



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC  
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August 24, 2004

Mayor Bruce Burrows  
4600 South Weber River Drive  
Riverdale, Utah 84405-3764

Mr. Greg Limburg  
Riverdale Planning Commission, Chair  
4600 South Weber River Drive  
Riverdale, Utah 84405-3764

Re: Riverdale Sign Ordinance

Gentlemen:

As national and local elections approach, it has come to our attention that the Riverdale zoning regulations include an ordinance that imposes a time limitation on the posting of political signs on residential property. Specifically, it states that political signs “shall be erected not earlier than sixty (60) days prior to the election at which time the candidates or measure will be voted upon and shall be removed within fifteen (15) days after such election, campaign or event.” Riverdale City Ordinances, § 10-16-3(F)(1).

The First Amendment to the Constitution guarantees, among several liberties, the freedom of expression. “A special respect for individual liberty in the home has long been a part of our culture and our law; that principle has special resonance when the government seeks to constrain a person’s ability to speak there.”<sup>1</sup> That liberty includes a right to erect signs, “a form of expression protected by the Free Speech Clause” of the First Amendment.<sup>2</sup> Indeed, yard and window signs are a unique medium that “may have no practical substitute.”<sup>3</sup> Although expression in the home is subject to constitutionally appropriate regulation,<sup>4</sup> Riverdale’s regulatory scheme is constitutionally flawed.

Most significantly, the ordinance applies different standards to signs depending upon their content or message. For instance, temporal limits appear to differ based on the content of the sign. Issue signs may be put up indefinitely while other types of signs (e.g. political or campaign signs) are limited in how long they may be displayed. Such “content-based” regulations of expression are “*presumptively unconstitutional*.”<sup>5</sup> Judicial skepticism of content-based restrictions is particularly acute for

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<sup>1</sup> City of Ladue v. Gilleo, 512 U.S. 44, 58 (1994).

<sup>2</sup> Id. at 48.

<sup>3</sup> Id. at 57.

<sup>4</sup> Id. at 48.

<sup>5</sup> Rosenberger v. Rector and Visitors of Univ. of Virginia, 515 U.S. 819, 828-29 (1995); Forsyth County, Georgia v. Nationalist Movement, 505 U.S. 123, 130 (1992); Simon and Schuster, Inc. v. Members of New York State Crime Victims Bd., 502 U.S. 105, 115 (1991).

expression that occurs on private property. “With rare exceptions, content discrimination in regulations of the speech of private citizens on private property or in a traditional public forum is presumptively impermissible, and this presumption is a very strong one.”<sup>6</sup>

In the residential context, we are unaware of any court that has allowed such content-based restrictions, except perhaps for signs with a commercial message. But signs bearing a political, personal or religious message cannot be banned altogether, restricted in duration, or otherwise burdened with an ill-defined regulatory system as has been done by Riverdale.<sup>7</sup>

We would appreciate receiving your written assurance by Thursday, September 2, 2004, that you will cease and desist from enforcing this zoning regulation and will work to change the law to reflect constitutional standards at the next Planning and Zoning meeting.

If the problem is not resolved, we will consider legal action against the town and the Zoning Commission. Should we be forced to take such action, the ACLU of Utah will be entitled to recover costs and attorney fees.

If you would like to discuss the matter, you can reach me through my office at 801.521.9862, ext. 103. We look forward to hearing from you.

Respectfully,

Margaret Plane  
Staff Attorney  
ACLU of Utah

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<sup>6</sup> Gilleo, 512 U.S. at 59 (O’Connor, J., concurring).

<sup>7</sup> See, e.g., Whitton v. City of Gladstone, 54 F.3d 1400, 1408 (8th Cir. 1995); Arlington County Republican Comm. v. Arlington County, VA, 983 F.2d 587 (4<sup>th</sup> Cir. 1993); Sugarman v. Village of Chester, 192 F.Supp.2d 282 (S.D.N.Y. 2002); King Enterprises, 215 F.Supp.2d 891 (E.D. Mich. 2002); Knoeffler v. Town of Mamakating, 87 F. Supp. 2d 322, 327-331 (S.D. NY 2000); North Olmstead Chamber of Commerce v. City of North Olmstead, 86 F. Supp. 2d 755, 764 (N.D. Ohio 2000); Curry v. Prince George’s Co., 33 F. Supp. 2d 447, 452 (D. Maryland 1999); Outdoor Systems, Inc. v. City of Merriam, Kansas, 67 F. Supp. 2d 1258 (D. Kansas 1999); Dimas v. City of Warren, 939 F. Supp. 554, 557 (E.D. Mich. 1996); Pica v. Sarno, 907 F. Supp. 795, 800-01 (D. NJ. 1995) McCormack v. Township of Clinton, 872 F. Supp. 1320 (D. NJ. 1994); Loftus v. Township of Lawrence Park, 764 F. Supp. 354 (W.D. Pa. 1991); Orrazio v. Town of North Hempstead, 426 F. Supp. 1144 (E.D. NY 1977).