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Election Lawn Sign Restrictions

Campaign lawn signs are ubiquitous during election season throughout towns across the country. These signs play an important and unique role in political debate and expression. The right to post campaign lawn signs has been defended under First Amendment protections by organizations like the American Civil Liberties Union when the state has attempted to regulate and restrict their usage based on content or limiting the length of time a sign may be posted. The state does have the right to regulate the posting of lawn signs in the interest of public safety and aesthetics so long as these restrictions remain reasonable, nondiscriminatory, and serve a compelling state interest.¹ "Political campaign signs may not be banned altogether."² However, they may be regulated as long as the regulations are "reasonable, nondiscriminatory rules"³ that "apply equally to all temporary signs."⁴

Freedom of Expression

Political campaign lawn signs are one of the easiest and most accessible ways for citizens to be involved with the political process. "The Supreme Court requires the government to provide substantial justification for the interference with the right of free speech where it attempts to regulate the content of the speech."⁵ Political speech has been protected most rigorously under the first amendment's freedom of expression because of the vital role that political expression plays in the democratic process.⁶

In 1994, the Supreme Court upheld an individual's right to freedom of expression through political lawn signs in the case of *City of Ladue v. Gilleo* stating that,

¹ Vermont Secretary of State, "Candidates and Municipal Officials Guide to Placement of Political Campaign Signs," Vermont Elections Division, accessed April 23, 2012, http://vermont-elections.org/elections1/political_signs.html.

² Vermont Secretary of State, "Candidates and Municipal Officials Guide to Placement of Political Campaign Signs."

³ Vermont Secretary of State, "Candidates and Municipal Officials Guide to Placement of Political Campaign Signs."

⁴ Vermont Secretary of State, "Candidates and Municipal Officials Guide to Placement of Political Campaign Signs."

⁵ Legal Information Institute, "First Amendment," Cornell University Law School, August 19, 2010, accessed April 27, 2012, http://www.law.cornell.edu/wex/First_amendment.

⁶ Clyde Spillenger, "Speech and the Press, Freedom of," *The Oxford Companion to American Law*, Oxford University Press, Oxford Online, accessed April 23, 2012, <http://www.oxfordreference.com/views/ENTRY.html?entry=t122.e0865#head9>.

Displaying a sign from one's own residence often carries a message quite distinct from placing the sign someplace else, or conveying the same text or picture by other means...Residential signs are an unusually cheap and convenient form of communication...the added costs in money or time of taking out a newspaper advertisement, handing out leaflets on the street, or standing in front of one's house with a handheld sign may make the difference between participating and not participating in some public debate.⁷

Durational time limits and content-based restrictions on campaign lawn signs have not withstood Constitutional scrutiny. Towns and municipalities have argued that lawn signs are detrimental to property value and community aesthetics. This argument has not been upheld in courts as a reason to interfere with freedom of speech and expression.⁸

A Rhode Island ACLU attorney, Richard A. Sinapi, notes, "Political sign restrictions generally have the effect of favoring incumbents over challengers, since one of the major obstacles for any challenger in a political campaign is name recognition."⁹ The low cost of creating political lawn signs coupled with the ease of distribution makes it a particularly cost-effective campaign tool and form of political speech for candidates.¹⁰

The American Civil Liberties Union has consistently opposed campaign sign restrictions that limit the size of campaign signs or the amount of time they may be displayed. The Rhode Island chapter of the ACLU filed a lawsuit challenging the constitutionality of a North Kingstown sign ordinance law in October of 2010 that required political signs to be no "larger than six square feet in a residential zone or 20 square feet in a non-residential zone," while restrictions on "construction and contractor signs, holiday signs, banners and a variety of other signs," were permitted to be considerably larger.¹¹ The ACLU argued that the ordinance was unconstitutional because it regulated political speech more harshly than non-political speech and that the ordinance infringes upon freedom of speech by limiting speech based on its

⁷ David L. Hudson, "Political Yard Signs," The First Amendment Center, September 27, 2004, accessed April 26, 2012, <http://www.firstamendmentcenter.org/political-yard-signs>.

⁸ Joseph M. Gerace, "Mayor, Group Leader Debate Lawn Sign Regulations at Closed Door Meeting," accessed April 26, 2012, <http://wyckoff.patch.com/articles/wysigns0223>.

⁹ American Civil Liberties Union, "ACLU Challenges North Kingstown Political Sign Ordinance on Behalf of Congressional Candidate," October 20, 2010, accessed April 29, 2012, <https://www.aclu.org/free-speech/aclu-challenges-north-kingstown-political-sign-ordinance-behalf-congressional-candidate>.

¹⁰ American Civil Liberties Union, "ACLU Challenges North Kingstown Political Sign Ordinance on Behalf of Congressional Candidate."

¹¹ American Civil Liberties Union, "ACLU Challenges North Kingstown Political Sign Ordinance on Behalf of Congressional Candidate,"; Rhode Island Affiliate American Civil Liberties Union, "North Kingstown Political Sign Case Resolved," <http://www.riaclu.org/20110307.htm>.

content.¹² The town agreed in a consent judgment to not regulate political speech more stringently than other types of speech.¹³

In 2008, the ACLU of New Jersey successfully argued against a town ordinance in Hawthorne, New Jersey that banned “political signs except for 32 days before an election and seven days after.”¹⁴ The town had fined a resident for keeping a Ron Paul campaign sign in his yard for longer than a week after the 2008 New Jersey primary.¹⁵ Ultimately, “the Hawthorne Borough Council unanimously voted to rescind the restrictions on time limits for political signs.”¹⁶ This past February, the ACLU of New Jersey was contacted about a town ordinance that states “temporary political signs are restricted to a size of four square feet, are set back 25 feet from the curb, and are limited to 30 days of display.”¹⁷ The ACLU of New Jersey has sent a letter to the town about the unconstitutionality of its ordinance. Durational time limits, such as this, are unconstitutional and have consistently been stricken down by courts, in New Jersey and other states.¹⁸

Vermont Sign Laws

The Vermont Agency of Transportation and the Travel Information Council has jurisdiction over enforcing the state’s sign laws.¹⁹ Signs are defined in 10 V.S.A. § 481(6) “as any structure, display, device, or representation, either temporary or permanent, portable or ground-mounted, which is designed or used to advertise or call attention to any thing, person, business, activity or place and is visible from any highway or other right of way. It does not include the flag, pennant or insignia of any nation, state or town.”²⁰

¹² American Civil Liberties Union, “ACLU Challenges North Kingstown Political Sign Ordinance on Behalf of Congressional Candidate.”

¹³ American Civil Liberties Union, “ACLU Challenges North Kingstown Political Sign Ordinance on Behalf of Congressional Candidate.”

¹⁴ New Jersey Affiliate American Civil Liberties Union, “ACLU-NJ Client Takes Down Town’s Lawn Sign Restrictions,” August 7, 2008, accessed April 29, 2012, <http://www.aclu-nj.org/news/2008/08/07/aclu-nj-client-takes-down-towns-lawn-sign-restrictions>.

¹⁵ New Jersey Affiliate American Civil Liberties Union, “Gause v. Borough of Hawthorne,” accessed April 29, 2012, <http://www.aclu-nj.org/legaldocket/gausevboroughofhawthorne>.

¹⁶ New Jersey Affiliate American Civil Liberties Union, “Gause v. Borough of Hawthorne.”

¹⁷ Joseph M. Gerace, “Mayor, Group Leader Debate Lawn Sign Regulations at Closed Door Meeting,” accessed April 29, 2012, <http://wyckoff.patch.com/articles/wysigns0223>.

¹⁸ Jeanne LoCicero, Deputy Legal Director, American Civil Liberties Union, letter to Robert Landel, Wyckoff Township Attorney, March 1, 2012, accessed April 30, 2012, http://www.aclu-nj.org/download_file/view_inline/920/683/.

¹⁹ Vermont Secretary of State, “Candidates and Municipal Officials Guide to Placement of Political Campaign Signs.”

²⁰ Vermont State Statutes, “Title 10: Conservation and Development”, 10 V.S.A. §481 <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=10&Chapter=021&Section=00481>.

Statute 10 V.S.A. §494(9) allows for the placement of temporary signs, “Signs to be maintained for not more than two weeks announcing an auction, or a campaign, drive or event of a civic, philanthropic or religious organization.”²¹

If the sign is placed in a Vermont highway right-of-way, the state Agency of Transportation has the authority to remove the signs without giving explicit notice to the owner of the sign because of public safety concerns.²² Similarly, signs cannot obstruct traffic signals, look like traffic signs, or generally impede traffic flow and confuse motorists.²³

It is within the jurisdiction of a local municipality to outline further regulations on the placement of signs within its locality. According to Vermont Statutes “[t]emporary political campaign signs on public or private property may also be regulated by either a local sign ordinance (24 V.S.A. §1971 and §2291) or a municipal zoning bylaw.”²⁴ 24 V.S.A. §1971 gives municipalities the authority to “adopt, amend, repeal and enforce ordinances or rules for any purposes authorized by law.”²⁵ 24 V.S.A. §2291(7) gives municipalities the power “[t]o regulate or prohibit the erection, size, structure, contents and location of signs, posters or displays on or above any public highway, sidewalk, lane or alleyway of the municipality and to regulate the use, size, structure, contents and location of signs on private buildings or structures.”²⁶

Environmental Considerations

The problem of “election litter” has received attention recently.²⁷ Ryan McLaren, Field Director at the Vermont Democratic Party, estimates that candidates running for statewide office would use between 1,000 and 10,000 lawn signs. For local level elections to the Vermont legislature, candidates typically display between 100 and 250 lawn signs. Incumbents and candidates for lower profile office often fall in the lower range, while candidates running against an incumbent or those running for “top-of-the-ticket” positions use more. Stylistic differences between campaign strategies also affect the amount candidates’ use or rely on lawn signs for publicity.²⁸

²¹ Vermont State Statutes, “Title 10: Conservation and Development”, 10 V.S.A. §494(9)

<http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=10&Chapter=021&Section=00494>.

²² Elections Division, “Candidates and Municipal Officials Guide to Placement of Political Campaign Signs.”

²³ Elections Division, “Candidates and Municipal Officials Guide to Placement of Political Campaign Signs.”

²⁴ Elections Division, “Candidates and Municipal Officials Guide to Placement of Political Campaign Signs.”

²⁵ Vermont State Statutes, “Title 24: Municipal and County Government,” 24 V.S.A. §1971,

<http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=24&Chapter=059&Section=01971>.

²⁶ Vermont State Statutes, “Title 24: Municipal and County Government,” 24 V.S.A. §2291(7),

<http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=24&Chapter=061&Section=02291>.

²⁷ Amy Rolph, “Signs of election litter medians,” Seattle Post-Intelligencer, September 22, 2006, accessed May 1,

2012, <http://www.seattlepi.com/local/article/Signs-of-election-litter-medians-1215385.php>; Richard Eisenbeis,

“Election litter needs to be removed,” The Independent, May 3, 2006, accessed May 1, 2012,

<http://ind.gmnews.com/news/2006-05-03/Letters/052.html>; John Breunig, “Green Party election litter?” The

Stamford Advocate, April 14, 2011, accessed May 1, 2012,

<http://blog.stamfordadvocate.com/stamford411/2011/04/14/green-party-election-litter/>.

²⁸ Ryan McLaren, Field Director, Vermont Democratic Party, telephone conversation with author, May 4, 2012.

Often campaign lawn signs are made of corrugated plastic sheets, which are made from polyethylene and polypropylene plastic.²⁹ These signs are staked into the ground using “step stakes” made of aluminum.³⁰ Polypropylene plastics make up 17% of “plastic waste in municipal solid waste.”³¹ According to a Greenpeace’s “pyramid of plastics...a ranking of plastics according to their hazardous characteristics,” polypropylene and polyethylene rank close to the bottom in position 4 out of 5.³²

Candidates are required to clean up campaign posters in public spaces. The city of Washington, D.C. fines candidates \$35 per sign.³³ In Vermont, legislators tend to follow a “courtesy rule” to have their election lawn signs gone shortly after the election to respect constituent preferences.³⁴

Conclusion

Campaign signs serve an important purpose because they are an easy medium of political speech for constituents and publicity for candidates.³⁵ Reasons to limit the use of lawn signs in elections include the concerns over the amount of waste they generate, their potential to be hazardous to traffic, and their general unsightliness, which may decrease property value.³⁶

This report was completed on January 9, 2013 by Lydia Lulkin, Josephine Miller, and Stephen-George O. Davis II under the supervision of graduate student Kate Fournier and Professor Anthony Gierzynski in response to a request from Representative Jill Krowinski.

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Disclaimer: This report has been compiled by undergraduate students at the University of Vermont under the supervision of Professor Anthony Gierzynski. The material contained in the report does not reflect the official policy of the University of Vermont.

²⁹ Corrugated Plastics, “Corrugated Plastic Sheets, Rolls, & Bins,” accessed April 30, 2012, <http://corrugatedplastics.net/>.

³⁰ Corrugated Plastics, “Corrugated Plastic Sheets, Rolls, & Bins.”

³¹ Claus Molgaard, “Environmental impacts by disposal of plastic from municipal solid waste,” *Institute of Manufacturing Engineering*, 15 (1995): p. 53-54, http://www.sciencedirect.com/science?_ob=MiamiImageURL&_cid=271808&_user=1563816&_pii=0921344995000139&_check=y&_origin=search&_zone=rslt_list_item&_coverDate=1995-10-31&_wchp=dGLbVIB-zSkzS&_md5=7aa3096f09dc45e1ebaaf051640bcf84/1-s2.0-0921344995000139-main.pdf.

³² Greenpeace International, “PVC Alternatives Database—Greenpeace Pyramid of Plastics,” n.d., accessed May 1, 2012, <http://archive.greenpeace.org/toxics/pvcdatabase/bad.html>.

³³ Department of Public Works, “Candidates Reminded to Take Down Campaign Posters by December 3,” District of Columbia, n.d., accessed May 1, 2012, <http://dpw.dc.gov/DC/DPW/About+DPW/News+Room/Press+Releases/ci.Candidates+Reminded+to+Take+Down+Campaign+Posters+by+December+3.print>.

³⁴ Representative Keshia Ram, Vermont House of Representatives, telephone conversation with author, May 4, 2012.

³⁵ David L. Hudson, “Political Yard Signs,” <http://www.firstamendmentcenter.org/political-yard-signs>.

³⁶ David L. Hudson, “Political Yard Signs,” <http://www.firstamendmentcenter.org/political-yard-signs>.