International Municipal Lawyers Association
2008 Annual Conference, Las Vegas, Nevada

Political Signs

Not In My Front Yard: Regulating Political Signs

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PART I: INTRODUCTION

The political sign posted in the front yard is a medium of communication which is unique and important. It affords people an inexpensive way to express a view on a controversial issue, to show support for a particular candidate or cause, and to comment on a local happening. A political sign in the front yard carries a message very different and distinct from a political advertisement on a billboard, in a newspaper, on the internet, or on television. Not only does the political sign convey a message, but it also provides information about the identity of the speaker and the identity of the speaker is an important part of any effort to persuade. The front yard political sign is a medium of expression which finds no alternative outlet in any other medium.

The First Amendment of the United States Constitution provides "Congress shall make no law…abridging the freedom of speech, or of the press…." Under the Fourteenth Amendment, city ordinances are within the scope of this limitation on governmental authority.[1] The First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others. Yet, a city is not powerless to protect its citizens from unwanted exposure to certain methods of expression and to impose reasonable time, place, and manner provisions.[2]

Signs promoting a political viewpoint, belief, position, or opinion are a form of expression protected by the First Amendment. Political speech is entitled to the highest form of protection by the Free Speech Clause of the First Amendment.[3] But, political signs also pose unique problems that are subject to a city's police powers. Political signs take up space, they may obstruct views, they distract motorists, they take up land which may be used for another purpose, and they may present aesthetic concerns such as "visual clutter." Just like the government may regulate audible expression such as noise,[4] the government may regulate the physical characteristics and locations of political signs.[5] To satisfy constitutional scrutiny, a sign ordinance regulating protected speech must be content-neutral, serve a substantial government interest, be narrowly tailored to

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[1] *See* Lovell v. City of Griffin, 303 U.S. 444, 450 (1938).
[2] *See* Kovacs v. Cooper, 336 U.S. 77 (1949); *see also* Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989) (the government may impose reasonable time, place and manner restrictions on speech as long as they are content neutral, narrowly tailored to serve a significant government interest and leave open "ample channels for communication").
[3] *See* McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 346 (1995) ("[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs,…of course includ[ing] discussions of candidates.")
[4] *See* Kovacs v. Cooper, 336 U.S. 77 (1949); *see also* Ward v. Rock Against Racism, 491 U.S. 781 (1989).
[5] *See generally* Metromedia, Inc. v. San Diego, 453 U.S. 490 (1981); Members of City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 (1984); City of Ladue v. Gilleo, 512 U.S. 43 (1994).

further this interest, and leave open ample alternative means for communicating the desired message.[6]

Defining a "Political Sign"

A political sign may relate to a candidate's election to public office or a ballot measure for an upcoming election.[7] Because the effectiveness of these signs is limited to a particular time period, it is possible to argue that political signs should be subject to special time limitations applicable only to them without sacrificing free speech values.

However, political signs can also relate to a matter of public interest and public concern which is not temporary in nature and is not bounded by an upcoming election.[8] These types of signs are sometimes referred to as "cause" signs because they express the opinion and viewpoint of the speaker. A "cause" sign may react to a local happening, comment on a controversial issue, or announce an opinion on an issue of statewide, national, or international concern.[9] While these types of signs may not necessarily be thought of as "political" in the traditional nature—they are not advocating for a particular candidate or taking a particular position on an election measure—they are protected speech under the First Amendment. A "cause" sign may express an opinion on a local matter ("Stop Wildfires, Ban Fireworks"), a statewide issue ("Same-Sex Marriage is Marriage"), or a national issue ("Terrorism is Crime and It Needs to End").

Although it may be possible to separate out regulations for political campaign signs, which are often bounded in time, and political signs expressing an opinion on a matter of public interest and public concern, which are not bounded in time, given that both political campaign signs and political (or "for cause") signs are protected speech, regulations governing "political signs"—whether for a campaign or for a cause—should be analyzed together rather than

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[6] A regulation which prohibits the communication of a specific idea is a content-based regulation. It is presumptively unconstitutional for the government to place burdens on speech because of its content. To justify a content-based regulation of speech, the government must show that the regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. A content-neutral regulation is one which does not discriminate based on the content of the speech. Content-neutral speech regulations generally are subject to intermediate scrutiny—they will be upheld if the government can show that: (i) they advance important interests unrelated to the suppression of speech, and (ii) they do not burden substantially more speech than necessary to further those interests.

[7] An example of a political campaign sign is "Vote for Obama," "Vote for McCain," "Vote for John Smith for Council."

[8] *See* City of Ladue v. Gilleo, 512 U.S. 43 (1994) ("For Peace in the Gulf"); Savago v. Village of New Paltz, 214 F.Supp.2d 252 (N.D.N.Y. 2002) ("Keep looking over your shoulder terrorists-we're coming for you. God bless America"); State ex rel. Dept. of Transp. v. Pile, 603 P.2d 337 (Okla. 1979) ("GET US OUT OF THE UNITED NATIONS").

[9] *See* City of Ladue v. Gilleo, 512 U.S. 43 (1994).

separately.[10] It is difficult to make any distinction between a "cause" sign and a "political sign." For example, it is very possible that a "cause" sign can become a "political" sign if elected officials react to the cause. Alternatively, why should a private resident be prohibited for campaigning for a ballot measure or candidate after the election if it is the opinion of that person that the ballot measure or candidate should be voted in. And, why should a private resident be prohibited from campaigning for government reform even when it is unrealistic and has no chance of winning.[11]

The Government's Authority to Regulate Political Signs in the Front Yard

This paper discusses both political signs in the front yards of America's neighborhoods and the posting of political signs on public property.

The posting of political signs on private residential property was squarely examined and discussed by the Supreme Court in *City of Ladue v. Gilleo*.[12] In this case, Margaret P. Gilleo placed an antiwar sign in the front yard of her home with the printed words "'Say No to War in the Persian Gulf, Call Congress Now.'"[13] The sign disappeared and Gilleo put up another one which was knocked to the ground.[14] She called the police and was informed that such yard signs were prohibited under the City of Ladue's sign ordinance which banned all residential signs except those falling within one of ten exemptions, political signs not being one of the exemptions. Gilleo filed an action against the City alleging the sign ordinance violated her First Amendment right to free speech.[15] The District Court issued a preliminary injunction against enforcement of the ordinance and Gilleo subsequently placed an 8.5-inches by 11-inches sign in the second story window of her home stating "'For Peace in Gulf.'"[16]

The Supreme Court analyzed the City of Ladue's ordinance as an unconstitutional content-neutral restriction, reasoning that the City's aesthetic interests, while valid, must be considered against the effects of the ban which summarily foreclosed an entire medium of expression: namely, prohibiting a property owner from freely expressing an opinion in his or her own front yard.[17] The Court did emphasize that although Ladue's ban on almost all residential signs violated the First Amendment, cities were not powerless to address the ills

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[10] For purposes of this paper, the term political sign will refer to both a political campaign sign and a "cause" sign.
[11] The holding in *City of Ladue v. Gilleo* is clear that when political signs and "cause" signs are posted on private residential property that the two types of signs should be treated the same.
[12] 512 U.S. 43 (1994).
[13] *Id*. at 45.
[14] *Id*.
[15] *Id.* at 45-46.
[16] *Id.* at 46.
[17] *City of Ladue*, 512 U.S. at 54-57.

associated with residential signs.[18] Unfortunately, the Court gave little, if any, guidance about what types of regulations are acceptable, focusing instead on the strong incentives of individual property owners' self-interest in keeping their property values up which diminishes the danger of the limitless proliferation of residential signs creating visual clutter.[19]

The *Ladue* decision permits the placement of political signs on private residential property. However, the Court did not foreclose the government's authority to impose reasonable content-neutral regulations on the size, shape, location, and other aspects of political signs, so long as the regulations do not unconstitutionally impinge upon a homeowner's First Amendment rights.

PART II: POLITICAL SIGNS ON PRIVATE PROPERTY

Although a total ban on political signs in the front yard is unconstitutional,[20] a city may consider regulating the non-communicative aspects of political signs such as the size, shape, location, and duration.[21] The challenging and perplexing area of regulation for a city is when the regulation of the non-communicative aspects of signs impinges on communicative aspects The government's regulatory interests must be balanced against the individual's right to expression.[22] If the regulation is content-based, for example regulating the size, location, and duration of political signs, then the regulation must be necessary to serve a compelling government interest and narrowly drawn to achieve that end. If, on the other hand, the regulation is content-neutral, for example imposing restrictions on all signs placed in the front yard, then it must serve a substantial government interest and be narrowly tailored to further this interest, leaving open ample alternative means for communicating the desired message.

Unfortunately what emerges from the case law for regulations pertaining to the physical attributes of signs is anything but clear; rather, judicial precedence is nuanced by a particular set of facts and circumstances offering, at best, subtle guidance to a city seeking to implement regulations which will withstand a constitutional challenge.

Size of the Sign and Number of Signs

Whether the regulation requires that large signs be mounted to a substantial physical structure or limits the size of a political sign to a maximum square footage, size limitations on political signs serve a substantial governmental interest in protecting safety and neighborhood beauty.

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[18] *Id*. at 58.
[19] *Id*.
[20] *See id.* at 56-58.
[21] *See* Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 502 (1981).
[22] *See id*.

In *Baldwin v. Redwood City*,[23] the City's ordinance provided that the aggregate area of signs per candidate or ballot issue was limited to 64 square feet, no single sign may exceed 16 square feet in area, the aggregate area of all temporary political signs on any one privately owned parcel must not exceed 80 square feet, and no signs were permitted in residential areas.[24] The practical effect of the ordinance was to limit to five the number of temporary signs any one non-residential property owner could display at any one time and to only allow four posters on any one candidate or ballot measure to be posted in the City. The size limitations were based on Redwood City's experience with the effects of the elements, particularly the wind and problems with flimsy signs.[25] The Court of Appeals upheld the size limitations, finding that the limitations do not "significantly deter the exercise of First Amendment rights."[26] The Court declared unconstitutional the limitation of the aggregate area of posters on behalf of a single candidate or issue because the limitations prohibited core political expression during an election.[27] Finally, the Court held that the total exclusion of political signs in residential areas to be invalid.[28]

Subsequently, the Court of Appeals for the Ninth Circuit held that a City of Concord ordinance requiring that the dimension of any sign may not exceed a maximum area of four square feet with maximum dimensions of two feet, with only one sign per private property, violated the First Amendment because the ordinance was unnecessarily restrictive.[29] The City of Concord failed to justify the restriction on the size of the signs and, consequently, failed to meet its burden of demonstrating the necessity of the restriction for a legitimate government interest.[30] The holding in *Verrilli v. City of Concord* suggests that a city's regulations should focus less on the number of signs in any one front yard and more on the aggregate square footage of sign area allowed in a front yard, regardless of the number of signs. In addition, the holding reinforces the duty which a city has to support the adoption of any regulation with findings which demonstrate that the city has a legitimate interest to justify the regulations imposed.

The Fourth Circuit held that an ordinance limiting the number of temporary signs that could be placed on residential property to two infringed on residents' free speech rights by preventing them from expressing support for more than two candidates in an election with numerous contested races, and by significantly restricting the ability of two voters living within the same household

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[23] 540 F.2d 1360 (9th Cir. 1976), *cert. denied*, 431 U.S. 913 (1977).
[24] *See id* at 1362, n.1.
[25] *Id.* at 1368-69.
[26] *Id.* at 1369.
[27] *Id.*
[28] *See Baldwin*, 540 F.2d at 1373.
[29] Verrilli v. City of Concord, 548 F.2d 262, 265 (9th Cir. 1977).
[30] *Id.*

to use a sign posting to express their support for opposing candidates.[31] The Court also found that the County was not able to demonstrate how the two-sign limit furthered the County's interest in promoting aesthetics and traffic safety, and that the County failed to consider less restrictive means to achieve its objectives.[32]

On the other hand, a City ordinance allowing residents to post only one non-commercial opinion sign in their yard year round and additional signs, up to one sign per ballot issue and per ballot candidate, during the election season did not violate the First Amendment because it balanced the city's inherent substantial interest in aesthetics, residential home value, visual clutter, and traffic hazards with the rights of its residents to express a non-commercial opinion.[33] Here, DeAnna Brayton placed two signs in the front yard of her home. One sign was approximately two feet by four feet in size and expressed criticism of a decision by a district court judge in an animal cruelty case. The other sign was approximately one foot by one and one-half feet and expressed Ms. Brayton's opinion on other issues related to the treatment of animals.[34] The City's ordinance established an exhaustive list supporting the purpose of the regulations which included the need to preserve residential character and cleanliness, to avoid the appearance of clutter, to protect property values, to reduce administrative burdens, and to protect the health, safety, and welfare of the community.[35] The court concluded that the ordinance was narrowly tailored to promote a substantial government interest, and that during the short election season these regulations are modified in favor of fewer regulations on political speech.[36]

Recently, a federal district court held that Troy, Michigan's ordinance limiting the number of political signs on any parcel of real property to two signs was a content-based restriction because the restriction only pertained to signs which were of a political nature.[37] Here, the Court concluded that the City's content-based ordinance could have been found to be constitutional if it was found necessary to serve a compelling government interest and was narrowly drawn to achieve that end.[38] The Court followed the long line of judicial precedent which has found that while "safety" and "aesthetics" are substantial government interests, they are not compelling interests to justify a content-based restriction on protected First Amendment speech.[39] It is not clear whether the Court would have held differently if the number of signs posted on private property was limited, regardless of the type of sign.

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[31] *See* Arlington County Republican Comm. v. Arlington County, 983 F.2d 587, 594 (4th Cir. 1993).
[32] *See id.* at 594-95.
[33] Brayton v. City of New Brighton, 519 N.W.2d 243 (Minn. Ct. App. 1994), *cert. denied*, 514 U.S. 1036 (1995).
[34] *Id.* at 244.
[35] *Id.* at 245.
[36] *Id.* at 247.
[37] Fehribach v. City of Troy, 412 F.Supp.2d 639 (E.D. Mich. 2006).
[38] *Id.* at 646.
[39] *Id.*

Sign Shape and Illumination

Political signs can be manufactured by a professional printer or they may be designed and constructed by an individual. In general, a city may regulate the shape and illumination of political signs in residential neighborhoods in the same manner it regulates the shape and illumination of all other signs in residential neighborhoods. This type of regulation is content-neutral and can be justified by a substantial governmental interest such as protecting city residents from bright lights in quiet neighborhoods or ensuring that a sign's shape does not get confused with an official traffic safety sign.[40]

In *Whitton v. City of Gladstone*,[41] the City prohibited the external illumination of political signs on residential property; however, certain ground signs which were less than thirty square feet could be illuminated on residential property. The federal district court determined that this was a content-neutral and a reasonable time, place, and manner restriction because the sign code did not permit external illumination of signs greater than thirty-square feet on residential property. The appellate court disagreed with this conclusion, holding that the sign ordinance permits some ground signs to be illuminated and, consequently, was a content-based restriction which failed to withstand strict scrutiny.[42]

Durational Limits

Contemporary courts have frequently held that durational limits on political campaign signs to be content-based and to be unconstitutional because the local government has failed to show a compelling interest to justify the durational limits.[43] The courts have distinguished between pre-election durational limits and post-election durational limits.

For example, an ordinance which prohibits residential property owners from placing political signs on their property more than 30 days before an election

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[40] For example, a city may prohibit all signs in the shapes of triangles, hexagons, and diamonds because these are shapes of signs which are used for traffic safety purposes.

[41] 54 F.3d 1400 (8th Cir. 1995).

[42] *Id.* at 1409-10.

[43] *See e.g.,* Whitton v. City of Gladstone, 54 F.3d 1400 (8th Cir. 1995); Knoeffler v. Town of Mamakating, 87 F. Supp.2d 322 (S.D.N.Y. 2000); Curry v. Prince George's County, Maryland, 33 F. Supp.2d 447 (D.Md. 1999); Dimas v. City of Warren, 939 F. Supp. 554 (E.D. Mich. 1996); City of Antioch v. Candidates' Outdoor Graphic Serv., 557 F.Supp. 52 (N.D.Cal. 1982); Orazio v. Town of North Hempstead, 426 F. Supp. 1144 (E.D.N.Y. 1977); Painesville v. Dworken & Bernstein, 733 N.E.2d 1152 (Oh. 2000); Collier v. City of Tacoma, 121 Wash.2d 737 (Wash. 1993); Lakewood v. Colfax Unlimited Association, Inc., 634 P.2d 52 (Col. 1981); Maguire v. American Canyon, 2007 WL 1875974 (N.D.Cal. 2007); Christensen v. Wheaton, 2000 WL 204225 (N.D.Ill. 2000). A handful of courts have upheld durational limits on political signs. *See e.g.,* Ross v. Goshi, 351 F. Supp. 949 (D. Haw. 1972); Town of Huntington v. Estate of Schwartz, 313 N.Y. S.2d 918 (D.Ct. Suffolk Cty., 1970).

amounts to an impermissible content-based restriction.[44] In some residential neighborhoods, a property owner may be able to express support for a community organization or high school sports team year-round, but under an ordinance regulating a political sign made of the same material, with the same dimensions and colors, and displayed in the same location, the political sign can not be displayed, thus the ordinance is inherently content-based.[45]

Similarly, an ordinance limiting signs advertising political events or viewpoints for 10 days before the event was found to be content-based.[46] The Court determined that other signs advertising events of a temporary nature—such as yard sales, town festivities, or athletic events—could presumably be posted at any time within 30 days before the actual event.[47] An ordinance prohibiting the posting of political signs more than 60 days before an election was also struck down on the basis that it failed to adequately provide for free speech rights.[48] The court struck down a municipal ordinance which banned the posting of temporary political signs everywhere in the city for all but a 60-day period before an election, viewing the ordinance as a general "ban" on political speech which was temporarily suspended 60 days prior to an election.[49] An ordinance allowing one non-commercial opinion sign to be posted year round and additional campaign signs or non-commercial opinion signs during the election season was upheld by a Minnesota state court.[50]

While pre-election restrictions are generally found to be unconstitutional, post-election removal requirements on political signs for an election have been upheld. For example, in *McCormack v. Township of Clinton* the Court found that a pre-election posting requirement that political signs be displayed not more than 10 days prior to any election and post-election posting requirement that signs be removed no later than three days after the election was unconstitutional.[51] The McCormack court indicated that the City's interests in safety and aesthetics could be adequately served by a provision removing all temporary signs, including political signs, within 10 days after termination of the special event.[52] Likewise, in *Collier v. City of Tacoma*, the court rejected a 60-day pre-election restriction on the posting of campaign signs, finding that Tacoma failed to prove its interests in aesthetics and traffic safety are sufficiently compelling to justify the restrictions imposed on restrictions to political expression.[53] But, the Court did not find unconstitutional a provision of the ordinance requiring removal of political signs

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[44] *See* Whitton v. City of Gladstone, 54 F.3d 1400, 1404-09 (8th Cir. 1995).
[45] *Id.*
[46] McCormack v. Township of Clinton, 872 F. Supp. 1320, 1323-24 (D.N.J. 1994).
[47] *Id.*
[48] Collier v. City of Tacoma, 854 P.2d 1046, 1057 (Wash. 1993).
[49] Antioch v. Candidates' Outdoor Graphic Serv., 557 F. Supp. 52, 61 (N.D.Cal. 1982).
[50] Brayton v. City of New Brighton, 519 N.W.2d 243, 248 (Minn. Ct. App. 1994).
[51] McCormack v. Township of Clinton, 872 F. Supp. 1320 (D. N.J. 1994).
[52] *Id.* at 1326-27.
[53] Collier v. City of Tacoma, 854 P.2d 1046, 1057-58 (Wash. 1993).

seven days after the date of the election for the intended signs.[54] The Court held that pre-election political speech interests that may outweigh a municipality's regulatory interests are not present following the event and may be outweighed by a municipality's demonstrated interests in aesthetics and traffic safety.[55]

One approach which cities may consider taking for imposing durational requirements on political campaign signs related to an upcoming election is to design the durational requirements around a special event, in general, and to focus the durational limits on the post-event period only. For example, the city could draft an ordinance requiring all temporary signs publicizing a special event to be removed no later than ten days after the special event. The ordinance would define a "special event" as any event, activity, or circumstance of an entity which is not part of its normal daily activities and which occurs uninterrupted for a continuous period of time, not to exceed ten days.

Permits, Registration, and Fees

Rules which impose special permits, registration requirements, and removal fees on political signs posted by a property owner in a residential area are not generally validated. For example, in *Baldwin v. Redwood City*[56], the City required filing an application, paying a $1.00 inspection fee, and depositing a $5.00 removal charge, for each sign.[57] The requirement was found unconstitutional on several grounds. First, a permit was required for each sign, thus in the scope of a political campaign this would impose an unnecessary burden which inhibits traditional means of communication, was unnecessarily burdensome, and contained elements of arbitrariness.[58] Second, the application form and information solicited was the same information required for a sign of a more permanent nature, much of the information required—such as plot plans and attachment specifications—was irrelevant to temporary signs.[59] Although the Court acknowledged that the permit requirements imposed in Redwood City were burdensome during a political campaign when time and money is of the essence, they went on to suggest that <u>any</u> permit requirement applied to temporary signs is unconstitutional because no substantial interest is served by requiring the City to be notified that signs are going to be erected.[60]

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[54] *Id.*
[55] *Id.* at 1058-59.
[56] 540 F.2d 1360 (9th Cir. 1976).
[57] *Id.* at 1370-71.
[58] *Id.* at 1372.
[59] *Id.*
[60] *Id.* The Court discussed the distinction in permit requirements for political signs and permit requirements for parades and organized demonstrations, noting that courts have upheld permit requirements for parades and organized demonstrations because they provide local government with advance notice necessary to provide proper policing to minimize the risk of disorder. Political signs, on the other hand, neither necessitate policing nor present a risk of disorder and, thus, permitting is not necessary. Baldwin v. Redwood City, 540 F.2d 1360, 1372 f. 32 (9th Cir. 1976).

More recently, however, a Federal District Court upheld a permit requirement that applied to all temporary signs, including political signs.[61] Here, plaintiff, a candidate for public office, filed suit against a number of towns and cities in Orange County, New York alleging that the ordinances regulating political signs were unconstitutional. In turn, the Court analyzed several challenged sign ordinances for the respective towns and cities.

One ordinance provided that all temporary signs, including those conveying a political message must receive a permit before posting and must pay a permit fee.[62] The court concluded that the permit requirements were "a reasonable time, manner and place restriction narrowly tailored to support Greenwood Lake's significant government interests in aesthetics and public safety."[63] However, the Court found that the City did not provide sufficient safeguards to ensure a permit determination is made expeditiously, thus rendering the entire sign ordinance unconstitutional.[64] With respect to the permit fee, the Court concluded that it was a reasonable content-neutral restriction on speech narrowly tailored to further a significant government interest.[65]

Another city ordinance analyzed in the same court opinion imposed permit requirements on all temporary political signs, but did not require permit requirements on all other temporary signs.[66] The court struck down this ordinance as unconstitutional. Similarly, a third ordinance uniformly required permit and accompanying permit fees for all signs; however, a few categories of signs were exempt from the fees and application requirements.[67] Political signs were not one of the categories of signs which were exempt and the Court concluded the ordinance was unconstitutional.[68]

The Third Circuit recently upheld a sign ordinance exempting all temporary signs posted in a historic district from obtaining a permit and paying a fee prior to posting the sign.[69] The Court also upheld another provision in the ordinance requiring that all permanent signs, regardless of their nature, obtain a permit.[70]

Limitations and Other Considerations

The general rule is that political signs are permissible in the front yard. However, there are some potential limitations to this doctrine which cities should

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[61] *See* Sugarman v. Village of Chester, 192 F.Supp.2d 282 (S.D. N.Y. 2002).
[62] *Id.* at 293.
[63] *Id.*.
[64] *Id.* at 296.
[65] *Id.* at 294.
[66] Sugarman v. Village of Chester, 192 F.Supp.2d 282, 297-98. (S.D. N.Y. 2002).
[67] *Id.* at 299.
[68] *Id.*
[69] Riel v. City of Bradford, 485 F.3d 736, 753-54 (3rd Cir. 2007).
[70] *Id.*

be aware of. First, solicitation of votes and posting of campaign materials within 100 feet of the entrance to the polls on election day is prohibited.[71] Although this is a content-based restriction, the Supreme Court has recognized that the government's compelling interest in securing the right to vote freely and effectively and the 100-foot limit prevents potential intimidation and voter fraud when voters go to the polls.[72] A question which naturally arises from the holding is, what happens in the situation when a polling place is located in a private residence in a neighborhood. It is undeniably common for a polling place to be located in a neighborhood. Under the Supreme Court doctrine, it suggests that no political signs or activities may occur within 100 feet of a polling place. It is not clear how the courts would resolve an apparent conflict between the First Amendment rights of private property owners with what is undoubtedly recognized by the government as a compelling interest to secure the right to vote freely and effectively.

Another issue which has not been discussed in great detail by the courts is the regulation of political signs in front yards in a community governed by a homeowners association. In general, the First Amendment protections do not extend to private residences governed by a homeowners association. If the regulations governing the display of political signs involve a contract between two private parties and the government is not involved, then the regulations will be valid.[73] If, on the other hand, the government is an actor, then a complete ban on political signs will probably be invalid. The Washington Supreme Court recently held that a local housing authority could not prohibit the posting of political signs on the doors to residences in a public housing complex.[74]

PART III: POLITICAL SIGNS ON PUBLIC PROPERTY

The rules governing political signs on public property are distinct from those governing political signs on private residential property. The level of regulation varies depending on what publicly owned property is being made available for speech and under what circumstances. Consequently, judicial precedence has classified different types of government property and has articulated varying rules for when speech in each category can be regulated. The clearest articulation of these categories and the rules applied for each is in *Perry Education Association v. Perry Local Educators' Association*.[75]

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[71] Burson v. Freeman, 504 U.S. 191 (1992).
[72] *See id.* at 208-09.
[73] *See* Committee For A Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 929 A.2d 1060 (NJ SC 2007).
[74] *See* Resident Action Council v. Seattle Housing Authority, 174 P.3d 84 (Wash. SC 2008). However, the principle that where the government is the "actor" does not necessarily extend to the situation where the government prohibits state employees from posting political signs supporting a candidate for office when the purpose of the regulation is to promote neutrality among government employees such as police officers. *See* Horstkoetter v. Department of Public Safety, 159 F.3d 1265 (10th Cir. 1998).
[75] 460 U.S. 37 (1983).

A public forum is an area which is held in trust for the use of the public, commonly referred to as places "which by long tradition or by government fiat have been devoted to assembly and debate."[76] For example, a sidewalk and a park are traditional public forums. A city may adopt a content-based regulation in a traditional public forum if it can show that the regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that interest.[77] A city may adopt time, place, and manner regulations that are content-neutral provided they are narrowly tailored to serve a significant governmental interest and must leave open ample alternative channels of communication.[78]

A designated public forum and nonpublic (limited) forum is created when the government opens public property for use by the public as a place for expressive activity.[79] Once the forum is created, the same standards which govern regulations concerning a traditional public forum apply. Examples of a designated public forum include buses, public libraries, and a community meeting room.

A nonforum is property where the government precludes all expressive use of the property and it is not a forum at all.[80] Here, a city may impose time, place, and manner regulations and reasonable restrictions to preserve the forum for its intended purpose—so long as those restrictions are not designed to prohibit the expression of an unpopular viewpoint.[81] In *Members of the City Council v. Taxpayers for Vincent*,[82] the Supreme Court upheld a Los Angeles ordinance prohibiting the posting of signs on public property.[83] The ordinance was challenged by a City Council candidate who posted campaign signs on utility polls which were subsequently removed by City workers.[84] "Taxpayers for Vincent" argued the utility poles were a public forum or should be treated as a public forum because they were located on public sidewalks.[85] The Court concluded that utility poles are a nonpublic forum, and that the government could prohibit the posting of signs to preserve physical and aesthetic values.[86] The Court rejected the claim that the public property was a public forum because of the absence of "a traditional right of access respecting such items as utility poles for purposes of their communication comparable to that recognized for public streets and parks" and simply because property is owned by the government does

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[76] *Id.* at 45.
[77] *Id.*
[78] *Id.*
[79] *See e.g.*, United Food and Chemical Workers v. Southwest Ohio Regional Transportation Authority, 163 F.3d 341 (6th Cir. 1998).
[80] Perry Education Association v. Perry Local Educators' Association, 460 U.S. 37, 46 (1983).
[81] *Id*.
[82] 466 U.S. 789 (1984).
[83] *Id.* at 817.
[84] *Id.* at 792-93.
[85] *Id.* at 813.
[86] *Id.* at 805.

it mean that all access shall be granted to whoever wishes to express their opinions.[87] Examples of nonforums which are appropriate for posting a political sign include utility poles, street signs, public buildings, and public fences.

What has emerged from the development of the public forum, designated public forum, and nonforum doctrine is the necessity for any city to determine the relevant forum for the applicable regulations. For example, if posting a political sign will be on a billboard in a park, then the relevant forum is the billboard and not the park. Similarly, if posting a political sign will be on a lamp post on a public sidewalk, then the relevant forum is the lamp post and not the public sidewalk.

The foregoing discussion on forum analysis can come into play when considering sign regulations applicable to private residential property. Oftentimes, the front yard of a home may have on it property a tree, garbage can, lamp post, or utility poll which is owned and maintained by the city. The question arises about whether a residential property owner should have a right to also post a sign on publicly owned property located within the owner's front yard.

PART IV: HYPOTHETICAL EXAMPLES AND QUESTIONS

This paper has discussed the posting of political signs on private residential property and public property. The following hypothetical examples and questions are intended to test your knowledge about how to apply the concepts discussed in this paper.

Example #1: Pre-Approval of Front Yard Political Sign

> *City Council adopts sign ordinance regulating "political and for cause" signs in residential neighborhoods. The ordinance does not distinguish between temporary signs and permanent signs. The ordinance requires that before property owner posts a sign in their front yard that they apply for and receive a permit from City Hall. The permit application requires applicant to submit example of sign. The ordinance includes no statement of findings or purpose supporting the permit requirement. Additionally, the ordinance is silent on how a city official rejects or accepts a permit application. No fee is required.*

[87] *Id.* at 814. In *United States Postal Service v. Council of Greenburgh Civic Associations*, 453 U.S. 114 (1981), the Court upheld a regulation prohibiting the placing of unstamped mailable matter in letter boxes. The Court said that home letter boxes were part of the nationwide system for delivery of the mail. The Court concluded that "[t]here is neither historical nor constitutional support for the characterization of a letter box as a public forum." *Id.* at 128.

Is this ordinance constitutional? No. Here, the ordinance specifically regulates temporary and permanent political signs in private residential neighborhoods. The ordinance is content-based because it is specifically regulating political signs and not merely regulating all signs in residential neighborhoods, regardless of the message they convey. The ordinance does not include any findings or apparent explanation by the city about the purpose for the permit requirement. No compelling state interest is served by requiring a private property owner to apply for a permit prior to post a political sign in their front yard. The requirement is unduly burdensome and the failure of the ordinance to include any standards about how the city will accept or reject an application yields it invalid as allowing for unbridled discretion and potential rejection based on unpopular views.

Example #2: Prohibiting Apartment Tenant from Posting Political Sign

> *Ordinance permits posting of political signs in front yards and in front windows. Property owner of apartment complex prohibits tenants from posting signs in front windows of individual apartments.*

Is the apartment owner's actions allowed? Probably. If the city is not an actor in the contract between the landlord and tenant then the prohibition is permissible.

Example #3: Tampering with the Garbage Can

> *Each Friday morning on Sunnyside Lane, a residential street with single-family homes, the garbage is collected by Sun City Garbage Department. Sun City provides each property owner with a garbage can. The garbage can is property of Sun City. The words "Property of Sun City" are inscribed on the garbage can. Sun City does not regulate where the garbage can may be located on the property. Sun City has not adopted an ordinance regulating political signs on private residential property. Sunny, a property owner on Sunnyside Lane, has constructed a political sign and attached it to her City-issued garbage can. Sunny's garbage can remains inside her property line, but in the front yard, for the entire week.*

May Sunny display the sign on the City-issued garbage can? No. The garbage can is property of Sun City and not Sunny. While the garbage can is located on private property it is Sun City-owned property and it is a nonpublic forum which Sun City has not intended to open up for debate.

May the Sun City garbage workers remove the sign? Assuming the garbage can is a nonpublic forum, the sign may be removed by garbage workers.

May Sun City regulate the placement of signs on the garbage cans? Yes. Sun City may prohibit the placement of signs on Sun City-issued garbage cans. The regulations should prohibit all signs, not just political signs.

Example #4: Tie a Yellow Ribbon Around the Old Oak Tree

> *In each front yard of the residential subdivision Oakmont is a large oak tree. The City planted the oak trees when Oakmont was developed. The City maintains the oak trees by trimming them regularly and preventing any oak tree diseases. The oak trees are property of the City. The developers of Oakmont planted other sorts of trees in the front yards, including maple and elm. These trees are owned and maintained by the property owner. The City has adopted a sign ordinance permitting signs, including political signs, in front yards of residential neighborhoods. The ordinance merely says that the sign must be displayed within the front yard (inside the property line of the owner) and the surface area cannot exceed 40 square feet (the ordinance regulates the total surface area and not the total number of signs; therefore, a property owner can have multiple signs posted, so long as the total surface area for all signs combined does not exceed 40 square feet). Olivia lives in Oakmont. Olivia constructs a large yellow ribbon around the oak tree in her front yard. The yellow ribbon reads "Peace on Earth, Stop the War." The total square footage of the sign is approximately 28 square feet. The City has also adopted a City-wide ordinance prohibiting attaching signs to City property, including trees.*

May Olivia attach the yellow ribbon to the oak tree? Probably not. The purpose of the City's ordinance prohibiting the attachment of signs to City-owned trees is to preserve public property from unsightly signs and advertisements without regard to the content of the speech communicated and is within the City's discretion to regulate. The relevant forum here is the oak tree. The oak tree is a nonpublic forum. Prohibiting Olivia from attaching the yellow ribbon to the oak tree does not prevent her from attaching a yellow ribbon to another tree located in her front yard which is permitted under the City's sign ordinance.

Example #5: The Case of Talking "Uncle Sam"

> *City adopted sign ordinance regulating political signs in residential neighborhoods. For purposes of the ordinance a "sign" is defined as "any letter, word, picture, symbol used to make anything known." No sign shall exceed six feet in height and four*

feet in width. All signs must be on private property. No further regulations apply. Property Owner Samuel constructs a replica of "Uncle Sam." Uncle Sam is four feet high and two feet wide. Uncle Sam is painted in the stars and stripes. The chest of Uncle Sam reads "No New Taxes." Uncle Sam is equipped with a monitor which tracks human movement within a 20-foot-wide radius around Uncle Sam. Anytime the monitor senses human activity within a 20-foot radius, Uncle Sam says "Read My Lips: If You Want No New Taxes, Vote For John Smith in November." Uncle Sam's audio operates from 8 a.m. to 6 p.m., 7 days per week. The audio can only be heard if you are within the 20 foot radius. Candidate John Smith's opponents have filed a complaint with City Hall alleging that the Uncle Sam sign is prohibited under the sign ordinance. There have been no complaints from neighbors about the sound coming from Uncle Sam.

Is talking "Uncle Sam" prohibited? No. The dimensions of Uncle Sam fall within the requirements of the political sign ordinance. The ordinance does not address a talking sign. Uncle Sam's statement is merely an extension of Samuel's First Amendment right to express his opinion. Samuel is expressing this opinion on his private property and in accordance with the political sign ordinance.

May the City regulate talking political signs? Maybe. While courts have held that a city may regulate the illumination of political signs in residential neighborhoods, it is less clear whether a city may regulate talking signs. The words of Uncle Sam are merely an extension of expression which is conveyed in writing on the sign. The message conveyed on the sign is political speech and so are the words coming from Uncle Sam. Although the City may limit the decibel level coming from Uncle Sam because it finds that decibel level above a certain level interrupts the quiet enjoyment of neighboring property owners, it probably cannot summarily prohibit talking signs.

Example #6: Signs on Trucks

Trucker Y lives on Gasoline Alley. He drives a large truck. He is able to park his truck on the street or in his driveway. When Trucker Y returns home from work he always posts a sign which reads "Support Alternative Fuel Research to Save Our Environment and Our Pennies." When Trucker Y parks in his driveway, he places the sign on the back of his truck. When Trucker Y parks on the street he places the sign on the side of the truck adjacent to the street (so passing traffic can see). The size and shape of the sign are permitted under the City's sign ordinance.

Is it OK for Trucker Y to place the sign on the back of his truck when he is parked in his driveway? Yes. This is permitted under the City's sign ordinance.

Is it OK for Trucker Y to place the sign on the side of his truck when he is parked on the street? Yes.

PART V: CONCLUSION

A city may regulate aspects of the political signs posted in the front yard. Any regulation pertaining to front yard political signs must be content-neutral, must advance an important government interest, and must not burden substantially more speech than is necessary to further the government interest.