



FOUNDATION

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Jeanne LoCicero  
Deputy Legal Director

VIA E-MAIL

August 29, 2016

Robert Landel, Wyckoff Township Attorney  
Landel, Bernstein & Kalosieh, LLP  
279 Franklin Avenue  
Wyckoff, New Jersey 07481

RE: Wyckoff Ordinance § 128.28(D)(5)

Dear Mr. Landel:

As you may recall, I contacted you in 2012 regarding the American Civil Liberties Union of New Jersey's concerns regarding the Township of Wyckoff's ordinance that placed limits on residential political signs. After receiving complaints about recent police enforcement of political signs, I write to again advise you that section 128.28(D)(5) of the Municipal Code violates the constitutional rights of Wyckoff residents

Wyckoff's ordinance limits political signs to "a period not exceeding one month" (which, based on reports, may be interpreted by township officials to mean the month preceding an election) and requires that they may not be larger than four square feet. My March 1, 2012, letter to you explained that the ordinance was unconstitutional and requested that the Borough cease enforcement and repeal or amend the ordinance. While the Township ceased enforcement at that time, the ordinance was not amended. I have attached a copy of the letter for your reference.

The ordinance effectively bans residents from engaging in a protected form of speech for eleven months of the year, which violates the First Amendment. I note that last year, the United States Supreme Court decided *Reed v. Town of Gilbert*, 576 U.S. \_\_\_ (2015), holding that content-based sign restrictions must meet strict scrutiny, *i.e.*, be narrowly tailored to meet a compelling state interest. The Court made clear that a sign regulation is content-based if it treats signs differently based on the ideas they express. Slip. op. at 6-7. Wyckoff's ordinance does exactly that, treating political signs worse than other noncommercial signs. It would fail to meet strict scrutiny. Even if the ordinance were content neutral, such restrictions on free speech could not be justified.

I am hopeful, given the clarity of the law regarding political sign restrictions and the rights so clearly burdened by the ordinance, that the Township will act quickly to amend section 128.28(D)(5) to comport with the First Amendment. However, because of the Township's history of enforcement, I advise you that it is risking litigation if it does not initiate such action by the conclusion of its September 20 meeting. Please feel free to contact me should you wish to discuss this issue.

Sincerely,

Jeanne LoCicero, Esq.  
Deputy Legal Director

cc: Kevin Rooney, Mayor

Enclosure



**American Civil  
Liberties Union  
of New Jersey**

P.O. Box 32159      VIA FACSIMILE (201) 891-7420  
Newark, NJ 07102    & U.S. MAIL

973-642-2086  
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RE:    Wyckoff Sign Ordinance

Dear Mr. Landel:

It was a pleasure to speak with you this afternoon. As we discussed, the American Civil Liberties Union of New Jersey (ACLU-NJ) has concerns regarding Wyckoff Township's sign ordinance that purports to ban political signs from private property after a permitted period of thirty days. As I explained, durational limits on political signs are unconstitutional and should not be enforced.

As you may know, the ACLU-NJ has engaged in successful efforts against similar sign ordinances, including lawsuits filed in 2008 against the Borough of Hawthorne and in 2001 against the Borough of Franklin Lakes, as well as advocacy efforts in other parts of the state.

The United States Supreme Court has held that political window and yard signs play an important and unique role in American democracy. City of Ladue v. Gilleo, 512 U.S. 43, 48 (1994) ("Displaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means. Precisely because of their location, such signs provide information about the identity of the "speaker." *Id.* at 56). See also State v. Miller, 83 N.J. 402, 412 (1980), citing Thomas v. Collins, 323 U.S. 516, 530 (1945) (where political speech is involved, our tradition insists that government "allow the widest room for discussion, the narrowest range for its restriction").

Courts throughout the country, including in New Jersey, have consistently struck down ordinances that placed durational limits on political signs displayed on private property. See, e.g., Boehm v. Borough of Franklin Lakes, 2001 WL 1704817 (D.N.J.) (Hayden, J.) (ordinance limiting display of political signs to no more than two weeks prior and two days after an election); Whitton v. City of Gladstone, 54 F.3d 1400, 1403-04 (8th Cir. 1995) (ordinance limiting display of political signs to no more than 30 days before an election and

Robert Landel, Esq.

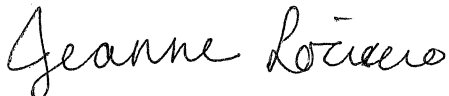
March 1, 2012

Page 2 of 2

seven days after an election); Fehribach v. City of Troy, 341 F. Supp. 2d 727, 732-33 (E.D. Mich. 2004) (limiting display of political signs to no more than 30 days before an election). I also note that Wyckoff's limitation of the size of a sign to be no more than four square feet is constitutionally dubious. I have not found a reported case upholding a four square foot limit. We grant that size regulations may be generally permissible for aesthetic or safety reasons. Pica v. Sarno, 907 F. Supp. 795, 800 (D.N.J. 1995). However, "residential signs are a form of expression entitled to the highest degree of protection by the Free Speech protection by the Free Speech Clause of the First Amendment." Id. at 800; see also Farrell v. Teaneck, 126 N.J. Super. 460, 464 (Law Div. 1974) (ensuring that aesthetic interests do not come "at the expense of a landowner's loss of unrestricted use of his property"). The Township's prohibition of political signs exceeding four square feet in area "may strongly impair the free flow of protected speech" because the size limit here would not "be large enough to permit viewing from the road, both by persons in vehicles and on foot." State v. Miller, 83 N.J. 402, 416 (1980) (holding that the six square foot size limit placed by the Borough was inadequate and noting that such a limitation cannot be upheld if it were determined in an arbitrary manner).

Based on the foregoing, I request that the Township (1) immediately cease enforcement of the durational limits on political signs and publicly announce such action and (2) repeal or amend the ordinance to cure the constitutional defects as soon as possible. The ordinance, as currently framed, abridges the First Amendment rights of the Township's citizens. Given the clarity of the law, I am hopeful that we will be able to resolve this amicably and swiftly without the need for further action.

Sincerely,



Jeanne LoCicero/fr  
Deputy Legal Director