AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Massachusetts

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Re: Restrictions on Political Signs and Speech

Dear Cities and Towns of the Commonwealth of Massachusetts:

We have become aware that several municipalities in the Commonwealth have ordinances restricting the ability of residents to display signs, including political signs, on private property in residential neighborhoods. Some of these ordinances limit the period before and after an election during which residents may place signs of support or opposition on election-related issues on private property.

This letter is to remind you that, under the U.S. Constitution and the Massachusetts Declaration of Rights, cities and towns may not impose unreasonable restrictions on political speech nor impose content-based restrictions on the display of signs unless such restrictions are narrowly tailored to serve a compelling interest. For the reasons that follow, if you have an ordinance restricting residents' ability to post political signs in their yards, windows, vehicles, or other pieces of private property, we urge you to discontinue enforcement of the law and to repeal it.

The First Amendment and Article 16 prohibit the government from encroaching on residents' rights to free speech, which include the right to speak on political and electoral issues. Political speech, and particularly political speech on private property, is entitled to the highest form of protection.

While municipalities have considerable authority to regulate the display of signs on public property in a content-neutral way, the authority to do so on private property is severely diminished by constitutional protections of civil liberty and, in particular, free speech. In *City of Ladue v. Gilleo*, 512 U.S. 43, 58 (1994) (citations omitted), the Supreme Court said:

> A special respect for individual liberty in the home has long been 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. Most Americans would be understandably dismayed, given that tradition, to learn that it was illegal to display from their

> windows an 8-by-11-inch sign expressing their political views. Whereas the government's need to mediate among various competing uses, including expressive ones, for public streets and facilities is constant and unavoidable, its need to regulate temperate speech from the home is surely much less pressing.

Accordingly, the Court in *City of Ladue,* held that an ordinance prohibiting homeowners from displaying any signs on their property except residence identification signs, for sale signs, and safety hazard warning signs was unconstitutional because it simply "prohibits too much speech." *Id.* at 55. The Court was specifically concerned that the ordinance broadly banned political signs on private property, or foreclosed an entire medium of communication to political speech. *Id.* Restricting the display of political signs on private property is a violation of the First Amendment (and Article 16) rights of private individuals. *Members of the City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984).

In *Reed v. Town of Gilbert, Arizona*, 576 U.S. __, 135 S.Ct. 2218 (2015), the Supreme Court struck down a municipal ordinance that exempted from a general ban various categories of lawn signs based on content, i.e. the topic discussed or the idea or message expressed. In doing so, the Court held that these types of sign ordinances constitute "content-based regulations of speech" and are subject to "strict scrutiny." *See id*. at 2224. Under the test of "strict scrutiny," content-based laws, e.g. laws that target and limit political signs differently than others, are "presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id*. at 2226. In *Reed*, the town's two justifications for the ban, "preserving the Town's aesthetic appeal and traffic safety," were ruled insufficient under this test. *Id*. at 2231-2232. The First Amendment prevents a township from "achieving its goal by restricting the free flow of truthful information." *City of Ladue*, 512 U.S. at 48 (quoting *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85 (1977)).

What towns may lawfully do is "regulate the physical characteristics of signs" without regard to the sign's content. *Id. See also Matthews v. Town of Needham*, 764 F.2d 58, 59 (1st Cir. 1985) (time, place, and manner restriction of speech must advance a significant governmental interest, be justified without reference to the content of the speech, and leave open ample alternative channels for communication of the information). Hence, municipalities may have reasonable, content-neutral laws uniformly applicable to all signs requiring, for instance, that the signs be no larger than certain dimensions and be placed in a manner so as not to impede visibility on the roads by motorists.

But, as noted above, preventing political signs on private property during certain periods of the year is not content-neutral, and such laws fail strict scrutiny. *City of*

Ladue, 512 U.S. at 55. Candidates have a right to begin their campaigns before, and continue their campaign for public support after, the dates allowed by such laws. Likewise, residents have a right to express their political views by posting yard signs at any time, including as a way of communicating with neighbors their approval or disapproval of a past election outcome and hopes for the next. The Supreme Court has made clear that these forms of speech are protected under the First Amendment and may not be unduly burdened. *See City of Ladue*, 512 U.S. at 54, 57. Furthermore, time limits favor incumbents by giving those already in office, and therefore with greater name recognition, an advantage. *See id.* at 51 (finding that impermissibly underinclusive laws may represent a governmental attempt to give one side of a debate an advantage). Thus, an interest in 'leveling the playing field' for candidates in an election may not be a valid compelling interest.

Recently, in a case brought by ACLU of Massachusetts, the U.S. District Court permanently enjoined the City of Holyoke from enforcing an ordinance, or any future ordinances, restricting lawn signs during certain months of the year and bumper stickers all year round. The court declared the ordinance unconstitutional. https://www.aclum.org/en/cases/molloy-et-al-v-city-holyoke. ACLU of Massachusetts also recently engaged with the Town of Scituate about its zoning ordinance which limits the ability of political candidates to post campaign signs on private property, and the Scituate Board of Selectmen voted to suspend enforcement of the ordinance. https://www.aclum.org/en/news/scituate-votes-suspend-restrictions-political-signs.

To comply with the law and respect the free speech rights of your residents, we urge you to change any law that specifically prohibits the display of political signs on private property or which otherwise places unique rules on the display of signs based on the sign's message or content.

Please do not hesitate to contact the ACLU of Massachusetts if you have any questions about this letter. We can be reached at (617) 482-3170.

Sincerely,

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