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July 22, 2024

VIA EMAIL

Mayor Paul Coogan
Joseph D. Camara, Fall River City Council President
Linda M. Pereira, Fall River City Council Vice-President
Ryan Lyons, Chairman & Director Board of Elections Dept.
Seth Aitken, City Administrator
Allan Rumsey, Corporation Counsel
City of Fall River
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**Re: Public Records Request Pursuant to M.G.L. c. 66,
City of Fall River Political Sign Ordinance and Interference with
Residential Political Speech**

Dear City of Fall River officials Coogan, Camara, Pereira, Lyons, and Aitken and Counsel Rumsey,

We are writing on behalf of the American Civil Liberties Union of Massachusetts, Inc. (“ACLUM”) with regard to the City of Fall River (the “City”)’s Ordinance No. 2008-13, City Code § 46.2-1 (the “Political Sign Ordinance”), and the City’s enforcement of the Political Sign Ordinance in a manner that infringes on City residents’ fundamental right of free speech.¹ We have summarized some of our concerns below and included several requests under the Public Records Law, M.G.L. c. 66, § 10.² We urge the City to give this matter prompt attention given

¹ Our firm has been engaged to assist attorneys at the ACLU Foundation of Massachusetts, Inc. on behalf of the ACLUM on this matter. Those attorneys are copied on this letter.

² We ask that you share a copy of this letter with all of the members of the City Council.

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that City residents have a fundamental right to express their political opinions at all times and especially in advance of the upcoming state and federal elections.

The Political Sign Ordinance states:

- A. Political signs may be located subject to the consent of property owners. They may be displayed for regular or special municipal elections, state, county or federal elections, to include preliminary and primary elections, for a period of eight weeks prior to election day, and shall be removed within 21 days after election day. In the case of a primary election, the winning candidate may leave signs on display until 21 days following the final election.
- B. The property owner shall be responsible for the removal of all signs within the prescribed 21 days after an election. No political sign may be placed on utility poles, other utility device, trees or abandoned buildings. Further, in accordance with the provisions of MGL. c. 53, §§ 70A through 70H, no signs may be displayed within 150 feet from the entrance of a polling place on primary or election day.

As noted above, the Political Sign Ordinance prohibits City residents from displaying “political signs” on their private property except for a period of eight weeks before an election until 21 days after the election. It subjects City residents to monetary fines for expressing their political views on their own property at times of their choosing. Specifically, City Code § 1-15 imposes a fine up to \$300 for each violation of the Political Sign Ordinance and provides that “[e]ach day a violation continues shall constitute a separate offense.”

On June 24, 2024, Chairman and Director of the City Board of Elections Department Ryan Lyons circulated a memorandum to all City candidates, political committees, and residents affirming the City’s continued enforcement of the Political Sign Ordinance (enclosed).

We and ACLUM have serious concerns that the City’s Political Sign Ordinance—both as written and as applied—imposes content-based and unreasonable restrictions on political speech in violation of the First Amendment to the U.S. Constitution and Article 16 of the Massachusetts Declaration of Rights (as amended). As you are aware, political speech, particularly on private property in residential areas, is entitled to the highest form of protection. *See* ACLUM’s April 23, 2019 Letter to the Cities and Towns of the Commonwealth of Massachusetts (enclosed). As explained in the enclosed letter, governmental regulations that place temporal limitations on the display of political signs on private property in residential areas except for limited periods around elections are unlawful. The City’s threat of monetary fines against City residents who wish to engage in political speech from their own private property unconstitutionally restricts free expression.

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Compounding the problem, neither the Political Sign Ordinance nor the City Code (including City Code §§ 86-450 through 86-457 concerning signs) defines the term political signs. While it is ambiguous, the Political Sign Ordinance may be limited to signs concerning elections given that its temporal limitations are expressly tied to elections. But because “political signs” is nowhere defined that we could find, the Political Sign Ordinance may be intended to or perceived to be intended to also place temporal limitations on City residents’ ability to display signs with political messages that are not necessarily tied to an election (*e.g.*, signs with messages such as “Blue Lives Matter,” “Black Lives Matter,” “Climate Change is a Hoax,” “Climate Change is Real,” “Impeach Trump,” “Impeach Biden,” etc.). At a minimum, residents may be chilled in their exercise of core free speech rights based on this ambiguity, which is constitutionally problematic.

Given these concerns, we request that the City immediately cease enforcement of the Political Sign Ordinance and amend the City Code (including but not limited to City Code § 46.2-1) to remove all temporal restrictions on City residents’ ability to engage in political speech on their own private property. Reasonable regulations of the number, size, and location of such signs so as to protect public safety may still be applied.

In light of the foregoing issues, we also request the following public records³ pursuant to the Public Records Law, M.G.L. c. 66, § 10, for the period from July 1, 2023 to the present:

1. All internal practices and/or procedures concerning the Political Sign Ordinance;
2. All records concerning the enforcement of the Political Sign Ordinance;
3. All notices of violation issued to City residents concerning the Political Sign Ordinance;
4. All records concerning the removal of political signs by the City from private property;
5. All communications with City residents concerning the Political Sign Ordinance;
6. All communications among any City officials or employees or agents concerning the Political Sign Ordinance;

³ Consistent with G.L. c. 4, § 7 (twenty-sixth), the term “records” includes all documents or other records that exist in any format including but not limited to hard copy records and records in electronic format such as emails or texts. We understand that City Administrator Aitken, included here, is the public records officer for the City. If not, we ask that you ensure this request is directed to the right person for prompt processing.

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7. All communications involving any member(s) of the City Council concerning the Political Sign Ordinance;
8. All communications involving any member(s) of the Board of Elections Department concerning the Political Sign Ordinance; and
9. All communications concerning any perceived need or desire to restrict political and/or election signs on private property.

Because this request involves a matter of public concern and is made on behalf of a nonprofit organization, we kindly ask that you waive any fees. Please provide documents in electronic format where possible. If you determine that some portions of the documents requested are exempt from disclosure, please release any reasonably segregable portions that are not exempt, including records with appropriate redactions, as required by law. In addition, please note the applicable statutory exemption and explain why it applies to any redacted information. As you know, a custodian of public records shall comply with a request within 10 business days of receipt of the request.

We would also like to start a dialogue with the City as soon as possible to discuss our concerns and try to reach an agreeable, voluntary solution. To that end, we will be in touch soon with Corporation Counsel Rumsey to discuss the issues raised in this letter. But in the meantime, do not hesitate to reach out to us and your immediate attention to the issues raised in this letter will be appreciated.

Best regards,



Keith H. Bensten

Enclosures

cc: Ruth Bourquin, Esq. (ACLUM)
Rachel Davidson, Esq. (ACLUM)
William Black, Esq. (Day Pitney LLP)

June 24, 2024 Letter re: Political Sign Ordinance



**BOARD OF ELECTION
COMMISSIONERS**

CITY OF FALL RIVER

To: 2024 Candidates, Political Committees & All Residents

From: Ryan Lyons

Date: 24 June 2024

Re: Political Signs

As adopted by the City Council, **Ordinance No. 2008-13** authorizes the display of political signs on private property for a period of **8 weeks prior to Election Day**. Candidates running in the State Primary are allowed to begin posting political signs starting on July 5th and must be removed no later than 21 days following the primary unless the candidate has been nominated onto the Biennial State Election.

Property owners are responsible for the removal of all political signs within the required 21-day timeframe prescribed in the ordinance. No political signs may be posted on city property including abandoned buildings, parks, trees or utility poles.

In addition, I would like to remind all candidates, political committees, and the public that pursuant to the General Laws of the Commonwealth *Chapter 53, Section 65* NO Political Signs or campaign paraphernalia may be displayed within **150-Feet from the entrance of a polling precinct on Election Day or In-Person Early Voting Location**. I ask that all candidates and committees make their volunteers aware of this legal requirement prior to Election Day.

Any Questions? Please contact the Elections Department at 508-324-2630 or email me at rlyons@fallriverma.gov.

Ryan Lyons

Chairman & Director
Chief Elections Official
Board of Elections Dept.

Ordinance No. 2008-13

BE IT ORDAINED by the City Council of the City of Fall River, as follows:

That Chapter 46 of the Revised Ordinances of the City of Fall River, Massachusetts, 1999, which chapter relates to Offenses, be amended, by inserting on proper numerical order, the following new Section 46-2.1 to read as follows:

Section 46-2.1 Political Signs.

Political signs may be located subject to the consent of property owners. They may be displayed for Regular or Special Municipal Elections, State, County or Federal Elections to include Preliminary and Primary Elections, for a period of eight (8) weeks prior to Election Day, and shall be removed within twenty-one (21) days after Election Day. In the case of a Primary election, the winning candidate may leave signs on display until twenty-one (21) days following the final election.

The property owner shall be responsible for the removal of all signs within the prescribed twenty-one (21) days after an election. No political sign may be placed on utility poles, other utility device, trees or abandoned buildings. Further, in accordance with the provisions of MGL. Ch. 53, Sec. 65, no signs may be displayed within 150 ft. from the entrance of a polling place on Primary or Election Day.

In City Council, April 8, 2008
Passed to be ordained.

Approved, April 14, 2008
Robert Correia, Mayor

A true copy. Attest:
City Clerk



BOARD OF ELECTION COMMISSIONERS

CITY OF FALL RIVER

150-FOOT LAW

Under the General Laws of the Commonwealth certain activities are prohibited within **150 feet** of a polling location. The **150-foot area includes**: the polling place on Election Day, the In-Person Early Voting location, the building where the polling place is located, on the walls thereof, on the premises on which the building stands, or within 150 feet of the **building entrance door to such polling place**. M.G.L.c.54, § 65. The "premises" on which the building stands is further defined to mean only the grounds in the immediate vicinity of the building and does not include the entirety of a large parcel of real property. 950 C.M.R. §52.03(22)(c), § 53.03(18)(c), § 54.04(22)(c).

The following are prohibited within 150 feet of a polling location:

- The posting, exhibition, circulation, or distribution of materials including stickers, posters, cards, handbills, placards, pictures, or circulars—intended to influence the action of the voter; M.G.L.c.54, § 65.
- The solicitation of votes for or against, or any other form of promotion or opposition of, any person or political party or position on a ballot question, to be voted on at the current Election; 950 C.M.R. §52.03(22)(d); 53.03(18)(d), 54.04(22)(d).
- Holding any campaign sign; handing any person literature intended to influence the voter's action at the polls; wearing any campaign buttons or identifying signage; soliciting a person's vote for or against a candidate or question on the ballot; or distributing stickers. M.G.L. c54, §65.
- Gathering signatures on nomination papers or initiative petitions. M.G.L.c.54, § 65.

The presiding officer at the polling place (Precinct Warden) enforces the various requirements of the 150-foot law. The police officer detailed to each polling place protects the election workers and assists the Warden in enforcing the laws relating to elections. Furthermore, the presiding officer at the polls may request that the police officer take into custody any person who by disorderly conduct interrupts or disturbs the proceedings of an election officer.

The Precinct Warden or Clerk of the polling place is vested with the authority and obligation to maintain peace, order, and decorum at the polls. G.L.c.54, § 71. Furthermore, the Code of Massachusetts Regulations requires that access to polling places must be open and unobstructed, and the voters may not be hindered. 950 C.M.R. § 52.03(22)(c); 950 C.M.R. § 53.08(18)(c); 950 C.M.R. § 54.04(22)(c). The Warden, pursuant to both statutory and regulatory authority, has significant discretion in determining what he or she believes amounts to a disturbance, an obstruction in access to the polling place, or a hindrance to the voters.

****It is the opinion of Secretary Galvin that a candidate's presence in the polling precinct is, in and of itself, campaign activity. Candidates should only be present in the polling place if they are voting, or if they are coming in to get the number of ballots cast on the DS200 Voting Machine from the precinct Warden.***

Ryan Lyons

Chairman & Director
Chief Elections Official
Board of Elections Dept.

Ryan Lyons, Chairman & Director

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**ACLUM's April 23, 2019
Letter to the
Cities and Towns of the
Commonwealth of Massachusetts**



Massachusetts

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April 23, 2019

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*

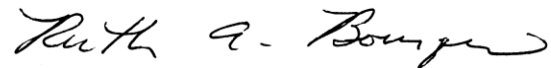
Ladue, 512 U.S. at 55. Candidates have a right to begin their campaigns before, and continue their campaign for public support after, the dates allowed by such laws. Likewise, residents have a right to express their political views by posting yard signs at any time, including as a way of communicating 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,



Ruth Bourquin



Jessica Lewis