Local Government Law Bulletin

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THE CONSTITUTIONALITY OF ORDINANCES REGULATING POLITICAL CAMPAIGN SIGNS

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BOTH CITIES AND COUNTIES are sometimes interested in adopting ordinances that regulate or prohibit erection and maintenance of political campaign signs. Ordinances of this type have recently been challenged in a number of federal and state courts, mainly on First Amendment grounds but also as violations of equal protection. This Local Government Law Bulletin gathers the cases, discusses the constitutional tests applied by the courts, and identifies some specific ordinance provisions that have been either upheld or invalidated.

In testing the constitutionality of ordinances regulating political campaign signs, the courts have applied the balancing approach used by the United States Supreme Court in First Amendment cases. As the Ninth Circuit stated in Baldwin v. Redwood City (probably the most extensive discussion of this sort of ordinance),[1] the rule to apply in determining whether an ordinance infringes on First Amendment rights is that "[i]ncidental restrictions upon the exercise of the first amendment rights may be imposed in furtherance of a legitimate governmental interest if that interest is unrelated to suppression of expression and is substantial in relation to restrictions imposed."[2] (One court went further and required that the city's interest be "compelling" before it could outweigh the imposition made on the freedom-of-speech interests.[3])

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1. 540 F.2d 1360 (9th Cir. 1976).
2. Id. at 1365.
3. Ross v. Goshi, 351 F. Supp. 949 (D. Hawaii 1972).

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Any restrictions on First Amendment rights may not be more inclusive or burdensome than necessary to protect the unit's interests[4] and must be the least restrictive means available to accomplish these interests.[5] Obviously, any such ordinance must be carefully and narrowly drawn.

Ordinances that prohibit political campaign signs entirely from a unit or residential areas have generally been held to violate the First Amendment right of free speech.[6] Among reported cases, only two trial courts in New York have ruled that such an ordinance is constitutional, arguing that the city's interest in aesthetics was valid and outweighed the restrictions placed on free speech rights by the ordinance.[7] The other courts presented with the question--while recognizing aesthetics, traffic safety, and other valid governmental interests--have found that less restrictive means are available to accomplish these interests.[8] These less restrictive means include ordinances that prohibit littering, prohibit the attachment of signs to public property, and permit the city to recover the costs of removing abandoned signs from the violator.[9]

However, the courts have recognized that cities or counties have sufficient interests to support restrictions on political campaign signs,[10] although the city or county bears the burden of demonstrating that (1) the restrictive ordinance protects those interests and (2) the interests cannot be adequately protected by alternative or less restrictive means.[11] Provisions that have been upheld include:

(1) A limitation of the size of individual campaign signs to 16 square feet.[12]
(2) A limitation of the aggregate areas of political signs on a single parcel of property to 80 square feet.[13]
(3) A prohibition on attaching signs to telephone poles.[14]

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4. Verrilli v. City of Concord, 548 F.2d 262, modified, 557 F.2d 664 (9th Cir. 1977); Baldwin v. Redwood City, 540 F.2d 1360 (9th Cir. 1976); Farrell v. Township of Teaneck, 126 N.J. Super. 460, 315 A.2d 424 (1974).

5. Baldwin v. Redwood City, 540 F.2d 1360 (9th Cir. 1976); Ross v. Goshi, 351 F. Supp. 949 (D. Hawaii 1972); Farrell v. Township of Teaneck, 126 N.J. Super. 460, 315 A.2d 424 (1974); Peltz v. City of South Euclid, 11 Ohio St. 2d 128, 228 N.E.2d 320 (1967).

6. Ross v. Goshi, 351 F. Supp. 949 (D. Hawaii 1972) (total prohibition); Farrell v. Township of Teaneck, 126 N.J. Super. 460, 315 A.2d (1974) (prohibition from residential areas); Pace v. Village of Walton Hills, 15 Ohio St. 2d 51, 238 N.E.2d 542 (1968) (prohibition from residential areas); Peltz v. City of South Euclid, 11 Ohio St. 2d 128, 228 N.E.2d 320 (1967) (prohibition from residential areas).

7. Town of Huntington v. Estate of Schwartz, 63 Misc. 2d 836, 313 N.Y.S. 2d 918 (1970); Gibbons v. O'Reilly, 44 Misc. 2d 353, 253 N.Y.S. 2d 731 (1964).

8. Ross v. Goshi, 351 F. Supp. 949 (D. Hawaii 1972); Farrell v. Township of Teaneck, 126 N.J. Super. 460, 315 A.2d 424 (1974); Peltz v. City of South Euclid, 11 Ohio St. 2d 128, 228 N.E.2d 320 (1967).

9. Ross v. Goshi, 351 F. Supp. 949 (D. Hawaii 1972); Peltz v. City of South Euclid, 11 Ohio St. 2d 128, 228 N.E.2d 320 (1967).

10. Verrilli v. City of Concord, 548 F.2d 262, modified, 557 F.2d 664 (9th Cir. 1977); Baldwin v. Redwood City, 540 F.2d 1360 (9th Cir. 1976); Orazio v. Town of North Hempstead, 426 F. Supp. 1144 (E.D.N.Y. 1977); Ross v. Goshi, 351 F. Supp. 949 (D. Hawaii 1972); Peltz v. City of South Euclid, 11 Ohio St. 2d 128, 228 N.E. 2d 320 (1967); Brayton v. City of Anchorage, 386 P.2d 832 (Alaska 1963).

11. Verrilli v. City of Concord, 548 F.2d 262, modified, 557 F.2d 664 (9th Cir. 1977); Ross v. Goshi, 351 F. Supp. 949 (D. Hawaii 1972).

12. Baldwin v. Redwood City, 540 F.2d 1360 (9th Cir. 1976).

13. Id.

14. Brayton v. City of Anchorage, 386 P.2d 832 (Alaska 1963). The provisions of N.C. Gen. Stat. § 14-145 are similar to the ordinance dealt with in this case.

Provisions found to be too restrictive include:

(1) A prohibition on erecting signs more than six weeks before an election.[15]
(2) A requirement of a permit for each political sign erected.[16]
(3) A requirement of a $1 nonrefundable inspection fee and a $5 removal deposit for each political sign erected.[17]
(4) A requirement of a $100 sign-removal deposit.[18]
(5) A requirement that political signs be free-standing.[19]
(6) A limitation of signs promoting a single candidate or issue to a total area of 64 square feet within the city limits.[20]

Occasionally, equal protection concerns have also arisen in the cases. An ordinance that prohibited erection of political wall signs more than six weeks before an election but did not impose such restrictions on other types of signs was held to be an unconstitutional denial of equal protection.[21] The court, while noting the city's interest in aesthetics in enacting the ordinance, held the unequal treatment to be unconstitutional because political signs are not inherently more obnoxious than nonpolitical signs.[22] Similarly, an ordinance that prohibited political signs but allowed commercial signs was found to violate the equal protection clause because political signs were not more dangerous or offensive in appearance than other signs.[23] Thus political signs might best be treated as part of a comprehensive sign ordinance.

IN SUMMARY, total prohibitions on erecting and maintaining political campaign signs in residential areas have been generally held to violate the First Amendment to the United States Constitution. But lesser restrictions on political signs have been upheld as long as the city or county shows that it has a legitimate interest in enacting the ordinance and that this interest outweighs its imposition on freedom of speech. Also, the unit must show that the ordinance is not unduly burdensome and is the least restrictive alternative available. An ordinance restricting political signs should also be drafted in such a way as to avoid placing a greater burden on political signs than on nonpolitical signs.

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15. Orazio v. Town of North Hempstead, 426 F. Supp. 1144 (E.D.N.Y. 1977).
16. Baldwin v. Redwood City, 540 F.2d 1360 (9th Cir. 1976).
17. Id.
18. Verrilli v. City of Concord, 548 F.2d 262, modified, 557 F.2d 664 (9th Cir. 1977).
19. Id.
20. Baldwin v. Redwood City, 540 F.2d 1360 (9th Cir. 1976).
21. Orazio v. Town of North Hempstead, 426 F. Supp. 1144 (E.D.N.Y. 1977).
22. Id. at 1148.
23. Ross v. Goshi, 351 F. Supp. 949 (D. Hawaii 1972).