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May 14, 2024

Via Email

Darrin Tangeman, Town Manager (dtangeman@truro-ma.gov)
Rich Stevens, Building Commissioner (rstevens@truro-ma.gov)
Barbara Carboni, Town Planner (bcarboni@truro-ma.gov)
Public Records Access Officer (rao@truro-ma.gov)
Town of Truro
24 Town Hall Road
Truro, Massachusetts 02666

Re: Public Records Request Pursuant to M.G.L. c. 66,
Town of Truro Sign Code and Interference with Residential Political Speech

Dear Town of Truro officials Tangeman, Stevens, and Carboni:

We¹ are writing with regard to the Town of Truro (the “Town”)’s Sign Code in the Town’s Zoning By-Laws (the “Sign Code”) and the Town’s enforcement of the Sign Code in a manner that infringes on Town residents’ fundamental right of free speech. 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 Town to give this matter prompt attention given that Town residents have a fundamental right to express their political opinions at all times and especially in advance of the Town election on May 29, 2024.

It has been reported to us that the Town recently confiscated political signs from residential private property, including political signs supporting at least one non-incumbent Select Board candidate. We have also been informed that Town employees and/or officials have advised Town residents that political signs may only be displayed on private property in residential areas if the resident first obtains (and pays for) a permit, presumably pursuant to Section 11 of the Sign Code (entitled, “Temporary Signs, etc.”). We have also received reports

¹ Please note that I am working with attorneys at the ACLU Foundation of Massachusetts, Inc. on behalf of the ACLU of Massachusetts (the “ACLUM”) on this matter.

² We ask that you share a copy of this letter with the Select Board, the Planning Board, and the Town’s counsel.

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that the Town has not removed political signs supporting incumbent Select Board candidates, which suggests that the Town's treatment of political signs on private property in residential areas has not been uniform.

We have serious concerns that the Town's Sign Code—both as written and as applied—imposes unreasonable restrictions and content-based 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* ACLU'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 forbid signs or require residents to obtain prior government permission (*e.g.*, a permit) to express their views on matters of public import on their own property are unlawful. Similarly, governmental regulations that prohibit the display of political signs on private property in residential areas except for the 15-day period in advance of an election are also unlawful. Finally, selective enforcement of governmental regulations is unlawful insofar as it imposes viewpoint-based restrictions on political speech.

In light of the foregoing issues, we request the following documents³ pursuant to the Public Records Law, M.G.L. c. 66, § 10, for the period from April 1, 2023 to the present:

1. All permit applications for temporary signs under Section 11 of the Sign Code;
2. All permits for temporary signs under Section 11 of the Sign Code;
3. All internal practices and/or procedures concerning the Sign Code;
4. All documents concerning the enforcement of the Sign Code;
5. All notices of violation issued to Town residents concerning the Sign Code;
6. All documents concerning the removal of signs by the Town;
7. All communications with Town residents concerning the Sign Code;
8. All internal communications concerning the Sign Code;
9. All communications involving the Building Commissioner concerning the Sign Code;

³ The term documents includes documents that exist in any format including but not limited to hard copy documents and documents in electronic format such as emails.

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10. All communications involving any member(s) of the Select Board concerning the Sign Code;
11. All communications involving any member(s) of the Planning Board concerning the Sign Code; and
12. All communications concerning political and/or election signs.

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. 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 Town as soon as possible to discuss our concerns and find a solution without the need for litigation. To that end, please let us know your availability and/or the Town's counsel's availability for a call or Zoom meeting to discuss these issues in the next week if at all possible. We look forward to hearing from you soon.

Best regards,



Keith H. Bensten

Enclosure

cc: Truro Select Board Chair Kristen Reed via
kreed@truro-ma.gov
Ruth Bourquin, Esq. (ACLUM)
Rachel Davidson, Esq. (ACLUM)
Megan Mauskopf, Esq. (ACLUM)
William Black, Esq. (Day Pitney LLP)

ENCLOSURE



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*

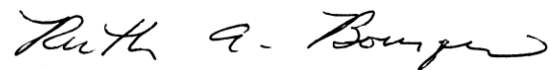
Ladue, 512 U.S. at 55. Candidates have a right to begin their campaigns before, and continue their campaign for public support after, the dates allowed by such laws. Likewise, residents have a right to express their political views by posting yard signs at any time, including as a way of communicating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