

Analysis

Posting campaign signs is a form of speech and courts have repeatedly recognized this form of expression as protected by the Free Speech Clause of the Constitution.¹ At the same time, posting signs poses “distinctive problems that are subject to municipalities’ police power.”² Unlike oral speech, signs take up space, may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation.³ Nevertheless, because of the potential to impact a protected right, when a governmental regulation affecting the right of speech is challenged, the court presumes the regulation is unconstitutional and the government has the burden of proving it is not.⁴ Fortunately, the issue of campaign signs has been addressed by the courts repeatedly providing a rich, but also complicated, set of rules which can help cities to craft effective and defensible regulations.

Content-Neutral vs. Content-Based

A regulation which is content-neutral is one which is applicable regardless of the message. Where a regulation is content-neutral, the court has established a two-part test to assess whether that regulation is constitutional. First, the law must bear a “substantial relation” to a “weighty” government interest and second, it must be the least drastic means of protecting that governmental interest.⁵ While the courts have established several legitimate and weighty governmental interests and drawn conclusions generally upholding certain types of restrictions (which will be discussed in more detail below), the government must nevertheless always articulate the reason for its restriction to pass constitutional muster. For example, where a city restricts signs consistent with prior legal precedent, its enactments may still be unconstitutional if the city fails to articulate its reasons for imposing the restriction.⁶ Courts have generally held that government has a legitimate interest in traffic safety and aesthetics⁷ as well as public safety, order and cleanliness, as well as administrative convenience.⁸

Content-based restrictions, on the other hand, must be necessary to serve a compelling interest and must be narrowly drawn to achieve that end.⁹ This is a harder standard to meet than that required of content-neutral restrictions. A sign ordinance which creates exemptions for certain types of noncommercial speech is content-based. For example, exemptions for temporary political signs, directional signs, official signs and notices are invalid if there is no compelling interest justifying the content-based exceptions.¹⁰ Regulations permitting on-site commercial speech while broadly prohibiting noncommercial messages are also content-based.¹¹ Restrictions that single out campaign signs for differential treatment from other kinds of noncommercial signs also have been interpreted as being content-based rather than content-neutral and thus held to a higher standard of review.¹²

Public Property

At least two cases have upheld complete bans on posting signs on public property.¹³ In *Sussli v. San Mateo* 120 Cal App.3d 1, the court upheld San Mateo's complete ban on signage posted on public property as applied to campaign signs. The Court held that the San Mateo had a compelling interest in maintaining some semblance of visual harmony in the city and that there was no more narrow way of achieving the town's goal.¹⁴

Where signs are permitted on public property, cities must allow such signs irrespective of their content. Cities may however, regulate the time, place and manner of postings. A more complete discussion of time, place and manner restrictions follows.

Private Property

The right of self expression on one's own property is higher than on public property.¹⁵ Political speech on one's own property is a unique and important medium of communication.¹⁶ As such, the governmental interest must be particularly high in order to ban it. The Supreme Court has held that an interest in minimizing visual clutter associated with signs on private property, while valid, is not compelling, particularly when balanced against the right of noncommercial expression including political signs. Total bans of political expression on private property have not stood up to legal challenge.¹⁷

Courts have upheld some limitations on campaign signs posted on private property. For example, as long as size limits do not infringe on the ability to exercise free speech effectively or unjustifiably treat campaign signs unequally to other noncommercial signage, courts have accepted limits on the size of signs.¹⁸ However, cities may not limit the number of signs erected in support or opposition to a particular candidate or issue.¹⁹

Time, Place and Manner Regulations

Time, place and manner restrictions are permissible "provided that they are justified without reference to the content of the regulated speech, that they serve a significant governmental interest and that in so doing, they leave ample alternative channels for communication of the information."²⁰

Imposition of any time, place or manner limitation must be content-neutral. As such, limitations which are otherwise permissible may be invalid if they apply only to campaign signs. Similarly, regulations exempting campaign signs from their application may also be invalid. Courts in both Kansas and New York have invalidated limitations on how long a "campaign" sign may remain posted after an election (which is otherwise permissible, see below) because the regulation only applied to campaign signs and not to other temporary signs.²¹ On the other hand, restrictions limiting "temporary" signs to some fixed number of days following the 'event' they advertise do not violate the first amendment.²²

As applied to campaign signs, the event triggering a time limitation is the election. Limitations on how long signs may be left up following an election are generally permissible.²³ However no limitation during the period leading up to an election has been upheld.²⁴

Courts have also upheld regulation of the size and placement of signs posted on public property. In *Candidates' Outdoor Graphics Service v. San Francisco*, 574 F.Supp. 1240, a company which manufactures, posts and removes temporary political signs challenged San Francisco's content-neutral regulations related to signs posted on utility poles and other public structures. There, the City specified the maximum size for signs, where signs could be placed, how they must be attached, that only one of the same type of sign could be affixed to any one utility pole, and that temporary signs be posted for a maximum of 30 days.²⁵ These regulations were upheld as permissible time, place and manner regulations on public property.

Permits, Fees and Deposits

In *Baldwin v. Redwood City* ("Baldwin"), 540 F.2d 1360, the Court addressed the issues of permits, fees, and deposits. While not per se unconstitutional, the court severely limited their applicability to temporary campaign signs.

Permit applications requiring detailed information that is burdensome to obtain before displaying temporary political campaign sign violates the First Amendment.²⁶ In *Baldwin*, Redwood City required the same application for a temporary sign as it would for a permanent sign including plot plans, specifications showing how the sign would be anchored and detailed calculations prepared by a civil or structural engineer. Even though the city's practice was to tell over-the-counter applicants that some of the information could be left off, the court nonetheless felt that the form the city used placed an undue burden on expression.²⁷

While the courts have not imposed a blanket prohibition on inspection fees or deposits, their application is severely limited. Inspection fees and deposits must be reasonable in light of the potential chilling effect they may have on political expression. Redwood City charged a \$1 per sign non-refundable inspection fee where the only inspection issue was the size of the sign and a \$5.00 refundable removal deposit. The court ruled while it might be reasonable to charge \$1 to inspect one sign, it was unreasonable to charge \$500 to inspect 500 identical signs.²⁸ Moreover, the \$5.00 refundable removal deposit, while well below the City's estimated cost of \$25 to remove each sign, still had a chilling effect on protected expression because the refund of \$5 per sign after the election was over was valueless to the campaign.²⁹ As such Redwood City's nonrefundable inspection fees and refundable deposits were overturned.³⁰

Summary Removal

Even in the absence of explicit provisions allowing for summary removal of signs posted on public property, municipalities may generally prohibit obstructions on public property and may, under the general police power, provide for the removal of any prohibited encroachments.³¹

The ability of a city to remove a suspected illegal sign depends on several factors. Depending on the circumstances, cities may have to attempt to notify the property owner or sign owner (if that can be determined). In cities which have a post-election deadline for removal of political signs, a city may remove campaign signs after an election without any notification regardless of whether the sign is on private or public property.³² Before an election, however, if a campaign sign posted on private property is suspected of being illegal, summary removal has been held unconstitutional except where the sign presents a risk of immediate harm.³³ In those circumstances, cities should attempt to notify the sign's owner before the sign is removed so that any defects may be corrected. If the owner cannot be notified or fails to respond, the sign may be deemed abandoned and the city may remove it.³⁴ Summary removal of signs illegally posted in public the right of way where such signs are properly prohibited has not been directly litigated, but it is probably permissible under the City's general police power as related to public property and the Government Code.³⁵

Conclusion

Campaign sign regulation falls under the First Amendment. Cities generally have more ability to regulate signs on public property than on private property. Cities may not completely ban expressive signs, including campaign signs, on private property, but may do so on public property.

Sign regulations should be content-neutral and apply equally regardless of the message which is being expressed. Additionally, regulations must be related to a legitimate governmental interest such as aesthetics, visual harmony or safety and may only go as far as necessary to accomplish that interest. Cities may establish content-neutral time, place, and manner regulations.

On private property, cities may limit the size of single signs, may limit the total area of all signs and may establish certain time limits for temporary signs.

Cities may not limit how long before an election campaign signs may be posted nor may they limit the number of signs posted on any property for any given cause or candidate. Cities may require that signs related to events (like elections) be removed within a certain number of days following that event. The ability to require permits, fees and deposits is limited as is the ability to remove signs without notifying the owner.

¹ *City of Ladue v. Gilleo* ("Ladue") (1994) 114 S.Ct. 2038, 2041.

² *Id.*

³ *Id.*

⁴ *Antioch v. Candidates' Outdoor Graphics Service* ("Antioch") (1982) 557 F. Supp. 52, 56.

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- ⁵ *Antioch* at 55; also see *Baldwin v. Redwood City* ("*Baldwin*") (1976) 540 F.2d 1360, 1365; *Los Angeles v. Taxpayers for Vincent* ("*Vincent*") (1984) 104 S.Ct. 2118, 2128-29.
- ⁶ *Verrilli v. Concord* (1977) 548 F. 2d 262, 265.
- ⁷ *Ladue* at 2042.
- ⁸ *Baldwin* at 1366.
- ⁹ *Desert Outdoor Advertising, Inc. v. City of Moreno Valley* (1996) 103 F.3d 814, 820.
- ¹⁰ *Desert Outdoor Advertising, Inc. v. City of Moreno Valley* at 820; *National Advertising Co. v. City of Orange* (1988) 861 F.2d 246, 248-49.
- ¹¹ *Ladue* at 2042; *Metromedia v. San Diego* (1981) 101 S.Ct. 2882, 2896-97.
- ¹² *Outdoor Systems, Inc. v. City of Lenexa, Kansas* (1999) 67 F.Supp.2d 1231; *Sugarman v. Village of Chester* (2002) 192 F.Supp.2d 282.
- ¹³ *Sussli v. San Mateo* (1981) 120 Cal App.3d 1; *Vincent*.
- ¹⁴ *Sussli v. San Mateo* at 10. (The court was applying the lower content-neutral standard of review requiring a legitimate governmental interest substantially related to the restriction and yet held that the city's interest in visual harmony was compelling).
- ¹⁵ *Ladue* at 2043.
- ¹⁶ *Id.* at 2045.
- ¹⁷ See generally *Ladue*; *Baldwin*.
- ¹⁸ *Baldwin* at 1368 (upholding 16 square foot size limit on individual signs and 80 square foot limitation on all signs on one parcel).
- ¹⁹ *Id.* at 1396.
- ²⁰ *Ward v. Rock Against Racism* (1989) 491 U.S. 781, 791; *Antioch* at 55.
- ²¹ *Outdoor Systems, Inc. v. City of Lenexa, Kansas* (1999) 67 F.Supp.2d 1231; *Sugarman v. Village of Chester* (2002) 192 F.Supp.2d 282.
- ²² *Baldwin* at 1363.
- ²³ *Baldwin* at 1374 (upholding requirement that campaign signs be removed ten days following an election).
- ²⁴ *Antioch* at 60 (invalidating regulations limiting campaign signs to 60 days before an election); *Van v. Travel Information Council* (1981) 52 Or.App. 399 (invalidating regulations limiting campaign signs to 60 days before an election); *Orazio v. Town of North Hempstead* (1977) 426 F. Supp. 1144 (6-week pre-election sign limitation ruled unconstitutional).
- ²⁵ *Candidates' Outdoor Graphics Service v. San Francisco* (1983) 574 F. Supp. 1240, 1241.
- ²⁶ *Baldwin* at 1371.
- ²⁷ *Id.* at 1372.
- ²⁸ *Id.* 1371.
- ²⁹ *Id.* 1372.
- ³⁰ *Id.*
- ³¹ Cal. Gov't. Code § 38775.
- ³² *Baldwin* at 1374.
- ³³ *Id.* at 1374-75.
- ³⁴ *Id.* at 1374.
- ³⁵ Gov't. Code §38775.

exceptions.¹⁰ Regulations permitting on-site commercial speech while broadly prohibiting noncommercial messages are also content-based.¹¹ Restrictions that single out campaign signs for differential treatment from other kinds of noncommercial signs also have been interpreted as being content-based rather than content-neutral and thus held to a higher standard of review.¹²

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