



P.O. Box 28004 • Raleigh, North Carolina 27611-8004

Phone (919) 834-3390 • Fax (866) 511-1344

August 4, 2009

VIA FACSIMILE AND U.S. MAIL

Christine B. Simpson
Town Attorney
Town of Cary
P.O. Box 8005
Cary, NC 27512-8005
(919) 460-4929 (facsimile)

Re: Constitutionality of Town of Cary's Sign Ordinance

Dear Ms. Simpson,

Thank you for speaking with me earlier today about the above-referenced matter. As I mentioned, as Legal Director of the American Civil Liberties Union of North Carolina Legal Foundation (ACLU-NCLF), I have been in contact today with David Bowden, a Cary resident who has been cited by the Town of Cary for an alleged violation of Section 9.3.2(S) of the Town's sign ordinance, Chapter 9 of Cary's Land Development Ordinance (the "Sign Ordinance"). Specifically, it is my understanding that Mr. Bowden caused to be painted on the front of his home, in fluorescent orange letters that are approximately two feet tall, the following statement: "Screwed By The Town of Cary." It is my understanding that the Town has served Mr. Bowden with notice that the statement violates the Sign Ordinance and is threatening to begin fining Mr. Bowden substantial amounts, beginning with \$100 for the first day and increasing from there.

I write today to urge the Town of Cary to cease the enforcement of this ordinance against Mr. Bowden immediately, as it appears that several provisions of the Sign Ordinance, both on their face and as applied to Mr. Bowden, are unconstitutional under the First Amendment to the United States Constitution. *See City of Ladue v. Gilleo*, 512 U.S. 43, 45, 54-55 (1994) (invalidating ordinance banning residential sign printed with the words, "Say No to War in the Persian Gulf, Call Congress Now," because expressive value of residential political signs outweighed state's interests in aesthetics and traffic safety); *Arlington County Republican Committee v. Arlington County*, 983 F.2d 587, 594 (4th Cir. 1993) (holding unconstitutional a two-sign limit on the number of temporary signs owners may place on their property because it did not provide sufficient alternatives for political speech). For example, the Sign Ordinance provides exemptions for certain signs, such as "[h]oliday decorations with no commercial message displayed between November 15 and January 15." LDO § 9.2(F). An ordinance regulating the display of signs is unconstitutional if it provides specific exceptions that effectively discriminate on the basis of the signs' messages, as is the case here. *City of Ladue*, 512 U.S. at 51 (citing *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 512-17 (1981)). Further, while courts have upheld certain regulations of signs by size and shape, such limits are

only permissible provided that they are content-neutral and are narrowly tailored so as not to infringe on the ability to exercise free speech effectively. *See, e.g., Am. Legion Post 7 of Durham v. City of Durham*, 239 F.3d 601, 611 (4th Cir. 2001) (upholding a 216 square foot limitation on flag size in non-residential districts and a 40 square foot limitation on flag size in residential districts). It is very unlikely that a court would find that Cary's 42-inch sign height limit and five square feet size limit are narrowly tailored so as not to infringe on Mr. Bowden's free speech rights.

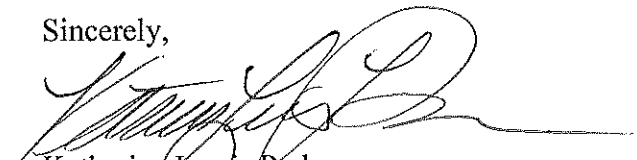
In *City of Ladue*, the United States Supreme Court recognized the expressive value of residential signs and the problems with foreclosing such an "important medium of speech":

Displaying a sign from one's own residence often carries a message quite distinct from placing the same sign somewhere else, or conveying the same text or picture by other means. Precisely because of their location, such signs provide information about the identity of the "speaker," Furthermore, a person who puts up a sign at her residence often intends to reach *neighbors*, an audience that could not be reached nearly as well by other means.

City of Ladue, 512 U.S. at 56-57 (internal citations omitted) (emphasis in original). It appears that Cary's sign ordinance suffers from many of the same defects found in the ordinance struck down by the Supreme Court in *City of Ladue*.

After you have had the chance to review this case law, I am happy to discuss ways in which the Town of Cary can bring its ordinance into compliance with the First Amendment. In the interim, please advise the Town to cease any and all enforcement of this Sign Ordinance against Mr. Bowden. Please contact me with any questions or concerns at (919) 834-3466. I would appreciate hearing from you about this matter as soon as possible.

Sincerely,



Katherine Lewis Parker
Legal Director

cc: Mr. David Bowden