



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

West Virginia

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February 13, 2020

Via Electronic Mail

City Attorney Bill File

bfileiii@suddenlinkmail.com

Via U.S. Mail

Beckley City Council

City Hall

409 S. Kanawha St.

Beckley, WV 25801

Dear Beckley City Council and City Attorney Bill File:

I am writing in regard to a complaint our office has received pertaining to the enforcement and threatened enforcement of an unconstitutional ordinance regulating political signage¹ in the Beckley city limits.

A restriction preventing residents from erecting “[T]emporary political signs concerning candidates for public office and ballot issues” prior to sixty days before an election or referendum” is in violation of the First Amendment, which prohibits the enactment of laws abridging the freedom of speech.

Instructive in this matter is the U.S. Supreme Court’s decision in *Reed v. Gilbert*. The Court in *Reed* found a town’s municipal ordinance unconstitutional because the regulation impermissibly restricted some signs more than others and the ordinance was not narrowly tailored to further a compelling state interest. *See generally Reed*, 135 S. Ct. 2218 (2015); *see also Cent. Radio Co. v. City of Norfolk*, 811 F.3d 625, 633 (4th Cir. 2016) (applying the “strict scrutiny” standard to determine the constitutionality of content-based regulation of speech).

The ordinance at issue in *Reed*, like the at-issue ordinance here, restricted the display of signage for qualifying events to a narrow timeframe before and after the event. *Id.* at 2224.

¹ Section 15-311 of the Beckley Municipal Code provides for exemptions from the city’s permitting requirements for signage. Subsection (b) of Section 15-311 reads:

Temporary political signs concerning candidates for public office and ballot issues and not exceeding eight (8) square feet in area. Such signs shall be erected no earlier than sixty (60) days prior to an election or referendum and removed no later than (7) days after the election or referendum.

It makes no difference that the City requests restricts in this way signage that applies to *all* political candidates or ballot issues.² A content-based regulation targeted at a specific subject is presumptively unconstitutional “even if does not discriminate among viewpoints within that subject matter.” *Id.* at 2230. Further, the motive behind a content-based regulation such as this one does not exempt it from strict scrutiny. *See id.* at 2229, quoting *Hill v. Colorado*, 530 U.S. 703, 743 (2000) (Scalia, J., dissenting) (“[t]he vice of content-based legislation . . . is not that it is always used for invidious, thought-control purposes but that it lends itself to use for those purposes.”).

The government has not offered any compelling government interest to satisfy the strict scrutiny required to place a limitation on the free speech rights of the residents of Beckley. The American Civil Liberties Union of West Virginia is monitoring this matter closely. The City should repeal this unconstitutional ordinance and inform residents publicly, via social media or otherwise, that the City no longer intends to penalize individuals for displaying political signs.

Please do not hesitate to contact me if I can be of additional assistance in your consideration of this issue. I can be reached at 304-345-9246, ext. 102, or via email at lstark@acluwv.org.

Sincerely,



Loree Stark
Legal Director, ACLU-WV

² Although the ordinance is unconstitutional on its face, even if it were constitutionally sound, it would be a violation of the First Amendment if it was determined that the city was enforcing the ordinance with regards to some political candidates or offices and not to others.