



Yard Signs Promoting or Opposing Recalls Are Free Speech

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Milwaukee – Many cities, towns and villages around Wisconsin have ordinances that regulate signs on private property. They are usually justified on grounds of aesthetics and traffic safety. If these ordinances just limit the size of the signs or how close they are to the street, they do not impermissibly infringe on freedom of speech. However, occasionally ordinances of this type prohibit property owners from placing political signs, in which case they are clearly unconstitutional.

The ordinances often limit the time when political signs, such as campaign signs, can be displayed, allowing them only during a period of several weeks before an election in which a candidate for office is on the ballot and a short time thereafter. These ordinances may have the effect of prohibiting an important form political expression altogether when the subject of the political sign is not a candidate on a ballot. For instance, right now eight Wisconsin State Senators are the subject of recall efforts. They are not “on the ballot,” so some ordinances can be read to prohibit signs urging or opposing the recall efforts, even though the recall sponsors are actively seeking signatures necessary to get a recall on the ballot. *See* Government Accountability Board website: <http://gab.wi.gov/elections-voting/recall>.

Ordinances that forbid the display of a sign promoting or opposing a recall on a person’s own property violate the First Amendment. Political speech stands upon the “highest rung of the hierarchy of First Amendment values.” *See NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982).

Courts strongly disfavor limits on political signs on private property, such as the sort of durational limits contained in many municipal ordinances. The Supreme Court has struck down an ordinance prohibiting political signs on private property, rejecting the City’s aesthetic and safety justifications. *City of Ladue v. Gilleo*, 512 U.S. 43 (1994).

The Court observed that political signs on private property are “a venerable means of communication that is both unique and important. . . . Signs that react to a local happening or express a view on a controversial issue both reflect and animate change in the life of a community. Often placed on lawns or in windows, residential signs play an important part in political campaigns, during which they are displayed to signal the resident’s support for particular candidates, parties, or causes. They may not afford the

same opportunities for conveying complex ideas as do other media, but residential signs have long been an important and distinct medium of expression.” *Id.* at 54-55. In holding the Ladue ordinance unconstitutional, the Court also stated, “Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute.” *City of LaDue*, 512 U.S. at 56-57.

Nearly every court to consider the question has struck down government-imposed time limits on when people may display such signs. Here in Wisconsin, the United States District Court for the Eastern District of Wisconsin invalidated a durational time limit on political signs in 2004 in a case brought by the ACLU of Wisconsin. *See Fiedorowicz v. City of Pewaukee*, Case No. 02-C-830, Decision and Order Granting Plaintiff’s Motion for Summary Judgment, Denying Defendant’s Motion for Summary Judgment, Declaring Unconstitutional the Ordinances at Issue, and Awarding Plaintiff Attorney’s Fees (E.D. Wis. April 9, 2004) (click here for a copy of the ruling).

The ACLU urges municipal officials to refrain from enforcing sign ordinances to restrict political expression and to repeal ordinances that limit this venerable form of speech.

And speaking of recalls, the Government Accountability Board, which regulates elections in Wisconsin, has clarified that recall supporters can seek signatures at polling places on Election Day, as long as they don’t interfere with the smooth running of the polling place and don’t try to talk about any candidates or referendums on the ballot. That’s because seeking a signature on a recall petition is not “electioneering,” since it is only electioneering if a person is trying to influence a voter about a race or question on the ballot, and a recall effort for which petitions are being circulated is not on the ballot. Of course, petition circulators should not be inside the room where voting is taking place (that could be disruptive) and be respectful in approaching people leaving the polling place. Go to the GAB’s website for the full memorandum on recall petitions at polling sites. <http://gab.wi.gov/node/1689>