



Victory for Free Speech in Sidewalk Protest Policy Change

Bayshore Mall, City of Glendale Acknowledge First Amendment Rights

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MILWAUKEE, WI – Bayshore Town Center and the City of Glendale have acknowledged citizens' First Amendment rights to picket and petition on the public sidewalks in front of the mall thanks to the advocacy of the American Civil Liberties Union of Wisconsin Foundation and volunteer attorneys. Last fall, Bayshore mall security ordered peaceful protesters away from the sidewalks in front of the mall and Glendale police arrested and issued a citation to a protester picketing a mall merchant's business practices. Mall management claimed it could control First Amendment activities because it "owned" the sidewalks along Port Washington Road and Silver Spring Drive.

"A sidewalk is a sidewalk," said Jeffrey Perzan, who was ordered to move by Glendale police while he collected petition signatures on the sidewalk along Port Washington Road. "The First Amendment protects my right to persuade my neighbors and the public to take action in the public places where they already congregate."

Lincoln Rice, who was protesting Trader Joe's business practices on the sidewalk outside its store, was arrested and issued a trespassing citation. ACLU of Wisconsin Foundation volunteer attorney Jim Gramling negotiated with Glendale's City Attorney to have the citation dismissed, and the city agreed to no longer interfere with individuals who peacefully protest on the perimeter sidewalks of the mall. Bayshore Town Center management has also agreed not to interfere with peaceful protest on the perimeter sidewalks surrounding the mall.

The ACLU opposed the mall management and the city police because every court to consider similar questions has held that private businesses cannot insulate themselves from criticism by artificially designating public sidewalks as private property. Despite a letter from the ACLU, mall security and Glendale police ordered Mr. Perzan to move from an allegedly "private" sidewalk along Port Washington Road as recently as January 6, 2012.

"This is a victory for the most basic form of free speech," said Gramling. "Sidewalks and parks are places where people traditionally have exchanged ideas and tried to persuade their neighbors to adopt their views. And unlike other forums for expression, like television or the radio, they can be used without charge, so anyone, rich or poor, can seek an audience there."

The perimeter sidewalks where First Amendment activity is permitted include: (1) the entire sidewalk on the north side of and parallel to Silver Spring Drive from Port Washington Road on the west to Lydell Avenue on the east; (2) the entire sidewalk on the east side of and parallel to Port Washington Road from Silver Spring Drive on the south to Carrigan Drive on the north; and (3) the sidewalks on the west side of and parallel to Lydell Avenue from Silver Spring Drive on the south to Carrigan Drive on the north. Although some portions of these sidewalks are owned by private entities and other portions are owned by the City, assembly and other expressive activity, as long as it is peaceful, and does not in any way disrupt access, or impede public health, welfare or safety, is lawful on all of these sidewalks, regardless of their ownership. The mall has *not* agreed to allow protest on the *interior* streets and sidewalks of Bayshore Town Center where the public gathers. Anyone attempting to protest in these interior spaces may be subject to arrest and/or citation or prosecution.

In addition to Attorney Gramling, Attorneys Holden Brooks and Michael Halfenger of Foley & Lardner in Milwaukee volunteered their time in this case.

The ACLU of Wisconsin Foundation is a non-profit civil liberties and civil rights organization working to protect the rights of Wisconsinites. For more on the work of the American Civil Liberties Union and Foundation of Wisconsin, visit our [webpage](#), like us on [Facebook](#) or follow us on Twitter [@ACLUofWisconsin](#) and [@ACLUMadison](#). Read more news and opinion on civil liberties in Wisconsin on the [Forward for Liberty](#) blog.

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