

July 19, 2022

Via Fax: 814-266-2024

Attn: Bryan J. Beppler, Executive Director
Bob Heffelfinger, Chairman, Board of Supervisors
Forrest Fordham, Township Solicitor
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RE: Richland Township's Unconstitutional Sign Ordinance

Dear Bryan Beppler, Bob Heffelfinger, and Forrest Fordham:

We have received complaints from Richland Township residents regarding removal from private, residential property of signs regarding a proposed asphalt plant. Our understanding is that many residents in mid-May put up signs in opposition to a proposed asphalt plant, and that Richland Township shortly afterwards removed and confiscated those signs from residents' private property. Residents were told that the signs could not be displayed because the asphalt company could not display signs, and that permits were required to display such signs on private residential property. We understand that the Township returned at least some of the signs and many residents have again displayed them without incident. We nonetheless write to express our concern about the unconstitutional removal of signs and the Township's unconstitutional sign ordinance. We request the Township's assurances that the Township's unconstitutional sign ordinance will not be enforced and that the process to promulgate a constitutional sign ordinance commences expeditiously.

The First Amendment to the United States Constitution guarantees, among several liberties, the freedom of expression. "A special respect for individual liberty in the home has long been a part of our culture and our law; that principle has special resonance when the government seeks to constrain a person's ability to speak there." *City of Ladue v. Gilleo*, 512 U.S. 43, 58 (1994) (internal citation omitted). That liberty includes a right to erect signs, which are, "a form of expression protected by the Free Speech Clause" of the First Amendment. *Id.* at 48. Indeed, yard and window signs are a unique medium that "may have no practical substitute." *Id.* at 57. Richland Township's ordinance is a content-based restriction on expression that treats signs differently based on content, which is prohibited by the First Amendment.

To the extent there may have been doubt that content-based ordinances like the one in Richland are facially unconstitutional, the U.S. Supreme Court has clarified the law in striking down a municipal sign ordinance—which

made distinctions among “ideological signs,” “political signs,” and “temporary directional signs,” among others—because the ordinance restricted the size, number, and length of time the signs could be displayed based on what the signs said, i.e., based on their content. *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). These types of content-based restrictions “can stand only if they survive strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” *Id.* at 171 (internal quotation marks and citation omitted). The Court rejected the town’s justifications for the restrictions—preserving its aesthetic appeal and traffic safety—because the regulation’s distinctions were “hopelessly underinclusive.” *Id.* As the Supreme Court made clear in *Reed*, the government must treat all signs in a particular zoning area equally, without regard to content. *See id.* (“a clear and firm rule governing content neutrality is an essential means of protecting the freedom of speech”).

Like the ordinances at issue in *Ladue* and *Reed*, the Richland Township Sign Ordinance is a content-based restriction on expression that gives preferential treatment to certain signs based on content. For example, the Sign Ordinance allows certain “types of signs and no other” in residential districts and the University District. Code of Twp. of Richland § 240-113. A similar ordinance in *Ladue* generally prohibited all signs except those that fell within 1 of 10 exemptions. The ordinance was unconstitutional because it banned almost all residential signs, including signs advocating “For Peace in the Gulf.” Richland’s Sign Ordinance similarly unconstitutionally bans almost all residential signs, including core political speech such as signs opposing a proposed asphalt plant.

Additionally, “special event signs” are exempt from the requirement of obtaining a permit from the Zoning Officer. Code of Twp. of Richland § 240-117. “Special event signs” include signs advertising garage sales, holiday decorations, certain directional signs, and real estate signs. The Sign Ordinance’s differential treatment of signs based on content is facially unconstitutional under *Reed*.

The Sign Ordinance suffers from an additional constitutional flaw in that it requires zoning approval for any sign. Code of Twp. of Richland § 240-112.B. The First Amendment prohibits the Township from requiring property owners to obtain approval prior to the erection of signs bearing non-commercial messages. “Prior restraints on speech and publication are the most serious and the least tolerable infringements on First Amendment rights.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). “Any system of prior restraints on expression . . . bear[s] a heavy presumption against its constitutional validity.” *Id.* We are unaware of any system of prior restraint that has been upheld as applied to private-property signs bearing non-commercial messages. To the contrary, courts that have considered similar permitting requirements declared them unconstitutional. *See King Enters. v. Thomas Twp.*, 215 F. Supp. 2d 891 (E.D. Mich. 2002); *North Olmstead Chamber of Commerce v. City of North Olmstead*, 86 F. Supp. 2d 755 (N.D. Ohio 2000); *Curry v. Prince George’s Cnty.*, 33 F. Supp. 2d 447, 455 (D. Md. 1999) (“[T]here is no justification for imposing [permit and fee] requirements in the case of campaign signs posted upon a private residence.”).

The ACLU-PA in the past has secured federal court orders enjoining enforcement of similar unconstitutional municipal sign restrictions. *See, e.g., Papiernik v. E. Norriton Twp.*, No. 09-cv-2096 (E.D. Pa.); *Frock v. Borough of Littlestown*, No. 1:08-cv-465 (M.D. Pa.); *Rudolph v. Twp.*

of South Park, No. 2:08-cv-234 (W.D. Pa.); *Fera v. Borough of Baldwin*, No. 05-cv-284 (W.D. Pa.); *Smith v. Borough of East Stroudsburg*, No. 3:04-cv-2032 (M.D. Pa.); *Benson v. Harborcreek Twp.*, No. 02-cv-303 (W.D. Pa.); *Bella Vista United v. City of Philadelphia*, No. 04-cv-1014 (E.D. Pa.); *Bellamy v. Twp. of Upper St. Clair*, No. 99-cv-1611 (W.D. Pa.). The protection for property signs is now even stronger after the Supreme Court's decision in *Reed*.

In sum, Richland Township may not regulate signs on private property based on content, may not prohibit any signs bearing a non-commercial messages absent a compelling reason, and may not require zoning approval for signs bearing non-commercial messages. Accordingly, we ask that you revise the Township's Sign Ordinance and immediately provide us with assurance that the provisions of the Sign Ordinance governing non-commercial signs will not be enforced.

If we receive further complaints about unconstitutional enforcement of the Township's Sign Ordinance, we may take legal action to declare the ordinance unconstitutional, facially and as applied, to enjoin enforcement, and to cover plaintiff's attorneys' fees under 42 U.S.C. § 1988. We look forward to your anticipated cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard T. Ting", written over a light gray rectangular background.

Richard T. Ting
Staff Attorney

