

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF FLORIDA  
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August 30, 2007

VIA FACSIMILE

Betty McMinamen  
Code Enforcement Officer  
City of Clermont  
P.O. Box 120219  
Clermont, FL 34712-0219

Re: August 23, 2007 Letter to Bryan J. and Leilani J. Orr

Dear Ms. McMinamen:

This letter is written on behalf of Bryan J. and Leilani J. Orr regarding your August 23, 2007 letter demanding that they immediately cease and desist the placement of a political sign on their property, purportedly in violation of the City of Clermont's ordinance requiring a political sign permit and payment of a \$50.00 refundable fee. We believe you have misapplied the ordinance and, to the extent you would apply it to the Orrs, that it is plainly unconstitutional.

First, City Code § 102-18 provides that "The candidate whose sign is erected . . . shall deposit with the city clerk" the required fee. The Orrs are not candidates so, by the terms of the ordinance itself, they cannot be required to pay a fee. Moreover, if by enforcing § 102-18 against the Orrs you are taking the position that they are prohibited from posting signs on their property unless the candidate named on their sign pays the fee, we believe such a position violates the Free Speech Clause of the First Amendment to the Constitution.

The law is clear that the display of political signs constitutes pure speech that is protected by the First Amendment. Indeed, the Supreme Court has held that "the First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office." *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 223 (1989). Because the City of Clermont's code specifically singles out political signs as a category, it is a content-based restriction that must be supported by a compelling governmental interest. Further, the means chosen to effect such interests must be narrowly tailored to achieve that objective. *See Boos v. Barry*, 485 U.S. 312, 321 (1988).

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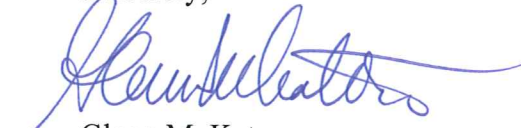
The ACLU believes that the City's restriction quite clearly cannot meet this heavy, strict scrutiny burden. I call your attention to several cases from around the country that have struck down various ordinances restricting the display of political signs: *Arlington County Republican Committee v. Arlington County, Virginia*, 983 F.2d 587 (4<sup>th</sup> Cir. 1993) (two sign limit unconstitutional even where ordinance was content neutral); *Knoeffler v. Town of Mamakating*, 87 F. Supp.2d 322 (S.D.N.Y. 2000) (restriction of political lawn signs violated First Amendment); *Curry v. Prince George's County, Maryland*, 33 F. Supp.2d 447 (D. Md. 1999) (durational limit with respect to political signs unconstitutional); *Savago v. Village of New Paltz*, 214 F. Supp.2d 252 (N.D.N.Y. 2002) (Village's sign ordinance unconstitutional). See also *Rappa v. New Castle County*, 18 F.3d 1043 (3<sup>rd</sup> Cir. 1994) (invalidating state statute regulating placement of signs).

The United States Court of Appeals decision in *Beaulieu v. City of Alabaster*, 454 F.3d 1219, 1233 (11th Cir. 2006) is particularly relevant. That case involved a city ordinance that imposed bureaucratic requirements on political signs that did not apply to other signs. The court struck the ordinance as unconstitutional, holding that "[i]n sum, under the sign ordinance it is easier, cheaper, and faster for Beaulieu to post a real estate sign than a campaign sign. Because political signs are subject to more regulatory burden than real estate signs, the sign ordinance discriminates against political speech in favor of commercial speech." Applying the City of Clermont's ordinances to require the Orrs to obtain a permit or pay a fee to post a political sign, while those same ordinances allow them to post a real estate sign with no permission or requirement is precisely what the Eleventh Circuit found unconstitutional in *Beaulieu*.

Please confirm in writing faxed to the above number no later than 5:00 p.m. on Tuesday, September 4, that you will not take the enforcement action against the Orrs described in your August 23, 2007 letter, and that they may post their political sign without the need for a permit or the payment of any fee. If we do not receive such confirmation we are prepared to challenge the ordinance in federal court.

Please contact me if you would like to discuss this matter further.

Sincerely,



Glenn M. Katon

cc: Bryan J. and Leilani J. Orr  
James K. Hitt, Director of Planning  
Daniel Mantzaris, City Attorney