Coates' Canons Blog: Campaign Signs and Local Land-Use Ordinances

By Richard Ducker

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UPDATE September 2013: In 2011 the General Assembly adopted legislation establishing standards for political signs within the right-of-way of NCDOT roads and highways, giving NCDOT the authority to enforce them. The adopted statute (G.S. 136-32) does, however, allow municipalities to retain authority to regulate political signs within the rights-of-way of streets inside city limits that are maintained by the city. For a full discussion of the 2011 law see my more recent 2011 blog.

Jerry is running for county commissioner. Jerry's backers tell him that he will have to improve the recognition of his name substantially if he is to have a chance in the upcoming election. His strategy is to flood the county with his purple and white campaign signs until virtually everyone will know his name. What could stand in the way of this strategy? Several local governments are considering new standards for "political signs." What do representatives of local governments need to know about the regulation of campaign signs to adequate balance Jerry's constitutional rights and the community's interest in its own appearance?

First, a brief review of the First Amendment. The First Amendment to the U.S. Constitution (made applicable to local governments by the Fourteenth Amendment) provides that governments "shall make no law . . . abridging the freedom of speech . . . " An important form of speech is the ability to display a sign, yet courts have generally upheld reasonable regulation of signs. Such regulation is often based on an interest in community appearance and may reflect additional governmental purposes, such as protection of public safety, preservation of property values, and promotion of tourism.

Except in special circumstances, effective regulation of signs must be content-neutral. If a regulation is found to be content neutral, then it generally follows that reasonable time, place, and manner restrictions may be applied. However, because there are variety of physical types and forms of signs as well as a variety of messages, it is often difficult to avoid classifying and differentiating signs. Unfortunately governments classify and differentiate at their peril and risk the loss of content neutrality.

At least one kind of distinction is permitted without violating the principle of content neutrality. Commercial advertising signs merit less First Amendment protection than noncommercial signs (including campaign and other political signs). As result, regulations may in no way favor commercial signs over noncommercial signs, or permit commercial signs where noncommercial signs are prohibited.

Noncommercial speech includes not only campaign signs but also the "political" messages of criticism, advocacy, outrage, and support. Campaign signs are just one form of political speech, which is accorded the greatest level of protection under the First Amendment. Since signs have long been an effective way of communicating political messages, restriction on signs tend to have a particularly noticeable effect on political speech. On the other hand most political signs are really campaign signs that relate to a particular election on a given date. Since their effectiveness tends to be limited to particular time periods in which their effect on appearance is considerable, it may seem possible to subject those kinds of signs to special limitations without sacrificing the values inherent in free speech. Federal and state courts, however, have been surprisingly unwilling to tolerate various restrictions on campaign signs, and the gap between the legal jurisprudence on this subject and local regulatory practice seems wide.

What does this constitutional background mean in practice? Consider the following seven questions:

(1) **May an ordinance define "political signs" and establish special more tolerant standards for them that are less demanding than for commercial signs?** Such an idea may seem plausible, but the answer is "probably not." If an ordinance singles out signs with specific content, even if the category is for "political signs," then the regulations may be in jeopardy because they lack sufficient content neutrality. The category "political signs" risks being viewed as insufficiently broad because it fails to include all forms of noncommercial speech. In contrast, special tolerance for categories of signs that include both noncommercial and commercial signs, such as "temporary signs," has generally avoided the content-neutrality problem.

(2) **May an ordinance prohibit the posting of all signs (including campaign signs) on public property, including public road rights-of-way?** Apparently so, according to the U.S. Supreme Court case of Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 (1984). In this court the ban was found to be content-neutral since it applied to all signs and was carefully tailored to remedy the problems it sought to address. In addition, there were ample methods of communication that served as alternatives to the signs.

(3) **Must noncommercial messages (including campaign signs) be allowed on private property in all zoning districts?** Apparently yes, even though no court has had the occasion to consider this question matter directly. Courts have routinely struck down regulations that prohibit the display of political signs on an owner's property, particularly in residential areas, and in commercial areas as well.

(4) **May an ordinance limit temporary signs (including temporary campaign signs) by size or number?** Within limits, yes. Three federal and state court cases have upheld limits on the square footage of temporary signs of sixteen (16) square feet, ten (10) square feet, and six (6) square feet, respectively. A restriction of four square feet has been invalidated as being unnecessarily restrictive. Limits on the total area of all temporary signs on any one parcel have been affirmed, but limits on the aggregate area of all temporary signs advertising a single candidate or ballot issue within a community have been ruled unconstitutional. Similarly, in Arlington County Republican Committee v. Arlington County, Va., 983 F. 2d 587 (4th Cir. 1993), the Fourth Circuit Court of Appeals held an ordinance unconstitutional that would have effectively limited the number of political signs that could be displayed on residential property to one sign, because the government's interests in aesthetics and safety were insufficient to justify the restriction.

(5) **Where campaign signs are included within the category "temporary signs," may an ordinance require a permit to be obtained in order to erect a temporary sign?** The answer is unclear. One seminal case has held that where large numbers of campaign signs are involved, the burden imposed by such a requirement unnecessarily inhibits this form of communication. However, in several other cases permit requirements were upheld in circumstances where essentially the same permitting requirements applied to all temporary signs, including campaign signs.

(6) **May an ordinance constitutionally require a nonrefundable inspection fee or a refundable deposit to ensure that temporary signs are removed?** The courts are split on this question. One court has found that the inspection fees were inadequately related to the actual cost of inspecting the signs and burdened this form of speech unduly. But another court sustained permit fees where the fee applied to all temporary signs and to permanent signs over two square feet in size.

The results with respect to refundable deposits to secure sign removal are also mixed. In one case a $100 refundable-deposit requirement imposed on each candidate was invalidated. Of course, any such fee or deposit applied to campaign or political signs that is not also applied to temporary commercial signs is probably unconstitutional.

(7) **May an ordinance limit the time temporary signs are displayed?** Pre-election or pre-event restrictions on temporary signs fail for a variety of reasons. Some fail because they do not apply to temporary signs that are not campaign signs. Others inappropriately limit the display of political messages that do not involve traditional election campaigns. Nonetheless, several courts have been less demanding and have upheld general 90-day pre-event restrictions.

Requirements that temporary signs be removed within days after the event have fared better, at least to the extent that they have not exempted other temporary signs. Any reasonable period, such as one week, should be adequate to allow removal of signs that no longer have utility. Several cases have approved limits of ten days following elections.

In summary, what lessons does First Amendment case law offer for local governments? Perhaps the most important lesson is that local governments must be very careful in developing effective and legally defensible regulations. It may be a mistake to give noncommercial speech too little attention in an ordinance and to miss the opportunity to promote community appearance. But it may also be a mistake to give campaign signs too much attention if it offends content neutrality. The regulation of campaign signs may be one regulatory area in which a review of one's current ordinance is always in order.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=136-32
- canons.sog.unc.edu/?p=5711&print=1
- supreme.justia.com/us/466/789/case.html