
Coates' Canons Blog: Signs of the Times: The Regulation of Political Signs

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Earlier this year it was reported in an Arizona newspaper that a prominent community activist (Ms. Smith) might face misdemeanor charges after witnesses saw her stealing campaign signs that Ms. Smith said were illegal and “negative” in their message. It seems that the signs made reference to the husband (Mr. Abbott) of an incumbent town council member whom Ms. Smith supported. Mr. Abbott had himself been accused of stealing the campaign signs of his wife’s opponent. The signs that Ms. Smith was accused of stealing declared: “If you’re reading this sign, it’s because Tom Abbott hasn’t taken it down yet.” According to those who came to her defense, the signs that Ms. Smith had confiscated were indeed slanderous. Ah, yes, election campaigns in full swing.

Should such an incident possibly occur in the calm political confines of North Carolina, we now know that stealing, defacing, vandalizing, or unlawfully removing a political sign that has been lawfully located is, under our law, a class 3 misdemeanor. So says Session Law 2011- 408 (S 315), adopted in this year’s General Assembly session.



The new law amends G.S. 136-32 to establish for the first time a regulatory framework

for dealing with the placement of “political” signs within the rights-of-way of public streets and highways. The amended statute spells out standards for North Carolina Department of Transportation (NCDOT) highways, and it also serves as enabling legislation for municipalities to prohibit or regulate these signs as well. In particular, a municipality may adopt and enforce its own ordinance prohibiting or regulating the placement of the campaign signs along city streets. (We know from the United States Supreme Court case of *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984), that if alternative modes of communication are available, it is not a violation of the First Amendment for a local government to ban campaign signs from public rights-of-way entirely).

A municipality may also apply its sign standards to those State highways inside city limits that are wholly maintained by a city under a maintenance contract with NCDOT. If a city has already adopted campaign sign regulations before the effective date of the new law (October 1, 2011), the city regulations continue to apply, but only inside city limits. Such regulations may no longer apply within a city’s extraterritorial planning jurisdiction. Even if the regulations are adopted after the law’s effective date, city-adopted regulations apparently displace the State standards set forth in G.S. 136-32(d), but only inside municipal limits. If a town or city fails to adopt campaign sign regulations of its own, then the State standards apply inside city limits, but only to state roads and highways. In any event, the new statutory standards apply to all those State roads and highways located in the unincorporated areas of North Carolina.

Several standards set forth in G.S. 136-32(d) are particularly notable. Signs may only be displayed during the period from the 30th day before the beginning of “one-stop” early voting and the 10th day after the primary or election day. These “pre-election” and “post-election” intervals may seem reasonable enough, but one has to wonder whether the First Amendment will be satisfied. Where restrictions on signs displayed near an election are concerned, courts in various parts of the country have invalidated restrictions looser than North Carolina’s. (See my earlier blog for more details.)

Another standard in G.S. 136-62(d) has also raised some eyebrows. The new law requires the party erecting the sign to

obtain the permission of the owner of any residence, business, or religious property that fronts the right-of-way where the sign is erected. It is worth noting that most streets and highways in North Carolina are based on easement interests. The owner of property abutting a street may or may not own the land to the center line of the street or road. Requiring permission of the abutting owner seems clearly to recognize the fact that many property owners consider the area behind the curb, shoulder, or ditch to be theirs regardless of the nature of the property interest they may or may not possess. Determining whether property owner permission is required will be most difficult for signs intended to be posted at intersections and in the medians of multi-lane highways, parkways, boulevards, and avenues. It may be that the law requiring a property owner's permission will be honored more in its breach than in its observance. But before candidates become too cavalier about obtaining the permission of property owners, they should keep in mind that stealing, removing, or defacing such a sign is against the law only if the sign is lawfully erected in the first place. If it is not, it may be treated as either a private or a public nuisance and summarily abated.

One peculiarity of the new law is that the title of the law refers to "campaign signs." However, the body of the law refers to the placement of a "political sign," defined as "any sign that advocates for political action." Does the law apply to the more controversial form of signs that involve messages directed at particular groups, individuals, and causes? Apparently the law does apply if such a sign is proposed for erection in a street or road right-of-way. However, the new law does not apply to political signs erected on private property behind the right-of-way line. A recent case heard in federal court here in North Carolina illustrates the distinction.

The case of *Bowden v. Town of Cary*, 754 F. Supp. 2d 794 (2010), *appeal filed*, No. 11 – 1480 (4th Cir. May 6, 2011), involved a dispute between a property owner and the town in which the property owner claimed that water runoff from a town street had caused major damage to his house. When the problem was not resolved, Bowden painted a protest sign occupying about 48 square feet on the front of his white house. The sign, in large fluorescent orange and pink letters, read: "Screwed by the Town of Cary." Remarkably enough, Cary's development ordinance included comprehensive provisions devoted to the kinds of signs that could be displayed in residential zoning districts. Although "political signs" were authorized in residential districts, those signs along with various other types of signs could not exceed 720 square inches in area or 42 inches in height. The regulations were obviously oriented to campaign or election signs rather than to more full-blown political statements.

Rather than tackle the sensitive question of what kind of sign standards legitimately could apply to signs displaying more elaborate forms of political speech, the federal court judge ruled in favor of Bowden by invalidating the ordinance as applied to him. According to the court, the ordinance impermissibly exempted from regulation holiday decorations, public art, temporary signs erected as part of a town-recognized event, and government signs. By doing so, the ordinance made distinctions based on the content of the sign's message that could not be adequately justified under the First Amendment, particularly since highly protected political messages were highly restricted. The court therefore enjoined the town from enforcing its ordinance against the infamous sign. The case is now on appeal to the federal Fourth Circuit Court of Appeals.



Session Law 2011 – 408 (S 315) allows North Carolina municipalities and NCDOT to enforce standards governing one special form of political signs – campaign or election signs – that are located within road rights-of-way although questions about the new law remain. What is less clear (as the Cary case illustrates) is how governments may best address the more unusual situation of property owners attempting to make political statements by displaying signs on their own property, particularly when the regulating body is also a target of inflammatory comment. These signs of the times will likely require more attention if we see more political discord in the days ahead.

Links

- www.azcentral.com/community/gilbert/articles/2011/05/12/20110512gilbert-community-activist-accused-stealing-campaign-signs.html
- www.ncleg.net/Sessions/2011/Bills/Senate/PDF/S315v5.pdf
- canons.sog.unc.edu/signs-of-the-times-the-regulation-of-political-signs/signs-campaign/
- www.law.cornell.edu/supct/html/historics/USSC_CR_0466_0789_ZO.html
- canons.sog.unc.edu/?p=2308&print=1
- scholar.google.com/scholar_case?case=11584111712193404022&q=Bowden+v.+Town+of+Cary&hl=en&as_sdt=2,34&as_vis=1
- canons.sog.unc.edu/signs-of-the-times-the-regulation-of-political-signs/image002-3/
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- canons.sog.unc.edu/?attachment_id=5723