

Local Regulation of Campaign Signs

By Zach Lell

Political campaign signs are a rite of the Fall election season. As predictable as harvest moons, falling leaves and football games, each autumn inevitably ushers forth a massive proliferation of campaign signs vying for public attention and votes. Inexpensive and easy to distribute, small political signs are viewed as an effective advertising mechanism by candidates, an administrative and legal headache for the municipalities charged with regulating them, and either an inspiration or eyesore by the general public. Love them or hate them, signs promoting political candidates or ballot issues implicate a unique regulatory framework with deep constitutional roots.

Campaign messages enjoy substantial protection under both the United States and Washington Constitutions. Courts have consistently acknowledged that “the First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.”¹ Political signs are also protected by Washington statute, which criminalizes the removal or defacement of lawfully placed political signs without authorization.²

The extent of governmental regulatory authority over political signs depends in large part upon a sign’s location. Signs displayed on private property are treated differently than those located on public land, and public property itself is legally differentiated into various categories under the relevant legal standard.

Public Property

In the context of public property, restrictions on political speech are governed by “forum analysis” — a judicial doctrine that divides public property into three main categories. The first category is the “nonpublic” forum, encompassing governmental property “which is not by tradition or designation a forum for public communication.”³ In addition to imposing reasonable time, place and manner regulations on speech, governments may reserve such property for its intended purposes by excluding particular speech as long as the regulations are reasonable and viewpoint neutral.⁴ As a general rule, campaign messages may be flatly prohibited on such property.

The second category of government property is the “limited public forum”, which arises when governments create a public forum for a limited purpose, such as use by certain groups or the discussion of certain subjects.⁵ Such property may be validly reserved for speech consistent with its specified purposes, but all speakers or subjects falling within the forum’s permitted designation must be afforded equal treatment. A public entity creating this type of limited forum may not, for example, permit the display of Democratic party signage while simultaneously excluding Republican signs.

The final — and most important — category of public property is the “quintessential” or “traditional” public forum, encompassing “places which by long tradition or government fiat have been devoted to assembly and debate.”⁶ The quintessential public forum includes such traditional gathering places as streets, sidewalks and parks, which “have immemorially been held in trust for the use of the public and . . . for purposes of assembly, communicating thoughts between citizens, and discussing public questions.”¹⁷ (Significantly, the government may

effectively “create” a public forum by opening traditionally nonpublic fora for broad expressive use.⁸ Once opened, such property is subject to the same rules governing the quintessential public forum.)⁹

Governmental restrictions on political expression in the quintessential public forum are subject to extremely demanding judicial scrutiny. Bans on such speech are almost categorically unconstitutional, and time, place and manner restrictions are valid under the federal analysis only if they (1) are content-neutral, (2) narrowly tailored to serve a significant government interest, and (3) leave open ample alternative channels of communication.¹⁰ Washington applies an even more stringent test, requiring that the proffered governmental interest be “compelling” rather than merely “significant.”¹¹

The seminal Washington case is *Collier v. City of Tacoma*. At issue in *Collier* was a Tacoma ordinance that prohibited the display of political campaign signs on public property more than 60 days prior to the election advertised by the sign.¹² Michael Collier, an underdog congressional candidate who had posted campaign signs in the parking strips located between city streets and sidewalks in violation of the 60 day requirement, challenged Tacoma’s regulatory scheme as a free speech violation.¹³ The Washington Supreme Court sided with Collier and invalidated the city’s pre-election durational limit on campaign signs under the three-prong time, place and manner analysis recited above.¹⁴

Emphasizing the constitutional protection afforded to political speech in the quintessential public forum, the *Collier* court rejected Tacoma’s proffered justification for the restriction (community aesthetics and traffic safety) as insufficiently “compelling”, and concluded that the ordinance was neither narrowly tailored nor allowed adequate alternative channels of communication.¹⁵ Critical to the court’s conclusion in *Collier* was the recognition that small, portable campaign signs represent a practical, cost-effective and highly localized campaign medium for political candidates.¹⁶ *Collier* reaffirms the enhanced judicial protection enjoyed by campaign signs in the public forum, and underscores the heightened scrutiny governmental restrictions must endure when regulating communications of this type.

Private Property

Municipalities are typically even more constrained in attempting to regulate campaign signs on private property — particularly in the context of private residential property. In addition to potential “takings” issues implicated by the Fifth Amendment, courts have recognized that political signage displayed at one’s home carries special constitutional importance and thus warrants heightened protection.

The United States Supreme Court’s 1994 decision in *City of Ladue v. Gilleo* exemplifies judicial sentiment in this area. The municipal ordinance challenged in *Gilleo* prohibited homeowners from displaying any signage on their premises except identification and “for sale” signs.¹⁷ Emphasizing that a “special respect for individual liberty in the home has long been a part of our culture and our law,”¹⁸ the Supreme Court struck down the ordinance on First Amendment grounds.¹⁹ The *Gilleo* Court’s dicta speaks volumes about the constitutional protection enjoyed by residential campaign signs:

Signs that react to a local happening or express a view on a controversial issue both reflect and animate change in the life of a community. Often placed on lawns or in windows, residential signs play an important part in political campaigns, during which they are displayed to signal the resident’s support for particular

candidates, parties or causes. . . . Small political campaign posters have maximum effect when they go up in the windows of homes, for this demonstrates that citizens of the district are supporting your candidate — an impact that money can't buy.²⁰

Thus, because of their inexpensiveness, convenience and intrinsic identification with the landowner, yard and window signs effectively “have no practical substitute” and are protected accordingly under the Constitution.²¹

Local governments have slightly greater latitude in regulating campaign signage on private, nonresidential property. The key legal requirements in this context generally prohibit governmental restrictions from favoring commercial speech over noncommercial, regulating noncommercial speech on the basis of content, or vesting excessive regulatory discretion in the hands of local officials.

Time, Place and Manner Restrictions

Although municipalities may not categorically ban campaign signs altogether, most local governments do regulate the non-communicative aspects (e.g., size, location and duration) of such signs. Common restrictions include forbidding vehicular or pedestrian traffic blockage, square footage requirements for each sign face, and prohibiting the display of campaign signs on public property beyond a specified post-election period. Regulations of this type address the physical attributes, as opposed to the content, of campaign signs.

Municipal time, place and manner restrictions on campaign signs vary substantially among local jurisdictions. Because each city or county may have adopted a regulatory scheme containing unique aspects, it is advisable to consult the relevant municipal code prior to posting a campaign sign.

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¹ *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989).

² RCW 29.84.040.

³ *Perry Edu. Ass'n v. Perry Local Edu. Ass'n*, 460 U.S. 37, 46 (1983).

⁴ *Id.*

⁵ *Id.* at 46 n.7.

⁶ *Id.* at 45.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 46.

¹⁰ *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

¹¹ *Collier v. City of Tacoma*, 121 Wn.2d 737, 747, 854 P.2d 1046 (1993); *Bering v. SHARE*, 106 Wn.2d 212, 234, 721 P.2d 918 (1986), *cert. dismissed*, 479 U.S. 1050 (1987).

¹² *Collier*, 121 Wn.2d at 742-43.

¹³ *Id.* at 741-44.

¹⁴ *Id.* at 760.

¹⁵ *Id.* at 754-60.

¹⁶ *Id.* at 760.

¹⁷ *City of Ladue v. Gilleo*, 512 U.S. 43, 45-47 (1994).

¹⁸ *Id.* at 58.

¹⁹ *Id.* at 58-59.

²⁰ *Id.* at 54-55 & n.12 (citation and internal punctuation omitted).

²¹ *Id.* at 57.