

*Court Received
2-2-17
KRB*

IN THE MUNICIPAL COURT FOR THE CITY OF ROELAND PARK, KANSAS

CITY OF ROELAND PARK,)
)
Plaintiff,)
v.)
)
MATTHEW DONEGAN,)
)
Defendant.)

Case No. 89605

DEFENDANT’S MOTION TO DISMISS COMPLAINT WITH SUGGESTIONS IN SUPPORT

Motion to Dismiss

COMES NOW defendant Matthew Donegan, through counsel, and moves to dismiss the Complaint in this case because the ordinance on which the charge is based, Roeland Park City Code § 16-910(b), violates the Free Speech Clause of the First Amendment to the United States Constitution and also violates Kansas law.

Suggestions in Support of Motion to Dismiss

I. *Facts*

1. Defendant resides in the City of Roeland Park, Kansas. Exhibit A, Citation (attached).
2. During the forty-five (45) days before the general election held on November 8, 2016, defendant displayed approximately two dozen signs in support of Donald Trump’s candidacy for President and other issues on the ballot in the general election.
3. In late September, defendant received from the City’s Code Compliance Officer, Shiloh Wells, a “Courtesy Notice” dated September 26, 2016, informing him that “the sign(s) at the above referenced property not in compliance with the City code.” The notice specifically advised defendant that “[o]nly three (3) temporary sign(s) are allowed in a yard and these cannot be any larger than three (3) square feet a piece. Please remove all but 3 of your signs that meet the size requirement.” Exhibit B (attached).

4. In late October or early November, Mr. Donegan received by certified mail a ticket from the City citing him for violating City Code § 16-910(b) by displaying “temporary signs – exceeding maximum amount (3).” Exhibit A.

II. *Argument*

1. *The City’s three sign limit violates the First Amendment.*

The Roeland Park City Code prohibits the display of more than three “temporary signs.” Roeland Park City Ord. § 16-910(b). “[S]igns are a form of expression protected by the Free Speech Clause.” *City of Ladue v. Gilleo*, 512 U.S. 43, 48 (1994). The First Amendment “was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *Roth v. United States*, 354 U.S. 476, 484 (1957). Roeland Park’s three sign limit violates the Free Speech Clause of the First Amendment to the United States Constitution.

In *Quinly v. City of Prairie Village*, Federal District Judge John Lungstrum succinctly stated the analysis that courts must apply in determining whether a sign ordinance violates the First Amendment:

In evaluating the constitutionality of an ordinance restraining or regulating speech, the court first inquires whether the ordinance is “content-based” or “content-neutral.” See *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1258 (11th Cir.2005) (citations omitted). If the ordinance is “a content-neutral time, place, and manner restriction, it is subject to intermediate scrutiny – that is, it must not restrict speech substantially more than necessary to further a legitimate government interest, and it must leave open adequate alternative channels of communication.” *Id.*

446 F. Supp.2d 1233, 1238 (D. Kan. 2006).

Even assuming *arguendo* that the City’s sign ordinance is content-neutral, the ordinance’s three sign limit violates the Free Speech Clause of the First Amendment because it is not necessary to further a legitimate government interest and does not leave open

adequate alternative channels of communication. *See, e.g., Arlington County Republican Comm. v. Arlington County*, 983 F.2d 587 (4th Cir. 1993) (county ordinance imposing two-sign limit on private property in residential districts violated First Amendment because it was not narrowly tailored to further the government’s substantial interests in promoting aesthetics and traffic safety and did not leave open adequate alternative means of communication); *Cleveland Area Bd. Of Realtors v. City of Euclid*, 88 F.3d 382, 388 (6th Cir. 1996) (“the wholesale ban on lawn signs in the name of aesthetics is, simply, not sufficiently narrowly tailored to withstand constitutional scrutiny”); *Dimas v. City of Warren*, 939 F. Supp. 554, 557 (E.D. Mich. 1996) (striking down as a violation of the First Amendment city ordinance prohibiting property owners from displaying more than “one election sign per candidate, per issue” and “[o]ne opinion sign per residence”).

2. The three sign limit violates Kansas statutory law.

The Home Rule Amendment to the Kansas Constitution grants cities the power to enact legislation to govern local affairs “subject only to enactments of the legislature of statewide concern applicable uniformly to all cities [and] to other enactments of the legislature applicable uniformly to all cities[.]” Kan. Const. Art. 12, § 5(b). Thus, the Home Rule Amendment prohibits cities from enacting ordinances that contradict uniformly applicable state laws. *See Kansas City Renaissance Festival Corp. v. City of Bonner Springs*, 269 Kan. 670, 673 (2000) (“home rule power does not authorize cities to act where the state legislature has precluded municipal action by clearly preempting the field with a uniformly applicable enactment”).

A Kansas statute “applicable uniformly to all cities” provides as follows:

No city or county shall regulate or prohibit the placement of or the number of political signs on private property or the unpaved right-of-way for city streets or

county roads on private property during the 45-day period prior to any election and the two-day period following any such election. Cities and counties may regulate the size and set-back distance for the placement of signs so as not to impede sight lines or sight distance for safety reasons.

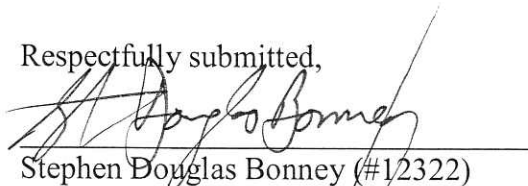
Kan. Stat. Ann. 25-2711.

In enacting Kan. Stat. Ann. 25-2711, the Legislature clearly provided that “[n]o . . . shall regulate or prohibit . . . the number of political signs on private property . . . during the 45-day period prior to any election[.]” Thus, because the City cited defendant for displaying more than three (3) signs within the forty-five (45) day time period before the general election held on November 8, 2016, the City’s numerical limitation on the number of signs that can be displayed in a residential district within the forty-five (45) days of an election must give way to the Kansas legislature’s determination that local governments cannot limit the number of signs that can be displayed during that time period. As such, the city ordinance used to cite defendant in this case is unenforceable with respect to defendant on the facts of this case.

III. *Conclusion*

For these reasons, defendant prays that the Court dismiss the Complaint in this case with prejudice.

Respectfully submitted,

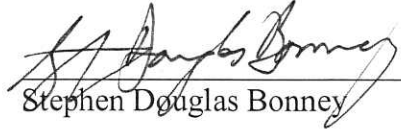


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ATTORNEYS FOR DEFENDANT

Certificate of Service

I certify that, on February 2, 2017, the foregoing document was served by hand-delivery on Frank P. Gilman, City Prosecutor, 4600 W. 51st Street, Roeland Park, KS 66205, counsel for plaintiff.



Stephen Douglas Bonney



City of Roeland Park

4600 West Fifty-First Street
Roeland Park, Kansas 66205
City Hall (913) 722-2600 - Fax (913) 722-3713
City Office Hours: Mon-Fri 8 am - 5 pm

Courtesy Notice

September 26, 2016

Resident
5300 W 55th
Roeland Park KS 66205

Re: Our file # 10683 ADDRESS: 5300 W 55TH ST

Notice of Code Compliance: SIGNS ALLOWED IN THE SINGLE-FAMILY RESIDENTS, DUPLEX RESIDENCE AND MULTI-RESIDENCE DISTRICTS

The City of Roeland Park is committed to maintaining quality neighborhoods and an excellent community environment. Our citizens expect us to do everything we can in this regard. We know that this can only be achieved through the cooperation of everyone involved.

On 9/26/2016, I observed that the sign(s) at the above referenced property are not in compliance with City code. The City is requesting that you voluntarily address this issue within 10 days.

Only three (3) temporary signs are allowed in a yard and these cannot be any larger than three (3) square feet a piece. Please remove all but 3 of your signs that meet the size requirement. Please remember signs cannot be illuminated either.

The City's objective is to maintain a safe, healthy and desirable community. We are willing to assist you in any way we can. We hope that you will work with us to maintain a positive community environment. Your cooperation will be greatly appreciated. If you have any questions or need further information, please feel free to contact me.

Thank you,

Shich Wells
Code Compliance Officer

EXHIBIT B