



City of Canal Fulton  
Attn: Scott Fellmeth, Law Director  
155 Market Street East, Suite A  
Canal Fulton, Ohio 44614  
[REDACTED]

October 23, 2009 - Sent via facsimile and U.S. Mail

Dear Mr. Fellmeth:

It has come to the attention of the American Civil Liberties Union of Ohio Foundation that Canal Fulton Zoning Code Section 1181.03(i) rigidly restricts political sign displays. The ordinance prohibits political signs exceeding six square feet. In addition, the ordinance limits the display of political signs to a period of forty-five (45) days before and seven (7) days after an election. This ordinance infringes on the free speech rights of Canal Fulton residents and political candidates under both the Ohio and United States Constitutions.

Political speech is at the core of the First Amendment. According to the United States Supreme Court, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Connick v. Myers*, 461 U.S. 138, 145 (1983). Signs, "[o]ften placed on lawns or in windows...play an important part in political campaigns...residential signs have long been an important and distinct medium of expression." *City of Ladue v. Gilleo*, 512 U.S. 43, 55 (1994).

Size limitations for political yard signs infringes on rights to core political speech protected by the constitution. In 2005, the Ninth District Court of Appeals in Ohio struck down an eight-square-foot sign size limitation because it burdened the rights of homeowners and candidates alike to display their messages. *City of Hudson v. Arshinkoff*, 2005-Ohio-6976 (Ohio App. 9 Dist, 2005). In *Arshinkoff*, the court found that a "square footage limitation affects speech", and that "Speech is burdened by the fact that the square footage limitation prevents homeowners from expressing support for as many candidates as they desire." *Arshinkoff*, 2005-Ohio-6976, para. 13.

Signs, regardless of size, are the most accessible form of communication, and if denied access to this right, the alternatives are too time consuming or costly. Size requirements, even in the name of aesthetic constraints, do not serve a constitutional purpose absent a demonstrated burden on traffic or safety. *Arshinkoff*, 2005-Ohio-6976, para.18. Moreover, the *Arshinkoff* court found that although "a city's goals of traffic safety and maintenance of its appearance are substantial, such a concern should not overshadow the basic constitutional rights of its citizens." *Id.* para. 22.

Furthermore, the ACLU of Ohio is concerned about the City's temporal restriction on signs. We direct your attention to *Painesville Bldg. Dept. v. Dworken & Bernstein Co. L.P.A.* (2000), 89 Ohio St. 3d 564, 2000-Ohio-488, where the Supreme Court of Ohio held that a City of Painesville ordinance restricting the number of days political signs may be posted before and after an election violated the First Amendment to the United

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States Constitution. *Id.* at 573-574. As the *Painesville* court recognized, people have the right to advocate publicly on political concerns even when an election is not imminent.

If Canal Fulton insists on enforcing its limitations on political speech, we will have little choice but to consider legal action to compel compliance with the constitutional right of free speech. We sincerely hope Canal Fulton will cease enforcing this ordinance and no further action from our office will be required.

We look forward to a prompt response from you on this matter. Please feel free to call me if you have any questions.

Sincerely,

[REDACTED]  
Carrie L. Davis  
Staff Counsel

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