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Recent Developments: City of Ladue v. Gilleo: Ordinance Banning Homeowner's Residential Sign Containing a Personal Political Message Violates the First Amendment

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City of Ladue v. Gilleo:

**ORDINANCE
BANNING
HOMEOWNER'S
RESIDENTIAL
SIGN CONTAINING
A PERSONAL
POLITICAL MESSAGE
VIOLATES THE
FIRST AMENDMENT.**

In *City of Ladue v. Gilleo*, 114 S. Ct. 2038 (1994), the United States Supreme Court held that an ordinance banning homeowners from displaying signs containing personal, political or religious messages violates the First Amendment because it restricts a cherished means of communication. In so holding, the Court greatly curbed municipality police powers to prevent overreaching regulation of residential signs and reacknowledged a special respect for individual liberty in the home.

Respondent Margaret P. Gilleo, a resident of Ladue, Missouri, was prohibited from displaying a sign in the second floor window of her home that stated "For Peace in the Gulf". The city of Ladue ("Ladue") cited a city ordinance as the basis for Gilleo's violation. The ordinance prohibited homeowners from displaying signs on their property, with the exception of "residential identification" signs, "for sale" signs, and safety hazard signs. The ordinance allowed further exceptions to this sweeping ban by permitting churches, schools, and non-profit groups to display certain signs not allowed on residential property. The ordinance recited its principal purpose as enabling the city to minimize the visual clutter associated with the prohibited signs. Gilleo challenged this ordinance by suing the city of Ladue, its Mayor, and the members of the Ladue City Council in the United States District Court for the Eastern

District of Missouri, alleging that the ordinance violated her First Amendment right of free speech.

After a finding by the district court that Ladue's sign ordinance was unconstitutional, the city appealed to the United States Court of Appeals for the Eighth Circuit. In upholding the district court's decision, the court of appeals determined that the ordinance was a content-based regulation, and therefore, unconstitutional. In so holding, the court of appeals concluded that the interest of Ladue to reduce visual clutter was "not sufficiently compelling" to allow Ladue to treat "commercial speech more favorably than noncommercial speech" and favor "some kinds of noncommercial speech over others." The United States Supreme Court granted certiorari to determine whether the ordinance violated a Ladue resident's right to free speech under the First Amendment.

In its analysis, the Court recognized that, while signs are protected speech under the First Amendment, physical characteristics of signs can pose problems that are properly subject to regulation under a municipality's police powers. *Id.* at 9. Such problems arise when signs "take up space and may obstruct views, distract motorists, [and] displace alternative uses for land . . ." *Id.* at 10. However, the Court pointed out that because signs are a means of communication, the regulation of this medium "inevitably affects communication itself." *Id.* at 10. Such an

ordinance can be challenged as to its constitutionality on two distinct grounds: the ordinance restricts too little speech because its exemptions discriminate on the basis of the sign's messages and, alternatively, the ordinance simply prohibits too much speech. *Id.* at 15-16.

The court of appeals relied on the notion that the ordinance restricted too little speech and was prone to viewpoint and content-based discrimination. *Id.* at 9. In challenging this holding, Ladue argued that its ordinance banning certain types of residential signs was to reduce visual clutter and was content-neutral. *Id.* at 18. Its rationale was that only a few residents would display "for sale" or "for rent" signs at one time, thereby not imposing any threat of visual clutter. This reasoning explained the exemptions for on-site commercial and organizational signs, given the fact that Ladue only had a few churches, schools, and businesses. *Id.* at 18-19.

Rejecting this rationale, the Supreme Court noted that Ladue's ban was a total prohibition of residential signs with only a few exceptions. Therefore, in theory, Ladue could correct the inadequacies of the ordinance by simply repealing all of the exemptions. *Id.* at 20. The Court found credence in the notion that the ordinance, with its limited exemptions, prohibited too much speech. By assuming that the ordinance was content-neutral as Ladue argued, the Court reasoned that

Ladue's "interest in allowing certain messages to be conveyed by means of residential signs outweighs the aesthetic interest in eliminating outdoor signs" and that Ladue had not imposed a flat ban on signs because it had determined that at least some of them were too vital to be banned. *Id.* at 19-20.

The Court held that by almost completely banning residential signs, the ordinance totally foreclosed a distinguished means of communication to personal, political, or religious messages, and posed a danger to freedom of speech by eliminating a shared method of communication. *Id.* at 22-23. The Court acknowledged that this form of communication plays a vital role in society, such as a person proclaiming his or her support for a particular candidate in a political campaign. *Id.* at 22.

Ladue argued that its ordinance merely regulated the "time, place, or manner" of this speech "because residents remain free to convey their desired messages by other means, such as hand-held signs, 'letters, handbills, flyers, telephone calls, newspaper advertisements, bumper stickers, speeches, and neighborhood or community meetings.'" *Id.* at 25 (quoting Brief for Petitioners at 41). The Court rejected the notion that these other modes of communication were adequate substitutes for noncommercial residential signs for the following reasons: 1) signs allow the identity of the speaker to be known which lends

to the persuasiveness of a message; 2) signs displayed on a homeowner's lawn or in a window are relatively inexpensive whereas the alternatives suggested by Ladue can be very costly; and 3) signs allow a person to effectively target their neighbors whereas the alternatives suggested by Ladue cannot reach this audience as successfully. *Gilleo* at 25-27.

With its decision in *City of Ladue v. Gilleo*, the Supreme Court greatly restricted a municipality's police powers in prohibiting residential signs containing personal, political, or religious messages. In so doing, the Court reaffirmed the law's respect for individual liberty in the home and its special protection of the exercise of free speech. The Court concluded that the suppression of this speech evokes a dangerous pattern of governmental constraints on private behavior that would jeopardize a form of communication unique in its broad access to the public and its effectiveness in carrying its message to its targeted audience. Recognizing these dangers, the Supreme Court, with its holding, protected the right to this form of speech for all American citizens.

- Andrea S. Holz