



October 17, 2022

Kenneth Jordan, Municipal Counselor
City of Oklahoma City
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RE: Constitutionality of Oklahoma City Municipal Sign Code

Dear Mr. Jordan,

Oklahoma City may not flatly ban freestanding signs that for decades have lined street corners, roadsides, and medians, where citizens have engaged in the First Amendment protected tradition of planting political signs in the run-up to elections. Section § 59-16113 of the Proposed Sign Code does precisely that. Aesthetics is not a license to impose sweeping restrictions on protected speech in the public square.

Your office has cited two cases—*Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789 (1984), and *Construction and General Laborers' Union No. 330 v. Town of Grand Chute*, 915 F.3d 1120 (7th Cir. 2019)—for the purported authority to ban all private signs on public property. With all due respect, your reliance is misplaced.

First, in *Vincent*, the Supreme Court upheld a prohibition on affixing signs to utility poles and lampposts based on the premise that those types of municipal property are *not* traditional public fora. *See Vincent*, 466 U.S. at 814-815. By contrast, applying relevant Supreme Court precedent, the Tenth Circuit in *McCraw v. City of Okla. City*, 973 F.3d 1057, 1070 (10th Cir. 2020), held that street corners, roadsides, and medians *are* traditional public fora. That is, these “public ways” have “immemorially been held in trust for the use of the public” and “occupy a special position in terms of First Amendment protection because of their historic role as sites for discussion and debate.” *McCullen v. Coakley*, 573 U.S. 464, 476 (2014) (internal quotations omitted). Moreover, unlike the signs on utility posts and lampposts in *Vincent*, the Tenth Circuit in *McCraw* specifically recognized that freestanding political signs on medians are part of a “long

tradition of expressive activity” that make Oklahoma City public ways traditional public fora that cannot be closed by “government fiat.” *McCraw*, 973 F.3d at 1069 (internal quotations omitted).

Accordingly, as Oklahoma City should have learned from losing in *McCraw*, it cannot broadly restrict citizens from communicating with each other in time-honored ways in these traditional free-speech zones. Indeed, given the Tenth Circuit’s conclusion that the City had “utterly failed” to justify on safety grounds its ban on citizens holding signs on medians, the City certainly cannot ban *safer* freestanding signs based on lesser interests such as aesthetics. *McCraw*, 973 F.3d at 1077.

Second, in *Construction and General Laborers’ Union No. 330*, the Seventh Circuit misread *Vincent* to permit bans on private signs in public fora. It is inadvisable for Oklahoma City to rely on this Seventh Circuit decision, which does not govern municipalities in the Tenth Circuit, but ignore the clear import of *McCraw*, which does govern here. Similarly, when Oklahoma City passed the ordinance invalidated in *McCraw*, the City’s legal team over-read federal caselaw, contrary to the proffered views of ACLU of Oklahoma and its First Amendment experts. Eventually, the Tenth Circuit disabused the City of its erroneous legal views. In both the *McCraw* litigation and here, the notion that a purportedly “content-neutral” law gives the City license to adopt an across-the-board ban of speech in traditional public fora is wrong as a matter of First Amendment law and dangerous as a matter of First Amendment values.

We therefore urge Oklahoma City to amend the Proposed Sign Code to comport with the First Amendment. Foremost, we advise deleting § 59-16113(A)(1), the provision that categorically bans freestanding signs in traditional public fora. Doing so would respect the time-honored tradition of citizens exercising their First Amendment right to campaign, protest, and otherwise communicate with thousands of their fellow citizens in the public square.

If Oklahoma City wishes to restrict freestanding signs on street corners, roadsides, and medians to a much lesser extent, we would be open to working with the City on crafting narrowly tailored regulations that achieve the requisite “close fit” to interests such as aesthetics or safety. *McCraw*, 973 F.3d at 1073. Less restrictive alternatives to the present proposed ban might include a prohibition on freestanding signs (1) pertaining to an event (like an election) remaining more than seven days after the conclusion of the event; (2) that block passage along paved

sidewalks, walkways, and trails or otherwise interfere with Americans with Disabilities Act requirements; (3) that obstruct traffic signs; or (4) that exceed certain dimensions at intersections and other (larger) dimensions at midblock.

However, should Oklahoma City pass the Proposed Sign Code as written, or fail to amend the current sign code in a manner that respects the free speech of Oklahomans, we are prepared to file a federal lawsuit. As before, we are prepared to litigate for as long as it takes and all the way to Supreme Court if necessary.

It hardly needs reminding that Oklahoma City already owes the *McCraw* plaintiffs nearly one million dollars in attorneys' fees for the vindication of their constitutional rights by their legal team, which included ACLU of Oklahoma and its First Amendment experts. In addition, the City also reportedly expended over \$200,000 in attorneys' fees for outside counsel to assist its unsuccessful defense.

Thus, even if your office disagrees with our understanding of First Amendment law, we again urge the City to delete the provision of the Proposed Sign Code that elevates aesthetics over free speech, or at least to work with us on much less restrictive alternatives. Either would be a considerably less costly solution that better safeguards public funds and better reflects fundamental values in our free society. Otherwise, we will see the City in court.

CC: David Holt, Mayor
Bradley Carter, Ward 1 City Councilmember
James Cooper, Ward 2 City Councilmember
Barbara Young, Ward 3 City Councilmember
Todd Stone, Ward 4 City Councilmember
David Greenwell, Ward 5 City Councilmember
JoBeth Hamon, Ward 6 City Councilmember
Nikki Nice, Ward 7 City Councilmember
Mark K. Stonecipher, Ward 8 City Councilmember

Sincerely,

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