

Maria Kayanan, Esq.
mkayanan@aclufl.org
Associate Legal Director
American Civil Liberties Union
Foundation of Florida
4500 Biscayne Boulevard- Suite 340
Miami, FL 33137-3227
T: (786) 363-2700
F: (786) 363-3108



November 24, 2008

Via Email and U.S. Mail

**The Hon. Larry Schultz
Mayor, City of Rockledge
1820 Laurel Oak Drive S.
Rockledge, FL 32955**

**Joseph E. Miniclier, Esq.
City Attorney, City of Rockledge
1037 Pathfinder Way Suite 150
Rockledge, FL 32955**

Re: Unconstitutionality of City of Rockledge Ordinance 86.07

Dear Mayor Schultz and Mr. Miniclier:

The American Civil Liberties Union of Florida (“ACLU”) represents the organization “Save Our Aquifer.” The ACLU of Florida takes no position on the merits of the environmental controversy, but writes to urge the City to reconsider its position on the organization’s posting of signs on private property. The organization, whose stated mission regards a pending issue of public concern, has been advised by Carl Jones, “Building Official,” that it is prohibited from posting, on private property whose owners consent, 4’ x 4’ signs that read:



Similar signs in residential areas are 12 x12 inches and have been in place for a considerable time; the larger signs, though, are necessary for Save Our Aquifer to direct its protected speech to a larger audience. This sign, and the mission of Save Our Aquifer, can be found on the organization’s website at saveouraquifer.org. We believe that the City’s position is contrary to the First Amendment.

Mr. Jones' "legal opinion," on behalf of the City, is attached to this letter as Ex. A. He concludes that (a) the sign is not a "political sign" and (b) that because the sign does not meet the definitions of *any* sign permitted by the Municipal Code of the City of Rockledge, the sign is prohibited. Specifically, Mr. Jones states in his email:

Placing a sign on US 1 would not be permitted by our ordinance. No signs may be placed on any public right-of-way in the City. See section 86.03 (a) (3) of the LDR's. *This sign does not qualify as a political sign because it does not address a referendum issue or candidate.* See section 86.07 (a) (3). This sign does not fit any of the 10 allowable cases for temporary signs as found in section 86.04. This sign does not fall into any of the "exempt" sign provisions either. See sections 86.03 (c) This sign however does fall under the category of "prohibited" "snipe" signs as defined in section 86.03 (b) (5) which reads, "Snipe sign. Any small sign, generally of a temporary nature, made of any material when such sign is tacked, nailed, posted, pasted, glued or otherwise attached to trees, poles, stakes or fences, or to other objects, when the advertising matter appearing thereon is not applicable to the present use of the premises upon which sign is located." Your sign is small, of a temporary nature and is not applicable to the present use of the premises upon which is would be located. *Therefore, it would be illegal in my opinion.*

Email of July 16, 2008 (emphases added).

Save Our Aquifer does not intend to place the signs "on US 1" but rather, on private property from which the signs are visible to those traveling on US 1. First, by the terms of your City's own ordinance, 86.07, "[p]olitical signs advertising on behalf of candidates for public officers *or issues or referenda are permitted* in all zones except . . ." (emphases added). The Aquifer Storage and Recovery (ASR) injection well is clearly an "issue"; it is the subject of heated public debate. Pursuant to the City's own ordinance, the signs are permissible. However, as set forth below, even if the signs are permissible political signs, as we assert, the City cannot require a cash bond from a property owner who chooses to display a "Save Our Aquifer" sign.

The ACLU believes that the City's ordinance, 86.07, which purports to regulate private property owners' displays of signs based on their content and requires a cash bond, is an unlawful prior restraint on protected speech and violates the First Amendment to the United States Constitution. Therefore, to avoid any legal action, the ACLU urges the City to immediately (1) cease any attempts to enforce this ordinance; (2) not remove political signs for which no bond was requested or obtained, and (3) not seek to fine any property owners who have not posted a cash bond before displaying a "Save Our Aquifer" sign on their property.

"At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence. Our political system and cultural life rest upon this ideal." *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1258-59 (11th Cir. 2005) (striking down Neptune Beach's sign ordinance that exempted from regulation certain types of signs, including government and religious flags) (citing *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641-42 (1994), *Simon & Schuster, Inc. v. Members of State Crime Victims Bd.*, 502 U.S. 105, 116 (1991); *Police Dep't of the City of*

Chicago v. Mosley, 408 U.S. 92, 95 (1972) (“[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content”); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992) (“Content-based regulations are presumptively invalid”).

Protected speech is not limited to individuals’ political campaigns for public office. Non-commercial speech urging citizens to voice their views to fellow citizens, to the City of Rockledge and to the State of Florida regarding an environmental issue is speech that is just as protected as speech urging citizens to vote for a particular candidate. See *Dimmitt v. City of Clearwater*, 985 F.2d 1565 (11th Cir. 1993). A content based restriction must be supported by a compelling governmental interest; further, the means chosen to effect such interests must be narrowly tailored to achieve that objective. See *Boos v. Barry*, 485 U.S. 312, 321 (1988). Ordinance 86.07 is not narrowly tailored to meet any compelling governmental interest.

Rockledge City Ordinance 86.07 impermissibly regulates protected speech based on content. For example, 86.07(1) allows only signs “for a bona fide candidate or campaign committee.” These criteria allow the City impermissible discretion to determine what constitutes a “bona fide candidate or campaign committee.” The ordinance is thus a permitting scheme that unlawfully places unbridled discretion in the hands of City officials, and cannot pass muster under the First Amendment. See *Thomas v. Chicago Park Dist.*, 534 U.S. 316, 322-24 (2002); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 223 (1990).

Furthermore, the City requires a cash bond *only* for what it determines are “political signs,” but allows, with no bond, “public service street graphics,” “governmental flags or graphics,” “murals, statues, paintings, designs or other decorative features or structures designed to attract attention to any occupancy”; it also allows “subdivision” and “on-site development street graphics,” “temporary real estate” and “new business” graphics with no cash bond required. Ord. 86.04. “Garage sale” and “banner graphics” require no cash bond. Ord. 86.04. Not even permanent “ground-mounted street graphics,” “interstate highway graphics,” “balloon signs,” “twirling signs” and “inflatable air signs” require a cash bond. Ord. 86.05. The City burdens **only political signs** with a cash bond.

The City’s bond requirement for a political sign is a content based restriction that does not meet this heavy, strict scrutiny burden. See *Beaulieu v. City of Alabaster*, 454 F.3d 1219 (11th Cir. 2006) (holding that City of Alabaster, Alabama could not constitutionally limit display of political signs to residential areas); *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250; *Dimmit v. City of Clearwater*, 985 F.2d 1565 (11th Cir. 1993) (striking down Clearwater’s ordinance that required property owner to obtain permit before erecting or altering most signs, but exempted certain types of signs, such as flags). Because cash bonds are required for political signs but not for any other types of signs, Ord. 86.07 treats political signs differently and is unconstitutional based on the cases we cite above. Moreover, **the time limitation** for political signage is not a reasonable regulation that would survive strict scrutiny for First Amendment purposes.

Accordingly, based on long-settled law from the United States Supreme Court and the Eleventh Circuit Court of Appeals, the ACLU of Florida on behalf of Save Our Aquifer asks

you, Mayor Schultz, as well as Mr. Miniclier, City Attorney for the City of Rockledge, not to enforce this ordinance, and to take whatever steps are necessary to rescind or revoke it.

Please inform us in writing by Wednesday December 3, 2008, whether you are willing to voluntarily take steps to cease any enforcement attempts, and to revoke or rescind the ordinance.

Your prompt attention to this matter is necessary to avoid legal action, particularly in light of the upcoming application for cycle testing being submitted by the City of Rockledge to the Florida Department of Environmental Protection. Please feel free to contact me should you have any questions.

Sincerely yours,

Maria Kayanan, Esq.
Associate Legal Director
ACLU of Florida