



AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE

18 Low Avenue
Concord, New Hampshire 03301
603-225-3080
www.aclu-nh.org

Devon Chaffee
Executive Director

February 26, 2018

BY MAIL AND EMAIL (townadministrator@gilmantonnh.org)

Heidi Duval, Town Administrator
Town of Gilmanton
503 Province Road
P.O. Box 550
Gilmanton, NH 03237

RE: Gilmanton's Unconstitutional Restriction of Speech

Dear Ms. Duval:

The ACLU of New Hampshire has become aware that the Town of Gilmanton's Office of Building Inspection/Code Enforcement sent letters to multiple residents concerning political signs on their property. As the Town's letters are unconstitutional and violate both the First Amendment and Part I, Article 22 of the New Hampshire Constitution, please issue a public retraction of these letters immediately, as well as send a retraction to all individuals who received these letters. Please let me know by Wednesday, February 28 whether the Town will do so. The letter and the signs in question are enclosed.

It appears that the Town principally directed these letters to several individuals who are critical of the Gilmanton Board of Selectmen and supportive of the Gilmanton Police Department. These individuals' signs state "We Support Gilmanton Police Even if the Selectmen Don't," and are designed to convey a political message in advance of the upcoming March 13, 2018 election. The Town's letters demand that residents remove these signs from their property because the signs are political in nature and therefore are not in compliance with Gilmanton Zoning Ordinance Article III-F-6, which states that "only signs advertising a business or industry in the Town of Gilmanton shall be permitted." These letters also threaten these speakers with a fine of \$275 per day if the signs are not removed.

The Town's demand that these speakers remove their signs on their property violates the First Amendment and Part I, Article 22 of the New Hampshire Constitution. People in New Hampshire have a First Amendment right to place whatever signs they want on their property. As the United States Supreme Court has explained, "a special respect for individual liberty in the home has long been part of this Nation's culture and law and has a special resonance when the government seeks to constrain a person's ability to speak there." *City of Ladue v. Gilleo*, 512 U.S. 43, 58 (1994) (ordinance prohibiting homeowners from displaying any signs on their property except residence identification signs, for sale signs, and signs warning of safety hazards violated the First Amendment). The Supreme Court has further explained: "Displaying a sign from one's own residence carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means, for it provides information about the speaker's identity, an important component of many attempts to persuade." *Id.* at 56. Indeed, Gilmanton's apparent restriction in its Ordinances banning individuals from placing political signs on their property violates the First Amendment. *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) makes clear that municipalities cannot discriminate based on a sign's content in this manner, especially when done to suppress political speech on private property. *See also Rideout v. Gardner*, 838 F.3d 65, 75 (1st Cir. 2016) (political speech "occupies the core of the protection afforded by the First Amendment").

The Town's letters are also concerning because they appear to be targeted at the viewpoint of certain speakers. We are under the impression that only individuals who have these pro-police/anti-Board signs—including the Police Chief's own mother—received these letters instructing them to remove the signs. Individuals who have signs supporting particular Board candidates or addressing warrant articles in advance of the March 13 election have apparently not been asked to remove their signs (of course, to do so would also violate the First Amendment). Such viewpoint discrimination would be patently unconstitutional. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 430 (1992) (“Viewpoint discrimination is censorship in its purest form ... and requires particular scrutiny, in part because such regulation often indicates a legislative effort to skew public debate on an issue.”).

The Town's letters also appear to misunderstand Chapter 664 governing political advertising, especially here where the speech is being engaged in by a private person through a sign on private property. Chapter 664 is inapplicable to the speech in question. Chapter 664's provisions referenced in the letter apply only to political advertising in “newspapers, periodicals or billboards” that “expressly ... advocates the success or defeat of any party, measure or person at any election.” *See* RSA 664:2, VI; RSA 664:16. The signs in question here, to the extent they can even be viewed as “billboards,” do not fit this definition, as the Town concedes. Indeed, this speech is issue advocacy that is squarely protected under the First Amendment. *See Stenson v. McLaughlin*, No. 00-514-JD, 2001 U.S. Dist. LEXIS 14167, 2001 DNH 159 (D.N.H. Aug. 24, 2001) (“the First Circuit has recognized the Supreme Court's dedication to protecting issue advocacy from regulation”; holding that RSA 664:2, VI and 664:16 are facially unconstitutional “1) because the disclosure requirements of RSA 664:14 and 664:16, applied to issue advocacy as a result of the word ‘implicitly’ contained in RSA 664:2, VI, violate *Buckley* and its derivative case law, and, 2) because the word ‘implicitly’ is impermissibly vague.”). The Town's suggestion that this speech is somehow impermissible because it does not fit the definition is RSA 664:2, VI is, of course, incorrect; rather, because the speech does not meet the definition of RSA 664:2, VI, all this means is that the rules in RSA 664:16 do not apply to this form of speech.

For these reasons, we request that the Town retract these letters immediately. Do not hesitate to contact me if you have any questions.

Very truly yours,



Gilles Bissonnette
Legal Director

cc: Laura Spector-Morgan, Esq. (laura@mitchellmunigroup.com)
Bill Tobin, Building Inspector/Code Enforcement Officer (building@gilmantonnh.org)
Matthew Broadhead, Assistant Attorney General (Matthew.Broadhead@doj.nh.gov)

Enclosures



BUILDING INSPECTION/CODE ENFORCEMENT

Town of Gilmanton

503 Province Road

P.O. Box 550

Gilmanton, NH 03237

(603) 267-6700 ext. 11 (phone)

(603) 267-6701 (fax)

www.gilmantonnh.org

February 14, 2018

Donald & Sandra Guarino
150 Meeting House Road
Gilmanton NH 03237

It has come to my attention that there are one or more signs on your property at 150 Meeting House Road, Map/Lot# 419/35, in Gilmanton. The Gilmanton Zoning Ordinance Article III-F-6 states "only signs advertising a business or industry in the Town of Gilmanton shall be permitted", and those signs must have a permit. Please have the signs removed by Thursday, February 22, 2018, or you may be fined \$275 per day pursuant to RSA 676:17.

Under RSA 664:2 Definitions VI – Political signs "expressly or implicitly advocates the success or defeat of any party, measure or person at any election." The signs on your property do not appear to conform to that definition. In addition RSA 664:16 required political signs to "be marked at the beginning or end thereof "Political Advertising".

As the property owner you are responsible for signs on your property. If you disagree with the interpretation of the Zoning Ordinance you may file an application of appeal of administrative decision to the Zoning Board of Adjustment. Applications and instructions for the appeal can be found on the Gilmanton website, or be picked up in the Selectmen's office.

Sincerely,

Bill Tobin
Building Inspector/Code Enforcement Officer

**WE SUPPORT
GILMANTON POLICE
EVEN IF THE
SELECTMEN DONT**