

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

THOMAS K. JONES,	:	
Plaintiff	:	
v.	:	C.A. No. 08-
	:	
TOWN OF WEST WARWICK, by and	:	
through its Treasurer, Malcolm A. Moore,	:	
and FRANK VENEZIA, in his individual	:	
and official capacities as Acting Building	:	
Official for the Town of West Warwick,	:	
Defendants	:	

COMPLAINT

I. Introductory Statement

This action is brought by the Plaintiff seeking declaratory and injunctive relief for acts and/or omissions of Defendants in violation of Plaintiff’s right to freedom of speech protected under the First and Fourteenth Amendments to the United States Constitution, actionable pursuant to 42 U.S.C. §1983, and under Article 1, §21 of the Rhode Island Constitution.

II. Parties

1. Plaintiff Thomas K. Jones is a resident of the Town of West Warwick, County of Kent, State of Rhode Island.

2. Defendant Town of West Warwick (“Town”) is a duly authorized and organized municipality under the laws of the State of Rhode Island and is sued by and through its Treasurer, Malcolm A. Moore, the official designated by state law, R.I.G.L. §45-15-5, to be named in a suit for relief against the Town.

3. Defendant Frank Venezia is sued in his individual and official capacities as the Town Acting Building Official, the Town official authorized and empowered to enforce the provisions of the Town Zoning Ordinance.

III. Jurisdiction

4. This Court has jurisdiction pursuant to 28 U.S.C. §§1331, 1343, 1367, 2201 and 2202.

IV. Venue

5. Venue is proper in this Court since all of the Defendants reside or may be found in the District of Rhode Island in compliance with the requirements set forth in 28 U.S.C. §1391.

V. Materials Facts

Chronology of Events

6. At all relevant times, Plaintiff was either a candidate in the Republican Party primary or a general election write-in candidate for State Representative, District 27, which includes parts of the Towns of Coventry and West Warwick and the City of Warwick.

7. At all relevant times, Plaintiff was an outspoken public opponent of the proposed Shipwreck Falls Water Park (“Water Park”) designated to be constructed in the Town Business Park and was also Vice-President of West Warwick Citizens Against the Water Park.

8. On July 31, 2008, Plaintiff purchased and erected numerous eight foot (8’) by four foot (4’) free standing signs at locations throughout the Town, including on his own property, promoting his candidacy in the Republican Party primary for the State Representative, District 27 seat (“campaign signs”).

9. Between the last week of August 2008 and September 4, 2008, Plaintiff purchased and erected numerous eight (8) foot by four (4) foot free standing signs at locations throughout the Town, including on his own property, critical of the proposed construction of the Water Park in the Town (“Water Park signs”).

10. On August 27, 2008, Plaintiff purchased and erected Water Park signs at various locations in the Town which read, in pertinent part, “Your kids cannot attend the water park

unless you pay \$350.00 for a hotel room.” Certain of these signs were affixed over and left exposed a portion of the existing sign, resulting in an overall sign size approximately one additional linear foot in height.

11. At many, but not all, of the foregoing locations, the Plaintiff also purchased and erected campaign signs.

12. At all relevant times, Plaintiff obtained permission in advance from the owners of the property on which the foregoing signs were erected.

13. The Water Park signs were erected by Plaintiff, in part, in response to claims made by certain candidates for political office in the Town who were publicly supporting construction of the Water Park, including Acting Town Council President Peter Calci.

14. On Sunday, August 31, 2008, on information and belief, Councilman Calci drove to the home of Antonio Lima, where one of the “\$350.00 hotel room” Water Park signs was erected, and unsuccessfully attempted to persuade Mr. Lima to remove the sign.

15. On Tuesday, September 2, 2008, Plaintiff attended a meeting of the Town’s Town Council. Councilman Calci announced at the meeting that Plaintiff had to remove his Water Park signs and campaign signs because they purportedly exceeded the maximum size permitted under the Town Zoning Ordinance.

16. On Wednesday, September 3, 2008, Plaintiff was advised that Councilman Calci attempted to solicit a local business owner to complain to the Town Building Official about the Water Park signs, so that the Plaintiff could be cited for a fine of \$500.00 per day, per sign.

17. On Saturday, September 6, 2008, Plaintiff received a phone call from the Town Police Department, wherein a Town police officer advised Plaintiff that his campaign signs were purportedly in violation of the Town Zoning Ordinance and that Plaintiff or his attorney should contact the Town Acting Building Official.

18. On Monday, September 8, 2008, Plaintiff, along with, on information and belief, all the other owners of properties on which a Water Park sign had been erected in the Town, received a written notice dated September 8, 2008 hand-delivered by Defendant Frank Venezia, in his capacity as the Acting Town Building Official, notifying them that they were in purported violation of the Town Zoning Ordinance, specifically, section 5.10, as it relates to “political signs” (“Town sign ordinance”).

19. The foregoing September 8th notices read, in pertinent part, “Specifically, the water park sign is too large. We are asking that the sign be removed in 24 hours. A fine may be assessed under section 28 of the zoning ordinance.”

20. Attached hereto as Exhibit A and incorporated herein by reference is a copy of the foregoing September 8th notice served on the Plaintiff.

21. At the time Plaintiff was served with the foregoing September 8th notice, Defendant Venezia confirmed that only owners of property where Plaintiff’s Water Park signs were posted received the foregoing notices of violation.

22. At the time the foregoing September 8th notices were served, there were at least 27 other locations in the Town, some in highly visible locations in the proximity of Town Hall, on which were erected political signs of the same or similar size as Plaintiff’s Water Park signs and campaign signs, or which, in any event, exceeded the maximum size for a political sign under the Town sign ordinance.

23. Many of the property owners to whom the foregoing September 8th notices were sent contacted Plaintiff and expressed concern they would be fined by the Defendants and requested that Plaintiff remove his Water Park signs and campaign signs.

24. The demand for compliance within 24 hours of the foregoing September 8th notices coincided with the September 9, 2008 primary election scheduled in the Town the next day.

25. On information and belief, the minimum period of time within which to remedy a purported violation of the Town Zoning Ordinance of the same or similar type of purported violation is typically seven (7) to thirty (30) days, not twenty-four (24) hours.

26. On September 8, 2008, the Rhode Island Affiliate of the American Civil Liberties Union (“RIACLU”) faxed and mailed a letter to Defendant Venezia warning that the Town sign ordinance was vague, confusing, discriminated on the basis of content, and that it was therefore unconstitutional on its face, and any attempt to levy fines or enforce the ordinance provision would constitute a clear violation of the free speech rights of the subject property owners.

27. The foregoing letter also expressed concern that the Defendants were unconstitutionally selectively enforcing the Town sign ordinance by targeting only Plaintiff’s Water Park signs and campaign signs.

28. Notwithstanding the foregoing letter from the RIACLU, Defendants sent a subsequent written notice dated September 10, 2008 to Plaintiff, along with, on information and belief, many of the other owners of properties on which a Water Park sign had been erected in the Town, once again claiming they were in purported violation of the Town sign ordinance, but now allowing seven (7) days within which to remove the signs.

29. The foregoing September 10th notice of violation also provided, in pertinent part, in bold print as follows: **“Specifically, the water park sign on your property does not meet the dimensional requirements of the sign ordinance. The sign shall be removed.”**

30. The foregoing September 10th notice of violation also threatened recipient property owners with a fine not exceeding \$500.00 per day for each offense, for each day of violation.

31. Attached hereto as Exhibit B and incorporated herein by reference is a copy of the foregoing September 10th notice served on the Plaintiff.

32. On September 10, 2008, Plaintiff received information from a reliable source within the employ of the Town that the Defendants were planning to impose fines of \$500.00 per day, per sign on Plaintiff and others to whom notices of violation were sent.

33. Although Plaintiff believed then, and still believes now, that the Defendants' demand that his Water Park signs and campaign signs be removed was unlawful and in violation of his right to freedom of speech, as well as the rights of the property owners who granted him permission to erect the signs, on September 10, 2008, Plaintiff removed all the signs he erected in the Town in order to protect himself and innocent property owners from the risk of incurring fines.

34. On September 14, 2008, Plaintiff sent a letter to Defendant Venezia expressing concern that, among other things, the Defendants were selectively enforcing the Town sign ordinance by targeting only Plaintiff's Water Park and campaign signs, while not enforcing the provision with respect to political signs of other candidates posted in the Town of the same or similar size as Plaintiff's signs, or which, in any event, exceeded the maximum size or the one sign per candidate or issue limit for a political sign under the Town sign ordinance.

35. Enclosed in the foregoing September 14, 2008 letter, Plaintiff provided Defendant Venezia with a list of approximately 50 signs erected in the Town in violation of the Town sign ordinance, including at least 27 political signs which exceeded the maximum size permitted

under the Town sign ordinance, and demanded that the Defendants enforce the ordinance in a uniform and consistent manner.

36. Notwithstanding the foregoing complaint and demand, the Defendants have failed and publicly refused to uniformly and non-selectively enforce the Town sign ordinance.

37. As a consequence, there are currently at least 97 political signs posted within the Town which exceed the maximum size permitted under the Town sign ordinance, including many of the same or similar size as Plaintiff's Water Park signs and campaign signs.

Town Sign Ordinance

38. "Political signs" are defined in subsection 5.10.2 under section 5.10 of the Town Zoning Ordinance entitled "Signs" as follows:

Any sign displayed so as to advise voters of a candidate or position in a forthcoming election. Each lot shall be allowed without permit one sign per candidate or issue, each sign not to exceed eight square feet. Off-premises political signs are prohibited. All political signs must be removed within seven days of the political election or event.

39. Subsection 3.74.11 of the Town Zoning Ordinance further defines a "political sign" as a "[t]emporary sign designating a candidate for elective office, or other matter on the ballot."

Content-Based Regulation of Speech

40. The Town sign ordinance regulates political speech based on content and in a more restrictive manner than other types of speech, among other ways, as follows:

a. Limiting political signs to a maximum of eight (8) square feet in area, while permitting, among other things, construction signs of up to thirty (30) square feet, directory signs of up to sixty (60) square feet, free standing signs of up to forty (40) square feet, real estate signs of up to thirty-two (32) square feet, subdivision estate signs of up to thirty-two

(32) square feet, residential zone signs of up to twelve (12) square feet, and subdivision identification signs of up to sixteen (16) square feet.

b. Requiring the removal of political signs within seven (7) days of the political election to which they relate, while permitting almost all other types of signs, in particular, signs advertising commercial activities, to be permanent in nature.

c. Prohibiting signs which relate to political matters not the subject of a pending election or ballot question.

d. Prohibiting off-premises political signs, but permitting signs with non-political content to be displayed off premises on billboards, banners and the like.

Town Sign Ordinance is Vague, Overbroad and Confusing

41. The Town sign ordinance is vague, overbroad and confusing, and chills the exercise of free speech by, among other things:

a. Permitting political signs of up to eight (8) square feet under the definition of “political sign” in subsection 5.10.2, but purporting to limit such signs under the definition of “residential sign” to only four (4) square feet.

b. Purporting to prohibit off-premises political signs, whereas there is typically no “premises” to which a ballot question political sign relates, while a candidate related political sign would appear to be technically “off-premises,” and therefore prohibited everywhere but at the home or campaign headquarters of a candidate. *See also* subsection 5.10.5. (prohibiting all off-premises signs not expressly permitted).

42. Accordingly, by failing to provide clear notice as to what is and is not permitted, members of the public are deterred from engaging in political speech by the potential of prosecution and the imposition of monetary penalties under the Town sign ordinance.

Restrictions on Plaintiff's Free Speech

43. Plaintiff has notified state and local election officials of his intention to continue in the District 27 election as a write-in candidate.

44. Plaintiff's right to freedom of expression was and continues to be substantially damaged and curtailed as a result of the conduct of Defendants, specifically the impairment of his ability to communicate both his political candidacy and his opposition to the Water Park to potential voters and members of the public generally.

45. The general election scheduled for November 4, 2008 is only a few weeks away, yet Plaintiff is unable to post within the Town, including on his own property, a) any of the forty-six (46) eight (8) foot by four (4) foot free standing Water Park signs and/or campaigns signs he previously purchased, due to the Defendants' foregoing selective enforcement action, or b) any other political signs of any size, insofar as he is uncertain as to what size of sign is and is not permitted.

46. In future elections, Plaintiff would also like and intends to erect and display signs at locations within the Town, including on his own property, to communicate, among other things, his candidacy for political office, his opposition to or support of various issues, and/or his support of or opposition to candidates for political office.

47. However, both the vague and confusing wording of the Town sign ordinance and the selective and arbitrary enforcement of the same by the Town have left the Plaintiff uncertain as to what is and is not permitted.

48. Accordingly, Plaintiff is reluctant to expend time and money to erect and display political signs of any size at locations within the Town, insofar as he faces potential prosecution and the imposition of monetary penalties under the Town's sign ordinance as well as the

expenditure of additional time and money should he be cited for purportedly violating the ordinance and ordered to remove any signs erected.

The Importance of Political Signs

49. The Supreme Court has held that "the First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office."¹

50. Communication by signs and posters is virtually pure speech.²

51. The Supreme Court has further held that residential signs are a form of unique expression entitled to the highest degree of protection under the Free Speech Clause of the First Amendment.³

52. Displaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means, insofar as, by their location, such signs can provide information about the identity of the "speaker."⁴

53. A person who puts up a sign at his or her residence often intends to reach neighbors, an audience that could not be reached nearly as well by other means.⁵

54. Many people do not have the time to actively participate in political campaigns, nor do they have the money to make substantial financial contributions to candidates or causes they support.

¹ *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 223 (1989).

² *Arlington County Republican Comm. v. Arlington County, Virginia*, 983 F.2d 587, 593 (4th Cir. 1993)(citing *Baldwin v. Redwood*, 540 F.2d 1360, 1366 (9th Cir.1976), *cert. denied, sub nom., Leipzig v. Baldwin*, 431 U.S. 913 (1977)).

³ *City of Ladue v. Gilleo*, 512 U.S. 43, 57-59 (1994); *see also Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 501 (1981)("The outdoor sign or symbol is a venerable medium for expressing political, social and commercial ideas. From the poster or 'broadside' to the billboard, outdoor signs have played a prominent role throughout American history, rallying support for political and social causes.")(internal citation and quotations omitted).

⁴ *City of Ladue*, 512 U.S. at 56.

⁵ *Id.* at 57.

55. Political signs are an unusually cheap and convenient form of communication that may have no practical substitute, by which people of modest means may become involved in political campaigns and show their support for a candidate or cause.⁶

56. Political sign restrictions generally have the effect of favoring incumbents over challengers, since one of the major obstacles for any challenger in a political campaign is name recognition-- something which the challenger usually lacks and an incumbent usually has.

57. Political signs are a simple and inexpensive means for a candidate without significant finances or name recognition to make his or her name known in the community.

58. Signs, such as the Water Park signs in the case at bar, “that react to a local happening or express a view on a controversial issue both reflect and animate change in the life of a community.”⁷

First Amendment Facial Challenge

Content-Based Discrimination⁸

59. The Town sign ordinance limitation on the posting of political signs to those “designating a candidate for elective office or other matters on the ballot” amounts to a ban on signs expressing views on non-ballot political and social issues and constitutes content-based discrimination.⁹

⁶ *Id.*

⁷ *Id.* at 54.

⁸ *City of Cincinnati v. Discovery Network, Inc.* 507 U.S. 410 (1993)(restriction on speech is content-based when the message conveyed determines whether the speech is subject to restriction).

⁹ *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 515 (1981)(quoting *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York*, 447 U.S. 530, 538 (1980)) (“With respect to noncommercial speech, the city may not choose the appropriate subjects for public discourse: ‘To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.’”).

60. The Town sign ordinance, which grants more favorable treatment to commercial than non-commercial speech by permitting both larger and permanent non-political signs as well as “off premises” non-political signs, constitutes content-based discrimination.¹⁰

61. Content-based restrictions on free speech “must be subjected to the most exacting scrutiny.”¹¹

62. Content discrimination in the regulation of the speech of private citizens on private property is presumptively impermissible.¹²

63. To survive strict scrutiny, a content-based restriction must serve a compelling governmental interest and must be narrowly drawn to achieve that purpose, such that it is the “least restrictive” alternative available.¹³

64. The Town’s asserted interests in traffic safety, aesthetics, and property values cited in the Town sign ordinance, while not insignificant, have never been held to be compelling,¹⁴ and any such purported interest is belied by the fact that the Town sign ordinance permits larger, permanent, and off-premises non-political signs.

65. Among other things, the durational limit on political signs such as that contained in the Town sign ordinance has been almost uniformly declared unconstitutional by the courts, including political sign challenges brought in the District of Rhode Island. *See Williams v. City*

¹⁰ *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 514-515 (U.S. 1981)(plurality opinion)(municipal billboard ordinance which impermissibly discriminated on basis of content by permitting on-site commercial speech while broadly prohibiting noncommercial messages held unconstitutional violation of First Amendment on its face).

¹¹ *Burson v. Freeman*, 504 U.S. 191, 196, 198 (1992)(“[T]he First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.”).

¹² *City of Ladue*, 512 U.S. at 59 (O’Connor, J., concurring).

¹³ *Whitton v. City of Gladstone*, 54 F. 3d 1400, 1408 (8th Cir. 1995)(quoting *Ward v. Rock Against Racism*, 491 U.S. 781,798 n.6 (1989)).

¹⁴ *Whitton*, 54 F.3d at 1408 (“[A] municipality’s asserted interests in traffic safety and aesthetics, while significant, have never been held to be compelling.”); *King Enterprises, Inc. v. Thomas Township*, 215 F. Supp. 2d 891, 911 (E.D. Mich. 2002) (“Although ‘safety’ and ‘aesthetics’ are substantial government interests, they are not compelling enough to justify content-based restriction on fully-protected, noncommercial speech.”)(citing *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507-508, 514-515 (1981)); *Curry v. Prince George’s County*, 33 F. Supp. 2d 447, 452 (D.Md. 1999) (“Again, while recognizing aesthetics and traffic safety to be significant government interests, none of these courts found those interests sufficiently compelling to pass the applicable strict

of *Warwick*, No. 01-194L (D.R.I)(consent judgment entered August 8, 2001)(Lagueux, J.)(enjoining enforcement of municipal sign ordinance which restricted posting of signs “political in nature” to no more than 60 days prior to election or referendum and 120 days total in any calendar year); *Thibodeau v. Town of Cumberland*, No. 88-0460T (D.R.I)(consent judgment entered Nov. 15, 1988)(Torres, J.)(enjoining enforcement of municipal sign ordinance which restricted posting of political signs to no more than 30 days prior and 14 after election for which they were erected).¹⁵

66. Accordingly, by imposing durational and size limitations on political signs greater than that placed on non-political signs and banning the posting of non-ballot question political

scrutiny test.”); *Keeler v. Mayor of Cumberland*, 940 F. Supp. 879, 886 (D. Md. 1996) (holding that interests in safeguarding historic heritage and fostering civic beauty are not compelling.); *see also*, cases cited *supra*, note 15.

¹⁵ *See also* *Whitton v. City of Gladstone, Mo.*, 54 F.3d 1400, 1409 (8th Cir. 1995) (holding city code which limited display of political signs to thirty days before election and seven days after election constituted unconstitutional content based restriction); *Quinly v. City of Prairie Village*, 446 F. Supp. 1233 (D. Kan. 2006) (issuing preliminary injunction enjoining city's enforcement of ordinance mandating removal of election signs immediately following election, since plaintiff had substantial likelihood of success on merits of claim ordinance was unconstitutional); *McFadden v. City of Bridgeport*, 422 F. Supp. 2d 659 (N.D. W.Va. 2006) (finding ordinance limiting posting of political signs to thirty days prior to and 48 hours after election was unconstitutional); *Knoeffler v. Town of Mamakating*, 87 F.Supp.2d 322 , 326-27 (S.D.N.Y. 2000) (noting “residential signs are a form of expression entitled to the highest degree of protection by the Free Speech clause of the First Amendment,” **and “durational limits on signs have been repeatedly declared unconstitutional.”**); *Christensen v. City of Wheaton*, No. 99-C8426, 2000 WL 204225, at *3-4 (N.D. Ill. Feb. 16, 2000) (finding durational limits on posting of political signs unconstitutional because limits were content-based and not narrowly tailored); *Curry v. Prince George's County, MD.*, 33 F.Supp.2d 447, 455-56 (D.Md. 1999) (holding ordinance placing durational limits on political campaign signs unconstitutional because such limits are “inconsistent with the ‘venerable’ status that the Supreme Court has accorded to individual speech emanating from an individual’s private residence,” **and interpreting holding in *City of Ladue* as prohibiting any durational limitations on posting of political signs**); *Outdoor Systems, Inc. v. City of Lenexa*, 67 F. Supp. 2d 1231 (D. Kan. 1999) (finding regulation requiring removal of political campaign signs seven days after election was unconstitutional); *Dimas v. Warren*, 939 F. Supp. 554 (E.D. Mich. 1996) (finding city ordinance limiting, *inter alia*, posting of election and opinion signs to forty-five days prior to election unconstitutional); *McCormack v. Twp. of Clinton*, 872 F.Supp. 1320, 1327 (D.N.J. 1994)(finding restrictive timeframe which limited placement of political signs to ten day days prior to and three days after election “an unconstitutional suppression of political speech.”); *City of Antioch v. Candidates' Outdoor Graphic Serv.*, 557 F.Supp. 52, 61 (N.D.Cal. 1982) (holding unconstitutional sixty day time limit on posting of political signs); *Orazio v. Town of North Hempstead*, 426 F.Supp. 1144, 1149 (E.D.N.Y. 1977) (**holding “no time limit on the display of pre-election political signs is constitutionally permissible under the First Amendment.”**); *Union City Board of Zoning Appeals v. Justice Outdoor Displays, Inc.*, 467 S.E.2d 875, 882 (Ga. 1996) (declaring seven-week durational limitation on political signs unconstitutional); *City of Painesville Bldg. Dep't v. Dworken & Bernstein Co.*, 733 N.E.2d 1152, 1160 (Ohio 2000) (finding ordinance unconstitutional when applied to prohibit owner of private property from posting single political sign outside prescribed durational period); *Van v. Travel Info. Council*, 628 P.2d 1217, 1228 (Or. Ct. App. 1981) (holding unconstitutional 60 day limitation on erection of political signs). *Collier v. City of Tacoma*, 854 P.2d 1046, 1057 (Wash. 1993)(*en banc*) (holding restrictive time period of sixty days unconstitutional).

content signs as well as off-premises political signs, the Town sign ordinance is a facially unconstitutional content-based infringement on freedom of speech.

Void for Vagueness

67. An enactment, such as the Town sign ordinance, is impermissibly vague if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits or authorizes or even encourages arbitrary and discriminatory enforcement.¹⁶

68. To prevent arbitrary and discriminatory enforcement, laws must provide explicit standards for those who apply them.¹⁷

69. It is further well established in the area of freedom of expression that a vague or overbroad regulation may be subject to facial review and invalidation, even though its application in the case under consideration may be constitutionally unobjectionable.¹⁸

70. This exception from general standing rules is based on an appreciation that the very existence of vague laws has the potential to chill the expressive activity of others not before the court,¹⁹ since the possibility of prosecution and the imposition of sanctions chills first amendment expression as people are intimidated into censoring their own speech.²⁰

71. A statute that allows arbitrary application is "inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view."²¹

¹⁶ *Chicago v. Morales*, 527 U.S. 41, 56-57 (1999); see also *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) (noting that "[v]ague laws may trap the innocent by not providing fair warning" and that "if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them").

¹⁷ *Grayned*, 408 U.S. at 108.

¹⁸ See *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 129 (1992); accord *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 798-799, and n. 15 (1984); *Board of Airport Comm'rs of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 574 (1987).

¹⁹ *Forsyth County*, 505 U.S. at 129; accord *New York v. Ferber*, 458 U.S. 747 (1982); *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491,503 (1985).

²⁰ *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 757 (1988);

²¹ *Forsyth County*, 505 U.S. at 130 (quoting *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 649 (1981)).

72. Courts may not constitutionally presume a decision-maker will act in good faith and adhere to standards absent from a provision's face nor write non-binding limits into an otherwise silent enactment.²²

73. Where, as here, the Town sign ordinance purports to permit “political signs” up to a certain size in one section, while limiting them to a smaller size in another, and prohibits “off-premises” political signs, even though there is typically no “premises” to which a ballot question political sign relates and a literal reading would prohibit nearly all candidate related political signs, the ordinance is unconstitutionally vague and overbroad as it fails to provide reasonable notice of what conduct it prohibits and/or authorizes arbitrary and discriminatory enforcement.

First Amendment As-Applied Challenge

Selective Enforcement—Viewpoint Discrimination

74. The First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.²³

75. As a general matter, “the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”²⁴

76. “To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.”²⁵

77. Any restriction on expressive activity because of its content undercuts the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”²⁶

²² *City of Lakewood*, 486 U.S. at 770.

²³ *Consolidated Edison Co.*, 447 U.S. at 537.

²⁴ *Id.*; *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972), and cases cited therein.

²⁵ *Consolidated Edison Co.*, 447 U.S. at 538.

²⁶ *Mosley*, 408 U.S. at 96 (citation and quotations omitted).

78. By not once, but twice, issuing notices of violation to Plaintiff and the owners of property where Plaintiff's Water Park signs were posted, threatening them with fines of up to \$500.00 per day, and demanding an unreasonably and extraordinarily brief period of only 24 hours within which to comply to the September 8th notice, while permitting the continued display, without citation or sanction, of at least 97 political signs of other candidates posted at locations in the Town of the same or similar size as Plaintiff's Water Park signs and campaign signs, or which, in any event, exceeded the maximum size or the one sign per candidate or issue limit for a political sign under the Town sign ordinance, the Defendants have engaged in unconstitutional viewpoint and content-based discrimination.

Irreparable Harm and Damages

79. The Defendants' actions in enforcing and threatening to enforce the Town sign ordinance constitute a violation of the Plaintiff's right to freedom of speech protected under the First and Fourteenth Amendments to the United States Constitution and Article 1, §21 of the Rhode Island Constitution.

80. Moreover, unless Plaintiff is immediately permitted to erect and display his Water Park signs and campaign signs and thereby communicate his candidacy and position on the Water Park issue prior to the general election scheduled for November 4, 2008, he will be unable to reach and convey information to potential voters prior to the election.

81. Nevertheless, Plaintiff is unable to erect and display political signs of any size, insofar as he is uncertain as to what size of sign is and is not permitted. Moreover, in the meantime, many of his supporters, including those who granted permission for him to post signs, perceive Plaintiff as having somehow engaged in wrongdoing because he was directed by Defendants to remove his signs.

82. The Defendants' actions in enforcing and threatening to enforce the Town sign ordinance have placed Plaintiff in the position of either refraining from protected speech or facing prosecution and the imposition of monetary sanctions for purported violation of the ordinance.

83. That, as a direct and proximate result of the Defendants' acts and/or omissions, including, but not limited to, those described herein, the Plaintiff has suffered and will continue to suffer deprivation of his First Amendment freedom of expression rights, and has thereby sustained and will continue to sustain irreparable harm.²⁷

84. That, as a direct and proximate result of the Defendants' acts and/or omissions, including but not limited to those described herein, the Plaintiff has suffered and will continue to suffer mental anguish, impairment of his freedom of speech, deprivation of his civil rights, expenses for legal services, and other great damage.²⁸

Intentional Conduct

85. At all relevant times, Defendants acted intentionally, willfully, maliciously, and/or with reckless or callous indifference to Plaintiff's clearly established constitutional rights. Furthermore, at all relevant times, Defendants knew or should have known that their conduct would cause or contribute to the deprivation of Plaintiff's clearly established civil rights.

86. At all relevant times, Defendants were motivated by malice, wantonness or willfulness of such an extreme nature as to amount to criminality.

²⁷ *Elrod v. Burns*, 427 U.S. 347, 373 (1976)(even temporary deprivation of First Amendment freedom of expression rights is sufficient to establish irreparable harm); *see also Citizens for a Better Environment v. City of Park Ridge*, 567 F.2d 689, 691 (7th Cir. 1975).

²⁸ *Carey v. Piphus*, 435 U.S. 247, 266-267 and n. 24 and n. 25 (1978).

VI. Claims for Relief

87. Plaintiff incorporates in the counts below the allegations contained in ¶¶1 through 86 above.

COUNT ONE
Impairment of Freedom of Speech in Violation of 42 U.S.C. §1983

88. Defendants, acting under the color of state law, by their acts and/or omissions, including but not limited to those described herein, have deprived Plaintiff of and placed unlawful restrictions on his freedom of expression in violation of Plaintiff's right to freedom of speech, causing Plaintiff to suffer harm as aforesaid, and have thereby deprived Plaintiff of rights secured under the First and Fourteenth Amendments to the United States Constitution, actionable pursuant to 42 U.S.C. §1983.

COUNT TWO
Impairment of Freedom of Speech in Violation of Article 1, §21 of the Rhode Island Constitution

89. Defendants, acting under the color of state law, by their acts and/or omissions, including but not limited to those described herein, have deprived Plaintiff of and placed unlawful restrictions on his freedom of expression in violation of Plaintiff's right to freedom of speech, causing Plaintiff to suffer harm as aforesaid, and have thereby deprived Plaintiff of rights secured under Article 1, §21 of the Rhode Island Constitution.

VII. Prayers for Relief

WHEREFORE, Plaintiff prays that this Court grant the following relief:

1. A temporary restraining order and preliminary and permanent injunctions restraining and enjoining Defendants from enforcing the Town sign ordinance in violation of the Plaintiff's right to freedom of speech guaranteed by the First and Fourteenth Amendments to the United States Constitution and Article 1, §21 of the Rhode Island Constitution.

2. A declaratory judgment that the Town sign ordinance is unconstitutional on its face in violation of the First and Fourteenth Amendments to the United States Constitution and Article 1, §21 of the Rhode Island Constitution.

3. A declaratory judgment that the Defendants, in the manner described herein, violated the First and Fourteenth Amendments to the United States Constitution and Article 1, §21 of the Rhode Island Constitution by depriving Plaintiff of and placing impermissible restrictions on Plaintiff's right to freedom of speech.

4. An award of compensatory damages.

5. An award of punitive damages.

6. An award of reasonable attorney's fees and costs of litigation to Plaintiff pursuant to 42 U.S.C. §1988.

7. Such other and further relief as this Court deems just and proper.

VIII. Demand for Jury Trial

Plaintiff hereby demands a trial by jury on all counts so triable.

IX. Designation of Trial Counsel

Plaintiff hereby designates Richard A. Sinapi, Esquire, as trial counsel.

Plaintiff,
THOMAS K. JONES
By his attorneys,

Date: October __, 2008

Richard A. Sinapi, Esq. (#2977)
American Civil Liberties Union, R.I. Affiliate
Sinapi, Formisano & Company, Ltd.
100 Midway Place, Suite 1
Cranston, RI 02920
Phone: (401) 944-9690; FAX: (401) 943-9040

VERIFICATION OF COMPLAINT

Now comes the Plaintiff, **Thomas K. Jones**, being duly sworn, and does hereby depose and say as follows:

1. That I am the Plaintiff in the within matter.
2. That I have read the above Complaint and acknowledge the factual allegations alleged therein to be true and accurate to the best of my knowledge, information, and belief.
3. That I have made this **Verification of Complaint** in support of my prayers therein for judgment and relief against the Defendants.

Thomas K. Jones

Subscribed and sworn to before me in **Cranston** on this ____ day of **October, 2008**.

(name)

NOTARY PUBLIC
My Commission Expires: _____