

# LIBERTY COUNSEL



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Reply to: Virginia

July 25, 2012

## **Via U.S. Mail and Email**

Vickie Sparks, Association Manager  
Mount Vista Association  
P.O. Box 61503  
Vancouver, WA 98666  
Phone: (360) 573-8058  
manager@mtvista.org

RE: Impermissible Suppression of Homeowner's Political Speech

Dear Ms. Sparks,

Liberty Counsel writes on behalf of Lisa Schmidt in reference to the Mount Vista Association (hereinafter, "MVA") Notice of Violation it recently issued to her, on the basis that a sign in her yard supporting a specific named candidate is permissible, but that commercially-produced political yard signs stating "Stand Up For Religious Freedom" and "Protect the Family, Protect the Nation;" are somehow impermissible because they are not "political" in the viewpoint of the MVA. Political signs in Home Owners' Association ("HOA") communities are expressly permitted by Wash. Rev. Code Ann. § 64.38.034 (West), which applies retroactively to developments like the MVA. The yard signs in question fall squarely under this law, and, as such, cannot be lawfully prohibited by MVA.

By way of brief introduction, Liberty Counsel is a non-profit litigation, education and policy organization with offices in Florida, Virginia, Washington, DC, and Jerusalem, Israel, and with hundreds of affiliate attorneys across the United States. Liberty Counsel specializes in constitutional litigation, including First Amendment rights, and has had great success in vindicating those rights.

I understand the following facts to be true. Lisa Schmidt is a resident of the Mount Vista subdivision, residing at 3412 NE 162nd Street, Ridgefield, WA. Ms. Schmidt is a politically active Christian, and will be voting in the upcoming August 7, 2012 primary, as well as the November general election. She votes her religious convictions, and believes that Julie Olson is the best person for the office for which that candidate is running. Consequently, she has a total of seven political signs in her front yard in conformity with the HOA regulations on pg. 8, which state as follows:

Signs are not permitted on lots or in windows, **except:**

- 1) Commercially produced "For Sale" or "For Rent" (max: 18" x 24")
- 2) Commercially produced signs showing resident name and/or address (maximum 6" x 24")
- 3) Small, commercially produced home security system signs
- 4) **Commercially produced political signs as follows:**
  - 45 days prior to an election
  - Maximum 18" x 24"
  - Maximum of one sign per candidate or issue – specifically on the ballot
  - No additional display enhancements (lights, streamers, etc)
  - Signs may not overhang sidewalks or impede site distance of vehicles
  - Signs must be removed from view within 5 days after an election
  - Signs may not contain false statements or obscene language (non-protected speech)

Due to overzealous HOAs infringing upon homeowners' protected free speech rights, the Washington legislature enacted Wash. Rev. Code Ann. § 64.38.034 (West) in 2005. This statute states in pertinent part that the governing documents of an HOA "may not prohibit the outdoor display of political yard signs by an owner or resident on the owner's or resident's property before any primary or general election." It further permits HOAs to promulgate "**reasonable** rules and regulations regarding the **placement** and **manner of display** of political yard signs." Emphasis added. As you can see, this section gives HOAs no authority whatsoever to regulate the content of political yard signs, or the time frame in which they may be displayed in an election year. Wash. Rev. Code Ann. § 64.38.034 further states that HOA provisions that are inconsistent with this provision are **void**. While no HOA has had the opportunity to litigate the time limitation to date, the Supreme Court of Washington held that the City of Tacoma's durational limitation on the pre-election posting of political signs unconstitutionally restricted the right to political expression. *Collier v. City of Tacoma*, 121 Wash.2d 737, at 745.

The conduct of the MVA in this instance not only runs afoul of the explicit provision of § 64.38.034 relating to political signs. It also violates Wash. Rev. Code Ann. § 49.60.224 (1), which provides that "every **condition**, restriction, or prohibition...**which directly or indirectly limits the use...of real property on the basis of...creed...**," among other things, "**is void.**" Section 49.60.224 (2) states that it is an unfair practice to "insert," "honor" or "attempt to honor" a provision that limits the use of real property based on "creed". As you know, "creed" encompasses both religious, political, and religio-political viewpoints, and expressing one's creed via political sign in an election year is a valid use of property. The MVA's attempt to punish Mrs. Schmidt for expressing her religiously-based political viewpoint, i.e., her "creed," is a violation of the law and subjects the MVA to liability.

Inconsistent with § 64.38.034, the MVA sign rules permit only one sign “per candidate or issue” that is “specifically on the ballot.” This restriction goes beyond what the statute permits, and is therefore void per Wash. Rev. Code Ann. § 64.38.034 and § 49.60.224. Nevertheless, Ms. Schmidt’s sign is conforming even under this impermissible restriction. The HOA’s past interpretation of “specifically on the ballot” permitted “Hope” and “Change” yard signs in the 2008 election season. If “Hope” and “Change” were on the ballot then, “Religious Freedom” is certainly on the ballot this election. This election more than ever will determine the future of religious freedom in America, as a vote to repeal Obamacare (by voting for Romney) is a vote against the biggest invasion of religious freedom yet – the requirement that religious organizations fund other people’s abortions. Be that as it may, nothing in Wash. Rev. Code Ann. § 64.38.034 gives an HOA the ability to limit political signs so narrowly as to issues “specifically on the ballot.”

Furthermore, “Stand Up For Religious Freedom” (and “Protect the Family, Protect the Nation”) is an imperative political statement that any reasonable person would understand in this context to mean “by voting”. In some countries, such as communist dictatorships, urging others to stand up for “religious freedom” is a hot-button political issue that could land its supporters in jail or worse. Even in America, what influence “religious freedom” should play in politics is often hotly debated, making it very much a political issue. Thus, a sign urging others to “Stand Up For Religious Freedom” is no different than a sign stating “Hope”, “Change”, “Vote Freedom First”, “Vote For Christian Values”, “Vote Republican”, “Vote Democrat”, “Public Safety Matters” or “Reign in Dictatorial HOAs”.

In the context of their display, next to other signs endorsing political candidates, and immediately before the August 7, 2012 primary, prior to the November 2012 general election, it is clear that these are indeed political signs as expressly protected by Washington statute. These signs simply express a religious viewpoint as part of a political statement.<sup>1</sup> It is unlawful to discriminate on the basis of religious viewpoint, and where the signs in question fall within the full protection of the Washington statute regulating HOA treatment of political signs, the MVA and those of its members who interfere with this expressive activity do so at their own peril.

Under Washington court precedent, the MVA’s purported distinction between “political” speech and “religious” speech is an impermissible content-based restriction, because the HOA is attempting to define and regulate “religious” yard signs from “political” yard signs as a separate class of expression. The Supreme Court of Washington has stated that

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<sup>1</sup> See attached photograph of “Stand Up For Religious Freedom” sign. Note that it is “Copyright © 2012 Pro-Life Action League” at “ProLifeAction.org” and “Citizens for a Pro-Life Society” at “ProLifeSociety.com”. “Pro-Life” is a political viewpoint (as opposed to “pro-abortion”), and the Pro-Life Action League, Citizens for a Pro-Life Society, and LifePAC (on the “Protect the Family, Protect the Nation” sign) are pro-life political advocacy organizations. Thus, the signs are political signs, that speak from a religious perspective.

"[c]onstitutionally permissible time, place, or manner restrictions may not be based upon either the content or subject matter of speech" and that "[c]ontent-based restrictions on speech are presumptively unconstitutional and are thus subject to strict scrutiny. *Collier v. City of Tacoma*, 121 Wash.2d 737, at 748, 749. As stated before, while no HOA has litigated the fullest extent and applicability of the Washington Constitution on speech issues vis-à-vis the covenantal nature of HOAs, in light of the legislative intent behind Wash. Rev. Code Ann. § 64.38.034, it is clear that the reasoning of *Collier* is quite applicable in this situation.

Finally, Page 6 of the 2010.11 HOA handbook states "Pursuant to RCW 64.38.050, the court can award the prevailing party reimbursement for reasonable attorneys' fees." *Riss v. Angel*, 131 Wash.2d 612 (1997) involved the unreasonable rejection of lot owners' building plans by a Washington HOA. The Washington Supreme Court affirmed a finding that the association's rejection of the plans was unreasonable and arbitrary, and that the members of the HOA who were responsible for that rejection were jointly and severally liable for delay damages and attorney fees. *Id.* at 615. The Court further held that an "association's decision was unreasonable and arbitrary and in violation of the covenants because it was made without adequate investigation and was based upon inaccurate information." *Id.* at 638. In the form of this letter, the MVA now has accurate information upon which to make a decision. Continued enforcement attempts against Ms. Schmidt for displaying political yard signs speaking from a religious perspective are unreasonable, are violative of Washington statute, and will subject those MVA members responsible for this decision to joint and several liability for an award of attorney fees, upon conclusion of a suit.

Therefore, in light of the above authorities, **please confirm in writing within ten (10) days**, that the MVA will cease its interference with protected speech as expressed by conforming yard signs speaking from a religious perspective. If I do not receive this requested response, Liberty Counsel will take further steps to protect its client from experiencing irreparable harm to her cherished liberties, up to and including the filing of a lawsuit for civil rights violations.

Sincerely

LIBERTY COUNSEL

Richard L. Mast, Jr.<sup>†</sup>

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<sup>†</sup> Licensed in Virginia