

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Ocala Division

CASE NO: 10-

BEE'S AUTO, INC. and
WAYNE E. WEATHERBEE,

Plaintiffs,

PRELIMINARY INJUNCTION SOUGHT

vs.

THE CITY OF CLERMONT, FLORIDA,

Defendant.

**VERIFIED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Preliminary Statement

1. Plaintiff WAYNE E. WEATHERBEE ("Weatherbee") owns and actively operates BEE'S AUTO, INC., in Clermont ("the City"), Lake County, Florida. On approximately October 28, 2009, in an act of political protest, Weatherbee posted twelve (12) signs on two parcels of property owned by the Bee's Auto, Inc. at 898 Montrose Street, within the City. Fourteen (14) photographs of these signs are attached hereto as Plaintiffs' Composite Exhibit No. 1. All twelve (12) signs voice Weatherbee's discontent with the City's

official actions against him and his business in the City; all twelve (12) signs protest and petition the City government for redress of grievances.

2. The signs call the reader's attention to Plaintiffs' opinion that the City has harassed and intimidated them, has selectively enforced its laws against them, and has committed false arrest. The signs are political speech that is protected under the First Amendment to the United States Constitution.

3. Notwithstanding that the twelve (12) signs are protected political speech, on December 22, 2009, the City's Code Enforcement Board ("the Board") issued a citation to Bee's Auto, charging that the signs were erected without permits in violation of Clermont City Code Chapter 102-6. A true and correct copy of the citation is attached hereto as Exhibit No. 2.

4. At an initial January 19, 2010 Board meeting, various members of the Commission correctly opined that the signs were political speech not subject to the City's signage code, and the Board initially declined to find Bee's Auto in violation of the Code.

5. However, immediately following this declination of action, the Board's attorney reversed position and the City issued its "Findings of Fact, Conclusion of Law and Order," a true and correct copy of which is attached to this Verified Complaint as Plaintiffs' Exhibit No. 3. Unless Plaintiffs "timely

correct the violation” by February 2, 2010, fines of \$75.00 per day will accrue. Plaintiffs’ Exhibit No. 3.

6. The City has been on notice since at least 2007 that its ordinance regulating political signs violates the First Amendment. In August 2007, the City demanded that two Clermont residents remove a political campaign sign from their lawn or obtain a permit and pay a fee for the sign. The ACLU of Florida sent the City a “cease and desist” letter on behalf of the property owners and advised the City that its signage code violated the First Amendment. The letter is attached as Ex. 4.

7. Although in that instance the City relented and did not pursue code violations for the campaign sign, the code remains unconstitutional and the City is now using that same code against Plaintiffs to silence their political speech.

8. Plaintiff Wayne Weatherbee has standing to challenge the City’s unlawful acts because he is the owner of Bee’s Auto, Inc.

9. As detailed below, the City’s signage code is unconstitutional on its face and as applied to Plaintiffs. First, the code creates an impermissible content-based distinction between types of political signs: those which “advertis[e] either a candidate for public office or a political cause subject to election” and those, like Plaintiffs’, which protest governmental acts and seek

redress. For example, a sign that reads “Vote for Crist for Senate” is a permissible temporary political sign, but a sign that reads “Impeach Crist” is an impermissible political sign, as it advertises neither a candidate for public issue nor a ballot issue.

10. Furthermore, the code requires permits and/or imposes size and location requirements for disfavored signs, including “temporary political signs,” but exempts favored signs from the permitting process and/or size and location requirements. The City thereby regulates speech based solely on its content, without any compelling interest.

11. Plaintiffs sue the City for violation of their First Amendment rights and respectfully request that this Court grant the declaratory and injunctive relief outlined below. Plaintiffs are contemporaneously filing a Motion for Preliminary Injunction and seek an expedited hearing on this matter.

Jurisdiction and Venue

12. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 for violation of their First Amendment rights.

13. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and injunctive relief pursuant to Fed. R. Civ. P. 65.

14. Venue is appropriate in this District and the Ocala Division, as the Defendant is a municipality in Lake County, Florida.

Parties

15. Bee's Auto, Inc. is a Florida Corporation with its principal place of business in Clermont, Florida.

16. Wayne E. Weatherbee is the Owner and Corporate President of Bee's Auto, Inc.

17. The City of Clermont is a political subdivision of the State of Florida organized under the laws of Florida.

Facts

18. As previously mentioned, the Plaintiffs established the twelve (12) signs in question as a form of political protest and as a method of petitioning for redress of grievances. *See* Plaintiffs' Composite Exhibit No.1. Specifically, Plaintiffs were protesting actions taken by the City that Weatherbee believes violated his property ownership rights; constitutional rights; and constituted improper governmental conduct – actions that impact both himself and potentially others.

19. The signs, as identified through Plaintiffs' Composite Exhibit No. 1, were of varying sizes, each predominantly containing red lettering, outlined in

black ink, and include the following messages designed explicitly as protected speech.

20. **“6 Ft Wall Really? Jim – Dezoned Unlawfully.”** This sign was designed to express the Plaintiffs’ prolonged experiences in attempting to deal with the City’s Zoning Department. These experiences, involving several arbitrary rule changes by City staff, resulted in substantial delays and great expense to the Plaintiffs.

21. **“Give Me Back My Driveway”** This sign relates to the City’s granting of a conditional permit to the predecessor owner of the property in question. The sign protests the City’s elimination of the driveway that provided access to the Plaintiffs’ automotive business, without providing any notice to the Plaintiffs, and thus depriving him of any venue to challenge to the City’s perceived unlawful action.

22. **“Rooney’s Right – ACLU Where Are You,”** refers to Rooney, a Clermont Police Officer who was wrongfully targeted and charged with falsifying documents. Plaintiffs supported Rooney’s position with this particular sign. Rooney was subsequently vindicated. The rest of the sign is self-explanatory.

23. **“In My Opinion Wayne Saunders ‘Took’ My Occ. License.”** Wayne Saunders is Clermont’s City Manager, who directed that the reissuance

of the preexisting occupational license be redirected from City staff directly to himself. Saunders repeatedly and arbitrarily avoided the efforts of the predecessor owner of Plaintiffs' business from being able to renew this occupational license. At the time, in 2003, Plaintiffs had been in negotiation to purchase the business; through Weatherbee's personal information and belief, the City also sought purchase of the business and land in question. The failure to reissue the occupational license to date has deprived Plaintiffs of any and all use of the property, and thus expansion of his business interests.

24. **“Bring Back Cheatham – Where’s FDLE[?]”** Cheatham is the former Clermont Police Lieutenant who arrested Plaintiff Weatherbee. Subsequently, Cheatham was decertified for failing to produce a valid high school diploma. Cheatham was involved in the false arrest of Plaintiffs – designed specifically as part of a perceived effort to drive the Plaintiffs out of business.

25. **“Surprise, Surprise, Surprise Even Mayberry Had a Garage – They Are OK with Adult Entertainment But Not With Automotive Uses?”** This message is Plaintiffs' commentary on the City's revising of its Code relating to the licensing of adult entertainment establishments to bring it into compliance with the First Amendment, and Plaintiffs' protest of the City's impermissible disparate treatment of his automotive business.

26. **“Intimidation/Harassment – Selective Law Enforcement – False Arrests – False Documents – What’s Next? At Least They Haven’t Taken My Freedom of Speech YET!”** This sign, perhaps a little dated considering this Complaint and Plaintiffs’ Motion for Preliminary Injunction, reflects Plaintiffs’ commentary on the long history of perceived abuse against him and his business by City officials.

27. **“It’s Been a Garage Since 1940 – Ask the City Manager What Happened? What’s the Big Deal? Can He Make It Reappear as Fast as It Disappeared?”** This sign serves as Plaintiffs’ further comment regarding City Manager Wayne Saunders’ perceived official abuse of power regarding his tactics to deprive Plaintiffs of the lawful use of their business property.

28. **“Shame on You ‘Dan’ – You Shouldn’t Listen to ‘Him’ – Why Do You Think Guthery Quit? And Randy Story with a 18 Month Resignation.”** The message in this sign is directed to City Attorney Dan Mantzaris, imploring him not to listen to the advice of City Manager Wayne Saunders. “Guthery” was the previous City Attorney, who was not purportedly subject to manipulation by City Manager Saunders. “Randy Story” was the previous City Chief of Police who resigned his position following a Florida Department of Law Enforcement (FDLE) investigation into Clermont Police Department.

29. **“Will the Real Chief of Police ‘Please’ Stand Up – Not the Guy on the 3rd Floor.”** This sign references the problems with consecutive City police chiefs taking instruction directly from City Manager Wayne Saunders.

30. **“The City Manager Has This All Messed Up – I Don’t Care Who He Is – I’ll Deal with the Mayor From Now On!”** This sign is another political commentary on the state of affairs within the City and the perceived problems with its City Manager.

31. **“27 Years in the Automotive Business and the City is Trying to Turn Me Into a Sign Painter.”** Read in context with the other eleven (11) signs, this is simple, rhetorical, humorous commentary on how the City’s acts have driven Plaintiffs to protest and request redress of grievances through the above-mentioned signage.

32. The property on which the signs are posted is classified for zoning purposes as “commercial” in the City’s Central Business District.

The City’s Ordinances

33. The City’s Signage Code is unconstitutional on its face and as applied to Plaintiffs, as it requires permits for some forms of speech in signs and exempts permits for other types of permits in signs, thereby impermissibly favoring certain types of speech based on their content, without any compelling interest.

34. Section 102-1 of the City's Code ("Purpose and Intent of Chapter")

provides:

The intent of this chapter is to ensure adequate means of communication through signage while maintaining attractive visual appearance within the city. By specifying criteria for all signage as stated in this chapter, this chapter is intended to serve the following purposes:

- (1) Maintain the established suburban character of the city by regulating all exterior signage in a manner which promotes low profile signage of high quality design.
- (2) Protect and maintain the visual integrity of roadway corridors within the city by establishing a maximum amount of signage on any one site to reduce visual clutter.
- (3) Establish locations and setback for signage which are designed to protect motorists from visual distractions, obstructions and hazards.
- (4) Enhance the appearance of the physical environment by requiring that signage be designed as an integral architectural feature of the site and structure which such signage is intended to identify, and sited in a manner which is sensitive to the existing natural environment.
- (5) Provide for signage which satisfies the needs of the local business community for visibility, identification and communication.
- (6) Establish procedures for the removal or replacement of nonconforming signs, enforcement of these regulations, maintenance of existing signs, and consideration of variances and appeals.

35. Section 102-2 of the City's code ("Definitions") limits the definition of a political sign as "a sign or poster advertising either a candidate for public office or a political cause subject to election."

36. Section 102-6 of the City's code ("Sign Permit") requires permits for signs, as follows:

Required; application. It shall be unlawful for any person to erect, alter, display, change or relocate *any sign within the city, except exempt signs*, until after a permit therefor has been issued by the administrative official or the established designee thereof and a fee paid to the city. Application for a sign permit shall be made by the owner of the premises or his appointed agent on a form provided by the city prior to the erection or placing of any sign proposed. Such application shall include the following:

- (1) The name and address of the owner of the property;
- (2) The name and address of the sign company erecting the sign;
- (3) The street address or legal description of the property upon which the proposed sign is to be located;
- (4) The height, size and shape of the proposed sign;
- (5) A plan, sketch, blueprint or similar presentation, drawn to scale, showing all pertinent structural details of the proposed sign;
- (6) A site plan, sketch, blueprint or similar presentation, drawn to scale, showing all pertinent information, verifying the specific location of the proposed sign, and the height, size, shape and location of existing signage on the premises.

(Emphasis added).

22. However, Section 102-7 (“Exempt Signs”) exempts from the permitting process the following signs, and impose no limits on their size or number:

The following signs are *exempt from the permit requirements of this chapter*, provided they are not placed or constructed so as to create a hazard of any kind. The following signs must still meet applicable construction and electrical standards required by city, state or other appropriate agency codes: . . .

(8) Legal notices and official instruments.

(9) Signs necessary to promote health, safety and general welfare, and other regulatory, statutory, traffic control or directional signs erected on public property as required by governmental entities with permission as appropriate from the city, the county, the state or the United States federal government.

. . .

(16) Holiday lights and seasonal decorations displayed at times when such lights and decorations are generally considered appropriate.

(Emphasis added).

23. Temporary political signs are not listed among “Exempt Signs” and are regulated by Section 102-18 of the City’s code (“Temporary Political Signs”), which provides:

Temporary political signs shall be permitted throughout the city *subject to the following restrictions, limitations and requirements* and any other applicable requirements set forth in this chapter:

(1) No political sign shall be erected or placed on city-owned property or on any trees or utility poles.

(2) Any political sign that is erected or placed in the city shall be removed within three days after any election or campaign to

which such sign pertains; provided, however, that a sign may remain through any secondary primary or runoff election as to any candidate who is subject thereto.

(3) The candidate whose sign is erected or placed on any premises shall deposit with the city clerk, or cause to be deposited by a designee thereof, a fee as adopted by resolution of the city council and on file in the city clerk's office, which sum shall be used to fund the cost of removal and disposition of such signs by city employees if the signs are not removed within the time limit set out in this section. A single deposit shall be required for each candidate or political cause being advertised.

(4) Political campaign signs shall conform to the following requirements:

a. No sign shall be located nearer than 50 feet to intersecting street rights-of-way.

b. A setback of five feet shall be required from all other public rights-of-way.

c. A maximum size of four square feet shall be permitted in residential zones.

d. A maximum size of 16 square feet shall be permitted in commercial or industrial zones.

e. *Location approval is required* and shall be the joint responsibility of the owner of the property upon which the sign is placed and the candidate for whom the sign is placed.

24. The City has created an impermissible content-based distinction between *types* of political signs: those which “advertis[e] either a candidate for

public office or a political cause subject to election” and those, like Plaintiffs’, which protest governmental acts and seek redress.

25. The City’s definition of “political signs” is impermissibly narrow.

26. The City’s regulation of the size, number and location of political signs disfavors political speech while favoring other types of speech and expression, such as “legal notices,” “signs necessary to promote health, safety and general welfare, and other regulatory, statutory, traffic control or directional signs,” and “holiday lights and seasonal decorations” that do not require any type of permitting or approval, and are not limited as to size, number or location.

27. Thus, holiday decorations do not require any permit; they have no size, location or format restrictions, whether they are Fourth of July banners, Christmas reindeer, Easter Bunnies, Veterans’ Day Flags, Martin Luther King Day portraits or illuminated displays.

28. Plaintiffs’ signs are protected political speech, as methods by which the Plaintiffs is expressing, at times through humor and throughout with opinion and rhetoric, his strong disagreement with the City’s actions, especially as it has directly impacted his business and personal interests. Yet, the City’s Code cloaks them with less protection than a Valentine’s or St. Patrick’s Day display.

The City’s Order

30. Although the City initially and properly recognized that Plaintiffs' signs are protected political speech, the City has ordered Plaintiffs' to "timely correct the violation" by removing or obtaining a permit for the signs by February 2, 2010. Ex. 3.

31. Plaintiffs' failure to remove the signs or obtain a permit will result in fines of \$75.00 per day as of February 2, 2010.

32. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs herein alleged.

33. Plaintiffs are now suffering and will continue to suffer irreparable injury from Defendant's acts, policies and practices unless they are granted the relief sought by this action. Each day that Plaintiffs are threatened with ever-growing fines for failing to "timely correct," by removal or obtaining permits for the protected speech at issue, Defendant denies Plaintiffs their Constitutional right to freedom of expression and to petition the government for redress of grievances and constitutes irreparable harm.

34. Plaintiffs face immediate threat of injury and are contemporaneously moving for a Preliminary Injunction.

RELIEF SOUGHT

35. Defendant's Signage Code, Section 102 of the Clermont Code of Ordinances, is unconstitutional on its face and as applied to Plaintiffs because

(a) the Code’s definition of “political signs” is impermissibly narrow, (b) the code creates an unconstitutional content-based distinction between *types* of political signs, and (c) the Code regulates protected speech based solely on its content. The City’s Signage Code cannot survive strict or even intermediate scrutiny.

36. Defendant’s actions deny Plaintiffs the right to engage in constitutionally protected expressive activities.

37. Title 42 U.S.C. § 1983 provides a remedy for Defendant’s unconstitutional actions.

WHEREFORE, Plaintiffs demand judgment against Defendant for:

- (a) Declaratory relief that Chapter 102 of the City’s Code of Ordinances, or at a minimum, sections 102-6, 102-7, and 102-18 of that Code are unconstitutional on their face and as applied to Plaintiffs;
- (b) Declaratory relief that Defendant’s actions constitute a violation of Plaintiffs’ rights under the First and Fourteenth Amendments to the United States Constitution;
- (c) Injunctive relief prohibiting Defendant from denying Plaintiffs the right to engage in protected political speech on their its property by displaying signs that protest the City’s actions and seek or petition for governmental redress;

- (d) Injunctive relief prohibiting Defendant from fining or compelling Plaintiffs to remove the twelve (12) signs that protest the City's actions and seek or petition for governmental redress;
- (e) Injunctive relief prohibiting Defendant from imposing and enforcing fines previously imposed or proposed against the Plaintiffs;
- (f) Attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

Dated this 3rd day of February 2010.

By:

DEREK B. BRETT

The Brett Law Firm, P.A.

TRIAL COUNSEL

Fla. Bar No.: 90750

20 North Orange Avenue Suite 700

Orlando, FL 32801

Phone: 407-928-6050

Fax: 407-429-3856

Cooperating Attorney for the American
Civil Liberties Union Foundation of
Florida, Inc.

derek@thebrettlawfirm.com

MARIA KAYANAN

Fla. Bar No.: 305601

mkayanan@aclufl.org

RANDALL C. MARSHALL

Fla. Bar No. 181765

rmarshall@aclufl.org

American Civil Liberties Union
Foundation of Florida, Inc.

4500 Biscayne Blvd. Suite 340

Miami, FL 33137

Phone: 786-363-2700

Fax: 786-363-3108

Verification by

WAYNE E. WEATHERBEE, PURSUANT TO 28 U.S.C. § 1746(2)

I, Wayne E. Weatherbee, declares pursuant to 28 U.S.C. § 1746 (2) that the facts alleged in this complaint are true and correct, based on my personal knowledge.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED IN CLERMONT, FLORIDA THIS ___ DAY OF FEBRUARY 2009.
