

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LAWRENCE WILLSON,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:18-cv-3
)	
CITY OF BEL-NOR, MISSOURI,)	
)	
Defendant.)	

COMPLAINT

Plaintiff Lawrence Willson alleges as follows:

INTRODUCTION

1. Plaintiff Lawrence Willson, a resident of Bel-Nor, wishes to continue displaying three political signs in his front yard. However, doing so violates Bel-Nor’s sign ordinance, whose applicable terms were reenacted in September 2017. Willson has been cited for violating the ordinance, faces steep fines and imprisonment, and risks additional prosecutions if he keeps his signs in his yard.

2. The ordinance—which totally prohibits any window or wall sign, as well as limiting each residential parcel to a single yard sign—is content based, vague, and overbroad, and it violates the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth Amendment, both on its face and as applied to Willson.

PARTIES

3. Plaintiff, Lawrence Willson, is a citizen of Missouri who resides in Bel-Nor.

4. Defendant City of Bel-Nor is a municipal corporation of the State of Missouri.

JURISDICTION AND VENUE

5. Willson brings this claim pursuant to 42 U.S.C. § 1983, the Fourteenth Amendment to the United States Constitution, and the First Amendment to the United States Constitution, incorporated as against States and their municipal divisions through the Fourteenth Amendment.
6. This Court has jurisdiction under 28 U.S.C. § 1331 as this claim “arises under the Constitution of the United States.”
7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) & (2) because Defendant is located in St. Louis County, Missouri, and its actions giving rise to the claim in this suit occur in St. Louis County.
8. Venue is proper in the Eastern Division pursuant to E.D. Local Rule 2.07(a)(1).

FACTS

9. Willson owns and lives in a single-family home in a residential part of Bel-Nor.
10. Willson is displaying three freestanding yard signs in his front yard.
11. The three signs read, respectively, “Black Lives Matter,” “Clinton Kaine,” and “Jason Kander U.S. Senate.”
12. The signs have a political message.
13. On June 20, 2017, a City of Bel-Nor police officer left a written warning on Willson’s property that he had violated Bel-Nor Code § 400.270.
14. Attached to the warning was a partial copy of Section 400.270 with two passages highlighted: (1) a clause limiting each “residential premises” to a single “political advertising” sign and (2) a sentence prohibiting the display of “political signs” more than 15 days after an election.

15. On that same day, police officers also left written warnings for other Bel-Nor residents who had “Clinton Kaine” signs displayed on their lawns.
16. On Willson’s behalf, counsel contacted Bel-Nor and explained that the ordinance was facially unconstitutional under *Reed v. Town of Gilbert*, 135 U.S. 2218 (2015).
17. Sometime thereafter, then-Bel-Nor Mayor Christina Buchek¹ contacted Willson and assured him that Bel-Nor was planning to rescind the offending ordinance.
18. Based on that assurance, Willson continued to display his signs.
19. On September 18, 2017, the Bel-Nor Board of Aldermen repealed Section 400.270, which eliminated restrictions specific to “political” and “political advertising” signs.
20. However, simultaneously, the Board repealed and replaced a separate section of the Code, Section 400.120, which had the effect of amending and repositioning the rest of the city’s sign restrictions, rather than deleting them.
21. Together, these changes were codified as Ordinance 983.
22. The new Section 400.120 (“the Ordinance”), attached and incorporated into this Complaint, defines “sign” and regulates the display of signs in areas zoned residential, such as Willson’s neighborhood.

THE ORDINANCE

23. The Ordinance permits “each improved parcel” in the residential zone to display “one stake-mounted self-supporting freestanding sign with no more than two sign faces.” *See* § 400.120(E)(2).
24. The Ordinance prohibits, among other things:

¹ Mayor Buchek is no longer in office. Alderperson William Hook is serving as Bel-Nor mayor pro tem.

- a. Any sign affixed to “any building, fence, tree, gas light, lamp post, garage, basketball hoop or any structure or improvement,” § 400.120(E)(2)(f).
 - b. Any sign “displayed from the interior of any window,” § 400.120(E)(2)(g)
 - c. Any sign displayed within 10 feet of any property boundary, § 400.120(E)(2)(i)
 - d. Any sign displayed in a front yard where, “if the right-of-way line is not clear,” the sign is within 10 feet of the interior edge of any sidewalk or 15 feet of the interior edge of any curb if there is no sidewalk, § 400.120(E)(2)(i)
 - e. Any sign larger than two-feet by three-feet, § 400.120(E)(2)(k)
 - f. Any sign material that “flutters” or otherwise moves, § 400.120(E)(3)(e)
 - g. Any “[o]bscenity,” § 400.120(E)(3)(f)
25. The Ordinance defines “sign” as “[a]ny poster, object, devise, or display, situated outdoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event, idea, belief or location by any means, including but not limited to words, letters, figures, designs, symbols, colors, logos, fixtures, cartoons or images.” Bel-Nor Code § 400.120(E)(1).
26. The Ordinance defines “flag” as “any fabric or bunting containing distinctive colors, patterns or symbols used as symbol of a government or institution” and states that “flags shall not be considered ‘signs.’” § 400.120(E)(5).
27. The Ordinance limits “each improved parcel” to one flag except within 5 days prior to and 3 days following a “national holiday such as Independence Day, Memorial Day, Labor Day or Veterans Day,” during which time it permits unlimited flags. *Id.*

28. The Ordinance excludes “numbers or letters used to display the address of [a] property” from its definition of “sign.” § 400.120(E)(6).
29. In a prefatory section, the Ordinance contains “whereas” clauses, including:
 - a. “WHEREAS, the City of Bel-Nor wishes to regulate signs within the City in a manner that does not infringe upon the rights granted by the First Amendment to the Constitution of the United State[s] of America, but that promotes the public safety, health and general welfare of the City and its citizenry; and”
 - b. “WHEREAS, the City is cognizant of the limitations upon the regulation of signs recognized by the Courts, but the City has the power and obligation to its citizens to ensure that signs are not placed and/or maintained in a manner that is harmful to the health, safety and welfare of the City and its citizenry”

POST-ENACTMENT ENFORCEMENT ACTION

30. On December 12, 2017, the City of Bel-Nor prosecuting attorney, Stephanie Karr, issued an information against Willson.
31. The information accuses Willson of violating Ordinance 983 and states that “[o]n or about December 11, 2017, and on property owned by the Defendant at [address] within the City of Bel-Nor, did display three separate signs thereby exceeding the number of signs allowed in the residential zoning district.”
32. The information notes that, if convicted, Willson could be fined up to \$1,000 and/or imprisoned up to 90 days. *See* Bel-Nor Code § 100.080.
33. Each day of violation is subject to a separate charge. *Id.*
34. Willson is risking additional, daily prosecutions under the Ordinance by continuing to display his three political signs.

35. Willson would display his signs on his home or through his front-facing windows, but the Ordinance prohibits that.
36. There is no mens rea requirement in the Ordinance.
37. Attached to the information issued to Willson was a summons, signed by Bel-Nor municipal judge Sean O'Hagan, which provides a court date of January 3, 2018.

COUNT I: FIRST AMENDMENT

*Bel-Nor § 400.120 is Unconstitutional
under the Free Speech Clause of the First Amendment*

38. Willson repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.
39. The Ordinance violates the Free Speech Clause of the First Amendment to the Constitution, on its face and as applied, because it impermissibly curtails Willson's free-speech rights.
40. The Ordinance is a content-based regulation because it permits certain types of expression based on the content thereof, including addresses and flags, that would otherwise be prohibited, as well as prohibiting expression based on the content thereof, including obscenity, that would otherwise be permitted.
41. The Ordinance is also overbroad because it totally prohibits window and wall signs and confines each residential parcel, no matter the number of occupants or any other factor, to a single sign.
42. These provisions "simply prohibit too much protected speech." *City of Ladue v. Gilleo*, 512 U.S. 43, 51 (1994).

43. In light of *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), as well as *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), the Ordinance is subject to strict scrutiny under the First Amendment.
44. The City of Bel-Nor has no compelling or significant interest that can justify the Ordinance, and the purported interests listed in Ordinance 983 are not significant or compelling.
45. The Ordinance is not the least restrictive means to achieve a compelling government interest, nor is it narrowly tailored to achieve a significant government interest.
46. In the alternative or in addition, the Ordinance does not leave open ample alternative avenues of communication for Willson to convey his message.
47. Plaintiff Willson has been chilled from displaying his political signs because of his reasonable fear of arrest and/or prosecution.
48. Willson risks additional prosecutions every day he displays his signs.

COUNT II: DUE PROCESS

49. The Ordinance is unconstitutionally vague on its face and thereby violates Willson's right to due process under the Fourteenth Amendment to the U.S. Constitution.
50. The Ordinance does not define "obscenity" at all, much less with sufficient definiteness that an ordinary person can understand what conduct is prohibited.
51. The Ordinance also encourages arbitrary and discriminatory enforcement.
52. For example, seasonal displays—such as Halloween "tombstones" or even Christmas lights²—fall within the scope of the broadly defined "sign," but upon information and belief, Bel-Nor has not enforced the Ordinance against parcels displaying such items.

² Christmas lights are an "object" or "display, situated outdoors, which is used to . . . attract attention to an . . . event . . . by any means, including but not limited to . . . colors [or] fixtures."

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court:

- a. Upon motion, grant a preliminary injunction preventing the enforcement of the Ordinance;
- b. Grant a permanent injunction preventing the enforcement of the Ordinance;
- c. Enter a declaration that the Ordinance is unconstitutional on its face and as applied to Plaintiff Willson;
- d. Award Plaintiff nominal damages;
- e. Award costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- f. Allow such other and further relief as this Court finds just.

Respectfully submitted,

/s/ Anthony E. Rothert
Anthony E. Rothert, #44827MO
Jessie Steffan, #64861MO
ACLU of Missouri Foundation
906 Olive Street, Suite 1130
St. Louis, Missouri 63101
Phone: (314) 652-3114
arothert@aclu-mo.org
jsteffan@aclu-mo.org

Gillian R. Wilcox, #61278MO
ACLU of Missouri Foundation
406 W. 34th Street, Suite 420
Kansas City, Missouri 64111
Phone: (816) 470-9938
gwilcox@aclu-mo.org

Attorneys for Plaintiff