AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 11: The Contemporary Era – Democratic Rights/Free Speech

**City of Ladue v. Gilleo, 512 U.S. 43** (1994)

*The town of Ladue, a suburb of St. Louis, had an ordinance prohibiting homeowners from displaying any signs on their property except for purposes of identifying the residence, selling the property, or warning of safety hazards. The ordinance applied only to residences. In 1990, Margaret Gilleo placed a sign in her front yard that read, “Say No to War in the Persian Gulf, Call Congress Now.” The sign was twice knocked down, but the police refused to investigate given that the sign violated the city ordinance. She then filed suit in federal district court seeking to have the ordinance struck down as a violation of her free speech rights. After she won a preliminary injunction and began to display a similar sign in a second-floor window facing the street, the city repealed the ordinance and replaced it with a new one that included a rationale for the sign prohibition on the grounds that a proliferation of signs in a residential area was, among other things, a “visual blight.”*

*The trial court struck down the new ordinance as unconstitutional. A federal circuit court affirmed that ruling, concluding that the town ordinance was an inappropriate content-based regulation of speech. The U.S. Supreme Court likewise unanimously affirmed that decision. The Court did not emphasize that the set of exceptions on signage in Ladue amounted to inappropriate content-based regulation, but instead emphasized that regardless of reasonableness of the various exemptions to the ordinance the prohibition on signs at residences was too restrictive of the channels of available speech.*

JUSTICE STEVENS delivered the opinion of the Court.

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While signs are a form of expression protected by the Free Speech Clause, they pose distinctive problems that are subject to municipalities' police powers. Unlike oral speech, signs take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. It is common ground that governments may regulate the physical characteristics of signs—just as they can, within reasonable bounds and absent censorial purpose, regulate audible expression in its capacity as noise. *Ward v. Rock Against Racism* (1989). . . .

In *Linmark Associates, Inc. v. Willingboro* (1977), we addressed an ordinance that sought to maintain stable, integrated neighborhoods by prohibiting homeowners from placing "For Sale" or "Sold" signs on their property. Although we recognized the importance of Willingboro's objective, we held that the First Amendment prevented the township from "achieving its goal by restricting the free flow of truthful information." In some respects *Linmark* is the mirror image of this case. For instead of prohibiting "For Sale" signs without banning any other signs, Ladue has exempted such signs from an otherwise virtually complete ban. Moreover, whereas in *Linmark* we noted that the ordinance was not concerned with the promotion of esthetic values unrelated to the content of the prohibited speech, here Ladue relies squarely on that content-neutral justification for its ordinance.

In *Metromedia, Inc. v. San Diego* (1981)*,* we reviewed an ordinance imposing substantial prohibitions on outdoor advertising displays within the city of San Diego in the interest of traffic safety and esthetics. The ordinance generally banned all except those advertising "on-site" activities. The Court concluded that the city's interest in traffic safety and its esthetic interest in preventing "visual clutter" could justify a prohibition of offsite commercial billboards even though similar on-site signs were allowed. Nevertheless, the Court's judgment in *Metromedia . . .* invalidated the San Diego ordinance in its entirety. . . .

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While surprising at first glance, the notion that a regulation of speech may be impermissibly *underinclusive* is firmly grounded in basic First Amendment principles. Thus, an exemption from an otherwise permissible regulation of speech may represent a governmental "attempt to give one side of a debatable public question an advantage in expressing its views to the people." . . .

. . . . The mix of prohibitions and exemptions in the ordinance, Ladue maintains, reflects legitimate differences among the side effects of various kinds of signs. . . .

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Ladue has almost completely foreclosed a venerable means of communication that is both unique and important. It has totally foreclosed that medium to political, religious, or personal messages. Signs 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. . . . They may not afford the same opportunities for conveying complex ideas as do other media, but residential signs have long been an important and distinct medium of expression.

Our prior decisions have voiced particular concern with laws that foreclose an entire medium of expression. Thus, we have held invalid ordinances that completely banned the distribution of pamphlets within the municipality, handbills on the public streets, the door-to-door distribution of literature, and live entertainment. . . . Although prohibitions foreclosing entire media may be completely free of content or viewpoint discrimination, the danger they pose to the freedom of speech is readily apparent—by eliminating a common means of speaking, such measures can suppress too much speech.

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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. Precisely because of their location, such signs provide information about the identity of the "speaker." As an early and eminent student of rhetoric observed, the identity of the speaker is an important component of many attempts to persuade. A sign advocating "Peace in the Gulf" in the front lawn of a retired general or decorated war veteran may provoke a different reaction than the same sign in a 10-yearold child's bedroom window or the same message on a bumper sticker of a passing automobile. An espousal of socialism may carry different implications when displayed on the grounds of a stately mansion than when pasted on a factory wall or an ambulatory sandwich board.

Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute. . . .

A special respect for individual liberty in the home has long been part of our culture and our law, and that principle has special resonance when the government seeks to constrain a person's ability to *speak* there. *Spence v. Washington* (1974). Most Americans would be understandably dismayed, given that tradition, to learn that it was illegal to display from their window an 8- by 11-inch sign expressing their political views. Whereas the government's need to mediate among various competing uses, including expressive ones, for public streets and facilities is constant and unavoidable, its need to regulate temperate speech from the home is surely much less pressing.

Our decision that Ladue's ban on almost all residential signs violates the First Amendment by no means leaves the City powerless to address the ills that may be associated with residential signs. It bears mentioning that individual residents themselves have strong incentives to keep their own property values up and to prevent "visual clutter" in their own yards and neighborhoods—incentives markedly different from those of persons who erect signs on others' land, in others' neighborhoods, or on public property. Residents' self-interest diminishes the danger of the "unlimited" proliferation of residential signs that concerns the City of Ladue. We are confident that more temperate measures could in large part satisfy Ladue's stated regulatory needs without harm to the First Amendment rights of its citizens. As currently framed, however, the ordinance abridges those rights.

*Affirmed*.

JUSTICE O’CONNOR, concurring.

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