

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION**

SAMUEL SHAW,)
)
 Plaintiff,)
)
 v.) No. 4:16-cv-00190
)
 CITY OF BEDFORD, INDIANA,)
)
 Defendant.)

Complaint for Declaratory and Injunctive Relief

Introduction

1. The City of Bedford has enacted a sign ordinance that limits property owners to posting one temporary outdoor sign and one small sign in a window. Any other sign must be tied to a special event, the sale or rental of a property, or an open house, or be mandated by law. The City regulates the content of all signs, and, on the basis of that content, restricts the number of signs that may be posted, the size of the signs, when the signs can be posted, and how long the signs can remain posted. Samuel Shaw is a resident of the City of Bedford and expresses his ideas and opinions by displaying signs on his property. Until recently, Mr. Shaw had numerous signs on his property expressing political statements, slogans, and ideas. Mr. Shaw had to take down his signs because the City of Bedford determined that he was in violation of its sign ordinance and threatened Mr. Shaw with a fine of \$300 per day that the signs remained up. Mr. Shaw wishes to continue to express himself by posting signs that express his views. The Ordinance is unconstitutional under the First and Fourteenth Amendments of the United States Constitution and Mr. Shaw brings this action for declaratory and injunctive relief.

Jurisdiction, Venue, Cause of Action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. §§ 1331 and 1343.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
5. The cause of action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

6. Samuel Shaw is an adult resident of the City of Bedford.
7. The City of Bedford, Indiana, is a municipal corporation and the county seat of Lawrence County.

Facts

City of Bedford Sign Ordinance

8. On September 13, 2016, the City of Bedford adopted City Ordinance 15-2016 (“the Sign Ordinance”), amending the City’s existing sign law, codified in Bedford City Code sections 155.002 (Definitions) and 155.033 (Signs). The Ordinance is hereto attached as Exhibit 1.
9. The Sign Ordinance prohibits all signage in the City unless explicitly authorized by the Ordinance or by permit. Sign Ordinance secs. II(I)(A) & II(IV)(A).
10. Only two categories of signs are authorized without a permit for single-family properties in residential districts: government signs and temporary signs. *See id.* secs. II(II) & II(III)(A). Other than those mandated by the government, no permanent signs are authorized without a permit under the Ordinance.

11. A “government sign” is defined under the ordinance as “a sign that is constructed, placed or maintained by the federal, state or local government or a sign that is required to be constructed, placed or maintained by the federal, state or local government either directly or to enforce a property owner’s right.” *Id.* sec. I.
12. Government signs include traffic control devices, address numbers, signs required by law “to warn of danger or to prohibit access,” and government and military flags. *Id.* sec. II(II)(A).
13. A “temporary” sign is defined as “[a] banner, pennant, poster or advertising display constructed of paper, cloth, canvas, plastic sheet, cardboard, wallboard, plywood or other like materials and that appears to be intended to be displayed for a limited period of time.” *Id.* sec. II(I). The face of a temporary sign may not exceed six square feet. *Id.* sec. II(II)(B)(6).
14. Property owners are limited in the number of temporary signs they may post depending on the content of the sign. Property owners may post one temporary outdoor sign that is unrestricted in its content; an unspecified number of special event signs; one “for sale or rent” sign; and one open house sign. *Id.* sec. II(II)(B). The total number of temporary outdoor signs may not exceed six signs at any given time. *Id.*
15. The Sign Ordinance also places temporal restrictions on the temporary outdoor signs that vary depending on the content of the sign. For example, a special event sign may only be posted thirty days prior to an event, and it must be removed ten days after the event; a “for sale or rent” sign must be removed within fifteen days following the execution of a contract for sale or rent; and an open house sign in a residential district may only be

- posted on the day of the open house, it may not be used for more than two days of the year, and the days must be consecutive. *Id.*
16. Property owners are also limited to posting a single 8.5 by 11 inch temporary sign in one their windows at any given time. *Id.*
 17. If property owners wish to post additional signs they must apply for a permit from the City Planning Department, submit “drawings or sketches of the construction and design of the sign,” and pay a \$50 fee. *Id.* sec. II(III)(A) & City of Bedford Code, Title XV, Ch. 150.09(D)(2)(c)(1).
 18. The Sign Ordinance provides an exemption, under limited circumstances, for certain non-conforming signs in existence before the Ordinance was “advertised.” *See id.* sec. II(IV)(A). Specifically, the Ordinance permits signs that “were in compliance with the applicable regulations at the time they were constructed, erected, affixed, or maintained.” *Id.*
 19. Prior to September 13, 2016, the City’s signs were regulated by Bedford Ordinance 3-2015, hereto attached as Exhibit 2. The old sign ordinance regulated the quantity, size, and other attributes of a property owner’s signs in part based on the content of the sign. For example, a sign in a residential district that was categorized as “ideological” could not be more than 12 square feet, while a church could place a “bulletin board” in a residential district of up to 24 square feet. Bedford City Ordinance 3-2015 sec. II(E)(3), (K)(1)(a). The old sign ordinance also limited the duration of signs deemed “political” to 10 days before and after an election. *Id.* Sec. II(J)(1).
 20. On June 18, 2015, the U.S. Supreme Court issued its opinion in *Reed v. Town of Gilbert*, ___ U.S. ___, 135 S. Ct. 2218 (2015), holding that regulations based on sign categories

violated the First Amendment of the U.S. Constitution because they required government officials to examine the message conveyed by a particular sign to determine how to categorize the sign. *Id.* at 2230. The Court found that such regulations based on the message of a sign were content-based restrictions that were presumptively unconstitutional under the First Amendment, and could only be justified if the government proves that the regulations are narrowly tailored to serve compelling state interests. *Id.* at 2226-27, 2230.

21. Upon information and belief, the City stopped enforcing the old sign ordinance following the Supreme Court's decision in *Reed* because it contained the very kind of content-based regulations that the Court deemed unconstitutional.
22. Nonetheless, the current Sign Ordinance allows signs that were in existence before the new Ordinance was "advertised," but only if they conformed to the unconstitutional provisions of the prior sign ordinance. Section II(IV)(A) states:

Except as provided in Section IV(A)(2), signs lawfully in existence on the date the provisions of this Code were first advertised, which do not conform to the provisions of this Code, but which were in compliance with the applicable regulations at the time they were constructed, erected, affixed or maintained shall be regarded as nonconforming. Provided, however, a sign constructed during the time following the day on which the Supreme Court released its opinion in *Reed v. Town of Gilbert*, ___ U.S. ___, 135 S. Ct. 2218, 192 L. Ed. 2d 236, 2015 U.S. LEXIS 4061, 83 U.S.L.W. 4444 (U.S. 2015) and the date the provisions of this Code were first advertised for adoption shall not be considered a non-conforming sign unless it conformed to the regulations in effect on the day immediately preceding the release of the Supreme Court's decision in *Reed v. Town of Gilbert*, ___ U.S. ___, 135 S. Ct. 2218, 192 L. Ed. 2d 236, 2015 U.S. LEXIS 4061, 83 U.S.L.W. 4444 (U.S. 2015).

...

2. Signs which were nonconforming to the prior Ordinance and which do not conform to this Code shall be removed immediately.

Samuel Shaw

23. Samuel Shaw is a resident of Bedford, and he owns property in a residential district.
24. Mr. Shaw is politically active and expresses his political and ideological views by, among other things, displaying signs on his property. As of September 13, 2016, when the Sign Ordinance was enacted, Mr. Shaw had approximately 12 signs on his property of various heights and sizes.
25. The signs varied in their messages, including ones that read, “I seek truth,” “Over the Hump w/ Trump,” and “Sam Shaw School Board NLCS.”
26. In a letter dated September 23, 2016, however, the City informed Mr. Shaw that he was in violation of the Sign Ordinance and that he was “not exempt by virtue of the non-conformity and modification of this ordinance.” *See* September 23, 2016 Letter from Dan Kirk, Planning and Zoning Director, to Samuel Shaw, hereto attached as Exhibit 3. The letter attached and highlighted the provisions of the ordinance that Mr. Shaw had violated, specifically Section II(II)(B)(1) (limiting property owners to one temporary sign of general use and one window sign) and Sections II(IV)(A)(2) & (3) (mandating removal of signs which were nonconforming to the prior Ordinance and which do not conform to the new Sign Ordinance, and requiring any sign that is “altered, relocated or replaced” to be brought immediately into compliance with the new Sign Ordinance).
27. The City followed up with another letter dated September 28, 2016, which explained further why Mr. Shaw had violated the Ordinance:

Under the New Sign Ordinance that we sent you a copy of, in both of the mailings, under Temporary Signs II, Authorized Signs, Subheading B-1, which is Temporary Signs, you are allowed one 6-square foot sign and one window sign that can be no larger than 8-1/2” x 11”. This was highlighted in the letter we sent you. There are other temporary signs allowed for special events, houses for rent or sale, and open house, and are categorized

in (B)2-6. Unfortunately 2-6 does not apply to your signs. Nor are any of your signs allowed under IV Non-Conformity.

September 28, 2016 Letter from Dan Kirk, Planning and Zoning Director, to Samuel Shaw, hereto attached as Exhibit 4.

28. The letter also informed Mr. Shaw that the “penalty for sign violations is \$300.00 per day” and that all of his signs “are now in violation of the Sign Ordinance.” *Id.*
29. Under threat of significant fines, Mr. Shaw removed his signs.
30. Mr. Shaw’s signs are being targeted by the City of Bedford on the basis of their content. First, Mr. Shaw is barred from posting permanent signs and may only post a sign if it “appears intended to be displayed for a limited period of time.” Sign Ordinance sec. I. Second, Mr. Shaw is limited to only one temporary sign unless it is for a special event, a house for rent or sale, or an open house. Sign Ordinance sec. II(II)(B). But to determine whether a sign fits into any of these categories, the City must examine the content of the sign itself. In fact, the City has already determined based on viewing Mr. Shaw’s signs, that none of his signs fall into these categories of temporary signs. *See* Exhibit 4.
31. Mr. Shaw would like to post permanent signs on his property but cannot because the Sign Ordinance only permits him to post temporary signs.
32. Mr. Shaw would also like to continue to post more than one outdoor sign and more than one sign in his window. Mr. Shaw also objects to the size restrictions on his signs. While Mr. Shaw would like to express his viewpoint year round, limiting Mr. Shaw to one outdoor sign and one sign the size of a sheet paper in his window is particularly oppressive during a political election when Mr. Shaw wishes to voice his support and opposition to a number of candidates and political issues.

33. Even when Mr. Shaw posts what he believes to be a temporary sign, he is subject to arbitrary enforcement because the definition of a temporary sign is impermissibly vague. Specifically, the Sign Ordinance defines a temporary sign in part as one “that appears to be intended to be displayed for a limited period of time.” Sign Ordinance Sec. I. Many of Mr. Shaw’s signs have been up for years, and although he periodically changes the message, the structures themselves might not “appear[] to be intended” to be displayed for a limited period of time. Mr. Shaw is also unsure of what constitutes “a limited period of time.”
34. Through the non-conformity provision of the Sign Ordinance, the City is also attempting to enforce the unconstitutional content-based restrictions that formed the basis of the old sign ordinance.
35. The City has indicated that Mr. Shaw’s signs that existed prior to the new Sign Ordinance are not exempt because they did not conform to the old sign ordinance. Mr. Shaw’s signs did not conform to the old sign ordinance, however, because it regulated the quantity, size, height, and placement of his signs based on their content. But as the City itself recognized, the Supreme Court’s decision in *Reed* made such regulations unconstitutional. Nonetheless, the City is continuing to enforce these unconstitutional provisions against Mr. Shaw through the non-conformity provision of the new Sign Ordinance.
36. At all times the defendant has acted under color of state law.
37. Additionally, Mr. Shaw is being caused irreparable harm for which there is no adequate remedy at law.

Legal claims

38. The City of Bedford Ordinance No. 15-2016 Sections II(II) and II(IV)(A) are content-based regulations that violate the First Amendment to the United States Constitution.
39. The City of Bedford Ordinance No. 15-2016 Sections II(I), II(II), and II(III)(A)'s restrictions on the time, size, and quantity of signs are unreasonable time, place, and manner restrictions that violate the First Amendment to the United States Constitution.
40. The City of Bedford Ordinance No. 15-2016 Section I's definition of a temporary sign is a content-based restriction in violation of the First Amendment to the United States Constitution and is unconstitutionally vague in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

Request for relief

WHEREFORE, Samuel Shaw requests that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. Declare that the challenged provisions of Ordinance 15-2016 violate the United States Constitution.
3. Enter a preliminary injunction, later to be made permanent, enjoining defendant from enforcing the challenged provisions of Ordinance 15-2016.
4. Award plaintiff his costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.

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