

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BETTY ASHLEY,)	
)	
Plaintiff,)	
)	
v.)	No. 1:18-cv-621
)	
RANDOLPH COUNTY, INDIANA,)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introductory Statement

1. Betty Ashley is a resident of the Town of Winchester in Randolph County, Indiana. She is opposed to many policies advanced by the Mayor of Winchester—the largest city in and county seat of Randolph County, Indiana—and since October of 2017 has therefore displayed a sign on her property that reads “SHON BYRUM IS NOT MY MAYOR.” Notwithstanding the fact that this sign does not impede or interfere with traffic in any way, Ms. Ashley has been informed by the Executive Director of the Randolph County Area Planning Commission that it must be removed on or before March 9, 2018. This is because Section 4.11 of the Randolph County Unified Zoning Ordinance prohibits all signs in residential districts in Randolph County except for those that pertain to one of five specified “activities.” Political and issue-oriented signage does not pertain to any of these activities, and is therefore completely prohibited in Randolph County. This prohibition represents a blatant violation of the First Amendment to the United States Constitution, and it must be enjoined.

Jurisdiction, Venue, and Cause of Action

2. The Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
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. This 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. Betty Ashley is an adult resident of Randolph County, Indiana.
7. Randolph County, Indiana, is one of Indiana’s ninety-two counties and is located along the Ohio border in eastern Indiana.

The Sign Ordinance

8. The Randolph County Unified Zoning Ordinance is available for public viewing at http://randolphcounty.us/files/rc/forms/randolph_county_unified_zoning_ordinance_2016.pdf (last visited Feb. 27, 2018).
9. Section 4.11 of the Randolph County Unified Zoning Ordinance (“the Sign Ordinance”) pertains to allowable signs in residential districts. The Sign Ordinance provides as follows:

Signs shall be permitted in residential zoning districts only for activities listed in accordance with the following table [footnotes omitted]:

TABLE 4.11.1 Permitted Residential Signs			
Activity	Front Setback	Area	Height
Home Occupation	5 feet	2 square feet	4 feet
Subdivision or multi-family entrance	5 feet	32 square feet	4 feet
Temporary construction or leasing	15 feet	64 square feet	10 feet

Temporary real estate	15 feet	9 square feet	3 feet
Weekend directional	2 feet	1 square foot	2 feet

10. The Sign Ordinance further provides that “[t]emporary signs shall be removed within twelve months of their erection.”
11. Although the various “activities” for which a sign may be permissible are not further defined by the Sign Ordinance, political and issue-oriented signs do not fall within any of the listed “activities.” They are therefore categorically prohibited by the Sign Ordinance.
12. A true and correct copy of the Sign Ordinance is attached and incorporated herein as Exhibit 1.

Factual Allegations

13. Betty Ashley is an adult resident of Winchester, which is the county seat of Randolph County, Indiana.
14. Ms. Ashley’s property is zoned for residential use.
15. Ms. Ashley is politically active and is opposed to several of the policies of Shon Byrum, who is currently the mayor and who has announced his candidacy for a seat in the Indiana House of Representatives.
16. To express her opposition to Mayor Byrum and his policies, Ms. Ashley constructed a sign to place in her front yard. That sign states, in large black lettering on a white background, “SHON BYRUM IS NOT MY MAYOR.” A true and correct photograph of this sign is attached and incorporated herein as Exhibit 2.
17. The sign is approximately four feet tall and four feet wide. It is set far back from the street and does not impede or interfere with traffic in any way.

18. The sign, in its present form, has been displayed in front of Ms. Ashley's house since October of 2017. Prior to that, Ms. Ashley displayed a series of smaller signs expressing the same message. However, these smaller signs were repeatedly vandalized and/or stolen, and she therefore created the larger version in order to discourage these activities.
19. In early February of 2018, Ms. Ashley received a letter from the Executive Director of the Randolph County Area Planning Commission ("Commission"). That letter explained that the Commission had received a complaint alleging that Ms. Ashley's sign was in violation of the Sign Ordinance. The complaint itself was submitted by one of Ms. Ashley's neighbors and was appended to this letter. This complaint alleged that the sign was in violation of the Sign Ordinance for four reasons:

SIGN IS TACKY
SIGN IS NEGATIVE IMAGE FOR CITY
SIGN IS NEGATIVE FOR OUR ELECTED OFFICIAL
SIGN NEGATIVELY AFFECTS REAL ESTATE VALUE IN THE
NEIGHBORHOOD

The letter then provided Ms. Ashley ten days within which to submit a written response. A true and correct copy of this letter, with attachments, is attached and incorporated herein as Exhibit 3. (The complaint and letter referenced a different address than the address where Ms. Ashley resides and where she displays her sign.)

20. Ms. Ashley submitted a written response to the Commission on February 22, 2018. The following day, the Executive Director of the Commission sent Ms. Ashley another letter, in which he informed Ms. Ashley of the determination that her sign violates the Sign Ordinance. Ms. Ashley was therefore given fourteen days within which to remove her sign. A true and correct copy of this letter is attached and incorporated herein as Exhibit 4.

21. In both Winchester and Randolph County, numerous signs are regularly displayed by residents in their front yards. Examples of signs that have not been removed include signs that support Mayor Byrom, signs advertising real estate for sale or for rent, and signs supporting local sports teams.
22. Ms. Ashley's adult granddaughter inquired of the Commission as to why some signs were allowed to remain but Ms. Ashley's sign was required to be removed. A representative of the Commission explained that the Commission did not require a sign's removal unless and until a complaint was made regarding a specific sign. This represents content-based discriminatory enforcement.
23. Regardless of what the Commission's representative stated, the Sign Ordinance is unconstitutional on its face as by allowing certain signage but not other, such as political and issue-oriented signage, it represents a content-based discrimination against expression.
24. Even were the Sign Ordinance content-neutral, it would still represent an unconstitutional infringement on Ms. Ashley's expressive activity.
25. Ms. Ashley wishes to continue displaying her sign and potentially to display it for longer than a year. She also wishes to display other political and issue-oriented signs in the future. However, as a result of the Sign Ordinance, she may not do so.
26. As a result of the actions or inactions of the defendant, Ms. Ashley is suffering irreparable harm for which there is no adequate remedy at law.
27. The defendant has, at all times, acted or refused to act under color of state law.

Legal Claims

28. The Sign Ordinance, and its enforcement against Betty Ashley, violates the First Amendment to the United States Constitution.

Request for Relief

WHEREFORE, the plaintiff requests that this Court do the following:

1. Accept jurisdiction of this cause and set it for hearing.
2. Declare that the defendant has violated the rights of the plaintiff for the reason specified above.
3. Issue a preliminary injunction, later to be made permanent, prohibiting enforcement of the Sign Ordinance and requiring the defendant to allow the plaintiff to display her sign.
4. Award the plaintiff her costs and attorneys' fees pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.

/s/ Gavin M. Rose

Gavin M. Rose

/s/ Jan P. Mensz

Jan P. Mensz

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