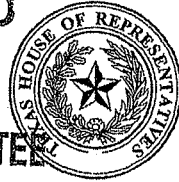


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Jodie Laubenberg
Chair

FEB 15 2018



OPINION COMMITTEE

COMMITTEE ON ELECTIONS
Texas House of Representatives

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February 13, 2018

FILE # ML-48316-18
I.D. # 48316
RQ-0212-KP

The Honorable Ken Paxton
Attorney General of Texas
209 W. 14th Street
Austin, TX 78701

Dear General Paxton,

On October 17, the City Council of McKinney enacted Ordinance No. 2017 10-095 regarding polling places and electioneering. It was immediately effective on October 17, 2017. A full copy of the ordinance can be found at <https://www.mckinneytexas.org/DocumentCenter/View/14107>.

Upon review, I developed a particular concern with parts of Section 38-73 regarding "Prohibited Area, Activities, and Conduct." Specifically, the parts are as follows:

Section 38-73 Prohibited Area, Activities, and Conduct.

...
h) The following regulations, adopted for the health, safety and welfare of the City's residents, shall apply to any person who engages in electioneering outside of the Prohibited Area during any voting period:

...
6) It shall be unlawful to overload the public's capacity to receive information or to increase the probability of traffic congestion and accidents by distracting attention or obstructing vision due to the posting of political signs.
...

8) It shall be unlawful to place or post political signs in public easements or rights-of-way.

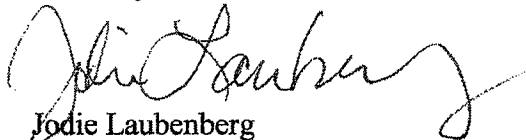
These new provisions create troubling restrictions that go outside the boundaries of the polling places themselves. The right to exercise public or political speech alongside roadways has been historically upheld by courts. *See, e.g., World Wide St. Preachers Fellowship v. Town of Columbia*, 245 Fed. Appx. 336, 347 (5th Cir. 2007).

Moreover, this ordinance is not content neutral as it addresses “political” signs, and no others. But the Supreme Court of the United States is clear that “(c)ontent-based laws - those that target speech based on its communicative content - are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert, Ariz*, 135 S. CT. 2218, 2226 (2015). The Ordinance provides no justification that an absolute prohibition or ban on “political signs” is narrowly tailored to serve a compelling governmental interest and I believe that prohibiting *all* “political signs” in *all* “public easements or rights-of-way” is not narrowly tailored. Moreover, it is hard to believe that McKinney possesses a compelling governmental interest in sanitizing its city from the political speech that is so central to the history of our country, our form of government and our way of life.

Given the circumstances I’ve described, I am respectfully requesting that you provide a formal opinion to address the constitutionality of the provisions of the Ordinance addressed herein.

I appreciate your assistance in this matter. Please contact me if I can answer any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jodie Laubenberg".

Jodie Laubenberg
Chair, House Committee on Elections