V. Brett Melvin
1420 Key Drive

vs

City of Alexandria

Board of Zoning Appeals
BZA2020-00001
Sign Violation

June 8, 2020

My name is Brett Melvin and I have lived within 100 ft of the Quaker Lane/Seminary Rd intersection since 2012. This gives me a unique perspective of the broader ramifications of the “traffic reduction” done on Seminary Rd.

Let me share that this traffic change has created a drastic, dangerous and unnecessary challenge for our families on Key Dr. Going left onto Quaker Lane from Key Dr. is now almost impossible, even for me when I have been driving for over 45 years. Consistently we have seen residents’ resort to taking a right turn and then a U-turn on Quaker Lane just to go left. When you have four 16-year old’s just learning to drive on the street, it is even more of a nail biter every time they get in their car and leave the house.

On November 29, 2019 I received a sign violation citation for my sign protesting the “traffic reduction”. I immediately reached out to Mr. Richard Leonards, the officer who issued the citation questioning why I had been singled out when 2 signs of similar size directly across the street ~~**(See Exhibit Sign Picture 6)**~~ that had been up for several months were still there. **Both Leonards and his supervisor, Mr. Tony LaColla wrote back and shared with me that the regulation is selectively enforced based on someone complaining**. ~~**(See Exhibit 2)**~~ clearly indicating that my protest was a victim of selective enforcement. Previous signage on my fence had never been cited for a violation.

It is clear that my sign addressing the “traffic reduction issue” has touched a sensitive issue with the Mayor and City Council. On the morning of the afternoon I received the citation, the Mayor had held a meeting on the “traffic reduction issue” at the corner of Ft. Williams Pkwy and Seminary. Roughly 10 minutes after the conclusion of that meeting, at 8:51 am, an anonymous person filed the complaint concerning my sign through Call Click Connect. That very afternoon my sign violation citation arrived. The complaint talks about 2 signs…the 6 x 8 banner sign on the fence and a smaller yet typical yard sign. ~~**(See Exhibit Sign Picture 5)**~~

How can the city single out enforcement against one property owner while allowing others to do the same thing unhindered? While the enforcement claims not to be content based, it is content based by its very nature because enforcement only happens if someone complains. In this case, it is an anonymous complaint. That makes an enforcement action not subject

to an objective standard, but rather to the whim of those who might disagree with a message and file a complaint. An ordinance which arguably interferes with protected speech would have to bear a heavy burden of showing nondiscrimination. This burden cannot be met with selective enforcement predicated solely on zoning authorities receiving a complaint. The city has to ban all signs or ban none; it cannot simply choose to single out some for censorship and not others.

As the attachments show, there are numerous other signs around the city that have been up for months and sometimes over a year that flagrantly violate the city's sign regulations. ~~**(See Exhibit Sign Picture 1, 2, 3, 4, 7)**~~

For those who may charge that I am simply a part of some bigger consortium, please know that other than the Next Door Neighbor app which I use to stay on top of what is happening in our town, I am not a user of social media and do not even have social media accounts such as Facebook or Twitter.

The BZA has received numerous unsolicited letters on this issue where I have been cc'd. One of them highlights the inconsistencies of the city regulation and stresses that the regulation is not only poorly written & sloppy, but also violates a State of VA legal statute that protects Political Speech and also clearly states that it **overrules any local ordinance**. ~~You will find that in **(Exhibit 1 and Exhibit 4 - Letters 1 & 2).**~~

Another shares that according to Section 9-201~~(A)(1)(a)(ii)(1)(a)~~ of the City of Alexandria's own Zoning Ordinance it cannot be applicable to my sign, since the very definition of a "sign" adopted by the City Council does not encompass the type of political message contained on my banner.

Another shared a unanimous 1994 Supreme Court case that parallels this case in an uncanny way. That case, **(City of Ladue v. Gilleo**) clearly indicates the city has violated my 1st Amendment rights. ~~You will find that in **(Exhibit 4, Letter 4)**~~

We either have a government of laws that applies equally to all persons, or we have a government of individuals who can selectively enforce the laws based on their own personal political ideology. The second is totally contrary to the founding principles of our country.

In closing, I am not a lawyer and I did not sleep in a Holiday Inn Express last night, but the foundation of this argument is that Alexandria has selectively enforced a regulation in an effort to eliminate my 1st Amendment right to protest. If this Zoning Board is thinking of ruling against what many people believe is a violation of our 1st Amendment rights thought selective enforcement, then I strongly urge you to first speak with the Commonwealth Attorney for their opinion. Let me assure you, it will save Alexandria a severe headache moving forward.

One must ask, “Is Alexandria still a city where we have freedom of speech, or has it become a city where we have freedom of speech only as long as the politicians currently in power deem it appropriate?

EXHIBIT 1 – Virginia Statute

State law states:

§ 15.2-109. Regulations on political campaign signs.

No locality shall have the authority to prohibit the display of political campaign signs on private property if the signs are in compliance with zoning and right-of-way restrictions applicable to temporary nonpolitical signs, if the signs have been posted with the permission of the owner. The provisions of this section shall supersede the provisions of any local ordinance or regulation in conflict with this section. This section shall have no effect upon the regulations of the Virginia Department of Transportation.

2004, c. 388.

EXHIBIT 2 – City Statement on Signs

From: Tony LaColla <Anthony.LaColla@alexandriava.gov>
Date: December 4, 2019 at 9:37:15 AM EST
Subject: FW: [EXTERNAL]Warning Notice Received - 1420 Key Dr.

Mr. Melvin,

Thank you for your message which was forwarded to me by Zoning Inspector Richards. **The City of Alexandria only responds to complaints from citizens and does not proactively enforce issue warnings or citations.** Now that you have logged a complaint, Inspector Richards will investigate the signs at Episcopal Seminar and issue a warning and/or citation if need be.

EXHIBIT 3 - Complaint

On Dec 4, 2019, at 11:16 AM, Tony LaColla <Anthony.LaColla@alexandriava.gov> wrote:

Mr. Melvin,

We cannot share the name of the complainant however I can share the request description.

Request Description: The property at 1420 Key Dr. appears, at a minimum, to be in violation of City Ordinances (9-104 - Prohibited signs, marquees and awnings...) for two different signs with each noted by sections, F: Banners and H: Mobile and Portable signs. This functionality only allows one picture for upload, but there are two signs. The other sign is a 6x8 foot banner attached to the fence of the property's Seminary Rd. border. ***Would you investigate and handle expeditiously.***

EXHIBIT 4 – Unsolicited letters of support

Letter 1
From Jol Silversmith of 323 East Oak St. Alexandria email 3/9/20 to Mary Christesen

March 9, 2020

Mary Christesen, Zoning Manager
City of Alexandria, Planning and Zoning Department
301 King Street
Alexandria, VA 22314

RE: 1420 Key Drive

I understand that docket item #4 for the Board of Zoning Appeals meeting on March 16, 2020 is a sign violation warning notice, appealed by Vinson Brett Melvin of 1420 Key Drive.

I have no knowledge of the alleged violation and circumstances other than the information provided in the docketed staff memo. But I can say that, based on the information provided by staff alone, it is clear that no violation of the ordinance has occurred - and thus despite the staff's insistence that the Board must defer to its judgment, the appellant should prevail, because the staff's judgement is in error.

The memo invokes Section 9-201(A)(1)(a)(ii)(1)(a) of the Zoning Ordinance, which in a residential area allows: "Signage with a total area of no more than ten square feet, however no single sign is permitted to be larger than four square feet." But staff fails to establish that a "sign," as defined in Section 9-102(KK) of the Zoning Ordinance, is actually at issue. Staff apparently assumes, without discussion, that the object in Attachment 2 is a "sign" as a matter of law.

For the record, a "sign" has been defined by the City to be: "Any object, device, display, or structure, or part thereof, visible from a public place, a public right-of-way, any parking area or right-of-way open to use by the general public, or any navigable body of water which is designed and used to attract attention to an institution, organization, business, product, service, event, or location by any means involving words, letters, figures, designs, symbols, fixtures, logos, colors, illumination, or projected images."

The text of the ordinance as cited above makes clear that what is at issue is not a "sign". It expresses opposition to a political decision and its real-world consequences. In so doing, it does not "attract attention to an institution, organization, business, product, service, event, or location." None of these terms are defined in the Zoning Ordinance, but it would be a gross abuse to assert that they encompass the message here conveyed.

Indeed, any argument that the message here conveyed is a "sign" within the scope of the Zoning Ordinance would have farcical results. For example, holiday decor often contain messages such as "Merry Christmas" or "Happy Halloween." But if any object with words on it is a "sign," staff is essentially claiming the right to ban any holiday decor with words that is larger than four square feet in area (i.e., if the message here conveyed is asserted to

attract attention to an institution, etc., so must any decor endorsing a holiday). Needless to say, such a position would be untenable.

Bottom line: Neither staff nor the Board may take action based on what an ordinance could have or should have said; they must act based on the text actual adopted by Council. And the ordinance here at issue is simply not applicable to the situation at hand.

Finally, I also note that the staff memo is also generally sloppy - for example, it asserts that the City's Zoning Ordinance was amended on June 18, 2006, to comply with the Supreme Court's ruling in Reed v. Town of Gilbert. But Reed was decided in 2015. The City's zoning ordinance was actually amended in 2016. Respectfully, if City's staff demands deference from the Board, they should at a minimum have the courtesy to provide a memo that has been subjected to basic proofreading.

Jol Silversmith
323 East Oak Street
Alexandria, VA 22301
(703) 371-5616
jol@thirdamendment.com

CC:
Laurence Altenburg, Chair
Mark Yoo, Vice Chair
Brett Melvin

Letter 2
From Jol Silversmith of 323 East Oak St. Alexandria email 6/1/20 to Kaliah Lewis

June 1, 2020

Kaliah Lewis, Senior Planning Technician
City of Alexandria, Planning and Zoning Department
301 King Street
Alexandria, VA 22314

RE: 1420 Key Drive

Dear Ms. Lewis:

Supplementing my message of March 9, and in anticipation of this matter (BZA #2020-00001) now being considered at the June 8 meeting of the Board, I submit the following comments:

On April 3, 2020, Mr. Harold Washington of the City informed me by email that the City was not required to release the name of the individual who filed the complaint which triggered this matter, based on an exemption to the Virginia Freedom of Information Act (Va. Code § 2.2-3705.3(8)). I concur that based on that FOIA exemption, the City is

not required to disclose the identity of the individual who filed the complaint. But the cited statute nevertheless allows the City to make that disclosure. Given that the complaint - and the City's actions - have been alleged to be politically motivated, I urge the Board to require City staff to identify the complainant, so that the motivation issue can be definitively resolved.

Likewise, the Board should require City staff to explain how Section 9-201(A)(1)(a)(ii)(1)(a) of the Zoning Ordinance is applicable, since the definition of a "sign" adopted by the City Council does not encompass the type of message at issue. Intriguingly, although City staff has provided a revised memo which corrects basic errors in their prior submission (such as the incorrect/impossible date flagged in my March 8 message), the revised memo does not address this issue. That omission seems to be a concession by City staff that, despite having had nearly three months to formulate an explanation of how the ordinance actually is applicable, they have not and cannot. Accordingly, Mr. Melvin's appeal can and should be granted on procedural grounds.

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CC:
Laurence Altenburg, Chair
Mark Yoo, Vice Chair
Christina Brown, Deputy City Attorney
Tony LaColla, Division Chief, Planning and Zoning
Mary Christesen, Zoning Manager
Brett Melvin

Letter 3
From Fran Vogel of 41 Early St. Alexandria email 3/16/20 to Melissa Dunn

Hello Ms. Dunn:

I understand that docket item #4 for the Board of Zoning Appeals meeting on March 16, 2020 is a sign violation warning notice, appealed by Vinson Brett Melvin of 1420 Key Drive.

I am writing in support of the appeal and sign posted at 1420 Key Drive, Alexandria, VA. The sign highlights a significant percentage of community members' collective opposition to the changes recently made to Seminary Road with the rode diet this past fall.

As a citizen and resident, I find it deeply disturbing that the City is attempting to muzzle our First Amendment right to Freedom of Speech. It is becoming clear that City of Alexandria prefers that citizens not comment nor express their views, and this is untenable. We have every right to state our views and let our leaders know when we do or do not agree with policies and actions.

I respectfully request that Docket Item #4, BZA #2020-00001 referencing the Appeal of a zoning violation warning for a sign posted on the resident's private property at 1420 Key Drive in Alexandria Public be upheld in favor of Mr. Melvin, the Appellant, and this violation warning dismissed.

Letter 4
From James Snow of 1417 Key Dr. Alexandria email 6/2/20 to Alexandria Zoning Appeals Board

To Members of the Zoning Appeals Board:

I am unable to attend this hearing in person, but I ask that these comments be considered in the adjudication of the appeal of Mr. Brett Melvin pertaining to a sign on his property protesting the City Council's decision to realign traffic on Seminary Road.

Mr. Melvin's sign reflects the objections of many in this neighborhood about the decision of the City Council pertaining to traffic on Seminary Road. Many feel that the City ran roughshod over neighborhood objections to the traffic realignment, particularly with respect to the views of the Seminary Hills Association. Those of us who live here now have to deal with the increased traffic and congestion resulting from this decision.

Mr. Melvin's sign is a Constitutionally protected objection to an action of the City Government. Therefore, the City cannot preclude his free speech or sanction his expression of it.

Issues of signs, zoning and the first amendment have been dealt with by the Courts. I call to your attention the appended decision of the United States Supreme Court in City of Ladue v. Gilleo, 512 U.S. 43 (1994) and, in particular, the following statement about political speech:

> Here, in contrast, 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. Often placed on lawns or in windows, residential signs play animportant part in political campaigns, during which they are displayed to signal the resident's support for particular candidates, parties, or causes. 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. 512 US 43, 55 (1994)

It would appear that Mr. Melvin's sign falls squarely within the ambit of protected speech. Therefore, his sign should remain and sanctions lifted.

Respectfully submitted,

James B. Snow

1417 Key Drive
Alexandria, Virginia 22302

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Wagner v. Federal Election Commission, D.C.Cir., July 7, 2015

114 S.Ct. 2038
Supreme Court of the United States

CITY OF LADUE, et al., Petitioners
v.
Margaret P. GILLEO.

No. 92–1856.
|
Argued Feb. 23, 1994.
|
Decided June 13, 1994.

Synopsis
Resident sued city for permanent injunction to prohibit city from enforcing ordinance that banned all residential signs but those falling within one of ten exemptions. The United States District Court for the Eastern District of Missouri, 774 F.Supp. 1564, granted resident's motion for summary judgment. Following denial of city's motion to alter or amend judgment, 791 F.Supp. 240, resident filed application for prevailing party attorney fees and expenses. The District Court, 791 F.Supp. 238, granted motion. City appealed. The Court of Appeals, 986 F.2d 1180, affirmed as modified. Certiorari was granted. The Supreme Court, Justice Stevens, held that ordinance violated resident's **free speech** rights.

Affirmed.

Justice O'Connor filed concurring opinion.

West Headnotes (6)

[1]	**Constitutional Law**Signs
	There are two analytically distinct grounds for challenging constitutionality of municipal ordinance regulating display of signs: one is that measure in effect restricts too little speech because its exemptions discriminate on basis of signs' messages; alternatively, such provisions

	are subject to attack on ground that they simply prohibit too much protected speech. U.S.C.A. Const.Amend. 1. 117 Cases that cite this headnote

[2]	**Constitutional Law**Content-Based Regulations or Restrictions
	Regulation of speech may be impermissibly underinclusive: thus, exemption from otherwise permissible regulation of speech may represent governmental attempt to give one side of debatable public question advantage in expressing its views to people; alternatively, through combined operation of general speech restriction and its exemptions, government might seek to select permissible subjects for public debate and thereby to control search for political truth. U.S.C.A. Const.Amend. 1. 141 Cases that cite this headnote

[3]	**Constitutional Law**Residential Signs **Municipal Corporations**Billboards, Signs, and Other Structures or Devices for Advertising Purposes
	City ordinance banning all residential signs but those falling within one of ten exemptions violated homeowner's right to **free speech**; although city had concededly valid interest in minimizing visible clutter, it had totally foreclosed venerable means of communication to political, religious, or personal messages. U.S.C.A. Const.Amend. 1. 106 Cases that cite this headnote

[4]	**Constitutional Law**Press in General
	Although prohibitions foreclosing entire media may be completely free of content or viewpoint discrimination, danger they pose to freedom of speech is readily apparent; by eliminating common means of speaking, such measures can suppress too much speech. U.S.C.A. Const.Amend. 1. 29 Cases that cite this headnote

[5]	**Constitutional Law**Residential Signs **Municipal Corporations**Billboards, Signs, and Other Structures or Devices for Advertising Purposes
	City ordinance banning all residential signs but those falling within one of ten exemptions could not be justified as "time, place, or manner restriction," as alternatives such as handbills or newspaper advertisements were inadequate substitutes for important medium that city had closed off; displaying sign from ones' own residence carries message quite distinct from displaying same sign someplace else, residential signs are unusually cheap and convenient form of communication, and audience intended to be reached by residential sign, i.e., neighbors, could not be reached nearly as well by other means. U.S.C.A. Const.Amend. 1. 155 Cases that cite this headnote

[6]	**Constitutional Law**Private Property
	Special respect for individual liberty in home has long been part of our culture and our law; that principle has special resonance when government seeks to constrain person's ability to speak there. U.S.C.A. Const.Amend. 1. 27 Cases that cite this headnote

****2039** *Syllabus*[*]

An ordinance of petitioner City of Ladue bans all residential signs but those falling within 1 of 10 exemptions, for the principal purpose of minimizing the visual clutter associated with such signs. Respondent Gilleo filed this action, alleging that the ordinance violated her right to **free speech** by prohibiting her from displaying a sign stating, "For Peace in the Gulf," from her home. The District Court found the ordinance unconstitutional, and the Court of Appeals affirmed, holding that the ordinance was a "content based" regulation, and that Ladue's substantial interests in enacting it were not sufficiently compelling to support such a restriction.

Held: The ordinance violates a Ladue resident's right to **free speech**. Pp. 2041–2047.

(a) While signs pose distinctive problems and thus are subject to municipalities' police powers, measures regulating them inevitably affect communication itself. Such a regulation may be challenged on the ground that it restricts too little speech because its exemptions discriminate on the basis of signs' messages, or on the ground that it prohibits too much protected speech. For purposes of this case, the validity of Ladue's submission that its ordinance's various exemptions are free of impermissible content or viewpoint discrimination is assumed. Pp. 2041–2044.

(b) Although Ladue has a concededly valid interest in minimizing visual clutter, it has almost completely foreclosed an important and distinct medium of expression to political, religious, or personal messages. Prohibitions foreclosing entire media may be completely free of content or viewpoint discrimination, but such measures can suppress too much speech by eliminating a common means of speaking. Pp. 2044–2045.

(c) Ladue's attempt to justify the ordinance as a "time, place, or manner" restriction fails because alternatives such as handbills and newspaper advertisements are inadequate substitutes for the important medium that Ladue has closed off. Displaying a sign from one's own residence carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means, for it provides information about the speaker's identity, an important component of many attempts to persuade. Residential signs are also ***44** an unusually cheap and convenient form of communication. Furthermore, the audience intended to be reached by a residential sign—neighbors— ****2040** could not be reached nearly as well by other means. P. 2046.

(d) A special respect for individual liberty in the home has long been part of this Nation's culture and law and has a special resonance when the government seeks to constrain a person's ability to speak there. The decision reached here does not leave Ladue powerless to address the ills that may be associated with residential signs. In addition, residents' self-interest in maintaining their own property values and preventing "visual clutter" in their yards and neighborhoods diminishes the danger of an "unlimited" proliferation of signs. P. 2047.

986 F.2d 1180 (CA8 1993), affirmed.

STEVENS, J., delivered the opinion for a unanimous Court. O'CONNOR, J., filed a concurring opinion, *post,* p. 2047.

Attorneys and Law Firms

Jordan B. Cherrick, for petitioners.

Gerald P. Greiman, for respondent.

Paul Bender, for the United States as amicus curiae, by special leave of the Court.

Opinion

***45** Justice STEVENS delivered the opinion of the Court.

An ordinance of the City of Ladue prohibits homeowners from displaying any signs on their property except "residence identification" signs, "for sale" signs, and signs warning of safety hazards. The ordinance permits commercial establishments, churches, and nonprofit organizations to erect certain signs that are not allowed at residences. The question presented is whether the ordinance violates a Ladue resident's right to **free speech**.[1]

I

Respondent Margaret P. Gilleo owns one of the 57 single-family homes in the Willow Hill subdivision of Ladue.[2] On December 8, 1990, she placed on her front lawn a 24– by 36–inch sign printed with the words, "Say No to War in the Persian Gulf, Call Congress Now." After that sign disappeared, Gilleo put up another but it was knocked to the ground. When Gilleo reported these incidents to the police, they advised her that such signs were prohibited in Ladue. The city council denied her petition for a variance.[3] Gilleo then filed this action under 42 U.S.C. § 1983 against the City, the mayor, and members of the city council, alleging that ***46** Ladue's sign ordinance violated her First Amendment right of **free speech**.

The District Court issued a preliminary injunction against enforcement of the ordinance. 774 F.Supp. 1559 (E.D.Mo.1991). Gilleo then placed an 8.5– by 11–inch sign in the second story window of her home stating, "For Peace in the Gulf." The Ladue City Council responded to the injunction by repealing its ordinance and enacting a replacement.[4] Like its predecessor, the new ordinance contains a general prohibition of "signs" and defines that term broadly.[5] The ****2041** ordinance prohibits all signs except those that fall within 1 of 10 exemptions. Thus, "residential identification signs" no larger than one square foot are allowed, as are signs advertising "that the property is for sale, lease or exchange" and identifying the owner or agent. § 35–10, App. to Pet. for Cert. 45a. Also exempted are signs "for churches, religious institutions, and schools," § 35–5, *id.,* at 41a, "[c]ommercial signs in commercially **zoned** or industrial **zoned** districts," § 35–4, *ibid.,* and on-site signs advertising "gasoline filling ***47** stations,"[6] § 35–6, *id.,* at 42a. Unlike its predecessor, the new ordinance contains a lengthy "Declaration of Findings, Policies, Interests, and Purposes," part of which recites that the

"proliferation of an unlimited number of signs in private, residential, commercial, industrial, and public areas of the City of Ladue would create ugliness, visual blight and clutter, tarnish the natural beauty of the landscape as well as the residential and commercial architecture, impair property values, substantially impinge upon the privacy and special ambience of the community, and may cause safety and traffic hazards to motorists, pedestrians, and children." *Id.,* at 36a.

Gilleo amended her complaint to challenge the new ordinance, which explicitly prohibits window signs like hers. The District Court held the ordinance unconstitutional, 774 F.Supp. 1559 (ED Mo.1991), and the Court of Appeals affirmed, 986 F.2d 1180 (CA8 1993). Relying on the plurality opinion in *Metromedia, Inc. v. San Diego,* 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981), the Court of Appeals held the ordinance invalid as a "content based" regulation because the City treated commercial speech more favorably than noncommercial speech and favored some kinds of noncommercial speech over others. ***48** 986 F.2d, at 1182. Acknowledging that "Ladue's interests in enacting its ordinance are substantial," the Court of Appeals nevertheless concluded that those interests were "not sufficiently 'compelling' to support a content-based restriction." *Id.,* at 1183–1184 (citing *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.,* 502 U.S. 105, 118, 112 S.Ct. 501, 509, 116 L.Ed.2d 476 (1991)).

We granted the City of Ladue's petition for certiorari, 510 U.S. 809, 114 S.Ct. 55, 126 L.Ed.2d 24 (1993), and now affirm.

II

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. See, *e.g.,* ****2042** *Ward v. Rock Against Racism,* 491 U.S. 781, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989); *Kovacs v. Cooper,* 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (1949). However, because regulation of a medium inevitably affects communication itself, it is not surprising that we have had occasion to review the constitutionality of municipal ordinances prohibiting the display of certain outdoor signs.

In *Linmark Associates, Inc. v. Willingboro,* 431 U.S. 85, 97 S.Ct. 1614, 52 L.Ed.2d 155 (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." *Id.,* at 95, 97 S.Ct., at 1619. In some respects *Linmark* is the mirror image of this case. For instead of prohibiting "For Sale" signs without banning any other ***49** 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, *id.,* at 93–94, 97 S.Ct., at 1618–1619, here Ladue relies squarely on that content-neutral justification for its ordinance.

In *Metromedia,* 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.[7] The Court concluded that the city's interest in traffic safety and its esthetic interest in preventing "visual clutter" could justify a prohibition of off-site commercial billboards even though similar on-site signs were allowed. 453 U.S., at 511–512, 101 S.Ct., at 2894–2895.[8] Nevertheless, the Court's judgment in *Metromedia,* supported by two different lines of reasoning, invalidated the San Diego ordinance in its entirety. According to Justice White's plurality opinion, the ordinance impermissibly discriminated on the basis of content by permitting on-site commercial speech while broadly prohibiting noncommercial messages. *Id.,* at 514–515, 101 S.Ct., at 2896–2897. On ***50** the other hand, Justice Brennan, joined by Justice BLACKMUN, concluded that "the *practical* effect of the San Diego ordinance [was] to eliminate the billboard as an effective medium of communication" for noncommercial messages, and that the city had failed to make the strong showing needed to justify such "content-neutral prohibitions of particular media of communication." *Id.,* at 525–527, 101 S.Ct., at 2902. The three dissenters also viewed San Diego's ordinance as tantamount to a blanket prohibition of billboards, but would have upheld it because they did not perceive "even a hint of bias or censorship in the city's actions" nor "any reason to believe that the overall communications market in San Diego is inadequate." *Id.,* at 552–553, 101 S.Ct., at 2915–2916 (STEVENS, J., dissenting in part). See also ****2043** *id.,* at 563, 566, 101 S.Ct., at 2921, 2922–2923 (Burger, C.J., dissenting); *id.,* at 569–570, 101 S.Ct., at 2924–2925 (REHNQUIST, J., dissenting).

In *Members of City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984), we upheld a Los Angeles ordinance that prohibited the posting of signs on public property. Noting the conclusion shared by seven Justices in *Metromedia* that San Diego's "interest in avoiding visual clutter" was sufficient to justify a prohibition of commercial billboards, 466 U.S., at 806–807, 104 S.Ct., at 2130 in *Vincent* we upheld the Los Angeles ordinance, which was justified on the same grounds. We rejected the argument that the validity of the city's esthetic interest had been compromised by failing to extend the ban to private property, reasoning that the "private citizen's interest in controlling the use of his own property justifies the disparate treatment." *Id.,* at 811, 104 S.Ct., at 2132. We also rejected as "misplaced" respondents' reliance on public forum principles, for they had "fail[ed] to demonstrate the existence of a traditional right of access respecting such items as utility poles ... comparable to that recognized for public streets and parks." *Id.,* at 814, 104 S.Ct., at 2133.

[1] These decisions identify two analytically distinct grounds for challenging the constitutionality of a municipal ordinance regulating the display of signs. One is that the measure in ***51** effect restricts too little speech because its exemptions discriminate on the basis of the signs' messages. See *Metromedia,* 453 U.S., at 512–517, 101 S.Ct., at 2895–2897 (opinion of White, J.). Alternatively, such provisions are subject to attack on the ground that they simply prohibit too much protected speech. See *id.,* at 525–534, 101 S.Ct., at 2901–2906 (Brennan, J., concurring in judgment). The City of Ladue contends, first, that the Court of Appeals' reliance on the former rationale was misplaced because the City's regulatory purposes are content neutral, and, second, that those purposes justify the comprehensiveness of the sign prohibition. A comment on the former contention will help explain why we ultimately base our decision on a rejection of the latter.

III

[2] While surprising at first glance, the notion that a regulation of speech may be impermissibly *underinclusive* is firmly grounded in basic First Amendment principles.[9] 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." *First Nat. Bank of Boston v. Bellotti,* 435 U.S. 765, 785–786, 98 S.Ct. 1407, 1420–1421, 55 L.Ed.2d 707 (1978). Alternatively, through the combined operation of a general speech restriction and its exemptions, the government might seek to select the "permissible subjects for public debate" and thereby to "control ... the search for political truth." *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N.Y.,* 447 U.S. 530, 538, 100 S.Ct. 2326, 2333, 65 L.Ed.2d 319 (1980).[10]

***52** The City argues that its sign ordinance implicates neither of these concerns, and that the Court of Appeals therefore erred in demanding a "compelling" justification for the exemptions. The mix of prohibitions and exemptions in the ordinance, Ladue maintains, reflects legitimate differences among ****2044** the side effects of various kinds of signs. These differences are only adventitiously connected with content, and supply a sufficient justification, unrelated to the City's approval or disapproval of specific messages, for carving out the specified categories from the general ban. See Brief for Petitioners 18–23. Thus, according to the Declaration of Findings, Policies, Interests, and Purposes supporting the ordinance, the permitted signs, unlike the prohibited signs, are unlikely to contribute to the dangers of "unlimited proliferation" associated with categories of signs that are not inherently limited in number. App. to Pet. for Cert. 37a. Because only a few residents will need to display "for sale" or "for rent" signs at any given time, permitting one such sign per marketed house does not threaten visual clutter. *Ibid.* Because the City has only a few businesses, churches, and schools, the same rationale explains the exemption for on-site commercial and organizational signs. *Ibid.* Moreover, some of the exempted categories (*e.g.,* danger signs) respond to unique public needs to permit certain kinds of speech. *Ibid.* Even if we assume the validity of these arguments, the exemptions in Ladue's ordinance nevertheless shed light on the separate question whether the ordinance prohibits too much speech.

Exemptions from an otherwise legitimate regulation of a medium of speech may be noteworthy for a reason quite apart from the risks of viewpoint and content discrimination: They may diminish the credibility of the government's rationale for restricting speech in the first place. See, *e.g.,* ***53** *Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 424–426, 113 S.Ct. 1505, 1514–1515, 123 L.Ed.2d 99 (1993). In this case, at the very least, the exemptions from Ladue's ordinance demonstrate that Ladue has concluded that the interest in allowing certain messages to be conveyed by means of residential signs outweighs the City's esthetic interest in eliminating outdoor signs. Ladue has not imposed a flat ban on signs because it has determined that at least some of them are too vital to be banned.

Under the Court of Appeals' content discrimination rationale, the City might theoretically remove the defects in its ordinance by simply repealing all of the exemptions. If, however, the ordinance is also vulnerable because it prohibits too much speech, that solution would not save it. Moreover, if the prohibitions in Ladue's ordinance are impermissible, resting our decision on its exemptions would afford scant relief for respondent Gilleo. She is primarily concerned not with the scope of the exemptions available in other locations, such as commercial areas and on church property; she asserts a constitutional right to display an antiwar sign at her own home. Therefore, we first ask whether Ladue may properly *prohibit* Gilleo from displaying her sign, and then, only if necessary, consider the separate question whether it was improper for the City simultaneously to *permit* certain other signs. In examining the propriety of Ladue's near-total prohibition of residential signs, we will assume, *arguendo,* the validity of the City's submission that the various exemptions are free of impermissible content or viewpoint discrimination.[11]

***54** IV

[3] In *Linmark* we held that the city's interest in maintaining a stable, racially integrated neighborhood was not sufficient to support a prohibition of residential "For Sale" signs. We recognized that even such a narrow sign prohibition would have a deleterious effect on residents' ability to convey important information because alternatives were "far from satisfactory." 431 U.S., at 93, 97 S.Ct., at 1618. Ladue's sign ordinance is supported principally by the City's interest in ****2045** minimizing the visual clutter associated with signs, an interest that is concededly valid but certainly no more compelling than the interests at stake in *Linmark.* Moreover, whereas the ordinance in *Linmark* applied only to a form of commercial speech, Ladue's ordinance covers even such absolutely pivotal speech as a sign protesting an imminent governmental decision to go to war.

The impact on free communication of Ladue's broad sign prohibition, moreover, is manifestly greater than in *Linmark.* Gilleo and other residents of Ladue are forbidden to display virtually any "sign" on their property. The ordinance defines that term sweepingly. A prohibition is not always invalid merely because it applies to a sizeable category of speech; the sign ban we upheld in *Vincent,* for example, was quite broad. But in *Vincent* we specifically noted that the category of speech in question—signs placed on public property—was not a "uniquely valuable or important mode of communication," and that there was no evidence that "appellees' ability to communicate effectively is threatened by ever-increasing restrictions on expression." 466 U.S., at 812, 104 S.Ct., at 2133.

Here, in contrast, 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. ***55** Often placed on lawns or in windows, residential signs play an important part in political campaigns, during which they are displayed to signal the resident's support for particular candidates, parties, or causes.[12] 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.

[4] 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, *Lovell v. City of Griffin,* 303 U.S. 444, 451–452, 58 S.Ct. 666, 669, 82 L.Ed. 949 (1938); handbills on the public streets, *Jamison v. Texas,* 318 U.S. 413, 416, 63 S.Ct. 669, 672, 87 L.Ed. 869 (1943); the door-to-door distribution of literature, *Martin v. City of Struthers,* 319 U.S. 141, 145–149, 63 S.Ct. 862, 864–866, 87 L.Ed. 1313 (1943); *Schneider v. State (Town of Irvington),* 308 U.S. 147, 164–165, 60 S.Ct. 146, 152, 84 L.Ed. 155 (1939), and live entertainment, *Schad v. Mount Ephraim,* 452 U.S. 61, 75–76, 101 S.Ct. 2176, 2186, 68 L.Ed.2d 671 (1981). See also *Frisby v. Schultz,* 487 U.S. 474, 486, 108 S.Ct. 2495, 2503, 101 L.Ed.2d 420 (1988) (picketing focused upon individual residence is "fundamentally different from more generally directed means of communication that may not be completely banned in residential areas"). 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.[13]

**2046 [5] *56 Ladue contends, however, that its ordinance is a mere regulation of the "time, place, or manner" of speech because residents remain free to convey their desired messages by other means, such as *hand-held* signs, "letters, handbills, flyers, telephone calls, newspaper advertisements, bumper stickers, speeches, and neighborhood or community meetings." Brief for Petitioners 41. However, even regulations that do not foreclose an entire medium of expression, but merely shift the time, place, or manner of its use, must "leave open ample alternative channels for communication." *Clark v. Community for Creative Non–Violence,* 468 U.S. 288, 293, 104 S.Ct. 3065, 3069, 82 L.Ed.2d 221 (1984). In this case, we are not persuaded that adequate substitutes exist for the important medium of speech that Ladue has closed off.

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.[14] 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–year–old 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 *57 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. Cf. *Vincent,* 466 U.S., at 812–813, n. 30, 104 S.Ct., at 2132–2133, n. 30; *Anderson v. Celebrezze,* 460 U.S. 780, 793–794, 103 S.Ct. 1564,

1572–1573, 75 L.Ed.2d 547 (1983); *Martin v. City of Struthers,* 319 U.S., at 146, 63 S.Ct., at 865; *Milk Wagon Drivers v. Meadowmoor Dairies, Inc.,* 312 U.S. 287, 293, 61 S.Ct. 552, 555, 85 L.Ed. 836 (1941). Even for the affluent, the added costs in money or time of taking out a newspaper advertisement, handing out leaflets on the street, or standing in front of one's house with a handheld sign may make the difference between participating and not participating in some public debate.[15] Furthermore, a person who puts up a sign at her residence often intends to reach *neighbors,* an audience that could not be reached nearly as well by other means.[16]

****2047** [6] ***58** A special respect for individual liberty in the home has long been part of our culture and our law, see, *e.g., Payton v. New York,* 445 U.S. 573, 596–597, and nn. 44–45, 100 S.Ct. 1371, 1385–1386, and nn. 44–45, 63 L.Ed.2d 639 (1980); that principle has special resonance when the government seeks to constrain a person's ability to *speak* there. See *Spence v. Washington,* 418 U.S. 405, 406, 409, 411, 94 S.Ct. 2727, 2728, 2729–2730, 41 L.Ed.2d 842 (1974) (*per curiam*). 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, see *Cox v. New Hampshire,* 312 U.S. 569, 574, 576, 61 S.Ct. 762, 765, 765, 85 L.Ed. 1049 (1941); see also *Widmar v. Vincent,* 454 U.S. 263, 278, 102 S.Ct. 269, 278–279, 70 L.Ed.2d 440 (1981) (STEVENS, J., concurring in judgment), its need to regulate temperate speech from the home is surely much less pressing, see *Spence,* 418 U.S., at 409, 94 S.Ct., at 2729–2730.

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.[17] 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 ***59** without harm to the First Amendment rights of its citizens. As currently framed, however, the ordinance abridges those rights.

Accordingly, the judgment of the Court of Appeals is

Affirmed.

Justice O'CONNOR, concurring.

It is unusual for us, when faced with a regulation that on its face draws content distinctions, to "assume, *arguendo,* the validity of the City's submission that the various exemptions are free of impermissible content or viewpoint discrimination." *Ante,* at 2044. With rare exceptions, content discrimination in regulations of the speech of

private citizens on private property or in a traditional public forum is presumptively impermissible, and this presumption is a very strong one. *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.,* 502 U.S. 105, 115–116, 112 S.Ct. 501, 507–508, 116 L.Ed.2d 476 (1991). The normal inquiry that our doctrine dictates is, first, to determine whether a regulation is content based or content neutral, and then, based on the answer to that question, to apply the proper level of scrutiny. See, *e.g., Burson v. Freeman,* 504 U.S. 191, 197–198, 112 S.Ct. 1846, 1850–1851, 119 L.Ed.2d 5 (1992) (plurality opinion); *Forsyth County, Ga. v. Nationalist Movement,* 505 U.S. 123, 133–135, 112 S.Ct. 2395, 2403–2404, 120 L.Ed.2d 101 (1992); *Simon & Schuster, supra,* at 115–116, 112 S.Ct., at 507–508; *Boos v. Barry,* 485 U.S. 312, 318–321, 108 S.Ct. 1157, 1162–1164, 99 L.Ed.2d 333 (1988) (plurality opinion); *Arkansas Writers' Project, Inc. v. Ragland,* 481 U.S. 221, 229–231, 107 S.Ct. 1722, 1727–1729, 95 L.Ed.2d 209 (1987); *Carey v. Brown,* 447 U.S. 455, 461–463, 100 S.Ct. 2286, 2290–2291, 65 L.Ed.2d 263 (1980); *Police Dept. of Chicago v. Mosley,* 408 U.S. 92, 95, 98–99, 92 S.Ct. 2286, 2289–2290, 2291–2292, 33 L.Ed.2d 212 (1972).

Over the years, some cogent criticisms have been leveled at our approach. See, *e.g.,* ****2048** *R.A.V. v. St. Paul,* 505 U.S. 377, 420–422, 112 S.Ct. 2538, 2563–2564, 120 L.Ed.2d 305 (1992) (STEVENS, J., concurring in judgment); *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N.Y.,* 447 U.S. 530, 544–548, 100 S.Ct. 2326, 2337–2339, 65 L.Ed.2d 319 (1980) (STEVENS, J., concurring in judgment); Farber, Content Regulation and the First Amendment: A Revisionist View, 68 Geo.L.J. 727 (1980); ***60** Stephan, The First Amendment and Content Discrimination, 68 Va.L.Rev. 203 (1982). And it is quite true that regulations are occasionally struck down because of their content-based nature, even though common sense may suggest that they are entirely reasonable. The content distinctions present in this ordinance may, to some, be a good example of this.

But though our rule has flaws, it has substantial merit as well. It is a rule, in an area where fairly precise rules are better than more discretionary and more subjective balancing tests. See *Hustler Magazine, Inc. v. Falwell,* 485 U.S. 46, 52–53, 108 S.Ct. 876, 880–881, 99 L.Ed.2d 41 (1988). On a theoretical level, it reflects important insights into the meaning of the **free speech** principle—for instance, that content-based speech restrictions are especially likely to be improper attempts to value some forms of speech over others, or are particularly susceptible to being used by the government to distort public debate. See, *e.g., ante,* at 2043–2044; *Mosley, supra,* 408 U.S., at 95, 92 S.Ct., at 2289–2290; Stone, Content Regulation and the First Amendment, 25 Wm. & Mary L.Rev. 189 (1983). On a practical level, it has in application generally led to seemingly sensible results. And, perhaps most importantly, no better alternative has yet come to light.

I would have preferred to apply our normal analytical structure in this case, which may well have required us to examine this law with the scrutiny appropriate to content-based regulations. Perhaps this would have forced us to confront some of the difficulties with the existing doctrine; perhaps it would have shown weaknesses in the rule, and led us to modify it to take into account the special factors this case presents. But such reexamination is part of the process by which our rules evolve and improve.

Nonetheless, I join the Court's opinion, because I agree with its conclusion in Part IV that even if the restriction were content neutral, it would still be invalid, and because I do not think Part III casts any doubt on the propriety of our normal content discrimination inquiry.

All Citations

512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36, 62 USLW 4477

EXHIBIT 5 - Pictures

7-11 on Duke St. Sign 1 **N. Ramsey Sign 2**

Delray Extended Fence Sign – 3

South Henry Fence Sign - 4 **1420 Key Drive Sign - 5**

Virginia Episcopal Seminary Signs – 6

St. Stephens Graduation Sign on Quaker Lane Sign – 7

Exhibit 6 – Call Connect Complaint released via FOIA

CALL.CLICK.CONNECT Complaint Released Through FOIA Request

New Cityworks Service Request #195395
Cityworks.Mail@alexandriava.gov Cityworks.Mail@alexandriava.gov

Dear *Call.Click.Connect* User

A request was either just created or updated using CityWorks.
Please take the necessary actions in responding, handling and/or updating this request.

Request Number:	**195395**
Date/Time Reported:	11/29/2019 8:51:45 AM
Description:	Signs – Permits & Inquiries
Problem Code:	PZ, SIGN_QUESTION
Problem Address:	1420 KEY DR.
Dispatched To:	
Prj Complete Date	12/4/2019 8:51:45

Dear ***Call.Click.Connect***. User

A request was just created using ***Call.Click.Connect***. The request ID is 195395

Request Details:

This is a "private" request. Information should only be provided to the original customer.

- Name:
- Approximate Address: 1420 KEY DR
- Phone Number:
- Email:
- Service Type: Report Violating Signs
- Request Description: The property at 1420 Key Dr. appears, at a minimum, to be in violation of City Ordinances (9-104 – Prohibited signs, marquees and awnings…) for two different signs with each noted by sections, F: Banners and H: Mobile and Portable signs. This functionality only allows one picture for upload, but there are two signs. The other sign is a 6x8 foot banner attached to the fence of the property's Seminary Rd. border. Would you investigate and handle expeditiously?
- Expected Response Date: Wednesday, December 4