

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN A. LAWLESS & JOSEPH	:	CIVIL ACTION
FERRARO	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
LOWER PROVIDENCE TOWNSHIP,	:	
at al.	:	NO. 02-7886
	:	
Defendants	:	
	:	

Newcomer, S.J. October , 2002

O P I N I O N

Presently before the Court is Plaintiff's "Application for Temporary Restraining Order and/or Preliminary Injunction." For the reasons as set forth below, said motion is granted, a temporary restraining order shall issue.

BACKGROUND

Plaintiff John A. Lawless is the Democratic Party Candidate for State Representative in the Commonwealth of Pennsylvania's 150th Legislative District. Included in the 150th District is Defendant Lower Providence Township ("Township"). Plaintiff Ferraro is a resident of the Township and is a supporter of Plaintiff Lawless. Defendants Daniel Olpere and Christine Dewees serve as the Township's Manager and Code Enforcement Officer, respectively.

Plaintiffs move this Court, less than three (3) weeks

before the election, for a "temporary restraining order and/or preliminary injunction" prohibiting the Township from enforcing Lower Providence Ordinance 383(4)(E)(5) ("Sign Ordinance"). Among various restrictions, the Sign Ordinance limits the display of political signs to no more than thirty (30) days before and seven (7) days after an election, prohibits persons from displaying more than one sign per candidate or issue on their property and requires candidates wishing to display signs on private property to obtain a permit from the Township by submitting an application which requires a list of the property owners' names and addresses of the properties where the signs will be displayed. No such requirements exist for non-political signs. Plaintiffs allege that these provisions amount to a violation of their First Amendment rights.

DISCUSSION

In considering whether to grant a request for equitable relief in the form of a temporary restraining order, four factors must be considered, they are: (1) the applicant's likelihood of success on the merits; (2) the probability of irreparable injury to the applicant in the absence of relief; (3) the risk of harm to the respondent if relief is granted; and (4) whether the public interest will be advanced by granting the requested relief. Fechter v. HMW Indus., Inc., 879 F.2d 1111, 1115 (3d Cir. 1989).

A. Likelihood of Success

The Sign Ordinance is content-based regulation on speech as it subjects signs of a political nature to special regulations based on their content. Content-based regulations of speech violate First Amendment rights unless they are narrowly tailored to serve a compelling governmental interest. Carey v. Brown, 447 U.S. 455, 461 (1980). Here, the Defendants offer two governmental interests as justification for the regulation, aesthetics and safety. These interests have been previously found to be insufficient justification for regulations which limit First Amendment rights. Whitton v. City of Glandstone, Mo., 832 F. Supp. 1329, 1335 (W.D.Mo. 1993). The Plaintiffs have met the likelihood of success requirement.

B. Irreparable Injury to the Applicant

The possibility of irreparable injury to the applicant in this case is evident. With less than three (3) weeks remaining before the election, Plaintiffs seek to exercise their First Amendment rights in order to influence the election results. The inability to post signs bearing Plaintiff Lawless' name could impair his ability to successfully compete in the election. Moreover, for obvious reasons, once the election is over this type of injury is irreparable.

C. Risk of Harm to the Respondent

The Defendants argue that without the Sign Ordinance

candidates may fail to clean up their signs after the election, thus creating an unnecessary eyesore for the community. While this may or may not be the case, this Court is convinced that when weighed against the possible injury to the Plaintiffs, impermanent injury to the community's appearance is less injurious than the irreparable injury which could be sustained by the Plaintiffs in the absence of a restraining order. In addition, in order to offset any potential damage to the Township, this Court shall impose a \$500.00 security bond, pursuant to Fed.R.Civ.P. 65(c), to be collected by the Township Defendant in the event this suit is resolved in favor of the Defendants (exclusive of settlement) and the Township Defendant encounters costs attributed to the cleanup of uncollected political signs.

D. Public Interest

The public interest is best served by protecting the unfettered dissemination of political ideas and thought, especially at a time so close to an election. The issuance of a temporary restraining order restricting the application of Lower Providence Ordinance 383(4)(E)(5) is in the public's best interest.

AN APPROPRIATE ORDER WILL FOLLOW.

Clarence C. Newcomer, S.J.

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O R D E R

AND NOW, this day of October, 2002, upon consideration of Plaintiffs' Motion for a Temporary Restraining Order (Document 2), it is hereby ORDERED that said motion is GRANTED. The Defendants are enjoined from enforcing Lower Providence Township Ordinance 383(4)(E)(5) ("Political Signs") until such time as this Court finds otherwise. A consolidated preliminary and final hearing shall be held on Tuesday, October 22, 2002, in Courtroom 13A, United States Courthouse, 601 Market Street, Philadelphia, PA 19106, at 10:00 AM.

It is further ORDERED that, pursuant to Fed.R.Civ.P. 65(c), the Plaintiffs post security of \$500.00 to be collected by the Township Defendant should this matter be resolved (exclusive of settlement) in the Defendants' favor and the Township Defendant incurs cleanup costs associated with uncollected

political signs.

AND IT IS SO ORDERED.

Clarence C. Newcomer, S.J.