LACROIX V. TOWN OF FORT MYERS BEACH: ELEVENTH CIRCUIT GRANTS PRELIMINARY INJUNCTION, FINDING THAT TOWN ORDINANCE BANNING ALL PORTABLE SIGNS LIKELY VIOLATES THE FIRST AMENDMENT

SAHARAH M. ALLEN*

In *LaCroix v. Town of Fort Myers Beach*, the United States Court of Appeals for the Eleventh Circuit addressed whether Fort Myers Beach, Florida likely violated the First Amendment by implementing Chapter 30 of the town's Land Development Code ("the Ordinance").[1] On appeal, the Eleventh Circuit reversed the district court's denial of preliminary injunctive relief, holding that the Ordinance banned "*all* portable signs . . . regardless of whether they are political, religious, advertising a garage sale, or an open house."[2] Although the ban was content-neutral, the Eleventh Circuit concluded that section 30–5 of the Ordinance categorically banned a method of expression without providing citizens a meaningful alternative.[3] Thus, the Eleventh Circuit granted a preliminary injunction, finding that the ban likely violated the First Amendment.[4]

The Ordinance regulated all sign usage within Fort Myers Beach.[5] The town attempted to do this in two ways: (1) section 30–5 of the Ordinance categorically banned twenty-four types of signs, including portable signs, and (2) sections 30–55 and 30–6 of the Ordinance required individuals to obtain a permit before displaying a sign in the town.[6] Notably, twenty-six different types of signs were exempt from the permit requirement, such as real estate signs, garage sale signs, and temporary signs.[7]

On October 1, 2020, Adam LaCroix was issued a written warning for violating the Ordinance's ban on portable signs while sharing his

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* Junior Editor, *Cumberland Law Review*; Candidate for Juris Doctor, May 2024, Cumberland School of Law; B.A. Criminal Justice, ASL & Deaf Culture, May 2021, The University of Alabama.

[1] LaCroix v. Town of Fort Myers Beach, 38 F.4th 941, 945 (11th Cir. 2022).

[2] *Id.* at 955–56.

[3] *Id.* at 956.

[4] *Id.*

[5] *Id.* at 945.

[6] *Id.*

[7] *LaCroix*, 38 F.4th at 945.

religious beliefs on the public sidewalks of the town.[8] Although the record did not specify the precise dimensions or the exact message of LaCroix's sign, LaCroix acknowledged that he was sharing "his 'religious, political and social message' which 'is one of hope and salvation that Christianity offers.'"[9] On December 17, 2020, LaCroix was given a written citation for the same conduct, though LaCroix was not carrying a portable sign on this occasion.[10] A town official informed LaCroix that "he was cited because he was the 'leader' of a group that was carrying portable signs on that day."[11] After LaCroix complained of the unfairness of the citation, the town official dismissed it.[12]

Subsequently, LaCroix filed a complaint in the United States District Court for the Middle District of Florida, alleging that the Ordinance violated the First Amendment and Equal Protection Clause of the Fourteenth Amendment.[13] LaCroix moved the district court for preliminary injunctive relief, which requires a party to show: (1) "a substantial likelihood of success on the merits," (2) that "irreparable injury will be suffered unless an injunction ensues," (3) that "the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party," and (4) that "the injunction would not be adverse to the public interest."[14] The district court denied the injunction for failure to show a substantial likelihood of success, finding that the Ordinance did not likely violate the First Amendment

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[8] *Id.* at 945–46.

[9] *Id.* at 946.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *LaCroix*, 38 F.4th at 946. LaCroix also argued that the Ordnance vested the town with unbridled discretion in violation of the First Amendment and challenged the Ordinance under the Florida Religious Freedom Restoration Act. *Id.* at 953–54 (citing Fla. Stat. §§ 761.01–761.061 (1998)). The unbridled discretion doctrine is traditionally applied for "permitting schemes where the official has the power to grant or deny a permit for any reason or no reason at all." *Id.* at 953. LaCroix contended that the Ordinance (1) contained no regulation regarding who the Ordinance should be enforced against and (2) inadequately defined what was considered a portable sign, thus giving "officers too much room to decide who should be fined." *Id.* The Eleventh Circuit rejected these arguments, noting that Ordinance categorically prohibited *all* portable signs. *Id.* at 953–54. Thus, "[t]here [was] no room for the exercise of discretion, unbridled because of the absence of standards or otherwise." *Id.* at 953–54. In addition, LaCroix did not properly raise his Florida Religious Freedom Restoration Act argument before the district court or Eleventh Circuit; thus, the Eleventh Circuit deemed the claim abandoned and did not consider it on appeal. *LaCroix*, 38 F.4th at 954.

[14] *Id.* at 946, 954.

because it "was content-neutral and . . . was justified by the [t]own's interests in aesthetics and traffic safety."[15] LaCroix appealed to the Eleventh Circuit.[16]

The Eleventh Circuit reviewed the district court's decision for abuse of discretion.[17] First, the Eleventh Circuit addressed LaCroix's argument that the ban should be reviewed under strict scrutiny because it was not content-neutral.[18] Explaining that "[t]he principal inquiry in determining content neutrality . . . is whether the government has adopted a regulation of speech because of a disagreement with the message it conveys," the Eleventh Circuit noted that the Ordinance prohibited all portable signs, regardless of the messages communicated.[19] Therefore, the ban was content-neutral.[20]

Nevertheless, the Eleventh Circuit noted that the Ordinance was not saved from First Amendment scrutiny.[21] The Eleventh Circuit began by acknowledging that the United States Supreme Court has "voiced particular concern with laws that foreclose an entire medium of expression."[22] In fact, Supreme Court precedent prohibits an ordinance restricting "pivotal speech," such as speech that includes political, religious, or personal communications, from "either foreclose[ing] an entire medium of exchange or le[aving] open precious little as an alternative channel for communication."[23] Accordingly, a law restricting pivotal speech must leave open "an alternative channel" that is meaningful and adequate, allowing "[t]he speaker . . . to effectively communicate his message to the intended audience."[24]

Here, the town claimed that, although the Ordinance applied to the broad category of portable signs, it "still le[ft] open alternative channels of speech."[25] The Eleventh Circuit concluded, however, that "the laundry list of prohibited signs in section 30–5 of the Ordinance suggest[ed] quite the opposite."[26] The Ordinance banned pole signs,

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[15] *Id.* at 946.
[16] *Id.*
[17] *Id.*
[18] *Id.* at 947.
[19] *LaCroix*, 38 F.4th at 948 ("The Ordinance makes clear that portable signs are banned, and it *lists no exceptions*.").
[20] *Id.* at 949.
[21] *Id.*
[22] *Id.* (quoting City of Ladue v. Gilleo, 512 U.S. 43, 55 (1994)).
[23] *Id.* at 950 (citing *Gilleo*, 512 U.S. at 55).
[24] *Id.* at 952 (citing Pine v. City of W. Palm Beach, 762 F.3d 1262, 1274 (11th Cir. 2014)).
[25] *LaCroix*, 38 F.4th at 952.
[26] *Id.*

vehicle signs, and signs on "any curb, sidewalk, post, pole, hydrant, bridge, tree, or other surface located on public property or over or across any street or public street . . . . Short of a bullhorn and running his voice hoarse, [LaCroix] . . . ha[d] precious few, if any, alternative channels of communication."[27]

The Eleventh Circuit analogized the present facts to the facts in *City of Ladue v. Gilleo*,[28] a similar case from the United States Supreme Court.[29] In *Gilleo*, homeowners were banned from displaying any signs on their property except "residence identification" signs, "for sale" signs, and "signs warning of safety hazards."[30] The Supreme Court struck down the ordinance, describing it as banning "absolutely pivotal speech" and stating that the ban "ha[d] almost completely foreclosed a venerable means of communication that is both unique and important."[31] In this case, the sign ban went beyond homeowners and their yards.[32] Thus, the Eleventh Circuit concluded that the Ordinance's absolute ban on these signs presumably violated the First Amendment.[33]

Finding that LaCroix had shown a substantial likelihood of success on the merits of his claim, the Eleventh Circuit addressed the remaining factors required for a preliminary injunction.[34] Because "[o]rdinances that violate the First Amendment are 'per se irreparable' injuries," LaCroix adequately met the second factor.[35] The court explained that the third and fourth factors were also satisfied, stating: "When the nonmovant is the government, the third and fourth requirements—'damage to the opposing party' and 'the public interest'—can be consolidated because neither the government nor the public has any legitimate interest in enforcing an unconstitutional ordinance."[36]

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[27] *Id.* at 952 ("A Fort Myers Beach resident may not hold a sign by hand, he may not put a sign in the ground if it is taller than [eighteen] inches, he may not display his sign on his car, and he cannot place any signs in a public place.").

[28] City of Ladue v. Gilleo, 512 U.S. 43 (1994).

[29] *LaCroix*, 38 F.4th at 950.

[30] *Gilleo*, 512 U.S. at 45.

[31] *Id.* at 54.

[32] *LaCroix*, 38 F.4th at 951. The Ordinance in this case barred all portable signs, regardless of whether they were on a homeowner's property or in a public area. *Id.*

[33] *Id.* at 952.

[34] *Id.* at 954. Generally, the Eleventh Circuit would remand the case for the district court to address the remaining factors; however, the other factors were "so clear cut" that the court addressed them in this decision. *Id.*

[35] *Id.* at 954–55.

[36] *LaCroix*, 38 F.4th at 955.

Accordingly, LaCroix sufficiently demonstrated all elements required to receive a preliminary injunction.[37]

In conclusion, the Eleventh Circuit preliminarily enjoined section 30–5(18)—the subsection of the Ordinance that banned all portable signs.[38] This decision is significant because, if the injunction had not been granted, "all kinds of expressive speech protected by the First Amendment would be barred" while LaCroix's litigation was pending.[39]

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[37] *Id.*

[38] *Id.* Notably, the Eleventh Circuit severed section 30–5(18) from the remainder of the Ordinance. *Id.* The severability of a local ordinance is a question of state law. *Id.* (first citing City of Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 772 (1988); and then citing Coral Springs St. Sys., Inc. v. City of Sunrise, 371 F.3d 1320, 1347 (11th Cir. 2004)). Applying Florida law, the Eleventh Circuit severed the Ordinance, thus enjoining section 30–5(18) only. *Id.*

[39] *LaCroix*, 38 F.4th at 951.