

FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING

2014 JAN 9 PM 2 36

Boyd O. Wiggam (Wyoming Bar No. 6-4059)  
Stephen R. Klein  
Wyoming Liberty Group  
1902 Thomes Ave  
Ste. 201  
Cheyenne, WY 82001  
307.632.7020 [Tel.]  
307.632.7024 [Fax.]  
boyd.wiggam@wyliberty.org  
stephen.klein@wyliberty.org

Tim Kingston (Wyoming Bar No. 6-2720)  
Law Office of Tim Kingston, LLC  
408 W. 23<sup>rd</sup> St.  
Ste. 1  
Cheyenne, WY 82001  
307.638.8885 [Tel.]  
kingston@rockymtnlaw.com

STEPHAN JARRIS, CLERK  
CHEYENNE

Benjamin T. Barr  
10737 Hunting Lane  
Rockville, MD 20850  
202.595.4671 [Tel.]  
benjamin.barr@gmail.com

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

Ronald D. Williams )  
)  
PLAINTIFF, )  
)  
v. )  
)  
City of Cheyenne, Wyoming; )  
Richard Kaysen, Mayor of Cheyenne, in )  
his official capacity; )  
Matthew Ashby, City of Cheyenne )  
Planning Services Director, in his official )  
capacity )  
)  
DEFENDANTS.

Civil Case No. 14 CV 06-F

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Ronald D. Williams brings this action for declaratory and injunctive relief, and complains as follows:

### **INTRODUCTION**

1. On February 15, 1995, Plaintiff Ronald D. Williams filed a Complaint for Declaratory Judgment against the Defendant City of Cheyenne, Wyoming in the Wyoming District Court for the First Judicial District. Doc. 139, No. 215. The suit alleged that political sign restrictions Cheyenne's Zoning Code were unconstitutional. At that time, the Zoning Code restricted the erection of political signs to 45 days before an election and required removal within 10 days following an election.
2. On May 17, 1996, the Wyoming District Court granted summary judgment in favor of Williams, ruling that the political sign restrictions in the Zoning Code were facially invalid under the First Amendment to the United States Constitution. *See* Exhibit 1.
3. Williams now challenges an even more restrictive speech ban enacted on January 23, 2012 by the City of Cheyenne in the Cheyenne Unified Development Code ("UDC"), *available at* <http://www.cheyennecity.org/DocumentCenter/Home/View/5576>.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 as a challenge arising under the First and Fourteenth Amendments to the Constitution of the United States. This Court also has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, and the Civil Rights Act, 42 U.S.C. § 1983.
5. This Court has jurisdiction to, in its discretion, award attorneys' fees in this action. 42 U.S.C. § 1988(b).

6. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(1)–(2) because Defendants reside in Wyoming and a substantial part of the events or omissions giving rise to this claim occurred in the District of Wyoming.

### **PARTIES**

7. Plaintiff Ronald D. Williams is a resident of Cheyenne, Wyoming.
8. Defendant City of Cheyenne, Wyoming is a city of the first class organized under the laws of the State of Wyoming.
9. Defendant Richard Kaysen is the Mayor of the City of Cheyenne, sued in his official capacity as an individual responsible to enforce the city ordinances for the City of Cheyenne, Wyoming.
10. Defendant Matthew Ashby is the City of Cheyenne Planning Services Director, sued in his official capacity as the individual appointed by the Mayor to serve as the principal enforcement officer under the Unified Development Code regulations pursuant to UDC § 1.2.2(a).

### **STATEMENT OF FACTS**

11. Plaintiff Williams resides on a lot less than one acre in size in the City of Cheyenne, with his residence located at 1835 Milton Drive, Cheyenne, Wyoming 82001. He has owned the residence since 1972. His residence is located in a Residential Zoning District classified as LR-1 Low-density Residential District.
12. Williams wishes to speak in support of more than two candidates for the November, 2014 local, state, and federal elections by displaying more than two election-related yard signs on his property. He wishes to do so immediately—more than 10 days before the election—to begin influencing his neighbors and friends and to add his voice to campaigns that have already begun. Williams also wishes to display his yard signs for

more than 10 days following the November 4, 2014 election to express continued support for officeholders and candidates.

13. Williams wishes to display signs advocating for reelection of United States Senator Mike Enzi, reelection of United States Representative Cynthia Lummis, reelection of Cheyenne City Councilman Mike Luna, election of Taylor Haynes for Wyoming Governor, and the election of Paul Ryan for President of the United States in 2016.
14. Williams's political speech is abridged by Article 6 of the Cheyenne Unified Development Code ("UDC"), specifically § 6.5 governing signs. *See* Exhibit 2.
15. Section 6.5.4(a) prohibits all political signs 10 days prior to and following an "event or distinct time period addressed by the sign." For political speech, the UDC bans speech for most of the year, except near the time of an election. Section 6.54(a) infringes on Williams's First Amendment right to speak about candidates for public office during any time of the year he sees fit.
16. UDC § 1.3.3 specifies the penalties that any person who is convicted of violation any regulation within the UDC may be subject to including conviction of a misdemeanor and a fine of not more than \$100.00 for each day a prohibited sign is present in Williams's yard. UDC § 1.3.3(b).
17. It has been repeatedly recognized that "residential signs have long been an important and distinct medium of expression." *City of Ladue v. Gilleo*, 512 U.S. 43, 54 (1994). Especially because residential signs are a uniquely convenient form of speech, for "persons of modest means or limited mobility, a yard or window sign may have no practical substitute." *Id.* at 57.
18. The City Council considered an ordinance to revise the regulations applicable to election signs and other noncommercial signs in response to public comments questioning the constitutionality of those provisions pursuant to the mandatory annual review specified in

UDC § 1.1.7. The City Council received extensive public input from Williams's counsel and others suggesting less-restrictive means to achieve legitimate governmental safety interests, such as using location setbacks, eliminating the temporal restrictions and replacing numeric restrictions with aggregate sign size limitations but voted not to revise the sign regulations at its December 23, 2013 meeting.

**CAUSE OF ACTION 1**  
**Declaratory Judgment concerning UDC § 6.5.4(a)**

19. Plaintiff realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.
20. Expressing one's views through lawn signs is a constitutionally protected form of speech. *See City of Ladue*, 512 U.S. 43; *see also Whitton v. City of Gladstone*, 54 F.3d 1400 (8th Cir. 1995); *Williams v. City of Cheyenne*, Doc. 139, No. 215 (Dist. Ct. for the 1<sup>st</sup> Dist., May, 17, 1996) (unpublished trial court order) (Exhibit 1); *McFadden v. City of Bridgeport*, 422 F.Supp.2d 659 (N.D.W.Va. 2006). Because the City of Cheyenne has decided to impose a sweeping ban on this form of expression, it violates the First Amendment both facially and as applied to Williams.
21. UDC § 6.5.4(a) applies to sign allowances for Residential Zoning Districts, including Williams's residential lot. Sign allowances described in Table 6-15, adopted by § 6.5.4(a), describe three different types of signs, "Temporary Signs," "Neighborhood/District/Identification Signs," and "Other Signs."
22. Political signs are regulated as Temporary Signs in UDC § 6.5.4(a). This is because political signs likely designate an "event or distinct time period."
23. Nothing in the law controls how short or expansive the "distinct time period" is within which Williams may express his views. Only the City of Cheyenne is vested with the

authority to determine the scope of this vague phrase. *See Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

24. Lots in zoning district LR-1 Low-density Residential that are less than one acre may only have up to two Temporary Signs such as political signs, and may only be displayed “up to 10 days prior to and following the event or distinct time period addressed by the sign.” UDC § 6.5.4(a).
25. If Williams places more than two political signs on his lawn or places these signs before, beyond or within the 10 day limits found in UDC § 6.5.4(a), he may be fined up to \$100.00 a day. UDC § 1.3.3(b). Further, other citizens may enact proceedings against Plaintiff. UDC § 1.3.3(a).
26. Under UDC § 6.5.4(a), Williams is barred from communicating his views about candidates for public office by placing lawn signs except for 10 days prior and 10 days post a “distinct time period” determined by the City of Cheyenne. For 2014 alone, general elections will be held on November 4, 2014. Primary elections are slated for August 19, 2014. The UDC thus completely forecloses political lawn signs during non-election years and offers but the most miniscule window of time to communicate in during election years.
27. The City of Cheyenne exempts particular types of speech from the reach of its sign permitting process. Speakers wishing to celebrate “Frontier Days,” promote a particular holiday, or provide warning messages, such as “beware of dog,” through yard signs are all allowed to do so without government permission. UDC § 6.5.5(b). The City of Cheyenne thus favors some forms of speech while subjecting others to the permitting process.
28. UDC § 6.5.2(c) requires a sign plan for “Any new proposed sign, unless exempt from the sign permit process in this Section.” A sign plan is not defined in the UDC and nothing in

the law indicates that noncommercial speech addressing subject matter that is not confined to a specific event or distinct time period is permissible. Therefore, the City of Cheyenne appears to prohibit signs containing noncommercial speech about some topics while permitting signs speaking to other, time-specific topics.

29. Under UDC § 6.5.4(a), when allowed to communicate, Williams is barred from placing more than two lawn signs of a political nature. Williams must ration his speech to decide which two candidates he would like to support or oppose so as to not violate the law.

#### **CAUSE OF ACTION 2**

##### **Preliminary and Permanent Injunctions concerning UDC § 6.5.4(a)**

30. Plaintiff realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.
31. The sign quantity and time restrictions in UDC § 6.5.4(a) are contrary to the First Amendment to the United States Constitution.
32. Enforcement of the sign quantity and time restrictions applicable to Temporary Signs in UDC § 6.5.4(a) violates and would violate the constitutional rights of Williams and other residents subject to the Cheyenne Unified Development Code.
33. Consequently, Williams asks that this Court issue preliminary and permanent injunctions prohibiting the enforcement of the quantity and time restrictions of Temporary Signs in UDC § 6.5.4(a). *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury”).

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for the following relief:

1. A declaratory judgment that the quantity and time restrictions in UDC § 6.5.4(a) are unconstitutional, facially and as applied, as a violation of the First Amendment protection for political speech, as incorporated against the states by the Fourteenth Amendment.
2. Preliminary and permanent injunctions pursuant to 42 U.S.C. § 1983 enjoining Defendants Richard Kaysen and Matthew Ashby from enforcing the quantity and time restrictions on Temporary Signs in UDC § 6.5.4(a) and any such additional injunctive relief as this Court may direct.
3. Costs and attorneys' fees pursuant to 42 U.S.C. § 1988 any applicable statute or authority, and further relief this Court may grant in its discretion.
4. Any other relief that the Court deems just and appropriate.

Dated this 9th of January, 2014.




**WILLIAMS VERIFICATION**

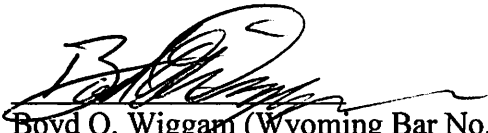
I, Ronald D. Williams, declare as follows:

1. I reside at 1835 Milton Avenue, Cheyenne, Wyoming 82001.
2. I have personal knowledge of my activities, including those set out in this Verified Complaint, and if called upon to testify I would competently testify as to the matters stated herein.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements contained in this Verified Complaint concerning my existing and proposed activities are true and correct.

Executed on January 9, 2014.

  
\_\_\_\_\_  
Ronald D. Williams

Respectfully submitted,



Boyd O. Wiggam (Wyoming Bar No. 6-4059)  
Wyoming Liberty Group  
1902 Thomes Ave  
Ste. 201  
Cheyenne, WY 82001  
307.632.7020 [Tel.]  
307.632.7024 [Fax.]  
boyd.wiggam@wyliberty.org

*Counsel of Record*

Tim Kingston (Wyoming Bar No. 6-2720)  
Law Office of Tim Kingston, LLC  
408 W. 23<sup>rd</sup> St.  
Ste. 1  
Cheyenne, WY 82001  
307.638.8885 [Tel.]  
kingston@rockymtnlaw.com

Benjamin T. Barr\*  
10737 Hunting Lane  
Rockville, MD 20850  
202.595.4671 [Tel.]  
benjamin.barr@gmail.com

Stephen R. Klein\*  
Wyoming Liberty Group  
1902 Thomes Ave  
Ste. 201  
Cheyenne, WY 82001  
307.632.7020 [Tel.]  
307.632.7024 [Fax.]  
stephen.klein@wyliberty.org

*\*Motions for pro hac vice admission to be filed.*