FIRE
Foundation for Individual Rights and Expression

July 21, 2025

Southold Town Board
c/o Albert J. Krupski, Jr.
Southold Town Supervisor
53095 Route 25
PO Box 1179
Southold, New York 11971

Sent via U.S. Mail and Electronic Mail (al.krupski@town.southold.ny.us)

Dear Southold Town Board:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, is concerned by Southold's current sign ordinance[1] and its proposed amendment,[2] which impose unconstitutional restrictions on this mode of expression, including extra burdens on political signs. Southold must reject the proposed amendment and instead adopt one bringing its existing ordinance in compliance with constitutional standards.

I. The Proposed Amendment Violates Supreme Court Precedent

Southold maintains a sign ordinance that appears to allow only one sign per residence or to altogether ban residential signs for personal expression, and to significantly limit signs even in business areas.[3] While this poses preexisting constitutional infirmities,[4] Southold is presently considering an amendment to the ordinance that will deepen these failings by injecting regulation of "political signs," defined as "any sign that includes the name, symbol, or insignia of a political candidate or party,"[5] and imposing upon them unique restrictions that do not apply to other types of signs.

---

[1] SOUTHOLD, NY, TOWN CODE, ch. 280, art. XIX (2025), https://ecode360.com/5162996.

[2] A Local Law in relation to an Amendment to Chapter 280, Zoning, in connection with signs, in Southold Town Board Regular Meeting Minutes, Southold, N.Y. Town Board, at 26 (June 24, 2025) (proposed) [hereinafter Amendment to Chapter 280], https://southoldny.portal.civicclerk.com/event/67/files/agenda/1086.

[3] SOUTHOLD TOWN CODE, ch. 280, art. XIX, *supra* note 1, § 280-83–86, https://ecode360.com/5162996#5163045.

[4] These are discussed *infra* at § II.

[5] Amendment to Chapter 280, *supra* note 2, at 27.

For example, under the amendment "political signs" can be posted only around election time,[6] will require a security deposit from candidates or political parties,[7] and will be banned from all public property.[8] At the same time, they would enjoy more lenient treatment in other respects: they can be up to 32 square feet compared to 24 square feet for freestanding,[9] subdivision,[10] and temporary signs;[11] they would be allowed for 142 days in election years versus 60 days for holiday signs[12] or 90 days for external temporary signs;[13] and they would have no numerical limit, whereas external temporary signs are limited to one per parcel.[14]

This disparate treatment is unconstitutional under the Supreme Court's decision in *Reed v. Town of Gilbert*, which invalidated a sign code that regulated signs differently depending on content, such as whether a sign was "ideological," "political," or "temporary directional."[15]

Because that code's application depended "entirely on the communicative content of the sign," the Court held it was "content based on its face."[16] Content-based laws present a unique "danger of censorship," so they must withstand strict scrutiny, the most exacting level of judicial review, under which they "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests."[17] Importantly, the government's benign intent does not exempt a law from strict scrutiny.[18] Although the Court assumed for argument's sake that the town's asserted interests in aesthetics and traffic safety were "compelling"—even though courts have never actually held

---

[6] *Id.* ("Political signs shall not be displayed more than 60 days before a scheduled primary or election and must be removed no later than 10 days after the primary or election for which they were placed.").

[7] *Id.* ("Individual candidates for public office must pay a security deposit to be set by Town Board resolution for permission to erect signage under this section. Alternatively, political parties may pay a security deposit to be set by Town Board resolution, which covers all candidate signs associated with that party.")

[8] *Id.* ("No person or organization may place or authorize the placement of signs on any land owned by the Town of Southold. This includes municipal use parcels, town rights- of-way, town parks, utility poles, signs, beaches, schools, or any town structures.").

[9] SOUTHOLD, NY, TOWN CODE, ch. 280, art. XIX, § 280-85(D)(7) (2025), https://ecode360.com/5162996#5163057.

[10] Amendment to Chapter 280, *supra* note 2, at 28.

[11] *Id.*

[12] SOUTHOLD, NY, TOWN CODE, ch. 280, art. XIX, § 280-81(B)(2)(c) (2025), https://ecode360.com/5162996#5163005.

[13] Amendment to Chapter 280, *supra* note 2, at 28.

[14] *Id.*

[15] 576 U.S. 155, 159–61 (2015).

[16] *Id.* at 164.

[17] *Id.* at 163, 167, 171.

[18] *Id.* at 164–65. ("On its face, the Sign Code is a content-based regulation of speech. We thus have no need to consider the government's purposes for enacting the Code to determine whether it is subject to strict scrutiny.").

that they are[19]—it still held the sign code was not narrowly tailored because it arbitrarily singled out some signs without justification.[20]

The proposed amendment to Southold's sign ordinance has the same flaw. Signs that merely mention a political candidate pose no greater risk to safety or aesthetics than other signs, yet they alone would require a security deposit and be prohibited outside of election periods. At the same time, the amendment would, in some respects, regulate non-political signs more harshly. For instance, in an election year, holiday signs would have shorter display windows than political signs. These inconsistencies underscore that the amendment is not narrowly tailored to advance the town's stated interests.

Approving the amendment would thus needlessly increase the town's risk of litigation—which the town would certainly lose—not only from individuals facing restrictions on their political signs, but also from those whose signs receive less favorable treatment. Southold may pursue interests like traffic safety, but only in a more targeted and less speech-restrictive manner.

II. Southold's Current Ordinance Also Violates the First Amendment

Not only should Southold not adopt the proposed amendment to its sign ordinance, the *current version* needs revision to satisfy the First Amendment. Even content-neutral sign regulations must be narrowly tailored to advance a significant government interest and leave open ample alternative channels of communication.[21] Yet the ordinance presently fails this test.

The existing ordinance appears to allow only one lawn sign per residence or to altogether ban residential lawn signs used for personal expression. Specifically, the ordinance does not list temporary signs as allowed in residential areas;[22] they appear to be allowed only in business areas.[23] Moreover, the ordinance instructs that, "No portable or temporary sign shall be placed

---

[19] *See Neighborhood Enters. v. City of St. Louis*, 644 F.3d 728, 737–38 (8th Cir. 2011) (quoting *Whitton v. City of Gladstone*, 54 F.3d 1400, 1408 (8th Cir. 1995)) (citing *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1267 (11th Cir. 2005)) ("interests in traffic safety and aesthetics, while significant, have never been held to be compelling"); *see also Marin v. Town of Southeast*, 136 F. Supp. 3d 548, 568 (S.D.N.Y. 2015) ("While aesthetics, public health, safety, and welfare, and property values . . . qualify as 'substantial interests,' Defendant cites no case law—nor is this court aware of any—finding that such interests are *compelling*" but rather "the cases dictate that such interests are not compelling.") (internal citations omitted)); *Savago v. Village of New Paltz*, 214 F. Supp. 2d 252, 259 (N.D.N.Y. 2002) ("aesthetics and traffic safety . . . may be substantial [interests]" but "there is no basis to hold that they are compelling") (internal citations omitted)).

[20] *Reed*, 576 U.S. at 171–72.

[21] *See Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984) ("Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions. We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information."); *see also Cleveland Area Bd. of Realtors v. City of Euclid*, 88 F.3d 382, 388 (6th Cir. 1996) (applying *Clark*'s "time, place, and manner test" to an ordinance banning all yard signs).

[22] SOUTHOLD, NY, TOWN CODE, ch. 280, art. XIX, § 280-86(A) (2025), https://ecode360.com/5162996#5163102.

[23] *See id.* at § 280-86(C).

on the front face of any building or upon any lot, except as provided in § 280-85G."[24] Assuming that means § 280-85L,[25] property owners must comply with a list of requirements, including that, "No more than one exterior temporary sign at a time shall be allowed on a parcel of property."[26] As with the other requirements, this appears to apply to businesses, suggesting residential yard signs are categorically disallowed under the default rule banning portable and temporary signs in any lot.

A blanket prohibition on yard signs for personal expression is unconstitutional. As one court held in invalidating such an outright ban, it "is, simply, not sufficiently narrowly tailored to withstand constitutional scrutiny" and is arguably not "'tailored' at all."[27]

Nor can an outright ban be said to leave open ample alternative channels of communication. Temporary yard signs are an important and, for many, irreplaceable means of expressing opinions. As the Supreme Court has explained, signs lack any real substitute, especially in a residential context:

> 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. 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 hand-held sign may make the difference between participating and not participating in some public debate. 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.[28]

Even if the ordinance does, despite appearances, allow temporary signs in residential areas, it still unconstitutionally limits temporary signs to one per parcel. At least one federal appellate court has invalidated a two-sign limit, holding the government failed to show that capping the number of signs was necessary to serve its asserted interests.[29] The court questioned "whether the County needs to limit the number of signs on private property to protect aesthetics," noting the Supreme Court's observation that "private property owners' esthetic concerns will keep the posting of signs on their property within reasonable bounds."[30]

And on alternative means of communication, the court rejected as too time-intensive or expensive the government's proposed alternatives—giving speeches in public places,

---

[24] *Id.* at § 280-83(I).

[25] Section 280-85(G) describes nameplates, whereas temporary signs are described in § 280-85L.

[26] *Id.* § 280-85(G). Section 280-85(G) reinforces this in requiring that "If there are multiple businesses on the property, they shall make internal arrangements to share the sign."

[27] *Cleveland Area Bd. of Realtors*, 88 F.3d at 388.

[28] *City of Ladue v. Gilleo*, 512 U.S. 43, 57 (1994) (internal citations omitted).

[29] *Arlington Cnty. Republican Comm. v. Arlington Cnty.*, 983 F.2d 587, 594 (4th Cir. 1993).

[30] *Id.* (quoting *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 811 (1984)). The Fourth Circuit also observed that, during the time the preliminary injunction entered below was in force, the government "could not show any specific aesthetic or traffic problems" that arose. *Id.*

distributing flyers, door-to-door and public canvassing, and appearing at citizen group meetings—holding that "laundry list" failed to recognize how a two-sign limit infringed speakers' rights by leaving no "viable alternative to the homeowner *on his property*."[31]

Assuming Southold's ordinance allows yard signs for personal expression at all, it also places a host of other restrictions on them. To illustrate, consider someone who wants to put up a sign in his yard to congratulate his daughter on her graduation. The ordinance instructs, "Except as otherwise provided in this chapter, signs shall not . . . be erected, structurally altered, enlarged or moved or reconstructed within the Town unless a permit is obtained from the Building inspector and payment of a required fee."[32] No exemption applies to an outdoor graduation sign,[33] so the father must apply for a permit and pay the $100 application fee.[34] And even assuming he is able and willing to pay $100 to exercise his First Amendment rights, he will need to provide information about the sign, like its size, construction, and design elements, and the Building Inspector will consider such factors as whether the sign is as small as practicable, avoids garish colors and materials, and has a dark background colors and light letters.[35]

This example demonstrates the overly restrictive nature of Southold's sign ordinance. The above restrictions are not narrowly tailored to advance a significant government interest, nor do they leave open ample alternative channels of communication. Requiring a resident to pay $100 just to post a single sign in their own yard is a substantial financial burden on speech, one not justified by any demonstrated need. Municipalities across the country allow yard signs without similar permitting and fee requirements. The process also grants officials open-ended discretion to decide whether a sign should be smaller or is too "garish," a vague and subjective standard that unconstitutionally invites "arbitrary and discriminatory enforcement."[36]

The durational limits for temporary signs, whether for 20, 30, or 90 days, also violate the First Amendment. Durational limits function as an outright ban for most of the year, and as noted, outright bans are unconstitutional. As one court has concluded, extended durational bans are "inconsistent with the 'venerable' status that the Supreme Court has accorded to individual speech emanating from an individual's private residence."[37]

---

[31] *Id*. at 594–595 (emphasis in the original).

[32] SOUTHOLD, NY, TOWN CODE, ch. 280, art. XIX, § 280-81(B) (2025), https://ecode360.com/5162996#5163005.

[33] *See id.* at § 280-81(B)(2). The ordinance exempts contractor signs, real estate signs, "[h]oliday lights and signs which are incidental and customary and commonly associated with any national, local or religious holiday," informational/directional signs, nameplates, temporary interior signs, window signs covering 10% or less of the window area, and nonprofit organization directory signs. Notably, the exemption for holiday lights and signs is content discriminatory and unconstitutional for reasons explained in the previous section.

[34] *Application for Sign Permit*, Town of Southold — Building Department, https://ny-southold2.civicplus.com/DocumentCenter/View/45/Sign-Permit?bidId=.

[35] SOUTHOLD, NY, TOWN CODE, ch. 280, art. XIX, § 280-82 (2025), https://ecode360.com/5162996#5163033.

[36] *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

[37] *Curry v. Prince George's Cnty.*, 33 F. Supp. 2d 447, 454–55 (D. Md. 1999).

Conclusion

To comply with its constitutional obligations, Southold must amend its ordinance, not to encompass "political signs," but so that residents can freely express themselves on their own property. That is not to say Southold cannot address legitimate concerns related to signage—it can pursue goals such as traffic safety without discriminating among signs based on content or otherwise imposing sweeping restrictions on residential signage. FIRE is happy to work with Southold—free of charge—to help ensure its ordinance respects First Amendment rights.

We respectfully request a substantive response to this letter no later than August 4, 2025.

Sincerely,

M. Brennen VanderVeen, Esq.
Program Counsel, Public Advocacy