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ACLU of Iowa Assisting Windsor Heights Residents Ordered to Take Down Signs Critical of the City

Windsor Heights, Iowa – Today the ACLU of Iowa sent a demand letter to the City of Windsor Heights to defend two couples' First Amendment rights to free speech regarding a sidewalk issue in that community.

The ACLU of Iowa is assisting two couples who were censored by the City of Windsor Heights after they each posted signs on their properties that were critical of the Des Moines suburb's actions on sidewalks.

Banner Taken Down at Orr Property

In the first case, Marijetka (pronounced *Mah-ree-yet-ka*) and James Orr hung a professionally made vinyl banner on their front porch, tied securely into place at all four corners. It read "No Concrete! 96 Percent said No. Save the Green Space!"

The next morning, the Orrs left for vacation. Before they left, the family had notified the Windsor Heights Police Department that they would be gone on vacation so that the police could check on the home.

A few days later while the Orrs were still on vacation, the city sent them a "notice to abate" letter, claiming that the sign was a "nuisance," and stating that the Orrs were required to remove the sign "immediately." Mere hours later, that same day, city officials came and took down the banner from the porch without the Orrs' permission.

City Orders Removal of Yard Sign at Miller and Foss Home

In the second case, the Orrs' neighbors, Mike Miller and Diane Foss, were upset with the city's actions against the Orrs. In response, Miller and Foss put up in their front yard a small sign, which read "City Hall Run Amok." Soon after, they received their own letter, demanding they remove the sign or be fined up to \$1,000 a day.

The pair of homeowners has filed appeals of those orders to remove the signs to the Windsor Heights City Council, which next meets on Monday, August 21.

ACLU Demand Letter Sent

In today's action, the ACLU sent a demand letter to the City of Windsor Heights. The letter informs the city that its actions in ordering the signs' removal is a violation of the homeowners' First Amendment rights. The letter also seeks resolution of the matter by noon on the day of the scheduled hearing August 21.

Specifically, the ACLU of Iowa demand letter seeks:

- 1) Successful appeal of the requirement that Miller and Foss and the Orrs remove their signs

2) Reassurance from the city that neither those homeowners nor any other residents in Windsor Heights will be subject to similar unconstitutional action in the future.

The issue of installing sidewalks for the first time in Windsor Heights has been extremely contentious in that community. Many residents object to having sidewalks put in for various reasons and arguments for and against sidewalks in the community have been raging for months. Signs and posters on the issue, as well as other political and business signs, can be seen throughout the neighborhood, including on the mayor's and a city councilperson's property.

Signs are Free Speech

Rita Bettis, ACLU of Iowa legal director, said, "The ACLU takes no position on the sidewalk issue itself, of course. But whatever one thinks about the sidewalks, the City of Windsor Heights should champion the right of its residents to peacefully express those thoughts and opinions, not censor them. The First Amendment protects most strongly exactly this kind of speech, which is critical of the decisions of government officials."

Mike Miller, who was ordered to remove his small front yard sign by the City, said, "My wife and I feel it is our right to express our opinion. The First Amendment defends our right to do that and the City of Windsor Heights cannot take that away."

Miller said it was important to them to appeal the city's decision and let the public know how the city is abusing its power. "We want to try to make sure this doesn't happen to anyone else," Miller said.

Down the street from the Miller and Foss house, Marijetka Orr expressed similar concerns. "There were absolutely no safety problems with the sign. It was tied securely to our porch. It's also far away from the street. We just wanted to express our opinion, like so many other people on our street have done. But the city did not like what we had to say so they came and just took it away."

The First Amendment Applies to Yard Signs

The Supreme Court has held that the First Amendment protects people from municipal regulations that are based on signs' content, rather than neutral factors like size and placement.

Any city ordinances that regulate signs have to be neutral as to what the signs say. Cities can't allow for-sale signs, for example, but ban political signs. Ordinances also have to be reasonable and serve a public purpose.

The Windsor Heights ordinance is also problematic because it allows bigger signs for religious signs than other types of signs. That's the kind of content-based regulation the Supreme Court has held violates the First Amendment.

In a TV interview, the Windsor Heights city clerk responsible for enforcement of the city's sign ordinance said sign enforcement is "complaint-based only." If the city receives a complaint or anonymous tip, she said, they check it out.

<http://www.kcci.com/article/windsor-heights-sidewalk-debacle-escalates-after-complaint/10338414>,

Bettis said that censoring content based on the complaints of others is what the courts call a "heckler's veto," which is a totally impermissible way for the government to regulate speech under the Constitution.

"To be clear, these signs were pretty polite," said Bettis. "But even speech that might be offensive or disagreeable to one's neighbors – or city council members – is

protected under the First Amendment.”

Please go to the following link to find:

- A copy of the demand letter
- A short video clip of Mike Miller
- A short video clip of Marijetka Orr
- Two photos of the Orr’s banner sign before it was removed
- A photo of the Foss’s and Miller’s “City Hall Run Amok sign” before they removed it
- A copy of this press release

<https://drive.google.com/drive/folders/0B5kehbsBXajnSIFaZE9fT1JXS28>

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