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Via Email and U.S. Mail

The Hon. Skip Beeler, Mayor of Cocoa Beach
Vice-Mayor Kevin Pruett
Commissioner Don John
Commissioner Skip Williams
Commissioner Ken Griffin
James A. “Skip” Fowler, Esq., City Attorney for the City of Cocoa Beach

May 19, 2009

Re: Save Our Aquifer; City of Cocoa Beach’s Sign Ordinances

Dear Mayor Beeler and Commissioners:

The ACLU of Florida represents the environmental group “Save Our Aquifer, Inc.” (“SOA”), a Florida corporation whose objectives are set forth on its website at <http://www.saveouraquifer.org/>. SOA’s Articles of Incorporation provide:

ARTICLE IV – PURPOSES

The corporation is organized exclusively for charitable, educational, and scientific purposes under section 501 (c) (3) of the Internal Revenue Code, or corresponding section of any future federal tax code. Specific purposes for which this corporation is organized are to:

1. protect the Floridan aquifer system and Underground Sources of Drinking Water (USDW) from threats, such as partially treated sewage effluent, other contaminants, aquifer injections, groundwater mining and other forms of aquifer depletion and contamination;
2. promote awareness about harm to the Floridan aquifer system and Underground Sources of Drinking Water (USDW) from aquifer injections of partially treated sewage effluent and other contaminants, groundwater mining and other forms of aquifer depletion and contamination;

3. educate the public, elected officials and agency staff regarding the ethical stewardship and critical role of the Floridan aquifer system in maintaining the landscape, native habitat and biological diversity; and

4. conduct other such related activities as are necessary, but only for charitable, educational, or other exempt purposes, including conducting educational meetings, preparing and distributing educational materials, or considering public policy issues in an educational manner.

The ACLU takes no position on the environmental claims, but represents SOA in connection with securing and enforcing its First Amendment rights. We are writing this letter in an attempt to avoid costly and protracted litigation under 42 U.S.C. §1983 for violation of SOA's constitutional rights.

SOA has been informed by Ms. Christina Doerrfeld of the City Clerk's Office, *see* Ex. A attached to this letter, and Mr. Tony Caravella, of the Development Services Department with the City of Cocoa Beach, that the SOA signs are not "political signs" and therefore must meet the permitting requirements of Section 6-05 of the City of Cocoa Beach's Land Development Code.

SOA seeks to erect temporary signs of varying sizes on private property, with the owners' consent, that convey SOA's mission to educate the public about, and urge them to voice their opposition to, the injection of sewage water into the aquifer through the ASR well. As you are probably aware, the issue has been the subject of many council meetings and protests in and around Rockledge, and is of great public interest to the adjoining communities that share the aquifer. The aquifer does not recognize municipal boundaries, and SOA's political speech is addressed to all persons within the geographic area who are affected by the quality of their shared water source.

Some of SOA's signs, which the adjacent cities of Rockledge,¹ Cocoa and Cape Canaveral have allowed to be posted without incident, read:



Other SOA signs convey information regarding the types of chemicals found in the sewage wastewater, the types of damage that would be caused by injecting sewage wastewater into the aquifer, depths of the proposed injections of sewage wastewater, and the Save Our Aquifer website address. The signs invite their viewers to sign SOA's petition, and the most recent signs

¹ Copies of correspondence between the ACLU and the City of Rockledge are Exs. B and B-1 to this letter. The wording of the earlier signs placed in Rockledge was slightly different, but the political message was the same.

feature surfers, a scuba diver, and illustrate other types of outdoor recreational and water-related activities that SOA advocates would be adversely affected if the proposed sewage wastewater injections are permitted by Florida Department of Environmental Protection.

These signs are unquestionably political speech, as they address matters of public concern and because they are vehicles for “the unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *Stough v. Gallagher*, 967 F.2d 1523, 1527 (11th Cir.1992) (quoting *Roth v. United States*, 354 U.S. 476, 484). The form and context of the signs evidence SOA’s intent to inform the public as part of the public discourse. *See Brochu v. City of Riviera Beach*, 304 F.3d 1144, 1158 (11th Cir. 2002). Not only is SOA constitutionally entitled to convey information and advocacy through their signs; area residents and visitors are constitutionally entitled to receive the information and determine whether to join SOA’s advocacy efforts.

Accordingly, the City of Cocoa Beach’s construction of the term “political signs” exempt from permitting requirements to encompass *only* those advanced by a “Political Committee” and issues that will be placed on the ballot is contrary to settled and controlling First Amendment law. The Code itself defines a political sign in section 6-04(z) as “A sign or poster advertising either a candidate for political office *or political causes.*” (emphasis added). Therefore, even under the City’s own definition, SOA’s signs are political signs.

Although Ms. Doerrfeld’s correspondence references permissible political signs, *see* Ex. A, those permissible signs that are exempt from the permitting process are limited to only six (6) square feet. Section 6-07(h). However, Article VI of the City’s Land Development Code either exempts some larger signs from permitting requirements or allows other signs with no size restrictions, thereby impermissibly regulating protected speech based on its content. For example, “**Directory signs**” may be eight (8) square feet for each occupant; “Signs indicating that a special event, such as a **fair, carnival, circus, festival or similar event**” may not exceed thirty-two (32) square feet. “Integral **decorative or architectural** features of a building” and “**holiday displays**, including lighting, erected in connection with the observance of holidays” have no size restrictions.

Save Our Aquifer’s political signs, which seek to inform the public of environmental concerns, are therefore treated less favorably by Cocoa Beach than signs advertising a circus or displays of holiday reindeer. The City of Neptune Beach, like the City Cocoa Beach, had a complex sign code replete with content-based exemptions from permitting regulations. Like the City of Cocoa Beach, the City of Neptune Beach allowed holiday decorations to be displayed freely, but Neptune Beach required permits signs identifying homes and offices and exempted only political signs that “related to elections, political campaigns or a referendum.” *Solantic, LLC v. City of Neptune Beach*, 410 F. 3d 1250, 1264 (11th Cir. 2005). The Eleventh Circuit noted the consequences of the impermissible content-based regulation:

Thus, a homeowner could plant a giant illuminated Santa Claus or a jack-o-lantern in his front yard, but not a figure of, say, the President or the Mayor. An illuminated reindeer would be permissible, whereas a less festive animal such as a dog would not.

Id. at 1265.

Neptune Beach's entire signage ordinance scheme, which is markedly similar to Cocoa Beach's Land Development Code, was declared facially unconstitutional. *See also Dimmitt v. City of Clearwater*, 985 F.2d 1565 (11th Cir. 1993); *Bonita Media Enters. v. Collier County County Code Enf. Bd.*, 2008 WL 423449 (M.D. Fla. Feb. 13, 2008); *The Complete Angler, LLC v. City of Clearwater*, -- F.Supp. 2d --, 2009 WL 969910 (M.D. Fla. April 9, 2009) (attached as Ex. C). We believe that Cocoa Beach's code would likewise be found either facially unconstitutional or unconstitutional as applied to SOA.

In short, the ACLU of Florida urges the City of Cocoa Beach to reconsider its position on Save Our Aquifer's signs, and allow SOA's political signs to be placed on private property with the owners' permission without the necessity of permitting or permitting fees. Please inform us in writing by Friday, May 29, 2009 whether Cocoa Beach is willing to voluntarily take steps to allow SOA to post its political signs on private property with the owners' permission. Your prompt attention to this matter is necessary to avoid legal action. Please feel free to contact me should you have any questions.

Sincerely yours,

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ACLU Foundation of Florida
On Behalf of Save Our Aquifer, Inc.