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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

BERNARD M. LEWIS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Docket No. 2:02-CV-259
	:	
BRIAN R. SEARLES, individually and in his capacity as the VERMONT SECRETARY OF TRANSPORTATION,	:	
	:	
Defendant.	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case comes before the Court on motion for a preliminary injunction. As a basis for seeking a preliminary injunction, Plaintiff claims that certain Vermont statutes restricting the use of signs in public rights-of-way are unconstitutional as invalid restrictions of free speech, and violations of due process, equal protection and the Americans with Disabilities Act.

The Court conducted a hearing on Plaintiff's Motion for Preliminary Injunction on October 17, 2002. Based upon arguments of counsel at the hearing, together with written submissions by all parties and the record to date, the Court hereby DENIES Plaintiff's Motion.

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Standards for a Preliminary Injunction

The trial court is vested with wide discretion in deciding whether to grant a preliminary injunction. Chemical Bank v. Hascotes, 13 F.3d 569, 573 (2d Cir. 1994); St. Albans Co-Op. Creamery, Inc. v. Glickman, 68 F. Supp. 2d 380, 385 (D. Vt. 1999). To be eligible for such a remedy, Plaintiff must overcome a high burden. He must demonstrate: (1) that, without an injunction, he will suffer irreparable harm and (2) that there is either a likelihood of success on the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation, with the balance of hardships tipping decidedly in the movant's favor. Brenntag Int'l Chems. v. Bank of India, 175 F.3d 245, 122-123 (2d Cir. 1999); see also Tunick v. Safir, 209 F.3d 67, 70 (2d Cir. 2000); see also St. Albans Co-Op. Creamery, Inc., 68 F. Supp. 2d at 385 (D. Vt. 1999).

In addition, an injunction against governmental action taken in the public interest, pursuant to a statutory or regulatory scheme, should be granted only if the moving party meets the more rigorous likelihood of success standard. Beal v. Stern, 184 F.3d 117, 122 (2d Cir. 1999). Furthermore, the movant is required to show "clear" or "substantial" likelihood of success where: "(1) an injunction will alter, rather than maintain, the status quo, or (2) an injunction will provide the

movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits." Tom Doherty Assocs. v. Saban Entert., Inc., 60 F.3d 27, 34 (2d Cir. 1995). "Though the 'clear showing' qualifier appears to have been abandoned for injunctions that serve the traditional purpose of preserving the status quo, plaintiffs have been put to a more rigorous burden in obtaining preliminary injunctions that order some form of mandatory relief. "[A] 'clear showing' is required where the injunction is mandatory," that is, where the court issues a mandate for relief. Secs. & Exch. Comm'n v. Unifund SAL, 910 F.2d 1028, 1039 (2d Cir. 1990) (internal citations omitted); see also Jacobson & Co. v. Armstrong Cork Co., 548 F.2d 438, 441 (2d Cir. 1977) (recognizing higher standard for mandatory injunction). As the movant here seeks a mandatory injunction to stay governmental action pursuant to a statutory or regulatory scheme, he must satisfy the more rigorous standard by establishing a "clear or substantial likelihood of success on the merits."

Statutory Provisions

Plaintiff's complaint takes aim at two specific sections of Title 10, Chapter 21 of Vermont Statutes Annotated. Section 495(d) prohibits any "person, firm or corporation" from placing any "outdoor advertising structure, device or display within the

limits of the highway right-of-way." It applies to all privately posted signs in the rights-of-way along all state highways.[1] Section 497 authorizes the Agency of Transportation ("the Agency") and any affected local municipality "to remove or relocate, or both, without prior notice, any sign, device or display which is temporary in nature . . . [and] which is erected within 24.75 feet of the actual centerline of the highway under its jurisdiction and within the public right-of-way."

Findings of Fact

Plaintiff Bernard M. Lewis is a political candidate running for probate judge. As part of his campaign, he wants to post signs within the public rights-of-way of certain state highways. The State of Vermont has for a number of years restricted, through the above-mentioned statute, the placement of signs in such areas. Lewis indicates that he has posted a number of his campaign signs in the rights-of-way and that they have been removed by Agency officials. He also indicates that the Agency now claims to have them in one of its facilities in White River

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[1] Section 494 carves out some exceptions to § 495 by permitting the posting of memorial signs and tablets, bus stop signs, official traffic control signals, and other regulatory or directional and informational signs posted by municipalities. See Vt. Stat. Ann. tit. 10, §§ 495(d), 494(3), (6), (7), (10), (14), (15), (17) (Lexis Supp. 2002 & Lexis 1998).

Junction.

It is the Agency's practice to remove all temporary signs within the standard "three rod right-of-way" (24.75 feet from the center line or 49.5 feet across) of state highways. Some state highways have rights-of-way that are wider than the standard 49.5 feet, in which case the Agency removes signs from areas "known and monumented (as is the case with some three and four lane sections of state highways, which may have a fence or other marker showing the right-of-way)" as within the right-of-way for that highway. (Def.'s Suppl. Mem. Opp'n. Pl.'s Req. Prel. Inj. p.1, ¶ 1). If the actual width of the right-of-way is not known by the state, its policy is to remove only signs within 24.75 feet of the centerline. Agency employees also remove signs outside the three rod right-of-way when they pose a safety hazard, pursuant to Vt. Stat. Ann. tit. 10, § 505, Vt. Stat. Ann. tit. 19, § 1111, and Vt. Stat. Ann. tit. 23, § 1027. Upon seizing illegally placed signs, it is the Agency's policy to hold them for up to ninety days so that they may be claimed by their rightful owner.

The Agency does not regularly dispatch employees solely for the purpose of removing signs. Signs are typically removed by work crews who encounter them while performing routine duties or during weekly sweeps by supervisors as workload and time permits. Removal of these signs is unrelated to their message

or content. Moreover, the Agency has exhibited no pattern of discrimination in its practice of removing them.

Discussion

A. First Amendment Challenges

Lewis asserts that the statute is an unconstitutional abridgement of free speech, both facially and as applied to him. Plaintiff has not demonstrated that he is likely to succeed on the merits of this challenge.

Restrictions on protected speech "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." Clark v. Cmty. For Creative Non-Violence, 468 U.S. 288, 293 (1984); see also Carow-Reid v. Metro. Transp. Auth., 903 F.2d 914 (2d Cir. 1990). Specifically, the constitutional standard set forth in Members of the City Council of Los Angeles v. Taxpayers for Vincent permits a law to restrict protected speech if it is: (1) a content-neutral time, place and manner restriction; (2) which serves substantial governmental interests; (3) which is narrowly tailored; and (4) which leaves open ample alternate channels of communication. 466 U.S. 789 (1984).

1. Facial Attack

A facial challenge to a statute under the First Amendment must demonstrate that the statute is "unconstitutional in every conceivable application . . . because it seeks to prohibit such a broad range of protected conduct that it is unconstitutionally overbroad. . . ," or because it is so vague that it unintentionally and/or impermissibly restricts protected free speech. Taxpayers, 466 U.S. 789, 796 (1984); see Grayned v. City of Rockford, 408 U.S. 104, (1972).

a. Vagueness

Lewis asserts that, based on a letter sent by the Vermont Secretary of State to political candidates advising them about the sign law and indicating that a right-of-way may be wider than 49.5 feet for some highways, the statute is unconstitutionally vague. "[A]n enactment is void for vagueness if its prohibitions are not clearly defined." Grayned, 408 U.S. at 108. Due process demands that laws "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited," and "provide explicit standards for those who apply them." Id. at 108-09. Where First Amendment freedoms are involved, a vague law causes citizens to "'steer far wider of the unlawful zone' than if the boundaries of the forbidden areas were clearly marked." Baggett v. Bullitt, 377 U.S. 360, 372

(1964) (quoting Speiser v. Randall, 357 U.S. 513, 526 (1958)).

The fact that some highways have a right-of-way that is wider than the standard three rods does not establish a sufficient facial challenge to void § 495's prohibition for vagueness. Moreover, the Secretary's letter does not illustrate that the enactment in question is vague. It simply indicates that scenarios could arise under which its specific delineations cannot be applied. For those signs within the 49.5 foot range, § 497 sets forth a very clear and detailed procedure for their removal. And, through its policy of leaving signs alone unless the affected right-of-way is clearly "known or monumented," the Agency has specifically addressed any vagueness that might arise under circumstances that do not comport with these specified dimensions.

It would be virtually impossible for the statute to account for the variant measurements of every right-of-way associated with a state highway. In determining whether an ordinance is unconstitutionally vague, a court must examine the words of the ordinance itself, as well as interpretations of analogous laws, keeping in mind that "[c]ondemned to the use of words, . . . mathematical certainty" is unattainable. Grayned, 408 U.S. at 110. Doing so here, the Court concludes that the statute is not impermissibly vague.

b. Overbreadth

"A statute is overbroad, if, in addition to proscribing activities which may be constitutionally forbidden, it also sweeps within its coverage speech or conduct which is protected by the guarantees of free speech or free association." Thornhill v. Alabama, 310 U.S. 88, 90-93 (1940). To state an overbreadth claim, Plaintiff must demonstrate "a realistic danger that the statute . . . will significantly compromise recognized First Amendment protections of individuals not before the Court." Taxpayers, 466 U.S. at 801.

Plaintiff has not made any substantial showing of third party harm or, in any event, that the statute is overbroad on its face. He, in essence, argues that the statute is overbroad because of the way it is being applied. His Memorandum of Law in Support of Injunctive Relief states, "Title V.S.A. Chapter 21 regulates tourism communication as it impacts upon interstate commerce. However, by regulating campaign and political signs it also sweeps within its coverage speech or conduct which is protected by the guarantees of fee [sic] speech, thus clearly running afoul of the doctrine of overbreadth." (Pl.['s] Mem. Supp. Prel. Inj., p.3, ¶ 2). In his Supplemental Memorandum, however, Plaintiff argues that this is a statute which is on its face intended to regulate only commercial speech and is therefore wrongfully applied to political speakers. In support of this argument, he notes that "[i]t is a fraudulent use of

Chapter 21 to apply it to political signs on the right of way which has [sic] never been addressed by the Vermont Legislature . . . ." (Suppl. Mem. Supp. Prel. Inj. p.3, ¶ 1). He cannot have it both ways. If the statute is on its face commercial, then it should not in any way chill free speech. Contesting the fact that such a facially plain statute "sweeps" political speech "within its coverage" assumes that it has been applied to such speech.

Courts should be cautious about resolving overbreadth claims unnecessarily. See Renne v. Geary, 501 U.S. 312, 324 (1991). Plaintiff has "failed to identify any significant difference between [his] claim that [the statute] is invalid on overbreadth grounds and [his] claim that it is unconstitutional when applied." Id., 466 U.S. at 802; see also Howard Opera House Assocs. v. Urban Outfitters, Inc., 131 F. Supp. 2d 559, 564 (D. Vt. 2001). The Court will therefore construe Plaintiff's overbreadth claim to be subsumed as part of his "as applied" challenge, which is addressed below.

2. First Amendment "As Applied" Challenge

Lewis asserts that the statute, as applied, is an unconstitutional abridgement of his right to express freely his political views. Again, as set forth in Taxpayers, a statute that restricts speech can be constitutional if it is: (1) a content neutral time, place and manner restriction; (2) which

serves substantial governmental interests; (3) which is narrowly tailored; and (4) which leaves open ample alternate channels of communication. 466 U.S. at 805-6. Plaintiff has not demonstrated any likelihood of success on the merits that the statute fails to meet these requirements.

a. Content Neutrality

In determining content neutrality, the court must determine "whether the government has adopted a regulation of speech because of disagreement with the message it conveys." Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). "The general principle that has emerged from [the Supreme Court's precedents] is that the First Amendment forbids the government to regulate speech in ways that favor some view points or ideas at the expense of others." Taxpayers, 512 U.S. at 804.

The purpose of this statute is not to inhibit any particular message from reaching the public. Its prohibition applies to all signs posted by private individuals. See Vt. Stat. Ann. tit. 10, § 495(d), (e). That it allows, through exemption, certain informational and directional signs to be posted by municipalities in the restricted areas, denotes no favoritism. The statute not only disallows all private signs that promote political candidates or views, but also those that promote garage sales, church functions, or business services. Its purpose is to keep certain signs out of the rights-of-way,

not certain speech. "[A] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." Rock Against Racism, 491 U.S. at 791. The State's justification for its regulation has nothing to do with content; its purposes are aesthetics and safety.[3]

Indeed, the purpose of this ban is very similar to that of the Los Angeles ordinance upheld in Taxpayers. 466 U.S. at 792 n.1. Like the Vermont Statute, the ordinance prohibited the posting of signs and hand bills on public property. The Taxpayers ordinance, likewise, provided certain exemptions for

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[3] As part of his "overbreadth" claim, Plaintiff asserts that the plain meaning of the statute in question and its location in the "Tourism Information Services" Chapter of Title 10, illustrates that its purpose is to regulate commerce and "not the public use of public land or political speech." He argues that it is, therefore, wrongfully applied to political speakers. In fact, nothing about the statute's legislative locale or plain meaning indicate that it is being impermissibly applied to restrict free speech. The statute prohibits any "device" or "display," commercial or not. See Vt. Stat. Ann. tit. 10, § 481 (Lexis 1998). The definitions section that precedes the right-of-way provisions defines "sign" as "any structure, device, or representation, either temporary or permanent . . . which is designed or used to call attention to any thing, person business, activity or place . . . ." § 481(6). Nothing about this language indicates that the Vermont legislature intended for the statute to serve solely as a commercial signage restriction. Moreover, the fact that the underlying purpose of the statute is to promote tourism has nothing to do with the content of the signage it seeks to regulate. That the statute falls within this chapter merely demonstrates that the State has a significant interest in protecting the scenic landscapes that bring tourists to Vermont.

commemorative plaques or directional signs. Id. Such a regime, in the Court's view, revealed "not even a hint of bias or censorship in the City's enactment of this ordinance." Id. at 804. Accordingly, no such bias can be found here. The statute's text is "silent . . . concerning any speaker's point of view." Id. Like the Los Angeles ordinance, the Vermont statute is therefore content neutral.

b. Substantial Governmental Interest

Limits on protected speech must be justified by and necessary to advance a substantial governmental interest that is unrelated to suppressing freedom of expression. Taxpayers, 466 U.S. at 804-5. The State has demonstrated two such interests.

First, it is clear from reading Vt. Stat. Ann. tit. 10, § 482 that the legislature's purpose in creating this statutory regime was to protect the State's "scenic resources." "[T]he state may legitimately exercise its police powers to advance esthetic values." Taxpayers, 466 U.S. at 805. The Supreme Court has indicated that "some methods of expression may legitimately be deemed a public nuisance," and governments have a "weighty . . . interest in proscribing" such methods. Taxpayers, 466 U.S. at 806. The Vermont legislature, in line with the Los Angeles City Council's rationale in Taxpayers, has surmised that "the visual assault . . . presented by an accumulation of signs on public property [is] a significant

substantial evil within the [legislature's] power to prohibit." Vermont's interest in removing such visual blight is certainly no less substantial than that of Los Angeles.

Indeed, the Vermont Legislature specifically concluded that its scenic resources contribute significantly to economic development through tourism and that outdoor advertising detracts from those resources, thereby diminishing part of its economic base. Vt. Stat. Ann. tit. 10, § 482(3), (4). A recent study by the Vermont Tourism Data Center indicates that tourists spend more than $2.5 billion in the state each year. The Impact of the Tourism Sector on the Vermont Economy 1999-2000, available at http://snr.uvm.edu/vtdc/publications/2000_Economic_Impact_Report.pdf. The same study indicates that tourism alone accounts for approximately 14% of the state's economy. Id. It constitutes a similar share of Vermonters' personal income. Id. Such an economic impact constitutes a substantial interest, to say the least.

The statute is further justified by safety concerns associated with activities along highways. The very purpose of establishing rights-of-way is to bolster traffic safety, which is in itself a substantial interest. See Abel v. Town of Orangetown, 724 F. Supp. 232, 234 (S.D.N.Y. 1989) (town's interest in motorist and pedestrian safety is substantial). Signs, if posted in the abundance characteristic of campaign

season, can distract and block the vision of drivers, and obstruct official traffic controls and signs. Moreover, the actual posting of signs along a roadside presents a danger to drivers and those doing the posting alike.

Like the governmental interests found in Taxpayers, the State's interests mentioned above are "unrelated to the suppression of ideas." They are also substantial enough to justify this prohibition.

c. Narrow Tailoring

A valid time, place or manner restriction must be narrowly tailored to serve a significant governmental interest. Rock Against Racism, 491 U.S. at 796; Hous. Works, Inc. v. Kerik, 283 F.3d 471, 480-81 (2d Cir. 2002). The restriction should not be "substantially broader than necessary to protect" the governmental interest. Taxpayers, 466 U.S. at 808. The Vermont right-of-way statute is so tailored. "[T]he requirement of narrow tailoring is satisfied 'so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.'" Rock Against Racism, 491 U.S. at 799 (quoting United States v. Albertini, 472 U.S. 675, 689, (1985)). Moreover, the regulation need not be the least restrictive means. Id.

The Court cannot envision any means of regulation here that would be any less restrictive and still accomplish the

government's substantial interests. Vermont is seeking to eliminate "visual blight...[which] is not merely a possible by-product of the activity, but is created by the medium of expression itself." 466 U.S. at 810. Like the Los Angeles city ordinance, Vermont's ban on signs in rights-of-way is the only method of curbing visual clutter along its highways. See Herschaft v. City of New York, __ F. Supp. 2d __, 2002 WL 1204780 *2, slip opinion (E.D.N.Y Feb. 15, 2002) (noting that "there is no way that the [government] could attack the evil created by the signs other than [by] banning them"). As in Taxpayers, the regulation in question "responds precisely to the substantive problem which legitimately concerns" the regulating body and "curtails no more speech than is necessary to accomplish its purpose." 466 U.S. at 810. The Court therefore concludes that it is narrowly tailored.

d. Alternative Channels

Those affected by this statute have myriad alternative channels through which to communicate their ideas and information. "[T]he First Amendment does not guarantee the right to employ every conceivable method of communication at all times and in all places." Taxpayers, 466 U.S. at 812; see also Carew-Reid, 903 F.2d at 919. Plaintiff may accomplish the goals of expressing his political views and promoting his candidacy by posting signs on the land of willing private property owners,

placing them on public land that has not been restricted, or by mailings, picketing, distribution of bumper stickers, door-to-door canvassing, car signs and handing out leaflets.

The Court does note that it is sensitive to the contention in Plaintiff's Supplemental Memorandum that "the road side right-of-way has long been a part of the public domain for communication in rural communities." Rural communities do have unique challenges and needs in terms of political communication and expression. The Court concludes, however, that such necessity is here outweighed by the substantial state interests, especially in light of the other means available to express one's political message discussed above.

B. Equal Protection and Due Process Claims

Plaintiff asserts that Agency employees have removed his signs in a discriminatory manner and that they have been seized as an unconstitutional taking. He thereby asserts that his constitutional rights to equal protection and due process have been violated. Based on the substantial evidence compiled by the State, through testimony and briefing, it is clear to the Court that the Agency has a consistent enforcement policy, which neither discriminates against Plaintiff nor presents an unconstitutional taking.

Agency employees have specific instructions to remove all

signs from every political party as well as all nonpolitical signs. The testimony of the State's witnesses reveals that Agency employees are consistently instructed to remove all signs within the 24.75 foot right-of-way. The Agency has admitted that sign removal ranks as a low priority among its assigned duties and that it is constrained by how many resources it can devote to identifying and removing illegal signs as a continuous practice. The practice the witnesses describe is admittedly somewhat arbitrary. Some signs may remain illegally posted on one side of the road, while those on the other side have been removed several times over.

However, "[t]he Constitution does not require perfection . . . ." Alvin v. Suzuki, 227 F.3d 107, 120 (3d Cir. 2000); see also Grayned, 408 U.S. at 110. The concepts of equal protection and due process both stem from the American ideal of fairness. Bolling v. Sharpe, 347 U.S. 497, 499 (1954). They require reasonable and fair enforcement of the laws. Plaintiff's own evidence combined with that of the State's confirms that the Agency's enforcement meets this standard. Affiant for Plaintiff, William B. Corrow "observed numerous campaign signs from other candidates in the state garage that had been removed by the State of Vermont road crews." (Corrow Aff. ¶ 4). At the hearing, the State presented photographs that demonstrate that the Agency has removed numerous signs other than those placed by

or on behalf of Lewis, from a range of political parties. In order to establish a likelihood of success on the merits of an equal protection claim, Plaintiff must demonstrate that the Agency has somehow singled out his signs or those of his party. He has failed to do so.

As for Plaintiff's "takings" claim under the due process clause, he has again failed to demonstrate that the Agency's policy and its implementation of that policy violate the Constitution. The Fifth Amendment guarantees that private property shall not "be taken for public use," without due process. Agins v. Tiburon, 447 U.S. 255, 260 (1980). This guarantee applies to the states through the Fourteenth Amendment. Id.

The Agency's stated policy, in line with the statute, is to keep any seized signs at state garages for ninety days, available for candidates to retrieve them. In Agins v. Tiburon, the Court held that a zoning regulation that limited development to five homes on five acres of property did not constitute a taking under the Fifth and Fourteenth Amendments because the ordinance "did not...extinguish a fundamental attribute of ownership." 447 U.S. 255, 262-263. No "fundamental attribute of ownership" has been extinguished here.[3] Plaintiff cannot,

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[3] The Court also agrees with the State that Plaintiff's proposal for "notice and opportunity to cure" would undermine

therefore, establish any likelihood of success on the merits of his claim that the statute or its enforcement present an unconstitutional taking.

C. Americans with Disabilities Act Claim

Finally, Plaintiff asserts that the statute violates the Americans with Disabilities Act (ADA). Because his complaint fails to state a claim under any of its provisions, it is impossible for the Court to find that he has any likelihood of success of prevailing at trial under the ADA.

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132 (1995). To state a claim for relief under the ADA, Plaintiff must allege that: (1) he has a disability for purposes of the ADA; (2) he is qualified for a benefit that has been denied; and (3) he was denied the benefit by reason of disability. See, e.g., Weixel v. Bd. of Educ., 287 F.3d 138,

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the very purpose of the sign ban. Such a policy would give sign posters no incentive to obey the law. These individuals would simply post their signs illegally until given notice that they must remove them. Well-timed postings, placed a few days prior to an election or a garage sale, could avoid any enforcement at all, putting at an unfair disadvantage those who comply with the law.

146-47 (2d Cir. 2002). Plaintiff has met none of these requirements.

Plaintiff's complaint does not allege that he has a disability of any kind, but instead is based on the fact that one of his volunteers has a disability. The Second Circuit has recognized instances in which non-disabled plaintiffs may bring claims under the ADA, where organizations or property owners suffered injury caused by discrimination against the disabled. See, e.g., Innovative Health Sys., Inc. v. City of White Plains, 117 F.3d 37, 47 (2d Cir. 1997) (drug and alcohol rehabilitation center that serves disabled clients could bring ADA claim alleging that city discriminated in denying building permit); Tsombanidis v. City of West Haven, 180 F. Supp. 2d 262, 283 (D. Conn. 2001) (landlord and umbrella organization for group home with disabled residents could challenge zoning regulations as discriminatory).

As discussed above however, no one, neither Plaintiff's nor any other campaign volunteers, has a right to post campaign signs in a right-of-way. Plaintiff is therefore unable to allege injury due to discrimination on his organization's behalf. Without showing that his organization has somehow been treated differently from other campaigns, Plaintiff does not have standing to raise the rights of a third party volunteer with a disability. See Puckett v. Northwest Airlines, 131 F.

Supp. 2d 379, 383 (E.D.N.Y. 2001) (plaintiff could not bring ADA claim based on airline's failure to accommodate her disabled sister on a flight); see also Allen v. Wright, 468 U.S. 737, 751 (1984) (recognizing "general prohibition on a litigant raising another person's legal rights").

Even if Plaintiff could assert a claim on behalf of the unidentified volunteer, his complaint fails to allege that the State has denied a benefit to or otherwise discriminated against the volunteer. Again, no one is permitted to place a sign in the state highway right-of-way, disabled or not.[4] Plaintiff claims that the State denies the disabled "the ability to participate in the political process" by refusing to allow disabled individuals to place signs in the public right-of-way. Compl. ¶ 49. But he provides no good reason why disabled individuals are any more affected than non-disabled individuals by this prohibition.[5] The complaint, therefore, fails to allege the denial of a benefit or discrimination.

Nor does the complaint allege that the State has denied a

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[4] Many other forms of political expression (such as mailings, placing signs on a vehicle or on private property, and picketing or leafleting in person) are probably more accessible than getting in and out of a car to post signs on the shoulder of a road.

[5] Plaintiff does assert that persons with disabilities are less able to reach areas where posting signs will not be illegal, but he provides no tangible evidence that this is the case.

benefit to or discriminated against Plaintiff or his organization "by reason of disability." It is undisputed that the right-of-way statute applies to all persons, regardless of disability. The complaint contains no allegation, much less proof, that the statute is limited to or has somehow been applied in a way that targets persons with disabilities. Without such a showing the Court cannot conclude that the prohibition is in any way motivated "by reason of disability."

Plaintiff has failed to meet any of the requirements to establish a claim under the ADA. He has therefore failed to demonstrate any likelihood of success on the merits of such a claim.

Conclusion

The Court recognizes the need for free political expression and the distinct and unique utility of campaign signs as a part of the political process. It is certainly sympathetic to the import of such signs in our rural communities, and how much they may mean to certain candidates who might not be able to afford broader promotional tactics, such as television or radio advertisements.

But the Court is also acutely aware that, in cases such as this one, its only obligation is to serve as a guardian of the Constitution and the rights it protects. Where the intent of

the legislature is clear and well within the confines of Supreme Court precedent, the Court has no further role.

Restrictions on protected speech "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." Clark v. Cmty. For Creative Non-Violence, 468 U.S. 288, 293 (1984); see also Carew-Reid v. Metro. Transp. Auth., 903 F.2d 914 (2d Cir. 1990). Specifically, the constitutional standard set forth in Members of the City Council of Los Angeles v. Taxpayers for Vincent permits a law to restrict protected speech if it is: (1) a content-neutral time, place and manner restriction; (2) which serves substantial governmental interests; (3) which is narrowly tailored; and (4) which leaves open ample alternate channels of communication. 466 U.S. 789 (1984).

The statute in question falls well within those confines. In crafting this limitation, the Vermont legislature has done the difficult job of balancing a number of strong interests to protect a critical part of the State's lifeblood, its tourism industry. The narrow tailoring of its law has provided a reasonable means by which Vermont's vibrant political tradition can continue to thrive. Those who wish to post their campaign

signs can do so, even along the highways, so long as they are not within the designated and clearly delineated rights-of-way.

The political process will never be perfect, but it should always be fair. In line with the Constitution, the Vermont Legislature provides candidates and voters for every office, at every level, ample and equal channels through which to express themselves and participate. The right-of-way statute does nothing to jeopardize this fair and equal access by discriminating, or providing room for discrimination, against any particular party or candidate. It only serves to balance the state's economic and public safety interests with its political ones. The Court has found no reason under the Constitution to affect that balance.

Wherefore, for the reasons stated above, Plaintiff's request for a preliminary injunction is **DENIED**. Dated at Burlington, Vermont this 23rd day of October, 2002.

William K. Sessions, III
United States District Court