

SUPREME COURT OF NEW JERSEY

State v. DeAngelo, 197 N.J. 478

963 A.2d 1200 (2009) · No. A-73, September Term 2007 · Decided February 5, 2009

SUMMARY

The Supreme Court of New Jersey held that Lawrence Township's sign ordinance was an unconstitutional content-based restriction on speech because it prohibited an inflatable rat used in a union labor protest while permitting similar displays for commercial grand openings. The Court also concluded that the ordinance was overbroad because it virtually eliminated a medium of expressive communication. The court reversed the Appellate Division and remanded for dismissal of the summons.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Justice Wallace, Jr.; Chief Justice Rabner; Justice Long; Justice LaVecchia; Justice Albin; Justice Rivera-Soto; Justice Hoens
JURISDICTION	New Jersey
DECIDED	February 5, 2009
DOCKET	A-73, September Term 2007
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed his municipal-court conviction for violating a municipal sign ordinance. The Law Division affirmed after a trial de novo, and the Appellate Division affirmed in a split decision. The Supreme Court of New Jersey reversed and remanded for dismissal of the summons.
STANDARD OF REVIEW	The court reviewed the constitutionality of the sign ordinance de novo, applying exacting scrutiny to content-based restrictions on noncommercial speech in a traditional public forum and the overbreadth doctrine to the facial challenge.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of New Jersey.
PARTIES	Wayne DeAngelo v. State of New Jersey

TOPICS

first amendment

free speech

overbreadth doctrine

ordinances

municipal law

PRACTICE AREAS

constitutional law

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land use and zoning

QUESTIONS PRESENTED

1. Whether Lawrence Township's sign ordinance, which prohibited balloon and other inflated signs while exempting grand-opening signs and other temporary signs, was a content-based restriction of speech in violation of the First Amendment and Article I, paragraph 6 of the New Jersey Constitution.
2. Whether the sign ordinance was facially overbroad because it virtually eliminated nonverbal, eye-catching symbolic signs as a medium of expression.

HOLDINGS

1. The Lawrence Township sign ordinance was content-based because it prohibited a union's inflatable rat display while permitting materially similar displays for grand openings and other favored purposes. The ordinance was unconstitutional because it did not satisfy strict scrutiny.
2. The ordinance was overbroad because it virtually eliminated an entire medium of protected expressive activity, namely nonverbal, eye-catching symbolic signs, while leaving only grand-opening signs and minor exceptions.

KEY QUOTATIONS

"In sum, the Lawrence Township sign ordinance is content-based, does not fairly advance any compelling governmental interests, and is not "narrowly tailored" to prevent "no more than the exact source of the 'evil' it seeks to remedy." (at 1206)

"The Township's elimination of an entire medium of expression without a readily available alternative renders the ordinance overbroad." (at 1208)

"As long as any future sign ordinance "leave[s] open ample alternative channels for communication," the Township may regulate the "time, place, or manner of [the use of] signs." (at 1208)

FACTUAL BACKGROUND

Members of the International Brotherhood of Electrical Workers distributed handbills on a public sidewalk in front of a Gold's Gym during a labor dispute. As part of the protest, they displayed a ten-foot-tall inflatable rat, a recognized symbol of labor unrest. After a police officer ordered the rat deflated and warned that reinflation would result in a summons, DeAngelo, the union official in charge, reinflated it and was cited under Lawrence Township Land Use Ordinance § 535(L)(2).

PROCEDURAL HISTORY

Wayne DeAngelo was convicted in the Municipal Court of Lawrence Township and fined for displaying an inflatable rat during a labor protest. After a trial de novo, the Law Division found him in violation of the

ordinance. The Appellate Division affirmed by majority, with Judge Sabatino dissenting on the constitutional issue. Defendant appealed that issue as of right and the Supreme Court granted certification on the remaining issues.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Law Division for entry of an order dismissing the summons issued to DeAngelo.

CASES CITED

- Int'l Union of Operating Eng'rs, Local 150 v. Vill. of Orland Park, 139 F. Supp. 2d 950 (N.D. Ill. 2001)
- State v. DeAngelo, 396 N.J. Super. 23, 930 A.2d 1236 (2007)
- State v. DeAngelo, 193 N.J. 276, 937 A.2d 978 (2007)
- New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964)
- Thomas v. Collins, 323 U.S. 516, 530 (1945)
- United States v. Grace, 461 U.S. 171, 176-77 (1983)
- Carey v. Brown, 447 U.S. 455, 459-63 (1980)
- State v. Cameron, 100 N.J. 586, 592, 498 A.2d 1217 (1985)
- Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 513, 101 S. Ct. 2882 (1981)
- Perry Education Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 44-45, 103 S. Ct. 948 (1983)
- Frisby v. Schultz, 487 U.S. 474, 479-80, 485, 108 S. Ct. 2495 (1988)
- Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 642-43, 114 S. Ct. 2445 (1994)
- Solantic, LLC v. City of Neptune Beach, 410 F.3d 1250 (11th Cir. 2005), reh'g denied, 175 F. App'x 328 (2006)
- National Advertising Co. v. Babylon, 900 F.2d 551, 557 (2d Cir. 1990)
- National Advertising Co. v. City of Orange, 861 F.2d 246 (9th Cir. 1988)
- Desert Outdoor Advertising, Inc. v. City of Moreno Valley, 103 F.3d 814, 820 (9th Cir. 1996), cert. denied, 522 U.S. 912 (1997)
- Whitton v. City of Gladstone, 54 F.3d 1400, 1403-04 (8th Cir. 1995)
- Rappa v. New Castle County, 18 F.3d 1043, 1063 (3d Cir. 1994)
- United States v. Williams, 553 U.S. 285, 128 S. Ct. 1830 (2008)
- City of Ladue v. Gilleo, 512 U.S. 43, 45, 48, 54-59, 114 S. Ct. 2038 (1994)
- Lovell v. City of Griffin, 303 U.S. 444, 451-52 (1938)
- Jamison v. Texas, 318 U.S. 413, 416 (1943)
- Martin v. City of Struthers, 319 U.S. 141, 145-49 (1943)
- Schneider v. State (Town of Irvington), 308 U.S. 147, 164-65 (1939)

- *Schad v. Mount Ephraim*, 452 U.S. 61, 75-76 (1981)
- *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)
- *State v. Miller*, 83 N.J. 402, 412 n.5, 413, 416-17, 416 A.2d 821 (1980)

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