

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

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TARA JILL CICCARONE and TROY  
BOHN,

Plaintiffs,

– Versus –

The CITY OF NEW ORLEANS;  
MITCHELL J. LANDRIEU, in his  
official capacity; RONAL SERPAS, in  
his official capacity.

Defendants.

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NUMBER: 2:13-cv-133

JUDGE:

Hon. Kurt D. Engelhardt

MAGISTRATE JUDGE:

Hon. Daniel Knowles

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**CONSENT JUDGMENT**

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This Consent Judgment is entered into this 28th day of January, 2013, by and between Plaintiffs Tara Jill Ciccarone, Troy Bohn, and Defendants City of New Orleans, Mitchell J. Landrieu and Ronal Serpas; and between Andrew Grafe and Defendants City of New Orleans, Mitchell J. Landrieu and Ronal Serpas.

WHEREAS, on July 11, 2012, in preparation for Super Bowl Forty-Seven, the City of New Orleans enacted, and on December 6, 2012, amended M.C.S. 24-913 (the "Ordinance"), attached hereto as **Exhibit J-1**;

WHEREAS, in October 2012, the City of New Orleans promulgated the Super Bowl XLVII Permit and Code Enforcement Guide (the "Guide"), attached hereto as **Exhibit J-2**;

WHEREAS the purpose of the Ordinance and Guide were to establish a "Clean Zone" from 6:00AM January 28, 2013 to 6:00PM February 5, 2013, within the following boundaries:

The area bounded by Earhart Boulevard to Calliope Street; Religious Street to Orange Street proceeding across the Mississippi River along the West bank Levee (at the Orleans Parish line); continuing across the Mississippi River to Elysian Fields Avenue (including Crescent Park); North Claiborne Avenue to Tulane Avenue; North Broad to Earhart Boulevard; and including the Louisiana Superdome Property (Champion Square), the New Orleans Arena, and the Ernest N. Morial Convention Center property.

[See **Exhibit J-1**, p.1]

WHEREAS, the City's goal in establishing the Clean Zone is to regulate, during the effective time and within the above-stated boundaries, various forms of commercial activity, including but not limited to advertising and other promotional

activities, for the purpose of providing for the public health, safety and welfare of residents and visitors and to assist businesses in thriving over the course of Super Bowl XLVII;

WHEREAS Plaintiffs Tara Jill Ciccarone and Troy Bohn, through undersigned counsel Justin Harrison of the ACLU Foundation of Louisiana, filed a Complaint (Rec. Doc. 1) on January 24, 2013, alleging that Sections 3(j) and 4 of the Ordinance and applicable portions of the Guide violate their rights under the First and Fourteenth Amendments to the United States Constitution by unlawfully regulating noncommercial expression;

WHEREAS on January 24, 2013, the Court entered a temporary restraining order (Rec. Doc. 4) partially enjoining enforcement of Sections 3(j) and 4 of the Ordinance and relevant portions of the Guide within the Clean Zone, except for the area set forth as follows:

The area bounded by Earhart Boulevard to Loyola Avenue; Loyola Avenue to Tulane Avenue; Tulane Avenue to North Broad; and North Broad to Earhart Boulevard; and including the Louisiana Superdome Property (Champion Square), and the New Orleans Arena

[See **Rec. Doc. 4**, p.2]

WHEREAS Andrew Grafe since has retained the ACLU Foundation of Louisiana through its attorney Justin Harrison and joined as Plaintiff in an amended complaint alleging that Sections 3(k) and (4) of the Ordinance and applicable portions of the Guide violate his rights under the First and Fourteenth Amendments to the United States Constitution by unlawfully regulating commercial speech;

WHEREAS Defendants deny Plaintiffs' allegations and admit no liability;

WHEREAS the Parties have negotiated in good faith in an attempt to settle this matter without further litigation, and have reached an amicable resolution of the controversies between them on the terms and conditions set forth herein and in consideration of the mutual promises and releases contained below, the Parties now agree as follows:

**As to Plaintiffs Tara Jill Ciccarone and Troy Bohn:**

1. Plaintiffs consent to the dissolution of the temporary restraining order and the dismissal with prejudice of this action, and release Defendants from any and all facial and/or preenforcement challenges arising on their own behalf to the Ordinance and Guide, including claims for reimbursement of expenses, costs, and reasonable attorneys' fees under 42 U.S.C. § 1988 and any other applicable provision of law. This dismissal and release does not apply to (i) any claim that has not yet accrued by the date of this Consent Judgment; or (ii) any claims arising out of the breach of any provision in this Consent Judgment. This Court shall retain jurisdiction for the duration of this Consent Judgment for the purposes of effectuating and/or enforcing its terms.

2. In consideration of Plaintiffs' dismissal, Defendants agree that the Ordinance and Guide shall apply to commercial activity only, and shall in no way be applied or enforced to encumber or burden noncommercial expressive activity.

**As to Andrew Grafe**

3. Grafe agrees to release Defendants from all facial and/or preenforcement challenges arising on his own behalf to the Ordinance and Guide, including claims for reimbursement of expenses, costs, and reasonable attorneys' fees under 42 U.S.C. § 1988 and any other applicable provision of law. This waiver does not apply to (i) any claim that has not yet accrued by the date of this Consent Judgment; or (ii) any claims arising out of the breach of any provision in this Consent Judgment.

4. In consideration of Grafe's waiver, Defendants agree as follows:

(a) Section 3(k) of the Ordinance, which is set forth at **Exhibit J-1**, p.4, shall be applied and enforced as follows:

k. Off-site and mobile advertising (including, but not limited to, signs on or attached to a vehicle, portable device or person) shall be prohibited except for promotional displays sanctioned or authorized by the City or by the National Football League (NFL), including, but not limited to, those placed on existing public utility poles

(b) Section 4 of the Ordinance, which is set forth at **Exhibit J-1**, p. 4, and which currently reads as follows:

Any temporary signage approved by the City pursuant to SECTION 3 above shall be required to consist of at least 60% Super Bowl/NFL branding, look and feel, and no more than 40% third party commercial identification.

shall not be applied or enforced.

(c) Page 6 of the Guide, under the heading "Banners & Signs and Advertising," set forth at **Exhibit J-2**, p.6, shall be amended and applied as follows:

**BANNERS & SIGNS & ADVERTISING**

- Inflatables, cold air balloons, banners, pennants, flags, building wraps, A-frame signs, projected image signs, electronic variable message signs, and light emitting diode signs of a commercial nature shall be prohibited except for those sanctioned or authorized by the City or by the National Football League (NFL).
- Off-site and mobile advertising (including, but not limited to, signs on or attached to a vehicle, portable device or person) shall be prohibited except for promotional displays sanctioned or authorized by the City or by the National Football League (NFL), including, but not limited to, those placed on existing public utility poles.

- (d) Page 24 of the Guide, under the heading “Banner & Signs,” set forth at **Exhibit J-2**, p.24, shall be amended and applied as follows:

#### Banner & Signs:

The City of New Orleans Clean Zone Ordinance Number 24,913, M.C.S. prohibits the following activity related to Banners & Signs & Advertising (unless sanctioned and authorized by the City or the National Football League)

- Inflatables, cold air balloons, banners, pennants, flags, building wraps, A-frame signs, projected image signs, electronic variable message signs, and light emitting diode signs of a commercial nature shall be prohibited except for those sanctioned or authorized by the City or by the National Football League (NFL).
- Off-site and mobile advertising (including, but not limited to, signs on or attached to a vehicle, portable device or person) shall be prohibited except for promotional displays sanctioned or authorized by the City or by the National Football League, including, but not limited to, those placed on existing public utility poles.

- (e) Page 33 of the Guide, under the heading “Sign Requirements,” set forth at **Exhibit J-2**, p.33, shall be amended and applied as follows:

#### Sign Requirements

....

Signs will be inspected for compliance with the approved application including the specified method of attachment. Unpermitted signs will be removed, and the businesses being advertised as well as anyone caught posting advertisements will be prosecuted.

- (f) Page 33-34 of the Guide, under the heading “Advertising,” set forth at **Exhibit J-2**, p.33-34, shall be amended and applied as follows:

#### Advertising

....

#### Specific Prohibitions:

Inflatables, cold air balloons, banners, pennants, flags, building wraps, A-frame signs, projected image signs, electronic variable message signs, and light emitting diode signs of a commercial nature shall be prohibited except for those sanctioned or authorized by the City or the by the National Football League (NFL). Off-site and mobile advertising (including, but not limited to, signs on or attached to a vehicle, portable device or person) shall be prohibited except for promotional displays sanctioned or authorized by the City or by the National Football League including, but not limited to, those placed on existing public utility poles.

- Sidewalk Chalking/Spray Painting is considered vandalism unless special exception is granted by the Department of Public Works.

- Posting of glued signs on vacant buildings, electrical poles, streetlight poles, traffic signal poles, traffic signal boxes, or newspaper boxes is considered vandalism.

- Display of advertisements attached to electrical poles, streetlight poles, and traffic signal poles by any means including rope, string, and zip tie is considered a violation of Section 166 of the City of New Orleans Municipal Code, and will be prosecuted accordingly.

In cases where the display of advertising is considered vandalism, the New Orleans Police Department has the authority to cite and/or arrest both the person(s) posting the signs and the business who solicited the promotion.

5. “Off-site” advertising is defined as advertising identifying a use, facility, or service not located on the premises; identifying a product which is not produced, sold or manufactured on the premises; or which otherwise directs attention to a product, service, activity, event, person, institution, or business offered elsewhere than on the premises where such advertising is located.

6. The parties agree to reserve the issue of attorneys fees and costs for separate determination by the Court.

7. This Consent Judgment is not to be construed as an admission of liability on the part of the Defendants.

8. The terms of this Consent Judgment shall be a matter of public record.

9. The Parties declare and understand that no promises, inducements, or agreements not contained in this Consent Judgment have been made to them, that this Consent Judgment contains the entire agreement between the Parties, and that the terms of this Consent Judgment are contractual and not merely a recital.

10. This Consent Judgment contains the entire agreement between the Parties with respect to the subject matter hereof, and there are no agreements, understandings, representations or warranties between the Parties other than those set forth or referred to in this Consent Judgment.

11. This Consent Judgment shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

12. If any provision of this Consent Judgment shall be determined to be invalid, illegal, or unenforceable for any reason, the remaining provisions and portions of this Consent Judgment shall be unaffected and unimpaired, and shall remain in full force and effect, to the fullest extent permitted by applicable law.

13. Counsel for each party has consented to the terms of this Consent Judgment, and has authorized inscription of their respective electronic signatures below to signify their consent.

Dated: January 28, 2013

Respectfully submitted by:

/s/ Justin Harrison  
Justin P. Harrison, La No. 33575  
Senior Staff Attorney  
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Attorney for Plaintiff

/s/ Christy Harowski  
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Attorney for Defendants

IT IS SO ORDERED, ADJUDGED AND DECREED.

New Orleans, Louisiana, this 28th day of January, 2013.

  
United States District Judge