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Manlius Censors Residents

Town Requires Residents to Ask Permission before Speaking

Introduction

David Rubin is a resident of the Town of Manlius, New York. He wishes to exercise his First Amendment right to engage in political speech by posting yard signs in support of his favorite political candidates on his private property.

Manlius, however, prohibits individuals from displaying political yard signs except during the thirty days before and seven days after an election. Even when citizens are allowed to display such signs, they are first required to obtain a permit.

Dr. Rubin wishes to display political yard signs more than thirty days before and seven days after scheduled elections. Furthermore, Dr. Rubin does not believe that he should have to seek the Town's permission before exercising his First Amendment rights.

On August 6, the Center for Competitive Politics (CCP) legal team, representing Dr. Rubin, filed a lawsuit challenging the town's unconstitutional restrictions on political yard signs.

Background

The Town of Manlius Code states that: "[i]n order to preserve aesthetics and ensure traffic safety in the Town of Manlius, political signs advocating the candidacy of an individual or individuals for public office are allowed, subject to the [condition that]…[n]o sign may be erected more than 30 days prior to the election to which it applies, and shall be removed within 7 days after that election date."[1]

Likewise, the Code allows property owners to place political signs only with the Town's prior permission: "[i]n order to preserve aesthetics and ensure traffic safety in the Town of Manlius, political signs advocating the candidacy of an individual or individuals for public office are allowed, subject to the [condition that]…[n]o sign may be erected without a permit on a form supplied by the Town after registration with the Town Clerk."[2]

Case

[1] Town of Manlius Code, Art. IV, § 155-26(E)(4).
[2] Town of Manlius Code, Art. IV, § 155-26(E)(5).

When most people think of local elections, yard signs are among the first things that come to mind. Like bumper stickers, yard signs are one of the most ubiquitous forms of political expressions in our society. They are perhaps the most basic way for citizens to express their support for candidates and causes.

Manlius' permitting regime and ban are a naked prior restraint on speech. Forcing citizens to ask permission on certain dates to express themselves politically, or else stay silent, is a gross overreach of government power and violates the First Amendment.

While it is true that the government may limit political signs if it is in the public interest, such as when signs create safety concerns, any such regulations must be tailored to survive strict scrutiny in court. That is, they must take care not to overly infringe on First Amendment political expression rights by being carefully drafted to address only compelling state interests. In this case, no safety interest involving political yard signs merits infringing some of the most basic rights enshrined in our Constitution.

CCP recently won a similar case in the United States District Court for the District of North Dakota. In that case, *Emineth v. Jaeger,*[3] North Dakota resident Gary Emineth, was, like all North Dakota residents, banned any speech, including political signs that attempt to "induce or persuade" citizens to vote for or against a candidate to be displayed on his property on election day. The case, which took three weeks from the initial filing to injunction, struck down North Dakota's 100-year-old ban. Ultimately, the federal judge, using authority granted to him by the Civil Rights Act, ordered the state to pay Mr. Emineth's attorneys' fees amounting to $18,000.

The 1994 Supreme Court decision in *Ladue v. Gilleo*[4] is directly on point in this case. There, the Court recognized that a city may have a valid interest in minimizing visual clutter to further aesthetic and safety concerns, but found this interest insufficient to justify a content-based restriction on speech as is the case here.

The Manlius law and permit requirement are particularly problematic because they are content-based: they single out just one type of speech for prohibition and regulation, namely political expression via lawn signs. In its 1992 *Burson v. Freeman* decision, the Supreme Court explicitly recognized the content-based nature of regulations that single out political speech.[5] There, the Court found a content-based restriction when "[w]hether individuals [could] exercise their free speech rights near polling places depend[ed] entirely on whether their speech is related to a political campaign,"[6] and recognized that "the First Amendment's hostility to content-based regulation extends not only to a restriction on a particular viewpoint, but also to a prohibition of public discussion of an entire topic."

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[3] *Emineth v. Jaeger*, 2012 U.S. Dist. LEXIS 159091, *16 (D.N.D. Oct. 31, 2012) (formal publication forthcoming).
[4] 512 U.S. 43 (1994).
[5] 504 U.S. 191, 197.
[6] *Id.*

The justification offered in the text the Manlius law is "to preserve aesthetics and ensure traffic safety." But the Supreme Court, in *Ladue,* rejected such a justification for burdens upon First Amendment rights. Recognizing that a city might have a *valid* interest in minimizing visual clutter to further aesthetic and safety concerns, the Supreme Court also found that such interest was not sufficiently *compelling* to justify a content-based restriction on speech.[7] This was particularly so where the restriction prohibited "even such absolutely pivotal speech as a sign protesting an imminent governmental decision to go to war."[8]

By contrast, in the *Burson v. Freeman* decision upholding campaign-free buffer zones around polling places, the Supreme Court did recognize a compelling government interest in "regulating conduct in and around the polls in order to maintain peace, order and decorum there."[9] But the Ban does not further such an interest. Instead, it is similar in both breadth and kind to the rule invalidated in *Ladue*—it is a blanket prohibition on speech, aimed at an interest the *Ladue* court recognized as insufficiently compelling.

In addition to failing strict scrutiny because it is not narrowly tailored to a compelling government interest, the town's permit requirement also fails to satisfy an additional requirement.[10] "A system of licensing that requires parties to obtain permits from the state before engaging in expression can be an unconstitutional prior restraint when state officials are allowed to exercise 'unfettered discretion' in the absence of explicit standards or procedures."[11] Indeed, "regulations requiring not merely registration but the securing of a license, issued either at the arbitrary discretion of licensing officials or by the application of licensing standards so broad or uncertain as to permit arbitrary action by officials, as prerequisite to the right to speak"[12] are invalid. Manlius has no standards or procedures governing its permit application and approval process.

Client

David Rubin is a professor at Syracuse University who wishes to speak out on political issues by displaying standard political signs on his lawn. Dr. Rubin does not wish to limit this expression to the narrow window of time the Town allows. He also does not want to ask for a permit each time he displays a political yard sign.

[7] *Ladue*, 512 U.S. at 54.
[8] *Id.* at 53.
[9] *Burson*, 504 U.S. at 193 (citing *Mills v. Alabama*, 384 U.S. 214, 218 (1966)).
[10] *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130 (1992) (outlining requirements to overcome the heavy presumption of unconstitutionality applicable to permit and licensing schemes burdening constitutionally protected speech).
[11] *Perry v. McDonald*, 280 F.3d 159, 171 (2d Cir. 2001) (citing *City of Lakewood v. Plain Dealer Publ'g Co*., 486 U.S. 750, 757 (1988); *Freedman v. Maryland*, 380 U.S. 51 (1965)).
[12] *Communist Party of United States v. Subversive Activities Control Bd.*, 367 U.S. at 90 n. 34.

Defendants

Defendants are Town Supervisor Edmond Theobald, other members of the town board, and the town's code enforcement officers.

Legal Team

CCP's legal team is led by the Center's Legal Director, Allen Dickerson.

The Center for Competitive Politics is one of the nation's premier centers of public interest litigation. It is the only public interest law firm with in-house litigation staff solely focused on the defense of First Amendment rights to free political speech, assembly and petition. CCP was co-counsel in *SpeechNow.org v. Federal Election Commission*, which held that there can be no limits on contributions to independent expenditure committees. This case created what is now known as Super PACs. CCP's amicus brief was cited in the majority opinion in the *Citizens United* case. CCP's legal team represents two cases now pending at the U.S. Supreme Court.