

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

**David Rubin,** )  
 )  
 **PLAINTIFF,** )  
 )  
 **v.** )  
 )  
 **Edmond Theobald, Town of Manlius** )  
 **Supervisor; John R. Loeffler, Town of** )  
 **Manlius Councilor and Deputy** )  
 **Supervisor; Town of Manlius Councilors** )  
 **Vincent Giordano, David M. Marnell, Sr.,** )  
 **Karen Green, Nicholas J. Marzola, and** )  
 **Jason Cassalia; Town of Manlius Code** )  
 **Enforcement Officers Michael Jones,** )  
 **David Weber, and Mike Wildrick;** )  
 **all in their official capacities,** )  
 )  
 **DEFENDANTS.** )

**No. 5:13-cv-00929-GTS-ATB**

**PLAINTIFF’S NOTICE OF VOLUNTARY DISMISSAL WITHOUT  
PREJUDICE PURSUANT TO RULE 41(a)(1)(A)(i)**

PLEASE TAKE NOTICE of Plaintiff’s voluntary dismissal of the above-captioned action under Fed. R. Civ. P. 41(a)(1)(A)(i). Such dismissal is without prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(B).

In papers filed August 6, 2013, Plaintiff Dr. David Rubin moved this Court for permanent injunctions against enforcement of Town of Manlius Code Art. IV § 155-26(E)(4) and (5). These laws constituted prior restraints upon Plaintiff’s protected political expression in violation of the First Amendment, as incorporated

against the State of New York and its municipalities by the Fourteenth Amendment. The points and authorities demonstrating this unconstitutionality are set forth in Plaintiff's Memorandum of Law in Support of Permanent Injunction (Docket # 4-1).

The Town of Manlius convened a Public Hearing on September 11, 2013, to discuss repeal or amendment of the offending provisions. In convening that meeting, the Town Board noted that "the Town of Manlius has been served with civil litigation... alleg[ing] that Town of Manlius Code § 155.26 Temporary Signs, Section E, Political Signs is unconstitutional and infringes upon an individuals [sic] protected political speech." The resolution further noted that "the Town of Manlius Code is not intended to restrict or deny any forms of political speech protected by the first amendment to the Constitution."<sup>1</sup> After the hearing, the Town Board voted unanimously to repeal Code Art. IV § 155-26(E) in its entirety.<sup>2</sup>

Fed. R. Civ. P. 41(a)(1) provides for voluntary dismissal by a plaintiff without a court order where "defendants have neither answered nor moved for summary judgment [...]. And, by rule, in the event that plaintiff has not previously

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<sup>1</sup> TOWN OF MANLIUS, NEW YORK, RESOLUTION CALLING FOR PUBLIC HEARING IN THE MATTER OF LOCAL LAW 2013-2, [http://www.townofmanlius.org/images/PH\\_Amending\\_Sign\\_Ordinance.pdf](http://www.townofmanlius.org/images/PH_Amending_Sign_Ordinance.pdf) (last visited, October 7, 2013).

<sup>2</sup> Elizabeth Doran, *Manlius town board repeals contested political lawn sign rules*, SYRACUSE POST-STANDARD, September 11, 2013, [http://www.syracuse.com/news/index.ssf/2013/09/manlius\\_residents\\_speak\\_in\\_fav\\_or\\_of\\_changing\\_campaign\\_lawn\\_sign\\_rules.html](http://www.syracuse.com/news/index.ssf/2013/09/manlius_residents_speak_in_fav_or_of_changing_campaign_lawn_sign_rules.html) (last visited, October 7, 2013).

once dismissed an action based upon the same circumstances in this or any other court of competent jurisdiction, the dismissal is properly without prejudice unless the notice states otherwise.” *Gillespie v. Frank*, 2009 U.S. Dist. LEXIS 117122, 1-2 (N.D.N.Y. Dec. 15, 2009).

Pursuant to this Court’s September 4, 2013 Order (Docket #8), the Town’s response to Plaintiff’s Motion for Permanent Injunction was due September 19, 2013. However, in furtherance of judicial efficiency and expeditious resolution of this matter, and acknowledging that the Town of Manlius had repealed the offending code provisions, Plaintiff withdrew his Motion for Permanent Injunction on September 19, 2013 (Docket #9).

On October 1, 2013, following an earlier conference between counsel for the parties, counsel for Defendants provided a letter to counsel for Plaintiff stating that (1) the Town would not reenact the ordinance challenged in this action, and (2) that any action concerning a new ordinance on the subject of political signs, if any, would not take place until “well after the first of the year in 2014.”<sup>3</sup>

Relying upon the Town’s representations in this respect, and noting that the unconstitutional ordinance challenged here has been withdrawn, Plaintiff sees no need for this action to proceed. Thus, a voluntary dismissal without prejudice—

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<sup>3</sup> The original letter is on file with counsel for Plaintiff.

preserving Plaintiff's right to refile this lawsuit should the Town enact further unconstitutional regulations applicable to political law signs—is appropriate.

Dated this 7<sup>th</sup> day of October, 2013.

Respectfully submitted,

/s/ Allen Dickerson  
Allen Dickerson  
Bar Roll # 518232  
Center for Competitive Politics  
124 S. West St., Ste. 201  
Alexandria, VA 22314  
Tel: 703-894-6800  
Fax: 703-894-6811  
adickerson@campaignfreedom.org

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of October, 2013, I caused a copy of the foregoing Notice of Voluntary Dismissal to be sent to Don Martin, Town Attorney for Town of Manlius, via electronic mail at djmartin@harrisbeach.com.

/s/ Allen Dickerson  
Allen Dickerson  
*Attorney for Plaintiff*