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STATEMENT OF BARRIE GEWANTER TO THE CORTLAND CITY COUNCIL 9/6/11

My name is Barrie Gewanter, and I am the director of the Central New York Chapter of the NYCLU, the New York State affiliate of the ACLU. I appreciate the opportunity to speak to the mayor and Cortland City Council.

Municipalities sometimes have laws on their books that are neither completely lawful nor practical. However, when a municipality chooses to enforce a law that treads on people's constitutional rights, we do intervene in order to ensure that the most fundamental American rights are preserved. Such a situation has been brought to my attention in Cortland. In consultation with staff attorneys in our New York State headquarters, I have reviewed the sections of Cortland's zoning laws that pertain to signs and the enforcement of related codes. Restrictions on political signs within Cortland's zoning law raise serious constitutional questions, and its enforcement this year has already had a negative impact on residents political expression.

Firstly, Section 300-107 of your zoning law states that a resident or property owner may only, without seeking a permit, place one of any of 13 temporary signs displayed on their property at any one time, without seeking a permit. The Cortland Codes Enforcement Office has interpreted this to mean that if you have a garage sale sign, a sign announcing a bingo event, a memorial sign, or a sign announcing that your home is for sale, you must seek a permit and pay a \$10 permit fee in order to place even one political sign on your lawn. If you wish to put more than one political sign on your lawn, even during an election season, you must request a permit and pay an additional \$10 fee for each additional lawn sign.

A municipality can put reasonable limits on the time, place and manner in which people speak out publicly. However, this numerical restriction on lawn signs is not reasonable. The existing prohibitions on placing temporary signs between the curb and sidewalk and on placing a sign in such a way as to obstruct the view of traffic are both reasonable. However, this numerical restriction on temporary signs has already functioned to dissuade people from expressing their political opinions in this election cycle. In legal terms that is referred to as a "prior restraint," and a municipality may not take action that functions as a prior restraint on free speech.

Secondly, Section 300-107 limits each political sign to no more the three square feet in area, while allowing other kinds of temporary signs or banners, including ones displayed for commercial purposes, to range from five to 50 square feet. A municipality cannot restrict political speech to a greater degree than other forms of speech, and certainly cannot privilege commercial speech over political speech.

Thirdly, the definition of political signs in Section 300-103 contemplates a political sign that pertains to or advocates political views or policies. Yet Section 300-107 restricts the placement of *all* political signs to a period of 45 days before an election to three days after an election. Such durational limits have also been found to be unconstitutional, whether they limit political signs for a particular candidate or for a political viewpoint. If I wish to place a sign that says "No Hydrofracking" or "Support Military Families" a municipality cannot say that you are only allowed to express those opinions for 48 days.

By now each councilor, the mayor and the corporation counsel have received a letter from NYCLU senior staff attorney Beth Haroules and I which makes two requests of the City of Cortland:

- 1) In order to prevent this ordinance and its enforcement from further dissuading people from expressing their political opinions using law signs, we request that the city direct its codes

enforcement officers to *immediately* cease enforcement of the numerical restrictions on political lawn signs, and to make it abundantly clear to the public that they may place such signs on their property without seeking a permit or paying a fee.

2) We ask that the City Council, in consultation with the mayor and the corporation counsel, take steps to amend the ordinance to address the ways in which it unduly and unreasonably restricts political signage. We ask that this be pursued with all due speed. We would be happy to be of consultation in this process, and intend to monitor the steps to be taken to accomplish this.

We would prefer to resolve these concerns as described, rather than go to federal court to request a temporary restraining order blocking any further enforcement of this ordinance in relation to political signage. Unfortunately, this is not the first time that I have approached the City of Cortland in relation to an unconstitutional restriction on free speech. In 2010, an insurance requirement was used to refuse the issuance of a permit for a peaceful and lawful protest on municipal streets. Revisions to the related 1969 protest permit ordinance have lingered without enactment. So, it is my hope that the discussion of this issue with political lawn signs will lead us to work together to enact amendments to both sections of your laws.

I have gotten the sense from residents of Cortland that the right to free speech is treasured here, that people here want to be able to express their political opinions as they see fit, during and after an election cycle, and that there is a strong desire to restore a vibrant socio-political dialogue here. That may be patently obvious from the turnout in this chamber today. Accordingly, I look forward to working with you to make this happen.