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September 2, 2011

SENT VIA FACSIMILE to Mayor at (607) 753-0385

SENT VIA FACSIMILE to Corporation Counsel at (607) 753-3328

SENT VIA Email to mayor@cortland.org and pperfetti@twcny.rr.com and knick@cortland.org

Susan Feiszli
Cortland Mayor
City Hall - 25 Court Street
Cortland, NY 13045

Members of the City Council
City of Cortland
City Hall - 25 Court Street
Cortland, NY 13045

Patrick Perfetti, Esq.
Cortland Corporation Counsel
City Hall - 25 Court Street
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Patrick Perfetti, Esq.
Perfetti Law Office
62 North Main Street
Cortland, NY 13045

Assistant Fire Chief William Knickerbocker
Director of Code Enforcement
City Hall - 25 Court Street
Cortland, NY 13045

Re: City of Cortland Sign Ordinance and Related Enforcement

Dear Mayor Feiszli, Councilors, and Messrs. Perfetti and Knickerbocker:

Our office has been contacted by Cortland residents who wish to display political signs on their privately owned residential property as well as by candidates for elected office who wish to have signs supporting their candidacy in the upcoming September 13, 2011 primary elections displayed by their supporters on their privately owned property.¹ Both the candidates and the homeowners are concerned by the Cortland zoning ordinance that prohibits the display of no more than one political sign on privately owned residential property. As we understand it, sections 300-105 and 300-107 of the Cortland zoning ordinance absolutely bar a homeowner from displaying more than one “temporary” sign on his/her property, unless and until the homeowner applies for and obtains a permit from the Cortland Fire Department.

Specifically section 300-107 requires anyone who wishes to place on their property more than one of any of the thirteen (13) types of signs listed in this section, including any “political signs”, to first seek a permit allowing them to do so. According to section 300-175, the applicant is required to pay a \$10 fee to obtain such a permit, for each sign they wish to post on their property beyond the initial sign that may be posted without a permit. According to section 300-172, a person who does not comply with a request from Cortland Codes Department to remove unpermitted signs could face a fine of up to \$250. Moreover, there are no identified

¹ It is our understanding that there are at least 5 contested local races involved in the upcoming September 13, 2011 primary and subsequent November general election.

procedures or standards to guide the Cortland Codes Department when considering sign permit applications, thus conferring standardless discretion to Codes Department staff.

The Supreme Court has long recognized that candidate yard signs are a venerable and unique medium of core political speech at the heart of the First Amendment's guarantee of the right to free expression. *City of Ladue v. Gilleo*, 512 U.S. 43 (1994). The law is also equally well established that a one-sign limit, such as Cortland's, imposes constitutionally impermissible burdens on the First Amendment rights of two distinct groups – homeowners as well as these candidates in contested primaries for elected office. *See, e.g., Arlington Cty. Republican Comm. v. Arlington Cty., Virginia*, 983 F.2d 587, 593 (4th Cir. 1993). In *Arlington County*, the Fourth Circuit concluded that a two-sign ordinance was impermissibly narrowly tailored because it failed to leave open ample alternative means for communicating the desired message by homeowners and candidates alike. Moreover, to the degree that the ordinance requires a permit from the Fire Department prior to posting a second sign, the law imposes a licensing regime that violates the first amendment prohibition against prior restraints. *Hynes v. Oradell*, 425 U.S. 610 (1976); *Niomotko v. Maryland*, 340 U.S. 268 (1951); *Lovell v. Griffin*, 303 U.S. 444 (1938).²

In this case, Cortland burdens substantially more speech than necessary by effectively completely foreclosing an inexpensive and autonomous way for homeowners and candidates to communicate. The one-sign limit leaves inadequate alternative means of expression to both the private property owners who wish to express their support for candidates in multiple races, or who are barred, for example, outright without a permit from posting a political sign because s/he is in the process of renovating or selling their homes and have other types of “temporary” signage posted. Similarly, as the Fourth Circuit noted in *Arlington County*, a restrictive sign limit leaves inadequate alternative means of expression to the candidates because various putative viable alternative avenues of speech – speeches in public places, door to door and public canvassing, distributing handbills, appearing at citizen group meetings, advertising, posting signs in local businesses and automobiles – were insufficient in that they required either too much time involvement or too much expense.

Accordingly, we would appreciate receiving your immediate written assurance that:

- you have directed your codes enforcement officers to immediately cease and desist from any enforcement of this zoning regulation in relation to political signage as well as any related demands or warnings related to enforcement, and
- you will move as quickly as practicable to change the law to reflect constitutional standards through action by the City Council and Mayor.

There is, however, one additional and crucial concern that we would request the City to address immediately – it relates to the issuance of a clear and unequivocal statement of the City's position that it will not enforce the zoning regulation in relation to political signage.

² In this regard, we note in passing that the Cortland sign ordinance contains other impermissible content-driven distinctions that burden political speech. As an example, the Cortland sign ordinance imposes differential temporal and size restrictions on political signage as compared to commercial and other types of signage displays

We also note that there is no form for the sign permit on the City of Cortland website and further, that it has been reported to us, that while there is direction on the website that a person interested in obtaining such permit should proceed to the Codes Enforcement department to obtain the appropriate paperwork, no such permit application may currently be available and “will have to be mailed out.”

Further, we note that we have received reports that Codes Enforcement personnel are approaching individual homeowners on an *ad hoc* basis to direct verbally the removal of all candidate signs but for one rather than enforce pursuant to section 300-114 of the Cortland zoning ordinance.

To date, the City has communicated its intention to enforce the existing zoning ordinance in a variety of conflicting and confusing public/quasi-public and private fashions. On or about August 12, 2001, an unsigned letter from Codes Enforcement informed candidates of the Cortland one sign limit and the penalties for violation of the signage ordinance relating to political signs. Subsequently, various statements were made by city officials published or restated in an August 27, 2011 article in the Cortland Standard.³ In addition, there has been at least one Facebook posting by Mayor Feiszli on August 29, 2011, in which Mayor Feiszli seems to suggest in great detail that for a variety of reasons, including lack of resources in the Codes Enforcement department of the Fire Department to investigate such low priority complaints about the City's zoning ordinance, that homeowners and candidates would be free to disregard the dictates and penalties of the Cortland zoning ordinance relating to political signage.⁴ Assistant Fire Chief Knickerbocker has also made public statements acknowledging the fact that enforcement of this ordinance in relation to number of signs would burden free speech. *See* Cortland Standard article, *supra*. By the same token, both Mayor Feiszli and Chief Knickerbocker have indicated that the law would be enforced and that Cortland residents could face an official letter of violation and a \$250 fine. *Id.*

Accordingly, the legislative and executive branches of the City of Cortland have a special obligation to communicate immediately to candidates and to the general public that codes enforcement officers have been officially instructed to forthwith cease and desist from any enforcement of this zoning regulation in relation to political signage, and that residents of Cortland are welcome to express their political views through multiple lawn signs. This should be done in as open, transparent, and public way as possible.⁵ This is absolutely necessary to alleviate public concerns about any potential risk of engaging in political speech using law signs, thereby minimizing the effect of prior restraint that is already in play, to clarify whatever remaining and constitutionally reasonable limitations on time, place, and manner may still be in force (such as not placing such signs between the sidewalk and the curb), and to restore a free flow of political speech in Cortland.

Obviously, we would prefer to resolve the issues addressed in this letter without the need to resort to litigation. We have sent this letter before pursuing any legal filings with the federal court in order to make this possible. Accordingly, we would, however, appreciate if you would contact either of us in advance of the Common Council meeting on Sept. 6, 2011 to discuss this matter further. Our office phone and fax contact information is listed above. Our email addresses are bharoules@nyclu.org and bgewanter@nyclu.org. Ms. Gewanter can also be reached by cell phone at (315) 569-6334 after 10:00 am.

In any event, Ms. Gewanter will attend the Common Council meeting on the September 6, 2011 to present further the concerns of those Cortland residents and candidates who have been in contact with our offices. It is our hope that when Ms. Gewanter addresses the Common Council, she will be able to thank the City for its quick action rather than criticize impermissible impositions on fundamental rights.

Very truly yours,

Beth Haroules bg

Beth Haroules
Senior Staff Attorney

Barrie Gewanter bg

Barrie Gewanter
Director – Central NY Chapter

³ *Candidates, Residents Object to Election Sign Law*, Matthew Nojiri, available at <http://www.cortlandstandard.net/articles/08272011n.html>.

⁴ Available at <http://www.facebook.com/pages/Susan-Feiszli-for-Cortland-Mayor/215502941817168?sk=wall> and www.susanfeiszlifor mayor.com.

⁵ We suggest that there are a variety of ways to accomplish this outcome: through a press release, direct contact with the Cortland Standard with a request to publish this new information, a letter to the candidates who received the August 12th letter, and postings on any appropriate internet and social media locations that are or have been utilized by the City or City officials to communicate related policy, including but not limited to the City's website.