

July 2, 2014

BY ELECTRONIC MAIL AND FIRST CLASS MAIL

Mayor Daniel Murphy
Hancock Town Hall
126 West High Street
Hancock, MD 21750

Dear Mayor Murphy:

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FOUNDATION OF
MARYLAND

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OFFICERS AND DIRECTORS
COLEMAN BAZELON
PRESIDENT

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We write on behalf of the American Civil Liberties Union of Maryland and Hancock resident Nigel Dardar, concerning the Town's recent enactment of unconstitutional new durational restrictions upon candidates' and residents' rights to display political yard signs on their private property. Specifically, Hancock's new Charter amendment – which we understand became effective on April 3 -- provides that in connection with municipal elections¹:

“Candidates shall not place or allow to be placed any campaign signs in Town prior to January 2. All campaign signs shall be removed within 72 hours after the completion of the election.”

Town of Hancock, Md., Town Charter, §32 (2014).

As a past Town official and potential future candidate, Mr. Dardar is concerned, as is the ACLU, that Hancock's new Charter provision violates the rights of residents, as well as those running for municipal office. As you might recall, Mr. Dardar expressed these concerns at Town Council meetings in March and May of this year, suggesting he might not comply with the restrictions, due to his belief that they are unlawful. *Minutes of Mayor and Council Meeting 2* (Mar. 12, 2014); (May 14, 2014). Failure to comply, he was told, could result in misdemeanor charges against violators.

The issue of government restrictions upon political lawn signs is one the ACLU of Maryland has been extensively involved in, both through public advocacy and, on occasion, through litigation. The United States District Court for the District of Maryland repeatedly has ruled that durational limits on political yard signs violate the First Amendment, most recently in an ACLU case invalidating a Baltimore County law that restricted the length of

¹ This amendment is part of the Charter provision establishing that municipal elections take place in Hancock on the last Monday in January, in odd numbered years.

time residents could display signs before and after an election. *Bell v. Baltimore County*, 550 F. Supp. 2d 590 (D. Md. 2008). Like Hancock's Charter amendment, Baltimore County's law barred residents from posting political campaign signs on their private property beyond a limited window of time surrounding the election. Judge Catherine Blake found the regulation to be an "unconstitutional durational limit on political residential signs." *Bell*, 550 F. Supp. at 591. Judge Blake noted that many courts have recognized "the importance of campaign signs and the message they provide" as a form of protected speech. *Id.* at 592. This type of regulation is not narrowly tailored when it specifically restricts campaign signs. *Id.*

The *Bell* ruling followed a 1999 federal district court ruling that struck down a similar provision of the Prince George's County Code. *Curry v. Prince George's County*, 33 F. Supp. 2d 447, 448 (D. Md. 1999). There, Judge Peter J. Messitte held that the Prince George's ordinance unconstitutionally infringed First Amendment rights "insofar as it impose[d] durational limitations on the posting of political campaign signs by individuals at their private residence." *Id.* at 448. The court found that, while valid regulations for private, residential property "may include size, shape and location restrictions upon campaign signs, they may not include durational ones." *Id.* at 455-55.

A restriction on the amount of time a political campaign sign may be displayed on private property restricts the First Amendment rights of both the resident and the candidate. *Curry*, 33 F. Supp. 2d at 449 n. 3. As the United States Supreme Court noted in *City of Ladue v. Gilleo*, "[d]isplaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means. Precisely because of their location, such signs provide information about the identity of the 'speaker.'" 512 U.S. 43, 56 (1994).

Like the sign ordinances found unconstitutional in Prince George's and Baltimore Counties, the amendment to §32 restricts the amount of time residential property owners may display political signs, and thereby violates the First Amendment.

We understand that Hancock officials proposed these restrictions to prevent campaign signs from being "plastered" all over, disrupting the tranquility of the Town during the holiday season. *Minutes of Mayor and Council Meeting 2* (March 12, 2014). However, a municipality's interests in promoting aesthetics and preventing visual clutter, even if significant, is not sufficient to justify abridgement of citizens First Amendment rights to free speech. *City of Ladue*, 512 U.S. at 58.

For these reasons, we urge you to revisit the Town's enactment of this law promptly, and to rescind these provisions in advance of the 2015 municipal election. We would appreciate it if you or your attorney would contact one of

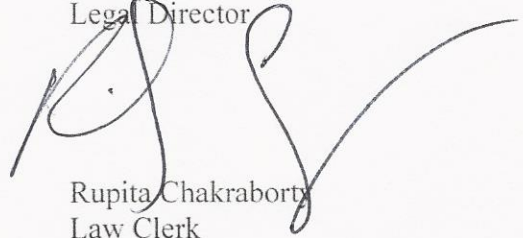
us after you have a chance to review this request to advise us of the Town's decision.

Thank you for your consideration.

Sincerely,



Deborah Jeon
Legal Director



Rupita Chakraborty
Law Clerk

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND

cc: Edward L. Kuczynski, Esq.
Mr. Nigel Dardar