

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

LABOREMO, LLC and ANDREW CUDDY,

Plaintiffs,

v.

TOWN OF FLEMING and BILL GABAK,  
JR., the Zoning Officer for the Town of  
Fleming,

Defendants.

No. 5:24-cv-1123 (MAD/TWD)

**COMPLAINT**

Plaintiffs Laboremo, LLC and Andrew Cuddy (“Plaintiffs”), by and through undersigned counsel, bring this Complaint against Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

**INTRODUCTION**

1. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, challenging Defendants’ restriction on Plaintiffs’ public issue speech.

2. The United States Supreme Court “has recognized that expression on public issues ‘has always rested on the highest rung of the hierarchy of First Amendment values.’ ‘[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.’” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) (citations omitted).

3. Plaintiffs seek a declaration that Defendants violated their clearly established constitutional rights as set forth in this Complaint; a preliminary and permanent injunction enjoining the enforcement of Article XII, Sign Regulations of the Zoning Ordinance, specifically

including the section restricting political signs (hereinafter referred to as the “Political Sign Restriction”), as set forth in this Complaint; an award of nominal damages; and an award of attorneys’ fees and costs pursuant to 42 U.S.C. § 1988, and other applicable laws.

### **JURISDICTION AND VENUE**

4. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

5. Plaintiffs’ claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure.

6. Plaintiffs’ claim for nominal damages is authorized by 42 U.S.C. § 1983.

7. Plaintiffs’ claim for an award of their reasonable costs of litigation, including attorneys’ fees and expenses, is authorized by 42 U.S.C. § 1988 and other applicable law.

8. Venue is proper under 28 U.S.C. § 1391(b) because Defendants are located in this judicial district and a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this district.

### **PARTIES**

9. Plaintiff Laboremo, LLC, is a company that is owned and controlled by Plaintiff Andrew Cuddy. Plaintiff Laboremo, LLC owns the property located within the Town of Fleming at 5693 South Street Road.

10. Plaintiff Andrew Cuddy is an adult citizen of the United States and a resident of the State of New York. Plaintiff Cuddy is the owner of Plaintiff Laboremo, LLC, and he is the owner of the political signs at issue in this lawsuit. In fact, Plaintiff Cuddy personally placed these signs on the property located within the Town of Fleming at 5693 South Street Road.

11. Defendant Town of Fleming is a municipal entity organized and existing under the laws of the State of New York. It is a municipal corporation with the right to sue and be sued. Defendant Town of Fleming enacted and enforces a Zoning Ordinance, which includes Article XII, Sign Regulations. The Sign Regulations contains a section (§ 12-5(N)) that restricts the display of political signs (referred to herein as the “Political Sign Restriction”).

12. Defendant Bill Gabak, Jr. is the Zoning Officer for the Town of Fleming. He is responsible for enforcing the Town of Fleming Zoning Ordinance, including Article XII, Sign Regulations and its Political Sign Restriction. At all times relevant, Defendant Gabak, Jr. was operating under the color of state and local law.

#### STATEMENT OF FACTS

13. On or about September 4, 2024, Plaintiffs displayed various public issue (political) signs on their property at 5693 South Street Road, which is located in the Town of Fleming.

14. True and accurate photographs of the public issue (political) signs on Plaintiffs’ property appear below (there are two of each sign for a total of four signs):



15. None of Plaintiffs’ sign displays cause any adverse impact on public health, safety, or welfare.

16. None of Plaintiffs' signs blocks sight lines, obstructs vision or rights of way, is dangerously distracting, or causes any hazards to motorists or pedestrians.

17. None of Plaintiffs' signs "exceed[s] ten (10) square feet per side in area."

18. A true and accurate photo showing Plaintiffs' signs on display on their property appears below:



19. On or about September 5, 2024, Defendants issued Plaintiff a Notice of Violation/Order to Remedy (hereinafter referred to as the "Notice"), directing and ordering Plaintiffs (the notice was addressed to Plaintiff Laboremo, PLLC) to remove the public issue (political) signs by October 5, 2024. Pursuant to the Notice, "If the person or entity served with this order to remedy fails to comply in full with this order to remedy within the thirty (30) day period, that person or entity will be subject to a fine of not more than \$1,000 per day of violation, or imprisonment not exceeding one year, or both." A true and correct copy of the Notice is attached to this Complaint as Exhibit 1.

20. The Notice claims that Plaintiffs violated Article XII of the Township's Sign Regulations. More specifically, the Notice asserts that Plaintiffs violated the Political Sign Restriction. Defendant Gabak, the person who signed and was responsible for issuing the Notice, stated in the Notice that "[a]n apparent violation of the Zoning/Building laws exist on the

above property [5693 South Street Road]. I observed: Political signs installed , (sic) too soon. No more than 45 days prior.”

21. Plaintiffs want to keep the political signs on display. However, they now face fines and possible imprisonment if they continue to do so. And Plaintiffs intend to display political signs early for other elections as well. However, the Political Sign Restriction subjects them to punishment (fines and possible imprisonment) if they do so. All of this causes a chilling effect on Plaintiffs’ political speech.

22. Article XII, Sign Regulations contains a Political Sign Restriction, which provides as follows:

N. Temporary signs announcing a campaign, drive or event of a civic, philanthropic, education or religious organization, and *temporary political/election signs*. Such signs shall not exceed ten (10) square feet per side in area, *shall be posted no more than forty-five (45) days before the campaign*, drive or event and shall be removed within seven (7) days upon its completion. If the sign is not removed within seven (7) days, the sign will be removed by the Town and the costs incurred will be paid by the owner of the sign.

(emphasis added).

A true and correct copy of Article XII, Sign Regulations, which contains the Political Sign Restriction, is attached to this Complaint as Exhibit 2.

23. Article XII, Sign Regulations, including the Political Sign Restriction, is a content-based restriction on speech as it expressly identifies the sign content that is regulated.

24. Article XII, Sign Regulations, specifically including the Political Sign Restriction, does not impose the same restrictions on signs that do not convey a political message. For example, certain commercial speech or other personal display items such as flags or banners are treated more favorably than political signs.



25. American flags, sports teams' flags or banners, Blue Lives Matter flags, signs, or banners, Black Lives Matter flags, signs, or banners, or garden banners or signs, *inter alia*, are not similarly regulated or restricted as political signs by Article XII, Sign Regulations and its Political Sign Restriction.

26. Temporary signs advertising a business or the sale of property are not similarly restricted as political signs by Article XII, Sign Regulations and its Political Sign Restriction. Examples of signs or banners exempted from the Political Sign Restriction that are currently on display in the Town of Fleming appear below:



27. On its face, Article XII, Sign Regulations, including the Political Sign Restriction, restricts signs based on their content and thus makes content-based distinctions. For example, this provision (Article XII, Sign Regulations) of the Town's Zoning Ordinance makes content-based distinctions based on whether the sign advertises "the sale of farm products, nursery products or livestock produced or raised on premises," denotes "membership in agricultural associations, cooperatives or indicat[es] specialization in a particular breed of cattle, hogs, etc.,

or in particular hybrids or strains of plants,” identifies “signs for schools, churches, hospitals, [or] recreation areas,” advertises “the sale or rental of property,” is a “[t]emporary contractors, developers, architects, or builders” sign or a “[t]resspassing sign[], sign[] indicating the private nature of a road, driveway, or premises, [or a] sign[] controlling fishing or hunting on the premises,” or a “memorial sign[] or tablet[.]” *See* Exhibit 2.

28. Most of these “on-premises signs” are treated more favorably under the Town’s Zoning Ordinance (Article XII, Sign Regulations) than Plaintiffs’ public issue speech (political signs). For example, many of these signs, including other “temporary signs,” do not have the severe time restriction that Defendants are imposing and enforcing against Plaintiffs’ signs. Defendants do not have a compelling governmental interest that is narrowly tailored to justify this disparate treatment or restriction.

29. Moreover, there is no legitimate governmental interest for placing such time restrictions on political signs as the State of New York, like so many other states, allows for voting by early mail ballot or absentee ballot well before the election day. *See* <https://elections.ny.gov/request-ballot>. Moreover, “campaigns” for candidates typically run far longer than just 45 days prior to an election.

30. “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Article XII, Sign Regulations, specifically including the Political Sign Restriction, is unquestionably a content-based restriction on speech.

31. As stated by the United States Supreme Court, “[c]ontent-based laws . . . are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed*, 576 U.S. at 163. And “[a] law that

is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech.” *Id.* at 165.

32. Defendants do not have a compelling governmental interest that is narrowly tailored to justify enforcing the content-based Article XII, Sign Regulations, specifically including its Political Sign Restriction. And more specifically, Defendants do not have a compelling governmental interest that is narrowly tailored to justify enforcing the Political Sign Restriction against Plaintiffs and their political speech as set forth in this Complaint.

33. Indeed, as noted by the United States Supreme Court, “Exemptions from an otherwise legitimate regulation of a medium of speech may be noteworthy for a reason quite apart from the risks of viewpoint and content discrimination: They may diminish the credibility of the government’s rationale for restricting speech in the first place.” *See City of Ladue v. Gilleo*, 512 U.S. 43, 52 (1994). There is no legitimate governmental interest that justifies Defendants’ content-based and disparate treatment of speech as set forth in this Complaint.

### **CLAIM FOR RELIEF**

#### **(First Amendment—Freedom of Speech)**

34. Plaintiffs hereby incorporate by reference all stated paragraphs.

35. By reason of the aforementioned decisions, laws, ordinances, policies, practices, procedures, customs, acts, and/or omissions, engaged in under color of state or local law, Defendants have deprived Plaintiffs of their right to freedom of speech in violation of the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.



36. Article XII, Sign Regulations, specifically including the Political Sign Restriction, facially and as applied to penalize Plaintiffs and restrict their speech as set forth in this Complaint violates the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

37. Article XII, Sign Regulations, specifically including the Political Sign Restriction, facially and as applied to penalize Plaintiffs and restrict their speech as set forth in this Complaint is a content-based restriction on speech in violation of the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

38. Defendants' restriction on Plaintiffs' speech, including their restriction on Plaintiffs' political speech pursuant to Article XII, Sign Regulations and its Political Sign Restriction, as set forth in this Complaint, violates Plaintiffs' right to freedom of speech protected by the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

39. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask this Court:

- A) to declare that Defendants violated the First and Fourteenth Amendments to the United States Constitution as set forth in this Complaint;
- B) to preliminarily and permanently enjoin Defendants from restricting Plaintiffs' right to freedom of speech as set forth in this Complaint;
- C) to preliminarily and permanently enjoin the enforcement of Article XII, Sign Regulations, specifically including the Political Sign Restriction, facially and as applied to Plaintiffs' speech, as set forth in this Complaint;
- D) to award Plaintiffs nominal damages for the violation of their constitutional right to freedom of speech as set forth in this Complaint;
- E) to award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988, and other applicable law;
- F) to grant such other and further relief as this Court should find just and proper.

Respectfully submitted,

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