

Bowen Street, Andrews Hall, namely, his pressing questions to, and tossing a video on the table in front of U.S. Congressman Patrick Kennedy, at Brown University's open forum on health care, which is the target of the instant complaint. Indeed, should the ordinance be stretched so far, it would be stretched past its breaking point and would have to be deemed unconstitutional, as so applied. Should it be held, on its face, to admit of such an unduly elastic construction, it would have to be struck down as unconstitutional on its face. More narrowly and properly applied, the ordinance simply does *not* apply to this case. The complaint must be dismissed.

In support, defendant will submit a video depiction of the events in question, which will demonstrate – beyond peradventure – that his actions on November 30th amounted to pure speech, mere words in addition to stepping forward in a non-threatening manner to toss a video – itself a communicative act – and that said words were in the nature of advocacy and questioning, without even the slightest element of physical threat or violence, either explicit or implicit. These were not “fighting words” – as defined in subsection (c) of Section 16-3 of the Code of Ordinances as “offensive language or words which by their very utterance inflict injury or are likely to provoke a violent reaction on the part of the average person so addressed.” On the contrary, defendant's words – as memorialized in the audio of the videotape – were neither personally insulting nor offensive. Rather, they took issue with Congressman Kennedy's positions on proposed health care legislation.

Brown University campus security police arrested the defendant and hauled him away from the microphone at Brown, but in so acting these officers were exercising police powers invested in them by the State of Rhode Island, which cast them in the role of “peace officers” entitled to arrest citizens for petty misdemeanors, upon reasonable cause to believe that said persons are committing same, pursuant to Sections 12-7-3 and 12-7-21(10), of state law.

Accordingly, said arrest of the defendant was subject to, and constrained by, federal and state constitutional restrictions and limitations. *E.g., United States v. Hoffman*, 498 F.2d 879, 881 (7th Cir. 1974)(privately employed railroad policeman vested with same powers as state and city police were “cloaked with the authority of the state” and amenable to suit under 42 U.S.C. Sec. 1983); *Henderson v. Fisher*, 631 F.2d 1115, 1118 (3d Cir. 1980)(university police given “the very powers which the municipal police possesses” buttresses conclusion that campus officers acted under color of state authority); *Scott v. Northwestern University School of Law, et al*, 1999 U.S. Dist. LEXIS 2815, p. 16 (“on University property a member of Northwestern’s police force is every bit the law enforcement officer as is a member of the Chicago Police Department when one walks off the University’s downtown property and onto a public thoroughfare” and thus campus police are amenable to a Sec. 1983 civil rights suit for acting “under color of state law”).

Brown University’s health care forum was posted and widely advertised as “open to the public.” This was, therefore, an open forum to which the defendant was invited. Indeed, the video will show that while he and his videographer were not permitted to bring signs into the open forum, they themselves were freely admitted without qualification or restraint. The online advertisement for this event, billed as part of the Levinger Lecture Series on Health Care Reform, even promoted the open forum as an opportunity for “robust” discussion of the subject matter.

All that is charged here is that defendant committed disorderly conduct by assembling to cause, provoke or engage in a fight or riotous conduct – a proscription that is alien to anything that happened in this case. Criminal charges that are predicated, as here, on communicative acts alone cannot be applied to protected political speech, as protected by the first and fourteenth amendments, even if that speech is vulgar or offensive. *Lewis v. City of New Orleans*, 415 U.S.

130, 134 (1974). As the nation's highest Court held in the landmark First Amendment case, *Terminiello v. City of Chicago*, 337 U.S. 1 (1949), it is "a function of free speech under our system of government ... to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even *stirs people to anger*. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have *profound unsettling effects* as it presses for acceptance of an idea" (emphasis supplied). That defendant may have expressed opinions which others found annoying or obnoxious – namely, that all human life is sacred, from conception through natural death, even if "unwanted" – cannot constitutionally be deemed criminal. That is, because "[h]owever pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas," citing *Gertz v. Welch*, 418 U.S. at 339-40. It bears repeating that, as the U.S. Supreme Court held in *New York Times v. Sullivan*, 376 U.S. 254 (1964), that our nation cherishes a profound commitment to the principle that debate on public issues – like health care reform – must be robust, wide-open and uninhibited, even if that debate should often prove vehement or unpleasantly sharp. Thus spirited, vehement, even unpleasantly sharp speech is *still* free speech, and constitutionally protected as such.

No doubt, the protection afforded by Section 21 of the Rhode Island Constitution is no less robust ("The citizens have a right in a peaceable manner to assembly for their common good and to apply to those invested with the powers of government, for redress of grievances, or for other purposes, by petition, address, or remonstrance" and, emphatically: "No law abridging the freedom of speech shall be enacted.")).

Rhode Island fully abides and enforces the stalwart constitutional principle usually referred to as 'the avoidance canon.' Indeed, it is "well settled," the Rhode Island Supreme

Court held in *State v. Fonseca*, 670 A.2d 1237, 1240 (R.I. 1996), “that this court will presume a legislative enactment of the General Assembly to be constitutional and valid and will so construe the enactment whenever such a construction is reasonably possible ... If more than one construction is possible, we will opt for that which will ***avoid unconstitutionality***” (citing *Kass v. Retirement Board of the Employment Retirement System*, 567 A.2d 358, 360 (R.I. 1989)(other internal citations omitted & emphasis supplied).

Respectfully submitted,

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NOTICE

This MOTION will come for hearing in the Providence Municipal Court, on the 17th day of February, 2010, at 8:00am.

CERTIFICATION

I, the undersigned, hereby certify that I mailed on this day 29, of January 2010, postage prepaid, and faxed a copy of this Motion to Transfer to the below address:

Steve Ryan
City Solicitor for the City of Providence,
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