STATE OF RHODE ISLAND
DISTRICT COURT, SIXTH DISTRICT

STATE OF RHODE ISLAND	:	
v.	:	Case No.: 61-2014-13232
CAMERON BATTLE	:	

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

INTRODUCTION

The defendant, arrested on November 25, 2014 while participating in a national protest movement against police racism and violence, challenges §R.I.G.L. 11-45-1 as unconstitutional on its face because it violates the First and Fourteenth Amendments of the United States Constitution, and Article 1, §21 of the Rhode Island Constitution.

SUMMARY OF ARGUMENT

Rhode Island's disorderly conduct statute is facially invalid for violating the First and Fourteenth Amendments because it is unconstitutionally vague. It fails to provide adequate notice of what is prohibited, leaves virtually unlimited discretion to the police, and chills the exercise of First Amendment rights. The statue is neither narrowly tailored, nor does it provide adequate alternative means of communication to individuals engaged in constitutionally protected political speech.

Rhode Island's Administrative Code requires that applicants seeking permission to hold parades on state highways apply at least seven days in advance of the anticipated event, effectively cutting off opportunity for political protest intended to quickly respond to public events. Mr. Battle was arrested while taking part in just this type of political speech, timed in communities across the nation to coincide with the grand jury decision in the August 9, 2014 police killing of Michael Brown in Ferguson, Missouri. Furthermore, for the State of Rhode Island to abandon the protection of the public's First Amendment rights to a bureaucratic commission within the Department of Administration represents an improper delegation of duty.

FACTS

On the evening of November 25, 2014, people in cities throughout the nation took part in protests in response to a decision by the Grand Jury in St. Louis County, Missouri not to indict Ferguson police officer Darren Wilson for the killing of Black teenager Michael Brown. In Providence, Rhode Island that night upwards of three hundred (300) protesters marched through city streets, and eventually approximately one hundred-fifty (150) individuals spilled out onto Route 95, where traffic was blocked for approximately thirty minutes, according to the *Providence Journal*.[1] The State alleges that Mr. Battle was one of five individuals who failed to leave the roadway following voice commands by Rhode Island State Troopers and

[1] See http://www.providencejournal.com/breaking-news/content/20141124-protesters-block-route-95-in-providence-in-outrage-over-ferguson-decision-gallery.ece.

Providence Police.[2] He was arrested and charged with the violation of §11-45-1(a)(4).

DISCUSSION

Rhode Island's prohibition of "disorderly conduct" is contained at R.I.G.L. § 11-45-1. The statute states in pertinent part,

> "(a) A person commits disorderly conduct if he or she intentionally, knowingly, or recklessly: … (4) Alone or with others, obstructs a highway, street, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway, or hallway to which he public or a substantial group of the public has access or any other place ordinarily used for the passage of persons, vehicles or conveyances."

An additional subsection (d) of R.I.G.L. § 11-45-1 purports to protect the rights of protestors via the following language: "In no event shall subdivisions (a)(2) – (5) of this section be construed to prevent lawful picketing or lawful demonstrations including, but not limited to, those relating to a labor dispute."

The statute has never been challenged in Rhode Island on the constitutional grounds asserted in this motion. See State v. Hesford, 900 A.2d 1194 (R.I. 2006) (challenging interpretation of subsections (a)(1) and (a)(2)); Anabell's Ice Cream Corp v. Town of Glocester, 925 F.Supp. 920 (R.I. Dist. Ct. 1996) (challenging a town noise ordinance as being preempted by § 11-45-1, which the court denied, but going on to hold that the town ordinance in question violated the First Amendment protection of speech for being neither content neutral nor narrowly tailored.); State ex rel. Providence v. Sullivan, No. P3-92-1437, 1992 WL 813655, at *4 (R.I. Super. Nov. 13, 1992)

[2] Rhode Island State Police Lincoln Woods, *Narrative for Trooper Jensen*, Ref.: 14RIX4-2144-AR.

(challenging city ordinance for being preempted by § 11-45-1(d) and overbreadth and vagueness of Providence Code of Ordinances § 16-13; holding that the ordinance was not unconstitutionally vague or overbroad because the conduct at issue, trespassing on private property, was not constitutionally protected.)

I. The disorderly conduct statute is void for vagueness.

Rhode Island's disorderly conduct statute is facially invalid for violating the First and Fourteenth Amendments because it is unconstitutionally vague. It fails to provide adequate notice of what is prohibited, leaves virtually unlimited discretion to the police, and chills the exercise of First Amendment rights. A well-established principal of due process is "that an enactment is void for vagueness if its prohibitions are not clearly defined." Grayned v. City of Rockford, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972); see also Roberts v. United States Jaycees, 468 U.S. 609, 629, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984). When the ordinance or statute challenged for vagueness interferes with the right of free speech or association, the Rhode Island Supreme Court has explained, "such an ordinance can 'exert a chilling effect that discourages individuals who are not present before the Court from exercising their First Amendment rights for fear of arbitrary enforcement.'" State ex rel. City of Providence v. Auger, 44 A.3d 1218, 1232 (R.I. 2012).

The caveat of subsection (d), which ostensibly protects the political speech of protestors, paradoxically increases confusion through its circular reference to "lawful picketing or lawful demonstrations," neither of which does the statute make

any attempt to define. An individual is left confused as to whether political speech is somehow afforded extra protection by this law, and if so under what circumstances. By establishing a blanket prohibition on obstructing a highway, with convoluted and superficial protection for "lawful picketing or ... demonstrations," Rhode Island's disorderly conduct statute clearly interferes with several rights protected by the First Amendment, including the right of free speech, right of assembly, and the right to petition government for redress of grievances. See Cox v. State of Louisiana, 379 U.S. 559 (1965).

II. The time, place, and manner restrictions set forth by the disorderly conduct statute are not narrowly tailored and fail to provide adequate alternative means of communication.

In a long string of cases decided by the United States Supreme Court in response to the upheaval of the Civil Rights Movement of the 1960s, the right to parade or march along public streets and highways was cemented as fundamental to the right to assemble, right to free movement and right to petition government. See id.; see also Shuttlesworth v. City of Birmingham, Ala., 394 U.S. 147, 152 (1969); Edwards v. S. Carolina, 372 U.S. 229, 235 (1963). In fact, the Supreme Court has been exceptionally clear in the constitutional implications of protesting on public roads:

> "Whenever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use

> of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; *but it must not, in the guise of regulation, be abridged or denied."*

Shuttlesworth, 394 U.S. at 152 (quoting Hague v. C.I.O., 307 U.S. 496, 515—516 (1939) (opinion of Mr. Justice Roberts, joined by Mr. Justice Black, emphasis added)).

As noted in the proceeding passage, the right is not unlimited, and state and town officials have the authority to enact regulations of the rights at issue here, as long as those regulations meet constitutional proscriptions. The Supreme Court has held "that a statute may be enacted which prevents serious interference with normal usage of streets and parks," but it has "consistently condemned licensing systems which vest in an administrative official discretion to grant or withhold a permit upon broad criteria unrelated to proper regulation of public places." Id. at 153. Therefore "although the government may place reasonable time, place, and manner restrictions on speech in a public forum, the enacted restrictions must: (1) be content neutral; (2) be narrowly tailored to serve a significant government interest; and (3) leave open alternative channels for communication of information." Auger, 44 A.3d at 1238.

Here, § 11-45-1(a)(4) is content neutral, because the provision addresses all conduct that obstructs a highway. . Where the statute fails is in the second and third elements that it be narrowly tailored and that it provide adequate alternatives means of communication. While the provision affects a significant interest in

restricting or controlling the use of city streets and other facilities to assure the safety and convenience of the people, see Cox, 379 U.S. at 554-555 it nevertheless grants complete discretion to officials to arrest demonstrators who "obstruct[] a highway." Furthermore, the scheme fails to provide an adequate alternative channel for communicating information, such as obtaining a license for constitutionally protected speech on or near that highway.

Rhode Island's Administrative Code provides that applicants may seek to use state highways for parades, but that provision specifically requires that applicants must seek such permission at least seven days prior to the planned event. R.I. Code R. 61-1-19:3.0 (Attached as Exhibit A). This alternative is not narrowly tailored to allow demonstrators to speak on critical political issues. Many such permit ordinances have been struck down for not being narrowly tailored on the ground that advanced notice provisions in such ordinances prohibit spontaneous speech that arises in response to time sensitive political occurrences. See Church of Am. Knights of Ku Klux Klan v. City of Gary, Indiana, 334 F.3d 676, 682 (7th Cir. 2003); Douglas v. Brownell, 88 F.3d 1511, 1524 (8th Cir. 1996); N.A.A.C.P., W. Region v. City of Richmond, 743 F.2d 1346, 1355 (9th Cir. 1984) ("A spontaneous parade expressing a viewpoint on a topical issue will almost inevitably attract more participants and more press attention, and generate more emotion, than the 'same' parade 20 days later. The later parade can never be the same. Where spontaneity is part of the message, dissemination delayed is dissemination denied."). Here, the protest that brought approximately one hundred-fifty (150) people to a highway

was intended to coincide with the date of the grand jury decision in the Ferguson case, specifically to follow it by one day. Thus, it would have been impossible to meet the seven day advance period required by the Administrative Code and still fulfill the spontaneity that was integral to the message of the protest.

III. The guarantee of the right to protest on public highways, "commensurate with the enormity of the wrongs that are being protested" should not be delegated to a bureaucratic body, untrained in First Amendment law.

It is important to note that while the statute addresses a significant government interest to maintain safe avenues for the public to travel, that interest should be weighed against the importance of the speech at issue in this case: expression of anguish and outrage at the unchecked extrajudicial killings of Black men at the hands of police throughout the country.[3] In 1965, the U.S. District Court for the Northern District of Alabama addressed the issue of whether people could march along U.S. Highway 80 from Selma to Montgomery for the purpose of petitioning their government for redress in their grievances in being deprived the right to vote. Williams v. Wallace, 240 F. Supp. 100 (N.D. AL 1965). In reviewing the constitutional precedent on the balance between the government's interest to protect streets and the petitioners' rights in demonstrating, the court stated, "it

[3] *Operation Ghetto Storm*, a report published by the Malcom X Grassroots Movement, documents that in 2012, a Black person was killed by police, security guards or vigilantes in the United States at the rate of once every twenty-eight hours. *https://mxgm.org/wp-content/uploads/2013/.../Operation-Ghetto-Storm.pdf*.

seems basic to our constitutional principles that the extent of the right to assemble, demonstrate and march peaceably along the highways and streets in an orderly manner should be commensurate with the enormity of the wrongs that are being protested and petitioned against." Id. at 106. The court went on to hold that "a reasonable use of the highways for the purpose of pedestrian marching is guaranteed … by the Constitution of the United States according to the principles above set out…" Id. at 107.

The Rhode Island Administrative Code governing permitting for state highways directs that a five-person body, named the State Traffic Commission, accept or reject all requests, R.I. Code R. 61-1-19:3.2. The Commission consists of individuals representing the State Police, Department of Transportation, and other appointees, and nowhere indicates that any member of the Commission have any legal training whatsoever, much less familiarity with the constitutional protections afforded to political speech. The Code describes no criteria upon which this bureaucratic body is to make its decision, however it does make clear that no appeal of a negative decision is available to the applicant, R.I. Code R. 61-1-19:3.2(b).

In Gregory v. City of Chicago, the U.S. Supreme Court addressed a case in which demonstrators were arrested after a peaceful and orderly march because police officers believed that the demonstration was about to cause impending civil disorder by the onlookers of the demonstration, not the demonstrators themselves. 394 U.S. 111 (1969). The Court held in a near per curium decision, with virtually no analysis by the majority, that the arrest of the petitioners with no evidence that

petitioners' conduct was disorderly were a violation of First Amendment protections. In a concurring opinion, Justice Black wrote the following stirring passage:

> In 1954 our Court held that laws segregating people on the basis of race or color in the public schools unconstitutionally denied Negroes equal protection of the laws. Negroes, and many others who sympathized with them, cooperatively undertook to speed up desegregation. These groups adopted plans under which they marched on the streets carrying placards, chanting, and singing songs, all designed to publicize their grievances and to petition the various units of government, state and national, for a redress of these grievances. Their activities along these lines quite obviously aroused highly emotional feelings both on their part and on the part of others who opposed the changes in local laws and customs which the 'picketers' and 'demonstrators' advocated. Id. At 114.

The demonstration at bar that led to the arrest of Mr. Battle is reminiscent of those days when demonstrations took place across the country to speed the end of desegregation. Today, this Court is faced with the continuation of that fight for civil rights – the fight to end an epidemic of police violence toward people of color, and primarily Black men.

CERTIFICATION

I hereby certify that on this ___ day of December, 2014, I delivered or caused to be delivered a true and accurate copy of the above memorandum to the Rhode Island Attorney General, 150 South Main Street, 02903.

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Shannah Kurland