



4. Peter Kilmartin is the Attorney General for the State of Rhode Island, and is named herein pursuant to Rhode Island Gen. Laws § 9-30-11 because this action challenges the constitutionality of certain portions of the General Laws of Rhode Island.

5. Jurisdiction is proper in this court pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983 in that this case presents a question of Federal law.

6. Venue is proper in this Court.

#### **Facts Common to All Counts**

7. Plaintiff restates the allegations of Paragraphs 1 through 6 as if fully set forth herein.

8. Plaintiff has been, and continues to be, active in matters of public interest, including political issues and matters of social concern. At various times in the past, Plaintiff has engaged in advocacy with regard to social and political issues, and has posted, circulated or disseminated written materials expressing his views on such subjects. Some of those materials could be deemed to criticize a candidate's political actions, and have not included the name and residence of a the voter responsible for them. Plaintiff desires to engage in future activity of that nature, advocating for the election or defeat of specific candidates for public office and commenting on certain questions submitted for decision to voters in the State of Rhode Island, including, but not limited to, an expected referendum question concerning a constitutional convention during the upcoming 2014 election cycle. Such activity would include the posting, circulation and/or dissemination of written materials expressing Plaintiff's views.

9. Because of a legitimate desire for privacy, and a fear of other consequences and reprisals, Plaintiff desires to post or distribute such literature or written materials anonymously.

Plaintiff does not wish to disclose his name in connection with those written materials or postings.

10. Under clear and binding precedent from the U.S. Supreme Court in McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995), and consistent with a long-standing and historic tradition that preceded that decision, anonymous pamphleteering on matters of public concern is protected by the First Amendment to the U.S. Constitution.

11. In McIntyre, the U.S. Supreme Court held that “anonymous pamphleteering is . . . an honorable tradition of advocacy and of dissent.” The Supreme Court held that such anonymous communications are designed to “protect unpopular individuals from retaliation – and their ideas from suppression – at the hand of an intolerant society.” Id. at 357. The Supreme Court also held that: “The interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry.”

12. Notwithstanding the foregoing precedent, embodying principles inherent in the First Amendment to the U.S. Constitution, the State of Rhode Island outlaws anonymous circulars, flyers or posters criticizing candidates for public office, or otherwise commenting on certain questions submitted to the voters of Rhode Island. Section 17-23-2 of the Rhode Island General Laws provides as follows:

No person shall intentionally write, print, post, or distribute, or cause to be written, printed, posted, or distributed, a circular, flier, or poster designed or tending to injure or defeat any candidate for nomination or election to any public office, by criticizing the candidate’s personal character or political action, or designed or tending to aid, injure, or defeat any question submitted to the voters, unless there appears upon the circular, flier, or poster in a conspicuous place the name of the author and either the names of the chairperson and secretary, or of two (2) officers, of the political or other organization issuing the poster, flier, or circular, or of some voter who is responsible for it, with the voter’s name and residence, and the street and numbers, if any.

13. In accordance with Rhode Island Gen. Laws § 17-23-3, any violation of section 17-23-2 is punishable as a misdemeanor and is considered a criminal offense.

14. Rhode Island General Laws 17-23-2 is both content- and viewpoint-based, by barring anonymous literature that criticizes candidates for public office but allowing anonymous literature that supports or praises candidates for public office.

15. In March of 2013, the Police Department in the Town of Smithfield arrested Robert Horowitz, a campaign consultant for State Sen. Stephen Archambault, on misdemeanor criminal charges for allegedly distributing anonymous campaign materials in violation of § 17-23-2.

16. Upon information and belief, the foregoing charges were ultimately dismissed by the State, through the Attorney General's office, because of constitutional concerns arising out of the First Amendment and the U.S. Supreme Court's decision in McIntyre. Nonetheless, Town officials, including St. Saveur and the Town Solicitor, stated their clear intent to continue initiating criminal complaints for any violations of § 17-23-2.

17. In March of 2014, in response to the foregoing events, and as a result of concerns expressed by Plaintiff and others wishing to post anonymous materials in connection with the 2014 election cycle, a representative of the American Civil Liberties Union of Rhode Island ("ACLU") wrote to St. Sauveur and requested clarification regarding the Police Department's position on continued enforcement of § 17-23-2. A copy of that correspondence is attached hereto as Exhibit A. The Town Council, the Town Manager, and the Town Solicitor all were sent copies of that correspondence.

18. As of the filing of this action, no response has been received to the aforementioned letter to the Town of Smithfield from the ACLU. However, in certain press

reports, officials of the Town have described any request that the Town refrain from initiating prosecutions under § 17-23-2 as “absolute nonsense.”

19. The foregoing conduct and statements by the Town, despite clear rulings by the U.S. Supreme Court, and despite positions taken by the State and the Attorney General in other cases, evidences a complete disregard for the rights of individuals like Plaintiff who wish to exercise their constitutionally protected right to engage in anonymous pamphleteering and electioneering on matters of public concern.

20. Plaintiff desires to engage in such anonymous advocacy in connection with the upcoming 2014 election cycle, but faces a real and demonstrable threat of criminal prosecution if he engages in such activity in light of positions taken to date by the Town. Under recognized principles of law, Plaintiff should not have to suffer arrest and prosecution in order to have standing to challenge this unconstitutional law.

21. A ripe and justiciable controversy exists between Plaintiff and the Town of Smithfield with regard to the constitutionality and enforceability of Rhode Island Gen. Laws § 17-23-2 as it relates to the criminal prosecution of individuals who exercise their constitutional right under the First Amendment to engage in anonymous speech on matters of public concern in connection with elections held in the State of Rhode Island.

**COUNT I**  
**(Declaratory Judgment – Constitutionality of § 17-23-2)**

22. Plaintiff restates the allegations of Paragraphs 1 through 20 as if fully set forth herein.

23. Under clear and unambiguous precedent from the U.S. Supreme Court, as set forth above, the First Amendment to the U.S. Constitution protects a right to anonymous free speech in connection with matters of public concern.

24. The First Amendment applies to the municipal defendants in this action through the operation of 42 U.S.C. § 1983.

25. Notwithstanding the foregoing, and notwithstanding a substantial similarity between the Rhode Island statute at issue in this case and the Ohio statute that was the subject of the McIntyre decision, the officials of the Town of Smithfield have stated a clear and unequivocal intent to prosecute violations of Rhode Island Gen. Laws § 17-23-2.

26. The fear of such criminal prosecution has a chilling effect on the exercise of protected rights of free speech. Plaintiff desires to engage in such anonymous communications in connection with the 2014 election cycle, and has a legitimate and demonstrable fear of criminal prosecution in light of positions taken to date by the Town of Smithfield.

27. Section 17-23-2 of the Rhode Island General Laws is unconstitutional, in violation of the First Amendment to the U.S. Constitution, on its face. Although the State, acting through the offices of the Attorney General, has acknowledged the unenforceability of § 17-23-2 in connection with the Horowitz case, the Town has nonetheless refused to acknowledge the unconstitutionality of § 17-23-2 and has stated a clear intent to initiate further such arrests and prosecution.

28. Section 17-23-2 of the Rhode Island General Laws unconstitutionally engages in both content-based and viewpoint-based discrimination and is not narrowly tailored to achieve whatever constitutionally legitimate interests the state may have.

29. Plaintiff is harmed by the ongoing and continued threat of § 17-23-2, and by the stated intent of the Town of Smithfield to enforce that law, in that it restrains him from exercising rights protected by First Amendment to the U.S. Constitution and forces him to face the risk of arrest and prosecution in the event he exercises such rights.

30. Plaintiff enjoys a reasonable likelihood of success on the merits of the claims and prayers for relief set forth in this action.

31. Plaintiff will be irreparably harmed unless the Town is temporarily, preliminarily and permanently enjoined and restrained from enforcing the provisions of Rhode Island Gen. Laws § 17-23-2. The balance of the equities, and the clear statement of public policy by the U.S. Supreme Court, all favor the issuance of an injunction restraining and enjoining the Town from enforcing the provisions of § 17-23-2.

WHEREFORE, Plaintiff requests Judgment in his favor, and against all named Defendants, and requests the following relief:

- a) A declaration that Rhode Island General Laws § 17-23-2 is unconstitutional, and in violation of the First Amendment to the U.S. Constitution, on its face.
- b) A temporary, preliminary and/or permanent injunction, restraining and enjoining the Town of Smithfield, or any of its public officials, from enforcing the provisions of Rhode Island General Law § 17-23-2, or from initiating any arrests or prosecutions for violations of Rhode Island General Law § 17-23-2.
- c) Plaintiff's reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988 or on any other available legal grounds.
- d) Plaintiff's costs of suit.
- e) Such other relief as this Court deems just and proper in the circumstances.

JOHN BLAKESLEE

By his Attorneys,

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