

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

BEACON COMMUNICATIONS, INC.	:	
and THE RHODE ISLAND PRESS	:	
ASSOCIATION,	:	
	:	
Plaintiffs	:	
	:	
v.	:	C.A. No. 11-
	:	
PETER KILMARTIN, in his Official	:	
Capacity as Attorney General of	:	
the State of Rhode Island,	:	
	:	
Defendant	:	

**COMPLAINT FOR DECLARATORY RELIEF**

Plaintiffs Beacon Communications, Inc., as owner and publisher of The Warwick Beacon (the “Beacon”), and the Rhode Island Press Association (“RIPA”) hereby allege as follows, by and for their Complaint for Declaratory Relief against Defendant Peter Kilmartin, in his Official Capacity as Attorney General for the State of Rhode Island.

**Parties and Jurisdiction**

1. The Beacon is a for-profit newspaper with semi-weekly circulation covering issues of concern to residents in the City of Warwick, Rhode Island. The Beacon is owned and published by Beacon Communications, Inc.
  
2. RIPA is an unincorporated association of media outlets and publications doing business in the State of Rhode Island, including print newspapers, magazines and online media outlets. RIPA acts as a trade association and frequently promotes and pursues issues of common interest to the press and the media in Rhode Island.

3. Defendant Peter Kilmartin is the Attorney General of the State of Rhode Island. He is named in this action only in his official capacity because this action raises questions concerning the constitutionality of a specific Rhode Island statute, on its face and as applied.

4. Subject matter jurisdiction in this Court is proper in that it raises a Federal question pursuant to 28 U.S.C. §1331.

5. Venue is proper in this Court because all parties reside or do business in this district, and because the acts complained of all occurred within this district.

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

6. Plaintiffs restate the allegations of Paragraphs 1 through 5 as if fully set forth herein.

7. Section 9-1-28 of the Rhode Island General Laws provides in pertinent part as follows:

**§9-1-28 Action for unauthorized use of name, portrait, or picture.** – Any person whose name, portrait, or picture is used within the state for advertising purposes or for the purposes of trade without his or her written consent may bring an action in the superior court against the person so using his or her name, portrait, or picture to prevent and restrain the use thereof, and may recover damages for any injuries sustained by reason of such use. If the defendant shall have knowingly used the person's name, portrait, or picture in such manner as is prohibited or unlawful, the court, in its discretion, may award the plaintiff treble the amount of the damages sustained by him or her.

8. On certain prior occasions, including occasions in 2011 related to taxes imposed by the City of Warwick on motor vehicles within that municipality, the Beacon and other Rhode Island publications have published advertisements containing the names and likenesses of elected officials or other public figures involved in matters of public concern.

9. Specifically, on September 22, 2011, the Beacon published an advertisement purchased by a Warwick resident named Robert Cote (“Cote”), in which Cote expressed concerns regarding previous actions undertaken by members of the Warwick City Council. Cote paid the Beacon for the placement of that advertisement. A copy of the subject advertisement is attached hereto and incorporated herein as Exhibit A. The advertisement reflected the positions and opinions of Cote and not the Beacon. It included the names and photographs of the Mayor of Warwick and the City Council President.

10. Other similar advertisements concerning the motor vehicle taxation issue ran in the Beacon on prior dates in 2011, and were paid for by Cote. Copies of those advertisements are attached hereto and incorporated herein as Exhibits B, C and D. They included the names and photographs of all City Council members.

11. Prior to and after the publication of the foregoing advertisements, the Beacon received correspondence from or on behalf of certain members of the Warwick City Council depicted in the advertisements. In those communications, those individuals claimed that the publication of the advertisements containing their names and likenesses would provide grounds for a civil action against the Beacon pursuant to §9-1-28 of the Rhode Island General Laws.

12. In all of the foregoing instances, the Beacon was confronted with the risk of civil liability, and the attendant costs thereof, in determining whether or not to accept and publish the advertisements. Moreover, in one of the foregoing instances, these demands led to certain revisions in the advertisement(s), which Cote was forced to accept as a condition of publication. Demands made on the basis of the subject statute also caused the Beacon to face the prospect of foregoing revenue associated with placement of the advertisements.

13. Similarly, in several past instances, the Beacon and other member publications associated with RIPA have faced demands when accepting payment for so-called “opposition ads” that would contain the names or likenesses of public officials or other elected officials who had taken certain position on matters of public concern.

14. Hence, the subject statute, §9-1-28 of the Rhode Island General Laws, has had, and continues to have, a chilling effect on the publication of opposition ads and on the legitimate and free exchange of ideas and opinions on matters of public concern.

15. Plaintiffs believe and assert that the subject statute was not intended to address such opposition and other ads on matters of public concern, and was instead intended to prevent the unauthorized use of a person’s name or likeness in connection with the sale of products or services in commerce. But, the past history of demands above asserting that the statute reaches beyond the commercial context and into core political speech demonstrates that the statute is vague.

16. When individuals holding public office, or otherwise involved in matters of public concern, can use the language of §9-1-28 to chill or prevent the publication of opposition advertisements, or otherwise dictate the content or terms of such advertisements, it has and continues to have an unintended and impermissible consequence on the freedom of the press and on the free exchange of ideas, all in violation of the First Amendment to the U.S. Constitution and comparable provisions of the Rhode Island Constitution.

17. The subject statute has historically created, and continues to create, a ripe and justiciable controversy that can and should be adjudicated by this Court. Even in cases in which

purportedly aggrieved individuals do not choose to pursue legal relief, the statute has a chilling effect and serves as a potential impediment to free speech and to the placement of what would otherwise be valid and legitimate opposition advertisements on matters of public concern.

**COUNT I**  
**(Statute is Facially Unconstitutional)**

18. Plaintiffs restate the allegations of Paragraphs 1 through 17 as if fully set forth herein.

19. At various times in 2011, as set forth above, members of the Warwick City Council, in demanding revisions to or the suppression of the subject opposition advertisements concerning taxation on motor vehicles in that municipality, took the position that §9-1-28 of the Rhode Island General Laws created the basis for a civil action for damages related to such opposition ads containing a person's unauthorized name or likeness.

20. Although Plaintiffs do not concede such a facial interpretation of the statute, and assert that the statute is vague, if the foregoing interpretation were adopted, it would render the statute facially overbroad and unconstitutional in that it would preclude any use of the names or likenesses of elected officials or other public officials acting on matters of public concern without their consent.

21. In that case, the foregoing statute would be unconstitutional and in violation of the First Amendment to the U.S. Constitution, as adopted and applied to the states through the Fourteenth Amendment and 28 U.S.C. §1983, as well as Article I, section 21 of the Rhode Island Constitution.

**Count II**  
**(Statute is Unconstitutional As Applied)**

22. Plaintiffs restate the allegations of Paragraphs 1 through 21 as if fully set forth herein.

23. Assuming that the literal language of the subject statute was not intended to reach political opposition advertisements on matters of public concern, and was instead intended to address the unauthorized use of a person's name or likeness solely for commercial purposes, such as the sale of goods or services, the language of the statute has been applied in circumstances such as those described herein, in a manner that has had an overbroad, impermissible and unconstitutional effect.

24. When applied in this manner, the subject statute has an impermissible and unconstitutional chilling effect on free speech and on the free exchange of ideas, and violates the First Amendment to the U.S. Constitution, as applied to the states through the Fourteenth Amendment and 42 U.S.C. §1983, as well as Article I, section 21 of the Rhode Island Constitution.

WHEREFORE, Plaintiffs request the following relief:

(a) A declaration of this Court holding that the subject statute, §9-1-28 of the Rhode Island General Laws, is facially unconstitutional to the extent that it creates a civil cause of action in favor of individuals whose names or likenesses are employed in paid advertisements that comment on matters of public concern, and which are not directed to the use of those individuals' names or likenesses for other commercial purposes such as the sale of goods or services;

(b) In the alternative, a declaration of this Court holding that the subject statute, §9-1-28 of the Rhode Island General Laws is unconstitutional as and when applied to instances in which the names or likenesses of individuals are used in paid advertisements concerning matters of public concern, and not in connection with other commercial purposes such as the sale of goods or services;

- (c) Plaintiffs' costs of suit;
- (d) Plaintiffs' reasonable attorney's fees in accordance with 42 U.S.C. §1988; and
- (e) Such other relief as this Court deems just and proper in the circumstances.

BEACON COMMUNICATIONS INC. and THE  
RHODE ISLAND PRESS ASSOCIATION

By their Attorneys,

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