

March 8, 2014

Chief Richard St. Sauveur, Jr.  
Smithfield Police Department  
215 Pleasant View Avenue  
Smithfield, RI 02917

Dear Chief St. Sauveur:

Last year, officers from your department arrested an individual for allegedly violating R.I.G.L. §17-23-2, which bans anonymous circulars, flyers or posters “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.” It is our understanding that the charge was dismissed two months ago at the Attorney General’s behest in recognition of the unconstitutionality of that statute.

It was thus with some concern that I read comments attributed to you in a January 15th article in *The Valley Breeze*, indicating that you would continue to enforce the statute. While it is indeed your department’s job to enforce the law, I would emphasize that “the law” includes the Constitution of the United States. In that regard, there is no question that the Constitution bars enforcement of this statute. The state’s decision to dismiss the charges in the arrest made by your department last year attests to that.

In fact, it has been almost two decades since the U.S. Supreme Court struck down a very similar Ohio statute as unconstitutionally overbroad in violation of the First Amendment’s guarantee of freedom of speech. In reaching that conclusion in *McIntyre v. Ohio Elections Commission*, 514 US. 334 (1995), the Court stated as follows:

Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation-and their ideas from suppression-at the hand of an intolerant society. The right to remain anonymous may be abused when it shields fraudulent conduct. But political speech by its nature will sometimes have unpalatable consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse. Ohio has not shown that its interest in preventing the misuse of anonymous election-related speech justifies a prohibition of all uses of that speech. The State may, and does, punish fraud directly. But it cannot seek to punish fraud indirectly by indiscriminately outlawing a category of speech, based on its content, with no necessary relationship to the danger sought to be prevented. *Id.* at 357. (citations omitted)

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The message conveyed by your public comments is thus quite troubling. The campaign season has begun, and there are residents in Smithfield who might wish to distribute a political flyer or post a political sign on their property without including their name or other identifying information on it. Yet in light of last year's incident and your recent comments, those individuals face a realistic fear of arrest for the peaceful exercise of their First Amendment rights. This climate can only create a chilling effect on free speech and deter some people from exercising their rights to anonymously post, display or circulate political literature in your town.

Under the circumstances, I am writing to seek clarification from you about your police department's position on continued enforcement of §17-23-2. Specifically, I would appreciate it if you could let me know if we have misconstrued that position as described above. If, in fact, the Smithfield Police Department has no plans to continue enforcing this statute – either on the department's own initiative or in response to complaints about alleged violations brought to the department's attention – we would welcome receiving such a clarification.

I would respectfully ask you to advise us by the 17th of this month so that we can consider whether any follow-up is needed. Thank you in advance for your prompt attention to this request.

Sincerely,

Steven Brown  
Executive Director

cc: Smithfield Town Council  
Edmund Alves, Jr., Town Solicitor  
Dennis Finlay, Town Manager