UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

URI STUDENT SENATE, et al
Plaintiffs

VS. C.A. NO: 08-207S

TOWN OF NARRAGANSETT, et al
Defendants

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

This is a 42 U.S.C. Section 1983 civil rights action brought by the ACLU on behalf of the URI Student Senate, five students, and three landlords challenging the Town of Narragansett's attempt to manage the behavior of URI students, residents and landlords in violation of their constitutional rights. The Town in 2005 enacted an Ordinance entitled "unruly gatherings" which it amended in 2007 as part of its continuing efforts "to discourage the occurrence of repeated loud and unruly gatherings" by penalizing "the persons responsible for the public nuisance created by these gatherings…." See Exhibit A of Agreed Statement of Facts. Plaintiffs believe that Narragansett's "unruly gatherings" ordinance violates their procedural, substantive, and equal protection rights, as well as their rights to privacy and association under both the United States and RI Constitutions. In addition, the plaintiffs

believe that the ordinance is preempted by the Residential Landlord and Tenant Act. RIGL §34-18-1 et seq.

This matter is before the Court on cross motions for Summary Judgment. Plaintiffs rely on the pleadings in the case file, the agreed statement of facts, the exhibits attached thereto, and this Memorandum of Law. Plaintiffs believe that there are no material facts in dispute and that they are entitled to relief as a matter of law.

FACTS
PROCEDURAL HISTORY

This matter commenced in the Washington County Superior Court on May 23, 2008, by the petitioners seeking declaratory and injunctive relief and a temporary order restraining and enjoining the Town of Narragansett from prosecuting criminal charges against petitoners Keach, DeMerchant and Spatcher. The Town voluntarily agreed to stay the pending prosecutions but removed this matter to Federal Court for resolution. Petitioners request for remand was denied. The parties conducted discovery and have filed cross motions for summary judgment based on an agreed statement of facts with attached exhibits.

SUBSTANTIVE HISTORY

In May of 2005, the Narragansett Town Council passed a Nuisance Ordinance designed to "give the Police Department one additional tool to use in its efforts to deal with issues related primarily to rental properties."[1] The justification for the Ordinance focused on discourag[ing] "the occurrence of repeated loud and unruly gatherings" and penalizing "the persons responsible for the public nuisance created by these gatherings…." See Exhibit A. The "unruly gatherings" Nuisance Ordinance as passed originally had five sections, reproduced below.

Section 46-10 (loud or unruly gatherings-public nuisance):

> It shall be a public nuisance to conduct a gathering of five (5) or more persons on any private property in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, as a result of conduct constituting a violation of law. Illustrative of such unlawful conduct is excessive noise or traffic, obstruction of public streets by crowds or vehicles, illegal parking, public drunkenness, public urination, the service of alcohol to minors, fights, disturbances of the peace, and litter.
>
> A gathering constituting a public nuisance may be abated by all reasonable means including, but not limited to, an order requiring the gathering to be disbanded and citation and/or

[1] The Ordinance Summary also stated: The Ordinance also would provide a penalty to the owners of rental properties if they are not taking appropriate steps to correct the violations.

arrest of any law violators under any applicable ordinances and state statutes.

Sec. 46-11 (Notice of unruly gathering- posting; mailing):

1. When the police department intervenes at a gathering which constitutes a nuisance under this ordinance, the premises at which such nuisance occurred shall be posted with a notice stating that the intervention of the police has been necessitated as a result of a public nuisance under this ordinance caused by an event at the premises, the date of the police intervention, and that any subsequent event within a sixty (60) day period therefrom on the same premises, which necessitates police intervention, shall result in the joint and several liability of any guests causing the public nuisance, or any persons who own or are residents of the property at which the public nuisance occurred, or who sponsored the event constituting the public nuisance as more fully set forth below.

2. The residents of such property shall be responsible for ensuring that such notice is not removed or defaced and it shall be an ordinance violation carrying a penalty of a minimum mandatory one hundred dollar ($100.00) fine in addition to any other penalties which may be due under this section if such notice is removed or defaced, provided, however, that the residents of the premises or sponsor of the event, if present, shall be consulted as to the location in which such notice is posted in order to achieve both the security of the notice and its prominent display.

Sec. 46-12 (Mailing of notice to property owner):

Notice of the intervention shall also be mailed to any property owner on the Town of Narragansett property tax assessment records and shall advise the property owner that any subsequent such intervention within sixty (60) days on the same premises shall result in liability of the property owner for all penalties associated with such intervention as more particularly set forth below:

Sec. 46-13 (Persons liable for a subsequent response to a gathering constituting a public nuisance):

1. The person or persons who own the property where the gathering constituting the public nuisance took place, provided that notice has been mailed to the owner of the property as set forth herein and the gathering occurs at least two weeks after the mailing of such notice.
2. The person or persons residing on or otherwise in control of the property where such gathering took place.
3. The person or persons who organized or sponsored such gathering.
4. All persons attending such gatherings who engage in any activity resulting in the public nuisance.
5. Nothing in this section shall be construed to impose liability on the resident or owners of the premises or sponsor of the gathering, for the conduct of persons who are present without the express or implied consent of the resident or sponsor, as long as the resident and sponsor have taken all steps reasonably necessary to exclude such uninvited participants from the premises, including landlords who are actively attempting to evict a tenant from the premises.

Where an invited guest engages in conduct which the sponsor or resident could not reasonably foresee and the conduct is an isolated instance of a guest at the event violating the law which the sponsor is unable to reasonably control without the intervention of the police, the unlawful conduct of the individual guest shall not be attributable to the sponsor or resident for the purposes of determining whether the event constitutes a public nuisance under this section.

Sec. 46-14 (Penalties):

It shall be an ordinance violation punishable as set forth herein when intervention at the same location to abate a gathering constituting a public nuisance occurs within a sixty (60) day period after the property was posted in accordance with Section 46-11.

1. For the first intervention in a sixty (60)

day period the fine shall be a minimum mandatory two hundred fifty dollars ($250.00);
2. For the second such intervention in a sixty (60) day period the fine shal1 be a minimum mandatory three hundred fifty dollars ($350.00);
3. For any further such responses in a sixty (60) day period the fine shall be a minimum mandatory five hundred dollars ($500.00).

In August of 2007, the Town of Narragansett amended the "Unruly Gatherings" Ordinance by renumbering the sections[2], extending the notice period to coincide with the school year, adding language that expanded categories of potential violators and proscribed actions[3], increasing the monetary penalties, and mandating community service for violators of the ordinance. See Exhibit B of agreed statement of facts.

The relationship between URI and the Town of Narragansett has been a long and tumultuous one. Historically, Narragansett's high volume of seasonal rental properties has attracted URI students needing off-campus housing, resulting in high concentrations of URI students living in various neighborhoods of the Town (Bonnet Shores, Scarborough, or Pt. Judith). In the late 1980s the Town attempted to deal with problems between residents and students by passing a zoning ordinance prohibitng the rental of properties to more than three unrelated persons. This ordinance was challenged by landlords and tenants (students) and declared unconstitutional by the Rhode Island Superior Court in 1994 as a violation of the due process and

[2] Now Article II, Section 46-31 through 35.
[3] The owner was added to the residents as responsible parties who could be assessed penalties, and "obscuring" of the orange sticker was added to the list of proscribed actions.

equal protection clauses of Article 1, Section 2, of the Rhode Island Constitution. DiStefano, et al v. Haxton, et al, Slip Decision dated 12/12/94 by J. Fortunato. Thus, Narragansett's attempt to deal with "loud parties, littering, abusive language, speeding vehicles, garbage, parking and urinating in public" through a zoning ordinance was unsuccessful. Id. However, in the face of persistent complaints about students and loud parties, the Town of Narragansett attempted to solve the problem by creating public nuisance ordinances to supplement Rhode Island criminal law.

The 2005 public nuisance ordinance as amended in 2007 to become the "unruly gatherings" or "orange sticker"[4] ordinance has been controversial from its inception. Efforts by URI students and landlords to block or amend the law through negotiations proved unsuccessful. After receiving complaints from the URI Student Senate, individual URI students, and landlords, the ACLU challenged to the constitutionality of this ordinance. The event that precipitated the filing of the lawsuit was the Town's prosecution of plaintiffs Keach, DeMerchant, and Spatcher in Narragansett's Municipal Court for the alleged violation of Ordinance 46-31-1, to wit:

> Did then and there, being a resident of the property at 24 Gardenia Ln, failed to abate a gathering, which constituted a public nuisance

[4] The Town of Narragansett Police Department uses 10" by 14" orange stickers to post public notice on the front door of "nuisance" houses. Agreed Statement Of Facts paragraph 21. See Exhibit D for Nuisance House Lists.

> that occurred within the noticed period after the property was posted in accordance with Sec. 46-32, in violation of 46-31 of the Narragansett Town Ordinances. See Exhibits C of Agreed Statement Of Facts.

These three prosecutions have been stayed pending the outcome of this matter. Agreed Statement Of Facts, Paragraph 29. Each of these students was disciplined by URI after Narragansett authorities forwarded the charges to URI. Agreed Statement Of Facts, Paragraph 30.

Two other plaintiffs, Byrne and Cuddy, had their rental home posted with an orange sticker. Agreed Statement Of Facts, Paragraph 31. Their landlord used the posting to evict these students who ending up having to pay for new housing, as well as, forfeiting prepaid rent. Agreed Statement Of Facts, Paragraphs 32 and 33. Byrne also was suspended for 2 games from his hockey team as a result of the disciplinary referral to URI. Agreed Statement Of Facts, Paragraph 33. At the conclusion of the 2007-8 school year, Cuddy transferred to an out-of-state school to complete his education rather than return to URI and deal with the off-campus housing situation.

The plaintiff landlords had their rental properties posted with the orange sticker. Due to the posting, they had extreme difficulty finding students to rent their properties and subsequently were forced to rent at lower rates to year-round non-student tenants. Agreed Statement Of Facts, Paragraphs 34, 35 and 36.

THE LAW

This case involves a challenge to the constitutionality of the "unruly gatherings" ordinance (Article II, Sections 46-31 through 35) enacted by the Town of Narragansett in 2005 and amended in 2007, brought by the URI Student Senate, five students, and three landlords. The plaintiffs believe that the ordinance violates their rights to procedural and substantive due process, equal protection, privacy and freedom of association. In addition, the plaintiffs maintain that the ordinance is preempted by the Residential Landlord and Tenant Act. RIGL §34-18-1 et seq.

A

The 2007 Amended Ordinance Sec 46-31 is void for vagueness. Phrases such as "unruly gathering," "public nuisance," "substantial disturbance," and "a significant segment of a neighborhood" do not provide fair notice to students, tenants or landlords of what constitutes illegal behavior and do not provide appropriate guidance to the police to ensure non-discriminatory and non-arbitrary enforcement. Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294 (1972); Fratiello v. Mancuso, 653 F.Supp 775 (D.R.I. 1987).

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague

> laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms," it "operates to inhibit the exercised of [those] freedoms." Uncertain meanings inevitably lead citizens to "'steer far wider of the unlawful zone'… than if the bounderies of the forbidden areas were clearly marked." Grayned v. City of Rockford, 408 U.S. 104 (1972) footnotes omitted.

In approving the anti-noise ordinance at issue in Grayned Justice Marshall stated that, although the question was close, the ordinance[5] required that (1) the "noise or diversion" be actually incompatible with normal school activity; (2) there be a demonstrated causality between the disruption that occurs and the "noise or diversion"; and (3) the acts be "willfully" done. Id. He contrasted this ordinance with the ordinance in Coates v. Cincinnati, 402

[5] "No person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school sessions or class thereof…" cite omitted.

U.S. 611(1971), that punished the sidewalk assembly of three or more persons who "conduct themselves in a manner annoying to persons passing by …" because enforcement depended on the completely subjective standard of "annoyance" and the broadly worded licensing ordinance in Shuttlesworth v. Birmingham, 394 U.S. 147 (1969), which granted standardless discretion to public officials to grant or withhold parade permits. Id.

Here, Narragansett fails to define "public nuisance" or "substantial disturbance" or "significant segment of a neighborhood," and gives the police unfettered discretion to post orange stickers on properties which subject landlords and tenants of those properties to monetary fines for removal and the stigma of public humiliation. The lack of fair warning to landlords and tenants and standardless enforcement by the police with no opportunity to contest the posting of the orange sticker combine to demand that Narragansett's "unruly gatherings" ordinance be voided on vagueness grounds.

B

The "unruly gatherings" ordinance violates the plaintiffs' right to procedural due process. Both liberty and property interests are implicated. The act of affixing a 10 inch by 14 inch orange sticker to the front door of a rental property is left to the sole discretion of the police with no opportunity for a hearing either before or after the

posting of the orange sticker. Since the orange sticker can not be removed until the end of the school year without financial penalty, regardless of the presence or absence of the original "unruly" tenants, its presence stigmatizes the reputations of the landlord and any and all tenants, and reduces the value of the property, in effect depriving the landlord of fair use of the property. See Goss v. Lopez, 419 U.S. 565 (1975); Wisconsin v. Constantineau, 400 U.S. 433 (1971).

In Goss v. Lopez, 419 U.S. 565 (1975), the U.S. Supreme Court held that students are entitled to notice and a hearing when suspended for up to ten days for alleged misconduct. They had both an entitlement to a public education under Ohio law and a "liberty" interest in their "good name, reputation, honor or integrity." Id. The Court explained:

> The Due Process Clause also forbids deprivations of liberty. "Where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him" the minimum requirements of the Clause must be satisfied. Wisconsion v. Constantineau, 400 U.S. 433,437(1971); Board of Regents v. Roth, 408 U.S. 564, 573(1972). School authorites here suspended appellees from school for periods of up to 10 days based on charges of misconduct. If sustained and recorded, those charges could seriously damage the student's standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and

> employment. It is apparent that the claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution. Id.

In Wisconsin v. Constantineau, 400 U.S. 433 (1971), the U.S. Supreme Court held that a Wisconsin statute that authorized designated persons to forbid the sale or gift of intoxicating liquors to one who, "by excessive drinking," produces conditions or exhibits specified traits, such as exposing himself or family "to want" or becoming "dangerous to the peace" of the community, was unconstitutional on its face. In this case the Chief of Police in Hartford, Wisconsin, posted a notice in all retail liquor outlets in Hartford that sales or gifts of liquors to appellee were forbidden for one year. The statute had no requirement of notice or a hearing for the designated officials. The appellee challenged the statute and sought to enjoin its enforcement. In finding the statute unconstitutional, the District Court said:

> It would be naïve not to recognize that such "posting" or characterization of an individual will expose him to public embarrassment and ridicule, and it is our opinion that procedural due process requires that, before one acting pursuant to State statute can make such a quasi-judicial determination, the individual involved must be given notice of the intent to post and an opportunity to present his side of the matter. Id.

The Supreme Court affirmed the finding that procedural due process was required because the "posting" was "a stigma or badge of disgrace." Id.

> Where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. "Posting" under the Wisconsin Act may to some be merely the mark of illness; to others it is a stigma, an official branding of a person. The label is a degrading one. Under the Wisconsin Act, a resident of Hartford is given no process at all. The appellee was not afforded a chance to defend herself. She may have been the victim of an official's caprice. Only when the whole proceedings leading to the pinning of an unsavory label on a person are aired can oppressive results be prevented. Id.

Here not only do the URI student residents receive the stigma of the highly public "orange sticker" posting, but the Police Department refers notice of the posting to URI officials, publishes same in local newspapers (*Narragansett Times* and the *Independent*), and maintains a public nuisance housing list. There is no way to challenge this stigmatizing event as the police are given unfettered discretion to post "orange stickers." The Town's decision to post students' residences for the balance of the school year (up to nine months depending on the date of the posting) defames and humiliates both the student residents and the owners of the properties. Critics of the orange sticker policy refer to

this posting as the equivalent of the branding of Heather Prynne with the “Scarlet letter” A in Nathaniel Hawthorne’s 1850 classic.

The landlords also have property and liberty interests at sake here and are denied any kind of a hearing to challenge the posting of the orange sticker on their properties. All of the plaintiff landlords lost income when they could not locate student renters and had to rent to non-student year-round renters. The stigma of the orange sticker also adversely affected their reputations in their communities. Retiree Walter J. Manning relies on the income generated by his rental property which is located in the same neighborhood where he resides. The posting of the orange sticker during the 2007-2008 school year was a constant shaming which he and his neighbors viewed daily as they drove in and out of their neighborhood.

C

Substantive due process gives individuals the right to be free of arbitrary laws and enforcement thereof where liberty interests like privacy and associational rights are

concerned. See Lawrence v. Texas, 539 U.S. 558, 123 S.Ct. 2472; Coates v. City of Cincinnati, 402 U.S. 611 (1971).[6]

In Lawrence v. Texas, Id., the U.S. Supreme Court held that a Texas statute criminalizing same sex intimate sexual conduct was unconstitutional as applied to adult males engaging in consensual sexual acts in the privacy of their home. The Court ruled that the adults were free to engage in private conduct in the exercise of their liberty under the Due Process Clause. It traced substantive due process rights cases from early cases like Meyer v. Nebraska, 262 U.S. 390 (1923) and Pierce v. Society of Sisters, 268 U.S. 510 (1925), through Griswold v. Connecticut, 381 U.S. 479 (1965), and Roe v. Wade, 410 U.S. 113 (1973) to establish "once more that the protection of liberty under the Due Process Clause has a substantive dimension of fundamental significance in defining the rights of the person." Lawerence v. Texas, Id.

The Lawrence Court opined that "[t]he stigma this criminal statue imposes, moreover, is not trivial". Id. While just a class C misdemeanor it still is "a criminal

[6] In Coates v. City of Cincinnati, 402 U.S. 611 (1971) the Supreme Court held unconstitutional on its face an ordinance that made it a criminal offense for "three or more persons to assemble … on any sidewalks … and there conduct themselves in a manner annoying to persons passing by …. In addition to the before discussed void for vagueness holding, the court also held that the ordinance violated the constitutional right of assembly and association.

offense with all that imports to the dignity of the persons charged." Id. Thus, "[t]he petitioners will bear on their record the history of their criminal convictions." Id.

Plaintiffs Keach, DeMerchant, and Spatcher face prosecution for violation of Ordinance 46-31 in the Narragansett Municipal Court for their alleged failure to abate a so-called "unruly gathering" after an "orange sticker" was posted on their door. They have already been stigmatized by the public posting of their residence but now face possible conviction with monetary fines and community service for being residents of a house where an alleged "unruly gathering" occurred. They are not charged with committing a crime but with failing to abate an ill-defined "unruly gathering" in their residence. Criminal or Quasi-criminal prosecutions based on a relationship to a residence and not on the commission of a crime offends notions of fairness and underscores why Narragansett's "orange sticker" ordinance should be held unconstitutional on its face or as applied to residents and/or owners. Similarly, this ordinance is over-inclusive in that it punishes individuals who have committed no crime or violation for simply being present at or associated with a location or an event. It should not be a criminal or quasi-criminal offense or even a civil violation to participate in a gathering or to be a

resident or owner of a residence where a gathering has taken place. Like the Cinncinnati ordinance in Coates, Id., the Narragansett ordinance makes it a crime to associate with others at gatherings deemed by the police to be "unruly."[7]

D

This ordinance also impinges upon the rights of URI students and property owners who rent to students to the equal protection of the law because this ordinance was designed to control their lives and activities as renters in Narragansett. They, like the hippies in Dept. of Agriculture v. Moreno, 413 U.S. 528, 93 S.Ct. 2821 (1973), or the disabled in City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 105 S.Ct. 3249 (1985), or the homosexuals in Romer v. Evans, 517 U.S. 620, 116 S.Ct. 1620 (1996), are politically unpopular groups entitled to a more searching form of rational basis review. See Lawrence v. Texas, supra., and Justice O'Connor's concurring opinion contained therein.

The equal protection clause protects unpopular groups that have been denied rights or entitlements because of animosity toward those groups. Justice O'Connor explained in her concurring opinion in Lawrence v. Texas, Id., the

[7] Unfettered police discretion concerning political signs was also held unconstitutional by this court in Driver v. Town of Richmond et al, 570 F.Supp. 2d 269 (RI 2008).

rationale for applying a more searching form of rational basis review:

> We have consistently held, however, that some objectives are, such as "a bare… desire to harm a politically unpopular group," are not legitimate state interests. Department of Agriculture v. Moreno, supra, at 534, 93 S.Ct.2821. See also Cleburne v. Cleburne Living Center, supra, at 446-447, 105 S.Ct. 3249; Romer v. Evans, supra at 632, 116 S.Ct.1620. When a law exhibits such a desire to harm a politically unpopular group, we have applied a more searching form of rational basis review to strike down such laws under the Equal Protection Clause.

The animosity between Narragansett landlords (whether residents or not of the Town) who rent to URI students and the URI students who rent from them on the one hand, and full-time residents of the Town who object to the presence of the students on the other, has a long history in Town affairs and politics. Efforts to use zoning laws to restrict and limit the student population (no more than 3 unrelated persons were permitted to live together) were held by the State Superior Court to violate the equal protection and due process clauses of the State Constitution. DiStefano et al v. Haxton et al, supra. The continuing effort to target students and to control their behavior led to the enactment of the "unruly gatherings" ordinance. The amendment of the ordinance in 2007 to coincide with the school year belies any effort by the Town to disguise the true intent of the

ordinance to target URI students and “absentee landlords” by this legislative act. Since 22% of Narragansett’s 2460± housing units are seasonal, it is clear that a high percentage of those units are rented by absentee landlords to URI students during the school year and that this has become a major concern of many town residents. See Agreed Statement Of Facts, Paragraphs 5,6, and 7 quoting from the Narragansett Comprehensive Plan (2005-2008). Like the Hippies in Moreno, Id., the disabled in City of Cleburne, Id., and the homosexuals in Romer, Id., and Lawrence, Id., the URI student renters and their landlords should be protected from prosecution by the Court based on the Equal Protection Clause of the R.I. and U.S. Constitutions.

E

The “unruly gatherings” ordinance as it attempts to regulate landlords and encourage them to evict their tenants runs afoul of and is inconsistent with the Residential Landlord Tenant Act, R.I.G.L. 34-18-1 et seq., which governs the rights and obligations of landlords and tenants. See Errico et al. v. LaMountain, 713 A.2d 791 (RI 1998). Plaintiffs believe that the “unruly gatherings” ordinance impermissibly intrudes upon the state-governed landlord-tenant area of the law as enacted by the Rhode Island General Assembly and thus should be preempted thereby. See

Providence Lodge No.3, Fraternal Order of Police, et al. v. Providence External Review Authority, et al., 951 A.2d 497 (RI 2008).

The Ordinance on its face targets landlords (property owners) and tenants (residents) and makes them jointly and severally responsible for the behavior of attendees at "unruly gatherings." It encourages landlords to evict their tenants as an affirmative defense. See Sec. 46-34(5). Agreed Statement Of Facts. Exhibit B. Plaintiffs Byrne and Cuddy were evicted from their home due to the police posting of their residence. Landlord-Tenant relations are regulated by the Residential Landlord Tenant Act, RIGL 34-18-1 et seq., and any town ordinance inconsistent with this Act is preempted by said state law. Narragansett's efforts to regulate the landlord-tenant relationship through enforcement of the "unruly gatherings" ordinance should be prohibited.

CONCLUSION

For all of the above reasons, plaintiffs believe that the "unruly gatherings" ordinance is unconstitutional on its face and as applied to them and request that their Motion for Summary Judgment be granted.

Attorney for Plaintiffs

H. Jefferson Melish */s/*
H. JEFFERSON MELISH, #3100
ACLU - RI AFFILIATE
74 Main Street
Wakefield, RI 02879
(401) 783-6840
On behalf of the RI ACLU
hj.melish@verizon.net

CERTIFICATION

I certify that on July 7, 2009, I caused to be filed and served electronically a copy of the attached Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment via the CM/ECF Filing System to all counsel of record.

H. Jefferson Melish */s/*