

STATE OF RHODE ISLAND
WASHINGTON, SC.

SUPERIOR COURT

URI STUDENT SENATE,
DAVID KEACH, TIMOTHY DEMERCHANT,
MICHAEL SPATCHER, WARREN BYRNE,
BEN CUDDY, WALTER J. MANNING,
STEVEN and KAREN JEDSON

VS.

C.A. NO:WC 08-

TOWN OF NARRAGANSETT, T. BRIAN HANDRIGAN,
JAMES P. DURKIN, KRISTA J. GARRETT,
GEORGE F. LENIHAN, CHRISTOPHER WILKENS,
Council Members in their
Official Capacities
JEFFRY CEASRINE, TOWN MANAGER,
ROBERT UYTTEBROEK, TOWN TREASURER,
and JOSEPH T. LITTLE, JR., TOWN POLICE CHIEF
in their Official Capacities

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

STATEMENT OF THE CASE

There exists a controversy between the Town of Narragansett (hereinafter, Respondent or Town) and certain URI students, tenants and property owners (hereinafter, Petitioners) with respect to the Town of Narragansett's Unruly Gatherings Ordinance (Article II, Sections 46-31 through 35 of the Code of Ordinances which attempts to manage the behavior of URI students, residents and landlords in violation of their constitutional rights. Petitioners contend that the Ordinance violates their procedural and substantive due process and equal protection rights, as well as their rights to privacy and freedom of association under both the Constitution of Rhode Island and the Constitution of the United States.

PARTIES

1. Petitioner URI Student Senate is the body of elected representatives of the URI student community with its office located in the Memorial Student Union on the Kingston Campus of URI.

2. Petitioners David Keach, Timothy DeMerchant and Michael Spatcher are URI students who reside in Narragansett, RI and who are currently facing prosecution for alleged violation of the Unruly Gatherings Ordinance.

3. Petitioners Warren Byrne and Ben Cuddy are URI students who reside in Narragansett and have been adversely affected by the Town's Unruly Gatherings Ordinance.

4. Petitioner Walter J. Manning, is a resident of Narragansett, RI, who owns a rental property in the Town of Narragansett.

5. Petitioners Steven and Karen Jedson, are residents of South Kingstown, RI, who own rental property in the Town of Narragansett.

6. Respondent Town of Narragansett, is a Rhode Island municipality.

7. Respondents T. Brian Handrigan, James P. Durkin, Krista J. Garrett, George F. Lenihan, and Christopher Wilkens are members of the Town Council of the Town of Narragansett, State of Rhode Island.

8. Respondent Jeffrey Ceasrine, is the Town Manager for the Town of Narragansett, State of Rhode Island.

9. Respondent Robert Uyttebroek, is the Finance Director/Treasurer for the Town of Narragansett, State of Rhode

Island.

10. Respondent Joseph T. Little, Jr., is the Police Chief for the Town of Narragansett.

JURISDICTION AND VENUE

11. This is an action for equitable and injunctive relief commenced pursuant to Rhode Island Uniform Declaratory Judgment Act, RI Gen.Laws §9-30-1, et seq and 42 USC §§ 1983 and 1988.

12. The jurisdiction of this Court is invoked pursuant to Rhode Island Uniform Declaratory Judgment Act and to remedy federal, state and local civil rights violations pursuant to 42 USC §§ 1983 and 1988.

13. The jurisdiction of this Court is invoked to secure the protection of and to redress the deprivation of rights secured by 42 USC §§ 1983 and 1988.

14. The jurisdiction of this Court is invoked to redress violations of the Article 1, Sections, 2, 5, 10, 21 and 24 of the Rhode Island Constitution.

15. The jurisdiction of this Court is invoked to redress violations of the First, Fifth, Ninth and Fourteenth Amendments of the Constitution of the United States.

16. The venue of this action properly lies in the Superior Court for Washington County.

COMPLAINT

17. On September 4, 2007, the Narragansett Town Council amended Article II of Chapter 46 of the Code of Ordinances of the Town of Narragansett entitled "Unruly Gatherings." See Appendix A. for a copy of said Ordinance.

18. Said Amended Ordinance took effect on passage and repealed all other ordinances or parts of ordinances inconsistent therewith.

19. Town Ordinance §§ 46-31 through 46-35 characterize certain gatherings on private property as "unruly" gatherings that constitute a public nuisance. The ordinance gives sole discretion to the police department to intervene in such alleged "unruly gatherings" and the authority to post an "orange sticker" on any house in which such an "unruly gathering" has taken place, without any opportunity for a hearing or appeal by owner or renter. The ordinance mandates that the orange sticker shall remain affixed to the house until 5/31 if the gathering took place between 9/1 and 5/31 (the college year) or until 8/31 if it took place during the summer after 5/31. The penalty for removing or defacing the sticker before the designated date is a "minimum, mandatory" \$100.00 fine.

20. The "unruly gatherings" ordinance is vague for several reasons. It fails to provide a clear definition of prohibited behavior, merely listing examples "illustrative" of prohibited behavior. It thus provides no clear behavioral guidelines for citizens, and it invites arbitrary and capricious enforcement on the part of the police. It is overinclusive in that it brings people who have committed no crime or violation within the scope of liability of this ordinance by simply being present at or associated with a location or an event.

21. The Ordinance further gives the Police Department authority to charge renters, owners, organizers, sponsors, or

attendees at any gatherings of five or more persons it deems a public nuisance at any location that already has an orange sticker on its front door.

22. There are no procedural due process protections for residents or owners who are subjected to the police department decision to post an orange sticker to the front door of a house deemed the site of an "unruly gathering."

23. This ordinance as it relates to landlord-tenants relations is preempted by the Rhode Island Landlord-Tenant law.

24. Those persons charged with violations of this ordinance are summoned into Narragansett Municipal Court to face prosecution with escalating mandatory fines and either discretionary or mandatory community service penalties for those who admit guilt or who are convicted after trial.

25. The Town of Narragansett Police Department maintains a public "Nuisance House List."

26. The Town of Narragansett forwards information concerning in-town (off campus) complaints against URI students, including complaints pursuant to this ordinance, to URI for further disciplinary action against those students.

27. The Town of Narragansett monitors URI student behavior in Narragansett and has assigned two police officers to this task.

28. The URI Student Senate has condemned the "Orange Sticker Policy" as a discriminatory policy aimed at students to humiliate and shame them, much like a "scarlet letter" or "mark of shame."

29. Petitioners David Keach, Timothy DeMerchant, and Michael

Spatcher were charged with violating Ordinance 46-31-1 on 4/18/08 as follows:

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

30. Petitioners David Keach, Timothy DeMerchant and Michael Spatcher were arraigned on 5/1/08 and are scheduled for a Pre-Trial on 6/5/08.

31. If convicted, said students face mandatory fines and community service.

32. Said students also have been referred to URI's disciplinary system and have been sanctioned for off-campus behavior.

33. Petitioners Warren Byrne and Ben Cuddy were residents at 10 South West Road in Narragansett, a house that received an orange sticker on 9/30/07.

34. Said petitioners believe that because of the posting of the "orange sticker" on their residence on or about December 1, 2007, they were evicted therefrom and forced to pay for rent for the balance of that school year for both 10 South West Road and their new residence.

35. Petitioner Warren Byrne also was suspended from his URI hockey team for 2 games by his coach as a direct result of the posting of the orange sticker.

36. Petitioner Walter J. Manning resides at 14 Treasure Road in Narragansett, RI. He is a landlord who has rented out

property in Narragansett for 34 years without incident. He is a retired Personnel Director in the City of Warwick, RI, who depends on his rental income to supplement his retirement income.

37. Petitioner Walter J. Manning owns and rents out the property located at 40 Muratore Road in Narragansett. He has rented out that property to URI students without incident for 18 years. On 3/18/08 an orange sticker was posted on Mr. Manning's property.

38. Petitioner Walter J. Manning lives in the same neighborhood where his rented property is located, and he believes that the orange sticker policy serves no purpose but to embarrass and shame the owner and the residents.

39. Petitioner Manning has been unable to rent out his property for this summer and for next year. He believes that the orange sticker policy is driving students out of Narragansett and is adversely affecting his ability to obtain rental income.

40. Petitioner Walter J. Manning likens the orange sticker policy and practice to the posting of yellow stars on the homes of Jews in Germany in the 1930s.

41 Petitioners Steven and Karen Jedson own rental property in Narragansett located at 51 Anchorage Road.

42. Said petitioners have owned this property for 15 years and rent to URI students during the school year.

43. On 9/29/07 an orange sticker was posted on their property.

44. The Jedsons' student tenants have not renewed their rental agreement for next school year, and the Jedsons have been

unable to find renters for next year.

45. Said petitioners are embarrassed by the orange sticker posted on their property and believe that the Town's Landlord Registration Ordinance and Orange Sticker policy violate the privacy rights of their tenants and force the landlords to "serve as adoptive parents to adult children."

WHEREFORE, petitioners pray for the following relief:

- a. That this Honorable Court declare said Ordinance to be unconstitutional in violation of the United States and/or Rhode Island Constitutions.
- b. That this Honorable Court declare that said Ordinance is preempted by the RI Landlord Tenant law.
- c. That this Honorable Court issue temporary, preliminary and permanent injunctions against the Town of Narragansett from enforcing the terms and conditions of the aforesaid Ordinance.
- d. That the petitioners be awarded compensatory damages.
- e. That the petitioners be awarded their costs of suit including their reasonable attorney's fees.
- f. That the petitioners be awarded such other and further relief as this Honorable Court may deem just.

Attorney for the
Petitioners

H. JEFFERSON MELISH, #3100
ACLU - RI AFFILIATE
74 Main Street
Wakefield, RI 02879
(401) 783-6840

On behalf of the RI ACLU

CERTIFICATION

I hereby certify that a true copy of the within document was mailed, to the Mark McSally, Esq., and Steven Brown, ACLU, on the ___ day of May, 2008.
