

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS

DISTRICT COURT DEPARTMENT
WORCESTER DIVISION
DOCKET # 0762CR001852

COMMONWEALTH

VS.

LAWRENCE D. CIRIGNANO

DECISION AND MEMORANDUM ON MOTION TO DISMISS

At issue here is whether a person may be considered as exercising a constitutional right in holding a sign that expresses an opposing viewpoint to that being supported by the organizers of a rally in a public forum. The defendant argues that there is no constitutional or civil right in undertaking such an act, and therefore the defendant may not be charged with a violation of the sign holder's civil rights. For reasons that follow this argument fails.

The cases cited by the defendant, Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, 515 U.S. 557 (1995), and Sistrunk v. City of Strongsville, 99 F.3d.194 (6th Cir 1996), stand generally for the proposition that government may not require that an organization include undesired and/or opposing viewpoints in its public rally. From this, however, there is no constitutional basis to conclude that the state may *ban* outright an individual's expression of an opposing viewpoint at a rally held in a public place.¹ In other words, the state may not require organizers of a rally to include opposing groups as marchers in its parade, but it just as certainly can not prohibit the opposing groups from holding signs along the intended route.

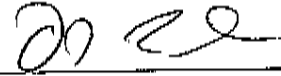
In holding her sign at the rally here, the complainant was simply expressing a view contrary to that being generally supported. This is speech which is clearly and unassailably protected by the First and Fourteenth Amendments of the U.S. Constitution and by the Massachusetts Bill of Rights. To conclude otherwise would allow the group that arrives at the city licensing office first to censor the free expression of speech in a particular area of the city at any given time. This is an unsupportable proposition under constitutional law.

¹ Of course, government has a compelling interest in promoting public safety, such as when the police keep opposing groups separate at such events. The question of whether the complainant here crossed some boundary line set by police is not at issue in this particular forum.

To paraphrase Chief Justice Roberts in a recent decision of the U.S. Supreme Court, when our courts are called upon to determine to what extent, if any, speech may be infringed upon, we must give the benefit of the doubt to speech not censorship; the First Amendment demands just that. See, Federal Election Commission v. Wisconsin Right to Life, Inc., 551 U.S. ____, 29 (2007).

Accordingly, this court declines to rule that there could be no violation of the complainant's civil rights as a matter of law, and it remains for the trier of fact to determine if the defendant is guilty as charged. The defendant's motion to dismiss is therefore DENIED.

DATED: July 6, 2007



David Ricciardone
Associate Justice
Worcester District Court