

December 15, 2004

Michael Ryan, Chairperson  
Warwick Board of Public Safety  
99 Veterans Memorial Drive  
Warwick, RI 02886

Dear Mr. Ryan:

I am writing in response to news reports describing actions that the Warwick Board of Public Safety has taken against Barry's nightclub, and more particularly, the imposition of a license stipulation against any further hip-hop or rap music at the club. While I understand that the club's owner has voluntarily agreed to no longer offer this type of entertainment, we believe that the Board has set a dangerous and unconstitutional precedent in banning a club from hosting certain styles of music.

The ACLU does not, of course, question the Board's right to investigate the serious problems – including a recent shooting – that have apparently occurred at the club, or to impose reasonable conditions on the club's license in order to reduce the further likelihood of such conduct. But when the Board goes so far as to ban certain types of music at an establishment, extremely serious First Amendment issues are implicated.

A few basic, if obvious, points need to be noted. First, the recent highly-publicized shooting at an Ohio nightclub where a heavy metal band was performing demonstrates – if such demonstration were ever needed – that one cannot single out particular types of music as more or less likely to lead to patron misconduct. Hip-hop and rap concerts routinely take place throughout the state without any untoward consequences. Indeed, less than two months ago, the Rhode Island ACLU itself helped sponsor a hip-hop concert geared towards raising awareness among youth about voting rights. Banning hip-hop and rap music at Barry's nightclub because of disruptive incidents is no more appropriate than banning "The Star Spangled Banner" at sporting events where spectator melees have occurred.

Further, since hip-hop and rap music often have a decided anti-establishment edge to them, a decision singling out these forms of musical performance for a ban has a content-based component that is especially troubling in a free speech context. Additional concerns are raised by the fact that these are also, not coincidentally, musical forms with a large African-American constituency.

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In short, we believe the Board of Public Safety has embarked down a slippery slope in dictating to club owners what type of music they can host or perform. The Board has many means at its disposal – unrelated to the censorship of speech – to address these sorts of problems, including setting liquor restrictions, requiring an increased security presence, and so forth. We urge the Board to reject any further actions that put it in the role of musical censor.

Thank you in advance for your attention to our views.

Sincerely,

Steven Brown  
Executive Director

cc: Leslie Walaska Baxter  
Marshall Martin  
The Hon. Scott Avedisian  
Col. Stephen McCartney