

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

JUDITH REILLY,	:	
Plaintiff	:	
v.	:	C.A. No. 10-
	:	
CITY OF PROVIDENCE, by and	:	<u>Jury trial demanded</u>
through its Treasurer, STEPHEN T.	:	
NAPOLITANO, alias, and PAUL	:	
KENNEDY, alias, and ALYSSA	:	
DeANDRADE, alias, individually and in	:	
their official capacities as police officers in:	:	
the City of Providence Police Department,:	:	
and DEAN ESSERMAN, alias,	:	
individually and in his official capacity as :	:	
Chief of the City of Providence Police	:	
Department,	:	
Defendants	:	

COMPLAINT

I. Introductory Statement

This action is brought by the Plaintiff seeking declaratory and injunctive relief and compensatory and punitive damages for acts and/or omissions of Defendants in violation of Plaintiff’s rights to freedom of speech and of the press protected under the First and Fourteenth Amendments to the United States Constitution, actionable pursuant to 42 U.S.C. §1983, and under Article 1, §§20 and 21 of the Rhode Island Constitution.

II. Parties

1 Plaintiff Judith Reilly is a resident of the City of Providence, County of Providence and State of Rhode Island.

2 Defendant City of Providence (“City”) is a duly authorized and organized municipality under the laws of the State of Rhode Island and is sued by and through its Treasurer, Stephen T. Napolitano, the official designated by state law, R.I.G.L. §45-15-5, to be named in a suit for relief against the City.

3 Defendant Paul Kennedy, alias is sued individually and in his official capacity as
a police officer in the City Police Department.

4 Defendant Alyssa DeAndrade, alias is sued individually and in her official
capacity as a police officer in the City Police Department.

5 Defendant Dean Esserman, alias, is sued individually and in his official capacity
as Chief of the City Police Department. On information and belief, at all relevant times, Chief
Esserman was the chief policy-making official of the City Police Department.

III. Jurisdiction

6 This Court has jurisdiction pursuant to 28 U.S.C. §§1331, 1343, 1367, 2201 and
2202.

IV. Venue

7 Venue is proper in this Court since, on information and belief, all of the
Defendants reside or may be found in the District of Rhode Island in compliance with the
requirements set forth in 28 U.S.C. §1391.

V. Material Facts

A. Chronology of Events

Flyer Distribution

8 At all relevant times, Plaintiff was an ally and supporter of the Olneyville
Neighborhood Association (“ONA”).

9 On or about February 2, 2010 at approximately 6:30 p.m., Plaintiff and a member
of ONA, Oscar Lemus, were distributing flyers on the public sidewalk along Cranston Street
adjacent to the Providence Career and Technical Academy (“PCTA”).

10 The PCTA has an address of 91 Fricker Street, Providence, RI, 02903.

11 The Plaintiff was distributing flyers to people entering the PCTA auditorium to attend Mayor David N. Cicilline's "State of the City" address, which was scheduled to commence at 7:00 p.m.

12 The flyers were critical of Mayor Cicilline's re-appointment to the City Planning Commission of Stephen Durkee, an individual who, at that time, was accused of a state code of ethics violation. A copy of that flyer is attached hereto as Exhibit A.

13 The flyers were representative of both the Plaintiff's personal views and ONA's position.

14 Plaintiff and Mr. Lemus were walking up and down the sidewalk at opposite ends of the building peaceably distributing the flyers.

15 The sidewalk in front of the auditorium where Plaintiff was distributing flyers is about fifteen (15) feet wide and was at all times unobstructed.

16 No crowds gathered nor was there any disruption, dissent or disorderly conduct.

17 In fact, at the time, it was rather quiet and calm and foot traffic was relatively sparse.

18 At the foregoing date, time and place, Mr. Lemus was told by a male City police officer in uniform to move across the street by Citizens Bank or down the street by the athletic field or across the street by the Central High School parking lot.

19 Subsequently, Plaintiff was approached by another male City police officer and told to move or be arrested.

20 Under the threat of arrest, Plaintiff moved across the street in front of the Central High School parking lot, while Mr. Lemus moved down the street by the athletic field.

21 Plaintiff subsequently had a conversation with State Representative and former City Councilman David Segal, who informed her that Plaintiff and Mr. Lemus had a right to peaceably distribute flyers on the public sidewalk in front of the PCTA.

22 Accordingly, Plaintiff and Mr. Lemus once again moved to their former positions on the public sidewalk along Cranston Street in front of the PCTA.

23 At this time, Plaintiff was approached by Defendant DeAndrade and one or two other City police officers and told to move or be arrested.

24 On information and belief, Defendant DeAndrade holds the rank of sergeant and was the officer in charge at the time.

25 Plaintiff advised Defendant DeAndrade that she had a right to remain on the public sidewalk in front of the PCTA and peaceably distribute political flyers.

26 Plaintiff advised her of the conversation with Representative Segal and offered to put her in touch with him by cell phone.

27 Defendant DeAndrade related that she did not care what Representative Segal said and stated, "All I know is, when my Commander says to move you, I move you."

28 Defendant DeAndrade advised Plaintiff that the Commander to which she was referring was Defendant Kennedy.

29 Defendant DeAndrade told Plaintiff and Mr. Lemus that if they wanted to continue to distribute the flyers, they had to move across the street by Citizens Bank or down the street by the athletic field or across the street by the Central High School parking lot.

30 Defendant DeAndrade reiterated that if Plaintiff and Mr. Lemus did not leave the sidewalk in front of PCTA, they would be arrested.

31 The areas to which Plaintiff and Mr. Lemus were directed by Defendant DeAndrade were not locations where they would likely encounter people entering the PCTA auditorium.

32 Since the literature was designed for individuals attending the event at the PCTA, moving to a location less proximate to the front of the auditorium would largely defeat the purpose of the activity.

33 Defendant DeAndrade never claimed that Plaintiff or Mr. Lemus were violating any laws, obstructing the sidewalk or creating a disturbance—only that they could not remain on the public sidewalk in front of the PCTA.

34 Nevertheless, under threat of arrest, Plaintiff and Mr. Lemus moved across the street to the area by Citizens Bank, even though it materially impaired if not prohibited their ability to distribute flyers to people entering the auditorium.

35 Although Plaintiff believed then, and still believes now, that the Defendants' demand that she cease distributing flyers on the public sidewalk in front of the PCTA was unlawful and in violation of her right to freedom of speech, Plaintiff left the area to avoid being arrested.

36 Plaintiff and Mr. Lemus subsequently left the vicinity altogether, insofar as the Defendants had rendered their intended purpose of distributing flyers to individuals entering the auditorium futile by banning them from the public sidewalk in front of the PCTA.

Events Subsequent to Flyer Distribution

37 On or about February 16, 2010, Plaintiff filed a detailed Civilian Complaint form with the City police department requesting that corrective action be taken to remedy the conduct of the Defendants described above and to ensure that people would not be prevented from peaceably distributing political flyers on public sidewalks in the City in the future.

38 Plaintiff was subsequently in communication with Inspector Francisco Colon of the City Police Department.

39 On information and belief, Inspector Colon was the internal affairs officer assigned to investigate the Plaintiff's Civilian Complaint.

40 On or about March 1, 2010, Plaintiff submitted a written follow-up communication to the City police department reiterating and expanding upon her previous complaint and responding to matters raised by Inspector Colon.

41 On or about March 23, 2010, Plaintiff received an email from Inspector Colon wherein, among other things, he expressed uncertainty as to whether the actions of the police officers involved in threatening to arrest her for the peaceable distribution of literature contravened Plaintiff's right to freedom of expression and/or constituted misconduct.

42 Almost two and one-half months after filing her original complaint, the Rhode Island Affiliate of the American Civil Liberties Union ("RIACLU") submitted a letter dated May 11, 2010 to Inspector Colon.

43 In that letter, the RIACLU, among other things, posited that "no police officer should be unaware of the fact that members of the public have a fundamental First Amendment right [established more than seventy years ago] to peacefully distribute literature on public sidewalks."

44 A copy of the foregoing letter was also sent to Defendant Esserman, wherein he was asked to take appropriate action to ensure his officers were properly trained on this issue.

45 According to the established process, investigations of Civilian Complaints are to be completed within thirty (30) days (or an additional thirty (30) days for good cause).

46 To date, the Plaintiff has received no further response from or a resolution of her complaint by the City or any representative thereof, nor is Plaintiff aware of any action taken by

the City to properly train, instruct, supervise and/or discipline the Defendants or other officers in the City Police Department relative to the constitutionally protected right of people to peaceably distribute political flyers on public sidewalks and in other public forums in the City.

B. Applicable Law

Local and State Law

47 City Ordinance §16-13, entitled “Obstruction of Public Ways,” expressly exempts from regulation situations such as this where individuals on public streets or sidewalks are exercising a right to protest and there is at least three (3) feet of unobstructed sidewalk access at all times.

48 Similarly, R.I.G.L. §11-5-1, entitled “Disorderly Conduct,” expressly exempts from prohibited conduct lawful picketing or lawful demonstrations of any kind.

Constitutional Law

49 Moreover, even if local or state statutory law, expressly or by implication, were interpreted to prohibit the conduct of Plaintiff at issue, it would be trumped by well-settled state and federal constitutional law protecting the right to peaceably demonstrate and distribute literature on public sidewalks and in other public forums.

Freedom of Speech and of the Press

50 Freedom of speech and that of the press are fundamental personal rights and liberties, and the exercise of these rights lies at the foundation of free government by free people.¹

51 One who is rightfully on a street open to the public “carries with him there as elsewhere the constitutional right to express his views in an orderly fashion [, including] . . . the communication of ideas by handbills and literature as well as by the spoken word.”²

Political Speech

52 The Supreme Court has recognized that the First Amendment reflects a “profound national commitment” to the principle that “debate on public issues should be uninhibited, robust, and wide-open,” and has consistently commented on the central importance of protecting speech on public issues.³

53 Political speech such as that involved in the case at bar is entitled to the fullest possible measure of constitutional protection.⁴

Leafletting

54 Distribution of flyers, leaflets or handbills is protected by the First Amendment guarantees of freedom of speech and freedom of the press.⁵

55 “In its traditional form, leafletting occurs when individuals offer handbills, pamphlets, tracts, advertisements, notices and other information to individuals on the street or sidewalk, who remain free to accept or reject the document.”⁶

56 “[Leafletting] is a venerable and inexpensive method of communication that has permitted citizens to spread political, religious and commercial messages throughout American

¹ *Schneider v. State of New Jersey, Town of Irvington*, 308 U.S. 147, 161 (1939).

² *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 810 (1984) (quoting *Jamison v. Texas*, 318 U.S. 413, 416 (1943)).

³ *Boos v. Barry*, 485 U.S. 312, 318 (1988)(quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

⁴ *Taxpayers for Vincent*, 466 U.S. at 816.

⁵ *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938); see also *U.S. v. Grace*, 461 U.S. 171, 176 (1983)(“There is no doubt that as a general matter peaceful picketing and leafletting are expressive activities involving ‘speech’ protected by the First Amendment.”); *Jamison v. Texas*, 318 U.S. 413, 416 (1943) (“[The] constitutional right to express . . . views in an orderly fashion . . . extends to the communication of ideas by handbills and literature as well as by the spoken word.”).

⁶ *Taxpayers for Vincent*, 466 U.S. at 809-10 (“The [leafletting] right recognized in *Schneider [v. New Jersey]*, 308 U.S. 147 (1939),] is to tender the written material to the passerby who may reject it or accept it, and who thereafter may keep it [or] dispose of it . . .”)

history, starting with the half a million copies of Thomas Paine's *Common Sense* that fomented the American Revolution.”⁷

57 The Supreme Court has previously invalidated bans on leafletting on public streets.⁸

58 The right to distribute literature protects both the interests of speakers in sharing information and the interests of citizens in receiving it.⁹

59 Many people do not have the time to actively participate in political campaigns, nor do they have the money to make substantial financial contributions to candidates or causes they support.

60 Leaflets and flyers are a simple and inexpensive means for an individual without significant resources to share his or her ideas and express support for political and social causes.¹⁰

⁷ *Jobe v. City of Catlettsburg*, 409 F.3d 261, 266 (6th Cir. 2005); see *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938) (noting that "pamphlets and leaflets ... have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest"); *Murdock v. Pennsylvania*, 319 U.S. 105, 108 (1943) ("The hand distribution of religious tracts is an age-old form of missionary evangelism--as old as the history of printing presses."); see also *Watchtower Bible & Tract Soc'y of New York v. Vill. of Stratton*, 536 U.S. 150, 153 (2002) (religious speech); *Hill v. Colorado*, 530 U.S. 703, 716 (2000) (political speech); *Breard v. Alexandria*, 341 U.S. 622, 624 (1951) (commercial speech); *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 424 (1993) (commercial speech).

⁸ See, e.g., *United States v. Grace*, 461 U.S. 171, 183-84 (1983) (striking statute forbidding leafletting on the sidewalks surrounding the Supreme Court); *Jamison v. Texas*, 318 U.S. 413, 414 (1943) (striking ordinance forbidding leafletting on public streets); *Schneider*, 308 U.S. at 162-63 (striking ordinances forbidding leafletting on public streets). The Court has also invalidated bans on door-to-door leafletting, where individuals offer the homeowner informational tracts at the same time that they try to engage the homeowner about the religious, political or commercial message they wish to convey. See, e.g., *Martin v. City of Struthers*, 319 U.S. 141, 149 (1943) (striking ordinance that forbade ringing a doorbell or otherwise summoning a resident to the door to receive handbills); *Schneider*, 308 U.S. at 165 (striking ordinance that forbade door-to-door leafletting). And it has invalidated licensing requirements for door-to-door solicitors and leafletters. See *Watchtower Bible & Tract Soc'y of New York*, 536 U.S. at 168 (striking ordinance prohibiting canvassers from going door-to-door among residences without a permit because it was "not tailored to the Village's stated interests"); *Lovell*, 303 U.S. at 451 (striking ordinance prohibiting "the distribution of literature of any kind at any time, at any place, and in any manner without a permit").

⁹ See *Martin*, 319 U.S. at 146-47 ("Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved."); *id.* at 143 (explaining that the freedom of speech "necessarily protects the right to receive [literature]" and considering "the right of the individual householder to determine whether he is willing to receive" a leafletter's message); see also *Gilleo*, 512 U.S. at 56; *Taxpayers for Vincent*, 466 U.S. at 812 n. 30, *Schneider*, 308 U.S. at 164.

61 The flyers such as that in the case at bar, “that react to a local happening or express a view on a controversial issue both reflect and animate change in the life of a community.”¹¹

Public Forum—Sidewalks

62 “Leafletting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment, and speech in public areas is at its most protected on public sidewalks, a prototypical example of a traditional public forum.”¹²

63 “City streets are recognized as a normal place for the exchange of ideas by speech or paper.”¹³

64 Public streets and sidewalks are considered traditional public forums that, “time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.”¹⁴

¹⁰ *Martin*, 319 U.S. at 146 (“Door to door distribution of circulars is essential to the poorly financed causes of little people.”); *see also City of Ladue v. Gilleo*, 512 U.S. 43, 57 (striking ordinance that prevented homeowners from displaying signs in their own windows and commenting that “[r]esidential signs are an unusually cheap and convenient form of communication”); *Watchtower Bible & Tract Soc’y of New York*, 536 U.S. at 162 (“[P]erhaps the most effective way of bringing [pamphlets] to the notice of individuals is their distribution at the homes of the people.”) (quoting *Schneider*, 308 U.S. at 164); *Discovery Network*, 507 U.S. at 424 (striking ordinance that banned the placement on public streets of newsracks containing commercial, but not non-commercial, handbills).

¹¹ *City of Ladue*, 512 U.S. at 54.

¹² *See, e.g., Boos v. Barry*, 485 U.S. 312, 322 (1988); *United States v. Grace*, 461 U.S. 171, 180 (1983); *Hannan v. City of Haverhill*, 120 F.2d 87, 88 -89(1st Cir. 1941)(“The streets are natural and proper places for purposes of assembly, of interchange of thought and opinion on religious, political and other matters, either by word of mouth or by the distribution of literature. Such use of the streets and public places, sanctioned by ancient usage, has become part of the liberties of the people protected by the Fourteenth Amendment from state encroachment.”).

¹³ *Kovacs v. Cooper*, 336 U.S. 77, 86-87 (1949) (Reed, J., plurality opinion)(majority agreed with this analysis; *see id.*, at 96-97 (Frankfurter, J., concurring); *id.*, at 97-98 (Jackson, J., concurring)); *see also Jamison v. Texas*, 318 U.S. 413, 416 (1943).

¹⁴ *Hague v. CIO*, 307 U.S. 496, 515 (1939) (Roberts, J., plurality opinion). “[F]rom ancient times, [streets and public places] been a part of the privileges, immunities, rights, and liberties of citizens.... [S]treets and parks ... have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *Id.*; *see also Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 579 (1995) (“Having availed itself of the public thoroughfares ‘for purposes of assembly [and] communicating thoughts between citizens,’ the [petitioner] is engaged in a use of the streets that has ‘from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.’”) (quoting *Hague*, 307 U.S. at 515); *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983) (noting that streets and parks are “[a]t one end of the spectrum” among “places which by long tradition or by government fiat have been devoted to assembly and debate”).

65 Accordingly, “[s]treets and sidewalks are quintessential public forums, and the Supreme Court has consistently affirmed the right of demonstrators to use them.”¹⁵

66 In such places, which occupy a “special position in terms of First Amendment protection,” the government's ability to restrict expressive activity “is very limited.”¹⁶

Free Speech Limitations on Police Power

67 There is no right to be free of unwelcome speech on the public streets.¹⁷

68 Individuals may not be punished for peacefully expressing unpopular views.¹⁸

69 The right to free speech includes the right to attempt to persuade others to change their views, and may not be curtailed simply because the speaker's message may be offensive to his or her audience.¹⁹

70 As a general matter, the Supreme Court has held that, in public debate, “our own citizens must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment.”²⁰

71 Free speech may not be curtailed merely because it is opposed to the views of the majority of the community or because of hostility to its assertion or exercise.²¹

72 “[A] prohibition on classic speech [, including leafleting,] in limited parts of a public sidewalk [is not] permissible” absent a “record of abusive conduct”²² or a showing that it is “likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.”²³

¹⁵ *Town of Barrington v. Blake*, 568 A.2d 1015, 1019 (R.I. 1990); *see also, supra*, note 8.

¹⁶ *United States v. Grace*, 461 U.S. at 177, 180.

¹⁷ *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357, 383-384 (1997).

¹⁸ *Cox v. State of La.*, 379 U.S. 536 (1965).

¹⁹ *Hill v. Colorado*, 530 U.S. 703, 716 (2000).

²⁰ *Boos v. Barry*, 485 U.S. at 322 (internal quotation marks omitted).

²¹ *Cox*, 379 U.S. at 551; *Edwards v. South Carolina*, 372 U.S. 229, 237 (1963).

²² *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357, 377 (1997)

²³ *Terminiello v. Chicago*, 337 U.S. 1, 4-5 (1949) (“[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest,

Selective Enforcement—Viewpoint and Content Discrimination

73 The First Amendment's hostility to content-based regulation of speech extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.²⁴

74 As a general matter, “the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”²⁵

75 “To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.”²⁶

76 Any restriction on expressive activity because of its content undercuts the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”²⁷

creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech . . . is . . . protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. . . . There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.”); *see also United States v. Grace*, 461 U.S. 171, 180 (1983) (absent obstruction of sidewalk or access to adjacent building, threatened injury to any person or property, or interference with the orderly administration of the building or grounds thereof, the need to protect persons and property or to maintain proper order and decorum does not justify total ban on portion of sidewalk in front of Supreme Court building); *Edwards v. South Carolina*, 372 U.S. 229, 237-238 (1963) (where there was no obstruction of vehicle or pedestrian traffic nor any violence or threatened violence but opinions being peaceably expressed “were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection,” conduct did not constitute breach of peace and was constitutionally protected); *Cantwell v. State of Connecticut*, 310 U.S. 296, 309-310 (1940) (in absence of assault or threatening of bodily harm, truculent bearing, intentional discourtesy, or personal abuse, provocative speech offensive to listeners’ religious beliefs was constitutionally protected and did not constitute breach of peace).

²⁴ *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York*, 447 U.S. 530, 537-538 (1980)(“With respect to noncommercial speech, the city may not choose the appropriate subjects for public discourse: ‘To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.’”).

²⁵ *Id.*; *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972), and cases cited therein.

²⁶ *Consolidated Edison Co.*, 447 U.S. at 538.

²⁷ *Mosley*, 408 U.S. at 96 (citation and quotations omitted).

Free Speech Protection

77 An absolute prohibition on a particular type of expression based on viewpoint or content will be upheld only if narrowly drawn to accomplish a *compelling governmental interest*.²⁸

78 Where regulation of speech in a public forum is not based on viewpoint or content, it will be upheld only if narrowly tailored to serve a *significant government interest* and it leaves open ample alternative channels of communication.

C. Application of Facts to Law

79 Insofar as Plaintiff was undisputedly peaceably distributing leaflets on a political issue on a public sidewalk, she was engaged in protected speech and publication that were entitled to the fullest possible measure of constitutional protection.

80 Insofar as Plaintiff was distributing flyers critical of the City's mayor, who was speaking at the PCTA auditorium to which the sidewalk was adjacent, under circumstances where there was no breach of City Ordinance or state law nor any obstruction of the sidewalk, violence or threat of violence, or interference with the orderly administration of the building or grounds thereof, there is a compelling inference that the Defendants were motivated by the content of Plaintiff's speech in ordering her to leave the sidewalk in front of the PCTA.

81 Regardless of the Defendants' motivation, under the circumstances, there was neither a compelling nor significant governmental interest to justify the limitation imposed on Plaintiff's constitutionally protected conduct.

82 Where, as here, Plaintiff was engaged in the peaceable distribution of political flyers on a public sidewalk in front of a governmental building, under circumstances where there was no obstruction of the sidewalk, violence or threat of violence, or interference with the

orderly administration of the building or grounds thereof, Defendants' conduct in banning Plaintiff from that sidewalk constituted a violation of Plaintiff's clearly established rights to freedom of speech and of the press. *See United States v. Grace*, 461 U.S. 171, 180 (1983) (absent obstruction of the sidewalk or access to the adjacent building, threatened injury to any person or property, or interference with the orderly administration of the building or grounds thereof, the need to protect persons and property or to maintain proper order and decorum does not justify a total ban on the distribution of leaflets on sidewalk in front of Supreme Court building and constituted a violation of leafletter's freedom of expression, even though such conduct was permitted on the sidewalk across the street).

D. Municipal Liability

83 On information and belief, at least five (5) City police officers, including Defendants Kennedy and DeAndrade and Inspector Colon, apparently were and currently remain unaware of the Plaintiff's constitutional right to peaceably distribute political literature on public sidewalks and other public forums.

84 On information and belief, this lack of knowledge, instruction and/or training relative to this important constitutional right possessed by people upon public sidewalks and in other public forums is widespread in the City Police Department.

85 That Defendants City and Esserman failed to properly select, train, instruct, supervise and/or discipline officers in the City Police Department, including Defendants Kennedy and DeAndrade, relative to the constitutionally protected right of people to peaceably distribute political flyers on public sidewalks and in other public forums.

86 That on information and belief, during all relevant time periods, a custom or policy existed in the City Police Department wherein the Defendant City acquiesced to,

²⁸ *U.S. v. Grace*, 461 U.S. 171, 177 (1983).

permitted, condoned and/or encouraged the deprivation of the constitutionally protected right of people to peaceably distribute political flyers on public sidewalks and in other public forums.

87 The Defendants knew or should have known that threatening Plaintiff with arrest and otherwise preventing her from peaceably distributing political flyers on public sidewalks or other public forums was unlawful under the circumstances, particularly insofar as this right was clearly established by the Supreme Court over seventy (70) years ago in *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938) and reaffirmed in a case nearly directly on point almost thirty (30) years ago in *United States v. Grace*, 461 U.S. 171, 180 (1983).

88 Despite such knowledge, the Defendants, by and through their policy-making officials and agents, approved, acquiesced to, condoned, intentionally ignored, or were deliberately indifferent to such practice, and failed to change or eliminate such unlawful custom or policy.

E. Intentional Conduct

89 At all relevant times, Defendants acted intentionally, willfully, maliciously, and/or with reckless or callous indifference to Plaintiff's clearly established constitutional rights. Furthermore, at all relevant times, Defendants knew or should have known that their conduct would cause or contribute to the deprivation of Plaintiff's clearly established civil rights.

90 At all relevant times, Defendants were motivated by malice, wantonness and/or willfulness of an extreme nature.

F. Restrictions on Plaintiff's Free Speech

91 Plaintiff's right to freedom of expression was and continues to be substantially damaged and curtailed as a result of the conduct of Defendants.

92 In the future, Plaintiff would also like and intends to communicate, among other things, support of or opposition to various issues and/or her support of or opposition to

candidates for political office by distributing flyers and other such literature on public sidewalks and other public forums in the City.

93 Nevertheless, Plaintiff is reluctant to expend the time and/or money to produce or peaceably publish and/or distribute political flyers on public sidewalks and in other public forums in the City, insofar as she faces potential arbitrary arrest and criminal prosecution at the whim of the Defendants, notwithstanding her constitutionally protected right to engage in such conduct.

G. Irreparable Harm and Damages

94 The Defendants' foregoing acts and/or omissions constitute a violation of the Plaintiff's rights to freedom of speech and of the press protected under the First and Fourteenth Amendments to the United States Constitution and Article 1, §§20 and 21 of the Rhode Island Constitution.

95 The Defendants' actions have placed Plaintiff in the position of either refraining from constitutionally protected conduct or facing arrest and criminal prosecution.

96 That, as a direct and proximate result of the Defendants' acts and/or omissions, including, but not limited to, those described herein, the Plaintiff has suffered and will continue to suffer deprivation of her First Amendment freedom of expression rights, and has thereby sustained and will continue to sustain irreparable harm.²⁹

97 That, as a direct and proximate result of the Defendants' acts and/or omissions, including but not limited to those described herein, the Plaintiff has suffered and will continue to

²⁹ *Elrod v. Burns*, 427 U.S. 347, 373 (1976)(even temporary deprivation of First Amendment freedom of expression rights is sufficient to establish irreparable harm); *see also Citizens for a Better Environment v. City of Park Ridge*, 567 F.2d 689, 691 (7th Cir. 1975).

suffer mental anguish, pain and suffering, impairment of her freedom of expression rights, deprivation of her civil rights, expenses for legal services, and other great damage.³⁰

VI. Claims for Relief

98 Plaintiff incorporates in the counts below the allegations contained in ¶¶1 through 97 above.

COUNT ONE

Impairment of Freedom of Speech and of the Press in Violation of 42 U.S.C. §1983

99 Defendants, acting under the color of state law, by their individual and/or concerted acts and/or omissions, including but not limited to those described herein, have deprived Plaintiff of and placed unlawful restrictions upon her freedom of expression in violation of Plaintiff's rights to freedom of speech and of the press, causing Plaintiff to suffer harm as aforesaid, and have thereby deprived Plaintiff of rights secured under the First and Fourteenth Amendments to the United States Constitution, actionable pursuant to 42 U.S.C. §1983.

COUNT TWO

Impairment of Freedom of Speech and of the Press in Violation of Article 1, §§20 and 21 of the Rhode Island Constitution

100 Defendants, acting under the color of state law, by their individual and/or concerted acts and/or omissions, including but not limited to those described herein, have deprived Plaintiff of and placed unlawful restrictions upon her freedom of expression in violation of Plaintiff's rights to freedom of speech and of the press, causing Plaintiff to suffer harm as aforesaid, and have thereby deprived Plaintiff of rights secured under Article 1, §§20 and 21 of the Rhode Island Constitution.

³⁰ *Carey v. Piphus*, 435 U.S. 247, 266-267 and n. 24 and n. 25 (1978).

VII. Prayers for Relief

WHEREFORE, Plaintiff prays that this Court grant the following relief:

1. Preliminary and permanent injunctions restraining and enjoining Defendants from interfering with the exercise of the Plaintiff's rights to freedom of speech and of the press guaranteed by the First and Fourteenth Amendments to the United States Constitution and Article 1, §§20 and 21 of the Rhode Island Constitution.

2. Preliminary and permanent injunctions directing the Defendants City and Esserman to properly select, train, instruct, supervise and/or discipline officers in the City Police Department relative to the constitutionally protected right of people to peaceably distribute political flyers on public sidewalks and in other public forums in the City.

3. A declaratory judgment that the Defendants, in the manner described herein, violated the First and Fourteenth Amendments to the United States Constitution and Article 1, §§20 and 21 of the Rhode Island Constitution by placing impermissible restrictions on Plaintiff's rights to freedom of speech and of the press.

4. An award of compensatory damages.

5. An award of punitive damages.

6. An award of reasonable attorney's fees and costs of litigation to Plaintiff pursuant to 42 U.S.C. §1988.

7. Such other and further relief as this Court deems just and proper.

VIII. Demand for Jury Trial

Plaintiff hereby demands a trial by jury on all counts so triable.

IX. Designation of Trial Counsel

Plaintiff hereby designates Richard A. Sinapi, Esquire, as trial counsel.

Plaintiff, **Judith Reilly**
By her attorneys,

Date: October ___, 2010

Richard A. Sinapi, Esq. (#2977)
American Civil Liberties Union, R.I. Affiliate
Sinapi, Formisano & Company, Ltd.
100 Midway Place, Suite 1
Cranston, RI 02920
Phone: (401) 944-9690; FAX: (401) 943-9040

VERIFICATION OF COMPLAINT

Now comes the Plaintiff, **Judith Reilly**, being duly sworn, and does hereby depose and say as follows:

1. That I am the Plaintiff in the within matter.
2. That I have read the above Complaint and acknowledge the factual allegations alleged therein to be true and accurate to the best of my knowledge, information, and belief.
3. That I have made this **Verification of Complaint** in support of my prayers therein for judgment and relief against the Defendants.

Judith Reilly

Subscribed and sworn to before me in **Cranston** on this ___ day of **October, 2010**.

(name) _____
NOTARY PUBLIC
My Commission Expires: _____