

## MUNICIPAL LAW HIGHLIGHTS – 2004\*

By James N. Tallberg, Esq.  
Updike, Kelly & Spellacy, P.C.  
[jtallberg@uks.com](mailto:jtallberg@uks.com)

### **I. Regulation of Political Signs**

The First Amendment to the United States Constitution provides that:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. CONST. amend. I.

In the summer of 2004, a controversy erupted in the Town of Westport, when a board member of the Connecticut Civil Liberties Union (“CCLU”) reportedly was informed that a political lawn sign on her private residence violated the Town’s zoning regulations, which provided that temporary political signs may only be posted on residential property for no more than 60 days before an event and must be removed within seven days after the event. The member informed the CCLU, which contacted the Town and informed it that its zoning regulation violated the First Amendment. According to press reports, the Town agreed to remove the limitation, has taken steps to do so, and agreed not to enforce the existing zoning regulation. The controversy, however, soon spread across the state.

---

\* Copyright © Updike, Kelly & Spellacy, P.C. All Rights Reserved

The CCLU next reviewed the zoning regulations of approximately 100 municipalities across Connecticut and sent letters to Mayors and First Selectman, informing them that their regulations may violate the First Amendment. According to the CCLU's legal director, many towns have responded by indicating that they have reviewed their regulations, which they have concluded do not violate the First Amendment. In some cases, the CCLU disagrees with the towns and has threatened legal action if they do not take steps to remove limitations regarding the display of political signs. The CCLU is reportedly continuing to review zoning regulations across the state, trying to work with municipalities to remove restrictions, and considering legal action against those that do not.

No reported Connecticut judicial decisions could be found involving a challenge to a municipal regulation limiting the display of political signs. The United States Supreme Court, and other federal courts, however, have provided some guidance. First, it is well settled that, "political speech is entitled to the highest form of protection by the Free Speech Clause of the First Amendment." *Sugarman v. Village of Chester*, 192 F. Supp. 2d 282, 291 (S.D.N.Y. 2002) citing *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995). As a result, any municipal regulations that impact the exercise of political speech will be subjected to more stringent scrutiny than regulations of, for example, commercial speech.

In *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), the Court struck down an ordinance of the City of Ladue, Missouri, which prohibited homeowners from displaying any signs on their property, with few limited exceptions. The plaintiff in *Gilleo* had placed on her front lawn a 24 by 36 inch sign printed with the words "Say No to War in the Persian Gulf, Call Congress Now." *Gilleo*, 512 U.S. at 45. After the sign disappeared, the homeowner called the police to report the incident and was advised that the sign violated a local sign ordinance, which essentially

prohibited all signs on residential property, except “residential identification” signs and “for sale” signs.

The plaintiff petitioned the city council for a variance, which was denied. She then filed an action under 42 U.S.C. §1983, alleging that her First Amendment rights were violated by the city’s ordinance. The district court entered a temporary injunction, which prompted the city to amend its ordinance to allow 10 categories of signs; however, the plaintiff was still prohibited from placing an 8.5 by 11 inch sign in the second story window of her home stating “For Peace in the Gulf.” *Id.* at 41. When it reached the United States Supreme Court, the city argued that its ordinance was a proper regulation of the “time, place and manner” of speech because residents remained free to express their views through other means, such as handheld signs, letters, handbills, flyers, telephone calls, newspaper ads, bumper stickers, speeches or public meetings. *Id.* at 56. The Court was not persuaded, and instead, noted that:

Displaying a sign from one’s own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by some other means. . . Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute. . . Furthermore, a person who puts up a lawn sign at her residence often intends to reach *neighbors*, an audience that could not be reached nearly as well by other means.

*Id.* at 56-57.

Finding that the city’s ordinance “has almost completely foreclosed a venerable means of communication that is both unique and important,” the Court held that the ordinance violated the First Amendment and was invalid. *Id.* at 47, 58. Courts in the Second Circuit have also addressed limitations on political signs and have struck down ordinances that were deemed to be content based. In *Sugarman, supra*, 192 F. Supp. 2d at 296-297, the Court held that an ordinance in Goshen, New York, was unconstitutional because it imposed restrictions on political signs,

including size (9 square foot limitation) and duration (28 days prior and 7 days following an election). The same Court upheld other similar sign regulations in neighboring communities because they were “content neutral” and applied to all temporary signs, regardless of whether they were political. *Id.* at 295.

The CCLU, and its affiliate branches around the country, appear determined to test municipal sign regulations in an effort to have them repealed legislatively, or invalidated in the courts. If successful, plaintiffs prevailing in Section 1983 cases are often awarded their attorney’s fees, even if there are no damages awarded. *See Sugarman v. Village of Chester, supra*, 213 F. Supp. 2d 304, 314 (S.D.N.Y. 2002) (plaintiff who successfully challenged local ordinances restricting political signs incurred approximately \$73,834 in legal fees – six municipal defendants settled with the plaintiff, court ordered two non-settling municipalities to pay plaintiff’s legal fees of \$14,476). In sum, challenges to political sign restrictions can be costly if resolved in the Courts.

## **II. Education Funding**

In *Board of Education v. Naugatuck*, 268 Conn. 295 (March 2004), the Connecticut Supreme Court held that a municipality can amend its town charter to allow for separate voter referenda on the town’s education budget and operating budget. The Naugatuck Board of Education (the “Board”) filed this action against the Town and Borough of Naugatuck (the “Town”) seeking a ruling that the Town’s 1996 amendment of its charter was unconstitutional. The Board argued that the amendment was inconsistent with the Connecticut General Statutes governing education funding and that it would impermissibly give the voters a veto power over the Board’s education budget. *Naugatuck*, 268 Conn. at 302. The Town argued that, under

Connecticut's Home Rule Act, Connecticut General Statutes § 7-344, it was authorized to submit its education budget to a separate vote of the electorate. *Id.*

The trial court agreed with the Board, in part, and struck down the charter amendment, ruling that the bifurcated referenda procedure unreasonably interfered with the Board's ability to perform its duties. The Connecticut Appellate Court also agreed with the Board, and found the charter amendment "upsets the balance between the board of education by allowing the electorate to veto only the education portion of the budget, in effect subjecting it to isolated scrutiny by voters who may or may not be aware of the board of education's statutory mandates or have a broad understanding of the town's financial resources and priorities as a whole." *Board of Education v. Naugatuck*, *supra*, 70 Conn. App. 366, 373.

The Connecticut Supreme Court, however, reversed the Appellate Court and determined that the charter amendment was valid. *Naugatuck*, 268 Conn. at 319. The Supreme Court reasoned that, although education of our schoolchildren is an issue of statewide concern, the particular *procedure* by which a municipality adopts its budget, including the education component of that budget, is more a matter of local concern. *Id.* at 309. The Supreme Court relied heavily on its conclusion that, under Connecticut law, boards of education "cannot recommend, and the [Town finance boards] lawfully cannot adopt, an education budget that fails to satisfy state educational mandates or that otherwise fails to address adequately the educational needs of the town's schoolchildren." *Id.* at 316. In sum, Connecticut municipalities now have the legal right, if they so choose, to split their town budgets and submit the education component to a separate voter referendum.

### III. Discrimination Claims in the Schools

In *Commission on Human Rights & Opportunities v. Board of Education of the Town of Cheshire*, 270 Conn. 665 (August 2004), the Connecticut Supreme Court held that a high school student's claim of racial discrimination against his school principal and the Board of Education (the "Board") could be decided at the Commission on Human Rights & Opportunities (the "CHRO"). The student, an African American high school senior, alleged that he had been called a racial epithet by a white student, which led to a physical altercation. *Board of Education*, 270 Conn. at 669-670. The student further alleged that, although the student handbook required that *all* students involved in a fight were to be suspended, he was the only one suspended. *Id.* He filed a complaint at the CHRO against his principal and the Board alleging that this was discriminatory and seeking "money damages." *Id.* at 677.

The Board and principal moved to dismiss the complaint at the CHRO, arguing that, pursuant to Connecticut General Statutes §10-4b and §10-15c, the State Board of Education had exclusive jurisdiction to hear the student's complaint. *Id.* A referee at the CHRO agreed and dismissed the claim. *Id.* The CHRO, acting in its enforcement role, appealed to the Superior Court, which dismissed part of the appeal on procedural grounds and remanded the case back to the CHRO for further proceedings. *Id.* Both the CHRO and the Board filed an appeal to the Connecticut Appellate Court, and the Supreme Court then transferred the case to itself. *Id.*

The Supreme Court decided two important questions: First, whether the CHRO could award compensatory damages to a student claiming damages; and second, whether the CHRO had jurisdiction to hear the student's complaint. It answered both questions in the affirmative, ruling that Connecticut General Statutes §46a-58, which prohibits discrimination based on, among other things, race, should be broadly construed. Significantly, the Court held that

“personal compensatory damages” could be awarded under Connecticut General Statutes §46a-86(c). *Id.* at 672. This is a departure from some of the Court’s prior rulings, including *Bridgeport Hospital v. Commission on Human Rights & Opportunities*, 232 Conn. 91, 92-93 (1995), in which it held that the CHRO did not have authority to award damages for emotional distress or attorney’s fees. The defendants had argued that §46a-86(c) limited an award to out of pocket expenses. The Court disagreed, relying primarily on the legislative history of the CHRO’s enabling statutes, which is rich with references to taking broad remedial efforts to eliminate discrimination. *Board of Education, supra*, 270 Conn. at 713-728.

The Court also held that the State Board of Education did not have exclusive jurisdiction because §46a-58 “enjoys a long and distinguished pedigree as the fundamental civil rights statute in our state,” whereas, the statutes governing the State Board of Education “never contained a specific remedy or set of remedies for a violation of its proscriptions.” *Id.* at 713-714. In other words, the Court relied on the fact that a party filing a complaint at the CHRO could obtain a remedy, including damages, whereas the State Board of Education had no enforcement power of its own and could, instead, only recommend remedial measures to a local board of education. In sum, the dismissal of the student’s complaint was reversed and the case was sent back to the CHRO for further action.

#### **IV. Eminent Domain**

In *Kelo v City of New London*, 268 Conn. 1 (2002), the Connecticut Supreme Court held that a municipality can exercise its power of eminent domain by condemning private property in furtherance of a significant economic development plan. The plaintiffs who filed this action are homeowners and businesses in the Fort Trumbull area of New London who are contesting the City’s plans to take their property for redevelopment. The plaintiffs, and some critics, have

argued that government should not be allowed to use the power of eminent domain for the benefit of private development, but instead, should be limited to condemnation for such traditional public uses as building roads or parks. The Connecticut Supreme Court agreed with the City that its economic distress, including the loss of 1,900 government jobs, justified using its power of eminent domain as part of its redevelopment plan.

On September 28, 2004, the United States Supreme Court agreed to hear the residents' appeal from the Connecticut Supreme Court's decision. *Kelo v. City of New London, supra*, 2004 U.S. LEXIS. The Supreme Court will decide the following question:

#### QUESTION PRESENTED

What protection does the Fifth Amendment's public use requirement provide for individuals whose property is being condemned, not to eliminate slums or blight, but for the sole purpose of "economic development" that will perhaps increase tax revenues and improve the local economy?

*Id*

*Kelo* will be followed closely not just in Connecticut municipalities, but by local and state governments around the country. This dispute is far from over.