

# Case law essay

Law



## 1. Case Abstract

The right to freedom of Speech is violated when one is being prevented by law or other wise to do the same. Under the given set of facts the plaintiff (mayor) may not validly claim violation of right to Freedom of Speech against the defendant councilman as there was nothing the defendant (councilman) has done to prevent the plaintiff from the exercise of the right. A mere accusation that the mayor is unpatriotic plus the initiation of a recall against the said mayor due to the mayor's publication of an editorial about alleged unreliable or not promises by a recruiter of high school students for enlistment in the army. The mayor was always indeed free in her right and there was not restriction whatsoever. On the other hand she may have violated the right to expression of defendant by her filing a suit of such violation. The US Supreme court in certain cases have cited cases where violations of the right to free speech and there is no available jurisprudence to support the stand of the mayor.

## 2. Case Background

The complaint of the mayor for violation against the councilman for violation of the former right to Freedom of Speech arose from the fact the her rival councilman has resented the editorial published by the mayor that the army recruiter was making false or unrealistic promises to the high school students that enlisting in the army is sure ticket from poverty. The mayor's publication of editorial may in fact be motivated in good faith as she is concerned that students' life would be wasted in the army. It is perhaps her stand that there are many choices of the students to get away from poverty other than the promise made by the recruiter.

The plaintiff's complaint for violation of her right to Freedom of Speech against the defendant councilman may have actually been motivated by such altruistic motives to protect the youth being the mayor of the town where recruited high school student resides. She felt betrayed perhaps for being called unpatriotic as she believes that there are other ways of serving the state aside from being part of the army. On the other hand the rival councilman may just be taking advantage of the occasion to ride on the popularity of the issue supposed premised on the belief that there could be better patriotism than to enlist in the army. Although the case facts do not state, the councilman may be talking from experience that life in the army is a good ticket to get away from poverty. It is can be deduced however that the rival councilman is also an elected official and, hence it was but political act (Kaufman-Osborn, 1997) to move for the recall of the mayor. As of the time of the filing of violation of the right of freedom of speech of the mayor, there was information yet on whether she could actually be successfully recalled or removed from office.

### 3. Case Arguments:

This researcher believes that the right of the right of the mayor to Freedom of Speech could not be violated as there was no prohibition by law or by some agents of the law for the mayor to do her publication of editorial where she claims that the promise of the army recruiter is unrealistic. The right to Freedom of Speech in the real sense of the word, is a right of the individual against the government as such it cannot be directed against the councilman since the latter has not in any way restricted the mayor in making her publication. Based on these two major arguments it could be

argued that the complaint of the major against councilman should be dismissed by the court for lack of merit.

It is clear in the facts that councilman was just exercising also his freedom of speech when he accused the mayor as unpatriotic. The case fact is clear that the person who made the accusation was a well known and very conservative political rival on the town council. It could therefore be deduced that the councilman believed in the patriotism of enlisting in the army as based on his believed serving the army is a show of love of country plus the fact the it could make the successful armies to have pensions when they become old. In addition the case fact is clear that the councilman stopped short of filing even a case in court against the mayor. He actually initiated a recall drive which a valid political exercise (Green, T. 2005) on the ground that the councilman is a politician and felt that he has theresponsibilityto take care of the values of the town, being then very conservative. Initiating a recall is not the same a filing a case in court and neither does it amount to an act of the state or prevent the exercise of state power to prevent the exercise of freedom of expression.

An act of the state to constitute a power of restrain of freedom of speech must fall under any of the three inherent powers of the state which include the power of taxation, the power of eminent domain or the police power. Such inherent rights of the state are presumably very powerful that the US Constitution had allowed the First Amendment to protect the right of its citizens against these state powers. Being part of the right of the individual against the state, the same can only be invoked against the state and not against the individual. Since the state can only act against the individual

through the laws and its agents the same parties must be established in order to sustain the validity of charge for violation of the Freedom of Speech. The case facts are clear that there was no law mentioned that was suppressing the right of the mayor. Neither was an agent of the law sent by the government like an FBI agent to have arrested the mayor in making such publication in the editorial. What was done to the mayor was the mere act of being accused by her rival councilman that she was just being unpatriotic in addition to the act of initiating recall and the act campaigning to try to get advertisers to stop advertising in the mayor's newspaper. It is therefore very clear that there could be no violation of the right to freedom of speech by the state or government.

To say that one person is unpatriotic is just a right to express oneself when there is basis to say as in the instant case. The initiation of a recall against mayor due to the fact the mayor has published an editorial on allegation on unreliable promises on matters of recruitment will not in any form be considered as restriction. With freedom of the mayor to do whatever she wished, she was in effect validly exercising her right under The First Amendment to the US Constitution without restriction.

On the other hand she may have attempted to violate the right to expression of defendant by her filing a suit of such violation. The US Supreme court in certain cases have cited cases where violations of the right to free speech and the instant case does not fall in the said cases. In *Strong V. California*, 283 US 359 (1931), a state law prohibited the display of any red flag as symbolic act of opposing organized government, the court found it violative of the freedom of speech. On the other hand, freedom of speech is protected

by First amendment and even the under the Fourth Amendment being one of the fundamental right of individuals. (Lovell v. City of Griffin, 303 U. S. 444, 450 , Cantwell v. Connecticut, 310 U. S. 296, 303 )

It may be pointed out the complaint of the mayor for violation her right against the councilman for violation of the former right to Freedom of Speech may have been based on good faith as far as the mayor is concerned by the mere that fact her rival councilman has resented the editorial published by the mayor that the army recruiter was making false or unrealistic promises to the high school students. Such good faith may traced to the argument that the is concerned that students' life would be wasted in the army if these students die in the process. Her stand could have been that there are many choices of the students to get away from poverty other than the promise made by the recruiter.

The plaintiff's complaint for violation of her right to Freedom of Speech against the defendant councilman may have actually been motivated by act of altruism as she tried to protect the youth being the mayor of the town where recruited high school student resides. Her feeling of betrayal for being called unpatriotic as she believed that there are other ways of serving the state aside from being part of the army could really have some legal basis but again there was any restriction to prevent her from the exercise of that right. On the other hand, however, the act of the rival councilman in possibly taking advantage of the occasion to ride on the popularity of the issue supposed is actually grounded on the belief that there could be better ways of being patriotic than enlisting in the army. In the absence of evidence to the contrary in the case facts, the councilman may be presumed

to be talking from experience that life in the army is a good ticket to get away from poverty. To see that the rival councilman is also an elected official that has the capacity to make a recall, the same is a also valid political act in democratic form of governments. As such the mayor may be rightly be removed through a validly legal basis to do the same. There was no information yet on whether she could actually be successfully recalled or removed from office from the time of the filing of a violation of right of freedom of speech, thus the theory that a restriction was needed to have sustain speech freedom violation is very evident to show the lack it. At the very least the charge of libel (Curtis, 2000) or defamation (Larson, 2003) should have been filed but its success could not be proven easily if the mayor could not show damage to her. In the case of *New York Times v Sullivan*, 376 U. S. 254 (1964), the US Supreme court applied the First Amendment so that for a public figure like the mayor to sustain the action for defamation, she must prove the additional element of " actual malice" which seems to be lacking in the instant case, hence defamation would not be successful even. It could be finally be concluded then that violation charge for violation of free speech filed by the mayor against the councilman should be dismissed by the court for lack of merit.

#### 4. References:

*Cantwell v. Connecticut*, 310 U. S. 296, 303

Curtis, M. (2000) *Free Speech, " the People's Darling Privilege": Struggles for Freedom of ...*; Duke University Press

First amendment, US Constitution

<https://assignbuster.com/case-law-essay/>

Fourth Amendment, US Constitution

Green, T. (2005) Lectures on the Principles of Political Obligation, The Law book Exchange, Ltd.

Kaufman-Osborn (1997) Creatures of Prometheus: Gender and the Politics of Technology, Rowman & Littlefield

Larson (2003) Defamation, Libel and Slander Law, {www document} URL, [http://www.expertlaw.com/library/personal\\_injury/defamation.html](http://www.expertlaw.com/library/personal_injury/defamation.html) Accessed March 1, 2008

Lovell v. City of Griffin, 303 U. S. 444, 450 ,

New York Times Co. V. Sullivan, 376 U. S. 254 (1964)

Strong V. California, 283 US 359 (1931)