STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNTIES
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities *ex rel.* Alan Couture, Complainant	:	CHRO No. 0630390
	:	Fed. No. n/a
v.		
Waterbury Republican, Respondent	:	June 12, 2008

Ruling On Motion to Dismiss

Preliminary Statement

This affidavit of illegal discriminatory practice was filed with the Connecticut Commission on Human Rights and Opportunities ("commission") on February 6, 2006. On October 1, 2007, the matter was certified to public hearing. The complainant alleges that the respondent refused to print a picture of him and his spouse (Robert McDonald), joined via Connecticut civil union (General Statutes § 46b-38aa) with those of married couples and that this constituted a denial of public accommodation on the basis of sexual orientation and marital status in violation of General Statutes §§ 46a-64 and 46a-81d. On October 10, 2007 the matter was assigned to the undersigned by Chief Human Rights Referee Donna Maria Wilkerson. An answer and special defenses were filed on October 25, 2007 by the respondent. On January 18, 2008, the respondent filed a motion to dismiss, predicated on the respondent newspaper's rights under the First Amendment of the United States Constitution. The respondent's motion appends an

affidavit from editor/publisher William J. Pape, II and an exemplar of its publication of marriage news (Dec. 23, 2007 edition) as Exhibit A.

The affidavit provides that the respondent is a private newspaper that publishes news of "certain" marriages often accompanied by a photo, that the marriage must be relevant to the publication area, that no monetary fee is charged to the submitter and that the respondent does not publish news of civil unions. A review of Exhibit A discloses that the respondent will "welcome the good news of your marriage or engagement and will gladly publish it at no charge." A time limit is imposed and a form for submission is stated to be available. The commission filed a memorandum in opposition to the respondent's motion on April 9, 2008 to which the respondent replied on May 5, 2008.

Overview

There are two benchmark United States Supreme Court cases that define the outer boundaries of the ongoing question regarding the extent to which First Amendment rights of freedom of expression may be curtailed to accomplish the ends of a competing governmental interest. The first is *Miami Herald Publishing Company v. Tornillo,* 418 U.S. 241 (1974) (*Miami Herald*). In this matter a political candidate demanded that the newspaper print verbatim his replies to critical editorials. The demand was predicated upon a Florida "right of reply" statute which provided that if a candidate were assailed regarding his personal character, the candidate would have the right to demand that the newspaper print a proffered reply free of cost. Failure to comply would constitute a

misdemeanor. The newspaper argued *inter alia* that the statute was void on its face for purporting to regulate the content of a newspaper in violation of the First Amendment. After a thorough review of the authorities and policy considerations advanced by the parties, the Supreme Court came down squarely on the side of the First Amendment, ruling as follows:

> Even if a newspaper would face no additional costs to comply with a compulsory access law and would not be forced to forgo publication of news or opinion by the inclusion of a reply, the Florida statute fails to clear the barriers of the First Amendment because of its intrusion into the function of editors. A newspaper is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials-whether fair or unfair-constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time. Accordingly, the judgment of the Supreme Court of Florida is reversed.

Id. at 258. The benchmark case most often cited for the proposition that competing governmental interests sometimes override First Amendment primacy is *Associated Press v. United States,* 326 U.S. 1 (1945) (*Associated Press*). The United States therein sought an injunction against the Associated Press stating that their acts and conduct constituted a combination and conspiracy in restraint of trade and commerce, and an attempt to monopolize a part of that trade, in violation of the Sherman Anti-Trust Act. In finding that the arguments of the plaintiff that the application of the Act would abridge its First Amendment rights were arguments not well founded, the Supreme Court reasoned as follows:

> It would be strange indeed however if the grave concern for freedom of the press which prompted adoption of the

> First Amendment should be read as a command that the government was without power to protect that freedom. The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish means freedom for all and not for some. Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests. The First Amendment affords not the slightest support for the contention that a combination to restrain trade in news and views has any constitutional immunity.

Id. at 19. After careful review of *Miami Herald* and *Associated Press,* as well as many cases, state and federal, assembled by the parties in their briefs and otherwise located in the preparation of this decision, all of which fall somewhere in a broad panoply of authority existing between the two, it is apparent that two findings must be made to determine which of the cited authorities is most instructive, and whether the *Miami Herald* or *Associated Press* approaches will ultimately control the debate. The two determinations are:

- What is the nature of the governmental interest (and accompanying legal vehicle necessary for its effectuation) that requires curtailment of the First Amendment rights?
- What is the nature of the "speech" that is being subjected to the competing governmental interest that requires curtailment of its First Amendment protections that would otherwise apply?

The sole governmental interest allegedly violated by the respondent's conduct is found in General Statutes §§ 46a-64 and 46a-81d. The former addresses prohibited discriminatory practices in public accommodations as applied to various impermissible considerations, including marital status. The latter extends protection vis a vis public accommodations to those discriminated against because of sexual orientation. There is brief allusion by the complainant to General Statutes § 46a-60 (a) (1), which governs employment discrimination, but there is nothing in the complaint or the brief to indicate any basis to consider that the complainant had a relationship with the respondent that would entitle him to the protections afforded by this statute. It will be assumed for purposes of this ruling that any such claims under 46a-60 (a) (1) were either referenced in error, or abandoned, and are in either case DISMISSED.

Cases cited by the parties (or otherwise located in the preparation of this ruling) involve a myriad of competing governmental interests, including the already referenced federal anti-trust legislation and state right of reply statutes, as well as municipal anti-discrimination ordinances, Connecticut prohibited discriminatory employment practices, 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, fair campaign practices acts, libel laws, law enforcement activities, National Labor Relations Board requirements, the free exercise of religion, city sanitary codes and others. All such cases must be distinguished to one degree or another to the extent that the limitations imposed by the legal vehicles employed by these interests differ in kind or scope from Connecticut's prohibition of unlawful discrimination in public accommodations.

The “speech” at issue consists of published wedding announcements. Based upon a review of Exhibit A to respondent’s motion to dismiss dated January 18, 2008, the announcements are written by the submitters; many include a photograph of the “couple”, and include information about the ceremony, family lineage, honeymoon plans, prior education and present employment. Submitters appear to have some minimum contacts with the respondent’s circulation area. The respondent does not charge for publication.

The parties and the cases they have cited address “speech” of almost every conceivable kind. These cases (and others reviewed) contain speech as disparate as the presence of military recruits on campus and the right of one to participate in a public parade to posting paid biographies on a commercial website promoting child adoption services. Speech in terms of that which may be included in a newspaper ranges from public forum speech (in newspapers with governmental affiliation) to the wide range of speech possible in private publications, including paid classified advertising, paid public and personal advertisements and announcements, national news, local news (including unpaid public and personal announcements), sports results, political speech, editorial opinions, op-eds and letters to the editor.

Commercial speech is speech that does no more than propose a commercial transaction and as such receives only limited First Amendment protection. *United States Olympic Committee v. American Media, Inc.,* 156 F.Supp. 2d 1200, 1207 (D. Col 2001).

"That books, newspapers and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment." *New Kids on the Block v. North American Publishing, Inc.,* 745 F.Supp. 1540, 1544 (C.D. Cal. 1990). News gathering activity is noncommercial speech and receives the fullest First Amendment protection. Id. Marriage announcements, like scholarship announcements, earnings reports and athletic results are news, not commercial speech. *Cook v. Advertiser Company, Inc.,* 458 F.2d 1119, 1123 (5th Cir. 1972). A community newspaper is noncommercial speech for First Amendment purposes even if only a few pages of community information are included among extensive paid advertising. *Ad World, Inc. v. Township of Doylestown,* 672 F.2d 1136, 1139 (3rd Cir. 1982). Under the assembled definitions, the respondent newspaper is engaging in noncommercial speech in its gathering and publication of unpaid marriage announcements.

Analysis

As is made clear from the party's thoughtful briefs, there are a host of constitutional and public policy analyses, some of them exotic and of possible first impression that this ruling could explore. After careful review, however, it must start with no more than the question of whether, under Connecticut law, a newspaper is a public accommodation in the gathering and publication of marriage and other public and personal announcements. A tribunal has a basic duty to avoid deciding a constitutional issue if a

nonconstitutional ground exists to dispose of the case. *Moore v. McNamara,* 201 Conn. 16, 20 (1986).

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. *Jolly, Inc. v. Zoning Board of Appeals,* 237 Conn. 184 (1996); *Upson v. State,* 190 Conn. 622, 624 (1983). The motion admits all facts well-pleaded and invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts. *Malasky v. Metal Products Corp.,* 44 Conn. App. 446, 451-52, cert. denied 241 Conn. 906 (1997). In evaluating the motion, the complainant's allegations and evidence must be accepted as true and interpreted in a light most favorable to the complainant and every reasonable inference is to be drawn in his favor; *New England Savings Bank v. Bedford Realty Corp.,* 246 Conn. 594, 608 (1998).

Administrative agencies are tribunals of limited jurisdiction and their jurisdiction is dependant entirely on the statutes vesting them with power, which power must be exercised within constitutional limitations. *Figueroa v. C&S Ball Bearing*, 237 Conn 1, 4 (1996). The threshold question here is clear, that being whether the complainant was entitled to have his civil union announcement published free of charge with similarly submitted marriage announcements as a public accommodation. To address this question, review should be limited to those cases which relate in a substantial way to the threshold question.

It is essential that the complainant establish the respondent as a public accommodation, in its capacity of collecting and disseminating news of local marriages. It is conceded that the complainant is a member of one or more protected classes under Connecticut law. In General Statutes § 46a-64a the prohibition on discrimination in public accommodations is defined as follows:

> It shall be a discriminatory practice in violation of this section : (1) to deny any person within the jurisdiction of this state full and equal accommodations in any place of public accommodations, resort or amusement…

General Statutes § 46a-63 provides a definition of such accommodations as follows:

> (1) "Place of public accommodation, resort or amusement" means any establishment which caters or offers its services or goods to the general public…

Connecticut case law has been of some assistance in the further definition of terms. In *Quinnipiac Council, Boy Scouts of America, Inc. v. Commission on Human Rights and Opportunities,* 204 Conn. 287 (1987), our Supreme Court determined that the local boy scout council was not excluded from the category of the "place of public accommodation." The Court in so ruling (ultimately for the scouts for unrelated reasons) noted that in 1953 the relevant public accommodation statute was changed to eliminate a specific list (laundry list) of enterprises offering food, lodging, transportation or entertainment to the general public. Id. at 296. In doing so the Court chose to take a more expansive view of entities covered, and determined that physical situs was no longer an essential element of the law. It is also concluded that "…our public

accommodation statute does not automatically exclude the plaintiff from coverage because it does not have a fixed physical situs…" Id. at 298. Additionally, the court found no basis to piggyback a "business" limitation on to the term "establishment" and concluded that while no private establishment is duty bound to offer its services to all comers, once it has determined to eschew selectivity, it may not discriminate among the general public. Id. at 299.

Our appellate court has recently ruled that *Quinnipiac* must be adhered to in principle and that Connecticut courts should be wary of adopting federal definitions of public accommodation in lieu of our own. In finding a public accommodation description set forth in 42 U.S.C. § 2000a (e), and employed as the basis for a superior court ruling, the appellate court reminded us that on occasion we have interpreted our anti-discrimination statutes even more broadly than their federal counterparts. *Corcoran v. German Social Society Frohsinn, Inc.,* 99 Conn. App. 839 (2007). No Connecticut authority has been presented or located which holds a newspaper to be a public accommodation in its totality, nor in any of its functions, and only a few cases have addressed the issue nationwide. Because of the holding in *Corcoran*, the respondent's citation of *Treanor v. Washington Post Co.,* 826 F.Supp. 568 (1993) is of qualified persuasiveness. *Treanor* does stand for the proposition that a newspaper column is not a public accommodation under the American with Disabilities Act (ADA), but is restricted to the definition employed by the ADA, which employs the "laundry list" format of including illustrative accommodations, the approach Connecticut discontinued in 1953. The court strongly noted, however, that there is a fundamental difference between having access to a local grocery store, and asserting a "so-called" right to have a book reviewed by a

newspaper. Id at 569. For similar reasons a decision by the Court of Appeals of Wisconsin should be somewhat qualified. In *Hatheway v. Gannett Satellite Information Network, Inc.,* 157 Wis. 2d 395 (1990), suit was brought against the defendant publisher, for failure to print paid advertisements in the classified advertising section. The ads pertained to the plaintiff's gay/lesbian referral service and the sale of sportswear with gay/lesbian slogans. Suit was brought under Wisconsin's public accommodations law. The defendant was found not to be a public accommodation under Wisconsin law. Wisconsin law also employed a long list of representative businesses covered by the law, and while the list did not purport to be all inclusive, the nature of the businesses listed allowed the court to conclude that newspapers were not intended to be covered, in any of their functions, commercial or otherwise.

In addressing the public accommodation issue the complainant relies heavily on *Butler v. Adoption Media, LLC,* 486 F. Supp. 2d 1022 (N. D. Cal., 2007). This expansive, almost encyclopedic treatment of the development of anti-discrimination law in California, dealt chiefly with same sex domestic partners who were denied the right to buy space on the defendant's child adoption related website. While the site was found to qualify as a public accommodation, the definition of same set forth in the relevant statute is broader than Connecticut in some respects (including "advantages" and "privileges"), yet narrower in restricting itself to business establishments. California Civil Code § 51(b) provides as follows:

> All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition,

> marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Moreover, the services in issue were paid services and commercial in every respect, and thus entitled to a lesser degree of Constitutional protection. The defendants ran businesses that operated adoption-related websites. They constituted the largest, most active internet adoption related businesses in the United States, one which allowed prospective adoptive parents, for a fee, to post profiles for review by women intending to give up children for adoption. The case is instructive in many respects but far from analogous to a regional newspaper publishing free wedding and other community announcements.

Both parties cite *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston,* 515 U.S. 557 (1995) as favoring their respective positions. The plaintiff sued the defendant parade organizers for excluding his gay advocacy group from the parade, in claimed violation of the Massachusetts public accommodations law. The defendant appealed after the Massachusetts Supreme Judicial Court upheld the trial court in its finding that a violation had occurred. The U.S. Supreme Court reversed and remanded, and speaking for the Court, Justice Souter made a number of cogent observations and findings, a number of which are highly germane to the question at hand. The Court found that although the parade organizers were rather lenient in admitting participants, they did not forfeit their First Amendment protection simply by combining multifarious voices. Id. at 569. Nor did the First Amendment require the speaker to generate, as an original matter, the item featured in the communication sought to be regulated. Id. at

570. Justice Souter noted also an important manifestation of free speech in acknowledging that one who chooses to speak may also decide what not to say. Id. at 573. Most importantly he stated that this manifestation applied not only to expressions of value, opinion and endorsement, but also to statements of fact the speaker would rather avoid. Id. at 573. See *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341, 342 (1995).

The Supreme Court of Utah is the only tribunal located which has made a finding that a newspaper may constitute a public accommodation, at least in certain of its commercial speech functions. The case of *World Peace Movement of America v. Newspaper Agency Cooperation, Inc.,* 879 P. 2d 253 (1994) involved a paid advertisement submitted by the plaintiff, World Peace Movement of America, to defendant's publications which were in part rejected for publication, primarily because of the pictorial depiction of a dark skinned Jesus. The plaintiff brought an action predicated on religious discrimination under the Utah Civil Rights Act as it pertained to public accommodations. The defendant filed a motion to dismiss/summary judgment which was granted by the state district court.

The plaintiff appealed, and on appeal the defendant argued that it was simply exercising editorial discretion based on content and not the religion of those tendering the submission. The defendant also denied its newspapers were public accommodations under Utah law. It also cited *Miami Herald* and its progeny and argued that should the plaintiff prevail newspaper editors could be forced to publish advertisements they deem

offensive, and to “speak” when they chose to refrain. The plaintiff cited *Pittsburg Press Co. v. Pittsburg Commission on Human Relations,* 413 U.S. 376 (1973), wherein a city ordinance prohibiting “help wanted” ads from being organized in sex designated columns was upheld, arguing that government may infringe on press freedom to advance a compelling state interest.

The Utah public accommodations law (Utah Code Ann. § 13-7-3) reads as follows:

> All persons within the jurisdiction of this state are free and equal and are entitled to full and equal accommodations, advantages, facilities, privileges, goods and services in all business establishments and in all places of public accommodations, and by all enterprises regulated by the state of every kind whatsoever, without discrimination on the basis of race, color, sex, religion, ancestry or national origin. Nothing in this act shall be construed to deny any person the right to regulate the operation of a business establishment or place of public accommodation or an enterprise regulated by the state in a manner which applies uniformly to all persons without regard to race, color, sex, religion, ancestry, or national origin; or to deny any religious organization the right to regulate the operation and procedures of its establishments.

The law appears more inclusive and broader in scope even than the California public accommodations statute considered in *Butler v. Adoption Media, LLC,* supra, and certainly broader in scope in its actual wording than the Connecticut statute in issue, in that unlike Connecticut, “advantages” and “privileges” are included in the Utah definition of that to which the protected classes are entitled.

Citing the California Civil Rights Act provision and its interpretation in *Pines v. Tomson,* 160 Cal. App. 3rd 370 (1984), the Utah Court stated as follows:

> We conclude from this language that the Act prohibits NAC from denying its advertising services on the basis of the religion of the person seeking those services. Nevertheless, under the plain language of the Act, a publisher may discriminate on the basis of content even when content overlaps with a suspect classification like religion. For example, a Jewish-owned and -operated newspaper which serves a primarily Jewish community might lawfully refuse advertisements propagating anti-Semitic "religious" sentiments. However, that same newspaper could not single out members of an anti-Semitic religious group and refuse to accept advertisements, regardless of content, from any member of that group *simply because they are a member of that group.* Such discrimination, which is directed at the individual seeking to place the advertisement rather than at the content of the advertisement, is prohibited by the Act.
>
> The Act, however, does not prohibit "discrimination" against religious beliefs, ideas, or sentiments standing alone, apart from the persons who hold and profess them. World Peace Movement appears to be entirely correct in its assertion that NAC refused to print its advertisement because of its religious message that Jesus Christ had a dark complexion. Nevertheless, it was the message itself that NAC rejected, not its proponents. NAC would have refused to print the advertisement had it been offered by any person of any religion. This conduct was not a denial of services to a person on the basis of religion within the meaning of the Act. In fact, the Act expressly permits NAC to establish and enforce such uniform editorial standards. *See* Utah Code Ann. § 13-7-3.

Id. at 257. The Court then summarized that the plaintiffs would be free to purchase advertising from NAC subject to the latter's editorial judgment and concluded as follows:

> This interpretation of the Act comports with the general principle that we construe statutes to avoid running afoul of constitutional prohibitions. *See State v. Wood,* 648 P.2d 71, 82 (Utah), *cert. denied,* 459 U.S. 988, 103 S.Ct. 341, 74 L.Ed.2d 383 (1982). As the United States Supreme Court clearly reaffirmed in *Miami Herald Publishing Co. v. Tornillo,* 418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed.2d 730 (1974), a newspaper's exercise of editorial control and

> judgment is a constitutionally protected process: A newspaper is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials-whether fair or unfair-constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.

Id. At 258. In *Cyntje v. Daily News Publishing Company,* 551 F. Supp. 403 (D.V.I. 1982), another case on which the Utah Court had relied, the plaintiff brought a complaint to the district court in order to have his newspaper submissions published. The court, in the process of dismissing the plaintiff's claims, did find that as to paid advertisements, a newspaper could not refuse to publish based upon an invidiously discriminatory classification among those seeking to place advertisements. Here too, it was the identity of the submitter, as opposed to the content of the submission, which allowed for a finding of unlawful discrimination, but only insofar as commercial speech was in issue.

The complainant has cited no cases wherein a newspaper has been held to be a public accommodation, and the Utah decision is the only authority located which provides that it can, albeit only to the extent that it discriminates unlawfully based upon the protected class of those individuals who submit paid advertisements, the content of which remain subject to the editorial discretion guaranteed to a free press under the First Amendment.

The complainant has brought to our attention a number of significant and even landmark cases to advance its proposition that the First Amendment does not permit newspapers and others to trample on the civil rights of people. It is a valid point, readily acknowledged. But the complainant has not brought forward any authority for the proposition that the content of unpaid public and/or personal announcements (noncommercial speech) are subject to the anti-discrimination laws of the State of Connecticut as they pertain to public accommodations.

The complainant has cited *Pittsburgh Press Company v. Human Relations Commission,* supra, and *Evening Sentinel v. Commission on Human Rights and Opportunities,* 168 Conn. 26 (1975). Both are good and strong authority for the proposition that the contents of a newspaper may be subject to state/municipal civil rights legislation. However, both cases relate to discrimination in employment and both involve paid advertisements in their application to a prohibited sex designated format for classified employment ads. There can be little question that the respondent's classified and other employment related services are squarely within the commission's jurisdiction regarding employment matters. Neither case, however, addressed the publication of unpaid announcements as a protected public accommodation.

The complainant advances our Supreme Court's decision in *Ramos v. Town of Vernon,* 254 Conn. 799 (2000). This is a comprehensive decision by our Connecticut Supreme Court that results in a finding that the Town of Vernon's curfew ordinance, which applied to persons under the age of 18, was facially valid against claims that it violated the

plaintiff's rights to free speech and lawful assembly under the state constitution. The case is undoubtedly sound, but of little applicability to the issue at hand in that it balances police power regulations against First Amendment rights.

Conclusion

Based upon the authorities submitted, and those independently located, I can find no authority for the proposition that the respondent is a public accommodation in the editorial control it maintains over the gathering and publication of unpaid wedding (or other) announcements. While *World Peace Movement*, supra, interpreting the somewhat more expansive Utah public accommodation law, provides some support for the proposition that § 46a-64 might be interpreted so as to allow jurisdiction over a newspaper in the selection or rejection of paid ads on the basis of the protected class of those submitting such ads, that is not the issue herein presented. What is at issue is the maintenance of editorial control over unpaid announcements, a reader assisted format for procuring and disseminating local and community news. To extend jurisdiction as the complainant requests would subject the selection, content, layout and placement of announcements on little league results, bowling league scores, Bar Mitzvahs, first communions, graduations, law firm openings, etc. to First Amendment override under the well intended goal of eliminating discrimination in public accommodations. In the process, however, no facet of a newspaper's existence, and no portion of its published word would be beyond governmental scrutiny as to the totality of motives shaping editorial selection and control. On this "slippery slope" could

not candidates for public office complain about the quantity and quality of press coverage based upon their membership in one protected class or another? What impact would such unlimited scrutiny have on newspapers and other publications that seek to attract a minority, special interest, ethnic or foreign language audience? Without clear legislative or judicial authority that such is the status of the law in Connecticut this decision can make no such quantum leap. To do so would also undoubtedly require at some point a determination whether such an interpretation might render our law against discrimination in public accommodation unconstitutional as applied. As was stated by the District Court for the District of Columbia in the *Treanor v. Washington Post,* supra, 826 F. Supp. 569, wherein a newspaper column was found not to be a public accommodation under the slightly more restrictive ADA definition, such a construction, "…avoids the potential constitutional difficulties the ADA might encounter if its provision were interpreted to required newspapers to publish certain reviews, articles or columns." Laurence Tribe*,* the preeminent constitutional law scholar, has characterized free speech as "the Constitution's most majestic guarantee….Free speech is a fundamental right on its own as well as a Keystone right enabling us to preserve all other rights." *Laurence H. Tribe, American Constitutional Law* § 12-1 at 785 (2d ed. 1988).

There is no Connecticut authority, at present, to support an administrative finding that Connecticut's laws against unlawful discrimination in public accommodations extends to a private newspaper in the gathering and publication of unpaid announcements. Nor is there such authority for the necessary predicate that Connecticut newspapers and their respective editors must "eschew selectivity" in all facets of the compilation and

publication of their product, rendering that product little more than a hard copy of an internet blog. As was stated by Judge Pickett in *Epworth v. Journal Register Co*., No. 94 00065371, 1995 WL 80042 (Conn. Super. Feb 15, 1995) (where the court rejected the plaintiff's constitutional claim that she had a right to publish an article in the defendant's newspaper) "…plaintiff had no right vis a vis the defendant to publish anything in the defendant's newspaper."

In *Rweyemanu v. Commission on Human Rights and Opportunities*, 98 Conn. App. 646 (2006), the appellate court upheld the commission in its *sua sponte* dismissal of an ordained priest's employment discrimination claim in recognition of a "ministerial exemption" which it found to invoke First Amendment protections. These protections caused the commission to determine that it therefore lacked subject matter jurisdiction. Related First Amendment protections preclude a finding here as well that subject matter jurisdiction can apply to the respondent's refusal to publish the subject announcement. This is not a ruling purporting to render General Statute § 46a-64 unconstitutional as applied, but a ruling interpreting the reach of the statute consistent with First Amendment mandates.

The respondent's motion to dismiss must therefore be GRANTED.

It is so ordered this 12th day of June 2008.

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J. Allen Kerr, Jr.,
Presiding Human Rights Referee

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