STATE OF WISCONSIN CIRCUIT COURT BRANCH 11 WAUKESHA COUNTY

CITY NEWS & NOVELTY, INC.,

Plaintiff,

v.

Case No. 96-CV-1427

CITY OF WAUKESHA,

Defendant.

REPLY BRIEF OF PLAINTIFF

ARGUMENT

I. SINCE THE WAUKESHA ADULT LICENSING ORDINANCE IS UNCONSTITUTIONAL ON ITS FACE, IT IS VOID, AND ANY DECISIONS MADE PURSUANT TO IT MUST BE VACATED BY THIS COURT.

For the reasons set forth in the plaintiff's principal brief and elaborated below, the Waukesha adult licensing ordinance is unconstitutional. The defendant seems to be arguing that even if the plaintiff satisfies the Court that the ordinance is unconstitutional on its face, the plaintiff does not qualify for certiorari relief. Both parties agree, however, that this Court must determine whether the City of Waukesha has acted "according to law" in this matter. The City of Waukesha has acted pursuant to its adult licensing ordinance, § 8.195. If that ordinance is unconstitutional, it is void, nonexistent for legal purposes, and hence any action taken pursuant to it must be vacated by this Court. Nor action taken pursuant to an ordinance which is unconstitutional on its face can have been taken "according to law" because an unconstitutional ordinance is no law.

"An unconstitutional law is void and is as no law." Ex Parte Seibold, 100 U.S. 371, 376 (1879). ". . . if the laws are unconstitutional and void, the [tribunal below] acquired no jurisdiction of the causes." Id. at 377. See also, G. Heileman Brewing Co. v. City of LaCrosse, 105 Wis. 2d 152, 312 N.W.2d 875, 879 (Ct. App. 1981) ("An unconstitutional act of the legislature is not a law. It confers no rights. It imposes no penalty, affords no protection, and in legal contemplation has no existence.").

A. The Ordinance Does Not Provide Specific and Objective Standards for the Renewal of Licenses.

1. The Only Standards Set Forth in the Ordinance Apply to the Issuance of New Licenses, Not to the Decision Concerning Whether or Not to Renew an Existing License.

The city apparently agrees with the plaintiff's arguments that a municipal decision to grant or deny a license to engage in protected expression may not be based on the content of the expression and must be based on specific and objective standards. Plaintiff's Principal Brief at 6-9. The parties have no argument as to the proposition that Waukesha's ordinance is unconstitutional unless it contains specific and objective standards, explicitly set forth, which determine each and every renewal decision on the basis of hard evidence. Plaintiffs' Brief at 9.

The city's response to these bedrock principles of law is that its ordinance does contain specific and objective standards for the renewal of licenses, and that these standards are, by

implication, the same standards as those which govern the issuance of new licenses, set forth at § 8.195(4). This argument runs contrary to both the plain language and the structure of the ordinance.

2. The Plain Language of the Ordinance Does Not Permit the Simplistic Equation of Issuance Standards with Renewal Standards.

The standards set forth at § 8.195(4) are called "standards for issuance of license." The relevant meaning of the verb "to issue" from Webster's Dictionary is "to put forth or distribute officially (government issued a new air mail stamp) (to issue orders to advance). Webster's 7th New Collegiate Dictionary, 451 (1966). The verb "issuance" is clearly appropriate on the first occasion the government issues an official document. On the other hand, Webster's defines "renew" as "to grant or obtain an extension of or on." Id. at 726. Thus, an official renewal of a license is not the "issuance" of a license for the first time but rather an extension of its legal life (in this case, for another year). To renew an existing license is in no sense to issue a license. The two concepts are quite separate ones in the English language.

3. The Ordinance Recognizes Renewals as Decisions Distinct from the Issuance of New Licenses.

If, as the city suggests, there is no need for its ordinance to contain renewal standards because renewal and issuance are really the same thing, one would expect the ordinance to treat

renewal and issuance as the same thing throughout. It does not. For example, § 8.195(10)(b) makes licensees vicariously liable for acts and omissions of their employees when it comes to decisions on revocation, suspension, or renewal, but imparts no such vicarious liability for employees' acts in the case of initial license issuance. Section 8.195(7) covers renewal applications in detail, without any suggestion at all that a renewal is exactly the same thing as a new issuance. This provision would be utterly unnecessary if the intent of the ordinance were to treat renewals as new applications for new license issuance. Since this Court may not read any part of the ordinance as surplusage, it must read renewals and issuances as separate events.

4. The Plaintiff Argued Below that the Review Board Should Apply Issuance Standards to this Renewal Decision Because the Ordinance Contains No Renewal Standards and the Review Board Lacked the Jurisdiction to Declare the Ordinance Unconstitutional for this Reason.

The city argues that, since the plaintiff suggested to the Review Board that it employ the ordinance's issuance standards in this renewal case, it must be self-evident that issuance and renewal are the same thing, and that issuance standards apply to both decisions. There are two common-sense responses to this suggestion. First, the plaintiff's suggestion that, in the absence of renewal standards, the Review Board take a leap and employ the only standards the ordinance contained, issuance standards, so that

it would have some basis to decide this case, is far from a concession that the ordinance contains sufficiently explicit and objective renewal standards to be constitutional. The suggestion was made in a constitutional vacuum of sorts, as the board lacked the jurisdiction to declare its own enabling legislation, Waukesha City Ordinances, unconstitutional. See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540 (E.D. Wis. 1977) (generally, administrative agencies do not have authority to rule on the constitutionality of statutes which they are empowered to enforce).

The fact that the board lacked the authority to declare its own ordinances unconstitutional is also the reason these constitutional arguments are raised for the first time in this court, the first forum to entertain this case which has jurisdiction to consider constitutional questions.[1]

The plaintiff can even concede now that, since the ordinance lacked any standards for license renewal, it made a certain kind of cock-eyed sense for the Review Board to look to the issuance standards in order to have something to base its decision on. This concession is not at all to say that the ordinance actually contains any renewal standards, but merely to observe the obvious, that it only contains a single set of standards, issuance standards.

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[1] The plaintiff does not argue that Ch. 68 of the Wisconsin Statutes is unconstitutional, and recognizes that such an argument would require notifying the attorney general's office.

It is as if a soldier needed to wear his or her dress uniform to pass muster on Saturdays, and a sergeant were to suggest to a private who owned no dress uniform that he simply wear his fatigues to inspection. The suggestion that he put on some clothing so as not to have to appear naked is far from a concession that the errant soldier will pass muster when the officers stride down the ranks. Similarly, the plaintiff's suggestion that the Review Board use the issuance standards, so that it would have something to use, is far from a concession that they pass constitutional muster as renewal standards. Like the soldier who cannot pass muster because he simply does not own a dress uniform, the ordinance cannot pass constitutional muster because it simply does not own any renewal standards.

B. The Licensing Ordinance Is Not Constitutional Because it Does Not Provide that a License **Must** be Issued if its Standards Are Satisfied.

Assuming for the sake of the argument, simply to get on to the next point, that the ordinance says its issuance standards are to be employed in renewal decisions (for it must say this explicitly to be constitutional), it still fails to pass constitutional muster because it does not say explicitly that if these standards are satisfied, a license must be issued without fail.[2] The plaintiff advanced this argument in its principal brief at 10-

[2] Section 8.195(4) simply says that "to receive a license to operate an adult oriented establishment, an applicant must meet the following standards:". It does not say, anywhere in ordinance 8.195, that an applicant who meets the enumerated standards must without fail be issued a license.

11, citing Wolff v. City of Monticello, 803 F.Supp. 1568, 1574 (Minn. 1992). The city apparently does not dispute that its ordinance is unconstitutional on this basis, for it nowhere addresses the plaintiff's argument in this regard. "Respondents on appeal cannot complain if propositions of appellants are taken as confessed which they do not undertake to refute." Charolais Breeding Ranches, Ltd. v. FPC Securities Corp., 90 Wis. 2d 97, 279 N.W.2d 493, 499 (Ct. App. 1979), quoting from State ex rel. Blank v. Gramling, 219 Wis. 196, 199, 262 N.W. 614, 615 (1935).

C. Even the Issuance Standards Are Unconstitutionally Vague Because the Meaning of the Words "Shall Have Been Found" Is Unclear.

Assuming for the sake of argument that the ordinance says that its issuance standards should be applied to renewal decisions, it still only passes constitutional muster if its issuance standards are specific and objective. The plaintiff has cited a great deal of authority to support this proposition in its principal brief, and the defendant does not dispute the general principle that its ordinance is unconstitutional if its licensing standards are vague or ambiguous. However, the defendant completely misapprehends the argument set forth in the plaintiff's principal brief at 11-14 to the effect that the ordinance is vague because the words "shall have been found" are unclear.

According to § 8.195(4)(b)2, corporate applicants are only eligible for licensure if "no officer, director, or stockholder . . . shall have been found to have previously violated this section within five years preceding the date of the application."

Both parties agree that under this language, a finding of a violation is a disqualifier. By arguing that "the ordinance does not require a conviction or a finding of guilt in a court of record in order to validate a finding that a license be suspended, revoked, or renewed (sic)," Defendants' Brief at 11, the city is apparently contending that a finding of a violation need not have occurred prior to the application date, but can disqualify an applicant even if the finding is made by the city during its review of the applicant's qualifications. The plaintiff merely attempts to show the Court that the ordinance is at least ambiguous as to the form such a finding of a violation must take and as to the time at which it must have occurred in order to disqualify an applicant.

If an applicant who had never been charged with violating anything could be denied a license because of a violation finding made by the Common Council for the first time during its consideration of the license application, wouldn't the licensing standard permit the licensure of a corporate applicant only if "no officer, director or stockholder . . . <u>is found</u> to have previously violated this section within five years immediately preceding the date of the application." This license language would make it clear that a violation finding could occur for the first time during the processing of the application and still work a disqualification. Of course, such a finding during the application processing could conceivably be based on a prior judicial decision, but, if the ordinance used the words "is found," it would not have to be based on a prior judicial decision. Rather than using the straightfor-

ward "is found," though, the drafters of the ordinance chose the arcane and obscure "shall have been found" to describe the disqualification provision. This use of what appears to be the past perfect subjunctive tense obviously was intended to convey some meaning other than the straightforward "is found." That is, this choice of words obviously was intended to convey some meaning other than that disqualification will occur if a finding of a violation is made for the first time during consideration of a license application.

What if the drafters had permitted corporate applicants to get licenses only if "no officer, director, or stockholder . . . shall be found to have previously violated this section. . . ."? In that case, it would be clear that no finding preceding the license application would be necessary to work a disqualification. Substitution of the words "have been" for the word "be" in the foregoing formulation substitutes the past for the present and future however, and seems to require that a formal finding of violation have occurred at some point in the past in order to work a disqualification. The plaintiff does not seek to satisfy the Court on this point, or on the point of what form such a past finding must have taken in order to work a disqualification. The plaintiff shows the ordinance to be unconstitutional if it merely satisfies the Court that the wording of the ordinance is ambiguous, a least, on these matters. It is ambiguous. Reasonable persons could argue at length about when a finding would have to have been made in order to work a disqualification, and what sort of finding

would be legally effective to work a disqualification. This possibility alone renders the ordinance invalid.

D. The Licensing Ordinance Is Unconstitutional on its Face Because it Does Not Set Forth Short and Explicit Time Limits Within Which Decisions Must be Made on Original Applications and All Reviews and Appeals Thereof.

Once again, the parties seem to be in agreement on the underlying constitutional principle, that a licensing ordinance must explicitly set forth short specific periods of time within which decisions must be made at all stages of the process in order to be constitutional under the First Amendment.

1. The Ordinance's Time Limits on Initial Administrative Action Are Illusory.

The plaintiff argued in its principal brief that although the provisions of the ordinance governing issuance of new licenses require a decision by the city clerk within twenty-one days of the date of application, this deadline can be rendered illusory by the provisions, which apply only to license renewals, for input by the city police department and the building inspector. The plaintiff pointed out that, in the case at bar, the twenty-one day limit was ignored by the clerk's office, inasmuch as the initial nonrenewal decision was issued some thirty-five days after the date of application. The plaintiff made this argument not to attempt to convince the Court that it was prejudiced by this delay -- it was not -- but to demonstrate that the twenty-one day time limit in the issuance section of the ordinance does not say it applies to

renewals, and cannot practicably be applied to renewals where input from the police department and building inspector are required. All the plaintiff asks the Court to do is to observe how remarkably similar the situation was in FW/PBS, Inc. v. Dallas, 393 U.S. 215 (1990), which led the Supreme Court to hold that city's purported decisional deadlines to be illusory and its ordinance therefore unconstitutional.

The Court should note that this problem obtains even after it grafts issuance procedures into the renewal scenario, for the ordinance section governing license renewals does not expressly incorporate the twenty-one day time limit at all. See § 8.195(7). This is all the more significant because where, in the context of license renewals, the city wanted to incorporate issuance procedures, it did so explicitly, as in § 8.195(7)(a), where the ordinance specifically states that renewal application forms "shall contain such information and data given under oath or affirmation as is required for an application for a new license."

The ordinance specifies no time within which a decision after a public hearing must be issued.

The defendant acknowledges that a license applicant receives an initial denial decision from the city clerk may, as his next step, have a public hearing under § 8.195(3)(d) of the ordinance. Defendants' Brief at 16. The plaintiff's argument on this point is that the ordinance fails to set forth any time limit within which the Common Council or its designated committee must issue its decision after the public hearing occurs. The city does

not seem to contest that this is an unconstitutional deficiency, Defendants' Brief at 16-17, but rather argues that the plaintiff may not raise it because the plaintiff did not request a public hearing.

Because the public hearing provision of the ordinance is unconstitutional for the reason that it does not contain a decision deadline, the plaintiff was not required to invoke this provision in order to have standing to challenge it. Plaintiffs may challenge unconstitutional application processes without actually making applications, and plaintiffs may challenge unconstitutional review processes without actually exercising them. Even had the plaintiff demanded a public hearing and received a decision immediately, on the same evening, this would not save the constitutionality of the ordinance on its face.

2. The Ordinance Does Not Provide for Prompt Judicial Review.

This Court should not feel, having read this caption, that its proper role is to burn the midnight oil and issue its decision as quickly as it can. The plaintiff's arguments are not about the pace of this case. They are about the fact that the ordinance is unconstitutional because it does not require decisions at various stages within specified time periods. No amount of haste and promptness in an individual case can erase this defect on the face of the ordinance or permit the courts to avert their eyes from it.

In its principal brief, the plaintiff cited a good deal of authority to the effect that ordinary judicial review by certiorari, which entails no short specific time limit within which a decision must be rendered, is not the prompt judicial review the First Amendment requires. Plaintiffs' Brief at 16-19. The plaintiff conceded that Graff v. City of Chicago, 9 F.3d 1309 (7th Cir. 1993) (en banc plurality decision), cert. denied, 114 S.Ct. 1837 (1994), is to the contrary. Plaintiffs' Brief at 17. The plaintiff attempted to convince the Court that the wealth of decisions opposed to the Graff holding are the better-reasoned and correct interpretations of controlling First Amendment principles. The defendant merely cites Graff. Defendants' Brief at 23. The plaintiff stands by its position. The Court should note that decisions of the United States Court of Appeals for the Seventh Circuit have no special sway over Wisconsin's state courts simply because Wisconsin is located, geographically, in the Seventh Circuit, and, indeed, have no more authoritative weight than decisions of the other federal circuit courts of appeals. Thompson v. Village of Hales Corners, 115 Wis. 2d 289, 340 N.W.2d 704 (1983).

3. The Ordinance Does Not Mandate Maintenance of the Status Quo Throughout Administrative and Judicial Review of a Nonrenewal Decision.

The City of Waukesha apparently does not differ with the plaintiff's constitutional proposition that in order to pass First Amendment muster a licensing ordinance must guarantee that an

applicant will continue to enjoy the status quo until all administrative and judicial appeals are exhausted. The city has not disputed this point in its brief and it has, by special resolution, authorized the plaintiff to keep its business open (the status quo ante) pending completion of all judicial review in this case. The very fact that the city was required to pass such a special resolution, however, points up the ordinance's constitutional deficiency. The ordinance itself must contain such a guarantee or it is invalid and unconstitutional.

4. The Plaintiff Need Not Have Been Prejudiced by the Ordinance's Lack of Time Limits and Failure to Guarantee the Status Quo Pending Exhaustion of Judicial Review in Order to Have Standing to Show this Court that these Deficiencies Invalidate the Entire Ordinance and that it Therefore Cannot Lawfully be Bound by an Invalid Ordinance.

The defendant cites a good deal of authority in an effort to convince the Court that since the plaintiff has not been prejudiced by the ordinance's lack of time deadlines and failure to guarantee the status quo pending completion of judicial review, the plaintiff lacks standing to challenge these deficiencies in the ordinance. This is not true for two reasons. First, the plaintiff enjoys traditional First-Amendment overbreadth standing. Second, these deficiencies render the ordinance in question utterly invalid, such that it cannot lawfully be applied to the plaintiff,

and the plaintiff clearly has the right to demonstrate this state of affairs to this Court.

First, where an ordinance involves licensing or permit requirements, both the Supreme Court and the Seventh Circuit have held that a litigant need not even apply for a license or permit in order to mount a facial challenge to an ordinance alleged to contain constitutional defects. Thornhill v. Alabama, 310 U.S. 88 (1947); Graff v. City of Chicago, 9 F.3d 1309 (7th Cir. 1993); Stokes v. City of Madison, 930 F.2d 1163 (7th Cir. 1991). The law is clear that a litigant need not, himself, have been subjected to injury by a licensing ordinance's lack of standards or time limits in order to have standing to mount a constitutional challenge. As recently summed up by the United States Court of Appeals for the Sixth Circuit in G & V Lounge, Inc. v. Michigan Liquor Commission, 23 F.3d 21 (6th Cir. 1994), "when a licensing statute allegedly vests unbridled discretion in a government official over whether to permit or deny expressive activity, one who was subject to the law may challenge it facially without the necessity of first applying for, and being denied, a license." Id. at 1075, quoting City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750 (1988). The same principle must necessarily permit a facial challenge to unconstitutional aspects of an ordinance where a plaintiff not only has applied for a license, but had its application rejected. A plaintiff subjected to licensing requirements by an unconstitutional ordinance need not show that he himself has been injured by the unconstitutional aspects of the ordinance, as the G & V Lounge

opinion demonstrates. Rather, it is enough that the plaintiff is being subjected to the requirement of a license under an ordinance which is, in fact, void, because of its unconstitutionality, when, therefore, the plaintiff should not be required to obtain a license at all.

Wisconsin has recognized that a plaintiff need not be subjected to prejudicial effects stemming from an ordinance's unconstitutional provisions in order to have standing to challenge it. In Brandmiller v. Arreola, __- Wis. 2d ___, ___ N.W.2d ___ (Case No. 93-2842, March 13, 1996), the Wisconsin Supreme Court recently held that a plaintiff may have standing to challenge the constitutionality of a statute or ordinance even where his or her own conduct could constitutionally be regulated under a narrowly drawn law. Such a plaintiff would not, of course, have been injured by the unconstitutional aspects of the ordinance (except, possibly, in the sense of having been required to apply for a license or permit under a void enactment) but the case law recognizes such an individual's right to constitutionally challenge the ordinance if there is a real possibility that persons may be injured by its unconstitutional aspects in the future.

As shown above, an ordinance which is unconstitutional is invalid. It is void and as no law at all. It cannot lawfully be applied in any manner to any person. All the plaintiff is seeking to do here is to show the Court that the City of Waukesha's licensing ordinance is unconstitutional for the reasons set forth above. If the ordinance is unconstitutional on its face, for these

reasons, then it is void and as if it never existed it cannot be applied lawfully to this plaintiff or anyone else.

It is as if the plaintiff were being prosecuted under an ordinance which was invalid because it had not been signed by the mayor, because it had not been passed by the requisite majority of the Common Council, or because of the omission of some other essential step in the transformation of a proposal for legislative action into the law of the land. Certainly a party whose conduct were challenged under such an ordinance would have the authority to demonstrate that the ordinance was not entitled to the force of law because of its inherent invalidity. That is all the plaintiff is doing here. The plaintiff does not argue that it was prejudiced by lack of time limits or by the ordinance's failure to guarantee continuation of the status quo in this case. The plaintiff has been prejudiced in a much more global fashion by being required to apply for a license under a fundamentally invalid, unconstitutional, and therefore legally non-existent ordinance.

II. THE PLAINTIFF WAS PREJUDICED DURING THE APPLICATION PROCESS BECAUSE IT WAS NOT AFFORDED THE BASIC ELEMENTS OF DUE PROCESS OF LAW.

Again here, the parties do not seek to disagree on basic constitutional principles. The city does not dispute that the plaintiff was entitled during the administrative phase of this case to the full panoply of Fourteenth-Amendment due process procedures. The point at which the parties diverge is on the question of whether all of these elements of due process were in fact afforded to the plaintiff.

A. A Decision Maker Cannot Impartially Review His or Her Own Decision on the Merits of the Case.

Both parties agree that the plaintiff was entitled to an administrative review board comprised of impartial decision makers. The city does not dispute that Mayor Opel both signed the December 19, 1995, resolution denying renewal of the license and sat on the Administrative Review Board. Both of these decisions represented instances of Mayor Opel deciding the merits of the plaintiff's application. The very decision to sign rather than veto the December 19 resolution represented a decision on the merits, regardless of protestations that the mayor did not actively participate in the deliberations leading to the council decision. By signing the resolution, she added her imprimatur to it as certainly as any council member who voted in its favor.

The city cites a number of cases which, upon inspection, all go to support the proposition that it is not a denial of due process for the same decision maker to participate both in the investigation of a dispute and in the determination of its merits. None of the cases cited by the defendant hold that a decision maker may determine the merits of a dispute, and then, with requisite constitutional impartiality, review his or her decision on the merits in a "due process hearing." The decision of the Wisconsin Supreme Court in Guthrie v. Wisconsin Employment Relations Commission, 111 Wis. 2d 447, 331 N.W.2d 331 (1983), was based on the fundamental principle of due process that "no man can be a judge in his own case." The United States Supreme Court decision

from which the defendant's argument stems, Withrow v. Larkin, 421 U.S. 35 (1975), involved the same entity performing initial investigation and then later adjudicative functions. The Withrow Court itself noted that this was a very different circumstance from that of a decision maker reviewing his own prior decision on the merits: "Allowing a decision maker to review and evaluate his own prior decisions raises problems that are not present here." Id. at 59, n.25. Cases which do discuss decision makers reviewing decisions hold squarely that when review of an initial decision is mandated, the decision maker must be other than the one who participated in making the decision under review. Gagnon v. Scarpelli, 411 U.S. 778, 785-786; Morrissey v. Brewer, 408 U.S. 471, 485-486; Goldberg v. Kelly, 397 U.S. 254, 271 (1970). The defendant has not pointed to a single case, either from Wisconsin's courts or the federal courts, which holds otherwise.

B. The Plaintiff Did Not Have Due Process Notice in Advance of the Administrative Review Board Hearing Because it Had Not Been Apprised of Many of the Incidents Upon Which the City Proceeded and Upon Which the Board Eventually Based its Decision.

The plaintiff shows the Court in detail, in its principal brief, that evidence was introduced at the administrative hearing beyond the allegations set out in the December 19, 1995, resolution, the plaintiff's only due process notice in advance of the hearing, in this case. Plaintiffs' Brief at 25-26. The plaintiff also demonstrated that while its due process notice conveyed the necessity to prepare a defense of building code violations alleged

to have occurred on November 30, December 1 and December 2, 1994, the eventual decision was that the violation occurred on November 7, 1994, a date concerning which the plaintiff had no prior notice. Plaintiffs' Brief at 26-27. The defendant does not dispute these facts. Rather, the defendant emphasizes the specificity of the notice the plaintiff did receive. It is this very specificity that rendered the December 19 resolution almost worse than no notice at all. The plaintiff would have stood a better chance of being adequately prepared for the hearing if, for example, the December 19 resolution had accused it of building code violations committed on unspecified dates in the fall of 1994 than it was having a notice which allowed it to focus its preparation on specific dates that turned out to be neither the focus of the city's evidentiary presentation at hearing nor of the Administrative Review Board's findings.

To put the matter simply, it is not enough to satisfy the requirements of due process that a notice of alleged wrongdoing be specific, if it does not also accurately tell an affected party what events it must be prepared to present evidence concerning. The city ignores this deficiency in these proceedings.

CONCLUSION

The city has made no explicit response to the arguments in Section IV of the plaintiff's brief, and the plaintiff stands on those arguments. Moreover, submitted herewith is a certified copy of a court order vacating the convictions in two of the cases upon which license nonrenewal was premised.

The circuit court's decision to reverse these convictions certainly was not the politically expedient path for it to take, but it realized that when public servants bend or bring down or ignore established principles of law in order to achieve a politically popular result, the injury done to that which makes this country great far outweighs any short-term benefit associated with the removal of an unpopular irritation from the body public.

This Court should reverse the decision of the Administrative Review Appeals Board and remand this case for lawful and appropriate action by that body.

Dated this 31 st day of December, 1996.

Respectfully submitted,

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