

October 20, 2018

(BY EMAIL AND MAIL)

The Hon. Jorge Elorza
Mayor
Providence City Hall
25 Dorrance Street
Providence, RI 02903

Dear Mayor Elorza:

I am writing to raise a legal matter surrounding the seemingly raucous protests that have taken place for three nights in a row in front of the home of Richard Gardner in Washington Park.

I know I do not have to provide you the background of those protests, as comments you were reported to have made at a community meeting immediately preceding the first such gathering last Wednesday – that Gardner “has given up his right to be here in the community” – have undoubtedly helped fuel these angry gatherings in front of his home. As you are probably aware, the ACLU has, contrarily, publicly argued that Gardner has a right to live there, and that the concerted efforts to force him to move are extremely counter-productive. However, the purpose of this letter is not to debate this point with you. It is, instead, simply to note for the record how the City has responded to this targeted picketing in front of Mr. Gardner’s home.

With your knowledge and approval, and that of police officials – since police have been present throughout these residential protests – the police have allowed these gatherings to take place in front of Mr. Gardner’s home without interference. While the ACLU strongly disapproves of these picketers’ message, we agree that (assuming, of course, they are not engaging in other violations of the law such as trespass, disorderly conduct, or vandalism), they should have the right to peacefully congregate in front of his home to express their views.

The only reason I make what may seem to be obvious points is that these protests actually violate the law, and specifically a Providence ordinance that bans targeted residential picketing like this. See Section 16-13.1. (In a footnote at the end of this letter, I cite the ordinance in full.)

The ACLU has long opposed on First Amendment grounds laws that ban residential picketing. However, both the U.S. Supreme Court¹ and the R.I. Supreme Court² have upheld the constitutionality of these ordinances. Because we nonetheless continue to oppose those rulings, we do not object to the City’s manifest decision this past week not to enforce its ordinance.

Having said that, we also wish to make sure that the City, through its imprimatur of approval of these protests, recognizes that it cannot later seek to enforce the ordinance against other protesters. While the City may have the right to ban residential picketing and a concomitant right to decide to not

¹ *Frisby v. Schultz*, 487 U.S. 474 (1988).

² *Town of Barrington v. Blake*, 568 A.2d 1015 (R.I. 1990).

enforce that ban, it does *not* have the right to pick and choose when it will enforce the ordinance depending on what the picketing happens to be about. As a result, groups that may have been deterred by the ordinance from engaging in residential picketing in Providence in the past – such as political groups wishing to protest in front of the house of a public official, or consumer groups desiring to shame a slum landlord in front of his home – will, we assume, be afforded the same rights and privileges to engage in residential protests that those picketing in Washington Park have been afforded, notwithstanding Sec. 16-13.1.

As I said at the beginning, this letter is simply to put the City's actions on record should there ever be a time when City officials, in blatant violation of the First Amendment, decide to begin selectively enforcing the ordinance against other peaceful residential protesters. Indeed, to avoid such an obvious abuse of the police power, we would urge you to propose the ordinance's repeal at the earliest opportunity.

If you have any questions about this, I hope you will feel free to let me know. And while not the point of this letter, the ACLU would also respectfully urge you to reconsider your remarks that a person lawfully released from prison has no right to live in the community, and to instead revert to touting Providence as a welcoming city for all.³

Sincerely,

Steven Brown
Executive Director

cc: Commissioner of Public Safety Stephen Pare
Police Chief Hugh Clements, Jr.
City Solicitor Jeffrey Dana
City Council President David Salvatore

³ The City ordinance reads in full:

Sec. 16-13.1. - Residential picketing. (a) Declaration. It is hereby declared that the protection and preservation of the home is the keystone of democratic government; that the public health and welfare and the good order of the community require that members of the community enjoy in their homes and dwellings a feeling of well-being, tranquility, and privacy, and when absent from their homes and dwellings, carry with them the sense of security inherent in the assurance that they may return to the enjoyment of their homes and dwellings; that the practice of picketing before or about residences and dwellings causes emotional disturbance and distress to the occupants; obstructs and interferes with the free use of public sidewalks and public ways of travel; that such practice has as its object the harassing of such occupants; and without resort to such practice full opportunity exists, and under the terms and provisions of this ordinance will continue to exist for the exercise of freedom of speech and other constitutional rights; and that the provisions hereinafter enacted are necessary for the public interest to avoid the detrimental results herein set forth.

(b) It shall be unlawful for any person to engage in picketing before or about the residence or dwelling of any individual.