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2000 Survey of Rhode Island Law: Cases: Constitutional Law

Tanya J. Zorabedian
Roger Williams University School of Law

Dean M. Castricone
Roger Williams University School of Law

Christy Hetherington
Roger Williams University School of Law

Constitutional Law. *Almond v. Rhode Island Lottery Commission*, 756 A.2d 186 (R.I. 2000). The Rhode Island Supreme Court held that the Rhode Island General Assembly's creation of the Lottery Commission was a constitutionally lawful delegation of legislative power and did not violate the separation of powers doctrine.

FACTS AND TRAVEL

On April 26, 1999, the Lottery Commission (Commission) voted five to four to authorize an increase in the number of video lottery terminals (VLTs) allowed at Newport Grand Jai Alai and Lincoln Greyhound Park.[1] The Commission authorized the increase despite the Governor's attempts to oppose it.[2] The commissioners who voted in favor of the increase were members of the Legislature.[3] The commissioners voting against the increase were appointed by the Governor (and were joined by one member of the Legislature).[4]

After the vote, but before the VLTs were installed, the Governor brought an action for declaratory judgment and sought an injunction against the installation of the VLTs.[5] The superior court granted the preliminary injunction.[6] The preliminary injunction was vacated in a supreme court decision.[7]

In August 1999, the superior court conducted evidentiary hearings on the matter.[8] During this time, the Commission implemented its vote.[9] The superior court denied the Governor's further request for a preliminary injunction.[10]

After the evidentiary hearings, the trial justice ruled that the plaintiff's separation of powers argument failed[11] according to the prior Rhode Island Supreme Court opinion, *Narragansett Indian*

1. *See* Almond v. Rhode Island Lottery Comm'n, 756 A.2d 186, 188 (R.I. 2000).
2. *See id.*
3. *See id.*
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*
10. *See id.*
11. *See id.*

Tribe of Rhode Island v. State.[12] However, the trial justice ultimately found that the delegation of authority to the Commission was unconstitutional because of the *composition* of the Commission (since the majority of the Commission is appointed by the House Speaker and Senate Majority Leader).[13]

BACKGROUND

The General Assembly of Rhode Island has historically authorized and supervised lotteries.[14] In the 1820s, the Rhode Island General Assembly delegated the supervision of some lotteries to professional managers.[15] In 1843, after the ratification of the Rhode Island Constitution, the creation of new lotteries was prohibited.[16] In 1973, the Rhode Constitution was amended, lifting the ban on lotteries.[17] A year later, in 1974, the General Assembly enacted section 42-61-1.[18] This statute created the Lottery Commission (Commission), a nine-member group authorized to manage state-run lotteries.[19] The statute delegated a number of specific powers to the Commission.[20] The Commission has been operating continuously since 1974.[21]

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12. 667 A.2d 280, 281 (R.I. 1995) (holding that "exclusive authority over lotteries is and always has vested in the General Assembly either by Royal Charter or by Constitution" and that "the Executive Department had no claim to any constitutional power with respect to lotteries and . . . the Governor lacked any implied powers with respect to lotteries").

13. *See id.* at 191.

14. *See Almond*, 756 A.2d at 188.

15. *See id.*

16. *See id.*

17. *See id.*; R.I. Const. of 1843, art. VI, § 15 (amended 1973).

18. *See* R.I. Gen. Laws § 41-61-1 (1956) (1997 Reenactment).

19. *See id.* Section 41-61-1(a) provides that:

> [The commission] shall consist of nine (9) members . . . three (3) of whom shall be members of the senate, not more than two (2) from the same political party to be appointed by the majority leader; three (3) of whom shall be members of the house of representatives, not more than two (2) from the same political party to be appointed by the speaker of the house; and three (3) of whom shall be representatives of the general public to be appointed by the governor.

Id.

20. *See Almond*, 756 A.2d at 188-90.

21. *See id.* at 190.

ANALYSIS AND HOLDING

The court agreed with the trial justice's ruling that the regulation of lotteries by the Rhode Island General Assembly does not violate the separation of powers principle.[22] The court disagreed with the trial justice on the delegation issue, holding that the delegation of power to the Commission was constitutional.[23] The court looked at the particular delegation in this case and found that it provided specific and detailed guidelines to the Commission.[24] The court also found that the delegation was necessary in this case, as the Legislature would not have been able to "operate such a massive enterprise" without delegation.[25]

Speaking to the composition of the Commission issue relied on by the trial judge, the court refused to force the Legislature to delegate its power to only judicially approved members.[26] The court felt that this type of judicial intervention would give rise to separation of powers issues.[27] Finally, after looking specifically at the Rhode Island Constitution, the court concluded, "nothing in the Rhode Island Constitution prohibits the appointment of legislators or their designees to an administrative agency to which the Legislature has delegated a portion of its power to administer and regulate lotteries in this state."[28] The court reversed the superior court's declaratory judgment and affirmed the part of the judgment that denied injunctive relief to the plaintiffs.[29]

The Dissent

Justice Flanders dissented.[30] He argued that affirming the trial justice's decision would not prohibit the General Assembly from properly delegating its powers, it would only prevent the Legislature from improperly "self-delegating its power to legislator-dominated entities like the present Lottery Commission" which are only "subparts and constituent elements of the Rhode Island Gen-

22. *See id.* at 191.
23. *See id.* at 191-92.
24. *See id.* at 192.
25. *Id.*
26. *See id.* at 193.
27. *See id.*
28. *Id.* at 196.
29. *See id.* at 197.
30. *See id.*

eral Assembly itself."[31] He argued that the delegation circumvented the procedural and oversight safeguards present in the Rhode Island Constitution.[32]

CONCLUSION

In *Almond v. Rhode Island Lottery Commission*, the Rhode Island Supreme Court held that the Rhode Island General Assembly's creation of the Lottery Commission was a constitutionally lawful delegation of legislative power and did not violate the separation of powers doctrine.

Tanya J. Zorabedian

31. *Id.* at 199.
32. *See id.* at 200-09.

Constitutional Law. *El Marocco Club, Inc. v. Richardson,* 746 A.2d 1228 (R.I. 2000). Municipalities have the authority to issue, maintain, and place reasonable restrictions on liquor licenses, including the limited restriction of the constitutionally protected activity of nude dancing as long as the purpose for such restriction serves a substantial government interest and is narrowly tailored to achieve that goal.

FACTS AND TRAVEL

El Marocco, operating under a Class B liquor license,[1] served alcoholic beverages for consumption and provided nude entertainment at no additional charge.[2] On March 27, 1997, Johnston police ordered the El Marocco Club, Inc. (El Marocco) to refrain from featuring nude dancers, as such conduct was in violation of a town ordinance prohibiting nudity at establishments serving liquor.[3] Asserting that the ordinance was invalid, El Marocco sought injunctive relief and damages for the loss of business.[4] The superior court denied El Marocco's motion for temporary injunction and ruled in favor of the Town of Johnston's (Town) motion for summary judgment.[5] El Marocco appealed that ruling to the Rhode Island Supreme Court arguing that the Town did not have the authority to adopt the ordinance and, even if it had the authority, the ordinance violated El Marocco's First and Fourteenth Amendment rights.[6]

El Marocco's first argument was that the state law that specifically granted municipalities the power to restrict entertainment at facilities holding a Class B liquor license did not exist when the Town adopted the ordinance at issue and, therefore, the Town did not have the authority to adopt and enforce the ordinance.[7] El Marocco's second challenge to the validity of the ordinance was that the Town is preempted from regulating in the area because the General Assembly has regulated this area through state law.[8]

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1. *See* El Marocco Club, Inc. v. Richardson, 746 A.2d 1228, 1231 n.4 (R.I. 2000).
2. *See id.* at 1232.
3. *See id.* at 1230.
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.* at 1230-31.
8. *See id.* at 1231-32.

El Marocco's final assertion regarding validity was that the Town should be equitably estopped from enforcing this ordinance against El Marocco because the nightclub had made future plans and preparations relying on the fact the Town had placed no such restriction on the establishment.[9]

The constitutional argument El Marocco put forth was that the ordinance prohibition is a content-based restriction in violation of the First Amendment right to free speech.[10] El Marocco asserted that the Town enacted the ordinance without having any evidence of the adverse effects of nudity in a liquor-serving establishment.[11] Therefore, such content-based regulation is impermissible.[12]

BACKGROUND

The Town of Johnston enacted Ordinance No. 965 in early 1996 that prohibits nudity at liquor-serving establishments.[13] This ordinance was reenacted in January of 1997.[14] Prior to the Town's adoption of this prohibition, the Town held public hearings during which Town officials heard from concerned community members and examined the experiences of other Towns and cities faced with the same issue.[15] This ordinance was adopted prior to the General Assembly's 1997 amendment to section 3-7-7.3 empowering municipalities to restrict or prohibit entertainment at facilities with a Class B liquor license.[16] One year after this specific grant of authority came into effect the Town adopted Ordinance No. 1057, which was identical to No. 965.[17]

ANALYSIS AND HOLDING

The court deemed El Marocco's challenge to the validity of Ordinance No. 965 moot because the Town adopted Ordinance No. 1057, which was identical to No. 965, after section 3-7-7.3 became

9. *See id.* at 1233.
10. *See id.* at 1234.
11. *See id.* at 1235.
12. *See id.*
13. *See id.* at 1230 n.2.
14. *See id.*
15. *See id.* at 1237.
16. *See id.* at 1230-31.
17. *See id.* at 1231.

effective. Therefore, the Town had explicit authority to act.[18] Furthermore, municipalities have the statutory authority, without section 3-7-7.3, to impose reasonable conditions on liquor licenses.[19] The Town's prohibition of nudity at establishments serving alcohol is a reasonable condition on El Marocco's liquor license.[20] Ordinance Nos. 965 and 1057 are simply codifications of the Town's preexisting authority to impose reasonable conditions on Class B liquor licenses.[21]

In response to El Marocco's claim that the Town is preempted from regulating in the area of entertainment, the court found that the General Assembly had no intention of regulating all entertainment at liquor-serving facilities.[22] Because there was no indication that the state wished to occupy the entire field of liquor license regulation, and because there were no conflicts between state and local laws, there was no preemption.[23] The sections of the Rhode Island law that El Marocco points to in support of preemption are section 3-7-7(a)(3), which applies when admission to an establishment serving alcohol and featuring nudity entails the payment of a separate fee or charge (which is different than El Marocco's practice) and section 3-7-7.3.[24] The court found that section 3-7-7 did not attempt to regulate all types of entertainment in facilities holding liquor licenses. In fact, the General Assembly expressly and clearly delegated its licensing power to local licensing boards and allowed such boards to suspend licenses for the violation of conditions.[25]

The equitable estoppel argument failed as well because El Marocco failed to show that: (1) a Town official affirmatively stated that El Marocco would be allowed to continue featuring nude dancers; (2) that such statements were designed to influence the nightclub; and (3) that El Marocco relied on those affirmations to its detriment.[26] The fact that the municipality failed to impose licens-

18. *See id.*
19. *See id.* (citing Thompson v. Town of East Greenwich, 512 A.2d 837 (R.I. 1986)).
20. *See id.* at 1231.
21. *See id.* at 1233.
22. *See id.*
23. *See id.* at 1232.
24. *See id.* (citing Chevron Enters., Inc. v. Scuncio, 268 A.2d 424, 427 (R.I. 1970)).
25. *See id.*
26. *See id.* at 1234.

ing restrictions in the past does not mean that such failure is an affirmation that restrictions will not be imposed in the future.[27] El Marocco is part of a highly regulated industry in which the establishment's license is subject to an annual review. It is not uncommon and El Marocco should have been aware that the new restrictions could be placed on that license at any time.[28]

El Marocco's constitutional plea was also unpersuasive. Nude barroom dancing as a First Amendment activity "falls, at most, only 'marginally' within the 'outer perimeters' of the First Amendment."[29] If the restriction was based on the content of the regulated activity, then there might potentially be a violation of this marginally protected right.[30] However, the ordinances in question, Nos. 965 and 1057, restrict only the time, place and manner in which nudity can be featured. There was no blanket prohibition of nudity in the ordinance.[31] The purpose of the ordinances was to avoid the undesirable secondary effects of featuring nudity at a liquor-serving establishment.[32] Content-neutral restrictions like those in the ordinances at issue are constitutional so long as they are narrowly tailored to serve a substantial government interest and leave open alternative forms of communication.[33] The purpose described above was a substantial government interest and the ordinances were narrowly tailored to achieve that goal by restricting only time, place and manner.[34]

The court continued its examination of the ordinances under the four-part intermediate scrutiny test as applied to symbolic content and concluded that the Town's ordinances were within constitutional limits.[35] First, the restriction was within the Town's constitutional powers because the state delegated its licensing and enforcement authority to municipalities.[36] Evidence of that au-

27. *See id.*
28. *See id.*
29. *Id.* at 1235 (quoting Barnes v. Glen Theatre, Inc., 501 U.S. 560, 566 (1991)).
30. *See id.*
31. *See id.*
32. *See id.*
33. *See id.* at 1235-36 (citing City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 47 (1986)).
34. *See id.* at 1235.
35. *See id.* at 1236 (referring to the four-part test set forth in United States v. O'Brien, 391 U.S. 367 (1968)).
36. *See id.*

thority was found in the Town's authority to place reasonable restrictions on the issuance and maintenance of liquor licenses coupled with the 1997 amendment to section 3-7-7.3 delegating the state's Twenty-first Amendment power to the Towns.[37]

Second, the regulation furthered the substantial government interest of promoting societal order and morality and maintaining health safety and welfare.[38] The narrowly tailored content-neutral regulation of time, place and manner will serve the government interest.[39] El Marocco argued that the Town lacked the necessary evidence to conclude the potential harm in allowing nudity in establishments serving alcohol.[40] The court found that the Town's reliance on the experience of other Towns and cities was established to determine the possible detrimental effects.[41]

Third, the Town's intent to promote societal order and morality was unrelated to the suppression of freedom of expression.[42] The ordinances did not prohibit nudity and nude dancing altogether, rather, they merely prohibited such dancing in commercial settings where alcohol is being served.[43] Finally, the free speech rights implicated were outweighed by the Town's legitimate interest in the safety and welfare of its citizens.[44] The restriction was sufficiently limited to achieving this end.[45]

CONCLUSION

In *El Marocco Club, Inc. v. Richardson*, the Rhode Island Supreme Court emphasized the autonomy of the state's municipalities in the policies surrounding the issuance and maintenance of liquor licenses. First, this decision affirms the licensing authority of towns and cities in Rhode Island. Second, this decision allows municipalities to create laws to legislate morality that implicate First Amendment concerns so long as the municipality can formu-

37. *See id.*; R.I. Gen. Laws § 3-7-7.3 (1956) (1998 Reenactment).
38. *See El Marocco*, 746 A.2d at 1236.
39. *See id.*
40. *See id.* at 1237.
41. *See id.* at 1237-38.
42. *See id.* at 1238.
43. *See id.*
44. *See id.*
45. *See id.*

late a purpose unrelated to the prohibition of the activity itself and the restriction is not too sweeping.

Dena M. Castricone

Constitutional Law. *Global Waste Recycling, Inc. v. Mallette*, 762 A.2d 1208 (R.I. 2000). A neighbor's statements made to a newspaper reporter about a facility that recycles construction and demolition debris were found to be immune from liability as provided in the anti-SLAPP statute. The statements were not objectively baseless and therefore, were not a sham outside the immunity provided by the statute. The term "issues of public concern" used in the statute is not overly broad or ambiguous, and does not violate due process.

FACTS AND TRAVEL

Plaintiff-Appellant Global Waste Recycling, Inc. (Global) had been operating an unlicensed construction and demolition debris recycling facility since June 1995.[1] The facility, located on a residentially-zoned street in the town of Coventry, was operating under a Department of Environmental Management (DEM) conditional permit that required Global to comply with an operating plan set forth under a settlement agreement with DEM.[2] On December 1996, Global was notified by DEM that violations of the operation plan were observed, including violations concerning a large amount of processed construction and demolition material being left on site rather than processed and recycled as agreed.[3] The defendant-appellees Henry and Marcia Mallette, Jr. (Mallettes) had also observed the expanding construction and demolition material stockpiles on the Global site since their residence adjoins it.[4] The Mallettes were concerned about the possibility of contamination of their well water, airborne pollutants from the composted materials left on site and of the fire hazard created by the stockpiled debris.[5] Because of such concerns, the Mallettes and forty-two other Colvintown Road residents filed a petition with the Cov-

1. *See* Global Waste Recycling, Inc. v. Mallette, 762 A.2d 1208, 1209 (R.I. 2000).

2. The prior operators of the Colvintown Road facility, Bettez, had been ordered by a final DEM agency decision to cease receiving materials, to dispose of materials on site, and to pay an administrative remedy to DEM after notices of violation and a hearing was held on the improper operations of its unlicensed landfill. Global intervened in Bettez's administrative appeal with the interest of operating on the Bettez property site, and negotiated a settlement with DEM as evidenced by a consent judgment. *See id.*

3. *See Global Waste*, 762 A.2d at 1209.

4. *See id.*

5. *See id.*

entry Town Council seeking relief from further expansion of those conditions at Global's facility.[6]

Just as the Colvintown Road residents had feared, a fire broke out on Global's site in July 1997.[7] By the Coventry fire chief's and police's accounts, the fire lasted two and a half hours, created heavy, dark smoke over the area and required twelve additional fire departments to respond.[8] During the fire, a news reporter from the local Kent County Daily Times interviewed several onlooking local residents.[9] Henry Mallette, Jr. was interviewed and was reported to have said, "[w]ho knows what they're burning over there. They say its mulch, but I know what it is. It's lead and asbestos and every other thing."[10] His wife, Marcia Mallette, spoke with reporters eight days later for a follow-up story on Global's operation and the ongoing neighborhood concerns.[11] Her comment that "[o]ld homes are taken in there and piled up, they just sit there. I don't think any recycling is going on" was reported in the Kent County Daily Times in August, 1997.[12] Three days later, Global initiated a civil action against the Mallettes for defamation, claiming that its business and its reputation had been destroyed by the publication of the Mallette's statements and seeking both economic and punitive damages.[13] Four months later, a superior court hearing justice granted summary judgment in favor of the Mallettes.[14] The justice found that Global's action constituted an attempt by Global to silence legitimate statements on a matter of public concern.[15] Consequently, the civil action was barred by

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6. *See id.*

7. *See id.* at 1210.

8. *See id.*

9. *See id.*

10. *Id.* In an affidavit, Mallette said he was misquoted and that what he told the reporter was: "God knows what's burning. There's lead and asbestos and who knows what else in those piles." *Id.* at n.1.

11. *See id.* at 1210.

12. *Id.* The supreme court noted that the Mallettes had previously received a copy of DEM's letter to Global advising Global that the inspector observed large amounts of construction and demolition material not leaving the site. The letter warned that failure to reuse this material would be considered by DEM to constitute the unpermitted disposal of solid waste. This seemingly provided some basis for the Mallettes' statements. *See id.* at n.2.

13. *See id.*

14. *See id.*

15. *See id.*

virtue of the provisions of the anti-SLAPP statute.[16] A final judgment in the case granted summary judgment and counsel fees against Global.[17] Global's present appeal followed twelve days later.[18]

The anti-SLAPP statute was determined to be constitutional in the 1996 Rhode Island Supreme Court decision of *Hometown Properties, Inc. v. Fleming*.[19] That court found that the statute was intended to provide conditional immunity to any person exercising his or her right of petition or free speech under the United States or Rhode Island Constitution concerning matters of public concern.[20] This conditional immunity would render the speaker immune from any civil claims for statements, or petitions, that were not sham by virtue of being objectively or subjectively baseless.[21] Relying on section 9-33-2 of the anti-SLAPP statute, the superior court justice found the Mallettes' statements neither objectively sham nor actionable;[22] she found the statements were afforded immunity protection.[23] This conclusion was based on her determination that the comments were made on an issue that is clearly one of public concern.[24] Not only was the operation of a 94-acre recycling plant a matter of public concern, but so was the issue of recycling, which had been the subject of both DEM proceedings and a local Town Council petition.[25] Additionally, the superior court justice relied on her belief that the Mallettes' remarks were typical of those made regularly by citizens, taxpayers,

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16. *See id.* at 1211-12.

17. *See Global Waste*, 762 A.2d at 1210.

18. *See id.*

19. *See* Hometown Props., Inc. v. Fleming, 680 A.2d 56 (R.I. 1996).

20. *See Global Waste*, 762 A.2d at 1211. The court describes how the anti-SLAPP statute was intended to emulate the federal Noerr-Pennington doctrine. *See id.* at 1211 n.3.

21. *See id.* The definition of a sham statement or petition can be found in section 9-33-2(a) of the anti-SLAPP statute. This section allows a finding of an objectively baseless statement when no reasonable person exercising the right of speech could realistically expect success in procuring government action, result, or outcome. A statement may be determined as subjectively baseless if the speaker's intention was to use the governmental process itself for the statement's own direct effects. However, use of outcome or result of the governmental process is not to be construed as using the process for its own "direct effects." *See id.*

22. *See id.*

23. *See id.*

24. *See id.*

25. *See id.*

neighbors and residents of a community wishing to encourage governmental action or resolution of concerns, that newspapers are a typical medium used for this purpose, and that the Mallettes could realistically have expected some success by utilizing this method.[26] Also, the Mallettes were reasonably relying on their own personal observations and the information obtained from the DEM when making the statements to the newspaper reporter.[27]

On appeal, Global challenged the grant of summary judgment in favor of the Mallettes.[28] Global asserted three contentions to support this position.[29] In the first, Global asserted that the anti-SLAPP policy was not intended to bar claims for tortious actions brought by a litigant having "suffered actual economic injuries from baseless attacks upon [its] business reputation."[30] Second, the Mallette statements were not made at a "judicial, administrative or legislative proceeding."[31] Lastly, the term "issues of public concern" found in the anti-SLAPP statute is void as being unconstitutionally vague.[32]

ANALYSIS AND HOLDING

The Rhode Island Supreme Court reviewed the grant of the motion for summary judgment on a de novo basis.[33] Following that review, the court determined that the hearing justice did not err and that summary judgment was appropriately granted in favor of the Mallettes as a matter of law.[34] The court found that Global had misstated both the material facts and the provisions of section 9-33-2(a) when drafting its appellate issues, and that all three issues were without merit.[35]

Addressing issue one, the court determined that Global's contention, that the anti-SLAPP statute was never intended to bar a civil action by one suffering economic injuries from baseless at-

26. *See id.*
27. *See id.* at 1212.
28. *See id.*
29. *See id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *See* Macera Brothers of Cranston, Inc. v. Gelfuso & Lachut, Inc., 740 A.2d 1262, 1264 (R.I. 1999).
34. *See id.*
35. *See id.*

tacks upon business reputation, would only have merit if the facts in this case warranted an inference that the statements were baseless or sham when made.[36] The court came to the same conclusion as the hearing justice, that the statements were not objectively baseless and not a sham.[37] The supreme court agreed that consequently, Global's suit was barred by the express immunity provisions of section 9-33-2(a).[38] Global's first appellate assertion of error was rejected as meritless.[39]

The supreme court found the second contention to be novel and meritless.[40] The Legislature's intention for enacting the anti-SLAPP statute was not only to allow "full participation by persons and organizations and robust discussion of issues of public concern before the legislative, judicial, and administrative bodies," but also "in other public fora."[41] Section 9-33-1 made clear the Legislature's disfavor of lawsuits brought in order to obstruct the valid exercise of freedom of speech by persons making public statements regarding issues of public concern.[42] The court also noted that the Legislature deliberately amended section 9-33-2 to provide explicit immunity to those making statements not objectively or subjectively baseless in a discussion of public concern.[43] Global's contention was a misread and a misinterpretation of the purpose and policy behind the anti-SLAPP statute. As it had in Global's first assertion, the supreme court reaffirmed the hearing justice's finding that the Mallette's statements were not objectively baseless and that the Mallettes were protected from Global's alleged defamation claims under the immunity granted in the anti-SLAPP statute.[44] The court noted that Global, rather than the Mallettes, was potentially the more culpable party, as Global had not yet removed the stockpiles at issue, and could be subject to an action for private nuisance.[45]

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36. *See id.* at 1213.
37. *See id.*
38. *See id.*
39. *See id.*
40. *See id.*
41. *Id.* (citing *Hometown*, 680 A.2d at 56).
42. *See Global Waste*, 762 A.2d at 1213.
43. *See id.*
44. *See id.*
45. *See id.*

Lastly, the court addressed the constitutionality of the term "issues of public concern" contained in the anti-SLAPP statute. It held that such terminology is not overly broad, ambiguous or without concrete meaning as Global contented.[46] The court cited a comprehensive and distinguished list of statutory and case law to support the reality that such phrasing and wording enjoys a long, unchallenged career in both state and civil defamation and tortious conduct actions.[47] Additionally, Global had the obligation of serving the Attorney General with a copy of the proceedings within a time frame so that the Attorney General could intervene.[48] This is required whenever the constitutionality of a state statute is challenged,[49] and Global failed to fulfill this requirement.[50] Therefore, the court would be hesitant to determine the constitutionality of a state statute in any given case, including this case, without first affording the Attorney General the opportunity to intervene and be heard.[51] This would have hindered Global's appeal even if the issue were meritorious.

In addition to denying and dismissing Global's appeal and affirming the summary judgment and trial counsel fees in favor of the Mallettes, the court directed the Mallettes' appellate counsel to submit a request for counsel fees.[52] Upon consideration of the request and objection, the court would thereby award an appropriate fee to the Mallettes' counsel.[53]

CONCLUSION

In *Global Waste Recycling, Inc. v. Mallette*, the Rhode Island Supreme Court affirmed the grant of a motion for summary judgment in favor of two Coventry residents sued in an action for defamation. Statements made to and later printed by a local newspaper reporter, by neighbors concerned about the violations and hazards of a nearby recycling facility, were held immune from liability as provided by the anti-SLAPP statute. The statements

46. *See id.* at 1214.
47. *See id.*
48. *See id.*
49. *See id.* Authority for this requirement can be found in R.I. Super. R. Civ. P. 24(d) and R.I. Gen. Laws § 9-30-11 (1956) (1997 Reenactment).
50. *See Global Waste*, 762 A.2d at 1214.
51. *See id.*
52. *See id.*
53. *See id.*

were not objectively baseless, this finding being one conditional obstacle to overcome in order to receive protection from the statute. Additionally, the statements pertained to issues of public concern, another condition of the statute. The term "issues of public concern," is not overly broad or ambiguous, and therefore not unconstitutional. Any determination of the constitutionality of a state statute should be undertaken only when the Attorney General has been afforded the opportunity to intervene and be heard.

Christy Hetherington