

James N. Thivierge
Home Address: 106 Friend Street,
Amesbury, MASSACHUSETTS 01913
PRO SE
Attorney for Plaintiff - Appellant

2011 JUL -5 P 3: 21

FILED IN CLERK'S OFFICE
DEPT. OF APPEALS
FOR THE FIRST CIRCUIT

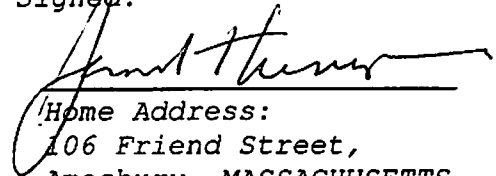
UNITED STATES COURT OF APPEALS

EN BANK PANEL

FOR THE FIRST CIRCUIT OF MASSACHUSETTS

JAMES N. THIVIERGE,)	Case No.: No. 10-1389
)	
PRO SE)	ON APPEAL FROM A JUDGMENT OF THE
)	
PLAINTIFF-APPELLANT,)	UNITED STATES COURT OF APPEALS For
)	
)	the First Circuit OF MASSACHUSETTS
)	
vs.)	
)	
Town of Amesbury et al.,)	
)	
<u>Defendant -Appellees</u>)	

Dated this 5th day of July 5,
2011 Signed:



Home Address:
106 Friend Street,
Amesbury, MASSACHUSETTS
01913

JAMES N. THIVIERGE,
Citizen of the
Commonwealth of
Massachusetts, and the
United States of
America

PETITIONER'S PLAINTIFF-APPELLANTS, JAMES N. THIVIERGE,
En Banc Panel Brief

Corporate Disclosure Statement

JAMES N. THIVIERGE
PLAINTIFF - APPELLANT - PRO SE
106 FRIEND STREET,
AMESBURY, MASSACHUSETTS 01913

978-517-7163

TABLE OF CONTENTS - page 2

Title Page 1; Corporate disclosure Statement Page 2
Table of Contents - page 2
Table of Authorities: Cases-Page 2, Statutes-Page 3,
Regulations- Page 3, Constitutional Issues- Page 4 & 5,
Other Authorities - Page 5 & 6
Statement and Reasons Regarding Argument - page 6
Jurisdiction - page 6
Statement of the Issues - page 6
Voting Rights - page 16
Municipal Liability - page 26
Conclusion - page 28
Certificate of Compliance - page 29
Certificate of Service - page
Addenda:
Exhibits

TABLE OF AUTHORITIES: CASES

Original brief filed with the Newburyport district court on December 24,2007;
Brief filed with the Newburyport superior court on December 26,2007 request for a writ of Mandamus;
AINS, INC V. US, CL. 2002, 56 Fed.Cl 522
Allen V. State Bd. of Elections, USVA 1969, 89 ST.CT 817, 393 US 544, page 18
[Bennett v. Norban, 396 PA 94, 1515 A2d 476]..page 19
[City of Canton v. Harris (S.Ct 1989)]... page 27 & 28
City of Cambridge v. Commissioner of Public Welfare, 357 Mass. 183, 257 N.E. 2nd 782(1970).. page 27
Chisom v. Poemer, US LA 1991, 111 S.CT 2354, 501 us 380, page 18

City of St.Louis V. Praprotnik (S.Ct.1968) page 28
Commonwealth v. Hudson, 315 Mass. 335, 52 N.E. 2nd 566 (1943).. page 27

[Eubanks v. smith 292 SC 57, 354 se2d 898]..page 23
[GRISWOLD ET AL. v. CONNECTICUT - 381 U.S. 479; 85 S. Ct. 1678; 14 L. Ed. 2d 510]..page 26
Graham v. Henderson 89 F3rd 75, page 21
GRISWOLD ET AL. v. CONNECTICUT - 381 U.S. 479; 85 S. Ct. 1678;
14 L. Ed. 2d 510;
Fuentes v. Shevin(S.Ct1972)..page 17

Hadnott v. Amos, US ALA 1969, 89 S.Ct 1101, 395 US 358, page 16

[Meyer v. Neb. (S.Ct1923)]..page 16

.[Monnell v. Department of Social Services (S.Ct.1978)]..page 28

[Pembaur v. Cincinnati (S.Ct 1986)]..page 28

[Reynolds v. Sims 377 US 533, 554 S.Ct 1362]..page 19

[Roybal v. Albuquerque, CV No. 85-1616 HB, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO, 653 F. Supp. 102; 1986]. ..page 25

[Schlager v. Beard, No. 10-2184, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 2010 U.S]..page 25

Young v. Secretary of health and Human Services - 957 F.2nd 386 ..page 22

Table of Authorities: Statutes

P.L. 88 - 352, **42 USC 1983, The Civil Rights Act of 1964**

P.L. 102 - 166, 42 USC 1973, 1973a, 1973c, The Voting Rights Act of 1965 - Public Law Voting rights Act of 1965 -

42 USC S. 3001 P.L. 89 - 73 Older Americans Act of 1965

P.L. 111 - 117 fy 2011 appropriation Labor, ... Education

P.L. 111 - 5 2009 (AMERICAN RECOVERY AND REINVESTMENT ACT):

Help America to Vote Act of 2002 (HAVE)

5 USC section 706 Administrative Procedures Act, Scope of Review, ...interpret constitutional statutory provisions: (2b) contrary to constitutional right, power, privilege or immunity;

P.L. 111-117 One of the twelve annual appropriation's laws by Congress; Older Americans Act of 1965, 42 USCA SECTION 2001 ET Seq;

Veterans Preference act, 5 USCA Section 7512 et sec;

Age Discrimination act of 1998, 29 USCA SECTIONS 621 - 626;

ALL Writs Acts, 28 USCA Section 1651;

Table of Authorities: Regulations

P.L. 93 - 383 Housing and Community Development of 1974 acts - the authorization

24 CFR 570.486 - LOCAL GOVERNMENT REQUIREMENTS

(2) ENSURE THAT CITIZENS WILL BE GIVEN REASONABLE AND TIMELY ACCESS TO LOCAL MEETINGS, INFORMATION, AND RECORDS RELATING TO THE UNITS OF GOVERNMENTS PROPOSED AND ACTUAL USE OF CDBG FUNDS.

24 CFR 570.508, CDBG, subpart j, grant administration public access to records;

24 CFR 85.442(f) recipients shall provide citizens with reasonable access to records regarding the past use of CDBG funds consistent with applicable state and local laws regarding privacy and obligations of confidentiality;

Massachusetts General Court: Acts and Resolves: chapter ??? of the acts of 2010, the general appropriations act for the fiscal year 2011, THE ANNUAL BUDGET for the Commonwealth of Massachusetts;

Executive Office of Housing and Economic Development
Housing and Community Development

Accounts funding contract - 7004 - 3037: Federal Grant spending

706 CMR 28.00 - 50.00 Housing and community Development

Assurances of Compliance

Table of Authorities: CONSTITUTIONAL ISSUES

**Declaration of Independence (1776) - Access the Public Record
" and distant from the depository of public records."**

**The Constitution of Massachusetts (1780) Preamble, Part the First
the Declaration of Rights of the Inhabitants, and Article 89 of
the amendments to the Massachusetts Constitution**

United States Constitution (1787): *The Constitutional Issues -*

Article 1, section 8, "to make all laws necessary and proper for carrying into execution the foregoing powers;" section 9 clause 8; "no money shall be drawn from the Treasury but in consequence of appropriations made by law;

Article 2 "the duty that laws are faithfully executed;

Article 3 "the judiciary the right to determine cases and controversies arising under those laws;

Article 4 section 1 "records"; section 2 "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states"

Article 5, "amendments to this constitution...shall be valid to all intents and purposes, as part of this constitution , when ratified

The bill of rights ratified by the several states on December 15, 1791. The first 10 amendments to the Constitution proposed to the legislatures of the several states by the First Congress September 25, 1789, 1 STAT 97.

Article 6 "this constitution and all laws made pursuance thereof", "shall be supreme law of the land" .

"amendments to this constitution: ":" Amendment 1, speech, assembly, the press, and the petition; Amendment 5, due process of law; Amendment 7, Trial by Jury; Amendment 9, unenumerated rights; amendment 14, due process under the law, equal protection under the law; amendment 15, voting rights; Amendment 19,; Amendment 24,; and Amendment 26.

Massachusetts Constitution: the Declaration of Rights for the Inhabitants, Articles On the state level I embrace the Constitutional intent and purpose of the Preamble that government exist for the "safety and tranquility" of their natural rights." And the "Declaration of right" for all Inhabitants," article I and successor CVI, Articles 4 and sel-government, 5 and Accountability, 6 and no peculiar privileges, 7 and government for

the common good, 8 and to prevent those who vested with authority from becoming oppressors, 11 and every subject... Ought to find a certain remedy, 12 and no person shall be held to answer for any crimes or offenses until the same is fully and plainly, substantially and formally, described to him..., 16 amended by article 77 the right of free speech shall not be abridged, 18 and good administration, 19 and the right to assemble, 21 and freedom of deliberation and debate; the Amendments, Article CVI (106) amends article 1 part the first equality not denied or abridged on basis of sex race color creed or national origin Article 107 section The budget; Article LXIII, section 3. The General Appropriations Bill.: Article LXXXIX, the Home rule Amendment; Article CVI, annuls Article 1 of the Declaration of Rights

Amesbury Home rule charter 1996, section 1-4, 2-2, 2-7a, budget policy, 5-2, 5-4 financial planning, 8-8. all three sections section cited in the December 24 2007 brief to the Newburyport district court, then the next week to the Newburyport Superior Court

Tale of Authorities: OTHER AUTHORITIES

The Writings of Madison: Letter from Madison to Jefferson October 17, 1788; Speech in Congress proposing Constitutional amendments June 8, 1789 Remarks in Congress on proposed Constitutional amendments August 15, 1789.

The Federalist Papers, written by Madison, Jay, and Hamilton (1788) #45 written by Madison "the public good", #69 & #73 - Federalist 69 and 73, AND OTHERS: Number 69, _Written by Hamilton - Subject the propose executive But that it would be precisely the same with that of the governor of Massachusetts, whose constitution, as to this article, seems to have been the original from which the convention have copies; Number 73, Written by Hamilton, _The chief magistrate and the judiciary - I have in another place remarked that in the convention, in the formation of this part of their plan, has departed form the model of the constitution of this state in favor of that of Massachusetts; Federalist # 45 "the public good."

ANNUAL REPORT OF THE TOWN OF AMESBURY JULY 1, 2007 - JUNE 30, 2008 presidential Primary election Warrant, page 28; page 30 & 31 totals; page 54 community block grant resolution supported by the municipal council grant application; page 46 acceptance of a Federal fire Act Grant; 2008 - 011 appropriation of 22500000 to upgrade water treatment plant plus the next item in the annual report dealing with water treatment both deal with federal funds ARRA pl 111-5, Help build America Bonds;

ANNUAL REPORT OF THE TOWN OF AMESBURY JULY 1, 2008 - JUNE 30, 2009: item 2008-087 and 2008-088 acceptances of grants from the West Dictionary and Thesaurus Webster's Third Dictionary Black's Legal Dictionary, Ninth Edition, West Publishing, St. Paul Minnesota

Federal Rules of Procedure:

Federal Rules of Evidence: Rule 803, 901, 902.

Petition of James N. Thivierge to the General Court of the commonwealth of Massachusetts under Article XIX of the Declaration of Rights via Senator Baddour of Methuen and Representative Costello of Newburyport to amend Article CVI of the Amendments to add "or age. Under "Equality under the law..."

STATEMENT REGARDING ANY FURTHER ARGUMENT TO PLEAD MY CASE

The Petitioner, the Plaintiff - Appellant, James N. Thivierge requests oral argument or any other opportunity to further my argument to plead my case before the United States court of appeals en banc panel for following reasons: to preserve my liberties and civil rights under the under the United States Constitution and those enumerated and un-enumerated rights granted by other constitutional sources and those of 'A Constitution or form of Government for the Commonwealth of Massachusetts, especially its Preamble, and Part the First, A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts Article CVI, LXXXIX et al., and those provided a resident of Amesbury under the Amesbury Home Rule Charter as a resident of the Municipal Corporation, a citizen of the Commonwealth of Massachusetts, and these United States of America; and as a Veteran of the United States Navy with an Honorable Discharge with Good Conduct, and National Defense Medal. A lifelong public servant for the department of corporation's and taxation, now department of revenue, served as an elected union steward, implemented the supreme judicial court's decision the Sudbury Decision and 100 percent equalized valuation worked with 351 cities and towns, for nearly five years, as a director of MIS Services, a manager for the division of banks, where I served for over twenty-two years and automated the statement of condition for all state chartered banks initially 900 with assets today easily over 250 billion, and may other activities such as credit cards, interest rates carried in the Sunday papers for over ten years, CRA and HUMDA, property tax escrow, one of our last mainframe structured programs establish the bounds of the non financial banks industry, advice and opinions data base for the legal section, training data base capturing all training by division personnel, as well as leading and learning all of the personnel plus platforms necessary to process these applications, all toll for over twenty seven years

in the service of the Commonwealth of Massachusetts with statewide recognition from the division of banks and the commonwealth with a "Pride in Performance" award in 1999 for a consumer assistance database, working many federal and state agencies, the statutory officers of banks and credit unions, associations, plus licensees, and taking over 50 to 60 personnel administration courses relevant budget, writing, thinking critical, operating systems, management some thru federal reserve and other federal agencies, plus in house learning activities. And during the evening since 1973, and my return from the United States Navy after two years in Europe as a computer technician who did repair reports for the sixth fleet, and learning multiple languages and traveling extensive throughout what is now the Euro zone plus visiting its capitals and museums meeting its people. I serve for over two decades in the town meeting, the committee on minutes, and its finance committee (carrying over a hundred issues as chairperson) and the by-law committees for one, seven and nine years respectfully, five three year terms on an elected board of selectmen for 120 million municipal corporation till 1998, truncated by the change in government which begins either on or one day after my birthday august 30 in 1996, plus nine years on weekends representing the community on the Essex county advisory board as a policy member towards the end of my term much before its demise, and one term on the school committee, one term on the school committee, as president of the county selectmen at one time, and the statewide president of the Franco American clubs, naturalizing citizens, as a Master of Arts in Public administration who studied to be a town manager, and has taught college level government, "State and Local Government, plus contracted for American Government, and Analysis and Design of Relational Database plus much more, I assisted people in the naturalization process, with my entity I have develop many ways to assist advocacy groups with software, and presentations etc. The Petitioner, the Plaintiff-Appellant, James N. Thivierge will take every opportunity provided to buttress my points and plead my cases versus the defendants the town of Amesbury et al. within the United States Court of Appeals, provided, they feel it needs further information toward explanation and or clarification, it may request.

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

This is an appeal from a judgment entered by the United States Court of Appeals. The judgment entered on June 8, 2011. The Plaintiff filed a notice of appeal to the en banc panel on July 5, 2011. The Court has jurisdiction with respect to claims under the United States Constitution and 28 USC SECTION 1983.

Petitioner's En Banc Petition, James N. Thivierge:

"May it please your Honors?"

what they said in May of 1779 in preventing a sitting court "until there is a constitution or form of government with a bill of rights explicitly approved of and firmly established by a majority of freemen of this state." (1) The original Massachusetts Constitution declared ratified June 16, 1780.

In Federalist #45 (2), Madison talks about being "too early for politicians to presume on forgetting that the public good, the real welfare of the great body of the people, is the supreme object to be pursued."

What James Madison says "bill of rights will be a good ground for an appeal to the sense of the community"... "and as a check on the misused powers of government... especially when the precaution can do no injury." He introduces a "bill of rights" to the First Congress.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW
From the Petitioner, Plaintiff-Appellant
James N. Thivierge

Freedom of Speech and Assembly of the Constitution for the Commonwealth of Massachusetts: First and Fourteenth Amendments - amendment and Massachusetts Constitution, Part the First, a declaration of rights for all its inhabitants- and abridging the right to vote Abridge the right to vote, fourteenth and fifteenth amendments to the united states constitution.

For the petitioner, the Plaintiff-Appellant, James N. Thivierge, the judgment and to enter the "town hall" "by request" is at issue for two substantial reasons: freedom of speech article 16 and assembly and the right of petition, article 19; both the 1st Amendment of the Bill of Rights, and the Fourteenth Amendment, the Civil Rights Act of 1964; and secondly, "abridging the right to vote" under the Fourteenth and Fifteenth Amendments, the Voting Rights Act of 1965.

What remains to the Plaintiff-Appellant is an explanation of 300 to 400 seconds to the United States Court of Appeals en banc panel for library issue decided. In every instance leading to this point in time the Plaintiff-Appellant has responded immediately to each. What keeps me from the town hall is a transaction that all toll may have been 300 to 400 seconds at best, and I thought nothing of it at the time and went to my computer to enter the tax rate recapitulation sheet requested of

1 The Constitution of the Commonwealth of Massachusetts, published by William Francis Galvin, Secretary of the commonwealth, May 2009, page viii

2 The Federalist Papers, No. 45

the town assessor because of a revenue deficit.

I maintain an dba entity ThinkTwoThousandPlus thru the clerk's office that caters to ways of saving monies for municipal corporations and my birth town is my incubator. Given that the template for every city and town is the department of revenue tax rate recapitulation sheet, the department of corporations and taxation when I worked there. Incidentally, my first assignment was to convert nearly a hundred tax and excise RPG (report generator programs) to COBOL. I entered a copy of the tax rate recapitulation sheet entered into evidence at the trial exhibit 2, on 2/2/2010. so, as a former chairperson of the local finance committee, and the board of selectmen, and principal of think2k+, I am concerned for the community but also for the employees, and the general condition and processes of government. It is business.

Although not cited in the original briefs of December 24 and 26 of 2007 in the Newburyport District and Superior Court under the Declaration of Rights under article 18 certain fundamental principles such as "frugality" to name one are... necessary to preserve the advantages of liberty" (3).

Under the present arrangement with the June 8, 2011 judgment, the Plaintiff-Appellant, James N. Thivierge, cannot without a request enter the town hall which he objects and finds untenable for the following reasons: not even to file a petition, to read public documents like audits required by charter to be located either in the clerk's office or the library sometimes not available within the latter, to file a nomination paper as I have during time frame for the attorney general of the commonwealth, to meet with a representative or a senator of the general court to give instruction or even the governor for that matter, to get a license until recently documented by the annual report, or to read historical document that cannot leave the building or not extant at the library, get a copy of the municipal council rules or ordinances, for a public event, or even pick up nomination papers to run for public office deadline July 29 2011, or to VOTE, pick up an upcoming municipal council agenda, to read an annual audit or an annual report or any other historical data necessary for evidence in a trial, or election lists and results during the day, this arrangement is not palatable to this citizen of the commonwealth and of these United States, and I believe violates my civil rights, and deprives and constrains me of my liberty, by actions that were highly subjective, maybe partisan, uniformed, selfish to the detriment to a person who only has the best interests of the community, and who knows what the town clerk did the night before, you know what I mean. Or even,

3 The Constitution of the Commonwealth of Massachusetts, Part the First, A Declaration of Rights of the Inhabitants of the commonwealth of Massachusetts, Article XVIII, "frugality," "to preserve the advantages of liberty"

conduct my business ThinkTwohousandPlus without seeking a request "no way." I just won't go in ever and submit to this partisan coalition tactic. It's the politics of excluding someone who has a little too much background, and challenges or comments under the a charter that states "shall provide for public comment." I want to pick up nomination papers by July 29, 2011 and gather signatures in order to place my name of the ballot for he primary in September 2011.

A country establish on speech, assembly, the public record, liberty, the unanswered petitions, no representation and taxation, all of these are the embodiment of the is municipal council-mayor form not because of the players apart from the obvious politicians, but there no game time preparation, it is basically walk-on players with good education and intentions trying to walk-off policy. A coalition run government with the public employee good so that the mayor and councilors, the right ones, get elected so everyone in the coalition "get's there's" and the public gets the bill. A newly defined public good, s, when someone challenges a revenue deficit, things start to happen to those opposed, the politics of exclusion. Politics is expensive, just look a the billion and a half deficit statewide, and the trillions nationwide. With the mayor-council government five straight deficits occur, followed by equity infused values, and heightened total expense, more taxation with less legislative representation from 108 to 9, means less questions, although better educated, less aware and more susceptible. Therefore, my concern over what I see as a government not in the public good, diverting from the principles of the founders.

The Petitioner, the Plaintiff-Appellant, James N. Thivierge, has broken no law, committed no crime, the Honorable Judge Patti B. Saris in her ruling puts the plaintiff-Appellant back in the library. This is the antecedent activity to the executive's December 19, 2007 letter. And, I believe substantiates that my rights mentioned in the opening brief have been violated by the uniformed actions in the library, but also the actions taken by the town, the town of Amesbury under the United States Constitution and the first Amendment, and at the time with limited resources the Civil Rights Act of 1964 which essentially invokes the Fourteenth Amendment emanating from the transactions in the town hall.

The judgment continues or reinstates an "abridgement of the petitioner plaintiff-appellant right to vote." To ask someone during an election, can I go in and vote, before you know, they'll say, say hey, by the way, vote for so and so. That's democracy, walking backwards. I'll never walk in town hall unless it's to a posted public meeting, because, I am not asking the corner office anything. On election day, I will walk in and vote as I did on the Presidential Preference Primary, February 5, 2008, when the "no trespass order" was in effect. The town of

Amesbury "abridged my right to vote" when that "no trespass letter" was still in force; and they, the state legislature advertised, it nationally for over two months after they change the presidential primary date to February 5, 2008 from a date in March.

meeting and on election day Also, it compromises my access to the public record because they can take the heat because I am an active and informed public citizen.

In addition, within the 12.24.07 brief the Newburyport district court as well as, its successor the 12.26.2007 brief before the Newburyport superior court requesting a Writ of Mandamus, the petitioner also notes as one of his sources the Massachusetts Constitution's Declaration of Rights for all Inhabitants, the Preamble, article 1 and its successor CVI, articles 4 and self government, article 5 and accountability, article six and no peculiar privilege, article 7 and government for the common good, and article 8 to prevent those who are vested with authority from becoming oppressors, article 11 every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries and wrongs which he may receive in his person, property, and character, article 12 and no subject ought to answer for any crimes or offenses until the same is fully and plainly, substantially and formally describes to him, article 18 and good administration, article 19 and the right to assemble, article 21 freedom of deliberation and debate.

The petitioner, the Plaintiff-Appellant James N. Thivierge, in addition to the article noted in short, makes note of the following additions contain within and certain already mentioned;

In addition, the petitioner, the Plaintiff-Appellant James N. Thivierge cites the Amesbury Home rule charter of 1996(AHRC)and that the executive has abused his authority under section 2-2, and not using good judgment and maybe susceptible to 8-8 of the same charter.

It is possible that neither the executive nor the town clerk had ever read the Massachusetts Constitution's and Declaration of Rights for all its Inhabitants prior to the actions taken by the town since the inception of my entity in the early part of the millennium because what I react to in briefs of 12.24 and 26 of 2007 are the distillation and culmination of many years of "oppression" of sorts by this insecure, ill-prepared administration. Especially in customer relations, do not forget I am citizen, a customer, the purpose for which government exists. Because I was and have a candidate and critic, they have no tight to treat be any different and they did, and they became essentially "oppressors," those vested with authority. What James Madison says "bill of rights will be a good ground for an appeal to the sense of the community"...and as a check on the

misused powers of government...especially when the precaution can do no injury."

I worked in Boston for twenty seven years and nothing this ever happened. It has been non-stop almost since I left July 26 2001.

I have known every town clerk since the fifties. In fact, all town clerks prior lived in a very narrow radius from my house, one living at the end of the street. Never, never, have I encountered or experienced such rude behavior by a local town clerk or official, as I did on that day, as life long resident who grew up across the fire station for five years, plus as someone who has been a public servant all his life, especially, as a finance committee chairperson and chairperson of the board of selectmen. I believe that anyone in my old agency would be severely reprimanded for that action or any similar action dealing with the public for which it exists.

To quote the Massachusetts' Constitution Preamble," the end of the institution, maintenance and administration of government, is to secure the existence of the body-politic. I simply wanted to ask the town clerk about the footer of an email, the first email I had ever received from a local elected official under the new format, mayor-council. In essence, to place into the parlance and context of her purview, the email ignites the municipal council Rule 20(see addenda), and, to me, its first manifestation affecting this individual, in its simplest form. All this surrounds an email footer, and a question about email footer's contents. I am before the United States Appeals Court for the first circuit of Massachusetts before the En Banc panes over an email footer to an email that was send to me by an outgoing municipal councilor, and it reads as follows:

"If business of the town of Amesbury is discussed in any part of this message, it is a public document in compliance with the open meeting law of the Commonwealth of Massachusetts, this email and any files transmitted with it will be forwarded to town clerk Bonnijo Kitchen & placed on file for public inspection. By sending or receiving messages from this address you agree to these terms." The generation date of the email is 12/16/2007.

In the Annual Report of the Town of Amesbury July 1, 2005 - June 30 2006, agenda items 2006-037 M by Lavoie 2nd Lindstrom voted, and 2006-114 M.Chandler 2nd Pineiro Vote 7 yes, 1- Abstain Headley, the Electronic Messaging Policy , under the seal of the town of Amesbury (see addenda)I include materials of the policy and its amendment to Municipal Council ordinance to amend rule 20 of the municipal council rules and procedures.

I show town clerk the email outside the clerk's office, ask the clerk about the emails footer, its contents and she erupts. We

had our exchange never experience like it before but to get back to enter the recap sheet data described supra. A police action over this, most likely what happen the night before because this customer doesn't deserve this guff, consequently for the first since I entered local town affairs, precipitated by the town clerk "f-off."

The problem is the town clerk didn't have the answer became immediately defensive. Like I said I've know them all since the fifties and her behavior uncharacteristic, the letter mis-characterizes th3 whole. Neither the officer Gagnon who was sergeant and gave the letter, to be lieutenant, and now police chief, nor the mayor, nor the then chief Cronin had any first hand knowledge of the incident. Plus, I object to the use of electronic signatures, the executive in this case, might not have been around. I have grave reservations concerning the paramilitary processes at the time. I needed to get home to enter the data from recap sheet on revenue deficits, peeked at the clock, check the time, and left.

I estimate the time of both transactions at the assessors office to pick up the recap sheet and the town clerk six minutes at best less than seven minutes, 300 to 400 sections.

In Brooks v. Nacrelli, the plaintiff alleges intimidation and that the his First Amendment Right of free expression, the privileges and immunities and equal protection of the Fourteenth amendment come into play and that certain activities violate 5 USC 1501. The Defendant-Appellee's, the Town of Amesbury et al., "no trespass order" is a form of intimidation from the local public discourse that keeps the Plaintiff-Appellant from the public record, as well as keeping him from "pulling papers" for mayor. Viewed wrongly by the body politic, can affect participation and ultimately representation its quality and quantity aside from constraining " liberty and the pursuit of happiness" especially for those who have made their interests in government their life's work, like me, who do it with the best interests and intentions of their actions, perhaps with a little chicanery at times, but in the promotion of the public and common good.

The petitioner, plaintiff-appellant, James N. Thivierge, on every occasion reacts almost immediately to each incident 9/17/2007 to the executive and also the 12/24/2007 letter to the same, referring to the mis-characterizations and rejection of all claims made by the town. Both letters are pieces of evidence plaintiff's exhibits 7 and 8 during the trial which the plaintiff immediate reaction to the incidents. Both are a part of the subsequent addenda. (The frustration that this individual experience starting with the endless traffic tickets - additionally he was wrong of his assessment of the library situation having only a general idea of what title VII issues.

I don't think they have read the Massachusetts constitution let alone the declaration of rights. I have because when work for the division of banks and we statutorily submitted our report to the House Clerk, State House, I needed to file with the state depository library, and the secretary of state bookstore, room 116, state house, sold copies of our periodic filings. They have free copies of the state constitution for the public. I read it many years ago when I took the legal basis of public administration in my public administration graduate program.

The procedural due process protections of the Massachusetts and the United States constitutions are the same. For purposes of equal protection the provisions of the Massachusetts Declaration of rights is the same the Fourteenth Amendment to the Federal Constitution. [Dickerson v. Attorney General, 396 Mass 740, 743, 488 N.E.2nd 757, 759 (1986)] Inherent in the state constitution right to life, liberty, and happiness is the right to move freely and peacefully in public without interference [com v. Weston W., 455 Mass. 24, 913 N.E. 2nd 832 (2009)] After the trial I entered the town hall feely and on an occasion to file a nomination paper on behalf of the reelection of the current Attorney General of the Commonwealth the police arrived and ask me to file a statement. No adequate explanation was given to this individual [Cotter v. Boston, 323 F3rd, 160, 168(1st Circuit)].

Article 1 of the Declaration of Rights, as amended by art. 106 of the amendments, established that " all people have certain natural, essential, and unalienable rights," including "the right of enjoying and defending their lives and liberties" and "that of seeking and obtaining their safety and happiness." Inherent in the right to life, liberty and happiness is the right to move freely." Articles 19, 16, Article 10, a fundamental right, inherent in citizens of all free governments, peacefully to dwell within the commonwealth." [US V. Wheeler, 254 US 281, 293 41 S.Ct 133, 65 Led 270]. The plaintiff was deprived due process under the color of state law s the declaration of rights mentioned within the initial 12/26 2007 brief before the Newburyport Superior Court as well as federal law under the Fourteenth Amendment. Having the liberty to be out and about attending public events, and the ability to earn a living and have the things one has at my age. [Mathews v. Aldridge, 42 US 319, 332, 96 S.Ct 893, 901, 47 l.ed2d 18 (1976)

On Voting Rights

The District Court did err when it did not consider the following evidence:

The United States District Court in the Jury Trial did not find or act on within the verdict the question of whether the Plaintiff-Appellant, JAMES N. THIVIERGE, Town of Amesbury et. al. "abridge his right to voting rights" and violate the Voting rights Act of 1965, and the Fifteenth Amendment plus Fourteenth

amendments to the United States Constitution with the "no trespass letter" by establishing prerequisite or a legal servitude as defined by Black's Legal Dictionary. "On Tuesday, the fifth day of February 2008 from 7:00AM TO 8:00pm to cast their votes in the Presidential Primary for the candidates of political parties for the following offices: Presidential Preference for this commonwealth; State Committee Man Senatorial District; State Committee Woman Senatorial District; Ward or Town committee City or Town. Given under the hands this day of 8th day of January, 2008. Municipal Council of Amesbury." An excerpt from the town report, municipal council section on the election warrants for every election from 1976 when I first ran for the town democratic committee.

The Voting Rights Act of 1965 states, 42 USC SECTION 1973, Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; section 1973c, also states abridgement of voting rights.

The Town of Amesbury's via their administrative agent, the mayor, within his written "no trespass letter" states that to gain entrance, one has to seek permission in order to enter town facilities. The mediated agreement between the Plaintiff-Appellant, JAMES N. THIVERGE, does not occur till late summer when the Honorable Judge Saris signs the agreement for the Plaintiff-appellant to regain access till otherwise agree or determined. I might add the current situation where the Plaintiff-Appellant, JANMES N. THIVIERGE, does not have access to town facilities other than the library as per the Judge's ruling from the jury trial. From December 17 2007 till the mediated agreement the Plaintiff-Appellant, does not have access to the town hall where the Presidential Preference Primary is held and also the votes are cast for ward or town committee man ward or precinct. I reside in precinct or district six in the town of Amesbury and have been on the Presidential primary ballot since 1976. In 2008 my name does not appear due to the "no trespass letter" and the prerequisite to request permission. On February 8, 2008, I entered the town hall in the afternoon and cast my presidential preference ballot and wrote my name in for town committeeman. Had there been no restriction or prerequisite as per the "no trespass letter" my name would have been on that ballot as it has since 1976.

Presently, two elections will transpire I will vote under the Judge's ruling which does not allow me into the buildings other than the library as I understand the ruling. The town of Amesbury abridges my privilege, the right to vote, under Fourteenth Amendment, and perhaps the Nineteenth Amendment because I am man, and maybe the twenty-sixth amendment being 64 years old, you can never, can tell? Nonetheless, the "no trespass letter" is a prerequisite that Black's Legal dictionary defines as a legal servitude. I might add that the Plaintiff-Appellant, JAMES N. THIVIERGE, is a resident of the Town of

Amesbury and registered for the privilege of voting. It can serve as notice of intimidation and unless this "no trespass letter" challenged others rights will be abridge in a similar fashion and I have done no wrong plus nearly three years to get to this point. In, Harman v. Forssenius USVA 1965, 85 S.ct 1177, 380 US 528, voting is a fundamental right, any restriction strikes at the heart of representative government.

It was the first time in 32 years my name did not appear on the Presidential Preference Primary ballot since 1976 the 200th anniversary of the Declaration of Independence; and that the presidential preference primary ballot for precinct democratic town committee was tailored for the sitting mayor, municipal council president and committee treasurer or secretary and others members forced to write in their names and the Plaintiff-Appellant, JAMES N, THIVIEREG, abridge from entering the town hall without permission and unable to sign the nomination paper for town democratic member for the presidential preference primary February 8, 2008.

In Hadnott v. Amos, US ALA 1969, 89 S.Ct 1101, 395 US 358, states this amendment guarantees the right of people regardless of their color or political persuasion to cast their votes effectively. Allen V. State Bd. of Elections, USVA 1969, 89 ST.CT 817, 393 US 544, implementing the 15TH Amendment with the voting rights Act of 1965 RIGHTS Act of 1965. it also "prohibits voting qualifications or pre-requisites in a manner resulting in a denial or abridgement of the right to vote." The mayor's "no trespass letter" did so. Chisom v. Poemer, US LA 1991, 111 S.CT 2354, 501 us 380.

Section 2 of the Voting Rights Act of 1965 prohibits any practice or procedure.

42 USC SECTION 1971 PROVIDES THAT "All citizens of the United States who are otherwise qualified by law to vote at any election. It is clear that the Constitution of the United States protects the rights of qualified citizens to vote in state as well as federal elections. [Reynolds v. Sims 377 US 533, 554 S.Ct 1362]

My name did not appear on the Presidential Preference Primary ballot for the first time since 1976 the 200th anniversary of the Declaration of Independence; and that the presidential preference primary ballot for precinct democratic town committee was tailored for the sitting mayor, municipal council president and committee treasurer or secretary and others members forced to write in their names and the Plaintiff-Appellant, JAMES N, THIVIEREG, abridge from entering the town hall without permission and unable to sign the nomination paper for town democratic member for the presidential preference primary February 8, 2008. In Hadnott v. Amos, US ALA 1969, 89 S.Ct 1101, 395 US 358, states this amendment guarantees the right of people regardless of their color or political persuasion to cast their votes effectively.

Allen V. State Bd. of Elections, USVA 1969, 89 ST.CT 817, 393 US 544, implementing the 15TH Amendment with the voting rights Act of 1965 RIGHTS Act of 1965. it also "prohibits voting qualifications or pre-requisites in a manner resulting in a denial or abridgement of the right to vote." The mayor's "no trespass letter" did so.
Chisom v. Poemer, US LA 1991, 111 S.CT 2354, 501 us 380.

Section 2 of the Voting Rights Act of 1965 prohibits any practice or procedure.

The Plaintiff-Appellant having done no wrong and beset with this "order" and the result of the jury trial not dealing with the voter rights questions still has right to the voting privilege abridge in a sense with both a federal primary and final elections for Congress compounded by the judgment of June 8 2011.
I still cannot vote without making a request to enter the building.

Libel and slander

Given my initial brief filed in December 26, 2007 in the Newburyport superior court and transferred to the Lawrence Superior court on page 6 of my December 26 2007 brief to the state district court and superior court of Newburyport, I mention "the dangerous mis-characterization and libel that can damage one's reputation and lead to the slanders that do just that, and against my constitutional rights cited." The law of defamation embodies the public policy that individuals should be free to enjoy their reputation unimpaired by false and defamatory attacks. This act of defamation to the Plaintiff-Defendant, JAMES N. THIVIERGE, is violation of the right.

Argument:

Standard of Review - DE Novo

Discussion of the Issues

Having done wrong but merely sign up for the computer, use the reference room prior to read Madison AND Marshall and do research on Theophilus Parsons, the "no trespass letter" and an earlier letter(s) falsely accuse the Plaintiff-Defendant, James N. Thivierge, of wrongs that the Defendant-Appellee had no accurate knowledge of and neither did his subordinates and did defame and injure the Plaintiff-Defendant, James N. Thivierge.

The "no trespass letter and order" to the Plaintiff-appellant, JAMES N. THIVIERGE, defames and injures his good name and reputation, demonstrating reckless disregard for the truth and a conscious indifference to the Plaintiff-Appellant's rights.
[Eubanks v. smith 292 SC 57, 354 se2d 898] written by the Defendant-Appellant the Town of Amesbury and its Mayor Thatcher

Kezer constituting a constitutional malice. A defamation of the Plaintiff-Appellant incurs "which causes him to be avoided or deprive of benefits of public confidence or injure him in his occupation." [Madison v. Bolton 234 la 997, 103 So 2d 433]

Who will ever know how many slanders did the "no trespass letter/order covered by the newspapers and carried over the internet, generate injuring further the reputation and opportunities for the Plaintiff-Appellant, JAMES N. THIVIERGE. There are many definitions of slander just as there are of libel.

One definition defines slander "as the publication of defamatory matter by spoken words." [Bennett v. Norban, 396 PA 94, 1515 A2d 476]. The absence of good faith constitutes malice toward the Plaintiff-Appellant, JAMES N. THIVIERGE, its continued presence on the world wide web makes this libel omni present and potentially world wide. With many acquaintances and friends, relatives all whom I have not seen for some time, the libel and when uttered words, the oral publication, can injury reputation and possibilities all over this country and beyond, creating a record difficult redact.

ACCOUNTABIITY & Municipal Liability

The Honorable Judge denying the defendants summary judgment cites in her opinion the Declaration of Rights of the Massachusetts Constitution, the Plaintiff-appellants uses this same Declaration of Rights of the Constitution of Massachusetts and the Article V because this case does center around the Ninth amendment of our United States Constitution "those unenumerated powers" not mentioned in the first eight of the bill of rights. The issue(s) which I bring is that off accountability cited in the 5th Article of the "Part the First," A Declaration of Rights of the Inhabitants of the Commonwealth of Massachusetts.

"The mayor shall cause all laws, ordinances and orders for town government to be enforced." [Amesbury Home Rule Charter (AHRC), section 2-2] which is subject to AHRC 1-4. How can he (or she), when, neither he nor his subordinates know what they really are or say specifically. The lack of training and the reliance of uninformed hearsay, it is apparent to this individual that neither, the department head, the head librarian in 2005, and later the sergeant, soon to be lieutenant, now police chief, did not know what it was. And the mayor went on the word of his subordinates. The sergeant, now police chief failed to advise the mayor that this was not what is was, because did not know and executed the order. Instead, they do what they want, then they and farm it out to the attorney. We are paying you, you handle it! A municipality can also be held liable under 42 USC Section 1983 for injuries resulting from a failure to train its employees properly. "A municipality's failure train to train its employees in a relevant respect evidences a deliberate indifference to the rights of its inhabitants." [City of Canton v. Harris (S.Ct 1989)]

One of the many central issues in this case is the accountability of the final policy maker. The Ninth Amendment of the United States Constitution ratified by a sufficient number of states 12/15/1791 provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Justice Goldberg comments that the liberties protected by the fourteen amendment are not limited to those mentioned in the first eight amendments. [GRISWOLD ET AL. v. CONNECTICUT - 381 U.S. 479; 85 S. Ct. 1678; 14 L. Ed. 2d 510]. The Massachusetts's Constitution of 1780 and the Declaration of Right's of the Inhabitants, Article V, "states all power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive or judicial are their substitutes and agents, and are at all times accountable to them."

The Preamble to this same constitution states that the "body politic is formed by a voluntary association of individuals - it is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people that all shall be govern governed by certain laws for the common good." As I said the jury trial, it is the concept of "the good" that underlies justice.

And the Amesbury Home Rule Charter (1996) thru sections 1-1 thru 1-6, specifically 1-4 which states the "Powers of the town, the intent and purpose of this charter is to secure for the voters of the town of Amesbury, through the adoption of this charter, all the powers possible to secure for their government under Article LXXXIX of the amendments to the constitution of the commonwealth and the laws of the commonwealth, as fully and as thou each such power were specifically enumerated herein and is subordinate to amendment 89 of the Constitution of Massachusetts and its laws;"

and both Commonwealth v. Hudson, 315 Mass. 335, 52 N.E. 2nd 566 (1943) and City of Cambridge v. Commissioner of Public Welfare, 357 Mass. 183, 257 N.E. 2nd 782 (1970) clarify the issue of the political subdivision within the purview of the Commonwealth of Massachusetts. "that Massachusetts's cities and towns are subject to the plenary legislative power of the commonwealth. As stated by the Supreme Judicial Court, "a town is not an independent sovereignty. It is merely a subordinate agency of the state government. It is creature of the Commonwealth, from which are derived all its powers and those of its voters."

Article 2.2 of the same Amesbury Home Rule Amendment, Executive Powers of the Mayor, "that the mayor shall cause the laws, ordinances and orders for town government to be enforced."

And given the Federalist 1788, numbers #69 & #73 and others, both written by Hamilton, the subject of the propose executive " But that it would be precisely the same with that of the governor of Massachusetts, whose constitution, as to this article, seems to have been the original from which the convention have copies; and #73, the proposed " The chief magistrate and the judiciary I have in another place remarked that in the convention, in the formation of this part of their plan, has departed from the model of the constitution of this state in favor of that of Massachusetts.

So, Madison says in his proposition of constitutional amendments on June 8, 1789 before congress "the exceptions here or else where in the constitution, made in favor of particular rights, shall not be construed as to diminish the just importance of other rights retained by the people." Accountability, Article V of the Declaration of Rights of Massachusetts Constitution is one of those rights; and what follows under Article 89, the penumbra of our Amesbury Home Rule Charter thru 1-4 and 2-2, makes the final policy accountable for his actions. According to Pembaur v. Cincinnati (S.Ct 1986) to those establish official policy, specifically "officials responsible for establishing final policy with respect to the subject matter in question."

One of the primary issue(s), among the many, is the failure of the policy maker, the final authority, within the municipal corporation, is an understanding of what constitutes sexual harassment. This leads to the "no trespass letter," this failure to understand the issue. They have no specific policy nor any real understanding of the specifics of this issue or what actions make it, what they alleged. No significant training exists. A reliance on a general idea of what it was or is, make this oppression real and dangerous to the body politic. Ultimately, it's where the buck stops in this case, the final authority of the municipal corporation.

The failure to train its employees is paramount issue as well and combination with the employees not having a good handle on this issue, the department supervisor as well and final policy maker and admits that he aware in general. Monies appropriated for this type of training was struck from the budget many years prior at least five or ten years ago by the first mayor. For it is, I, that put it there for fiscal year 1997 for that specific purpose, a sum of 10,000 thousand dollars. With the majority agreement of the members of the board of selectmen and voted by the legislating body, the appropriators, the town meeting of the municipal corporation of Amesbury.

It is the "no trespass letter" of December 17, 2010 that re- "inflicts the injury that government as an entity is responsible under 42 USC Section 1983. "It is when execution of a government

policy or custom, whether made by its lawmakers or by those whose edits or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under section 1983. [Monnell v. Department of Social Services (S.Ct.1978)]

A municipality can also be held liable under 42 USC Section 1983 for injuries resulting from a failure to train its employees properly. "A municipality's failure train to train its employees in a relevant respect evidences a deliberate indifference to the rights of its inhabitants." [City of Canton v. Harris (S.Ct 1989)]

Municipal liability attaches according to [Pembaur v. Cincinnati (S.Ct 1986)] to those establish official policy, specifically "officials responsible for establishing final policy with respect to the subject matter in question."

In City of St.Louis V. Praprotnik (S.Ct.1968) the opinion concluded that the supervisor's discretionary decisions are "subject to review" by authorized policy makers, the latter officials have the final policy making authority." These are actions that 42 USC SECTION 1983 oversee that establish municipal liability.

In the mayor's testimony (see addenda - Day one of the jury trial - February 1, 2010) he says while on the witness stand to the question put before the witness "Do you know what constitutes sexual harassment" by the Pro Se Plaintiff-Appellant, James N. Thivierge, to which he answered, "I'm not sure what the legal definition is, but based on the reports I were getting it was fitting the general - my general understanding of sexual harassment.

The mayor has final authority he was not sure what it was, and neither were his supervisor subordinates nor his employees. The injury here is being wrongly accused by those who thought they knew what it was, that is, what constitutes sexual harassment, but really did not know what constitutes the act or an act of sexual harassment.

Conclusion: I broke no law, committed no crime, but simply attend meetings since 1973 and spoke at the public meetings under public comment which under the AHRC S. 3.5b as of the 1996 charter states "that the municipal council shall provide a period for public comment." So, I learned a little more of local and state government than the average person and therefore excluded by the action by the town depriving me access to the public record, activities etc. plus the during course,, a collision with the

presidential preference primary my voting rights were abridged on February 5, 2008 during a Presidential Preference Primary.

It is my belief that neither the town clerk, the municipal council, the mayor nor the registrars of voters made note of what appears a total breakdown of the voting process that the "no trespass letter" of December 19, 2007 "abridge my right to vote."

With the exception of the town clerk, none of the people involved with the "no trespass letter" had any direct involvement. The incident is extremely exaggerated but serves a purpose to keep a knowledgeable participant away from audits, the public record and even from signing a nomination paper.

I

The relief sought by the Petitioner Plaintiff-Appellant.

In addition, a return to my natural day to day activity and access to all public buildings, including the town hall at any time, as it was before, and activities from which I have been excluded.

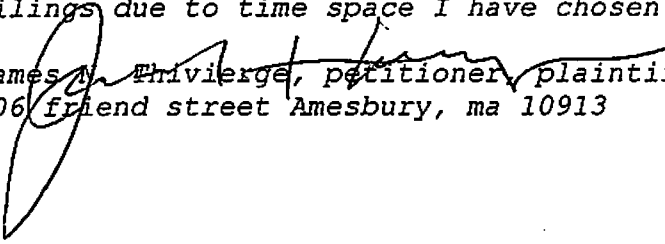
My ThinkTwoThousandPlus business opportunities have been severely impeded, and Having severely impacted my business opportunities, my reputation and character with libels and slanders that emanate locally, regionally, statewide, all over new England, and because of the world wide web, now, globally in an instantaneous fashion with friends and acquaintances everywhere, I seek damages commensurate with the global magnitude of the libel and slander.

I owe a great deal of money largely due to the activities of the local government, as I see it. Plus, the public record of the Plaintiff-appellant blemished by this wrongful action, the Town of Amesbury must correct its egregious error.

Plus monetary damages, I owe a great in my context, not much to others; and basically, it has cost me and others from whom I have borrowed monies within my family, much in dollars, much more in time. I learned a great deal so far that's part of the overall experience, the last ten years virtually night day has been exhausting.

I have spent my whole adult life in government, day and night, doing what I consider thing that are in the best interest of the community as an appointive and elective volunteer for expense money only but helping people get essential services: water/sewer for neighborhoods without since the 1950's so that they sell their at their properties advance ages to provide for their posterity; helping people with naturalization becoming citizens; filing legislation that becomes public safety law preventing the use of cells phones in school buses while underway and many other positive accomplishments.

I do not cede the other issues brought forward by previous filings due to time space I have chosen the aforementioned.


James J. Thivierge, petitioner, plaintiff-appellant
106 friend street Amesbury, ma 10913