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TO: Mayor and City Council of Northampton, Massachusetts

RE: Freedom of speech and zoning changes directed at Capital Video Corporation

Dear people:

I have been asked to represent Capital Video and I accepted the engagement. It was referred to me by a Northampton lawyer who was afraid to take the case, for fear of harassment of his children in the Northampton public schools, and employment harassment of his wife, not to mention threats and intimidation directed at himself personally and his law firm. It's a sad comment on the state of American democracy, when lawyers become justifiably frightened to take on representation of unpopular clients.

Do any of you remember when the American Civil Liberties Union (ACLU) was vilified for defending the right of Nazis to march through the streets in a Chicago suburb? I am a Jew who lost relatives to the Nazis, but I hope I would have the gumption to take a similar stand in that situation. The issue is NOT what one thinks of the content of speech, but rather the constitutional right to freedom of speech. Who was it who said, "I disagree with what you say, but I will defend to the death your right to say it"?

Government censorship of the content of speech is a very dangerous slippery slope. The definition of pornography has shifted dramatically over the years -- just review all the fine literature that was once "banned in Boston." What about the Kama Sutra, sex education material, or publications about lesbianism or male homosexuality? Would the Kinsey Report

or the later work of Masters and Johnson on human sexuality be subject to the proposed 1000 square foot limitation?

If you pass these zoning amendments, particularly the 1000 square foot limitation, the Northampton Building Commissioner will become an official government censor. This is precisely the point where government becomes involved in making judgments about the content of speech.

What standards or guidelines will be provided to the Building Commissioner to determine whether a particular item is subject to the 1000 square foot provision? If these standards or guidelines exist, may I please have a copy? If not, who will write them -- NoPornNorthampton? Will the city set up an official public censorship board to oversee the Building Commissioner's work? Or will it fall to the Zoning Board of Appeals to make these determinations?

Will these zoning amendments be enforced uniformly against all local retailers who sell or rent videos, dvds, books, magazines, and audio disks with adult images on the cases, or only against Capital Video?

It appears that NoPornNorthampton has succeeded in creating a climate of hysteria reminiscent of McCarthyism. In such an atmosphere, constitutional rights are the first casualty. True political leadership lies in resistance to such influences, not falling prey to them. Have any of you read John F. Kennedy's book Profiles in Courage? It tells the stories of elected officials who took moral stands that earned them distinguished places in American history (albeit sometimes at the cost of their elected offices).

If these zoning amendments are adopted, they could precipitate litigation that may cost each side more than \$100,000.00. Where will the City of Northampton get that money?

How many school teachers, fire fighters or police officers will have to be laid off? Will the NoPornNorthampton people pay for the entire cost of the litigation they are provoking?

Has there been any serious legal research and analysis to address the question of whether these proposed zoning amendments can withstand a court challenge? By an email dated October 17, 2006, I asked the City Solicitor, Attorney Janet Sheppard, for copies of all research memoranda and other documents on this subject, but so far I have received no response. All such papers are matters of public record.

Capital Video wants to be part of the Northampton business community. There will be no offensive signs and no offensive merchandise visible from the outside of their store. The company will not tolerate any illegal conduct in or around its place of business. In response to community concerns, the company has removed viewing booths from its proposed store.

Capital Video is ready and willing to engage in a continuing dialogue to address legitimate community concerns. We will not be bullied, threatened or intimidated by NoPornNorthampton or by anyone else who tries to use totalitarian methods to frighten into silence those who would defend constitutional rights.

Very truly yours,

Michael Pill

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