



## GOVERNANCE

## First Amendment Assaulted by Queen City of the Sound

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plaints relative to the yellow flag that was hung underneath the American Flag at the Armory. The complaints are that the flag is a political flag with a political message. ...I have been advised by several people that this flag is a Tea Party Flag. ...The purpose of this email is to advise you that I have directed the City's Department of Public Works to remove this flag from the Armory flagpole."

And later:

... [a] simple or Google or Bing search of tea party flags will show that this flag has been adopted for use by the Tea Party. ...

Naivete, inexperience, notions of fair play, or simple decency be damned! To say the least, the city manager is acting presumptuously; I believe he is mistaken in the exercise of his essentially ministerial duties.

As far as I can tell, there has been no formal transfer of the right of use of the historical "Gadsden" flag to any party or club, not ever and not anywhere; Tea, Republican, Democrat, Socialist Workers, Reform or other. If the city manager has proof that any private organization has acquired, assumed or accepted ownership, legal or otherwise, of the image of the coiled reptile in a field of yellow, a right of use temporary or in perpetuity to it, or any intellectual property right to the image in question whatsoever, I believe he is obligated to produce it.

Failing that, I believe this action is an act of pure censorship, in violation of the First Amendment of the

Constitution of the United States and the Constitution of the State of New York. I believe also that his conduct would qualify as a violation of the oath of the relevant office and likely any handbook or employment manual issued to officials and employees of the City of New Rochelle, which was, after all, incorporated under the laws of the State of New York.

No public servant has been charged with the responsibility of public censor, or minister of protocol which perhaps in some foreign jurisdiction would entitle such person to remove from general display of symbols deemed to be "disruptive of the public order" or somehow offensive to the sensibilities of one political grouping or another, including an elected official or mayor, full time, ceremonial or other. Such duties would be appropriate to a bureaucrat in an organic "maximal state" of unlimited powers, unconstrained by a comprehensive system of individual and property rights like a constitution. One would have to scan the historical record to find the exercise of such powers: in Nazi Germany, Fascist Italy or Stalinist Russia. Or, look to classics of literature such as George Orwell's "1984" or Arthur Koestler's "Darkness at Noon" for precedent. Not here. Not in the United States that was founded in 1776 and ordained a "system of laws, not men" by the creation of its Constitution in 1787 and the document's ratification in 1789.

The functions of a city manager's office are described generally as pri-

marily ministerial. Meaning, it is supposed to transact the administrative and operational business of the city and its financial obligations according to narrow and strict rules and procedures with a minimum of individual prerogative involved (Definition... ministerial: Of, relating to, or being a mandatory act or duty admitting of no personal discretion or judgment in its performance. (SOURCE: Collins English Dictionary - Complete and Unabridged © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003).

The actions acknowledged by the New Rochelle City Manager's office appear to belong to the class of official duties usually described as discretionary which are universally accepted to be rarely exercised, and if so, according to the highest and most stringent professional standards. That is why some public servants, like police officers are sent to military-like service-academies; tested and screened to the greatest requirements of physical and mental fitness, and; required to account for and explain the firing of any firearms they may employ in the exercise of their "official duties" every day.

I have observed and attended rallies and official meetings of many and various organizations, groups and clubs, political and non-partisan also, including the Republican, Democratic, Conservative, Libertarian, New Rochelle Reform, B'nai Brith, Anti-Defamation League, assemblages of Tea Party-devotees, even an Occupy Wall Street outbreak or two, and observed all manner of nationalistic /

patriotic images including modern American flags, historical reproductions of colonial varieties and other permutations of the venerated stars and stripes in red, white and blue in many configurations and shapes, not just the traditional rectangular one. I have never heard a complaint from any quarter that the presence of such a flag was inappropriate or that its utilization by any individual or group was inapt in either a private or public venue.

I have also seen the particular complained-of image in a variety of settings across the political spectrum; from the fields of The Woodstock Festival of Music and Art in 1969 to rallies in support of the Second Amendment in the present day. In my experience, no such festival organizers, present-day gun rights activists or national, regional or local divisions or subsets of what has been rather loosely and quite inaccurately described as a single or unitary incarnation of one unique and official entity legally embodied as "The Tea Party" has assumed official or exclusive rights of use to the "Gadsden" flag or any permutations thereto.

How the administration concluded that the image belongs to any private party or entity is a mystery. The rights to "Old Glory" (and, I would presume, all the variations that preceded and followed its creation) would seem to reside in the United States government; available for public use without limitation; except the cultural / legal strictures concerning desecration, proper display etc. It appears that the legal transfer of intellectual rights to the image in question occurred only in the fevered imaginations of council

majority Democrats. Perhaps a FOIL (Freedom of Information Law)-initiated perusal of emails to and from city hall would explain the origin of these acts of mass-hysteria and reveal a partisan purpose, which would in my opinion amplify the offensiveness of the conduct and raise the Constitutional violation to an even more objectionable level.

From the legal to the political to the moral. The road to fascism is littered with the detritus of bureaucratic incompetence and political aspiration. But dare not confuse the actions of a city functionary scarred from the lashings by the masters of his livelihood for over 18 year with the actions of the Democratic city council and mayor themselves! This extra-legal perversion of official duties must be ascribed directly to the design / build architect of executive power-engorgement: the mayor himself! It's Dr Frankenstein himself, not the pathetic sidekick Ygor! And this Constitutional horror story is the result of the unconstrained hubris of a power-dipsomaniac part-time mayor - obsessed with threats, real or imagined, to his carefully cultivated power base of credulous party hacks and hangers-on. An ersatz Hamlet - fixated on fancied insults to his collectivist edifice instead of the genuine threats to his political hegemony; uniformed public safety officers restive from the failures of collective bargaining; potholes pock marking our streets and thoroughfares, and; the unceasing collapse of the city budget's reserve fund balance!

*Stephen I. Mayo is an attorney and manufacturer residing in New Rochelle.*

## LEGAL

## County May Lose \$7.4 Million from FEDS



By **ABBY LUBY**

Westchester County stands to lose \$7.4 million in Community Development Block Grants (CDBG) from

the U.S. Housing and Urban Development (HUD). The federal agency will withhold the funds pending the county's zoning analysis required to fulfill an affordable housing settlement. HUD has also taken the county to task for not voting on sources of

income legislation that would protect lower income families from housing discrimination.

In a March 25, 2013 letter to Westchester County Executive Rob Astorino, HUD Director of Community Planning and Development Vincent Hom said, "To date, the County has not provided satisfactory certification that it will comply with its obligation to affirmatively further fair housing as part of its 2011 Annual Action Plan." (The Annual Action Plan funds some 1,200 local New

York State communities to revitalize lower income neighborhoods with park and street improvements, sewer work, aid for seniors and the homeless).

HUD has been overseeing the historic 2009 Fair Housing Settlement, after Westchester County was sued by the Anti-Discrimination Center (ADC) in 2006. It was then cited for having failed to use its CDBG grants to provide affordable housing. The settlement stipulates that

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*Affordable Housing in Yorktown Heights. Photo by and courtesy of Abby Luby.*



## LEGAL

## County May Lose \$7.4 Million from FEDS

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by 2016 the county builds 750 units of affordable housing in predominantly white neighborhoods in 31 eligible communities.

Hom gave the county until April 25, 2013, to comply by HUD's demands.

"This is outrageous," said county spokesman Ned McCormack. "It's an arbitrary date. It's been our understanding that the county is entitled to have this money or they [HUD] take it away by September. Now all of a sudden they come up with an April deadline. They are trying again to bully the county into going beyond the terms of the settlement."

"We've heard this [rhetoric] a lot from Westchester County," said Mirza Orriols, Acting HUD Regional Administrator for New York and New Jersey. "In agreeing to build affordable housing, part of the certification is an analysis of zoning ordinances and proving those ordinances don't discriminate against affordable housing." Orriols added that the April 25 deadline was to get a jump on a lengthy process of reallocating the \$7.4 million. "If we don't receive what we are asking for then we have to start the very long process of recapturing the funds. If we don't start soon, the funds are lost by September 30 and go back to the Treasury."

But McCormack points to what the county has done so far. "We've

analyzed more than 800 zoning districts. Westchester zoning is not exclusionary. There's no basis to go after the county if we're already building affordable housing."

According to HUD, county documents have failed to analyze whether municipal ordinances have an exclusionary impact on affordable housing. "What that means is we need the county to list certain zoning practices," said Orriols. "There can be restriction limits on multiple family houses, or on town house developments - those could have a detrimental impact on developing affordable units. The county has given us a lot of documents but they have failed to analyze these ordinances and how the county would rectify these ordinances so affordable housing can be built in those areas."

The federal agency also required the county to "promote" sources of income legislation to protect poor and lower income families who use Section 8 vouchers, live on federal subsidies such as social security or disability - families who are typically refused housing by landlords. The Westchester County Board of Legislators (WCBOL) passed sources of income legislation in 2010, but County Executive Astorino vetoed it. The issue is now being reviewed before the U.S. Second Circuit Court of Appeals, where the county is arguing that the settlement word "promote" doesn't require Astorino to sign legislation pertaining to the affordable housing

settlement; also that the settlement can't force the WCBOL to vote a certain way.

McCormack lashed out at HUD's request for a plan to promote source of income legislation when the county is arguing the issue in court. "We are in court with HUD on this specific issue and we are entitled to due process in court." A statement issued by the county said "the county is confident that the U.S. Magistrate's ruling in its favor will be upheld."

For over four years, the Astorino administration has not only locked horns with HUD over the settlement, but has also alienated the Westchester County Board of Legislators (WCBOL) whose biggest complaint has been that they are being left out of the administration / HUD loop. Westchester Legislator Catherine Borgia (D-Ossining) issued a statement in response to the HUD letter blaming Astorino for his failure to advise the WCBOL of the possible funding loss. "We can't have any more stalling, political posturing and finger-pointing. I call on County Executive Astorino to work collaboratively with the Board of Legislators and the federal government to remedy this perilous situation before more harm is done to Westchester." Borgia, who is chair of the WCBOL Government Operations Committee, said losing the HUD community grants will "hurt Westchester's low-income and most vulnerable residents immediately, but, in the long-term, all of the county's taxpayers will be impacted by

this."

Orriols said she hopes HUD doesn't withhold the CDBG grants. "We're very frustrated, but we continue to provide the county with responses to the documents they give us. Throughout this whole process it has been our hope that the county will work with us and with the monitor to resolve these issues." She added, "the county has been good about keeping up the construction schedule."

According to McCormack the county is a year ahead of schedule in meeting the key benchmarks towards

the required 300 affordable units with financing in place by the end of 2013. To date there are 110 completed units in Bedford (1), Cortlandt (83), Pelham (3), Pleasantville (1), Yorktown (16), Rye City (6).

"Our team is reviewing the letter [from Hom] and there will be a response," said McCormack.

*Abby Luby is a Westchester based, freelance journalist who writes about current, local news, environmental issues, art entertainment and food. Learn more at [www.abbylu.com](http://www.abbylu.com).*

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## LEGISLATION

## Medical Marijuana Bill Introduced in New York Senate

**ALBANY, NY** – On Tuesday, March 26, 2013, New York State Sen. Diane Savino, and a group of Senate colleagues will introduce a bill to allow seriously ill patients in the Empire State to use medical marijuana legally with a doctor's recommendation.

By passing the Compassionate Care Act, New York will join 18 other states and Washington, D.C. in protecting residents whose doctors recommend the medical use of marijuana. After over a decade of similar bills passing overwhelmingly in the State Assembly, advocates feel it is time for the Senate to follow suit and reflect the will of the people of New York. A 2010 Quinnipiac poll found that 71% of New Yorkers support passing a

medical marijuana law, including 55% of Republicans.

"Doctors need all of the tools they can get their hands on, and marijuana has proven to be a safe and effective medicine across a range of conditions," said Evan Nison, director of the New York Cannabis Alliance. "People suffering from cancer, HIV, multiple sclerosis and chronic pain, often without any effective treatment available, can benefit from using marijuana, especially when nothing else has worked and the side effects from conventional treatments can be devastating. The introduction of this bill will hopefully bring the day closer when patients in New York no longer suffer needlessly."

With this bill, New York has the



opportunity to join neighboring Connecticut, Massachusetts, New Jersey and Vermont, as well as other northeastern states that have medical marijuana laws. In the meantime, thousands of people continue to be arrested in New York every year for marijuana law violations, including those who use cannabis as a medicine to find relief from their suffering.

Increasingly, researchers are studying cannabis use to treat the effects of Post Traumatic Stress Disorder and are finding positive results. Adam Scavone, president of the New York Cannabis Alliance, who worked with veterans returning from Iraq and Afghanistan said, "In this country, 22 veterans per day are committing suicide, a 20% increase from just five years ago. We know cannabis is useful in treating PTSD and we can save veterans lives,

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