

George F. Welch Jr aka Jack  
Problem Solver and CCTV independent Contractor  
8 Woodrow Wilson Ct #24  
Cambridge MA 02139  
(617) 354-1387

CAMBRIDGE MA.

August 1, 1991

The Cambridge City Council  
via Joseph E Connerton, Clerk  
Cambridge City Hall

Dear Members of the Cambridge City Council

To assist your clerk in complying with the attached six (6) page Decision and Order of the Superior Court of July 9, 1991 that he place the four communications which are the subject matter of this litigation on the agenda for the next regular City Council meeting, which as we are all aware, was scheduled for July 29, 1991 and rescheduled for August 7, 1991, I am attaching as EXHIBITS H, I and I, J and K and K, the four communications. I

As you are aware, the City Council Rules allow me to speak for 10 minutes on each matter.

Further, based on the findings of the Court regarding the Conduct of Mayor Wolf which has imposed liability for damages on the City of Cambridge, I propose that you replace Alice Wolf as Mayor with Vice Mayor Ken Reeves and that you promote assistant clerk Flynn to the position clerk of the City Council.

Order and EXHIBITS Attached

George S. Welch Jr aka Jack  
Voter, Problem Solver, CCTV contractor

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

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SUPERIOR COURT  
CIVIL ACTION  
No. 90-8394

GEORGE F. WELCH, JR.

vs.

JOSEPH E. CONNARTON <sup>1/</sup>

MEMORANDUM OF DECISION AND ORDER ON  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, George F. Welch, Jr. (Welch) brings this action, pro se, against the defendant, Joseph E. Connarton (Connarton), individually and in his official capacity as Clerk for the City of Cambridge, to recover damages for the alleged violation of his right to free speech guaranteed under the First Amendment. Defendant Connarton now moves for summary judgment. Plaintiff opposes.

BACKGROUND

The Cambridge City Council (City Council) holds regular public meetings. Mr. Welch, a resident of Cambridge, sent four communications, with regard to the operation of cable television in Cambridge, to the City Council for the public meeting scheduled on Monday, December 10, 1990. Upon receipt, Mr. Connarton, in his

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<sup>1/</sup> Individually and in his official capacity as Clerk for the City of Cambridge.

capacity as Clerk of the City of Cambridge, reviewed these communications with past communication lists of the City Council and determined that Mr. Welch had previously submitted identical communications to the City Council within the preceding month. Mr. Welch had also previously offered oral testimony in support of the communications at two public City Council meetings held in November 1990. The City Council, City Manager and/or City Clerk had responded to or otherwise acted upon the communications prior to Mr. Welch's resubmission of the communications.

Because the communications were repetitive, Mr. Connarton, after consultation with Alice K. Wolf, Mayor of Cambridge, did not place the four communications on the communications list for the December 10, 1990 City Council meeting and advised Mr. Welch of his decision. In response, Mr. Welch filed the present action.

Mr. Welch argues that Mr. Connarton's refusal to place the four communications on the December 10, 1990 list violated his First Amendment right to free speech. Mr. Welch also argues that Mr. Connarton's actions violated the Rules of the City Council.<sup>2/</sup> Mr. Connarton contends that his decision not to place the repetitive communications on the list was reasonable in order to protect the public interest and that his actions did not violate the First Amendment.

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<sup>2/</sup> This theory was advanced at oral argument.

DISCUSSION

Summary judgment is appropriate where no material facts are in dispute and the moving party is entitled to judgment as a matter of law. Cassesso v. Commissioner of Corrections, 390 Mass. 419, 422 (1983); Community National Bank v. Dawes, 369 Mass. 550, 553-554 (1976). Summary judgment, when appropriate, may be rendered against the moving party. Mass. R. Civ. P. 56(c). The material facts recited above are either undisputed or considered in the light most favorable to the non-moving party. Coveney v. Holy Cross, 388 Mass. 16, 17 (1983).

The degree to which the government<sup>3/</sup> may regulate communicative activity protected by the First Amendment depends upon the nature of the forum in which the First Amendment rights are sought to be exercised. Cornelius v. NAACP Legal Defense and Educational Fund, 473 U.S. 788 (1985); Perry Education Ass'n. v. Perry Local Educators' Ass'n., 460 U.S. 37, 44 (1983). For purposes of First Amendment analysis, three types of fora are recognized: "the traditional public forum, the public forum created by government designation, and the nonpublic forum." Cornelius, supra at 802.

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<sup>3/</sup> The court treats the naming of Mr. Connarton in his official capacity as the equivalent of naming the City of Cambridge as a defendant. See Brandon v. Holt, 469 U.S. 464, 471-472 (1985). In order for the city to be held liable for a constitutional injury inflicted by its employee, it must do something more than employ a tortfeasor. Monell v. NY Dept. of Soc. Services, 436 U.S. 658, 691 (1978). Liability may be imposed where the acts of the employee may fairly be said to represent official policy. Id. at 694. The court treats Mr. Connarton's decision, after consultation with the Mayor, as representing official policy for which the city may be held liable.

"[A] public forum may be created by government designation of a place or channel of communication for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects." Id.

In this case, Mr. Welch challenges Mr. Connarton's decision not to place the four repetitive communications on the communications list for the December 10, 1990 public City Council meeting. The meetings of the City Council are required to be public under G.L. c. 43, §98.<sup>4/</sup> In addition, City Council meetings are the focus of highly important individual and governmental interests, and citizens have an enormous First Amendment interest in directing speech about public issues to those who govern their city. White v. City of Norwalk, 900 F.2d 1421, 1425 (9th Cir. 1990). For these reasons, the City Council meeting at issue here is a public forum created by government designation. City of Madison Joint School District v. Wisconsin Employment Relations Comm'n., 429 U.S. 167, 175 (1976). Although this public forum is limited to a governmental process with a governmental purpose.

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<sup>4/</sup> General Laws c. 43, §98 provides in part:

Except in the cases of executive sessions...all meetings of the city council shall be open to the press and to the public, and the rules of the city council shall provide that citizens and employees of the city shall have a reasonable opportunity to be heard at any such meeting in regard to any matter considered thereat.

Rule 25 of the Cambridge City Council Rules provides: All communications, petitions, or resolutions addressed to the City Council shall be filed with the City Clerk. The City Clerk shall place all such correspondence on the agenda for the next regular City Council meeting. Correspondence that does not meet the agenda deadline specified in rule 20 shall be held over for the subsequent Council agenda unless it is of an emergency nature.

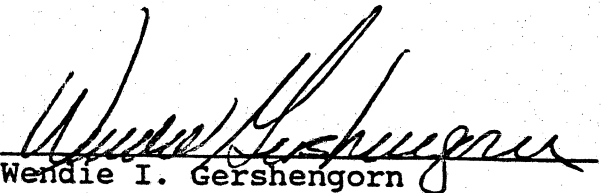
White, supra at 1425; see City of Madison, supra at 175 n.8 ("public bodies may confine their meetings to specified subject matter..."), in this case, the City Council rules define the agenda. City Council Rule 25 mandates that the City Clerk shall place all communications addressed to the City Council on the agenda for the next regular City Council meeting. The City Council has a recognizable interest in accomplishing its business in a reasonably efficient manner. White supra at 1425-1426, however, it must do so within the rules it has promulgated. Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Board of Lawrence, 403 Mass. 531, 550 (1988). Here, Rule 25 does not allow for the exercise of discretion and Mr. Connarton did not have the authority to exclude the four repetitive communications from the December 10, 1990 City Council agenda. Having so concluded, the court need not reach the other points argued. Steinbergh v. Rent Control Board of Cambridge, 406 Mass. 147, 148 (1989).

ORDER

For the foregoing reasons, it is hereby ORDERED that

1. Defendant's motion for summary judgment is DENIED.
2. Summary judgment is GRANTED in favor of plaintiff, George F. Welch, Jr.

It is further ORDERED that defendant Joseph E. Connarton, in his official capacity as Clerk for the City of Cambridge, shall place the four communications, which are the subject of this litigation, on the agenda for the next regular City Council meeting.<sup>5/</sup>

  
Wendie I. Gershengorn  
Justice of the Superior Court

Dated: *July 9*, 1991

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<sup>5/</sup> Nothing herein should be construed to limit the City Council's ability to maintain order at public City Council meetings pursuant to the Rules of the City Council. See White supra at 1426 (speaker may disrupt a City Council meeting by speaking too long, by being unduly repetitious, or by extended discussion of irrelevancies).

George F. Welch Jr. a.k.a. Jack  
Professional Television Industry Problem Solver  
and  
DEC -5 Member & Elected Representative of the 900 +  
Members of the Cambridge Public Access Corporation  
CAMBRIDGE MA. (W) 3 Woodman Wilson Ct #24

Cambridge MA. 02139

(617) 354-1307

Wednesday, November 21, 1990 - Resubmitted, Dec 5/89

The Honorable Cambridge City Council  
City Hall, Cambridge MA

for correction of errors,  
and notice of submission  
date to City Council &  
Public

Dear Honorable City Councillors

Please provide me, at the next regular meeting of the City Council,  
with a copy of the Cable Committee's report to the City Council, on  
the May 31, 1990 public hearing conducted by Councillor Welsh, Chairman  
of the Cable Committee, on the rate increases proposed by Continental  
Cablevision, presented by Phil Ripe, Continental's Cambridge Manager,  
and Continental's report back to the Committee, regarding Continental's  
treatment of elderly Cambridge Cable subscribers, with respect to  
Continental's rates.

Thank you,

George F. Welch Jr. a.k.a. Jack  
Professional Television Industry Problem Solver  
and  
MERMCPAC

EXH. H

100 DEC -5 PM 4:11

CAMBRIDGE MA.

George F. Welch Jr. a.k.a Jack  
Professional Television Industry Problem Solver  
and  
Member & Elected Representative of the First  
Members of the Cambridge Public Access Corporation  
(h) 3 Woodrow Wilson Ct, #24 Cambridge MA 02139  
(617) 354-1307

November 8, 1990, Resubmitted ~~Dec 5, 1990~~  
for final determination  
by City Council

RE: Demand For Payment of Invoice/Bill

To: The Honorable City Council of the City -  
of Cambridge and The City Manager

1. This is a demand for payment of the \$666.00  
(Six Hundred Sixty Six dollars) per day Bill/Invoice  
submitted to the Cambridge City Manager and  
the Cambridge City Council's Finance Committee  
on June 7, 1990 and to the Cambridge City  
Council on June 11, 1990 at the regular public  
meeting.

2. This demand for payment, without further  
delay is based upon the absence of any  
legal argument against payment or findings of  
fact or conclusions of law by the City's attorney

EXH. I

Page 2

Demand for Payment

November 8, 1990

Philip L. Sussler Esq., as more fully appears in his July 2, 1990 Investigator's Report submitted to the full City Council by its Cable Committee in October 1990 and accepted by the full Council on the day of submission.

3. I expect payment from the Ten Thousand Dollars (\$10,000) appearing on page 61, Section 9 "Insurance, Bonds and Indemnifications" of the Final License, (LIC), for the reasons set forth therein and not for the reasons set out on page 7 of Investigator Sussler's report but in connection with the investigation and finding as appears on page 3, II "Discussion of the Allegations", 1., A of his July 2, 1990 report.

Wherefore: I demand that the Cambridge City Council make or approve payment to me of the sum of \$666.00 (Six Hundred Sixty Six dollars) for each of the 6 days appearing in the Bill plus interest of 1.5% per month from June 7, 1990

George S. Welch Jr. aka Jack

EXH. I-1

George F. Welch Jr. a.k.a Jack  
Professional Television Industry Problem Solver  
and

Member & Elected Representative of the Top Plus  
Members of the Cambridge Public Access Corporation  
CAMBRIDGE MA. (h) 3 Woodrow Wilson Ct. #24

Cambridge MA. 02139  
(617) 254-1307

Thursday, November 15, 1990 — Re submitted Dec 3, 1990  
Due to lack of response

The Honorable Members of the Cambridge City Council (Written) by City Manager  
xc The Cambridge City Manager

Dear Cambridge City Council Members

1. On or before the next regular Monday meeting of the Cambridge City Council, please provide me with a copy of the hearing or meeting of the Cambridge City Council in which the City Manager announced the name of the person he appointed to the position Cable Commissioner which was vacant on June 7, June 11 and June 21, 1990 when I applied for the position. This request is based upon and in response to a letter to me from the City Manager dated August 8, 1990 with copies to Deputy City Solicitor Driscoll and Cambridge City attorney Sussler, indicating that no vacancy exists for that position. Considering the fact that the position is required under the City's Final CATV license, I am aggrieved by the City Manager's rejection of my application for the position and his refusal to recognize my right to make a contract with the City of Cambridge for the position and perform the duties and responsibilities assigned to the position as set out in the Final CATV License

2. Also, on or before the next regular Monday meeting of the Cambridge City Council, please provide me with a copy of any written or videotaped statement by me that I was charging the City any money while pursuing my claims as set out in #3 of my April 17, 1990 letter to the City Manager for his assistance. This request is based upon and in response to a letter to me from the City Manager dated August 8, 1990, a copy of which you should obtain from the City Manager.

Thank you

George F. Welch Jr. a.k.a Jack  
PTIPS + MERMCPAC

EXH. J

George F. Welch Jr. a.k.a. Jack  
Professional Television Industry Problem Solver  
and

Member & Elected Representative of the Fox Plus 4:11  
Members of the Cambridge Public Access Corporation.

(N) 3 Leodraw Wilson Of #24

Cambridge MA 02139

(617) 354-1307

Wednesday, November 14, 1990 -

Re submitted Dec 5, 1990  
Due to lack of written  
response by City Manager

The Honorable Members of the Cambridge City Council &  
The City Manager:

xc Irwin Hipsman, Executive Director, Cambridge Public Access Corporation, for  
Distribution to his employers, the CPAC Board of Directors, 13 members  
xc Susan Freshman, General Manager, Cambridge Public Access Corporation for  
Distribution to the CPAC Members Advisory Group, 11 members

Dear Cambridge City Council Members and City Manager

This is a request that, on or before the next regular meeting  
of the Cambridge City Council, Monday November 19, 1990, you direct the  
appropriate person to provide me with a copy of the 1988 management  
Contract between Continental Cablevision and the Cambridge Public Access  
Corporation, discussed on page 3, II, 1. of the July 2, 1990 report of the City's  
attorney, Philip Sussler, which attorney Sussler neglected to include in his  
tabbed binder of the record documents, attached to his report.

A. If the 1988 Continental/CPAC Management contract does not exist  
in the City of Cambridge's Public Records, then on or before Monday, November  
19, 1990, I request a written statement from you, the Cambridge City Council  
or from the Cambridge City Manager, stating that the 1988 Contract between  
Continental and CPAC does not exist.

EXH. K (Go to page 2)

Nov 14 1990  
Received for  
Susan Freshman  
Irwin Hipsman  
City Manager

George T. Welch Jr a.k.a Jack

Cambridge City Council & City Manager  
Wednesday, November 19, 1990  
Page 2

B If the Continental/CPAC Management Contract of 1988 does not exist, then on or before Monday, November 19, 1990, please provide me with a copy of the letter which Sussler advised the City Manager to write on July 2, 1990, Ordering Continental to comply with Section 2.2 h(3) of the Final License by re-executing the CPAC management contract and Ordering Continental to prove, at a public hearing, conducted by the City Manager, in accordance with M.G.L. c 166A:11 and Section 14.19 of the Final License, that between 1988 and the present Continental has been in compliance with each and every section of the CPAC management contract in defense against the allegations in my August 14, 1990 Complaint to the Mass Cable Commission, and to the City Manager on September 11, 1990, and show cause why Cable Subscribers should not get their money back for unlawful rate increases.

C If the Continental/CPAC Management Contract of 1988 does not exist, then, on or before Monday, November 19, 1990, please provide me with a copy of the City Manager's letter to the CPAC Board of Directors, Ordering them to promptly make the payments to CPAC members as set out in my April 17, 1990 request to the City Manager and others and Ordering the CPAC Board of Directors to prove to the 700+ members of CPAC and the incoming State Attorney General that they have lawfully held their positions between 1986 and the present and have been lawfully amending CPAC's By-Laws and Conducting CPAC's business as discussed in Sussler's July 2, 1990 report.

II. 4, 5, 6 DATE: DEC 17 1990

A TRUE COPY ATTEST:

Joseph E. Connerman

Joseph E. Connerman

City Clerk

EXH. K-1

Thank you for giving this matter your prompt attention.

George S. Welch a.k.a Jack  
Professional Problem Solver and elected  
representative of the members of CPAC

CONSENT COMM. # 50 5-410

Comm. from George F. Welch, 3 Woodrow  
Wilson Court, transmitting various  
communications previously sent to the  
City Council regarding cable TV issues.

*Placed on file*

In City Council,

August 7, 1991