

Middlesex, ss.

Third District Court
of Eastern Middlesex
Cambridge Parking
Ticket No. 833480

Commonwealth

v.

Henry P. Sorett

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S

MOTION TO DISMISS

I. The Nature of Permit Parking in Cambridge.

At the present time, the City of Cambridge operates a parking permit system under which only residents of certain streets are permitted to park on those streets. Upon application, the City issues permits to residents of neighborhoods covered by the system and those residents displaying the permits on their cars are permitted to park on their neighborhood streets. All persons not displaying permits on their cars are viewed as parking illegally and are subjected to being ticketed and fined.

The system now in effect was developed in 1973 by City Traffic Director George Teso under authority delegated to him by the Cambridge City Council in Section 2.8 of the Traffic Regulations of the City of Cambridge (1971). The City's authority to create the permit parking system derives from

Chapter 340 of the Acts of 1972 of the Massachusetts Legislature. This chapter states that the City of Cambridge may, if it so desires, adopt a permit parking system for residents of Cambridge who register their cars in Cambridge for such streets or neighborhoods as the City may designate.

The system currently covers three major sections of the City:

- a. The Cambridgeport neighborhood near the Polaroid Plant and the B.U. Bridge.
- b. An area running west from the Harvard Square business district, south of Brattle St., east of the Alewife Brook Parkway and north of the river.
- c. An area, referred to as East Cambridge, west of First Street, north of Main St., south of Cambridge St. and east of Eighth St. including Spring St. on which the Defendant's car was parked when the ticket in question was issued.

The system does not cover other major sections of the City, similar to those covered, in terms of demand for parking space, such as the area west of the Cambridge Common in which the Defendant lives.

II. Nature of the Relief Sought.

The Defendant seeks to have the complaint against him dismissed and alleges three grounds, each of which is based on the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

In moving to have the complaint against him dismissed, the Defendant contends that:

1. The City of Cambridge, acting through its Traffic Director, is impermissibly discriminating between residents of certain Cambridge streets and all others, both residents of other areas of Cambridge and all other citizens who reside outside of the permit areas.
2. The Massachusetts Legislature had no authority, consistent with the Fourteenth Amendment, to authorize the City to create a discriminatory parking system.

The Defendant contends that both of these actions violate the Equal Protection Clause and argues that this Court should dismiss this complaint because of both unconstitutional actions. However, consistent with the policy of judicial restraint, the Defendant concedes that if this Court finds that the City acted unconstitutionally through its Traffic Director, then the Court can dismiss the complaint without

reaching the question of the constitutionality of the Legislature's action.

The Defendant further contends that the permit parking system violates both the First and Fourteenth Amendments to the United States Constitution in that it places an impermissible restriction on every citizen's First Amendment right of equal and fair access to the Courts.

III. The Equal Protection Argument.

In analyzing claims made under the Equal Protection Clause, the Supreme Court looks to three things: the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification. See e.g. Dunn v. Blumstein, 405 U.S. 330 (1972); Williams v. Rhodes, 393 U.S. 23 (1968). Having made this examination, the Court then selects the appropriate standard of review and applies it to resolve the issue.

The character of the classification in question goes to the extent of the citizen's right to use and park his automobile. In the context of modern society and given the limited availability of public transportation, restrictions on the use of the automobile affect the citizen's right to travel. Under the permit parking system, some citizens are allowed a greater freedom to travel and park their automobiles than others.

Hence, the individual interest at issue is the citizen's right to travel.

The governmental interest asserted by the City Traffic Department is that of making it possible for citizens of certain neighborhoods to park their cars within a reasonable distance of their homes. This interest, however, is no greater in the areas covered by the permit parking system than it is either in other areas of Cambridge or in other urban parts of Massachusetts.

In cases discussing the issue, the Supreme Court has frequently held that the right to travel is a fundamental personal right, abridgement of which can only be justified by a compelling state interest. Memorial Hospital v. Maricopa County, U.S. , 94 S.Ct. 1076 (1974); Dunn v. Blumstein, 405 U.S. 330 (1972), Shapiro v. Thompson, 394 U.S. 618 (1969); Oregon v. Mitchell, 400 U.S. 112, 237 (1972) (separate opinion of Brennan, White and Marshall, JJ., Stewart, J., Burger, C.J. and Blackmun, J. concurring in the result). Further, the Court has held that this right is an "unconditional right" which may not be abridged absent an overwhelming and compelling state interest. Dunn v. Blumstein, 405 U.S. at 342, Oregon v. Mitchell, 400 U.S. at 292.

Since there is no compelling state interest which may be advanced in support of the discriminatory permit parking system it must fall as an invalid attempt to restrict citizens' rights to travel.

While the Supreme Court of the United States has never been confronted with the precise issue raised in this case, it has been raised and decided in the appellate courts of at least two states.

In Ohio, the state Supreme Court and several lower appellate courts have repeatedly struck down discriminatory parking preference schemes. In Cincinatti v. Cook, 107 Ohio St. 223, 140 N.E. 655 (1923) the court struck down a municipal railway station rule which granted one party exclusive use of an area of the parking lot to the exclusion of all others. This leading case has been followed at least twice in the last seventeen years. In Roller v. Stoecklein, Montgomery County No., 111064, 143 N.E. 2d 181 (1957), a county appeals court struck down a discriminatory parking rule which prohibited policemen from parking their private cars on residential streets near the police station. And, in State v. Whisman, 24 Ohio Misc. 59, 263 N.E. 2d 411 (1970), under a fact situation which almost directly parallels the one before this Court, the Court held that a neighborhood permit parking preference system violated the Equal Protection Clause of the United States Constitution.

It should be noted that the court in Whisman applied the rationale basis standard rather than the compelling state interest standard of review in reaching its determination that the scheme before it was unconstitutional.

In the state of Washington, in 1925, the state Supreme Court summarily struck down a restrictive and discriminatory parking scheme. *Kaufman v. West*, ___Wash.____, 233 P. 321 (1925) In its opinion the Court said of the scheme:

It is unjust, unreasonable, and discriminatory, in that it does not operate alike on all persons and property under the same circumstances and conditions, and is therefore class legislation in discriminating against some and favoring others. It presents nothing but an arbitrary selection, and as such is invalid.

The Defendant urges this Court to follow a similar course and strike down the Cambridge permit parking scheme as contrary to the Equal Protection Clause.

IV. The First Amendment Argument.

It has long been held that access to the courts is a fundamental First Amendment Right which may not be restricted. United Mine Workers of America, District 12, v. Illinois State Bar Association, 389 U.S. 217 (1967); NAACP v. Button, 371 U.S. 415 (1963).

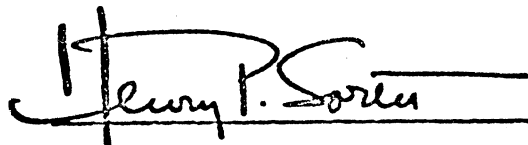
The Defendant here contends that the Cambridge permit parking system impermissibly restricts access to this Court and to the Middlesex County Superior and Probate Courts in that it makes it impossible for most of those persons who must come before these Courts to park their cars legally. This is not to argue that every court house must have adequate parking but rather to assert that whatever public parking is

available must be equally available to all, wherever they live.

Under the permit parking system, only residents of Cambridge with permits for East Cambridge may park legally on the streets near the Court. Residents of other parts of the City, other parts of Massachusetts and other parts of the United States may not park legally on these streets. This interferes with the rights of those persons not eligible for Cambridge parking permits to have access to the Courts and as such is in violation of the First and Fourteenth Amendments to the United States Constitution.

V. Conclusion.

For the reasons set forth in the motion to dismiss and this memorandum, the Defendant moves that this Honorable Court dismiss the complaint against him.

A handwritten signature in cursive script, reading "Henry P. Sorett", written over a horizontal line.

Henry P. Sorett

434
Brief submitted by Henry P. Sorett re:
Commonwealth v. Henry P. Sorett

September 30, 1974

File with Sundries