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SUPREME COURT OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT

Parkhouse v. Stringer[1]

(decided August 19, 2008)

Virginia Parkhouse, a volunteer for the nonprofit community group Landmark West!, filed an application to repeal a subpoena served by the Department of Investigation ("DOI").[2] The New York County Supreme Court ordered Parkhouse to comply with the subpoena.[3] On appeal, the Appellate Division, First Department, addressed whether the DOI had the authority to subpoena Parkhouse during the course of their investigation,[4] and if so, whether her statements at a New York City Landmarks Preservation Commission ("LPC") were entitled to freedom of speech protection under the Federal Constitution[5] or the New York Constitution.[6] The appellate division held that the DOI had the authority to subpoena Parkhouse, and that compliance did not constitute a violation of Parkhouse's right to free speech.[7]

One of Parkhouse's duties as a volunteer of Landmark West! was to testify at public hearings before the LPC, which was charged

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[1] 863 N.Y.S.2d 400 (App. Div. 1st Dep't 2008).

[2] *Id.* at 403.

[3] *Id.*

[4] *Id.* at 402.

[5] U.S. CONST. amend. I, states, in pertinent part: "Congress shall make no law . . . abridging the freedom of speech. . . ."

[6] N.Y. CONST. art. I, § 8, states, in pertinent part: "Every citizen may freely speak . . . and no law shall be passed to restrain or abridge the liberty of speech."

[7] *Parkhouse*, 863 N.Y.S.2d at 405.

with identifying and designating historic landmarks in New York City.[8] On October 17, 2006, LPC held a public hearing to determine whether to give landmark status to the Dakota Stables and New York Cab Company Stables.[9] Two months earlier, in August, Borough President Scott M. Stringer wrote a letter in support of granting landmark status, but he later changed his mind without notifying the LPC and revoked his support for the landmark designation before the hearing.[10] However, at the hearing, Parkhouse voluntarily read Stringer's statement, which she altered from its original form.[11] She then submitted the altered letter without noting that she was the one who modified the letter.[12]

Following the hearing, Stringer's attorney informed the LPC that Parkhouse did not have the authority to speak on his behalf, and threatened further legal action.[13] The LPC filed a complaint with the DOI in February 2007, alleging misrepresentation.[14] The DOI then began an investigation and attempted to interview Parkhouse.[15] After Parkhouse refused the interview, she was served with a subpoena, which she moved to quash.[16] In response, the First Deputy Commissioner for the DOI noted that there were still unanswered questions

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[8] *Id.* at 402.

[9] *Id.*

[10] *Id.* The original letter stated, in pertinent part: "I ask that you move to calendar these two buildings and protect an important part of the history of the development of the Upper West Side." *Id.* at 403.

[11] *Id.* at 403. The altered letter stated, in pertinent part: "I ask that you immediately protect the important part of history of the Upper West Side and landmark these buildings." *Id.*

[12] *Parkhouse*, 863 N.Y.S.2d. at 403.

[13] *Id.* at 403.

[14] *Id.*

[15] *Id.*

[16] *Id.*

that remained for Parkhouse that would assist the DOI in future "policy and procedural recommendations."[17]

Parkhouse asserted that the subpoena violated her free speech rights under the U.S. Constitution and the New York State Constitution because it had a chilling effect and forced her to explain the reasoning behind her statements, which she classified as political speech.[18] The First Department disagreed, concluding that her rights were not violated because the investigation was not aimed at the content of her speech.[19]

The subject of the DOI's investigation in *Parkhouse* regarded the procedures of the LPC, which permit individuals to misrepresent their affiliations with public officials, and not the content of Parkhouse's testimony.[20] Accordingly, the court stated that their ruling could actually encourage speech, by allowing the DOI investigation to continue to ensure the legitimacy of the proceedings, and thus providing an incentive for citizens to participate in the public hearings.[21]

In addition, the court noted that Parkhouse had no First Amendment right to misrepresent herself as authorized to speak on Borough President Stringer's behalf.[22] The court reasoned that "she does not have a constitutionally protected right to disseminate false

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[17] *Parkhouse*, 863 N.Y.S.2d at 404.

[18] *Id.* at 404-05.

[19] *Id.* at 405. The United States Supreme Court in 1972 interpreted the First Amendment as meaning that "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." Police Department of the City of Chicago v. Mosley, 408 U.S. 92, 95 (1972).

[20] *Parkhouse*, 863 N.Y.S.2d at 405 ("DOI is not conducting a content-based inquiry by investigating or condemning the actual words spoken by petitioner or other participants at the hearing.").

[21] *Id.* at 406.

[22] *Id.* at 405.

information in a public forum."[23] On the other hand, the court, quoting John Stuart Mill extolling the merits of free speech, said that, " '[T]he peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it.' "[24] The key word in Mill's statement was "opinion," which raised a question in *Parkhouse* of whether she was stating an opinion or rather falsely misrepresenting herself.[25]

The *Parkhouse* Court relied partly on the United States Supreme Court case of *Ward v. Rock Against Racism,*[26] which addressed this issue of content-neutral speech. In *Ward*, there was a dispute between Rock Against Racism ("RAR"), a group claiming to be " 'dedicated to the espousal and promotion of anti-racist views,' " and the City of New York.[27] RAR held annual programs of rock music and speeches at the Naumberg Acoustic Bandshell in Central Park.[28] The city had repeatedly received complaints about the excessive noise at these concerts, and RAR refused to comply with the requests of city officials to reduce the volume.[29] In 1985, the city refused to grant RAR permission to hold their concert in the Bandshell, citing the repeated problems with noise and disruptive crowds.[30] In response, RAR filed suit against the mayor, police and parks depart-

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[23] *Id. See also* Herbert v. Lando, 441 U.S. 153, 171 (1979) ("Spreading false information in and of itself carries no First Amendment credentials.").

[24] *Parkhouse*, 863 N.Y.S.2d at 406.

[25] *Id.* at 405.

[26] 491 U.S. 781 (1989).

[27] *Id.* at 784.

[28] *Id.* at 781.

[29] *Id.*

[30] *Id.* at 785.

ment officials, and the City of New York, but the parties settled and in exchange for a permit, RAR agreed to comply with all regulations.[31]

After learning that the city retained an independent sound technician for the event, RAR returned to court and moved for an injunction against enforcement of certain "sound-amplification" guidelines.[32] The injunction was granted, and RAR's 1986 concert, using their own sound technician, resulted in several excessive noise complaints.[33] After the concert, RAR amended their complaint seeking to strike down the guidelines.[34] The Supreme Court granted certiorari to "clarify the legal standard applicable to governmental regulation of the time, place, or manner of protected speech."[35] The Court created a benchmark in which the government can restrict speech, but only if the restrictions are: (1) not in regards to the content of the speech; (2) narrowly tailored to further an important government interest; and (3) leave open alternate means of communication.[36]

The Court also defined the concept of "content neutral" as it relates to First Amendment challenges.[37] The primary question in determining content neutrality is whether the speech regulation occurred because the government disagreed with the message of the speech.[38] The main consideration must be the purpose of the gov-

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[31] *Ward*, 491 U.S. at 785.
[32] *Id.* at 787.
[33] *Id.* at 788.
[34] *Id.*
[35] *Id.* at 789.
[36] *Ward*, 491 U.S. 791.
[37] *Id.*
[38] *Id.*

ernment in enacting the restriction.[39] If the reason for regulating the speech was completely unrelated to the content of the speech, it is deemed to be content neutral, regardless of any ancillary effect on some speakers or messages.[40] In *Ward*, the purpose of the sound guideline was to maintain reasonable sound levels at Bandshell events in order to avoid disturbing the surrounding residences, and not to censor any specific ideas.[41]

The second consideration is whether the regulation is " 'narrowly tailored to serve a significant governmental interest.' "[42] The Court determined that the city's interest in quality sound for the performances in the Bandshell was both reasonable and significant.[43] Poor sound quality diminished the quality of the performances and disrupted the citizens of New York City.[44]

The third consideration requires that the government leave open alternate routes of communication.[45] The Court found that this requirement was easily met, because the city's guidelines did not restrict the content of the expression, rather they merely regulated the

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[39] *Id.*

[40] *Id.*

[41] *Ward*, 491 U.S. at 792.

[42] *Id.* at 796 (quoting Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 293 (1984)). "The Supreme Court has held that some liberties are so important that they are deemed to be 'fundamental rights' and that generally the government cannot infringe them unless strict scrutiny is met; that is, the government's action must be necessary to achieve a compelling purpose." ERWIN CHEMERINSKY, CONSTITUTIONAL LAW 815 (2d ed. 2005).

[43] *Ward*, 491 U.S. at 796.

[44] *Id.* at 797, 800 n.7 ("[T]he city seeks to eliminate–excessive and inadequate sound amplification–and eliminates them without at the same time banning or significantly restricting a substantial quantity of speech that does not create the same evils. This is the essence of narrow tailoring.").

[45] *Id.* at 802.

volume of the sound.[46]

Based on these three factors, the Court held that the sound amplification guidelines were valid as a form of reasonable regulation of the place and manner of speech under the First Amendment.[47] While the dissent agreed with the majority's enumeration of the standard for evaluating the constitutionality of governmental guidelines,[48] its main contention was with their interpretation of the narrow tailoring requirement, or rather, their disregard for it.[49] The dissent argued that the real definition of narrow tailoring, as expressed through precedent, required the Court to examine the alternate methods of serving a legitimate government interest and whether the benefits of the regulation carry more weight than the burden it places on the First Amendment right to freedom of speech.[50] In contrast, the majority only required the government to show that the regulation effectively served the government's interest.[51] The dissent stated that the enacted regulation was more restrictive than necessary, reasoning that the city in this instance could have served their goals just as effectively and without intruding on protected speech by simply punishing RAR for breaking their rules.[52]

A few years earlier, the United States Supreme Court decided

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[46] *Id.*

[47] *Id.* at 803.

[48] *Ward*, 491 U.S. at 804 (Marshall, J., dissenting).

[49] *Id.*

[50] *Id.* at 805.

[51] *Id.* at 806.

[52] *Id.* at 807. ("By holding that the Guidelines are valid time, place, and manner restrictions, notwithstanding the availability of less intrusive but effective means of controlling volume, the majority deprives the narrow tailoring requirement of all meaning. Today, the majority enshrines efficacy but sacrifices free speech.") (footnote omitted).

a similar case in *City of Renton v. Playtime Theatres, Inc.*[53] *Renton* involved a zoning ordinance which prohibited " 'adult motion picture theater[s]' from [being] within 1,000 feet of any residential zone[s], single-or multiple-family dwellings, church[es], or park[s], and within one mile of any school[s]."[54] Playtime Theaters, Inc. ("Playtime") challenged the ordinance on the grounds that it violated the First Amendment protection of freedom of speech.[55]

The Court described the ordinance as a time, place, and manner regulation and used the same standard set forth in *Ward*.[56] The first requirement, that the speech be content-neutral, garnered strong disagreements among the divided Court. The majority initially proclaimed that the ordinance was neither content-based nor content-neutral, before declaring that it was content-neutral.[57] The Court stated that the ordinance did not meet their definition of a content-based speech regulation, reasoning it did "not contravene the fundamental principle that underlies our concern about 'content-based' speech regulations: that 'government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.' "[58]

Additionally, the Court addressed whether the ordinance was enacted to serve an important governmental interest.[59] It decided affirmatively that the interest was " 'preserv[ing] the quality of urban

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[53] 475 U.S. 41 (1986).
[54] *Id.* at 44.
[55] *Id.* at 45.
[56] *Id.* at 46-47.
[57] *Id.* at 47.
[58] *Renton*, 475 U.S. at 48-49 (quoting *Mosley*, 408 U.S. at 95-96).
[59] *Id.* at 50.

life.' "[60] The Court found that adult theaters have a harmful effect on the surrounding area and contribute to "neighborhood blight."[61]

Moreover, the Court determined that the ordinance left open alternative routes of communication.[62] The ordinance left open about five percent of the total city of Renton to use as adult theater sites.[63] Playtime argued that it was practically impossible for them to operate an adult film theater within the parameters of the ordinance, as there were practically no " 'commercially viable' " sites available after the restrictions.[64] However, the Court held that Playtime remained capable of operating within the open real estate market, and that their potential difficulties in doing so did not constitute a First Amendment violation.[65] Ultimately, the Court held that the zoning ordinance satisfied the freedom of speech requirement of the First Amendment.[66]

The dissent strongly disagreed, contending that the ordinance was a clear content-based restriction of speech.[67] Justice Brennan refused to accept the reasoning of the majority, declaring that the ordinance blatantly discriminated on its face against adult films precisely

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[60] *Id.* (quoting Young v. Am. Mini Theaters, Inc., 427 U.S. 50 (1976)).

[61] *Id.* at 51.

[62] *Id.* at 54.

[63] *Renton*, 475 U.S. at 53.

[64] *Id.*

[65] *Id.* at 54. The Court further stated that:

> And although we have cautioned against the enactment of zoning regulations that have "the effect of suppressing, or greatly restricting access to, lawful speech," we have never suggested that the First Amendment compels the Government to ensure that adult theaters, or any other kinds of speech-related businesses for that matter, will be able to obtain sites at bargain prices.

Id. (quoting *Am. Mini Theaters*, 427 U.S. at 71).

[66] *Id.* at 54-55.

[67] *Id.* at 55 (Brennan, J., dissenting).

because of their content.[68] While adult films were restricted from being within 1,000 feet of any residential zone, school, church, or park, other movie theaters and forms of "adult entertainment" like bars and massage parlors, were not held to the same constraints.[69] This underinclusion led to the conclusion that the city inexcusably enacted a statute that treated adult theaters different from other similar businesses, in violation of the First Amendment.[70]

The Supreme Court again evaluated issues of content neutrality in the context of balancing free speech with government interests in *United States v. O'Brien*.[71] In *O'Brien*, the Court analyzed the constitutionality of the 1965 Amendment to the Universal Military Training and Service Act, making it illegal to destroy Selective Service registration certificates.[72] O'Brien was convicted in the United States District Court for the District of Massachusetts for publicly burning his Selective Service registration, which he stated was meant to be an expression of his anti-war beliefs.[73] The Court of Appeals for the First Circuit overturned the conviction, holding that the 1965 Amendment was a freedom of speech violation.[74] The United States Supreme Court vacated the decision of the Court of Appeals, reinstating the District Court's conviction.[75]

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[68] *Renton*, 475 U.S. at 57.

[69] *Id.* ("This selective treatment strongly suggests that Renton was interested not in controlling the 'secondary effects' associated with adult businesses, but in discriminating against adult theaters based on the content of the films they exhibit.").

[70] *Id.* at 57.

[71] 391 U.S. 367 (1968).

[72] *Id.* at 370.

[73] *Id.* at 369-70.

[74] *Id.* at 371.

[75] *Id.* at 372.

O'Brien argued that the 1965 Amendment violated his right to freedom of speech because his war protest demonstration was a " 'communication of ideas by conduct.' "[76] The Court refused to accept this argument, warning against an "apparently limitless variety of conduct" that could potentially be allowed by applying O'Brien's reasoning.[77] In addition, the Court contended that even if O'Brien's actions constituted a communication, it did not mean that they were automatically protected by the First Amendment.[78] The Court viewed the action as containing both speech and nonspeech elements and considered whether there was a "sufficiently important governmental interest in regulating the nonspeech element [to] justify incidental limitations on First Amendment freedoms."[79]

The Court articulated a test of three factors to be analyzed in the evaluation of whether a government regulation is justified, including: if it advances a significant governmental interest; if the suppression of speech did not relate to the interest; and if any restriction on the freedom of speech is only as much as is required by the government interest advanced.[80] In applying these factors to the 1965 Amendment, the Court found that all three were met, allowing the federal government to legally punish O'Brien for violating it.[81]

Despite O'Brien's argument that registration certificates were

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[76] *O'Brien*, 391 U.S. at 376.

[77] *Id.*

[78] *Id.*

[79] *Id.* at 376-77 ("To characterize the quality of the governmental interest which must appear, the Court has employed a variety of descriptive terms: compelling; substantial; subordinating; paramount; cogent; strong.").

[80] *Id.* at 377.

[81] *O'Brien*, 391 U.S. at 377.

merely meant as notices to those who receive them, the Court adopted the State's position that these certificates served numerous practical purposes comprising a substantial governmental interest in raising a strong army.[82] In addition, the Court found that the 1965 Amendment was sufficiently narrowly tailored to protect this interest without unnecessarily suppressing any freedoms.[83] The scope of the amendment was deemed to be solely aimed at preventing harm to the Selective Service System, and employed the least restrictive means to that goal.[84] Furthermore, the conduct barred by the amendment was non-communicative in nature and not restricted with the purpose of suppressing speech.[85] This was distinguished from a statute struck down from the same court that made it illegal to show opposition to the government through the display of a flag, banner, or similar exhibition.[86] In upholding the 1965 Amendment, the Court held that the amendment was focused on non-communicative conduct harmful to a legitimate and important governmental interest, and any suppression of communicative speech was merely ancillary.[87]

In contrast to the federal approach, New York takes a slightly

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[82] *Id.* at 378-80. Among these purposes are: proof that the individual has registered for the draft; a simplification of the system by facilitation of communication between registrants and boards; a reminder to the registrant of procedure in the case of any changes in his status; and the furtherance of a regulatory scheme designed to minimize forgery and other abuses. *Id.*

[83] *Id.* at 381-82.

[84] *Id.* at 381 ("We perceive no alternative means that would more precisely and narrowly assure the continuing availability of issued Selective Service certificates than a law which prohibits their wilful mutilation or destruction.").

[85] *Id.* ("When O'Brien deliberately rendered unavailable his registration certificate, he wilfully frustrated this governmental interest. For this noncommunicative impact of his conduct, and for nothing else, he was convicted.").

[86] *O'Brien*, 391 U.S. at 382.

[87] *Id.*

broader approach than the federal courts when analyzing freedom of speech issues. In *600 West 115th Street Corp. v. Von Gutfeld*,[88] Von Gutfeld was the president of a condominium's board of managers, and then a member of the board's building committee.[89] During his time as president of the board, he repeatedly complained about problems with a restaurant on the ground floor of the building, which was owned by the plaintiff corporation.[90] The dispute that led to this action arose from a proposal to create a sidewalk café adjacent to that restaurant.[91] Von Gutfeld testified at a public hearing about the proposal and made several strong statements in opposition to it.[92]

The community board subsequently voted against the proposal and the plaintiff filed a defamation suit against Von Gutfeld for his statements during the hearing.[93] Von Gutfeld moved for summary judgment, contending that his statements were not factual assertions but rather protected speech under both the U.S. Constitution and the New York Constitution.[94] The New York Court of Appeals interpreted the freedom of speech protection from the New York Constitution to be different from that owed by the U.S. Constitution.[95]

The court looked to the Supreme Court's decision in *Milk-*

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[88] 603 N.E.2d 930 (N.Y. 1992).

[89] *Id.* at 931.

[90] *Id.*

[91] *Id.*

[92] *Id.* (" 'Why do they want to do it? Because they have an illegal lease with Coronet [plaintiff's prior landlord] that said they could take the sidewalk. Therefore, this entire lease and proposition . . . is as fraudulent as you can get and it smells of bribery and corruption.' ").

[93] *Von Gutfeld*, 603 N.E.2d at 932.

[94] *Id.*

[95] *Id.*

ovich v. Lorain Journal Co.[96] to aid them in determining whether Von Gufeld's statements were opinions or facts, in order to decide whether they were afforded protection under the First Amendment.[97] The *Milkovich* test advocates courts to: (1) define the words as they are commonly understood; (2) decide if the statement was subject to verification; and (3) see if the expression fell into a certain protected type of speech, such as hyperbole or figurative.[98] If a statement falls into the third type of speech, the fact that it was also meant to be verified can be negated.[99] The court used federal precedent to formulate a test of "[w]hat circumstances, in addition to the literal text of the communication, would the reasonable reader or listener perceive and use in determining whether or not a factual assertion was being made?"[100]

The court held that Von Gutfeld's remarks, when taken in the context with which they were made, were protected by the U.S. Constitution.[101] The court analyzed each specific phrase, the meaning of each word, whether they were verifiable, and then the "general tenor" of the remarks.[102] The only phrases that required serious contemplation by the court were Von Gutfeld's assertion that the restaurant was " 'as fraudulent as you can get and [that] it smells of bribery and corruption.' "[103] The court considered the exact choice of words, espe-

[96] 497 U.S. 1 (1990).
[97] *Von Gutfeld*, 603 N.E.2d at 934.
[98] *Id.* at 934-35.
[99] *Id.* at 935.
[100] *Id.*
[101] *Id.* at 937.
[102] *Von Gutfeld*, 603 N.E.2d at 937.
[103] *Id.*

cially the colloquialism of the phrase "smells of" and the atmosphere of a heated public hearing, along with the lack of a specific reference to the plaintiff or any other actual people.[104] If you take the general tone of the remarks, and the environment they were said in, as a whole, no reasonable person could conclude that they were meant as actual factual assertions.[105]

After performing the federal analysis, the court noted that under New York law there is a slightly different approach.[106] New York law focuses on " 'the content of the whole communication, its tone and apparent purpose.' "[107] The purpose of the change from the federal standard was to avoid the "fine parsing" of that test, and take a more abstract approach that afforded a greater preservation of free speech rights.[108] Under the state analysis, the court also found that Von Gutfeld's statements were merely a form of opinion, and thus not subject to liability for defamation.[109]

The right to free speech is one so sacred in America that the founding fathers felt it necessary to declare it in the very first amendment to the United States Constitution.[110] The power to express your ideas without fear of recrimination is perhaps the arche-

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[104] *Id.* ("This is not the language of someone inviting reasonable persons at a heated public hearing to find specific factual allegations in his remarks. Indeed, the figurative 'smells of' by its nature conveys to listeners that he has no hard facts, only generalized suspicions.").

[105] *Id.* ("We note as well the general tenor of the remarks. Von Gutfeld's statement is a rambling, table-slapping monologue, much of it dealing with his past problems with the restaurant and his frustration with the government of New York City. It could not reasonably be heard as a factual presentation . . . .").

[106] *Id.* at 938.

[107] *Von Gutfeld*, 603 N.E.2d at 938 (quoting Immuno AG. v. Moor-Jankowski, 567 N.E.2d 1270 (N.Y. 1991)).

[108] *Id.*

[109] *Id.*

[110] U.S. CONST. amend. I.

type of our freedom as a nation. This right should not be interpreted to mean that any utterance is afforded immunity, simply because we have the right to voice our opinions. Defamation laws, for example, exist because there is no value to society in allowing people to harm others' reputations by spreading blatant falsities. Justice Holmes famously stated that, "[t]he most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."[111]

Speech does not have to be content-based in order to be constitutionally protected. As exhibited in *Ward*, even content-neutral speech is protected if it satisfies several requirements set forth by the Supreme Court.[112] The government can regulate the time, place, or manner of speech if it is content neutral, narrowly tailored to serve an important state interest, and leaves open alternative channels for communication of the information.[113]

Applying that standard to *Parkhouse*, it becomes clear that the court analyzed the case appropriately. The purpose for the subpoena in *Parkhouse* was to further investigate the procedures at the public hearing, and not to delve into any specific content that the speaker expressed.[114] In addition, the government's interest in protecting and improving the procedure at public hearings is definitely a substantial one, and finding out more information about Parkhouse's testimony was narrowly tailored to furthering that governmental interest. As for

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[111] Schenck v. United States, 249 U.S. 47, 52 (1919).
[112] *Ward*, 491 U.S. at 791.
[113] *Id.*
[114] *Parkhouse*, 863 N.Y.S.2d at 404.

alternate channels of communication, Parkhouse was free to testify at any public hearing of her choosing, and in fact none of her speech was suppressed.[115] The DOI simply wanted to find out more information about the procedural aspects of her testimony, which would actually promote speech, rather than chill it.[116]

Often, the question becomes whether the statement is one of fact or one of opinion. Disseminating blatantly false factual assertions holds no constitutional protection.[117] In *Parkhouse*, the government argued that the First Amendment analysis was irrelevant, since her statements consisted solely of false misrepresentations.[118] In addition to making clear that public hearings are expressions of free speech, the New York Court of Appeals has articulated its own standard for interpreting the demarcation between an opinion and a false factual assertion in regards to both federal and New York constitutional law.[119]

Applying either standard, it can be argued whether Parkhouse's statement was actionable. On the one hand, she did not make any blatantly false accusations toward anyone. On the other hand, she clearly misrepresented herself. However, it is difficult to argue that Parkhouse's statement was one that represented her own ideas, or that the DOI's actions would result in a chilling effect for speech. While the suppression of speech should always be an absolute last re-

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[115] *Id.* at 406 ("Here, there is simply no evidence in the record that petitioner was censored or harassed at LPC's hearing.").

[116] *Id.*

[117] *Herbert*, 441 U.S. at 171.

[118] *Parkhouse*, 863 N.Y.S.2d at 405.

[119] *Von Gutfeld*, 603 N.E.2d at 932.

sort, and subject to the highest scrutiny possible, the *Parkhouse* decision makes it clear that no suppression had occurred and that there was no undue infringement of her First Amendment rights.

The famed justice Learned Hand once said that the First Amendment " 'presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all.' "[120] The right to freedom of speech, along with the other freedoms enumerated in the Bill of Rights, comprise the fundamental rights that form the foundation of America.[121] This inalienable right is the embodiment of what some like to call the "beacon of light"[122] that is this country, and as such must be analyzed so as to always err on the side of bestowing the most extensive interpretation of rights as the law can allow. However, as demonstrated in *Parkhouse*, it cannot be used as a shield for those seeking to misrepresent themselves, or spread harmful falsities, or attempt in any way to subvert the true purpose of the First Amendment while hiding under its veil.

Alyssa Dunn

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[120] *Von Gutfeld*, 603 N.E.2d at 934 (quoting United States v. Associated Press, 52 F. Supp. 362, 372) (D.C.N.Y. 1943).

[121] U.S. CONST. amend. I.

[122] Barack Obama, American Leadership Television Ad Transcript (July 15th, 2008), *available at* http://my.barackobama.com/page/community/post/laurinmanning/gGxkqk ("We are a beacon of light around the world. At least that's what we can be again. That's what we should be again.").

ELEVENTH AMENDMENT

United States Constitution Amendment XI:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.