

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NICHOLAS ARRUDA and ALFRED	:	
FIGUEIREDO dba FORBIDDEN ART STUDIO	:	
	:	
Plaintiffs	:	
	:	
vs.	:	C.A. No. 02-
	:	
TOWN OF BRISTOL by and through its Town	:	
Council Members, RICHARD RUGGIERO,	:	
KATHLEEN D. BAZINET, RAYMOND	:	
CORDEIRO, DAVID BARBOZA and HALSEY	:	
C. HERRESHOFF and it Treasurer, JOHN M.	:	
DAY	:	
	:	
Defendants	:	

COMPLAINT

INTRODUCTION

1. This is a civil action for injunctive and declaratory relief and damages. The Plaintiffs, an individual who is of the age of majority who wishes to receive a tattoo, and an individual who is operating a tattoo parlor in Bristol, Rhode Island, challenge the constitutionality of a Bristol ordinance that prohibits the practice of the art of tattooing on individuals who are under the age of twenty-one (21) years old. The plaintiffs allege that tattooing is an art form and that the acts of creating and wearing tattoo art are forms of expression protected by the First Amendment to the United States Constitution and Article I, Section 21 of the Rhode Island Constitution. And, as to the individual who seeks the tattoo, the prohibition is violative of his substantive due process, privacy and

equal protection rights in violation of the United States Constitution.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. ' 1983 and the First and Fourteenth Amendment to the United States Constitution.

THE RELEVANT ORDINANCE AND STATE LAW

3. Bristol Ordinance Sec. 13-222(2) provides that ~~A~~No person under 21 years of age shall be tattooed, and the licensee shall require proof of age at all instances.@ (The ~~A~~Bristol Ordinance@).
4. Bristol Ordinance Sec. 1-7(a) provides that a violation of the Bristol Ordinance results in ~~A~~a fine not exceeding \$100.00 or imprisonment for a term not exceeding ten days.@ Bristol Ordinance Sec. 1-7(b) further provides that for every day of any violation it ~~A~~shall constitute a separate offense.@
5. Rhode Island Gen. Laws ' 11-9-15 provides in pertinent part that ~~A~~Every person who shall tattoo any minor under the age of eighteen (18) shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned not exceeding one year or be fined not exceeding three hundred dollars (\$300).@
6. Additionally, tattoo artists and parlors are heavily regulated by the Department of Health (DOH). The DOH has enacted Rules and Regulations for tattoo artists and parlors. Included among the Rules and Regulations is the requirement that an applicant seeking registration as a tattoo artist or tattoo parlor ~~A~~be over 18 years of age.@ Rules and Regulations for the Registration of Tattoo Artists and Tattoo Parlors (October, 1990, as

amended and re-filed January 2002) Section 3.1(a).

7. The DOH also includes among its restrictions in its Rules and Regulations, the prohibition of tattooing minors. Rules and Regulations for the Registration of Tattoo Artists and Tattoo Parlors Section 7.7.1.
8. The DOH also strictly regulates the practice of tattooing for health and safety concerns such as the maintenance of sanitary and safe practice (Section 7.1); the use of safe and sterile dyes, pigments and stencils (Section 7.2); the prevention of the transmission of communicable diseases (Section 7.3); and the use of sterile materials (Section 7.4, 7.5 and 7.6)

PARTIES

9. PLAINTIFF NICHOLAS ARRUDA (NArruda@) is an individual currently residing in Fall River, Massachusetts and is of the age of majority, but not yet 21 years of age. Arruda admires the artistic talents and work of Figueiredo and would like Figueiredo to design and place a tattoo on him if he were able to do so without violating the law in Bristol, Rhode Island.
10. PLAINTIFF ALFRED FIGUEIREDO dba FORBIDDEN ART STUDIO (Figueiredo) is a tattoo artist licensed and registered by the State of Rhode Island and doing business at 11 Gooding Avenue, in Bristol, Rhode Island.
11. DEFENDANT TOWN OF BRISTOL is being sued by and through its Town Council Members RICHARD RUGGIERO, KATHLEEN D. BAZINET, RAYMOND CORDEIRO, DAVID BARBOZA AND HALSEY C. HERRESHOFF and through

its Treasurer, JOHN M. DAY as this complaint seeks damages.

FACTUAL BACKGROUND

12. Tattooing is an art form. Tattooing is practiced in virtually every culture on the planet and has been practiced for thousands of years.
13. Persons across the cultural spectrum of America have tattoos. Tattooing is believed to be the most commonly purchased form of original art work in the United States. Estimates of the numbers of Americans in certain age groups who have tattoos range as high as 30 percent.
14. Individuals obtain tattoos to express the full range of human emotions and beliefs, including their religious beliefs and declarations; declarations of patriotism and loyalty to their country; declarations of love and devotion for spouses, children and lovers; beliefs about freedom, loyalty and beauty; membership in organizations or branches of the military; expressions of remembrance for deceased persons; and the entire spectrum of human beliefs and feelings.
15. Tattoos are a unique form of personal art. Persons obtain tattoos to demonstrate their commitment to other persons, to institutions, to religious beliefs and to political or personal beliefs. No other form of art can communicate this degree of commitment to these beliefs.
16. Tattoo artists such as Figueiredo develop and become known for their own individual styles and forms.
17. Tattoo artists such as Figueiredo develop followings and persons seek them out.

18. Tattooing has been associated with religious beliefs since antiquity. Religious expression remains a common subject of tattoo art. Tattooing has been associated with Christianity since Biblical times.
19. Tattoo artwork is the subject of art museums, gallery and educational institution art shows across the United States. Numerous scholarly and art books have been published about tattooing. Professional journals, newspapers, magazines and cultural reference books recognize tattooing as a well-established art form.
20. Tattooing and tattoos no less a form of expression than parades, marching, displaying swastikas, wearing an armband, saluting or refusing to salute a flag, displaying a red flag, singing or other artistic endeavors.
21. Speech, including tattooing is protected even where the person engaging in the conduct does not intend to express an idea. No articulable or particularized message is a condition to being protected speech. Expression devoid of ideas but with entertainment value is protected speech.
22. When tattooing is practiced under sterile, sanitary conditions by trained persons it presents virtually no medical risks.
23. The use of autoclaves and other sterilization techniques effectively prevents the risks of disease transmission by tattooing.
24. The Rules and Regulations promulgated and adopted by the DOH comprehensively address the licensing and inspection for tattoo artists and effectively address any health and public safety risk associated with tattooing.

25. The Bristol Ordinance does nothing to address or reduce health risks caused by tattooing.

COUNT ONE

(First Amendment/42 U.S.C. § 1983)

26. Tattooing is an art form that involves the expression of ideas and beliefs in a unique manner by both the artists and the wearer. The conduct of creating a tattoo is an integral and essential part of the expressive act involved in tattooing.
27. Tattooing is a form of expression of ideas protected by the First and Fourteenth Amendments to the United States Constitution.
28. The Bristol Ordinance prohibits and criminalizes the tattooing of persons between the ages of 18 and 21 and being tattooed between the ages of 18 and 21.
29. The Bristol Ordinance violates free speech rights of the Plaintiffs to create and receive tattoos as protected by the First and Fourteenth Amendments to the U.S. Constitution.
30. The Bristol Ordinance is not narrowly tailored to meet a substantial or compelling governmental interest. The State and DOH have already used less restrictive means to protect the government's health and safety concerns.

WHEREFORE, the Plaintiffs request, that the Court provide the following relief pursuant to 42 U.S. C. § 1983:

1. Enter a Declaration that the Bristol Ordinance violates the First and Fourteenth Amendments to the U.S. Constitution.

2. Issue a Preliminary and Permanent Injunction against the enforcement of the Bristol Ordinance.
3. Award Plaintiffs their compensatory damages.
4. Award Plaintiffs their costs, including reasonable attorneys' fees pursuant to 42 U.S.C. ' 1988.
5. Award such further relief as this Court deems fair and just.

COUNT II

(Article I, Section 21 of the Rhode Island Constitution)

31. The Bristol Ordinance violates the Plaintiffs' right of free expression to create and receive tattoos, as protected by Article I, Section 21 of the Rhode Island Constitution.

WHEREFORE, the Plaintiffs request that this Court:

1. Enter a Declaration that the Bristol Ordinance violates Article I, Section 21 of the Rhode Island Constitution.
2. Issue a Preliminary and Permanent Injunction against the enforcement of the Bristol Ordinance.
3. Award such further relief as this Court deems fair and just.

COUNT III

(Substantive Due Process Rights/42 U.S. C. ' 1983)

32. The Bristol Ordinance violates Arruda's substantive due process rights as protected by the Fifth and Fourteenth Amendments to the U.S. Constitution.

WHEREFORE, Arruda requests that this Court, pursuant to 42 U.S.C. ' 1983:

1. Enter a Declaration that the Bristol Ordinance violates his substantive due process rights.
2. Issue a Preliminary and Permanent Injunction against the enforcement of the Bristol Ordinance.
3. Award Arruda his costs, including a reasonable attorney's fee pursuant to 42 U.S.C. ' 1988.
4. Award such further relief as this Court deems fair and just.

COUNT IV

(Privacy Rights/42 U.S.C. ' 1983)

33. The Bristol Ordinance violates Arruda's privacy rights as protected by the Fifth and Fourteenth Amendments to the U.S. Constitution.

WHEREFORE, Arruda requests that this Court pursuant to 42 U.S.C. ' 1983:

1. Enter a Declaration that the Bristol Ordinance violates his privacy rights.
2. Issue a Preliminary and Permanent Injunction against the enforcement of the Bristol Ordinance.
3. Award Arruda his costs, including a reasonable attorney's fee pursuant to 42 U.S.C. ' 1988.
4. Award such further relief as this Court deems fair and just.

COUNT V

(Equal Protection/Fifth and Fourteenth Amendments/42 U.S.C. ' 1983)

34. The Bristol Ordinance violates Arruda's equal protection rights as protected by the Fifth

and Fourteenth Amendments to the U.S. Constitution.

WHEREFORE, Arruda requests that this Court, pursuant to 42 U.S.C. ' 1983:

1. Enter a Declaration that the Bristol Ordinance violates his federal equal protection rights.
2. Issue a Preliminary and Permanent Injunction against the enforcement of the Bristol Ordinance.
3. Award Arruda his costs, including a reasonable attorney's fee pursuant to 42 U.S.C. ' 1988.
4. Award such further relief as this Court deems fair and just.

COUNT VI

(Equal Protection/Article I, Section 2)

35. The Bristol Ordinance violates Arruda's state equal protection rights as protected by Article I, Section 2 of the R.I. Constitution.

WHEREFORE, Arruda requests that this Court:

1. Enter a Declaration that the Bristol Ordinance violates his equal protection rights.
2. Issue a Preliminary and Permanent Injunction against the enforcement of the Bristol Ordinance.
3. Award such further relief as this Court deems fair and just.

Plaintiffs Nicholas Arruda and Alfred Figueiredo
By their Attorney:

CAROLYN A. MANNIS, ESQ. #4275
As volunteer Attorney for the R.I. Affiliate of the
American Civil Liberties Union
170 Westminster Street, Suite 800
Providence, RI 02903
401.454.4466 (Telephone)
401.351.3914 (Facsimile)