

## OPINION

# Taking on city hall

You have to give a tip of the glass to those rare people who take on the powers of city hall and even win some battles.

Take the long-running case of ex-county corrections officer William Burkert. This corner has watched the journey of the matter from Elizabeth Municipal Court all the way to the state Supreme Court.

It all started when Burkert authored a tasteless flier about a fellow officer.

Following a municipal court conviction for harassment, the Union County Prosecutor's Office under Meredith Balo with the exalted title of "special deputy attorney general, acting assistant prosecutor" won the first round in Superior Court where the conviction was upheld.

Not to be satisfied, Burkert's counsel, Steven Kaflowitz, appealed and had the conviction overturned at the state Appellate Division, where the higher court found that, while the material was "unprofessional, puerile and inappropriate for the workplace," it was still protected by the First Amendment.

On the taxpayer dime, the state took the appeal to the Supreme Court. This brought in a bevy of groups including the American Civil Liberties Union, the Pennsylvania Center for the First Amendment and the UCLA First Amendment Clinic, all defending Burkert.

Last week, the Burkert free speech case resulted in a 36-page opinion by Supreme Court Justice Barry Albin, who wrote that Burkert's bad joke was still an example of free speech.

To successfully prosecute, they needed to "reasonably put a person in fear for his safety or security or that intolerably interfere with that person's reasonable expectation of privacy."

After the ruling, Kaflowitz said, "The Court is saying that neither prosecutors nor private citizens can use the criminal laws to punish speech that they don't like.

LEFT OUT

BY FRANK CAPECE

This opinion strikes a blow against those who wrongly believe that so-called 'hate speech' is not protected by the First Amendment."

If the state's argument had been accepted, most of the fans at any Yankees/Red Sox game would be guilty of harassment before the end of the first inning.

Albin wisely admonished, however, that the First Amendment does not allow us to use the criminal laws to protect ourselves from "the common stresses, shocks, and insults of life."

The courts were also busy last week in Union County where Roselle community activist Anthony Esposito scored a major win in his crusade against the planned Mind and Body Complex.

Esposito's win in his battle against the project was because of the cost.

The project had the support of borough officials via funding by the municipality and the school board. He estimated it could add \$500 a year to the taxpayer's bill. The court in its opinion ruled that Esposito had raised significant issues, meaning the lawsuit could proceed.

From a practical position, the election of Esposito allies on both the school board and municipality, who will take office in January, could hamper and maybe destroy the ability of supporters to ever vote to fund the project in a new form.

Esposito, in his usual pithy manner, said, "My motivation was simply that the taxpayers of Roselle were overburdened and the project was just too expensive."

For Burkert, a tasteless flier and an overzealous Office of the County Prosecutor, resulted in precedent-setting law on harassment. For Esposito, tenacity has meant a big break for Roselle taxpayers.

Two cheers for the little guys.