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# Deseret News

## Nathan B. Oman: Chick-fil-A and the problem of soft censorship

By Nathan B. Oman , For the Deseret News  
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This Thursday, July 19, 2012 file photo shows a Chick-fil-A fast food restaurant in Atlanta. Earlier this month, Chick-fil-A set off a furor opposing same-sex unions. Other companies are brushing off fears that support for gay marriage could hurt their bottom line. (Mike Stewart, File, Associated Press)

Dan Cathy, president of Chick-fil-A, recently put his company in activists' sights by donating money to same-sex marriage opponents and defending his conservative views on gay rights. Nothing too interesting here. This is what political debate in a democracy looks like.

Chicago Alderman Joe Moreno has gone farther. Chick-fil-A owns property in his ward, but he must approve any construction. "There are consequences for one's actions, statements and beliefs," he said in a public statement. "Because of this

man's ignorance, I will deny Chick-fil-A a permit to open a restaurant in my ward."

Legally speaking, this isn't a hard case. Moreno has announced his intention to violate the First Amendment. As an ACLU attorney aptly noted in response, "When an alderman refuses to allow a business to open because its owner has expressed a viewpoint the government disagrees with, the government is practicing viewpoint discrimination." As any first-year law student can tell you, viewpoint discrimination is the number one no-no of American free-speech law.

Unlike Moreno, most officials punishing speech don't announce their unequivocal intention to violate the Constitution. Consider Boston Mayor Thomas Menino. Last week he said it would be "very difficult" for Chick-fil-A to get needed licenses in Boston and sent a letter telling Cathy that there was "no place" for Chick-fil-A in the city.

This is a more interesting case. Unlike the alderman, the mayor does not have direct control over the zoning process. However, his letter



In this Monday, Dec. 14, 2009 picture, Chick-fil-a founder Truett Cathy, left, and his son Dan Cathy pose for a photo with the Chick-fil-A cows during a

pointedly cc-ed Chick-fil-A's property developer and can

celebration of passing the \$3 billion dollar mark in system-wide sales for the first time at the Chick-fil-a headquarters in Atlanta. (Associated Press)

informally influence the zoning process. And then there are the numberless ways in which urban construction projects empower local officials like Menino to harass disfavored projects.

The law, however, is unlikely to constrain the kinds of influence that Menino can wield. The reality is that litigation is a blunt instrument, and it is ill-suited to ferreting out the more subtle ways that officials can punish unwanted speech. This fact, however, doesn't make a threat from an official like Menino any less potent.

This is why, regardless of politics, one ought to condemn the mayor's actions. Such public condemnation is the only way of effectively constraining the kind of soft censorship he threatened.

The most obvious reason to condemn his threats is the counsel of prudence. One may applaud the courageous official who takes a stand against detested speech today. Tomorrow, however, some vindictive politician opposed to your enlightened views may try the same thing.

These tactics are also redundant. If Chick-fil-A really is the outrage to Boston that the mayor claims, he doesn't need to bluster and threaten. The good people of Massachusetts are free to withdraw their patronage from offending businesses. The market already keeps most business speech pretty innocuous.

Finally, gay rights activists should be particularly wary of such tactics. Every political persuasion has a stereotype of what it looks like in its uglier moments. For progressives, it is the image of the sanctimonious activist confidently using the power of the government to bully and bludgeon the less enlightened. It's best not to associate one's cause with such images by acting out the stereotype.

To the credit of our political culture, many condemned Menino's actions. To his credit, he has backed down, repudiating his earlier statements and saying he won't try to stop Chick-fil-A building in Boston. At times the best response to elected bullies caught in a moment of righteous indignation is simply to call them on it. Speech is a good way of protecting free speech.

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