ing the law on the basis that it violated his First and Fourth Amendment rights, as well as the Ex Post Facto Clause of the United States Constitution. The district court initially invalidated the statute on the basis that, because the law provided "no restrictions on how the [State] c[ould] use or disseminate registrants' [I]nternet information," it infringed on Doe's First Amendment right to anonymous speech. As a result, the State amended the law to designate certain information provided by an offender, including Internet identifiers, as private information, and filed a motion for the district court to vacate its earlier order. That court ruled that the amendments "diminished" the chilling effect on Doe's speech, and granted the motion. It also held that the statute did not violate Doe's Fourth Amendment rights (because he had failed to show he had a reasonable expectation of privacy in his Internet identifiers, communicated to a third party) and did not violate the Ex Post Facto Clause. Doe appealed.

The U.S. Court of Appeals for the Tenth Circuit affirmed. On the First Amendment claim, a State could permissibly infringe upon the right to anonymous speech when its interest was important enough and the law was appropriately tailored to meet the stated interest. The registry law was a content-neutral regulation subject to intermediate scrutiny, because it was entirely unconcerned with the ideas or opinions that Doe wished to express. The State had a clear, compelling interest in investigating kidnapping and sex-related crimes, and the law was narrowly tailored. It permitted sharing of the information provided "only among law-enforcement agencies, not the public at large, and only for the recited law-enforcement purposes," and the statute included sufficient restrictions so as not to unnecessarily chill Doe's speech.

The Fourth Amendment claim failed. Although Doe argued that there was a reasonable expectation of privacy in online identifiers because it was not always the case that an individual could be identified from his identifier, even if police were in possession of the associated IP address, he had raised these arguments for the first time on appeal. Even if Doe's arguments were not thus forfeited, there were no facts in the record from which the court could conclude that Doe's identities were shielded from his Internet service provider. On the Ex Post Facto Clause claim, the Tenth Circuit held that the threshold issue was whether the registry program constituted "additional criminal punishment for the crimes previously committed by those subject to its provisions." The court had previously held, in *Femedeer v. Haun*, 227 F.3d 1244 (10th Cir.2000), that the statute was civil in nature and presented no ex post facto violation. Here, "the effect of the new disclosure requirements is not substantial enough to alter our original analysis of the statute in *Femedeer*." *Doe v. Shurtleff*, No. 09-4162, 2010 WL 4888036 (10th Cir. Dec. 01, 2010).

First Amendment

Campaign Finance Rules

Colorado law required that any group of two or more persons, which accepted or made contributions or expenditures over $200 to support or oppose a ballot issue, to register as an issue committee and report the names and addresses of anyone who contributed $20 or more. The plaintiffs opposed the annexation of their neighborhood by an adjacent town, and started raising funds. Supporters of the annexation filed a complaint with the Colorado Secretary of State, alleging that the plaintiffs had violated the campaign finance law by, among other things, failing to comply with the financial reporting requirements. In response, the plaintiffs challenged the Colorado law, claiming that the reporting requirements unconstitutionally burdened their First Amendment rights of association.

The U.S. Court of Appeals for the Tenth Circuit ruled in favor of the plaintiffs, finding that the reporting and disclosure requirements could infringe on the right of association. As the U.S. Supreme Court stated in *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 238, 254 (1986), "[d]etailed record-keeping and disclosure obligations, along with the duty to appoint a treasurer and custodian of records, impose administrative costs that many small entities may be unable to bear." With regards to campaign finance disclosure requirements, the Supreme Court had recognized three proper justifications. First, reporting and disclosure requirements were an essential part of gathering data necessary to detect violations of contribution limitations; second, publicizing large contributions and expenditures could deter actual corruption and favoritism; and last, the requirements supported an informational interest that allowed voters to place a candidate in the political spectrum "more precisely" than would often be possible using just party labels and campaign speeches. The Tenth Circuit reasoned that these justifications were not applicable to ballot-issue committees, stating that "[w]hen analyzing the governmental interest in disclosure requirements, it [was] essential to keep in mind that our concern [was] with ballot issues, not candidates." In previous cases, contribution limits to candidates had been upheld because limits were necessary "to avoid the risk or appearance of quid pro quo corruption — the exchange of a contribution for political favor." Limits on ballot-issue committees, in contrast, were "unconstitutional because of the absence of any risk of quid pro quo corruption." That said, however, disclosure requirements could still be upheld if they survived "exacting scrutiny." There had to be a "substantial relation" between the requirement and a governmental interest, sufficient to justify the burden on the freedom of association. In this case, the court reasoned that the "financial burden of state regulation" approached or exceeded "the value of the [plaintiffs'] financial contributions to their political effort and the governmental interest in imposing the regulations [was] minimal, if not nonexistent, in light of the small size of the contributions." The court reversed and remanded the case for entry of judgment in favor of the plaintiffs. *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010).

Personnel and Employment

Religious Discrimination – Title VII

Mary Sharon Dixon and her husband, Daniel Dixon, were, respectively, the on-site property manager and the maintenance technician at Thornwood Terrace Apartments, a rental complex owned by Hallmark Management. They had previously worked at two other apartment complexes owned by that company, Rosemont and Devonshire. As part of their compensation, the Dixons were provided with an apartment at the Thornwood complex. The apartments were subject to periodic inspections by the

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U. S. Department of Agriculture (USDA) because the facility was a recipient of federal funds in the form of rental assistance. During one such inspection, the Dixons' supervisor, Christina Saunders, saw that the rental office had been decorated with art containing references to the Bible, and asked that it be removed. Saunders believed that the display was in violation of the federal Fair Housing Act (FHA), and feared losing her job if the facility was found to be non-compliant with the Act. Ms. Dixon had previously been told that, under Hallmark's policy, she could not display religious items in the management office. According to Saunders, Ms. Dixon "made it clear that the picture was not going to come down" and left the office, and Saunders called her own supervisor. That manager instructed Saunders to take down the artwork herself. Ms. Dixon, however, returned to the rental office with her husband, and they allegedly insisted on re-hanging their artwork. Saunders ultimately fired both Dixons for insubordination. The Dixons, however, claimed that Mr. Dixon was fired because, as Saunders alleged said, "You're fired, too. You're too religious."

The Dixons filed a lawsuit against Hallmark, alleging that it violated Title VII of the Civil Rights Act of 1964 by intentionally discriminating against them, failing to accommodate their sincerely held religious beliefs, and retaliating against them. The Dixons also asserted claims of retaliation and housing discrimination in violation of the FHA. The district court granted Hallmark's motion for summary judgment, rejecting the plaintiffs Title VII intentional discrimination and retaliation claims, and finding, on their failure-to-accommodate claim, that it was unclear whether they held a sincere religious belief regarding the removal of their artwork. It held that § 3604(b) of the FHA did not cover the Dixons. The defendants could not have interfered with the Dixons' right to not be discriminated against in the terms, conditions or privileges of the rental of a dwelling when they were evicted because the manager's apartment was "part of their compensation, not a rental."

On appeal, summary judgment in favor of the defendants was affirmed, in part. The U.S. Court of Appeals for the Eleventh Circuit held that a reasonable jury could conclude that Saunders's alleged comment ("You're fired, too. You're too religious.") constituted direct evidence of religious discrimination. Because the Dixons raised a genuine issue of material fact as to whether Hallmark intentionally discriminated against them on the basis of their religious beliefs, the district court erred by granting summary judgment on that claim. On the Title VII failure-to-accommodate claim, the appellate court vacated and remanded the district court's grant of summary judgment. The differing testimony as to whether the Dixons held a sincere religious belief that conflicted with the employer's directive to remove their artwork raised a genuine issue of material fact as to the first prong of the failure-to-accommodate analysis (that they held a bona fide religious belief that conflicted with an employment requirement). The Dixons also satisfied both remaining prongs: that they informed Hallmark of that belief; and were discharged for failing to comply with the conflicting employment requirement.

On their Title VII retaliation claim (that they opposed Hallmark's "unlawful employment practice," the decision to keep its workplace free of religious symbols), the Eleventh Circuit concluded that the Dixons failed to demonstrate a viable claim. While they *subjectively* believed that Hallmark's policy was an "unlawful employment practice," they pointed to no evidence to show that the belief was *objectively* reasonable — that is, statutory or case law that could reasonably be believed to prohibit a private employer from keeping its own workplace free of religious references. The absence of anything in the FHA to prohibit religious symbols in the workplace did "nothing to further the Dixons' obligation to demonstrate that the law prohibits a private employer from deciding to keep its workplace free of religious symbols."

On the last issue, retaliation and housing discrimination under the FHA, the court found the court below erred, but affirmed on other grounds. The district court was incorrect in finding that the FHA did not apply because the FHA's definition of "to rent" included "to grant for a consideration the right to occupy premises," which included providing an apartment in exchange for management and maintenance services. However, to establish a claim for retaliatory housing discrimination, the Dixons had to show that Hallmark "coerce[d], intimidate[d], threaten[ed], or interfere[d] with" their exercise of rights granted under § 3604(b). Since the Dixons failed to show how § 3604(b) provided a right to hang religious artwork in Hallmark's rental office (which was separate from their personal dwelling premises), and because § 3604(b) provided no such right, the Dixon's claim for retaliatory housing discrimination failed. *Dixon v. The Hallmark Companies, Inc.*, 627 F. 3d 849 (11th Cir. 2010).

Employee Speech and Retaliation

Lauck had been an employee of the Campbell County Sheriff's Department for 22 years, rising to the rank of deputy sheriff. He was also the lead officer on his shift. The sheriff decided to transfer Lauck to the Civil Process Division. Lauck would retain his pay and rank, but would no longer be the lead officer on his shift. Lauck refused the transfer and claimed that he was being demoted and constructively discharged. He brought a state law breach of contract claim, and civil rights claims under 42 U.S.C. §1983, alleging a denial of procedural due process and retaliation for speech protected by the First Amendment.

With regards to the First Amendment retaliation claim, the U.S. Court of Appeals for the Tenth Circuit followed a five-step approach. First, the court determined "whether the employee spoke pursuant to his official duties." If the answer was no, the court next examined whether the speech was on a matter of public concern. If the answer was yes, the court then determined whether the employee's interest in commenting on the issue outweighed the interest of the State as an employer. In the fourth step, the court decided whether the employee had shown that the speech was a substantial or motivating factor in a detrimental employment decision. Last, the court decided whether the employer showed that it would have taken the same employment action even in the absence of the protected speech.

Lauck identified two statements that