marchers off the streets and onto the sidewalks, unchecked by any requirement to explain the reasons for doing so or to provide some forum for appealing the chief's decision. We therefore hold that the parade ordinance is facially unconstitutional." The ordinance allowed officials to restrict access to the streets whenever such a restriction was in the undefined "interest of" traffic and pedestrian safety. This language gave officials "less guidance and more leeway" than the standards the Supreme Court and the Ninth Circuit had previously approved, especially since the ordinance had no requirement that the reason for the restriction be articulated, or any mechanism for direct administrative or judicial review. In finding the ordinance to be invalid, the court also pointed to the implementation of the ordinance: as applied, the ordinance seemed to be akin to a permit scheme that allowed the deciding official to grant or deny a permit for speech; further, the police had been enforcing the ordinance "as though it authorized denying permits (relegating marchers to the sidewalks as normal pedestrians), although the City has repeatedly claimed that all permits must be granted." *Seattle Affiliate of the October 22nd Coalition to Stop Police Brutality v. City of Seattle*, 550 F. 3d 788 (9th Cir. 2008).

License Plates—Whose Speech?

Illinois permitted vehicle owners in the state to have, for a fee, specialized license plates that included a specific message or symbol. State law provided that at least 10,000 applications had to be received for each new license plate before the Secretary of State issued the specialized plates. Although the law did not specifically require it, the Secretary of State traditionally referred to the state legislature for enabling legislation concerning the plates. Choose Life Illinois (CLI) was a nonprofit agency that collected more than 25,000 signatures towards obtaining approval for a specialty license plate with the words "Choose Life." The Secretary informed CLI that he could not issue the plate without approval by the Illinois General Assembly. For the next few years, CLI tried to gather support in the Assembly for the license plate; however, the proposal died in a subcommittee. CLI then bought a First Amendment free speech claim against the Secretary, alleging that the refusal to approve the plates constituted viewpoint discrimination within a government-created forum for private speech. The district court granted summary judgment for CLI, stating that the Secretary did not need enabling legislation; further, the specialty-plate program established a forum for private speech, and excluding CLI's message of "Choose Life" was impermissible viewpoint discrimination.

The U.S. Court of Appeals for the Seventh Circuit addressed the questions of whether the messages on specialty license plates were the government's own speech, or private speech; if they were private speech, did the exclusion of CLI's proposed language violate the Free Speech Clause of the First Amendment? First, it held the message on the plates was private, not government, speech, siding with the position taken by the Ninth and Fourth Circuits. The specialty plates "serve[d] as mobile billboards for the organizations and like-minded vehicle owners to promote their causes and also [were] a lucrative source of funds." Although the State and the organization shared editorial control, the organization typically developed the plate design and the slogan or symbol that went on the license plate. In addition, the plates themselves were "most closely associated with the drivers and the sponsoring organizations, and the driver [was] the ultimate communicator of the message." The court next determined that the plates constituted a nonpublic forum, due to the fact that their primary purpose was vehicle identification, not facilitating an exchange of ideas, and because the plates themselves were "heavily regulated by policy and practice." Finding a nonpublic forum, the court reviewed CLI's exclusion from the specialty-plate program under a reasonableness standard. The exclusion was reasonable, as "[a]lthough the messages on [the plates were] not governmental speech, they [were] reasonably viewed as having the State's stamp of approval…it [was] reasonable for the State to maintain a position of neutrality on the subject of abortion." *Choose Life Illinois, Inc. v. White*, 547 F. 3d 853 (7th Cir. 2008).

Personnel and Employment

Employee Screening and Errors in Reports

Pendergrass was employed by a pharmacy, Rite Aid. He was suspected of theft and aggressively questioned about merchandise losses by the store's loss prevention officer. Pendergrass claimed that the officer coerced him into signing a false written statement. Subsequently, in January 2006, Pendergrass was fired for unexplained merchandise losses, fraudulent transactions, and other related infractions. At the same time, the employer published a report of the incident with ChoicePoint, a "data aggregation company that operates as a private intelligence service to government and industry." Employers accessed its database through the Internet or in other ways. The report apparently referred to "Cash Register Fraud and Theft of Merchandise," with a total theft amount of $7,313.00. This listing, Pendergrass alleged, resulted in him being turned away when he sought employment with CVS, Walgreens, and Target. One prospective employer advised him of the bad report. In January 2008, Pendergrass sued, alleging violations of the Fair Credit Reporting Act (FCRA) by Rite Aid and ChoicePoint, and raising a defamation claim under Pennsylvania law against Rite Aid and ChoicePoint. He alleged his employer had made the report "with malice or willful intent to injure [him]" and specifically intended to prevent him from getting future employment. He further alleged that ChoicePoint repeatedly republished the defamatory report, with the result that the plaintiff was "branded a thief" and unable to obtain employment. Rite Aid sought to dismiss the defamation claim on the basis that the applicable statute of limitations barred the claim. In Pennsylvania, the statute of limitations for defamation claims was one year from the date of publica-

tion. According to Pendergrass, Rite Aid was liable for each "republication" of its initial report, including the July 2007 viewing by Target, and any other republications occurring within the statutory limitations period.

The court presumed that the discovery rule delayed the beginning of the limitations period to November 30, 2006, when the plaintiff alleged he first learned of the defamatory report. Second, it declined to apply the "single publication" rule (that any one edition, broadcast, or similar aggregate communication was a single publication) in this case, "given the vast differences between traditional 'mass publication' for a general audience and confidential publication to a consumer reporting agency." Rite Aid did not circulate the report to a wide audience; instead, it transmitted it to ChoicePoint with the knowledge that it would be made available to subscribing customers upon request, and viewed on separate, distinct occasions. Therefore, there was no "aggregate publication." Accordingly, the motion was dismissed in respect of any republication of the report that occurred on or after January 2007, but granted for any republication occurring prior to that date, being time-barred. *Pendergrass v. ChoicePoint, Inc.*, No. 08-188, 2008 WL 5188782 (E.D. Pa. Dec. 10, 2008).

Employment Discrimination—Evidence

Stover, an African-American woman, was employed by the defendant school district as a secretary and administrative assistant. A few years prior to Stover's resignation in 2006, the District created and filled an unadvertised position for a "Central Office Administrative Coordinator." This position was filled by a O., a white man. His starting salary was significantly higher than what Stover was being paid, and he had a master's degree, while Stover had a bachelor's degree. When Stover learned of the new hire's salary, she argued that like O., she was an administrative assistant and performed substantially equal work, and, therefore, should be paid the same. She filed a charge with the Equal Employment Opportunity Commission (EEOC), alleging that the District had discriminated against her on the basis of race, and violated the Equal Pay Act (EPA). A year later, Stover filed a complaint in federal court, alleging race discrimination and a violation of the EPA, and adding claims for gender discrimination and retaliation. At trial, the district court precluded certain evidence, including evidence of the District's practice of not advertising employment openings. The district court ultimately permitted the case to go to a jury, and the jury returned a special verdict in favor of the District on all claims. The District also moved for, and was granted, an award of attorney's fees and costs. Stover appealed, claiming that the district court made several errors, including: not permitting alleged admissions of discrimination and discriminatory intent to be considered as direct evidence; permitting evidence of the new hire's qualifications; allowing evidence that attacked Stover's character; excluding evidence of the District's hiring practices; and dismissing the constructive discharge claim.

The U.S. Court of Appeals for the Fifth Circuit affirmed in part, reversed and vacated in part, and remanded. Dealing first with the district court's grant of summary judgment in favor of the District on the constructive discharge claim, the court applied the requirement that the employee must "offer evidence that the employer made the employee's working conditions so intolerable that a reasonable employee would be compelled to resign." Stover presented no evidence of a demotion, a reduction in salary or job responsibilities, reassignment to menial work, badgering or harassment, or offers of early retirement. "[A]t best, the evidence shows that Stover was disgruntled ... [but] none of the evidence increases the severity of pervasiveness of any harassment to the level required to support a constructive discharge claim." On Stover's challenges to various evidentiary rulings in the court below, the appellate court held that the district court properly admitted evidence comparing the skill, effort, and responsibilities required of the jobs performed by Stover and O. There was sufficient evidence presented at trial for the jury to conclude that the District did not discriminate against Stover on the basis of race or sex, so that her claim (that evidence that the District admitted discriminatory conduct and violations of the EPA should have been considered as direct evidence of discrimination) was not justified. Stover also claimed that the court below had erroneously permitted evidence that Stover had destroyed or deleted computer information. The appellate court found that this was not an abuse of discretion, as "the district court stated that Stover had portrayed herself to be a victim and work attitude was at issue. The court permitted the evidence for purposes of impeachment." Likewise, on the remaining argument—that the district court improperly precluded evidence of discriminatory hiring practices by the District—the Fifth Circuit found no error had occurred. The "lack of a policy requiring advertisement under these circumstances is not evidence of discrimination." *Stover v. Hattiesburg Pub. Sch. Dist.*, 549 F. 3d 985 (5th Cir. 2008).

Public Records

Production of Deleted E-mails

In the course of a public debate on whether to renovate a government building (a courthouse) or to demolish it, the Seneca County Board of Commissioners approved an architectural study of the County government's future space requirements. The resulting report identified five options. The report was circulated by e-mail to the Board members by Commissioner Nutter prior to August 2006, when the Board approved a variation of one of the options that included demolition. Nutter had received no e-mail responses from the other commissioners, and no one had raised the issue during any meeting prior to a Board resolution in an open meeting. Claiming there had been no public deliberations on the approved option, the applicant company sought to review all outgoing and incoming e-mails, including "all sent messages, received messages, deleted messages, and drafts of messages" of specified County Commissioners, including Nutter, up to August 2007. The records produced contain-

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