

Civil Rights

Voting Rights and Photo ID

In 2005, the citizens of Albuquerque approved an amendment to their City Charter that required the production of photo identification for in-person voters in all municipal elections. The stated purpose was to prevent voter fraud and identity impersonation for in-person voting (thus, it did not address absentee voters). However, the amendment allowed a voter without the requisite identification to submit a provisional ballot, after completing a clerk-supplied affidavit as to identity. The vote would then be counted once the individual presented photo identification to the city clerk within ten days of the election date. Also, the city clerk provided free photo identification cards at any time, including on election day and during the ten-day period following an election. The plaintiffs, City residents and various organizations representing voters and homeless individuals, challenged the constitutionality of the Charter amendment, claiming that it violated equal protection and First Amendment rights. The district court granted summary judgment in favor of the plaintiffs on the equal protection claim and in favor of the defendants on the First Amendment claim. The City appealed. After the district court entered its final order, but before the oral argument in the Tenth Circuit, the U.S. Supreme Court decided the case of *Crawford v. Marion County Election Board*, 128 S.Ct. 1610 (2008), where the Court upheld, against a facial equal protection challenge, an Indiana requirement that photo identification be presented before voting. In *Crawford*, the Court held that the appropriate standard for evaluating constitutional challenges to a regulation affecting the right to vote was to balance the restrictions imposed by the regulation against its justifications. Justices Scalia, Thomas, and Alito, in a concurring opinion, stated that the burden imposed by the photo identification law was "minimal and justified," and that the law was a "generally applicable, nondiscriminatory voting regulation."

With the *Crawford* decision in mind, the U.S. Court of Appeals for the Tenth Circuit reviewed the grant of summary judgment. The City argued the plaintiffs' lacked standing, and that the law properly distinguished between in-person and absentee voters. In the court below, the plaintiffs successfully argued that the law created an arbitrary distinction between in-person and absentee voters by only requiring in-person voters to present identification. The Tenth Circuit disagreed, finding that absentee voting was fundamentally different than in-person voting and had its own set of procedures by which to confirm a voter's identity. The law was intended for in-person voters only and, since there were clear differences between in-person and absentee procedures, the law's distinction was proper. Next, analyzing the law using the balancing test in *Crawford*, the court ruled that the law was valid. The justifications for the requirement were to prevent voter fraud and impersonation. Dealing with the district court's finding that the City did not present any evidence of past instances of voting fraud, the Tenth Circuit referred to *Crawford*, where the Supreme Court did not require Indiana to present specific evidence of past conduct to justify its photo identification requirement. Balancing the government's need to prevent fraud against the burden on an in-person voter, a voter without ID could still cast a provisional ballot, and at most, would be burdened with an additional single trip to the city clerk's office. Because an identical burden was found to be permissible in *Crawford*, the court here found it was permissible as well, and the district court's judgment invalidating the law was reversed. *The American Civil Liberties Union of New Mexico v. Santillanes*, 546 F. 3d 1313 (10th Cir. 2008).

Red Light Cameras

In 2003, the City of Chicago installed so-called "red light cameras"—cameras to take photos of cars that ran red lights and made illegal turns. The ordinance provided that the vehicle owner was liable for the $90 fine, regardless of who was driving, although the ordinance exempted certain leases (in such cases, the lessee, rather than the owner, was responsible). Persons cited could defend by showing that the vehicle or its plates had been stolen or that the vehicle had been sold, but could not raise the defense that someone else was driving. The plaintiffs, various owners who had been fined under the ordinance, argued that the system violated the equal protection and due process clauses of the Fourteenth Amendment. The district court held otherwise and entered summary judgment for the defendants. On further appeal, the U.S. Court of Appeals for the Seventh Circuit affirmed. "Substantive due process depends on the existence of a fundamental liberty interest ... and no one has a fundamental right to run a red light or avoid being seen by a camera on a public street. The interest at stake is a $90 fine…, and the Supreme Court has never held that a property interest so modest is a fundamental right." Further, the ordinance was rational: the photographic evidence reduced the costs of law enforcement and increased the proportion of offenses that were detected. Placing the responsibility on the owner induced owners to exercise control over their vehicles, without foreclosing the opportunity for them to recover the cost from the wrongdoer. Lastly, the distinction between lessors and owners was not irrationally discriminatory, given that the City's goal was to impose the fine on the person who, based on readily-available legal documents, was

in charge of the vehicle. *Idris v. City of Chicago*, No. 08-1363, 2009 WL 18138 (7th Cir. Jan. 05, 2009).

Due Process—Claim Preclusion

Giragosian owned and operated a gun shop in the Town of Arlington, Massachusetts, and also offered training on gun safety at the premises. In 2007, while he was training a customer to use a handgun, the customer intentionally shot himself in the head. The same day, the Arlington Police Department investigated and concluded that Giragosian was not at fault, but suspended his licenses to carry and sell firearms, and requested the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to investigate his business. Giragosian challenged the license suspensions in state court, and the court hearing the matter granted his request to vacate the license suspensions. However, instead of reinstating the licenses, Ryan, the police chief, completely revoked the licenses, giving as reasons Giragosian's failure to report stolen firearms, failure to undergo a firearms safety instructor course mandated by the state court, and various violations uncovered in the ATF investigation. Giragosian responded with a 42 U.S.C. § 1983 suit in federal court, alleging that Ryan and the Town violated his rights under the Fourth and Fourteenth Amendments; he simultaneously brought a state court action also seeking reinstatement of his firearm licenses. The state court refused to reinstate the licenses, finding "sufficient grounds to conclude that the decision of [Ryan] in revoking [the] firearms licenses was reasonable and not arbitrary, capricious or an abuse of discretion." In the federal action, the Town argued *res judicata* (both claim and issue preclusion); Giragosian, for his part, argued that the federal court should ignore the state court judgment due to the lack of impartiality and numerous errors of law. The magistrate judge ruled and recommended to the district court that (1) issue preclusion barred the federal court from reexamining whether Ryan's actions were arbitrary, capricious, or an abuse of discretion, (2) the post-deprivation review process available in state court provided Giagosian with adequate process, and (3) qualified immunity shielded Ryan and the Town from suit. Accordingly, the district court granted the defendants' motion to dismiss under Rule 12(b)(6). Giragosian appealed.

On appeal, the U.S. Court of Appeals for the First Circuit considered whether Giragosian's federal claim was barred by the doctrine of *res judicata*. In Massachusetts, the doctrine encompasses both claim and issue preclusion and, generally, follows the rule that "when two actions are pending which are based on the same claim, or which involve the same issue, it is the final judgment first rendered in one of the actions which becomes conclusive in the other action ... regardless of which action was first brought." Under the doctrine of claim preclusion, Massachusetts evaluated three elements: the identity of privity of the parties; the identity of the causes of action; and a prior final judgment on the merits. The First Circuit held that all three elements for claim preclusion were met, as the parties were identical in both cases, the facts in both cases were identical and left no doubt that the causes of action were identical, and there was a final judgment in the state court. The court ruled that Giragosian had a "full and fair opportunity" to litigate his claim in state court and could have raised his constitutional claims at that time. Preventing him from proceeding with a claim in federal court protected "against the expense and vexation attending multiple lawsuits, conserved judicial resources, and fostered reliance on judicial action by minimizing the possibility of inconsistent decisions." *Giragosian v. Ryan*, 547 F. 3d 59 (1st Cir. 2008).

First Amendment

Parade Ordinances

The City of Seattle's parade ordinance required those wishing to march or have a parade to first obtain a permit from the City's chief of police. The ordinance indicated that the police chief, when issuing a permit, had the discretion to require marchers to use sidewalks, instead of the streets: "The Chief of Police may modify the place and hour of formation, the proposed line of movement or march, and the scheduled starting time in the interest of vehicular or pedestrian traffic safety." However, the chief had no authority to deny a permit. The Seattle affiliate of the October 22nd Coalition to Stop Police Brutality, Repression and the Criminalization of a Generation was an association dedicated to raising awareness about police brutality. The Coalition had applied for, and received, a permit to march every year since 2001. In 2003, a permit had been granted, but on the day of the march, one of the police officers present told members they could only use the sidewalks, as the parade permit had been "rescinded," and that the decision to rescind was "based on the number" of marchers (approximately 80 to 100). The City's ordinance did not include a minimum numbers requirement in all, or even most, parade permits as a condition of allowing marchers to use the streets, nor did it set the minimum requirement at a consistent number. The Coalition maintained that the City's permitting practices suggested that political or protest marches were more likely than other parades to have their permission to use the streets conditioned on a minimum number of marchers. It sued, claiming that the conduct of police officers at the Coalition's 2003 parade violated their free speech and due process rights, and that the parade ordinance, on its face, violated the First Amendment. It argued that restricting marchers to the sidewalks amounted to a constructive and impermissible denial of a parade permit.

The ordinance was a content-neutral time, place and manner regulation. The issue was whether the ordinance violated the free speech guarantees of the First Amendment because, on its face, it impermissibly granted "the licensing official ... unduly broad discretion," pursuant to *Thomas v. Chicago Park Dist.*, 534 U.S. 316 (2002). The U.S. Court of Appeals for the Ninth Circuit concluded that it did: "the ordinance by its terms gives the Chief of Police unbridled discretion to force

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