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First Amendment: No Constitutional Right to Rapid Access to Court Records

Sullo & Bobbitt P.L.L.C. v. Milner, No. 13-10869 (5th Cir. Aug 6, 2014).

There is no constitutional right for a criminal defense law firm to view records of new misdemeanor summonses within one business day after they are filed, according to the Fifth Circuit.

Sullo & Bobbitt P.L.L.C. ("Sullo") offers legal representation for misdemeanor offenses in the Dallas-Fort Worth area. In addition to advertising for clients through television and other media, the firm culls through court records seeking information about recent misdemeanor summonses to obtain the names and addresses of people who might require their services.

In 2011, Sullo sued the Chief Municipal Judge of Arlington Texas as well as various other local judicial officials on the grounds that they had "deliberately delayed access" to court case information needed by Sullo to contact potential criminal defendants—despite the firm's offer to send individuals to court to obtain the desired data or, in the alternative, to provide the courts with software to extract and deliver such information.

Sullo alleged violation of its right "to receive quick access to court records" under federal common law as well as violations of its First and Fourteenth Amendment rights and 28 U.S.C. Section 1983. In its prayer for relief, Sullo sought access to criminal citations or new criminal cases *within one business day* after they are recorded or filed.
The District Court denied Sullo's request and dismissed their claims.

HELD: The Fifth Circuit affirmed, finding no constitutionally-cognizable claim for expedited access to court records.

DISCUSSION: The Circuit Court reiterated much of the lower court's analysis. It looked to the Supreme Court's "experience and logic" test (*Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986): when dealing with First Amendment claims of right of access to criminal proceedings, courts look to whether they have traditionally been accessible to the press and public, and to what extent such access plays a significant positive role in the functioning of that process.

Here, Sullo had to allege more than a tendency of other Texas courts to afford rapid access to records—the firm had to allege that courts nationally (and not just in Texas) have historically given access to court records in the timeframe requested. "Because plaintiffs assert a constitutional right under the *United States* Constitution, they must make allegations or raise arguments that are sufficient to support a reasonable inference that courts throughout the United States have historically released citations or citation information to the public." Sullo had failed to allege even that a significant number of other jurisdictions outside Texas afforded such access. They therefore had no constitutional argument and no basis for a Section 1983 action.

http://www.ca5.uscourts.gov/opinions/unpub/13/13-10869.0.pdf (last accessed August 14, 2014)

Land Use: Town's Delay in Granting Building Permits Is Not Denial of Substantive Due Process

CEnergy-Glenmore Wind Farm #1, LLC v. Town of Glenmore, No. 12-C-1166 (7th Cir. August 7, 2014).

The Seventh Circuit has upheld a lower court decision finding that, where a town delayed granting permits to a wind farm company because of public opposition, resulting in the applicant's loss of a power purchase agreement, the delay did not constitute an actionable denial of substantive due process, particularly where the plaintiff had not first exhausted its state law remedies.

In 2007 Prelude Inc., which CEnergy-Glenmore ("CEnergy") later bought, contracted with a Glenmore, Wisconsin family to construct a wind farm on the family's property. Additionally, it contracted with the Wisconsin Public Service Corporation to sell the power generated at the wind farm for fixed rates for 20 years. Critically, however in order for the power purchase agreement with the Wisconsin Public Service Corporation to be binding CEnergy had to acquire all necessary permits by March 1, 2011.

Due to the wind farm's construction within Glenmore town limits, CEnergy had to obtain a building permit for each of seven planned turbines. The company began the process of acquiring permits in September 2010, but the permits were not forthcoming. The town sought supplemental information on the initial application. The company submitted the information quickly and asked that the item be added to both the January and February Town Board meetings, but to no avail. With public opposition to the farm increasing, the Town Board refused