Cases



Civil Rights
Pat-Down Inspections – Stadium

In 2005, a football team, the San Francisco 49ers, Ltd., implemented a policy of the National Football League (NFL) that required all patrons at their football games to submit to a pat-down search as a condition of entering the stadium at San Francisco's Candlestick Park. This consisted of non-police screeners running their hands around the patrons' backs and down the sides of their bodies and their legs. Members of the San Francisco Police Department stood nearby, observing the searches. The Sheehans, two long-time season ticket holders, sued the team seeking declaratory and injunctive relief, claiming that the pat-down policy violated their state constitutional right to privacy. (The California State Constitution, article I, section 1, specifically refers to an inalienable right of "privacy"). The team demurred, arguing that the suit did not state a cause of action, without giving any explanation or justification for the alleged search policy, or asserting any defenses. The trial court sustained the demurrer without leave to amend and dismissed the action with prejudice. The plaintiffs appealed and the California Court of Appeal affirmed, finding that the plaintiffs had validly consented to the search and failed to show that they had a reasonable expectation of privacy, because "rather than submit to the pat-down[,] the Sheehans had the choice of walking away, no questions asked."

On further appeal, the Supreme Court of California reversed and remanded, ruling that the plaintiffs had adequately alleged a reasonable expectation of privacy not to be subjected to a pat-down inspection when entering the stadium. Referring to the analytical framework of *Hill v. Nat'l Collegiate Athletic Ass'n*, 865 P.2d 633 (Cal. 1994), the court held that the plaintiffs had established a legally protected privacy interest ("a right not to have others pat them down") and a reasonable expectation of privacy under the circumstances. While consent was a factor in the latter determination, the court held that a person who chose to attend an entertainment event could not, in doing so, be taken to consent to any security measure the promoters decided to impose, "no matter how intrusive or unnecessary." Other factors were the team's identity as a private, not public, entity, and the availability of less invasive alternatives. "Private entities that present entertainment events, like the 49ers', necessarily retain primary responsibility for determining what security measures are appropriate to ensure the safety of their patrons, subject, when those security measures substantially infringe on a privacy interest, to judicial review for reasonableness." In this case, given the absence of an adequate factual record, further inquiry was necessary to determine whether the challenged policy was reasonable, and the matter was remanded for the trial court to consider the circumstances. However, three of the judges signed onto a concurring opinion that rejected the "extreme deference to the judgment of private interests" in the majority opinion, finding that the intrusion, "far from being trivial or insignificant, involve[d] a substantial invasion of citizens' interests and expectations of physical autonomy," and suggesting that the policy should be subjected to a greater level of scrutiny. *Sheehan v. San Francisco 49ers, Ltd.*, 201 P.3d 472, 45 Cal. 4th 992 (Cal. 2009).

First Amendment
Soliciting Ban Valid

As part of his campaigning for public office, Del Gallo attempted to solicit signatures in support of his election campaign in the lobby of the Pittsfield Post Office. The staff started receiving complaints, and Del Gallo was told that, although he could not solicit signatures in the post office, he could do so on the post office sidewalk, which separated the post office parking lot from the post office itself. Later that month, Del Gallo returned to solicit signatures on the post office sidewalk. This time, Del Gallo was instructed by a post office supervisor that he could not continue campaigning on the post office sidewalk. This supervisor was aware of a postal service regulation, 39 C.F.R. § 232.1, which banned "campaigning for election to any public office" on post office property. Del Gallo refused to comply and was arrested. He sued the Post Office and its staff on First Amendment grounds, alleging a violation of his rights. The district court granted summary judgment in favor of the defendants.

The U.S. Court of Appeals for the First Circuit agreed with the district court. Reviewing the purpose behind 39 C.F.R. § 232.1, the court found that, until the 1970's, the Post Office was closely tied to partisan politics. It was a Cabinet-level department within the executive branch and Congress was extensively involved in the management of the post office (including selecting local postmasters). In 1970, Congress "recognized that partisan political entanglement was one of the most foremost problems facing the post office." As part of the reorganization of the Post Office, the regulation which banned campaigning on post office property was passed to "prevent abuses and to preclude any appearance of partisan endorsement or preference." With this historical angle in mind, the First Circuit analyzed the First Amendment implications of the regulation. The first inquiry was whether the post office sidewalk constituted a traditional public forum. In this case, it was held not to "have the characteristics of public sidewalks traditionally open to expressive activity." The sidewalk was clearly distinguishable from the municipal sidewalk and was not used as a public thoroughfare or a gathering place. It was constructed for the sole purpose of providing passage into the post office for individuals "engaged in post office business ... [and] not to facilitate the daily commerce and life of the neigh-