still available — just not at all hours and under any conditions — but instead, targeted non-expressive aspects of sexually oriented businesses. *Metro Pony, LLC v. City of Metropolis*, No. 11-cv-144-JPG, 2012 U.S. Dist. LEXIS 55491 (S.D. Ill. April 20, 2012).

Civil Rights

Whistleblower Finalist's "Entitlement" to Position

McDonald worked for the City of St. Paul from 2002 to 2003 as its director of the Office of Affirmative Action and the Coordinator of Minority Business Development and Retention. In 2003, he was terminated and sued the City and city officials, alleging violations of the Minnesota Whistleblower Protection Act, the Civil Rights Act of 1866, and the Civil Rights Act of 1871. In 2004, the City and McDonald executed a settlement in which no party admitted liability.

In 2008, the City established a new department, the Department of Human Rights and Equal Economic Opportunity, and took steps to hire a director. A 13-member hiring committee was established to recommend a list of finalists, but the final decision was to be made by city council. Thirty-one people applied for the position, including McDonald, and eight of these were chosen for interviews. One of the selection committee members included a woman against whom McDonald had filed a workplace conduct complaint. She recused herself from his interview, but McDonald was asked about his 2003 whistleblower action. Three finalists — including McDonald— were selected. All were subjected to additional interviews. The position was offered to the first finalist, and then the next (who both rejected it, in turn), leaving McDonald as the sole remaining finalist. Instead of offering him the position, the council decided to reconvene the selection committee on the basis that they wanted to produce a slate of three to five candidates to choose from.

McDonald sued the City and the mayor, alleging violations of his rights to equal protection and procedural and substantive due process under 42 U.S.C. § 1983 and the Fourteenth Amendment, resulting from his engagement in protected activity; conspiracy to deny him an employment opportunity with a public institution because of engagement in protected activity, in violation of 42 U.S.C. § 1985; violations of Title VII of the Civil Rights Act of 1964, and various state law claims. In essence, he claimed that he was passed over because of his prior lawsuit against the City. The district court granted the defendants' motion for summary judgment on all claims.

On appeal, the U. S. Court of Appeals for the Eighth Circuit affirmed. Regarding the due process claim, the possession of a protected life, liberty or property interest was a condition precedent to the government's obligation to provide due process of law, and where no such interest existed, there could be no due process violation. McDonald had no protected property interest in the director position: nothing in the ordinances or the selection process, as outlined, precluded the selection committee from certifying additional finalists or prohibited the mayor from considering additional finalists. Even if the mayor was constrained to appoint from the initial list of three finalists, the fact that an appointment was subject to the approval of the city council prevented McDonald from possessing a legitimate claim of entitlement to the director position.

On the equal protection claim — that he was treated differently from similarly situated candidates and denied the position because of his participation in the earlier lawsuit— there was no evidence that the mayor's decision to appoint someone other than McDonald to the position was influenced by McDonald's lawsuit. Likewise, his conspiracy claim failed. To prove a conspiracy under 42 U.S.C. § 1985, a plaintiff had to show that the conspiracy was fueled by some "class-based, invidiously discriminatory animus." The court here decided, as had other circuits, that McDonald's status as a whistleblower did not qualify so as to entitle him to protection under 42 U.S.C. § 1985. *McDonald v. City of St. Paul*, No. 11-2264, 2012 U.S. App. LEXIS 9484 (8th Cir. May 10, 2012).

Handgun Restrictions and Fees

A group of residents of New York City, plus several gun-rights groups, brought a Section 1983 action challenging two statutes — New York City Administrative Code § 10-131(a)(2) (the City Statute) and New York Penal Law § 400.00(14) (the State Statute)— on the basis that these laws violated their rights under the Second Amendment, as incorporated against the States by the Fourteenth Amendment, and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The State Statute made it illegal to possess a handgun, including within one's home, without a license. The fee to apply for a New York City "Premises Residence" handgun license, which allowed license holders to possess handguns within a specified dwelling, was set by the City at $340. All of the individual plaintiffs had paid the $340 fee.

The plaintiffs challenged two specific statutory provisions related to this licensing scheme: the State Statute authorizing the New York City Council to set the fees for the issuance and renewal of all handgun licenses issued in New York City (in New York State, the license fee was otherwise generally capped at a $10 maximum), and the City Statute prescribing the $340 fee, on the basis that it violated the Second Amendment because it imposed an impermissible fee that unconstitutionally burdened the right to keep and bear arms. The plaintiffs sought declaratory and injunctive relief, and moved for summary judgment. The fee, they alleged, was in excess of a "nominal" fee so as to deter the exercise of a protected activity, and exceeded the costs of administering New York's handgun licensing scheme. The Attorney General of the State of New York intervened in this action, and argued that the plaintiffs lacked standing to challenge the State Statute, on the basis that none of them had suffered any concrete or actual injury as a result of the operation of that law; any injury that occurred was traceable to the City's law alone.

The court dismissed the arguments challenging standing and found the fee was constitutional. "While the Intervenor is correct that it is the City Statute, rather than the State Statute, that imposes the $340 fee at issue, there exists a sufficient causal nexus between the City Council's actions and the State Statute to give rise to standing to chal-

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