Cases



Civil Rights

Liability and "Sanctuary City" Policies

In 2008, Edwin Ramos, an illegal immigrant, allegedly shot and killed Anthony Bologna and his sons, Michael and Matthew, as they were stopped in traffic in San Francisco. Ramos was allegedly a known gang member and a citizen of El Salvador who had lived in the United States for years in violation of the federal Immigration and Nationality Act (INA). The victims' family members sued the City and County of San Francisco, its mayor, and others in tort and alleged a violation of mandatory duties imposed by law. They claimed that San Francisco's policy of providing sanctuary to illegal immigrants was a legal cause of the decedents' murders because it shielded Ramos from deportation in violation of state and federal statutes, the Cal. Health & Safety Code § 11369 (West 2011) (requiring state authorities to notify federal authorities about the immigration status of drug arrestees), and part of the Illegal Immigration Reform and Responsibility Act of 1996 (8 U.S.C. § 1373) (invalidating all restrictions on the voluntary exchange of immigration information between federal, state, and local government entities and officials and federal immigration authorities).

The complaint alleged that Ramos had been arrested by San Francisco police officers on multiple occasions (as both a minor and later, as an adult offender) for violent crimes and drug offenses, and had been identified as a suspect in other serious crimes, including murder. It claimed that San Francisco's "sanctuary polices," pursuant to which City officials harbored individuals they knew to be illegal aliens who had committed crimes, violated state and federal laws. The plaintiffs asserted that police officers knew that they were required by state law to report Ramos's drug-related arrests and detentions to federal immigration officials, but were prevented from doing so by the sanctuary policies; that it was reasonably foreseeable that Ramos would continue to commit violence upon San Francisco citizens; and that, had San Francisco officials reported Ramos previously to U.S. Immigration and Customs Enforcement (ICE), it was a certainty that ICE would have initiated removal proceedings and deported him.

The trial court found that the alleged breaches of the two statutes supported neither a legally viable claim of negligence per se, nor breach of mandatory duties under state law. On appeal, the California Court of Appeal affirmed. Central to claims asserting both negligence per se and a violation of a mandatory duty was the requirement that the harm allegedly caused be of the precise nature the statute was designed to prevent. The State's Health & Safety Code was enacted to combat the illegal drug trade, and facilitate the deportation of persons arrested for selling or using illegal narcotics. "The fact that reporting suspected illegal immigrants arrested for drug offenses to the federal immigration authorities may also prevent them from committing violent crimes is not enough to warrant our conclusion that section 11369 creates an actionable tort on behalf of the general public." The court reached the same conclusion on the federal law relied upon by the plaintiffs: "the federal statute was not designed or intended to prevent the type of harm that plaintiffs suffered." *Bologna v. City and County of San Francisco,* 192 Cal. App.4th 429 (Cal. Ct. App. 2011).

Privacy: Disclosure of Medical Condition

Matson worked as a teacher for a public school, and also served as a director-conductor for the New York Scandia Symphony, a private orchestra. From 2003 through 2005, Matson took sick leave from her teaching job. After one request for sick leave, the school principal reminded Matson that she was scheduled to conduct a student orchestra that week. Matson insisted that she would have to miss the concert because she was ill. On Matson's return, the principal confronted her about a suspected abuse of her sick time: he had listened to a radio performance of the Scandia Symphony that Matson was conducting while on sick leave. After another absence by Matson for sick leave, the principal filed a complaint with the New York Department of Education, accusing her of "theft of services." The final report issued by the investigator for the New York City School District (SCI) verified that Matson had conducted the orchestra several times while on sick leave from her public school job. The report contained specific references to a conversation that the investigator had with Matson's doctor, who stated, among other things, that Matson had fibromyalgia, a medical condition that was exacerbated by stress at work. He informed the investigator that Matson needed time off from her teaching position, but could be able to conduct an orchestra. The report was publicly issued by SCI (as it was authorized to do) and made available on the SCI website. The investigation and report ended up being covered by the local press.

Matson filed a Section 1983 suit against the SCI, the board of education of the school district, and the City of New York, alleging that her constitutional privacy rights had been violated by the disclosure of her medical condition (however, she did not challenge the SCI finding that she abused sick leave or its recommendation that she be terminated). The district court granted the defendants' motion to dismiss on the basis that fibromyalgia was not a condition that gave rise to a constitutionally-protected privacy right. On appeal, the U. S. Court of Appeals for the Second Circuit affirmed.

As a general matter, a right to privacy protected "the individual interest in avoiding disclosure of personal mat-

ters." *Whalen v. Roe*, 429 U.S. 589 (1977). However, the interest of privacy of medical information varied with the condition and had been constitutionalized only "within narrow parameters." Historically, the courts had considered, on a case-by-case basis, whether a disease was contagious or attributed in any way to "socially repugnant conduct." The Second Circuit declined to add fibromyalgia to the list of protected conditions, as it was not a disease that was fatal or resulted in "profound psychiatric disorder." The court also focused its analysis on whether revealing one's condition would expose a person "not to understanding or compassion but to discrimination and intolerance." For fibromyalgia, there was no evidence of social discrimination or intolerance against people with the disease. Matson also claimed that the defendants disclosed her private medical information for the purpose of embarrassing and humiliating her, and it prevented her being employed in the teaching sector again. The court disagreed. The SCI had been given specific authority to issue reports of investigations that would be in the interest of the school district. In the year Matson's report was issued, the SCI publicly released ten other reports. Moreover, there was no evidence that Matson was precluded from finding employment (the Scandia Symphony website had rave reviews about her work). Because Matson's complaint offered no allegations of societal or actual discrimination, hostility, or intolerance based upon her diagnosis, the court affirmed the dismissal of the action. *Matson v. Board of Educ. of City School Dist. of New York*, 631 F.3d 57 (2d Cir. 2011).

Ordinance Banning Recruiting Invalid

Two California cities, Arcata and Eureka, passed basically identical "Youth Protection Acts," being ordinances that prohibited agents or employees of the federal government from engaging in military recruitment activities targeting minors. The ordinances were proposed in response to alleged violations of laws governing military recruitment — specifically, that recruiters targeted "teens through ad campaigns, mailings, telephone calls, email, and direct personal contact. They promote[d] enlistment by glorifying military service and exaggerating the educational and career benefits, while ignoring the dangers." The ordinances purported to bar the federal government from "recruit[ing], initiat[ing] contact with for the purpose of recruiting, or promot[ing] the future enlistment of any person under the age of eighteen into any branch of the United States Armed Forces" and subjected military recruiters to civil penalties for infractions. However, the ordinances exempted "individuals who are not employed by or agents of the U.S. government" from these restrictions. Both cities expressed an intent to enforce their ordinances against the federal government. In response, the federal government sued to bar enforcement on the basis that the ordinances were invalid under the Supremacy Clause of the U.S. Constitution. It asserted that the laws were preempted by federal law, and violated the doctrine of intergovernmental immunity because they directly regulated and discriminated against the federal government.

The district court agreed and granted the federal government's motion, finding the ordinances sought "to subject the conduct of the federal government directly to local government control," thereby violating the doctrine of intergovernmental immunity. It declared the ordinances invalid and permanently enjoined the two cities from enforcing them. The cities appealed, raising, for the first time, the district court's subject matter jurisdiction, arguing that the government failed to satisfy the "injury in fact" requirement for Article III standing; second, that because the government's complaint presented only a federal defense and not a federal claim, the government misused the Declaratory Judgment Act to try to establish federal question jurisdiction where it did not exist.

The U.S. Court of Appeals for the Ninth Circuit affirmed, finding the ordinances were unconstitutional. The government had established Article III standing, as it faced an "imminent adverse impact." It was "the sole target of the challenged [municipal] action," as enforced by civil penalties, and it was undisputed that the cities intended to and would enforce the ordinances if they were upheld. The federal government was not misusing the Declaratory Judgment Act to manufacture a federal claim, as Congress had, by statute, provided the district courts with original jurisdiction over "all civil actions, suits or proceedings commenced by the United States," and the government's complaint posed a federal question in its own right.

On the merits, the district court correctly held that the ordinances violated intergovernmental immunity — by constraining the conduct of federal agents and employees, the ordinances sought to regulate the government directly; further, they discriminated against the United States by specifically targeting and restricting its recruiters. The cities' Tenth Amendment defense (that the ordinances represented a valid exercise of their general police powers) was rejected because regulating the federal government's military recruitment efforts was not a power reserved to the states. The Ninth Circuit found it unnecessary in the circumstances to address the preemption argument. *U.S. v. City of Arcata*, 629 F.3d 986 (9th Cir. 2010).

Code Enforcement

Preemption and Medical Marijuana Dispensaries

California voters enacted Proposition 215, which legalized the right to obtain and use marijuana for medical purposes. In 2003, California added another law, this time for the purpose of promoting the "uniform and consistent application of [Proposition 215] among the counties." In 2006, Los Angeles County adopted a number of ordinances regulating the operation of medical marijuana dispensaries (MMDs). The laws required a MMD to obtain a conditional use permit, to locate outside a 1,000-foot radius of schools, playgrounds, parks, libraries, places of worship, child-care facilities and youth facilities. Any MMD not in compliance would be deemed a public nuisance.

Martin Hill and others allegedly operated a MMD without having obtained a business license, a conditional use permit, and a zoning variance to allow its operation within 1,000 feet of a public library. The County brought

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