

Civil Rights

Potential Perceived Violence and Public Meetings

William Garbett described himself as a "civic-minded gentleman with a penchant for following city government." He attended city council meetings in the San Jose City Hall almost every week, as well as election meetings and "rules in open government committee" meetings. He spoke often during the public comment periods of the meetings. He was also in the city clerk's office on a regular basis, with questions or requests for public records. Pimentel, a deputy city clerk, found Garbett to be angry and resentful toward the City, and to speak in a "somewhat condescending way" at the meetings. In March 2008, Garbett came to the clerk's office to turn in his nomination papers for a seat on the city council. Pimentel noted that his form had only one signature on it, rather than the required 50-person minimum, which she advised disqualified him. Garbett explained this was his way of "bowing out gracefully." He also said that the police were "in and out of his home," had "ransacked" it, and had landed a helicopter on his roof; that the director of Environmental Services had rummaged through his garbage on occasion; and that the City had caused his neighbor's house to burn down. He had later conversations with Pimentel in which he indicated his feelings that the City was "against" him. At one point he said, "What does somebody have to do to change policy around here? Do you have to be—take matters into your own hands like the black man in Missouri?" Pimentel was frightened: she understood this to refer to the February 8, 2008 shooting at City Hall in Kirkwood, Missouri, where Charles Thornton killed six people. She reported this to the assistant city clerk and a security officer. Garbett repeated this reference to the security officer, adding that Charles Thornton was "a good friend of his," and that there was a conspiracy against him at City Hall. The officer testified that he was absolutely fearful for the safety of the mayor, the city councillors, and Pimentel. Extra monitoring procedures were implemented when Garbett attended meetings.

California's Workplace Violence Safety Act enabled an employer to seek an injunction to prevent violence or threatened violence against its employees. In 2008, the City filed 14 petitions, each seeking an injunction prohibiting violence or threat of violence by Garbett against Pimentel, the mayor, and the city council members. Also sought were temporary restraining orders. In his response to the petitions, Garbett claimed that his acts were constitutionally protected by his First Amendment right of free speech, and that his conduct did not constitute violence or a credible threat of violence and, therefore, did not meet the test for an injunction. At the hearing on the petitions, the City presented several additional witnesses, city staff who had had disturbing (to them) interactions with Garbett. The trial court admitted the expert testimony of Zarate, a police officer trained in threat assessment, who reviewed police reports and interviewed many individuals who had encounters with Garbett. (Garbett refused to speak with Zarate). She testified that "the best predictor of future violence is past violence."

The petitions were granted. Each included a stay-away order, with specified exceptions to allow Garbett to attend public city council meetings. Garbett appealed, arguing that the statute did not permit a court to issue an injunction prohibiting speech or other activities that were constitutionally protected, and arguing that, while he was "known to be bombastic, to speak in grand language, and to use rhetorical flourishes" and had used "graphic, loud, attention-grabbing speech" in City Hall for 20 years, he had specifically answered "No" when Pimentel asked if he was threatening city personnel.

The California Court of Appeal ruled that the statute did not preclude the issuance of an injunction, as credible threats meeting the elements of the Workplace Violence Safety Act were not constitutionally protected. "The First Amendment does not help [the] appellant here. The right to free speech is not absolute or unlimited.... If the elements [of the Act] are met by the expression of a credible threat of violence toward an employee, then that speech is not constitutionally protected and an injunction is appropriate." Garbett's subjective intent was not required or decisive with regard to whether his conduct could be deemed a credible threat. Based on the plain language of the statute and the reasoning in similar cases, the trial court properly found that the appellant had uttered a credible threat within the meaning of the Act. Garbett also challenged the sufficiency of the evidence that there was a likelihood of future harm, pointing out that he "did not repeat any alarming conduct or make any threatening statement ..." to anyone after the statement to Pimentel. The appellate court noted that Garbett continued to appear regularly at City Hall and had a history of threatening conduct toward City employees. This suggested that irreparable harm was reasonably likely to occur if the injunction was not issued.

Here, "substantial evidence" supported the court's factual findings on the requisite elements, and an injunction was "necessary to prevent irreparable harm to the identified City employees." *City of San Jose v. Garbett*, 190 Cal.App. 4th 526 (Cal. Ct. App. 2010).

Compelled Disclosure of Internet ID

A Utah statute establishing a sex offenders registry required convicted sex offenders in the state to provide all "Internet identifiers and the addresses" that the offender used "for routing or self-identification in Internet communications or postings," and that the offender also provide "all online identifiers and passwords used to access" websites where he or she used an online identifier, with the exception of identifiers used for employment or financial accounts. The statute defined "online identifier" as "any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication." "John Doe" refused to provide the requested information and brought a lawsuit challeng-