

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-

ing the law on the basis that it violated his First and Fourth Amendment rights, as well as the Ex Post Facto Clause of the United States Constitution. The district court initially invalidated the statute on the basis that, because the law provided "no restrictions on how the [State] c[ould] use or disseminate registrants' [I]nternet information," it infringed on Doe's First Amendment right to anonymous speech. As a result, the State amended the law to designate certain information provided by an offender, including Internet identifiers, as private information, and filed a motion for the district court to vacate its earlier order. That court ruled that the amendments "diminished" the chilling effect on Doe's speech, and granted the motion. It also held that the statute did not violate Doe's Fourth Amendment rights (because he had failed to show he had a reasonable expectation of privacy in his Internet identifiers, communicated to a third party) and did not violate the Ex Post Facto Clause. Doe appealed.

The U.S. Court of Appeals for the Tenth Circuit affirmed. On the First Amendment claim, a State could permissibly infringe upon the right to anonymous speech when its interest was important enough and the law was appropriately tailored to meet the stated interest. The registry law was a content-neutral regulation subject to intermediate scrutiny, because it was entirely unconcerned with the ideas or opinions that Doe wished to express. The State had a clear, compelling interest in investigating kidnapping and sex-related crimes, and the law was narrowly tailored. It permitted sharing of the information provided "only among law-enforcement agencies, not the public at large, and only for the recited law-enforcement purposes," and the statute included sufficient restrictions so as not to unnecessarily chill Doe's speech.

The Fourth Amendment claim failed. Although Doe argued that there was a reasonable expectation of privacy in online identifiers because it was not always the case that an individual could be identified from his identifier, even if police were in possession of the associated IP address, he had raised these arguments for the first time on appeal. Even if Doe's arguments were not thus forfeited, there were no facts in the record from which the court could conclude that Doe's identities were shielded from his Internet service provider. On the Ex Post Facto Clause claim, the Tenth Circuit held that the threshold issue was whether the registry program constituted "additional criminal punishment for the crimes previously committed by those subject to its provisions." The court had previously held, in *Femedeer v. Haun*, 227 F.3d 1244 (10th Cir.2000), that the statute was civil in nature and presented no ex post facto violation. Here, "the effect of the new disclosure requirements is not substantial enough to alter our original analysis of the statute in *Femedeer*." *Doe v. Shurtleff*, No. 09-4162, 2010 WL 4888036 (10th Cir. Dec. 01, 2010).

First Amendment

Campaign Finance Rules

Colorado law required that any group of two or more persons, which accepted or made contributions or expenditures over $200 to support or oppose a ballot issue, to register as an issue committee and report the names and addresses of anyone who contributed $20 or more. The plaintiffs opposed the annexation of their neighborhood by an adjacent town, and started raising funds. Supporters of the annexation filed a complaint with the Colorado Secretary of State, alleging that the plaintiffs had violated the campaign finance law by, among other things, failing to comply with the financial reporting requirements. In response, the plaintiffs challenged the Colorado law, claiming that the reporting requirements unconstitutionally burdened their First Amendment rights of association.

The U.S. Court of Appeals for the Tenth Circuit ruled in favor of the plaintiffs, finding that the reporting and disclosure requirements could infringe on the right of association. As the U.S. Supreme Court stated in *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 238, 254 (1986), "[d]etailed record-keeping and disclosure obligations, along with the duty to appoint a treasurer and custodian of records, impose administrative costs that many small entities may be unable to bear." With regards to campaign finance disclosure requirements, the Supreme Court had recognized three proper justifications. First, reporting and disclosure requirements were an essential part of gathering data necessary to detect violations of contribution limitations; second, publicizing large contributions and expenditures could deter actual corruption and favoritism; and last, the requirements supported an informational interest that allowed voters to place a candidate in the political spectrum "more precisely" than would often be possible using just party labels and campaign speeches. The Tenth Circuit reasoned that these justifications were not applicable to ballot-issue committees, stating that "[w]hen analyzing the governmental interest in disclosure requirements, it [was] essential to keep in mind that our concern [was] with ballot issues, not candidates." In previous cases, contribution limits to candidates had been upheld because limits were necessary "to avoid the risk or appearance of quid pro quo corruption — the exchange of a contribution for political favor." Limits on ballot-issue committees, in contrast, were "unconstitutional because of the absence of any risk of quid pro quo corruption." That said, however, disclosure requirements could still be upheld if they survived "exacting scrutiny." There had to be a "substantial relation" between the requirement and a governmental interest, sufficient to justify the burden on the freedom of association. In this case, the court reasoned that the "financial burden of state regulation" approached or exceeded "the value of the [plaintiffs'] financial contributions to their political effort and the governmental interest in imposing the regulations [was] minimal, if not nonexistent, in light of the small size of the contributions." The court reversed and remanded the case for entry of judgment in favor of the plaintiffs. *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010).

Personnel and Employment

Religious Discrimination – Title VII

Mary Sharon Dixon and her husband, Daniel Dixon, were, respectively, the on-site property manager and the maintenance technician at Thornwood Terrace Apartments, a rental complex owned by Hallmark Management. They had previously worked at two other apartment complexes owned by that company, Rosemont and Devonshire. As part of their compensation, the Dixons were provided with an apartment at the Thornwood complex. The apartments were subject to periodic inspections by the

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