In order to be placed on the ballot, candidates for mayor, city treasurer and city clerk of Chicago must collect 12,500 signatures from "legal voters in the city." Candidates have ninety days to perform the task, and voters may not sign more than one nominating petition for the same office in a single election cycle. Of the twenty-one individuals who submitted nominating petitions in 2011 (not all of which collected 12,500 signatures), four filed suit against the city arguing the signature requirement, the ninety-day window, and the limit against signing more than one nominating petition were unconstitutional. The District Court rejected the argument, holding both Supreme Court and Seventh Circuit precedent proscribed such a claim. The candidates appealed.

HELD: The Seventh Circuit affirmed the District Court. It held that, although burdening candidates to some degree, the scheme furthers the state's interests in avoiding ballot overcrowding and preventing voter confusion while still allowing reasonably diligent candidates to get on the ballot.

DISCUSION: The Supreme Court recognizes that candidate eligibility requirements impact both the constitutional right to associate politically with likeminded voters and for those voters to cast a meaningful vote, but that simultaneously states can enact "reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." There is no hard-and-fast rule to separate valid and invalid regulations; rather courts perform a practical assessment of the justifications and effects of the scheme at issue by considering the "character and magnitude" of a party's asserted First and Fourteenth Amendment injuries by "identify[ing] and evaluat[ing] the precise interests put forward by the State as justifications for the burden imposed by its rule[s] . . . [and] consider[ing] the extent to which [the] interests make it necessary to burden the plaintiff's rights."

Plaintiffs argued the 12,500-signature requirement burdened "average 'Joe' and 'Jane'" candidates that cannot afford to assemble a political infrastructure and hire signature collectors, a burden which is "amplified" by the two complementary requirements. Second, they pointed out Chicago's requirement was much more burdensome than the election rules in other big cities. The Court began its assessment by looking at the number of candidates that have achieved the 12,500-signature goal, and, seeing that nine did in 2011, said that "reasonably diligent candidates" were able to meet the requirement. The Court also pointed out that one of the plaintiff's in the case had in fact met the threshold himself. Another element the Court found relevant was that Chicago's mayoral elections are nonpartisan, meaning every candidate has to meet the requirement in the same time frame from the same voter pool, further evidencing the reasonableness of the regulation and its furtherance of the city's legitimate goals of reducing voter confusion and ballot overcrowding. As for the number 12,500, the Court looked to Supreme Court precedent and noted that it had approved a signature requirement mandating candidates collect signatures of 5% of registered voters (Chicago's requirement amounted to 1%).

The Court also found the other requirements of the ballot rules—timeframe and single nominating petition) were acceptable under Supreme Court case law. The ninety day window was a full forty days longer than the shortest period the Supreme Court had approved – in that case candidates had to collect 22,000 signatures--almost twice as many signatures in nearly half the time. And the rule that voters only sign one nominating petition did not concern the Court given that there were no other restrictions on voters. (The one time the Seventh Circuit had found such a restriction unreasonable was when only independent candidates were subject to the rule, each had to collect signatures from 10% of the voting population ninety days before the primary, and the signatories could not vote in the primary election).

Overall, the scheme was deemed reasonable and non-discriminatory, and a legitimate means to serve the important government interests of preventing voter confusion and reducing ballot overcrowding.

Stone v. Board of Election Commissioners for the City of Chicago, No. 10-cv-7727 (7th Cir. Apr. 25, 2014).

No "Reasonable Suspicion" for Vehicle Stop Based Solely On Automated License Plate Identification

A police officer who did not confirm the accuracy of an automated license plate identification before pulling an allegedly stolen vehicle over and publicly arresting the driver was not entitled to summary judgment on the plaintiff's section 1983 claim, according to the Ninth Circuit.

Denise Green's 1992 Lexus was stopped by the San Francisco Police Department (SFPD) when its Automatic License Plate Reader (ALPR) mistakenly identified her car as having been stolen. Based on the incorrect description, and without personally confirming Green's license plate, Sergeant Ja Han Kim of the SFPD made a "high-risk" stop at 11:15 pm during which Green, a 47-year old African American, was surrounded at gunpoint, handcuffed, forced to her knees, and detained for twenty minutes. She was released only after officers ran her actual plate number and verified that the Lexus was not stolen.

Sergeant Kim knew from police radio transmissions that the plate number had been matched to a gray GMC truck, while the ALPR photo captured a dark Lexus. Kim did he not visually confirm her license plate number, even though nothing obscured his view as he trailed the Lexus. Nor did he verify the plate number with his dispatcher. He admitted that if he had read the plate, he would not have had reasonable suspicion to make the stop.

Green sued Kim, the City and County of San Francisco and SFPD, alleging Fourth Amendment violations for unreasonable search, seizure and use of force, violation of California laws, intentional infliction of emotional distress, assault and negligence. Defendants moved for summary judgment, arguing that Kim merely subjected Green to an investigatory detention and not an arrest, that he had reasonable suspicion to stop her vehicle, and that the force used was reasonable in the context of a lawful investigatory stop.

The District Court for the Northern District of California granted Defendants' motion for summary judgment. It held that Sergeant Kim reasonably assumed a fellow officer communicating the ALPR data had visually confirmed Green's plate, because the officer did not expressly state otherwise. The court concluded that Kim's belief that the plates had been matched to the ALPR

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matches the contract or work specified in each bond. If the contract has a title, the title should be described in the bond exactly as it is on the contract;

- The date of each bond is the same date as the contract~ or a later date;
- Each bond is signed by the both the contractor (principal) and the bonding company (surety);
- The names of the principal and surety are sealed. It is possible that the principal will not have a seal, but the reason for the lack of the principal's seal should be documented;
- The surety's seal contains the exact name of the surety. (Agents will occasionally use a seal from the wrong surety company.)
- The bond(s) is/are accompanied by a Power of Attorney, which authorizes the surety's signatory to execute the bond. The Power of Attorney should be checked for the following:
  - The Power of Attorney's authorization matches the bond. Generally, the Power of Attorney will contain a control number that will match the control number for the bond;
  - The person who signed as the surety on the Performance and Payment Bond is listed on the Power of Attorney as an Attorney-in-Fact.
  - Any bonds authorized pursuant to the Power of Attorney do not exceed the amount authorized by the Power of Attorney.
  - The Power of Attorney contains the seal of the surety.
  - The date of the Power of Attorney is the same as or prior to the date of the bond.
  - Usually, the Power of Attorney will be on distinctive paper. If not, there should be indicia of authenticity, such as a raised seal. If in doubt, call the surety to verify the authenticity of the bond(s) and Power of Attorney, and document the call.

This checklist provides the basics. It does not include the various statutory provisions that must normally be incorporated into the contract at the time of drafting. It also does not include the federally required provisions that we are so often expected to include in municipal contracts that use federal funds. However, getting these basics right will ensure that, when we discover a non-performing contractor, our first question need not be "Did they execute the contract?" ML

Cases *Cont'd from page 29*

hit was a "good faith, reasonable mistake" and that "no reasonable jury could find that Kim lacked reasonable suspicion to conduct an investigatory stop." The lower court also decided that that the tactics used by the officers were objectively reasonable in the context of a lawful investigatory stop, rejecting Green's unlawful arrest and excessive force claims. The court further determined that Kim was entitled to qualified immunity because Green had not established a constitutional violation.

HELD: The Ninth Circuit reversed the lower court's grant of summary judgment, finding that a rational jury could find that defendants violated Green's Fourth Amendment rights on the grounds of wrongful seizure, false arrest and excessive force. It further found that Sergeant Kim was not entitled to qualified immunity, at least until later in the proceedings.

DISCUSSION: In assessing whether Sergeant could claim reasonable suspicion, the Circuit Court focused on ALPR procedures. It was well established by the record that an unconfirmed hit on the ALPR did not, alone, form the reasonable suspicion necessary to support an investigatory detention; addition confirmation was required. The parties disputed whose responsibility it was to perform these additional steps: Defendants stated that it was the duty of the officer in the camera car, while Green argued that it was reasonable for the officer actually making the stop to perform these steps. The parties cited no SFPD policy that expressly placed the responsibility with either officer.

In the absence of such a policy, it was disputable whether an officer conducting a stop could reasonably rely on a lack of qualifying information from the camera car operator as a justification for making the stop without independent verification. Reasonable suspicion thus remained a triable issue, not ripe for summary judgment.

Green's detention was found to be de facto arrest without probable cause. It was a greater detention than a *Terry* stop. She was held at gunpoint, handcuffed and directed to her knees. The Ninth Circuit had previously held that "under ordinary circumstances, when the police have only reasonable suspicion to make an investigatory stop, drawing weapons and using handcuffs and other restraints will violate the Fourth Amendment." (citation omitted). Factors justifying such action included 1) where the suspect is uncooperative or takes action at the scene that raises a reasonable possibility of danger or flight; 2) where the police have information that the suspect is currently armed; 3) where the stop closely follows a violent crime; and 4) where the police have information that a crime that may involve violence is about to occur. A belief that a vehicle has been stolen does not suffice. Viewing the facts in the light most favorable to Green, a rational jury could find that Green had been arrested using tactics were not reasonable given the totality of the circumstances.

Defendants also failed on the issue of excessive force. Green, a woman of 250 pounds, had been forced to her knees, handcuffed and surrounded by up to six officers with guns drawn. The test for evaluating the legitimacy of these tactics was "(1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight." (citation omitted). By any standard, the Circuit Court found, these factors had not been satisfied, preventing a grant of summary judgment to Defendants.

The district court had found that Kim was protected by qualified immunity. The Ninth Circuit applied the standard test: (1) whether the law governing the conduct was clearly established and (2) whether the facts as alleged could support a reasonable belief that the conduct in question conformed to the established law. (Act Up!/Portland v. Bagley, 988 F.2d 868, 873 (9th Cir. 1993)). Both are questions of law to be determined by the court in the absence of genuine issues of material fact.

The first element was satisfied as a matter of law: it was clearly established that individuals may not be subject to seizure or arrest without reasonable suspicion or probable cause. As to the second question--whether Kim could reasonably believe that his actions were lawful, the Circuit Court saw significant issues of fact: "When viewing the facts in the light most favorable to Green, we cannot make a determination as a matter of law that Sergeant Kim 'could have reasonably believed at the time that the force actually used was lawful under the circumstances.' Instead, this question must go before a jury." (citation omitted).

Green v. City and County of San Francisco, No. 11-17892 (9th Cir. May 12, 2014). ML