Targeted Residential Picketing

CITY OF SAN JOSE'S EXPERIENCE

San Jose Municipal Code §10.09.010

- **Targeted residential picketing prohibited.**
- A. No person shall engage in picketing activity that is targeted at and is within three hundred feet of a residential dwelling.
- B. For purposes of this chapter, the term "residential dwelling" means any permanent building being used by its occupants solely for nontransient residential uses.
- C. For purposes of this chapter, the term "targeted" picketing means picketing activity that is targeted at a particular residential dwelling and proceeds on a definite course or route in front of or around that particular residential dwelling.
- D. This chapter does not and shall not be interpreted to preclude picketing in a residential area that is not targeted at a particular residential dwelling.
- 1993

San Jose Municipal Code

- Municipal Code violations are punishable as misdemeanors or, at the election of the City Attorney, as infractions
  - SJMC § 1.08.010
- Misdemeanors punishable by $1000 fine and/or 6 months jail
- Municipal Code also provides for enforcement by civil injunction
  - SJMC § 1.08.015

Frisby v. Schultz (1988)

- Ordinance made it "unlawful for any person to engage in picketing before or about the residence or dwelling of any individual"
- Court narrowly construed ordinance, such that prohibited picketing would:
  - "be having the picket proceed on a definite course or route in front of a home." and
  - "be directed at a single residence"; "general marching through residential neighborhoods, or even walking a route in front of an entire block of houses, is not prohibited."
  - So "only focused picketing taking place solely in front of a particular residence is prohibited"
- Bottom line: "Because the picketing prohibited … is speech directed primarily at those who are presumptively unwilling to receive it, the State has a substantial and justifiable interest in banning it. The nature and scope of this interest make the ban narrowly tailored. The ordinance also leaves open ample alternative channels of communication and is content neutral."
- 487 U.S. 474 (1988)

City of San Jose v. Superior Court (Cal. App. 1995)

- Considered implications of *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753 (1994)
  - Disapproved injunction imposing 300-foot no-picket zone around residences of abortion clinic employees
- "*Madsen* which involved application of First Amendment principles to an *injunction*, does not control this case, which involves application of First Amendment principles to a *public law*."
- 300-foot zone reasonable here
  - Consistent with standard notice requirements set forth in local and state laws for land use decisions
  - Minimum standard lot frontage in San Jose subdivisions is 55 feet, per code
  - So at most, 300 foot buffer zone keeps pickets from coming within 5½ homes on either side of the targeted residence
- "[T]he zone does not prevent picketers from disseminating their message to the general public or even to the residents of the targeted homes, from a lawful distance."
- 32 Cal.App.4th 330 (1995)

San Jose enforcement

This racist bocephus lives at [redacted] street, San Jose CA 95112. In case anyone wants to go ask him if this how he really feels in person.



San Jose enforcement

- BWC video

San Jose enforcement



Klein v. San Diego Cty. (9th Cir. 2006)

- Ordinance read, "No person shall engage in picketing activity that is targeted at and is within three hundred (300) feet of a residential dwelling."
- Picketers "walked a circuitous route the length of the block that included" the targeted home and were ordered to leave.
- Misinterpretation: Ordinance requires that picketers remain 300 feet from the targeted *dwelling,* not 300 feet from the property line of the targeted residence. Here, the targeted dwelling was set back more than 300 feet from the property line.
- "The combined teaching of *Frisby* and *Madsen* is that the government's interest in residential privacy does not trump all other rights. The government certainly has a significant interest in preventing picketing that renders the targeted resident a captive audience to the picketers' message. But the right to residential privacy does not encompass a right to remain blissfully unaware of the presence of picketers."
- But facial challenge to ordinance was rejected, relying on *Frisby v. Schultz*
- 463 F.3d 1029 (9th Cir. 2006)

Klein v. San Diego Cty. (9th Cir. 2006)

- "We believe *City of San Jose* wrongly characterized the right at issue—it concluded that residential picketing is 'highly offensive conduct,' a 'disfavored activity not entitled to a high level of First Amendment protection.' Contrary to the California court's characterization, the United States Supreme Court has called public issue picketing on streets and sidewalks "an exercise of ... basic constitutional rights in their most pristine and classic form." *Carey v. Brown,* 447 U.S. 455, 466–67 (1980). … While *Frisby* noted that targeted picketing is inherently intrusive on residential privacy, it did not suggest that, where the two clash, the right to residential privacy necessarily trumps the rights of picketers. That is to say, residential picketing is not the black sheep of the First Amendment family."

Klein v. San Diego Cty. (9th Cir. 2006)

- Ninth Circuit's criticisms of ordinance:
  - "One-size-fits-all approach to residential picketing, which in some cases will allow picketing directly in front of the targeted home if the home is situated on a large lot, but will put the picketers several lots away from the targeted audience if the residence is situated on a small lot."
  - "[A]s in *Madsen,* the ordinance does not consider more limited restrictions, such as limitations on the number of picketers, the time of day, or the duration of picketing."

Dean v. Byerley (6th Cir. 2004)

- Bar applicant picketed outside home of Bar Director, who allegedly told applicant to leave or he would never be admitted.
- In the absence of a specific, constitutional statute, there is no general prohibition on targeted residential picketing
  - "*Frisby* did not place in question an individual's clearly established right to engage in peaceful targeted residential picketing; rather it carved out an exception to this right, allowing the government to prohibit such picketing through a narrowly tailored and applicable time, place, or manner regulation."
- 354 F.3d 540, 551 (6th Cir. 2004)
- Remanded for trial resulting in defense verdict. Upheld on appeal. Cert denied.

Vittitow v. City of Upper Arlington (6th Cir. 1995)

- Ordinance read: "No person shall engage in picketing before or about the residence or dwelling of any individual in this City."
- Court held: "The City enacted this ordinance long after the decision in *Frisby* was issued and should have been well aware of the pitfalls in attempting to enforce an ordinance worded this broadly."
- And: "[T]he City's police view the ordinance as violated when they can discern one residence as being the target of picketing. … In our view, that is a misreading of *Frisby*. All picketing of this nature will have a target, otherwise it is not really picketing. *Frisby* could not be more clear: '[O]nly focused picketing *taking place solely in front of a particular residence* is prohibited.'"
- 43 F.3d 1100 (6th Cir. 1995)

Veneklase v. City of Fargo (8th Cir. 2001)

- Fargo statute prohibited residential picketing, with picketing defined as "the practice of standing, marching, or patrolling by one or more persons inside of, in front, or about any premises for the purpose of persuading an occupant of such premises or to protest some action, attitude or belief"
- Constitutional under *Frisby v. Schultz*
- And *Hill v. Colorado,* 530 U.S. 703 (2000), which upheld an ordinance that made it unlawful in regulated areas of a health care facility to knowingly approach within eight feet of another person "for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person"
- 248 F.3d 738 (8th Cir. 2001)

Bell v. City of Winter Park (11th Cir. 2014)

- Ordinance: "It shall be unlawful for any person or persons to picket, protest or conduct any picketing or protesting activity within a buffer area of 50 feet from the property line of any dwelling unit in the City of Winter Park."
- Upheld, relying on *Frisby v. Schultz*
- Determined "picket" and "protest" applied generally
- 745 F.3d 1318 (11th Cir. 2014)

Minnesota v. Castellano (Minn. Ct. App. 1993)

- 1990 White Bear ordinance prohibits "any activity focused on a single residential dwelling without the consent of the dwelling's occupant."
- Provides for prosecution as misdemeanor, with fines up to $3000 and/or 1 year in jail, depending on how violation is charged
- Town "has an interest in the protection of residential privacy … and protecting the well-being, tranquility and privacy of the home"; Town "further finds that, without resorting to targeted residential picketing, ample opportunities exist for those otherwise engaged in targeted residential picketing to exercise constitutionally protected freedom of speech and expression"
- Town's stated interest in protecting residential privacy is consistent with *Carey v. Brown*, 447 U.S. 455 (1980)
- 506 N.W.2d 641 (Minn. Ct. App. 1993)

State v. Baldwin (Ariz. Ct. App. 1995)

- Arizona Law 13-2909, enacted 1978, provides: "A person commits residential picketing if, with intent to harass, annoy or alarm another person, such person intentionally engages in picketing or otherwise demonstrates before or about the residence or dwelling place of an individual, other than a residence or dwelling place also used as the principal place of business of such individual."
- Single person picketed Phoenix home of doctor who performed abortions
- Defendant challenged conviction, arguing law was vague, overbroad, and violated First Amendment guarantees of free speech and religious freedom
- Court relied on *Frisby v. Schulz* to uphold ordinance
- 184 Ariz. 267 (Ariz. Ct. App. 1995)

Virginia Code § 18.2-419

- **Picketing or disrupting tranquility of home.**
- Any person who shall engage in picketing before or about the residence or dwelling place of any individual, or who shall assemble with another person or persons in a manner which disrupts or threatens to disrupt any individual's right to tranquility in his home, shall be guilty of a Class 3 misdemeanor.
- Nothing herein shall be deemed to prohibit (1) the picketing in any lawful manner, during a labor dispute, of the place of employment involved in such labor dispute; (2) the picketing in any lawful manner of a construction site; or (3) the holding of a meeting or assembly on any premises commonly used for the discussion of subjects of general public interest.
- Notwithstanding the penalties herein provided, any court of general equity jurisdiction may enjoin conduct, or threatened conduct, proscribed by this article, and may in any such proceeding award damages, including punitive damages, against the persons found guilty of actions made unlawful by this section.
- 1975

Unconstitutional. Severable?

- Indistinguishable from statute held unconstitutional in *Carey v. Brown*, 447 U.S. 455 (1980)
  - The Illinois statute at issue was found to "accord[] preferential treatment to the expression of views on one particular subject; information about labor disputes may be freely disseminated, but discussion of all other issues is restricted."
- Attorney General 1989 opinion deemed offending provision severable
  - 1989 Va. Op. Att'y Gen. 157 (1989)
- Court disagreed
  - *Commonwealth v. Hyatt*, 7 Va. Cir. 384 (1995)

North Carolina G. S. § 14-277.4A

- (a)(2) "Targeted picketing" means picketing, with or without signs, that is specifically directed toward a residence, or one or more occupants of the residence, and that takes place on that portion of a sidewalk or street in front of the residence, in front of an adjoining residence, or on either side of the residence.
- (b) It shall be unlawful for a person to engage in targeted picketing when the person knows or should know that the manner in which they are picketing would cause in a reasonable person any of the following:
  - (1) Fear for the person's safety or the safety of the person's immediate family or close personal associates.
  - (2) Substantial emotional distress.
- (c) Any person who commits the offense defined in this section is guilty of a Class 2 misdemeanor.
- (d) Any violation of an injunction obtained pursuant to this section constitutes criminal contempt and shall be punishable by a term of imprisonment of not less than 30 days and no more than 12 months.
- (e) Nothing in this section shall be construed to prohibit general picketing that proceeds through residential neighborhoods or that proceeds past residences.
- 2009

Town of Newfields, NH

- "It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the Town of Newfields."
- Passed December 22, 2020