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COMPELLED SPEECH: YOU CAN'T MAKE ME SAY THAT



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CONTENTS / MAY / JUNE 2023

COMPELLED SPEECH: YOU CAN'T MAKE ME SAY THAT
By: Aimee Alcorn-Reed, Assistant City Attorney, Corpus Christi, Texas
The First Amendment unreservedly protects the individual's freedom to speak, among other prerogatives. But it equally girds the right to refrain from expressing messages with which one disagrees--whether in the form of a schoolroom pledge, a license plate slogan, an oath of office, or elsewhere.
PAGE 6

REMOVING AND BANNING INDIVIDUALS FROM PUBLIC PROPERTY
By: Michael Koss, Deputy City Attorney, Overland Park, Kansas
Whether local governments have the right to remove disruptive persons from a particular location depends on a number of factors, including the extent of the disruption and the forum involved. Regardless of the circumstances, removal triggered by the content of the disruptive expression will be problematic
PAGE 10

MANAGING RISK BY EMBEDDING MENTAL HEALTH CO-RESPONDERS IN POLICE DEPARTMENTS
By: Douglas Hoffer, Deputy City Attorney, Eau Claire, Wisconsin and Jasmine Dutton, Administrative Associate, Eau Claire, Wisconsin Police Department
With ever-increasing frequency, law enforcement is called to scenarios involving the mentally ill--an environment where officers often lack the necessary training and experience. As evidenced in numerous programs around the country, embedded mental health professionals can play a vital role, helping to avert tragic outcomes.
PAGE 16

DEPARTMENTS

20 NEW LAWYERS
Getting Your Boss's Job: Tips on Ascending to the City Attorney Position
By: Andy Segovia, City Attorney, San Antonio, Texas
Insights and advice for law department success.

22 AMICUS
"Continuity of Government"- the Virginia Supreme Court's Minimalist View
By: Amanda Karras, IMLA Executive Director and General Counsel
A zoning ordinance adopted via electronic meeting is declared void.

24 LISTSERV
A Tale of Two Cities
By: Brad Cunningham, Municipal Attorney, Lexington, South Carolina
Columbia and Charlotte—differing trajectories.

26 MID-YEAR SEMINAR
A Look at the 2023 Meeting in DC
IMLA lays a wreath, salutes amicus award winners, and hosts 400 colleagues.

32 INSIDE CANADA
Delaying Tactics, Redacted Documents, Single-Vote Recounts, and More
By: Monica Ciriello, Director of Municipal Law and Licensing Compliance, City of Hamilton, Ontario
Recent cases of interest.

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LISTSERV

By: BRAD CUNNINGHAM,
Municipal Attorney, Lexington, South Carolina

A Tale of Two Cities

Back in the late sixties and early seventies, I observed that my place of birth–Columbia, SC–and nearby Charlotte, NC, were thought of by many as comparable cities. There was some size difference (in 1970 Charlotte had a population of around 240,000, and Columbia had a population of roughly 110,000) but a drive-through of the two cities, which lie about ninety miles apart, revealed municipalities that seemed a lot closer in size.

Fast forward to 2023, and the story is much different. Charlotte sports a population exceeding 894,000, as compared to Columbia's population just over 139,000. So, in fifty years, Charlotte went from roughly twice as populated to more than six times as populated as Columbia. What could be the reason(s)?

Let's start with the similarities between the two. Both cities occupy cities occupy similar latitudes. Charlotte sits in the piedmont area of North Carolina, nearly straddling the North Carolina/South Carolina State Line. Columbia is also a piedmont city, sitting by design right in the middle of the Palmetto State. Both cities lie at the crossroads of major U.S. Interstates, the climate in both cities is very similar (hot!), and both are home to a major state university. Circa 1970, these factors helped make the two cities appear much more similar than they do now.

What made the difference, you may ask? Well, the first big thing I remember was the announcement around 1970 that a "gigantic" theme park along the lines of Disney World was coming to Charlotte. This drew the excitement of the area children, and although the theme park today technically sits right on the state line, nobody outside the area is ever told that the park is in "upper state South Carolina." One is told today that the park is in Charlotte, NC, and many of the supporting services are provided from the north side of the line.

Charlotte has since outpaced Columbia in developing its airport, as Douglas International Airport is now the sixth busiest in the country and is a southern hub for United Airlines. Cue another big industry and all the benefits it brings to a city. In addition, Charlotte has developed its air freight industry to go along with the massive increase in passenger flights.

Meanwhile, Columbia boasts a very nice airport of its own but nowhere near the traffic of Douglas International. There is little in passenger flight choices beyond United, Delta and American, and Columbia's airport has largely remained dependent on freight traffic to keep afloat. United Parcel Service is a major contributor here, but a "fly by" of the airport wouldn't show a lot of passenger traffic. In fact, many visitors to Columbia fly into Charlotte and take a shuttle south.

Then there is the development of the banking industry in Charlotte. Bank of America and Wells Fargo both have a tremendous presence in the city, and both have grown exponentially in the past few decades. The two banks are the top employers in the Tarheel State's largest city. Truist Bank headquarters also sits in Charlotte. Columbia's largest employers include the State Government, the school system and the U.S. Army. The largest private employers in Columbia the city are two healthcare systems.

Beyond the growth of industry in Charlotte, there is also the city's expanding geography. Charlotte consists of 312 square miles compared to Columbia's 141 square miles. Charlotte's rapid population growth has been spurred by a growth in land area. In fact, according to a 2019 article published by the UNC Charlotte Urban Institute, Charlotte's total land area had increased by almost twelve square miles in the past decade. So, in addition to its population growing by almost twenty percent, its land area has grown by over four percent, according to the Urban Institute.

So, how does a city grow physically in size? Annexation, of course. The willingness and ability to aggressively annex property is one crucial difference between Charlotte and many cities with similar populations, according to the Urban Institute. In addition, many major cities are land locked, either literally (by bodies of

water) or figuratively (by adjacent cities) according to the Urban Institute…. Yet, "there are still thousands of acres Charlotte can still potentially absorb." (Quote again attributable to the Urban Institute).

Although the laws appear to have changed somewhat recently, they have historically been a bit more lenient "north" of our common border. A colleague reports that at one point his parents in Charlotte received a garbage roll cart and a welcome letter by complete surprise. This was followed by a tax bill increase and a tax bill for each vehicle the family owned. That could never have happened in South Carolina!

So, why would annexation play so much of a bigger role in increasing the size of one city as opposed to another similar municipality? The answer could partially lie within the varying state laws which govern the annexation process for all cities within state lines. A listserv review of laws around the country reveals quite an array of annexation statutes. (Names omitted to protect the innocent).

One member reports there are absolutely no involuntary annexations in their state. Annexation of land can only occur "contractually," and be accomplished by petition of the landowner to become a part of the city. The cities have little to no "leverage" to encourage landowners to annex, save the enticement of lower utility rates. This member reports a prevailing sentiment favoring landowner rights to determine the fate of their own property as a reason for slow annexation rates.

Yet another survey contributor reports that until very recently, city staff could almost ride down the street and pick out the parcels it wished to annex. After a short ministerial process, a landowner more or less got a "Welcome to the City" letter. This eventually met with growing landowner resistance and ended up being curtailed by the state legislature.

Another City Attorney reports their city grew exponentially after a resolution to combine City and County Governments. Once the governments combined, all the property became part of the city and the geographic size surged.

There are states with very strict requirements that must be followed to the letter to provide for annexation, and then there are those who pretty much can annex as long as the city and landowner agree to do so. There are also states that require a referendum of voters to approve an annexation.

One respondent cites three methods of annexation: 1) by act of state legislature; 2) by referendum of the voters; and 3) by petition from every landowner of the subject property. A reader in another state reports that a municipality may initiate annexations itself, while others strictly require them to be initiated by landowners.

In one of the more amazing situations, a member reports that annexation in their state cannot move forward at all without approval of the state legislative authorities, even in situations where One Hundred Percent of the Landowners AND the Municipality are in agreement on the matter.

Another reader reports that city boundaries are drawn by the legislature and can be redrawn any time by those same politicians or alternatively by a vote of the people. State politicians deciding municipal boundaries?

Yet another contributor notes that a required part of the annexation process is the filing of an economic plan for the provision of services to the annexed area. And, although nearly all states require property to be contiguous to the current city boundaries to be eligible for annexation, one reader reports state law allows non-contiguous property to be annexed so long as there is the consent of the owner and the property lies within the "urban growth boundary of the municipality." One can imagine the potentially wild city outlines in such a situation!

So, there you have it… Annexation statutes are all over the board ranging from extremely lenient to extremely stringent. In this tale of two cities, Charlotte seems to have grown more quickly due to a combination of economic factors, geographic factors and an aggressive annexation plan. South Carolina has traditionally been a "property owners state," with local governments often facing opposition on the part of property owners to the annexation process. Columbia has, however, maintained a steady population growth to the presence of the state government, the U.S. Army at Fort Jackson and the University of South Carolina.

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Since we are on the subject of cities' population changes since 1970s, I thought it interesting to compare the largest U.S. Cities in 1970 to the largest in 2022. According to *Biggestuscities.com*, the 25 largest cities in the U.S. in 1970 were: New York at 7,894,862; Chicago 3,366,957; Los Angeles 2,816,061; Philadelphia 1,948, 609; Detroit 1,511,482; Houston 1,232,802; Baltimore 905,759; Dallas 844,401; Washington 756,510; Cleveland 750,903; Indianapolis 744,624; Milwaukee 717,033; San Francisco 715,674; San Diego 696,769; San Antonio 654,153; Boston 641,071; Memphis 623,530; St. Louis 622,236; New Orleans 593,471; Phoenix 581,562; Columbus 539,677; Seattle 530,831; Jacksonville 528,865; Pittsburgh 520,117; and Denver 514,678.

In 2022 the list looked like this: New York 8,467,513; Los Angeles 3,849,297; Chicago 2,696,555;

Continued on page 35

police-partner-with-crisis-responders-to-help-mentally-ill-and-save-tax-dollars-in/article_dd45e3fa-ed53-11e8-b084-930ac282df11.html.
13. Abramson, *supra* note 1.
14. Lexipol, *supra* note 1.
15. Gregory, *supra* note 1.
16. Doris A. Fuller, H. Richard Lamb, M.D., Michael Biasotti, John Snook, *Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters*, Treatment Advocacy Center (December 2015) available at: https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf.
17. Statewide Crisis Intervention Team Program Annual Report 2020-2021 available at https://www.tn.gov/content/dam/tn/mentalhealth/documents/220416-2021-2022-AR_CIT.pdf.
18. Gregory, *supra* note 1.
19. Kisela v. Hughes, 200 L. Ed. 2d 449, 138 S. Ct. 1148 (2018).
20. Aguirre v. City of San Antonio, 995 F.3d 395 (5th Cir. 2021).
21. Michael Ranalli, *Police Use of Force: Managing Risk and Mitigating Harm*, Lexipol (April 18, 2022) available at https://www.lexipol.com/resources/blog/police-use-of-force-managing-risk-and-mitigating-harm/.
22. *Assessing the Impact of Co-Responder Team Programs: A Review of Research*, IACP/University of Cincinnati Center for Police Research and Policy (2020) available at https://www.theiacp.org/sites/default/files/IDD/Review%20of%20Co-Responder%20Team%20Evaluations.pdf.
23. Goodell, *supra* note 12.
24. Lexipol, *supra* note 1.
25. Gregory, *supra* note 1.
26. Goodell, *supra* note 12.
27. *Assessing the Impact of Co-Responder Team Programs: A Review of Research*, IACP/University of Cincinnati Center for Police Research and Policy (2020) available at https://www.theiacp.org/sites/default/files/IDD/Review%20of%20Co-Responder%20Team%20Evaluations.pdf.
28. Goodell, *supra* note 12

Listserv *cont'd from page 25*

Houston 2,288,250; Phoenix 1,624,569; Philadelphia 1,576,251; San Antonio 1,451, 853; San Diego 1,381,611; Dallas 1,288,457; San Jose 983,489; Austin 964,177; Jacksonville 954,614; Fort Worth 935,508; Columbus 906,528; Indianapolis 882,039; Charlotte 879,709; San Francisco 815,201; Seattle 733,919; Denver 711,463; Oklahoma City 687,725; Nashville 678,851; El Paso 678,415; Washington 670,050; Boston 654,776; and Las Vegas 646,790.

A few observations: Cities on the 1970 list that did not appear on the 2022 list include Detroit, Baltimore, Cleveland, Milwaukee, Memphis, St. Louis, New Orleans, and Pittsburgh. Detroit suffered the longest fall dropping off the 2022 list after being number five in 1970. Baltimore dropped off from number seven. Other significant drops include Cleveland, which dropped off from tenth on the list, and Milwaukee, which dropped off from number twelve.

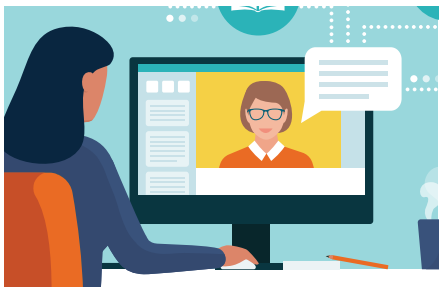
Cities that were not on the list in 1970 but do appear in 2022 include San Jose, Austin, Fort Worth, Charlotte, Oklahoma City, Nashville, El Paso, and Las Vegas. The highest jump belongs to San Jose which went from not on the list to number ten. It was closely followed by Austin which jumped from not being on the list to number eleven, Fort Worth which showed up at thirteen, and Charlotte at sixteen.

The top three cities on the list stayed the same, except Los Angeles and Chicago switched places, while six of the top ten cities in 1970 remained in the 2022 top ten. In all, seventeen cities appeared on both lists.

One could look at the same factors used in comparing Columbia and Charlotte for virtually all explanations on the list. San Jose's move from off the list to the top ten is likely due in large part to its location in Silicon Valley and the rapidly evolving technology industry. It is home to Apple, Google and Facebook. Conversely, Detroit dropping off the list from its number five position is likely in great part because of its dependence on the auto industry and the changes that sector has seen over the past fifty years.

In some cases, it is easy to pinpoint the likely cause of rises and falls in population. But in others it appears to be a mixture of all things discussed herein. One thing is for sure, however: annexation will continue to be a significant factor as cities grow, and will pose challenges for local government attorneys.

The prosecution rests, your honor… ML



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