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FEATURE:

11th Circuit Holds City Commissioners May Be Personally Liable for Retaliating Against Police Chief's Whistleblowing

Acevedo v. de la Portilla, 24-12650 (11th Cir. August 26, 2026)

Miami Mayor Francis Suarez and City Manager Arthur Noriega recruited Hubert Acevedo as Miami Police Chief to reform the department and change its culture. Shortly after his appointment, Acevedo suspended Officer Luis Camacho for an operational security breach. Commissioners Alex Diaz de la Portilla, Manuel Reyes, and Joe Carollo publicly berated him and privately pressured him to reinstate Camacho, including offers of political support. Acevedo was also warned that Commissioner Carollo had a vendetta against business owner Bill Fuller and observed efforts by officials, including Noriega, to direct investigations of Fuller's businesses allegedly at Carollo's behest despite no evidence of wrongdoing ever emerging.

Acevedo reported to Suarez and Noriega that Commissioners were interfering in internal and external investigations and attempting to use the department for personal agendas, and was told this was simply how Miami worked. Seeing no other way to bring these corrupt acts to light, Acevedo then sent a whistleblowing memorandum to Suarez, Noriega, the State Attorney's Office, and the FBI detailing the Commissioners' efforts to weaponize the police and impede reform, which later leaked. The complaint alleges the memo did not disrupt the police department or City government, as the Commission lacked authority to manage the department. After the memo, Noriega warned Acevedo he had better have a "kill shot" and acknowledged his own limited autonomy. At special meetings, Commissioners attacked Acevedo's performance and character, played a demeaning video of him, questioned his racial and ethnic background, and voted to investigate his allegations while cutting funding for senior police positions. Noriega then suspended Acevedo, refused to reschedule a near-term termination hearing despite counsel conflicts, and called witnesses as Commissioners displayed bias. A lot was going on here.

The Commission terminated Acevedo, allegedly because he reported their misconduct to City leadership and outside law enforcement. Officer Morales was made interim Chief because he

purportedly followed the Commissioners' orders, and Carollo played *the "The Godfather"* theme at his swearing-in. Acevedo sued Commissioners Diaz de la Portilla, Reyes, and Carollo, and Manager Noriega under § 1983 for First Amendment retaliation, and the district court denied their immunity-based motions to dismiss.

Legal Question(s):

1. Whether the commissioners were entitled to either legislative or qualified immunity.
2. Whether the city manager was entitled to qualified immunity.

Holding(s):

The Eleventh Circuit held that the commissioners were not entitled to legislative or qualified immunity, but the city manager was entitled to qualified immunity for suspending Acevedo with pay.

Analysis:

Legislative Immunity

The court held legislative immunity extends only to actions within the sphere of legitimate legislative activity and does not cover executive or administrative acts, and because employment and personnel decisions are administrative, terminating Acevedo was therefore not a legislative act. The commissioners were denied legislative immunity.

Qualified Immunity: Commissioners

The court held Acevedo's memo was private-citizen speech because investigating Commissioners was outside his ordinary duties, especially given the a 2020 Resolution directing most criminal investigations of City elected officials to state or federal authorities to avoid the appearance of corruption and his lack of authority over the Commission. The court rejected arguments that he had an implied duty to report crimes or that the memo was mere workplace management speech. However, the memo addressed a matter of public concern because it alleged corruption and abuse of power, and just because it was transmitted privately to law enforcement did not mean it was a private employment dispute. Under *Pickering*, the complaint alleged no disruption to government efficiency, the Commission lacked authority over police operations, and the memo was privately circulated to law enforcement and supervisors. Acevedo's whistleblowing interest was weighty and could further governmental efficiency by exposing misconduct, tipping the balance in his favor at this stage. The court rejected defenses based on policymaker speech limits, ongoing personnel disputes, quasi-military police deference, and reliance on a non-incorporated suspension memo. For clearly established law, Eleventh Circuit precedents made it apparent that retaliating against whistleblowing police personnel absent evidence of disruption violates the First Amendment. Accordingly, the Commissioners were not entitled to qualified immunity at the motion to dismiss stage.
Qualified Immunity: City Manager

Unlike the Commissioners, Noriega only suspended Acevedo with pay pending a termination hearing, and did not terminate him. The court held it was not clearly established that a paid suspension pending proceedings constitutes an adverse employment action under Eleventh Circuit law. The court therefore reversed the denial of qualified immunity for Noriega and remanded, while affirming the denial for the Commissioners.

SHORT SUMMARIES:

6th Circuit - Unreasonable Seizure

In this case, the panel in a 2-1 decision concludes that the Constitution includes a right to pee in one's own bathroom during the execution of a search warrant. Police execute a warrant. During the search, the police remove all occupants from the home: the man, his wife, and children. As the dissent notes: When you gotta go, you gotta go. And the guy asked to use the interior bathroom. The officer refused the request and told him to relieve himself in the front yard. He sued. The facts seemingly imply that the officer required the homeowner to urinate in his front yard rather than use the bathroom in a vindictive fashion during the search, so the majority found both a right and its clarity sufficient to deny Qualified Immunity. The panel found that refusing to allow him to use his bathroom was an unlawful seizure and that the law was clearly established to be so. The dissent found little in the Constitution and its history to support this novel theory. So, if you're in the Sixth Circuit, make sure your officers understand that a person has a Constitutional right to pee in their own bathroom.

Antol vs. English

11th Circuit - Due Process - Notice - Abandoned Property

This case involves the question of what notice is required to satisfy due process if you are going to claim property has been forfeited. Under Florida law, in an eviction proceeding, a tenant must deposit accrued rent into court until the litigation is resolved. The tenant in this case did not claim the funds for over two years, but upon learning of their forfeiture to the county, claimed he was not properly notified. The clerk mailed notice to the Plaintiff and received all notices back as undeliverable at the address provided; the law required the clerk to notify people of their property interest by newspaper, and the clerk chose a Spanish-language paper to do so (the notice there included mention in English). Despite having the Plaintiff's email address, the clerk did not use it for any notice. Long story short, the panel concluded that the clerk did not meet the requirements of due process. The panel in a 2-1 portion of the decision found that the clerk's actions violated the Takings Clause, but the dissent argued that the Plaintiff had abandoned the funds and should have known the escheat provisions applied thereby foreclosing a claim under the Takings Clause.

Warner vs. Hillsborough County Clerk of the Courts

8th Circuit – 1st Amendment – Zoning – Adult Stores

Romantix-Fargo sought to open an adults-only retail store at 74 Broadway North in Fargo's Downtown Mixed-Use zone. The store would sell lingerie, sexual devices, sexual wellness products, and related items, but no sexually explicit books, magazines, periodicals, or DVDs. Fargo's code allowed retail sales and service uses in the zone but prohibited adult entertainment centers, including "Adult Bookstores" which were defined as having a substantial or significant portion of its stock in trade as books, magazines, or other periodicals emphasizing specified sexual content. After receiving product and layout information, the Zoning Administrator denied the change-of-use permit, deeming the use an Adult Bookstore without applying a numerical threshold. Administrative appeals to the Fargo Board of Adjustment and the City Commissioners were unsuccessful. Romantix sued, asserting First Amendment, prior restraint, procedural due process, and vagueness claims, and appealed the Commissioners' decision under state law. Importantly, while the suit was pending,

Fargo proposed and enacted an amendment creating "Adult Establishment," including "Sexual Device Shop," which undisputedly covered Romantix's store. The district court denied a TRO and later dismissed all claims on motions to dismiss or for summary judgment, and Romantix appealed.

On appeal, the court held that Romantix failed to state a First Amendment claim because selling adult toys and related products, without expressive media, is not expressive conduct under *Adam & Eve Jonesboro*, a prior 8th Circuit case that decided that issue. Because Romantix disavowed selling books, magazines, periodicals, or DVDs, its expressive conduct theory failed. The court rejected the prior restraint challenge and the procedural due process claim. The vagueness challenge to "Adult Bookstore" failed because the ordinance provided fair notice and was not standardless.

However, interpreting the definition using ordinary meaning and grammar, the court held "stock in trade" introduces the list of covered items, namely books, magazines, or periodicals. Under that reading, Romantix's store was not an Adult Bookstore because it did not sell books, magazines, or periodicals. The Commissioners' denial was arbitrary and capricious under state law because it rested solely on the erroneous Adult Bookstore classification. The court remanded the state-law claim for the district court to address potential mootness due to the later "Sexual Device Shop" amendment and possible remedies.

Romantix-Fargo, Inc. v. City of Fargo

9th Circuit – First Amendment – Social Media

I've recently had many people ask me about post-*Lindke v. Freed* social media policies for their cities. While this is not that, it is a summary of a Summary Judgment order recently obtained by our members in Las Vegas that offers a window into how judges are approaching the *Lindke* analysis.

After journalist Derek Myers filed a civil-rights suit, Las Vegas Public Safety Chief Jason Potts changed his X account settings to allow direct replies only from accounts he followed. Myers alleges the account was an official communications channel and that the change excluded him and much of the public from an open forum. Myers sought damages, declaratory relief, and an injunction barring viewpoint-based reply restrictions.

Under *Lindke*, social-media account actions are state action only if the official had actual authority to speak for the state and purported to exercise it. Actual authority must derive from statute, ordinance, regulation, custom, or usage and can be implied from well-settled practice. The court found Myers failed to show Potts had actual authority to speak for the City on the subjects of the posts. Myers relied heavily on Potts's role as Department of Public Safety director and post topics that pertained to that on his account but identified no legal source granting communicative authority. Potts's deposition excerpts did not show any assigned responsibility to make official statements. Myers also cited the City's social-media policy, but it also did not assign the Department director authority to speak on the City's behalf. The policy centralizes official account designation and messaging control in the Office of Communications. There was no evidence Potts's X account was approved, designated, or administered as an official City account under the policy. The court contrasted Garnier, where statutes and bylaws expressly authorized the official to communicate on the district's behalf. Because Myers did not establish actual authority, his federal claim fails regardless of remedy. Shoutout to the Las Vegas attorneys on this case for a job well done.

Myers v. Potts