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MUNICIPAL ORDINANCE - CALIFORNIA

Acosta v. City of Costa Mesa

United States Court of Appeals, Ninth Circuit - May 3, 2013 - F.3d - 13 Cal. Daily Op. Serv. 4481

Speaker at city council meeting brought action against the mayor, the chief of police, the city, and certain individual police officers, challenging city ordinance making it a misdemeanor for members of the public who speak at city council meetings to engage in disorderly, insolent, or disruptive behavior, and alleging he was unreasonably and unlawfully seized after speaking at a meeting.

The court of appeals held that:

- City ordinance was facially overbroad in violation of the First Amendment;
- Unconstitutional portions of the ordinance were not severable;
- Officers were entitled to qualified immunity on speaker's First Amendment claims;
- Officers were entitled to qualified immunity on speaker's unlawful seizure and arrest claims;
- Officers did not use excessive force against speaker;
- Any error in the district court's evidentiary rulings did not prejudice speaker; and
- Substantial evidence supported jury's verdict that the mayor neutrally and constitutionally applied the ordinance to speaker.

City ordinance provision prohibiting the making of "personal, impertinent, profane, insolent or slanderous remarks" at city council meetings was an unconstitutional prohibition on speech, absent a readily susceptible narrowing construction.

An ordinance that governs the decorum of a city council meeting is not facially overbroad under the First Amendment if it only permits a presiding officer to eject an attendee for actually disturbing or impeding a meeting. However, actually disturbing or impeding a meeting means actual disruption of the meeting, as a municipality cannot merely define disturbance in any way it chooses, e.g., it may not deem any violation of its rules of decorum to be a disturbance.

Under California law, city ordinance making it a misdemeanor for members of the public who speak at city council meetings to engage in disorderly, insolent, or disruptive behavior allowed the city to prohibit non-disruptive speech that was subjectively "impertinent," "insolent," or essentially offensive, and therefore the ordinance was facially overbroad in violation of the First Amendment; only the words "disorderly" and "disruptive" were qualifiers that referred to actual disruption of the city proceedings, and the third qualifier merely prohibited "insolent" behavior, and that type of expressive activity could, and often likely would, fall well below the level of behavior that actually disturbed or impeded a city council meeting.