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MUNICIPAL ORDINANCE - ILLINOIS

City of Chicago v. Alexander

Supreme Court of Illinois - June 15, 2017 - N.E.3d - 2017 IL 120350 - 2017 WL 2590718

Protesters involved in grass roots political movement challenging wealth inequity were arrested and charged with violating park district ordinance prohibiting persons from remaining in parks after closing time.

The Circuit Court dismissed charges, finding ordinance facially unconstitutional and unconstitutional as applied. City appealed. The Appellate Court reversed and remanded. Protesters petitioned for appeal as a matter of right or for leave to appeal. The Supreme Court denied petition, but issued supervisory order instructing the Appellate Court to vacate order and review trial court's judgment. On remand, the Appellate Court again reversed and remanded. Protestors petitioned for leave to appeal, which petition was granted.

The Supreme Court of Illinois held that:

- As a matter of first impression, the right to assembly afforded by the state constitution is to be interpreted and applied in lockstep with the federal precedents interpreting and applying the assembly clause of the federal constitution's First Amendment, and
- Protesters forfeited any claim that appellate court failed to properly conduct intermediate review under the applicable First Amendment jurisprudence.

The right to assembly afforded by the state constitution is to be interpreted and applied in lockstep with the federal precedents interpreting and applying the assembly clause of the federal constitution's First Amendment. Both the state and federal constitutions used the verb "assemble," with state constitution using adjectival phrase "peaceable manner" and federal constitution using the adverb "peaceably," and while most recent amendment to state constitution inserted comma after phrase "right to assemble in a peaceable manner," and before unique language referring to right to consult for common good and right to make opinions known, addition of comma merely corrected inconsistency, with intent of drafters being to express same meaning as federal constitution.

Protesters forfeited any claim that the appellate court failed to properly conduct intermediate review under the applicable First Amendment jurisprudence, when reviewing their challenge, under state constitutional provision governing right to assembly, to park district ordinance prohibiting persons from remaining in parks after closing time, by failing to argue such issue in their brief to Supreme Court except in the context of arguing for departure from lockstep based on their claim of broader protection of right to assembly under state constitution.