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CONSTITUTIONAL LAW - TEXAS

Three Expo Events, L.L.C. v. City of Dallas, Texas

United States Court of Appeals, Fifth Circuit - October 24, 2018 - F.3d - 2018 WL 5274394

Producer of sex-themed adult entertainment conventions brought action against city, alleging that city passed a content-based and viewpoint-based resolution prohibiting city from contracting with producer to use city convention center in violation of the First Amendment, the Equal Protection Clause, and the Bill of Attainder Clause.

The United States District Court granted city's motion to dismiss for lack of standing. Producer appealed.

The Court of Appeals held that:

- Producer suffered economic damages of loss of revenues;
- Alleged injury was fairly traceable to challenged action; and
- City's actions would have caused producer future reputational injury likely redressable by injunctive or declaratory relief.

Producer of sex-themed adult entertainment convention suffered economic damages in loss of revenues, lost net profits, and defrayal of cost of advance publicity and other expenses, due to city's adoption of resolution banning convention from city convention center, as would support finding that producer had standing to bring First Amendment free speech claim against city, even though city counsel resolution literally prohibited city manager from entering contract only with producer, and not producer's wholly-owned subsidiary; mayor and city council made clear their firm and deliberate decision to exclude show from convention center under any circumstance and regardless of the legal consequences.

Alleged injury sustained by producer of sex-themed adult entertainment convention was fairly traceable to challenged action of city declaring that convention was unfit and inappropriate for expression and viewing in a public facility, calling for convention's prohibition and suppression, and adopting content-based and viewpoint-based resolution prohibiting city from contracting with producer to use city convention center as venue, as would support finding that producer had standing to bring First Amendment claim against city, even though producer relied on wholly-owned subsidiary to enter into venue leases; city prevented convention from occurring because of public opinion adverse to convention regardless of which party's name was on contract.

City's actions of declaring that sex-themed adult entertainment convention was unfit and inappropriate for expression and viewing in a public facility, calling for convention's prohibition and suppression, and adopting content-based and viewpoint-based resolution prohibiting city from contracting with producer to use city convention center as venue, would have caused producer future reputational injury likely redressable by injunctive or declaratory relief, as would support finding that producer had standing to bring First Amendment claim against city.

