

## **Constitutional Law Exam 3**

### **Fact Pattern:**

Bobby Blogger wrote an online blog about the Sin City Counsel. Bobby Blogger was often critical of the workings of Sin City government officials and loved to blog about what was said at city counsel meetings. There was also a portion of the meetings where the counsel members would answer questions and hear opinions from the press. He loved to voice his opinions during this portion of the meetings.

One day, Bobby showed up to the city counsel meeting but was stopped when he tried to enter through the press entrance.

"Sorry Bobby," said a city counsel staff member, "There's a new ordinance, only employees of a recognized press organization are allowed into press row. Recognized press organization is defined as being in the New York Times list of Recognized Media Outlets. It's for security purposes. Either get on that list or you'll have to sit in back with all of the regular people."

"What about the press question, answer and comment section?" Bobby asked.

"Nope," said the staffer, "only real press can participate."

Bobby comes to you and asks you what his chances are of filing a suit in federal court against Sin City. Bobby tells you he is sure his U.S. Constitutional rights under the 1<sup>st</sup> and 14<sup>th</sup> amendments have been violated and possibly others, he adds. Bobby also wishes to bring a separate claim on behalf of his blog readers as he believes the rights of his blog readers are also being trampled on.

### **Questions:**

Please advise Bobby on what claims he can bring.

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## **Example Answer**

### Standing

Does Bobby have standing to bring these claims in federal court?

Federal courts are only empowered to hear cases involving real controversies, and a plaintiff has standing to bring a case only if he or she suffers, or will imminently suffer, an injury in fact that may be remedied by the court's action.

Under the first claim Bobby is alleging that he is being denied access to the city counsel meetings because he does not belong to a recognized press organization. Bobby claims that his first amended right to free speech is being violated as he is unable to speak or ask questions at the meeting. Bobby is also claiming that his fourteenth amendment rights are being violated because his status as a blogger does not meet the threshold of a recognized press organization. Thus, he has alleged an injury in fact sufficient to give the federal court the power to hear the case. Further, if the court found the ordinance unconstitutional it would remedy this injury. Bobby has standing to bring his own claims in this case.

Bobby also wishes to raise the rights of his blog readers. A plaintiff may only raise his own constitutional rights, unless the persons he is seeking to represent are unable to vindicate their own rights, the proposed plaintiff has the same motivation to pursue the litigation as the right holder, and the proposed plaintiff is capable of doing so. Here, Bobby's readers are capable of raising any rights they may have and Bobby's rights are not necessarily the same as his readers. Bobby will not be able to raise the rights of his readers in court.

### Eleventh Amendment

Does the 11<sup>th</sup> Amendment prevent Bobby from bringing this lawsuit?

In general, the eleventh amendment prevents a private individual from bringing suit in federal court against a state government. However, this prohibition does not apply to local governments, nor to individual state officers.

Bobby is bringing his suit against Sin City, not the state. Under these facts the 11<sup>th</sup> Amendment does not bar Bobby's claims.

### State Action

Generally where a plaintiff alleges violation of personal rights under the constitution, the violation must have been committed by a state or federal actor in order to be actionable.

Here, Bobby is primarily arguing that Sin City's actions violate his rights. Sin City is a political subdivision of state, and is therefore a state actor. However, Sin City may argue that it is only implementing a classification it has no control over as it's using the New York Times list of Recognized Media Outlets-- a private, not state actor. However, the fact that Sin City adopts the private entity's classification is enough to establish state action.

### Free Speech

Does the Sin City ordinance violate the free speech clause of the First Amendment to the U.S. Constitution?

The First Amendment to the constitution states in part, "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . ."

Under the free speech clause, the Government may not control the content of expression. In addition, the U.S. Supreme Court has held that a government cannot compel anyone to speak, or endorse any particular words.

Here Sin City is controlling the content of Bobby's Blog by preventing him from asking questions with other press members and preventing Bobby from speaking up at the Sin City counsel meeting .

As freedom of speech is a fundamental right, the ordinance will be subjected to the toughest standard: strict scrutiny. To survive under this standard, the ordinance must be necessary for a compelling governmental interest.

Here Sin City's stated interest is security at the counsel meetings. Security is certainly a legitimate interest. However, the ordinance limiting to the press to recognized press organizations, does not appear under these facts to be necessary to ensure security. Therefore the ordinance will not survive strict scrutiny and will be struck down.

Under these facts, the ordinance violates the freedom of speech clause of the First Amendment to the U.S. Constitution.

### Equal protection

Does the Sin City ordinance violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution?

The Fourteenth Amendment states that, "No State shall deny to any person. . . equal protection of the laws."

Here, the ordinance singles out recognized press organizations to the exclusion of all others.

This runs afoul of the equal protection clause of the Fourteenth Amendment. Under the equal protection clause, the government may not enact legislation that discriminates against any person or group.

Non-recognized press organizations certainly do not fall into a suspect or quasi-suspect class. Under our facts, however, Bobby is attempting to exercise a fundamental right (free speech) which will give rise to the strict scrutiny standard. To survive under strict scrutiny, the ordinance must be necessary for a compelling governmental interest.

As stated above, while Sin City's interest in security is legitimate, the ordinance does not appear to be necessary to ensure security. Therefore the ordinance will not survive strict scrutiny and will be struck down.

Under these facts, the ordinance violates the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

### Void for Vagueness

Is the ordinance unconstitutionally vague?

An ordinance is unconstitutionally vague if the conduct forbidden by it is so unclearly defined that a reasonable person would have to guess at its meaning.

Here Bobby would attempt to argue that "recognized press organization" is too vague. While in a vacuum this is true, under our facts the term is specifically defined by the New York Times list.

Under our facts, the ordinance is not unconstitutionally vague.