

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Larry Davis v. Kris Ockomon, et al.

Larry Davis v. Kris Ockomon, 668 F.3d 473 (7th Cir. 2012) · No. No. 10-2589 · Decided February 3, 2012

SUMMARY

The Seventh Circuit considered whether the City of Anderson’s Senior Humane Officer was a policymaking position for which political affiliation could be an appropriate qualification. The court held that city ordinances vested the officer with sufficient policymaking discretion, including authority over animal-control regulations, licenses, permits, and policies, and affirmed summary judgment for the defendants.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Kanne, Circuit Judge; Cudahy, Circuit Judge; Sykes, Circuit Judge
JURISDICTION	Federal
DECIDED	February 3, 2012
DOCKET	No. 10-2589
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the grant of summary judgment to City officials on Davis's 42 U.S.C. § 1983 claim alleging politically motivated termination in violation of the First and Fourteenth Amendments.
STANDARD OF REVIEW	De novo review of summary judgment, construing facts and reasonable inferences in favor of the nonmoving party.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Larry Davis v. Kris Ockomon, Other City officials

TOPICS

[first amendment](#)[wrongful termination](#)[section 1983](#)[appellate procedure](#)[standard of review](#)

PRACTICE AREAS

[constitutional law](#)[civil rights](#)[employment law](#)[municipal law](#)[appellate procedure](#)

QUESTIONS PRESENTED

1. Whether the Senior Humane Officer position was subject to political termination under the First Amendment because political affiliation was an appropriate qualification for the position.
2. Whether the court should determine the inherent powers of the Senior Humane Officer position from the official job description or from applicable City ordinances.
3. Whether the City ordinances vested the Senior Humane Officer with sufficient policymaking discretion to bring the position within the patronage-dismissal exception.

HOLDINGS

1. When a statute or city ordinance defines a public position's duties, the ordinance or statute controls the determination of the position's inherent powers; an official job description may provide additional detail only insofar as it is consistent with the governing law.
2. The Senior Humane Officer was a policymaking position because City ordinances vested the officer with substantial discretion to promulgate regulations and policies, issue and revoke licenses and permits, and make other policy-laden animal-control decisions.
3. Davis's termination did not violate the First Amendment because political loyalty was an appropriate qualification for the policymaking position of Senior Humane Officer.

KEY QUOTATIONS

“The First Amendment “forbids government officials to discharge or threaten to discharge public employees solely for not being supporters of the political party in power, unless party affiliation is an appropriate requirement for the position involved.”” (at 475)

“A job description, to the extent it is consistent with pertinent statutes or ordinances, may be relevant in providing greater detail of a position’s duties and thus assisting in the determination of whether a position is best characterized as a policymaker or confidential employee.” (at 479)

“City ordinances confer sufficient policymaking responsibilities to the SHO such that political loyalty was a valid qualification.” (at 483)

FACTUAL BACKGROUND

Davis served as Senior Humane Officer for the City of Anderson from 1988 until January 2008. The position involved directing animal shelter and animal control operations and implementing and enforcing City animal-control policies. After Davis supported a rival in the 2007 Democratic mayoral primary and refused to support Kris Ockomon in the general election, Ockomon won and terminated Davis upon taking office. City ordinances gave the Senior Humane Officer authority over animal-control regulations, licenses, permits, revocations, and animal-adoption policies.

PROCEDURAL HISTORY

Davis sued Ockomon and other City officials in the Southern District of Indiana after being terminated as Senior Humane Officer following his refusal to support Ockomon's mayoral campaign. The district court granted defendants summary judgment on December 11, 2009, concluding that the Senior Humane Officer was a

policymaking position subject to political termination, and dismissed Davis's separate state-law claim without prejudice. The Seventh Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Moore v. Vital Products, Inc., 641 F.3d 253, 256 (7th Cir. 2011)
- Rutan v. Republican Party of Illinois, 497 U.S. 62, 64 (1990)
- Kiddy-Brown v. Blagojevich, 408 F.3d 346, 354-55 (7th Cir. 2005)
- Moss v. Martin, 473 F.3d 694, 698 (7th Cir. 2007)
- Riley v. Blagojevich, 425 F.3d 357, 359-61 (7th Cir. 2005)
- Branti v. Finkel, 445 U.S. 507 (1980)
- Elrod v. Burns, 427 U.S. 347, 368 (1976)
- Tomczak v. City of Chicago, 765 F.2d 633, 641 (7th Cir. 1985)
- Pleva v. Norquist, 195 F.3d 905, 912-13 (7th Cir. 1999)
- Walsh v. Heilmann, 472 F.3d 504, 505 (7th Cir. 2006)
- Powers v. Richards, 549 F.3d 505, 510 (7th Cir. 2008)
- Kupstas v. City of Greenwood, 398 F.3d 609 (7th Cir. 2005)
- Rissman v. Rissman, 213 F.3d 381, 386 (7th Cir. 2000)