

RESIDENCY POLICY RACIAL DISCRIMINATION CLAIM

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Federal civil rights law and the Constitution prohibit discrimination by the government against a suspect class, i.e., a classification based on race, creed, color, religion, or national origin. In addition to direct discrimination against an individual or individuals of a suspect class, this prohibition can also include formal governmental policies as well as informal customs which have an egregious “disparate impact” against a suspect class.

Residency is not a suspect class. Moreover, public recreational opportunities are not a fundamental right guaranteed under the Constitution. Accordingly, governmental entities can generally discriminate on the basis of residency in providing public recreational opportunities, favoring their residents, as long as there is a rational connection between a residency classification policy and a legitimate governmental interest that is not unduly burdensome on the individual rights of non-residents. On the other hand, a policy which discriminates against non-residents may be illegal when it can be proven that the residency policy is a mere pretext to discriminate against individuals in a particular suspect class.

Given increasing demand for limited public recreational resources, many public park and recreation agencies have adopted residency policies which allocate public use and may effectively discriminate against non-residents. As illustrated by the case described herein, for at least one non-resident, a perceived threat to his recreational activity produced sufficient consternation to prompt a lawsuit in federal court.

Many legal problems start out as public relations problems. Most people are not litigious by nature. Accordingly, an individual usually has to become very upset before contemplating the personal time and resource burden associated with a lawsuit. Although the City prevailed in this particular case, with 20-20 hindsight, perhaps the public parks and recreation agency could have negotiated an amicable resolution to what was essentially an interpersonal dispute between one individual and agency staff. In so doing, a better public relations and mediation may have defused a volatile situation and possibly avoided the significant cost associated with defending a lawsuit. Unfortunately, even though a claim may appear to be frivolous and without merit in retrospect, once a claim is filed in federal court, it must still be defended to have the suit effectively dismissed prior to trial.

PATTERN OF DISCRIMINATION?

In the case of *Jefferson v. City of Fremont*, 2014 U.S. Dist. LEXIS 157307 (N.D. Cal. 11/6/2014), plaintiff Walter Jefferson alleged discriminatory treatment and harassment relating to his use of the Fremont Tennis Center ("FTC"). The FTC is a premier public recreational tennis facility and part of the City of Fremont's Parks and Recreation department. Players utilize the FTC for a variety of types of play, including recreational play and lessons. The FTC also hosts USTA tournament matches and league play.

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In addition to the City of Fremont, Jefferson also sued Jeff Gonce, in his official capacity as the Tennis Director of the FTC. Gonce's responsibilities included managing the FTC, scheduling use of the FTC by all types of tennis players, supervising staff, and operating the FTC within its budget. Gonce was subordinate to Kelly King, a Recreation Superintendent II. Gonce did not have the authority to enact official FTC policies or guidelines.

The City filed a motion for summary judgment which would effectively dismiss the claim without a full trial. In so doing, the City argued that Jefferson had failed to allege sufficient facts upon which to base a federal civil rights claim for racial discrimination.

UNRESOLVED CONFLICT

Plaintiff Walter Jefferson is an African-American tennis player. Beginning around 1985, Jefferson began to utilize the FTC. Jefferson also participated in United States Tennis Association ("USTA") amateur league team play, including as captain for certain USTA teams. From 1985 until approximately 2005, Jefferson enjoyed the use of the FTC without incident. Jefferson alleged discrimination started in 2000 when Gonce was promoted to supervisor. Due to the alleged discrimination, Jefferson claimed he ceased patronizing the FTC in 2005 until 2008.

There were a handful of conflicts over the years between Jefferson and Gonce over Jefferson's use of the FTC courts. In one instance, Jefferson alleged Gonce had had the FTC timers set to turn shut the lights off fifty minutes early during an evening recreational reservation. After one confrontation, a witness testified that Jefferson told Gonce: "If you do not give me courts, I will go ahead and sue the city and I will get you fired, is this the route that you want to take Jeff, do you want to lose your job? Do you want to be fired?" Jefferson denied this account of the incident. According to Jefferson, Gonce had told him he was "unwelcome" and "to find elsewhere to play."

Jefferson and Gonce also clashed over reservations for USTA league play. The USTA organized socially-competitive amateur tennis league play, and the FTC participated in hosting league matches. Courts for USTA league play were obtained by making a reservation with the FTC. For league matches, the USTA league team captains were required to email Gonce proposed dates for "home" matches; such requests were approved by Gonce subject to court availability and receipt of payment.

After approval, and at least ten days before the proposed match, the team also had to fill out a use permit and pay fees of \$10 per court, per match. Courts were not "booked" on the reservation sheets until the FTC received the required fees. In March of 2011, Gonce canceled certain requested dates reserved by Jefferson for USTA league play after discovering that Jefferson had booked the same dates at other facilities.

RESIDENCY RULES

In 2008, the FTC experienced challenges stemming from the financial crisis, leading to budget cuts, service reductions and a decrease in City personnel. Fees paid by tennis players are the

FTC's only source of funding. Consequently, the FTC made an effort to maximize fees and accommodate demand for its courts, including implementing certain procedures for making a reservation.

In July of 2011, King directed Gonce to review the FTC's procedures governing the USTA league hosting program due to the increased demand for court space. In response, Gonce stated that he had consulted with "other public tennis facilities, team captains, and USTA staff" in determining how to limit the number of teams. In addition, Gonce had explored multiple proposals, including a cap, using "most popular team levels," and using Fremont residency criteria.

The guidelines produced by Gonce were ultimately reviewed and approved by King. The guidelines were never approved by the City Manager or City Council. Other regional tennis facilities had also used residency policies to allocate courts to USTA league teams. The FTC's residency requirements did not bar a non-Fremont player from participating in league play, but rather assigned priority to teams based on their number of Fremont residents. The policies also required that team captains be Fremont residents.

While Jefferson disputed the motivation for the revision of the guidelines, testimony from other players from Jefferson's USTA League team as well as former employees of the FTC failed to indicate that the conflicts between Gonce and Jefferson were prompted by racially-motivated harassment and discrimination. On the contrary, as one witness testified, "the reason for Gonce's attitude was that Gonce and Jefferson 'were two guys that didn't like each other'."

Jefferson claimed Gonce had engaged in racially-motivated discrimination against him in recreation and USTA league use of the courts. In response, the City claimed Jefferson's failure to follow the rules were the "true cause of any conflict that he may have experienced at the FTC." Specifically, the City produced a documented history of Jefferson not paying on time and following the rules regarding timely court reservations for league play. In the opinion of the City, if allowed, "Jefferson's infractions would affect general customer service and revenues."

Jefferson himself testified that he could not recall having any issue booking recreational play at the FTC. Moreover, Jefferson failed to show that he did not violate the FTC's rules on the occasions referenced by the City.

FULL AND EQUAL ENJOYMENT

As cited by the federal district court, "[Section 1983](#) provides a cause of action for the deprivation of any rights, privileges, or immunities secured by the Constitution and laws by any person acting under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory." Further, federal civil rights law provides: "[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation . . . without discrimination or segregation on the ground of race, color, religion, or national origin." 42 U.S.C. § 2000a.

In his complaint, Jefferson essentially contended that he was "treated poorly at the FTC, a place

of public accommodation, and ultimately denied the right to use the FTC because of his race.”

According to the federal district court, Sections 1983 of the federal civil rights laws would require Jefferson to “show that any purported racial discrimination was intentional.” On the other hand, the court acknowledged that “gross statistical disparities” regarding the adverse impact of a law (in this case the FTC residency requirement) on a racial group “may be so extreme that courts invalidate the challenged action based on discriminatory impact” as a denial of equal protection.

However, in this particular instance, the federal district court found that Jefferson had “not established that the residency requirements had a discriminatory impact on a protected class,” i.e., African-Americans. Specifically, the court noted teammates of Jefferson had failed to offer any testimony that supported his allegations of racial discrimination. In particular there was no evidence that “Jefferson and his multi-cultural team were not welcome at the FTC” or that the FTC's residency policy was designed to “rid the facility of minorities.” On the contrary, the court noted the following testimony from one of Jefferson’s teammates:

Obviously, there's — obviously, there's a lot of people that play at the tennis center that come from different backgrounds; African-Americans, Filipinos, Chinese, Indians. We also have Latinos that come out and play there, but again, there's no sort of, you know, special kind of treatment for certain groups of people or, you know, anything that may be related to racism. I never witnessed any of that.

Further, the court found “no disparate impact stemming from the residency requirements” for USTA league play on any racial group. In particular, the court noted that the residency rules favoring teams with more Fremont residents had also excluded two non-Fremont resident captains who were Caucasian.

As a result, the federal district court concluded that Jefferson had failed to establish any race based disparate impact associated with the residency rules.

DISPARATE TREATMENT?

As described by the federal district court, to establish a federal civil rights claim under Section 1981, Jefferson had to show the following to prove “disparate treatment motivated by race”:

(1) is a member of a protected class; (2) attempted to contract for services and afford himself the full benefits and enjoyment of a public accommodation; (3) was denied the full benefits or enjoyment of a public accommodation, and that (4) such services were available to similarly situated persons outside his protected class who received full benefits.

In this particular instance, the court found Jefferson was only prevented from getting on a court to begin play in June 2011, not because of the residency requirements, but based on the fact that “Jefferson did not make a timely request for reservation.” More significantly, the court found

Jefferson had failed to offer any evidence that “similarly-situated persons outside of the protected class were treated better “or that Jefferson “received services in a markedly hostile manner that is objectively discriminatory.”

Despite any alleged disparate impact, the court found the City of Fremont had demonstrated “legitimate purposes for its actions, such as enforcing FTC rules applicable to all.” In particular, the court found legitimate reasons for the residency requirements, specifically the need “for added criteria because of demand for court time.” Further, the court noted the City’s actions were similar to “other regional tennis centers that also use residency policies to give priority to USTA league teams.”

MUNICIPAL POLICY LIABILITY?

In response to Jefferson’s allegations of racial discrimination against Gonce, the City of Fremont further contended “there was no official policy or custom sufficient to establish causation under [Section 1983](#).”

According to the federal district court, municipal liability under Section 1983 requires "an action pursuant to official municipal policy of some nature" which causes a deprivation of an individual’s civil rights. Specifically, the court noted a municipal entity will be held liable under Section 1983 "only when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury."

Accordingly, the court acknowledged that the City of Fremont could not be “subject to municipal liability absent proof of the existence of an unconstitutional municipal policy." Within the context of Section 1983, the court found “official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law” which causes a “deprivation of rights.”

Under the circumstances of this particular case, the federal district court found Jefferson had failed to show a "policy or custom" giving rise to municipal liability. In so doing, the court noted that Jefferson and the testimony of teammates had “not shown a pattern of repeated discrimination with respect to other minority players.” Moreover, at one point in his deposition, Jefferson had conceded that Gonce “did not handle scheduling USTA tournaments” and Gonce “did not interfere with Jefferson's ability to reserve courts for recreational play.”

Accordingly, absent evidence of a “persistent, widespread, or well-settled custom,” the federal district court found any problems relating to recreational play were not an “informal policy” which could provide a legal basis for municipal liability under Section 1983.

MUNICIPAL DECISIONMAKER?

Moreover, the court found Jefferson had failed to “show that his alleged “deprivation resulted from an official policy or custom established by a municipal policymaker possessed with final authority to establish that policy." In so doing, the federal district court found “the residency

requirements have at least one core characteristic of a policy.”

The word “policy” generally implies a course of action consciously chosen from among various alternatives." Here, it is undisputed that Gonce considered "various ways" of limiting the number of USTA teams seeking to play at the FTC in revising the USTA guidelines. In other words, the residency requirements were consciously chosen from various alternatives.

That being said, the federal district court found “no evidence that the alleged ‘policy’ or ‘custom’ was established by the municipal decisionmakers of the City of Fremont.” On the contrary, the revised guidelines with the residency requirements were approved by King, not Gonce. Further, Gonce was “neither the final policymaker nor delegated final policymaking authority.” As a part-time Tennis Operations Supervisor, Gonce lacked authority to make final policy for the City of Fremont. The City of Fremont's general ordinances treat Fremont's city council as responsible for general policies regarding community recreation.

Further, the federal district court found “no evidence that any final policymaker knew of or ratified any alleged disparate impact or discriminatory motive behind the residency requirements.” Instead, in the opinion of the court, the record indicated “the residency requirements were developed at the request of Kelly King, in response to increased USTA league team demand, in consultation with the USTA, and after consideration of similar residency requirements adopted by other regional tennis centers.”

CONCLUSION

Having found no evidence of any race-based discrimination by the City, the federal district court granted summary judgment in favor of the City, dismissing Jefferson’s federal civil rights claims.

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