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## PERSPECTIVE

## Balancing public employee safety with the First Amendment

By Nicole R. Roggeveen

**A**rmando Herman appealed from a workplace violence restraining order imposed on him under Code of Civil Procedure Section 527.8. The trial court ordered restrictions on Herman's contact with a deputy city attorney after Herman made threatening statements towards him at city council meetings. Herman argued that the restraining order was unwarranted and violated his First Amendment rights. The California Court of Appeal disagreed. *City of Los Angeles v. Herman*, 2020 DJDAR 9596 (Sept. 2, 2020).

During an April 2019 Los Angeles City Council meeting, Herman made profanity-laced threats at the deputy city attorney and revealed his home address stating that "everyone should know" where he lived. Almost two weeks later, Herman again disclosed the deputy city attorney's home address at a Pasadena City Council meeting. He also submitted public speaker cards making profane threats with disturbing drawings above the deputy city attorney's name. Herman later shouted profanities at the deputy city attorney while being escorted out of a Los Angeles City Council meeting for being disruptive.

In response, the city of Los

Angeles filed a petition for a workplace violence restraining order against Herman under Civil Code Section 527.8, which permits an employer to seek a restraining order on behalf of an employee who has "suffered unlawful violence or a credible threat of violence from any individual that can reasonably be construed to be carried out or to have been car-

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ried out at the workplace." At "credible threat of violence" includes a "course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

The restraining order was granted requiring Herman to stay at least 10 feet away from the deputy city attorney during city meetings, refrain from violence, stalking and assault of the deputy city attorney, and refrain from disclosing his home address and making any contact with him.

Herman appealed the trial court's order on the grounds that the order violated his right to freedom of speech under the

First Amendment and Civil Code Section 528.7(c) specifically precludes a court from issuing a restraining order that prohibits speech or other activities "that are constitutionally protected."

Citing the U.S. Supreme Court, the Court of Appeal explained that "once a court has found that a specific pattern of speech is unlawful, an

injunctive order prohibiting the repetition, perpetuation, or continuation of that practice is not a prohibited 'prior restraint' of speech." In this case, the trial court found that Herman's threatening statements constituted credible threats of violence and were therefore not constitutionally protected. Moreover, an actual intent to cause harm is not a requirement to prove a threat that falls outside the protection of the First Amendment.

The Court of Appeal also noted that the restraining order was tailored to balance the need to protect the deputy city attorney's safety with the need to protect the First Amendment rights of Herman to speak at

city meetings. "Most of the prohibitions in the trial court's Order ... concern conduct rather than speech. The portions of the Order that do apply to speech ... are based upon specific prior threatening conduct that was not protected by the First Amendment. The Order was therefore constitutionally permissible."

The opinion in this case provides assurance to public entities that their employees can be protected without the fear of trampling on an individual's freedom of speech under the First Amendment. An order tailored in a manner that would allow an individual to continue to speak, but prohibit certain conduct could serve to protect both the safety of the employee and the First Amendment rights of the individual. ■

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