

Ordinance, Section 1.12.011 provides the relevant part as follows:

“All city officials and employees are entitled to a workplace free of unlawful harassment by City officials... this means that all city officials and employees must be respectful of others and act professionally. City officials and employees are prohibited from engaging in unlawful harassment of other city officials, employees, citizens, vendors and all other third parties.

(1) Harassment becomes unlawful when:

(A) The offensive conduct causes intimidation and antagonistic environment and/or is offensive to a reasonable person. The conduct can include but is not limited to epitaphs, slurs and negative stereotyping; threatening intimidating or hostile conduct; denigrating jokes and comments; and writings or pictures that single out, denigrate or show hostility or version toward a city official or employee, and that interferes with the work performance. Conduct, comments or innuendos that may be perceived by others as offensive are wholly prohibited.”

Subsequent to Councilman Bradshaw’s harassment of the two City of Leon Valley Police Officers concerning the arrest of Olen Yarnell, the City retained the services of Board Certified Labor and Employment lawyer Keith B. Sieczkowski to evaluate the incident. Attorney Sieczkowski returned a summary of his investigation of the complaint concerning Councilman Will Bradshaw to the City of Leon Valley City Council. This summary is part of the record as Exhibit 1 for Defendants in the Preliminary Injunction Hearing.

II. **LEGAL ANALYSIS**

At issue in the case at bar, is whether or not Councilman Bradshaw was acting in his capacity as a Councilman or a private citizen. The United States Supreme Court has not issued an opinion as to whether or not *Garcetti v. Ceballos*, 547 U.S. 410 (2006) applies to an elected official. As the Magistrate Judge noted in her recommendation, the Fifth Circuit addressed this issue in *Rangra v. Brown*, 566 F.3d 515 (5th Cir. on reh’g *en banc*, 584 F.3d 206 (5th Cir. 2009))

but this case is not binding since the opinion was vacated.

Defendants assert that Councilman Bradshaw, when acting as a City Councilman for the City of Leon Valley cannot directly harass employees of the City of Leon Valley who are performing their duties. Defendants assert that Plaintiff Bradshaw does not have carte blanche to harass City Employees whose actions he disagrees with. The First Amendment permits restrictions upon the content of speech in limited areas, as follows:

- *Simon & Schuster Inc. v. Members of New York State Crime Victims Board*, 502 U.S. 105 (1991) (obscenity);
- *Roth v. United States*, 354 U.S. 476, 483 (1957)(defamation);
- *Virginia Bd of Pharmacy v. Virginia Citizen's Consumer Council, Inc.*, 425 U.S. 748, 771 (1976)(incitement);
- *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571 (1942).

III. DEFENDANTS' OBJECTIONS

OBJECTION NO. 1: Defendants **CITY OF LEON VALLEY OFFICIALS SALVAGGIO, KUENSTLER, RODRIGUEZ, CHARLES and ALCO CER** object to the Magistrate's Report and Recommendation that Garcetti does not apply to limit First Amendment rights of elected officials.

OBJECTION NO. 2: Defendants **CITY OF LEON VALLEY OFFICIALS SALVAGGIO, KUENSTLER, RODRIGUEZ, CHARLES and ALCO CER** object to the Magistrate's Report and Recommendation that Plaintiff Bradshaw was speaking as a public citizen on the date of the incident in question.

OBJECTION No. 3: Defendants **CITY OF LEON VALLEY OFFICIALS SALVAGGIO, KUENSTLER, RODRIGUEZ, CHARLES** and **ALCOCER** object to the Magistrate's Report and Recommendation that Plaintiff Bradshaw was engaged in political speech when he harassed Assistant Deputy Chief Gonzales and Officer Flores on the date of the incident in question.

OBJECTION No. 4: Defendants **CITY OF LEON VALLEY OFFICIALS SALVAGGIO, KUENSTLER, RODRIGUEZ, CHARLES** and **ALCOCER** object to the Magistrate's Report and Recommendation that that Plaintiff Bradshaw has a substantial likelihood of success on the merits; that the threatened injury outweighs any damage that the injunction may cause the opposing party and that the injunction will not disserve the public interest. Defendants object to the Court's recommendation that this preliminary injunction should be ordered as an extraordinary remedy when the Plaintiff has not carried the burden of persuasion.

WHEREFORE, PREMISES CONSIDERED, Defendants **CITY OF LEON VALLEY OFFICIALS SALVAGGIO, KUENSTLER, RODRIGUEZ, CHARLES** and **ALCOCER** pray that their objections to the Magistrate's Report and Recommendation be in all things sustained and that Plaintiff Bradshaw's Motion for Preliminary Injunction be denied and for such other and further relief as they may show themselves justly entitled.

Respectfully submitted,

LAW OFFICES OF CHARLES S. FRIGERIO

A Professional Corporation

Riverview Towers

111 Soledad, Suite 840

San Antonio, Texas 78205

(210) 271-7877

(210) 271-0602 Telefax

Email: csfrigeriolaw@sbcglobal.net

frigeriolaw1995@sbcglobal.net

BY: /s/ Charles S. Frigerio

CHARLES S. FRIGERIO

SBN: 07477500

ATTORNEY-IN-CHARGE

HECTOR X. SAENZ

SBN: 17514850

ATTORNEYS FOR DEFENDANTS

CHIEF JOSEPH SALVAGGIO, CITY MANAGER

KELLY KUENSTLER, CITY COUNCILMEMBERS

DR. CATHERINE RODRIGUEZ, DONNA CHARLES

AND MONICA ALCOCER

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of October, 2020, I electronically filed the foregoing Defendants' **CITY OF LEON VALLEY OFFICIALS SALVAGGIO, KUENSTLER, RODRIGUEZ, CHARLES and ALCOCER's** Objections to the Magistrate's Report and Recommendation with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Mr. Brandon J. Grable
Grable Law Firm PLLC
1603 Babcock Road, Suite 118
San Antonio, Texas 78229

Mr. Solomon M. Radner
Ms. Madeline M. Sinkovich
EXCOLO LAW, PLLC
26700 Lahser Road, Suite 401
Southfield, MI 48033

/s/ Charles S. Frigerio

CHARLES S. FRIGERIO