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United States v. Riccardi
405 F.3d 852 (10th Cir. 2005)9

Constitutional Provisions

U.S. Const. amend. Iassim.. p

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Other Authorities

Lynda V. Mapes,
Standing Rock Sioux Tribe Prepares Push Back Against Trump's Dakota
Access Pipeline Order Seattle Times (Jan. 24, 2017).....2

I. INTRODUCTION

This matter involves an overbroad and unconstitutional request for private data belonging and related to a local political advocacy group's associational activity. On February 16, 2017—just days after a peaceful political protest in Bellingham—the Whatcom County Sheriff's Department served Facebook with a warrant seeking not only private online communications and information about the group's political activity, but also data related to an unknown number of individuals who merely interacted with the group via Facebook some point during the 12 days (both before and after the protest) covered by the warrant. The First Amendment protects political speech, the right to receive information, and the right to associate with others to engage in political speech and advocacy without state monitoring or interference. The warrant here intrudes on all of these rights and would chill political speech and association at the heart of the First Amendment. The warrant also fails to meet the basic Fourth Amendment requirement that warrants be particularized, not least because it potentially extends to any member of the public, supportive or not, who interacted with the group.

Given the important First Amendment-protected associational interests and Fourth Amendment-protected privacy interests at stake, the context of the County's investigation centered on a political protest, and the breadth of information sought by the warrant, it is inconceivable that the County can meet its existing burden for compelled production of such information. Furthermore, in the protected context of this case, an after-the-fact suppression remedy would plainly be insufficient to ensure the adequate protection of the First Amendment associational and speech rights at issue. For these reasons and those given below, Movant respectfully requests that the Court quash the County's warrant.

1 (1968); *Perlman v. United States*, 347 U.S. 7, 12–13, 38 S. Ct. 417, 62 L. Ed 950 (1954).

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1 F.2d at 1083 (quotation marks omitted); In re Faltico, 561 F.2d 109, 111 (8th Cir. 1977) (per
2 curium); Gibson, 372 U.S. at 551. In addition, the Court must show that “the means of
3 obtaining the information is not more drastic than necessary to forward the asserted
4 governmental interest.” Bursey, 466 F.2d at 1083.

5 The search warrant for the bellinghamrapl’s Facebook page does not meet these
6 standards. First, the page’s contents and related information are undoubtedly protected speech,
7 and the information sought by the warrant includes political speech. See, e.g., *United States v. Jones*, 135 S.Ct. 1011 (2013) (quoting *United States v. Jones*, 135 S.Ct. 1011, 1025 (2013)).

1 inevitably keep some people from engaging with joining such groups. Furthermore, this chill
2 is not limited to those sympathetic to the political aims of the Bellingham #NoDAPL Coalition,
3 or to those on the Coalition's side of the political spectrum. If the State may intrude on the
4 political and associational conduct of the Bellinghamnodapl Facebook group, it can do the same
5 with respect to any politically associated groups.

6 Second, the County's interest is neither "immediate, substantial, and subordinating," nor
7 sufficiently connected to the wide swath of information requested. Reckless endangerment—the
8 only offense indicated on the face of the warrant—is a gross misdemeanor under state law.
9 RCW 9A.36.050. Upon information and belief, the warrant relates to a political protest against
10 the Dakota Access Pipeline that took place in Bellingham on February 11, 2017. See *Dakota Access Pipe* 3-S Pi8.3(c

1 expedition. The First Amendment prohibits County from proceeding in such a broad and
2 unbound way.⁵

3 2. The search warrant does not satisfy particularity under the Fourth
4 Amendment.

5 Even if the bellinghamnodapl Facebook group were not engaged in political advocacy
6 and speech, the County's warrant would fail under the Fourth Amendment.

7 As an initial matter, the warrant would still be subject to a form of heightened scrutiny
8 with respect to particularity because it seeks electronic data. Courts around the country have
9 recognized that "the particularity requirements assume even greater importance" in electronic
10 searches because otherwise there is "a serious risk that every warrant for electronic information
11 will become, in effect, a general warrant, rendering the Fourth Amendment irrelevant."
12 *United States v. Galpin*, 720 F.3d 436, 446–47 (2d Cir. 2013) (quoting *United States v. Comprehensive
13 Drug Testing, Inc.*, 621 F.3d 1162, 1177 (9th Cir. 2010)). See also *State v. Roderick*, 179 Wn.2d 893, 898,
14 321 P.3d 1183 (2014); see also *United States v. Riccardi*, 405 F.3d 852, 862–63 (10th Cir. 2005).
15 This is because "advances in technology and the centrality of [electronic devices] in the lives of
16 average people have rendered [such devices] akin to a person's residence[s] in terms of the scope and
17 quantity of private information [they] may contain." *Galpin*, 720 F.3d at 446. Indeed, this is why
18 Washington courts have repeatedly held that the search of computers or other electronic storage
19 devices gives rise to heightened particularity concerns. See, e.g., *State v. Keodara*, 191 Wn. App.
20 305, 314, 364 P.3d 777 (2015); *State v. Griffith*, 129 Wn. App. 482, 488–89, 120 P.3d 610
21 (2005). So too can the contents of electronic accounts like Facebook, which is at once a message
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⁵ In addition, an after-the-fact suppression remedy would be insufficient to ensure the adequate protection of the First Amendment association and speech rights at issue.

1 board, an email service, a diary, a calendar, a photo book, a video archive, and much more. As
2 explained above, the County's warrant cannot meet heightened constitutional scrutiny.

3 Beyond that, however, the warrant in this case fails to meet even the most elemental
4 Fourth Amendment particularity requirements. It does not adequately limit the scope of the
5 privacy intrusion that it authorizes. The Fourth Amendment's particularity requirement serves
6 three central purposes: to prevent general searches, to "eliminate[] the danger of unlimited
7 discretion in the executing officer's determination of what to seize"; and to prevent the execution
8 of "warrants issued on loose, vague, or doubtful bases of fact." *Perrone*, 834 P.2d at 615–16. In
9 effect, the particularity requirement ensures that the County has a specific aim in mind before
10 conducting a search; that it explicitly limits its search to that aim; and that it has good reason to
11 obtain the information it seeks.

12
13 The County's warrant here fails on all three counts. First, the warrant is akin to the very
14 kind of general warrant the Fourth Amendment was meant to prohibit. Rather than specifically
15 target an individual based on information suggesting that the individual committed the
16 misdemeanor of reckless endangerment, the warrant asks for information related to a political
17 advocacy group, which may include information about the group's members and activities.
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AMERICAN CIVIL LIBERTIES

DECLARATION OF

I, Edward [redacted], a [redacted] assistant for the American Liberty Foundation, 901 First Avenue, Suite 530, Seattle, WA 98101. I hereby certify that the information provided in the attached document is true and correct. I am providing this information to you via email on [redacted] date [redacted].

Motion to

of Bill Elford, King County Superior Court, Case No. 17-2-0363, in the matter of [redacted].

David S. [redacted], PROSECTOR, Suite 200, 1100 Bell Street, Seattle, WA 98101.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this [redacted] day of [redacted], 2017 at Seattle, Washington.



DAVID S. [redacted] WIXL