

latimes.com**Arrest for Nazi salute violated 1st Amendment, court says****Appeals panel says the Santa Cruz council's ouster of a homeless activist over the protest gesture was 'viewpoint discrimination,' not a bid to maintain order.**

By Carol J. Williams, Los Angeles Times

December 16, 2010

The city of Santa Cruz violated the 1st Amendment rights of an advocate for the homeless when the mayor had him arrested for giving a Nazi salute at a City Council meeting, a federal appeals court ruled Wednesday.

The unanimous ruling by a full 11-judge panel of the U.S. 9th Circuit Court of Appeals deemed Mayor Christopher Krohn's order to remove activist Robert Norse from the public meeting to be "viewpoint discrimination" rather than an effort to maintain order during discussion about where the homeless would be permitted to sleep.

Chief Judge Alex Kozinski, a libertarian and fierce supporter of 1st Amendment protections, said Norse's ouster was spurred by a councilman's "hissy fit," not any actual disruption of the meeting.

Free speech advocates hailed the ruling as a warning to public officials trying to muzzle opposing voices.

"This kind of behavior not only occurs in Santa Cruz but in other places too," said David J. Beauvais, an Oakland attorney specializing in 1st Amendment issues who represented Norse in the protracted legal action. Beauvais said two previous rulings by the 9th Circuit on city officials' power to control public meetings "set up such a relaxed standard that cities were emboldened to do whatever they want."

The appeals court reversed a lower court decision to dismiss Norse's lawsuit on grounds that city officials are immune from such legal actions. The case had been dismissed by U.S. District Judge Ronald M. Whyte of San Jose on the eve of trial, denying Norse any opportunity to argue that his rights had been violated, the appeals court said.

Kozinski wrote a concurring opinion to underscore the constitutional issues behind the decision to send the case back for trial. The chief judge said a video of Norse's gesture at the March 12, 2002, meeting, part of the case record as well as available on YouTube, "speaks for itself."

"Norse raises his hand in a brief, silent protest of the mayor's treatment of another speaker. The mayor ignores Norse's fleeting gesture until Councilman [Tim] Fitzmaurice throws a hissy fit," Kozinski said in arguing that Norse' stiff-armed salute fell far short of the disruption necessary to justify his removal and arrest.

At a June hearing on Norse's lawsuit, the 9th Circuit judges made clear their concerns about the city's claim to unlimited latitude in controlling expression at public meetings.

12/16/2010

Arrest for Nazi salute violated 1st Amen...

Norse is an activist with Homeless United for Friendship and Freedom and has been battling Santa Cruz officials over their treatment of the city's down-and-out for more than a decade.

George J. Kovacevich, attorney for the city of Santa Cruz, said city officials hadn't yet decided whether to seek U.S. Supreme Court review or let the case go to trial. He said he was disappointed in the ruling and concerned it could lead to more unruly behavior at public meetings.

"But that's always a rub with the 1st Amendment," he said. "I'm not saying that's good or bad, just that it goes with the territory."

carol.williams@latimes.com

Copyright © 2010, Los Angeles Times