

**Constitutional Law**—First Circuit Conducts Independent, Not Clear-Error, Review in Free Speech Case Involving City Ordinances—*Sullivan v. City of Augusta*, 511 F.3d 16 (1st Cir. 2007), *cert. denied*, 129 S. Ct. 112 (2008)

Protecting the expression of unpopular ideas lies at the heart of the First Amendment; therefore, free speech law inherently distrusts regulation.<sup>1</sup> Acknowledging the First Amendment's importance, the United States Supreme Court imposed a special appellate duty to protect free speech.<sup>2</sup> In *Sullivan v. City of Augusta*,<sup>3</sup> the First Circuit considered whether two city ordinances violated the First Amendment's free speech and assembly protections.<sup>4</sup> The First Circuit conducted an independent review of the record and vacated in part, reversed in part, and affirmed in part the district court's unconstitutionality findings.<sup>5</sup>

In January 2004, the March for Truth Coalition (Coalition) began organizing a demonstration in Augusta, Maine.<sup>6</sup> The organizational effort required obtaining a permit pursuant to a city ordinance applying to street marches.<sup>7</sup> Accordingly, in February 2004, Coalition organizer Timothy Sullivan filed for a marching permit, which the city agreed to grant if the Coalition posted a bond to cover cleanup and other costs associated with the march.<sup>8</sup> Sullivan subsequently filed suit on behalf of the Coalition in the United States District

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1. See Steven Alan Childress, *Constitutional Fact and Process: A First Amendment Model of Censorial Discretion*, 70 TUL. L. REV. 1229, 1236, 1294-98 (1996) (analyzing First Amendment's historical importance and noting regulations of speech inherently suspect). The First Amendment states, "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. CONST. amend. I.

2. See *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984) (declaring First Amendment protection non-delegable appellate obligation); see also *infra* notes 32-33 (detailing special appellate-review duty in First Amendment cases).

3. 511 F.3d 16 (1st Cir. 2007), *cert. denied*, 129 S. Ct. 112 (2008).

4. See *id.* at 20 (stating issues on appeal).

5. See *id.* (outlining and disaffirming in part district court's findings); *id.* at 24-25 (articulating appellate courts use plenary review standard in First Amendment cases).

6. See *Sullivan v. City of Augusta*, 310 F. Supp. 2d 348, 350 (D. Me. 2004) (setting forth factual background). The march would promote "worldwide end of war and empire building, greater honesty and openness in domestic government, affordable health care, veterans' rights and benefits, and living wage jobs." *Id.*

7. See *Sullivan v. City of Augusta*, 310 F. Supp. 2d 348, 350-51, 351 n.1 (D. Me. 2004) (setting forth ordinance and application process). The ordinance allows the Police Chief to set "reasonable conditions" on permits, including traffic control and cleanup fees. *Id.* at 350.

8. See *Sullivan v. City of Augusta*, 310 F. Supp. 2d 348, 351 (D. Me. 2004) (detailing Coalition's permit application process and city's conditions). Timothy Sullivan applied for a permit on behalf of the Coalition and suggested three alternative routes. *Id.* Pursuant to the ordinance, the Deputy Police Chief Major Gregoire determined that traffic control for the first route would cost \$2,077.44, the second route \$1,761.20, and the third route \$1,543.08. *Id.* Additionally, the Coalition would need to provide a \$10,000 bond or proof of insurance. *Id.* The insurance would cost the Coalition \$450. *Id.*

Court for the District of Maine, seeking a temporary restraining order (TRO).<sup>9</sup> The Coalition argued that it could not afford the fees and that the conditional permit violated its free speech rights.<sup>10</sup> The district court granted the motion with respect to the bond requirement, but it upheld the remaining provisions of the Augusta ordinance.<sup>11</sup>

Sullivan subsequently amended his complaint and returned to court.<sup>12</sup> The parties conducted discovery and submitted a stipulated record.<sup>13</sup> The court discussed the constitutionality of two ordinances: the Parade Ordinance (PO) and the Mass Outdoor Gathering Ordinance (MOGO).<sup>14</sup> The PO, originally at issue in the TRO, sets up the framework for requesting a permit to “march or . . . use . . . public ways within the city.”<sup>15</sup> The MOGO applies to “a mass outdoor gathering attended by two hundred (200) or more persons.”<sup>16</sup>

The district court addressed at length issues of standing and ripeness as well as substantive First Amendment questions regarding content neutrality, governmental discretion, and legislative overbreadth.<sup>17</sup> The district court determined that the Coalition had proven standing with respect to both ordinances and that the claims were ripe.<sup>18</sup> Among other findings, the district court concluded that the lack of an indigence exception was unconstitutional.<sup>19</sup>

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9. See *Sullivan v. City of Augusta*, 310 F. Supp. 2d 348, 350 (D. Me. 2004) (describing motion and Sullivan’s arguments thereto).

10. See *Sullivan v. City of Augusta*, 310 F. Supp. 2d 348, 350 (D. Me. 2004) (outlining Coalition’s argument that ordinance unconstitutionally burdens First Amendment rights). The Coalition claimed only \$1,365 in assets, which other Maine nonprofit organizations held in trust. *Id.* at 351.

11. See *Sullivan v. City of Augusta*, 310 F. Supp. 2d 348, 350 (D. Me. 2004) (granting TRO for bond requirement only). The city subsequently removed the bond requirement from the parade ordinance as well as from a similar ordinance applying to mass outdoor gatherings. See *Sullivan v. City of Augusta*, 406 F. Supp. 2d 92, 97 n.2 (D. Me. 2005) (indicating city’s actions after motion), *aff’d in part, vacated in part, rev’d in part*, 511 F.3d 16 (1st Cir. 2007).

12. 511 F.3d at 21 (describing amended complaint). The amended complaint added a party and a claim challenging Augusta’s Mass Outdoor Gathering Ordinance’s constitutionality, which had not been at issue for the TRO. See *Sullivan v. City of Augusta*, 406 F. Supp. 2d 92, 95-96 (D. Me. 2005), *aff’d in part, vacated in part, rev’d in part*, 511 F.3d 16 (1st Cir. 2007).

13. See 511 F.3d at 21 (detailing procedural history). Given the stipulated record, the district court could thus “decide any significant issues of material fact.” See *Boston Five Cents Sav. Bank v. Sec’y of Dep’t of Hous. & Urban Dev.*, 768 F.2d 5, 11-12 (1st Cir. 1985) (explaining stipulated record’s procedural effect in contrast to cross-motions for summary judgment).

14. See *Sullivan v. City of Augusta*, 406 F. Supp. 2d 92, 99-128 (D. Me. 2005) (analyzing whether PO and MOGO violate First Amendment), *aff’d in part, vacated in part, rev’d in part*, 511 F.3d 16 (1st Cir. 2007).

15. See *Sullivan v. City of Augusta*, 406 F. Supp. 2d 92, 96 (D. Me. 2005) (outlining key PO provisions), *aff’d in part, vacated in part, rev’d in part*, 511 F.3d 16 (1st Cir. 2007).

16. See *Sullivan v. City of Augusta*, 406 F. Supp. 2d 92, 96-97 (D. Me. 2005) (outlining key MOGO provisions), *aff’d in part, vacated in part, rev’d in part*, 511 F.3d 16 (1st Cir. 2007).

17. See *Sullivan v. City of Augusta*, 406 F. Supp. 2d 92, 99-128 (D. Me. 2005) (discussing standing, ripeness, and substantive arguments), *aff’d in part, vacated in part, rev’d in part*, 511 F.3d 16 (1st Cir. 2007).

18. See *Sullivan v. City of Augusta*, 406 F. Supp. 2d 92, 99-106 (D. Me. 2005) (finding standing and ripeness), *aff’d in part, vacated in part, rev’d in part*, 511 F.3d 16 (1st Cir. 2007).

19. See *Sullivan v. City of Augusta*, 406 F. Supp. 2d 92, 122-26 (D. Me. 2005) (noting indigent receive disparate treatment), *aff’d in part, vacated in part, rev’d in part*, 511 F.3d 16 (1st Cir. 2007). The issue turned on whether venues such as sidewalks and parks provide reasonable alternatives to marching on the street. *Id.* at

After conducting an independent review of the record, the First Circuit vacated in part, reversed in part, and affirmed in part the district court's findings.<sup>20</sup>

Although standards of review date back to early American jurisprudence, the analytical framework remains ambiguous.<sup>21</sup> Notwithstanding some uncertainty, review standards have become an increasingly important aspect of appellate practice.<sup>22</sup> Courts of appeals apply different standards depending on the issue at hand.<sup>23</sup> For example, the predominant standard of review for factual questions appealed from civil bench trials is "clear error."<sup>24</sup>

Appellate courts generally review questions of law and mixed questions of law and fact de novo.<sup>25</sup> This analytical framework attempts to distinguish law and fact, but the two concepts interrelate.<sup>26</sup> The ambiguity in distinguishing law from fact makes determining the review standard difficult, particularly for mixed questions.<sup>27</sup> For that reason, some appellate courts reviewing mixed questions defer to the lower court's findings of underlying facts instead of

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124. Even prior to the hearing, the Coalition's lawyer "scoff[ed] at the notion" that marching on sidewalks would suitably replace a street march. See Save Our Civil Liberties, <http://www.saveourcivil liberties.org/en/2005/04/1034.shtml> (last visited Feb. 10, 2008). With precedent and expert opinions in mind, the district court found that sidewalk marches were symbolically and logistically inadequate as substitutes for street marches. See *Sullivan v. City of Augusta*, 406 F. Supp. 2d 92, 125 (D. Me. 2005), *aff'd in part, vacated in part, rev'd in part*, 511 F.3d 16 (1st Cir. 2007).

20. See 511 F.3d at 45 (setting forth holding), *cert. denied*, 129 S. Ct. 112 (2008). Sullivan unsuccessfully appealed the First Circuit's decision to the Supreme Court. See generally Reply Brief for Petitioners, *Sullivan v. City of Augusta*, No. 07-1500 (Aug. 7, 2008), 2008 WL 3540278, *cert. denied*, 129 S. Ct. 112 (2008). Pointing to a 4-3 circuit split, Sullivan argued that "the circuits are closely and deeply divided on the proper standard of appellate review in cases upholding First Amendment rights." *Id.* at \*3-4.

21. See Martha S. Davis, *Standards of Review: Judicial Review of Discretionary Decisionmaking*, 2 J. APP. PRAC. & PROCESS 47, 47 (2000) (indicating commentators only recently began discussing review standards). The first comprehensive work came in 1986. *Id.* at 47 n.1.

22. See Steven Alan Childress, *Standards of Review Primer: Federal Civil Appeals*, 229 F.R.D. 267, 268-69 (2005) (stating attorney knowledge of review standards essential in appellate practice).

23. See Davis, *supra* note 21, at 47-49 (providing general background for review standards). See generally Childress, *supra* note 22 (discussing review standards in federal civil appeals).

24. See Childress, *supra* note 22, at 270-74 (discussing clear-error standard). Pursuant to Rule 52 of the Federal Rules of Civil Procedure, the clear-error standard states that "[f]indings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility." FED. R. CIV. P. 52(a)(6).

25. See Childress, *supra* note 22, at 274 (explaining errors of law reviewed without deference); *id.* at 275-76 (analyzing standard of review for mixed questions). A mixed-question label, however, does not automatically trigger de novo review. See *Ornelas v. United States*, 517 U.S. 690, 701-02 (1996) (explaining when de novo review appropriate for mixed questions). The issue turns on whether the appellate or the district court is in a better position to assess the facts. See *Miller v. Fenton*, 474 U.S. 104, 114 (1985).

26. See L. Steven Grasz, *Critical Facts and Free Speech: The Eighth Circuit Clarifies its Appellate Standard of Review for First Amendment Free Speech Cases*, 31 CREIGHTON L. REV. 387, 401 (1998) (explaining ambiguous nature of law and fact makes determining standard of review difficult). *But see* Henry P. Monaghan, *Constitutional Fact Review*, 85 COLUM. L. REV. 229, 232-36 (1985) (explaining law and fact distinction not necessarily incoherent). Monaghan explains that the distinction between law and fact should not imply direct dichotomy, but rather a continuum. See *id.* at 233. In general, law connotes broad principles while facts are case specific. *Id.* at 235.

27. See Monaghan, *supra* note 26, at 232-34 (suggesting difficulty in determining review standard stems from appellate confusion in distinguishing law and fact).

reviewing the action de novo.<sup>28</sup> Also complicating matters, the Supreme Court decided that de novo review, also termed independent review, would control First Amendment questions.<sup>29</sup> Independent review ensures that appellate courts safeguard free speech rights by interpreting facts according to the proper constitutional standard.<sup>30</sup>

In *Bose Corp. v. Consumers Union of United States, Inc.*,<sup>31</sup> (Bose) the Supreme Court articulated additional appellate duties for First Amendment cases.<sup>32</sup> Independent review did not begin with *Bose*, but the decision solidified the standard for the first time.<sup>33</sup> The standard articulated in *Bose* left ripples that continue to impact appellate review in First Amendment cases.<sup>34</sup> The circuits are now split on an important issue that *Bose* left unaddressed: whether, given that the rationale for independent review is protection of the First Amendment, independent review is appropriate in all First Amendment cases or only when the finding below disfavors free speech.<sup>35</sup> Four years after *Bose*, the Supreme Court declined to address the conflict.<sup>36</sup> The First Circuit

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28. See Childress, *supra* note 22, at 275-76 (describing evolving review standard for mixed questions); see also Long v. Nix, 86 F.3d 761, 764 (8th Cir. 1996) (indicating “term ‘mixed question of law and fact’ is confusing and best discarded”).

29. See *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984) (indicating First Amendment requires independent review).

30. See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 285 (1964) (explaining independent review prevents “forbidden intrusion on the field of free expression”); see also Adam Hoffman, Note, *Corralling Constitutional Fact: De Novo Fact Review in the Federal Appellate Courts*, 50 DUKE L.J. 1427, 1432 (2001) (setting forth traditional rationales for independent review).

31. 466 U.S. 485 (1984).

32. See *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984) (proclaiming appellate courts cannot delegate First Amendment protection duties to lower courts); see also Childress, *supra* note 1, at 1239 (differentiating mixed-questions review and appellate protective duty in First Amendment cases).

33. See Monaghan, *supra* note 26, at 230-31 (explaining independent review usage before *Bose*). Although courts had used independent review before, *Bose* framed the issue strictly in terms of the First Amendment’s importance. See *id.* at 230 (differentiating *Bose* application from previous decisions conducting independent review).

34. See Childress, *supra* note 1, at 1267-77 (discussing *Bose* aftermath); Grasz, *supra* note 26, at 399 (indicating Third Circuit conducted independent review in First Amendment Establishment Clause case using *Bose* rationale).

35. See Childress, *supra* note 22, at 277 (describing circuit split); Grasz, *supra* note 26, at 398-99 (discussing standard disparity between circuits). The majority of circuit courts independently reviews the record for all First Amendment cases, regardless of the finding below. See *Bartimo v. Horsemen’s Benevolent & Protective Ass’n*, 771 F.2d 894, 896-98 (5th Cir. 1985) (discussing *Bose* and adopting First Amendment independent review universally). Conversely, the minority applies a basic “clear error” review when the district court’s opinion favors speech. See *Daily Herald Co. v. Munro*, 838 F.2d 380, 383 (9th Cir. 1988) (applying clear error when pro-speech finding below).

36. See *Don’s Porta Signs, Inc. v. City of Clearwater*, 485 U.S. 981, 981 (1988) (denying certiorari and thus avoiding circuit-split resolution); Grasz, *supra* note 26, at 401 (advocating for Supreme Court to resolve circuit split). Although the majority holds that independent review is a two-way street, both judges and commentators have opposed this approach. See *Don’s Porta Signs, Inc. v. City of Clearwater*, 485 U.S. 981, 981-82 (1988) (White, J., dissenting) (dissenting from Court’s decision not to resolve circuit split); *Time, Inc. v. Pape*, 401 U.S. 279, 293-94 (1971) (Harlan, J., dissenting) (predicting negative repercussions of adopting independent review); *Hardin v. Santa Fe Reporter, Inc.*, 745 F.2d 1323, 1326 (10th Cir. 1984) (following *Bose*’s independent review “to the limited extent possible”); see also Childress, *supra* note 1, at 1238-39, 1317-

has adopted the majority's position, which disregards the nature of the finding below and applies independent review in all First Amendment circumstances.<sup>37</sup>

In *Sullivan v. City of Augusta*, the First Circuit considered the constitutionality of two city ordinances: the PO and the MOGO.<sup>38</sup> The court vacated the district court's rulings regarding MOGO, holding that Sullivan did not have standing to challenge the ordinance.<sup>39</sup> Additionally, the court reversed the district court's ruling that the PO's traffic fee provision granted excessive discretion.<sup>40</sup> The court held that the city had no duty to include an indigence exception because sidewalks are available for free.<sup>41</sup> The court affirmed, however, that the PO's thirty-day advance notice and meeting provisions were unconstitutional.<sup>42</sup>

The First Circuit's decision illustrates some structural issues affecting standards of review.<sup>43</sup> In reviewing standing *de novo*, for example, the First Circuit disaffirmed the district court's valid factual finding that the MOGO might apply to parades.<sup>44</sup> While courts might view standing as a mixed question of law and fact, the injury-in-fact element is specifically a factual question.<sup>45</sup> When a lower court applies the correct legal standard, an appellate court's factual findings should not weigh more heavily than an equally valid finding of a lower court.<sup>46</sup> Accordingly, the relevant inquiry here is whether

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23 (arguing against independent appellate review when district court decision favors speech); Monaghan, *supra* note 26, at 245-47, 264-71 (suggesting independent-appellate-review duty for First Amendment cases problematic and possibly overreaching); Daniel P. Tokaji, *First Amendment Equal Protection: On Discretion, Inequality, and Participation*, 101 MICH. L. REV. 2409, 2494 (2003) (suggesting independent review implies appellate courts distrust lower courts' impartiality and skill).

37. See Childress, *supra* note 1, at 1318 n.417 (grouping First Circuit with majority).

38. See 511 F.3d at 20 (describing issue before court).

39. See *id.* at 25-30 (vacating district court's MOGO unconstitutionality findings and explaining Sullivan lacked standing to challenge MOGO).

40. See *id.* at 33-38 (reversing district court and holding traffic fee provision does not grant excessive discretion). Reviewing the fee provision as-applied, the court nonetheless held that the city had unconstitutionally overcharged Sullivan. *Id.* at 37-38.

41. See *id.* at 41-45 (holding indigence exception not required). *But see id.* at 45-58 (Lipez, J., dissenting) (arguing marching on sidewalks inadequate substitute for street marches).

42. See 511 F.3d at 38-41 (holding thirty-day-notice and meeting requirements overly broad and therefore violative of First Amendment).

43. See *supra* notes 25-36 and accompanying text (discussing problems with current appellate review standards).

44. See 511 F.3d at 25-30 (reversing district court's standing ruling regarding MOGO). The First Circuit did not reject as unreasonable the district court's interpretation. *Id.* at 28. Instead, the First Circuit court held that the district court's position was "far less likely" than its own. *Id.*

45. See *supra* note 26 (discussing distinctions between law and fact). The inquiry for injury-in-fact is similar to that of other factual findings requiring the court to look at the "concrete and particularized" circumstances of the case. See 511 F.3d at 25 (citations omitted) (noting injury-in-fact requirements). The issue in this particular case was factual, namely whether the city might apply MOGO to parades. *Id.* The district court found that the city could apply MOGO to parades, but the First Circuit "[w]ith respect . . . [did] not agree . . ." *Id.* at 26.

46. See *Time, Inc. v. Pape*, 401 U.S. 279, 294 (1971) (Harlan, J., dissenting) (warning against appellate courts reversing factual findings when district court applies appropriate standard). *Miller* indicates that a

appellate courts should review injury-in-fact findings under the clear-error standard despite their possible classification as mixed questions.<sup>47</sup> District court factual errors can and should be addressed within the Rule 52 clear-error framework, which exists to give appellate courts such power.<sup>48</sup>

A second concern in *Sullivan* is that the First Circuit reviewed anew the First Amendment question although the district court's ruling had favored speech.<sup>49</sup> The court in *Sullivan* correctly identified that the purpose of independent review is to protect the First Amendment.<sup>50</sup> The First Circuit's position nonetheless to conduct an independent review in all First Amendment cases, a position illustrated in *Sullivan* and similarly applied in the majority of circuits that have addressed the issue, frustrates the purpose of the rule.<sup>51</sup> Using the indigence exception as an example, the First Circuit set aside the district court's valid conclusion that the city might apply the PO to sidewalk marches.<sup>52</sup> This conclusion was an important basis for the district court's unconstitutionality ruling.<sup>53</sup> The First Circuit's decision to reverse the district court on this issue and to uphold the PO's constitutionality suggests that the time for independent review, if any, is when the lower court's decision censors or limits speech, and not in all First Amendment contexts.<sup>54</sup>

Lastly, the First Circuit in *Sullivan* unconvincingly reasoned that sidewalks

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deferential standard applies when "probing appellate scrutiny will not contribute to the clarity of legal doctrine." See *Salve Regina Coll. v. Russell*, 499 U.S. 225, 233 (1991) (citing *Miller v. Fenton*, 474 U.S. 104, 114 (1985)). In *Sullivan*, little question exists that the district court used the appropriate standard. See *supra* note 44 (indicating district court applied legal doctrine properly). Still, perhaps the argument against independent review is somewhat weaker in *Sullivan* because the stipulated record placed the appellate court in a similar fact-finding position as the district court. See 511 F.3d at 21 (noting stipulated record). All the same, the First Circuit did not base its review standard on the stipulated record, but rather on the standing and First Amendment issues. *Id.* at 24-25.

47. See *supra* note 28 and accompanying text (noting some appellate courts defer to district court's underlying facts in mixed questions). At least one scholar has praised this analytical scheme. See Childress, *supra* note 22, at 276 (noting factual deference and independent review of legal conclusions "clearest way to approach mixed findings").

48. See Childress, *supra* note 22, at 272 (explaining purpose behind Rule 52).

49. See 511 F.3d at 24-25, 25 n.1 (applying independent review to First Amendment question even when district court made pro-speech ruling).

50. See *id.* at 24-25 (identifying independent-review standard's purpose).

51. See *supra* note 36 (detailing independent review criticism and majority position rationales).

52. See 511 F.3d at 44 (recognizing district court's position regarding free sidewalk availability "not unreasonable").

53. See *Sullivan v. City of Augusta*, 406 F. Supp. 2d 92, 125-26 (D. Me. 2005) (noting PO "arguably" applies to sidewalk marches), *aff'd in part, vacated in part, rev'd in part*, 511 F.3d 16 (1st Cir. 2007). The district court listed three reasons for its finding, one of which was the possible application of the PO to sidewalk marches. *Id.*

54. Compare Monaghan, *supra* note 26, at 269-70 (arguing independent review in all First Amendment cases unnecessary), with Childress, *supra* note 1, at 1234-39 (noting First Amendment's importance justifies independent review). Although Childress favors independent review, he also notes correctly that applying it to cases in which the lower court protected speech is inconsistent with Rule 52's purpose. See Childress, *supra* note 1, at 1238, 1317-23 (rejecting independent review when decision below favors speech).

are an adequate alternative to marching on the street.<sup>55</sup> Despite persuasive arguments from Sullivan's lawyer, the district court, and Judge Lipez's dissent, the First Circuit pioneered into territory that erodes free speech.<sup>56</sup> The unfavorable result in *Sullivan* limits the expression of those unable to afford the city's fees.<sup>57</sup>

The First Circuit's decision in *Sullivan* serves to indicate that the standards of review need further clarification. First, on the merits, *Sullivan* weakens freedom of speech by failing to recognize crucial distinctions between street and sidewalk marches. Second, phrases such as "mixed questions of law and fact" are not useful methods of discerning the appropriate review standard. Lastly, the circuit majority position notwithstanding, conducting a blanket independent review in First Amendment cases may hinder rather than protect free speech rights. The Supreme Court, however, has implicitly dismissed as a non-issue the circuit split affecting the standard of appellate review in First Amendment cases. By denying certiorari in *Sullivan*, just as it had done four years after *Bose*, the Supreme Court once again missed the opportunity to resolve this important conflict, which as *Sullivan* demonstrates, has a detrimental impact on freedom of speech in the United States.

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55. See 511 F.3d at 41-45 (reasoning indigence exception provision not necessary).

56. See *supra* notes 19, 41 (discussing arguments favoring indigence exception). Webbert, Sullivan's lawyer, continued to criticize the fee requirement after the First Circuit rendered its decision. See Betty Adams, *Augusta Parades and Protests: City Critics Claim Victory In Ruling*, KENNEBEC J., Dec. 15, 2007, available at <http://kennebecjournal.mainetoday.com/news/local/4566370.html> (last visited Dec. 19, 2008); *1st Circuit: Parts of Augusta Parade Permit Law Unconstitutional*, ASSOCIATED PRESS, Dec. 14, 2007, available at [http://www.boston.com/news/local/maine/articles/2007/12/14/1st\\_circuit\\_parts\\_of\\_augusta\\_parade\\_permit\\_law\\_unconstitutional](http://www.boston.com/news/local/maine/articles/2007/12/14/1st_circuit_parts_of_augusta_parade_permit_law_unconstitutional) (last visited Dec. 19, 2008).

57. See *supra* text accompanying notes 55-56 (explaining majority's decision abridges free speech).