

Gonzalez

vs

Trevino

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James Craven

72-YEAR-OLD
SYLVIA GONZALEZ—

THE FIRST HISPANIC
COUNCILWOMAN TO
SERVE CASTLE HILLS

—IS HARD
AT WORK.

THE YEAR
IS 2019.

CASTLE HILLS
RESIDENTS ARE CONCERNED
THAT THEIR CITY MANAGER,
RYAN RAPELYE, HASN'T
DONE WHAT HE PROMISED:

FIX THEIR STREETS.

GONZALEZ'S
"FIX OUR STREETS"
PETITION CALLS FOR
HIS REMOVAL.

IT NETS
OVER 300
SIGNATURES.

THAT'S NO SMALL FEAT IN CASTLE HILLS, TEXAS: A QUIET SUBURB
ENSCONCED IN SAN ANTONIO WITH JUST 4,500 RESIDENTS.

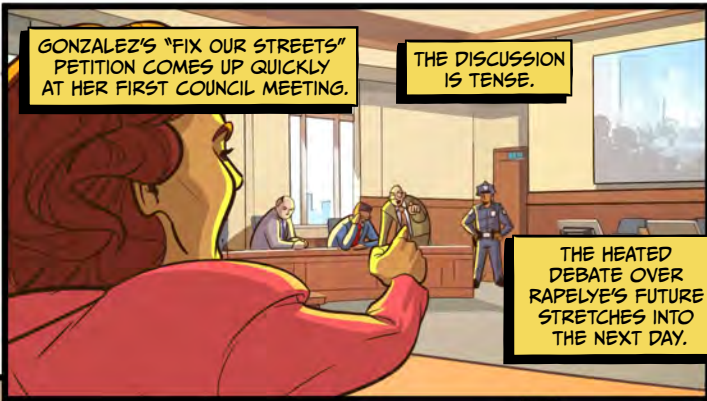
BUT THE CASTLE HILLS GOVERNMENT
IS A TIGHT-KNIGHT CABAL. THE MAYOR
AND HIS INNER CIRCLE RESPOND QUICKLY
WITH A PETITION TO KEEP RAPELYE.

MAYOR
"J.R." TREVINO

CITY MANAGER
RYAN RAPELYE

COUNCILMAN
"SKIP" MCCORMICK

THOUGH THEIR PETITION GETS
HALF AS MANY SIGNATURES
AS GONZALEZ'S, IT LAYS THE
GROUNDWORK FOR A BIGGER PLAN.



GONZALEZ'S "FIX OUR STREETS" PETITION COMES UP QUICKLY AT HER FIRST COUNCIL MEETING.

THE DISCUSSION IS TENSE.

THE HEATED DEBATE OVER RAPELYE'S FUTURE STRETCHES INTO THE NEXT DAY.



AND AT ONE POINT, GONZALEZ PICKS HER PETITION BACK UP.

LATER, THE WOMAN GONZALEZ DEFEATED IN HER ELECTION COMES TO THE DOOR, DEMANDING THE NOTES GONZALEZ TOOK DURING THE MEETING.



WHEN GONZALEZ SAYS SHE DOESN'T HAVE THE NOTES, COUNCILMAN MCCORMICK BURSTS IN AND THREATENS TO HAVE GONZALEZ ARRESTED.

WHILE GONZALEZ IS DISTRACTED, MAYOR TREVINO SIFTS THROUGH HER BINDER.

CAPTAIN—
—TAKE A LOOK AT THIS.



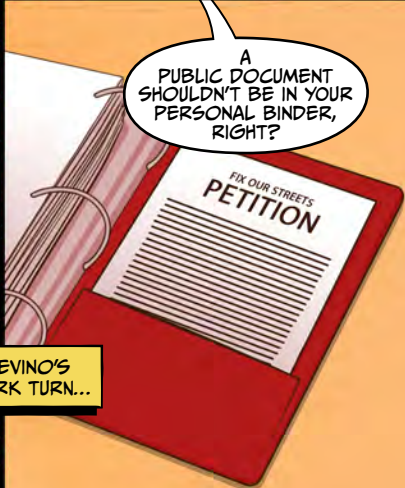
WHERE'S THE PETITION?

DON'T YOU HAVE IT?

IT WAS TURNED IN TO YOU YESTERDAY.



NOW MAYOR TREVINO'S PLAN TAKES A DARK TURN...



A PUBLIC DOCUMENT SHOULDN'T BE IN YOUR PERSONAL BINDER, RIGHT?

JOHN SIEMENS, THE CHIEF OF POLICE, IS TASKED WITH INVESTIGATING GONZALEZ FOR VIOLATING A STATUTE IMPOSING POTENTIAL JAIL TIME ON ANYONE WHO "INTENTIONALLY DESTROYS, CONCEALS, REMOVES, OR OTHERWISE IMPAIRS THE VERITY, LEGIBILITY, OR AVAILABILITY OF A GOVERNMENTAL RECORD."

SERIOUS STATUTE TO VIOLATE.

IT COULD MEAN UP TO A YEAR IN THE CAN...

WHEN THE OFFICER APPOINTED TO INVESTIGATE THE CASE CAN'T FIND ANY EVIDENCE OF WRONGDOING—

YOINKS!

—CHIEF SIEMENS DEPUTIZES FRIEND AND LOCAL ATTORNEY ALEX WRIGHT TO SERVE AS A "SPECIAL DETECTIVE."

YOU CAN WEAR THIS FOR NOW.

BYPASSING THE DISTRICT ATTORNEY—

HEY!

—WRIGHT GOES DIRECTLY TO THE MAGISTRATE TO REQUEST AN ARREST WARRANT.

HELLO, I AM KIND-OF SORT-OF A POLICE OFFICER.

PLEASE ISSUE AN ARREST WARRANT FOR THIS 72-YEAR-OLD WOMAN BEFORE SHE TRIES TO PUT HER PETITION IN A BINDER AGAIN.

WELL, I GUESS IT IS AGAINST THE LAW...

5'0"

4'6"

4'0"

3'6"

AND TRIVINO'S PLAN COMES TOGETHER.

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SYLVIA GONZALEZ

UPON REVIEWING THE CHARGES, THE BEXAR COUNTY DISTRICT ATTORNEY DISMISSES THEM.



FREE BUT DISPIRITED, GONZALEZ RESIGNS FROM THE CITY COUNCIL AND FILES A CIVIL RIGHTS LAWSUIT AGAINST MAYOR TREVINO, CHIEF SIEMENS, AND "SPECIAL DETECTIVE" WRIGHT FOR RETALIATORY ARREST.



IN OTHER WORDS, SHE CLAIMS THEY ARRESTED HER FOR EXERCISING HER CONSTITUTIONAL RIGHTS.

IN DECIDING WHETHER THE GROUP COMMITTED A RETALIATORY ARREST, THE FIFTH CIRCUIT COURT OF APPEALS APPLIES THE LEGAL STANDARD FROM NIEVES V. BARTLETT.

THE NIEVES STANDARD HAS TWO PARTS.

FIRST, IT REQUIRES THE PLAINTIFFS TO SHOW THAT THERE WAS NO PROBABLE CAUSE TO MAKE THE ARREST.

AND IF YOU CANNOT DO SO, YOU MUST PRESENT "OBJECTIVE EVIDENCE" THAT YOU WERE ARRESTED WHEN SIMILARLY SITUATED PEOPLE DOING SIMILAR THINGS WERE NOT.



BUT THE FIRST PART OF THE NIEVES STANDARD IS ALMOST IMPOSSIBLE TO OVERCOME BECAUSE OUR NATION HAS AMASSED LAWS AT AN ALARMING RATE:

THERE ARE MORE THAN 300,000 DIFFERENT OFFENSES CARRYING CRIMINAL PENALTIES AT JUST THE FEDERAL LEVEL.

AND MANY OF THOSE LAWS ARE BROAD. THAT MAKES IT REMARKABLY EASY FOR AN OFFICER TO ESTABLISH PROBABLE CAUSE TO MAKE AN ARREST FOR SOMETHING.

PROBABLE CAUSE?

THERE'S PROBABLY CAUSE IN ONE OF THESE LAWS.

THE FOUNDING FATHERS LIKELY DIDN'T ANTICIPATE THAT OUR REPRESENTATIVES WOULD PRODUCE SO MANY CRIMINAL LAWS. IN THEIR TIME, WHAT CONSTITUTED A CRIME WAS DETERMINED MOSTLY BY THE COURTS.

SO TO PROTECT CITIZENS FROM ARBITRARY PUNISHMENT, THE FOUNDERS ENACTED A CONSTITUTIONAL GUARANTEE THAT ONLY A JURY COMPOSED OF THE DEFENDANT'S FELLOW CITIZENS COULD CONVICT HIM OF A CRIME.



IT IS TRULY A LIBEL TO WRITE ANYTHING MEAN ABOUT THE ROYAL GOVERNOR, EVER.

IF A LIBEL IS UNDERSTOOD IN THE LARGE AND UNLIMITED SENSE URGED BY MR. ATTORNEY, THERE IS SCARCE A WRITING I KNOW THAT MAY NOT BE CALLED A LIBEL...

THE QUESTION BEFORE YOU, GENTLEMEN OF THE JURY, IS NOT OF SMALL NOR PRIVATE CONCERN... IT MAY IN ITS CONSEQUENCE AFFECT EVERY FREE MAN THAT LIVES UNDER A BRITISH GOVERNMENT ON THE MAIN OF AMERICA.

IT IS THE BEST CAUSE. IT IS THE CAUSE OF LIBERTY!

HEY, THAT GUY IS RIGHT!

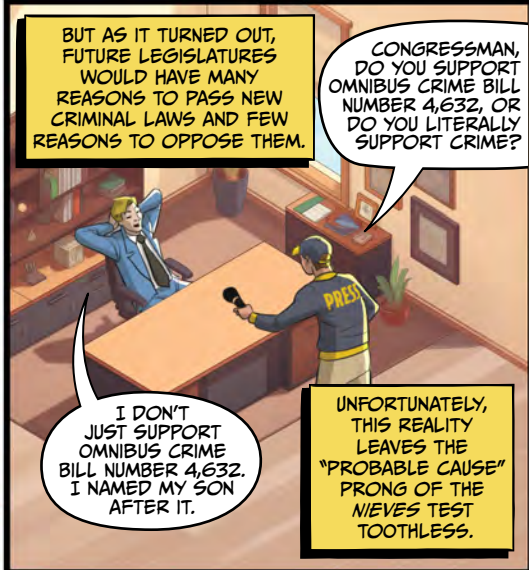
WE SHOULD BE ABLE TO WRITE MEAN STUFF ABOUT THE ROYAL GOVERNOR!



CONSISTENT WITH THIS VISION, WHEN THE FIRST CONGRESS ENACTED ITS LAWS, IT DIDN'T PASS MUCH IN THE WAY OF CRIMINAL LAWS.

MAYBE 30 CRIMES?

YES, I'M SURE COURTS CAN HANDLE THE REST.

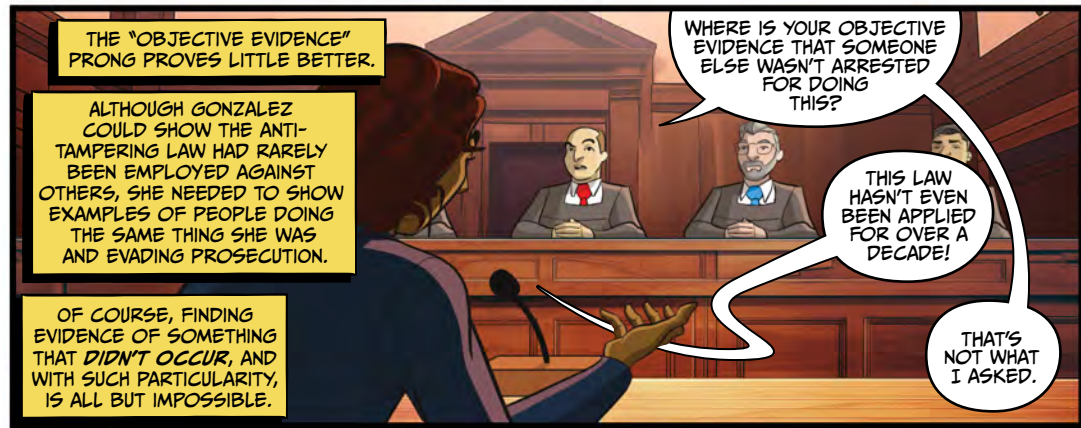


BUT AS IT TURNED OUT, FUTURE LEGISLATURES WOULD HAVE MANY REASONS TO PASS NEW CRIMINAL LAWS AND FEW REASONS TO OPPOSE THEM.

CONGRESSMAN, DO YOU SUPPORT OMNIBUS CRIME BILL NUMBER 4,632, OR DO YOU LITERALLY SUPPORT CRIME?

I DON'T JUST SUPPORT OMNIBUS CRIME BILL NUMBER 4,632. I NAMED MY SON AFTER IT.

UNFORTUNATELY, THIS REALITY LEAVES THE "PROBABLE CAUSE" PRONG OF THE NIEVES TEST TOOTHLESS.



THE "OBJECTIVE EVIDENCE" PRONG PROVES LITTLE BETTER.

ALTHOUGH GONZALEZ COULD SHOW THE ANTI-TAMPERING LAW HAD RARELY BEEN EMPLOYED AGAINST OTHERS, SHE NEEDED TO SHOW EXAMPLES OF PEOPLE DOING THE SAME THING SHE WAS AND EVADING PROSECUTION.

OF COURSE, FINDING EVIDENCE OF SOMETHING THAT DIDN'T OCCUR, AND WITH SUCH PARTICULARITY, IS ALL BUT IMPOSSIBLE.

WHERE IS YOUR OBJECTIVE EVIDENCE THAT SOMEONE ELSE WASN'T ARRESTED FOR DOING THIS?

THIS LAW HASN'T EVEN BEEN APPLIED FOR OVER A DECADE!

THAT'S NOT WHAT I ASKED.



AFTER BEING REBUFFED BY THE FIFTH CIRCUIT, GONZALEZ BROUGHT HER CASE TO THE U.S. SUPREME COURT.



THE COURT CONSIDERED ITS STANDARD FOR RETALIATORY-ARREST LAWSUITS AGAINST GOVERNMENT OFFICIALS WHO HAD PROBABLE CAUSE TO MAKE AN ARREST—BUT MAY NEVERTHELESS HAVE ABUSED THEIR POWER IN DOING SO.



DID THE STANDARD REQUIRE DIRECT, COMPARATIVE EVIDENCE OF A TIME WHEN POLICE DIDN'T ARREST SOMEONE FOR IDENTICAL CONDUCT?

TWO JAYWALKERS, PARTNER... BUT AIN'T THE LEFT ONE A CUTIE?

LET'S NAIL THAT GUY IN THE FUNNY SHIRT, THOUGH.

NO.

IN AN UNSIGNED OPINION, EIGHT OF THE NINE JUSTICES AGREED THAT EVIDENCE PRESENTED BY GONZALEZ, WHICH SHOWED "THAT NO ONE HAS EVER BEEN ARRESTED FOR ENGAGING IN A CERTAIN KIND OF CONDUCT," SATISFIED THE STANDARD...

THE CONCURRENCES HIGHLIGHTED SOME DIFFERENCES IN THE JUSTICES' THINKING.

ALITO, FOR INSTANCE, STRESSED THAT THE STANDARD WAS STILL A NARROW ONE...

...WHILE JACKSON, BY CONTRAST, SUGGESTED IT MIGHT BE BROADER.



...BECAUSE IT "MAKES IT MORE LIKELY THAT AN OFFICER HAS DECLINED TO ARREST SOMEONE FOR ENGAGING IN SUCH CONDUCT IN THE PAST." IN OTHER WORDS, IT WAS "OBJECTIVE EVIDENCE" UNDER THE *NEVES* TEST.



THE ANOMALOUS PROCEDURES USED FOR HER ARREST AND STATEMENTS IN THE ARRESTING OFFICER'S WARRANT AFFIDAVIT CAN SUPPORT THE CONCLUSION THAT GONZALEZ WAS ARRESTED WHEN OTHERWISE SIMILARLY SITUATED INDIVIDUALS NOT ENGAGED IN THE SAME SORT OF PROTECTED SPEECH HAD NOT BEEN.

THOUGH THE EXACT CONTOURS OF THE *NEVES* STANDARD ARE STILL UNCLEAR, THE JUSTICES' DECISION UNMISTAKABLY INCREASED ACCESS TO COURT FOR PEOPLE WITH PLAUSIBLE CLAIMS OF RETALIATORY ARREST.

THAT WILL HELP PROTECT PEOPLE'S RIGHT TO CRITICIZE GOVERNMENT OFFICIALS—AND THEIR OPPORTUNITY TO PROMOTE REFORM BY PARTICIPATING IN THE POLITICAL PROCESS.

