INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION
2021 CODE ENFORCEMENT PROGRAM

CASE LAW UPDATE
2021 LOCAL GOVERNMENT CODE ENFORCEMENT CASES

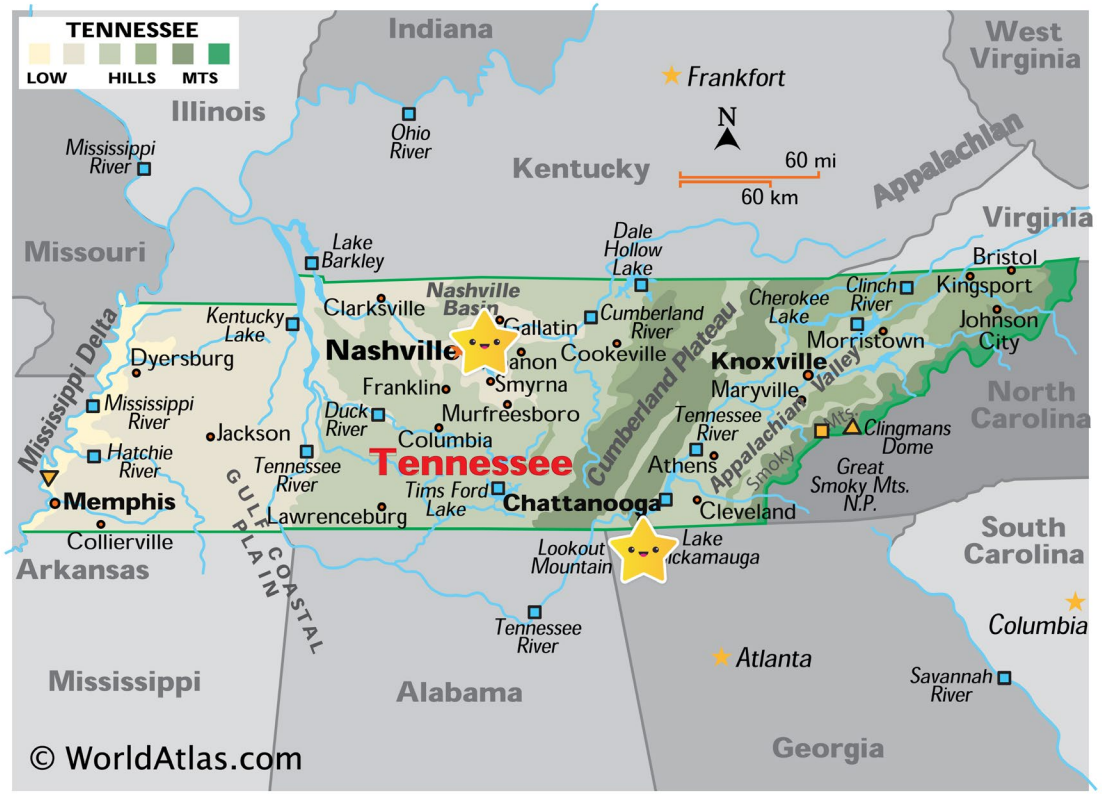
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FREE SPEECH



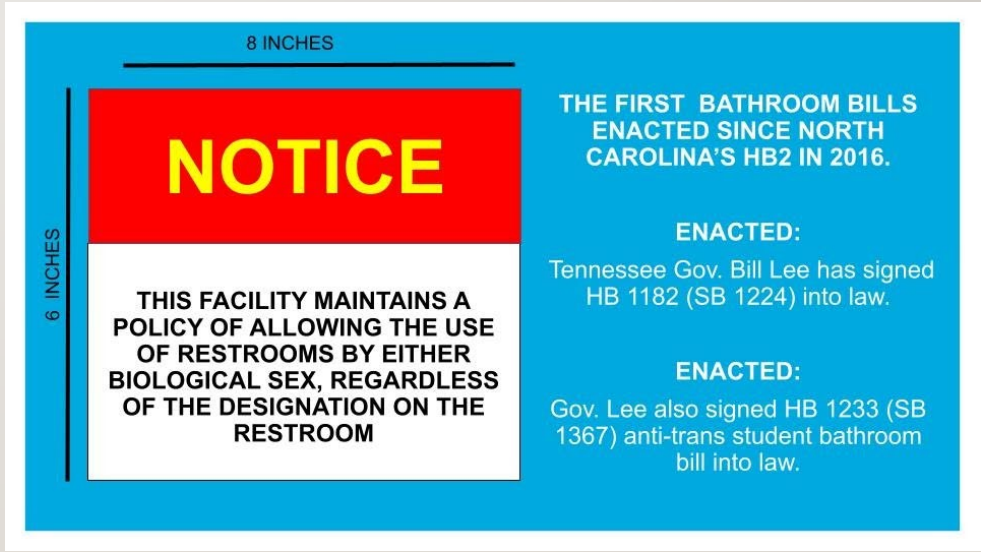
BONGO V. LAWRENCE



BONGO V. LAWRENCE

FACTS

- Legislature mandated a detailed sign
- Restaurants did not want to offend customers or staff
- "Biological Sex" is confusing and controversial



BONGO V. LAWRENCE

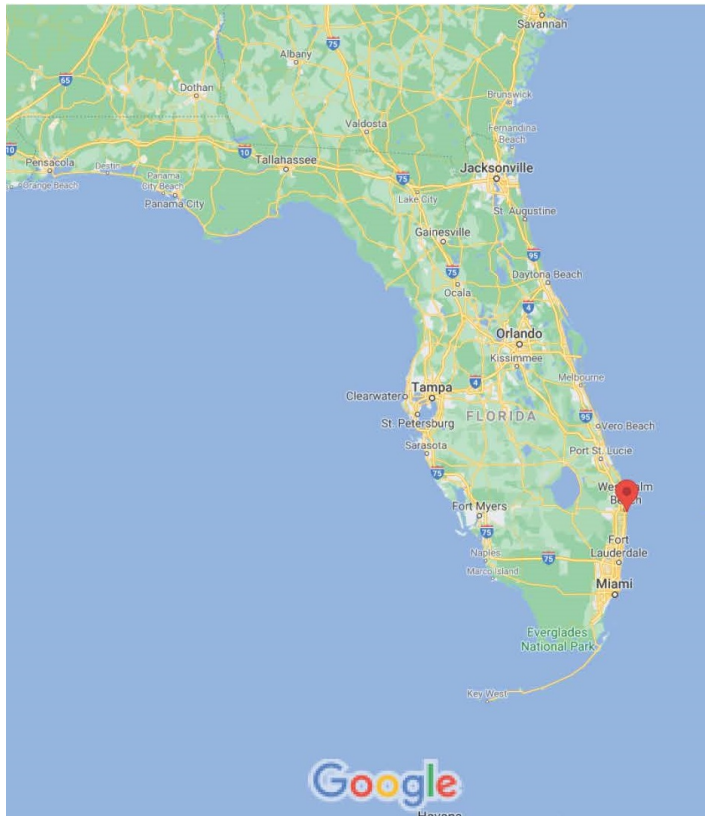
LAW

- Government cannot mandate speech

STRICT SCRUTINY

- Compelling Interest
  - No evidence of creeps using non-gendered restrooms
  - No evidence sign would fix problem
- Narrowly Tailored?
  - No. Should have just told facilities to let customers know

BURNS V. TOWN OF PALM BEACH



BURNS V. TOWN OF PALM BEACH

FACTS

- Burns wanted to build a bigger house
- Town denied the application
  - Not in harmony with neighborhood



BURNS V. TOWN OF PALM BEACH

LAW

- Is there an intent to convey a message?
- Will the message be understood?

ANALYSIS

- Conceded
- No. Impossible to see and not open to the public, no plans for brochures or banners.

HERNÁNDEZ-GOTAY V. UNITED STATES



BALDWIN PARK FREE SPEECH COALITION V. CITY OF BALDWIN PARK



BALDWIN PARK FREE SPEECH COALITION V. CITY OF BALDWIN PARK

FACTS

- No sign permit needed if banners meet requirements
- Larger banners need a permit but will be approved if less than 35 square feet
- Plaintiff hung 72 square foot banners without a permit
- Fines totaled more than $12,000



BALDWIN PARK FREE SPEECH COALITION V. CITY OF BALDWIN PARK

LAW

- Permit systems
  - Cannot give broad authority to staff
  - Approval cannot be based on content of sign
  - Must be narrowly tailored to serve significant government interest
  - Must leave communication alternatives

ANALYSIS

- The system
  - Mandated that permits be given
  - Did not base approval on content
- Traffic safety and aesthetics are significant interests
- The system leaves alternatives because unpermitted banners are allowed

HARMON V. CITY OF NORMAN



HARMON V. CITY OF NORMAN

FACTS

- Protestors could be heard inside medical facility.
- Protestors were cited for disturbing the peace.
- “Playing or creating loud or unusual sounds”



HARMON V. CITY OF NORMAN

LAW

- Government may impose time, manner and place restrictions
- Restrictions
  - Cannot be based on content of speech
  - Must be narrowly tailored to serve a significant governmental interest
  - Must leave alternate channels of communication

ANALYSIS

- Ordinance is not content based
- Protecting medical facilities from unwelcome noise is a significant interest
- There are plenty of avenues of communication

BAKER V. CITY OF FORT WORTH



BAKER V. CITY OF FORT WORTH

FACTS

- Only 2 types of signs allowed in right-of-way without council permission
  - Government signs
  - Election signs at polling locations
- Plaintiff placed crosses in the right-of-way



BAKER V. CITY OF FORT WORTH

LAW

- Government may impose time, manner and place restrictions
- Restrictions
  - Cannot be based on content of speech
  - Must be narrowly tailored to serve a compelling governmental interest
  - Must leave alternate channels of communication

ANALYSIS

- Aesthetics are never compelling
- Ordinance does not achieve the government interest

QUALIFIED IMMUNITY



WILLIAMS V. GALLIGAN



WILLIAMS V. GALLIGAN

FACTS

- Plaintiff cleaned foreclosed homes
  - Stored items on her property
- In 2012 Town began addressing accumulation at home
- Town enacted new blight ordinance
- In 2016 Town abated property



WILLIAMS V. GALLIGAN

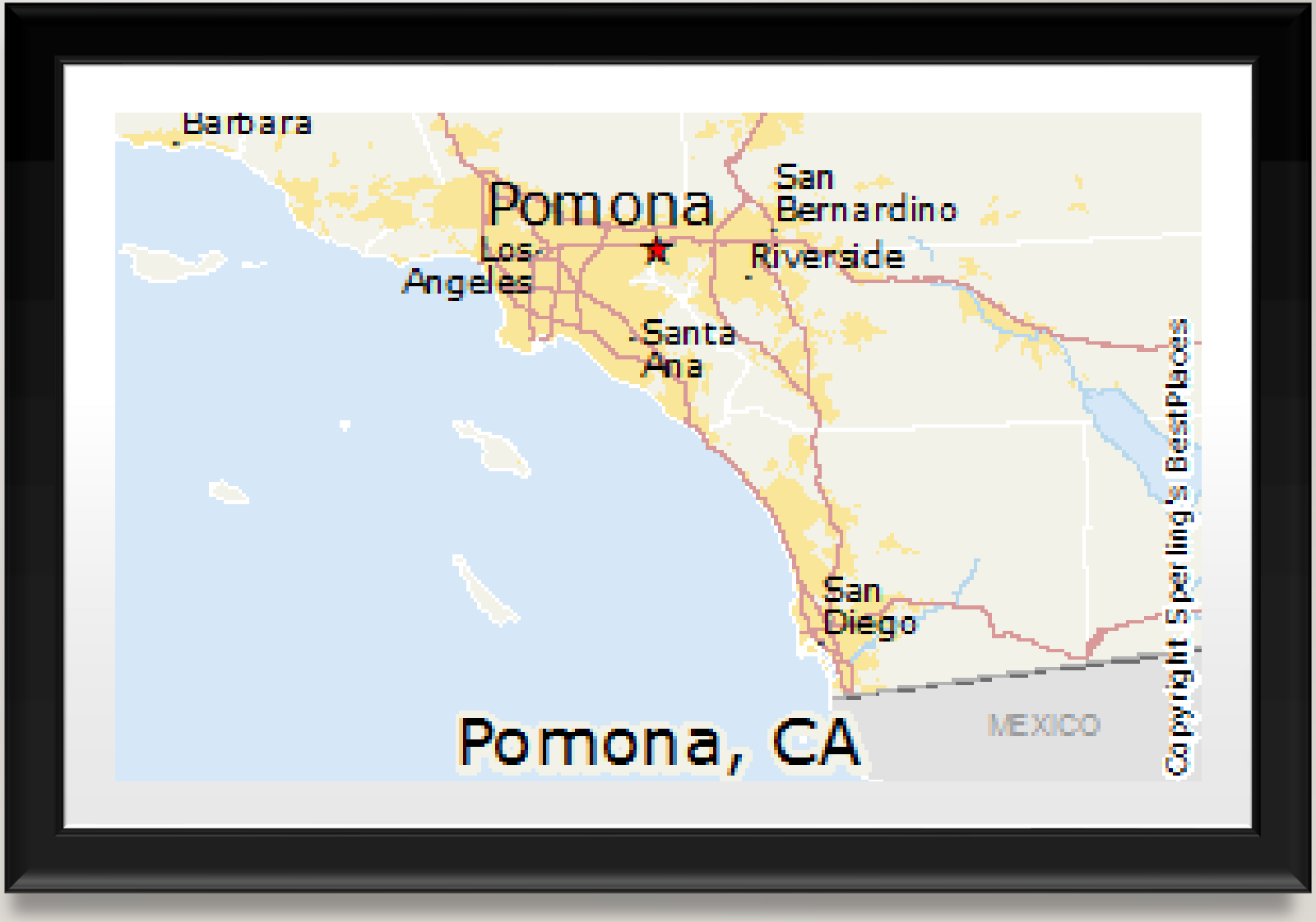
LAW

- Lose qualified immunity when
  - Official violates a right
  - Reasonable official would have known of the unconstitutionality of act

ANALYSIS

- Official was enforcing a presumptively valid ordinance
- Reasonable official would have perceived of need to take immediate action
- Reasonable official would not believe violating a right by acts

B LEGAL V. TORRES



B LEGAL V. TORRES

FACTS

- Administrative inspection for permit renewal
- Plaintiff claims officer violated rights by threatening and harassing dancers



B LEGAL V. TORRES

LAW

- Lose qualified immunity when
  - Official violates a right
  - Reasonable official would have known of the unconstitutionality of act

ANALYSIS

- Asking for identification, warning employees that club was illegal and that they should quit before they were fined is not clearly a violation of a right

TAKINGS



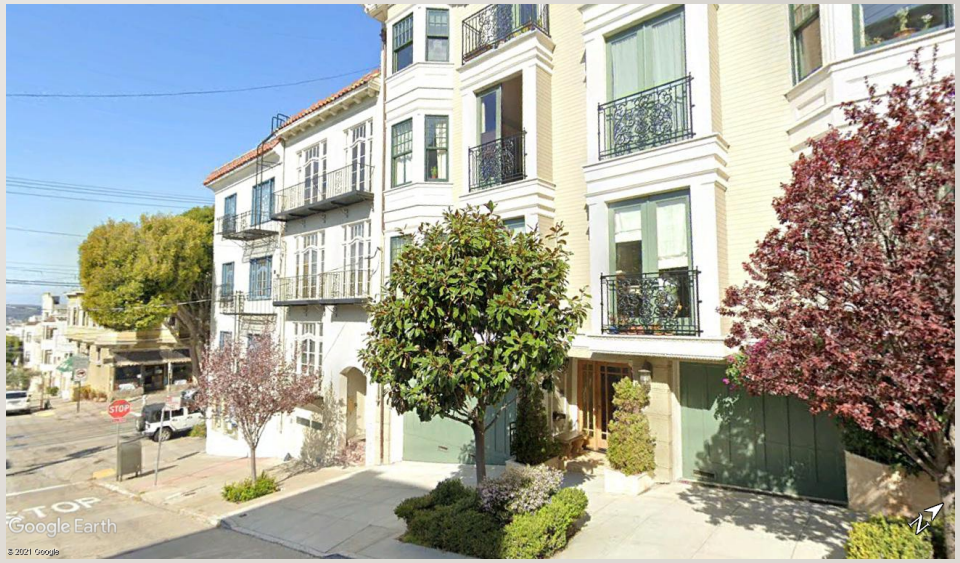
PAKDEL V. SAN FRANCISCO



PAKDEL V. SAN FRANCISCO

FACTS

- Before converting building to condos, owners were required to offer tenants a lifetime lease
- Plaintiff applied for a waiver
- Circuit court held claim was not ripe



PAKDEL V. SAN FRANCISCO

LAW

- For case to bring ripe, plaintiffs must have been injured by the government's actions
- Complete exhaustion is not a prerequisite

ANALYSIS

- San Francisco reached a final conclusion
- Any further efforts would be futile

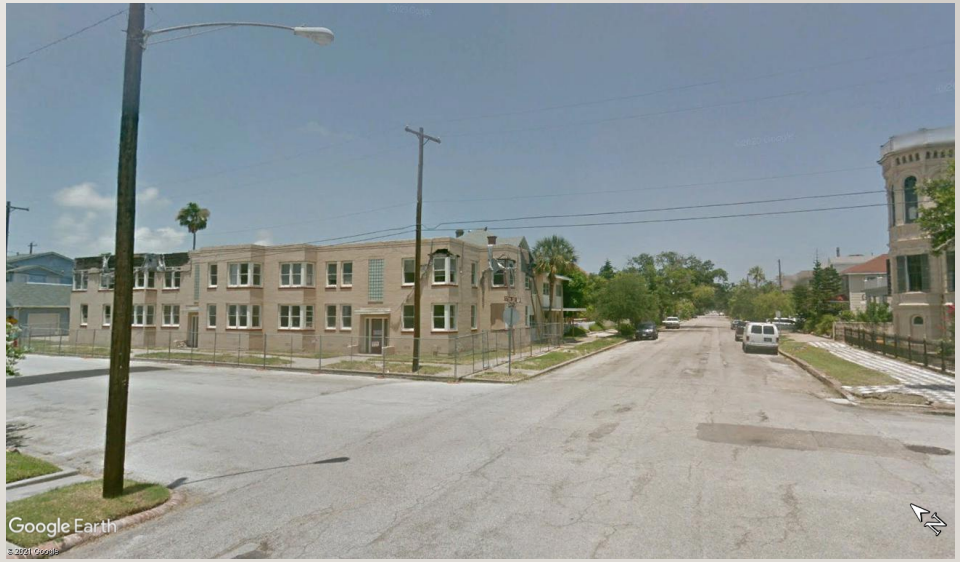
MURPHY V. CITY OF GALVESTON



MURPHY V. CITY OF GALVESTON

FACTS

- Nonconforming status as multi-family
- Building damaged in September 2008
- City vacated building January 2009
- Lost status in May 2010
- February 2011 council denied special use permit to operate as multi-family
- Plaintiff attempted to sue under state takings law



MURPHY V. CITY OF GALVESTON

LAW

- For case to bring ripe, plaintiffs must have been injured by the government's actions
- Complete exhaustion is not a prerequisite

ANALYSIS

- City SUP decision was not final
  - Plaintiff could have followed advice and re-applied
- Plaintiff did not appeal decision to revoke nonconforming status

WILLIAMS V. CITY OF STANFORD



WILLIAMS V. CITY OF STANFORD

FACTS

- House fire in 2008
- Owner moved and house remained vacant
- In 2017, City began notice, abatement, citation cycle
- City began demolition 2019



WILLIAMS V. CITY OF STANFORD

LAW

- For case to bring ripe, plaintiffs must have been injured by the government's actions
- Complete exhaustion is not a prerequisite

ANALYSIS

- The Fifth Amendment does not apply to nuisances

FOURTH AMENDMENT



CLARK V. CITY OF WILLIAMSBURG



CLARK V. CITY OF WILLIAMSBURG

FACTS

- Clark placed items in the right-of-way
- Code officer walked up driveway to speak to Clark
- Officer could not reach porch, so walked around back



CLARK V. CITY OF WILLIAMSBURG

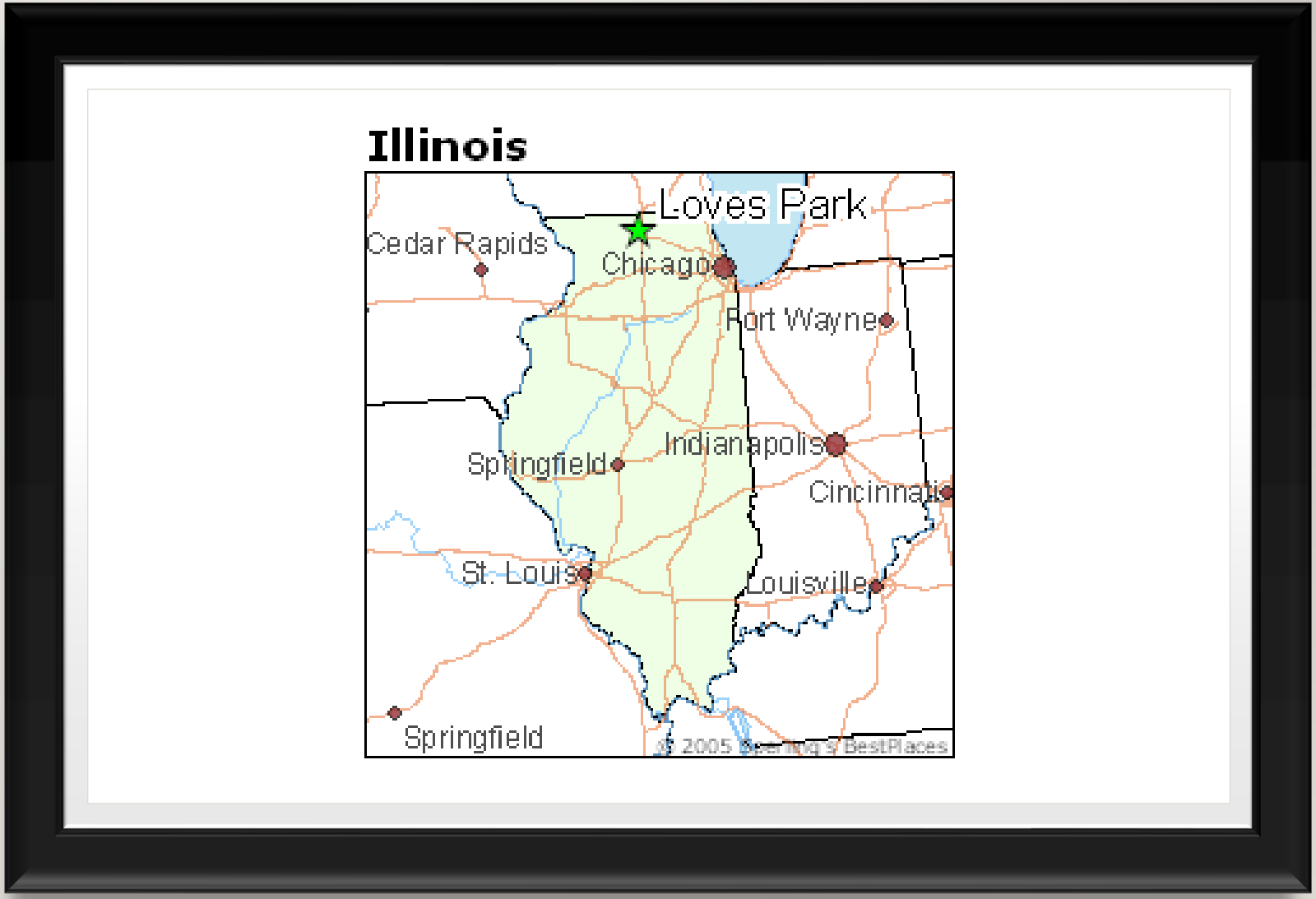
LAW

- Knock-and-talk license for visitors
- What is the normal route for visitors?

ANALYSIS

- Clark desire that no one approach front door was obvious
- Reasonable to walk around back
- Left as soon as he was told
- Officer did not exceed scope of license

GAETJENS V. CITY OF LOVES PARK



GAETJENS V. CITY OF LOVES PARK

FACTS

- Plaintiff was told to go to hospital
- Neighbor called police to help find Plaintiff
- Neighbor gave key to police
- Odor knocked them back
- Fire department searched for Plaintiff and then temporarily condemned home



GAETJENS V. CITY OF LOVES

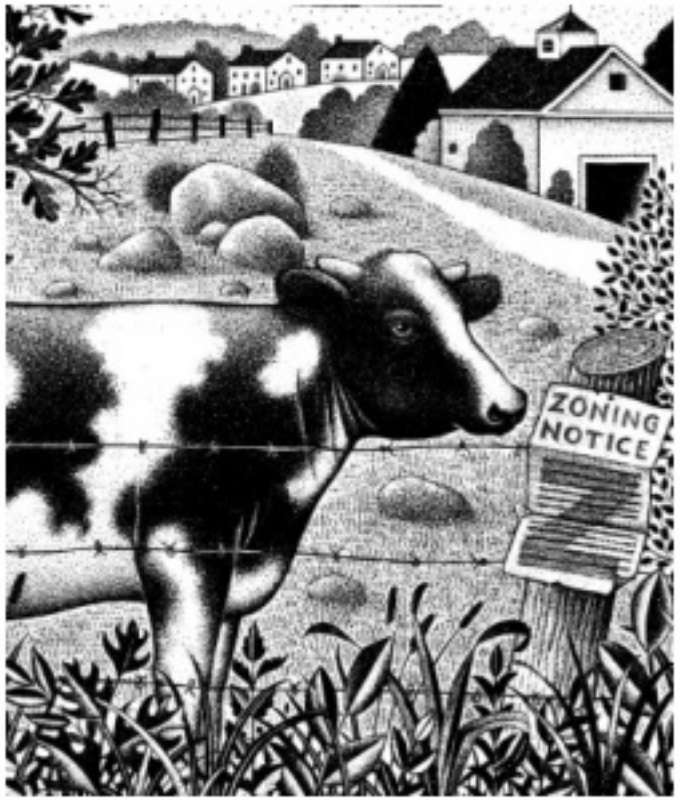
LAW

- Fourth Amendment requires a warrant for search and seizure
- Lack of a warrant makes searches presumptively unreasonable
- Exigent circumstances can make warrantless search reasonable

ANALYSIS

- Officer had reasonable basis for entering home
- Fire department had reasonable basis to believe home was threat to health and safety
- Animal services reasonably determined cats were in danger

PROCEDURAL DUE PROCESS



KEENE GROUP V. CINCINNATI



KEENE GROUP V. CINCINNATI

FACTS

- City condemned building and county sold it at tax sale
- City sent notices and posted notice on property
- City demolished house and sent owner a bill



KEENE GROUP V. CINCINNATI

LAW

- Fourteenth Amendment requires notice and due process before taking property
- Notice must be reasonably calculated to let people know of future actions
- City mailed notice (not delivered)
- City posted notice

ANALYSIS

- Reasonableness of notice depends on facts of case
- Plaintiff knew building condemned
- Plaintiff did not contact city
- City posted notice on property

EXCESSIVE FINES



PIMENTEL V. LOS ANGELES

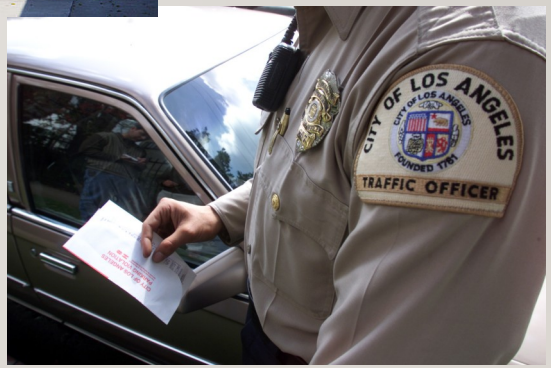


PIMENTEL V. LOS ANGELES

FACTS

- City charges $63.00 fine for running over on parking meter and for not paying fine on time





PIMENTEL V. LOS ANGELES

LAW

- Eighth Amendment forbids excessive fines, both civil and criminal
- Fines are excessive if they are grossly disproportional to the underlying offense
- Court analyzed two of four factors in excessive fine test

ANALYSIS - 2/4 FACTOR TEST

- 1. Nature of the offense
  - Minimal but not de minimis
- 2. Extent of harm caused by violation
  - Increased congestion
  - Impedes traffic flow

PIMENTEL V. LOS ANGELES

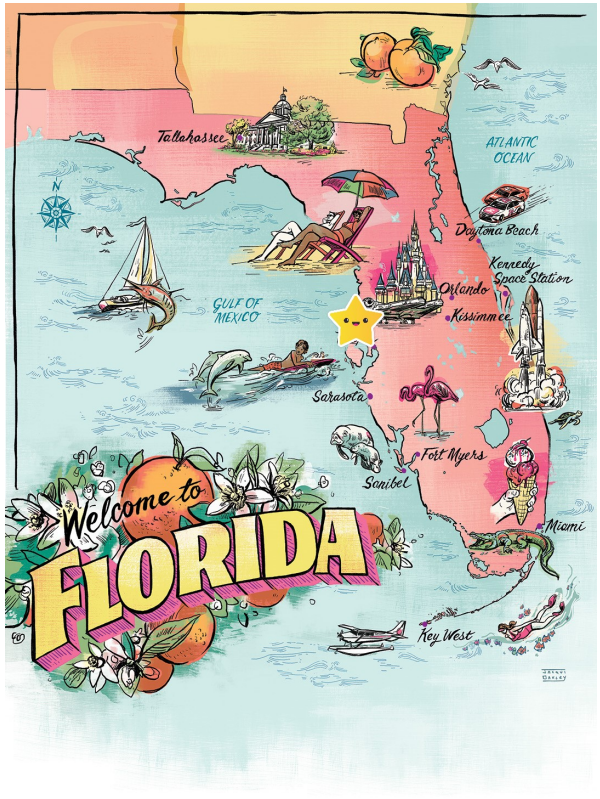
PROPORTIONALITY

- City does not need to show how the amount chosen is in proportion to offense
- A nonserious offense receives a nonserious fine





FICKEN V. CITY OF DUNEDIN



FICKEN V. CITY OF DUNEDIN

FACTS

- Warnings, citations, and fines for tall weeds and grass
- Fines are up to $500 a day for repeat violators
- After eight years, fines totaled $29,833



FICKEN V. CITY OF DUNEDIN

LAW

- Eighth Amendment forbids excessive fines, both civil and criminal
- Fines are excessive if they are grossly disproportional to the underlying offense
- Uses 11th Circuit test

ANALYSIS – IRRELEVANT TEST

- 1. Is Ficken one of the people the statue is directed?
- 2. What other fines could have been assessed?
- What is the harm caused by violations?

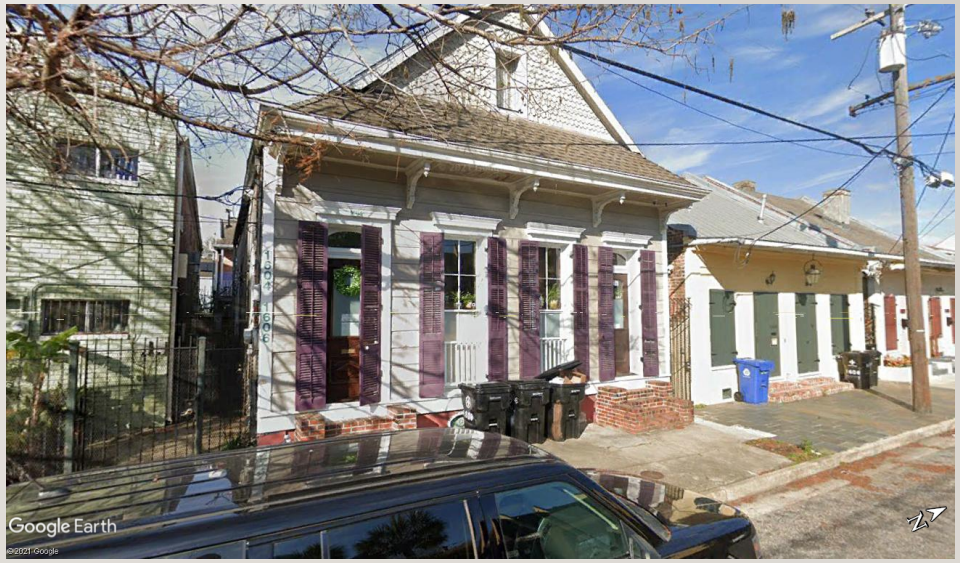
HIGNELL V. NEW ORLEANS



HIGNELL V. NEW ORLEANS

FACTS

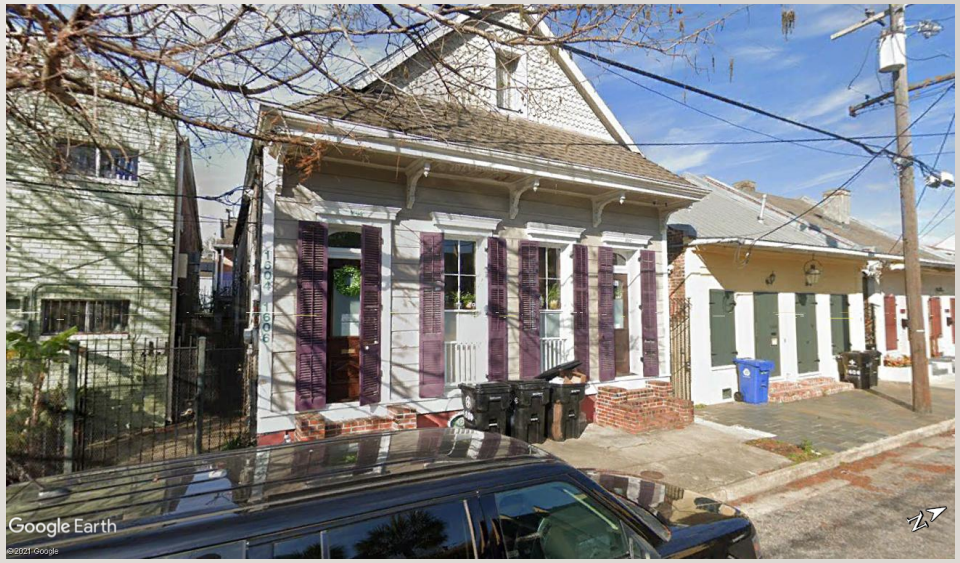
- Short term rentals require yearly permits and various other requirements
- Fines are a maximum of $500 per offense
- City can also disconnect electrical service



HIGNELL V. NEW ORLEANS

ANALYSIS

- Fines set by legislature are presumptively valid
- Disconnection of electricity is a method of obtaining compliance



WARREN V. CHICO



HOMELESS



WARREN V. CITY OF CHICO



WARREN V. CITY OF CHICO

FACTS

- City ordinances prohibit sleeping, sitting, lying, etc. on public property
- Camping is only allowed at campgrounds
- City has insufficient number of shelter beds
- After TRO granted, City built temporary shelter facility at the airport



WARREN V. CITY OF CHICO

ANALYSIS

- Ordinance makes homelessness a status crime
- Shelter should cover or afford protection

FINDING

- Asphalt tarmac with no roof is not shelter
- Injunction granted