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Case Law Update

2021 Local Government Code Enforcement Cases

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First Amendment

Bongo v. Lawrence, 2021 WL 2897301 (M.D. Tenn. July 9, 2021).

The Tennessee legislature cannot mandate that facilities with non-gendered restrooms install sign with mandated language.

Burns v. Town of Palm Beach, 999 F.3d 1317 (11th Cir. 2021).

House that was so shielded with heavy landscaping that public could not view house was not protected by the First Amendment. For an expression to be protected by the First Amendment, the message must be understood to be an expression by those who view it.

Hernández-Gotay v. United States, 985 F.3d 71 (1st Cir. 2021).

Using the same reasoning as the *Burns* court, the First Circuit found that cockfighting does not communicate Puerto Rico's culture and deeply rooted sense of self-determination to a viewer.

Baldwin Park Free Speech Coalition v. City of Baldwin Park, 843 Fed. Appx. 21 (9th Cir. 2021).

City's sign permit procedure of requiring picture or sketch of banner was not content based because the building official did not have discretion to deny permit if banner met all requirements.

Harmon v. City of Norman, 981 F.3d 1141 (10th Cir. 2020).

City's noise ordinance was not content based. The ordinance only made reference to how loud the protestors' expressions were, not the content of the expressions.

Baker v. City of Fort Worth, 506 F.Supp.3d 413 (N.D. Tex. 2020).

City's sign ordinance was content based because it allowed election signs in the right-of-way but no other private signs.

Qualified Immunity

Williams v. Galligan, 834 Fed. Appx. 673 (2nd Cir. 2021).

The enforcement of a validly enacted law creates a heavy presumption in favor of qualified immunity. Because the ordinance authorized the code enforcement officer to take immediate action in the face of an immediate danger (similar to the exigent circumstance exception to the warrant requirement) a reasonable official would not have thought that he was violating a constitutional right when he entered Plaintiff's property and seized the items.

B Legal v. Torres, 825 Fed. Appx. 528 (9th Cir. 2020).

Qualified immunity shielded officer because a reasonable official would not believe that warning employees that they could be fined and arrested if they continued working at the club was a violation of a constitutional right.

Takings Under the Fifth Amendment

Pakdel v. City and County of San Francisco, 114 S.Ct. 2226 (2021).

Plaintiffs may bring §1983 actions without bringing an inverse condemnation suit in state court. Exhaustion of remedies is not required if any further attempts at resolving the issue would be futile.

Murphy v. City of Galveston, 2021 WL 1220104 (S.D. Tex. March 31, 2021).

For a takings claim to be ripe, the government must have reached its final decision. Plaintiff did not seek a resolution through taking the actions city council requested and Plaintiff did not appeal the loss of the non-conforming use status.

Williams v. City of Stanford, 2021 WL 1343507 (E.D. Ky. April 9, 2021).

The Takins Clause is inapplicable if the city takes the property to abate a nuisance.

Fourth Amendment

Clark v. City of Williamsburg, 844 Fed. Appx. 4, (10th Cir. 2021).

When a person's front door is blocked, it is reasonable for a government official to walk around to the back to contact the resident.

Gaetjens v. City of Loves Park, 4 F.4th 487 (7th Cir. 2021).

Exigent circumstances are an exception to the warrant requirement of the Fourth Amendment. IN this case, police and fire entered the home, took the cats, and posted a temporary condemnation warning on the front door.

Fourteenth Amendment

Keene Group v. City of Cincinnati, 998 F.3d 306 (6th Cir. 2021).

Undelivered letters do not require the city to conduct a search to find a better address for a property owner as long as city chose a second method for notice. Posting notice on the property is a sufficient second method.

Madar v. City of Philadelphia, 2021 WL 2156362 (E.D. Penn May 27, 2021).

Notice must be reasonably calculated under the circumstances to let the interested parties know of the action and give the parties an opportunity to object.

Excessive Fines

Pimentel v. City of Los Angeles, 974 F.3d 917 (9th Cir. 2020).

Fines violate the Eighth Amendment clause if they are grossly disproportional to the underlying offense. Los Angeles is one of the most congested cities in the country. Overstaying parking meters leads to increased congestion and impedes traffic flow. The $63.00 is sufficiently large enough to deter parking violations but is not so large that it is grossly out of proportion.

Ficken v. City of Dunedin, 2021 WL 1610408 (M.D. Fla. April 26, 2021).

The $500 per day fine for repeat code enforcement offenders falls with the range allowed by statute, therefore it does not violate the 8th Amendment.

Wirth v. City of Rochester, 2021 WL 3270512 (W.D. New York July 30, 2021).

Plaintiff asserted that the $150.00 fine and attorney's fees were excessive under the 8th Amendment. Fees paid to a private attorney are not payment to the government for an offense, so they cannot be analyzed under the 8th Amendment. Plaintiff was not required to pay a fine for his violation, so he has no standing to bring the 8th Amendment claim for the fine.

Hignell v. City of New Orleans, 476 F.Supp.3d 369 (E.D. La. August 6, 2020).

In order to bring property owners in compliance with its short term rental ordinances, the City imposes fines and discontinues electrical service. The court held that the disconnection allows the City to impose a meaningful penalty when the landowner pays the fines but does not change his behavior.

Homeless

Warren v. Chico, 2021 WL 2894648, (E.D. Cal. July 8, 2021).

A temporary outdoor shelter facility at an airport is not a shelter. Preliminary injunction was granted.