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Contracts: Venue Clause Requiring Courthouse to be "in" a County Forecloses Removal to Federal Court not Physically Located in the County

City of Albany v.CH2M Hill, Inc., No. 18-35283 (9th Cir. May 29, 2019).

Affirming the lower court, the Ninth Circuit finds that where a venue selection clause states that venue for litigation "shall be in" a specified county, the case cannot be removed to a federal court having jurisdiction over that county-but not physically located there.

The City of Albany, Oregon (City) brought an action in the Circuit Court for Linn County, Oregon, alleging that CH2M Hill, Inc., an engineering firm incorporated in Florida (CH2M), breached its contract to provide engineering services to the City. CH2M removed the case to federal court based on diversity of citizenship. The City moved to remand the case back to state court based on the venue-selection clause in the parties' contracts.

The federal district court granted the City's motion for remand, and CH2M appealed.

The Ninth Circuit noted that, while an order remanding a case to state court ordinarily is not reviewable, see 28 U.S.C. § 1447(d), review is permitted where remand is based on a venue-selection agreement. Here, the relevant contract provision stated "Venue for litigation shall be in Linn County, Oregon." Notwithstanding the provision, CH2M had removed the case under 28 U.S.C. § 1441 to the United States District Court for the District of Oregon.

Linn County lies within the federal district court's Eugene Division, but there is no federal courthouse physically located in Linn County. The federal courthouse is located in the City of Eugene, which is in neighboring Lane County. Despite the absence of a federal courthouse in Linn County, CH2M contended that the venue-selection clause was ambiguous as to whether removal to federal court was permitted. CH2M argued that a federal court could reasonably be deemed to be "in" a county merely by virtue of its judicial authority over cases that arise in that county.

The Circuit had not previously decided whether removal to federal court is permitted when a venue-selection clause provides that litigation shall occur "in" a county in which no federal courthouse is located. It had previously considered a forum-selection clause limiting venue to the "courts in King County, Washington," and found that the "in" imposes a geographic limitation, and that "when a federal court sits in a particular county, the district court is "undoubtedly 'in' that county." While that precedent did not squarely address the issue here, given the Circuit's emphasis in that case on the location where a federal court sits, "we think the answer to the question before us is straightforward: An agreement limiting venue for litigation to a particular county unambiguously prohibits litigation in federal court when there is no federal courthouse located in the designated county."

The Circuit found that the clear import of the venue selection clause was to ensure that any litigation arising out of the contracts would take place within the geographic boundaries of Linn County. If the case had proceeded as CH2M proposed, litigation would instead occur in Lane County, violating the plain terms of the parties' agreement. That holding was in accord with decisions of the Second and Fourth Circuits. In the Second Circuit decision, there had been a federal courthouse in the specified county when the contract was signed, but by the time the plaintiff filed, the courthouse had closed. That development meant that the litigation could not proceed in federal court.

The only way to effectuate the parties' agreement was to limit venue for litigation to the state court in Linn County.

LINK

Education: Where Harassment was Initially Known Only to Non-Decision Makers, Subsequent Corrective Actions were Adequate

E. M. v. Austin Independent School District, no.18-50256 (5th Cir. May 29, 2019).

Affirming the lower court, the Fifth Circuit holds that, once decision-making school authorities became aware of harassment of a student, they took adequate steps to avoid a finding of deliberate indifference.

E.M., a minor (E.M.) alleges that she was subject to harassment during her junior year in an Austin, Texas high school. The alleged harasser, D.M. (D.M.), a male student who, upset about E.M. rejecting his romantic advances, engaged in repeated conduct that made E.M. feel unsafe

at school. This behavior culminated in D.M.'s jumping over a railing on the second floor of the school in an apparent suicide attempt while E.M. was watching.

A teacher broke his fall and he was not seriously injured. But E.M., not knowing that D.M. was not harmed, was distraught over D.M's attempt on his life. After the incident, a school counselor told her that "D.M. was obsessed with her and that his actions were connected to his unrequited love for her."

E.M. brought a Title IX action against the Austin Independent School District (District), alleging, among other things, deliberate indifference by the District. The district court dismissed.

On appeal, the Fifth Circuit recounted the relevant legal standards: A school district is liable for student-on-student harassment only if, among other things, the district knew about the harassment and was deliberately indifferent to it. For the district to have knowledge, it is not enough that any employee learns of the harassment--the employee must, at minimum, have the authority to "institute corrective measures on the [school's] behalf" to put the school on notice. Deliberate indifference, too, is a "high bar;" "neither negligence nor mere unreasonableness is enough."

The Circuit agreed with the district court's conclusion that no school official with the relevant authority knew about the harassment until the apparent suicide attempt. At that point, the school took corrective measures that, even if not ideal or what E.M. preferred, were at odds with a finding of deliberate indifference. Specifically, the school adopted a safety plan to provide E.M. with a security guard escort and updated the plan multiple times in response to complaints from E.M. As part of the plan, the school modified D.M.'s schedule to minimize encounters between the two students. The school also created a specific plan for choir, an activity both students participated in. "These proactive measures show that the District was attentive to, rather than indifferent to, E.M.'s situation once it learned about the problem. That is enough under the deliberate indifference standard, which does not allow us to second-guess the soundness of the corrective measures."

LINK

Equal Protection: Right of Association-Officer's Employment Termination was not due to Relationship with another Officer

Perez v. City of Roseville, No. 15-16430 (9th Cir. May 21, 2019).

Reversing its own prior Circuit ruling, the Ninth Circuit has declined to eliminate qualified immunity for officers who terminated employment of a probationary employee involved in a romantic relationship with another officer.

(This case presented interesting dynamics. An initial decision had been rendered in February 2018, finding that plaintiff Janelle Perez had raised sufficient factual questions about whether her termination from the Roseville Police Department was at least partly based on her liaison with another officer to defeat summary judgment. En banc review had been scheduled, but Judge Reinhardt, who was a member of the original panel, died after the case was argued and the original opinion was issued. Judge Ikuta was randomly drawn to replace Judge Reinhardt, and the new panel proceeded to reconsider the case and reissue the current opinion without proceeding to en banc review).

In 2011, Janelle Perez (Perez) was hired by the City of Roseville Police Department (RPD), commencing with a one-year probationary period. RPD sent her a confirming letter stating that " [d]uring your probationary period you may be released from City services with or without cause at

the sole discretion of the City."

Shortly after beginning her term, Perez separated from her husband and began dating Shad Begley (Begley), another officer in the RPD, who had also separated from his spouse. In June 2012, the RPD received a written citizen's complaint from Begley's wife, alleging that Begley and Perez were having an extramarital relationship and suggesting that they were engaging in romantic relations while on duty. She also alleged that Begley and Perez were exchanging numerous phone and text contacts while on the job.

RPD conducted an internal affairs investigation into the complaint. It found no evidence of sexual relations while the two were on duty, but indicated that Perez and Begley made numerous personal phone calls to each other while on the job, including during times when the recipient was responding to calls for help. Both officers admitted to sending personal text messages to each other about five times per shift.

RPD informed Perez and Begley that the internal investigation had resulted in sustaining the charges of "Unsatisfactory Work Performance" "Conduct Unbecoming" under various provisions of RPD's Code of Conduct. It also notified Begley's wife of the RPD findings.

In August 2012, RPD issued separate written reprimands to Perez and Begley explaining the grounds for the two violations. In the reprimand to Perez, RPD identified various instances of calls while she was supposed to be on duty, including responding to a suicide call. Both officers appealed, seeking an administrative hearing. While the appeal was pending, Perez was the subject of various citizen complaints about her performance. The RPD Chief of Police ultimately decided to terminate Perez's employment for failing to complete probation successfully, later testifying that her extracurricular relationship played no part in the decision.

Perez filed an action for damages, and the district court granted summary judgment in favor of the defendants on all claims.

Perez appealed on her claims under 42 U.S.C. § 1983 for (1) violation of her rights to privacy and intimate association under the First, Fourth, and Fourteenth Amendments; and (2) deprivation of liberty without due process of law in violation of the Fourteenth Amendment.

The Ninth Circuit affirmed, reversing their decision of February 2018, concluding that the individual defendants were entitled to qualified immunity on Perez's first claim because it was not clearly established that an officer's rights to privacy and intimate association are violated if a police department terminates her due to her engaging in an extramarital relationship with a married fellow officer, where an internal investigation finds that she plaintiff engaged in inappropriate personal cell phone use in connection with the relationship while on duty, resulting in a written reprimand for violating department policy. Perez argued that such a rule was already clearly established, relyinng on *Thorne v. City of El Segundo*, 726 F.2d 459 (9th Cir. 1983), which involved a female applicant for a police officer position. The applicant had previously had an affair with a married officer, a fact that she revealed in confidence in the course of background checks. The department declined to hire her, and she sued on the basis of her constitutional right to privacy and intimate association. The court held that it would violate an applicant's constitutional right to privacy to be refused employment because of her sexual activities where there was no evidence "that would show that appellant's affair with the police officer before becoming a police officer [candidate], herself, affected or could potentially affect her job performance." *Thorne's* facts were materially different from the Perez situation, and the court found that, in reality, *Thorne* advised that police departments *can* appropriately consider on-the-job sexual relations that impact job performance and are not purely

Perez also claimed entitlement to a hearing so that she could clear her name in the face of the RPD's confirmation notice to Begley's wife that the two were romantically involved and exchanging communications while on duty. This required showing a "temporal nexus" between the individual defendants' allegedly stigmatizing statements and Perez's termination. The 19-day

period which elapsed between those events had previously been found to defeat a temporal nexus in an employment termination context. The individual defendants were therefore also entitled to qualified immunity on Perez's claim that the lack of a name-clearing hearing violated her due process rights.

The Circuit upheld the lower court's grant of qualified immunity.

DISSENT:

Judge Molloy disagreed with this trajectory:

> I respectfully disagree with the new majority opinion in this case and consequently I dissent. There are two specific reasons that I dissent, one being that the majority in the published opinion in this case, *Perez v City of Roseville*, 882 F.3d 843 (9th Cir. 2018), correctly resolved the issues. The majority opinion of a quorum of judges should stand for the reasons stated therein. The more problematic concern is the substitution of a different judge following the post-publication death of the original decision's author. . . .The procedural facts in this case compel en banc consideration of whether Judge Reinhardt's majority opinion, an opinion I joined, should be allowed to stand or whether it should be reconsidered.
>
> Indeed, in the fourteen months since the published opinion issued, this case has been cited 72 times, including at least twice for its substantive holding. In this case Perez's appeal was decided by a quorum of the judges on the original panel, the decision was published, and there was an en banc call by a member of this court. Consequently, the original opinion should stand. It was decided. Now with a different judge assigned, the new majority opinion completely reverses the original opinion without notice to the parties or regard to the en banc call. Judge Reinhardt's death under the circumstances presented in this case should not be invoked to reverse the outcome of the case legitimately decided by the original majority through a procedural mechanism of substituting a different judge. . . . For these reasons, I respectfully dissent and believe this case should go to an en banc panel if the previously published opinion is in error, which I do not believe.

LINK

Equal Protection: Unresponsive Car Accident Victim is not Similarly Situated to Uninjured Driver who Provides Accident Report

Green v. City of Southfield, Nos. 18-1758/1775 (6th Cir. May 28, 2019).

A black woman driver who was injured and unresponsive to police officers at an accident scene could not assert that officers' taking of a statement from the other driver--a white male who was uninjured and conversant--constituted unequal treatment of similarly-situated persons.

In October 2012, a sedan driven by Dawn Green (Green) collided with an SUV driven by William Patterson (Patterson) in the Detroit suburb of Southfield (Southfield). Patterson was uninjured but Green's vehicle sustained significant damage; other drivers pulled over to help Green, disoriented and with glass in her face, climb out of her car and lay down on the median.

A Southfield police officer arrived at the scene soon after the accident, speaking briefly with Patterson and then approaching Green. Because she appeared to be dazed and had difficulty responding, he asked few questions after getting her identification. A Southfield traffic specialist

arrived thereafter. He spoke briefly to Green as she lay on a gurney in an ambulance. He also spoke with Patterson, who relayed that he had just entered the intersection with a green light when his car "was struck" by Green's car. The traffic specialist determined that the physical evidence-the degree and location of the vehicles' respective damage, the absence of skid marks around Green's vehicle, and the spot where Green's vehicle came to rest-corroborated Patterson's account.

He did not consider the accident serious enough for criminal proceedings or a traffic ticket, so he did not complete a police incident report. He instead filled out the crash report that the State of Michigan requires for highway-safety planning purposes when car accidents lead to injuries. In the form's "Hazardous Action" box, he wrote "none" for Patterson and "disregarded traffic [signal]" for Green. Michigan law provides that such crash reports "shall not be available for use in a court action." Mich. Comp. Laws § 257.624(1).

When Green later saw the accident report, she contacted a detective at the Southfield Police Department (SPD), insisting it was Patterson who ran the light and that she had an eyewitness to back her up. After conferring internally the SPD decided against amending the report, and simply added an affidavit from the potential witness.

Green sued Patterson in state court, eventually settling her negligence claim after discovery, case evaluation, and court-ordered facilitation. She then filed § 1983 and § 1985 actions against Southfield and various SPD officers, alleging that the investigation of the accident violated her equal protection rights and her right of access to the courts. The district court concluded that the officers deserved qualified immunity and granted summary judgment.

The issue on appeal was whether a material-fact dispute stood in the way of the officers' qualified-immunity defense or whether they were entitled to judgment as a matter of law. Answering this question required analyzing the facts underlying Green's constitutional claims.

Equal protection. Green claimed that officers discriminated against her based on race and sex, evidenced in the fact that the Southfield traffic specialist did not ask for her account of the crash because she is a black woman but asked for Patterson's account of the accident because he is a white man, and SPD officers' follow-up investigation revealed a similar bias.

While § 1983 prohibits state employees from violating a person's constitutional rights and § 1985 prohibits them from conspiring to deprive someone of those rights, the party alleging race or sex discrimination must show that the challenged law-enforcement practice "had a discriminatory effect and was motivated by a discriminatory purpose." And to prove a discriminatory effect, the plaintiff must show that similarly situated individuals were not subject to the challenged police actions.

The Sixth Circuit found that Green's factual premise was incorrect--Green and Patterson were not similarly situated, and those differences justified the way the officers responded to the accident. Green had been dazed and unresponsive at the scene, while Patterson was fully coherent and ready to describe the accident. Therefore, officers "had ample reason to ask Patterson what happened but not to ask Green the same."

While Green protested that she would have given a statement if asked, "The relevant point at any rate isn't whether [the SPD officer] could have coaxed Green's story out of her had he tried; it's whether he had good reason to leave her alone. No material-fact dispute clouds that issue."

Access to courts. Green also claimed that the SPD's failure to solicit statements from witnesses at the accident scene crippled her lawsuit against Patterson, forcing her to settle for a lower amount-$95,000-than she deserved. Again, the court found the legal predicate of Green's claim to be correct, but the factual predicate lacking.

While the Constitution protects an individual's right to bring a non-frivolous claim in a court of law,

and that right extends to protection from government conspiracies to destroy evidence if those actions prevent a plaintiff from having an "adequate remedy on the underlying claim," there is a material difference between "active concealment" or destruction of evidence on the one hand and a failure to "pursue all possible leads" on the other. Mere "laxity in investigation" does not rise to a constitutional violation.

As the Circuit put it" This case falls (at worst) on the 'mere laxity' side of the line." While officers might have discovered greater evidence to support Green had they canvassed the area for additional witnesses, this was not a case where the SPD took witness statements and then destroyed them, or deleted case notes or log sheets to deprive Green of favorable evidence. "Failure to solicit additional witness statements, when the physical evidence supports the only account offered at the scene, is a sizeable step removed from that problem." By the time the Southfield traffic specialist arrived-after Green was already in the ambulance-- none of the potential witnesses who had helped Green from her vehicle remained. "On this record, no cognizable access-to-the-courts claim exists."

Municipal liability. Green argued that the SPD maintained an unconstitutional policy of not investigating citizen complaints if they think a lawsuit is in the offing. But because her related claims against the SPD officers failed on the merits, her municipal liability claim premised on those claims necessarily failed as well.

Motion to amend the complaint. Green separately challenged the court's denial of her motion to file what would have been her seventh complaint. While Fed. R. Civ. P. 15(a)(1) allows plaintiffs to file one no-questions-asked amended complaint, and after that the court should "freely" grant in the ordinary course, Fed. R. Civ. P. 15(a)(2), The request may be denied for a host of reasons-including undue delay. Here, Green had filed an amended complaint followed by two more amendments without permission. After the court gave her a strict deadline, she nevertheless filed additional unpermitted versions. More than a year after the case commenced, she attempted to file a seventh version, adding five additional defendants-all of whom were known to her at the outset. "[T]he district court did not abuse its discretion in denying Green's motion."

Attorney's fees. The defendants cross-appealed on the ground that the court should have imposed attorney's fees on Green. While a court may award a prevailing defendant reasonable fees, provided the lawsuit was frivolous, that was not the case here. The court reasonably denied the defendants' motion on the ground that the discovery and motions practice had been "very contentious, on both sides" and on the ground that "this is not an egregious case." Defendants countered that (1) Green knew she was dazed at the crash scene and thus knew from the beginning that she was not similarly situated to Patterson, and (2) she should have known the defendants did not conceal any evidence and that accident reports are inadmissible in Michigan courts.

The court was unconvinced. "That Green did not draw the same legal conclusions from these facts as the defendants, however, does not mean the denial of fees is an abuse of discretion. Yes, a different trial court might have reached a different conclusion. But that reality squares with another reality-that our deferential standard of review permits two opposing decisions both to fall within it."

LINK

Food Trucks: Ordinance Requiring 200-Foot Distance from Brick and Mortar Restaurants and Transmittal of GPS Data Passes Muster

LMP Services, Inc. v. City of Chicago, no. 123123 (Ill. May 23, 2019).

The Illinois Supreme Court has upheld a Chicago ordinance requiring that food trucks be located at least 200 feet from brick and mortar restaurants and must transmit GPS location data whenever in service, finding that the measure bears a rational basis to a valid governmental purpose.

In July 2012, the Chicago City Council passed Ordinance 2012-4489 (Ordinance), regarding mobile food vehicles (food trucks) within Chicago (City). The Ordinance kept in place a restriction known as "the 200-foot rule" that had been in effect since September 1991, which states that "[n]o operator of a mobile food vehicle shall park or stand such vehicle within 200 feet of any principal customer entrance to a restaurant which is located on the street level." "Restaurant" is defined as "any public place at a fixed location kept, used, maintained, advertised and held out to the public as a place where food and drink is prepared and served for the public for consumption on or off the premises pursuant to the required licenses." The restriction applies regardless of whether the food truck is parked on private or public property. The Ordinance quadrupled the previous minimum fine amount to $1,000.

The Ordinance also added a new provision establishing a "mobile food vehicle stands program" reserving designated areas where a certain number of food trucks are permitted to operate without being subject to the 200-foot rule. Another new provision established a "GPS requirement" that compels food truck owners to install on their food trucks a permanent GPS device "which sends real-time data to any service that has a publicly-accessible application programming interface (API)."

The Ordinance was challenged LMP, Inc. (LMP) a corporation which operated the food truck "Cupcakes for Courage" in the City. LMP alleged the 200-foot rule contained violates the equal protection and due process clauses in the Illinois Constitution because it is protectionist and unreasonably favors brick-and-mortar restaurants over food trucks. LMP further alleged that the GPS requirement is unconstitutional because it constitutes a continuous, unreasonable, warrantless search of food trucks.

The Cook County circuit court dismissed LMP's equal protection claim but allowed the other claims to go forward. Following discovery, both parties moved for summary judgment, and the circuit court granted the City's motion. It held that LMP's substantive due process challenge to the 200-foot rule failed because the rule satisfies the rational basis test, balancing the needs of both restaurants and food trucks and serves to protect a legitimate City interest in reducing pedestrian traffic.

The circuit court also upheld the GPS requirement, finding that it was not a search because the City did not physically trespass upon plaintiff's property to install the GPS unit on the food truck. The circuit court also held that, even if the GPS requirement constituted a search, it was not unreasonable.

Citing *New York v. Burger*, 482 U.S. 691 (1987), the court held that warrantless inspections of closely regulated businesses, such as food services, must meet three criteria to be constitutionally valid: (1) there must be a substantial governmental interest that informs the regulatory scheme permitting the warrantless inspection, (2) the warrantless inspection must be necessary to further the purpose of the regulatory scheme, and (3) the regulatory scheme must provide a constitutionally adequate substitute for a warrant.

The circuit court held the GPS requirement satisfied the *Burger* test because the City has a substantial interest in ensuring food safety and must know the location of food trucks to be able to make inspections. Further, the court held that food trucks have no expectation of privacy as to their location and, therefore, there is no reason why the City could not make compliance with the GPS requirement a condition of LMP's licensure.

The appellate court affirmed the circuit court's grant of summary judgment. It found that a food

truck owner's right to conduct its business on City streets is not a fundamental right for substantive due process purposes and, thus, the 200-foot rule need only pass the rational basis test to be valid. After thoroughly examining each of plaintiff's arguments, the court upheld the 200-foot rule "as a rational means of promoting the general welfare of the City of Chicago." The court rejected plaintiff's protectionist argument, holding that the City has a legitimate interest in protecting brick-and-mortar restaurants because they bring critical economic benefits to the City, including the payment of taxes and other fees, that exceed any similar expenditure by food trucks. The appellate court also held that that the GPS requirement is a search; because food trucks do not have a constitutional right to conduct business on the streets and sidewalks of Chicago, the City may require food trucks to install a GPS device as a condition of licensure.

LMP petitioned to the Illinois Supreme Court for leave to appeal, which was granted. The Illinois Policy Institute, Restore the Fourth, Inc., the Pacific Legal Foundation, the Illinois Food Truck Owners Association, the National Food Truck Association and CATO Institute were allowed to file amicus briefs in support of LMP. In addition, the Illinois Restaurant Association filed an amicus curiae brief in support of the City.

The Illinois Supreme Court began by establishing is scope of review. Like statutes, municipal code provisions are presumed constitutional, and the burden of rebutting that presumption rests with the challenging party, who must demonstrate a clear constitutional violation. A reviewing court must affirm the constitutionality of a statute or ordinance if it is "reasonably capable of such a determination" and resolve any doubt as to the statute's construction in favor of its validity.

The court then turned to the challenged provisions, generally following the lower court analyses:

The 200-Foot Rule: Substantive due process bars arbitrary governmental actions that infringes upon a protected interest. The nature of the protected interest determines the level of scrutiny--where, as here, the challenged provision did not affect a fundamental right, the rational basis test applied. LMP's burden in challenging the Ordinance as failing rational basis review was to prove, by clear and affirmative evidence, that the enactment was arbitrary, capricious, and unreasonable legislative action; that no permissible interpretation justified its adoption; or that it did not promote the safety and general welfare of the public. Importantly, when determining whether a legislative enactment survives rational basis review, "courts do not consider the wisdom of the enactment or whether it is the best means of achieving its goal."

The court noted that while brick-and-mortar restaurants and food trucks are both important enterprises that bring significant benefits to the City, they do so in very different ways. Brick-and-mortar restaurants bring stability to the neighborhoods in which they are located, they pay property taxes and have a vested interest in their neighborhoods. Moreover, in certain areas of the City, such as Greektown, "restaurants are a vibrant part of the community and bring a long-term sense of cohesiveness and identity to the area." In contrast, food trucks do not have the same long-term, stabilizing effect on City neighborhoods.

The court found that the City's "legitimate governmental interest in encouraging the long-term stability and economic growth of its neighborhoods" was advanced by the 200-foot rule, which was rationally related to promoting brick-and-mortar restaurants and, thus, neighborhood stability. It was significant that the City had also set aside food truck areas which were not subject to the 200-foot rule, evidencing a regulatory scheme that attempted to balance the interests of food trucks with the need to promote neighborhood stability.

In challenging the 200-foot rule, LMP cited *Chicago Title & Trust Co. v. Village of Lombard*, 19 Ill. 2d 98, 100 (1960). There, the court had stricken a municipal ordinance providing that " 'no filling station may be erected on a lot within 650 feet of any lot upon which a filling station, licensed under the provisions of this ordinance, is in operation.' " The court was unconvinced that the 650 foot provision advanced public safety and could not discern an otherwise legitimate purpose for the measure.

Chicago Title was distinguishable on several counts. First, that ordinance preventing a property owner from constructing a gas station on his land even though the property was zoned to permit that use., whereas the City's food trucks operated on public land. They therefore had no constitutionally protected property interest to conduct business at any particular location within the City. And although the village in *Chicago Title* claimed the ordinance promoted the health and safety of its residents, the record contained no evidence to indicate that gas stations located in close proximity to each other had any adverse effect on health or safety.

A case more on point had upheld a provision prohibiting food trucks from conducting business within an area of the City identified as the "Medical Center District." Applying rational basis, the court held that the City had the power to regulate the use of its streets for private gain and that the prohibition furthered the City's legitimate interest in ensuring that emergency vehicles, medical personnel, and medical clients had easy access to the medical facilities.

In sum, the court found that LMP had not met its considerable burden of showing that the 200-foot rule was an arbitrary and unreasonable municipal action and that no permissible interpretation justifies its adoption.

The GPS Requiremnt: LMP also reiterated its objection to the rule requiring that GPS devices be attached to food trucks, that location data be transmitted to the service whenever the trucks were serving clients, and that the service provider maintain "at least six (6) months of historical location information."

The court cited elements of the Ordinance that moderated its intrusive character. While the Ordinance required that the service provider have a "publicly-accessible" API, there was no requirement that the location data be made available to the public. In addition, the City could not request location information from a GPS service provider unless investigating a complaint of unsanitary or unsafe conditions, a food-related threat to public health or for emergency response purposes; or pursuant to a warrant, or with permission of the food truck licensee.

LMP contended that the requirement to install a GPS unit in its food truck and transmit its location to a service provider constituted a prohibited warrantless. Citing *Katz v. United States*, 389 U.S. 347 (1967), LMP contended that the GPS intruded on LMP's reasonable expectation of privacy. The Illinois court found *Katz* to be inapposite: it was a criminal case, and the government, without a warrant, attached an electronic monitoring device to a public phone booth that the government believed the defendant was using for his drug trade.

> The situation here is very different. The City requires food truck owners to install GPS devices on their vehicles as a condition of their license to operate on the streets of Chicago. The GPS device does not transmit the food truck's location data directly to the City, nor does plaintiff allege that the City has ever obtained plaintiff's location data from its service provider without obtaining a warrant. In fact, plaintiff admits that, at present, the City has never requested location data from any food truck's service provider. In addition, plaintiff also admits that food trucks generally post their location on social media to attract customers. Thus, any expectation of privacy a food truck might have in their location is greatly diminished, if it exists at all.

Other interests militated in favor of the GPS requirement. The City needed to regularly inspect food service businesses for compliance with health and food safety regulations. While easily accomplished at stationary brick-and-mortar restaurants, food trucks could move about the City. While phone calls might eventually lead to locating them, "the GPS system is the best and most accurate means of reliably locating a food truck, which is particularly important and necessary in the event of a serious health issue.

Following in the same path as the appellate court and the circuit court, the Illinois Supreme Court upheld the Ordinance.

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