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Prisons: No Equal Protection Claim Where Evidence Inadequate to Establish that Prison Officials Controlled Prices of Commissary Items

Leatherwood v. Rios, No. 16-6370 (10th Cir. Aug. 16, 2017).

An Oklahoma inmate's Equal Protection and conspiracy claim has failed where he could not show that the prison officials named in his complaint were responsible for the higher prices charged in his privately-run prison's commissary versus prices in state-run prisons.

Michael D. Leatherwood (Leatherwood) is an inmate at the Lawton Correctional Facility (LCF) in Oklahoma, a private facility under contract with the state. He filed suit alleging, under both §1983 and §1985, that the defendants violated his constitutional rights and conspired to do so because

the LCF commissary offers fewer items and charges a higher price for those items than commissaries located in prisons operated by the Oklahoma Department of Corrections (DOC). The defendants answered with 12(b)(6) motions and a magistrate judge - whose report and recommendation was adopted in whole - recommended they be granted. Leatherwood appealed.

The Tenth Circuit first dealt with procedural matters, noting Leatherwood, proceeding pro se, failed to address some issues on appeal, thus limiting its review to whether the district court properly dismissed Leatherwood's § 1983 equal protection and conspiracy claims for failure to state a claim. As for the equal protection claim, the Circuit Court characterized Leatherwood's contention as based on the fact that he must "pay higher prices for a lesser selection of items at the LCF commissary than similarly situated medium-security inmates at commissaries in DOC-operated prisons." Though the Circuit assumed *arguendo* that this treatment could rise to the level of a constitutional violation, it found Leatherwood failed to establish that the individuals named had the authority to affect the availability and/or price of commissary items. Thus, they could "not have treated Leatherwood differently from similarly situated medium-security inmates in DOC-operated prisons." As for the conspiracy claim, Leatherwood had to show that he was "deprived of a constitutional right as a result of a conspiracy comprised of or including conspirators acting under color of state law," but he failed in two respects according to the Circuit. First, he did not identify a constitutional violation and, second, his assertions about the conspiracy were "conclusory and devoid of the requisite specific facts showing agreement and concerted action by the LCF" and defendants. The Circuit thus affirmed the dismissal.

LINK

Retaliation: Qualified Immunity for City Attorney where Motel Condemnation was Supported by Probable Cause

Scott v. Tempelmeyer, No. 16-2404 (8th Cir. Aug. 16, 2017).

A Nebraska City Attorney was found by the Eighth Circuit to have qualified immunity where a motel owner claimed First Amendment retaliation for having contested lodging taxes. Given that the City Attorney's push to have the motel condemned was supported by probable cause that the building was not fit for habitation, the plaintiff could not demonstrate violation of an established constitutional right.

From 2005 to 2010 Ray Scott (Scott), the lessor and operator of the Villa Motel, had a running dispute with the city of Beatrice, Nebraska (City) about paying City lodging taxes. In December 2009 City Attorney Tobias Tempelmeyer warned Scott that if he did not pay by January 2010, the City would take legal action to collect the taxes or prosecute him for zoning violations. In November 2010 Tempelmeyer came to possess photos of the interior of the motel and had a fire inspector and the City's building inspector inspect the property for safety issues. The fire inspector identified several fire code violations and safety hazards and he ordered Scott to address the issues or prepare a plan of correction; in no event was Scott allowed to host guests until completing the plan or correcting the problems.

The building inspector, meanwhile, told Tempelmeyer that he did not think the issues were life-threatening or that the Motel Villa should be condemned or denied a certificate of occupancy. The City Attorney, nonetheless, told the building inspector to condemn the motel. Scott sued the City Attorney, the Mayor and the City itself, alleging a variety of charges, but in particular that Tempelmeyer retaliated against Scott for exercising his First Amendment rights to challenge the lodging tax assessment by ordering condemnation of the Villa Motel. The district court dismissed all claims, but denied Tempelmeyer's assertion of qualified immunity regarding the retaliation

claim, which he appealed.

The Eighth Circuit announced that "to establish a First Amendment retaliation claim in a particular case, a plaintiff must show (1) that he engaged in a protected activity, (2) that the defendant's actions caused an injury to the plaintiffs that would chill a person of ordinary firmness from continuing to engage in the activity, and (3) that a causal connection exists between the retaliatory animus and the injury." The causation prong was the heart of the issue for the Circuit and it noted the Supreme Court's conclusion that where the causal connection required was "*between the retaliatory animus of one person and the action of another*" the plaintiff had to demonstrate an absence of probable cause for prosecution in order to "to bridge the gap between the non-prosecuting government agent's motive and the prosecutor's action." In this case the Circuit found that there was probable cause to order the condemnation; despite the building inspector's statement that the motel's code violations were not life-threatening, there was ample evidence (including black mold) to conclude that the building was not fit for occupancy. In essence, the plaintiff's claim became "the right to be free from retaliatory regulatory enforcement that is otherwise supported by probable cause." The Circuit found no support that this was an established constitutional right. It reversed the lower court's denial of qualified immunity.

LINK

Search and Seizure: Failure to Provide Jury with Clear *Terry* Instruction Requires Remand

Doornbos v. City of Chicago, No. 16-1770 (7th Cir. Aug. 18, 2017).

Vacating a finding for the City at the district court, the Seventh Circuit has found that jury instructions were flawed because they did not explicitly state that law enforcement must reasonably believe that a civilian is armed and dangerous to justify a frisk.

Joseph Doornbos (Doornbos) was exiting a Chicago train station when two plainclothes Chicago police officers confronted him, grabbed him, threw him to the ground and ultimately arrested him for resisting arrest. Doornbos challenged the charge and won at trial. He then sued Chicago, alleging excessive force and malicious prosecution. This - the second case - went to trial as well and Doornbos lost, prompting him to appeal to the Seventh Circuit, alleging the judge erred in his jury instruction regarding *Terry* stops.

The Seventh Circuit found the judge's instructions were inadequate. The Court pointed out a *Terry* stop has two elements - first that the officer performing the initial stop reasonably suspects the person of committing or about to commit a crime and second, to *graduate from a stop to a frisk,* that the person is armed and dangerous. The judge's instruction, which was the defendant's version and which was objected to by Doornbos, was that "[a] police officer is allowed to conduct a brief investigatory stop of a citizen, not rising to the level of an arrest, if the officer performing the stop has a reasonable suspicion that criminal activity is afoot." Doornbos's request for an instruction on frisks to explain that an officer *must have reasonable suspicion that a civilian is armed and dangerous to justify a frisk*, was denied. The Court found this was erroneous because the officer's own testimony suggested the frisk was unjustified and thus unconstitutional - specifically because the officer's testimony lacked a showing of reasonable suspicion that Doornbos was armed and dangerous, meaning the officer, arguably, could not legally grab him as he testified to having done. The lower court's election "not to include an instruction on frisks deprived the jury of the law it needed to reach a sound verdict." The Circuit thus vacated the judgment and remanded the case for a new trial.

LINK

Search and Seizure: Lack of Cooperation by Occupants Does Not Give Police Actionable Inference to Continue Searching House after Making Arrest

United States of America v. Nelson, No. 16-3292 (10th Cir. Aug. 17, 2017).

Reversing the district court, the Tenth Circuit has refused to find that, because officers were not immediately allowed entry into a residence and were initially mislead as to the location of a suspected probation violator, they were therefore justified in making a "protective sweep" for additional dangerous occupants which led to discovery of weapons.

Officers received information that Stephen Nelson (Nelson), wanted for probation violations, might be hiding in a private residence. When they inquired at the front door as to Nelson's whereabouts, a resident initially tried to shut the door on them and then told them Nelson was upstairs. He was ultimately discovered in the lower level of the house and arrested. After his arrest, officers continued searching the dwelling, resulting in the discovery of two firearms that were attributed to Nelson, for which he faced additional charges. He challenged the search, arguing that it violated the Fourth Amendment, but the district court found the post-arrest search was a valid protective sweep because the officers "could have reasonably believed that someone other than [Nelson] was hiding in the house." By means of a conditional plea, Nelson continued to fight the Fourth Amendment case and the Tenth Circuit reversed.

The Tenth Circuit identified the relevant exception for when police officers may search a residence without a warrant, specifying it is that officers may "conduct a protective sweep beyond areas immediately adjoining the arrest if there are articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." The facts identified by the government to justify the sweep that netted the firearms at issue and that the lower court relied are were that: "(1) [the person that opened the door (not Nelson)] attempted to shut the front door on the deputies; (2) [this person] incorrectly informed the deputies that Nelson was upstairs, on the fourth level, when in fact he was on the first level; and (3) Nelson failed to immediately show himself to the deputies when they instructed him to do so."

The Tenth Circuit denied that these facts - individually or as a whole - created an inference that someone other than Nelson was hiding in the house. The Court then rejected the government's reliance on the fallback position that the officers had no way of knowing whether someone else was in the house. This was plainly unacceptable to the Circuit, as letting such an argument prevail eviscerates the entire fact-based analysis that makes this an *exception* to the general rule that officers *may not search private homes at will*.The Circuit reversed the lower court on this issue. The appeal, however, did provide the government the chance to argue the scope of the consent that was provided and the Circuit Court declined to decide this issue in the first instance on appeal, thus remanding the case to the district court for resolution of that narrow issue.

LINK

Sex Offenders: Seventh Circuit Upholds Requirement that Wisconsin

Resident Required by California to Register as Sex Offender Must also Register in Wisconsin

Murphy v. Rychlowski, No 16-1662 (7th Cir. Aug. 18, 2017).

The State of Wisconsin may require that a resident who was previously required to register for life as a sex offender in California must also register in Wisconsin, despite not having committed any sex offense in the state.

Paul Murphy (Murphy) was convicted of rape by the State of California 37 years ago and placed on the California sex offender registry. Years later, he moved to Wisconsin, where he was arrested for battery--not involving any sexual misconduct. Upon his release from prison for that offense, Wisconsin required him to register on Wisconsin's sex offender registry for life, based on his California registration.

He challenged Wisconsin's stance that he had to register on the Wisconsin registry. He won that suit, and from 2012 to late 2014, was not required to register nor placed on the registry. Murphy then filed suit alleging he had been denied his constitutional right to due process by being placed on the registry when he moved to the state because he had not received prior notice and an opportunity to be heard. He was placed back on the registry after filing the case in October 2014. The district judge granted the defendants' motion for summary judgment, finding that *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), dictated that Murphy was not entitled to any process prior to his placement on the registry. Murphy appealed.

The Circuit began its analysis with the common refrain that to succeed on a § 1983 claim, "a plaintiff must demonstrate that the defendants: (1) acted under the color of state law; and (2) deprived him of a constitutional right." The only issue at play was whether Murphy was deprived of a constitutional right and specifically the Fourteenth Amendment's prohibition against "depriv[ing] any person of life, liberty, or property, without due process of law." The court then delved into *Connecticut*, the Supreme Court's controlling case on the matter, noting it held that "because offenders received a procedurally safe- guarded opportunity to contest the charges against them through the criminal justice system, no further process was required" before being placed on the sex offender registry. Murphy contended that the cited case did not control because he was not arguing about whether he was dangerous (as the offender in *Connecticut Department of Public Safety* did), but rather that he is neither currently required to register as a sex offender in California because he is no longer living there and because he was not registered at the time the case was filed in Wisconsin.

The Wisconsin Department of Corrections argued he was required to register as a sex offender in California *for life* for his 1980 conviction of rape by force under that state's law. The Circuit disagreed with Murphy, characterizing his position as "challeng[ing] a *legal determination* that the [Wisconsin] Department [of Corrections] made when it interpreted Wisconsin law" - e.g. that Wisconsin law required he register in Wisconsin based on California's statutory requirement that he register in that state, where he committed the offense, for life. The Circuit declined to "read *Connecticut Department of Public Safety* as standing for the proposition that an individual is entitled to process to challenge the legal determinations made by the authority charged under state law with administering a sex offender statute." It thus affirmed the lower court's holding.

LINK

Sovereign Immunity: Indiana May Assert Sovereign Immunity where It Refused to Provide Interpreter for Deaf Plaintiff in Arbitration

King v. Marion Circuit Court, No. 16-3726 (7th Cir. August 18, 2017).

Where a deaf plaintiff voluntarily chooses to use private arbitration in a domestic relations case, and eschews litigation through the courts where he would have been provided an interpreter, he cannot assert that the state has impaired his constitutional rights--and the state can assert sovereign immunity.

Indiana allows counties to subsidize private dispute resolution in domestic-relations cases and Marion County instituted such a program. Dustin King (King) looked to take advantage of the program and obtain financial assistance to defray mediation costs. His participation in the program was authorized, but when King, who is deaf, also asked to have the court provide an American Sign Language interpreter, the request was denied. He ultimately used his father as an interpreter and, succeeding in his endeavor, got the domestic-relations case dismissed.

He then promptly sued Marion Circuit Court in federal district court, arguing it violated the Americans with Disabilities Act by refusing to provide him with a free interpreter in mediation, thus, "by reason of [his] disability ... den[ying him] the benefits of the services, programs, or activities of a public entity." After a bench trial, King was awarded $10,380.00 in damages, prompting the Marion Circuit Court to appeal.

The Seventh Circuit did not address the merits of the appeal, instead finding the threshold issue of sovereign immunity controlled. The Circuit noted the Marion Circuit Court is actually a division of the State of Indiana, meaning King actually filed suit against Indiana itself. Indiana had asserted sovereign immunity, but the lower court rejected that position, holding Indiana did not enjoy sovereign immunity in this case because it falls within the exception set forth in *Tennessee v. Lane*, 541 U.S. 509 (2004). The Circuit Court began by noting that Section 5 of the Fourteenth Amendment permits Congress to abrogate states' sovereign immunity 1) to protect substantive rights guaranteed by the Fourteenth Amendment's other provisions and 2) to authorize federal litigation to enforce rights guaranteed by the other Amendments that have been incorporated against the states via the Fourteenth Amendment, but that it *does not* permit Congress to authorize federal litigation against the states to enforce statutory rights.

In *Lane* - a disability case about a courthouse that had no wheelchair access at all to the second story courtrooms - the Supreme Court held the people have a broad "fundamental right of access to the courts." In this case, the Circuit found the mediation program did not prevent King from accessing "judicial attention" because he was *not required* to participate in the mediation program and, especially, since the judge in the case offered him the option of going through the standard court process where the judge was authorized to provide a no-cost interpreter for King. King had rejected that offer however, instead choosing to go through the subsidized mediation program.

Thus, the Circuit reversed the district court and remanded the case with instructions to dismiss the case without prejudice to King raising the Americans with Disabilities claim in state court - where Indiana is free to waive its sovereign immunity.

LINK

Speech: San Francisco's On-site and Off-site Business Sign Distinction Upheld (NOTE--The following summary was written and published by IMLA member Best Best & Krieger):

Contest Promotions LLC v. City and County of San Francisco, no. 17-15909 (9th Cir. Aug. 16, 2017).

Ninth Circuit Says Code is Proper Regulation of Commercial Speech.

A City of San Francisco Planning Code section that distinguishes between "general advertising signs" and "business signs" was upheld last week by a federal appeals court. The U.S. Ninth Circuit Court of Appeals ruling reaffirms prior decisions that cities' disparate treatment of on-site and off-site business advertising is within the bounds of proper commercial speech regulation, and outlines the relevant test for commercial speech regulation in general.

The code section at issue in *Contest Promotions v. City and County of San Francisco* defines general advertising signs as signs that "direct attention to a business, commodity, industry or other activity which is sold, offered or conducted elsewhere than on the premises upon which the sign is located." "Business signs" are defined as signs referring to the "primary business, commodity, service, industry or other activity which is sold, offered, or conducted on the premises upon which such sign is located." The code bans new general advertising signs, but permits business signs, subject to certain restrictions. San Francisco cites safety and aesthetics concerns for justifying the ban.

Contest Promotions alleged, among other arguments, that the code section that defines business signs violates the First Amendment. The district court granted the city's motion to dismiss the case, and it was appealed to the Ninth Circuit.

Contest Promotions argued that by requiring business signs to direct attention to the primary business conducted on the premises, the code section is a "content-based" regulation of speech subject to heighted scrutiny. The court rejected this argument, applying the four-part test developed in *Central Hudson Gas & Electric Corp. v. Public Service Commission*, which has become the standard for assessing restrictions on commercial speech.

The court held that the City's code section satisfied the *Central Hudson* test, explaining that first, there was no question that the proposed signs concern lawful activity and are not misleading, and second, that San Francisco's interests in safety and aesthetics are substantial. Third, the court noted that it has "repeatedly held that regulations distinguishing between on-site and off-site advertising signs directly advance governmental interest in safety and aesthetics." Lastly, the court found that the code section is not more extensive than necessary to serve San Francisco's interest, because the code section's detailed definition of a "business sign" is appropriate to ensure that such signs actually relate to activities on the premises.

The court also rejected Contest Promotions' other arguments and upheld the district court's decision to dismiss the case.

LINK

The link to BB&K's original posting is HERE

Speech: Nebraska's Two Hour/500-Foot Buffer Restriction against Picketing at Funerals is Valid

Phelps-Roper v. Ricketts, No. 16-1902 (8th Cir. Aug. 11, 2017).

In the latest chapter of a continuing saga, the Eighth Circuit has upheld Nebraska's restriction against picketing within 500 feet of a funeral, between one hour before the

service to two hours after, finding that a group of flag-bearing, silent bikers who were invited by the deceased soldier's family were not "picketing" under the Nebraska law, and that police failure to actively enable the protestors to display their signs did not constitute a "heckler's veto."

Caleb Nelson, a highly decorated Navy SEAL, died in Afghanistan when his vehicle struck an improvised explosive device. Days later, on a Nebraska street corner not far from where his church funeral would begin, a picketer wore a t-shirt announcing "GOD HATES FAGS" and held signs proclaiming in large font "THANK GOD FOR DEAD SOLDIERS," "SOLDIERS DIE 4 FAG MARRIAGE," "SHAME," and "DESTRUCTION IS IMMINENT."

Shirley Phelps-Roper and other Westboro Baptist Church (WBC) members consider military funerals to be "patriotic pep rallies" which suggest that God approves of national policies contrary to Biblical instruction. They picket to assert that God does not bless a nation that tolerates homosexuality and adultery. They coordinate with law enforcement and do not commit violence; their typical process is to begin picketing 45 minutes before the funeral and cease as soon as the service starts. Nebraska's Funeral Picketing Law (NFPL) as revised in 2011 prohibits picketing within 500 feet of a cemetery, mortuary, or church from one hour prior to the start of a funeral to two hours after it ends. Neb. Rev. Stat. §§ 28-1320.01 to .03.

Plaintiffs originally challenged the NFPL in December 2009, when the NFPL required a 300-foot margin; their motion to enjoin was denied at the district court. In 2011, a panel of the Eighth Circuit reversed-whereupon Nebraska filed for rehearing.

That petition was held in abeyance while the court considered a similar ordinance from Manchester, Missouri, which prohibited picketing within 300 feet of any funeral, from one hour before to one hour after the service. In a unanimous 2012 decision (*Phelps-Roper v. City of Manchester*) which reversed prior holdings on the issue, the Manchester ordinance survived, because "it serve[d] a significant government interest, it [was] narrowly tailored, and it [left] open ample alternative channels for communication."

Plaintiffs argued that Nebraska's larger buffer zone of 500 feet was unconstitutional--and also alleged that WBC had been unconstitutionally targeted by the Nebraska legislature, citing a newspaper article in which a legislator stated that he wished WBC protestors could be banned from picketing funerals.

The Eighth Circuit disagreed. The increase of the buffer zone to 500 feet versus the 300-foot buffer in *Manchester* did not change the outcome-the Circuit found that the NFPL served a significant government interest by protecting citizens from disruption during a funeral and avoiding potential violence, was still narrowly tailored, and left open ample alternative channels for communication. Allegations of legislative motive--thinly supported by the evidence--had no bearing on the statute's validity as enacted. Plaintiffs' facial challenge failed.

Their as-applied challenge also floundered. Plaintiffs attempted to demonstrate that opposing viewpoints had been allowed expression while their views were suppressed. They pointed to the fact that a motorcycle group, the Patriot Guard Riders (PGR) had been allowed inside 500-foot perimeter and formed a flag line. But the PGR stood on different footing than the plaintiffs. First, their silent participation did not constitute "protest" under the Nebraska law. More importantly, they had been invited to Caleb Nelson's funeral by his close relatives. Those distinctions doomed plaintiffs:

> In short, Phelps-Roper requests that this court create a rule that, because the WBC chooses to protest a funeral, all others already participating in or attending that funeral must likewise be considered "protestors" under the NFPL. We decline Phelps-Roper's request.

Plaintiffs further argued that they had not been allowed to display their messages effectively

because other members of the public blocked their signs and were not stopped by the police. They cited a recent Sixth Circuit case, *Bible Believers v. Wayne County*, 805 F.3d 228, 234 (6th Cir. 2015) (en banc) ("The scenario presented by this case, known as the 'heckler's veto' occurs when police silence a speaker to appease the crowd and stave off a potentially violent altercation.") The court disagreed that a heckler's veto had occurred in Nebraska-there was no evidence that police silenced WBC or selectively allowed the crowd to act in an unlawful manner at WBC's picket:

> The decedent's family and other private parties are under no obligation to listen to WBC's message and can take whatever lawful means they wish to avoid hearing or seeing Phelps-Roper. The First Amendment guarantees free speech, not forced listeners.

LINK

Standing: No Standing by County on Behalf of its Residents Where State Transportation Department Damaged Private Property

Board of Commissioners of Union County v. McGuinness, No. 81S01-1708-PL-529 (Ind. Aug. 15, 2017).

Reversing the state's Court of Appeals, the Indiana Supreme Court has denied standing to a county seeking declaratory judgment and injunction where the state's transportation department caused damage to private septic systems adjoining a highway construction project-thereby narrowing possible recourse for future such plaintiffs.

The Indiana Department of Transportation (INDOT) performed construction and repair work on a federal highway in Union County (County), negligently causing damage to adjoining private property septic systems. The County filed for declaratory judgment and an injunction against INDOT, seeking repair of the septic systems and an order that the highway and associated storm drain activity was INDOT's responsibility. The trial court granted INDOT's motion to dismiss on the basis that the County lacked standing. The Court of Appeals reversed, finding that declaratory judgment was appropriate for resolving highway "responsibility," and that the County could maintain an action for injunctive relief on behalf of its citizens under third-party standing doctrines, specifically public standing, associational standing, and *parens patriae* authority.

On appeal, the Indiana Supreme Court reversed. It cited provisions requiring that plaintiffs under the State's Declaratory Judgment Act "must be persons 'whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise . . . .'" and who have "a substantial present interest in the relief sought." While the Court of Appeals had found that the County's declaratory judgment allegations could be viewed as "akin to a dispute regarding ownership of or title to real property," the inference necessary to adopt that viewpoint was that the County had some "underlying property interest at issue"--and the County had provided no such evidence. It had identified INDOT alone as having control over the highway, and three local landowners who own adjacent property. Mere physical presence of the road within the County did not support the inference that the County had any responsibility for it, particularly since the federal highway might merely rest upon a public right-of-way, rather than government property acquired through condemnation or eminent domain proceedings:

> In short, by crafting its complaint to avoid any connection to U.S. Route 27, Union County has also managed to avoid pleading any personal interest in its own case. As such, the trial court did not err in dismissing Union County's declaratory judgment claim for lack of standing.

The County again alleged a third-party interest in the suit, namely that INDOT's actions "may impact other properties and may implicate a broader public health and safety concern for Union County, Indiana." Although a third-party interest would not support standing for declaratory judgment purposes, it could enable standing for equitable relief, such as an injunction, based on a number of principles which the County had raised below: public standing, associational standing and *parens patriae* authority, each of which the Supreme Court assessed.

It dispensed rapidly with the public standing exception, which allows one member of the public to assert a public right. The court held that such a right could only be asserted by a citizen, which the County was not. The associational standing exception likewise did not apply, because it must be asserted by an association on behalf of its members, and the County was not an association.

Finally, the court disallowed the County's *parens patriae* argument-an effort to act as "provider of protection to those unable to care for themselves." While it is well-settled law that a *state* may act a s *parens patriae* on behalf of its citizens, the Supreme Court held that "a county has no sovereign powers and cannot act as *parens patriae*, asserting the claims of its residents." (citation omitted).

LINK

*As **Mark Crandley of Barnes & Thornburg** in Indianapolis noted when bringing this case to our attention, the Indiana Supreme Court's view that a public health risk was not enough to confer standing on the County, and that only the individual property owners themselves would have standing, was a fairly limited view, "particularly since Indiana's standing rules are much more lenient than those of the federal courts." He also commented that the court's rejection of the County's invoking the "public standing" doctrine--holding that while a private citizen may use public standing, a government entity may not-"is a novel ruling that has not been Indiana lawprior to today."*

The case is likely to stand as an impediment for Indiana cities and towns seeking to remedy injuries to residents or property within their jurisdictions.

THIS JUST IN: How to Protect "Begging-Free Speech" -- Another Community Confronts Panhandling

A recent Pueblo, Colorado news article discusses the burden that the City Council--and others around the country--face as they attempt to respond to residents' complaints about panhandling, while not running afoul of *Reed*. There are many more questions than answers.

(IMLA will offer a session on panhandling ordinances-and a Model Panhandling Ordinance-at its Niagara Conference in mid-October. CLICK HERE for more information on the Conference).

LINK

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