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FEATURED CASE
Home Rule: Chicago's Ban on Puppy Mill Animals in City Pet Retailers is Valid Exercise of Home Rule and Doesn't Violate Commerce Clause

***Park Pet Shop, Inc. v. City of Chicago*, no. 15-3711 (7th Cir. Sept. 21, 2017).**

A Chicago ordinance banning the sale of "puppy mill" animals at retailer pet stores is permissible under Illinois Home Rule laws and does not violate the Dormant Commerce Clause by unfairly impacting out-of-state mills.

In 2014 the Chicago City Council acted to address concerns that pet stores in Chicago (City) sourced their animals from large mill-style breeders, which are notorious for deplorable conditions and abusive breeding practices. The City Council determined that banning the supply of puppy-mill pets would serve several important goals: (1) limit financial support to mill operators; (2) reduce the toll on consumers who purchase mill-bred pets with latent physical and behavioral problems; (3) boost placement of shelter pets; and (4) reduce the City's animal-care and euthanization costs.

The City Council adopted the following ordinance:

> (b) Restrictions on the retail sale of animals. A retailer may offer for sale only those dogs, cats, or rabbits that the retailer has obtained from:
>
> (1) an animal control center, animal care facility, kennel, pound or training facility operated by any subdivision of local, state or federal government; or
>
> (2) a humane society or rescue organization.
>
> Chicago, Ill., Code § 4-384-015(b) (2016).

The ordinance effectively prohibited large commercial breeders from supplying dogs, cats, and rabbits to pet retailers in the City (but did not limit their ability to sell to consumers directly). Two City pet stores and a Missouri dog breeder challenged the law on the grounds it exceeded the City's home-rule powers under the Illinois Constitution and violated the Dormant Commerce Clause. The district judge granted the City's 12(b)(6) motion, holding that the ordinance was a valid exercise of home-rule authority and did not unconstitutionally regulate interstate commerce.

The Seventh Circuit affirmed. As a home-rule municipality under the Illinois Constitution, the City "may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." Ill. Const. art. VII, § 6(a). Furthermore, a home-rule municipality may "exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive." Ill. Const. art. VII, § 6(i).

The Circuit found concurrent authority over animal control issues: "In Illinois, the problem of animal control, over-population, and the spread of rabies is both a local and statewide concern." In such case, the Illinois Constitution "expressly requires a clear statement from the state legislature to oust a municipality's home-rule power." Far from such an ouster, state law preserved municipal power to regulate animal care and welfare:

> Nothing in this Act shall be held to limit in any manner the power of any municipality or other political subdivision to prohibit animals from running at large, nor shall anything in this Act be construed to, in any manner, limit the power of any municipality or other political subdivision to further control and regulate dogs, cats or other animals in such municipality or other political subdivision provided that no regulation or ordinance is specific to breed.

The puppy-mill ordinance thus did not exceed the City's home-rule authority under the Illinois Constitution.

Dormant Commerce Clause analysis similarly did not support the plaintiffs' argument. The doctrine applies only to laws that discriminate against interstate commerce, either expressly or in

practical effect. That discrimination can fall within three broad categories- (1) facial and explicit; (2) non-explicit but nevertheless bearing more heavily on interstate commerce than on local commerce; or (3) facially nondiscriminatory but having "mild disparate effects." The ordinance clearly passed the first two of these tests: it did not expressly discriminate against out-of-state breeders, nor did it have a disproportionate impact those out-of-state providers.

The third category required review under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), which balances the burden on inter-state commerce against the nature and strength of the state or local interest at stake. Here, "the normal rational-basis standard is the governing rule." While it was possible to imagine that consumers might turn directly to breeders for their purebred pets, and would prefer to visit and buy from breeders located closer to the City rather than those farther away, "those breeders are as likely to be located in nearby Wisconsin or Indiana as they are in suburban Chicago or downstate Illinois."

The ordinance therefore fell into the category comprising state and local laws that "affect commerce without any reallocation among jurisdictions." It easily survived rational-basis review. "Chicago's justifications for the ordinance are plentiful and plausible. . . . These are unquestionably legitimate governmental interests, and it's rational to think that the puppy-mill ordinance will serve them." Affirmed.

DISSENT: Judge Hamilton disagreed with the Commerce Clause analysis. He argued that the Supreme Court "has not yet confined the balancing test under [*Pike*] as narrowly as my colleagues suggest. . . . The majority would apply Pike only when the challenged law gives "'local firms any competitive advantage over those located elsewhere.'"

He saw the balancing test differently, citing the Supreme Court's acknowledgement that federal courts "generally leave the courtroom door open to plaintiffs invoking the rule in Pike that even nondiscriminatory burdens on commerce may be struck down on a showing that those burdens clearly outweigh the benefits of a state or local practice." He went beyond that critique, restating an argument he has made in the past - that Pike should be abandoned, because "[t]he judiciary lacks the time and the knowledge to be able to strike a fine balance between the burden that a particular state regulation lays on interstate commerce and the benefit of that regulation to the state's legitimate interests.") He also saw the majority as imposing an unfairly strict interpretation of *Iqbal* and *Twombly* to find that plaintiffs had not plausibly alleged sufficiently burdensome effects on interstate commerce.

LINK

Bankruptcy: Section 1983 Settlement Agreement was Unsecured Nonpriority Claim under Detroit's Bankruptcy Process, Resulting in Only 13 Cents per Dollar

McKay v. City of Detroit, No. 17-1256 (6th Cir. Sept. 28, 2017).

Despite having a valid $42,500 settlement from three Detroit police officers in a Section 1983 action, the plaintiff held only a "general unsecured nonpriority claim" and was only entitled to 13 cents on the dollar under Detroit's bankruptcy plan.

Michael McKay (McKay) filed a §1983 suit against three City of Detroit (City) police officers and expected to recover from the City since it indemnifies its police officers. However, McKay settled his §1983 *after* the City declared bankruptcy. He presented his arbitration award of $42,500 in the City's bankruptcy proceeding. The key language in his settlement agreement became paragraphs 2 and 5 which states:

> The Filed Claim is deemed amended, modified and allowed as a general unsecured, nonpriority claim . . . . The Parties agree that any Settled Claim is a general unsecured, nonpriority claim, subject to the treatment provided for such claims under any chapter 9 plan for the adjustment of debts confirmed by the Bankruptcy Court.

After working through all the claims and complexities of the municipal bankruptcy the Bankruptcy Court confirmed Detroit's plan and treated "Other Unsecured Claims" as "Class 14" claims, resulting in just 13 cents on the dollar for McKay. The Bankruptcy Court did clarify however that "§1983 suits against officers in their individual capacities, as opposed to suits against officers in their *official* capacities, were not claims against the City" and could not be discharged or adjusted by the plan. McKay, whose claim was deemed an "Other Unsecured Claim" and having thus been awarded 13 cents per dollar via the bankruptcy, appealed the district court decision affirming the Bankruptcy Court's holding.

McKay argued that his suit - a § 1983 suit against officers - was an individual-capacity claim, not a claim against the City, and thus should not have been discharged by the bankruptcy. The Sixth Circuit disagreed, holding instead that the bankruptcy and district courts were correct in reasoning that McKay released his § 1983 claims against the officers by signing the agreement with the City. In exchange, as set forth in the agreement language of paragraphs 2 and 5, his claims were "deemed amended, modified, and allowed as a general unsecured, nonpriority claim against the City in its bankruptcy proceedings." The Court sympathized with the "many plaintiffs" like McKay and his counsel that faced uncertainty in how their claims would be treated in Detroit's bankruptcy and thus made a bargain. It closed by noting, however, that "courts are not in the business of overriding the terms of contracts when one party has settler's remorse." It affirmed the lower court.

LINK

Damages: Appellant's Failure to Raise Damages Issues at Trial or in Post-Trial Motion Forecloses Consideration on Appeal

Mosley Motel, Inc. v. Margalis, No. 16-4694 (6th Cir. Sept. 29, 2017).

Where a motel owner failed to properly raise the issue of damages at trial or promptly challenge the jury's $0 damages award in a post-trial motion, the appellate court could not consider the issue.

Julious Mosley owned the Mosley Motel of Cleveland, Inc. (Motel) - the Motel being the formal plaintiff herein - in the City of Wickliffe, Ohio (City). In 2014, without notice or a hearing before or after the action, the City shut down the Motel under a local ordinance prohibiting "habitability defects," which it found evidenced by mold, water leaks, the presence of vermin, and prohibited cooking appliances. The Motel filed suit against the mayor and City asserting a violation of its due process rights. The Motel won a jury trial. However, the jury awarded $0 in damages, a number the judge raised to $1 to nominal damages.

The Motel appealed to the Sixth Circuit, arguing the jury's failure to award damages constituted "reversible error."

The Circuit identified the Motel's primary claim as arguing that the jury verdict was contrary to the weight of the evidence. It noted however that its review of civil jury verdicts is limited to "errors adequately preserved in the trial court." Setting forth the rationale for such a rule, the Circuit noted that courts review trial judges' "assessment of the work of the jury," and thus the trial court's

exercise of discretion-- not the jury's action in and of itself. Looking at the record, the Circuit found the Motel failed to raise the issue of damages at trial or in a post-trial motion, thus the appellate court was left without anything to review. It affirmed the lower court on the grounds that it lacked the ability to entertain the appealed issue.

LINK

Education: City's Closure of Charter School due to Poor Academic Performance, While Leaving nearby School Open, Is Not Equal Protection Violation

Archer v. York City School District, No. 17-1223 (3dCir. Sept. 27, 2017).

In a "class of one" Equal Protection claim filed by a parents of students at a charter school which had been closed by the school district while a nearby charter school remained open, the poor academic performance at the closed school provided a rational basis for the closure.

In 2011 the Board of Directors (Board) for the York City School District (District) did not renew the charter for the New Hope Academy Charter School (New Hope), resulting in its closure. After New Hope exhausted remedies in the state system at all levels, students and parents from the school filed suit in district court alleging the refusal to renew the charter violated the Fourteenth Amendment's Equal Protection clause. The district court dismissed the case, prompting the parents and students to appeal.

The core of New Hope's claim relied on its argument that a nearby charter school, the Helen Thackston Charter School (Thackston), was similarly situated. The district court disagreed that the schools were similarly situated, but also held that even if they were so situated, the vast differences in performance - specifically the substantially poor performance of New Hope students - provided a rational basis for the District to treat them differently. The Circuit set out New Hope's task, namely that since the plaintiffs filed a "class of one" suit they had to prove New Hope and Thackston "were similarly situated charter schools that the [District] treated differently, even though there was no rational basis for doing so." The Circuit agreed with the lower court that there is "no factual dispute" that Thackston's test scores were better than New Hope's and found that this alone was a sufficient rational basis to treat the two schools differently. The Circuit did not go further in its analysis, deeming it unnecessary since this issue was definitive. It affirmed the lower court.

LINK

Search and Seizure: Good Faith Exception Applies to Pre-*Birchfield* Warrantless Blood Draws

Nebraska v. Hoerle, No. S-16-1003 (Neb. Sept. 22, 2017).

The Nebraska Supreme Court has given a "thumbs up" to a pre-*Birchfield* warrantless blood draw, holding that because the officer acted reasonably and the state's implied consent statute was not clearly unconstitutional at the time of the defendant's arrest, the defendant's motion for a new trial was properly denied by the district court.

Jared Hoerle (Hoerle) was convicted of a DUI the day before the Supreme Court issued its opinion on warrantless blood draws and implied-consent laws in *Birchfield v. North Dakota*, ___ U.S.___, 136 S. Ct. 2160 (2016). The State of Nebraska (State) initially charged and convicted Hoerle after he crashed his motorcycle and was taken to a hospital. A responding officer observed clues that Hoerle may have been impaired and, based on the results of an earlier breath test, determined that Hoerle needed to submit to a blood test at the hospital. After being read the state's implied-consent advisory, Hoerle submitted to a blood test. The test revealed that Hoerle was well over the legal limit and he was ultimately convicted of a DUI. A warrant was never sought for the blood test because, as the officer later testified, his knowledge at the time was that he did not need one.

Hoerle moved for a new trial arguing, among other things, that the introduction of the blood test was an error because he had not voluntarily submitted to it and it had been obtained without a warrant. The court overruled his motion and imposed a sentence. Hoerle appealed and the State petitioned to bypass appellate review and go directly to the Nebraska Supreme Court.

The Nebraska Supreme Court noted that *Birchfield* did not create a categorical rule that consent given after threat of prosecution is per se involuntary. Instead, *Birchfield* indicates that voluntariness is determined by the totality of the circumstances. Consequently, a warrantless blood draw based on actual consent-even when a driver is incorrectly advised that they may face criminal penalties for not submitting-is not expressly precluded by *Birchfield*. Instead, the exclusionary rule applies. Because the implied-consent statute was not clearly unconstitutional at the time of Hoerle's arrest, it was objectively reasonable for the arresting officer to rely on a State statute that had been constitutional at the time of the arrest.

LINK

Sentencing: Maine Statute Imposing Minimum 10-Year Sentence for Accessing Child Pornography after Prior Conviction for Unlawful Contact Withstands Due Process and Eighth Amendment Challenge

United States of America v. Blodgett, No. 17-1034 (1st Cir. Sept. 27, 2017).

In a question of first impression, the First Circuit has upheld a Maine law imposing a minimum 10-year sentence for accessing child pornography after a prior conviction for unlawful contact; the court found the lengthy term was supported by a rational basis and was not grossly disproportionate to the crime.

Douglas Blodgett (Blodgett) was arrested and convicted in Maine in 1997 of unlawful sexual contact. In April 2016 Blodgett was charged with and convicted of one count of accessing child pornography with the intent to view it. At the sentencing hearing, the judge ruled that a statute prescribing a ten-year minimum and a twenty-year maximum sentence if an individual accessed child pornography with intent to view it and has a prior state conviction pertaining to "aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor" applied in the case. Blodgett appealed his sentence, alleging the sentence violated the Due Process Clause and the Eighth Amendment, thus bringing an issue of first impression to the Circuit.

The court tackled the Due Process Clause question first, noting that "[o]nce a person has been convicted . . . any punishment prescribed is consistent with the Due Process Clause as long as Congress had a rational basis for its choice of penalties and the particular penalty imposed is not based on an arbitrary distinction." The Circuit found Blodgett failed to meet the steep burden

imposed by the low-level rational review because the legislative history made clear that Congress enacted the statute to address judges sentencing recidivist defendants too lightly in relation to the significant danger posed by "all levels for the child pornography distribution chain" and the "dangers" actors in the chain pose. Given that deterrence of recidivism is recognized as a legitimate basis for increased punishment, Congress had a rational basis for it, and Blodgett's appeal failed.

As for the Eighth Amendment challenge, the Court handled it in short order, beginning with the telling statement that the Amendment "does not mandate strict proportionality between crime and sentence but rather forbids only extreme sentences that are grossly disproportionate to the crime." The Court concluded a ten-year minimum sentence is not irrational in and of itself, nor is it a *grossly disproportionate* sentence for those that are convicted of accessing child pornography when they have already been convicted of sexual predation involving a child. Blodgett thus lost this argument as well.

LINK

Speech: Empirical Support Not Always Required for Time, Place, and Manner Restrictions

Luce v. Town of Campbell, No-152627 (7th Cir. Sep. 22, 2017).

Despite the absence of empirical evidence demonstrating a danger to passing motorists, an ordinance banning signs, banners and flags from a town's three highway overpasses was deemed content-neutral and a reasonable time, place and manner restriction.

More than 25,000 vehicles a day travel along Interstate 90 at 65 miles per hour as it passes through the Town of Campbell, Wisconsin (Town). Members of the local Tea Party decided to hang "HONK TO IMPEACH OBAMA" signs on the Town's pedestrian overpass, resulting in numerous issues with traffic back-up. This eventually led the Town to enact an ordinance banning all signs, flags, and banners other than traffic control information from the Town's three I-90 overpasses and within a 100-foot buffer zone from each overpass.

When the Town's police force began to hand out citations and escort demonstrators off the pedestrian overpass, the Tea Partiers responded by making video recordings and posting them on a website. The Town's police chief, Kelemen, particularly did not take kindly to these videos and decided to "mess with" several Tea Party members by posting their names and email addresses on several porn websites catering to gay men. Ultimately, Kelemen resigned because of this misconduct and was prosecuted under a state statute for unlawful use of a computerized communication system.

Plaintiffs brought suit under Section 1983 arguing that the First Amendment permitted them to carry and place banners and signs everywhere in the Town. The district court disagreed and granted summary judgment for the municipality. Plaintiffs also brought suit against the Town's police chief, who they argued was acting under the color of law when he performed his misdeeds against the Tea Partiers. The district court also disagreed, pointing out that all the information Kelemen had used was available to the general public. Further, the court added that acting as a vigilante was not a part of his responsibilities as a police officer.

On appeal, the Seventh Circuit emphasized that Kelemen's misbehavior significantly impacted his credibility as a witness, particularly since much of the reasoning behind the ordinance's enactment came from Kelemen's testimony. Despite Kelemen's untrustworthiness however, the

court upheld the ordinance without seeking additional evidence to justify its enactment, deeming it to be a proper time, place, and manner restriction. The Circuit pointed to several cases, such as *Metromedia* and *Rock against Racism* where empirical support for a restriction was not necessarily required. Instead, the judges simply relied on their own experiences and common sense to determine whether or not a restriction's justification made sense, noting:

> It does not take a double-blind empirical study, or a linear regression analysis, to know that the presence of overhead signs and banners is bound to cause some drivers to slow down in order to read the sign before passing it.

The Seventh Circuit affirmed the judgments of the district court except as to the lower court's rejection of plaintiffs' challenge to the 100-foot buffer zone. With respect to that issue, the judgment was vacated and remanded.

LINK

Speech: Reasonable Deadlines Required for School Board's Public Comment Policy

Barrett v. Walker County School District, No. 16-11952 (11th Cir. Oct. 2, 2017).

The Eleventh Circuit has deemed a school district board's public comment period to be a limited public forum and required the board to re-draft its policy to require that the Superintendent responsible for approving speakers act in a reasonably expeditious manner.

Jim Barret (Barrett), a seventh- and eighth- grade social-studies teacher employed by the Walker County School District (District) filed for an injunction against the District's policy governing public comment at its meetings. To speak at a Walker County Board of Education (Board) meeting, the District requires a member of the public to go through several steps, the first of which is controlled by the District's Board of Directors. Anyone wishing to speak must first meet with the Superintendent of the School Board, who is responsible for reviewing the potential speakers. Next, the Superintendent must investigate the matter and "report back" to the potential speaker within ten days after the initial meeting. If the Superintendent rejects the speaker's request, but the speaker is unsatisfied and still wishes to speak at the Board hearing, he or she can again request to do so, provided the renewed request is at least one week before the Board meeting.

If the entire process is not completed at least one week before the Board meeting, the citizen may not speak at the meeting. In other words, if the Superintendent delays setting up the second meeting, a member of the public cannot finish the rest of the steps in time to be permitted to speak.

As the president of the Walker County Association of Educators (WCAE), Barrett had participated at Board meetings numerous times and was familiar with their process, contending that despite the policy's existence, he had never personally been subjected to it. Things only changed, he asserted, when his comments were no longer flattering to the Board-specifically when he, in his capacity as president of WCAE, criticized the District's new grading policy. He claimed the Superintendent was given unbridled discretion in his ability to control the timing of his initial meetings with potential speakers and filed for an injunction.

The district court granted Barrett's injunction and enjoined the Board's public-comment policy, letting Barrett's other claims proceed to discovery. The Board appealed the injunction.

The Eleventh Circuit determined that the school board's public comment period was a limited public forum-meaning, one where the government may be permitted to limit the topics on which speech may be rendered or the people who may speak (or in some cases both). The court concluded that while there was a time limit on the Superintendent reporting back, there was no time limit on scheduling the *initial* meeting. Thus, the Superintendent had "unbridled discretion" in setting the meeting and effectively limiting speech at the board meeting.

The court, however, noted a remedy: "If Defendants wish to continue requiring potential speakers to meet with the Superintendent before submitting a request to speak, Defendants must impose a reasonable time limit within which the Superintendent must respond to the speaker's request, schedule the initial meeting, and hold the initial meeting."

LINK

Statute of Limitations: Eighth Circuit Confirms that Limitations Period for Data Privacy Protection Act Begins at Occurrence of Unlawful Access, Not Discovery of Access

Shambour v. Carver County, No. 16-1425 (8th Cir. Sept. 25, 2017).

In a decision varying from other Circuits' interpretations, the Eighth Circuit has confirmed its view that the statute of limitations under the Data Privacy Protection Act begins upon the improper data access, not the discovery of that improper access.

In 2013 Angela Kay Shambour (Shambour), a former law enforcement officer, discovered through an audit that her driver's license record had been accessed 59 times between 2003 and 2011. She brought suit against various Minnesota individuals, cities, counties, and law-enforcement entities, alleging the access violated the federal Data Privacy Protection Act (DPPA). She alleged there were no legitimate lawful bases for which her information was accessed, and theorized it had to do with romantic interest or how her appearance had drastically changed since she left law enforcement. The district court held many of the claims were time-barred by the statute of limitations and dismissed them. The court also held that the claims after the time-barred date were sufficiently pled against the individual defendants, though not for the supervisors, the cities or counties, or the state Driver and Vehicle Services Department since Shambour failed to sufficiently allege these supervisor, department and entity defendants provided access for any reason other than law-enforcement purposes. Shambour thus settled with the individual defendants and dismissed some claims, but appealed the lower court's dismissal of the claims against the supervisor, department and entity defendants.

Shambour argued the dismissals against these defendants based on the statute of limitations was erroneous because the statute was improperly calculated by the lower court. She argued the limitations period should have started running when the unlawful record access was *discovered*, rather than when the unlawful access *occurred*. The Circuit had no trouble with the argument, noting it previously held in *McDonough v. Anoka County*, 799 F.3d 931 (8th Cir. 2015), that the statute of limitations for DPPA claims begins when the violations occur and, being bound by that previous panel decision, the panel evaluating Shambour's case refused to overrule the holding. The Circuit notably cited only Eighth Circuit precedent, indicating other circuits calculate the statute of limitations period for DPPA claims differently. The lower court decision was affirmed.

LINK

Voting: Pennsylvania Law Does Not Require Removal of Incarcerated Felons from Voter Rolls

American Civil Rights Union v. Philadelphia City Commissioners, No. 16-3811 (3d Cir. Sept. 25, 2017).

Rebuffing an effort to disenfranchise Pennsylvania prisoners by a nonprofit whose mission is to "clean" voter rolls, the Third Circuit has confirmed that the National Voter Registration Act prohibits removal of names from voter rolls unless state law so provides-and Pennsylvania law does not require such removal, because voting rights are restored once the felon's incarceration is over.

The American Civil Rights Union (ACRU), a non-profit chartered to "litigate[] to enforce clean voter registration rolls," sued the Philadelphia City Commissioners, alleging it failed to purge the city's voter rolls of voters currently incarcerated who, therefore, were ineligible to vote. After issuing a letter threatening to sue and then meeting with the Commissioners, the ACRU filed suit alleging the City violated the National Voter Registration Act (NVRA) because it "requires [the City Commissioners] to make a 'reasonable effort to remove the names of ineligible registrants from the official lists of eligible voters,' including voters ineligible by virtue of felony conviction." The district court disagreed with the allegation, holding the ACRU "grossly misrepresented" the language of the NVRA and issued a Rule to Show Cause as to why the motion should not be stricken and why the Court should not issue sanctions. The ACRU said it may have incompletely represented the statute, but that reading the statute in conjunction with the Help America Vote Act (HAVA) as it argued should be done, its argument was accurate. With this the district court granted the Commissioner's motion to dismiss, prompting an appeal.

The Circuit began with a brief summary of the relevant provision of the NVRA, specifically that it limits states' ability to remove individuals from the voting rolls once properly registered, except under specific scenarios--the relevant one in this case being when the person becomes ineligible to vote under state law. The Circuit noted that Pennsylvania law only limits felons' right to vote while they are incarcerated, after which they can vote. It then noted the HAVA does require states to do their best to maintain voter rolls, commanding that "states may not remove individuals from the voter rolls unless they do so in accordance with the provisions of the National Voter Registration Act."

The question presented was thus whether the NVRA requires the Commissioners to purge voter rolls of individuals who are currently incarcerated for a felony conviction in Pennsylvania. The court disagreed with ACRU's conclusion that the law so requires. The Circuit found the answer was clear and unambiguous in the NRVA statute because it provides that states may, but are not required, to remove registrants from the voter rolls based on a criminal conviction. The Court found this consistent with the NRVAs purpose of making sure voters do not get removed from registration rolls for improper reasons and consistent with the legislative history of the NRVA, gleaned from the associated Senate Report.

As for the ACRU arguments, the first relied on a district court case from the Western District of Missouri to assert the NRVA required states to make "reasonable efforts" to remove ineligible voters, but the Court easily rejected it, finding the argument "not only mangles the statute beyond recognition, it also misrepresents the non-precedential case it relies on." The ACRU's second argument, that the HAVA, when read in conjunction with the NRVA, requires ineligible felons to be removed from voter rolls, fared no better because the HAVA contains no private right of action and thus ACRU would have no ability to file suit under that statute. Ultimately, the court held that "the very thorough and thoughtful opinion of the District Court is clearly correct and entirely in keeping with the "whole law" and the "object and policy" of the NVRA. It is the ACRU's interpretation of the NVRA, not the Commissioners', that most threatens the goals of the statute

and the integrity of the vote."

LINK

THIS JUST IN: FEDERAL PREEMPTION OF AUTONOMOUS VEHICLE REGULATION?

While it is early in the process, some observers are already raising concerns that recent actions in the House and Senate evidence an intent to restrict or eliminate the role of state and local government in regulating autonomous vehicles. Issues include access to data from self-driving cars and the import of words such as "performance" -- which is deemed to be solely subject to Federal oversight and could inhibit the applicability of local traffic laws to autonomous vehicles.

The story appears in RouteFifty.com; many thanks to Osceola County Attorney Andrew Mai for flagging it.

LINK

IMLA

www.imla.org
51 Monroe Street
Suite 404
Rockville, MD 20850
202-466-5424

