International Municipal Lawyers Association
2024 Code Enforcement Program
Case Law Update

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HOMELESS









CITY OF GRANTS PASS V. JOHNSON

CITY OF GRANTS PASS V. JOHNSON

PROBLEM

- Homeless



ACTION

- Ordinance that allows people to sleep but
- Cannot use sleeping bags, etc.
- 9th Circuit held ordinance violated the 8th Amendment



CITY OF GRANTS PASS V. JOHNSON

SCOTUS

- Not allowing people to use blankets and pillows is not cruel and unusual punishment
- Cruel means
  - Disemboweling
  - Burning alive
  - Anything that causes terror, pain or disgrace

SCOTUS

- Unusual means
  - Punishments that were no longer used, such as disemboweling, burning alive, etc.
- Did not rule on whether a person could be punished for their status or whether the 8th Amendment only applied to crimes





ANIMALS



BRODANEX V. TOWN OF ST. JOHN

BRODANEX

PROBLEM

- Broadanex owned a dog training business
- Complaints: Shooting dogs with blanks and beating them with whips
- Animal control found unclean conditions and injured animals

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ACTIONS

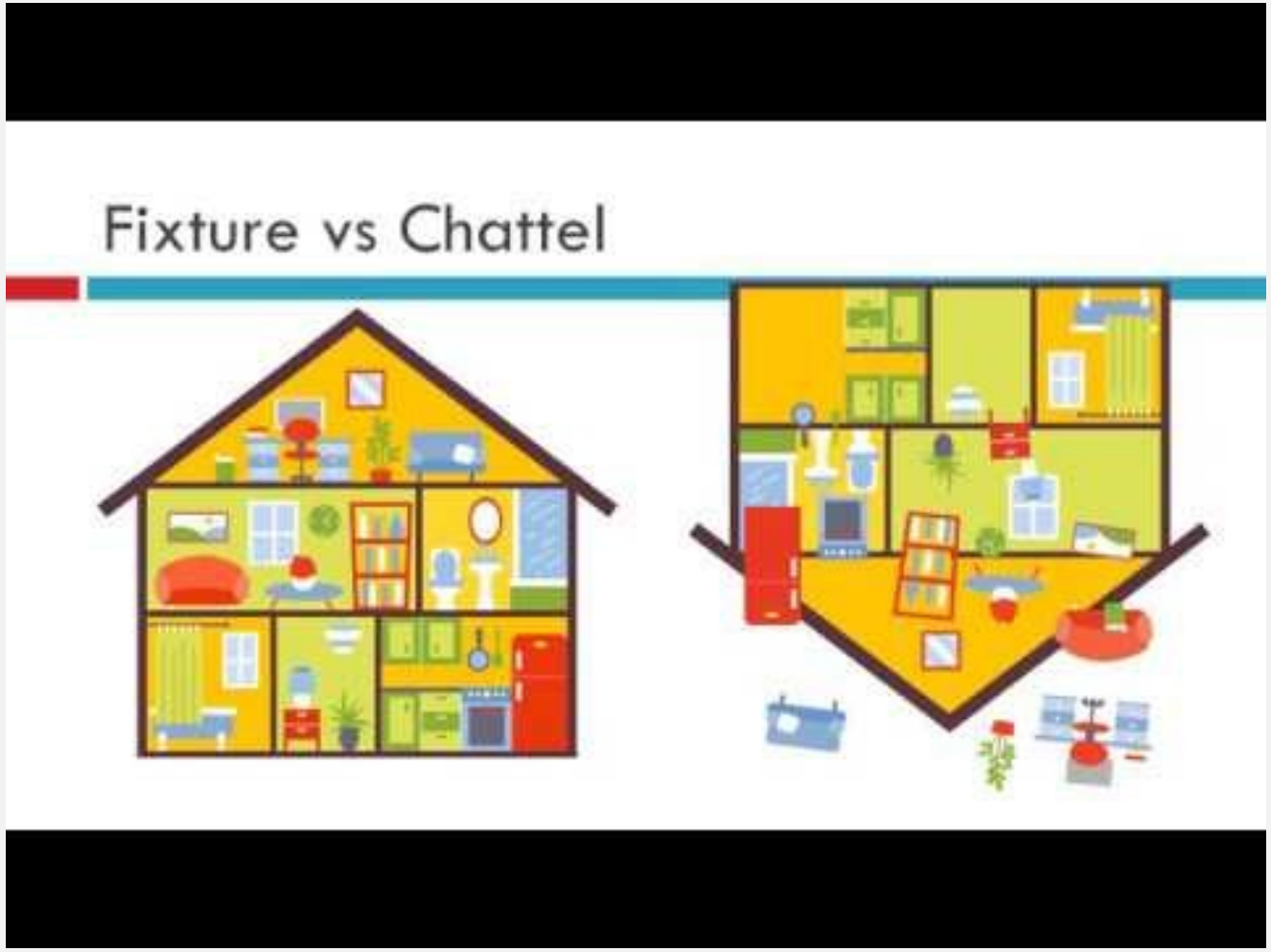
- Warrants were obtained
- Charges were animal torture and animal cruelty
- Trial court suppressed the evidence because landlord did not have power to consent to the search (poisonous tree)
- Brodanex sued under Fourth Amendment

BRODANEX

7TH CIRCUIT

- Granted city summary judgement
- No evidence that a final policy maker authorized the warrant request

CHATTELS



NAT'L FED'N OF THE BLIND V. CITY OF ARLINGTON





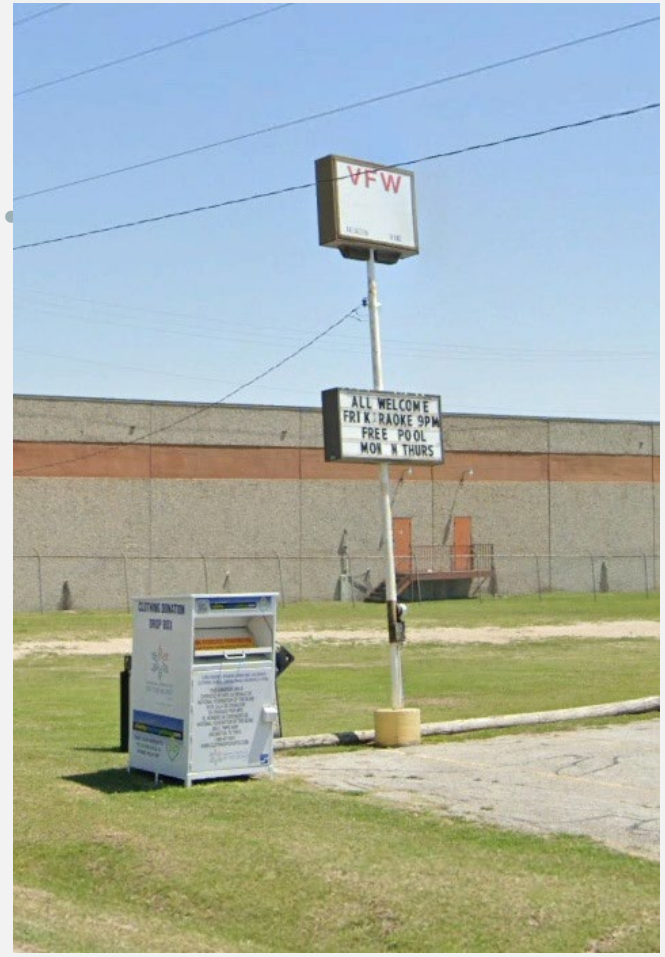
NAT'L FED'N OF THE BLIND V. CITY OF ARLINGTON

PROBLEM

- Donation boxes



NAT'L FED'N OF THE BLIND V. CITY OF ARLINGTON



ACTION

- Ordinance requires permit
- Regulates
  - Color
  - Signage (operator's contact info)
  - Size
  - Upkeep
  - Setback
- Restricted to 3 zones

NAT'L FED'N OF THE BLIND V. CITY OF ARLINGTON

5TH CIRCUIT

- Facial 1st Amendment Challenge
- Ordinance applied to all donation boxes, so content neutral – intermediate scrutiny

5TH CIRCUIT

- Substantial government interest
  - Community aesthetic
  - Orderly appearance of developed property
  - Accountability of box operators
- Alternative avenues of communication
  - 7,138 acres

NAT'L FED'N OF THE BLIND V. CITY OF ARLINGTON

- Solicit donations by:



At-home pickup



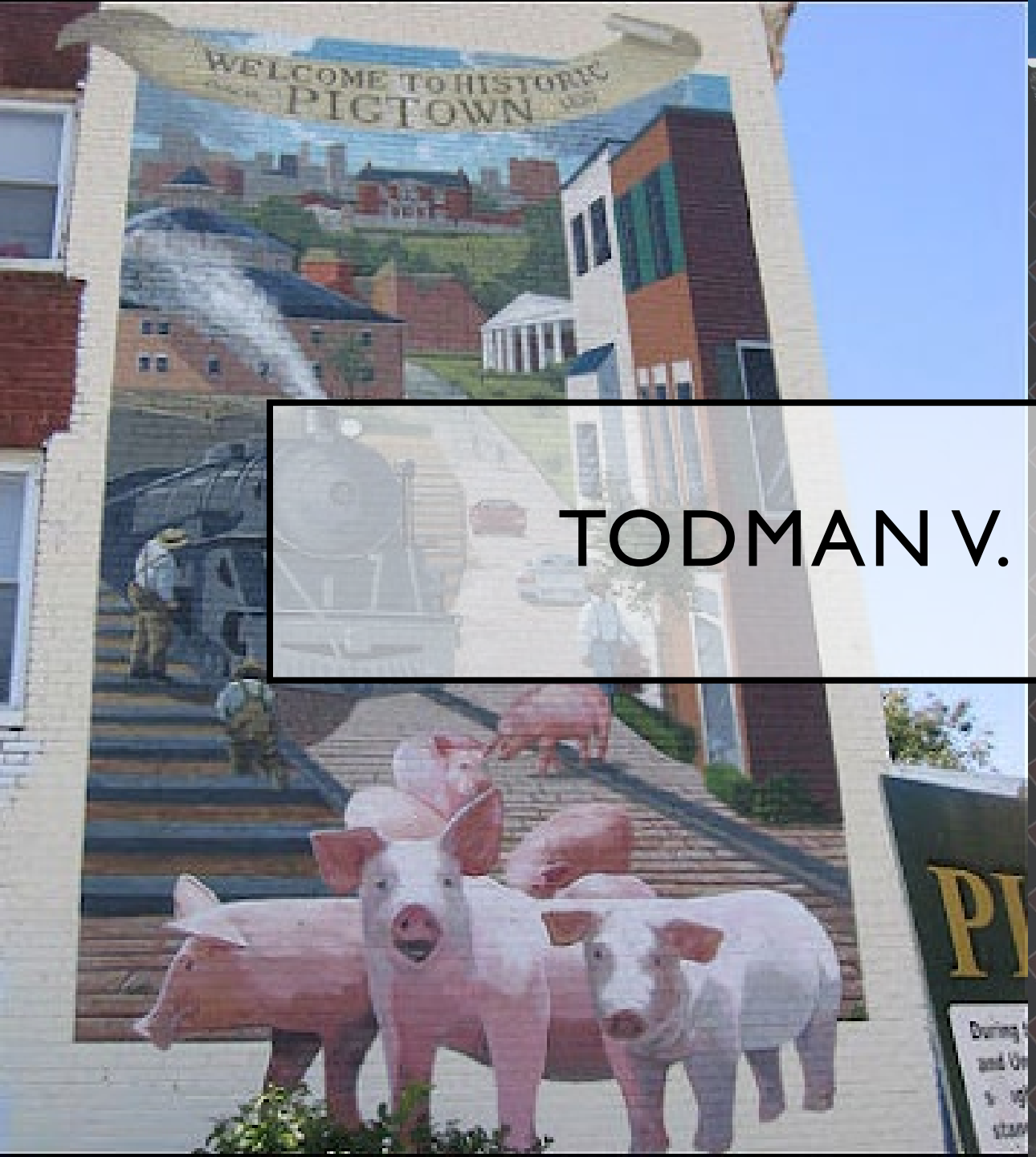
Church drop-off



Magazine inserts



Store front drop-off





TODMAN V. BALTIMORE

TODMAN V. BALTIMORE

PROBLEM

- Evictions



ACTION



TODMAN V. BALTIMORE

PROBLEM

- Evictions
- 7000 evictions in 2006
  - 3,000 tons of materials
  - $800,000 a year

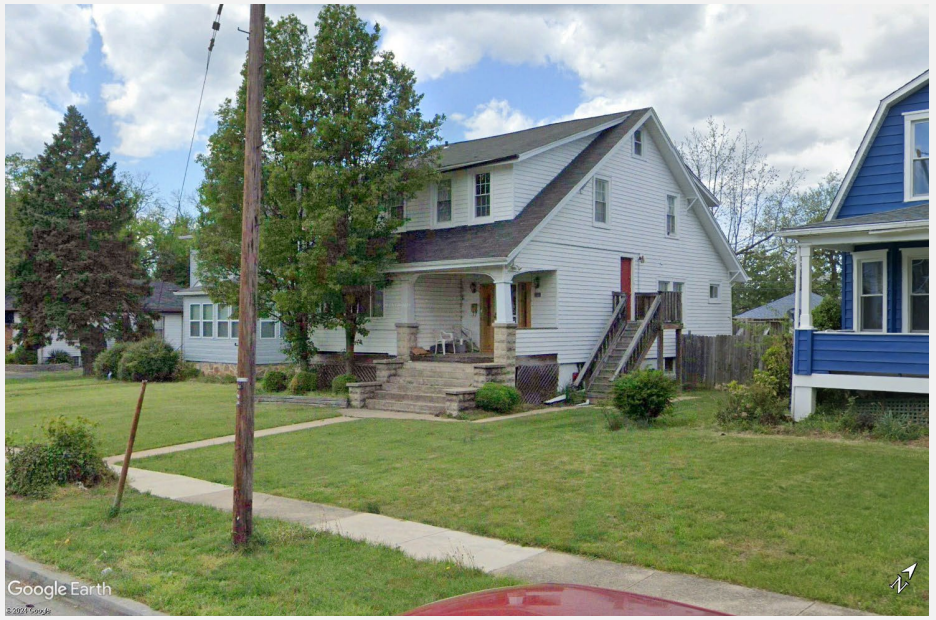
ACTION

- Abandonment Ordinance
  - No reclamation period
    - Day of eviction, day of abandonment
  - Warning required for behind-on-the-rent tenants
  - Warning not required for holdover tenants

TODMAN V. BALTIMORE

FACTS

- Todmans told to leave multiple times
- Notice to quit tenancy hearing
  - Parties compromised to a stay of judgment until July 16
    - Two weeks after July 16, (August 2nd) sheriff would evict



TODMAN V. BALTIMORE

FACTS

- Todmans told to leave multiple times
- Notice to quit tenancy hearing
  - Parties compromised to a stay of judgment until July 16
    - Two weeks after (August 2nd) sheriff would evict

FACTS

- Landlord asked sheriff for warrant of restitution (eviction) 2 days early
- Warrant mailed to Todmans
  - No eviction date
  - Instructions on abandonment hidden and confusing
- Sheriff arrived on July 31st

TODMAN V. BALTIMORE

FACTS

- Eviction occurred when Todmans were at work
  - Let mom take meds, phone, and charger
- Landlord texted Mr. Todman:
  - As of this Morning everything in and on the property are my possessions per Balt city law.
  - Motorcycle, clothes furniture, electronics, kitchen stuff, family photos, cremains



TODMAN V. BALTIMORE

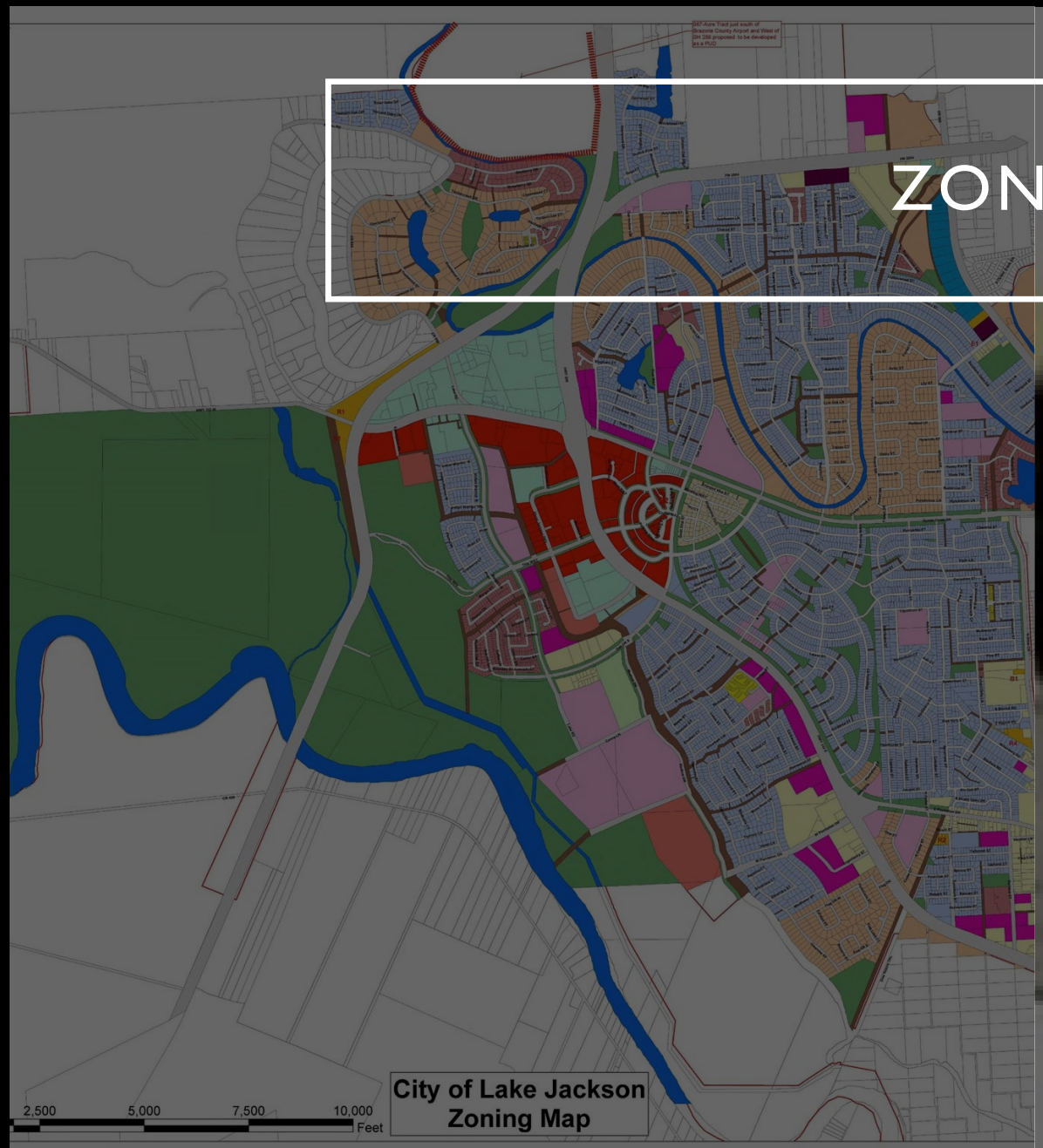
4TH CIRCUIT

- 14th Amendment requires notice
  - None of pre-eviction notices warned of abandonment
  - Warrant's warning in small print and buried in paragraphs for behind-on-the-rent tenants

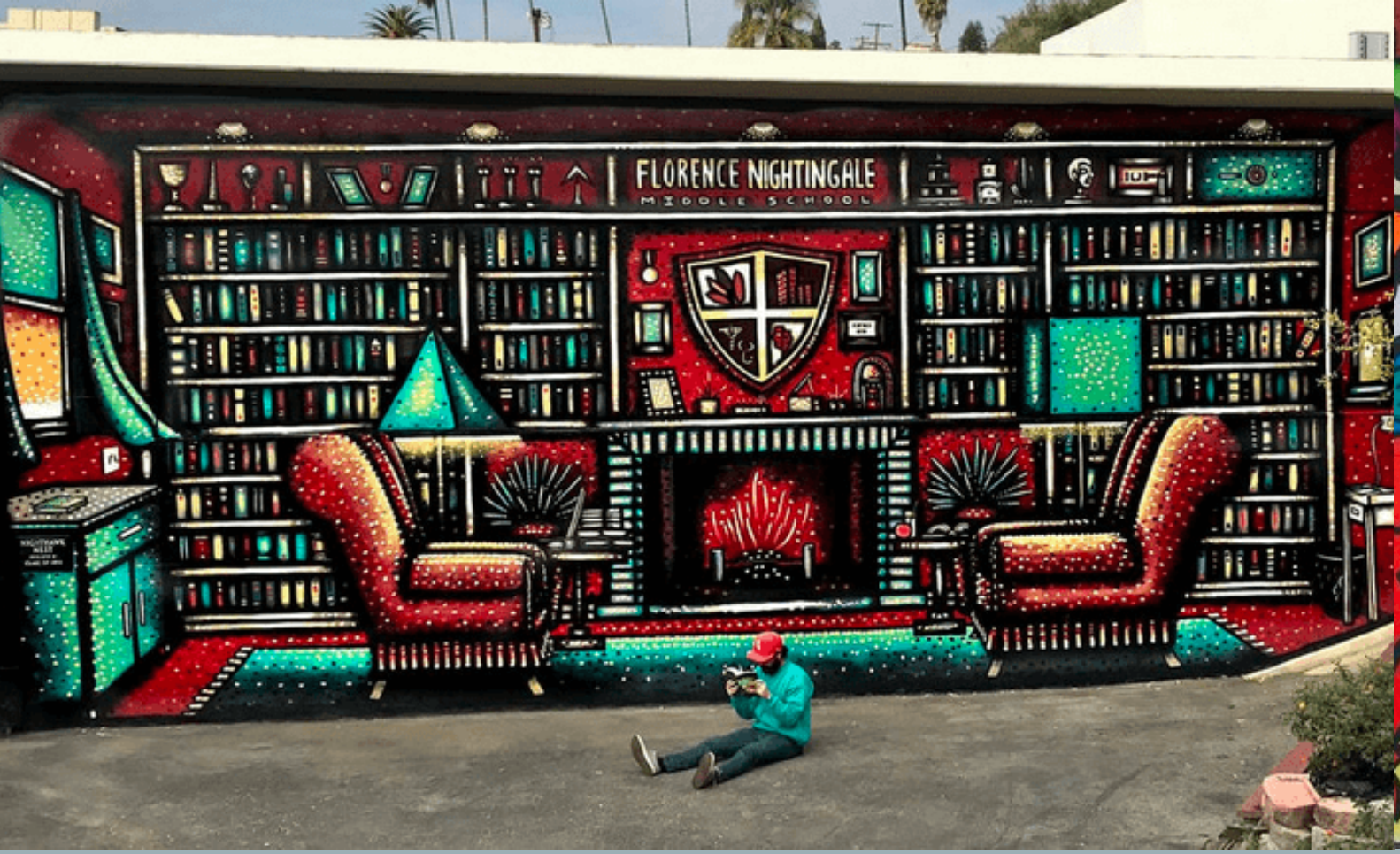
4TH CIRCUIT

- 14th Amendment requires hearing
  - No pre- or post-deprivation hearing
- *Monell* liability
  - City liable because ordinance was direct causal link to 14th Amendment violation
- $36,000 in direct damages and $150,000 emotional distress

ZONING









OAKLAND TACTICAL SUPPLY V. HOWELL TWP.

OAKLAND TACTICAL SUPPLY V. HOWELL TWP.

PROBLEM

- Oakland Tactical wanted to open a long-range shooting site
- But not where Oakland wanted

ACTIONS

- City denied the zoning change
- City created a zone for shooting ranges

OAKLAND TACTICAL SUPPLY V. HOWELL TWP.

NEW 2ND AMENDMENT ANALYSIS

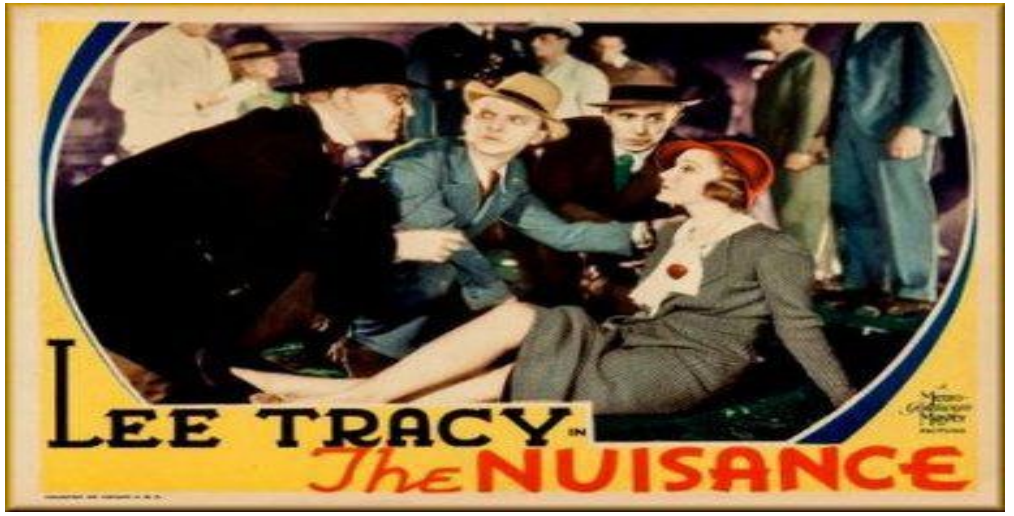
- Is the company's desired conduct covered by the 2nd Amendment
- Is the city's ordinance consistent with US history of firearm regulation
- *New York State Rifle v. Bruen*

6TH CIRCUIT

- Yes – If you are allowed to shoot, you are allowed to learn to do it well
- No – No right to train at a specific place or distance
- No – Historically, the 2nd Amendment's intent is for self-protection at confrontation. Proficiency at 1000 yards is not necessary.

NUISANCE AND DEMOLITION











SANIMAX USA V. CITY OF SOUTH ST. PAUL

SANIMAX USA V. CITY OF SOUTH ST. PAUL

PROBLEM

- Rendering plants and tanneries emanate offensive odors
- People complain

ACTIONS

- New ordinance regulated smells if they occurred in a new zone
- A business was designated a SOG if
  - It generated 7 verified odor complaints within 6 months; and
  - It generated a ratio of odor units using an olfactometer

SANIMAX USA V. CITY OF SOUTH ST. PAUL

SOG REPERCUSSIONS

- If the business did not develop an odor management plan, it would receive citations
- Sanimax received 20 citations and
- $35,000 in fines

8TH CIRCUIT

- Sanimax sued under equal protection
  - Claiming it was treated differently from similar businesses
- Burden was to prove intentioanly treated differently and no rational basis for doing so
- The comparators were similar, except that they only generated 7 citations combined

ITUAH V. CITY OF PHILADELPHIA







ITUAH V. CITY OF PHILADELPHIA

PROBLEM

- Ituah's building had a bulging wall
- Building was occupied

ACTIONS

- City filed for a restraining order and injunction so that City could demolish
  - Bracing nailed to the ground
  - Third floor without a permit – increased weight load on bad wall
  - Inspector testified potential for collapse
- Court ordered building to be demolished

ITUAH V. CITY OF PHILADELPHIA

LAWSUIT

- Takings Clause – 5th Amendment

3RD CIRCUIT

- Property not taken when government acts due to its right and obligation to ensure public safety





FIRST FLOOR LIVING V. CITY OF CLEVELAND

FIRST FLOOR LIVING V. CITY OF CLEVELAND

PROBLEM

- First Floor and Lush Designs bought property after it was condemned
- Both started renovation without permits

ACTIONS

- City sent noticed to First Floor and Lush
- City posted notice on the buildings
- City searched for permits, found none, and demolished

FIRST FLOOR LIVING V. CITY OF CLEVELAND

6TH CIRCUIT

- Both parties were provided adequate notice for 14th Amendment
- If property is sold, City does not have to re-start the notification process
  - That would unduly hamper city's interest in demolishing blighted buildings





CLUBS AND RESTAURANTS







ASSOC. OF CLUB EXEC. V. CITY OF DALLAS

BRUCE V OGDEN CITY CORP

PROBLEM

- Bruce's property:
  - Had too many buildings
  - Accumulations of junk
  - Fire
- Bruce needed to file paperwork to conform to new ordinance
- Bruce did not file paperwork

ACTIONS

- Bruce claimed City down-sized without giving notice and ability to contest the notice
- Bruce also claimed the down-sizing was a taking

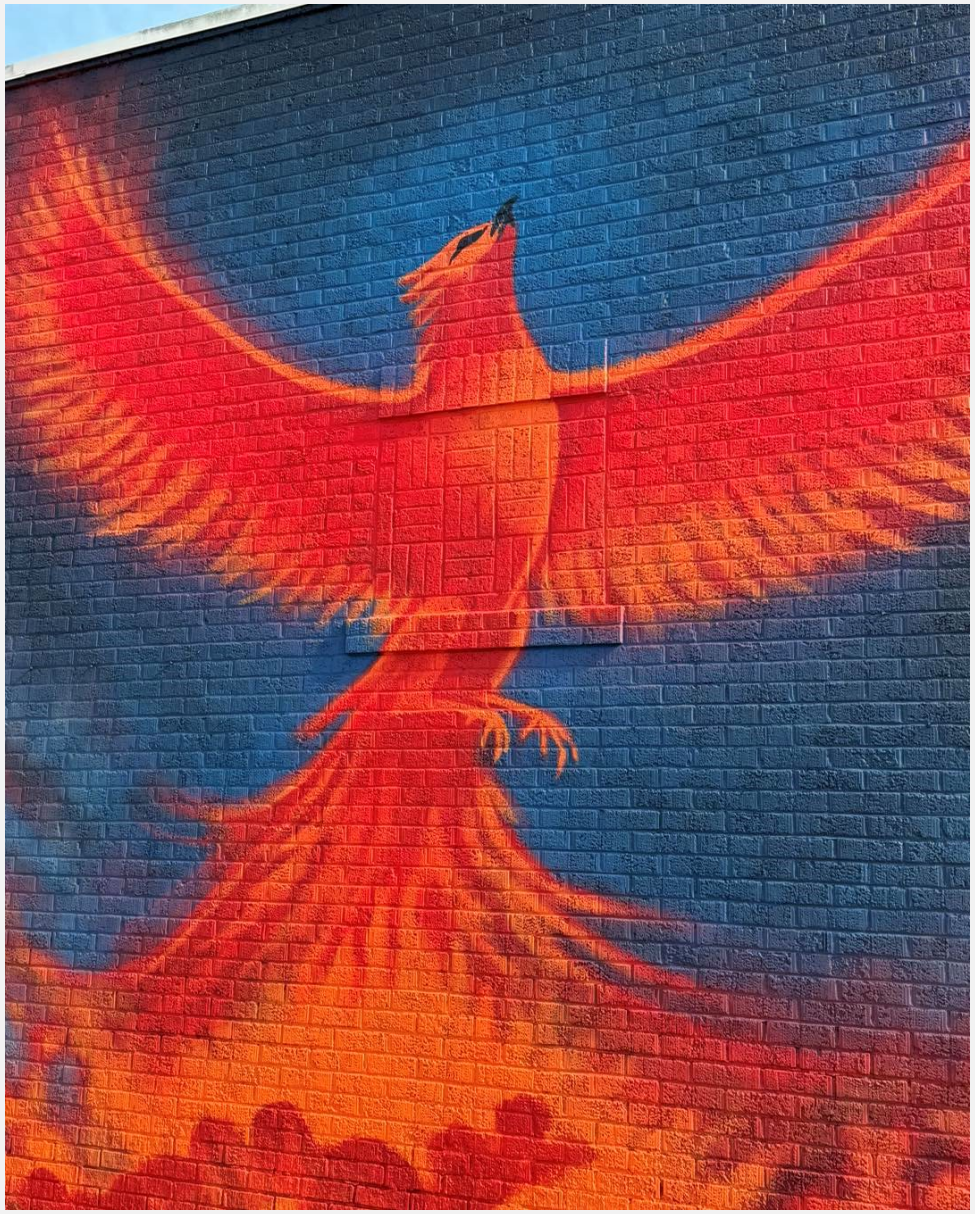
BRUCE V OGDEN CITY CORP

10TH CIRCUIT

- The down-sizing ordinance was passed in 2009.
  - 2009 was when Bruce's injury began
  - 4-year SOL had run

10TH CIRCUIT

- The focus isn't on the small amount of property that received the governmental action
- Focus is on the whole property
- Bruce not deprived of the economic benefit of the whole lot



ASSOC. OF CLUB EXEC. V. CITY OF DALLAS



ASSOC. OF CLUB EXEC. V. CITY OF DALLAS

PROBLEM

- Violent crime rates between 2 a.m. and 6 a.m.

ACTIONS

- City passed ordinance mandating clubs close between 2 a.m. and 6 a.m.
- Association filed for an injunction
  - Likelihood Association would prevail
  - Will Association suffer an irreparable injury
  - Injury outweighs reason for ordinance
  - Granting injunction in public interest

ASSOC. OF CLUB EXEC. V. CITY OF DALLAS

5TH CIRCUIT

- To determine likilhood to prevail, court had to analyze ordinance as if lawsuit had been filed
- Used secondary effects precedent
- City had data that proved there was an increase in violent crime between 2 a.m. and 6 a.m.

5TH CIRCUIT

- City could reasonably believe that there was a link between men's clubs and crime
- Reducing crime is a substantial government interest
- And 20 hours a day was plenty





DIAMOND S.J. ENTER. V. CITY OF SAN JOSE

DIAMOND S.J. ENTER. V. CITY OF SAN JOSE

PROBLEM

- SJ booked Lucci
- Night of show, manager cancelled
- Mayhem, including gun shots
- There was video

ACTIONS

- City revoked entertainment permit due to nuisance violations
- SJ appealed twice
- SJ claimed facial violation of 1st Amendment

DIAMOND S.J. ENTER. V. CITY OF SAN JOSE

9TH CIRCUIT

- Facial challenge to licensing procedure
  - Ordinance cannot give unbridled discretion to a city official
- Not unbridled
  - Reasonable person standard
  - Nuisance must be substantial and unreasonable
  - Behavior must jeopardize health, safety, or welfare

9TH CIRCUIT

- Also administrative review and appeal makes sure action was objective



RED DOOR
ASIAN BISTRO V. CITY OF FORT LAUDERDALE



RED DOOR ASIAN BISTRO V. CITY OF FORT LAUDERDALE

PROBLEM

- Red Door bought old restaurant
- Renovated
- Installed zero clearance kitchen hood
- Building code wants 18 inches, but that can be modified

ACTIONS

- Inspectors wanted Red Door to use a different insulation in the hood
- Communications back and forth between manufacturer, Red Door, architect, inspectors
- Hood failed
- Third party inspection –hood passed
- Permit rescinded

RED DOOR ASIAN BISTRO V. CITY OF FORT LAUDERDALE

MORE ACTIONS

- During whole saga, main inspector
  - Made racial slurs
  - Made derogatory racial comments
  - Made derogatory gestures

11TH CIRCUIT

- 14th Amendment's central purpose is to prevent government from discriminating based on race.
- Trial court granted summary judgment because Red Door didn't bring forth a comparator
- Comparator not needed for misapplication of law with a discriminatory purpose
- Test: was there a discriminatory motive and a discriminatory effect

RED DOOR
ASIAN BISTRO V. CITY OF FORT LAUDERDALE

15 EXAMPLES



11TH CIRCUIT

- Test: was there a discriminatory motive and a discriminatory effect
- Yes. Inspector didn't correctly enforce the law due to anti-Asian animosity
- SJ reversed and qualified immunity for inspector removed



MULTIFAMILY





SO APT'S V. CITY OF SAN ANTONIO

SO APT'S V. CITY OF SAN ANTONIO

PROBLEM

- Pattern of property maintenance code violations, the City of San Antonio
- SO was one of the properties with violations

ACTIONS

- Apartment Inspection Program
- Forced enrollment for complexes with history of violations
- Fee is $100 per apartment unit per year
- ($12,500)
- Monthly inspections
- Unenrolled if everything is resolved and no more than 2 violations
- Preliminary Injunction

SO APT'S V. CITY OF SAN ANTONIO

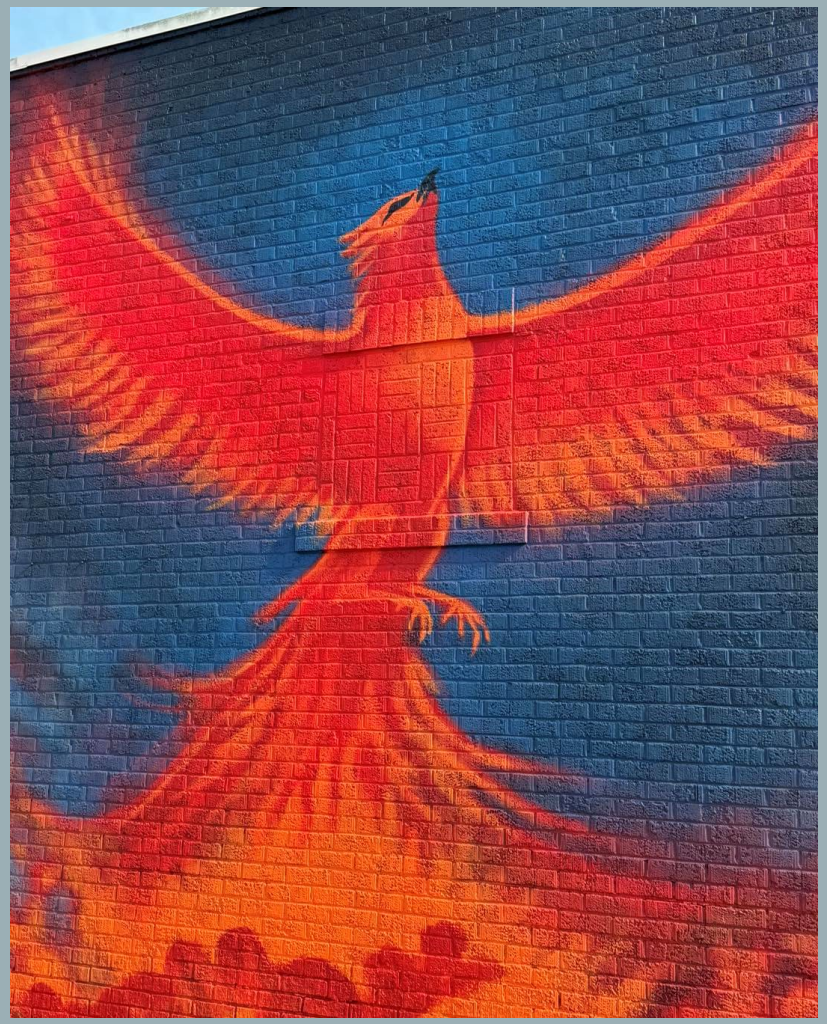
5TH CIRCUIT

- Did the complex have a substantial likelihood of prevailing?
- 4th Amendment – program allowed for warrantless searches
  - Court looked at ordinance in context with other sections and disagreed. If complex refused inspection, city would obtain a warrant

5TH CIRCUIT

- 8th Amendment – fees too high
  - Fees are not punishment, but funds for the program
- 14th Amendment – no due process
  - Are you kidding? Notice, chance to correct, 10-day appeal, separate appeals for each point

RHONE V. CITY OF TEXAS CITY





RHONE V. CITY OF TEXAS CITY

PROBLEM

- Rotted open eaves and overhangs
- Sagging balcony
- Spongy floorboards

ACTIONS

- City told Rhone he could not sell or lease apartments until repaired
- City filed injunction and abatement action in municipal court
- Court ordered the building to be demolished
- Rhone claimed the municipal judge was not independent from the city

RHONE V. CITY OF TEXAS CITY

5TH CIRCUIT

- Court examined municipal judge's contract
  - "all material decisions affecting the Office of Municipal Court Judge will be submitted to [the City Attorney] for approval"
- City Attorney prepared the abatement complaint and order, participated in the trial, and signed the order
  - "approved as to form, substance and entry"

5TH CIRCUIT

- Court held that it appeared the City Attorney had the final authority on what the order would say
- Remand to district court to determine if role of city attorney violated due process

DISTRICT COURT FOR S. DIST. OF TX.

No – signature block did not mean judge needed city attorney's approval

STREET PREACHERS







SESSLER V. CITY OF DAVENPORT



SESSLER V. CITY OF DAVENPORT

PROBLEM

- Street Fest had a permit and permission to limit access with fencing and security
- There were points for pedestrian entry
- Vendors paid for space or ability to roam
- Sesller and 5 others entered and began speaking with a microphone and speaker
- Signs on extendible poles and children distributing pamphlets

ACTION

- Police and Sessler picked a spot but he was told not to scream or block vendors
  - That didn't work
- Police moved Sessler across the street where he preached for 2 hours
- Sued under the 1st Amendment

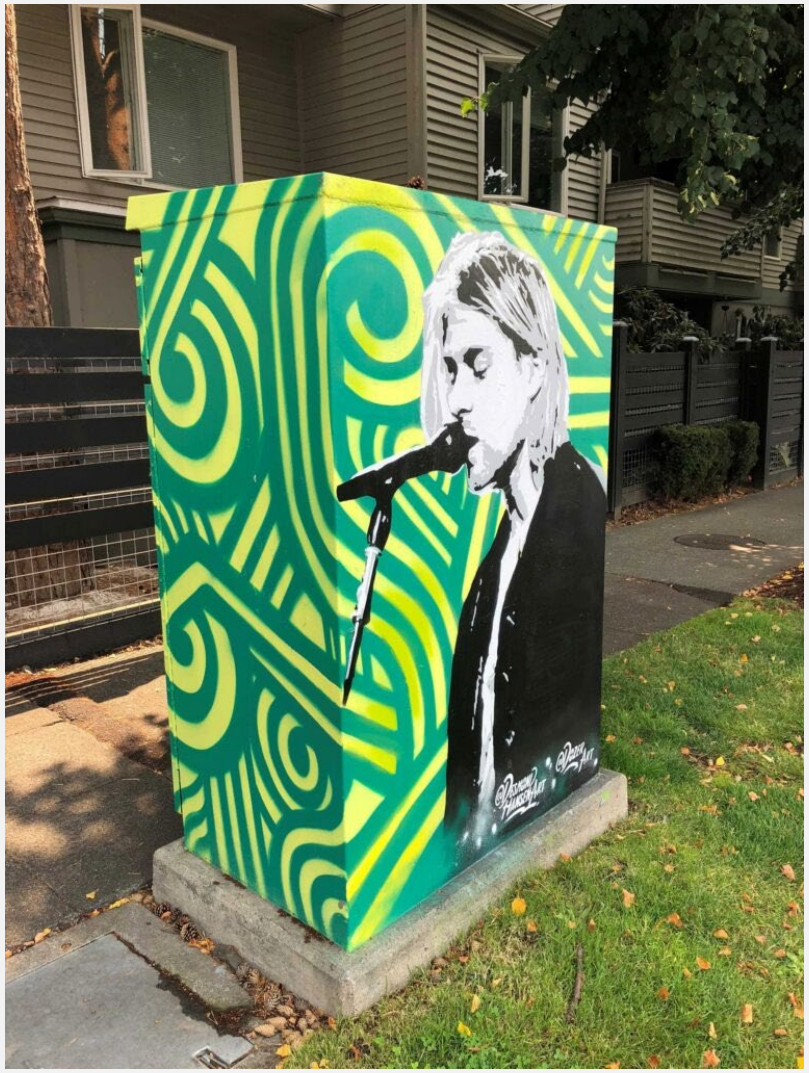
SESSLER V. CITY OF DAVENPORT

8TH CIRCUIT

- Type of forum
  - Limited public forum
- Were restrictions content based?
  - No content neutral
  - Police concerned with volume and disruption
    - Crowd didn't like message
  - Police gave a warning before moving Sessler

8TH CIRCUIT

- Officers kept qualified immunity
- Special Event Police was not content based



MEINECKE V. CITY OF SEATTLE



MEINECKE V. CITY OF SEATTLE

PROBLEM

- Meinecke attended a Dobbs protest and a Pridefest.
- He dressed neatly and went into the area and read a Bible loudly.
- Pro-choicers ripped pages from his Bible, physically removed him, took his shoe.
- Pride people howled, barked, danced, and tented him with flags.
- https://youtu.be/JucAl6zWZzo?t=24
-
- https://www.youtube.com/shorts/bw5cqgtxeBE?t=2&feature=share

ACTION

- Police asked him to move to a different area
- Police arrested him for obstruction
- Charges were not brought
- Meinecke sued for an injunction to prevent police from doing what they do

MEINECKE V. CITY OF SEATTLE

9TH CIRCUIT

- Likelihood of success on the merits
  - Once plaintiff proves his 1st Amendment rights have been infringed, the burden shifts
- Did the police impose a timer, manner, place restriction or a content based restriction
-

9TH CIRCUIT

- Content Based Heckler's Veto
  - Government silences particular speech or speaker due to anticipated disorderly or violent reaction
  - Strict scrutiny
- Narrowly tailored?
  - No – step back, more officers, free speech barricade, arrest the perpetrators