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FEATURE:

11th Circuit Holds City Ordinances Passed Prohibiting Various Forms of Panhandling Content-Based That Do Not Pass Strict Scrutiny

Scott v. City of Daytona Beach, No. 24-12662 (11th Cir. June 25, 2026)

Daytona Beach enacted Ordinance No. 19-27 in 2019 to broadly restrict panhandling after complaints about safety, sanitation, and "aggressive panhandling." The definitions here are important, since the ordinance defines "panhandle" as any in-person request for an immediate donation of money or other valuable item, expressly including "begging" and "soliciting," and it defines "aggressive panhandling" through five rather vague coercive or intrusive behaviors. The ordinance banned aggressive panhandling citywide, prohibited ordinary panhandling in specified locations, and restricted certain methods and circumstances of panhandling, including at transit stops, near commercial property, at certain intersections, on the boardwalk, when under the influence, and after dark. Plaintiffs regularly panhandled in Daytona Beach in areas included in the ordinance. Police threatened each plaintiff with arrest under the ordinance, and one plaintiff was arrested, causing all four to reduce or modify their panhandling. Plaintiffs sued under 42 U.S.C. § 1983, bringing facial and as-applied First Amendment challenges to 18 of the 19 provisions and seeking declaratory, injunctive relief, and damages. The district court granted partial summary judgment, held the challenged provisions content-based and failing strict scrutiny, permanently enjoined enforcement, and later entered an $80,000 stipulated damages judgment contingent on any provision being unconstitutional.

Legal Question(s):

1. Whether the challenged provisions in the ordinance were content-based.
2. Whether the provisions survive strict scrutiny if they are found to be content-based.

Holding(s):

The court held that the challenged provisions were content-based, and that the city's interest in preventing petty crime was not a compelling interest that survived strict scrutiny.

Analysis:

The court began with a long analysis of the Plaintiff's standing as to each part of the ordinance. The district court had grouped together various parts of the ordinance and decided standing for the plaintiffs based on those groups. But the appellate court cited case law contradicting that kind of grouping and evaluated standing for each of the 18 provisions challenged, most of which were upheld.

As to the plaintiffs' First Amendment challenges, the court explained that a law is content-based if it targets speech by its communicative content, even with benign motives, while some neutral line-drawing that incidentally examines content can remain content-neutral. The court emphasized that general, evenhanded regulations of "solicitation" may be content-neutral under controlling case law, but singling out subcategories of solicitation is content-based. Daytona Beach's ordinance was content-based because it targeted only immediate requests for donations while exempting commercial solicitations and other advocacy. The court found that the ordinance's application turned on message content, as exemplified by the differential treatment between a sign reading "Hungry—Please Help Me" and advocacy such as "Help Your Local Humane Society." The city's argument that "immediacy" is a neutral criterion akin to location failed because immediacy changes the communicative message by conveying urgency integral to the speech.

Because the provisions were facially content-based, the court applied strict scrutiny, requiring a compelling interest pursued through the least speech-restrictive means. The city asserted public health and traffic safety as its compelling interests, with testimony linking panhandling to public urination/defecation and to traffic incidents at intersections. But the court rejected this argument because the city could enforce existing disorderly conduct laws that directly address unsanitary conditions without restricting protected speech, therefore making the restriction not narrowly tailored. An interesting read (once you get past the standing analysis) that seems to reflect a growing national attitude towards panhandling by the courts.

Scott v. City of Daytona Beach

SHORT SUMMARIES:

6th Circuit - Evictions – Police Action

Mary Ann Bender lived with and cared for her friend Rita Cole in Cole's condominium and remained there for a month after Cole died due to illness and to move some belongings out of the condo. Upon Cole's death, title to the condo transferred to Cole's living trust, and Bender became trustee under prior trust documents naming her as successor trustee. Cole's nephew, Kevin Surette, asked officers to accompany him to remove Bender and showed them Cole's 2015 will, listing him as a beneficiary. The officers only glanced at the will's title, accepted Kevin's claim that he was the executor, and did not read even the first page naming a different executor or any provision mentioning the condo. They had no court order or other legal process and knew Kevin had taken no legal action against Bender. The officers pushed their way into the condo, told her she had ten minutes to leave, repeatedly threatened arrest, took her key, and pushed her out. Bender sued under § 1983, alleging an unreasonable seizure in violation of the Fourth Amendment, and the district court denied qualified immunity for the officers.

The court held Bender had a cognizable possessory interest because, as trustee, she held legal title and at least a voidable right to occupy or lease the condo to herself. Ohio law renders trustee self-dealing voidable, not void, unless timely challenged, and no beneficiary had acted to void Bender's occupancy before the incident. The court rejected the argument that Bender's ownership of another home negated Fourth Amendment protection of her residence in the condo. The court found the Officers actively participated in the eviction, not mere peacekeeping, by entering, issuing departure commands, threatening arrest, taking her key, and physically removing her. The court compared the fact of this case to other cases that hinged on whether officers were actively engaged in the facilitation of an eviction or merely peacekeeping and determined that the officer's actions amounted to state action.

On reasonableness, the court emphasized the absence of a court order, lack of exigency, and Ohio's prohibition on self-help evictions requiring legal process. Bender's statements requesting a warrant, challenging the will, and asserting she had the true will could inform reasonable officers that ownership was disputed. The court concluded a jury could find the Officers knew there was no court order, knew the dispute existed, and failed to investigate, rendering the seizure unreasonable. The court also held the right was clearly established, as similar cases forbid officers from taking an active role in private evictions without legal authority.

Bender v. Village of Mariemont

2nd Circuit - Transit - Tolls

This case features an interesting battle between local governments. New York enacted the Traffic Mobility Act in 2019, which established a congestion-pricing toll for vehicles entering Manhattan's Central Business District (CBD). The toll is a daily charge triggered by entry into the CBD, does not vary with mileage or time in the zone, and exempts trips that originate and remain within the CBD. Stated purposes include reducing CBD traffic congestion and funding mass-transit capital projects, with revenues allocated 80% to subways and buses, 10% to LIRR, and 10% to Metro-North. In 2024, Rockland and Orange Counties sued TBTA and MTA, asserting unauthorized tax, right-to-travel, due process, equal protection, and excessive fines claims, and seeking declaratory and injunctive relief, arguing that their residents would be disproportionately harmed by the enactment of this toll. The district court granted defendants' motion to dismiss and denied leave to amend, and the counties appealed.

The court assumed without deciding that the toll is not a state tax under the Tax Injunction Act and exercised hypothetical jurisdiction to reach the merits of the case. On the right-to-travel claim, the court held that strict scrutiny does not apply because the program creates no invidious classifications and imposes at most a minor restriction on travel. The court applied the *Northwest Airlines* reasonableness test and found the toll reasonable because it fairly approximates use, is not excessive relative to benefits, and does not discriminate against interstate commerce. The court reasoned that benefits include reduced CBD congestion and mass-transit funding, which need not be earmarked to directly benefit each payer. Due process and equal protection claims failed under rational-basis review because the Program is rationally related to legitimate interests in funding transit, reducing congestion, and protecting public health. Distinguishing between vehicles entering the CBD and those remaining within it was deemed rational and administratively efficient. Rockland's excessive fines claim failed because a toll is not a punishment and therefore not a fine under the excessive fines clauses. The Second Circuit affirmed dismissal of all claims and the denial of leave to amend.

County of Rockland v. Triborough Bridge & Tunnel Auth.

5th Circuit – Excessive Force – No Knock Warrants

Houston police executed a no-knock warrant based on false information supplied by a neighbor and an officer. Officer Gerald Goines fabricated a controlled buy and firearm sighting to obtain the warrant, which a SWAT team executed. During entry, officers announced as HPD, engaged an aggressive dog, and immediately encountered gunfire inside the home, injuring several officers. According to the defense, Officer Gallegos was outside to the right of the door, saw Medina on a couch with Rhogena Nicholas nearby, and shot Nicholas, killing her. Gallegos then fired through a wall toward Tuttle, broke a window, and later engaged Tuttle at the doorway during ongoing exchanges that also injured two other officers. Gallegos ultimately shot Tuttle multiple times, including a final fatal shot as Tuttle sat on the floor with a gun in his hand.

Plaintiffs disputed key details, asserting video showed Medina had been extracted before Nicholas was shot and that wounds proved officers, not Tuttle, caused several police injuries. Several defendants were dismissed, and the district court denied Gallegos qualified immunity on plaintiffs' Fourth Amendment excessive force claims for Nicholas and Tuttle.

The Fifth Circuit reviewed the denial of qualified immunity and assessed video evidence under *Scott v. Harris*. The court held that the plaintiffs' interpretation of the video was effectively contradicted by its contents. Proceeding on plaintiffs' best-supported facts, the court assumed Nicholas was not standing over Medina or reaching for his weapon when shot. Applying *Graham* and *Garner*, the court evaluated reasonableness from the perspective of a reasonable officer amid a rapid gunfight where multiple officers had been shot. The court held a reasonable officer could view Nicholas, seated on the same couch as a wounded officer and beginning to stand, as an immediate threat given proximity to a weapon and the chaotic scene. The court cited Fifth Circuit precedents upholding deadly force when unarmed suspects make movements perceived as reaching for a weapon, emphasizing context here was more dangerous. Because Gallegos's use of deadly force against Nicholas was objectively reasonable, there was no constitutional violation and qualified immunity applied. For Tuttle, the court considered only the final two shots and assumed he was incapacitated, but focused on what Gallegos could have known. The court found Tuttle was facing away and dropping when shot in the buttocks, so Gallegos could not have known whether Tuttle was unable to use a gun. Afterward, Tuttle raised his upper body on his elbows before the fatal neck shot, which did not clearly signal surrender or the end of the threat. Given that four officers had just been shot and threat perception remained acute, the court held that continued deadly force was reasonable until the threat ended. Concluding no Fourth Amendment violations occurred as to Nicholas or Tuttle, the court reversed and held Gallegos entitled to qualified immunity. This is one of those cases where the facts are very difficult to follow just by reading them and there is no easily accessible video of the incident online, but the outcome favored local governments. Well done to everyone in Houston who worked on this case.

Tuttle v. Gallegos

4th Circuit - Removal - Due Process

Just to be clear, a person cannot be removed from a position without due process if holding the position involves a property right. So, what about a person appointed to a position on the city's board of adjustment? It may matter as to a property right how the terms of that appointment are conditioned and limitations placed on the removal authority, but in this case, the City was not limited by its ordinances or policies. A fellow had been serving on the city's board of adjustment and had presumably upset someone on the council, because, apparently without notice, the council voted to remove him during a regular council meeting. Upset, he sued. From the court, "When Deal was

appointed to the BOA, his appointment was subject to the city code providing that “all [board] members serve at the pleasure of City Council and may be removed at any time with or without cause at the discretion of City Council.” The Plaintiff argued that because he had been appointed to a three-year term, he could not be removed before the end of the term so long as the Board existed. The panel concluded that the broad discretion accorded the city council over the board contrasted with cases the Plaintiff relied upon and reflected a lack of a property interest in the position.

Deal vs. City of Monroe

8th Circuit - Reckless Investigation - Wrongful Conviction

Having been convicted of murder and sentenced to life without parole, a man was able to gain Habeas relief on a claim that Brady material was suppressed during his trial. Once released, the state dismissed the charges, and he sued. While still in the pleading stages, the facts related suggested that the officers involved in investigating the crime fabricated evidence, coerced witnesses to lie, and despite knowing that the testimony of the witnesses contradicted the evidence, did not pursue further avenues of investigation. The prosecutor did not escape cleanly either as one witness claimed the prosecutor threatened to have officers plant drugs on her and prosecute her if she didn't ID the suspect under investigation. Long story short, the court notes as to reckless investigations: "The failure to follow up on minor inconsistencies in a witness’ statements does not rise to reckless conduct. Id. (claiming inconsistencies in a sexual assault investigation because the victim did not immediately tell her mother or school employees that the encounter was nonconsensual). To completely fabricate an event—rolling the body over and shooting the victim five times—is not a minor inconsistency."

Carnes vs. Blehm