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FEATURE:

5th Circuit Affirms Dismissal of Takings and Section 230 Challenges to New Orleans Short-Term Rental Ordinances

Bodin v. New Orleans, No. 25-30524 (5th Cir. August 5, 2026)

This case centers around challenges to New Orleans' 2023 and 2024 short-term rental ordinances, upholding limits on licenses and platform obligations. After several studies indicated that short-term rentals were detrimental to neighborhood character and often drove up housing prices where they were not curtailed, New Orleans began passing a series of ordinances over several years to limit them. Some of these ordinances were struck down while others were upheld. The 2023 Ordinance limits short-term rental licenses to one property per residential block, with licenses distributed by lottery. The 2024 Ordinance prohibits short-term rental platforms from facilitating a transaction on an unlicensed rental; and requires them to verify a rental's license status before facilitating a transaction, and to reverify this status every 30 days after the transaction, or if they "know or should know that any data it used to complete the most recent verification has changed." Plaintiffs (Hosts) included several residential property owners and Airbnb, and they alleged Takings Clause and Section 230 preemption violations among other claims. The court reviewed the district court's Rule 12(b)(6) dismissals de novo and addressed summary judgment previously granted to Airbnb on a Fourth Amendment reporting claim not at issue on appeal.

Legal Question(s):

1. Whether New Orleans's 2023 and 2024 Ordinances effect a per se or regulatory taking.
2. Whether the 2024 Ordinance's booking requirement or verification requirement was preempted by 47 U.S.C. Section 230

Holding(s):

The court affirmed dismissal of the Hosts' Takings Clause challenge, and the Section 230 preemption challenge, holding the 2023 Ordinance is neither a per se taking nor a regulatory taking

under Penn Central, and Section 230 does not preempt the booking or verification requirements of the 2024 Ordinance.

Analysis:

Takings Analysis

On the Takings Clause claim, the Hosts asserted both per se and regulatory takings based on interference with a supposed fundamental right to lease short-term. The court rejected a reimagined per se test, holding per se takings are limited to physical appropriations or interferences with the right to exclude. Citing *Cedar Point* and *Sheetz*, the court emphasized the special protection for the right to exclude and declined to equate a right to include short-term guests with that right. Because the ordinance neither authorizes physical invasion nor impairs exclusion, the per se theory failed.

Under *Penn Central*, the court assumed the first two factors favored the Hosts but only slightly, then found the third factor dispositive for the City. For economic impact, the court viewed lost profits as a weak basis for a taking and noted the concrete figure of about $20,000 per year in lost revenue for one Host was not severe. Allegations of being unable to unlock full value were deemed nebulous and minor compared to classic takings that destroy primary uses. The court then turned to another argument of the Hosts, investment-backed expectations. The court found expectations limited because long-term renting remained available and the City only recently lifted a total ban in 2017. The court held the character of the action favored the City because the 2023 Ordinance is a reasonable zoning measure addressing documented neighborhood harms. The court rejected claims that the ordinance was extraordinary, distinguishing cases involving destruction of essential property sticks like exclusion or descent. Balancing the factors, the court concluded the modest impact and limited expectation interference were outweighed by the ordinance's reasonable public purpose.

Section 230 Analysis

On Section 230, Airbnb argued preemption of the 2024 Ordinance's booking and verification requirements as treating it as a publisher or speaker. The court applied a functional approach, asking whether duties necessarily require monitoring, altering, or removing third-party content. It held the booking requirement imposes a duty not to profit from unlawful transactions, which does not require publication functions. The court rejected Airbnb's contention that compliance effectively forces content removal, because liability does not necessarily turn on content moderation. The court found the requirement leaves Airbnb free to host unlawful listings while declining to process bookings for them.

Regarding verification, the ordinance requires platforms to verify eligibility through the City's system initially and every thirty days after a transaction. The court concluded Section 230 does not cover duties tied to distinct, internal, nonpublic information rather than public third-party speech. It instead emphasized that hosts must provide detailed license information to the platform for verification and that no rule requires publishing license status on listings. Because compliance can occur without monitoring or altering public listing content, Section 230 does not preempt the verification requirement. The court thus affirmed dismissal of Airbnb's Section 230 claim and, after brief review, affirmed dismissal of all other challenged claims.
Well done to the attorneys in New Orleans on this victory and for handling Airbnb's curveball Section 230 argument.

Bodin v. New Orleans

SHORT SUMMARIES:

6th Circuit - Unreasonable Seizure

In this case, the panel in a 2-1 decision concluded that the Constitution includes a right to pee in one's own bathroom during the execution of a search warrant. Police execute a warrant. During the search, the police remove all occupants from the home: the guy, his wife, and children. The facts implied that the officer vindictively required the homeowner to urinate in his front yard rather than use the bathroom, so the majority found both a right and its clarity sufficient to deny qualified immunity. As the dissent notes: When you gotta go, you gotta go. And the guy asked to use the interior bathroom. This request was refused and he was told to relieve himself in the front yard. He sued.

The panel found that refusing to allow his use of the bathroom was an unlawful seizure and that the law was clearly established to be so. The dissent found little in the Constitution and its history to support this theory. So, if you're in the Sixth Circuit make sure your officers understand that a person has a Constitutional right to pee in their own bathroom.

Antol vs. English

7th Circuit - First Amendment

In another small-town case, the Chairman of the Board apparently had control of the delete button for comments on the town's web page the town used for informational purposes and resident comment. Disliking some comments related to new rules about recreational vehicles, the Mayor used the button. After being threatened with a lawsuit the Board decided to remove comments entirely, taking the comments that were posted and putting them on a separate webpage. Suit followed. The argument that the page was Town speech and not private speech didn't fly, and the Mayor's actions damaged First Amendment rights.

Schulte v Leners

6th Circuit – Excessive Force – Training Exercises

A mental-health employee was injured during a hostage training exercise at a jail when officers' entry pinned her against an armchair, causing leg injuries. She sued the participating officers, but her sole remaining claim after the 12(b)(6) culling alleged Fourth Amendment excessive force. The district court granted summary judgment to the defendants in November 2025, holding the employee was not "seized" within the meaning of the Fourth Amendment.

On appeal, the Sixth Circuit focused on whether the officers effected a seizure by force or by control. The court held there was no seizure by force because the officers lacked an objective intent to restrain anyone during the training exercise. The court cited similar rulings from other circuits holding that injuries during law-enforcement training do not constitute seizures under the Fourth Amendment. The court also rejected seizure by control because the employee voluntarily participated, could withdraw, and the exercise stopped immediately when she cried out, so there was no actual control. The panel affirmed summary judgment, noting workers' compensation as an alternative remedy.

Arthur v. Krause