
ZONING - CONNECTICUT

Keepers, Inc. v. City of Milford, Conn.

United States District Court, D. Connecticut - March 30, 2013 - F.Supp.2d - 2013 WL 1297839

Court upholds the constitutionality of city ordinances regulating sexually-oriented businesses; strikes down posting provision as unconstitutionally broad.

Operators of strip club and sex shop challenged the constitutionality of two versions of a city ordinance regulating sexually-oriented businesses.

Plaintiffs argued that the ordinance violates the First Amendment (as an impermissible prior restraint, an undue burden on protected expression, overbroad, and an impermissible impairment on the right to freely associate); the Fourth Amendment; the Takings Clause of the Fifth Amendment; the Ninth Amendment; and the Fourteenth Amendment (as vague as-applied, facially vague, and causing a deprivation of liberty interests without due process). They also contend it violates Conn. Gen.Stat. § 8–2.

The court held that the ordinances in question were not an attempt to regulate the primary effects of the expression, but rather target secondary effects of the expression, the court concluded that the ordinances are content-neutral time, place, and manner regulations, and thus subject to intermediate scrutiny.

The court found that both ordinances satisfied all four elements established in *O'Brien*. Therefore, the ordinances are valid restrictions on speech.

However, the court concludes that the scope of the posting provision was unconstitutionally broad because there is not a substantial relationship between the governmental interest and the information required to be posted. While requiring the posting of the names of the individuals who manage, operate and/or control a sexually oriented business is substantially related to enforcement of the ordinance, posting the names of individuals based merely on their status as a 30% shareholder or an officer not involved in the management, operation or control of the sexually oriented business is not substantially related to the city's interest in enforcing the ordinance.

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