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MUNICIPAL ORDINANCE - FLORIDA

Buehrle v. City of Key West

United States Court of Appeals, Eleventh Circuit - December 29, 2015 - F.3d - 2015 WL 9487716

Applicant for license to open tattoo establishment brought action in state court against city, alleging its prohibition of tattoo establishments in historic district violated First Amendment. City removed action to federal court. The United States District Court for the Southern District of Florida granted city's motion for summary judgment. Applicant appealed.

The Court of Appeals held that:

- As a matter of first impression, act of tattooing is artistic expression protected by First Amendment, and
- City failed to meet its burden of demonstrating that ban served its alleged significant governmental interest of protecting historic district from deterioration.

City failed to meet its burden of demonstrating that its ban on tattoo establishments in historic district served its alleged significant governmental interest of protecting historic district from deterioration, and thus ordinance was not narrowly tailored to serve a significant governmental interest, as required to survive scrutiny under First Amendment, where statements by city's director of planning that tattoo establishments would impact the character and fabric of historic district and impact tourism were made after enactment of ordinance, director's statements were unsubstantiated by records regarding tattoo establishments prior to blanket ban in historic district, city did not rely on any studies regarding tattoo establishments in enacting ban, and city conceded absence of any ill effect from two tattoo establishments that were currently permitted in historic district.