
SHORT TERM RENTALS - LOUISIANA

Hignell-Stark v. City of New Orleans

United States Court of Appeals, Fifth Circuit - August 22, 2022 - 46 F.4th 317

Homeowners who sought to operate short term rentals and company providing services for short term rental owners brought § 1983 action against city, alleging violations of the dormant Commerce Clause, the Takings Clause of the Fifth Amendment, and the First Amendment right to free speech, based on the city's ordinance requiring licenses to operate short term rentals.

The United States District Court for the Eastern District of Louisiana granted summary judgment in favor of city, in part, and denied city's motion, in part. Parties cross-appealed.

The Court of Appeals held that:

- Homeowners had no protected property interest in the renewal of their short term rental licenses, as required to support Takings Clause claim for nonrenewals;
- Ordinance's residency requirement violated dormant Commerce Clause; and
- Court of Appeals lacked jurisdiction to review District Court's decision on the homeowners' First Amendment claim.

Homeowners who sought to operate short term rentals had no protected property interest in the renewal of their short term rental licenses, as required to support Takings Clause claim against city for nonrenewals; the original licensing ordinance stated expressly that a short term rental license was a privilege, not a right, and that the license could be revoked or not renewed for non-compliance with the ordinance, and homeowners only held prior licenses for a couple of years, so that they were not firmly established in custom and practice.

Residency requirement of city ordinance governing licenses for short term rentals, providing that no homeowner could obtain license to operate short term rental unless property was also homeowner's primary residence and owner had homestead exemption for that property, violated dormant Commerce Clause; requirement discriminated on its face against interstate commerce, as it completely prohibited out-of-state residents who owned property in city from obtaining short term rental licenses, and legitimate local purposes of requirement, including preventing nuisances and promoting affordable housing, could adequately be served by reasonable nondiscriminatory alternatives, such as enforcement efforts to address nuisances, and reducing housing regulations.

The Court of Appeals lacked jurisdiction to review District Court's determination that homeowners' First Amendment claim, alleging that city ordinance requiring homeowners to obtain licenses to operate short term rentals was a prior restraint on free speech, was viable; finding that claim was viable was not "final, appealable judgment," as determination did not resolve all of homeowners' claims for relief.

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