Short Circuit 228

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SPEAKERS

Anthony Sanders, David Markese, Dan Rankin

A Anthony Sanders 00:24

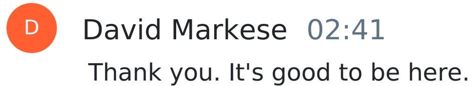
Do not adjust your device, your volume is working perfectly fine. That is our new intro music, ladies and gentlemen. Regular listeners will know that that is a different beginning of the show than we usually have. After many years of having the same introduction, including some words from our beloved former president and co-founder Chip Mellor, we have moved on. It is now 2022. And so we have a new introduction that is actually music composed by IJ Attorney Patrick Jaicomo, which regular listeners will know from from a few episodes in the past, including one where he explained how to seize cocaine on open waters. But today, we are very fortunate to have a special guest here to help celebrate this new intro music. But before we get to our special guest and a recent victory that he was involved with, I'd like to introduce fellow attorney Dan Rankin. But first, I should say that this is Short Circuit. My name is Anthony Sanders. I'm an attorney at the Institute for Justice and Director of the Center for Judicial Engagement. We are recording today, Friday, July 15, 2022. And now I can introduce my good friend and colleague, Dan Rankin. Dan, welcome back to the show.

D Dan Rankin 01:53

Thank you. It's great to see you, Anthony. Although I'm a little sad that you're not showing off your French accent today.

A Anthony Sanders 01:59

Yes, that was an internal matter that that happened earlier this week that we do not discuss. Although I do I think I do do a good Peter Sellers impersonation of him impersonating a French person. But now we'll get to what I think many people will be excited about is we are having on the show for the first time, David Markese. David is an attorney at the American Liberties Institute. He litigates lots of First Amendment cases. He's a graduate of Harvard Law School. And he's going to be talking today about a recent victory in the 11th Circuit. So David, welcome to Short Circuit.

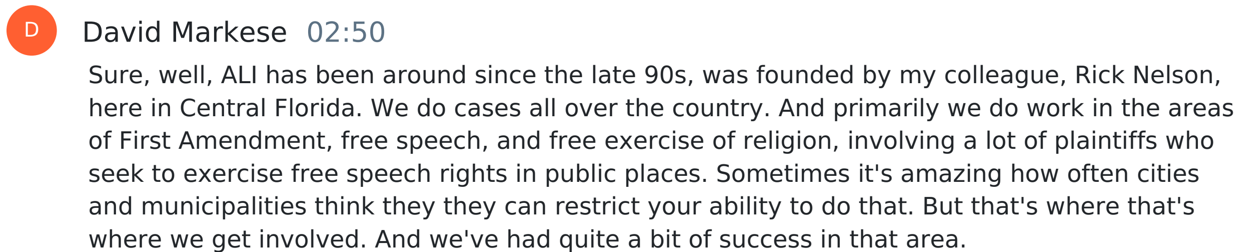


David Markese 02:41

Thank you. It's good to be here.

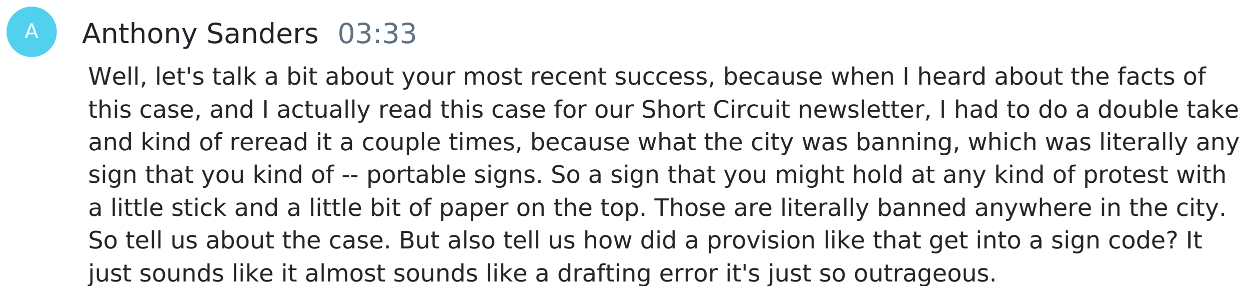
Anthony Sanders 02:43

So David, tell us a little bit about your guy's work at at the American Liberties Institute. ALI.



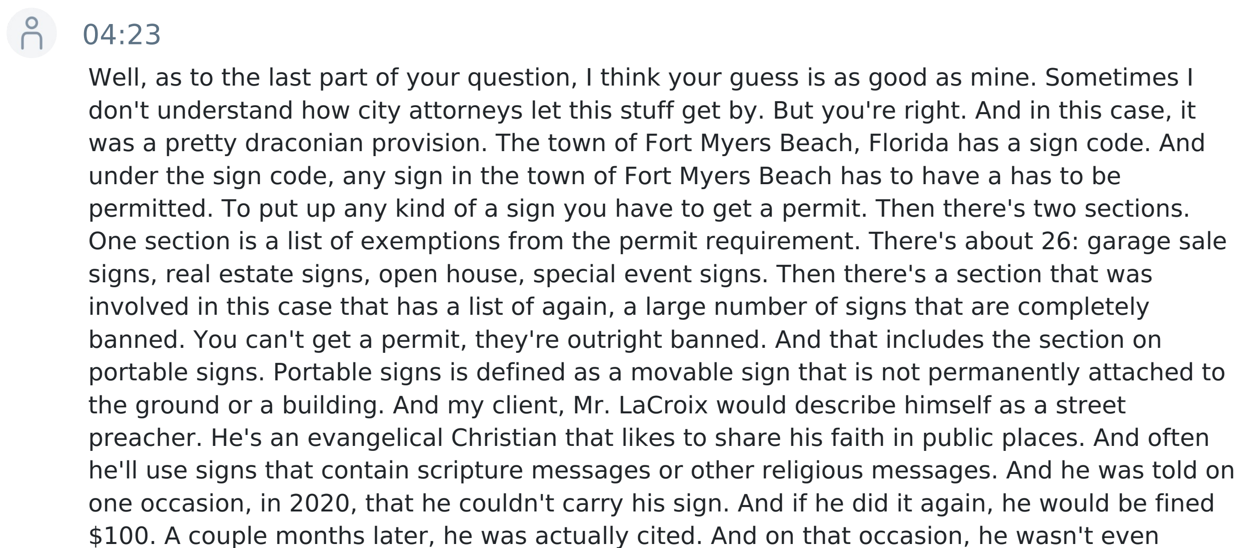
David Markese 02:50

Sure, well, ALI has been around since the late 90s, was founded by my colleague, Rick Nelson, here in Central Florida. We do cases all over the country. And primarily we do work in the areas of First Amendment, free speech, and free exercise of religion, involving a lot of plaintiffs who seek to exercise free speech rights in public places. Sometimes it's amazing how often cities and municipalities think they they can restrict your ability to do that. But that's where that's where we get involved. And we've had quite a bit of success in that area.



Anthony Sanders 03:33

Well, let's talk a bit about your most recent success, because when I heard about the facts of this case, and I actually read this case for our Short Circuit newsletter, I had to do a double take and kind of reread it a couple times, because what the city was banning, which was literally any sign that you kind of -- portable signs. So a sign that you might hold at any kind of protest with a little stick and a little bit of paper on the top. Those are literally banned anywhere in the city. So tell us about the case. But also tell us how did a provision like that get into a sign code? It just sounds like it almost sounds like a drafting error it's just so outrageous.



04:23

Well, as to the last part of your question, I think your guess is as good as mine. Sometimes I don't understand how city attorneys let this stuff get by. But you're right. And in this case, it was a pretty draconian provision. The town of Fort Myers Beach, Florida has a sign code. And under the sign code, any sign in the town of Fort Myers Beach has to have a has to be permitted. To put up any kind of a sign you have to get a permit. Then there's two sections. One section is a list of exemptions from the permit requirement. There's about 26: garage sale signs, real estate signs, open house, special event signs. Then there's a section that was involved in this case that has a list of again, a large number of signs that are completely banned. You can't get a permit, they're outright banned. And that includes the section on portable signs. Portable signs is defined as a movable sign that is not permanently attached to the ground or a building. And my client, Mr. LaCroix would describe himself as a street preacher. He's an evangelical Christian that likes to share his faith in public places. And often he'll use signs that contain scripture messages or other religious messages. And he was told on one occasion, in 2020, that he couldn't carry his sign. And if he did it again, he would be fined $100. A couple months later, he was actually cited. And on that occasion, he wasn't even

holding a sign. Someone else in the group was holding a sign. And the enforcement officer said, well, we can't take the time to cite everyone that's actually holding a sign. So we cite the leader of the group and you're the leader.

A Anthony Sanders 06:22

That's something I've heard of by the way.

D Dan Rankin 06:24

Me either.

A Anthony Sanders 06:26

It was pretty ingenious of that officer to come up with that.

06:29

Yeah, they can't be bothered with actually citing people that are holding signs. They ended up dropping that citation, thankfully, but we brought this lawsuit challenging the ordinance as applied to Mr. LaCroix and on its face. And we made a twofold argument. First, we argued that the the ordinance as a whole is content based. If a regulation or restriction is based on content, or you have to reference content in order to enforce it, then it's going to be subject to strict scrutiny, which is an extremely high standard that is almost never satisfied. The regulation has to be narrowly tailored to serve a compelling government interest. And they typically don't. So our argument was, there are several categories of signs that are allowed under the code. If you look at the exemptions section, garage sale signs, special events signs that are defined by content that are allowed, but otherwise fit the definition of a portable sign. And I used it at oral argument, I use the example of a special event sign. If someone's holding a sign that says carwash support your local youth soccer team. And it's a handheld sign. He's holding it on a sidewalk. Is that a special event sign which is allowed? It's defined under the code as a sign that advertises fundraisers or other events for nonprofit organizations or government entities. So is it a special event sign which is allowed? Or is it a portable sign, which is banned? And our argument was the only way to know is to read it? You have to read the sign if it says carwash, it's allowed. If it says Jesus saves, it's banned. And so under the First Amendment, that would be a content based restriction. We argue that you can apply this sign ordinance without reference to content. The town responded by saying no. This is a total ban on all portable signs. There no exceptions. No exemptions. Content doesn't matter. All portable signs are banned. So our response is okay, well, then it's unconstitutional because it bans an entire means of communication. And we relied on the Supreme Court case of Ladue versus Gilleo. The city of Ladue, Missouri had a ban on all residential signs with narrow exceptions. For sale signs were one of the exceptions. And Ms. Gilleo, the plaintiff in that case, had a sign, I believe, protesting the Iraq War. And she had a sign on her residence, on her property. And it was deemed to be in violation of the ordinance. And the Supreme Court said, You cannot ban a venerable means of communication that is both unique and important. That was the language that the Supreme Court used. And they held that signs on residential property are unique and important. Well, so

much more in our case, I argued, if you if you look at the history of public discourse on important issues, going all the way back to the women's suffrage movement, the Vietnam War, political campaigns, labor disputes, Black Lives Matter, abortion. They all involve hand held signs. It's, to use the language of the Supreme Court, a venerable means of communication that is both unique and important. The the 11th Circuit didn't like our content based argument, but they they honed in on this total ban. And Judge Marcus actually used the example at oral argument. He said, if I'm sitting on my front lawn at my house, and I'm holding a sign that says, Trump for President or Biden for President, and I'm holding it in my hand, is that banned under the code? And the obvious answer is yes, it is. As written and as applied to Mr. LaCroix that's not allowed. So the town of Fort Myers Beach took it upon itself to, in the interest of aesthetics and traffic safety, to completely ban this unique and important means of communication. And the 11th Circuit agreed with us that that doesn't satisfy the First Amendment. So they struck down that portion of the ordinance as as a violation of the First Amendment.

11:08

So it's a victory for the First Amendment. We lost in the District Court, we lost at the preliminary injunction stage. And we appealed that denial. And this is one of those cases that you don't like to lose, but had we won below, this would have been binding in the Middle District of Florida, which covers from Jacksonville, Daytona Beach, Orlando, Tampa. Whereas now because we have a published 11th Circuit opinion, it's binding precedent in the entire 11th Circuit covering all of Florida, Georgia and Alabama. So it ends up being a greater victory for the First Amendment.

Anthony Sanders 11:48

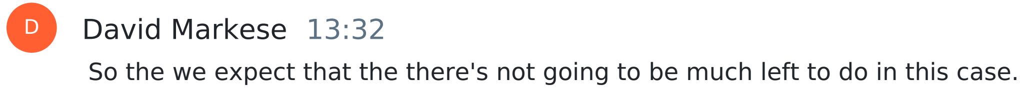
And do you think there's there's more life to the case on on remand? Or does it seem like the town is ready for it to be over now?

11:57

Well, Judge Marcus asked me an oral argument. The decision was based on likelihood of success on the merits. We lost because the district court held there wasn't a likelihood of success on the merits. She did reach the other prongs of the preliminary injunction standard, irreparable harm and the interest of justice in the public interest, the effects on the parties. And Judge Marcus asked me, should we remand this for the district court to consider those problems, or should we just address them? And I said, Well, I prefer that you address them. But I understand if you if you want to remand. Well, I was expecting them to remand. But instead, they went ahead and addressed it. They said, it's obvious that all of these prongs are satisfied. There's irreparable harm. When there's a violation of First Amendment rights. It's basically automatically constitutes irreparable harm. And the interests of justice are that clearly a town doesn't have an interest in enforcing an unconstitutional ordinance. So they went ahead and reversed and basically directed the lower court to enter a preliminary injunction. Now, technically, the case still needs to go forward on the merits. But when the 11th Circuit has decided we have a likelihood of success on the merits, and they actually in the opinion Judge Marcus said we have no problem deciding that there's a likelihood of success on the merits. Typically, that means we're going to win.

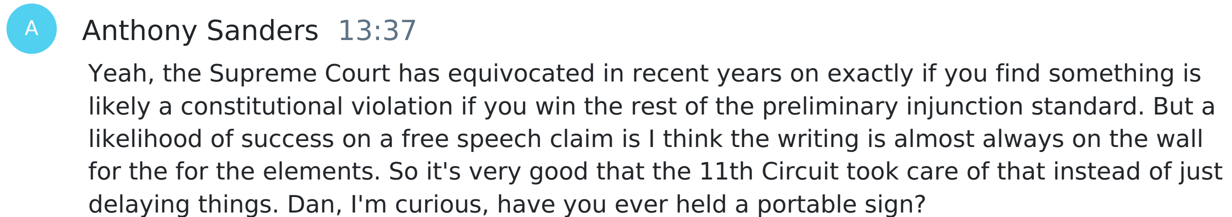
Anthony Sanders 13:31

Right.



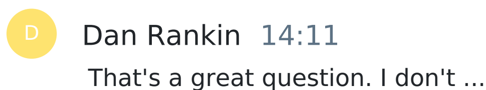
David Markese 13:32

So the we expect that the there's not going to be much left to do in this case.



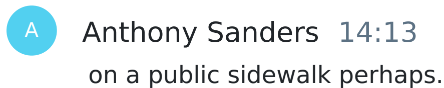
Anthony Sanders 13:37

Yeah, the Supreme Court has equivocated in recent years on exactly if you find something is likely a constitutional violation if you win the rest of the preliminary injunction standard. But a likelihood of success on a free speech claim is I think the writing is almost always on the wall for the for the elements. So it's very good that the 11th Circuit took care of that instead of just delaying things. Dan, I'm curious, have you ever held a portable sign?



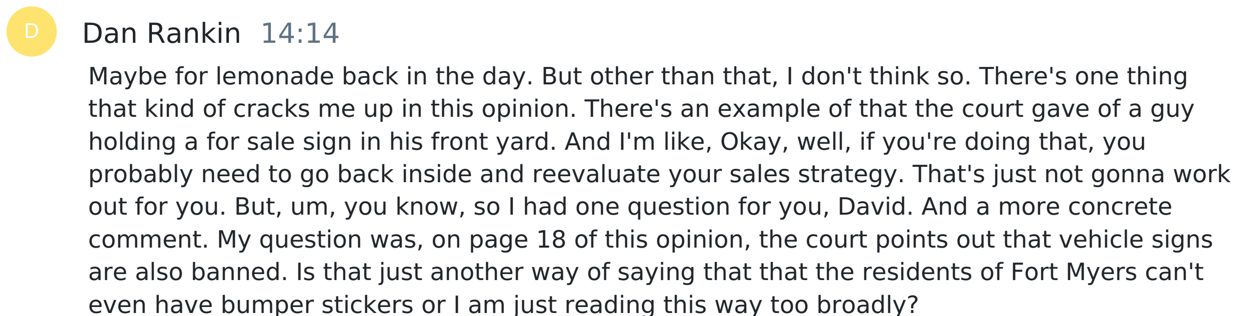
Dan Rankin 14:11

That's a great question. I don't ...



Anthony Sanders 14:13

on a public sidewalk perhaps.



Dan Rankin 14:14

Maybe for lemonade back in the day. But other than that, I don't think so. There's one thing that kind of cracks me up in this opinion. There's an example of that the court gave of a guy holding a for sale sign in his front yard. And I'm like, Okay, well, if you're doing that, you probably need to go back inside and reevaluate your sales strategy. That's just not gonna work out for you. But, um, you know, so I had one question for you, David. And a more concrete comment. My question was, on page 18 of this opinion, the court points out that vehicle signs are also banned. Is that just another way of saying that that the residents of Fort Myers can't even have bumper stickers or I am just reading this way too broadly?

14:33

Well, a lot of times these ordinances are not not very well crafted. I'm trying to be nice. But, yeah, I don't know, we didn't. Obviously, we didn't address that. But that that stands to reason. What constitutes a sign? If it's something that is posted that conveys a message, that seems to me that that would include bumper stickers. My guess is they would probably say they don't

enforce that. But, again, it shouldn't be on the face of the ordinance because somebody reading that ordinance might chill their own speech by saying, Hey, this is not allowed. I can't have this in the town of Fort Myers Beach. So yeah, that's a good point.

D

Dan Rankin 15:50

I mean, if there's any kind of communication has a there's a rich history, I'm sure. It's bumper stickers, if anything. My more concrete comment was that, and it's more of a small quibble, I guess, on the last page of this opinion in the last section talking about severability. The court says that we preliminarily enjoin Section 30-518 of the of the law. And I think that language is a little imprecise here, because if we've learned anything from the writ of erasure fallacy in the Supreme Court's opinion in Whole Women's Health versus Jackson, is that courts don't enjoin laws in the abstract. They enjoin the federal officials who enforce the laws. And I think what's kind of driving the imprecision in the language here is, I think the facial challenge to the ordinance. You know, the necessary implication of facial invalidity is that there's virtually no circumstance in which the ordinance can be constitutionally applied. And I think that's what the court actually wants here. I wants non parties to the case to benefit from this injunction given how broadly unconstitutional is. But we actually have a term for that kind of injunction. It's a nationwide injunction or a universal injunction. And I guess this kind of gets the point as to where nationwide injunction is a bit of a misnomer because we're talking about an ordinance in Fort Myers, Florida here. But anyway, I think Scott Keller actually made this same point with you, Anthony, a couple years back on Short Circuit that facial challenges, the doctrine of facial challenges actually dovetails pretty well with nationwide injunctions. But anyway, that's just kind of a small point that I wanted to point out. But I think courts ought to be more careful in terms of what they're doing and how they're describing their powers of equity.

A

Anthony Sanders 17:41

Yeah, I think that's something we've talked about many times and our old colleague Adam Shelton has blogged about. An injunction is against an official, because usually it's hard to sue the state or the federal federal government. And here it would be a bit against the against the city. But when it enjoins in an ordinance or a statute from being enforced, it usually does so in a -- maybe not facial is the best way to put it -- but in a way that beyond just the parties. And that's what universal injunction has kind of become known as in the nomenclature. The Supreme Court, again, may be looking at that soon, looking at that basic issue soon. And that's something that that we IJ are very interested in. Finally, David, I just a point that I had that was interesting is for people interested in sign First Amendment law as as all of us here are: In recent months, the big news has been the city of Austin case from the Supreme Court, which we think unfortunately, here at IJ, said that the distinction between, say banning on-premises signs and off-premises signs is not a, quote, content based distinction. And so you don't have strict scrutiny applied to that type of distinction. Now, this court here mentions Austin a couple times, but of course, because it ruled for you, not on content based grounds, but just on intermediate scrutiny, that you just can't totally ban this type of communication. It didn't it didn't come into play. So do you see this maybe as an example of some fears about city of Austin aren't founded? That the court was retrenching on for First Amendment protections there? Or is it you know, or that there are lots of dangers out there for the First Amendment that really aren't content based dangers that that people should take note of and this is an example of or how do you see those two relating?

20:02

Well, obviously, the, the content based argument in this case was was the more complex argument and we relied on several Supreme Court cases that made distinctions. You know, on-premises versus off-premises, commercial versus non commercial speech. We got into that discussion in this case, because the town was trying to cite cases that they purported, they argued, allowed bans on portable signs. But they only involved commercial speech, as opposed to non commercial speech.

Anthony Sanders 20:37

Jesus saves is not terribly commercial in my experience.

20:41

No, it's not. It shouldn't be. Let's put it that way. Yeah, so and, you know, kind of maybe going to Dan's point a little bit, too, if the court had reached the content based section of our argument, the injunction would have been far broader. Because our argument was this entire code can't be interpreted without reference to content. You've got garage sale signs, you got all these categories of signs that are definable by content, that are exempt. And those were some of the cases that we cited involved, restrictions on particular signs, but then they distinguished based on content. So, you know, like Dan said, in this case, the town is basically going to excise subsection 18, the ban on portable signs, and under the 11th Circuit ruling, that's all they have to do. But had the court reached the content -- I wish they would have. Because this is probably something that's going to come up again, and it's going to continue to come up. It's a lot cleaner to just say you can't ban an entire category of speech. But when you start parsing, and you start making distinctions between a garage sale sign and a religious sign or a political sign, then you're going to start running into problems. So that certainly is not -- the law is certainly not settled yet. I don't think in this area, and it's most likely going to keep coming up.

Anthony Sanders 22:12

And I would add that, I think a distinction between say a lawn sale sign and a religious sign or a political sign, those definitely in my book would be content based even under this, the city of Austin case that First Amendment lawyers now have to deal with. Well, David, congratulations again, on your victory there at the 11th Circuit for for your clients in Fort Myers Beach. We're going to turn now into someone who's always a pleasure to read. And that's Judge Willett on the Fifth Circuit about something that is going to be more interesting than it may sound: federal officer removal. So Dan, what is going on in this case that begins with a quip about the War of 1812?

Dan Rankin 23:02

Yes, it's always a pleasure to read what Judge Willett writes, and he provides some history of

the federal officer removal statute. But before I get into the into the details of that case, I do want to ask you a quick question, Anthony related to this case. And how do you pronounce the Latin term use for friend of the court briefs?

A

Anthony Sanders 23:26

I always do am-uh-kuss cure-i. But I don't really know if that's correct or not.

D

Dan Rankin 23:34

David, are you the same? Same with Anthony?

23:38

I always hear am-ee-kus cure-ee-ay. But we're not Latin experts. I wouldn't necessarily rely on anyone.

D

Dan Rankin 23:46

Yeah, the reason why I bring it up and I'm sure Anthony, you know, is at oral argument the the federal government was amicus or ameekuss. And before the attorney for the government began arguing, Judge Willett kind of playfully asked what the government's official position was on the pronounciation versus ah-muh-kuss versus am-ee-kuss. And he actually has a stake in this dispute because he has a family dog named Amicus. And so anyway, and for what it's worth, Judge Willett said that the official Texan pronounciation was am-uh-kusss. So I think we are henceforth bound at least for me, I'm a Texan. Anyway, so this case, Glenn versus Tyson Foods arises from something called the COVID-19 pandemic. Not sure if either one of you have heard of it. But anyway, it arises from the early months of the pandemic, when large parts of the national economy were shutting down. And the government was trying to figure out which businesses were critical or essential, and therefore needed to stay open. And one sector of the economy, the food distribution sector, was pretty quickly identified as critical. Because people, you know, need to eat during the pandemic. I know I did my fair share. And one of the businesses in this sector was Tyson Foods, which as listeners may know, is one of the largest poultry processing companies in the country. And Tyson Foods was one of the big name companies that actually got a call from the White House early on the pandemic, and the White House told them among other companies, that hey, you're critical infrastructure, so you really need to stay open and keep selling your chicken. And unsurprisingly, Tyson did, as part of the encouragement from the federal government, Tyson coordinated pretty extensively with the Department of Agriculture. With how, on the one hand to comply with CDC guidance, and on the other to comply with the routine inspections from the from the Department of Agriculture on on the poultry that they're selling. And perhaps predictably, and quite unfortunately, some employees of Tyson caught COVID. They got sick and some died. And this lawsuit is the result of that. Various plaintiffs sued Tyson in Texas state court alleging that Tyson was negligent in the way it handled COVID protocols. And so in some ways this is a pretty ordinary case. It's a state tort lawsuit that was removed to federal court. But despite it being ostensibly pretty run

of the mill, there's some big players here. As I mentioned, Tyson is one of the largest corporations in the United States. And they went out and they wanted to win this appeal. And so they hired won the bid, arguably one of the best advocates in the country, Paul Clement.

A

Anthony Sanders 26:42

A friend of Short Circuit.

D

Dan Rankin 26:44

Oh, that's right.

A

Anthony Sanders 26:44

Who was on Short Circuit Live earlier this year.

D

Dan Rankin 26:46

And it also has Judge Don Willett writing for the panel, who in my opinion, is a superstar of the federal judiciary and one of the best writers. So, you know, as I mentioned this case, it started off in state court, and Tyson wanted to remove it. And it doesn't involve the ordinary bases, I think, of removal like 1331, or 1332. It involves a lesser known statute, codified 28 USC 1442, the federal officer removal statute. And that statute allows federal officers to, if they're sued state court, remove their case to federal court, because the policy behind it is that it provides a more favorable forum for federal officers. But that statute not only applies to federal officers, but also to people who are acting under a federal officer, that's gonna be the key phrase on which this appeal ultimately turns. So Tyson, of course, is not a federal officer. It alleges, or it argues that, that it can avail itself of this statute because it was acting under various federal officials whenever it kept its facilities open. And, you know, in support this argument, Tyson has multiple arguments, none of which the Fifth Circuit ultimately finds persuasive. Tyson first points out that the government designated it as critical infrastructure, and that the government had later kind of general encouraged employees of critical infrastructure industries to keep going to work. And the Fifth Circuit says, Yeah, that's true. But the guidance to critical infrastructure employees was non binding. There was simply just encouragement here, and there was no directive or order. It was meant just as a guide for states. And in rejecting this argument, the court points out that, you know, a lot of other people were designated as critical infrastructure as well. And you have drycleaners, bus drivers, farmers, just a whole swath of almost like half the economy. And the Fifth Circuit says, you know, if we construe the statute this way almost everyone can avail themselves of this federal removal statute. And that kind of line of reasoning really had some Major Questions vibes that we saw in West Virginia versus EPA, this term from the Supreme Court. But in event I think it's just a common sense reading of the statute. Tyson secondarily argues that, you know, unlike all these other guys like farmers and dry cleaners, we are subject to some really heavy regulation here. And the Fifth Circuit also rejects the argument, saying that, you know, being heavily heavily regulated has never been enough to avail yourself of the of the statute, pandemic or not, that's just not going to be a winning argument here.

A

Anthony Sanders 29:48

It's enough to have the Fourth Amendment not apply in different contexts, but not not enough for federal removal.

D

Dan Rankin 29:55

Yeah, that's quite the doctrine, along with the open fields doctrine, I think IJ is working on tackling that issue. Then Tyson has one last argument here. And I think it's my favorite. Tyson says that it received all kinds of communications from federal officials that encouraged it to keep its plants open. It points to a few things. But I'll just note two here. One is an executive order. And the other one is, of course, a presidential tweet. So a little context is necessary here. Before we get into that, there's a there's a big federal law lurking in the background here. And it's called the Defense Production Act, which I think was passed in the 1950s or sometime. And it essentially grants the president the sweeping power to direct private companies to prioritize certain production needs and contracts to quell any kind of shortage caused by war or some kind of national emergency. And so we have this law lurking in the background. And after the various, you know, conversations with the White House and the Department of Agriculture. Tyson points out that President Trump had tweeted, quote, Defense Production Act is in full force. But we haven't had to use it yet. Because no one has said no. I have to admit, I stared at this tweet for a long time last night trying to make heads or tails of it. And I really couldn't. I'm not quite sure what legal effect if any, a presidential tweet has. We've seen this with agencies too. Sometimes agencies will tweet out some specific policy guidance, and we don't know whether that's Chevron deference or not. But anyway, that's that's that's another conversation.

A

Anthony Sanders 31:44

That's a unitary executive doctrine question. We don't have to get into that today.

D

Dan Rankin 31:48

That sounds right. In any event, following the tweets, there's an executive order, that's a little bit more official. And what this executive order from President Trump did was that it actually delegated his powers under the Defense Production Act to the Department of Agriculture. And so that's a big deal. But importantly, here, as the court points out, even though the Department of Agriculture now has this delegated power under the Defense Production Act, it never actually invoked it and never issued an order to Tyson under this law to keep cranking out the chicken. There was only just encouragement from the from the department, and only just kind of exhortation to stay open, and have your employees to keep going to the plants. So at the end of the day, this case is really about the distinction between encouragement versus orders. And that distinction is what drives the court's holding here that Tyson is not quote, unquote, acting under any federal official for purposes of his statute. And I think I'll just leave it with this one quote from Judge Willett. He says in his introduction, he says Tyson received at most strong encouragement from the federal government. But Tyson was never told that it must keep its facilities open. Try as it might Tyson cannot transmogrify suggestion and concern in two

direction and control. And that's kind of as I'm sure Anthony knows, a kind of a classic Judge Willett line. And he's, he's he's, like I said, quite a writer. And that's what this appeal hangs on. And Tyson is, I guess, packing his bags and going back to state court.

A

Anthony Sanders 33:40

David, have you ever gone up the federal court but had to pack your bags back to state court?

33:44

No, fortunately, I have not. I've been involved in removal cases, but they're always diversity cases. I haven't had occasion to to address this statute. One question that I had: the court pointed out that Tyson was not actually doing government work. The court cited cases where the statute did apply, the removal procedure did apply. The private entities were actually doing government work, either they were doing work for the Department of Defense, or what have you. And in this case, Tyson is just doing work for profit. So I wasn't entirely sure had Tyson actually been given an enforceable directive to to keep producing chicken, you know, had the Defense Act actually been applied to them, would that have been enough? Or were they still doomed because they were just doing for profit work rather than doing work for the government?

D

Dan Rankin 34:48

My impression is that if they had a contract from the federal government, that probably would have been sufficient. I know there's tons of contracts out there with the federal government that you know, for health care or or something along those lines and or the manufacturer manufacturing of planes and things of that sort. Maybe some of those may ordinarily be attributed to be a fundamental government task, but others not. But I think they if they at least had a contract here, there would have been a expressly delegated duty from the government and not something that was just kind of mere encouragement, or exhortation. And I think that, I think that would have been enough. That's my impression. But I think the kind of quintessential government task reasoning was probably more so for the occasions in which there there may not have been a contract, perhaps. But I could be wrong.

A

Anthony Sanders 35:45

My take from this is not without getting too into the weeds, and without reading many of the background cases is that the kind of the common sense view I get here is it's a little bit like interrogations by the police. So if the policeman, you know, starts asking you questions, and you ask, am I free to leave? And they say, Well, sure, -- which a lot of people, of course, don't have the sense of mind to ask -- then, then you wouldn't be ordered by the government. But if but if you are not free to leave, and so there you're basically under arrest, then it's a little bit like the government has ordered you to keep producing chicken. And therefore that there's a chance at least that the case could be removed under the statute. And although they're very

different contexts, and of course, the statute here is very different than the the an officer in the Fourth Amendment. In the end, I think that the kind of the common sense approach is maybe what was what's driving some of Willett's reasoning here.

D Dan Rankin 36:57

Yeah, I think so. It's funny, I actually thought of that exact same thing. When I was reading this opinion, Anthony, I think that kind of whole line of free-to-leave jurisprudence is just really wonky, in my opinion. Because you read these fact patterns where people get pulled over. And you know, practically speaking, if you get pulled over by an officer, you don't feel free to leave like that, like, what was going to ensue is a high speed chase, in all likelihood. Um, so, you know, it's it's that whole kind of line of reasoning doesn't really make any sense to me. And it's something that came up for me as well. And yeah, perhaps that's that's kind of like a, an instinct. That's a subtle instinct. That's, that's kind of animating what's going on in this opinion, as well.

A Anthony Sanders 37:43

Well, thank you, Dan, for for that case and that fun read of of Judge Willett's prose. Thank you again, David, for coming on the show. And also congratulations on the 11th Circuit victory. Is there anything we should be looking for from, that you're working on at ALI and in coming months and years elsewhere in the federal courts?

38:07

Well, cities and municipalities and governments continue to take it upon themselves to infringe on First Amendment rights. So so we stay are definitely staying busy. We have an appeal we're working on in the 10th Circuit. We've got cases in different parts of the country. So yeah, you may be may be seeing us again on another one of these cases.

A Anthony Sanders 38:36

Well, great. Well as as our IJ colleague Paul Sherman likes to say I sue the government, business is booming. So that's, that's good to hear. Well, thank you both again for coming on Short Circuit. Thank you everyone for listening. And until next time, I hope that everyone will get engaged.