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SPEAKERS

Sophia Henderson, Anthony Sanders, Dan Knepper

A Anthony Sanders 00:11

Pirated shows on YouTube and monopolies on the beach. This week here on Short Circuit, your podcast on the federal courts of appeals, I'm your host, Anthony Sanders, Director of the Center for Judicial Engagement at the Institute for Justice. We're recording this on Wednesday, January 28, 2026, and ladies and gentlemen, we have two very brave IJ attorneys here today who somehow have made it into Institute for Justice headquarters in Arlington, Virginia, where it is basically an apocalyptic scene of snow, ice, people eating cats, rats, fighting with men for their very survival, and yet somehow my colleagues have made it into the studio while I sit here safe in a basement in Minnesota. A lot of people in Minnesota aren't safe right now, where it's also very cold and there's a lot of ice, but I'm fine, but my colleagues were not fine for a while, but they made it into work, and so we're all here ready to share some stories from the federal courts of appeals with you. So one of them, interesting enough for a show that this week is on YouTube, will be about shows on YouTube, although it will be a very different kind of show, not a show that is made free for the public to educate them, but a for-profit show that I believe is in Spanish that is being pirated. Then we will have a very different kind of opinion, and that is about a beach monopoly in South Carolina. So the first one will be from the Eleventh Circuit, the second from the Fourth Circuit, so it's a very East Coast show today. But first I want to introduce who will be doing the beach opinion later, a first-timer on IJ, and that is Sophia Henderson. So Sophia, she is an attorney with us at IJ now, but she went to Washington and Lee School of Law. She also went to—now I'm going to get this wrong—Sewanee: The University of the South, okay, I'm about to be corrected, and we are very happy to have her today. She's also a philosophy major, which is a favorite of mine. But Sophia, tell us a little bit about yourself and how I mispronounced your college.

S **Sophia Henderson** 02:40

Hi, Anthony, thank you so much for having me. You're very close. It's Sewanee.

A **Anthony Sanders** 02:46

So it's not like Shawnee River. It's Sewanee

S **Sophia Henderson** 02:53

Okay, okay. If you're really pronouncing it like a local, you'd say Sewanee. You're super close. But yeah, I graduated law school in 2023. I clerked for two years for a federal district court judge on the United States District Court for the Eastern District of Kentucky. I had a really great experience and kind of always knew that the type of work that IJ does is the work that I want to do, so I feel like clerking prepared me really well for that, so I'm super excited to be here.

A **Anthony Sanders** 03:28

Yeah, so you were a district court clerk for two years. Now, I've got to say, I was an appellate clerk at a state court for one year. District court clerkships terrify me because you have to do things like write orders and help with discovery disputes and that kind of real law that, frankly, scares the bejesus out of me. But what is it like? What should someone know when they're getting into a district court clerkship?

S **Sophia Henderson** 03:58

Yeah, I would say there's a very large learning curve when you first start clerking on a district court, and everything just kind of comes at you all at once, and it's a little bit like sink or swim. But I was super lucky—I had a wonderful judge, and I'm really glad that I chose to do two years, because I think it can take you a while to get used to it, but then once you do, it's great. I absolutely loved it, and I feel like clerking on a district court is one of the best jobs you can have right out of law school, because every aspect of litigation, you kind of get thrown right into it. So things that you understand maybe on an intellectual level in law school, you get to understand them on an actual practical level in terms of the day-to-day of litigation.

A **Anthony Sanders** 04:45

So absolutely, I mean, I've spoken to many people with district court clerkships, and the practical experience you get from that side of the bench really helps you when you're thrown into actual litigation, so that's good to know—a practical tip for some of our listeners. But we have more practical tips when it comes to pirating videos, or maybe trying not to have your videos pirated. So Dan Knepper, our CEO and CFO and general counsel here at the Institute for Justice—he's a practical guy, right? He comes up with these cases that aren't about some highfalutin constitutional matter, but actual real stuff. And he came to me and said, this is actual real stuff, and I really, really want to talk about it. And I read the case, and I had no clue what's going on other than there are videos on YouTube. So Dan, please explain why this is important—why should we care about this show that's from Latin America I had never heard of before, and how best to use YouTube if you want to be on the up and up? All our viewers on YouTube are very interested.

D **Dan Knepper** 06:03

You bet, Anthony, thanks. Yes, yes. So the case I'm going to be talking about is Athos Overseas Limited Corp v. YouTube and Google. It's out of the Eleventh Circuit. I found this opinion to be a little confusing, and I went to the district court opinion, so I'm going to kind of fill in some blanks, or at least places where I got confused, with some of the stuff that we learned from the district court—but Athos is a Panamanian entity that is owned and operated by a producer who acquired all kinds of rights to largely classic Mexican films, like hundreds of them. And as we'll get into the facts in a little bit, starting in 2013 or 2014 or so, they got really upset at seeing his movies on YouTube without his permission. And so this is a drawn-out saga—we'll talk about what may be some questionable strategic decisions that they made along the way—but we're going to ultimately find out that the Court of Appeals and the district court both were not all that sympathetic to Athos's arguments about whether YouTube had done what it was supposed to do or if it needed to do more. So we're going to start with where the law is and what they get—this is a DMCA case, the Digital Millennium Copyright Act, and the relevant part here is trying to strike a balance between the rights of copyright holders and service providers. The internet is coming along—we don't want to stunt its growth—we want to protect and allow copyright holders to protect their rights and their intellectual property, and so Congress drew some lines.

A **Anthony Sanders** 07:58

And this one is drawn up in the days of Napster, if I remember right.

D Dan Knepper 08:02

1998, I think, so yeah, around then—and I may or may not be familiar with Napster. So at any rate, the DMCA includes safe harbors for service providers, one of which YouTube would be, and the safe harbor says, look, you service provider are not liable for damages and very limited injunctions if you don't have actual knowledge of an infringement, if you are not aware of facts and circumstances from which infringement is apparent—and we're going to put an asterisk by this, this is the red flag test that the decision is going to talk about—and, upon obtaining such knowledge or awareness, you act to remove it. You can't have a direct financial benefit, and you have to act expeditiously to take the infringing materials down. Importantly, you have no duty to monitor—you don't have to scour your website, YouTube doesn't have to look around and see what might be infringing—because the DMCA, and it makes a lot of sense, puts that obligation and onus on the copyright holder. The copyright holder is going to be in the best position to know whether the copyright has been violated, right? And this has evolved, and it was intended to do so, into kind of the notice-and-takedown system that we're all vaguely familiar with, right? You get a notice of copyright, and then YouTube says, okay, I'm going to take it down, and I'm going to put a mark against that user—if they accumulate enough marks, we're going to disable the account. And you see this regime all over the place, whether it's in this case or, you know, it was also an issue in the Sony versus Cox case that's pending before the Supreme Court. And unlike in that instance, YouTube responded, right, and they took down the materials. So let's walk through this a little bit more: for a service provider to be covered or to be fine, it has to adopt and reasonably implement a policy, act expeditiously to remove, have no financial benefit, and now our story begins. It's 2013 or 2014, Athos has owned hundreds of classic films, and it began to send takedown notices to YouTube, and the record—I found the decisions to be a little bit confusing on the volume of takedown notices that it sent—but I believe the number is 7,000 in total. Wow. I think it was 30,000-plus for the relevant period, and so they sit here and say, all these clips, things, are infringements, and YouTube took them all down—there is no argument that YouTube did not say, oh, we got a notice, we took down the infringing material.

A Anthony Sanders 11:06

So how long was the gap between the notice to the take down? That's what I couldn't tell from the opinion.

D Dan Knepper 11:13

I don't know that it was discussed, but it's pretty quick. Like, YouTube moved pretty fast on this, and there was no argument it made that YouTube didn't move quick enough once it received it.

A Anthony Sanders 11:25

Its not like weeks and weeks go by and it's still up there, right?

D Dan Knepper 11:28

Right, so now we're a little bit familiar with Athos—a giant library of largely classic Mexican films—and they're upset that their films, or bits and pieces of them, are showing up on YouTube in ways that aren't consistent with the rights that it has. YouTube is YouTube, right? As of the relevant time, the district court opinion noted that as of February 2020, YouTube was adding 500 new hours of programming every minute—it's enormous, we all know that, but that really jumps out, like it's got a lot going on. And so what YouTube has done is create tools to allow content owners to more effectively find or locate their infringing materials. They've got great names like Copyright Match and Content ID, and the effect of these tools is to make it easier for content owners to submit takedown requests by identifying and suggesting possibly infringing works. In some of the more confusing parts of the decision, the court attempts to describe how the technology works, using things like hash and digital thumbprint, but the district court, in my opinion—and hopefully they got it right—did a much better job of describing how this stuff worked by saying the Copyright Match tool is automated software that, through encoding and fingerprinting technology, detects videos that match a user's copyrighted material and presents those matches to the user, and Content ID is automated software available for users with more complex management needs, where you have to upload verifying materials and so on. But in both of these, YouTube is going to suggest, hey, it looks like we might have some copyright infringement going on, and it makes it easier for the copyright owner to submit takedown notices. However—and this is where the worm turns—when you sign up for those, you agree not to sue YouTube; it includes a release. And Athos made the business decision at the time that it would rather do the individual thousands of takedown notices and preserve the right to sue than subscribe to tools to make it easier to police its copyrights but give up that right, and they did preserve that right to sue, and they did sue, and it did not go well for them. The decision walks through the various tools that YouTube provides and tries to explain how it all works, but one of the things the court says—and it's true—is that all of these tools are operated by the copyright holder, because the copyright holder is in the best place to know what materials are protected and how to police them, and also is the only one who knows what's going on legally. None of these tools are capable of doing a legal analysis to say, is this fair use, did the copyright owner sublicense the content, is it an affiliate, is it permitted—there's no way to automate that, that has to be done by the copyright holder, and only the copyright holder knows that information. And this is going to be very relevant to the court's reasoning as it goes along in determining whether YouTube had enough notice or had some burden to carry that it failed to carry. So the decision talks about whether YouTube has either actual or red flag knowledge as a result of this content detection, with Athos basically saying, look, YouTube has the capability—and it does—to suggest infringing materials, so why isn't that at least constructive notice, why isn't that enough to suggest that infringement is happening and to give YouTube an obligation to do something with that information?

A **Anthony Sanders** 15:57

- even without the take down those notices they're saying.

D **Dan Knepper** 16:00

We’re talking a little bit about that red flag standard, right? And the decision quotes and goes into a well-known treatise on copyright by Nimmer, and it suggests that the red flag test goes to generalities—like the infringing activity is apparent—not the specific infringing activity alleged in the complaint. So, for example, if the YouTube CEO picks up the newspaper and there’s an article that says, man, there’s a lot of pirated content on YouTube, has the CEO received enough notice of what’s going on that they have an obligation to do something about it? And the court is really skeptical of applying this standard in this type of situation. It says, look, there are probably some services out there, like Napster, where you have directory-based systems, where that type of constructive knowledge, that type of red flag, might be sufficient, but where you have no way to know what the legal analysis is—and you’re not the copyright holder—you’re running really close to imposing the very obligation that the DMCA says service providers are not required to take on, which is monitoring their libraries. And given that the copyright holder is in such a better position—the only position—to know whether something is violating its rights, both because it owns the material and has the relevant legal relationships, the court is not going to impose that obligation on YouTube. And the Second and Ninth Circuits had already looked at this and decided it in a similar way; this decision goes a little bit further, I believe, on the red flag standard, and ultimately this is a pretty big loss for Athos and its library of classic Mexican films.

A **Anthony Sanders** 18:27

Hang on—so they could have put themselves in the YouTube system and gotten all the benefits of that, but they didn’t. Now I want to ask a little bit about what that could have given them, but first I want to see what Sophia thinks about all this, who I’m guessing does not remember Napster.

S **Sophia Henderson** 18:53

I think I remember my dad using it when I was a kid.

D **Dan Knepper** 18:56

Oh, that's, that's harsh.

S Sophia Henderson 19:00

So I do remember it a little bit.

A Anthony Sanders 19:04

You guys were a Napster household, that's great.

S Sophia Henderson 19:06

I think so, but I have very little experience with copyright law, so I more just had a question. I don’t like the outcome here, especially in terms of the red flag stuff—it seemed pretty straightforward to me, like I didn’t really see how the court could possibly reach a different conclusion, so I was just wondering, am I missing something—should that be more controversial? Because it seemed to me like the common-sense result.

D Dan Knepper 19:40

I think that’s right—both of the courts of appeals that had looked at this issue before had come out the same way. I think this decision maybe goes a little bit further than what had been done, and it’s definitely crystal clear that YouTube does not have an obligation here—this red flag, these facts and circumstances, aren’t going to rise to the level that would require a service provider to do extra work or take down materials on its own. I thought this was interesting because it feels like there’s a bit of a movement toward making it harder for copyright holders to find their remedies, and it does make things tougher. One of the things, maybe anticipating Anthony’s question a little bit, is that it’s an uphill climb for a copyright owner to sue YouTube—it really is, or Google—and in addition to all the practical considerations, this is YouTube’s business, they’ve produced the tools, they’ve won these cases before, and they have the argument that, hey, we can’t inventory everything—we had 500 hours of new content every minute five years ago—we’re automating this, we’ve invested hundreds of millions of dollars into these tools, take advantage of them. You can’t sue us if you do, but that was the tradeoff. This business decision that Athos made, I found to be interesting—there’s an intellectually appealing part to it, standing your ground and not clicking into this form contract—but if you’re really interested in getting the materials that violate your copyright off YouTube, these tools provide a way to do that, and they’re designed for that purpose. So I kind of think that before they filed that lawsuit, it might have made sense to ask, what’s our real goal here, because the path to getting there is getting the videos taken down—however many there are—and it avoids this litigation that has not been successful the other times people have tried it.

A Anthony Sanders 22:09

So a quick correction—you're right, Napster began in mid-1999, so the DMCA was just before it, but I remember there were basically proto-Napsters already starting at that time, and MP3s were flying around the internet, and that was driving it, and Napster, of course, tried and went in flame for a while and then burned out because of the DMCA.

D Dan Knepper 22:33

Well, I don't know that anything was flying around that fast back then, Anthony—I was putt-putting along at 56.6k modem speed.

A Anthony Sanders 22:49

Wait like half an hour for the song to download—yeah, yes, of course. I didn't actually do that myself, but so the other question I have is, say you opt into this YouTube system—I'm guessing the problem with a contract like that is, what if YouTube just falls down on the job and isn't doing that? I mean, they probably don't talk about this, Dan, in there, but I would think there's some kind of best-efforts part of the contract or terms of service where, if it really wasn't happening, maybe you could opt out and then sue, because that is a lot of trust to place in Google to protect your stuff.

D Dan Knepper 23:38

So great question—not only does the opinion not go into it, and I don't personally know what's in YouTube's terms and conditions then or now, but the record, which I'm taking at face value, is how the district court described Athos's motivations for not entering into those agreements, which was that they wanted to preserve the right to sue. I don't think it was super clear-cut—I think there were other factors, so it's not totally known why Athos had the reaction it did to the terms and conditions. My hunch is that Athos is looking at this and saying there are literally thousands of copies of my movies, either clips or snippets, floating around YouTube, and YouTube can produce a list—if I sign up, they can produce a list—copyright violation, copyright violation, copyright violation. Gosh, it seems like they know what's going on, and there's a part of that that makes sense, but it's automated—there's nobody there actually reviewing them, and even if somebody were looking at each one, they'd have no idea what Athos had said was a permitted use, or how to analyze 500 hours of new content every minute to determine which portions might be fair use, because those are not automated processes.

A Anthony Sanders 25:07

And I have to say, the little I know about it, it is amazing how YouTube's programs can—the algorithm will go click and find something on there and send the warning out. Sometimes they're not accurate, I will say, but they're fast.

D Dan Knepper 25:24

As I say, there are all kinds of views out there on the notice-and-takedown system—when it's used correctly, when it's abused a bit, those types of things—but whether people send them or a robot sends them, it is the system that has evolved out of the DMCA context.

A Anthony Sanders 25:46

Well, we all like enjoying our YouTube, of course. You can watch it on your phone, and sometimes people will watch YouTube on their phone at the beach, but if you're at the beach, you maybe want to be a little more comfortable—get a lawn chair, get an umbrella, sit there with your drink with an umbrella while watching YouTube on your phone. But unfortunately, in some places, that practice has been given to monopolistic forces that depress one's ability to earn a living, and so there was an attack on one of those monopolies in the little old city of North Myrtle Beach, but the city unfortunately had some protection. So Sophia, tell us a little bit about this, but I'm also curious—have you been to the city of North Myrtle Beach or Myrtle Beach itself, and what's it like?

S Sophia Henderson 26:49

I don't think I have, have you?

A Anthony Sanders 26:51

No, I've been to the beach in South Carolina—but, wait, is it North Carolina? I think it's South Carolina, isn't it? I mean, there are probably some southerners turning the channel right now. I just know it's a place to go, that the beach is nice—you go for spring break, that kind of thing. Dan, you probably have some knowledge about that.

D Dan Knepper 27:13

I'm trying to decide whether the Southerners are leaving now or when you mispronounced the name of the-

A Anthony Sanders 27:22

Yeah, that might have happened earlier. Anyway, I've done my research. Yeah, Myrtle Beach. It's a little I've been to Charleston. It's a little north of Charleston in South Carolina.

S Sophia Henderson 27:32

Yeah, my family typically goes to the beach in North Carolina, so I haven't been to the South Carolina beaches too much.

A Anthony Sanders 27:38

Understood, it's very close to the South and North Carolina border, I will add. So anyway, that's where we are. What's going on on the beach?

S Sophia Henderson 27:49

Yes, so this case is Cherry Grove Beach Gear v. City of North Myrtle Beach, and it’s out of the Fourth Circuit, and it’s about when cities are immune from federal antitrust law. It comes out of North Myrtle Beach, which attracts around 2 million visitors per year, so it’s a very popular destination, and understandably a large percentage of those vacationers want to rent beach equipment like chairs and umbrellas, and that’s where the plaintiffs come in. The plaintiffs are the owners and operators of a company called Cherry Grove Beach Gear—they rent beach equipment like umbrellas and chairs to vacationers, and when you rent from them, you can either pick up the equipment yourself or pay them to set it up on the beach for you, at least up until 2021, when the city of North Myrtle Beach informed Cherry Grove that their beach setup services were in violation of city code. Because Cherry Grove disagreed with the city’s interpretation, they continued providing those services, and in response, the city passed a new law in 2022 that unequivocally barred them from doing so. The 2022 ordinance stated that only city officials are allowed to set up rented beach equipment on the beach in a commercial context, so under this ordinance, Cherry Grove can still rent out equipment and even drop it off at your beach house, but it cannot bring umbrellas and chairs onto the beach and set them up—if you want that, you have to rent from the city. Despite the ordinance, Cherry Grove continued providing setup services, but after receiving multiple citations, they brought a federal antitrust lawsuit against the city in the District of South Carolina, alleging that the city violated federal antitrust law by trying to impose an unlawful monopoly on the rental of beach chairs and equipment across the entirety of the beaches.

A Anthony Sanders 30:27

I don't know if it's in the opinion or not Sophia, but it sounds like these beaches are all publicly owned. They're not like privately owned by the property owner at the edge of the beach.

S Sophia Henderson 30:38

That’s my understanding, yeah. Okay, right—so the district court disagreed with the plaintiffs and ended up granting summary judgment to the city because of an immunity doctrine known as state action immunity. This doctrine provides that federal antitrust laws do not apply to anticompetitive restraints that are imposed by states, as long as those restraints are imposed as an act of government. So in other words, the immunity attaches only when the city is acting pursuant to a policy to displace competition through regulation or monopoly.

A Anthony Sanders 31:20

Right because in some senses, regulation is always monopolistic, and so it's just exempt from antitrust.

S Sophia Henderson 31:28

Yeah, so the plaintiffs disagreed with the district court and appealed to the United States Court of Appeals for the Fourth Circuit, raising two arguments on appeal. First, they argued that state action immunity cannot attach because the state statutes at issue are not sufficiently clear expressions of state policy, and second—and I thought this one was interesting—they asked the Fourth Circuit to adopt something known as the market participation exception to state action immunity, where the city would not receive immunity because it was participating in the market as a competitor instead of acting in a regulatory capacity. The Fourth Circuit disagreed with the plaintiffs on both counts and found for the city. First, it held that the state statutes are sufficiently clear expressions of the state’s intent to impose a monopoly on beach equipment setup, and it focused on a couple of statutes in its analysis, noting that South Carolina law authorizes municipalities to grant franchises and make charges for the use of public beaches, and also authorizes them to provide lifeguard and beach safety services, including granting the exclusive right to a beach safety company to rent beach equipment and sell items to the public on the beach that are allowed by the municipality

A Anthony Sanders 33:11

So, I mean, that's pretty specific. They explicitly have the right to let someone else at least be a monopolist on the beach.

S Sophia Henderson 33:22

Right, so the plaintiffs tried to distinguish that by saying, well, okay, we don't dispute that the statutes grant the city the ability to displace competition, but the city would have to farm it out to a private company—they can't just give themselves a monopoly. But the Fourth Circuit disagreed and said that because the state has given the city the power to establish an exclusive franchise, the city also has the ability to establish a monopoly, and therefore state action immunity attaches. So essentially, because those statutes contemplated anticompetitive conduct, the Fourth Circuit found that the city would receive state action immunity. Then on the second issue, the market participation exception that the plaintiffs urged the court to adopt, the Fourth Circuit noted that the Supreme Court has gestured at the possibility of such an exception but has never actually held that it exists, and while the Fourth Circuit didn't give a ton of analysis on this point, it noted that it had rejected the exception in a prior case and declined the plaintiffs' invitation to "steer federal antitrust law into uncharted waters."

A Anthony Sanders 35:01

And onto the beach, perhaps.

S Sophia Henderson 35:03

Right, into the ocean.

A Anthony Sanders 35:08

So I guess monopolists win. We wait for another day. Dan, you know at IJ we were very much not into monopolies. And any thoughts?

D Dan Knepper 35:22

Do you have any sense of what happened in 2022? Because in my head—I don't know if this is right or not—I've got this picture of a thriving, sort of symbiotic relationship where people go down there and get chairs on the beach, and it feels like it went bad quickly. Do we know, was there any hint in the record as to why this got so adversarial so quickly?

S Sophia Henderson 35:54

Yeah, when I was reading the opinion, I had the same question, so I went back and listened to the oral argument, and they didn't really explain it there, but there was a lot of attention paid to how much money the city is making from this and what they're doing with it. Apparently, the city is using the money to fund lifeguards, so the city's lawyer talked about that quite a bit, and then the question came up whether it even matters what they're using the money for—could they still do this even if they were using it for something frivolous, which was pretty interesting.

A Anthony Sanders 36:36

Yeah, it's kind of just, I guess, not a great look if they were making a lot of money—I would guess a lot of people want beach equipment when they go to the beach, and lifeguards, I mean, they're trained, you've got to pay them, but I'd bet they made a lot more than what the lifeguards cost. That's just a wild guess, but it's probably more like, we don't have to raise people's taxes in the city, we can make money off the 2 million people who visit every year—kind of like a hotel tax.

S Sophia Henderson 37:08

Right, yeah—I saw a news article that said the city was making at least one and a half million, and then I think there was something in the oral argument about how any excess that doesn't go to the lifeguards is used for things like beach maintenance or general beach safety.

A Anthony Sanders 37:27

So yeah, I mean, those big beaches—when you have lots and lots of people—it does take a toll on the beach and a few other things, but man, they must make a lot of money off this, that's my guess. So my response—and I bet many listeners' and viewers' responses—is, right, this is an antitrust case, but it sounds a lot like some of the cases we do at IJ about the right to make a living, right? There's this private outfit renting equipment to people on the beach—it sounds like a nice little startup, what a cool idea—and it gets shut down by the city, and not only shut down, but shut down so the city itself can compete against it. And yet we have an antitrust lawsuit, not a constitutional lawsuit, and people who have been listening to the show for years will probably know the reason is that a constitutional claim would be incredibly difficult, because not only is the right to earn a living very hard to vindicate, with the rational basis test and all of that, but this is a public beach—that's why I asked that question—so I don't know if the county or the state owns it, but it's public property, and the government gets more leeway there than if it were someone's private land. So it's going to be really hard to bring a right-to-earn-a-living claim in that context, whether under the state or federal Constitution, and so you try antitrust law instead, and sometimes those cases do work against cities or state boards—like the North Carolina Dental Board case—but here that statute you read is pretty on point for what the city was doing, so the court was able to let it go.

S Sophia Henderson 39:48

Yeah, it seemed like—I mean, I could understand why the Fourth Circuit would read those statutes that way. The question that kept coming to my mind when I was reading it about the market participation exception is that it seems like in this case the state is acting less as a sovereign regulator and more like an ordinary competitor in the market, except they're shutting out all competition, so I can see why the plaintiffs were advocating for that exception.

A Anthony Sanders 40:20

Yeah, it's like they're giving a patent to run a monopoly to the city, like in the old days of Lord Coke–type monopolist cases, so it kind of has that ring to it. I don't know much about that market participation exception, but we have some friends of the show who do this kind of monopoly work against cities and boards, so maybe it'll percolate, though it doesn't seem to be creating a circuit split or anything like that.

S Sophia Henderson 40:48

I don't think so. It seems like a lot of circuits and district courts have declined to adopt it so.

A Anthony Sanders 40:56

Well, while everyone's sitting at home—some may still be stuck in the cold, the snow, and perhaps even the ice, forcing them to be at home—we can all think about the summer, where we can do things like go to the beach, and maybe there are some more free-market-oriented beaches out there where you can rent your beach equipment or just bring it yourself, which is, I suspect, what a lot of people do. But until that time, thank you both for a little bit of YouTube, a little bit of rentals at the beach, and a little bit of pining for summer, and until then, please be sure to follow Short Circuit on YouTube, Apple Podcasts, Spotify, and all other podcast platforms, and remember to get engaged.