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Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Eleventh Circuit Rules 36-2, 36-3. (Find CTA11 Rule 36-2 and Find CTA11 Rule 36-3)

United States Court of Appeals, Eleventh Circuit.

5634 EAST HILLSBOROUGH AVENUE, INC., d.b.a. Tootsies, Gemini Property Ventures, LLC, d.b.a. Showgirls, et al., Plaintiffs-Appellants, Cross-Appellees,

v.

HILLSBOROUGH COUNTY, FL, a political subdivision of the State of Florida, Defendant-Appellee, Cross-Appellant.

No. 07-14955

Sept. 18, 2008.

Background: Several adult-oriented businesses brought action against county, alleging that ordinances violated the businesses' First Amendment rights. The United States District Court for the Middle District of Florida, Richard A. Lazzara, United States District Judge, granted motion. Businesses appealed.

Holding: The Court of Appeals held that businesses adduced no local evidence to diminish force of studies presented by county.
Affirmed.

West Headnotes

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315T Public Amusement and Entertainment
Adult-oriented businesses adduced no local evidence, other than assertion that calls for police help from businesses compared favorably to non-adult-oriented businesses, to diminish force of studies presented by county, and thus county met its evidentiary burden to show that its zoning ordinance, licensing ordinance, and ordinance regulating "bikini bars" had the purpose and effect of suppressing secondary effects of such businesses. U.S.C.A. Const.Amend. 1.

Luke Charles Lirot, Luke Lirot, P.A., Clearwater, FL, for Plaintiffs-Appellants.
Scott D. Bergthold, James C. Stuchell, Law Office of Scott D. Bergthold, P.L.L.C., Chattanooga, TN, Robert Eric Brazel, Hillsborough County Attorney's Office, Tampa, FL, for Defendant-Appellee.

Appeals from the United States District Court for the Middle District of Florida. D.C. Docket Nos. 06-01695 CV-T-26-EAJ, 06-02323-CV-T-2.

Before ANDERSON, BARKETT and HILL, Circuit Judges.

PER CURIAM:
***1** We held oral argument in this appeal on September 8, 2008. At the outset, we note that appellants have abandoned on appeal numerous arguments that they either made or could have made in the district court and on appeal. For example, we note that there are three ordinances at issue, a zoning ordinance, a licensing ordinance, and an ordinance regulating bikini bars. Appellants make no distinction amongst the three ordinances; nor do they suggest that a different analysis might apply. Rather, appellants' sole, and narrow, argument on appeal is that appellants adduced sufficient evidence to create genuine issues of fact with respect to whether the county satisfied its evidentiary burden to show that its ordinances have the purpose and effect of suppressing secondary effects. Thus, appellants do not challenge the district court's resolution of any of the other aspects of the analysis for zoning ordinances set out in *Peek-A-Boo Lounge of Bradenton v. Manatee County*, 337 F.3d 1251, 1265-66 (11th Cir.2003). Appellants have not challenged the district court's conclusion that the ordinances at issue do not constitute a total ban, but rather constitute merely time, place and manner regulations. And appellants do not challenge the district court's conclusion that, as a time, place and manner regulation, the ordinances are subject to intermediate

scrutiny. Finally, although appellants do challenge whether the ordinances were designed to serve a substantial governmental interest, they do not challenge the district court's conclusion that the ordinances allowed for reasonable alternative channels of communication. Similarly, appellants do not argue that the four pronged analysis derived from *United States v. O'Brien*, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968), is applicable. Accordingly, the only issue for appeal is whether appellants have created a genuine issue of material fact with respect to whether the county met its evidentiary burden to show that its ordinances have the purpose and effect of suppressing secondary effects. [FN1]

Addressing that single issue, we note that appellants' briefs on appeal describe the evidence adduced by appellants in completely conclusory fashion. When pressed at oral argument, counsel for appellants asserted that its experts challenged the methodology of the studies put forward by the County to establish that the ordinances had the purpose and effect of reducing the secondary effects of such businesses. However, counsel's description of the alleged flaws in the County's evidence left us with the firm conviction that there was little or no diminishment in the force of the County's evidence. Appellants' brief on appeal contained vague suggestions that appellants may have adduced evidence that the particular businesses of appellants had not caused such secondary effects. However, in light of the County's assertion in brief that appellants had adduced no such local evidence, we pressed appellants' counsel at oral argument for a description thereof. The only evidence counsel could describe was their expert's assertion that the calls for police help from one of appellants' businesses compared favorably to non-adult businesses. Of course, binding case law has discounted the value of such 911 calls as indicative of the kind of secondary effects which are the focus of the County's ordinances.

***2** After oral argument and careful consideration, we conclude that the County met its evidentiary burden to show that its ordinances have the purpose and effect of suppressing secondary effects. We conclude that appellants have pointed to no evidence that would create a genuine issue of fact as to whether the County was reasonable in relying on their evidence and their rationale that the ordinances would reduce secondary effects. Accordingly, we conclude that the County has established that it was reasonable in this regard.

For the foregoing reasons, the judgment of the district court is

AFFIRMED.

> FN1. Of course, with respect to any other issue, we express no opinion on the law or the application of the law to the facts here.

C.A.11 (Fla.),2008.
5634 East Hillsborough Ave., Inc. v. Hillsborough County, FL
Slip Copy, 2008 WL 4276370 (C.A.11 (Fla.))

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