

NOT RECOMMENDED FOR PUBLICATION

File Name: 21a0385n.06

Case No. 20-6434

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED
Aug 16, 2021
DEBORAH S. HUNT, Clerk

JEREMIAH WALDROP, Individually; PHILLIP)
SELF, Individually,)
)
Plaintiffs-Appellants,)
)
v.)
)
CITY OF JOHNSON CITY, TENNESSEE,)
)
Defendant-Appellee.)
)

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF TENNESSEE

OPINION

BEFORE: SUTTON, Chief Judge; COLE and READLER, Circuit Judges.

PER CURIAM. Street preachers Jeremiah Waldrop and Phillip Self sued the city of Johnson City, Tennessee, alleging that the city authorized its police officers to move them from the main grounds of an LGBTQ pride festival based on their anti-gay speech.

The plaintiffs moved for a preliminary injunction, and after conducting discovery the parties cross-filed for summary judgment. The district court awarded summary judgment to Johnson City, but did so on grounds the city had not advanced, namely, that the officers' conduct was a permissible, content-neutral restriction based on the plaintiffs' blocking an entrance to the festival. The court summarily denied the plaintiffs' motion for a preliminary injunction as well.

On appeal, both parties agree that the district court erred in granting summary judgment on grounds that neither party argued below. Because the district court did not consider the parties' arguments and record evidence on an issue going to the heart of the plaintiffs' claims, we reverse the district court's grant of summary judgment to Johnson City and its denial of the plaintiffs' preliminary injunction motion and remand the case for further proceedings consistent with this opinion.