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9th Circuit Upholds San Diego Chalking Tires

Court rules longstanding parking enforcement method doesn't violate 4th Amendment

City Attorney Mara W. Elliott announced today that the 9th Circuit Court of Appeals has upheld San Diego's longstanding practice of chalking tires as a means of enforcing time limits in parking spaces on City streets.

Tens of millions of dollars were at stake with the ruling. Attorneys in the class-action lawsuit sought damages from the City of at least \$11 million for each of the past four years.

In a split 2-1 decision, the panel held that, even assuming the temporary dusting of chalk on a tire constitutes a "search" under the Fourth Amendment, as the plaintiffs argued, it represents a negligible intrusion on personal liberty and falls within the amendment's administrative search exception.

"San Diego has chalked tires as an effective, cost-efficient, and accurate means of parking enforcement for nearly 100 years," City Attorney Mara W. Elliott said. **"The court was correct in determining that chalking a tire does not represent an illegal search and in rejecting the plaintiffs' unsupported, revisionist account of Fourth Amendment doctrine."**

Judge Daniel A. Bress, writing for the majority, noted that courts have found it constitutional for people to be stopped at drunk driving checkpoints, while hunting, or in airport terminals, where passengers can have their luggage opened and their bodies patted down.

"It would be passing strange if tire chalking, of all things, were somehow a Fourth Amendment red line that cannot be crossed," Bress wrote.

He also noted that the plaintiffs in *Andre Verdun, et al., v. City of San Diego* suggested that the city should photograph cars or use license plate readers instead of chalking. Those methods, Bress concluded, "would ironically invite greater intrusions into personal privacy."

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The decision breaks from a 6th Circuit decision in a similar case, *Taylor v. City of Saginaw*. The 9th Circuit disagreed with that court's reasoning that just because there were other parking enforcement techniques available, chalking tires should be ruled unconstitutional.

Plaintiffs in *Verdun* appealed a 2021 district court ruling that dismissed the case in response to the City's motion for summary judgment. The City of San Diego was defended by Senior Deputy City Attorney Meghan Ashley Wharton.

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