14th Annual Municipal Law Conference 2016

Update on the most timely topics affecting public sector law practice at the local level

Supreme Court Review Resources

Wednesday, March 16, 2016
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A special thanks goes to **Douglas C. Haney**, the City Attorney of Carmel, Indiana, a friend of many members of MMLA because of Doug's hard work over so many years for IMLA. The list which follows is taken, with his permission, from his annual presentation to IMLA and from his updates. I have highlighted in yellow those cases I will discuss, added some citations, and included a case for which certiorari was denied.

FEDERAL CASE LAW UPDATE FOR LOCAL GOVERNMENT ATTORNEYS

(September 1, 2014 -- September 10, 2015)

A. U. S. SUPREME COURT

Carroll v. Carman, *__U.S.__, No.14-212 (Dec. 4, 2014).*
Third Circuit decision holding that an officer violated the Fourth Amendment when his "knock and talk" entry onto private property began in the backyard instead of at the front door of the residence is reversed. No such requirement was clearly established at the time of the conduct.
http://www.supremecourt.gov/opinions/14pdf/14-212_c07d.pdf

EEOC v Abercrombie & Fitch, *__U.S.__, No.14-86 (June 1, 2015).*
Summary judgment to an employer in a Title VII claim is reversed when an applicant wearing a head scarf as part of her religion was denied a job accommodation. In a disparate treatment claim, a job applicant need only show that her need for an accommodation was a motivating factor in an employer's decision, not that the employer had knowledge of her need.
http://www.supremecourt.gov/opinions/14pdf/14-86_p86b.pdf

Integrity Staffing v. Busk, *__U.S.__, No.13-433 (Dec. 9, 2014).*
Time spent by employees undergoing an anti-theft screening before leaving their place of employment each day is not compensable time under the FLSA.

Kingsley v. Hendrickson, *__U.S.__, No. 14-6368 (June 22, 2015).*
A pre-trial detainee need only show that the force used against him was objectively unreasonable in order to prevail on a Fourteenth Amendment "excessive force" claim. An officer's subjective state of mind is irrelevant to this showing.

Los Angeles v. Patel, *__U.S.__, No. 13-1175 (June 22, 2015).*
A city ordinance required hotel operators to record and retain certain guest information and to make it accessible to city police officers upon request. To survive a Fourth Amendment facial challenge, such a law must allow an objecting hotel operator an opportunity to obtain a pre-compliance review before a neutral decision-maker before releasing the requested records.
http://www.supremecourt.gov/opinions/14pdf/13-1175_2qe4.pdf

Mach Mining v. EEOC, *__U.S.__, No.13—1019 (Apr. 29, 2015).*
Courts have authority to review whether the EEOC has fulfilled its Title VII duty to attempt conciliation by giving an employer notice and an opportunity to achieve voluntary compliance.

Michigan v. EPA, *__U.S.__,No. 14-46 (June 29, 2015).*
The EPA's refusal to consider costs in its decision to regulate power plant emissions was unreasonable.

Reed v. Gilbert, *__U.S.__, No. 13-502 (June 18, 2015).*
A municipal sign ordinance that prohibited the display of outdoor signs without a permit, but which contained twenty-three (23) exemptions and subjected each exempt category of signs to different rules, was facially content-based, because it defined its categories of "exempt" signs on the basis of their message and then subjected each category to different restrictions based upon its communicative content. As such, it could not survive a "strict scrutiny" analysis, because the town's differentiation between categories of signs was not narrowly tailored to further its compelling governmental interests in aesthetics and traffic safety. Less restricted signs created the same problems as more restricted signs.
http://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf

Rodriquez v. US, *__U.S.__, No.13-9972 (Apr. 21, 2015).*
Absent reasonable suspicion, the police extension of a traffic stop for 8 minutes in order to conduct a dog sniff violates the Fourth Amendment.

San Francisco v. Sheehan, *__U.S.__, No. 13-1412 (May 18, 2015).*
Qualified immunity under the Fourth Amendment is justified when officers forcefully entered the home of an armed, mentally ill person who had been acting irrationally and had threatened to kill anyone who entered. The failure by officers to follow their training does not itself negate qualified immunity where it would otherwise be warranted.

T-Mobile South v. Roswell, *__U.S.__, No.13-975 (Jan. 14, 2015).*
Under the Telecommunications Act, a municipality's denial of a cell tower application was insufficient because it did not provide in writing its reasons for the denial "essentially contemporaneously" with its written decision when the applicant had to wait 26 days after receiving its denial letter before being provided with these reasons - - only four (4) days before its time to seek judicial review expired.
http://www.supremecourt.gov/opinions/14pdf/13-975_8n6a.pdf

Texas Dept. of Housing v. Inclusive Communities, *__U.S.__, No. 13-1371 (June 25, 2015).*
Disparate-impact claims are cognizable under the Fair Housing Act.
http://www.supremecourt.gov/opinions/14pdf/13-1371_m64o.pdf

Young v. UPS, *__U.S.__, No.12-1226 (Mar. 5, 2015).*
Under the Pregnancy Discrimination Act, an employer's failure to accommodate a pregnant female employee's lifting restrictions while accommodating other employees with similar restrictions may be unlawful. An individual pregnant worker who seeks to show disparate treatment through indirect evidence may do so through application of the *McDonnell Douglas* framework. However, the Court rejected the contention that the PDA grants a pregnant worker an "unconditional most-favored nation status" that would require an employer, once it had provided an accommodation to any other worker regardless of their nature of their job, the employer's need to keep them working, their age, or any other criteria then had to provide that accommodation to all pregnant workers with comparable physical limitations.

1. FIRST AMENDMENT

American Freedom v MBTA, *__F.3d__, No. 14-1018 (1st Cir., Mar. 30, 2015).*
Transit authority that refused to run two advertisements concerning the Israeli-Palestinian conflict because they violated its rules against ads that "demean or disparage" individuals or groups did not violate the First Amendment by following this viewpoint neutral and reasonably applied guideline.

Showtime Ent. V. Mendon, *__F.3d__, No. 12-2121(1st Cir., Oct. 8, 2014).*
Towns zoning by-laws which regulated the lighting, signage, noise, security touching, and clothing requirements of a nude dancing establishment but not of other town establishments of similar size, height, and hours of operation, unlawfully abridged expressive conduct in violation of the First Amendment.

***Van Wagoner Boston v. Davey**, __F.3d__, No. 13-2087 (1st Cir., Oct. 20, 2014).*
Facial challenge to a regulation that gives a director unbridled discretion to revoke a billboard permit without giving him objective standards on which to make his decisions survives dismissal as alleged violation of the First Amendment.

***Watchtower Bible v. Somoza**, __F.3d__, No. 13-1605 (1st Cir., Nov. 20, 2014).*
Law that permitted HOA to erect gates denying access to neighborhood public streets was enjoined, but remedial scheme that allowed gates to be opened to door-to-door ministers upon request was approved subject to periodic district court review.

***Dolan v. Connolly**, __F.3d__, No. 14-2561 (2nd Cir., July 23, 2015).*
Voicing inmate grievances as a member of an "inmate liaison committee" is protected conduct under the First Amendment.

***Golodner v. Berliner**, __F.3d__, No. 12-1173 (2nd Cir., Oct. 27, 2014).*
City officials who retaliated against a vendor for his earlier complaint about the city on a matter of public concern by cancelling his city contract may have violated the First Amendment by doing so. Summary judgment for the city is denied.

***Matthews v. NYC**, __F.3d__, No. 13-2915 (2nd Cir., Feb. 26, 2015).*
Police officer who spoke to his commander about an arrest quota survives summary judgment on his First Amendment claim, as comments on precinct policies are not part of his official duties and he elected a channel with a civilian analogue to complain - - thus speaking as a citizen.

***Dougherty v. Philadelphia**, __F.3d__, No. 13-3868 (3rd Cir., Nov. 21, 2014).*
School employee was terminated in violation of her First Amendment right of free expression when she disclosed that the school superintendent had illegally steered a lucrative contract to a minority-owned business.

***Flora v. Luzerne County**, __F.3d__, No. 14-1854 (3rd Cir., Jan. 15, 2015).*
Under *Garcetti*, the test for determining citizen speech is not whether statements made are "related" to a public employee's job duties, but whether they were made "pursuant to" her job duties.

***Hefferman v. City of Patterson**, __F.3d__, No. 14-1610 (3rd Cir., Jan. 22, 2015).*
A public employee who picks up a political sign for his mother but does not himself convey any political message cannot prevail on a claim of retaliation based upon his actual exercise of free-speech rights.

***Mercer v. Hermitage**, __Fed Appx.__, No. 14-3732 (3rd Cir., Apr. 2, 2015).*
No redressable injury alleged by billboard company challenging a municipal zoning ordinance governing permitted users on First and Fourteenth Amendment grounds because the requested billboards did not meet the height and size restrictions of another ordinance the company did not challenge.

***Werkheiser v. Pocono Twp**, 780 F.3d 172 (3rd Cir. 2015).*
Contours of First Amendment right of member of township board to speak to elected officials on issues concerning the township were not "clearly established" and other board members are entitled to qualified immunity when they refuse to re-appoint him to a position on account of his speech.

***Willson v. Yerke**, __Fed Appx.__, No. 14-1173 (3rd Cir., Mar. 11, 2015).*
Allegations by former member of township board that board chairman called him a "coward", a "homo", and threatened to "kick his ass" and directed obscene gestures at him did not support a First Amendment retaliation claim or a substantive due process claim.

***Cahaly v. Larosa**, __F.3d__, Nos. 14-1651 & 14-1680 (4th Cir., Aug. 6, 2015).*
Under *Gilbert*, an anti-robo call statute placing different restrictions on robo-calls dependent on whether they are unsolicited and made for political, consumer, or other purposes, is content-based and fails a strict scrutiny analysis.

***Central Radio v. Norfolk**, 776 F.3d 229 (4th Cir. 2015).*
City sign ordinance was content neutral despite containing exemptions for flags and emblems of governmental and religious organizations and for all works of art, as these exemptions bore a reasonable relationship to the city's interests in aesthetics and in reducing distractions, obstructions, and hazards to pedestrian and vehicular traffic.

***Hunter v. Mocksville**, __F.3d__, Nos. 14-1081 & 14-1125 (4th Cir., June 15, 2015).*
Police officers who reached out to the governor's office - - as concerned citizens - - about alleged corruption in their department were entitled to First Amendment protection.

***Reynolds v. Middleton**, 779 F.3d 222 (4th Cir. 2015)*
County ordinance that prohibited solicitation within county roadways was not narrowly tailored to serve governmental interests in safety and unobstructed usage of highways, and thus violated the First Amendment, where no alternatives were tried first and the ordinance applied to all county roads regardless of location on traffic volume, plus all medians.

***Benes v. Puckett**, __ F.3d __, No. 14-10951 (5th Cir., Mar. 4, 2015).*
City engineer was acting in his official capacity when he sent e-mails to city council asking them to investigate possible fraud and misuse of public funds relative to a specific construction project and thus his terminating director is entitled to qualified immunity from his free speech retaliation claim.

***Gibson v. Kilpatrick**, 773 F.3d 661 (5th Cir. 2014).*
Mayor's reprimand of police chief for reporting his misuse of a municipal gas card to the FBI does not violate free speech.

***Graziosi v. Greenville, Mississippi**, 775 F.3d 731 (5th Cir. 2015).*
Police officer's on-line criticisms of police chief for not paying for the gasoline needed for officers to attend a funeral were as a private citizen, but did not constitute a matter public concern for First Amendment purposes.

***Paske v. Fitzgerald**, __F.3d__, No. 14-20292 (5th Cir., May 4, 2015).*
Police officer who spoke at a meeting he was required to attend, in response to job-related questions, spoke as a public employee.

***Wilson v.Treqre**, __F.3d__, No. 14-31179 (5th Cir., May 22, 2015).*
Chief deputy was acting in his official capacity when he expressed concerns over the legality of recording equipment in the interrogation room.

***Boulton v. Swanson**, __F.3d__, No.14-2308 (6th Cir., July 29, 2015).*
Deputy who, as a union member at a contract arbitration proceeding, testified contrary to the testimony of his superior officer engaged in protected speech under the First Amendment.

***Occupy Nashville, v Haslam**, 769 F.3d 434 (6th Cir. 2014).*
Protesters do not have a First Amendment right to continuously occupy public property for an indefinite period of time.

***Planet Aid v. St. Johns**, 782 F.3d 318 (6th Cir. 2015).*
City ordinance banning outdoor, unattended charitable donation bins was content-based and violated free speech.

***Norton v. Springfield**, 768 F.3d 713 (7th Cir. 2014).*
Content-neutral panhandling ordinance prohibiting panhandling in city's downtown historic district - - limited to oral requests for the immediate donation of money - - does not violate the First Amendment.

***Rossi v. Chicago**, __F.3d__, No. 13-3795 (7th Cir., June 22, 2015).*
The failure of the police to investigate a claim of unlawful conduct by another police officer did not violate the victim's Constitutional right to "judicial access" when his actions did not prevent the victim from seeking legal redress.

***Anzaldua v. Northeast Ambulance**, __F.3d__, No. 14-1850 (8th Cir., July 10, 2015).*
Under the *Pickering* balancing test, an email from a firefighter about a lack of working SCBA gear that resulted in his termination has a public concern component that is outweighed by its disruptive impact on public services - - even absent specific evidence of an actual disruption.

***KKK v. Desloge**, 777 F.3d 969 (8thCir. 2014).*
Ordinance prohibiting pedestrians from entering roadways to distribute anything to car occupant was reasonably tailored to promote pedestrian and traffic safety and was a valid time, place, and manner restriction under the First Amendment.

***Wagner v. Campbell**, 779 F.3d 761 (8th Cir. 2015).*
Written reprimand that did not result in any change in job terms or conditions was not an "adverse employment action" in retaliation for an exercise of free speech.

***Santa Monica Nativity v. Santa Monica**, 784 F.3d 1286 (9th Cir. 2015).*
City ordinance banning all unattended winter displays in city park does not violate First Amendment.

***Seattle Mideast v. King County**, 781 F.3d 489 (9th Cir. 2015).*
City bus policy of forbidding ads that were so objectionable under contemporary community standards as to make it reasonably foreseeable that it would result in harm, disruption, or interference with the transportation system was viewpoint neutral and allowed in this limited public forum.

***Turner v. San Francisco**, __F.3d__, No. 13-15099 (9th Cir., June 11, 2015).*
A public employee did not engage in protected speech when he complained to his supervisors about the city's hiring of temporary exempt employees.

***US v. Agront**, 773 F.3d 192 (9th Cir. 2014).*
Disorderly conduct regulation prohibiting "loud, boisterous, and unusual noise" is not unconstitutionally vague.

***Nixon v. Denver**, 784 F.3d 1364 (10th Cir. 2015).*
City's challenge to the civil service commission's decision to re-instate officer is not First Amendment retaliation for the officer's statements to the commission.

***Pippin v. Elbert**, __Fed. Appx.__, No. 14-1082 (10th Cir., Mar. 2, 2015).*
County officials were entitled to qualified immunity from a First Amendment claim after they obtained a temporary protective order keeping a potentially dangerous citizen who had previously spoken to them in an allegedly threatening manner, from coming near the county building where they worked.

***Seifert v. Wyandotte County**, 779 F.3d 1141 (10th Cir. 2015).*
Civil rights trial testimony of reserve deputy about matters he observed while on duty is protected by the First Amendment.

***Moss v. Pembroke Pines**, 782 F.3d 613 (11th Cir. 2015).*
Assistant fire chief's statements at a pension board meeting about city budget and pension issues are not protected speech under the First Amendment.

***Watkins v. US Postal Employee**,__F.3d__, No. 14-14608 (11th Cir., May 4, 2015).*
Customer who was asked to leave government building and not allowed to purchase a mail box because he would not stop singing did not state a First Amendment retaliation claim.

***Baumann v. D. C.**, __F.3d__, No. 13-7189 (D.C. Cir., Aug., 4, 2015).*
An officer's release of a recording, when that release could have an unfavorable impact upon an ongoing criminal investigation, is not protected speech under the First Amendment.

2. SECOND AMENDMENT; FIREARMS

***Tolbert v. Smith**, __F.3d__, No. 14-1012 (2nd Cir., June 24, 2015).*
Lengthening a teacher's period of probationary employment is an "adverse employment action" for purposes of a Title VII claim.

***Friedman v. Highland Park**, 784 F.3d 406 (7th Cir. 2015).*
Ordinance prohibiting possession of semi-automatic assault weapons did not violate Second Amendment.

***Fyock v. Sunnyvale**, 779 F.3d 991 (9th Cir. 2015).*
Injunction not issued on Second Amendment challenge to ordinance that restricted possession of large capacity magazines.

3. FOURTH AMENDMENT; EXCESSIVE FORCE

***Hunt v. Massi**, __F.3d__, No. 14-1379 (1st Cir., Dec. 10, 2014).*
Officers refusal to hand-cuff an arrestee who had recent stomach surgery in front rather than behind his back did not violate a clearly established right nor constitute excessive force.

***Mitchell v. Miller**, __F.3d__, No. 14-2116 (1st Cir., June 15, 2015).*
The fact that nobody was directly in the path of the vehicle driven by a fleeing suspect does not obviate the reasonableness of an officer's belief that someone was at risk of serious physical harm. The officer who shot the fleeing suspect was entitled to qualified immunity as to his Fourth Amendment claim.
***Brown v. NYC**, __F.3d__, No. 14-2611 (2nd Cir., Aug. 19, 2015).*
An "excessive force" claim survives summary judgment where two police officers took a 120-pound woman to the ground and sprayed her twice in the face with pepper spray.

***Rogoz v. Hartford**, __F.3d__, No. 14-876 (2nd Cir., Aug. 10, 2015).*
An "excessive force" claim survives summary judgment when an unresisting offender who laid on the ground with his hands behind his back had his rib and spine broken.

***Salmon v. Blesser**, __F.3d__, No. 14-1993 (2nd Cir., Sept. 10, 2015).*
An order to depart a public area does not, by itself, effect a seizure under the Fourth Amendment.

***US v. Diaz**, __F.3d__, No. 14-2505 (2nd Cir., Sept. 8, 2015).*
An officer's observing a vehicle twice touch or cross a solid line separating the roadway from the shoulder gave him "reasonable suspicion" to conduct a traffic stop.

***Vargas v. Philadelphia**, 783 F.3d 962 (3rd Cir. 2015).*
No Fourth Amendment violation when, after responding to several 911 calls, officers prevented a mother from seeking medical care for her asthmatic daughter in lieu of her being treated by an arriving ambulance under their "community caretaker" role.

***Covey v. Assessor**, 777 F.3d 186 (4th Cir. 2015).*
Officers violated Fourth Amendment by their warrantless search of a home's walkout basement area in backyard after by-passing the home's front door.

***Trent v. Wade**, 776 F.3d 368 (5th Cir. 2014).*
Right to home occupants to be free form no-knock entry into their house precludes summary judgment for officer on qualified immunity grounds when he entered the home without a warrant in pursuit of a fleeing felony suspect.

***Cass v. Dayton**, 770 F.3d 368 (6th Cir. 2014).*
Under the Fourth Amendment, an officer can continue to shoot at a fleeing vehicle even when no one is in its direct path, if officer's prior interactions with the driver suggest that he will continue to endanger others with this car.

***Family Service v. Wells Twp.**, 783 F.3d 600 (6th Cir. 2015).*
Walking away from an officer does not create reasonable suspicion to support a *Terry* stop.

***Goodwin v. City of Painesville**, 781 F.3d 314 (6th Cir., Mar. 19, 2015).*
Arrestee had right to be free from the gratuitous application of a stun gun after he had ceased all resistance.

***Krause v. Jones**, 765 F.3d 675 (6th Cir. 2014).*
Under the Fourth Amendment, if officers are justified in firing at a suspect that poses a threat of serious physical harm in order to end that threat, they can continue shooting until the threat has ended.

***Rudlaff v. Gillispie**, __F.3d__, No. 14-1712 (6th Cir., July 1, 2015).*
When an arrestee actively resists arrest, the Fourth Amendment permits officers to use a Taser and a knee strike to subdue him.

***US v. Bah**, __F.3d__, Nos. 14-5178 & 14-5179 (6th Cir., July 24, 2015).*
The warrantless scan of credit card magnetic strips does not constitute a "search" under the Fourth Amendment.

***US v. Bost**, __Fed. Appx.__, No. 13-5757 (6th Cir., Apr. 9, 2015).*
During a traffic stop, officer's action in putting his finger in detainee's mouth to remove the gum he was chewing, violated the Fourth Amendment.

***Bruce v. Geurnsey**, 777 F.3d 872 (7th Cir. 2015).*
Police officer did not violate Fourth Amendment by ordering a minor out of her house and into his custody for 37 minutes based upon a report that she was possibly suicidal.

***US v. Bentley**, __F.3d__, No. 13-2995 (7th Cir., July 28, 2015).*
A dog sniff from a drug dog with a 59.5% success rate was sufficient to establish probable cause for a vehicle search.

***US v. Leo**, __F.3d__, No.14-2262 (7th Cir., July 2, 2015).*
Officers making a *Terry* stop of a suspect wearing a back pack were not entitled to search its contents once the suspect was handcuffed, although they could pat down its outside to address their safety concerns.

***US v. Smith**, __F.3d__, No.14-2982 (7th Cir., July 20, 2015).*
Police officers "seized" a person for Fourth Amendment purposes when they entered an alley on bicycles, placed the bicycles at a 45-degree angle to him when he was about five feet away from them, and one of them asked him if he had a gun in his possession.

***US v. Webster**, 775 F.3d 897 (7th Cir. 2015).*
Recording conversations in police patrol car does not violate any reasonable expectation of privacy under the Fourth Amendment.

***Williams v. Indiana**, __F.3d__, Nos. 14-2523 & 14-2808 (7th Cir., Aug. 13, 2015).*
An officer cannot resort, as an initial matter, to lethal force on a person who is passively resisting and has not presented any threat of harm to others. To do so violates the Fourth Amendment.

***US v. Anguiano**, __F.3d__, No. 14-2955 (8th Cir., Aug. 3, 2015).*
The mere duration and distance of a trip does not heighten a vehicle passenger's expectation of privacy in the vehicle for Fourth Amendment purposes.

***US v. Evans**, 781 F.3d 433 (8th Cir. 2015).*
If a vehicle impoundment is valid, an investigatory notice does not prevent police from towing the vehicle and conducting an inventory search.

***US v. Matthews**, 784 F.3d 1232 (8th Cir. 2015).*
Evidence from dog sniff in common hallway outside defendant's apartment door does not violate Fourth Amendment.

***US v. Williams**, 777 F.3d 1013 (8th Cir. 2015).*
Officer's decision to have arrestee's car towed from a high crime area did not violate the Fourth Amendment.

***Patel v. Montclair**, __F.3d__, No. 13-55632 (9th Cir., July 18, 2015).*
Police officers do not conduct a "search" when they enter an area of private commercial property that is open to the public.

***Reza v. Pearce**, __F.3d__, No. 13-15154 (9th Cir., July 18, 2015).*
Officers who removed a plaintiff from a state senate building on order of a state senator were entitled to qualified immunity against his later First and Fourth Amendment claims.

***Torres v. Goddard**, __F.3d__, No. 12-17096 (9th Cir., July 16, 2015).*
The service and execution of wire transfer seizure warrants are not subject to absolute immunity, as these acts are those of police officers and not of legal advocates.

***Aldaba v. Pickens**, 777 F.3d 1148 (10th Cir. 2015).*
Use of stun gun to arrest person who had committed no crime and was a danger only to himself was not objectively reasonable under Fourth Amendment.

***Felders Smedley v. Malcom**, __F. 3d__, No. 12-4154 (10th Cir., June 20, 2014).*
Officers who, during a drug dog sniff, and without probable cause, facilitated the dog's entry into a car by preventing the car's occupants from closing the car doors, conducted an improper search in violation of the Fourth Amendment.

***US v. Paetsch**, 782 F.3d 1162 (10th Cir. 2015).*
Officers' barricade "seizure" of 20 cars while searching for a fleeing armed robber did not violate the Fourth Amendment.

***US v. Sanders**, __F.3d__, No. 14-1296 (10th Cir., Aug. 7, 2015).*
When a vehicle is not impeding traffic or impairing public safety, vehicle impoundments are constitutional only if guided by both standardized criteria and a legitimate community-caretaker rationale.

***US v. Walker**, __F.3d__, No. 15-10710 (11th Cir., Sept. 3, 2015).*
Officers did not exceed the scope of the "knock and talk" warrant exception when they knocked on the window of a car located in a carport right next to the house.

***Salvato v. Miley**, __F.3d__, Nos. 14-12112 & 14-13424 (11th Cir., June 25, 2015).*
A single act by a Sheriff in not conducting an internal investigation of an excessive force incident did not constitute the "ratification" of that action for Fourth Amendment purposes.

***West v. Davis**, 767 F.3d 1063 (11th Cir. 2014).*
Attorney was "seized" when deputy sheriff working at courthouse security checkpoint grabbed and pulled her hand.

***Williams v. Hudson**, __Fed. Appx.__, No. 14-12254 (11th Cir., Mar. 11, 2015).*
Once police had reasonable suspicion to conduct a *Terry* stop, they were entitled to continue their investigation into the person's identity, including his name and DOB.

***Dukore v. Dist. Of Columbia**, __F.3d__, No. 13-7150 (D.C. Cir. Aug. 25, 2015).*
There is no right under the First or Fourteenth Amendments to be free from arrest made in retaliation for one's speech when the arrest is supported by probable cause.

***Fox v. D.C.**, __F.3d__, No. 14-7042 (D.C. Cir., July 17, 2015).*
Ordering a belligerent passenger to put her hands on the hood of a car during a traffic stop did not violate the Fourth Amendment.

***US v. Gross**, 784 F.3d 784 (D.C. Cir., 2015).*
Fourth Amendment seizure did not occur when officer exited his squad car, approached a person, and asked him if he had a weapon.

4. FIFTH AMENDMENT/SIXTH AMENDMENT

***US v. Tellez**, 586 Fed.Appx. 242 (7th Cir. 2014).*
Driver who was a native of Mexico but who told the stopping officer that he spoke English and was therefore given his *Miranda* rights in English could not later have evidence suppressed by claiming that his limited English comprehension prevented him from understanding the warning.

***US v. Daniels**, 775 F.3d 1001 (8th Cir., 2014).*
Defendant's intoxication did not render his *Miranda* waiver involuntary.

***US v. Mohr**, 772 F.3d 1143 (8th Cir. 2014).*
Statement that a defendant wanted a lawyer if police were going to record his interview is not an unequivocal invocation of right to counsel.

***US v. Martinez**, __F. 3d__, No.13-10390 (9th Cir., Feb. 23, 2015).*
Suspect not "in custody" for *Miranda* purposes during a less than 2-minute interrogation in a police van parked outside his house.

***Everett v. Florida**, 779 F.3d 1212 (11th Cir. 2015).*
Arrestee who asks for counsel need not be provided counsel for a reasonable period of time so long as no interrogation takes place during the interlude, and a DNA sample can be procured from the arrestee during this period of time.

5. FOURTEENTH AMENDMENT; DUE PROCESS; EQUAL PROTECTION

***Vega v. Hempstead Union**, __F.3d__, No.14-2265 (2nd Cir., Sept. 2, 2015).*
Retaliation claims are permitted under Section 1983.

***Estate of Lagano**, __F.3d__, No. 13-3232 (3rd Cir., Oct. 15, 2014).*
An officer who discloses the identity of an informant, leading to his murder, may create an actionable "state-created danger claim" under the Fourteenth Amendment.

***Doe 2 v. Rosa**, __F.3d__, No. 14-1748 (4th Cir., July 28, 2015).*
Under the Due Process Clause of the Fourteenth Amendment, a summer camp had no duty to protect campers from a pre-existent danger.

***Shoemaker v. Howell**, __F.3d__, No. 13-2535 (6th Cir., July 29, 2015).*
A homeowner who refused to mow part of his lawn and was subjected to a $600 grass cutting lien did not have a valid procedural due process claim even though the City's notice procedure violated its own ordinance, because he had ample notice and an opportunity to be heard. A city's failure to follow its own ordinance notice procedures does not automatically create a due process violation.

***Yang v. City of Wyoming**, __F.3d__, No. 14-1846 (6th Cir., July 13, 2015).*
Two regular mail notices and one posted notice were sufficient for due process purposes to alert landowners of the demolition of their building.

***Doe v. Arlington Heights**, 782 F.3d 911 (7th Cir. 2015).*
Officer did not violate the equal protection rights of a minor female by failing to adequately investigate a 911 call, preventing other officers from going to the scene, and allowing her to leave with three males who then assaulted her, absent evidence that the officer intentionally treated her differently than similarly situated persons.

***Hinkle v. White**, __F.3d__, No.14-2254 (7th Cir., July 16, 2015).*
Police officers defamed a fellow officer by spreading untrue rumors about him that negatively affected his ability to obtain employment elsewhere. These facts did not establish a "deprivation of liberty" claim in violation of the Fourteenth Amendment.

***Johnson v. Wallich**, 578 Fed. Appx. 601 (7th Cir. 2014).*
Police towed a recovered stolen vehicle, but it was stolen again before it could be returned to the owner, Car owner had state law remedies for such actions, but no due process claim against the police due to their delay in returning his car to him.

***Noble v. Village of Elliott**, __Fed. Appx.__, No.14-2745 (7th Cir. 2015)*
Towing an inoperable vehicle parked on a public road without notice to its owner did not violate due process.

***Villanueva v. Scotts Bluff**, 779 F.3d 507 (8th Cir. 2015).*
A failure of police officers to respond to residents' complaints does not create an equal protection claim unless the ignorance of a discrete group for a discriminatory purpose is shown.

***Browder v. Albuquerque**, __F.3d__, No. 14-2048 (10th Cir., June 2, 2015).*
An officer who, on his own time, flipped on his emergency lights and sped through intersections was not entitled to qualified immunity against a later Fourteenth Amendment claim brought by those injured in a vehicle with which he collided.

***Anderson v. Chapman**, __Fed. Appx.__, No. 13-14283 (11th Cir., Mar. 11, 2015).*
Pretrial detainee's placement in administrative segregation without a hearing did not violate procedural due process.

***Barth v. McNeely**, __Fed. Appx.__, No. 14-13182 (11th Cir. 2015).*
Homeowner did not have a liberty or property interest, for procedural due process purposes, in county's enforcement of its nuisance ordinance against her neighbors.

***Pollack v. Duff**, __F.3d__, No. 13-5263 (D.C. Cir., July 7, 2015).*
Neither the Privileges and Immunities Clause nor the Equal Protection Clause creates a "right to travel" that would prevent a public employer from requiring its job applicants to live within a specific geographic area.

6. EEOC; TITLE VII

***Claudio de-Leon v. Ayala**, __F.3d__, No. 13-1198 (1st Cir., Dec. 22, 2014).*
Forum selection clause in employment contract that precludes adjudication in federal court is enforceable against a Title VII claim.

***Fowlkes v. Ironworkers**, __F.3d__, No. 12-336 (2nd Cir., June 19, 2015).*
Title VII's "administrative exhaustion" requirement is not a jurisdictional prerequisite to suit. It is a necessary precondition to suit that is subject to equitable defenses.

***Robinson v. Concentra**, __F.3d__, No. 14-941 (2nd Cir., Mar. 24, 2015).*
Plaintiff judicially estopped from showing in her Title VII case that she was qualified for her position when she was terminated because she had previously applied for and was receiving fully – disabled SSA disability benefits on the date of her termination, absent an explanation for such a discrepancy.

***Jones v. Southeastern Penn. Transp. Auth.** , __F.3d__, No. 14-3814 (3rd Cir., Aug. 12, 2015).*
Suspension with pay will not typically constitute a Title VII "adverse employment action".

***Boyer-Liberto v. Fontainebleau**, __F.3d__, No. 13-1473 (4th Cir., May 7, 2015).*
An employee is protected by Title VII from retaliation for opposing isolated harassment upon reasonable belief that a hostile work environment is in progress.

***DeMasters v. Carilion**, __F.3d__, No. 13-2278 (4th Cir., Aug. 10, 2015).*
The court holds that the "manager rule", which prevents an employee whose job responsibilities include reporting discrimination from seeking protection under Title VII's "anti-retaliation" program, has no place in Title VII jurisprudence.

***Nobach v. Woodland Village**, __F.3d__, Nos. 13-60378 & 13-60397 (5th Cir., Aug 20, 2015).*
Based upon the Supreme Court's decision in *Abercrombie & Fitch*, a plaintiff that was discharged for her failure to "pray the Rosary" with a resident, but who never told her employer that her religious beliefs prevented her from doing so, presented no legally sufficient basis to support her Title VII religious discrimination claim.

***Perret v. Nationwide**, 770 F.3d 336 (5th Cir. 2014).*
Employer did not constructively discharge an employee by placing him on a performance improvement plan (PIP).

***Satterwhite v. Houston**, __Fed. Appx.__, No. 14-20240 (5th Cir., Mar. 3, 2015).*
Employee's actions in reporting his supervisor's one offensive remark are not protected under Title VII.

***Zamora v. Houston**, __F.3d__, No. 14-20125 (5th Cir., Aug. 19, 2015).*
The court joins three other circuits in holding that, in the context of a Title VII retaliation claim, the "cat's paw" analysis remains a viable theory of causation.

***Muhammad v. Caterpillar**, 767 F.3d 694 (7th Cir. 2014).*
Employer did not violate Title VII by suspending an employee for complaining about sexual orientation harassment.

***Fabiyi v. McDonald's**, 595 Fed. Appx. 621 (7th Cir. 2014).*
Supervisor who yelled at an employee, occasionally in front of co-workers, and twice within a 12-month period rubbed her buttocks, did not engage in actions sufficiently adverse or pervasive enough to support sexual harassment or hostile work environment claim under Title VII.

7. ADA

***EEOC v. Kohl's**, __F. 3d__, No. 14-1268 (1st Cir., Dec. 19, 2014).*
Under the ADA, if an employer engages in good faith in an interactive process with an employee to discuss alternative reasonable accommodations to the one the employee requested and was denied, and the employee fails to cooperate in the process, the employer cannot be held liable under the ADA for a failure to provide reasonable accommodation.

***Sunrise Detox v. White Plains**, __F.3d__, No. 13-2911 (2nd Cir., Oct. 2, 2014).*
Failure of provider of medically supervised care for alcohol and drug abusers whose application to build a new facility was denied for zoning reasons, and who then failed to appeal the zoning decision or seek a variance justified the dismissal of its ADA claim for its failure to obtain a final decision on its application.

***Matthews v. PA DOC**, __Fed. Appx.__, No. 14-1330 (3rd Cir., June 1, 2015).*
Under the ADA, a short term impairment that limits an inmate's walking ability for several months due to pain in his heel is a disability.

***Reyazuddin v. Montgomery Cty.** , __F.3d__, No. 14-1299 (4th Cir., June 15, 2015).*
Public employees cannot use Title II of the ADA to bring employment discrimination claims against their employers.

***Higbie v. Kerry**, __Fed. Appx.__, No. 14-10568 (5th Cir., Mar. 20, 2015).*
Moving employee's desk one floor away from agency with which he was the primary liaison was not an adverse employment action under the RA.

***Anderson v. Blue Ash**, __F.3d__, No. 14-3754 (6th Cir., Aug. 14, 2015).*
The court reverses summary judgment for the City when a woman claimed that the ADA required the City to allow her to keep a miniature horse to assist her disabled child, even though horses were prohibited in the City's residential areas.

***EEOC v. Ford**, 782 F.3d 753 (6th Cir. 2015).*
Employee with repeated absences from work due to her disability was not a "qualified individual" under the ADA when on-site attendance was an essential job function and a pre-requisite to her performing other essential functions of her job.

***Get Back Up v. Detroit**, __Fed. Appx.__, No. 13-2722 (6th Cir., Mar. 13, 2015).*
Municipal ordinance requiring residential substance abuse treatment facility to obtain a conditional use permit does not discriminate against disabled persons under the ADA.

***Mobley v. Miami Valley**, __Fed. Appx.__, No. 14-3665 (6th Cir, Feb. 25, 2015).*
Transferring employee with cognitive and physical impairments from room cleaner to trash remover was not an adverse employment action under the ADA when no title, salary, benefits, or hours were changed, and the jobs were equally arduous, even if employee subjectively considered it a demotion.

***Rutledge v. IDHS**, 785 F.3d 258 (7th Cir. 2015).*
Under the RA, there is no paradox in a person deemed 100% disabled by VA wanting, finding, and holding a job.

***Stern v. St. Anthony's**, __F.3d__, No. 14-2400 (7th Cir., June 4, 2015).*
Speculative, non-conclusive evidence that a proposed accommodation would allow an employee to perform the essential functions of his job are insufficient to support an ADA claim.

***Scheffler v. Dohman**, __F. 3d__, No.13-3785 (8th Cir., May 12, 2015).*
Motorist who consistently lost his driving privileges due to DUI offenses was not "disabled" under the ADA.

***Butler v. WinCo**, __F.3d__, No. 13-55862 (9th Cir., May 26, 2015).*
Policy of prohibiting service animals from riding in grocery carts may violate the ADA.

***Fortyune v. Lomita**, 776 F.3d 1098 (9th Cir. 2014).*
Under the ADA, city must maintain accessible on-street parking even absent regulatory design specification for the same.

***Kohler v. Flava**, 779 F.3d 1016 (9th Cir. 2015).*
In a case of first impression, the court held that a dressing room bench provided an equivalent facilitation under the ADA for a wheel-chair bound customer.

***EEOC v. Beverage**, 780 F.3d 1018 (10th Cir. 2015).*
An employer need not establish that an employee posed an actual threat to himself and others in order to establish a "direct-threat" defense under the ADA.

8. FMLA

***Bonkowski v. Oberg**, __F.3d__, No. 14-1239 (3rd Cir., May 22, 2015).*
Employee admitted and discharged from hospital on same day did not have a "serious health condition" under the FMLA.

***Hansler v. Lehigh Valley Hosp** , __F.3d__, No. 14-1772 (3rd Cir., August 19, 2015).*
An employer violated the FMLA when it terminated an employee without allowing her a chance to cure deficiencies in her FMLA medical certification.

***Bryant v. Texas**, 781 F.3d 764 (5th Cir. 2015).*
Employer visiting house of employee and telephoning her did not interfere with, restrain, or deny her FMLA rights.

***Lee v. Elkhart**, 602 Fed. Appx. 335 (7th Cir. 2015).*
Under the FMLA, the plaintiff cannot prevail on an interference claim because he never submitted a requested health care provider's certificate that he suffered from a serious health condition.

***Preddie v. Bartholomew**, __F.3d__, No. 14-3125 (7th Cir., Aug. 24, 2015).*
Discouraging an employee from taking more time off due to FMLA - qualifying conditions supports a FMLA "interference" claim.

***Johnson v. Wheeling**, 779 F.3d 514 (8th Cir. 2015).*
Employee who needed only one treatment for high blood pressure and its consequences did not have a "serious health condition" covered by the FMLA.

***Dalton v. CDC**,__Fed. Appx.__, No. 14-13654 (11th Cir. Mar. 6, 2015).*
Transferring employee to another supervisor was a reasonable accommodation under the FMLA when former supervisor aggravated her anxiety disorder.

***White v. Beltram Edge**, __F.3d__, No. 14-11750 (11th Cir., June 12, 2015).*
In making a "serious health condition" determination under the FMLA, a court should not limit itself to information received by an employer prior to its termination of the employee at issue.

9. ***FLSA***

Glatt v. Fox, *__F.3d__, No. 13-4478 (2nd Cir., July 2, 2015).*
In determining whether an unpaid intern is entitled to compensation under the FLSA, the proper question is whether the intern or his employer is the primary beneficiary of the relationship.

Bodle v. TXL, *__F.3d__, No. 14-20224 (5th Cir., June 1, 2015).*
The court refuses to enforce a generic broad release against plaintiff's subsequent FLSA claims when the release was obtained through the private settlement of a prior state court action that did not involve the FLSA or any wage claim.

Misewicz v. Memphis, *771 F.3d 332 (6th Cir. 2014).*
Firefighters' time spent training for paramedic certification was not FLSA - compensable.

Ruffin v. MotorCity, *775 F.3d 802 (6th Cir. 2015).*
Guards monitoring their two-way radios during lunch breaks was not a substantial job duty compensable under the FLSA.

Balestrieri v. Menlo Park, *__F.3d__, No. 12-15975 (9th Cir., Sept. 4, 2015).*
An employer did not violate the FLSA by excluding monies paid for "leave buybacks" from its "regular rate of pay" overtime calculations.

Albers v. Bd. Of Cty. Commsrs., *771 F.3d 697 (10th Cir. 2014).*
Under FLSA, employee's "rate of pay" is the amount that they are actually paid, not the rate contained in posted salary schedule.

Bailey v. Titlemax, *776 F.3d 797 (11th Cir. 2015).*
Employer who knew its employees were underreporting their hours could not assert equitable defenses based on employee underreporting as a total bar to an employee's FLSA claim.

10. ADEA; FHA

Delaney v. Bank of America, *__F.3d__, No. 13-184 (2nd Cir., Sept. 5, 2014).*
Comments about another employee's age, absent any suggestion that they "influenced the decisions" regarding the plaintiff's own employment, do not raise an issue of material fact as to "but-for" age discrimination.

Rodriguez v. Village Green, *__F.3d__, No. 13-4792 (2nd Cir., June 2, 2015).*
The FHA's provisions prohibiting discrimination based upon handicap can be violated even if the subject of those statements is not disabled.

***Jenkins v. San Antonio**, 784 F.3d 263 (5th Cir., Apr. 20, 2015).*
Employee had no valid ADEA claim when he was not selected for a position that did not pay more or have more prestige than his current position and position given to someone less than two years his junior.

***Wooten v. McDonald**, 775 F.3d 689 (5th Cir. 2015).*
In a case of first impression, court holds that deficiencies in an ADEA complaint could not be rectified by plaintiff's testimony given at a "prove-up" hearing, as it was not part of the pleadings and was a "de facto" amendment of the complaint to which the employer should have an opportunity to respond.

***Velez v. Cuyahoga Metro. H. Auth.**, __F.3d__, No. 14-3978 (6th Cir., July 30, 2015).*
Fees charged to lessors for lease terms shorter than one year are "rent" under the FHA.

***Hilde v. Eveleth**, 777 F.3d 998 (8th Cir. 2015).*
An employee's retirement eligibility was a non-discriminatory reason under the ADEA for not promoting him to police chief.

***France v. Johnson**, __F.3d__, No. 13-15534 (9th Cir., Aug. 5, 2015).*
The court adopts the Seventh Circuit's holding that an age difference of less than ten (10) years creates a rebuttable presumption that it is "insubstantial" under the ADEA.

***Miami v. Bank of America**, __F.3d__, No. 14-14543 (11th Cir., Sept. 1, 2015);*
***Miami v. Wells Fargo**, __F.3d__, No. 14-14706 (11th Cir., Sept. 1, 2015).*
A city had standing to sue a bank under the FHA for its pattern of discriminatory lending in local residential housing markets that caused the city economic harm.

11. RLUIPA; Religious Freedom Restoration Act

***Jehova v. Clarke**, __F.3d__, No. 13-7529 (4th Cir., July 23, 2015).*
Summary judgment for a prison is reversed as against a prisoner's RLUIPA claim based upon the prison's failure to allow him to consume wine during communion, making him work on the Sabbath, and assigning him non-Christian cell-mates.

***World Outreach v. Chicago**, __F. 3d__, Nos. 13-3728 & 13-3669 (7th Cir., June 1, 2015).*
City's frivolous lawsuit aimed at preventing religious organization from using its only building to serve its religious objectives violates RLUIPA.

***Walker v. Beard**, __F.3d__, No. 12-17460 (9th Cir., June 18, 2015).*
A prison's refusal to grant an Odinist's request for an exemption to its race-neutral celling policy does not violate the RLUIPA.

Rojas v. Hermgartner, *__Fed. Appx.__, No. 14-3178 (10th Cir., Mar. 20, 2015).*
Prison regulation against wearing colored bandannas did not violate prisoner's right to free exercise of religion.

Knight v. Thompson, *__F.3d__, No. 12-11926 (11th Cir., Aug. 5, 2015).*
A prison's "no long hair" policy for male inmates does not violate RLUIPA, due to the costs and risks to safety and security created by long hair.

N.B. Go to **WWW.RLUIPA-Defense.com** for more cases and to subscribe to receive updates.

12. SCHOOLS; IDEA

Spady v. Bethlehem Area Sch. Dist. *, __F.3d__, No. 14-3535 (3rd Cir., Sept. 1, 2015).*
There is no Fourteenth Amendment right for a student to have adequate safety protocols in place during public school swimming classes.

W.D. v. Watchung, *__Fed. Appx.__, No. 14-1733 (3rd Cir., Mar. 6, 2015).*
Parents failure to provide school with timely notice of their child's removal precluded claim for private school tuition reimbursement under IDEA.

Doe v. Bd. Of Educ. *, __Fed. Appx.__, No. 13-2537 (4th Cir., Apr. 7, 2015).*
Student-on-student sex harassment cannot be imputed on school board on theory of "deliberate indifference".

E.L. v. Chapel-Hill, *773 F.3d 509 (4th Cir., Dec. 3, 2014).*
The failure of a board of education to provide a student with a one-on-one special language service did not violate the IDEA.

Bell v. Itawambo Cty. *, __F.3d__, No. 12-60264 (5th Cir., Aug. 20, 2015).*
A student disciplined after posting an off-campus Facebook song describing violent acts against named teachers raised no First Amendment claim.

Kelly v. Allen, *__F.3d__, No. 14-40239 (5th Cir., Feb. 19, 2015).*
School did not violate Title IX when it had no knowledge that a student faced substantial risk of serious harassment from another student.

F. H. v. Memphis City, *764 F.3d 638 (6th Cir. 2014).*
As a matter of first impression, a breach of contract claim does not require administrative exhaustion under IDEA.

Fry v. Napoleon, *__F.3d__, No. 14-1137 (6th Cir., June 12, 2015).*
At a minimum, the IDEA's exhaustion requirement applies when an ADA or RA claim arises as a result of an alleged denial of a FAPE.

Smith v. Jefferson Cty., *__F.3d__, No. 13-5957 (6th Cir., June 11, 2015).*
A school, facing a budget shortfall, contracted for its students to be educated in a secular alternative-school program at a private Christian School. This did not violate the Establishment Clause.

Wenk v. O'Reilly, *783 F.3d 585 (6th Cir. 2015).*
Parents with a disabled student who advocated for a change in her educational plan and thereafter were the subjects of a child abuse report filed by the school director may state a First Amendment retaliation claim.

Schlemm v. Wall, *784 F.3d 362 (7th Cir. 2015).*
A prisoner's inability to eat game meat for a religious feast may violate RLUIPA.

Stanek v. St. Charles, *783 F.3d 634 (7th Cir. 2015).*
Students' delegation of rights permitted his parents to pursue his IDEA claim after he turned 18.

B.S. v. Anoka Hennepin, *__F.3d__, No. 14-2564 (8th Cir., Sept. 2, 2015).*
No denial of due process existed where an ALJ limited testimony to nine (9) hours per side during a due process hearing under the IDEA.

Fairfield-Suisum v. Calif. DOE, *780 F.3d 968 (9th Cir. 2015).*
IDEA does not give school districts the right to sue state agencies in federal court.

M. M. v. Lafayette S. D., *767 F.3d 842 (9th Cir. 2014).*
School's refusal to provide student's parents with the disabled student's response to intervention date denied the student a FAPE.
Ollier v. Sweetwater, *768 F.3d 843 (9th Cir. 2014).*
Under Title IX, a school must show not only female program expansion, but expansion that is responsive to developing interests and abilities of female students.

Rock v. Levinski, *__F.3d__, No. 14-2157 (10th Cir., June 29, 2015).*
A school principal who was terminated after she spoke at a public meeting against a School District proposal to close her school did not raise a First Amendment claim when expressing her policy views did not overcome the District's concern that high-ranking policy personnel speak with one voice on policy matters.

Hill v. Madison Cty., *__F.3d__, Nos. 14-12481 & 13-15444 (11th Cir., Aug. 12, 2015).*
A claim that school officials using an eighth grade girl as "rape-bait" to catch a sexual harasser, which led to her rape, survives summary judgment on her Equal Protection claim.

Lamar v. Clayton Cty., *__Fed. Appx.__, No. 14-14879 (11th Cir. Mar. 20, 2015).*
Public statements made by an IEP team member concerning services for a disabled student were not protected by the First Amendment.

***Boose v. D.C.**, __ F.3d__, No. 14-7086 (D.C. Cir., May 26, 2015).*
School district's failure to afford a disabled student FAPE violates the IDEA, and later provision of an IEP to the student does not render action for prior FAPE violation moot.

13. COMMERCE CLAUSE

***Camara de Mercadeo v. Vazquez**, __F.3d__, No. 13-2518 (1st Cir., Aug. 18, 2015).*
The dormant Commerce Clause does not prevent Puerto Rico from charging shippers a scanning fee to pay for the cost of scanning incoming cargo.

14. JAILS; PRISONS; EIGHTH AMENDMENT

***Anderson v. Warden**, __Fed. Appx.__, No. 14-1191 (3rd Cir., Feb. 25, 2015).*
Prisoner not subjected to cruel and unusual punishment by being served nutraloaf, placed in a cold cell, and denied a blanket and mattress during the day.

***Barkes v. First Correctional**, __F.3d__, No. 12-3074 (3rd Cir., Sept. 5, 2014).*
Prison administrators are not entitled to qualified immunity from an Eighth Amendment claim that serious deficiencies in the provision of medical care by a private, third-party provider resulted in an inmate's suicide.

***Jones v. County Jail**, __F.3d__, No. 14-3842 (3rd Cir., Apr. 30, 2015).*
No Eighth Amendment violation when inmate fell out of top bunk and jail gave him an ice pack and medicine for his head ache but did not provide a ladder for him to use in reaching his bed.
***Young v. Martin**, __F.3d__, No.13-4057 (3rd Cir., Sept. 8, 2015).*
Securing a naked mentally ill inmate to a chair for 14 hours, although he did not pose a threat to himself or others, may violate the Eighth Amendment.

***Estate of Henson v. Wichita Cty.** , __F.3d__, No. 14-10126 (5th Cir., July 28, 2015).*
A "woefully" inadequate prison medical care system does not become an Eighth Amendment issue absent "deliberate indifference" to an inmate's rights.

***Sanchez v. Allen**, __Fed. Appx.__, No. 13-41247 (5th Cir., Apr. 23, 2015).*
An inmate being placed on a 7-day "food loaf" diet does not violate the Eighth Amendment.

***ACLU v. Livingston Cty.** , __F.3d__, No. 14-1617 (6th Cir., Aug. 11, 2015).*
For purposes of delivery of mail to an inmate, "legal mail" can include mail that contains neither privileged communications nor implicate the attorney-client relationship.

***King v. Zamiara**, __F.3d__, Nos. 13-1766 & 13-1777 (6th Cir., June 1, 2015).*
Section 1997(e) of the Prison Litigation Reform Act does not bar First Amendment claims that do not result in physical injury.

***Gibson v. Paquin**, 590 Fed. Appx. 635 (7th Cir. 2015).*
Making inmates occasionally take cold showers does not violate the Eighth Amendment.

***Swisher v. Porter Cty.**, 769 F.3d 553 (7th Cir. 2014).*
No need for a prisoner to exhaust prison's internal grievance procedure before filing a Section 1983 action when the prison staff misled him on how to invoke the procedure.

***Talonen v. Herdon**, 599 Fed. Appx. 591 (7th Cir. 2015).*
Prison officials were not deliberately indifferent to inmate's serious medical condition when they refused to prescribe him medication that would completely clear up his acne.

***Murchison v. Rogers**, 779 F.3d 882 (8th Cir. 2015).*
Censorship of violent materials /magazines for inmates served a legitimate penological purpose.

***Reeves v. King**, 774 F.3d 430 (8th Cir. 2014).*
Eighth Amendment covers right of inmate not to be labeled a "snitch" regarding conduct beneficial to other inmates.

***McBride v. Lopez**, __F.3d__, No. 12-17682 (9th Cir., June 30, 2015).*
Fear of retaliation, if it has both a subjective and an objective basis, can be sufficient to render an inmate grievance procedure "unavailable" for PLRA purposes.

***Teamsters v. Washington**, __F.3d__, No. 13-35331 (9th Cir., June 12, 2015).*
Sex is a BFOQ reasonably necessary to the operation of women's prisons.

***Pfeil v. Lampert**, __Fed. Appx.__, No. 14-8035 (10th Cir., Feb. 20, 2015).*
Prison policy forbidding hard cover books does not violate prisoner's right to free exercise of religion.

15. LABOR; UNIONS

***Sweeney v. Pence**, 767 F.3d 654 (7th Cir. 2014).*
Indiana's "Right to Work" law not pre-empted by NLRA.

***Fallbrook v. NLRB**, __F.3d__, No. 14-1056 (D.C. Cir., May 8, 2015).*
NLRB properly determined that employer has to pay union's negotiating expenses for its refusal to bargain with the union.

16. TELECOMMUNICATIONS

***Johnson v. American Towers**, 781 F.3d 693 (4th Cir. 2015).*
The Telecommunications Act pre-empts claims against prison by prison guard who was shot at home at the directions of an inmate using a contraband cell phone.

***Gomez v. Campbell-Ewald**, 768 F.3d 871 (9th Cir. 2014).*
Advertiser was not entitled to immunity for violating the TCPA by sending unsolicited automated calls to consumer cell phones.

***Palm Beach Golf v. Sarris**, 771 F.3d 1274 (11th Cir. 2014).*
Party who did not physically send unsolicited fax ad can be liable under TCPA.

17. ENVIRONMENTAL; CWA

***Gulf Restoration v. McCarthey**, 783 F.3d 227 (5th Cir. 2015).*
The EPA may decline to make a necessary determination under the Clean Water Act.

***California Dump Truck v. Nichols**, 784 F.3d 500 (9th Cir. 2015).*
District court does not have jurisdiction under Clean Air Act to review final action by EPA.

18. PROCEDURAL; EVIDENTIARY

***Novak v. Bank of New York**, __F.3d__, No. 13-2543 (1st Cir., Apr. 21, 2015).*
Service of process is generally not a prerequisite to a defendant removing a state court action to federal court at any time after the lawsuit is filed and before the removal period ends.

***US v. Arroyo-Blas**, __F.3d__, No. 13-1613 (1st Cir., Apr. 16, 2015).*
Denial of sentence appeal affirmed where waiver of appeal was part of defendant's plea agreement.

***US v. Anderson**, __F.3d__, No. 13-4152 (2nd Cir., Nov. 24, 2014).*
A criminal defendant cannot suppress evidence that was seized through an illegal search directed at another person.

***US v. Thomas**, __F.3d__, No. 14-1083 (2nd Cir., June 11, 2015).*
The denial of a motion to suppress is affirmed. Evidence generated by an automated software program provided a substantial basis for a judge's conclusion that there was probable cause that child pornography would be found on the defendant's computer.

***Florimont v. Dalton**, __Fed. Appx.__, No. 14-3298 (3rd Cir., May 20, 2015).*
Plaintiff's tenth lawsuit (9 state, one federal) against a municipality for its installation of drain pipes on her property prior to her purchase of the same is dismissed under the doctrine of *res judicata*, but court refuses to order her to cease filing federal lawsuits over this same matter.

***Lehman Bros. v. Gateway**, 785 F.3d 96 (3rd Cir. 2015).*
Appellate claim forfeited by failure to provide a transcript.

***US v. Burnett**, __F.3d__, No. 14-1288 (3rd Cir., Dec. 2, 2014).*
Passenger in a vehicle did not have standing to suppress evidence found during the search of the vehicle's trunk over which he had no expectation of privacy.

***US v. Wright**, 777 F.3d 635 (3rd Cir., Feb 6, 2015).*
Failure to attach list of items to be seized to warrant did not require their suppression under the discovery rule.

***EEOC v. Freeman**, 778 F.3d 463 (4th Cir. 2015).*
District Court properly excluded EEOC experts where his reports contained numerous errors, had incorrect coding, duplicate entries, and omitted data.

***Hudson v. Pennsylvania Cty.**, 774-F.3d 231 (4th Cir. 2014).*
Summary judgment on Section 1983 action against county was a "final action" although court retained jurisdiction to consider motions for attorney fees and costs and to enforce permanent injunction.

***US v. Powell**, __Fed. Appx.__, No. 14-1366 (6th Cir., Mar. 9, 2015).*
Eight-month delay between activity in affidavit and execution of search warrant did not render affidavit stale.

***Farley v. Koepp**, __F.3d__, No. 14-1695 (7th Cir., June 8, 2015).*
E-mailing a complaint to the court clerk, as required to open a new electronic case file, is sufficient "delivery" for purposes of Fed. R. Civ. P. 5(d)(4), so as to toll the statute of limitations.

***Moore v. Burge**, 771 F.3d 444 (7th Cir. 2014).*
Each separate incident of alleged police torture was a completed act carrying its own Section 1983 limitations period.

***Escobedo v. Applebee's**, __F.3d__, No. 12-16244 (9th Cir., June 4, 2015).*
Under Title VII, the filing date of a complaint is the date it is delivered to the court clerk, whether or not it was submitted with an in forma pauperis application.

***Harding v. San Francisco**, 602 Fed. Appx. 380 (9th Cir. 2015).*
Injury caused to detainee due to unfortunate accident precludes Section 1983 claims against city, county, and officers.

***Lisker v. Los Angeles**, 780 F.3d 1237 (9th Cir. 2015).*
Detectives are not absolutely immune from a Section 1983 action alleging that they fabricated reports and notes of crime scene during a homicide investigation, especially when these notes and reports were not introduced into evidence at trial.

***Riggins v. Polk Cty.**, __Fed. Appx.__, No. 14-13680 (11th Cir., Mar. 11, 2015).*
Shareholder lacked standing to challenge an ordinance, as the corporation was the real party in interest.

***Versata v. Callidus**, 780 F.3d 1134 (Fed. Cir. 2015).*
Parties' voluntary and unconditional dismissal of complaint mooted appeal before court's prior opinion was issued.

***Maggio v. Wisconsin Ave Psychiatric**, __F.3d__, No. 13-7181 (D.C. Cir., July 24, 2015).*
The equitable tolling doctrine would not be applied when a claimant who missed his Title VII filing deadline thought the EEOC would send his right-to-sue letter to his attorney, not him. He did not receive the EEOC's letter because he failed to inform the EEOC that he had moved.

***US v. Weaver**, __F.3d__, No. 13-3097 (D.C. Cir. Sept. 4, 2015).*
The exclusion of evidence is a proper remedy when that evidence is discovered after officers, pursuant to an arrest warrant, sought to arrest a party at his residence, violated the "knock and announce" rule, and improperly forced entry into his apartment.

19. ARBITRATION; CONTRACTS

***Clukey v. Camden**, __F.3d__, No. 14-1264 (1st Cir., Aug. 10, 2015).*
A contractual recall provision requiring a laid off public employee to provide his written name and address to his employer in order to assert his recall rights is ambiguous, given that the employer already had his name and address on file. It could mean that such notice was necessary only in the case of a name or address change.

***Raymond James v. Fenjk**, __F.3d__, No. 14-1252 (1st Cir., Mar. 11, 2015).*
A court cannot overturn an arbitration decision that is incorrect as a matter of law if the award was within arbitrator's authority.

***Angus v. Glendora**, 782 F.3d 175 (5th Cir. 2015).*
Fact issue existed as to whether "replace" in an easement agreement allowed the holder to abandon an old pipe after putting a new one.

***Underwood v. Chicago**, 779 F.3d 461 (7th Cir. 2015).*
Expiration of city ordinance establishing retiree health care benefits did not violate the Contracts Clause.

***Ashby v. Archstone**, __F. 3d__, No. 12-55912 (9th Cir., May 12, 2015).*
Employee Title VII retaliation claim is subject to arbitration.

***Community v. Maritime**, __Fed. Appx.__, Nos. 14-10989 & 12-13249 (11th Cir., Mar. 25, 2015).*
City project manager's approval of a contract did not waive violations of public contracting statute.

***Taylor v. City of Gadsden**, 767 F.3d 1124 (11th Cir. 2014).*
City resolution that increased firefighters' retirement fund contribution rates was not legislation as required for a Contract Clause violation.

***Garcia v. Homeland Security**, 780 F.3d 1145 (Fed. Cir. 2015).*
CBA provision that requires requests for arbitration to be made within 30 days required the request only to be mailed within the 30 day period.

20. OTHER CASES OF INTEREST

***Batista v. Cooperativa de Vivienda**, __F.3d__, No. 13-1817 (1st Cir., Jan. 13, 2015).*
The FHA does not require a landlord, as a reasonable accommodation to a disabled tenant, to allow her to remain in her apartment after she lost the federal subsidy that allowed her to do so.

***C. W. Downer v. Bioriginal Food**, __F.3d__, No. 14-1327 (1st Cir., Nov. 12, 2014).*
State long-arm jurisdiction applied despite the lack of any physical presence of Canadian defendant in state, given phone, e-mail, and internet contacts of considerable volume over a lengthy period of time.

***Concord v. Northern New England Telephone**, __F.3d__, No. 14-3381 (2nd Cir., Aug. 4, 2015).*
A Chapter 11 reorganization plan extinguishes a city's tax lien when the text of the plan does not preserve the lien, the plan is confirmed, the liened property is "dealt with" under the terms of the plan, and the lien holder has participated in the bankruptcy proceedings.

***In re Jevic**, __F.3d__, No. 14-1465 (3rd Cir., May 21, 2015).*
Court can approve a settlement resulting in a structural dismissal violative of the Bankruptcy Code's priority scheme.

***Spence v. Nelson**, __Fed. Appx.__, No. 14-10306 (5th Cir., June 1, 2015).*
Non-policy-making prison officials are not liable in their individual capacities for prison mailroom policy.

***Bah v. Attorney General**, __F.3d__, No. 14-5861 (6th Cir., May 8, 2015).*
African "hair-braiders" must obtain a state hairstylist license.

***Crabbs v. Scott**, __F.3d__, No. 14-4068 (6th Cir., May 4, 2015).*
Sheriff was not acting as a state official when he collected a DNA sample from an acquitted defendant that was not required by law.

S.L. v. Pierce Twp., *771 F.3d 956 (6th Cir. 2014).*
Intake officer at juvenile detention facility has no duty to make an independent assessment of probable cause for the detention.

Dahlstrom v. Sun-Times, *777 F.3d 937 (7th Cir. 2015).*
An officer's height, weight, hair color, DOB, and eye color, taken from state motor vehicle records, are "personal information" protected by the Drivers' Privacy Protection Act.

Senne v. Village of Palatine, *784 F.3d 444 (7th Cir. 2015).*
Placement of personal information about motorist on parking ticket left on vehicle windshield did not violate DPPA.

Castro v. Los Angeles, *785 F.3d 336 (9th Cir. 2015).*
Design of municipal jail was a result of deliberate choices that render the design a formal municipal policy for purposes of Section 1983 municipal liability for injury of one arrestee by another.

El Dorado Estates v. Fillmore, *765 F.3d 1118 (9th Cir. 2014).*
Under FHA, mobile home park owners had standing to bring action against city in connection with its seniors – only mobile park application, given the city's alleged engagement in familial discrimination as part of the approval process.

Fallay v. San Francisco, *__F. 3d__, No.10-16437 (9th Cir., Mar. 6, 2015).*
City attorney is entitled to absolute immunity against employee claims against him for his conduct in filing and prosecuting criminal charges against the employee.
Garcia v. US, *__Fed. Appx.__, No. 13-55464 (9th Cir., Feb. 20, 2015).*
Government's failure to post any 15 mph speed limit signs along a sand highway was not a policy choice protected by the "discretionary function exception" to the Federal Tort Claims Act.

In re Reines, *771 F.3d 1326 (Fed. Cir. 2014).*
Attorney who circulated a private e-mail from a judge praising his abilities committed "conduct unbecoming a member of the bar".

Cases Pending Before the U.S. Supreme Court this Term

Franchise Tax Board of California v. Hyatt – Comity / State Sovereignty

The issues before the Court are: (1) Whether Nevada may refuse to extend to sister States haled into Nevada courts the same immunities Nevada enjoys in those courts; and (2) Whether *Nevada v. Hall*, 440 U.S. 410 (1979), which permits a sovereign State to be haled into the courts of another State without its consent, should be overruled.

Friedrichs v. California Teachers Association – Public Sector Bargaining

The issues before the Court are: (1) Whether *Abood v. Detroit Board of Education* should be overruled and public-sector "agency shop" arrangements invalidated under the First Amendment; and (2) whether it violates the First Amendment to require that public employees affirmatively object to subsidizing nonchargeable speech by public-sector unions, rather than requiring that employees affirmatively consent to subsidizing such speech.

Evenwel v. Abbott – Voting Districts

The issue before the Court is whether the three-judge district court correctly held that the "one-person, one-vote" principle under the Equal Protection Clause allows states to use total population, and does not require states to use voter population, when apportioning state legislative districts.

Heffernan v. Paterson – First Amendment / Public Employment

The issue is whether the First Amendment bars the government from demoting a public employee based on a supervisor's perception that the employee supports a political candidate.

Luis v. United States – Asset Forfeiture

The issue before the Court is whether the pretrial restraint of a criminal defendant's legitimate, untainted assets (those not traceable to a criminal offense) needed to retain counsel of choice violates the Fifth and Sixth Amendments.

Fisher v. University of Texas at Austin – Affirmative Action

The issue before the Court in this case is whether the Fifth Circuit's re-endorsement of the University of Texas at Austin's use of racial preferences in undergraduate admissions decisions can be sustained under this Court's decisions interpreting the Equal Protection Clause of the Fourteenth Amendment, including *Fisher v. University of Texas at Austin*.

Tyson Foods v. Bouaphakeo – Class Action Wage & Hour Claims / Use of Statistics

The issues before the Court in this case are: (1) Whether differences among individual class members may be ignored and a class action certified under Federal Rule of Civil Procedure 23(b)(3), or a collective action certified under the Fair Labor Standards Act, where liability and damages will be determined with statistical techniques that presume all class members are identical to the average observed in a sample; and (2) whether a class action may be certified or maintained under Rule 23(b)(3), or a collective action certified or maintained under the Fair Labor Standards Act, when the class contains hundreds of members who were not injured and have no legal right to any damages.

Green v. Brennan – Employment Law / Constructive Discharge Timing

The issue before the Court in this case is whether, under federal employment discrimination law, the filing period for a constructive discharge claim begins to run when an employee resigns, as five circuits have held, or at the time of an employer's last allegedly discriminatory act giving rise to the resignation, as three other circuits have held.

Dollar General Corporation v. Mississippi Band of Choctaw Indians – Tribal Court Jurisdiction

The issue before the Court is whether Indian tribal courts have jurisdiction to adjudicate civil tort claims against nonmembers, including as a means of regulating the conduct of nonmembers who enter into consensual relationships with a tribe or its members.

Utah v. Strieff – Evidence Suppression

The issue before the Court is whether evidence seized incident to a lawful arrest on an outstanding warrant should be suppressed because the warrant was discovered during an investigatory stop later found to be unlawful.

Florida v. Georgia - Water Rights

The issue before the Court is whether Florida is entitled to equitable apportionment of the waters of the Apalachicola-Chattahoochee-Flint River Basin and appropriate injunctive relief against Georgia to sustain an adequate flow of fresh water into the Apalachicola Region.
http://www.scotusblog.com/case-files/cases/florida-v-georgia-2/

Mississippi v. Tennessee - Water Rights / Groundwater

The issues before the Court are: (1) Whether the Court will grant Mississippi leave to file an original action to seek relief from respondents' use of a pumping operation to take approximately 252 billion gallons of high-quality groundwater; (2) whether Mississippi has sole sovereign authority over and control of groundwater naturally stored within its borders, including in sandstone within Mississippi's borders; and (3) whether Mississippi is entitled to damages, injunctive, and other equitable relief for the Mississippi intrastate groundwater intentionally and forcibly taken by respondents.
http://www.scotusblog.com/case-files/cases/mississippi-v-tennessee/

U.S. Army Corp of Engineers v. Hawkes – Clean Water Act / Administrative Law

The issue in this case is whether the United States Army Corps of Engineers' determination that the property at issue contains "waters of the United States" protected by the Clean Water Act, constitutes "final agency action for which there is no other adequate remedy in a court," and is therefore subject to judicial review under the Administrative Procedure Act.
http://www.scotusblog.com/case-files/cases/united-states-army-corps-of-engineers-v-hawkes-co-inc/

CRST Van Expedited v. EEOC **–**Employment Law / EEOC Pre-Suit Obligations and Attorney's Fees

The issue in this case is whether a dismissal of a Title VII case, based on the EEOC's total failure to satisfy its pre-suit investigation, reasonable cause, and conciliation obligations, can form the basis of an attorney's fee award to the defendant.

Birchfield v. North Dakota –Fourth Amendment / Warrantless Search for Blood Alcohol Testing

The issue in this case is whether, in the absence of a warrant, a state may make it a crime for a person to refuse to take a chemical test to detect the presence of alcohol in the person's blood.

Murr v. Wisconsin - Takings

The question presented is whether, in a regulatory taking case, the "parcel as a whole" concept as described in *Penn Central Transportation Company v. City of New York*, establishes a rule that two legally distinct but commonly owned contiguous parcels must be combined for takings analysis purposes.
http://www.scotusblog.com/case-files/cases/murr-v-wisconsin/

Manuel v. City of Joliet **– Fourth Amendment / Malicious Prosecution Claim**

The question presented is whether an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a malicious prosecution claim based upon the Fourth Amendment.

Mullenix v. Luna **– Fourth Amendment / Qualified Immunity**

In a per curiam opinion, the Supreme Court ruled that a police officer should have been granted qualified immunity when he shot at a car whose driver had led police on a high speed chase to stop it instead of waiting to see if spike strips worked.

United States v. Texas **– Immigration / Executive Authority**

The issues in this case are: (1) Whether a state that voluntarily provides a subsidy to all aliens with deferred action has Article III standing and a justiciable cause of action under the Administrative Procedure Act (APA) to challenge the Secretary of Homeland Security's guidance seeking to establish a process for considering deferred action for certain aliens because it will lead to more aliens having deferred action; (2) whether the guidance is arbitrary and capricious or otherwise not in accordance with law; (3) whether the guidance was subject to the APA's notice-and-comment procedures; and (4) whether the guidance violates the Take Care Clause of the Constitution, Article II, section 3.

And the one that got away (certiorari denied):

California Building Industry Association v. City Of San Jose, California, et al.
http://www.courts.ca.gov/opinions/documents/S212072.PDF

See also Justice Thomas's concurring opinion http://www.supremecourt.gov/opinions/15pdf/15-330_1q24.pdf and the city's program https://www.sanjoseca.gov/index.aspx?nid=3979