Miller felt one of her supervisors, F., was ineffective and unprofessional (F. allegedly referred to probationers as "scum," saying they did not deserve the money that the office spent on them). Miller, who had a different philosophy with respect to the incarcerated, wrote a letter expressing her concern about F. and another worker to a judge overseeing the office. The letter referred to the "stressful conditions" under which she worked and stated, "I know that you are friends with both [co-workers] and you may not appreciate my candor but I believe that the time has come to explain my position to the court." The judge fired Miller immediately. She sued, claiming a protected interest in her continued employment, and alleging that the failure to provide her with adequate notice and an opportunity to respond was a violation of the Fourteenth Amendment's guarantee of due process. She also asserted that her expression was protected under the First Amendment's guarantee of free speech and that she had been improperly terminated for exercising her speech rights. The judge moved to dismiss Miller's claims as against him under Federal Rule of Civil Procedure 12(b)(6), and also claimed immunity from suit. The district court denied his motion (and refused to convert it to a summary judgment motion), as he had not established his entitlement to qualified immunity—the record did not support his claim that he had not violated Miller's clearly established constitutional rights. Further, it held that Miller's due process claim could not be dismissed at the pleading stage because she alleged that her employment was governed by the collective bargaining agreement.

On appeal, the U.S. Court of Appeals for the Third Circuit reversed and remanded, finding that Miller failed to establish that the defendant judge's conduct violated her constitutional rights. Therefore, the defendant was entitled to qualified immunity. "Based on our phased inquiry under [*Saucier v. Katz*, 533 U.S. 194, 201 (2001)], we conclude the district court erred in not dismissing Miller's complaint because her allegations do not establish either a violation of her right to free speech under the First Amendment, or a denial of due process." Dealing with the speech claims, the court held that Miller's statements (that the probation office was being poorly run and that her supervisors called clients "scum") "undoubtedly" referred to matters of public concern. However, the context in which the statements occurred established that the speech was not protected. The letter, which started with an indication that Miller could no longer tolerate the stressful working conditions, "focused upon her private grievances as an employee." By including the "attack on management and her supervisors, Miller's letter did manage to brush ever so gently against a matter of public concern...[but] that seemingly serendipitous encounter does not convert her personal grievance into protected speech." The district court also erred in not dismissing Miller's due process claim, as state law precluded local governments from employing workers on any term other than as at-will employees, unless explicit enabling legislation to the contrary existed. The State's Public Employee Relations Act, which allowed for collective bargaining between public employees and local governments, limited the matters that could be subjected to collective bargaining, and could not "undermine" the general rule that public workers were at-will employees. Accordingly, the collective bargaining agreement that Miller sought to rely on could not confer any property interest in her employment or elevate her to something other than an employee-at-will.

Town Attorney's Employment

Hesse, the plaintiff, worked as a town attorney for Jackson, Wyoming pursuant to a contract. The contract provided for a two-year term and an automatic renewal, unless notice of termination was given at least six months prior to the end of the term. Shortly before Hesse was to start on a new term, the town administrator and the town clerk had separate heated arguments with him, arising from Hesse questioning their various decisions. Because of these incidents, the town administrator and mayor contacted another lawyer to inquire about terminating Hesse's employment. Four weeks into the new contract term, the mayor told Hesse that unless Hesse resigned, he would be asking the town council to fire Hesse. The mayor offered to pay the benefits listed in the termination clause in the employment contract. Hesse resigned, collected the benefits, and sued the Town and the officials involved in his removal. The district court denied the summary judgment motion by the Town and local officials, including the officials' claim for qualified immunity, and the defendants appealed the ruling on qualified immunity.

The U.S. Court of Appeals for the Tenth Circuit began by reviewing the qualified immunity test in *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The threshold question is whether the "facts alleged show the [official's] conduct violated a constitutional right;" if so, the second inquiry is to "determine whether that right was clearly established at the time of the alleged violation." To answer the threshold question, the court reviewed whether or not there was a constitutionally protected "legitimate expectation in continued employment." Under state law, a town attorney could be removed by a mayor, unless otherwise provided by ordinance. The local ordinance provided that the town attorney "shall be hired and may be removed by the mayor, by and with the advice and consent of the [council]." The court determined that neither state nor local law provided Hesse with a protected interest in continued employment. Next, the court reviewed the employment contract. This stated that "[n]othing in this agreement shall prevent, limit or otherwise interfere with the right of the Town Council to terminate the services of the Employee at any time, subject only to provisions set in Section 4...". (Section 4 provided for the benefits to be paid to Hesse if he was terminated without cause. These were the benefits that were accepted by the plaintiff before his resignation.) The court held that Hesse did not have a constitutionally-protected interest in continued public employment, and reversed and remanded the case back to the district court for further pro-

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ceedings. *Hesse v. Town of Jackson*, 541 F. 3d 1240 (10th Cir. 2008).

Preemption
Home Rule and Gun Laws

In early 2004, the Ohio legislature enacted a bill, H.B. No. 12, which created a licensing procedure for handgun owners in Ohio. It provided that a licensed handgun owner could "carry a concealed handgun anywhere in this state," except as specifically set out in the legislation. The exceptions included police stations, jails, airports, schools and school zones, court houses, and any place in which federal law prohibited the carrying of handguns. The law also allowed private employers and landowners to prohibit gun possession on their property as they deemed appropriate, but specifically stated that "[n]o municipality may adopt or continue in existence any ordinance... that attempts to restrict the places where a person possessing a valid license to carry a concealed handgun may carry a handgun concealed." The City of Clyde subsequently adopted an ordinance prohibiting persons "located within the confines of any City Park" from "knowingly carry[ing] or hav[ing], on or about his person or readily to hand, any deadly weapon, irrespective of whether such person has been issued a license to carry a concealed handgun pursuant to" the state concealed-carry law or pursuant to a comparable provision of the law of any other state. Ohioans for Concealed Carry, Inc. filed suit, seeking an order striking down the ordinance and for injunctive relief prohibiting Clyde from curtailing gun owners' rights. Both Ohioans for Concealed Carry, Inc. and Clyde moved for summary judgment. The issue was the ability of the municipality to regulate handgun possession on its own property by persons possessing a valid permit to carry a concealed handgun. The trial court granted judgment in favor of the City, ruling that the state law was not a general law for home-rule purposes and, therefore, the ordinance did not run afoul of Section 3 of the Home Rule Amendment, Article XVIII, of the Ohio Constitution. While an appeal was pending, the State legislature enacted a further law, R.C. 9.68(A), which referred to a "fundamental individual right" to "keep and bear arms"; expressed the legislature's desire "to provide uniform laws throughout the state" on the ownership and possession of firearms; and provided that, except as specifically provided by the federal or state constitutions, state law, or federal law, a person "may own, possess, purchase, ...or keep any firearm" without further license. The appellate court held that, because R.C. 9.68(A) precluded any law other than a state or federal law from infringing on the right to carry arms, the law preempted the Clyde ordinance.

On further appeal, the City argued that the ordinance was a constitutional exercise of its home-rule power—first, because regulation of its parks was purely a matter of local self-government, and not its police power; second, the concealed handgun law's multiple exceptions rendered uniform application impossible. A divided panel of the Supreme Court of Ohio rejected these arguments, finding the ordinance was, in fact, an exercise of the City's police power that conflicted with the general law governing licenses to carry concealed handguns. It was, thus, unconstitu-tional. In enacting the gun laws, the State legislature "could not have been more direct in expressing its intent for statewide comprehensive handgun-possession laws." The ordinance was clearly in conflict with the state laws, which permitted a licensed gun owner to carry a concealed handgun in Clyde's parks ("indeed, in any municipal park across the state"), being "the very con-duct prohibited" by the Clyde ordinance. (One of the dissenting judges held that given "the arbitrary and unreasonable distinction between public and private landowners, the fact that the law is subject to the will of private landowners, and the fact that the statute fails to meet its stated objective of establishing uniformity in its designation of those places in which persons may carry concealed handguns," R.C. 2923.126 was not a general law and, therefore, did not take precedence over the ordinance.) *Ohioans for Concealed Carry, Inc. v. Clyde*, No. 2007-0960, 2008 WL 4274503 (Ohio Sept. 18, 2008).

Search and Seizure
Authority to Consent

In 2006, the sheriff's office in Adams County received a visit from Ms. Lawicki. Lawicki and her daughter had been living with Lawicki's ex-husband, Ryerson, for about a year. Lawicki left him and moved in with a friend three days before. She told police she wanted to return to the house to retrieve her belongings, but could not get in because Ryerson was in jail and had changed the locks. The officers told Lawicki that she could break a window to enter the home as long as she lived there. Lawicki claimed that she did live at the house. She broke in to get her things, but was unaware that Ryerson had asked a neighbor to look after the house. The neighbor reported a burglary after he saw the broken window. The next day, the police interviewed Lawicki, who repeatedly stated that she lived at the home. The house was in Ryerson's name, she said, but she had bought the property with him. She lived there with their baby and ran their business out of the house. Lawicki also claimed that Ryerson sold drugs and stored weapons at the house. The officers asked Lawicki if they could search the home and Lawicki agreed, signing a permission-to-search form. The neighbor willingly let the police into the home. Ryerson had phoned the neighbor earlier to tell him to get rid of "a little rapid fire BB gun" stashed in the garage drywall. Ryerson also wrote a note to prison officials about his concern that Lawicki was "planting illegal things in the House ...her know boyfriend he is a Drug Dealer and I think when they broke in last knight they put some thing in my house." After police listened to a tape of Ryerson's call, they returned to the house and conducted a second search, finding a machine gun concealed in the garage wall. Ryerson failed in his motion to suppress the evidence, and was convicted and sentenced to 48 months in prison.

On appeal, Ryerson claimed that Lawicki's consent did not justify a