in charge of the vehicle. *Idris v. City of Chicago*, No. 08-1363, 2009 WL 18138 (7th Cir. Jan. 05, 2009).

Due Process—Claim Preclusion

Giragosian owned and operated a gun shop in the Town of Arlington, Massachusetts, and also offered training on gun safety at the premises. In 2007, while he was training a customer to use a handgun, the customer intentionally shot himself in the head. The same day, the Arlington Police Department investigated and concluded that Giragosian was not at fault, but suspended his licenses to carry and sell firearms, and requested the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to investigate his business. Giragosian challenged the license suspensions in state court, and the court hearing the matter granted his request to vacate the license suspensions. However, instead of reinstating the licenses, Ryan, the police chief, completely revoked the licenses, giving as reasons Giragosian's failure to report stolen firearms, failure to undergo a firearms safety instructor course mandated by the state court, and various violations uncovered in the ATF investigation. Giragosian responded with a 42 U.S.C. § 1983 suit in federal court, alleging that Ryan and the Town violated his rights under the Fourth and Fourteenth Amendments; he simultaneously brought a state court action also seeking reinstatement of his firearm licenses. The state court refused to reinstate the licenses, finding "sufficient grounds to conclude that the decision of [Ryan] in revoking [the] firearms licenses was reasonable and not arbitrary, capricious or an abuse of discretion." In the federal action, the Town argued *res judicata* (both claim and issue preclusion); Giragosian, for his part, argued that the federal court should ignore the state court judgment due to the lack of impartiality and numerous errors of law. The magistrate judge ruled and recommended to the district court that (1) issue preclusion barred the federal court from reexamining whether Ryan's actions were arbitrary, capricious, or an abuse of discretion, (2) the post-deprivation review process available in state court provided Giagosian with adequate process, and (3) qualified immunity shielded Ryan and the Town from suit. Accordingly, the district court granted the defendants' motion to dismiss under Rule 12(b)(6). Giragosian appealed.

On appeal, the U.S. Court of Appeals for the First Circuit considered whether Giragosian's federal claim was barred by the doctrine of *res judicata*. In Massachusetts, the doctrine encompasses both claim and issue preclusion and, generally, follows the rule that "when two actions are pending which are based on the same claim, or which involve the same issue, it is the final judgment first rendered in one of the actions which becomes conclusive in the other action ... regardless of which action was first brought." Under the doctrine of claim preclusion, Massachusetts evaluated three elements: the identity of privity of the parties; the identity of the causes of action; and a prior final judgment on the merits. The First Circuit held that all three elements for claim preclusion were met, as the parties were identical in both cases, the facts in both cases were identical and left no doubt that the causes of action were identical, and there was a final judgment in the state court. The court ruled that Giragosian had a "full and fair opportunity" to litigate his claim in state court and could have raised his constitutional claims at that time. Preventing him from proceeding with a claim in federal court protected "against the expense and vexation attending multiple lawsuits, conserved judicial resources, and fostered reliance on judicial action by minimizing the possibility of inconsistent decisions." *Giragosian v. Ryan*, 547 F. 3d 59 (1st Cir. 2008).

First Amendment

Parade Ordinances

The City of Seattle's parade ordinance required those wishing to march or have a parade to first obtain a permit from the City's chief of police. The ordinance indicated that the police chief, when issuing a permit, had the discretion to require marchers to use sidewalks, instead of the streets: "The Chief of Police may modify the place and hour of formation, the proposed line of movement or march, and the scheduled starting time in the interest of vehicular or pedestrian traffic safety." However, the chief had no authority to deny a permit. The Seattle affiliate of the October 22nd Coalition to Stop Police Brutality, Repression and the Criminalization of a Generation was an association dedicated to raising awareness about police brutality. The Coalition had applied for, and received, a permit to march every year since 2001. In 2003, a permit had been granted, but on the day of the march, one of the police officers present told members they could only use the sidewalks, as the parade permit had been "rescinded," and that the decision to rescind was "based on the number" of marchers (approximately 80 to 100). The City's ordinance did not include a minimum numbers requirement in all, or even most, parade permits as a condition of allowing marchers to use the streets, nor did it set the minimum requirement at a consistent number. The Coalition maintained that the City's permitting practices suggested that political or protest marches were more likely than other parades to have their permission to use the streets conditioned on a minimum number of marchers. It sued, claiming that the conduct of police officers at the Coalition's 2003 parade violated their free speech and due process rights, and that the parade ordinance, on its face, violated the First Amendment. It argued that restricting marchers to the sidewalks amounted to a constructive and impermissible denial of a parade permit.

The ordinance was a content-neutral time, place and manner regulation. The issue was whether the ordinance violated the free speech guarantees of the First Amendment because, on its face, it impermissibly granted "the licensing official ... unduly broad discretion," pursuant to *Thomas v. Chicago Park Dist.*, 534 U.S. 316 (2002). The U.S. Court of Appeals for the Ninth Circuit concluded that it did: "the ordinance by its terms gives the Chief of Police unbridled discretion to force

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marchers off the streets and onto the sidewalks, unchecked by any requirement to explain the reasons for doing so or to provide some forum for appealing the chief's decision. We therefore hold that the parade ordinance is facially unconstitutional." The ordinance allowed officials to restrict access to the streets whenever such a restriction was in the undefined "interest of" traffic and pedestrian safety. This language gave officials "less guidance and more leeway" than the standards the Supreme Court and the Ninth Circuit had previously approved, especially since the ordinance had no requirement that the reason for the restriction be articulated, or any mechanism for direct administrative or judicial review. In finding the ordinance to be invalid, the court also pointed to the implementation of the ordinance: as applied, the ordinance seemed to be akin to a permit scheme that allowed the deciding official to grant or deny a permit for speech; further, the police had been enforcing the ordinance "as though it authorized denying permits (relegating marchers to the sidewalks as normal pedestrians), although the City has repeatedly claimed that all permits must be granted." *Seattle Affiliate of the October 22nd Coalition to Stop Police Brutality v. City of Seattle*, 550 F. 3d 788 (9th Cir. 2008).

License Plates—Whose Speech?

Illinois permitted vehicle owners in the state to have, for a fee, specialized license plates that included a specific message or symbol. State law provided that at least 10,000 applications had to be received for each new license plate before the Secretary of State issued the specialized plates. Although the law did not specifically require it, the Secretary of State traditionally referred to the state legislature for enabling legislation concerning the plates. Choose Life Illinois (CLI) was a nonprofit agency that collected more than 25,000 signatures towards obtaining approval for a specialty license plate with the words "Choose Life." The Secretary informed CLI that he could not issue the plate without approval by the Illinois General Assembly. For the next few years, CLI tried to gather support in the Assembly for the license plate; however, the proposal died in a subcommittee. CLI then bought a First Amendment free speech claim against the Secretary, alleging that the refusal to approve the plates constituted viewpoint discrimination within a government-created forum for private speech. The district court granted summary judgment for CLI, stating that the Secretary did not need enabling legislation; further, the specialty-plate program established a forum for private speech, and excluding CLI's message of "Choose Life" was impermissible viewpoint discrimination.

The U.S. Court of Appeals for the Seventh Circuit addressed the questions of whether the messages on specialty license plates were the government's own speech, or private speech; if they were private speech, did the exclusion of CLI's proposed language violate the Free Speech Clause of the First Amendment? First, it held the message on the plates was private, not government, speech, siding with the position taken by the Ninth and Fourth Circuits. The specialty plates "serve[d] as mobile billboards for the organizations and like-minded vehicle owners to promote their causes and also [were] a lucrative source of funds." Although the State and the organization shared editorial control, the organization typically developed the plate design and the slogan or symbol that went on the license plate. In addition, the plates themselves were "most closely associated with the drivers and the sponsoring organizations, and the driver [was] the ultimate communicator of the message." The court next determined that the plates constituted a nonpublic forum, due to the fact that their primary purpose was vehicle identification, not facilitating an exchange of ideas, and because the plates themselves were "heavily regulated by policy and practice." Finding a nonpublic forum, the court reviewed CLI's exclusion from the specialty-plate program under a reasonableness standard. The exclusion was reasonable, as "[a]lthough the messages on [the plates were] not governmental speech, they [were] reasonably viewed as having the State's stamp of approval…it [was] reasonable for the State to maintain a position of neutrality on the subject of abortion." *Choose Life Illinois, Inc. v. White*, 547 F. 3d 853 (7th Cir. 2008).

Personnel and Employment

Employee Screening and Errors in Reports

Pendergrass was employed by a pharmacy, Rite Aid. He was suspected of theft and aggressively questioned about merchandise losses by the store's loss prevention officer. Pendergrass claimed that the officer coerced him into signing a false written statement. Subsequently, in January 2006, Pendergrass was fired for unexplained merchandise losses, fraudulent transactions, and other related infractions. At the same time, the employer published a report of the incident with ChoicePoint, a "data aggregation company that operates as a private intelligence service to government and industry." Employers accessed its database through the Internet or in other ways. The report apparently referred to "Cash Register Fraud and Theft of Merchandise," with a total theft amount of $7,313.00. This listing, Pendergrass alleged, resulted in him being turned away when he sought employment with CVS, Walgreens, and Target. One prospective employer advised him of the bad report. In January 2008, Pendergrass sued, alleging violations of the Fair Credit Reporting Act (FCRA) by Rite Aid and ChoicePoint, and raising a defamation claim under Pennsylvania law against Rite Aid and ChoicePoint. He alleged his employer had made the report "with malice or willful intent to injure [him]" and specifically intended to prevent him from getting future employment. He further alleged that ChoicePoint repeatedly republished the defamatory report, with the result that the plaintiff was "branded a thief" and unable to obtain employment. Rite Aid sought to dismiss the defamation claim on the basis that the applicable statute of limitations barred the claim. In Pennsylvania, the statute of limitations for defamation claims was one year from the date of publica-