12,000), the plaintiffs could not meet their prima facie burden of establishing a significant disparate impact on a protected class. The plaintiffs have appealed the trial court's ruling to the U.S. Court of Appeals for the Fifth Circuit.

Search Warrants – Familial Connection

A county deputy sheriff was shot and killed during a traffic stop. After investigators identified Astorga as the primary suspect, Astorga's neighbors told police that a man matching Astorga's description had recently moved in with his "pregnant girlfriend." Astorga had listed his wife, M., in prior contacts with police, so police tried to locate her by contacting her father (Astorga's father-in-law). M's father, Poolaw, a retired state police officer, told investigators that M. was pregnant and had been with them on the night of the shooting, but was no longer at the house (he indicated she could not be reached as she had called in sick at work). When investigators were unable to locate Astorga, they determined that the Poolaw home should be searched. They prepared an affidavit stating, "[b]ased on the apparent fact that [M] resides at least part time at [her father's residence], it would be reasonable to assume that [Astorga] resides there at least part time as well and may have left or hidden evidence related to this crime at this residence." The warrant was executed on the Poolaw home, during which the in-laws were handcuffed and kept outside the house. The Poolaws brought a 42 U.S.C. §1983 action against the officers, alleging that the search and detention constituted an unreasonable search and seizure. The district court denied qualified immunity to the investigators, stating that the affidavit "established only that [Astorga] was married, that [M] stayed at [the Poolaws] home and did not go to work the next day. ... [The affidavit] provided only inferences and assumptions of dubious reliability ... which were simply not enough to provide probable cause to violate the Poolaws' right of privacy in their home."

On appeal, the U.S. Court of Appeals for the Tenth Circuit affirmed the denial of qualified immunity. In determining whether probable cause existed for the issuance of a warrant, the judge "must decide whether, given the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place." The Tenth Circuit followed a number of other circuits in stating that "a search warrant resting primarily on a familial relation is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable."In this case, the facts that M. spent the night at the Poolaws' house, called in sick to work the next day, was listed as Astorga's emergency contact (on forms related to his unrelated prior arrests), and was pregnant with his child, were not enough to establish probable cause to search the Poolaws' home. The connection between Astorga and the Poolaw home was even more attenuated – nothing in the affidavit suggested that Astorga had any contact with the Poolaw's home during the time when he could have hidden evidence of the crime. As a result, the search violated the Poolaws' Fourth Amendment rights. *Poolaw v. Marcantel*, 565 F.3d 721 (10th Cir. 2009).

First Amendment

Ten Commandments – Context is Everything

After the Haskell County Board of Commissioners approved a constituent's request to erect a monument displaying the Ten Commandments on the lawn of the county courthouse, a county resident – James Green – and the American Civil Liberties Union (ACLU) filed suit, claiming that the placement violated the Establishment Clause of the First Amendment. The courthouse contained the courts and various county offices. The lawn outside of the courthouse already contained many monuments of various sorts, most of which were paid for by private donors. These included a log cabin, occupied by the local historical society; a sidewalk made of personal message bricks; two benches, dedicated to and inscribed by graduating students; a monument honoring the Choctaw Nation; a monument honoring all unmarked graves in the County; a memorial to the war dead (the largest monument); and additional monuments honoring those killed in action in Vietnam and Korea. The Ten Commandments monument was added after a local citizen, a minister, asked for approval from the Board, claiming that God had directed him to create the monument. The monument was paid for through funds raised by religious groups in the community, and was approximately eight feet tall and three feet wide. The Ten Commandments were inscribed on one side, with the Mayflower Compact on the other. The Board selected the location for the monument but had no other input into the text or design. The monument was unveiled in a ceremony organized by the donor. Two out of the three commissioners attended the ceremony, and 17 churches were represented. The ceremony opened with a prayer and included remarks by local pastors. Two commissioners, asked for their feelings about the monument, were quoted as saying, in essence, that "God died for me and I'm going to stand up for Him." Green objected to the monument because he did not "subscribe to a particular faith that [was] represented by this monument." He testified that he visited the County Historical Society on a weekly basis; that business occasionally took him to the courthouse; and that he was unable to avoid the monument in doing so. Subsequently, the monument supporters organized a rally – one poster (a young girl praying before an American flag and captioned "One Nation Under God") was placed on the courthouse door. The rally was held on the courthouse lawn. In the subsequent legal proceedings, the district court found in favor of the defendants.

The U.S. Court of Appeals for the Tenth Circuit reversed, finding that, "under the unique circumstances presented here, the Establishment Clause was violated because the reasonable observer would view the Monument as having the impermissible principal or primary effect of endorsing religion." Green had standing to bring his

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claim. While a Ten Commandments monument was not itself presumptively unconstitutional, after applying the test in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the court here found the principal or primary effect of the Board's action was to endorse religion or a particular form of religion. A reasonable observer would be aware of the circumstances surrounding the monument's placement, the donor's "unalloyed" religious motivation and the Board approval of the same (along with the commissioners' statements as to the religious theme), the nature of the dedication ceremony, and the community's response to the monument. Although ultimately, the monument was also inscribed with the Mayflower Compact, the Board had approved the monument on the understanding that it would be inscribed only with the Ten Commandments. The end result was a "clear impression – not counteracted by the individual commissioners or the Board collectively – that the commissioners were speaking on behalf of the government and the government was endorsing the religious message of the Monument." *Green v. Haskell County Bd. of Comm'rs*, 568 F. 3rd 784 (10th Cir. 2009).

City Statements and Retaliation

Camastro and the City of Wheeling had a long, contentious relationship, dating back to a 1994 attempt by Camastro to obtain a zoning variance to construct a carwash on his property. When the City denied his request, Camastro responded by putting up signs on the lot, reading:

> The City of Wheeling Has Cheated Me. They Stopped Me from Building a Car Wash. I Was Censored at City Council July 5th and Not Allowed to Speak. Look at What They Are Doing to Wheeling. I Was Stopped from Presenting Evidence to a Grand Jury Against Corrupt City Officials.

He also filed at least eleven lawsuits against the City regarding the carwash, a billboard business, and a proposed video lottery café. Predictably – because he never applied for the permits required by City ordinances to erect the signs – the signs led to the City suing Camastro to enforce its sign ordinance, and he was eventually ordered to remove the signs. Camastro alleged that, in addition to bringing the action, the City retaliated against his exercise of his First Amendment rights in erecting the signs. First, he claimed that, while litigation over the signs was still pending, a city councilman stated that "I want the city to take them down and if he wants to, he can take us to court." Camastro alleged that, a week later, his signs were torn down by unknown individuals (he admitted that previously, the signs had already been torn down approximately 20 times, and that he simply replaced them with identical signs). Camastro's second claim was that his First Amendment rights were violated by a letter sent to him by the City Solicitor. The letter read, in part: "Please do not misquote me again... Please be advised that due to your outright inaccurate misstatements, do not contact this department by telephone or in person again. I will also not respond to the other false allegations and requests made by you in correspondence and shall advise other City of Wheeling Departments to similarly respond." Nonetheless, Camastro continued to contact the City and its officials, and the City Solicitor provided him with assurances that the City would not interfere with his "right to communicate with city departments." The district court granted summary judgment in favor of the defendants, holding that neither the councilman nor the City Solicitor, acting alone, had final policy-making authority for the City; as a result, neither statement was actionable under Section 1983.

The U.S. Court of Appeals for the Fourth Circuit affirmed. Neither statement was actionable as a violation of the plaintiff's First Amendment rights. On its face, the councilman's statement was no more than an expression of a personal desire that the City take the signs down, and not a new City policy or an ultimatum. Even if the statement could be read as intimating imminent sanctions, however, it would still fail to constitute actionable conduct, as the City was already seeking precisely that relief in its then-pendent lawsuit against Camastro. Turning to the letter, the court found that this, coupled with the later assurances that the City would not restrict Camastro's access to City departments, fell "far short of the sort of retaliatory conduct that would 'deter a person of ordinary firmness from the exercise of First Amendment rights.'" In any event, it was clear that it failed entirely in halting Camastro's ongoing contact with the City and its employees and officials. *Camastro v. City of Wheeling*, No. 08-1002, 2009 WL 1241634 (4th Cir. May 07, 2009).

Litigation and Liability

Bar Raid – Qualified Immunity

The Doublets were the owners of a new nightclub, Club Retro, in Alexandria, Louisiana. Before opening, they obtained all of the appropriate permits to operate and serve alcohol. Shortly after Club Retro opened, however, the Doublets were repeatedly approached by local law enforcement officers and asked to close because of compliance issues that the Doublets disputed. The next weekend, in a preplanned, warrantless police raid ("Operation Retro-Fit") executed while the club was open and crowded with patrons, 40 deputy sheriffs, some outfitted in full S.W.A.T. gear, stormed the club with shotguns and AR-15 assault rifles drawn and pointed at patrons and employees. Many patrons were forced to the ground at gunpoint. "Operation Retro-Fit" had been approved by the local sheriff as a raid for purposes of detecting the sale or possession of illegal narcotics, the sale of narcotics to minors, and fire code violations. The Doublets were assaulted by police officers during the raid, then transferred to a warehouse holding facility and held for six hours. The club premises were searched – mirrors, the cash registers, and the office areas were trashed. An armed officer kicked down a door to a separate, but attached, apartment that was not open to the public (this was where the Doublets stayed when the club was open). Inside, the officers found one of the Doublets' children,