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,

a minor, along with two babysitters. The child was taken to the bar in her pajamas and photographed as if she were a bar patron. Because of the size and ferocity of the raid, many of the employees thought that they were being robbed by armed gunmen. The Doublets and their employees were charged with various offences, including allowing persons aged between 18 and 21 into the club. The Doublets brought a 42 U.S.C. §1983 action against a number of the officers, claiming a violation of their First, Fourth, Fifth, and Fourteenth Amendment rights. The district court rejected the defendants' claim of qualified immunity for most of the claims, and the officers appealed.

The U.S. Court of Appeals for the Fifth Circuit affirmed in part and reversed in part. "[W]e conclude that defendants are not entitled to qualified immunity for their entry and search of Club Retro because the unreasonable scope and manner of Operation Retro-Fit violated Club Retro, L.L.C.'s clearly established constitutional rights to be free from unreasonable searches and seizures." Under *Pearson v. Callahan*, 129 S. Ct. 808 (2009), "[t]he doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." In the absence of a warrant, consent, or exigent circumstances, law enforcement officers act "unreasonably and thus unconstitutionally when they enter a commercial property to conduct a search for contraband or evidence of a crime." In response to the defendants' argument that this situation was akin to an administrative search, the court responded that "inspection statutes and ordinances do not grant law enforcement officers unfettered discretion to conduct searches ... and do not provide notice to bar owners that [they] are subject to armed S.W.A.T. team raids, physical assault, threats at gunpoint, and prolonged detention." However, the court reversed the district court's denial of qualified immunity on the plaintiffs' First Amendment claim. The plaintiffs had argued that, by shutting down the nightclub and telling patrons that they should not come back to the club, the officers imposed a prior restraint on their First Amendment rights. The Fifth Circuit disagreed, finding that the officers' statements were not a prior restraint, as patrons "were free to attend and did attend [subsequent club events]." The Fifth Circuit also reversed the district court's order denying qualified immunity on the Fourteenth Amendment equal protection claim. In support of this, the plaintiffs had alleged that they had been discriminated against because Mr Doublet was a Creole and the club's clientele was mixed-race. They pointed to the officers' use of racial profanity during the raid and detention, and the fact that a similar, but white-owned, nightclub close by had never been raided. While strongly condemning the use of racial epithets, the court here held that the usage was not probative of disparate treatment or discriminatory intent, in the absence of any indication or statement by the officers that the club was targeted because it was minority-owned and attracted a mixed-race or mixed-ethnicity crowd. *Club Retro LLC v. Hilton*, 568 F.3d 181 (5th Cir. 2009).

Schools
Title IX

Plamp was a high-school student. During her junior year, she took a course taught by Tate. Tate engaged in inappropriate behavior, such as complimenting Plamp on her "knockout body" and asking her to bring pictures of herself wearing limited clothing. Near the end of Plamp's junior year, she told her parents about Tate's conduct and they contacted the superintendent. Tate was immediately suspended and was eventually terminated from his position. Plamp filed suit against the school district and Tate, asserting, among other things, a civil rights claim under 42 U.S.C. section 1983 and a Title IX discrimination claim. Title IX provides that "[n]o person ... on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance." In prior rulings, the U.S. Court of Appeals for the Eighth Circuit held that, for a school to incur liability under Title IX, it had to have been deliberately indifferent to known acts of discrimination that occurred under its control. Further, liability would not be found unless "an appropriate person" had "actual knowledge of discrimination." At trial, Plamp introduced evidence that, a few years prior to the incidents involving her, an anonymous individual had approached the school guidance counselor claiming that Tate had engaged in inappropriate behavior. Plamp also introduced statements from other students and a teacher that discussed Tate's inappropriate and harassing behavior. Nonetheless, the district court ruled that the school officials did not have actual knowledge of the harassment, and that the guidance counselor and teachers were not "appropriate persons" within the meaning of Title IX.

On appeal, the Eighth Circuit affirmed on both the Title IX and Section 1983 claims. No "appropriate" school official had knowledge of Tate's discriminatory actions, and the school district did not act with deliberate indifference once it became aware of his actions. The school principals possessed the power to institute corrective measures and stop Tate's discrimination during their respective tenures by seeking to reprimand, further supervise, suspend, or even fire Tate, but the evidence fell short of establishing that they possessed actual knowledge. Neither the counselor nor the teachers had "remedial authority" regarding sexual harassment claims. Summary judgment in favor of the school district regarding the 42 U.S.C. section 1983 claim was also appropriate. Although a school district could be liable for civil rights violations under Section 1983 (the Due Process Clause protected the liberty interest of a child in public school from sexual abuse), Plamp failed to produce enough evidence to raise more than a "suspicion of sexual harassment," and there was no evidence of "continuing, widespread, persistent patterns of unconstitutional misconduct generally." *Plamp v. Mitchell School District No. 17-2*, 565 F.3d 450 (8th Cir. 2009).

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