Here, because Sweetman did not actually submit to the inspection of his home, he was not deprived of his right to be free of unreasonable searches. Similarly, because there was no unreasonable search, Sweetman could not successfully allege that the municipalities had in place a policy authorizing code enforcement personnel to take unlawful action.

http://www2.ca3.uscourts.gov/opinarch/133540np.pdf (last accessed Feb. 5, 2014).

Due Process: State Not Liable Under "State Created Danger" Doctrine Where Parolee Kills Police Officer After Being Allowed to Remain At Large

***Lipscomb v. Pennsylvania Board of Probation & Parole,* No. 13-1902 (3d Cir. Jan. 30, 2014).**

The estate of a police officer killed by a parolee sued the Pennsylvania Board of Probation & Parole (Board) and a number of officers individually and in their official capacities as agents of the Board for violations of Section 1983.

In October 2011 the Board released a prisoner from state prison after serving the maximum sentence for carrying a firearm without a license, at which point his three-year probationary period commenced. Shortly thereafter, the parolee was arrested and charged with robbing a man at gunpoint. At the hearing for armed robbery, the judge ordered that the parolee be placed on house arrest with electronic monitoring and that he would be re-incarcerated if he violated the terms of his probation by testing positive for drugs. Despite the court order, the defendants never put the parolee on house arrest or electronic monitoring. Within the month, the parolee failed a drug test. Nevertheless, the defendants denied an officer's request for a warrant to arrest the parolee. Three days after the denial, the parolee shot and killed a Philadelphia police officer, Officer Walker.

Walker's estate filed suit under Section 1983, claiming that the defendants violated Walker's substantive due process rights under the Fourteenth Amendment by failing to protect him from harm inflicted by the parolee. The defendants brought a motion to dismiss the claims and the district court granted that motion.

HELD: On appeal, the Third Circuit affirmed the decision of the district court dismissing the plaintiff's Section 1983 claim for failing to assert a constitutional violation.

DISCUSSION: The plaintiff argued on appeal that the defendants created and executed a policy whereby they "designate[d] specific dates/times during which they [would] not seek and/or issue arrest warrants for probation/parole violations." The plaintiff claims that the policy was put into place to "give the appearance that recidivism rates for the probation/parole violations are lower than they would otherwise be." The plaintiff claimed that defendants' failure to arrest the parolee created the circumstances leading to Officer Walker's death under the "state created danger" theory.

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In order to prevail on a constitutional violation under the "state created danger" theory, the plaintiff must prove: "1) the harm ultimately caused was foreseeable and fairly direct; 2) a state actor acted with a degree of culpability that shocks the conscience; 3) a relationship between the state and the plaintiff existed such that the plaintiff was a foreseeable victim of the defendant's acts, or a member of a discrete class of persons subjected to the potential harm brought about by the state's actions, as opposed to a member of the public in general; and 4) a state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all." *Kneipp v. Tedder,* 95 F.3d 1199, 1205 (3d Cir. 1996).

The Third Circuit concluded that the plaintiff had failed to allege a deprivation of a right secured by the Constitution and that inquiry was dispositive of the case. Relying on the Supreme Court decision in *Martinez v. California,* 44 U.S. 277 (1980), the Circuit Court held that the defendant officers' actions could not be said to have deprived Officer Walker of his life. The Circuit Court reasoned that the killing of Officer Walker was "too remote a consequence of the failure to arrest [the parolee] to constitute a cognizable 'deprivation' by the Defendants under the Fourteenth Amendment." The plaintiff/appellant argued that the third element of the state created danger theory was met because police officers are a "distinct class of individuals who "are at a greater risk than the general public within the context of a[n encounter with a] parolee." The court disagreed with the plaintiff/appellant's argument and refused to expand the "state created danger theory" in such a manner. Finally, because there was no constitutional violation, the court deemed it unnecessary to assess defendants' qualified immunity defense.

http://www2.ca3.uscourts.gov/opinarch/131902np.pdf (last accessed Feb. 6, 2014)

Employment: County's Commitment to Provide Employees With Premium-Free Health Insurance Coverage Does Not Imply Cost-Free Coverage

***Hussey v. Milwaukee County*, No. 12-3625 (7th Cir. Jan. 29, 2014).**

Esther Hussey began working for Milwaukee County in 1961 and stayed until 1991. In 1971, the county provided its employees with health insurance pursuant to the county code, which stated that the "county shall participate in the payment of monthly premiums for such insurance . . . for eligible employees in the classified service, except for employees 65 years or age or over." In that same year, the county also decided to expand its coverage to retired employees with 15 years or more of public service. In 1989, the code was amended to read the "County shall participate in the payment of the monthly costs or premium for [health insurance] benefits" and it stated it would pay these same costs for any employees that began working prior to 1989, as well as retired employees. Moreover, the code noted "the provisions of this subsection are considered a part of an employee's vested benefit contract."

Esther Hussey paid no insurance payments, deductibles, co-insurance, or co-payments during her employment with Milwaukee County. The year she retired her employee handbook stated "If an active employee retires with fifteen years or more of County service, the retiree may participate in the health plan in which he/she is currently enrolled on the same basis as