570 U.S. ____, 133 S. Ct. 2612 (2013). As a result, plaintiffs could only demonstrate the potential for repetition, which did not suffice.

http://www.ca5.uscourts.gov/opinions/unpub/13/13-60614.0.pdf (last accessed May 28, 2014).

Evidence: Expert Testimony Cannot Be Excluded Merely Because the Methodology Utilized is Still Being Refined

City of Pomona v. SQM North America Corp., No. 12-55147 (9th Cir. May 2, 2014).

Where a lower court refused to admit an environmental expert's testimony on the grounds that the methodology used is still being refined among the scientific community, the Ninth Circuit has reversed, holding that so long as the methodology is at least supported by a minority of scientists the testimony should be heard by a jury.

The California Department of Public Health (CDPH) regulates contaminant levels, including perchlorate, in drinking water throughout the state. In 2007, Pomona found perchlorate levels in its public water supply above CDPH's limits. It took remedial steps, including shutting off some of its wells, purchasing water, and mixing well and non-well water. It also investigated the source of the pollutant. An outside expert determined that the perchlorate came from SQM North America's (SQM) importation of sodium nitrate fertilizer from Chile, which had started in 1927 and continued through the 1950s. The city sued SQM to recover the cost of remediation; SQM moved to exclude the expert testimony. The District Court granted the motion, deeming the opinion unreliable on the grounds that: "(1) the opinions were subject to future methodological revisions and not yet certified; (2) the procedures he used had not yet been tested and were not subject to retesting; and (3) the reference database used by [the expert] was too small."

HELD: The Ninth Circuit reversed the District Court's decision to exclude the expert, holding the Court abused its discretion by not allowing the jury to determine issues of fact that were contested, but admissible.

DISCUSSION: Rule 702 of the FRE states that expert opinion evidence is admissible if "(1) the witness is sufficiently qualified as an expert by knowledge, skill, experience, training, or education; (2) the scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (3) the testimony is based on sufficient facts or data; (4) the testimony is the product of reliable principles and methods; and (5) the expert has reliably applied the relevant principles and methods to the facts of the case." Under this scheme the trial court's role is to ensure the testimony is based on a reliable foundation and is relevant to the issue at hand. Ultimately, trial courts do not determine whether an expert is right or wrong, but whether the substance of the testimony would be helpful to the jury.

The District Court had found that the expert did not use a reliable procedure since it was not yet accepted in the scientific community and was still being refined and because the EPA has not yet certified the method of analysis used for the kind of compound at issue. The Circuit Court rejected this holding because a scientific method can be reliable and generally accepted while

at the same time still be refined. The Court noted the trial court must determine only whether a scientific method was used to arrive at the assertion; it should exclude an opinion based on "unsubstantiated and undocumented information," but not because scientists in the field are still refining the methodology. EPA approval of a method is not a precondition to admissibility. It is admissible when, as was the case here, a method is recognized by at least a minority of scientists in the field.

The District Court also excluded the expert testimony because the methods were not subject to retesting, "given the failure to take dual samples." The Circuit Court disagreed, pointing out that three other labs – including the U.S. Geological Survey, Oak Ridge National Lab, and the University of Chicago – had used the expert's methodology. Finally, the appeals court found the remaining issue raised by SQM, specifically that the expert did not follow his own procedures, was also a question for the jury and not a reason to exclude. The Ninth Circuit held the District Court abused its discretion in excluding the testimony and remanded the case for trial.

http://cdn.ca9.uscourts.gov/datastore/opinions/2014/05/02/12-55147.pdf (last accessed June 3, 2014).

Religion: Police Department Directive that Officer Attend Non-religious Event at Mosque or Send Subordinate on his Behalf Does Not Violate First Amendment

Fields v. City of Tulsa, No. 12-5218 (10th Cir. May 22, 2014).

A police supervisor who sued his department for violation of the Free Exercise and Establishment clauses because the department ordered that that he, or a member of his squad, attend a community event at a mosque has been rebuffed-both at the district court and the Tenth Circuit.

In 2010 the FBI notified the Islamic Society of Tulsa (Society) that there was a threat against it. For months thereafter the Tulsa Police Department (TPD) worked with the Society to protect it and its school next door. Once the threat passed the Society invited the TPD, as well as local FBI officers and the Attorney General's office to attend a "law enforcement appreciation day" to thank those involved. Top officers in the TPD forwarded an email invitation for the event to supervisors and, having not received any RSVPs a month prior to the event, ordered supervisors to send two officers from each division to the event, including a supervisor or commander. It is noteworthy that TPD had been using a "community policing" model in Tulsa for over 20 years, wherein they often worked closely with groups in the community to build relationships and in that time had attended over 3500 community events like this, over 350 of which were with various religious institutions/organizations.

Captain Fields, a supervisor in charge of roughly 30 officers, responded to the email order by stating that he believed "this directive to be an unlawful order, as it is in direct conflict with my personal religious convictions, as well as to be conscience shocking" and that "forcing me to enter a Mosque when it is not directly related to a police call for service is a violation of my Civil Rights." Fields included his lawyer on the communication. The deputy chief of police responded with a three-page letter noting that officers were not required to engage in any services or worship or even observe services, but rather to meet with members of the community.