the only African-American woman holding that position. However, her title remained unchanged and she was never paid as a foreman despite performing a foreman's job duties. In 1997 and 2000, Hobbs applied and interviewed for the foreman position, but both times a white male received the job, and in 2004, another white male, Q., was promoted to an acting foreman position (this was not posted as a job opening as the City did not consider this to be a permanent vacancy). In 2005, Hobbs filed a charge of discrimination against the DOT with the Equal Employment Opportunity Commission (EEOC), alleging the City denied her a promotion to the foreman position because of her race and gender. She alleged that shortly thereafter, Q. and other City employees began a campaign of disciplinary enforcement against her for infractions that were ignored in the case of other employees; her car was vandalized; and she was assigned work duties to humiliate her. She sued, alleging race and gender discrimination and retaliation claims in violation of 42 U.S.C. § 1981 against the City and her coworkers; race and gender discrimination and retaliation in violation of Title VII against the City; a hostile work environment claim against the City; and equal protection claims against all defendants pursuant to 42 U.S.C. § 1983. The district court granted the City's motion to dismiss the Section 1981 race and retaliation claims, and the Section 1983 claim against the City. Hobbs appealed.

The U.S. Court of Appeals for the Seventh Circuit affirmed. The district court properly granted summary judgment on Hobbs's Title VII and Section 1981 claims, as on the indirect, burden-shifting method in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), the position was not given to someone outside the protected class who was similarly or less qualified than Hobbs. The acting foreman, Q., had at least two more years experience than Hobbs as a motor truck driver; unlike Hobbs, he had experience with the City's snow program; and, although he did not have Hobbs's college education and computer skills, these were not part of the job qualifications for an acting foreman. Even if Hobbs could show a prima facie case of discrimination, the City offered nondiscriminatory reasons for promoting Q., which Hobbs failed to show were pretextual. Although the process used in promoting Q. may have been "questionable," there was no evidence it was motivated by a racial or sexist animus. Hobbs further argued that she proved, through the direct method, that the City took adverse actions against her in retaliation for her discrimination complaints with the EEOC. This the court rejected on the basis that Hobbs failed to show a materially adverse action taken by her employer, or that there was a causal connection between the complaint and any adverse actions. The commissioner who disciplined her did not know that Hobbs had filed an EEOC charge; the assignments she was given were clearly within her job duties; and "[Q's] elevation – not Hobbs's complaints – was the reason her responsibilities changed." The mere fact that the vandalism occurred after the EEOC charge and the same day that Hobbs received notification of a disciplinary action was not enough to survive summary judgment. The hostile work environment claim also failed, as the facts did not rise to the level of the "severe or pervasive" threshold – the alleged vandalism and the failure to investigate it was "disgraceful, but that one act alone [was] not egregious enough to create a hostile work environment." *Hobbs v. City of Chicago*, 573 F.3d 454 (7th Cir. 2009).

Employee Speech Rights – Police

"[W]hen working for the government, saying one's boss is a bully does not necessarily a constitutional case make." Desrochers and Lowes were police sergeants with the San Bernardino Police Department. In 2006, Desrochers was transferred from the Homicide Unit to the Robbery Unit, an action he viewed as a demotion. Lowes was the subject of an internal affairs investigation pertaining to an April 2006 arrest, following which he received a two-week suspension. They claimed that the reason for these employment actions was actually based in grievances that they had made in 2006 respecting their supervisor, Lieutenant K., arising out of ongoing problems that they felt had a negative effect on the department's efficiency and morale. In the initial grievance, they asked the department to, among other things, remove K. from command of their unit and formally investigate the charges in their grievance. K. asked for and received a transfer after learning of the grievance, but the officers felt this was inadequate to address their issues and brought a formal complaint, again indicating that K's management style was destroying morale and created a "hostile work environment," reflected badly on the department, and impeded operating efficiency. When this grievance was denied, Desrochers and Lowes filed a complaint with the City's human resources department, and claimed retaliation at the hands of K's replacement. They alleged that their transfer and suspension were retaliation for engaging in speech protected by the First Amendment. The police department, however, stated that the actions were due to Desrochers botching a murder investigation and Lowes disobeying orders and endangering a suspect in custody. Ultimately, both officers brought a 42 U.S.C. § 1983 lawsuit. The district court granted summary judgment for the defendants after concluding that the plaintiffs' complaints did not address matters of public concern.

On appeal, the U.S. Court of Appeals for the Ninth Circuit affirmed, in a decision limited to whether the plaintiffs spoke on a matter of public, as opposed to personal, concern. To address a matter of public concern, the content of the officers' speech had to involve "issues about which information [was] needed or appropriate to enable the members of society to make informed decisions about the operation of their government." Citing *Johnson v. Multnomah*, 48 F.3d 420, 425 (9th Cir. 1995), the court noted that, in "a close case, when the subject matter of a statement is only marginally related to issues of public concern, the fact that it was made because of a grudge or other private interest or to co-workers rather than to the press may lead the court to conclude that the statement does not substantially involve a matter of public concern." In this case, the fact that the speech contained references

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25. *See, e.g.*, In re Unisys Corp. Retiree Medical Benefit "ERISA" Litigation, 58 F.3d 896, 908 (3d Cir. 1995).
26. Law Enforcement Labor Serv., Inc. v. County of Mower, 483 N.W. 2d 696, 701 (Minn. 1992).
27. Navlet v. Port of Seattle, 194 P.3d 221, 231 (Wash. 2008).
28. Jeannot v. N. H. Personnel Comm'n, 392 A.2d 1193, 1195 (N.H. 1978); Thorning v. Hollister Sch. Dist., 11 Cal. App. 4th 1598 (Cal. Ct. App. 1992); Opinion of the Justices, 303 N.E.2d 320 (Mass. 1973).
29. *See, e.g.*, *Navlet*, 194 P.3d at 238; City of Anchorage v. Gentile, 922 P.2d 248, 260 (Alaska 1996).
30. *See, e.g.*, Hous. and Redev. Auth. of Chisholm v. Norman, 696 N.W.2d 329 (Minn. 2005); Beggs v. City of Portales, 210 P.3d 798 (N.M. 2009).
31. Poole v. City of Waterbury, 831 A.2d 211, 234 (Conn. 2003).
32. *Id.* at 233-34.
33. *Id.* at 235.
34. 11 U.S.C. § 901, *et seq.* (West 2009).
35. 11 U.S.C. § 365 (West 2009). This, in general, provides that the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.
36. U.S. CONST. art. 6, cl. 2.
37. In re City of Vallejo, 403 B.R. 72 (Bankr. E.D. Cal. 2009). ML

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8. Indiana, Nebraska, West Virginia.
9. Illinois.
10. Missouri.
11. Texas.
12. S.1536, §3.
13. Tara Morgan, *Since New Virginia Texting While Driving Law, Five People Ticketed*, NBC12News, July 31, 2009, at http://www.nbc12.com/Global/story.asp?S=10823369.
14. Theresa Gutierrez, *Quinn Signs Texting Ban Bill*, abc7chicago.com, Aug. 6, 2009, at http://abclocal.go.com/wls/story?section=news/local&id=6951218.
15. Kristyn Soltis, *Cleveland Bans Texting While Driving*, kentnewsnet.com, July 8, 2009, at http://media.www.kentnewsnet.com.
16. Press Release, Dept. of Transportation, *DOT Secretary Ray LaHood Announces Distracted Driving Summit* (Aug. 4, 2009) (on file with author). ML

SUPREME COURT

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of murder. The primary witness relied upon in bringing charges was a teenager who continuously changed his story and claimed he was pressured to implicate McGhee and H. (The witness later recanted and admitted he lied in hopes of getting a proffered reward and to avoid being personally charged with the murder.) In 2002, a court vacated or reversed the convictions, and both men brought civil rights actions against the County and the former prosecutors and officers involved in the initial investigation and prosecution, alleging they had used perjured and fabricated testimony and improperly withheld evidence. Richter, the County Attorney at the time, and Hrvol, an Assistant County Attorney, moved for and were denied qualified, absolute, and sovereign immunity. The Eighth Circuit held that "immunity does not extend to the actions of a County Attorney who violates a person's substantive due process rights by obtaining, manufacturing, coercing and fabricating evidence before filing formal charges, because this is not 'a distinctly prosecutorial function.'" The question for the Supreme Court is whether a prosecutor can be subjected to a civil trial and potential damages for a wrongful conviction and incarceration where the prosecutor allegedly (1) violated a criminal defendant's "substantive due process" rights by procuring false testimony during the criminal investigation, and then (2) introduced that same testimony against the criminal defendant at trial. ML

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29. *Id.*
30. Foster v. United States, 922 F. Supp. 642 (D.D.C. 1996); Idylwoods Assocs. v. Mader Capital, Inc., 915 F. Supp. 1290 (W.D.N.Y. 1996).
31. EPA, *Questions and Answers Regarding Federal Brownfields Property Liability* 4 (Nov. 2003) (emphasis added), *available at* http://www.epa.gov/NE/brownfields/pdfs/qa6FINAL.pdf.
32. City of Toledo v. Beazer Materials & Servs. Inc., 923 F. Supp. 1013 (N.D. Ohio 1996).
33. *Id.* at 1020-21.
34. City of Emeryville v. Elementis Pigments, Inc., No. 99-03719, 2001 WL 964230 (N.D. Cal. Mar. 06, 2001).
35. *Id.* at *8.
36. 42 U.S.C. § 9607(r) (2002).
37. Pub. L. No. 107-118, 115 stat. 2356 (2002).
38. A BFPP is not liable under CERCLA for cleanup costs at a site. However, if the EPA has unrecovered response costs incurred in cleaning up that property and the EPA response action increases the fair market value of the property, the EPA may have a windfall lien on the property. *See* EPA & U.S. Department of Justice, *Interim Enforcement Discretion Policy Concerning "Windfall Liens" under Section 107(r) of CERCLA (2003), available at* http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-windfall-lien.pdf.
39. Innocent Landowners, Standards for Conducting All Appropriate Inquiries, Final Rule: 40 C.F.R. Pt. 312.
40. 42 U.S.C. § 9607(r) (2002).
41. *See* EPA, *Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability* (2003), *available at* http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-guide.pdf. ML

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to department safety and efficiency was insufficient: "We have never held that a simple reference to government functioning automatically qualifies as speech on a matter of public concern." The plain language of the grievances catalogued a strained working relationship due to personality flaws, rather than incidents of incompetence or malfeasance. As a result, Desrochers and Lowes failed to meet their burden of demonstrating that their speech involved a matter of public concern. *Desrochers v. City of San Bernardino*, F. 3d (9th Cir. 2009). ML