violence" that required and justified "stern control measures." She had not exhibited evidence of drug abuse or cocaine-induced psychosis, nor had the deputies used any vertical pressure, all of which were risks associated with four-point restraints, and the plaintiff's medical expert's testimony failed to raise a material fact issue that the use of four-point restraints was objectively unreasonable. The mere existence of alternatives to the restraints (which were admittedly more difficult for the officers or more risky for Loggins) was "not probative of the excessiveness of four-point restraints." Addressing the issue of an alleged failure to monitor a detainee during transport, the court noted this claim "sounds not in the Fourth Amendment but in the Fourteenth," and required the plaintiff to show that the officers acted with subjective knowledge of a substantial risk of serious medical harm, followed by a response of deliberate indifference. This was not supported by the record. "No evidence supports a fact issue that the deputies acted with deliberate indifference toward Loggins at any time." *Hill v. Carroll County, Miss.*, No. 08-60516, 2009 WL 3448137 (5th Cir. Oct. 28, 2009).

Excessive Force and Handcuffing

In a domestic dispute between Amanda Morrison and her mother, Morrison left the house screaming "I could just kill myself," which prompted her sister to call 911. An officer arrived and found Morrison sitting, alone, in front of a neighbor's house. After talking with Morrison, the officer told her that he would have to take her to the hospital for a psychiatric evaluation. The parties disputed what happened next: Morrison said she got up to walk into the house; the officers stated that she jumped up to flee. However, what happened next was undisputed: Morrison was tackled from behind by Officer Celender. Morrison claimed that he also handcuffed her tightly, to the point where her skin turned black and blue (though the injury was very short-lived). Her repeated requests to have the cuffs loosened were supposedly ignored, and she alleged further that every time she tried to talk, Celender would push her face into the ground. Paramedics arrived and treated Morrison for a sprained ankle; she was transported to hospital and released later that day. Morrison sued the officers and their employer, Green Township, in a Section 1983 action, alleging excessive force, seizure without probable cause, and a failure to train.

The district court granted summary judgment in favor of the defendants on all claims except the excessive force claim, ruling that Celender was not entitled to qualified immunity. Celender appealed, and the U.S. Court of Appeals for the Sixth Circuit affirmed. The appellate court applied unreasonable seizure jurisprudence in analyzing the excessive force claim. The Fourth Amendment prohibited unduly tight or excessively forceful handcuffing during the course of a seizure. *Kostrzewa v. City of Troy*, 247 F.3d 633 (6th Cir. 2001). To succeed on a summary judgment motion, a plaintiff was required to show sufficient evidence that he or she had complained that the handcuffs were too tight; the officer ignored the complaints; and the plaintiff suffered physical injury as a result. The court focused on the third factor, as Celender argued that just bruising and wrist-marks were insufficient. The Sixth Circuit, however, disagreed, finding that, under its existing jurisprudence, bruising and wrist-marks could create a genuine issue of material fact with regard to the physical injury requirement. With regards to Morrison's excessive force claim based on the head-pushing, the court also found in Morrison's favor. Using an objective reasonableness standard, the court rejected Celender's argument that his use of force was reasonable because of his concern for officer safety and given the limited nature of Morrison's injuries. The Sixth Circuit had consistently held that "use of force after a suspect has been incapacitated or neutralized [was] excessive as a matter of law." Celender admitted that Morrison was totally compliant while being handcuffed, and had not tried to flee or struggle. The limited nature of injuries was not decisive: Celender "essentially asks this court to impose a blanket de *minimis* injury requirement for excessive force claims… [and] while an excessive force claim may be established through evidence of severe injury or physical contact, this Circuit has not required that this must be the case." *Morrison v. Board of Trustees of Green Township*, 583 F. 3rd 384 (6th Cir. 2009).

Due Process, Notice, and Towing

The California Vehicle Code permitted towing of vehicles that were "parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal." The Code also preempted municipal vehicle ordinances inconsistent with its provisions. The City of Los Angeles had enacted a provision that prohibited parking in an otherwise legal public spot "for more than 72 hours in the aggregate during any period of 73 hours." Lone Star Security & Video, Inc. attached advertisements to a number of mobile trailers and parked the trailers for extended periods on residential streets in Los Angeles. Over several years, the Los Angeles Police Department (LAPD) and the Los Angeles Department of Transportation (DOT) had impounded 77 of Lone Star's trailers for having been parked longer than the 72-hour period permitted under the local code. The LAPD and LADOT had forms or notices that could be left on a vehicle to notify the owner that the vehicle could be towed for parking for longer than 72 hours, and had policies regarding attaching the forms to any vehicle belonging to a first-time offender. For repeat offenders, however, the officer had discretion on whether to attach the form.

Lone Star brought a Section 1983 action contending that its federal due process rights were violated because the City gave inadequate notice before towing its vehicles, and because California's Code preempted the City's ordinance. The district court granted summary judgment in favor of Lone Star on the preemption claim, but held that the City was not constitutionally required to provide notice each time it towed a vehicle, and awarded damages to Lone Star reflecting the overall losses for all of its trailers towed under local

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law. The City appealed and Lone Star cross-appealed the court's finding of constitutionally sufficient notice.

The U.S. Court of Appeals for the Ninth Circuit affirmed the district court's rejection of Lone Star's constitutional notice claim, but reversed its grant of summary judgment on the invalid-ordinance claim. On the preemption argument, the court found the "claim [was] premised on an untenable notion of due process. It is a tenet of our federal system that state constitutions are not taken up into 14th Amendment such that a federal court may strike down a statute as invalid. … It is likewise axiomatic for the purposes of the Supremacy Clause that the constitutionality of local ordinances [be] analyzed the same way as that of statewide laws." Addressing the inadequate notice claim, the court held that, although due process generally required that notice be given before the government seized property, there were exceptions to that rule. Notice need not be given prior to a seizure when the interest at stake was small, relative to the burden that providing notice would impose. Here, Lone Star was not using the trailers for transportation but for advertising, and this use created a lesser interest than had the trailers served a transportation purpose. In addition, Lone Star was a chronic offender, lessening the risk of an erroneous deprivation. The City had an interest in preventing the public nuisance caused by Lone Star parking its trailers for extended periods in residential neighborhoods. *Lone Star Security & Video, Inc., v. City of Los Angeles*, 584 F. 3d 1232 (9th Cir. 2009)

Land Use
RLUIPA

Due to its growing congregation, the River of Life Kingdom Ministries ("the Church") wanted to upgrade from its existing location, a rented warehouse in Chicago, to a property it planned to purchase in the Village of Hazel Crest. However, by the time the Church entered into negotiations with the seller, the Village had adopted certain zoning ordinances and a Tax Increment Financing (TIF) plan to be applied to certain land, including the land desired by the Church. The ordinances permitted the following uses of land: general commercial/retail, gas stations, hotels, taverns, offices and meeting halls. The Village later amended the ordinances and removed meeting halls and other non-commercial institutions from its list of permitted uses. After the Church purchased the land and applied for special permission to use the property, which the Village denied, the Church filed a lawsuit. It alleged, *inter alia*, that the zoning ordinances violated the Equal Terms provision under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). The Equal Terms provision states that "[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution."

The U.S. Court of Appeals for the Seventh Circuit affirmed the district court's denial of a preliminary injunction. In coming to its decision, the court was persuaded by the Third Circuit Court of Appeals' decision in *Lighthouse Institute for Evangelism, Inc. v. City of Long Branch* (in order to find a violation of the Equal Terms provision, a plaintiff was required to identify a non-religious institution that was treated better than a similarly-situated religious property with regards to the regulatory purposes of the land use regulation). This position, adopted by the Seventh Circuit, preserved a local government's ability to enact neutral laws of general applicability. Here, the Church argued that some permitted non-religious uses (such health clubs, hotels and salons) could be categorized as "assembly" uses and, since such business uses were allowed, the Church should be allowed to build in the area as well. The Seventh Circuit disagreed, stating that the "permitted entities [were] all *commercial* in nature, while churches, meeting halls, community centers, and schools (which [were] all uses excluded from the ordinance after the amendment) [were] not. A locality seeking to create a commercial area should be able to exclude non-commercial uses that do not contribute to its goal [of creating a tax revenue-generating commercial district] without violating RLUIPA." *River of Life Kingdom Ministries v. Village of Hazel Crest*, 585 F. 3d 364 (7th Cir. 2009).

Litigation and Liability
Negligence and the Duty To Preserve Evidence

Is the victim of a crime entitled to an award of damages for the negligent infliction of emotional distress due to the wrongful disposal of evidence collected during an ongoing criminal investigation? Dennis had been raped 20 years previously by an unknown man. Evidence was collected as part of that investigation, but her assailant was never caught. In 2003, Dennis saw a television program about a serial rapist and killer, and was convinced that he was her attacker as well. She contacted the sheriff's office to see if they would reexamine the evidence in her case. However, that evidence had been destroyed in 1995 pursuant to a court order, as it had been mislabeled as the evidence of a crime that could no longer be prosecuted and was, therefore, considered abandoned. Dennis brought an action against the sheriff's office for the negligent infliction of mental anguish and emotional distress resulting from the incorrect handling and the disposal of the evidence. She made no allegations of intentional destruction, but alleged that the actions of the sheriff's office were reckless, wanton, and grossly negligent. The sheriff's office admitted that a mistake was made but denied that it owed any special duty to preserve evidence, obtained during the investigation of a particular crime, for the benefit of the victim. After a bench trial, the trial court ruled that the sheriff's office was liable for the negligent infliction of emotional distress, finding that it had breached its duty to retain and preserve the evidence of the plaintiff's aggravated rape, and that the breach had caused the plaintiff's damages.

Addressing a matter of first impression, the Court of Appeal of Louisiana reversed. The sheriff's office was charged with a general, not personal, duty to preserve the peace and apprehend criminal offenders. There