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FOREWARNED IS FOREARMED – THE LATEST FROM THE FEDERAL COURTS

(SEPTEMBER 1, 2013 TO SEPTEMBER 1, 2014)

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FEDERAL CASE UPDATE
(September 1, 2013 to September 1, 2014)

A. U. S. SUPREME COURT

Fernandez v. CA**,** *__U.S.__, No. 12-7822 (Feb. 25, 2014).*
The rule that the consent of one occupant to a search is insufficient when another occupant is present and objects does not apply to a circumstance in which consent was provided by an abused woman after her abuser, the other home occupant, was earlier that day arrested and removed from the residence.

Lane v. Franks*, __ U. S. __, No.13-483 (June 19, 2014).*
The First Amendment protects a public employee who, pursuant to a subpoena, provides truthful sworn testimony on issues outside the scope of his ordinary job responsibilities.

McCullen v. Coakley*, __ U. S. __, No.12-1168 (June 26, 2014).*
A law which establishes a 35-foot buffer zone around abortion clinics is not sufficiently tailored. It burdens substantially more speech than necessary to further the government's interest in public safety, by preventing abortion opponents located in traditional public fora from engaging in close, personal conversations with, and from distributing literature to, clinic patients. Alternative, less burdensome measures are readily available.

NLRB v. Noel Canning*, __ U. S. __, No. 12-1281 (June 26, 2014).*
President Obama lacked authority under the Recess Appointments Clause to appoint members to the NLRB during Congress' January 3-6 *pro forma* sessions.

Plumhoff v. Rickard**,** *__US__, No. 12-1117 (May 27, 2014).*
Qualified immunity was properly granted to police officers faced with a Section 1983 "excessive force" claim based upon their termination of a high speed car chase that threatened the lives of numerous by-standers by shooting and killing the fleeing driver

Riley v. California*, __ U. S. __, No.13-132 (June 25, 2014).*
The police generally may not, absent a warrant, search digital information on a cell phone seized from an arrestee.

Sandifer v. USSC**,** *__ U. S. __, No.12-417 (Jan. 27, 2014).*
Donning and doffing protective gear constitutes "changing clothes", an activity that parties can collectively bargain over regarding whether the time spent doing so is compensable, for purposes of a FLSA back pay claim.

Stanton v. Sims**,** *__ U. S. __, No. 12-1217 (Nov. 4, 2013).*
The warrantless entry of a police officer into the fenced residential yard of a personal residence while in hot pursuit of a misdemeanant does not, per se, violate the Fourth Amendment.

B. CIRCUIT COURTS

1. FIRST AMENDMENT

Gericke v. Begin, *__F.3d__, No. 12-2326 (1st Cir., May 23, 2014).*
No qualified immunity for officers who arrested a motorist attempting to film them during a traffic stop. This violated the filmer's First Amendment rights, as she was never ordered to stop filming or to leave the area.

Nat. Assoc. of Tobacco Outlets v. Providence, *__F. 3d__, No.13-1053 (1st Cir., Sept. 30, 2013).*
City ordinances restricting retailers from reducing prices on tobacco products through coupons and discounts, and from selling flavored tobacco products other than cigarettes, do not violate the First Amendment because they regulate pricing, not commercial speech.

Thayer v. Worcester*, __F. 3d__, No. 13-2355 (1st Cir., June 19, 2014).*
A panhandling ordinance that banned all aggressive solicitations and distractive roadside demonstrations regardless of their message was not overly vague but a valid, content-neutral, time, place, and manner restriction on speech and expressive conduct.

American Athiests v. Port Authority, *__F. 3d__, No. 13-1668 (2nd Cir., July 28, 2014).*
Displaying "The Cross at Ground Zero" in the National September 11 Museum does not violate the Establishment Clause.

Dorsett v. Nassau County, *__F. 3d__, No. 13-651 (2nd Cir., Oct 18, 2013).*
The court dismissed a Section 1983 claim alleging that the county deliberately delayed executing a settlement agreement in retaliation for the plaintiff's exercise of his First Amendment rights. The plaintiff had no right to have the agreement approved at all, much less by a date certain.

Evergreen Assoc. v. NYC, *__F. 3d__, No.11-2735 (2nd Cir., Jan. 17, 2014).*
No First Amendment violation found when a local law required abortion clinics to disclose whether they had a licensed medical provider on staff who supervises all of the clinic's services.

Holland v. Goord, *__F. 3d__, No. 13-2694 (2nd Cir., July 10, 2014).*
A prison official who punished an inmate for refusing to provide a urine sample while he was fasting during Ramadan unconstitutionally burdened his religious exercise.

Lederman v. NYC Parks, *__F. 3d__, No. 12-4333 (2nd Cir., Sept. 25, 2013).*
A municipal regulation limiting the number of "expressive-matter vendors" in popular public parks to a set number of spaces filled on a first come-first served basis constitutes a valid time, place, and manner restriction on First Amendment speech.

Matusick v. Erie County, *__F. 3d__, Nos. 11-1234 and 11-1618 (2nd Cir., Jan. 6, 2014).*
For purposes of a Section 1983 claim, a Constitutionally-protected right to "intimate association" exists between un-married persons who are engaged to be married.

Newsday v. County of Nassau, *__F. 3d__, Nos.12-2728 & 12-2731 (2nd Cir., Sept. 23, 2013).*
The First Amendment's presumptive right of access to court proceedings applies to civil contempt proceedings.

Tearpock-Martini v. B. of Shickshinny*, __F. 3d__, No. 13-3876 (3rd Cir., June 23, 2014).*
A Section 1983 Establishment Clause challenge to a still-existing religious-themed monument located on public property is not subject to a state law statute of limitations.

ACLU v. Tata, *__F. 3d__, No. 13-1030 (4th Cir., Feb. 11, 2014)*
State law authorizing the issuance of "choose life" license plates but refusing to authorize "pro-choice" license plates implicates private speech rights, is not pure government speech, and constitutes viewpoint discrimination in violation of the First Amendment.

Bland v. Roberts, *__F. 3d__, No.12-1671 (4th Cir., Sept. 18, 2013).*
Clicking the Facebook "like" button qualifies as "symbolic expressive speech" for purposes of a later First Amendment political retaliation claim.

Durham v. Jones, *__F. 3d__, No. 12-2303 (4th Cir., Dec. 10, 2013).*
An officer who published internal grievance procedure documents to expose serious and pervasive law enforcement misconduct and was then terminated engaged in protected First Amendment conduct. Even though the documents pertained to his own alleged misconduct, they also addressed a matter of public concern that outweighed his employer's interest in maintaining an effective and efficient work environment.

Occupy Columbia v. Haley, *__F. 3d__, No. 13-1258 (4th Cir., Dec. 16, 2013).*
Plaintiffs have a clearly established First Amendment right to protest on State House grounds after 6:00 p.m. absent a valid time, place, and number restriction.

Ross v. Early*, __F. 3d__, No. 12-2547 (4th Cir,. Mar. 5, 2014).*
Court refuses to impose a "small group exception" on an otherwise valid time, place, and manner restriction on expressive activities.

Gibson v. Kilpatrick, *__F. 3d__, No. 12-60905 (5th Cir., Oct. 29, 2013).*
Court rejects contention that, under *Garcetti*, as long as a public employee's speech could be classified as citizen speech, the inquiry ends even if the speech was part of the employee's official duties.

Kagan v. New Orleans*, __F. 3d__, No. 13-30801 (5th Cir., June 2, 2014).*
A city licensing scheme under which anyone seeking to provide city tours to the public for compensation must: (1) pass an examination testing the applicant's knowledge of city history and points of interest, (2) not be a recently convicted felon, (3) pass a drug test, and (4) pay a $50 fee, is a lawful exercise of police power that does not violate the First Amendment.

Liberty Coins v. Goodman, *__F. 3d__, No. 13-3012 (6th Cir., Apr. 8, 2014).*
A law requiring precious metal dealers to be licensed is rationally related to the legitimate government purposes of protecting the public from theft, fraud, money laundering, fencing, stolen goods and terrorism, and does not impermissibly burden commercial speech.

Annex Books v. Indianapolis, *__F. 3d__, No. 13-1500 (7th Cir., Jan. 24, 2014).*
A city ordinance that required adult bookstores to be closed between the hours of midnight and 10:00 a.m. and all day Sunday, in order to reduce armed robberies, but that allowed newspapers to be sold during those times, was a content-based regulation that violates the First Amendment.

Craig v. Rich Township, *__F. 3d__, No. 13-1398 (7th Cir., Dec. 3, 2013).*
A guidance counselor who was terminated after publishing a sexually explicit book failed in his Section 1983 First Amendment lawsuit because the school district's interest in restricting his speech outweighed his interest in publishing his book.

Smith v. Exec. Director, *__F. 3d__, No. 13-1939 (7th Cir., Feb. 4, 2014).*
A municipal policy that required gatherings around a war monument – a public forum – to last for five hours or less unless a permit was obtained, and that required a permit for protests of any size if the public was invited, is likely to run afoul of the First Amendment, justifying a temporary injunction against its enforcement.

Swetlik v. Crawford, *__F. 3d__, No. 12-2675 (7th Cir., Dec. 23, 2013).*
An officer's statements made in his capacity as a union representative, not as a police officer, are not deprived of their First Amendment protection by *Garcetti*.

Hemminghaus v. Missouri, *__F. 3d__, No. 13-1566 (8th Cir., July 1, 2014).*
A court employee's blog entries expressing concern about her children's abuse in the hands of their nanny and about the county prosecutor's refusal to prosecute her constituted speech related to a matter of public concern.

Johnson v. Minneapolis Park, *__F. 3d__, No. 12-2419 (8th Cir., Sept. 11, 2013).*
A city is enjoined from prohibiting a person from passing out Bibles near a Twin Cities Pride Festival entrance when it allows solicitation and street actors near the same entrance. That policy was not narrowly tailored to serve the significant governmental interest of crowd control.

Scheffler v. Molin, *__F. 3d__, No. 13-1008 (8th Cir., Feb. 25, 2014).*
A city building inspector who yelled at a citizen, called him a criminal, accused him of unlawful conduct, escorted him from the building and threatened to call the police when he returned, did not violate the citizen's First Amendment right to petition the government for redress of grievances. The other city employees did not condone the inspector's conduct, and the citizen was eventually able to file a grievance against the inspector.

Snider v.C.Girardeau, *_F. 3d_, Nos.13-1072, 1108, 1410, 1618 & 1619 (8th Cir., May 30, 2014).*
An officer is not entitled to qualified immunity on First and Fourth Amendment claims arising out of his arrest of a person for shredding an American Flag in public.

Chula Vista Citizens v. Norris, *__F. 3d__, No. 12-55726 (9th Cir., June 16, 2014).*
Under the First Amendment, a state law is unconstitutional to the extent it requires official ballot initiative proponents to identify themselves on the face of their initiative petition.

Hagen v. City of Eugene, *__F. 3d__, No. 12-35492 (9th Cir., Dec. 3, 2013).*
The repetitive nature of an employee's speech to his supervisors, and the fact that he complained of well-known facts rather than reporting anything new, does not remove that speech from the application of *Garcetti* for purposes of determining whether it constituted protected "private speech" on a matter of public concern.

Shoemaker v. Taylor, *__F. 3d__, No. 11-56476 (9th Cir., Sept. 13, 2013).*
Images of children digitally "morphed" into appearing that they were engaging in sexual activity are not protected speech.

Bushco TT II v. Shurtleff, *__F. 3d__, No. 12-4093 (10th Cir., Sept. 9, 2013).*
A statute that prohibits a person, with intent to engage in sexual activity for a fee or to pay another person to commit any sexual activity for a fee, from engaging in, offering or agreeing to engage in, or requesting or directing another to engage in the exposure of a person's genitals, buttocks, anus, pubic area, or the female breast below the top of the areola; masturbation; the touching of a person's genitals, buttocks, anus, pubic area, or the female breast; or, any act of lewdness does not impermissibly limit expressive conduct or other protected speech.

Bell v. Winter Park, *__F. 3d__, No. 13-11499 (11th Cir., Mar. 20, 2014).*
An ordinance prohibiting picketing within 50 feet of a residence posted with a "no loitering" sign does not violate the First Amendment, as it is a valid time, place, and manner restriction, except to the extent this "buffer zone" involves public property that is a traditional public forum.

Edwards v. D.C. , *__F. 3d__, Nos. 13-7063 & 7064 (D. C. Cir., June 27, 2014).*
A city licensing scheme that requires all persons who provide city tours for compensation to pass an examination and pay a licensing fee or risk imprisonment is an unlawful content-based restriction on free speech.

Fields v. Tulsa, *__F. 3d__, No. 12-5218 (10th Cir., May 22, 2014).*
Requiring an officer to either attend, or to order another officer to attend, a law-enforcement appreciation event hosted by an Islamic Society does not violate his First Amendment right to personal religious beliefs.

Mpoy v. Rhee, *__F. 3d__, No. 12-7129 (D.C. Cir., July 15, 2014).*
Public employee speech must be reviewed in context. When 98% of an employee's e-mail is devoted to speech made pursuant to his official duties, the remaining portion must be assessed in light of the content of the overall statement to determine its protection, if any, under *Garcetti*.

2. SECOND AMENDMENT; FIREARMS

Estate of Arrington v. Michael, *__F. 3d__, No. 13-1042 (3rd Cir., Dec. 24, 2013).*
An action arising out of an officer's son's shooting of a woman with the officer's service weapon is dismissed. Since the officer did not give his son permission to have the gun and used a secure storage or safety device in storing his weapon, he is entitled to immunity under the Child Safety Lock Act of 2005.

Jackson v. San Francisco*, __F. 3d__, No. 12-17803 (9th Cir., Mar. 25, 2014).*
Local law requiring handguns to be stored in a locked container or disabled with a trigger lock, and prohibiting the sale of hollow-point ammunition, survives an intermediate scrutiny analysis as against a Second Amendment challenge.

Peruta v. San Diego Cty. *, __F. 3d__, No. 10-56971 (9th Cir., Feb. 13, 2014).*
A county's "good cause" requirement for obtaining a concealed-carry permit violates the Second Amendment right to bear arms in lawful self-defense.

3. FOURTH AMENDMENT; EXCESSIVE FORCE

MacDonald v. Town of Eastham*, __F. 3d__, No. 13-1779 (1st Cir., Mar. 12, 2014).*
No Fourth Amendment violation occurred when police officers, pursuant to their community caretaker function, entered the open doorway of a house in response to a neighbor's call.

US v. Ryan, *__F. 3d__, No.11-2341 (1st Cir., Sept. 30, 2013).*
The Fourth Amendment does not require the exclusion of evidence gathered after an arrest made outside of a law enforcement officer's statutory jurisdiction.

Lynch v. NYC, *__F. 3d__, No. 12-3089 (2nd Cir., Nov. 15, 2013).*
A city policy of administering a breathalyzer test to any officer who discharges a firearm that results in death or personal injury is reasonable under the "special needs doctrine" and does not violate the Fourth Amendment although it is a warrantless, suspicion-less search. This policy serves the special needs of personnel management and increases public confidence by adding another deterrent to officers who may carry firearms when they are unfit for duty.

US v. Bailey*, __F. 3d__, No. 07-3719 (2nd Cir., Feb., 21, 2014).*
The detention of a person incident to the search of his residence, even when his home was a mile away, was reasonable under *Terry v. Ohio* up until the time he was placed in handcuffs.

Carman v. Carroll, *__F. 3d__, No. 13-2371 (3rd Cir., May 15, 2014).*
The "knock and talk" exception to the need for a search warrant to the non-consensual search of private property did not apply when an officer did not begin his visit at the property owner's front door.

***Galarza v. Szalczyk**, __F. 3d__, No. 12-3991 (3rd Cir., Mar. 4, 2014).*
The dismissal of a Section 1983 claim alleging that a county violated the Fourth Amendment when it unlawfully detained a person for more than 48 hours without notice of the basis for his detention or of his ability to contest it, when the basis for the detention was a federal immigration detainer, is reversed. Immigration detainers are permissive, and cannot justify the county's unconstitutional conduct.

***US v. Cortez-Dutrieville**, __F. 3d__, No. 13-2266 (3rd Cir., Feb. 26, 2014).*
A defendant who was prohibited from entering a home due to a protective order had no standing to challenge the search of that home and his overnight bag that was located therein.

***US v. Stanley**, __F. 3d__, No.13-1910 (3rd Cir., June 11, 2014).*
An officer's use of a device to trace a wireless signal from a neighbor's unsecured wireless router to its source inside the defendant's home is not a "search" within the meaning of the Fourth Amendment.

***Cooper v. Sheehan**, __F. 3d__, No. 13-1071 (4th Cir., Nov. 7, 2013).*
No qualified immunity was granted to officers who, without warning, shot a resident who stepped onto his unlit porch at 11:30 p.m. carrying a shotgun pointed at the ground, asked "Who was there?", heard nothing, and was then shot. No probable cause existed to believe that the resident was dangerous.

***Stevenson v. Seat Pleasant**, __F. 3d__, No. 12-2047 (4th Cir., Feb. 21,2014).*
A complaint need not contain the words "bystander liability" in order to plead a Section 1983 claim regarding the actions of a police officer who stood by while fellow officers took arguably unlawful actions against the plaintiff.

***US v. Robertson**, __F. 3d__, No. 12-4486 (4th Cir., Dec. 3, 2013).*
An officer waved the defendant forward to be searched. He stood up, turned around, and raised his hands. The firearm discovered on his person was suppressed because he merely submitted to a search, rather than validly consenting to it for Fourth Amendment purposes.

***US v. Saafir**, __F. 3d__, No.13-4049 (4th Cir., June 11, 2014).*
An officer's search of a vehicle was "unreasonable" under the Fourth Amendment when the driver's consent was obtained after the officer's patently false assertion that he had probable cause to search the vehicle and he suggested that he would therefore perform the search with or without the driver's consent.

***US v. Williams**, __F. 3d__, No. 12-4374 (4th Cir., Jan 23, 2014).*
The Fourth Amendment does not require the suppression of evidence obtained when the traffic offense for which a driver is cited is inapplicable to the road on which he was travelling, because another closely related traffic offense barred the conduct for which he was cited.

Burgess v. Fischer, *__F. 3d__, No. 12-4191 (6th Cir., Nov. 1, 2013).*
The fact that a handcuffed arrestee, who was surrounded by officers and was not being physically resistant, asked the officers if they wanted to give him "a blow job" did not justify his take down for Fourth Amendment "excessive force" purposes.

Hocker v. Pikeville, *__F. 3d__, No. 13-5341 (6th Cir., Dec. 17, 2013).*
No *per se* "excessive force" exists whenever a police officer fires his service weapon at the driver's side of a moving and potentially departing vehicle.

T.S. v. DOE*, __F. 3d__, No. 12-5724 (6th Cir., Feb. 5, 2014).*
The Fourth Amendment does not prohibit a juvenile detention facility from requiring all teenagers to submit to a nude same-sex visual inspection upon intake, even if the children are being admitted for non-violent misdemeanor offenses.

US v. McMullin, *__F. 3d__, No. 12-2300 (6th Cir., Jan. 21, 2014).*
In a case of first impression, the court holds that reasonable suspicion that a person engaged in breaking and entering or burglary is sufficient for a police officer to reasonably suspect that he may be armed, thus justifying his stop and frisk.

US v. Thompson*, __F. 3d__, No. 13-3094 (6th Cir., June 24, 2014)(unpub.).*
A person who ignores an officer's order to stop is not "seized" for Fourth Amendment purposes until he yields to the officer's order.

Balthazar v. Chicago, *__F. 3d__, No. 12-3378 (7th Cir., Nov. 8, 2013).*
An officer's accidental breaking of an exterior door, followed by a glance inside the room that was unrelated to any interest in contraband or evidence of a crime, followed by an immediate withdrawal from the area, is not a "search" for Fourth Amendment purposes.

Carter v. Milwaukee*, __F. 3d__, No. 13-2187 (7th Cir., Feb. 19, 2014).*
Requiring an officer executing a search warrant to remain on the scene until he was searched after the homeowner alleged that money was missing did not violate the Fourth Amendment.

Hamilton v. Oak Lawn, *__F. 3d__, No. 12-3174 (7th Cir., Nov. 20, 2013).*
Officers, who responded to a home in response to an elder abuse complaint and then lingered for two hours deciding whether to arrest the suspect, first forbidding her to leave and then requiring her to leave the home, were acting in a caretaker role and did not violate the Fourth Amendment.

Huff v. Reichert*, __F. 3d__, No. 13-1734 (7th Cir., Mar. 10, 2014).*
Two arrests from a decade ago, and driving in a high crime area, do not warrant a conclusion that a person was committing a crime so as to justify his arrest and the search of his vehicle.

US v. Williams, *__F. 3d__, No. 12-3864 (7th Cir., Sept. 24, 2013).*
When officers responded to an anonymous 911 call reporting an unruly crowd with weapons, the fact that, in a high crime area, an individual kept his hand in his pocket, averted his eyes, and slowly walked away from the area, in and of itself, did not create reasonable suspicion that he was armed and dangerous so as to justify his stop and frisk.

White v. Stanley, *__F. 3d__, No. 13-2131 (7th Cir., Mar. 11, 2014).*
Police officers who merely smell burning marijuana generally face no exigency and must obtain a warrant before entering the home from which the smell is emitting.

Bechman v. Magill, *__F. 3d__, No. 13-1142 (8th Cir., Mar. 11, 2014).*
No qualified immunity was granted to officers when they arrested a woman, removed her from her house, and jailed her overnight based upon a possible outstanding warrant the validity of which dispatch would confirm "the following morning". The warrant had been withdrawn.

U.S. v. Garzo, *__F. 3d__, No. 13-3437 (8th Cir., May 30, 2014).*
No "reasonable suspicion" to justify the further detention of those involved in a traffic stop is needed when an officer acted in his "community caretaker" role after arresting the driver by questioning the vehicle's passengers in order to move them and the vehicle to a safe location.

Williams v. Decker, *__F. 3d__, No. 13-2074 (8th Cir., July 18, 2014).*
Detaining motorists for 30 minutes after their lawful traffic stop, during which time officers conducted a protective sweep, removed and handcuffed the vehicle's occupants, located and unloaded a firearm, questioned the occupants, and ascertained their criminal histories, does not violate the Fourth Amendment.

Blondin v. Shelton, *__F. 3d__, No. 12-35121 (9th Cir., Sept. 6, 2013).*
It is "excessive force" for an officer to use a Taser in dart mode against a passive bystander.

George v. Edholm, *__F. 3d__, No. 11-57075 (9th Cir., May 28, 2014).*
Officers who gave false information to prompt a doctor to perform a non-consensual, invasive search of an arrestee's rectum can be liable for conducting an unlawful search.

Patel v. Los Angeles, *__F. 3d__, No. 08-56567 (9th Cir., Dec. 24, 2013).*
A municipal ordinance requiring hotel operators to keep certain private information on their guests and to allow police officers to engage in on-site inspections of those records upon demand is facially invalid under the Fourth Amendment.

US v. Cruz, *__F. 3d__, No. 11-50551 (9th Cir., Sept. 12, 2013).*
Consent to search a cell phone's records does not include consent to answer the cell phone, pose as the phone's owner, and carry on a conversation with the caller.

US v. Edwards, *__F. 3d__, No. 13-50165 (9th Cir., July 31, 2014).*
For Fourth Amendment purposes, the fact that four officers responding to a 911 call all pointed their weapons at a suspect, forced him to kneel, and handcuffed him before patting him down did not convert their investigatory stop into an arrest, given their legitimate safety concerns and need to make an on-the-spot assessment of the degree of restraint they needed to impose in order to control the situation.

Felders Smedley v. Malcom, *__F. 3d__, No. 12-4154 (10th Cir., June 20, 2014).*
Officers, who, during a drug dog sniff, and without probable cause, facilitated the dog's entry into a car by preventing the car's occupants from closing the car doors, conducted an improper search in violation of the Fourth Amendment.

US v. Harmon, *__F. 3d__, No. 12-2099 (10th Cir., Jan. 27, 2014).*
Observing a vehicle weaving within his lane and once crossing the fog line, absent difficult driving conditions or adverse weather, provides reasonable suspicion justifying a traffic stop for possible driving while impaired.

US v. Mosley*, __F. 3d__, No. 13-3101 (10th Cir., Mar. 3, 2014).*
When officers made a show of authority and yelled "hands up", the defendant was not "seized" for Fourth Amendment purposes until he complied with the officer's order and put his hands up.

US v. Wells*, __F. 3d__, No. 11-5162 (10th Cir., Jan. 3, 2014).*
A crooked undercover officer had no expectation of privacy in the cell phone comments he made to a drug dealer while the dealer was in a motel room.

Gennusa v. Canova*, __F. 3d__, No. 12-13871 (11th Cir., Apr. 8, 2014).*
A non-incarcerated plaintiff had a reasonable expectation of privacy during his pre-arrest privileged conversation with his attorney even though it took place in a County Sheriff's interview room. The secret recording and monitoring of this conversation, without a waiver, violated the Fourth Amendment.

US v. Folk, *__F. 3d__, No. 13-15126 (11th Cir., June 12, 2014).*
Firearms are so connected to the sale of narcotics that their seizure is implicitly authorized by a warrant authorizing a search for narcotics.

US v. Timmerman, *__F. 3d__, No. 11-15832 (11th Cir., Dec. 18, 2013).*
To avail themselves of the "emergency aid" exception to the need for a warrant to enter a private residence without consent, police officers must be faced with circumstances that indicate an urgent, on-going emergency.

US v. Brodie*, __F. 3d__, No. 11-3029 (D.C. Cir., Feb. 18, 2014).*
A suspect who complied with an officer's orders to put his hands on a car, but who fled seconds later when the officer turned his head, was "seized" for Fourth Amendment purposes the moment he submitted to the officer's show of authority and touched the car with his hands.

US v. Peyton*, __F. 3d__, No. 10-3099 (D.C. Cir., Mar. 21, 2014).*
A person with common authority over a shared dwelling can consent to the search of commonly used areas in the dwelling, but not to private areas used exclusively by another dweller.

4. FIFTH AMENDMENT

Sherman v. Town of Chester, *__F. 3d__, No. 13-1503 (2nd Cir., May 16, 2014).*
After a developer had endured 10 years of a town changing its zoning laws and placing numerous other new obstacles in his path after he applied for subdivision approval, there was no need for him to obtain a "final decision" from the town on his application before his Takings Clause claim ripened. The town had improperly used repetitive and unfair procedures to avoid making a final decision on his application.

US v. Taylor*, __F. 3d__, Nos. 11-2201, 11-2426 & 11-2639 (2nd Cir., Mar. 4, 2014).*
A suspect who ingested numerous pills upon his arrest and was only semi-lucid during post-arrest questioning initiated after he had waived his *Miranda* rights had his post-arrest statements suppressed. They were not "voluntary" because the officers took advantage of his impairment.

US v. Johnson, *__F. 3d__, No. 12-4176 (4th Cir., Oct. 29, 2013).*
An officers response of "What do you mean?" to an arrestee's unsolicited voluntary statement did not constitute an "interrogation" for Fifth Amendment *Miranda* purposes.

Wilkins v. Daniels*, __F. 3d__, No. 13-3112 (6th Cir., Mar. 4, 2014).*
A law requiring exotic animals to be micro-chipped does not constitute a physical taking in violation of the Fifth Amendment.

Biery v. US*, __F. 3d__, No. 13-5082 (Fed. Cir., June 4, 2014).*
A plaintiff has a compensable property interest in the conversion of a rail corridor to a recreational trail pursuant to the National Trail Systems Act when the underlying property claimed by the plaintiff was not conveyed to the railroad in fee simple but only an easement interest in the property was conveyed.

Marcum v. US*, __F. 3d__, No. 14-5001 (Fed. Cir., June 13, 2014).*
A lawyer cannot bring a Fifth Amendment takings claim for the unpaid legal fees he incurred when providing legal services as a court-appointed attorney pursuant to the Criminal Justice Act.

5. FOURTEENTH AMENDMENT; DUE PROCESS; EQUAL PROTECTION

Snider International v. Forest Heights, *__F. 3d__, No. 12-2490 (4th Cir., Jan. 7, 2014).*
Under a speed camera automated ticket system, neither the mailing of citations by regular U.S. First Class mail (rather than by certified mail), nor the electronic signatures placed on the citations, violated a traffic violator's due process rights.

Planned Parenthood v. Abbott*, __F. 3d__, No. 13-51008 (5th Cir., Mar. 27, 2014).*
A state law requiring physicians performing abortions to have admitting privileges at a hospital located within 30 miles of the abortion clinic, and requiring FDA protocols to be followed in drug-induced abortions, does not violate procedural or substantive due process rights.

Jasinski v. Tyler, *__F. 3d__, No. 10-2571 (6th Cir., Sept. 3, 2013).*
The qualified immunity defense shielded government actors who brought criminal charges against a parent for child abuse but did not immediately remove the abused child - - later murdered by the abusive parent - - from the premises, from a substantive due process claim.

Carmody v. Bd. Of Trustees*, __F. 3d__, No. 13-2302 (7th Cir., Mar. 28, 2014).*
To satisfy due process, a public employee with a property interest must generally be given a "meaningful opportunity" to respond before his employer decides to terminate his employment. This may require the employer to accommodate temporary obstacles that prevent an employee from immediately responding to pending charges.

Goodpaster v. Indianapolis, *__F. 3d__, No. 13-1629 (7th Cir., Nov. 25, 2013).*
Smoking is not a fundamental right. A no-smoking ordinance for public bars and restaurants does not violate substantive due process if it bears a rational relationship to a legitimate end.

Hussey v. Milwaukee County, *__F. 3d__, No. 12-3625 (7th Cir., Jan. 29, 2014).*
Ordinances that provide retirees with "cost free" health insurance only require their participation in the same health insurance plan as active employees on a "premium free" basis. Requiring them to make co-payments is not a taking of their property without due process of law.

Kvapil v. Chippewa Cty.*, __F. 3d__, No. 13-2658 (7th Cir., June 9, 2014).*
A local government's failure to follow its own procedural rules does not, in and of itself, violate due process. Process is not an end in itself.

Markadonatos v. Village of Woodridge, *__F. 3d__, No. 12-2619 (7th Cir., Jan. 8, 2014).*
An ordinance that charges every arrestee in the village's custody a $30 booking fee, without any opportunity to contest the fee, does not violate an arrestee's procedural due process rights.

Petty v. Chicago*, __F. 3d__, No. 12-3303 (7th Cir., June 9, 2014).*
No due process claim exists when allegations involve an officer's "coercion" of a witness to testify. In cases where an officer knowingly "fabricates" evidence, a due process claim exists.

Burton v. Arkansas, *__F. 3d__, No.13-1427 (8th Cir., Dec. 17, 2013).*
A plaintiff may not bring a Section 1983 retaliation claim for complaining of discrimination under the guise of equal protection.

Gladden v. Richburg, *__F. 3d__, No. 12-3918 (8th Cir., July 23, 2014).*
Police officers violated neither the Fourth nor Fourteenth Amendment when they did an intoxicated person "a favor" by, at his request, driving him to a remote location and dropping him off into the cold night, wherein he subsequently died of environmental hypothermia.

Kansas City Taxi Cab Drivers v. Kansas City, *__F. 3d__, No. 13-1343 (8th Cir., Dec. 19, 2013).*
A city ordinance that limits taxi cab permits and that requires new applicants to purchase at least 10 permits does not violate either the Equal Protection or Due Process Clause. It is rationally related to the legitimate purpose of creating incentives to invest in infrastructure and to increase the quality of taxi cab service.

Desertrain v. Los Angeles, *__F. 3d__, No. 11-56957 (9th Cir., June 19, 2014).*
An ordinance prohibiting the use of a motor vehicle "as living quarters either overnight, day-by-day, or otherwise" is unconstitutionally vague under the Fourteenth Amendment because it does not define "living quarters" or how long or when is "otherwise".

Sylvia Landfield Trust v. Los Angeles, *__F. 3d__, No. 11-55904 (9th Cir., Sept. 9, 2013).*
A municipal law under which rental properties cited for un-repaired habitability violations are administratively placed into a "rent escrow account program" wherein tenants are required to pay a lower rent does not violate their landlord's substantive due process rights.
Eisenhour v. Weber Cty., *__F. 3d__, No. 12-4190 (10th Cir., Mar. 12, 2014).*
In an equal protection claim against a judge for sexual harassment, a victim need not show that she was treated differently from a similarly situated employee, but just that she was discriminated against because of her sex.

6. EEOC; TITLE VII

Ponte v. Steelcase, *__F. 3d__, No.13-2011 (1st Cir., Jan. 31, 2014).*
A new female employee whose supervisor, on two occasions, insisted on driving her alone to her hotel after training sessions and put his hand around her shoulder during these trips established that such conduct made her feel "uncomfortable" – but that is not the test under Title VII. This conduct was not severe or pervasive enough to establish a hostile work environment claim.

Rijos v. Carolina, *__F. 3d__, No.13-1487 (1st Cir., Mar. 28, 2014).*
A five month gap between the taking of Title VII protected conduct and an allegedly retaliatory adverse employment action is not so attenuated as to fail to meet the plausibility standard for surviving a motion to dismiss.

Rodriquez-Vives v. P.R. Firefighters Corps., *__F. 3d__, No.13-1587 (1st Cir., Feb. 18, 2014).*
A valid Title VII retaliation claim can be brought based upon actions taken after an employer settled an employee's Section 1983 Equal Protection Clause claim, even if the earlier claim never mentioned Title VII. Title VII's retaliation protections extend beyond retaliation for filing a Title VII complaint, and include all retaliation actions taken against an employee for opposing any employment practice made unlawful by Title VII.

Cox v. Onondaga Cty., *__F. 3d__, No. 12-1526 (2nd Cir., July 23, 2014).*
An employer's investigation into an employee's claims of sexual harassment is not an adverse employment action.

Kwan v. Andalex, *__F. 3d__, No. 12-2493 (2nd Cir., Dec. 16, 2013).*
The "but-for" causation standard established by the Supreme Court in *Nassar* for Title VII retaliation claims does not alter a plaintiff's ability to demonstrate causation at the *prima facie* stage or at trial indirectly through temporal proximity.

Carnell Construction v. Danville, *__F. 3d__, No. 13-1143 (4th Cir. Mar. 6, 2014).*
A corporation can acquire a racial identity and establish standing to seek a remedy for alleged race discrimination under Title VII.

EEOC v. Propak, *__F. 3d__, No. 13-1687 (4th Cir., Mar. 25, 2014).*
The EEOC was required to pay defendant's attorney fees when it filed an employment discrimination complaint despite the fact that matters that occurred during the EEOC's administrative investigation precluded it from obtaining relief.

Castro v. Texas DOCJ, *__F. 3d__, No.12-20584 (5th Cir., Sept. 18, 2013)(unpub.).*
A Title VII race and sex lawsuit is dismissed for lack of EEOC exhaustion when the plaintiff did not check the "race" or "sex" boxes on his EEOC complaint nor discuss race or sex in his complaint narrative, even if the person who replaced him was of a different race and sex.

EEOC v. Boh, *__F. 3d__, No. 11-30770 (5th Cir., Sept. 27, 2013).*
Nothing in *Oncale* changes the right of a plaintiff under *Price Waterhouse* to establish a sexual harassment claim with evidence of sex-stereotyping.

Leal v. McHugh, *__F. 3d__, No. 12-40069 (5th Cir., Sept. 26, 2013).*
The filing of an EEOC complaint three years prior to the currently complained of conduct is too attenuated to support a claim of retaliation.

Royal v. CCC & R, *__F. 3d__, No. 12-11022 (5th Cir., Nov. 21, 2013).*
A new employee who was terminated after four days of work and after she complained that two maintenance men came into her office several times each day and "sniffed" the air around her in a "sexual" manner could raise an actionable hostile work environment claim under Title VII.

Laster v. Kalamazoo, *__F. 3d__, No. 13-1640 (6th Cir., Mar. 13, 2014).*
Harassment complaints filed internally with human resources are protected actions for purposes of a Title VII retaliation claim.

Shazor v. Professional Transit, *__F. 3d__, No. 13-3253 (6th Cir., Feb. 19, 2014).*
An African-American woman replaced by a Hispanic woman was thereby replaced by someone "outside her protected class" for purposes of establishing a *prima facie* Title VII case of employment discrimination.

Williams v. CSX, *__F. 3d__, No.12-6197 (6th Cir., Sept. 19, 2013)(unpub.).*
The mere presence of visible pornography in the workplace and a single confrontation involving sexist remarks does not create a sexually hostile work environment.

Bell v. Indiana, *__F. 3d__, No. 13-1235 (7th Cir., July 21, 2014).*
Allowing a male supervisor who had an on-duty affair to resign and return to work as a contract employee while not providing the same opportunity to the female employee involved in the affair may constitute Title VII sex discrimination.

Chaib v. State, *__F. 3d__, No. 13-1680 (7th Cir., Feb. 24, 2014).*
The court refuses to find that poor performance reviews alone can be the basis for a finding of an adverse employment action under Title VII.

EEOC v. Mach Mining, *__F. 3d__, No. 13-2456 (7th Cir., Dec. 20, 2013).*
The Court refuses to create a "failure of the EEOC to conciliate" affirmative defense to the merits of a Title VII discrimination suit.

Johnson v. General Board, *__F. 3d__, No. 12-1699 (7th Cir., Oct. 21, 2013).*
Observing one video on a company computer containing nudity is not sufficiently severe to constitute a hostile work environment.

Wilson v. Cook Cty. *, __F. 3d__, No. 13-1464 (7th Cir., Feb. 10, 2014).*
An employee "made up" a job position and induced an applicant to grant him sexual favors in return for her selection for the non-existent job. No Title VII cause of action against the employer. An employment relationship could not exist as regards a job that never existed.

Sayger v. Riceland, *__F. 3d__, Nos. 12-3301 & 12-3395 (8th Cir., Nov. 18, 2013).*
"Statutorily protected activity" for a retaliation claim brought under Section 1981 is conduct covered by Title VII.

Ambat v. Anderson, *__F. 3d__, Nos. 11-16746,16752, & 17330 (9th Cir., July 2, 2014).*
The court refused to grant summary judgment in favor of a jail who claimed that being female was a BFOQ for a deputy to work in its female housing pod.

Green v. Donahoe, *__F. 3d__, No. 13-1096 (10th Cir., July 28, 2014).*
Being placed on unpaid leave can constitute an "adverse employment action" for purposes of a Title VII retaliation claim.

Kramer v. Wasatch Cty., *__F. 3d__, No. 12-4058 (10th Cir., Feb. 25, 2014).*
Neither an employee's rape by a supervisor nor her unfiled bad performance evaluation constituted an "adverse employment action" for purposes of an ***Ellerth*** analysis under Title VII.

Barthelus v. G4S Government, *__F. 3d__, No. 13-14121 (11th Cir., May 27, 2014).*
An employee who alleges status-based discrimination under Title VII need not prove a "but for" causal relationship between an act and his injury, so long as an intent to discriminate was one of his employer's motives in taking the action.

7. ADA; REHABILITATION ACT

Kreisler v. Second Avenue Diner, *__F. 3d__, No. 12-4093 (2nd Cir., Sept. 25, 2013).*
A disabled plaintiff has standing to challenge alleged ADA building violations that he has not personally encountered.

***Parada v. Banco Industrial**, __F. 3d__, No. 12-3525 (2nd Cir., Mar. 25, 2014).*
An employee's inability to sit for a prolonged period of time may constitute an ADA disability.

***Summers v. Altarum**, __F. 3d__, No. 13-1645 (4th Cir., Jan. 23, 2014).*
Under the ADA, as amended, a temporary impairment, such as a temporary condition that affects walking but that could be accommodated by a wheel chair, can still constitute a disability.

***Feist v. Louisiana**, __F. 3d__, No.12-31065 (5th Cir., Sept. 16, 2013).*
Under the ADA, an employee's requested "reasonable accommodation" need not facilitate the essential functions of the employee's job in order for her employer to be obligated to provide it.

***Rorrer v. City of Stow**, __F. 3d__, No. 13-3272 (6th Cir., Feb. 26, 2014).*
An employee's ADA retaliation claim fails when it is based upon alleged retaliation for his testimony at an arbitration hearing that was unrelated to his disability. The court also refuses to find that his sworn testimony at the private arbitration hearing is a matter of "public concern" for purposes of a Section 1983 First Amendment speech claim.

***Brumfield v. Chicago**, __F. 3d__, Nos. 11-2265 & 11-3836 (7th Cir., Nov. 6, 2013).*
Joining the Ninth and Tenth Circuits, and disagreeing with the Eleventh Circuit, the court holds, in a case of first impression, that Title II of the ADA does not cover employment-related disability discrimination and that Title I of the ADA is the exclusive ADA remedy for claims of disability discrimination in public and private sector unemployment.

***Bunn v. Khoury**, __F. 3d__, No. 13-2292 (7th Cir., May 28, 2014).*
There is no separate cause of action under the ADA for an employer's failure to initiate an informal, interactive process with its employee to determine an acceptable disability accommodation for the employee.

***Gogos v. AMS**, __F. 3d__, No. 13-2571 (7th Cir., Dec. 16, 2013).*
An employee's chronic (but medicated) blood-pressure condition, as well as his vision problems caused by blood pressure spikes, could constitute disabilities under the ADA.

***DeBoise v. Taser International, et. al.**, __F. 3d__, No. 13-2742 (8th Cir., July 28, 2014).*
Officers are not required by the ADA to consider "reasonable accommodations" for persons with mental disabilities when they are presented with unexpected and rapidly evolving circumstances when dealing with such individuals.

***Hill v. Walker**, __F. 3d__, No. 13-1381 (8th Cir., Dec. 16, 2013).*
The removal of a family service worker from a "stressful case" and reassigning the case to another employee is not a "reasonable accommodation" under the ADA.

***Cohen v. Culver City**, __F. 3d__, No. 13-55079 (9th Cir., June 6, 2014).*
A city may violate its obligations under Title II of the ADA when it allows a car show vendor to block a curb ramp and impede access to a public sidewalk, and it fails to post signs indicating alternate disabled access routes.

Ervine v. Desert View, *__F. 3d__, No. 12-15059 (9th Cir., May 29, 2014).*
No valid claim under Title III of the ADA exists when the claimant does not indicate that he intends to ever return to a non-compliant place of public accommodation.

Hwang v. KSU, *__F. 3d__, No. 13-3070 (10th Cir., May 29, 2014).*
A six-month absence from work is not a "reasonable accommodation" under the Rehabilitation Act when it does not allow a disabled employee to perform her essential job functions.

Pacific Shores v. Newport B., *__F. 3d__, Nos. 11-53460 & 11-5461 (9th Cir., Sept. 20, 2013).*
A city ordinance, if enacted with the discriminatory purpose of limiting the housing options of disabled persons recovering from addiction, violates the ADA and the FHA.

Sheehan v. San Francisco*, __F. 3d__, No. 11-16401 (9th Cir., Feb. 21, 2014).*
Officers may have violated a mentally ill person's ADA rights when they forced their way into her room without making a reasonable accommodation for her illness.

Smothers v. Solvay Chemicals, *__F. 3d__, No. 12-8013 (10th Cir., Jan. 21, 2014).*
Significant limitations on an ability to "sleep" can constitute the substantial limitation of a "major life activity" for ADA purposes. Moreover, even if an incident of alleged employer retaliation does not support an independent retaliation claim, it may be relevant as background evidence in a pretext inquiry.

8. FMLA

Gienapp v. Harbor Crest*, __F. 3d__, No. 14-1053 (7th Cir., June 24, 2014).*
The FMLA allows a mother to take unpaid leave to care for her "daughter" even if that daughter is married and her mother is no longer her primary caregiver. A failure to provide an employer with the expected date of return from unexpected FMLA leave does not constitute failure to provide the employer with "essential information", especially when an employee does not herself know how long the medical condition that necessitates the leave will last.

Hager v. Arkansas DOH, *__F. 3d__, No.12-3842 (8th Cir., Nov. 14, 2013).*
Notice of a medical leave request provided immediately prior to leaving for the medical appointment that necessitated the leave request does not support an FMLA entitlement claim when sooner notice was practicable. The court also joins the Third, Sixth, and Eleventh Circuits in holding that notifying an employer of an intent to take FMLA leave is protected activity.

Escriba v. Foster Poultry*, __F. 3d__, Nos. 11-17608 & 12-15320 (9th Cir., Feb. 25, 2014).*
An employee can affirmatively decline to take FMLA leave even if the underlying reason for seeking leave would have evoked FMLA protection. If so, she must have a reason for the leave that is acceptable under her employer's policies, or termination for her work absence is justified.

***Hurley v. Kent**, __F. 3d__, No. 13-10298 (11th Cir., Mar. 20, 2014).*
The court rejects the argument that an employee must only "potentially qualify" for FMLA leave in order to be able to bring an interference claim. An FMLA claimant must be actually qualified for FMLA leave in order to bring an interference claim.

***Wetherbee v. Southern**, __F. 3d__, No. 13-10305 (11th Cir., June 11, 2014).*
The court joins the Seventh and Tenth Circuits in holding that a job applicant who alleges that an employer violated the ADA by misusing information obtained from him during a required medical examination to rescind his job offer must prove that he is actually "disabled" in order to prevail on his claim.

9. *FLSA; EPA; OSHA*

***Brown v. NYC DOE**, __F. 3d__, No.13-139 (2nd Cir., June 18, 2014).*
A volunteer at a public library who is given his position in order to help him "build his resume", does not become an "employee" under the FLSA when employees sporadically give him gifts of money and subway fare cards on account of his good work and promise to try to find money in the budget to pay him a true wage.

***Pippins v. KMPG**, __F. 3d__, No. 13-889 (2nd Cir., July 22, 2014).*
Entry-level accountants are "learned professionals" exempt from FLSA overtime payments.

***Rosano v. Township of Teaneck**, __F. 3d__, No.13-1283 (3rd Cir., June 10, 2014).*
Donning and doffing police uniforms and gear is non-compensable time under the FLSA.

***Johnson v. Heckmann**, __F. 3d__, No. 13-40824 (5th Cir., July 14, 2014).*
For purposes of an FLSA overtime calculation, an employer is not required to establish a "workweek" that reflects an employee's actual work schedule.

***DeKeyser v. Thyssenkrupp**, __F. 3d__, No. 12-3306 (7th Cir., Oct. 30, 2013).*
The fact that OSHA has not promulgated a rule requiring certain employee activity does not bar a party from presenting evidence as to the compensability of such activities under the FLSA.

***Haro v. Los Angeles**, __F. 3d__, No. 12-55062 (9th Cir., Mar. 18, 2014).*
A city violated the FLSA by not paying its fire department dispatcher and aeromedical technician overtime. They did not fall within the Act's "engaged in fire protection" exception.

***Rivera v. Peri**, __F. 3d__, No. 11-17365 (9th Cir., Nov. 13, 2013).*
Under the FLSA, an employer of alien workers is required to reimburse those employees during their first week of work for their inbound travel and immigration expenses to the extent those expenses lowered the employees' compensation below the minimum wage.

***Walthour v. Chipio**, __F. 3d__, No. 13-11309 (11th Cir., Mar. 21, 2014).*
An arbitration agreement that waives an employee's ability to bring a collective action under the FLSA is enforceable under the FAA.

10. ADEA; PDA

***Hildebrand v. Allegheny County**, __F. 3d__, No. 13-1321 (3rd Cir., June 27, 2014).*
State and local government officials must bring age discrimination claims under the ADEA, not Section 1983. Moreover, a county not named on an EEOC Intake Questionnaire and not identified as a respondent to an age discrimination charge until after the deadline for filing a charge of discrimination had passed was properly dismissed from the lawsuit.

***EEOC v. Baltimore County**, __F. 3d__, No. 13-1106 (4th Cir., Mar. 31, 2014).*
An employee retirement plan that requires older employees to pay a greater percentage of their salaries based upon their ages at the time they enrolled in the plan violates the ADEA.

***DeLeon v. Kalamazoo**, __F. 3d__, No. 12-2377 (6th Cir., Jan. 14, 2014).*
The fact that an employee applied for the job position to which he was later involuntarily transferred does not bar a finding that the lateral transfer constituted an "adverse employment action" for ADEA and Title VII purposes.

***Ortony v. Northwestern Univ.**, __F. 3d__, No. 12-3897 (7th Cir., Dec. 3, 2013).*
Offers of retirement packages do not violate the ADEA.

***Holmes v. Trinity Health**, __F. 3d__, No. 12-3129 (8th Cir., Sept. 4, 2013).*
Under the ADEA, evidence that an older employee assumed the claimant's job duties under a different job title is sufficient to defeat the claimant's assertion that her position was filled by a younger employee. The fact that her replacement's job title was different was not dispositive.

11. RLUIPA; RELIGIOUS FREEDOM RESTORATION ACT

***Washington v. Gonyea**, __F. 3d__, No.11-980 (2nd Cir., Sept. 10, 2013).*
RLUIPA (Section 3, which deals with institutionalized persons) does not provide a private right of action against government officials.

***Tagore v. US**, __F. 3d__, No. 12-20214 (5th Cir., Nov. 13, 2013).*
The government must have a compelling interest under the RFRA to prohibit an employee from carrying her kirpan dagger in a government building because its blade is longer than permitted by applicable law.

Eagle Cove v. Woodboro, *__F. 3d__, No. 13-1274 (7th Cir., Oct. 30, 2013)* **.**
The fact that a religious institution spent considerable time and money on re-zone applications does not *per se* constitute a "substantial burden" under RLUIPA. Facially neutral land use regulations that prohibit year-round Bible camps on residential property do not violate RLUIPA.

Wood v. Yordy*, __F. 3d__, No. 12-35336 (9th Cir., June 3, 2014).*
In a case of first impression in the Circuit, the court holds that a RLUIPA claimant may not seek damages against prison guards in their individual capacities.

Stewart v. FNU Beach FNU, *__F. 3d__, No.12-3013 (10th Cir., Dec. 18, 2013).*
In a case of first impression, the court joins the Third, Fifth, Seventh, and Eleventh Circuits in holding that there is no cause of action under RLUIPA for individual capacity claims.

12. USERRA

Rivera-Melendez v. Pfizer, *__F. 3d__, No.12-1023 (1st Cir., Sept. 20, 2013).*
Under USERRA, the application of the "escalator principle" and "reasonable certainty test" are not limited to "automatic" or seniority-based job promotions.

13. SCHOOLS; IDEA

Bronx Household v. Bd. Of Ed. *, __F. 3d__, No. 12-2730 (2ndCir., Apr. 3, 2014).*
A rule allowing the use of school facilities after hours by outside organizations and individuals but forbidding the holding of religious worship services does not violate the First Amendment.

T.M. v. Cornwall Central*, __F. 3d__, No. 12-4301 (2nd Cir., Apr.2, 2014).*
The LRE requirement of IDEA applies to extended school year placement just as it does to regular school year placement.

CG v. PA Dept. of Education, *__F. 3d__, No. 12-3747 (3rd Cir., Nov. 5, 2013).*
Compliance with the IDEA through the provision of a FAPE does not immunize a program or practice from an ADA claim.

Durrell v. Lower Merion, *__F. 3d__, No. 12-3264 (3rd Cir., Sept. 5, 2013).*
In a case of first impression, the court holds that the IDEA does not extend beyond students with disabilities to cover those misidentified as disabled.

M.R. v. Ridley Sch. Dist. *, __F. 3d__, No. 12-4137 (3rd Cir., Feb. 20, 2014).*
A school district was required to pay three years of private school tuition incurred after it appealed a hearing officer ruling favorable to a student – the right of reimbursement under IDEA extends through the final appellate judgment.

***Estate of Lance v. Louisville**, __F. 3d__, No. 12-41139 (5th Cir., Feb. 28, 2014).*
No "special relationship" for purposes of Section 1983 liability existed between a school and a special needs student when he was bullied by fellow students and then locked himself in the nurse's bathroom and hung himself.

***Hayden v. Greensburg**, __F. 3d__, No. 13-1757 (7th Cir., Feb. 24, 2014).*
A school policy requiring boys but not girls playing interscholastic basketball to have short hair violates the Equal Protection Clause.

***Dariano v. Morgan Hill**, __F. 3d__, No. 11-17858 (8th Cir., Feb. 27, 2014).*
A school did not violate its students' First or Fourteenth Amendment rights by requiring them to remove shirts depicting the American Flag after receiving threats of race-related violence during a school-sanctioned *Cinco de Mayo* event.

***Daubert v. Lindsay Unified**, __F. 3d__, No. 12-16252 (9th Cir., July 25, 2014).*
Under Title II of the ADA, a school need not alter the public seating area of its pre-ADA built football stadium, so long as it provides program access to the wheel chair-bound.

***Demers v. Austin**, __F. 3d__, No. 11-35558 (9th Cir., Sept. 4, 2013).*
Pickering, not *Garcetti*, applies to teaching and writing on academic matters by teachers employed by the state.

***Frudden v. Pilling**, __F. 3d__, No. 12-15403 (9th Cir., Feb. 14, 2014).*
A school uniform policy that mandated a written motto on the uniform shirt ("Tomorrow's Leaders") but made exceptions for Girl Scout and Boy Scout uniforms both compelled speech and made content-based exceptions in violation of the First Amendment.

***K.A. v. Fulton Cty**, __F. 3d__, No. 12-15483 (11th Cir., Dec. 20, 2013).*
An IEP team can amend an IEP at a team meeting even if a student's parents do not consent. The parents are not entitled to a complaint and due process hearing before the change is instituted.

14. COMMERCE CLAUSE

***Delaware Cty. v. FHFA**, __F. 3d__, No. 13-2163 (3rd Cir., Mar. 18, 2014).*
The Federal Housing Finance Agency is not required to pay local real estate transfer taxes because a transfer tax is not a property tax even if the transfer is of property.

***Sandlands v. Horry County**, __F. 3d__, No.13-1134 (4th Cir., Dec. 3, 2013).*
A local flow control ordinance that prohibits the disposal of waste generated in a county at any site other than a designated public landfill does not violate the Commerce Clause.

***Montgomery Cty. v. Fed.Nat. M.**, __F. 3d__, Nos. 13-1691 & 13-1752 (4th Cir., Jan. 27, 2014).*
Fannie Mae and Freddie Mac are exempt from the payment of local property transfer taxes.

Montgomery County v. FNMA, *__F. 3d__, No. 13-4429 (6th Cir., July 10, 2014).*
Fannie Mae and Freddie Mac are exempt from real property transfer taxes under state law.

DeKalb v. FHF, *__F. 3d__, Nos. 13-1558,-1559, -1611 & -2739 (7th Cir., Dec. 23, 2013).*
Counties cannot levy a tax on the sale of real property by Fannie Mae and Freddie Mac. The Commerce Clause forbids it.

Hennepin County v. FNMA*, __F. 3d__, No. 13-1821 (8th Cir., Feb. 5, 2014).*
FHFA is exempt from paying deed transfer fees to a county upon the transfer of real property.

Vadnais v. Fed. Ntl. Mortgage*, __F. 3d__, No. 13-2733 (8th Cir., June 6, 2014).*
The FHFA does not have to pay state "deed transfer" taxes.

Kay City v. FHFA*, __F. 3d__, No. 13-7114 (D.C. Cir., June 13, 2014).*
The FHFA does not have to pay state "documentary stamp" taxes.

15. JAILS; PRISONS; EIGHTH AMENDMENT

Kosilek v. Spencer, *__F. 3d__, No.12-2194 (1st Cir., Jan. 17, 2014).*
A prison's failure to provide an inmate with sex reassignment surgery constituted a denial of adequate medical care in violation of the Eighth Amendment.

Wall v. Wade*, __F. 3d__, No. 13-6355 (4th Cir., Feb. 3, 2014).*
A prison policy of requiring an inmate to possess a physical indicia of faith before approving his request for religious accommodation violated the First Amendment.

Coleman v. Sweetin*, __F. 3d__, No. 12-40012 (5th Cir., Mar. 12, 2014).*
An Eighth Amendment claim of "cruel and unusual punishment" is not stated based upon an allegation of slippery shower conditions.

Morris v. Livingston, *__F. 3d__, No. 12-50848 (5th Cir., Jan. 10, 2014).*
A State law requiring inmates to pay a $100 annual health care services fee does not violate the Eighth Amendment if an inmate is not denied medical care due to his or her inability to pay.

Fourte v. Faulkner Cty. *, __F. 3d__, No. 13-2241 (8th Cir., Mar. 25, 2014).*
The fact that prison doctors may have committed medical malpractice does not prove their "deliberate indifference" for purpose of a "cruel and unusual punishment" finding.

Smith v. Conway Cty. *, __F. 3d__, No. 13-3095 (8th Cir., July 16, 2014).*
It constitutes "excessive force" for prison officers to use "tasers" to compel compliance from non-violent and non-threatening inmates.

Thompson v. King, *__F. 3d__, No.12-3450 (8th Cir., Sept. 20, 2013).*
No qualified immunity was provided to a booking officer regarding a substantive due process claim for his deliberate indifference to serious medical needs when he failed to provide medical assistance to an arrestee who exhibited severe intoxication symptoms, was unable to sign the booking sheet, and later died in lock-up.

Albino v. Baca*, __F. 3d__, No. 10-55702 (9th Cir., Apr. 3, 2014).*
Under the PLRA, a person has no obligation to exhaust his administrative remedies before filing a Section 1983 lawsuit if no administrative remedies are available at the jail in which he resides.

Blaisdell v. Frappiea, *__F. 3d__, No. 10-16845 (9th Cir., Sept. 10, 2013).*
Absent evidence of expressive association, the First Amendment does not protect an inmate's attempted service of process on a prison official.

Castle v. Eurofresh, *__F. 3d__, No. 11-17947 (9th Cir., Sept. 24, 2013).*
A prison work program must accommodate its inmate workers' disabilities under the ADA.

Wagner v. Maricopa County, *__F. 3d__, No. 10-15501 (9th Cir., Dec. 30, 2013).*
Requiring a mentally disturbed prisoner to change into prison garb – including pink underwear – may constitute a deliberate indifference to his serious medical needs.

Graham v. Sheriff of Logan Cty. **,** *__F. 3d__, No. 12-6302 (10th Cir., Dec. 20, 2013).*
Consensual sex between a prisoner and guards constitutes neither a Fourteenth Amendment excessive force violation nor an Eighth Amendment cruel and unusual punishment violation.

Gilmore v. Hodges, *__F. 3d__, No.11-12674 (11th Cir., Dec. 20, 2013).*
Refusing to provide a prisoner with hearing aid batteries constitutes a deliberate indifference to basic medical needs in violation of the Due Process Clause.

16. LABOR; UNIONS

Flex Frac v. NLRB*, __F. 3d__, No. 12-60752 (5th Cir., Mar. 24, 2014).*
A company policy prohibiting (as interpreted by the NLRB) employees from discussing employee wages violates Section 8(a)(1) of the NLRA.

Horton v. NLRB, *__F. 3d__, No. 12-60031 (5th Cir., Dec. 3, 2013).*
A contractual provision prohibiting employees from pursuing class or collective claims in an arbitral or judicial forum did not violate the NLRA so long as the provision could not be reasonably construed as prohibiting an employee from filing a claim with the NLRB.

Cillo v. Greenwood Village, *__F. 3d__, No. 12-1395 (10th Cir., Dec. 31, 2013).*
Punishing union supporters more severely than union opponents for workplace misconduct may establish a First Amendment violation.

17. TELECOMMUNICATIONS

CTIA v. Telecom.Req. Bd., *__F. 3d__, No. 12-2427 (1st Cir., May 9, 2014).*
A law that required the sellers of prepaid phones to provide information about the purchasers of these phones is preempted by the Federal Stored Communications Act.

T-Mobile v. Loudon Cty. Bd.*, __F. 3d__, Nos. 12-2396 & 12-2397 (4th Cir., Apr. 3, 2014).*
A board of supervisors who denied a cell tower application for valid aesthetic and unlawful radio frequency emission reasons was not, by virtue of its independent lawful denial basis, immune from liability under the Telecommunications Act on the basis of its unlawful basis of denial.

Patriotic Veterans v. Indiana, *__F. 3d__, No. 11-3265 (7th Cir., Nov. 21, 2013).*
A State law prohibiting non-consensual robo-calls is not pre-exempted by the Federal Telephone Consumer Protection Act.

Omnipoint v. Huntington B., *__F. 3d__, Nos. 10-56877 & 10-56944 (9th Cir., Dec.11, 2013).*
The TCA does not preempt a municipality's decision to obtain voter approval before constructing mobile telephone antennae on city-owned park property.

Mobile South v. City of Milton, *__F. 3d__, No.12-10487 (11th Cir., Sept. 5, 2013).*
Enlarging a Circuit split, the court joins the Fourth Circuit and, holds, contrary to the First, Sixth, and Ninth Circuits, that, under the Telecommunications Act, a municipality's cell tower application denial decision does not have to be communicated in "a separate writing with an explanation of reasons" independent and apart from a hearing or meeting transcript or minutes.

18. ENVIRONMENTAL; CERCLA; CWA

Oneida Tribe v. Hobert, *__F. 3d__, No. 12-3419 (7th Cir., Oct. 18, 2013).*
The Clear Water Act does not authorize a municipality to assess storm water management fees on an Indian tribe.

Black Warrior Riverkeeper v. Black Warrier, *_F. 3d_, No. 12-15409 (11th Cir., Nov. 13, 2013).*
A citizen cannot evade the notice and waiting period requirements of the CWA by suing a discharger of pollutants for violations of the Acts' "new-source standards" instead of for violations of that discharger's state-issued permit.

19. PROCEDURAL; EVIDENTIARY

Castagna v. Luceno*, __F. 3d__, No. 13-796 (2nd Cir., Mar. 5, 2014).*
As a matter of federal law, the filing of an EEOC charge does not toll the statute of limitations for state law tort claims even if they are based upon the same facts as the EEOC charge.

Perez v. AC Roosevelt, *__F. 3d__, No. 13-497 (2nd Cir., Dec. 16, 2013).*
A final order solely on the issue of attorney fees is applicable without the entry of a separate judgment. Therefore, the subsequent entry of an identical judgment document does not restart the time to appeal.

Rogers v. Bromac Title*, __F. 3d__, No. 13-31097 (5th Cir., June 18, 2014).*
The "but for" causation standard applies to a claim brought under the Jury System Improvement Act alleging that the plaintiff was terminated as a result of her grand jury service.

Taylor v. Bailey Tool*, __F. 3d__, No. 13-10715 (5th Cir., Mar. 10, 2014).*
A claim barred by the statute of limitations when filed in state court cannot be revived by FRCP 15(c) once the case is removed.

Baugh v. Cuprum Se, *__F. 3d__, No. 12-2019 (7th Cir., Sept. 13, 2013).*
It is reversible error to send a demonstrative exhibit never introduced into evidence to the jury for its use during deliberations.

Campbell v. Forest Preserve, *__F. 3d__, No. 13-3147 (7th Cir., May 15, 2014).*
Section 1983 is the exclusive remedy for state actor violations of Section 1981.

Snyder v. King*, __F. 3d__, No. 13-1899 (7th Cir., Mar. 11, 2014).*
A Section 1983 claim against a county is not stated when county officials simply follow a compulsory state law.

U.S. v. Valpendesto*, __F. 3d__, No. 11-3020 (7th Cir., June 6, 2014).*
Enlarging a split in the Circuits, the court held that a restitution order made part of a criminal judgment abates when the convicted criminal dies during the appeal of his conviction.

Bonnet v. Harvest, *__F. 3d__, No. 12-4068 (10th Cir., Jan. 28, 2014).*
A subpoena *duces tecum* served on a non-party tribe and seeking documents relevant to a federal civil suit is itself a "suit" against the tribe triggering tribal sovereign immunity.

US v. Pulliam*, __F. 3d__, No. 13-1026 (10th Cir., Apr. 8, 2014).*
A failure to provide homeowners with a copy of a federal search warrant does not justify the suppression of the evidence gathered in the search authorized by that warrant unless the failure was intentional or prejudicial or otherwise rendered the search unreasonable.

20. ARBITRATION; CONTRACTS

Huffman v. Hilltop*, __F. 3d__, No. 13-3938 (6th Cir., Mar. 27, 2014).*
Even when a contract contains both a mandatory arbitration and a survival paragraph and the latter does not list the arbitration paragraph, the strong presumption of arbitration controls.

***Russell v. Citigroup**, __F. 3d__, No. 13-5994 (6th Cir., Apr. 4, 2014).*
An employee who signs an arbitration agreement upon hire does not thereby agree to arbitrate matters already in litigation.

***US v. Graves**, __F. 3d__, No. 13-2356 (8th Cir., June 25, 2014).*
A statement made 30 minutes after an incident is an "excited utterance" given the declarant's distress, the nature of the incident, and the fact that the statement was made in response to a general question.

***In re: Wal-Mart.**, __F. 3d__, Nos . 11-17718 & 11-17778 (9th Cir., Dec. 17, 2013).*
In a case of first impression, the court holds that a contractual non-appealability clause that eliminates all federal court review of an arbitration award is not enforceable.

21. OTHER CASES OF INTEREST

***Merit Constr. Alliance v. City of Quincy**, __F. 3d__, No. 13-2189 (1st Cir., July 16, 2014).*
A city ordinance that requires public works project bidders to enter a training program registered with the state labor department is pre-empted by ERISA.

***American Petroleum v. NYC**, __F. 3d__, No.12-4505 (2nd Cir., Dec. 6, 2013).*
Although the *Robins Dry Dock* rule has been overextended, it has been so consistently applied in admiralty that it should continue to be applied unless altered by Congress or the Supreme Court.

***US v. Reed et. al.**, __F. 3d__, Nos. 13-359, 13-361, 13-380 (2nd Cir., June 25, 2014).*
Placing an individual in a police line-up without the benefit of counsel, after a grand jury voted a true bill of indictment against him but before any accusatory instrument had been filed against him in court can raise a Sixth Amendment "right to counsel" claim.

***Clear Sky Car Wash v. Chesapeake**, __F. 3d__, No. 13-1492 (4th Cir., Feb. 21, 2014).*
A city's "quick take" proceeding cannot be contested by private action under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) or under Section 1983.

***Inclusive Comm. v. Texas**, __F. 3d__, Nos. 12-11211 & 13-10306 (5th Cir., Mar. 24, 2014).*
The court adopts the burden of proof standard announced by HUD (24 CFR § 100.500) as applicable to disparate impact claims brought under the FHA.

***Burton v. Infinity Capital**, __F. 3d__, No. 12-15618 (9th Cir., June 4, 2014).*
An attorney who prepares a "show cause" order at the request of a judge is not entitled to absolute quasi-judicial immunity

***In re: City of Houston**, __F. 3d__, Nos. 2012-1356 & 2012-1418 (Fed. Cir., Oct. 1, 2013).*
Under the Lanham Act, a local government entity cannot obtain a federal trademark registration for its own official insignia.

C. DISTRICT COURT CASES

EEOC v. Bloomberg, *__F. Supp. 2d__, No. 07-CV-8383 (S.D.N.Y., Sept 9, 2013).*
The EEOC brought a discrimination claim before fulfilling its pre-litigation investigation and conciliation efforts. The defendant was granted leave to file an application for attorney fees as the prevailing party in this improperly filed litigation.

Farsh v. A-1, *__F. Supp. 2d__, No. 12-2692 (D. Kansas, Nov. 20, 2013).*
Requiring an Islamic employee to conduct his noon-time prayer in his car, outside, or off-site rather than in the main lobby of the building where he worked did not constitute religious discrimination.

Finkle v. Howard Cty, *__F. Supp. 2d__, No. 13-3236 (D.Md., April 10, 2014)*
A sex discrimination claim by a transsexual whose application to serve on the county's volunteer horse-mounted search and rescue squad survives summary judgment.

Gaskins v. Rock-Tenn. , *__F. Supp. 2d__, No. 1:12-CV-192 (S.D. Ohio, Nov. 8, 2013).*
In deciding an FLSA "interference" claim, an employer's intent is irrelevant. An employee's belief that her employer may rescind its approval of her future requested leave or terminate her prior to the start of that leave is insufficient to constitute an FLSA violation.

Litzman v. NYPD, *__F. Supp. 2d__, No. 12-civ-4681 (S.D.N.Y., Nov. 15, 2013).*
A police department's "no-beard" policy violates an Orthodox Jewish officer's First Amendment rights under a strict scrutiny analysis.

Perry v. NYC, *__F. Supp. 2d__, No. 13-civ-1015 (S.D.N.Y., Dec. 17, 2013).*
A FLSA compensation claim brought by NYFD firefighters who were required to check with their supervisors about their daily assignments, gather medical supplies and gear, and don their uniforms before their paid shift started survives a motion to dismiss.

Wonasue v. U. of Myld, *__F. Supp. 2d__, No. 11-3657 (D. Md., Nov., 22, 2013).*
Routine morning sickness during pregnancy is not a "disability" under either the ADA or the Rehabilitation Act.

[Mercifully, the end]