IMLA 2017 AMICUS SERVICE AWARD RECIPIENTS

IMLA gratefully acknowledges the extraordinary contributions to municipal law made by the following amicus brief authors:



STUART BANNER, Professor of Law at UCLA-*Murr v. Wisconsin* (Supreme Court merits case). Issue: whether the "parcel as a whole" concept establishes a rule that two legally distinct but commonly owned contiguous parcels must be combined for takings analysis purposes.

EREK BARRON, Counsel of Whiteford, Taylor, Preston LLP-*Siena Corporation v. Mayor and City and County of Rockville* (Fourth Circuit). Issues: (1) whether a zoning text amendment violated a company's due process and equal protection rights; and (2) whether the City has the burden to prove it acted rationally in adopting the ZTA (as opposed to the plaintiff proving pretext).

DOUGLAS BARUCH, Partner, **JANICE MAC AVOY**, Partner, **JENNIFER COLYER**, Special Counsel, **ANDREW CASHMORE**, Associate, and **LEIGH ROME**, Associate, with Fried Frank-*Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor & City Council of Baltimore* (Fourth Circuit). Issue: whether a City ordinance requiring Limited-Service Pregnancy Centers to post disclaimers stating that they do not provide or make referrals for abortions or certain types of birth control violates the Constitution.

BILL BRINTON, Shareholder of Roger Towers, P.A.-*Thomas v. Schoer* (Western District of Tennessee). Issue: whether provisions of the Tennessee Highway Beautification Act and localities' regulation of billboards are constitutional. Also *AusPro Enterprises v. Texas Department of Transportation* (Texas Court of Appeals-petition for rehearing). Issue: constitutionality of the Texas Department of Transportation's outdoor advertising regulations.

ERIC CITRON, Partner of Goldstein & Russell, P.C., and **RON PARSONS**, Partner of Johnson Janklow Abdallah Reiter & Parsons, LLP-*Direct Marketing v. Brohl* (Supreme Court petition stage). Issue: whether Colorado's law requiring out-of-state retailers to report total sales to purchasers and the Department of Revenue discriminates against interstate commerce. The Supreme Court denied certiorari, which was the unusual position advocated by our brief.

MICHAEL COLANTUONO, Shareholder of Colantuono, Highsmith & Whatley-*Leider v. Lewis* (California Supreme Court). Issue: whether a private citizen can seek injunctive relief against a city based on his taxpayer claims of alleged violations of a criminal statute.

ALLEGRA COLLINS, Professor at Campbell University-*Asheville v. State of North Carolina*, (Supreme Court of North Carolina). Holding: legislation requiring Asheville to cede ownership and control of its public water system to another political subdivision violated the North Carolina Constitution.

DANIEL COLLINS, Partner with Munger, Tolles & Olson-*County of Los Angeles v. Mendez* (Supreme Court merits case). Issues: (1) whether the 9th Circuit's "provocation" rule should be barred as it conflicts with *Graham v. Connor*; and (2) whether, in an action brought under Section 1983, an incident giving rise to a reasonable use of force is an intervening, superseding event which breaks the chain of causation from a prior, unlawful entry in violation of the Fourth Amendment.

SHAY DVORETZKY, Partner at Jones Day-*Flores v. City of San Gabriel* (Supreme Court petition stage), and **ARTHUR HARTINGER**, Partner with Renne, Sloan, Holtzman, Sakai LLP (Ninth Circuit petition for rehearing). Issue: whether cash-in-lieu of benefits payments are properly excluded from the regular rate of pay under the FLSA pursuant to § 207(e)(2) because they are not compensation for hours worked.

KYMBERLY EVANSON, Partner with the Pacifica Law Group--*District of Columbia v. Wesby* (Supreme Court petition stage). Issues: (1) whether a police officer assessing probable cause is entitled to credit one set of conflicting statements over another; and (2) even if the officer cannot, whether the law was clearly established for the purposes of qualified immunity.

ROBERT FUGATE, Deputy City Attorney of Arlington, Texas-*Hunter v. Cole* (Supreme Court petition stage). Issues: (1) does clearly established law require every police officer to wait before firing in self-defense or defense of another until after a person points his firearm directly at another, when it's then too late to stop the immediate deadly threat presented?; and (2) does a police officer accused of inaccurately reporting his perceptions of events during a dynamic shooting encounter violate clearly established rights under the Fourteenth Amendment? (Petition granted and judgment vacated in light of *Mullenix v. Luna*).

DEEPAK GUPTA, Founding Principal of Gupta Wessler PLLC-*Bank of America Corp. v. City of Miami* (Supreme Court merits stage). Issues: (1) whether, by limiting suit to "aggrieved person[s]," Congress required that a Fair Housing Act plaintiff plead more than just Article III injury-in-fact; and (2) whether proximate cause requires more than just the possibility that a defendant could have foreseen that the remote plaintiff might ultimately lose money through some theoretical chain of contingencies.

SCOTT HOUSTON, Deputy Executive Director & General Counsel for the Texas Municipal League-*Carruth v. City of Plano* (Texas Court of Appeals). Issue: whether a City's adoption of a comprehensive plan can be subject to referendum.

JOSEPH JACQUOT and **LINDA BENFIELD**, Partners with Foley & Lardner LLP~ *U.S. Army Corps of Engineers v. Hawkes* (Supreme Court merits case). Holding: an approved jurisdictional determination by the United States Army Corps of Engineers definitively stating the presence or absence of waters of the United States on a particular property is a final agency action judicially reviewable under the APA.

JOHN NEIMAN, Shareholder with Maynard Cooper & Gale, and **BRAXTON THRASH**, Associate~ *Packingham v. North Carolina* (Supreme Courts merits case). Issue: whether, under the Court's First Amendment precedents, a law that makes it a felony for any person on the state's registry of former sex offenders to "access" websites that are "know[n]" to allow minors to have accounts, like Facebook, is permissible, both on its face and as applied to petitioner.

ANDREW ORENSTEIN, Member of Harris Beach PLLC, and **BRADLEY WANNER**, Associate~*Turturro v. City of New York* (New York Court of Appeals). Holding: Roadway design decisions are propriety functions (as opposed to governmental) and entitled to a qualified immunity only for issues of roadway safety.

RUSI PATEL, Associate General Counsel for the Georgia Municipal Association~*Walker v. Calhoun* (Eleventh Circuit). Issues: (1) whether the District Court erred in determining that the City possesses control over its municipal court, specifically on issues of bail and bond, which are traditionally reserved to the judge and whether the exercise of such powers was derived from municipal policy or by state law; and (2) whether a municipality can be held liable under 42 U.S.C. §1983 for its municipal court having a policy of wrongfully incarcerating indigent defendants when the relevant decisions are made by municipal judges acting in their judicial capacities under direction of state law.

MARC POSTER, Partner, and **TIMOTHY COATES**, Managing Partner of Greines, Martin, Stein & Richland LLP~*Kirola v. City & County of San Francisco* (Ninth Circuit). Issues: (1) whether the City's departure from ADA guidelines in a few isolated instances when constructing or altering public facilities warrants the injunctive relief; and (2) whether the District Court erred when it determined that San Francisco provides meaningful access to the programs, services and activities offered by its parks, swimming pools, and public rights-of-way when it reviewed those programs in their entirety.

STEVEN RENICK, Partner, and **NICOLE THRELKEL**, Associate, with Manning & Kass, Ellrod, Ramirez, Trester LLP~*Lowry v. San Diego* (Ninth Circuit). Issues: (1) whether the use of police service dogs is a categorically "severe" use of force under *Graham* because dog bites can be fatal; and (2) in determining whether qualified immunity is appropriate, whether the *Graham* factors can be reviewed from the perspective of the facts known to the appellant, rather than the officers.

STEVEN RENICK~*Diaz v. City of Anaheim* (Ninth Circuit petition for rehearing and Supreme Court petition stage). Issue: whether liability and damages should have been bifurcated in a qualified immunity case that involved certain testimony related to the deceased's gang membership.

LANNY RICHMOND, Staff Attorney at the Arkansas Municipal League~*Gage County v. Dean* (Eighth Circuit). Issues: (1) whether the jury erred by finding the County liable for a final policy decision by the Sheriff where the Sheriff was found not to be liable for any of his actions.; and (2) whether the Sheriff is a final policymaker for the County under state law.

LAWRENCE ROSENTHAL, Professor of Law at Chapman University~*Manuel v. City of Joliet* (Supreme Court merits case). Holding: an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a Fourth Amendment claim for his/her pretrial detention. (Remanded to the lower court to determine when the statute of limitations begins to run for such a claim).

CHARLES ROTHFELD, Special Counsel with Mayer Brown~*Expressions Hair Design v. Schneiderman*. (Supreme Court merits case). Holding: New York's no-surcharge law regulated speech and not simply conduct; remanded to the lower court to conduct a First Amendment analysis.

RICHARD SIMPSON, Partner with Wiley Rein, LLP~*Ivy v. Morath* (Supreme Court merits case). Issue: whether the relationship between public and private actors invokes dual obligations to accommodate disabilities in any context other than an express contractual relationship between a public entity and its private vendor. (Judgment was vacated and case dismissed as moot).

SARAH SHALF, Professor at Emory University, and **JOHN BAKER**, Founding Attorney of Greene Espel~*Ela v. Destefano* (Eleventh Circuit). Issue: whether a plaintiff is entitled to a liquidated damages award of $2,500 per Driver Privacy Protection Act violation/per lookup.

SARAH SHALF~*Town of Chester v. Laroe Estates, Inc.*, (Supreme Court petition stage and merits case). Issue: whether a party seeking to intervene as a matter of right needs independent Article III standing.

HELMUT STARR, Principal of Curtis, Heinz, Garrett & O'Keefe P.C.~*Josephine Havlak Photographer, Inc. v. Village of Twin Oaks* (Eighth Circuit). Issue: whether the requirement of a permit and fee for commercial photography in the public park violates the First Amendment.



From left to right: Mary Ellen Bench, Charles Thompson, Amanda Kellar, Charles Rothfeld, Rusi Patel, Sarah Shalf, Eric Citron, Timothy Coates, Deepak Gupta, Lanny Richmond, Arthur Hartinger, Daniel Collins, Douglas Baruch, Steven Renick, Andrew Cashmore, Leigh Rome, Allegra Collins, Andrew Orenstein, Nicole Threlkel, Marc Poster