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FEDERAL CASE LAW UPDATE FOR LOCAL GOVERNMENT ATTORNEYS

(THROUGH APRIL 4, 2016)

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A. U. S. SUPREME COURT

EEOC v Abercrombie & Fitch, *__U.S.__, No.14-86 (June 1, 2015).*
Summary judgment for an employer in a Title VII claim is reversed when an applicant wearing a head scarf as part of her religion was denied a job accommodation. In a disparate treatment claim, a job applicant need only show that her need for an accommodation was a motivating factor in an employer's decision, not that the employer had knowledge of her need.

Evenwell v. Abbott, *__U.S.__, No. 14-940 (April 4, 2016).*
Under the "one-person, one-vote" principle, state and local jurisdictions must design legislative districts with equal populations, although they can deviate somewhat from perfect population equality to accommodate traditional districting objectives. A maximum population deviation of under ten percent from the largest to the smallest district is presumptively valid. Districts that equalize voter population, rather than overall population, are not required by the Fourteenth Amendment.

Campbell-Ewald v. Gomez, *__U.S.__, No. 14-857 (Jan. 20, 2016).*
An unaccepted settlement offer or offer of judgment does not moot a plaintiff's lawsuit.

James v. City of Boise, *__U.S.__, No.15-493 (Jan. 5, 2016).*
A state court cannot award attorney fees in a Section 1983 lawsuit without first determining that the plaintiff's action was frivolous, unreasonable, or without foundation.

Kingsley v. Hendrickson, *__U.S.__, No. 14-6368 (June 22, 2015).*
A pre-trial detainee need only show that the force used against him was objectively unreasonable in order to prevail on a Fourteenth Amendment "excessive force" claim. An officer's subjective state of mind is irrelevant to this showing.

Los Angeles v. Patel, *__U.S.__, No. 13-1175 (June 22, 2015).*
A city ordinance required hotel operators to record and retain certain guest information and to make it accessible to city police officers upon request. To survive a Fourth Amendment facial challenge, such a law must allow an objecting hotel operator an opportunity to obtain a pre-compliance review before a neutral decision-maker before releasing the requested records.

Mach Mining v. EEOC, *__U.S.__, No.13—1019 (Apr. 29, 2015).*
Courts have authority to review whether the EEOC has fulfilled its Title VII duty to attempt conciliation by giving an employer notice and an opportunity to achieve voluntary compliance.

Michigan v. EPA, *__U.S.__,No. 14-46 (June 29, 2015).*
The EPA's refusal to consider costs in its decision to regulate power plant emissions was unreasonable.

Mullenix v. Luna, *__U.S.__, No. 14-1143 (Nov. 9, 2015).*
Qualified immunity on an excessive force claim was justified when an officer shot at a fleeing vehicle and killed the driver, although no innocent bystanders were present, the vehicle was being driven in a reasonably controlled manner, there was no need for a split second decision, and less deadly "stop strips" had not been tried first.

Nicholas v. US, *__U.S.__, No. 15-5238 (April 4, 2016).*
SORNA does not require a sex offender to update his registration in a state once he has moved his residency from that state.

Reed v. Gilbert, *__U.S.__, No. 13-502 (June 18, 2015).*
A municipal sign ordinance that prohibited the display of outdoor signs without a permit, but which contained twenty-three (23) exemptions and subjected each exempt category of signs to different rules, was facially content-based, because it defined its categories of "exempt" signs on the basis of their message and then subjected each category to different restrictions based upon its communicative content. As such, it could not survive a "strict scrutiny" analysis, because the town's differentiation between categories of signs was not narrowly tailored to further its compelling governmental interests in aesthetics and traffic safety. Less restricted signs created the same problems as more restricted signs.

Rodriguez v. US, *__U.S.__, No.13-9972 (Apr. 21, 2015).*
Absent reasonable suspicion, the police extension of a traffic stop for eight minutes in order to conduct a dog sniff violates the Fourth Amendment.

San Francisco v. Sheehan, *__U.S.__, No. 13-1412 (May 18, 2015).*
Qualified immunity under the Fourth Amendment is justified when officers forcefully entered the home of an armed, mentally ill person who had been acting irrationally and had threatened to kill anyone who entered. The failure by officers to follow their training does not itself negate qualified immunity where it would otherwise be warranted.

Texas Dept. of Housing v. Inclusive Communities, *__U.S.__, No. 13-1371 (June 25, 2015).*
Disparate-impact claims are cognizable under the Fair Housing Act.

B. U. S. CIRCUIT COURTS

1. FIRST AMENDMENT

***American Freedom v MBTA**, __F.3d__, No. 14-1018 (1st Cir., Mar. 30, 2015).*
A transit authority that refused to run two advertisements concerning the Israeli-Palestinian conflict because they violated its rules against ads that "demean or disparage" individuals or groups did not violate the First Amendment by following this viewpoint neutral and reasonably applied guideline.

***Cutting v. Portland**, __F.3d__, No. 14-1421 (1st Cir., Sept. 11, 2015).*
A city ordinance prohibiting standing, sitting, parking, or driving on city median strips violates the First Amendment because it bars all expressive conduct on those median strips and is therefore not narrowly tailored to accomplish its goal of protecting public safety.

***D'Agostino v. Baker**, __F.3d__, No. 15-1433 (1st Cir., Feb. 2, 2016).*
A statutory scheme that allows the union representative of public family care providers to agree to terms that affect the providers' relationship with their clients does not violate their First Amendment rights of association and expression.

***Dolan v. Connolly**, __F.3d__, No. 14-2561 (2nd Cir., July 23, 2015).*
Voicing inmate grievances as a member of an "inmate liaison committee" is protected conduct under the First Amendment.

***Mercer v. Hermitage**, __Fed Appx.__, No. 14-3732 (3rd Cir., Apr. 2, 2015).*
No redressable First or Fourteenth Amendment injury was alleged by a billboard company challenging a municipal zoning ordinance because the requested billboards did not meet the height and size restrictions of another ordinance that the company did not challenge.

***Cahaly v. Larosa**, __F.3d__, Nos. 14-1651 & 14-1680 (4th Cir., Aug. 6, 2015).*
Under *Gilbert*, an anti-robo call statute placing different restrictions on robo-calls dependent on whether they are unsolicited and made for political, consumer, or other purposes, is content-based and fails a strict scrutiny analysis.

***Hunter v. Mocksville**, __F.3d__, Nos. 14-1081 & 14-1125 (4th Cir., June 15, 2015).*
Police officers who reached out to the governor's office - - as concerned citizens - - about alleged corruption in their department were entitled to First Amendment protection.

***Paske v. Fitzgerald**, __F.3d__, No. 14-20292 (5th Cir., May 4, 2015).*
Police officer who spoke at a meeting he was required to attend, in response to job-related questions, spoke as a public employee.

Advanced Technology v. Jackson, MS, *__F.3d__, No. 15-60069 (5th Cir., Mar. 14, 2016).*
No First Amendment municipal liability existed against a city by virtue of its mayor's alleged retaliation against a developer on account of the developer's critical public comments about the mayor, when the mayor was not the "final policymaker" as regards the city's decision not to go forward with the development project at issue.

Allen v. Cisneros, *__F.3d__, No. 15-20264 (5th Cir., Mar. 9, 2016).*
An officer did not violate a protestor's First or Fourth Amendment rights by arresting him for carrying an object that was over ¾ of an inch at its thickest dimension during a demonstration, in violation of a local ordinance, even though the object at issue was a ceremonial religious trumpet.

Machete Productions v. Page, *__F.3d__, No. 15-50120 (5th Cir., Dec. 28, 2015).*
The First Amendment does not require a state with an incentive program that provides economic grants to the producers of films that are filmed within its borders to fund films that cast the state in a negative light.

Wilson v.Tregre, *__F.3d__, No. 14-31179 (5th Cir., May 22, 2015).*
A chief deputy was acting in his official capacity when he expressed concerns over the legality of recording equipment in an interrogation room.

Bible Believers v. Wayne County, *__F.3d__, No. 13-1635 (6th Cir., Oct. 28, 2015).*
Forbidding Christian evangelists from walking and proselytizing on public streets and sidewalks during an Arab International Festival because their speech agitated the predominantly Muslim crowd, and not providing a "free speech zone" alternative to their doing so, amounted to an impermissible "heckler's veto". These evangelists had a First Amendment right to engage in peaceful expression during this festival.

Boulton v. Swanson, *__F.3d__, No.14-2308 (6th Cir., July 29, 2015).*
A deputy who, as a union member at a contract arbitration proceeding, testified contrary to the testimony of his superior officer engaged in protected speech under the First Amendment.

Susan Anthony List v. Driehaus, *__F.3d__, No. 14-4008 (6th Cir., Feb. 24, 2016).*
A state law that prohibits false statements in campaign materials violated the First Amendment. It was a content-based restriction on political speech that was not narrowly tailored to achieve its goal of fair elections.

US v. DeJournett, *__F.3d__, No. 14-4204 (6th Cir., Mar. 30, 2016).*
The public has a constitutional right to have access to criminal plea agreements.

Backpage v. Dart, *__F.3d__, No. 15-3047 (7th Cir., Nov. 30, 2015).*
A sheriff violated the First Amendment when he tried to shut down an "adult" on-line service by using the power of his office to pressure credit card companies to cut their business ties with the website.

***Discount Inn v. Chicago**, __F.3d__, No. 14-3678 (7th Cir., Sept. 28, 2015).*
A tall weed ordinance does not violate a landowner's First Amendment right of free expression.

***Planet Aid v. St. Johns**, 782 F.3d 318 (6th Cir. 2015).*
A city ordinance banning outdoor, unattended charitable donation bins was content-based and violated free speech.

***Rossi v. Chicago**, __F.3d__, No. 13-3795 (7th Cir., June 22, 2015).*
The failure of the police to investigate a claim of unlawful conduct by another police officer did not violate the victim's Constitutional right to "judicial access", since these actions did not prevent the victim from seeking legal redress.

***Anzaldua v. Northeast Ambulance**, __F.3d__, No. 14-1850 (8th Cir., July 10, 2015).*
Under the *Pickering* balancing test, an email from a firefighter about a lack of working SCBA gear that resulted in his termination has a public concern component that was outweighed by its disruptive impact on public services - - even absent specific evidence of an actual disruption.

***Santa Monica Nativity v. Santa Monica**, 784 F.3d 1286 (9th Cir. 2015).*
A city ordinance banning all unattended winter displays in city parks does not violate the First Amendment.

***Turner v. San Francisco**, __F.3d__, No. 13-15099 (9th Cir., June 11, 2015).*
A public employee did not engage in protected speech when he complained to his supervisors about the city's hiring of temporary exempt employees.

***Holub v. Gdowski**, __F.3d__, No. 14-1419 (10th Cir., Sept. 24, 2015).*
Under *Garcetti*, an internal auditor tasked with discovering and reporting accounting and budgetary issues was speaking as an employee, and not as a private citizen, when she told school board members about fraudulent school budgeting practices and was then terminated.

***Nixon v. Denver**, 784 F.3d 1364 (10th Cir. 2015).*
A city's challenge to a civil service commission's decision to re-instate an officer does not constitute First Amendment retaliation against the officer for his statements to the commission.

***Buehrle v. Key West**, __F.3d__, No. 14-15354 (11th Cir., Dec. 29, 2015).*
Tattooing is a protected artistic expression that is subject to reasonable First Amendment time, place, and manner restrictions.

***Watkins v. US Postal Employee**,__F.3d__, No. 14-14608 (11th Cir., May 4, 2015).*
A customer who was asked to leave a government building because he would not stop singing did not state a First Amendment retaliation claim.

***Baumann v. D. C.**, __F.3d__, No. 13-7189 (D.C. Cir., Aug., 4, 2015).*
An officer's release of a recording, when that release could have had an unfavorable impact upon an ongoing criminal investigation, was not protected speech under the First Amendment.

Dukore v. Dist. Of Columbia, *__F.3d__, No. 13-7150 (D.C. Cir. Aug. 25, 2015).*
There is no right under the First or Fourteenth Amendments to be free from an arrest made in retaliation for one's speech when the arrest is supported by probable cause.

2. SECOND AMENDMENT; FIREARMS

NYS Rifle v. Cuomo, *__F.3d__, No. 14-36 (2nd Cir., Oct. 19, 2015).*
Statutory restrictions on semi-automatic weapons and large capacity magazines cannot survive an intermediate scrutiny analysis and therefore violate the Second Amendment.

Kolbe v. Hogan, *__F.3d__, No. 14-1945 (4th Cir., Feb. 4, 2016).*
A state law prohibiting law-abiding citizens from possessing semi-automatic weapons must pass a strict scrutiny analysis in order to survive a Second Amendment challenge.

Friedman v. Highland Park, *784 F.3d 406 (7th Cir. 2015).*
An ordinance prohibiting the possession of semi-automatic assault weapons does not violate the Second Amendment.

3. FOURTH AMENDMENT; EXCESSIVE FORCE

Mitchell v. Miller, *__F.3d__, No. 14-2116 (1st Cir., June 15, 2015).*
The fact that nobody was directly in the path of the vehicle driven by a fleeing suspect does not obviate the reasonableness of an officer's belief that someone was at risk of serious physical harm. The officer who shot the fleeing suspect was entitled to qualified immunity as to his Fourth Amendment claim.

Stamps v. Framingham, *__F.3d__, No. 15-1141 (1st Cir., Feb. 5, 2016).*
No qualified immunity was granted to a SWAT officer who accidently shot and killed a non-resisting elderly man. Pointing a loaded firearm at the head of an innocent and compliant person, with the safety off and a finger on the trigger, is not Constitutionally permissible.

Brown v. NYC, *__F.3d__, No. 14-2611 (2nd Cir., Aug. 19, 2015).*
An "excessive force" claim survives summary judgment where two police officers took a 120-pound woman to the ground and sprayed her twice in the face with pepper spray.

Rogoz v. Hartford, *__F.3d__, No. 14-876 (2nd Cir., Aug. 10, 2015).*
An "excessive force" claim survives summary judgment when an unresisting offender was laid on the ground with his hands behind his back, which broke his rib and spine.

***Salmon v. Blesser**, __F.3d__, No. 14-1993 (2nd Cir., Sept. 10, 2015).*
An order to leave a public area does not constitute a Fourth Amendment seizure. However, as soon as an officer uses physical force to effectuate such an order, the Fourth Amendment's "reasonableness" requirement applies.

***US v. Diaz**, __F.3d__, No. 14-2505 (2nd Cir., Sept. 8, 2015).*
An officer's observation of a vehicle touching once or twice the solid line separating the roadway from the shoulder gave the officer "reasonable suspicion" to conduct a traffic stop of the vehicle.

***US v. Thomas**, __F.3d__, No. 14-1083 (2nd Cir., June 11, 2015).*
The denial of a motion to suppress is affirmed. Evidence generated by an automated software program provided a substantial basis for the judge's conclusion that there was probable cause that child pornography would be found on the defendant's computer.

***Vargas v. Philadelphia**, 783 F.3d 962 (3rd Cir. 2015).*
No Fourth Amendment violation existed when, after responding to several 911 calls, officers, in their "community caretaker" role, prevented a mother from seeking medical care for her asthmatic daughter in lieu of the daughter being treated by an arriving ambulance.

***Estate of Armstrong v. Pinehurst**, __F.3d__, No.15-1191 (4th Cir., Jan. 11, 2016).*
Tasing a stationary, non-violent but resisting individual while executing an involuntary commitment order constitutes "excessive force".

***US v. Robinson,** __F.3d__, No. 14-4902 (4th Cir., Feb. 23, 2016).*
Police officers lacked reasonable suspicion that a defendant was "dangerous" based upon an anonymous tip that he was carrying a handgun in his pocket - - when state law permitted the concealed carry of a handgun.

***US v. Rush**, __F.3d__, No. 14-4695 (4th Cir., Dec. 21, 2015).*
A police officer's deliberate lie about having a search warrant does not meet the "good faith" exception to the exclusionary rule.

***US v. Slocumb**, __F.3d__, No. 14-4733 (4th Cir., Oct. 22, 2015).*
Police officers lacked reasonable suspicion to detain a defendant based upon his presence in an area known for drug dealing late at night, coupled with his nervous and evasive behavior.

***Yates v. Terry**, __F.3d__, No. 15-1555 (4th Cir., Mar. 31, 2016).*
No qualified immunity was granted to an officer who stopped a driver for a minor traffic violation, ordered him out of his vehicle and to place his hands on the top of his vehicle, and then Tazed him three times when he turned his head to speak with the officer, given no prior warning to the driver nor any order not to move, and since the driver posed no risk to the officer.

US v. Castillo, *__F.3d__, No. 14-41425 (5th Cir., Sept. 11, 2015).*
"Reasonable suspicion" exists for stopping a vehicle that is travelling in the left lane when not passing another vehicle, even if a police officer does not have specific knowledge that the driver of the vehicle passed a "left lane for passing only" sign prior to making the traffic stop.

Brown v. Chapman, *__F.3d__, No. 15-3506 (6th Cir., Feb. 19, 2016).*
A city policy that required officers to discharge their Tasers "at center mass" may be the "moving force" behind a Section 1983 excessive force claim against the municipality premised upon such Taser use.

Carlson v. Fewins, *__F.3d__, No. 13-2643 (6th Cir., Sept. 11, 2015).*
A sheriff's actions in not seeking a search warrant because a warrant was not "handy" or "useful in the field" did not, absent exigent conditions, justify his deputies' warrantless entry into a house with tear gas and surveillance equipment.

Family Service v. Wells Twp., *783 F.3d 600 (6th Cir. 2015).*
Walking away from an officer does not create reasonable suspicion to support a *Terry* stop.

Foster v. Patrick, *__F.3d__, No. 14-6254 (6th Cir., Nov. 20, 2015).*
Summary judgment was denied to an officer who used deadly force to stop a woman who had assaulted him, jumped into his squad car, and started to drive away, as the officer had no reason to believe that she would use the vehicle or the weapons contained therein to hurt anyone.

Kent v. Oakland Cty, *__F.3d__, No. 14-2519 (6th Cir., Jan. 6, 2016).*
Tasing a homeowner who objected to an EMT's attempt to perform life-sustaining procedures on his father, against the father's stated wishes, was "excessive force", even if a "do not resuscitate" order did not exist, since the homeowner was not under arrest and posed no threat of immediate harm.

Lange v. Benton Harbor, *__F.3d__, No. 15-1665 (6th Cir., April 4, 2016)(unpub.).*
Qualified immunity was granted to a municipal officer who deleted all work-related and personal e-mails from another employee's hard drive, as against a Fourth Amendment claim that his deletion of the personal e-mails was unconstitutional.

Mullins v. Cyranek, *__F.3d__, No. 14-3817 (6th Cir., Nov. 9, 2015).*
Qualified immunity against an excessive force claim was granted to an officer who shot and killed an armed assailant a few seconds after the assailant threw away his gun. Under the circumstances, it was reasonable to assume that the assailant posed a serious threat to the officer and to others at the time the shots were fired.

Ortiz v.Kazimer, *__F.3d__, No. 15-3453 (6th Cir., Feb. 4, 2016).*
Qualified immunity against an excessive force claim was denied to officers who took a non-resisting 16 year old boy with Downs Syndrome and slammed him against an SUV, pinned his face against the car, and kept him pinned for 15 minutes.

Peatross v. Memphis, *__F.3d__, No. 15-5288 (6th Cir., Mar. 29, 2016).*
A Section 1983 claim of individual liability against the director of a municipal police force survives a motion to dismiss when he was alleged to have knowingly acquiesced in the unconstitutional excessive force actions of his subordinates, which acquiescence was causally connected to his subordinate police officers shooting to death a driver who had not been observed committing any crime.

Rudlaff v. Gillispie, *__F.3d__, No. 14-1712 (6th Cir., July 1, 2015).*
When an arrestee actively resists arrest, the Fourth Amendment permits officers to use a Taser and a knee strike to subdue him.

US v. Bah, *__F.3d__, Nos. 14-5178 & 14-5179 (6th Cir., July 24, 2015).*
The warrantless scan of credit card magnetic strips does not constitute a "search" under the Fourth Amendment.

US v. Bost, *__Fed. Appx.__, No. 13-5757 (6th Cir., Apr. 9, 2015).*
During a traffic stop, an officer's action in putting his finger in a detainee's mouth to remove the gum he was chewing violated the Fourth Amendment.

US v. Houston, *__F.3d__, No. 14-5800 (6th Cir., Feb. 8, 2016).*
Warrantless surveillance from a camera placed atop a utility pole 200 yards from a defendant's property did not violate any reasonable expectation of privacy for Fourth Amendment purposes.

US v. Tessier, *__F.3d__, No. 15-5284 (6th Cir., Feb. 18, 2016).*
Under the Fourth Amendment, a probationer whose probation order contains a search condition may be searched even absent reasonable suspicion.

Alicea v. Thomas, *__F.3d__, No. 15-1255 (7th Cir., Mar. 1, 2016).*
Excessive force may exist when an officer orders his K-9 to attack and hold a suspect who had ceased his flight, was trapped at the bottom of a waterless pool, and was complying with police orders - - despite his prior attempts to flee the scene.

Gustafson v. Adkins, *__F.3d__, No. 15-1055 (7th Cir., Oct. 16, 2015).*
Qualified immunity was denied as against a Fourth Amendment claim resulting from a police officer placing a hidden camera in the female officers' dressing room

US v. Bentley, *__F.3d__, No. 13-2995 (7th Cir., July 28, 2015).*
A dog sniff from a drug dog with a 59.5% success rate was sufficient to establish probable cause for a vehicle search.

US v. Garcia, *__F.3d__, No. 15-2540 (7th Cir., Feb. 18, 2016).*
An officer was not justified in stopping a driver for "texting while driving" when he could not tell if she was really "texting" or was instead using her cell phone to watch a movie or to engage in another permitted purpose.

***US v. Leo**, __F.3d__, No.14-2262 (7th Cir., July 2, 2015).*
Officers making a *Terry* stop of a suspect wearing a back pack were not entitled to search the back pack's contents once the suspect was handcuffed, although they could pat down its outside to address their safety concerns.

***US v. Rivera**, __F.3d__, Nos. 15-1740 & 15-2637 (7th Cir., Mar. 16, 2016).*
The Fourth Amendment does not require a search warrant to search or to arrest, although it has been interpreted as requiring a warrant in some cases. In sustaining a search against a Fourth Amendment challenge, the court rejects the "consent once removed" doctrine.

***US v. Sanford**, __F.3d__, No. 14-2860 (7th Cir., Nov. 25, 2015).*
If an officer has "reasonable suspicion" that drugs are secreted in a stopped vehicle, prolonging a traffic stop for eight minutes to allow for the arrival of a drug dog does not violate the Fourth Amendment.

***US v. Smith**, __F.3d__, No.14-2982 (7th Cir., July 20, 2015).*
Police officers "seized" a person for Fourth Amendment purposes when they entered an alley on bicycles, placed the bicycles at a 45-degree angle to him when he was about five feet away from them, and one of them asked him if he had a gun in his possession.

***US v. Thompson**, __F.3d__, No. 15-2008 (7th Cir., Feb. 1, 2016).*
A drug informant's secretive video recordation of his observations during a drug transaction did not transform this consensual encounter into a Fourth Amendment search.

***Williams v. Indiana**, __F.3d__, Nos. 14-2523 & 14-2808 (7th Cir., Aug. 13, 2015).*
An officer cannot resort, as an initial matter, to lethal force on a person who is passively resisting and has not presented any threat of harm to others. To do so violates the Fourth Amendment.

***Zimmerman v. Doran**, __F.3d__, No. 15-1242 (7th Cir., Nov. 24, 2015).*
No false arrest in violation of the Fourth Amendment existed when a tree harvester was arrested for trespass while he was on another's property cutting timber pursuant to a "timber deed", after being told by the property owner to leave the property. The deed did not give the harvester unlimited and unbounded access to the private property.

***US v. Anquiano**, __F.3d__, No. 14-2955 (8th Cir., Aug. 3, 2015).*
The mere duration and distance of a trip does not heighten a vehicle passenger's expectation of privacy in the vehicle for Fourth Amendment purposes.

***US v. Ball**, __F.3d__, No. 15-1491 (8th Cir., Oct. 29, 2015).*
The inventory search of a vehicle can include searching the vehicle's air filter box.

***US v. Burston**, __F.3d__, No. 14-3213 (8th Cir., Nov. 23, 2015).*
Police officers violated the Fourth Amendment when they had their drug dog sniff six to ten inches from a residential window without a warrant.

***US v. Campos**, __F.3d__, No. 15-1346 (8th Cir., Mar. 22, 2016).*
Contraband contained in a bag that was attached to the handlebars of a fallen bicycle that came into view when an officer moved the bicycle out of a lane of traffic was not discovered in violation of the Fourth Amendment.

***US v. Jackson**, __F.3d__, No. 14-3756 (8th Cir., Jan. 28, 2016).*
The "automobile exception" to the need for a search warrant applies to an airplane, allowing officers to hold an airplane until a warrant to search it can be obtained when there is probable cause to believe that it contains evidence of a crime.

***US v. Matthews**, 784 F.3d 1232 (8th Cir. 2015).*
Evidence from a dog sniff in a common hallway outside the defendant's apartment door does not violate the Fourth Amendment.

***US v. Rodriguez**, __F.3d__, No. 13-1176 (8th Cir., Sept. 3, 2015).*
An eight minute delay in a traffic stop to allow a drug dog to arrive and participate in a vehicle walk-around was a *de minimus* intrusion on personal liberty that did not violate the Fourth Amendment.

***Lowry v. San Diego**, __F.3d__, No. 13-56141 (9th Cir., April 1, 2016).*
Summary judgment for a municipality against a Section 1983 claim is reversed. The municipal policy of training police dogs to "bite and hold" may violate the Fourth Amendment.

***Lyall v. Los Angeles**, __F.3d__, No. 13-56122 (9th Cir., Dec. 4, 2015).*
Attendees at an open, widely publicized concert had no expectation of privacy for purposes of a Fourth Amendment claim stemming from a police officer's warrantless entry into the venue.

***Mendez v. Los Angeles County**, __F.3d__, Nos. 13-56656 & 13-57072 (9th Cir., Mar. 2, 2016).*
The Fourth Amendment applies to the search of a dilapidated shack located thirty feet from a residence, since the shack was in the curtilage of the house.

***Patel v. Montclair**, __F.3d__, No. 13-55632 (9th Cir., July 18, 2015).*
Police officers do not conduct a "search" when they enter an area of private commercial property that is open to the public.

***Reza v. Pearce**, __F.3d__, No. 13-15154 (9th Cir., July 18, 2015).*
Officers who removed the plaintiff from a state senate building on order of a state senator were entitled to qualified immunity against the plaintiff's later First and Fourth Amendment claims.

***Torres v. Goddard**, __F.3d__, No. 12-17096 (9th Cir., July 16, 2015).*
The service and execution of wire transfer seizure warrants is not subject to absolute immunity, as these acts are those of police officers and not of legal advocates.

***US v. Fowlkes**, __F.3d__, No. 11-50273 (9th Cir., Sept. 28, 2015).*
The forcible removal of an item from an arrestee's rectum by officers who lacked both medical training and a search warrant constituted an illegal search under the Fourth Amendment.

***US v. Lundin**, __F.3d__, No. 14-10365 (9th Cir., Mar. 22, 2016).*
Police officers violated the Fourth Amendment when they knocked on the front door of a residence at 4:00 am without an arrest or search warrant with the intent of arresting the occupant.

***US v. Magallon-Lopez**, __F.3d__, No. 14-30249 (9th Cir., Mar. 31, 2016).*
For Fourth Amendment purposes, so long as the facts known to a police officer establish reasonable suspicion to conduct an investigatory stop, the stop is lawful even if the officer falsely cites as the basis for the stop a ground that is not supported by reasonable suspicion.

***Black v. Alamosa, CO**, __F.3d__, No. 15-1200 (10th Cir., Mar. 28, 2016).*
No excessive force existed when officers decided to enter a motel room with their weapons drawn. Although the plaintiff was not fleeing or threatening to harm anyone but himself, he was also allegedly intoxicated, volatile, and armed.

***Maresca v. Bernalillo County**, __F.3d__, No. 14-2163 (10th Cir., Oct. 22, 2015).*
An officer entered the wrong license plate number into her on-board computer, received a "stolen car hit" for a maroon 2009 Chevrolet sedan based upon her data entry mistake, and then performed a felony stop on a family driving a red 2004 Ford pick-up truck. Summary judgment was entered against the officer on the family's Fourth Amendment unlawful arrest claim.

***Perea v. Baca**, __F.3d__, No.14-2214 (10th Cir., April 4, 2016).*
Police officers who Tazed a suspect ten times in less than two minutes after they forced him off his bicycle, without first telling him why they were trying to seize him, were denied qualified immunity on his estate's later "excessive force" claim.

***Schaffer v. Salt Lake City**, __F.3d__, No. 14-4112 (10th Cir., Mar. 2, 2016).*
Parking enforcement officers were not acting "under color of state law" when they, while on duty as city employees, allegedly lied to the police by alleging that the plaintiff hit their city vehicle and tried to hit them with her vehicle. Therefore, the plaintiff's Section 1983 Fourth and Fourteenth Amendment claims against the city based upon this conduct must fail.

***US v. Carloss**, __F.3d__, No. 13-7082 (10th Cir., Mar. 11, 2016).*
The mere presence of a "no trespassing" sign does not, for Fourth Amendment purposes, revoke the implied license that an officer has to approach the front door of a residence in an attempt to conduct a "knock and talk" discussion.

***US v. Hill**, __F.3d__, No. 14-2206 (10th Cir., Nov. 9, 2015).*
An officer's actions in removing an un-tagged bag from a common luggage area on a train, and then asking passengers if it was "their bag", constituted an illegal seizure of the bag and required the suppression of the illegal drugs contained therein.

***US v. Paetsch**, 782 F.3d 1162 (10th Cir. 2015).*
Officers' barricade "seizure" of 20 cars while searching for a fleeing armed robber did not violate the Fourth Amendment.

***US v. Sanders**, __F.3d__, No. 14-1296 (10th Cir., Aug. 7, 2015).*
When a vehicle is not impeding traffic or impairing public safety, vehicle impoundments are constitutional only if guided by both standardized criteria and a legitimate community-caretaker rationale.

***US v. Webster**, __F.3d__, Nos. 15-3027 & 15-3028 (10th Cir., Jan. 5, 2016).*
The misconduct of officers searching a residence, by their stealing personal property from that residence, did not justify the suppression of other evidence properly obtained from that residence.

***Moore v. Pederson**, __F.3d__, No. 14-14201 (11th Cir., Oct. 15, 2016).*
Under the Fourth Amendment, a police officer may not conduct the equivalent of a *Terry* stop inside a person's home without probable cause, consent, exigent circumstances or an arrest warrant.

***Salvato v. Miley**, __F.3d__, Nos. 14-12112 & 14-13424 (11th Cir., June 25, 2015).*
A single act by a Sheriff in not conducting an internal investigation into an alleged excessive force incident did not constitute the "ratification" of that action for Fourth Amendment purposes.

***Singletary v. Vargas**, __F.3d__, No. 14-14424 (11th Cir., Oct. 29, 2015).*
Qualified immunity was granted to an officer as regards an excessive force claim that resulted from a suspect accelerating his car towards the officer during a drug bust, causing the officer to shoot at the car and hit the plaintiff, a passenger in the car.

***US v. Thomas**, __F.3d__, No. 14-14680 (11th Cir., April 1, 2016).*
The fact that a husband was the primary user of a home computer and typically deleted his user history and shut down his computer every evening did not destroy his wife's common authority over the computer so as for her to be able to consent to its search.

***US v. Walker**, __F.3d__, No. 15-10710 (11th Cir., Sept. 3, 2015).*
Officers did not exceed the scope of the "knock and talk" warrant exception when they knocked on the window of a car located in a carport parked next to the house.

***Fox v. D.C.**, __F.3d__, No. 14-7042 (D.C. Cir., July 17, 2015).*
Ordering a belligerent passenger to put her hands on the hood of a car during a traffic stop did not violate the Fourth Amendment.

***Robinson v. Pezzat**, __F.3d__, No. 15-7040 (D.C. Cir., April 1, 2016).*
Summary judgment granted to an officer on a Fourth Amendment claim that arose when the officer shot and killed a dog after it had bitten the foot of another officer.

***US v. Gross**, 784 F.3d 784 (D.C. Cir., 2015).*
A Fourth Amendment seizure did not occur when an officer exited his squad car, approached a person, and asked him if he had a weapon.

***US v. Weaver**, __F.3d__, No. 13-3097 (D.C. Cir., Sept. 4, 2015).*
The exclusionary rule is applied when police officers violated the Fourth Amendment's "knock-and-announce" rule when executing an arrest warrant on a suspect in his own home.

4. FIFTH AMENDMENT

***Bachynski v. Stewart**, __F.3d__, No. 15-1442 (6th Cir., Dec. 23, 2015).*
No Fifth Amendment violation occurred when an arrestee invoked her right to remain silent and asked for an attorney, but later told a detective "I want to talk to you", waived her *Miranda* rights, and confessed to a crime.

***US v. Ray**, __F.3d__, No. 14-2159 (6th Cir., Sept. 23, 2015).*
In a case of first impression in the Circuit, the court adopts the Supreme Court's plurality opinion in *Missouri v. Seibert* for determining if a confession is voluntary. Under the *Seibert* test, the admissibility of statements made after a "mid-stream" *Miranda* warning is given hinges upon whether a reasonable person in the suspect's shoes could have seen the questioning conducted after the warning was given as a "new and distinct experience", and whether the warning presented the suspect with a "genuine choice" of whether or not to repeat his earlier pre-warning admission.

***Homoky v. Ogden**, __F.3d__, No. 14-3788 (7th Cir., Feb. 24, 2016).*
A police officer who was informed that neither his participation in a voice stress test, nor his test answers, would be used against him in a criminal proceeding, could be dismissed from employment for his refusal to submit to such a test and to sign its accompanying participation release form. No Fifth Amendment violation occurred based upon these facts.

***Tarango v. McDaniel**, __F.3d__, No. 13-17071 (9th Cir., Mar. 3, 2016).*
The case was remanded for an evidentiary hearing on a "right to a fair trial" claim stemming from a squad car following a juror's car for seven miles during a trial that involved several police victims.

***US v. Matchett**, __F.3d__, No. 14-10396 (11th Cir., Sept. 21, 2015).*
In a case of first impression in the Circuit, the court holds that the "vagueness doctrine" of the Fifth Amendment's Due Process Clause does not apply to advisory sentencing guidelines.

5. SIXTH AMENDMENT

***US v. Ragin**, __F.3d__, No. 14-7245 (4th Cir., Mar. 11, 2016).*
A defendant is denied his Sixth Amendment right to counsel when his attorney falls asleep for a substantial portion of the trial.

***US v. Pittman**, __F.3d__, No. 15-5085 (6th Cir., Mar. 11, 2016).*
A defendant who fired five court-appointed counsel thereby gave up his Sixth Amendment rights and had to proceed to trial *pro se*.

6. FOURTEENTH AMENDMENT; DUE PROCESS; EQUAL PROTECTION

***Saldivar v. Racine**, __F.3d__, No. 15-1448 (1st Cir., Mar. 25, 2016).*
No Section 1983 liability existed against either a police supervisor or a municipality when a police officer raped a citizen. The officer had not exhibited any propensity towards violence or rape prior to his misconduct, and the city was not deliberately indifferent when it hired and retained him.

***Vega v. Hempstead Union**, __F.3d__, No. 14-2265 (2nd Cir., Sept. 2, 2015).*
Section 1983 retaliation claims are actionable when the protected activity at issue is a complaint of race or age discrimination.

***Hasan v. NYC**, __F.3d__, No. 14-1688 (3rd Cir., Oct. 13, 2015).*
In a case of first impression in the Circuit, the court holds that municipal police surveillance classifications based upon religious affiliation trigger heightened scrutiny under the Equal Protection Clause.

***Mammaro v. NJ Div. of Child Protection**, __F.3d__, No. 15-1448 (3rd Cir., Feb. 19, 2016).*
There is no clearly established law stating that temporarily removing a child from its home after his parent takes him from approved housing violates the parent's Fourteenth Amendment substantive due process rights.

***Doe 2 v. Rosa**, __F.3d__, No. 14-1748 (4th Cir., July 28, 2015).*
Under the Due Process Clause of the Fourteenth Amendment, a summer camp had no duty to protect campers from a pre-existing danger.

***Cole v. Carson**, __F.3d__, Nos. 14-10228 & 15-10045 (5th Cir., Sept. 25, 2015).*
The victim of the intentional fabrication of evidence by police officers is denied due process even if he is subsequently acquitted of the criminal charges stemming therefrom.

***Gardner v. Evans**, __F.3d__, No. 15-12001 (6th Cir., Feb. 4, 2016).*
No clear law existed in the Circuit that would support a due process claim based upon officers' service of eviction notices to tenants, even though the notices lacked specific information advising the tenants of available appeals processes.

***Shoemaker v. Howell**, __F.3d__, No. 13-2535 (6th Cir., July 29, 2015).*
A homeowner who refused to mow his lawn and was subjected to a $600 grass cutting lien did not have a valid procedural due process claim against a city even though the city's notice procedure violated its own ordinance. He had ample notice and an opportunity to be heard. A city's failure to follow its own ordinance notice procedures does not automatically create a due process violation.

***Yang v. City of Wyoming**, __F.3d__, No. 14-1846 (6th Cir., July 13, 2015).*
Two regular mail notices and one posted notice were sufficient, for due process purposes, to alert landowners of the demolition of their building.

Doe v. Arlington Heights, *782 F.3d 911 (7th Cir. 2015).*
An officer did not violate the equal protection rights of a minor female by failing to adequately investigate a 911 call, preventing other officers from going to the scene, and allowing her to leave with three males who then assaulted her, absent evidence that the officer intentionally treated her differently than similarly situated persons.

Hinkle v. White, *__F.3d__, No.14-2254 (7th Cir., July 16, 2015).*
Police officers who defamed a fellow officer by spreading untrue rumors about him that negatively affected his ability to obtain employment elsewhere did not thereby deprive him of liberty in violation of the Fourteenth Amendment.

Noble v. Village of Elliott, *__Fed. Appx.__, No.14-2745 (7th Cir. 2015)*
Towing an inoperable vehicle parked on a public road without notice to its owner did not violate due process.

Higgins v. O'Fallen, *__F.3d__, No. 15-1222 (8th Cir., Feb. 22, 2016).*
A union that submitted the lowest bid for electrical work on a fire station but was not awarded the contract had no valid Equal Protection claim against the fire district, as electrical contractors are not a protected class and no "class-of-one" claim existed where the bidding rules were uniformly enforced and the award decision involved a subjective, individualized determination by a government official who had reserved the right to select other than the lowest bidder. The union's "freedom of association" claim also failed.

Public Integrity v. Tucson, *__F.3d__, No. 15-16142 (9th Cir., Nov. 10, 2015).*
A city's process of electing its city council members using ward-based primaries but city-wide general elections violated the Equal Protection Clause. Voters must have an equal opportunity to participate in both primary and general election cycles to select their representatives.

Browder v. Albuquerque, *__F.3d__, No. 14-2048 (10th Cir., June 2, 2015).*
An officer who, on his own time, flipped on his emergency lights and sped through several intersections was not entitled to qualified immunity against a later Fourteenth Amendment claim brought by those injured in a vehicle with which he collided.

Cordova v. Albuquerque, *__F.3d__, No. 14-2083 (10th Cir., Mar. 8, 2016).*
A Fourteenth Amendment "familial association" claim was dismissed. The Constitution does not prevent a police officer from denying a hospitalized arrestee the right to see his family for five days - - until after he was able to be interviewed by the police.

Pollack v. Duff, *__F.3d__, No. 13-5263 (D.C. Cir., July 7, 2015).*
Neither the Privileges and Immunities Clause nor the Equal Protection Clause creates a "right to travel" that would prevent a public employer from requiring its job applicants to live within a specific geographic area.

7. EEOC; TITLE VII

***Buntin v. Boston**, __F.3d__, No. 15-1667 (1st Cir., Dec. 29, 2015).*
The "administrative exhaustion" requirement imposed by Title VII does not apply to a discrimination complaint brought under Section 1981.

***EEOC v. Sterling Jewelers**, __F.3d__, No. 14-1782 (2nd Cir., Sept. 10, 2015).*
Under Title VII, a court can review whether the EEOC conducted an investigation, but not the sufficiency of that investigation.

***Fowlkes v. Ironworkers**, __F.3d__, No. 12-336 (2nd Cir., June 19, 2015).*
Title VII's "administrative exhaustion" requirement is not a jurisdictional prerequisite to suit. It is a necessary precondition to suit that is subject to equitable defenses.

***Robinson v. Concentra**, __F.3d__, No. 14-941 (2nd Cir., Mar. 24, 2015).*
A plaintiff was judicially estopped from attempting to prove in her Title VII case that she was "qualified for her position" at the time she was terminated because she had previously applied for and was receiving "fully disabled" SSA disability benefits on the date of her termination, absent an explanation for this discrepancy.

***Tolbert v. Smith**, __F.3d__, No. 14-1012 (2nd Cir., June 24, 2015).*
Lengthening a period of probationary employment is an "adverse employment action" for purposes of a Title VII claim.

***Village of Freeport v. Barrella**, __F.3d__, No. 14-2270 (2nd Cir., Feb. 16, 2016).*
"Race" includes ethnicity under Section 1981 and Title VII. An employer who promotes a white Hispanic employee over a white non-Hispanic employee can engage in racial discrimination.

***Jones v. Southeastern Penn. Transp. Auth.** , __F.3d__, No. 14-3814 (3rd Cir., Aug. 12, 2015).*
Suspension with pay will not typically constitute a Title VII "adverse employment action".

***Bauer v. Lynch**, __F.3d__, No. 14-2323 (4th Cir., Jan. 11, 2011).*
No employment discrimination exists when an employer uses gender-normed physical fitness standards that distinguish between the sexes on the basis of their physiological differences.

***Boyer-Liberto v. Fontainebleau**, __F.3d__, No. 13-1473 (4th Cir., May 7, 2015).*
An employee is protected by Title VII from retaliation for opposing isolated harassment upon his reasonable belief that a hostile work environment is in progress.

***DeMasters v. Carilion**, __F.3d__, No. 13-2278 (4th Cir., Aug. 10, 2015).*
The court holds that the "manager rule", which prevents an employee whose job responsibilities include reporting discrimination from seeking protection under Title VII's "anti-retaliation" program, has no place in Title VII jurisprudence.

***Nobach v. Woodland Village**, __F.3d__, Nos. 13-60378 & 13-60397 (5th Cir., Aug 20, 2015).*
Based upon the Supreme Court's decision in *Abercrombie & Fitch*, a plaintiff that was discharged for her failure to "pray the Rosary" with a resident, but who never told her employer that her religious beliefs prevented her from doing so, presented no legally sufficient basis to support her Title VII religious discrimination claim.

***Zamora v. Houston**, __F.3d__, No. 14-20125 (5th Cir., Aug. 19, 2015).*
The court joins three other Circuits in holding that, in the context of a Title VII retaliation claim, the "cat's paw" analysis remains a viable theory of causation.

***Partes v. Houma**, __F.3d__, No. 14-31090 (5th Cir., Nov. 17, 2015).*
Refusing to accept an employee's rescission of her resignation from employment can constitute an "adverse employment action" for purposes of a Title VII retaliation claim.

***Smith v. Rock-Tenn**, __F.3d__, No. 15-5534 (6th Cir., Feb. 10, 2016).*
Three incidents in three months of unwanted touching between male employees - - one slap on the buttocks, one pinch to the buttocks, and one brief grinding of a pelvis into another's behind - - went beyond "horseplay" and were sufficient to establish a Title VII hostile work environment.

***Baqwe v. Sedgwick**, __F.3d__, No. 14-3201 (7th Cir., Jan. 26, 2016).*
Under Title VII, it is insufficient to simply show as proof of "discrimination" that others of different races or nationalities, but with the same job title, are paid more money, without also disclosing their relative experience and qualifications, work standards, and supervisors.

***Boss v. Castro**, __F.3d__, No. 14-2996 (7th Cir., Mar. 18, 2016).*
Placing an employee on a PIP, requiring him to substantiate his time off, and rescheduling his telework day were not "adverse employment actions" for Title VII discrimination purposes.

***EEOC v. CVS**, __F.3d__, No. 14-3653 (7th Cir., Dec. 17, 2015).*
Title VII does not give the EEOC the power to sue without first engaging in conciliation efforts or without alleging that an employer actually engaged in discrimination.

***Jaburek v. Foxx**, __F.3d__, No. 15-2165 (7th Cir., Jan. 13, 2016).*
Removing an employee from more challenging job duties and confining her to an administrative role may constitute an "adverse employment action" for Title VII retaliation claim purposes.

***Bonenberger v. St. Louis**, __F.3d__, No. 14-3696 (8th Cir., Jan. 19, 2016).*
Supervisory duties, a regular work schedule and hours, greater prestige, and promotion opportunities, taken together, can constitute "material working conditions" for purposes of a Title VII "adverse employment action" claim.

***Hutton v. Maynard**, __F.3d__, No. 15-1300 (8th Cir., Feb. 3, 2016).*
Free-standing racial comments made to friends, when those comments were not made near the time of a job termination or as part of any city business or city employment, are insufficient to prove pretext in support of a later discrimination claim.

***Flowers v. Troup County**, __F.3d__, No. 14-11498 (11th Cir., Oct. 16, 2015).*
A disagreement between an employer and an employee that does not include unlawful discrimination, even if it involves otherwise unfair treatment, does not raise a Title VII claim.

***Quigg v. Thomas Cty**, __F.3d__, No. 14-14530 (11th Cir., Feb. 22, 2016).*
The *McDonnell Douglas* framework is not appropriate for evaluating "mixed-motive" claims that rely upon circumstantial evidence. In such cases, and in order to avoid summary judgment, a plaintiff need only produce evidence sufficient to convince a jury that his employer took an adverse employment action against him and that a protected characteristic of the plaintiff was a motivating factor for that action.

8. ADA;REHABILITATION ACT

***Davis v. NYC DOE**, __F.3d__, No. 14-1034 (2nd Cir., Oct. 19, 2015).*
The denial or reduction of a discretionary bonus can constitute an "adverse employment action" for purposes of an ADA discrimination claim.

***Range v. Broadway**, __F.3d__, No. 14-3987 (2nd Cir., Nov. 24, 2015).*
A court order staying an ADA action for two (2) years in order to allow the defendants time to bring their building into ADA compliance is not appealable as either a final order or a collateral order, nor subject to a writ of mandamus.

***Matthews v. PA DOC**, __Fed. Appx.__, No. 14-1330 (3rd Cir., June 1, 2015).*
Under the ADA, a short term impairment that limits a person's walking ability for several months due to pain in his heel is a "disability".

***Reyazuddin v. Montgomery Cty.** , __F.3d__, No. 14-1299 (4th Cir., June 15, 2015).*
Public employees cannot use Title II of the ADA to bring employment discrimination claims against their employers.

***Cannon v. Jacobs Field Svcs.** , __F.3d__, No. 15-20127 (5th Cir., Jan. 13, 2015).*
An inability to lift one's arm above shoulder level due to a torn rotator cuff is a "lifting" disability covered by the ADA.

***Flynn v. Distinctive Home Care**, __F.3d__, No. 15-50314 (5th Cir., Feb. 1 2016).*
In a case of first impression in the Circuit, the court joins the Ninth and Tenth Circuits, and disagrees with the Eighth Circuit, in holding that an independent contractor may sue her "employer" under the Rehabilitation Act, but not under the ADA.

***Anderson v. Blue Ash**, __F.3d__, No. 14-3754 (6th Cir., Aug. 14, 2015).*
The court reverses summary judgment for a city when a woman claimed that the ADA required the city to allow her to keep a miniature horse to assist her disabled child, even though horses were prohibited in the city's residential areas.

***EEOC v. Ford**, 782 F.3d 753 (6th Cir. 2015).*
An employee with repeated absences from work due to her disability was not a "qualified individual" under the ADA when on-site attendance was an essential job function and a pre-requisite to her performing other essential functions of her job.

***Michael v. Troy**, __F.3d__, No. 14-2478 (6th Cir., Dec. 14, 2015).*
A city that refused to allow a police officer to return to duty on the basis of two adverse medical opinions did not have to prove that those opinions were correct in order to avoid ADA liability, only that they were objectively reasonable.

***Carothers v. Cook County**, __F.3d__, No. 15-1915 (7th Cir., Dec. 21, 2015).*
An employee is not, for ADA disability purposes, impaired in the major life activity of "working" when she had an anxiety disorder that is exacerbated when working with teenagers - - a single aspect of a single specific job.

***Dunderdale v. United Airlines**, __F.3d__, No. 14-2911 (7th Cir., Dec. 3, 2015).*
Employers need not maintain job positions or structures that may provide reasonable accommodations to their employees if they find, for legitimate business reasons, that the same should be eliminated.

***Hill v. Chicago**, __F.3d__, No.15-1963 (7th Cir., Mar. 31, 2016).*
To prove causation under the ADA, disabled police officer candidates must show that they were not hired because of their disability, not because of a delay in obtaining the necessary medical clearance - - even if the delay was caused by their disability.

***Johnson v. Beach Pk.**, __F.3d__, No. 15-2346 (7th Cir., Mar. 28, 2016)(unpub.).*
Summary judgment for an employer is affirmed when the plaintiff's mere assertion that she had "fibromyalgia and other disabilities making it hard for her to walk or climb stairs" did not establish that she was substantially limited in any major life activity for ADA purposes.

***Neisler v. Truckwell**, __F.3d__, No. 15-1804 (7th Cir., Nov. 25, 2015).*
Title VII of the ADA does not apply to a prisoner's claim of employment discrimination in a prison job.

***Rutledge v. IDHS**, 785 F.3d 258 (7th Cir. 2015).*
Under the Rehabilitation Act, there is no paradox in a person who is deemed 100% disabled by the VA wanting, finding, and holding a job.

***Stern v. St. Anthony's**, __F.3d__, No. 14-2400 (7th Cir., June 4, 2015).*
Speculative, non-conclusive assertions that a proposed accommodation would allow an employee to perform the essential functions of his job are insufficient to support an ADA claim.

***Kelleher v. Wal-Mart**, __F.3d__, No. 15-2105 (8th Cir., Mar. 31, 2016).*
For ADA purposes, a plaintiff did not suffer an "adverse employment action" when she accepted a job position that she was offered by her employer after it learned of her disability accommodation request, when the new job was less strenuous and higher paid.

***Scheffler v. Dohman**, __F. 3d__, No.13-3785 (8th Cir., May 12, 2015).*
A motorist who consistently lost his driving privileges due to DUI offenses was not "disabled" under the ADA.

***Scruggs v. Pulaski Cty**, __F. 3d__, No. 15-1248 (8th Cir., April 1, 2016).*
Under the ADA, if no reasonable accommodation is available, an employer need not engage in an interactive process with an employee to determine whether a reasonable accommodation is available. An infrequent job duty can constitute an "essential function" of a job.

***Butler v. WinCo**, __F.3d__, No. 13-55862 (9th Cir., May 26, 2015).*
A policy of prohibiting service animals from riding in grocery carts may violate the ADA.

***Carroll v. Lawton**, __F.3d__, No. 14-6245 (10th Cir., Nov. 10, 2015).*
A lawsuit brought under the ADA on behalf of an autistic student who was allegedly abused by a special-education teacher was dismissed due to her parents' failure to first exhaust their administrative remedies under the IDEA.

***Christine v. Espanola**, __F.3d__, No. 14-2139 (10th Cir., Sept. 15, 2015).*
A plaintiff cannot bring an ADA or Rehabilitation Act claim seeking the same relief she sought in an earlier IDEA claim which she settled - - due to the IDEA's "exhaustion rule".

9. FMLA

***Graziadio v. Culinary Institute**, __F.3d__, No.15-888 (2nd Cir., Mar. 17, 2016).*
The court formally establishes the requirements of a *prima facie* case of interference with FMLA rights as: 1) that the plaintiff is an eligible employee under the FMLA, 2) that the defendant is an employer under the FMLA, 3) that the plaintiff is entitled to take leave under the FMLA, 4) that the plaintiff gave notice to the employer of her intent to take leave, and 5) that the plaintiff was denied a benefit to which she was entitled under the FMLA.

***Bonkowski v. Oberg**, __F.3d__, No. 14-1239 (3rd Cir., May 22, 2015).*
An employee admitted and discharged from a hospital on the same day does not have a "serious health condition" under the FMLA.

***Hansler v. Lehigh Valley Hosp** , __F.3d__, No. 14-1772 (3rd Cir., August 19, 2015).*
An employer violated the FMLA when it terminated an employee without allowing her a chance to cure the deficiencies in her FMLA medical certification.

***Bryant v. Texas**, 781 F.3d 764 (5th Cir. 2015).*
An employer visiting the house of an employee and telephoning her did not "interfere with, restrain, or deny" her FMLA rights.

***Barrett v. Illinois DOC**, __F.3d__, No. 13-2833 (7th Cir., Oct. 20, 2015).*
The FMLA statute of limitations begins to run on the date an employee's leave request is denied or her leave absence is deemed unauthorized, not on the later date on which she is terminated on the basis of her overall attendance record.

***Curtis v. Costco**, __F.3d__, No. 14-3354 (7th Cir., Nov. 24, 2015).*
An employee's passing comment to a fellow worker that he was "considering taking medical leave" does not constitute notice to his employer for FMLA purposes.

***Preddie v. Bartholomew**, __F.3d__, No. 14-3125 (7th Cir., Aug. 24, 2015).*
Discouraging an employee from taking more time off due to FMLA - qualifying conditions supports a FMLA "interference" claim.

***Hasenwinkel v. Mosaic**, __F.3d__, No. 14-3786 (8th Cir., Dec. 29, 2015).*
No FMLA claim exists when an employee is made whole by receiving back pay for a work suspension, absent proof of any tangible harm caused by the delay in her receiving this back pay.

***White v. Beltram Edge**, __F.3d__, No. 14-11750 (11th Cir., June 12, 2015).*
In making a "serious health condition" determination under the FMLA, a court should not limit itself to information received by an employer prior to its termination of the employee at issue.

10. GINA

***Ortiz v. San Antonio**, __F.3d__, No. 15-50341 (5th Cir., Nov. 18, 2015).*
GINA does not prohibit an employer from instituting a mandatory wellness program that requires the acquisition of employee medical information that is then used to test for blood count, cholesterol, and liver function.

11. FLSA

***Glatt v. Fox**, __F.3d__, No. 13-4478 (2nd Cir., July 2, 2015).*
In determining whether an unpaid intern is entitled to compensation under the FLSA, the proper question is whether the intern or his employer is the primary beneficiary of the relationship.

***Babcock v. Butler County**, __F.3d__, No. 14-1467 (3rd Cir., Nov. 24, 2015).*
In a case of first impression in the Circuit, the court adopts the "predominant benefit test", which looks to the party to which the predominant benefit of a mealtime belongs, in deciding whether an employee's meal periods are compensable under the FLSA.

***Williams v. Genex**, __F.3d__, No. 14-1966 (4th Cir., Dec. 18, 2015).*
A registered nurse working in the health care field is exempt from FLSA overtime rules, as she is working in a *bona fide* professional capacity.

***Bodle v. TXL**, __F.3d__, No. 14-20224 (5th Cir., June 1, 2015).*
The court refuses to enforce a generic broad release against the plaintiff's subsequent FLSA claims when that release was obtained through the private settlement of a prior state court action that did not involve the FLSA or any wage claim.

***Fairchild v. All American**, __F.3d__, No. 15-60190 (5th Cir., Mar. 18, 2016).*
For purposes of a FLSA claim, an employer's mere ability to access information regarding an employee's after-hours computer use does not constitute its "constructive knowledge" of her otherwise unauthorized overtime work. Moreover, temporal proximity between an employer learning of an employee's pregnancy and her termination is not enough, in and of itself, to establish pretext for purposes of a Title VII claim.

***Naybor v. Securiguard**, __F.3d__, No. 14-60637 (5th Cir., Sept. 15, 2015).*
Although 30-minute meal breaks are normally non-compensable under the FLSA, if employer-mandated travel requirements reduce an employee's actual meal time to less than 30 minutes, these "meal breaks" may be compensable "rest breaks".

***Smith v. Dark**, __F.3d__, No. 14-1169 (7th Cir., Sept. 25, 2015).*
Pretrial detainees are not protected by the FLSA, because they are not prison "employees".

***Balestrieri v. Menlo Park**, __F.3d__, No. 12-15975 (9th Cir., Sept. 4, 2015).*
Firefighters and EMTs were not entitled to overtime under the FLSA for taking their gear to temporary duty stations. This conduct was neither integral nor indispensable to the principle activities that they were employed to perform. The FLSA was also not violated when an employer excluded money paid for "leave buybacks" from its employees' "regular rate of pay" when making their overtime calculations.

12. USERRA

***Slusher v. Shelbyville Hosp.** , __F.3d__, No. 15-5256 (6th Cir., Oct. 26, 2015).*
Under USERRA, an employee with a one-year temporary employment contract had no reasonable expectation of indefinite employment or employment "for a significant time", and therefore no right of reemployment when he returned from military service.

***Arroyo v. Volvo Group**, __F.3d__, No. 14-3618 (7th Cir., Oct. 6, 2015).*
Terminating a soldier for her non-military-related reporting late to work supports her USERRA discrimination claim, given her employer's past statements of frustration with her military-related work absences.

***Hayden v. Air Force**, __F.3d__, No. 2015-3073 (Fed. Cir., Feb. 12, 2016).*
Under USERRA, an employee's military absence cannot be held against him. Employers cannot treat employees on military leave the same as employees on nonmilitary leave in cases where that leave prevents an employee from attending a requested work meeting.

13. ADEA

***Mercantanti v. WCI**, __F. 3d__, No. 15-1866 (3rd Cir., April 1, 2016)(unpub.).*
For the purposes of an ADEA claim, an employer did not create an issue of "pretext" when it indicated that it terminated an employee due to "restructuring", although the real reason was his inability to get along with management, when the subterfuge was to allow the employee to collect unemployment compensation.

***Jenkins v. San Antonio**, 784 F.3d 263 (5th Cir., Apr. 20, 2015).*
An employee had no valid ADEA claim when he was not selected for a position that did not pay more or have more prestige than his current position and was given to someone less than two years his junior.

***Woods v. Berwyn**, __F.3d__, No. 13-3766 (7th Cir., Oct. 15, 2015).*
A police merit board's formal, adversarial procedures, and the eyewitness evidence it relied upon in support of its decision to terminate a police officer, negated any "cat's paw" liability under the ADEA based upon an allegedly biased charging official. The board did not rely upon the factual allegations provided by this official, but on the testimony of an unbiased witness.

***France v. Johnson**, __F.3d__, No. 13-15534 (9th Cir., Oct. 3, 2015).*
The court joins the Seventh Circuit in adopting a rebuttable presumption that age differences of "ten years or less" are insubstantial for purposes of a claim of discrimination under the ADEA.

***Liebman v. Metropolitan Life**, __F.3d__, No. 14-13197 (11th Cir., Dec. 18, 2015).*
For ADEA purposes, a seven year difference in age qualifies as being "substantially" younger.

***Villarreal v. R.J. Reynolds**, __F.3d__, No. 15-10602 (11th Cir., Nov. 30, 2015).*
Section 4(a)(2) of the ADEA authorizes "disparate impact" claims by job applicants.

14. FHA

***Anderson v. Saratoga Springs**, __F.3d__, Nos. 12-3775 & 12-4485 (2nd Cir., Oct. 19, 2015).*
A jury verdict was reinstated against a city for its zoning policies that precluded high-density developments, because those policies had a "disparate impact" upon African-Americans and families with children, in violation of the Fair Housing Act.

***Rodriquez v. Village Green**, __F.3d__, No. 13-4792 (2nd Cir., June 2, 2015).*
The FHA's provisions prohibiting discrimination based upon handicap can be violated even if the subject of those statements is not disabled.

***Velez v. Cuyahoga Metro. H. Auth.**, __F.3d__, No. 14-3978 (6th Cir., July 30, 2015).*
Fees charged to lessors for lease terms shorter than one year are "rent" under the FHA.

***Avenue 6E Investments v. Yuma City**, __F.3d__, No. 13-16159 (9th Cir., Mar. 25, 2016).*
A claim against a city alleging that its refusal to rezone land to permit higher density development violated the Fair Housing Act survives summary judgment. The City Council may have engaged in disparate treatment in denying the re-zone in the face of racially charged resident opposition. The Court rejected the argument that the availability of similar housing in the community necessarily precluded a disparate impact finding.

***Miami v. Bank of America**, __F.3d__, No. 14-14543 (11th Cir., Sept. 1, 2015);*
***Miami v. Wells Fargo**, __F.3d__, No. 14-14706 (11th Cir., Sept. 1, 2015).*
A city had standing to sue a bank under the FHA for its pattern of discriminatory lending in local residential housing markets, when that practice caused the city economic harm.

15. RLUIPA

***Jehova v. Clarke**, __F.3d__, No. 13-7529 (4th Cir., July 23, 2015).*
Summary judgment for a prison is reversed as against a prisoner's RLUIPA claim based upon the prison's failure to allow him to consume wine during communion, making him work on the Sabbath, and assigning him non-Christian cell-mates.

***Schlemm v. Wall**, 784 F.3d 362 (7th Cir. 2015).*
Not allowing a prisoner to eat game meat for a religious feast may violate RLUIPA.

***World Outreach v. Chicago**, __F. 3d__, Nos. 13-3728 & 13-3669 (7th Cir., June 1, 2015).*
A city's frivolous lawsuit, aimed at preventing a religious organization from using its building to serve its religious objectives, violates RLUIPA.

***Walker v. Beard**, __F.3d__, No. 12-17460 (9th Cir., June 18, 2015).*
A prison's refusal to grant an Odinist's request for an exemption to its race-neutral celling policy does not violate RLUIPA.

***Knight v. Thompson**, __F.3d__, No. 12-11926 (11th Cir., Aug. 5, 2015).*
A prison's "no long hair" policy for male inmates does not violate RLUIPA, due to the costs and risks to safety and security created by long hair.

16. SCHOOLS; IDEA

***T.K v. NYC DOE**, __F.3d__, No. 14-3078 (2nd Cir., Jan. 20, 2016).*
A school violated a student's IDEA right to a FAPE when it refused to discuss her being bullied by other students when discussing her IEP.

***G. L. v. Ligonier Valley**, __F.3d__, No. 14-1387 (3rd Cir., Sept. 22, 2015).*
In a case of first impression in the Circuit, the court rules that, despite the existence of contrary statutory language, due process complaints alleging the denial of a FAPE must be filed no more than two years after the parents of the affected student knew or should have known about the due process violation.

***Spady v. Bethlehem Area Sch. Dist.** , __F.3d__, No. 14-3535 (3rd Cir., Sept. 1, 2015).*
There is no Fourteenth Amendment right for a student to have adequate safety protocols in place during public school swimming classes.

***Doe v. Bd. Of Educ.** , __Fed. Appx.__, No. 13-2537 (4th Cir., Apr. 7, 2015).*
Student-on-student sex harassment cannot be imputed to a school board on a theory of "deliberate indifference".

***Bell v. Itawambo Cty.** , __F.3d__, No. 12-60264 (5th Cir., Aug. 20, 2015).*
A student disciplined after posting an off-campus Facebook song describing violent acts against named teachers raised no First Amendment claim.

***D. G. v. New Caney**, __F.3d__, No. 15-20079 (5th Cir., Nov. 10, 2015).*
A prevailing party under IDEA is not limited, when seeking attorney's fees, to claims filed within 90 days of a hearing officer's decision date.

***Donald v. Orleans Parish**, __F.3d__, No. 15-30164 (5th Cir., Jan. 15, 2016).*
Under IDEA, a school board need not be the party that initiated a hearing to contest an IEE in order to preserve its right to refuse reimbursement to the parents that initiated such a hearing.

***Shannon v. St. Tammany**, __F.3d__, No. 15-30220 (5th Cir., Feb. 23, 2016).*
Obtaining a "stay-put" order is insufficient to qualify a litigant as a "prevailing party" under IDEA.

***Fry v. Napoleon**, __F.3d__, No. 14-1137 (6th Cir., June 12, 2015).*
At a minimum, IDEA's exhaustion requirement applies when an ADA or Rehabilitation Act claim arises as a result of the alleged denial of a FAPE.

***Smith v. Jefferson Cty.**, __F.3d__, No. 13-5957 (6th Cir., June 11, 2015).*
A school, facing a budget shortfall, contracted for its students to be educated in a secular alternative-school program at a private Christian school. This did not violate the Establishment Clause.

Stiles v. Grainger Cty. *, __F.3d__, No. 15-5438 (6th Cir., Mar. 25, 2016).*
Title IX does not require a school district to eliminate peer harassment, so long as it is not deliberately indifferent to harassment claims and responds to all such claims in a reasonable, tailored manner.

Wenk v. O'Reilly*, 783 F.3d 585 (6th Cir. 2015).*
Parents with a disabled student who advocated for a change in her educational plan and thereafter were the subjects of a child abuse report filed by the school director may state a First Amendment retaliation claim.

Stanek v. St. Charles*, 783 F.3d 634 (7th Cir. 2015).*
A student's "delegation of rights" permitted his parents to pursue his IDEA claim after he turned 18 years old.

B.S. v. Anoka Hennepin*, __F.3d__, No. 14-2564 (8th Cir., Sept. 2, 2015).*
No denial of due process existed where an ALJ limited testimony to nine hours per side during an IDEA due process hearing.

Beauchamp v. Anaheim Union*, __F.3d__, No. 14-56212 (9th Cir., Mar. 16, 2016).*
Under IDEA, the reduction of an attorney's fee award was justified when the plaintiff's counsel unreasonably rejected a timely settlement offer that the plaintiff was not substantially justified in rejecting.

Coomes v. Edmonds Sch. Dist. *, __F.3d__, No. 13-35747 (9th Cir., Mar. 23, 2016).*
A teacher who voiced concerns over her school district's plans for her emotionally disabled students was not protected from termination by the First Amendment. Her comments were part of her job duties.

J. H. v Bernalillo*, __F.3d__, No. 14-2068 (10th Cir., Nov. 27, 2015).*
No Fourth or Fourteenth Amendment violation existed when a school resource officer handcuffed and arrested an 11-year old student after he observed her kick a teacher.

J. V. v Albuquerque Pub. Sch. *, __F.3d__, No. 15-2071 (10th Cir., Feb. 19, 2016).*
Handcuffing a disruptive autistic student to his chair did not violate the ADA. Any temporary educational interference stemming from the handcuffing was due to the student's conduct, not his disability, even if the former was a manifestation of the latter.

Rock v. Levinski*, __F.3d__, No. 14-2157 (10th Cir., June 29, 2015).*
A school principal who was terminated after she spoke at a public meeting against a School District proposal to close her school did not raise a First Amendment claim. Expressing her policy views did not overcome the District's concern that its high-ranking policy personnel speak with one voice on policy matters.

Alves v. Board of Regents*, __F.3d__, No. 14-14149 (11th Cir., Oct. 29, 2015).*
University employees who were terminated after they complained to university officials about their poor department management were engaged in employee, not citizen, speech.

***Hill v. Madison Cty.**, __F.3d__, Nos. 14-12481 & 13-15444 (11th Cir., Aug. 12, 2015).*
A claim that school officials using an eighth grade girl as "rape-bait" to catch a sexual harasser, which led to her rape, survives summary judgment on her Equal Protection claim.

***Mech v. School Board**, __F.3d__, No. 15-10778 (11th Cir., Nov. 23, 2015).*
A school could remove one of the banners attached to its fences that recognized a sponsor of a school tutoring program. The First Amendment does not protect the banner because it constitutes "government speech".

***B. D. v. Dist. Of Columbia**, __F.3d__, No. 15-7002 (D.C. Cir., Mar. 22, 2016).*
Neither Section 1415(i)(2)(A) nor Section 1331 of IDEA provides a cause of action for parents seeking to enforce a favorable hearing officer decision.

***Boose v. D.C.**, __ F.3d__, No. 14-7086 (D.C. Cir., May 26, 2015).*
A school district's failure to afford a disabled student a FAPE violates IDEA, and its later provision of an IEP to the student does not render her action for its prior FAPE violation moot.

17. COMMERCE CLAUSE;TRANSPORTATION

***Camara de Mercadeo v. Vazquez**, __F.3d__, No. 13-2518 (1st Cir., Aug. 18, 2015).*
The Dormant Commerce Clause does not prevent Puerto Rico from charging shippers a scanning fee to pay for the cost of scanning incoming cargo.

***Gross v. Surface Transportation Board**, __F.3d__, No.15-1069 (1st Cir., Oct. 16, 2015).*
The Interstate Commerce Commission Termination Act does not preempt the state and local regulation of facilities simply because they are economically connected to rail transportation. Preempted activities must be related to the physical movement by rail of passengers or property.

***Padgett v. Surface Transportation Board**, __F.3d__, No. 14-2067 (1st Cir., Oct. 16, 2015).*
The Interstate Commerce Commission Termination Act preempts state and local laws regulating rail transportation.

***Colon Health Ctrs. V. Hazel**, __F.3d__, No. 14-2283 (4th Cir., Jan. 21, 2016).*
A state "certificate of public need" program, which requires such a certificate in order for medical service providers to establish or expand their operations within the state, does not violate the Dormant Commerce Clause.

***Senne v. Village of Palatine**, 784 F.3d 444 (7th Cir. 2015).*
The placement of personal information about a motorist on a parking ticket left on a vehicle windshield does not violate the Driver's Privacy Protection Act.

18. JAILS; PRISONS; EIGHTH AMENDMENT

***Harris v. Fischer**, __F.3d__, No. 14-2957 (2nd Cir., Mar. 15, 2016).*
Female guards who hold a female inmate down so that her genitalia can be visually inspected for contraband by a male corrections officer may have violated the Fourth Amendment.

***Jones v. County Jail**, __F.3d__, No. 14-3842 (3rd Cir., Apr. 30, 2015).*
No Eighth Amendment violation occurred when an inmate fell out of the top bunk and the jail gave him an ice pack and medicine for his headache, but did not provide him a ladder to use to reach his bed.

***Young v. Martin**, __F.3d__, No.13-4057 (3rd Cir., Sept. 8, 2015).*
Securing a naked mentally ill inmate to a chair for fourteen hours, although he did not pose a threat to himself or others, may violate the Eighth Amendment.

***Estate of Henson v. Wichita Cty.** , __F.3d__, No. 14-10126 (5th Cir., July 28, 2015).*
A "woefully" inadequate prison medical care system does not become an Eighth Amendment issue absent "deliberate indifference" to an inmate's rights.

***Sanchez v. Allen**, __Fed. Appx.__, No. 13-41247 (5th Cir., Apr. 23, 2015).*
Placing an inmate on a 7-day "food loaf" diet does not violate the Eighth Amendment.

***ACLU v. Livingston Cty.** , __F.3d__, No. 14-1617 (6th Cir., Aug. 11, 2015).*
For purposes of the delivery of mail to an inmate, "legal mail" can include mail that contains neither privileged communications nor implicates the attorney-client relationship.

***King v. Zamiara**, __F.3d__, Nos. 13-1766 & 13-1777 (6th Cir., June 1, 2015).*
Section 1997(e) of the Prison Litigation Reform Act does not bar First Amendment claims that do not result in physical injury.

***Beal v. Foster**, __F.3d__, No. 14-2489 (7th Cir., Oct. 2, 2015).*
Verbal harassment, without more, can be "cruel and unusual punishment" for Eighth Amendment purposes when it is directed by a guard at an inmate.

***Dobbey v. Mitchell-Lawshea**, __F.3d__, No. 14-2772 (7th Cir., Nov. 24, 2015).*
A two week delay in treating a prisoner for an infected tooth survives summary judgment on an Eighth Amendment "deliberate indifference" claim.

***Mathison v. Moats**, __F.3d__, No. 14-3549 (7th Cir., Feb. 8, 2016).*
Summary judgment was denied to a prison nurse and her supervisor who waited four hours to summon help after an inmate began having a heart attack. An inmate is constitutionally entitled to more than "minimal care" in life-and-death situations.

Payton v. Cannon, *__F.3d__, No. 14-1694 (7th Cir., Dec. 1, 2015).*
A prison policy forbidding inmates from having pornographic magazines, in an effort to limit problems with black-market trading, violence, and the objectification of female guards, survives a First Amendment challenge.

Talonen v. Herdon, *599 Fed. Appx. 591 (7th Cir. 2015).*
Prison officials were not deliberately indifferent to an inmate's serious medical condition when they refused to prescribe him medication that would completely clear up his acne.

Thompson v. Holm, *__F.3d__, No. 15-1928 (7th Cir., Jan. 4, 2016).*
Not providing meals to an inmate for two days in an effort to force him to break his religious fast, rather than accommodating his religious diet, impermissibly burdened his right to exercise his religious beliefs.

Bailey v. Feltmann, *__F.3d__, No. 14-3859 (8th Cir., Jan. 15, 2016).*
For purposes of a Section 1983 "denial of emergency care" claim by an arrestee, the statement of a paramedic that the arrestee "needed sutures and further evaluation" did not objectively establish to a lay person that a need for immediate medical treatment existed.

Ballinger v. Cedar County, *__F.3d__, No. 14-3576 (8th Cir., Jan. 14, 2016).*
Placing an inmate in solitary confinement for a year does not, in and of itself, deprive him of a liberty interest under the Due Process Clause.

Hollingsworth v. City of St. Ann, *__F.3d__, No. 14-1583 (8th Cir., Sept. 3, 2015).*
No excessive force existed when a jail intake officer used a Taser to "prompt" a prisoner to obey his order to change into an orange jump suit, since no more than a *de minimus* injury resulted.

Jackson v. Riebold, *__F.3d__, No. 14-2775 (8th Cir., Feb. 24, 2016).*
An inmate must present verifying medical evidence to prove his deliberate indifference claim based upon a delay in medical treatment - - to establish that the delay had a detrimental effect.

Reid v. Griffin, *__F.3d__, No. 15-1678 (8th Cir., Dec. 17, 2015).*
No Eighth Amendment claim existed when a prison official refused to provide a prisoner with hormone-replacement therapy, since no doctor had diagnosed the prisoner with GID.

Garcia v. Riverside County, *__F.3d__, No.13-56857 (9th Cir., Feb. 3, 2016).*
Qualified immunity is denied on Fourth and Fourteenth Amendment claims that arose when the plaintiff was arrested and incarcerated pursuant to the misapplication of a felony warrant that contained his first and last name, but described someone of a different height and weight and with a different middle name. Jail officers have a constitutional obligation to investigate a detainee's identity when faced with a claim of misidentification and material differences exist that would lead a reasonable person to question the identification.

McBride v. Lopez, *__F.3d__, No. 12-17682 (9th Cir., June 30, 2015).*
Fear of retaliation, if it has both a subjective and an objective basis, can be sufficient to render an inmate grievance procedure "unavailable" for Prison Litigation Reform Act purposes.

***Reyes v. Smith**, __F.3d__, No. 13-17119 (9th Cir., Jan. 12, 2016).*
A prisoner exhausts his administrative remedies under the Prison Litigation Reform Act when his grievance is decided at all levels of administrative review, even if he fails to comply with an administrative rule that requires him to name all of his treating physicians in his grievance.

***Teamsters v. Washington**, __F.3d__, No. 13-35331 (9th Cir., June 12, 2015).*
Sex is a BFOQ reasonably necessary to the operation of a women's prison.

19. LABOR; UNIONS

***MCPC v. NLRB**, __F.3d__, No. 14-1379 (3rd Cir., Feb. 11, 2016).*
The *Wright Line* "mixed" or "dual" nature discharge test is appropriate for determining whether an employee has been discharged for engaging in protected concerted activity.

***Conagra Foods v NLRB**, __F.3d__, Nos. 14-3771 & 15-1049 (8th Cir., Feb. 19, 2016).*
Under the NLRA, an employer can impose a blanket prohibition against union solicitation during working time, whether or not a work time discussion is lengthy or involves the presentation of a union authorization card.

***Stenger v. Bi-State**, __F.3d__, No. 15-1338 (8th Cir., Dec. 15, 2015).*
Section 13(c) of the Urban Mass Transportation Act does not give a private cause of action to local mass transit mechanics through which they can create a new bargaining unit.

***Hooks v. Kitsap**, __F.3d__, No. 13-35912 (9th Cir., Mar. 7, 2016).*
A NLRB petition for injunctive relief is dismissed when the NLRB's Acting General Counsel served in an "acting" capacity while also being the President's nominee for the permanent position, in violation of the Federal Vacancies Reform Act.

***Fallbrook v. NLRB**, __F.3d__, No. 14-1056 (D.C. Cir., May 8, 2015).*
The NLRB properly determined that an employer has to pay a union's negotiating expenses when the employer refused to bargain with the union.

20. WARN ACT

***Morton v. Vanderbilt U.** , __F.3d__, No. 15-5417 (6th Cir., Jan. 5, 2016).*
Employees who were not permitted to report for work, but who were nonetheless paid their normal wages and accrued benefits, did not suffer an "employment loss" for purposes of the WARN Act's "aggregation" provisions.

21. TELECOMMUNICATIONS

***Global Tower v. Town of Rome**, __F.3d__, No. 15-1140 (1st Cir., Jan. 8, 2016).*
Under the TCA, a local planning board's cell tower decision was not a "final action" when that decision was subject to further review by a local board of appeal. Therefore, since the planning board's decision did not mark the end of the administrative process, a TCA challenge to that decision was premature.

***Johnson v. American Towers**, 781 F.3d 693 (4th Cir. 2015).*
The Telecommunications Act pre-empts claims against a prison by a prison guard who was shot at home at the direction of an inmate using a contraband cell phone.

***Montgomery County v. FCC**, __F.3d__, No. 15-1240 (4th Cir., Dec. 18, 2015).*
A FCC rule that allows telecommunications providers to improve their existing wireless facilities, by limiting the ability of local authorities to prevent the modification of electronic equipment sitting atop cell towers, is affirmed.

***Spectra v. City of Cameron**, __F.3d__, Nos. 14-2808 & 14-2848 (8th Cir., Nov 10, 2015).*
Enlarging a split in the Circuits, the court holds that Section 253 of the Telecommunications Act does not authorize a private right of action.

22. ENVIRONMENTAL

***Gulf Restoration v. McCarthey**, 783 F.3d 227 (5th Cir. 2015).*
The EPA may decline to make a necessary determination under the Clean Water Act.

***Askins v. Ohio Dept. of Ag.** , __F.3d__, No. 15-3147 (6th Cir., Jan. 6, 2016).*
There is no private right of action against EPA regulations issued pursuant to the Clean Water Act premised upon the EPA's violation of its own procedural regulations.

***In Re: EPA**, __F.3d__, Nos. 15-3799, 15-3887, 15-3822 & 15-3853 (6th Cir., Oct. 9, 2015).*
The court stays the enforcement of an EPA "clean water rule" that broadly defines "waters of the United States", given the likelihood that the party seeking the stay will prevail on the merits as to their contention that the rule conflicts with *Rapanos*.

***Merrick v Diageo Americas**, __F.3d__, No. 14-6198 (6th Cir., Nov. 2, 2015).*
The Clean Air Act does not preempt common law claims brought against an emitter based upon the law of the state in which the emitter operates.

***California Dump Truck v. Nichols**, 784 F.3d 500 (9th Cir. 2015).*
A district court does not have jurisdiction under the Clean Air Act to review a final EPA action.

***Sanders v. Energy Northwest**, __F.3d__, No. 14-35368 (9th Cir., Feb. 12, 2016).*
The whistleblower retaliation provisions of the Energy Reorganization Act do not cover a municipal employee's objection to the "severity level designation" of an internal "condition report" dealing with potential safety procedure violations at a municipal power plant.

***Sierra Club v. Oklahoma Gas**, __F.3d__, No. 14-7065 (10th Cir., Mar. 8, 2016).*
A citizen suit against a power plant for its modification of its boiler without first obtaining the necessary emission-regulating permit under the Clean Air Act is dismissed as untimely, as the suit was brought more than five years after construction on the boiler plant began.

***Western Minnesota v. FERC**, __F.3d__, No. 14-1153 (D.C. Cir., Nov. 29, 2015).*
Under the Federal Power Act, a municipality's preference when seeking a permit to build a hydroelectric plant is not limited to the municipality's development of water resources that are located near its corporate borders.

23. PROCEDURAL; EVIDENTIARY

***Davis v. Coakley**, __F.3d__, No. 14-2306 (1st Cir., Sept. 18, 2015).*
A Section 1983 action brought against a governor and an attorney general in their personal capacities and alleging equal protection and due process violations for their refusal to indemnify a punitive damage award entered against individual state employees for their misconduct towards the plaintiff is dismissed for failing to state a claim for relief.

***Martinez-Rivera v. Puerto Rico**, __F.3d__, No. 13-1772 (1st Cir., Jan 29, 2016).*
Filing an EEOC charge does not affect the limitations period for a Section 1983 political discrimination claim.

***Novak v. Bank of New York**, __F.3d__, No. 13-2543 (1st Cir., Apr. 21, 2015).*
Service of process is generally not a prerequisite to a defendant removing a state court action to federal court at any time after the lawsuit is filed and before the removal period ends.

***US v. Arroyo-Blas**, __F.3d__, No. 13-1613 (1st Cir., Apr. 16, 2015).*
The denial of a sentence appeal is affirmed when an appeal waiver was part of the defendant's plea agreement.

***Florimont v. Dalton**, __Fed. Appx.__, No. 14-3298 (3rd Cir., May 20, 2015).*
A plaintiff's tenth lawsuit (9 state, one federal) against a municipality for its installation of drain pipes on her property prior to her purchase of the same is dismissed under the doctrine of *res judicata*, but the court refuses to order her to cease filing federal lawsuits over this issue.

***Lehman Bros. v. Gateway**, 785 F.3d 96 (3rd Cir. 2015).*
An appellate claim is deemed forfeited by a failure to provide an oral argument transcript.

Griffin v. Baltimore P.D. *, __F.3d__, No. 14-1494 (4th Cir., Oct. 27, 2015).*
Heck v. Humphrey bars a plaintiff from filing a Section 1983 action seeking damages for alleged *Brady* violations so long as his conviction remains valid.

Tommy Davis v. Cape Fear*, __F.3d__, No. 14-1778 (4th Cir., Dec. 1, 2015).*
An *ultra vires* order requiring the refund of the impact fees paid by a construction company in order to obtain a building permit, when those fees were paid for water and sewer services that were never provided, is affirmed.

US v. Smith*, __F.3d__, No. 14-60926 (5th Cir., Feb. 10, 2016).*
It was plain error for a prosecutor to personally vouch for the credibility of a witness and thus involve the integrity of his office in an effort to bolster his case.

Brown v. Chapman*, __F.3d__, No. 15-3158 (6th Cir., Feb. 19, 2016).*
Unlike a denial of summary judgment on qualified immunity grounds, a denial of summary judgment on municipal-liability grounds does not fall under the "collateral-order doctrine" for purposes of an interlocutory appeal.

Kitchen v. Heyns*, __F.3d__, No. 15-2048 (6th Cir., Oct. 6, 2015).*
In a case of first impression in the Circuit, the court holds that it does not have appellate jurisdiction over an appeal from a FRCP Rule 21 order dismissing some, but not all, defendants in a lawsuit.

Farley v. Koepp*, __F.3d__, No. 14-1695 (7th Cir., June 8, 2015).*
E-mailing a complaint to the court clerk, as required to open a new electronic case file, is sufficient "delivery" for purposes of Fed. R. Civ. P. 5(d)(4), so as to toll the statute of limitations.

Hassebrock v. Bernhoft*, __F.3d__, No. 14-2943 (7th Cir., Mar. 7, 2016).*
The expert witness disclosure deadline set forth in FRCP 26(a)(2)(D) is a default deadline that is "trumped" by an earlier deadline set by court.

Western Thrift v. Rucci*, __F.3d__, No. 14-3150 (8th Cir., Feb. 9, 2016).*
A verbal case settlement agreement reached before a magistrate judge is enforceable against the parties even through that agreement was never reduced to writing.

Escobedo v. Applebee's*, __F.3d__, No. 12-16244 (9th Cir., June 4, 2015).*
Under Title VII, the filing date of a complaint is the date on which it is delivered to the court clerk, whether or not it was submitted with an in forma pauperis application.

US v. Gandara-Delgado*, __F.3d__, No. 15-2131 (10th Cir., Mar. 30, 2016).*
An unconditional plea of guilty waives a defendant's right to appeal the earlier denial of his motion to dismiss.

***US v. Martinez**, __F.3d__, Nos. 14-2203 & 14-2209 (10th Cir., Dec. 16, 2015).*
The government cannot enforce, through a garnishment action, payments that are not yet due under a court-ordered payment schedule.

***Black v. Wiqinqton**, __F.3d__, No. 15-10848 (11th Cir., Jan. 22, 2016).*
The exclusionary rule does not apply in a civil suit against police officers.

***Maqqio v. Wisconsin Ave Psychiatric**, __F.3d__, No. 13-7181 (D.C. Cir., July 24, 2015).*
The equitable tolling doctrine would not be applied when a claimant who missed his Title VII filing deadline thought the EEOC would send his right-to-sue letter to his attorney, not him. He did not receive the EEOC's letter because he failed to inform the EEOC that he had moved.

***Jenkins v. US**, __F.3d__, No. 2014-5107 (Fed. Cir., Oct. 5, 2015).*
In a rails-to-trails case, an appraiser must take into account the physical remnants of a railroad easement when determining the pre-take value of the land.

24. ARBITRATION; CONTRACTS

***Clukey v. Camden**, __F.3d__, No. 14-1264 (1st Cir., Aug. 10, 2015).*
A contractual recall provision requiring a laid off public employee to provide his written name and address to his employer in order to assert his recall rights is ambiguous, given that the employer already had his name and address on file. It could mean that such notice was necessary only in the case of a name or address change.

***Dell Webb v. Carlson**, __F.3d__, No. 15-1385 (4th Cir., Mar. 28, 2016)*
If an arbitration agreement does not unmistakably provide that the arbitrator will decide whether the agreement allows class arbitration, that is a decision for the court.

***Lorenzo v.Prime Communications**, __F.3d__, No. 14-1727 (4th Cir., Nov. 24, 2015).*
The denial of a motion to compel arbitration is affirmed. The parties' arbitration clause was contained in a handbook that expressly stated that its contents "do not constitute a binding contract".

***Angus v. Glendora**, 782 F.3d 175 (5th Cir. 2015).*
A fact issue existed as to whether "replace" in an easement agreement allowed the holder to abandon an old pipe after putting in a new one.

***Beverly v. Abbot Labs**, __F.3d__, No. 15-1098 (7th Cir., Mar. 16, 2016).*
A handwritten arbitration settlement agreement is valid and enforceable when a party later refuses to sign a more formal typewritten version of the same.

***Demien Construction v. O'Fallon FPD**, __F.3d__, No. 14-3857 (8th Cir., Feb. 1, 2016).*
No binding obligation was created to accept the lowest bid for a public works project by virtue of a statement contained in the invitation and instructions to bid that the "AIA guide for bidding procedures" would "guide all bidding", even though that AIA guide stated that the contract should be awarded to the "lowest responsible bidder".

***Ashby v. Archstone**, __F. 3d__, No. 12-55912 (9th Cir., May 12, 2015).*
An employee's Title VII retaliation claim is subject to arbitration.

***Community v. Maritime**, __Fed. Appx.__, Nos. 14-10989 & 12-13249 (11th Cir., Mar. 25, 2015).*
A city project manager's approval of a contract did not waive violations of a public contracting statute.

***IBEW 824 v. Verizon**, __F.3d__, No. 15-10536 (11th Cir., Oct. 7, 2016).*
An arbitrator exceeded his power when he issued an arbitration award and then tried to issue a substitute award after he determined that he had exceeded his power in his original award.

***Parnell v. Cashcall**, __F.3d__, No. 14-12082 (11th Cir., Oct. 28, 2015).*
When a party seeks to challenge an arbitration agreement that contains a delegation provision committing the arbitrator to making the threshold determination of whether the agreement to arbitrate is enforceable, he must challenge the delegation provision directly.

25. BANKRUPTCY

***Concord v. Northern New England Telephone**, __F.3d__, No. 14-3381 (2nd Cir., Aug. 4, 2015).*
A Chapter 11 reorganization plan extinguishes a city's tax lien when the text of the plan does not preserve the lien, the plan is confirmed, the liened property is "dealt with" under the terms of the plan, and the lienholder has participated in the bankruptcy proceedings.

***In re Jevic**, __F.3d__, No. 14-1465 (3rd Cir., May 21, 2015).*
A court can approve a settlement that results in a structured dismissal that violates the Bankruptcy Code's priority scheme.

***Horn v. Martin**, __F.3d__, No. 15-1710 (8th Cir., Feb. 11, 2016).*
The failure to disclose her Title VII and Equal Protection Clause claims against her municipal employer in her Chapter 13 bankruptcy proceedings judicially estopped a debtor from later pursuing those claims.

***Slater v. U. S. Steel Corp.** , __F.3d__, No. 12-15548 (11th Cir., Feb. 24, 2016).*
Judicial estoppel barred the further prosecution of a federal discrimination claim that was not disclosed in a debtor's Chapter 7 bankruptcy filing, even though the party invoking the doctrine was not a party to the bankruptcy proceeding.

26. OTHER CASES OF INTEREST

***Bernstein v. Bernstein Litowitz**, __F.3d__, No.15-374 (2nd Cir., Feb. 24, 2016).*
A lawsuit by a law firm partner against his firm was not sealed when sealing was not required to protect confidential client communications.

***Spence v. Nelson**, __Fed. Appx.__, No. 14-10306 (5th Cir., June 1, 2015).*
Non-policy-making prison officials are not liable in their individual capacities for a prison mailroom policy.

***Bah v. Attorney General**, __F.3d__, No. 14-5861 (6th Cir., May 8, 2015).*
African "hair-braiders" must obtain a state hairstylist license.

***Crabbs v. Scott**, __F.3d__, No. 14-4068 (6th Cir., May 4, 2015).*
A sheriff was not acting as a state official when he collected a DNA sample from an acquitted defendant that was not required by law.

***Callahan v. Chicago**, __F.3d__, No. 15-1318 (7th Cir., Feb. 17, 2016).*
The extensive city regulation of cab drivers does not make those drivers municipal employees.

***Bravo v. Santa Maria**, __F.3d__, No. 14-55557 (9th Cir., Jan. 12, 2016).*
In a Section 1983 case, it is appropriate to determine a fee award by referring to a settlement agreement entered into by another party in a case that arose out of the same set of facts.

***Castro v. Los Angeles**, 785 F.3d 336 (9th Cir. 2015).*
The design of a municipal jail was a result of deliberate choices that render that design a formal municipal policy for purposes of a Section 1983 municipal liability claim resulting from injuries caused by one arrestee to another.

***Fallay v. San Francisco**, __F. 3d__, No.10-16437 (9th Cir., Mar. 6, 2015).*
A city attorney is entitled to absolute immunity against an employee's claims against him for his conduct in filing and prosecuting criminal charges against the employee.