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IMPORTANT FEDERAL CASES FOR THE MUNICIPAL LAWYER: THE LATEST AND GREATEST

(THROUGH MARCH 27, 2017)

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By

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A. U. S. SUPREME COURT

Bethune-Hill v. Virginia, *__U.S.__, No. 15-680 (Mar. 1, 2017).*
The Equal Protection Clause can be violated in a voting district re-alignment if race is the predominant factor motivating the legislature to place voters within a particular district, even if the redistricting plan otherwise respects traditional redistricting criteria and principles.

Betterman v. Montana, *__U.S.__, No. 14-1457 (May 19, 2016).*
The Sixth Amendment's "speedy trial" guarantee does not apply to sentencing after a defendant has plead or is found guilty of a criminal charge.

Birchfield v. North Dakota, *__U.S.__, No. 14-1468 (June 23, 2016).*
The Fourth Amendment permits warrantless breath tests incident to an arrest for drunk driving, but not warrantless blood tests.

Bravo-Fernandez v. US, *__U.S.__, No. 15-537 (Nov. 11, 2016).*
Issue preclusion under the Double Jeopardy Clause does not preclude the retrial of a defendant after a jury returns irreconcilably inconsistent verdicts of conviction and acquittal and the conviction is later vacated for legal error unrelated to the inconsistency.

CRST v. EEOC, *__U.S.__, No. 14-1375 (May 19, 2016).*
A four million dollar attorney fees award is upheld after the EEOC sued the defendant without first complying with its pre-suit obligations. A favorable ruling on the merits is not a prerequisite to finding the defendant to be the "prevailing party" in the litigation.

Endrew F. v. Douglas County, *__U.S.__, No. 15-827 (Mar. 22, 2017).*
To meet its substantive obligations under IDEA, a school must offer an IEP reasonably calculated to enable a child to make appropriate progress in light of his or her circumstances.

***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 in order to accommodate traditional districting objectives. A maximum population deviation of less than 10% 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.

***Fry v. Napoleon Community Schools**, __U.S.__, No. 15-497 (Feb. 22, 2017).*
When a student brings an ADA claim challenging a school's refusal to allow a service dog to accompany the child in school, the exhaustion of the IDEA's administrative procedures is not necessary when the claim does not involve the denial of a FAPE.

***Green v. Brennan**, __U.S.__, No. 14-613 (May 23, 2016).*
For purposes of a constructive discharge claim, the limitations period for filing an EEOC charge begins on the date of a claimant's actual resignation, not on the earlier date on which his resignation paperwork is signed.

***Harris v. AZ Indep. Redistricting Comm'n.** , __U.S.__, No. 14-232 (April 4, 2016).*
A legislative redistricting plan with an 8.8% deviation from absolute district equality does not violate the Fourteenth Amendment, even if partisanship played some part in the redistricting.

***Heffernan v. City of Paterson**, __U.S.__, No. 14-1280 (April 26, 2016).*
When an employer demotes an employee to prevent him from engaging in protected political activity, that employee can bring a First Amendment challenge even if his employer's actions are based upon a factual mistake about his engagement in the protected conduct.

***Husky v. Ritz**, __U.S.__, No. 15-145 (May 16, 2016).*
For purposes of a Chapter 7 bankruptcy discharge claim, "actual fraud" includes fraudulent conveyance schemes that do not involve a false representation.

***Manuel v. Joliet**, __U.S.__, No. 14-9496 (March 21, 2017).*
An arrestee can challenge his pre-trial detention on Fourth Amendment grounds.

***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.

***Ocasio v. US**, __U.S.__, No. 14-361 (May 2, 2016).*
A police officer's Hobbs Act conviction is affirmed. He participated in a kickback scheme wherein he routed damaged vehicles to a repair shop in exchange for payments from the shop owner "under color of official right."

***Sietz v. Bouldin**, __U.S.__, No. 15-458 (June 9, 2016).*
In a civil case, a district court judge has the limited inherent power to rescind a jury discharge order and to recall a jury for further deliberation after finding an error in the verdict.

US v. Bryant, *__U.S.__, No. 15-420 (June 13, 2016).*
Tribal court convictions obtained in proceedings that complied with the Indian Civil Rights Act of 1968 can be used as predicate convictions for a later federal prosecution.

USA Corps of Eng. v. Hawkes, *__U.S.__, No. 15-290 (May 31, 2016).*
A "jurisdictional determination" by the US Army Corps of Engineers that a property contains "waters of the United States" subject to the Clean Water Act is a judicially reviewable "final agency action".

Utah v. Strieff, *__U.S.__, No. 14-1373 (June 30, 2016).*
The "attenuation doctrine" exception to the exclusionary rule applies to evidence discovered after an individual is unconstitutionally detained by an officer who then learns that the individual has an outstanding arrest warrant, arrests him, and discovers contraband on his person during a search incident to arrest.

White v. Pauly, *__U.S.__, No. 16-67 (Jan. 9, 2017).*
No settled Fourth Amendment principle requires a police officer who arrives late to the scene to second guess the earlier actions of other officers or not to assume that proper procedures, such as officer identification, have already been followed.

B. U. S. CIRCUIT COURTS

1. FIRST AMENDMENT

Marrero-Mendez v. Calixto-Rodriquez, *__F.3d__, No. 14-2030 (1st Cir., July 19, 2016).*
Qualified immunity for a police chief is denied on a First Amendment claim brought by a police officer who refused to participate in a group prayer and was punished for his non-participation.

Rideout v. Gardner, *__F.3d__, No. 15-2021 (1st Cir., Sept. 28, 2016).*
A state law prohibiting voters from photographing and publishing pictures of their marked ballots is an unconstitutional restriction on free speech that fails to meet an intermediate scrutiny analysis based upon the state's professed desire to avoid vote-buying and voter intimidation.

Ricciuti v. Gyzenis, *__F.3d__, No. 12-432 (2nd Cir., Aug. 24, 2016).*
A patrol officer who shared her concerns about supervisory over-time padding with local political leaders was speaking on a matter of public concern, and therefore the police commissioners who terminated her for these comments were not entitled to qualified immunity against her First Amendment claim.

Bruni v. Pittsburgh, *__F.3d__, No. 15-1755 (3rd Cir., June 1, 2016).*
A motion to dismiss was denied against a First Amendment claim challenging a city "sidewalk counseling" ordinance that prohibited certain speech on public sidewalks within 15 feet of the entrance to any health care facility. The city had not demonstrated that it had at least "seriously considered" less restrictive alternatives to its total speech ban that would still achieve its legitimate, substantial, and content-neutral interests.

Zaloga v. Borough of Moosic, *__F.3d__, No. 15-2723 (3rd Cir., Oct. 24, 2016).*
For purposes of a First Amendment retaliation claim, the law is not clearly established as to whether a government official who pressures another person to retaliate against an individual, but who does not retaliate himself, can be held personally liable.

Brickey v. Hall, *__F.3d__, No. 14-1910 (4th Cir., July 8, 2016).*
Qualified immunity against a First Amendment claim is granted to a police chief who fired a police officer for comments the officer made while a candidate for town council that were critical of the chief and his police department.

Bucker v. Howard County, *__F.3d__, No. 15-2066 (4th Cir., Mar. 20, 2017).*
A firefighter terminated for his Facebook posts that, while partially touching upon matters of public concern, disrupted department efficiency, internal harmony, and trust, and were insubordinate and diminished his department's standing with the public, was not protected by the First Amendment.

Crouse v. Town of Moncks Corner, *__F.3d__, No. 16-1039 (4th Cir., Feb. 15, 2017).*
Police officers, by encouraging an arrestee to file suit against a fellow officer that they did not like, did not engage in protected speech.

Liverman v. City of Petersburg, *__F.3d__, No. 15-2207 (4th Cir., Dec. 15, 2016).*
A police department social networking policy that prohibited speech critical of the government employer by forbidding any comments unfavorable of the department's operations or policies is facially overbroad, and violates an officer's right to comment on matters of public concern.

Loftus v. Bobzien, *__F.3d__, No.15-2164 (4th Cir., Feb. 8, 2017).*
Terminating an assistant county attorney after she was elected to the city council does not violate her First Amendment right to hold elected office. Public employers can bar their employees from running for public office.

Lund v. Rowan County, *__F.3d__, No. 1591 (4th Cir., Sept. 19, 2016).*
A sectarian legislative prayer, even if conducted by a prayer-giver who is a legislator offering the prayer to his own legislative body, is compatible with the Establishment Clause.

Anderson v. Valdez, *__F.3d__, No. 15-40836 (5th Cir., Nov. 9, 2016).*
A public attorney's letter to the State Commission on Judicial Conduct, made outside of his chain of command and his job duties, was subject to First Amendment protection for purposes of a retaliation claim against the judges who refused to hire him after he sent the letter.

***Childers v. Iglesias**, __F.3d__, No. 16-10442 (5th Cir., Feb. 9, 2017).*
Arresting an individual who did not obey a lawful order, even if the non-compliance was due to his being in the middle of explaining his views to the officer, does not violate the First Amendment. The arrest was due to his conduct, not his speech.

***Cripps v. LA Dept. of Ag. And Forestry**, __F.3d__, No. 15-30524 (5th Cir., April 8, 2016).*
First Amendment retaliation can occur when, after a person appears before an administrative agency, the agency fines that person, suspends or denies his license or registration, or requires him to provide the agency with access to his employment records.

***Gibson v. City of Drew**, __F.3d__, No. 15-60583 (5th Cir., Sept. 20, 2016).*
A lawsuit by a police chief against a mayor in his personal capacity, and asking only for personal relief, although it contained a First Amendment retaliation allegation, was not a matter of public concern because the police chief was not acting as a whistleblower in bringing the lawsuit, but sought merely to redress a personal dispute and to obtain rectification for himself.

***Heaney v. Roberts**, __F.3d__, No. 15-31088 (5th Cir., Jan. 23, 2017).*
A councilman who, at a public meeting, prohibited a non-lawyer citizen, during the public comment section of the meeting, from challenging the opinion of the parish attorney, and then ejected him from the meeting, may have engaged in viewpoint discrimination in a limited public forum in violation of the First Amendment.

***Howell v. Ball**, __F.3d__, No. 15-30552 (5th Cir., July 1, 2016).*
A police officer who participated in an FBI investigation into police corruption and was then terminated raises a valid free speech retaliation claim against his police chief and may raise a valid *Monell* claim against the Board of Aldermen who approved his termination.

***Turner v. Driver**, __F.3d__, No. 16-10312 (5th Cir., Feb. 16, 2017).*
The First Amendment protects the right for a citizen to record police activities, subject to reasonable time, place, and manner restrictions.

***Dibrito v. St. Joseph**, __F.3d__, No. 16-1357 (6th Cir., Jan. 13, 2017).*
A complaint by one employee that another has defamed him is not a matter of public concern for First Amendment *Garcetti* purposes.

***Bormouth v. Jackson County**, __F.3d__, No. 15-1869 (6th Cir., Feb. 15, 2017).*
A board of commissioners began each meeting with one member delivering a prayer before which all public attendees were directed to rise and assume a reverent position. As all the commissioners were Christian, they were endorsing a specific religion (the record showed the affirmative decision of the commissioners to exclude other prayer givers, and to thus control the content of the prayer). The prayers were unduly coercive in violation of the First Amendment and outside of the *Town of Greece* legislative prayer protections.

***Gillis v. Miller**, __F.3d__, No. 16-1245 (6th Cir., Jan. 6, 2017).*
A correctional officer who, during an investigation into drug trafficking at his jail, distributed a memorandum to his fellow officers advising them about their right to union representation during the investigation and was terminated as a result did not engage in First Amendment protected speech. His memo did not involve a matter of public concern and, in any event, his free speech interests were outweighed by the officers' need to comply with the investigation.

***Hendrix v. Dekalb County**, __F.3d__, No. 16-5771 (6th Cir., Mar. 3, 2017).*
In a First Amendment retaliation case, a 27-month gap between protected conduct and an adverse employment action is too large to establish causation.

***Holbrook v. Dumas**, __F.3d__, No. 15-4334 (6th Cir., Aug. 17, 2016).*
A fire chief who was discharged after informing his firefighters of the possible closure of the department and loss of their jobs was not speaking on a matter of public concern for First Amendment retaliation purposes.

***Naghtin v. Montgague Fire Dist. Bd.** , __F.3d__, No. 16-1552 (6th Cir., Dec. 30, 2016).*
A firefighter who circulated a petition for the reinstatement of another firefighter to the position of unit captain, presented this petition to the fire board, and was subsequently terminated, was not engaged in speech on a matter of public concern for First Amendment retaliation purposes.

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

***Wagner v. Garfield Heights**, __F.3d__, No. 13-3474 (6th Cir., Jan. 13, 2017).*
A city's six foot limit on political signs does not survive strict scrutiny under *Town of Gilbert*.

***Kristofek v. Village of Orland Hills**, __F.3d__, No. 14-2919 (7th Cir., Aug.11, 2016).*
A police officer who issued tickets to a driver that were later rescinded by his police chief based upon politically-connected phone calls, and who then made statements to his colleagues and the FBI about this alleged police conduct and was terminated, was speaking as a private citizen on a matter of public concern for purposes of his First Amendment retaliation claim.

***Patriotic Veterans v. Zoeller**, __F.3d__, No. 16-2059 (7th Cir., Jan. 3, 2017).*
An anti-robo-call law is not content-based or discriminatory against political speech under *Reed* because it exempts messages from school districts, subscribers with which the recipient has a current relationship, or employer messages to employees about work schedules from its general prohibition against robocalls absent advance consent of the recipient.

***Roake v. Forest Preserve Dist.** , __F.3d__, No. 16-2976 (7th Feb. 17, 2017).*
An officer's internal complaint about the alleged racial profiling activities of fellow officers is not protected speech under the First Amendment.

***Eggenberger v. West Albany**, __F.3d__, No. 15-1378 (8th Cir., April 21, 2016).*
There is no general First Amendment right to access information that is not publically available.

***Miller v. City of St. Paul**, __F.3d__, No. 15-2885 (8th Cir., May 23, 2016).*
A threat by a patrol commander to confiscate any religious banners displayed by an evangelist at a public fair subjected her to potential personal liability for this First Amendment violation, even if the city she represented had no official policy restricting the evangelist's religious expression.

***Thompson v. Shock**, __F.3d__, No. 16-1643 (8th Cir., Mar. 28, 2017).*
In a First Amendment freedom of expression case, if the employee is discharged because of his or her expressive conduct, the *Pickering Connick* test is applied. If the employee is discharged because of his or her political affiliation, the *Elrod-Branti* test is applied. When a political-affiliation employee gets discharged for his or her expressive conduct, the *Pickering-Connick* is applied.

***Young v. Mercer County Commission**, __F.3d__, No. 16-1324 (8th Cir. Feb. 27, 2017).*
Decisions about whether to approve or disapprove a proposed budget item fall squarely within the discretion of a county commission, and, therefore, the commissioners were entitled to legislative immunity against a Section 1983 claim premised upon their actions in voting to deny a budgetary request. Moreover, placing a street address sign on private property is not a taking in violation of the Fifth Amendment.

***Brandon v. Maricopa County**, __F.3d__, No. 14-16910 (9th Cir., Feb. 23, 2017).*
A county attorney who told a reporter that the county increased its settlement offers to avoid having key county officials testify was not engaged in protected citizen speech.

***LoneStar v. Los Angeles**, __F.3d__, Nos. 14-55014 & 14-55050 (9th Cir., July 7, 2016).*
City ordinances that limit the type of advertising signs that can be affixed to cars parked on city streets, prohibit non-motorized mobile billboard advertising displays, and prohibit advertising signs on motorized vehicles that extend beyond the length, height, and width of the motor vehicle, are valid time, place, and manner regulations that do not become "content-based" merely because they differentiate between signs based upon whether they contain "advertising".

***Celebrity Attractions v. Oklahoma City PPA**, __F.3d__, No. 16-6013 (10th Cir., Aug. 19, 2016).*
A public theater's over-arching purpose, the extent of its use, and the local government's intent in opening it to the public, combine to show that it is selective in providing access to speakers and types of speech - - and thus that the theater is a limited public forum for First Amendment purposes, even if it was not used exclusively for ballet, theater, Broadway, chorus, orchestra, or other high culture productions.

***Cvancara v. Reams**, __F.3d__, No. 16-1093 (10th Cir., Jan. 23, 2017).*
A deputy who was terminated after going outside her chain of command and accusing a fellow deputy of performing private work on public time did not engage in speech on a matter of public concern, especially when her contentions were weakly supported and were not motivated by broader public purposes but were instead the airing of a grievance.

***Denton v. Yancy**, __F.3d__, No. 15-5114 (10th Cir., Oct. 3, 2016).*
A government's public release of an employee's arbitration testimony was not retaliation for his free speech because that testimony was not on a matter of public concern.

Felix v. Bloomfield, *__F.3d__, No. 14-2149 (10th Cir., Nov. 9, 2016).*
Placing an equivocal "disclaimer sign" near a Ten Commandments monument located on public property is not enough to secularize its primarily religious message.

Griffin v. Bryant, *__F.3d__, No. 16-2164 (10th Cir., Jan. 27, 2017).*
Refusing to place the plaintiff on the Council agenda, but letting him speak for five-minutes during the public comment section of the meeting, does not restrain his speech in violation of the First Amendment.

Helget v. City of Hays, *__F.3d__, No. 15-3093 (10th Cir., Jan. 4, 2017).*
No First Amendment violation occurred when an officer was terminated after she voluntarily provided an affidavit in support of a former officer's lawsuit against her employer. The city's interests as a public employer outweighed her interest in speaking about a former employee's civil litigation.

Muhammad v. Hall, *__F.3d__, No. 16-6046 (10th Cir., Jan. 4, 2017).*
Qualified immunity is granted to an employee on a First Amendment retaliation claim. The law is unclear as to whether a subordinate employee can be liable for First Amendment retaliation when she merely acts at the direction of a supervisor who desires to retaliate.

Walton v. Powell, *__F.3d__, No. 14-2166 (10th Cir., April 19, 2016).*
The *McDonnell Douglas* test has no useful role to play in First Amendment retaliation cases.

Bailey v. Wheeler, *__F.3d__, No. 15-11627 (11th Cir., Nov. 27, 2016).*
An officer who had a BOLO issued against him allegedly in retaliation for his reporting his fellow officers illegal racial profiling survived a motion to dismiss his First Amendment retaliation claim against the issuing officer.

Cornell v. Oakland Park, *__F.3d__, No. 16-15270 (11th Cir., Mar. 8, 2017).*
A City's SOB licensing regulations, forbidding full nudity, patron-dancer physical contact, and alcohol consumption, survives an *O'Brien* analysis, and are amply supported by relevant judicial opinions and studies from other municipalities so as to satisfy the First Amendment.

May v. Sasser, *__F.3d__, No. 15-15766 (11th Cir., Nov. 15, 2016).*
A firefighter who spoke at a public hearing about the prospect of his own termination did not speak on a matter of public concern for First Amendment retaliation purposes.

Trigo v. City of Doral, *__F.3d__, No. 15-14657 (11th Cir., Oct. 21, 2016).*
For First Amendment retaliation claim analysis purposes, a public records request lacked any intent to convey a message. The act of seeking to obtain public records is not inherently protected by the First Amendment.

Wollschlaeger v. Florida, *__F.3d__, No. 12-14009 (11th Cir., Feb. 16, 2017).*
A law that prohibits doctors from discriminating against patients who own firearms does not violate the First Amendment.

Wright v. St. Petersburg, *__F.3d__, No. 15-10315 (11th Cir., Aug. 15, 2016).*
Issuing a citizen a "trespass warning" prohibiting him from entering a public park for one year does not violate the First Amendment even though it has an incidental effect on those rights.

Act Now v. District of Columbia, *__F.3d__, No. 12-7139 (D.C. Cir., Jan. 24, 2017).*
An ordinance that allows posted signs on public lampposts for 180 days, but signs related to "events" for only 30 days after the event, even if this meant they were posted for less than 180 days, was not content-based, but a reasonable time, place, and manner restriction that was narrowly tailored to further the legitimate governmental interest in avoiding visual clutter.

A.N.S.W.E.R. v. Basham, *__F.3d__, No. 16-5047 (D.C. Cir., Jan. 17, 2017).*
A regulation that allows the Inaugural Committee to erect spectator bleachers in Freedom Plaza does not regulate speech but the places in which speech may occur, and applies to all demonstrators, regardless of viewpoint or speech content.

2. SECOND AMENDMENT; FIREARMS

Ezell v. Chicago, *__F.3d__, No. 14-3312 (7th Cir., Jan. 18, 2017).*
Municipal zoning regulations that dramatically limit the ability of a shooting range to exist within the City of Chicago and limit access to shooting ranges to persons eighteen years old or older, when one hour of range training is a prerequisite to obtaining a gun permit, unconstitutionally burdens Second Amendment rights.

Peruta v. San Diego County, *__F.3d__, No. 10-56971 (9th Cir., June 9, 2016).*
The Second Amendment does not protect the right of a member of the general public to carry a concealed firearm in public.

Silvester v. Harris, *__F.3d__, No. 14-16840 (9th Cir., Dec. 14, 2016).*
A local law requiring a 10-day waiting period for all lawful gun purchases is a reasonable safety precaution that does not violate the Second Amendment.

Teixeira v. County of Alamed, *__F.3d__, No. 13-17132 (9th Cir., May 16, 2016).*
A Second Amendment claim alleging that an ordinance that forbids gun stores from operating within 500 feet of a residentially zoned district is unconstitutional survives summary judgment. The right to purchase and sell firearms is part and parcel of the right to keep and bear arms.

3. FOURTH AMENDMENT

Alfano v. Lynch, *__F.3d__, No. 16-1914 (1st Cir., Feb. 1, 2017).*
Qualified immunity for an officer was denied on a Fourth Amendment claim that arose when he took a person into protective custody, hand-cuffed, and transported him to the police station, and jailed him all without probable cause to believe that he was incapacitated or likely to harm either person or property.

US v. Coraballo, *__F.3d__, Nos. 12-3839 & 14-4203 (2nd Cir., Aug. 1, 2016).*
Police officers were justified in conducting a warrantless search of the defendant's cell phone location by using a "pinging" process, based upon the threat he posed to law enforcement.

US v. Compton, *__F.3d__, No. 15-942 (2nd Cir., July 19, 2016).*
A five minute delay in order to conduct a canine sniff to resolve suspicions that arose during a traffic stop was a reasonable extension of a *Terry* stop.

Jones v. Chandrasuwau, *__F.3d__, No. 15-1110 (4th Cir., April 28, 2016).*
In a case of first impression in the Circuit, the court holds that, for purposes of the Fourth Amendment, "reasonable suspicion" for an arrest exists when there is a sufficiently high probability that a probationer has violated the terms of his probation, thus making an intrusion on his privacy reasonable.

Smith v. Munday, *__F.3d__, Nos. 15-1092 & 1496 (4th Cir., Feb. 3, 2017).*
A person's criminal history, common name, gender, and race are not enough to establish the probable cause needed to arrest her for participation in a drug sale that occurred eleven miles from her residence.

US v. Graham, *__F.3d__, No. 12-4659 (4th Cir., May 31, 2016).*
The government does not violate the Fourth Amendment when it obtains historical cell-site location information from a service provider without a warrant.

US v. Robinson, *__F.3d__, No. 14-4902 (4th Cir., Jan. 23, 2017).*
Under the Fourth Amendment, an officer can frisk a person that he has lawfully stopped and whom he believes to be armed regardless of whether that person is legally entitled to carry a firearm.

Blair v. Sallas, *__F.3d__, No. 16-10202 (5th Cir., Nov. 15, 2016).*
Qualified immunity was granted to officers on a wrongful seizure claim brought by the wife and child of a suspect that was premised upon their inability to exit their apartment while the officers were shooting at the suspect after he opened the door with a flashlight that the officers considered to be a weapon.

Davidson v. Stafford, *__F.3d__, No. 16-20217 (5th Cir., Feb. 7, 2017).*
For Section 1983 municipal liability purposes, evidence that a police chief investigated the contested action of two police officers in arresting a protester and found discipline unwarranted does not constitute his ratification of that conduct.

Groden v. Dallas, *__F.3d__, No. 15-10073 (5th Cir., June 16, 2016).*
A plaintiff who brings a Section 1983 *Monell* action against a municipality need not identify a specific policymaker in his compliant in order to survive Rule 12(b)(6) dismissal, so long as the facts alleged claim that the city acted pursuant to a specific municipal policy promulgated by a legally authorized policymaker, such as the city council.

***Mabry v. Lee County**, __F.3d__, No. 16-60231 (5th Cir., Feb. 21, 2017).*
Requiring a twelve-year-old student who was arrested for assaulting another student and taken to a juvenile detention center to undertake a strip search and visual body cavity inspection does not violate the Fourth Amendment.

***Melton v. Phillips**, __F.3d__, No. 15-10604 (5th Cir., Sept. 14, 2016).*
An officer who recklessly provided false material information can be liable for a Fourth Amendment violation even if he neither prepared nor signed the affidavit in support of the arrest warrant that relied upon this information.

***Morrow v. Washington**, __F.3d__, No. 15-41233 (5th Cir., Dec. 2, 2016).*
The subjective intentions of police officers play no role in an ordinary probable cause analysis.

***US v. Berry**, __F.3d__, No. 15-30196 (5th Cir., Dec. 1, 2016).*
The mere length of a vehicle search conducted during a traffic stop does not dissipate the probable cause justifying that stop and search.

***US v. Gonzalez**, __F.3d__, No. 15-10935 (5th Cir., Aug. 31, 2016).*
The fact that a driver follows the "two-second rule" contained in his state driver's manual does not prohibit a police officer from using his own judgment to nevertheless determine that this driver is following another vehicle too closely and to conduct a traffic stop as a result.

***US v. Jarman**, __F.3d__, No. 16-30468 (5th Cir., Feb. 1, 2017).*
The four months taken by the government to review several computers and their hard drives pursuant to a search warrant does not require the Fourth Amendment suppression of the evidence discovered thereon.

***US v. Monsivais**, __F.3d__, No. 15-10357 (5th Cir, Feb. 2, 2017).*
For Fourth Amendment purposes, an officer "seized" a motorist when he announced that he was going to "pat him down." The actions of the motorist in walking past an officer's patrol car did not provide reasonable suspicion that he had or was going to commit a crime so as to justify seizing and searching him.

***US v. Spence**, __F.3d__, No.*15-50226 (5th Cir., June 30, 2016).
No Fourth Amendment violation occurred when a police officer asked a stopped motorist about his criminal history while waiting for the computer check on this individual to be completed.

***US v. Toussaint**, __F.3d__, No. 15-30748 (5th Cir., Sept. 22, 2016).*
Pulling over a vehicle being driven by an individual who the police were actively looking for after they received word that a credible threat had been made against his life does not require the suppression of the evidence later found on his person. The traffic stop was legal under the "exigent circumstances" warrant exception.

Brown v. Battle Creek, *__F.3d__, No. 16-1575 (6th Cir., Dec. 19, 2016).*
In a case of first impression in the Circuit, the court joins the Second, Third, Fourth, Seventh, and Tenth Circuits in holding that the Fourth Amendment protects against the unreasonable seizure of a pet dog.

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.

Noonan v. Oakland County, *__F.3d__, No. 15-2192 (6th Cir., Mar. 24, 2017).*
No Fourth Amendment deprivation of liberty existed when a claimant was never arrested or incarcerated, required to post bond or bail, or subjected to any travel restrictions, despite his suffering aggravation, financial cost and humiliation as a result of false charges being filed against him.

Smith v. City of Wyoming, *__F.3d__, No. 15-3336 (6th Cir., April 15, 2016).*
An officer's entrance into a private residence in the course of a routine child welfare check, after being told that the occupant could not speak with him, may violate the Fourth Amendment.

Thompson v. City of Lebanon, *__F.3d__, No. 14-5711 (6th Cir., July 26, 2016).*
Firing a weapon at a suspect "seizes" that suspect even if the bullets miss their mark.

US v. Brown, *__F.3d__, No. 15-1761 (6th Cir., June 27, 2016).*
A search warrant for a home is not adequately supported by evidence when it is based upon the fact that a car parked in front of the home contained illegal drugs.

US v. Carpenter, *__F.3d__, Nos. 14-1572 & 14-1805 (6th Cir., April 13, 2016).*
The Fourth Amendment does not require the police to obtain a search warrant before obtaining cell-site data pursuant to the Stored Communications Act.

US v. Church, *__F.3d__, No. 15-5362 (6th Cir., May 17, 2016).*
The use of a crow bar to open a safe, pursuant to a search warrant, after the owner refused to provide the police with its combination, was not unreasonable under the Fourth Amendment.

US v. Jimmy Jail Abernathy, *__F.3d__, No. 16-5314 (6th Cir., Dec. 6, 2016).*
No probable cause existed for the search of a house based upon drug paraphernalia being found in a trash pull in front of the house.

US v Lash, *__F.3d__, No. 15-4220 (6th Cir., Dec. 6, 2016).*
No Fourth Amendment violation occurred when officers extended the length of a traffic stop in order to check a driver's car rental agreement – a routine incidental request.

US v. Powell, *__F.3d__, No. 14-2506 (6th Cir., Feb 6, 2017).*
Surveillance of an unobstructed warehouse for a 90 day period by means of cameras placed atop public utility poles located in a non-residential area does not violate the Fourth Amendment.

***Bell v. Chicago**, __F.3d__, No. 15-2833 (7th Cir., Aug. 30, 2016).*
An ordinance authorizing the warrantless seizure of a vehicle whenever a police officer has probable cause to believe that the vehicle was used in a law violation is not unreasonable under the Fourth Amendment.

***US v. Contreras**, __F.3d__, No. 15-1279 (7th Cir., April 19, 2016).*
No reasonable expectation of privacy exists, for Fourth Amendment purposes, when an individual conducts a drug transaction in his garage with the garage door open and an officer views the illegal transaction from a public street.

***US v. Jenkins**, __F.3d__, No. 15-3068 (7th Cir., Mar. 13, 2017).*
During an arrest, the arrestee's cell phone, which is not on his person nor within reaching distance, could not be searched without a warrant or his consent under the "search incident to arrest" doctrine and the Fourth Amendment.

***US v. Webster**, __F.3d__, No.*14-2913 (7th Cir., Feb. 17, 2017).
No Fourth Amendment right of privacy existed for arrestees whose incriminating statements were made and recorded while they were seated in a marked police transport van.

***US v. Whitaker**, __F.3d__, Nos. 14-3290 & 14-3506 (7th Cir, April 12, 2016).*
Officers engaged in a warrantless search, for Fourth Amendment purposes, when they had a drug dog come to the closed door of an apartment and search for the scent of illegal drugs.

***Zoretic v. Darge**, __F.3d__, No. 14-2008 (7th Cir., Aug. 8, 2016).*
Even an officer's reasonable belief that he was enforcing a legal eviction order does not entitle him to quasi-judicial immunity from a Fourth Amendment claim when, in fact, the eviction order was unenforceable.

***Schaffer v. Beringer**, __F.3d__, No. 15-3438 (8th Cir., Nov. 21, 2016).*
For Fourth Amendment qualified immunity purposes, the issue is not probable cause "in fact", but "arguable" probable cause.

***US v. Arnold**, __F.3d__, No. 15-3697 (8th Cir., Aug. 31, 2016).*
For purposes of a suppression motion, the constitutionality of an emergency police roadblock turns on reasonableness, not individualized suspicion.

***US v. Craddock**, __F.3d__, No. 15-3705 (8th Cir., Nov. 8, 2016).*
During a pat-down search, feeling a key fob in a suspect's pocket did not allow an officer to reasonably infer that it belonged to a stolen vehicle so as to remove the fob from the pocket.

***US v. Faulkner**, __F.3d__, Nos. 15-2252 & 15-2286 (8th Cir., June 27, 2016).*
No Fourth Amendment violation occurred when an officer, pursuant to a warrant that authorized him to place a GPS unit on a car in one county, actually placed it on that car in another county.

US v. Hawkins, *__F.3d__, No. 15-1894 (8th Cir., July 26, 2016).*
An officer's threat to search, and his subsequent reach towards a suspect, does not transform a *Terry* stop into an arrest.

US v. Jefferson, *__F.3d__, No. 16-1019 (8th Cir., Nov. 4, 2016).*
Parking next to a suspect's car does not implicate the Fourth Amendment when it does not limit the suspect's freedom of movement.

US v. Morgan, *__F.3d__, No. 16-1525 (8th Cir., Dec. 1, 2016).*
No Fourth Amendment expectation of privacy existed when a plaintiff voluntarily displayed his cell phone screen in the presence of detectives.

US v. Pile, *__F.3d__, No. 15-1882 (8th Cir., April 11, 2016).*
The "protective sweep" exception to the Fourth Amendment warrant requirement applies even when an officer does not subjectively fear for his safety or for the safety of others.

US v. Rodriguez, *__F.3d__, No. 15-2723 (8th Cir., Aug. 25, 2016).*
A homeowner who opens his front door and, in response to a request by officers for consent to enter his residence, turns around and walks back into his house without trying to close the door or protesting when the officers follow him in, presents objective evidence of his consent to enter the residence for purposes of a later suppression motion.

US V. Russell, *__F.3d__, No. 16-1700 (8th Cir., Feb. 1, 2017).*
The mere fact that a vehicle is rented by one's girlfriend at your request does not give you, as a mere passenger, a reasonable expectation of privacy in the vehicle or standing to challenge a search thereof.

US v. Smith, *__F.3d__, No. 15-1742 (8th Cir., April 14, 2016).*
Officers were justified in entering a private residence without a warrant when they reasonably believed that its occupant was in danger, as an exercise of their community caretaker function.

US v. Wright, *__F.3d__, No. 15-3237 (8th Cir., Dec. 23, 2016).*
A person who does not live in an apartment complex and who is not a guest of someone who does cannot vicariously assert the Fourth Amendment rights of an apartment complex resident.

Farkas v. Williams, *__F.3d__, No. 14-55756 (9th Cir., May 24, 2016).*
No unlawful "seizure" occurs when an interviewee voluntarily enters a secured location to participate in an interview and is required to place his wallet, keys, and other personal belongings in a lock box before entering the interview room.

Thomas v. Dillard, *__F.3d__, No. 13-55889 (9th Cir., April 5, 2016).*
Police officers are not free to conduct a *Terry* frisk whenever they are investigating a potential "domestic violence" incident regardless of the circumstances of the call to investigate or the facts they face upon arrival at the scene of the alleged incident.

***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.

***Cox v. Cache County**, __F.3d__, No. 14-4123 (10th Cir., Nov. 2, 2016).*
Qualified immunity is granted to a government inspector against a Fourth Amendment claim stemming from his conduct in approaching and opening bee hives in order to determine who owned them.

***Gutierrez v. Luna County Sheriff**, __F.3d__, No. 15-2161 (10th Cir., Nov. 15, 2016).*
Qualified immunity is granted to officers for their warrantless entry into a home because the law is currently unsettled as to whether, for Fourth Amendment purposes, the "hot pursuit" exception applies when a misdemeanor suspect is involved.

***Mayfield v. Bethards**, __F.3d__, No. 15-3074 (10th Cir., June 20, 2016).*
Pet dogs are subject to Fourth Amendment protection from police seizure.

***Rife v. OK Dept. of Pub. Safety**, __F.3d__, No. 16-7019 (10th Cir., Jan. 23, 2017).*
Probable cause existed to arrest an individual who exhibited the outward manifestations of intoxication although these manifestations, in fact, were caused by his recent head injury.

***US v Amador-Baltran**, __F.3d__, No. 15-2216 (10th Cir., July 20, 2016).*
Consent to search a sweater implicitly includes consent to search a fanny pack wrapped in the sweater.

***US v. Hawley**, __F.3d__, No. 16-1000 (10th Cir., Nov. 14, 2016).*
For purposes of determining reasonable suspicion to justify a traffic stop, the "fellow officer" (or "collective knowledge") rule has both horizontal and vertical components - - vertical when one officer with reasonable suspicion directs another to take an action, and horizontal when the collective knowledge of several officers, taken together, creates the reasonable suspicion needed to justify the action.

***US v. Hernandez**, __F.3d__, No. 15-1116 (10th Cir., Feb. 9, 2017).*
A uniformed officer who pulled alongside a pedestrian and asked him questions as he walked did not commit a Fourth Amendment seizure. However, a seizure occurred when he asked the pedestrian to stop walking, under circumstances where the pedestrian was being closely followed by a police car, it was dark, he was alone, and he was not told that he could terminate the encounter.

***US v. Lopez**, __F.3d__, Nos. 15-3130 & 3134 (10th Cir., Feb. 27, 2017).*
No reasonable suspicion existed to detain a motorist until a drug dog could be summoned after the driver had been given a warning ticket and wished safe travels and the officer then returned to the vehicle and asked a few more questions after which the motorist refused consent to the search of her vehicle. General nervousness and unusual travel plans - - absent lies or inconsistencies - - do not provide reasonable suspicion sufficient to prolong a traffic stop.

***US v Juszczyk**, __F.3d__, No. 15-3323 (10th Cir., Jan. 3, 2017).*
An individual who threw his backpack on a neighbor's roof had no Fourth Amendment reasonable expectation of privacy in it for purposes of a later search.

***Vasquez v. Lewis**, __F.3d__, No. 14-3278 (10th Cir., Aug. 23, 2016).*
Officers who stopped and searched a car because it was travelling at night with out-of-state license plates are not entitled to qualified immunity from a Fourth Amendment claim.

***Washington v. Wyandotte County**, __F.3d__, No. 15-3181 (10th Cir., Feb. 6, 2017).*
A county's random drug test of an employee did not violate the Fourth Amendment, since drug use among the tested individuals would threaten workplace or public safety - - in this case the juveniles this case worker had to train and supervise.

***Carter v. Butts County**, __F.3d__, No. 1512529 (11th Cir., May 3, 2016).*
Qualified immunity from a Fourth Amendment claim is denied to an officer who arrested and jailed persons who were lawfully cleaning out the officer's foreclosed-upon house.

***May v. City of Nahunta**, __F.3d__, No. 15-11749 (11th Cir., Jan. 19, 2017).*
The Fourth Amendment right of a mental health detainee to personal security may be violated when, prior to transporting her to the hospital for an evaluation, the responding officer detained her in a locked room for twenty minutes and required her to disrobe.

***Milwood v. Shaheen**, __F.3d__, No. 15-15240 (11th Cir., Oct. 4, 2016).*
Transvaginal ultrasounds are Fourth Amendment searches.

***US v. Aponte**, __F.3d__, No. 14-15208 (11th Cir., Oct. 26, 2016).*
An officer's retention of a motorist's drivers' license was not a Fourth Amendment seizure since the motorist's car was disabled and he could not go anywhere while waiting for a tow.

***US v. Ortega**, __F.3d__, No. 16-13400 (11th Cir., Feb. 8, 2017).*
An individual, for Fourth Amendment purposes, does not have a reasonable expectation of privacy in subscriber information that was voluntarily transmitted and stored by a third party internet service provider.

***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. Vargas**, __F.3d__, No. 16-14714 (11th Cir., Feb. 16, 2017).*
The extended length of a traffic stop did not violate the Fourth Amendment when it was due to no person being present who could lawfully operate the stopped vehicle.

Young v. Borders, *__F.3d__, No. 14-14673 (11th Cir., Mar. 16, 2017).*
Simply knocking on an apartment door, albeit loudly and early in the morning, without more of a "show of authority" indicating to the apartment residents that they had to open their door, or would not be permitted to close their door and remain in their apartment, dos not violate the Fourth Amendment's "knock and talk" exception.

Corrigan v. D.C., *__F.3d__, No. 15-7098 (D.C. Cir., Nov. 8, 2016).*
Qualified immunity against a Fourth Amendment claim was denied to officers who entered a home and conducted a valid protective sweep but, after securing the scene, conducted a second thorough search of the premises, absent a warrant or exigent circumstances.

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

4. FOURTH AMENDMENT: EXCESSIVE FORCE

Figueroa v. Mazza, *__F.3d__, No. 14-4116 (2nd Cir., June 3, 2016).*
The court refuses to adopt a bright line rule in "failure to intervene" excessive force cases that would hold that assaults that last less than 30 seconds do not provide officers with sufficient time to intervene.

Johnson v. Philadelphia, *__F.3d__, No. 15-2346 (3rd Cir., Sept. 20, 2016).*
Allegedly improper actions by an officer in initiating a one-on-one confrontation with an individual, which eventually led to the individual's death, do not establish a causal link between those actions and the death, when the individual's violent attack of the officer during the confrontation constituted a superceding cause that justified the officer's use of lethal force.

Yates v. Terry, *__F.3d__, No. 15-1555 (4th Cir., Mar. 31, 2016).*
No qualified immunity for 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, without first providing a warning to the driver or ordering him not to move, since the driver posed no risk to the officer.

Aaron Brothers v. Zoss, *__F.3d__, No. 15-51204 (5th Cir., Sept. 14, 2016).*
The fact that officers, who pulled an intoxicated driver from the cab of his truck, precipitated the fall that left him paralyzed does not, in itself, prove that excessive force was used. Moreover, all actions that result in serious injury are not tantamount to deadly force.

Cooper v. Brown, *__F.3d__, No. 16-60042 (5th Cir., Dec. 27, 2016).*
Allowing a police dog to continue biting a compliant and non-threatening arrestee constitutes excessive force under the Fourth Amendment.

***Griggs v. Brewer**, __F.3d__, No. 16-10221 (5th Cir., Oct. 28, 2016).*
No excessive force exists when an officer uses non-deadly punches to gain control of the arms of a drunken, resisting suspect.

***Hatcher v. Bement**, __F.3d__, No. 16-10488 (5th Cir., Jan. 19, 2017).*
It may be excessive force to shoot an unarmed suspect who, after struggling with a police officer, was pepper-sprayed and then was slowly walking away from the officer while bent over and wiping his eyes.

***Mendez v. Poitevent**, __F.3d__, No. 15-10358 (5th Cir., May 19, 2016).*
The mere fact that an assailant, after a violent physical attack upon a border agent, may have begun to flee in the seconds before he was shot by the injured agent, did not make the agent's use of deadly force violative of the Fourth Amendment.

***Pratt v. Harris County**, __F.3d__, No. 15-20080 (5th Cir., May 3, 2016).*
Hog-tying an arrestee is neither a *per se* unconstitutional technique nor a *per se* exercise of excessive force.

***Thomas v. Pohlmann**, __F.3d__, No. 16-30798 (5th Cir., Mar. 15, 2017).*
An excessive force claim is not barred by *Heck* if it is temporally and conceptually distinct from the claimant's conviction.

***Zimmerman v. Cutler**, __F.3d__, No. 15-50424 (5th Cir., Sept. 20, 2016).*
Qualified immunity against an excessive force claim is granted to an officer who Tased a fleeing non-violent misdemeanant who fell down and broke his arm as a result.

***Thomas v. Pohlmann**, __F.3d__, No. 16-30798 (5th Cir., Mar. 15, 2017).*
An excessive force claim is not barred by *Heck* if it is temporally and conceptually distinct from the claimant's conviction.

***Brackens v. Lettie**, __F.3d__, No. 15-6142 (6th Cir., Feb. 21, 2017).*
Reasonable force does not become "excessive" when it hurts a person with a medical condition of which the responding officers were unaware. Moreover, in making a high-risk stop, officers can rely upon information from dispatch that turns out to be wildly inaccurate.

***Folks v. Petitt**, __F.3d__, No. 16-3596 (6th Cir., Jan. 23, 2017).*
Summary judgment was denied to an officer on an excessive force claim that stemmed from him forcefully removing a cooperative, non-aggressive driver suspected of driving on a suspended license from his vehicle and slamming him against the windshield of his car.

***Getz v. Swoap**, __F.3d__, No. 15-3514 (6th Cir., Aug. 16, 2016).*
Placing a struggling arrestee in handcuffs that were tight enough to cause skin abrasions for between five and twenty minutes is not excessive force, even if the arresting officer failed to check for tightness and did not double-lock the handcuffs.

***Jackson v. Lubelan**, __F.3d__, No. 15-2563 (6th Cir., Sept. 16, 2016).*
No excessive force claim arises from overly tight handcuffing in the absence of a physical injury caused by the handcuffing.

***Jackson v. Washtenaw County**, __F.3d__, No. 15-1250 (6th Cir., Jan. 31, 2017).*
Tasing a struggling arrestee four times in five minutes was not excessive force, and neither was punching him in the face when he tried to bite an officer.

***Jelsma v. Knox County**, __F.3d__, No. 16-6202 (6th Cir., Jan. 20, 2017).*
No qualified immunity for an officer who forcefully took a woman he was interviewing to the ground after she began to record the interview on her cell phone.

***Jennings v. Fuller**, __F.3d__, No. 15-1870 (6th Cir., Sept. 9, 2016).*
Qualified immunity was denied to an officer for his vicious take-down, pepper-spraying, Tasing, and 3-hour restraint of an arrestee who lowered his left hand (and thereby removed it from a wall during his pat-down) in response to the officer touching his groin area.

***Scott v. Kent County**, __F.3d__, No. 16-1587 (6th Cir., Feb. 17, 2017).*
No excessive force existed when an officer, attempting to remove a disruptive arrestee from a jail cell, took him to the ground after he stepped towards the officer with clenched fists.

***Lawry v. Rodriquez**, __F.3d__, No. 15-1730 (6th Cir., Aug. 25, 2016).*
Qualified immunity was denied to police officers who continued to kneel on the back and head of an arrestee once he was subdued and stopped resisting.

***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 to 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.

***Presnall v. Huey**, __F.3d__, No. 16-1105 (6th Cir., Sept. 22, 2016).*
Officers who shot and killed a man after he pointed a gun at them and pulled the trigger - - only to have the gun misfire - - did not use excessive force.

***Woodcock v. Wiles**, __F.3d__, No. 16-5322 (6th Cir., Feb. 16, 2017).*
Summary judgment was denied to an officer who shot and killed a man who appeared to be intoxicated, ignored orders to stop, and kept his hand behind his back, since, even if he had a gun, he gave no indication that he would use it, threatened no one, and posed no imminent threat of serious harm to anyone. The officer's partner, who did not stop the shooting, was also denied summary judgment on failure to supervise and failure to intervene claims. Finally, the court declined to apply the "intra-corporate conspiracy doctrine" to the plaintiff's Section 1983 civil conspiracy claim.

Becker v. Elfreich, *__F.3d__, No. 15-1363 (7th Cir., May 12, 2016).*
Qualified immunity is denied to an officer who, after the plaintiff surrendered, dragged him down three steps, placed a knee in his back, and allowed a police dog to continue biting him.

Ehlers v. Dirkes, *__F.3d__, No. 16-1834 & 1835 (7th Cir., Jan. 25, 2017).*
An arrestee who continues to lay on his hands in defiance of an officer's instructions could reasonably be believed to be resisting and Tasering him was therefore not "excessive force." Using an arm bar in taking down and handcuffing a resisting arrestee is also not excessive force.

Malone v. Hinman, *__F.3d__, No. 15-3465 (8th Cir., Feb. 7, 2017).*
No excessive force for an officer to shoot a suspect as he ran towards another officer while holding a gun.

Ames v. King County, *__F.3d__, No. 14-36035 (9th Cir., Jan. 13, 2017).*
Qualified immunity was granted to deputies against a Fourth Amendment excessive force and warrantless search claim that stemmed from their response to a 911 call regarding a possible suicide, wherein they were denied entry into the apartment where the victim was located, withdrew, saw the homeowner exit and load an unconscious victim into her truck, then forced their way into the truck, took down the resisting driver by a hair hold, searched the vehicle, and transported the victim to the hospital.

Hughes v. Kisela, *__F.3d__, No. 14-15059 (9th Cir., Nov. 28, 2016).*
Summary judgment is denied to a police officer on an excessive force claim stemming from the shooting of the plaintiff for walking down her driveway and approaching a third party while holding a kitchen knife, although she did not comply with police orders to drop the knife. She never raised the knife and maintained a composed and non-threatening demeanor.

Lowry v. San Diego, *__F.3d__, No. 13-56141 (9th Cir., April 1, 2016).*
Municipal liability on an "excessive force" claim may exist when a police department policy is to have their K-9 dogs bite and hold the first person they come across after being released into a building, regardless of the person's risk of danger to another.

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 because, although the plaintiff was not fleeing or threatening to harm anyone but himself, he was intoxicated, volatile, and armed.

Carabajal v. Cheyenne P.D. *, __F.3d__, No. 15-8139 (10th Cir., Feb. 6, 2017).*
An officer did not use excessive force when he shot the driver of a vehicle after the driver disobeyed the officer's command and slowly drove his vehicle towards the officer. The officer was not required to "stand down and hope for the best."

Clark v. Bowcutt, *__F.3d__, No. 14-4163 (10th Cir., Jan. 5, 2017).*
An officer who stepped in front of a moving vehicle to stop it from leaving the traffic stop, and then shot the driver after he ignored the officer's numerous commands to stop, did not engage in excessive force despite his opportunity to move aside and let the vehicle exit prior to shooting the driver.

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.

Boynton v. Tallahassee, *__F.3d__, No. 15-14343 (11th Cir., May 24, 2016).*
Tasing a non-argumentative, non-aggressive, and immobile medical patient nine times to get him to move from the floor to an EMT's stretcher is "excessive force" under the Fourth Amendment.

Clemons v. Knight, *__F.3d__, No. 16-12239 (11th Cir., Oct. 12, 2016).*
No excessive force existed when officers shot a motorist during a traffic stop after he tried to flee the scene in his vehicle and one officer was in or near the path of that vehicle.

Collar v. Austin, *__F.3d__, No. 15-14482 (11th Cir., Sept. 2, 2016).*
An officer was justified, for purposes of an excessive force claim, in using a firearm to stop a rapidly advancing assailant when there was no time for him to unholster and use his pepper spray, and despite another officer being located nearby.

Davidson v. City of Opelika, *__F.3d__, No. 16-10857 (11th Cir., Jan. 17, 2017).*
No excessive force for an officer to shoot a driver during a traffic stop when the driver, although unarmed, exited his vehicle holding a wallet in his hand that looked like a weapon.

Dukes v. Deaton, *__F.3d__, No. 15-14373 (11th Cir., Jan. 26, 2017).*
An officer who threw a "flash bang" in a dark room occupied by two sleeping persons, without first visually inspecting the room, did not engage in "excessive force," even though the device burned one of the sleepers.

Hart v. Logan, *__F.3d__, No. 16-10556 (11th Cir., Nov. 22, 2016).*
No excessive force existed when an officer shot an individual who was advancing towards him and refused to show his hands.

Hendrickson v. Cervone, *__F.3d__, No. 15-11100 (11th Cir., Sept. 26, 2016).*
Painful handcuffing, without more, is not excessive force.

Jacoby v. Baldwin County, *__F.3d__, No. 14-12773 (11th Cir., Nov. 7, 2016).*
Qualified immunity against an excessive force claim is denied to officers who left an arrestee in a restraint chair wearing pepper-spray and urine-soaked clothes for over eight hours, although their initial pepper-spraying and restraint were justified.

Montanez v. City of Orlando, *__F.3d__, No. 15-15211 (11th Cir., Feb. 2, 2017).*
"Clotheslining" a bicyclist who disobeyed an officer's order to stop and who was apparently attempting to flee the scene was not excessive force.

Nigro v. Carrasquillo, *__F.3d__, No. 16-10193 (11th Cir., Oct. 4, 2016).*
Two short bursts of pepper spray shot at a woman who violently kicked a patrol car door and then resisted arrest is not excessive force.

Prevatt v. Gainesville, FL, *__F.3d__, No. 16-11081 (11th Cir., Aug. 8, 2016) (unpub).*
It was not excessive force for an officer to tackle a suspect who had taken several steps away from him but then stopped just before he was tackled.

Sexton v. Mangiaracina, *__F.3d__, No. 16-11403 (11th Cir., Sept. 16, 2016).*
An excessive force claim survives summary judgment when a person who had been drinking and had a handgun in his pocket was allegedly shot as he began to kneel in compliance with an officer's instructions to do so.

Shuford v. Conway, *__F.3d__, No. 16-12128 (11th Cir., Nov. 18, 2016).*
Qualified immunity was denied to an officer who shot with pepperballs and a Taser a non-violent arrestee who had been placed in a holding cell and who was obeying the officer's orders to kneel and put his hands on his head. A supervisor who had viewed numerous videotapes of past instances of this type of conduct was also not immune from liability against a Fourteenth Amendment claim.

Smith v. LePage, *__F.3d__, No. 15-11632 (11th Cir., Aug. 25, 2016).*
A non-complaint suspect need not be armed in order to justify the use of non-lethal force against him.

Wate v. Kubler, *__F.3d__, No. 15-15611 (11th Cir., Oct. 12, 2016).*
Qualified immunity is denied to officers on an excessive force claim when they Tased an individual five times, at least twice after he had ceased resisting and was no longer a flight risk.

Williams v. Luecke, *__F.3d__, No. 14-14183 (11th Cir., Oct. 26, 2016).*
It was not excessive force for an officer, during a traffic stop, to grab and attempt to push back in his car a motorist who exited his vehicle and then ignored the officer's order to return to it.

5. FIFTH AMENDMENT

Cole v. Memphis, *__F.3d__, Nos. 15-5725 & 5999 (6th Cir., Oct. 17, 2016).*
A city policy of requiring all persons to immediately leave the sidewalks and street at 3:00 am every morning despite the lack of any present threat to police officer safety, violated these persons' fundamental liberty right to intra-state travel and was not sufficiently tailored so as to survive an intermediate scrutiny analysis.

***US v. Calvetti**, __F.3d__, Nos. 15-1526 & 1558 (6th Cir., Sept. 8, 2016).*
An individual's consent to search her residence is not an incriminating statement under the Fifth Amendment because it is not testimonial or communicative evidence.

***US v. Mays**, __F.3d__, No. 16-3177 (6th Cir., Mar. 23, 2017).*
A single statement during a police interview: "I really should have a lawyer, huh?" is not an unequivocal request for counsel for Fifth Amendment purposes.

***Bell v. Country Club Hills**, __F.3d__, No. 16-1245 (7th Cir., Nov. 8, 2016).*
A city's repeal of an ordinance that provided a 25% tax rebate to qualified homeowners did not violate the Fifth Amendment because this tax rebate program did not confer vested property rights to these homeowners.

***Gill v. Milwaukee**, __F.3d__, No. 16-2846 (7th Cir., Mar. 7, 2017).*
Detectives were entitled to qualified immunity against Fifth and Fourteenth Amendment claims stemming from their use of interrogation techniques such as social isolation, confrontation, theme development, minimization, and falsely stating that a suspect had been identified by an eyewitness and failed a polygraph test in order to coerce a confession from the functionally illiterate suspect.

***Joe Sanfelippo Cabs v. Milwaukee**, __F.3d__, No. 16-1008 (7th Cir., Oct. 7, 2016).*
Removing the cap on the number of taxicab permits issued by a city does not violate the Fifth Amendment because there is no property interest in a taxicab permit.

***US v. Adams**, __F.3d__, Nos. 14-3339 & 14-3354 (8th Cir., April 11, 2016).*
"I don't want to talk, man" is not an unequivocal invocation of the right to remain silent when it is promptly followed by the speaker starting a conversation with the same police officer.

***US v. Bailey**, __F.3d__, No. 15-3591 (8th Cir., Aug 5, 2016).*
Statements made while sitting alone in a police car that had its video recording device turned on, made before *Miranda* warnings were given, were properly admissible at trial.

***US v. Laurita**, __F.3d__, No. 15-1137 (8th Cir., May 4, 2016).*
A "custodial interrogation" is not necessarily created whenever an interviewee is not expressly told that his participation is voluntary and that he is free to leave at any time.

***Reyes v. Lewis**, __F.3d__, No. 12-56650 (9th Cir., Aug. 17, 2016).*
A post-*Miranda* statement must be suppressed if interrogating officers deliberately used the two-step interrogation technique used in *Missouri v. Seibert* and effective corrective measures were not taken to insure that the interviewee understood his *Miranda* warning.

***US v. Loucious**, __F.3d__, No. 16-10121 (9th Cir., Feb. 7, 2017).*
Miranda warnings are not constitutionally deficient because they did not explicitly inform an arrestee of his right to consult with an attorney before questioning when that right is reasonably inferred from the warning given. *Miranda* warnings need not follow a precise formulation.

Vogt v. City of Hays, *__F.3d__, No. 15-3266 (10th Cir., Jan. 4, 2017).*
The Fifth Amendment right against self-incrimination applies to compelled statements used both at trial and in probable cause hearings. Such a Fifth Amendment violation can serve as the basis for Section 1983 liability.

Etherton v. City of Rainsville, *__F.3d__, No. 15-15147 (11th Cir., Sept. 26, 2016).*
A municipality's enforcement of its zoning law against private property did not "take" without due process a landowner's contract with a potential purchaser of that property even though this action discouraged the purchaser from going forward with the purchase.

US v. Smith, *__F.3d__, No. 13-15476 (11th Cir., April 29, 2016).*
In a case of first impression in the Circuit, the court holds that a public employee, after he has been terminated, may knowingly and voluntarily waive his *Garrity* rights and allow his prior compelled and protected statements to be used in a criminal investigation.

6. FOURTEENTH AMENDMENT; DUE PROCESS

Ferrari v. Suffolk County, *__F.3d__, No. 15-975 (2nd Cir., Dec. 7, 2016).*
When a sports car is impounded after its driver is arrested for operating while impaired, due process is met when, at a post-seizure hearing, the county makes out a *prima facie* case for its retention in order to protect its interests in the financial value of the vehicle and to protect the public from further illegal driving. The title owner is then required to meet its burden of identifying alternative measures that would satisfy the county's interests.

Black v. Montgomery County, *__F.3d__, No. 15-3399 (3rd Cir., Aug. 20, 2016).*
For purposes of a Fourteenth Amendment due process claim regarding allegedly fabricated evidence, a plaintiff is not required to be convicted at trial in order to proceed with her claim.

Hackbelt 27 v. City of Coppell, *__F.3d__, No. 15-11109 (5th Cir., Sept. 27, 2016).*
For substantive due process purposes, a city council's concerns that a zoning request for a mixed use development lacked cohesiveness and that a proposed hotel was not the best use for the property were sufficiently related to the city's interests in promoting the general welfare and were neither arbitrary or unpredictable reasons for its denial of this request.

Montano v. Orange County, *__F.3d__, No. 15-41432 (5th Cir., Nov. 29, 2016).*
A custom and practice of leaving persons in a detox cell for five to six days, without medical care, supports an unconstitutional "condition of confinement" claim.

Three Legged Monkey v. El Paso, *__F.3d__, No. 15-50946 (5th Cir., June 10, 2016) (unpub).*
A municipality that aggressively enforced its ordinances in response to citizen complaints against a tavern, and used its leverage to encourage the tavern's landlord not to renew the tavern's lease, did not engage in conscious-shocking conduct that violated substantive due process.

Caminata v. Wexford County, *__F.3d__, No. 16-1451 (6th Cir., Nov. 17, 2016).*
Mere negligence in a fire investigation does not support a Fourth and Fourteenth Amendment claim stemming from the plaintiff's arrest for alleged arson.

Nelson v. Madison Heights, *__F.3d__, No. 15-2441 (6th Cir., Jan. 9, 2017).*
Summary judgment is denied against a Section 1983 substantive due process claim brought against an officer when he disclosed the name of a drug informant to a drug dealer's associate, which led to the informant's death.

Parisi v. Heck, *__F.3d__, No. 16-3114 (6th Cir., Nov. 16, 2016).*
A county prosecutor's office did not violate an attorney's substantive due process right of privacy when it shared with a bar association evidence of the attorney's possible unethical conduct despite no professional obligation on its part to do so.

Pesci v. City of Niles, *__F.3d__, No. 16-2057 (6th Cir., Jan. 5, 2017).*
The duty to supervise is not a duty to micro-manage, and a municipality does not open itself up to Section 1983 liability under the Fourth or Fourteenth Amendments whenever it delegates power to employees.

Cairel v. Alderden, *__F.3d__, No. 14-1711 (7th Cir., May 5, 2016).*
The mere fact that a person interrogated by police has a cognitive impairment does not make that interrogation "conscience shocking" for Fourteenth Amendment purposes.

Canen v. Chapman, *__F.3d__, No. 16-1621 (7th Cir., Jan. 27, 2017).*
The failure of a detective to disclose that he was not trained as a latent print examiner, when his mis-identification of a print led to the plaintiff's conviction, does not violate any clearly established right for purposes of a Section 1983 due process claim.

Giddeon v. Flynn, *__F.3d__, No.15-3464 (7th Cir., July 28, 2016).*
Requiring an arrestee to remain in a car with an interior temperature of 90˚ F for 30 minutes does not violate his civil rights.

LLC v. Black Earth, *__F.3d__, No. 15-3818 (7th Cir., Aug. 24, 2016).*
If the actual abatement of a public nuisance is not a deprivation of due process, mere notice that a government actor will pursue a nuisance action against an individual is also not a deprivation of due process.

Bolderson v. Wentzville, *__F.3d__, No. 15-3846 (8th Cir., Nov. 1, 2016).*
The fact that a municipal official had discretion to hire and fire does not necessarily mean that he had responsibility for establishing related policy so as to transform him into a "policymaker" for Section 1983 municipal liability purposes.

Hughes v. Cedar Rapids, *__F.3d__, No. 15-2703 (8th Cir., Nov. 2, 2016).*
A government agency's regulations do not set the legal standard for procedural due process, and their mere violation does not constitute a federal due process violation.

Jenkins v. Anderson, *__F.3d__, No. 15-3273 (8th Cir., Oct. 3, 2016).*
The fact that a woman does not immediately report the inappropriate advances of her supervisor towards her does not indicate that his advances were welcome for purposes of a Section 1983 Fourteenth Amendment sexual harassment claim.

MacMann v. City of Columbia, *__F.3d__, No. 15-3400 (8th Cir., Dec. 9, 2016).*
The right to a municipal referendum is not protected by the Due Process Clause.

Truong v. Hassan, *__F.3d__, No. 15-2052 (8th Cir., July 14, 2016).*
No substantive due process violation occurred when a bus passenger was injured after he did not pay his fare, refused to leave the bus, was removed from the bus, and then jumped in front of the bus and was hurt. The entire episode took nine minutes and was rapidly evolving, with no time for deliberation. No intent to harm was shown.

Hardwick v. Orange County, *__F.3d__, No. 15-55563 (9th Cir., Jan. 3, 2017).*
Qualified immunity was denied to social workers who allegedly used perjured testimony and fabricated evidence to effectuate the plaintiff's removal from her mother's home.

Castillo v. Bobelu, *__F.3d__, No. 15-6203 (10th Cir., Aug. 26, 2016).*
For purposes of a Section 1983 claim, eight hours of training - - and perhaps no formal training - - is sufficient for prison guards to know that they are not to sexually assault inmates.

Kirkpatrick v. Washoe County, *__F.3d__, No. 12-15080 (9th Cir., Dec. 9, 2016).*
Social workers who suspect child abuse must pursue a warrant before seizing a child if they have time to do so without risking the child's well-being - - absent imminent danger of serious bodily injury. However, a parent with no enforceable parental rights at the time of the child's removal had no standing to bring a Fourteenth Amendment claim challenging the removal.

Pauluk v. Savage, *__F.3d__, No. 14-15027 (9th Cir., Sept. 8, 2016).*
The due process "state-created danger" doctrine can be applied to dangers that result from a physical condition (such as mold) in a government employee's workplace.

Yagman v. Garcetti, *__F.3d__, No. 14-56223 (9th Cir., Jan. 20, 2017).*
A municipal procedure for contesting parking citations, which requires the penalty to be paid or proof of inability to pay before an administrative hearing is held on the citation, does not violate an offender's procedural due process rights.

Onyx v. Bd. Of Commsrs. , *__F.3d__, Nos. 15-1141 & 1197 (10th Cir., Oct. 3, 2016).*
The adoption of a comprehensive zoning ordinance is a legislative act that does not require a due process hearing for the landowners affected by the ordinance.

Thomas v. White-Gordon, *__F.3d__, No. 16-1042 (10th Cir., Dec. 6, 2016).*
Having a duty to protect the "public at-large" does not establish a special relationship with a particular member of the public for purposes of a substantive due process claim.

***Browder v. Casaus**, __F.3d__, No. 16-2092 (10th Cir., Jan. 11, 2017).*
Summary judgment was denied to a police officer on a substantive due process claim brought by a plaintiff who was seriously injured when an off-duty police officer, for no legitimate law enforcement purpose, activated his emergency lights, sped through red lights, and collided with the plaintiff's vehicle.

***Zia Shadows v. City of Las Cruces**, __F.3d__, No. 15-2009 (10th Cir., July 25, 2016).*
For purposes of a due process claim, a claimant has no constitutionally protected property interest in a special use permit that a city has the right to amend or revoke through subsequent zoning amendments. Also, government employment alone does not bar a prospective juror from serving in a case involving her government employer.

***May v. City of Nahunta**, __F.3d__, No. 15-11749 (11th Cir., Nov. 15, 2016).*
Qualified immunity was denied to an officer who was justified in conducting a mental health seizure but who may have violated the seized individual's Fourth Amendment rights to personal security by the unreasonable manner in which he conducted this otherwise justified seizure.

7. EQUAL PROTECTION

***Davidson, et al., v. City of Cranston**, __F.3d__, No. 16-1692 (1st Cir., Sept. 21, 2016).*
Using total population data to divide a city into six nearly equal-in-population voting districts does not violate the Equal Protection Clause even though much of the population contained in one district consisted of prisoners housed in an adult correctional facility.

***Public Integrity Alliance v. Tucson**, __F.3d__, No. 15-16142 (4th Cir., Sept. 2, 2016).*
A city's system for electing members to its common council, which uses a ward-based primary and an at-large general election, does not violate the Equal Protection Clause.

***Integrity Collision v. City of Fulshear**, __F.3d__, No. 15-20560 (5th Cir., Sept. 20, 2016).*
A class-of-one equal protection claim is inappropriate in the context of a local government's discretionary decision as to whether to include a towing company on its non-consent tow list. The quality and quantity of towing companies that a municipality needs in order to fulfill its non-consent towing obligations is not for the court to decide or the Equal Protection Clause to inform. That the police chief requires only two towing companies to satisfy this need is sufficient to survive a rational-basis review.

***Illinois Transp. Trade Assoc. v. Burgess**, __F.3d__, No. 16-2009 (7th Cir., Oct. 7, 2016).*
"Property" does not include the right to be free from competition. Taxicabs and transportation network providers provide different services, and a city's different licensing and fare rules for taxicabs and Uber drivers does not violate the Equal Protection Clause or the Fifth Amendment.

American Family Insur. v. Minneapolis, *__F.3d__, No. 15-3216 (8th Cir., Sept. 6, 2016).*
A municipality did not violate the Equal Protection Clause when, after a city water main break caused damage, it paid all claimants who were natural persons or business entities whose insurance did not cover their loss and refused to pay all claims by insurance companies for similar losses suffered by their insureds.

8. EEOC; TITLE VII

Burns v. Johnson, *__F.3d__, No. 15-1982 (1st Cir., July 12, 2016).*
A plaintiff who brings a Title VII sex discrimination claim against her employer under a mixed motive theory can prove her case by circumstantial evidence alone. A change in job duties leaving an employee with nothing but clerical and menial duties can constitute an actionable adverse employment action.

Jones v. City of Boston, *__F.3d__, No. 15-2015 (1st Cir., Dec. 28, 2016).*
For Title VII purposes, a police department's "hair test" requirement, which tested for drug use, was job-related and consistent with business necessity although it was not 100% accurate. However, the employer's refusal to adopt a more accurate "hair test plus urinalysis" procedure may result in disparate impact liability if this alternative procedure would have produced less of a disparate impact based upon race yet have still served the employer's legitimate needs.

Tang v. Citizens Bank, *__F.3d__, No. 15-2003 (1st Cir., May 19, 2016).*
The use of the word "ass" in the workplace does not necessarily amount to sexual harassment.

Christiansen v. Omnicom, *__F.3d__, No. 16-748 (2nd Cir., Mar. 27, 2017).*
Under Title VII, an employee's claim that he was perceived by his supervisors as effeminate and submissive, and harassed for those reasons, state a cognizable gender stereotyping claim.

Vasquez v. Empress Ambulance, *__F.3d__, No. 15-3239 (2nd Cir., Aug. 29, 2016).*
Under Title VII, an employer cannot normally be held responsible for the retaliatory animus of a low level co-worker that led to an employee's termination. However, that employee's retaliatory intent can be imputed to his employer when the employer's own negligence gave effect to the employee's animus and caused the plaintiff to suffer the adverse employment action. In this case, the court adopted this negligence-based approach to the "cat's paw" theory of liability because the employer had allegedly negligently credited the low-level employee's accusations to the exclusion of all contrary evidence.

Carvalho-Grevious v. Delaware St. *, __F.3d__, No. 15-3521 (3rd Cir., Mar. 21, 2017).*
In a Title VII retaliation claim, the plaintiff at the *prima facie* stage need only provide evidence sufficient to raise an inference that her protected activity was a likely reason for her adverse employment action - - not the "but for" reason.

Baker v. McHugh, *__F.3d__, No. 15-41439 (5th Cir., Dec. 5, 2016).*
The exhaustion of EEOC administrative remedies is not jurisdictional in Title VII cases.

***Burgess v. Hattiesburg**, __F.3d__, No. 16-60171 (5th Cir., Nov. 5, 2016).*
Mere workplace harassment, without evidence that it was race or disability related, does not support a Title VII or ADA claim.

***EEOC v. Bass Pro**, __F.3d__, No. 15-20078 (5th Cir., June 17, 2016).*
Congress did not prohibit the EEOC from bringing pattern or practice lawsuits under Section 706. The Commission can meet its conciliation and investigation obligations without naming individual class members and by relying upon statistical and anecdotal evidence, rather than upon evidence about any specific aggrieved individual.

***EEOC v. Rite Way**, __F.3d__, No. 15-60380 (5th Cir., April 8, 2016).*
In a case of first impression in the Circuit, the court holds that in order to survive a motion for summary judgment, a third party witness contending that she was retaliated against after participating in a harassment allegation investigation need not show that the discrimination rose to the level of a Title VII violation, but only a reasonable belief that it did.

***Outley v. Luke & Assoc.** , __F.3d__, No. 16-60223 (5th Cir., Oct. 19, 2016).*
A lateral job transfer is not an adverse employment action under Title VII merely because it changes an employee's working hours or imposes a heavier workload.

***Panagiota Heath v. Bd. Of Supervisors**, __F.3d__, No. 16-30625 (5th Cir., Mar. 8, 2017).*
Under Title VII, the continuing violation doctrine applies even when a claimant knew or should have earlier been aware of a duty to assert her rights, thus allowing the claimant to support her harassment claim with evidence of conduct that occurred more than 300 days before she filed her EEOC charge. The continuing violation doctrine applies the same to both Title VII and Section 1983 hostile work environment claims.

***Pullen v. Caddo Parrish**, __F.3d__, No. 15-30871 (5th Cir., July 20, 2016).*
An employer could not avail itself of the *Ellerth/Faragher* defense against liability for supervisor sexual harassment when it is unclear whether its employees were trained on sexual harassment, informed of their employer's sexual harassment policy, where to find it, or to whom to complain.

***Rogers v. Pearland**, __F.3d__, No. 14-41115 (5th Cir., June 28, 2016).*
An African-American job applicant who was not hired due to his failure to disclose a felony conviction on his job application, and who was subsequently not hired for a second job position because of his untruthfulness on his first job application, did not establish a *prima facie* case of racial discrimination under Title VII.

***Adamov v. US Bank**, __F.3d__, No. 16-5458 (6th Cir., Mar. 7, 2017).*
In a Title VII national-origin discrimination case, a less than one month gap between an employee's protected conduct and his adverse employment action, coupled with increased work scrutiny, created an inference of causation and pretext.

***Graves v. Dayton**, __F.3d__, No. 15-4049 (6th Cir., Sept. 13, 2016).*
The fact that a female employee received two sex-based texts that did not evince an anti-female animus, and that the sender of these texts was angry at her for reporting them to her supervisor but not for her being female, does not establish a Title VII hostile work environment.

***Lee v. Cleveland Clinic**, __F.3d__, No. 16-3901 (6th Cir., Jan. 20, 2017).*
Increased surveillance and discipline, whether warranted or not, do not constitute a material change in a terms of employment in a discrimination context. However, a suspension without pay, once issued and even if not yet served, can constitute an adverse employment action under Title VII.

***Presley v. Ohio Dept. of Rehab.** , __F.3d__, No. 16-3563 (6th Cir., Jan. 6, 2017).*
Under Title VII, a constructive discharge did not occur when a nurse was temporarily assigned to an administrative position pending an investigation into her conduct, when that temporary assignment was not "objectively intolerable."

***Carlson v. Christian Bros.** , __F.3d__, No. 15-3807 (7th Cir., Oct. 27, 2016).*
Filling out a "complaint information sheet" is not the same as filing a charge of discrimination with the EEOC for exhaustion of administrative remedies purposes.

***Cole v. NIV**, __F.3d__, No. 15-2305 (7th Cir., Sept. 27, 2016).*
Forms of harassment that might seem neutral in terms of a protected status can still contribute to a hostile work environment claim if the evidence supports a reasonable inference tying the harassment to a plaintiff's protected status.

***Hively v. Ivy Tech**, __F.3d__, No. 15-1720 (7th Cir., July 28, 2016).*
Title VII does not protect employees from sexual orientation discrimination.

***Ortez v. Werner**, __F.3d__, No. 15-2574 (7th Cir., Aug. 19, 2016).*
The court overrules prior Circuit opinions that either required a different analysis of "direct" and "indirect" evidence of discrimination based upon ethnicity in, or made a "convincing mosaic" of direct and indirect evidence of discrimination a legal requirement of, a successful Section 1981 discrimination claim.

***Poullard v. McDonald**, __F.3d__, No. 15-1962 (7th Cir., July 21, 2016).*
Under Title VII, threats of discipline are not adverse employment actions, although they can show intent or pretext if a disciplinary action is later taken.

***Volling v. Kurtz**, __F.3d__, No. 15-3572 (7th Cir., Oct. 19, 2016).*
Providing notice of a job opening to some employees but not to those who had previously been involved in protected activity may be an actionable adverse employment action even though the latter group of employees never applied for the open position at issue.

***Blackwell v. Alliant**, __F.3d__, No. 15-2316 (8th Cir., May 16, 2016).*
No discrimination was shown when an employer fired a worker for elbowing another in the back, when that incident was corroborated by the written statement of another employee. It is irrelevant that, after the worker's termination, the corroborating witness recanted his statement.

***Blomker v. Jewell**, __F.3d__, No. 15-1787 (8th Cir., Aug. 5, 2016).*
Seven separate workplace incidents over a three year span involving two male employees, where no actual touching occurred, did not create a hostile work environment.

***Liles v. McCrossan**, __F.3d__, No. 15-3801 (8th Cir., Mar. 21, 2017).*
Title VII retaliatory causation is not shown where adverse employment actions took place between eight and fifteen months after the claimant's complaints of discrimination.

***Wilson v. Arkansas DHS**, __F.3d__, No. 16-1174 (8th Cir., Mar. 1, 2017).*
In a retaliatory discharge case, a six-week period between an employee filing an EEOC charge and his termination plausibly alleges the "but-for" causal connection needed to survive a summary judgment challenge.

***Reynaga v. Roseburg**, __F.3d__, No. 14-35028 (9th Cir., Jan. 21, 2017).*
To avoid vicarious liability for the discriminatory actions of its employee, an employer's remedial measures must be both prompt and effective.

***Zetwick v. County of Yolo**, __F.3d__, No. 14-17341 (9th Cir., Feb. 23, 2017).*
A sheriff who hugged the men and women who worked for him differently could thereby create a hostile work environment, despite the absence of sexual comments or other touching.

***Bird v. West Valley City**, __F.3d__, No. 15-4024 (10th Cir., Aug. 8, 2016).*
Temporal proximity between a worker complaint and his termination is relevant to a sex discrimination pretext claim, but not alone sufficient to establish pretext.

***Drury v. BNSF**, __F.3d__, No. 15-3021 (10th Cir., Aug. 2, 2016).*
For Title VII purposes, a falsely claimed lack of knowledge of an employee's race is not enough to prove pretext for the employee's poor work performance reviews.

***EEOC v. Equal Employment Advisory**, __F.3d__, No. 16-2053 (10th Cir., Feb. 27, 2017).*
When subpoenaing documents from an employer, the EEOC must show the relevancy to its investigation of the requested information. Courts must be careful not to read "relevancy" so broadly as to make this requirement a nullity.

***Tilghman v. Kirby**, __F.3d__, No. 16-6010 (10th Cir., Oct. 7, 2016).*
Speaking to an employee about her tardiness and personal activities at work is not an adverse employment action under Title VII.

***Black v. Reynolds**, __F.3d__, No. 16-10481 (11th Cir., Dec. 22, 2016).*
An employee's e-mail, complaining of bullying and harassment but not tying this conduct to race or sex, contained no protected activity under Title VII for purposes of a retaliation claim.

Cheatham v. Dekalb Cty. *, __F.3d__, No. 16-11068 (11th Cir., Mar. 20, 2017).*
Under Title VII, an employee does not engage in protected activity by participating in her employer's internal, in-house investigation.

EEOC v. Catastrophic Mgmt. Solutions*, __F.3d__, No. 14-13482 (11th Cir., Sept. 15, 2016).*
Title VII protects persons with respect to their immutable characteristics, not their cultural practices - - such as wearing dreadlocks - - which were prohibited by the employer's grooming policy.

Evans v. Georgia Regional*, __F.3d__, No. 15-15234 (11th Cir., Mar. 10, 2017).*
Discrimination based upon gender nonconformity is actionable under Title VII. However, a sexual orientation claim is not.

Furcron v. Mail Centers*, __F.3d__, No. 15-14595 (11th Cir., Dec. 16, 2016).*
A hostile work environment can exist under Title VII when a male employee continually walks up to and bumps into a female employee while sporting an erection.

Holmes v. Jefferson County*, __F.3d__, No. 15-1519 (11th Cir., July 29, 2016).*
Evidence of a failure to renew the contracts of two Black IT employees, but the renewal of the contract of one White IT employee, provides too small of a sample size to show causation, especially when the first substitute employee recommended to fill the open positions was Black.

Marria v. England*, __F.3d__, No. 15-14453 (11th Cir., Feb. 10, 2017);*
Shi v. Montgomery*, __F.3d__, No. 15-14837 (11th Cir., Feb. 10, 2017).*
Under Title VII, an employer's termination decision need not be prudent or fair, as long as it is not discriminatory.

Perry v. Avon Park*, __F.3d__, No. 15-14525 (11th Cir., Nov. 18, 2016).*
A single stale statement by a male supervisor that "women do not belong in the workplace" is insufficient as direct evidence that this supervisor would, three years later, terminate a female employee on account of her sex in violation of Title VII.

Reed v. Winn-Dixie*, __F.3d__, No. 16-11712 (11th Cir., Jan. 27, 2017).*
Talking to an EEOC counselor, completing an intake questionnaire, being in a state of depression, and allegedly mailing an EEOC charge to the agency do not satisfy the Title VII 180-day timely filing requirement when the EEOC did not receive any charge until after the 180-day period had expired.

Smith v. Mobile Shipbuilding*, __F.3d__, No. 16-10321 (11th Cir., Oct. 4, 2016).*
General unfair workplace treatment is not protected by Title VII.

Stancombe v. New Process*, __F.3d__, No. 15-11791 (11th Cir., June 2, 2016).*
A hostile work environment under Title VII is not shown by two offensive instances involving two male employees over a thirty day time period. The acts were three hugs and buttocks touches in rapid succession and the grabbing of an employee's head followed by three pelvic thrusts to his face.

Miles v. Howard Univ. *, __F.3d__, No. 15-7027 (D.C. Cir., June 14, 2016).*
Under Title VII, temporal proximity alone cannot rebut an employer's legitimate non-discriminatory reason for taking an adverse employment action against an employee.

Ortiz-Diaz v. HUD*, __F.3d__, No. 15-5008 (D.C. Cir., Aug. 2, 2016).*
The denial of lateral transfer requests is not an action cognizable under Title VII, because it is not an adverse employment action.

Robbins v. Dist. Of Columbia*, __F.3d__, No. 15-7072 (D.C. Cir., June 10, 2016).*
Title VII does not prevent unequal treatment based upon a teacher's academic discipline.

9. ADA;REHABILITATION ACT

Valez-Ramirez v. CHSC*, __F.3d__, No.15-1607 (1st Cir., June 27, 2016).*
An employer's denial of a reasonable accommodation request does not necessarily constitute a constructive discharge for ADA purposes.

B.C. v. Mt. Vernon Sch. Dist. *, __F.3d__, No. 14-3603 (2nd Cir., Sept. 16, 2016).*
For purposes of an ADA disparate impact claim, data that concerns students with disabilities under IDEA is insufficient to show that a school district's policies adversely affected individuals protected by the ADA, as IDEA disability does not necessarily constitute ADA disability.

Kovaco v. Rockbestos-Suprenant*, __F.3d__, No. 15-2037 (2nd Cir., Aug. 22, 2016).*
An appeal of a summary judgment decision was denied when the plaintiff bringing discriminatory discharge claims under the ADA, ADEA, and Title VII failed to explain why his assertion that he was qualified for his job position was consistent with his earlier sworn statement to the SSA that he was "unable to work".

Caldwell v. KHOU-TV*, __F.3d__, No. 16-20408 (5th Cir., Mar. 6, 2017).*
An employee claiming ADA and FMLA violations raised evidence of pretext when he showed that his employer's reasons for firing him were inconsistent, erroneous, and changed over time.

EEOC v. Vicksburg Healthcare*, __F.3d__, No. 15-60764 (5th Cir., Oct. 12, 2016).*
The fact that an employee claimed to be "temporarily totally disabled" for purposes of a private insurance disability claim does not necessarily establish that, for ADA purposes, she could not perform her job duties with reasonable accommodation.

Moss v. Harris County*, __F.3d__, No. 16-20113 (5th Cir., Mar. 15, 2017).*
Being granted extra leave and then being allowed to retire are not reasonable accommodations under the ADA, as they would not allow an employee to perform the essential functions of his job.

Spencer v. KS Mgmt. Svcs. *, __F.3d__, No.16-20553 (5th Cir., Feb. 27, 2017).*
At trial, an ADA plaintiff need not prove a *prima facie* case under McDonnell Douglas, but must instead prove the ultimate question of discrimination.

Williams v. JB Hunt*, __F.3d__, No. 15-20610 (5th Cir., June 20, 2016).*
A truck driver is not a "qualified individual" under the ADA when he lacks DOT certification.

Bush v. Compass Grp. *, __F.3d__, No. 16-6258 (6th Cir., Mar. 23, 2017).*
Under the ADA, reasonable accommodation does not include removing an essential job function or promoting an employee to another position.

Pena v. City of Flushing*, __F.3d__, No. 15-2316 (6th Cir., June 7, 2016) (unpub).*
An employee's aberrant behavior that raised concerns about his work performance gave his employer reason to require a fitness for duty examination. No ADA violation occurred when the employee was fired for refusing to submit to such an examination conducted by a company doctor. His offer to undergo the examination using his own physician does not justify this refusal.

Sharp v. Profitt*, __F.3d__, No. 14-3959 (6th Cir., Dec. 28, 2016).*
An employer did not violate the ADA or the FMLA when it terminated an employee for violating a work rule that required him to immediately report any work incidents - - including any work-related injury that he allegedly suffered while on the job.

Swank v. Caresource*, __F.3d__, No. 15-4193 (6th Cir., Aug. 17, 2016).*
Under the ADA, whether a job duty is listed as "essential" on a job description is not necessarily determinative of whether it is an essential job function for purposes of an "otherwise qualified" determination.

Williams v. AT&T*, __F.3d__, No. 16-6078 (6th Cir., Jan. 27, 2017).*
An employee suffering from depression and panic attacks was not entitled, under the ADA, to additional leave from work, flexible scheduling, and additional work breaks as accommodations, because these requests sought to eliminate an essential job function - - regular attendance and punctuality.

Bell v. Bd. Of Education*, __F.3d__, No. 16-1365 (7th Cir., Sept. 22, 2016).*
An employer who fired an employee because it believed that she had abandoned her job does not violate the ADA.

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 their 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.

***Wells v. Winnebago Cty.** , __F.3d__, No. 15-1805 (7th Cir., April 27, 2016).*
"Anxiety" is not covered by the ADA unless it is linked to a qualifying disability.

***Whitaker v. WI Dept. of Health Svcs.** , __F.3d__, No. 16-1807 (7th Cir., Feb. 27, 2017).*
Under the Rehabilitation Act, mere evidence that an employee was under medical treatment was insufficient to establish that the treatment was effective or that it was medically likely that the treatment would allow her to return to work regularly - - with regular attendance being an essential function of her job.

***Dick v. Dickinson State**, __F.3d__, No. 15-2419 (8th Cir., June 23, 2016).*
Exposing a custodian to floor wax and cleaner fumes in an effort to provide her with work that accommodated her disability is not an adverse employment action under the RA.

***Guenther v. EEOC**, __F.3d__, No. 16-1760 (8th Cir., Jan. 19, 2017).*
A claim for compensatory damages under the ADA survives the death of the aggrieved party.

***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.

***Parker v. Crete Carrier**, __F.3d__, No. 16-1371 (8th Cir., Oct. 12, 2016).*
A motor carrier did not violate the ADA by requiring all of its drivers with a BMI of 35 or above to submit to a medical examination to determine whether they had obstructive sleep apnea - - a condition that imposes an increased public safety risk.

***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. Also, an "essential job function" can be one that is seldom performed.

***Hansen v. Robinson Nevada Mining**, __F.3d__, No. 14-16116 (9th Cir., Aug. 16, 2016) (unpub).*
The failure to offer an employee "light duty", when no existing and open "light duty" positon existed, does not violate the ADA.

***Mendoza v. Roman Catholic Archbishop**, __F.3d__, No. 14-55651 (9th Cir., June 7, 2016).*
To prove disparate treatment under the ADA, a plaintiff must show that discriminatory animus is either the sole reason or one of several reasons for a challenged action.

Adair v. City of Muskogee, *__F.3d__, No. 15-7067 (10th Cir., May 26, 2016).*
In a case where an employee has sought worker's compensation benefits based upon a physical impairment, his employer has a legitimate business interest in determining whether the employee can perform the essential functions of his job. Requiring him to undergo a medical test to determine this does not violate the ADA.

DeWitt v. Southwestern Bell, *__F.3d__, No. 14-3192 (10th Cir., Jan. 18, 2017).*
The ADA does not require employers to reasonably accommodate an employee's disability by overlooking past employee misconduct - - irrespective of whether the misconduct resulted from the employee's disability.

Dye v. Moniz, *__F.3d__, No. 16-2024 (10th Cir., Dec. 6, 2016).*
No adverse employment action under the RA existed when an employee was given little or no work, or work outside of her area of expertise, and was threatened with a PIP, when these actions did not affect her salary, job prospects, or professional development.

Ewing v. Doubletree, *__F.3d__, No. 16-4037 (10th Cir., Dec. 14, 2016).*
No ADA violation exists when a terminated employee claims that she is "somewhat mentally disabled" but never disclosed this to her employer, and her alleged mental disability is not otherwise obvious, since her employer has no knowledge of her alleged disability.

Foster v. Mountain Coal, *__F.3d__, No. 15-1025 (10th Cir., July 26, 2016).*
In an ADA retaliation case, a plaintiff may rely solely upon temporal proximity to show causation during the *prima facie* stage of a *McDonnell Douglas* analysis, when his protected activity is followed closely by an adverse employment action.

Henson v. Amerigas, *__F.3d__, No. 16-7057 (10th Cir., Mar. 10, 2017).*
In an ADA termination case, an employee's self-assessment of his job performance is not enough to show pretext.

Levorsen v. Octapharma, *__F.3d__, No. 14-4162 (10th Cir., July 12, 2016).*
A plasma center is a "service establishment," and therefore a public accommodation under Title III of the ADA, because it is an establishment and provides a service.

Vinez v. Sky Chefs, *__F.3d__, No. 15-1314 (10th Cir., Aug 12, 2016).*
Under the ADA, the untruthfulness or inaccuracy of the stated reason for a lay-off does not alone create an inference of discriminatory intent as needed to establish a *prima facie* case.

Wickware v. Johns Manville, *__F.3d__, No. 15-6028 (10th Cir., Jan. 17, 2017).*
Court rejects arguments that an ADA claimant need only prove that he is qualified for his job position - - without any consideration for whether he can actually perform that position. It's not a reasonable accommodation proposal to request that the employer remove an essential job function from a disabled employee's job position.

Williams v. FedEx, *__F.3d__, No. 16-4032 (10th Cir., Feb. 24, 2017).*
Requiring an employee to disclose all legally-prescribed medications he was taking may violate the ADA if it was required in order for his employer to learn if he suffered from any health defects.

Bagwell v. Morgan County, *__F.3d__, No. 15-15274 (11th Cir., Jan. 18, 2017).*
Under the ADA, ensuring that a groundskeeper could each sit, stand, and walk for one third of her work shift was not a reasonable accommodation request.

Cooper v. CLP Corp. , *__F.3d__, No. 16-10536 (11th Cir., Feb. 9, 2017).*
For purposes of an *Faragher/Ellerth* defense, an employer is not placed on notice of a supervisor's alleged ADA disability harassment complaint by an employee's informal complaints to supervisory individuals not designated by his employer to receive or process such complaints.

Frazier-White v. GEE, *__F.3d__, No. 15-12119 (11th Cir., April 7, 2016).*
Under the ADA, "permanent light-duty" and "reassignment to another (unspecified) position" are not "reasonable" accommodations.

Garrison v. Tallahassee, *__F.3d__, No. 16-10114 (11th Cir., Nov. 9, 2016).*
An employee was not a "qualified individual" under the ADA when she was unable to perform an essential element of her job - - full-time physical attendance at work - - since telecommuting would not allow her to perform this essential job function.

Luke v. Florida A & M, *__F.3d__, No. 15-13995 (11th Cir., Dec. 22, 2016).*
Under the RA, a refusal to extend an employee's medical leave in order to allow her to be eligible for additional FMLA leave was not a reasonable accommodation because it would not have enabled her to perform her job duties in the present or immediate future.

Valdes v. City of Doral, *__F.3d__, No. 15-12401 (11th Cir., Oct. 31, 2016).*
For ADA purposes, an "essential function" of a police lieutenant's job was the ability to work outside of the office. Moreover, for purposes of a First Amendment retaliation claim, a police chief's increased scrutiny of, and demand that an officer comply with, his work schedule were not adverse employment actions.

10. FMLA; PDA; EPA

Chase v. USPS, *__F.3d__, No. 16-1351 (1st Cir., Dec. 14, 2016).*
No FMLA violation occurred when an employee on FMLA leave was terminated by a decision-maker who did not know that the employee was on FMLA leave but believed him to be off work on worker's compensation leave. Moreover, institutional knowledge of FMLA leave cannot override a decisionmaker's actual lack of knowledge in an FMLA retaliation case.

Coutard v. Municipal Credit U. *, __F.3d__, No. 15-1113 (2nd Cir., Feb. 9, 2017).*
Under the FMLA, an employee, in giving notice of leave, need not provide his employer at or before the time of the request with all of the necessary details needed to permit his employer to make a definitive determination of the FMLA's applicability. Such notice must only reasonably indicate that the FMLA may apply.

Capps v. Mondelez Global*, __F.3d__, No. 15-3839 (3rd Cir., Jan. 30, 2017).*
An employer's honest belief that an employee is mis-using FMLA leave can defeat a FMLA retaliation claim. A request for intermittent leave under the FMLA may, depending upon the circumstances, also constitute an ADA request for reasonable accommodation.

Egan v. Delaware R. Port Auth.*, __F.3d__, No. 16-1471 (3rd Cir., Mar. 21, 2017).*
Under the FMLA, a plaintiff bringing a retaliation claim need not provide direct evidence of retaliation in order to pursue a mixed-motive theory of liability.

Mozingo v. Oil States*, __F.3d__, No. 16-60125 (5th Cir., Oct. 5, 2016).*
Under the FMLA, an employer's failure to send an employee the proper FMLA leave form does not support a finding that this conduct was "willful" so as to extend the statute of limitations from two to three years.

Casagrande v. OhioHealth*, __F.3d__, No. 15-3292 (6th Cir., Dec. 20, 2016).*
An employer interfered with an employee's FMLA rights when it failed to advise him that his failure to obtain medical certification would result in the denial of his job restoration. It is irrelevant that the employer acted in good faith on its mistaken belief that the employee was not FMLA-eligible.

Levaine v. Tower Automotive*, __F.3d__, No. 16-1782 (6th Cir., Feb. 22, 2017).*
An employee who claimed that he was entitled to FMLA leave, but who then prevented his employer from gathering the facts necessary to determine whether his work absence warranted excuse under the FMLA, thereby failed to establish that he was entitled to FMLA leave.

Hernandez v. Bridgestone*, __F.3d__, Nos. 15-2042 & 15-2428 (8th Cir., May 13, 2016).*
Under an overtime procedure wherein employees internally volunteered for overtime work, but, when selected to work, were required to be present for that work, the overtime work of these selected employees was "mandatory". Therefore if they failed to work this overtime due to an FMLA covered reason, their missed work was properly counted against their annual 12-week FMLA leave allotment.

Branham v. Delta Airlines*, __F.3d__, No. 16-4092 (10th Cir., Feb. 3, 2017).*
An employer does not violate the FMLA when it terminates an employee for failing to comply with its work absence-notification policy, even if the absence at issue involves an FMLA-covered event.

***Jackson v. Simplot**, __F.3d__, No. 16-8044 (10th Cir., Dec. 15, 2016).*
No PDA discrimination occurred when an employer relied upon a pregnant employee's doctor's letter that objectively prevented her from working around chemicals to temporarily deny her work, even if that letter was not subjectively intended to forbid her from all work around chemicals.

***Diamond v. Hospice of Florida Keys**, __F.3d__, No. 15-15716 (11th Cir., Jan. 27, 2017).*
Sending an employee an e-mail telling her that her continued unpaid absence from work "compromises the quality of care we are able to provide as an organization" may constitute unlawful interference with her FMLA leave.

***Feise v. North Broward**, __F.3d__, No. 15-15261 (11th Cir., Mar. 24, 2017).*
The FMLA does not interfere with an employer's ability to manage its personnel and does not afford relief in the absence of evidence of retaliation as it pertains to an adverse employment action against an employee.

***Han v. Emory Univ.** , __F.3d__, No. 15-14858 (11th Cir., Sept. 29, 2016).*
The FMLA does not require employers to "accommodate" employees by changing their work hours so that they do not have to take intermittent FMLA leave. They can also terminate employees who still have available FMLA leave if they would do so regardless of the availability of such leave.

***Kalu v. Fla. Dept. of Children & Families**, __F.3d__, No. 16-13265 (11th Cir., Feb. 27, 2017).*
Hiring a male nurse and paying him 10% more than a female nurse, because the need to fill the job vacancy was critical, he was the only qualified applicant, and he would not take the job absent the increased pay, was due to factors "other than sex" that did not violate the Equal Pay Act. Good timing is gender-neutral.

11. GINA; INA

***Employer Solutions v. Office of Chief**, __F.3d__, No. 15-60173 (5th Cir., Aug. 11, 2016).*
The Immigration and Naturalization Act does not indicate whether the attester on an I-9 form must be the same person who physically examines the documents in the presence of the hired employee, nor bar corporate or entity attestation of an I-9 form instead of personal attestation.

12. FLSA; OSHA

***Hill v. Delaware North Co.** , __F.3d__, No. 15-2109 (2nd Cir., Oct. 3, 2016).*
Under the FLSA, concessionaires at a baseball park need not be paid overtime pursuant to the Act's "amusement and recreational establishment" exception, even if they do not directly provide either amusement or recreation.

***Smiley v. DuPont**, __F.3d__, No. 14-4583 (3rd Cir., Oct. 7, 2016).*
The FLSA does not allow an employer to use an employee's paid non-work meal time to offset some of his unpaid productive worktime so as to avoid paying overtime to him for all hours of work over forty that he performs in a given work week.

***Kumbala v. Supreme**, __F.3d__, No. 15-41507 (5th Cir., July 20, 2016).*
An employer who instituted a new policy requiring employment disputes to be arbitrated, and conditioned an employee's future employment upon his acceptance of this policy change, was entitled to have the employee's FLSA claim arbitrated.

***Pineda v. JTCH**, __F.3d__, No. 15-10932 (5th Cir., Dec. 19, 2016).*
Under the FLSA, only employees can bring suit, but they can recover for their emotional injuries resulting from unlawful retaliation.

***Garrison v. ConAgra**, __F.3d__, Nos. 15-1177 & 15-1428 (8th Cir., Aug. 15, 2016).*
The "executive" exemption from overtime pay under the FLSA applies to employees whose suggestions and recommendations regarding hiring, firing, and other changes in employment status are given particular weight by their employer.

***Morrison v. Fairfax County**, __F.3d__, No. 14-2308 (9th Cir., June 22, 2016).*
Fire captains who also serve as first responders are not exempt from FLSA overtime requirements.

***Sharp v. CGG Land**, __F.3d__, No. 15-5113 (10th Cir., Nov. 4, 2016).*
An employer did not violate the FLSA by failing to include a $35 daily meal allowance that was paid to employees when they were working away from home in their "regular rate of pay" for overtime calculation purposes.

***Secretary, USDOL v. Lear**, __F.3d__, No. 15-12060 (11th Cir., May 13, 2016).*
Under OSHA, a court should not enjoin an employer from filing state court suits against its employees who have raised OSHA issues based solely upon the potential retaliatory motive behind those lawsuits, absent a showing that the lawsuits are baseless or preempted.

***Johnson v. Interstate Mgmt.** , __F.3d__, No. 14-7164 (D.C. Cir., Mar. 3, 2017).*
OSHA Section 11(c) affords the Secretary of Labor a cause of action for retaliation claims involving employee complainants, but does not afford employees a private cause of action for such retaliation claims.

13. MILITARY; USERRA

***Carroll v. Delaware River Port Auth.** , __F.3d__, No. 16-2492 (3rd Cir., Dec. 12, 2016).*
A plaintiff need not plead or prove that she is objectively qualified for her job position in order to meet her initial burden under USERRA. Her employer can raise her non-qualification as a non-discriminatory justification for its employment action.

***Butts v. Prince William County**, __F.3d__, No. 15-1989 (4th Cir., Dec. 21, 2016).*
It is not an USERRA violation to re-employ a veteran in her "escalator position" upon her return to work, when she did not claim at the time of her re-employment that she was unqualified for that position and gave no notice at that time that she suffered from PTSD. The fact that the stress of her "escalator position" worsened her PTSD is irrelevant when her employer was unaware of her condition until after it had terminated her for job performance-related reasons.

***Davis v. Philadelphia**, __F.3d__, No. 15-2937 (3rd Cir., May 4, 2016).*
The protections offered a veteran by the Servicemembers Civil Relief Act do not extend to a delinquent property tax assessment against his company's commercial property.

***Hernandez v. Results Staffing**, __F.3d__, No. 15-10602 (5th Cir., Jan. 30, 2017).*
An employee cannot avoid USERRA re-employment protections by re-employing a soldier upon his return from reserve duty and then terminating him later that day. Also, USERRA requires an employer to re-employ a soldier injured while on military maneuvers at the end of his period of convalescence for that injury.

***Ziober v. BLB Resources**, __F.3d__, No. 14-56374 (9th Cir., Oct. 14, 2016).*
USERRA does not prohibit the compelled arbitration of claims brought under its provisions.

***Bodine v. Cook's Pest Control**, __F.3d__, No. 15-13233 (11th Cir., July 29, 2016).*
An arbitration agreement in an employment contract is enforceable as against an allegation of discrimination under USERRA, despite the Act's non-waiver provisions that prohibit the contractual limitation of USERRA rights.

14. ADEA

***Karlo v. Pittsburgh Glass**, __F.3d__, No. 15-3435 (3rd Cir., Jan. 10, 2017).*
An ADEA disparate-impact claim is cognizable when it alleges that one sub-group of protected employees (those 50 years old or older) were disfavored relative to younger protected employees (those between 40 and 49 years old) during a RIF.

***Mercantanti v. WCI**, __F. 3d__, No. 15-1866 (3rd Cir., April 1, 2016)(unpub.).*
For 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 undertaken in order to allow the employee to collect unemployment compensation.

***Vaughan v. Anderson Regional Med. Ctr.** , __F.3d__, No. 16-60104 (5th Cir., Feb. 15, 2017).*
A plaintiff may not invoke the ADEA as the basis for recovering general compensatory damages for pain and suffering, or for punitive damages.

***Stilwell v. City of Williams**, __F.3d__, No. 14-15540 (9th Cir., Aug. 5, 2016).*
The ADEA's retaliation provisions do not preclude an employee from filing a Section 1983 First Amendment retaliation claim. A municipal employee was engaged in private citizen speech when his sworn statements and expected testimony in an ADEA lawsuit against his municipal employer were outside of his ordinary job duties as a water department supervisor, and involved a matter of public concern.

***Stapp v. Curry County Bd.** , __F.3d__, No. 16-2067 (10th Cir., Dec. 6, 2016).*
The *Ellerth/Faragher* defense applies in ADEA cases.

***Villarreal v. RJ Reynolds**, __F.3d__, No. 15-10602 (11th Cir., Oct. 5, 2016).*
A job applicant cannot sue an employer for disparate treatment under the ADEA because he has no status as an employee.

***DeJesus v. WP Company**, __F.3d__, No. 15-7126 (D.C. Cir., Nov. 15, 2016).*
Summary judgment is denied to an employer facing ADEA and Title VII claims when its supervisor's "no worries" reaction to an employee's conduct was followed a few days later by the employee's termination for insubordination, raising a reasonable doubt as to whether the proffered reason for termination was a pretext for discrimination.

15. FHA

***DeCambre v. Brookline Housing**, __F.3d__, Nos. 15-1458 & 15-1515 (1st Cir., June 14, 2016).*
The court allows to proceed a Section 1983 cause of action brought by a tenant against her local housing authority based upon its alleged miscalculation of her Section 8 income under the Fair Housing Act's rent ceiling provisions.

***HUD v. Castillo**, __F.3d__, No. 14-2139 (1st Cir., May 2, 2016).*
Denying a tenant his support dog by virtue of a "no pets" policy violates the Fair Housing Act.

***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.

***Austin v. Town of Farmington**, __F.3d__, No. 15-2238 (2nd Cir., June 21, 2016).*
A motion to dismiss a FHA claim of discrimination brought by a resident against a town is denied. The town granted a homeowner with a disabled son a variance to construct a fence, pool, and deck on the condition that he pay to remove these otherwise prohibited accessory structures when he sold his home. Variances were granted to other homeowners without this restoration provision.

***Fair Housing Rights Ctr. V. Post Goldtex**, __F.3d__, No. 15-1366 (3rd Cir. May 17, 2016).*
The Fair Housing Act does not apply to a commercial building that was constructed before the Act took effect but that was subsequently converted into residential units.

16. RLUIPA; RFRA

***Ali v. Stephens**, __F.3d__, No. 14-41165 (5th Cir., May 2, 2016).*
A prison policy forbidding a Muslim inmate from growing a four inch beard and wearing a skull cap violates RLUIPA.

***Davis v. Davis**, __F.3d__, No. 14-40339 (5th Cir., June 14, 2016).*
A prison policy of not allowing Native American inmates to wear medicine bags or ceremonial prayer pipes does not violate RLUIPA.

***Garrett v. Stephens**, __F.3d__, No.16-40354 (5th Cir, Jan. 12, 2017).*
The confiscation of an inmate's property, which forced him to modify his daily religious practice, did not violate RLUIPA because the seizure was not pursuant to a government policy infringing his free exercise of religion, but as part of a criminal investigation.

***US v. Barnes**, __F.3d__, No. 16-1188 (6th Cir., Jan. 26, 2017).*
Growing large quantities of marijuana is not central to the faith of the Oklevueha Native American Church for RFRA purposes in a challenge to a drug possession conviction.

***Oklevueha Native v. Lynch**, __F.3d__, No. 14-15143 (9th Cir., April 6, 2016).*
Federal prohibitions on cannabis possession and distribution do not place a substantial burden on a church's free exercise of religion under RLUIPA, and the American Indian Religious Freedom Act does not create an individual cause of action based upon such a prohibition.

***US v. Florida**, __F.3d__, No. 15-14117 (11th Cir., July 14, 2016).*
RLUIPA requires prisons to offer kosher meals to those with a sincerely held belief that requires them to keep kosher.

***Watkins v. Secretary**, __F.3d__, No. 15-15543 (11th Cir., Oct. 28, 2016).*
Summary judgment for an inmate on his RLUIPA claim is affirmed when he was denied a kosher meal for cost containment reasons.

17. SCHOOLS; IDEA; TITLE IX

***Doe v. Cape Elizabeth**, __F.3d__, No. 15-1155 (1st Cir., Aug. 5, 2016).*
Under the IDEA, a student with a strong academic record can still have a learning disability.

***Morgan v. Town of Lexington**, __F.3d__, No. 15-2174 (1st Cir., May 23, 2016).*
Title IX concerns actions taken "on the basis of sex", not on the basis of undifferentiated bullying.

***Doe v. Columbia**, __F.3d__, Nos. 15-1536 & 15-1661 (2nd Cir., July 29, 2016).*
A lawsuit brought under Title IX, alleging sex bias in a school's investigation of a student for sexual assault survives a motion to dismiss. The plaintiff was able to show the "minimal inference of bias" that is required by Title IX.

Doe v. Mercy Catholic, *__F.3d__, No. 16-1247 (3rd Cir., Mar. 7, 2017).*
A private retaliation claim exists for employees of federally funded programs under Title IX despite concurrent Title VII applicability.

L.R. v. Philadelphia, *__F.3d__, No. 14-4640 (3rd Cir., Sept. 6, 2016).*
Qualified immunity is denied to a teacher against a Fourteenth Amendment "state-created danger" claim when she let a kindergarten student leave her classroom with an adult who failed to identify herself and who then molested the student.

S.D. v. Hadden Hgts. , *__F.3d__, No. 15-1804 (3rd Cir., Aug. 18, 2016).*
A claim of school board discrimination on the basis of disability is subject to IDEA exhaustion requirements even when the plaintiff sought to enforce the student's rights under a non-IDEA statute.

Am. Humanist v. McCarty, *__F.3d__, Nos. 15-11067 & 16-11220 (5th Cir., Mar. 20, 2017).*
Student-led invocations at school board meetings are akin to legislative prayers and do not violate the Establishment Clause.

Tumminello v. Rather Ryan H.S., *__F.3d__, No. 16-5165 (6th Cir., Jan. 30, 2017).*
No Title IX liability exists for a school after it failed to enforce its anti-bullying policy and a bullied student committed suicide.

Brown v. Chicago, *__F.3d__, No. 15-1857 (7th Cir., June 2, 2016).*
A teacher who was suspended for using a racial epitaph as part of a teaching lesson, when such use was forbidden under all circumstances, did not engage in constitutionally protected speech.

Hatcher v. Bd. Of Trustees, *__F.3d__, No. 15-1599 (7th Cir., July 14, 2016).*
A teacher who helps a student make a sex harassment complaint against a school is not engaged in protected speech under *Garcetti*, although the teacher's job duties did not expressly require her to take this action.

Gerlich v. Leath, *__F.3d__, No. 16-1518 (8th Cir., Feb. 13, 2017).*
The First Amendment prohibits a university that created a limited public forum by making its trademark available for student organizations to use if they abided by certain conditions from engaging in viewpoint discrimination by refusing to let a campus NORML organization use that trademark.

Moore v. Kansas City Pub. Sch. , *__F.3d__, No. 15-2617 (8th Cir., July 7, 2016).*
A state law claim alleging premises liability and negligent supervision damages for the harassment and rape of an intellectually disabled student is not subject to IDEA administrative exhaustion requirements.

C.R. v. Eugene Sch. Dist. 4J, *__F.3d__, No. 13-35856 (9th Cir., Sept. 1, 2016).*
A school has authority to suspend a student for his off-campus sexually harassing speech despite a First Amendment defense.

L.J. v Pittsburg, *__F.3d__, No. 14-16139 (9th Cir., Feb. 27, 2017).*
Under the IDEA, the mere fact that a student performs satisfactorily in general education classes does not mean that he does not need special education services.

Timothy v. Paso Robles, *__F.3d__, No. 14-55800 (9th Cir., May 23, 2016).*
A school's failure to assess a student after he shows signs of autism, relying instead upon an informal, non-scientific assessment of the child, violated the IDEA and denied the student a FAPE.

A.M. v. Holmes, *__F.3d__, Nos. 14-2066 & 14-2183 (10th Cir., July 25, 2016).*
Reasonable suspicion that a student is carrying contraband justifies the search of his outer clothing, but a higher degree of justification is necessary to conduct a search that exposes his intimate areas.

D.H. v. Clayton County, *__F.3d__, No. 14-14960 (11th Cir., July 29, 2016).*
No qualified immunity from a Fourth and Fourteenth Amendment claim was granted to a principal who conducted a strip search on a 12 year old student in an effort to locate illegal drugs.

Zieqler v. Martin County, *__F.3d__, No. 15-11441 (11th Cir., July 28, 2016).*
Under the Fourth Amendment, once a student has passed a breathalyzer test, he or she cannot be further detained from entering a school dance until such time as all student testing is completed.

18. COMMERCE CLAUSE;TRANSPORTATION

New York Pet v. NYC, *__F.3d__, No. 15-4013 (2nd Cir., Mar. 2, 2017).*
An ordinance requiring pet shops to purchase dogs and cats from federally licensed dealers does not violate the Dormant Commerce Clause.

Associated Builders v. Jersey City, *__F.3d__, No. 15-3166 (3rd Cir., Sept. 12, 2016).*
The dismissal of a claim that a municipal law that provided certain tax incentives to developers if they entered into agreements with labor unions that bound them to specified labor practices violated the NLRA, ERISA, and the Dormant Commerce Clause is reversed, where the city was acting as a regulator and not as a market participant.

City of Ozark v. Union Pacific R.R., *__F.3d__, Nos. 16-1186 & 1187 (8th Cir., Dec. 19, 2016).*
The Surface Transportation Board has exclusive jurisdiction (unless waived) of a city's claim that a railroad company must re-open a public at-grade railroad crossing or allow the city to condemn the railroad's land across that public crossing.

19. JAILS; PRISONS; EIGHTH AMENDMENT

***Mack v. Warden**, __F.3d__, No. 14-2738 (3rd Cir., Oct. 11, 2016).*
An oral grievance lodged by a prisoner is entitled to First Amendment protection.

***Pearson v. Prison Health Svc.** , __F.3d__, No. 16-1140 (3rd Cir., Mar. 7, 2017).*
Forcing a screaming inmate to crawl to a wheel chair when he was unable to walk may violate the Eighth Amendment.

***Dilworth v. Adams**, __F.3d__, No. 15-6910 (4th Cir., Nov. 7, 2016).*
Procedural due process entitles a pre-trial detainee to a hearing before he is punished by a detention facility officer for his alleged disciplinary infractions.

***Hyatt v. Thomas**, __F.3d__, No. 15-10708 (5th Cir., Nov. 18, 2016).*
No due process violation existed for "deliberate indifference" to a suicidal pretrial detainee's serious medical condition when an officer negligently failed to inspect his holding cell for the plastic trash bag with which the detainee hung himself.

***Omran v. Prator**, __F.3d__, No. 16-30034 (5th Cir., Dec. 30, 2016).*
No First Amendment right for a Muslim inmate to have a kosher meal made to his particularized requirements regarding meal content and preparation.

***Richko v. Wayne County**, __F.3d__, No. 15-1524 (6th Cir., April 15, 2016).*
Placing a prisoner with a known mental health history in a cell with another prisoner without first reviewing his mental health records may constitute "deliberate indifference".

***Ajala v. Tom**, __F.3d__, Nos. 15-3101 & 13-cv-102 (7th Cir., July 22, 2016).*
Under the Eighth Amendment, using handcuffs that inflicted prolonged, unnecessary pain to an inmate may state an actionable claim.

***Caffey v. Maue**, __F.3d__, No. 15-3772 (7th Cir., Feb. 15, 2017).*
A prisoner's insubordinate and profane name-calling is not protected speech. However, a guard's gratuitous striking him on the head with a stick, even if the force was *de minimus*, may violate the Eighth Amendment.

***Knowles v. Pfister**, __F.3d__, No. 15-1703 (7th Cir., July 13, 2016).*
A warden violated a prisoner's First Amendment rights by not letting him wear a one inch in diameter Wiccan pendant.

***Mulvania v. Sheriff of Rock Cty.** , __F.3d__, No. 16-1711 (7th Cir., Mar. 9, 2017).*
A jail's "white or no underwear only" policy may violate the Fourteenth Amendment by denying prisoners their human dignity.

***Zaya v. Good**, __F.3d__, No. 15-1470 (7th Cir., Sept. 6, 2016).*
Deliberate indifference may exist for Eighth Amendment purposes when a prison doctor disregards, rather than just disagrees with, another doctor's treatment recommendation.

***Barton v. Taber**, __F.3d__, No. 14-3280 (8th Cir., April 27, 2016).*
Qualified immunity is denied to officers facing a "deliberate indifference" claim after they did not seek medical care for an intoxicated pre-trial detainee who had been involved in an accident and who was unable to sit up straight or answer questions during booking.

***Ingram v. Cole County**, __F.3d__, No. 16-1046 (8th Cir., Jan. 17, 2017).*
A jail laundry policy that leaves pre-trial detainees naked except for a bed sheet and blanket for seven hours every two to four nights may be punishment that violates the Eighth and Fourteenth Amendments.

***Kulkay v. Roy**, __F.3d__, No. 16-1801 (8th Cir., Feb. 2, 2017).*
For purposes of an Eighth Amendment claim, the mere existence of state and federal safety regulations does not charge prison officials with knowledge of potentially unsafe conditions in their facility.

***Yang v. MO Dept. of Corrections**, __F.3d__, No. 15-2231 (8th Cir., Aug. 15, 2016).*
Prohibiting prisoners from making international calls is related to a legitimate penological concern for prison security and does not violate the First Amendment.

***Mangiaracina v. Penzone**, __F.3d__, No. 14-15271 (9th Cir., Mar. 3, 2017);*
***Hayes v. Idaho**, __F.3d__, No. 14-35078 (9th Cir., Mar. 3, 2017).*
When prisoners have a First Amendment right to have their legal mail opened only in their presence, a plaintiff need not allege a long-standing practice of First Amendment violations in order to state a claim for relief on a direct liability theory, nor allege any actual injury beyond the free speech violation itself.

***Norwood v. Cate**, __F.3d__, No. 14-17059 (9th Cir., Feb. 15, 2017).*
Prison officials did not violate the Eighth Amendment by denying an inmate access to the exercise yard during a prison lock-down caused by a *bona fide* emergency.

***Bloom v. Pompa**, __F.3d__, No. 15-5098 (10th Cir., July 6, 2016).*
Qualified immunity is denied to an official as against a due process claim alleging that he intentionally punished a pre-trial detainee by subjecting him to violence at the hands of another prisoner.

***Covalt v. Inmate Service**, __F.3d__, No. 15-1247 (10th Cir., Aug. 1, 2016).*
No due process violation occurred when a pretrial detainee was taken on a seven-day journey in which he was handcuffed sitting up, given unhealthy food, subjected to second-hand smoke, required to sit for six hours between bathroom breaks, not given an opportunity to shower, change clothes, or adequately clean himself, and was harassed by other prisoners.

***Durkee v. Minor**, __F.3d__, No. 16-1003 (10th Cir., Nov. 14, 2016).*
A detention center supervisor cannot, as a matter of law, be held individually liable for the misconduct of a subordinate towards an inmate simply because the supervisor is in charge of the detention center.

Lewis v. Clark, *__F.3d__, No. 15-8135 (10th Cir., Oct. 18, 2016).*
A pretrial detainee was not denied his First and Fourteenth Amendment rights on the basis of a jail's policies against inmate-to-inmate communications (even if the inmates are related) or by its 10-page limit on mailed items.

Smith v. Duboise, *__F.3d__, No. 16-5004 (10th Cir., Oct. 7, 2016).*
Jailers who responded to a pretrial detainee's refusal to follow their directions by grabbing his arm behind his back and directing him where to go to complete his booking into an Oklahoma jail did not exercise excessive force or violate the ADA despite the arrestee's claim that his refusal was not due to his drunkenness or uncooperativeness, but because his mental condition made him think that he was "in a New Mexico restaurant."

US v. Pinkerton, *__F.3d__, No. 16-8072 (10th Cir., Oct. 6, 2016).*
Coram nobis relief is not available to prisoners currently in custody.

Daker v. Warren, *__F.3d__, Nos. 13-14446 & 14-10096 (11th Cir., Aug. 22, 2016).*
A prison policy forbidding hardcover books based upon security and contraband concerns may violate the First Amendment, since some books are only available in a hardcover format. However, a Wednesday-only policy for religious services does not violate the First Amendment.

Jacoby v. Baldwin County, *__F.3d__, No. 14-12932 (11th Cir., Aug. 29, 2016).*
Having a prisoner temporarily sleep on a mattress on the floor near a toilet is not a substantive due process violation.

Mitchell v. McKeithen, *__F.3d__, No. 16-12837 (11th Cir., Nov. 29, 2016).*
A jail nurse who referred an arrestee for a mental health evaluation based upon symptoms that were actually the result of him having a stroke committed no due process violation, as she was not deliberately indifferent to his medical needs.

Pearson v. Warden, *__F.3d__, No. 14-15459 (11th Cir., Dec. 20, 2016).*
Use of pepper spray, immediately followed by confinement to a small, poorly ventilated, pepper spray-filled cell, when an inmate is no longer resisting, can constitute excessive force.

Revere v. Owens, *__F.3d__, No. 14-15564 (11th Cir., Oct. 24, 2016).*
Placing a prisoner in a cell block with rival gang members may constitute an Eighth Amendment violation premised upon a deliberate indifference to the substantial risk of his serious harm.

Watkins v. Broward County, *__F.3d__, No. 16-12932 (11th Cir., Feb. 7, 2017).*
A pretrial detainee's Section 1983 claims for declaratory and injunctive relief against a jail became moot upon his release from custody.

Woodson v. Whitehead, *__F.3d__, No. 16-13278 (11th Cir., Dec. 20, 2016).*
The Due Process Clause creates neither an enforceable liberty interest in freedom from restrictive confinement for prisoners nor in the "mandatory" language of prison rules and regulations.

20. LABOR; UNIONS

***Gilman v. Marsh & McLennan**, __F.3d__, No. 15-0603 (2nd Cir., June 16, 2016).*
Employees fired after they refused to explain their actions to their employer, who was under threat of criminal indictment on the basis of their actions, were properly fired for refusing to comply with a reasonable work order.

***Citigroup v. NLRB**, __F.3d__, No. 15-60856 (5th Cir., Dec. 8, 2016).*
An employer does not violate the NLRA by requiring its employees to sign an arbitration agreement containing a class action waiver.

***Baker v. Reinforced Concrete**, __F.3d__, No.14-4102 (6th Cir., April 21, 2016).*
Under the NLRA, an employer can repudiate its statutory and contractual obligations under a CBA when it does not employ anyone within the relevant bargaining unit.

***Ohio Edison v NLRB**, __F.3d__, No. 15-1783 (6th Cir., Feb. 10, 2017).*
A union representative's generalized complaint about various reductions in employee benefits does not constitute a union request to bargain over a specific employee-recognition program for purposes of a "failure to bargain in good faith" charge.

***United Automobile v. Harding County**, __F.3d__, No. 16-5246 (6th Cir., Nov. 18, 2016).*
A county ordinance that prohibits employers from requiring membership in a labor organization as a condition of employment is not preempted by the NLRA.

***Polycon v. NLRB**, __F.3d__, Nos. 15-3675 & 15-3859 (7th Cir., May 9, 2016).*
An employer who agrees to the terms of a CBA, and then refuses to sign it because it has learned that its employees are circulating a union decertification petition, violates the NLRA.

***LLC v. NLRB**, __F.3d__, Nos. 15-1620 & 15-1860 (8th Cir., June 2, 2016).*
An employer did not violate Section 8(a)(1) of the NLRA by seeking to enforce a mandatory agreement requiring the individual arbitration of work-related claims.

***Morris v. Ernst & Young**, __F.3d__, No. 13-16599 (9th Cir., Aug. 22, 2016).*
An employer violates Sections 7 and 8 of the NLRA when it requires its employees to sign an agreement precluding them from bringing in any forum a concerted claim regarding wages, hours, and terms of employment.

***Mercedes-Benz v. NLRB**, __F.3d__, No. 15-10291 (11th Cir., Oct. 3, 2016).*
Under the NLRA, a work rule prohibiting the solicitation or distribution of non-work related materials "during work time or in work areas" could be read as impermissibly prohibiting solicitation in work areas during non-working time.

***Banner Health v. NLRB**, __F.3d__, No. 15-1245 (D.C. Cir., Mar. 24, 2017).*
Under the NLRA, an employer's confidentiality agreement that forbid its employees from discussing their salaries and certain employee discipline with each other violated its employees right to share employment-related information with one another in an effort to improve their lot.

***Lancaster Symphony v. NLRB**, __F.3d__, Nos. 14-1247 & 14-1272 (D.C. Cir., April 19, 2016).*
The court upholds an NLRB finding that musicians that contracted with a city to play in one or more community concerts were employees and not independent contractors, and therefore entitled to form a union. The city exerted sufficient control over their concert and rehearsal conduct, etiquette, dress, and instrument play.

***NCR Corp v. NLRB**, __F.3d__, No. 15-1230 (D.C. Cir., Nov. 1, 2016).*
The court enforces the Board's order certifying the results of a mail-in union election and rejecting several outcome-determinative ballots that were postmarked prior to the election deadline but received two days after the deadline.

21. TELECOMMUNICATIONS

***Page v. City of Wyandotte**, __F.3d__, No. 15-2442 (6th Cir., Nov. 17, 2016).*
A lawsuit against a city alleging constitutional violations related to its cable franchise and water franchise fees cannot be removed to federal court because these fees are taxes subject to the Tax Injunction Act.

***Robbins v. New Cingular**, __F.3d__, No. 16-5524 (6th Cir., Jan. 30, 2107).*
The TCA impliedly preempts tort claims brought by residents fearful of cell tower radio radio-frequency emissions.

***Tennessee v. FCC**, __F.3d__, Nos. 15-3291 & 15-3555 (6th Cir., Aug. 10, 2016).*
State laws that prohibit municipalities from expanding their broadband service networks beyond their current territorial boundaries are not preempted by federal telecommunications law.

22. ENVIRONMENTAL

***Catskill Mountains v. EPA**, __F.3d__, No. 14-1823 (2nd Cir., Jan 18, 2017).*
The court upholds, under *Chevron* deference, the EPA's "Water Transfers Rule," which holds that water transfers are not subject to regulation under the NPDES permitting system established by the CWA.

23. PROCEDURAL; EVIDENTIARY

***LaPierre v. City of Lawrence**, __F.3d__, No. 15-1641 (1st Cir., April 26, 2016).*
A municipality made an offer of judgment under FRCP 68, but remained silent as to whether that offer included costs. It then amended its offer to specifically include costs. The plaintiff was entitled to accept the municipality's original offer and to then move for its fees and costs.

***Sai v. TSA**, __F.3d__, No. 15-2526 (1st Cir., Dec. 7, 2016).*
The court declines an invitation to join its sister circuits and treat a decision to deny appointed counsel to an anti-discrimination claimant as an immediately reviewable collateral order.

***Laroe Estates v. Town of Chester**, __F.3d__, No. 15-1086 (2nd Cir., July 6, 2016).*
A proposed intervenor in a federal takings claim lawsuit need not demonstrate that he has standing when there is already a genuine case or controversy between the existing parties that satisfies Article III of the U.S. Constitution.

***In re: Grand Jury Matter #3**, __F.3d__, No. 15-2475 (3rd Cir., Jan. 27, 2017).*
A court may continue to exercise jurisdiction over an appeal of an evidentiary ruling in a grand jury proceeding so long as the grand jury investigation continues - - even after the grand jury has returned an indictment.

***US v. Browne**, __F.3d__, No. 14-1798 (3rd Cir., Aug. 25, 2016).*
Facebook chat messages are not self-authenticated business records under FRE Rule 902(11).

***Clark v. Cartledge**, __F.3d__, No. 15-6248 (4th Cir., July 12, 2016).*
A document filed as an "extension of time to request a certificate of appealability" qualifies as a notice of appeal as required by FRAP Rule 3.

***Guessous v. Fairview Property**, __F.3d__, No. 15-1055 (4th Cir., July 6, 2016).*
The court joins the Seventh, Eighth, Tenth, and Eleventh Circuits in holding that, for statute of limitations purposes, the "continuing violation" theory that applies to hostile work environment claims brought under Title VII also applies to such claims brought under Section 1981.

***US v. McTague**, __F.3d__, No. 15-4739 (4th Cir., Oct. 26, 2016).*
A trial court cannot summarily exclude grand jury testimony from use at trial without some showing of prosecutorial misconduct or bad faith and without providing a detailed explanation of its ruling and the parameters of any such exclusion.

***Wood v. US**, __F.3d__, No. 15-2106 (4th Cir., Jan. 4, 2017).*
A suit brought by a sheriff's deputy against the Navy under the FTCA after she was injured during a training exercise is properly dismissed because the Navy's conduct in allegedly negligently allowing a dangerous condition to exist regarding some mats placed next to a training structure, and its failure to warn of this condition, fell within the FTCA's discretionary function exception and sovereign immunity applied to her claim.

***Orr v. Copeland**, __F.3d__, No. 16-50023 (5th Cir., Dec. 22, 2016).*
A trial court erred in holding that - - in the absence of video evidence - - eyewitness testimony should not be considered for summary judgment purposes because it could not be subjected to cross examination.

***US v. Castillo**, __F.3d__, No. 15-50762 (5th Cir., Nov. 2, 2016).*
The answers to special jury questions must be considered when evaluating the sufficiency of the evidence supporting a court judgment.

Eldridge v. City of Warren, *__F.3d__, Nos. 15-1637 & 15-1690 (6th Cir., July 6, 2016) (unpub).*
In an excessive force claim involving the use of a Taser, a video of the officer's earlier use of a Taser against another person was properly excluded from evidence when its introduction was for the purpose of establishing excessive force and municipal liability.

Doe v. Village of Deerfield, *__F.3d__, No. 15-2069 (7th Cir., April 12, 2016).*
In a case of first impression in the Circuit, the court holds that the denial of a motion to proceed anonymously is immediately appealable.

Lavender v. UIC College of Denitstry, *__F.3d__, No. 16-3388 (7th Cir., Feb. 15, 2017).*
Dismissal of a lawsuit alleging that a dentist violated the plaintiff's civil rights by placing a miniature bomb in one of her teeth was upheld as too speculative to state a claim on which relief could be granted.

Martinez v. Chicago, *__F.3d__, Nos. 15-2752 & 15-3410 (7th Cir., May 23, 2016).*
An order by a district court judge imposing a non-monetary sanction on an attorney for misconduct during a trial is subject to appeal.

Tatum v. Foster, *__F.3d__, No. 14-3343 (7th Cir., Jan. 31, 2017).*
A court cannot refuse to allow a generally competent criminal defendant the right to self-representation.

US v. Wahi, *__F.3d__, No. 15-2094 (7th Cir., Mar. 2, 2017).*
A district court's ancillary jurisdiction does not permit it to exercise jurisdiction over a petition to expunge the judicial record in a criminal case on purely equitable grounds.

Sample v. PLLP, *__F.3d__, No. 15-3213 (8th Cir., Sept. 6, 2016).*
Municipalities do not enjoy absolute immunity from suit under Section 1983.

Shultz v. Buchanan, *__F.3d__, No. 15-1854 (8th Cir., July 19, 2016).*
An arrest and conviction for public intoxication does not, under *Heck v. Humphrey*, bar a claim contesting the officer's entry into a private house to effectuate that arrest.

US v. Skarda, *__F.3d__, No. 15-3889 (8th Cir., Dec. 22, 2016).*
The unintentional failure to record a telephone conversation later used to support the issuance of a search warrant, in violation of FRCRP 4.1(b)(2)(A), is not a violation of constitutional magnitude so as to require the suppression of the evidence discovered pursuant to that warrant.

Briseno v. ConAgra, *__F.3d__, No. 15-55727 (9th Cir., Jan.3, 2017).*
The FRCP does not require a demonstration of an administratively feasible way to identify class members as a prerequisite to class certification.

Chan Healthcare v. Liberty Mutual, *__F.3d__, No. 16-35210 (9th Cir., Jan. 3, 2017).*
In a case of first impression in the Circuit, the court finds that it lacks jurisdiction to review a district court's order in a class action case founded on federal question jurisdiction, remanding the case to the state court from which it was removed.

Garmon v. Los Angeles, *__F.3d__, No. 12-55109 (9th Cir., July 5, 2016).*
Prosecutorial immunity applies to Section 1983 lawsuits, but does not apply to a prosecutor's false statements in a document supporting her application for a subpoena *duces tecum.*

Lingo v. City of Salem, *__F.3d__, No. 14-35344 (9th Cir., June 27, 2016).*
The Court joins the First and Fifth Circuits in holding that the exclusionary rule does not apply in Section 1983 cases.

Ruiz v. Snohomish County, *__F.3d__, No. 14-35030 (9th Cir., June 8, 2016).*
Joining the Sixth and Seventh Circuits, the court holds that the dismissal of a Section 1983 sex discrimination lawsuit on both jurisdictional grounds and on a merits determination is not *res judicata* for a subsequent Section 1983 lawsuit brought upon the same factual basis.

Good v. Town of Meeker, *__F.3d__, No. 15-6085 (10th Cir., July 1, 2016).*
In reviewing a false arrest and unreasonable seizure claim, a court can consider statements outside of the four corners of the arrest-warrant application when determining whether probable cause existed for the warrant.

Gosselin v. Kaufman, *__F.3d__, No. 15-1484 (10th Cir., July 19, 2016).*
The court declines an invitation to apply the "continuing violation" doctrine to Section 1983 actions.

US v. Bowline, *__F.3d__, No. 15-7053 (10th Cir., Dec. 30, 2016).*
An agreement by two people that one will transfer drugs to another cannot form the basis of a "conspiracy to distribute" charge.

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.

CSX v. General Mills, *__F.3d__, No. 15-12095 (11th Cir., Jan. 30, 2017).*
In a case of first impression in the Circuit, the court holds that federal common law adopts the relevant state rule of collateral estoppel when determining the preclusive effect of a federal court judgment.

Thomas v. Home Depot, *__F.3d__, No. 15-15409 (11th Cir., Sept. 8, 2016).*
An amended complaint that did not include a jury demand did not cancel or supercede the jury demand made in the original complaint.

US v. Antunez, *__F.3d__, No. 15-10224 (11th Cir., April 25, 2016).*
A criminal defendant need not show good cause to dismiss his retained counsel if he intends to seek appointed counsel.

***US v. Deluca**, __F.3d__, No. 15-12033 (11th Cir., Oct. 25, 2016).*
The court declines an invitation to remove the requirement that a plaintiff show prejudice due to the government's violation of his attorney-client privilege in order for him to obtain the dismissal of an indictment against him.

***Winston & Strawn v. McClean**, __F.3d__, No. 14-7197 (D.C. Cir., Dec. 9, 2016).*
Under the Federal Rules of Civil Procedure, a motion for summary judgment cannot be "conceded" for want of opposition. The burden always remains on the movant to demonstrate why summary judgment is warranted.

24. ARBITRATION; CONTRACTS

***Rando v. Leonard**, __F.3d__, No. 15-1857 (1st Cir., June 17, 2016).*
Summary judgment is granted to an employer on a suit brought by a former employee alleging "intentional interference with contractual relations," when the employee confessed to stealing bottles of pain medication after being questioned by her employer in a "hostile manner."

***Lawrence v. Sol G. Atlas Realty**, __F.3d__, No. 15-3087 (2nd Cir., Oct. 28, 2016).*
An arbitration clause in a CBA that required any disputes that arose under its non-discrimination clause to be arbitrated did not "clearly and unmistakably" require the arbitration of an employee's statutory discrimination claims.

***S. Jersey Sanitation v. Applied Underwriters**, __F.3d__, No. 14-4010 (3rd Cir., Oct. 25, 2016).*
A motion to compel arbitration is granted on appeal when the allegations at issue apply to the contract at large and not only to its arbitration provisions.

***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.

***Reyna v. International Bank**, __F.3d__, No. 16-40057 (5th Cir., Oct. 4, 2016).*
A court must consider a motion to compel arbitration prior to considering conditional class certification.

***Bratton v. Trugreen**, __F.3d__, No. 16-5161 (6th Cir., Jan. 11, 2017).*
A dispute does not "arise under" an agreement that requires arbitration but that expired prior to the date of the events that are the subject of the dispute.

***Pure Wafer v. City of Prescott**, __F.3d__, No. 14-15940 (9th Cir., Jan. 10, 2017).*
A municipality does not "impair" the obligations of its contract with a private party, in violation of the Contracts Clause, so long as both parties can pursue court-ordered remedies in the event either party breaches its contractual obligations.

Coleman v. Utah State Charter School Bd. *, __F.3d__, No. 15-4141 (10th Cir., Dec. 16, 2016).*
An "implied understanding to the contrary" cannot defeat express at-will contractual language.

CM South East Texas v. Careminders*, __F.3d__, No. 16-11054 (11th Cir., Oct. 7, 2016).*
An arbitration award will not be overturned just because an arbitrator refused to continue the arbitration hearing after both sides had agreed to postpone it.

25. BANKRUPTCY

Premier Capital v. Crawford*, __F.3d__, No. 16-1285 (1st Cir., Oct. 24, 2016).*
Omitting the name of an asset, although disclosing its value on Bankruptcy Schedule B, justifies the denial of a petition for bankruptcy.

Smith v. Dallas County*, __F.3d__, No. 14-11370 (5th Cir., June 9, 2016) (unpub).*
A Title VII claim is dismissed because the plaintiff failed to list it in his bankruptcy schedules.

In Re: Michael Corrin*, __F.3d__, No. 16-5717 (6th Cir., Feb. 23, 2017).*
The court approves a Chapter 13 plan that called for 12% interest to be paid on overdue property taxes, although state law specified an 18% interest rate.

Rivera v. Orange County. *, __F.3d__, No. 14-60044 (9th Cir., Aug. 10, 2016).*
Debt arising from a debtor's son's involuntary juvenile detention is not a "domestic support obligation" and is dischargeable in bankruptcy.

Marshall v. Honeywell*, __F.3d__, No. 14-7190 (D.C. Cir., July 12, 2016).*
A plaintiff is judicially estopped from proceeding forward with her discrimination claim by her failure to disclose her lawsuit in her bankruptcy schedules.

26. DRIVER'S PRIVACY PROTECTION ACT

Bates v. Bates*, __F.3d__, No. 16-15129 (11th Cir., Feb. 28, 2017).*
DAVID access is not self-concealing, and the fact that an officer had a statutory duty to advise the plaintiff of unlawful DAVID access does not alone warrant the equitable tolling of the statute of limitations for purposes of bringing a claim under the DPPA.

Foudy v. Miami-Dade County*, __F.3d__, No. 15-12233 (11th Cir., May 19, 2016).*
In a case of first impression, the court holds that a DPPA claim accrues, for statute of limitation purposes, at the time the alleged unlawful act occurs, not when the unlawful act is later discovered.

McCourtney-Bates v. Dawsy*, __F.3d__, No. 16-15136 (11th Cir., Feb. 8, 2017).*
DPPA violations are not "self-concealing" so as to trigger the equitable tolling of the statute of limitations.

***Watts v. Miami**, __F.3d__, No. 16-15383 (11th Cir., Feb. 8, 2017).*
An officer who used the DAVID database to obtain personal information on a driver for other than law enforcement or criminal justice purposes was entitled to qualified immunity against a DPPA claim.

27. OTHER CASES OF INTEREST

***Friends of E. Hampton v. E. Hampton**, __F.3d__, Nos. 15-2334/2465 (2nd Cir., Nov. 4, 2016).*
A town must comply with the procedural requirements of the Airport Noise and Capacity Act of 1990 when enacting local laws affecting flights into a local airport even if it is willing to forego future federal funding for its airport.

***Raab v. Ocean City**, __F.3d__, No. 15-2127 (3rd Cir., Aug. 15, 2016).*
A plaintiff can be a "prevailing party" in a civil rights action that the parties settled and over which the court *sua sponte* entered a dismissal order incorporating and retaining jurisdiction over that settlement agreement.

***Daugherty v. Convergent Outsourcing**, __F.3d__, No. 15-20392 (5th Cir., Sept. 8, 2016).*
A collection letter violated the Fair Debt Collection Practices Act when its statements could lead an unsophisticated consumer into believing that her time-barred debt was legally enforceable.

***United Motorcoach v. Austin**, __F.3d__, No.16-50115 (5th Cir., Mar. 17, 2017).*
Federal law does not preempt a city's exercise of its regulatory power over the inter-state operation of charter busses and its requirement that such busses obtain a city permit in order to operate within its municipal limits.

***D. O. v. Glisson**, __F.3d__, No. 16-5461 (6th Cir., Jan. 27, 2017).*
The federal Child Welfare Act creates a private right to foster-care maintenance payments enforceable by a foster-parent under Section 1983.

***Frazier v. Chattanooga**, __F.3d__, No. 15-6405 (6th Cir., Nov. 3, 2016).*
The fact that a city described its fixed 3% COLA as "guaranteed" does not prove that it intended to be bound by that fixed COLA amount forever, given that its city code did not state that this fixed COLA amount was either vested or accrued.

***Franklin v. Parking Revenue Recovery Svcs.** , __F.3d__, No. 14-3774 (7th Cir., Aug. 10, 2016).*
Unpaid parking tickets are "debts" covered by the Fair Debt Collection Protection Act.

***Chaffins v. Stewart**, __F.3d__, No. 12-16913 (9th Cir., June 8, 2016).*
An artist transformed a used school bus into a Spanish galleon, which was burned after the defendant took possession of the land upon which it was parked. This artwork was "applied art" that did not afford the artist protection under the Visual Artists Rights Act.

John Doe #1 v. Miami-Dade County, *__F.3d__, No. 15-14336 (11th Cir., Jan. 25, 2017).*
An ordinance that prohibits certain sexual offenders from residing within 2500 feet of a school may violate the *Ex Post Facto* Clause.

Tundidor v. Miami-Dade, *__F.3d__, No. 15-12597 (11th Cir., Aug. 3, 2016).*
A canal is not navigable for purposes of admiralty jurisdiction if an artificial obstruction prevents vessels from using it to conduct interstate commerce.

Mercifully, the end.

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