INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

78th Annual Conference
September 29 – October 2, 2013
San Francisco, California

FEDERAL CASE LAW UPDATE

By

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U. S. SUPREME COURT

American Express v. Italian Colors, *__ U. S. __, No. 12-133 (June 20, 2013).*

The Federal Arbitration Act does not permit courts to invalidate contractual waivers of class arbitration on the ground that the cost of individually arbitrating a statutory claim exceeds its potential recovery.

Arkansas Game & Fish Comm. v. U.S., *__ U. S. __, No. 11-597 (Dec. 4, 2012).*

Temporary takings (flooding during tree growing season) can be compensable under the Takings Clause. Factors considered in determining a compensable taking include the time and duration of the taking, the degree to which the taking is a foreseeable result of governmental action, the character of the land involved, the private landowner's reasonable investment-backed expectations as regards the land's use, and the severity of the interference with that use.

Arlington v. FCC, *__ U.S. __, No.11-1545 (May 20, 2013).*

Courts must apply the Chevron framework to an agency's interpretation of a statutory ambiguity even if the ambiguity at issue involves the scope of the agency's jurisdiction.

ATA v. City of Los Angeles, *__ U. S. __, No. 11-798 (June 13, 2013).*

The Federal Aviation Administration Authorization Act pre-empts a municipality's short-haul cargo carrier placard and parking requirements because they relate to a motor carrier's price, route, or service in transporting property and have the force and effect of law.

Bailey v. U.S., *__ U.S. __, No. 11-770 (Feb. 19, 2013).*

The *Summers* rule, which allows police officers to detain without reasonable suspicion occupants of a residence who are located within or immediately outside that residence during the execution of a premises search warrant, does not apply when the detention of residents took place a mile from their residence.

Fisher v. Univ. of Texas-Austin, *__ U. S. __, No. 11-345 (June 24, 2013).*

A university's consideration of race in its admission decisions must survive a strict scrutiny analysis in order to avoid an Equal Protection Clause challenge to this policy and practice.

Florida v. Jardines, *__ U.S. __, No. 11-564 (Mar. 26, 2013).*

Using a drug dog on the porch of a residence to investigate the contents of the residence is a "search" under the Fourth Amendment.

Genesis Healthcare v. Symezyk, *__ U.S. __, No. 11-1059 (Apr. 16, 2013).*

In a collective action brought under the FLSA, when the plaintiff ignored a FRCP Rule 68 settlement offer that fully satisfied her claim, her action was properly dismissed for lack of subject matter jurisdiction, as she no longer had any personal interest in representing the other un-named punitive claimants that were the co-plaintiffs in her lawsuit.

Henderson v. U.S., *__ U.S. __, No. 11-9307 (Feb. 20, 2013).*

An error is "plain" under F.R.Cr.P. Rule 52(b) if it is plain at the time of appellate review, even if the law was unsettled at the time of the trial court's allegedly erroneous ruling.

Koontz v. St. John's River Water Mgmt. Dist. *, __ U.S. __, No.11-1447 (June 25, 2013).*

A government's property demand from a land use permit applicant must satisfy the Nollan/Dolan "nexus" and "rough proportionality" requirements even if it denies the land use permit and/or demands money from the applicant instead of land.

Lefemine v. Wideman, *__ U.S. __, No. 12-168 (Nov. 5, 2012).*

In this Section 1983 First Amendment lawsuit against police officers who prohibited protesters from carrying posters of aborted fetuses during a demonstration, the plaintiffs were the "prevailing party" for attorney's fee purposes when the court granted their motion for a permanent injunction, even though no monetary damages were assessed against the officers.

Los Angeles Cty. v. Natural Resources Def. Counsel, *__ U.S. __, No. 11-460 (Jan. 8, 2013).*

Under the Clean Water Act, the flow of polluted water from an improved (concrete-lined) portion of a navigable waterway into an unimproved portion of that same waterway does not constitute a "discharge of pollutants."

Lozman v. City of Riveria Beach, *__ U.S. __, No. 11-626 (Jan. 15, 2013).*

Under federal admiralty law, a plywood "houseboat" with no electricity, steering mechanism, or internal power is not a "vessel" nor is it capable of being used as a means of water transportation because, to any reasonable observer, it is not designed to carry people or property on water.

Maryland v. King, *__ U.S. __, No.12-207 (June 3, 3013).*

When police officers arrest and book a suspect based upon probable cause, the taking and analyzing of a cheek swab of his DNA is a legitimate police procedure that is reasonable under the Fourth Amendment.

McBurney v. Young, *__US__, No.112-17 (April 29, 2013).*

Virginia's FOIA, which grants only its citizens access to state public records, does not violate either the Privileges and Immunities Clause nor the dormant Commerce Clause.

Missouri v. McNeely, *__ U.S. __, No. 11-1425 (Apr. 17, 2013).*

The non-consensual warrantless testing of the blood of a suspected drunk driver violates the Fourth Amendment. The fact that alcohol dissipates in the blood stream did not constitute an "exigency" justifying this warrantless search.

Salinas v. Texas, *__ U. S. __,No. 12-246 (June 17, 2013).*

No Fifth Amendment violation exists when a person, without being placed in custody or receiving Miranda warnings, did not expressly invoke his privilege against self-incrimination in response to an officer's question.

Texas Southwestern Med. Ctr. v. Nasser, *__ U.S. __, No.12-484 (June 24, 2013).*

Title VII retaliation claims must be proven under traditional "but for" causation principles, not under a lesser causation "motivating factor" test.

Vance v. Ball State Univ. **,** *__ U.S. __, No.11-556 (June 24, 2013).*

For Title VII vicarious liability purposes, a harassing employee is a "supervisor" only if he/she is empowered by his/her employer to take tangible employment actions against the victim of his/her harassment. Having authority to assign daily work tasks is not sufficient, in and of itself, to turn a co-worker into a "supervisor".

U.S. COURTS OF APPEAL

1. *FIRST AMENDMENT*

Lund v. City of Fall River, *714 F. 3d 65 (1st Cir., 2013).*

A city did not violate the First Amendment when it denied the defendant a zoning variance that would have allowed him to open an adult bookstore. He had an adequate opportunity to place his establishment on one of the eight sites (totaling 28.53 acres or 0.24% of the city's developable land), even if these available sites would have to be subdivided, have their access drives relocated and/or existing structures removed to be useable.

McCullen v. Coakley, *__F. 3d__, No. 12-1334 (1st Cir., Jan. 9, 2013).*

A 35-foot buffer zone around the entrances, exits, and driveways of abortion clinics is a valid "time, place, and manner" restriction designed to protect clinic patients and employees.

Newton v. Lepage, *__F. 3d__, No. 12-1472 (1st Cir., Nov. 28, 2012).*

It is not a First Amendment violation for a governor to move a mural depicting "pro-union" scenes to another location. He is free to convey a different message from that of the former administration.

O'Connell v. Marrero-Recio, *__F. 3d__, No. 12-2191 (1st Cir., July 22, 2013).*

The refusal of a HR director to engage in unethical or illegal personnel actions at the behest of her politically motivated supervisor was not protected speech under the First Amendment because it was made pursuant to her official duties.

Rodriquez-Reyes v. Molina-Rodriguez, *__F. 3d__, No. 12-1647 (1st Cir., Mar. 22, 2013).*

Allegations that as soon as a new government agency head took office he began to "talk about politics" and engage in "a witch hunt" to discover the political affiliations of his agency employees are sufficient to avoid summary judgment on an employee's First Amendment claim of political discrimination.

U.S. v. Kravetz, *706 F. 3d 47 (1st Cir., 2013).*

There is no First Amendment or common law right for reporters to have access to pre-trial subpoenas and related documents in a criminal case.

Fahs Construction v. Gray, *__F. 3d__, No.13-27 (2nd Cir., Aug. 8, 2013).*

A contractor who argued with the Department of Transportation in an effort to secure additional money and time for his company to complete its construction projects did not engage in speech "on a matter of public concern" for First Amendment purposes.

Singer v. Ferro, *711 F. 3d 331 (2nd Cir., 2013).*

An employee disciplined for creating a computer parody that suggested corruption amongst the government officials for whom he worked did not establish a viable First Amendment claim. His vague parody was not citizen speech "on a matter of public concern."

Sousa v. Marquez, *__F. 3d__, No. 12-403 (2nd Cir., Dec. 13, 2012).*

Assuming that a backward-looking-right-of-access claim exists under the First Amendment, that claim is not available unless a judicial remedy is completely foreclosed by the false statement or non-disclosure of a government official.

State Employees v. Rowland, *__F. 3d__, No.11-3061 (2nd Cir., May 31, 2013).*

State officials who targeted union employees for firing based upon their union membership may have violated the employees' First Amendment right to freedom of association.

Interstate Outdoor Ad. v. Mt. Laurel, *__F. 3d__, No. 11-3837 (3rd Cir., Feb. 11, 2013).*

An ordinance prohibiting billboards based upon traffic safety and aesthetics concerns does not violate the First Amendment. The industrial nature of the area affected by the ordinance does not mitigate these concerns, and a town-wide ban is not overly broad when it advances substantial municipal interests.

Conestoga Wood v. USDHHS, *__F. 3d__, No. 13-1144 (3rd Cir., July 26, 2013).*

A for profit, secular corporation cannot assert a claim under the Free Exercise Clause.

PG Publishing v. Aichele, *__F. 3d__, No. 12-3863 (3rd Cir., Jan. 15, 2013).*

A law that prohibits the Press from being located within 10 feet of a polling place when voting is taking place does not violate the First Amendment.

Brown v. Town of Cary, *706 F. 3d 294 (4th Cir., 2013).*

The court rejects the "absolutist" approach to content neutrality that has been adopted by the Fifth, Eighth, and Eleventh Circuits, and holds that a sign ordinance is not content-based for First Amendment purposes of it: (1) regulates the places where speech may occur, and not the speech itself, (2) was not adopted because of any disagreement with the message conveyed, and (3) the government's interests in the regulation of speech are unrelated to its content. Therefore, a city ordinance can, in a content-neutral manner and to promote aesthetics and traffic safety, prohibit a homeowner from spray-painting "Screwed by the Town of Carey" on his house when the large letters and florescent colors violated its sign ordinance.

Centro Tepeyac v. Montgomery Cty., *__F. 3d__, No. 11-1314 (4th Cir., July 3, 2013).*

A lower court's decision to enjoin the enforcement of that portion of the defendant's resolution requiring limited service pregnancy resource centers to post signs disclosing that "the Montgomery County Health Officer encourages women who are or may be pregnant to consult with a licensed health care provider" is affirmed over a First Amendment challenge.

Sons of Conf. Vet. v. Arlington, *__F. 3d__, No. 12-1832 (4th Cir., July 5, 2013).*

A city ordinance that bans private access to city-owned flag standards does not violate the First Amendment.

Tobey v. Jones, *__F. 3d__, No. 11-2230 (4th Cir., Jan. 25, 2013).*

The arrest of the plaintiff by a TSA agent after he displayed the text of the Fourth Amendment on his chest creates a plausible First Amendment claim.

US v. Lanning, *__F. 3d__, No. 12-4547 (4th Cir., July 19, 2013).*

The brief fondling of the fully clothed crotch of an undercover officer during a sting operation does not constitute disorderly conduct nor is such conduct obscene.

Asgeirsson v. Abbott, *696 F. 3d 454 (5th Cir., 2012).*

An open door law that criminalizes private deliberations between a quorum of the members of a governmental body over public business that is within their control constitutes a valid "time, place, and manner" restriction on free speech.

Haverda v. Hays County, *__F. 3d__, No. 12-51008 (5th Cir., July 17, 2013).*

A correctional officer was speaking as a private citizen for First Amendment purposes when he wrote a "letter to the editor" supporting the current sheriff and praising his efforts as regards the county jail and was then terminated when the sheriff lost the election.

PPA of Hildago Cty. V. Svehs*, __F.3d__, No. 12-50377 (5th Cir., Aug. 21, 2012).*

A State does not violate the First Amendment by denying funding within its own subsidized program to organizations that promote elective abortions.

600 Marshall v. Memphis, *705 F. 3d 576 (6th Cir., 2013).*

Nude dancing as a nonconforming use cannot be grandfathered under a new municipal zoning ordinance when nude dancing was not legal in the district at the time the new zoning ordinance was adopted.

American Freedom v. SMART, *__F. 3d__, No. 11-1538 (6th Cir., Oct. 25, 2012).*

The sides of busses are not "public forums" for First Amendment advertising purposes when the transit authority's numerous rules and tight control over advertising space made this location incompatible with public discourse, assembly and debate.

Dixon v. Univ. of Toledo, *702 F. 3d 269 (6th Cir., 2012).*

A high-level HR official who writes publically against the very policies her government employer charged her with creating, promoting, and enforcing does not engage in First Amendment protected speech.

Dye v. Office of the Racing Commission, *702 F. 3d 286 (6th Cir., 2012).*

In a case of first impression, the court holds that employees claiming to have been retaliated against because of their political affiliation need not show that they were actually affiliated with the political party or candidate at issue.

Entertainment Productions v. Shelby Cty. , *__F. 3d__, No. 11-6396 (6th Cir., July 2013).*

The First Amendment does not require direct empirical support, let alone a specific methodology, in order to sustain a regulation on erotic expression.

Freedom From Religion v. Warren, MI., *__F. 3d__, No. 12-1858 (6th Cir., Feb. 25, 2013).*

A municipality's nativity scene, accompanied by numerous secular and seasonal symbols, did not violate the First Amendment because it was "government speech," and the First Amendment does not prohibit a government from making content or viewpoint distinctions when it comes to its own speech. The municipality could therefore refuse to include a Freedom From Religion Foundation sign in its holiday display.

Handy-Clay v. Memphis, *695 F. 3d 531 (6th Cir., 2012).*

An assistant city attorney who was terminated may state a valid First Amendment claim when some of the comments that led to her termination concerned the improper use of city funds, an issue that she had not been asked to investigate, and were made to individuals both inside and outside the city. Her speech may have been as a concerned citizen addressing issues of public corruption.

In Re: The Search of Fair Finance, *__F. 3d__, No. 10-4139 (6th Cir., Sept. 5, 2012).*

Newspapers did not have a First Amendment right of access to the sealed documents filed in proceedings initiated to obtain a search warrant after that warrant is executed. The execution of the search warrant did not eliminate the possibility that harm would result from the disclosure of these documents.

Keeling v. Coffee Cty. , *__F. 3d__, No.12-6250 (6th Cir., Aug. 8, 2013) (unpub.).*

An employee who complained internally about her supervisor's inability to properly assist those members of the public who came to her with questions did not speak as a citizen on a matter of public concern for First Amendment purposes.

The Contributor v. Brentwood, *__F. 3d__, No.12-6598 (6th Cir., Aug. 14, 2013).*

In defending against a First Amendment claim that an ordinance prohibiting the street-selling of newspapers does not leave open adequate alternative means of communication, a municipality need not offer proof that its proffered list of alternative means of communication are, in fact, "adequate".

Bell v. Keating, *697 F. 3d 445 (7th Cir., 2012).*

A city ordinance criminalizing an individual's refusal to leave the scene when instructed to do so by a police officer, in situations where three or more people are engaging in disorderly conduct nearby, violates the First and Fourteenth Amendments.

Chrzanowski v. Bianchi, *__F. 3d__, No. 12-2811 (7th Cir., Aug. 2, 2013).*

An assistant state's attorney engaged in protected speech when he testified at grand jury and at trial about the misconduct of his supervisors. The fact that his testimony involved the subject matter of his employment does not mean that his speech "owed its existence" to his official duties.

Doe v. Marion County Prosecutor, *__F. 3d__, No. 12-2512 (7th Cir., Jan. 23, 2013).*

A statute prohibiting registered sex offenders from using all social networking sites, instant messaging services, and chat programs is not narrowly tailored to serve the State's interest in preventing them from engaging in improper communications with minors.

Embry v. Calumet City, *701 F. 3d 231 (7th Cir., 2012).*

A Commissioner of Streets who claimed he was demoted for supporting his mayor's re-election held a "policy-making" position and could be removed for his political affiliation.

Kristofek v. Village of Orland Hills, *__F. 3d__, No. 12-2345 (7th Cir., Mar. 11, 2013).*

An officer fired for his comments concerning the release without charges of a politically-connected driver arrested for traffic violations may raise a valid First Amendment claim even if that speech was motivated exclusively his own self-interest – if the "content, context, and manner" in which his speech was delivered indicate that one of its objectives was to bring about change with public ramifications extending beyond the personal.

McArdle v. Peoria Sch. Dist., *__F. 3d__, No. 11-2437 (7th Cir., Jan. 31, 2013).*

Statements made by a public employee about matters that directly affect her area of responsibility are unprotected by the First Amendment.

Peele V. Burch, *__F. 3d__, No. 12-3562 (7th Cir., July 9, 2013).*

The job assignment transfer of a police detective, which occurred one day after his negative comments about the election of a Democratic mayoral candidate were published in a local newspaper, was sufficient to avoid summary judgment on his First Amendment claim.

WEAC v. Walker, *__F. 3d__, Nos. 12-1854, 12-2011 & 12-2058 (7th Cir., Jan. 18., 2013).*

A law prohibiting a State's payroll system from being used to collect union dues does not violate the First Amendment.

Pl. Prnthd. v. Rounds*, 686 F.3d 889 (8th Cir., 2012).*

A state law requiring physicians, when obtaining informed consent, to inform abortion-seeking patients about the risk of post-abortion suicide did not violate the First Amendment.

Acosta v. Costa Mesa, *__F. 3d__, No.10-56854 (9th Cir., May 3, 2013).*

A city ordinance that makes it a misdemeanor for a member of the public speaking at a City Council meeting to engage in "disorderly, insolent, or disruptive behavior" is facially overbroad, because it does not limit its prohibition to actual disturbances.

B.-Wallace v. San Diego, *__F. 3d__, Nos. 04-55732 & 04-56167 (9th Cir., Dec. 20, 2012).*

A city's lease of municipal property to the Boy Scouts, an organization that prohibits atheists, agnostics, and homosexuals, does not violate the Establishment Clause.

Charles v. Los Angeles, *__F. 3d__, No.10-57028 (9th Cir., Oct. 15, 2012).*

An ordinance requiring a building permit for the erection of all temporary signs except those containing a "political, ideological, or noncommercial" message is valid when applied to truthful commercial advertisements for noncommercial expressive works.

Dex Media v. Seattle, *696 F. 3d 952 (9th Cir., 2012).*

An ordinance that requires publishers of business directories to obtain a permit and pay a fee for each directory distributed, and to provide an opt-out registry, does not survive strict scrutiny. It is not the least restrictive means of advancing the government's interests in waste, resident privacy, and cost recovery.

Ellins v. City of Sierra Madre, *__F. 3d__, No.11-55213 (9th Cir., Mar. 22, 2013).*

A police officer's speech, which led to a "no-confidence" vote by the police union against his police chief, addressed a matter of public concern. The subsequent delay in his pay raise may constitute an unlawful act of retaliation for his exercise of First Amendment rights.

Ford v. City of Yakima, *__F. 3d__, No.11-35319 (9th Cir., Feb. 8, 2013).*

An officer who arrested a driver for a noise ordinance violation because of the driver's disrespectful behavior towards law enforcement was not entitled to qualified immunity on a First Amendment claim alleging that the driver was jailed in retaliation for his exercise of free speech … even if probable cause otherwise existed for the driver's arrest.

Hartman v. Calif. Dept. of Corr. *, __F. 3d__, No.11-16008 (9th Cir., Feb 19, 2013).*

It may violate the Establishment Clause for a prison to fail to employ neutral criteria when determining whether its resources should be re-allocated to recognize its growing Wiccan religious population.

Rubin v. Lancaster, *__F. 3d__, No.11-56318 (9th Cir., Mar. 26, 2013).*

A city council's practice of opening its meetings with privately led prayers does not violate the Establishment Clause. The First Amendment does not categorically forbid sectarian references in legislative prayers, and the fact that most prayer volunteers selected under the council's facially neutral invocation policy were Christian may be a function of demographics, not religious preference.

Valle Del Sol v. Arizona, *__F. 3d__, No.12-15688 (9th Cir., Mar. 4, 2013).*

An injunction is affirmed against a state law making it unlawful for a motorist to hire from a stopped car that impedes traffic a person to work at another location. These "day-laborer" provisions are content-based restrictions on commercial speech that are more extensive than necessary to promote the state's interest in traffic safety.

Cressman v. Thompson, *__F. 3d__, No.12-6151 (10th Cir., June 11, 2013).*

Requiring an Oklahoma motorist to display a state license plate that depicts an Indian shooting a "sacred rain arrow" that went against his religious beliefs states a plausible First Amendment compelled speech claim involving symbolic speech.

***Indigo Room v. City of Ft. Myers**, __F. 3d__, No.12-11738 (11th Cir., March 1, 2013).*

An ordinance prohibiting persons under the age of 21 from entering or remaining in certain alcoholic beverage establishments does not violate the First Amendment even if it prevents minors from entering such establishments to sign a political petition.

***Underwood v. Hawkins**, __F. 3d__, No.11-13117 (11th Cir., Oct. 18, 2012).*

It does not violate the First Amendment for a successful political candidate to terminate the employment of the co-worker (and election rival) that she bested.

2. SECOND AMENDMENT; FIREARMS

***Kachalsky v. Cty. Of West Chester**, 701 F. 3d 81 (2nd Cir., 2012).*

A handgun licensing scheme that requires an applicant to demonstrate "proper cause" to obtain a license to carry a handgun in public does not violate the Second Amendment.

***Kwong v. Bloomberg**, __F. 3d__, No. 12-1578 (2nd Cir., July 9, 2013).*

A municipal law that sets a hand gun licensing fee greater than that required in other areas of the state does not violate the Second Amendment or the Equal Protection Clause.

***U.S. v. Bogle**, __F. 3d__, No.11-349 (2nd Cir,. May 23, 2013).*

The conviction of the defendant under a federal law prohibiting felons from possessing firearms and body armor does not violate the Second Amendment.

***Drake v. Filko**, __F. 3d__, No. 12-1150 (3rd Cir., July 31, 2013).*

A state requirement that private gun owners demonstrate a "justifiable need" to publically carry a handgun for self-defense withstands an intermediate scrutiny analysis.

***NJ Rifle & Pistol Clubs v. New Jersey**, __F. 3d__, No. 12-1624 (3rd Cir., Jan. 30, 2013).*

A state law that prohibits the purchase or sale of more than one handgun per month is not pre-empted by Federal law.

Wollard v. Gallagher, *__F. 3d__, No. 12-1437 (4th Cir., Mar. 21, 2013).*

A law conditioning the carrying of a hand gun in public upon having a "good and substantial reason to do so" does not violate the Second Amendment.

Moore v. Madigan, *702 F. 3d 933 (7th Cir., 2012).*

The Second Amendment protects the right to carry ready-to-use firearms in public for potential self-defense – subject to reasonable limitations consistent with public safety. It creates a right of self-defense both outside and inside the home.

3. FOURTH AMENDMENT; EXCESSIVE FORCE

Hernandez-Cuevas v. Taylor, *__F. 3d__, No. 12-1053 (1st Cir., July 17, 2013).*

An individual's Fourth Amendment right to be free from seizure absent probable cause continues through the pretrial period.

U.S. v. Dapolito, *__F. 3d__, No. 12-2023 (1st Cir., Apr. 11, 2013).*

Reasonable suspicion that a person is a wanted fugitive cannot be created simply by the failure of an officer to find the name the person gives him in a government database.

U.S. v. Infante, *__F. 3d__, No. 11-2156 (1st Cir., Dec. 11, 2012).*

A firefighter's warrantless entry into the defendant's house to search for the source of a propane tank explosion that had injured him, and his observation of marijuana plants therein, falls within the "emergency exception" to the Fourth Amendment's search warrant requirement.

U.S. v. Rabbia, *699 F. 3d 85 (1st Cir., 2012).*

The combination of an undercover officer's display of his service weapon, his temporary handcuffing of a suspect for safety reasons, and his pat-frisk of that suspect, did not convert his valid *Terry* stop into a *de facto* arrest.

Swartz v. Insogna, *__F. 3d__, No. 11-2846 (2nd Cir., Jan. 3, 2013).*

Giving an officer "the finger" while driving by him does not, in and of itself, give that officer reasonable suspicion that criminal activity or a traffic violation is afoot so as to justify a traffic stop.

Winfield v. Trottier, *__F. 3d__, No. 11-4404 (2nd Cir., Mar. 6, 2013).*

It is a Fourth Amendment violation for a police officer to open and read a letter not in plain view that he finds during a search incident to a traffic stop when his actions are based upon the driver's general consent to search the area where the letter was found.

Gunter v. Lumberton Tshp. , *__F. 3d__, No.12-3146 (3rd Cir., July 31, 2013)(unpub.).*

Using a sweep kick, three doses of pepper spray, and a hobble tie is not "excessive force" even if the arrestee dies of cocaine-induced delirium and toxicity during the struggle.

James v. City of Wilkes Barre, *700 F. 3d 675 (3rd Cir., 2012).*

An officer who makes a "show of authority" and insists that a parent accompany her injured child to the hospital does not effectuate an "arrest" in violation of the Fourth Amendment.

U.S. v. Navedo, *__F. 3d__, No. 11-3413 (3rd Cir., Sept. 12, 2012).*

A person's unprovoked flight from an officer, without more, cannot elevate the reasonable suspicion to detain and investigate him into the probable cause required for his arrest.

Evans v.Chalmers, *703 F. 3d 636 (4th Cir., 2012).*

A police officer is not liable for a person's unlawful seizure after indictment in the absence of evidence that the officer misled or pressured the prosecution into issuing the indictment.

Meyers v. Baltimore Cty., *__F. 3d__, No. 11-2192 (4th Cir., Feb. 1, 2013).*

"Excessive force" existed when an officer "Tased" a suspect 10 times -- four (4) times in "probe" mode to bring him down and six (6) more times in "stun" mode after he had been subdued.

Santos v. Frederick Cty. **,** *__F. 3d__, No. 12-1980 (4th Cir., Aug. 7, 2013).*

A Fourth Amendment "seizure" occurred when an officer gestured a person to "remain seated".

U.S. v. Watson, *__F. 3d__, No. 11-4371 (4th Cir., Jan. 2, 2013).*

The 3-hour detention of a person the police encountered in a building that was open to the public, without any reason to believe that he was linked to any criminal activity, violates the Fourth Amendment.

U.S. v. Yengel, *__F. 3d__, No. 12-4317 (4th Cir., Feb. 15, 2013).*

The possibility that an immobile and inaccessible grenade is located in a locked closet, coupled with the fact that the officers who knew of the grenade did not evacuate the area around the closet, belie the existence of an "emergency" justifying the warrantless search of the residence within which the closet is located.

Curtis v. Anthony, *__F. 3d__, No. 11-20906 (5th Cir., Mar. 6, 2013).*

The court affirms summary judgment in favor of police officers who relied upon "dog-scent line-ups" to arrest the defendant.

US v. Cotton, *__F. 3d__, No. 12-40563 (5th Cir., July 2, 2013).*

A police officer conducted a traffic stop and asked the driver "Is it OK if I search everything in the car?" to which the driver replied "My luggage, yeah." Under these facts, any warrantless search of other than the driver's luggage violated the Fourth Amendment.

U.S. v. Woerner, *__F. 3d__, No. 11-41380 (5th Cir., Feb. 22, 2013).*

The court concludes that the "good faith" exception applies to prevent the suppression of evidence obtained via search warrant even when the magistrate's probable cause finding when issuing the warrant was based upon illegally obtained information. When the officer sought the warrant, he did not know that his information was tainted, and his fellow officers did not knowingly supply him with the tainted information.

Andrews v. Hickman County, *700 F. 3d 845 (6th Cir., 2012).*

A police officer accompanying child welfare officers on a home site visit who was told to wait outside the home, but who entered anyway without a warrant, may have violated the Fourth Amendment.

Campbell v. City of Springboro, *700 F. 3d 779 (6th Cir., 2012).*

Summary judgment in favor of K-9 officers was denied on excessive force claims brought after they released, without warning, a dog ("Spike") with known excessive biting issues and who had not been kept on an accepted training regime.

Eldridge v. City of Warren, *__F. 3d__, No.12-1500 (6th Cir., Aug. 5, 2013) (unpub.).*

The court refuses to find that a lethargic driver who clutched the steering wheel and provided unhelpful answers to an officer's questions engaged in "active resistance" justifying the officer's use of force.

G.C. v. Owensboro Pub. Sch., *__F. 3d__, No. 11-6476 (6th Cir., Mar. 28, 2013).*

General knowledge of a student's drug abuse and depressive tendencies does not justify a school official's warrantless search of his cell phone.

Hagans v. Franklin Cty. Sheriff, *695 F.3d 505 (6th Cir., 2012).*

No "excessive force" is shown when officers repeatedly used a Taser on a suspect who was actively resisting arrest and refusing to be handcuffed.

Hensley v. Gassman, *693 F. 3d 681 (6th Cir., 2012).*

An officer who did not remain neutral during a "self-help" vehicle repossession -- instead advising one party that she had the right to immediate vehicle repossession and threatening the other party's attorney with arrest if he interfered -- engaged in state action in violation of the Fourth Amendment even though he did not participate in the actual repossession.

Marcilis II v. Redford Township, *693 F. 3d 589 (6th Cir., 2012).*

A 90-minute un-handcuffed detention of the plaintiff while police officers secured the scene and searched for controlled substances was not unreasonable.

Smith v. Stoneburner, *__F. 3d__, No.12-1963 (6th Cir., May 10, 2013).*

Reaching across a doorway and grabbing the arm of a suspect located in a house constitutes entry into that house for Fourth Amendment purposes.

Sutton v. Nashville, *__F. 3d__, No. 11-6449 (6th Cir., Nov. 28, 2012).*

An officer did not have probable cause to arrest the plaintiff, who denied ownership of a cell phone found at a crime site and produced a cell phone of his own, based solely upon the officer's speculation that the plaintiff "looked like someone who had a couple of girlfriends on the side and needed two cell phones so that his wife would not find out about them."

U.S. v. Cochrane, *__F. 3d__, Nos. 11-4081 & 11-4082 (6th Cir., Dec. 20, 2012).*

Under the Fourth Amendment, an officer need not ask questions of the driver of a vehicle he stops in any specific order when the totality of the circumstances indicates that the scope and duration of the traffic stop were reasonable.

US v. Jeter, *__F. 3d__, No. 12-3909 (6th Cir., July 10, 2013).*

In a case of first impression, the court holds that a suspect who stops his bicycle when approached by police officers, and then drops his bicycle and flees without speaking to the officers, did not submit to their authority and was not "seized" for Fourth Amendment purposes, when his flight was not improperly provoked but an effort to get away.

U.S. v. Kinison, *__F. 3d__, No. 12-5997 (6th Cir., Mar. 19, 2013).*

It is not unreasonable for Fourth Amendment purposes for officers to rely upon a magistrate's erroneous probable cause determination even if the search warrant affiants are also its executing officers.

U.S. v. Shaw, *__F. 3d__, No. 11-6433 (6th Cir., Feb. 21, 2013).*

An officer who entered a house after telling its occupant that he had a search warrant "for this address," when it was actually for another address, violated the Fourth Amendment.

Findlay v. Lendermon, *__F. 3d__, No.12-3881 (7th Cir., June 14, 2013).*

Tackling a person so that he does not take possession of a camera's memory card containing evidence against him is not "excessive force" for substantive due process purposes.

Robin v. Flynn, *__F. 3d__, No. 11-3904 (7th Cir., July 9, 2013).*

Police officers are entitled to qualified immunity on a Fourth Amendment claim stemming from the plaintiff's 90-minute detention while they determined the legitimacy of his handgun carry permit.

U.S. v. Delgado, *__F. 3d__, No. 12-2478 (7th Cir., Nov. 29, 2012).*

Merely knowing that a shooter is "at large" did not justify an officer's warrantless entry into an apartment located in the same apartment complex as the shooting victim.

US v. Sabo, *__F. 3d__, No. 12-2700 (7th Cir., July 31, 2013).*

A homeowner's physical action of moving back to allow an officer to enter the door to his residence, upon the officer's request that he be allowed to "step inside", constituted consent for Fourth Amendment purposes, even if no verbal consent was given.

U.S. v. Uribe, *__F. 3d__, No. 11-3590 (7th Cir., Feb. 13, 2013).*

Driving a car of one color while exhibiting a registration number for a car of a different color does not, alone, give rise to the reasonable suspicion necessary to conduct an investigatory stop. No law requires a car owner to amend his vehicle registration information to reflect a change in his car's color.

Alexander v. Hedback, *__F. 3d__, No. 12-2834 (8th Cir., June 28, 2013).*

No Fourth Amendment municipal liability exists when a municipal police force carries out an eviction order issued by a bankruptcy court.

Chevallier v. Hand, *__F. 3d__, No. 12-2983 (8th Cir., July 19, 2013).*

The warrantless arrest of a person based solely upon the uncorroborated statements of another who is not clearly trustworthy may violate the Fourth Amendment.

Hess v. Ables**,** *__F. 3d__, No. 12-3211 (8th Cir., Apr. 26, 2013).*

Outside of the "excessive force" context, there is no clearly established law regarding the duty of a police officer to intervene to prevent constitutional violations.

Lenderman v. St. Louis P.D. **,** *__F. 3d__, No.12-3193 (8th Cir., Aug. 5, 2013).*

Conspiring to prevent a plaintiff from bringing a viable Section 1983 action by covering up a false arrest justifies the denial of qualified immunity for the officers involved.

U.S. v. Arvocha**,** *__F. 3d__, No.12-2853 (8th Cir., May 8, 2013).*

While some degree of standardized criteria or established routine is required for a police officer to impound and inventory a vehicle without a warrant or probable cause, there need not be clear cut guidance for every situation. As long as an officer's residual judgment is based upon legitimate concerns related to the purposes of an impoundment, his decision to impound a particular vehicle does not violate the Fourth Amendment.

US v. Bausby**,** *__F. 3d__, No. 12-3212 (8th Cir., July 11, 2013).*

The defendant, who placed a stolen motorcycle with a "for sale" sign on it in his chain-link fenced front yard, thereby placed his front yard outside the curtilage of his house for Fourth Amendment purposes.

U.S. v. Lindsey**,** *__F. 3d__, Nos. 11-3485, 11-3513 (8th Cir., Jan. 9, 2013).*

Consent to search a house was validly given by a woman who answered the door and knew the house occupants.

US v. Mathias**,** *__F. 3d__, No. 12-3092 (8th Cir., July 31, 2013).*

An officer who, while standing in an open field, peered through the slats of the defendant's home fence, did not engage in a trespassory search.

U.S. v. Quintero Felix, *__F. 3d__, No. 12-3535 (8th Cir., May 1, 2013).*

A traffic offender who was given a warning ticket and then, when he began to leave the squad car, was asked by the officer if he could "ask him a few more questions," and who then stopped, sat back in the seat, and closed the car door, consented to this extension of his traffic stop for Fourth Amendment purposes.

US v. Smith, *__F. 3d__, No. 12-2948 (8th Cir., Aug. 1, 2013).*

An incorrect date on a search warrant does not invalidate that warrant.

US v. Thomas, *__F. 3d__, No.11-10451 (9th Cir., Aug. 8, 2013).*

A drug detection dog's failure to complete his trained indication for the presence of drugs does not, as a matter of law, mean that his behavior cannot give rise to probable cause to search the contents of a vehicle.

George v. Morris, *__F. 3d__, No. 11-55956 (9thCir., July 30, 2013).*

Shooting a 64-year old man in a walker on his own patio when he was holding a gun pointed towards the ground may violate the Fourth Amendment.

Lavan v. Los Angeles, *693 F. 3d 1022 (9th Cir., 2012).*

The Fourth and Fourteenth Amendments protect homeless persons from the government's seizure and destruction of their momentarily-unattended personal property.

Sims v. Stanton, *__F. 3d__, No.11-55401 (9th Cir., Dec. 3, 2012).*

An officer who injured the plaintiff when he kicked down the gate to the fence enclosing her yard in pursuit of a fleeing misdemeanant engaged in an unconstitutional warrantless search of the curtilage of her home that was not excused by exigency or emergency circumstances.

AFSCME Local 79 v. Scott, *__F. 3d__, No.12-12908 (11th Cir., May 29, 2013).*

An executive order mandating the suspicionless drug testing of all State employees, including those not occupying safety – sensitive positions, is too broad for Fourth Amendment purposes.

Martinez v. Carson, *697 F. 3d 1252 (10th Cir., Oct. 17, 2012).*

Officers who arrested the plaintiff without probable cause and then immediately transferred him to other officers could be held liable for the entire period of his unlawful detention. They were the proximate cause of his detention in violation of the Fourth Amendment.

Storey v. Taylor, *__F. 3d__, No.11-2180 (10th Cir., Oct. 1, 2012).*

The report of a loud argument that had ceased by the time an officer arrived – without more – does not create the probable cause or exigent circumstances needed to justify the warrantless search of his home.

U.S. v. De La Cruz, *__F. 3d__, No.11-5114 (10th Cir., Jan. 9, 2013).*

After comparing the defendant to a photograph of a wanted man, which objectively showed that he was not the man in the photograph, a police officer could not continue to detain him until his subjective doubt as to the defendant's identity had been satisfied.

U.S. v. Garcia, *__F. 3d__, No.11-2233 (10th Cir., Feb. 13, 2013).*

A search warrant listing the wrong address but unequivocally identifying the house to be searched does not violate the Fourth Amendment.

U.S. v. Jones II, *__F. 3d__, No.11-3104 (10th Cir., Dec. 18, 2012).*

The court rejects an argument that the Missouri officers who seized the defendant in Kansas violated the Fourth Amendment simply because, at the time of his seizure, they were acting outside of their jurisdiction and without authority under Kansas law.

U.S. v. Valerio, *__F. 3d__, No.12-12235 (11th Cir., June 20, 2013).*

A *Terry* stop and seizure made by an officer almost a week after he last observed the suspect do anything suspicious violates the Fourth Amendment.

4. FIFTH AMENDMENT; SIXTH AMENDMENT

U.S. v. Ferguson, *__F. 3d__, No. 11-3806 (2nd Cir., Dec. 6, 2012).*

Interrogating an arrestee for an hour without informing him of his *Miranda* rights is justified under the "public safety exception," since the possibility that he left a firearm in a public place created an objectively reasonable need for the officers to protect public safety through their interrogation.

U.S. v. Gupta, *__F. 3d__, No. 09-4738 (2nd Cir., Nov. 8, 2012).*

A criminal court's intentional and summary exclusion of the public from the courtroom during *voire dire* violated the defendant's Sixth Amendment right to a public trial.

Sansotta v. Nags Head, *__F. 3d__, No. 12-1538 (4th Cir., July 25, 2013).*

A municipality's enforcement of its nuisance laws against the owner of a storm-damaged beach cottage does not deprive him of any constitutionally protected property rights.

Quesada v. Napolitano, *__F. 3d__, No. 12-50374 (5th Cir., Nov. 30, 2012).*

The Fifth Amendment's due process guarantee is not implicated by the defective legal representation of a claimant during a Title VII settlement proceeding.

Janosek v. Cleveland, *__F. 3d__, No.12-4028 (6th Cir., June 7, 2013).*

Any property interest that a landowner may have had in his overpayment of utility bills ended, for Fifth and Fourteenth Amendment purposes, when the statute of limitations ran on his state law unjust enrichment claim.

U.S. v. Hodge, *__F. 3d__, No. 12-1173 (6th Cir., Apr. 19, 2013).*

The "public safety" exception to the need for a *Miranda* warning applied when officers questioned a criminal suspect about a pipe bomb, even if they did not fear that the suspect could access that dangerous weapon, as a bomb is inherently unstable and dangerous.

U.S. v. Scott, *__F. 3d__, No. 10-5811 (6th Cir., Sept. 10, 2012).*

A suspect invoked his Fifth Amendment right to counsel when he answered "No" to the question "*Having these rights in mind, do you wish to talk to us now?"*

U.S. v. Woods, *__F. 3d__, No. 11-2429 (6th Cir., Apr. 3, 2013).*

An officer conducting a lawful "pat down" of the defendant incident to his arrest was not required to provide a *Miranda* warning to him before asking him "What's in your pocket" after he felt a hard lump therein.

U.S. v. Hunter, *__F. 3d__, No. 12-1751 (7th Cir., Feb. 28, 2013).*

"Can you call my attorney?" is an unambiguous invocation of one's right to counsel under the Fifth Amendment.

Laurel Park v. Tumwater, *__F. 3d__, No.1-35466 (9th Cir., Oct. 29, 2012).*

City ordinances that included certain existing manufactured home parks as part of a new "Manufactured Home Park Zone District," and essentially restricted the use of this property to manufactured homes, did not engage in a Fifth or Fourteenth Amendment "taking" of this property. The owners of these parks could still close or sell them or convert them to one of a few other allowed uses.

US v. Botello-Rosales, *__F. 3d__, No. 12-30074 (9th Cir., July 15, 2013).*

Administering Miranda warnings in English to a Spanish-speaking arrestee does not "reasonably" convey this information to him where the subsequent conveyance of those rights in Spanish was faulty and the officers did not clarify which set of warnings was correct.

U.S. v. Morgan, *__F. 3d__, No.12-10056 (9th Cir., June 3, 2013).*

An officer's re-advising a suspect of her Miranda rights, as well as processing the drugs found in her car and taking her photograph next to these drugs, did not amount to an "interrogation" for Fifth Amendment purposes.

U.S. v. Santistevan, *__F. 3d__, No.11-1534 (10th Cir., Dec. 17, 2012).*

A defendant invoked his Fifth Amendment right to counsel when he presented an officer with a letter from his attorney that indicated that he did not wish to speak to the officer without his counsel present.

Trinco Investment v. US, *__F. 3d__, No. 2012-5139 (Fed. Cir., July 18, 2013).*

The US Forest Services' intentional and uncompensated burning of timber on private property may violate the Fifth Amendment. The doctrine of "necessity" does not absolve the federal government from liability for the taking or destruction of property in its efforts to fight fires.

5. FOURTEENTH AMENDMENT; DUE PROCESS; EQUAL PROTECTION

Clukey v. Town of Camden, *__F. 3d__, No. 12-1555 (1st Cir., May 21, 2013).*

In a case of first impression, the court holds that a tenured public employee's right to be recalled following a lay-off is a constitutionally protected property interest. Therefore, the employee had a due process right to notice and a hearing regarding his recall.

Gianfranceseo v. Wrentham, *__F. 3d__, No. 12-1677 (1st Cir., Apr. 5, 2013).*

To state a Section 1983 due process and equal protection claim against a municipality for its excessive and maliciously imposed regulatory violations, a plaintiff must do more than allege misconduct. He must actually describe that conduct, and cannot rely upon assertions nominally cast in factual terms but actually so general and conclusory in nature as to amount to mere assertions that unspecified facts exist.

Sanra v. Town of Smithfield, *__F. 3d__, No. 12-1600 (1st Cir., May 3, 2013).*

Even assuming that a terminated public employee's post-discharge arbitration proceedings were defective, a court must look to the entire pre- and post- discharge proceeding when determining whether his procedural due process rights were violated.

Coollick v. Hughes, *699 F. 3d 211 (2nd Cir., 2012).*

No procedural due process violation occurred when a guidance coordinator's position was eliminated. She received notice prior to her job termination and any rights deprivation issues she had could be fully remedied through the grievance procedure provided for in her collective bargaining agreement.

Edelhertz v. Middletown, *__F. 3d__, No. 12-3923 (2nd Cir., May 8, 2013).*

The failure of a city to notify landowners prior to enacting a zoning change did not violate due process, as the zoning changes at issue were prospective and generally applicable, and were therefore legislative, not adjudicative, in nature.

B. S. v. Somerset County, *__F. 3d__, No. 11-1833 (3rd Cir., Jan. 8, 2013).*

A mother's procedural due process rights were violated when county child welfare officers removed her child from her care after presenting *ex parte* conclusions about the child's welfare to a judge.

Mulholland v. County of Berks, *__F. 3d__, No. 12-2075 (3rd Cir., Jan. 28, 2013).*

A county did not violate the plaintiff's due process rights during its child abuse investigation when the plaintiff, as the subject of the investigation, had the opportunity to present new information at a meaningful time and in a meaningful manner.

Nat'l. Amusements v. Borough of Palmyra, *__F. 3d__, No.12-1630 (3rd Cir., May 9, 2013).*

A city need not hold a pre-deprivation hearing when it temporarily shuts down a flea market located on an abandoned munitions site to prevent the public from walking around on a surface littered with live explosives. This municipal action was a proper use of its police power, was neither arbitrary nor capricious, and did not require just compensation.

Smith v. Philadelphia, *__F. 3d__, No.12-3531 (3rd Cir., July 23, 2013)(unpub.).*

There is no constitutional right to a "safe work environment" under the Due Process Clause even if state officials allegedly concealed a known workplace danger (friable asbestos).

U.S. v. Fisher**,** *__F. 3d__, No. 11-6781 (4th Cir., Apr. 1, 2013).*

A police officer's affirmative misrepresentation in his search warrant affidavit, which tinged the entire criminal proceeding, rendered the defendant's plea involuntary and violated his due process rights.

Whitley v. John Nick, et. al. **,** *__F. 3d__, No. 12-10312 (5th Cir., Aug. 8, 2013).*

An officer is not liable under the "bystander liability theory" for knowing that a fellow officer is violating another's constitutional rights and doing nothing to prevent it unless he or she acquiesces in the misconduct.

EJS Properties v. City of Toledo**,** *__F. 3d__, No. 10-4471 (6th Cir., Sept. 5, 2012).*

An elected official who would not support a re-zone application unless the applicant provided a $100,000 "contribution" to a local community center did not create a due process issue. There was no liberty or property interest in the re-zone and therefore no Constitutional right to have this government official make his discretionary decision corruption-free.

Howe v. City of Akron**,** *__F. 3d__, No. 11-3752 (6th Cir., July 22, 2013).*

Substantially delayed promotions are sufficient "irreparable harm" to justify an injunction requiring the promotion of firefighters adversely impacted by a promotional exam that disfavored Caucasian candidates on account of their race.

Balckowl v. Peterson**,** *__F. 3d__, No. 12-3352 (7th Cir., July 18, 2013).*

The Due Process Clause requires notice and an opportunity for a government contractor who is debarred from municipal work to present its position, but not an extended to-and-fro.

Cromwell v. City of Momence**,** *__F. 3d__, No. 12-1541 (7th Cir., Apr. 12, 2013).*

A police department regulation that states that probationary employees could be terminated at any time for any reason but omits that same language with regard to non-probationary employees does not create a Constitutionally-protected property interest for the latter in their continued employment.

Kurtis v. Kopp, *__F. 3d__, No. 12-2818 (7th Cir., Aug. 2, 2013).*

Allegations of improper subjective motive (political favoritism) are not enough to state a class-of-one equal protection claim.

Schepers v. Commsr., Indiana DOC*, __F.3d__, No. 11-3834 (7th Cir., Aug. 28, 2012).*

The Due Process Clause is violated by a state's sex and violent offender registry that does not provide a process by which persons can dispute their placement on that registry.

Swanson v. City of Chetek, *__F. 3d__, No.10-1658 (7th Cir., June 19, 2013).*

In a class-of-one equal protection claim brought against a mayor by his neighbor, when the mayor's animus is readily obvious, there is no need for the plaintiff to show disparate treatment through a near-exact one-to-one comparison to another individual. As overt hostility has been demonstrated, the failure to identify a similarly situated individual is not fatal to the claim.

Doe v. Gay, *__F. 3d__, No. 12-2052 (8th Cir., June 20, 2013).*

A police department's custom of ignoring violent officer misconduct and failing to supervise or discipline its officers could have led one of its officers to sexually assault a citizen while on duty, and thus impose Section 1983 liability on the city.

Faruq v. Vickers, *__F. 3d__, No.12-2192 (8th Cir., Aug. 5, 2013) (unpub.).*

Summary judgment was inappropriate in a Section 1983 case by a prisoner alleging that a correctional nurse acted with deliberate indifference to his medical needs when he confiscated the orthotic devices he needed for his unstable knees.

Gallagher v. City of Clayton, *699 F. 3d 1013 (8th Cir., 2012).*

Outdoor smoking on public property does not constitute a fundamental right, and smoking does not constitute a part of one's existing fundamental right to bodily integrity. An ordinance prohibiting smoking in public areas is rationally related to the protection of public health and safety for due process purposes.

Hess v. Ables**,** *__F. 3d__, No. 12-3211(8th Cir., April 26, 2013).*

Firing an at-will municipal employee for refusing to take a urine drug test requested by a state trooper during an off-duty investigatory stop does not violate the Fourth, Fifth, or Fourteenth Amendments.

Sutton v. Bailey**,** *__F. 3d__, No. 12-1276 (8th Cir., Dec. 3, 2012).*

For due process purposes, an employee does not receive "inadequate notice" of the charges against him simply because he is not told that a meeting that he is asked to attend will concern his termination. He is also not denied a "meaningful" pre-termination meeting simply because the decision to terminate him has been made before the meeting by partial decision makers, so long as their initial termination decision can be reconsidered and he has a right to a post-termination proceeding before an impartial adjudicator.

Blantz v. CA Dept. of Corr. And Rehab**,** *__F. 3d__, No.11-56525 (9th Cir., Aug. 15, 2013).*

A state agency does not create a property interest in an independent contractor position simply by instituting performance review procedures.

Goldstein v. Long Beach**,** *__F. 3d__, No.10-56787 (9th Cir., May 8, 2013).*

A district attorney acts as a "final policy-maker" when he establishes policies on the use of jailhouse informers. His public employer may be liable under Section 1983 for an imprisonment based upon the perjured testimony of an unreliable jailhouse snitch.

Maxwell v. San Diego Cty.**,** *697 F. 3d 941 (9th Cir., 2012).*

A police officer's delay in allowing an ambulance carrying a shooting victim to leave a crime scene, thus denying her medical care, could constitute a due process violation.

Gonzales v. Albuquerque**,** *__F. 3d__, No.11-2248 (10th Cir., Dec 17, 2012).*

Neither the existence of a progressive disciplinary system nor the fact that city employees were never told that they were "at-will," created a property interest in their continued employment for purposes of their due process claim.

Lynch v. Barrett, *__F. 3d__, No.12-1222 (10th Cir., Jan. 4, 2013).*

Police officers' "code of silence", under which they refused to discuss the details of a police shooting in public, did not constitute a violation of the defendant's right to "court access" under the First or Fourteenth Amendments. These officers would still be required to disclose the details of that shooting during case discovery and at trial.

Schneider v. Grand Junction, *__F. 3d__, Nos.12-1086 & 12-1115 (10th Cir., June 5, 2013).*

A police department was not liable under Section 1983 for the violation of a woman's substantive due process right to bodily integrity when she was raped by an officer who had been hired on the basis of a background check that ended three weeks before his hire and that did not include information from his former employer. These facts do not show "deliberate indifference" to the risk that he might sexually assault a person with whom he came into contact during his official duties.

Schwartz v. Booker, *__F. 3d__, No.11-1583 (10th Cir., Dec. 19, 2012).*

The "special relationship" doctrine can apply to county social workers who did not place a child with foster parents but subsequently oversaw the child's case, and they may be liable under the Fourteenth Amendment if they abdicated their responsibility to investigate the well-being of this child, who died while in the care of his foster parents.

6. EEOC TITLE VII

Gerald v. Univ. of Puerto Rico, *__F. 3d__, No. 11-2143 (1st Cir., Jan. 28, 2013).*

An employee's voluntary resignation that took place over a year after the last act of his alleged harassment and eight months after the last act of the alleged retaliation against him came too late to support his constructive discharge claim.

Medina Rivera v. MVM, *__F. 3d__, No. 11-2419 (1st Cir., Apr. 10, 2013).*

Title VII does not ban workplace harassment, no matter how pervasive or severe, unless it is tied to sex or another protected characteristic.

Desardouin v. City of Rochester, *__F. 3d__, No. 12-**187** (2nd Cir., Feb. 19, 2013).*

A supervisor's repeated comments to a female employee that her husband was not "taking care of her in bed" warrants a trial on her Title VII "hostile work environment" claim. However, no unlawful retaliation exists when a Title VII claimant files an EEOC charge and is then terminated for secretly and unlawfully taping her workplace conversations.

Kelly v. Howard J. Shapiro & Assoc., *__F. 3d__, No. 12-3489 (2nd Cir., Apr. 26, 2013).*

A female employee's "hostile work environment" claim was dismissed when it was based upon her allegedly unequal treatment by a supervisor in favor of another female employee with whom the supervisor was having an affair. The plaintiff's gender had nothing to do with her unequal treatment, and the court refuses to recognize a "paramour preference" cause of action under Title VII.

U.S. v. Vulcan Society, et. al. **,** *__F. 3d__, No. 11-5113 (2nd Cir., May 14, 2013).*

In order to rebut a *prima facie* showing of a Teamsters pattern-or-practice of discrimination, an employer must produce evidence that is relevant to rebutting the inference of discrimination that arises from the plaintiff's statistics, not evidence directed at the statistics themselves.

Zeno v. Pine Plains Centr. Sch. Dist., *__F. 3d__, No. 10-3604 (2nd Cir., Dec. 3, 2012).*

A jury verdict of $1 Million is affirmed on a Title VII claim that a school was deliberately indifferent to student-on-student harassment for three and one-half years, despite the fact that it had, during this time period, disciplined some of the harassing students and conducted racial sensitivity training at student assemblies.

Mandel v. M & Q Packaging, *__F. 3d__, No. 11-3193 (3rd Cir., Jan. 14, 2013).*

Because a "hostile work environment" constitutes a single unlawful employment practice, a plaintiff may base her lawsuit on acts that occurred outside of the statute of limitations, so long as one act occurred within the statutory filing period.

EEOC v. Houston Funding, *__F. 3d__, No.12-20220 (5th Cir., May 31, 2013).*

Discharging an employee because she is lactating constitutes Title VII sex discrimination.

Juino v. Livingston Parish, *__F. 3d__, No.12-30274 (5th Cir., May 30, 2013).*

In a case of first impression, the court joins the Second, Fourth, Eighth, Tenth, and Eleventh Circuits, and rejects the view of the Sixth and Ninth Circuits, in holding that volunteer firefighters must show remuneration in order to be considered "employees" under Title VII.

Griffin v. Finkbeiner*, 689 F.3d 584 (6th Cir., 2012).*

Although the only "racially insensitive" remark made by a mayor to an African-American employee was that he was "lazy," the mayor's tendency to make racially insensitive remarks at meetings could be used as evidence of discrimination under Title VII.

Serrano v. Cintas, *699 F. 3d 884 (6th Cir., 2012).*

The EEOC can employ the *Teamsters* "pattern or practice" framework for proving intentional discrimination based solely upon circumstantial evidence when it brings suit under either Section 706 or 707 of Title VII.

Adeyeye v. Heartland Sweetners, *__F. 3d__, No. 12-3820 (7th Cir., July 31, 2013).*

An employee's request to return to Nigeria to lead his deceased father's funeral rites, upon threat of "spiritual death" to his family should he fail to do so, is sufficient to avoid summary judgment on his Title VII religious accommodation claim.

Alam v. Miller Brewing, *__F. 3d__, No. 11-2456 (7th Cir., Feb. 27, 2013).*

A former employee does not have a Title VII retaliation claim against his former employer for the latter's refusal to now do business with him because, while an employee, he had filed an EEOC charge against the employer.

Bates v. Chicago, *__F. 3d__, No.12-1500 (7th Cir., Aug. 9, 2013).*

Under Title VII, a Black firefighter did not show that he was treated worse than similarly situated White firefighters when his evidence showed that he and two other Black firefighters, as well as five non-Black firefighters, were demoted.

Begolli v. Home Depot, *701 F. 3d 1158 (7th Cir., 2012).*

Whether the plaintiff failed to file a timely Title VII administrative charge is a defense to be decided by a jury, not a judge, in a case where a jury has been demanded.

Benes v. State Ltd. **,** *__F. 3d__, No. 13-1166 (7th Cir., July 26, 2013).*

During an EEOC mediation, after receiving his employer's settlement offer, the plaintiff stormed into his employer's deliberation room and said: "You can take your proposal and shove it up your ass and fire me and I'll see you in court!" He was then fired. Due to this misconduct, his claim of sex discrimination was deemed abandoned and his subsequent firing deemed due to his misconduct during mediation, which does not violate Title VII.

Hall v. Chicago, *__F. 3d__, No. 11-3279 (7th Cir., Mar. 29, 2013).*

Isolating a female employee from other workers may create a "hostile work environment."

Hobgood v. Ill. Gaming Bd. **,** *__F. 3d__, No. 11-1926 (7th Cir., July 16, 2013).*

The court endorses the "convincing mosaic" approach to showing that an employer acted for unlawful reasons in terminating an employee for assisting a fellow employee in his Title VII lawsuit against their employer. If the evidence, as a whole, could suggest improper conduct, summary judgment is improper.

Johnson v. Koppers, *__F. 3d__, No.12-2561 (7th Cir., Aug. 8, 2013).*

A false report by a co-employee does not establish Title VII employer liability under the "cat's paw" theory absent a showing that the report was motivated by a discriminatory animus.

Lambert v. Peri Fireworks, *__F. 3d__, No. 12-2502 (7th Cir., July 24, 2013).*

Calling African American laborers "donkeys" and "gorillas" is sufficient evidence of a hostile work environment based upon race to avoid summary judgment.

Porter v. Chicago, *700 F. 3d 944 (7th Cir., 2012).*

Allowing a Christian employee to come to work on Sunday afternoon, to allow her to attend morning church service, is a sufficient religious accommodation under Title VII. Giving her the entire day off is not necessary.

Leapheart v. Williamson, *__F. 3d__, No. 12-1516 (8th Cir., Jan. 29, 2013).*

In a case of first impression in the Circuit, the court holds that the decision to eliminate by ordinance a human resources department under the control of the mayor and to create a new human resources position under the control of the city council, and to thus terminate all executive branch human resources employees, is entitled to absolute legislative immunity as regards a subsequent EEOC charge.

Bridgeforeth v. Jewell, *__F. 3d__, No. 12-5015 (D.C. Cir., July 2, 2013).*

An employer's failure to nominate a police officer for a "time-off award" after the officer settled an EEOC claim against the employer is not the type of "materially adverse" action that gives rise to a Title VII retaliation claim.

Dyson v. Dist. of Columbia, *__F. 3d__, No.11-7146 (D. C. Cir., Feb. 5, 2013).*

The court refuses to equitably toll the statute of limitations for filing an EEOC charge for the time the EEOC spent processing the plaintiff's intake form and mailing her a draft charge.

7. *ADA / REHABILITATION ACT*

Jones v. Nationwide Life Ins., *__F. 3d__, No. 12-1414 (1st Cir., Sept. 26, 2012).*

Under the ADA, an employee's request for accommodation, coming after two years of delay and only after he knew that he was being terminated for failing to perform an essential job function, came too late.

Mary Jo C. v. N.Y. State & Local Ret., *__F. 3d__, No. 11-2215 (2nd Cir., Jan. 29, 2013).*

Title II of the ADA does not apply to employment discrimination.

McElwee v. Orange County, *__F. 3d__, No. 11-4366 (2nd Cir., Nov. 15, 2012).*

An ADA accommodation that would require the employees with whom the plaintiff worked to be educated about his inability to respond to social cues and body language, and to become more tolerant of his harassing behavior, is unreasonable as a matter of law.

Solomon v. Philadelphia, *__F. 3d__, No.12-3436 (3rd Cir., Aug. 12, 2013) (unpub).*

While an employer's failure to engage in an interactive process with an employee runs the risk that a reasonable accommodation will be missed, this failure, in and of itself, does not violate the ADA - - especially when the employer reasonably accommodates the employee's disability outside of this process.

Young v. UPS, *__F. 3d__, No. 11-2078 (4th Cir., Jan. 9, 2013).*

Under the ADA, an employer need not initiate an "informal, interactive process" to determine whether an employee is disabled – only as to whether she needs an accommodation. Also, providing light duty assignments to employees injured on the job, but not to pregnant employees or employees not injured on the job, does not violate the PDA.

Stewart v. Waco Sch. Dist., *__F. 3d__, No. 11-51067 (5th Cir., Mar. 14, 2013).*

The court recognizes a "gross misjudgment" theory of recovery under Section 504 of the Rehabilitation Act as regards a sexually abused handicapped student. This theory may apply when a school district refuses to implement reasonable accommodations or to properly exercise its professional judgment in response to new circumstances.

Keith v. Oakland County, *__F. 3d__, No. 11-2276 (6th Cir., Jan. 10, 2013).*

The court remands this ADA case to determine if a deaf person is otherwise qualified to be a wave pool lifeguard with or without reasonable accommodation.

***Knoll v. White Lake Ambulance**, __F.3d__, No. 10-2348 (6th. Cir., Aug. 22, 2012).*

Under the ADA, "counseling" can constitute a "medical examination" limited by the Act's "job-relatedness" and "business necessity" requirements.

***EEOC v. Thrivent**, 700 F. 3d 1044 (7th Cir., 2012).*

An employer did not violate the ADA's medical records confidentiality requirements when it disclosed a former employee's migraine headache problem to prospective employers. These confidentiality requirements apply to medical inquires only.

***Feldman v. Olin Corp.**, 673 F.3d 515 (7th Cir., 2012).*

Sleep-apnea affects the major life activity of sleeping and may require a day shift accommodation under the ADA.

***Povey v. Jeffersonville**, 697 F. 3d 619 (7th Cir., 2012).*

An employer's statements that the plaintiff, who had injured her wrist, "couldn't do a whole lot of anything" at the animal shelter where she worked and that the shelter "didn't have a job for that" (meaning a job that accommodated her wrist restrictions), did not establish for ADA purposes that she was substantially limited in the activity of "working." These comments related to animal shelter jobs only, and not to an entire class of jobs.

***Bahl v. County of Ramsey**, 695 F. 3d 778 (8th Cir., 2012).*

Given the exigencies of a traffic stop, the ADA does not require an officer to communicate with a deaf motorist in writing. Subsequently providing him with a written explanation of the reasons for his arrest provides him with "meaningful access" to the "service" of being notified of the reason for his arrest. However, his post-arrest interview is also a covered "service," and cannot be stopped on account of his disability simply because the county does not want to pay for an interpreter.

***Kallail v. Alliant Energy**, 691 F. 3d 925 (8th Cir., 2012).*

A diabetic employee's request for a permanent schedule was not a request for a "reasonable accommodation" under the ADA when a rotating shift was an essential element of her job.

Olsen v. CRMC**,** *__F. 3d__, No.12-2113 (8th Cir., May 7, 2013).*

Under the ADA, a nurse was not able to perform her essential job duties when she suffered from seizures, and it was not necessary for her employer to "accommodate" this disability by allowing her to rest after each seizure. These "rest periods" would not remedy her condition nor otherwise allow her to perform her essential job duties during her seizure episodes.

Pulczinski v. Trinity*, 691 F.3d 996 (8th Cir., 2012).*

The court rejects the Sixth Circuit's view that an employer can be liable under the ADA based upon its ill-considered or unreasonable business decisions, holding that ADA liability is conditioned upon a showing of intentional discrimination based upon a known disability.

Roberts v. City of Omaha**,** *__F. 3d__, No. 12-3426 (8th Cir., July 31, 2013).*

Qualified immunity is granted against ADA and Rehabilitation Act "reasonable accommodation" claims made against officers who were attempting to secure a paranoid schizophrenic and take him into custody for his own safety and for the safety of others.

Gilstrop v. United Airlines**,** *__F. 3d__, No.11-55271 (9th Cir., Mar. 12, 2013).*

An airport terminal is not a place of "public accommodation" under the ADA.

Strong v. Valdez Fine Foods**,** *__F. 3d__, No. 11-55265 (9th Cir., July 18, 2013).*

There is no ADA requirement that the removal of obstructions in buildings constructed after January 26, 1993 be "readily achievable".

Elwell v. Oklahoma Univ. **,** *693 F. 3d 1303 (10th Cir., 2012).*

In a case of first impression, the court holds that Title II of the ADA does not provide a cause of action for employment discrimination.

***Robert v. Bd. of Commsrs.**, 691 F.3d 1211 (10th Cir., 2012).*

Under the ADA, an employee cannot use her employer's tolerance of her impairment-based, ostensibly temporary non-performance of essential job duties as evidence that those duties are non-essential.

***Ausah v. Coca Cola**, __F. 3d__, No. 11-13663 (11th Cir., May 8, 2013).*

In a case of first impression, the court holds that an employee seeking protection under §12112(d)(4)(A) of the ADA (the "medical examination provision") does not first have to prove that she is disabled. However, her employer can require her to undertake a "fitness for duty" evaluation if its request represents a reasonable, objective concern over her ability to perform her essential job functions or over the safety of other employees, and is consistent with business necessity.

***Liese v. Indian River Cty. Hosp. Dist.** , 701 F. 3d 334 (11th Cir., 2012).*

A defendant's "deliberate indifference" is sufficient to establish "intentional discrimination" under Section 504 of the Rehabilitation Act.

***Seff v. Broward Cty.**, 691 F.3d 1221 (11th Cir., 2012).*

An employee wellness program, consisting of a biometric screening and an on-line health risk assessment questionnaire, and offered as part of an employer's group health insurance plan, did not violate the ADA's prohibition against non-voluntary medical examinations and inquiries, as it fell within the Act's safe harbor provisions for insurance plans.

8. FMLA

***Pagn-Coln, et al. v. Walgreens**, __F. 3d__, Nos. 11-1089; 11-1091 (1st Cir., Sept. 4, 2012).*

In a case of first impression, the court holds that overtime pay can be included in an award of back pay under the FMLA.

Diaz v. MI. Dept. of Corr., *__F. 3d__, Nos. 11-1075 & 11-1213 (6th Cir., Jan. 7, 2013).*
A Section 1983 claim cannot be brought to enforce the FMLA's self-care provisions.

Kinds v. Ohio Bell, *__F. 3d__, No. 12-4048 (6th Cir., July 29, 2013).*
Nothing in the FMLA or its regulations limits to instances of "employee fraud" an employer's right to request medical certification after the "5-business-day period" pertaining to an employee's request for leave expires.

Mendel v. City of Gibraltar, *__F. 3d__, No. 12-1231 (6th Cir., Aug. 15, 2013).*
"Volunteer" firefighters who received a "substantial" hourly wage ($15.00) whenever they chose to respond to a call are "employees" for FMLA purposes.

Srouder v. Dana Light Axle, *__F. 3d__, No. 12-5835 (6th Cir., Aug. 7, 2013).*
No FMLA violation existed when an employer terminated an employee for his absence from work after he verbally indicated that he needed to undergo surgery but failed to follow the employer's leave request policy and procedures.

Basden v. PTI, *__F. 3d__, No. 11-2880 (7th Cir., May 8, 2013).*
The court refuses to extend the scope of the FMLA to include an ineligible employee's request for future leave to commence after she becomes an FMLA-eligible employee.

Bosley v. Cargill Meat, *__F. 3d__, No. 12-1290 (8th Cir., Feb. 5, 2013).*
A depressed employee's failure to use her employer's call-in procedures while missing work for an entire month violated her FMLA notice obligations and justified her discharge.

Clinkscale v. St. Therese, *__F. 3d__, No. 12-10259 (8th Cir., Nov. 13, 2012).*
An employee's signs of workplace stress and anxiety (severe crying and shaking) were sufficient to put her employer on notice of her possible need for medical leave for purposes of the FLMA interference claim filed after she was terminated for abandoning her job.

***Walker v. Trinity Marine**, __F. 3d__, No. 12-2468 (8th Cir., July 19, 2013).*

An employer's mistaken belief that an employee suffered from a "serious health condition" does not entitle that employee to the benefits of the FMLA if she actually did not have a serious health condition.

***Duchateau v. Camp Dresser McKee**, __F. 3d__, No.12-10838 (11th Cir., April 9, 2013).*

Direct estoppel barred a state law claim of pregnancy discrimination when a jury found that the plaintiff suffered no adverse employment action related to her claim of retaliation for exercising her right to maternity leave under the FMLA.

9. FLSA; OSHA

***Steel Institute v. N.Y.C.** , __F. 3d__, No.12-276 (2nd Cir., May 7, 2013).*

A city's crane regulations, contained in its building code, are laws of general applicability not pre-empted by OSHA.

***Boaz v. Fed Ex**, __F. 3d__, No. 12-5319 (6th Cir., Aug 6, 2013).*

A clause in an employment agreement limiting the time during which legal action can be brought against the employer to six months violates the FLSA and the Equal Pay Act.

***Almy v. Kickert School Bus Line**, __F. 3d__, No. 13-1273 (7th Cir., July 16, 2013).*

An interstate school bus driver falls within the "motor-carrier exemption" to overtime wages.

***Abshire v. Redland Energy**, 695 F. 3d 792 (8th Cir., 2012).*

Changing a designated workweek on a permanent basis does not violate the FLSA even if it causes less employee hours to be classified as "overtime." The FLSA does not require a "workweek" to begin on any specific day of the week.

Lucas v. Jerusalem Cafe**,** *__F. 3d__, No. 12-2170 (8th Cir., July 29, 2013).*

The FLSA applies to employers who hire illegal aliens and then fail to pay them earned overtime.

McCall v. DAV**,** *__F. 3d__, No. 12-3011 (8th Cir., July 31, 2013).*

A salaried truck driver was not entitled to overtime pay when he drove a commercial motor vehicle (GVWR exceeding 10,000 pounds) because he fell within the "motor-private carrier" overtime exemption, even if his actual loads weighed less than 10,000 pounds.

Comtran Group v. DOL**,** *__F. 3d__, No. 12-10275 (11th Cir., July 24, 2013).*

In a case of first impression, the court holds that, under OSHA, it is not appropriate to impute a supervisor's knowledge of his own violative conduct to his employer.

Miller v. Roche Surety**,** *__F. 3d__, No.12-10259(11th Cir., Dec. 26, 2012).*

An employee's e-mail, complaining that she needed a place at work to express her breast milk, cannot reasonably be considered a FLSA complaint.

Cannon v. District of Columbia**,** *__F. 3d__, No. 12-7064 (D.C. Cir., June 4, 2013).*

Under the FLSA, in determining the minimum wage of "double-dippers", their annuity payments cannot be included as part of their "compensation".

10. ADEA; PDA; RLUIPA

Bishop of Springfield v. Springfield**,** *__F. 3d__, No. 11-1117 (1st Cir., July 22, 2013).*

A city ordinance creating a single parcel "historic district" that prevented a church from making any exterior changes to its building without the permission of the municipality's "historical committee" does not, on its face, violate RLUIPA.

Rodriquez-Machado v. Shinseksi, *__F. 3d__, No. 12-1430 (1st Cir., Nov. 21, 2012).*

An appeal of a district court decision granting summary judgment to an employer in an ADEA case is dismissed with prejudice when the appellant's opening brief contained no specific record cites to support her factual allegations.

Fortress Bible v. Feiner, *694 F. 3d 208 (2nd Cir., 2012).*

When a municipality uses a statutorily-created environmental review process as its primary vehicle for making zoning decisions, those decisions constitute the application of a zoning law and are within the purview of RLUIPA.

Bethel World v. Montgomery Cty., *__F. 3d__, No. 11-2176 (4th Cir., Jan. 31, 2013).*

In a land use context, a plaintiff can succeed on a RLUIPA "substantial burden" claim by establishing that a governmental regulation puts substantial pressure on it to modify its behavior.

Moore-King v. Chesterfield Cty., *__F. 3d__, No. 11-2183 (4th Cir., Feb. 29, 2013).*

Requiring a fortune teller to obtain a business license in order to operate does not violate her First Amendment rights of free speech and religion nor violate RLUIPA. The requirement is part of a generally applicable regulatory scheme, and the fortune teller's set of beliefs does not constitute a "religion" under either the Constitution or RLUIPA.

Gardner v. Kennedy IV, *__F. 3d__, No. 11-40653 (5th Cir., Apr. 2, 2013).*

A policy prohibiting prisoners from wearing quarter-inch beards for religious reasons violates RLUIPA.

Gonzalez v. San Antonio, *__F. 3d__, No. 12-50472 (5th Cir. Mar. 12, 2013).*

The fact that the EEOC found that a municipality had violated the ADEA is not dispositive in a later lawsuit stemming from the EEOC charge. That finding is entitled to no more weight than other trial testimony.

Opulant Life Church v. Holly Springs, *697 F. 3d. 279 (5th Cir., 2012).*

A city zoning ordinance was properly enjoined because it improperly singled out churches -- requiring a 60% approval from property owners located within a 1300 – foot radius of a church site, as well as the approval of the mayor and board of aldermen.

Auday v. Wet Seal, *698 F. 3d 902 (6th Cir., 2012).*

An employee's ADEA claim becomes the property of her estate once she files for bankruptcy.

Blizzard v. Marion Tech., *__F. 3d__, No. 11-3441 (6th Cir., Oct. 19, 2012).*

A six and one-half year age difference between a terminated employee and her younger replacement is "significant" for ADEA purposes.

Sadie v. Cleveland, *__F. 3d__, Nos. 12-3142 & 12-3143 (6th Cir., June 11, 2013).*

A city did not violate the ADEA when, pursuant to city ordinance, it forced its police officers to retire when they reached the age of sixty-five.

Levin v. Madigan*, 692 F.3d 607 (7th Cir., 2012).*

In a case of first impression, the court holds that a Section 1983 equal protection claim alleging age discrimination is not precluded by the ADEA. This determination, that the ADEA is not the exclusive remedy for age discrimination in employment claims, is contrary to decisions from the First, Fourth, Fifth, Tenth, and D. C. Circuits.

Stewart v. FNU Beach FNU, *__F. 3d__, No.12-3013 (10th Cir., Dec. 18, 2013).*

In a case of first impression, the court joins the Third, Fifth, Seventh, and Eleventh Circuits in holding that there is no cause of action under RLUIPA for individual capacity claims.

Cobb v. City of Roswell, *__F. 3d__, No.12-15633 (11th Cir., Aug. 12, 2013)(unpub.).*

Merely stating that "fresh" leadership is needed is not enough, in and of itself, to establish a *prima facie* case of age discrimination under the ADEA.

Knight v. Thompson**,** *__F. 3d__, No. 12-11926 (11th Cir., July 26, 2013).*

A prison hair policy requiring hair to be off of the collar and ears is the least restrictive means to further a compelling government interest, and thus satisfies RLUIPA.

11. USERRA

Baldwin v. Greensboro**,** *__F. 3d__, No.12-1722 (4th Cir., May 6, 2013).*

The four-year statute of limitations contained in 28 U.S.C. §1658(a) applies to USERRA claims.

Milhauser v. Minco Products**,** *701 F. 3d 268 (8th Cir., 2012).*

Under USERRA, a "position of employment" for a returning veteran can be "job termination" if he would have been terminated had he not left work for military service.

Crawford v. Dept. of Army**,** *__F. 3d__, No.2012-3037 (Fed. Cir., June 11, 2013).*

A returning veteran was provided a position of "like status" under USERRA when his position had the same title, grade, and location and similar pay, tenure, seniority, working conditions, risk and responsibility, although some of his job duties were different.

12. SCHOOLS; IDEA

Bryant v. NYSED, *__F.3d__, No. 10-4029 (2nd Cir., Aug. 20, 2012).*

The use of negative consequences or stimuli administered to disruptive school children with behavioral disabilities does not undermine their right to a FAPE under the IDEA.

R.E. v. NYC Dept. of Educ., *__F. 3d__, No. 11-1266 (2nd Cir., Sept. 20, 2012).*

Courts must evaluate the adequacy of an IEP prospectively, as of the time of a student's parents' placement decision, and may not consider retrospective testimony about services not listed in the IEP.

Ross v. Breslin, *693 F. 3d 300 (2nd Cir., 2012).*

A school district payroll clerk typist was acting in her "official capacity" for First Amendment purposes when she reported financial malfeasance to the Board of Education.

Connelly v. Steel Valley, *__F. 3d__, No. 11-4206 (3rd Cir., Jan. 24, 2013).*

It does not violate the Equal Protection Clause for a school district to base its teacher salaries, in part, on their prior in-state teaching experience.

D. F. v. Collingswood, *694 F. 3d 167 (3rd Cir., 2012).*

Under the IDEA, a claim for compensatory education is not mooted by a student's out-of-district move.

D. K. v. Abington Sch. Dist., *__F. 3d__, No. 10-2189 (3rd Cir., Oct. 11, 2012).*

Under the IDEA, a plaintiff may not evoke a common law equitable tolling doctrine in light of the specifically enumerated exceptions to the Act's statute of limitations set forth therein.

Hawk v. Easton Area, *__F. 3d__, No. 11-2067 (3rd Cir., Aug. 5, 2013).*

The First Amendment allows middle school students to wear bracelets stating: "I (heart) boobies!" as part of a breast cancer awareness campaign.

K.A. v. Pocono Mtn. Sch. Dist., *__F. 3d__, No. 12-1728 (3rd Cir., Mar. 12, 2013).*

An injunction is granted against a grade school to prevent it from allowing students to pass out invitations to birthday parties, Valentine's Day parties, and other non-academic events, but not to a church Christmas party.

Morrow v. Balaski, *__F. 3d__, No. 11-2000 (3rd Cir., June 5, 2013).*

School officials did not violate a student's substantive due process rights by not protecting him from abuse by a fellow student.

R.B. v. Mastery Cty. Sch. **,** *__F. 3d__, No.11-1009 (3rd Cir., July 25, 2013)(unpub.).*

For purposes of the IDEA's "stay-put" provisions, a student's "status quo" is determined by the existing IEP, not the student's current state of affairs at the time he files his complaint.

D. L. v. Baltimore, *__F. 3d__, No.11-2041 (4th Cir., Jan. 9, 2013).*

Section 504 of the IDEA does not place an affirmative obligation on school districts to provide services to private school students.

Hardwick v. Heyward, *__F. 3d__, No. 12-1445 (4th Cir., Mar. 25, 2013).*

A school dress code that prohibits the wearing of a Confederate Flag T-shirt does not violate the First Amendment.

Alief Sch. Dist. v. Kenneth, *__F. 3d__, No. 12-2062 (5th Cir., Apr. 3, 2013).*

Merely defeating a motion for attorney fees does not establish "prevailing party" status under the IDEA.

Wyatt v. Fletcher, *__F. 3d__, No.11-41359 (5th Cir., May 28, 2013).*

A secondary school student has no privacy right under the Fourteenth Amendment that precludes a school official from discussing with her parents the student's private matters - - including her sexual activities.

Bailey v. Callaghan, *__F. 3d__, No. 12-1803 (6th Cir., May 9, 2013).*

Neither the First nor the Fourteenth Amendments prohibit a law that forbids public schools from collecting membership dues for the unions that represent their employees.

Hearring v. Sliworwski, *__F. 3d__, No. 12-5194 (6th Cir., Mar. 27, 2013).*

A school nurse who viewed a six-year old student's genital area in response to her complaints of itching and discomfort did not violate the Fourth Amendment.

Spurlock v. Fox, *__F. 3d__, No.12-5978 (6th Cir., May 10, 2013).*

The requirement that legislative classifications be color-blind does not demand demographic ignorance. For purposes of a school-districting policy-making process, racial imbalance in schools does not offend the Constitution when it is based upon residential patterns over which the school board has no control.

Gschwind v. Heiden*, 692 F.3d 844 (7th Cir., 2012).*

A teacher fired after complaining about a threat made to him by one of his students engaged in speech involving a matter of public concern for First Amendment free speech purposes.

Burlison v. Springfield Pub. Schools, *__F. 3d__, No. 12-1382 (8th Cir., Mar. 4, 2013).*

For Fourth Amendment purposes, requiring a student to leave his backpack in a classroom for five minutes so that it could be subjected to a drug dog sniff was a reasonable means of furthering the important issue of deterring drug use amongst school children.

J.R. v. St. Louis Sch. Bd., *__F. 3d__, No. 12-1426 (8th Cir., Nov. 2, 2012).*

A school nurse who gave a grade school student a vaccination despite her mother's refusal to consent to the same did not engage in "conscience-shocking" behavior for substantive due process purposes.

W. K. v. Harrison Sch. Dist. **,** *__F. 3d__, No.12-2848 (8th Cir., June 14, 2013)(unpub.).*

Under the IDEA, notice deficiencies do not invalidate a student's IEP when his parents had some notice that the student's aggressive behavior would be discussed at the meeting with school officials and they were provided some level of participation in the meeting.

***Bright v. Tustin Unified**, __F. 3d__, Nos.11-56259 & 12-56224 (9th Cir., Aug. 6, 2013).*

A school district's compliance with its obligations towards a hearing-impaired student under IDEA does not necessarily establish compliance with its effective communication obligations under the ADA.

***Doug C., v. Hawaii DOE**, __F. 3d__, No.12-15079 (9th Cir., June 13, 2013).*

A school violated the IDEA by holding a student's annual IEP meeting without the participation of one of her parents.

***Ebonie Mary v. Pueblo Sch. Dist.**, 695 F.3d 1051 (10th Cir., 2012).*

Requiring a disabled student to sit in a desk with a restraining bar that made her face forward did not violate the Fourth Amendment. She could remove the restraint, it was not attached to her body, and she remained in the regular classroom environment.

***Hispanic Interest Co. v. Alabama**, 691 F.3d 1236 (11th Cir., 2012).*

A statute requiring public schools to check the immigration status of its students violates their right to a public education under the Equal Protection Clause.

***Phillip v. Jefferson Cty. Bd. of Educ.** , __F. 3d__, No.11-14859 (11th Cir., Nov. 21, 2012).*

The regulations implementing the IDEA which require local agencies to finance a parent's IEE are valid and within the Congressional authority granted to the Secretary of Education.

13. COMMERCE CLAUSE

***Selevan v. N.Y. Thruway Authority**, __F. 3d__, No. 11-5370 (2nd Cir., Mar. 27, 2013).*

A bridge toll policy that provided discounted fares to residents of one island municipality but did not offer the same discount to other motorists did not violate the plaintiff's right to travel nor violate the dormant Commerce Clause. The scheme was based upon a fair approximation of toll bridge use, was not excessive in relation to the benefits conferred, and did not discriminate against interstate commerce.

Cibalo Waste v. San Anotnio, *__F. 3d__, No.12-50153 (5th Cir., May 15, 2013).*

A city ordinance that requires a $2,500 annual permit fee to be paid in order to collect or dispose of solid waste within the city limits - - whether a hauler uses the city landfill once or one thousand times a year - - does not violate the dormant Commerce Clause.

Fla. Trans. v. Miami Dade , *703 F. 3d 1230 (11th Cir., 2012).*

A port director's permitting practice, which regulated participation in the interstate stevedore market using the port under his supervision on the basis of an applicant's local or out-of-state origin, burdened interstate commerce in a manner that exceeded the local benefits of the practice, in violation of the dormant Commerce Clause.

14. JAILS; PRISONS; EIGHTH AMENDMENT

Walker v. Schult, *__F. 3d__, No.12-1806 (2nd Cir., May 23, 2013).*

Mixing inmates of different backgrounds in the same cell may violate the Eighth Amendment when this action subjects them to a substantial risk of serious harm.

Bistrian v. Levi, *696 F. 3d 352 (3rd Cir., 2012).*

A lawsuit brought by a prisoner claiming that, as a known jailhouse snitch, prison officials exhibited deliberate indifference to the risk they exposed him to by placing him in a recreation yard with other inmates, survives summary judgment.

De' Lonta v. Johnson, *__F. 3d__, No. 11-7482 (4th Cir., Jan. 28, 2013).*

A prisoner states a plausible Eighth Amendment claim based upon a prison's continued refusal to consider him for sex reassignment surgery, as this constitutes deliberate indifference to his serious medical need.

Williams v. Ozmit, *__F. 3d__, No.11-6940 (4th Cir., May 15, 2013).*

There is no First, Eighth, or Fourteenth Amendment right to prison visitation.

Moussazadeh v. TX Dept. of Crim., *703 F. 3d 781 (5th Cir., 2012).*

Under RLUIPA, making a prisoner pay for his Kosher meals when non-Kosher meals are free to other prisoners "substantially burdens" his ability to exercise his religious beliefs.

Rogers v. Boatright, *__F. 3d__, No. 12-20063 (5th Cir., Feb. 18, 2013).*

An Eighth Amendment claim of cruel and unusual punishment may exist when a shackled and un-seat-belted prisoner is hurt as a result of the alleged reckless driving of the driver of the van in which he is being transported.

Stroble v. Livingston, *__F. 3d__, No.13-10137 (5th Cir., Aug. 9, 2013)(unpub.).*

A prison's refusal to allow a prisoner to view sexually explicit materials was reasonably related to a legitimate penological interest and did not violate the First Amendment.

Fields v. Henry County, *__F. 3d__, No. 11-6352 (6th Cir., Dec. 10, 2012).*

A county's policy of automatically detaining domestic assault defendants for twelve hours and using a bond schedule to determine their bail does not violate the Eighth or Fourteenth Amendments.

Earl v. Racine County, *__F. 3d__, No.12-3900 (7th Cir., May 28, 2013).*

The placement of a prisoner on "suicide watch" for five days without a prior hearing does not violate due process or his liberty interests - - even if he gets a rash from the suicide prevention gown.

Gruenberg v. Gempeler *__F. 3d__, No. 10-3391 (7th Cir., Sept. 28, 2012).*

Keeping a prisoner naked and shackled for five days until his body naturally voided the prison keys he had swallowed did not violate the Eighth Amendment.

Lane v. Williams*, __F.3d__, No. 11-3373 (7th Cir., Aug. 24, 2012).*

No First Amendment right exists for civil detainees to utilize their facility's internal mail system instead of the U.S. Mail to communicate with other detainees.

***McGee v. Adams*, __F. 3d__, No. 11-2666 (7th Cir., Aug. 1, 2013).**

Swollen legs caused by leg shackles worn during the transportation of a prisoner do not constitute "deliberate indifference" or "serious harm" for Eighth or Fourteenth Amendment purposes.

***Poole v. Isaacs*, __F. 3d__, No. 11-2903 (7th Cir., Dec. 28, 2012).**

Requiring a prisoner to make a $2 co-pay for his dental treatment does not violate the Eighth Amendment.

***Ray v. Wexford*, __F. 3d__, No. 12-1774 (7th Cir., Feb. 7, 2013).**

A prisoner's disagreement with a prison doctor's diagnosis and treatment regime does not establish "cruel and unusual punishment" for Eighth Amendment purposes.

***Thomas v. Illinois*, 697 F. 3d 612 (7th Cir., 2012).**

The creation of a "mere hazard" to a prisoner's health, as opposed to the actual impairment of his health, is enough to constitute an Eighth Amendment violation.

***Montin v. Gibson*, __F. 3d__, No. 12-2577 (8th Cir., June 28, 2013).**

No protected due process liberty interest exists in an involuntarily committed mental hospital patient being free to engage in unsupervised walks on unsecured facility grounds.

***Albino v. Baca*, __F. 3d__, No. 10-55702 (9th Cir., Sept. 21, 2012).**

A prisoner's lack of knowledge of a prison's grievance procedure does not make this administrative remedy "unavailable" for purposes of the Prison Litigation Reform Act.

***Bell v. City of Boise*, __F. 3d__, No.11-35674 (9th Cir., Mar. 7, 2013).**

A police chief's issuance of a "special order" curbing the discretion of his officers' enforcement of a camping ordinance against homeless persons on nights when the city's homeless shelters were full did not moot an Eighth Amendment challenge to that law, given the ease in which the order could be rescinded.

***Labatad v. CCA**, __F. 3d__, No. 12-15019 (9th Cir., May 1, 2013).*

A prison policy of permitting members of different gangs to be housed together is not, in and of itself, an Eighth Amendment violation.

***Goodman v. Clayton Cty. Sheriff**, __F. 3d__, No.12-10732 (11th Cir., June 21, 2013)*

A jail keeper's dereliction of duty, which facilitated violence being visited upon a cellmate, does not support a "deliberate indifference" claim absent evidence of the jail keeper's subjective awareness of a substantial risk of serious harm to the inmate.

15. LABOR; UNIONS

***Jones v. Smith**, __F. 3d__, No.12-401 (2nd Cir., June 19, 2013).*

Dismissals of habeas petitions and appeals of those dismissals do not count as "strikes" under the Prison Litigation Reform Act.

***NLRB v. Special Touch**, __F. 3d__, No. 11-3147 (2nd Cir., Feb. 27, 2013).*

Striking health care workers who indicated that they would report to patients' homes but then failed to do so created a reasonably foreseeable "risk of imminent danger," and they thereby engaged in unprotected, indefensible workplace misconduct.

***Rochester Gas & Electric v. NLRB**, __F. 3d__, No. 10-3448 (2nd Cir., Jan. 17, 2013).*

An employer committed a ULP when it failed to bargain with the union representing its employees over the "effects" of its decision to discontinue its employee take-home vehicle policy. The parties' CBA allowed the employer to change its work practices and to control the use of company property, but did not allow it to forego "effects" bargaining.

Chamber of Commerce v. NLRB, *__F. 3d__, No. 12-1757 (4th Cir., June 14, 2013).*
An NLRB rule requiring employers to post an official NLRB employee rights poster exceeded the Board's authority under the NLRB.

NLRB v. Enterprise Leasing, *__F. 3d__, No. 12-1514 (4th Cir., July 17, 2013).*
The President's January 4, 2013 appointments to the NLRB are constitutionally infirm.

Sheet Metal Workers v. Silgan*, __F.3d__, No. 11-3251 (8th Cir., Aug. 28, 2012).*
A CBA clause requiring the mandatory arbitration of employee termination decisions is held to survive a grievant's death.

16. TELECOMMUNICATIONS

Garcia v. City of Laredo, *702 F. 3d 788 (5th Cir., 2012).*
The Stored Communications Act does not apply to data stored on a personal cell phone. This data could therefore be lawfully accessed to provide evidence supporting a police dispatcher's termination for her violation of department policies.

Seitz v. City of Elgin, *__F. 3d__, No.13-1045 (7th Cir., June 24, 2013).*
The Federal Wiretap Act applies to municipalities, but no cause of action exists thereunder against a city when its police officers disclosed communications in violation of the Act. Liability is against the officers only, and not against the city as a corporate entity.

17. ***ENVIRONMENTAL***

Paolino v. JF Realty, *__F. 3d__, No. 12-2031 (1st Cir., Mar. 13, 2013).*

In a case of first impression, the court holds that the notice required by the CWA prior to the commencement of a citizen enforcement action is sufficient if it identifies the potential plaintiffs, provides their contact information, and allows the punitive defendants to identify and remedy the alleged violations.

Waldburger v. CTS, *__F. 3d__, No. 12-1290 (4th Cir., July 10, 2013).*

A nuisance action brought under CERCLA and alleging that certain solvents used by the defendant polluted the plaintiff's well water is not subject to a state's statute of limitations on the accrual of real property claims.

Assoc. of Taxicab Oper. v. Dallas, *__F. 3d__, No.12-10470 (5th Cir., June 13, 2013).*

A municipal ordinance that gives preference in airport queues to taxicabs running on compressed natural gas is not preempted by the Clear Air Act.

U.S. v. DTE Energy, *__F. 3d__, No. 11-2328 (6th Cir., Mar. 28, 2013).*

Under the Clean Air Act, the EPA can challenge the preconstruction projection of emission increases anticipated from a new construction project by a major pollution emitting source even though there is no post-construction data available to prove or disprove that projection.

Ecological Rights v. Pacific G & E, *__F. 3d__, No.11-16042 (9th Cir., Apr. 30, 2013).*

A claim that utility poles discharge wood preservatives into the environment is dismissed. Discharges of storm water from poles are neither a "point source discharge" under the CWA nor a "solid waste" under the RCRA.

NRDC v. City of Los Angeles, *__F. 3d__, No.10-56017 (9th Cir., Aug. 8, 2013).*

Pollution exceedances detected at a county's own monitoring station are sufficient to establish its liability, as a matter of law, for violating the terms of its NPDES permit.

Mingo Logan Coal v. USEPA**,** *__F. 3d__, No.12-5150 (D. C. Cir., Apr. 23, 2013).*

The CWA authorizes the EPA to withdraw previously approved disposal sites specified in a Section 404 permit issued by the U.S. Corps of Engineers, even after the permit is finalized.

18. ***PROCEDURAL; EVIDENTIARY***

Freeman v. Town of Hudson**,** *__F. 3d__, No. 12-1351 (1st Cir., Apr. 15, 2013).*

911 call transcripts and police incident reports are not "public records" that a court can consider when deciding a motion to dismiss if they are not facts alleged in the complaint or in the exhibits attached thereto.

Goldstein v. Galvin**,** *__F. 3d__, No.12-2184 (1st Cir., June 10, 2013).*

A person who has defended a lawsuit brought against him in his official capacity is not protected by the doctrine of "claim preclusion" from a subsequent lawsuit brought against him by the same plaintiffs in his individual capacity.

Nansamba v. N. Shore Med. **,** *__F. 3d__, No. 13-1266 (1st Cir., Aug. 12, 2013).*

The failure of the plaintiff's lawyers to open an e-mail from the defendants, which e-mail contained numerous medical records, is "neglect on steroids" that is not excused for purposes of an F.R.C.P. Rule 60(b) relief from judgment motion.

U.S. v. Cameron**,** *699 F. 3d 621 (1st Cir., 2012).*

The admission of Yahoo!CP and National Center for Missing and Exploited Children reports at trial was in error, as those reports were testimonial in nature, and the defendant should have had an opportunity to cross-examine the employees who prepared them.

***U.S. v. Gates*, __F. 3d__, No. 10-2163 (1st Cir., Mar. 1, 2013).**

A party cannot concede an issue at trial and then attempt to repudiate the concession and resurrect the issue on appeal.

***Marshall v. Randall*, __F. 3d__, No.12-2479 (2nd Cir., June 12, 2013).**

An officer's grand jury testimony can be used to impeach him at trial.

***Stansbury v. Wertman*, __F. 3d__, No. 12-713 (2nd Cir., June 26, 2013).**

For purposes of a Section 1983 action, a court must analyze evidence in its totality, and not in isolation, when determining if an officer had probable cause to arrest a plaintiff.

***Yeldon v. Fisher*, __F. 3d__, No. 11-2334 (2nd Cir., Mar. 6, 2013).**

Summary judgment on a Section 1983 claim is vacated when the plaintiff did not consent to having his case referred to a magistrate judge. Lack of consent is a jurisdictional defect that cannot be waived.

***SBRMCOA v. Bayside Resort*, __F. 3d__, No. 07-2436 (3rd Cir., Feb. 11, 2013).**

A challenge to a contract on "unauthorized signatory" grounds must be decided by a court even if the contract contains an arbitration clause, as the challenge is as to the contracts' formation, not to its validity.

***Backe v. LeBlanc*, 691 F.3d 645 (5th Cir., 2012).**

A court abuses its discretion by refusing to address a qualified immunity defense to a Section 1983 claim until after general discovery had been concluded.

***McCormick v. Miami Univ.*, __F. 3d__, No. 11-3614 (6th Cir., Sept. 10, 2012).**

Section 1983 is the exclusive mechanism for vindicating violations of Section 1981 by individual state actors acting in their individual capacities.

***Nimer v. Litchfield Tshp.*, __F. 3d__, No. 12-3309 (6th Cir., Feb. 21, 2013).**

The *Younger* abstention doctrine applies to a Section 1983 damages claim.

Bracey v. Grondin, *__F. 3d__, No. 12-1644 (7th Cir., Mar. 15, 2013).*

An adverse inference instruction was not warranted when the spoliation of a videotape violated the defendant's duty to preserve but was not a result of his bad faith.

Engel v. Buchan, *__F. 3d__, No. 11-1734 (7th Cir., Mar. 5, 2013).*

A *Bivens* cause of action is available for a *Brady* violation by a federal officer.

U.S. v. Bloch, III, *__F. 3d__, No.12-2784 (7th Cir., May 20, 2013).*

A felon's statement to the police, demanding the return of the guns they had seized, was not "inherently unreliable" evidence of his possession of those firearms simply because he was drunk when he made the statement.

U.S. v. Pelletier, *__F. 3d__, No. 12-1274 (7th Cir., Nov. 21, 2012).*

A motion to suppress is denied as to a statement made by a job applicant admitting that he possessed child pornography on his home computer.

Aguilar v. Woodford, *__F. 3d__, No. 09-55575 (9th Cir., July 29, 2013).*

The failure of a prosecutor to disclose a police dog's history of mistaken scent identifications violates *Brady v. Maryland*.

Cavanaugh v. Woods Cross City, *__F. 3d__, No.11-4206 (10th Cir., June 12, 2013).*

When qualified immunity is not at issue, a court may submit the question of "excessive force" to the jury.

Walters v. Wal-Mart, *__F. 3d__, No.11-5130 (10th Cir., Jan. 8, 2013).*

An employer's motion to enforce a settlement agreement reached at a court-ordered settlement conference is granted even though the employee refused to sign the agreement.

***FTC v. Leshin**, __F. 3d__, No.12-12811 (11th Cir., June 5, 2013).*

In a case of first impression, the court holds that a district court can convert the unpaid remainder of an equitable disgorgement remedy stemming from a civil contempt sanction into the legal remedy of a money judgment after the contemnor had disgorged as much money as he was currently able to pay.

***Unique Sports v. Ferrari**, __F. 3d__, No. 11-15586 (11th Cir., July 8, 2013).*

A party may not appeal on the merits a decision in its favor, but is entitled to *vacatur* of that portion of the district court's order that, while not dispositive of the case, is adverse to him.

***Oakland v. Fed-Maritime Comm.** , __F. 3d__, No. 12-1080 (D.C. Cir., July 26, 2013).*

A city cannot use the "public trust" doctrine to claim Eleventh Amendment immunity from lawsuits filed against its park department regarding its management of tidelands it acquired in trust from the state.

***West Chelsea Bldgs. V. US**, 109 Fed. Cl. 5 (2013).*

Landowners seeking a re-zone can waive their "unconstitutional conditions" claim through their voluntary execution of a covenant not to sue as part of their settlement negotiations with a municipality.

19. ARBITRATION; CONTRACTS

***Paris v. Goldman Sachs**, __F. 3d__, No. 11-5229 (2nd Cir., Mar. 21, 2013).*

A motion to compel the arbitration of the plaintiff's gender discrimination claim is granted when her arbitration agreement required the arbitration of individual but not class action claims, even if this fact prevented her from bringing a Title VII class action lawsuit and using the "pattern-or-practice" method of proof.

Sutherland v. Ernst Young, *__F. 3d__, No. 12-304 (2nd Cir., Aug. 9, 2013).*

The plaintiff cannot use the "effective vindication doctrine" to invalidate class-action waiver provisions in arbitration agreements that make individual claims uneconomical to pursue.

Village of Bald Head Isl. v. U.S. COE, *__F. 3d__, No. 11-2366 (4th Cir., Apr. 29, 2013).*

"Commitments" made by the U.S. Corps of Engineers to a municipality during the former's project plan development do not constitute a "final agency action" subject to judicial review.

Northern States Power v. IBEW, *__F. 3d__, No. 12-1186 (8th Cir., Apr. 1, 2013).*

An arbitrator need not use the words "just cause" to implicitly find that "just cause" for termination exists.

Owen v. Bristol Case, *__F. 3d__, No. 12-1719 (8th Cir., Jan. 7, 2013).*

Class waivers in arbitration agreements are enforceable.

Sonoma Cty. Assn. v. Sonoma Cty., *__F. 3d__, No.10-17873 (9th Cir., Feb. 25, 2013).*

A county can form, by ordinance or resolution, a contract with implied terms.

Young v. HUD, *__F. 3d__, No.11-3232 (Fed. Cir., Feb. 12, 2013).*

Ex parte communications with an arbitrator that do not merely confirm and clarify information already in the record, but that introduce new and material information, deprive an employee of due process of law.

20. OTHER CASES OF INTEREST

Mashantucket Pequot v. Ledyard, *__F. 3d__, Nos. 12-1725- 1735 (2nd Cir., July 15, 2013).*

A town's imposition of its state's personal property tax on the lessors of slot machines used at a tribe casino does not violate federal Indian laws.

U.S. Smokeless Tobacco v. NYC**,** *__F. 3d__, No. 11-5167 (2nd Cir., Feb. 26, 2013).*

A municipal ordinance governing the sale of flavored tobacco products is a valid exercise of local police power that is not pre-empted by the Family Smoking Prevention and Tobacco Control Act.

Lozano v. City of Hazelton**,** *__F. 3d__, No. 07-3531 (3rd Cir., July 26, 2013).*

Ordinances that prohibit the employment of unauthorized aliens and their rental of apartments within the city limits are pre-empted by federal immigration law.

MD Mall v. CSX**,** *__F. 3d__, No. 12-1934 (3rd Cir., Apr. 30, 2013).*

The Federal Railroad Safety Act did not pre-empt a claim alleging that a railroad's berm was responsible for the storm water flooding of the plaintiff's property.

County Vintner v. Gallo Winery**,** *__F. 3d__, No. 12-2074 (4th Cir., Apr. 29, 2013).*

"Making copies," for purposes of a taxation of costs statute, includes converting native files to TIFF and PDF formats, and transferring files onto CDs.

Municipal Assoc. of S.C. v. USAA**,** *__F. 3d__, No. 11-2220 (4th Cir., Mar. 1, 2013).*

A municipality is not allowed to assess municipal business license taxes based upon, or measured by, the total flood insurance premiums collected within the municipality by insurance companies under an arrangement with FEMA, absent the Federal government's consent to do so.

Washington Gas v. Prince Georges' Cty.**,** *__F. 3d__, No. 12-1443 (4th Cir., Mar. 25, 2013).*

The Natural Gas Pipeline Safety Act does not preempt county zoning plans as they pertain to the expansion of a gas substation, because zoning plans are not safety regulations.

L & F Homes v. Gulfport Miss. **,** *__F. 3d__, No.12-60597 (5th Cir., Aug. 7, 2013)(unpub.)*

A developer who was denied water service for a housing development allegedly to cover up the city's contemporaneous denial of water service to a nearby housing development likely to be occupied by Blacks does not have standing to bring a Section 1982 claim alleging that, while not a racial minority, it nonetheless suffered collateral damage from its coincidental presence in the queue for governmental benefits. However, it does have an FHA claim for injuries suffered when the city allegedly racially discriminated against this other development.

Parkside v. Farmer's Branch, *__F. 3d__, No. 10-10751 (5th Cir., July 22, 2013).*

A municipal licensure requirement regarding the occupation of rental units by illegal aliens is pre-empted by Federal law.

Kovacic v. Cuyahoga Cty., *__F. 3d__, No. 11-4002 (6th Cir., July 29, 2013).*

Social workers who removed children from their home were acting in a police capacity and not as legal advocates, and are not entitled to absolute immunity for their actions.

Keller v. City of Fremont, *__F. 3d__, Nos. 12-1702/1705/1708 (8th Cir., June 28, 2013).*

A city ordinance limiting the hiring and provision of rental housing to illegal immigrants is not pre-empted by Federal law.

Confederated Tribes v. Thurston Cty. **,** *__F. 3d__, No. 10-35642 (9th Cir., July 30, 2013).*

State and local governments do not have the power to tax permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian tribe.

Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir., 2012).*

A special county prosecutor who issued grand jury subpoenas to a newspaper allegedly to stop it from writing articles critical of public officials is not entitled to absolute prosecutorial immunity as regards his actions.

Schanzenbach v. Town of Opal, *__F. 3d__, No.11-8093 (10th Cir., Feb. 7, 2013).*

An ordinance banning the installation of mobile homes more than 10 years old is not preempted by the Manufactured Housing Act, which regulates the aesthetics of manufactured homes and not their construction or safety.