On appeal, the First Circuit reversed. The court made clear that the pleadings raised no claim that the treatment by the police gave rise to a suicidal inclination when none otherwise existed, and nothing in the complaint suggested that Jason's self-destructive tendency was intensified by state action, or that anything done or omitted by the police made him more dangerous to himself. The causation alleged was a "failure to prevent the consequence of his preexisting suicidal disposition, a failure to intervene in a way that would change him, or his circumstances, for the better in the period after his release." Although "principles of liability under Section 1983 borrow from the understanding of tort causation... we think the rationale for official responsibility under the Due Process Clause requires a limit on liability that stops short of the point that may be reached by fact causation analysis, and this accounts for our disagreement with the district court." Here, the claim of causation led "to a liability beyond what due process impose[d]." In the absence of a claim of a state-created or augmented risk, fourteen hours at liberty was "not reasonably compatible with any claim that normal sources of support were effectively blocked. So far as it appears from the complaint, when the police released the decedent they 'placed him in no worse position than that in which he would have been had they not acted at all...'" With the restoration of the detainee's liberty, "the legal chain of preventive (as distinct from state-created) causation must be taken to have ended." *Coscia v. Town of Pembroke, MA*, No. 10-1714, 2011 U.S. App. LEXIS 18933 (1st Cir. Sept. 14, 2011).

Provision of Services to the Homeless

"A Society Without a Name, For People Without A Home Millennium Future-Present" (ASWAN) was an unincorporated association made up of homeless and formerly homeless people that advocated for the rights of the homeless. On February 05, 2007, the Commonwealth of Virginia, the City of Richmond, and others began operating the Conrad Center, a facility located about two miles from downtown Richmond that provided services to the homeless. ASWAN alleged that the governments and other defendants conspired to establish the Conrad Center in a "remote" location to reduce the presence of homeless people in the downtown area; that they took various actions to pressure organizations that provided services to the homeless in the downtown to relocate to the Conrad Center; and that the defendants did this to make the homeless less visible to, and segregate them from, Richmond's downtown community. They alleged, further, that the efforts to make the homeless less visible had their roots in class, race, and disability prejudice because the public generally perceived and regarded homeless people as being disabled due to mental illness, alcoholism, and substance abuse.

On February 17, 2009, ASWAN sued pursuant to 42 U.S.C. §§ 1983 and 1985(3), the Americans with Disabilities Act (ADA), the Equal Protection Clause of the Fourteenth Amendment, and the Fair Housing Act (FHA). In response, all of the defendants filed motions to dismiss, arguing, among other things, that the conspiracy complaint failed to state a claim upon which relief could be granted, and that the claims were barred by the applicable statute of limitations. The district court agreed and dismissed.

On appeal, the U.S. Court of Appeals for the Fourth Circuit affirmed. A conspiracy claim under Section 1985(3) required the plaintiff to prove (1) a conspiracy of two or more persons, (2) motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by the law to all, (4) and which resulted in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy. The conspiracy claim here was "comprised almost entirely of conclusory allegations unsupported by concrete facts," and, therefore, not sufficient to state a claim.

On the ADA, § 1983, and equal protection claims and the limitations issue, the Fourth Circuit had not previously determined what limitation period governed ADA claims brought in Virginia. It ruled here that a one-year limitation period in the Virginia Disabilities Act applied to ADA claims. On the § 1983 and equal protection claims, the statute of limitations period for both was two years. These began to run when ASWAN knew or should have known of its purported injury stemming from the alleged conspiracy to relocate homeless services from downtown, and certainly by February 2007. Accordingly, ASWAN's suit, filed after the two-year period expired on February 05, 2009, was out of time. The fact that the Conrad Center was still located in the original location and continued to offer services to the homeless (including new services) did not amount to a continuing violation so as to extend the limitation period: rather, this amounted to the continuing effect of the original decision to locate away from the downtown.

Last, on the FHA claim and argument that the actual date of the provision of "intake services" (overnight shelters) extended the accrual date for the limitation, the court disagreed: this was not material because ASWAN knew or should have known that intake services were going to be shifted when the Center opened; moreover, intake services to sign up for overnight shelter were not covered "services" within the meaning of the FHA. The intake services were provided by Catholic Charities, a nonprofit organization, and not by any governmental unit. A *Soc'y Without a Name, for People Without a Home, Millennium Future-Present v. Virginia*, No. 10-1437, 2011 U.S. App. LEXIS 17689 (4th Cir. Aug. 24, 2011).

First Amendment

Access to Bus Advertising

The plaintiff, a coalition of public interest groups, embarked on a public education campaign to correct a misconception that in Pennsylvania, felons were not eligible to vote immediately upon release from prison. As part of this project, the coalition approached the Port Authority of Allegheny County, Pennsylvania (the Authority), to place an ad in city transit buses. The Port Authority refused on the basis that its written advertising policy prohibited "noncommercial" ads (and later, the

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Authority indicated the ad was also "political," another subject matter banned under the advertising policy). "Political" and "commercial" were not defined in the advertising policy, but the Authority staff agreed that an ad was not commercial unless it promoted the monetary interests of the advertiser in some way. In addition, it appeared that the Authority had not consistently adhered to the ban on noncommercial ads (it accepted ads from Just Harvest, the Fair Housing Partnership, and the Women's Law Project). The coalition sued pursuant to 42 U.S.C. § 1983, alleging a violation of the First Amendment's Free Speech Clause, in that the Authority's advertising space was a public forum, and rejecting the ad amounted to impermissible content-based discrimination; further, it claimed that the ad was rejected as a result of unconstitutional viewpoint discrimination.

The district court granted the Authority's summary judgment motion on the content-based discrimination claim, holding that the advertising space was not a public forum, but denied the motion as to the viewpoint-discrimination claim as a genuine dispute existed about whether the Authority had rejected the coalition's ad because of hostility towards the ad's message. That claim was scheduled for a bench trial, following which the court ruled that Authority had rejected the ad as a result of viewpoint discrimination. The rejection because the ad was "noncommercial" was a pretext for viewpoint discrimination, as the Authority had accepted similar public advocacy ads in the past. The Authority appealed.

The U.S. Court of Appeals for the Third Circuit affirmed. Regardless of whether the advertising space was a public or nonpublic forum—which was an issue in dispute—the coalition was entitled to relief because it had established viewpoint discrimination. If a government allowed speech on a certain subject, it had to accept all viewpoints on the subject. In this case, the rejection of the ad as "political" was not meaningful as that did not occur until after the lawsuit was filed (and it was "less than obvious that the ad could even be considered 'political'"); the noncommercial character rejection was undermined by the fact that similar ads, even though they promoted free services, had been permitted. These "comparator ads were all designed to educate readers about their legal rights." "[W]e do not suggest that the Port Authority must accept all noncommercial, rights-education advertisements going forward. We hold only that the facts of this case indicate viewpoint discrimination, and that the coalition is therefore entitled to relief. If the Port Authority were to develop more precisely phrased written guidance on the ads for which it will sell advertising space and apply the guidance in a neutral and consistent manner, it may, in the future, be able to reject ads like the one at issue." *Pittsburgh League of Young Voters Educ. Fund v. Port Auth. of Allegheny County*, No. 09-3352, 2011 U.S. App. LEXIS 16128 (3d Cir. Aug. 05, 2011).

Invocational Prayers – School Board

Since its inception in 1969, the Indian River School Board had a policy of praying before each regularly-scheduled meeting. In 2004, following a heated community debate and complaints about the propriety of these invocational prayers, the board adopted a written policy providing that, on a rotating basis, one board member per meeting would be given the opportunity to offer a prayer or request a moment of silence. Any such prayers could be sectarian or non-sectarian, denominational or non-denominational, but the opportunity could not be used or exploited to proselytize, advance or convert anyone, or to derogate or otherwise disparage any particular faith or belief. Participation in this prayer was limited to the adult members of the board: no student or person present was required to participate in any way. The practice surrounding the recitation of the prayer was essentially the same as it was prior to the enactment of the formal policy. Also, it was "customary for a board member to offer a disclaimer"—this indicated to those present that prayer was a voluntary activity limited to the adult members of the board, and that no school employee, student in attendance or member of the community was required to participate. The record showed that the prayers recited at the meetings "nearly always—and exclusively—refer[red] to Christian concepts."

The meetings were routinely attended by students: to receive awards, to participate in performances or as ROTC members, to speak as the student government reps or during the public comment section. Parents of children in the school district sued, claiming that the invocational prayers and policy were unconstitutional under the Establishment Clause of the First Amendment. The board claimed that a school board was analogous to a legislative body, and that its practice of opening meetings with a prayer was akin to the practice upheld in *Marsh v. Chambers*, 463 U.S. 783 (1983) (Nebraska's practice of opening legislative sessions with a prayer held not to be a violation of the Establishment Clause). The district court agreed, and dismissed the claim. It found *Marsh* applied; further, as "*Marsh* did not intend to authorize only non-sectarian" prayer, the content of the board's prayers was not dispositive.

On appeal, the U.S. Court of Appeals for the Third Circuit reversed. "The issue in this case is whether a school board may claim the exception established for legislative bodies in *Marsh*, or whether the traditional Establishment Clause principles governing prayer in public schools apply." The legislative prayer exception did not apply, and the case was more properly addressed using the Supreme Court's principles endorsed in *Lee v. Weisman*, 505 U.S. 577, 592 (1992). "*Marsh*'s entire approach rest[ed] on the long-standing and 'unique' history of legislative prayer." Several elements of the board's actions took it outside the purview of *Marsh*, especially that the board carried out its practice of praying in an atmosphere with "many of the same indicia of coercion and involuntariness that the Supreme Court ha[d] recognized elsewhere in its school prayer jurisprudence." Further, the purpose and nature of the board removed it from the logic in *Marsh*. Applying the three-part test