Exercise Clause, based on its previous ruling that public schools were not obligated to shield students from ideas which potentially were "religiously offensive, particularly when the school impose[d] no requirement that the student agree with or affirm these ideas, or even participate in discussions about them." *Parker v. Hurley*, 514 F.3d 87, 103 (1st Cir. 2008). FFRF's Equal Protection claim failed because the statute applied equally to those who believed in God and those who did not, "giving adherents of all persuasions the right to participate or not participate in reciting the pledge, for any or not reason." The First Circuit affirmed the judgment of the lower court granting summary judgment in favor of the school district. *Freedom From Religion Foundation v. Hanover Sch. Dist.*, 626 F.3d 1 (1st Cir. 2010).

Search and Seizure

Stop and Frisk – Reasonable Suspicion

Members of a police department gang unit were investigating a stabbing in the vicinity involving a gang member. Attempting to forestall any attempt at retaliation for the stabbing, the unit set up surveillance of the area around a high school. The school had a history of gang-related incidents and some of the involved gang members were students there. Close to the end of the school day, the officers saw a group of Hispanic youths (some older than school age) standing under a tree across the street from the school, having a discussion and occasionally looking at the school. Edith Hernandez-Mendez came close to the group. One of the males joined her, spoke with her, and she left to sit apart from the group, nearby. When officers went to confront the group, they scattered. The group members were detained and frisked for weapons. The officers also located Hernandez-Mendez nearby. She told Officer Webster that she had just come from the doctor, that she did not know anybody in the group, and did not produce a photo ID. Webster asked her if she had photo identification in her purse. As he asked, he reached out to take possession of the purse; Hernandez-Mendez simultaneously said "no" and pulled away. However, Webster had felt a solid, heavy object in the purse that he recognized as the barrel of a semiautomatic pistol. This turned out to be a Smith & Wesson 9mm semiautomatic pistol with unchambered ammunition. Hernandez-Mendez was arrested. Officer Webster relied on his knowledge of Hispanic gangs in the area, his experience in responding to gang-related incidents at the school, and his observations during the surveillance to find reasonable suspicion to stop the group. He was aware that female gang members were often responsible for holding weapons or other contraband for male gang members in order to minimize the potential for discovery by police, who were perceived to be more likely to frisk the males.

Hernandez-Mendez moved to suppress the evidence on the basis that the objective facts known to the officers were too tenuous to support a finding of reasonable suspicion — specifically, that her detention did not take place in a high-crime area or among known criminals, and arguing that the police relied solely on the actions and behavior of the males in the group to justify stopping her. The district court found her guilty of possession of a firearm by an alien and possession of a firearm in a school zone.

On appeal, the U.S. Court of Appeals for the Fourth Circuit affirmed. A *Terry* stop was permitted as a brief, investigatory stop of a person when a police officer observed unusual conduct which led him "reasonably to conclude in light of his experience that criminal activity may be afoot." Reasonable suspicion in this case was "justified by the officer's articulation of objective facts which provided information probative of a likelihood of criminal activity. Moreover, he obtained much of the information through his own observations, which, when coupled with his accumulated experience and relevant background knowledge, formed the basis for a reasonable suspicion that Hernandez-Mendez was engaged in (or was about to become engaged in) criminal activity." Addressing the claim that reliance on the acts of others could not contribute to a finding of individualized suspicion, the court found this "misse[d] the mark." The relevant question was whether the officers reasonably inferred that Hernandez-Mendez was "potentially a knowing and willing participant" in whatever incipient criminal activity the group of males may have been contemplating. The objective facts justified Hernandez-Mendez's detention and those that emerged after she had been detained — including her evasiveness — provided a reasonable suspicion justifying a frisk for weapons. Lastly, during a permissible frisk, if a police officer "feels an object whose contour or mass makes its identity immediately apparent" as contraband, it may be lawfully seized. *U.S. v. Hernandez-Mendez*, 626 F.3d 203 (4th Cir. 2010).

Excessive Force – Taser

Nickolos Cyrus suffered from bipolar disorder and schizophrenia, and was known to the local police because of his past psychotic (but not criminal) episodes. He was reported missing by his family early one morning. In a state of delusion, Cyrus had wandered onto the property of another resident, who called the police. Lieutenant Czarnecki responded, and asked Cyrus to come towards the police car so they could talk. When Cyrus started to walk away, towards the house, Czarnecki fired his Taser to stop him. Cyrus fell, and when he tried to get up, he was tased again. He remained face-down on the ground. A second officer arrived, and Cyrus was tased several more times to get him to comply with the officers' orders to show his hands. After Cyrus was handcuffed, he was turned onto his back and officers discovered that he was not breathing. He died shortly after. His parents sued the officers and their employer, the Town of Mukwonago, in a 42 U.S.C. §1983 suit, alleging the use of excessive force in violation of the Fourth Amendment. The district court granted summary judgment

in favor of the defendants, and the parents appealed.

The U.S. Court of Appeals for the Seventh Circuit reversed. Excessive force claims in the context of an arrest were reviewed under the Fourth Amendment's objective reasonableness standard under *Graham v. Connor*, 490 U.S. 386 (1989). This inquiry required an examination of the totality of the circumstances. The factors taken into consideration included the severity of the crime at issue, whether the suspect posed an immediate threat or was actively resisting arrest or attempting to evade arrest, and, if the suspect was mentally ill, whether the officer was aware of the illness. Here, there was conflicting evidence on the force used on Cyrus. Czarnecki testified that he deployed his taser "five or six times," but the taser's internal computer registered 12 trigger pulls during the encounter. The evidence was also in conflict on the extent to which Cyrus resisted arrest: the parties disputed whether Cyrus ran or merely walked away from Czarnecki. Finally, there was evidence that a dispatcher had warned Czarnecki before he arrived that the suspect in question was likely "that crazy boy," suggesting that Czarnecki was aware of Cyrus's mental condition. With these factors in mind, the Seventh Circuit reversed and remanded the case to the lower court. *Cyrus v. Town of Mukwonago*, 624 F.3d 856 (7th Cir. 2010). **ML**

