ment, arguing the Facebook posts were not protected speech as they were too vague, did not touch on a matter of public concern (and had a private motive), and were "immediately disruptive" to him in his position as the prospective Circuit Clerk. Milligan also claimed entitlement to qualified immunity because no reasonable official could have known that the posts touched on a matter of public concern.

The court granted the motion, in part. There was no evidence that Milligan discharged Mattingly in retaliation for associating with supporters of Kidd and campaigning on his behalf, and Milligan's motion for summary judgment was granted with respect to Mattingly's free association and right to campaign claim. On the other claim, viewing the evidence in Mattingly's favor, her Facebook posts touched on a matter of public concern: County residents were sufficiently concerned about the terminations to contact Milligan with individual complaints, and news media reported on the terminations. In light of the context, content, and format of the Facebook posts, Mattingly's speech related to a matter of public concern. "Even if, as Milligan contends, Mattingly's Facebook posts were made primarily to further her private interest in receiving emotional support and affirmation, the fact remains that she did not make them as an employee but as a citizen." Although Mattingly's first post was vague, in the context and given the additional comment, it was clear it was a reference to the decision not to retain certain employees in the Circuit Clerk's office. Milligan himself—and, according to him, a number of his constituents—clearly understood the posts to refer to his termination decisions.

Milligan failed to point to any evidence that Mattingly's posts adversely affected the efficiency of the Circuit Clerk's office or caused any disruption at all. Bare allegations that the speech caused disruptions supported by minimal or no evidence was insufficient to invoke the *Pickering* balancing test. Milligan was not entitled to qualified immunity because, at the time Mattingly's termination occurred, it was clearly established that a public employer could not fire an employee for speech relating to a matter of public concern when that speech caused no disruption to the workplace. *Mattingly v. Milligan*, No. 4:11CV00215 JLH, 2011 U.S. Dist. LEXIS 126665 (E.D. Ark. Nov. 01, 2011).

Ex-Employee Must Provide Passwords, Login Information

In 2008, a related group of online marketing companies ("Ardis") hired Ashleigh Nankivell as a video and social media producer. All of the Ardis companies were wholly owned and collaboratively operated by its founder, Jordan Finger. Nankivell signed an agreement that stated that all work created or developed by her was the property of the employer, that she would return all confidential information to the employer upon request, and that "actual or threatened breach of [the agreement]" would cause the employer "irreparable injury and damage." Nankivell performed work for a number of entities in Finger's enterprises, including producing videos and maintaining websites, blogs, and social media pages in connection with the online marketing of the companies' products. She maintained passwords and other login information for websites, email accounts, and social media accounts, as well as for third-party servers where content was stored. Because her personal laptop crashed purportedly due to over-use from work-related tasks, the employer provided Nankivell with a used laptop as a replacement. She used this to store much of the work she did.

By 2011, Nankivell was looking for new employment, and was fired in June 2011, allegedly because the employer discovered she was looking for work. Finger requested the return of the laptop, as well as the access information and passwords. Nankivell, however, declined to return the computer and information, and the employer was unable to access a number of online accounts and websites to update them as needed for its marketing purposes. The employer also alleged that the laptop contained proprietary information that was otherwise unavailable to it. (Nankivell maintained that the laptop was synced with the desktop she used at work, so all of the work files on the laptop were within the company's control). The employer moved for a preliminary injunction against Nankivell, to require her to return the employer's login information for various websites, and return the laptop and its content.

The court ordered the return of the employer's access information. It was uncontested that the employer owned the rights to that information, and the employee's unauthorized retention of the information could, therefore, form the basis of a claim of conversion. However, the return of the laptop was not ordered. The employer had not demonstrated irreparable harm if the laptop was not returned, and "made no arguments whatsoever with respect to the computer itself; as a mass-produced object, its loss [was] clearly monetarily compensable." *Ardis Health, LLC v. Nankivell*, No. 11 Civ. 5013 (NRB), 2011 U.S. Dist. LEXIS 120738 (S.D.N.Y. Oct. 19, 2011).

Planning and Land Use

RLUIPA & Secular Uses

Calvary Christian Center ("the church") applied to the City of Fredericksburg for a special use permit to lease its church space to the operator of a private day-school for disabled children called Fairwinds, operated on a for-profit basis. The church believed that the Bible mandated that it have a "social ministry" and assist families in the area. It had previously obtained a special use permit to allow it to operate a before and after school day-care called Precious Moments Day Care. Fairwinds would have six full-time staff at the church, and would operate between 8:30 a.m. and 3:00 p.m., utilizing two classrooms and office rooms on the second floor of the church building. The council members rejected the application, referring to the number of group homes and group facilities already functioning in the area; the propriety of providing services to special-needs students from outside the area; the nature of the disabilities of the Fairwinds students; and the safety of the day-care students in the same building. The church sued, claiming that the City's decision violated the Americans with Disabilities