FEDERAL CASE LAW UPDATE
September 1, 2011 – August 31, 2012

A. U. S. SUPREME COURT

Knox v. SEIU, *__U.S.__, No. 10-1121 (June 21, 2012).*
Whenever a public sector union in an agency shop relationship imposes a special assessment or dues increase on its members in order to meet expenses not disclosed in its regular assessment, the First Amendment requires it to provide a new notice to, and to not exact monies from, nonmembers without their consent.

Armour v. Indianapolis, *__U.S.__, No. 11-161 (June 4, 2012).*
A municipal sewer project was funded by the equal apportionment of costs amongst abutting landowners, who could pay their assessment in a lump sum or over time. After the project was completed and the payment options chosen, the city funded the project through other means and forgave all assessment payments still owed. However, it refused to refund the lump sum payees for their contributions. This action did not violate the Equal Protection Clause, as the distinction made between lump sum and installment payees was reasonably and rationally related to the city's legitimate interests in reducing its administrative costs, especially since no fundamental right or suspect classification was involved.

Reickle v. Howards, *__U.S.__, No. 11-262 (June 4, 2012).*
The court refuses to recognize a First Amendment right to be free from a retaliatory arrest that is supported by probable cause.

Blueford v. Arkansas, *__ U. S. __, No. 10-1320 (May 24, 2012).*
The Double Jeopardy Clause was not violated when a judge declared a mistrial after the jury foreman announced that the jury was unanimous against guilt on some charges, deadlocked on others, and had not voted on others. That declaration was not a final resolution of the charges.

Taniguchi v. Kan Pacific Saipan, *____ U.S. ___, No. 10-1472 (May 21, 2012).*
Under the Court Interpreters' Act, 29 U.S.C. 1920, costs that may be awarded to prevailing plaintiffs do not include the costs of document translation.

Filansky v. Delia, *___ U.S. ___, No. 10-1018 (April 17, 2012).*
A private person temporarily retained by the government to carry out its work is entitled to seek qualified immunity under Section 1983 for the actions he took during the period of retention.

Florence v. County of Burlington, ___ *U.S.* ___, *No. 10-945 (April 2, 2012).*
The Court rejects the contention that persons arrested for minor offenses cannot be subjected to invasive searches without a reason to suspect the concealment of contraband on their person.

Rehberg v. Paulk, ___ *U.S.* ___, *No. 10-788 (April 2, 2012).*
A grand jury witness is entitled to the same immunity under Section 1983 as a trial witness.

Sackett v. EPA, ___ *U.S.* ___, *No. 10-1062 (March 21, 2012).*
An EPA "compliance order" is a final agency action giving a court jurisdiction to review the same under the APA.

Coleman v. Maryland Ct. of Appeals, ___ *U.S.* ___, *No. 10-1016 (March 20, 2012).*
FLSA suits against state employers for the denial of employee self-care leave are barred by sovereign immunity.

Howes v. Fields, ___ *U.S.* ___, *No. 10-680 (Feb. 21, 2012).*
There is no *per se* rule that isolation from the general prison population and questioning about conduct that took place outside of the prison make an interrogation custodial.

Reynolds v. U.S., ___ *U.S.* ___, *No. 10-6549 (Jan. 23, 2012).*
SORNA's registration requirements do not apply to pre-Act offenders until the U.S. Attorney General so specifies.

U.S. v. Jones, ___ *U.S.* ___, *No. 10-1259 (Jan. 23, 2012).*
The government's attachment of a GPS device to a vehicle and its use of the same to monitor the vehicle's movements constitutes a search under the Fourth Amendment.

Perry v. New Hampshire, ___ *U.S.* ___, *No. 10-8974 (Jan. 11, 2012).*
The Due Process Clause does not require a preliminary judicial inquiry into the reliability of an eyewitness identification absent the presence of unduly suggestive circumstances arranged by law enforcement officers.

B. U. S. COURTS OF APPEAL

1. *FIRST AMENDMENT*

Barry v. Moran, *__F.3d__, No. 10-1607 (1st Cir., Nov. 22, 2011).*
Firefighters' choice not to associate with powerful members of the Boston Fire Department, and their subsequent failure to be promoted on the basis of cronyism and nepotism, does not rise to the level of actionable political discrimination in violation of the First Amendment.

Galloway v. Town of Greece, *__F.3d__, No. 10-3635 (2nd Cir., May 17, 2012).*
Although a town claimed that any person could give its monthly legislative invocation, it never publicized this policy and, between 1999 and 2010, allowed approximately 97% of its invocations to be given by Christian clergy. This practice violates the Establishment Clause, because it endorses a particular religious viewpoint.

Johnson v. City of Philadelphia, *__F.3d__, No. 10-4185 (2nd Cir., Dec. 27, 2011).*
A municipal ordinance prohibiting the posting of signs, including political signs, on public street poles does not violate the First, Fourteenth, or Twenty-Fourth Amendments.

Marcavage v. NYC, *__F.3d__, No. 10-4355 (2nd Cir., Aug. 2, 2012).*
A 2-block "no-protest zone" created for the Republican National Convention was a valid time, place, and manner restriction even if it barred forms of expression that did not increase traffic and pedestrian congestion. Allowing protestors to be within "sight and sound" of Convention delegates is not a Constitutional requirement.

NYCLU v. NYCTA, *__F.3d__, No. 10-0372 (2nd Cir., Jan. 4, 2012).*
A transit authority's policy of requiring third parties to obtain the consent of the persons contesting notices of violation in order to observe their administrative hearings violates the First Amendment right of third parties to have access to governmental proceedings.

Baltimore Cty. v. Mayor & City Council, *_F.3d_, No. 11-1111 (4th Cir., June 27, 2012);*
Tepeyac v. Montgomery Cty., *_F.3d_, Nos. 11-1314 & 11-1336 (4th Cir., June 27, 2012).*
A city ordinance requiring pregnancy centers that do not include birth control or abortion services to post a sign identifying themselves as "limited-service pregnancy centers" violates the First Amendment's free speech protections.

Brooks v. Arthur, *__F.3d__, No. 11-1899 (4th Cir., July 9, 2012).*
Complaints about an employee's own duties, filed with his employer pursuant to an internal grievance procedure, do not relate to a matter of public concern for First Amendment purposes.

Preston v. Leake, *__F.3d__, No. 10-2294 (4th Cir., Nov. 7, 2011).*
A state law prohibiting a registered lobbyist from making contributions to candidates for certain state offices does not violate the First or Fourteenth Amendments and is a valid exercise of the State's legislative prerogative to address political corruption and the appearance of political corruption within its borders.

Juarez v. Aguilar, *__F.3d__, No. 10-40611 (5th Cir., Sept. 30, 2011).*
For purposes of a Section 1983 claim alleging a First Amendment violation, an informal decision not subject to a final vote can be an "adverse employment action".

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.

Bays v. City of Fairborn, *__F.3d__, No. 10-4059 (6th Cir., Feb. 13, 2012).*
A sweet corn festival solicitation policy, enforced by municipal police, prohibiting all sales or solicitations outside of assigned booth spaces is overbroad for First Amendment purposes, given its objectives of crowd control and smooth traffic flow.

Ohio Citizen Action v. Englewood, *_F.3d_, Nos. 10-3265 & 10-3293 (6th Cir., Feb. 2, 2012).*
A 6:00 p.m. curfew on door-to-door soliciting is not narrowly tailored, for First Amendment purposes, when it is designed to protect residential privacy and crime.

Satawa v. Macomb County, *__F.3d__, No. 11-1612 (6th Cir., Aug. 1, 2012).*
A median between eight lanes of traffic on a road that carries over 82,000 cars a day can still be a "traditional public forum" for First Amendment purposes if it contains benches and is accessible from a public sidewalk. The county's denial of an application to place a crèche' in such a median is therefore subject to a strict scrutiny analysis.

Wurzelbacher v. Jones-Kelly, *__F.3d__, No. 10-4009 (6th Cir., March 27, 2012).*
The improper search of government databases by state employees seeking information about a citizen ("Joe the Plumber") who publically questioned a political candidate, when the retrieved information was never made public, does not constitute First Amendment retaliation for the citizen's protected political speech.

Davis v. Ockomon, *__F.3d__, No. 10-2589 (7th Cir., Feb. 3, 2012).*
Under the First and Fourteenth Amendments, a city ordinance that gave the plaintiff policy-making responsibilities is sufficient to make his political loyalty an appropriate consideration for his continued employment.

Hutchins v. Clarke, *__F.3d__, No. 10-2661 (7th Cir., Oct. 24, 2011).*
A sheriff's public disclosure of a deputy's past disciplinary record, unaccompanied by threat or coercion, is not actionable under Section 1983 as a First Amendment violation.

Surita v. Hyde, *__F.3d__, No. 09-1165 (7th Cir., Dec. 22, 2011).*
A mayor's total ban on the plaintiff speaking at "public time" before Council was not a valid and content-neutral time, place, and manner restriction, but a punishment for his prior conduct towards the mayor – in violation of the First Amendment. Likewise, the calculation of a protest rally permit fee based upon the number of officers the police chief thought would be needed to manage the rally was impermissibly content-based.

Wisconsin Right to Life PAC v. Barland, *__F.3d__, No. 11-2623 (7th Cir., Dec. 12, 2011).*
A State law applying a $10,000.00 annual cap on contributions made to organizations engaged only in independent spending for political speech violates the First Amendment.

Nelson Enterprises v. County of St. Louis, *__F.3d__, No. 10-3467 (8th Cir., Mar. 9, 2012).*
A sheriff's implementation of new eviction rules that were allegedly designed to put one moving company "out of business" in retaliation for its complaints about the sheriff's process of selecting moving companies to help evict tenants raised a valid First Amendment claim.

Phelps-Roper v. City of Manchester, *__F.3d__, No. 10-3197 (8th Cir., Oct. 5, 2011).*
An ordinance prohibiting protest activities at a funeral or burial service is violative of the First Amendment because a municipality had no significant interest in protecting funeral attendees from unwanted communication.

Pl. Prnthd. v. Rounds, *_ F.3d_, Nos. 09-3231, 09-3233 & 09-3362 (8th Cir., July 24, 2012).*
A state law requiring physicians, when obtaining informed consent, to inform abortion-seeking patients of the risk of post-abortion suicide did not violate the First Amendment.

Comite de Jourraleros v. Redondo Bch., *__F.3d__, No. 06-55750 (9th Cir., Sept. 16, 2011).*
A city ordinance prohibiting individuals from standing on a street and soliciting employment, business, or contributions from motor vehicle occupants is facially unconstitutional because it is not narrowly tailored to fulfill its objectives of improving traffic safety and flow at major intersections. The city could achieve these purposes by enforcing its existing jaywalking and blocking the roadway laws.

Dahlia v. Rodriguez, *__F.3d__, No. 10-55978 (9th Cir., August 7, 2012).*
A police detective's disclosure of the alleged use of abusive interrogation tactics by his fellow officers was made in the course of his official duties and was not protected First Amendment speech.

Kaahumanu v. State of Hawaii, *__F.3d__, No. 10-15645 (9th Cir., June 6, 2012).*
A law requiring permits for "commercial weddings" on public beaches is upheld against First Amendment challenges except for its provisions that allowed government agents to alter or revoke already issued permits in their sole discretion.

Moss v. USSS*, __F.3d__, Nos. 10-36152 & 10-36172 (9th Cir., April 9, 2012).*
Moving anti-Bush protesters away from the President's motorcade route while leaving pro-Bush supporters along that route may constitute illegal viewpoint discrimination under the First Amendment.

Wright v. Incline Village*, __F.3d__, No. 10-16043 (9th Cir., Dec. 27, 2011).*
An improvement district that prohibits non-residents from accessing district beaches does not violate the First Amendment, as the beaches are not traditional public fora.

Klen v. City of Loveland*, __F.3d__, Nos. 10-1311 & 10-1327 (10th Cir., Nov. 15, 2011).*
Under the First Amendment, private citizens can express an opinion on purely private matters to public officials without fear of retaliation, even if that opinion is expressed with vulgarity not analogous to fighting words.

Koch v. Del City*, __F.3d__, No. 10-6105 (10th Cir., Nov. 2, 2011).*
There is no clearly established right under the First, Fifth or Fourth Amendments to refuse to answer an officer's questions during a pre-arrest *Terry* stop.

Initiative and Referendum Institute v. UPS*, _F.3d_, No. 10-5337 (D. C. Cir., July 13, 2012).*
A ban on collecting signatures on Post Office sidewalks that do not run along public streets does not violate the First Amendment.

Libertarian Party v. D.C. Bd. of Elections*, __F.3d__, No. 11-7029 (D. C. Cir., June 8, 2012).*
An election board's refusal to tabulate the write-in votes for U. S. President does not violate the First or Fifth Amendment.

2. SECOND AMENDMENT

Gonzalez v. Village of West Milwaukee*, __F.3d__, No. 10-2356 (7th Cir., Feb. 2, 2012).*
Openly carrying a firearm into a retail store is not categorically "disorderly conduct," given the plaintiff's right to bear arms under his State constitution.

Nordyke v. King*, __F.3d__, No.07-15763 (9th Cir., June 1, 2012).*
The holding of gun shows at county fairgrounds could, consistent with the Second Amendment, require all firearms to be secured with a cable attached to a fixture in order to prevent their unauthorized use.

Georgia Carry Org. v. Georgia, *__F.3d__, No. 11-10387 (11th Cir., July 20, 2012).*
A statute barring unsecured weapons in places of worship does not, on its face, violate the Second Amendment.

Heller v. D.C., *__F.3d__, No. 10-7036 (D.C. Cir., Oct. 4, 2011).*
The Second Amendment does not prohibit the District of Columbia form outlawing assault weapons and large capacity magazines.

3. FOURTH AMENDMENT / EXCESSIVE FORCE

Eldredge v. Falmouth, *__F.3d__, No. 11-1151 (1st Cir., Nov. 22, 2011).*
Officers who hit a pedestrian while responding to a 911 call were not required by the Fourth Amendment to show that their conduct was the soundest course of action under the circumstances in order to be entitled to qualified immunity against a Section 1983 unreasonable seizure claim.

Spencer v. Roche, *__F.3d__, No. 11-1146 (1st Cir., Oct. 18, 2011).*
A non-consensual x-ray drug search of an arrestee's anal cavity pursuant to a search warrant does not violate the Fourth Amendment even though no drugs were found.

U. S. v. Harrison, *__F.3d__, No. 11-2566 (3rd Cir., Aug. 7, 2012).*
A house with a rundown exterior and a "trashed" interior that was observed over time made police officers' mistaken belief that it was abandoned reasonable for purposes of a Fourth Amendment challenge to their warrantless search of the property.

U.S. v. Lewis, *__F.3d__. No. 11-1136 (3rd Cir., Feb. 22, 2012).*
Under the Fourth Amendment, the after-the-fact determination that a vehicle, stopped on the basis of an informant's tip that its occupants possessed firearms, also had illegally tinted windows did not provide a pretextual justification for the stop when the tip alone did not provide reasonable suspicion.

Bishop v. San Antonio, *__F.3d__, No. 11-50010 (5th Cir., March 9, 2012).*
The presence of small quantities of easily disposable drugs is legally insufficient, in and of itself, to constitute an exigency justifying a no-knock entry.

Kahn v. Normand, *__F.3d__, No. 11-30112 (5th Cir., May 31, 2012).*
Placing an arrestee in a four-point restraint (hog-tie) which allegedly led to his death was not "excessive force" *per se*, and was not unreasonable in this case because the arrestee was not left unsupervised or face down.

U.S. v. Gray, *__F.3d__, No. 10-11150 (5th Cir., Feb. 1, 2012).*
Requiring an arrestee to undergo a proctoscopic examination under sedation pursuant to a search warrant obtained because the police believed he was concealing cocaine in his rectum violated the Fourth Amendment in light of its affront to dignity and the existence of less invasive alternatives.

Cockron v. Gilliam, *__F.3d__, No. 10-6274 (6th Cir., Sept. 2, 2011).*
Sheriff's deputies who helped a landlord load an evicted renter's possessions in the landlord's truck and kept the renter from interfering with the removal of his property "meaningfully interfered" with the renter's property for Fourth Amendment purposes, even if the deputies never entered the renter's apartment.

Neill v. Louisville Jefferson County, *__F.3d__, No. 10-5699 (6th Cir., Nov. 8, 2011).*
A claim that animal control officers entered a home and seized adult dogs and their puppies without a warrant, then neutered and spayed them, implanted micro-chips in them, and required their owners to pay $1,020.95 to retrieve them, all without formal charges ever being served, raises colorable Fourth and Fourteenth Amendment unlawful seizure and procedural due process claims.

U.S. v. Beauchamp, *__F.3d__, No. 10-5102 (6th Cir., Oct. 25, 2011).*
The fact that a person hurriedly walks away from a police officer without making eye contact, even at 2:30 a.m. in a high drug complaint area, does not create reasonable suspicion of criminal activity that justifies his seizure.

U.S. v. Sharp, *__F.3d__, No. 10-6127 (6th Cir., July 27, 2012).*
A drug dog that sniffed the exterior of a vehicle and then jumped into it and sniffed its interior before "alerting" did not conduct a search in violation of the Fourth Amendment when its jump was instinctive and not the result of police encouragement.

U. S. v. Skinner, *__F.3d__, No. 09-6497 (6th Cir., Aug. 14, 2012).*
Police who used date emanating from a drug runner's "pay-as-you-go" cell phone to determine his real-time location did not violate the Fourth Amendment. There is no reasonable expectation of privacy in this data.

Phillips v. Community Insurance, *__F.3d__, No. 10-1654 (7th Cir., April 27, 2012).*
Shooting a subject four times with polyurethane bullets when she was not actively resisting arrest or assaulting an officer, but remained still in her car, constituted excessive force.

U.S. v. Bohman, *__F.3d__, No. 10-3656 (7th Cir., June 28, 2012).*
The Fourth Amendment does not allow the police to stop a vehicle simply because it emerges from a site of suspected illegal drug activity.

U.S. v. Burgard, *__F.3d__, No. 11-1863 (7th Cir., April 2, 2012).*
A six day delay in seeking a warrant to search a cell phone lawfully seized by the police was not unreasonable for purposes of the Fourth Amendment.

Hemphill v. Hale, *__F.3d__, No. 11-3116 (8th Cir., May 10, 2012).*
Since no degree of force is justified in an attempt to coerce someone to consent to a search, even *de minimis* physical force can support a Fourth Amendment excessive force claim under such circumstances.

Johnson v. Phillips, *__F.3d__, No. 11-1367 (8th Cir., Dec. 22, 2011).*
The court joins the Seventh Circuit in holding that police officers can rely upon information obtained during an unconstitutional traffic stop to justify the subsequent arrest of the driver.

U.S. v. Cowan, *__F.3d__, No. 11-1525 (8th Cir., March 23, 2012).*
To the extent using a key fob to locate the plaintiff's automobile was a search and seizure, it was permitted by the "automobile exception" to the Fourth Amendment's warrant requirement, because it was based upon probable cause.

U.S. v. Garreau, *__F.3d__, No. 11-1008 (8th Cir., Oct. 11, 2011).*
After a driver was arrested on an outstanding warrant and indicated that no one was available to drive his car home, an officer, pursuant to department policy, had his car towed and inventoried the items located therein—at which time contraband was found. This was a proper inventory search that did not violate the Fourth Amendment.

Haskell v. Harris, *__F.3d__, No. 10-15152 (9th Cir., Feb. 23, 2012).*
A State law requiring enforcement officers to collect DNA samples from all adults arrested for felonies does not violate the Fourth Amendment.

Hydrick v. Hunter, *__F.3d__, No. 03-56712 (9th Cir., Jan. 12, 2012).*
Conclusory allegations contained in a complaint are insufficient to establish individual liability on a Section 1983 Fourth Amendment claim.

Mattos v. Agarano, *__F.3d__, Nos. 08-15567 & 08-35526 (9th Cir., Oct. 17, 2011).*
Tasing an unarmed seven-months' pregnant woman three times in less than a minute after she refused to sign her speeding ticket and remained behind the wheel of her car rather than comply with the officers' orders to exit her vehicle constitutes excessive force.

Nelson v. Davis, *__F.3d__, Nos. 10-16256, 10-16257 & 10-16258 (9th Cir., July 11, 2012).*
The use of pepperballs to dispense a group of partying students from an apartment complex breezeway, during which a student awaiting police instructions was hit in the eye, constituted excessive force. There were no attempts by the student to resist or evade arrest, the student was not charged with a crime, the risk of injury from shooting pepperballs beyond their approved range was well known, no warning was given in a manner that could be heard over the din of the crowd, and the injured student posed no risk to the officers or to others. Qualified immunity from the student's Fourth Amendment claim was denied.

Patel v. Los Angeles, *__F.3d__, No. 08-56567 (9th Cir., July 17, 2012).*
A municipal ordinance that requires motel owners to maintain and make available to police officers certain guest registry information does not on its face constitute an unreasonable intrusion into private business records in violation of the Fourth Amendment. There is no reasonable expectation of privacy in this information.

U. S. v. Pope, *__F.3d__, No. 11-10311 (9th Cir., July 17, 2012).*
A police officer's command that the defendant "empty his pockets" was not an unlawful search under the Fourth Amendment because the defendant did not comply with the command and because there existed probable cause for the later search of the defendant's person.

Armijo v. Perales, *__F.3d__, No. 11-2098 (10th Cir., Aug. 1, 2012).*
No qualified immunity against a Fourth Amendment claim was available to an officer who searched an apartment based upon a search warrant that authorized a search for "funds and narcotics" but that relied upon a supporting affidavit that did not link the plaintiff to any missing funds or narcotics.

Ebonie Mary v. Pueblo Sch. Dist., *__F.3d__, No. 11-1273 (10th Cir., Aug. 28, 2012).*
A disabled student who was forced to sit in a desk with a restraining bar that made her face forward did not raise a Fourth Amendment claim. She could remove the restraint, the restraint was not attached to her body, and she was not removed from the regular classroom environment.

U. S. v. Burleson, *__F.3d__, No. 10-2060 (10th Cir., Sept. 12, 2011).*
No Fourth Amendment violation took place when an officer stopped pedestrians based upon reasonable suspicion after he observed them walking in the street and asked them their names in order to run a warrant check on them.

Allen v. Cooks, *__F.3d__, No. 11-10771 (11th Cir., Feb. 27, 2012).*
Qualified immunity is granted to officers facing an excessive force claim when they Tased a struggling arrestee who had just assaulted an officer, using the Taser once in "probe mode" and between 5 and 18 times in "dry mode."

Loftus v. Clark-Moore, *__F.3d__, No. 09-14032 (11th Cir., Aug. 13, 2012).*
Qualified immunity from a Fourth Amendment claim was granted to a social worker who interviewed the plaintiff's minor child without his consent as part of an investigation into the child's welfare that the plaintiff himself initiated.

U. S. v. Welch, *__F.3d__, No. 10-14649 (11th Cir., June 13, 2012).*
When a person refuses to consent to a search of his apartment, telling him "Fine. We will need to get a warrant --- which might take some time" is not unlawful coercion by law enforcement officers for Fourth Amendment purposes.

NFFE v. Vilsak, *__F.3d__, No. 11-5135 (D. C. Cir., June 8, 2012).*
The random and suspicionless drug testing of all Forest Service Job Corps employees, without evidence of a serious drug problem amongst the Corps staff that threatened personal safety, violated the Fourth Amendment.

4. FIFTH AMENDMENT

U.S. v. Cavazos, *__F.3d__, No. 11-50094 (5th Cir., Jan. 19, 2012).*
For Fifth Amendment purposes, an interrogation is "custodial" even though it is conducted in the interrogee's home and after he is told that the interrogation is "non-custodial," when he is handcuffed, separated from his family, and monitored whenever he makes a phone call or uses the bathroom.

U.S. v. Brown, *__F.3d__, No. 11-1344 (7th Cir., Dec. 30, 2011).*
An arrestee can understand and waive his *Miranda* rights even without uttering a clear "yes" or signing a waiver form, by selectively answering questions or seeking a plea agreement.

U.S. v. Martin, *__F.3d__, No. 11-1696 (7th Cir., Dec. 30, 2011).*
An arrestee's statement that he would "rather talk to an attorney" before making a written statement invoked his Fifth Amendment right to counsel as regards written statements only.

5. FOURTEENTH AMENDMENT; DUE PROCESS; EQUAL PROTECTION

Big Time, Inc. v. Town of Franklin, *__F.3d__, No. 10-1800 (1st Cir., Oct. 31, 2011).*
A tavern was under investigation for serving liquor without a license. Municipal police parked their marked cars near the premises, conducted undercover operations into the tavern's business practices, and a raid that resulted in adverse publicity. The police chief also strongly opposed the issuance of a liquor license to the tavern and the town subsequently denied the license application without a hearing. As a result, the tavern was forced to close. These actions did not violate the tavern's Equal Protection or Due Process rights.

Coscia v. Town of Pembroke, *__F.3d__, No. 10-1714 (1st Cir., Sept. 14, 2011).*
In the absence of a risk of harm created or intensified by state action, no due process liability exists for a city that releases a detainee who, instead of seeking self-help, commits suicide.

Marrero-Rodriguez v. San Juan, *__F.3d__, No. 11-1195 (1st Cir., May 7, 2012).*
A training exercise into which a live firearm was improperly introduced and an unarmed and subdued trainee was shot in the back at point blank range while lying face down on the ground justified a Section 1983 lawsuit against the police officers present during the exercise, as well as against those not present but directly responsible for the training.

Massachusetts v. DHHS, *__ F.3d __, No. 10-2204 (1st Cir., May 31, 2012).*
Section 3 of DOMA, which denies federal economic and other benefits to married same-sex couples, constitutes an unconstitutional violation of the equal protection right of those couples.

Cunney v. Village of Grand View, *__F.3d__, No. 10-0485 (2nd Cir., Oct. 19, 2011).*
A zoning requirement that no building can be more than a certain height "above the easterly side of River Road" is unconstitutionally vague and authorized arbitrary and discriminatory enforcement in violation of the Due Process Clause, as it failed to designate an elevation point on River Road from which to measure building height.

Ognibene v. Parkes, *__F.3d__, No. 09-0994 (2nd Cir., Dec. 21, 2011).*
A municipal rule limiting the campaign contributions of persons who have business dealings with the city to candidates for municipal office does not violate the Fourteenth Amendment, as it is narrowly drawn to reduce actual or perceived political corruption.

Slaughter v. Mayor & Council of Baltimore, *__F.3d__, No. 10-2436 (4th Cir., June 7, 2012).*
No substantive due process violations occurred when a fire department staged a live burn exercise that killed a new recruit, absent any contention that the exercise was staged with the purpose of causing harm to the recruit.

Bevis v. New Orleans, *__F.3d__, No. 11-30711 (5th Cir., June 11, 2012).*
A traffic violation administrative procedure wherein the presiding officer is a municipal employee and an offending driver must file a civil action to contest the outcome of the administrative hearing does not violate due process. The maximum fine is $455 and no fundamental interest is at stake.

Greater Houston Small Taxicab v. Houston, *_F.3d__, No. 10-20381 (5th Cir., Oct. 10, 2011).*
A city ordinance that distributed taxi cab permits on the basis of the size of the taxi cab company does not violate the Equal Protection Clause although larger companies are favored, as a rational relationship exists between this permitting scheme and the governmental interest in increasing competition and the quality of taxicab services.

Staden v. St. Martin, *__F.3d__, No. 10-20882 (5th Cir., Dec. 1, 2011).*
Applicants for permanent resident status do not constitute a suspect class under the Equal Protection Clause.

Hagans v. Franklin Cty. Sheriff, *__F.3d__, No. 11-3648 (6th Cir., Aug. 23, 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.

Geinosky v. Chicago, *__F.3d__, No. 11-1448 (7th Cir., March 28, 2012).*
The recipient of 24 bogus parking tickets states a claim of deliberate and unjustified official harassment that is recognizable under the Equal Protection Clause.

Paine v. Cason, *__F.3d__, No. 10-1487 (7th Cir., April 26, 2012).*
A detainee does not have a constitutional right to have her release delayed pending mental health treatment, but police, by arresting her in a safe place and releasing her in a dangerous place when she was unable to protect herself, may have violated her due process rights.

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 the registry.

Vinning-El v. Evans, *__F.3d__, No. 10-1681 (7th Cir., Sept. 16, 2011).*
Section 1983 does not authorize "supervisory liability", but only liability for personal actions and decisions.

McDonald v. City of St. Paul, *__F.3d__, No. 11-2264 (8th Cir., May 10, 2012).*
During a job selection process, the plaintiff was one of three finalists. The other two finalists removed themselves from contention. The selection committee chose two additional finalists rather than send the name of the remaining finalist for mayoral approval. The mayor subsequently selected, and the council approved, one of the alternate finalists. This process did not violate the plaintiff's due process or equal protection rights.

Rogers Group v. City of Fayetteville, *__F.3d__, No. 11-2482 (8th Cir., July 5, 2012).*
A plaintiff who sought a preliminary injunction against a city ordinance that allegedly violated the Due Process Clause was entitled to attorney fees as the "prevailing party" when the city repealed the ordinance to avoid litigation expense, even though the court never decided his alleged Constitutional claims.

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 the registry.

Stahl v. St. Louis, *__F.3d__, No. 10-3761 (8th Cir., Aug. 6, 2012).*
An ordinance that prohibits speech or activities that cause a pedestrian or traffic obstruction violates the Due Process Clause because it fails to provide fair notice of what speech or conduct is forbidden.

Henry A. v. Willden, *__F.3d__, No. 10-17680 (9th Cir., May 4, 2012).*
A child welfare agency's failure to provide appropriate care for foster children in its control may give rise to Fourteenth Amendment substantive due process violations.

Marsh v. San Diego, *__F.3d__, No. 11-55395 (9th Cir., May 29, 2012).*
A mother has a privacy right in her son's death images, but, for Due Process Clause purposes, a retired police officer was not acting under color of law when he disclosed the son's pictures to the Press.

Cybert v. Indep. Sch. Dist., *__F.3d__, No. 10-5122 (10th Cir., Oct. 19,2011).*
A supervisor's mere presence at an executive session held before an impartial tribunal regarding the termination of an employee does not violate that employee's due process rights.

Butler v. Sheriff of Palm Beach County, *__F.3d__, No. 11-13933 (11th Cir., July 6, 2012).*
A sheriff who came home to find her daughter naked in bed and the plaintiff naked in the bedroom closet, and who held him at gunpoint until her husband got home and identified the suitor, did not act in her official capacity for purposes of a Section 1983 excessive force claim.

Corey Airport Svcs. v. Clear Channel, *__F.3d__, No. 11-10579 (11th Cir., June 4, 2012).*
No viable Due Process claim exists for a group of government contract bidders whose only shared characteristic is that they all lost the bid, even if it is true that their bid loss was based upon subjective and arbitrary factors.

Edwards v. Shanley, *__F.3d__, No. 11-11512 (11th Cir., Jan. 12, 2012).*
No qualified immunity is available to officers who allowed a K-9 to attack a person who had fled his car after a traffic stop when the attack lasted 5 to 7 minutes after the person was lying face down, not resisting, and pleading to have the dog called off because he "surrendered."

Glenn v. Brumby, *__F.3d__, No. 10-14833 (11th Cir., Dec. 6, 2011).*
Discriminating against someone on the basis of his or her gender non-conformity constitutes sex-based discrimination under the Equal Protection Clause.

Dixon v. D.C., *__F.3d__, No. 10-7178 (D.C. Cir., Dec. 20, 2011).*
Subjecting motorists, caught by police officers for speeding, to different penalties than motorists caught for speeding by a speed camera does not violate the Equal Protection Clause or the Fifth Amendment.

6. EEOC/Title VII

Jones v. East Haven, *__F.3d__, Nos. 10-4731 & 10-4894 (2nd Cir., Aug. 1, 2012).*
For *Monell* purposes, three incidents over several years of a small number of police officers abusing the rights of African-Americans falls short of establishing a policy, custom, or usage of officers abusing Blacks or of showing that such conduct must have been known to their supervisory personnel.

M.O.C.H.A. v. Buffalo, *__F.3d__, Nos. 11-2184 and 10-2168 (2nd Cir., July 30, 2012).*
Promotional examinations having a disparate impact on a protected class of employees may be job related and supported by business necessity even when the job analysis that produced them relied upon state-wide, not employer-specific, data.

Edwards v. Shanley, *__F.3d__, No. 11-11512 (11th Cir., Jan. 12, 2012).*
No qualified immunity is available to officers who allowed a K-9 to attack a person who had fled his car after a traffic stop when the attack lasted 5 to 7 minutes after the person was lying face down, not resisting, and pleading to have the dog called off because he "surrendered."

Redd v. NYS Div. of Parole, *__F.3d__, No. 10-1410 (2nd Cir., May 4, 2012).*
A female supervisor's repeatedly touching a female employee's breasts could constitute sex discrimination under Title VII.

Townsend v. Benjamin Enterprises, *__F.3d__, No. 09-0197 (2nd Cir., May 9, 2012).*
An employee's participation in an internal employer investigation not connected with any formal EEOC charge does not qualify as protected conduct under the participation clause of Title VII's anti-retaliation provisions.

AACP v. Hudson Regional Fire & Rescue, *__F.3d__, No. 10-3965 (3rd Cir., Dec. 12, 2011).*
A residency requirement for firefighter candidates is invalidated because it had a disparate impact on African-American applicants.

Meditz v. City of Newark, *__F.3d__, No. 10-2442 (3rd Cir., Sept. 28, 2011).*
For Title VII analysis, evidence that the population in the counties surrounding Newark was comprised of a significantly greater percentage of White, non-Hispanics than Newark's non-uniformed workforce supports a disparate impact claim brought by its White, non-Hispanics, as Newark's employee population did not reflect the racial make-up of its relevant labor market.

Gerner v. Chesterfield County, *__F.3d__, No. 11-1218 (4th Cir., March 16, 2012).*
The discriminatory denial of a non-contractual employment benefit (a severance package) can constitute an adverse employment action under Title VII.

Cherry v. Shaw Coastal, *__F.3d__, No. 11-30403 (5th Cir., Jan. 19, 2012).*
A jury award in favor of the plaintiff and against his employer on a same-sex workplace harassment claim is affirmed. Suggestive sexual texts and uncomfortable touching, coupled with employer inaction in light of its conclusion that the workplace assailant was "just horsing around," was sufficient evidence to support the verdict.

Dedial v. Best Chevrolet, *__F.3d__, No. 10-30767 (5th Cir., Sept. 12, 2011).*
In a case of first impression, the court joins the Sixth Circuit and holds that Title VII does cover a claim of hostile work environment based upon age.

EEOC v. Goh Bros., *__F.3d__, No. 11-30770 (5th Cir., July 27, 2012).*
No same-sex harassment exists when a supervisor heaps sexual vulgarities on a heterosexual construction crew member that are of a homosexual nature ("faggot"; "princess"). A plaintiff may not recover based on his nonconformance with a gender stereotype unless he or she conforms to the nonconforming gender stereotype.

Bryson v. Middlefield V.F.D., *__F.3d__, Nos. 09-6121 & 09-6169 (6th Cir., Sept. 2, 2011).*
For purposes of determining if a fire department meets the 15-employee minimum for Title VII coverage, whether volunteer firefighters are remunerated for their services need not be an independent antecedent inquiry – remuneration is only one of several factors that should be considered in determining their employment relationship under a common-law agency test. This opinion is contrary to Fourth, Eighth, and Tenth Circuit opinions.

Griffin v. Finkbeiner, *__F.3d__, No. 10-3659 (6th Cir., Aug. 20, 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.

Wasek v. Arrow Energy Svcs., *__F.3d__, No. 10-2418 (6th Cir., June 20, 2012).*
Same sex bullying and harassment does not give rise to a Title VII hostile work environment claim in an all male workplace absent evidence that the harasser is generally hostile to men or is a homosexual.

Dickerson v. Community College, *__F.3d__, No. 10-3381 (7th Cir., Sept. 16, 2011).*
A supervisor's statement, made after an employee filed an EEOC charge, that the employee ought not to be suing the company if he wanted to be promoted is not, alone, sufficient to avoid summary judgment. It was clear that poor work performance was the cause of his termination.

Harris v. Warrick Cty. Sheriff Dept., *__F.3d__, No. 10-3706 (7th Cir., Jan. 13, 2012).*
Behavior by non-supervisors such as watching "Blazing Saddles" in the workplace and giving the Black plaintiff racially-tinged nicknames such as "Calvin," "Urkel," "Cowboy Troy" and "Tubbs," did not support an inference that the plaintiff was terminated because of his race.

Overly v. Key Bank, *__F.3d__, No. 10-2705 (7th Cir., Nov. 10, 2011).*
A hostile work environment for Title VII purposes is not exhibited by evidence showing that a superior called a female employee "cutie" 5 to 10 times in a two-month period and once said that the company should send her "pretty face" to a golf outing.

Passananti v. Cook County, *__F.3d__, No. 11-1182 (7th Cir., July 20, 2012).*
The constant use of the word "bitch" in reference to a female employee can be sufficient to support an actionable Title VII hostile work environment claim.

Smith v. Bray, *__F.3d__, No. 11-1935 (7th Cir., May 24, 2012).*
A supervisor can be held individually liable under Section 1981 for causing his employer to discriminate against an employee.

Guimaraes v. Supervalue, *__F.3d__, No. 11-1046 (8th Cir., March 23, 2012).*
A supervisor's "targeting" of an employee for termination because of a personality conflict, because the employee questioned her managerial style, or because the employee was applying for a green card, did not violate Title VII.

Sanchez v. Dakota County, *__F.3d__, Nos. 11,2896 through 2898 (8th Cir., Aug. 3, 2012).*
Asking a female subordinate out several times and offering her a box of chocolates does not create a sexually hostile work environment.

Williams v. Herron, *__F.3d__, No. 11-2894 (8th Cir., Aug. 3, 2012).*
A corrections officer who began a consensual sexual relationship with a jail administrator and then did not end it out of fear that, based upon the administrator's reaction to her attempts to do so, she would lose her job if she did, states a Section 1983 hostile work environment claim.

Karl v. City of Mountlake Terrace, *__F.3d__No. 11-35343 (9th Cir., May 8, 2012).*
No qualified immunity is available to an assistant police chief for his allegedly retaliatory action in terminating an employee for providing subpoenaed deposition testimony in connection with a civil rights lawsuit alleging governmental misconduct.

Jones v. UPS, *__F.3d__, No. 11-10416 (11th Cir., June 11, 2012).*
A hostile work environment can be based upon an African-American employee's finding banana peels by his truck on several occasions and the wearing of Confederate Flag apparel by co-workers, which sent a message of racial intolerance.

Youssef v. FBI, *__F.3d__, No. 11-5069 (D.C. Cir., July 20, 2012).*
An employee who experienced an "extraordinary reduction in responsibilities" allegedly based upon his national origin may thereby show that he was subject to a materially adverse action for Title VII purposes. His showing is not diminished by the fact that he was given a job promotion seven months later.

7. ADA/REHABILITATION ACT

McDonough v. Donahoe, *__F.3d__, No. 11-1477 (1st Cir., March 14, 2012).*
A plaintiff's disability claim brought under the Rehabilitation Act was dismissed because her "neck and back pain" did not substantially limit her in the major life activities of working, walking, standing, sitting, or lifting.

Ramos-Eshevarria v. Pichis, *__ F.3d__, No. 10-1522 (1st Cir., Oct. 21, 2011).*
The plaintiff's claim that his disability – epilepsy – affected his major life activity of "working" failed when he only had to stop work temporarily whenever he was experiencing a seizure. The other activities that he was unable to engage in were not required job duties.

Krist v. Kolombos, *__F.3d__, No. 11-1263 (2nd Cir., July 24, 2012).*
The ADA does not prohibit employees of a public facility from rudely and insensitively complaining about a service dog's handling or behavior if its disabled handler is not denied the use or enjoyment of the facility – absent a showing of discriminatory intent or animosity based upon her disability. The ADA does not impose a civility code.

Lopez v. Jet Blue, *__F.3d__, No. 10-3550 (2nd Cir., Dec. 1, 2011).*
Title III of the ADA does not apply to services provided by an air carrier in an airport terminal used primarily to facilitate air transportation.

Noel v. NYC Taxi Commission, *__F.3d__, No. 12-41 (2nd Cir., June 28, 2012).*
The public agency that licensed taxi cabs required 2% of these licensed cabs to be handicapped accessible but did not prohibit any cab from being handicapped accessible. Title II of the ADA does not apply to this public agency so as to require it to make more taxis handicapped accessible, as the taxi cabs themselves are a private industry and the commission's licensing requirements did not cause the alleged lack of meaningful access to a handicapped accessible cab in the city.

Tiberio v. Allergy Asthma Immunology, *__F.3d__, No. 11-2576 (2nd Cir., Dec. 20, 2011).*
Under the ADA, a claim must be filed within 90 days of the receipt of the EEOC's right to sue letter by the plaintiff or by her attorney, whichever date is earlier.

Boitnott v. Corning, *__F.3d__, No. 10-1769 (4th Cir., Feb. 10, 2012).*
The inability to work overtime is not a substantial limitation on a major life activity and thus not a disability under the ADA.

Seremeth v. Frederich County, *__F.3d__, No. 10-1711 (4th Cir., March 12, 2012).*
The ADA applies to police interrogations, but given the exigencies inherent in responding to a domestic disturbance 911 call, accommodating a deaf suspect by either handcuffing him in front of his body so that he can write notes to the police, or by providing him with a qualified ASL interpreter, is not required.

Sydnor v. Fairfax Cty., *__F.3d__, No. 11-1573 (4th Cir., June 19, 2012).*
In an ADA suit, an EEOC charging party's administrative remedies were sufficiently exhausted when she listed "limited walking ability" in her EEOC questionnaire and then claimed in her lawsuit that she had been denied the reasonable accommodation of a wheelchair. Her employer was provided with sufficient notice of the allegedly discriminatory actions with which it was charged.

Frame v. City of Arlington, *__F.3d__, No. 08-10630 (5th Cir., Sept. 15, 2011).*
A private right of action exists to enforce Title II of the ADA as regards newly built and altered public sidewalks, and that right accrues at the time the plaintiff first knew or should have known he or she was being denied the benefits of the sidewalks.

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.

Feldman v. Olin Corp., *__F.3d__, No. 10-3955 (7th Cir., Aug. 27, 2012).*
Sleep-apnea affects the major life activity of sleeping and may require a day shift accommodation under the ADA.

Hanson v. Caterpillar, *__F.3d__, No. 11-3292 (7th Cir., Aug. 3, 2012).*
For ADA purposes, the fact that the employer placed the plaintiff in three jobs within her medical restrictions clearly refutes her claim that it subjectively regarded her as unable to perform a broad class of jobs.

Magnus v. St. Mark United Methodist Church, *_F.3d_, No. 11-3767 (7th Cir., Aug. 8, 2012).*
When an employee is fired for poor attendance and her refusal to work weekends, the ADA does not require her employer to accommodate her desire to be with her disabled daughter during these time periods, as the employee herself is not disabled.

Powers v. USF Holland, *__F.3d__, No. 10-2363 (7th Cir., Dec. 15, 2011).*
A driver is not limited in the major life activity of "working" because he cannot work a route requiring frequent stops and loading/unloading, when he can perform long hauls.

Pulczinski v. Trinity, *__F.3d__, No. 11-2585 (8th Cir., Aug. 31, 2012).*
The court rejects the Sixth Circuit's holding that an employer can be liable under the ADA based upon its ill-considered or unreasonable business decisions, holding instead that ADA liability is conditioned upon a showing of intentional discrimination based upon a known disability.

Baughman v. Walt Disney World, *__F.3d__, No. 10-55792 (9th Cir., July 18, 2012).*
A Segway must be considered as a possible "reasonable public accommodation" under the ADA. Allowing wheelchairs only in an amusement park may not satisfy the ADA.

Bullock v. Bessier, *__F.3d__, No. 10-55866 (9th Cir., July 30, 2012).*
An employee who files an optional appeal with the EEOC of an ALJ's decision, but then files suit within the 180-day waiting period, has not failed to exhaust her administrative remedies under the Rehabilitation Act.

James v. City of Costa Mesa, *__F.3d__, No. 10-55769 (9th Cir., May 21, 2012).*
Doctor-recommended marijuana permitted by state law but prohibited by federal law is an illegal drug for purposes of the ADA.

Okwu v. McKim, *__F.3d__, No. 11-15369 (9th Cir., June 12, 2012).*
The comprehensive remedial scheme contained in Title I of the ADA precludes Section 1983 claims predicated upon alleged violations of the same.

EEOC v. Picture People, *__F.3d__, No. 11-1306 (10th Cir., July 10, 2012).*
An employee who was required to verbally communicate as an essential function of her job was not entitled to an ASL interpreter as a reasonable accommodation under the ADA.

Robert v. Bd. of Commsrs. Of Brown Cty., *__F.3d__, No. 11-3092 (10th Cir., Aug. 29, 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.

Seff v. Broward Cty., *__F.3d__, No. 11-12217 (11th Cir., Aug. 20, 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

Donnelly v. Greenburgh Central Sch. Dist. 7, *_F.3d_, No. 11-2448 (2nd Cir., Aug. 10, 2012).*
A teacher who annually worked 1247 hours per the terms of his CBA may still be eligible for FMLA leave if, in practice, he actually worked sufficient hours before and after his contracted working day to total 1250 hours within his FMLA eligibility period. When computing FMLA eligibility, a court is not restricted to the hours identified in a CBA. It is an employer's burden to show that an employee has not worked the requisite hours.

Hayberger v. Lawrence County, *__F.3d__, No. 10-3916 (3rd Cir., Jan. 31, 2012).*
As a case of first impression in the Circuit, the Court holds that a supervisor in a public agency may be subject to personal liability under the FMLA. This ruling joins the Fifth and Eights Circuits and is contrary to Sixth and Eleventh Circuit opinions.

Lichtenstein v. Pittsburg Med. Center, *__F.3d__, No. 11-3419 (3rd Cir., Aug 3, 2012).*
Under the FMLA, an absence from work to "care for" a parent can include providing "psychological care" to that parent, even if other family members are also with the parent.

Thom v. American Standard, *__F.3d__, Nos. 09-3507 & 09-3508 (6th Cir., Jan. 20, 2012).*
Under the FMLA, an employer's notice of its change from a calendar year to a rolling 365 day leave calculation cannot be imputed to employees through their union, but must be provided in writing to the employees themselves.

Breneisen v. Motorola, *__F.3d__, No. 10-1982 (7th Cir., Sept. 2, 2011).*
A plaintiff is barred from collecting front and back pay damages under the FMLA for periods in which he was unable to work and his FMLA leave entitlement had been exhausted. Also, an employer's conduct that "exacerbates" an employee's medical condition is not a valid theory of liability under the FMLA.

Jones v. C & D Technologies, *__F.3d__, No. 11-3400 (7th Cir., June 28, 2012).*
Visiting a doctor's office to obtain a drug refill prescription does not constitute a "treatment" under the FMLA when the doctor never saw the patient during this visit. Therefore, this work absence could form the basis for the employee's termination for poor attendance.

9. FLSA

Boitnott v. Corning, *__F.3d__, No. 10-1769 (4th Cir., Feb. 10, 2012).*
The inability to work overtime is not a substantial limitation on a major life activity and thus not a disability under the ADA.

***Minor v. Bostwich Labs**, __F.3d__, No. 10-1258 (4th Cir., Jan. 27, 2012).*
Intra-company complaints can constitute the "filing of a complaint" for purposes of the FLSA's anti-retaliation provisions.

***Republic Franklin v. Albemarle City Sch. Bd.**, _F.3d_, No. 10-1961 (4th Cir., Feb 24, 2012).*
An insurance company was denied declaratory judgment on its claim that it owed no duty to defend its public sector client in an action filed by the insured's employees under the FLSA. The FLSA complaint alleged a claim for a covered "wrongful act" and liquidated damages and attorney fees awarded on account of this claim would be covered "losses."

***Ellington v. East Cleveland**, __F.3d__, No. 11-3700 (6th Cir., Aug 6, 2012).*
In a case of first impression, the Court holds that a deputy clerk employed by a city council and not subject to civil service laws is a "legislative employee" excluded from FLSA coverage despite the fact that he is neither a policymaker nor on the staff of an elected official.

***Sandifer v. U.S. Steel**, __F.3d__, Nos. 10-1821 & 10-1866 (7th Cir., May 8, 2012).*
Under the FLSA, an employer need not compensate employees for the time they take to walk to their work stations from the locker room in which they change into their work clothes.

***McBride v. Peak Wellness Ctr.**, __F.3d__, No. 11-8037 (10th Cir., Aug. 6, 2012).*
The FLSA does not prohibit employees from docking exempt salaried employees non-monetary compensation for working less than an 8-hour day.

10. PDA

***Arizanovska v. Wal Mart**, __F.3d__, No. 11-3387 (7th Cir., June 12, 2012).*
To establish a *prima facie* case under the PDA, a plaintiff must name a comparator employee who was treated differently and who is not pregnant. Comparators cannot be other pregnant employees. Also, an employer need not offer light duty to a pregnant employee if it does not do so for non-pregnant employees. Finally, an employment decision, for retaliation purposes, can be materially adverse even if it is consistent with a broader company policy.

***Chapter Trustee v. Gate Gormet**, __F.3d__, No. 11-11819 (11th Cir., June 11, 2012).*
Under the PDA, a plaintiff's failure to identify a non-pregnant comparator who was treated differently is not fatal to her case if she presents other circumstantial evidence showing her employer's discriminatory intent. In addition, it is unlawful retaliation to offer a light-duty job to an employee conditioned upon her withdrawal of an EEOC charge and then to rescind the offer when she refuses.

11. RLUIPA

Couch v. Jabe, *__F.3d__, No. 11-6560 (4th Cir., May 11, 2012).*
Under RLUIPA, a prison must explain how the growth of a 1/8 inch beard by a Sunni Muslim impacts its health or security concerns.

Guatay Christian v. San Diego Cty., *__F.3d__, No. 09-56541 (9th Cir., Dec. 23, 2011).*
A church's RLUIPA claims are not ripe when it failed to apply for a required land use permit during the 22 years it occupied its site prior to the start of the county's permit enforcement actions.

12. USERRA

Serricchio v. Wachovia Securities, *__F.3d__, No. 10-1590 (2nd Cir., Sept. 13, 2011).*
There was no abuse of discretion for a court, pursuant to USERRA, to require a service member who was not promptly re-employed upon his return from active duty to be placed in a job position with a fixed salary, even if the original position he left was commission-based.

Bobo v. UPS, *__F.3d__, No. 09-6348 (6th Cir., Jan. 9, 2012).*
The cat's-paw theory is viable in a USERRA claim alleging that the supervisor who fired the plaintiff was influenced by the remarks of another supervisor who said that he did not want the plaintiff to volunteer for additional military training because he was needed at work. The job termination, taken two months after the plaintiff submitted military orders to his employer, was sufficiently proximate for purposes of a USERRA retaliation claim.

Petty v. Nashville & Davidson Cty., *_F.3d_, Nos. 10-6013 & 10-6105 (6th Cir., July 24, 2012).*
Requiring a veteran to submit to a "return to work" process before returning him to his previously held position, and delaying his reinstatement pending further investigation into allegedly dishonest statements he made during this "return to work" process, violated USERRA's re-employment provisions.

13. ADEA

Phillips v. Leggett Platt, *__F.3d__, No. 10-60585 (5th Cir., Sept. 21, 2011).*
Under the ADEA, the 180 day statute of limitations begins when an employer unequivocally notifies an employee that her employment is or will be terminated, not on the actual date of her termination, even if she is offered temporary, indefinite employment in the interim.

Levin v. Madigan, *__F.3d__, No. 11-2820 (7th Cir., Aug. 17, 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.

14. IDEA; SCHOOLS

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.

Cuff v. Valley Central Sch. Dist., *__F.3d__, No. 10-2282 (2nd Cir., March 22, 2012).*
An elementary school student who drew a picture expressing a wish for violence against his school was properly suspended. The drawing could reasonably disrupt the school environment.

Moss v. Spartanburg Cty. Sch. Dist., *__F.3d__, No. 11-1448 (4th Cir., June 28, 2012).*
A school policy of allowing students to earn two academic credits for private off-campus religious instruction does not violate the Establishment Clause.

Alief Indep. Sch. Dist. v. C.C., *__F.3d__, No. 10-20285 (5th Cir., Sept. 9, 2011).*
Under the IDEA, a prevailing school district can seek attorney fees against parents who allegedly filed an IDEA administrative complaint for improper purposes.

Magee v. Covington County Sch. Dist., *__F.3d__, No. 09-60406 (5th Cir., March 23, 2012).*
The adoption by a school of a policy that allowed a 9-year old student to be escorted from the premises by an unknown third party (who then molested her) does not meet the "shocks the conscience" standard necessary for municipal liability under Section 1983.

Doe v. Elmbrook Sch. Dist., *__F.3d__, No. 10-2922 (7th Cir., Sept. 9, 2011).*
A school holding graduation ceremonies in a rented church hall does not violate the Establishment Clause.

Gschwind v. Heiden, *__F.3d__, No. 12-1755 (7th Cir., Aug. 31, 2012).*
A teacher who was 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.

Anchorage Sch. Dist. v. M. P., *__F.3d__, No. 10-36065 (9th Cir., July 19, 2012).*
Under the IDEA, a school deprived a student of an adequate FAPE by relying upon an outdated IEP to measure his academic and functional performance and to provide him with educational benefits.

Emeldi v. Univ. of Oregon*, __F.3d__,No. 10-35551 (9th Cir., Mar. 21, 2012).*
The Title VII framework for deciding retaliation claims is applicable to Title IX retaliation claims.

Johnson v. Poway Unified*, __F.3d__, No. 10-55445 (9th Cir., Sept. 13, 2011).*
A school does not violate the First Amendment by prohibiting an employee from preaching his own views of God's role in our Nation's history to captive students in a classroom.

Michael P. v. Hawaii Dept. of Ed.*, __F.3d__, No. 09-16078 (9th Cir., Sept 8, 2011).*
The State violated the IDEA by relying exclusively upon the "severe discrepancy" model to determine whether a child's condition constituted a qualifying "specific learning disability."

Oman v. Portland Public Sch.*, __F.3d__, No. 10-35340 (9th Cir., May 14, 2012).*
The IDEA does not permit a cause of action for nominal damages.

Hispanic Interest Coalition v. Alabama*, __F.3d__, No. 11-14535 (11th Cir., Aug. 20, 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.

15. COMMERCE CLAUSE

McBurney v. Young*, __F.3d__, No. 11-1099 (4th Cir., Feb. 1, 2012).*
A State public records law that requires public records to be made available for inspection to citizens of the state only does not violate the Privileges and Immunities Clause or the Dormant Commerce Clause.

Mason & Dixon Lines v. Steudle*, _F.3d_, Nos. 11-1183 & 11-1186 (6th Cir., June 26, 2012).*
For Dormant Commerce Clause purposes, a State is acting as a "market participant" rather than as a government regulator when it contracts with a private bridge company to divide up the work of building new ramps and roads to connect various highways to a bridge.

U.S. v. Coleman*, __F.3d__, No. 10-5283 (6th Cir., March 29, 2012).*
SORNA's registration requirements do not violate the Ex Post Facto Clause and are not an invalid exercise of Congress' power under the Commerce Clause.

16. JAILS; PRISONS

Graziano v. Pataki, *__F.3d__, No. 11-116 (2nd Cir., Aug. 3, 2012).*
Prisoners have no liberty interest in parole that is protected by the Due Process Clause, and a rational basis for distinguishing between violent and non-violent offenders for purposes of awarding parole defeats a violent felony offender's equal protection claims.

Jabbar v. Fischer, *__F.3d__, No. 11-3765 (2nd Cir., June 21, 2012).*
The failure of prison officers to provide seatbelts in its inmate transportation busses does not violate the Eighth or Fourteenth Amendments.

McGarry v. Pallito, *__F.3d__, No. 10-669 (2nd Cir., Aug. 3, 2012).*
A prisoner raises a plausible Thirteenth Amendment claim by complaining that he was compelled to work in a prison laundry under threat of physical restraint and legal process.

Bruederle v. Louisville Metro Gov't., *__F.3d__, No. 11-5637 (6th Cir., July 24, 2012).*
The plaintiff was jailed after hours on a Friday. Because he did not manifest an immediate danger of suffering withdrawal symptoms if unable to take his prescription drugs, his request for those drugs was not addressed until the following Monday. He suffered a withdrawal seizure over the weekend. These facts do not support "deliberate indifference" by the municipal jail in violation of the Due Process Clause.

Lane v. Williams, *__F.3d__, No. 11-3373 (7th Cir., Aug. 24, 2012).*
No First Amendment right exists for civil detainees to utilize the facility's internal mail system instead of the U. S. Mail to communicate with other detainees.

Prude v. Clark, *__F.3d__, No. 11-1448 (7th Cir., March 27, 2012).*
A person who serves inmates an allegedly inedible "nutraloaf" as a disciplinary measure may be liable under the Eighth Amendment for deliberate indifference to a serious health problem.

Smith v. Knox County Jail, *__F.3d__, No. 10-1113 (7th Cir., Jan. 23, 2012).*
An inmate's Eighth Amendment claim that he was denied medical care for a serious albeit readily treatable injury while the jail was on "lock-down" survives summary judgment.

Luckert v. Dodge County., *__F.3d__, No. 11-1178 (8th Cir., June 22, 2012).*
The failure of a jail to follow its written procedures does not constitute *per se* "deliberate indifference" for Eighth and Fourteenth Amendment purposes.

Alston v. Read, *__F.3d__, No. 10-15332 (9th Cir., Dec. 14, 2011).*
Qualified immunity is granted to a prison official on a due process claim because there is no clearly established duty imposed upon a prison official to review a prisoner's court records, beyond those in his institutional file, to determine if he is being over-detained.

Tuckel v. Grover, *__F.3d__, No.10-1353 (10th Cir., Nov. 8, 2011).*
A plaintiff with an objectively reasonable fear of retaliation from prison officials may show that administrative remedies were unavailable to him and thus be excused from exhausting those remedies under the PLRA.

Milligan v. Archuleta, *__F.3d__, No. 11-1218 (10th Cir., Nov. 1, 2011).*
A prisoner does not have a constitutional right to prison employment.

17. UNIONS; COLLECTIVE BARGAINING; LABOR

NLRB v. USPS, *__F.3d__, No. 11-1225 (1st Cir., Oct. 27, 2011).*
A petition to enforce an order requiring an employer to disclose certain employee aptitude test scores to a union for purposes of collective bargaining was denied because the employees had a legitimate and substantial privacy interest in their test scores.

Rhode Island Hospitality v. City of Providence, *_F.3d_, No. 11-1415 (1st Cir., Dec. 2, 2011).*
A city ordinance that required a hospitality employer replacing another hospitality employer to retain the previous employer's employees for three months was not preempted by the NLRA and did not violate the Equal Protection or Contract Clause.

Building Industry Elec. Contr. Assoc. v. NYC, *_F.3d_, No. 11-3590 (2nd Cir., May 4, 2012).*
Long term construction agreements entered into by a municipality who is acting as a market participant and not as a regulator are not preempted by the NLRA.

NLRB v. Starbucks, *__F.3d__, No. 10-3511 (2nd Cir., May 10, 2012).*
An employer's enforcement of a "one union button" dress code is not an unfair labor practice under the NLRA.

Sheet Metal Wkrs. 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 the grievant's death.

Mulhall v. Unite Here Local 355, *__F.3d__, No. 11-10594 (11th Cir., Jan. 18, 2012).*
An employer who provides a union with access to its work premises to assist it in organizing its employees, as well as a list of its employees by job classification and address, may be providing a "thing of value" in violation of the LMRA's organizing assistance prohibitions.

18. TELECOMMUNICATIONS

Mobile Northeast v. New Port News, VA, *__F.3d__, No. 11-1293 (4th Cir., March 26, 2012).*
Under the Telecommunications Act, two citizen comments about property values, one about an eyesore, and a few about health concerns do not support the denial of a celltower application at an elementary school.

Mobile Central v. West Bloomfield, *__F.3d__, No. 11-1568 (6th Cir., Aug. 12, 2012).*
In a case of first impression, the court holds that the denial of a single cell tower application can constitute a violation of the Telecommunications Act – a blanket prohibition affecting all wireless providers is not necessary. It also joins the Second, Third, and Ninth Circuits in ruling that, as regards a determination as to whether there exist feasible alternative locations for a requested tower, a provider need only show that the manner in which it seeks to fill a gap in service by building a tower is the least intrusive on the values its application denial sought to protect. It refuses to join the First and Seventh Circuits in requiring a showing that there were no viable alternative sites that would fill the service gap.

Quesh v. Minnesota PUC, *__F.3d__, No. 11-2590 (8th Cir., July 12, 2012).*
A state public utilities commission order requiring a telecommunications company to submit for approval its price list for the network facilities it provided to its competitors was preempted by the Telecommunications Act.

19. ENVIRONMENTAL LAW

Redondo Waste Systems v. Freytes, *__F.3d__, No. 10-1865 (1st Cir., Oct. 18, 2011).*
For due process purposes, the fact that the members of a state environmental quality board have friends who are attorneys who represent competitors of the plaintiff is insufficient to state a claim for relief under the Fourteenth Amendment.

Emergency Svcs. Billing. v. Allstate Insur., *_F.3d_, No. 11-2381 (7th Cir., Feb. 2, 2012).*
Under CERCLA, personal motor vehicles fall within the "consumer product in consumer use" exception to the Act's definition of a "facility," and therefore a fire department cannot charge the owners of motor vehicles involved in traffic accidents for its accident response costs.

Otay Land v. United Enterprises, *__F.3d__, No. 10-55550 (9th Cir., Mar. 14, 2012).*
A determination of "just costs" under Section 1919 of CERCLA requires an analysis of what is fair and equitable under the totality of the circumstances

***Samson III v. City of Bainbridge Island**, __F.3d__, No. 10-35351 (9th Cir., June 15, 2012).*
A city ordinance imposing a moratorium on shoreline development applications for the construction of new docks and piers does not violate a developer's substantive due process rights because the ordinance bears a substantial relationship to the general welfare by seeking orderly, environmentally protective shoreline development.

***Coalition for Responsible Reg. v. EPA**, __F.3d__, No. 09-1322 (D.C. Cir., June 26, 2012).*
The EPA's rules regarding the regulation of GHG emissions from major stationary sources, and its determination that GHG emissions endanger public health and safety by contributing to climate change, are upheld by the court as supported by the record.

***Heart's Bluff v. U.S.**, __ F.3d __, No. 2010-5164 (Fed. Cir., Jan. 19, 2012).*
No Fifth Amendment property interest exists in obtaining a wetlands mitigation bank on one's property.

20. HOUSING

***Randall v. Laconia**, ___ Fed.3d. ___, No. 11-1412 (1st Cir., May 8, 2012).*
Suits against a city as the owner and seller of a house, pursuant to the Residential Lead-Based Paint Hazard Reduction Act, alleging that this federal law was violated by the city's failure to disclose lead-based paint hazards in a house, was time-barred. The city's failure to disclose a report indicating the presence of lead-based paint did not give rise to a separate cause of action so as to avoid a statute of limitations defense.

***Fair Housing Council v. Roomate.com**, __F.3d__, No.09-55272 (9th Cir., Feb. 2, 2012).*
The sorting and selection of roommates based upon their sex, sexual orientation, and familial status does not violate the FHA.

***Putnam Family Prtnrshp v. City of Yucaipa**, _F.3d_, No. 10-55563 (9th Cir., Feb. 17, 2012).*
A lawsuit alleging that a city ordinance prohibiting a mobile home park operating as senior housing from converting to all-age housing violates the FHA is dismissed, as the ordinance is exempt from the Act's prohibition of discrimination based upon familial status.

***Cinnamon Hills v. St. George City**, __F.3d__, No. 11-4020 (10th Cir., July 3, 2012).*
A residential treatment center that wanted to allow emotionally disturbed youths to live in the top floors of a hotel and to keep the ground floor open for use by the general public in violation of municipal zoning ordinances, did not have a viable discrimination claim against the city under the ADA, the FHA, or the RA. No discrimination against the disabled was shown to exist.

21. PROCEDURAL; EVIDENTIARY ISSUES

Bergemann v. Rhode Isl. Dpt. of Envir.Mgmt., *_F.3d_, No. 11-1407 (1st Cir., Dec. 20, 2011).*
In a case of first impression in the Circuit, the court held that a State does not waive its sovereign immunity to a pleaded claim by removing the claim to federal court unless that removal confers an unfair advantage to the State.

Colon-Fontarez v. San Juan, *__F.3d__, No. 10-1026 (1st Cir., Oct. 12, 2011).*
The court correctly refused to consider evidence not translated into English.

Silva v. City of New Bedford, *__F.3d__, No. 10-1013 (1st Cir., Nov. 1, 2011).*
The plaintiff brought an action against several police officers as a result of their conduct during an altercation with her that occurred when they responded to a call to a nightclub. After settling this lawsuit, the plaintiff filed a second suit against the City over the incident. Although there was no privity between the officers and the City, the former were employees of the latter, which provided a sufficiently close relationship for the second lawsuit to be dismissed under the claim preclusion doctrine.

U.S. v. Garcia-Hernandez, *__F.3d__, No. 10-2146 (1st Cir., Oct. 12, 2011).*
Evidence suppression is not a proper remedy for a "knock and announce" rule violation.

Chin v. NY, NJ Port Auth., *__F.3d__, Nos. 10-1904 and 10-203 (2nd Cir., July 10, 2012).*
The "pattern or practice" method of proof is not available in a non-class action private Title VII lawsuit. Moreover, an allegation of an ongoing discriminatory policy does not extend the statute of limitations when the individual effects of the policy that give rise to the claim are discrete acts. Finally, a failure to institute a litigation hold does not constitute gross negligence *per se*, but is merely one factor to be considered in determining discovery sanctions.

Nagle v. Marron, *__F.3d__, No. 10-1420 (2nd Cir., Dec. 12, 2011).*
The court joins the Sixth and Seventh Circuits in applying the "cat's paw" theory of liability to a Section 1983 complaint against a municipality.

Backe v. LeBlanc, *__F.3d__, No. 11-40460 (5th Cir., Aug. 16, 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.

U.S. v. Macias, *__F.3d__, No. 10-50614 (5th Cir., Sept. 27, 2011).*
Evidence discovered in a vehicle whose driver had been stopped for not wearing a seatbelt was suppressed when the officer unnecessarily prolonged the stop for two additional minutes by asking questions not related to wearing a seatbelt and without reasonable suspicion of criminal activity.

U. S. v. Archibald, *__F.3d__, No.11-5488 (6th Cir., July 11, 2012).*
A search warrant is not invalid for staleness when it is executed five days after it was issued.

Williams v. Adams, *__F.3d__, No. 10-3044 (6th Cir., Sept. 23, 2011).*
It is improper to dismiss a lawsuit because the plaintiff does not have the money to pay a court sanction imposed on account of his noncooperation in preparing a final pretrial order.

Coleman v. Donahoe, *__F.3d__, No. 10-3694 (7th Cir., Jan. 6, 2012).*
In a Title VII disparate treatment claim, evidence that a similarly-situated employee received better treatment can serve not only as an element of the plaintiff's *prima facie* case, but also satisfy the plaintiff's burden of showing that the employer's legitimate, non-discriminatory reason for its action was pre-textual.

Cortezaro v. Salin Bank, *__F.3d__, No. 11-1631 (7th Cir., May 21, 2012).*
Alienage is not a protected classification under Title VII.

Servin v. Ford Motor Co., *__F.3d__, Nos. 11-1665, 08-2792 (7th Cir., Nov. 23, 2011).*
On appeal, counsel may urge the over-ruling of, or attempt to distinguish, dispositive authority, but may not simply ignore it.

EEOC v. CRST, *__F.3d__, Nos. 09-3764, 09-3765 & 10-1692 (8th Cir., Feb. 22, 2012).*
The trial court properly dismissed a lawsuit filed by the EEOC because the EEOC did not first investigate any of the complaints raised therein, in violation of its pre-suit obligations.

Richter v. Advance Auto Parts, *__F.3d__, No. 11-2570 (8th Cir., Aug. 1, 2012).*
Retaliation claims arising from EEOC charges are not excepted from Title VII's statutory exhaustion requirements. A separate administrative charge must be filed for a retaliation claim.

U. S. v. Johnson, *__F.3d__, No. 11-3204 (8th Cir., July 31, 2012).*
No Sixth Amendment Confrontation Clause violation existed when the government failed to call as witnesses at trial the forensic lab technician who checked its case evidence in and out of the crime lab and the lab supervisor who certified the crime lab report regarding such evidence.

U.S. v. Thoms, *__F.3d__, No.11-30120 (9th Cir., June 29, 2012).*
In a criminal pre-trial matter, a district court abuses its discretion when it reverses a magistrate judge's credibility determinations, made after receiving live testimony and favorable to the government, without viewing key demeanor evidence, with one exception: where the district judge finds that the magistrate judge's credibility determinations had no legally sufficient evidentiary basis, so that, were they jury determinations, judgment as a matter of law would issue for the defendant.

***EEOC v. Burlington Northern**, __F.3d__, No. 11-1121 (10th Cir., Feb. 27, 2012).*
The EEOC, in investigating an individual disability discrimination claim by two men applying for the same job in the same state, cannot administratively subpoena an employer's nationwide employment records.

***U. S. v. Hunter**, __F.3d__, No. 10-3266 (10th Cir., Nov. 16, 2011).*
A person whose name is not on a car rental agreement but who is otherwise legally driving a rental car can give consent to its search.

***U. S. v. Soto**, __F.3d__, No. 10-3307 (10th Cir., Nov. 8, 2011).*
A court need not allow a guilty plea to be withdrawn when the request is based upon a lie.

***U. S. v. Murdock**, __F.3d__, No. 11-3068 (D.C. Cir., Feb. 10, 2012).*
An arrestee's statements obtained in violation of *Miranda* can still be admissible for purposes of impeachment should the arrestee testify at trial.

22. BANKRUPTCY

***Love v. Tyson Foods**, __F.3d__, No. 10-60106 (5th Cir., April 4, 2012).*
A Title VII claim was properly dismissed because the plaintiff failed to disclose that claim on her previously filed Chapter 13 bankruptcy petition.

***Dominic Restaurant v. Mantia III**, _F.3d_, Nos. 10-3376 and 10-3377 (6th Cir., July 5, 2012).*
The automatic stay does not operate to prevent a court from proceeding forward with a contempt of court hearing.

***TW Telecom v. Carolina Internet**, __F.3d__, No. 11-1068 (10th Cir., Nov. 15, 2011).*
Section 352 of the Bankruptcy Code stays appeals in all proceedings originally brought against the debtor, regardless of whether the debtor is an appellant or appellee.

23. OTHER CASES OF INTEREST

***23-24 94th St. Grocery v. NYC Bd. of Health**, __F.3d__, No. 11-91 (2nd Cir., July 10, 2012).*
A municipal ordinance requiring tobacco retailers to display graphic adverse images of the health effects of smoking is null and void, as pre-empted by the Federal Cigarette Labeling and Advertising Act.

***Brown v. City of Syracuse**, __F.3d__, No. 10-0529 (2nd Cir., March 13, 2012).*
Police officers have no constitutionally recognized right to "professional courtesies" that police sometimes extend to their fellow officers.

Global Seafood v. Bantry Bay Mussels, *__F.3d__, No. 08-1358 (2nd Cir., Oct. 20, 2011).*
A forum selection clause stating that an agreement is "governed" by Irish courts and Irish law is not a mandatory clause requiring an Irish venue.

Texas Central v. City of Midlothian, *__F.3d__, No. 10-11041 (5th Cir., Feb. 1, 2012).*
City ordinances regulating building height, slope grading, and road paving are all preempted by the ICCTA as they relate to a railroad expansion project.

Bartholomew v. Blevins, *__F.3d__, No. 10-6352 (6th Cir., May 17, 2012).*
A Federal law requiring states and municipalities to accept military powers of attorney does not require a county clerk's office to accept a photocopy of the same.

Senne v. Village of Palatine, *__F.3d__, No. 10-3243 (7th Cir., Aug. 6, 2012).*
The practice of printing personal information (vehicle owner's name, address, DLN, DOB, sex, height, and weight) on parking tickets placed on offending vehicle windshields may violate the Driver's Privacy Protection Act. It is a "disclosure" within the meaning of the Act.

ATA v. Los Angeles, *__F.3d__, No. 10-56465 (9th Cir., Sept. 26, 2011).*
When an independent State entity manages access to its facilities and imposes conditions similar to those imposed by private landlords in the State's position, it may claim the "market participant" exemption from Federal Aviation Administration Authorization Act preemption.

Lacey v. Maricopa Cty., *__F.3d__, No. 09-15703 (9th Cir., Aug. 29, 2012).*
A special county prosecutor who issued grand jury subpoenas to a newspaper allegedly to stop it from writing articles critical of public officials was not entitled to absolute prosecutorial immunity as regards his actions.

U. S. v. Custer Battlefield Museum, *__F.3d__, No. 10-30222 (9th Cir., Sept. 30, 2011).*
The public has a common law right of access to materials filed in support of a search warrant application after the investigation has been terminated.

McGaugey v. D.C., *__F.3d__, No. 11-7001 (D. C. Cir., July 17, 2012).*
A negligence claim filed under State law against a police department after its officers told a hospital not to conduct a forensic examination on an alleged rape victim fails because the hospital had the authority, independent of the police, to decide whether to conduct the examination.

C. U. S. DISTRICT COURTS

Alec L. v. Jackson, *__F. Supp. 2d __, No. 2012 WL 1951969 (D.D.C., May 31, 2012).*
In a citizen suit brought under the CWA, winning at trial is not sufficient reason to award the plaintiff attorney fees when that favorable trial court decision is reversed on appeal.

Am. Freedom Def. Iniative v. MTA, *_F.Supp.2d_, No. 11-civ-6774 (S.D.N.Y., July 20, 2012).*
A metropolitan transit authority that accepted or rejected advertisements based upon its internal "no demeaning" standard engaged in content-based discrimination in violation of the First Amendment.

Ardis Health v. Nankivell, *___ F. Supp. 2d ___, No. 11-cv-5013 (S.D.N.Y., Oct. 19, 2011).*
Laptop access information and passwords that accompany an employer-furnished laptop computer are proprietary information that have to be returned to the employer by the employee upon termination.

Barmore v. City of Rockford, *__ F. Supp. 2d __, No. 09-C-50236 (N. D. Ill., Feb. 7, 2012).*
The court refuses to extend the psychotherapist-patient privilege to a police officer's communications with psychiatrists in relation to his disability application.

Calvary Christian v. Fredericksburg, *__ F. Supp. 2d __, No. 3:11-cv-342 (E.D. Va., Nov. 21, 2011).*
Operating a private day-school is not a religious activity under RLUIPA and can be regulated by a content-neutral zoning law.

Cortez v. Alameda County, *__ F. Supp. 2d __, No. 11-03199 (N. D. Cal., Mar. 9, 2012).*
A zoning ordinance restricting the keeping of horses and cows on residential property does not constitute an unconstitutional taking under the Fifth and Fourteenth Amendments.

CTIA v. San Francisco, *____ F. Supp. 2d __, No. 10-03224 (N.D. Cal., Oct. 27, 2011).*
An ordinance requiring retailers to indicate that their cell phones are a possible carcinogen does not violate the First Amendment.

Gallagher v. City of Clayton, *__ F. Supp. 2d __, No. 4:11-cv-392 (E.D. Mo., Dec. 9, 2011).*
An ordinance banning smoking on all city grounds, parks, parking lots, and playgrounds does not violate a smoker's substantive due process rights. Public health, litter, and aesthetics are all legitimate government interests that are served by this law.

Gbur v. City of Harvey, *_____ F. Supp. 2d _____, No. 07-C-1923 (N. D. Ill., Dec. 19, 2011).*
A single incident of a police officer being assigned an unsafe vehicle for one shift, allegedly as punishment for his protected activity, may support a Title VII discrimination claim.

Markadonatos v. Village of Woodridge, *_ F. Supp. 2d _, No. 11-C-7006 (N. D. Ill., Jan. 6, 2012).*
Requiring arrestees to pay a $30 non-refundable booking fee does not violate their Fourteenth Amendment procedural due process rights.

Mattingly v. Milligan, *__ F. Supp. 2d __, No. 4:11-cv-00215 (E.D. Ark., Nov. 1, 2011).*
Facebook posts touching upon a matter of public concern are protected speech under the First Amendment.

McClanahan v. City of Tumwater, *__ F. Supp. 2d __, No. 11-5623 (W.D. Wash., Mar. 6, 2012).*
An ordinance prohibiting signs on public sidewalks does not violate the First Amendment.

Suarez v. Philadelphia, *___ F. Supp. 2d ___, No. 10-426 (E.D. Pa., Dec. 15, 2011).*
An ambulance involved in an accident while responding to a 911 call with its siren and lights on, but driving the wrong way on a one-way street, did not constitute a state-created danger for substantive due process liability purposes.

U.S. v. Renton, *__F. Supp. 2d__, No. 11-1156 (W.D. Wash., May 25, 2012).*
The CWA waives the sovereign immunity of the United States as regards the payment of municipal storm water service fees.

Yates v. Norwood, *___ F. Supp. 2d __, No. 3:11-cv-258 (E. D. Va., Jan. 11, 2012).*
An ordinance requiring a reasonable fee, based upon objective criteria, for the expense incident to the maintenance of public order during a requested parade does not, on its face, violate the First Amendment.