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FEDERAL CASE UPDATE – CASES EVERY LAWYER SHOULD KNOW

By

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FEDERAL CASE LAW UPDATE
August 1, 2010 – August 31, 2011

A. U. S. SUPREME COURT

Brown v. Entertainment Merchants Assn., *___ U.S. ___, No. 08-1448 (June 27, 2011).*
Video games qualify for First Amendment protection. A legislature cannot simply create a new category of unprotected speech applicable only to speech that depicts violence and is directed at children. California's content-based law prohibiting the sale or rental of violent video games to children does not pass the strict scrutiny test.

Bullcoming v. New Mexico, *___ U.S. ___, No. 09-10876 (June 23, 2011).*
The Confrontation Clause does not permit the prosecution, absent stipulation, to introduce a lab report containing a testimonial certification of blood-alcohol content to prove a fact at a criminal trial absent the in-court testimony of the analyst who signed the certification or who personally performed or observed the testing reported in the certification at issue.

Burrough of Duryea v. Guarnievi, *_ U.S. _, No. 09-1476 (June 20, 2011).*
The "public concern test" applies to government employees and limits their actionable First Amendment Petition Clause claims to employee petitions that address a matter of public concern.

Camreta v. Greene, *___ U.S. ___, No. 09-1454 (May 26, 2011).*
In a Section 1983 action involving a warrantless search, the Court's practice of not hearing appeals by prevailing parties does not bar consideration of an immunized official's petition for certiorari.

J.D.B. v. North Carolina, *___ U.S. ___, No. 09-11121 (June 16, 2011).*
A child's age is relevant to an analysis of the *Miranda* warnings provided the child when questioned while in police custody.

Connick v. Thompson, __U.S. __, *No. 09-571 (Mar. 29, 2011).*
A district attorney's office may not be held liable under Section 1983 on a "failure to train" theory that is based on a single *Brady* breach.

Kasten v. St. Gobain Performance, __U.S. __, *No. 09-834 (Mar. 22, 2011).*
An oral complaint alleging a FLSA violation is protected conduct under the Act.

Kentucky v. King, __U.S. __, *No. 09-1272 (May 16, 2011).*
A warrantless entry based upon exigent circumstances is reasonable when the police do not create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment.

Los Angeles Cty. v. Humphries, __U.S. __, *No. 09-350 (Nov. 30, 2010).*
The "policy or custom" requirement of *Monell* for a finding of municipal liability for the deprivation of a federal right applies in Section 1983 cases irrespective of whether the relief sought is monetary or injunctive.

Ortiz v. Jorden, __U.S. __, *No. 09-737 (Jan. 24, 2011).*
A party may not appeal a denial of summary judgment after the district court has conducted a full trial on the case merits.

Skinner v. Switzer, __U.S. __, *No. 09-9000 (Mar. 7, 2011).*
Post conviction requests for DNA evidence are cognizable both in *habeas corpus* and under Section 1983.

Snyder v. Phelps, __U.S. __, *No. 09-751 (Mar. 2, 2011).*
Protestors picketing a military funeral held on public grounds are shielded from tort liability by the First Amendment.

Sossamon v. Texas, __U.S. __, *No. 08-1438 (Apr. 20, 2011).*
A state, in accepting federal funding, does not consent to waiving its sovereign immunity to private suits seeking monetary damages under RLUIPA.

Staub v. Proctor Hospital, __U.S. __, *No. 09-400 (Mar. 1, 2011).*
An employer is liable under USERRA for a supervisor's anti-military motivated act that is the "cat's paw" behind the ultimate decision maker's adverse employment action.

Thompson v. N. A. Stainless, *__U.S. __, No. 09-291 (Jan. 24, 2011).*
An employer alleges a Title VII cause of action when he alleges that he was terminated in retaliation for an EEOC complaint filed by his fiancé.

Turner v. Rogers, *___ U.S. ___, No. 10-10 (June 20, 2011).*
The state is not automatically required by the Fourteenth Amendment Due Process Clause to provide counsel to an indigent person at a civil contempt proceeding, even if that individual faces incarceration as a result of the charge.

B. U. S. COURTS OF APPEAL

1. FIRST AMENDMENT

Barton v. Clancy, *__ F.3d __, No. 08-2479 (1st Cir., Jan. 14, 2011).*
The mayor who refuses to re-appoint a retired firefighter and union critic to an unpaid position on the Parks Commission does not violate the First Amendment. Non-reappointment to a voluntary, limited-term position in retaliation for protected speech is not a violation of clearly established law.

Foote v. Bedford, *__ F.3d __, No. 10-2094 (1st Cir., Apr. 21, 2011).*
The plaintiff was not re-appointed to an unpaid town advisory commission after he publically criticized the commission's policies. Although this failure to reappoint was based upon free speech comments, no First Amendment violation occurred. The First Amendment does not require an appointing authority to surround herself with policy-makers who represent divergent viewpoints. An interest in effective and efficient government outweighs the plaintiff's First Amendment right to freely express his views.

Gilk v. Cunnife, *___ F. 3d ___, No. 09-1764 (1st Cir., Aug. 26, 2011).*
Police officers are denied qualified immunity on a Section 1983 claim brought after they arrested the plaintiff for exercising his First Amendment right to film a public arrest.

Bronx H.H. of Faith v. NYC Bd. of Ed., __ *F. 3d* __, *No. 07-5291 (2nd Cir., June 1, 2011).*
Board of Education policy of forbidding the use of school facilities after hours for "religious worship services" is a valid and reasonable content-based restriction that does not violate the First Amendment.

Byrne v. Rutledge, __ *F.3d* __, *No. 07-4375 (2nd Cir., Oct. 8, 2010).*
State law prohibiting vanity plates that refer in any language to a religion or deity (such as "JN36TN") constitutes unconstitutional viewpoint discrimination.

Costello v. Burlington, __ *F.3d* __, *No. 08-0551 (2nd Cir., Feb. 14, 2011).*
A street preacher given a written warning for his violation of a city noise ordinance by preaching at the top of his voice in a pedestrian mall does not have a valid First Amendment claim. The ordinance was content-neutral, not overly broad, and reasonable as applied. The preacher was merely told to lower his voice, which impinged upon the public forum rights of others.

Cox v. Warwick V. Ctr. S. D., ___ *F. 3d* ___, *No. 10-3633 (2nd Cir., Aug. 17, 2011).*
Placing student in a suspension room for writing a violent essay that casually described crimes and suicide did not violate the First Amendment.

Faghri v. U. of Conn., __ *F.3d* __, *No. 09-1862 (2nd Cir., Sept. 17, 2010).*
A college dean had no established right to remain dean while voicing opposition to college policies. Qualified immunity was granted to the college official on the dean's First Amendment claims.

Jackler v. Byrne, ___ *F. 3d* ___, *No. 10-0859 (2nd Cir., July 22, 2011).*
Garcetti and *Weintraub* do not preclude First Amendment protection for a public employee who refuses to replace a true statement with a false statement.

NYCLU v. NYCTA, ___ *F. 3d* ___, *No. 10-0372 (2nd Cir., July 20, 2011).*
A policy requiring third party observers to obtain the consent of those contesting a transit authority citation in order to obtain access to their adjudicatory hearings violates the presumptive First Amendment right of the public to obtain access to such hearings.

Zherka v. Amicone, *__F.3d __, No. 10-37 (2nd Cir., Mar. 2, 2011).*
A state law theory of *per se* defamation does not, by itself, sufficiently demonstrate harm for purposes of establishing a federal First Amendment retaliation claim against a public official.

EEOC v. Geo Grp., *__F.3d __, No. 09-3093 (3rd Cir., Aug. 2, 2010).*
A police officer's religious desire to wear a khimar does not have to be accommodated, due to the strong public safety interest in not having the face of a police officer covered.

Galena v. Leone, *__F.3d __, No. 10-1914 (3rd Cir., Apr. 13, 2011).*
City Council's policy limiting public comments to a certain portion of its meeting does not violate the First Amendment, even if allowing public comments to be made when other agenda items are being discussed by the Council would make them more effective.

McCauley v. UVI, *__F.3d __, No. 09-3735 (3rd Cir., Aug. 18, 2010).*
College rules that prohibited any "offensive signs" or any conduct that "causes emotional distress" violates the First Amendment.

Pittsburg League v. P. Auth., ___ *F. 3d* ___, *No. 09-3352 (3rd Cir., Aug. 5, 2011).*
City policy that prohibited non-commercial ads in its buses amounted to viewpoint discrimination in violation of the First Amendment when, in practice, several non-commercial ads had been allowed while others of similar size and resemblance were denied.

Adams v. UNCW, *__F.3d __, No. 10-1413 (4th Cir., Apr. 6, 2011).*
A public employee's protected speech, as contained in newspaper articles, does not lose its First Amendment protection when the employee includes copies of those articles in his job promotion application packet.

Joyner v. Forsyth Cty., ___ *F. 3d* ___, *No. 10-232 (4th Cir., July 29, 2011).*
Board of Commissioners' meeting invocation policy violates the Establishment Clause when it permits Christian prayers to the exclusion of other faiths.

Legends v. Miller, ___*F.3d* ___, *No. 09-1540 (4th Cir., Feb. 17, 2011).*
Statute prohibiting any entertainment in an establishment that serves alcoholic beverages that "simulates sexual behavior or displays human nudity" is overbroad in violation of the First Amendment.

Glassman v. Arlington Cty., ___*F.3d* ___, *No. 10-1496 (4th Cir., Dec. 23, 2010).*
County that joins a church for the secular end of providing affordable housing does not violate the Establishment Clause.

Intern'l. Womens' Day v. San Antonio, _ *F.3d* _, *No. 09-50692 (5th Cir., Sept. 9, 2010).*
City that charges a permit fee to organizers of street marches to insure that they pay for traffic control and clean-up, but that selectively exempts certain events from fee payment, does not violate the First Amendment so long as the city does not engage in viewpoint discrimination.

Big Dipper v. Warren, ___*F.3d* ___, *No. 09-2339 (6th Cir., Apr. 13, 2011).*
The fact that the city took 24 days, rather than the 20 prescribed by its rules, to rule on an SOB's application to operate an adult business does not constitute a prior restraint on speech.

DeFoe v. Spiva, ___*F.3d* ___, *No. 09-6080 (6th Cir., Nov. 18, 2010).*
The ban of the display of a confederate flag at a public school does not violate the First Amendment.

Evans-Marshall v. Bd. of Ed., ___*F.3d* ___, *No. 09-3775 (6th Cir., Oct. 21, 2010).*
First Amendment does not protect primary and secondary teacher's in-class curricular speech.

Gaspers v. Ohio Dept. of Youth Svcs., *__F. 3d__, No. 09-3829 (6th Cir., Aug. 5, 2011).*
The First Amendment right of "intimate association" applied to a husband and wife who were allegedly harassed and retaliated against after the wife was promoted to a supervisory position in which she supervised her husband.

Holzemer v. Memphis, *___F.3d ___, No. 09-5086 (6th Cir., Sept. 15, 2010).*
Plaintiff's oral complaint to a city councilman regarding difficulties he was having with the police in operating his taxi business was a First Amendment protected petition to the government for a redress of grievances. A police officer who allegedly retaliated against the plaintiff for his complaint was denied qualified immunity.

Miller v. Cincinnati, *____F.3d ____, No. 08-4679 (6th Cir., Sept. 24, 2010).*
A city cannot give unfettered discretion to its council members and department heads to approve access to the interior of its city hall building for the purpose of press conferences and rallies. Such a regulation violates free speech and is void for vagueness.

Saieg v. Dearborn, *__F.3d ___, No. 10-1746 (6th Cir., May 26, 2011).*
City that established an inner "core festival area" and a "buffer zone" around this festival area, and then prohibited peaceful leafleting within this outer "buffer zone," violated the First Amendment. The policy was not narrowly tailored to the goal of isolating the "core festival area" from vehicular traffic.

Badger Catholic v. Walsh, *__F.3d ___, No. 09-1102 (7th Cir., Sept. 1, 2010).*
A public university that creates a public forum cannot then exclude speakers who want to use the forum for worship. Underwriting a religious speaker's costs, as part of a neutral speakers program justified by its secular benefits, does not violate the Establishment Clause.

Woods v. IDOC, *__F. 3d__, No. 10-3339 (7th Cir., July 29, 2011).*
There was no First Amendment violation when a prison prevented inmates from advertising for "pen pals" or receiving web site materials advertising for internet "pen pals."

Zamecnik v. Indian Pr. Sch., *__F.3d __, Nos. 10-2485 & 10-3035 (7th Cir., Mar. 1, 2011).*
A public school violated the First Amendment rights of a female high school student when it refused to allow her to wear a "Be happy, not gay" T-shirt in school.

Dahl v. Rice Cty., *___F.3d ___, No. 09-1210 (8th Cir., Sept. 13, 2010).*
A deputy sheriff's comment about his sheriff's unpleasant demeanor is not protected by the First Amendment.

Neighborhood Enterprises v. St. Louis, *__F. 3d__, No. 10-1937 (8th Cir., July 13, 2011).*
A city sign ordinance that required staff to look to the content of the sign to determine if it was a "non-sign" because it displayed a national, state, religious, fraternal, professional, or civic crest or symbol was an illegal content-based restriction on free speech.

Alpha Delta Chi Delta v. Reed, *__F. 3d__, Nos. 10-15607, 10-15951 (9th Cir., Aug. 1, 2011).*
A public school can prohibit all student groups from having membership restrictions based upon race, gender, religion and/or sexual orientation.

Anderson v. Hermosa B., *___F.3d ___, No. 08-56914 (9th Cir., Sept. 9, 2010).*
A city's total ban on tattoo parlors violated the First Amendment as not being a valid time, place, or manner restriction of this expressive conduct.

C. F. v. Capistrano USD, *__F. 3d__, No. 09-56690 (9th Cir., Aug. 19, 2011).*
A teacher violated the Establishment Clause by making comments during class hostile to religion in general and Christianity in particular.

Hoye II v. Oakland, *__F. 3d__, No. 09-16753 (9th Cir., July 28, 2011).*
An ordinance that does not punish abortion clinic "escorts" from telling women not to listen to pro-life advocates as they enter a clinic, but does punish advocates who attempt to persuade women not to enter the clinic and abort their child, is a content-based regulation that violates the First Amendment.

Hunt v. L. A., *__F.3d__, No. 09-55750 (9th Cir., Mar. 22, 2011).*
An ordinance that requires a permit for a person to sell merchandise if the merchandise does not constitute, carry, or make a "religious, political, philosophical or ideological message or statement which is inextricably intertwined with the merchandise" is vague and violates the First Amendment.

Nichols v. Dancer, *____F.3d ____, No. 10-15359 (9th Cir., June 24, 2011).*
Public employee sanctioned merely for showing up at a public hearing and sitting next to her supervisor after he was terminated raised an associational First Amendment claim.

Powell's Books v. Kroger, *___F.3d ___, No. 09-35153 (9th Cir., Sept. 20, 2010).*
A statute that criminalizes the provision to minors of reading material designed to "titillate" or to offer "a visual description or explicit verbal description or narrative account of sexual conduct" is constitutionally overbroad and vague.

Deutsch v. Jordan, *____F.3d ___, No. 09-8042 (10th Cir., Aug. 24, 2010).*
A police chief's statements to clear his name and to respond to an allegation of public corruption are a matter of public concern under *Garcetti.*

Leverington v. Colorado Springs, *____F.3d ____, No. 09-1550 (10th Cir., May 5, 2011).*
The termination of a nurse after, during a traffic stop, she told the officer "I hope I never have you as a patient" did not violate the First Amendment.

Sarkar v. McCallin, *___F.3d ___, No. 09-1420 (10th Cir., Feb. 22, 2011).*
Speech can be part of an employee's official duties, for First Amendment purposes, even if it is made to persons outside of the employee's chain of command.

First Vagabonds Ch. of God v. Orlando, *__F.3d __, No. 08-16788 (11th Cir., Apr. 12, 2011).*
An ordinance that limits the number of feedings of large groups of persons that an entity can sponsor in centrally located parks is a valid time, place, and manner restriction.

Mahoney v. Doe, *__F. 3d__, No. 09-7131 (D. C. Cir., June 21, 2011).*
The First Amendment permits a statute to prohibit a "chalk" demonstration on the sidewalk in front of the White House. The sidewalk was a public forum, but the statute was neutral and narrowly tailored to preserve the District's aesthetic interests.

Oberuetter v. Hilliard, *___F.3d ___, No. 10-5078 (D. C. Cir., May 17, 2011).*
That a memorial is open to the public does not alter its status as a nonpublic forum subject to viewpoint neutral and otherwise reasonable regulations.

2. *FOURTH AMENDMENT / EXCESSIVE FORCE*

Boroian v. Mueller, *__ F.3d __, No. 09-1630 (1st Cir., Aug. 11, 2010).*
The government's retention and matching of the plaintiff's lawfully obtained DNA sample against others in its database does not violate the Fourth Amendment.

Lopera v. Coventry, *__ F.3d __, No. 09-2386 (1st Cir., Apr. 1, 2011).*
Police had qualified immunity against a Fourth Amendment claim that arose after they searched high school team members with their coaches' consent after items went missing from the opposing team.

Raiche v. Pietroski, __ *F.3d* __, *No. 09-1910 (1st Cir., Oct. 25, 2010).*
No qualified immunity granted on an excessive force claim against an officer who tackled the plaintiff off of his motorcycle and onto the pavement.

U. S. v. Werra, __ *F.3d* __, *No. 09-1593 (1st Cir., Mar. 22, 2011).*
The stop-and-frisk of a person that occurred after officers forced their way into a house to execute a warrant violated the Fourth Amendment, as the plaintiff was not the subject of the warrant.

Florence v. Burlington Cty., ___*F.3d* ___, *No. 09-3603 (3rd Cir., Sept. 21, 2010).*
Joining the Ninth and Eleventh Circuits, the court holds that a policy to strip search all arrestees before introducing them into the general jail population does not violate the Fourth Amendment even in the absence of individualized suspicion or an indictable offense.

Kelly v. Carlisle, ___*F.3d* ___, *No. 09-2644 (3rd Cir., Oct. 4, 2010).*
In a case of first impression, the court held that a police officer's good faith reliance upon a prosecutor's legal opinion that an arrest is warranted under the law is presumptively entitled to qualified immunity from Fourth Amendment claims premised upon a lack of probate cause.

Reedy v. Evanson, ___*F.3d* ___, *No. 09-2210 (3rd Cir., Aug. 2, 2010).*
A rape victim who consented to having her blood drawn as part of a rape kit had a Fourth Amendment right not to have that blood, without her consent, tested for the law enforcement purpose of obtaining incriminating evidence against her.

U. S. v. Pierce, ___*F.3d* ___, *No. 09-3865 (3rd Cir., Oct. 1, 2010).*
The interior sniff of a car by a drug dog is not a search for Fourth Amendment purposes if it is the result of the dog's instinctive act of jumping into the car without assistance from its handler.

Bellotte v. Edwards, ____*F.3d* ____, *No. 10-1115 (4th Cir., Jan. 11, 2011).*
The plaintiff's prospect of being arrested for child pornography and his possession of a valid concealed carry permit does not justify a no-knock entry into his private residence.

Ienry v. Purness, *____ F. 3d ____, No. 08-7433 (4th Cir., July 14, 2011)(en banc).*
An officer who mistakenly shot, rather than Tasered, a man who started to run away when being arrested for a child support misdemeanor was not entitled to summary judgment on a resulting excessive force claim.

Bletz v. Gribble, *___F.3d ___, No. 09-2006 (6th Cir., May 27, 2011).*
An officer who shoots an armed suspect as he is obeying the officer's command to lower his weapon is not entitled to qualified immunity on an excessive force claim.

Johnson v. Memphis, *____F.3d ____, No. 09-5046 (6th Cir., Aug. 24, 2010).*
The combination of a 911 hang-up, an unanswered return call, and an open door with no response from within the residence is sufficient to satisfy the "exigency" requirement of a no warrant entry.

Kennedy v. Villa Hills, *___F.3d ___, No. 09-6442 (6th Cir., Mar. 24, 2011).*
No qualified immunity is available to police officer (also the city's building inspector) arrested a resident who called him a "fat slob" during a zoning dispute in response to the officer saying that the resident was a "son of a bitch who had broken all the zoning laws."

Malley v. Flint, *__F. 3d__, No. 09-2037 (6th Cir., July 26, 2011).*
Parking behind a vehicle in a driveway, informing a driver who had just exited the vehicle and was walking toward his house that "he was a police officer and wanted to talk to him", and asking "who owns this vehicle" did not create a Fourth Amendment seizure even if such conduct caused the suspect to stop walking.

McKenna v. Edgell, *__F.3d ___, Nos. 08-2080 & 08-2393 (6th Cir., Aug. 17, 2010).*
Police officers who responded to a 911 call, found the plaintiff possibly under the influence of drugs, and then searched her medical cabinet, were not acting as medical personnel. Therefore, no qualified immunity was granted as regards a Fourth Amendment challenge to their warrantless search.

Norris v. Premier Integrity, *___F.3d ___, No. 09-6252 (6th Cir., Apr. 6, 2011).*
No Fourth Amendment unlawful search is created by requiring a job applicant to provide a urine sample while directly facing a monitor in order to prevent the swapping of urine samples.

Rodriguez v. Passinault, *___F.3d ___, No. 09-1949 (6th Cir., Mar. 25, 2011).*
By shooting the driver of a moving vehicle, an officer effectively "seizes" everyone in the vehicle for Fourth Amendment excessive force purposes.

U. S. v. Dyson, *___F.3d ___, No. 08-3944 (6th Cir., Apr. 20, 2011).*
A drug dog who alerted to a parked car did not engage in an illegal search. As the car was not stopped by the police, there exists no Fourth Amendment interest in not having the car sniffed.

U. S. v. Johnson, *__F. 3d__No. 09-6461 (6th Cir., Aug. 29,2011).*
During a "knock and talk" action, the estranged husband, who intermittently lived in the residence, objected to a search of the house, while the houses' owner and the husband's wife, who continuously lived in the house, consented to the search. As a co-tenant, the husband's objection made the search over his objection violative of the Fourth Amendment.

Carlson v. Bukovic, *____F.3d ____, No. 09-2578 (7th Cir., Sept. 2, 2010).*
Mere physical contact by an officer does not automatically create a Fourth Amendment seizure.

U. S. v. Griffin, *__F. 3d.__, No. 10-2028 (7th Cir., July 22, 2011).*
A driver was not "seized" for Fourth Amendment purposes when he was in a low speed car chase and threw drugs out the window of his car.

Jackson v. Parker, *___F.3d ___, No. 09-3873 (7th Cir., Dec. 3, 2010).*
A probable cause finding bars a false arrest claim even if the police officer did not have probable cause to arrest the plaintiff for one offense and did not ultimately charge the plaintiff with the offense for which he did have probable cause to arrest.

Johnson v. Manitowac Cty., ___*F.3d* ___, *No. 10-2409 (7th Cir., Mar. 10, 2011).*
Officers need not use the least destructive means to execute a search warrant.

Jones v. Clark, ___*F.3d* ___, *No. 09-3574 (7th Cir., Jan. 14, 2011).*
No qualified immunity in a Fourth Amendment suit brought by a Black meter reader who was arrested for taking pictures of houses in a White neighborhood.

Ray v. Chicago, ___*F.3d* ___, *No. 09-3719 (7th Cir., Jan. 5, 2011).*
A police officer who has probable cause to believe that a person has committed even a very minor criminal offense in his presence can arrest her without violating the Fourth Amendment.

Sow v. Fortville P.D., ____*F.3d* ____, *No. 10-2188 (7th Cir., Feb. 11, 2011).*
Being outside in the cold during a police investigation, complaining once about "too tight" handcuffs, and bumping one's head upon entering a squad car, does not establish an excessive force claim.

U. S. v. Hicks, ___*F.3d* ___, *No. 09-2184 (7th Cir., May 27, 2011).*
An officer's baseless threat to obtain a search warrant may render an otherwise valid consent to search invalid. An officer needs a reasonable factual basis to support probable cause.

U.S. v. McBride, ___*F.3d* ___, *No. 10-2094 (7th Cir., Mar. 14, 2011).*
Asking a driver investigatory questions for 2 minutes does not unreasonably delay a traffic stop for Fourth Amendment purposes.

U.S. v. Perez, ___*F.3d* ___, *No. 10-1473 (7th Cir., Apr. 28, 2011).*
The warrantless use of a GPS unit on the plaintiff's vehicle does not violate the Fourth Amendment.

Vodak v. Chicago, __*F.3d* ___, *Nos. 09-2768, 09-2843 & 09-2901 (7th Cir., Mar. 17, 2011).*
Police cannot issue a "disperse" order to one portion of a large parade of demonstrators and then begin arresting marchers on another street when they cannot have heard the order or have any reason to believe that they are violating it.

Coates v. Powell, *__F.3d __, No. 10-1639 (8th Cir., Apr. 8, 2011).*
Remaining in a house for 10 minutes after consent is revoked, absent a warrant, violates the Fourth Amendment.

El Ghazzawy v. Berthiaume, *__F.3d __, No. 10-2058 (8th Cir., Mar. 15, 2011).*
Placing a suspect in handcuffs during an investigatory stop violates the Fourth Amendment if doing so is not required for personal safety or to maintain the status quo during the stop.

U. S. v. Taylor, *__F.3d __, No. 10-2556 (8th Cir., Feb. 18, 2011).*
The "inventory search" exception to a warrant requirement for the search of an impounded vehicle is not available when the property in the vehicle is not individually inventoried by description or photograph.

Byrd v. Maricopa Sheriff's Dept., *____F.3d ____, No. 07-16640 (9th Cir., Jan. 5, 2011).*
Cross-gender strip searches by jail staff, absent an emergency, are unreasonable searches under the Fourth Amendment.

Chism v. Washington State, *__F. 3d__, No. 10-35085 (9th Cir., Aug. 25, 2011).*
An affidavit in support of a search warrant that contained false statements and serious omissions that were material to the Court's probable cause determination was sufficient for a judicial deception claim alleging a violation of the plaintiff's Fourth and Fourteenth Amendment rights to survive summary judgment.

Hamilton v. Brown, *____F.3d ____, No. 09-15236 (9th Cir., Jan. 4, 2011).*
The Fourth Amendment does not preclude the collection of blood samples from prison inmates for DNA identification.

Rosenbaum v. Washoe County, *__F. 3d__, No. 10-15637 (9th Cir., Aug. 22, 2011).*
An officer who arrested the plaintiff for scalping tickets when the state had no no-scalping law could not rely upon a little known statute he was unaware of at the time of the arrest so as to be able to avail himself of qualified immunity defense for his unlawful arrest.

Torres v. Madera, *__F. 3d__, No. 09-16573 (9th Cir., Aug. 22, 2011).*
A suspect handcuffed in the back seat of a squad car was, by mistake, fatally shot instead of Tased. No qualified immunity was available to the officer against an excessive force claim, even if her action was an "honest mistake".

Young v. L. A., *__F. 3d__, No. 09-56372 (9th Cir., Aug. 26, 2011).*
The use of intermediate force is excessive when an officer detains a suspect for minor infractions and the suspect poses no threat to the officer or the general public.

Brooks v. Gaenzle, *___F.3d ___, No. 09-1489 (10th Cir., Aug. 10, 2010).*
No Fourth Amendment excessive force "seizure" exists when a police officer shoots a suspect but the bullet does not cause the suspect to pause or cease running.

Cavanaugh v. Woods Cross, *____F.3d ____, No. 10-4017 (10th Cir., Nov. 3, 2010).*
The use of a Taser when the plaintiff did not present an immediate threat and was walking quickly towards her home but not "fleeing" may form the basis of a Fourth Amendment excessive force claim.

Porro v. Barnes, *___F.3d ___, No. 10-6002 (10th Cir., Nov. 9, 2010).*
To create a triable issue on an excessive force claim, more must be shown than simply that the defendant failed to adopt the most protective possible policy against the application of force.

Rick v. Jensen, *__F. 3d__, Nos. 10-4110 and 10-4119 (10th Cir., June 30, 2011).*
No Fourth Amendment violation for an officer to open a gate and enter the unpaved driveway portion of private property a considerable distance from a suspect's home. That location was not within the curtilage of the house.

U.S. v. Ludwig, *___F.3d ___, No. 10-8009 (10th Cir., Apr. 22, 2011).*
An accredited drug dog's alert provided probable cause even if it was right only 58% of the time.

U. S. v. Martinez, *__F. 3d__, No. 10-2070 (10th Cir., July 12, 2011).*
A static 911 call (caused by the weather) did not create the exigent circumstances that would warrant the warrantless search of a house on the belief that someone inside needed aid or was in danger.

Coffin v Brandau, *__F. 3d__, No. 08-14538 (11th Cir., June 3, 2011).*
A deputy who stepped into an electric eye safety beam to prevent a wife from closing the garage door, and who then entered the open garage to serve a warrant on her husband, violated the Fourth Amendment.

3. *FIFTH AMENDMENT*

Matson v. Bd. of Education, *__ F.3d __, No. 09-3773 (2nd Cir., Jan. 11, 2011).*
A teacher had no constitutional right to have her chronic fatigue syndrome affliction kept confidential during a sick leave abuse investigation.

Henry v. Jefferson Cty. Comm., *___F.3d ___, No. 09-1546 (4th Cir., Mar. 3, 2011).*
A planning and zoning commission did not engage in an unconstitutional regulatory taking when it approved a smaller conditional use permit than requested, even if the smaller approved use was not economically feasible. The property still had other economic value.

McCarthy v. Cleveland, *___F.3d ___, No. 09-4149 (6th Cir., Nov. 9, 2010).*
A city's decision to enforce its traffic camera ordinance against the drivers of leased vehicles does not constitute an unconstitutional taking under the Fifth Amendment even though the ordinance did not originally provide for lessee liability.

Bettendorf v. St. Croix Cty., *___F.3d ___, No. 10-1359 (7th Cir., Jan. 20, 2011).*
An ordinance that rezones private property but states that the property will revert back to its original zoning classification upon the landowner's death does not violate the Fifth Amendment.

LaBella Winnetka v. Winnetka, *___F.3d ___, No. 09-3297 (7th Cir., Dec. 29, 2010).*

The mere failure of a city to send the plaintiff a liquor license renewal form, otherwise available on the city's website, does not result in the deprivation of a property interest without due process of law when the licensee's license is revoked for a failure to renew.

Guggenheim v. Goleta, *___F.3d ___, No. 06-56306 (9th Cir., Dec. 22, 2010).*

City's mobile home pad rent control ordinance was enacted for the legitimate government purpose of protecting mobile home owners from the leverage the pad owners would otherwise have to charge a premium equal to the cost of moving. It does not violate the Fifth Amendment's Takings Clause.

U. S. v. Prince, *__F. 3d__, No. 10-3180 (10th Cir., Aug. 5, 2011).*

There is no constitutional prohibition against pre-emptively striking prospective jurors based upon their views on marijuana legalization.

Arkansas Fish & Game v. U. S., *___F.3d ___, No. 2009-5121 (Fed. Cir., Mar. 30, 2011).*

A temporary flowage easement over another's property taken by the U.S. Army Corps of Engineers in deviation from its operating plan does not constitute a taking.

4. *FOURTEENTH AMENDMENT; DUE PROCESS; EQUAL PROTECTION*

Downing/Salt Pond v. R. I., *__ F.3d __, No. 10-1484 (1st Cir., May 23, 2011).*

A federal takings claim is ruled unripe under *Williamson County* when the state agency had not reached a final decision on the plaintiff's inverse condemnation claims, despite numerous requests for a final decision having been made and further administrative proceedings being allegedly futile.

URI Student Senate v. Narragansett, *__ F.3d __, No. 10-1209 (1st Cir., Jan. 5, 2011).*
Ordinance requiring the placement of a bright orange sticker on any residence holding an "unruly" gathering does not violate Fourteenth Amendment procedural due process rights.

Malleus v. George, *____F.3d ____, No. 10-3539 (3rd Cir., May 26, 2011).*
The court declines to recognize a Fourteenth Amendment "privacy right" in opinions shared with someone else, with the expectation that those opinions will be kept secret, thereby requiring that opinion to be kept confidential.

Reuchenski v. Piazza, *____F.3d ____, No. 07-3530 (3rd Cir., Oct. 4, 2010).*
An inmate's forced participation in sex offender treatment therapy violates the Fourteenth Amendment when he was never charged nor convicted of a sex crime.

Duvall v. Dallas Cty., *____F.3d ____, No. 09-10660 (5th Cir., Jan. 14, 2011).*
A due process violation exists when an arrestee is confined in a facility known to have a staph infection problem that the county is not willing to spend the money to correct.

Gentilello v. Rege, *__F.3d __, No. 09-11216 (5th Cir., Dec. 2, 2010).*
The Due Process Clause does not protect specific job duties or responsibilities absent a statute, rule, or express agreement reflecting a unique property interest in same.

Kovacic v. Villarreal, *____F.3d ____, No. 10-40208 (5th Cir., Dec. 17, 2010).*
An intoxicated person who could not be housed in jail due to over-crowding was released at a gas station after he said he would call his wife to come get him. Instead, he apparently decided to walk home and was hit and killed by an unknown driver. His estate had no due process claim against the police officers. The "state-created danger" rule does not extend to a point in time when the victim is no longer in police custody.

Ulloa v. Janet, *__F.3d __, No. 10-41274 (5th Cir., May 11, 2011).*
In order to satisfy due process, the government must take added steps to notify a bond obligor that its bond has been breached when it has knowledge that the original attempt at notice failed.

Hussein v. Perrysburg, *__F.3d __, No. 09-4054 (6th Cir., Aug. 20, 2010).*
State officials are permitted under the Constitution to inform citizens of their view that they are violating state or local law, and to threaten prosecution if they do not conform their actions to the law.

Chicago Teacher's U. v. Chicago, *__F.3d __, No. 10-3396 (7th Cir., Mar. 29, 2011).*
Laid off public school teachers have a Fourteenth Amendment due process right to have an opportunity to show that they are qualified to fill new public school job vacancies as they arise within a reasonable period of time.

Groesch v. Springfield, *__F.3d __, No. 07-2932 (7th Cir., Mar. 28, 2011).*
An officer's race discrimination claim, brought under the Equal Protection Clause is subject to the "paycheck accrual theory," whereby each paycheck resulting from an original discriminatory act triggers its own new statute of limitations.

Wilson v. Price, *__F.3d __, No. 09-2904 (7th Cir., Oct. 4, 2010).*
An alderman who took matters into his own hands and beat an employee who failed to move illegally parked cars does not create a Section 1983 claim, as his actions were not taken under color of law.

Dodd v. Jones, *__F.3d __, No. 09-2016 (8th Cir., Oct. 18, 2010).*
The failure of officers who were treating a drunk lying in the roadway after his own drunk-driving accident to protect him from being hit by another drunk driver who ignored the officers' orders to stop, did not violate the drunk's due process rights when he had not been taken into custody or held against his will. They also did not violate the Fourth Amendment by taking his blood sample after a preliminary breath test gave them probable cause to arrest him for DUI.

Fields v. Abbott, *__F. 3d__, No. 10-2805 (8th Cir., Aug. 30, 2011).*
A county, but not individual deputies, could be liable on a "state-created danger" claim brought by a deputy who was held hostage by two inmates. The inmates' cell had an inside handle and the jail was understaffed yet continued to accept transfer prisoners, which created a possible situation of deliberate indifference to the safety of the deputy.

ALADS v. L. A. Cty., *__F. 3d__, No. 08-56283 (9th Cir., Aug. 12, 2011).*
Officers suspended after being charged with felonies must be provided with a post-suspension hearing. A policy prohibiting such hearings in cases where an officer resigns after being suspended but before receiving a post-suspension hearing is completed violates the Due Process Clause.

Braswell v. Shoreline F. Dept., *___F.3d ___, No. 09-35974 (9th Cir., Sept. 9, 2010).*
When it was shown unlikely that the plaintiff would be hired by another fire department due to his termination by the defendant fire department, a triable issue of whether he suffered a deprivation of liberty in pursuing a paramedical career arose.

Chudacoff v. Univ. Med. Ctr of S. Nev., *__F.3d__, No. 09-17652 (9th Cir., June 9, 2011).*
Voting members of a county hospital credential's committee, even if they are not county employees, could be held liable for the unlawful suspension of a doctor's staff priviledges, a protected property interest under state law.

Gerhart v. Lake Cty., *___F.3d ___, No. 10-35183 (9th Cir., Mar. 18, 2011).*
For due process purposes, a person's belief of entitlement to a government benefit, no matter how sincerely or reasonably held, does not create a property right if that belief is not mutually held by the government.

Tamas v. DSHS, *__F.3d __, No. 08-35862 (9th Cir., Dec. 22, 2010).*
To support government liability for injuries to foster children, the "deliberate indifference" test requires a showing of an objectively substantial risk of harm and a showing that government officials were subjectively aware of facts that would support an inference that a substantial risk of serious harm existed and that they actually drew that inference or reasonably should have done so.

Starr v. Baca, *__F. 3d__, No. 09-55233 (9th Cir., July 25, 2011).*
Deliberate indifference, not personal involvement, is all that is required to hold a sheriff personally liable for the unconstitutional actions of his deputies under the Eighth and Fourteenth Amendments in allowing inmates to knife another inmate 23 times.

Patel v. Kent S. D., *__F. 3d__, No. 10-35430 (9th Cir., July 11, 2011).*
The mother of a disabled child does not have a Fourteenth Amendment due process claim against her child's special education teacher in her individual capacity.

Bankshot Billiards v. Ocala, *___F.3d ___, No. 10-11474 (11th Cir., Mar. 11, 2011).*
No Fourteenth Amendment due process violation exists when a confusing ordinance causes a business to lose customers as a result of its decision to cautiously and conservatively interpret the ordinance rather than risk being prosecuted for its violation.

Youmans v. Gagnon, *___F.3d ___, No. 09-15113 (11th Cir., Nov. 16, 2010).*
No actionable Fourteenth Amendment "deliberate indifference" to a "serious medical need" claim was shown where an arrestee was booked before being provided medical care for visible but non-bleeding cuts and scrapes, even though he said "ow" several times, complained of blurred vision once, and said he had "cracked something" in his hand. Officers need not error on the side of caution.

5. ADA; WARN ACT

Faiola v. APCO Graphics, *__ F.3d __, No. 10-1137 (1st Cir., Dec. 10, 2010).*

An employee's refusal to fly to a seminar because her doctor told her to avoid stress, and flying is "stressful," does not establish an ADA claim. Her inability to attend a seminar is not a substantial limitation on a major life activity or constitute a "single, particular job."

Roman-Oliveras v. PREPA, *___ F. 3d ___, No. 09-1503 (1st Cir., Aug. 18, 2011).*

ADA discrimination can exist based upon an employer's perception that a person with schizophrenia is disabled. However, the ADA does not provide for liability against individuals who are not themselves employers.

Abrahams v. MTA Long Island Bus., *__ F.3d __, No. 10-2058 (2nd Cir., May 5, 2011).*

Paratransit services beyond those required by the ADA can be changed or reduced without public participation or reasonable modifications without violating the ADA.

Hale v. King, *____F.3d ____, No. 07-60997 (5th Cir., Oct. 15, 2010, 2010).*

The ADA does not abrogate state sovereignty with respect to claims by disabled inmates denied access to prison educational and work programs.

Bates v. Dura Auto, *___F.3d ___, No. 09-6351 (6th Cir., Nov. 3, 2010).*

In order to bring a claim under Section 12112 of the ADA alleging discrimination in employee drug testing, a claimant must be disabled.

Stansberry v. Air Wisconsin, *__F. 3d__, No. 09-2499 (6th Cir., July 6, 2011).*

An employee's poor work performance, caused by distractions related to his disabled spouse, does not protect him from discharge under an ADA "associational discrimination" theory. An employer has no obligation to provide a reasonable accommodation to a non-employee spouse.

Miller v. IDOC, *__F.3d __, No. 09-3143 (7th Cir., May 10, 2011).*
Under the ADA, an "essential job function" may not be a function that employees are routinely excused from performing through job duty assignment swaps.

Neagley v. Little Rock, *___F.3d ___, No. 10-2932 (8th Cir., May 2, 2011).*
In a case of first impression in the circuit, the court holds that a plaintiff must show intentional discrimination in order to recover compensatory damages under the ADA.

Collins v. Gee West, *___F.3d ___, No. 09-36110 (9th Cir., Jan. 21, 2011).*
If an employee leaves his job because the business is closing, that employee has not "voluntarily departed" for purposes of the WARN Act.

AAPWD v. Harris, *__F. 3d__, No. 07-15004 (10th Cir., July 27, 2011).*
Voting machines are not "facilities" under the ADA.

EEOC v. England, *___F.3d ___, Nos. 09-4207 and 09-4217 (10th Cir., May 3, 2011).*
Having trainees sign a consent form before working with "an HIV-positive driver" does not violate the ADA.

Mauerhan v. Wagner Corp., *__F.3d __, Nos. 09-4179 and 09-4185 (10th Cir., Apr. 19, 2011).*
An employee is "currently engaging in the illegal use of drugs" for ADA purposes if his drug use is sufficiently recent to justify his employer's reasonable belief that it remains an ongoing problem.

6. FMLA / ADEA

Tayag v. Lahey Clinic, *__ F.3d __, No. 10-1169 (1st Cir., Jan. 27, 2011).*
An unapproved 7-week leave of absence to accompany an ill husband on a spiritual healing trip is not FMLA-protected leave – it is a vacation.

Saenz v. Harlington Med. Ctr., *__F.3d __, No. 09-40887 (5th Cir., Aug. 2, 2010).*
An employee can meet the FMLA's leave notice requirements even if she fails to abide by her employer's stricter notice requirements. A failure to follow employer requirements does not affect FMLA protections.

Branham v. Gannett Satellite, *___F.3d ___, No. 09-6149 (6th Cir., Sept. 2, 2010).*
An employee cannot be disciplined for failing an FMLA medical certification requirement when not informed of the need to timely return the certification or of the consequences of her failure to do so.

Ames v. Home Dpt, *__F.3d __, No. 09-4151 (7th Cir., Jan. 6, 2011).*
Coming to work hung over does not constitute having a serious health condition for FMLA purposes.

Brown v. Auto. Components, *__F.3d __, No. 09-1641 (7th Cir., Sept. 8, 2010).*
An employer is entitled to adhere to and enforce its own internal leave policies and practices that do not violate the FMLA.

Opp v. State's Attny., *___F.3d ___, No. 09-3714 (7th Cir., Dec. 29, 2010).*
Assistant state's attorneys are excluded from the ADEA because they hold policy making positions.

Clark v. Mathews, *__F.3d __, No. 10-1037 (8th Cir., Dec. 27, 2010).*
Under the ADEA, a 4% drop in the employment of 40 year old or older employees is not sufficient to establish that age was a factor in a termination decision.

Estrada v. Cypress Semi-Condtr., *__F.3d __, No. 09-3005 (8th Cir., Aug. 17, 2010).*
An employer who may have counted a day of FMLA leave when terminating an employee for work absences avoids liability by showing that it would have made the same decision notwithstanding the FMLA leave.

EEOC v. UPS, *__F.3d __, No. 08-56874 (9th Cir., Aug. 27, 2010).*
Under the ADA, a sign language interpreter may not be needed for a deaf employee who is provided, instead, with agendas, contemporaneous notes, and written summaries of weekly employee meetings.

Walls v Cent. Contra Costa T. A., *__F. 3d__, No. 10-15967 (9th Cir., Aug. 3, 2011).*
When the plaintiff made a medical request after he had been terminated, his re-employment subject to a last chance agreement did not change his status from "terminated" to "eligible employee" for purposes of FMLA protection.

7. FLSA / FAIR PAY ACT

Mullins v. NYC, *___ F. 3d ___, No. 09-3435 (2nd Cir., Aug. 5, 2011).*
Court accepts the Secretary of Labor's interpretation of the "first responder regulation" (29 C.F.R. §541.3) in holding that a police sergeant's giving directions and exercising discretion while performing field law enforcement work does not transform his duties into management primary duties that would make him a management employee exempt from overtime pay.

Noel v. Boeing, *___F.3d ___, No. 08-3871 (3rd Cir., Oct. 1, 2010).*
A "failure to promote" claim is not a discrimination-in-compensation claim cognizable under the Fair Pay Act.

Dellinger v. Science Applications, *____ F. 3d ____, No. 10-1499 (4th Cir., Aug. 12, 2011).*
A prospective employee cannot sue a prospective employer under the FLSA. That Act only applies to employees and their current or former employers.

Perez v. Mountainaire Farms, *____ F. 3d ____, No. 09-1917 (4th Cir., June 7, 2011).*
Under the FLSA, doffing and donning protective gear during an employee's mid-shift lunch break is not compensable time.

Franklin v. Kellogg, ___*F.3d* ___, *No. 09-5880 (6th Cir., Aug. 31, 2010).*
Under the FLSA, the non-de minimus time taken between donning a work uniform and walking to the time clock may be compensable.

Specht v. Sioux Falls, ___*F.3d* ___, *No. 10-1733 (8th Cir., May 11, 2011).*
A city must pay overtime compensation to firefighters for the work they performed, on voluntary assignment, for other states during a wildfire emergency. Pursuant to the interlocal agreement, they remained city employees although under the temporary command of others.

Gordon v. Oakland, ___*F.3d* ___, *No. 09-16167 (9th Cir., Nov. 19, 2010).*
No FLSA violation occurred when a city's policy requiring police officers to repay a portion of their training costs if they voluntarily left the department before completing 5 years of service resulted in the issuance of a paycheck exceeding the minimum wage amount.

Mumby v. Pure Energy Svcs., ___*F.3d* ___, *No. 10-8030 (10th Cir., Feb. 22, 2011).*
Under the FLSA, an employer cannot selectively rely upon or ignore the advice of counsel as regards overtime payments so as to avoid the 3-year statute of limitations and liquidated damages.

Dionne v. Floormasters, __*F. 3d*__, *No. 09-15405 (11th Cir., July 28, 2011).*
Under the FLSA, an employer who denies overtime nonpayment liability but who tenders the full amount claimed by the plaintiff as part of its motion to dismiss does not have to pay the plaintiff's attorney fees and costs.

Figueroa v. D.C. Metro P.D., ___*F.3d* ___, *No. 09-7133 (D.C. Cir., Feb. 11, 2011).*
The FLSA's statute of limitations is not tolled while employees wait on an administrative decision on a grievance they file over their pay. However, a new statute of limitations begins with the issuance of each pay check.

8. TITLE VII / EEOC; PDA

Ahern v. Shinseki, __ *F.3d* __, *No. 09-1985 (1st Cir., Dec. 13, 2010).*
In a Title VII gender discrimination case, the fact that the vast majority of employees who worked under the defendant and were subject to the same treatment chose to stay underscores the absence of any proof of a "constructive discharge."

Hernandez-Miranda v. Empresas Diaz Masso, __ *F. 3d* __, *No. 10-1639 (1st Cir., June 29, 2011).*
In determining damages caps under Title VII, "current" year for purposes of 42 U.S.C. §1981a(b)(3) liability means the year the discrimination occurred.

Rios-Colon v. Toledo, __ *F.3d* __, *No. 09-2296 (1st Cir., Mar. 30, 2011).*
A Title VII complaint naming government officials in their official capacities is sufficient to include the municipality as employer.

Wilson v. Moulison North, __ *F.3d* __, *No. 10-1387 (1st Cir., Mar. 21, 2011).*
A hostile work environment claim is dismissed on summary judgment because the employer, when notified of the hostile environment, took prompt and appropriate corrective action.

El Sayed v. Hilton Hotels, __ *F.3d* __, *No. 10-453 (2nd Cir., Dec. 17, 2010).*
Retaliatory discharge cannot be proven by simply showing a temporal proximity between a plaintiff's complaint to management about a co-employee and the plaintiff's discharge.

Estate of Paulette Hamilton v. NYC, __ *F.3d* __, *No. 09-4318 (2nd Cir., Dec. 3, 2010).*
In a Title VII employment discrimination case, it is up to the discretion of the trial court as to whether to consider the EEOC's findings.

Henry v. Wyeth Pharm., __ *F.3d* __, *No. 08-1477 (2nd Cir., Aug. 4, 2010).*
An element of a Title VII claim is discrimination, not dishonesty.

McKenna v. Philadelphia, *___ F. 3d ___, No. 09-3567 (3rd Cir., Aug. 17, 2011).*

Following *Staub*, court holds that a review board not shown to be independent of a supervisor with discriminatory animus against a Caucasian police officer did not refute the "cat's paw" theory of employer liability for the unlawful actions of its supervisor against an employee.

Mosby-Grant v. Hagerstown, *___F.3d ___, No. 09-2161 (4th Cir., Dec. 20, 2010).*

The sole female police academy recruit survives summary judgment on her sex based hostile work environment claim where male recruits, over a 5 month period, made dozens of general comments about females as "bitches," "white trash," "ghetto," and "prostitutes," although the recruit herself was only called a name ("bitch") once. These other sexist comments were made in her presence, and although not directed at or to her, were able to be overheard.

Barker v. Halliburton, *__F. 3d__No. 10-20638 (5th Cir., June 23, 2011).*

A plaintiff cannot maintain a lack of consortium claim arising out of a Title VII claim.

Williams v. CSX, *__F. 3d__, No. 09-2037 (6th Cir., July 26, 2011).*

A "charge information form" submitted to the EEOC is a "charge" for purpose of filing a hostile work environment claim even if it is not verified.

Berry v. CTA, *___F.3d ___, No. 07-2288 (7th Cir., Aug. 23, 2010).*

A Title VII hostile work environment claim can be based upon a single bad act if sufficiently severe.

Diaz v. Kraft Foods, *__F. 3d__, No. 10-3073 (7th Cir., Aug. 8, 2011).*

Title VII claims cannot be defeated merely by showing that some members of a suspect class were not discriminated against by the employer.

EEOC v. Konica, *___F.3d ___, No. 10-1239 (7th Cir., Apr. 29, 2011).*

In investigating a case of discrimination in termination, the EEOC can subpoena information on an employer's hiring practices as well.

Finch v. Peterson, ___*F.3d* ___, *No. 09-2676 (7th Cir., Sept. 10, 2010).*
The denial of the defendant's motion for summary judgment was affirmed when the Indianapolis Merit Board allegedly engaged in reverse discrimination when making employment decisions regarding its police officers.

Groesch v. Springfield, ___*F.3d* ___, *No. 07-2932 (7th Cir., Mar. 28, 2011).*
Each paycheck to a police officer triggers a new limitations period under Title VII and Section 1983 for purposes of pay discrimination claims.

Hatmaker v. Mem'l. Med. Ctr., ___*F.3d* ___, *No. 09-3002 (7th Cir., Aug. 30, 2010).*
Participation in a purely internal investigation into alleged discrimination does not support a Title VII retaliation claim. Such participation is not protected by Title VII.

Vance v. BSU, __*F. 3d*__, *No. 08-3568 (7th Cir., June 3, 2011).*
An employee who was promoted by management and provided increased benefits, but also given some menial assignments she disliked, did not establish a Title VII retaliation claim.

EEOC v. Con-Way Freight, ___*F.3d* ___, *No. 09-2926 (8th Cir., Sept. 22, 2010).*
Summary judgment is affirmed against a Title VII failure-to-hire claim when the employer proved that it had a policy of automatically disqualifying all applicants who had a theft-related conviction.

Pye v NuAire, __*F. 3d*__, *No. 10-2243 (8th Cir., June 17, 2011).*
A racial remark made by a non-supervisor who was unaware that the plaintiff could hear him does not support a hostile work environment claim.

Torgison v. Rochester, __*F. 3d*__, *No. 09-1131 (8th Cir., June 1, 2011).*
A statement by a decision maker that he would not have recommended that the city accept a government grant if he had known it required the hiring of women and minorities was not direct evidence of a discriminatory animus. Title VII does not require the preferential treatment of classes of people.

Trierweiler v. Wells Fargo, *___F.3d ___, No. 10-1343 (8th Cir., Apr. 8, 2011).*
Telling a pregnant woman that if she missed one more day that year she would be terminated did not amount to a constructive discharge under the PDA.

EEOC v. Prospect Arprt. Svcs., *___F.3d ___, No. 07-17221 (9th Cir., Sept. 3, 2010).*
A hostile work environment claim survives summary judgment where a female employee continued to pursue a male employee despite his refusal of her advances and complaints to management, even if most men would have "welcomed" her advances.

Stater v. Energy Svcs., *___F.3d ___, No. 09-13794 (11th Cir., Mar. 8, 2011).*
A Title VII suit was properly dismissed for being in the wrong forum when the employment agreement the plaintiff signed agreed to bring all claims related thereto "in a court in the City of Richmond, Virginia."

Geleta v. Gray, *__F. 3d__, No. 10-7026 (D. C. Cir., June 17, 2011).*
The transfer to a position of lesser responsibility in retaliation for making statements supporting a racial discrimination claim is an "adverse" employment action under Title VII.

Medina v. D. C., *__F. 3d__, No. 10-7094 (D. C. Cir., July 1, 2011).*
A plaintiff cannot recover twice, under both Title VII and state law, for the same injury.

Payne v. Salazar, *___F.3d ___, No. 09-5291 (D.C. Cir., Nov. 7, 2010).*
An employee can sue on just those EEOC claims that were administratively unsuccessful, and is not required by Title VII to bring suit on the claims for which she received a favorable administrative ruling.

9. PROCEDURAL; EVIDENTIARY ISSUES

Soto-Fonalledas v. Ritz-Carlton, __ F.3d __, No. 10-1638 (1st Cir., May 4, 2011).
In a Title VII action alleging disability and gender discrimination, an order to compel arbitration under the Federal Arbitration Act is affirmed. A challenge to an arbitration provision that allegedly limits the full vindication of statutory rights is initially a question for the arbitrator.

Harvey v. Plains Tshp., *___F.3d ___, No. 09-1170 (3rd Cir., Mar. 28, 2011).*
Action "under color of state law" must be addressed after considering the totality of the circumstances, and cannot be confined to a single factual question.

Brooks v. Arthur, *___F.3d ___, No. 09-1551 (4th Cir., Nov. 19, 2010).*
The administrative resolution of a claim against a public officer in his official capacity has no *res judicata* effect on a later suit against that same individual in his individual capacity over the same conduct.

EEOC v. Philip Svcs., *____F.3d ____, No. 10-20291 (5th Cir., Mar. 4, 2011).*
A party may not sue for the breach of an oral contract reached during the Title VII reconciliation process.

Reed v. Arlington, *____F.3d ____, No. 08-11098 (5th Cir., Sept. 17, 2010).*
A firefighter obtained a $1 Million verdict against the city and, while that decision was on appeal, filed bankruptcy but left the verdict out of his court filings. As a "no asset" case, he obtained a bankruptcy discharge. Thereafter, his deception was discovered. To preserve the integrity of the system, judicial estoppel prevents both the debtor and the trustee from collecting the judgment.

Brown v. Upper Arlington, *___F.3d ___, No. 09-4396 (6th Cir., Mar. 25, 2011).*
In a lawsuit wherein a homeowner contested the removal of a 40-year old tree, the city received a favorable court decision and then cut down the tree before the homeowner could appeal. The trial court could not use its contempt powers to sanction the city, since no stay pending appeal had been entered.

Pittman v. Chyahoga Cty., *___F.3d ___, No. 09-4161 (6th Cir., May 20, 2011).*
Absolute immunity applies to a social worker who allegedly misrepresented to the juvenile court a father's desire and ability to parent a child, as against the father's claim of substantive and procedural due process violations over his fundamental right to maintain a parent-child relationship.

Abner v. Scott Mem. Hosp., *___F.3d ___, No. 10-2713 (7th Cir., Mar. 9, 2011).*
The court issues a stern warning that an oversized brief, when not disclosed in a properly stated word count certification, may, in the future, result in the summary denial of the appeal.

Am. Bank v. Menasha, *___F.3d ___, No. 10-1963 (7th Cir., Nov. 29, 2010).*
Public records requests are not "discovery" within the scope of a trial court's order staying discovery.

Ault v. Spicher, *___F.3d ___, No. 09-2104 (7th Cir., Mar. 3, 2011).*
The failure to follow state statutory procedures, in and of itself, does not demonstrate the violation of a clearly established constitutional due process right. This is a separate and independent determination.

DeTata v. Rollprint Pack., *___F.3d ___, No. 10-1596 (7th Cir., Jan. 12, 2011).*
The plaintiff's telephone call to the EEOC, wherein she learned that the EEOC had earlier sent her an un-received right-to-sue letter, did not start her 90-day period to file suit. Her receipt of the letter, when sent to her correct address, did.

Fletcher v. Menard, ____*F.3d* ____, *No. 08-3871 (7th Cir., Oct. 28, 2010).*

No exception exists for civil rights suits brought by prisoners who are in "imminent danger" that allows them to forego the requirement to pay the entire filing fee when the case is filed.

Moore v. Vital Prod., ____*F.3d* ____, *Nos. 09-1527 and 09-1537 (7th Cir., May 25, 2011).*

There is no exception to the requirement that a plaintiff's discriminatory discharge claims be "like or related" to the allegations in his underlying EEOC charge, even if the plaintiff is confused about the underlying facts.

Wilkie v. DHHS, ___*F.3d* ___, *No. 10-1916 (8th Cir., Apr. 27, 2011).*

The timely filing of an EEOC charge is not tolled because the claimant is stressed and depressed.

Calif. Shock Trauma v. State Comp., ___*F.3d* ___, *No. 09-16810 (9th Cir., Mar. 31, 2011).*

The expectation of a federal law defense, without more, is not sufficient to establish federal jurisdiction over state law claims.

Community House v. Boise, ___*F.3d* ___, *No. 09-35780 (9th Cir., Oct. 6, 2010).*

A mayor and city council have absolute legislative immunity for their actions in promoting and approving the lease of a public building to a religious organization to use as a homeless shelter.

Johnson III v. Lucent Tech., __*F. 3d*__, *No. 09-55203 (9th Cir., Aug. 4, 2011).*

Section 1981 retaliation claims are governed by the 4-year statute of limitations applicable to claims arising out of an Act of Congress enacted after 12-01-90, not the personal injury statute of limitations of the forum state.

Pitts V. Terrible Habst, __*F. 3d*__, *No. 10-15965 (9th Cir., Aug. 9, 2011).*

An unaccepted Rule 68 offer of judgment for the full amount of the named plaintiff's individual claim made before the named plaintiff files a motion for class certification does not moot a class action.

Home Products v. U.S., ___*F.3d* ___, *No. 2010-1184 (Fed. Cir., Feb. 7, 2011).*
The court abused its discretion when it refused to remand a case to an administrative agency when new evidence indicated that the agency's proceedings were tainted by material fraud.

10. RLUIPA / USERRA

Kuperman v. Wrenn, ___ *F. 3d* ___, *No. 10-2083 (1st Cir., July 14, 2011).*
Prison regulation requiring all inmates not exempt for religious or medical reasons to be clean-shaven does not violate the First or Fourteenth Amendments or RLUIPA.

Melendez-Garcia v. Sanchez, __ *F.3d* __, *No. 08-2530 (1st Cir., Dec. 10, 2010).*
An ROTC officer cannot predicate his Section 1983 claims on a USERRA violation.

Vega-Colon v. Wyeth Pharmacy, __ *F.3d* __, *No. 09-1861 (1st Cir., Oct. 28, 2010).*
Under USERRA, a plaintiff must show evidence of discrimination in addition to the fact that he was not selected for a job position and is a member of a protected class in order to survive summary judgment.

Hart v. Family D., ___*F.3d* ___, *No. 10-1008 (2nd Cir., May 31, 2011).*
An employer who reemploys a returning veteran for 180 days with the same seniority, position, pay and the other rights and benefits he enjoyed before leaving for military service complies with USERRA. The employee can thereafter be terminated.

Third Ch. of Christ Scientist v. NYC, _ *F.3d* _, *No. 08-6022-cv (2nd Cir., Dec. 1, 2010).*
Under RLUIPA, a city cannot prevent a church from using its facility for private, catered events when it allows similarly situated secular entities to do so.

Carder v. Continental Airlines, *__F.3d __, No. 10-20105 (5th Cir., Mar. 22, 2011).*
USERRA does not prohibit the harassment of military members nor contemplate a hostile work environment claim.

The Elijah Group v. Leon Valley, *__F. 3d__, No. 10-50035 (5th Cir., June 10, 2011).*
A city zoning ordinance that prohibits churches but allows some secular business from requesting a special use permit to operate in the city's B-2 business zone violates RLUIPA's Equal Term Clause.

M. Christe Rel. Ord. v. Northville Tsp. *_F.3d _, No. 09-1618 (6th Cir., Dec. 21, 2010).*
A RLUIPA claim is unripe when it is based upon the application of zoning ordinances to a residence owned by a member of a religious order but no final decision on the application has been made by the municipality's zoning board and no hardship is being caused by waiting for the board's final decision.

Gross v. PPG, *__F.3d __, No. 10-1405 (7th Cir., Mar. 5, 2011).*
USERRA does not require an employer to provide differential pay to supplement the military pay of an employee-service member.

Edwards v. Jonesboro, *__F. 3d__, No. 10-2405 (8th Cir., July 14, 2011).*
An allegation that the smell of methane gas from a city landfill reduced the value of an abutting parcel did not support a Fifth or Fourteenth Amendment "takings" claim.

Lisdahl v. Mayo, *__F.3d __, Nos. 10-1477, 10-2038 & 10-2040 (8th Cir., Feb. 28, 2011).*
Minor slights and disagreements with supervisors do not rise to the level of actionable retaliation under USERRA.

Rademacher v. HBE, *__F. 3d__, No. 10-1816 (8th Cir., July 14, 2011).*
An employer's expressed frustration with an employee's military enlistment in 2003 was insufficient, by itself, to support a USERRA claim over the employee's 2006 discharge.

Centro Familiar Cristiano Buenas Nuevas v. Yuma, *__F. 3d__, No. 09-15422 (9th Cir., July 12, 2011).*
City ordinance that requires religious institutions to obtain a conditional use permit but not other similarly situated entities violates the equal terms provision of RLUIPA.

Khatib v. Orange Cty., *___F.3d ___, No. 08-56423 (9th Cir., Mar. 15, 2011).*
A courthouse holding facility is covered by RLUIPA.

11. SCHOOLS; IDEA

Sumpter Cty. Sch. Dist. 17 v. Hefferman, *___F.3d ___, No. 09-1921 (4th Cir., Apr. 27, 2011).*
The failure to perfectly execute on IEP does not necessarily constitute the denial of a FAPE, but the failure to execute an essential element of an IEP necessary for a child to receive a FAPE does.

C. B. v. S.S.D., *___F.3d ___, No. 09-3104 (8th Cir., Apr. 21, 2011).*
When a public school fails to provide a student an IEP that makes available a FAPE, it is not entitled to a second chance before the student's parents can enroll their child in a private institution.

Doe v. Todd Cty., *___F.3d ___, No. 09-3221 (8th Cir., Nov. 12, 2010).*
A plaintiff's due process rights under IDEA for IEP school placement are limited to the "decision maker" procedures in 20 USC §1415.

C.B. v. Garden Grove, *___F.3d ___, No. 09-56588 (9th Cir., Mar. 28, 2011).*
The IDEA does not require a private school to provide all of the services a disabled child needs in order for a court to award full reimbursement for a student's placement therein.

Forest Grove v. T.A., *___F.3d ___, No. 10-35022 (9th Cir., Apr. 27, 2011).*
Under the IDEA, a court decision that equitable considerations do not support an award of reimbursement when a student was placed in a private school for non-academic reasons is not an abuse of discretion.

Payne v. Peninsula, *__F.3d__, No. 07-35115 (9th Cir., July 29, 2011).*
The IDEA's exhaustion requirement is not jurisdictional as regards non – IDEA claims.

12. *ENVIRONMENTAL LAW*

Precon Dev. v. Ace, *____F.3d ____, No. 09-2239 (4th Cir., Jan. 25, 2011).*
The court refuses to give deference to an EPA "guidance" document that has not been incorporated into a binding rule.

W.Va. Highlands Cons. v. Huffman, *___F.3d ___, No. 09-1474 (4th Cir., Nov. 8, 2010).*
The CWA applies to any entity discharging pollutants into the waters of the United States. There are no exceptions for state agencies engaged in reclamation efforts.

Calanese Corp. v. Martin Eby, *___F.3d ___, No. 09-20487 (5th Cir., Sept. 21, 2010).*
A person whose backhoe dented a pipe that, over time, developed a stress crack that allowed methanol to leak from the pipe is not an "arranger" for purposes of CERCLA liability.

Colton v. Am. Prom Events, *__F.3d __, No. 06-56718 (9th Cir., Aug. 2, 2010).*
A city's failure to follow the national contingency plan in its clean-up efforts under CERCLA prevents it from seeking compensation from other responsible parties for its response costs.

Hinds Invest. v. Angioli, *__F. 3d__, Nos. 10-15607, 10-15951 (9th Cir., Aug. 1, 2011).*
For Resource Conservation and Recovery Act liability, dry cleaning manufacturers' "contribution" requires more than merely providing, installing, and repairing dry cleaning machines designed so that toxic waste flows into drains and the sewer system.

Jensen Fam. Farms v. Monterey Bay, ___*F.3d* ___, *No. 09-16790 (9th Cir., May 27, 2011).*
A Pollution Control District's diesel-powered engine emissions rules are pre-empted by the Federal Clean Air Act.

Los Angeles v. San Pedro Boat Works, ___*F.3d* ___, *No. 08-56163 (9th Cir., Mar. 14, 2011).*
Acknowledging a split in the circuits, the court holds that a permit holder does not have a sufficient interest in property to be characterized as an "owner" under CERCLA.

NW. Env. Def. Ctr. v. Brown, ___*F.3d* ___, *No. 07-35266 (9th Cir., Aug. 17, 2010).*
The CWA requires an EPA permit in order to allow storm water to flow from logging roads into ditches and then into forest streams.

Sackett v. EPA, ___*F.3d* ___, *No. 08-35854 (9th Cir., Sept. 20, 2010).*
The CWA precludes the pre-enforcement judicial review of administrative compliance orders.

Team Enterprise v. Western Investment, __*F. 3d*__, *No. 10-16916 (9th Cir., July 26, 2011.)*
The manufacturer of dry-cleaning equipment is not liable under CERCLA as an "arranger" unless it is shown to have entered into the sales transaction for the specific purpose of disposing of a hazardous substance.

Natural Resources Def. Council v. EPA, __*F. 3d*__, *No. 10-1056 (D.C. Cir., July 1, 2011).*
EPA "guidance" on ozone levels is a legislative act that required notice and concurrent rule-making. As this did not occur, the guidance is vacated.

13. ***TELECOMMUNICATIONS***

Ind. Comm & Electronics v. Slade, *__ F.3d __, No.10-1738 (1st Cir., May 19, 2011).*
A property owner has standing to intervene and challenge a consent decree entered into between a city and a cell tower company that provides a variance allowing a cell tower to be built so as to obstruct the property owner's view. She has a legal interest in the protection afforded by local zoning laws that allows her to intervene to block the consent decree.

In the Matter of an Order Directing, *___F.3d ___, No. 08-4227 (3rd Cir., Sept. 7, 2010).*
Cell phone "cell site location information" (the contents of electronic communications in electronic storage) is available to the government under the Stored Communications Act based upon the showing under an intermediate standard that is less stringent than "probable cause."

14. ***COMMERCE CLAUSE***

Freeman v. Corzine, *____F.3d ____, No. 08-3268 (3rd Cir., Dec. 17, 2010).*
A state law allowing only in-state wineries to sell directly to consumers or retailers, and placing a cap on the importation of out-of-state wine for personal use at one gallon without a permit, violates the Dormant Commerce Clause.

Locke v. Shore, *___F.3d ___, No. 10-11052 (11th Cir., Mar. 1, 2011).*
A state licensing requirement for interior designers does not violate the Dormant Commerce Clause.

15. ***OTHER CASES OF INTEREST***

Lozano v. Hazleton, *____F.3d ____, No. 07-3531 (3rd Cir., Sept. 9, 2010).*
A city ordinance regulating the employment and housing of illegal aliens is pre-empted by federal law.

N. J. Treasury v. Merrill Lynch, *___F.3d ___, No. 09-4676 (3rd Cir., May 18, 2011).*
A forum selection clause stating that exclusive jurisdiction shall lie in the appropriate courts of the "State of New Jersey" constitutes a waiver of the right to remove the action to the New Jersey federal district courts.

Green v. Atkinson, *____F.3d ____, No. 09-11050 (5th Cir., Oct. 12, 2010).*
An Eighth Amendment cruel and unusual punishment claim avoids summary dismissal when it alleges that a prisoner broke a tooth on a metal nut baked into his cornbread.

U. S. v. Sarile, *__F. 3d__, No. 10-50577 (5th Cir., June 23, 2011).*
The "public authority" defense requires a law enforcement officer who engages a defendant in covert activity to have actual, not just apparent, authority to authorize the defendant's conduct.

Sheffield v. Fort Thomas, *___F.3d ___, No. 09-5619 (6th Cir., Sept 3, 2010).*
An ordinance prohibiting deer feeding outside the curtilage of private homes is a legitimate exercise of municipal authority.

White v. Wyndham Vac., *___F.3d ___, No. 09-5626 (6th Cir., Aug. 11, 2010).*
A plaintiff who waited to file her discrimination claim until her bankruptcy plan was confirmed, and who did not adequately disclose this potential claim in her bankruptcy schedules, was judicially estopped from later pursuing that claim in district court.

Active Disposal v. Darien, *___F.3d ___, No. 10-2568 (7th Cir., Mar. 14, 2011).*
The "state-action" exception in federal antitrust law applies to a municipality's contract for trash services.

Ezell v. Chicago, *__F. 3d__, No. 10-3525 (7th Cir., July 6, 2011).*
A preliminary injunction was granted to prevent the enforcement of a Chicago ordinance prohibiting a public firing range anywhere in the city. The plaintiffs suffered irreparable harm to their Second Amendment right to maintain their proficiency in firearm use by practicing live range shooting.

Kelly v. Chicago P. D., *___F.3d ___, No. 08-3701 (7th Cir., Feb. 15, 2011).*
To qualify for VARA's "moral rights" protection, a work must actually be a sculpture or painting, not just the same metaphorically or by analogy. A 2-football field sized "artwork" of planted flowers is not entitled to VARA protection.

Palka v. Shelton, *___F.3d ___, No. 08-4245 (7th Cir., Oct. 7, 2010).*
An officer's decision to resign rather than risk an unfavorable Merit Board decision does not make his resignation involuntary.

Preston V. Pleasant Hill, *__F. 3d__, No. 10-1899 (8th Cir., June 21, 2011).*
A person is not a "fire code official" under the International Fire Code simply because he performs some of the duties of a "fire code official".

Senne v. Pallatine, *__F. 3d__, No. 10-3242 (7th Cir., July 11, 2011).*
A parking ticket placed on a windshield that contained the name, driver's license number, address, DOB, sex, height, and weight of the vehicle owner does not violate the Driver's Privacy Protection Act.

U. S. v. Szeymerszkiervicz, *___F.3d ___, No. 10-1347 (7th Cir., Sept. 9, 2010).*
Under the federal Wiretap Act, the intentional interception of e-mails is covered conduct.

Gallagher v. Magner, *___F.3d ____, No. 09-1209 (8th Cir., Sept. 1, 2010).*
A city's aggressive code enforcement strategy, when a more flexible approach would not have so great an impact on affordable housing and, ultimately, such a disproportionate impact on African-Americans, survives summary judgment on a FHA disparate impact claim.

Rau v. Roberts, *___F.3d ___, No. 10-1476 (8th Cir., May 19, 2011).*
A city is not vicariously liable when its off-duty police officer, still in uniform and using a command voice, says "Why are you calling the police? The police are here," and assaults a gas station attendant.

AARR v. S. Coast Air, *___F.3d ___, No. 07-55804 (9th Cir., Sept. 15, 2010).*
An injunction preventing the enforcement of a local government agency's rules aimed at limiting air pollution caused by idling trains is affirmed. Those rules are preempted by the ICCTA, because they are not of general applicability and unreasonably burden railroad activity.

Nordyke v. King, *___F.3d ___, No. 07-15763 (9th Cir., May 2, 2011).*
An ordinance banning gun shows on city property does not violate the Second Amendment.

Rickley v. L. A. Cty., *__F. 3d__, No. 09-56498 (9th Cir., Aug. 19, 2011).*
Pursuant to 42 USC §1988, a successful civil rights plaintiff my recover reasonable attorney fees for legal services provided by her lawyer spouse.

U.S. v. Arcata, *___F.3d ___, No. 09-16780 (9th Cir., Dec. 17, 2010).*
An ordinance prohibiting agents of the federal government from engaging in military recruitment activities targeting minors discriminates against the United States.

Kay Elec. v. Newkirk, *__F. 3d__, No. 10-6214 (10th Cir., July 29, 2011).*
Under the Sherman Act, a city cannot annex territory normally served by a rural electric cooperative and then refuse to provide sewage service to the buildings thereon unless they purchased electricity from the city and not the rural co-op, unless the state has expressly granted the city the right to suppress competition in this manner.

Mata v. Anderson, *____F.3d ____, No. 10-2031 (10th Cir., Mar. 31, 2011).*
Enforcing a settlement agreement that waives all known and accrued claims is not against public policy.

U.S. v. Imanzar, ___F.3d ___, *No. 10-11481 (11th Cir., Mar. 4, 2011).*
A court judge's entry of acquittal despite a jury verdict of guilty, because "life is different for a Hispanic woman in a male dominated culture, the cultural expectations are different and Hispanic women frequently . . . do what their male family members ask them to do . . . " is reversed as being based upon racial stereotypes.

Kiewit Power v. NLRB, __F. 3d__, *Nos. 10-1289, 10-1312 (D. C. Cir., Aug. 3, 2011).*
Employees who were fired after they responded to supervisors who said that their morning and afternoon breaks were too long by saying "things would get ugly" and "better bring boxing gloves" if they were disciplined for doing so were not making physical threats but merely "figures of speech" that did not warrant their discipline.

C. U. S. DISTRICT COURTS

Ecological Rights v. PG&E, ___F. Supp 2d ___, *No. C-10-0121 (N.D. Cal., Feb. 4, 2011).*
The court refused to dismiss an action requiring a utility otherwise exempt from the CWA to obtain a storm water permit when it operates support facilities that produce industrial stormwater discharges.

Flava Works v. Miami, ___F. Supp 2d ___, *No. 07-22370 (S.D. Fla., July 29, 2011).*
A residential zoning ordinance was upheld against First Amendment and Dormant Commerce Clause claims when it prevented the operation of a sexually explicit website business out of a private residence.

Hoffman v. Carefirst, ___F. Supp. 2d ___, *No. 1:09-cv-251 (N.D. Ind., Aug. 31, 2010).*
Renal cancer, in remission, is a disability under the ADA, as amended.

McClure v. Crawfordsville, ___F. Supp 2d __, *No. 1:10-cv-00822 (S.D. Ind., Nov. 4, 2010).*
An arrestee who was detained for 92 days while the substance he had in his possession was being tested by a laboratory (it was a dietary supplement) survives motion to dismiss on his Fourth Amendment claim.

NMA v. EPA, *___F. Supp 2d ___, No. 10-1220 (S.D. D.C., Jan. 14, 2011).*
The EPA cannot circumvent formal rulemaking by issuing "guidance" documents (immune from challenge) to enforce its statutes and rules.

Nolan v. Dolan, *___F. Supp 2d ___, No. 10-cv-7357 (N. D. Ill, Apr. 21, 2011).*
A woman complained to the police department about an officer. He later confronted her and yelled that nothing was going to happen to him on account of her complaint and that "we know who you are and where you live," before issuing her two citations. Her subsequent Section 1983 First Amendment free speech claim survives a motion to dismiss.

Rubin v. Lancaster, *__ F. Supp 2d __, No. 10-4046 (C.D. Cal., July 11, 2011).*
Single reference to Jesus Christ in an invocation does not violate the Establishment Clause.

Slater v. Douglas Cty., *___F. Supp 2d ___, No. 09-cv-6274 (D. Or., Sept. 24, 2010).*
A county clerk who held a religious objection to registering same-sex couples for marriage need not surrender her beliefs as a condition of public sector employment. Also, no constitutional violation was created by her employer accommodating these religious beliefs.

Wyant v. Wayne Tshp., *___F. Supp 2d ___, No. 1:11-cv-00145 (S.D. Ind., May 3, 2011).*
An employee's "alienation" from fellow employees is insufficient to raise a hostile work environment claim.