International Municipal Lawyers Association



e-News: Issue 12 June 16, 2017

Re-Issue: Please Note Addition of *Lowry v. San Diego* to this eNews. Thank you.

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Personnel: No Contract Breach or Promissory Estoppel Where Settlement Agreement Is Contingent upon Approval of City Council

Thoma v. City of Spokane, No. 14-35829 (9th Cir. June 5, 2017).

The Ninth Circuit has affirmed a decision for Spokane, Washington, finding that the record adduced ample evidence to indicate that a settlement agreement with a terminated employee former was conditioned upon City Council approval.

Bradley N. Thoma (Thoma) was fired from the Spokane (City) Police Department. Thoma challenged the City and ultimately reached a settlement. The settlement was rejected by the City Council, prompting Thoma to allege claims of breach of contract and promissory estoppel. The district court granted summary judgment to the City.

The Ninth Circuit quickly disagreed with Thoma, noting that email exchanges in the record about the settlement stated it was contingent upon approval by the City Council. Moreover, it found the City garnered statements during Thoma's deposition that he understood that the settlement reached was contingent on such approval. As a result, when the negotiated settlement was not accepted by the City Council it was not a breach of contract and did not raise a viable promissory estoppel claim.

LINK

Police: Use of Police Dog "Bite and Hold" Technique by Officers Responding to Potential Burglary Is Not Excessive Force

Lowry v. City of San Diego, No. 13-56141 (9th Cir. June 6, 2017).

In an en banc decision, the Ninth Circuit has reversed a panel's decision denying summary judgment to San Diego in a case where its officers allowed a police dog to enter a darkened office after several warnings-resulting in injury to an employee sleeping inside.

Sara Lowry (Lowry) went out for drinks with friends after work on a Thursday night. Instead of going home, she went back to her office to sleep on the couch, not realizing she had triggered the office alarm system. She then fell asleep. Officers responding to the burglary alarm had no idea Lowry was there, was asleep, and was not a burglar. The police entered the commercial office with a police dog and, finding an office door cracked, ordered any one to come out immediately or they were sending the dog in. They called twice, and got no response twice. The police dog entered, his handler close behind, jumped and bit the sleeping person - Lowry - on the lip. Lowry filed a *Monell* claim alleging the San Diego Police Department training technique of "bite and hold' for dogs violated her Fourth Amendment right because it subjected her to excessive force. The district court disagreed, as did the Ninth Circuit ultimately.

The procedural posture as a *Monell* case required Lowry to establish that "(1) [police department]'s use of [the police dog] amounted to an unconstitutional application of excessive force, and (2) the City's policy caused the constitutional wrong." In order to meet the first prong, Lowry had to show that that the force was not objectively reasonable, thus requiring the Court to consider "(1) the severity of the intrusion on the individual's Fourth Amendment rights by evaluating the type and amount of force inflicted, (2) the government's interest in the use of force, and (3) the balance between the gravity of the intrusion on the individual and the government's need for that intrusion." As to the first of these, the Court found the force was moderate since the handling officer was right behind the dog and immediately called him off, so quickly that it was unclear any contact was made. As for the second element, the Court found it fell in the city's favor because the officers were responding to a burglary late at night, reasonable officers would suspect a burglar to be armed, and because notice of the dog entering was provided and no one responded to the two warning calls. The Court noted also that Lowry's suggestion that the dog could have been leashed was unsubstantiated and unsupported by any evidence that such a technique would be effective for policing. As for the third, the Court held that the force was not severe, given the foreseeable danger a reasonable officer expects facing in an active burglary scenario. Having determined Lowry's argument failed the first prong of the *Monell* analysis, the Court did not reach the second prong and affirmed the lower court.

DISSENT: A dissent by Chief Judge Thomas focused on the damage the police dog could have inflicted, noting that in previous cases the Ninth Circuit had recognized that police dogs pose a severe

risk of danger. He argued Lowry faced that severe risk even though she, as the dog handler put it, was just "very lucky" since the dog could have "ripped her face off." Chief Judge Thomas noted "[t]herefore, in assessing the reasonableness of the force at the moment when the officers made the decision to use an off-leash police dog - rather than in hindsight, based on Lowry's actual injuries - a reasonable jury could find that the use of force was moderate or severe." Second, Chief Judge Thomas took issue with the majority's assessment of the government's interest in using an off-leash dog, noting the majority's reliance on presuming burglars to be dangerous is misplaced, not in line with Circuit precedent, and that Lowry's failure to respond to verbal warnings does not constitute active resistance to arrest. Thus, the Chief Judge found a reasonable jury under these facts could have found the force excessive and thus would have held the lower court erred in holding that *as a matter of law* the use of a police dog did not constitute excessive force.

NOTE: *IMLA submitted an amicus on behalf of the City of San Diego and is pleased with this decision, particularly given that the Ninth Circuit's initial opinion undermined officer safety and exposed municipalities to unwarranted liability. IMLA extends its gratitude to pro bono author Steven Renick for his excellent brief. For more information on IMLA's legal advocacy activities, please visit our website.*

LINK

Qualified Immunity: Officials' Cancellation of Drivers' License under Florida Same-Sex Law that Would Become Unenforceable 60 Days Later is Entitled to Immunity

Wall-DeSousa v. Florida Department of Highway Safety and Motor Vehicles, No. 16-10410 (11th Cir. June 2, 2017).

Florida DMV officials who cancelled the drivers' licenses of a same-sex couple after the couple took to the media to publicize the officials' obstructive tactics were entitled to qualified immunity-even though the Florida law refusing to recognize same-sex marriages was already scheduled to become invalid 60 days later; at the time of the cancellation, plaintiffs' rights were not yet "clearly established."

Daniel DeSousa and Scott Wall were married in New York in December 2013, thereafter combining their last names into one: Wall-DeSousa. Upon returning to Florida each went to the Social Security office and obtained new social security cards and subsequently went to change their driver's licenses in Brevard County. Daniel went to the Palm Bay DMV office and was successful. Scott, on the other hand, went to the Indian Harbor office, where problems proliferated. The supervisor there, after receiving the new social security card and the marriage license from Scott, "tossed" the documents back at him across the counter and said Florida does not recognize out of state same sex marriages. He then called Palm Bay to have Daniel's new license it had just issued cancelled. Palm Bay took no such action.

On August 6, 2014 a federal district court in Florida invalidated the Florida law refusing to recognize same sex marriages, holding it unconstitutional. The injunction resulting from that decision--prohibiting Florida from enforcing its refusal to recognize same-sex marriages-was stayed law in light of then-pending Supreme Court same-sex cases. Those cases were denied on October 6, 2014-meaning that the Florida policy of refusing to issue same-sex drivers licenses would be invalid effective January 6, 2015.

Meanwhile between late 2013 and January 2015, Scott - whose license had been cancelled by the supervisor in Brevard County - was still trying to get a license. The deputy supervisor there told him that since she knew he was in a same-sex marriage she *could not issue* the license, but that another county could. Scott went to Orange County, which issued the license. He was then

interviewed on TV about the hassle and, perhaps unbelievably, the supervisor from Brevard County saw the interview and called Orange County to have the license cancelled. On November 7, 2014, the Wall-DeSousa's received a letter from Brevard County saying both their licenses had been cancelled. Then they received advice that they should seek an administrative hearing since the Florida DMV was following "the letter but not the spirit" of the law.

The Wall-DeSousa's sued, perhaps not surprisingly, alleging a variety of constitutional claims. Operative for the appeal, they alleged a First Amendment retaliation claim with regard to the supervisor calling other offices to have their newly-issued driver's licenses cancelled. The supervisor - and government defendants - claimed they were entitled to qualified immunity, which the district court agreed with. The Eleventh Circuit took the case, noting that "[t]o overcome qualified immunity at the motion-to-dismiss stage, the plaintiff must plead sufficient facts to allege that: (1) the defendant violated a constitutional right; and (2) the right was clearly established at the time of the alleged violation." Thus the Wall-DeSousa's first had to show that their speech on the TV interview was protected speech, which the Circuit had no trouble finding given that a widely disseminated TV interview about local law clearly touches on matters of public concern. The next step required the Wall-DeSousa's to show they suffered adverse consequences from their speech that would deter others from speaking, again this was easily found by the Circuit given that Daniel had to get another driver's license in his maiden name and Scott had no license for two months.

The hiccup for the Wall-DeSousa's came from the "clearly established" prong of the analysis and in the form of precedent: in the Eleventh Circuit, following the Supreme Court, precedent holds that a government official will still enjoy qualified immunity even if when acting lawfully s/he does so with *some unlawful motive* in mind, but *not solely an unlawful motive*. The Circuit recognized the possibility that the defendants acted with *some unlawful motive*, but it was unwilling to say, given that Florida *at the time* did not recognize same-sex marriages, that no legitimate reason in fact motivated the defendants' conduct. Thus, at the time it was not clearly established that the defendants could not act as they did and the lower court was affirmed.

LINK

Qualified Immunity: Search for Media, Money and Firearms When Enforcing Misdemeanor Law Prohibiting Keeping of a Deer is not so Lacking in Probable Cause to Prevent Immunity

Kiesling v. Doc Holladay, No. 16-2197 (June 9, 2017).

Reversing the district court, the Eighth Circuit has found that Arkansas game officials' reliance on a warrant to effect a wide-ranging search of a home for electronic media, firearms, money and related "instrumentalities" of "criminal activity"--incident to enforcing a state misdemeanor law prohibiting the keeping of a pet deer--was not so blatantly unreasonable as to eliminate qualified immunity.

The Arkansas Game and Fish Commission received an anonymous complaint that Christopher and Katy Kiesling were keeping a deer as a pet, a violation of state law. Corporal Ross Spurlock of the Arkansas Game and Fish Commission heard this information and possessed a recorded phone call where Christopher told a friend he was "watching" the deer through his window and made other tangential references to being in possession of a deer. Spurlock prepared an affidavit for a search warrant stating he had probable cause to believe the Kieslings were "conceal[ing] . . . certain property, to-wit: a male whitetail deer, to wit: pens or cages, deer food, ledgers documenting the capture or sale of wildlife, photographs of captured or illegally taken wildlife, specifically deer."

A state court judge issued a warrant, authorizing law enforcement to search for the following evidence: "(1) a button buck whitetail deer[;] (2) books, records, receipts, notes, ledgers, and other personal papers to the capture or sale of wildlife, specifically deer, pens or cages of housing wildlife[;] (3) photographs, in particular photographs of captured or illegally taken wildlife, specifically deer[;] (4) indicia of ownership of the above described property; (5) computers, digital and/or electronic storage devices, and any digital and/or electronic remov[able] media, tending to demonstrate that criminal offenses have been committed[;] (6) and all other instrumentalities including firearms and monies of criminal activity . . . ."

The warrant was executed and the deer was found in the home. Coincidentally however, drug crimes were discovered as well, prompting the police to get involved and subsequent charges to be filed. The Kiesling's attorney filed a motion to suppress the evidence based on the fact that Spurlock's probable cause affidavit lacked sufficient indicia of reliability and was improperly issued. A different state court judge agreed, thus suppressing all the evidence and leading the Kiesling's to file a §1983 case against Spurlock and other law enforcement. Spurlock filed a motion to dismiss based on qualified immunity that was denied by the district court. Spurlock appealed.

The Eighth Circuit agreed that, in general, the issuance of a warrant by a neutral magistrate provides a shield of immunity for officers executing the warrant, but with some exception. The district court had applied the exception to Spurlock, holding the "warrant was based on an affidavit so lacking in indicia of probable cause [that it] render[ed Spurlock's] belief in its existence entirely unreasonable." The Circuit reversed the lower court, holding that it was not entirely unreasonable for Spurlock to believe his affidavit provided probable cause to issue the warrant because the recorded phone call and anonymous tip created probable cause *to believe the Kieslings were in possession of a deer*. The Circuit agreed with the Kieslings that some of the latter portions of the warrant were "broad" but that it was not entirely unreasonable to believe the items would be in the house, thus it held Spurlock was entitled to immunity, reversing the lower court.

DISSENT: A dissent by Judge Gritzner would have held that the warrant was overly broad, so much so and so obviously so that "any reasonable officer would have known there was no probable cause for the scope of the warrant. Put simply, no reasonable officer could conclude that a search and seizure of digital storage devices, firearms, or monies would bear any plausible connection to a misdemeanor regulatory infraction of housing a deer as a pet. As it stands, the majority opinion could potentially permit overbroad, and thus unconstitutional, warrants so long as some portion of the warrant is supported by probable cause, substantially weakening the Fourth Amendment's protections against general searches." As a result the dissent would have affirmed the lower court and denied Spurlock immunity.

LINK

RLUIPA: No RLUIPA Violation Where Township Refuses to Issue Permit to Religious School Based on Congestion and Incompatibility with Residential Area, Where School has Alternative Sites

Livingston Christian Schools v. Genoa Charter Township, No 16-2060 (6th Cir. June 2, 2017).

A religiously-affiliated school's RLUIPA claim has failed where its proposed move to a nearby church property would increase traffic and interfere with the area's residential use-particularly in light of the fact that the school leased its then-existing premises to a

third party before confirming that it had permission to use the new site; in addition, the court found that other alternatives existed for the school.

Livingston Christian School (LCS) is a nondenominational educational institution school formerly located in Livingston, Michigan. After some years' operating there LCS sought to relocate to a church property in Genoa Township via an agreement with that church. Genoa Township indicated a special use permit would be required to allow the use of a school at a church and LCS applied for such. It was denied by a four-to-three vote by the Genoa Board. LCS sued, alleging the denial violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment to Genoa and LCS appealed.

The Sixth Circuit began by setting the context for the case, specifically highlighting that three properties were central to merits. First, it noted the LCS owned the property it formerly operated on and still owned it, though it leased that property to a religiously-based school for a seven year term *after* the Genoa Board voted to deny its special use permit. Second, it noted the school was currently operating from a leased property in a neighboring county. Third, there was the property it was currently seeking to operate from in Genoa and that it entered a lease agreement for *without* being aware that a special use permit would be needed to change the use to a school.

It then noted Genoa's reasons for denying the permit, namely increased traffic, inconsistency with the surrounding area's residential character, and the property owner's history of non-compliance with conditions of previous special use permits. With these facts established, the court set forth the standard for the merits of the case: "No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that the imposition of the burden . . . (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest."

The court reviewed both its and sister circuit precedent for factors useful in determining whether a burden placed on a religious institution is significant enough to be a "substantial" one. These included whether the religious institution has a feasible alternative location from which it can carry on its mission; whether the institution itself was partly liable for imposing the burden on itself, and whether the institution faced a substantial delay, uncertainty, and/or expense. These factors all fell in favor of Genoa. First, LCS put forth only conclusory evidence that its current property was inadequate, and did not allege that any of its core religious functions could not be carried out there, neither of which was adequate to support a summary judgment motion. Second, it was not lost on the court that LCS entered a contract to lease the property it owns and formerly operated out of *after* it did not get its special use permit, indicating a somewhat self-created problem. The court rejected the LCS argument that since there were no suitable locations within Genoa for its need it was burdened, holding instead it had alternative locations within roughly 12 miles and that the law cannot hold that simply because a political jurisdiction cannot accommodate the specific needs for a religious institution it is a violation of RLUIPA. The Circuit affirmed the lower court.

LINK

Search: Use of Real-Time GPS Location Data to Track Suspect during Seven Hour Period Is Not a Fourth Amendment Search; Per *Skinner*, There is No Expectation of Privacy in Public Movements

United States v. Riley, No. 16-6149 (6th Cir. June 5, 2016).

The Sixth Circuit has affirmed a lower court decision denying suppression of evidence obtained via the government's use of GPS tracking data obtained from AT&T to track a

suspect's public movements for seven hours.

On June 23, 2015, a state court in Kent County, Michigan, issued an arrest warrant for Montai Riley, having found probable cause to believe that he had committed armed robbery of a local Check 'n Go store. A member of Riley's family gave Riley's phone number to Riley's girlfriend, who in turn disclosed the number to law enforcement. Law enforcement applied for and received a court order to compel AT&T to produce telecommunications records of Riley's cell phone. Specifically, the court order compelled disclosure of call metada and cell-site location (CSL) data, as well as real-time tracking of the latitude and longitude coordinates of Riley's phone (known as "pinging").

Within hours of the issuance of the surveillance order, U.S. Marshals received real-time GPS data indicating Riley was located at the Airport Inn in Memphis. Task-Force deputies ascertained Riley's room number from the front desk (also finding out that he had been using the pseudonym "Rico Lavender"), entered Riley's room and arrested him.

The Sixth Circuit affirmed the district court's denial of a motion to suppress. Relying on *United States v. Skinner*, the court emphasized that because law enforcement was solely tracking Riley's movements *outside* his home, the use of the cell phone data did not constitute a search. The GPS tracking did not provide any significant insight that could not have been ascertained by observing Riley's travels "along public thoroughfares" to the hotel lobby.

NOTE: *Because Riley declined to argue a physical trespass theory and the court declined to consider an electronic trespass theory, the question as to whether pinging a cell phone may constitute an electronic trespass was not considered. SCOTUS has added an important case on this question,* Carpenter v. United States*, to be decided next term. Unlike Riley, which addresses the question of law enforcement tracking a suspect over the course of a seven hour window, Carpenter decides whether the warrantless tracking of a cellphone user's location and movements over a period of one hundred and twenty-seven days is permissible.*

LINK

Speech: University's Trademark Policy for Student Groups Creates Limited Public Forum; Discrimination against Pro-Marijuana Organization Violates First Amendment

Gerlach v. Leaf, no. 16-1518 (8th Cir. June 13, 2017).

Having created a limited public forum through its policy of licensing school trademarks and logos to all student groups, the University of Iowa could not selectively decline to allow such licensing to a pro-marijuana group in response to legislative pressure; such was improper viewpoint discrimination and did not support qualified immunity.

Iowa State University (ISU), a land grant school with an enrollment of 36,000 and 800 student organizations, allows student groups to use ISU's trademark, insignia and mascot "Cy the Cardinal" on merchandise, subject to approval from ISU's trademark office. In October 2012, NORML was given approval to produce t-shirts having "NORML ISU" on the front with the "O" represented by Cy the Cardinal, and on the back, the words "Freedom is NORML at ISU" with a small cannabis leaf above "NORML."

In November 2012, the Des Moines Register published a front page article referencing NORML ISU President Josh Montgomery: "Montgomery said his group has gotten nothing but support from the university. He even got approval from the licensing office to make a NORML T-shirt with

the ISU logo; the red shirt features Cy the Cardinal on the front, and a pot leaf on the back . . . ."

ISU immediately issued a statement stating that it allows all officially recognized student organizations to use ISU's marks as long as they observe proper procedures. "This does not mean that we take a position on what any of the organizations represent" and that the statement in the article might be misleading, confusing "recognition" of the NORML group as the university's "supporting" it.

After pressure from the Iowa legislature and governor, ISU changed its trademark policies. NORML ISU was informed that the university would not approve of any t-shirt design that used ISU trademarks in conjunction with a cannabis leaf and that henceforth NORML ISU requests would require prior review. ISU changed its guidelines, prohibiting "designs that suggest promotion of the below listed items . . . dangerous, illegal or unhealthy products, actions or behaviors; . . . [or] drugs and drug paraphernalia that are illegal or unhealthful." ISU thereafter rejected every NORML ISU design application that depicted a cannabis leaf, as well as designs that spelled out the NORML acronym but replaced "Marijuana" with either "M********" or "M[CENSORED]." (Several designs which did not use a cannabis leaf, but simply stated the group's name and fully spelled out the NORML acronym were approved).

In July 2014 NORML officials sued ISU, stating claims under 42 U.S.C. § 1983. Count I alleged that defendants' trademark licensing decisions, as applied to plaintiffs, violated their right to free speech. Counts II through IV alleged that the trademark guidelines were unconstitutional on their face and unconstitutionally vague.

The district court concluded that defendants were not entitled to qualified immunity and granted plaintiffs' motion for summary judgment on Count I but dismissed Counts II through IV. The district court also entered a permanent injunction that prohibits defendants "from enforcing trademark licensing policies against Plaintiffs in a viewpoint discriminatory manner and from further prohibiting Plaintiffs from producing licensed apparel on the basis that their designs include the image of a . . . cannabis leaf."

On appeal, defendants argued that plaintiffs lacked an injury in fact because they were asserting NORML ISU's right to free speech, not their own. The Eighth Circuit found that "Plaintiffs' allegations that ISU violated their First Amendment rights by rejecting their designs and therefore preventing their ability to spread NORML ISU's message are sufficient to establish an injury in fact."

The Circuit also denied qualified immunity. ISU had created a limited public forum through its process of allowing student groups to use its trademarks and logo. Having done so, it could not then then "discriminate against speech on the basis of its viewpoint." The court found defendants' discriminatory motive evidenced "by the unique scrutiny defendants imposed on NORML ISU after the Des Moines Register article was published." That unique scrutiny included requiring prior review of NORML ISU designs before they were even submitted to the ISU trademark office.

The court did not accept defendants' argument that political pushback played no role in their decision. The record was replete with internal messages evidencing concern about calls from the governor and "public relations implications." There was no record of the ISU trademark office having previously rejecting any student group's design application due to ostensible endorsement of the group's cause. Against this backdrop, defendants needed to show that the revised ISU trademark policy was narrowly tailored to satisfy a compelling governmental interest-which ISU could not do.

Defendants then argued that, despite viewpoint discrimination, they were engaged in government speech, which confers much greater scope: When the "government speaks, it is not barred by the Free Speech Clause from determining the content of what it says." *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2245 (2015). However, under *Summum, t*he

government speech doctrine does not apply if a government entity has created a limited public forum for speech.

Having determined that ISU had violated defendants' First Amendment rights, the Circuit examined whether those rights had been clearly established at the time of the conduct in question. They had been, for several decades: "plaintiffs' right not to be subjected to viewpoint discrimination while speaking in a university's limited public forum was thus clearly established at the times in question."

DISSENT: Judge Loken disagreed. He concurred that ISU officials had overreacted and that an injunction against enforcement of the discriminatory trademark policy was warranted, but opined that qualified immunity was warranted. Citing the Supreme Court's warning that qualified immunity should not be denied based on generalities, he found that " [t]he court cites no case in which school officials administering a trademark licensing program violated, or were even accused of violating, the First Amendment by denying proposed uses of the school's registered trademark." In his view, it was far from clear that ISU's trademark licensing was not a form of government speech. In support, he pointed to *Walker*, and more recently, the Eleventh Circuit's conclusion that private advertising banners printed in school colors, subject to school design requirements, and displayed on school fences were government speech because "observers reasonably believe the government has endorsed the message." *Mech v. Sch. Bd. of Palm Beach Cty.*, 806 F.3d 1070, 1076-77 (11th Cir. 2015) , cert. denied, 137 S. Ct. 73, 196 L. Ed. 2d 35 (2016).

In his view, the complex nuances of when a limited public forum is created had not been adequately assessed by the majority-requiring a finding of qualified immunity.

LINK

Search: Use of Real-Time GPS Location Data to Track Suspect during Seven Hour Period Is Not a Fourth Amendment Search; Per *Skinner*, There is No Expectation of Privacy in Public Movements

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LINK

Trials: Equitable Tolling Permitted Where Section 1983 Suit Was Dismissed Rather Than Transferred to Correct Venue

Hahn v. Waddington, No. 15-35091 (9th Cir. June 5, 2017).

The Ninth Circuit has allowed equitable tolling in a Section 1983 suit previously dismissed for improper venue, citing the statute's concern with civil rights and state abuse of power, emphasizing that the Plaintiff will still have to demonstrate diligence in pursuing his action in the proper venue.

Aaron Hahn {Hahn} filed a §1983 suit against Doug Waddington, the superintendent of the Washington State Correctional system, and others in the correctional system. Hahn's case involved defendants in both the Eastern and Western District federal courts of Washington. Defendants raised a defense that the suit was barred by the statute of limitation, an argument with which the district court agreed, holding equitable tolling - tolling when "justice requires" - did not apply. The Ninth Circuit disagreed.

In recounting the facts, it noted Hahn timely and appropriately filed his case in the *Eastern* District of Washington. When that Court dismissed the case against residents of that District, however, it then erred by *dismissing* the case entirely rather than *transferring venue* to the Western District of Washington Court for claims pending against a resident there. Hahn only received notice of the dismissal after the statute of limitations had expired, meaning equitable tolling could have applied. The Court found "[s]trict adherence to the statute of limitations in the face of procedural unfairness cannot be reconciled with §1983" in light of the fact that the statute concerns civil rights and the prevention of state abuses of power. It also found tolling would not frustrate the underlying general purposes of statutes of limitation - finality and protection from stale and unverifiable claims - in this case. The court closed by noting that to Hahn still had to show he was diligent in pursuing his action in the Western District of Washington after dismissal - something the appellate court did not know - and therefore he had more work to do on remand.

LINK

THIS JUST IN:

Where Only Injunctive Relief is Sought, and the Only Defendant is the City, It's Back to State Court

In a decision issued yesterday, the 11th Circuit concluded that in a suit that had been removed to federal court and then remanded to the state courts, the Class Action Fairness Act's "Home State Exception" applied. Thus, the remand was correct. The suit involved claims by a class of motorists that a red light program violated their rights.

The case is ***Hunter v. City of Montgomery***, no. 16-15861 (11th Cir. June 14, 2017).

LINK

No Qualified Immunity for SEC Penalties

A California federal court has denied qualified immunity to a defendant in the City of Victorville litigation, citing the Eleventh Circuit's holding in *SEC v. City of Miami* that qualified immunity is unavailable where the underlying claim is in the nature of a penalty designed to deter future misconduct rather than a claim for damages meant to compensate a victim.

The case is ***SEC v. City of Victorville***, no. cv 13-00776 (C.D. Ca. June 2, 2017)

LINK

IMLA

www.imla.org
51 Monroe Street
Suite 404
Rockville, MD 20850
202-466-5424

