International Municipal Lawyers Association
www.imla.org

IMLA NEWS
Issue 1 – February 2, 2024

FEATURED CASE:

NYC Law Safeguarding Hourly Workers Deemed Constitutional by Second Circuit

Restaurant Law Center v. City of New York, No. 22-491 (2d Cir. Jan. 5, 2024).

In 2017, New York City enacted the Fair Workweek Law to safeguard the wage and hour rights of fast-food industry employees, targeting establishments with specific criteria. Recently amended in December 2020, the law now includes a mandate that employers cannot dismiss employee's post-probation without just cause or economic reasons. Plaintiffs, including the Restaurant Law Center, challenged the amendments, citing preemption by federal acts and constitutional violations. However, the Second Circuit upheld the City's amendments, rejecting claims of preemption and dormant Commerce Clause violations.

Background:

In 2017, the City of New York implemented the Fair Workweek Law to safeguard wage and hour rights for utility, retail, and fast-food industry employees. For fast-food workers, the law specifically targets establishments that primarily serve food and drink that is paid for before consumption, provide limited service, and are members in a chain of 30 or more establishments nationwide.

In December 2020, the City Council amended the Fair Workweek Law to include the Wrongful Discharge Law ("Law"), which prevents covered employers from terminating hourly wage employees without notice or reason, unless for egregious misconduct. Additionally, it introduces two critical provisions subject to appeal: the Just Cause Provision and the Arbitration Provision.

The Just Cause Provision mandates that a covered fast-food employer cannot dismiss an employee who has completed the probation period unless for just cause or bona fide economic reasons. The term "discharge" includes any cessation of employment, and "just cause" is defined as the failure to perform job duties satisfactorily or engaging in demonstrably harmful misconduct. Factors for determining just cause, including an employer's use of a progressive discipline policy, are outlined, and the employer must provide a written explanation for the discharge within five days.

Employers may claim exceptions to the just-cause requirement for bona fide economic reasons, requiring them to demonstrate operational changes in response to a reduction in production, sales, or profit.

The Arbitration Provision introduces a third enforcement option under the Law. Previously, employees could file an administrative complaint or bring a private action in court. With the new provision, any person or organization representing those alleging a violation can initiate an arbitration proceeding. If an employee chooses arbitration, it becomes the exclusive remedy, barring other legal actions unless the arbitration proceeding is withdrawn or dismissed without prejudice. Successful employees in arbitration are entitled to attorneys' fees, costs, reinstatement, and other appropriate relief.

Plaintiffs, including the Restaurant Law Center and the New York State Restaurant Association, filed a lawsuit in 2021, seeking to enjoin the Law's enforcement. They argued preemption by the National Labor Relations Act ("NLRA") and the Federal Arbitration Act ("FAA"), along with violations of the dormant Commerce Clause, the New York State Constitution, and state law.

Appeal:

After cross-motions for summary judgment, the district court granted the City's motion on federal claims. The court rejected preemption arguments, concluding that the NLRA does not preempt the Law as a validly enacted minimum labor standard. It also found no violation of the dormant Commerce Clause and rejected the claim that the Law's arbitration provision is preempted by the FAA. As a result, the court declined to exercise supplemental jurisdiction over state law claims. The plaintiffs appealed and the Second Circuit upheld.

Analysis:

Preemption
The Second Circuit first addressed the question of whether the Law is preempted by the National Labor Relations Act ("NLRA"). The NLRA aims to eliminate obstructions of commerce by encouraging collective bargaining and protecting workers' freedom of association. However, the NLRA does not explicitly include a preemption provision, and the court reasoned that the mere existence of the NLRA does not indicate a congressional intent to usurp the entire field of labor-management relations.

The court focused its preemption analysis on the application of the *Machinists* doctrine, which prohibits states and localities from interfering with the labor-management bargaining process. It explains that the NLRA established a framework for self-organization and collective bargaining, and *Machinists* preemption limits state regulation of activities related to labor-management relations.

Plaintiffs argued that the Law is preempted under *Machinists* doctrine, but the Second Circuit disagreed, citing *New York Tel. Co. v. New York State Dept. of Lab.* and *Fort Halifax Packing Co. v. Coyne*, which upheld state laws providing benefits and protections to workers without impeding collective bargaining processes. The court emphasized that states retain authority under their police powers to regulate substantive labor standards, which form the backdrop for federal employment negotiations.

Plaintiffs' argument on appeal that the Law imposes collective-bargaining agreement terms on nonunionized employers was dismissed by the court, which found that such a requirement does not trigger *Machinists* preemption. The court further dismissed the argument that the Law encourages

unionization and points out that lobbying efforts and legislative history are irrelevant to preemption analysis.

The court addressed Plaintiffs' claim that the Law restricts the use of lockouts during labor disputes. While acknowledging that this claim may raise preemption issues, the court concluded that it is speculative and not enough to prevail on a facial challenge to the Law.

Dormant Commerce Clause

The court found the Law does not violate the dormant Commerce Clause. The court noted that the dormant Commerce Clause's scope is not absolute, allowing states broad power to regulate their affairs even if it adversely affects interstate commerce.

The court dismissed the plaintiffs' argument that the law discriminates against interstate commerce in practical effect, as it applies to all fast-food establishments meeting certain criteria, irrespective of their location, emphasizing that the law's focus on chain size is logical, given larger chains can better absorb compliance costs. The court rebuked the plaintiffs' approach, arguing that it would prioritize inflexible rules over nuanced case-by-case analysis.

Drawing on precedent, the court rejected the claim that burdening some interstate companies equates to discrimination against interstate commerce. It distinguished the case at bar from *Cachia v. Islamorada*, highlighting that New York's law regulates methods of operation rather than outright prohibiting chain restaurants. The court concluded that any local costs imposed by the law are highly localized, not creating a competitive disadvantage for out-of-state businesses.

In assessing the law's effects, the court found no evidence supporting claims of diminished franchise royalties or profits for out-of-state companies. It deemed any incidental burdens on interstate commerce, primarily compliance costs for fast-food businesses, insufficient to challenge the law under *Pike* balancing. The court underscored the law's local benefits, protecting fast-food employees from arbitrary terminations, homelessness, and food insecurity, which outweigh any potential burdens.

In conclusion the Second Circuit Court affirmed, stating “the Law represents an unexceptional exercise of the City’s traditional power to regulate and define minimum labor standards.”

Restaurant Law Center v. City of New York

SHORT SUMMARIES:

3rd Circuit – Prosecutorial Immunity – Jailhouse snitches – Wrongful Conviction

This case involves allegations that a prosecutor seeing a case fall apart for lack of evidence knowingly used false testimony from a jailhouse snitch to convict a person who is now suing for being wrongfully convicted. The Plaintiff spent 13 years in prison having been convicted of murder and was exonerated. The suit alleged that the prosecutor upon seeing the case fall apart sought to join with the police to develop more evidence of motive including bringing in a jailhouse snitch who had previously been convicted of making false statements to the police. The prosecutor asserted absolute prosecutorial immunity which the lower court denied. On appeal the panel concluded that

the attorney's actions were not within the traditional role of the prosecutorial function and that the lower court properly denied immunity.

Note to readers: At IMLA programs in the past we have included within the ethics element aspirational statements from well respected jurists and lawyers that include the admonition that our goals should always be seeking justice and recognize that defendants and opponents are generally our constituents just as are our clients and victims of crime. In short be fair.

Roberts v. Lau

4th Circuit – Discovery Violation – Excessive Force

Plaintiff files an untimely discovery request; rather than object officer responds, but does not include pertinent information. Before trial, additional information becomes available and officer does not supplement the discovery. During trial officer is questioned about whether other claims of excessive force have been filed against him. He mentions one case but denies any others exist, although one does which should have been disclosed. Jury finds for officer. On appeal the panel concludes that the District Court erred in not granting a new trial due to the failed discovery. Reversed. Of note and pertinent to the decision the officer's lawyer was the lawyer in all the claims filed against the officer which probably helped the court find the officer at fault for failed discovery.

Morgan v. Tincher

4th Circuit – Malicious prosecution – coerced confessions – probable cause

Two men were arrested for sexual assault and burglary. They spent around a year in jail before their cases were *nolle prossed*. The case turns on the probable cause the officers had to arrest the defendants and the lower court granted the officers' motions as to one of the men "English" but not the other "Powell". The victim identified her assailant by name leading to English's arrest. She did not know the other assailant, but gave a bit of a description. When English was arrested, he implicated Powell and eventually Powell was arrested and confessed. Both claim that their statements were coerced. As a result, the panel affirmed the lower court's decision as to English because it concluded there was sufficient probable cause without the confession to uphold the validity of the arrest. Whereas, the panel concluded that the evidence regarding whether the confession was coerced was in dispute and because the confessions were central to the prosecution of Powell a jury must determine whether the confessions were voluntarily given or coerced. The court did not delve into significant analysis regarding the Powell claim and the officer's defense only to say that the factual dispute makes the appeal inappropriate. To the officer's argument that infirm confessions can support probable cause, the court only said "While Clarke argues that confessions, even if coerced, can bolster the case for probable cause, the district court held that infirm confessions should not be included in the probable cause calculus. See Gilliam v. Sealy, 932 F.3d 216, 234–35 (4th Cir. 2019). Here we are not in any position to sort out the facts and determine whether the confessions are infirm or not." I leave it to you to ask "if infirm confessions can support probable cause and confessions infirm or not provided probable cause to arrest Powell, why couldn't the panel rule that qualified immunity applied?

English v. Clarke

4th Circuit – Land Use

In a decision that needs to be in every land use lawyer's arsenal, the 4th Circuit rationally explained why the federal courts have no business second guessing land use decisions by local elected leaders absent some clear evidence of constitutional violation. In this case the court reviewed the lower court's dismissal of a claim by developers against a city for denying the developer's plans. Some of the court's analysis ought to be in every local government lawyer's quiver:

"As a prefatory matter, we underscore that zoning decisions are presumptively the province of local governments. Land use decisions like these lie at the core of local governments' historic responsibilities in much the same way that state governments regulate domestic relations and the federal government oversees matters of national security. See *Gardner v. City of Baltimore Mayor & City Council*, 969 F.2d 63, 67 (4th Cir. 1992).

"To have the federal courts upending zoning decisions impairs the constitutional architecture in two ways. First, zoning challenges constitute a request for the federal government to intervene in local affairs. Zoning decisions primarily impact the communities to which they apply. Local officials are well equipped to make such decisions because they interact with those most affected and can remain attentive to their changing needs. Their constituents attend the schools, drive the roads, and drink the water that zoning classifications affect. The federal government, on the other hand, waves a distant wand. It cannot inform itself about individual communities well enough to know their needs and is thus comparatively ill-suited to decide matters of zoning."

SAS Associates I v. City Council of Chesapeake Virginia

4th Circuit – ADA – Accommodation – Constructive Discharge

Person hired as Town Attorney. Becomes City Manager and the town becomes embroiled in political turmoil. The elected leaders engage in harassing behavior and interfere with the manager's duties and rules, treat the manager badly and do so publicly. The manager hires a law firm to represent the manager's personal interests and those of other staff members who are similarly upset. The Town agrees to engage in an interactive process, but the manager asserts they failed to do so. Eventually manager resigns asserting constructive discharge and sues. Claims dismissed for failure to state a claim. Panel upholds dismissal as manager "alleged no facts (1) warranting an inference of disability discrimination; or (2) connecting his asserted "accommodation request" to his disabilities".

Kelly v. Town of Abingdon

4th Circuit – Guns – First Amendment – Required Notifications

Anne Arundel County, Maryland considering the great number of suicides attributed to guns (approximately 30% of all suicides) adopted a requirement that merchants of guns and gun ammunition must provide a pamphlet to buyers that discusses suicide and suicide prevention; these were: "an eight-page pamphlet entitled "Firearms and Suicide Prevention" and a single page flyer providing information about Anne Arundel County's resources for "conflict resolution," including where to obtain a suicide-prevention toolkit." The lower court found in favor of the County and in

doing so excluded the expert witness proferred by the Plaintiffs because the witness based the opinion on a conclusion that the pamphlets stated that guns cause suicides which the court determined was not the message conveyed by the pamphlets and the panel affirmed.

Maryland Shall Issue v. Anne Arundel County

6th Circuit – Immunity – Local Officers following direction of federal officials – Joint Task Force

As we so often see, this case involves an unspeakable tragedy. Police officers attempting to apprehend a dangerous felon engaged in a two-state car chase at speeds over 100 miles an hour through urban areas. The chase ended when the felon crashed into an outdoor café where a couple was dining, killing them and seriously injuring two pedestrians. One officer was a member of a federal task force and that officer, once the car chase began, pursuant to the task force policy, sought help from the local police in apprehending the felon and took control of the chase from the city's communications. All officers sought immunity provided by federal law to those acting on behalf of the federal government under the Westfall Act, 28 U.S.C. §§ 2679(b)(1), (d)(1), (d)(3). The lower court denied immunity as the US disclaimed responsibility for the officers. The panel reversed in part finding that one officer showed sufficient deputization by the US while affirming denial of immunity to the two city officers not fully deputized but who acted at the direction of the officer who had been deputized. There's a dissent that seems to this writer a better analysis of agency law and responsibility in which the dissent concluded that upon finding the officer who took charge of the chase to be federally deputized that the other officers were acting under that officers direction and should be protected by the immunity provided.
Learning Lesson: Have officers fully understand the scope of their work and liability when acting at the direction of federal officers when involved in joint task forces and responding to requests from federal agents such as TSA or CBP.

Liable v. Lanter

7th Circuit – Jails – Medical Needs

Proving once again that closing asylums only moved the insane from a civil institution designed to treat them to a penal institution designed for different purposes, an inmate in a jail who frequently caused self harm, pushed a screw into his arm at the crook in his elbow. As part of this really smart move, the inmate also ate some metal from a broken mirror that offered access to the screw. A nurse was called and could not find the screw in the folds of the inmate's arm. A doctor was called. Here is where it goes downhill for the jail. For whatever reason, maybe it was the inmate's attempt to head butt the doctor, the doctor attempted to remove the screw without anesthesia allegedly causing great pain and suffering, not once but twice. After failing these tactics, the jail removed the inmate to a hospital where the screw was removed painlessly, easily and with anesthesia. Suit followed. Immunity granted. No immunity on appeal.

Brown v. Lavoie

7th Circuit – Firefighters Employment Testing – Discrimination – Disparate Impact

A candidate for a position with the City of Madison fire department failed the city's test and alleged that it was designed with and had a disparate impact upon female applicants. The city and the Plaintiff agreed that the test had a disparate impact and that a test used by several cities and embraced by the IAFF had less of a disparate impact. Nevertheless, the panel affirmed the lower4 court's decision in favor of the city concluding that the evidence provided by the city supported its position that the test it used was designed for the specific needs of the city, it's structures, its equipment, firefighter safety, was less expensive to use and did not incur as much overtime cost. Great work by the City of Madison.

Erdman v. City of Madison

8th Circuit – Agricultural Operations Protection laws

Iowa passed several laws to protect agricultural operations. If you're from a jurisdiction that hosts large agricultural operations, you'll recognize that conflicts exist between the urban neighbors and the farming community and even greater conflict exists between agricultural operators and animal protection groups. In the latter instance some groups enter property under false pretenses and will have members gain employment with the specific intent on spying on the operations to later publicize what they believe are inhumane treatment of animals. The Iowa legislature as other states and some cities and counties adopted laws to address these issues. In two recent cases the 8th Circuit addressed the application of the Constitution to these laws. The First Amendment analysis is instructive.

***Animal Legal Defense Fund v. Reynolds* &**
Animal Legal Defense Fund v. Reynolds

9th Circuit – 11th Amendment – Bail

Class action lawsuit seeking to reform the bail system in Los Angeles County fails. Suite named the judges of the court asserting that the judges set cash bail in cases where defendants could not afford the bail deprived those defendants of due process by unlawfully detaining them pretrial. 11th Amendment immunity applies. You can't sue state courts or state court judges acting in their judicial capacity in federal court. To the extent that " *Wolfe v. Strankman*, 392 F.3d 358 (9th Cir. 2004), can be read to hold that the Ex parte Young exception allows injunctions against judges acting in their judicial capacity, that conclusion is clearly irreconcilable with *Whole Woman's Health v. Jackson*, 595 U.S. 30 (2021), and thus overruled."

Munoz v. Superior Court of Los Angeles County

11th Circuit – Jails – Duty to protect – Racial Animus

As the court notes – jails are a dangerous place. A person upset by seeing white police officers shooting black men decided "somebody has to do something". He enters a store and stabs a white clerk several times leading to his arrest. The police report did not include the motivation for the crime but when booked at the jail one of the officers had the man explain his motivation. That information

did not go past the intake officer and the man was booked into a cell with a white man. The cell apparently had something of a revolving door as another inmate entered who was black and the other white inmate left for other destinations and another white inmate was assigned to the cell and eventually the other black inmate left. During rounds an officer saw the man strangling his cellmate. When asked, the inmate complained that his cellmate had put hair in his food. This would be the cellmates last such action as he died from being strangled. Suit followed by the estate asserting that because the jailors knew the man's revenge motivations based on race that he should not have been placed in a cell with a white inmate. The lower court denied the intake officer's motion for summary judgment on a qualified immunity defense and this panel affirmed. Perhaps, the best analysis comes from the concurring opinion which explains the decision in that judge's mind: "To clarify, the law that this Circuit has now clearly established is this: "prison officials have a duty" under the Fourteenth Amendment to take reasonable action "to protect prisoners from violence at the hands of other prisoners" when officials have a reasonable belief that another inmate might have racial animus and, thus, is dangerous even when that inmate is housed with others of different races and ethnicities for several days with[1]out incident. Maj. Op. at 6-7; See *Bowen v. Warden Baldwin State Prison*, 826 F.3d 1312, 1320 (11th Cir. 2016)." Oddly, there are three opinions in this case: the panel decision, the concurring opinion by one of the judges and a separate concurring opinion by the other two judges that attempts to dispute the analysis of the other concurring opinion. From the second concurrence: "Our colleague's separate concurring opinion would take a more expansive approach by interpreting the Court's decision to "recognize[]" that "any evidence of racial animus—even when there may be other motivations behind the assailant's actions—is sufficient to overcome qualified immunity under these circumstances." Abudu Concurrence at 7 (emphasis added). Our decision does not recognize or even imply that, and it certainly does not hold that. Reframing our decision in that way would defy all of our many precedents stressing that a holding reaches only as far as the facts and circumstances of the case. See, e.g., *Chavers*, 468 F.3d at 1275". Couldn't someone have just agreed on what they wanted to say?

Nelson v. Tompkins

11th Circuit – First Amendment – Removal of Prosecutor

The political divide finds additional evidence in this case where the Florida Governor suspended the elected prosecutor in Hillsborough County. Without delving too deeply into specifics, the prosecutor was elected as a "reform prosecutor" and affiliated with a party different from that of the Governor. Elected to a second term the prosecutor joined in making statements regarding prosecution of restrictive abortion laws, transgender laws and adopted non-prosecution policies that apparently upset the proverbial apple cart being pulled by the state law enforcement community. So, the prosecutor sued in federal court and lost at the District Court level. On appeal, the panel concluded that the prosecutor showed sufficient evidence that the Governor's motivation for suspension lay in protected First Amendment activities to send the case back to the lower court to determine if the Governor would have suspended the prosecutor for unprotected activities. For those outside Florida, the Governor also suspended the elected prosecutor in Orange County. That prosecutor was also "progressive," affiliated with a party different from the Governor's and building a platform of "reform."

Warren v. DeSantis

11th Circuit – Warrantless Arrests – 4th Amendment – Your Home is your Castle

This case came before the Circuit for a second time. Previously the court had found that no immunity protected an officer for entering a home to arrest the Plaintiff. In this iteration, the panel reviewed a decision by the lower court to grant judgment based on qualified immunity not withstanding a jury verdict that found for the Plaintiff and awarded $625,000 in damages. Long story short – an officer cannot enter a hone to arrest a person absent a warrant or exigent circumstances. The jury in this case concluded that the officer arrested the Plaintiff outside the home, but that there were no exigent circumstances to capture the fleeing arrestee once the arrestee retreated into the home.

Learning point: Officers need to understand that a fleeing misdemeanant who retreats into a home and is known to the officer is protected by the 4th Amendment and the officer absent exigency needs to get a warrant to arrest that person.

Bailey v. Swindell