CIRCUIT OVERLOAD

(MARCH 10, 2023 through MARCH 10, 2024)
by
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U. S. CIRCUIT COURT DECICIONS

FIRST AMENDMENT

Public/Private Speech

Ciarametaro v. City of Gloucester, *__ F.4th __, No. 22-1780 (1st Cir., Nov. 28, 2023).*
Qualified immunity was granted to public officials who threatened retaliation against an employee whose expert testimony would harm the city's relationship with its fishing community. The employee's free speech right as a private citizen did not clearly outweigh the effect that his testimony would have on the public perception of his municipality.

DiMarco v. St. Clair Borough, *No. 22-2865 (4th Cir., Sept. 29, 2023)(Unpub.).*
An officer who used Facebook to promote the tasing of a volunteer as part of a fundraiser may have been speaking as a private citizen, but his First Amendment interest was outweighed by his department's interest in maintaining order and discipline.

Dusterhoft v. City of Austin, *No. 23-50313 (5th Cir., Oct. 13, 2023)(Unpub.).*
An employee who complains to another municipal employee outside his chain of command does not thereby speak as a "private citizen."

Ashford v. U. of Michigan,*__ F.4th __, No. 22-2057 (6th Cir., Jan. 9, 2024).*
An officer who spoke outside of his chain of command with a reporter about his department's apparent mishandling of a sexual assault case spoke on a matter of public concern and not pursuant to his official duties. Public safety employers do not have a greater interest in regulating employee speech to promote department efficiency than any other government employer.

Hayes v. Nashville, *Nos. 23-5027/5075 (6th Cir., Dec. 13, 2023)(Unpub.).*
The mere fact that an employee shares non-confidential information learned during employment does not make his speech "government speech" for purposes of a First Amendment analysis.

Middleton v. Lexington-Fayette County, *No. 22-6040 (6th Cir., Feb. 20, 2024)(Unpub.).*
An officer who was disciplined for disclosing confidential information to his cousin did not suffer a First Amendment violation.

Religious Speech/Establishment Clause

Maryland Shall Issue v. Anne Arundel County, *__ F.4th __, No. 23-1351 (4th Cir., Jan. 23, 2024).*
An ordinance requiring gun retailers to distribute literature related to gun safety, suicide, mental health, and conflict resolution to their customers does not violate the First Amendment, as it is factual, uncontroversial, and not unduly burdensome.

Assoc. of Club Exct v. Dallas, *__ F.4th __, No. 22-10556 (5th Cir., Oct. 12, 2023).*
An ordinance that requires SOBs to close between 2 am and 6 am in order to deter crime is likely constitutional and does not substantially limit speech, as the clubs are still open 20 hours each day.

Reagan Natn'l Advertising v. City of Austin, *__ F.4th. __, No. 19-50354 (5th Cir., Mar. 30, 2023).*
An ordinance prohibiting off-premises commercial and non-commercial signs is "content neutral" and survives, under an intermediate scrutiny analysis, a First Amendment challenge.

Animal Legal Def. Fund v. Reynolds, *__ F.4th __, No. 22-3464 (8th Cir., Jan. 8, 2024).*
A law prohibiting the placement of cameras on trespassed property is not facially unconstitutional under the First Amendment.

Krishna Lunch v. Beck, *No. 23-55072 (9th Cir., Sept. 21, 2023)(Unpub.).*
In a limited public forum such as a school campus, limiting groups to four reserved spots per quarter and charging them a $500 fee are likely constitutional restrictions on free speech.

Long v. Sugai, *__ F.4th __, No. 22-15997 (9th Cir., Feb. 5, 2024).*
Summary judgment was denied on a First Amendment claim stemming from the early delivery of a meal to a Muslim prisoner that got cold before he could break his fast, which action may substantially burden his free exercise of religion.

Yim v. Seattle, *__ F.4th. __, No. 21-35567 (9th Cir., Mar. 21, 2023).*
An ordinance prohibiting any discussion between landlords and prospective tenants regarding the latter's criminal history impinges upon landlords' First Amendment rights and is not narrowly tailored to achieve the city's goal of reducing racial injustice and housing barriers.

Young Israel v. Hillsborough, *__ F.4th __, No. 22-11787 (11th Cir., Jan. 10, 2024).*
A regional transit authority's policy on advertisements promoting a religious faith violated the First Amendment because its terms were vague, there was no official guidance, and it vested too much discretion in those who applied it.

Laws/Policies

Turco v. City of Englewood, *No. 22-2647 (3rd Cir., Jan. 31, 2024).(Unpub.).*
An ordinance creating an 8 – foot buffer zone outside the entrances to health care and transactional facilities survives a First Amendment challenge, as it is narrowly tailored and not overbroad.

McGriff v. Miami Beach, *__ F.4th __, No. 22-12863 (11th Cir., Oct. 27, 2023).*
The First Amendment does not require the government to display any particular artwork in an art exhibition that it funds, organizes and promotes as government speech.

Other Cases

Falcone v. Dickstein,__ *F.4th __, Nos. 22-2701/2702 (3rd Cir., Feb. 5, 2024).*
Refusing to wear a mask at a school board meeting is not First Amendment expressive conduct.

Ruttle v. Brady*, No. 22-3000 (4th Cir., Aug. 29, 2023(Unpub.).*
The verbal censure of a public official by other public officials is not an "adverse" retaliatory act that could form the basis of a First Amendment claim.

Bailey v. Iles*, __ F.4th __, No. 22-30509 (5th Cir., Nov. 21, 2023).*
A Facebook poster's First and Fourteenth Amendment rights were violated when he was arrested for "terrorizing" by means of a false post stating that county sheriffs were ordered to shoot on sight anyone infected with COVID and urging others to share the post, since it did not direct or initiate "imminent" lawless action.

Jackson Mun. Airport Auth. v. Harkins*, No. 21-60312 (5th Cir., Aug. 25, 2023)(Unpub.).*
Legislative privilege may apply to communications with third parties outside of the legislative forum if the communication pertains to potential legislation.

Kallinen v. Neuman*, No. 22-20383 (5th Cir, Mar. 27, 2023)(Unpub.).*
A judge who used his personal Facebook page to support his political campaign did not violate the First Amendment by blocking a lawyer who often appeared before him and was making negative comments about him.

National Press v. McCraw*, __ F.4th __, No. 22-50337 (5th Cir., Oct. 23, 2023).*
There is no First Amendment right to use unmanned drones to film private citizens and their property without their consent.

Villarreal v. City of Laredo,__ *F.4th __, No. 20-40359 (5th Cir., Jan. 23, 2024).*
Officers are entitled to qualified immunity on First and Fourth Amendment claims that arose when they arrested a citizen reporter for releasing to the public confidential law enforcement information about a suicide and deceased motor vehicle accident victims.

DeMian v. St. Louis*, __ F.4th __, No. 22-3000 (8th Cir., Nov. 16, 2023).*
No First Amendment violation occurred when police officers pepper-sprayed a crowd of protestors that included a non-protesting photographer, as there is no evidence that the officer recognized her or sprayed her in retaliation for her taking pictures.

Felts v. Green,__ *F.4th __, No. 23-1042 (8th Cir., Jan. 29, 2024).*
An alderman who blocked a complaining citizen from accessing a Twitter account that she used primarily for official government business thereby violated the First Amendment by engaging in viewpoint discrimination.

Camenzind v. CA Exposition*, __ F.4th __, No. 22-15931 (9th Cir., Oct. 31, 2023).*
An enclosed, ticketed portion of a fairgrounds constitutes a non-public forum.

Jamgotchian v. Ferraro,__ *F.4th __, No. 23-55735 (9th Cir., Feb. 26, 2024).*
In this case over the naming of a horse, a state agency's decision to deny the name "Malpractice Meuser" does not preclude the horse owner form bringing an action alleging a First Amendment violation.

StreetMediaGroup v. Stockinger*, No. 21-1448 (10th Cir., Aug. 25, 2023)(Unpub.).*
A regulatory scheme treating billboards differently depending upon whether their message is paid for or not does not violate the First Amendment - - as it furthers the legitimate governmental objective of promoting roadside safety and aesthetics.

US v. Martinez*, __ F.4th __, No. 22-1167 (10th Cir, Dec. 20, 2023).*
A detective's testimony about the accused's Santa Muerte ("Our Lady of Holy Death") shrine did not violate the First Amendment.

McDonough v. Garcia,__ *F.4th __, No. 22-11421 (11th Cir., Jan. 10, 2024).*
Swearing at officers and making obscene gestures are protected speech under the First Amendment. However, barring someone from future Council meetings held in a designated public forum violates the First Amendment when the trespass order is not narrowly tailored and does not provide alternative channels of communication.

SECOND AMENDMENT

Lara v. Commissioner, PA State Police,__ *F.4th __, No. 21-1832 (3rd Cir., Jan. 18, 2024).*
The Second Amendment right to bear arms applies to 18- to 21-year-old persons.

US v. Cash*, No. 22-2713 (4th Cir., Oct. 6, 2023)(Unpub.).*
The Second Amendment does not protect a person who possesses a firearm in his house for unlawful purposes.

Grisham v. Valenciano,__ *F.4th __, No. 22-50915 (5th Cir., Feb. 26, 2024).*
Probable cause existed to arrest two Second Amendment protesters for standing on a street corner armed with AK-47s, since officers could have rightfully thought they were engaging in criminal activity.

Bevis v. Naperville*, __ F.4th __, Nos. 23-1353/1793/1825 (7th Cir., Nov. 3, 2023).*
An ordinance banning assault rifles and high-capacity magazines probably does not violate the Second Amendment.

Brizuela v. City of Sparks*, No. 22-16357 (9th Cir., Aug. 25, 2023)(Unpub.).*
While the Supreme Court has held that the Second Amendment allows a person to retain a firearm in his home, it is unclear as to his right to possess a firearm at a particular time and place - - such as when he is shot by officers because he is observed holding a firearm on his front porch.

FOURTH AMENDMENT

Traffic Stop

US v. Fishbourne, *No. 21-4200 (4th Cir., Sept. 6, 2023)(Unpub.).*
A traffic checkpoint established after speeding complaints were received did not violate the Fourth Amendment when the checkpoint was visible from 500 feet away, marked with a sign and lit, and every vehicle was stopped and subjected to a driver's license, registration and insurance request.

US v. Alkhegani, *__ F.4th __, No. 21-10966 (5th Cir, Aug. 17, 2023).*
Minor inconsistencies in eyewitness accounts does not automatically render the officer's reasonable suspicion and resultant traffic stop invalid.

US v. Tellez, *__ F.4th __, No. 22-5902 (6th Cir., Nov. 17, 2023).*
When an officer asks the driver of a vehicle during a traffic stop: "Do you have your wallet? Let me see it for a minute," the driver's handing the wallet to the officer implies consent to search it.

US v. Hays,*__ F.4th __, No. 22-3294 (7th Cir., Jan. 12, 2024).*
Under the 'automobile exception" to the Fourth Amendment's warrant requirement, officers may conduct a warrantless search of a vehicle as long as they have probable cause to believe that it may contain contraband. This includes the vehicle's air filter.

US v. Ho, *No. 22-50294 (9th Cir., Jan. 31, 2024)(Unpub.).*
A driver who, after giving police permission to search his vehicle then asked: "Can I consent not to search the vehicle?" thereby withdrew his consent to the search.

US v. Dawson,*__ F.4th __, No. 22-8064 (10th Cir., Jan. 22, 2024).*
An officer does not violate the Fourth Amendment by checking the rental agreement of a car pulled over for speeding.

Johnson v. Nocco, *__ F.4th __, No. 21-10670 (11th Cir., Oct. 2, 2023).*
The Supreme Court has never ruled that an officer, during a traffic stop, cannot ask a vehicle passenger to identify herself without reasonable suspicion or a reason to believe that the passenger poses a risk to his safety.

K-9

Whitworth v. Kling,*__ F.4th __, No. 22-3051 (8th Cir., Jan. 17, 2024).*
An accidental K-9 bite suffered while visiting a police dog handler's home is not a seizure under the Fourth Amendment.

US v. Moore, *No. 22-30009 (9th Cir., Oct. 20, 2023)(Unpub.).*
A drug dog may conduct a warrantless search of a car's exterior and, once probable cause exists to believe that the car contains contraband, may enter the interior of the car as well.

"Exigent Circumstances"

Banks v. Herbrick, *__ F.4th __, No. 23-20107 (5th Cir., Jan. 3, 2024).*
The mere possibility of future damages is not enough of an "exigency" to justify the warrantless removal of a child from her mother.

US v. Maxwell, *__ F.4th __, No. 22-2655 (8th Cir., Dec. 27, 2023).*
The warrantless entry into a private residence was permitted due to "exigent circumstances," as two small children were present in the home and were either unattended or with the suspect, and it would have taken hours to obtain a warrant.

US. v. Williams, *__ F.4th __, No. 223023 (8th Cir., Aug. 16, 2023).*
A suspect who has just fired a gun is on a different Fourth Amendment footing from someone who merely possesses a gun. No violation occurred when officers made a warrantless entry into a house occupied by a man who illegally fired a gun a few minutes prior and patted him down to ensure he was not armed before questioning him.

Bailey v. Swindell, *__ F.4th __, No. 21-14454 (11th Cir., Jan. 8, 2024).*
Absent "exigent circumstances" or a warrant, an officer who tackles a suspect through the front door of his parent's house and then arrests him inside the house is not entitled to qualified immunity on a Fourth Amendment claim.

"Expectation of Privacy"

Hughson v. Chemung County, *__ F.4th __, No. 21-2998 (2nd Cir., Sept. 21, 2023).*
If a misdemeanor arrestee is subjected to an *ad hoc* strip search without reasonable suspicion or a universal policy requiring the strip search of all detainees, his Fourth Amendment rights are violated.

US v. Montalvo-Flores, *__ F.4th __, No. 22-1752 (4th Cir., Aug. 28, 2023).*
A drug dealer who had control of a rental car with his girlfriend's permission had a reasonable "expectation of privacy" in it for Fourth Amendment purposes.

Foxhoven v. Stacy, *__ F.4th. __, No. 23-1692 (8th Cir., Dec. 21, 2023).*
Police need not have a warrant to enter a driveway. A person cannot bring a Fourth Amendment claim to vindicate the constitutional rights of another.

US v. Vittetoe, *__ F.4th __, No. 22-2930 (8th Cir., Nov. 30, 2023).*
Because a vehicle was reported stolen, officers could conduct a warrantless search of it seeking evidence of it being stolen.

US v. Carter, *Nos. 21-30254/30257/30258 (9th Cir., Aug. 25, 2023)(Unpub.).*
For Fourth Amendment purposes, throwing away a gun and satchel of drugs when confronted by the police constituted an abandonment of those items.

***Yarofalchuw v. Cabrera**, No. 23-15279 (9th Cir., Mar. 8, 2024)(Unpub.).*
Qualified immunity was granted to officers who arrested a man at the end of his driveway as against a curtilage violation claim.

***Becerra v. City of Albuquerque**, No. 23-2053 (10th Cir., Nov. 7, 2023)(Unpub.).*
Officers who were able to view a suspect's vehicle license plate from their vantage point in his driveway did not thereby conduct a Fourth Amendment search.

***US v. Ronquillo**,__ F.4th __, No. 22-1247 (10th Cir., Mar. 7, 2024).*
A detached garage was in the curtilage of a house when it was close to the residence, enclosed by a fence, shielded from public view, and used for domestic activities.

***US v. Vasquez** No. 22-1294 (10th Cir., Jan. 3, 2024)(Unpub.).*
For purposes of a warrantless search, neither a home's front yard or driveway constitutes curtilage.

***Us v. Carmody**, No. 22-12539 (11th Cir., Oct. 25, 2023)(Unpub.).*
An individual does not have a reasonable expectation of privacy in an IP address.

***US v. Harris**, No. 10887 (11th Cir., Sept. 28, 2023)(Unpub.).*
For Fourth Amendment purposes, a person has no expectation of privacy in a FedEx package for which he is neither the sender nor the listed addressee, and furthermore has no expectation of privacy in the apartment to which the package is addressed and delivered.

"Arrest/No Arrest"

***Armstrong v. Hutcheson**, __ F.4th __, No. 22-1082 (4th Cir., Sept. 13, 2023).*
No Fourth Amendment violation occurred when officers responding to a domestic disturbance call briefly detained the husband when there were guns in the house, and he was argumentative.

***US v. Bonilla**, __ F.4th __, No. 22-3006 (8th Cir., Nov. 20, 2023).*
Hand-cuffing the driver of a vehicle subject to a traffic stop did not turn the investigatory stop into a *de facto* arrest when the officers had a legitimate concern that he might flee the scene.

***US v. Mara**, No. 23-1132 (8th Cir., Dec. 4, 2023)(Unpub.).*
For Fourth Amendment purposes, a driver is not "in custody" during a traffic stop when he is asked to briefly sit in the front seat of a patrol car and is questioned about his itinerary and rental car.

***Cooke v. Brashears**, No. 23-10191 (11th Cir., Nov. 13, 2023)(Unpub.).*
Officers need not sift through conflicting evidence or resolve credibility issues during a probable cause arrest.

***US v. Larson**, No. 22-12031 (11th Cir., Aug. 25, 2023)(Unpub.).*
When an officer asks for identification, that alone does not turn the encounter into a detention. He can ask questions of anyone on the street unless he induces cooperation by coercive means.

"Protective Sweep"

US v. Ackerman, *__ F.4th __, No. 23-1298 (8th Cir., Dec. 8, 2023).*
Officers who arrested an individual at the bottom of a staircase could search the rooms adjoining the stair landing as part of a protective sweep.

"Unlawful Extension of Traffic Stop"

US v. Hunter, *__ F.4th __, No. 21-3316 (3rd Cir., Dec. 5, 2023).*
A criminal history check lasting two minutes was a reasonable safety precaution related to the mission of the traffic stop and did not unlawfully extend the stop.

Hicks v. Ferreyra, *__ F.4th. __, No. 22-1339 (4th Cir., Mar. 29, 2023).*
An officer unlawfully extended a traffic stop when, after he ascertained that the driver of a parked vehicle was authorized to carry the gun that was visible on the passenger's seat of his car, and that he was not a suspect in a criminal matter, made the driver wait an hour for a supervisor to arrive.

US v. Phillips, *No. 22-50745 (5th Cir., Jan. 29, 2024)(Unpub.).*
Making a driver wait 21 minutes for the arrival of a drug dog did not unreasonably prolong the traffic stop.

US v. Beltran, *No. 22-50179 (9th Cir., Jan. 30, 2024)(Unpub.).*
An officer did not impermissibly extend a traffic stop by asking a driver about his parole and probation status.

US v. Betts, *__ F.4th __, No. 23-1012 (8th Cir., Dec. 14, 2023).*
An officer had probable cause to extend a traffic stop based upon a driver's sweating, fast talking, rotted teeth, possession of a butane "torch" lighter, shallow breathing and odd travel plans.

US v. Contreras, *No. 22-50187 (9th Cir., Dec. 21, 2023)(Unpub.).*
Asking a driver about his supervisory release status, checking his criminal record, and waiting for an officer's partner to arrive before performing a "pat down" search do not unlawfully extend a traffic stop.

US v. Williams, *No. 22-10052 (9th Cir., Sept. 12, 2023)(Unpub.).*
An additional three minutes added at the end of a traffic stop caused by an independent on-site investigation into drug possession without reasonable suspicion unlawfully extended the stop.

US v. Hayes, *__ F.4th. __, No. 22-8010 (10th Cir., Mar. 17, 2023).*
The court declined to adopt a *per se* rule that, during a traffic stop, anytime an officer goes "off-course" from the mission of the stop, even for a few seconds, constitutes an unlawful extension of the stop.

***US v. Leon**, __ F.4th __, No. 22-1070 (10th Cir., Sept. 11, 2023).*
Reasonable suspicion to extend a traffic stop is not shown by a combination of factors such as: Minnesota and Arizona being known drug hubs, unusual but not logistically unrealistic travel plans, a messy car interior, ordinary nervousness, a single ignition key, and the recent registration of a newly purchased car.

Consent

***US v. Bermel**, __ F.4th __, No. 22-3092 (8th Cir., Dec. 14, 2023).*
No *per se* rule exists prohibiting a minor from consenting to the search of his parent's property.

***US v. Esqueda**, __ F.4th __, No. 22-50170 (9th Cir., Dec. 12, 2023).*
An undercover agent who enters a room with consent but secretly records what he can see and hear therein does not engage in an unlawful search under the Fourth Amendment.

***US v. Parkins**,__ F.4th __, No. 22-50186 (9th Cir., Feb. 14, 2024).*
Under the Fourth Amendment, a defendant must be physically present and expressly refuse consent to nullify a co-tenant's consent to a warrantless search of an apartment.

***Morrison v. Ramos**, No. 22-55684 (9th Cir., Oct. 16, 2023)(Unpub.).*
Qualified immunity was granted to officers on a Fourth Amendment claim that arose after they entered an apartment on the resident mother's consent but over her resident adult child's objection.

Other Cases

***US v. Perez**,__ F.4th __, No. 22-1121 (1st Cir., Dec. 28, 2023).*
When a suspect fled from the police wearing a backpack, the backpack was part of his "person" and fell within the search-incident-to-arrest exception to the Fourth Amendment's warrant requirement.

***US v. Haqood**, __ F.4th __, No. 22-588 (2nd Cir., Aug. 30, 2023).*
Reasonable suspicion to stop an individual was created when he appeared to be nervous, wore a fanny pack across his chest that contained something with a straight line on top, the hour was late, and he was in a high crime neighborhood.

***US v. Amos**, __ F.4th. __, No. 20-3298 (4th Cir. Dec. 14, 2023).*
For Fourth Amendment purposes, a person's two second pause and halfway hand raise before fleeing did not manifest his submission to an officer's show of authority.

***US v. Davis**,__ F.4th __, No. 22-4088 (4th Cir., Jan. 25, 2024).*
Cell phones that are in plain view during the service of a search warrant may not always be seized as instrumentalities of a crime. Seizure is justified based upon the nature of the crime and the totality of the circumstances.

Jimerson v. Lewis, *__ F.4th __, No. 22-10441 (5th Cir., Feb. 1, 2024).*
A SWAT team officer who erred after making significant efforts to identify the correct house to search was entitled to qualified immunity on a Fourth Amendment claim by the homeowner whose home was mistakenly breached.

Akima v. Peca, *__ F.4th __, No. 22-2058 (6th Cir., Oct. 26, 2023).*
An arrest based upon a reasonable mistake does not violate the Fourth Amendment. However, an officer reading a breathalyzer at .22 when it was actually .02 is not a reasonable mistake.

US v. Hutchins, *No. 22-3655 (6th Cir., Nov. 13, 2023)(Unpub.).*
The fact that officers briefly lost sight of the vehicle they were pursuing does not undermine the reasonableness of their belief that they stopped the car they were pursuing, since it was the same make and color and was travelling on the same street.

Harris v. City of Saginaw, *__ F.4th. __, No. 22-1504/1505 (6th Cir., Mar. 20, 2023).*
Qualified immunity was denied to officers who may have already made up their minds to arrest a suspect before investigating the incident.

US v. Coates, *No. 22-1924 (7th Cir., Mar. 15, 2023)(Unpub.).*
Seeing one hand-rolled cigarette containing a brown substance that was emitting no distinctive odor does not establish probable cause to arrest anyone.

US v. Hudson, *__ F.4th. __, No. 23-1108 (7th Cir., Nov. 16, 2023).*
A nurse treating a gunshot victim was not acting as a government agent conducting a warrantless search when she asked the victim to spit out whatever he was concealing in his mouth in order to provide him with necessary medical care.

US v. Dankemeyer, *No. 22-2850 (8th Cir., Aug. 23, 2023)(Unpub.).*
A search warrant was not "facially deficient" when it authorized the search of all cars on a property when the search itself was limited to cars belonging to the property owners.

US v. Ralston, *__ F.4th __, No. 22-3352 (8th Cir., Dec. 14, 2023).*
No probable cause or *Leon* exception applied when officers entered property that contained two residences and searched the residence in which their suspect did not reside.

Montgomery v. Lore, *No. 23-1106 (10th Cir., Dec. 13, 2023)(Unpub.).*
An officer who had probable cause to seize stolen wipes from a shoplifter had no Fourth Amendment right to then continue to pat him down seeking other stolen items.

Land v. Allen, *__ F.4th __, No. 22-12324 (11th Cir., Oct. 31, 2023).*
A warrant issued based on an affidavit that contained several factual errors was not invalid if, absent these errors, the affidavit still supplied probable cause for the plaintiff's arrest.

***US v. Long**, No. 23-10511 (11th Cir., Nov. 6, 2023)(Unpub.).*
A warrant authorizing the search of a computer for child pornography that was executed over two months later was not stale, because pedophiles rarely delete their pornographic pictures.

FOURTH AMENDMENT "EXCESSIVE FORCE"

Gun/Knife

***Kelly v. O'Malley**, No. 22-1688 (3rd Cir., Dec. 22, 2023)(Unpub.).*
No "excessive force" for an officer to shoot a knife-wielding suspect who refused his commands, killed his K-9, injured a fellow officer, ignored several Taser strikes, and pointed a knife at an officer while only eight feet away.

***Rush v. Philadelphia**, __ F.4th __, No. 21-1298 (4th Cir., Aug. 30, 2023).*
Qualified immunity was denied on an "excessive force" claim arising when officers shot an unarmed driver after he attempted to escape at slow speed and hit a squad car in the process.

***Arqueta v. Jaradi**, __ F. 4th __, No. 22-40781 (5th Cir., Nov. 17, 2023).*
Qualified immunity was granted to officers on an "excessive force" claim, with the court finding that holding one's arm to one's side while running from the police is a "furtive gesture" akin to reaching for one's waistband, thus justifying the shooting of the running suspect.

***Barnes v. Felix**,__ F.4th __, No. 22-20519 (5th Cir., Jan. 23, 2024).*
Once a driver put his car in gear and started to move, the officer who initiated his traffic stop was entitled to qualified immunity when he shot inside the moving vehicle without enough visibility to see where he was aiming, which resulted in the death of the driver.

***Lewis v. Inocencio**, No. 23-20098 (5th Cir., Jan. 22, 2024)(Unpub.).*
Qualified immunity was denied to officers who shot a fleeing felon in the back, without warning and facing no immediate threat.

***Morgan-Tyra v. St. Louis**,__ F.4th __, No. 22-3193 (8th Cir., Jan. 8, 2024).*
No "excessive force" existed when an officer, without warning, shot a woman wielding a gun in a menacing fashion and appearing ready to discharge it.

***Quinones v. City of Edina**, __ F.4th __, No. 22-2818 (8th Cir., Aug. 16, 2023).*
Officers who shot a man charging towards them with a knife after he disobeyed orders to "drop it" and after a Taser strike had no effect did not engage in "excessive force.".

***Andrich v. Kostas**, No. 16226 (9th Cir., Sept. 21, 2023)(Unpub.).*
A suspect resisted arrest, was unfazed by Taser strikes, avoided handcuffing, and turned towards a pursuing officer with the protruding claw of one handcuff in his hand. He was then shot. No "excessive force" occurred under these circumstances.

***Harris v. City of Tulare**, No. 22-15142 (9th Cir., Mar. 17, 2023)(Unpub.).*
Qualified immunity was granted to officers who shot a suspect who had just seized a weapon from another officer, was standing and facing them, was not disabled, and was within striking distance.

***Rosalia v. City of Hayward**, No. 22-16135 (9th Cir., Sept. 11, 2023)(Unpub.).*
Qualified immunity was granted to officers on an "excessive force" claim that arose when a man yelled at them, retreated into his garage, emerged with a knife, refused orders to drop it, and took a martial-arts stance, was Tased and then shot.

***Smith v. Aqdeppa**, __ F.4th __, No. 20-56254 (9th Cir., Aug. 30, 2023).*
Qualified immunity on an "excessive force" claim was granted to officers who shot an assailant after he ignored their orders to stand down, ignored several taser strikes, and attacked the officers, even if no "final warning" was given.

***Yearick v. Leatham**, No. 22-16310 (9th Cir., Sept. 12, 2023)(Unpub.).*
Qualified Immunity on an "excessive force" claim was granted to officers who shot a man advancing towards them holding a gun pointed at the ground and refusing their commands to stop.

***Hausen v. Dailey**, No. 21-3235 (10th Cir., Nov. 2, 2023)(Unpub.).*
There was no "excessive force" when an officer shot the driver of a vehicle who, after being surrounded at the end of a high-speed chase, ignored orders to turn off the car, revved its engine, and began backing up towards the officer.

***Leonard v. Tony**, No. 23-10244 (11th Cir., Sept. 20, 2023)(Unpub.).*
There was no "excessive force" when officers shot a man who, after ignoring their warnings, charged towards them with a sharp broken piece of plexiglass and a sharp pencil.

Taser

***Bagley v. Guillen**,__ F.4th __, No. 22-20644 (5th Cir., Jan. 10, 2024).*
For "excessive force purposes", an officer may not Tase a subject that he pulled over for a minor traffic violation and who was obeying his commands.

***Melvin v. Colorado Springs**, No. 23-1070 (10th Cir., Dec. 11, 2023)(Unpub.).*
Qualified immunity was denied to officers when, after informing an unarmed individual that he was being detained and having him struggle, flee and ignore their commands to "stop resisting," tased him 7 times, pepper-sprayed him twice and struck him twice with their fists before handcuffing him, all in a span of eleven minutes.

K-9

***Sligh v. City of Conroe**, No. 22-40518 (5th Cir., Nov. 21, 2023)(Unpub.).*
Qualified immunity was granted to officers who released their K-9 on a mentally disturbed woman who had committed no crime, did not pose an immediate safety threat, and needed emergency medical treatment due to her self-harm, when she slipped free from their attempt to seize her.

Handcuffs

***McNeal v. City of Katy**, No. 23-20054 (5th Cir., Nov. 16, 2023)(Unpub.).*
No "excessive force" occurred when an officer pushed to the ground and drug by her arms a suspect who was belligerent and resisted being handcuffed, even if at that time she was not under arrest and no charges were filed against her.

***Stewart v. Precythe**,__ F.4th __, No. 22-3297 (8th Cir., Jan. 30, 2024).*
No "excessive force" or cruel and unusual punishment existed by handcuffing prisoners to a steel bench for hours in order to preserve order, discipline and institutional security.

***Brooks v. Miller**, __ F.4th __, No. 21-10590 (11th Cir., Aug. 22, 2023).*
Qualified immunity was granted to an officer who, instead of loosening the handcuffs of an arrestee complaining that they were causing him pain and numbness, instead drove him 25 miles to a jail where he could receive medical attention.

Other Cases

***Thompkins v. Penn Hills**, No. 22-3012 (4th Cir., Oct. 23, 2023)(Unpub.).*
No "excessive force" occurred when an officer used a holding technique on a domestic violence perpetrator who resisted arrest, even if in doing so he broke her nose.

***Salinas v. Loud**, No. 22-11248 (5th Cir., Jan. 12, 2024)(Unpub.).*
No "excessive force" occurred when a suspect was taken to the ground and his lip started bleeding, but who later claimed that he was not hurting and refused medical treatment.

***Soto v. Bautista**, No. 21-40803 (5th Cir., Mar. 24, 2023)(Unpub.).*
Slamming an arrestee to the ground hard enough to break bones and kneeing him in the spine was "excessive force" when it was in response to being spit on.

***Walls v. Caddo Parish Sheriff's Office**, No. 23-30353 (5th Cir., Dec. 6, 2023)(Unpub.).*
Qualified immunity on an "excessive force" claim was denied to an officer who believed that a senior citizen was filming him on his cell phone and proceeded to grab him, slam him against his squad car and pushed him inside, although the man committed no crime and made no attempt to actively resist, and no exigency existed. He died of a heart attack while in the squad car.

***Zavala v. Harris Cty.**, No. 22-20611 (5th Cir., Nov. 21, 2023)(Unpub.).*
No "excessive force" occurred by hog-tying an arrestee upon booking when she started yelling for help and exhibited disorderly and injurious behavior.

***Cunningham v. Packard**, No. 22-2112 (6th Cir., Oct. 24, 2023)(Unpub.).*
For purposes of an "excessive force" analysis, reasonable force is reasonable regardless of the injuries it might cause.

Lunneen v. Village of Berrien Springs, *Nos. 22-2044/2046 (6th Cir., Sept. 21, 2023)(Unpub.).*
"Excessive force" existed when officers applied pressure to the back of a prone subject by using a neck restraint that created asphyxiating conditions while attempting to handcuff him when he was not actively resisting arrest.

Reed v. Campbell Cty., *__ F.4th __, No. 22-5751 (6th Cir., Aug. 30, 2023).*
Retreating into one's home rather than coming outside to talk to officers does not constitute active resistance for purposes of an "excessive force" analysis.

Roberson v. City of Hawthorne, *No. 21-55134 (9th Cir., Mar. 22, 2023)(Unpub.).*
Qualified immunity on an "excessive force" claim was denied to an officer who threw an individual against a wall, took him to the ground in a headlock, and held him on the ground by applying pressure to his neck, all without any basis for suspecting him of a crime.

Sable v. Washington County, *__ F.4th __, No. 21-35431 (9th Cir., Oct. 17, 2023).*
A PIT maneuver may constitute "excessive force" when it creates a substantial risk of serious injury, a suspect does not pose an immediate threat, and less intrusive options are available.

Anderson v. Colorado Springs, *__ F.4th __, No. 22-1130 (10th Cir., Aug. 18, 2023).*
Grabbing a suspect's arm and wrist to prevent him from deleting incriminating evidence from his cell phone upon arrest was not "excessive force" when he refused to turn over the phone and officers had probable cause to believe that the phone contained incriminating evidence.

Gilmore v. Neph, *No. 23-3134 (10th Cir., Jan. 4, 2024)(Unpub.).*
"Excessive force" need not include an injury, as injury and force are not perfectly correlated.

Hall v. Brown, *No. 22-4080 (10th Cir., Oct. 25, 2023)(Unpub.).*
No "excessive force" occurred when officers employed a take-down maneuver on a drunk and belligerent person who ignored their orders to calm down, advanced to within two feet of them r and raised his hand towards the officer with one finger extended.

FIFTH, SIXTH, SEVENTH, AND THIRTEENTH AMENDMENTS

US v. Cowette, *__ F.4th __, No. 22-1534 (1st Cir., Dec. 12, 2023).*
Under the Fifth Amendment, a suspect's statement "I guess I'll wait until I have a lawyer" the words "I guess" do not create any ambiguity to an otherwise unequivocal invocation of her rights to counsel.

US v. Maynard, *__ F.4th __, No. 22-4178 (4th Cir., Jan. 11, 2024).*
A court's mask requirement did not violate a defendant's Sixth Amendment rights.

Baker v. City of McKinney, *__ 4th __, No. 22-40644 (5th Cir., Oct. 11, 2023).*
The Takings Clause does not require compensation for property damaged when it is objectively necessary for officers to do so during an active emergency in order to prevent imminent harm to persons.

US v. Pennington, *No. 23-30038 (5th Cir., Nov. 9, 2023)(Unpub.).*
Hand-uffing an individual for 5 minutes while officers conduct a protective sweep does not mean that he is "in custody" for purposes of a Fifth Amendment *Miranda* claim.

Freed v. Gratiot County, *__ F.4th __, Nos. 21-1248/1288/1339 (6th Cir., Sept. 6, 2023).*
A property owner whose property is foreclosed and sold at tax sale is not entitled to receive the fair market value of her property – only the foreclosure sale price minus the taxes due plus interest.

Monson v. City of Detroit, *Nos. 22-2050/2122 (6th Cir., Jan. 8, 2024)(Unpub.).*
An arrestee's statement, made after he waived his *Miranda* rights, can still be "unlawfully coerced" if it is made after an investigating officer makes false promises of leniency in return for the arrestee's signed confession.

US v. O'Lear,*__ F.4th __, No. 22-3835 (6th Cir., Jan. 8, 2024).*
The Sixth Amendment was not violated when persons not vaccinated for COVID were excluded from a jury pool.

Scott v. Hepp, *__ F.4th __, No. 22-1314 (7th Cir., Mar. 19, 2023).*
No *Miranda* violation occurred when a suspect requested a lawyer upon arrest but was later questioned while in custody, as a suspect cannot cut-off questioning before any attempt to question him is attempted. *Miranda* does not extend beyond custodial interrogations.

Wesley v. Hepp,*__ F.4th __, No. 22-2968 (7th Cir., Jan. 5, 2024).*
The statements that "Ain't nothing to talk about, hoe," "I ain't got shit to say about no homicide," and "Can I go back to my cell now?" do not constitute an unequivocal invocation of an arrestee's right to remain silent.

Rancho Mirage v. Coachella Valley Water Dist., *No. 22-55212 (9th Cir., Oct. 30, 2023)(Unpub.).*
When charging a user fee to water customers, the fact that the water district used a standard usage formula to determine a user's fee does not violate the Takings Clause even if the user may be charged more or less than they would under a perfect user fee system.

US v. Jones, *No. 22-1031 (10th Cir., Aug. 28, 2023)(Unpub.).*
Mere drug use and lack of sleep does not necessarily mean that a suspect cannot knowing and intelligently waive his *Miranda* rights.

Bowen v. Secretary, Florida DOC,*__ F.4th __, No. 22-11744 (11th Cir., Feb. 15, 2024).*
The placement of two crime suspects in the same room during an investigation does not necessarily violate *Miranda*.

Leitgeb v. SackWire, *No. 22-13683 (11th Cir., Aug. 30, 2023)(Unpub.).*
Forcing someone to receive a COVID test to maintain employment does not amount to slavery in violation of the Thirteenth Amendment, an employee can always work elsewhere.

FOURTEENTH AMENDMENT; DUE PROCESS

"Deliberate Indifference"

Thomas v. City of Harrisburg, *__ 4th __, Nos. 21-3963/3964/3018 (3rd Cir., Dec. 6, 2023).*
For purposes of a "deliberate indifference" analysis, when an officer is aware of the oral ingestion of narcotics by an arrestee under circumstances suggesting that the amount consumed poses a substantial risk to his health, the officer must take reasonable steps to render medical care.

Lowe v. Johnson, *No. 21-7443 (4th Cir., Nov. 1, 2023(Unpub.).*
A prison doctor may be liable for "deliberate indifference" to an inmate's epilepsy by waiting 14 days before prescribing anti-seizure medication, during which time the inmate seizured ans was injured.

Yarbrough v. Henderson County, *No. 23-5117 (6th Cir., Jan. 22, 2024)(Unpub.).*
A prisoner being on a "psych hold" was sufficient to alert officers that he required more surveillance and assistance than an average prisoner for purposes of a "deliberate indifference" analysis.

Cheeks v. Jakob, *__ F.4th. __, No. 22-2749 (8th Cir., Sept. 1, 2023).*
Qualified immunity was denied to officers on a "deliberate indifference" claim stemming from their failure to call for medical assistance for a suspect who crashed his car after engaging in a high-speed chase. In cases where no medical aid is provided, a plaintiff need not demonstrate the detrimental effect of a lack of aid.

Nelson v. Tompkins,*__ F.4th __, No. 22-14205 (11th Cir., Jan. 5, 2024).*
Qualified immunity was denied to a jail officer who learned that a black prisoner had previously engaged in racially motivated violence against white men but did not pass this information along. His failure to do so constituted "deliberate indifference" to a substantial risk of harm to the white prisoner with whom the black prisoner shared a cell, and whom the latter later killed.

Thomas v. City of Americus, *No. 22-11398 (11th Cir., Mar. 14, 2023)(Unpub.).*
Outside of a custodial context, "deliberate indifference" by officers not removing a trespassing ex-boyfriend from a house does not rise to the level of a substantive due process violation.

"State-Created Danger"

Johnson v. City of Biddeford,*__ F.4th __, No. 23-1399 (1st Cir, Feb. 13, 2024).*
No "state-created danger" was created when an officer told a landlord to stay away from an angry tenant, heard the landlord say "There gonna be a bloody mess" yet did not disclose this to the tenant, whom the landlord subsequently killed.

***Fisher v. Moore**, __ F.4th. __, No. 21-20553 (5th Cir., Mar. 16, 2023).*
The court declined to apply the "state-created danger" exception to the general rule that governments have no duty under the Due Process Clause to protect people from privately inflicted harm.

***Walton v. City of Verona**, __ F.4th __, No. 22-60231 (5th Cir., Sept. 13, 2023).*
An officer has no "special duty" to protect a citizen from a drive-by residential shooting for purposes of a "state-created danger" analysis.

***Hall v. Portland**, No. 22-35705 (9th Cir., Aug. 28, 2023)(Unpub.).*
No "state-created danger" occurred when a citizen chose to enter Portland during a period of riots, as the danger was not particularized to him.

***Leeper v. City of Tacoma**, No. 22-35502 (9th Cir., Sept. 1, 2023)(Unpub.).*
A city may be liable for an intentional sexual assault committed by one of its officers while he was in uniform working as a security guard, if it knew of past sexual complaints that made him unfit as an officer yet retained him, and that retention was the proximate cause of the plaintiff's injuries.

Procedural Due Process

***Lawless v. Town of Freetown**, __ F.4th __, No. 21-1251 (1st Cir., Mar. 22, 2023).*
It is not a procedural due process violation for pre-termination hearing officers to be biased against the employee subject to their employment decision, if there is notice of the hearing, a recitation of the employer's evidence, and a chance for the employee to rebut that evidence.

***Rivera v. Edwards**, No. 23-1286 (4th Cir., Nov. 21, 2023)(Unpub.).*
Qualified immunity was granted to officers on a Fourteenth Amendment claim arising when a woman was erroneously arrested on a bench warrant, shuffled between three detention centers, and held for ten days despite repeatedly providing evidence that she was not the person described in the warrant, as the law is unclear as to how promptly an arrestee must be released after confirmation that she is not the person sought by warrant.

***Ingram v. Wayne County**, __ F.4th __, No. 22-1262 (6th Cir., Aug. 31, 2023).*
A county seized private vehicles and then bullied their owners into either paying a redemption fee or incurring storage costs while they waited for months to appear before a neutral decisionmaker. This practice violated the Due Process Clause. The county was ordered to hold a hearing on the validity of the seizure within two weeks of the same.

***Willow Way v. Village of Lyons**, __ F.4th __, No. 22-1775 (7th Cir., Oct. 5, 2023).*
The demolition of a public nuisance, after notice and the opportunity for a hearing, does not violate the Due Process Clause and does not require compensation.

***Joseph v. San Jose**, No. 20-17458 (9th Cir., Oct. 12, 2023)(Unpub.).*
A city, by requiring a homeowner to strip his trees from ground level to five feet above ground level without a hearing, violates the Fourteenth Amendment.

***Lobats v. Las Vegas MPD**, No. 22-15440 (9th Cir., Oct. 11, 2023)(Unpub.).*
Qualified immunity on a Fourteenth Amendment claim was denied to an officer who deliberately mischaracterized a statement in an investigative report.

***Lewis v. Federal Bureau of Prisons**,__ F.4th __, No. 2023-2015 (Fed. Cir., Mar. 4, 2024).*
A probationary employee need not receive notice of her termination before the end of her probationary period.

Substantive Due Process

***Nelson v. Town of Paris**, __ F.4th __, No. 22-2485 (7th Cir., Aug. 16, 2023).*
An ordinance limiting where certain designated sex offenders could live, and forbidding them from living within 6,500 feet of certain protected areas where children congregated, did not violate an offender's substantive due process rights.

***Martinez v. High**,__ F.4th __, No. 22-16335 (9th Cir., Jan. 26, 2024).*
An officer did not violate a woman's due process rights by disclosing her confidential domestic violence report to her abuser.

***Murguia v. Langdon**, __ F.4th. __, No. 21-16709 (9th Cir., Mar. 14, 2023).*
The court declined to extend the exceptions to the general rule against "failure to act" substantive due process claims to include a failure to comply with a legally required duty (a welfare check).

***Wright v. Ponca City**, No. 22-6137 (10th Cir., Sept. 7, 2023)(Unpub.).*
Qualified immunity on a substantive due process claim was granted to paramedics who, after learning that a patient had a possible neck injury, moved him to an ambulance without a cervical collar or backboard, allowing his head to flop and causing his death. In this non-custodial and non-state created danger setting, it was unclear whether EMT's would be aware that their willfully defective EMT services would amount to a substantive due process violation.

Other Cases

***Merrill v. Fell**, No. 23-7018 (10th Cir., Dec. 21, 2023)(Unpub.).*
Qualified immunity was granted to an officer on a "failure to intervene" claim when another officer Tased a suspect "without warning," thereby giving the first officer no realistic opportunity to stop the Tasing.

FOURTEENTH AMENDMENT: EQUAL PROTECTION

***Red Door v. Ft. Lauderdale**, __ F.4th __, No. 22-11489 (11th Cir., Aug. 30, 2023).*
In Equal Protection Clause cases involving a distortion of or departure from the law, rather than selective enforcement due to unlawful animus, proof of a similarly situated comparator is not required.

Stanley v. City of Sanford, *__ 4th __, No. 22-10002 (11th Cir., Oct. 11, 2023).*
Under the Equal Protection Clause, disabled persons are not a "suspect class" and government paid health insurance is not a recognized fundamental right. Under a rational basis analysis, a city's change in disability retiree health insurance benefits advanced the legitimate governmental interest in conserving public funds.

TITLE VII: DISCRIMINATION

"Hostile Work Environment"

Szyper v. American Medical, *No.21-3272 (3rd Cir., Mar. 22, 2023)(Unpub.).*
One incident where a supervisor grabbed an employee's wrist and made two crude and offensive sexual remarks to her did not create a "hostile work environment."

Hubbard v. SC Dept. of Mental Health, *No. 22-1374 (4th Cir., Sept. 1, 2023)(Unpub).*
No "hostile" work environment" was shown by the isolated use of the work ni**er and the posting of a monkey picture, when management addressed the issue as soon as it became aware of it.

Souza v. Amazon, *No. 22-3043 (4th Cir., Nov. 13, 2023)(Unpub.).*
A "hostile work environment" is not created when a supervisor made late night calls to an employee and asked intrusive questions, and then refused to answer her work calls, when the calls were not threatening, humiliating, or highly offensive and the failure to answer work calls did not impact the employee's ability to do her job or alter her terms and conditions of employment.

Price v. Valvoline, *__ F.4th __, No. 20-3298 (5th Cir., Dec. 15, 2023).*
No "hostile work environment" was created by two comments: "Lazy boy" and "You people always want something for free."

Wilkinson v. Pinnacle Lodging, *No. 22-30556 (5th Cir., Oct. 5, 2023)(Unpub.).*
"Hostile work environment" claims fail even in the presence of severe harassment if there is no evidence that the harassment interfered with an employee's work.

Hambrick v. Kijakazi, *__ F.4th __, No. 22-3217 (7th Cir., Aug. 18, 2023).*
Dissatisfaction with supervisors, a heavy workload, and a lack of employee recognition do not create a "hostile work environment."

Gonzalez v. Englewood, *No. 23-1073 (10th Cir., Nov. 9, 2023)(Unpub.).*
For purposes of a Title VII "hostile work environment" analysis, the law allows for a certain measure of workplace banter, even of a sexual nature.

Yelling v. St. Vincent's Health, *__ F.4th __, No. 21-10017 (11th Cir., Oct. 5, 2023).*
A "hostile work environment" is not shown by an isolated incident wherein employees called President Obama "stupid," "the worst" and a "piece of sh*t," as those phrases are not inherently racist.

"Adverse Employment Action"

Johnson v. Iberia Medical, *No. 23-30159 (5th Cir., Nov. 15, 2023)(Unpub.).*
A three-month gap between an employee's complaint and her termination is sufficiently close in time to establish the causality element of her *prima facie* claim of discrimination.

Lemonia v. Westlake Management, *No. 22-30630 (5th Cir, Oct. 18, 2023)(Unpub.).*
The failure of an employer's investigation of "hostile work environment claims" does not, standing alone, make the investigation a deficient remedial action. Moreover, neither placing an employee on a PIP nor verbally reprimanding him is, standing alone, an "adverse employment action."

Moore v. Jackson Public School District, *No. 2260376 (5th Cir., Mar 14, 2023)(Unpub.).*
Being reprimanded in the presence of others, being assigned a specific seat in a meeting, being denied a chance to speak during open discussions, being peered at, and being directed to do another employee's responsibilities are not materially "adverse employment actions" for purposes of a retaliation claim.

Fuller v. McDonough, *__ F.4th __, No. 22-2478 (7th Cir., Oct. 18, 2023).*
Verbal and written warnings under an employer's progressive discipline policy are not "adverse employment actions."

Klamrzynski v. Maricopa Cty. Comm. College, *No. 22-16752 (9th Cir., Sept. 20, 2023)(Unpub.).*
Under Title VII, non-professional e-mails can constitute an "adverse employment action."

Laster v. GA DOC, *No. 22-13390 (11th Cir., Sept. 12, 2023)(Unpub.).*
Requiring an employee to perform an undesirable job is not an "adverse employment action" unless it constitutes a material change in the terms or benefits of employment.

Payne v. Savannah College of Art & Design, *__ F.4th __, No. 22-11556 (11th Cir., Aug. 31, 2023).*
Payne sued alleging race discrimination and retaliation after he was fired by a college from his position as *Head Fishing Coach*!

Temporal Proximity

Edwards-Yu v. DeJoy, *No. 22-36009 (9th Cir., Dec. 20, 2023)(Unpub.).*
A two-month gap between an employee's protected activity and an adverse employment action is short enough to support a causal link between the two.

Clark v. 10 Roads Express, *No. 23-3067 (10th Cir., Oct. 24, 2023)(Unpub.).*
As regards a Title VII retaliation claim, a six-month gap between a protected action and an adverse employment action does not, standing alone, provide a causal connection between the two.

Other Cases

Boykin v. Genzyme, *__ F.4th __, No. 23-1667 (1st Cir., Feb. 16, 2024).*
A single racially tinged comment by an executive does not prove discriminatory intent.

Kebe v. Washington Township School District, *No. 23-1366 (3rd Cir., Jan. 23, 2024)(Unpub.).*
No Title VII violation exists just because a school district lacks diversity, and its employees are "not very friendly" towards those who do not look like them.

Prosper v. Government of Virgin Islands, *No.21-3060 (3rd Cir., Mar. 29, 2023)(Unpub.).*
Policymakers are not protected by either Title VII or the Equal Pay Act.

Abney v. SEPTA, *No. 22-1351 (4th Cir., Oct. 5, 2023)(Unpub.).*
Being the subject of an EEO investigation does not exclude an employee from Title VII protection.

Bush v. Frederick County, *No. 1127 (4th Cir., Feb. 15, 2024)(Unpub.).*
No Title VII discrimination occurred when a principal fired a coach who told her team that she was going to make them strong so that they could say "f*ck white people."

Cosby v. S.C. Probation, *__ F.4th __, No. 21-2275 (4th Cir., Feb. 27, 2024).*
An internal complaint is not protected activity under Title VII's retaliation provisions when it does not allege that the complainant was retaliated against because of her gender.

Brown v. City of Anna, *No. 23-40214 (5th Cir., Nov. 29, 2023)(Unpub.).*
A plaintiff cannot rely upon her initial EEOC charge as evidence of her exhaustion of her administrative remedies for claims that are based upon subsequent events.

Hamilton v. Dallas County, *__ F.4th __, No. 21-10133 (5th Cir., Aug. 18, 2023).*
Although a gender-biased scheduling policy is not an "ultimate employment decision," it is sex-based workplace bias that supports a plausible claim of Title VII discrimination.

Hebrew v. Texas Dept. of Criminal Justice, *__ F.4th __, No. 22-20517 (5th Cir., Sept. 15, 2023).*
A facially neutral workplace grooming policy must give way to an employee's Title VII religious accommodation request to maintain his long hair and beard.

Johnson v. LSUHSC, *__ F.4th __, No. 22-30699 (5th Cir., Jan. 8, 2024).*
Temporarily reassigning an employee while investigating her sexual harassment claim, in order to separate her from her alleged harasser, did not constitute unlawful retaliation under Title VII.

Hammond v. Sysco, *No. 23-5385 (6th Cir., Dec. 21, 2023)(Unpub.).*
In a Title VII "failure to promote" claim, in order to show pretext, an employee must, among other things, show that he was "significantly" better qualified for the job that he was passed over to fill.

***Smith Patel v. DeJoy**, No. 23-1344 (7th Cir., Feb. 28, 2924)(Unpub.).*
Summary judgment was awarded to an employer against an employee who brought a Title VII action for allegedly adverse actions taken against her because of her: 1. color (brown), 2. national origin (India), 3. religion (Hindu), 4. race (Asian), 5. sex (woman), 6. disability (knee injury) and 7. previous discrimination complaints.

***Tisdall v. McDonough**, No. 24-2658 (8th Cir., Mar. 14, 2023)(Unpub.).*
No Title VII retaliation occurred when an employer moved an employee's desk to another department away from others with the same job description and next to her supervisor's office, even if her desk now had no telephone. These were not materially "adverse employment actions."

***Phillips v. Legacy Cabinets**, __ F.4th __, No. 22-10057 (11th Cir., Dec. 8, 2023).*
Summary judgment was denied to an employer on a race discrimination claim brought by a White employee who claimed that she was treated more harshly than Black employees for the same or similar workplace conduct.

ADA; REHABILITATION ACT

"Reasonable Accommodation"

***Kelly v. Town of Abingdon**,__ F.4th __, No. 21-2261 (4th Cir., Jan. 2, 2024).*
The employee's letter to his employer entitled "Accommodation Requests" was not an ADA accommodation request because the accommodations requested therein were not connected to the employee's disabilities but were related to general workplace issues.

***Tartaro-McGowan v. Inova Home Health**,__ F.4th __, No. 22-1825 (4th Cir., Jan. 17, 2024).*
Under the ADA, an employer offered a nurse with arthritis in her knees her choice of which in-home visits she would make so as to limit the pain in her legs. This was a "reasonable accommodation."

***EEOC v. Methodist Hospital**, __ F.4th __, No. 17-10539 (5th Cir., Mar. 17, 2023).*
Absent special circumstances, the ADA does not require an employer to reassign a qualified disabled employee to a vacant job position in violation of its legitimate, neutral policy of hiring the most qualified candidate for its job positions.

***Narayanan v. Midwestern State**, No. 22-11140 (5th Cir., Oct. 11, 2023)(Unpub.).*
Indefinite leave requests constitute an "undue hardship" under the ADA.

***Taylor v. University of Mississippi**, No. 23-60246 (5th Cir., Feb. 9, 2024)(Unpub.).*
An employer refusing to accommodate an employee's request for a lighter workload, because a heavy workload exacerbated his depression and anxiety, did not create a viable RA claim because the employee could not tie his depression to his workload.

Bennett v. Hersley Medical Center, *__ F.4th __, No. 23-1162 (6th Cir., Nov. 9, 2023).*
No ADA "failure to accommodate" occurred when a hospital refused to let a clinical student with panic attack issues work with her support dog, as the hospital's concerns were about the dog causing allergic outbreaks and compromising patient care.

Cooper v. Dolgencorp, *__ F.4th __, No. 23-5397 (6th Cir., Feb. 15, 2024).*
When an employee's Tourette Syndrome caused him to utter profanities, moving him to a position with no customer contact was a "reasonable accommodation" under the ADA.

Bruno v. Wells-Armstrong, *__ F.4th __, No. 22-2945 (7th Cir., Feb. 23, 2024).*
A request to remove an education requirement from a fire fighter's employment contract is not a request for a "reasonable accommodation" under the ADA.

Ivens v. GK North, *No. 23-2586 (7th Cir., Feb. 1, 2024)(Unpub.).*
Under the ADA, an unlimited leave request is not reasonable.

Smithson v. Austin, *__ F.4th __, No. 22-2566 (7th Cir., Nov. 20, 2023).*
When in-person attendance is required for a job, the RA is not violated when an employee's request that she be given a half-day of sick leave whenever she is late for work is denied. The employee could not perform the in-person attendance essential function of her job.

Freeman v. City of Cheyenne, *No. 23-8022 (10th Cir., Feb. 7, 2024)(Unpub.).*
Under the ADA, an employee must show that a reasonable accommodation is possible, even if her employer does not engage in the interactive process.

Hampton v. Utah DOC, *__ F.4th __, No. 21-4127 (10th Cir., Dec. 4, 2023).*
The refusal to accept a handicapped officer's request to use a Springfield 1911 rather than a Glock 17 handgun in order to accommodate his disability may violate the RA.

Mastaw v. W. Florida Medical Center Clinic, *No. 22-12202 (11th Cir., Aug. 23, 2023)(Unpub.).*
Under the ADA, requesting a change in supervisor is not a "reasonable accommodation" request.

Other Cases

Crews-Sanchez v. Frito-Lay, *No. 22-1831 (4th Cir., Feb. 7, 2024)(Unpub.).*
A four-month gap between an ADA requested accommodation and job termination is too long, standing alone, to infer causation.

Israelitt v. Enterprise Services, *__ F.4th __, No. 22-1382 (4th Cir., Aug. 16, 2023).*
An employee with an arthritic toe was not disabled under the ADA. An ADA retaliation claim does not afford the plaintiff legal damages nor guarantee him a Seventh Amendment trial by jury.

Clark v. Louisiana, *__ F.4th __, No. 21-30709 (5th Cir., Mar. 28, 2023).*
The government did not violate the ADA by requiring a wheelchair-bound woman to have her physician fill out a medical form confirming that she could drive safely on public roadways.

***EEOC v. US Drug Mart**, No. 23-50075 (5th Cir., Jan. 4, 2024)(Unpub.).*
Becoming frustrated with a young asthmatic employee, belittling him during a workplace discussion, and calling him "a disrespectful, stupid little kid" -- which caused the employee to cry -- is insufficient to support a "hostile workplace" claim under the ADA.

***Canter v. Disability Network**, No. 22-1856 (6th Cir., Aug. 31, 2023)(Unpub.).*
Under the ADA, the mere failure to grant a plaintiff's request to correct a condition that he feels is unlawful does not constitute retaliation or interference with his statutory rights.

***Brown v. Meisner**, No. 22-2458 (7th Cir., Aug. 25, 2023) (Unpub.).*
A plaintiff need not identify a particular ADA accommodation in his complaint.

***Brown v. Brennan**, No. 21-16154 (9th Cir., Jan. 17, 2024)(Unpub.).*
Taking two to four weeks to correct a payment error does not amount to an "adverse employment action" under the Rehabilitation Act.

***Akridge v. Alfa Insurance**,__ F.4th __, No. 22-12045 (11th Cir., Feb. 16, 2024).*
The ADA does not incorporate Title VII's "motivating factor" causation standard, and an ADA plaintiff must prove that an action was outcome determinative.

***Harrison v. Sheriff, Holmes County**, No. 22-14288 (11th Cir., Feb. 6, 2024)(Unpub.).*
In this RA case, the court rejected the argument that a deputy was terminated for his mental illness when he had previously lied about his intimate relationship with a co-worker and he shot himself in the chin while drunk, on-duty, and in a county vehicle.

FMLA; EPA

***Eisenhower v. Culinary Institute**, __ F.4th __, No. 21-2919 (2nd Cir., Oct. 17, 2023).*
Under the EPA, in order to establish a "factor other than sex" defense, a defendant need not prove that the factor is job related.

***Murillo v. City of Granbury**, No. 22-11163 (5th Cir., Oct. 2, 2023)(Unpub.).*
The FMLA's protections continue after FMLA leave has been taken, and an employee who is fired shortly after his return to work may have a valid claim.

***Wayland v. OSF**,__ F.4th __, No. 23-1541 (7th Cir., Feb. 28, 2024).*
The FMLA would be violated if an employee took leave but her employer failed to adjust her performance expectations to reflect her reduced hours and then terminated her for not meeting those expectations.

***Eaton v. Montana Silversmiths**, No. 22-35480 (9th Cir., Oct. 31, 2023)(Unpub.).*
A HR staff member who told an employee that he did not qualify for FMLA leave because he was already on worker's compensation and refused to provide him with a FMLA leave request form, did thereby unlawfully "discourage" him from taking FMLA leave.

***Ford v. Brennan**, No. 21-4068 (10th Cir, Aug. 30, 2023)(Unpub.).*
Supervisor comments criticizing an employee's use of FMLA leave, without more, do not amount to an adverse employment action when the employee was allowed to take all of his FMLA leave.

***Lapham v. Walgreen**, __ F.4th __, No. 21-10491 (10th Cir., Dec. 13, 2023).*
The proper causation standard for FMLA retaliation claims is but-for causation - - a plaintiff must prove that an adverse employment action would not have occurred but-for the alleged cause.

FLSA; COBRA

***Perry v. City of New York**, __ F.4th __, No. 21-2095 (2nd Cir., Aug. 25, 2023).*
Under the FLSA, an employer who requires, knows about, or should know about employee work must compensate the worker regardless of whether pay is requested, or the employee knows that the work is not being paid.

***Austin v. Glynn County**, __ F.4th __, No. 21-10162 (11th Cir., Sept. 14, 2023).*
A lawsuit regarding overtime pay filed against a sheriff in his individual capacity was dismissed because a sheriff is not an employer under the FLSA.

***Tyger v. Precision Drilling**, __ F.4th __, No. 22-1613 (4th Cir., Aug. 16, 2023).*
Under the FLSA and the Portal-to-Portal Act, whether changing in and out of protective gear and walking to and from a changing room at the beginning and end of a work shift is compensable time or is non-compensable as tasks "integral" to one's work duties requires an inquiry into whether employees could change at home, whether changing into the gear is required by law, and whether the gear is reasonably necessary to perform work safely and well.

***Caudle v. Hard Drive**,__ F.4th __, No. 23-1145 (6th Cir., Feb. 7, 2024).*
Complaints related to a company's paid time-off policy are not protected by the FLSA.

***Meadows v. NCR**, __ F.4th __, No. 21-3309/22-1383 (7th Cir., Oct. 5, 2023).*
The FLSA does not require the payment of overtime for the performance of "incidental activities." Yet, if an employer chooses to pay for these activities by custom or practice, it can place requirements upon the payment of the same.

***Sanders v. Ventura County,** __ F.4th __, No. 22-55663 (9th Cir., Nov. 3, 2023).*
Employees who opted out of an employer-sponsored health plan received a monetary credit. This opt-out credit need not be treated as part of their "regular rate of pay" when calculating overtime compensation under the FLSA.

USERRA

Arroyo v. Volvo Grp. *,__ F.4th __, No. 23-1165 (7th Cir., Feb. 27, 2024).*
PTSD, standing alone, is insufficient to raise a cognizable discrimination claim under USERRA.

ADEA

Redd-Oyedele v. Santa Clara County, *No. 22-15728 (9th Cir., Oct. 26, 2023)(Unpub.).*
The mere fact that the plaintiff is older than the person chosen for promotion does not, standing alone, raise a material issue of pretext in an age discrimination case.

Gorgett v. Florida Dept. of Juvenile Justice*, No. 21-13430 (11th Cir., Dec. 18, 20230(Unpub.).*
Replacement by an employee who is ten years younger is "substantially younger" for purposes of the ADEA. However, an 8-week temporary job assignment does not constitute an "adverse employment action" under that Act.

FHA; PUBLIC HOUSING

BMG v. Village of Monroe*,__ F.4th __, No. 22-1047 (2nd Cir., Feb. 16, 2024).*
A suit alleging discrimination under the FHA for failure to issue a developer building permits was held to be unripe when the developer had not requested a variance and been denied, even if the municipality indicated that it "might not be receptive" to such a request.

Women's Elevated Sober Living v. Jones*, __ F.4th __, No. 22-40637 (5th Cir., Nov. 20, 2023).*
Under the FHA, a sober house's request for an accommodation allowing it to house at least 34 persons in an area zoned for 8-unit sober houses could be denied when the plaintiff failed to demonstrate that such an accommodation was necessary to the facilitation of a resident's recovery. Being "therapeutically beneficial" is not enough to show "necessity."

Cook County v. Bank of America*, __ F.4th __, No. 22-1407 (7th Cir., Aug. 16, 2023).*
A city's lawsuit under the FHA against banks who made loans to uncreditworthy borrowers who then defaulted and left vacant properties, thereby taking away tax revenue, was dismissed as there was no showing of a direct relation between the lending of money and the presence of abandoned properties and a tax revenue loss.

RLUIPA; RFRA

Mack v. Yost*, __ F.4th. __, No. 21-2472 (3rd Cir., Mar. 21, 2023).*
Qualified immunity can be asserted as a defense under RFRA.

Davis v. Wigen, *__ F.4th __, No. 21-3162 (4th Cir., Sept. 19, 2023).*
Under RFRA, preventing two inmates from marrying placed a substantial burden on the exercise of their Christian faith.

Landor v. LA DOC, *__ F.4th __, No. 22-30686 (5th Cir., Sept. 14, 2023).*
Under RLUIPA, plaintiffs cannot recover monetary damages against prison guards in their individual capacities.

Catholic Healthcare v. Genoa, *__ F.4th __, Nos. 22-2139/23-1060 (6th Cir., Sept. 11, 2023)*
Denying a special use variance for a church to construct a "Stations of the Cross Trail" on its property, while allowing a municipal "Leopold the Lion Reading Trail" a few miles away, violated RLUIPA.

Muhammed v. Jones, *No. 22-12563 (11th Cir., Aug. 25, 2023)(Unpub.).*
Summary judgment on a RLUIPA claim is denied to officers who, pursuant to policy, provided inmate meals after astrological twilight, requiring a Muslim inmate to choose between adhering to his religious beliefs or receiving adequate nutrition during Ramadan.

Vision Warriors v. Cherokee County Board, *No. 22-10773 (11th Cir., Jan. 11, 2024)(Unpub.).*
Under RLUIPA, a city's restriction on a residential faith-based recovery center could constitute a "substantial burden" even if the restriction did not remove any possibility that the center could operate despite the restriction or did not effectively bar the property's use for religious exercise.

SCHOOLS

IDEA

Pitta v. Medeiros, *__ F.4th __, No. 23-1513 (1st Cir., Jan. 4, 2024).*
The father of a student has no First Amendment right to videotape a private meeting discussing his child's IEP.

Lartique v. Northside Indep., *__ F.4th. __, No. 22-50854 (5th Cir., Nov. 16, 2023).*
The IDEA "exhaustion requirement" does not apply to ADA claims.

Bradley v. Kenton Cty. Pub. Sch., *__ F.4th __, No. 22-6091 (6th Cir., Dec. 21, 2023).*
Holland v. Kenton Cty. Pub. Sch., *__ F.4th __, No. 22-5874 (6th Cir., Dec. 21, 2023).*
Under IDEA, a school district is not required to provide special education classes after a student graduates from high school, nor to high school students who enroll in dual-credit classes offered at post-secondary institutions.

F.B. v. Francis Howell School District, *__ F.4th __, No. 23-1073 (8th Cir., Nov. 16, 2023).*
A parent need not exhaust IDEA's administrative processes before bringing a suit under the ADA seeking compensatory damages, as such damages are not available under the IDEA.

Powell v. Volusia County School Board, *__ F.4th __, No. 22-14083 (11th Cir., Nov. 13, 2023).*
Parents need not exhaust IDEA's administrative remedies before filing an ADA complaint seeking compensatory and punitive damages.

Title IX

Soule ex rel. Stanescu v. CT Assoc. of Sch., *__ F.4th. __, No. 21-1365 (3rd Cir., Dec. 15, 2023).*
Non-transgender athletes have standing under Title IX to challenge a policy allowing transgender girls to compete against biological girls.

Reid v. James Madison University,*__ F.4th __, No. 22-1441 (4th Cir., Jan. 9, 2024).*
Under Title IX, the statute of limitation begins to run when a school denies a teacher's appeal, not earlier when an internal reprimand decision is made.

S. C. v. Nashville & Davidson County, *__ F.4th __, No. 22-5125 (6th Cir., Nov. 15, 2023).*
Under Title IX, a school has an obligation to address student-on-student threats and harassment that occurred after a student participates in a sexual harassment investigation. It cannot remain deliberately indifferent.

Doe v. Manhattan Beach, *No. 23-55233 (9th Cir., Feb. 22, 2024)(Unpub.).*
The court rejects an "erroneous outcome" theory of Title IX liability.

Other Cases

Der Sarkistan v. Austin Prep., *__ F.4th __, No. 23-1040 (1st Cir., Nov. 7, 2023).*
A teacher's request that other teachers take on her teaching responsibilities is, on its face, an unreasonable ADA accommodation request.

McElhaney v. Williams, *__ F.4th __, No. 22-5903 (6th Cir., Aug. 25, 2023).*
When a school employee interacts with a student, speech by the student's parent about the interactions enjoys First Amendment protection.

Hershey v. Jasinski, *__ F.4th __, Nos. 22-1826/1941/2235 (8th Cir., Nov. 21, 2023).*
An advance notice provision requiring pamphleteers to notify a school before distributing pamphlets was content-neutral and not a prior restraint on speech because only notice, not approval, was required.

Sasser v. Board of Regents, *No.21-14433 (11th Cir., Mar. 10, 2023)(Unpub.).*
Qualified immunity was granted to school officials on a First Amendment claim regarding a student's punishment for using a racial slur on campus during a school-sponsored event.

JAILS; PRISONS; EIGHTH AMENDMENT

Wiggins v. Griffin, *__ F.4th __, No. 21-539 (2nd Cir., Nov. 20, 2023).*
A prison that failed to update its records, which denied an inmate the right to attend religious services, substantially burdened his religious exercise.

Williams v. Diven,*__ F.4th __, No. 23-2712 (3rd Cir, Jan. 9, 2024)*
A single incident in which an inmate's mail is mishandled is insufficient to support a First Amendment claim.

Amisi v. Brooks,*__ F.4th __, Nos. 21-1960/1962 (4th Cir., Feb. 22, 2024).*
The Fourth Amendment was violated when officers at a jail mistakenly strip-searched a nurse, believing that she was a prisoner.

Jones v. Soloman,*__ F.4th __, No. 21-7239 (4th Cir., Jan. 3, 2024).*
Placing an inmate in a "dry" cell for 17 hours with no water to wash his hands and requiring him to eat his food with his hands during this time period, does not violate the Eighth Amendment.

Safrit v. Stanley, *No. 22-6902 (4th Cir., Feb. 5, 2024)(Unpub.).*
An Eighth Amendment claim may lie when a prison's head count policy deprives prisoners of adequate sleep and may exacerbate their mental health conditions.

Webb v. Butler, *No. 21-1441 (4th Cir., Mar. 22, 2023)(Unpub.).*
A pretrial detainee's First Amendment retaliation claim survives summary judgment when he was transferred to another facility nine days after filing a grievance and on the day on which he filed a second grievance. This temporal proximity creates an issue of material fact.

LaVergne v. Stutes, *No. 22-30475 (5th Cir., Sept. 25, 2023))(Unpub.).*
Confinement within a cell for 23 hours a day does not violate the Eighth Amendment so long as a prisoner can converse with others, receive visitors, and get some exercise.

Alicea v. Cook County, *__ F.4th __, No. 22-2863 (7th Cir., Dec. 18, 2023).*
The use of cameras to record holding cell toilets in courthouses does not unlawfully infringe upon the privacy interests of pretrial detainees.

Johnson v. Murray, *No. 23-1805 (7th Cir., Jan. 19, 2024)(Unpub.).*
While jail officials may punish pre-trial detainees for violating jail rules, they must afford the procedural safeguards required by the Due Process Clause.

Covert v. Plummer, *No. 23-1557 (8th Cir., Aug. 18, 2023)(Unpub.).*
Qualified immunity was granted to prison officers on a First Amendment claim that arose after they searched a cell after its occupant called the prison tip line. This one-time search would not chill a prisoner from making further calls.

Artisani v. Iowa, *No. 23-2984 (9th Cir., Jan. 22, 2024)(Unpub.).*
Pre-trial detainees cannot be punished without being afforded due process.

Franklin v. Anaya, *No. 23-2026 (10th Cir., Sept. 18, 2023)(Unpub.).*
The court rejects a contention that the mere transfer of a prisoner between prisons, even if one has more restrictive conditions of confinement than the other, supports an Eighth Amendment claim.

Jackson-Mackey v. Penrod, *No. 22-8033 (10 Cir., Mar. 17, 2023)(Unpub.).*
Qualified immunity was granted to prison officials on a First Amendment claim that a prisoner has the right to both be present when his mail is opened and to seal his own mail.

LABOR; UNIONS; WARN ACT

Resturant Law Center v. NYC,__ *F.4th __, No. 22-491 (2nd Cir., Jan. 5, 2024).*
A municipal law prohibiting the wrongful discharge of fast-food restaurant employees is not preempted by the NLRA nor prohibited by the Dormant Commerce Clause.

Fleming v. Bayou Steel, __ *F.4th __, No. 22-30260 (5th Cir., Sept. 27, 2023).*
There is no right to a jury trial under the WARN Act.

Tesla v. NLRB, __ *F.4th __, No. 22-60493 (5th Cir., Nov. 14, 2023).*
The NLRA does not give the NLRB the authority to deem all company uniforms presumptively unlawful.

ENVIRONMENT

Munoz v. Intercontinental Terminals, __ *F.4th __, No. 22-20456 (5th Cir., Oct. 27, 2023).*
CERCLA, not The Oil Pollution Act of 1980, applies to discharges of oil mixed with hazardous substances.

City of Ferley v. Conant, *No. 22-15400 (9th Cir., Mar. 17, 2023)(Unpub.).*
A statutory claim under NEPA does not exist when a municipality alleges only economic harm as a result of a diminution in the amount of water seeping from a canal into a city's water system.

CRA v. City of Berkeley,__ *F.4th __, No. 21-16278 (9th Cir., Jan. 2, 2024).*
The federal Energy Policy and Conservation Act preempts a local building code that bans natural gas piping in new buildings.

Baker v. Upson Regional Medical Center ,__ *F.4th __, No. 22-11381 (11th Cir., Mar. 8, 2024).*
Under the EPA, a plaintiff does not have to prove discriminatory intent on behalf of her employer.

City of Lincoln v. FERC,__ *F.4th __, No. 22-1205 (D.C. Cir., Jan. 2, 2024).*
A public utility that invests in facilities that benefit one group of customers cannot recover its costs from other customers who neither caused nor benefited from the investment.

PROCEDURAL; EVIDENTIARY

Town of Milton v. FAA, *__ F.4th __, No. 22-1521 (1st Cir., Nov. 30, 2023).*
A municipality does not have Article III standing to challenge new FAA flight routes over its residential neighborhoods based upon its contention that the money it has spent challenging the routes could have otherwise been spent on other municipal activities. This is not a relevant economic injury for purposes of standing.

US v. Johnson,*__ F.4th __, No. 22-1086 (2nd Cir., Feb. 27, 2024).*
Evidence seized pursuant to the execution of a valid search warrant but not reviewed until after a defendant's sentencing can be used in his subsequent prosecution for another offense.

Yaakov Academy v. Town of Clarkstown, *__ F.4th __, No. 22-1714 (2nd Cir., Dec. 8, 2023).*
By declining to review a variance application, a zoning board thereby reached a decision that was sufficiently final for ripeness purposes.

US v. Vongphakdy, *No. 22-4593 (4th Cir., Oct. 12, 2023)(Unpub.).*
The Fifth Amendment does not prohibit the introduction of evidence indicating that a suspect was able to respond to an English-language interrogation.

Bernstein v. Maximus, *__ F.4th. __, No. 22-10354 (5th Cir., Mar. 30, 2023).*
Equitable tolling may be appropriate when the EEOC affirmatively misleads a claimant about the time within which he must file a federal complaint.

Culbertson v. Harris County, *No. 20527 (5th Cir., Sept. 26, 2023)(Unpub.).*
For a Section 1983 retaliation claim, standing depends upon the plaintiff's direct, nonderivative injury, not the defendant's motive.

Strunk v. Methanex, *No. 23-30685 (5th Cir., Jan. 31, 2024)(Unpub.).*
Equitable tolling was not justified when a plaintiff filed her discrimination complaint late due to being on bedrest for a difficult pregnancy and its aftermath.

Rodriguez v. Hirshberg, *__ F.4th __, Nos. 20-2184/2247/2253 (6th Cir., Mar. 14, 2023).*
A court violated the FRCP by using an "administrative closure" to suspend and dismiss a civil lawsuit.

US v. Robinson, *__ F.4th __, No. 21-6056 (6th Cir., Mar. 21, 2023).*
The exclusionary rule does not bar evidence illegally obtained from a "supervised release" hearing.

US v. Whipple,*__ F.4th __, No. 23-5126 (6th Cir., Feb. 8, 2024).*
A warrant's execution date does not apply to the off-site investigation and analysis of a cellphone's contents.

US v. Zahn, *__ F.4th __, No. 22-1408 (8th Cir., Mar. 23, 2023).*
Evidence was not excluded at trial based upon a sheriff's department's negligent failure to remove a recalled arrest warrant from its file and computer system. Such conduct was not so objectively culpable as to require the exclusion of the evidence obtained after the suspect's arrest.

Washington v. St. Louis, *__ F.4th __, No. 22-1843 (8th Cir., Oct. 19, 2023).*
Unsworn statements are no substitute for evidence at a summary judgment hearing.

Davis v. Koch, *No. 23-8029 (10th Cir., Aug. 25, 2023)(Unpub.).*
Under FRCP Rule (4)(e) & (m), regular mail is not an approved method of service, and if a plaintiff relies upon regular mail and a filing deadline is missed, a court can dismiss the action.

Speech First v. Shrum, *__ F.4th __, No. 23-6054 (10th Cir., Feb. 9, 2024).*
Pseudonymous declarations can establish Article III standing.

Waetzig v. Halliburton Energy, *__ F.4th __, No. 22-1252 (10th Cir., Sept. 11, 2023).*
A district court cannot reopen a case under FRCP Rule 60(b) after it has been voluntarily dismissed without prejudice - - because a voluntary dismissal is not a final judgment, order, or proceeding.

Harris v. Public Health Trust, *__ F.4th __, No. 21-11016 (11th Cir., Oct. 4, 2023).*
What is necessary to rebut a "cat's paw" allegation of a biased employment discipline recommendation is an unbiased investigation into the complaint against the employee, not into the bias of the recommender.

Rogers v. Sheriff, *No. 21-13994 (11th Cir, Mar. 20, 2023)(Unpub.).*
Individual liability under Section 1983 is not a necessary component of *Monell* liability.

ARBITRATION; CONTRACTS

Iten v. Los Angeles County, *__ F.4th __, No. 22-55480 (9th Cir., Aug. 30, 2023).*
A landlord had standing to bring a Contracts Clause claim against a county when the county's executive order issued during COVID impaired his contract with a tenant by altering the remedies the parties had agreed upon when entering into the lease.

Bedgood v. Wyndham Vacation Resorts, *__ F.4th __, No. 22-11504 (11th Cir., Dec. 19, 2023).*
Persons who seek to arbitrate disputes but whose petitions are rejected by the AAA for a failure to follow its rules can proceed to trial.

OTHER CASES OF INTEREST (TO ME)

Kerson v. Vermont Law School, *__ F.4th __, No. 21-2094 (2nd Cir., Aug. 18, 2023).*
An artist's rights were not violated under the Visual Artists Rights Acts when a law school erected a wall around an artwork to keep it from public view but neither modified nor destroyed the work.

Roberts v. Lau, *__ F.4th __, No. 22-2340 (3rd Cir., Jan. 11, 2024).*
For purposes of an absolute immunity analysis, whether a prosecutor's actions were pre- or post-indictment, and whether those actions were connected to a judicial proceeding, are "relevant considerations" when determining whether the actions served a "quasi-judicial" function.

VI Carnival v VI Department of Tourism, *No. 22-2658 (4th Cir., Sept. 32, 2023)(Unpub.).*
Government officials could not be enjoined from using the phrases "St. Thomas Carnival" and "Virgin Island Carnival" as those terms are generic and not subject to trademark infringement.

Weimer v. Fayette County, *No. 22-2363 (4th Cir., Nov. 2, 2023)(Unpub.).*
Qualified immunity was granted to an officer on a "malicious prosecution" claim stemming from his failure to disclose potentially exculpatory evidence and investigatory leads to a prosecutor before charging decisions were made.

Sun v. TETRA, *No. 22-20646 (5th Cir., Oct. 19, 2023)(Unpub.).*
The fact that the same law firm filed a pleading in state court for one entity and a pleading in federal court for another entity regarding the same incident does not establish privity between the entities.

Elden v. Nirvana, *__ F.4th __, No. 22-55822 (9th Cir. Dec. 21, 2023).*
Nirvana's album cover showing a naked baby in a swimming pool may constitute child pornography.

Saili v. Waste Management, *No. 22-3268 (10th Cir., Sept. 18, 2023)(Unpub.).*
Judicial estoppel prevents the pursuit of claims not disclosed on a Chapter 13 property schedule.

MERCIFULLY, THE END

NOTES