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FEATURED CASE

City Officials did Not Violate Fire Captain's First Amendment Rights by Terminating him for Online Comments

***Misjuns v. City of Lynchburg,* No. 24-1782 (4th Cir. June 5, 2025)**

Martin Misjuns (Misjuns) was employed by the City of Lynchburg, Virginia (City) as a Fire Captain and paramedic. In January of 2021 Misjuns posted to his personal Facebook page a number of cartoons which depicted offensive stereotypes of transgender women in bathrooms and participating in sports, with the caption "#BidenErasedWomen- coming to your daughters high school locker room in the near future." After numerous complaints to the City, the mayor and city manager agreed that action must be taken against Misjuns.

In February of the same year Misjuns found out about the complaints against him and posted yet another offensive meme to his Facebook page that stated in part, "In the beginning, God created Adam & Eve. Adam could never be a Madam." Misjuns also began circulating a petition asking the mayor and City to protect and defend the Constitution and protect his First Amendment rights of political speech. After an investigation into his social media activity, Misjuns was terminated for his posts. He filed suit alleging breach of contract, with three § 1983 claims for free speech and free exercise of religion under the First Amendment, and an equal protection claim under the Fourteenth Amendment.

Legal Questions:

1. Did the City of Lynchburg violate Misjuns' First Amendment rights by terminating his employment in retaliation for his public comments?

Holdings:

The Fourth Circuit held that the City did not violate Misjuns' rights when the City officials fired him because they did not have final policymaking authority and Misjuns did not show that such firing was pursuant to a custom or policy of the City.

Analysis:

The court first defined what Misjuns would have to prove to be successful. In order to succeed with his § 1983 claims against the City and officials he sued, Misjuns would have to prove *Monell* liability. There are four ways to show *Monell* liability, however Misjuns only attempted to show two; that the actions which violated his constitutional rights were taken by a person with final governmental policymaking authority, and that the practice by the government is so consistent and widespread as to constitute a custom or usage with the force of law.

Misjuns argued that his firing was proof of the fire chief's final policymaking authority; however the court disagreed, pointing out that having the authority to make personnel decisions is not the same as having final policymaking authority. "[t]he fact that a particular official—even a policymaking official—has discretion in the exercise of particular functions does not, without more, give rise to municipal liability based on an exercise of that discretion." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 482 (1986). The court further added that simply stating a legal conclusion that someone has final policymaking authority does not make it so.

Misjuns then argued that he pled facts sufficient to show a persistent and widespread discriminatory practice on the part of the City. He attempted to show this by attaching emails from City officials to constituents and to each other recognizing their concerns over Misjuns' comments and confirming that something would be done about it. However, the court pointed out that Misjuns never actually detailed what policy or custom those emails were supposed to be expressing. It also cited case law noting that a plaintiff cannot show a policy or custom based on a single alleged violation, and Misjuns did not show any instance of this practice or custom on the part of the City outside of his own experience. The court also dismissed Misjuns' claims of breach of contract, conspiracy, and wrongful termination.

Concurrence:

The concurrence explains further the justifications behind Misjuns' firing and points out that trans people were not the only demographic Misjuns made derogatory comments about. He also made offensive comments towards black citizens, calling Black Lives Matter supporters "lazy and stupid" and "opportunistic thugs." He made negative comments about Asian Americans, called the coronavirus the "CCP virus," and attacked the LGBT community in general as fanatical activists. The concurrence had this to say in response:

The plaintiff has every right to express his views, hateful though they be. But he has no right to impair the Fire Department's work and efficiency. His transparently bigoted remarks gave rise to a reasonable apprehension on the part of Lynchburg's citizens that the Fire Department's emergency-response tasks would not be carried out in an even-handed and unbiased way. The city, in turn, was fully justified in responding to the possible corruption of its basic services and to the negative effects on recruitment that the well-known views of a well-known Captain in the Fire Department would likely have.

Happy Pride Month, everyone.

***Misjuns v. City of Lynchburg*, No. 24-1782 (4th Cir. 2025)**

CASE UPDATE:

In the spirit of Pride Month, I thought I would give an update on a case that is related to the LGBTQIA community, *Doe v. McHenry*, 1:25-cv-00286, (D.D.C. May 15, 2025). As many of you are aware, the Trump Administration is attempting to move trans women currently housed in federal women's prisons into men's prisons. The Administration's justification for this is the unsupported fear that trans women pose a safety threat to other female prisoners. In fact, the opposite is true. Trans people are **13 times more likely to be sexually assaulted** as opposed to a random sample of incarcerated men.

A number of Jane Doe plaintiffs who would be impacted by the administration's new policy sued, and an **order** was issued on May 15th directing that these women remain in women's facilities and continue to receive the care that they need until August 23rd. The court found that there would be no adverse impact on the operation of the criminal justice system while the litigation proceeds.

SHORT SUMMARIES:

6th Circuit – Deliberate Indifference – Pretrial Detainee

Officers in the process of executing a search warrant find the subject in a car outside and box him in with their cars to prevent him from fleeing. Officers see the subject put what they guess is drugs in his mouth and then struggle with him to force him to expel the drugs – a bag of cocaine. Following their perceived saving his life, the officers interview the subject and ask repeatedly if he's ingested more drugs. The officers explain that doing so likely would kill him and while the subject explains in detail what drugs he's had and what he's been doing thereby incriminating himself, he says he did not ingest any drugs.

At the jail, when booked, he again affirms that he has not ingested any drugs. He's examined by a nurse who finds him healthy with no indication of being under the influence. His mother calls and says she believes he ingested drugs based on a conversation with his sister. The nurse again examines him and as with every interaction before he claims not to have ingested any drugs. He has his bail hearing and seems fine, but shortly after returning to his cell his cellmate calls for help. The subject is found responsive, but in serious condition. He's rushed to the hospital where he dies and later a plastic bag with a fair amount of cocaine is recovered from his stomach.

The family sues and the lower court denies summary judgement to the officers believing a reasonable person would have suspected the man had swallowed life-threatening drugs. On appeal the panel disagreed and reversed and remanded for entry of judgment for the officers. From the opinion "Death alone does not suffice to prove the objective prong where the decedent, prior to their death, showed no symptoms of a serious medical need. See Spears, 589 F.3d at 253, 255. And Molson's death, one full day after his arrest, cannot establish "the obvious existence of a sufficiently serious medical need" under the circumstances, since Molson exhibited no symptoms for the entirety of January 20, 2021, and denied swallowing drugs at every possible opportunity. See id. at 255; Grote, 85 F.4th at 409–10. Because Plaintiff has not established that Molson's condition was objectively serious when the officers arrested and transported him to jail on January 20, 2021, and the officers had no later interactions with him, his death alone cannot serve as a sufficient basis for their liability."

Hodges vs. Abram

10th Circuit – Excessive Force

A driver on I-10 phones in that the driver saw a man in the median with a weapon possibly shooting at passing cars. The driver did not know if the weapon was real. Officers respond and find the subject a bit north of the Interstate matching the description and carrying a weapon. Some of the officers are familiar with the subject and know him to be mentally disturbed, erratic and sometimes violent. The subject told one of the officers he'd been hunting rabbits. From this the officers assumed the weapon was real. When confronted the subject was given several orders so the officers could safely approach him and take him into custody. The response to those commands seems half-hearted and when the man began handling the weapon which looked like an AR-15 rifle so as to point the barrel in the direction of the officers four officers fired 20 times hitting the subject 10 times. He died and his estate sued. The rifle was actually an airsoft gun with an orange tip that had been painted black. The officers were between 30 and 40 feet away when they fired. The lower court granted summary judgment and the panel affirmed on appeal. The court's opinion offers quite a bit of analysis that those practicing in this area may wish to review.

Cruz vs. City of Deming

4th Circuit – Excessive Force

In this case two state police officers who were riding together in the same car notice a car speeding in the early hours of the morning. The officers were parked in a median and gave chase. They followed the speeding car and observed that they were going about 96 mph in doing so. They activated their lights and the car pulled to a slow roll on the side of the road, but abruptly attempted to u-turn across the highway. The maneuver saw the car slide down an embankment towards a line of trees. The officers moved towards the car and positioned their police car so as to shine lights down the embankment at their quarry. The sole occupant was ordered out of the car, but claimed the door was stuck. The troopers ordered him to put his hands out the window, but he only put his left hand and arm out. Several other orders and attempts to get the occupant to put his arms out the window ensued. One officer looked into the car and saw the occupant reaching for something he believed to be a gun and yelled gun at which time both officers fired killing the occupant. Suit followed and the lower court granted judgement to the officers based on Qualified Immunity. The panel affirmed.

Benton vs. Layton

9th Circuit – Excessive Force

In an en banc decision, the 9th Circuit reversed grant of summary judgment to an officer in a case alleging excessive force when the officer shot a man wielding a knife and moving toward her. The man ignored repeated commands to stop moving and drop the knife. As described by the court the "entire shooting occurred over just six seconds, the officer fired three distinct volleys of two shots, pausing after each." Apparently, the last volley included the fatal shot and it was this last volley that proved decisive. Although there were dissenters, the majority believed that the officer's last shot proved excessive as by the time it was fired the man lay on the ground in a fetal position.

Estate of Hernandez v. City of Los Angeles

3rd Circuit – Religious Discrimination – Fire Departments

A firefighter sought to grow a beard to satisfy his religious convictions. Unfortunately, policy requirements tied to wanting to protect firefighters from fumes that might enter their lungs because protective masks don't fit well over beards prevented the department from granting an accommodation for the beard. The firefighter's claims as reported by the court: "Smith believes men should grow and maintain beards based on the teachings of Holy Scripture and early Christian theologians. Beards, Smith says, emulate Jesus Christ and the biblical prophets; they are symbols of masculinity, maturity, and man's natural role as "head and leader." The lower court denied relief, but on appeal the panel found that the City's policies allowed for exceptions to the requirements one for administrative staff who were firefighters themselves and one at the discretion of a fire captain who assumed responsibility for the decision. Both exceptions led the court to the conclusion that the beard policy could accommodate the religious beliefs of the firefighter.

Smith vs. City of Atlantic City

6th Circuit – Pleading – Qualified Immunity

This case involves strictly a question of whether qualified immunity applies at the pleading stage where the complaint apparently does not reference video footage or other facts outside the four corners of the complaint. The lower court declined to review anything outside the complaint and the panel affirmed. The complaint asserted liability against officers for the arrest/detention of an 11-year-old girl without probable cause. The officers assert that the video paints a more full picture of what happened at the time. Based on the decision, the video as a defense must await a later stage of the case.

Hodges v. City of Grand Rapids, Mich. et al.