International Municipal Lawyers Association
www.imla.org

IMLA NEWS
Issue 17 – October 7, 2026

FEATURE:

Fifth Circuit Holds Alleged Government-Caused Water Contamination and Misleading Safety Assurances Do Not Give Rise to Substantive Due Process Claims

Sterling v. City of Jackson, No. 24-60370 (5th Cir. Sept. 4, 2026)

Although the facts are relatively simple in this case, the legal questions they present to the court are not. The Plaintiffs were Jackson, Mississippi residents and public-water subscribers who alleged exposure to lead and other contaminants due to the City's acts and omissions. They allege City officials falsely assured residents the water was safe despite knowing it likely was not, inducing them to drink contaminated water. According to the court, this was not the first time Jackson has had water quality problems in the last few years. Dozens of boil water notices have been issued in recent memory for issues ranging from E. Coli to lead to other bacteria and unsafe chemicals. Plaintiffs sued the City and officials under 42 U.S.C. § 1983 for substantive due process violations, and also asserted state-law tort claims.

Legal Question(s):

1. Whether City officials acting with deliberate indifference violate residents' constitutional right to bodily integrity when they deliberately mislead residents about the quality of the water they are drinking.
2. Whether City officials stepping in and affirmatively telling residents the water is safe to drink when they know it is not is grounds for a state-created danger claim.

Holding(s):

The Fifth Circuit held that even assuming Jackson officials caused lead contamination and misled residents about its safety, the alleged conduct did not violate a substantive due process right

recognized by the Fourteenth Amendment, so the residents could not maintain § 1983 claims on that theory.

Analysis:

The court framed plaintiffs' asserted rights as freedom from exposure to contaminated water caused by officials and a right to truthful information about contaminants. Applying *Dobbs* and *Glucksberg*, the court required a careful, historically grounded definition of the asserted substantive due process rights tied to history and tradition. The court held no deeply rooted tradition supports a constitutional right to be free from contaminated water or to accurate official information in a public health crisis. The Constitution imposes no duty to provide services competently and is not a guarantee of minimal safety levels. Plaintiffs' bodily integrity theory failed because mismanaged water causing lead exposure is unlike forced medical procedures or assaults that have been historically protected. If you are wondering whether the court found any parallels between this case and the *Guertin* case out of Flint, Michigan, which did find in favor of the plaintiffs, the answer is no. The majority didn't explain why, though, citing Guertin only in a handful of footnotes, where it simply says it is unpersuasive and nonbinding and the proceedings in Guertin were not concluded during the events of this case, so even if the right were to be recognized, it was not established at the time.

On the truthful-information theory, the court found no precedent recognizing a due process right to accurate public statements during evolving crises. The court rejected framing the claim as informed consent, distinguishing cases involving medical refusal and coercive procedures. Because no cognizable substantive right was alleged, § 1983 relief was unavailable, and tort or political remedies were the proper avenues. Alternatively, qualified immunity would shield the officials because no clearly established right covered lead-free water or truthful crisis communications.

Dissent

The dissent began by further detailing the allegations that the City knowingly switched sources, worsened corrosion control, misled the public, and concealed an EPA order. It noted Plaintiffs alleged concrete harms, including diagnosed lead poisoning and symptoms consistent with contamination. The dissent heavily criticized the majority for omitting Plaintiffs' state-created danger claim, which was squarely presented throughout the case. The majority just entirely ignored one of the two main arguments presented by the Plaintiffs. The dissent reiterated that it would adopt the state-created danger doctrine, aligning with at least ten circuits recognizing liability for knowingly creating or increasing danger. It cited *DeShaney's* language preserving affirmative duties when the state creates or increases vulnerability to harm.

On the bodily integrity argument, the dissent viewed the right as longstanding and applicable to involuntary exposure to toxic substances introduced by the state. It found plaintiffs plausibly alleged deliberate indifference by the City to their bodily integrity under established standards. The dissent distinguished *Lombardi* and *Benzman* (cases involving statements by public officials about air quality in New York shortly after 9/11) as emergency, rapidly evolving contexts unlike Jackson's prolonged, City-created crisis. It found Guertin persuasive that involuntary exposure under false pretenses invades the core of bodily integrity. The dissent agreed officials individually had qualified immunity but would vacate dismissal of state-law claims and remand.

Sterling v. City of Jackson

SHORT SUMMARIES:

2nd Circuit - Wrongful Conviction - Fair Trial - Monell Liability

Who remembers going to watch the "Batman" movie back in 1989? Did you go in the Bronx? Maybe you saw a confrontation take place in the concession line between a couple of guys and then saw them engage in a gunfight during the movie. A fight in which one fellow was killed. I'm guessing folks who saw the fight would rather have seen the movie and would not be too keen on stepping forward to identify the shooters. Apparently, a brave lad of 15 tending the concession stand was willing to do so and knew the fellow who shot the deceased. He knew him as "Leon" and knew he had a relationship with a young lady whom he also identified. Police spoke with her (also a juvenile), and she said she knew the fellow but called him "Ricky." Both were shown pictures of a guy and confirmed he was the same man. The fellow was arrested but the witnesses stopped cooperating and he was released.

The cold case unit picked up the ball and, in 2007, using a prison snitch, a convicted informant, and the original concessionaire, took the case to trial and secured a conviction. In 2022, the court vacated the conviction based on the prosecutor's Brady violations. Suit followed. The lower court dismissed the complaint. On appeal, the panel reversed as to the city's Monell liability, contending the lower court had more work to do. It also concluded that based on the pleadings, the officer who picked up the ball had improperly influenced witnesses, thereby denying the Plaintiff a fair trial. As to *Monell*, lawyers will find the allegations quite troubling. They include the allegation that the Bronx District Attorney's office both negligently and as a policy and custom fails to discipline attorneys who violate *Brady* and cite to a law review article that apparently serves notice on the widespread failure to comply with *Brady* by that office. In this case, the prosecutor failed to provide the defense with several documents detailing how the convicted informant's testimony in prior matters and in the case at hand was rewarded by the federal government.

Jimenez v. City of New York

8th Circuit - Racial Discrimination - Appointed Positions

This case reflects on why we lawyers wish our elected leaders could sometimes keep their thoughts to themselves. The city sought to replace the police commissioner. Several folks applied, but only two ultimately qualified through an examination process, both internal candidates. Both were white, and the Mayor, noticing this, announced that the city would reopen the application process to seek more candidates who might better reflect the city's demographics. The results identified four candidates as eligible. Of the four, two were black and two were white. After the two black candidates withdrew before the appointment, the interim director of public safety appointed the white candidate, who had newly entered the process, which sincerely upset the guy seeking promotion. So, he sued. The lower court denied qualified immunity. On appeal, the city asserted that failing to promote someone doesn't count as an adverse employment action. The panel disagreed. At this point, let me add that the officer sued both the Mayor and the personnel director who was acting as the interim director of public safety. In concluding its opinion, the panel wrote: "Isom was the interim director of public safety and the appointing authority for the position of commissioner. Sack alleges that Isom was personally involved in the hiring process because Sack was instructed to contact Isom to arrange an interview for the position. When the search was reopened without an offer to [sic] interview to Sack, it is reasonable to infer, drawing on experience

and common sense, that the official who served as the appointing authority participated in the decision."

Sack vs. City of St Louis

6th Circuit - Sign Regulation

Briefly, if you have sign regulations that clearly define off-premises signs from on-premises signs by their respective content, you are likely to face a First Amendment claim. Now, if the folks representing the sign company want to challenge the ordinance based on a requested permit denial, they may want to review the rest of the ordinance. In this case, the rest of the ordinance generally limited sign height and size, and the requested sign did not meet those requirements. Because the Plaintiffs only challenged the on-premises vs. off-premises part of the ordinance and not the height and size requirements that would have also caused their permit to be denied the court was faced with an interesting choice: "We (and other courts) have often confronted a similar redressability problem. Suppose that a regulation bars plaintiffs from engaging in a desired course of conduct. See *Int'l Outdoor, Inc. v. City of Southgate*, 556 F. App'x 416, 417 (6th Cir. 2014). And suppose that the plaintiffs bring a constitutional or statutory challenge to this regulation. See id. But suppose that a different unchallenged regulation would also prohibit the plaintiffs' desired conduct. See id. at 417–18. Do the plaintiffs have standing to sue over the challenged regulation if the unchallenged one would still bar them from following their preferred course? The consensus answer in the circuit courts: No. See id. at 418–21; *Midwest Media,* 503 F.3d at 461–65 (citing cases); see also *Maverick Media Grp., Inc. v. Hillsborough County*, 528 F.3d 817, 820–23 (11th Cir. 2008) (per curiam); *Get Outdoors II, LLC v. City of San Diego,* 506 F.3d 886, 891–94 (9th Cir. 2007). We have reasoned that no relief against the challenged regulation would "redress plaintiffs' injury because the [unchallenged regulation] still would" inflict that injury. *Midwest Media*, 503 F.3d at 461." Of course, there is more analysis directed at each of the company's arguments for those interested.

Summit Locations, LLC, vs. Board of Trustees, Bath Township

3rd Circuit - Strip Search

The panel adopted a rule that prohibits strip searches outside a jail or detention center generally when a person is arrested. To quote: "Today, we recognize another such limit on searches incident to arrest: strip searches. Outside of jails or prisons, officers need a search warrant (or exigent circumstances) supported by probable cause to believe that a strip search will reveal weapons, contraband, or evidence under the arrestee's clothes."

Beatty vs. Gardner

11th Circuit - Excessive Force – Mental Health

The case, like most, involves a truly tragic event. A relatively young man developed a severe brain cancer. The operation to remove the tumor left him suffering from a host of behavioral issues and scarred, with a shaved head and significant scars, with staples holding things together. The fellow began acting out one evening, and ultimately his housemates called 911. A deputy responded, as did an EMS ambulance unit. When the deputy arrived, the fellow moved to the back of the deputy's

SUV and, with his bare hands, smashed in the rear window. The deputy attempted de-escalation tactics, but eventually tased him; within five seconds, the man tore out the barbs. The deputy drew his weapon, shouting orders, including that he would shoot, but kept backing up. The man went to the ambulance and, with his bare hands, smashed in the front windscreen, causing glass fragments to temporarily blind the EMS driver. The deputy continued de-escalation by backing up as the man kept ignoring his orders. Eventually, the man ran towards a neighbor's house about 200 yards away. As the event began, a housemate ran to the neighbor's home. The neighbor had been alerted to the disturbance while watching TV in his recliner with his wife and daughter. When alerted, the neighbor, an off-duty police officer, dressed and strapped on his weapon.

When the housemate arrived, she related the scene in a panic and said he was going to shoot. She didn't specify who would shoot. The neighbor saw a man running towards his house and a man following. The neighbor went into his yard and saw a man in shorts, sweating profusely, dripping blood, with a shaved head and staples in it, approaching him. He drew his weapon and told him to stop. The fellow did not stop. The neighbor holstered his gun, and a fist fight began. The fellow was several inches taller and about 20 pounds heavier than the neighbor and landed a really hard haymaker to the neighbor's head. At this point, the neighbor felt he might lose consciousness and feared for his life, that of his family, and the housemate who had arrived shortly before. He drew his weapon and emptied it into the fellow's chest. As an aside, bear in mind that the deputy who arrived earlier did not intervene and had basically backed up while the guy approached for close to 100 yards and then ran after him for about another. Bear in mind that none of the housemates intervened. The estate sued for excessive force. Long story short, the estate lost at the lower court and on appeal. The opinion is 87 pages, which, based on its rendition of the facts, might have been reduced to one additional page. Of note here, towards the end of the opinion, the court addresses the argument that the neighbor should be held liable because he should never have opted to be a police officer if he was not willing to get into a fist fight and suffer a few bruises or lose teeth.

Callaway vs. Adcock