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SECTION 1983 CIVIL RIGHTS UPDATE

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MONELL LIABILITY:

Los Angeles County, California v. Humphries, 131 S.Ct. 447 (2010)

- ⌚ Parents who had been arrested on charges of child abuse and felony torture, but subsequently found “factually innocent” after charges were dismissed, brought § 1983 action against state and county defendants, alleging that their continued listing in California’s Child Abuse Central Index, pursuant to the Child Abuse and Neglect Reporting Act, violated due process. The Supreme Court held that in order for a civil rights plaintiffs to successfully sue a municipal entity under § 1983, *Monell*’s “policy or custom” requirement applies, irrespective of whether the relief sought is monetary or prospective.

Wragg v. Village of Thornton, 604 F.3d 464 (7th Cir. 2010)

- ⌚ The Village of Thornton’s fire chief John Klaczak molested Stephen Wragg, Jr., a sixteen-year-old in the Village’s fire cadet program. Wragg sued the Village under § 1983, alleging a *Monell* claim that the Village violated his substantive due process rights under the Fourteenth Amendment by deliberately retaining Klaczak as fire chief, despite knowledge of his prior improprieties with other minors. The district court granted summary judgment to the Village. On appeal, the Seventh Circuit affirmed, finding that “Wragg present[ed] no evidence from which a reasonable jury could find that either the board of trustees or [village president] knew that maintaining Klaczak in employment would pose a ‘substantial risk’ of a constitutional violation.”

FOURTH AMENDMENT:

City of Ontario, California v. Quon, 130 S.Ct. 2619 (2010)

- ⌚ The City’s Police Department issued pagers to its officers that were capable of sending and receiving text messages. The Department had a contract whereby it was able to send a certain amount of characters per month. After noticing large overages of text messages, the Department reviewed two months’ worth of messages to determine if the contract with the wireless provider was sufficient. After finding many non-work related text messages sent during working hours, Quon was disciplined for violating Department rules. Quon then brought a § 1983 action against the City, alleging its viewing of his text messages violated his Fourth Amendment rights. In its narrow holding, the Court found that the City’s search of its officers’ text messages was reasonable because it was motivated by a work-related purpose and because it was not excessive in scope.

Ray v. City of Chicago, 2011 WL 13862 (7th Cir. Jan. 5, 2011)

- ⌚ Plaintiff Nona Ray was pulled over for driving her car at night without headlights and was subsequently arrested when officers found cocaine in her car. Ray then

filed her § 1983 action, alleging violations of her Fourth and Fourteenth Amendment rights based in her arrest, detention and allegedly malicious prosecution. The district court dismissed all of her claims. On appeal, the Seventh Circuit affirmed the dismissal. The court reasoned that, aside from the drugs, because Ray admitted she was driving at night without her headlights, the officers had probable cause to arrest her for just that offense. Furthermore, Ray failed to allege that the length of her detention exceeded constitutionally permissible time frames from other cases. Thus, these claims were dismissed, and because of this dismissal, the Court concluded that the appropriate venue for her malicious prosecution claim was in state court.

QUALIFIED IMMUNITY:

Jones v. Clark, 2011 WL 117107 (7th Cir. Jan. 14, 2011)

- ⌚ Plaintiff Christina Jones, an African-American meter reader for ComEd, brought a § 1983 action against two Braidwood, Illinois, police officers, alleging a violation of her Fourth Amendment rights when the officers arrested her while she was performing her job. The officers allegedly began questioning Jones after receiving a phone call reporting her activities, and despite the facts that she was wearing a ComEd uniform and presented ComEd identification, the officers allegedly arrested her without probable cause. The officers sought summary judgment based on qualified immunity, but they were denied by the district court. On appeal, the Seventh Circuit noted that for the purposes of the appeal, it had to accept Jones' version of the facts. Applying those facts, the court upheld the summary judgment denial and noted that “[t]he fatal flaw in the [officers’] argument is that they cannot point to a single circumstance that could have led them to believe that Jones was engaged in criminal activity.” Because the facts, as laid out by Jones, show that the officers violated Jones’ Fourth Amendment rights, qualified immunity was improper.

MISTAKEN IDENTITY in ARREST:

Atkins v. City of Chicago, 2011 WL 206155 (7th Cir. Jan. 25, 2011)

- ⌚ William Atkins was illegally pulled over by Chicago police officers and then arrested for a parole-violation warrant. Atkins told the officers they were mistaken as to him being the person wanted in the warrant, but he was arrested nonetheless and was transferred to the custody of the Illinois Department of Corrections. After spending 36 days at the Stateville prison, Atkins received a full hearing on the parole-violation, where it was determined that he was not the person named in the warrant. After filing a § 1983 claim against the City of Chicago and other defendants, Atkins died, and his wife was substituted as plaintiff. The district court dismissed the complaint for failure to state a claim.

On appeal, the Seventh Circuit affirmed. The court noted that although the physical description of the William Atkins sought in the warrant varied slightly from the William Atkins who was arrested, both men had the same birth month and day, and the first three digits of both men’s social security numbers were the same, thus the officers’ mistake was reasonable. While Atkins initially argued that he was not the William Atkins in the warrant, he later argued that he was the correct William

Atkins, but that his parole had expired. These inconsistent statements allowed Atkins' continued detention to be reasonable, until a full hearing could be had. Additionally, the illegality of Atkins' initial stop played no role in determining the legality of his arrest relating to the warrant.

RES JUDICATA:

Czarniecki v. City of Chicago, 2011 WL 181471 (7th Cir. Jan. 21, 2011)

- ⌚ Plaintiff Wojciech Czarniecki, a Polish immigrant, was dismissed as a City of Chicago probationary police officer in February 2007, and he then filed a § 1983 action against the City, alleging national origin discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. The district court granted summary judgment in favor of the City. In May 2009, Czarniecki filed a second lawsuit, alleging that the City intentionally discriminated against him based on his national origin in violation of Title VII of the Civil Rights Act of 1964. Because Czarniecki's second lawsuit arose from the same set of operative facts as the first lawsuit, it was dismissed. On appeal, the Seventh Circuit affirmed the dismissal, reasoning that despite the Title VII claim presenting a different theory of liability, Czarniecki could not bring it because it was from the same set of operative facts as the earlier § 1983 claim.

EQUAL PROTECTION & SUBSTANTIVE AND PROCEDURAL DUE PROCESS:

LaBella Winnetka, Inc. v. Village of Winnetka, 2010 WL 5367749 (7th Cir. Dec. 29, 2010)

- ⌚ After a fire at LaBella restaurant in Winnetka, the kitchen, bar and patio were not damaged, but other parts of the building, including the roof, were damaged. The Village did not allow LaBella to re-open after the fire, but it did allow other restaurants in the same building to re-open. LaBella then brought a § 1983 action, alleging an equal protection violation and substantive and procedural due process violations. The district court dismissed LaBella's claims. On appeal, the Seventh Circuit affirmed the dismissal of the equal protection claim, finding that LaBella was not similarly situated to the other restaurants that were allowed to immediately re-open because the other restaurants did not suffer roof damage. LaBella's substantive due process claim was that it was deprived of its property interests in its lease and its restaurant business when it was not allowed to re-open. The Seventh Circuit also upheld dismissal of this claim, finding that it failed to sufficiently allege that its state law claims on this issue were inadequate. LaBella's procedural due process claim was that the Village failed to send LaBella notice of its liquor renewal license, as it had done in the past, but the Seventh Circuit held that the Village did not have a duty to mail the notice and that there were no allegations that the Village prevented LaBella from obtaining or submitting the renewal forms, which were available on the Village's website.

SUBSTANTIVE AND PROCEDURAL DUE PROCESS:

Khan v. Bland, 2010 WL 5185838 (7th Cir. Dec. 23, 2010)

- ⌚ Plaintiff Latif Khan, a landlord who rented properties under the Section 8 Housing Choice Voucher Program through the county housing authority, brought a § 1983

action against, among others, the executive director of the county program, alleging his substantive and procedural due process rights were violated when his existing contracts were terminated and he was barred from the program. After the district court granted the defendants' motion for judgment as a matter of law, the Seventh Circuit affirmed. The Court determined that Khan did not have any due process rights when he was debarred from participating in the Sec. 8 housing program because he did not have a property interest in entering into new contracts. The Court also determined that while Khan did have a property right in his existing contracts, he did not have a § 1983 remedy because he could bring a state-law breach of contract action. Finally, Khan did not have a substantive due process claim because he could still rent his properties and could still continue in his occupation as a landlord.

STANDING:

Parvati Corp. v. City of Oak Forest, Ill., 2010 WL 5185835 (7th Cir. Dec. 23, 2010)

- ⌚ Parvati owned a hotel in the City of Oak Forest and was going to sell it to a church, contingent upon the church securing the City's approval to convert the hotel into a senior-living facility. The City's Zoning Commission denied the request because of a recently enacted zoning ordinance. After Parvati and the church sought judicial review in both state and federal courts, the Zoning Commission's decision was upheld. Parvati then conveyed the property back to its mortgagor to resolve foreclosure proceedings that had been initiated against it. About a year later, Parvati, acting alone, moved for post-judgment relief, alleging that the City misrepresented material facts during the zoning proceedings. The district court judge denied this motion, and on appeal, the Seventh Circuit affirmed, reasoning that the relief Parvati sought from its motion – a reversal of the Zoning Commission's decision – would only benefit the owner of the property. Because Parvati was no longer the owner, its case was moot, and it lacked standing to further challenge the Zoning Commission's decision.

INADEQUATE MEDICAL CARE OF ARRESTEE & MONELL LIABILITY:

Sallenger v. City of Springfield, Ill., 2010 WL 5128850 (7th Cir. Dec. 17, 2010)

- ⌚ Andrew Sallenger suffered from schizophrenia and bipolar disorder. During the early morning hours of April 30, 2002, Sallenger's sister called the police when Sallenger was "running around the house naked" and "breaking all kinds of stuff." After police arrived and a violent struggle ensued, the officers were able to subdue Sallenger and restrain him in a "hobble," which is a cord that is looped around an arrestee's lower legs and then connected to a strap that is attached to handcuffs. A few minutes after the hobble was placed, Sallenger stopped breathing, and despite the officer's removal of the hobble and attempts at CPR, Sallenger died.

Sallenger's family brought suit, alleging, among other things, that the officers inadequately responded to Sallenger's medical needs. The district court entered summary judgment for the defendants, and on appeal, the Seventh Circuit affirmed, finding that the officers promptly responded with medical care when they realized Sallenger was not breathing and that their conduct thus satisfied the Fourth Amendment's reasonableness standard. Additionally, the City could not be held liable for a *Monell* claim that it failed to properly train its officers in using the hobble because the officers did not violate Sallenger's rights by the way in which they used the hobble.

EXCESSIVE FORCE:

Cyrus v. Town of Mukwonago, 624 F.3d 856 (7th Cir. 2010)

- ⌚ Nickolos Cyrus suffered from schizophrenia and bipolar disorder and was known by local police officers because of previous psychotic, but non-criminal, episodes. A property owner found Cyrus on the property of his partially constructed new home and called the police. Upon the officers' arrival, Cyrus walked away from the officers and would not speak to them. As Cyrus turned his back to the officers, he was tasered, fell over and then was tasered a second time. After unsuccessfully attempting to cuff Cyrus, the officers tasered him several more times. After the officers secured Cyrus in handcuffs, they found he was not breathing, and he was pronounced dead at the hospital.

After Cyrus' parents brought suit against the officers and Town, the district court granted summary judgment for the defendants. On appeal, the Seventh Circuit reversed, determining that there were material facts in dispute as to the extent to which Cyrus attempted to evade the police and to the actual amount of force used by the officers to affect Cyrus' arrest. While a police officer testified Cyrus was tasered six times, with this testimony being backed up by an autopsy report, internal reports from the Taser showed twelve trigger pulls. This discrepancy created enough of a material dispute to avoid summary judgment. Additionally, the officers argued that because they were justified in using their Taser initially, the subsequent Taser shots were appropriate because they could continue to use the same level of force until Cyrus was apprehended. The court disagreed, determining that "force is reasonable only when exercised in proportion to the threat posed" and that "force becomes increasingly severe the more often it is used." Thus, it was "the totality of the circumstances, not the first forcible act, that determines objective reasonableness."

Evans v. Poskon, 603 F.3d 362 (7th Cir. 2010)

- ⌚ Police burst into plaintiff Ty Evans' home to stop what they reasonably believed was his attempt to strangle someone to death. The arresting officers claimed that Evans resisted arrest and needed to be subdued, but Evans alleged that he was beaten mercilessly both before and after the officers gained custody of him. Evans was convicted of attempted murder and resisting arrest and was sentenced to a term of 71 years' imprisonment. He then filed this § 1983 action, alleging the officers used excessive force both before and after his arrest. The district court dismissed Evans' claim on summary judgment, reasoning that his claim was barred because his assertion that he did not oppose being taken into custody contradicts his

conviction. On appeal, the Seventh Circuit reversed, finding that even though Evans was convicted of resisting arrest, his allegations that the officers beat him so severely so as to fracture his skull, mangle his face and cause permanent vision impairment, was enough to survive summary judgment. The court reasoned that even if a suspect is convicted of resisting arrest, the officers could still have used excessive force while attempting to force the suspect to comply with the arrest.

“COLOR OF STATE LAW”:

Wilson v. Price, 624 F.3d 389 (7th Cir. 2010)

- ⌚ Defendant Keith Price, an alderman for the City of Harvey, Illinois, received complaints from his constituents about cars parked illegally in front of a car repair shop located within his ward. After Price notified the City and nothing was done to remove the cars, Price went to the shop and asked the manager to move the cars. When the manager refused and turned to walk away, Price attacked the manager, punching him in the head several times, leaving him unconscious and with a fractured jaw. After the manager filed a § 1983 claim against Price, the district court dismissed the claim, determining that Price was not “acting under color of state law” when he attacked the shop manager. On appeal, the Seventh Circuit upheld the decision to dismiss the § 1983 claim, reasoning that under the Illinois Municipal Code, aldermen serve a “purely legislative” function and thus Price’s actions could not be related to his legislative duties. In upholding the district court’s dismissal, the Seventh Circuit also chose not to exercise supplemental jurisdiction over the remaining state law claims.

FOURTEENTH AMENDMENT VOTING RIGHTS:

Parra v. Neal, 614 F.3d 635 (7th Cir. 2010)

- ⌚ Four days before the 2007 primary election for Chicago aldermen, the Illinois Supreme Court removed candidate Ambrosio Medrano from the ballot because he had a prior felony conviction. It was too late for his name to be removed from the physical ballots, so the Chicago Election Board posted signs at the polling places, in three languages, indicating that votes cast for Medrano would not be counted. Despite these efforts, eighty-eight votes were cast for Medrano on election day, in addition to the ninety votes he received during the early voting period. Eight of those voters then filed a § 1983 suit against the Election Board, alleging their votes were invalidated in violation of their Fourteenth Amendment rights.

The district court granted defendants’ summary judgment. On appeal, the Seventh Circuit noted that election irregularities implicate §1983 only when defendants engage in “willful conduct” that undermines the process used to elect candidates. The court went on to clarify that “willful conduct” in this type of situations means “that the defendants acted with the intent of subverting the electoral process or impairing a citizen’s right to vote.” Because the Election Board’s actions were predicated on the Supreme Court’s decision to invalidate all votes cast for Medrano, it did not have any intention of interfering with the voting process.