

# Illinois Institute for Local Government Law 17<sup>th</sup> Annual Conference

Northern Illinois University, Naperville Campus  
February 12, 2010

---

## Civil Rights Update

**Presented by:**

**Michael D. Bersani**

**Hervas, Condon, & Bersani, P.C.**

**630-860-4343**

**[mbersani@hcbattorneys.com](mailto:mbersani@hcbattorneys.com)**

**[www.hcbattorneys.com](http://www.hcbattorneys.com)**

# First Amendment – Public Monuments, Display Racks and Websites

---

- *Pleasant Grove City, Utah v. Summum*, 129 U.S. 1125 (2009)
  - Placement of permanent monument in a city park is a form of “government speech” not subject to scrutiny under the Free Speech Clause
  
- *Illinois Dunesland Preserv. Soc. v. Ill. Dept. Nat. Resources*, 584 F.3d 719 (2009)
  - State park refused to display pamphlet prepared by not for profit organization warning of asbestos on state beaches. Purpose of display racks is to promote Illinois tourism and facilities. Court held that government has the right to choose how it wants to convey that message.
  
- *Sutcliffe v. Epping School Dist.*, 584 F.3d 314 (1<sup>st</sup> Cir. 2009)
  - Town’s decision not to allow hyperlink on website to citizen’s group’s website did not violate free speech rights.

# First Amendment – Adult Book Stores

---

- *New Albany DVD, LLC v. City of New Albany*, 581 F.3d 556 (7<sup>th</sup> Cir. 2009)
  - Preliminary injunction remanded for evidentiary hearing on constitutionality of city’s zoning ordinance, which prohibited “sexually oriented businesses” within 1,000 feet of a church or residentially zoned property
  
- *Annex Books, Inc. v. City of Indianapolis*, 581 F.3d 460 (2009)
  - City failed to show causation between operating hours requirement and secondary effects of retail stores that offer only adult books and videos

# RLUIPA

---

- *World Outreach Conf. Center v. City of Chicago*, 2009 WL 5125822, (7<sup>th</sup> Cir. 2009)
  - Consolidated appeals addressing the rights of religious organizations to avoid having to comply with local land-use regulations
  - Denial of single room occupancy license, to operate a community center which included recreational and living facilities on property in Chicago, violated RLUIPA
  - Request to demolish building to construct a “Family Life Center” lawfully denied under Peoria landmark preservation ordinance

# Employment Discrimination

---

- *Ricci v. DeStefano*, 129 S.Ct. 2658 (2009)
  - White firefighters sued city alleging Title VII discrimination for refusing to certify results of promotional exam. City's decision violated Title VII disparate treatment statute, absent "strong basis in evidence" for believing that it would otherwise be liable under disparate impact statute.
  
- *Gross v. FBI Financial Services*, 129 S.Ct. 2343 (2009)
  - ADEA does not recognize mixed motive claims – age discrimination must be "but for" cause of adverse employment decision
  
- *Serwatika v. Rockwell Auto.*, 2010 WL 137343 (7<sup>th</sup> Cir. 1/15/10)
  - Employers not liable under ADA for mixed motive employment decisions

# Employment Retaliation

---

- *Crawford v. Metropolitan Gov't of Nashville*, 129 U.S. 846 (2009)
  - Title VII is not violated when employee speaks out about discrimination, not on her own initiative, but in answering questions during employer's internal sexual harassment investigation.
- *Casna v. City of Loves Park*, 573 F.3d 420 (7<sup>th</sup> Cir. 2009)
  - City may not reassign a civil service employee, in disregard of her due process protections, to a temporary position that lacks such safeguards, and then fire her from both positions without a hearing.
- *Valentino v. Village of South Chicago Heights*, 575 F.3d 664 (7<sup>th</sup> Circuit 2009)
  - Village employee blew whistle to citizen group about ghost payrolling. Although Village came forward with plausible reason for termination, its actions in searching employee's desk was "too fishy" or "too convenient" to allow summary judgment in Village's favor.
- *Bivens v. Trent*, 2010 WL 22369 (7<sup>th</sup> Cir. 1/6/10)
  - State police officer did not speak out as a citizen when he filed a union grievance and complained to his supervisors about environmental lead contamination at firing range.

# Residential Home Inspection Ordinance

---

- *Mann v. Calumet City*, 588 F.3d 949 (7<sup>th</sup> Cir. 2009)
  - “Point of sale” residential inspection ordinance did not violate due process rights of sellers
  - Ordinance required:
    - Owner to notify city of proposed sale
    - City has 28 days to inspect
    - If owner does not consent, city may apply for administrative warrant within 10 days
    - City has 3 business days to notify owner of compliance after inspection and 3 business days to re-inspect after owner provides notice or repairs
    - Alternatively, owner may post bond for repairs and buyer has 6 months to complete repairs
    - Appeal to zoning board and administrative review is available



# Due Process – Vehicle Forfeiture

---

- *Alvarez v. Smith*, 130 S.Ct. 576 (2009)
  - Challenge to Illinois vehicle drug forfeiture statute moot.
  
- *People v. One 1998 GMC*, Case No. 07 MR 1126 (DuPage County) (11/29/09)
  - DUI forfeiture statute, 720 ILCS 5/36-1, violates due process - fails to require a prompt post-seizure judicial review prior to trial on the merits

## Section 1983 - False Arrest and Use of Force

---

- *Thomas v. City of Peoria*, 580 F.3d 633 (7<sup>th</sup> Cir. 2009)
  - Seventh Circuit affirmed dismissal of claim brought by motorist mistakenly arrested following traffic stop based on outstanding warrant for unpaid parking tickets. Prosecutor absolutely immune from liability for applying for arrest warrant.
- *Nail v. Gutierrez*, 339 Fed. Appx. 630 (7<sup>th</sup> Cir. 2009) (unpublished)
  - Summary judgment upheld for officers who entered backyard after receiving 911 domestic battery call, seeing suspect disappear into home, and hearing back door slam.
- *Marion v. City of Corydon*, 559 F.3d 700 (7<sup>th</sup> Cir. 2009)
  - Summary judgment upheld for officers who shot plaintiff in his truck after he led police on high speed chase – deadly force justified.

# Section 1983 – Use of Taser

---

- *Haynes v. Village of Lansing*, 656 F. Supp.2d 783 (N.D. Ill. 2009)
  - Police use Taser three times on unarmed woman who weighed 415 pounds and was laying prone on the floor following arrest for giving false information about a traffic offense. Court denied summary judgment to officers.
  
- *Lewis v. Downey*, 581 F.3d 467 (7<sup>th</sup> Cir. 2009)
  - Seventh Circuit reversed summary judgment for correctional officer who used Taser to extract known violent and disruptive inmate from cell.