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CIVIL RIGHTS UPDATE

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FOURTH AMENDMENT – WARRANTLESS ENTRY INTO HOME

- **Ryburn v. Huff**, No. 11-208, 565 U.S. ____ (Jan. 23, 2012)
  - Police officers investigating a potential school shooting followed a woman into her home when she ran into the home after being asked if she possessed any guns.
  - The Supreme Court held that the officers did not violate the woman's Fourth Amendment rights by entering the home without a warrant, as the officers "could have come to the conclusion that there was an imminent threat to their safety and the safety of others."

FOURTH AMENDMENT – TASERS

- **Clarett v. Roberts**, 657 F.3d 664 (7th Cir. 2011)
  - Plaintiff sued police under 42 U.S.C. § 1983 for excessive use of force based on the use of a Taser.
  - Police used Taser 3 times for 5 seconds each time causing electrical burns and stress related anxiety.
  - Jury returned verdict in favor of the officers.
  - On appeal, Court affirmed denial of her motion for judgment as a matter of law.
  - Court reasoned that jury was entitled to believe the officers' version of events, and that the verdict based on the record did not "cry out to be overturned" or "shock the conscience."

FOURTH AMENDMENT - TASERS

- **United States v. Norris**, 640 F.3d 295 (7th Cir. 2011)
  - Officer did not execute search warrant in an unreasonable manner.
  - Single shot of Taser was reasonable.
  - Subject was attempting to retreat into his home with hands near front waistband area and refusing to show his hands or comply with officers' orders to stop.

FOURTH AMENDMENT – EXCESSIVE FORCE

- **Padula v. Leimbach, et al.**, 656 F.3d 595 (7th Cir. 2011)
  - Police officers came to the scene of a parked car with a driver who they believed was intoxicated, but who was really a diabetic suffering from a hypoglycemic episode. The officers physically removed the driver from the car, maced him, and struck him four times with a baton. The driver died two weeks later of natural causes, and his estate filed suit for wrongful arrest and excessive force.
  - The Seventh Circuit found that the officers' use of force was not excessive, as they "faced a fluid situation" and "appropriately increased their force in order to keep the situation under control."

FOURTH AMENDMENT – QUALIFIED IMMUNITY

- **Brooks v. City of Aurora**, 653 F.3d 478 (7th Cir. 2011)
  - Plaintiff sued police for false arrest and excessive use of force under 42 U.S.C. § 1983.
  - 7th Circuit affirmed summary judgment for officers:
    - Controlling law would not have communicated to reasonable officer that applying pepper spray to an arrestee who ceased active, physical resistance for a few seconds but had not submitted to the officer's authority, had not been taken into custody and still arguably posed threat of flight or further resistance.

FOURTH AMENDMENT – QUALIFIED IMMUNITY

- **Reher v. Vivo**, 656 F.3d 772 (7th Cir. 2011)
  - Plaintiff videotaped ex-girlfriend with whom he had a contentious past. Others at the park believed the plaintiff to be a "pervert" filming kids. Plaintiff arrested for disorderly conduct. Plaintiff sued under 42 U.S.C. § 1983, alleging false arrest.
  - The Seventh Circuit found that the officer with knowledge of the plaintiff's past with his ex-girlfriend gave that officer sufficient probable cause for the arrest. The other officer, who did not have such knowledge, did not have probable cause for the arrest, but he was entitled to qualified immunity based on eyewitness accounts.

FIFTH AMENDMENT - TAKINGS

- **Hendrix v. Plambeck**, 420 Fed. App'x 589 (7th Cir. 2011)
  - The plaintiff, property owner of a nuisance building that was torn down by city officials, filed suit under § 1983, claiming a Fifth Amendment takings violation and a Fourteenth Amendment due process violation.
  - The Seventh Circuit held that the takings claim was properly dismissed because the plaintiff failed to first seek compensation in state court with an inverse-condemnation suit.
  - The court also found that even if the plaintiff had first gone to state court, his claim would still fail because the state's destruction of his property is not a taking, but rather is a means by which the state exercises its police power.

FOURTEENTH AMENDMENT – DUE PROCESS

- **Bettendorf v. St. Croix County**, 631 F.3d 421 (7th Cir. 2011)
  - The plaintiff owned property that was subject to a 1985 zoning ordinance that contained a special condition relating to the plaintiff's land.
  - The plaintiff filed suit in Wisconsin state court, seeking a declaratory judgment that the zoning condition was void, but the Wisconsin Court of Appeals found the entire ordinance was void, and the county then rescinded it.
  - The plaintiff then filed suit under § 1983, alleging a violation of his due process rights, but the Seventh Circuit affirmed the district court's granting of summary judgment to the defendants, finding that the county's decision to rescind an ordinance declared void by a state appellate court did not amount to conduct that "shocked the conscience."

FOURTEENTH AMENDMENT – EQUAL PROTECTION

- **Harvey v. Town of Merrillville**, 649 F.3d 526 (7th Cir. 2011)
  - Subdivision residents, most of whom were African-American, filed a § 1983 action alleging that town violated their equal protection rights by ignoring their complaints about problematic retention pond.
  - The plaintiffs argued they were similarly situated to another group of homeowners who were "predominantly white," opposed new building developments in the same zoning class, and attended the same zoning board meetings.
  - The Seventh Circuit affirmed summary judgment for town, finding that the plaintiffs were not similarly situated to other residents. The other residents were actually "treated less favorably" and did not have a retention pond.
  - Simply put, the court found that "[w]ithout a similarly situated comparator, the [plaintiffs'] equal protection claim cannot hold

EMPLOYMENT DISCRIMINATION

- **Groesch, et al. v. City of Springfield**, 635 F.3d 1020 (7th Cir. 2011)
  - Three white plaintiffs voluntarily resigned from their city police officer positions but were later re-hired and were required to "start over" at entry-level positions.
  - Several years later, an African-American officer resigned from his police officer position and was also later rehired, but he was able to retain his prior years of service and was not re-hired as an entry-level officer.
  - After the white officers filed suit, alleging race discrimination, the district court granted summary judgment to the city. However, the Seventh Circuit reversed in part, finding that under the 2009 Lilly Ledbetter Fair Pay Act, each time the officers received a lesser paycheck, a fresh cause of action existed, and the officers were thus able to proceed their claims.

EMPLOYMENT DISCRIMINATION

- **Radentz, et al. v. Marion County**, 640 F.3d 754 (7th Cir. 2011)
  - African-American coroner cancelled a contract with its white pathologist to allegedly reduce costs, and the coroner then hired a new African-American pathologist.
  - After the district court granted summary judgment in favor of the county, the Seventh Circuit reversed. The evidence showed that the county coroner had made statements that he wanted to replace white workers in his office with African-American workers and that he wanted to hire an African-American pathologist, and then did so without any national search. "[A] reasonable factfinder would not be compelled to believe that the contract was terminated because it was too expensive."

FIRST AMENDMENT - PICKETING

- **Snyder v. Phelps**, 131 S.Ct. 1207 (2011)
  - Father of a deceased military service member filed suit against Fred Phelps and six of his parishioners from Westboro Baptist Church for picketing son's funeral with an anti-homosexual demonstration. The Fourth Circuit reversed a jury's verdict of over $10 million in favor of the plaintiff, finding that the defendants' actions were protected under the First Amendment.
  - The Supreme Court affirmed the Fourth Circuit's decision. It found that the defendants' speech addressed matters of public importance while on public property and was done peacefully and in full compliance with the guidance of local officials. Additionally, the defendants' speech did not disrupt the plaintiff's son's funeral.
  - The Court reasoned that although the defendants' speech "inflict[ed] great pain," the United States of America has chosen "to protect even hurtful speech on public issues to ensure that we do not stifle public debate."

FIRST AMENDMENT – RIGHT TO PETITION

- **Borough of Duryea, Pa. v. Guarnieri**, 131 S.Ct. 2488 (2011)
  - After the plaintiff was fired as police chief, he filed a union grievance that led to his reinstatement. The council then issued directives instructing the plaintiff on how to do his job. The plaintiff then filed suit, alleging First Amendment retaliation and violation of the Petition Clause by denying his request for overtime pay.
  - The Supreme Court held that the retaliatory actions did not violate the Petition Clause because his petition was a union grievance that was strictly personal and was not a matter of public concern.

FIRST AMENDMENT – FREE SPEECH

- **Surita v. Hyde**, __ F.3d __, 2011 WL 664218 (7th Cir. 2011)
  - Opponents of city towing ordinance sued city, mayor, and police chief for denying entry to city council meetings, for taking action in retaliation of their protest activities, and for applying an ordinance in an unconstitutional manner.
  - Audience time at a city council meeting is a designated public forum. Mayor's act of barring the plaintiff from speaking at the city council meeting unless the plaintiff first apologized for prior confrontation with a city employee violated the First Amendment.
  - The defendants' charging a higher permit fee for a public rally opposing the towing ordinance was impermissibly content based.

FIRST AMENDMENT - RETALIATION

- **Zellner v. Herrick**, 639 F.3d 371 (7th Cir. 2011)
  - The plaintiff was a public high school teacher who was terminated after he had viewed pornographic images on his school computer in violation of district policy.
  - Plaintiff alleged his due process rights were violated with his termination and also alleged his First Amendment rights were violated because of his prior pro-union activities.
  - The Seventh Circuit rejected the due process claim, as the plaintiff was given an open hearing where he could present evidence. The court also rejected the First Amendment claim because the plaintiff did violate school policy and did not have any evidence showing that other teachers also violated the same policy without being terminated.

FIRST AMENDMENT – POLITICAL RETALIATION

- **Brown v. County of Cook, et al.**, --- F.3d ---, 2011 WL 5041712 (7th Cir. Oct. 25, 2011)
  - The plaintiff, a sergeant in the Cook County Sheriff's Office, filed suit alleging his First Amendment rights were violated when he was not promoted to lieutenant because he was a Republican who neither voted for Democratic Sheriff Michael Sheahan nor contributed to Sheahan's political campaign.
  - The Seventh Circuit affirmed the district court's granting of summary judgment to the defendant county, as the plaintiff was unable to present evidence showing that his political affiliation was a "motivating factor" in the decision to not promote him.

FIRST AMENDMENT – RELIGIOUS SPEECH

- **Marcavage, et al. v. City of Chicago, et al.**, 659 F.3d 626 (7th Cir. 2011)
  - Members of a religious organization filed a § 1983 action alleging that the city, its police officers, and a municipal corporation that owned and managed a park violated their First Amendment free speech rights and their rights to equal protection when they were not allowed to share their religious message with attendees and supporters of the Gay Games that were being held in Chicago.

FIRST AMENDMENT – RELIGIOUS SPEECH

- **Marcavage** (cont.)
  - The Seventh Circuit found that the plaintiff's First Amendment rights were not violated when they were told to move off of busy sidewalks in front of Soldier Field and Wrigley Field because the restrictions were (1) content-neutral, (2) were narrowly tailored to the significant goal of avoiding congestion on the sidewalk and (3) accommodated alternative channels for speech.
  - The court also found the plaintiffs' First Amendment rights were not violated when they were required to get a permit for expressive activity at Navy Pier, as Navy Pier is a commercial, non-public forum.
  - However, the Seventh Circuit remanded the issue of whether or not a permit was justified for expressive activity at Gateway Park, which was not a non-public forum outside of Navy Pier and thus was held to a stricter level of scrutiny.

FIRST AMENDMENT – FREE SPEECH

- **Milestone v. City of Monroe**, --- F.3d ---, 2011 WL 5865649 (7th Cir. Nov. 21, 2011)
  - Plaintiff filed a § 1983 action against the city, alleging violations of her free-speech and due process rights, after the plaintiff was expelled from a senior center for consistently violating the code of conduct.
  - The Seventh Circuit affirmed summary judgment to the city, finding no constitutional violations with the senior center's code of conduct, which required patrons treat everyone with respect and courtesy, prohibited abusive, vulgar, or demeaning language, and required patrons treat staff with respect.
  - The court found that this code of conduct was a valid time, place, or manner regulation that was content neutral, and that the municipality had a significant interest in maintaining a hospitable place for senior citizens to gather.

DUE PROCESS - EMPLOYMENT

- **Schulz v. Green County, WI**, 645 F.3d 949 (7th Cir. 2011)
  - The plaintiff filed suit alleging a due process violation when her employment for the defendant county was terminated to save costs.
  - The Seventh Circuit found that "[b]ecause nothing in the record suggest[ed] that saving money was a pretext for something else," the district court correctly found that the plaintiff's position was eliminated pursuant to a legitimate governmental reorganization, and summary judgment was properly granted to the defendant.

ATTORNEY FEES

- **Fox v. Vice**, 131 S.Ct. 2205 (2011)
  - A police chief candidate filed both state and federal claims against the town and the incumbent police chief, alleging that he was subjected to dirty politics during his bid for chief of police.
  - Plaintiff conceded on summary judgment that federal claims were not valid. District court awarded attorney's fees to defendants for frivolous claims.
  - The Supreme Court held that when a plaintiff's suit involves both frivolous and non-frivolous claims, a defendant can be awarded reasonable fees, but only for costs the defendant would not have incurred but for the frivolous claims.
  - The dispositive question is not whether attorney costs at all relate to a non-frivolous claim, but whether the costs would have been incurred in the absence of the frivolous allegation. The Supreme Court found that the district court erred in failing to take into to account the overlap in costs and fees between the frivolous and non-frivolous claims.

ATTORNEY FEES

- **Frizzell v. Szabo**, 647 F.3d 698 (7th Cir. 2011)
  - After a jury awarded nominal damages to plaintiff on his excessive force claim, the district court denied the plaintiff's motion for § 1988 attorney's fees.
  - The Seventh Circuit affirmed, finding that: (1) the difference between the amount sought and amount awarded ($160,000 to $1) was too great to award fees; (2) the significance of the legal issue was minimal in that the plaintiff only marginally prevailed on his theory of recovery; and, (3) the public purpose served by the suit was minimal in that the plaintiff only attempted to apply a common sense rule to redress his private injury.