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SECTION 1983 AND ILLINOIS TORT IMMUNITY CASE LAW UPDATE 2018-2019

Presented by: Mike Bersani
Hervas, Condon & Bersani, P.C.
333 Pierce Road, Suite 195
Itasca, IL 60143
(630) 860-4343
mbersani@hcbattorneys.com
www.hcbattorneys.com

UNITED STATES SUPREME COURT

EXACTION OF UNION AGENCY FEE FROM NON-CONSENTING PUBLIC SECTOR EMPLOYEE VIOLATES THE FIRST AMENDMENT

Janus v. State, County, and Municipal Employees, 138 S. Ct. 2448 (2018)

Plaintiff Mark Janus was employed by the Illinois Department of Healthcare and Family Services. The agency employees were represented by a union. Janus chose not to join the union, as was his right. However, while not required to pay full membership dues, he was required to pay a percentage of dues called an ñagency fee, which included costs attributable to activities that Janus objected to. He filed suit claiming that the forced payment of the agency fee violated his First Amendment rights. The U.S. Supreme Court agreed and held that the exaction of the agency fee from a non-consenting public sector employee violated the First Amendment.

COURT REVERSES GRANT OF QUALIFIED IMMUNITY FOR OFFICER WHO INTEREFERED WITH PERSON'S RIGHT TO PRAY DURING POLICE INVESTIGATION

Sause v. Bauer, 138 S. Ct. 2561 (2018) (*per curiam)*

Plaintiff, appearing *pro se*, sued town police and elected officials under 42 U.S.C. § 1983, alleging that the police stopped her from praying in her apartment when the police were present investigating a noise complaint. The district court granted the defendantsô motion to dismiss on qualified immunity grounds. The Tenth Circuit affirmed. The U.S. Supreme Court reversed and remanded. The Court held that while certainly the First Amendment protects the right to pray, she may not have such a right if it interferes with a legitimate law enforcement activity, such as an arrest. Thus, if the First Amendment activity occurs in the midst of law enforcement investigative conduct, it may implicate the Fourth Amendment as well. Thus, the First and Fourth Amendment issues were inextricable. Since it was unclear from the complaint whether the police were lawfully present in the apartment, the First Amendment claim could be resolved on a motion to dismiss.

OFFICIAL MUNICIPAL POLICY RESTRAINING FIRST AMENDMENT ACTIVITY, DESPITE THE EXISTENCE OF PROBABLE CAUSE FOR AN ARREST, VIOLATED FIRST AMENDMENT

Lozman v. Riviera Beach, 138 S. Ct. 1945 (2018)

Plaintiff Fane Lozman was arrested at a city council meeting for violating the Councilôs rules of procedure when he spoke in the public comment session about matters unrelated to city business and refused to leave the podium. Plaintiff filed a Section 1983 lawsuit for violation of his right to petition the government under the First Amendment. Lozman alleged that his arrest was ordered by the city council as part of an official city policy to retaliate against him for filing a prior open meetings lawsuit against the city and for his prior public criticisms of city officials. The 11th Circuit followed existing circuit precedent and held that the existence of probable cause defeated a First Amendment retaliatory arrest claim. The Supreme Court reversed and held that

the existence of probable cause did not bar his First Amendment retaliatory arrest claim. The Court decided the issue narrowly. Lozman did not sue the arresting officer; he sued the city itself based on an unconstitutional policy of retaliation and intimidation. An official retaliatory policy is troubling and a potent form or retaliation, and can be long term and pervasive. There is a compelling need for adequate avenues of redress under these circumstances as opposed to the typical retaliatory arrest claim which is more of an *ad hoc* on the spot decision made by the individual officer.

LAW PROHIBITING POLITICAL APPAREL INSIDE POLLING PLACE ON ELECTION DAY VIOLATED FIRST AMENDMENT

Minnesota Voters Alliance v. Mansky, 138 S. Ct. 1876 (2018)

Minnesota law prohibited voters from wearing political badges, buttons or other political insignia inside a polling place on Election Day. The plaintiffs sued under 42 U.S.C. § 1983 for violation of their free speech rights under the First Amendment. The district court granted summary judgment for the state and county defendants, and the 8th Circuit affirmed. The Supreme Court reversed and held that the law violated the First Amendment. A polling place is a non-public forum, subject to reasonable content-based restrictions on free speech. The statute in question did not make any content-based distinction as to political speech. So, the statute is valid if the apparel ban serves a reasonable purpose. While recognizing that campaign advocacy within a polling place can by disruptive and therefore prohibited, the law in question swept too broadly because the meaning of ñpoliticalò without objective, workable standards as to what apparel would be prohibited, left too much discretion to election judges to enforce.

COURT FINDS THAT POLICE OFFICER WAS ENTITLED TO QUALIFIED IMMUNITY IN SHOOTING SUSPECT WHO POSED THREAT TO BYSTANDER

Kisela v. Hughes, 138 S. Ct. 1148 (2018) (*per curiam)*

Police shot suspect engaged in erratic behavior with a knife. When the officer fired, he had seconds to react to the suspect, who was holding a large kitchen knife, had taken steps toward another woman standing nearby, and had refused to drop the knife after at least two commands to do so. Although the officer did not believe the suspect posed a threat to him, he did believe suspect posed a threat to the other woman. The suspect sued under 42 U.S.C. § 1983 alleging a violation of her Fourth Amendment rights. The district court granted qualified immunity for the officer, but the 9th Circuit reversed. The Supreme Court reversed the 9th Circuit and held that, even if the Fourth Amendment was violated, the officer was entitled to qualified immunity, because this was far from an obvious case in which any competent officer would have known that shooting the suspect to protect the other person would have violated the Fourth Amendment.

FOURTH AMENDMENT'S EXCEPTION FOR WARRANTLESS SEARCH OF AUTOMOBILE DID NOT PERMIT ENTRY ONTO CURTILAGE OF HOME TO SEARCH THE VEHICLE

Collins v. Virginia, 138 S. Ct. 1663 (2018)

Police officer entered driveway of person suspected of eluding the police on a stolen motorcycle. The motorcycle was covered in a tarp. The officer lifted the tarp to check the license plate and determined it was the same bike. He took photos of the bike and replaced the tarp. He did not have a warrant. He then approached the house and spoke with the defendant who admitted that the bike was his, and that he bought it without title. The officer then arrested the defendant. The defendantôs motion to suppress was denied, and he was convicted and affirmed on appeal under the Fourth Amendmentôs automobile exception, which allows warrantless search of an automobile if the officer has probable cause to believe that the car contains evidence of a crime. The Supreme Court reversed and held that the automobile exception did not permit a police officer, uninvited and without a warrant, to enter the curtilage of a home in order to search a vehicle parked therein. The Court found that the driveway enclosure where the officer searched the motorcycle was properly considered curtilage.

COMPELLING BAKER TO CREATE WEDDING CAKE FOR SAME-SEX COUPLE VIOLATED FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT

Masterpiece Cakeshop, Ltd v. Colorado Civil Rights Comm'n, 138 S. Ct. 1719 (2018)

Bakery owner and devout Christian told a same-sex couple that he would not create a cake for their wedding celebration because of his opposition to same-sex marriage. Couple brought a claim under Coloradoôs anti-discrimination statute which prohibits discrimination based on sexual orientation. An administrative law judge for the Commission found a violation and rejected the bakerôs First Amendment claim that requiring him to create the cake violated his free speech rights by compelling him to exercise his artistic talents to express a message that he disagreed with. The decision was upheld by the Colorado appellate courts. The Supreme Court reversed and held that the decision violated Free Exercise Clause under the First Amendment. The Court held that any law protecting the civil rights of gay persons and gay couples must be applied neutrally toward religion.

SUPREME COURT CONTINUES ITS TREND OF RECOGNIZING QUALIFIED IMMUNITY IN EXCESSIVE FORCE CASES WHERE LOWER COURT APPLIES "CLEARLY ESTABLISHED" STANDARD TOO GENERALLY AND NOT ON THE SPECIFIC FACTS OF THE CASE

City of Escondido v. Emmon, 139 U.S. 500 (2019) (*per curiam)*

Police officers responded to 911 call about a domestic violence incident at victimôs apartment and arrested the victimôs husband. Two weeks later, the police received another domestic call this time from the victimôs mother, who was not at the apartment but was on the phone with her daughter, who was at the apartment. The mother heard her daughter yelling and screaming for help, but the call then disconnected. The officers responded and learned that two children could be in the residence. The officers spoke with the victim through a window and tried to convince

her to let them in to check on her welfare, but an unidentified man inside the home told the victim to back away. The man then exited the house and tried to brush past the officers, who quickly took him to the ground and cuffed him. The man turned out to be the victimôs father and not the husband. The father sued the police under 42 U.S.C. § 1983 for excessive use of force. The Supreme Court reversed the denial of qualified immunity and held that the 9th Circuit applied the ñclearly establishedò standard too broadly. The Court found that excessive force cases are very much dependent on the specific facts, and that qualified immunity should be afforded officers unless existing precedent squarely governs the specific facts at issue.

SEVENTH CIRCUIT COURT OF APPEALS

PLAINTIFF WHO SPENT 30 YEARS IN PRISON BROUGHT TIMELY SECTION 1983 CLAIM WITHIN TWO YEARS AFTER GOVERNOR'S PARDON BASED ON ALLEGED WRONGFUL CONVICTION

Savory v. Cannon, 912 F.3d 1230 (7th Cir. 2019)

Plaintiff pardoned for murder conviction after spending 30 years in prison sued police under 42 U.S.C. § 1983, alleging that conviction was obtained through fabricated evidence and a coerced, false confession. The district court dismissed the case on statute of limitations grounds, finding that the plaintiffôs claims accrued when he was paroled in 2006 and, since he failed to sue within two years of that date and instead waited until after he was pardoned in 2015, his claims were untimely. The Seventh Circuit disagreed and held that, under *Heck v. Humphrey*, 512 U.S. 477 (1994), the plaintiff could not sue until his conviction was overturned, which occurred in 2015 when he was pardoned by the Governor. Since the plaintiff filed within two years after the pardon, his suit was timely. The Court rejected the defendantôs argument that a section 1983 plaintiff who is released from incarceration (and therefore could not collaterally attack his conviction via *habeas* proceeding) must bring suit without first having to satisfy the favorable termination requirement of *Heck.*

UNLAWFUL PRETRIAL DETENTION CLAIM UNDER FOURTH AMENDMENT ACCRUES WHEN THE DETENTION ENDS

Manuel v. City of Joliet, 903 F.3d 667 (7th Cir. 2018)

In *Manuel v. City of Joliet*, 137 S. Ct. 911 (2017), the Supreme Court held that a section 1983 plaintiff may pursue a Fourth Amendment claim for damages based on his continued detention without probable cause, but remanded the case to determine when such a claim accrued. On remand, the city argued that the claim accrued when the state court judge ordered Manuel to be held in custody pending trial. The plaintiff argued that the claim accrued when the prosecution was dismissed, analogizing its position to the law of malicious prosecution. The Seventh Circuit rejected both positions and held that the date of release started the limitations period. The Seventh Circuit found the cityôs argument faulty because Manuel was challenging the legality of his continued custody, not the prosecution. The Court also criticized the plaintiffôs analogy to the tort of malicious prosecution because Manuelôs claim was one for ñwrongful custody.ò The Court stated that, ñ[b]ecause the wrong is the detention rather than the existence of criminal charges; the period of limitations also should depend on the dates of the detention.ò

COURT REMANDS CASE BACK TO DETERMINE TIMELINESS OF *MANUEL* PRETRIAL DETENTION CLAIM BECAUSE RECORD WAS INSUFFIENT TO DETERMINE WHETHER BOND CONDITIONS AMOUNTED TO "CUSTODY" SUFFICIENT TO STATE A CLAIM.

Mitchell v. City of Elgin, 912 F.3d 1012 (7th Cir. 2019)

The plaintiff was arrested for electronic communication harassment, immediately bonded out, and was acquitted two years later after a bench trial. She sued the city and police under 42 U.S.C. § 1983 under *Manuel v. City of Joliet*, 137 U.S. 911 (2017), which held that pretrial confinement without probable cause supports a Section 1983 Fourth Amendment claim, but remanded to determine when such a claim accrues. The district court dismissed her claim finding that it was untimely. While the appeal was pending, the Seventh Circuit decided the remanded *Manuel* case and held that a Fourth Amendment pretrial confinement claim accrues when the detention ends. *Manuel v. City of Joliet*, 907 F.3d 667 (7th Cir. 2018) (ñ*Manuel II"*). Applying *Manuel II*, the Seventh Circuit in *Mitchell* held that it could not decide the timeliness issue because the record was unclear as to what conditions of release, if any, were imposed on the plaintiff after she bonded out. Although expressing doubt that a claim could be stated based on mere bond conditions, the Court could not decide on the present record whether the conditions were so restrictive that it could have amounted to a deprivation of liberty sufficient to state a *Manuel* claim, and it remanded the case for further proceedings.

PRETRIAL DETENTION CLAIMS UNDER *MANUEL* ARE GOVERNED EXCLUSIVELY BY THE FOURTH AMENDMENT

Lewis v. City of Chicago, 2019 WL 289104 (7th Cir. 1/23/19)

Plaintiff spent more than two years in pretrial detention in the Cook County Jail based on police reports falsely implicating him for unlawfully possessing a firearm. After the case was dismissed, he sued the city and several police officers under 42 U.S.C. § 1983, alleging a violation of his rights under the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment. The district court dismissed the claims as untimely. The Seventh Circuit held that the Fourth Amendment claim was timely under *Manuel* but that the due process claim could not survive for a different reason. The Court held that pretrial custody claims are governed exclusively by the Fourth Amendment, not the Due Process Clause of the Fourteenth Amendment, overruling *Hurt v. Wise*, 880 F.3d 831 (7th Cir. 2018).

SECTION 1983 CLAIM BASED ON EVIDENCE OBTAINED BY POLICE IN VIOLATION OF FIFTH AMENDMENT RIGHT AGAINST SELF INCRIMINATION AND USED AT TRIAL TO OBTAIN CONVICTION MUST BE BROUGHT WITHIN TWO YEARS OF REVERSAL OF THE CONVICTION

Johnson v. Winstead, 900 F.3d 428 (7th Cir. 2018).

Plaintiffôs first conviction for murder was reversed in 2010. He was retried and convicted again, and the second conviction was reversed in 2014. He filed suit under 42 U.S.C. §1983 less than a year later, claiming that both convictions were based on evidence obtained by the police in violation of his Fifth Amendment right against self-incrimination and used at both trials. The district court dismissed his complaint. The Seventh Circuit affirmed in part and reversed in part. The Court held that the plaintiff could not seek damages associated with his first conviction because that claim accrued in 2010 when that conviction was reversed and the limitations period started to run and expired well before he filed suit. Only his claim stemming from the second trial was timely because it was brought within two years of the reversal of the second conviction.

SEVENTH CIRCUIT DENIES QUALIFIED IMMUNITY IN POLICE SHOOTING CASE

Strand v. Minchuk, 908 F.3d 300 (7th Cir. 2018)

Plaintiff was unhappy about receiving parking tickets and began taking photos on his cell phone of the area to use in court. An officer told him to leave the area and the plaintiff refused. The officer slapped the phone out of his hands and demanded his identification. The plaintiff refused. The officer grabbed the plaintiff on his shirt and neck, and the plaintiff pushed back. They fell to the ground and fought. The plaintiff stood up and backed away four to five feet and put his hands up and said he surrendered. The officer removed his gun from his holster and shot the plaintiff. The plaintiff survived the gunshot and brought a claim for excessive force under 42 U.S.C. § 1983. The Seventh Circuit affirmed the denial of qualified immunity. The Court found that it could not view the facts in plaintiffôs favor and then find for the officer. The plaintiff had stopped fighting, stepped back 4-5 feet with his hands in the air and said he surrendered. He was not armed and made no threatening move toward the officer. The incident only concerned a minor parking ticket. Since it was clearly established that a subdued suspect has the right not to be seized by deadly force, the officer would be liable. Therefore, the existence of a factual dispute over the timing of the shooting *vis a vis* when plaintiff surrendered prevented the court from resolving the issue in the officerôs favor as a matter of law.

POLICE OFFICERS DID NOT USE EXCESSIVE FORCE BY DEPLOYING TASER ON UNRULY ARRESTEE IN BOOKING ROOM OF POLICE DEPARTMENT

Dockery v. Blackburn, 911 F.3d 458 (7th Cir. 2018)

Plaintiff was arrested for domestic battery and criminal damage to property. He became confrontational as the officer was trying to take his fingerprints. The officer told him that step

back with hands behind his back, but plaintiff physically prevented the cuffing process. Two officers then tried to cuff him while standing up, and the plaintiff fell to the floor and kicked at the officers. The second officer deployed her Taser multiple times until they were able to restrain and cuff him. The entire incident was caught on the booking room surveillance video system. Plaintiff sued the officers for excessive use of force under 42 U.S.C. § 1983. The Seventh Circuit reversed, finding first that it had appellate jurisdiction to review the denial of qualified immunity because the video captured the entire episode and therefore the appeal raised a purely legal issue as to whether use of force was objectively reasonable. The Court then held that no officer would have believed that using a Taser even multiple times on an actively resisting arrestee, as shown in the video, was unconstitutional under existing precedent. The plaintiffôs argument that he did not intend to resist was immaterial because the question was whether a reasonable police officer could have believed he was resisting. Further, the court rejected the plaintiffôs argument that he did not make any aggressive advances toward the officers and that he did not try to stand up after being tased, because his version was utterly discredited by the video.

OFFICER ENTITLED TO QUALIFIED IMMUNITY IN DEADLY FORCE CASE WHERE HE HAD REASONABLE ALBEIT MISTAKEN BELIEF SUSPECT WAS SHOOTING AT HIM

Mason-Funk v. City of Neenah, 895 F.3d 504 (7th Cir. 2018)

Armed suspect took persons hostage at a motorcycle shop. SWAT team breached the shop through rear entrance and volley of gunshots followed striking one of the officers. The SWAT team retreated. Within minutes, one of the hostages ran out of the back door and dove to the ground as the suspect fired bullets in his direction. The hostage grabbed a gun from his waistband and stood up with arms in low position and moved around a truck keeping his sight on the back door. Within seconds, he turned and ran across the alley. Several officers fired at him and killed him. No warnings were given before the fatal shots. The Seventh Circuit affirmed the grant of summary judgment in favor of the officers in Section 1983 lawsuit filed by the decedentôs wife. Existing case law failed to put defendants on notice that their use of deadly force, without warning on armed individual in dangerous hostage situation, was in violation of decedent's constitutional right, especially where defendants could have concluded, albeit mistakenly, that armed decedent had shot at defendants only minutes prior to defendants shooting decedent. Thus, officers were entitled to qualified immunity from suit.

SEVENTH CIRCUIT REMANDS WRONGFUL DEATH CASE BECAUSE DISTRICT COURT FAILED TO MAKE INDIVIDUALIZED ASSESSMENT OF QUALIFIED IMMUNITY ANALYSIS AS TO EACH OFFICER DEFENDANT

Estate of Williams v. Cline, 902 F.3d 623 (7th Cir. 2018)

Police chased and apprehended a man suspected of attempted robbery. A brief struggle occurred and the man was cuffed. He complained he could not breathe and later collapsed in a squad car. The officers believed he was faking it. Paramedics performed CPR but the suspect died. During the event 11 different officers dealt with the suspect. The suspectôs family brought suit under 42

U.S.C. § 1983.The district court denied summary judgment based on qualified immunity, and the Seventh Circuit affirmed. The Court initially held that the existence of material factual disputes over whether the officers had notice that the suspect was in distress precluded appellate jurisdiction over the first prong of the qualified immunity analysis (i.e., the constitutionality of the officersô conduct). The Court held that it did have jurisdiction over the second prong, i.e., whether the law was clearly established. However, the Court remanded the case back because the district court had erred in failing to make individualized assessment of each officerôs conduct, especially where the officers had differing degrees of contact with the suspect and different assigned responsibilities.

PARAMEDIC ENTITLED TO QUALIFIED IMMUNITY BECAUSE LAW WAS NOT CLEARLY ESTABLISHED THAT HE VIOLATED FOURTH AMENDMENT BY SEDATING SUSPECT TO TRANSPORT HIM TO THE HOSPITAL

Thompson v. Cope, 900 F.3d 414 (7th Cir. 2018)

Suspect was high on amphetamines and running around naked in the street. Police responded and tried to subdue him. A paramedic arrived and sedated the suspect so he could be transported by ambulance to hospital. The suspect died several days later. His estate filed suit under 42 U.S.C. § 1983 alleging a Fourth Amendment claim. The district court denied summary judgment based on qualified immunity. The Seventh Circuit reversed. The estate failed to cite any case holding that a paramedic can be liable under the Fourth Amendment for rendering medical treatment. But, a case exactly on point is not always required. The Court posited that ñclearly established lawò must not be established too generally, but that establishing it too narrowly is equally problematic. The district court defined the issue too broadly (that excessive force may not be used in seizing a suspect). Rather, the issue was ñwhether it was clearly established in 2014 that a paramedic ósezesô an arrestee and is subject to Fourth Amendment limits on excessive force by sedating the arresteeð who appears to the paramedic to be suffering from a medical emergencyð before taking the arrestee by ambulance to the hospital.ò The Court held that it was not, and reversed the denial of summary judgment based on qualified immunity.

OFFICER WHO SUBMITTED FALSE PROBABLE CAUSE AFFIDAVIT COULD BE SUED FOR FOURTH AMENDMENT VIOLATION.

Rainsberger v. Benner, 913 F.3d 640 (7th Cir. 2019)

Plaintiff accused of murder filed Section 1983 suit against police officer claiming that he was arrested, charged, and imprisoned for two months based on false probable cause affidavit submitted by police officer defendant. The Seventh Circuit affirmed denial of officerôs summary judgment motion based on qualified immunity. Officer conceded for purposes of the appeal that he made knowing or reckless statements in his affidavit, but argued that the statements were immaterial to the probable cause determination therefore he did not violate the Fourth Amendment. Seventh Circuit disagreed, holding that the affidavit even devoid of the false statements still failed to establish probable cause. The Court also refused to consider inculpatory evidence outside the affidavit. The issue is whether the officer actually submitted a truthful affidavit not whether he could have submitted one. Since it was clearly established that the

Fourth Amendment is violated when deliberate statements are used to establish probable cause in an affidavit, the officer was not entitled to qualified immunity from suit.

PROBABLE CAUSE EXISTED FOR SEARCH WARRANT BASED ON INFORMATION PROVIDED BY CONFIDENTIAL INFORMANT

Edwards v. Jollif-Blake, 907 F.3d 1052 (7th Cir. 2018)

Plaintiff sued the police under 42 U.S.C. § 1983, alleging that based on information from allegedly unreliable ñdrug addictò confidential informant. The judge who signed the warrant heard from the informant under oath but no transcript was prepared. The search was conducted four days later but uncovered no drugs. The plaintiff attempted to interfere with the search and claimed that the police used excessive force. The Seventh Circuit affirmed summary judgment for the officers. The Court found that the reliability factors needed to support search warrant affidavit were present. The fact that informant lacked track record of informing and that the police did not have him wear a wire or otherwise corroborate some aspects of his account did not present *genuine* and *material* disputes to the probable cause question. The Court also found the police lawfully detained the occupants during the search, and that a mere push by officer to stop plaintiff from entering house while search was ongoing did not constitute excessive use of force.

COURT DISMISSES *MONELL* CLAIM AFTER VERDICT AGAINST INDIVIDUAL DEFENDANT

Swanigan v. City of Chi., 881 F.3d 577 (7th Cir. 2018)

Chicago police misidentified plaintiff as serial bank robber and arrested him and detained him for 51 hours without a probable cause hearing. He was released and charges were not filed. He sued for various constitutional violations. A jury found in his favor for unconstitutionally prolonging his detention and awarded $60,000 in damages. He then moved to lift a stay that the court had imposed on his Monell claim. The court denied the motion and dismissed the suit entirely. The 7th Circuit vacated the dismissal order as premature and remanded with instructions to allow the plaintiff to amend his complaint. The plaintiff filed an amended complaint alleging Monell claims based on police department's hold policy, its lineup policy, and its policy regarding cleared-closed case reports. The district court dismissed the case, and the 7th Circuit affirmed. He cannot recover from the City for the prolonged detention because he was compensated for that constitutional violation in his suit against the officers. He cannot proceed on his claim for improper lineup because the mistaken identifications were never admitted in a trial. Finally, he could not proceed with a claim that his reputation was damaged because the police department's policy regarding cleared-closed case files violates his constitutional rights by continuing to label him as the bank robber. The potential for public stigma isn't cognizable as a due-process violation because reputational harm alone doesn't deprive a person of life, liberty, or property.

COUNTY JAIL OFFIALS VINDICATED IN INMATE WRONGFUL DEATH CLAIM

McCann v. Ogle County, 909 F.3d 881 (7th Cir. 2018)

The estate of an Ogle County pretrial detainee sued county sheriff, jail superintendent, nurse, and doctor, claiming that the inmate died while detained at the jail due to the over-prescription of methadone for pain due to burn injuries sustained in arson fire set by detainee. After the jail doctor settled with the estate, the district court granted summary judgment for county officials, which the estate appealed. While the appeal was pending, the Seventh Circuit decided *Miranda v. County of Lake*, 900 F.3d 335 (7th Cir. 2018), replacing deliberate indifference with a standard requiring a showing of objective reasonableness with regard to medical care claims brought by pretrial detainees. Even under this new and seemingly less demanding evidentiary standard, the Seventh Circuit affirmed summary judgment. The court found that the nurse administered methadone in strict compliance with the jail doctorôs orders and thus her actions were objectively reasonable. The court held that neither sheriff and jail superintendent were responsible for providing medical care to the inmate and reasonably relied on the jail doctor to determine the proper course of care. The court also rejected the municipal liability against Ogle County. The jail doctor assessed the inmateôs condition and determined that the jail had the capacity to attend to his ongoing medical needs. Thus, the decision to house the inmate reflected the jail doctorôs medical judgment on which the county officials reasonably deferred. The Court also concluded that the inmateôs tragic death resulted from the jail doctorôs over-prescription of methadone, not the decision to keep him in jail.

CORRECTIONAL OFFICERS ENTITLED TO QUALIFIED IMMUNITY FOR PLACEMENT OF DRUNK DETAINEE ON TOP BUNK WHERE HE FELL, SUFFERED PARALYSIS AND DIED

Lovett v. Herbert, 907 F.3d 986 (7th Cir. 2018)

Plaintiffôs decedent was arrested for drunk driving, taken to jail, and placed in cell on top bunk. After 30 minutes, he fell while climbing down, hit his head, and damaged his spinal cord resulting in permanent paralysis. He died five months later. His estate sued the county and officers for failure to provide adequate medical care in violation of the Fourth Amendment. The district court denied summary judgment, but the Seventh Circuit reversed, initially holding that the factual disputes identified by the district court did not preclude the appellate court from jurisdiction to review the denial of qualified immunity. The court assumed that the officers knew that the decedent was severely intoxicated and that other bunks were available but found that, under this specific factual context, the officersô conduct was not egregious or obviously unreasonable. A much higher level of obvious risk must be present to deny qualified immunity. Plus, the intervening acts of the decedent climbing down and hitting his head were not so objectively foreseeable that the standard of reasonableness under the Fourth Amendment would have put the officers on notice that their actions violated that standard. The Court also found that the plaintiff cited no analogous case that clearly established the law under the facts faced by the officers.

POLITICAL AFFILIATION AND RETALIATION CLAIM PROPERLY DISMISSED BECAUSE PLAINTIFF OCCUPIED POSITION FOR WHICH POLITICS COULD BE CONSIDERED IN TERMINATING EMPLOYMENT

Bogart v. Vermilion County, 909 F.3d 210 (7th Cir. 2018)

A county financial resources director was fired by incoming county board chairman for political reasons. The district court granted summary judgment for the county, and the Seventh Circuit affirmed. The plaintiff had substantial fiscal and budgetary responsibilities that fit within the exception to political patronage dismissals under *Elrod v. Burns* , 427 U.S. 347 (1976) and *Branti v. Finkel*, 445 U.S. 507 (1980). She held a senior position requiring the trust and confidence of the elected board members and her position entailed substantial policymaking authority, including budgeting decisions. Because elected officials run for office based on how they are going to address such issues, they are entitled to surround themselves with persons whom they can trust to make and implement difficult fiscal decisions.

COLLATERAL ESTOPPED PRECLUDED POLICE OFFICER FROM BRINGING FIRST AMENDMENT RETALIATION CLAIM BECAUSE HE HAD FULL AND FAIR OPPORTUNITY TO LITIGATE HIS TERMINATION IN STATE COURT

Taylor v. City of Lawrenceburg, IN, 909 F.3d 137 (7th Cir. 2018)

The plaintiff, who was a police officer, ran for and won a seat on the city council. During the election, he improperly wore his police uniform at a campaign event and inaccurately represented on his time sheet that he was on duty. He was investigated by the state police and charged criminally for official misconduct. He signed a deferred prosecution agreement and admitted to the criminal allegations and agreed to resign from the city council. The next day he delivered a written statement to the city accusing them of wrongdoing and corruption. A week later, the city served him with notice of termination, held an evidentiary hearing, made findings of fact, and fired him. Plaintiff appealed the decision in state court, but then withdrew it and sued in federal court under 42 U.S.C. § 1983 alleging that he was fired in violation of his free speech rights under the First Amendment. The district court entered summary judgment in the cityôs favor, and the Seventh Circuit affirmed. Because he litigated the same retaliatory claims before the city council, whose decision became final when he withdrew his state court review action, he was collaterally estopped from asserting his Section 1983 claim in federal court.

SHERIFF IS VICARIOUSLY LIABLE FOR SEXUAL ASSAULT BY DEPUTY WHILE ON DUTY

Zander v. Orlich, 907 F.3d 956 (7th Cir. 2018)

Plaintiff sued Indiana deputy sheriff and sheriff for sexual assault and false imprisonment perpetrated by deputy sheriff while on duty. The deputy sheriff had responded to a domestic disturbance call and took the plaintiff to another house and sexually assaulted her. Plaintiff sued under 42 U.S.C. § 1983 for violation of her Fourteenth Amendment rights. Plaintiff brought

Indiana tort claims against sheriff under *respondeat superior* theory of liability. District court granted summary to sheriff and case against deputy sheriff went to trial and resulted in verdict for plaintiff in the amount of $100,000 in compensatory damages and $275,000 in punitive damages plus nearly $100,000 in prevailing attorneyôs fees. Plaintiff appealed the summary judgment entered for the Sheriff, and the Seventh Circuit reversed, holding that deputy sheriff had abused his employer-conferred powers under Indiana law and therefore sheriff could be vicariously liable for deputy sheriffôs tortious actions.

COURT REJECTS *MONELL* CLAIM BASED ON ALLEGED CUSTOM OR POLICY OF CONDONING SEXUAL ASSAULTS BY EMPLOYEES

Doe v. Vigo County, Indiana, 905 F.3d 1038 (7th Cir. 2018)

County parks maintenance employee sexually assaulted volunteer in park bathroom. Volunteer brought section 1983 suit against county under Monell claiming that county had a custom or policy of condoning sexual assault by employees. Volunteer pointed to a handful of prior incidents of misconduct by county employees over the course of 20 years. None involved coerced sexual activity and several resulted in discipline of the accused employee. The Seventh Circuit affirmed summary judgment for the county, finding that the evidence was insufficient to establish a custom or practice and did not support a finding of deliberate indifference.

PRIVATE COMPANY HAD NO FIRST OR FOURTH AMENDMENT CLAIMS FOR TERMINATION OF CONTRACT WITH CITY

Comsys, Inc. v. Pacetti, 893 F.3d 468 (7th Cir. 2018)

Information technology company sued city and its officials under 42 U.S.C. § 1983, alleging that defendants violated the company's First and Fourth Amendment rights. The company alleged that the city terminated a services contract in retaliation for company owner's letter accusing city officials of "unseemly conduct.ò The company also claimed that a former employee changed employment to the city and had accessed emails from the cityôs server and gave them to the city. The district court denied summary judgment to the city officials based on qualified immunity, and the Seventh Circuit reversed. The Court applied *Garcetti v. Ceballos*, 547 U.S. 410 (2006) (holding that public employee is not speaking as citizen with First Amendment protection when speaking as part of his job) to the administration of a public contract and held that the ownerôs letter to city council was not protected speech under the First Amendment because it concerned contract administration. While the company ownerôs communications with a police investigator and filing of criminal complaint against city official was a closer call, the law was not clearly established that this was protected speech. Also, defendants were entitled to qualified immunity with respect to plaintiffs' Fourth Amendment claim since: (1) Fourth Amendment does not apply to searches made by "private" actors; and (2) case authority did not clearly establish that private search is treated as governmental search when public and private actors had only friendship type of relationship.

SHERIFF'S TERMINATION OF DEPUTY DID NOT VIOLATE FIRST AMENDMENT

Milliman v. County of McHenry, 893 F.3d 498 (7th Cir. 2018)

Sheriffôs deputy made statements in a deposition accusing Sheriff of corruption, bribery, fraud, soliciting murder and other criminal acts. Deputy also stated that he had called the U.S. Attorney and reported the Sheriffôs illegal conduct. Sheriff received copy of the deposition and due to the deputyôs bizarre statements, referred deputy to fitness for duty evaluation. The psychologistôs conclusion was that deputy suffered from cognitive and psychological problems and was unfit for duty. Sheriff opened internal investigation and ultimately terminated deputyôs employment on that basis as well as deputyôs false accusations and violations of general orders. Sheriffôs deputy sued Sheriff claiming under Section 1983 that his termination was retaliatory in violation of his First Amendment rights. The 7th Circuit affirmed summary judgment for the Sheriff. While the deputyôs speech was protected under the First Amendment and the Sheriff fired the deputy based on that speech, the Sheriff undisputedly met his burden of showing that Deputy would have been fired anyway because he honestly believed that the Deputy was unfit for duty based on the psychologistôs report. Also, Deputy failed to show that a jury could reasonably infer that Sheriffôs proffered reason for termination was pretextual.

VILLAGE MANAGER HAD NO DUE PROCESS RIGHT TO JOB UNDER CONTRACT WHERE HE COULD BE FIRED WITHOUT CAUSE BUT WITH PAYMENT OF SEVERANCE

Linear v. Vill. of Univ. Park, Ill., 887 F.3d 842 (7th Cir. 2018)

Village manager had four-year contract that ran through May 2015, concurrent with the term of the Village's Mayor. In October 2014 the Village Board extended the contract for a year. However, after the mayor was reelected in the spring of 2015 and her new term began, the village board fired the manager and refused to pay the 6 monthsô severance owned under the agreement. The Village took the position that the contract's extension was forbidden by Illinois law and that it owed the manager nothing, because his only valid term expired in May 2015. The manager filed a Section 1983 federal civil rights suit accusing the village board of violating his due process rights by not giving him a hearing before his discharge. The district court dismissed the suit, and the 7th Circuit affirmed. The manager never had a legitimate claim of entitlement to remain as Village Manager. His contract allowed the Village to fire him without cause. His remedy was to receive severance pay which was a question of Illinois law only, and Illinois court was the appropriate forum for that dispute.

COLLEGE VIOLATED DUE PROCESS RIGHT TO NAME CLEARING HEARING IN FIRING PRESIDENT FOR MISCONDUCT

Breuder v. Bd. of Trs. of Cmty. Coll. Dist. No. 502, 888 F.3d 266 (7th Cir. 2018)

Community college presidentôs contract ran through 2019. In October 2015, he was discharged without notice or a hearing based on his misconduct and refused to pay contractual severance pay and retirement benefits. President filed a Section 1983 suit and state law. The district court denied the collegeôs motion to dismiss but certified for appeal whether there was a valid

employment contract. The individual board members took an appeal from the denial of qualified immunity. On the former question, the 7th Circuit held that the contract was valid because Illinois law allowed community colleges to enter into administrative contracts beyond the terms of the board members. On the question of qualified immunity, the 7th Circuit held that the law was clearly established that a public employee accused of misconduct was entitled to a name clearing hearing before being defamed as part of a discharge, or at a minimum to a name-clearing hearing after the discharge. Because the Board did not **offer** that opportunity to the plaintiff, they violated his due process rights.

CITY'S COLLECTION OF PERSONAL DATA THROUGH SMART METERS IS REASONABLE UNDER THE FOURTH AMENDMENT

Naperville Smart Meter Awareness v. City of Naperville, 900 F.3d 921 (7th Cir. 2018)

City owned and operated a public utility that provided electricity to its residents. Through a federal grant, it replaced residentsô water meters with ñsmart metersò which collected residentsô energy-consumption data at 15-minute intervals and stored the data for up to three years. Residents were not allowed to opt out of buying the smart meters. Plaintiff brought a claim under 42 U.S.C. § 1983, alleging that the collection of this data was unreasonable under the Fourth Amendment. Plaintiff alleged that the smart meters revealed intimate personal details such as when people are home and when the home is vacant, sleeping routines, eating routines, etc. The district court dismissed the complaint, and the Seventh Circuit affirmed, finding that the data collection was a search under the Fourth Amendment, but it is reasonable. While residents have privacy interests in their energy-consumption data, the collection of such data here is ñfar less invasive than the prototypical Fourth Amendment search of a homeò and also unrelated to any law enforcement objective. Given the cityôs substantial interest in obtaining the data for effective operation of its electrical grid system, the collection of the data is reasonable.

SIX MONTH DELAY BETWEEN PROPERTY INSPECTION AND NOTICE OF MUNICIPAL ORDINANCE CITATION DID NOT VIOLATE PROCEDURAL DUE PROCESS PROTECTIONS

Tucker v. City of Chicago, 907 F.3d 487 (7th Cir. 2018)

Plaintiff bought vacant lot from city for $1 through cityôs ñLarge Lot Programò designed to unload unneeded parcels to reduce cityôs cost of maintenance. Plaintiff intended to convert to lot into a community garden. A city inspector inspected the property, took photos, but delayed six months in serving citation for violation of the cityôs yard weed ordinance. Plaintiff attending administrative hearing with counsel, but the hearing officer ruled against her and fined her $640. She paid the fine under protest and brought a procedural due process claim under 42 U.S.C. § 1983, based on six month delay between a property inspection and notice of a municipal ordinance citation. The district court dismissed the complaint, and the Seventh Circuit affirmed. The Court held that the administrative and judicial proceedings available for the plaintiff to challenge her citation satisfied due process. The delay between the inspection and the citation did not amount to a procedural due process violation because there was no showing of any substantial prejudice, and there is no case law requiring immediate prosecution of ordinance violations. Nor does the inspectorôs alleged misinterpretation of the cityôs yard weed ordinance

give rise to a constitutional claim; the plaintiff could have made that argument in state court but did not pursue it.

ILLINOIS TORT IMMUNITY CASE LAW

CITY WAS NOT ENTITLED TO DISCRETIONARY IMMUNITY BECAUSE IT FAILED TO PRESENT EVIDENCE DOCUMENTING DECISION NOT TO REPAIR THE SIDEWALK UPON WHICH THE PLAINTIFF FELL AND WAS INJURED

Monson v. City of Danville, 2018 IL 122486

Plaintiff sued city after tripping on sidewalk in downtown shopping area. City employees had inspected and repaired selected sidewalks a year earlier based on condition, location, proximity to buildings, and available time and cost. There was no written policy addressing these factors or guidelines. City employees making the repair decisions could not recall making the decision not to repair the specific sidewalk on which plaintiff fell. As a result, Illinois Supreme Court ultimately held that city was not entitled to discretionary immunity under sections 2-201 and 2-109 of the Illinois Tort Immunity Act. Section 2-201 immunity requires proof of a conscious decision not to repair. The city failed to present any evidence documenting the decision not to repair the particular section of sidewalk at issue in the case. Therefore, the city was not entitled to discretionary immunity.

VILLAGE'S DISCRETIONARY AND POLICY MAKING DECISIONS AS TO HOW TO REPAIR STORM DRAIN WERE IMMUNE FROM CIVIL LIABILITY

Doyle v. Village of Tinley Park, 2018 IL App (1st) 170357

Homeowners sued village for structural damage to their home caused by improperly working storm drain system installed by builder. Appellate Court affirmed summary judgment for village based on section 2-201 discretionary immunity. The village had sent a public works crew to the house, and the crew placed stone, soil and grass seed around the storm drain of a sinkhole. How the crew repaired the issue was judgment call by them in the field. The problem persisted, and another crew placed more stone around the storm drain. The following year another crew returned and did some dye and camera testing and confirmed the storm drain was compromised in several locations. The village repaired the line but that did not work. Further tests revealed more leaks in the storm drain in the street. But, a decision was made not to repair it because of the cost. Months later the village repaired the pipe in the street. The record showed the village made discretionary and policy making decisions every step of the way and thus was entitled to tort immunity.

CITY NOT LIABLE UNDER SECTION 4-102 OF THE TORT IMMUNITY ACT FOR FAILING TO TIMELY DISPATCH EMERGENCY SERVICES

Carolan v. City of Chicago 2018 IL App (1st) 170205

Plaintiffs sued city for wrongful death based on the failure to timely dispatch police in response to a 911 call reporting an armed robbery in progress at a convenience store. The owner of the store was shot and killed less than two minutes before police arrived. The Appellate Court affirmed summary judgment in favor of the city based on section 4-102 of the Tort Immunity Act and the Illinois Supreme Court's decision in *DeSmet ex rel. Estate of Hays v. County of Rock Island*, 219 Ill. 2d 497 (2006) (absolute immunity for failing to provide police protection service in the form of dispatch services). The plaintiffs had argued that section 15.1 of the Emergency Telephone System Act controlled because it was the more specific immunity. The Appellate Court disagreed. Section 15.1 immunized local governments assuming the duties of an emergency telephone system board from liability unless their acts or omissions constitutes willful or wanton conduct in connection with developing, adopting, operating or implementing any plan or system required by this Act. However, the plain language of section 15.1 related to an emergency system operator's development, adoption, operation, or implementation of an emergency ñplan or systemò and did not expressly contemplate the provision of emergency services. Therefore, the provision of 911 services was not governed by the Emergency Telephone System Act at the time of the incident.

AMBULANCE DRIVER WAS NOT ENTITLED TO IMMUNITY UNDER EMS ACT FOR ACTS OR OMISSIONS EN ROUTE TO PICKING UP PATIENT FOR TRANSPORT

Hernandez v. Lifeline Ambulance, LLC, 2019 IL App (1st) 180696

Plaintiff sustained injuries in auto accident with ambulance. The ambulance driver was operating the ambulance in the performance of a non-emergency medical services, i.e., he was dispatched to pick up a patient for transport to another location. Section 3.150(a) of the Emergency Medical Systems Act afforded immunity for negligence in providing emergency or non-emergency medical services, unless the conduct is willful and wanton. The EMS Act defined ñnon-emergency medical servicesò as medical services rendered to patients during transportation to healthcare facilities. Thus, Section 3.150(a) did not apply acts or omissions while en route to a patient pickup.

INJURED WORKER STATED WILLFUL AND WANTON SUPERVISION CLAIM EVEN IN THE ABSENCE OF PRIOR SIMILAR INJURIES

Andrews v.MWRD, , 2018 IL App (1st) 170336

Plaintiff, who was a contract construction worker, fell on project owned by MWRD and suffered severe, career ending injuries. He sued MWRD and alleged safety violations. The circuit court dismissed the complaint under section 3-108 of the Tort Immunity Act, which provided immunity to local governments for supervision of activities on public property unless willful and

wanton. The circuit court held that a willful and wanton supervision claim could not stand unless the defendant had prior knowledge of a similar injury arising from the condition at issue. None was alleged. The Appellate Court reversed and held that similar prior injuries are not always required for willful and wanton supervision claims. As recently held by the Illinois Supreme Court in *Barr v. Cunningham*, 2017 IL 120751, willful and wanton claims can be viable in the absence of prior injuries where there is some evidence that the activity is generally associated with a risk of serious injuries. Here, plaintiff might be able to prove that MWRD if it observed or should have observed an activity that it knew was dangerous, that an injury could result, and failed to act in face of that danger. Thus, dismissal of the complaint was incorrect. The Court also reversed summary judgment for districtôs engineer, because there was no evidence that he was making policy or exercising discretion when the injury occurred and, therefore, was not entitled to section 2-201 discretionary immunity.

COURT REISTATES VERDICT IN TRIP AND FALL CASE BECAUSE JURY'S GENERAL VERDICT FOR PLAINTIFF WAS NOT INCONSISTENT WITH SPECIAL INTERROGATORY ANSWER IMPLYING THAT DEFECT WAS DE MINIMUS

Bartkowiak v. City of Aurora, 2018 IL App (2d) 170406

Plaintiff brought a negligence action against City of Aurora for injuries that she alleged were caused by a depression located in an asphalt parking lot of the Route 59 Metra train station. The jury rendered a verdict in favor of plaintiff but answered yes to a special interrogatory that asked if the depression had "a vertical difference of 1.5 inches or less." The trial court entered judgment for defendant, finding that the special interrogatory was inconsistent with the general verdict. In its denial of plaintiff's motion to reconsider, the court determined that the special interrogatory resolved the factual question of whether the depression was de minimis and that, because it was de minimis and there were no aggravating factors that could render it actionable, defendant, as a matter of law, owed no duty to guard against hazards created by the depression.

On appeal, Plaintiff contends that the special interrogatory should not have been given, as it was not determinative of an ultimate fact, and that the answer was not irreconcilable with the general verdict. Both issues turn on plaintiff's argument that, even if the depth of the depression was 1.5 inches or less, aggravating factors presented a question of fact as to whether it posed an unreasonable risk.

The appellate court agreed with plaintiff and reversed the trial court's judgment and remanded the cause with directions to reinstate the verdict. Even though there was no issue as to sufficient lighting, the size of the defect was not insubstantial, it was located in an area where it was likely to be encountered by pedestrians, and it contained broken asphalt and was deep enough for plaintiff's foot to become stuck, causing her to stop dead and fall forward. Furthermore, there was evidence of the parking lot's bottleneck design, the "madhouse" conditions of the congested parking lot when plaintiff was injured, and defendant's employees' testimony that the defect needed to be repaired because it was a tripping hazard.

MOTORIST WHO EXITED HIS VEHICLE AFTER ACCIDENT ON BRIDGE WAS AN INTENDED AND PERMITTED USER OF THE BRIDGE FOR PURPOSES OF SECTION 3-102 DUTY OF CARE

Flynn v. Town of Normal, 2018 IL App (4th) 170070

Plaintiff was injured in car accident on historic bridge owned by town. He exited vehicle to talk with other driver, and another car rear ended his vehicle pinning him between the cars resulting in amputation of both legs. Plaintiff alleged that there was an unsafe crest configuration on the bridge, that the posted speed limit was unsafe, and that the surface was unsafe. The circuit court granted summary judgment for town on tort immunity grounds. The Appellate Court affirmed in part and reversed in part. The Court rejected the townôs argument that plaintiff was not an intended and permitted user of the bridge. Although he exited his car, he was still using the bridge as a motorist, not a pedestrian. The Court also found that a jury could find that the plaintiffôs injuries were foreseeable and therefore the townôs negligence could have proximately caused the accident despite the plaintiffôs decision to exit his vehicle and the collision by the third party driver.