

FEDERAL CIVIL RIGHTS AND ILLINOIS
TORT IMMUNITY CASE LAW UPDATE
2018-2019

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U.S. Supreme Court – First Amendment

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

- Non-union public employee sued over forced payment of agency fee.
- USSC held that the exaction of agency fee from a non-consenting public sector employee violated the First Amendment.

U.S. Supreme Court – First Amendment

Masterpiece Cakeshop v. Colo. 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 Colorado's anti-discrimination statute. An administrative law judge found a violation and rejected the baker's First Amendment claim.
- Supreme Court held that the decision violated Free Exercise Clause under the First Amendment.

U.S. Supreme Court – 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 Supreme Court held that the law violated the First Amendment. The statute swept too broadly because the meaning of “political” without objective, workable standards as to what apparel would be prohibited left too much discretion to election judges to enforce.

U.S. Supreme Court – First Amendment and Qualified Immunity

Sause v. Bauer, 139 S. Ct. 2561 (2018)

- Police stopped plaintiff from praying in her apartment when they were present investigating a noise complaint. Plaintiff sued for First Amendment violation.
- The district court granted the defendants' motion to dismiss on qualified immunity grounds. The Tenth Circuit affirmed.
- The U.S. Supreme Court reversed and remanded, holding that while a citizen certainly the First Amendment protects the right to pray, she may not have such a right if it interferes with police activity.
- Since it was unclear from the complaint whether the police were lawfully present in the apartment, the First Amendment claim could not be resolved on a motion to dismiss.

U.S. Supreme Court – First Amendment

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

- Plaintiff alleged that his arrest was ordered by the city council as part of an official policy to retaliate against him for filing a prior open meetings lawsuit and for his prior public criticisms of city officials.
- U.S. Supreme Court held that the existence of probable cause did not bar his First Amendment retaliatory arrest claim because arrest was alleged to have occurred as a result of official policy as opposed to on the spot decision by police officer.
- But, see, *Nieves v. Bartlett*, pending in October 2018 term, where Court may answer the question left open in *Lozman* as to whether plaintiff must show lack of probable cause to state a First Amendment retaliatory arrest claim.

U.S. Supreme Court – Qualified Immunity

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

- Police shot suspect engaged in erratic behavior with a knife. The suspect sued 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 and held that the officer was entitled to qualified immunity. This was far from an obvious case in which any competent officer would have known that shooting the suspect to protect a bystander violated the Fourth Amendment.

U.S. Supreme Court – Qualified Immunity

City of Escondido v. Emmon, 139 S. Ct. 500 (2019)

- Police arrest man who they suspect was husband in domestic violence incident, but it was victim's father, who then sued for excessive use of force.
- The Supreme Court reversed the denial of qualified immunity and held that the 9th Circuit applied the “clearly established” standard too broadly.
- Excessive force cases are dependent on the specific facts. Qualified immunity should be afforded officers unless existing precedent squarely governs the specific facts at issue.

Seventh Circuit – Fourth Amendment Unlawful Pretrial Detention Claims

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

- Remanded from *Manuel v. City of Joliet*, 137 S. Ct. 911 (2017), where Supreme Court held that a section 1983 plaintiff may pursue a Fourth Amendment claim based on his continued detention without probable cause, but remanded the case to determine when such a claim accrued.
- 7th Circuit held that claim accrues when detention ends and plaintiff released from custody.

Seventh Circuit – Fourth Amendment Unlawful Pretrial Detention Claims

Mitchell v. City of Elgin, 912 F.3d 1012 (7th Cir. 2018)

- The plaintiff was arrested, immediately bonded out, and was acquitted two years later after a bench trial. She sued the city and police under *Manuel*. Case was dismissed as untimely.
- Seventh Circuit reversed and remanded. Applying *Manuel II*, the Seventh Circuit 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 such that they amounted to being in custody for purposes of a *Manuel* claim.

Seventh Circuit – Fourth Amendment Unlawful Pretrial Detention Claims

Lewis v. City of Chicago, 2019 WL 289104 (7th Cir. 2019)

- Plaintiff spent two years in jail based on false police reports. After the case was dismissed, he sued the city and officers under 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*.
- However, the due process claim could not survive because pretrial custody claims are governed exclusively by the Fourth Amendment.

Seventh Circuit – Excessive Force Claims

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

- Plaintiff sued for excessive force after being shot with Taser 6 times after becoming confrontational as the officer was trying to take his fingerprints in booking room.
- District court denied summary judgment based on qualified immunity.
- Seventh Circuit reversed:
 - Court had jurisdiction despite plaintiff's version that he wasn't resisting, because the booking room video captured the entire episode therefore the appeal raised a purely legal issue as to whether use of force was objectively reasonable.
 - No officer would have believed that using a Taser multiple times on an actively resisting arrestee, as shown in the video, was unconstitutional under existing precedent.

Seventh Circuit – Political Retaliation

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

- County financial resources director was fired by incoming county board chairman for political reasons.
- Seventh Circuit affirmed summary judgment for the county.
 - 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).

Seventh Circuit – First Amendment Retaliation

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

- City vendor sued for violation of First Amendment rights, alleging that the city officials terminated services contract in retaliation for company owner's letter accusing city officials of "unseemly conduct."
- Seventh Circuit reversed denial of summary judgment based on qualified immunity, and the Seventh Circuit reversed.
 - *Garcetti v. Ceballos*, 547 U.S. 410 (2006) blocked claim because speech concerned contract administration.

Seventh Circuit – Due Process

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

- Village manager, who was fired by village board after being given one year extension on contract, sued because he was not given a hearing prior to discharge.
- Seventh Circuit affirmed dismissal of suit:
 - Manager never had a legitimate claim of entitlement to remain as Village Manager, because contract allowed firing 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.

Seventh Circuit – Due Process

Breuder v. Bd. of Trustees, 888 F.3d 266 (7th Cir. 2018)

- Community college president filed suit based on termination of contract without notice or a hearing based on misconduct.
- District court denied motion to dismiss based on qualified immunity.
- 7th Circuit affirmed and 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.

Illinois Tort Immunity – Discretionary Immunity

Monson v. City of Danville, 2018 IL 122486

- Plaintiff sued city after tripping on sidewalk in downtown shopping area.
- Supreme Court reversed grant of summary judgment.
 - 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.

Illinois Tort Immunity – Discretionary Immunity

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 sent a public works crew to the house multiple times to repair drain system, and the repairs were judgment calls by them in the field and policy decisions based on cost and allocation of resources.

Illinois Tort Immunity – Willful and Wanton Supervision

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

- Plaintiff, who was a contract construction worker, sued for injuries suffered on project owned by MWRD.
- Appellate Court reversed dismissal of complaint.
 - Similar prior injuries are not always required for willful and wanton supervision claims 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 observed or should have observed an activity that it knew was dangerous, and that an injury could result, and failed to act in face of that danger.

Illinois Tort Immunity – Willful and Wanton Supervision

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

- Plaintiff sued for injuries after falling in depression in asphalt parking lot at Metra train station. Jury found for plaintiff but answered yes to special interrogatory that depression had "a vertical difference of 1.5 inches or less." The trial court entered judgment for defendant because special interrogatory inconsistent with the general verdict.
- Appellate Court reversed:
 - Size and nature of defect was not insubstantial, was located in high traffic, congested area, and city's admission it was tripping hazard. Aggravating circumstances existed defeating *de minimus* argument.