

RECENT FEDERAL CASES OF INTEREST TO CITIES

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***United States v. Williams,* 128 S.Ct. 1830 (2008)**

- First Amendment
- Federal child pornography statute
- Statute will be facially invalid if it prohibits a substantial amount of protected speech

***Sole v. Wyner,*
127 S.Ct. 2188 (2007)**

- Artwork at state beach
- 42 USC 1983 First Amendment
- Injunctive relief
- Must be prevailing party at end

***Davis v. McKinney, M.D.,*
518 F.3d 304 (5th Cir. 2008)**

- Qualified Immunity
- 1st Amendment Retaliation
- Porn on computers
- Did not get the job she applied for
- *Garcetti* analysis
- "mixed speech" test

***James v. Collin County*, 535
F.3d 365 (5th Cir. 2008)**

- Foreman in Collin County public works department
- Ran for County commissioner 2x during employment
- Terminated and brought action under 1983 and 1988
- First amendment retaliation discharge claim

***Rigley v. FEMA*, 512 F.3d
727 (5th Cir. 2008)**

- Katrina and Rita “continued rent assistance payments”
- Plaintiffs challenged denial of payments
- No property interest in continued rental payments

***Linquist v. City of Pasadena,*
525 F.3d 383 (5th Cir. 2008)**

- Applied for used car dealership license
- Denied license but others were granted
- Equal protection claim and due process claim
- Plaintiff carries heavy burden on equal protection claim
- Dismissed due process claim

***Reliable Consultants, Inc. v. Earle,*
517 F.3d 738 (5th Cir. 2008)**

- Challenge of constitutionality of statute making it crime to promote or sell sexual devices
- Dec action claiming violation of liberty rights (14th Amendment) and free speech (1st Amendment)
- 5th Circuit found no governmental interest for statute

***Federal Express Corp. v. Holowecki,*
128 S.Ct. 1147 (2008)**

- ADEA requirement to file timely charge
- Worker file intake questionnaire with detailed affidavit
- Issue was whether this constituted a charge
- Reasonably construed to be because had all information

***Lauderdale v. TDCJ,* 512
F.3d 157 (5th Cir. 2007)**

- Female sued claiming sexual harassment and constructive discharge
- Prior to discharge able to perform all functions and no adverse actions taken against her
- Duty to mitigate damages
- Immunity never available in sexual harassment claims

***Meacham v. Knolls Atomic Power Laboratory*, 128 S.Ct. 2395 (2008)**

- Layoffs due to budget cuts
- 30 out of 31 laid off
- Disparate impact claim under ADEA
- Exception "reasonable factors other than age"

***Gomez-Perez v. Potter*, 128 S.Ct. 1931 (2008)**

- Postal worker claimed retaliation after filing ADEA claim
- Focus on "discrimination based on age"
- And whether includes retaliation for filing age discrimination complaint
- Court compared to Title IX

***Aryain v. Wal-Mart Stores Texas
L.P.*, 534 F.3d 473 (5th Cir. 2008)**

- Title VII action involving sexual harassment, constructive discharge and retaliation
- Inappropriate comments over 4 months
- Transferred out of department
- Analysis of constructive discharge

***Rockwell Int'l Corp. v. U.S.*,
127 S.Ct. 1397 (2007)**

- Qui tam relator
- False claims act
- Original source
- Test: whether provided information that jury eventually used to find fraudulent claims

***Pinkerton v. Spellings*, 529
F.3d 513 (5th Cir. 2008)**

- Disabled individual
- Removed for unacceptable behavior
- Filed EEOC complaint
- Must show disability was a “motivating factor” not the “sole cause”

***Nelson v. University of Texas at
Dallas*, 535 F.3d 318 (5th Cir. 2008)**

- Employee of UTD
- Went on FMLA leave and terminated while on leave for absenteeism
- UTD claimed immunity under 11th Amendment and official immunity
- Request for reinstatement falls under exception

***Elsensohn v. St. Tammany Parish Sheriff's Office*, 530 F.3d 368 (5th Cir. 2008)**

- FMLA claim by Sheriff's deputy
- Wife was former employee in department
- Must establish prima facie case
- Court did not find protection for relatives and friends under FMLA

***CBOCS v. Humphries*, 128 S.Ct. 1951 (2008)**

- Cracker Barrel assistant manager
- Sued for racial bias
- Question before the Court was whether or not Section 1981 encompassed retaliation claims

***Whitt v. Stephens County,*
529 F.3d 278 (5th Cir. 2008)**

- Jail suicide – or was it?
- 42 USC 1983
- John Doe defendants
- Strange facts

***McIntosh v. Partridge,* 540
F.3d 315 (5th Cir. 2008)**

- Dentist
- USERRA- navy reserve
- Professional incompetence
- Due process and equal protection claims

***Brown v. Miller*, 519 F.3d
231 (5th Cir. 2008)**

- Due process claim against lab tech after being released –DNA cleared
- Created a misleading and scientifically inaccurate report
- Reasonable lab tech would have understood actions violated rights
- Law clear at time
- Denied qualified immunity defense

***Jordan v. Ector County*, 516
F.3d 290 (5th Cir. 2008)**

- District clerk employee ran and lost election
- Demoted
- Judge's desk- fired
- 1st Amendment retaliation claim
- Elements to prevail
- Employee is still protected against distant retaliation

***Southwestern Bell Telephone, LP v. City of Houston*, 529 F.3d 257 (5th Cir. 2008)**

- Federal Telecommunications Act
- Seeking to cover costs of relocation
- Interpretation of language in statute
- No private right enforceable under 1983

***Rothgery v. Gillespie County*, 128 S.Ct. 2578 (2008)**

- 6th Amendment right to counsel

***United States v. Cano, 519
F.3d 512 (5th Cir. 2008)***

- Traffic stop and arrested
- Consented initially to search
- Motion to suppress evidence
- Pro se representation denied
- Error to deny motion without hearing

***Waltman v. Payne, 535
F.3d 342 (5th Cir. 2008)***

- Hunting lease with look alike marijuana
- Cut down 500 plants and destroyed them
- 14th Amendment and due process claims
- Open fields doctrine and open view

U.S. v. Mata, 517 F.3d 279
(5th Cir. 2008)

- Protective sweep exception to 4th Amendment which prohibits warrantless searches
- Truck full of marijuana
- Warrant never arrived
- Exigent circumstances allowed officers to enter
- Consent was voluntary

Ali v. Federal Bureau of Prisons,
128 S.Ct. 831 (2008)

- Transferred to new cell and items disappeared
- Detention of goods exception
- Immunity for "any" officer

***Gonzalez v. United States,*
128 S.Ct. 1765 (2008)**

- Consent to magistrate judge by Petitioner's counsel
- Petitioner objected on appeal that he did not give consent
- Court said consent by counsel is sufficient

***Hagan v. Echostar Satellite, LLC,*
529 F.3d 617 (5th Cir. 2008)**

- FLSA
- Whether behavior met filing requirements under FLSA
- Did not participate in protected activity under FLSA

***Wright v. Harris County*, 536
F.3d 436 (5th Cir. 2008)**

- 1983 action
- Died after left custody
- Batson challenge
- Judge changed mind
- Error was waived

***District of Columbia v. Heller*,
128 S.Ct. 2783 (2008)**

- DC police officer applied to register a hand gun
- 2nd Amendment case
- Total ban of handguns in the home violates the 2nd Amendment

***Virginia v. Moore*, 128
S.Ct. 1598 (2008)**

- Stopped vehicle driven by Moore
- State law – summons only but was arrested
- Found drugs
- No violation of 4th Amendment when arrest made with probable cause

***Powell v. Quarterman*, 536
F.3d 3265 (5th Cir. 2008)**

- Convicted of murder of police officer
- 5th and 14th Amendment
- ER doctor examined 12 hours after arrest without a Miranda warning
- Doctor not acting as agent for state

***US v. Casper*, 536 F.3d
409 (5th Cir. 2008)**

- Two warrantless searches
- Traffic stop and search
- Phone tip and search
- Reasonable suspicion

***Dearmore v. City of Garland*,
519 F.3d 517 (5th Cir. 2008)**

- Property owner challenged the constitutionality City ordinance
- Who is prevailing party under Sec. 1988
- Case of first impression
- 3 prong test to be met for answer