

RECENT FEDERAL CASES OF INTEREST TO GOVERNMENTAL ENTITIES

RANDY MONTGOMERY
D. Randall Montgomery & Associates P.L.L.C.
Rmontgomery@drmlawyers.com

- TEXAS CITY ATTORNEYS ASSOCIATION
- HOUSTON, TEXAS
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McAllen Grace Brethren Church v. Salazar, --- F.3d---, 2014 WL 4099141 (5th Cir., August 20, 2014).

- Non-federally recognized Native American sued US Department of Interior
- Regarding right to possess bald eagle feathers for religious purposes
- Fifth Circuit agreed protecting bald eagles is a compelling interest
- Government did not prove that regulation against possession was least restrictive means

Hurst v. Lee County, --F.3d--, 2014 WL 4109647 (5th Cir., August 21, 2014).

- Sherriff terminated employment of deputy for speaking with reporters against policy
- Deputy brought claim under First Amendment claim for violation of free speech
- Fifth Circuit affirmed district court's finding that he spoke as an employee, not a citizen
- Speech not protected

***McCullen v. Coakley, 573 U.S. ____,
134 S.Ct. 2518 (U.S. 2014).***

- 35-foot buffer zone around reproductive health care centers challenged
- Supreme Court held that the buffer zones were too restrictive
- Viewpoint discrimination unconstitutional

***Town of Greece v. Galloway, --S.Ct. -
-, 2014 WL 1757828, U.S., May 05,
2014.***

- Town opened all town meetings with a prayer by local clergy member.
- Citizens alleged violation of First Amendment Establishment Clause
- Supreme Court held practice constitutional
- Prayer practice is a long tradition, provided it is nondiscriminatory

***Morgan v. Swanson, ---F.3d---, 2014 WL
1316929 (Fifth Circuit, April 2, 2014).***

- Parent attempted to disseminate religious material during son's school function to other consenting adults
- Parent sued principal for violation of their First Amendment rights
- Fifth Circuit found no constitutional violation

***Morgan v. Swanson*, --F.3d--, 2014 WL 2484235 (5th Cir., June 3, 2014).**

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- Parent sued on behalf of their son's First Amendment right to distribute religious materials during school function
- Fifth Circuit considered only whether a reasonable official would have deemed the disputed conduct constitutional
- No First Amendment violation

***Thompson v. Mercer*, ---F.3d---, 2014 WL 3882460 (5th Cir. Aug. 7, 2014).**

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- During two hour police chase, officers made multiple attempts to disable vehicle, but each failed
- Sheriff laid in wait with AR-15 assault rifle on rural road and killed decedent with three shots
- Parents of decedent sued, claiming excessive force
- District Court granted summary judgment on qualified immunity
- Fifth Circuit affirmed

***Luna v. Mullenix*, ---F.3d---, 2014 WL 4251122 (5th Cir., August 28, 2014).**

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- Police attempt to stop a 26 mile car chase, by deploying spikes in three locations
- Before the first of these spike locations, officer aimed .223 caliber M-4 rifle
- Shot six shots as car approached, killing decedent with four bullets
- Representative of estate brought excessive force claim
- *Thompson v. Mercer* distinguished
- Police did not first use less-lethal means to stop car

***Riley v. California*, 573 U.S. ____, 134 S.Ct. 999 (U.S. 2014)**

- Seized cellphone from pants
- Evidence of shooting and gang
- S Ct: Warrant required to search cellphone
- OK to check and see not a weapon
- Phone holds "privacies of life"

***Hogan v. Cunningham*, 722 F.3d 725 (5th Cir. 2013).**

- Officers tried to conduct a warrantless arrest that led to a controlled take-down
- For warrantless arrest inside his home to be constitutional, there must have been probable cause and exigent circumstances
- Officers argued that Hogan created exigent circumstances

***Kitchen v. Dallas County Texas, et al.*, -- F.3d.--, 2014 WL 3537022 (5th Cir. July 2014).**

- Excessive force and deliberate indifference to medical needs claim
- District court reversed
- Remanded to consider direct liability or bystander liability
- Also remanded to consider qualified immunity claims

Harris v. Serpas, 745 F.3d 767
(5th Cir. 2014).

- 911 call by woman regarding her ex-husband's potential suicide
- Police responded, did not respond to verbal commands
- Brandished a knife instead and was shot three times
- Brought Section 1983 claim for excessive force
- Fifth Circuit found force was reasonable
- It is enough that officers reasonably feared for their safety at the moment of the fatal shooting

Coleman v. Sweetin, 745 F.3d
756, (5th Cir. 2014).

- Inmate slipped in shower and later discovered he had broken his hip
- Requested medical treatment several times, but was refused
- Fifth Circuit reversed district court's finding medical providers were not deliberate indifferent

The Inclusive Communities Project, Inc. v. Texas
Dep't of Housing & Community Affairs, --F.3d ---
2014 WL 1257127, (Fifth Circuit, March 24, 2014)

- Racial discrimination claim against housing authority for tax-credits
- Fifth Circuit reversed district court's finding that the housing authority must prove there are no less discriminatory alternatives
- Rather, Plaintiff must prove that there are less discriminatory alternatives

***Pierce et al. v. Springfield Township, Ohio*, ---
Fed.Appx. ----, 2014 WL 1408885 (6th Circuit,
April 11, 2014).**

- Fourteenth Amendment failure to render aid claim
- Officer's responded to a gunshot call
- Suspect ran from officers
- Officer shot suspect in leg; suspect later died from gunshot
- Sixth Circuit held no special relationship existed because suspect was not in custody

***Plumhoff, et al., v. Rickard*, --- S.Ct. ----,
2014 WL 2178335 (U.S., May 27, 2014).**

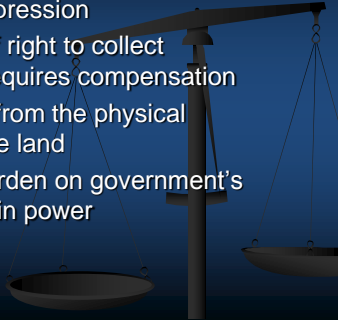
- Traffic stop led to multi-state car chase
- Driver was killed in a "barrage of gunfire"
- Officer's sued under Fourth Amendment, excessive force
- Supreme Court held officers acted reasonably given the circumstances and the general danger to public

***Shirley v. Precision Castparts Corp.*,
726 F.3d 675 (5th Cir. 2013).**

- Sued for violations of ADA and the FMLA
- Twice entered an in-patient rehabilitation program for abuse of prescription meds
- Argued that ADA's safe harbor provision shielded him
- FMLA not guarantee the employee's reinstatement because his drug abuse
- Employers should be aware of four things

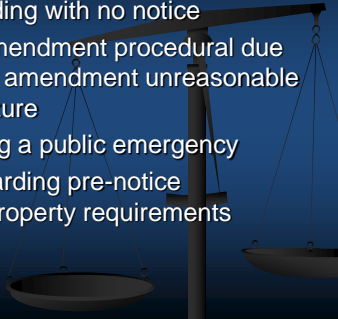
***USA v. 0.73 Acres of Land*, 705 F.3d 540 (5th Cir. 2013).**

- Case of first impression
- Whether loss of right to collect assessments requires compensation
- Does not stem from the physical substance of the land
- Unjustifiable burden on government's eminent domain power



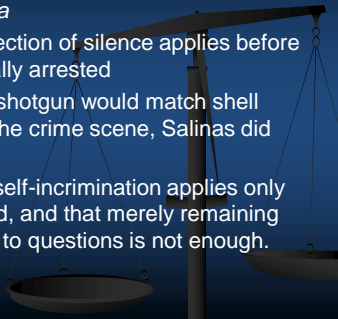
***RBIII, L.P. v. City of San Antonio*, 2013 WL 1748056 (5th Cir. 2013).**

- Tore down building with no notice
- Claimed 14th amendment procedural due process and 4th amendment unreasonable search and seizure
- Was the building a public emergency
- Discussion regarding pre-notice deprivation of property requirements



***Salinas v. Texas*, 133 S.Ct. 2174 (U.S. 2013).**

- *Miranda v. Arizona*
- Whether this protection of silence applies before a suspect is actually arrested
- Asked whether a shotgun would match shell casings found at the crime scene, Salinas did not answer
- Privilege against self-incrimination applies only when it is asserted, and that merely remaining silent in response to questions is not enough.



Doe, et al. v. Robertson, et al., ---F.3d---, 2014 WL 1796653 (Fifth Circuit, May 06, 2014).

- Sexual assault claim against border patrol during transport from immigration center
- Plaintiff's claimed Fifth Amendment due process violation
- Fifth Circuit held officer's entitled to qualified immunity because complaint did not allege violation of a clearly established constitutional right

Fisher v. University of Texas --- S.Ct. -- --, 2013 WL 3155220 (U.S. 2013).

- UT to admit top 10%
- Remainder of in-state class university will consider race as a factor in admission
- Whether equal protection clause of the 14th amendment permits consideration of race in undergraduate admissions

Fisher v. University of Texas at Austin,-- F.3d--, 2014 WL 3442449 (5th Cir. 2014).

- Divided Fifth Circuit
- Universities may use race as part of holistic ...program where it cannot otherwise achieve diversity
- The interest is compelled by reality that university education is more shaping of our lives

***Shelby County v. Holder* --- S.Ct. --
--, 2013 WL 3184629 (U.S. 2013).**

- Fourteenth Amendment
- County in Alabama sought declaration that sections of the Civil Rights Act of 1965 were unconstitutional
- Supreme Court held that Section 5's preapproval requirement is still valid, it has no effect until Congress enacts new statute to determine who should be covered

***Davoodi v. Austin Independent School District*,
--F.3d--, 2014 WL 2714355 (5th Cir., 2014).**

- Former employee brought discriminatory termination claim against ISD
- Fifth Circuit held removal proper because incorporated EEOC charge, plaintiff alleged violation of Title VII
- Failure to challenge sua sponte dismissal of claim under FRCP 59(e) does not waive claim

***Davis v. Fort Bend County*, ---F.3d---, 2014 WL
4209371 (5th Cir., August 26, 2014).**

- Sexual harassment retaliation claim by ex-employee
- Employee missed work for a religious commitment, though made arrangements
- District Court granted summary judgment on behalf of county
- Fifth Circuit reversed with respect to the religious discrimination claim

***Thompson v. City of Waco, Texas*, ---F.3d---, 2014 WL 4364153 (5th Cir., September 9, 2014).**

- An African-American detective filed discrimination claim against police department
- Claimant received more severe disciplinary action than two Caucasian detectives for same offense
- District Court granted city's motion to dismiss
- Fifth Circuit reversed, holding the "ultimate employment decision" standard applies
- Claimant's job responsibilities were rewritten to such extent that he no longer held same position

***Equal Employment Opportunity Commission v. Boh Brothers Construction Company*, 731 F.3d 444 (5th Cir. 2013).**

- All-male bridge-maintenance crew, member singled out for "almost-daily" verbal and physical harassment
- Harasser and the target of the harassment were heterosexual
- Plaintiff can rely on gender-stereotyping evidence to support a violation of Title VII in a same-sex discrimination case.

***Vance v. Ball State University*, --- S.Ct. ----, 2013 WL 3155228 (U.S. 2013).**

- Title VII standard for imposing liability on an employer workplace harassment depends on the status of the harasser
- Who qualifies as a "supervisor"
- Authorized by an employer to take "tangible employment actions"

***Sandifer v. United States Steel Corporation*, 134 S.Ct. 870 (2014).**

- FLSA
- Time they spent donning and doffing protective clothing
- Plaintiffs claimed activities during the donning and doffing time period did not constitute “changing clothes” for purposes of the statute, thus making this time compensable

***Doe v. Robertson*, 751 F.3d 383 (5th Cir. 2014).**

- Contractor operated detention center for US Immigration & Customs Enforcement
- Employee sexually assaulted 8 women
- Plaintiffs claimed deliberate indifference to enforcing compliance w/ ICE contract
- Addressing only QI : actual knowledge of violations not enough to establish deliberate indifference

***Zapata, et al. v. Melson, et al.*, ---F.3d---, 2014 WL 1545911 (5th Circuit, April 18, 2014).**

- Immigration officer’s died when shot with guns obtained in federal sting operation
- Plaintiff’s brought suit alleging civil rights violations
- District Court ordered further discovery on qualified immunity defense
- Officer’s appealed effective denial of qualified immunity defense
- Fifth Circuit reversed, holding District Court did not following proper procedure

***Campbell v. Forest Pres. Dist. of Cook Cnty., Ill.*, No. 13-3147, 2014 WL 1924479 (7th Cir. May 15, 2014).**

- Plaintiff was fired after being caught having sex with a coworker on video
- Plaintiff Section 1981 claim alleged racial discrimination
- Section 1983 claims dropped for failure to timely file
- Seventh Circuit held Section 1981 provides a remedy for violations committed by private actors, but an injured party must resort to Section 1983 to obtain relief

***Burwell v. Hobby Lobby*, 573 U.S. ____, 2014 WL 2921709 (U.S. 2014).**

- Patient Protection & Affordable Care Act
- Employers required to provide coverage for certain contraceptive methods
- Religious Freedom Restoration Act prohibits gov't substantial burdening...
- Contraceptive mandate not least restrictive means of furthering a compelling interest
- Limited to contraceptive mandate and not all insurance coverage
