

RECENT FEDERAL CASES OF INTEREST TO GOVERNMENTAL ENTITIES

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- TEXAS CITY ATTORNEYS ASSOCIATION
 - 2014 SUMMER CONFERENCE
 - SOUTH PADRE ISLAND, TEXAS

Texans for Free Enterprise v. Texas Ethics Commission, et al, 732 F.3d 535 (5th Cir. 2013).

- “direct campaign expenditure only committee,”
- spends funds only to support its own speech in favor of or against candidates.
- ethics commission could not enforce the election code against Texans for Free Enterprise in a way that curtails its free speech

Haverda v. Hays County, 723 F.3d 586 (5th Cir. 2013).

- Deputy sheriff supported the re-election campaign of the incumbent sheriff, who lost
- Sued for retaliating against his political speech, in violation of the First Amendment.
- Whether Haverda’s political speech was a motivating factor in his demotion
- Did not eliminate a genuine issue because Haverda showed that the reasons pretexts for retaliation.
- “Was speaking as a citizen, supporting a candidate during an election.”

**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).**

- 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

Bailey v. United States,
133 S.Ct. 1031 (2013).

- 4th Amendment
- Informant
- Search warrant
- 1 mile from the apartment
- Once individual leaves premises, detention must be justified otherwise

Florida v. Harris, 133
S.Ct. 1050 (2013).

- Possession with intent to manufacture
- Moved to suppress
- Warrantless search of car
- Drug dog alerted officer
- Unanimous opinion of Supreme Court
- Dog's alert sufficient probable cause for warrantless search

Florida v. Jardines, 133
S.Ct. 1409 (2013).

- Unverified crime stopper's tip
- Dog at front door of home
- Obtained search warrant
- Front porch of home is part of home

Maryland v. King, 133 S.Ct. 1958 (2013).

- Arrested in 2009 on a charge of assault
- Police took a DNA sample by swabbing his inner cheek
- State's interest was more than sufficient to offset minimal intrusion into personal privacy
- Used only to help identify an individual taken into custody

Missouri v. McNeely, 133 S.Ct. 1552 (2013).

- Refused alcohol breath test
- Then transported to a medical clinic where the clinic staff administered a blood test without the suspect's consent
- Court left open the possibility that the "exigent circumstances" exception to that general requirement might apply in some

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

***Curtis v. Anthony*, 710 F.3d 587 (5th Cir. 2013).**

- Conducted "dog-scent" line-up
- String of burglaries
- District court granted summary judgment on all section 1983 claims
- 5th Circuit upheld summary judgments

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

- 911 call regarding her ex-husband's potential suicide
- Police responded but did not respond to verbal commands
- Brandished a knife instead and was shot three times
- Surviving children brought Section 1983 claim for excessive force
- Fifth Circuit found force was reasonable
- It is enough that officers reasonably believed 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
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***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

Tina Milton v. TDCJ, 707 F.3d 570 (5th Cir. 2013).

- Job was to look for coded gang messages
- Terminated under FMLA
- Claimed disability- scented candles and wall plug-ins
- Accommodation request
- Difference between simple "impairment" and ADA "disability"

Stewart v. Waco ISD, 711 F.3d 513 (5th Cir. 2013).

- Special Ed student
- Modified her IEP
- Involved in subsequent misconduct
- Claims "gross mismanagement" of IEP and claims ADA violations
- Must exercise professional judgment in response to changing circumstances

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
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Hollingsworth v. Perry --- S.Ct. ----, 2013 WL 3196927 (U.S. 2013).

- Proposition 22- marriage between man and woman
- Question of whether petitioners have standing
- Whether equal protection clause of 14th amendment prohibits California from defining marriage

United States v. Windsor, --- S.Ct. ----, 2013 WL 3196928 (U.S. 2013).

- Challenge to the constitutionality of DOMA
- Held unconstitutional by Supreme Court
- Fifth Amendment protects the liberty of the person
- DOMA is a deprivation of Fifth Amendment rights

***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

***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

***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

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
