RECENT FEDERAL CASES OF INTEREST TO GOVERNMENTAL ENTITIES

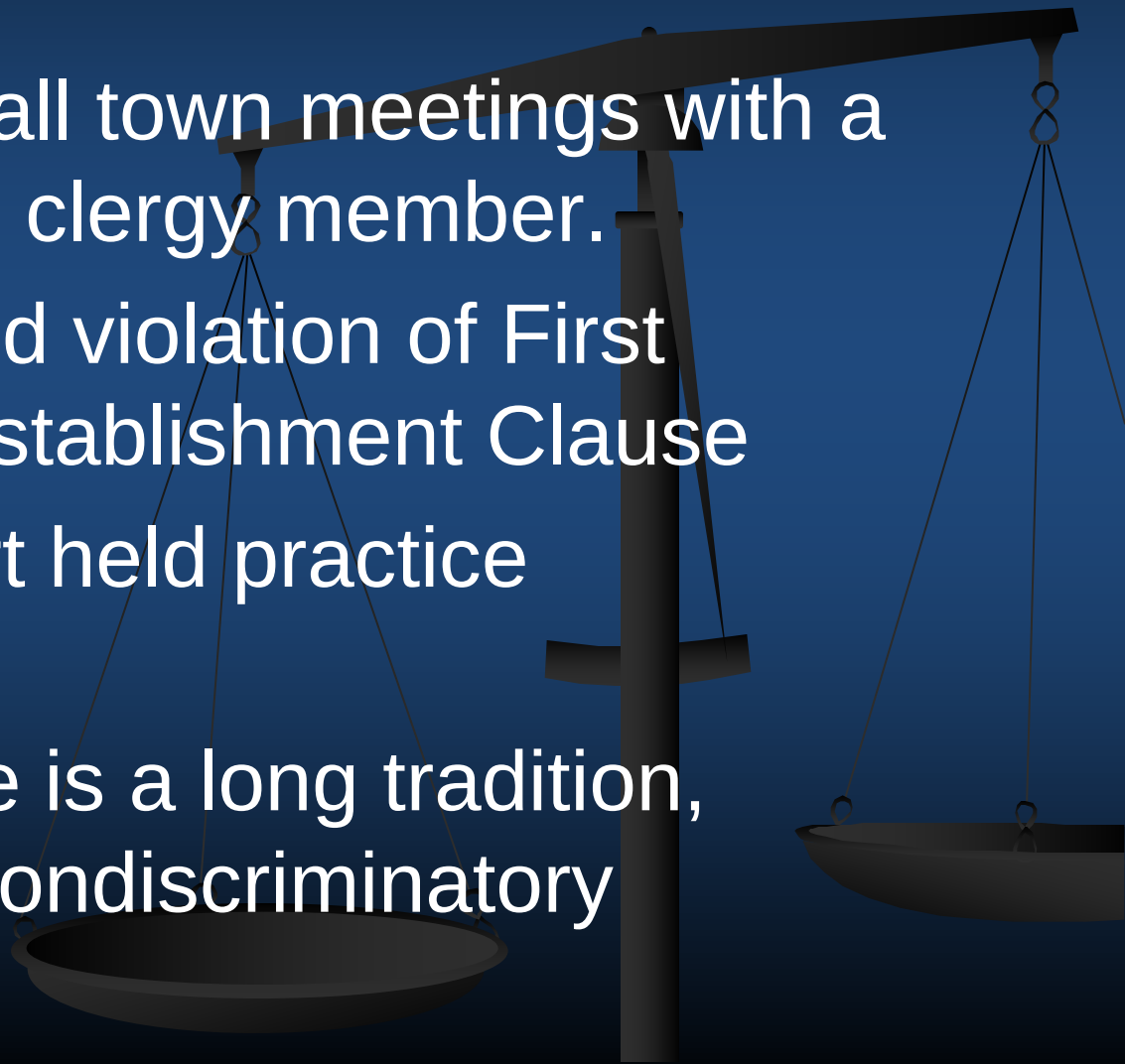
RANDY MONTGOMERY
D. Randall Montgomery & Associates P.L.L.C.
Rmontgomery@drmlawyers.com

- **TEXAS CITY ATTORNEYS ASSOCIATION**
- **2015 ANNUAL MEETING**

SAN ANTONIO, TEXAS

SEPTEMBER 24, 2015

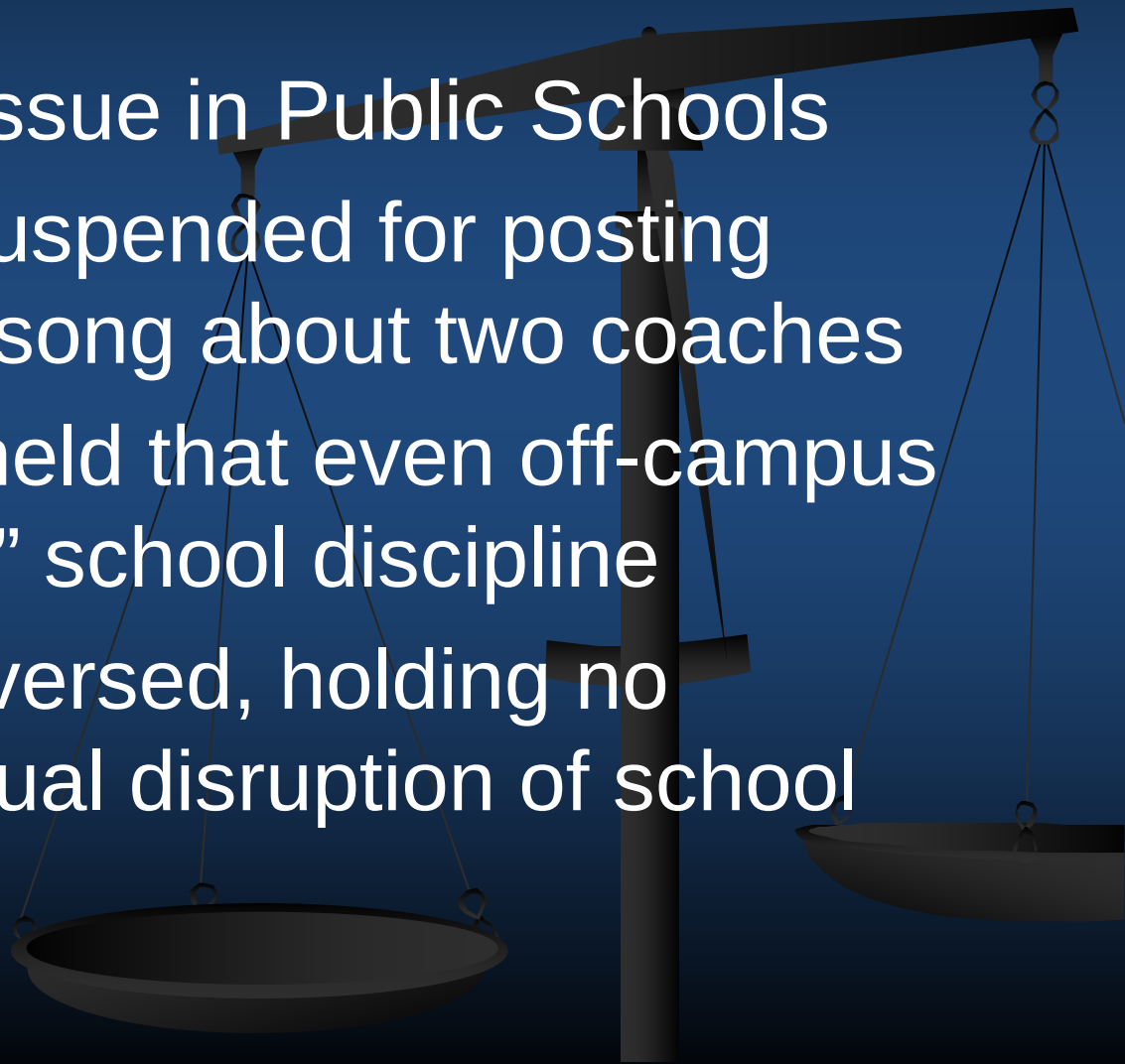
Town of Greece v. Galloway, 134 S.Ct. 1811 (2014)



- 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

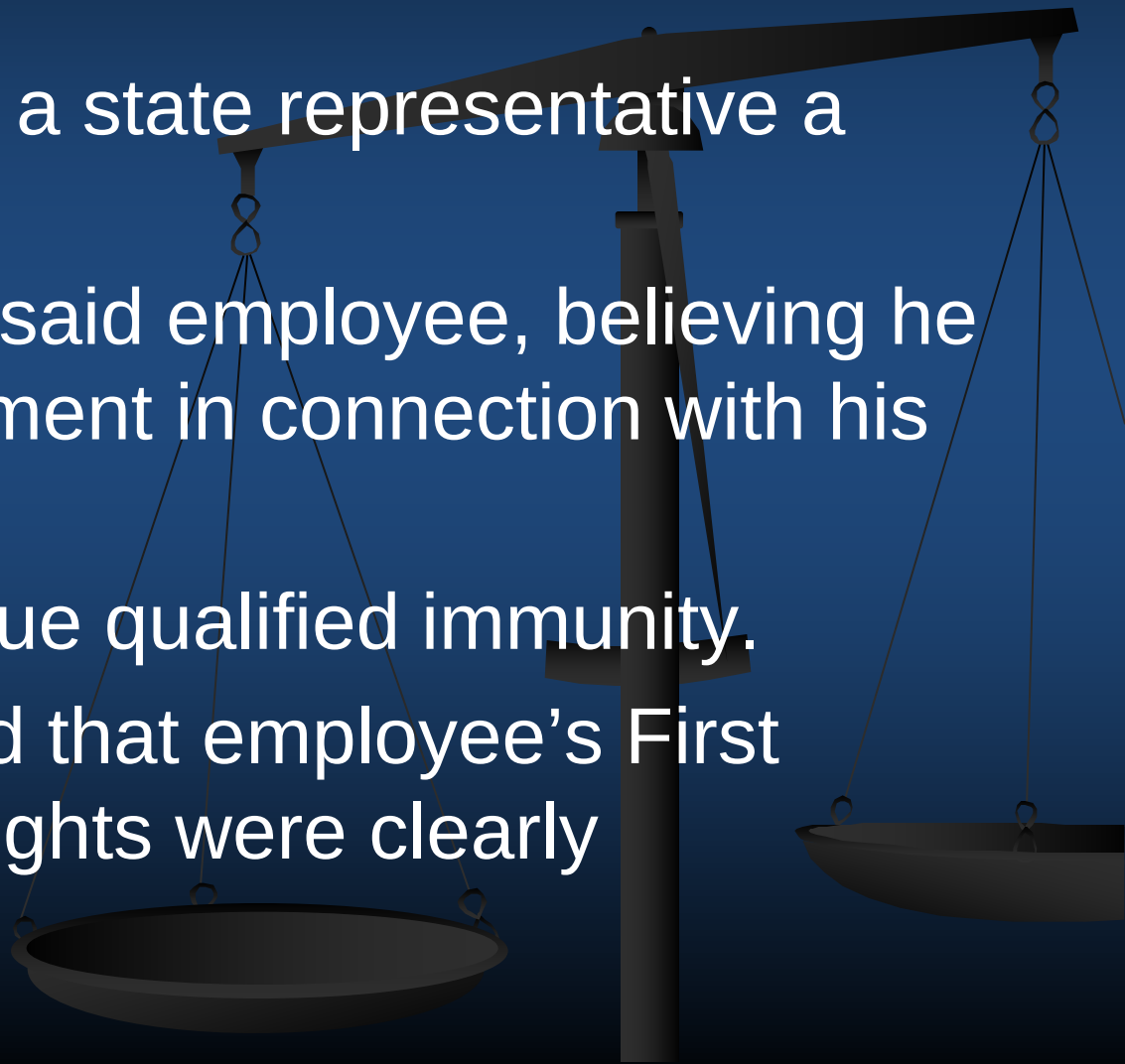
Bell v. Itawamba County School Board, 774 F.3d 280 (5th Cir. 2014)

- Free Speech Issue in Public Schools
- Student was suspended for posting Facebook rap song about two coaches
- District Court held that even off-campus had “disrupted” school discipline
- Fifth Circuit reversed, holding no showing of actual disruption of school activities



Cutler v. Stephen F. Austin University, 767 F.3d 462 (5th Cir. 2014)

- Fired for calling a state representative a "fear monger."
- University fired said employee, believing he made the statement in connection with his duties.
- Defendants argue qualified immunity.
- Fifth Circuit held that employee's First Amendment's rights were clearly established

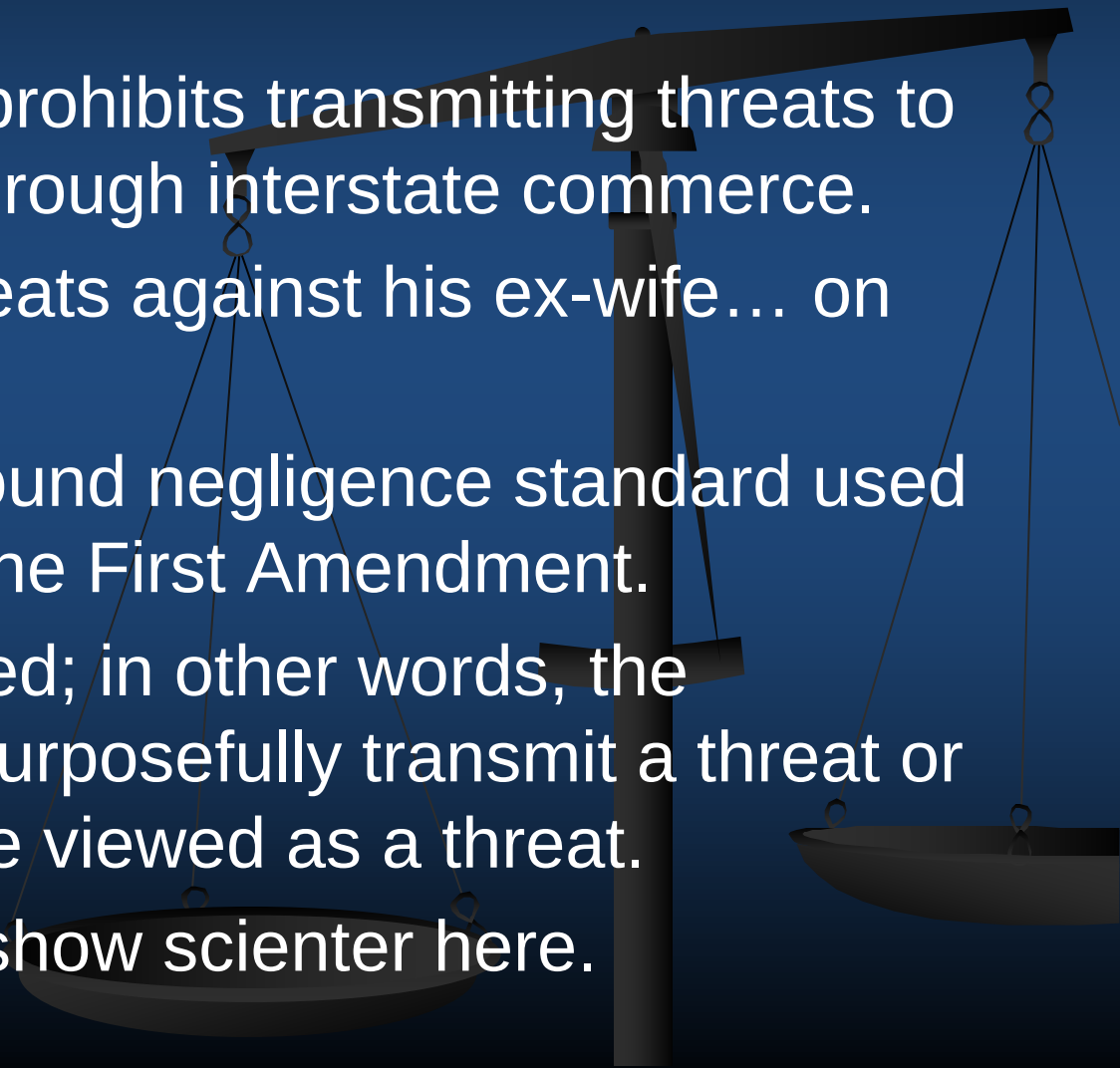


Graziosi v. City of Greenville, MS, 775 F.3d 731 (5th Cir. 2015)

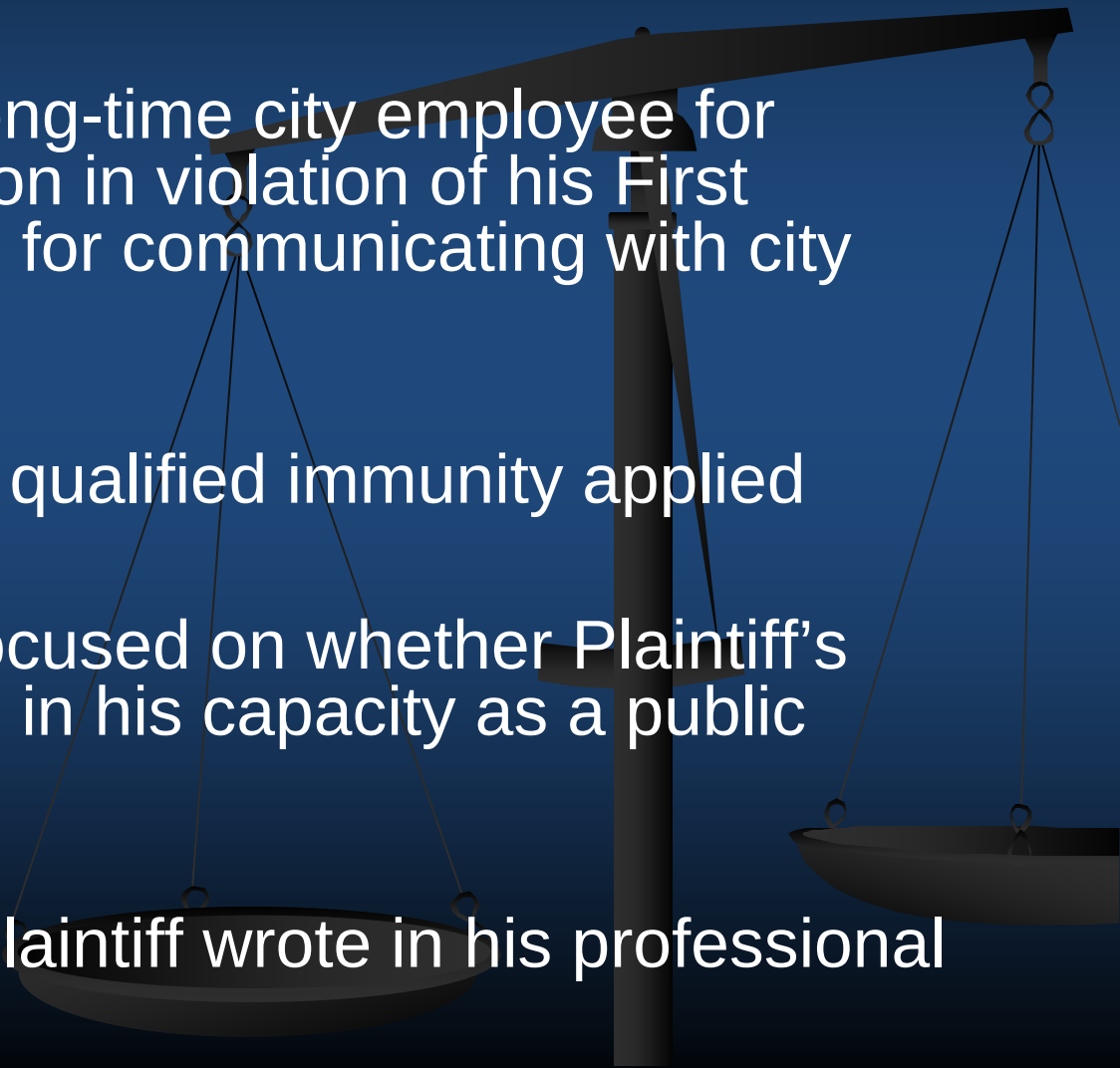
- Police officer complains she was wrongfully terminated in violation of the First Amendment, after making several posts on Facebook about her immediate supervisor
- Speech to be unprotected because she spoke as city employee, not as a public citizen.
- Fifth Circuit affirmed

Elonis v. United States, 135 S. Ct. 2001 (2015)

- 18 USC §875(c) prohibits transmitting threats to another person through interstate commerce.
- Made several threats against his ex-wife… on Facebook.
- Supreme Court found negligence standard used by is contrary to the First Amendment.
- Scienter is required; in other words, the defendant must purposefully transmit a threat or know that it will be viewed as a threat.
- The US failed to show scienter here.

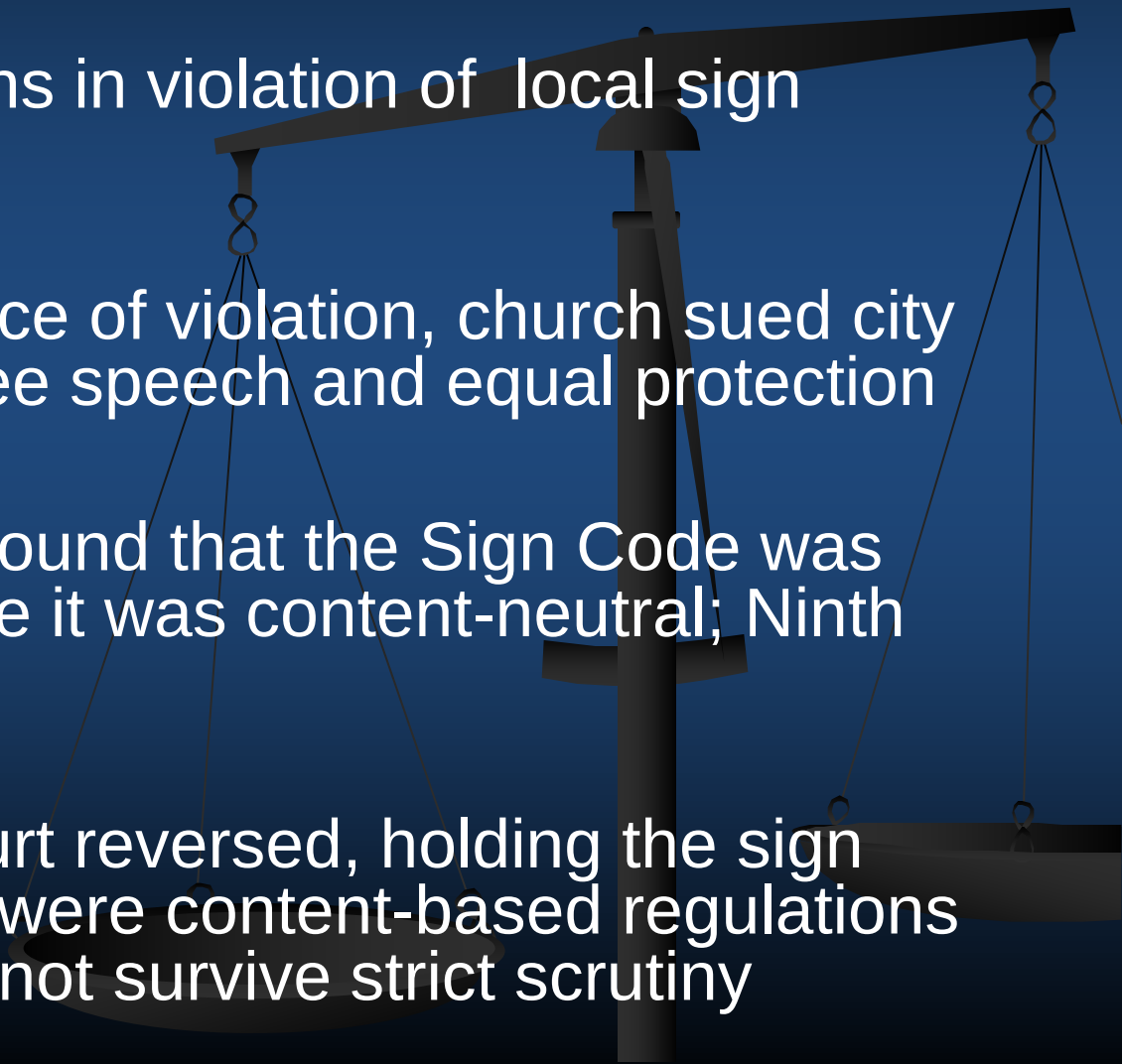


Benes v. Puckett, 602 Fed.Appx. 589 (5th Cir. 2015)



- §1983 action by long-time city employee for wrongful termination in violation of his First Amendment rights for communicating with city council.
- District Court held qualified immunity applied
- The Fifth Circuit focused on whether Plaintiff's emails were made in his capacity as a public employee
- Facts supported Plaintiff wrote in his professional capacity; affirmed.

Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015)



- Pastor posted signs in violation of local sign ordinance
- After city sent notice of violation, church sued city for violations of free speech and equal protection
- The district court found that the Sign Code was constitutional since it was content-neutral; Ninth Circuit affirmed
- The Supreme Court reversed, holding the sign code's provisions were content-based regulations of speech that do not survive strict scrutiny

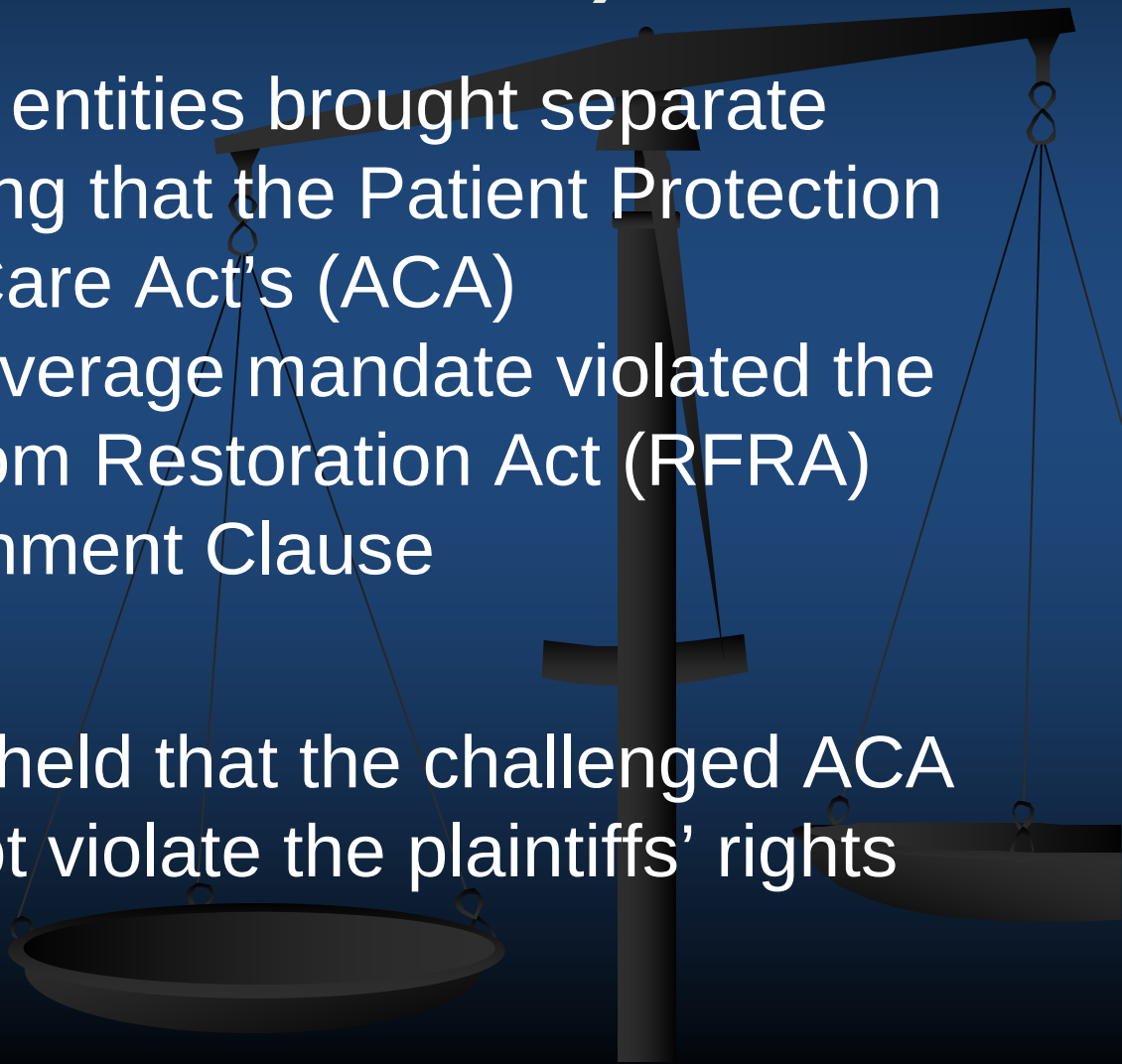
Walker v. Texas Division, Sons of Confederate Veterans, Inc., 135 S. Ct. 2239 (2015)

- Texas offers automobile owners a choice between general-issue and specialty license plates
- Sons of Confederate Veterans sued for its right to feature a Confederate battle on a license plate under the First Amended
- In reversing the Fifth Circuit, the Supreme Court held that Texas's specialty license plate designs constitute government speech, and thus Texas was entitled to refuse to issue plates featuring the proposed design

East Texas Baptist University v. Burwell, __ *F.3d.* ___, 2015 WL 3852811 (5th Cir. June 22, 2015)

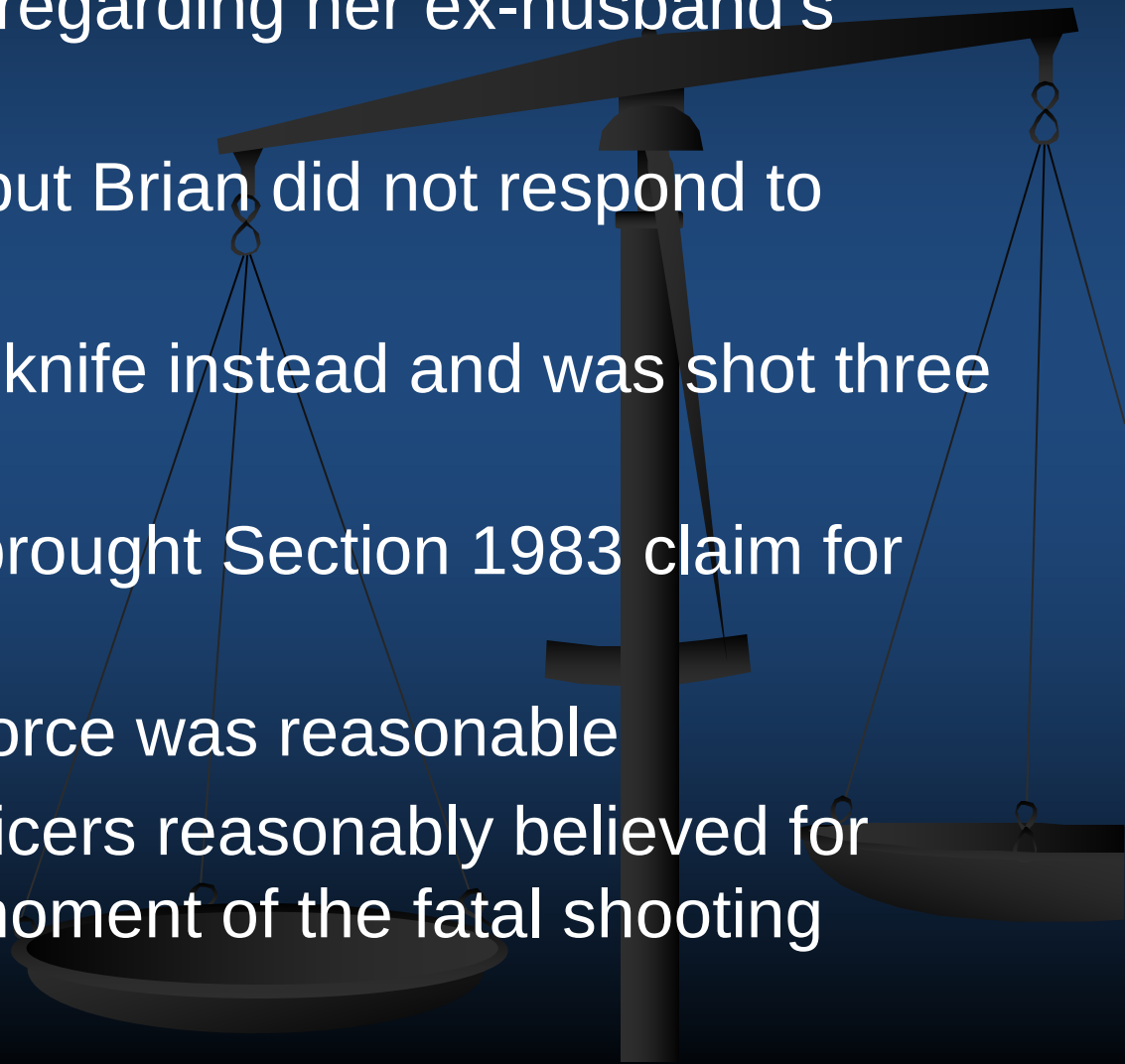
- Church-affiliated entities brought separate actions contending that the Patient Protection and Affordable Care Act's (ACA) contraception-coverage mandate violated the Religious Freedom Restoration Act (RFRA) and the Establishment Clause

- The Fifth Circuit held that the challenged ACA provisions did not violate the plaintiffs' rights under the RFRA



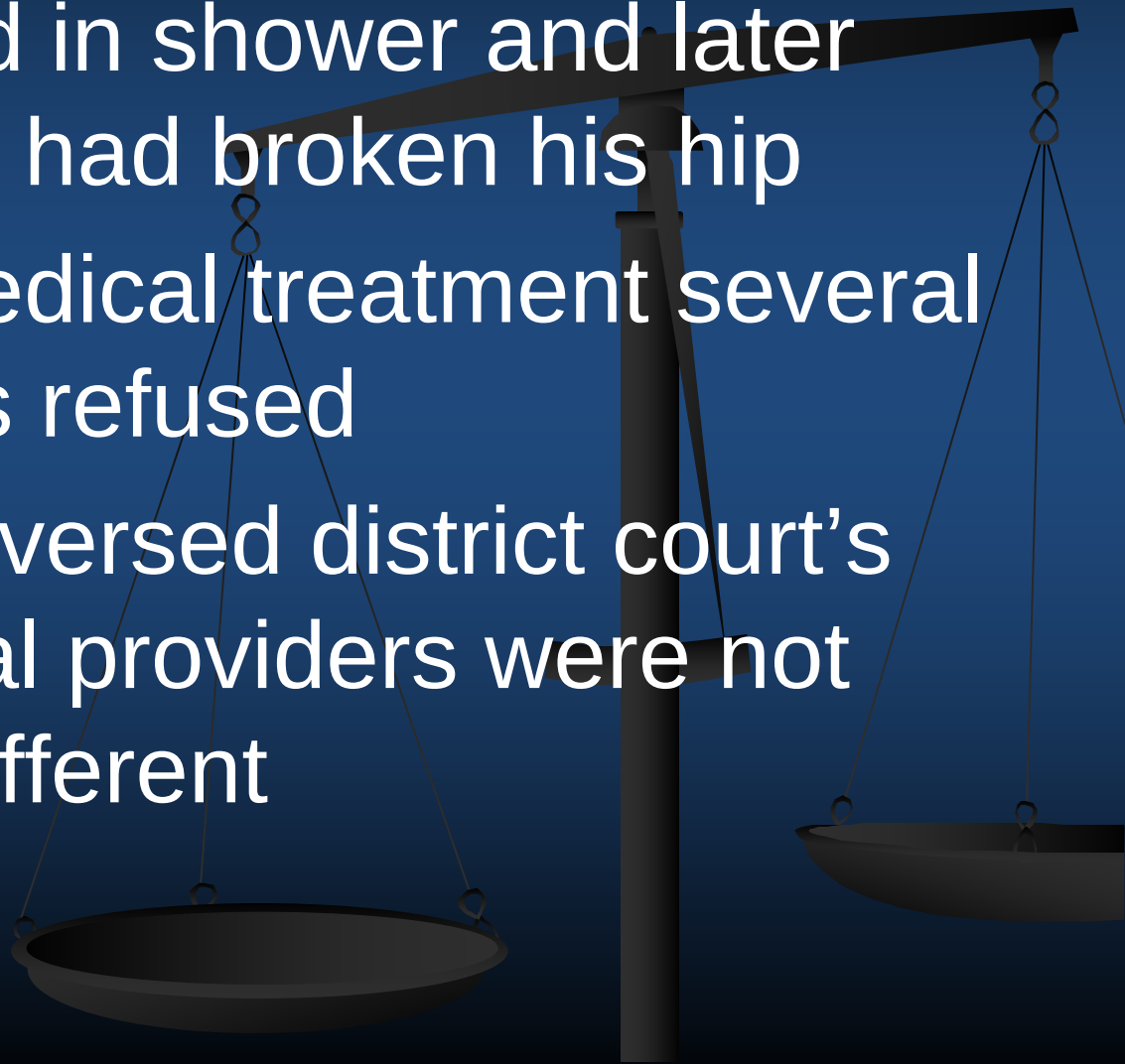
Harris v. Serpas, 745 F.3d 767 (5th Cir. 2014)

- 911 call by woman regarding her ex-husband's potential suicide
- Police responded, but Brian did not respond to verbal commands
- Brian 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



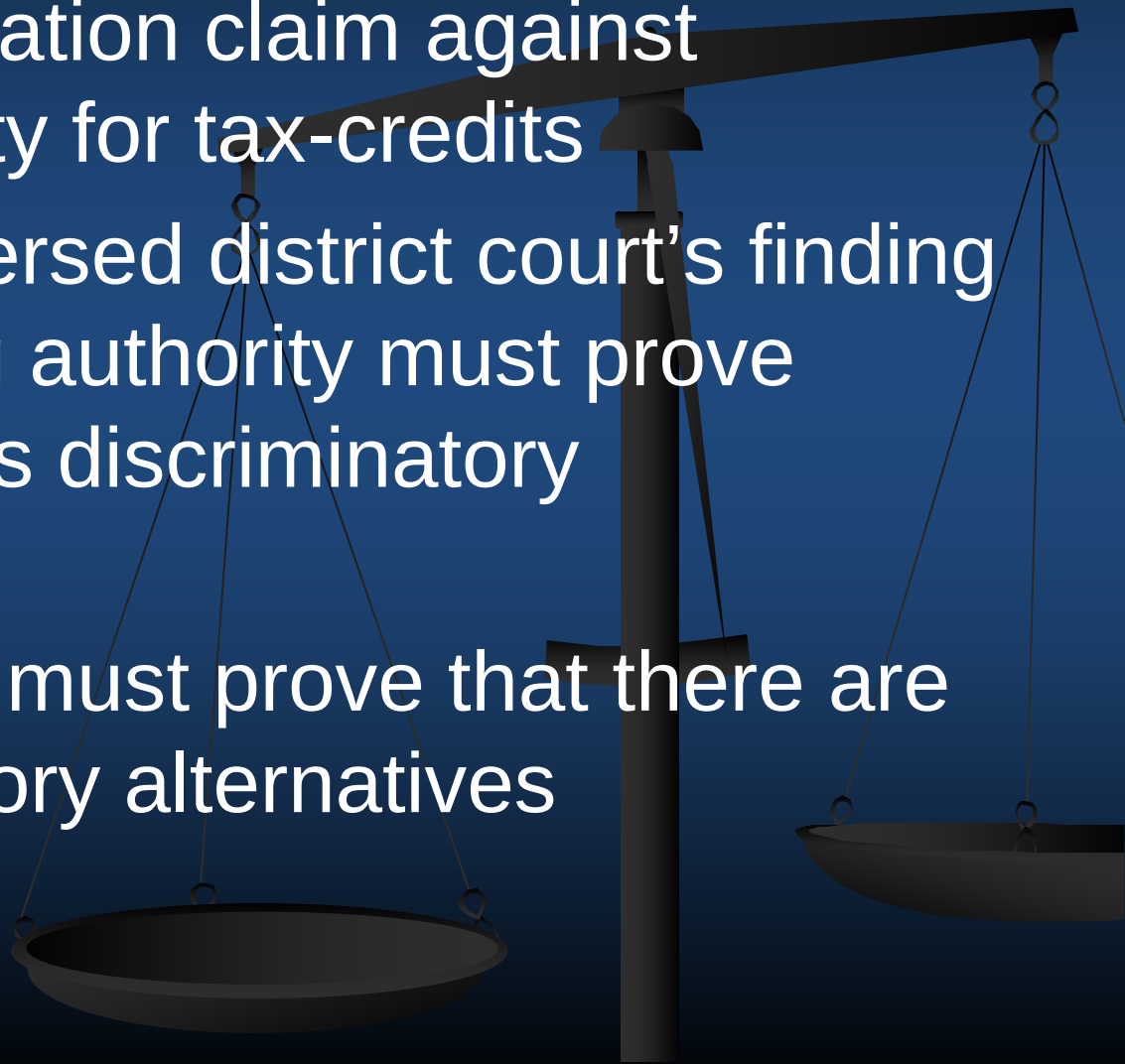
Coleman v. Sweetin, 745 F.3d 756, (5th Cir. 2014)

- 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



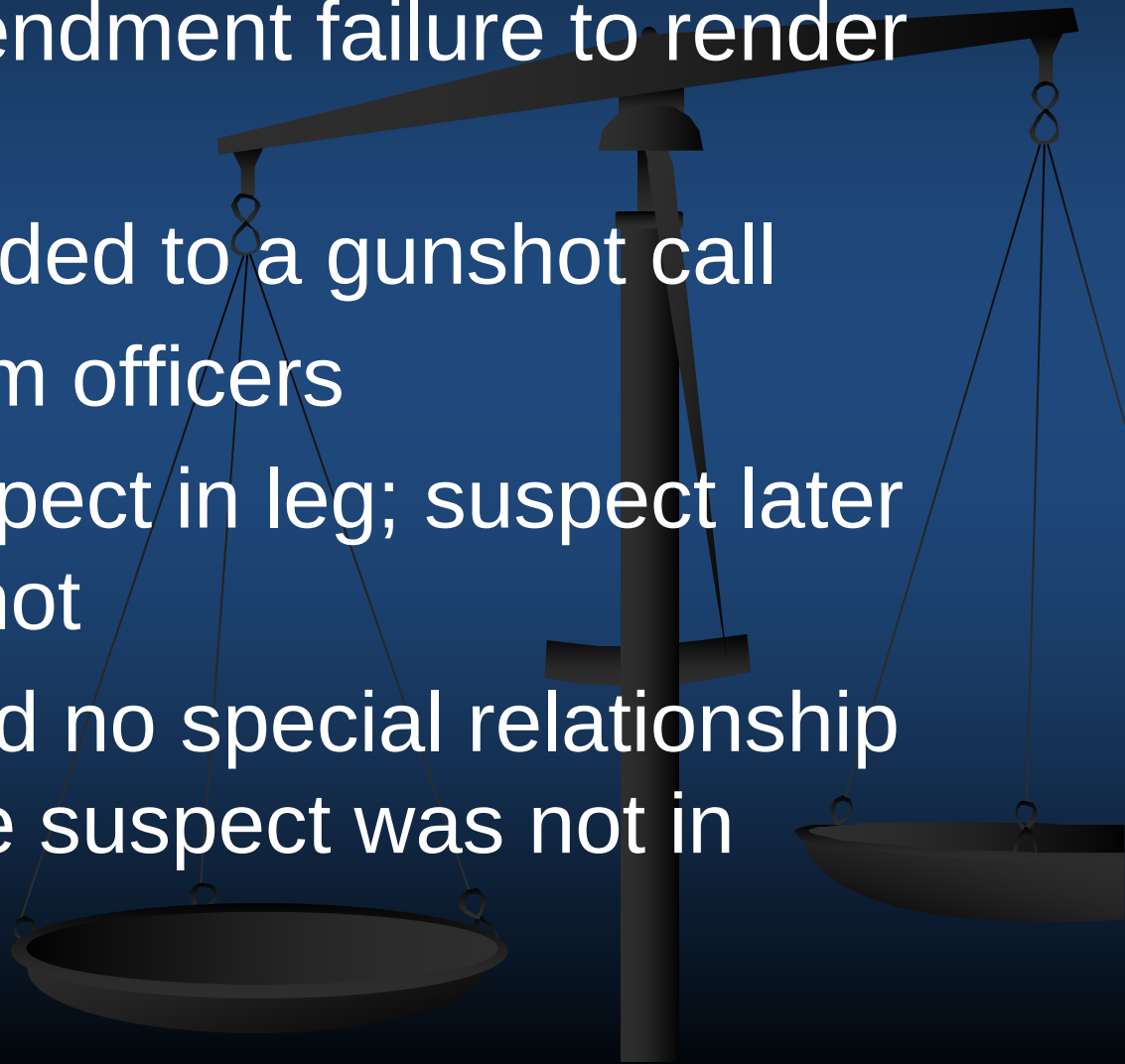
The Inclusive Communities Project, Inc. v. Texas Dep't of Housing & Community Affairs, 747 F. 3d 275 (5th Cir. 2014)

- 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



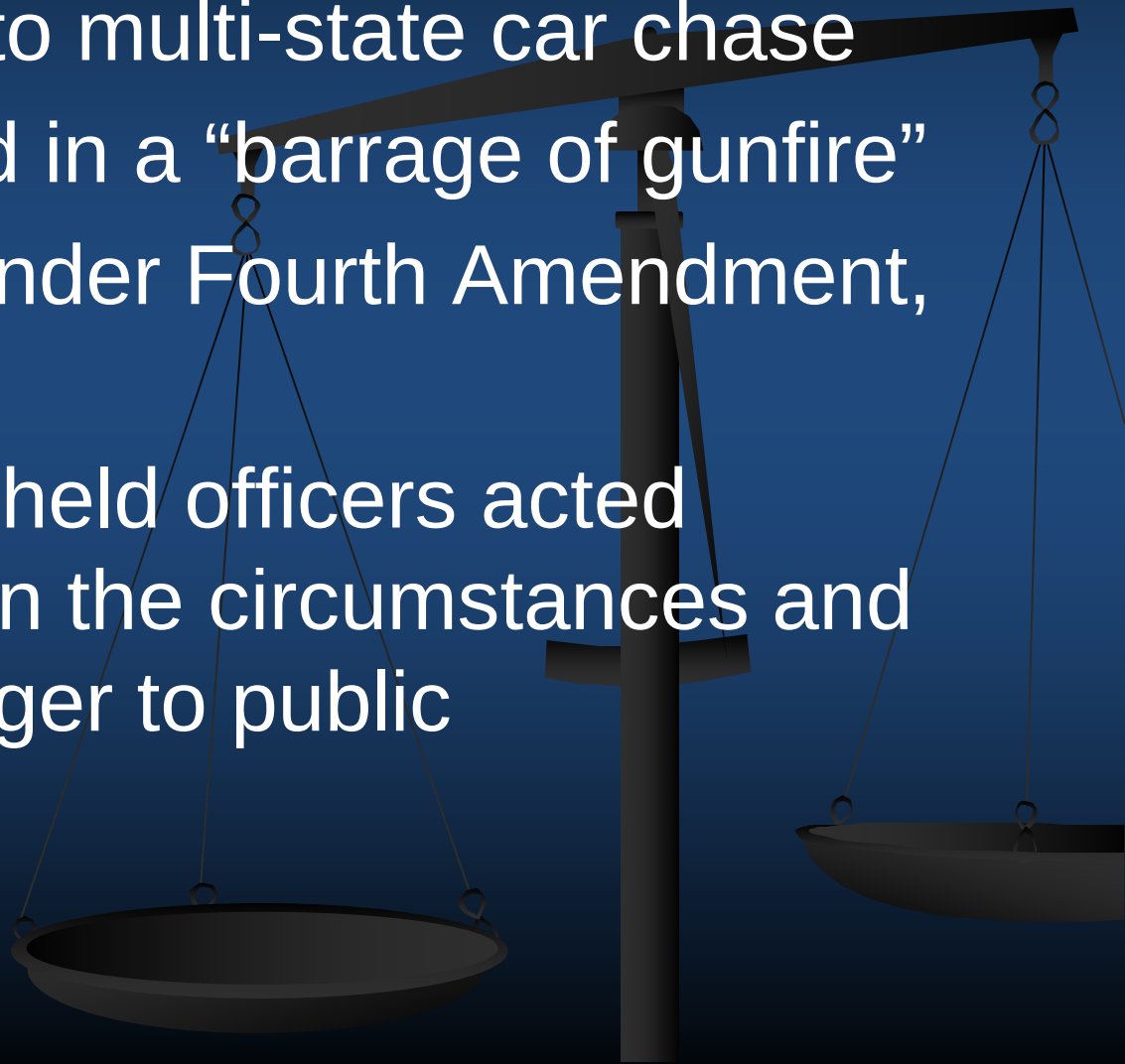
Pierce et al. v. Springfield Township, Ohio, 562 Fed.Appx. 431, 2014 WL 1408885 (6th Cir. 2014)

- 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



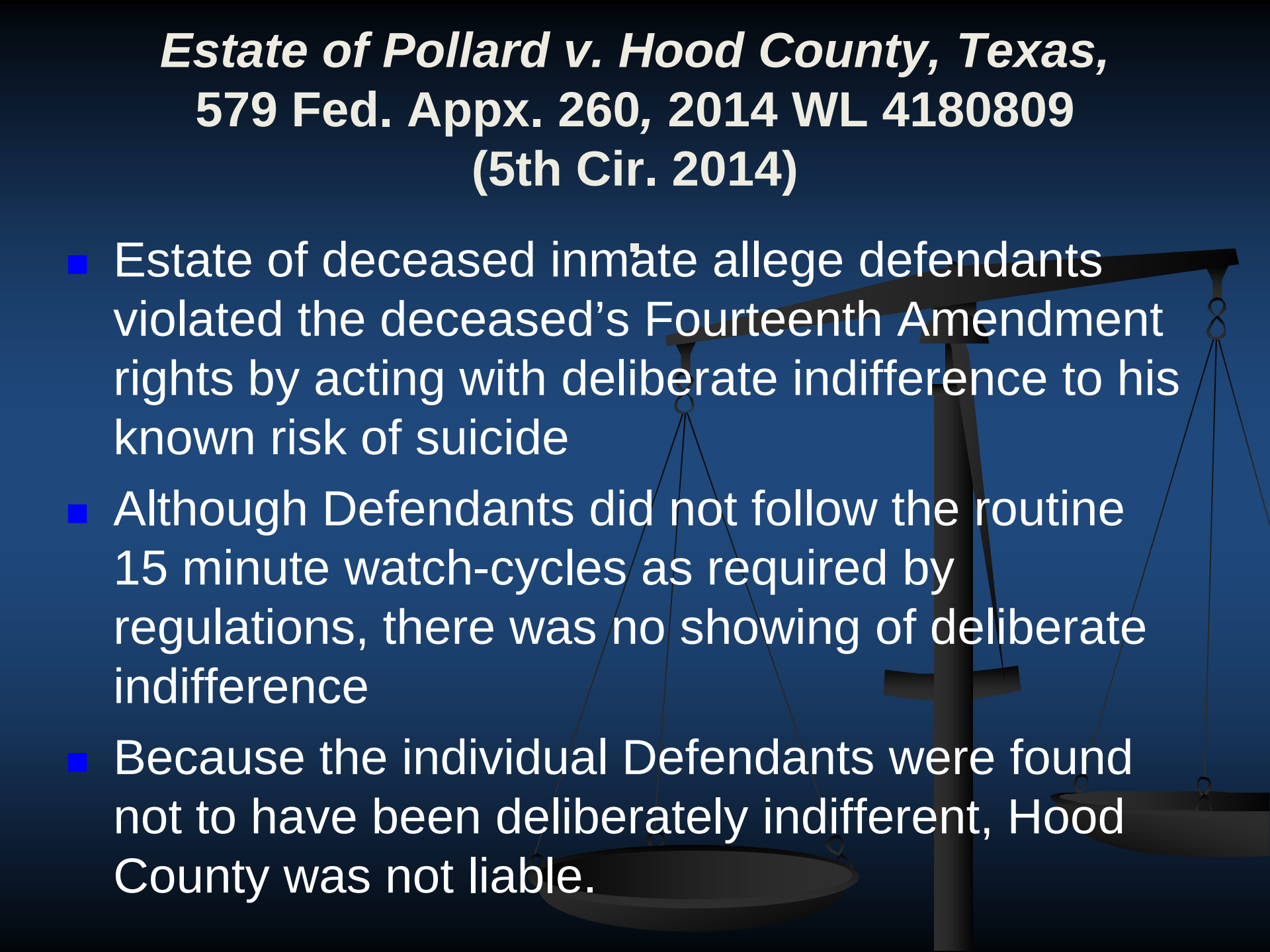
Plumhoff, et al., v. Rickard, 134 S. Ct. 2012 (2014)

- 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



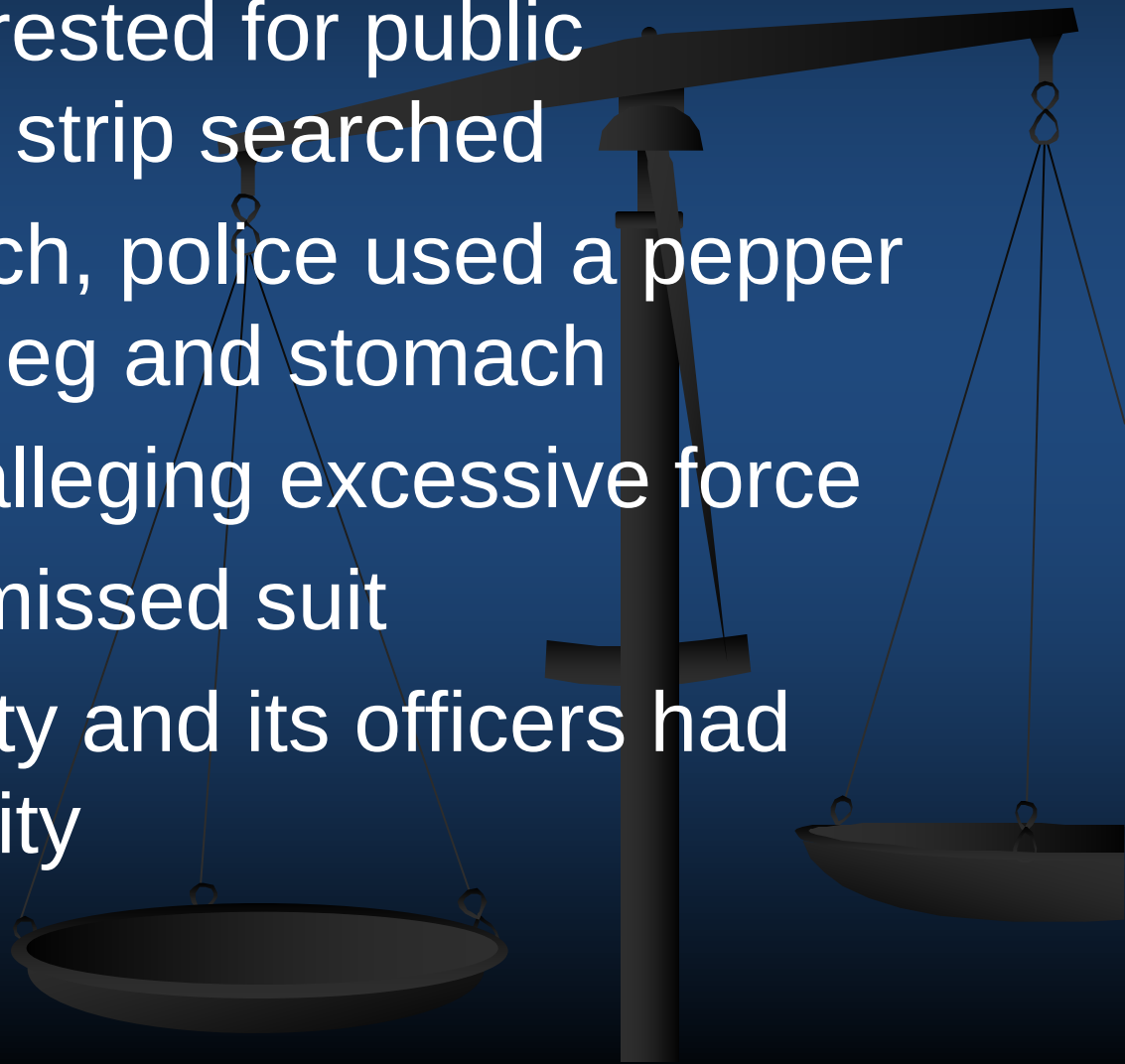
Estate of Pollard v. Hood County, Texas, 579 Fed. Appx. 260, 2014 WL 4180809 (5th Cir. 2014)

- Estate of deceased inmate allege defendants violated the deceased's Fourteenth Amendment rights by acting with deliberate indifference to his known risk of suicide
- Although Defendants did not follow the routine 15 minute watch-cycles as required by regulations, there was no showing of deliberate indifference
- Because the individual Defendants were found not to have been deliberately indifferent, Hood County was not liable.



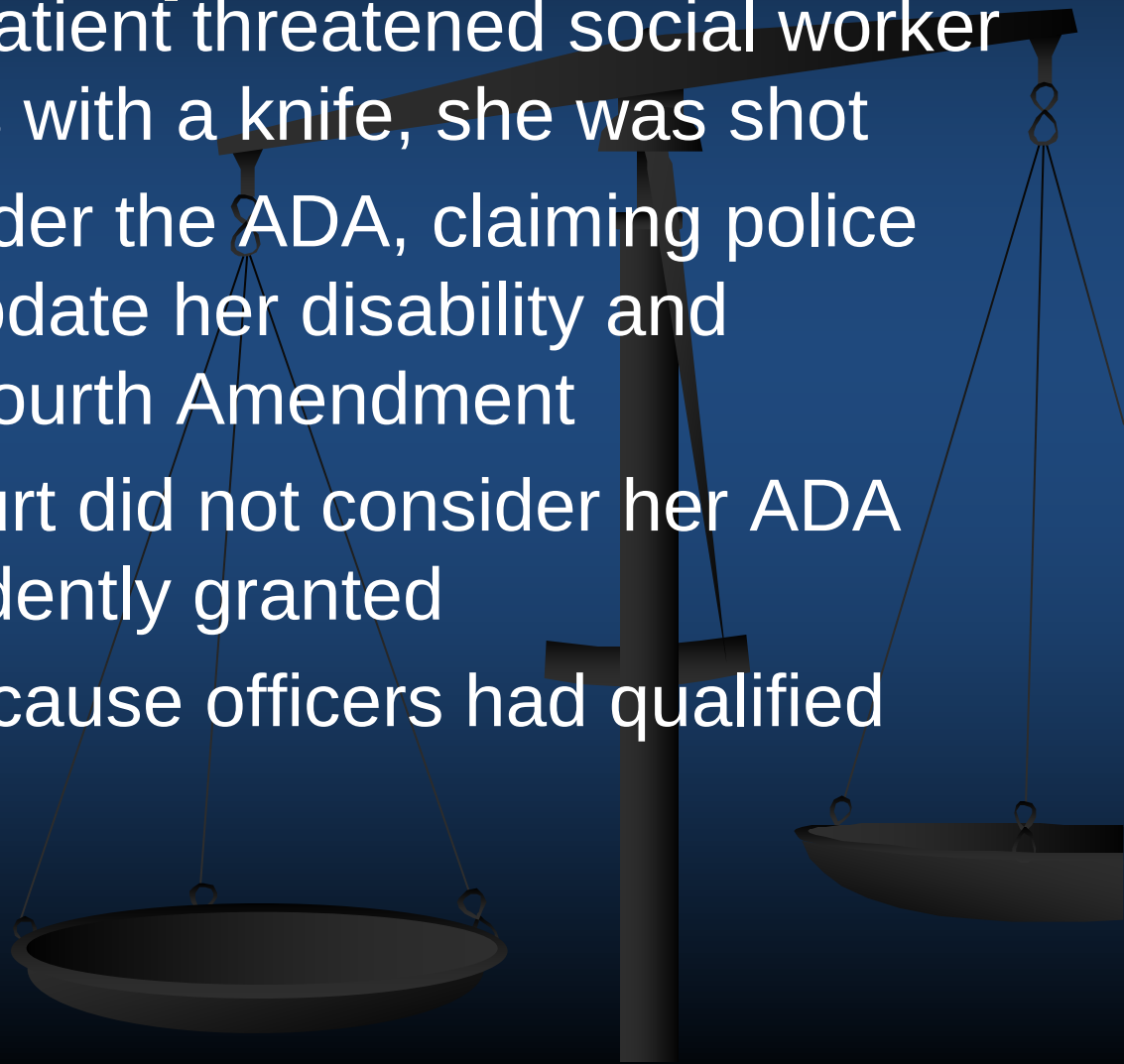
Dawson v. Anderson County, Tex., 769 F.3d 326 (5th Cir. 2014)

- Dawson was arrested for public intoxication and strip searched
- During the search, police used a pepper ball gun on her leg and stomach
- Dawson sued, alleging excessive force
- Fifth Circuit dismissed suit
- Anderson County and its officers had qualified immunity



City and County of San Francisco v. Sheehan, 135 S.Ct. 1705 (2015)

- After mentally ill patient threatened social worker and police officers with a knife, she was shot
- Sheehan sued under the ADA, claiming police failed to accommodate her disability and violations of the Fourth Amendment
- The Supreme Court did not consider her ADA claims as improvidently granted
- Suit dismissed because officers had qualified immunity

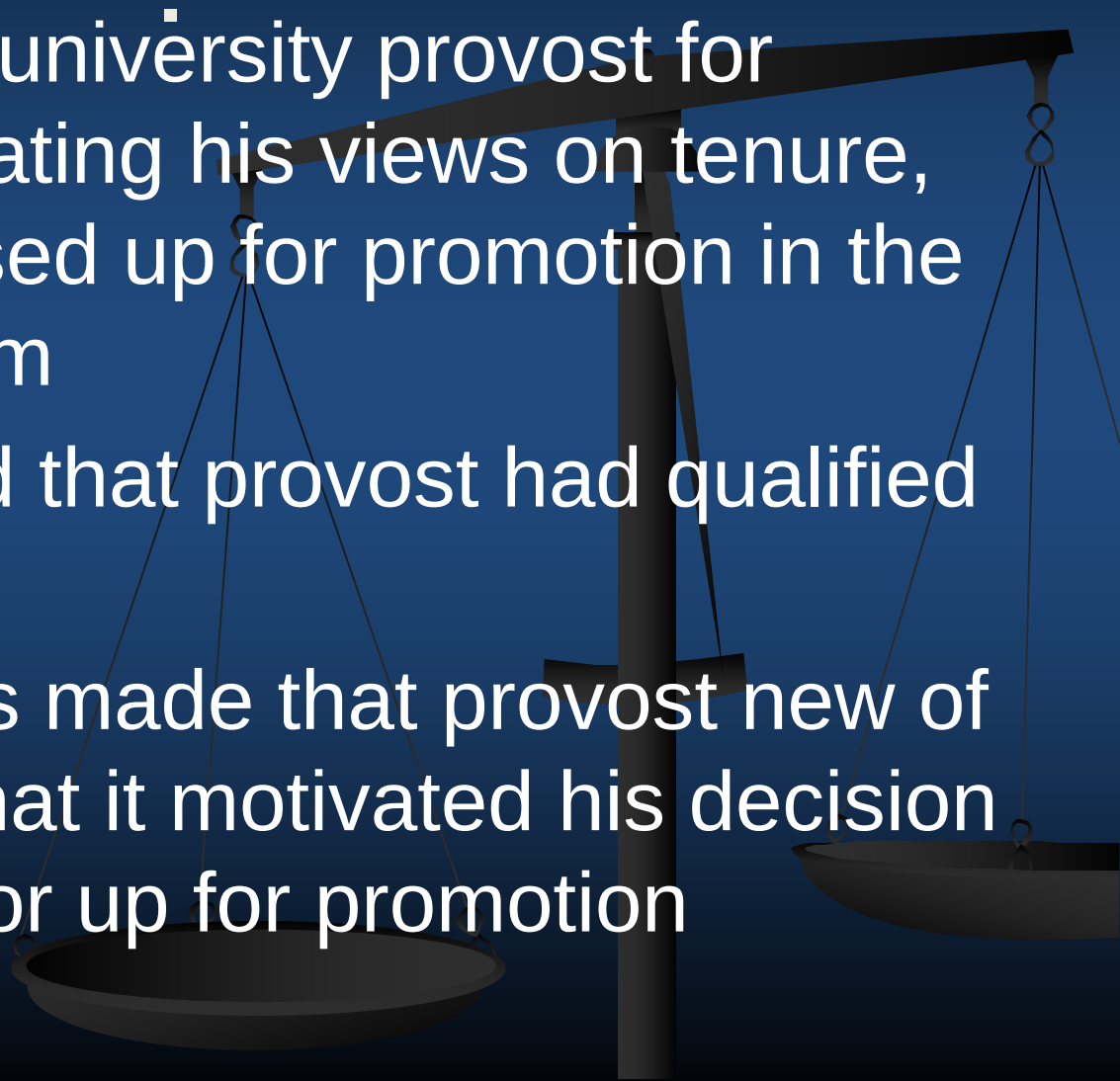


Singleton v. Darby, --F.3d--, 2015 WL 2403430 (5th Cir. 2015)

- Protester was blocking traffic
- After police officer used pepper spray on her, protestor filed suit alleging violations of the First and Fourth Amendments
- On her First Amendment claim, Fifth Circuit found Singleton was not entitled to block traffic or create hazards for others. Police were entitled to enforce traffic obstruction laws.
- Regarding her excessive force claim, Fifth Circuit held officer acted as a reasonable officer under the circumstances

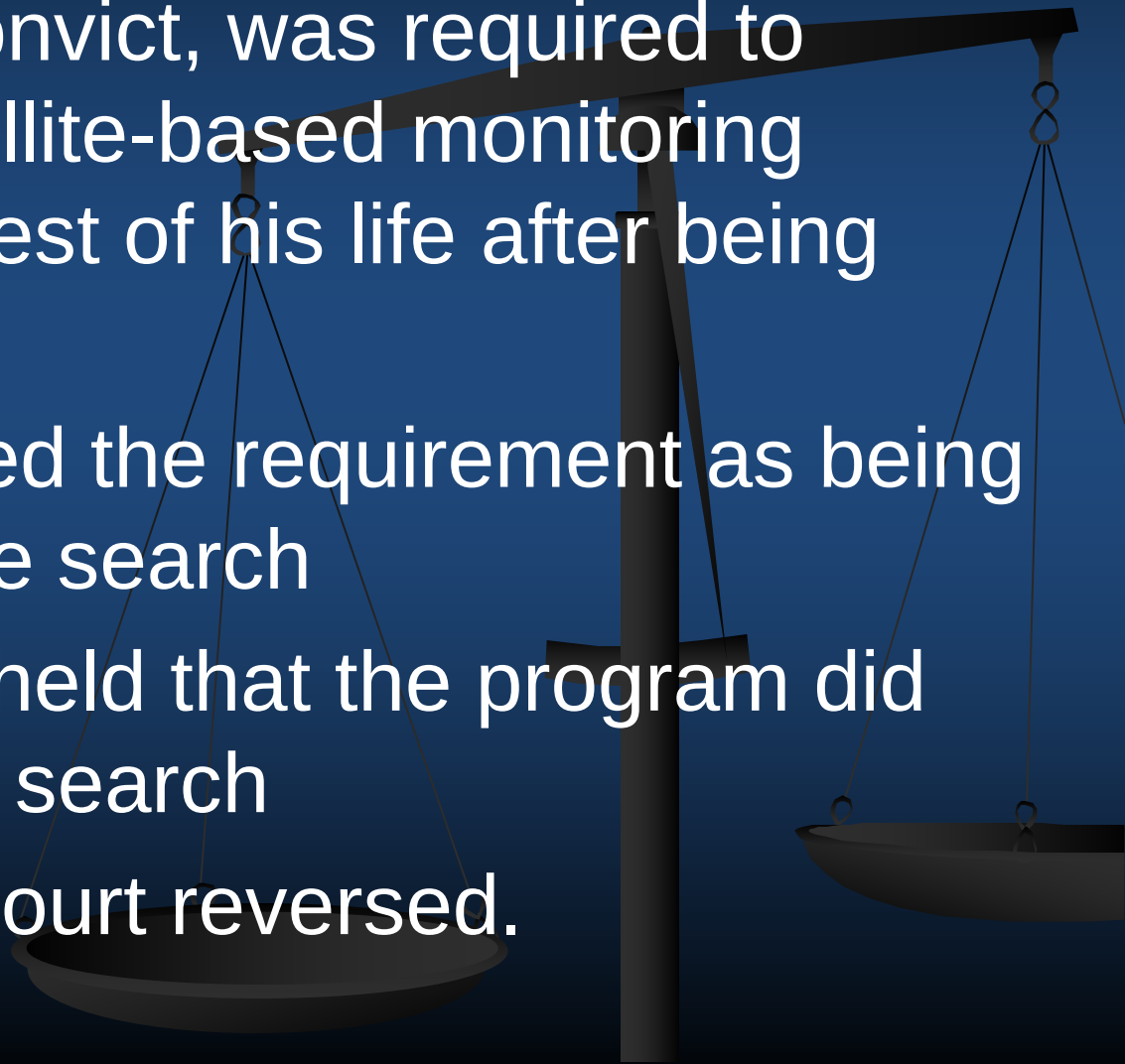
Weatherbe v. Smith, --F.3d--, 2014 WL 7564675 (5th Cir. 2014)

- Professor sued university provost for retaliation for stating his views on tenure, after being passed up for promotion in the university system
- Fifth Circuit held that provost had qualified immunity
- No showing was made that provost new of the speech or that it motivated his decision to pass professor up for promotion



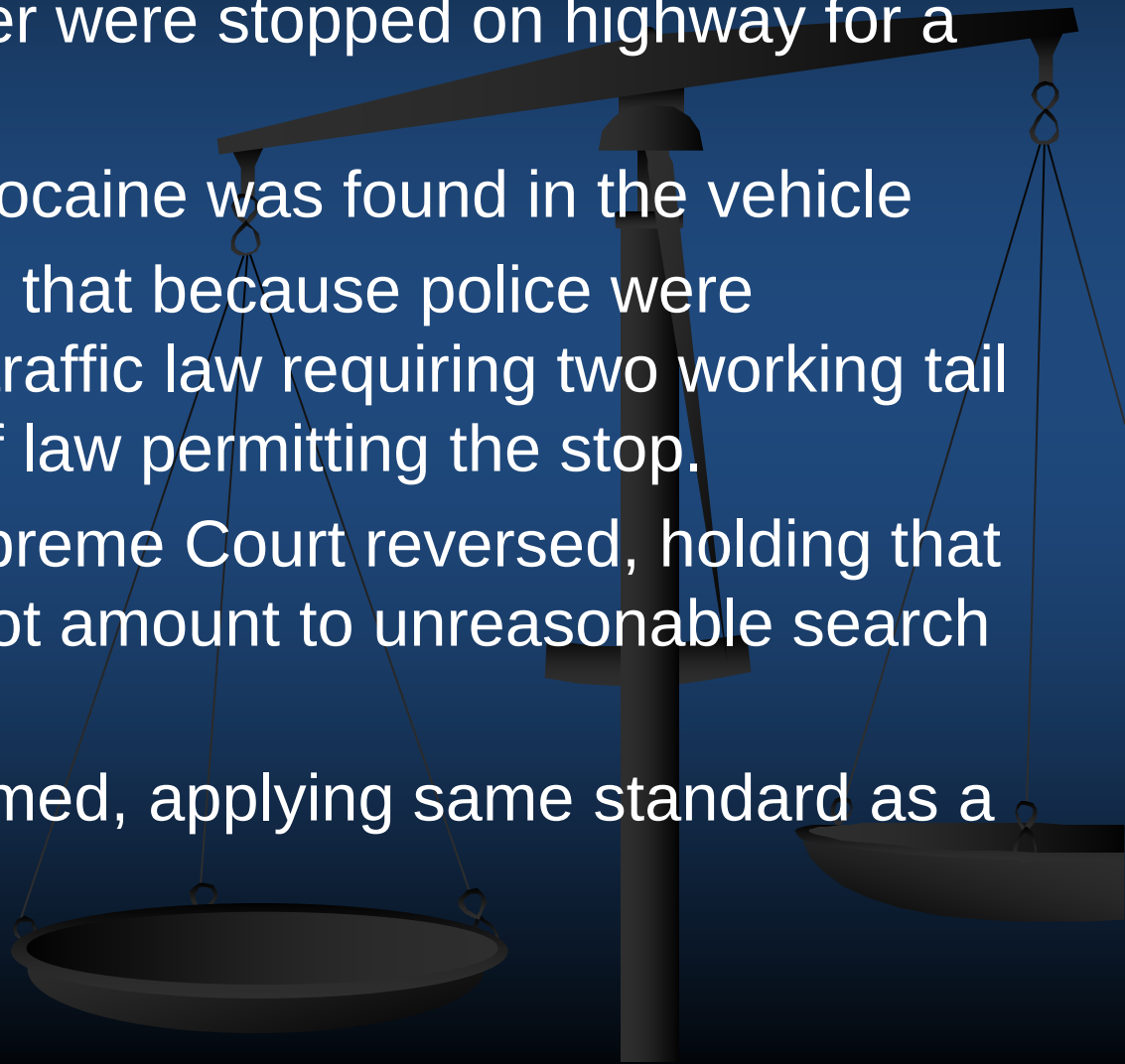
Grady v. North Carolina, 135 S.Ct. 1368 (2015)

- Grady, an ex-convict, was required to submit to a satellite-based monitoring system for the rest of his life after being released
- Grady challenged the requirement as being an unreasonable search
- The trial courts held that the program did not amount to a search
- The Supreme Court reversed.



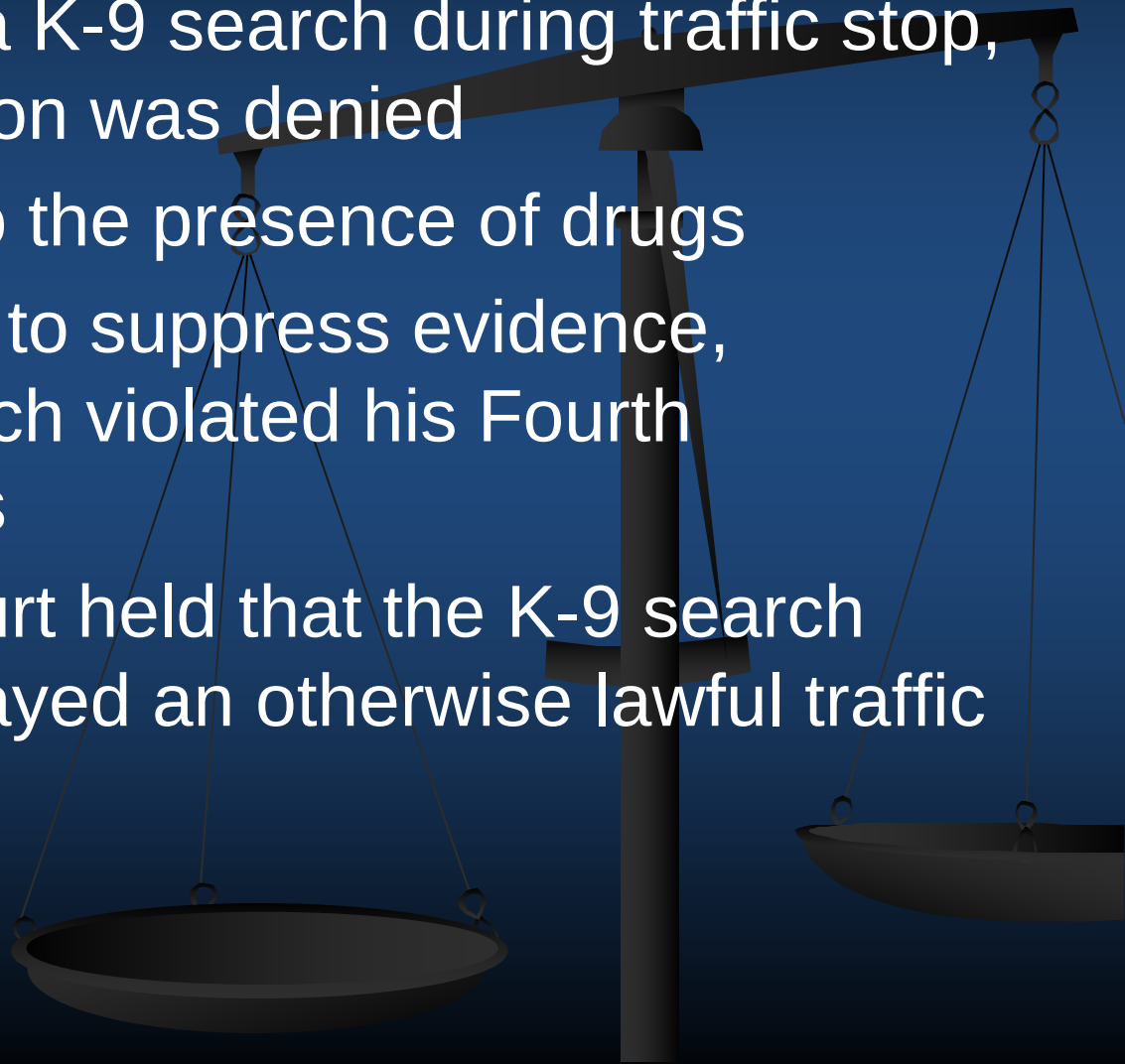
Heinen, v. North Carolina, 135 S.Ct. 530 (2014)

- Driver and passenger were stopped on highway for a broken tail light
- During traffic stop, cocaine was found in the vehicle
- Appellate Court held that because police were mistaken about the traffic law requiring two working tail lights, no violation of law permitting the stop.
- North Carolina's Supreme Court reversed, holding that mistake of law did not amount to unreasonable search and seizure
- Supreme Court affirmed, applying same standard as a mistake of fact.



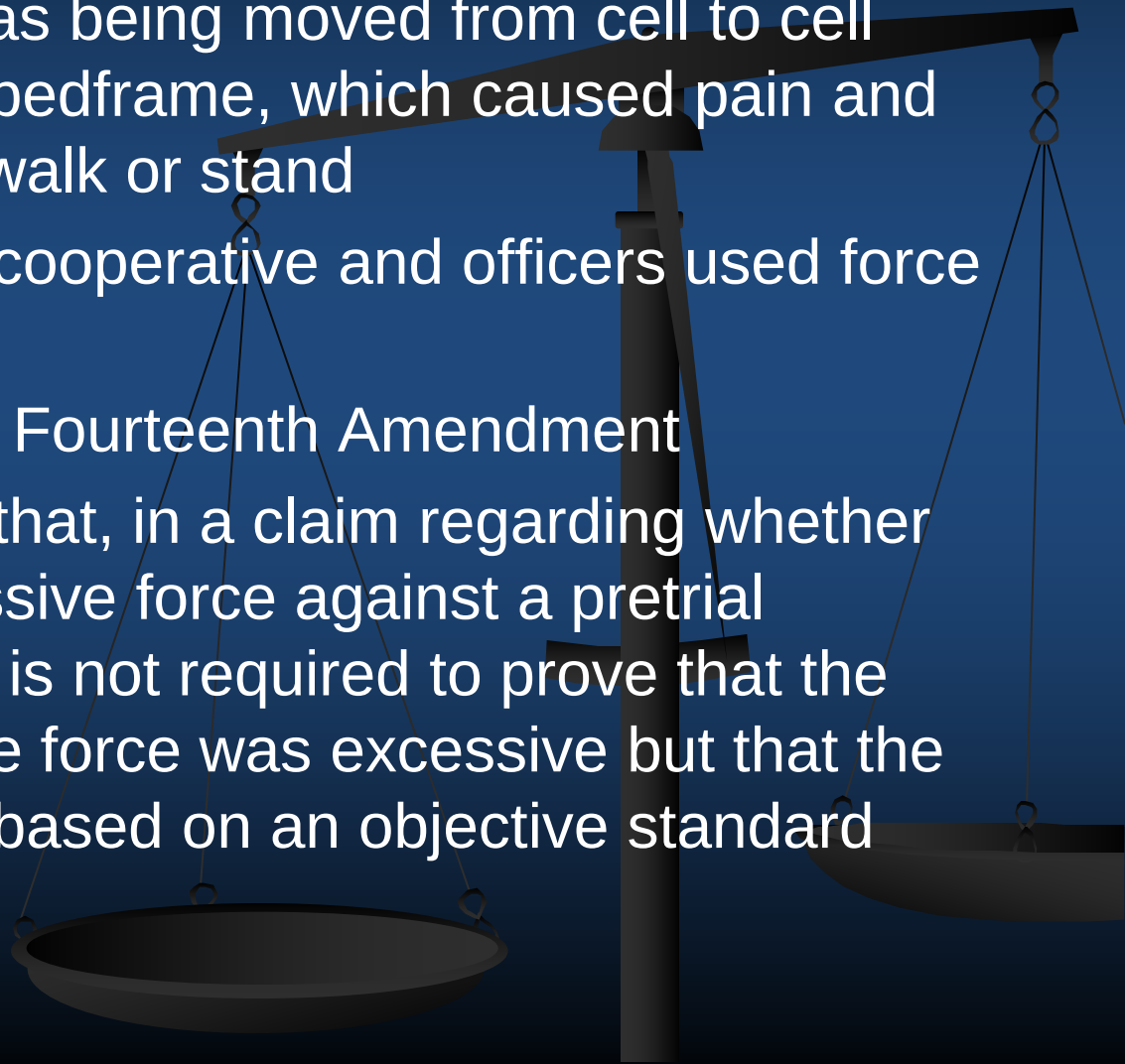
Rodriguez v. United States, 575 U.S. ___ (2015).

- Police employed a K-9 search during traffic stop, although permission was denied
- The dog alerted to the presence of drugs
- Rodriguez moved to suppress evidence, claiming dog search violated his Fourth Amendment rights
- The Supreme Court held that the K-9 search unreasonably delayed an otherwise lawful traffic stop



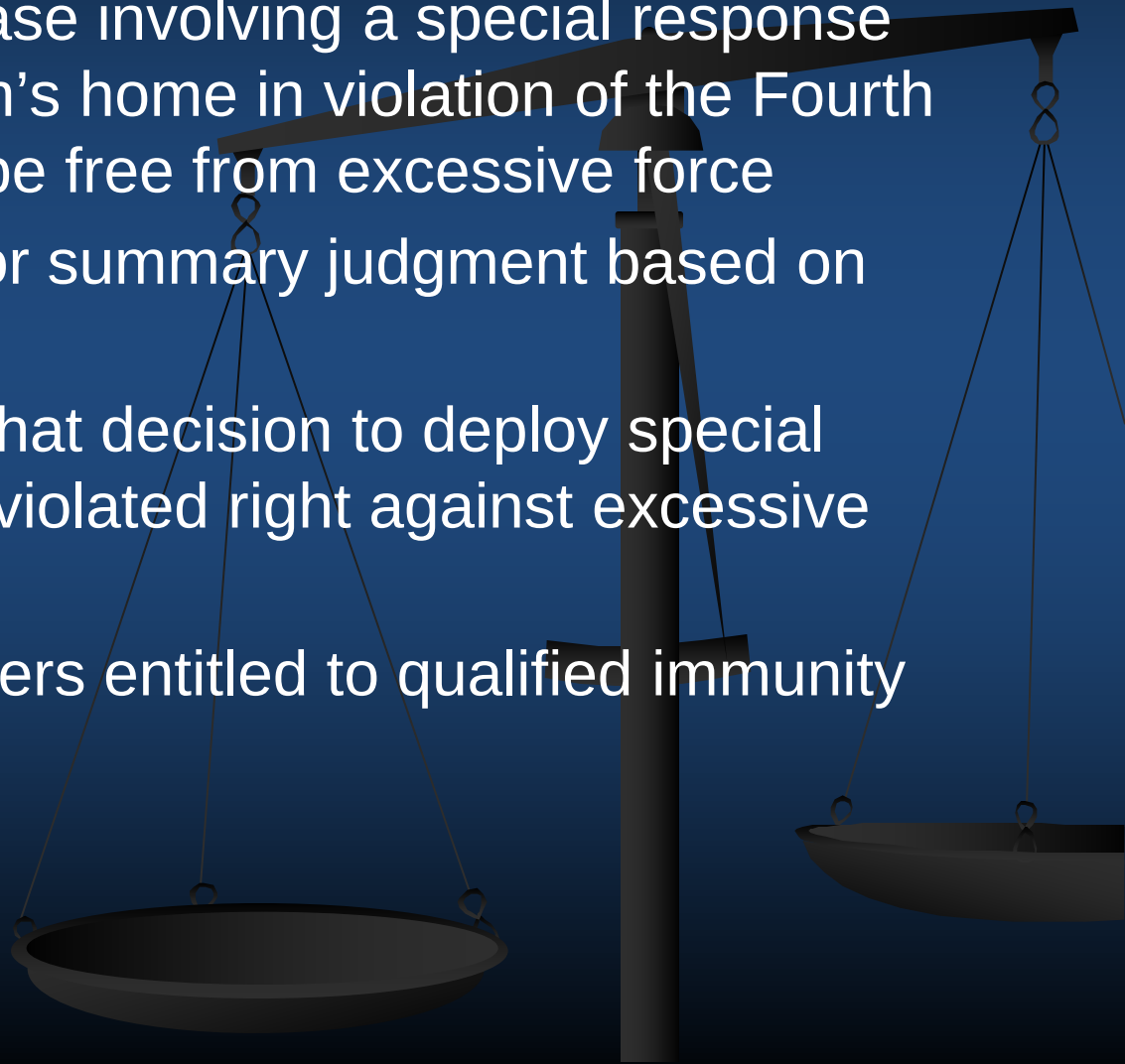
Kinsley v. Hendrickson, 135 S. Ct. 2466 (2015)

- A pretrial detainee was being moved from cell to cell when his feet hit the bedframe, which caused pain and made him unable to walk or stand
- Detainee became uncooperative and officers used force to restrain him
- Detainee sued under Fourteenth Amendment
- Supreme Court held that, in a claim regarding whether an officer used excessive force against a pretrial detainee, the plaintiff is not required to prove that the defendant thought the force was excessive but that the force was excessive based on an objective standard



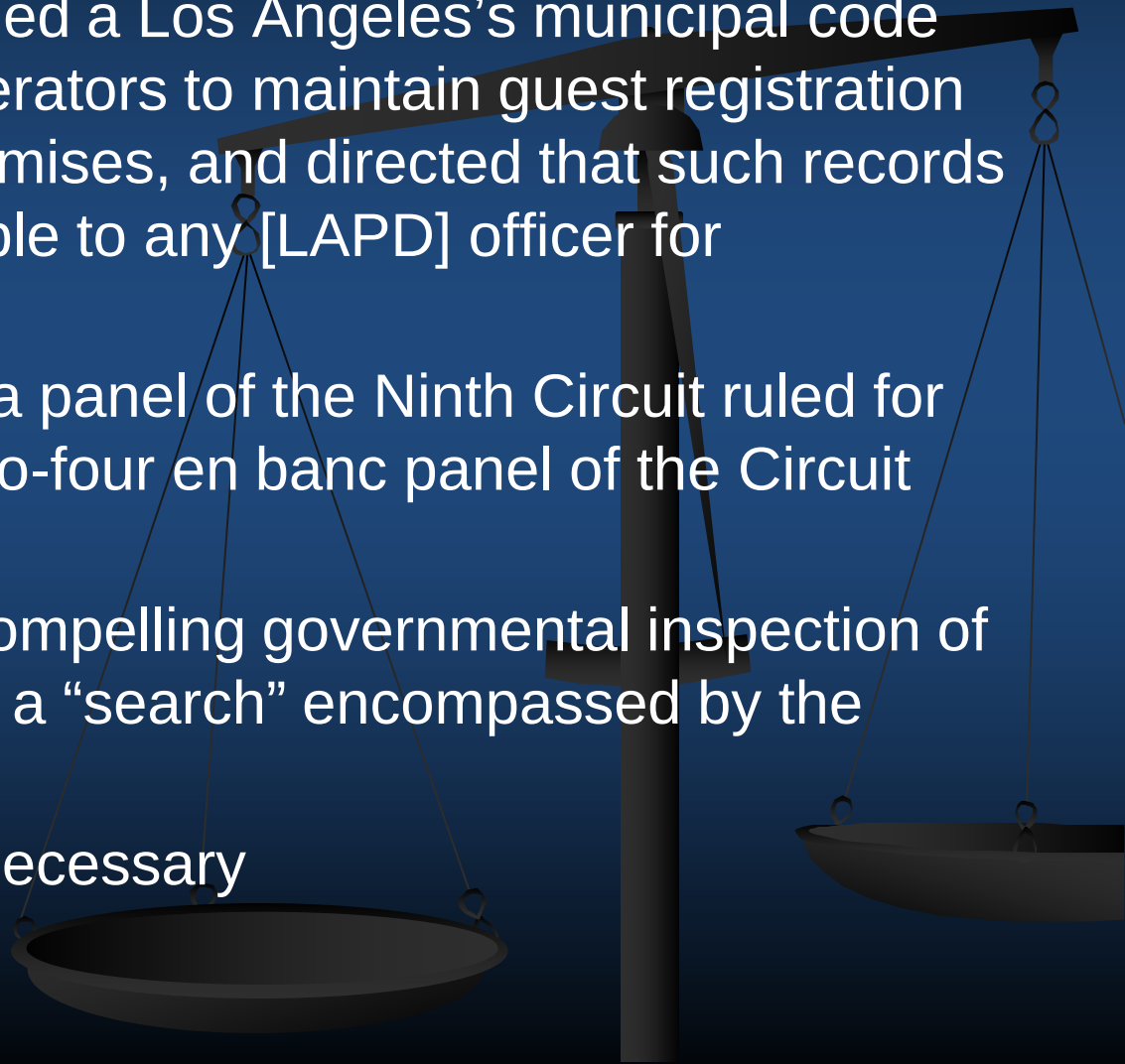
Bailey v. Lawson, 2015 WL 3875940 (5th Cir. June 23, 2015)

- Qualified immunity case involving a special response team entering woman's home in violation of the Fourth Amendment right to be free from excessive force
- Defendants moved for summary judgment based on qualified immunity
- Plaintiffs contended that decision to deploy special response team itself violated right against excessive force
- Fifth Circuit held officers entitled to qualified immunity



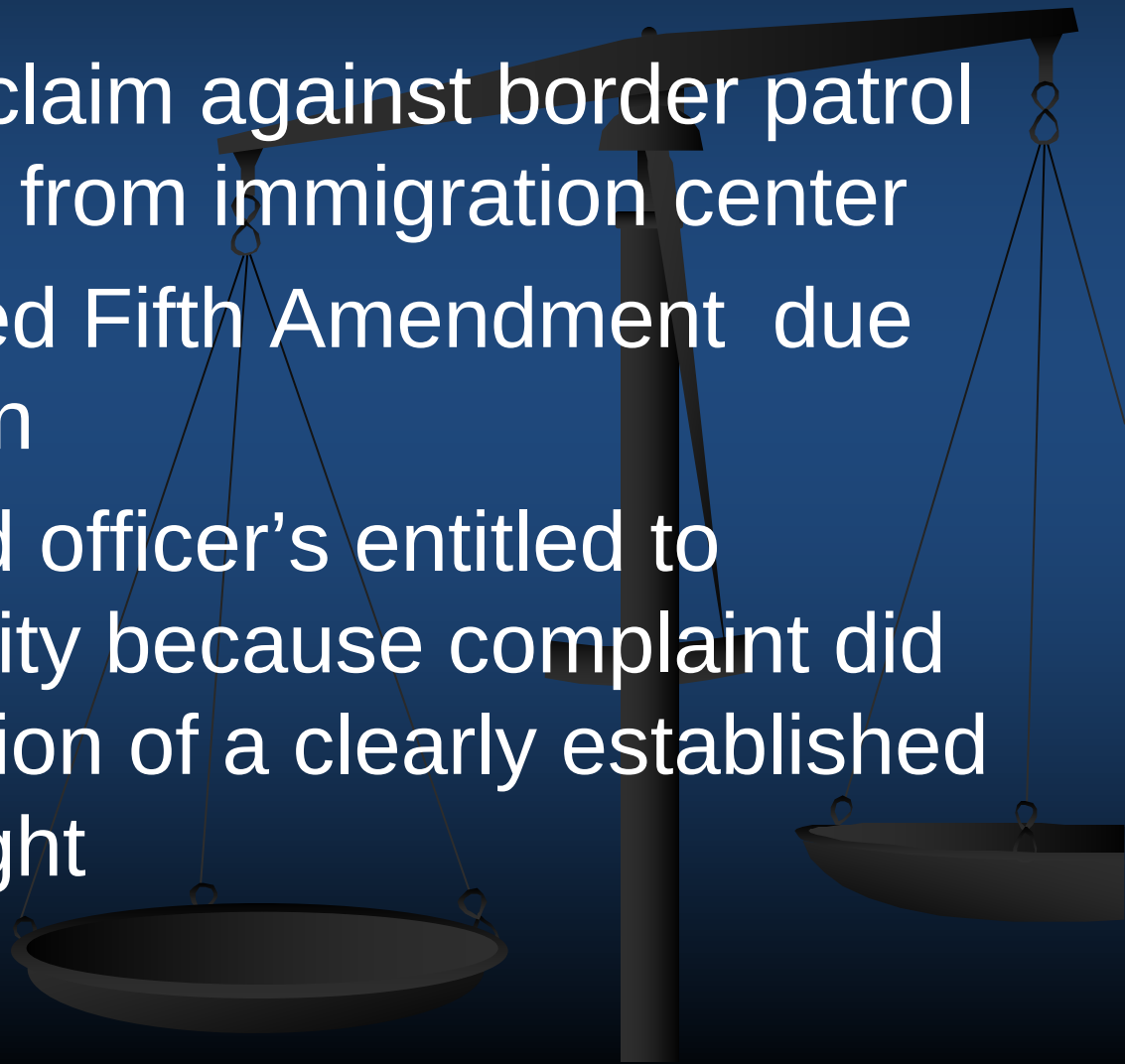
City of Los Angeles v. Patel, 135 S. Ct. 2443 (2015)

- Hotel owners challenged a Los Angeles's municipal code that required hotel operators to maintain guest registration information on the premises, and directed that such records "shall be made available to any [LAPD] officer for inspection."
- The district court and a panel of the Ninth Circuit ruled for the City, but a seven-to-four en banc panel of the Circuit reversed.
- Fifth Court held that compelling governmental inspection of commercial records is a "search" encompassed by the Fourth Amendment
- Thus, a warrant was necessary



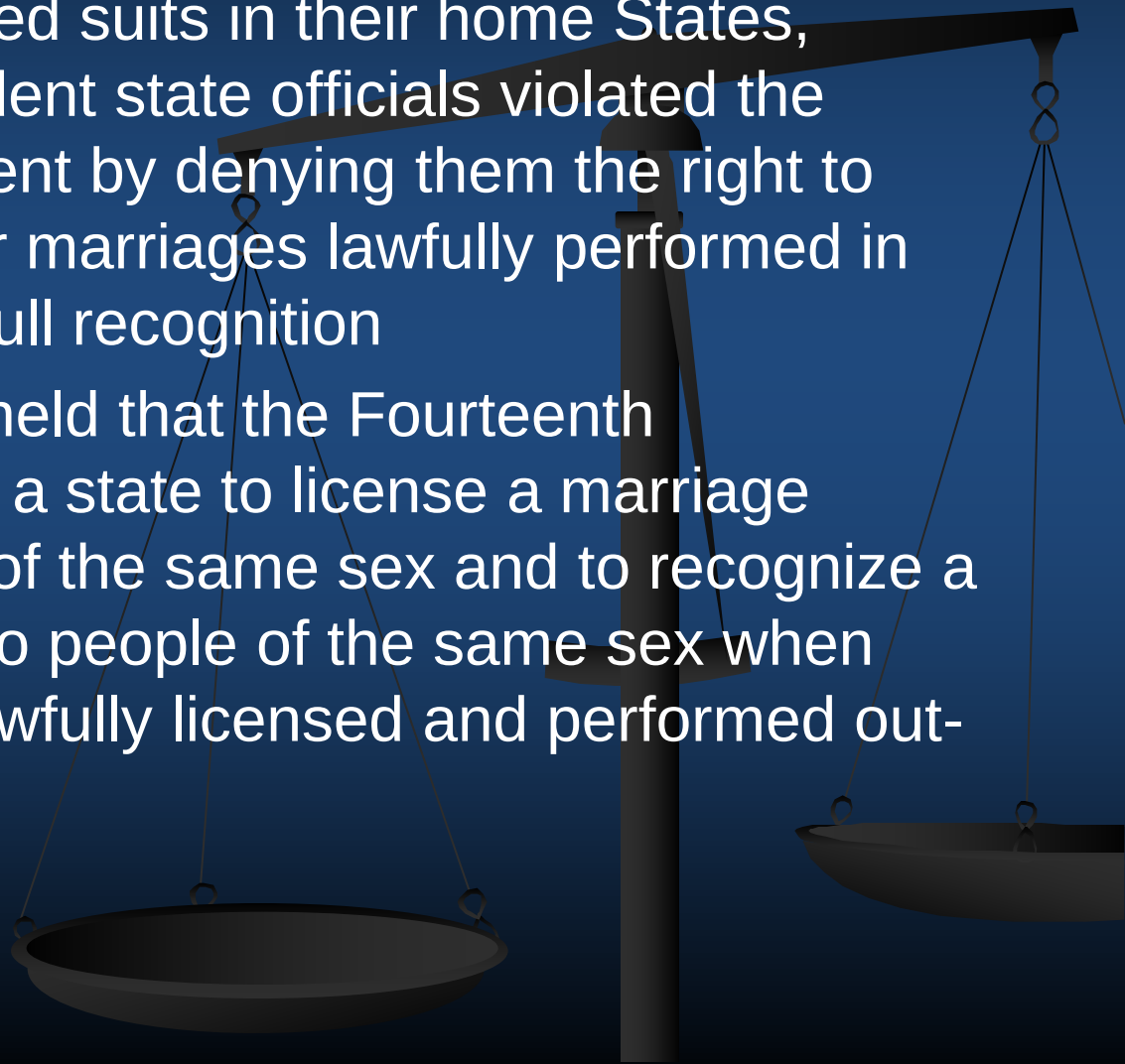
Doe, et al. v. Robertson, et al., 751 F.3d 383 (5th Cir. 2014)

- 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



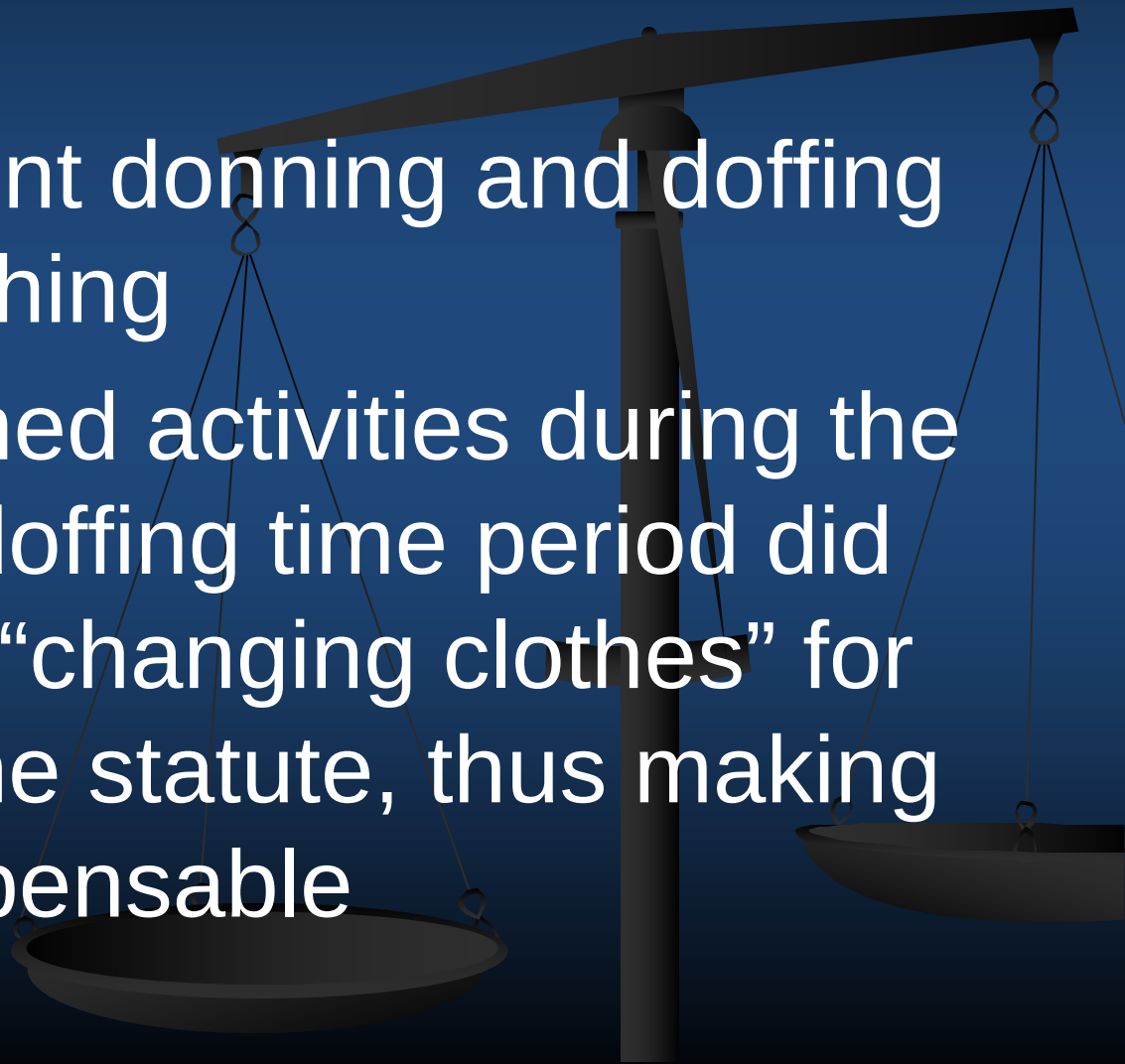
Obergefell v. Hodges, 135 S. Ct. 2584 (2015)

- Same-sex couples filed suits in their home States, claiming that respondent state officials violated the Fourteenth Amendment by denying them the right to marry or to have their marriages lawfully performed in another State given full recognition
- The Supreme Court held that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state



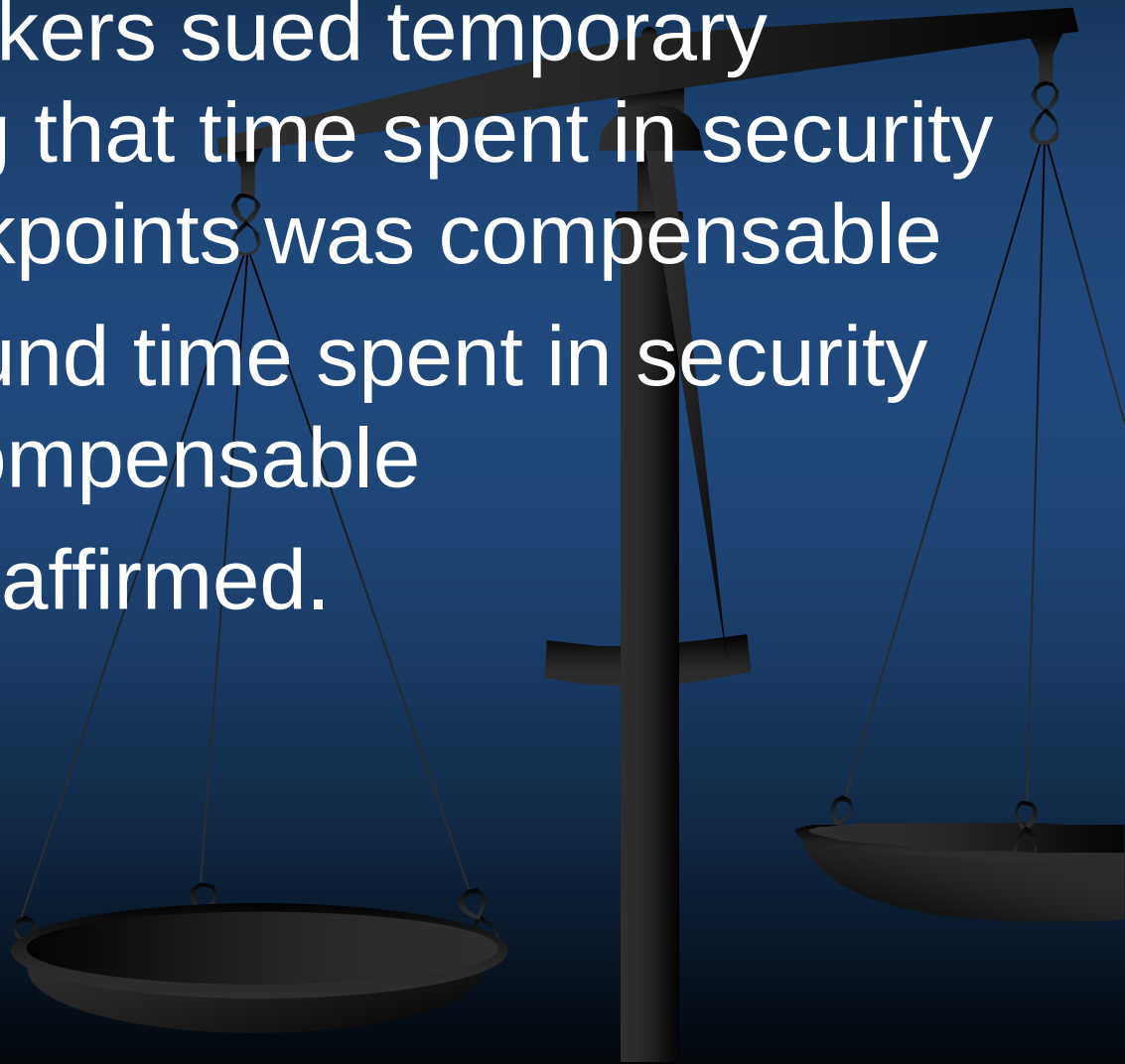
Sandifer v. United States Steel Corporation, 134 S.Ct. 870 (2014)

- 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



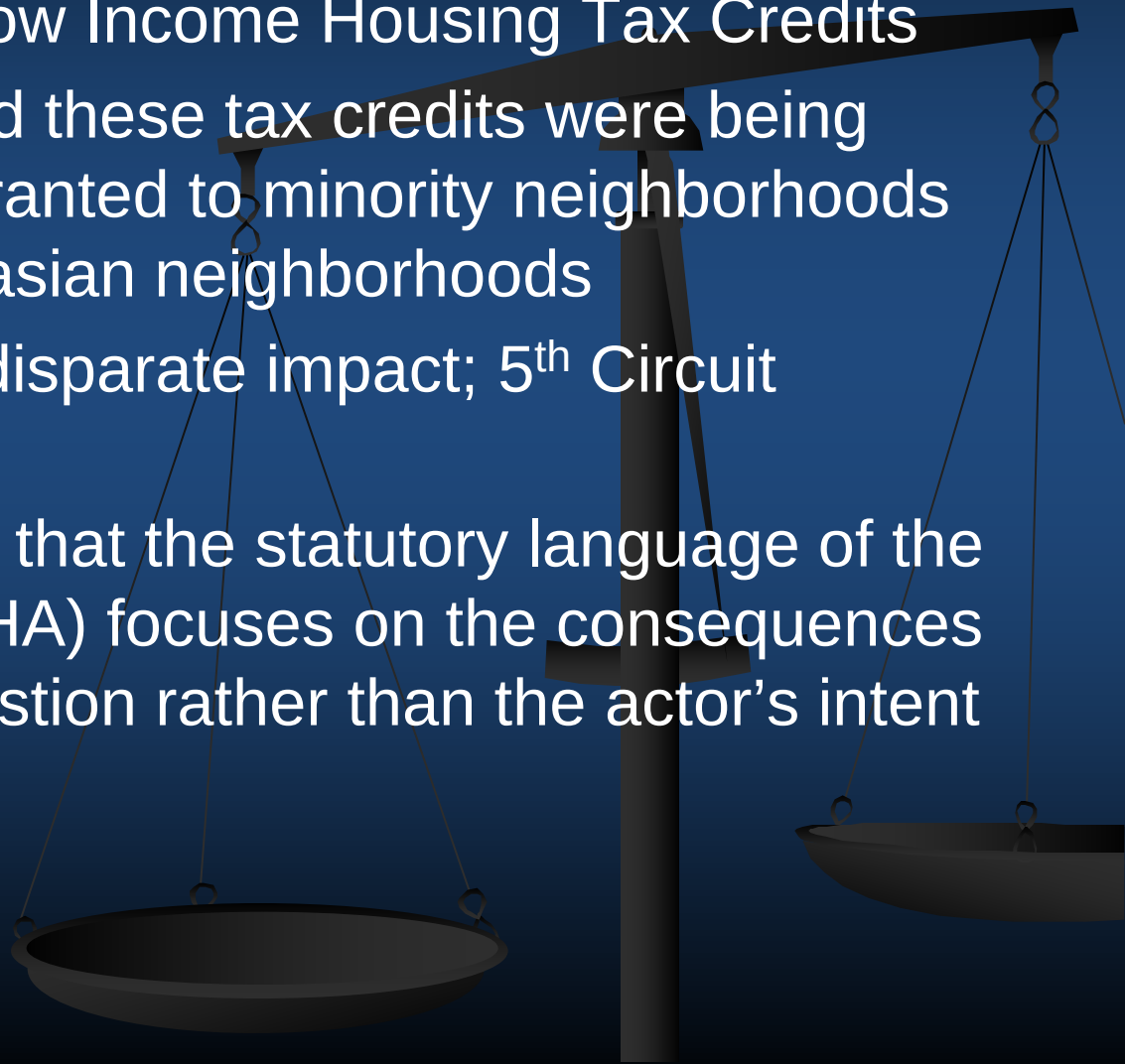
Integrity Staffing Solutions v. Busk, 135 S.Ct. 513 (2014)

- Warehouse workers sued temporary agency claiming that time spent in security clearance checkpoints was compensable
- District court found time spent in security lines was not compensable
- Supreme Court affirmed.



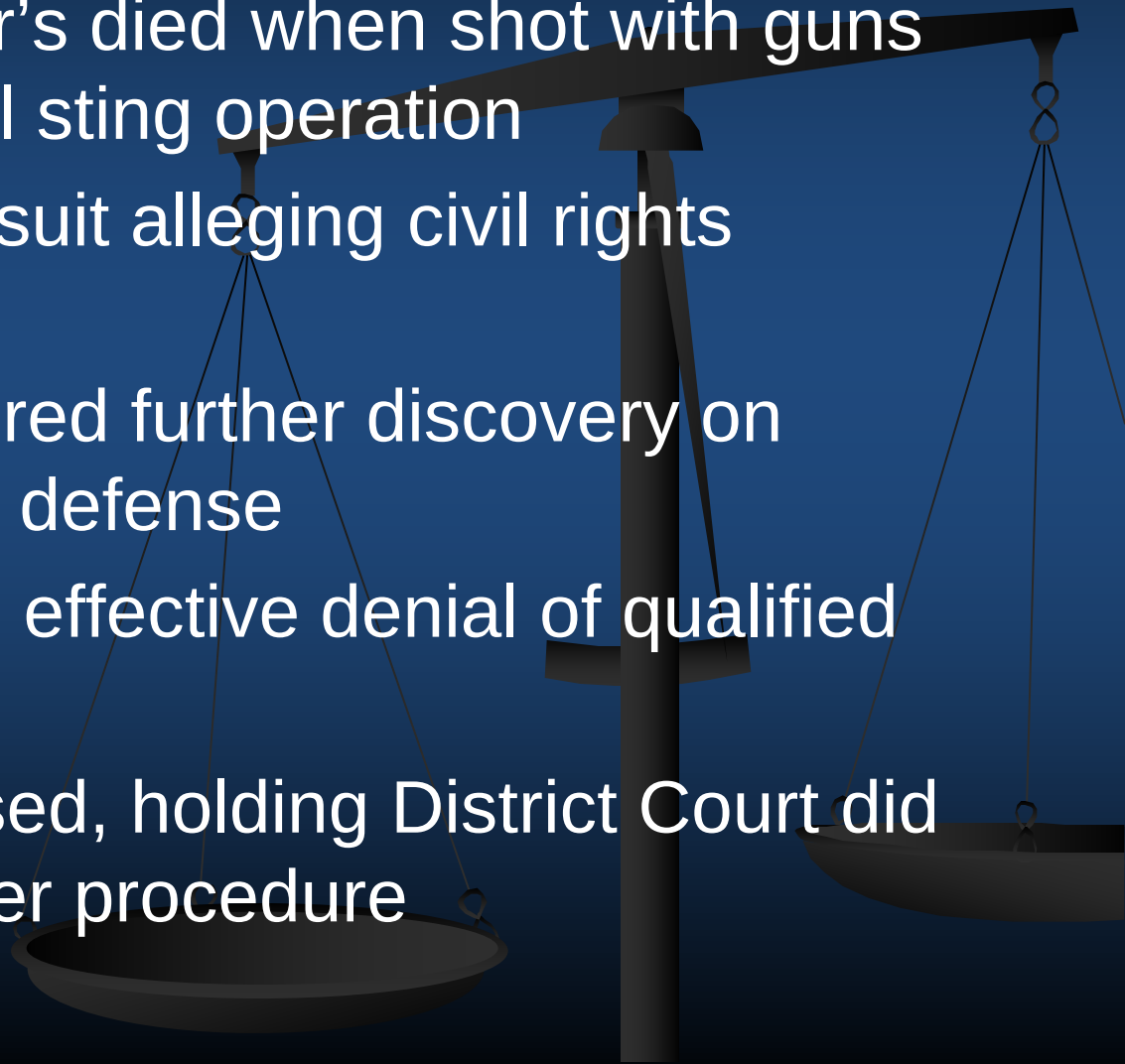
Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015)

- This case involved low Income Housing Tax Credits
- Organization claimed these tax credits were being disproportionately granted to minority neighborhoods and denied to Caucasian neighborhoods
- District court found disparate impact; 5th Circuit affirmed
- Supreme Court held that the statutory language of the Fair Housing Act (FHA) focuses on the consequences of the actions in question rather than the actor's intent



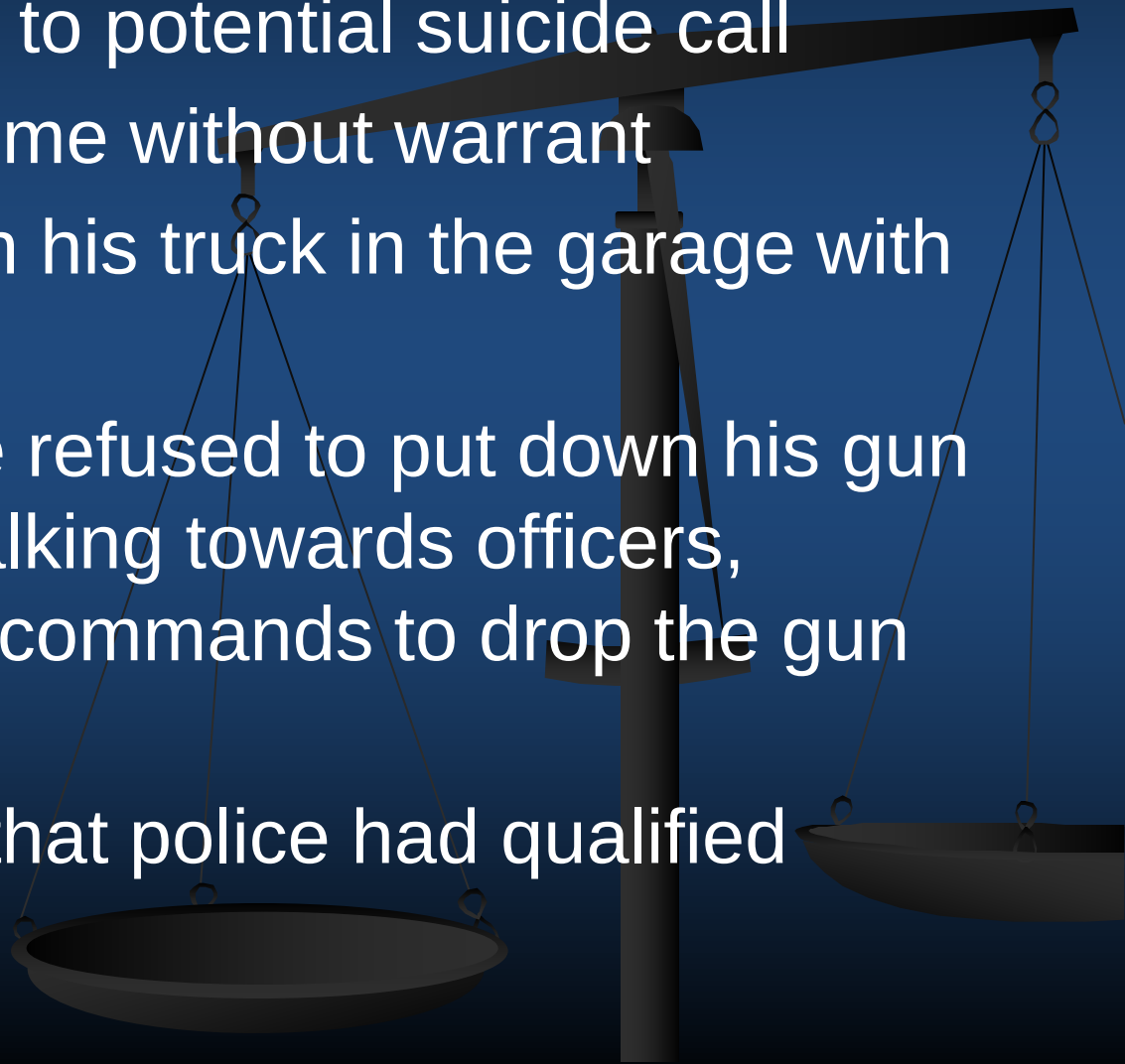
Zapata, et al. v. Melson, et al., 750 F.3d 481 (5th Cir. 2014)

- 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



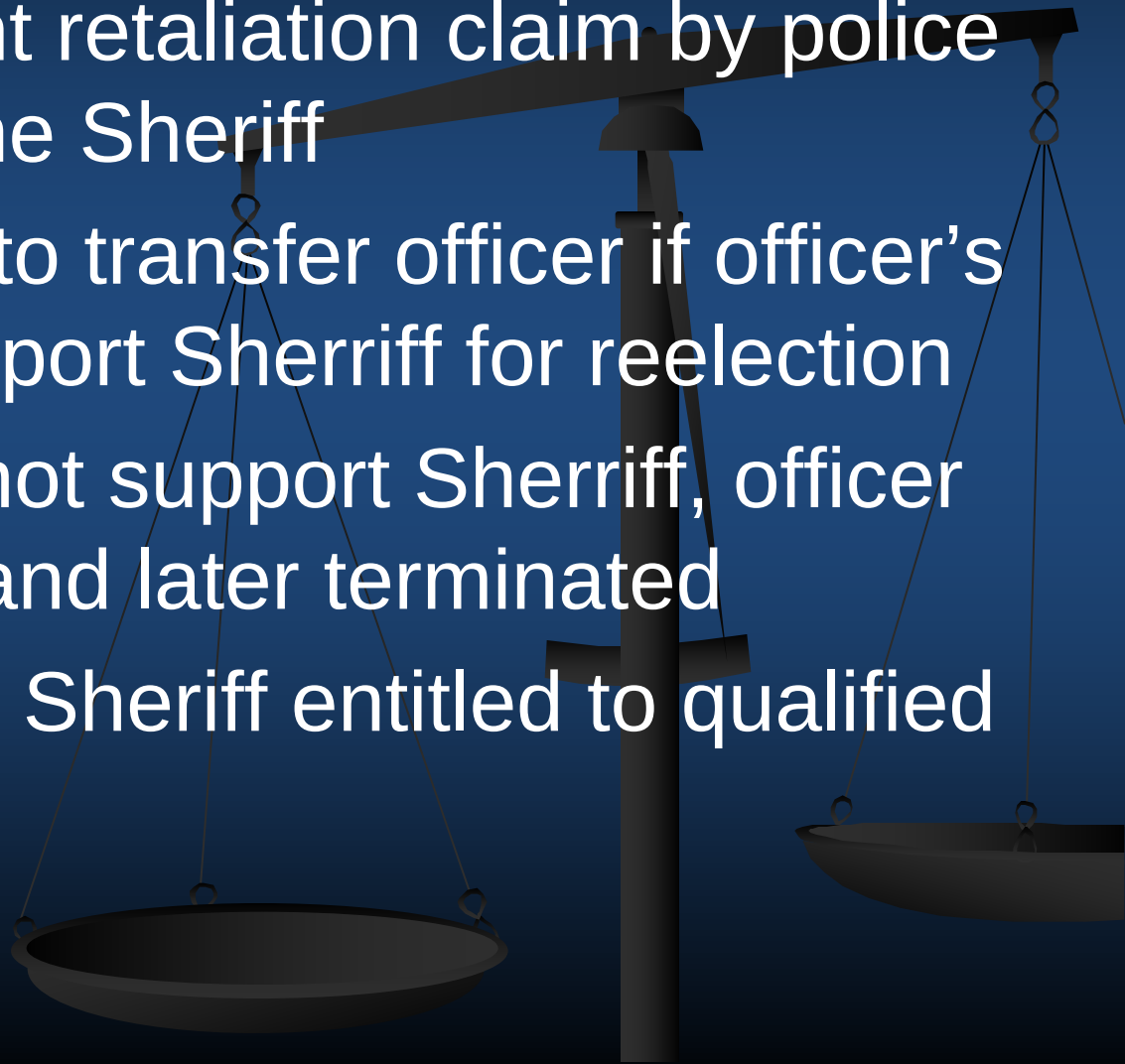
Rice v. ReliaStar Life Insurance Co., 770 F.3d 1122, (5th Cir. 2014)

- Police responded to potential suicide call
- Police entered home without warrant
- Rice was sitting in his truck in the garage with a gun to his head
- Rice died after he refused to put down his gun and continued walking towards officers, despite repeated commands to drop the gun and stop
- Fifth Circuit held that police had qualified immunity



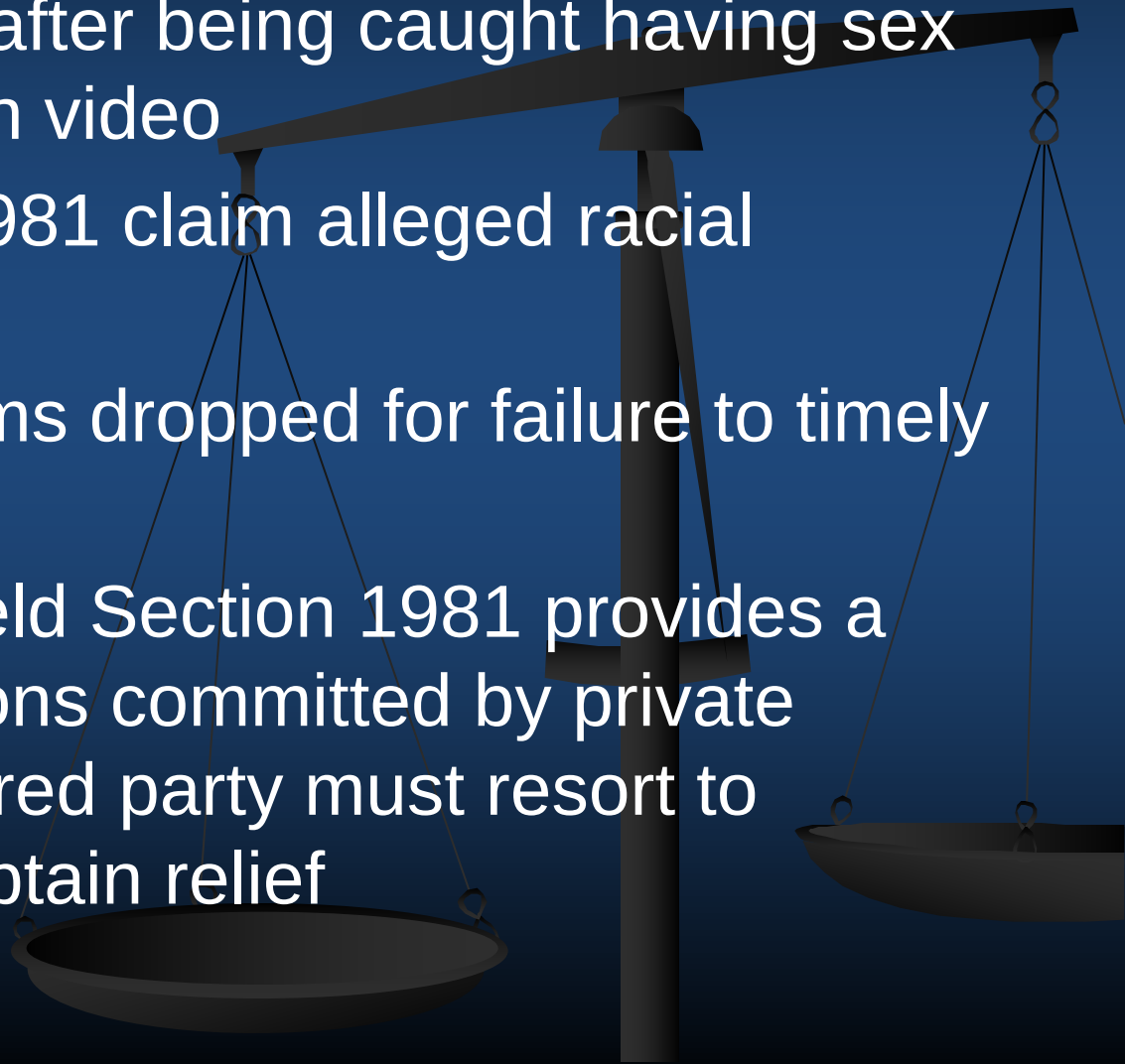
Burnside v. Kaelin, 773 F.3d 606 (5th Cir. 2014)

- First Amendment retaliation claim by police officer against the Sheriff
- Sheriff threated to transfer officer if officer's PAC did not support Sherriff for reelection
- When PAC did not support Sherriff, officer was "demoted" and later terminated
- Fifth Circuit held Sheriff entitled to qualified immunity



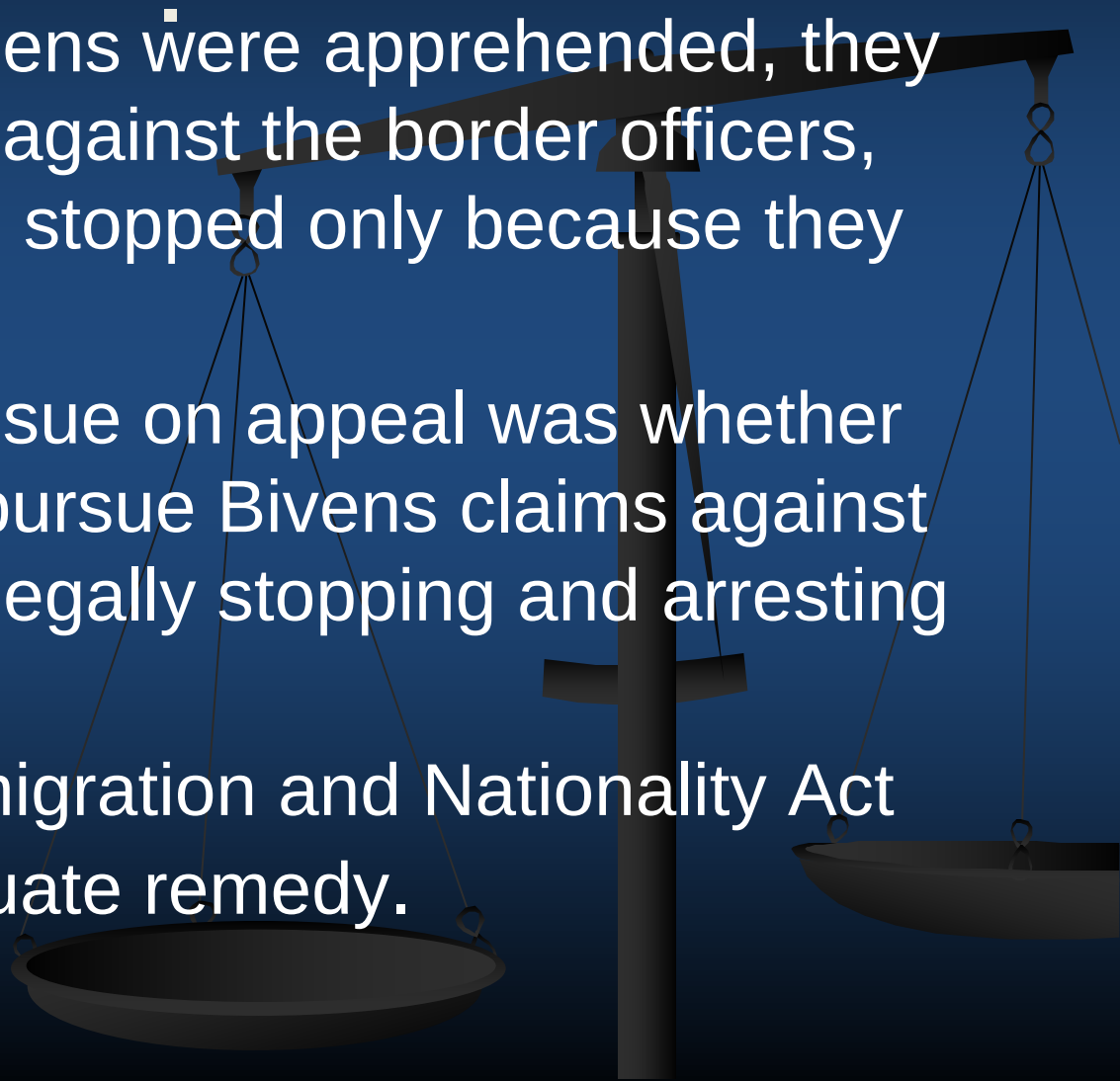
Campbell v. Forest Pres. Dist. of Cook Cnty., Ill., 752 F.3d 665 (7th Cir. 2014)

- 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



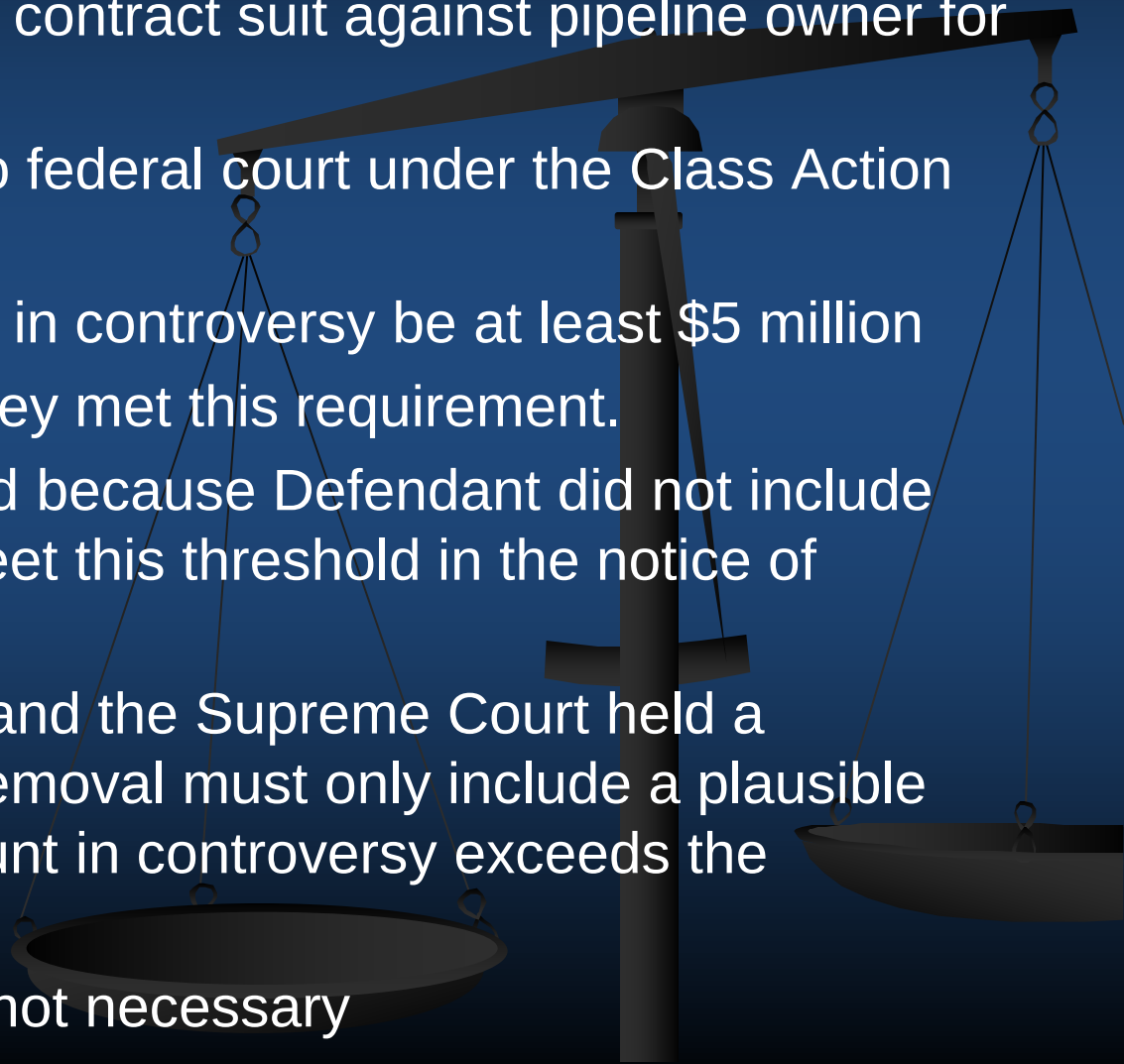
De La Paz v. Coy, et al., 786 F.3d 367 (5th Cir. 2015)

- After two illegal aliens were apprehended, they filed a Bivens suit against the border officers, alleging they were stopped only because they were Hispanic
- First impression issue on appeal was whether illegal aliens can pursue Bivens claims against border patrol for illegally stopping and arresting them.
- Held no. The Immigration and Nationality Act provided an adequate remedy.



Dart Cherokee Basin Operating Company v. Owens, 135 S.Ct. 547 (2014)

- Class action, breach of contract suit against pipeline owner for underpaying royalties
- Defendants removed to federal court under the Class Action Fairness Act of 2005
- CAFA requires amount in controversy be at least $5 million
- Defendant's claimed they met this requirement.
- District Court remanded because Defendant did not include specific evidence to meet this threshold in the notice of removal.
- Both the Tenth Circuit and the Supreme Court held a defendant's notice of removal must only include a plausible allegation that he amount in controversy exceeds the threshold
- Evidentiary proofs are not necessary

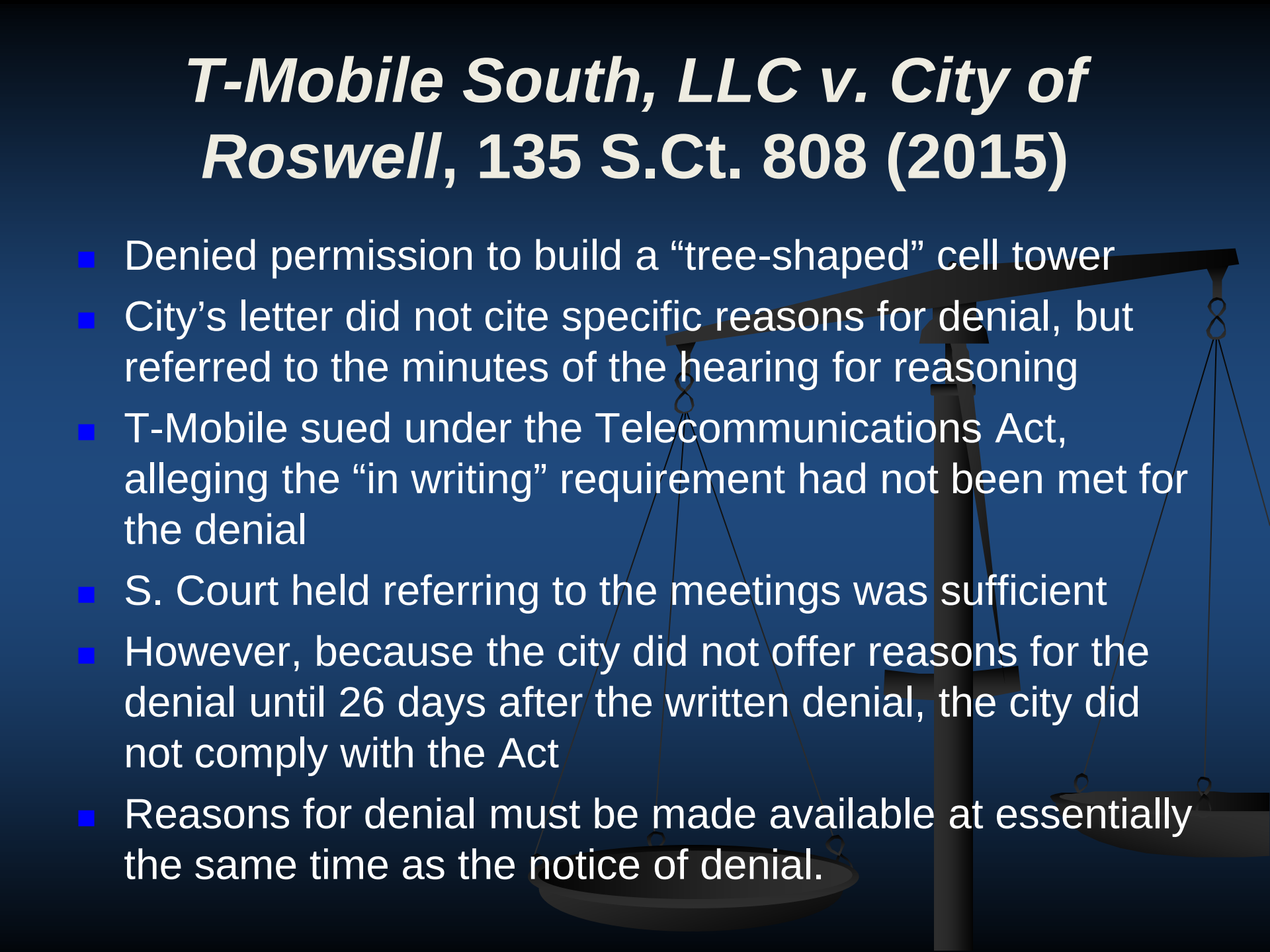


Warger v. Shauers, 135 S.Ct. 521 (2014)

- After verdict in an automobile case, Plaintiff alleged the foreperson's misconduct in expressing past life experiences to sway the jury
- District Court and the Eighth Circuit held statements were allowable
- Supreme Court held that Rule 606(b) precludes the use of juror testimony when a party is seeking a new trial on the basis of juror dishonesty during voir dire.

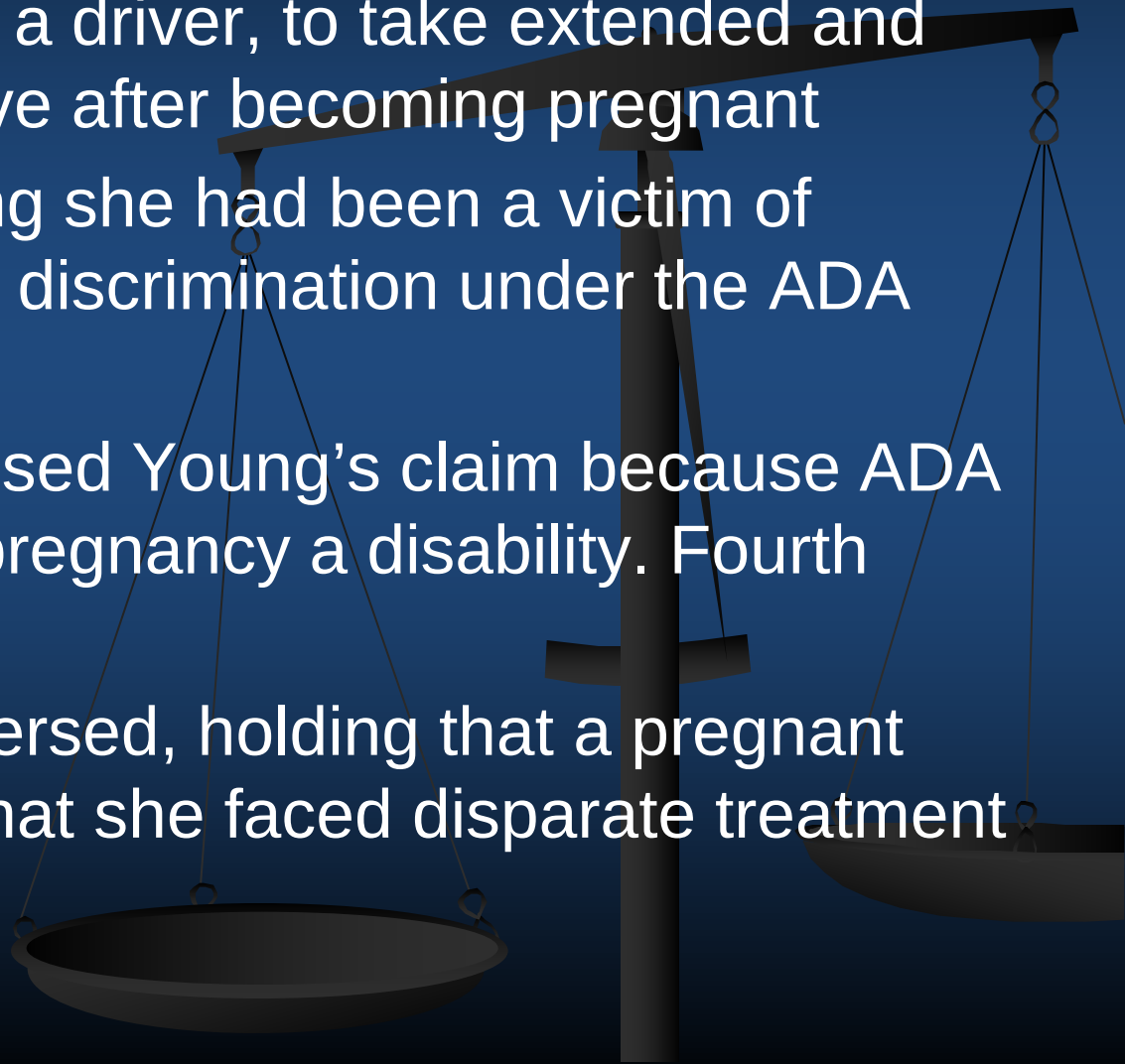
T-Mobile South, LLC v. City of Roswell, 135 S.Ct. 808 (2015)

- Denied permission to build a “tree-shaped” cell tower
- City’s letter did not cite specific reasons for denial, but referred to the minutes of the hearing for reasoning
- T-Mobile sued under the Telecommunications Act, alleging the “in writing” requirement had not been met for the denial
- S. Court held referring to the meetings was sufficient
- However, because the city did not offer reasons for the denial until 26 days after the written denial, the city did not comply with the Act
- Reasons for denial must be made available at essentially the same time as the notice of denial.



Young v. United Parcel Service, 135 S.Ct. 1338 (2015)

- UPS forced Young, a driver, to take extended and unpaid medical leave after becoming pregnant
- Young sued claiming she had been a victim of gender an disability discrimination under the ADA and the PDA
- District court dismissed Young's claim because ADA does not consider pregnancy a disability. Fourth Circuit affirmed.
- Supreme Court reversed, holding that a pregnant worker may show that she faced disparate treatment from her employer



Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, 135 S. Ct. 2028 (2015)

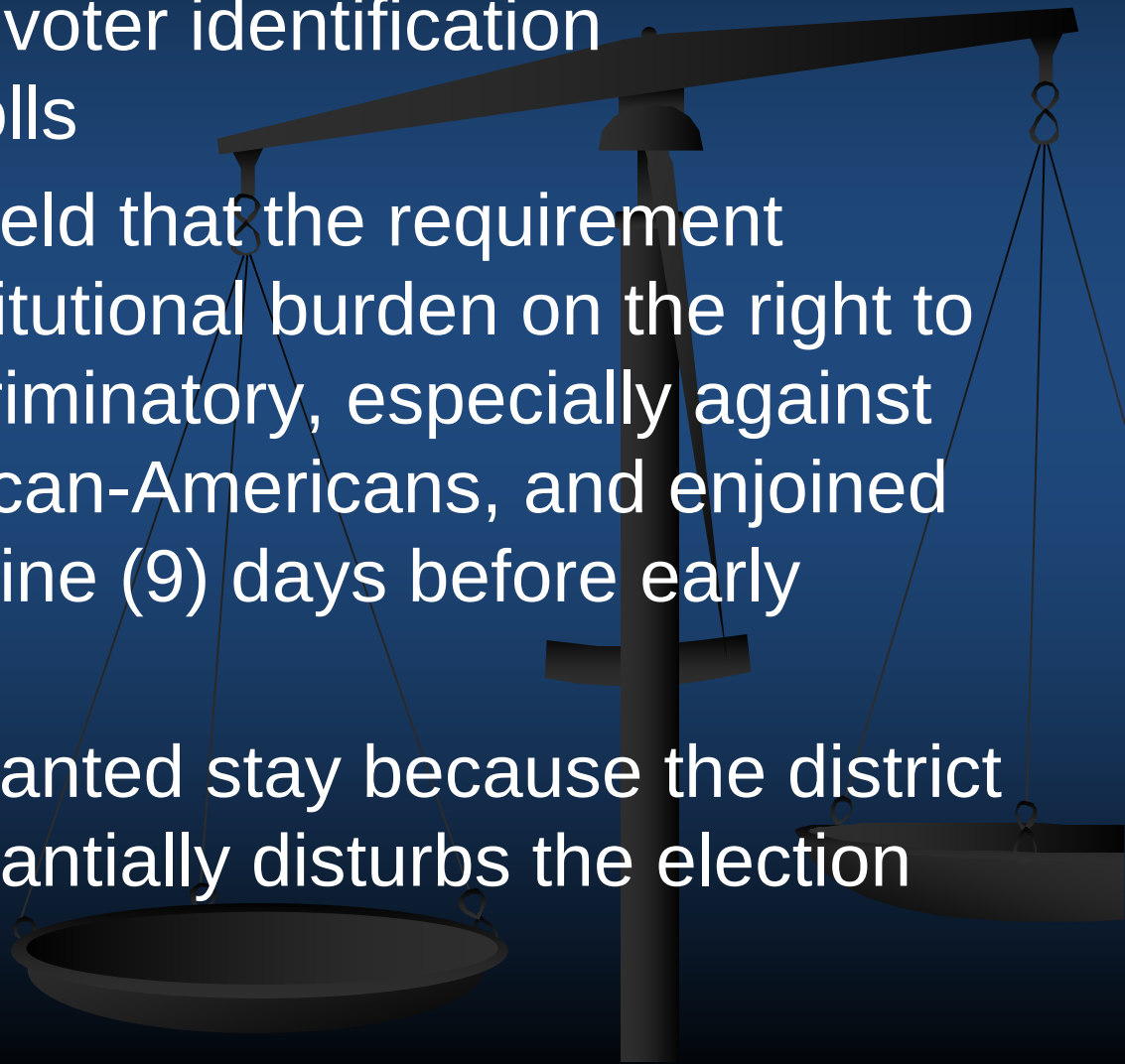
- Practicing Muslim filed an EEOC complaint against a retailer after she was denied a job for wearing a hijab
- Abercrombie's "Look Policy" required its store employees to meet a certain dress code and forbade "caps"
- Complainant wore the hijab during her interview and did not request an accommodation from the policy
- Supreme Court held that even though applicant did not inform management of a religious practice, the 1964 civil rights law may be enforced against the employer who refuses to make an exception

Satterwhite v. City of Houston, 602 Fed.Appx. 585 (5th Cir. 2015)

- Satterwhite, a former Assistant City Controller for the City of Houston, was demoted two pay grades after reporting his supervisor for using the phrase “Heil Hitler” at a meeting
- Satterwhite brought Title VII action against City
- District Court granted summary judgment to the City
- The Fifth Circuit affirmed, holding that the single “Heil Hitler” is not actionable under Title VII
- Must view the totality of the circumstances

Veasey v. Perry, 769 F.3d 890 (5th Cir. 2014)

- Voters challenged voter identification requirements at polls
- The district court held that the requirement placed an unconstitutional burden on the right to vote and was discriminatory, especially against Hispanics and African-Americans, and enjoined enforcement just nine (9) days before early voting
- The Fifth Circuit granted stay because the district court's order substantially disturbs the election process



McFadden v. United States, 135 S. Ct. 2298 (2015)

- McFadden was arrested and charged with distributing controlled substance analogues
- Supreme Court held that when a controlled substance is an analogue, the Government must establish that the defendant knew he was dealing with a substance regulated under the Controlled Substances Act or Analogue Act