

An Information Report

FEDERAL COURT RULINGS  
INVOLVING  
STATE, LOCAL, AND TRIBAL GOVERNMENTS  
CALENDAR YEAR 1994

A REPORT PREPARED UNDER SECTION 304  
UNFUNDED MANDATES REFORM ACT OF 1995



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**July 1995**

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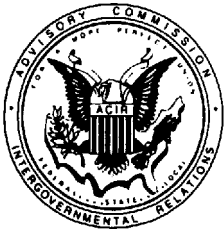
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**ADVISORY COMMISSION  
ON INTERGOVERNMENTAL RELATIONS**

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July 1995


Dear Mr. President and Members of Congress:

The Advisory Commission on Intergovernmental Relations is pleased to submit the attached report, prepared as required by Section 304 of the *Unfunded Mandates Reform Act of 1995* (P.L. 104-4). The report describes Federal court cases to which a State, local, or tribal government was a party in calendar year 1994, and in which a State, local, or tribal government was required to undertake responsibilities or activities, beyond those such government would otherwise have undertaken, to comply with Federal statutes and regulations.

This report is required to be submitted annually, no later than March 15, but for 1994 court rulings, the report is required to be submitted no later than July 21, 1995.

Respectfully,

  
William F. Winter  
Chairman

  
William E. Davis III  
Executive Director



# Acknowledgments

Robert Brauneis, Associate Professor at the George Washington University National Law Center, directed this study on judicial mandates for the Advisory Commission on Intergovernmental Relations (ACIR) and is the principal author of the report. This ACIR report is required under Section **304** of the *Unfunded Mandates Reform Act of 1995*.

The Commission and Professor Brauneis wish to express their appreciation for the hard work, diligence, and patience of the following researchers, who together read more than 25,000 federal court opinions to prepare this report: Jennifer Bacon, Sampak Garg, David Kaufman, Erin Leveton, Melissa Levine, Alfred Rosa, and Hillary Tennant. We also would like to **thank** Lee **Hoffman** and Michael **Volin**.

At ACIR, Philip M. Dearborn, Director of Government Finance Research, is directing the mandates studies. Joan Casey edited the report, and Stephanie Richardson was responsible for typesetting.

**William E. Davis III**  
**Executive Director**





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## Introduction

**The** Advisory Commission on Intergovernmental Relations is required under Section 304 of the *Unfunded Mandates Reform Act of 1995* (P.L. 104-4,109 Stat. 48) to produce annually a report

describing any Federal court case to which a State, local, or tribal government was a party in the preceding calendar year that required such State, local, or tribal government to undertake responsibilities or activities, beyond those such government would otherwise have undertaken, to comply with Federal statutes or regulations.

This is the first Section 304 report, covering calendar year 1994. For the report, researchers read more than 25,000 federal court opinions and created a special computer database (“Section 304 Database”) into which they entered information about more than 3,500 opinions on issues concerning the effect of more than 100 federal laws on state, local, or tribal governments.

This report presents a sample of the most important information in the database, focusing on two groups of federal court rulings at the core of Section 304. The “first-tier federal mandates” encompass rulings that directly order state, local, or tribal governments to undertake particular responsibilities or activities. The “second-tier federal mandates” encompass rulings that order state, local, or tribal governments to refrain from certain activities, or that declare state, local, or tribal laws invalid due to a conflict with federal law.

The report also contains a Litigation Frequency Table, which lists federal statutes covered by one or more opinions in the Section 304 Database, followed by the number of opinions that were written on each statute. This table is intended to provide a rough measure of the litigation generated by each federal statute represented in the database, and it responds specifically to the one piece of legislative history that is available for Section 304. In a brief discussion on the House floor about a predecessor to Section 304, Representative Schiff made the following comment:

I think that to say that the Advisory Commission should give its priority [to] studying those issues which are in litigation makes a great deal of sense. I have always

felt. . . that there is a great waste of taxpayers' money when government agencies or levels of government go to court against one another and the taxpayers **are** essentially paying for both sides of a lawsuit.

Now we all understand that [it] is necessary that a sovereign State has the right to make certain challenges to the Federal Government, and within the laws of those States, municipalities may be able to challenge the State.

But it seems to me to the extent we can head this off or if [such cases] arise to the extent we can address them rapidly, that saves a great deal of money, of time, and of effort of government agencies that are litigating against each other. (Remarks of Rep. Steven H. Schiff, 141 Congressional Record H912, January 31, 1995)

## METHODOLOGY

There is no single, central source containing information about the rulings of federal courts. The United States Supreme Court, the 94 United States District Courts, and the 13 United States Courts of Appeals maintain 108 independent systems for docketing cases and rulings. No other single source reproduces all of the information that is included in the federal court docket systems. When a federal court issues a ruling, it may or may not issue an opinion describing the background of the case and the reasons for the ruling. If the court issues an opinion, it may or may not release that opinion to a publisher or an on-line database service. Even opinions that are released may not be designated "for publication." Information from a single, readily available source is guaranteed only for rulings accompanied by opinions designated for publication.

Although it would be difficult and expensive to compile exhaustive information about every federal court ruling relevant to the Section 304 report, those available in published and on-line sources should provide an excellent sample. First, such rul-

ings should include all or almost all of the most important ones. Judges usually write opinions to accompany rulings that they believe are legally significant, and they usually decide to publish the most important opinions. Second, there is a very large number of opinions available. For example, for calendar year 1994, there are more than 45,000 opinions in WESTLAW, more than 25,000 of which contain significant text and more than 16,000 of which have been designated for publication.

For these reasons, this first Section 304 report is based on federal court opinions that have been published or released to an on-line database. There is no easy, mechanical method of isolating the relevant opinions. At the time this report was in preparation, there was no exhaustive list of federal statutes and regulations under which a Section 304 issue could arise, and it is probably not possible to compile such a list because a federal court may always decide to find a mandate where a researcher thought none existed. There is no **finite** list of the state, local, and tribal governments and governmental officials that could be parties to Section 304 cases. Finally, there is no particular term or phrase, such as "federal mandate," that will appear in every case involving a Section 304 issue.

Thus, research assistants-law students at George Washington University-were employed to scan all **16,000+** opinions designated for publication, all 12,000 of the unpublished District Court cases, and a sample of the unpublished Courts of Appeals cases. The research assistants entered information about those opinions that fit the broadest "database" interpretation of Section 304 into the Section 304 Database, which is described in detail in Section 3 of this report. The statistics and case abstracts were derived from that database.

The bulk of the planning, research, and production of this report was squeezed into a six-week period. Future reports will undoubtedly benefit from a longer production period. Specific recommendations for future reports are contained in Section 4.

# 1

## *First-Tier Federal Mandates: Federal Court Rulings Ordering State, Local, or Tribal Governments to Undertake Responsibilities or Activities*

The Advisory Commission on Intergovernmental Relations has developed a broad interpretation of Section 304 for the purpose of selecting cases to be included in the Section 304 Database (see Section 3). This interpretation includes many rulings that are of only marginal relevance to the issue of federal mandates, or which are interesting only as a matter of statistical trends and not necessarily as individual rulings. Thus, for purposes of selecting rulings to be described individually in this report, the Commission isolated two narrower groups of cases.

The “first-tier” group is the narrowest, and is designed to include rulings that seem to be at the core of the concerns underlying Section 304. It encompasses federal court rulings *directly ordering state, local, or tribal governments to take certain actions, or affirming such orders*. In some aspects, this group is still defined quite broadly. For example, the group includes cases involving both federal statutes and the U.S. Constitution; actions brought against government officials as well as **the governments themselves**; and interim rulings as well as final dispositions.

This first-tier definition includes only those cases that state, local, or tribal governments “lost,” in the sense that the plaintiffs prevailed upon the court to enter an order against the government. Moreover, it includes only one type of order—a mandatory injunction, ordering the state, local, or tribal government to take some affirmative action. These orders may be seen by some state, local, and tribal governments as the most intrusive type of federal court action, and they fall within the narrowest reading of the language in Section 304 referring to cases “that **requir[e]** State, local, or tribal government[s] to undertake responsibilities or activities.”

The first-tier group includes cases at all levels of the federal courts; however, here a word of caution is in order. The Courts of Appeals and the Supreme Court rarely issue injunctions themselves. Rather, their chief function is to affirm or reverse the decisions of the District Courts. Although it is relatively easy to identify appellate decisions that merely **affirm** a District Court injunction, it is far more difficult to identify appellate decisions that may eventually result in the granting of an injunc-

tion but that themselves only decide some narrower issue of law and remand the case to the District Court for further proceedings. A good example of this second type of appellate decision is *Service Employees International Union v. County of San Diego*, a Ninth Circuit case on *the Fair Labor Standards Act*. Although this case has been identified and included in the first tier, other cases of the same type may not be included.

The **first-tier** group does not include one type of order mandating action by a state or local government—relief granted state prisoners under 28 U.S.C. 2254, the habeas corpus statute. Although habeas actions generate a large amount of litigation (see the Litigation Frequency Table in Appendix 1), most of them are closely tied to the facts of each case, and it did not seem useful to provide an abstract of each habeas ruling. Full information about each ruling is available in the Section 304 Database.

Following are abstracts of 44 first-tier opinions. As the Litigation Frequency Table shows,

federal litigation involving state, local, and tribal governments is dominated by 42 U.S.C. 1983, one of the best-known of the Civil Rights Acts. Section 1983 allows persons to bring federal court actions for deprivations “under color of state law” of rights guaranteed under federal statutes or the U.S. Constitution. Thus, Section 1983 provides the most popular vehicle for challenges by individuals, based on federal law, to actions of states, local governments, and their officials. Section 1983 is used most often to bring actions alleging violations of the U.S. Constitution. Federal constitutional litigation under Section 1983 also dominates the **first-tier** group, with 18 of the 44 rulings.

Three other federal statutes account for three or more opinions in the first tier. *The Individuals with Disabilities Education Act* has generated six opinions; Title XIX of the *Social Security Act* (Medicaid) and *the Americans with Disabilities Act* have each generated three opinions. Otherwise, the opinions are spread over a wide range of federal statutes.

## CASE ABSTRACTS

These case abstracts are arranged by the United States Code Section number of the federal statute they primarily concern. Cases concerning the same statute are ordered by court level (Supreme Court, Court of Appeals, District Court), and then alphabetically by the name of the first party to the case. Each abstract contains the case title and citation; the name of the state, local, or tribal government or **governments** involved (in italics directly below the citation); and a paragraph describing the case and the ruling. Some cases, particularly those brought under 42 U.S.C. 1983, also concern provisions of the U.S. Constitution. Those provisions, if any, are listed in bold type beneath the citation.

### 20 U.S.C. 1232

#### ***Family Educational Rights and Privacy Act***

**Belanger v. Nashua, New Hampshire,  
School District**  
**858 F. Supp. 40 (D.N.H. 1994)**

#### ***Nashua, N.H., School District***

Student brought action against the school district, seeking declaratory and injunctive relief under the *Family Educational Rights and Privacy*

*Act* and *the Individuals with Disabilities Education Act* to require the school district to give the student’s files to his mother, who was concerned about his school placement. The district had refused to give all of the files, asserting that certain files related to some juvenile court proceedings were sealed. The Court held that the records were “education records” to which the mother was entitled, and ordered the school district to provide the mother with the student’s education records as defined. The court also awarded the plaintiff costs and attorney’s fees.

20 U.S.C. 1400 et seq.

***Individuals with Disabilities  
Education Act***

**Brimmer v. Traverse City Area Public  
Schools**

**872 F. Supp. 1994 (W.D.Mich. 1994)  
Fourteenth Amendment Due Process  
City of Traverse Bay**

Hearing impaired students, by and through their parents, brought action for judicial review under IDEA challenging a decision requiring that special education services be provided to the students at their resident school district rather than at a hearing-impaired school where they had been educated for the last three years. The court held that plaintiffs showed that the individualized education programs (IEP) were the product of a defective procedure, and remanded to the school district so that new IEPs can be formulated in conformity with procedural requirements. The court instructed the school district to perform a comprehensive evaluation as part of the IEP report to determine how each program might help develop the child's potential. The court also ordered the defendant to set aside its change of placement decision and to allow the plaintiff children to remain in current placements until their IEPs could be reformulated.

**Duane B. v. Chester-Upland School District  
1994 WL 724991 (E.D.Pa. 1994)**

***State of Pennsylvania  
Chester-Upland School District***

Plaintiff class filed a renewed motion to have the school district adjudged in civil contempt of court orders and to have the Department of Education adjudged in noncompliance. The orders require evaluating and placing all class members in appropriate educational programs, revising disciplinary procedures, providing in-service training, and developing new curricula. The court granted both motions. Plaintiff originally sued under the *Individuals with Disabilities Education Act* to receive funds with which states must enact policies and procedures to assure handicapped students the right to a **free** and appropriate public education.

**Hunt v. Bartman  
873 F. Supp. 229 (W.D.Mo. 1994)  
Fourteenth Amendment Due Process  
State of Missouri**

Parents of a handicapped child filed action against state education **officials** under the *Individuals with Disabilities Education Act*, challenging procedures for placement of the child in state school for the severely handicapped. The court held that: (1) claims were not rendered moot by a consent decree between parties covering a single school year; (2) the state's refusal to participate in a hearing to compare placement in the local school district with referral for placement at the state school violated IDEA's requirements for due process hearings and deprivation of federal rights enforceable under 42 U.S.C. 1983; (3) the state's failure to require local school districts to consider the least restrictive environment before referring a child to state schools violated IDEA's requirement that children be removed **from** regular schools only if supplemental aids and services would not allow satisfactory educations; and (4) state procedures violated IDEA by determining eligibility for placement in a state school without requiring prior documentation **from** the local school district.

The court permanently enjoined the state defendants from failing to participate in a **three**-party hearing with parents and local school districts when the defendants or their agents have recommended that the child be placed in a certain state school and the parents have requested a hearing. The court **further** permanently enjoined the defendants **from** failing to require that local school districts consider the least restrictive environment required by IDEA, and from notifying a local school district that a child is eligible for the state schools without requiring the school district to provide documentation and reasons why the child can't be educated locally. The court ordered the defendants to develop and implement compliance procedures.

**Neely v. Rutherford County Schools  
851 F. Supp. 888 (M.D. Tenn. 1994)**

***Rutherford County Schools***

Plaintiffs, parents of a child having congenital central hyperventilation syndrome, brought action

against the school district under IDEA seeking to have the district provide nursing care while their child attends school. The court ordered the defendants to provide the requested services on the grounds that: (1) nursing care was a supportive service within the statute, (2) and absent evidence that the care would be unduly burdensome, nursing care fell outside medical services exclusion of IDEA.

**Reusch v. Fountain**  
**872 F. Supp. 1421 (D.Md. 1994)**

**State of Maryland**

Disabled children filed suit claiming that a school district violated IDEA when it systematically failed to meet its obligation to provide them with an opportunity to obtain extended school year (ESY) services. The court held that: (1) the district violated the procedural requirements of IDEA by not informing parents of their right to request ESY services, by using a two-step process for annual determinations of eligibility that violated IDEA in both structure and practice, and by allowing ESY decisions to be made so late in the academic year that meaningful review was not possible before the end of the academic year; (2) the **district** violated the substantive requirements by evaluating eligibility on the single criterion of whether a student would suffer some significant regression of skills or knowledge without a summer program, without **sufficient** recoupment of those skills during the next school year; and (3) the placement of disabled students at nonpublic schools with academic years in excess of the 180 days mandated for public schools under Maryland law did not satisfy ESY requirements. The court ordered the defendants to comply with IDEA and awarded plaintiffs attorney's fees.

**Roisman v. District of Columbia**  
**4 A.D.D. 929, 1994 WL 114681 (D.D.C. 1994)**

**District of Columbia**

A student at a private special education school alleged that the District of Columbia was not fully funding the cost of her education, in violation of the *Individuals with Disabilities Education Act*. She moved for certification of the class of approximately 75 similarly situated students. The

court certified the class and granted summary judgment to the plaintiffs, ordering the District of Columbia to pay approximately \$500,000 to the schools.

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**25 U.S.C. 2701 et seq.**  
**Indian Gaming Regulatory Act**

**Ponca Tribe v. Oklahoma**  
**37 F.3d 1422 (10th Cir. 1994)**

**Various States**

Indian tribes brought action against states and governors to obtain an injunction requiring the state to negotiate compacts under the *Indian Gaming Regulatory Act (IGRA)*, and the District Court ruled in favor of the tribes. This court held that: (1) the Indian commerce clause empowers Congress to abrogate Eleventh Amendment immunity; (2) IGRA abrogates Eleventh Amendment immunity; (3) the Tenth Amendment is not violated by the requirement that states negotiate compacts in good faith; and (4) no injunction could be issued against governors.

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**29 U.S.C. 201 et seq.**  
**Fair Labor Standards Act**

**Union Local 102 v. County of San Diego**  
**35 F.3d 483 (9th Cir. 1994)**

**County of San Diego**

County employees and their union brought suit against the county, claiming that it failed to pay overtime compensation in accordance with the *Fair Standards Labor Act (FLSA)*. The District Court granted summary judgment for the plaintiffs, and the county appealed. This court reverses, holding that: (1) orders granting partial summary judgment were appealable under the practical finality rule; (2) for purposes of determining whether employees were exempt from the overtime provision of FLSA as salaried employees, a salary test in existence prior to September 6, 1991, was invalid in its entirety as applied to the public sector; (3) remand was necessary to determine whether employees were exempt from FLSA under the "duties test";



and (4) if county assistant deputy probation officers and nurses employed at the probation facilities were not exempt under the duties test, they were entitled to overtime pay for stand-by duty, as such duty was "work" within the meaning of FLSA.

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**29 U.S.C. 621 et seq.**

***Age Discrimination in Employment Act***

**Quinones v. City of Evanston**  
**No. 91 C 3291, 1994 WL 405963 (N.D. Ill.**  
**July 29, 1994)**

***City of Evanston***

Fire fighter plaintiff sued defendant city for not allowing the plaintiff to join the pension fund because of the plaintiff's age. The court held that the defendant was guilty of age discrimination and ordered the defendant to allow the plaintiff into the pension fund with full credit.

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**29 U.S.C. 701 et seq.**

***Rehabilitation Act***

**Worlford by Mackey v. Lewis**  
**860 F. Supp. 1123 (S.D.W.Va. 1994)**

***West Virginia Department of Health and Human Resources***

Action was brought on behalf of residents of West Virginia residential board and care facilities, personal care facilities, and nursing homes, claiming that state regulations governing such facilities violated both state law and the Keys Amendment to the Supplemental Security Income program, and further claiming that conditions at facilities had disparate impact on disabled Medicaid-eligible residents in violation of the *Rehabilitation Act* and Title II of the *Americans with Disabilities Act*. The District Court held that: (1) the regulations violated various aspects of both the Keys Amendment and state law; (2) state enforcement of standards and procedures violated both state law and the Keys Amendment; (3) the state failed to rebut disabled residents' prima facie case that they were being denied meaningful access to Medicaid services by

being denied transportation and that reasonable accommodation was possible; but (4) to the extent that disabled residents of some types of facilities were alleging that they were being treated differently than disabled residents of other types of facilities, they did not state actionable claim under *Rehabilitation Act* or Title II. This court orders the parties to develop a remedial plan for correcting and implementing proposed changes to existing residential board and care and personal care regulations and enforcement procedures. The defendants are required to include in the regulations transportation assurances comparable to those in existing adult family care home regulations.

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**42 U.S.C. 601 et seq.**

***Aid to Families with Dependent Children***

**Brown v. Giuliani**  
**158 F.R.D. 251 (E.D.N.Y. 1994)**

***City of New York***

Recipients of Aid to Families with Dependent Children (AFDC) sued New York City, claiming that the city failed to process public assistance grants under AFDC in a timely fashion, and moved for a preliminary injunction and certification of a class action. The court granted the preliminary injunction, ordering the city to prepare a new plan for the prompt disposition of requests for AFDC grants, and prohibiting the city from implementing a plan to redeploy personnel from AFDC grant processing to other activities. The court also certified the action as a class action under Rule 23 of the Federal Rules of Civil Procedure.

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**42 U.S.C. 1395**

***Medicare***

**Newman v. Kelley**  
**848 F. Supp. 228 (D.D.C. 1994)**

***District of Columbia***

In a class action under Medicare and Medicaid statutes, nursing home residents sought injunc-

tive and declaratory relief to bring the District of Columbia's nursing home regulations into compliance with the federal *Nursing Home Reform' Law of 1987*. On cross-motions for summary judgment, the court held that the District's regulatory scheme, which enforces nursing facility resident transfers and discharges based on level of care distinction, was preempted by federal Medicaid and Medicare law.

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42 U.S.C. 1396

**Title X/X, Social Security Act**

**Rehabilitation Association of Virginia v. Kozlowski**

42 F.3d 1444 (4th Cir. 1994)

**State of Virginia**

Providers of rehabilitative services challenged the legality of parts of Virginia's Medicaid plan and sought prospective injunctive relief. The District Court found for the providers, and appeal was taken. This court **affirms**, holding that Virginia's plan for buying-in for certain Medicare recipients involved a Medicare program to be partially funded by Medicaid resources, and, thus Medicare reimbursement requirements governed which plan allowed direct payment to providers of rehabilitative services.

**Shifflett v. Kozlowski**

843 F. Supp. 133 (W.D. Va. 1994)

**Fourteenth Amendment Due Process**

**Virginia Department of Medical Assistance Services**

Plaintiffs, Medicaid applicants and recipients, brought suit under 42 U.S.C. 1983 against the Department of Medical Assistance Services for violations of the *Social Security Act*, alleging that the department failed to provide rapid action on appeal of a local decision and that it violated plaintiffs' due process rights. Plaintiffs sought declaratory and injunctive relief. Plaintiffs moved for summary judgment. The court held that when an agency provided an appeal procedure for Medicaid

decision, **final** action needed to be taken within 90 days of appeal. The court ordered the department to comply with the *Social Security Act*, and with the time limits imposed by the act to ensure a fair hearing to plaintiffs.

**Sobky v. Smoley**

855 F. Supp. 1123 (E.D.Cal. 1994)

**California Health and Welfare Agency**

Providers and recipients or potential recipients of state Medicaid-funded drug abuse treatment services filed an action under 42 U.S.C. 1983 alleging that the practice of allowing counties to determine whether and in what amount to provide Medicaid-funded methadone maintenance treatment violated the Medicaid statute. On plaintiffs' motions for summary judgment and for reconsideration, the District Court held that: (1) requirement of statewide applicability of Medicaid plans created a federal right enforceable under Sec. 1983; (2) Medicaid recipients were entitled to preliminary injunction; (3) fact questions as to extent of the problem caused by the state scheme precluded summary judgment in favor of Medicaid recipients; (4) state practice did not violate the equal access provision of the statute; (5) the requirement that all categorically needy individuals receive equal medical assistance created an enforceable federal right; (6) state failure to fund enough methadone maintenance slots violated the categorically needy equal treatment requirement; (7) plaintiffs were not entitled to enforce the single state agency requirement; (8) state practice violated the Medicaid requirement that services be provided with reasonable promptness; and (9) state procedures upon denial, termination or reduction of methadone maintenance services did not violate recipients' due process rights. The court granted the plaintiffs motion for a preliminary injunction on the basis that the state Medicaid plan was not in effect statewide, and requested that the parties meet and confer as to the terms of the permanent injunction. The court contemplated a permanent injunction that required the states to assure that all eligible needy individuals receive methadone maintenance treatment services equal in amount, duration, and **scope**.

**42 U.S.C. 1973**

***Voting Rights Act***

**Cane v. Worcester County, Maryland**  
**847 F. Supp. 369 (D.Md. 1994)**

**Worcester County, Maryland**

Citizens challenged the system used by the county to elect county commissioners. The court held that evidence was clear and convincing that due to community voting patterns, residential at-large requirements for county commission elections, and past and present discrimination against blacks, voting strength of black voters had been diluted. The court ordered the county a cumulative voting system to elect its county commission.

**Marylanders for Fair Representation v. Schaefer**

**849 F. Supp. 1072 (D. Md. 1994)**  
**Fourteenth Amendment Equal Protection**

***State of Maryland***

The plaintiffs brought an action against the state under the *Voting Rights Act*, challenging a redistricting plan. The court had ordered the state to provide a new plan (reported at **849 F. Supp. 1022**), and the state had complied. The court approved the state's new redistricting proposal and ordered the defendants to adopt and implement it.

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**42 U.S.C. 1983**

***Section 1983***

**AIDS Action Committee v. Massachusetts Bay Transportation Authority**  
**42 F.3d 1 (6th Cir. 1994)**  
**First Amendment Speech/Press**

***State of Massachusetts***

AIDS Action Committee filed a Sec. 1983 action for declaratory and injunctive relief alleging violations of the First and Fourteenth Amendments as a result of the transportation authority's advertising policy, which prohibited ads containing sexually explicit and patently offensive language to convey a substantive message. The District Court ruled that the interiors of subways and trolley cars

were public forums, and that the policy violated the First Amendment; it enjoined the authority from refusing to accept and display ads and from applying its policy. The Court of Appeals **affirmed**, holding that: (1) the policy, which permitted an idea to be expressed but disallowed use of certain words in expressing that idea, was content-based and violated the First Amendment; (2) the authority's decision not to run the AIDS committee's ads while running ads for movies containing sexually explicit words and photographs constituted content discrimination that gave rise to the appearance of viewpoint discrimination in violation of the First Amendment; and (3) the advertising policy in its present form was properly enjoined.

**Casey v. Lewis**  
**43 F.3d 1261 (9th Cir. 1994)**

**Fifth Amendment**  
**Fourteenth Amendment Due Process**

***State of Arizona***

Inmates brought a civil rights class action alleging that Arizona prison **officials** violated their constitutional right to access to courts. The District Court found constitutional violations and granted injunctive relief. This court held that the Arizona Department of Corrections' legal access program unconstitutionally denied inmates meaningful access to courts, and that the District Court did not abuse its discretion in ordering the relief set forth in its permanent injunction relating to the contents of law libraries, physical access to libraries, legal assistants, library staff, photocopy policy, and attorney telephone calls. The injunctive relief ordered the department to provide meaningful access to the courts for all present and future prisoners, following the practices set forth in the order, including access to the law library and law clerks.

**Hellebust v. Brownback**  
**42 F.3d 1331 (10th Cir. 1994)**  
**Fourteenth Amendment Equal Protection**  
**Fourteenth Amendment Due Process**

***State of Kansas***

State residents brought action challenging the system of electing the state Board of Agriculture. The District Court entered judgment affording

relief. The Court of Appeals **affirmed**, holding that: (1) the system under Kansas Stat. Ann. 74-502 for election by delegates from private agricultural associations violated the “one person, one vote” rule under the equal protection clause; (2) the state legislature was not a necessary party to the action; and (3) the District Court did not abuse its discretion in remedying the process by declaring terms of members of the board expired and appointing the governor as receiver for the board.

**Hershberger v. Scaletta**  
**33 F.3d 955 (8th Cir. 1994)**  
**Fourteenth Amendment Equal Protection**  
**Fourteenth Amendment Due Process**

**State of Illinois**

Indigent inmates brought a civil rights action against prison **officials**, challenging prison policy of denying indigent inmates in administrative segregation any free legal or personal postage. The District Court enjoined the prison’s practice as to legal mail, but found its policy as to personal mail was permissible, and both sides appealed. This court affirmed, holding that: (1) indigent inmates in administrative segregation could not be denied **free** postage for legal mail, but (2) inmates did not have a right to free postage for nonlegal mail.

**Pottinger v. City of Miami**  
**40 F.3d 1155 (11th Cir. 1994)**  
**Fourth Amendment Search/Seizure**  
**Eighth Amendment Cruel and Unusual**

**City of Miami**

After a class of homeless persons was certified for purposes of a civil rights action against the city, the District Court granted injunctive relief that required the city to establish “safe zones” in which the police department could not arrest homeless people for performing harmless life-sustaining acts. The Court of Appeals remanded, holding that the District Court was required to reconsider the injunction in light of recent events, such as the construction of homeless shelters.

**Speer v. Miller**  
**15 F.3d 1007 (11th Cir. 1994)**  
**First Amendment Speech/Press**

**State of Georgia**

Lawyer filed an action seeking a permanent injunction against enforcement of a Georgia statute prohibiting inspection of law enforcement records for commercial solicitation. The District Court denied the lawyer’s motion for a preliminary injunction. The Court of Appeals vacated that decision, holding that a mere reading of the statute indicated that it probably impinged on the lawyer’s First Amendment rights to commercial speech, and, thus, the lawyer’s likelihood of success on the merits warranted a hearing on the request for a **preliminary** injunction.

**Turpen v. City of Corvallis**  
**28 F.3d 978 (U.S. Ct. App. 9th Cir.)**  
**Fourteenth Amendment Due Process**

**City of Corvallis**

Tenants brought a civil rights action against the city, alleging that the city’s termination without notice of their water service because their landlord failed to pay the water bill violated their due process rights. The District Court entered judgment in favor of the tenants, The Court of Appeals held that the city’s failure to supply water based on the landlord’s failure to pay the water bill deprived tenants of cause of action under Oregon law by preventing them from suing for injunctive relief before service was terminated, and that the tenants were deprived of property interest under the Fourteenth Amendment by the termination of service without notice, but did not have a property right to continuous water services **from** the city. The court declined to address the issue of injunctive relief ordering defendants to give pre-termination notice because plaintiffs did not raise the issue on cross appeal, but plaintiffs were entitled to damages following the termination of service.

**Aciemo v. New Castle County**  
**1994 WL 720273 (D. Del. )**  
**Fourteenth Amendment Due Process**  
**Fourteenth Amendment Equal Protection**  
**New Cast/e County**

Plaintiff brought suit under Sec. 1983 asserting that the defendant's continuing conduct in denying him a building permit violated his due process and equal protection rights. The court previously had entered a preliminary injunction against the county ordering them to review the plaintiff's building permit application, the defendants appealed, and this court dismissed the plaintiff's case without prejudice. The plaintiff refiled his complaint and the court granted the preliminary injunction ordering the building permit issued.

**Aldrich v. Knab**  
**858 F. Supp. 1480 (W.D.Wash. 1994)**  
**First Amendment Speech/Press**  
**State of Washington**

Volunteer staff members and listeners of a noncommercial radio station owned by a public university sued the university, the university's director of broadcast services, and past and current station managers, alleging violation of the First Amendment and wrongful termination. This court granted plaintiffs motion for summary judgment regarding the no criticism policy, holding that it violates the First Amendment, and enjoined the defendants from continuing to utilize the policy. The court ordered the defendants to reinstate the plaintiffs to their former positions.

**Carper v. DeLand**  
**851 F. Supp. 1506 (D. Utah 1994)**  
**Fourteenth Amendment Due Process**  
**State of Utah**

Utah inmates brought a class action suit against Utah Department of Corrections **officials** alleging failure to provide inmates with adequate access to courts. This court granted the **plaintiff's** summary judgment motion, and held that: (1) the department's obligation to assist inmates did not extend beyond completion of initial petitions for writs of habeas corpus and civil rights complaints,

and (2) budgetary reasons did not justify a prison regulation that infringed on inmates' constitutional right of access to courts. The court granted plaintiffs a declaration that the scope of the present UDC legal contract provides **insufficient** legal assistance, and ordered the defendants to provide legal assistance through the preparation and filing of the initial complaint in **all** civil rights cases that involve due process.

**Dunn v. New York State**  
**Department of Labor**  
**1994 WL 48799 (S.D.N.Y.)**  
**State of New York**

Plaintiffs and intervenors, Municipal Labor Committee, moved for an order adjudging defendant in civil contempt, declaring that plaintiffs are entitled to relief to enforce this judgment, appointing a special master to recommend a long-term remedial plan, granting relief by ordering defendants to reassign temporary administrative law judges, and consolidating this action. The court held that the defendant was not in civil contempt of the 1979 order that required the New York Department of Labor to render 60% of all first-level appeals decisions within 30 days of the appeal and 80% within 45 days of the appeal. However, the court established a monitoring system to ensure that the defendant achieved consistent compliance.

**Faulker v. Jones**  
**858 F. Supp. 552 (D.S.C. 1994)**  
**Fourteenth Amendment Equal Protection**  
**State of South Carolina**

Female plaintiff brought action against members of the Board of Visitors of the Citadel, the Military College of South Carolina, and certain of its **officials**, seeking permanent injunction against discrimination on the basis of sex and immediate admission to the Citadel's corps of cadets. The court granted the injunction, requiring the defendants to admit the plaintiff to the South Carolina Corps of Cadets, and ordered the defendants to pursue their proposed remedial plan without delay and adopt a plan that conforms with the Equal Protection Clause.

**Maraldo v. City of New Orleans**  
**1994 WL 50246 (E.D. La.)**  
**Fourteenth Amendment Due Process**  
**City of New Orleans**

Plaintiff filed action under Sec. 1983 against the city and its mayor seeking a declaratory judgment that she is entitled to complete her term as a member of the Sewerage and Water Board, and an injunction prohibiting defendants from interfering with her service and money damages. Plaintiff claimed that the defendants engaged in activity that violates her due process rights of office. The court held that because the plaintiff had been removed without due process, she was entitled to injunctive relief prohibiting defendants from interfering with her board service. The court reserved judgment on plaintiffs claim for damages and attorney's fees.

**Nicholson v. Moran**  
**1994 WL 409494 (D.R.I.)**  
**Fourteenth Amendment Due Process**  
**State of Rhode Island**

Inmate brought an action under Sec. 1983, claiming that a disciplinary report charging him with giving false information violated his due process rights. The court held that the inmate was entitled to declaratory and injunctive relief, and attorney's fees. The court ordered the defendants to expunge any reference to the disciplinary board's finding that the plaintiff was guilty of giving false information, and to restore 30 days of good time credits. The court also ordered the defendants to pay attorney's fees and costs.

**Oropallo v. Ackerman**  
**856 F. Supp. 35 (D.N.H. 1994)**  
**Fourteenth Amendment Due Process**  
**Fourteenth Amendment Privileges**  
**and Immunities**  
**New Hampshire Department of Corrections**

An inmate whose word processor disks were confiscated sued, arguing that his right to the courts was being infringed, as notes for his habeas corpus action were contained on the disks. The court issued a preliminary injunction requiring the prison to give him 12 of the 60 disks.

**Pratt v. Rowland**  
**856 F. Supp. 565 (N.D. Cal. 1994)**  
**Eighth Amendment Cruel and Unusual**  
**First Amendment Speech/Press**  
**California Department of Corrections**

Elmer "Geronimo" Pratt, a former leader of the Black Panther Party, sued, arguing that he was moved and double-celled in retaliation for (1) testifying about the FBI's counter-intelligence program against the Black Panthers, (2) drawing media attention, and (3) a successful civil rights action brought by the plaintiff in 1981. The court granted a preliminary injunction ordering the defendants to restore Pratt's prior living arrangements.

**Republican Party of North Carolina v. Hunt**  
**941 F. Supp. 722 (E.D.N.C. 1994)**  
**Fourteenth Amendment Equal Protection**  
**State of North Carolina**

Republican Party of North Carolina and other plaintiffs brought a civil rights suit alleging that the method of election for superior court judges (district-wide primary nominations followed by statewide elections) denied plaintiffs equal protection of the laws by diluting the voting franchise of Republican voters. The District Court dismissed the action. On appeal, the Court of Appeals reversed, finding that the plaintiffs presented a viable, **justiciable** Fourteenth Amendment claim of vote dilution, and remanded the case. On remand, plaintiffs renewed their motion for a preliminary injunction. This court held that the plaintiffs were entitled to a preliminary injunction requiring that upcoming elections be conducted under a modified format.

**Women's Prisoners of the District of**  
**Columbia Department of Corrections v.**  
**District of Columbia**  
**877 F. Supp. 634 (D.D.C. 1994)**  
**Eighth Amendment Cruel and Unusual**  
**Fourteenth Amendment Due Process**  
**District of Columbia**

Plaintiffs brought this class action on behalf of female prisoners in the District of Columbia seeking declaratory and injunctive relief on the

grounds that: (1) they were subject to sexual harassment in violation of the Fifth and Eighth Amendments; (2) received unequal opportunities to participate in prison programs in violation of Title IX and the **Fifth** Amendment; (3) received inadequate obstetrical and gynecological care at the prison in violation of the Eighth Amendment; and (4) were subject to general conditions of **confinement** violating the Eighth Amendment. This court held that: (1) the Eighth Amendment was violated by sexual harassment, living conditions, and lack of proper medical care; (2) Title IX was violated by lack of educational opportunities compared with those available to men; and (3) prison **officials** were liable for civil rights violations. The court ordered declaratory and injunctive relief to take necessary action to remedy and prevent the violations of plaintiffs rights, including actions to be taken to improve environmental health, obstetrical and gynecological care, and diagnostic evaluations to determine prisoners' needs and interests for increased programs in academic and higher learning, religion, work, and recreation.

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#### 42 U.S.C. 1988

##### *Section 1988*

**AIDS Action Committee v. Massachusetts Bay Transportation Authority**  
1994 WL 61614 (D. Mass. Jan. 25, 1994)  
First Amendment Speech/Press  
Fourteenth Amendment

##### *Massachusetts Bay Transportation Authority*

Plaintiff filed for preliminary injunction and attorney's fees for failure to display **plaintiff's** paid public service ads on subway cars and platforms. The court held that the plaintiff would get a permanent injunction enjoining the defendants from refusing to accept and display the public service ads, and awarded the plaintiff costs and attorney's fees.

#### 42 U.S.C. 2000e

##### *Title VII, Civil Rights Act*

**United States v. Criminal Sheriff, Parish of Orleans**

19 F.3d 236 (5th Cir. 1994)

##### *Parish of Orleans*

In Title VII litigation alleging sex discrimination by the parish criminal sheriffs office and its sheriff, the District Court enjoined the sheriff **from** failing or refusing to hire females in the position of deputy sheriff, or failing or refusing to promote female deputies, or failing or refusing to adopt a program to inform women of equal employment opportunities. Defendants appealed. The Court of Appeals affirmed in part, holding that the **magistrate's** ruling impermissibly exceeded the scope of stipulation on which the injunction was based; it therefore vacated the part of the injunction addressing hiring and promotional practices in other areas of the prison system.

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#### 42 U.S.C. 3001 et seq.

##### *Older Americans Act of 1965*

**Southwest Missouri Office on Aging v. Missouri Department of Social Services**  
850 F. Supp. 816 (W.D. Mo. 1994)

##### *Missouri Department of Social Services*

Office on aging brought suit against the state department to challenge the allocation of certain federal monies pursuant to the federal act. The plaintiff demanded declaratory judgment and injunctive relief, and moved for summary judgment. The court held that the state factor-in formula did not reflect older persons in greatest economic and social need, and thus violated the *Older Americans Act*. The court enjoined the defendants from using the current intrastate funding formula to distribute funds under the act.

42 U.S.C. 6961

**Resource Conservation  
and Recovery Act**

**City of Chicago v. Environmental  
Defense Fund**

114 s. ct. 1588 (1994)

**city of Chicago**

Respondent alleged that petitioner city mishandled hazardous waste from a municipal incinerator by dumping it into landfills not licensed to accept hazardous waste. The District Court granted summary judgment for the petitioner on grounds that the waste was not toxic enough to be “hazardous” under EPA regulations and the *Resource Conservation and Recovery Act* (RCRA). The Court of Appeals reversed. The Supreme Court **affirmed** the Court of Appeals, holding that waste generated by the city was subject to RCRA. The court held that RCRA is a comprehensive environmental act that leaves the determination of hazardous waste to EPA, and that **the** city’s waste was within EPA’s definition.

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42 U.S.C. 7401 et seq.

**Clean Air Act**

**American Lung Association v. Kean**  
856 F. Supp. 903 (D. N.J. 1994)

**New Jersey**

Citizens groups brought suit under the *Clean Air Act* to compel New Jersey to comply with a state implementation program and a previously entered scheduled order for reduction of ozone emissions from consumer and commercial products. The plaintiffs moved to enforce the order and the defendants moved to amend. The court held that: (1) subsequent amendments to the *Clean Air Act* did not excuse the state from its preexisting obligations, and (2) there was no justification for further delay. The court enjoined the state to comply with the program and order.

42 U.S.C. 12101 et seq.

**Americans with Disabilities Act**

**Concerned Parents v. City  
of West Palm Beach**  
853 F. Supp. 424 (S.D. Fla. 1994)

**City of West Palm Beach**

The city discontinued special services for the disabled, used mainly by nonresidents, at the Dreher Park Center because of a budget crisis. The court found that the budget cuts affected disability programs more severely than other recreational programs, and held that the city could not discriminate against nonresidents if there was a resulting disadvantage to the disabled. The court granted a preliminary injunction, concluding that plaintiffs were denied benefits in violation of ADA. The court ordered **the** city to take all necessary steps to afford the benefits of the city’s recreational **pro-**gram to persons **with** disabilities.

**Dees v. Austin-Travis County Mental Health  
and Mental Retardation**  
860 F. Supp. 1186 (W.D. Texas)

**Austin-Travis County Mental Health and  
Mental Retardation**

A patient brought an action against the center board of trustees under the *Americans with Disabilities Act*, arguing that as a result of the medication she was required to take, she was unable to attend regular meetings of the board of trustees. The court held that ADA was not violated, but in the interests of equity, ordered the board to schedule meetings at times when the plaintiff could attend, for a trial period of six months.

**Tugg v. Towey**  
864 F. Supp. 1201 (S.D. Fla. 1994)

**State of Florida**

Deaf individuals eligible for mental health counseling services sought a preliminary injunction under ADA requiring the state to provide the services through counselors with sign language ability. This court granted the preliminary injunction until permanent guidelines were approved.



## 2

### *Second- Tier Federal Mandates: Prohibitory Injunctions and Declarations that State, Local, or Tribal Laws Violate the U.S. Constitution or are Preempted by Federal Law*

To complement the first-tier group, the Commission selected a closely related second tier of federal court rulings that includes (1) *prohibitory injunctions, which order a government to refrain from taking some particular action, such as enforcing a local law, and (2) declarations that a particular state, local, or tribal law runs counter to a federal law or regulation, or a provision of the U.S. Constitution.* While the rulings falling within this second tier do not directly require governments to undertake particular activities, they often have the same practical effect. Like the first tier, this group includes only those cases that state, local, or tribal governments lost in the sense that the plaintiffs prevailed upon the court to enter a ruling against the government.

Following are abstracts of 96 rulings falling within this second tier. Federal constitutional litigation under Section 1983 dominates the second tier, as it does the first, with 40 of the 96 rulings. Table 1 presents the statutes that have generated three or more rulings in the second tier.

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*Table 1*  
**Second-Tier Rulings by Statute  
(Three or More)**

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<b>Statute</b>	<b>Number of Rulings</b>
Section 1983	40
Voting Rights Act	9
Title XIX, Social Security Act (Medicaid)	6
National Labor Relations Act	5
Religious Freedom Restoration Act	5
Employee Retirement Income Security Act	4
Indian Gaming Regulatory Act	3
Fair Housing Act	3

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## CASE ABSTRACTS

These case abstracts are arranged by the United States Code Section number of the federal statute they primarily concern. Cases concerning the same statute are ordered by court level (Supreme Court, Court of Appeals, District Court), and then alphabetically by the name of the **first** party to the case. Each abstract contains the case title and citation; the name of the state, local, or tribal government or **governments** involved (in italics directly below the citation); and a paragraph describing the case and the ruling. Some cases, particularly those brought under 42 U.S.C. 1983, also concern provisions of the U.S. Constitution. Those provisions, if any, are listed in bold type beneath the citation.

### 2 U.S.C. 453

#### ***Federal Election Campaign Act of 1971***

**Bunning v. Commonwealth of Kentucky**  
42 F.3d 1008 (6th Cir. 1994)

#### ***State of Kentucky***

A congressional representative brought action seeking declaration that the state registry of election finance was not entitled to investigate a poll conducted by the representative's reelection committee. The District Court entered judgment for the representative, and awarded attorney's fees. The Court of Appeals affirmed in part and reversed in part, holding that the state's attempt to investigate the poll was preempted by the *Federal Election Campaign Act*, but that the representative was not entitled to attorney's fees.

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### 12 U.S.C. 92

#### ***National Bank Act***

**Owensboro National Bank v. Stephens**  
44 F.3d 388 (6th Cir. 1994)

#### ***State of Kentucky***

National bank sued the commissioner of the Kentucky Department of Insurance to require compliance with 12 U.S.C. 92, which permits national banks to act as insurance agents in towns with fewer than 5,000 inhabitants. The District Court granted the bank's motion for summary judgment. On appeal, the Court of Appeals held that 12 U.S.C. 92 preempts a Kentucky statute prohibiting bank holding companies from acting as insurance agents, and that the Kentucky statute is not protected by the *McCarran-Ferguson Act*.

### 12 U.S.C. 1821 et seq.

#### ***Federal Deposit Insurance Act***

**Resolution Trust Corporation v. State of California**  
851 F. Supp. 1453 (C.D. Cal 1994)

#### ***State of California***

The Resolution Trust Corporation brought suit against the State and the Controller of California seeking declaratory and injunctive relief preventing the state from taking custody of unclaimed federal deposit insurance funds under California's Unclaimed Property Law. The court held that California's law was preempted by 12 U.S.C. 1822, governing disposition of insured deposits remaining unclaimed, and that the RTC was entitled to restitution. The court also permanently enjoined the defendants from interfering with **RTC's** recovery of such funds from acquiring institutions.

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### 15 U.S.C. 1 et seq.

#### ***Sherman Act***

**Pine Rldge Recycling, Inc. v. Butts County, Georgia**  
864 F. Supp. 1338 (M.D. Ga. 1994)

#### **Dormant Interstate Commerce**

#### ***County of Butts***

Developer filed an action to prevent the county from interfering with the establishment of a new municipal solid waste landfill, seeking preliminary injunctive relief. This court granted the preliminary injunction on the grounds that the plaintiff showed a likelihood of prevailing on the merits of a **monopolization** claim against the county.

**Santos v. City of Houston, Texas**  
**852 F. Supp. 601 (S.D. Tex. 1994)**

**City of Houston**

Plaintiff, an operator of a jitney service, brought an action against the city for a declaration that an anti-jitney ordinance violated federal antitrust laws. This court granted the plaintiffs summary judgment motion and held that the ordinance violated the *Sherman Act* and deprived the plaintiff of his due process rights. The court permanently enjoined the city from enforcing the ordinance.

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**15 U.S.C. 1331 et seq.**

**Federal Cigarette Labeling and Advertising Act**

**Vango Media, Inc. v. City of New York**  
**34 F.3d 68 (2nd Cir. 1994)**

**City of New York**

Company in the business of displaying advertising signs on the exterior of privately owned taxicabs brought an action against New York City, the New York City Department of Health and the New York City Taxi and Limousine Commission, challenging a city ordinance requiring a minimum of one public health message to be displayed for every four tobacco advertisements displayed on property and facilities licensed by the city. The District Court granted the company's motion for summary judgment, and appeal was taken. This court **affirms**, holding that **the** *Federal Cigarette Labeling and Advertising Act* preempted the ordinance as applied to the company.

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**15 U.S.C. 2801 et seq.**

**Petroleum Marketing Practices Act**

**Mobil Oil Corporation v. Virginia Gasoline Marketers**  
**34 F.3d 220 (4th Cir. 1994)**

**Commonwealth of Virginia**

Oil company brought suit against the Attorney General of Virginia, seeking declaratory and

injunctive relief from amendments to *the Virginia Petroleum Products Franchise Act*. The District Court dismissed the suit for failure to present a **justiciable** case or controversy, and the oil company appealed. The Court of Appeals reversed and remanded. On remand, the Attorney General moved for summary judgment and the oil company cross-moved for summary judgment. The District Court granted the cross-motion in part, determining that all but one provision of the state amendments were federally preempted, and that the amendments violated the state constitution's prohibition on special laws. The oil company appealed. This court affirms in part and reverses in part, holding that: (1) the *Petroleum Marketing Practice Act* preempted the amendments, including the prohibitions on quota, minimum hours, minimum renewal, and maximum number of stations, and the rent control provision, and (2) the amendments were not expressly or implicitly preempted by the *Lanham Act* governing trademarks.

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**15 U.S.C. 3901 et seq.**

**Product Liability Risk Retention Act of 1981**

**Preferred Physicians Mutual Risk Retention Group v. Cuomo**  
**865 F. Supp. 1057 (S.D.N.Y.1994)**  
**Dormant Interstate Commerce**

**State of New York**

Plaintiffs brought suit alleging that New York's Excess Insurance Law violated the federal *Product Liability Risk Retention Act* and the Commerce Clause, and that defendants' actions violated *the Sherman Act*. *The court* held that the New York law violated the *Product Liability Risk Retention Act* and prohibited the state defendants from enforcing the offending provisions of the law in a way that treats plaintiffs differently from licensed insurers until **the** court entered a permanent injunction.

16 U.S.C. 3117

**Alaska National Interest Lands  
Conservation Act**

**Native Village of Quinhagak v.  
United States**  
35 **F.3d** 388 (9th Cir. 1994)

**State of Alaska**

Native Villages in Alaska and others brought an action under the *Alaska National Lands Conservation Act* challenging state regulations prohibiting subsistence rainbow trout fishing and a federal regulation excluding navigable waters from regulation of “public lands.” The plaintiffs’ motion for a preliminary injunction entitling them to a preference for the taking of rainbow trout for nonwasteful subsistence uses was denied by the District Court, and plaintiffs appealed. This court reverses, holding that: (1) there were serious questions going to the merits as to whether there was the necessary federal “interest” in the waters in dispute so as to make them “public lands” within the meaning of the Act, and (2) balance of hardships tipped sharply in favor of plaintiffs in light of threatened loss of an important subsistence food source and destruction of culture and way of life.

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18 U.S.C. 922(s)

**Brady Act**

**Mack v. United States of America**  
856 **F. Supp.** 1372 (D. Ariz. 1994)  
**Fifth Amendment Self-Incrimination  
Tenth Amendment**

**Graham County Sheriff**

An Arizona county sheriff brought suit against the United States to challenge the constitutionality of the *Brady Act*. The court held that the *Brady Act* violated the Tenth Amendment under *New York v. United States*, 505 U.S. 144, and also the Fifth Amendment due to vagueness.

21 U.S.C. 360

**Federal Food, Drug, and Cosmetic Act**

**Committee of Dental Amalgam Alloy  
Manufacturers v. Henry**  
871 **F. Supp.** 1278 (S.D.Cal. 1994)  
**Commerce Clause**

**State of California**

Declaratory and injunctive relief action was brought seeking determination that California’s Safe Drinking Water and Toxic Enforcement Act was preempted by the Medical Device Amendment (MDA) insofar as it imposed warning requirements for dental mercury that were different from or in addition to requirements under MDA, and alleging that the Act violated the Commerce Clause. The court held that the warning requirements of the Act, when imposed on dental mercury or products containing dental mercury, were different from, or in addition to, specific MDA requirements and were thus preempted. It also held that the Act was not a “requirement of general applicability” within the meaning of a regulation providing that the preemption provision of MDA did not preempt state or local requirements of general applicability, and that genuine issues of material fact, including whether compliance with the Act was unduly burdensome, precluded summary judgment as to whether that statute violated the Commerce Clause.

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21 U.S.C. 451 et seq.

**Poultry Products Inspection Act**

**National Broiler Council v. Voss**  
44 **F.3d** 740 (9th Cir. 1994)

**State of California**

Trade associations filed an action claiming that the *Poultry Products Inspection Act* (PPIA) preempted a California statute prohibiting wholesalers from using the word “fresh” on labels for poultry and poultry products unless poultry had been stored at temperatures at or above 25 degrees. Plaintiffs’ motion for summary judgment was granted by the District Court. On appeal, this court **affirmed** in part and reversed in part, holding that

the preemption clause in PPIA precluded labeling requirements in addition to or different from those made under PPIA-preempted prohibitory enactments such as the California labeling provision; the California provision was preempted both as being in addition to and different from federal labeling requirements; but the California labeling provision was severable from the remainder of the statute, proscribing advertising, describing, holding out, or selling as fresh poultry that was stored below 26 degrees.

**National Broiler Council v. Voss**  
851 F. Supp. 1481 (E.D. Cal. 1994)

**State of California**

Poultry and meat trade associations filed an action claiming that the *Poultry Products Inspection Act* preempted a California statute restricting the use by wholesalers of the term “fresh” on poultry product labels to poultry that had been stored in temperatures above 25 degrees. This court granted the plaintiffs motion for summary judgment, holding that: (1) California’s statute is preempted by PPIA’s express preemption provision, and (2) because the preemption provision is not severable from the statute, an injunction barring the labeling provision would also bar enforcement of the remainder of the statute. The court therefore permanently enjoined the defendant from enforcing the California statute until further order.

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25 U.S.C. 331

**Indian General Allotment Act**

**Cree v. Waterbury**  
873 F. Supp. 404 (E.D.Wash. 1994)

**State of Washington**

Tribe members and one non-member employee of the tribe brought actions against traffic officers for issuing citations for the tribe’s failure to pay licensing fees and to obtain permits for trucks used to haul tribal timber to market over state highways. This court granted the defendant’s motion for summary judgment dismissing the independent tribal sovereignty claims. The plaintiffs motion for summary judgment regarding the meaning of “in

common with” in Article III was granted. This court granted the plaintiffs prayer for declaratory relief of the Yakamas’ Treaty right to travel, and denies injunctive relief under Sec. 1983.

**Southern Ute Indian Tribe v. Board of County Commissioners**  
855 F. Supp. 1194 (D.Colo. 1994)

**La Plata County**  
**State of Colorado**  
**Southern Ute Indian Tribe**

Indian tribe filed a lawsuit against taxation of real property interests by the county and the state. Issues under consideration included: (1) whether the district court had jurisdiction over the matter; (2) whether the county and the state could directly tax real property interests held by the tribe in fee simple, and (3) whether the county and state could tax third parties holding real property interests within the reservation where such tax also impacts the tribe’s derivative interest. The court held that it did have jurisdiction over the matter, and that absent any further congressional or presidential action, the county and state could not directly tax real property interests held by the tribe in fee simple, nor may they tax mineral interests owned by the tribe relating to lands within the boundaries of the reservation. The court entered an injunction prohibiting the county and state from directly taxing real property interests held by the tribe in fee simple or mineral interests on land within boundaries of the reservation.

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25 U.S.C. 2701 et seq.

**Indian Gaming Regulatory Act**

**Cabazon Band of Mission Indians v. Wilson**  
37F.3d 430 (9th Cir. 1994)

**State of California**

Plaintiff Indian band challenged the state’s authority to collect license fees from a racing association conducting simulcast wagering on tribal lands. The District Court entered judgment for the state. The Court of Appeals reversed the District

Court's decision on the grounds that the *Indian Gaming Regulatory Act* preempted the state from taxing off-track betting activities on tribal lands.

**Coeur D'Alene Tribe v. State of Idaho**  
842 F. Supp. 1288 (D. Idaho 1994)

**Cabazon Band of Mission Indians v. Wilson**  
23 F.3d 1535 (9th Cir. 1994)

**State of California**

Native American tribe brought an action to challenge the state's authority to collect license fees from an organization hired to administer the off-track betting facility and activities on reservations. The District Court entered judgment for the state. The Court of Appeals reversed on the grounds that the *Indian Gaming Regulatory Act* (IGRA) expressly withheld from the states the authority to impose any tax, fee, charge, or other assessment on an Indian tribe or by any other person or entity authorized by an Indian tribe to engage in an activity within the meaning of IGRA. Here, racing associations were expressly authorized to conduct "simulcast wagering," an activity covered by Class III of IGRA.

**Sycuan Band v. Roache**  
38 F.3d 402 (9th Cir. 1994)

**State of California**

Indian tribes that operated gaming centers on their reservations brought an action for declaratory relief and injunctions against California state prosecutions of individuals employed in the tribe's gaming centers. The District Court granted declaratory and injunctive relief in favor of the tribes. The Court of Appeals **affirmed** on the grounds that: (1) California public law only grants California and certain other states jurisdiction over criminal violations and civil causes of action on Indian reservations, but leaves civil regulatory jurisdiction in the hands of the tribes; (2) under IGRA, the state has no authority to prosecute employees of Indian tribes for conducting the tribes' gaming on Indian reservations; and (3) IGRA made California law against Class III gaming devices applicable in Indian country, but granted the federal government exclusive power to enforce that law, such that the California public law provision was impliedly repealed by IGRA.

**State of Idaho**

Indian tribes and the state brought declaratory judgment actions regarding individual rights and obligations under IGRA. Parties cross-motivated for summary judgment. The court held that: (1) law and policy at the time of the court decision, not at the time the tribes requested negotiations, would guide analysis; (2) the state was not required to negotiate about gaming activities not permitted by Idaho law; and (3) the state was not allowed to operate a lottery absent tribal permission.

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**29 U.S.C. 151 et seq.**

**National Labor Relations Act**

**Livadas v. Bradshaw**  
114 S. Ct. 2068 (1994)

**California Department of Labor**

Plaintiff employee sued the Commissioner of Labor, alleging that enforcement of state law deprived her of benefits of federal law. State law required employers to pay employees' wages immediately on discharge. The plaintiff's employer refused to comply, so she requested that the defendant commissioner intervene. The defendant stated that he was unable to enforce the law for the plaintiff because her employment contract was governed by collective-bargaining agreements containing an arbitration clause. The plaintiff sued in District Court, alleging that the nonenforcement policy violated her rights under the *National Labor Relations Act* (NLRA). The District Court held that NLRA preempted state law, and granted summary judgment in the plaintiff's favor. The Court of Appeals held **that** the plaintiff's federal rights had not been infringed because she was merely asserting that the defendant had misinterpreted state law. The court reversed the lower court and held that: (1) federal law preempted the state's policy of not requiring employers to pay all wages due to discharged employees, and (2) the plaintiff was entitled to seek relief under 42 U.S.C. 1983 because she was deprived of the privileges of federal law.

**Bud Antle, Inc. v. Barbosa**  
35 **F.3d 1355 (9th Cir. 1994)**

**State of California**

Employer brought action against members and the executive secretary of the California Agricultural Labor Relations Board (ALRB), claiming that the *National Labor Relations Act* ousted ALRB of jurisdiction to adjudicate various unfair labor practice charges then pending before ALRB. The District Court held that NLRA did not preempt ALRB jurisdiction over charges and that it was required to abstain pursuant to the *Younger* doctrine. This court **affirms** in part and reverses in part, holding that: (1) the Anti-Injunction Act did not prevent relief; (2) *Younger* abstention was inappropriate; and (3) NLRA preempted ALRB of jurisdiction over charges.

**Cannon v. Edgar**  
33 **F.3d 880 (7th Cir. 1994)**

**State of Illinois**

Union of gravediggers and union leaders brought suit challenging the Illinois Burial Rights Act. The union alleged that the Act, which requires that cemeteries and gravediggers negotiate for establishment of a pool of workers designated to perform religiously required interments during labor disputes, was preempted by NLRA. The District Court granted summary judgment for the plaintiffs, and defendants appealed. This court affirms, holding that: (1) exceptions to the Garmon doctrine were not applicable to save the Burial Rights Act from preemption, and (2) the Burial Rights Act was also preempted by NLRA under the Machinists preemption doctrine.

**Alameda Newspapers, Inc. v. City of Oakland**

860 **F. Supp. 1428 (N.D. Cal. 1994)**

**City of Oakland**

Newspaper brought suit against the city after the city council passed a resolution endorsing a union boycott of the newspaper, and canceling its advertising and subscriptions. The paper contended that the resolution was preempted by NLRA. The court held that the resolution was regulatory in

nature and was therefore preempted by NLRA as an attempt by the city to interfere in the **free** play of economic forces permitted by NLRA in collective bargaining disputes, and the *Norris-LaGuardia Act* (prohibiting punishment by a court for voicing an opinion regarding labor disputes) applied only to individuals and not to the city. The court declared that the Oakland City Council resolution is preempted by **NLRA** and thus invalid. It permanently enjoined the defendants **from** enforcing the resolution, endorsing the boycott against the plaintiff by the AFL-CIO, and requesting any citizen to stop purchasing or advertising in the plaintiffs publications, and ordered the defendants to reinstate any subscriptions to the plaintiff's paper that they directed to be canceled because of the labor dispute.

**Washington Service Contractors Coalition v. District of Columbia**

858 **F. Supp. 1219 (D.D.C. 1994)**

**District of Columbia**

Private contractors challenged the District of Columbia's newly enacted Displaced Workers Protection Act, requiring contractors who provide certain types of services to retain many of their predecessors' employees after the contractors have taken over service contracts. The court entered a judgment declaring that NLRA preempts the District's law, and permanently enjoined the defendants from enforcing it.

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29 **U.S.C. 1001 et seq.**

**Employee Retirement Income Security Act**

**Associated Builders and Contractors v. Perry**

869 **F. Supp. 1239 (E.D.Mich. 1994)**

**State of Michigan**

Contractors' association brought an action against the director of the Michigan Department of Labor (MDOL) challenging enforcement of the Michigan Prevailing Wage Act. A construction union association intervened. The union **associa-**

tion and the director moved for partial summary judgment. The court held that the federal *Employee Retirement Income Security Act (ERISA)* preempted the MDOL policy of not crediting fringe benefits paid in excess of the fringe benefit component of the prevailing wage requirement, and preempted the apprenticeship requirements under the Act. The court declared the Act unenforceable as a whole because it held that valid portions of Act were not severable from invalid portions.

**Connecticut Hospital Association v. Pogue**  
**870 F. Supp. 444 (D.Conn. 1994)**

***State of Connecticut***

Plaintiff Connecticut Hospital Association sought to enjoin defendants from enforcing a Connecticut statute that abolished the pooling mechanism component of the Uncompensated Cam Pool Act. The court held that ERISA preempted the Connecticut statute, and enjoined the defendants from enforcing the relevant sections of the statute.

**New York State Health Maintenance Organization Conference v. Curiale**  
**1994 WL 482951**

***State of New York***

Plaintiffs sued to enjoin enforcement of New York's Pooling Regulation, which establishes a demographic pooling arrangement whereby the demographic characteristics of HMOs and insurers are compared to a regional average. The court held that ERISA preempted the Pooling Regulation and granted the injunction.

**United States v. City of Toledo**  
**887 F. Supp. 598 (N.D. Ohio 1994)**

***city of Toledo***

EPA and the Ohio EPA brought suit against the city alleging that discharges of pollutants from the city's wastewater treatment plant exceed the limits imposed by permits issued by the state EPA and the *Clean Water Act*. This court granted plaintiffs' motion for partial summary judgment, holding that the city's claims didn't preclude EPA from establishing that discharge of pollutants from the

city's waste water plant exceeded limits imposed by permits.

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**42 U.S.C. (no section number)**

***Housing and Development Act***

**Louisiana Landmarks Society v. City of New Orleans**  
**1194 WL 715606 (E.D.La. 1994)**

***City of New Orleans***

Plaintiff Louisiana Landmarks Society brought suit against the City of New Orleans, seeking a temporary restraining order barring demolition of the Joan of Arc Plaza until it was able to determine whether demolition was appropriate. The court held that, because the Plaza was funded in part by a federal grant under Section 702 (a) of the *Housing and Development Act*, the plaintiff was entitled to a temporary restraining order prohibiting defendants from disposing of or converting the use of any of the property of the Plaza unless approved by the Secretary of Interior. (There is no United States Code cite available because the relevant sections of the *Housing and Development Act* have since been repealed.)

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**42 U.S.C. 1396**

***Title X/X, Social Security Act***

**Indiana Pharmacists Association v. Indiana Family and Social Services Administration**  
**881 F. Supp. 395 (S.D.Ind. 1994)**

***State of Indiana***

Plaintiffs claimed that federal law prevents enforcement of Indiana Medicaid regulations that reduce the amount paid to pharmacies for medicines without regard to the ability of the pharmacy to collect the copayment. The court held that the Indiana regulations violated the federal *Medicaid Act*, and granted declaratory and injunctive relief, but deferred ruling on the issues of monetary damages and class certification.



**Little Rock Family Planning Services v. Dalton**  
**880 F. Supp. 809 (E.D. Ark. 1994)**  
**Article VI Supremacy Clause**

**State of Arkansas**

Clinics and doctors brought injunctive and declaratory action on behalf of themselves and of Arkansas Medicaid-eligible women on the grounds that an amendment to the Arkansas Constitution providing that no public funds will be used to pay for abortion except to save mother's life violated the federal Hyde Amendment, which required states participating in the federal Medicaid program to pay for abortions in cases where pregnancy is the result of rape or incest, as well as abortions to save the mother's life. The court held that the state constitutional amendment violated federal law and declared it invalid in its entirety.

**Planned Parenthood Affiliates of Michigan v. Engler**  
**880 F. Supp. 406 (W.D. Mich. 1994)**

**State of Michigan**

Plaintiffs, abortion providers and patients, filed suit after the Michigan legislature prohibited all funding of abortions except to save the life of the mother. The plaintiffs argued that this was preempted by the Hyde Amendment, which permits funding in cases of rape or incest. The court agreed that the Hyde Amendment preempted the state law and granted summary judgment on the merits to the plaintiffs.

**Planned Parenthood v. Wright**  
**1994 WL (N.D.Ill.)**

**State of Illinois**

Plaintiff Planned Parenthood had received a temporary restraining order prohibiting Illinois from enforcing a state law that prohibits Medicaid payments for abortions that were the result of rape or incest, on the grounds that the law was preempted by the Hyde Amendment. Upon expiration of the temporary restraining order, Planned Parenthood sought, and the court granted, a permanent injunction.

**Stephens v. Childers**  
**1984 WL 761468 (E.D. Ky. Nov. 4, 1994)**  
**Fourteenth Amendment Due Process**

**State of Kentucky**

Plaintiffs sought declaratory and injunctive relief under 42 U.S.C. 1983, alleging that the defendants' actions in promulgating changes to the reimbursement methodology for physicians who participate in the Medicaid program, and an accompanying \$50 million reduction in reimbursement rates, violate the federal *Medicaid Act* and its implementing regulations, and the plaintiffs' right to due process. In addition, the plaintiffs contend that unless a preliminary injunction is granted prohibiting the enforcement of the new reimbursement system, they and their patients will suffer irreparable harm. This court granted the preliminary injunction, holding that: (1) physician reimbursement rates for services rendered to Medicaid recipients are not proper if the methods and procedures used in formulating the rates are merely an exercise to make the best case to support the state's rates and the state considers only factors favorable to its position; (2) defendants' actions in reducing the reimbursement levels of physician providers of Medicaid services were arbitrary and capricious because they failed to articulate a rational connection between facts found as relevant factors outlined in the federal statute and their decision to reduce the provider reimbursement rates by \$50 million; (3) the state budget cannot be the deciding factor in rate reductions; (4) defendants failed to establish a procedurally sound rate-setting methodology that considered the relevant factors outlined in the equal access provision; (5) defendants violated due process by cutting reimbursement rates without due notice; and (6) plaintiffs have shown a substantial likelihood of success on the merits and irreparable harm, and, therefore, issuance of a preliminary injunction is appropriate.

**Visiting Nurse Association of North Shore, Inc. v. Bullen**  
**866 F. Supp. 1444 (D. Mass. 1994)**  
**Fourteenth Amendment Due Process**

**State of Massachusetts**

Providers of home health services brought suit challenging rates set by the state under the fed-

eral *Medicaid Act* (42 U.S.C. 1396). The court granted the plaintiffs motion for partial summary judgment on the claim that the implementation of the current class rate did not comply with the notice requirement of *the* federal *Medicaid Act*, and granted an injunction stopping implementation until the state complies with the regulations. The court stayed the judgment pending a determination of how quickly state compliance could be effected.

**Bridgeport Coalition for Fair Representation v. City of Bridgeport**  
**26 F.3d 271 (2nd Cir. 1994)**

***City of Bridgeport***

Coalition for Fair Representation and others sought and obtained a preliminary injunction prohibiting the City of Bridgeport, Connecticut, from conducting city elections under a 1993 reapportionment plan, which the District Court held still diluted minority voting power. The Court of Appeals **affirmed**, but remanded for modifications.

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**42 U.S.C. 1973**

***Voting Rights Act***

**Marks v. Stinson**  
**19 F.3d 873 (3rd Cir. 1994)**

***City and County of Philadelphia***

Losing state senate candidate, state political committee, and eight named voters brought action against the winning candidate, candidate's campaign, the Board of Elections and various individuals, alleging violations of *the Voting Rights Act* and *the Civil Rights Act* in connection with the election. The District Court found that certain election **officials** had conspired with the winning candidate to cause numerous illegally obtained absentee ballots to be cast and issued a preliminary injunction enjoining the winning candidate from exercising any of the authority of the **office** of state senator and directing the Board of Elections to certify the losing candidate. The Court of Appeals vacates in part, holding that: (1) the District Court did not err in refusing to abstain and (2) the District Court was

not justified in ordering certification of **the** losing candidate.

**Dillard v. City of Greensboro**  
**865 F. Supp. 773 (M.D. Ala. 1994)**  
**Fourteenth Amendment Equal Protection**  
***City of Greensboro***

Black voters filed an action challenging the election of the city council under the *Voting Rights Act*, and requested that their proposed plan be adopted. This court held that the plaintiffs redistricting plan would be adopted, prohibiting minority vote dilution, and the defendants would be enjoined from using the current plan in future elections.

**Dye v. McKeithen**  
**856 F. Supp. 303 (W.D. La. 1994)**  
**Fourteenth Amendment Equal Protection**  
**Fifteenth Amendment**

***Vernon Parish School Board***

Voters brought an action for injunctive relief, challenging the validity of the parish school board reapportionment. The court held that: (1) the school board resolution adopting the reapportionment plan violated provisions of Louisiana law providing authority for reapportionment by not publishing the plan or satisfying the content requirements of the statute; (2) population deviation between districts in the plan exceeded the acceptable levels; and (3) the exclusion of a census tract containing a military base violated equal protection principles. The court also held, however, that the mere existence of a multimember district and residency requirements were not sufficient to sustain the claim asserting a violation of equal protection. The court enjoined implementation of the plan as violative of the U.S. Constitution and Louisiana law.

**Hays v. State of Louisiana**  
**862 F. Supp. 119 (W.D. La. 1994)**  
**Fourteenth Amendment Equal Protection**  
***State of Louisiana***

The state adopted a new redistricting scheme creating a second majority-minority district. This court held that: (1) the new districting map **reflect-**

ed racial gerrymandering; (2) *the Voting Rights Act* does not compel such creation of a second majority-minority district; and (3) the creation wasn't necessary to remedy discrimination. Because the state could not **justify** the measures, the court held that efforts to create a second minority-majority district violated the plaintiffs' equal protection rights, and declared it null and void. The court then devised a congressional districting plan of its own.

**Johnson v. Desoto County Board of Commissioners**  
**888 F. Supp. 1376 (M.D. Fla. 1994)**

**Helen Washington v. Arcadia City Council**  
**First Amendment Establishment**  
**Thirteenth Amendment**

**County Board of Commissioners**  
**City Council of Arcadia**

African-Americans brought an action against the county board of commissioners and city council alleging violations of the *Voting Rights Act*. This court held that the county would be enjoined from using the at-large election method for school board members for future elections, but not for election of county commissioners.

**Johnson v. Miller**  
**864 F. Supp. 1354 (S.D. Ga. 1994)**  
**Fourteenth Amendment Equal Protection**

**State of Georgia**

Suit was brought challenging the constitutionality of congressional districts in Georgia, seeking injunction against the further use of the districting plan in elections. This court granted the injunction. It held that the plan was unconstitutional because it had been influenced by racial gerrymandering, and that proportional representation was not a compelling state interest justifying the plan.

**Straw v. Barbour County**  
**864 F. Supp. 1148 (M.D. Ala. 1994)**

**Barbour County**

Plaintiffs brought an action challenging the districting scheme for the election of the county commission. This court entered judgment for the plaintiffs, holding that the current districting

scheme was malapportioned and violated the Fourteenth Amendment. The court declared that the new districting plan was constitutional and enjoined the defendants from using the current districting system for future elections and from failing to implement the new scheme.

**Vera v. Richards**  
**861 F. Supp. 1304 (S.D. Tex. 1994)**  
**Fourteenth Amendment Equal Protection**  
**Fifteenth Amendment**

**State of Texas**

Voters brought suit alleging that the state redistricting plan violated the *Voting Rights Act* and the U.S. Constitution by being racially segregated. They sought declaratory and injunctive relief. The court held that the districts were so misshapen that racial segregation was the only possible explanation for the location of boundaries. The court declared the plan unconstitutional.

**White v. State of Alabama**  
**867 F. Supp. 1519 (M.D. Ala. 1994)**  
**Fourteenth Amendment Equal Protection**

**State of Alabama**

Black voters brought an action under the *Voting Rights Act* challenging the system of electing Alabama appellate judges. The plaintiffs and defendants submitted a final judgment for approval, and the court approved and adopted the proposed judgment, holding that the settlement was fair and did not violate equal protection or the *Voting Rights Act*. The **final** judgment ordered the governor to appoint minority preferred candidates to a limited number of appellate judgeships.

**City of Ladue v. Gilleo**  
**114 S. Ct 2038 (1994)**  
**First Amendment Speech/Press**

**City of Ladue, Missouri**

Plaintiff resident sued the city for a permanent injunction to enjoin the city from enforcing the regulation preventing her from displaying a sign reading "For Peace in the Gulf" in the window of her home but allowing ten exemptions to the regulation. The city contended that it had an **inter-**

est in keeping the city free of visual clutter. The district court granted the plaintiffs motion for summary judgment against the city, holding that the ordinance violated the First Amendment protection of free speech. The Court of Appeals affirmed and modified. The Supreme Court affirmed the Court of Appeals, holding that the city's regulation violated the plaintiff's free speech rights.

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**42 U.S.C. 1983**

**Section 1983**

**Cooper v. McBeath**  
**11 F.3d 647 (5th Cir. 1994)**  
**Dormant Interstate Commerce**  
**State of Texas**

An action was brought challenging the constitutionality of provisions of the Texas alcoholic beverage code imposing residency requirements on permit holders. The District Court struck down the provisions, and defendants appealed. The Court of Appeals affirms, holding that: (1) amendments to the alcoholic beverage code did not render the case moot; (2) plaintiffs who had the option to purchase a majority interest in permit holder had standing; and (3) residency requirements violate the Commerce Clause.

**Cullen v. Fliegner**  
**18 F.3d 96 (2nd Cir. 1994)**  
**First Amendment Speech/Press**

**Tuxedo, New York, Union Free School District**

Teacher brought an action challenging the school district's method of enforcing the statutory prohibition of electioneering within 100 feet of a polling place during a school board election. The school district obligated the inspector of elections to place distance markers containing notice of the electioneering prohibition at a distance of 100 feet from the polling place. The District Court permanently enjoined disciplinary proceeding, and the school district appealed. The Court of Appeals

affirms, holding that: (1) the school district had not given notice required by statute; (2) Younger abstention was not required, (3) the teacher had not waived the right to have claims heard in federal district court; and (4) award of attorney's fees was proper.

**Day v. Holahan**  
**34 F.3d 1356 (8th Cir. 1994)**  
**First Amendment Speech/Press**

**State of Minnesota**

Political candidates, political funds, political contributors, and a nonprofit corporation brought constitutional challenges to Minnesota's campaign finance reform laws. The District Court struck some provisions and upheld others, and appeal was taken. This court affirms in part and reverses in part, holding that: (1) the statute providing an increase in a candidate's expenditure limit and public subsidies based on amounts of independent expenditures violated the first amendment rights of those making independent expenditures; (2) the statute denying exemption from prohibition against independent expenditures by corporations was unconstitutional as applied to the nonprofit corporation; and (3) the \$100 limit on contributions to and from political committees was so low as to infringe on citizens' first amendment rights.

**Harris v. Joint School District No. 241**  
**41 F.3d 447 (9th Cir. 1994)**  
**First Amendment Establishment**

**City of Grangeville, Idaho**

Students and parents of students brought suit challenging the constitutionality of prayer during a public high school graduation ceremony. The District Court held that the prayers did not violate the Establishment Clause and declined to rule on the state law issues. The Court of Appeals affirmed in part and reversed in part, holding that: (1) declining to decide whether school prayers violated the Idaho constitution was not an abuse of discretion; (2) school prayer violated the First Amendment establishment clause; and (3) prohibiting prayer did not violate speech or free exercise rights of students desiring prayer.

**Loschiavo v. City of Dearborn**  
**33 F.3d 646 (6th Cir. 1994)**  
**First Amendment Speech/Press**  
**Fourteenth Amendment Due Process**  
***City of Dearborn, Michigan***

Homeowners who installed a receive-only satellite dish antenna sued the city, claiming that a city zoning ordinance forbidding antennas exceeding size limitations violated their rights under the First and Fourteenth Amendments and that the ordinance was preempted by a Federal Communications Commission (FCC) regulation. The District Court granted summary judgment for the city on the claims that plaintiffs were denied constitutional rights, but held that the FCC regulation preempted the city ordinance and enjoined enforcement. The Court of Appeals reversed and **affirmed** the entry of the permanent injunction, holding that: (1) FCC regulation prohibiting enforcement of local zoning ordinances that unduly interfered with installation of individual satellite antennas created a private right of action under 42 U.S.C. 1983, and (2) permanent injunction precluding city enforcement of this zoning ordinance was proper.

**Louisiana Debating and Literary Association v. City of New Orleans**  
**42 F.3d 1463 (5th Cir. 1995)**  
**First Amendment Speech/Press**  
***City of New Orleans***

Private clubs sued the city, challenging the ordinance prohibiting discrimination in places of public accommodation as applied. The District Court declared the ordinance unconstitutional. The Court of Appeals affirmed, holding that: (1) the federal court was not required to abstain to allow the discrimination claim against the clubs to proceed as provided under the ordinance; (2) the clubs were social in nature, as opposed to having a business purpose, and were entitled to the fullest protection of the associational rights under the First Amendment; and (3) ordinance procedures governing administrative adjudication of claims, although they furthered compelling state interest in eradicating discrimination, were not the least intrusive means of accomplishing the objective because they impermissibly impinged on the privacy rights of members.

**Nichols v. Nix**  
**1994 WL 20653 (6th Cir. Jan. 28, 1994)**  
**First Amendment Speech/Press**  
***State of Iowa***

Prisoner brought an action against a prison **mailroom** clerk for violating his First Amendment rights by denying him access to three publications from the Church of Jesus Christ Christian. The District Court granted injunctive relief in favor of the prisoner, and the mail clerk appealed, arguing that there was no evidence of any conduct by him on which to establish liability. The Court of Appeals **affirmed** the grant of injunctive relief, holding that the evidence showed that the defendant had signed the rejection notice for the magazines and could therefore be held liable.

**Triplet-t Grille, Inc. v. City of Akron**  
**40 F.3d 129 (6th Cir. 1994)**  
**First Amendment Speech/Press**  
***City of Akron***

Operator of the club brought an action against the City of Akron, challenging the constitutionality of a public indecency ordinance. The District Court held that the ordinance was substantially overbroad and violated the First Amendment, and the city appealed. The Court of Appeals affirmed, holding that: (1) the indecency ordinance did not violate the First Amendment as applied to prohibit nude dancing at the club, despite the claim that the ordinance was not enacted to combat the secondary effects of adult entertainment, but (2) the ordinance, facially banning all nudity in public places, was unconstitutional under the First Amendment's overbreadth doctrine, as the city had failed to demonstrate a link between nudity in nonadult entertainment and secondary effects.

**Washegesic v. Bloomingdale Public Schools**  
**33 F.3d 679 (6th Cir. 1994)**  
**First Amendment Establishment**  
***City of Bloomingdale***

Student brought an action to compel the school district to remove a portrait of Jesus Christ from display in a hallway. The District Court

ordered the removal of the portrait, and the school district appealed. The Court of Appeals **affirmed**, holding that the (1) the student's graduation from school did not render the action moot, and (2) display of the portrait violated the Establishment Clause.

**Yniguez v. Arizonans for Official English**  
42 **F.3d** 1217 (9th Cir. 1994)  
**First Amendment Speech/Press**  
**Fourteenth Amendment Due Process**

**State of Arizona**

State employee filed an action against the state, governor, attorney general, state senator, and director of the Arizona Department of Administration seeking an injunction against state enforcement of the article of the Arizona Constitution entitled "English as the **Official** Language," and a declaration that the article violated the First and Fourteenth Amendments of the constitution, as well as the federal civil rights laws. The District Court found that the article was facially overbroad in violation of the First Amendment and granted declaratory relief. The sponsor of the article appealed the declaratory judgment, and the employee cross-appealed, requesting nominal damages. The Court of Appeals **affirmed** in part and reversed in part, holding that: (1) the article was unconstitutionally overbroad and (2) the employee was entitled to nominal damages.

**Alpine Christian Fellowship v. Pitkin County**  
870 **F. Supp.** 991 (**D.Colo.** 1994)  
**First Amendment Free Exercise**  
**Fourteenth Amendment Privileges and immunities**

**Pitkin County**

Church brought a civil rights action seeking declaratory and injunctive relief, challenging the county's denial of a special permit allowing the church to operate a religious school in the church building. This court held that the county's denial of a special permit that would allow the church to operate the religious school in a residential neighborhood not zoned for schools violated the church's First Amendment right to free exercise of

religion. The plaintiffs claim for the declaratory judgment was granted, as well as a permanent injunction restraining the county from enforcing the special use requirement of its land use code to preclude this school use of the church building.

**American Constitutional Law Foundation, inc. v. Meyer**  
870 **F. Supp.** 995 (**D.Colo.** 1994)  
**First Amendment Speech/Press**  
**Fourteenth Amendment Equal Protection**

**State of Colorado**

Public interest organization and Colorado residents brought an action for declaratory and injunctive relief from restrictions on circulation and submission of petitions to propose state laws and constitutional amendments. The court held that: (1) the provision compelling circulators to wear identification badges was an unconstitutional burden on political liberty; (2) requiring circulators to be registered voters eligible to vote on the measure which is the subject of the petition was valid, (3) requiring monthly reports on paid circulators was an invalid restriction on core political speech; (4) requiring petitions to be circulated within a six-month period was not an undue restriction; and (5) the state had compelling need for names and addresses of circulators in the **affidavit** attesting to the validity of signatures. The court entered a judgment declaring that the specified provisions of the Colorado Revised Statutes were invalid and permanently enjoining the Colorado Secretary of State from enforcing those provisions.

**Ayers-Schaffner v. DiStefano**  
860 **F. Supp.** 918 (**D.R.I.** 1994)  
**First Amendment Speech/Press**  
**Fourteenth Amendment Equal Protection**

**Rhode Island Board of Elections**

Registered voters who did not vote in the first primary election for school committee, but wished to vote in a new election after the first election was invalidated, brought suit against members of the board of elections. The judge held that limiting voters to those who voted in the first election violated the plaintiffs' rights. The court permanently enjoined the defendants from limiting the primary

election to those voters who voted in the June 7 primary election, and required the defendants to permit all duly registered voters to vote in the October primaries.

**Central Avenue Enterprises v. City of Las Cruces**  
**845 F. Supp. 1499 (N.D.M. 1994)**  
**First Amendment Speech/Press**  
**Fourteenth Amendment Due Process**  
*city of Las Cruces*

Action was brought challenging an ordinance requiring a special use permit to operate an adult bookstore or adult amusement establishment. On the plaintiffs motion for preliminary injunction, the court held that the ordinance, which described an adult bookstore or video store as providing materials relating to "specified sexual activities or specified anatomical areas" without defining these **terms**, was impermissibly vague and violated both first amendment and due process guarantees.

**Goluba v. School District of Ripon**  
**874 F. Supp. 242 (E.D.Wis. 1994)**  
**First Amendment Establishment**  
*State of Wisconsin*

Student sought and obtained an injunction prohibiting school authorities **from** including religious prayer in school commencement proceedings. After school **officials** failed to stop students from praying before the commencement proceedings, the student moved for a finding of civil contempt. The court held that school **officials'** failure to try to stop student prayer did not violate the injunction prohibiting **officials** from knowingly allowing student prayer.

**Hechinger v. Metropolitan Washington Airports Authority**  
**846 F. Supp. 902 (D.D.C. 1994)**  
**Article II**  
*District of Columbia*

Citizens group brought an action challenging constitutionality of the Metropolitan Washington Airports Authority's board of review. Parties **cross-** moved for summary judgment. The court held that

the board violated the doctrine of separation of powers and the Appointments Clause.

**Illinois Sporting Goods Association v. County of Cook**  
**846 F. Supp. 683 (N.D.Ill. 1994)**  
**Fourteenth Amendment Due Process**  
*county of Cook*

Gun shop operators filed a declaratory action to challenge a county ordinance prohibiting operation of gun shops within one-half mile of a park or school, and to request preliminary injunctive relief. The court granted the preliminary injunction

**Ingebretsen v. Jackson Public School District**  
**864 F. Supp. 1473 (S.D. Miss. 1994)**  
**First Amendment Establishment**  
*Jackson Public School District*  
*State of Mississippi*

Students and parents brought action against the school district, school **officials**, and state attorney general, challenging a state statute that permitted public school students to initiate nonsectarian prayer at school events as violative of the Establishment Clause. **This** court enjoined the enforcement of all parts of the **statute**, except the provision allowing nonsectarian voluntary prayer at high school commencement ceremonies.

**International Caucus v. City of Montgomery**  
**856 F. Supp. 1552 (M.D. Ala. 1994)**  
**First Amendment Speech/Press**  
*City of Montgomery*

A political organization challenged a ban on the placement of tables on public sidewalks for the distribution of literature. The court held that although there was a significant governmental interest in protecting **the** safety and convenience of the people using the sidewalk, the ban was **over-** broad because it suppressed a great quantity of speech that did not cause problems. The court declared the ban unconstitutional.

**Johnson v. County of Los Angeles  
Fire Department  
865 F. Supp. 1430 (C.D. Cal. 1994)  
First Amendment Speech/Press  
Fourteenth Amendment Due Process**

***County of Los Angeles***

Captain in the county fire department sued the department, claiming that the department's sexual harassment policy violated his right to free speech, and seeking a declaratory judgment that the policy was unconstitutional and a permanent injunction preventing enforcement of the policy. The court held that the policy was invalid as applied to the plaintiffs private reading of a pornographic magazine, and ordered the defendant to not ban such activity.

**Johnston-Loehner v. O'Brien  
859 F. Supp. 575 (M.D.Fla. 1994)  
First Amendment Speech/Press  
Fourteenth Amendment Due Process**

***State of Florida***

Suit was brought on behalf of an elementary school student, challenging the constitutionality of a school policy requiring prior approval by the superintendent before distribution of non-school materials. The court held that the restriction was an impermissible content-based prior restraint on speech in violation of the First and Fourteenth Amendments. The court enjoined the defendants from enforcing that portion of the school policy requiring that students obtain the review and approval of school officials before distributing written material, and held that the student was entitled to attorney's fees.

**Lee v. State of Oregon  
869 F. Supp. 1491 (D.Or. 1994)  
Fourteenth Amendment Equal Protection  
Fourteenth Amendment Due Process**

***State of Oregon***

Physicians, terminally ill patients, and residential care facilities sued the state, challenging the constitutionality of Measure 16, passed by Oregon voters, which authorizes physician-assisted suicide for the terminally ill. Plaintiffs moved for prelimi-

nary injunction. This court held that: (1) the plaintiff had standing; (2) serious questions were presented as to whether Measure 16 violated the plaintiffs freedom of association, freedom of religion, due process, and equal protection rights; and (3) balance of hardships favored the plaintiffs. This court granted a preliminary injunction enjoining defendant Attorney General and District Attorney from recognizing the exception from the homicide laws created by Measure 16. The court also (1) permanently enjoined members of the state board of medical examiners from recognizing the exception from the standard of professional conduct created by Measure 16; (2) permanently enjoined defendant Oregon Health Sciences University Hospital from allowing assisted suicides; and (3) preliminarily enjoined defendants from bringing any suit based on Measure 16 against any plaintiff for refusing to assist or advise a patient on the basis of a religious objection.

**Limit v. Maleng  
847 F. Supp. 1138 (W.D.Wash. 1994)  
First Amendment Speech/Press**

***King county***

Political action group and its president brought an action challenging the constitutionality of the Washington statute criminalizing payment of signature gatherers on a per signature basis for initiative and referendum petitions. The group and president moved for summary judgment. The court held that the statute was an unconstitutional infringement on freedom of political speech.

**McCormack v. Township of Clinton  
872 F. Supp. 1320 (D.N.J. 1994)  
First Amendment Speech/Press**

***Township of Clinton***

Plaintiff challenged a township ordinance that restricted the time range for placement of political signs. On motion for preliminary injunctive relief, the court held that: (1) the plaintiff established the likelihood of success on merit of the claim that the ordinance violated the First Amendment, as the ordinance was not content neutral and was not narrowly tailored to further the township's goals; (2) the plaintiff established irreparable harm; (3) the



balance of equities and public interest weighed in the plaintiff's favor; and (4) the waiver of security bond for the plaintiff for a preliminary injunction was appropriate. This court ordered the defendant preliminarily restrained **from** prohibiting the posting of political signs 10 days before an election.

**National Collegiate Athletic Association v. Roberts**

**1994 WL 750585 (N.D. Fla. Nov. 8, 1994)**

**Commerce Clause**

**First Amendment Speech/Press**

**State of Florida**

Plaintiffs brought this action challenging a state statute that provides that a collegiate athletic association may not impose a penalty on any institution of higher education operating in the state unless the association first provides the procedural due process protections required by the statute. The plaintiff alleges the statute violates the Commerce Clause, the Contract Clause, and the First Amendment. This court grants the plaintiffs' motion for a permanent injunction, holding that the statute violates the commerce clause and the contract clause in that universities choosing to participate in NCAA sports would be treated differently from state to state.

**National Association of Social Workers v. Harwood**

**860 F. Supp. 943 (D.R.I. 1994)**

**First Amendment Speech/Press**

**Rhode Island House of Representatives**

Organizations brought action questioning the constitutionality of the rule of the Rhode Island House of Representatives as interpreted and enforced so as to allow governmental lobbyists onto the floor of the House while the House was in session while denying lobbyists for private organizations the same access. The court held that enforcement of the rule was an improper regulation of time, place, and manner of expressive activity in that private lobbyists lacked ample alternative channels for communication, but that the remedy was more properly for the House of Representatives than the court.

**O'Keefe v. Murphy**

**860 F. Supp. 748 (E.D. Wash. 1994)**

**First Amendment Speech/Press**

**Fourth Amendment Search/Seizure**

**Washington State Penitentiary**

An inmate filed suit arguing that mail sent to grievance authorities was treated as regular mail instead of legal mail, which was protected. The court held that the mail was protected. The court later addressed whether a mail room sign left up after judgment was violative of the injunction enjoining the defendants **from** reading prisoners' grievances to government agencies except in the presence of those prisoners. It found the sign to be a violation, and granted sanctions. The court ordered the defendants either to remove mail room signs containing the text of the policy concerning legal mail, or to amend mail room signs by stating that grievance mail will be treated as legal mail. The declaratory and permanent injunctions granted in the order apply also to incoming responses to inmate grievance mail **from** government agencies.

**One World One Family Now, Inc. v. State of Nevada**

**860 F. Supp. 1457 (D. Nev. 1994)**

**First Amendment Speech/Press**

**State of Nevada**

**Nevada Department of Transportation**

Charitable nonprofit organization brought a claim seeking a preliminary injunction to prevent the Nevada Department of Transportation from enforcing a state licensing scheme with respect to organizations' placement of portable tables, chairs, umbrellas, boxes, and signs on public sidewalks in front of hotels and casinos located on "the Strip" in order to sell their message-bearing T-shirts. The court held that the organizations succeeded in demonstrating that there was a strong likelihood of success with regard to portable tables (and thus merited a preliminary injunction) but did not do so with regard to the chairs, umbrellas, and boxes. The court enjoined the defendants from enforcing the state statute against the plaintiffs by requiring the plaintiffs to obtain licenses for portable tables and signs, and from fining plaintiffs.

**Planned Parenthood, Sioux Falls Clinic v. Miller**

**880 F. Supp. 1409 (D.S.D. 1994)**

**Fourteenth Amendment Due Process**

**State of South Dakota**

Action was brought challenging South Dakota statutes regulating abortions. The court held that: (1) the parental notification provision that did not include a bypass other than for abused and neglected minors was unconstitutional; (2) the requirement that parents be given **48-hour** notice of minor's intent to have an abortion was valid; (3) the civil penalty statute providing for liability damages against persons who performed or attempted to perform abortions without complying with statutory requirements was unconstitutional; (4) the criminal penalty statute that included no **state-of-mind** requirement was unconstitutional; and (5) the informed consent statute's failure to provide an exception for rape victims or women on whom certain information would have adverse effect did not render the statute unconstitutional.

**Pogany v. Yedeiros**

**847 F. Supp. 10 (D.R.I. 1994)**

**Fourteenth Amendment Equal Protection**

**City of Pawtucket**

**State of Rhode Island**

Public employee brought an action seeking a declaration that the state election statute was unconstitutional. The court held that the statute prohibiting public employees **from** serving as election **officials**, but exempting public school teachers and residents of particular towns, violated equal protection.

**Pyle by and through Pyle v. So. Hadley School Committee**

**861 F. Supp. 157 (D. Mass. 1994)**

**First Amendment Speech/Press**

**South Hadley School Committee**

Defendant school prohibited plaintiff students from wearing certain T-shirts as violating the school's dress code. The students brought an action claiming that the dress code, which prohibited "vulgar" dress and dress which "harasses," was unconstitutional. The court held that the regulation

of "vulgar" speech was constitutional, but the prohibition of speech which "**harasses**" violated the First Amendment.

**Ruff v. City of Leavenworth, Kansas**

**858 F. Supp. 1646 (D.Kan. 1994)**

**First Amendment Speech/Press**

**Fourteenth Amendment Due Process**

**City of Leavenworth**

Members of the police department brought an action against the city and police chief alleging that personnel policies, which prohibited employees **from** engaging in political activity or activities with respect to city elections, violated the First Amendment. This court entered judgment for the plaintiffs on grounds that the policies were **unconstitutionally** overbroad and vague, and enjoined the city from enforcing those policies. The court ordered the city to rescind the discipline imposed on the **officers** and held that the plaintiffs may recover attorney's fees and costs.

**Simmons v. Hooks**

**843 F. Supp. 1296 (E.D. Ark. 1994)**

**Fourteenth Amendment Equal Protection**

**Board of Education of the Augusta School District No. 10**

Simmons, a black parent of three children, brought suit against the school district and its officials, alleging race discrimination. The court held that the district's use of ability grouping and placement for special education was unconstitutional. (It held that intraclass grouping was not segregative and that special education and **gifted** programs did not violate children's rights.) The court granted nominal damages (\$3) to Simmons. The court ordered defendants to stop the ability grouping by class for the 1994-95 school year.

**United Food and Commercial Workers v. City of Valdosta**

**861 F. Supp. 1570 (M.D. Ga. 1994)**

**First Amendment Speech/Press**

**City of Valdosta**

Local unions that had attempted to picket brought a declaratory action against the city and the

chief of police challenging the constitutionality of a city code limiting public demonstrations. The court held that restrictions on time, place, and manner were overbroad and unconstitutional. Additionally, provisions prohibiting picketing and distributing handbills in streets, alleys, roads, highways, drive-ways, or other public traffic places were unconstitutional, as was a ban on parades in all residential zones and the prohibition on judicial review of the permit process. However, the city's parade permit fee scheme did not violate the First Amendment, nor did a restriction on dangerous instruments.

**Warms v. Springfield Township**  
**1994 WL 613660 (E.D. Pa. Nov. 1, 1994)**  
**First Amendment Speech/Press**  
***Springfield Township***

Plaintiffs brought this action challenging a city ordinance that prohibited political opinion signs except for the 15 days preceding an election. The plaintiffs sought a preliminary injunction. This court grants the injunction, holding that: (1) plaintiffs are entitled to a preliminary injunction because they have demonstrated a likelihood of success on the merits and likelihood of irreparable harm; (2) the ordinance is a content-based regulation on speech because it distinguishes between permissible and impermissible signs based on substance; and (3) content-based regulations must be narrowly tailored to fit a compelling governmental interest, and aesthetics and **traffic** safety are not compelling interests.

**Warner v. Orange County Department of Probation**  
**870 F. Supp. 69 (S.D.N.Y. 1994)**  
**First Amendment Establishment**  
***Orange County***

Motorist who had been convicted of an alcohol-related driving offense brought an action against the county department of probation challenging the constitutionality of a probation condition requiring the motorist to attend Alcoholics Anonymous meetings. The court held that the department violated the Establishment Clause by requiring Alcoholics Anonymous meeting attendance, and granted the motorist nominal damages.

**Campos v. Coughlin**  
**854 F. Supp. 194 (S.D.N.Y. 1994)**  
**First Amendment Free Exercise**  
***New York State Department of Correctional Services***

Plaintiff Campos, an inmate at Sing Sing Correctional Facility, practiced a religion known as Santeria, which required the wearing of Orisha beads. Campos was permitted to possess and wear the beads until 1993, when the Department of Correctional Services prohibited the wearing of the beads. Campos sued under the First Amendment and *the Religious Freedom Restoration Act*, seeking injunctive and monetary relief for constitutional and statutory violations. The court held that there was enough evidence to conclude there was irreparable harm to Campos in not allowing him to **wear** the beads, and granted a preliminary injunction.

**Lawson v. Dugger**  
**844 F. Supp. 1538 (S.D. Fla. 1994)**  
**Fourteenth Amendment Due Process**  
**First Amendment Speech/Press**  
***State of Florida***

Inmates brought a class action challenging the refusal of prison officials to permit inmates of the Hebrew Israelite faith to receive religious literature of that faith as violating their First Amendment, equal protection, due process rights and RFRA. This court, on remand, held that RFRA and the First Amendment were violated, and enjoined the defendants from taking further action in violation of the plaintiffs' rights to freely exercise their religion during incarceration.

**Rodriguez v. Coughlin**  
**No. 94 CIV. 2290, 1994 WL 174298 (S.D.N.Y. May 4, 1994)**

***NY State Department of Corrections***  
***Greenhaven Correctional Facility***

Inmate plaintiffs alleged that the defendants violated their rights by not allowing them to display their religious beads when worn. Plaintiffs moved for preliminary injunction to enjoin defendants from preventing plaintiffs **from** displaying

the beads. The court granted the preliminary injunction, holding that the defendants did not prove that not allowing beads was the best way to prevent gang activity or other violence.

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**42 U.S.C. 2000bb**

***Religious Freedom Restoration Act***

**Western Presbyterian Church v. Board of Zoning Adjustment**

**849 F. Supp. 77 (D.D.C. 1994)**

**First Amendment Free Exercise**

**Fifth Amendment Due Process**

***Board of Zoning Adjustment of the District of Columbia***

Church brought suit to enjoin the board from requiring the church to obtain a zoning variance to operate a homeless feeding program. The plaintiff moved for a preliminary injunction. The court held that the plaintiff showed high likelihood of success on the merits, and granted the injunction.

**Western Presbyterian Church v. Board of Zoning Adjustment of the District of Columbia**

**882 F. Supp. 538 (D.D.C. 1994)**

**First Amendment Speech/Press**

***District of Columbia***

Church brought an action against the board seeking to enjoin enforcement of zoning regulations prohibiting the church from feeding homeless persons on its premises. The court held that the defendant's actions substantially burden their right to free exercise of religion in violation of the First Amendment and RFRA. The court permanently enjoined the defendants from preventing the church from feeding the homeless on their premises.

**Hopwood v. State of Texas**

**861 F. Supp. 551 (W.D. Tex. 1994)**

**Fourteenth Amendment Equal Protection**

***University of Texas Board of Regents***

Four white applicants to the University of Texas Law School filed suit, alleging that the **affir-**

mative action admissions program discriminated against white applicants. The court held that the program was not **sufficiently** narrowly tailored to achieve the governmental interest of remedying past discrimination, and therefore violated the Fourteenth Amendment. The court also found, however, that sufficient reason existed to deny the plaintiffs admission to the Law School even in the absence of the **affirmative** action program; therefore, the only remedy available to the plaintiff was nominal damages and the permission to reapply for admission.

**Bessard v. California Community Colleges**  
**867 F. Supp. 1454 (E.D. Cal. 1994)**

***State of California***

Jehovah's Witness plaintiffs brought an action under **RFRA** against the community college district and the state challenging the loyalty oath that was required as a condition precedent to consideration for employment at the college. This court held that the loyalty oath violated RFRA, and entered an injunction prohibiting its use.

**Legault v. Arusso**

**842 F. Supp. 1479 (D.N.H. 1994)**

***City of Johnston***

***Johnston Fire Department***

Legault, a rejected female applicant for a position as a Johnston fire fighter, brought suit against the city and the fire department, challenging the physical ability tests used to select recruits. Legault moved for a preliminary injunction. The court held that: (1) Legault showed likelihood of success on the merits of a claim of disparate impact and (2) loss of experience if not hired immediately was irreparable harm that supported the preliminary injunction. The court ordered defendants to hire the plaintiff immediately, pending a determination on the merits, and enjoined further use of the defendant's agility and obstacle course tests and eligibility lists.

**42 U.S.C. 3601 etseq.**

***Fair Housing Act***

**City of Edmonds v. Washington State  
Building Code Council  
18 F.3d 802 (9th Cir. 1994)**

***City of Edmonds  
Washington State***

City filed a declaratory judgment action, seeking a ruling that the single-family residential zoning provision limiting the maximum number of unrelated occupants of a single-family residence did not violate the *Fair Housing Act* (FHA) prohibition against handicap discrimination. The federal government filed an action alleging that the city's failure to make reasonable accommodation for a group home of more than five unrelated recovering alcoholics and drug addicts violated the Act. After consolidation of the actions, the District Court granted summary judgment for the city, ruling that the zoning provision was exempted from requirements of the Act because it was a restriction regarding the maximum number of occupants permitted to occupy a dwelling. The group home and the government appealed. The Court of Appeals reversed, holding that a maximum occupancy exemption of FHA exempts only occupancy restrictions that apply to all occupants, whether related or not, and thus that the ordinance was not exempted from prohibition against handicap discrimination.

**Oxford House-C v. City of St. Louis  
843 F. Supp. 1556 (E.D. Mo. 1994)**

***City of St. Louis***

Home for recovering alcoholics and drug addicts brought suit against the City of St. Louis, seeking an injunction and declaratory judgment to prevent the city from enforcing zoning ordinances that would prevent the plaintiff from operating homes. The court held that: (1) the city's ordinance allowing at most eight unrelated handicapped persons within a single-family dwelling violated the *Fair Housing Act* and the *Rehabilitation Act*; (2) Oxford House was not entitled to a broad injunction as to all zoning ordinances; and (3) Oxford House did not have a private right of action under

*the Housing and Community Development Act*. The court entered judgment for the plaintiff and permanently enjoined the defendant from enforcing its zoning ordinance to prevent the plaintiff from operating with 10 or 12 unrelated handicapped residents at its current location.

**Michigan Protection and Advocacy Service  
v. Miller  
849 F. Supp. 1202 (W.D. Mich. 1994)**

***Department of Social Services***

Corporation that provides advocacy for developmentally disabled persons brought suit against the Michigan Department of Social Services, seeking a declaration that its director violated federal law. The corporation moved for summary judgment. The court held that: (1) the corporation had a right to sue under the *Developmental Disabilities Assistance and Bill of Rights Act* and the *Protection and Advocacy for Mentally Ill Individuals Act*; (2) the acts gave the corporation authority to access state facilities and review records; and (3) the corporation's right to access state facilities was not reduced by the fact that state courts oversaw state facilities. This court granted the plaintiffs motion for summary judgment and referred the case to a special master for determination of the appropriate level of access to which the plaintiff is entitled.

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**47 U.S.C. 521**

***Cable Television Consumer Protection  
And Competition Act of 1992***

**Cablevision Systems Corporation v. Town  
of East Hampton  
862 F. Supp. 875 (E.D.N.Y. 1994)**

***Town of East Hampton***

Cable television company brought an action for declaratory relief against the town and injunctive relief against the town and town board, challenging the town's revocation of the plaintiff's cable television franchise and the town's denial of the plaintiff's request for modification of the franchise agreement to bring it into compliance with federal law. This court granted the plaintiffs sum-

mary judgment motion, holding that the *Cable TV Consumer Protection and Competition Act* preempted the requirement in the franchise agreement that the entry level tier of cable services requires more than a minimum number of stations required by the Act. The court granted declaratory relief to the plaintiffs and enjoined the defendants from taking further steps to implement their decision to revoke the **franchise**.

**Chlorine Institute v. California Highway Patrol**

**29 F.3d 495 (9th Cir. 1994)**

***State of California***

Plaintiffs, manufacturers and shippers of chlorine and oleum, brought suit against the California Highway Patrol (CHP), seeking a declaratory judgment and injunctive relief against CHP regulations requiring that shipments of certain hazardous materials on California highways **be accompanied** by escort vehicles and prescribing requirements **regarding** those vehicles. The District Court granted summary judgment for the plaintiffs. The Court of Appeals **affirmed** on the grounds that CHP regulations were preempted by the *Hazardous Materials Transportation Uniform Safety Act*.

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**49 U.S.C. 11503**

***Railroad Revitalization and Regulatory Reform Act***

**ACF Industries, Inc. v. California State Board of Equalization**  
**42 F.3d 1288 (9th Cir. 1994)**

***State of California***

Independent car lines brought an action pursuant to *the Railroad Revitalization and Regulatory Reform Act*, challenging California's collection of **ad valorem** property taxes for specialty railroad cars that independent car lines leased to shippers. The District Court granted preliminary injunctive relief, and thereafter denied motions to dismiss, for summary judgment, and to **modify** the preliminary injunction. This court **affirms** in part and reverses in part, holding that the provision of *the Railroad Revitalization and Regulatory Reform Act* prohibiting states from assessing "rail transportation property" at a higher assessment ratio than other commercial industrial property applied to the specialty railroad cars at issue.



## *The Section 304 Database: Federal Law Cases to which State, Local, or Tribal Governments are Parties*

**T**he first- and second-tier groups together contain fewer than 200 federal court opinions; the database on which this report is based contains information on more than 3,500 opinions. A far broader set of criteria is used for determining whether an opinion should be included in the Section 304 Database. Although the **first-** and second-tier groups may be at the core of Section 304, many opinions that do not fall within those groups are relevant to Section 304 issues. **The** larger database is a powerful research tool for discovering other groups of cases that bear on particular mandates issues and provides flexibility for this and future reports. The criteria for inclusion in the Section 304 Database are:

- (1) ***Include cases at all levels of the federal courts.*** Strictly speaking, usually only federal District Courts “require” governments to do anything; federal Courts of Appeals and the Supreme Court only **affirm** or reverse the judgments of lower courts. The Section 304 Database, however, includes opinions at all federal court levels.
- (2) ***Include cases concerning alleged violations of the U.S. Constitution as well as federal statutes and regulations.*** Section 304 refers specifically to compliance “with Federal statutes or regulations.” Read narrowly, this would exclude cases in which a plaintiff claims that a state, local, or tribal government has violated the U.S. Constitution. Such an interpretation would exclude the vast majority of cases filed under the habeas corpus statute (28 U.S.C. 2254) and the Civil Rights Acts, particularly 42 U.S.C. 1983. In fact, constitutional litigation under these two statutes accounts for the majority of federal court opinions concerning state, local, and tribal governments. This type of litigation is included because it is extremely important to these governments and because federal statutes provide the procedural context in which constitutional issues are litigated.
- (3) ***Include both cases won and lost.*** Read narrowly, Section 304 suggests that the report should contain only federal mandate cases that state, local, or tribal governments have lost-cases that “required” governments to do something that they would not otherwise have

done. However, for purposes of building a database on mandates issues and for determining how frequently particular statutes are litigated, the Section 304 Database includes cases in which state, local, or tribal governments prevailed.

- (4) *Include cases to which officials of state, local, or tribal governments, in their official capacities, are parties.* Read narrowly, Section 304 requires a report about only cases to which state, local, or tribal governments were named parties. Many cases, however, are brought against officials of those governments, (This is due in part to the Eleventh Amendment to the U.S. Constitution, which prohibits individuals from suing state governments directly in federal courts.) Because these cases are, for most practical purposes, the same as cases that name the governments, the Section 304 Database includes them.
- (5) *Include cases involving damage awards as well as cases requesting injunctive and declaratory relief.* Section 304 orders a report about cases that require governments “to undertake responsibilities and activities.” On a narrow reading, this encompasses only cases in which a government is enjoined to take some future action. For database and liti-

gation frequency purposes, however, it makes sense also to include cases in which damages may be awarded because a government has failed to satisfy some duty imposed by a federal statute or regulation.

- (6) *Include significant interim judicial actions taken in federal mandate cases, as well as final orders and dispositions.* Many federal mandate cases will not begin and end in the same calendar year. Some will remain pending for years, during which time the trial court may issue rulings on subsidiary issues—for example, whether certain discovery is permissible or whether there are disputed facts that would necessitate a trial. In some instances, the trial court’s rulings on these issues may be appealed. For database and litigation frequency purposes, it makes sense to include not only final determinations on the merits of a plaintiff’s claim but also these interim, subsidiary rulings.

The list below contains those statutes in the Section 304 Database that were the subject of litigation in five or more cases. A detailed Frequency Litigation Table is included as Appendix 1. A sample data entry form for the Section 304 Database is included as Appendix 2.

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**Litigation Frequency at a Glance**  
(Five or More Cases\*)

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Section 1983 (Civil Rights)	2,095	Indian Gaming Regulatory Act	12
Habeas Corpus	<b>737</b>	Aid to Families with Dependent Children	11
Title VII (Civil Rights)	185	Title IX, Education Amendments of 1972	8
Individuals with Disabilities Education Act	61	Sherman Act	8
Fair Labor Standards Act	59	Racketeer Influenced and Corrupt Organizations Act	<b>7</b>
Voting Rights Act	56	Housing Act of 1937	<b>7</b>
Americans with Disabilities Act	55	Bankruptcy Code	<b>6</b>
Age Discrimination in Employment Act	47	<b>Wire</b> and Electronic Communications Interception	<b>6</b>
Rehabilitation Act	46	Family Educational Rights and <b>Privacy</b> Act	<b>6</b>
Title XIX, Social Security Act (Medicaid)	39	Social Security Act	<b>6</b>
Employee Retirement Income Security Act	19	Gun Control Act	<b>5</b>
Religious Freedom Restoration Act	17	Resource Conservation and Recovery Act	<b>5</b>
Civil Rights Act of 187 1	15	Labor-Management Relations Act	<b>5</b>
Fair Housing Act	14	Comprehensive Environmental Response	
Clean Water Act	13	Compensation and Liability Act	<b>5</b>
National Labor Relations Act	12		

\* Some case rulings are based on more than one law.



# 4

## *Recommendations for Future Reports*

The recommendations for future reports fall into two groups—modifications to the database file, and other methods of gathering and presenting information on rulings.

### **DATABASE MODIFICATIONS**

The computer database proved to be of tremendous help in preparing this report; without it, the task of coordinating and organizing the information gathered by nine researchers could not have been accomplished in such a short time. A number of modifications to the database file, however, will increase its flexibility as a research tool and the quality of the information it contains.

When the research assistants began entering information into the database, they had no list of standardized names and citations of federal statutes; such a list could be developed only as statutes were discovered. Precision and efficiency will be greatly increased by incorporating into the data entry form a list of standard citations for the most common 100 or so statutes. Technical **modifications** to the fields containing these citations should also increase the usefulness of the database, particularly with regard to compiling information about rulings that concern more than one federal statute. Finally, the quality of the information in the database will be enhanced by providing a more complete set of instructions, based on the experience of developing the first sample of 3,500 entries.

### **OTHER METHODS**

Future reports may also benefit from other methods of gathering information about federal court cases. Each federal trial and appellate court maintains a computerized docketing system, called the Integrated Case Management System (ICMS). There are 107 of these courts, each with a separate system, as well as a different system for the Supreme Court, and they are not linked together. Some of the information in the systems, however, is maintained in a standard form and is used by the Administrative Office of the United States Courts in compiling statistics about the federal court system as a whole. It may be possible to gather information from these systems that would be useful for future Section 304 reports. This will likely require

modifications to the systems themselves, which would need to be made before the beginning of the calendar year covered by the report. This means that the Calendar Year 1996 report is the first that could benefit from this information.

It may also be useful to form a group of experts in different fields of federal law to evaluate rulings and their significance for state, local, and **tribal** governments. Federal law covers an extraordinary range of topics that may affect these governments, including labor and employment discrimination, education, civil rights, voting rights, the environment, social security, criminal law, food and drugs, Indian law, bankruptcy, banking, com-

munications, transportation, and maritime law. No single person can be an expert in all these fields, but it may take an expert to understand the significance of a ruling that appears trivial to the ordinary observer.

Given the time constraints on this report, it was not possible to send groups of opinions out to experts and gather their comments; inevitably, therefore, the selection of opinions to be abstracted in this first report depended chiefly on formal characteristics-whether they obviously concerned injunctions and declarations-rather than on substantive evaluation. Future reports may be able to focus more on substantive importance.

# *Appendices*



# Appendix 1

## Litigation Frequency Table

This table lists the number of opinions in the Section 304 Database that address each federal statute that is represented in that Database. Its purpose is to provide a rough measure of the amount of litigation that each statute generates in the federal courts. Because not every federal court action generates a published opinion, this is not a table of the number of actions filed, but it does provide a measure of those cases that were significant enough to generate rulings accompanied by opinions. Approximately 100 of the 3,500 federal court opinions in the Section 304 Database do not refer to a particular federal statute; most of these involve federal constitutional issues, and were probably brought under one of the civil rights statutes, such as 42 U.S.C. 1983.

Statute by United States Code Citation and Popular Name		Number of Opinions
<b>Title 2</b>		
2 U.S.C. 453	Federal Election Campaign Act of 1971	1
<b>Title 4</b>		
4 U.S.C. 106	Buck Act	1
<b>Title 5</b>		
5 U.S.C. 1101	Civil Service Reform Act	2
5 U.S.C. 1501	Hatch Act	1
5 U.S.C. 5305	Federal Law Enforcement Pay Reform Act	1
<b>Title 7</b>		
7 U.S.C. 1921	Agricultural Act of 1961	1
7 U.S.C. 2014	Food Stamp Act	2
<b>Title 8</b>		
8 U.S.C. 1342	Immigration Reform and Control Act	1
<b>Title 11</b>		
11 U.S.C. 1 et seq.	Bankruptcy Code	6
<b>Title 12</b>		
12 U.S.C. 92	National Bank Act	4

Statute by United States Code Citation and Popular Name		Number of Opinions
12 U.S.C. 1461 et seq.	Home Owners' Loan Act	1
12 U.S.C. 1821 et seq.	Federal Deposit Insurance Act	4
12 U.S.C. 1823	Garn-St. Germain Depository	1
<b>Title 13</b>		
13 U.S.C. 131	Census Act	1
<b>Title 14</b>		
14 C.F.R. 77	FAA Regulations	1
<b>Title 15</b>		
15 U.S.C. 1 et seq.	Sherman Act	8
15 U.S.C. 12 et seq.	Clayton Act	1
15 U.S.C. 1331 et seq.	Federal Cigarette Labeling and Advertising Act	2
15 U.S.C. 1381 et seq.	National <b>Traffic</b> and Motor Vehicle Safety Act of 1966	2
15 U.S.C. 1692	Fair Debt Collection Practices Act	1
15 U.S.C. 2801 et seq.	Petroleum Marketing Practices Act	2
15 U.S.C. 3901 et seq.	Product Liability Risk Retention Act of 198 1	4
<b>Title 16</b>		
16 U.S.C. 5 15	Weeks Law	1
16 U.S.C. 791a et seq.	Electric Consumers Protection Act	3
16 U.S.C. 836	Niagara Redevelopment Act	1
16 U.S.C. 1456	Coastal Zone Management Act of 1972	1
16 U.S.C. 1531 et seq.	Endangered Species Act	3
16 U.S.C. 1604	National Forest Management Act of 1976	1
16 U.S.C. 2621	Public Utility Regulatory Policies Act	1
16 U.S.C. 3117	Alaska National Interest Lands Conservation Act	1
<b>Title 16</b>		
18 U.S.C. 921 et seq.	Gun Control Act	5
18 U.S.C. 922(s)	Brady Act	1
18 U.S.C. 1151 et seq.	Indian Crimes	2
18 U.S.C. 1301	Lotteries	1
18 U.S.C. 1341	Mail Fraud	1
18 U.S.C. 1951	Hobbs Act	2
18 U.S.C. 1961 et seq.	Racketeer Influenced and Corrupt Organizations Act	7
18 U.S.C. 25 10 et seq.	Wire and Electronic Communications Interception	6
18 U.S.C. 3181 et seq.	Extradition	1
18 U.S.C. 3500	Jencks Act	1
18 U.S.C. 3626(c)	Violent Crime Control and Law Enforcement Act	1

Statute by United States Code Citation and Popular Name		Number of Opinions
<b>Title 20</b>		
20 U.S.C. 107	Randolph-Sheppard Vending Stand Act	3
20 U.S.C. 1071	Higher Education Act of 1965	1
20 U.S.C. 1232	Family Educational Rights and Privacy Act	6
20 U.S.C. 1400 et seq.	Individuals with Disabilities Education Act	61
20 U.S.C. 1681	Title IX, Education Amendments of 1972	8
<b>Title 21</b>		
21 U.S.C. 360	Federal Food, Drug, and Cosmetic Act	1
21 U.S.C. 451 et seq.	Poultry Products Inspection Act	2
21 U.S.C. 848	Comprehensive Drug Abuse Prevention and Control Act	1
<b>Title 25</b>		
25 U.S.C. 70	Indian Claims Commission Act	2
25 U.S.C. 177	Indian Nonintercourse Act	1
25 U.S.C. 233	NY State Indian Jurisdiction	1
25 U.S.C. 261	Indian Trader Statutes	1
25 U.S.C. 33 1	Indian General Allotment Act	4
25 U.S.C. 677	Ute Partition Act	1
25 U.S.C. 1300g	Ysleta <del>del</del> Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act	1
25 U.S.C. 1301 et seq.	Indian Civil Rights Act	3
25 U.S.C. 1901	Indian Child Welfare Act	1
25 U.S.C. 2206	Indian Land Consolidation Act	1
25 U.S.C. 2701 et seq.	Indian Gaming Regulatory Act	14
<b>Title 28</b>		
28 U.S.C. 1331	Subject Matter Jurisdiction of USDC	1
28 U.S.C. 1341	Tax Injunction Act	1
28 U.S.C. 1446	Removal Jurisdiction	1
28 U.S.C. 1661	Writ of Mandamus	1
28 U.S.C. 1915	In Forma <b>Pauperis</b>	1
28 U.S.C. 1961	Interest on Money Judgments	3
28 U.S.C. 2201	Declaratory Judgment Act	1
28 U.S.C. 2254	Habeas Corpus	737
28 U.S.C. 2409	Quiet Title Act	1
28 U.S.C. 24 12	Equal Access to Justice Act	1
<b>Title 29</b>		
29 U.S.C. 151 et seq.	National Labor Relations Act	12
29 U.S.C. 185	Labor-Management Relations Act	5

Statute by United States Code Citation and Popular Name		Number of Opinions
29 U.S.C. 201 et seq.	Fair Labor Standards Act	59
29 U.S.C. 206(d)	Equal Pay Act	2
29 U.S.C. 621 et seq.	Age Discrimination in Employment Act	47
29 U.S.C. 65 1	Occupational Safety and Health Act	1
29 U.S.C. 701 et seq.	Rehabilitation Act	46
29 U.S.C. 1001 et seq.	Employee Retirement Income Security Act	19
29 U.S.C. 10901		1
<b>Title 31</b>		
31 U.S.C. 3729	False Claims Act	2
<b>Title 33</b>		
33 U.S.C. 901 et seq.	Longshore and Harbor Workers' Compensation Act	1
33 USC. 1251 et seq.	Clean Water Act	13
33 U.S.C. 1401 et seq.	Marine Protection Act	2
<b>Title 38</b>		
38 U.S.C. 2021 et seq.	Veterans' Reemployment Rights Act	4
38 U.S.C. 4212	Vietnam Era Veterans Readjustment Assistance Act	2
38 U.S.C. 4301 et seq.	Veterans' Reemployment Rights Act	2
<b>Title 42</b>		
42 U.S.C. (no section number)	Housing and Development Act	1
42 U.S.C. 300f	Public Health Service Act	1
42 U.S.C. 405	Social Security Act	4
42 U.S.C. 503	Unemployment Compensation	4
42 U.S.C. 601 et seq.	Aid to Families with Dependent Children	11
42 U.S.C. 722(e)(3)	Stewart B. McKinney Homeless Assistance Act	2
42 U.S.C. 1395	Medicare	4
42 U.S.C. 1395dd	Federal Patient Anti-Dumping Act	3
42 U.S.C. 1396	Title XIX, Social Security Act	39
42 U.S.C. 1404	Housing and Community Development Act	1
42 U.S.C. 1437	Housing Act of 1937	7
42 U.S.C. 1902	Social Security Act	2
42 U.S.C. 1973	Voting Rights Act	56
42 U.S.C. 1981	Civil Rights Act of 1871	15
42 U.S.C. 1983	Section 1983	2095
42 U.S.C. 1985	Section 1985	5
42 U.S.C. 1986	Civil Rights Act	1
42 U.S.C. 1988	Civil Rights Act-Attorney's Fees	41
42 U.S.C. 1997	Civil Rights of Institutionalized Persons Act	1
42 U.S.C. 2000bb	Religious Freedom Restoration Act	17



Statute by United States Code Citation and Popular Name		Number of Opinions
42 U.S.C. 2000d	Title VI	4
42 U.S.C. 2000e	Title VII	185
42 U.S.C. 2239	Atomic Energy Act	2
42 U.S.C. 3001 et seq.	Older Americans Act	3
42 U.S.C. 3601 et seq.	Fair Housing Act	14
42 U.S.C. 4321 et seq.	National Environmental Policy Act	8
42 U.S.C. 6042	Mental Retardation Facilities and Community Mental Health Centers Construction Act	2
42 U.S.C. 6961	Resource Conservation and Recovery Act	5
42 U.S.C. 7401 et seq.	Clean Air Act	3
42 U.S.C. 9601 et seq.	Comprehensive Environmental Response Compensation and Liability Act	6
42 U.S.C. 9839	Community Economic Development Act	1
42 U.S.C. 12101 et seq.	Americans with Disabilities Act	55

### Title 43

43 U.S.C. 1061	Unlawful Inclosures of Public Lands Act	
43 U.S.C. 2106	Abandoned Shipwreck Act of 1987	

### Title 46

45 U.S.C. 51 et seq.	Federal Employees' Liability Act	
45 U.S.C. 151	Railway Labor Act	

### Title 46

46 App. U.S.C. 688	Jones Act	2
46 U.S.C. 13 109	Federal Boat Safety Act	2

### Title 47

47 U.S.C. 52 1	Cable Television Consumer Protection and Competition Act of 1992	1
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### Title 49

49 App. U.S.C. 1486	Federal Aviation Act	1
49 App. U.S.C. 1513	Anti-Head Tax Act	3
49 App. U.S.C. 1801	Hazardous Materials Transportation Uniform Safety Act	2
49 U.S.C. 11503	Railroad Revitalization and Regulatory Reform Act	2
49 U.S.C. 11506	Intermodal Surface Transportation Efficiency Act	1

### Title 50

50 App. U.S.C. 2406	Export Administration Act	1
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## *Appendix 2*

### *Sample Data Entry Form for Section 304 Database*



Worlford by **Mackey** v. Lewis,  
 880 F. Supp. 1123 (S.D.W.Va. 1994)

**Named Parties**

Paul Worlford by his next  
 Henry Bias by his next friend,  
 Coy **Burdette**

**Plaintiff[s] or petitioner[s]**

**Title[s], if any**

Gretchen Lewis	Secretary, West Virginia Dept.
Ann Stottlemeyer	Director, Medical Services,
<b>Lynda G. Kramer</b>	Director, Office of Health
Sandra L. <b>Daubman</b>	Program Administrator, Office
<b>Gaston Caperton</b>	Governor of the State of West
<b>Defendant[s] or respondent[s]</b>	<b>Title[s], if any</b>

**Federal Government Information**

29 U.S.C. 701 et seq.      42 U.S.C. 12101

**Statute/Regulation Cite[s]**

Rehabilitation Act      Americans with Disabilities Act

**Statute/Regulation Name[s]**

Constitutional **Provision[s]**

**Federal Agency[s]**

**Case description notes**

Action was brought on behalf of residents of West Virginia residential board and care facilities, personal care facilities, and nursing homes, claiming that state regulations governing such facilities violated both state law and Keys Amendment to Supplemental Security Income program, and further claiming that conditions at facilities had disparate impact on disabled Medicaid-eligible residents in violation of Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA). The District Court held that (1) the regulations violated various aspects of both the Keys Amendment and state law; (2) state's enforcement of standards and procedures violated both state law and the Keys amendment; (3) the state failed to rebut disabled residents' prima facie case that they were being denied meaningful access to Medicaid services by being denied transportation and that reasonable accommodation was possible; but (4) to the extent that disabled residents of some types of facilities were alleging that they were being treated differently than disabled residents of other types of facilities, they did not state actionable claim under Rehabilitation Act or **Title II**. This court orders the parties to develop a remedial plan for correcting and implementing proposed changes to existing residential board and care and personal care regulations and enforcement procedures. The defendants are required to include in the regulations transportation assurances comparable to those in existing adult family care home regulations.

**Court Information**

Southern District of West Virginia

**Court Name**

**3/21194**

District Court

**Opinion Date**

**Court Type**

**2:92-1151**

**Complaint Date**

**Docket Number**

**State, local, or Tribal Government Information**

West Virginia Dept. of Health & Human Resources

**Government Name[s]**

State

**Type[s] Involved**

West Virginia

**State name[s]**

**Action taken in this opinion**

Summary judgment awarded in part to plaintiffs

**Action Taken**

Permanent Injunction

Major **Relief** type **[s] granted**

**Subsequent History**



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Grants Funded FY 1993 (M-188,1994) .....	\$.10.00
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