



Supreme Court Update

UTAH LEAGUE OF
CITIES AND TOWNS

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(preferably by 5 p.m. today)

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
- *United States v. Rahimi*
- *Grants Pass v. Johnson*
- *Muldrow v. City of St. Louis*
- *Sheetz v. El Dorado County*
- *Loper Bright Ent. v. Raimondo*
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- *Ohio v. EPA*
- *Harrington v. Purdue Pharma*

O'Connor-Ratcliff v. Garnier & Lindke v. Freed

Voldemort?

OR

Ralph Fiennes?



LEFT, FROM WARNER BROTHERS STUDIOS/EVERETT COLLECTION; RIGHT, BY JOHN PHILLIPS/GETTY IMAGES.

UTAH LEAGUE OF
CITIES AND TOWNS
2024

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O'Connor-Ratcliff v. Garnier

Facts

- Two school district officials created public Facebook and Twitter pages to promote their campaigns for office and continue to use them after winning their election.
- Their Facebook page describes them as “Governmental Officials” and listed their positions as “School Trustees.”
- Only the school district officials had access to post, but members could comment.
- Garnier rapidly and repeatedly commented on their posts
- Trustees delete the comments, then eventually block them altogether

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Lindke v. Freed

Facts

- Freed created a personal facebook account
- Switched facebook account to a “page” to allow more facebook friends and identified himself as “public figure”
- Appointed to be City Manager in 2014 and added his position to his page
- Posted mostly about personal things (pictures, family outings, etc.) and occasionally posted public information (COVID-19 Policies)
- Lindke left negative comments on Freed’s facebook page complaining about how the city had handled COVID.
- Lindke deleted comments and eventually blocked him altogether from posting.

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Lindke v. Freed

Holding

A government official's social media posts are attributable to the government only if:

- 1) The officer or employee had actual authority to speak on the government's behalf **AND**
- 2) The officer or employee purported to exercise that authority when they spoke on social media.

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O'Connor-Ratcliff v. Garnier & Lindke v. Freed

Key Takeaways



- Resharing public information likely will not be considered public action
- On your private social media account, use labels (“Private Facebook Page” or “Not an Official Page of Cam City”)
- Specifically define in your job descriptions what social media authority an employee will have.
- Prohibit the use of government logos, email addresses, and websites to be on personal accounts
- Prohibit the use of public property to manage or use private accounts

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Murthy v. Missouri

Facts

- Federal Government (White House, Surgeon General, CDC, and FBI) requested private social media companies (Facebook, etc.) to take down certain posts on their sites pertaining to alleged misinformation related to COVID-19 and elections.
- Government employees attempted to pressure Facebook to take action in removing any anti-vaccine related material and made subtle threats to ensure compliance by Facebook.
- Case was set to answer the question of whether legitimate government speech can pressure a private entity to the extent that the private entity turns into a public actor based on the threats by the government to perform some action.

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Murthy v. Missouri

Holding

- No standing (right to redress a grievance), and therefore, no answer to the question.



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NRA v. Vullo

Facts

- New York Dept. of Financial Services began investigating NRA-endorsed affinity insurance programs that provided insurance to licensed firearm use to protect persons/property even if insured was found to have acted with criminal intent.
- NRA clients began to drop them based upon Vullo's promise that she would overlook other things if they did that.
- NRA sued alleging that Vullo had violated the First Amendment by coercing DFS regulated parties to punish or suppress the NRA's gun promotion advocacy.

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NRA v. Vullo

Holding

- “The First Amendment prohibits government officials from wielding their power selectively to punish or suppress speech, directly or through private intermediaries.”
- “Nothing here prevents government officials from forcefully condemning views within which they disagree.”
- Totality of the circumstances guideposts:
 - Word choice and tone
 - The existence of regulatory authority
 - Whether the speech was perceived as a threat
 - Whether the speech refers to adverse consequences

Murthy v. Missouri & NRA v. Vullo

Key Takeaways



- Be aware of the speech you are using and whether such speech could be of a nature that would cause another to be in fear of retribution or consequences

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Gonzalez v. Trevino



Sylvia Gonzalez
City Council Member



Ryan Rapelye
City Manager



Edward Trevino II
Mayor

- Gonzalez gets elected as Council Member of Castle Hills, Texas and immediately organizes campaign and petition to remove Rapelye as City Manager
- Two day public hearing – Gonzalez came under criticism
- At the end of public hearing, Trevino asked Gonzalez for petition, she denied having it, but was “surprised” to later find it in her binder.

Gonzalez v. Trevino



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Gonzalez v. Trevino



Sylvia Gonzalez
City Council Member



Ryan Rapelye
City Manager



Edward Trevino II
Mayor

- City arrests Gonzalez for violating an anti-tampering law that prohibits a person from intentionally removing a governmental record.
- Gonzalez spends a night in jail. City prosecutor dismisses charges a month later.
- Gonzalez sues for retaliatory arrest based on protected speech. Admits that there was probable cause for her arrest!
- Claims that criminal statute has not been used to criminally charge someone trying to steal a government document in the last decade.

Gonzalez v. Trevino

Analysis

- In order to move forward with a retaliatory arrest claim under the First Amendment (arresting because they exercised their free speech rights), Plaintiff must show that there was no probable cause to arrest other than for retaliatory purposes. BUT...
- **Nieves v. Bartlett Exception:** Even if there is probable cause for the arrest, Plaintiff can still move forward with the retaliatory arrest claim if they can show **objective evidence that they were arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been.**

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Gonzalez v. Trevino

Holding

- You do not have to show **exact circumstances** where officers did not charge under that law. It can be **general application** of that conduct.
- Remanded back to Fifth Circuit to determine whether the evidence was enough to show the Nieves exception applies.
- [This is already been going on for 5 years!]

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Gonzalez v. Trevino

Key Takeaways



- If you do illegal things, make sure there is not a video camera over your head.
- Past history of enforcing or not enforcing laws could be used against you in the future.
- Don't use old, unused criminal laws that are never enforced. 41-6a-1112 (Prohibits operating a bike with no hands on handlebars)
- Ensure that officers have probable cause **before** arresting
- If there is probable cause, **be consistent** in your enforcement.

United States v. Rahimi

Facts

- Rahimi assaulted his girlfriend and warned her that he would shoot her if she told authorities about the attack.
- Court issued a domestic violence restraining order that prohibited Rahimi from possessing a firearm
- Notified Rahimi that his possession of a gun while the order was in effect would constitute a felony
- Rahimi committed other crimes with a gun and violated the order.
- Statute: Any person subject to a court order that includes a finding that such person represents a credible threat to the physical safety of an intimate partner or child may not possess any firearm or ammunition.

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United States v. Rahimi

Holding

- The Second Amendment is not a carte blanche license to be able to hold a gun – there are limitations for certain people at certain times.
- Supreme Court said, “An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.”

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United States v. Rahimi

Key Takeaways



- Laws that prohibit certain individuals from holding guns may or may not be upheld under the Second Amendment.
- The Court only identified that on its face it was not unconstitutional, but it still could be unconstitutional as it is applied to certain individuals

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Grants Pass v. Johnson

The homeless in Washington state scatter as cities ban them from public spaces - OPB News

'No more excuses': Gavin Newsom directs California cities to clear homeless encampments - San Francisco Chronicle

Titusville police form team to crack down on homeless camps

- Spectrum News

ALBUQUERQUE NEWS

Crews clean up homeless camp in southeast Albuquerque

Supreme Court Expands Cities' Power to Remove Homeless Camps

- The Wall Street Journal

Grants Pass v. Johnson

Facts

- Grants Pass Laws in Question:
 - Prohibition of “sleeping on public sidewalks, streets, or alleyways”
 - Prohibition on “camping” on public property.
 - Prohibition on “camping” and “overnight parking” in the city’s parks.
 - Camping means: “Setting up . . . Or remaining in or at a campsite (defined as any place where bedding, sleeping bags or other material used for bedding purposes, or any stove or fire is placed For the purpose of maintaining a temporary place to live)
- Grants Pass Enforcement:
 - First offense, a fine
 - Second offense, order barring offender from city parks
 - Third or more offense, criminal trespass (maximum of 30 days in prison and a fine of \$1,250)

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Grants Pass v. Johnson

Issue

Does the Eighth Amendment (Cruel and Unusual Punishment Clause) restrict state and local governments from regulating camping on public property?

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Grants Pass v. Johnson

Analysis

- Martin v. Boise (9th Circuit)
 - Barred Boise from enforcing its public-camping ordinance against homeless individuals who lacked access to alternative shelter because of the Eighth Amendment.
 - “Access” was lacking, the court said, whenever there is a greater number of homeless individuals in a jurisdiction than the number of available beds in shelters.

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Grants Pass v. Johnson

Holding

- The Eighth Amendment does not prohibit local governments from using a wide array of tools to deal with the social issue of homelessness, including the use of “no camping” laws or fines.
- Local governments still do not have “unfettered freedom to punish,” but must be kept within the bounds of the U.S. Constitution.
- The Constitution prohibits making someone’s status as criminal (to which they have no control over). I.e., Cannot punish homeless because they are homeless.

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Grants Pass v. Johnson

Key Takeaways



- Ordinances against public camping do not violate the Eighth Amendment
- When drafting homeless ordinances, try to work with your homeless population to resolve the issues that are presented by encampments
- Does not eliminate other protections under the Constitution, such as the right to speak, worship, assemble, petition, and exercise the freedom of the press, or not or discriminating against a protected class or providing due process

Muldrow v. City of St. Louis

Facts

- New Police Commissioner transfers Muldrow, a woman Sargeant in the Intelligence Division, along with 4 other women and 17 other male officers to new assignments.
- She retained her pay and rank and her supervisory role
- Claims she lost:
 - Monday through Friday day shifts
 - Association with high profile officials
 - Access to her unmarked take-home vehicle
 - Free weekends
 - FBI credentials
 - Plain clothes / No uniform required

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Muldrow v. City of St. Louis

Applicable Law

Muldrow sued the City under 42 U.S.C. 2000e-2(a)(1):

“It shall be an unlawful employment practice for an employer:

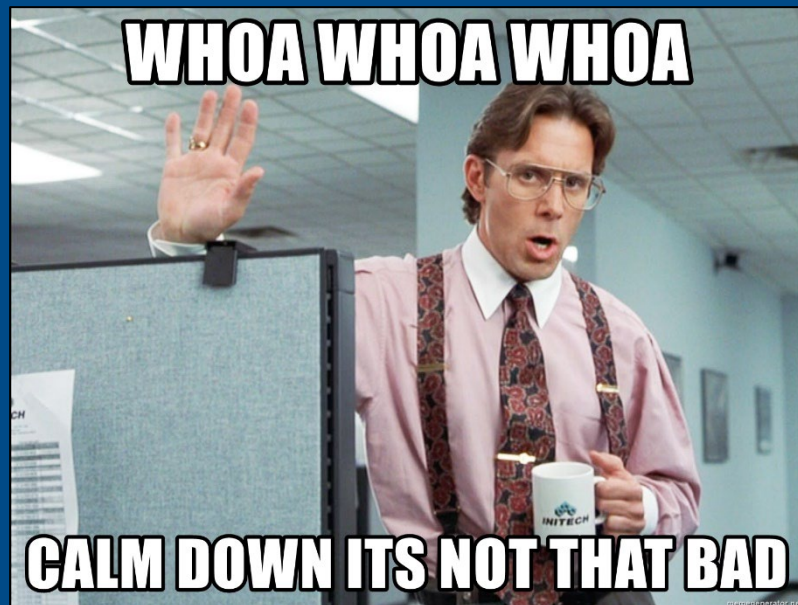
1) To fail or refuse to hire or to discharge any individual, or otherwise to **discriminate against** any individual with respect to his compensation, **terms, conditions,** or **privileges of employment,** because of such individual’s race, color, religion, sex, or national origin.”

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- *Garland v. Cargill*
- *Ohio v. EPA*
- *Harrington v. Purdue Pharma*

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
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- *Harrington v. Purdue Pharma*

Muldrow v. City of St. Louis

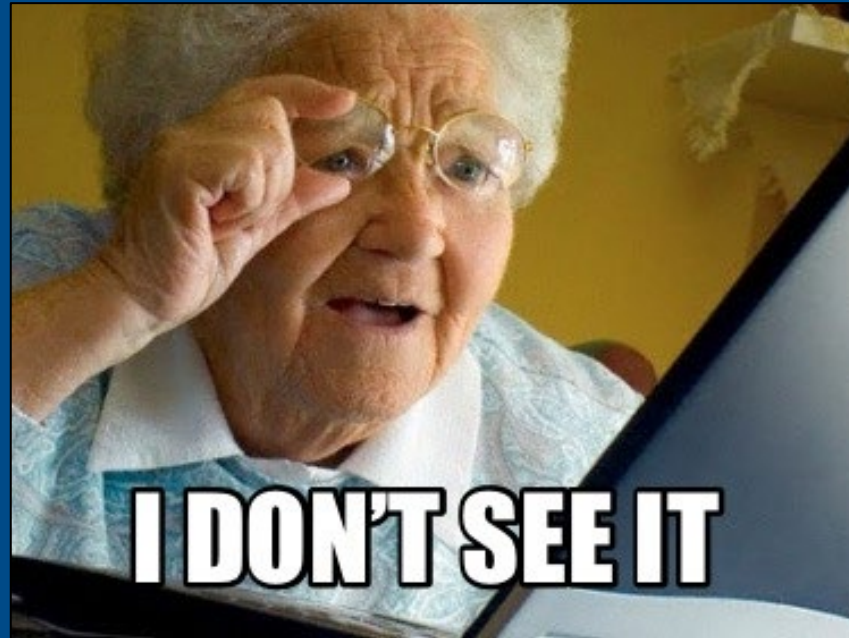
District Court and 8th Circuit Court of Appeals



“Minor changes in duties or working conditions, even unpalatable or unwelcome ones, which cause no **materially significant disadvantage**, do not rise to the level of an adverse employment action”

Muldrow v. City of St. Louis

Supreme Court Holding



“An employee must show some harm from a forced transfer to prevail in a Title VII suit, she need not show that the injury satisfies a significance test. **Title VII’s text nowhere establishes that high bar.**”

- *O’Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
- *United States v. Rahimi*
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- *Garland v. Cargill*
- *Ohio v. EPA*
- *Harrington v. Purdue Pharma*

Muldrow v. City of St. Louis

Key Takeaways



- HR needs to speak to their attorney before making any transfers / layoffs / terminations / reduction in benefits.
- This **significantly** lowers the bar to file a claim of discrimination on the basis of race, color, religion, sex, and national origin.
- Critically important to train managers and supervisors to be honest in evaluations and report and document everything!

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
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- *Ohio v. EPA*
- *Harrington v. Purdue Pharma*

Sheetz v. El Dorado County



- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
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- *Ohio v. EPA*
- *Harrington v. Purdue Pharma*

Sheetz v. El Dorado County

Facts

- Sheetz wanted to build a prefabricated home on his property
- Payment of 23k in traffic impact fees
- Sued the County arguing that it was an unconstitutional taking because the impact did not have any nexus to the project nor were the fees roughly proportionate to the impact
- City's argument was that Nollan/Dolan test did not apply to legislative acts, only administrative acts.

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
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- *Ohio v. EPA*
- *Harrington v. Purdue Pharma*

Sheetz v. El Dorado County

Holding

- Nollan/Dolan Test: Impact fees must have an “essential nexus” to the development being proposed and the amount demanded must be “roughly proportional” to the impact on the costs of the infrastructure and impact upon the City.
- Question is whether or not the Nollan/Dolan test applies to not only administrative acts but also legislative acts.
- **Narrow....But** watch out for future legislation related to the concurring opinions
- Did not decide certain issues – On interim agenda as potential topic of discussion

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
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- *Ohio v. EPA*
- *Harrington v. Purdue Pharma*

Sheetz v. El Dorado County

Key Takeaways



- Update your impact fee study often! (and reevaluate any other fees you have by performing and updating a study)
- Watch for legislation relating to impact fees

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
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Loper

Bright

Enterprises

v. Raimondo

UTAH LEAGUE OF
CITIES AND TOWNS
2024

Loper Bright Enterprises v. Raimondo

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
- *United States v. Rahimi*
- *Grants Pass v. Johnson*
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UTAH LEAGUE OF
CITIES AND TOWNS
2024



Loper Bright Enterprises v. Raimondo

“Chevron Doctrine”

Courts should defer to an agency’s interpretation of the law if such law is considered, as a whole, as ambiguous, so long as the interpretation is reasonable.

- *O’Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
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Loper Bright Enterprises v. Raimondo

Facts

- Magnuson-Stevens Act (“MSA”) (which incorporates the “Administrative Procedures Act”)
- National Marine Fisheries Service manages and administers the MSA
- NMFS adopted a new rule that required off-shore fishing expeditions to pay money to staff an “observer” onboard each time fishing expedition occurred
- Fishing Expeditions sued stating that the rule was “arbitrary” and “capricious” and that the MSA did not allow the agency to mandate fishing expeditions to pay the cost of the observer onboard.

- *O’Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
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- *Harrington v. Purdue Pharma*

Loper Bright Enterprises v. Raimondo

“Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority”



UTAH LEAGUE OF
CITIES AND TOWNS
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- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
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Loper Bright Enterprises v. Raimondo

Key Takeaways



- Far reaching impacts given the plethora of federal regulations.
- Uncertain how this will affect **local** governments – could be good for local governments when courts strike down agency regulations, but could be bad if the courts uphold a bad agency interpretation.

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
- *United States v. Rahimi*
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Snyder v. United States



BRIBERY

is such a dirty word don't you think,
lets just call it a gift from you to me

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
- *United States v. Rahimi*
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Snyder v. United States

Facts

- City of Portage, Indiana awards two contracts to a local truck company, Great Lakes Peterbilt to purchase trash trucks.
- Contract worth 1.1 million for five trucks
- The next year, Peterbilt gave James Snyder, Mayor of Portage, a check for \$13,000.
- Snyder claimed he was a contractor for Peterbilt and the \$13,000 was payment for his consulting services.
- Federal prosecutors charged him with violating 18 U.S.C. 666
- District Court sentenced him to 1 year 9 months in prison

• *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*

• *Murthy v. Missouri & NRA v. Vullo*

• *Gonzalez v. Trevino*

• *United States v. Rahimi*

• *Grants Pass v. Johnson*

• *Muldrow v. City of St. Louis*

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• *Garland v. Cargill*

• *Ohio v. EPA*

• *Harrington v. Purdue Pharma*

Snyder v. United States

Issue

- Whether 18 U.S.C. 666(a)(1)(B) makes it a federal crime for state and local officials to access *gratuities* for their past official acts?
- **18 U.S.C. 666(a)(1)(B)**: Prohibits an agent of a local government that receives more than 10k in federal funds annually from corruptly soliciting or demanding a benefit or accepting or agreeing to accept anything of value from any person, intended to be given to **influence or reward** in connection with any business, transaction, or series of transactions of the local government involving any thing of value of 5k or more

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
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- *Harrington v. Purdue Pharma*

Snyder v. United States

Holding

Section 666 prohibits bribes to state and local officials but does **not** make it a crime for those officials to accept gratuities for their past acts.



- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
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Snyder v. United States

Wait!

Before accepting that Jazz Game invite

- **Utah Code 67-16-5** (Accepting gift, compensation, or loan)
 - “To **knowingly receive**, accept, take, seek, or solicit, directly or **indirectly** for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift:
 - That would **tend improperly to influence a reasonable person** in the person’s position to depart from the faithful and impartial discharge of the person’s public duties;
 - That the public officer or public employee **knows** or that a reasonable person in that position **should know** under the circumstances **is primarily for the purpose of rewarding the public officer or public employee for official action taken**; or
 - **If** the public officer or public employee recently has been, is now, or in the near future **may be involved in any governmental action directly affecting the donor or lender, unless** a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.

Snyder v. United States

Key Takeaways



- Just because the court said that Section 666 does not apply to local public officials receiving gifts, the state of Utah still regulates that activity!
- Make sure you have clear policies and procedures that outline what is allowed and not allowed
- Ensure that newly elected or appointed public officials understand what forms they should be filling out (Conflict of Interest Forms and what they must disclose in open meetings).

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
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Chiaverini v. City of Napoleon

Facts

- Chiaverini (jewelry store owner) buys ring for \$45 from a jewel thief
- Police request the ring back and he refuses to give it back
- During investigation, he mentions that he does not have a license to run the business
- Charged with:
 - Receiving stolen property (misdemeanor)
 - Dealing in precious metals without a license (misdemeanor)
 - Money laundering (felony)
- Dismissed the charges because prosecutors failed to present the case to the grand jury in required time.
- Chiaverini filed malicious prosecution case under Section 1983

• *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*

• *Murthy v. Missouri & NRA v. Vullo*

• *Gonzalez v. Trevino*

• *United States v. Rahimi*

• *Grants Pass v. Johnson*

• *Muldrow v. City of St. Louis*

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• *Snyder v. United States*

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• *Ohio v. EPA*

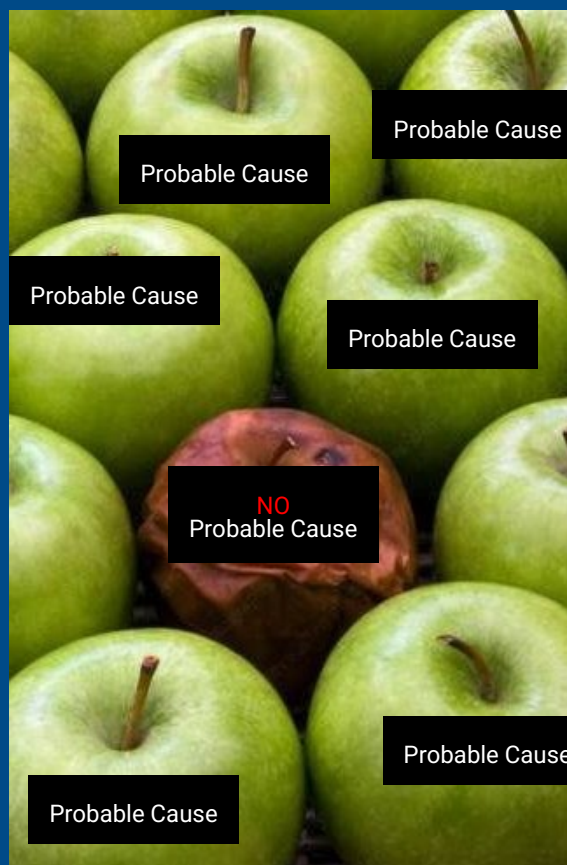
• *Harrington v. Purdue Pharma*

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Chiaverini v. City of Napoleon

Issue

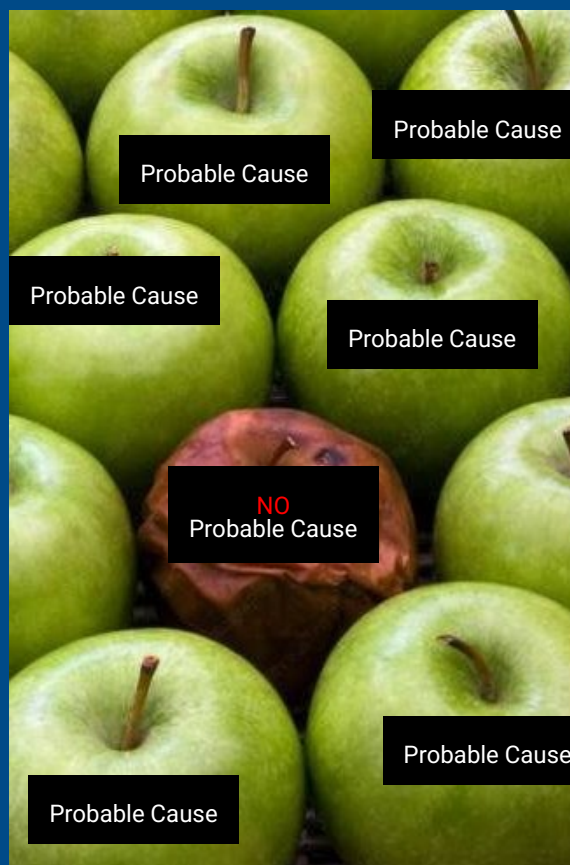


Whether the presence of probable cause for at least one other charge automatically defeats a Fourth Amendment malicious prosecution claim when there are other charges that did not have probable cause?

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
- *United States v. Rahimi*
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- *Harrington v. Purdue Pharma*

Chiaverini v. City of Napoleon

Holding



No – A Fourth Amendment malicious prosecution cause of action can be maintained even if there are other charges that are backed by probable cause.

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
- *United States v. Rahimi*
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Chiaverini v. City of Napoleon

Key Takeaways



- Only charge what you have probable cause to charge.
- There may be an uptick in the filings of Fourth Amendment malicious prosecution claims.

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
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“At a Glance” Cases

Holdings

Garland v. Cargill:

- A bump stock is not a “machine gun” under Federal Law and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) exceeded their authority in proposing a rule “clarifying” that a bump stock was a machine gun.

Culley v. Marshall:

- In civil forfeiture cases involving personal property, the Due Process Clause requires a timely forfeiture hearing but does NOT require a separate preliminary hearing before the property is seized and held.

• *O’Connor-Ratcliff v. Garnier & Lindke v. Freed*

• *Murthy v. Missouri & NRA v. Vullo*

• *Gonzalez v. Trevino*

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“At a Glance” Cases

Holdings

Ohio v. EPA:

- A stay of enforcing EPA’s rule regarding the “good neighbor program” of certain states should be issued when they meet the qualifications for a stay.

Harrington v. Purdue Pharma:

- Bankruptcy Courts do not have the authority to release or issue an injunction, as part of a Chapter 11 bankruptcy, that effectively seeks to discharge claims against a nondebtor without the consent of affected claimants.

- *O’Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
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Questions?

- *O'Connor-Ratcliff v. Garnier & Lindke v. Freed*
- *Murthy v. Missouri & NRA v. Vullo*
- *Gonzalez v. Trevino*
- *United States v. Rahimi*
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