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FBA CASE SUMMARIES

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Case Summaries, Complaints and Trials Filed in the U.S. District Court, District of Idaho

Huitran-Barron v. United States, No. 4:17-CV-00299-BLW;
No. 4:16-CR-00175-BLW – *Sentencing; Appeal*

- Richard A. Hearn, Hearn Law, PLC, Pocatello, ID for Movant
- John C. Shirts, U.S. Attorney's Office, Pocatello, ID for Government

In 2016, Bulmaro Huitran-Barron was sentenced to 82 months in prison and four years of supervised release after pleading guilty to possession of a controlled substance with intent to distribute. This sentence was within the guideline range but was two years longer than Huitran-Barron and his attorney originally expected. Huitran-Barron challenged his sentence under 28 U.S.C. § 2255, claiming that he requested that his attorney file an appeal but that his attorney failed to do so. On March 13, 2020, Judge B. Lynn Winmill granted Huitran-Barron's § 2255 motion.

Huitran-Barron alleged that he spoke to his attorney on three separate occasions about appealing his sentence—when discussing the plea agreement and the expected sentence prior to the sentencing hearing, right after the sentencing hearing, and sometime after the hearing when Huitran-Barron claimed he left a message with his attorney. Huitran-Barron and his attorney did not use an interpreter when they communicated with one another, however, an interpreter was present at all court proceedings. The attorney alleged that he did not recall Huitran-Barron requesting an appeal but that it was possible he made such a request and, if he did, the attorney did not understand.

The court gave deference to Huitran-Barron's allegations since his attorney did not entirely dispute that it was possible Huitran-Barron made an appeal request. The court also reasoned that Huitran-Barron reasonably believed that he could effectively communicate with his attorney because all of their past interactions took place without an interpreter. Finally, the court discussed the fact that Huitran-Barron's attorney should have been on notice to the possibility of his client wanting to appeal at the conclusion of the sentencing hearing given that the sentence imposed by the court was longer than he had previously advised his client.

Upon granting the § 2255 motion, the court vacated the judgment in the criminal matter and re-entered the same to allow for Huitran-Barron to file an appeal. The Ninth Circuit has directed the parties to submit briefing by July 27, 2020.

Smout et al. v. Benewah County et al., No. 2:18-CV-00136-DWM (Visiting Judge Donald W. Molloy from the District of Montana)

§ 1983; Fourth Amendment; Due Process

- April M. Linscott, Owens, McCrea & Linscott, PLLC, Coeur d'Alene, ID for Plaintiffs
- Bentley G. Stromberg, Clements Brown & McNichols, Lewiston, ID; Michael L. Haman, Haman Law Office, Coeur d'Alene, ID for Defendants

Plaintiffs, Tamara Smout and Donald Stallsworth, brought this action against Benewah County, the Benewah County Sheriff's Office, and Deputy Rodney Dickenson (collectively "the County"), as well as their former landlords, Nakkii and Ed White. Smout and Stallsworth brought § 1983 claims against the County, alleging violations of the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment. They also brought various state law claims against both the County and the Whites.

Smout and Stallsworth owned a mobile home that was located on land owned by the Whites. After falling behind on the rent payments, the Whites instituted a judicial eviction proceeding against them and they were ordered to vacate the property and remove their mobile home. Smout and Stallsworth were still on the property the day after the deadline for them to vacate. The Whites contacted the County and Deputy Dickenson responded. Deputy Dickenson subsequently cited both Smout and Stallsworth for trespassing and in the course of doing so, observed drug paraphernalia in the mobile home. Thereafter, the Whites did not allow Smout or Stallsworth to remove any of their belongings from the premises, so they left. Deputy Dickenson then obtained permission from the Whites to search the mobile home. As a result, he seized additional drug paraphernalia, as well as methamphetamine. Deputy Dickenson also took possession of several personal items for safekeeping. Several months later, the County contacted Smout and Stallsworth regarding their personal property, which was the first time they learned the County had possession of their belongings. Smout and Stallsworth were never prosecuted for trespassing. This action followed.

The court first determined that Deputy Dickenson was entitled to qualified immunity on the Fourth Amendment claim related to his search of the mobile home and the subsequent seizure of the personal items that the County took possession of. The court reasoned that the scope of a landlord's authority to consent to a search of a mobile home and other personal property owned by an evicted tenant is not clearly established by any binding precedent.

The court next addressed the Fourth Amendment claim related to the Whites' seizure of the mobile home. Smout and Stallsworth argued that Deputy Dickenson effected the seizure by aiding the Whites in a self-help eviction since the Whites did not allow them to remove any property from the premises after they were cited for trespassing. The court determined that Deputy Dickenson was also entitled to qualified immunity on this claim. The court acknowledged that Deputy Dickenson might have violated state law by issuing the citations and assisting the Whites despite the fact they had not obtained a writ of execution. However, the court nevertheless determined that binding precedent did not address whether law enforcement's response to a trespass complaint from a landlord with a judgment for eviction could amount to a Fourth Amendment violation.

Finally, the court addressed Smout and Stallsworth's procedural due process claim against Deputy Dickenson. They argued that removing their personal property from their mobile home without notice was a violation of the Fourteenth Amendment. The court readily acknowledged that they were not given any notice as to the seizure of their personal property, either prior to Deputy Dickenson taking it or post-deprivation. However, the court determined that Deputy Dickenson

was entitled to qualified immunity because the precise notice requirements that law enforcement must follow when collecting personal items for safekeeping are not clearly defined.

The court ultimately granted the County's motion for summary judgment and dismissed, without prejudice, the remaining state law claims against BCSO and the Whites, declining to exercise supplemental jurisdiction. Smout and Stallsworth, as well as the Whites, subsequently stipulated that the claims be dismissed with prejudice.

Guion v. Bonner Homeless Transitions, et al., No. 2:18-CV-00186-DCN
Fair Housing Act

- Josephine Guion, *pro se*
- Phillip J. Collaer, James R. Stoll, Anderson, Julian & Hull, LLP, Boise, ID for Defendants Bonner Homeless Transitions Board of Directors, Mary Jo Ambrosiani, and Joanne Barlow

Plaintiff, Josephine Guion, filed this action against the Bonner Homeless Transitions Board of Directors, as well as the Board's President, Mary Jo Ambrosiani, and its Program Manager, Joanne Barlow (collectively "Bonner program"). Guion also named two individual participants in the Bonner program. Guion brought five causes of action against Bonner and the participants: housing discrimination; defamation; intentional infliction of emotional distress; retaliation; and fraud. On April 2, 2020, Chief Judge David C. Nye granted summary judgment in favor of Bonner. The court declined to take up issues related to the individual program participants that Guion named in her complaint, as they had not been served.

The Bonner program provides transitional housing to homeless families and domestic violence victims. In 2013, Guion became a resident at a facility operated by the Bonner program and was eligible to stay at the facility for two years. During Guion's stay, she alleged that staff and residents made racially charged comments towards her, while residents claimed she was harassing them in various ways. At one point, Barlow told Guion that staff and residents alike felt threatened by Guion and that it was possible she would be removed from the facility. Thereafter, Guion filed a grievance with the Bonner program against Barlow, alleging that Barlow was discriminating against her. Guion refused to meet with staff and these residents to informally mediate the various issues and instead contacted law enforcement to intervene. Around the same time, Guion also filed complaints with both the U.S. Department of Housing and Urban Development ("HUD") and the Idaho Human Rights Commission ("IHRC"). HUD declined to investigate because Guion did not provide additional information that HUD requested. IHRC did investigate the matter but found no merit to Guion's allegations. Guion subsequently left the facility in July 2015, when her two-year stay was up. She subsequently filed this action in May 2018.

The court determined that Guion's claims were barred under the statute of limitations, but it further analyzed the substance of her claims and determined that even if the statute of limitations did not preclude her action, the Bonner program was nevertheless entitled to summary judgment. With respect to Guion's housing discrimination and retaliation claims under the Fair Housing Act, the only evidence that race was ever a topic that the Bonner program staff mentioned to or about Guion was a conversation with Barlow in which Barlow told Guion she could help her overcome any discriminatory barriers she might face. The court said that the substance of Barlow's

statements could not be interpreted as discriminatory. Moreover, there was no evidence of retaliation because Guion remained in the facility for the entirety of her two-year stay and the Bonner program staff made several attempts to mediate the issues that arose during the same period to no avail.

The court came to the same conclusion with respect to Guion's defamation, intentional infliction of emotional distress, and fraud claims. The court again said that these claims were time-barred, but even if they were not, no reasonable juror could find that the elements of any of these claims could be established by Guion. The court reasoned that all the evidence suggested that the Bonner program's actions were taken in the normal course of its business and generally good-faith attempts to help Guion.

Hill v. County of Benewah, et al., No. 2:18-cv-00320-DCN
§ 1983; Fourth Amendment

- Douglas D. Phelps, Phelps & Associates, Spokane, WA for Plaintiff
- Bentley G. Stromberg, Clements Brown & McNichols, Lewiston, ID for Defendants

In 2018, Plaintiff, Darren Robert Hill, brought this §1983 action against Benewah County, the Benewah County Sheriff's Office, Sheriff Dave Resser, and several deputies (collectively "BCSO"), alleging BCSO violated several of Hill's civil rights when it conducted a search of his residence in 2017. Specifically, Hill alleged that BCSO violated his rights to be free from illegal search, seizure, restraint, confinement, imprisonment, physical abuse, taking of property, and unlawful arrest as protected by both the United States and Idaho Constitutions, as well as state and federal law. On March 4, 2020, Judge David Nye issued a memorandum decision and order, granting BCSO's motion for summary judgment in full.

BCSO received information from another law enforcement agency and a confidential informant that stolen goods and narcotics were located in a trailer at 2317 Ora Avenue in St. Maries, Idaho. Hill resided in a trailer on property owned by his parents. That property also contained the parents' residence, which had the 2317 Ora Avenue address. Hill's trailer actually had the address of 2313 Ora Avenue. However, Hill used his parents' address on his driver's license and as his mailing address. Additionally, he did not have a separate mailbox and the properties were taxed as a single unit. Hill contended that the residence and trailer were separately marked with their respective numbers. Deputies also never attempted to search Hill's parents' residence, as they were already familiar with Hill and believed the search warrant was authorizing a search of his trailer specifically. BCSO subsequently obtained a search warrant that authorized the search of "the home of Darren Hill." However, the search warrant only listed the 2317 address. BCSO contended that the deputies had no knowledge that Hill's trailer actually had a different address.

Upon executing the search warrant at Hill's trailer, deputies secured Hill, handcuffed him, and placed him in a patrol vehicle at the start of the search. Soon after, deputies discovered an array of drugs and paraphernalia indicative of trafficking. At that time, Hill was charged with multiple drug-related offenses and transported to jail. Deputies continued their search and found several tools that they believed fit the description of tools that had been recently reported stolen. Hill contested the seizure of the tools, claiming that they were not stolen and requested they be returned to him. The prosecutor subsequently agreed and had them released from evidence, but Hill never

actually took the opportunity to retrieve the tools. A few months later, the state court granted dismissal of the charges against Hill on the prosecutor's motion. Hill subsequently filed this action.

First, with respect to Hill's claims arising under the Idaho Constitution, the court said §1983 plaintiffs do not have a direct cause of action for damages for violations of the Idaho Constitution. The court also said Idaho Code § 6-904 mandated dismissal of Hill's remaining claims under Idaho statutes because he failed to post the required bond or seek a waiver from the requirement. Additionally, Benewah County was entitled to immunity on the state law claims. The court also determined that Hill did not have viable § 1983 claims under the U.S. Constitution or federal law against Benewah County or Sheriff because there was no evidence that would suggest the alleged violations of Hill's constitutional rights arose out of any official policy or custom adopted by the County or the Sheriff, as required under *Monell v. Dep't of Social Services*, 436 U.S. 658 (1976).

With respect to the claims against the individual deputies, the court next addressed the alleged Fourth Amendment violation. The court acknowledged that the search warrant was inaccurate, but it nevertheless contained sufficient information to ensure deputies searched the correct location and it also justified the seizure of the tools. Even if the warrant could not be considered valid, the court said the deputies would still be entitled to qualified immunity. As to Hill's claim of unlawful arrest and imprisonment, the court concluded that detaining Hill prior to discovering the drugs and paraphernalia was permissible under *Michigan v. Summers*, 452 U.S. 692 (1981), and that Hill was timely arraigned before a magistrate judge.

Hill recently filed a notice of appeal in the Ninth Circuit.

Hermann v. Stimson Lumber Company, No. 2:18-CV-00462-DCN
Age Discrimination in Employment Act

- Fred D. Hermann, *pro se*
- Courtney Angeli, Buchanan Angeli Altschul & Sullivan, LLP, Portland, OR; Tamsen L. Leachman, Ogletree, Deakins, Nash, Smoak & Stewart, PC, Portland, OR for Defendant

Plaintiff, Fred D. Hermann, brought this action against his former employer, Stimson Lumber Company ("Stimson"), alleging that Stimson engaged in unlawful age discrimination against him in violation of the Age Discrimination in Employment Act ("ADEA") and state law. On March 23, 2020, Judge David Nye issued a memorandum decision and order on the parties' competing motions for summary judgment and granted Stimson's motion in full.

In 2016, Stimson hired Hermann to work at its facility in Plummer, Idaho. At the time, Hermann was 49 years old. The facility had about 100 employees, some of whom were close to Hermann's age. In 2017, Hermann's supervisor became aware that many employees were engaging in inappropriate behavior during work by making sexual remarks, imitating sexual acts, and making other vulgar comments. In response, the supervisor held a staff-wide meeting and demanded that this behavior immediately stop. Thereafter, a fellow employee reported to the supervisor that Hermann had continued this inappropriate behavior and reported that other employees had ceased participating in such inappropriate actions. The supervisor eventually forwarded this complaint to the human resources department, which conducted a full investigation and recommended that

Hermann be terminated. The Stimson Vice President and Chief Operating Officer, who did not know Hermann's age, approved the termination recommendation. This action followed.

The court determined that Hermann could not establish the requisite prima facie case for age discrimination because he could not show that Stimson treated him differently than younger, similarly situated employees. The court reasoned that it was only after the supervisor had a staff-wide meeting addressing the inappropriate behavior was Hermann singled out and subject to an investigation. The court further pointed to the fact that Hermann was singled out because he was the only employee that received a complaint regarding continued inappropriate behavior after the staff-wide meeting.

Although the court determined that Hermann could not establish a prima facie case for age discrimination, it went on to state that even if Hermann could set forth the prima facie case, Stimson nevertheless had a legitimate and non-discriminator reason for terminating Hermann. Further, the legitimate reason offered by Stimson could not be pretext because Hermann did not offer any evidence that would show that his termination was pretextual.

Ferguson, et al. v. Idaho Transportation Department, et al., No. 4:18-CV-00469-CWD

§ 1983; Takings Clause; Due Process Clause; Breach of Contract

- Nicole M. Deforge, Scott M. Lilja, Fabian VanCott, Salt Lake City, UT; Karl R. Decker, Holden Kidwell Hahn & Crapo, PLLC, Idaho Falls, ID for Plaintiffs
- Blake G. Hall, Sam L. Angell, Hall Angell & Associates, LLP, Idaho Falls, ID for Defendant Madison County

Plaintiffs makeup several entities that collectively own property in Madison County upon which they operate Yellowstone Bear World, a tourist attraction (collectively "Bear World"). Bear World filed this action against the State of Idaho, the Idaho Department of Transportation ("ITD"), and Madison County, bringing inverse condemnation claims under the Takings Clause of the Fifth Amendment and Article I, Section 14 of the Idaho Constitution, substantive and procedural due process claims under the Fourteenth Amendment, and a breach of contract claim.

Bear World's claims arose out of a dispute regarding access to its property. Historically, patrons accessed Bear World from U.S. Highway 20, which is controlled by ITD, at a specific intersection. This intersection was constructed upon land that was deeded to the State of Idaho in the 1970s by the previous owners of the Bear World property. That deed expressly reserved access to the intersection to the grantors. ITD designated Highway 20 as a "controlled-access road" in 2012, this subsequently resulted in the closure of the intersection at issue, which Bear World claimed was a taking. Madison County was involved in discussions with ITD related to the designation and the intersection's closure. Madison County subsequently constructed a frontage road at its expense to provide a new access point to Bear World. However, Bear World argued that this was not a reasonable alternative to the original access point at the intersection. With respect to Bear World's breach of contract claim, Bear World argued that as the successor in interest to the previous owners, it held an easement or contract right with respect to the intersection under the 1970s deed to the State of Idaho.

The State of Idaho and ITD were previously dismissed from the case because they were entitled to immunity under the Eleventh Amendment. At the same time, Judge Candy Wagahoff Dale denied Madison County's motion to dismiss, relying on recent Supreme Court precedent established in *Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019). However, on March 9, 2020, the court issued a memorandum decision and order granting Madison County's motion for summary judgment.

The court first analyzed whether Madison County could be liable under Bear World's takings claim. The court held that Madison County's actions did not constitute a taking. According to the court, Idaho law clearly designated ITD as the sole entity that had the authority to close the intersection by designating Highway 20 as a controlled-access road. Neither Madison County's knowledge of nor its cooperation with ITD's decision was sufficient to change the court's analysis because Idaho law explicitly prohibits local governments from interfering with ITD's control over state highways.

The court went on to analyze whether Madison County could be liable under Bear World's breach of contract claim related to the rights reserved in the 1970s deed. It held that it could not. The court reasoned that Madison County was not involved in that transaction and therefore could not be liable for any alleged breach related to the deed.

Copeland v. Bannock County, et al., No. 4:19-CV-00089-BLW

§ 1983; Due Process; Defamation

- Bron M. Rammell, Jason M. Brown, May, Rammell & Thompson, Chtd., Pocatello, ID for Plaintiff
- Blake G. Hall, Sam L. Angell, Hall Angell & Associates LLP, Idaho Falls, ID for Defendants Bannock County and Robert Poleki; Charles T. Hopkins, Sean J. Coletti, Hopkins Roden Crockett Hansen & Hoopes, Idaho Falls, ID for Defendant Tom Sellers

Plaintiff, Dan Copeland, brought this action against Bannock County and its Treasurer, Robert Polecki (collectively "Bannock County"), as well as Idaho State Police Officer Tom Sellers. Copeland was previously employed by Bannock County as its Director of Public Works. However, in 2017, Polecki directed Bannock County to investigate Copeland for alleged misuse of public funds. The investigation was led by Sellers. Bannock County then provided Copeland with notices regarding paid suspension and proposed termination. The notices provided that Copeland would have an opportunity to meet with Bannock County officials at a specific date and time to provide input as to what action should be taken with respect to Copeland's employment. Copeland did not choose to meet with officials but instead submitted a notice of his retirement, which Copeland claimed was not a response to the investigation or an admission of any allegations against him. After the effective date of his retirement, Copeland alleged that Bannock County made defamatory statements against him to the public.

Copeland subsequently filed this action, alleging that Bannock County and Sellers deprived him of his liberty and property interests in his reputation and freedom to engage in his occupation without due process, by failing to afford him a hearing at which he could clear his name. Copeland also brought defamation, libel, slander, negligence, and false-light invasion of privacy claims. Bannock County and Sellers filed motions for summary judgment in the matter and on April 3,

2020, Judge B. Lynn Winmill granted the motions in full and remanded the state law claims to state court.

With respect to Copeland's due process claims, the court determined that Bannock County was entitled to summary judgment in light of *Seigert v. Gilley*, 500 U.S. 226 (1991). Under *Seigert*, there is no right to a name-clearing hearing when stigmatizing material is made public after a government employee voluntarily leaves his employment. The court reasoned that it was undisputed that Bannock County gave Copeland notice and an opportunity to be heard on the investigation and his employment but that he opted to instead retire. The court said that Copeland's reason for retiring could not change the analysis, because Bannock County did not make any public statements related to Copeland until well after the date of his retirement.

The court next addressed Copeland's defamation claim, under which Copeland argued that Bannock County wrongfully damaged his reputation, which caused Copeland to be deprived of his constitutional interests in practicing his chosen occupation. The court acknowledged that while defamation is generally a state law claim that is not actionable as a constitutional deprivation, government action in the form of an adverse employment action that amounts to alleged defamation can entitle the aggrieved party to notice and an opportunity to be heard. However, the court concluded that Copeland could not set forth any evidence to show that the alleged defamation deprived him of a right protected under state law, a required element of a constitutional defamation claim.

As a result of granting Bannock County and Sellers' motions for summary judgment, the court declined to exercise supplemental jurisdiction over the remaining state law claims because there were no federal claims left for the court to address. Therefore, the court remanded those claims to the Sixth Judicial District Court of the State of Idaho for further proceedings.

Bannock County and Sellers subsequently filed motions for relief from the court's judgment, arguing that the court erroneously remanded the state law claims after declining to exercise supplemental jurisdiction. They argue that the court should reconsider and dismiss the state law claims. The motions will be ripe for the court's consideration after May 11, 2020.

Munden, et al. v. Stewart Title Guaranty Company, et al., No. 4:19-CV-00112-DCN
Title Insurance

- Nathan M. Olsen, Petersen Moss Hall & Olsen, Idaho Falls, ID for Plaintiffs
- Clinton O. Casey, Cantrill Skinner Lewis Casey & Sorensen, Boise, ID for Defendant Stewart Title Guaranty Company; Matthew R. Cleverley, Fidelty National Law Group, Seattle, WA for Defendant Chicago Title Insurance Company

Plaintiffs, Dennis and Sherrilyn Munden, purchased agricultural land in Bannock County on two separate occasions and obtained two insurance policies, one from Stewart Title Guaranty Company and one from Chicago Title Insurance Company (collectively "Title Companies"), for indemnification and defense against covered claims against title.

Several years prior to these property purchases, Bannock County enacted an ordinance that prohibited non-snowmobile vehicular traffic during the winter on a road that runs through the

properties. Bannock County later amended the ordinance to further restrict winter traffic on the same road after the Mundens acquired the properties. The Mundens subsequently filed an action in state court against Bannock County for its actions related to the road, alleging that the ordinance severely restricts their ability to access or depart from their properties. At a hearing in the state court action, which was still pending at the time of the court's decision and order in the instant case, Bannock County asserted counterclaims against the Mundens. Bannock County's counterclaims were based on its argument that the road was a public highway of record under state law and therefore, the Mundens acquired the properties subject to the easement that it has over the road.

As a result, the Mundens submitted notice of claims with both Title Companies on the basis that Bannock County's counterclaims affected the value and marketability of the titles. The Title Companies denied the notice of claims. Subsequently, the Mundens filed this action seeking declaratory relief and alleging claims for defense and prosecution of action, indemnification, and breach of contract.

On March 11, 2020, Chief Judge David C. Nye issued a memorandum decision and order in favor of both Title Companies, determining they did not have a duty to indemnify or defend the Mundens against Bannock County's counterclaims in the state court action. The court first determined that the Mundens offered sufficient evidence that a reasonable person might find the titles unmarketable due to the restrictions and Bannock County's counterclaims. The court stated that this at least showed the potential that the Title Companies' duties to defend would be triggered unless an applicable exception within the policies existed.

Both policies explicitly excluded coverage from claims related to easements, encumbrances, encroachments, and the like that are not shown in public records. The policies defined "public records" as records established under state law for the purpose of imparting constructive notice of matters related to real property to purchasers for value and without knowledge. The court found that the meaning of public record would be those established under Idaho's recording statute, which does not extend to general public records such as county road maps and ordinances. Therefore, the court determined that the exception to the duty to defend was applicable and that the Title Companies were not obligated to indemnify and defend the Mundens in the state court action.

The Mundens have filed a notice of appeal in the Ninth Circuit.

King Hutton, et al. v. Blaine County School District #61, et al., No. 1:19-CV-00116-DCN
§ 1983; First Amendment; Equal Protection

- Samuel L. Linnet, Linnet Law Office, PLLC, Hailey, ID for Plaintiffs
- Carol Tippi Jarman, David P. Gardner, Hawley Troxell Ennis & Hawley, LLP, Pocatello, ID for Defendants

Plaintiffs, Dakota King Hutton and Emily Thayer, are former Wood River High School students and brought this action against Blaine County School District #61 and several of its officials and employees (collectively "BCSD") after graduating. They alleged BCSD violated their rights protected by the First Amendment, the Equal Protection Clause, and Article I, Section 9 of the

Idaho Constitution. King Hutton and Thayer also requested declaratory, injunctive, and monetary relief. BCSD filed a motion to dismiss and a motion to bifurcate. On March 23, 2020, Chief Judge David C. Nye issued a memorandum decision and order granting in part and denying in part the motion to dismiss and denying the motion to bifurcate.

This action arose out of two separate incidents concerning each student. With respect to King Hutton, as part of a class assignment, she created an opinion poll and distributed it to students within BCSD. Some of the questions in the poll related to the BCSD Superintendent, GwenCarol Holmes. After the poll inadvertently came to the attention of a BCSD teacher, Holmes contacted the BCSD Board of Trustees indicating that the poll was an evaluation of her and that it had been shut down. Holmes also contacted King Hutton's teacher and told him the poll violated Idaho law and more appropriate content should be assigned. Thereafter, the teacher was required to apologize to Holmes. King Hutton requested a meeting with BCSD officials and an apology. BCSD declined a meeting but permitted King Hutton to address her concerns at a public meeting.

With respect to Thayer, as part of her duties as a student representative, she submitted monthly reports to the BCSD Board regarding student-related issues. One such report addressed student concerns regarding the date of graduation. However, Holmes directed the report to be redacted to remove references to the graduation concerns. Thayer then redrafted the report and obtained approval from her mentor and vice principal before resubmitting. Despite this, references to the graduation concerns were redacted and not presented to the BCSD Board. Shortly after, new policies and procedures were put in place with respect to these monthly student reports and Thayer was unable to further address the issue.

In addressing King Hutton and Thayer's claims, the court first determined that they did not have standing to seek declaratory and injunctive relief. The court reasoned that generally, former high school students that have graduated cannot seek declaratory or injunctive relief against their school for claims arising prior to their graduation. As a result, the court dismissed the causes of action with prejudice related to such relief.

The court next determined that King Hutton and Thayer had standing to seek monetary damages and assert § 1983 claims for violations of the First Amendment and the Equal Protection Clause, so it went on to address BCSD's claim that it was entitled to immunity under the Eleventh Amendment. The court stated that BCSD would only be entitled to Eleventh Amendment immunity if it was considered "an arm of the State." The court applied four factors to address this question, relying on *Mitchell v. Los Angeles Comm. Coll. Dist.*, 861 F.2d 198 (9th Cir. 1988). The court concluded that BCSD did not sufficiently establish that it was an arm of the State. However, the court said BCSD could raise the same defense at a later stage in the proceedings since there was very little evidence one way or another on the most heavily weighted factor, whether a money judgment against it would be paid out of state funds.

Next, the court addressed whether the individual BCSD officials and employees were entitled to qualified immunity with respect to the First Amendment and the Equal Protection Clause claims. The court said that the individual BCSD officials and employees did not act with a legitimate, pedagogical concern in either instance and therefore, were not entitled to qualified immunity at this stage. Therefore, both King Hutton and Thayer's § 1983 damages claims could proceed.

Finally, the court addressed BCSD's motion to bifurcate and dismissed it without prejudice. The court reasoned that bifurcating would cause undue expense and duplicative work for all parties during the discovery phase. However, the court highlighted its concern that BCSD could suffer prejudice if the case proceeded to trial and one jury heard and decided both King Hutton and Thayer's claims. Therefore, the court stated that BCSD could renew their motion if and when the case proceeded to trial.

Dreyer, et al. v. Idaho Department of Health and Welfare, et al., No. 1:19-CV-00211-DCN
§ 1983; Torts; Health Law

- Charlene K. Quade, Sean R. Beck, C.K. Quade Law, PLLC, Boise, ID; Mark R. Azman, Shamus P. O'Meara, O'Meara, Leer, Wagner & Kohl, PA, Minneapolis, MN for Plaintiffs
- Cynthia L. Yee-Wallace, Megan A. Larrondo, Office of the Idaho Attorney General Boise, ID; Trudy Hanson Fouser, Emma C. Nowacki, Gjording Fouser, PLLC, Boise, ID; Michael E. Kelly, Shannon M. Graham, Kelly Law PLLC, Boise, ID for Defendants

In 2019, Plaintiffs, seven different family members and/or guardians of individuals with intellectual and developmental disabilities, filed a class action complaint against the State of Idaho, the Idaho Department of Health and Welfare ("IDHW"), the Southwest Idaho Treatment Center ("SWITC"), SWITC's Director, and several individual SWITC staff members. SWITC, which is operated by IDHW, offers crisis care for individuals with intellectual and developmental disabilities. In 2017, after a resident committed suicide, SWITC came under scrutiny and faced abuse allegations by other residents, which were subsequently substantiated through IDHW surveys, legislative inquiries, and reports by a disability rights advocacy group. This action followed.

Plaintiffs brought twenty causes of action under federal and state law and also requested injunctive relief, alleging that individuals in SWITC's care have been subjected to widespread abuse, neglect, and mistreatment. Defendants filed motions to dismiss on all counts, notwithstanding Plaintiffs' claims of § 1983 violations, negligence, or their request for injunctive relief. Chief Judge David C. Nye issued a memorandum decision and order on April 20, 2020, granting in part and denying in part the motions.

First, the court dismissed Plaintiffs' claim that Defendants deprived them of their rights secured under Article I, Section 1 of the Idaho Constitution, reasoning that alleged violations of the Idaho Constitution do not provide independent causes of action for monetary damages. Second, the court dismissed Plaintiffs' claims against those Defendants sued in their individual capacities for alleged violations of the Americans with Disabilities Act ("ADA") and the Rehabilitation Act ("RA"), reasoning that neither Act allowed for such actions. However, the court ruled that the same claims under the ADA and RA could survive against the State, IDHW, SWITC, and its Director, who Plaintiffs sued in their official capacity.

With respect to Plaintiffs' claim that Defendants violated the Idaho Human Rights Act ("IHRA"), the court found dismissal to be proper, reasoning that Plaintiffs could not get around the requirement that they exhaust their administrative remedies before the Idaho Human Rights Commission before asserting an IHRA claim in court. While Plaintiffs argued that their failure to

exhaust was not a complete bar to their claim for various equitable reasons, the court held that it did in fact require dismissal.

Next, the court dismissed Plaintiffs' negligence per se claims. While the court found that Plaintiffs may have sufficient factual allegations for such claims, they were not properly pleaded in the complaint. The specific allegations that could potentially support a negligence per se cause of action were only contained in the factual background section of the complaint and although they could be incorporated into the specific negligence per se sections of the complaint, the court said it was unable to ascertain whether the general facts were meant to support the negligence per se counts. Similarly, the court dismissed Plaintiffs' assault, battery, intentional infliction of emotional distress, and misrepresentation claims because it determined that Plaintiffs failed to set forth factual allegations in sufficient detail that would support such claims. However, the court did not rule on Defendants' immunity defenses on these claims. With respect to these claims, the court granted Plaintiffs leave to amend their complaint to correct the deficiencies outlined in its decision.

The court did, however, decline to dismiss the wrongful death claim brought by the Plaintiff who serves as the personal representative of the estate of the individual who committed suicide while in SWITC's care. The court determined that as personal representative of the estate, the Plaintiff had standing to bring such a claim.

The court gave Plaintiffs until June 19, 2020 to amend their complaint to cure the deficiencies.

Richardson v. Bertram's Salmon River Brewery, LLC, et al., No. 4:19-CV-00349-BLW
Employment; Title VII

- DeAnne Casperson, Amanda E. Ulrich, Ryan S. Dustin, Casperson Ulrich Dustin, PLLC, Idaho Falls, ID for Plaintiff
- Yvonne A. Dunbar, Anderson, Julian & Hull, LLP, Boise, ID for Defendant Bertram's Salmon River Brewery, LLC; Gary Lee Cooper, Cooper & Larsen, Chtd., Pocatello, ID for Defendant Gregory Picanzo; Counsel for Defendant Joe Daniels has not yet appeared.

Plaintiff, Valisity Richardson, brought this action against Bertram's Salmon River Brewery ("Brewery"), as well Gregory Picanzo, a manager at the Brewery, and Joe Daniels, a Brewery employee. Richardson alleges that she was subjected to sexual harassment and a hostile work environment at the Brewery in violation of Title VII and the Idaho Human Rights Act ("IHRA"). Richardson brought additional causes of action for negligent supervision, negligent infliction of emotional distress, intentional infliction of emotional distress, and battery. Both the Brewery and Picanzo filed motions to dismiss the case in its entirety. On March 19, 2020, Judge B. Lynn Winmill denied the motions.

In August 2017, Richardson submitted an application to work at the Brewery and she was hired on the spot. Richardson was not given any paperwork or notice regarding the Brewery's employment policies or anti-discrimination laws. On September 13, 2017, Picanzo, Richardson's supervisor, asked her to stay late. Picanzo then began serving Richardson alcohol and she alleges that she did not remember anything soon after. The next morning, she woke up in her bed without pants and sought medical care, at which point she learned that she had sustained abrasions to her

vaginal area. As a result, law enforcement had Richardson wear a wire and ask Picanzo what had happened. Picanzo responded that he had sex with her. At that point, September 22, 2017, Richardson decided to no longer work at the Brewery.

In November 2017, law enforcement obtained video surveillance from the night in question. The surveillance footage revealed that Picanzo served Richardson at least twelve shots of liquor and that Daniels served her a clear liquid drink. Richardson subsequently lost consciousness and Daniels began groping her as Picanzo watched. The surveillance footage then revealed that Picanzo had sex with Richardson while she was in and out of consciousness. This footage was the first time Richardson became aware of the extent of what had happened. According to Richardson's Complaint, the Brewery did not terminate either Picanzo or Daniels.

On August 6, 2018, Richardson filed claims with both the Equal Employment Opportunity Commission ("EEOC") and the Idaho Human Rights Commission ("IHRC"). Prior to this time, Richardson had not retained legal counsel and stated that she was unaware of her rights and duties under Title VII and the IHRA. Richardson received a probable cause finding on her claim of discrimination and a notice of right to sue on September 11, 2019. This action followed on the same day. The Brewery and Picanzo argued that Richardson's Title VII claim was untimely and should be dismissed along with her state law claims because she did not file her claim with the EEOC within 300 days of the alleged discrimination, as required by 42 U.S.C. § 2000e-5(e)(1). The Brewery and Picanzo stated that she filed after 318 days of ceasing her employment, however Richardson countered by arguing that her claim was entitled to equitable tolling because she was unaware of the full extent of the assault until November 2017 and was further unaware of her right to file a claim under Title VII until August 2018.

The court agreed and applied equitable tolling, explaining that it was reasonable for Richardson to be unaware of her right to file a Title VII claim because the Brewery altogether failed to give Richardson any sort of notice of its employment policies and employee protections afforded under federal and state law. Additionally, even though Richardson became aware that Picanzo had sex with her in September 2017, the fact that she was unaware of the extent of the incident until two months later also played a factor. The court further stated that the Brewery did not suffer prejudice by the eighteen-day delay in Richardson's EEOC and IHRC filings.

The court also opted not to decline exercising supplemental jurisdiction over Richardson's state law claims, as requested by the Brewery and Picanzo. Specifically, the court analyzed Picanzo's argument that the battery cause of action against him should be dismissed because it is distinct from the Title VII cause of action. The court concluded that the battery claim was part of the same case or controversy as the Title VII claim and is central to Richardson's argument that the battery occurred as a result of alleged ongoing discriminatory conduct that took place at the Brewery.

On March 23, 2020, Picanzo filed a motion to stay proceedings because there is a pending criminal case against him for one count of rape in state court. Picanzo states that the rape charge arises from the same incident that serves as the factual basis for Richardson's battery claim against him in the instant case. The state criminal case is currently scheduled to go to trial on July 27, 2020. The motion is currently pending but is ripe for decision.

Nigro v. Tuckett, et al., No. 1:20-CV-00059-BLW
§ 1983; Eighth Amendment; Prisoner Civil Rights

- Shane Vincent Nigro, *pro se*
- Christina Hardesty, Dylan A. Eaton Parsons Behle & Latimer, Boise, ID for Defendants Joshua Tuckett, Cody Mattingly, Dr. Abby Luensmann, and Dr. April Dawson; Yvonne A. Dunbar, Anderson, Julian & Hull, Boise, ID for Defendant Rona Siegert

Plaintiff, Shane Vincent Nigro, is incarcerated at the Idaho Maximum Security Institution ("IMSI") and brought this action against several medical providers at IMSI alleging his right to necessary medical care has been violated. Specifically, Nigro alleges that in June 2018, he discovered a large lump in his throat and sought medical care to obtain a diagnosis and treatment. Nigro claims that he has not received any treatment and that he is currently suffering because the lump has made it very painful for him to eat or swallow.

According to the verified prisoner complaint, one Defendant, Dr. April Dawson, sent Nigro to a specialist for a biopsy and at some point, informed him that the lump was a benign cyst that would not be removed. Another Defendant, Rona Siegert, the healthcare services director, allegedly did not share the biopsy results with Nigro and did not authorize a treatment plan for him. The remaining Defendants, Dr. Abby Luensmann, Joshua Tuckett, and Cody Mattingly allegedly told Nigro that there was a treatment plan in place but ignored Nigro's complaints related to the cyst.

Judge B. Lynn Winmill issued an Initial Review Order and allowed Nigro's Eighth Amendment claims related to medical care to go forward against the Defendants referenced above. However, Judge Winmill did not permit Nigro's supplemental state law claims to go forward and he ordered additional parties that Nigro named as Defendants to be terminated as parties to the action.

The Defendants recently filed answers.

Wilson v. 24 Hour Fitness USA, Inc., No. 1:20-CV-00081-BLW
Telephone Consumer Protection Act; Idaho Consumer Protection Act

- Patrick J. Geile, Foley Freeman, PLLC, Meridian, ID for Plaintiff
- Brook B. Bond, Parsons Behle & Latimer, Boise ID for Defendant

Plaintiff, Matt Wilson, brought this action against 24 Hour Fitness USA, Inc. ("24 Hour Fitness"), for allegedly violating the federal Telephone Consumer Protection Act ("TCPA") and the Idaho Consumer Protection Act ("ICPA") in attempting to collect gym membership dues from Wilson. Wilson alleges that 24 Hour Fitness began calling him on his cell phone from several telephone numbers at an annoying and harassing rate in May 2019. During one of these calls, Wilson alleges that he requested the telephone calls to stop, but this request was ignored. Wilson further alleges that 24 Hour Fitness uses an automated dialing system, therefore whenever he has answered one of these calls, they begin with dead air until someone on the other end is connected to the call and if no one is available to connect, the call is abandoned and dropped by the caller.

Wilson alleges that 24 Hour Fitness's telephone calls using this kind of automated system for non-emergency purposes when consent to receive such calls was revoked by Wilson is a violation of

the TCPA, specifically 47 U.S.C. § 227(b)(1)(A)(iii), which entitles Wilson to $500 in statutory damages for each alleged violation and injunctive relief to prohibit such conduct in the future. According to Wilson, the alleged annoying and harassing rate of these telephone calls is a violation of the ICPA, which entitles Wilson to $1,000 in statutory damages and attorney fees and costs.

The court required 24 Hour Fitness to file an answer by May 15, 2020.

Hulla v. Brennan, et al., No. 1:20-CV-00091-REB
Employment; Sex Discrimination

- Daniel W. Bower, Gabriel M. Haws, Morris Bower & Haws, PLLC, Boise, ID for Plaintiff
- Counsel for Defendants have not yet appeared.

Plaintiff, Mandy Hulla, brought this action against Megan Brennan, Postmaster General, and the United States Post Office (collectively "Post Office"), alleging that the Post Office violated her civil rights by engaging in retaliation, gender discrimination, and wrongful termination. Hulla was employed by the Post Office beginning in November 2016 and, as part of routine training, was assigned to shadow Tim Hoover, an experienced mail carrier. Despite this assignment, Hulla alleges that a different mail carrier, Daniel Romrell, went out of his way to seek Hulla out and get permission from a supervisor for Hulla to shadow him for Sunday deliveries. According to Hulla, it was her belief that new mail carriers typically did not shadow Sunday deliveries. However, during the Sunday delivery training, Hulla alleges that Romrell immediately began making sexually explicit remarks towards her, which she repeatedly tried to deflect to no avail. Romrell also allegedly made comments to Hulla alluding to his authority over her.

Hulla further alleges that the following day, Romrell repeatedly contacted her and eventually told her that he was transferring to a different Post Office location and that he wanted her to join him. When she declined, Romrell allegedly told her he would get her supervisors to transfer her regardless. At the advice of a co-worker and the training instructor, Hulla then contacted Romrell and told him to leave her alone and reported her grievance to a union steward. Upon returning to work after her day off, her supervisors had her draft a statement about Romrell's actions and she was subsequently interviewed by the postmaster and another union steward. According to Hulla, she felt good about the result of that meeting and believed that the matter would come to a favorable close, as she was allegedly told that she would not have to work with Romrell again.

Soon after, Hulla was allegedly pulled into a meeting with other union leaders, who allegedly told her that if Romrell lost his job, they would have to fight for him to get reinstated and that she should keep her mouth shut about the matter. After several months passed, Hulla was allegedly scheduled to work with Romrell again and when she contacted the union about this, she learned that a union steward had left language out of the grievance report that would prevent Romrell from working with Hulla or being promoted to a supervisory position, because he was of the opinion that it violated Romrell's rights. She also subsequently learned that the grievance report allegedly did not contain any documentation related to sexual harassment or her own written statement.

As time went on, Hulla alleges that she encountered ongoing poor treatment and retaliation by other co-workers and supervisors as a result of the issues related to Romrell. Additionally, according to the complaint, Hulla unsuccessfully sought help from the union on several occasions

and was met with resistance. According to Hulla, she was offered a new job, which she accepted despite allegedly lower pay and less lucrative benefits because her continued employment with the Post Office would be impossible, and as such she was constructively discharged from the Post Office.

Hulla requests that the Post Office be ordered to cease and desist all retaliatory treatment of employees that engage in protected activity and pay back pay, compensatory damages in excess of $200,000, and attorney fees and costs.

Broadcast Music, Inc., et al. v. The Green Triangle, LLC et al., No. 4:20-CV-000999-REB

Copyright Infringement

- Brad P. Miller, Carol Tippi Jarman, Hawley Troxell Ennis & Hawley, LLP, Boise, ID for Plaintiffs
- Counsel for Defendants have not yet appeared.

This is a copyright infringement action brought by several entities against The Green Triangle, LLC, d/b/a The Golden Nugget, a bar and live music venue located in Chubbuck, Idaho, as well as Corey Hillman, the manager of the venue. This action resulted after The Golden Nugget allegedly failed to purchase the requisite licenses before allowing performances of certain copyrighted musical works at the venue. According to the complaint, Plaintiff, Broadcast Music, Inc. ("BMI"), has the right to license the public performance of the copyrighted musical works at issue, while the other thirteen Plaintiffs are various entities that own the copyrights to these musical works.

BMI alleges that it reached out to The Golden Nugget over fifty times since July 2018 to inform them that it was necessary to purchase licenses for the public performances of the musical works at issue and that it must immediately cease all public performances of these works. Accordingly, BMI and the other Plaintiffs allege five claims of willful copyright infringement against The Golden Nugget. Specifically, BMI and the other Plaintiffs allege that on November 26, 2019, The Golden Nugget engaged in willful copyright infringement by holding public performances of: (1) "Jessie's Girl" by Rick Springfield; (2) "Mama Tried" by Merle Haggard; (3) "Nobody in His Right Mind Would've Left Her" by Dean Dillon; (4) "Broken Road" by Jeff Hanna, Marcus Hummon, and Bobby Boyd; and (5) "In Color" by "Jamey Johnson, Lee Thomas, and James Otto.

BMI and the other Plaintiffs request that The Golden Nugget be enjoined and restrained from further copyright infringement and ordered to pay statutory damages, as well as attorney fees and costs.

Oliver v. The Amalgamated Sugar Company, LLC et al., No. 1:20-cv-00107-JZ (Visiting Judge Jack Zouhary, Northern District of Ohio)

Labor Union Contracts

- Chad M. Nicholson, McConnell, Wagner, Sykes & Stacey, PLLC, Boise, ID for Plaintiff
- Counsel for Defendants, The Amalgamated Sugary Company, LLC and Bakery Confectionery Tobacco Workers and Grain Millers International, AFL-CIO, Local 284G, have not yet appeared.

Plaintiff, Ryan Clark Oliver, filed this complaint against The Amalgamated Sugar Company, LLC ("ASC") and the Bakery Confectionery Tobacco Workers and Grain Millers International, AFL-CIO, Local 284G ("Union"). Oliver, a former ASC employee, alleges that he was wrongfully terminated by ASC in violation of the collective bargaining agreement ASC had with the Union. Oliver also alleges that the Union breached its duty of fair representation that it owed to Oliver under the same collective bargaining agreement.

According to the complaint, Oliver was an ASC employee and member of the Union beginning in 2015. In June 2019, Oliver claims that ASC terminated his employment on the basis that Oliver had been placed under a "third-strike agreement" and that an alleged incident one week prior to his employment termination constituted the third strike. Oliver alleges that he was never given notice of such an agreement, nor any documentation related to any strikes. Under the terms of the collective bargaining agreement between ASC and the Union, Oliver and the Union appealed his employment termination, which did not result in a favorable outcome to Oliver. Thereafter, Oliver alleges that he expressed interest to the Union to participate in arbitration pursuant to the collective bargaining agreement, which could only be initiated by ASC or the Union, not Oliver. According to the complaint, the Union voted to initiate arbitration, but failed to file the requisite notice of intent to arbitrate with ASC.

Oliver seeks damages in excess of $100,000, as well as attorney fees from both ASC and the Union.

Galloway v. Boise City/Ada County Housing Authorities, et al., No. 1:20-CV-00136-CWD
Employment Discrimination; Family Medical Leave Act

- Jeffrey J. Hepworth, J. Grady Hepworth, Hepworth Law Offices, Boise, ID for Plaintiff
- John A. Bailey Jr., Julian E. Gabiola, Hawley Troxell Ennis & Hawley, LLP, Pocatello, ID for Defendant Boise City/Ada County Housing Authorities; Catherine A. Freeman, Ada County Prosecutor's Office, Boise, ID for Defendant Ada County; Mary R. Grant, City of Boise Attorney's Office, Boise, ID for Defendant City of Boise

Plaintiff, Sharon Galloway, filed this action alleging discrimination, retaliation, and wrongful termination under the Family Medical Leave Act ("FMLA"), as well as negligent infliction of emotional distress against her former employer, the Boise City/Ada County Housing Authorities ("BC/ACHA"), as well as Ada County and the City of Boise. Galloway had been employed by BC/ACHA since 1992 as a public housing specialist. According to her complaint, Galloway took medical leave under the FMLA for the first time in 2013 to undergo several necessary surgeries. Galloway alleges that at the time she had to take this medical leave, BC/ACHA was dealing with multiple internal administrative and employment issues that were causing "significant turmoil" within BC/ACHA.

Galloway alleges that upon returning from medical leave, her colleagues began subjecting her to malicious harassment because they did not appreciate the timing of her leave. This allegedly caused Galloway significant distress and caused her to seek counseling to deal with anxiety and panic attacks. According to Galloway, this treatment intensified in 2019 when her supervisor began being unnecessarily critical of Galloway and taking disciplinary measures against her. As a

result, Galloway alleges that she had to take sick leave for several days to deal with the distress she was experiencing. Soon after, Galloway claims that her medical provider recommended surgery for a separate physical condition, so she submitted a formal application for FMLA leave. According to Galloway's complaint, when she informed her supervisor of her intent to submit the application, the supervisor became visibly angry. Subsequently, Galloway alleges that her supervisor terminated Galloway's employment, effective immediately, just hours after she formally submitted the FMLA paperwork.

In addition to the answer filed by BC/ACHA, both Ada County and the City of Boise have filed motions to dismiss in the case, arguing that although they had a hand in creating BC/ACHA, they are not liable for its acts, as it is an independent body under Idaho law, separate and distinct from Ada County and the City of Boise. The City of Boise also argues that Galloway failed to provide adequate and timely notice to the City that she would be pursuing a claim against it, in violation of the Idaho Tort Claims Act.

Berg v. City of Boise Police Department, et al., No. 1:20-CV-00164-CWD
Employment; Title VII

- Jeffrey J. Hepworth, J. Grady Hepworth, Hepworth Law Offices, Boise, ID for Plaintiff
- Counsel for Defendants have not yet appeared.

Plaintiff, Siernna Berg, filed this action against the City of Boise Police Department ("BPD") and the City of Boise, alleging discrimination and retaliation on the basis of sex in violation of Title VII, the Idaho Human Rights Act, and the Idaho Protection of Public Employees Act. Berg was hired as a BPD police officer in January 2019 and commenced training to obtain her POST certification. During this 20-week in-house training, Berg was elected as the president of her POST Academy class.

During her time at the POST academy, Berg alleges that she witnessed a POST Academy training officer unlawfully place a fellow trainee in a chokehold as a result of a disagreement, which Berg alleges was a violation of applicable administrative regulations, as well as BPD's policy manual. Berg alleges that she reported this incident to her supervisor, but that he subsequently failed to report the incident to Internal Affairs as required by the BPD policy manual. According to the Complaint, Berg was required to report this incident under the BPD policy manual and was therefore a protected activity under Idaho law. Berg asserts that, after reporting the incident, she was subjected to a pattern of sex discrimination and retaliation during the remainder of her POST Academy training, which she states she also reported.

After successfully obtaining her POST certification, Berg commenced additional BPD field training. Berg alleges that throughout this process, she faced additional sex discrimination and unnecessary delays in progressing through the program, as well as unfair and fabricated evaluations. Berg alleges that she nevertheless successfully completed additional phases of the field training program, however, when BPD was served with a Notice of Tort Claim that listed her as a potential witness, the alleged discrimination and retaliation intensified. Berg reported this to a BPD investigator and requested that she complete the remainder of her training under a different supervisor. Berg further alleges that at that time, a BPD captain placed her on administrative leave and subsequently terminated her.

Berg seeks wage and benefit compensation in excess of $500,000, as well as compensatory, consequential, and non-economic damages. Berg further requests that she be reinstated.

Hecox, et al. v. Little, et al., No. 1:20-CV-00184-CWD
§ 1983; Transgender Civil Rights

- Chase Strangio, Gabriel Arkles, James Esseks, Richard A. Eppink, American Civil Liberties Union, New York, NY and Boise, ID; Andrew Barr, Elizabeth Prelogar, Kathleen Hartnett, Cooley LLP, Broomfield, CO, Washington D.C., San Francisco, CA; Catherine Ann West, Legal Voice, Seattle, WA for Plaintiffs
- Counsel for Defendants have not yet appeared.

Plaintiffs, Lindsay Hecox and Jane Doe, brought this action seeking declaratory and injunctive relief to prevent the enforcement of a recent Idaho legislative enactment ("HB 500"), which aims to prohibit participation by transgender athletes in women's athletic activities. Hecox and Doe claim they are entitled to the requested relief under the Fourteenth Amendment's Equal Protection and Due Process Clauses, the Fourth Amendment, and Title IX.

The complaint names the following individuals and entities as Defendants: Idaho Governor Brad Little; Idaho Superintendent Sherri Ybarra; the Idaho State Board of Education; Boise State University and its President, Dr. Marlene Tromp; the Independent School District of Boise City #1 and its Superintendent, Coby Dennis, as well as its Board of Trustees; and the Idaho Code Commission.

HB 500 was passed by the Idaho Legislature earlier in 2020 and subsequently signed by the Governor. Its passage creates a new statute, Idaho Code § 33-6203, which requires athletic teams at Idaho public education institutions to designate the teams as male, female, or coed. It further provides that athletic teams designated for females cannot be open to male participants and that if a participant's sex is disputed, the dispute is to be resolved by the educational institution through requesting that the student submit a signed statement by a healthcare provider that verifies their "biological sex." Such verification must rely on the student's "reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels."

Hecox is a student at Boise State University and identifies as a transgender woman. According to the complaint, Hecox has been training in anticipation of trying out for the University women's cross-country team for the Fall 2020 season and would have been eligible to do so under existing NCAA regulations until the recent passage of HB 500. Doe is a student-athlete at Boise High School and identifies as female, the sex she was assigned at birth. Doe alleges her rights will be violated if she is forced to undergo physical examinations that involve proving she was born with the reproductive anatomy, genes, and/or hormones traditionally associated with the female sex, should her sex be disputed.

The court has set a telephone scheduling conference for June 18, 2020.

Lee v. Stone, et al., No. 1:20-CV-00186-REB
§ 1983; Unlawful Arrest; Malicious Prosecution

- Nathan M. Olsen, Petersen Moss Hall & Olsen, Idaho Falls, ID for Plaintiff
- Counsel for Defendants have not yet appeared.

On April 16, 2020, Plaintiff, Matthew Lee, filed this § 1983 action against Kayse Stone, a former police officer with the Boise Police Department ("BPD"), Ada County Sheriff's Office ("ACSO") Deputy Terry Lakey, Ada County, the City of Boise, as well as Stone's husband, Zane Stone.

According to the complaint, the Stones filed a false complaint with Deputy Lakey in April 2018, claiming that Lee was stalking their family. Lee alleges that Zane Stone called Kayse Stone to give her Lee's license plate number while he was parked outside of his girlfriend's home, which is located a block away from the Stone residence. According to Lee, Kayse Stone then used her position as a BPD officer to run Lee's license plate number to learn his identity. After giving Deputy Lakey this information along with the claims of stalking, Deputy Lakey signed the narrative under penalty of perjury. The Ada County Prosecutor's Office subsequently filed a criminal stalking charge against Lee, and he was arrested and booked into jail soon after.

As a result of the pending criminal charge, the Stones obtained a no-contact order against Lee, which prohibited him from visiting his girlfriend's home since it was in close proximity to the Stone residence. Lee also alleges that he was forced to wear an ankle monitor and undergo a psychological exam when the Stones accused him of violating the order. According to the complaint, Zane Stone also posted Lee's mugshot and driver's license photo online along with a narrative about the stalking allegation.

While the criminal matter was pending, Lee alleges that he was also involved in a custody case with his ex-wife over their daughter and that his ex-wife obtained an ex parte order removing all of Lee's visitation and custody rights as a result of the criminal charge. When the court held a hearing on the ex parte custody order, both Kayse and Zane Stone testified, and Lee alleges the testimony was false. After the custody hearing, Lee's defense attorney unsuccessfully negotiated with the prosecutor throughout the spring and summer of 2018, arguing there was no factual basis for the criminal stalking charge. The prosecutor subsequently added an additional criminal charge for disturbing the peace. Lee filed a motion to dismiss, again arguing that the allegations against him were based on false statements. Shortly before trial, Lee alleges the prosecutor dismissed the charges against Lee and stated that the reason for the dismissal was because the Stones did not want to follow through with the case.

In December 2018, Lee filed a complaint with BPD internal affairs regarding Kayse Stone's alleged conduct. In June 2019, her employment with BPD ceased. BPD then sent a letter to various prosecutors and defendants in 47 cases to inform them that it had found Kayse Stone had given false testimony under oath about Lee.

Although it is not entirely clear from Lee's complaint what precise causes of action he is bringing against the parties named as Defendants, he generally alleges that he deprived of his constitutional rights through unlawful arrest and detention, malicious prosecution, and defamatory conduct, as well as BPD's negligent supervision.

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