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Local Government Law

The newsletter of the Illinois State Bar Association's Section on Local Government Law

Case Summary: *Roman Catholic Diocese v. Cuomo*

BY PHILLIP LENZINI

By per curiam order on November 25, 2020, the U.S. Supreme Court enjoined New York Governor Andrew Cuomo from enforcing his executive order setting 10- and 25-person limits on occupancy on religious services during the pending appeal pursuant to the Free Exercise Clause of the First Amendment in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. ___ (11/25/2020).

Plaintiffs, the Roman Catholic Diocese of Brooklyn and the Agudath Israel of America (a Jewish orthodox synagogue) claimed that Cuomo's COVID-19 executive order violated their Free Exercise rights. The Plaintiffs argued that the regulations treated houses of worship more harshly than comparable secular facilities. Plaintiffs claimed, without contention, that they had

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ISBA Local Government Section Council Case Summaries for the December 3, 2020, Meeting

Litigation Committee: James Ferolo, Sonni Williams, Phil Lenzini, Matt Dione, Brian Flynn, and Josh Herman

7th Circuit

Employment Discrimination

Marshall v. Indiana Dept. of Corrections, No. 19-3270 (September 4, 2020) S.D. Ind., Terre Haute Div. Affirmed Dist. Ct. did not err in granting defendant-employer's motion for summary judgment in Title VII action alleging that defendant terminated plaintiff-employee on account of his sexual orientation and in retaliation for its belief that plaintiff would file EEOC charge against defendant. Defendant explained that plaintiff was terminated

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implemented alternative precautionary measures (e.g. social distancing, mask wearing, reduced occupancy numbers of their own, sanitizers, etc.) and "operated at 25% and 35% capacity for months without a single outbreak." Based on this undisputed evidence, the Supreme Court concluded that the Plaintiffs showed a likelihood of success on the merits on their First Amendment claims because they made a "strong showing" that the challenged executive order violated the requirement of neutrality on religion and singled out houses of worship for especially harsh treatment. *Roman Catholic*, at *2-3. Cuomo's executive order exempted "essential business" which included large stores, factories, and schools, all of which the Governor has stated contributed to outbreaks. Thus, although stemming the spread of COVID-19 is "unquestionably a compelling interest," the restrictions are not narrowly tailored. *Id.* at *3-4.

Further, the Court held that there was "no question that the challenged restrictions, if enforced, will cause irreparable harm" because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Id. at *5.

Finally, the Court noted that there was no evidence that granting the injunction would harm the public. The State had not claimed "that attendance at the applicants' services has resulted in the spread of the disease." *Id.* While acknowledging that courts are not a public health experts, the Court held that: "But even in a pandemic, the Constitution cannot be put away and forgotten." *Id.*

Justices Gorsuch and Kavanaugh wrote separate concurring opinions. Chief Justice Roberts dissented and Justice Breyer, with Justice Sotomayor joining him and also writing separately in dissent, with Justice Kagan joining both in dissent.

Justice Gorsuch begins his concurrence opinion saying:

"Government is not free to disregard the First Amendment in times of crisis. At a minimum, that Amendment prohibits government officials from treating religious exercises worse than comparable secular activities, unless they are pursuing a compelling interest and using the least restrictive means available." *Roman Catholic*, (Gorsuch concurring), at *1.

As he so clearly points out:

"People may gather inside for extended periods in bus stations and airports, in laundromats and banks, in hardware stores and liquor shops … Indeed, the Governor is remarkably frank about this: In his judgment laundry and liquor, travel and tools, are all 'essential' while traditional religious exercises are not. That is exactly the kind of discrimination the First Amendment forbids." *Id.* at * 2.

He concludes his concurrence by saying:

"It is time – past time – to make plain that, while the pandemic poses many grave challenges, there is no world in which the Constitution tolerates color-coded executive edicts that reopen liquor stores and bike shops but shutter churches, synagogues and mosques." *Id.* at * 7.

Indeed, it seems all of the Justices would agree with these propositions as expressed by Justice Gorsuch, and at least the five in the majority and the chief justice in his dissent do, and even agree with the view that a "strict scrutiny" must be met when reviewing First Amendment rights regarding religious activities' restrictions.

The real point of separation relates simply to the need for an injunction under the circumstances. For each of the dissenters, there is no need for an injunction at this point since the governor has (since suit was filed) "relaxed" the restrictions. Thus, the challenged occupancy limits no longer apply. However, Cuomo never challenged the Plaintiffs' standing or raised the mootness doctrine. Therefore, the majority found no jurisdictional or prudential barriers existed to issuing the injunctions now.■

Local Government Law

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following its investigation into complaint by male subordinate that plaintiff had engaged in same-sex, sexual harassment with subordinate on two occasions. Plaintiff, though, failed to produce valid comparative employee who received better treatment, even though two of said proposed comparative co-workers had been accused of sexual harassment, where said comparative co-workers: (1) did not have same level and type of authority over their victims as plaintiff had over his victim; and (2) did not have same sort of disciplinary history as plaintiff. Plaintiff further failed to show that defendant's explanation for his termination was pretextual. Fact that plaintiff disagreed with defendant's finding that plaintiff had sexually harassed his subordinate did not establish pretext. Plaintiff also failed to show any causal connection between any protest and any adverse act, where defendant made decision to terminate plaintiff prior to its knowledge that plaintiff might be filing EEOC complaint.

Americans With Disabilities Act

Mlsna v. Union Pacific Railroad Co., No. 19-2780 (September 14, 2020) W.D. Wisc. Reversed and remanded

Dist. Ct. erred in granting defendant-employer's motion for summary judgment in plaintiff-railroad conductor's ADA action, alleging that defendant terminated him on account of his hearing disability, after defendant determined that although plaintiff had passed required hearing acuity test through use of his hearing aids, he could not pass said test with use of additional hearing protection device that, according to defendant's policy, plaintiff was required to wear if he was exposed to noise from locomotive above certain level. Question of fact existed as to whether plaintiff was exposed to noise level on his locomotive that required wearing of hearing protection device at time of his termination, and there was question of fact as to whether defendant's more stringent policy requiring wearing of hearing protection device was essential function of his conductor position. Also, while defendant rejected plaintiff's proposed hearing protection device because it lacked published noise reduction rating, material fact existed as to whether defendant satisfied its duty to accommodate plaintiff's disability by exploring other devices, if plaintiff was subject to hearing protection regulation.

Sandefur v. Dart, No. 19-2787 (November 4, 2020) N.D. Ill., E. Div. Affirmed

Dist. Ct. did not err in granting defendants-employers' motion for summary judgment in plaintiff-police officer's action under Americans with Disabilities Act, alleging that defendants dismissed plaintiff from police academy on account of his disability after investigating circumstances of plaintiff's possession of handicapped parking placard on first day of academy. In 2011, plaintiff received handicapped parking placard based on representation that he could not walk without assistance, and that his osteoarthritis was permanent, and plaintiff's physician completed medical release in 2015 that certified that plaintiff could perform defendants' P.O.W.E.R. physical agility test required of academy recruits. Plaintiff initially told individuals that placard belonged to his wife and not him, but eventually told defendants that the placard was for his arthritic knee condition which would not affect his ability to perform duties at the academy. Defendants could properly find that dismissal from academy was warranted, because plaintiff had demonstrated inability to provide truthful responses to basic questions, which called into question his ability to function as member of police force. Moreover, plaintiff failed to establish that dismissal was result of real or perceived disability, where record supported defendants' belief that plaintiff had been dishonest, and where defendants could reasonably make inquiry about his placard, given physical demands of academy and given need for police integrity. Fact that individual, who brought plaintiff's possession of placard to attention of defendants' decision-makers, referred to plaintiff as "handicapped m*****f*****" did not require different result, where said individual had no further involvement in investigation.

Section 1983 Action

Patrick v. City of Chicago, No. 18-2759 (September 8, 2020) N.D. Ill., E. Div. Affirmed

Record contained sufficient evidence to support jury's $13.3 million verdict in favor of plaintiff in his section 1983 action, alleging that his constitutional rights were violated where defendants: (1) used his coerced confession to obtain convictions on murder charges that were eventually vacated via state's motion after plaintiff had served 21 years on life sentence; (2) fabricated evidence against plaintiff and conspired to violate his constitutional rights; and (3) failed to intervene to prevent certain constitutional violations. While defendants argued that case should have been dismissed as sanction for plaintiff giving two false statements in his deposition, Dist. Ct. did not abuse its discretion in not dismissing case, where plaintiff's false statements about seeing third-party get arrested or about fact that he had never spoken to different individual did not concern core issues in plaintiff's case and were otherwise fully exposed at trial. Also, Dist. Ct. did not err in admitting plaintiff's certificate of innocence, since said certificate was highly relevant to plaintiff's malicious prosecution claim, and jury was otherwise instructed not to decide whether plaintiff had committed charged offenses in criminal case. Also, while Dist. Ct. gave jury fabrication of evidence instruction that improperly failed to explain that plaintiff had burden to prove that said evidence was used at trial and was material to his conviction, said error was harmless, where record showed that plaintiff's coerced confession and defendants' fabricated line-up report were actually used at trial, and that said evidence was material to his convictions.

Fourth Amendment

Dix v. Edelman Financial Services, LLC, No. 18-2970 (October 19, 2020) N.D. Ill., E. Div. Affirmed

Dist. Ct. did not err in dismissing for failure to state cause of action plaintiff's section

1983 action alleging that defendants-former girlfriend and two police officers violated his Fourth Amendment rights by unlawfully evicting him from former girlfriend's home, where, according to plaintiff, said eviction constituted unreasonable seizure of his possessory interest in former girlfriend's home. Plaintiff failed to adequately allege that he had possessory interest in former girlfriend's home to support any Fourth Amendment claim, where plaintiff had paid no rent over six-year period, had no lease and asserted that he had no ability to prevent former girlfriend from going through and mingling with his property within her home. As such, plaintiff held only revocable license to remain in former girlfriend's home, and former girlfriend could revoke his license to remain in her home at any time, such that plaintiff was trespasser at time former girlfriend called police to remove him from her home. Fact that former girlfriend had previously been told by other police that she needed court order to remove plaintiff from her home did not require different result. Ct. of Appeals also entered order directing clerks from district courts to return plaintiff's unfiled civil pleadings for two-year period as sanction for plaintiff having filed series of frivolous actions.

Turner v. City of Champaign, No. 19-3446 (November 3, 2020) C.D. Ill. Affirmed Dist. Ct. did not err in granting defendants-police officials' motion for summary judgment in plaintiff's section 1983 action alleging that defendants violated decedent's 4th Amendment rights by using excessive force when causing decedent's death during encounter in which defendants attempted to detain decedent to protect himself and others and to take decedent to hospital for evaluation of his mental health. On day of encounter in 2016, defendant police-officer held belief since 2010 that decedent had mental health problems, and decedent seemed disorientated and incoherent when officer approached decedent. After decedent began to flee, three officers gave chase and eventually subdued decedent by grabbing his shoulder, bringing him to ground, placing him in handcuffs and, after decedent continued to struggle, wrapping his legs. Shortly after decedent's legs were subdued, officers determined that decedent was not breathing and attempted CPR, but decedent eventually died. Autopsy determined that decedent died from cardiac arrhythmia, and medical evidence showed no other cause of death that related to claim of excessive force. Defendants acted legally to detain decedent and used reasonable force in response to decedent's continued resistance. Also, defendants were entitled to qualified immunity, since defendants' conduct was similar to use of force displayed in Estate of Philips, 123 F.3d 586, during similar encounter with mentally ill person. Too, while defendants' use of force, when combined with decedent's other health problems, resulted in decedent's death, defendants' use of force did not constitute "deadly force," because force used by defendants did not carry substantial risk of causing death or serious bodily harm. Defendants were also entitled to absolute immunity under section 4-102 of Ill. Tort Immunity Act with respect to plaintiff's state-law claims, since defendants were attempting to obtain mental health detention of decedent at time of encounter.

Whistleblower Protection Act

Delgato v. U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, No. 19-2239 (October 29, 2020) Petition for Review, Order of Merit Systems Protection Board Vacated and remanded Record failed to support AJ's decision that denied relief to plaintiff-ATF agent in his claim under Whistleblower Protection Act (Act) that he was denied certain promotions in retaliation for telling his employer that another ATF agent may have committed perjury during federal criminal trial. AJ could not properly find that plaintiff had failed to make protected report, where Ct. of Appeals had previously found that said report was protected under Act, and where AJ had merely restated her contrary position on remand from Ct. of Appeals' order. However, AJ properly found on remand that plaintiff's report was contributing factor in at least two promotion applications, where: (1) applicable decision makers were aware of said report for all at issue promotion applications and had been aware that report had been made within six weeks of one promotion denial; (2) plaintiff was sole "best-qualified" candidate for another promotion that he did not receive; and (3) govt.'s evidence that it would have made same decision to deny plaintiff's promotion applications fell short of required "clear and convincing" standard required by Act. Ct. remanded matter for determination of damages. (Corrected opinion)

Second Amendment

Calderone v. City of Chicago, No. 19-2858 (November 5, 2020) N.D. Ill., E. Div. Affirmed

Dist. Ct. did not err in granting defendants-employer and other police officials' motion for summary judgment, alleging that defendants were entitled to qualified immunity in plaintiff-police employee's action, asserting that defendants violated her Second Amendment rights by terminating her because she had shot third-party in self-defense during off-duty physical altercation with third-party. Defendants based termination on plaintiff's violation of personnel rules prohibiting city employees from discharging firearm that result in injury to another person, and plaintiff claimed that her termination violated her Second Amendment right to use her firearm in self-defense. However, defendants were entitled to qualified immunity, since, although relevant case law recognized constitutional right to possess firearm, no case law has recognized Second Amendment right to use firearm for self-defense. Ct. further rejected plaintiff's procedural due process claim, where relevant collective bargaining agreement that allowed plaintiff to grieve her termination provided plaintiff with sufficient post-deprivation due process to address her termination.

Illinois Supreme Court

Illinois Municipal Code

Policemen's Benevolent Labor Committee v. City of Sparta, 2020 IL 125508 (November 19, 2020) Randolph Co. (KILBRIDE) Appellate court affirmed; circuit court reversed; remanded. Plaintiff police union filed declaratory judgment action seeking a ruling that

an activity-points policy used by City to evaluate the performance of its police officers established an unlawful ticket quota in violation of Section 11-1-12 of Illinois Municipal Code. Plain language of section 11-1-12 of Municipal Code prohibits municipalities from including the issuance of citations in a "points of contact" system used to evaluate the job performance of police officers. By granting awards based on points of contact, City's policy may provide incentive for officers to write citations to accumulate as many points as possible. (A. BURKE, GARMAN, KARMEIER, THEIS, NEVILLE, and M. BURKE, concurring.)

Illinois Appellate Court

First District

Illinois Wage Payment and Collection Act

Samano v. Temple of Kriya, 2020 IL App (1st) 190699 (September 3, 2020) Cook Co., 4th Div. (GORDON) Reversed.
The Minimum Wage Law does not apply to Plaintiff, who was ordained as a swami and performed religious ceremonies in that role, as she is not an "employee" for purposes of the statute because she is a member of a religious organization. Plaintiff's Wage Payment Act claims must fail where there was no evidence that the parties agreed to pay Plaintiff for more than 2 1/2 days of work. The function of Plaintiff's work was not just to send emails or maintain a website for a commercial enterprise, where the temple would earn money for religious purposes. The reason for Plaintiff's work cannot be removed from the work itself. Plaintiff did not show a violation of the Wage Payment Act. An employment agreement for purposes of the Wage Payment Act need not be a formally negotiated contract. (REYES, concurring; DELORT, specially concurring.)

Employment

Campos v. Cook County Sheriff's Merit Board, 2020 IL App (1st) 191833 (September 15, 2020) Cook Co., 2d Div. (LAVIN) Affirmed.
Circuit court confirmed decision of Sheriff's Merit Board terminating employment of a correctional officer based on his arrest for DUI, striking an unattended motor vehicle and leaving the scene of property damages. Officer claimed that Board's decision was invalid because the Board was unlawfully constituted. Termination was proper, as officer violated Sheriff's Department's general orders by disobeying Illinois law. Officer's challenge to Board's constituency was based on appointment irregularities which have since been cured by amendment of the Counties Code. (FITZGERALD SMITH and PUCINSKI, concurring.)

Condemnation

Berry v. City of Chicago, 2020 IL 124999 (September 24, 2020) Cook Co. (A. BURKE) Appellate court reversed; circuit court affirmed.
Plaintiffs filed 2-count amended class-action complaint alleging negligence and inverse condemnation as to City's replacement of water meters and water main pipes, and the partial replacement of lead service lines that run between the water mains and residences throughout the City. Plaintiffs allege only that City caused an increased risk of harm and thus does not allege a cognizable injury for purposes of a negligence action. Plaintiffs seek to have all of the proposed class members' service lines replaced, but do not allege that all these service lines have been rendered completely unusable, or that these lines are unfit for human use as a matter of law, by the City's actions. Complaint contains no allegation of any measurable, pecuniary loss caused by City's repair work. Thus, no action for inverse condemnation. (GARMAN, KARMEIER, and THEIS, concurring.)

Prevailing Wage Act

Moore Landscapes, LLC v. Valerio, No. 126139, 1st Dist.
This case presents question as to whether trial court properly dismissed plaintiffs' action under section 11 of Prevailing Wage Act that sought recovery from defendant-contractor for its failure to pay them prevailing wages for tree planting work pursuant to defendant's contract with Chicago Park District. Instant contract failed to contain stipulation that Park District project was subject to provisions of Prevailing Wage Act, and trial court found that said failure to so stipulate precluded plaintiffs from obtaining any remedy under section 11 of Prevailing Wage Act. Appellate Court, though, found that plaintiffs could proceed, even where contract did not contain stipulation of coverage under Prevailing Wage Act. In its petition for leave to appeal, defendant argued that only Illinois Dept. of Labor has authority to prosecute claim under Prevailing Wage Act where contract fails to contain stipulation as to Act's coverage.

Second Amendment

Guns Save Life, Inc. v. Ali, No. 126014, 1st Dist.
This case presents question as to whether trial court properly granted defendant's motion for summary judgment in plaintiffs' action challenging Cook County's Ordinance that imposed $25 tax on firearms purchased at retail businesses located within County and $.01 per cartridge tax on rimfire ammunition and $.05 per cartridge tax on centerfire ammunition. Appellate Court, in affirming trial court, rejected plaintiffs' claims that: (1) said Ordinance violated both Second Amendment to U.S. Constitution because it essentially places tax on constitutional right, as well as Section 22 of Article I of Illinois Constitution; and (2) instant classifications in ammunition tax violated Uniformity Clause of Section 2 of Article IX of Illinois Constitution. Appellate Court further found that owner of firearm store lacked standing to bring instant lawsuit because taxes are not paid by retailer, and customer also lacked standing to bring instant lawsuit because she had not actually paid any tax and was basing claim on hypothetical firearm purchase.

Zoning

Sullivan v. Village of Glenview, 2020 IL App (1st) 200142 (November 4, 2020) Cook Co., 3d Div. (ELLIS) Reversed and remanded.
Plaintiff homeowners filed declaratory judgment action to invalidate a 1988 municipal ordinance which Plaintiffs claimed to pave the way for rezoning of property adjacent to their homes from residential to commercial. Court erred in

dismissing complaint as time-barred, based on a 90-day limitations provision in the Municipal Code that governs challenges to municipal zoning "decisions." Ordinance unambiguously left the rezoning decision for later, in the hands of the Board of Trustees, should the landowner choose to apply for it. As the 1988 ordinance was not a "decision" to rezone, limitations provision in Municipal Code are inapplicable. Suit is not time-barred. (HOWSE and COBBS, concurring.)

Elections

Somer v. Bloom Township Democratic Organization, 2020 IL App (1st) 201182 (November 10, 2020) Cook Co., 4th Div. (GORDON) Affirmed with instructions.
Plaintiffs, various elected officials and citizens of Township, filed suit seeking order requiring Democratic nominees to be selected through a primary instead of through the Township caucus process, alleging that the COVID-19 pandemic makes a caucus unsafe. Court properly denied Plaintiffs' request for preliminary injunction, as Plaintiffs failed to establish a likelihood of success on the merits. Plaintiffs have not shown that they can dictate the method by which a township's political party selects its nominees, or that holding a caucus meeting will violate Plaintiffs' rights. If Defendants choose to proceed with a caucus meeting, trial court is ordered to ensure safety of participants by imposing appropriate restrictions, based on public health guidelines in effect at the time, and Defendants must provide for method of remote participation in the caucus meeting. (HALL and ELLIS, concurring.)

Negligence

Foy v. Village of LaGrange, 2020 IL App (1st) 191340 (November 6, 2020) Cook Co., 5th Div. (CUNNINGHAM) Affirmed.
Plaintiff sued Village in negligence, after he tripped and fell when walking on a sidewalk. Village measured the "raised deviation" between the sidewalk slabs as between 1.5 and 1.75 inches. The fact that Plaintiff admits that the sidewalk deviation was readily visible supports finding that it was open and obvious. Court properly granted summary judgment on grounds that deviation was open and obvious. (DELORT and ROCHFORD, concurring.)

Employment

Porter v. Cook County Sheriff's Merit Board, 2020 IL App (1st) 191266 (July 21, 2020) Cook Co., 2d Div. (PUCINSKI) Affirmed.
Cook County Sheriff's Merit Board terminated Plaintiff's employment for testing positive for a cocaine metabolite. Even if testing lab's litigation package should not have been admitted, another lab's test results confirmed that Plaintiff tested positive for benzoylecgonine, and thus any error was harmless. Board did not abuse its discretion in admitting lab's litigation package under the business records exception. The alleged missteps in testing procedure did not affect validity of the lab results, were corrected, or were overcome by other evidence that Plaintiff tested positive. (LAVIN and COGHLAN, concurring.)

Third District

Tort Immunity Act

Donath v. Village of Plainfield, 2020 IL App (3d) 190762 (October 6, 2020) Will Co. (O'BRIEN) Reversed and remanded.
Plaintiff sued Village for injuries sustained when she tripped and fell on a public street while leaving a street festival. Questions of material fact exist as to whether the use of Fox River Street as a pedestrian walkway for a few days a year increased the usefulness of any public property intended or permitted to be used for recreational purposes. Court erred in granting summary judgment for Village on basis of immunity under Section 3-106 of Tort Immunity Act. (McDADE, concurring; WRIGHT, dissenting.)

Ordinances

Frederick v. Gaca, 2020 IL App (3d) 200154 (October 23, 2020) Will Co. (O'BRIEN) Affirmed.
Plaintiff filed suit alleging that Defendants violated local zoning ordinances by operating a boarding house and a vehicle parking and storage facility on residential property they owned next door to Plaintiff's property. Court properly granted partial summary judgment for Plaintiff and entered a permanent injunction enjoining Defendants from those activities. Requests to admit established that Defendants were operating a boarding house and used the property as a parking and storage facility for vehicles. No adequate remedy at law exists. Defendants were not denied due process, as they were given time to respond but failed to do so in compliance with deadlines. (LYTTON and SCHMIDT, concurring.)

Tax Increment Allocation Redevelopment Act

The Board of Education of Richland School Dist. No. 88A v. The City of Crest Hill, No. 126444, 3rd Dist.
This case presents question as to whether trial court properly granted defendant's motion for summary judgment in plaintiff's action that challenged ordinances approved by defendant that established TIF District under Tax Increment Allocation Redevelopment Act (Act). Plaintiff asserted that TIF District was unlawfully composed, where portion of TIF District was not contiguous with remaining portion of TIF District as required by section 11-74.4-4(a) of Act because said portions were separated by 234.9 foot portion of natural gas right-of-way. While trial court found that existence of instant right-of-way was of no legal consequence, Appellate Court found that existence of instant right-of-way precluded establishment of instant TIF District because defendant could not "jump" said right-of-way for purposes of establishing contiguous requirement. Appellate Court also rejected defendant's claim that term "contiguous" has same meaning under both section 11-74.4-4(a) and section 7-1-1 of Ill. Municipal Code that pertained to annexations.

Fourth District

Annexation Agreements

I-57 & Curtis, LLC v. Urbana & Champaign Sanitary District, 2020 IL App (4th) 190850 (August 26, 2020) Champaign Co. (CAVANAGH) Affirmed.
Plaintiff LLC filed action against municipal defendants, seeking to invalidate an intergovernmental contract and some

related ordinances. The contract governs annexations of territory to the Sanitary District new connections to the sewer lines of the Sanitary District. Plaintiff has not been deprived of a property interest or due process. Plaintiff has no protectable property interest in subdivision approval. Illinois statutory law explicitly authorizes the negotiation and execution of an annexation agreement between a landowner and a municipality. No provision of Illinois Municipal Code would necessarily be violated if a landlowner and a municipality agreed to subdivision approval in return for a municipal annexation. (KNECHT and TURNER, concurring.)

Fifth District

Ordinances

Saladrigas v. City of O'Fallon, 2020 IL App (5th) 190466 (August 26, 2020) St. Clair Co. (BOIE) Reversed and remanded. Class action filed as to constitutionality of city ordinance which authorizes city to impound a motor vehicle used to commit certain offenses, including DUI, and provides for a $500 charge to owner of any vehicle impounded under the ordinance. Towing and storage fees and penalties may also be imposed. Ordinance's $500 charge is a fee, rather than a fine. Due process requires that a fee be in an amount that bears some reasonable relationship to the actual costs the fee is intended to recoup. Court erred in granting summary judgment for city on basis that ordinance provided for a fine. (MOORE and OVERSTREET, concurring.)■

The Public Policy Exception to Enforcing Collective Bargaining Agreements: *City of Chicago v. Fraternal Order of Police* and Section 8.4

BY PETER J. ORLOWICZ & JULIA STUBLEN

The Illinois Local Records Act (50 Ill. Comp. Stat. 205/1 *et seq.*) establishes a comprehensive program for management, preservation, and disposal of public records in Illinois. For almost forty years, the Chicago Fraternal Order of Police (FOP) has sought to contract around this statutory requirement with respect to police disciplinary records through provisions in its collective bargaining agreement (CBA) with the City of Chicago. Section 8.4 of the 2007-12 CBA and substantially similar provisions in previous agreements have required the City to destroy disciplinary records five years after the date of the incident or its discovery.[1] However, the City of Chicago has not complied with this portion of the CBA since 1991, in part due to federal court orders prohibiting destruction of such records.[2] On June 18, 2020, the Illinois Supreme Court held that Illinois law establishes a well-defined and dominant public policy concerning the procedures for retention and destruction of government records, and that an arbitration award forcing the City to comply with Section 8.4 in contravention of the Local Records Act was void and unenforceable because the award violated that public policy.[3]

Factual Background

The City of Chicago and the FOP first entered into a CBA in 1981. Since then, the CBA has required the City to destroy "all disciplinary investigation files" and "all disciplinary record[s] or summary of such record[s]" after five years; this language has remained substantially unchanged since the initial 1981 agreement. [4] For ten years, the City complied with this portion of the CBA.[5]

In 1991, a federal court ordered the City to stop destroying records of police misconduct,[6] setting a precedent that many other courts began to follow. The City halted its destruction of these records, but was unable to negotiate the relevant provision out of the CBA.[7] In 2011, the FOP filed two grievances seeking to compel the city to destroy disciplinary records pursuant to Section 8.4 of the 2007-12 CBA. The City denied the grievances, and the FOP pursued arbitration.[8]

In late 2014, the Chicago Tribune and Chicago Sun-Times requested police misconduct information from the City dating back to 1967 under the Illinois Freedom of Information Act (5 Ill. Comp. Stat. 140/1 *et seq.*). The City notified the FOP it intended to comply with the request, prompting the FOP to seek a preliminary injunction in Illinois circuit court to prevent the City from releasing documents older than four years old until

arbitration ended. The trial court entered two preliminary injunctions in December 2014 and May 2015, from which the City filed interlocutory appeals.[9] In December 2015, while the City's appeals were pending, the United States Department of Justice ordered the City to preserve all documents pertaining to police misconduct in connection with a pattern or practice investigation under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. § 13701). [10]

In spite of the pending requests and Justice Department investigation, the arbitrator issued an initial opinion in January 2016, finding the City violated Section 8.4 of the CBA and ordering the City and the FOP to "negotiate a timeline and method" for destroying misconduct documents pursuant to the parties' CBA.[11] In response, an assistant U.S. attorney wrote to the City to clarify that they could not destroy any documents relating to police misconduct, which prompted the arbitrator to modify the initial opinion and deny the FOP's grievance "for the reasons of the public policy involved in the request of the U.S. Department of Justice, and only for this reason."[12] The FOP asked for reconsideration and in June 2016, the arbitrator released yet another opinion, clarifying that after the Justice Department investigation concluded the CBA could be enforced.[13]

Weeks later, the appellate court vacated the preliminary injunction entered by the circuit court, holding the relevant portion of the CBA unenforceable as a violation of the Illinois Freedom of Information Act and the public policy underlying it.[14] In light of the appellate court's decision, the City returned to circuit court and filed to vacate the arbitration decision, and the FOP filed a counterpetition to confirm it.[15] The circuit court ruled in favor of the City on public policy grounds in October 2017, based on the State Records Act (5 Ill. Comp. Stat. 160/1 *et seq.*), the Local Records Act, and the Freedom of Information Act,[16] and the appellate court affirmed in March 2019.[17] The FOP then sought review in the Illinois Supreme Court, and the court granted the petition for leave to appeal on September 25, 2019.

Review of Arbitration Decisions and Public Policy

On June 18, 2020, the Illinois Supreme Court affirmed the appellate court and agreed that Section 8.4 of the CBA violated public policy and was unenforceable.[18] Judicial review of an arbitration award is extraordinarily narrow and there is a strong presumption that the arbitration award is valid.[19] However, the Illinois Supreme Court recognizes a narrow exception to this rule where an arbitration award based on a collective bargaining agreement contravenes explicit public policy, and will vacate such an award as " repugnant to established norms of public policy."[20] As a CBA is simply a contract between parties, this doctrine is based on the common law principle that courts may refuse to enforce contracts which violate law or public policy.[21]

The court articulated a two-step analysis in deciding whether the public policy exception applied: first, the court determined whether a "well-defined and dominant public policy" could be identified;[22] and second, evaluated whether the arbitration award violated the established public policy.[23] This review is *de novo* because the existence of a well-defined and dominant public policy and whether an arbitration award violates the policy are questions of law.[24]

Applying that standard, the court looked to the Local Records Act in the first step. The Act forbids the destruction of public records without the approval of the Local Records Commission.[25] The Local Records Commission may only authorize destruction or disposal of records after determining that the records in question have no administrative, legal, historical, or research value.[1] The court found that the procedures laid out in the Local Records Act are an express, legislative restriction on a local government to act in any other way than authorized by the statute.[2] The court also pointed to the State Records Act, which contains a similar requirement for the disposal of state records.[3] The court found that in light of the plain language of state statute, it was unnecessary to look further to determine the state's public policy.[4]

For the second step, the court went on to find that Section 8.4 of the CBA could not be reconciled with state law and public policy because the CBA required the City to destroy all records of police misconduct regardless of whether or not the Local Records Commission approved the destruction.[5] The court explained that the City might find itself in a situation where the Local Records Commission denied permission to destroy records covered by Section 8.4 of the CBA, and allowing the arbitrator's award to stand would create a "shift in the balance of power where document destruction procedures in a contract provision would supersede statutory procedures."[6] Because of this conflict, the court voided the arbitration award.[7]

The court also rejected the FOP's argument that the Illinois Public Labor Relations Act (5 Ill. Comp. Stat. 315/5 *et seq.*) established a public policy of "enforcing labor arbitration awards over any other laws," which would override the public policy identified by the court in the Local Records Act. The court noted the FOP's position would obliterate the entire public policy exception and would be contrary to numerous past decisions of the court, which it declined to overrule.[8] Justice Kilbride dissented from the court's decision, agreeing that the Local Records Act established a well-defined and dominant public policy, but stating he believed the arbitrator's award only required negotiation between the City and the FOP, not destruction of any actual records, and that the negotiation process might result in an agreement that could be reconciled with the requirements of the Local Records Act. As such, the arbitrator's decision should not be set aside because it should be construed in a way that did not violate public policy.[9]

Significant Lessons

The arbitration and litigation between the City of Chicago and the FOP proceeded parallel to growing anger around the country and in Chicago regarding police brutality and the lack of transparency between police departments and the public. In 2016, the Police Accountability

Task Force in Chicago released a report that, among other things, recommended the elimination of the CBA provision "requiring destruction of records." In its view, records of police misconduct contain information that "rightfully" belongs to the public.[10] In 2017, the U.S. Department of Justice released its pattern or practice investigation report about the Chicago Police Department, concluding that the destruction of documents provision in the CBA inhibited important police reform.[11]

In light of the increasing public pressure on state and local governments to strengthen police accountability, agencies and municipalities should carefully review any existing CBAs to determine if compliance with the terms of the CBA is compatible with state statutory requirements like the Local Records Act. The two-step analysis described by the Illinois Supreme Court for triggering the public policy exception is not limited to CBA provisions like Section 8.4 which require document destruction, nor is it limited to CBAs with law enforcement bargaining units, but the strong statement by the Illinois Supreme Court of the state's public policy supporting the proper retention and availability of government records may be a useful starting point for reform efforts.

Similarly, agencies and municipalities should keep these considerations in mind when re-negotiating or entering into collective bargaining agreements to begin with, to avoid being placed in a position where they must choose between compliance with the CBA and compliance with state law. Although the grounds for setting aside a contract provision as against public policy are narrow, agencies should not feel obligated to negotiate or trade off over proposals that clearly contradict a well-defined and dominant public policy as described by the Illinois Supreme Court.■

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1. *City of Chicago v. Fraternal Order of Police, Chicago Lodge No. 7*, 2020 IL 124831, ¶ 8.
2. *Id.* at ¶ 9.
3. *Id.* at ¶ 37.
4. *Id.* at ¶ 8.
5. *Id.* at ¶ 9.
6. *Fallon v. Dillon*, 90-C-6722 (N.D. Ill. 1990).
7. *City of Chicago v. Fraternal Order of Police, Chicago Lodge No. 7*, 2020 IL 124831, ¶ 9.
8. *Id.* at ¶ 10.
9. *Id.* at ¶ 11.
10. *Id.* at ¶ 12.
11. *Id.* at ¶ 13.
12. *Id.* at ¶ 14-15.
13. *Id.* at ¶ 16.
14. *Fraternal Order of Police, Chicago Lodge No. 7 v. City of Chicago*, 2016 IL App (1st) 143884, ¶ 55.
15. *City of Chicago v. Fraternal Order of Police, Chicago Lodge No. 7*, 2020 IL 124831, ¶ 18.
16. *Id.* at ¶ 21.
17. *City of Chicago v. Fraternal Order of Police*, 2019 IL App (1st) 172907, ¶40.
18. *City of Chicago v. Fraternal Order of Police, Chicago Lodge No. 7*, 2020 IL 124831, ¶¶42, 52.
19. *American Federation of State, Country & Municipal Employees v. State of Illinois*, 124 Ill. 2d 246, 254 (1988).
20. *American Federation of State, Country & Municipal Employees v. Department of Central Management Services*, 173 Ill. 2d 299, 306-07 (1996).
21. *City of Chicago v. Fraternal Order of Police, Chicago Lodge No. 7*, 2020 IL 124831, ¶25.
22. *Zeigler v. Illinois Trust & Savings Bank*, 245 Ill. 180, 193 (1910).
23. *American Federation of State, County & Municipal Employees v. Department of Central Management Services*, 173 Ill. 2d 299, 307-08 (1996).
24. *Country Preferred Insurance Co. v. Whitehead*, 2012 IL 113365, ¶ 27
25. 50 Ill. Comp. Stat. 205/4a.
26. 50 Ill. Comp. Stat. 205/10.
27. *City of Chicago v. Fraternal Order of Police, Chicago Lodge No. 7*, 2020 IL 124831, ¶35.
28. *Id.* at ¶36
29. *Id.* at ¶34.
30. *Id.* at ¶41.
31. *Id.* at ¶42.
32. *Id.* at ¶44.
33. *Id.* at ¶¶45-47.
34. *Id.* at ¶¶56-58, 60.
35. Police Accountability Task Force, *Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities they Serve* 159 (April 2016).
36. United States Department of Justice, *Investigation of the Chicago Police Department* 89, 113 (January 13, 2017).

Executive Orders and Their Challenges During COVID-19

BY LESLEY GOOL

Governors across the United States have issued executive orders as the country responds to the unending coronavirus pandemic (COVID-19) in hopes of slowing the virus's spread and thus helping to safeguard the health and well-being of our communities. Here in Illinois, Governor Pritzker has used his executive authority to require residents to maintain social distancing, stay in their homes or residences, prohibit particular outdoor activities, restrict the operation of non-essential businesses, and limit the number of people gathered together outside a single household, to name a few.

For a number of constituents, this was the first time an Executive Order noticeably affected their normal ways of life, and after the first 30-day stay-at-home Order was issued, civilians began to wonder what the function of an executive order is and where did Governor Pritzker's authority to make these seemingly unilateral decisions originate. It is the purpose of this article to provide a brief historical background of a proclamation or executive order and to examine the governor's authority to issue such orders, with an emphasis on recent lawsuits challenging Governor Pritzker's COVID-19 Orders.

Executive orders and proclamations originated with the English king. The monarch enjoyed specific entitlements and

rights which belonged only to him by virtue of his preeminent position. Certain direct prerogatives, including the power to make war and the right to send ambassadors to other countries, were considered a part of the king's sovereignty. Other incidental entitlements were attached to the Crown, including that no costs could be recovered against the king and his debt was preferred to the debt of anyone else. These exceptions were established from the general rules applicable to the entire kingdom.

Unlike the king, whose authority to issue a proclamation or an executive order is rooted in his position, the office of governor was created by state constitutions to head the executive department of the state. Reacting to the arbitrary and powerful colonial governors preceding the American Revolution, the legislatures of the newly established states expressed their fear of the governor's office by constitutionally limiting the authority of the executive branch. In contrast to the king, a governor possessed only those powers delegated to him by the state constitution or by state statute, and such powers were limited in that they could be exercised only in the manner provided. Most state constitutions place the supreme executive power, the chief executive power, or the executive power in the office of the governor, and frequently cloak their chief executive with the responsibility to "take care that the laws be carefully executed."

Particularly in Illinois, the governor's implied power to promulgate an executive order or proclamation in response to the coronavirus pandemic is centered within Article V, Section 8 of the Illinois Constitution and explicitly stated in the Illinois Emergency Management Agency Act. See 20 ILCS 3305 *et seq*. which is hereinafter referred to as the "IEMAA."

Article V, Section 8 of the Illinois Constitution states: "The Governor shall have the supreme executive power and shall be responsible for the faithful execution of the laws."

The IEMMA states: "In the event of a disaster, as defined in Section 4, the governor may by proclamation declare that a disaster exists. Upon such proclamation, the governor shall have and may exercise for a period not to exceed 30 days the following emergency powers." See 20 ILCS 3305/7.

Section 4 of the IEMMA defines a disaster as the following: "Disaster" means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, public health emergencies, or acts of domestic terrorism. See 20 ILCS 3305/4.

Pursuant to his authority, explicit and implicit, Governor Pritzker proclaimed that a disaster existed within the State of Illinois after determining that the circumstances surrounding COVID-19 constituted a public health emergency, and he declared all counties in the State as a disaster area on March 9, 2020 (Gubernatorial Disaster Proclamation). Thereafter, Governor Pritzker issued a number of executive orders, the first being Executive Order 2020-10 on March 20, 2020, which required Illinois residents to maintain social distancing and stay in their homes, except to engage in "Essential Activities, Essential Government Functions, or to operate Essential Businesses and Operations." The Executive Order became effective on March 21, 2020 at 5:00 p.m. and continued until April 7, 2020. On April 1, 2020, Governor Pritzker issued a second proclamation declaring the COVID-19 pandemic to be a continuing public health emergency and extended the duration of the March 20 Executive Order twice with the last extension until May 30, 2020.

While residents and leaders from both parties had given Governor Pritzker high marks for his handling of the crisis, especially after his early stay-at-home order was widely credited for helping control the spread of infection in Illinois, there were a handful of lawsuits filed challenging the constitutional and statutory authority of those executive orders.

Lawsuits Challenging the Governor's Exercise of Executive Power

The first lawsuit was filed in Clay County by Darren Bailey on April 23, 2020, alleging the governor overstepped his power by declaring more than one state of emergency and shutting down non-essential businesses to address the COVID-19 pandemic. The Clay County Circuit Court judge presiding over the matter ruled that the 30-days of emergency powers provided under the IEMAA lapsed on April 8, 2020 and any executive orders in effect after that date relating to COVID-19 were void. Particularly, this ruling did not apply statewide and only applied to the individual Bailey. The Illinois Attorney General's Office, which represents the governor, appealed the ruling to the Illinois Supreme Court.

Governor Pritzker then had to defend against other lawsuits, including six that were filed in July 2020 in six downstate counties, that also alleged the governor overstepped his legal authority in issuing executive orders in response to the COVID-19 pandemic, and that the Pandemic did not fit the criteria under state law as a public health emergency in their respective counties. While the plaintiffs concede the COVID-19 pandemic satisfied section (a) of the definition, because COVID-19 is "an illness or health condition that (a) is believed to be caused by the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin", the plaintiffs insist the COVID-19 pandemic is not a public health emergency because it does not satisfy any of the three disjunctive requirements set forth in section (b). Specifically, the lawsuits plead only three factual allegations in support of their theory: 1) the total number of people who have been tested for, 2) contracted, and 3) died from COVID-19 in each of their counties, which did not demonstrate that COVID-19 was a public health emergency within the meaning of the IEMAA.

Governor Pritzker, through representation by the Illinois Attorney

General, filed to dismiss the six lawsuits, collectively, before a Sangamon County Circuit Court judge, who granted the governor's motion to dismiss. The court stated in its ruling that the complaints fell short on facts needed to support their claims. The judge explained that "Illinois is a fact pleading state, which means that plaintiffs must allege facts, not conclusions to establish a viable cause of action."

Additionally, the initial lawsuit filed by Bailey was redirected by the Illinois Supreme Court to the same above-mentioned Sangamon County Circuit Court judge, and the court also dismissed Bailey's complaint on the grounds that his amended complaint failed to state a cause of action and therefore any amendment would be futile.

Similarly, on October 30, 2020, McHenry County Circuit Court Judge Michael Chmiel ruled against a group of restaurant owners who had filed suit against the governor arguing he exceeded his authority in restricting indoor dining at restaurants and drinking at bars, which would permanently imperil their businesses. Judge Chmiel found that the governor has authority to impose restrictions on businesses because the IEMAA gives the governor the authority to continue to issue new disaster declarations and reassert emergency powers every 30 days. Notably, Judge Chmiel factored in the role of the legislative branch by drawing attention to the fact that lawmakers could have taken the time to insert language in the IEMAA explicitly granting the governor such extended emergency powers.

As recent as November 6, 2020, the Illinois second district appellate court struck down an order from a Kane County Circuit Court judge that had allowed a restaurant in Geneva, IL to continue operating legally despite the executive orders issued by Governor Pritzker that had otherwise shut down indoor restaurant dining this fall in order to reduce the spread of COVID-19. The court explicitly declared Governor Pritzker has the authority under state law to claim emergency powers by executive order for as long as he believes the disaster that caused the emergency continues.

While only the Clay County judge has declared Governor Pritzker's orders unconstitutional, these rolling controversies spotlight the need to explicitly clarify the governor's authority and boundaries involving the use of executive orders in relation to the COVID-19 Pandemic. Without any federal mandates, an executive order or proclamation is the only tool available to Governor Pritzker to implement various restrictions and guidelines in order to protect Illinois residents and prevent the spread of COVID-19. And given recent data regarding the increased spread of the virus in Illinois, it is possible we will see new and different, or renewed executive orders issued by the governor—and thus more challenges to those orders. ■

Justice Ginsburg – Her Legacy and Impact

BY NATALI P. THOMAS

Ruth Bader Ginsburg, March 15, 1933 – September 18, 2020.

On September 18, 2020, we lost a truly legendary advocate for females and minorities. Ruth Bader Ginsburg, associate justice of the Supreme Court of the United States, passed away from complications of metastatic pancreatic cancer in her home in Washington, D.C.[1] She became the first known woman, and the second Supreme Court justice, to lie in state at the United States Capitol.[2]

Justice Ginsburg, or by the endearing moniker given to her by millennials, "Notorious RBG", began her career in times where women in law school were questioned on their reasons for being in the classroom, and not at home as a housewife. She was rejected from numerous jobs upon becoming licensed. But that did not stop her, she surpassed everyone's expectations and became a justice on the highest court. She was, and still is, most admired for her passionate advocacy and progressive decisions. Today, we reflect not just on her trajectory to becoming one of the most revered and admired icons of our lifetime, but also on some of the most impactful opinions she gave while on the Supreme Court.

In 1996, just three years after joining the court, she heard *United States v. Virginia*[3] challenging the Virginia Military Institute's all-male admissions policy. She led the court in holding that the state-funded school would be required to accept women for admission. A step in the right direction towards equality for women.

Justice Ginsburg was known for writing impactful dissenting opinions. In *Ledbetter v. Goodyear Tire & Rubber Co.*, a female retiree sued her former employer, alleging sex discrimination-based poor performance evaluations she received earlier in her tenure resulted in lower pay than her male colleagues throughout her career, asserting claims under Title VII and Equal Pay Act.[4] The majority held that her claim for discrimination was time barred because it was not brought within 180 days of her employer's pay decision, even though she did not yet have a reason to believe the decision was discriminatory.[5] Justice Ginsburg, however, saw the analysis much differently. Justice Ginsburg found Ledbetter's claim was not untimely and that the Court ordered a "cramped interpretation of Title VII, incompatible with the statute's broad remedial purpose" and that the "ball is in Congress' court . . . ., the Legislature may act to correct [the] Court's parsimonious reading of Title VII."[6] And Justice Ginsburg's strong dissent did not go unheard. On January

29, 2009, the Legislature passed the "Lilly Ledbetter Fair Pay Act of 2009" finding the *Ledbetter* decision "significantly impairs statutory protections against discrimination in compensation that Congress established and that have been bedrock principles of American law for decades."[7] The Legislature further found that the "Ledbetter decision undermines those statutory protections by unduly restricting the time period in which victims of discrimination can challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress."[8]

In 2013, she dissented forcefully in *Shelby County v. Holder*. The majority decision invalidated key provisions in the Voting Rights Act (VRA) requiring certain jurisdictions that historically discriminated to undergo federal oversight before enacting changes in voting procedure.[9] Justice Ginsburg writing for the dissent stated, "Beyond question, the VRA is no ordinary legislation. It is extraordinary because Congress embarked on a mission long delayed and of extraordinary importance: to realize the purpose and promise of the Fifteenth Amendment. For a half century, a concerted effort has been made to end racial discrimination in voting. Thanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made."[10] Justice Ginsburg, in the lengthy dissent, stated a well-reasoned and thorough basis for standing by the court of appeals affirmation of the United States District Court for the District of Columbia's entry of summary judgment for the attorney general, finding that there was sufficient evidence to justify reauthorization of section 5 and 4(b) of the Voting Rights Act.[11]

In 2014, Justice Ginsburg wrote the dissenting opinion in *Burwell v. Hobby Lobby Stores, Inc*. The majority held that a "contraceptive mandate, as applied to closely held corporations, violates [the Religious Freedom Restoration Act of 1993]"[12] which "prohibits the 'Government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability . . . .'"[13] Justice Ginsburg disagreed with the majority stating, among many arguments, that she "would confine religious exemptions under that Act to organizations formed 'for a religious purpose,' 'engage[d] primarily in carrying out that religious purpose,' and not 'engaged . . . substantially in the exchange of goods or services for money beyond nominal amounts.'"[12]

Justice Ginsburg was not afraid to use her voice, to dissent, and to put pen to paper for what she believed in. May her legacy continue to inspire all attorneys to advocate zealously and fervently to ensure justice and the blessings of liberty to all.

If you would like to read about Justice Ginsburg's life and legacy in more detail, please check out these books:

- Conversations with RBG: Ruth Bader Ginsburg on Life, Love, Liberty, and Law by Jeffrey Rosen
- Ruth Bader Ginsburg: A Life by Jane Sherron de Hart
- Sisters in Law: How Sandra Day O'Connor and Ruth Bader Ginsburg Went to the Supreme Court and Changed the World by Linda R. Hirshman■

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1. https://www.cnn.com/2020/09/18/politics/ruth-bader-ginsburg-dead/index.html.
2. https://wjla.com/news/local/ginsburg-to-be-the-second-woman-supreme-court-justice-to-be-lain-in-state-at-the-capitol.
3. *United States v. Virginia*, 518 U.S. 515 (1996).
4. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), overturned due to legislative action (Jan. 29, 2009).
5. *Id*.
6. Id. at 661.
7. Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2 (Jan. 29, 2009).
8. *Id*.
9. *Shelby Cty., Ala. v. Holder*, 570 U.S. 529 (2013).
10. *Id*. at 593.
11. *Id*.
12. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 736 (2014).
13. *Id*. at 682.
14. *Id*. at 772.