ORIGINAL

PETITION FOR WRIT OF CERTIORARI

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Sharon K. Bland, Pro Se Petitioner

vs.

Gellman, Brydges & Schroff, et al. Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO

THE NEW YORK STATE COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Sharon K. Bland

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QUESTIONS PRESENTED:

Is New York State Workers' Compensation Law Constitutional? Does the government have the right to take away my cause of action and substitute it with a lesser mismanaged authority?

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293	A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center, 372 F.3d 572, 580 (3d Cir. 2004). A suit against a municipal policymaking official in her official capacity is treated as a suit against the municipality.		91f
292d	A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center, 372 F.3d 586. (A supevisor with policymaking authority may also, in an appropriate case, be liable based on the failure to adopt a policy."		91f
292	Abbott v. Latshaw, 164 F.3d 141, 147-48 (3d Cir. 1998). "An otherwise private person acts "under color of State law" when engaged in a conspiracy with state officials to deprive another of federal rights".		91f
199	Accord, Kneipp v. Tedder, 95 F.3d 1999 (3rd Cir. 1996), The Third Circuit articulated four elements of the state created danger theory 1) harm caused was foreseeable and "fairly direct"; 2) the official acted in willful disregard of the plaintiff's safety; 3) some relationship existed between the state and the plaintiff; and 4) the official crated an opportunity for the infliction of harm.	26,35	91g
253	Action for Children's Television v. FCC, 564 F.2d 458 (D.C. Cir. 1977).	37	
29	Adair v. United States, 208 U.S. 161 (1908), Common law causes of action define the fundamental rights of liberty and property, the national law entitlements of individuals. These rights receive Procedural Due Process protection against government deprivation just as they received Substantive Due Process protection against regulation.	5	
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86	Adickesv. S. H. Kress & Co., 398 U.S. 144, 170 (1970).	21	
29	Adkins v. Children's Hosp., 261 U.S. 525 (1923).	5	
83	Adler v. Board of Education, 342 U. S. 485. (1952). "The protection of the Due Process Clause extends...to a statute which is patently arbitrary or discriminatory."	20	
249	Adler v. Board of Education, 342 U. S. 485. (1952). "The protection of the Due Process Clause extends. ...to a statute which is patently arbitrary or discriminatory."	36	101f
147	Affordable Care Act (ACA).	30	
179	Agins v. City of Tiburon, 447 U.S. 255, 65 L.Ed.2d 106 (1980).	34	93f
255	Albert v. Caravano , 851 F.2d 561 (2d Cir. 1988) (en banc).	38	
129	Albright v. Oliver, 510 U.S. 266, 272 (1994).	27	93a
362	Alexander v. Choate, 469 U.S. 287, 301, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985); Henrietta D., 331 F.3d at 273.		95
121	American Farm Lines v. Black Ball Freight Serv., 397 U.S. 532, 538-39 (1970), "..whereby the failure to follow procedural rules could fall outside the scope of substantive process if they did not involve adjudication".	27	93a
44	American Manufacturers v. Sullivan, 26 U.S. 40, 119 S. Ct. 977, 143 L. Ed. 2d 130, (1999)	7, 36	66d, 94
57	American Manufacturers v. Sullivan, 26 U.S. 40, 119 S. Ct. 977, 143 L. Ed. 2d 130, (1999)	10	75a
262	American Manufacturers v. Sullivan, 26 U.S. 40, 119 S. Ct. 977, 143 L. Ed. 2d 130, (1999). In American Manufacturers v. Sullivan, in relation to state action inquiries: (1) where there is a sufficiently close nexus between the state and the challenged action, which depends on whether the state ordered, coerced, or significantly encouraged the private activity; and (2) whether the state delegated to the private entity powers historically and traditionally exclusively governmental in nature.	39	102
104	Anderson Nat'l Bank v. Luckett, 321 U.S. 233, 246- 47 (1944).	25	91c
200	Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir.1990).	27,35	91g
161	Armstrong v. Manzo, 380 U.S. 545, 552 (1965). The "fundamental requirement" of due process "is the opportunity to be heard at a meaningful time in a meaningful manner."	32	93d
178	Armstrong v. United States, 364 U.S. 40, 49 (1960). Federal taking claims are based on the Fifth Amendment to the United States Constitution that provides: "*[N]or shall private property be taken for public use without just compensation.*"	34	93f
182	Armstrong v. United States, 364 U.S. 40, 49, 4 L. Ed. 2d 1554, 80 S. Ct. 1563 (1960). As the Supreme Court explained in Armstrong v. United States, the Takings Clause is triggered by regulation which forces "some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."	34	93f

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229	Arnett v. Kennedy, 416 U. S. 134. (1974).	23, 36	94
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50	Arnett v. Kennedy, 416 U.S. at 416 U. S. 167. (1974). "'While the legislature may elect not to confer a property interest,. . it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards. . . . [T]he adequacy of statutory procedures for deprivation of a statutorily created property interest must be analyzed in constitutional terms.'"	9	71a
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32	Arnett, 416 U.S. at 154, 164-167. (1974), Thus it was found that the government could neither reduce procedural rights directly, nor do so indirectly by conditioning a substantive right on their reduction.	5	
33	AT&T Wireless Services, Inc. v. Castro, Case No. 1D03-1264 (Fla 1st DCA 2005), Constitutional challenges have already been made which verify that there is a Substantive deprivation when Procedural Due Process requirements are either non-existent, or not met.	5	
172	AT&T Wireless Services, Inc. v. Castro, Case No. 1D03-1264 (Fla 1st DCA 2005).	33	93e
135	Atmospheric Testing Litig., 820 F.2d at 988-989 (9th Cir. 1987).	28	93a
2	Bagley v. Washington Township Hospital Dist., 65 Cal.2d 499, 505. (1966).	3	
334	Baldwin County Welcome Ctr. V. Brown, 466 U.S. 147, 151 (1984)(discussing circumstances justifying equitable tolling).		94
203	Barnes v. Anderson, 202 F.3d 150 (2d Cir. 1999) – courts look to state tort analogies; Townes v. City of New York, 176 F.3d 138 (2d Cir.) (same), cert. denied, 528 U.S. 964 .	25,27,35,37	91g
242	Barrett v. Claycomb, 705 F.3d 315 (2013).	36	101d
54	Barrett v. Claycomb, 705 F.3d 315,. 322 (8th Cir. 2013). In Barrett v. Claycomb, it was determined that suspicionless drug testing (presumed but not for cause), was a constitutional violation	10	75a
311	Bartlett, v. New York State Board of Law Examiners, 156 F.3d 331 (2d Cir.1998); Matthews v. Jefferson, 29 F.Supp.2d 525, 535-536 (W.D.Ark.1998) (notice combined with failure to provide appropriate facilities may violate Title II).		94
300	Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996). As to the adequacy of a municipality's investigation, the Third Circuit has made clear that a policy must be adequate in practice, not merely on paper. "We reject the district court's suggestion that mere Department procedures to receive and investigate complaints shield the City from Liability. The investigative process must have some teeth".		91f
260	Bell Atlantic v. Twombly, 550 U.S. at 556. (2007)	38	102
14	Bell v. Burson, 402 U.S. 535 (1971) (driver's license).	4	
287	Benn , 371 F.3d at 171 (quoting Brentwood, 531 U.S. at 296 (quoting Blum, 457 U.S. at 1004).		91f
286	Benn v. Universal Health System, Inc. 371 F. 3d 165, 171 (3d Cir. 2004) (quoting Brentwood Acad v. Tennessee Secondary Sch. Athletic Ass'n, 531 U.S. 288, 296 (2001) (quoting Blum v. Yaretsky, 457 U.S. 991, 1004 (1982).		91f
290	Benn, 371 F.3d at 171 (quoting Brentwood, 531 U.S. at 296 (quoting Evans v. Newton, 382 U.S. 296, 299, 301 (1966).		91f
288	Benn, 371 F.3d at 171 (quoting Brentwood, 531 U.S. at 296 (quoting Pennsylvania Bd. Of Dir. Of City Trusts of Philadelphia, 353 U.S. 230, 231 (1957) (per curiam)).		91f
289	Benn, 371 F.3d at 171 (quoting Brentwood, 531 U.S. at 296); (quoting Pennsylvania Bd. Of Dir. Of City Trusts of Philadelphia, 353 U.S. 230, 231 (1957) (per curiam)).		91f
223	Bennett v. Board of Education Joint Vocational School District, 2011 U.S. Dist. Lexis 116412 (S.D. Ohio, October 7, 2011). Compensatory damages for violations of Title II are available, particularly when the defendant (State) shows Deliberate Indifference to the rights and needs of disabled people in accessing the courts.	36	94

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267	Bermudez v. City of New York, 790 F.3d 368 (2d Cir. 2015).	38	102
294	Bielevicz v. Dubinon, 915 F.2d 845, 850 (3d Cir. 1990). In addition to showing the existence of an official policy or custom, plaintiff must prove that the municipal practice was the proximate cause of the injuries suffered.		91f
124	Bishop v. Wood, 426 U.S. 341, 344 (1976).	28	93a
87	Blum v. Yaretsky, 457 U.S. 1004-1005, 102 S. Ct. 2777, 73 L. Ed. 2d 534, (1982). Action taken by private entities with the mere approval or acquiescence of the State is not state action.	21	91
166	Blum v. Yaretsky, 457 U.S. 1011, 102 S. Ct. 2777, 73 L. Ed. 2d 534, 1982 U.S. . The Supreme Court, referencing Blum and Jackson, in particular, "have established that "privately owned enterprises" providing services that the State would not necessarily provide, even though they are extensively regulated, do not fall within the ambit of Burton."	33	93d
88	Blum v. Yaretsky, 457 U.S. 1011, 102 S. Ct. 2777, 73 L. Ed. 2d 534, 1982 U.S. The Supreme Court, referencing Blum and Jackson, in particular, has established that "privately owned enterprises providing services that the State would not necessarily provide, even though they are extensively regulated, do not fall within the ambit of Burton."	21	91
153	Blum v. Yaretsky, 457 U.S. 991, 1004 (1982). For example, the State "normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State". Similarly, state action may be found where a private entity exercises functions that are "traditionally the exclusive prerogative of the State."	32	93d
313	Board of County Comm'rs v. Brown, 520 U.S. 397, 403, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997) ("A municipality may not be held liable under § 1983 solely because it employs a tortfeasor.		94
20	Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972). Language used in several welfare cases indicates the importance attached to these benefits by the Supreme Court. Public assistance "involves the most basic economic needs of impoverished human beings."	4	
96	Board of Regents of State Colleges v. Roth, 408 U.S. 564 (more) 92 S. Ct. 2701; 33 L. Ed. 2d 548. (1972) U.S. LEXIS 131; 1 I.E.R. Cas. (BNA) 23, "Without doubt it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized...as essential to the orderly pursuit of happiness by free men.	24	91b
11	Board of Regents v. Roth, 408 U. S. 564, 408 U. S. 576-578 (1972), The hallmark of property, the Court has emphasized, is an individual entitlement grounded in state law, which cannot be removed except "for cause."	4	
232	Board of Regents v. Roth, 408 U. S. 564, 408 U. S. 576-578 (1972).	36	101b
229	Board of Regents v. Roth, 408 U. S. 564, 408 U. S. 576-578 (1972). Once that characteristic is found,the types of interests protected as "property" are varied and, as often as not, intangible, relating "*to the whole domain of social and economic fact.*"	23, 36	91a, 94
124	Board of Regents v. Roth, 408 U.S. 564, 577 (1972).	28	93a
110	Board of Regents v. Roth, 408 U.S. 573-574, (1972), In Board of Regents v. Roth, two more discrete defined strands of protected liberty were found; the right to one's good name, and the right to pursue one's chosen occupation	24	91d
111	Board of Regents v. Roth, 408 U.S. 577 (1972), "To have a property interest in a benefit, a person clearly .....must have more than a unilateral expectation of it. He must instead have a legitimate claim of entitlement to it", and "Property interests...are not created by the Constitution. Rather they are created and their dimensions defined by existing rules or understandings that stem from an independent source such as state law."	24	91d
142	Board of the County Commissioners v. Brown, 520 U.S. 397 (1997) (liability for failure to hire competent personnel requires a showing of "*deliberate indifference*" to the consequences in light of the newly hired deputy sheriff's propensity for violence).	30	93b

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140	Board of the County Commissioners v. Brown, 520 U.S. 397 (1997) (liability for failure to hire competent personnel requires a showing of "*deliberate indifference*" to the consequences inlight of the newly hired deputy sheriff's propensity for violence).	29	93b
134	Boddie v. Connecticut, 401 U.S. 371, 401 U.S. 378 (1971)(appropriate to the nature of the case).	28	93a
137	Borgnos v. Falk Co., 133 N.W. 209, 222 (Wis. 1911). "The right to bring an action in the future...is subject to change by the lawmaking authority at any time."	28	93a
90	Bormann v. Board of Supervisors, 584 N.W. 2d 309 (Iowa, 1998), Richard A. Epstein, in Takings: Private Property and the Power of Eminent Doman, 226 (1985), argued that there is no "distinction between vested and contingent remainders: both are property, albeit in different forms and with different values.", and "If you deny the Plaintiff the prima facie right to recover against a stranger without proof of negligence, then you have taken a limited property interest; if you deny the plaintiff the right to recover for certain nuisances, then you have created an easement to cause a nuisance."	8,22	
273	Bowers v. DeVito, 686 F.2d 616 (7th Cir. 1982). , "If the State puts a man in a position of danger from private persons and then fails to protect him, it is as much an active tortfeasor as if it had thrown him into a snake pit."	26	91g
126	Bowles v. Willingham, 321 U.S. 503, 516 (1944).	28	93a
18	Boyd v. United States, 116 U.S. 616 (1886), the Supreme Court ruled that the evil in an unreasonable search and seizure was not so much found in the fact that it disturbs a man's privacy, but in the fact that it is an "invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence." In the Court's opinion, personal security, personal liberty and private property each constituted an indefeasible, or unalienable, right protected by the Constitution.	4	
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128	Bracy v. Gramley, 520 U.S. 899, 904-905, 117 S. Ct. 1793, 1797, 138 L. Ed. 2d 97. (1997).	28	93a
315	Branch v. Guilderland Central School Dist., 2003 WL 110245 (N.D.N.Y. 2003). Morgan did not foreclose application of the continuing violation doctrine to Title VII pattern and practice cases. Court found that the doctrine could be invoked for a Section 1983 policy or custom case which the Court viewed as analagous to a Title VII pattern and practice case. Court stated that test was whether the conduct was sufficiently similar or related in both time and substance to the same policy.		94
235	Breard v. Alexandria, 341 U.S. 622, 626, 644. (1951).	36	101c
143	Brett v. Orange County Human Rights Comm'n, 194 F.3d 341, 350 (2d Cir. 1999).	30	93b
186	Broadwater Farms Joint Venture v. United States, 35 Fed. Cl. 232, 236 n.1 and 236-38 (1996). Doctrine of Exhaustion of Administrative Remedies.	34	93f
348	Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)	19	94
78	Brown v. Cassens Transport Co., 743 F. Supp. 2d 651 (E.D. Mich. 2010). District Court, E.D. Michigan.	20	67
176	Brown v. Legal Found. Of Wash., 538 U.S. 216, 231-32 (2003)("*The Fifth Amendment imposes two conditions on the exercise of such authority: the taking must be for a* "public use" *and* "just compensation" *must be paid to the owner.*").	34	93f
145	Brown v. Pennsylvania, 318 F.3d 473, 482 & n.3 (3d Cir. 2003). "A municipality may be held independently liable for a Substantive Due Process violation even in situations where none of its employees are liable."	30	93b

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271	Brown v. State of New York, 89 N.Y.2d 172, 674 N.E.2d 1129, 52 N.Y.S.2d 223 (1996). (Individuals may assert claims for compensatory damages for violations of their rights protected by the Equal Protection (N.Y. Const.art.I& II) and Search and Seizure Guarantees (N.Y. Const. art I & 12) of the New York Constitution" (Brown, 89 N.Y.2d at 176, 674 N.E. 2d at 1131, 652 N.Y.S.2d at 225) with respondent superior liability (Id. at 195-6, 674 N.E. 2d at 1143-44, 652 N.Y.S.2d at 238). The State of New York has waived their Sovereign Immunity such that they may be sued for Constitutional Wrongs, without the need for Section 1983 Protection employed in Federal Court.	39	105
25	Brown v. State of New York, 89 N.Y.2d 172, 674 N.E.2d 1129, 652 N.Y.S.2d 223, 65 USLW 2355 (1996).	5	
204	Brown v. State of New York, 89 N.Y.2d 172, 674 N.E.2d 1129, 652 N.Y.S.2d 223, 65 USLW 2355 (1996). ... we held the State had waived its immunity from respondeat superior liability and specifically recognized that the State and its subdivisions were liable for the acts of their employees. Common law tort rules are heavily influenced by overriding concerns of adjusting losses and allocating risks, matters that have little relevance when constitutional rights are at stake. But aside from those considerations, the State is appropriately held answerable for the acts of its officers and employees because it can avoid such misconduct by adequate training and supervision and avoid its repetition by discharging or disciplining negligent or incompetent employees.	5,35	
224	Brown, et al., Appellant v. State of New York, 89 N.Y.2d 172, 674 N.E.2d 1129, 652 N.Y.S.2d 223, 65 USLW 2355 (1996).	36	94, 105
239	Brown, et al., Appellant v. State of New York, 89 N.Y.2d 172, 674 N.E.2d 1129, 652 N.Y.S.2d 223, 65 USLW 2355 (1996).	36	101d
245	Brown, et al., Appellant v. State of New York, 89 N.Y.2d 172, 674 N.E.2d 1129, 652 N.Y.S.2d 223, 65 USLW 2355 (1996).	36	101f
89	Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). "Here, workers' compensation insurers are at least as extensively regulated as the private nursing facilities in Blum and the private utility in Jackson. Like those cases, though, the state statutory and regulatory scheme leaves the challenged decisions to the judgment of insurers."	21	
167	Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). Here, workers' compensation insurers are at least as extensively regulated as the private nursing facilities in Blum and the private utility in Jackson. Like those cases, though, the state statutory and regulatory scheme leaves the challenged decisions to the judgment of insurers."	33	93d
154	Burton v. Wilmington Parking Authority, 365 U.S. 715, 725 (1961). In Burton v. Wilmington Parking Authority, the Court stated that where "the State has so far insinuated itself into a position of interdependence with a private actor, the State may be held to be " a joint participant in the challenged activity".	32	91, 93d
343	Bustamento v. Tucker, 607 So. 2d 532, 542 (La. 1992) ("When the acts or conduct are continuous on an almost daily basis, by the same actor, of the same nature, and the conduct becomes tortious and actionable because of its continuous, cumulative, synergistic nature, then prescription does not commence until the last act occurs or the conduct is abated.")		94
60	Buxton v. Plant City, 871 F.2d 1037 (11th Cir. 1989).	11	75a
292b	C.N. v. Ridgewood Bd. Of Educ., 430 F.3d 159, 173 (3d Cir. 2005). A Supervisor's personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence.		91f
95	Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886, 894-95 (1961), "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."	24	91b
159	Cafeteria Workers v. McElroy, 367 U.S. 886, 895 (1961). Due process "is not a technical conception with a fixed content unrelated to time, place and circumstances."	32	93d
6	California v. ARC America Corp., 490 U.S. 93 (1989), the Supreme Court held that if Congress expressly intended to act in an area, this would trigger the enforcement of the Supremacy Clause, and hence nullify the state action.	4	

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297	Carswell v. Borough of Homestead, 381 F.3d 235, 244 (3d Cir. 2001) (quoting Canton, 489 U.S. at 385). Policymakers were aware of similar unlawful conduct in the past, but failed to take precautions against future violations, and that this fialure, at least in part, led to their injury.		91f
62	Castellanos v. Next Door Company, 124 So.3d 392 (2013).	15	66e
246	Cf. U.S. Railroad Retirement Bd. v. Fritz, 449 U.S. at 449 U. S. 178.	36	101f
143	Chew v. Gates, 27 F.3d 1432, 1438 (9th Cir. 1994).	30	93b
187	Christensen v. Yolo County Bd. of Supervisors, 995 F.2d 161 (9th Cir. 1993).	34	93f
223	City and County of San Francisco v. Sheehan, 135 S. Ct. 1765. A win for persons with disabilities as it acknowledges that title II of the ADA applies to everything that a public entity does. It also remanded the case for ADA proceedings.	36	94
203	City of Canton v. Harris, 489 U.S. 378 (1989, the Court stated there *"must be a direct causal link between a municipal policy or custom and the alleged constitutional deprivation". "In relation to training, deliberate indifference standard applies."*	25,27,35,37	91g
142	City of Canton v. Harris, 489 U.S. 378, 388 (1989)(failure to train police officers to identify medical emergencies). "...the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need", and the lack of training actually causes injury.	30	93b
310	City of Canton v. Harris, 489 U.S. 378, 389, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1988); see also id. at 395, 109 S.Ct. 1197 (O'Connor, J., concurring) (deliberate indifference requires both "some form of notice and the opportunity to conform to [statutory] dictates"). Moreover, the deliberate indifference standard adopted by those circuits is better suited to the remedial goals of Title II of the ADA than is the discriminatory animus alternative noted in Ferguson. Deliberate indifference requires both knowledge that a harm to a federally protected right is substantially likely, and a failure to act upon that the likelihood.		94
140	City of Canton v. Harris, 489 U.S. 378-388 .	29	93b
41	City of Canton, Ohio v. Harris, 489 U.S. 378 (1989).	6	
185	City of Chicago v. International College of Surgeons, 522 U.S. 156 (1997) (federal court can exercise supplemental jurisdiction to satisfy this prong).	34	93f
208	City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 446-447 (1985). Further, some objectives, such as a bare desire to harm a politically unpopular group are not legitimate state interests.	35	
214	City of Cleburne v. Cleburne Living Ctr., supra, 473 U.S. at 440. (1985).	36	100a
177	City of Monterey v.Del Monte Dunes, Ltd., 119 S. Ct. 1624 (1999) (Seventh Amendment to the United States Constitution protects right to jury trial in a federal taking claim). To the extent a state's procedures deprive claimants of their right to a jury trial on the issue of whether a taking occurred, there may be an argument that the state procedures are inadequate.	34	93f
295	City of Oklahoma City v. Tuttle, 471 U.S. 808, 823 (1985).		91f
210	Clark v. Jeter, 486 U.S. 456, 461 (1988). The third equal protection test; intermediate, requires that the classification bear a "substantial relationship" to an "important" governmental interest.	35	
14	Cleveland Bd of Ed. V. Loudermill, 470 U.S. 532 (1985) (Public employment).	4	
23	Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985), More recently, however, the Court has squarely held that because "minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse action. Indeed, any other conclusion would allow the State to destroy virtually any state-created property interest at will."	4	
203	Cohen v. Cowles Media Co., 501 U.S. 663 (1991). In Cohen v. Cowles Media Co., the U.S. Supreme Court held that "a state court's enforcement of a state law cause of action constitutes state action: application of state rules of law in state courts in a manner alleged to restrict First Amendment freedoms constitutes "state action".	27,35,37	91g
259	Collins v. Womancare, 878 F.2d 1145, 1154 (9th Cir. 1989), cert denied, 493 U.S. 1056 (1990). There must be a substantial degree of cooperative action.	38	102
8	Commonwealth Edison Co. v. Montana, 453 U.S. 609, 634. (1981).	4	

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142	Connick v. Thompson, 131 S. Ct. 1350, 1359-60 (2011).	30	93b
141	Connick v. Thompson, 131 S. Ct. 1350, 1359-60 (2011). When..."the type of incident which resulted in injury is so recurring as to tend to show that the government's inaction was conscious or deliberate, amounting to "deliberate indifference" to the consequences of its inaction."	29	93b
365	Connick, 131 S. Ct. at 1360 (emphasis supplied).		102
58	Constitution, Article 1, Section 1; Hill v. NCAA, 865 P.2d 633 (1994). It has been said "In the absence of a clear, immediate and substantial impact on the employee's reputation which effectively destroys his ability to engage in his occupation, it cannot be said that a right of personal liberty is involved".	11	75a
34	Coppage v. Kansas, 236 U.S. 1, 14. (1915). "If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense."	5	
100	Coppage v. Kansas, 236 U.S. 1, 14. (1915). "If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense."	24	91b
202	Cornelius, 880 F.2d at 350), Community Schools, 433 F.3d 460 (6th Cir. 2006) (state created danger doctrine requires showing of 1) affirmative act; 2) creating or increasing risk of harm; 3) special danger to victim as distinguished from public at large; and 4) requisite culpability, namely, deliberate indifference, which means "*subjective recklessness*").	27,35	91g
265	Cousins v. Lockyer, 568 F.3d 1063, 1072 (9th Cir.2009)	38	102
331	Cowell v. Palmer Twp., 263 F.3d 286, 292 (3d Cir. 2001). "The reach of this doctrine is understandably narrow".		94
7	Crosby v. National Foreign Trade Council, 530 U.S. 363 (2000), that even when a state law is not in direct conflict with a federal law, the state law could still be found unconstitutional under the Supremacy Clause if the "state law is an obstacle to the accomplishment and execution of Congress's full purposes and objectives";	4	
8	Crosby v. National Foreign Trade Council, 530 U.S. 363, 372-374. (2000), Congress need not expressly assert any preemption over state laws either, because Congress may implicitly assume this preemption under the Constitution.	4	
8	Crosby v. National Foreign Trade Council, 530 U.S. 363, 386-388 (2000).	4	
261	Crowe v. Lucas, 595 F.2d 985, 993 (5th Cir. 1979). Circumstantial evidence may be used, however, because "conspirators rarely formulate their plans in ways susceptible of proof by direct evidence."	38	102
105	Crowell v. Benson, 285 U.S. 22 (1932), Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287 (1920) "*where company appealed from agency rate setting on grounds that rate effectively confiscated company's property without due process*".	24	91c
126	Crowell v. Benson, 285 U.S. 22 (1932). "But I cannot agree that terminating a claim that the State itself has misscheduled is a rational way of expediting the resolution of disputes."	28	93a
130	Cruzon v. Director of Missouri Department of Health, 497 U.S. 261 (1990), but the right to obtain medical treatment, as far as I can tell, has not been enumerated.	28	93a
346	Cuccolo v. Lispky, Goodkin & Co., 826 F. Supp. 763, 768 (S.D.N.Y. 1993)		94
203	Cyrus v. Town of Mukwonago, 624 F.3d 856, 864 (7th Cir. 2010) (common law tort causation rules apply to Section 1983 claims; general rule is that expert testimony is not necessary to prove causation).	25,27,35,37	91g
19	Dandridge v. Williams, 397 U.S. 471, 485 (1970). A state's action "*may not deprive an eligible recipient of the very means by which to live" or render his situation "immediately desperate".*	4	
189	Dandridge v. Williams, 397 U.S. 471, 485 (1970). For loss of income due to bodily injury deprives the individual of their ability to work, their right to work, and their ability to obtain a timely medical recovery (thus reducing their losses), deprivation of both of which deprive the individual of the most basic economic needs leading to impoverishment of human beings.	34	93f
37	Daniels v. Williams, 474 U.S. at 331, 106 S.Ct. at 665. (1986). ... "regardless of the fairness of the procedures used to implement them."	5	

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322	Darmanin v. San Francisco Fire Dept., 2002 U.S. App. Lexis 19676, 2002 WL 31051571 (9th Cir. 2002) (Section 1983)		94
263	Davis v. Brady, 143 F.3d 1021 (6th Cir. 1998), cert. denied, 525 U.S. 1093 (1999).	38	102
256	Dennis v. Sparks, 449 U.S. 24 (1980). The court ruled that private parties who corruptly conspire with a judge, who is protected by absolute judicial immunity, act under color of state law.	38	102
257	Dennis v. Sparks, 449 U.S. 24 (1980). The court ruled that private parties who corruptly conspire with a judge, who is protected by absolute judicial immunity, act under color of state law	38	102
292	Dennis v. Sparks, 449 U.S. 24 27-28 (1980) (citing Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 (1970); The court ruled that private parties who corruptly conspire with a judge, who is protected by absolute judicial immunity, act under color of state law.		91f
99	Department of Agriculture v. Moreno, 413 U.S. 528 (1973).	24	91b
296	DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989) (holding that Plaintiffs must simply establish a municipal custom coupled with causation i.e. that policymakers were aware of similar unlawful conduct in the past, but failed to take precautions against future violations, and that this failure, at least in part, led to their injury.		91f
202	DeShaney v. Winnebago County Dept. of Social Servs., 489 U.S. 189 at 1152-1153 (1989), It was further noted that "[t]he cases where the state-created danger theory was applied were based on discrete, grossly reckless acts committed by the state or state actors using their peculiar positions as state actors, leaving a discrete plaintiff vulnerable to foreseeable injury."	27,35	91g
201	DeShaney v. Winnebago County Dept. of Social Servs., 489 U.S. 189 at 201 n.9 (1989) The State has a due process duty to protect children in foster care.	27,35	91g
148	DeShaney v. Winnebago Cty. DSS, 489 U.S. 189 (1989). b) When the government is required to provide protection, because government is responsible for creating the danger, a/k/a State Created Danger and the proverbial Snake Pit.	31	
237	Doe v. City of New York, 15 F.3d 264 (2d Cir. 1994). "The mere fact that complainant filed a claim with the commission that his employer discriminated against him because of his homosexual status did not necessarily waive his privacy rights.	36	101c
59	Donald Leroy Brown v. Joseph R. Brierley, 438 F.2d 954 (3d Cir. 1968)	11	75a
65	Douglas v. California, 372 U.S. 353 (1963), free attorneys for indigents to appeal criminal convictions.	16	66e
8	Dow Chemical Co. v. Exxon Corp., 139 F.3d 1470 (Fed Cir 1998).	4	
349	Duvall v. County of Kitsap, 260 F.3d 1124 (9th Cir. 2001).		94
1	Eastern Enters. V. Apfel, 524 US 498 , 529-537 (1998).	2	102
6a	Edgar v. Mite, 457 U.S.624 (1982), the Supreme Court ruled: "A state statute is void to the extent that it actually conflicts with a valid Federal statute". Where State Law violates Federal Laws or when "state law is an obstacle to the accomplishment and execution of Congress's full purposes and objectives", the Supremacy Clauses states it may be struck down, on a strict scrutiny basis, or other like type of legal review.	4	
152	Edmonson, 500 U.S. at 622. (1991). State Created Danger hinges on "whether the injury caused is aggravated in a unique way by the incidents of governmental authority."	32	91, 93d
316	EEOC v. Dial Corp., 2002 WL 1974072 (N.D. Ill. 2002). Morgan does not preclude application of continuing violation doctrine to pattern and practice cases.		94
203	Egervary v. Young, 366 F.3d 238 (3d Cir. 2004).	25,27,35,37	91g
186	Eisen v. Eastman, 421 F.2d 560, 569 (2d Cir. 1969) cert denied, 400 U.S. 841 (1970).	34	93f
325	English v. Pabst Brewing Co., 828 F.2d 1047, 1049 (4th Cir. 1987), cert. denied, 486 U.S. 1044 (1988);		94
225	Esmail v. Macrane, 862 F.Supp. 217 (1994).	36	94
202	Estate of Lance v. Lewisville Indep. Sch. Dist., 743 F.3d 982 (5th Cir. 2014) State created danger doctrine – state created dangerous conditions and acted with deliberate indifference to the plight of plaintiffs.	27,35	91g

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195	Estate of Lance v. Lewisville Indep. Sch. Dist., 743 F.3d 982 (5th Cir. 2014); Farmer v. Brennan, 511 U.S. 825 (U.S. 1994). Intentionally delaying medical care for a known injury (i.e. a broken wrist) has been held to constitute deliberate indifference; Elliott v. Jones, 2009 U.S. Dist. LEXIS 91125 (N.D. Fla. Sept. 1, 2009), Deliberate indifference is defined as requiring (1) an "awareness of facts from which the inference could be drawn that a substantial risk of serious harm exists" and (2) the actual "drawing of the inference.". State created danger doctrine – state created dangerous conditions and acted with deliberate indifference to the plight of plaintiffs.	26,35	91g
150	Estelle v. Gamble, 429 U.S. 97 (1976).	32	93d
126	Estep v. United States, 327 U.S. 114, 122-25 (1946).	28	93a
230	F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).	36	94
209	F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920). The Equal Protection Clause directs that all persons similarly circumstanced shall be treated alike.	27,35	
305	Fell v. Spokane Transit Auth., 128 Wash.2d 618, 637, 911 P.2d 1319 (Wash.1996) (en banc).		94
328	Felty v. Graves-Humphreys, 818 F.2d 1126 (4th Cir. 1987);		94
307	Ferguson v. City of Phoenix, 157 F.3d 668, 674 (9th Cir.1998). Id. at 675.		94
176	First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 314 (1987)(noting that Takings Clause does not prohibit government takings, merely places limits on the government's power to do.	34	93f
157	First English Lutheran Evangelical Church v. County of Los Angeles, 482 U.S. 304, 321 (1987) (normal regulatory delays to not effect a "TAKING" of property). "If the delays resulting from utilization review are quite modest, it cannot be argued that the delays have the effect of destroying or substantially diminishing the value of respondents' property interests in their claims for benefits."	32	91, 93d
85	Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 156 (1978). "This argument, however, ignores our repeated insistence that state action requires both an alleged constitutional deprivation "caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible," and that "the party charged with the deprivation must be a person who may fairly be said to be a state actor." Thus, the private insurers in this case will not be held to constitutional standards unless "there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the latter may be fairly treated as that of the State itself."	10, 21	
164	Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 156 (1978). The Mathews court was not convinced that reasonable and necessary medical review, if adversely withheld, meant that "any governmental interest outweighs the private interest".	33	93d
87	Flagg Bros., Inc. v. Brooks, 436 U.S. 154-165 (1978).	21	91
86	Flagg Bros., Inc. v. Brooks, 436 U.S. 166 (1978). "Whether such a "close nexus" exists", our cases state, depends on whether the State "has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State."	21	
8	Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142 (1963).	4	
341	Flowers v. Carville, 310 F.3d 1118, 1126 (9th Cir. 2002)		94
175	Franco v. Nat'l Capital Revitalization Corp., 930 A.2d 160, 172 (D.C. App. 2007) (remanding to trial court for determination of whether stated purpose was pretextual).	34	93f
132	Frank v. Mangum, 237 U.S. 309, 340.	28	93a
235	Frank v. Maryland, 359 U.S. 360. (1959).	36	101c
22	Fuhrman v. Georgia, 408 U.S. at 577 (1972), "Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits."	4	

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118	Furman v. Georgia, 408 U.S. 238 (1972), In Furman v. Georgia, Justice Brennan wrote, in regards to Eighth Amendment protections, "There are, then, four principles by which we may determine whether a particular punishment is 'cruel and unusual" which "set the standard that a punishment would be cruel and unusual [if] it was too severe for the crime, [if] it was arbitrary, if it offended society's sense of justice, or if it was not more effective than a less severe penalty."	25	
144	Garcia v. Salt Lake County, 768 F.2d 303, 310 (10th Cir. 1985). "Supervisory liability may be imposed under Section 1983 notwithstanding the exoneration of the officer whose missions of	30	93b
160	Gilbert v. Homar, 117 S. Ct. 1807, 1812 (1997).	32	93d
292e	Gilles v. Davis, 427 F.3d 197, 207 n. 7 (3d Cir. 2005). Supervisor's Failure to Train demonstrates Deliberate Indifference.		91f
124	Goldberg v. Kelly (397 U.S. 254, 264 (1970), And a tentative 5th established under Goldberg, "Pre-termination hearings are required where the threatened property right consists of need-based benefits. This is because the recipient or applicant may be deprived of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate."	28	93a
14	Goldberg v. Kelly, 397 U.S. 254 (1965) (public assistance) The objective standards create a "*reasonable expectation*" that if the standards are satisfied the government will provide the entitlement. Entitlements arise from the existence of objective standards of eligibility for public employment, licenses, public assistance, and other government dispensed commodities.	4	
109	Goldberg v. Kelly, 397 U.S. 254, 262 (1970), It was determined "the constitutional challenge cannot be answered by an argument that public assistance benefits are a "privilege" and not a "right". "It may be realistic today to regard welfare entitlements as more like "property" than a "gratuity".	24	91d
31	Goldberg v. Kelly, 397 U.S. 254, 262 n.8 (1970), "To have a property interest in a benefit, a	9,20	71a
133	Goldberg v. Kelly, 397 U.S. 254, 262-63 (1970). "The extent to which Procedural Due Process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication."	28	93a
151	Goldberg v. Kelly, 397 U.S. 254, 262-63 (1970). "The extent to which Procedural Due Process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication."	32	93d
222	Goldberg v. Kelly, 397 U.S. 254, 262-63 (1970). "The extent to which Procedural Due Process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication."	36	94
190	Goldberg v. Kelly, 397 U.S. 254, 264 (1970). The State's action, as such, "deprived an eligible recipient of the very means by which to live", thus rendering her situation "immediately desperate", which was deliberately indifferent to the individual's plight, of which the NYS WC Board was well aware.	34	93f
19	Goldberg v. Kelly, 397U.S. 254, 264 (1970) and 438 F.2d at 7 and 12. (2nd Cir. 1971), "While welfare payments are money benefits and, as such, comprise only a property right, their denial deprives an eligible recipient of the very means by which to live. Since welfare cases by their very nature involve people at a bare subsistence level, disputes over the correct amounts payable are treated not merely as involving property rights, but some sort of right to exist in society, a personal right under the Stone formula." "Medical care is a necessity of life."	4	
356	Good v. Town of Brutus, 2013 NY Slip Op 7244 (3rd Dept. 2013) (11/7/2013). In determing whether a claim should be apportioned between previous employers in the same field, the relevant focus is whether the claimant contracted an occupational disease while employed by that employer.		103
193	Gormley v. Wood-El, 218 N.J. 72 (2014), Under Gormley v.Wood, the issue of qualified immunity was addressed as a matter of law in a similar situation.	26,35	
11	Goss v. Lopez, 419 U. S. 565, 419 U. S. 573-574 (1975).	4	

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229	Goss v. Lopez, 419 U. S. 565, 419 U. S. 573-574 (1975).	23, 36	91a, 94
14	Goss v. Lopez, 419 U.S. 565 (1975) (Public school education).	4	
124	Goss v. Lopez, 419 U.S. 565, 572-74 (1975).	28	93a
51	Goss v. Lopez, 419 U.S. at 419 U. S. 579. (1975). On the other hand, the Court has acknowledged that the timing and nature of the required hearing "will depend on appropriate accommodation of the competing interests involved."	9	71a
124	Greenholtz v. Inmates of the Nev. Penal & Correctional Complex, 442 U.S. 1, 12 (1979) (same).	28	93a
263	Greer v. Shoop, 141 F.3d 824 (8th Cir. 1998).	38	102
64	Griffin v Illinois, 351 U.S.12, (1956), In the area of access to justice, the Court also has concluded that states must provide free trial transcripts to indigents.	16	66e
235	Griswold, v. Connecticut, 381 U.S. 479, 484-85 (1965).	36	101c
181	Hage v. United States, 35 Fed. Cl. 147, 150-152 (1996) (judicial role in takings claims is not that of "*super legislator or executive, intent on preventing regulation that goes too far*").	34	93f
70	Ham v. Smith, 653 F.2d 628, 630 (D.C. Cir. 1981).	18	
261	Hampton v. Hanrahan, 600 F.2d 600, 620-23 (7th Cir. 1979), rev'd in part, 446 U.S. 754 (1980).	38	102
69	Hanes v. Kener, 404 U.S. 519 (1972). The concept of liberally construed pleadings.	17	
265	Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). "Insofar as their conduct does not violate clearly established [federal] statutory or constitutional rights of which a reasonable person would have known."	38	102
211	Harper v. Virginia Bd. of Elections, 383 U.S. 663, 672 16 L.Ed. 2d 169, 86 S. Ct. 1079 (1966). Although this test is usually used only in certain circumstances, it is noted that Claimant's deprivations are fundamental.	35	
345	Heard v. Sheeehan, 253 F.3d 316, 317 (7th Cir. 2001).		94
116	Heckler v. Campbell, 461 U.S. 458, 103 S. Ct. 1952, 76 L. Ed. 2d 66, (1983), Arbitrary adjudicative procedure is defined, in the negative, by Justice Powell in Campbell. "The regulations afford claimants ample opportunity both to present evidence relating to their abilities and to offer evidence that the general rules do not apply to them, for informal rulemaking foreclosed only a "general factual issue" which was not "unique to each Claimant".	24	91d
124	Hewitt v. Helms, 459 U.S 460, 469-71 (1983) (particular liberty right).	28	93a
120	Hewitt v. Helms, 459 U.S. 460, 471 (1983). "The constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement."	27	93a
119	Hewitt v. Helms', (459 U.S. 460, 466 (1983). In Hewitt v. Helms,' Justice Rehnquist, principal architect of the underlying rights approach, wrote: "Liberty interests protected by the Fourteenth Amendment may arise from two sources-the Due Process Clause itself and the laws of the States."	27,36	93a, 101f
203	Higazy v. Templeton, 505 F.3d 161 (2d Cir. 2007) (Bivens action).	25,27,35,37	91g
336	Hilao v. Estate of Marcos, 103 F.3d 767, 773 (9th Cir. 1996)		94
253	Home Box Office, Inc. v. FCC, 567 F.2d 9, 61 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977).	37	
292a	Horton v. City of Harrisburg, 2009 WL 2225386 at *5 (M.D.Pa. July 23, 2009). Supervisory liability under Section 1983 utilizes the same standard as municipal liability. Therefore a supervisor will only be liable for the acts of a subordinate if he fosters a policy or custom that amounts to deliberate indifference towards an individual's constitutional rights.		91f
29	Hovey v. Elliott, 167 U.S. 409 (1897) (deprivation of property without trial violates due process.).	5	
70	Hudson v. Hardy, 412 F.2d 1091, 1094-95 (D.C. Cir. 1968).	18	
321	Inglis v. Buena Vista University, 235 F. Supp. 2d 1009 (N.D. Iowa 2002) (Equal Pay Act);		94
27	Ingraham v. Wright, 430 U.S. 651 (1977).	5	
97	Ingraham v. Wright, 430 U.S. 651 (1977). "These procedural liberty interests should not, however, be confused with substantive liberty interests, which, if not outweighed by a sufficient governmental interest, may not be intruded upon regardless of the process followed."	24	91b
42	Ingraham v. Wright, 430 U.S. 651 at 673 & n.41. (1977).	6	

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117	Ingraham v. Wright, 430 U.S. 651 at 673 & n.41. (1977). "It is fundamental that the State cannot hold and physically punish an individual except in accordance with due process of law."	25	
131	Ingraham v. Wright, 430 U.S. 651, 673 (1977). In Ingraham v. Wright, the Court stated "The liberty preserved from deprivation without due process included the right 'generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.' . . . Among the historic liberties so protected was a right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security." In one example, a state appellate court reversed a trial court and entered a final judgment for the defendant, a plaintiff who had never had an opportunity to introduce evidence in rebuttal to certain testimony which the trial court deemed immaterial but which the appellate court considered material was held to have been deprived of his rights without due process of law.	28	93a
250	Ingraham v. Wright, 430 U.S. 651, 682 n.55 (1977). "It is fundamental that the State cannot hold and physically punish an individual except in accordance with due process of law."	36	101f
233	Ingraham v. Wright, 430 U.S. at 673 & n.41. (1977). "It is fundamental that the State cannot hold and physically punish an individual except in accordance with due process of law."	36	101b
275	International Bhd. Of Teamsters v. United States, 431 U.S. 324, 335 n.15 (1977) (describing general theory of disparate treatment discrimination in the context of a Title VII claim)	36	101e
363	Jackan v. N.Y. State Dep't of Labor, 205 F.3d 562, 566 (2d Cir.), cert. denied, 531 U.S. 931, 121 S.Ct. 314, 148 L.Ed.2d 251 (2000); see 29 C.F.R. § 1630.2 ("To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation.");		95
86	Jackson v. Metropolitan Edison Co., 419 U. S. 357 (1974). "have established that "privately owned enterprises" providing services that the State would not necessarily provide, even though they are extensively regulated, do not fall within the ambit of Burton.	21	
87	Jackson v. Metropolitan Edison Co., 419 U. S. 357 (1974). "have established that "privately owned enterprises" providing services that the State would not necessarily provide, even though they are extensively regulated, do not fall within the ambit of Burton.	21,36	91
88	Jackson v. Metropolitan Edison Co., 419 U. S. 357-358 (1974). "have established that "privately owned enterprises" providing services that the State would not necessarily provide, even though they are extensively regulated, do not fall within the ambit of Burton.	21	91
166	Jackson v. Metropolitan Edison Co., 419 U. S. 357-358 (1974). "have established that "privately owned enterprises" providing services that the State would not necessarily provide, even though they are extensively regulated, do not fall within the ambit of Burton.	33	93d
66	Jacobsen v Filler, 790 F.2d at 1367-68. (1986). "The choice to appear pro se may not truly be a choice under such circumstances."	16	66e
202	Johnson v. Dallas Independent School Dist., 38 F.3d 198, 201 (5th Cir.1994), cert. denied, 514 U.S. 1017, 115 S.Ct. 1361, 131 L.Ed.2d 218 (1995).	27,35	91g
133	Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 168 (1951) (Justice Frankfurter concurring)).	28	93a
151	Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 168 (1951) (Justice Frankfurter concurring)).	32	93d
222	Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 168 (1951) (Justice Frankfurter concurring)).	36	94
17	Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 162 (1951), These types of legal concerns are not time barred. Due process is not unrelated to time, place and circumstances, but rather is "flexible and calls for such procedural protections as the particular situation demands".	4	
71	Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 162 (1951). Thus, access to critical evidence is adversely prevented by cost and function, failing to provide due process access, and further creating barriers when the process is required to be "flexible and calling for such procedural protections as the particular situation demands."	18	

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319	Kaster v. Safeco Ins. Co. of America, 212 F. Supp. 2d 1264 (D.Kan. 2002) (ADEA)		94
147	Kavanagh v Akhtar (1998) 45 NSWLR588.	30	
304	Keith Foust v. North Carolina Central University, et al, No. 1:2015cv00470 - Document 32 (M.D.N.C. 2016)		94
15	Kelo v. City of New London, 545 U.S. 469 (2005), Kelo v. City of New London, provoked criticism for "TAKING" private property in order to produce economic advantage to another private party. Thereafter, the scope of the "TAKINGS" law became limited by State laws by necessity, for if the society did not "see" the betterment, then it made no sense for the government to suppose it.	4	
175	Kelo v. New London, 545 U.S. 469 at 478 (2005). (*"Nor would the City be allowed to take property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit."*).	34	93f
268	Kerman v. City of New York, 374 F.3d 93 (2d Cir. 2004). "..that a government defendant is liable for the naturally foreseeable consequences of his actions, including consequences from the reasonably foreseeable intervening acts of third parties.	38	102
93	Kimball Laundry Co., v. United States, 338 U.S. 15, 15-16 (1949). ...just compensation had to include the value of less tangible factors, such as the loss of autonomy.	23	91a
9	Kimes v. Stone, 84 F.3d 1121, 1128 (9th Cir. 1996).	3	
220	Kluger v. White, 281 So.2d 1 (Fla. 1973), Violation of Equal Protection Under State Constitution by Allowing for Disparate Treatment of Select Groups	36	
75	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	19	
84	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	20	
94	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	23	91b
172	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	33	93e
228	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	36	94
248	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	36	101e-f
252	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	37	
266	Kregler v. City of New York, 987 F. Supp. 2d 357, 365-69 (S.D.N.Y. 2013) (court noted lack of Second Circuit precedent applying cat's paw doctrine to Section 1983 claims). "An employer's mere conducting of an independent investigation does not have a claim preclusive effect. The independent investigation does not relieve the employer of fault. The employer is at fault because one of its agents committed an action based on discriminatory animus that was intended to cause, and did in fact cause, an adverse employment decision...motivating factor....10th Cir. 2011."	38	102
342	Landman v. Royster, 354 F. Supp. 1302, 1315 (E.D. Va. 1973)		94
235	Lanza v. New York, 370 U.S. 139. (1962).	36	101c
235a	Lawrence v. Texas, 539 U.S. 558 (2003)(substantive due process right to engage in private consensual homosexual conduct). "We have had many controversies over these penumbral rights of "privacy and repose"".	36	101c
327	Lawson v. Burlington Industries, 683 F.2d 862, 864 (4th Cir. 1982)).		94
124	Leis v. Flynt, 439 U.S. 438, 441 (1979).	28	93a
351	Levitsky v. Garden Time, Inc., 2015 N.Y. App. Div. LEXIS 2570 (3rd Dep't, Mar. 26, 2015)] [2015 N.Y. App. Div. LEXIS 2570 (3rd Dep't, Mar. 26, 2015)]		103
276	Levitsky v. Garden Time, Inc., 2015 N.Y. App. Div. LEXIS 2570 (3rd Dep't, Mar. 26, 2015)] [2015 N.Y. App. Div. LEXIS 2570 (3rd Dep't, Mar. 26, 2015)], Matter of Campbell v Interstate Materials Corp., 135 AD3d at 1278, quoting Matter of Ford v Fucillo, 66 AD3d 1066, 1067 [2009]. Matter of Lattanzio v Consolidated Edison of N.Y., 129 AD3d 1343, 1343[2015]		103
70	Lewis v. Faulkner, 689 F.2d 100,102(7th Cir. 1982).	18	

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219	Lindsey v. Normet, 405 U. S. 56 (1972).	36	100a
247	Lindsey v. Normet, 405 U. S. 56 (1972).	36	101f
1	Lingle v. Chevron U.S.A., 544 US at 539 (2005).	2	102
17	Little v. Streater, 452 U.S. 1 (1981)	4,17	
71	Little v. Streater, 452 U.S. 1, 5-6 (1981).	18	
68	Little v. Streater, 452 U.S. 1, 5-6 (1981). "The result is to place in jeopardy the one due process right that pro se litigants clearly have: the right to a meaningful opportunity to be heard."	16	
175	LLC v.Vill. Of Haverstraw, 839 N.Y.S.2d 127 (N.Y. App. Div. 2007) (holding that the claim of condemnation failed to serve a public purpose).	34	93f
29	Loclmer v. New York, 198 U.S. 45 (1905).	5	
191	Logan v. Zimmerman Brush Co., 455 U. S. 422, 428-431, (1982). I do not doubt, however, that due process requires fair procedures for the adjudication of respondents' claims for workers' compensation benefits, including medical care.	34	93f
134	Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) (negligent failure to observe a procedural deadline). "....a plaintiff who had never had an opportunity to introduce evidence in rebuttal to certain testimony which the trial court deemed immaterial but which the appellate court considered material was held to have been deprived of his rights without due process of law."	28	93a
53	Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982). In this instance, "It is the state system itself that destroys a complainant's property interest, by operation of law, whenever the Commission fails to convene a timely conference -- whether the Commission's action is taken through negligence, maliciousness, or otherwise. Parratt was not designed to reach such a situation."	9	71a
227	Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1928).	36	94
74	Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1928). A cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause."	19	
168	Logan v. Zimmerman Brush Co., 455 U.S. 422, 431 (1982). As well, it is understood that whether or not a WC Injured Worker has a Property Right interest in obtaining medical care for an approved injury, they have a right to the claim for payment and/or authorization as provided for under the act, which is akin to a property interest.	33	93d
13	Logan v. Zimmerman Brush Co., 455 U.S. 422, 432-33 (1982), In Goldberg v. Kelly, where the loss or reduction of a benefit or privilege was conditioned upon specified grounds, it was found that the recipient had a property interest entitling him to proper procedure before termination or revocation.	4,28	
270	Logan v. Zimmerman Brush Co., 455 U.S. 422, 436-37. (1982). Thus the court has held that post-deprivation procedures would not satisfy due process if it is "the state system itself that destroys a complainant's property interest."	39	105
67	Logan v. Zimmerman Brush Co., 455 U.S. 422, 437 (1982). Not to fight is not an option.	16	
125	Logan v. Zimmerman Brush Co., 455 U.S. 422, 440 (1982). "Traditional due process makes no such computation. It assumes that a serious risk of error is present, and then employs a range of trial based procedures to protect against it."	28	93a
169	Logan v. Zimmerman Brush Co., 455 U.S. 431 (1982). It likewise follows that where a State puts Procedural Due Process requirements in place, and then fails to follow them, it can be said they are a State actor for failure to provide what they themselves have articulated to be the minimum Procedural Due Process requirements to withhold the same.	33	93d
269	Logan v. Zimmerman Brush Co., 455 U.S. at 435-36 (1982). "The Court has required greater protection from property deprivations resulting from operation of established state procedures than from those resulting from random and unauthorized acts of state employees".	39	105

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246	Logan v. Zimmerman, 455 U.S. 422 (1982). "The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes". The decision of the Illinois Supreme Court effectively created two classes of claimants: those whose claims were, and those whose claims were not, processed within the prescribed 120 days by the Illinois Fair Employment Practices Commission. Under this classification, claimants with identical claims, despite equal diligence in presenting them, would be treated differently, depending on whether the Commission itself neglected to convene a hearing within the prescribed time. The question is whether this unusual classification is rationally related to a state interest that would justify it. The State no doubt has an interest in the timely disposition of claims. But the challenged classification failed to promote that end -- or indeed any other -- in a rational way. As claimants possessed no power to convene hearings, it is unfair and irrational to punish them for the Commission's failure to do so. The State also has asserted goals of redressing valid claims of discrimination and of protecting employers from frivolous lawsuits. Yet the challenged classification, which bore no relationship to the merits of the underlying charges, is arbitrary and irrational when measured against either purpose,	36	101f
29	Londoner v. City of Denver, 210 U.S. 373 (1908) (taxation of property without adjudication violates due process).	5	
103	Londoner v. City of Denver, 210 U.S. 373 (1908).	24	91c
364	Lovejoy-Wilson v. NOCO Motor Fuel, Inc., 263 F.3d 208, 219 (2d Cir.2001).	38	95
260	Lugar v. Edmondson Oil Co., 457 U.S. 922, 942 (1982). Mere assertion of conspiracy will not suffice. Such cooperation exists when a state statute establishes a procedure which when utilized by one private person will violate the constitutional rights of another and the private party "invoked" the aid of state officials to take advantage of state created procedures.	39	102
291	Lugar v. Edmondson Oil Co., 457 U.S. 922, 942 (1982). Mere assertion of conspiracy will not suffice. Such cooperation exists when a state statute establishes a procedure which when utilized by one private person will violate the constitutional rights of another.		91f
86	Lugar, v. Edmondson Oil Co., 457 U.S. 922, 937 (1982).	21	
85	Lugar, v. Edmondson Oil Co., 457 U.S. 922, 937 (1982).	21	
63	M.L.B. v. S.L.J., 519 U.S. 102 (1996), M.L.B. v. S.L.J., is illustrative of cases that have applied heightened scrutiny to financial roadblocks imposed by states that stand in the way of indigents getting equal access to justice with respect to issues that substantially affect liberty or family life. the Court struck down a Mississippi law that prevented an indigent mother from appealing a termination of parental rights order because she could not pay a $2000 transcript-processing fee. The deprivation involved a complete severing of parent-child bonds, Justice Ginsburg wrote for the Court, which is understandably "devastating" and heightened scrutiny is justified. The modest cost savings to the state resulting from the mandatory fee was not a sufficiently compelling reason to impose the burden that Mississippi's law did.	16	66e
56	Marchwinski v. Howard, 113 F. Supp. 2d 1134 (E.D. Mich. 2000), aff'd 60 F. App'x 601 (6th Cir. 2003)(Drug testing of welfare recipients deemed unconstitutional.) It is always in the public interest to protect constitutional rights."	10	75a
242	Marchwinski v. Howard, 113 F.Supp.2d 1134 (2000).	36	
199	Mark v. Borough of Hatboro 51 F.3d 1137, 1153 (3d Cir.) cert denied, 516 U.S. 858 (1995) 516 U.S. 858 (1995).	26,35	91g
165	Marsh v. Alabama, 326 U. S. 501, distinguished. Pp. 436 U. S. 157-163. (1945). Flagg Bros., Inc. v. Brooks, noted that simply putting in place the "challenged statute does not delegate to the storage company an exclusive prerogative of the sovereign.", for other remedies for the settlement of disputes between debtors and creditors remain available to the parties.	33	93d
150	Martinez v. California, 444 U.S. 277 (1980).	32	93d
14	Mathews v. Eldridge, 424 U.S. 319 (1976) (social security benefits).	4	

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123	Mathews v. Eldridge, 424 U.S. 319 (1976). Criteria were put in place by which government administration to a property right would be reviewed based on, 1) The private interest affected by the official action; 2) The risk of erroneous deprivation of such interest through the procedures used; 3) The probable value of any additional procedural safeguards; 4) The Government's interest, including the function involved, and the administrative burdens of additional procedural requirements.	28	93a
161	Mathews v. Eldridge, 424 U.S. at 333, (1976).	32	91, 93d
162	Mathews v. Eldridge, 424 U.S. at 335. (1976). In determining whether the requirements of due process have been met, this Court has typically looked to three factors: First, the private interest that will be affected by the official action; Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and Finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.	32	91, 93d
52	Mathews v. Eldridge, 424 U.S. at 424 U. S. 334-335 (1976); the likelihood of governmental error, see id. at 424 U. S. 335; and the magnitude of the governmental interests involved, see ibid. These include the importance of the private interest and the length or finality of the deprivation.	9	71a
13	Mathews v. Eldridge, 424 U.S.319 (1976) (SocialSecurity benefits). . The balancing process mandated by Eldridge did not occur, failing to consider, before implementation, the seriousness of the deprivation which would result, nor to properly remediate circuitous guidelines, deficient of timely Procedural Due Process protections, to "catch" mistakes which might occur.	4	
5	Mathews v. Lucas, 427 U. S. 495, 427 U. S. 510 (1976), (the classificatory scheme must "*rationally advance a reasonable and identifiable governmental objective*.")	3	
218	Mathews v. Lucas, 427 U. S. 495, 427 U. S. 510 (1976), (the classificatory scheme must "*rationally advance a reasonable and identifiable governmental objective*.")	36	100a
156	Mathews, 424 U.S. at 332 ("Procedural Due Process imposes constraintson governmental decisions which deprive individuals of "liberty" or "property interests"). Although the Court of Appeals analyzed the degree of process "due" by balancing the parties' interests under Matthews v. Eldridge, such a test – and the due process inquiry generally – normally applies only when a state actor seeks to "deprive" an individual of a "property interest".	32	93d
352	Matter of Campbell v Interstate Materials Corp., 135 AD3d 1276, 1278 [2016]. See generally Larson's Workers' Compensation Law, § 90.04 [90.04] "Apportionment of a workers' compensation award is a factual issue for the Board to determine, and its decision will be upheld if supported by substantial evidence"		103
361	Matter of Castro v NYC Transit Auth, 50 AD3d 1272 (2008).		103
350a	Matter of Fama vs. P&M Sorbara, 29 AD3d 170, 172-173 (2006), iv dismissed 7 NY3d 783 (2006). Reversal of Section 44 Apportionment		103
278	Matter of Illaqua v Barr-Llewellyn Buick Co., 81 AD2d 708 [1981]. It is well settled that "the fundamental principle of the compensation law is to protect the worker, not the employer, and the law should be construed liberally in favor of the employee"	13,17	
360	Matter of Keselman v. NYC Transit Authority, 18 AD3d 974 (2005)		103
355	Matter of Lattanzio v Consolidated Edison of N.Y., 129 AD3d 1343, 1343[2015])		103
354	Matter of Levitsky v Garden Time, Inc., 126 AD3d 1264, 1264-1265 [2015]. "Apportionment of a workers' compensation award is a factual issue for the Board to determine, and its decision will be upheld if supported by substantial evidence"		103
353	Matter of Morin v Town of Lake Luzerne, 100 AD3d 1197, 1197 [2012], lv denied 21 NY3d 865 [2013]. While "[a]pportionment'is appropriate where the medical evidence establishes that the claimant's current disability is at least partially attributable to a prior compensable injury'". Claimants who are employed full-time, and are fully able to perform their jobs with no restrictions, are not disabled in the workers' compensation sense. Therefore, Apportionment is not available in these cases, even if the claimant had massive and repeated surgeries.		103

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359	Matter of Nye v. IMB Corp., 768 N.Y.S. 2d 706, 706-07 (N.Y. App. Div. 2003). Claimants who return to full employment in essence negate apportionment. (As in Claimant's case)		103
350	Matter of Polifroni v. Delhi Steel Corp., 46AD3d 970,971 (2007). Reversal of Section 44 Apportionment		103
357	Matter of Walton v Lin-Dot, 85 Ad3d 1413, 1414, 926 N.Y.S.2d 183 (2011). Whereby IME claims presumed basis of apportionment with no objective medical proof.		103
192	Matter of Winfield v. N.Y.C. H.R.R.R. Co., 216 N.Y. 284, 289. (1915). "The compensation awarded the employee is not such as is recoverable under the rules of damages applicable in actions founded upon negligence. It is based on loss of earning power * * *."	34	93f
155	Matthews v. Eldridge, 424 U.S. 319 (1976).	32	93d
158	Matthews v. Eldridge, 424 U.S. 341-342 (delays of 10 to 11 months between request for ALJ hearing and decision), (1976). Protracted delays that prevent claims from ever ripening into payment, of course, might be said to destroy the individual's interest in the claim itself, for a claim to payment is valueless if, because of such delays, payment effectively cannot be received, and failing to compensate for delays – deprives respondents of "property" without "due process" in violation of the Fourteenth Amendment.	32	93d
206	Matthews v. Lucas, 427 U.S. 495, 510 (1976).	35	
318	McCarron v. British Telecom, 2002 WL 1832843 (E.D. Pa. 2002) (ADA);		94
84	McCrone v. BankOneCorp, 2004 WL 1111021 (Ohio App. 5th. May 17, 2004)(Ohio); Disparate Treatment of One Injury vs. Another is Unlawful.	10,20	
173	McCrone v. BankOneCorp, 2004 WL 1111021 (Ohio App. 5th. May 17, 2004)(Ohio); Disparate Treatment of One Injury vs. Another is Unlawful.	33	93e
220	McCrone v. BankOneCorp, 2004 WL 1111021 (Ohio App. 5th. May 17, 2004)(Ohio); Disparate Treatment of One Injury vs. Another is Unlawful.	36	
248	McCrone v. BankOneCorp, 2004 WL 1111021 (Ohio App. 5th. May 17, 2004)(Ohio); Disparate Treatment of One Injury vs. Another is Unlawful.	36	101e-f
281	McKeesport Hosp. v. Accreditation Council for Graduate Med. Educ., 24 F.3d 519, 524 (3d Cir. 1994) (quoting Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351 (1974).		91f
285	McKeesport Hosp. v. Accreditation Council for Graduate Med. Educ., 24 F.3d 519, 524. The Court of Appeals has explained that Supreme Court caselaw concerning "joint action or action in concert suggests that some sort of common purpose or intent must be shown...State actor voluntarily participated with self interest in deprivation.		91f
203	McKinley v. City of Mansfield, 404 F.3d 418, 438 (6th Cir. 2005) (causation in the constitutional sense is no different than causation in the common law sense).	25,27,35,37	91g
186	McNeese v. Bd. Of Education, 373 U.S. 558 (1963), it has been said, does away with this doctrine in relation to Section 1983. Under federal precedents, the futility exception is appropriate where the process for obtaining a permit is so burdensome or futile that it "effectively deprives the property of value" or "[n]o reasonable landowner would find a door left open for obtaining a permit."	34	93f
202	McQueen v. Beecher Community Schools, 433 F.3d 460 (6th Cir. 2006) (state created danger doctrine requires showing of 1) affirmative act; 2) creating or increasing risk of harm; 3) special danger to victim as distinguished from public at large; and 4) requisite culpability, namely, deliberate indifference, which means "*subjective recklessness*").	27,35	91g
196	McQueen v. Beecher Community Schools, 433 F.3d 460 (6th Cir. 2006).	26,35	91g
124	Meachum v. Fano, 427 U.S. 215, 226 (1976) (liberty in general).	28	93a
308	Memmer, 169 F.3d at 633; Midgett v. Tri-County Metro. Transp. Dist. of Oregon, 254 F.3d 846 (9th Cir.2001). This Circuit has, on three occasions, refused the opportunity to determine the appropriate test for intentional discrimination under the ADA. Instead, we decided each time to set forth the options, rather than to resolve the issue, leaving subsequent courts to choose between a "deliberate indifference" or "discriminatory animus" standard. We now determine that the deliberate indifference standard applies.		94
11	Memphis Light, Gas & Water Div. v. Craft, 436 U. S. 1, 436 U. S. 11-12 (1978).	4	
229	Memphis Light, Gas & Water Div. v. Craft, 436 U. S. 1, 436 U. S. 11-12 (1978).	23, 36	91a, 94
52	Memphis Light, Gas & Water Div. v. Craft, 436 U.S. at 436 U. S. 19. (1978).	9	71a
314	Mercado v. Commonwealth of Puerto Rico, Case No. 15-1327 (1st Cir., 2/29/2016		94

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73	Meyer v. Nebraska, 262 U.S. 390, 399 (1923). ...liberty includes "not merely freedom from bodily restraint but also the right of the individual to contract to engage in any of the common occupations of life..."	18	
61	Meyer v. Nebraska, 262 U.S. 390, 399 (1923)....liberty includes "not merely freedom from bodily restraint but also the right of the individual to contract to engage in any of the common occupations of life..."	13	84a
338	Miller v. Beneficial Mgmt. Corp., 977 F.2d 834, 843-44 (3d Cir. 1992) ("If the alleged discriminatory conduct is a "continuing violation", the statute of limitations begins to run on the date of the last occurrence of discrimination, rather than the first.")		94
102	Missouri, Kansas & Texas Ry. Co. v. Cade, 233 U.S. 642, 650 (1914) and cases there cited.	24	
75	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	19	
84	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	10,20	
94	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	23	91b
172	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	33	93e
220	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	36	
248	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	36	101e-f
252	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	37	
228	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	36	94
323	Moiles v. Marple Newtown School Dist., 2002 WL 1964393 (E.D. Pa. 2002) (Section 1983)		94
203	Monell v. Department of Social Services (55) and again in Polk County v. Dodson (56). Municipal policy must be the "*moving force of the constitutional violation*" in order to impose municipal.	25, 27, 35, 37	91g
298	Monell v. Department of Social Services of City of New York, 436 U.S. 658, 660-61 & n.2 (1978). Likewise, if the legislative body delegates authority to a municipal agency or board, an action by that agency or board also constitutes government policy.		91f
312	Monell v. Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) and id. at 694.		94
263	Monfils v. Taylor, 165 F.3d 511 (7th Cir. 1998), cert. denied, 528 U.S. 810 (1999).	38	102
235	Monroe v Pape, 365 U.S. 167. (1961).	36	101c
238	Monroe v. Pape, 365 U.S. at 184. (1961). "Misuse of power, possessed by virtue of state law and made possibly only because the wrongdoer is clothed with the authority of state law, is action taken under "color of state law".	36	101c
29	Moore v. Dempsey, 261 U.S. 86 (1923) (deprivation of liberty without proper trial violates due process).	5	
70	Moore v. State of Fla. 703 F.2d 516, 521 (11th Cir. 1983).	18	
86	Moose Lodge No. 107 v. Irvis, 407 U.S. 163,173(1972).	21	
17	Morrissey v. Brewer, 408 U.S. 471, 481 (1972).	4	
71	Morrissey v. Brewer, 408 U.S. 471, 481 (1972).	18	
160	Morrissey v. Brewer, 408 U.S. 471, 481 (1972). ..but rather "is flexible and calls for such procedural protections as the particular situation demands."	32	93d
147	Nader v Urban Transit Authority of NSW (1985)2 NSWLR501, (McHugh JA). [1]. (1985).	30	
302	Natale v. Camden County Correctional Facility, 318, F.3d 575, 585 (3d Cir. 2003) ("A reasonable jury could conclude that the failure to establish a policy to address the immediate medication needs of inmates with serious medical conditions creates a risk that is sufficiently obvious as to constitute deliberate indifference to those inmates medical needs.		91f

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279	National Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179, 191 (1988). (quoting Monroe v. Pape, 365 U.S. 167, 172 (1961).		91f
12	National Mutual Insurance Co. v. Tidewater Transfer Co., 337 U. S. 582, 337 U. S. 646 (1949) (Frankfurter, J., dissenting)	4	
229	National Mutual Insurance Co. v. Tidewater Transfer Co., 337 U. S. 582, 337 U. S. 646 (1949) (Frankfurter, J., dissenting).	23, 36	91a, 94
258	NCAA v. Tarkanian, 488 U.S. 179 (1988). The joint participation test requires a showing of conspiratorial or other concerted action. A conspiracy requires an agreement or meeting of the minds to violate federally protected rights. Although each participant need not know the details of the plan, together they must share a common objective.	38	102
21	New York Central R.R. Co. v. White 243 U.S. 188 (1917), Indeed, WC law was deemed constitutional under the premise that "One of the grounds of its concern with the continued life and earning power of the individual is its interest in the prevention of pauperism, with its concomitants of vice and crime."	4	
165	Nixon v. Condon, 286 U. S. 73. (1932).	33	93d
146	Norfleet v. Ark. Dept. of Human Services, 796 F. Supp. 1194 (E.D. Ark. 1992). As per Judge Posner, "the state, having saved a man from a lynch mob, cannot then lynch him, on the ground that he will be no worse off than if he had not been saved."	30	93b
3	NY Central Railroad v. White, 243 U.S. 188 (1917). "For any question of that kind may be met when it arises."	17	
47	O'Bannon v. Town Court Nursing Center, 447 U.S. 773 (1980). Fundamental rights are central to a scheme of ordered liberty.	8	66d, 71a
231	O'Bannon v. Town Court Nursing Ctr., 447 U.S. 773 (1980). Fundamental rights are central to a scheme of ordered liberty.	36	101b
126	Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287 (1920).	28	93a
120	Olim v. Wakinekona, 461 U.S. 238, 251 (1983), 103 S. Ct. at 1748.	27	93a
223	Olmstead v. L.C. by Zimring, 527 U.S. 581. A huge win for persons with disabilities with the court holding that persons with disabilities have a right to be served within the community.	36	94
339	O'Rourke v. City of Providence, 235 F.3d 713, 730 (1st Cir. 2001)		94
142	Owens v. Baltimore City State Attorney's Office, 767 F.3d 379, 402-404 (4th Cir. 2014) cert denied, 135 S. Ct. 1893 (2015) (count found plaintiff plausible claim that police dept maintained a custom, policy, and/or practice of condoning activity, is "knowingly, consciously and repeatedly withholding and suppressing exculpatory evidence.)	30	93b
344	Page v. United States, 729 F.2d 818, 821-22 (D.C. Cir. 1984) (quoting Fowles v. Pennsylvania R.R.C o., 264 F.2d 397, 399 (3d Cir. 1959).		94
198	Paine v. Cason, 678 F.3d 500, 510 (7th Cir. 2012), "State created danger doctrine requires showing of 1) affirmative act; 2) creating or increasing risk of harm; 3) special danger to victim as distinguished from public at large; and 4) requisite culpability, namely, deliberate indifference, which means "subjective recklessness") 197 "It is clearly established that state actors who without justification increase a person's risk of harm violate the constitution.	26,35	91g
181	Palazzolo v. Rhode Island, 458 U.S. 419, 415 (1982); Hage v. United States, 35 Fed. Cl. 147, 150-152 (1996) (judicial role in takings claims is not that of "*super legislator or executive, intent on preventing regulation that goes too far*"). "The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."	34	93f
178	Palazzolo v. Rhode Island, 458 U.S. 419, 427 (1982). (United States Supreme Court, June 28, 2001). "These inquiries are informed by the purpose of the Takings Clause, which is to prevent the government from forcing some people to alone to bear public burdens which, in fairness and justice, should be borne by the public as a whole."	34	93f
180	Palazzolo v. Rhode Island, 458 U.S. 419, 427 (1982). "Our cases establish that even a minimal permanent physical occupation of property requires compensation under the taking Clause."	34	93f
92	Palazzolo v. Rhode Island, 533 U.S. 606, 627 (2001). Future generations, too, have a right to challenge unreasonable limitations on the use and value of land.	23	91a

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26	Palko v. Connecticut, 302 U.S. 319, 327 (1937). Fundamental rights are central to a scheme of ordered liberty. "These procedural liberty interests should not, however, be confused with substantive liberty interests, which, if not outweighed by a sufficient governmental interest, may not be intruded upon regardless of the process followed."	5,20	
243	Palko v. Connecticut, 302 U.S. 319, 327 (1937). The Federal government has noted fair procedures are a "fundamental right", central to a "scheme of ordered liberty".	36	101e
134	Parratt v. Taylor, 451 U.S. 527 (1981) (opportunity to be heard at a meaningful time in a meaningful manner).	28	93a
115	Parratt v. Taylor, 451 U.S. 527 (1981), In Paul v. Davis and Parratt v. Taylor, a substantive element of one's liberty requires freedom from arbitrary adjudicative procedure.	24	91d
49	Parratt v. Taylor, 451 U.S. 527 (1981).	9	71a
250	Parratt v. Taylor, 451 U.S. 527, 544 (1981). "For what the State cannot do is conceal its criteria behind a façade of discretion, for this emerges from the limitation of due process to the goal of accurate decision making."	36	101f
250a	Paul v. David, 424 U.S. 693-701 (1976).	36	101f
115	Paul v. Davis, 424 U.S. 693 (1976)	24	91d
49	Paul v. Davis, 424 U.S. 693 (1976).	9	71a
124	Paul v. Davis, 424 U.S. 693, 709-10 (1976) (same).	28	93a
299	Pembaur v. City of Cincinnati, 475 U.S. 469, 480 (1986).		91f
149	Pena v. DePrisco, 432 F.3d 98 (2d Cir. 2005). The Second Circuit, in particular, provides two separate exceptions: first, if the individual in custody has a special relationship with the government, OR second, if there is a state-created danger.	31	
1	Penn Cent. Transp. Co. v. City of New York, 438 US at 124, cf. Eastern Enters. V. Apfel, 524 US 498 , 529-537 (1998)	2	102
188	Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922). "If the regulation deprives the owner of the property's value, utility or marketability, denying him or her the benefits of property ownership, this thus accomplishes a constitutionally forbidden de facto taking without compensation."	34	93f
223	Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206. A win for persons with disabilities with the court holding that the ADA applies to prisons.	36	94
24	People v. Singer, 44 N.Y.2d 241 (1978).	4	
24	People v. Staley, 41 N.Y.2d 789 (1977).	4	
14	Perry v. Sindermann, 408 U.S. 593 (1972) (public employment).	4	
55	Phelps-Roper v. Nixon, 545 F.3d 685, 690 (8th Cir. 2008). The protection of constitutionally protected rights necessarily serves the public interest."	10	75a
70	Phillips v. United States Board of Parole, 352 F.2d 711, 714 (D.C.Cir. 1965).	18	
212	Plyler v. Doe, 457 U.S. 202, 211 n.10 (1982).	35	100a
329	Price v. Litton Business Systems, 694 F.2d 963, 965 (4th Cir. 1982)).		94
138	Pritchard v. Norton, 106 U.S. 124, 132 (1882). In contrast, retrospective interference with causes of action, whereby "a law changes the legal consequences of past actions, it interferes with vested rights, and courts have held that property....is implicated". That is, a cause of action vests upon the occurrence of an injury, and that "vested right of action is property in the same sense in which tangible things are property, and is equally protected against arbitrary interference." The main issue with the Takings Clause and Personal Property Interest stems from arguments over "when the injury occurred".	23,29	91a, 93a
147	Prosser, Handbook of the Law of Torts 261 (4th ed. 1971).	30	
114	Pruneyard Shopping Center v. Robins, 447 U.S. 74, 82 (1980).	25	91d
84	Psychiatric Associates v. Siegel, 610 So.2d 419 (Fla.1992).	10,20	
248	Psychiatric Associates v. Siegel, 610 So.2d 419 (Fla.1992).	36	101e-f
173	Psychiatric Associates v. Siegel, 610 So.2d 419 (Fla.1992). (Florida), Mitchell v. Moore, 786 So.2d 521 (Fla. 2001); Kluger v. White, 281 So.2d 1 (Fla. 1973), Violation of Equal Protection Under State Constitution by Allowing for Disparate Treatment of Select Groups	33	93e
220	Psychiatric Associates v. Siegel, 610 So.2d 419 (Fla.1992). (Florida).	36	
75	Psychiatric Associates v. Siegel, 610 So.2d 419. (1992) (Florida) Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	19	66f

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108	Slochower v. Board of Higher Educ., 350 U.S. 551, 559 (1956), As a result, the Court reasoned, reaching factual conclusions without a hearing constituted a Substantive Due Process violation. "Indiscriminate classification....must fail as an assertion of arbitrary power". To reach factual conclusions without a hearing constitutes a Substantive Due Process violation.	24	91d
28	Slochower v. Board of Higher Educ., 350 U.S. 551, 559 (1956), Substantive Due Process is the notion that due process not only protects certain legal procedures, but also protects certain rights unrelated to procedure. To reach factual conclusions without a hearing constitutes a Substantive Due Process violation.	5,20	
48	Slochower v. Board of Higher Educ., 350 U.S. 551, 559 (1956).	8	71a
82	Slochower v. Board of Higher Educ., 350 U.S. 551, 559 (1956).	20	
244	Slochower v. Board of Higher Educ., 350 U.S. 551, 559 (1956). As a result, the Court reasoned, reaching factual conclusions without a hearing constitutes a Substantive Due Process violation.	36	
70	Smart v. Villar, 547 F.2d 112, 114 (10th Cir. 1976).	18	
165	Smith v. Allwright, 321 U. S. 649. (1944).	33	93d
39	Smith v. Marasco, 318 F.3d 497, 509 (3d Cir. 2003) "*relationship between the plaintiff and the state requirement was met because police officers who engaged in a stand-off, keeping the victim in the woods, away from his home and his medicines, exerted sufficient control over him*".	6	
75	Smothers v. Gresham Transfer, Inc. 23 P.3d 333 (Or. 2001).	19	66f
228	Smothers v. Gresham Transfer, Inc. 23 P.3d 333 (Or. 2001).	35	94
252	Smothers v. Gresham Transfer, Inc. 23 P.3d 333 (Or. 2001).	37	
263	Spence v. Staras, 507 F.2d 554 (7th Cir. 1974). "If a state or local official places an individual in foreseeable danger of the infliction of harm by private persons and then fails to protect that individual, the official cannot be heard to complain that she is not responsible for the resulting harm."	38	102
203	Stevenson v. Koskey, 877 F.2d 1435, 1438 (9th Cir. 1989) (federal courts turn to common law of torts for causation in civil rights cases).	25,27,35,37	91g
147	Stoleson v United States, 708 F.2d 1217. (1983). The principle of Eggshell Skull	30	
184	Suitum v. Tahoe Reg'l Planning Agency, 520 U.S. 725, 117 S. Ct. 1659, 1664-65 (1997).	34	93f
187	Suitum v. Tahoe Regional Planning Agency, 520 U.S. 725, 734 n 8 (1997).	34	93f
221	Swekel v. City of River Rouge, 119 F.3d 1259, 1262 (6th Cir. 1997) (Noting that access to courts protects more than physical access, but also effective and meaningful access) 554, 562 (2004).	35	94
10	Swekel v. City of River Rouge, 119 F.3d 1259, 1262 (6th Cir. 1997) (Noting that access to courts protects more than physical access, but also effective and meaningful access).	4	
335	Taliani v. Chrans, 189 F.3d 597, 597 (7th Cir. 1999) (describing equitable tolling as "*the judge-made doctrine, well established in federal common law, that excuses a timely filing when the plaintiff could not, despite the exercise of reasonable diligence, have discovered all the information he needed in order to be able to file his claim on time*". 51 AM. Jur. 2d Limitation of Actions Section 174-178 (2000); 54 C.J.S. Limitations of Actions Section 115 (2005)		94
284	Tarkanian, 488 U.S. at 192 (citing Burton v. Wilmington Parking Auth., 365 U.S. 715 (1961).		91f
282	Tarkanian, 488 U.S. at 192 (citing North Ga. Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975).		91f
332	Tearpock-Martini v. Borough of Shickshinny, 756 F.3d 232, 236 (3d Cir. 2014).		94
223	Tennessee v. Lane, 541 U.S. 509. A win of sorts for persons with disability with the court holding that sovereign immunity can be forcibly waived with respect to non-employment suits against state entities depending upon the facts of the case.	35	94
165	Terry v. Adams, 345 U. S. 461. (1953)	33	93d
33	Thompson v. Awnclean, USA, 849 So.2d 1129, 1132 (Fla. 1st DCA, 2002) (Florida).	5	48a
172	Thompson v. Awnclean, USA, 849 So.2d 1129, 1132 (Fla. 1st DCA, 2002) (Florida).	33	93e
265	Tibbetts v. Kulongoski, 567 F.3d 529, 535 (9th Cir.2009).	38	102

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36	Tichon v. Harder, 438 F.2d 1396 (2d Cir. 1971). " In the absence of a clear, immediate and substantial impact on the employee's reputation which effectively destroys his ability to engage in his occupation, it cannot be said that a right of personal liberty is involved."	5	
43	Tobe v. City of Santa Ana 9 Cal. 4th 1069, 1084 (Cal. 1995)	7	
256	Tower v. Glover, 467 U.S. 914 (1984); Dennis v. Sparks, 449 U.S. 24 (1980).	38	102
292	Tower v. Glover, 467 U.S. 914, 920 (1984)		91f
14	Town of Castle Rock v. Gonzales, 125 S. Ct. 2796 (2005).	4	
203	Townes v. City of New York, 176 F.3d 138 (2d Cir.) (same), cert. denied, 528 U.S. 964 (1999).	25,27,35,37	91g
35	Truax v. Raich, 239 U.S. 33, 41. (1915). "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure."	5	
101	Truax v. Raich, 239 U.S. 33, 41. (1915). "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure."	24	
45	Tulsa Professional Collection Services, Inc. v. Pope, 485 U. S. 478, 485 (1988); Brief for United States as Amicus Curiae 21-22. When States implement laws, allegedly for the protection of individual parties, there is a presumption of protection.	8	66d
191	Tulsa Professional Collection Services, Inc. v. Pope, 485 U. S. 478, 485 (1988); Brief for United States as Amicus Curiae 21-22. The appellant's claim regarded a private property interest. When States implement laws, allegedly for the protection of individual parties, there is a presumption of protection.	34	93f
174	U.S. Dep't of the Interior v. 16.03 Acres of land, 26 F.3d 329, 356 (2d Cir. 1994) (*"A reviewing court may only set aside a takings decision as being arbitrary, capricious, or undertaken in bad faith in those instances where the Court finds the Secretary's conduct so egregious that the taking at issue can serve no public use."*)	34	93f
221	Una A. Kim, Government Corruption and the Right of Access toCourts, 103 Mich. L. Rev. 554, 562 (2004).	35	94
83	United Public Workers v. Mitchell, 330 U. S. 75, distinguished. Pp. 344 U. S. 191-192. (1947).	20	
249	United Public Workers v. Mitchell, 330 U. S. 75, distinguished. Pp. 344 U. S. 191-192. (1947).	36	101f
207	United States Dept. of Agriculture v. Moreno, 413 U.S. 528, 535 (1973). The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.	35	
30	United States ex rel. Accardi v. Shaughnessy 347 U.S. 260 (74 S.Ct. 499, 98 L.Ed. 681, 1954), "Under the Doctrine of Unconstitutional Conditions, an inquiry into the government's compliance with applicable legislative or administrative authorization, results in a review of arbitrary action. Thus, beginning in the 1950's, the notion that administrative agencies must follow their own rules had already been established with respect to substantive rules affecting traditional property rights, which was then extended to require an agency to obey rules governing the matter of its adjudications."	5	
127	United States ex rel. Negron v. State of New York, 434 F.2d 386 (2d Cir. 1970), "The recipient may have no cause of action if the benefit is legitimately discretionary, but he or she at least has the right to go to court and obtain that determination". Proper Procedural Due Process is articulated to require, in addition to notice and opportunity to be heard, the (1) notice and basis of the governmental action; 2) a neutral arbiter; 3) an opportunity to make oral presentation; 4) a means of presenting evidence; 5) an opportunity to cross-examine witnesses or two respond to written evidence; 6) to be represented by counsel; and 7) a decision based on the record with a statement of reasons for the result.	28	93a
13	United States Railroad Retirement Bd. v. Fritz, 449 U.S. 166, 174 (1980).	4	
174	United States v. 58.16 Acres of Land, 478 F.2d 1055, 1060 (7th Cir. 1973) (observing that allegations of bad faith, arbitrariness, and capriciousness...bear upon the public use determination).	34	93f

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238	United States v. Classic, 313 U.S. 229, 326 (1941).	36	101c
103	United States v. Florida East Coast Ry., 410 U.S. 224 (1973), 410 U.S. at 245 (distinguishing between rule-making, at which legislative facts are in issue, and adjudication, at which adjudicative facts are at issue, requiring a hearing in latter proceedings but not in the former).	24	91c
183	United States v. General Motors Corp., 323 U.S. 373, 377-78, 89 L. Ed. 311, 65 S. Ct. 357 (1945).	34	93f
76	United States v. General Motors, Corp. 384 U.S. 127 (1966). "For it is the deprivation of the former owner rather than the accretion of a right or interest to the sovereign that constitutes a taking."	19	
292	United States v. Price, 383 U.S. 787, 794 (1966));		91f
256	United States v. Price, 383 U.S. 787, 794 (1966).	38	102
213	Vacco v. Quill, 521 U.S. 793, 799 (1997).	36	100a
107	Valko v. Connecticut, 302 U.S. 319, 327 (1937), The Federal government has noted fair procedures are a "fundamental right", central to a "scheme of ordered liberty".	24	91d
326	Vance v. Whirlpool Corp., 716 F.2d 1010, 1011-12 (4th Cir. 1983).		94
84	Vasquez v. Dillard's Inc., 2016 OK 89 2016 OK 89 381 P.3d 768 Case Number: 114810 Decided: 09/13/2016. Violation of Equal Protection Under State Constitution by Allowing for Disparate Treatment of Select Groups	10,20	
173	Vasquez v. Dillard's Inc., 2016 OK 89 2016 OK 89 381 P.3d 768 Case Number: 114810 Decided: 09/13/2016. Violation of Equal Protection Under State Constitution by Allowing for Disparate Treatment of Select Groups	33	93e
220	Vasquez v. Dillard's Inc., 2016 OK 89 2016 OK 89 381 P.3d 768 Case Number: 114810 Decided: 09/13/2016. Violation of Equal Protection Under State Constitution by Allowing for Disparate Treatment of Select Groups	36	
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226	Village of Willowbook v. Olech, 528 U.S. at 564 Class of One (2000).	36	94
98	Village of Willowbook v. Olech, 528 U.S. at 564. Class of one. (2000).	24	91b
347	Virginia Hospital Association v. Baliles, 868 F.2d 653 (4th Cir. 1989).		94
277	Virginia v. Am. Booksellers Ass'n, 484 U.S. 383, 392-393 (1988), Prime Media, Inc. v. City of Brentwood, 485 F.3d 343, 349-50 (6th Cir. 2007) (Moreover, even in cases involving overbreadth challenges – which might be characterized as a species of continuing injury case – plaintiffs must demonstrate that they have been injured in fact.)	23	91a
234	Vitek v. Jones, 445 U.S. (1980). In Vitek v. Jones, the Court reiterated that the right to personal security was inherent in the due process clause, and further found that individuals had the right to avoid being stigmatized by the government.	36	101b
23	Vitek v. Jones, 445 U.S. 480, 491 (1980).	4	
50	Vitek v. Jones, 445 U.S. at 445 U. S. 490-491, n. 6. (1980)	9	71a
194	Walker v. Rowe, 791 F.2d 507, 511 (7th Cir.), cert denied, 479 U.S. 994 (1986), The State must protect those it throws into the Snake Pit.	35	91g
132	Walker v. Sauvinet, 92 U.S. 90. (1875). Of course, the Board Panel holds no respect for Injured Workers, regardless of the letter of the original law under NYCRvW: "No question is made but that the procedural provisions of the act are amply adequate to afford the notice and opportunity to be heard required by the Fourteenth Amendment. The denial of a trial by jury is not inconsistent with "due process.""	28	93a
38	Washington v. Harper, 494 U.S. 210, 237 (1990) "*Every violation of a person's bodily integrity is an invasion of his or her liberty.*" . In the field of human rights, violation of the bodily integrity of another is regarded as an unethical infringement, intrusive, and possibly criminal.	6	
147	Watts v Rake, 108 CLR 158, {8} (1960) (Menzies J).	30	
303	Weinreich v. Los Angeles County Metropolitan Transp. Auth., 114 F.3d 976, 978 (9th Cir.1997).		94

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46	West v. Atkins, 487 U.S. 42 (1988).	8	66d
163	West v. Atkins, 487 U.S. 42 (1988). It must also follow that if the protection of individual parties fails to be protected, then the State by failing to provide protection under the terms they created, must then be found guilty of the damage.	33	93d
283	West v. Atkins, 487 U.S. 42 (1988); see also Reichley v. Pennsylvania Dept. of Agriculture, 427 F.3d 236, 245 (3d Cir. 2005) (holding that trade association's "involvement and cooperation with the Commonwealth's efforts to contain and combat" avian influenza did not show requisite delegation of authority to the trade association.		91f
280	West v. Atkins, 487 U.S. 42, 49 (1988) (quoting United States v. Classic, 313 U.S. 299, 326 (1941).		91f
33	Westphal v. City of St. Petersburg, 122 So. 3d 440 (Fla. 1st DCA 2013) (Florida).	5	
171	Westphal v. City of St. Petersburg, 122 So. 3d 440 (Fla. 1st DCA 2013) (Florida).	33	93e
172	Westphal v. City of St. Petersburg, 122 So. 3d 440 (Fla. 1st DCA 2013) (Florida).	33	93e
264	White v. Frank, 143 F.3d 679 (2d Cir. 1998), cert. denied, 525 U.S. 1139 (1999).	38	102
201	White v. Rochford, 592 F.2d 381 (7th Cir. 1979) (Minor children left in car by police officer).	27,35	91g
263	White v. Rochford, 592 F.2d 381 (7th Cir. 1979) (Minor children left in car by police officer).	38	102
33	Whiteside v. Division of Workers' Compensation, 67 P.3d 1240 (Colo. 2003).	5	
172	Whiteside v. Division of Workers' Compensation, 67 P.3d 1240 (Colo. 2003). The denial of due process by various means has been deemed unconstitutional in multiple circuits.	33	93e
244	Wieman v. Updegraff, 344 U.S. 183, 191 (1952), *"Indiscriminate classification....must fail as an assertion of arbitrary power"*.	36	
28	Wieman v. Updegraff, 344 U.S. 183, 191 (1952).	5	
48	Wieman v. Updegraff, 344 U.S. 183, 191 (1952).	8	71a
82	Wieman v. Updegraff, 344 U.S. 183, 191 (1952).	20	
108	Wieman v. Updegraff, 344 U.S. 183, 191 (1952).	24	91d
236	Wierciak v. Individual Members of the Medical Licensing Board of Indiana, Case 1:14-cv-00012-SEB-DML (S.D. Ind.2014).	36	101c
242	Wierciak v. Individual Members of the Medical Licensing Board of Indiana, Case 1:14-cv-00012-SEB-DML (S.D. Ind.2014). This has been found to be unconstitutional in multiple states under the Fourth Amendment as a violation of an individual's right to be free of unreasonable search & seizure.	36	
70	Wilborn v. Escalderon, 789 F.2d 1328, 1332 (9th Cir. 1986)	18	
176	Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 194 (1985) (*"The Fifth Amendment does not proscribe the taking of property; it proscribes taking without just compensation"*).	34	93f
128	Withrow v. Larkin, 421 U.S. 35, 46, 95 S. Ct. 1456, 1464, 43 L. Ed. 2d 712. (1975).	28	93a
122	Wolff v. McDonnell, 418 U.S. 539 (1974), The Court reasoned that the existence of rules created by the State had created a Liberty Interest protection in their execution, and said Liberty analysis parallels the accepted Due Process analysis as to property.	27	93a
113	Wolff v. McDonnell, 418 U.S. 539, 557 (1974), "Likewise, where the Court could have found that the State's failure to employ its own procedures rendered the State's action arbitrary the Court instead reasoned that the existence of rules created by the State had created a liberty interest protection in their execution, and said liberty analysis parallels the accepted due process analysis as to property."	24	91d
52	Wolff v. McDonnell, 418 U.S. at 561 563. (1974).	9	71a
337	Wolin v. Smith Barney Inc. 83 F.3d 847, 852 (7th Cir. 1996)		94
263	Wood v. Ostrander, 879 F.2d 583 (9th Cir. 1989), cert. denied, 498 U.S. 938 (1990).	38	102
202	Wood v. Ostrander, 879 F.2d 588 (9th Cir. 1989), cert. denied, 498 U.S. 938 (1990).	27,35	91g
333	Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997)		94
40	Youngberg v. Romeo, 457 U.S. 307 (1982)	6	
150	Youngberg v. Romeo, 457 U.S. 307 (1982).	32	93d

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330	Zankel v. Temple Univ., 245 Fed. Appx. 196, 198 (3d Cir. 2007) (quoting Brenner v. Local 514, United Bhd. Of Carpenters and Joiners of Am. 927 F.2d 1282, 1295 (3d Cir. 1991) (declining to find that an employee's termination constituted a continuing violation of employer's earlier failures to accommodate).		94
324	Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982) (title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(3)).		94
207	Zobel v. Williams, 457 U.S. 55, 61-63 (1982).	27,35	
4	Zobel v. Williams, 457 U.S. 55, Pp. 457 U. S. 58-61. (1982).	3	
306	Zukle v. Regents of University of California, 166 F.3d 1041, 1045 n. 11 (9th Cir.1999). Because the elements of Duvall's ADA, Rehabilitation Act, and WLAD claims do not differ in any respect relevant to the resolution of this appeal,10 we address these claims together.		94
	STATUTES		
366	Under the Laws of the State of New York, passed by the Legislature in their Tenth session, passed January 26th, 1787, it is stated, in their Fourth Statute: *"That no person shall be put to answer without presentment before justices, or matter of record, or due process of law according to the law of the land and if anything be done to the contrary it shall be void in law and held over for error."* ,		
367	NY Constitution, Article I, Section 6, "No person shall be deprived of life, liberty or property without due process of law."	4	
368	NY Constitution, Article I, Bill of Rights, Section 7, "Compensation for taking private property; private roads; drainage of agricultural lands], (a) Private property shall not be taken for public use without just compensation.", replicated from the Federal Constitutional Fifteenth Amendment		44a
	NY Constitution, Article I, Bill of Rights, Section 11, "Equal protection of laws; discrimination in civil rights prohibited, replicated from the Federal Constitutional Fourteenth Amendment."	4	44a
	NY Constitution, Article I, Bill of Rights, Section 12, "Security against unreasonable searches, seizures and interceptions, replicated from the Federal Constitutional Fourth Amendment protection."	4	44a
	NY Constitution, Section XVII, Section 3, [Public health] guarantees; The protection and promotion of the health of the inhabitants of the state are matters of public concern and provision therefor shall be made by the state and by such of its subdivisions and in such manner, and by such means as the legislature shall from time to time determine.		44a
	NY Constitution, Article XVII, Section 1 [Social Welfare]. New York State Law places a mandatory obligation upon the State to provide assistance to the "needy". "The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine."		42 Pg 3
	New York State Law - Article 15 - (290 - 301) Human Rights Law (NY Exec L Section 296 (2012))		42
	New York State Technology Law, Section 203		80
	New York State Public Officers Law, Article 6-a Personal Privacy Protection Law		80
	NYS Workers Compensation Law, Section 18, (Workers Compensation): 6-a. Reclassification of disabilities. Subject to the limitations set forth in sections twenty-five-a and one hundred twenty-three of this chapter, the board may, at any time, without regard to the date of accident, upon its own motion, or on application of any party in interest, reclassify a disability upon proof that there has been a change in condition, or that the previous classification was erroneous and not in the interest of justice.		103
	NYS Workers Compensation Law Section 28 Statute of Limitations. Limitation to right of compensation is 2 years. Thus Apportionment should not have been established.		103
	NYS Workers Compensation Law, Section 18, [Workers' compensation]; Nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health, or safety of employees; ...or for the payment...of compensation for injuries to employees...with or without trial by jury...		9
	NYS Workers Compensation Law, Section 18, [Workers' compensation], Section 24-1, WC Law prohibits Injured Workers from representing themselves, per the Judiciary Act of 1789.	15	

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	NYS Workers Compensation Law, Section 18, see 12 NYCRR 324.3 [b] [2] Carrier Compliance with Authorization for Special Services. The carrier or Special Fund must respond to the variance application within 15 days (see 12 NYCRR 324.3 [b] [2]) unless it desires an independent medical examination, of which it must notify the chair within five days and respond to the variance request within 30 days of receipt (see 12 NYCRR 324.3 [b] [2] [ii] [a]). Claimants may request review of denied variances within 21 days and may request an expedited hearing, which must be commenced within 30 days unless an adjournment is granted for good cause by the WCLJ, who must render a decision on the record unless the WCLJ finds complex medical issues, in which case a decision must be issued within 30 days (see 12 NYCRR 324.3 [d] [i], [ii]). "The social welfare considerations in providing workers' compensation benefits to injured employees include the elimination of obstacles to a claimant's award.		56
	NYS Workers Compensation Law, Section 24-1 Injured Workers cannot represent themselves, nor per the Judiciary Act of 1789, and Section 24-1 of the WC Law, nor does the New York Constitution provide a right of self- representation in State Courts.	16	
	NYS Workers Compensation HIPAA policies		80
	New York Workers' Compensation - Article 7 - ◆ 110-A Confidentiality of Workers' Compensation Records		80
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	Exh. 10 - For Injured Workers - A Costly Legal Swamp, The New York Times	34	10
	Exh. 11 - Injured Workers Suffer As 'Reforms' Limit Workers' Compensation Benefits, ProPublica	34	11
	Exh. 12 - The Workers Compensation System Is Broken, The Washington Post	34	12
	Exh. 13 - The Fallout Of Workers Compensation Reforms - ProPublica	34	13
	Exh. 14 - Benefit Adequacy in State and Provincial Workers Compensation Programs - The UpJohn Institute	34	14
	Exh. 15 - Current Workers' Comp System Outdated, Contributes to Worker Poverty - Claims Journal	34	15
	Exh. 106 Does the Workers Compensation System Fulfill Its Obligations to Injured Workers?	38	106
	TREATISES		
18a	Charles Francis Adams, ed., The Works of John Adams, 10 vols., Little, Brown and Company, Boston, 1850-1856, 6:9, 280. John Adams proclaimed: "The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence. Property must be secured or liberty cannot exist."	4	16
8	Cornell University Law School. "*Supremacy Clause*". law.cornell.edu., Lawson, Gary. "*Essays on Article V: Supremacy Clause*". The Heritage Foundation. Retrieved March 23, 2016, Drahozal, Christopher R. (2004). The Supremacy Clause: A Reference Guide to the United States Constitution. Praeger. p. xiv.	4	
124	Easterbrook, Frank H. & Fischel, Daniel R., Limited Liability and the Corporation, 52 U.CHI. L. REV. 89, 89 supra note 264, at 87-88 (liberty and property). (1985).	3,4,25,28	
42b	Florida Law Review: Volume 66, Issue 2, Article 7. When the Courts of Limited Jurisdiction Yield to Finality	3,16,31,34	42b
80	Frank B. Cross, In Praise of Irrational Plaintiffs, 86 Cornell L. Rev. 19 (2000), Roy D. Simon, Jr., The Riddle of Rule 68, 54 Geo. Wash. L. Rev. 1, 63 (1985). Even when settling a lawsuit would be more favorable than a trial outcome, plaintiffs may want to feel that they have had their day in court."	20	67
79	Frank I. Michelman, Property, Utility, and Fairness: Comments on the Ethical Foundations of "*Just Compensation Law*", 80 Harv. L. Rev. 1165 (1967). Legal scholars have stated that there is a Personal Property deprivation which occurs, known as a "demoralization cost", based on the psychological harm caused by losses uncompensated by purely objective measures, including the loss of the opportunity for a "day in court", or to express one's "voice", integral to notions of procedural justice.	20	67

	TABLE OF AUTHORITIES - Alphabetically	Brief Pg	Exh
18b	In a "Fifth Amendment" treatise by Washington State Supreme Court Justice Richard B. Sanders (12/10/97), writes: "Our state, and most other states, define property in an extremely broad sense." That definition is as follows: "Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment, and disposal. Anything which destroys any of the elements of property, to that extent, destroys the property itself. The substantial value of property lies in its use. If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right."	3,4,25	
91	Jeremy A. Blumenthal, J.D., University of Pennsylvania Law School; A.B., A.M., Ph.D., Harvard University. Legal Claims as Private Property: Implications for Eminent Domain. "When an injured plaintiff commences an action, complying with established guidelines for how to obtain the remedy associated with that injury, doing so activates expectations about how the machinery of the state will be used. Condemning that lawsuit through eminent domain takes a property interest and violates those settled expectations, thus warranting just compensation."	3,4,22,25	45
79	Josh Crank, Privacy Dangers in Workers Compensation,	11,12,20	
272	Kenneth R. Kupchak et al., Arrow of Time: Vested Rights, Zoning Estoppel, and Development Agreements in Hawaii'I, 27 U. Haw. L. Rev. 17, 25 (2004).	23	79, 91a
93	Lee Anne Fennell, Taking Eminent Domain Apart, 2004 Mich St. L. Rev. 957; Lee Anne Fennell, The Neglected Political Economy of Eminent Domain, 105 Mich.L.Rev.101 (2006).	23	
261	M. Schwartz, Section 1983 Litigation: Federal Evidence Section 106 (3ded. 1999).	38	
81	Margaret J. Radin, Market-Inalienability, 100 Harv. L. Rev. 1849 (1987). (Margaret Radin's Total PersonHood as a type of Liberty which comprises Personal Property). They have further noted the close relationship between lawsuits and personal dignity and integrity, within the context of Margaret Radin's "Property as Personhood Theory".	22	67, 91a
139	Margaret J. Radin, Market-Inalienability, 100 Harv. L. Rev., 1849 (1987). "When a plaintiff has an accrued cause of action based on established common law doctrines, courts are likely to find a property interest."	29	93a
90	Richard A. Epstein, in Takings: Private Property and the Power of Eminent Doman, 226 (1985), argued that there is no "distinction between vested and contingent remainders: both are property, albeit in different forms and with different values.", and "If you deny the Plaintiff the prima facie right to recover against a stranger without proof of negligence, then you have taken a limited property interest; if you deny the plaintiff the right to recover for certain nuisances, then you have created an easement to cause a nuisance."	22	
16	Saul K. Padover, ed., The Complete Madison, Harper & Bros., New York, 1953, p. 267, "Government is instituted to protect property of every sort.... nor is property secure under it, where the property which a man has in his personal safety and personal liberty is violated by arbitrary seizures of one class of citizens for the service of the rest."	4	
251	Zeigler and Hermann, 47 N.Y.U.L. Rev. at 205-206.	36	
	CONSTITUTIONAL PROVISIONS		
	28 U.S. Code § 1658 - Time limitations on the commencement of civil actions arising under Acts of Congress. Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.		94
	29 U.S.C. § 794(a). No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978.	35	95
	42 U.S. Code, Chapter 21, Civil Rights, Subchapter II, Public Accommodations, and/or Subchapter V, Federally Assisted Programs, including 2000a, 2000a1, 2000a2, 2000a3, and 2000a6.	35	94
	Affordable Care Act (ACA)	35	101 and

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	Americans with Disabilities Act (ADA) Failure to provide legal instruction and/or to secure legal representation for an Injured Worker, speaks to the "program accessibility requirement in regulations implementing Title II of the Americans with Disabilities Act, which requires that each service, program, or activity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities." 28 CFR 35.150(a)	35	94
	Americans with Disabilities Act (ADA), 42 U.S. Code § 12132, Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. (Pub. L. 101–336, title II, § 202, July 26, 1990, 104 Stat. 337.)	35	94
	Americans with Disabilities Act (ADA), 42 U.S. Code § 12203 - Prohibition against retaliation and coercion, (a) Retaliation. No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter. (Pub. L. 101–336, title V, § 503, July 26, 1990, 104 Stat. 370.)	35	94
	Architectural Barriers Act	35	94
	Fair Credit Reporting Act (FCRA)	35	101b
	Health Insurance Portability & Accountability Act (HIPAA)	36	101c
	Reconstruction Civil Rights Act - Section 1983	37-38	
	Rehabilitation Act, Sections 501 and 503	35	94
	Telecommunications Act Section 255 and Section 251(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.	35	94
	Telecommunications Act, Section 255 and Section 251(a)(2) of the Communication Act of 1934, as amended by the Telecommunications Act of 1996, which requires providers of telecommunication services to ensure that such equipment and services are accessible to and usable by persons with disabilities.	35	94
	The ADA Amendments Act of 2008 (ADAAA) was enacted on September 25, 2008, and became effective on January 1, 2009.	35	94
	The **Judiciary Act of 1789**, officially titled "An Act to Establish the Judicial Courts of the United States," was signed into law by President George Washington on September 24, **1789**. Article III of the Constitution established a Supreme Court, but left to Congress the authority to create lower federal courts as needed. Cannot represent oneself.	16	
156	U.S. Const. Amend V and XIV, Section 1 (*"nor shall any State deprive any person of life, liberty, or property, without due process of law"*).	1-4 and continuing	
	U.S. Const. Amend XIV, Section 1 Equal Protection, "The clause, which took effect in 1868, provides that no state shall deny to any person within its jurisdiction "the equal protection of the laws"".	1-10 and continuing	
	U.S. Constitution, First, Third, Fourth, Fifth, and Ninth Amendments. "Rights to Privacy". "The right to privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose. The right of privacy is an American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth, and Ninth Amendments to the U.S. Constitution. This right should be abridged only when there is a compelling public need."	10,12,36	

TABLE OF AUTHORITIES - By Citation Number		Brief Pg	Exh
	CASES		
1	Eastern Enters. V. Apfel, 524 US 498 , 529-537 (1998). "character of the government action at issue here is that the public program allegedly adjusting the benefits and burdens of economic life to promote the common good, and as such, not generally considered a "TAKING.	2	102
1	Lingle v. Chevron U.S.A., 544 US at 539 (2005).	2	102
1	Penn Cent. Transp. Co. v. City of New York, 438 US at 124, cf. Eastern Enters. V. Apfel, 524 US 498 , 529-537 (1998)	2	102
2	Bagley v. Washington Township Hospital Dist., 65 Cal.2d 499, 505. (1966). "When receipt of a public benefit is conditioned upon the waiver of a constitutional right, the "government bears a heavy burden of demonstrating the practical necessity for the limitation."	3	
3	NY Central Railroad v. White, 243 U.S. 188 (1917). ..."For any question of that kind may be met when it arises."	3,16	
4	Zobel v. Williams, 457 U.S. 55, Pp. 457 U. S. 58-61. (1982).	3	
5	Mathews v. Lucas, 427 U. S. 495, 427 U. S. 510 (1976), (the classificatory scheme must "*rationally advance a reasonable and identifiable governmental objective*.")	3	
5	Schweiker v. Wilson, 450 U. S. 221, 450 U. S. 230 (1981). This is not a difficult standard for a State to meet when it is attempting to act sensibly and in good faith. But the "*rational basis standard is not a toothless one*," id. at 450 U. S. 234.	3	
5	Schweiker v. Wilson, 450 U.S. at 450 U. S. 235 (1981).	3	
6	California v. ARC America Corp., 490 U.S. 93 (1989), the Supreme Court held that if Congress expressly intended to act in an area, this would trigger the enforcement of the Supremacy Clause, and hence nullify the state action.	4	
6a	Edgar v. Mite, 457 U.S.624 (1982), the Supreme Court ruled: "A state statute is void to the extent that it actually conflicts with a valid Federal statute". Where State Law violates Federal Laws or when "state law is an obstacle to the accomplishment and execution of Congress's full purposes and objectives", the Supremacy Clauses states it may be struck down, on a strict scrutiny basis, or other like type of legal review.	4	
7	Crosby v. National Foreign Trade Council, 530 U.S. 363 (2000), that even when a state law is not in direct conflict with a federal law, the state law could still be found unconstitutional under the Supremacy Clause if the "state law is an obstacle to the accomplishment and execution of Congress's full purposes and objectives";	4	
8	Commonwealth Edison Co. v. Montana, 453 U.S. 609, 634. (1981).	4	
8	Crosby v. National Foreign Trade Council, 530 U.S. 363, 372-374. (2000), Congress need not expressly assert any preemption over state laws either, because Congress may implicitly assume this preemption under the Constitution.	4	
8	Crosby v. National Foreign Trade Council, 530 U.S. 363, 386-388 (2000).	4	
8	Dow Chemical Co. v. Exxon Corp., 139 F.3d 1470 (Fed Cir 1998).	4	
8	Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142 (1963).	4	
9	Kimes v. Stone, 84 F.3d 1121, 1128 (9th Cir. 1996).	3	
10	Swekel v. City of River Rouge, 119 F.3d 1259, 1262 (6th Cir. 1997) (Noting that access to courts protects more than physical access, but also effective and meaningful access).	4	
11	Board of Regents v. Roth, 408 U. S. 564, 408 U. S. 576-578 (1972), The hallmark of property, the Court has emphasized, is an individual entitlement grounded in state law, which cannot be removed except "for cause."	4	
11	Goss v. Lopez, 419 U. S. 565, 419 U. S. 573-574 (1975).	4	
11	Memphis Light, Gas & Water Div. v. Craft, 436 U. S. 1, 436 U. S. 11-12 (1978).	4	
12	Arnett v. Kennedy, 416 U. S. 134. (1974), Once that characteristic is found, the types of interests protected as "property" are varied and, as often as not, intangible, relating "to the whole domain of social and economic fact."	3	
12	National Mutual Insurance Co. v. Tidewater Transfer Co., 337 U. S. 582, 337 U. S. 646 (1949) (Frankfurter, J., dissenting)	4	
13	Logan v. Zimmerman Brush Co., 455 U.S. 422, 432-33 (1982), In Goldberg v. Kelly, where the loss or reduction of a benefit or privilege was conditioned upon specified grounds, it was found that the recipient had a property interest entitling him to proper procedure before termination or revocation.	4,28	

VIII

	TABLE OF AUTHORITIES - By Citation Number	Brief Pg	Exh
13	Mathews v. Eldridge, 424 U.S.319 (1976) (SocialSecurity benefits). . The balancing process mandated by Eldridge did not occur, failing to consider, before implementation, the seriousness of the deprivation which would result, nor to properly remediate circuitous guidelines, deficient of timely Procedural Due Process protections, to "catch" mistakes which might occur.	4	
13	Richardson v. Belcher, 404 U.S. 78 (1971).	4	
13	United States Railroad Retirement Bd. v. Fritz, 449 U.S. 166, 174 (1980).	4	
14	Bell v. Burson, 402 U.S. 535 (1971) (driver's license).	4	
14	Cleveland Bd of Ed. V. Loudermill, 470 U.S. 532 (1985) (Public employment).	4	
14	Goldberg v. Kelly, 397 U.S. 254 (1965) (public assistance) The objective standards create a "*reasonable expectation*" that if the standards are satisfied the government will provide the entitlement. Entitlements arise from the existence of objective standards of eligibility for public employment, licenses, public assistance, and other government dispensed commodities.	4	
14	Goss v. Lopez, 419 U.S. 565 (1975) (Public school education).	4	
14	Mathews v. Eldridge, 424 U.S. 319 (1976) (social security benefits).	4	
14	Perry v. Sindermann, 408 U.S. 593 (1972) (public employment).	4	
14	Town of Castle Rock v. Gonzales, 125 S. Ct. 2796 (2005).	4	
15	Kelo v. City of New London, 545 U.S. 469 (2005), Kelo v. City of New London, provoked criticism for "TAKING" private property in order to produce economic advantage to another private party. Thereafter, the scope of the "TAKINGS" law became limited by State laws by necessity, for if the society did not "see" the betterment, then it made no sense for the government to suppose it.	4	
17	Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 162 (1951), These types of legal concerns are not time barred. Due process is not unrelated to time, place and circumstances, but rather is "flexible and calls for such procedural protections as the particular situation demands".	4	
17	Little v. Streater, 452 U.S. 1 (1981)	4,17	
17	Morrissey v. Brewer, 408 U.S. 471, 481 (1972).	4	
18	Boyd v. United States, 116 U.S. 616 (1886), the Supreme Court ruled that the evil in an unreasonable search and seizure was not so much found in the fact that it disturbs a man's privacy, but in the fact that it is an "invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence." In the Court's opinion, personal security, personal liberty and private property each constituted an indefeasible, or unalienable, right protected by the Constitution.	4	
19	Dandridge v. Williams, 397 U.S. 471, 485 (1970). A state's action "*may not deprive an eligible recipient of the very means by which to live" or render his situation "immediately desperate".*	4	
19	Goldberg v. Kelly, 397U.S. 254, 264 (1970) and 438 F.2d at 7 and 12. (2nd Cir. 1971), "While welfare payments are money benefits and, as such, comprise only a property right, their denial deprives an eligible recipient of the very means by which to live. Since welfare cases by their very nature involve people at a bare subsistence level, disputes over the correct amounts payable are treated not merely as involving property rights, but some sort of right to exist in society, a personal right under the Stone formula."	4	
20	Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972). Language used in several welfare cases indicates the importance attached to these benefits by the Supreme Court. Public assistance "involves the most basic economic needs of impoverished human beings."	4	
21	New York Central R.R. Co. v. White 243 U.S. 188 (1917), Indeed, WC law was deemed constitutional under the premise that "One of the grounds of its concern with the continued life and earning power of the individual is its interest in the prevention of pauperism, with its concomitants of vice and crime."	4	
22	Fuhrman v. Georgia, 408 U.S. at 577 (1972), "Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits."	4	

	TABLE OF AUTHORITIES - By Citation Number	Brief Pg	Exh
23	Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985), More recently, however, the Court has squarely held that because "minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse action. Indeed, any other conclusion would allow the State to destroy virtually any state-created property interest at will."	4	
23	Vitek v. Jones, 445 U.S. 480, 491 (1980).	4	
24	People v. Singer, 44 N.Y.2d 241 (1978).	4	
24	People v. Staley, 41 N.Y.2d 789 (1977).	4	
25	Brown v. State of New York, 89 N.Y.2d 172, 674 N.E.2d 1129, 652 N.Y.S.2d 223, 65 USLW 2355 (1996).	5	
26	Palko v. Connecticut, 302 U.S. 319, 327 (1937). Fundamental rights are central to a scheme of ordered liberty. "These procedural liberty interests should not, however, be confused with substantive liberty interests, which, if not outweighed by a sufficient governmental interest, may not be intruded upon regardless of the process followed."	5,20	
27	Ingraham v. Wright, 430 U.S. 651 (1977).	5	
28	Slochower v. Board of Higher Educ., 350 U.S. 551, 559 (1956), Substantive Due Process is the notion that due process not only protects certain legal procedures, but also protects certain rights unrelated to procedure. To reach factual conclusions without a hearing constitutes a Substantive Due Process violation.	5,20	
28	Wieman v. Updegraff, 344 U.S. 183, 191 (1952).	5	
29	Adair v. United States, 208 U.S. 161 (1908), Common law causes of action define the fundamental rights of liberty and property, the national law entitlements of individuals. These rights receive Procedural Due Process protection against government deprivation just as they received Substantive Due Process protection against regulation.	5	
29	Adkins v. Children's Hosp., 261 U.S. 525 (1923).	5	
29	Hovey v. Elliott, 167 U.S. 409 (1897) (deprivation of property without trial violates due process.).	5	
29	Loclmer v. New York, 198 U.S. 45 (1905).	5	
29	Londoner v. City of Denver, 210 U.S. 373 (1908) (taxation of property without adjudication violates due process).	5	
29	Moore v. Dempsey, 261 U.S. 86 (1923) (deprivation of liberty without proper trial violates due process).	5	
30	United States ex rel. Accardi v. Shaughnessy 347 U.S. 260 (74 S.Ct. 499, 98 L.Ed. 681, 1954), "Under the Doctrine of Unconstitutional Conditions, an inquiry into the government's compliance with applicable legislative or administrative authorization, results in a review of arbitrary action. Thus, beginning in the 1950's, the notion that administrative agencies must follow their own rules had already been established with respect to substantive rules affecting traditional property rights, which was then extended to require an agency to obey rules governing the matter of its adjudications."	5	
31	Goldberg v. Kelly, 397 U.S. 254, 262 n.8 (1970), "To have a property interest in a benefit, a person clearly .....must have more than a unilateral expectation of it. He must instead have a legitimate claim of entitlement to it", and "Property interests...are not created by the Constitution. Rather they are created and their dimensions defined by existing rules or understandings that stem from an independent source such as state law." "Medical care is a necessity of life."	9,20	71a
32	Arnett, 416 U.S. at 154, 164-167. (1974), Thus it was found that the government could neither reduce procedural rights directly, nor do so indirectly by conditioning a substantive right on their reduction.	5	
33	AT&T Wireless Services, Inc. v. Castro, Case No. 1D03-1264 (Fla 1st DCA 2005), Constitutional challenges have already been made which verify that there is a Substantive deprivation when Procedural Due Process requirements are either non-existent, or not met.	5	
33	Thompson v. Awnclean, USA, 849 So.2d 1129, 1132 (Fla. 1st DCA, 2002) (Florida).	5	48a
33	Westphal v. City of St. Petersburg, 122 So. 3d 440 (Fla. 1st DCA 2013) (Florida).	5	
33	Whiteside v. Division of Workers' Compensation, 67 P.3d 1240 (Colo. 2003).	5	
34	Coppage v. Kansas, 236 U.S. 1, 14. (1915). "If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense."	5	

	TABLE OF AUTHORITIES - By Citation Number	Brief Pg	Exh
35	Truax v. Raich, 239 U.S. 33, 41. (1915). "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure."	5	
36	Tichon v. Harder, 438 F.2d 1396 (2d Cir. 1971). " In the absence of a clear, immediate and substantial impact on the employee's reputation which effectively destroys his ability to engage in his occupation, it cannot be said that a right of personal liberty is involved."	5	
37	Daniels v. Williams, 474 U.S. at 331, 106 S.Ct. at 665. (1986). ..."regardless of the fairness of the procedures used to implement them."	5	
38	Washington v. Harper, 494 U.S. 210, 237 (1990) *"Every violation of a person's bodily integrity is an invasion of his or her liberty."* . In the field of human rights, violation of the bodily integrity of another is regarded as an unethical infringement, intrusive, and possibly criminal.	6	
39	Smith v. Marasco, 318 F.3d 497, 509 (3d Cir. 2003) *"relationship between the plaintiff and the state requirement was met because police officers who engaged in a stand-off, keeping the victim in the woods, away from his home and his medicines, exerted sufficient control over him".*	6	
40	Youngberg v. Romeo, 457 U.S. 307 (1982)	6	
41	City of Canton, Ohio v. Harris, 489 U.S. 378 (1989).	6	
42	Ingraham v. Wright, 430 U.S. 651 at 673 & n.41. (1977). "It is fundamental that the State cannot hold and physically punish an individual except in accordance with due process of law."	6	
43	Tobe v. City of Santa Ana 9 Cal. 4th 1069, 1084 (Cal. 1995)	7	
44	American Manufacturers v. Sullivan, 26 U.S. 40, 119 S. Ct. 977, 143 L. Ed. 2d 130, (1999)	7, 36	66d, 94
45	Tulsa Professional Collection Services, Inc. v. Pope, 485 U. S. 478, 485 (1988); Brief for United States as Amicus Curiae 21-22. The appellant's claim regarded a private property interest. When States implement laws, allegedly for the protection of individual parties, there is a presumption of protection.	8	66d
46	West v. Atkins, 487 U.S. 42 (1988).	8	66d
47	O'Bannon v. Town Court Nursing Center, 447 U.S. 773 (1980). Fundamental rights are central to a scheme of ordered liberty.	8	66d, 71a
48	Slochower v. Board of Higher Educ., 350 U.S. 551, 559 (1956). To reach factual conclusions without a hearing constitutes a Substantive Due Process violation.	8	71a
48	Wieman v. Updegraff, 344 U.S. 183, 191 (1952).	8	71a
49	Parratt v. Taylor, 451 U.S. 527 (1981).	9	71a
49	Paul v. Davis, 424 U.S. 693 (1976).	9	71a
50	Arnett v. Kennedy, 416 U.S. at 416 U. S. 167. (1974). "'While the legislature may elect not to confer a property interest,. . it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards. . . . [T]he adequacy of statutory procedures for deprivation of a statutorily created property interest must be analyzed in constitutional terms.'"	9	71a
50	Vitek v. Jones, 445 U.S. at 445 U. S. 490-491, n. 6. (1980)	9	71a
51	Goss v. Lopez, 419 U.S. at 419 U. S. 579. (1975). On the other hand, the Court has acknowledged that the timing and nature of the required hearing "will depend on appropriate accommodation of the competing interests involved."	9	71a
52	Mathews v. Eldridge, 424 U.S. at 424 U. S. 334-335 (1976); the likelihood of governmental error, see id. at 424 U. S. 335; and the magnitude of the governmental interests involved, see ibid. These include the importance of the private interest and the length or finality of the deprivation.	9	71a
52	Memphis Light, Gas & Water Div. v. Craft, 436 U.S. at 436 U. S. 19. (1978).	9	71a
52	Wolff v. McDonnell, 418 U.S. at 561 563. (1974).	9	71a
53	Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982). In this instance, "It is the state system itself that destroys a complainant's property interest, by operation of law, whenever the Commission fails to convene a timely conference -- whether the Commission's action is taken through negligence, maliciousness, or otherwise. Parratt was not designed to reach such a situation."	9	71a

	TABLE OF AUTHORITIES - By Citation Number	Brief Pg	Exh
54	Barrett v. Claycomb, 705 F.3d 315,. 322 (8th Cir. 2013). In Barrett v. Claycomb, it was determined that suspicionless drug testing (presumed but not for cause), was a constitutional violation	10	75a
55	Phelps-Roper v. Nixon, 545 F.3d 685, 690 (8th Cir. 2008). The protection of constitutionally protected rights necessarily serves the public interest."	10	75a
56	Marchwinski v. Howard, 113 F. Supp. 2d 1134 (E.D. Mich. 2000), aff'd 60 F. App'x 601 (6th Cir. 2003)(Drug testing of welfare recipients deemed unconstitutional.) It is always in the public interest to protect constitutional rights."	10	75a
57	American Manufacturers v. Sullivan, 26 U.S. 40, 119 S. Ct. 977, 143 L. Ed. 2d 130, (1999)	10	75a
58	Constitution, Article 1, Section 1; Hill v. NCAA, 865 P.2d 633 (1994). "The right to privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose. The right of privacy is an American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth, and Ninth Amendments to the U.S. Constitution. This right should be abridged only when there is a compelling public need." It has been said "In the absence of a clear, immediate and substantial impact on the employee's reputation which effectively destroys his ability to engage in his occupation, it cannot be said that a right of personal liberty is involved".	11	75a
59	Donald Leroy Brown v. Joseph R. Brierley, 438 F.2d 954 (3d Cir. 1968)	11	75a
60	Buxton v. Plant City, 871 F.2d 1037 (11th Cir. 1989).	11	75a
61	Meyer v. Nebraska, 262 U.S. 390, 399 (1923)....liberty includes "not merely freedom from bodily restraint but also the right of the individual to contract to engage in any of the common occupations of life..."	13	84a
62	Castellanos v. Next Door Company, 124 So.3d 392 (2013).	15	66e
63	M.L.B. v. S.L.J., 519 U.S. 102 (1996), M.L.B. v. S.L.J., is illustrative of cases that have applied heightened scrutiny to financial roadblocks imposed by states that stand in the way of indigents getting equal access to justice with respect to issues that substantially affect liberty or family life. the Court struck down a Mississippi law that prevented an indigent mother from appealing a termination of parental rights order because she could not pay a $2000 transcript-processing fee. The deprivation involved a complete severing of parent-child bonds, Justice Ginsburg wrote for the Court, which is understandably "devastating" and heightened scrutiny is justified. The modest cost savings to the state resulting from the mandatory fee was not a sufficiently compelling reason to impose the burden that Mississippi's law did.	16	66e
64	Griffin v Illinois, 351 U.S.12, (1956), In the area of access to justice, the Court also has concluded that states must provide free trial transcripts to indigents.	16	66e
65	Douglas v. California, 372 U.S. 353 (1963), free attorneys for indigents to appeal criminal convictions.	16	66e
66	Jacobsen v Filler, 790 F.2d at 1367-68. (1986). "The choice to appear pro se may not truly be a choice under such circumstances."	16	66e
67	Logan v. Zimmerman Brush Co., 455 U.S. 422, 437 (1982). Not to fight is not an option.	16	
68	Little v. Streater, 452 U.S. 1, 5-6 (1981). "The result is to place in jeopardy the one due process right that pro se litigants clearly have: the right to a meaningful opportunity to be heard."	16	
69	Hanes v. Kener, 404 U.S. 519 (1972). The concept of liberally construed pleadings.	17	
70	Ham v. Smith, 653 F.2d 628, 630 (D.C. Cir. 1981).	18	
70	Hudson v. Hardy, 412 F.2d 1091, 1094-95 (D.C. Cir. 1968).	18	
70	Lewis v. Faulkner, 689 F.2d 100,102(7th Cir. 1982).	18	
70	Moore v. State of Fla. 703 F.2d 516, 521 (11th Cir. 1983).	18	
70	Phillips v. United States Board of Parole, 352 F.2d 711, 714 (D.C.Cir. 1965).	18	
70	Smart v. Villar, 547 F.2d 112, 114 (10th Cir. 1976).	18	
70	Wilborn v. Escalderon, 789 F.2d 1328, 1332 (9th Cir. 1986)	18	
71	Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 162 (1951). Thus, access to critical evidence is adversely prevented by cost and function, failing to provide due process access, and further creating barriers when the process is required to be "flexible and calling for such procedural protections as the particular situation demands."	18	
71	Little v. Streater, 452 U.S. 1, 5-6 (1981).	18	
71	Morrissey v. Brewer, 408 U.S. 471, 481 (1972).	18	

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72	Robbins and Herman, 42 Brooklyn L.Rev. at 667. (1976). "A willingness to treat pro se litigants benevolently can alleviate a potentially unfair procedural system."	18	
73	Meyer v. Nebraska, 262 U.S. 390, 399 (1923). ...liberty includes "not merely freedom from bodily restraint but also the right of the individual to contract to engage in any of the common occupations of life..."	18	
74	Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1928). A cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause."	19	
75	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	19	
75	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	19	
75	Psychiatric Associates v. Siegel, 610 So.2d 419. (1992) (Florida) Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	19	66f
75	Smothers v. Gresham Transfer, Inc. 23 P.3d 333 (Or. 2001).	19	66f
76	United States v. General Motors, Corp. 384 U.S. 127 (1966). "For it is the deprivation of the former owner rather than the accretion of a right or interest to the sovereign that constitutes a taking."	19	
77	S&A Plumbing v. Kimes, 756 So.2d 1037 (Fla. 1st DCA, 2000).	19	
78	Brown v. Cassens Transport Co., 743 F. Supp. 2d 651 (E.D. Mich. 2010). District Court, E.D. Michigan.	20	67
82	Slochower v. Board of Higher Educ., 350 U.S. 551, 559 (1956).	20	
82	Wieman v. Updegraff, 344 U.S. 183, 191 (1952).	20	
83	Adler v. Board of Education, 342 U. S. 485. (1952). "The protection of the Due Process Clause extends...to a statute which is patently arbitrary or discriminatory."	20	
83	United Public Workers v. Mitchell, 330 U. S. 75, distinguished. Pp. 344 U. S. 191-192. (1947).	20	
84	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	20	
84	McCrone v. BankOneCorp, 2004 WL 1111021 (Ohio App. 5th. May 17, 2004)(Ohio); Disparate Treatment of One Injury vs. Another is Unlawful.	10,20	
84	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	10,20	
84	Psychiatric Associates v. Siegel, 610 So.2d 419 (Fla.1992).	10,20	
84	Vasquez v. Dillard's Inc., 2016 OK 89 2016 OK 89 381 P.3d 768 Case Number: 114810 Decided: 09/13/2016. Violation of Equal Protection Under State Constitution by Allowing for Disparate Treatment of Select Groups	10,20	
85	Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 156 (1978). "This argument, however, ignores our repeated insistence that state action requires both an alleged constitutional deprivation "caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible," and that "the party charged with the deprivation must be a person who may fairly be said to be a state actor." Thus, the private insurers in this case will not be held to constitutional standards unless "there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the latter may be fairly treated as that of the State itself."	10, 21	
85	Lugar, v. Edmondson Oil Co., 457 U.S. 922, 937 (1982).	21	
86	Adickesv. S. H. Kress & Co., 398 U.S. 144, 170 (1970).	21	
86	Flagg Bros., Inc. v. Brooks, 436 U.S. 166 (1978). "Whether such a "close nexus" exists", our cases state, depends on whether the State "has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State."	21	
86	Jackson v. Metropolitan Edison Co., 419 U. S. 357 (1974).	21	
86	Lugar, v. Edmondson Oil Co., 457 U.S. 922, 937 (1982).	21	
86	Moose Lodge No. 107 v. Irvis, 407 U.S. 163,173(1972).	21	
87	Blum v. Yaretsky, 457 U.S. 1004-1005, 102 S. Ct. 2777, 73 L. Ed. 2d 534, (1982). Action taken by private entities with the mere approval or acquiescence of the State is not state action.	21	91

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87	Flagg Bros., Inc. v. Brooks, 436 U.S. 154-165 (1978).	21	91
87	Jackson v. Metropolitan Edison Co., 419 U. S. 357 (1974).	21,36	91
88	Blum v. Yaretsky, 457 U.S. 1011, 102 S. Ct. 2777, 73 L. Ed. 2d 534, 1982 U.S. The Supreme Court, referencing Blum and Jackson, in particular, has established that "privately owned enterprises providing services that the State would not necessarily provide, even though they are extensively regulated, do not fall within the ambit of Burton."	21	91
88	Jackson v. Metropolitan Edison Co., 419 U. S. 357-358 (1974).	21	91
89	Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). "Here, workers' compensation insurers are at least as extensively regulated as the private nursing facilities in Blum and the private utility in Jackson. Like those cases, though, the state statutory and regulatory scheme leaves the challenged decisions to the judgment of insurers."	21	
90	Bormann v. Board of Supervisors, 584 N.W. 2d 309 (Iowa, 1998), Richard A. Epstein, in Takings: Private Property and the Power of Eminent Doman, 226 (1985), argued that there is no "distinction between vested and contingent remainders: both are property, albeit in different forms and with different values.", and "If you deny the Plaintiff the prima facie right to recover against a stranger without proof of negligence, then you have taken a limited property interest; if you deny the plaintiff the right to recover for certain nuisances, then you have created an easement to cause a nuisance."	8,22	
92	Palazzolo v. Rhode Island, 533 U.S. 606, 627 (2001). Future generations, too, have a right to challenge unreasonable limitations on the use and value of land.	23	91a
93	Kimball Laundry Co., v. United States, 338 U.S. 15, 15-16 (1949). ...just compensation had to include the value of less tangible factors, such as the loss of autonomy.	23	91a
94	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	23	91b
94	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	23	91b
94	Psychiatric Associates v. Siegel, 610 So.2d 419. (1992) (Florida) Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	23	91b
94	Reesor v. Montana State Fund, 103 P.3d 1019 (Mont. 2004) (Illegal to Cap Benefits at Age of Retirement).	23	91b
95	Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886, 894-95 (1961), "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."	24	91b
96	Board of Regents of State Colleges v. Roth, 408 U.S. 564 (more) 92 S. Ct. 2701; 33 L. Ed. 2d 548. (1972) U.S. LEXIS 131; 1 I.E.R. Cas. (BNA) 23, "Without doubt it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized...as essential to the orderly pursuit of happiness by free men.	24	91b
97	Ingraham v. Wright, 430 U.S. 651 (1977). "These procedural liberty interests should not, however, be confused with substantive liberty interests, which, if not outweighed by a sufficient governmental interest, may not be intruded upon regardless of the process followed."	24	91b
98	Village of Willowbook v. Olech, 528 U.S. at 564. Class of one. (2000).	24	91b
99	Department of Agriculture v. Moreno, 413 U.S. 528 (1973).	24	91b
99	Romer v. Evans, 517 US 620 (1996). In Romer v. Evans, the Supreme Court quoted Department of Agriculture v. Moreno: "If the constitutional concept of equal protection of the laws means anything, it must at the very least mean that a bare (governmental) desire to harm a politically unpopular group cannot constitute a legitimate government interest."	24	91b
100	Coppage v. Kansas, 236 U.S. 1, 14. (1915). "If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense."	24	91b

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101	Truax v. Raich, 239 U.S. 33, 41. (1915). "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure."	24	
102	Missouri, Kansas & Texas Ry. Co. v. Cade, 233 U.S. 642, 650 (1914) and cases there cited.	24	
103	Londoner v. City of Denver, 210 U.S. 373 (1908).	24	91c
103	United States v. Florida East Coast Ry., 410 U.S. 224 (1973), 410 U.S. at 245 (distinguishing between rule-making, at which legislative facts are in issue, and adjudication, at which adjudicative facts are at issue, requiring a hearing in latter proceedings but not in the former).	24	91c
104	Anderson Nat'l Bank v. Luckett, 321 U.S. 233, 246- 47 (1944).	25	91c
105	Crowell v. Benson, 285 U.S. 22 (1932), Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287 (1920) *"where company appealed from agency rate setting on grounds that rate effectively confiscated company's property without due process"*.	24	91c
106	Rodriguez v. Plymouth Ambulance Serv., 577 F.2d 816, 826 (7th Cir. 2009), The State has failed in its constitutional obligation to protect Injured Workers in exclusivity. In so doing, it has deprived individuals of their constitutionally protected rights by delegating government functions to the private sector.	24	91d
107	Valko v. Connecticut, 302 U.S. 319, 327 (1937), The Federal government has noted fair procedures are a "fundamental right", central to a "scheme of ordered liberty".	24	91d
108	Slochower v. Board of Higher Educ., 350 U.S. 551, 559 (1956), As a result, the Court reasoned, reaching factual conclusions without a hearing constituted a Substantive Due Process violation. "Indiscriminate classification....must fail as an assertion of arbitrary power". '	24	91d
108	Wieman v. Updegraff, 344 U.S. 183, 191 (1952).	24	91d
109	Goldberg v. Kelly, 397 U.S. 254, 262 (1970), It was determined "the constitutional challenge cannot be answered by an argument that public assistance benefits are a "privilege" and not a "right". "It may be realistic today to regard welfare entitlements as more like "property" than a "gratuity".	24	91d
109	Shapiro v. Thompson, 394 U.S. 618, 627 n.6 (1969).	24	91d
110	Board of Regents v. Roth, 408 U.S. 573-574, (1972), In Board of Regents v. Roth, two more discrete defined strands of protected liberty were found; the right to one's good name, and the right to pursue one's chosen occupation	24	91d
111	Board of Regents v. Roth, 408 U.S. 577 (1972), "To have a property interest in a benefit, a person clearly .....must have more than a unilateral expectation of it. He must instead have a legitimate claim of entitlement to it", and "Property interests...are not created by the Constitution. Rather they are created and their dimensions defined by existing rules or understandings that stem from an independent source such as state law."	24	91d
112	Arnett, 416 U.S. at 154, 164-167 (1974), Thus it was found that the government could neither reduce procedural rights directly, nor do so indirectly by conditioning a substantive right on their reduction.	24	91d
113	Wolff v. McDonnell, 418 U.S. 539, 557 (1974), "Likewise, where the Court could have found that the State's failure to employ its own procedures rendered the State's action arbitrary the Court instead reasoned that the existence of rules created by the State had created a liberty interest protection in their execution, and said liberty analysis parallels the accepted due process analysis as to property."	24	91d
114	Pruneyard Shopping Center v. Robins, 447 U.S. 74, 82 (1980).	25	91d
115	Parratt v. Taylor, 451 U.S. 527 (1981), In Paul v. Davis and Parratt v. Taylor, a substantive element of one's liberty requires freedom from arbitrary adjudicative procedure.	24	91d
115	Paul v. Davis, 424 U.S. 693 (1976)	24	91d

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116	Heckler v. Campbell, 461 U.S. 458, 103 S. Ct. 1952, 76 L. Ed. 2d 66, (1983), Arbitrary adjudicative procedure is defined; in the negative, by Justice Powell in Campbell. "The regulations afford claimants ample opportunity both to present evidence relating to their abilities and to offer evidence that the general rules do not apply to them, for informal rulemaking foreclosed only a "general factual issue" which was not "unique to each Claimant".	24	91d
117	Ingraham v. Wright, 430 U.S. 651 at 673 & n.41. (1977). "It is fundamental that the State cannot hold and physically punish an individual except in accordance with due process of law."	25	
118	Furman v. Georgia, 408 U.S. 238 (1972), In Furman v. Georgia, Justice Brennan wrote, in regards to Eighth Amendment protections, "There are, then, four principles by which we may determine whether a particular punishment is 'cruel and unusual" which "set the standard that a punishment would be cruel and unusual [if] it was too severe for the crime, [if] it was arbitrary, if it offended society's sense of justice, or if it was not more effective than a less severe penalty."	25	
119	Hewitt v. Helms', (459 U.S. 460, 466 (1983). In Hewitt v. Helms,' Justice Rehnquist, principal architect of the underlying rights approach, wrote: "Liberty interests protected by the Fourteenth Amendment may arise from two sources-the Due Process Clause itself and the laws of the States."	27,36	93a; 101f
120	Hewitt v. Helms, 459 U.S. 460, 471 (1983). "The constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement."	27	93a
120	Olim v. Wakinekona, 461 U.S. 238, 251 (1983), 103 S. Ct. at 1748.	27	93a
121	American Farm Lines v. Black Ball Freight Serv., 397 U.S. 532, 538-39 (1970), "..whereby the failure to follow procedural rules could fall outside the scope of substantive process if they did not involve adjudication".	27	93a
122	Wolff v. McDonnell, 418 U.S. 539 (1974), The Court reasoned that the existence of rules created by the State had created a Liberty Interest protection in their execution, and said Liberty analysis parallels the accepted Due Process analysis as to property.	27	93a
123	Mathews v. Eldridge, 424 U.S. 319 (1976). Criteria were put in place by which government administration to a property right would be reviewed based on, 1) The private interest affected by the official action; 2) The risk of erroneous deprivation of such interest through the procedures used; 3) The probable value of any additional procedural safeguards; 4) The Government's interest, including the function involved, and the administrative burdens of additional procedural requirements.	28	93a
124	Bishop v. Wood, 426 U.S. 341, 344 (1976).	28	93a
124	Board of Regents v. Roth, 408 U.S. 564, 577 (1972).	28	93a
124	Goldberg v. Kelly (397 U.S. 254, 264 (1970), And a tentative 5th established under Goldberg, "Pre-termination hearings are required where the threatened property right consists of need-based benefits. This is because the recipient or applicant may be deprived of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate."	28	93a
124	Goss v. Lopez, 419 U.S. 565, 572-74 (1975).	28	93a
124	Greenholtz v. Inmates of the Nev. Penal & Correctional Complex, 442 U.S. 1, 12 (1979) (same).	28	93a
124	Hewitt v. Helms, 459 U.S 460, 469-71 (1983) (particular liberty right).	28	93a
124	Leis v. Flynt, 439 U.S. 438, 441 (1979).	28	93a
124	Meachum v. Fano, 427 U.S. 215, 226 (1976) (liberty in general).	28	93a
124	Paul v. Davis, 424 U.S. 693, 709-10 (1976) (same).	28	93a
125	Logan v. Zimmerman Brush Co., 455 U.S. 422, 440 (1982). "Traditional due process makes no such computation. It assumes that a serious risk of error is present, and then employs a range of trial based procedures to protect against it."	28	93a
126	Bowles v. Willingham, 321 U.S. 503, 516 (1944).	28	93a
126	Crowell v. Benson, 285 U.S. 22 (1932). "But I cannot agree that terminating a claim that the State itself has misscheduled is a rational way of expediting the resolution of disputes."	28	93a
126	Estep v. United States, 327 U.S. 114, 122-25 (1946).	28	93a
126	Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287 (1920).	28	93a
127	Rogin v. Bensalem Township, 616 F.2d 680, 694 (3d Cir. 1980).	28	93a

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127	United States ex rel. Negron v. State of New York, 434 F.2d 386 (2d Cir. 1970), "The recipient may have no cause of action if the benefit is legitimately discretionary, but he or she at least has the right to go to court and obtain that determination". Proper Procedural Due Process is articulated to require, in addition to notice and opportunity to be heard, the (1) notice and basis of the governmental action; 2) a neutral arbiter; 3) an opportunity to make oral presentation; 4) a means of presenting evidence; 5) an opportunity to cross-examine witnesses or two respond to written evidence; 6) to be represented by counsel; and 7) a decision based on the record with a statement of reasons for the result.	28	93a
128	Bracy v. Gramley, 520 U.S. 899, 904-905, 117 S. Ct. 1793, 1797, 138 L. Ed. 2d 97. (1997).	28	93a
128	Withrow v. Larkin, 421 U.S. 35, 46, 95 S. Ct. 1456, 1464, 43 L. Ed. 2d 712. (1975).	28	93a
129	Albright v. Oliver, 510 U.S. 266, 272 (1994).	27	93a
130	Cruzon v. Director of Missouri Department of Health, 497 U.S. 261 (1990), but the right to obtain medical treatment, as far as I can tell, has not been enumerated.	28	93a
131	Ingraham v. Wright, 430 U.S. 651, 673 (1977). In Ingraham v. Wright, the Court stated "The liberty preserved from deprivation without due process included the right 'generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.' . . . Among the historic liberties so protected was a right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security." In one example, a state appellate court reversed a trial court and entered a final judgment for the defendant, a plaintiff who had never had an opportunity to introduce evidence in rebuttal to certain testimony which the trial court deemed immaterial but which the appellate court considered material was held to have been deprived of his rights without due process of law.	28	93a
132	Frank v. Mangum, 237 U.S. 309, 340.	28	93a
132	Walker v. Sauvinet, 92 U.S. 90. (1875). Of course, the Board Panel holds no respect for Injured Workers, regardless of the letter of the original law under NYCRvW: "No question is made but that the procedural provisions of the act are amply adequate to afford the notice and opportunity to be heard required by the Fourteenth Amendment. The denial of a trial by jury is not inconsistent with "due process.""	28	93a
133	Goldberg v. Kelly, 397 U.S. 254, 262-63 (1970). "The extent to which Procedural Due Process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication."	28	93a
133	Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 168 (1951) (Justice Frankfurter concurring)).	28	93a
134	Boddie v. Connecticut, 401 U.S. 371, 401 U.S. 378 (1971)(appropriate to the nature of the case).	28	93a
134	Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) (negligent failure to observe a procedural deadline). "....a plaintiff who had never had an opportunity to introduce evidence in rebuttal to certain testimony which the trial court deemed immaterial but which the appellate court considered material was held to have been deprived of his rights without due process of law."	28	93a
134	Parratt v. Taylor, 451 U.S. 527 (1981) (opportunity to be heard at a meaningful time in a meaningful manner).	28	93a
134	Saunders v. Shaw, 244 U.S. 317 (1917).	28	93a
135	Atmospheric Testing Litig., 820 F.2d at 988-989 (9th Cir. 1987).	28	93a
136	Sayles v. Foley, 96 A. 340, 347 (R.I. 1916). Prospective regulations which diminish and eliminate un-accrued causes of action (or defenses) have been determined to exclude the implication of property rights, for the injury has not yet occurred. Until "the occurrence of an accident there is no property right growing out of it."	28	93a
137	Borgnos v. Falk Co., 133 N.W. 209, 222 (Wis. 1911). "The right to bring an action in the future...is subject to change by the lawmaking authority at any time."	28	93a

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138	Pritchard v. Norton, 106 U.S. 124, 132 (1882). In contrast, retrospective interference with causes of action, whereby "a law changes the legal consequences of past actions, it interferes with vested rights, and courts have held that property....is implicated". That is, a cause of action vests upon the occurrence of an injury, and that "vested right of action is property in the same sense in which tangible things are property, and is equally protected against arbitrary interference." The main issue with the Takings Clause and Personal Property Interest stems from arguments over "when the injury occurred".	23,29	91a, 93a
140	Board of the County Commissioners v. Brown, 520 U.S. 397 (1997) (liability for failure to hire competent personnel requires a showing of "*deliberate indifference*" to the consequences inlight of the newly hired deputy sheriff's propensity for violence).	29	93b
140	City of Canton v. Harris, 489 U.S. 378-388 .	29	93b
141	Connick v. Thompson, 131 S. Ct. 1350, 1359-60 (2011). When..."the type of incident which resulted in injury is so recurring as to tend to show that the government's inaction was conscious or deliberate, amounting to "deliberate indifference" to the consequences of its inaction."	29	93b
142	Board of the County Commissioners v. Brown, 520 U.S. 397 (1997) (liability for failure to hire competent personnel requires a showing of "*deliberate indifference*" to the consequences in light of the newly hired deputy sheriff's propensity for violence).	30	93b
142	City of Canton v. Harris, 489 U.S. 378, 388 (1989)(failure to train police officers to identify medical emergencies). "...the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need", and the lack of training actually causes injury.	30	93b
142	Connick v. Thompson, 131 S. Ct. 1350, 1359-60 (2011).	30	93b
142	Owens v. Baltimore City State Attorney's Office, 767 F.3d 379, 402-404 (4th Cir. 2014) cert denied, 135 S. Ct. 1893 (2015) (count found plaintiff plausible claim that police dept maintained a custom, policy, and/or practice of condoning activity, is "knowingly, consciously and repeatedly withholding and suppressing exculpatory evidence.)	30	93b
143	Brett v. Orange County Human Rights Comm'n, 194 F.3d 341, 350 (2d Cir. 1999).	30	93b
143	Chew v. Gates, 27 F.3d 1432, 1438 (9th Cir. 1994).	30	93b
144	Garcia v. Salt Lake County, 768 F.2d 303, 310 (10th Cir. 1985). "Supervisory liability may be imposed under Section 1983 notwithstanding the exoneration of the officer whose missions of several employees acting under a governmental policy or custom may violate" the Constitution.	30	93b
145	Brown v. Pennsylvania, 318 F.3d 473, 482 & n.3 (3d Cir. 2003). "A municipality may be held independently liable for a Substantive Due Process violation even in situations where none of its employees are liable."	30	93b
146	Norfleet v. Ark. Dept. of Human Services, 796 F. Supp. 1194 (E.D. Ark. 1992). As per Judge Posner, "the state, having saved a man from a lynch mob, cannot then lynch him, on the ground that he will be no worse off than if he had not been saved."	30	93b
147	Affordable Care Act (ACA).	30	
147	Kavanagh v Akhtar (1998) 45 NSWLR588.	30	
147	Nader v Urban Transit Authority of NSW (1985)2 NSWLR501, (McHugh JA). [1]. (1985).	30	
147	Prosser, Handbook of the Law of Torts 261 (4th ed. 1971).	30	
147	R v Blaue [1975] 1 WLR 1411. (1975) The Principle of Eggshell Skull	30	
147	Stoleson v United States, 708 F.2d 1217. (1983). The principle of Eggshell Skull	30	
147	Watts v Rake, 108 CLR 158, {8} (1960) (Menzies J).	30	
148	DeShaney v. Winnebago Cty. DSS, 489 U.S. 189 (1989). b) When the government is required to provide protection, because government is responsible for creating the danger, a/k/a State Created Danger and the proverbial Snake Pit.	31	
149	Pena v. DePrisco, 432 F.3d 98 (2d Cir. 2005). The Second Circuit, in particular, provides two separate exceptions: first, if the individual in custody has a special relationship with the government, OR second, if there is a state-created danger.	31	
150	Estelle v. Gamble, 429 U.S. 97 (1976).	32	93d
150	Martinez v. California, 444 U.S. 277 (1980).	32	93d
150	Youngberg v. Romeo, 457 U.S. 307 (1982).	32	93d

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151	Goldberg v. Kelly, 397 U.S. 254, 262-63 (1970). "The extent to which Procedural Due Process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication."	32	93d
151	Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 168 (1951) (Justice Frankfurter concurring)).	32	93d
152	Edmonson, 500 U.S. at 622. (1991). State Created Danger hinges on "whether the injury caused is aggravated in a unique way by the incidents of governmental authority."	32	91, 93d
153	Blum v. Yaretsky, 457 U.S. 991, 1004 (1982). For example, the State "normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State". Similarly, state action may be found where a private entity exercises functions that are "traditionally the exclusive prerogative of the State."	32	93d
153	Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1982).	32	93d
153	San Francisco Arts & Athletics v. United States Olympic Comm., 483 U.S. 522, 546 (1987).	32	93d
154	Burton v. Wilmington Parking Authority, 365 U.S. 715, 725 (1961). In Burton v. Wilmington Parking Authority, the Court stated that where "the State has so far insinuated itself into a position of interdependence with a private actor, the State may be held to be " a joint participant in the challenged activity".	32	91, 93d
155	Matthews v. Eldridge, 424 U.S. 319 (1976).	32	93d
156	Mathews, 424 U.S. at 332 ("Procedural Due Process imposes constraintson governmental decisions which deprive individuals of "liberty" or "property interests"). Although the Court of Appeals analyzed the degree of process "due" by balancing the parties' interests under Matthews v. Eldridge, such a test – and the due process inquiry generally – normally applies only when a state actor seeks to "deprive" an individual of a "property interest".	32	93d
157	First English Lutheran Evangelical Church v. County of Los Angeles, 482 U.S. 304, 321 (1987) (normal regulatory delays to not effect a "TAKING" of property). "If the delays resulting from utilization review are quite modest, it cannot be argued that the delays have the effect of destroying or substantially diminishing the value of respondents' property interests in their claims for benefits."	32	91, 93d
158	Matthews v. Eldridge, 424 U.S. 341-342 (delays of 10 to 11 months between request for ALJ hearing and decision), (1976). Protracted delays that prevent claims from ever ripening into payment, of course, might be said to destroy the individual's interest in the claim itself, for a claim to payment is valueless if, because of such delays, payment effectively cannot be received, and failing to compensate for delays – deprives respondents of "property" without "due process" in violation of the Fourteenth Amendment.	32	93d
159	Cafeteria Workers v. McElroy, 367 U.S. 886, 895 (1961). Due process "is not a technical conception with a fixed content unrelated to time, place and circumstances."	32	93d
160	Gilbert v. Homar, 117 S. Ct. 1807, 1812 (1997).	32	93d
160	Morrissey v. Brewer, 408 U.S. 471, 481 (1972). ..but rather "is flexible and calls for such procedural protections as the particular situation demands."	32	93d
161	Armstrong v. Manzo, 380 U.S. 545, 552 (1965). The "fundamental requirement" of due process "is the opportunity to be heard at a meaningful time in a meaningful manner."	32	93d
161	Mathews v. Eldridge, 424 U.S. at 333, (1976).	32	91, 93d
162	Mathews v. Eldridge, 424 U.S. at 335. (1976). In determining whether the requirements of due process have been met, this Court has typically looked to three factors: First, the private interest that will be affected by the official action; Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and Finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.	32	91, 93d

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163	West v. Atkins, 487 U.S. 42 (1988). It must also follow that if the protection of individual parties fails to be protected, then the State by failing to provide protection under the terms they created, must then be found guilty of the damage.	33	93d
164	Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 156 (1978). The Mathews court was not convinced that reasonable and necessary medical review, if adversely withheld, meant that "any governmental interest outweighs the private interest".	33	93d
165	Marsh v. Alabama, 326 U. S. 501, distinguished. Pp. 436 U. S. 157-163. (1945). Flagg Bros., Inc. v. Brooks, noted that simply putting in place the "challenged statute does not delegate to the storage company an exclusive prerogative of the sovereign.", for other remedies for the settlement of disputes between debtors and creditors remain available to the parties.	33	93d
165	Nixon v. Condon, 286 U. S. 73. (1932).	33	93d
165	Smith v. Allwright, 321 U. S. 649. (1944).	33	93d
165	Terry v. Adams, 345 U. S. 461. (1953)	33	93d
166	Blum v. Yaretsky, 457 U.S. 1011, 102 S. Ct. 2777, 73 L. Ed. 2d 534, 1982 U.S. . The Supreme Court, referencing Blum and Jackson, in particular, "have established that "privately owned enterprises" providing services that the State would not necessarily provide, even though they are extensively regulated, do not fall within the ambit of Burton."	33	93d
166	Jackson v. Metropolitan Edison Co., 419 U. S. 357-358 (1974). "have established that "privately owned enterprises" providing services that the State would not necessarily provide, even though they are extensively regulated, do not fall within the ambit of Burton.	33	93d
167	Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). Here, workers' compensation insurers are at least as extensively regulated as the private nursing facilities in Blum and the private utility in Jackson. Like those cases, though, the state statutory and regulatory scheme leaves the challenged decisions to the judgment of insurers."	33	93d
168	Logan v. Zimmerman Brush Co., 455 U.S. 422, 431 (1982). As well, it is understood that whether or not a WC Injured Worker has a Property Right interest in obtaining medical care for an approved injury, they have a right to the claim for payment and/or authorization as provided for under the act, which is akin to a property interest.	33	93d
168	Schvartzman v. Apfel, 138 F.3d 1196, 1199 (7th Cir. 1998) (discussing Zimmerman).	33	93d
169	Logan v. Zimmerman Brush Co., 455 U.S. 431 (1982). It likewise follows that where a State puts Procedural Due Process requirements in place, and then fails to follow them, it can be said they are a State actor for failure to provide what they themselves have articulated to be the minimum Procedural Due Process requirements to withhold the same.	33	93d
170	Reesor v. Montana State Fund, 103 P.3d 1019 (Mont. 2004) (Illegal to Cap Benefits at Age of Retirement).	33	93e
171	Westphal v. City of St. Petersburg, 122 So. 3d 440 (Fla. 1st DCA 2013) (Florida).	33	93e
172	AT&T Wireless Services, Inc. v. Castro, Case No. 1D03-1264 (Fla 1st DCA 2005).	33	93e
172	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	33	93e
172	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	33	93e
172	Psychiatric Associates v. Siegel, 610 So.2d 419. (1992) (Florida) Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	33	93e
172	Thompson v. Awnclean, USA, 849 So.2d 1129, 1132 (Fla. 1st DCA. 2002) (Florida).	33	93e
172	Westphal v. City of St. Petersburg, 122 So. 3d 440 (Fla. 1st DCA 2013) (Florida).	33	93e
172	Whiteside v. Division of Workers' Compensation, 67 P.3d 1240 (Colo. 2003). The denial of due process by various means has been deemed unconstitutional in multiple circuits.	33	93e
173	McCrone v. BankOneCorp, 2004 WL 1111021 (Ohio App. 5th. May 17, 2004)(Ohio); Disparate Treatment of One Injury vs. Another is Unlawful.	33	93e

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173	Psychiatric Associates v. Siegel, 610 So.2d 419 (Fla.1992). (Florida), Mitchell v. Moore, 786 So.2d 521 (Fla. 2001); Kluger v. White, 281 So.2d 1 (Fla. 1973), Violation of Equal Protection Under State Constitution by Allowing for Disparate Treatment of Select Groups	33	93e
173	Vasquez v. Dillard's Inc., 2016 OK 89 2016 OK 89 381 P.3d 768 Case Number: 114810 Decided: 09/13/2016. Violation of Equal Protection Under State Constitution by Allowing for Disparate Treatment of Select Groups	33	93e
174	Shaikh v. City of Chi., 341 F.3d 627, 632-33 (7th Cir. 2003) (Taking..."*by unlawful discriminatory animus*"). When determining whether a taking is in fact in the public interest, bad faith conduct by government officials including arbitrary, capricious, or discriminatory conduct may be considered.	34	93f
174	U.S. Dep't of the Interior v. 16.03 Acres of land, 26 F.3d 329, 356 (2d Cir. 1994) (*"A reviewing court may only set aside a takings decision as being arbitrary, capricious, or undertaken in bad faith in those instances where the Court finds the Secretary's conduct so egregious that the taking at issue can serve no public use.")*	34	93f
174	United States v. 58.16 Acres of Land, 478 F.2d 1055, 1060 (7th Cir. 1973) (observing that allegations of bad faith, arbitrariness, and capriciousness...bear upon the public use determination).	34	93f
175	Franco v. Nat'l Capital Revitalization Corp., 930 A.2d 160, 172 (D.C. App. 2007) (remanding to trial court for determination of whether stated purpose was pretextual).	34	93f
175	Kelo v. New London, 545 U.S. 469 at 478 (2005). (*"Nor would the City be allowed to take property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit."*).	34	93f
175	LLC v.Vill. Of Haverstraw, 839 N.Y.S.2d 127 (N.Y. App. Div. 2007) (holding that the claim of condemnation failed to serve a public purpose).	34	93f
176	Brown v. Legal Found. Of Wash., 538 U.S. 216, 231-32 (2003)(*"The Fifth Amendment imposes two conditions on the exercise of such authority: the taking must be for a "*public use*" and "*just compensation*" must be paid to the owner."*).	34	93f
176	First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 314 (1987)(noting that Takings Clause does not prohibit government takings, merely places limits on the government's power to do.	34	93f
176	Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 194 (1985) (*"The Fifth Amendment does not proscribe the taking of property; it proscribes taking without just compensation"*).	34	93f
177	City of Monterey v.Del Monte Dunes, Ltd., 119 S. Ct. 1624 (1999) (Seventh Amendment to the United States Constitution protects right to jury trial in a federal taking claim). To the extent a state's procedures deprive claimants of their right to a jury trial on the issue of whether a taking occurred, there may be an argument that the state procedures are inadequate.	34	93f
178	Armstrong v. United States, 364 U.S. 40, 49 (1960). Federal taking claims are based on the Fifth Amendment to the United States Constitution that provides: "*[N]or shall private property be taken for public use without just compensation.*"	34	93f
178	Palazzolo v. Rhode Island, 458 U.S. 419, 427 (1982). (United States Supreme Court, June 28, 2001). "These inquiries are informed by the purpose of the Takings Clause, which is to prevent the government from forcing some people to alone to bear public burdens which, in fairness and justice, should be borne by the public as a whole."	34	93f
179	Agins v. City of Tiburon, 447 U.S. 255, 65 L.Ed.2d 106 (1980).	34	93f
180	Palazzolo v. Rhode Island, 458 U.S. 419, 427 (1982). "Our cases establish that even a minimal permanent physical occupation of property requires compensation under the taking Clause."	34	93f
181	Hage v. United States, 35 Fed. Cl. 147, 150-152 (1996) (judicial role in takings claims is not that of "*super legislator or executive, intent on preventing regulation that goes too far*").	34	93f

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181	Palazzolo v. Rhode Island, 458 U.S. 419, 415 (1982); Hage v. United States, 35 Fed. Cl. 147, 150-152 (1996) (judicial role in takings claims is not that of "*super legislator or executive, intent on preventing regulation that goes too far*"). "The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."	34	93f
182	Armstrong v. United States, 364 U.S. 40, 49, 4 L. Ed. 2d 1554, 80 S. Ct. 1563 (1960). As the Supreme Court explained in Armstrong v. United States, the Takings Clause is triggered by regulation which forces "some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."	34	93f
183	United States v. General Motors Corp., 323 U.S. 373, 377-78, 89 L. Ed. 311, 65 S. Ct. 357 (1945).	34	93f
184	Suitum v. Tahoe Reg'l Planning Agency, 520 U.S. 725, 117 S. Ct. 1659, 1664-65 (1997).	34	93f
185	City of Chicago v. International College of Surgeons, 522 U.S. 156 (1997) (federal court can exercise supplemental jurisdiction to satisfy this prong).	34	93f
186	Broadwater Farms Joint Venture v. United States, 35 Fed. Cl. 232, 236 n.1 and 236-38 (1996). Doctrine of Exhaustion of Administrative Remedies.	34	93f
186	Eisen v. Eastman, 421 F.2d 560, 569 (2d Cir. 1969) cert denied, 400 U.S. 841 (1970).	34	93f
186	McNeese v. Bd. Of Education, 373 U.S. 558 (1963), it has been said, does away with this doctrine in relation to Section 1983. Under federal precedents, the futility exception is appropriate where the process for obtaining a permit is so burdensome or futile that it "effectively deprives the property of value" or "[n]o reasonable landowner would find a door left open for obtaining a permit."	34	93f
187	Christensen v. Yolo County Bd. of Supervisors, 995 F.2d 161 (9th Cir. 1993).	34	93f
187	Suitum v. Tahoe Regional Planning Agency, 520 U.S. 725, 734 n 8 (1997).	34	93f
188	Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922). "If the regulation deprives the owner of the property's value, utility or marketability, denying him or her the benefits of property ownership, this thus accomplishes a constitutionally forbidden de facto taking without compensation."	34	93f
189	Dandridge v. Williams, 397 U.S. 471, 485 (1970). For loss of income due to bodily injury deprives the individual of their ability to work, their right to work, and their ability to obtain a timely medical recovery (thus reducing their losses), deprivation of both of which deprive the individual of the most basic economic needs leading to impoverishment of human beings.	34	93f
190	Goldberg v. Kelly, 397 U.S. 254, 264 (1970). The State's action, as such, "deprived an eligible recipient of the very means by which to live", thus rendering her situation "immediately desperate", which was deliberately indifferent to the individual's plight, of which the NYS WC Board was well aware.	34	93f
191	Logan v. Zimmerman Brush Co., 455 U. S. 422, 428-431, (1982). I do not doubt, however, that due process requires fair procedures for the adjudication of respondents' claims for workers' compensation benefits, including medical care.	34	93f
191	Tulsa Professional Collection Services, Inc. v. Pope, 485 U. S. 478, 485 (1988); Brief for United States as Amicus Curiae 21-22.	34	93f
192	Matter of Winfield v. N.Y.C. H.R.R.R. Co., 216 N.Y. 284, 289. (1915). "The compensation awarded the employee is not such as is recoverable under the rules of damages applicable in actions founded upon negligence. It is based on loss of earning power * * *."	34	93f
193	Gormley v. Wood-El, 218 N.J. 72 (2014), Under Gormley v.Wood, the issue of qualified immunity was addressed as a matter of law in a similar situation.	26,35	
194	Walker v. Rowe, 791 F.2d 507, 511 (7th Cir.), cert denied, 479 U.S. 994 (1986), The State must protect those it throws into the Snake Pit.	35	91g

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195	Estate of Lance v. Lewisville Indep. Sch. Dist., 743 F.3d 982 (5th Cir. 2014); Farmer v. Brennan, 511 U.S. 825 (U.S. 1994). Intentionally delaying medical care for a known injury (i.e. a broken wrist) has been held to constitute deliberate indifference; Elliott v. Jones, 2009 U.S. Dist. LEXIS 91125 (N.D. Fla. Sept. 1, 2009), Deliberate indifference is defined as requiring (1) an "awareness of facts from which the inference could be drawn that a substantial risk of serious harm exists" and (2) the actual "drawing of the inference.". State created danger doctrine – state created dangerous conditions and acted with deliberate indifference to the plight of plaintiffs.	26,35	91g
196	McQueen v. Beecher Community Schools, 433 F.3d 460 (6th Cir. 2006).	26,35	91g
196	Schruder v. City of Fort Thomas, 412 F.3d 724 (6th Cir. 2005).	35	91g
197	Schruder v. City of Fort Thomas, 412 F.3d 724 (6th Cir. 2005).	35	91g
198	Paine v. Cason, 678 F.3d 500, 510 (7th Cir. 2012), "State created danger doctrine requires showing of 1) affirmative act; 2) creating or increasing risk of harm; 3) special danger to victim as distinguished from public at large; and 4) requisite culpability, namely, deliberate indifference, which means "subjective recklessness") 197 "It is clearly established that state actors who without justification increase a person's risk of harm violate the constitution.	26,35	91g
199	Accord, Kneipp v. Tedder, 95 F.3d 1999 (3rd Cir. 1996), The Third Circuit articulated four elements of the state created danger theory 1) harm caused was foreseeable and "fairly direct"; 2) the official acted in willful disregard of the plaintiff's safety; 3) some relationship existed between the state and the plaintiff; and 4) the official crated an opportunity for the infliction of harm	26,35	91g
199	Mark v. Borough of Hatboro 51 F.3d 1137, 1153 (3d Cir.) cert denied, 516 U.S. 858 (1995) 516 U.S. 858 (1995).	26,35	91g
200	Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir.1990).	27,35	91g
201	DeShaney v. Winnebago County Dept. of Social Servs., 489 U.S. 189 at 201 n.9 (1989) The State has a due process duty to protect children in foster care.	27,35	91g
201	White v. Rochford, 592 F.2d 381 (7th Cir. 1979) (Minor children left in car by police officer).	27,35	91g
202	Cornelius, 880 F.2d at 350), Community Schools, 433 F.3d 460 (6th Cir. 2006) (state created danger doctrine requires showing of 1) affirmative act; 2) creating or increasing risk of harm; 3) special danger to victim as distinguished from public at large; and 4) requisite culpability, namely, deliberate indifference, which means "*subjective recklessness*").	27,35	91g
202	DeShaney v. Winnebago County Dept. of Social Servs., 489 U.S. 189 at 1152-1153 (1989), It was further noted that "[t]he cases where the state-created danger theory was applied were based on discrete, grossly reckless acts committed by the state or state actors using their peculiar positions as state actors, leaving a discrete plaintiff vulnerable to foreseeable injury."	27,35	91g
202	Estate of Lance v. Lewisville Indep. Sch. Dist., 743 F.3d 982 (5th Cir. 2014) State created danger doctrine – state created dangerous conditions and acted with deliberate indifference to the plight of plaintiffs.	27,35	91g
202	Johnson v. Dallas Independent School Dist., 38 F.3d 198, 201 (5th Cir.1994), cert. denied, 514 U.S. 1017, 115 S.Ct. 1361, 131 L.Ed.2d 218 (1995).	27,35	91g
202	McQueen v. Beecher Community Schools, 433 F.3d 460 (6th Cir. 2006) (state created danger doctrine requires showing of 1) affirmative act; 2) creating or increasing risk of harm; 3) special danger to victim as distinguished from public at large; and 4) requisite culpability, namely, deliberate indifference, which means "*subjective recklessness*").	27,35	91g
202	Schruder v. City of Fort Thomas, 412 F.3d 724 (6th Cir. 2005).	35	91g
202	Schruder v. City of Fort Thomas, 412 F.3d 724 (6th Cir. 2005).	35	91g
202	Wood v. Ostrander, 879 F.2d 588 (9th Cir. 1989), cert. denied, 498 U.S. 938 (1990).	27,35	91g
203	Barnes v. Anderson, 202 F.3d 150 (2d Cir. 1999) – courts look to state tort analogies; Townes v. City of New York, 176 F.3d 138 (2d Cir.) (same), cert. denied, 528 U.S. 964 .	25,27,35,37	91g
203	City of Canton v. Harris, 489 U.S. 378 (1989, the Court stated there *"must be a direct causal link between a municipal policy or custom and the alleged constitutional deprivation". "In relation to training, deliberate indifference standard applies."*	25,27,35,37	91g
203	Cohen v. Cowles Media Co., 501 U.S. 663 (1991). In Cohen v. Cowles Media Co., the U.S. Supreme Court held that "a state court's enforcement of a state law cause of action constitutes state action: application of state rules of law in state courts in a manner alleged to restrict First Amendment freedoms constitutes "state action".	27,35,37	91g

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203	Cyrus v. Town of Mukwonago, 624 F.3d 856, 864 (7th Cir. 2010) (common law tort causation rules apply to Section 1983 claims; general rule is that expert testimony is not necessary to prove causation).	25,27,35,37	91g
203	Egervary v. Young, 366 F.3d 238 (3d Cir. 2004).	25,27,35,37	91g
203	Higazy v. Templeton, 505 F.3d 161 (2d Cir. 2007) (Bivens action).	25,27,35,37	91g
203	McKinley v. City of Mansfield, 404 F.3d 418, 438 (6th Cir. 2005) (causation in the constitutional sense is no different than causation in the common law sense).	25,27,35,37	91g
203	Monell v. Department of Social Services (55) and again in Polk County v. Dodson (56). Municipal policy must be the "*moving force of the constitutional violation*" in order to impose municipal.	25, 27, 35, 37	91g
203	Rodriguez-Cirilo v. Garcia, 115 F.3d 50 (1st Cir. 1997).	25,27,35,37	91g
203	Sanchez v. Pereira-Castillo, 590 F.3d 31, 50 (1st Cir. 2009) (common law tort causation rules apply under Section 1983 claims; causal connection may consist of state actor setting in motion series of acts by others which state actor knows or reasonably should know would cause others to inflict constitutional injury).	25,27,35,37	91g
203	Stevenson v. Koskey, 877 F.2d 1435, 1438 (9th Cir. 1989) (federal courts turn to common law of torts for causation in civil rights cases).	25,27,35,37	91g
203	Townes v. City of New York, 176 F.3d 138 (2d Cir.) (same), cert. denied, 528 U.S. 964 (1999).	25,27,35,37	91g
204	Brown v. State of New York, 89 N.Y.2d 172, 674 N.E.2d 1129, 652 N.Y.S.2d 223, 65 USLW 2355 (1996). ... we held the State had waived its immunity from respondeat superior liability and specifically recognized that the State and its subdivisions were liable for the acts of their employees. Common law tort rules are heavily influenced by overriding concerns of adjusting losses and allocating risks, matters that have little relevance when constitutional rights are at stake. But aside from those considerations, the State is appropriately held answerable for the acts of its officers and employees because it can avoid such misconduct by adequate training and supervision and avoid its repetition by discharging or disciplining negligent or incompetent employees.	5,35	
205	Romer v. Evans, 517 U.S. 620, 631 (1996).	35	
206	Matthews v. Lucas, 427 U.S. 495, 510 (1976).	35	
207	United States Dept. of Agriculture v. Moreno, 413 U.S. 528, 535 (1973). The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.	35	
207	Zobel v. Williams, 457 U.S. 55, 61-63 (1982).	27,35	
208	City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 446-447 (1985). Further, some objectives, such as a bare desire to harm a politically unpopular group are not legitimate state interests.	35	
209	F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920). The Equal Protection Clause directs that all persons similarly circumstanced shall be treated alike.	27,35	
210	Clark v. Jeter, 486 U.S. 456, 461 (1988). The third equal protection test; intermediate, requires that the classification bear a "substantial relationship" to an "important" governmental interest.	35	
211	Harper v. Virginia Bd. of Elections, 383 U.S. 663, 672 16 L.Ed. 2d 169, 86 S. Ct. 1079 (1966). Although this test is usually used only in certain circumstances, it is noted that Claimant's deprivations are fundamental.	35	
212	Plyler v. Doe, 457 U.S. 202, 211 n.10 (1982).	35	100a
213	Vacco v. Quill, 521 U.S. 793, 799 (1997).	36	100a
214	City of Cleburne v. Cleburne Living Ctr., supra, 473 U.S. at 440. (1985).	36	100a
215	San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 28 (1973).	36	100a
216	Reed v. Reed, 404 U. S. 71, 404 U. S. 76 (1971). "Merely to accomplish the elimination of hearings on the merits is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause. . . ."	36	100a
217	Schweiker v. Wilson, 450 U. S. 221, 450 U. S. 230 (1981). At the minimum level, however, the Court "consistently has required that legislation classify the persons it affects in a manner rationally related to legitimate governmental objectives."	36	100a
218	Mathews v. Lucas, 427 U. S. 495, 427 U. S. 510 (1976), (the classificatory scheme must "*rationally advance a reasonable and identifiable governmental objective*.")	36	100a

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218	Schweiker v.Wilson, 450 U.S. at 450 U. S. 235. (1981). This is not a difficult standard for a State to meet when it is attempting to act sensibly and in good faith. But the "rational basis standard is not a toothless one,"	35	100a
219	Lindsey v. Normet, 405 U. S. 56 (1972).	36	100a
219	Schweiker v. Wilson, 450 U. S. 221, 450 U. S. 230 (1981). "As claimants possessed no power to convene hearings, it is unfair and irrational to punish them for the Commission's failure to do so. This Court has held repeatedly that state-created classifications must bear a rational relationship to legitimate governmental objectives."	36	100a
220	Kluger v. White, 281 So.2d 1 (Fla. 1973), Violation of Equal Protection Under State Constitution by Allowing for Disparate Treatment of Select Groups	36	
220	McCrone v. BankOneCorp, 2004 WL 1111021 (Ohio App. 5th. May 17, 2004)(Ohio); Disparate Treatment of One Injury vs. Another is Unlawful.	36	
220	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	36	
220	Psychiatric Associates v. Siegel, 610 So.2d 419 (Fla.1992). (Florida).	36	
220	Vasquez v. Dillard's Inc., 2016 OK 89 2016 OK 89 381 P.3d 768 Case Number: 114810 Decided: 09/13/2016. Violation of Equal Protection Under State Constitution by Allowing for Disparate Treatment of Select Groups	36	
221	Swekel v. City of River Rouge, 119 F.3d 1259, 1262 (6th Cir. 1997) (Noting that access to courts protects more than physical access, but also effective and meaningful access) 554, 562 (2004).	35	94
221	Una A. Kim, Government Corruption and the Right of Access toCourts, 103 Mich. L. Rev. 554, 562 (2004).	35	94
222	Goldberg v. Kelly, 397 U.S. 254, 262-63 (1970). "The extent to which Procedural Due Process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication."	36	94
222	Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 168 (1951) (Justice Frankfurter concurring)).	36	94
223	Bennett v. Board of Education Joint Vocational School District, 2011 U.S. Dist. Lexis 116412 (S.D. Ohio, October 7, 2011). Compensatory damages for violations of Title II are available, particularly when the defendant (State) shows Deliberate Indifference to the rights and needs of disabled people in accessing the courts.	36	94
223	City and County of San Francisco v. Sheehan, 135 S. Ct. 1765. A win for persons with disabilities as it acknowledges that title II of the ADA applies to everything that a public entity does. It also remanded the case for ADA proceedings.	36	94
223	Olmstead v. L.C. by Zimring, 527 U.S. 581. A huge win for persons with disabilities with the court holding that persons with disabilities have a right to be served within the community.	36	94
223	Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206. A win for persons with disabilities with the court holding that the ADA applies to prisons.	36	94
223	S. v. Georgia, 546 U.S. 151. A win for persons with disabilities holding that a showing of constitutional violations waives sovereign immunity.	36	94
223	Tennessee v. Lane, 541 U.S. 509. A win of sorts for persons with disability with the court holding that sovereign immunity can be forcibly waived with respect to non-employment suits against state entities depending upon the facts of the case.	35	94
224	Brown, et al., Appellant v. State of New York, 89 N.Y.2d 172, 674 N.E.2d 1129, 652 N.Y.S.2d 223, 65 USLW 2355 (1996).	36	94, 105
225	Esmail v. Macrane, 862 F.Supp. 217 (1994).	36	94
226	Village of Willowbook v. Olech, 528 U.S. at 564 Class of One (2000).	36	94
227	Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1928).	36	94
228	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	36	94

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228	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	36	94
228	Psychiatric Associates v. Siegel, 610 So.2d 419. (1992) (Florida) Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	36	94
228	Smothers v. Gresham Transfer, Inc. 23 P.3d 333 (Or. 2001).	35	94
229	Arnett v. Kennedy, 416 U. S. 134. (1974).	23, 36	94
229	Board of Regents v. Roth, 408 U. S. 564, 408 U. S. 576-578 (1972). Once that characteristic is found,the types of interests protected as "property" are varied and, as often as not, intangible, relating "*to the whole domain of social and economic fact.*"	23, 36	91a, 94
229	Goss v. Lopez, 419 U. S. 565, 419 U. S. 573-574 (1975),	23, 36	91a, 94
229	Memphis Light, Gas & Water Div. v. Craft, 436 U. S. 1, 436 U. S. 11-12 (1978).	23, 36	91a, 94
229	National Mutual Insurance Co. v. Tidewater Transfer Co., 337 U. S. 582, 337 U. S. 646 (1949) (Frankfurter, J., dissenting).	23, 36	91a, 94
230	F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).	36	94
231	O'Bannon v. Town Court Nursing Ctr., 447 U.S. 773 (1980).	36	101b
232	Board of Regents v. Roth, 408 U. S. 564, 408 U. S. 576-578 (1972).	36	101b
233	Ingraham v. Wright, 430 U.S. at 673 & n.41. (1977). "It is fundamental that the State cannot hold and physically punish an individual except in accordance with due process of law."	36	101b
234	Vitek v. Jones, 445 U.S. (1980). In Vitek v. Jones, the Court reiterated that the right to personal security was inherent in the due process clause, and further found that individuals had the right to avoid being stigmatized by the government.	36	101b
235	Breard v. Alexandria, 341 U.S. 622, 626, 644. (1951).	36	101c
235	Frank v. Maryland, 359 U.S. 360. (1959).	36	101c
235	Griswold, v. Connecticut, 381 U.S. 479, 484-85 (1965).	36	101c
235	Lanza v. New York, 370 U.S. 139. (1962).	36	101c
235	Monroe v Pape, 365 U.S. 167. (1961).	36	101c
235	Public Utilities Comm'n v. Pollak, 343 U.S. 451. (1952)	36	101c
235	Skinner v. Oklahoma, 316 U.S. 535, 541. (1942) These cases bear witness that the right of privacy which presses for recognition here is a legitimate one.	36	101c
235a	Lawrence v. Texas, 539 U.S. 558 (2003)(substantive due process right to engage in private consensual homosexual conduct). "We have had many controversies over these penumbral rights of "privacy and repose"".	36	101c
236	S&A Plumbing v. Kimes, 756 So.2d 1037 (Fla. 1st DCA, 2000).	36	101c
236	Wierciak v. Individual Members of the Medical Licensing Board of Indiana, Case 1:14-cv-00012-SEB-DML (S.D. Ind.2014).	36	101c
237	Doe v. City of New York, 15 F.3d 264 (2d Cir. 1994). "The mere fact that complainant filed a claim with the commission that his employer discriminated against him because of his homosexual status did not necessarily waive his privacy rights.	36	101c
238	Monroe v. Pape, 365 U.S. at 184. (1961). "Misuse of power, possessed by virtue of state law and made possibly only because the wrongdoer is clothed with the authority of state law, is action taken under "color of state law".	36	101c
238	United States v. Classic, 313 U.S. 229, 326 (1941).	36	101c
239	Brown, et al., Appellant v. State of New York, 89 N.Y.2d 172, 674 N.E.2d 1129, 652 N.Y.S.2d 223, 65 USLW 2355 (1996).	36	101d
240	Boyd v. United States, 116 U.S. 616 (1886), the Supreme Court ruled that the evil in an unreasonable search and seizure was not so much found in the fact that it disturbs a man's privacy, but in the fact that it is an "invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence." In the Court's opinion, personal security, personal liberty and private property each constituted an indefeasible, or unalienable, right protected by the Constitution.	36	101d
241	Arnett v. Kennedy, 416 U.S. at 154, 164-167, (1974).	36	101d
242	Barrett v. Claycomb, 705 F.3d 315 (2013).	36	101d
242	Marchwinski v. Howard, 113 F.Supp.2d 1134 (2000).	36	
242	Wierciak v. Individual Members of the Medical Licensing Board of Indiana, Case 1:14-cv-00012-SEB-DML (S.D. Ind.2014). This has been found to be unconstitutional in multiple states under the Fourth Amendment as a violation of an individual's right to be free of unreasonable search & seizure.	36	

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243	Palko v. Connecticut, 302 U.S. 319, 327 (1937). The Federal government has noted fair procedures are a "fundamental right", central to a "scheme of ordered liberty".	36	101e
244	Slochower v. Board of Higher Educ., 350 U.S. 551, 559 (1956). As a result, the Court reasoned, reaching factual conclusions without a hearing constitutes a Substantive Due Process violation.	36	
244	Wieman v. Updegraff, 344 U.S. 183, 191 (1952), "*Indiscriminate classification....must fail as an assertion of arbitrary power*".	36	
245	Brown, et al., Appellant v. State of New York, 89 N.Y.2d 172, 674 N.E.2d 1129, 652 N.Y.S.2d 223, 65 USLW 2355 (1996).	36	101f
246	Cf. U.S. Railroad Retirement Bd. v. Fritz, 449 U.S. at 449 U. S. 178.	36	101f
246	Logan v. Zimmerman, 455 U.S. 422 (1982). "The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes". The decision of the Illinois Supreme Court effectively created two classes of claimants: those whose claims were, and those whose claims were not, processed within the prescribed 120 days by the Illinois Fair Employment Practices Commission. Under this classification, claimants with identical claims, despite equal diligence in presenting them, would be treated differently, depending on whether the Commission itself neglected to convene a hearing within the prescribed time. The question is whether this unusual classification is rationally related to a state interest that would justify it. The State no doubt has an interest in the timely disposition of claims. But the challenged classification failed to promote that end -- or indeed any other -- in a rational way. As claimants possessed no power to convene hearings, it is unfair and irrational to punish them for the Commission's failure to do so. The State also has asserted goals of redressing valid claims of discrimination and of protecting employers from frivolous lawsuits. Yet the challenged classification, which bore no relationship to the merits of the underlying charges, is arbitrary and irrational when measured against either purpose,	36	101f
247	Lindsey v. Normet, 405 U. S. 56 (1972).	36	101f
247	Schweiker v. Wilson, 450 U. S. 221, 450 U. S. 230 (1981). This Court has held repeatedly that state-created classifications must bear a rational relationship to legitimate governmental objectives.	36	101f
248	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	36	101e-f
248	McCrone v. BankOneCorp, 2004 WL 1111021 (Ohio App. 5th. May 17, 2004)(Ohio); Disparate Treatment of One Injury vs. Another is Unlawful.	36	101e-f
248	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	36	101e-f
248	Psychiatric Associates v. Siegel, 610 So.2d 419 (Fla.1992).	36	101e-f
248	Vasquez v. Dillard's Inc., 2016 OK 89 2016 OK 89 381 P.3d 768 Case Number: 114810 Decided: 09/13/2016. Violation of Equal Protection Under State Constitution by Allowing for Disparate Treatment of Select Groups	36	101e-f
249	Adler v. Board of Education, 342 U. S. 485. (1952). "The protection of the Due Process Clause extends. ...to a statute which is patently arbitrary or discriminatory."	36	101f
249	United Public Workers v. Mitchell, 330 U. S. 75, distinguished. Pp. 344 U. S. 191-192. (1947).	36	101f
250	Ingraham v. Wright, 430 U.S. 651, 682 n.55 (1977).	36	101f
250	Parratt v. Taylor, 451 U.S. 527, 544 (1981). "For what the State cannot do is conceal its criteria behind a façade of discretion, for this emerges from the limitation of due process to the goal of accurate decision making."	36	101f
250a	Paul v. David, 424 U.S. 693-701 (1976).	36	101f
252	Kluger v. White, 281 So.2d 1 (Fla. 1973). Passing of Medical Treatment Guidelines Strictly to Control Costs is unconstitutional.	37	
252	Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	37	
252	Psychiatric Associates v. Siegel, 610 So.2d 419. (1992) (Florida) Passing of Medical Treatment Guidelines Strictly to Control Costs if unconstitutional.	37	
252	Smothers v. Gresham Transfer, Inc. 23 P.3d 333 (Or. 2001)	37	

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253	Action for Children's Television v. FCC, 564 F.2d 458 (D.C. Cir. 1977).	37	
253	Home Box Office, Inc. v. FCC, 567 F.2d 9, 61 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977).	37	
254	Sangamom Valley Television Corp. v. United States, 269 F.2d 221 (D.C. Cir. 1959). "In deciding challenges to rulemaking proceedings on the ground that ex parte contact occurred, the courts distinguish between those that determine the rights of particular persons and those that were more general in effect."	37	102
255	Albert v. Caravano , 851 F.2d 561 (2d Cir. 1988) (en banc).	38	
256	Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 (1970).	38	102
256	Dennis v. Sparks, 449 U.S. 24 (1980). The court ruled that private parties who corruptly conspire with a judge, who is protected by absolute judicial immunity, act under color of state law.	38	102
256	Tower v. Glover, 467 U.S. 914 (1984); Dennis v. Sparks, 449 U.S. 24 (1980).	38	102
256	United States v. Price, 383 U.S. 787, 794 (1966).	38	102
257	Dennis v. Sparks, 449 U.S. 24 (1980). The court ruled that private parties who corruptly conspire with a judge, who is protected by absolute judicial immunity, act under color of state law.	38	102
258	NCAA v. Tarkanian, 488 U.S. 179 (1988). The joint participation test requires a showing of conspiratorial or other concerted action. A conspiracy requires an agreement or meeting of the minds to violate federally protected rights. Although each participant need not know the details of the plan, together they must share a common objective.	38	102
259	Collins v. Womancare, 878 F.2d 1145, 1154 (9th Cir. 1989), cert denied, 493 U.S. 1056 (1990). There must be a substantial degree of cooperative action.	38	102
259	Sable Communications v. Pacific Tel. & Tel. Co., 890 F.2d 184, 189 (9th Cir. 1989).	38	102
260	Bell Atlantic v. Twombly, 550 U.S. at 556. (2007)	38	102
260	Lugar v. Edmondson Oil Co., 457 U.S. 922, 942 (1982). Mere assertion of conspiracy will not suffice. Such cooperation exists when a state statute establishes a procedure which when utilized by one private person will violate the constitutional rights of another and the private party "invoked" the aid of state officials to take advantage of state created procedures.	39	102
261	Crowe v. Lucas, 595 F.2d 985, 993 (5th Cir. 1979). Circumstantial evidence may be used, however, because "conspirators rarely formulate their plans in ways susceptible of proof by direct evidence."	38	102
261	Hampton v. Hanrahan, 600 F.2d 600, 620-23 (7th Cir. 1979), rev'd in part, 446 U.S. 754 (1980).	38	102
262	American Manufacturers v. Sullivan, 26 U.S. 40, 119 S. Ct. 977, 143 L. Ed. 2d 130, (1999). In American Manufacturers v. Sullivan, in relation to state action inquiries: (1) where there is a sufficiently close nexus between the state and the challenged action, which depends on whether the state ordered, coerced, or significantly encouraged the private activity; and (2) whether the state delegated to the private entity powers historically and traditionally exclusively governmental in nature.	39	102
263	Davis v. Brady, 143 F.3d 1021 (6th Cir. 1998), cert. denied, 525 U.S. 1093 (1999).	38	102
263	Greer v. Shoop, 141 F.3d 824 (8th Cir. 1998).	38	102
263	Monfils v. Taylor, 165 F.3d 511 (7th Cir. 1998), cert. denied, 528 U.S. 810 (1999).	38	102
263	Reed v. Gardner, 986 F.2d 1122 (7th Cir.), cert denied, 510 U.S. 947 (1993).	38	102
263	Spence v. Staras, 507 F.2d 554 (7th Cir. 1974). "If a state or local official places an individual in foreseeable danger of the infliction of harm by private persons and then fails to protect that individual, the official cannot be heard to complain that she is not responsible for the resulting harm."	38	102
263	White v. Rochford, 592 F.2d 381 (7th Cir. 1979) (Minor children left in car by police officer).	38	102
263	Wood v. Ostrander, 879 F.2d 583 (9th Cir. 1989), cert. denied, 498 U.S. 938 (1990).	38	102
264	White v. Frank, 143 F.3d 679 (2d Cir. 1998), cert. denied, 525 U.S. 1139 (1999).	38	102
265	Cousins v. Lockyer, 568 F.3d 1063, 1072 (9th Cir.2009)	38	102
265	Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). "Insofar as their conduct does not violate clearly established [federal] statutory or constitutional rights of which a reasonable person would have known."	38	102
265	Tibbetts v. Kulongoski, 567 F.3d 529, 535 (9th Cir.2009).	38	102

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266	Kregler v. City of New York, 987 F. Supp. 2d 357, 365-69 (S.D.N.Y. 2013) (court noted lack of Second Circuit precedent applying cat's paw doctrine to Section 1983 claims). "An employer's mere conducting of an independent investigation does not have a claim preclusive effect. The independent investigation does not relieve the employer of fault. The employer is at fault because one of its agents committed an action based on discriminatory animus that was intended to cause, and did in fact cause, an adverse employment decision...motivating factor....10th Cir. 2011."	38	102
267	Bermudez v. City of New York, 790 F.3d 368 (2d Cir. 2015).	38	102
268	Kerman v. City of New York, 374 F.3d 93 (2d Cir. 2004). "..that a government defendant is liable for the naturally foreseeable consequences of his actions, including consequences from the reasonably foreseeable intervening acts of third parties.	38	102
269	Logan v. Zimmerman Brush Co., 455 U.S. at 435-36 (1982). "The Court has required greater protection from property deprivations resulting from operation of established state procedures than from those resulting from random and unauthorized acts of state employees".	39	105
270	Logan v. Zimmerman Brush Co., 455 U.S. 422, 436-37. (1982). Thus the court has held that post-deprivation procedures would not satisfy due process if it is "the state system itself that destroys a complainant's property interest."	39	105
271	Brown v. State of New York, 89 N.Y.2d 172, 674 N.E.2d 1129, 52 N.Y.S.2d 223 (1996). (Individuals may assert claims for compensatory damages for violations of their rights protected by the Equal Protection (N.Y. Const.art.I& II) and Search and Seizure Guarantees (N.Y. Const. art I & 12) of the New York Constitution" (Brown, 89 N.Y.2d at 176, 674 N.E. 2d at 1131, 652 N.Y.S.2d at 225) with respondent superior liability (Id. at 195-6, 674 N.E. 2d at 1143-44, 652 N.Y.S.2d at 238). The State of New York has waived their Sovereign Immunity such that they may be sued for Constitutional Wrongs, without the need for Section 1983 Protection employed in Federal Court.	39	105
273	Bowers v. DeVito, 686 F.2d 616 (7th Cir. 1982). , "If the State puts a man in a position of danger from private persons and then fails to protect him, it is as much an active tortfeasor as if it had thrown him into a snake pit."	26	91g
274	Shaw v. Hunt, 517 U.S. 899, 908 (1996).		100a
275	International Bhd. Of Teamsters v. United States, 431 U.S. 324, 335 n.15 (1977) (describing general theory of disparate treatment discrimination in the context of a Title VII claim)	36	101e
276	Levitsky v. Garden Time, Inc., 2015 N.Y. App. Div. LEXIS 2570 (3rd Dep't, Mar. 26, 2015)] [2015 N.Y. App. Div. LEXIS 2570 (3rd Dep't, Mar. 26, 2015)], Matter of Campbell v Interstate Materials Corp., 135 AD3d at 1278, quoting Matter of Ford v Fucillo, 66 AD3d 1066, 1067 [2009]. Matter of Lattanzio v Consolidated Edison of N.Y., 129 AD3d 1343, 1343[2015]		103
277	Virginia v. Am. Booksellers Ass'n, 484 U.S. 383, 392-393 (1988), Prime Media, Inc. v. City of Brentwood, 485 F.3d 343, 349-50 (6th Cir. 2007) (Moreover, even in cases involving overbreadth challenges – which might be characterized as a species of continuing injury case – plaintiffs must demonstrate that they have been injured in fact.)	23	91a
278	Matter of Illaqua v Barr-Llewellyn Buick Co., 81 AD2d 708 [1981]. It is well settled that "the fundamental principle of the compensation law is to protect the worker, not the employer, and the law should be construed liberally in favor of the employee"	13,17	
279	National Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179, 191 (1988). (quoting Monroe v. Pape, 365 U.S. 167, 172 (1961).		91f
280	West v. Atkins, 487 U.S. 42, 49 (1988) (quoting United States v. Classic, 313 U.S. 299, 326 (1941).		91f
281	McKeesport Hosp. v. Accreditation Council for Graduate Med. Educ., 24 F.3d 519, 524 (3d Cir. 1994) (quoting Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351 (1974).		91f
282	Tarkanian, 488 U.S. at 192 (citing North Ga. Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975).		91f

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283	West v. Atkins, 487 U.S. 42 (1988); see also Reichley v. Pennsylvania Dept. of Agriculture, 427 F.3d 236, 245 (3d Cir. 2005) (holding that trade association's "involvement and cooperation with the Commonwealth's efforts to contain and combat" avian influenza did not show requisite delegation of authority to the trade association.		91f
284	Tarkanian, 488 U.S. at 192 (citing Burton v. Wilmington Parking Auth., 365 U.S. 715 (1961).		91f
285	McKeesport Hosp. v. Accreditation Council for Graduate Med. Educ., 24 F.3d 519, 524. The Court of Appeals has explained that Supreme Court caselaw concerning "joint action or action in concert suggests that some sort of common purpose or intent must be shown...State actor voluntarily participated with self interest in deprivation.		91f
286	Benn v. Universal Health System, Inc. 371 F. 3d 165, 171 (3d Cir. 2004) (quoting Brentwood Acad v. Tennessee Secondary Sch. Athletic Ass'n, 531 U.S. 288, 296 (2001) (quoting Blum v. Yaretsky, 457 U.S. 991, 1004 (1982).		91f
287	Benn , 371 F.3d at 171 (quoting Brentwood, 531 U.S. at 296 (quoting Blum, 457 U.S. at 1004).		91f
288	Benn, 371 F.3d at 171 (quoting Brentwood, 531 U.S. at 296 (quoting Pennsylvania Bd. Of Dir. Of City Trusts of Philadelphia, 353 U.S. 230, 231 (1957) (per curiam)).		91f
289	Benn, 371 F.3d at 171 (quoting Brentwood, 531 U.S. at 296); (quoting Pennsylvania Bd. Of Dir. Of City Trusts of Philadelphia, 353 U.S. 230, 231 (1957) (per curiam)).		91f
290	Benn, 371 F.3d at 171 (quoting Brentwood, 531 U.S. at 296 (quoting Evans v. Newton, 382 U.S. 296, 299, 301 (1966).		91f
291	Lugar v. Edmondson Oil Co., 457 U.S. 922, 942 (1982). Mere assertion of conspiracy will not suffice. Such cooperation exists when a state statute establishes a procedure which when utilized by one private person will violate the constitutional rights of another.		91f
292	Abbott v. Latshaw, 164 F.3d 141, 147-48 (3d Cir. 1998). "An otherwise private person acts "under color of State law" when engaged in a conspiracy with state officials to deprive another of federal rights".		91f
292	Dennis v. Sparks, 449 U.S. 24 27-28 (1980) (citing Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 (1970); The court ruled that private parties who corruptly conspire with a judge, who is protected by absolute judicial immunity, act under color of state law.		91f
292	Tower v. Glover, 467 U.S. 914, 920 (1984)		91f
292	United States v. Price, 383 U.S. 787, 794 (1966));		91f
292a	Horton v. City of Harrisburg, 2009 WL 2225386 at *5 (M.D.Pa. July 23, 2009). Supervisory liability under Section 1983 utilizes the same standard as municipal liability. Therefore a supervisor will only be liable for the acts of a subordinate if he fosters a policy or custom that amounts to deliberate indifference towards an individual's constitutional rights.		91f
292b	C.N. v. Ridgewood Bd. Of Educ., 430 F.3d 159, 173 (3d Cir. 2005). A Supervisor's personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence.		91f
292c	Robinson v. City of Pittsburgh, 120 F.3d 1286, 1294 (3d Cir. 1997). Where a supervisor with authority over a subordinate knows tha the subordinate is violating someone's rights but fails to act to stop the subordinate from doing so, the factfinder may usually infer that the supervisor acquiesced in the subordinate's conduct.		91f
292d	A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center, 372 F.3d 586. (A supevisor with policymaking authority may also, in an appropriate case, be liable based on the failure to adopt a policy."		91f
292e	Gilles v. Davis, 427 F.3d 197, 207 n. 7 (3d Cir. 2005). Supervisor's Failure to Train demonstrates Deliberate Indifference.		91f
293	A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center, 372 F.3d 572, 580 (3d Cir. 2004). A suit against a municipal policymaking official in her official capacity is treated as a suit against the municipality.		91f

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294	Bielevicz v. Dubinon, 915 F.2d 845, 850 (3d Cir. 1990). In addition to showing the existence of an official policy or custom, plaintiff must prove that the municipal practice was the proximate cause of the injuries suffered.		91f
295	City of Oklahoma City v. Tuttle, 471 U.S. 808, 823 (1985).		91f
296	DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989) (holding that Plaintiffs must simply establish a municipal custom coupled with causation i.e. that policymakers were aware of similar unlawful conduct in the past, but failed to take precautions against future violations, and that this failure, at least in part, led to their injury.		91f
297	Carswell v. Borough of Homestead, 381 F.3d 235, 244 (3d Cir. 2001) (quoting Canton, 489 U.S. at 385). Policymakers were aware of similar unlawful conduct in the past, but failed to take precautions against future violations, and that this fialure, at least in part, led to their injury.		91f
298	Monell v. Department of Social Services of City of New York, 436 U.S. 658, 660-61 & n.2 (1978). Likewise, if the legislative body delegates authority to a municipal agency or board, an action by that agency or board also constitutes government policy.		91f
299	Pembaur v. City of Cincinnati, 475 U.S. 469, 480 (1986).		91f
300	Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996). As to the adequacy of a municipality's investigation, the Third Circuit has made clear that a policy must be adequate in practice, not merely on paper. "We reject the district court's suggestion that mere Department procedures to receive and investigate complaints shield the City from Liability. The investigative process must have some teeth".		91f
301	Berg v. County of Alleghany, 219 F.3d 261, 276 (3d Cir. 2000) Liability can arise if the constitutional tort is caused by an official policy of inadequate training, supervision or investigation, or by a failure to adopt a needed policy.		91f
302	Natale v. Camden County Correctional Facility, 318, F.3d 575, 585 (3d Cir. 2003) ("A reasonable jury could conclude that the failure to establish a policy to address the immediate medication needs of inmates with serious medical conditions creates a risk that is sufficiently obvious as to constitute deliberate indifference to those inmates medical needs.		91f
303	Weinreich v. Los Angeles County Metropolitan Transp. Auth., 114 F.3d 976, 978 (9th Cir.1997).		94
304	Keith Foust v. North Carolina Central University, et al, No. 1:2015cv00470 · Document 32 (M.D.N.C. 2016)		94
305	Fell v. Spokane Transit Auth., 128 Wash.2d 618, 637, 911 P.2d 1319 (Wash.1996) (en banc).		94
306	Zukle v. Regents of University of California, 166 F.3d 1041, 1045 n. 11 (9th Cir.1999). Because the elements of Duvall's ADA, Rehabilitation Act, and WLAD claims do not differ in any respect relevant to the resolution of this appeal,10 we address these claims together.		94
307	Ferguson v. City of Phoenix, 157 F.3d 668, 674 (9th Cir.1998). Id. at 675.		94
308	Memmer, 169 F.3d at 633; Midgett v. Tri-County Metro. Transp. Dist. of Oregon, 254 F.3d 846 (9th Cir.2001). This Circuit has, on three occasions, refused the opportunity to determine the appropriate test for intentional discrimination under the ADA. Instead, we decided each time to set forth the options, rather than to resolve the issue, leaving subsequent courts to choose between a "deliberate indifference" or "discriminatory animus" standard. We now determine that the deliberate indifference standard applies.		94
309	See Bartlett v. New York State Board of Law Examiners, 156 F.3d 321, 331 (2d Cir.1998) reversed on other grounds, 527 U.S. 1031, 119 S.Ct. 2388, 144 L.Ed.2d 790 (1999) (citing Ferguson and adopting the deliberate indifference standard); Powers v. MJB Acquisition Corp., 184 F.3d 1147, 1153 (10th Cir.1999) (discussing Ferguson and applying deliberate indifference standard to Rehabilitation Act).13		94

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310	City of Canton v. Harris, 489 U.S. 378, 389, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1988); see also id. at 395, 109 S.Ct. 1197 (O'Connor, J., concurring) (deliberate indifference requires both "some form of notice and the opportunity to conform to [statutory] dictates"). Moreover, the deliberate indifference standard adopted by those circuits is better suited to the remedial goals of Title II of the ADA than is the discriminatory animus alternative noted in Ferguson. Deliberate indifference requires both knowledge that a harm to a federally protected right is substantially likely, and a failure to act upon that the likelihood.		94
311	Bartlett, v. New York State Board of Law Examiners, 156 F.3d 331 (2d Cir.1998); Matthews v. Jefferson, 29 F.Supp.2d 525, 535-536 (W.D.Ark.1998) (notice combined with failure to provide appropriate facilities may violate Title II).		94
312	Monell v. Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) and id. at 694.		94
313	Board of County Comm'rs v. Brown, 520 U.S. 397, 403, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997) ("A municipality may not be held liable under § 1983 solely because it employs a tortfeasor.		94
314	Mercado v. Commonwealth of Puerto Rico, Case No. 15-1327 (1st Cir., 2/29/2016		94
315	Branch v. Guilderland Central School Dist., 2003 WL 110245 (N.D.N.Y. 2003). Morgan did not foreclose application of the continuing violation doctrine to Title VII pattern and practice cases. Court found that the doctrine could be invoked for a Section 1983 policy or custom case which the Court viewed as analagous to a Title VII pattern and practice case. Court stated that test was whether the conduct was sufficiently similar or related in both time and substance to the same policy.		94
316	EEOC v. Dial Corp., 2002 WL 1974072 (N.D. Ill. 2002). Morgan does not preclude application of continuing violation doctrine to pattern and practice cases.		94
317	Shea v. City and County of San Francisco, 2003 U.S. App. Lexis 1675, 2003 WL 192111 (9th Cir. 2003 (ADA);		94
318	McCarron v. British Telecom, 2002 WL 1832843 (E.D. Pa. 2002) (ADA);		94
319	Kaster v. Safeco Ins. Co. of America, 212 F. Supp. 2d 1264 (D.Kan. 2002) (ADEA)		94
320	Sherman v. Chrysler Corp., 2002 U.S. App. Lexis 19186, 2002 WL 31074591 (6th Cir. 2002) (ADEA)		94
321	Inglis v. Buena Vista University, 235 F. Supp. 2d 1009 (N.D. Iowa 2002) (Equal Pay Act);		94
322	Darmanin v. San Francisco Fire Dept., 2002 U.S. App. Lexis 19676, 2002 WL 31051571 (9th Cir. 2002) (Section 1983)		94
323	Moiles v. Marple Newtown School Dist., 2002 WL 1964393 (E.D. Pa. 2002) (Section 1983)		94
324	Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982) (title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(3)).		94
325	English v. Pabst Brewing Co., 828 F.2d 1047, 1049 (4th Cir. 1987), cert. denied, 486 U.S. 1044 (1988);		94
326	Vance v. Whirlpool Corp., 716 F.2d 1010, 1011-12 (4th Cir. 1983).		94
327	Lawson v. Burlington Industries, 683 F.2d 862, 864 (4th Cir. 1982)).		94
328	Felty v. Graves-Humphreys, 818 F.2d 1126 (4th Cir. 1987);		94
329	Price v. Litton Business Systems, 694 F.2d 963, 965 (4th Cir. 1982)).		94
330	Zankel v. Temple Univ., 245 Fed. Appx. 196, 198 (3d Cir. 2007) (quoting Brenner v. Local 514, United Bhd. Of Carpenters and Joiners of Am. 927 F.2d 1282, 1295 (3d Cir. 1991) (declining to find that an employee's termination constituted a continuing violation of employer's earlier failures to accommodate).		94
331	Cowell v. Palmer Twp., 263 F.3d 286, 292 (3d Cir. 2001). "The reach of this doctrine is understandably narrow".		94
332	Tearpock-Martini v. Borough of Shickshinny, 756 F.3d 232, 236 (3d Cir. 2014).		94
333	Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997)		94
334	Baldwin County Welcome Ctr. V. Brown, 466 U.S. 147, 151 (1984)(discussing circumstances justifying equitable tolling).		94

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335	Taliani v. Chrans, 189 F.3d 597, 597 (7th Cir. 1999) (describing equitable tolling as "*the judge-made doctrine, well established in federal common law, that excuses a timely filing when the plaintiff could not, despite the exercise of reasonable diligence, have discovered all the information he needed in order to be able to file his claim on time*". 51 AM. Jur. 2d Limitation of Actions Section 174-178 (2000); 54 C.J.S. Limitations of Actions Section 115 (2005)		94
336	Hilao v. Estate of Marcos, 103 F.3d 767, 773 (9th Cir. 1996)		94
337	Wolin v. Smith Barney Inc. 83 F.3d 847, 852 (7th Cir. 1996)		94
338	Miller v. Beneficial Mgmt. Corp., 977 F.2d 834, 843-44 (3d Cir. 1992) ("If the alleged discriminatory conduct is a "continuing violation", the statute of limitations begins to run on the date of the last occurrence of discrimination, rather than the first.")		94
339	O'Rourke v. City of Providence, 235 F.3d 713, 730 (1st Cir. 2001)		94
340	Rodrique v. Olin Employees Credit Union, 406 F.3d 434, 442 (7th Cir. 2005)		94
341	Flowers v. Carville, 310 F.3d 1118, 1126 (9th Cir. 2002)		94
342	Landman v. Royster, 354 F. Supp. 1302, 1315 (E.D. Va. 1973)		94
343	Bustamento v. Tucker, 607 So. 2d 532, 542 (La. 1992) ("When the acts or conduct are continuous on an almost daily basis, by the same actor, of the same nature, and the conduct becomes tortious and actionable because of its continuous, cumulative, synergistic nature, then prescription does not commence until the last act occurs or the conduct is abated.")		94
344	Page v. United States, 729 F.2d 818, 821-22 (D.C. Cir. 1984) (quoting Fowles v. Pennsylvania R.R.C o., 264 F.2d 397, 399 (3d Cir. 1959).		94
345	Heard v. Sheeehan, 253 F.3d 316, 317 (7th Cir. 2001).		94
346	Cuccolo v. Lispky, Goodkin & Co., 826 F. Supp. 763, 768 (S.D.N.Y. 1993)		94
347	Virginia Hospital Association v. Baliles, 868 F.2d 653 (4th Cir. 1989).		94
348	Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)		94
349	Duvall v. County of Kitsap, 260 F.3d 1124 (9th Cir. 2001).		94
350	Matter of Polifroni v. Delhi Steel Corp., 46AD3d 970,971 (2007). Reversal of Section 44 Apportionment		103
350a	Matter of Fama vs. P&M Sorbara, 29 AD3d 170, 172-173 (2006), iv dismissed 7 NY3d 783 (2006). Reversal of Section 44 Apportionment		103
351	Levitsky v. Garden Time, Inc., 2015 N.Y. App. Div. LEXIS 2570 (3rd Dep't, Mar. 26, 2015)] [2015 N.Y. App. Div. LEXIS 2570 (3rd Dep't, Mar. 26, 2015)]		103
352	Matter of Campbell v Interstate Materials Corp., 135 AD3d 1276, 1278 [2016]. See generally Larson's Workers' Compensation Law, § 90.04 [90.04] "Apportionment of a workers' compensation award is a factual issue for the Board to determine, and its decision will be upheld if supported by substantial evidence"		103
353	Matter of Morin v Town of Lake Luzerne, 100 AD3d 1197, 1197 [2012], lv denied 21 NY3d 865 [2013]. While "[a]pportionment'is appropriate where the medical evidence establishes that the claimant's current disability is at least partially attributable to a prior compensable injury'". Claimants who are employed full-time, and are fully able to perform their jobs with no restrictions, are not disabled in the workers' compensation sense. Therefore, Apportionment is not available in these cases, even if the claimant had massive and repeated surgeries.		103
354	Matter of Levitsky v Garden Time, Inc., 126 AD3d 1264, 1264-1265 [2015]. "Apportionment of a workers' compensation award is a factual issue for the Board to determine, and its decision will be upheld if supported by substantial evidence"		103
355	Matter of Lattanzio v Consolidated Edison of N.Y., 129 AD3d 1343, 1343[2015])		103
356	Good v. Town of Brutus, 2013 NY Slip Op 7244 (3rd Dept. 2013) (11/7/2013). In determing whether a claim should be apportioned between previous employers in the same field, the relevant focus is whether the claimant contracted an occupational disease while employed by that employer.		103
357	Matter of Walton v Lin-Dot, 85 Ad3d 1413, 1414, 926 N.Y.S.2d 183 (2011). Whereby IME claims presumed basis of apportionment with no objective medical proof.		103
358	Rova Farms Resort v. Investors. Ins. Co. of Am., 65 N.J. 474 (1974). The Appellate Division, and/or the Board, has the power to exercise in its limited jurisdiction, judicial mistakes whereby a comp judge rules in a way "manifestly unsupported by or inconsistent with competent relevant and reasonably credible evidence so as to offend the interests of justice."		103

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359	Matter of Nye v. IMB Corp., 768 N.Y.S. 2d 706, 706-07 (N.Y. App. Div. 2003). Claimants who return to full employment in essence negate apportionment. (As in Claimant's case)		103
360	Matter of Keselman v. NYC Transit Authority, 18 AD3d 974 (2005)		103
361	Matter of Castro v NYC Transit Auth, 50 AD3d 1272 (2008).		103
362	Alexander v. Choate, 469 U.S. 287, 301, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985); Henrietta D., 331 F.3d at 273.		95
363	Jackan v. N.Y. State Dep't of Labor, 205 F.3d 562, 566 (2d Cir.), cert. denied, 531 U.S. 931, 121 S.Ct. 314, 148 L.Ed.2d 251 (2000); see 29 C.F.R. § 1630.2 ("To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation.");		95
364	Lovejoy-Wilson v. NOCO Motor Fuel, Inc., 263 F.3d 208, 219 (2d Cir.2001).		95
365	Connick, 131 S. Ct. at 1360 (emphasis supplied).		102
	STATUTES		
367	NY Constitution, Article I, Section 6, "No person shall be deprived of life, liberty or property without due process of law."	4	
368	NY Constitution, Article I, Bill of Rights, Section 7, "Compensation for taking private property; private roads; drainage of agricultural lands], (a) Private property shall not be taken for public use without just compensation.", replicated from the Federal Constitutional Fifteenth Amendment		44a
	NY Constitution, Article I, Bill of Rights, Section 11, "Equal protection of laws; discrimination in civil rights prohibited, replicated from the Federal Constitutional Fourteenth Amendment."	4	44a
	NY Constitution, Article I, Bill of Rights, Section 12, "Security against unreasonable searches, seizures and interceptions, replicated from the Federal Constitutional Fourth Amendment protection."	4	44a
	NY Constitution, Section XVII, Section 3, [Public health] guarantees; The protection and promotion of the health of the inhabitants of the state are matters of public concern and provision therefor shall be made by the state and by such of its subdivisions and in such manner, and by such means as the legislature shall from time to time determine.		44a
	NY Constitution, Article XVII, Section 1 [Social Welfare]. New York State Law places a mandatory obligation upon the State to provide assistance to the "needy". "The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine."		42 Pg 3
	New York State Law - Article 15 - (290 - 301) Human Rights Law (NY Exec L Section 296 (2012))		42
	New York State Technology Law, Section 203		80
	New York State Public Officers Law, Article 6-a Personal Privacy Protection Law		80
	NYS Workers Compensation Law, Section 18, (Workers Compensation): 6-a. Reclassification of disabilities. Subject to the limitations set forth in sections twenty-five-a and one hundred twenty-three of this chapter, the board may, at any time, without regard to the date of accident, upon its own motion, or on application of any party in interest, reclassify a disability upon proof that there has been a change in condition, or that the previous classification was erroneous and not in the interest of justice.		103
	NYS Workers Compensation Law Section 28 Statute of Limitations. Limitation to right of compensation is 2 years. Thus Apportionment should not have been established.		103
	NYS Workers Compensation Law, Section 18, [Workers' compensation]; Nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health, or safety of employees; ...or for the payment...of compensation for injuries to employees...with or without trial by jury...		9
	NYS Workers Compensation Law, Section 18, [Workers' compensation], Section 24-1, WC Law prohibits Injured Workers from representing themselves, per the Judiciary Act of 1789.	15	

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	NYS Workers Compensation Law, Section 18, see 12 NYCRR 324.3 [b] [2] Carrier Compliance with Authorization for Special Services. The carrier or Special Fund must respond to the variance application within 15 days (see 12 NYCRR 324.3 [b] [2]) unless it desires an independent medical examination, of which it must notify the chair within five days and respond to the variance request within 30 days of receipt (see 12 NYCRR 324.3 [b] [2] [ii] [a]). Claimants may request review of denied variances within 21 days and may request an expedited hearing, which must be commenced within 30 days unless an adjournment is granted for good cause by the WCLJ, who must render a decision on the record unless the WCLJ finds complex medical issues, in which case a decision must be issued within 30 days (see 12 NYCRR 324.3 [d] [i], [ii]). "The social welfare considerations in providing workers' compensation benefits to injured employees include the elimination of obstacles to a claimant's award.		56
	NYS Workers Compensation Law, Section 24-1 Injured Workers cannot represent themselves, nor per the Judiciary Act of 1789, and Section 24-1 of the WC Law, nor does the New York Constitution provide a right of self- representation in State Courts.	16	
	NYS Workers Compensation HIPAA policies		80
	New York Workers' Compensation - Article 7 - § 110-A Confidentiality of Workers' Compensation Records		80
	OTHER AUTHORITIES		
	Exh. 10 - For Injured Workers - A Costly Legal Swamp, The New York Times	34	10
	Exh. 11 - Injured Workers Suffer As 'Reforms' Limit Workers' Compensation Benefits, ProPublica	34	11
	Exh. 12 - The Workers Compensation System Is Broken, The Washington Post	34	12
	Exh. 13 - The Fallout Of Workers Compensation Reforms - ProPublica	34	13
	Exh. 14 - Benefit Adequacy in State and Provincial Workers Compensation Programs - The UpJohn Institute	34	14
	Exh. 15 - Current Workers' Comp System Outdated, Contributes to Worker Poverty - Claims Journal	34	15
	Exh. 106 Does the Workers Compensation System Fulfill Its Obligations to Injured Workers?	38	106
	TREATISES		
8	Cornell University Law School. "*Supremacy Clause*". law.cornell.edu., Lawson, Gary. "*Essays on Article V: Supremacy Clause*". The Heritage Foundation. Retrieved March 23, 2016, Drahozal, Christopher R. (2004). The Supremacy Clause: A Reference Guide to the United States Constitution. Praeger. p. xiv.	4	
16	Saul K. Padover, ed., The Complete Madison, Harper & Bros., New York, 1953, p. 267, "Government is instituted to protect property of every sort.... nor is property secure under it, where the property which a man has in his personal safety and personal liberty is violated by arbitrary seizures of one class of citizens for the service of the rest."	4	
18a	Charles Francis Adams, ed., The Works of John Adams, 10 vols., Little, Brown and Company, Boston, 1850-1856, 6:9, 280. John Adams proclaimed: "The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence. Property must be secured or liberty cannot exist."	4	16
18b	In a "Fifth Amendment" treatise by Washington State Supreme Court Justice Richard B. Sanders (12/10/97), writes: "Our state, and most other states, define property in an extremely broad sense." That definition is as follows: "Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment, and disposal. Anything which destroys any of the elements of property, to that extent, destroys the property itself. The substantial value of property lies in its use. If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right."	3,4,25	
42b	Florida Law Review: Volume 66, Issue 2, Article 7. When the Courts of Limited Jurisdiction Yield to Finality	3,16,31,34	42b
79	Josh Crank, Privacy Dangers in Workers Compensation,	11,12,20	

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79	Frank I. Michelman, Property, Utility, and Fairness: Comments on the Ethical Foundations of "*Just Compensation Law*", 80 Harv. L. Rev. 1165 (1967). Legal scholars have stated that there is a Personal Property deprivation which occurs, known as a "demoralization cost", based on the psychological harm caused by losses uncompensated by purely objective measures, including the loss of the opportunity for a "day in court", or to express one's "voice", integral to notions of procedural justice.	20	67
80	Frank B. Cross, In Praise of Irrational Plaintiffs, 86 Cornell L. Rev. 19 (2000), Roy D. Simon, Jr., The Riddle of Rule 68, 54 Geo. Wash. L. Rev. 1, 63 (1985). "Even when settling a lawsuit would be more favorable than a trial outcome, plaintiffs may want to feel that they have had their day in court."	20	67
81	Margaret J. Radin, Market-Inalienability, 100 Harv. L. Rev. 1849 (1987). (Margaret Radin's Total PersonHood as a type of Liberty which comprises Personal Property). They have further noted the close relationship between lawsuits and personal dignity and integrity, within the context of Margaret Radin's "Property as Personhood Theory".	22	67, 91a
90	Richard A. Epstein, in Takings: Private Property and the Power of Eminent Doman, 226 (1985), argued that there is no "distinction between vested and contingent remainders: both are property, albeit in different forms and with different values.", and "If you deny the Plaintiff the prima facie right to recover against a stranger without proof of negligence, then you have taken a limited property interest; if you deny the plaintiff the right to recover for certain nuisances, then you have created an easement to cause a nuisance."	22	
91	Jeremy A. Blumenthal, J.D., University of Pennsylvania Law School; A.B., A.M., Ph.D., Harvard University. Legal Claims as Private Property: Implications for Eminent Domain. "When an injured plaintiff commences an action, complying with established guidelines for how to obtain the remedy associated with that injury, doing so activates expectations about how the machinery of the state will be used. Condemning that lawsuit through eminent domain takes a property interest and violates those settled expectations, thus warranting just compensation."	3,4,22,25	45
93	Lee Anne Fennell, Taking Eminent Domain Apart, 2004 Mich St. L. Rev. 957; Lee Anne Fennell, The Neglected Political Economy of Eminent Domain, 105 Mich.L.Rev.101 (2006).	23	
124	Easterbrook, Frank H. & Fischel, Daniel R., Limited Liability and the Corporation, 52 U.CHI. L. REV. 89, 89 supra note 264, at 87-88 (liberty and property). (1985).	3,4,25,28	
139	Margaret J. Radin, Market-Inalienability, 100 Harv. L. Rev., 1849 (1987). "When a plaintiff has an accrued cause of action based on established common law doctrines, courts are likely to find a property interest."	29	93a
251	Zeigler and Hermann, 47 N.Y.U.L. Rev. at 205-206.	36	
261	M. Schwartz, Section 1983 Litigation: Federal Evidence Section 106 (3ded. 1999).	38	
272	Kenneth R. Kupchak et al., Arrow of Time: Vested Rights, Zoning Estoppel, and Development Agreements in Hawaii'I, 27 U. Haw. L. Rev. 17, 25 (2004).	23	79, 91a
	CONSTITUTIONAL PROVISIONS		
	28 U.S. Code § 1658 - Time limitations on the commencement of civil actions arising under Acts of Congress. Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.		94
	29 U.S.C. § 794(a). No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978.	35	95
	42 U.S. Code, Chapter 21, Civil Rights, Subchapter II, Public Accommodations, and/or Subchapter V, Federally Assisted Programs, including 2000a, 2000a1, 2000a2, 2000a3, and 2000a6.	35	94

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	Affordable Care Act (ACA)	35	101 and 101a
	Americans with Disabilities Act (ADA) Failure to provide legal instruction and/or to secure legal representation for an Injured Worker, speaks to the "program accessibility requirement in regulations implementing Title II of the Americans with Disabilities Act, which requires that each service, program, or activity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities." 28 CFR 35.150(a)	35	94
	Americans with Disabilities Act (ADA), 42 U.S. Code § 12132, Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. (Pub. L. 101–336, title II, § 202, July 26, 1990, 104 Stat. 337.)	35	94
	Americans with Disabilities Act (ADA), 42 U.S. Code § 12203 - Prohibition against retaliation and coercion, (a) Retaliation. No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter. (Pub. L. 101–336, title V, § 503, July 26, 1990, 104 Stat. 370.)	35	94
	Architectural Barriers Act	35	94
	Fair Credit Reporting Act (FCRA)	35	101b
	Health Insurance Portability & Accountability Act (HIPAA)	36	101c
	Reconstruction Civil Rights Act - Section 1983	37-38	
	Rehabilitation Act, Sections 501 and 503	35	94
	Telecommunications Act Section 255 and Section 251(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996,	35	94
	Telecommunications Act, Section 255 and Section 251(a)(2) of the Communication Act of 1934, as amended by the Telecommunications Act of 1996, which requires providers of telecommunication services to ensure that such equipment and services are accessible to and usable by persons with disabilities.	35	94
	The ADA Amendments Act of 2008 (ADAAA) was enacted on September 25, 2008, and became effective on January 1, 2009.	35	94
	The **Judiciary Act of 1789**, officially titled "An Act to Establish the Judicial Courts of the United States," was signed into law by President George Washington on September 24, **1789**. Article III of the Constitution established a Supreme Court, but left to Congress the authority to create lower federal courts as needed. Cannot represent oneself.	16	
	U.S. Const. Amend V and XIV, Section 1 ("*nor shall any State deprive any person of life, liberty, or property, without due process of law*").	1-4 and continuing	
	U.S. Const. Amend XIV, Section 1 Equal Protection, "The clause, which took effect in 1868, provides that no state shall deny to any person within its jurisdiction "the equal protection of the laws""	1-10 and continuing	
	U.S. Constitution, First, Third, Fourth, Fifth, and Ninth Amendments. "Rights to Privacy". "The right to privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose. The right of privacy is an American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth, and Ninth Amendments to the U.S. Constitution. This right should be abridged only when there is a compelling public need."	10,12,36	

LIST OF PARTIES:

Gellman, Brydges&Schroff a/k/a WCB 89401097 via Special Funds

Ronco Communications, Inc. a/k/a WCB 80807153 via Travelers Insurance

State of New York, NYS Workers Compensation Board, and various State Actors including: Governor Andrew Cuomo (*and all other Governors from 2008 to the present*), Attorney General, Eric Schneidermann (*and all other Attorney Generals from 2008 to the present*), Board Commissioner - Robert E. Beloten, Senior Law Judge Stephen Cordovani, Judge Paul Georger, Judge Thadeus J. Dziekonski, Senior Claims Examiner Denise Larson, Claims Examiners Eileen Hryckowian& Sybil Sullivan, Inspector General of Workers Compensation - Catherine Leahy Scott, Medical Directors Office - Patricia Furdyna, Office of General Counsel - Kenneth Munnelly& Patrick Cremo, NYS WC Board's IT Department (parties unknown), Board Panel Members Robert E. Beloten, Freida Foster, and Candace K. Finnegan, Hamberger& Weiss attorneys Richard Holstein, Rene Heitger& Patricia O'Connor (Medical Records Clerk) & others, Special Funds Counsel Tom Dickinson, Jill Singer (& others), Dr. Ronald Bauer, Dr. Donald Jacobs, IME, of Superior Medical Consultants (& others), and all associated IME's.

Note:

As defined by 28 U.S.C. Section 451, pursuant to 28 U.S.C. Section 2403(b), it is unknown whether or not the New York State Court of Appeals certified to the State Attorney General the fact that the constitutionality of a statute of New York State Law was drawn into question, although this was clearly identified in all appeals from the NYS WC hearing level up to the Appellate Division, and called out specifically to the Court of Appeals.

Sharon K. Bland
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March 19th, 2018

Solicitor General of the United States
Room 616, Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001 Sent Via Certified Mail

State of New York Attorney General
The Capitol
Albany, NY 12224-0341 Sent Via Certified Mail

Re: Court of Appeals Case No. 2017-896

To Whom It May Concern:

Please be advised the above case is being appealed to the Supreme Court and raises issues of Constitutionality in relation to both Federal and State aspects of New York State Workers Compensation Law and "exclusivity", and thus 28 U.S.C. Section 2403(b) may apply.

This statement is being provided as it is unclear whether or not the NYS Court of Appeals, under 28 U.S.C. Section 451, certified to the Attorney General the fact that the constitutionality of a statute of that State was drawn into question, under Rule 14.1(e)(v).

Sincerely,

Electronically Signed

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OR CERTIORARI

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix 1 to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was December 14th, 2017. A copy of that decisions appears at Appendix 2 to the petition.

A timely petition for rehearing was thereafter denied on the following date: March 29th, 2018, and a copy of the order denying reconsideration appears at Appendix 1.

The Jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

Please see Appendix Pages 27-30

STATEMENT OF THE CASE

Petitioner is a New York State Workers Compensation claimant with indemnified injuries from 1993 and 2008. She was sent back to work in 1995 against the advice of her physician, who indicated return to employment would cause the occupational disease to "*move up*". Consequentially, in 2008, Petitioner sustained additional injuries, and was further denied lifetime medical care guaranteed upon the settlement of her 1993 claim, and was required to "*pay back*" her $16,000.00 lifetime awards. She was denied medical care (*including surgery*) and lost income for protracted periods of time, on both old and new injuries, despite protections guaranteed by law, until she became totally disabled for life, whereupon she was denied lost income & employment benefits commensurate with her resulting disablement. (*Prior Decisions under Appendix Exhibits 1-8*) Deprivation occurred due to Substantive & Procedural Due Process violations, Equal Protection Disparate Treatment, Constitutional Violations, Corruption, and Deliberate Indifference leading to Impoverishment.

The basis for Petitioner's deprivation includes a number of constitutional violations by a State Agency, not the least of which is rampant Corruption. The "*final straw*", however, occurred when critical surgical requests were deleted from the WC electronic Board file, preventing timely legal review. Despite repeated notification of medical necessity, Petitioner was unable to secure surgery for 18 months, where after she became

inoperable, and thus permanently disabled, for the most serious of her injuries, while denied "*maintenance care*" for all of her other injuries (*7 out of 13 accepted*).

Petitioner also sustained consequential injuries which resulted from the direct failure of the NYS WC Board to deal with the bad faith denials of 2 insurance carriers (*one of which is the "arm" of the State*), not in compliance with Disparate Medical Treatment Guidelines (*hereinafter MTG*) which were passed to "*cut costs*", beginning in 2010, at the expense of the health & welfare of the Injured Worker, in a manner which reflected Deliberate Indifference and a State Created Danger, and violated Petitioner's Equal Protection safety. In this manner, Petitioner's injury was misclassified into the wrong MTG, such that to obtain surgery would require multiple variance authorizations under multiple MTG's. Due to bad faith denials by both carriers, and a complete lack of medical training of Board Personnel, IME's, treatment providers, and Injured Workers, in the constantly changing disparate, medically un-vetted MTG's (*12 since 2010*), authorization for surgery was arbitrarily and egregiously denied, with Deliberate Indifference.

REASONS FOR GRANTING THE WRIT

As a Pro Se Petitioner, there is probably a million things I could have done better in filing this brief. It is long and circuitous because the Workers Compensation System it challenges hides behind a Paper Nightmare designed to prevent, rather than help, America's Injured Workers, who are also, by definition, Disabled. At its premise, I am arguing not only that Exclusivity is Unconstitutional in a 21st Century environment, but that it fundamentally violates the Americans with Disabilities Act, by segregating Disabled People for financial ruin.

This Brief follows the last 10 years of my life through this system, after losing 5 years of income when I was 25, during which time I, like other Injured Workers, was forced to continue working while waiting for both medical care and benefits, after developing Bilateral Carpal Tunnel, causing additional medical damage.

Five years later, the NYS WC Board, against the advice of my nationally known medical specialist, would send me back to work declaring me only nominally disabled, after tossing me $16K in lost wages, when I had lost $125K. A meager $16K settlement would not be mine, but had to be paid back if I suffered additional injury. Lifetime medical care, guaranteed as part of the settlement, was not forthcoming.

Fifteen years after that, however, my doctor's words in 1995, indicating I should never work again for the condition would "move up", came back to haunt me. This time, my spine had collapsed, my subclavian arteries were compressed, and I had developed 4 additional primary injuries; Bilateral Cubital Tunnel and Bilateral Thoracic Outlet Syndrome (TOS).

It took the Board 3 months to find my old file, and even then, the bulk of it was "misplaced". It took 15 more months to get a hearing to establish the injuries. During that time, I went without income, without proper medical care, and experienced increasing levels of pain and confusion, as my condition worsened. I developed multiple consequential injuries which also went unmanaged. Denied all appropriate medical care, I

relied on medications which were constantly late for refill, for no particular reason, leading to chronic pain, sleeplessness, esophageal and gastrointestinal breakdown, early kidney failure, and brain damage.

To make a very long story short, 5 years into the claim, I became inoperable after being denied surgery, which should have been performed within 6 months. I was denied surgery because of a missing fax number in a fax box, and due to arguments, by legally and medically untrained Board clerks, and/or Board Panel members appointed by the Governor, over where my rare vascular illness (TOS) fell within the infamous Medical Treatment Guidelines. Without medical review, I was forced into an orthopedic rather than a vascular MTG. Neither MTG was sufficient, as the surgical forms were deleted by a Claims Examiner.

Along the way I was subjected to the Board's required medical provider list, filled with doctors with double digit medical malpractice lawsuits, many of whom due to low reimbursement rates no longer participated. There were no participating doctors in my county, and thus I traveled long distances routinely in order to attempt to get medical care. Due to the mischaracterization of my vascular illness as an orthopedic injury, all requested medical care was routinely denied as not compliant, and waited years for appeal. The only therapy I could get authorized was the wrong therapy.

I got sicker, until I was on oxygen and lived in chronic pain. By 2012, Social Security Disability finally found me 100% life disabled for Bilateral Carpal Tunnel alone. Workers Compensation hadn't even started paying disability yet. Medicare easily saved my life, but Workers Comp injuries were denied coverage. Currently, due to years of taking Advil, I have early kidney failure. The long term use of medications has trashed my gastrointestinal system, chronic spasticity my esophagus, and intractable migraine and pain medications my short term memory.

I waited years for basic expense reimbursement, until balances climbed into the thousands. Most of what was due was "disallowed" via one means or another, though it comprised tolls, mileage, parking, or medications for workers compensation medical care obtained long distance.

I didn't get any disability awards from Workers Compensation until 2013, as both the 1993 insurance carrier and the 2008 insurance carrier engaged in bad faith tactics fully embraced by Board employees to deny payment, with multiple NYS WC Board employees caught contributing to fraud and collusion, forcing every single medical request into the 7 year appeal process.

They weren't done with me yet. As several of my medical doctors were in bed with the insurers, surgery wasn't offered for the 25 year old injuries, and the new injury doctor was in medical malpractice court for maiming another TOS patient when she performed surgery with no training. As all surgery was prevented or denied, I asked my doctors to file Permanency by injury in 2010 and 2011, but was ignored for years. Eventually, in 2015, denied the right to call witnesses, testify, or provide rebuttal, Total Permanency requested by my doctors was cut up into pieces and denied piece by piece. After violations of privacy, collection harassment, lack of ADA accommodation or legal representation, and corruption, my injuries were parsed down to nothing. Requests for investigation into corruption by the State were utterly ignored.

After 10 years, I will walk away with less than $19K per year, when I made $75K per year, plus $25K in employment benefits and lost $75K in education. I even had to pay back my 1995 $16K settlement so I owed them money, while incurring thousands of dollars of out of pocket medical expenses for consequential injuries denied a hearing. Today, I survive on Social Security Disability, but this too, is less than stellar, as I've lost 30 years of contributions, and pay for individual medical policy premiums out of pocket, previously fully covered by employment, with hundreds of dollars of prescription costs per month, and a high deductible plan.

But this story really isn't about me, I am just the bread. There are hundreds of thousands like me.

One in five Social Security recipients is Work Disabled. At this point Workers Compensation is to Impoverishment like Human Trafficking is to the Drug Trade; intrinsically linked.

It is nationally recognized that Workers Compensation not only creates impoverishment, but creates disablement. It's not my employer that damaged me for life, it's the State of New York, via NYS WC Board employees, in collusion with the insurance carriers & their legal representatives, the allegedly independent medical examiners, the medical providers looking for a bigger meal ticket, and this egregious legal concept of Exclusivity, combined with the infamous Medical Treatment Guidelines. This is the animal that owns me, just as surely as if I was an indentured servant. Untrained, uncertified Board employees get to decide whether or not I get to live or die, and whether or not I deserve to be fixed. And then, even if they have stolen my health, they can then decide not to pay me for the damage.

And no, I'm not just referring to pain & suffering, for that's just what anyone else injured by anyone else would get. I'm referring to actual damages, stolen right out from under me.

This Brief parallels the last 10 years of my journey through a government system which has damaged me more than I could ever have been damaged in the first place. This is a system which has belittled me, ignored me, beaten me, and stripped me of my privacy, my dignity, and my entire purpose in life. This is about my refusal to let a Government Agency control my life, and the lives of other disabled people. This case could change the World. Please Listen.

Petitioner's 20 year experience with the NYS WC system reveals a host of unlawful Procedural and Substantive Due Process violations embedded within NYS WC Law. Most notably, a 100 year old law, passed in 1917, has been redesigned by the State such that the Compensation Bargain is no longer even remotely equitable, constitutes a "*taking*" of personal property rights which results in impoverishment and unconscionable pain & suffering, and amounts to a substantial intrusion on the personal freedoms, safeties, and constitutional rights of Injured Workers in a 21st Century environment, under ADA, ACA, HIPAA, and FCRA protections, as well as those Due Process and Equal Protection provisions originally enshrined within the law, but adversely diminished to unfathomable levels. This is a "*known*" issue. Exh. 9-15. Claimant's Story Exh. 16.

Petitioner challenges the validity of both NYS WC Law, and the Federal acceptance of "Exclusivity" on both a facial and as-applied basis. Exh. 16a. (incorporates 17-41) The Questions are complex. Exh.16b.

Why should a State government have the right to take away my cause of action and substitute it with a lesser, medically & legally untrained authority? Why are disabled people being persecuted?

ARGUMENT

1. **Can Resolution of Conflict Between Circuits be Obtained?** see Exh. 16b

2. **Are the Constitutional Rights of the Injured Worker violated via the following**

   2.1. Is Workers Compensation Law's premise of exclusivity valid & useful, i.e. serving a public purpose, in a 21st Century Environment? (FACIAL CHALLENGE)

The History of this File: Exhibit 42 It becomes clear, in Claimant's 20 year WC claim that the "TAKING", is in fact, just that; a substantive TAKE on an extraordinary level.[1] The government bears a heavy burden.[2]

How does Claimant's deprivation help Society? The Excessive Delay by the State is Egregious. Exhibit 42a Neither the Board nor the Appellate Division, nor the Court of Appeals has training in the length and breadth of the violative NYS WC MTG's and Statutes. The failure of the Court of Appeals to hear anything related to WC based on lack of finality puts the final nail in the coffin. Exhibit 42b

What conditions must the government establish to meet a facial challenge? Exhibit 42c

To adjust the benefits & burdens of economic life for the common good cannot occur unequally, or WC Law, and Exclusivity, as a construct, clearly violates Equal Protection Guidelines, as the founders noted, [3] When a state distributes benefits unequally, the distinctions it makes are subject to scrutiny under the Equal Protection Clause, and generally will survive scrutiny only if the distinctions rationally further a legitimate state purpose. [4]

   2.2. Is there a valid public purpose or benefit for denying injured workers access to tort including damages generously available to others within our society? (AS-APPLIED)

Can Workers Compensation Exclusivity pass Strict Scrutiny today? Exh. 43

For over a century, the Supreme Court has sought to identify the precise nature of the Equal Protection Clause's guarantees. At the minimum level, the Court's classification must be rational. [5] Yet as you can see in Exh. 43, it's all about reducing benefits due to cost, to benefit everyone but the Injured Worker.

Without question the MTG's do rationally advance the State's objectives, no matter how unethical and illogical those objectives may be, and whether or not those interests are in the best interests of the public or the disabled. The Board has perpetually cut benefits to substandard levels which are lower than Medicaid, in

order to assist the insurance industry (*represented by local attorneys*) which cries poor to the Legislature. The Board doesn't even attempt to hide their purpose. Exh. 43a In short, the critical safeguards which allegedly rendered WC in "*Exclusivity*" constitutional in 1917 no longer exist. The State of New York has broken the WC Bargain, and in failing to provide adequate protection after taking away the individual's right to protect themselves, has proven itself incapable and unworthy of looking out for the interests of Injured Workers in its Fiduciary Capacity in "*Exclusivity*" in order to benefit society via the reduction of impoverishment; the State's stated premise.

Likewise, the advent of Social Security Law, Personal Property Rights established in the intervening 100 years, the Americans with Disabilities Act, the Affordable Care Act, and the Health Insurance Portability and Accountability Act (HIPAA), are all in conflict with the State's WC Law, as modified indiscriminately by the State Legislature; ironically based on false premise presented by the NYS WC Board Chairman, that the MTG's were drafted by medical professionals, currently under investigation by an independent Legislative council, for legitimate reasons. Exh. 44

For the State to deny medical care is to deny humanity; creating an obstacle to the purposes of Federal Law. [6-10] NYS WC Law violates both the New York and the U.S. Constitutions. Exh. 44a

2.3 Does Workers Compensation Law's premise of exclusivity properly address the Personal Property Right Interests of the individual to legally protect themselves? (AS APPLIED)

What Personal Property Right Interests does an individual have in a 21st Century Environment? (Exh. 45– please read entirely) How do Personal Property Rights affect Workers Compensation Law? Exh 45a.

What are the Hallmarks of Property Rights? [11-14] The taking of economic advantage from the individual is no different than the taking of physical property, yet far more insidious, for the right to earn a living and/or protect compensable lost earnings and medical care in order to mitigate future damage, adversely withheld, prevents meaningful recovery and deprives the victim of their individual property right of recovery. To take away individual liberties for Society violates multiple aspects of the N.Y. Constitution.[15-16] The Due Process Clause was intended to protect an individual from an abuse of power by government officials. However, there can be no due process if the "*TAKING*" prevents the cause of action altogether.[17-18]

Personal security, personal liberty and private property each constitute an indefeasible, or unalienable, right protected by the Constitution. [18a] Property is defined in an extremely broad sense. [18b]

In every area of property law except regulatory takings we recognize that property is a "*bundle of sticks*". [19-22] Exh. 45b. The State must provide adequate procedural requirements, or else it could destroy any state created property interest at will. Personal Security is inherent in the due process clause.[23] How did WC violate Petitioner's Right of Personal Security? Exh. 45c Comparison of 1917 v. 2017 Personal Property Rights. Exh. 45d

Petitioner has substantial financial damages and seeks recovery. Exh. 46

2.4 Does Workers Compensation Law and/or the handling, processing, or administration of Workers Compensation Law by NYS Workers Compensation Board members, violate the Injured Worker's right of access to Due Process?

Workers Compensation guidelines violate New York State's own laws. [366-367] Yet, Injured Workers are denied the right to hearings, or to testify, or to call witnesses.

Further, the State of New York has waived their Sovereign Immunity such that they may be sued for Constitutional Wrongs, without the need for Section 1983 Protection employed usually in Federal Court. [25] Exh. 47. How did NYS WC Law violate Petitioner's Due Process rights? Exh. 47a-48

Claimant's liberties and freedoms including the right to sue were adversely "*taken*" by the State in violation of Article I, Sections 3, 7, 11, 12, and 18 of the NY Constitution and NY's Human Rights Law. [204]

2.4.1. On a Substantive Due Process basis:

Fundamental rights are central to a scheme of ordered liberty. [26-29]

And yet, the Board held hearings without Claimant, denied or delayed hearings altogether, and further denied all rights to testify, call witnesses, or present evidence, thus preventing an opportunity to be heard. This resulted in a Substantive Denial of Medical Care and resulting Permanent Damage. [30-32]

Constitutional challenges have already been made which verify that there is a Substantive deprivation when Procedural Due Process requirements are either non-existent, or not met. [33] Exh. 16a (Pages 3, 8-10, 17-19) How did NYS WC Law violate Petitioner's Substantive Due Process Rights? [34-36] Exh. 48a.

So, damage to reputation preventing the ability to engage in my occupation is considered a right of personal liberty, but the taking of one's complete ability to work is a personal freedom not yet preserved, and specifically precluded under Workers Compensation Exclusivity.

2.4.1.1 Denial of Medical Care?

a. Limitations on Access to Medical Care without Due Process

Petitioner's liberty interest was impeded, for her right of access to timely review of denial of surgery was adversely restricted, until recovery became impossible. Exh's 21-24, 49-66c. Please read Exhibit 56 first.

More generally, Substantive Due Process violations comprise those acts by the state that are prohibited. [37]

The denial of access to medical care violates Petitioner's right of Bodily Integrity, robs her of her personal autonomy and the self-determination of human beings over their own bodies. [38-39] Under the Fourth

Amendment, does the governmental need for the intrusion created by WC Law, for the alleged betterment of society, stack up as against the loss of Bodily Integrity to the individual? The Injured Worker, rather than being more protected by the State's involvement, is instead less protected, if not damaged by the State itself, with callous indifference for the egregious damage which will result, when such should have been totally unnecessary and avoidable. For otherwise, what would be the purpose of the State's involvement on behalf of society to begin with? The State forces the disabled into permanent impoverishment.

The relationship between medical care and control has been established for prisoners, but also in other less obvious situations. [39] While Petitioner was not in jail, she was nonetheless exposed to Deliberate Indifference to serious medical need, for the WC Board inflicted a cruel and unusual punishment over the lack of a fax number. To say that a one-off or doesn't amount to Deliberate Indifference would be to ignore the 14 other surgical request forms which were filed without proper denial, fully compliant with the safeguards established by the MTG's, whereby expedited hearings were also not obtained (*with some deleted by the Claims Examiner as duplicative*). [40] The Board doesn't even know what was deleted; they keep no copies.

As under *City of Canton, Ohio v. Harris,* medical care is a necessity of life. [41] The failure of the NYS WC Board to employ medical specialists to review denial of medical care, and/or to fail to train non-medical staff as to the urgency of timely review, when this is one of two main purposes under which the construct of WC Law exists, is egregious, and further qualifies as a substantial TAKING by a government. The expedited hearing process is one of only two choices identified on the medical variance form (*both the C-4 and the MG-2*). One option is to have your case heard on an expedited basis by a hearing judge within 30 days, and the other is to have the request reviewed by a medical arbitrator. However, there is no such thing as a medical arbitrator. The State most surely knew they didn't have a medical arbitrator. Exh's 57 and 58 In Ingraham v. Wright, the Court noted, due process review was required. [42] The Court applied this physical philosophy to prisoners in jail, but WC's closed medical system has the exact same affect, if not worse due to lack of proper procedural due process review. Claimant is held hostage, via the cruel & unusual punishment of the adverse and irrational withholding of medical care (*thus impugning Bodily Integrity*) from an individual who needs it, who further is legally prohibited from getting the medical care anywhere else; nor financial redress. Exh. 65a-c. Disabled People are punished for being disabled. And, legal representation is non-existent, compromised, or inadequate.

Perhaps if the Injured Worker had only a broken leg their needs are adequately compensated (*at least in regard to medical*). However, to have a host of more serious injuries, caused by the negligence of the State in sending Claimant back to work against the advice of her physician in 1995 (Exh. 18), and to be denied medical treatment based on the "*costs*" of the injury alone, when the injury is deemed compensable, is arbitrary and unreasonable. [43] As it stands, the employer can fight all medical care, and then avoid the resulting medical damage they created, with impunity. That is certainly not an appropriate "*TAKING*", serves no benefit to society, and defrauds a very specific subset of people, and an even more specific subset of disabled people,

while others damaged by negligence can obtain punitive damages to cover the significant losses to their life liberties, to be made whole. Exh. 66 Exclusivity deprives only the work disabled from protection.

b. Bodily Integrity – Denial of Surgery

Claimant's Thoracic Outlet Syndrome (hereinafter TOS) surgery, which comprised 7 surgical codes, allegedly required a C-4 filed under the 1996 MTG for several codes, an MG-2 under the 2010 Orthopedic Shoulder MTG's for several other codes, and left several automatically authorized codes remaining. This was frustrated by the minimal references to Thoracic Outlet Syndrome (TOS) in the 1996 MTG, one paragraph, nor ZERO mention in the 2010 MTG. Thus, Claimant's occupational disease was caught between the cracks. Where, based on the actual writing of the MTG, no variance was required, Claimant and her physicians were told they had to file one. Arguments abounded between Board employees; the judge wanted one form, the carriers the other, and the Medical Directors Office (*employing no doctors*) first said one thing, and then another. Claimant's physicians filed both forms, to both carriers, 8 times. Exh's 23 and 24. In point of fact, no authorization should have been required unless the medical care fell "*outside*" the MTG's or was "*unreasonable*" as proven by an independent IME. TOS Surgery would have automatically been approved under the 1996 MTG, but was suddenly "*outside*", after being forced into 2010 Shoulder MTG's. No IME was ever obtained by either carrier, but the carrier's "*denials*" were not thrown out, nor an expedited hearing obtained. The Board later affirmed this bad faith behavior, but did nothing to turn the situation around.

Meanwhile, Claimant requested an expedited 30 day hearing, but no expedited hearing was scheduled, and both surgical forms "*disappeared*". Exh's 41, 66d-71 The Claims Examiner threw out both initial surgical requests because they were missing a "*fax number*" in a "*fax box*", even though the fax number was clearly printed on the top of the page. Exh's 22 pgs 1 & 2, 22c and 22d She will also throw out other surgical request forms on the basis that they were "*duplicative*". She will also claim that the Judge has authorized her actions, either in destroying forms, or denying hearings. Despite years of appeals, neither the Board nor the Courts have provided any explanation of why the surgery was unnecessary or excessive, let alone why Claimant was held to a standard when the insurance companies never followed the legal requirements to dispute treatment.

It cannot be said, as is intimated in American Manufacturers v. Sullivan, that the availability of a remedy by a private actor, and the use of it, fails to make the State a willful participant. For the State created the MTG process, arbitrarily and falsely decided what was reasonable while willfully ignoring standardly accepted medical care, and put procedures in place, upon which the Legislature was "*sold*", indicating that the MTG's were necessary to both reduce costs and speed up access to medical care, and alleging medical specialists had designed and reviewed the standard of care contained therein. This was not the case, otherwise surely Claimant's injury wouldn't have been cut into pieces, such that medical care for one condition was never possible to obtain, either under one MTG, nor the 2nd, nor at all. Meanwhile, the sole protection for Injured Workers, expedited hearings, didn't occur. [44-45] Exh's 44, 90-91 No independent specialist was asked or allowed to testify.

If the State fails to protect under the power they deemed exclusive and necessary, they should be held responsible for their failures.[46] The State did not delegate Workers Compensation to insurers. Everything about WC Law, in New York, and elsewhere is regulated by State Insurance Rates, time deadlines, paper processes, and millions and millions of dollars of "*oversight*", by the State, of an insurance program, no different than auto insurance or health care coverage. At its core, it must be "*adequate*" and "*speedy*" to survive constitutional deprivation. This is the bar. The bar is not met.

In O'Bannon v. Town Court Nursing Center, Justice Stevens held that decertification of a nursing home resident was only an indirect cause of the residents' transfer, and thus not a deprivation of life, liberty, or property. [47] However, in Claimant's case, the deprivation of a hearing prevented perfectly reasonable access to standard surgical codes for a standard and reasonably necessary surgery, 3 years into a claim, which should have resulted within 6 months of diagnosis in 2008, until Claimant became inoperable. In a closed medical system, per the State, you are denied any control over your own medical fate. In essence, your Bodily Integrity is "*given over*" in exchange for your right to receive benefits & services under a government program which restricts any other option. This way of thinking belies the freedoms of the individual imperative to medical care and personal freedom. Per the Board, if any doctor is available, the disabled person has a doctor. Exh. 62b The Board's approved Medical Provider List was unvetted, full of quacks with double digit lawsuits.

c. Scope of increasingly restrictive Medical Treatment Guidelines Arbitrary & Irrational

Every MTG and/or Permanency Guideline established by the State is a subsequent "*TAKING*", a "*bible of denial*" the sole purpose of which was to prevent access to medical care without any concern for the egregious medical deprivation which would result for the Injured Worker.[47-48] Exh 71a. This is not a situation which can be fixed, for the State has complete control over the unjust, arbitrary, deprivation of medical care, predicated on their Deliberate Indifference in regards to training of all parties, failure to employ medical specialists, and their obvious conflict of interest and collusion with the insurers. Exh. 71& 21. The Board provides no instruction or assistance to the Injured Worker, let alone the Pro Se Injured Worker. Thus, even if a hearing is held, the deck is stacked such that a positive outcome is largely unattainable. No tools are provided. Additionally, one injury is pitted against another, so rather than cumulative disablement, a medical report for 100% disablement is only valid until the next medical report (*even for a different injury*) which could say 50%, and the Injured Worker's total disablement FOR ALL INJURIES is suddenly reduced to 50%. The Board, in the fine print, requires each doctor to speak to total disablement for all injuries, even when they don't treat those injuries, and thus the doctors refuse to comply and the Injured Worker is denied money to eat. Why would the Board unreasonably expect one doctor to speak to all injuries, but to help the insurance carriers? Why would lack of training of physicians be used to hurt the disabled? The MTG's dilute medical care by type of injury, with the worst deprivation heaped on the most severe injuries; under the guise of preventing access to "*unreasonable*" medical care, which is code word for "*medical care which costs money*". Claimant's injury was forced into the wrong MTG, whereupon the surgical codes weren't listed, then into the old MTG, where other surgical codes weren't listed, until Claimant's medical care floated somewhere in the Black Hole in the middle,

even though both forms could have, and should have, at a minimum, been processed; and this assuming that the Paper Nightmare was reasonable to begin with, as no variance should have been required. Training anyone?

The NYS WC Law states that where treatment protocols for new injuries are insufficient, the Board will utilize treatment plans from other States. Again, this did not occur. Why? The American Medical Association protocol for Vascular TOS, prepared by Dr. Richard Sanders, one of Claimant's Denver doctors, was submitted to the Board, which absolutely refused to acknowledge the protocol, insisting that TOS was an orthopedic condition (*which conflicted with testimony had anyone read the testimony*). Exh. 72-73 Again, non-medical personnel made life changing medical decisions without a hearing.

The class disparity of the new 2010 Shoulder MTG literally cut Claimant's illness in half for surgery, for certain codes relied on different forms with different requirements that Claimant's physicians could not meet. So, the system failed in relation to Claimant's injury even though the Board and the Appellate Division will claim that they provide medical care for any and all injuries. Yet, migraines, chronic spasticity, C-spine collapse, and the like, which are standard TOS, were not even mentioned in either the Vascular or Orthopedic MTG's. The Board ignored these anomalies, despite repeated notification, and egregiously required Claimant to prove each symptom of an already indemnified TOS injury, while denied the right to call her own doctors, independent medical examiners, or to obtain a timely, effective hearing with the right to be heard. Exh. 41 #5.

In essence, the MTG's created mayhem, led to thousands of workers being unable to obtain any medical care for an extended period of time, which led to a backup in the hearing schedule, which resulted in medical deprivation, for Claimant and all similarly Injured Workers whose injuries were misclassified by Board employees responsible for the creation of MTG's without medical input, and without MTG training (*if such existed*). Thus, medical care was unattainable, yet the Board when notified, showed Deliberate Indifference to the damage which would result. Exh's. 71 and 21

In Paul v. Davis and Parratt v. Taylor, a substantive element of one's liberty requires freedom from arbitrary adjudicative procedure. [31, 49-53] Logan is challenging not the Commission's error, but the "*established state procedure*" that destroys his entitlement without according him proper procedural safeguards. Claimant waited years to be heard even when multiple physicians (*including those in-state*), wrote letters indicating there were no participating providers with TOS experience in their medical consortium, and thus out of state treatment was necessary, which was also ignored by the Board. Exh's 59-64 When Claimant's Denver doctors noted the need for immediate surgery, in a 20 page medical report, this was ignored. In short, the Board failed to provide guidance on how to get emergency treatment, when the emergency treatment costs $250,000.00. Instead, arbitrary, medically unvetted policies took precedent over Medical Necessity. Exh's 74-75. According to the law and the various statutes, Claimant could appeal. However, the appeals never addressed the fundamental flaws, looked the other way, and refused to accept culpability for the Deliberate Indifference of the process, due to lack of training, corruption, and ignorance.

Criminals in Jail are given access to timely medical care, and thus, to deny the same under the premise of exclusivity, which prevents a Disabled Worker, by statute, from obtaining this medical care anywhere else, while also limiting access to financial damages via the standard Tort/Negligence system even when Workers Compensation denies an injury is a workplace injury (*which takes years to fight resulting in no medical care in the meantime*), cuts off access to Due Process altogether, as medical care withheld results in permanent damage by default, and the inability to be heard at a meaningful time in a meaningful manner would reasonably result in permanent damage, as in Claimant's case, where she should have been largely repairable had proper medical care by a properly trained specialist been available, and/or surgery timely addressed (*after Claimant attempted to mitigate her damage by going out of state*). Exh. 19

Further, the MTG's are disparate, drastically affecting some injuries more than others. This serves no purpose other than to lower costs as against those who are the most seriously disabled and costly. [84-85]

d. Stigma – Mandatory Drug Testing / Credit Harassment / Privacy

How does the Stigma of Workers Compensation affect my life? Exh. 75a As a result of Claimant's disablement, her life activities are substantially limited. Exh's 25,34, 36 But, on top of this, Claimant now has to live with the stigma of being disabled, on Social Security, and thus unproductive to society, on limited income, utilizing government programs to get access to low cost prescriptions, etc., including credit harassment due to unpaid bills, which have prevented Claimant from obtaining medical care (*even under Medicare*) as certain businesses will no longer take her as a patient, routine invasions of privacy, as well as routine drug testing, violating search & seizure rights, whereby Claimant as a sick person is treated like a criminal. This has created substantial embarrassment and emotional stress to Claimant within her small community, on top of being stripped of all her "*worth*" as a person.

Mandatory Drug Testing: Exh. 76

NYS WC Law requires mandatory drug testing in compliance with Pain Management Guidelines which has been deemed unconstitutional in multiple states and in relation to strict scrutiny, all across the country, but most notably in relation to mandatory drug testing to obtain access to WC benefits, for without probable cause, and no crime committed, sick & disabled individuals are subjected to routine search & seizure.[54-57] Exh. 16a Pages 19-25 This also violates New York State Equal Protection Rights under Search & Seizure. As a disabled person, who will be disabled for life, I feel stigmatized and victimized in being forced to subject to drug testing in relation to access to pain medications as a condition of obtaining benefits & services, that any other injured person with a negligence action or illness would be spared. The State subjected me to the use of their system. The State created my drug addiction, for the use of pain medications is literally killing me, inside and out. I rely on pain medications. The fear of losing them and not being able to afford them out of pocket is literally terrifying (*and not just for pain medications, but the other medications received under WC*). Prescriptions are routinely denied or delayed under WC, and this has caused consequential injuries including autonomic nervous

system disorders. Abrupt withdrawal can lead to stroke or aneurism. Exh's 28 and 92. Thanks to the carriers, this happened repeatedly, every month for the last 6 years, and resulted in brain damage. Exh. 28 In short, I am in a virtual jail, again, simply because I am disabled due to no fault of my own. Exh. 77 Monthly drug testing at $600.00 a pop is a windfall for doctors.

Credit Harassment: Exh. 78

Due to the false statements of the carriers, Claimant was regularly turned away from medical appointments, denied access on the phone to an appointment on the basis that the carrier had told the provider there was no claim, told the injury was not compensable when it was, or because bills were outstanding and unpaid due to the willful failure of the carriers to pay the bills within the 30-45 days required, with no action taken by the Board, to address the carriers bad faith denial. This subjected Claimant to endless collection calls and emotional stress. To this day, Claimant has an anxiety attack when she has to go to the mailbox to get mail, for there will surely be a denial, a dispute, an unpaid bill, or some other such problem which will requires hours to fix and will result in collection harassment and stress; for to have to pay such a bill means no money to eat. Meanwhile, medical care is denied at any and all providers who got stiffed (*if the provider just gives up and writes the debt off*), or just gets tired of waiting. This was humiliating for someone who has never carried debt, and never defaulted on any bill of any kind in her entire life, and whose very job as a financial manager requires squeaky clean credit.

Privacy: Exh's 79-83a

Because of a workplace injury, my entire life is controlled by a government agency.[58-59]

It must also follow that in the presence of a clear, immediate, and substantial impact on a person's reputation, given the publishing of WC cases to the internet by the Appellate Division, including all manner of personal medical and financial details, readily available on the web under my name, <u>as a requirement in order to obtain due process</u>, privacy is violated. It's like walking naked in public. This deliberately violates personal liberties, freedoms, and protections, as a condition of the required enslavement of WC benefits & services, even when you aren't getting them, but are forced to beg for you can't get them anywhere else. [60]

Privacy of Mental Health Records: Exh. 82 and Exh's 79-84.

Claimant was deprived of access to already limited medical providers due to allegations of mental health defect, based on the corrupt dissemination by the carriers of inaccurate mental health reports, denied by the Judge for WC purposes (*as this report cited cognitive damage which the Judge will also ignore, via denial of a hearing, and while ignoring medical reports which relate cognitive damage to long term pain medication usage*). HIPAA law prohibits release of mental health or HIV records, but this is what occurred. The Board has since changed their HIPAA forms to hide the rights of the Injured Worker in order to allow this illegality to occur. Claimant was forced on multiple occasions to sign HIPAA auth's under duress, or be denied access to prima facie and causation in relation to her right to be heard on the issue of consequential injuries. Exh. 80-84.

Loss of Ability to Drive due to Pain Medications

Claimant lives on chronic pain medication for her long list of injuries. The use of opiates and narcotics makes it unlawful to drive or operate any machinery while under the influence. As the ability to drive is fundamental in our society today, and certainly qualifies as a necessary freedom, Claimant has to go without medications to drive, and do so in great pain, simply to get groceries, domestic supplies, and medical care. The hearing judge who established permanency ignored Claimant's inability to drive and further claimed she could work 4 hours a day despite chronic pain. Claimant was not allowed testimony or rebuttal. Exh. 35-36a. Claimant lives in a small town with no bus service and cannot "*travel*" as vibration aggravates chronic muscle spasticity from TOS. She would have to go without medications all day in order to work 4 hours a day and drive.

2.4.1.2 Arbitrary Restriction of a Closed Medical System? Exh. 84a

WC has created a "*closed*" medical system by statute, which severely limits access to competent medical help, drastically limits access to specialists under each discipline, and falsely claims, within this isolated microcosm created and maintained by non-physicians, that there are adequate providers for "*any and all injuries*", which is a grandiose statement that is utterly false. Claimant contacted hundreds of vascular doctors in the State, including all those on the medical provider list, and found that those listing were largely not participating, or admittedly (*via signed affidavit*) did not have TOS training or knowledge. Exh. 59 Claimant reported to the State that there was a lack of participating providers, large numbers of physicians with double digit medical malpractice lawsuits, non-participating physicians whose names were still on the Board's medical provider list, and no participating doctors in Claimant's own county of residence, forcing her to drive long distances to another county to obtain medical care, a distinct hardship for disabled people. As the Board's medical fee schedule pays less than Medicaid, the Board's medical provider list is deficient, and yet, although this is "*known*", the Board has failed to take action to remedy the situation. Exh. 59-60. In-State doctors even wrote letters on Claimant's behalf in order to ask for out of state treatment. Exh. 61-62c. The Board took no heed, telling Claimant she couldn't go out of state, as there were in-state doctors. The Appellate Division will later affirm Injured Workers always have the right to go out of state, for the State of New York cannot control the medical rates of out of state doctors nor Injured Workers who move. Thus, Claimant could have gone out of State years earlier but the Board, via various employees including the Judge, deliberately told her she couldn't. Again, due to lack of training or deliberate collusion, this "right" was withheld. And not just rare injuries were without medical support. (Fibromyalgia and Aqua Therapy)

Wouldn't you think the Board Panel and Judge would know this? Training anyone? This alone is egregious. Claimant shouldn't have to move to get medical care out of state that is reasonable. Denials such as these created unconscionable delays that were illogical and egregious, and collusive (*showing a clear commonality of purpose and collusion between the allegedly independent Board and Judge in working with the carriers, to avoid $250,000.00 worth of surgery*). The Board and Judge were repeatedly notified there were no participating doctors for Claimant's medical injuries in her county; requiring long distance driving to another county.

To force Injured Workers to use bad doctors, and to fail to manage the allegedly participating list of doctors is unconscionable. The State has a higher duty, within a closed medical system, to screen for quality, which is not relinquished by allowing the Injured Worker to pick a doctor from a list of bad doctors, and then stating they made the choice. Likewise, to be told what kind of medical treatment you can get vs. what you can't, when the State selected the participating doctors, and should thus "*trust*" that these doctors are properly trained in their specialty, properly insured, and thus competent to select the best medical treatment, is inexplicable. Claimant was subjected to doctors for her rare occupational disease, which were the worst of the worst, and were simultaneously untrained in the proper administration of the paper processes of the MTG. The Board was notified and refused to respond. The Judge hid the evidence of lack of participating and competent medical providers. The Deliberate Indifference to medical need and access defies belief. Exh. 71

In essence, the State has created complicated medical variance requirements which allow insurance carriers to question the reasonableness of every medical request made by Board certified doctors. These are not Injured Workers doctors, for all intents and purposes, the Board selected them. The doctors are not paid by the Injured Workers and are often coerced into requesting the least expensive medical care, even if this is not in the best interests of the Injured Worker[278], based on ex parte communications between the carriers and the doctors. This was proven, based on verbal and written communications presented to the Court, yet again, the Judge did nothing, though these types of communications are illegal under WC Law. Exh's 85-86. The Supreme Court has determined what "liberty" includes.[61] Surely this must include the right of access to qualified medical care, to Bodily Integrity, to be free from adverse and/or arbitrary cost driven denial of medical care, and to have some say, as a patient, in what medical care is desired, as well as the right to select a competent medical provider, not just the best of the worst provided, in order to save the Insurance Industry, not even the employer, money, as the employer has already unloaded all liability for pain & suffering.

NYS Workers Compensation doesn't even have any participating doctors in my county, so I have to drive 45-60 minutes one way to obtain medical care, routinely, based on the requirements to verify disablement. Meanwhile, out of pocket expenses for gas at over $.50/mile go unpaid for years if ever.

2.4.1.3 Loss of Social Security Contributions?

Claimant is on Social Security Disability, and is considered 100% life disabled for her 1993 injuries (*bilateral carpal tunnel*) alone. For the Federal Government to recognize life disablement for just one of the same injuries NYS WC refuses to see as even totally work disabling is inexplicable. NYS WC Law originally limited lifetime permanency benefits to Age 65, which has been deemed unconstitutional. However, they went further with the MTG's, and further lessened lifetime benefits to a maximum of 10 years. Injured Workers are already receiving reduced SSI benefits which will drastically affect their retirement due to their lost years of work, uncompensated under NYS Law (*along with other employment benefits other than wages*). Work disablement now comprises 20% of all current Social Security Recipients. The State of Montana, in Reesor v. Montana State Fund, 103 P.3d 1019 (Mont. 2004), already addressed this disparity in the termination of

benefits at Age 65 and found it unconstitutional. Exh. 16a Pages 5-6. Claimant, whose percentage of impairment was reduced to 66% will receive 3 years for 9 injuries. Permanency is only calculated for one injury, not the totality of all injuries like SSD; incidentally. Thus, the carrier and/or the Board can cause consequential injuries, and never have to pay for them. Plus the 60 day required hearing didn't take place for another 6 years. Exh. 37a,b. Where Claimant would have been entitled to scheduled losses for each of her 9 injuries, she was instead reduced not only to less than 100% disablement for all injuries, but only 50% loss of wage earning capacity, for a maximum of 300 weeks of benefits at $480.00 per week or $144K. Lost earnings up to 2015 alone were $525K, not to mention for the 27 years to retirement. In short, the Board has bargained away my suffering and my impoverishment, on top of eliminating pain & suffering damages.

Claimant's lifetime benefits to Age 65 were secured with her 1993 injuries, but in spite of this, a hearing judge ruled that Claimant's benefits would stop in a mere 3 years; even less than the 10 year maximum. So, Claimant has lost $75,000.00 per year for a minimum of 27 years to the age of retirement, and all Social Security Contributions (*which thus adversely lowers the money she lives on now*). This "*take-away*" was not advertised and again, benefits the employer (*or rather, the insurance carrier for the employer*). Exh. 65b It is noted, for this is not mentioned elsewhere, that WC decisions fail to properly articulate what exact evidence was utilized to come to this decision. No calculation has been provided despite repeated request. Hearing Decisions routinely fail to quantify what occurred at a hearing or what evidence was used in rendering a decision. Despite repeated request, Claimant's permanency is unexplained. The Board justified denial of surgery, years later, for example, based on an alleged failure by Claimant to attend an IME who was disqualified, though this was not reduced to writing on a hearing decision.

2.4.1.4 Loss of Employment Benefits?

NYCRvW set the tone for how Injured Workers would be treated, not unlike how poor people are treated when attempting to obtain access to social services for which there is a critical need. The same "*blindness*" by society to the deprivation caused by WC Law, supported by the "*Test of Time*" across 100 years, has allowed the State's administration of Exclusivity to create its own kind of due process, which includes denial of hearings, denial of the right to be heard, and a host of cushy State jobs where State workers, with no medical training, nor training in the MTG's are allowed to engage in random, unmonitored acts, like deleting critical surgical forms or denying hearings. Likewise, administrative law judges, similarly untrained, are literally allowed to play God with someone's life, including ignoring irrefutable evidence per the Board and Appellate Division. Thus if a Claimant produces evidence, it serves no purpose, for it can simply be ignored. This creates a breeding ground for corruption. Likewise, the Board Panel members are appointed by the Governor, and have little to no medical or legal training. Thus, if the tone is deny, deny, deny, then it becomes the norm to deny medical care as if the Injured Worker is being "*greedy*" by simply asking for it. Meanwhile the State Courts could not possibly be "*up*" on the constantly changing MTG's for they change too fast, and it takes years to secure an appeal. Training is minimal to non-existent. Regardless, the process is tone deaf to the needs of the disabled, urgent medical necessity, or the need to eat. Injured Workers are just numbers.

Injured Workers are deprived of their Substantive right to Personal Property Interests affected by the injury which results in the actual loss of employee benefits including (*in Claimant's case*), health insurance, SSI Contributions, and 401K (*with match*). These benefits were standard within Claimant's occupation, and were a large part of the compensation package. Claimant's inability to work stole her access to these benefits, supplied no doubt at group rates to the employer, which Claimant could never afford individually. Claimant's out of pocket medical costs alone comprise 1/3rd of her monthly Social Security check, sometimes more as Claimant has no prescription coverage and her health care coverage another 1/3rd. Claimant will lose 27 years of SSI Contributions, both on her own behalf, and those of her employer, and a 401K Pension Plan of 6% with a 3% match for the same period. Medical Benefits Claimant must maintain to cover medical treatment resulting from, or denied by, WC, will amount to more money than Claimant is receiving for lifetime disablement for 6 bilateral injuries. Exh. 46. Society gets to pick up the tab. How does Exclusivity thus serve the public interest?

2.4.1.5 Lack of Legal Representation?

Adversely restrictive fee schedules limiting access to proper legal representation and proper due diligence in representing the rights of Injured Workers, have already been deemed unconstitutional. [62] Exh. 16a Pages 12-14. In New York, legal fees come out of the Injured Workers settlement, if there is one. This means that complicated cases, such as Claimant's, whereby occupational diseases are present (*a disparate class of injury*), are prevented legal representation, as insurance carriers aggressively fight lifetime injury claims, where a "*cure*" is not possible, so WC claimant attorneys cherry pick the easier cases, and avoid representing Injured Workers with multiple layered injuries. Exh 43a.

Likewise, Injured Workers, by default, are disabled workers, who have no legal training, which, by law, cannot defend themselves (*again, the Board doesn't worry about the law*), and yet, are left no other option. As the Americans with Disabilities Act requires accommodation for those who are disabled, it should further follow that to expect injured disabled workers to fight multi-million dollar insurance carrier representatives, without an attorney or even with an underpaid under-motivated attorney, creates a substantial deprivation to a HEALTHY person, never mind a DISABLED one.

Then there is the cost of defending an action. [63-65] . Exh. 66b What are the Costs to the Injured Worker? Exh. 66e. If an accommodation can be made for criminals in this country, then why not for Injured Workers subjected to a giant State bureaucracy and an entire arm of the insurance industry, not to mention the procedural and financial due process requirements of access to the courts (*Appellate and Court of Appeals*)? The Appellate Division, despite Claimant's poverty status, refused to allow Claimant to proceed as an indigent, while the Court of Appeals refused to review based on lack of finality. The result is lack of access to the Court system both due to costs and denial of due process, stripped by Exclusivity, such that Negligence Law would be a surer result. The State leaves Injured Workers with no money with the full and certain knowledge that they then cannot defend a legal action. Exh. 42a / 42b This cannot logically be accidental.

2.4.1.6 Adverse Limitations on Pro Se Protection?

WC Attorneys aren't paid to defend their clients under Agency law, let alone to address constitutional violations. As Injured Workers can't control the rate of pay they also can't control the outcome. This results in an increasingly large number of Pro Se Claimants, who, due to no fault of their own, have fools for clients. WC Law prohibits, in writing, Injured Workers from representing themselves, per the Judiciary Act of 1789, and Section 24-1 of the WC Law, nor does the New York Constitution provide a right of self- representation in State Courts. Yet, this deprivation continues. This argument seems pointless however, as this Pro Se Claimant did not choose to be Pro Se, and neither would any Injured Worker. Under Duress, Injured Workers are forced to represent themselves for their right to be properly represented by competent attorneys is prevented due to improper fee schedules and lack of incentive thereof. *"The choice to appear pro se may not truly be a choice under such circumstances."* [66] In short, Claimant had no choice, despite sickness and pain, to fight for herself, for there was no one else to do it, and *"not to fight"* was not an option given the substantial, if not total, deprivations to which Claimant was and is subjected to, by the failure of the Board to follow their own laws, due to corruption overlay, and 25 Constitutional Violations embedded within the current version *(deteriorating every minute of every year)* of the NYS WC Law; as perpetually amended. [67-68]

Further, legal costs of the action (*not anticipated in the year 1917 via NY Central Railroad v. White*) are compensatory, can be quantified, and are clearly an actual cost in relation to the injury. Why shouldn't these costs be borne by the employer? Why are disabled, untrained, Pro Se Disabled Workers being expected to bare these costs, when these are actual costs to defend against the Paper Nightmare created by the State? In fact, Injured Workers have to pay for copies of their own evidence. In fact, why would any copy be necessary if the documents can be found in the Board file or could be filed on a flash drive? Exh. 66c How are we accommodating disabled people? The question is rhetorical, for we aren't. The State of New York, including the Appellate Division, is not allowing *"liberally construed pleadings"*. The Appellate Division won't even abide by their own written instructions, and has cost Claimant thousands of dollars in freight fees alone. [69] In fact, all levels of the hearing process and appeals process fail to provide clear, properly articulated instructions, even though the WC System is supposed to be a simple administrative process to access speedy and *"sure"* benefits, with minimal legal *"fight"*. I have a Master degree, but struggle to follow. How would a Blue Collar Worker negotiate such a system? Can they? No. Do they just quit? Yes. That's the point.

Given that there are over 12 new MTG's and Permanency Guidelines which have evolved since 2010, without training of the doctors, Board employees, judges, Board Panel Members or Injured Workers, it's not surprising that the Paper Nightmare would exist. Other courts have found judicial assistance undermines the impartial role of the judge in the adversary system, but in point of fact, WC was not supposed to be an adversarial system. Work related injury compensability is to be liberally construed to the benefit of the Injured Worker. [278 and 17] Indemnity, once established, should not cause delay in medical care, unless the State deliberately creates roadblocks. Judicial instruction or assistance is provided to prisoners in jail due to the *"deprivation which could occur"*. So, it thus follows denial of timely appropriate medical care resulting in loss

of income to eat must also be a serious deprivation, for the loss of the right to work prohibits the ability to support oneself, and thus adversely limits freedom and liberty. The Board has stated outright it is not their job to "help" Injured Workers. This flies in the face of the language, tone, and purpose deemed fundamental to the Constitutionality of Exclusivity under NY Central Railroad v. White as reviewed in 1917.

Further, if medical care can be denied based on form filing issues, the Board has a responsibility to "*train*" the allegedly participating doctors, given the severe compliance requirements put in place by the MTG, which if not perfect, prevent medical care altogether. The question must be asked, can the Board predicate the denial of medical care on the failure of a form to be filed completely when neither the Claimant nor the Board can legally compel the physician to obtain training? Can the serious medical deprivation which results based on a missing fax number in a fax box be rationalized in such a manner? And, what about protections afforded under the ADA? Should obviously disabled people be forced to use a government program which provides them no protection, when those damaged by any other means are not adversely limited their right of protection in that their legal fees are compensable? Why are disabled people being expected to take on this burden, when they are already substantially deprived of their liberties and freedoms? Why do the Board's outdated DOS files hold documents in an unprintable format? Again, is this accidental or deliberate by design?

Pro Se protection is further supposed to include access to legal materials and sources of proof. Yet, the NYS WC Board fails to make evidence accessible, requires Injured Workers to pay for copies, if they have online access to view their records, which are held in a black & green screen DOS non-inter-relational database, where items mislabeled will literally never be found again, for this would require going through thousands of individual documents, document by document. [70-71] Again, forget ADA accessibility.

The State of New York's failure to follow their own laws, which has denied Claimant protections which clearly existed, separate from the protections which fail to exist and should, allows the law to work like a "*sword*" rather than a "*shield*". [72] Injured Workers are treated like annoying termites, with disrespect and derision. This, in and of itself, creates enormous pain and suffering, for the people who should be helping Injured Workers won't. Endless communications with the Board go unanswered, or result in circuitous answers so you are right back where you started; and this IF they answer the phone.

2.4.1.7 Loss of Access to Freedom of Employment?

The Supreme Court has memorialized the right to contract.[73] Exclusivity, however, has taken away the worker's right to contract, via the denial of protections inherent to an agreement of employment, even when employment is at will, per the Federal Government, notwithstanding the protections created by the Occupational Safety & Health Administration requiring employers to maintain a safe workplace.

To state that the employee should have to beg for remuneration from injury caused by a negligent safety environment goes to the heart of what exclusivity was supposed to do; create a safeguard for Injured Workers, not an even more dangerous, paper laden War Zone, where every battery and band-aid becomes a political

football based simply on the cost to Big Business or the insurer. This does not safeguard the adequacy required by workers compensation exclusivity. The worker has a right to contract for employment, and if that right to work is taken away, the worker should be properly compensated for their actual compensatory damages, for the lifetime duration of the injury, whether or not the denial of additional punitive damages really provides a benefit to society (*which is unproven*). To take one, and then pick away at the other, while denying "*just compensation*" via a legal game of "*cat and mouse*" fails to serve the purpose of the law, let alone Society, but further begs the question, why? Workers must be free from unnecessary danger. To be constitutionally compromised as a consequence is adversarial, and serves no public purpose, while creating devastation for the Disabled.

2.4.1.8 Loss of Common Law Tort?

A cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." [74] And yet, a law written in 1917 took away that right, before the right to sue was protected and understood to be a substantive liberty interest, not under control of the State, and before this worker was even born or thus would be directly affected.

When a plaintiff has an accrued cause of action based on established common law doctrines, courts are likely to find a property interest; as they should. Had negligence tort common law been sufficiently evolved in 1917, as a legitimate cause of action, "*in tooth*", perhaps a better system than exclusivity would have formed.

On a WC basis, the denial of a lack of remedy has been deemed unconstitutional in Florida and Oregon.[75] However, as the right to sue hasn't been explored in 100 years, it would be impossible to adequately represent the interests of both parties by simply presuming that the State would "*adequately*" look out for the interests of the Injured Worker; for time has proven, they haven't, either in New York or elsewhere. In fact, the entire construct has been a bludgeoning tool on an already disadvantaged class of Disabled individuals which blatantly violates 21st Century Protections like the ADA and the ADAA.

What is the loss of a right to sue? Exhibit 66f. It is the injury to the owner that makes something a taking, and thus determines the measure of just compensation. [76]

But Petitioner's rights were violated not only by the adverse limitation on her right to sue, but on the adverse limitation on adequate reimbursement (*her actual losses*), not to mention what her earnings would have been worth in the future, had her right to work not been stolen from her. She has lost more than her job; she has lost her health, for the opportunity to mitigate the damage, via the provision of access to tools of recovery, was taken under the guise of being beneficial to Society, when an inability to contribute to Society, and/or protect oneself, is paramount. Petitioner has lost her Personal Property Right Interest in herself, due to no fault of her own. There is nothing more sacred.

2.4.1.9 Denial of Review of Corruption and Constitutional Claims?

Claimant believes there is Racketeering and Collusion between Board Members, employees, insurers, legal representatives, and IME's, identical to a case in Michigan, whereby the implicit act of individual parties to the "*scheme*", cannot make sense unless they are part of a large racketeering enterprise. [77-78] Exh.16a, pages 14-16. How has Corruption damaged Claimant's Personal Property Right access to benefits & services under NYS WC Law? Exh's 67-73, 86-89

Legal scholars have stated that there is a Personal Property deprivation which occurs, known as a "*demoralization cost*", based on the psychological harm caused by losses uncompensated by purely objective measures, including the loss of the opportunity for a "*day in court*", or to express one's "*voice*", integral to notions of procedural justice. [79-80] They have further noted the close relationship between lawsuits and personal dignity and integrity, within the context of Margaret Radin's "*Property as Personhood Theory*". [81-82]

Under WC law, plaintiff's, in being denied a tort action, are deprived of an opportunity to restore personal dignity and integrity. To place a value on such intangibles may be difficult, but goes to the heart of "*just compensation*" for the State is victimizing the Injured Worker, when they are Disabled and at their most vulnerable. Claimant has literally begged for help, in abject frustration and fear, as one symptom at a time took over her life. In failing to thoroughly and properly investigate fraud, failing to give Claimant any credence despite specific evidence provided, the State did psychological harm to Claimant. For the anger of being forgotten, overlooked, and diminished, by the State sworn to protect her violates freedoms so basic they are primal. Exh. 87 Pages 12-15 – Corruption CD contents

2.4.1.10 Right to an Impartial Hearing / To Be Heard at a Meaningful Time in a Meaningful Manner?

Per Goldberg v. Kelly, we know there must be an evidentiary hearing before an impartial decision maker including the right to confront and cross-examine witnesses before a recipient can be deprived of critical benefits. [26,28,31] There must result from this evidentiary hearing a written statement setting out the evidence relied upon and the legal basis for the decision. When the State enacted the first of many MTG's, creating adversarial Procedural Due Process limitations, while preventing Injured Workers from the proper evidentiary hearing, a Substantive Due Process violation occurred. [83]

To take away access to medical benefits or lost income retroactively solely based on "*cost*" when the same were compensable under the Exclusivity of WC Law at the time of the injury, was deemed unconstitutional. Exh. 16a, Const. Impl. for OH, OR, FL, Pages 3, 8-10, 16-19. [84] However, this is all the more egregious when benefits are cut and hearings are denied, delayed or deflected, evidence is blatantly ignored, the Board Panel renders decisions on issues which haven't been appealed or were decided without a hearing, and then refuses to issue decisions on items at Claimant's request, denying her the right to be heard altogether. Hearing decisions don't articulate the evidence used, fail to document hearing results, or refuse to acknowledge evidence altogether. Exh. 42a, 65-66. Under Workers Compensation, what Due Process is Adequate? Exh. 89a.

The Supreme Court has already determined what was adequate in American Manufacturers v. Sullivan, in that the State of Pennsylvania did not make medical decisions and did provide due process review of medical denials.[85-89] However, in New York, the State does make medical decisions directly, and fails to provide due process review. American Manufacturers v. Sullivan, for the most part, determined Pennsylvania's WC Law provided proper due process, where Injured Workers were allowed all of the rights denied above, and more. Exh. 90 The opposite exists in NY. Exh's 91-92a. Thus a standard was created.

For the Supreme Court to believe that privatization breaks the chain, were that to exist in this situation, then the Supreme Court would also need to believe that the need for State oversight no longer exists, and can thus be "*given away*", for if the State is not the Protector, then they must also have determined that the need for protection no longer exists, since they held this fiduciary responsibility under "*Exclusivity*", which also means that the State has either created the danger by relinquishing significant deprivation rights to private actors, and/or that the WC law need not exist at all for the "*danger*" no longer exists to Society.

To say that WC leaves the choice to challenge a decision to the judgment of the insurers, and thus relieves the State for they did not make the choice, is tantamount to expecting the Fox to attack the Chicken Coop just because it can, and for the Farmer to let the Fox be a Fox because it was the Fox's choice, not his. The challenging of a decision is not the questionable part of the scheme. The lack of due process protection put forth by the State to begin with, which creates an environment Disabled Workers are required to use, thus preventing all manner of other recovery, is the questionable part of the scheme. We expect the Fox to be a Fox, but we also expect the Farmer to be the Farmer, not to give the Fox the Chickens by holding the door to the Chicken Coop wide open.

NY WC Law has adversely restricted access to medical care based on a bureaucratic Paper Nightmare, which presumes not only adequate participation by a treating medical provider, not enjoined to the State, but presumes they will comply with constantly changing, adversely restrictive MTG's in order to effectively request medical care which is adversely denied under the cloak of "*unreasonableness*" which is code word for "*cost*", the denial of which prevents Disabled Workers from the very benefits & services guaranteed for compensable injuries by law. As the State has failed to train either the Disabled Worker, nor the Treating Medical Providers, nor their staff, unconscionable damage, pain & suffering result.

Without the premise of the MTG, the insurer wouldn't have grounds to deny medical care, for the medical provider list is made up of independent medical providers (*unlike the carriers IME's*) who have no vested interest in requesting one type of medical care over another; as they won't be appropriately paid for either, as the State has not secured their interests and is clearly in bed with the insurers, and has been for the last 8 years; with literally no one watching the Chicken Coop.

The Board's failure to enforce the law, while failing to provide due process review, and ignoring critical guarantees put in place to protect Injured Workers allowed the carriers to literally invade the Chicken Coop with impunity.

2.4.1.11 Fifth Amendment – Just Compensation for the Taking?

In addition to the 25 other Substantive and Procedural Due Process violations against Injured Workers embedded in NYS Workers Compensation Law, the law itself, both as it was constructed in 1917, and now in 2018, violates the constitutional rights of the individual by failing to adequately compensate them for the "TAKING" of their right to the full gamut of legal remedies, allegedly in exchange for speedy and adequate access to benefits & services, in a manner which is supposed to be far superior to the normal tort continuum; when in fact, it's much worse, for tort law would provide independent review of medical care, whereby NYS WC Law does not. [90-91]

The "*Just Compensation*" Clause of the Constitution passed in 1917, had never been applied to "*TAKINGS*" other than physical property. Perhaps this is because there is no other legal construct, with the exception of Exclusivity, that deprives an individual of liberties so fundamental, and so intrinsic to their person, as their ability to defend themselves, and/or to mitigate damages to their person, in order to preserve their personal freedoms, ability to work, and freedom of choice, as this mixed conglomerate of medical and financial deprivation that is Exclusivity. For this "*package*", by its very nature, combines the total personhood, in a manner which creates a Substantial Erroneous Deprivation, but yet continues despite a 21st Century World that increasingly interprets the Personal Freedoms of the Individual to be Inalienable, and protected by a higher power than just "*cost*". [81]

Exclusivity, further, goes unchallenged, even though the Taking is a continuing and/or continuous one. The Taking is disregarded via the denial of "*Personhood*"; i.e. choosing to ignore the inalienability of personal rights by decreeing that the "*individual is not injured*" by the Taking, when in fact, such has never been determined on behalf of the individual, and was not "*foreseen*" by the language of the act in 1917 to forever exclude the individuals' right of protection. Has the State engaged in a Taking? Exh. 91a.

In 2017, the "*Personhood*" of lost Employment Benefits, clearly "*seen*" as reflected in the impoverishment of Injured Workers, as a specific class of Disabled people, across a time continuum ("*Test of Time*"), is also ignored, despite the clearly erroneous deprivation which occurs due to the Deliberate Indifference of the State body sworn to protect those who are injured. [277, 92] Exh's 71 and 21.

Are intangibles like the loss of future employment benefits a taking? In Kimball Laundry Co., v. United States, the U.S. Supreme Court held that where the government had entirely appropriated a business to use itself, albeit temporarily, just compensation had to include the value of less tangible factors, such as the loss of autonomy. [93] Recent reforms warrant and include the consideration of tangible, non-economic, consequential, and other non-FMV costs.

With every MTG passed by the State of New York an additional Taking occurs.[138] Exh. 49

However, under WC Law, to find a Taking would require the Court to "*see*" that the injury occurred when the right to sue was taken, whether or not the injury had yet occurred. "*Unimpaired plaintiffs retain ownership of their causes of action and the benefits to be derived from them.*" [138 at Page 294] This comports with the prospective/retrospective distinction, noting that once a lawsuit or claim is filed, subsequent action by the sovereign interferes not with possible rights that might accrue in future, but with existing expectations and rights that have accrued, or vested, previously which constitute a property interest. [229 at Pages 138-140] To reduce benefits prospectively is to interfere with a legitimate claim of entitlement of a vested right which accrued at the time of the retrospective vested "*taking*", and is thus an ADDITIONAL taking which deserves legal review.[272]

2.4.1.12 In Relation to serious deprivations of long term income and earning potential?

NYS WC Law, as amended, has perpetually reduced access to lifetime damages via continuous restriction of Permanency Percentages. The Constitutionality of limiting lifetime injuries to less than lifetime awards (*either age 65, or to New York's 10 year maximum duration*) has already been successfully challenged. [94] Exh. 16a Page 5 and 43a. Likewise, adversely limiting the weekly wage to $500.00 rather than the Injured Worker's actual lost wages (*in Claimant's case, $1442.00*) per week creates a substantial deprivation to educated workers, vs. perhaps blue collar workers, as some will be able to retrieve their entire lost income, while others, such as Claimant, are adversely restricted, before their injury even occurs. Likewise, the $500.00 figure is arbitrary and unreasonable, less than poverty level, and Claimant has been prevented even that, for the Judge on her case cut her percentage of impairment by 50% claiming only a 50% loss of wage earning capacity due to education Claimant can never use again. Cut, Cut, Cut..... I am somehow 75% disabled but only 50% wage disabled. I was 50% disabled from 1993, so how can I be no more wage disabled than I was then with 7 new injuries?

Arbitrary limitations such as these, which aberrate the intention of NYCRvW, are difficult to justify. There is no societal need to adversely limit an Injured Worker's actual damages, after already stripping them of punitive damages, for if this be the case, then one might as well shoot them at dawn and put them out of their misery. As insurance covers the employer, this creates little hardship for the employer, but drastically affects the Injured Worker. Such anomalies lead to Substantive Due Process violations. *Substantive Due Process* is the notion that *due process* not only protects certain legal procedures, but also protects certain *rights* unrelated to procedure.[95-96]

The loss of the right to work, including the "*useful knowledge*" incorporated in years of specialized education, is a denial of a liberty interest; in perpetuity, to which real compensation (*with or without expected increases in income which would occur via promotion, etc.*) should not be denied, for this is an actual damage. Has Claimant been deprived of substantial income and earning potential? Exh. 91b

Substantive loss is a loss that no one can measure for you, for my freedom is not the same as someone else's freedom.[97] That being said, Claimant is not a Class of One. She is a member of a very specific group of work injured Disabled people, adversely discriminated against by a law which provides her no opportunity to

defend herself, fails to look out for her interests, and continues to take with impunity, for there is no Farmer watching the Chicken Coop, and the door has been left wide open. [98-102]

The denial of actual damages, plus punitive damages, is inadequate on an equal protection basis in a 21st Century legal world. Moreover, the original law specifically refuted this "*reduction*", thus challenging the imbalanced Compensation Bargain which exists today. Today's adverse weekly wage, duration of loss classifications, and MTG's are obviously inadequate and unreasonable, for all Injured Workers, resulting in significant Societal Woe. Thus, the question of whether or not a Taking has occurred now becomes obvious, for the safeties in the original law are gone, and safeties which are appropriate in a modern world are adversely withheld. The government is wielding an enormous power over a particular sub-set of the disabled.

2.4.1.13 Failure to Notify the Public?

Should a Regulatory Personal Property Right "Taking" be Publicized? [103-105] Exh. 91c

2.4.1.14 Liberty – Freedom?

Does Exclusivity take away an individual's "Personhood"? [106-116] Exh. 91d

Justice Brennan concluded that even a temporary deprivation of one's welfare benefits is sufficiently serious to require an evidentiary hearing before termination. In comparison, Claimant's benefits by injury, were deprived for years, despite all proper paperwork filed, yet denied review pursuant to the very protections in the MTG's, which were constantly ignored, and denied accessibility. Thus, no money to eat, and no medical care to obtain recovery. No wages in 7 days per the pretty little brochure. No lifetime medical care for established injuries. No timely establishment of injuries, or speedy access. Even permanency took years longer than 60 days.

The State of New York, with full knowledge of the "*bundle of sticks*" Personal Property Right interests that the individual had been granted, fully protects its own State government workers with full WC lost income and lost benefits, but meanwhile fails to protect, under Equal Protection guidelines, workers in the State who are employed in private industry, maintaining these "*entitlements*" to themselves. [114]

The State of New York promised "*definite and easily ascertained compensation*". Still waiting for that. But, from a Substantive Due Process standpoint, NYCRvW defined a statutory basic need, and even premised this on the need for WC Law to begin with. So, to now claim they can withhold this basic need, so allegedly vital to the State to protect in order to avoid "*pauperism, with its concomitants of vice and crime*", is unreasonable, particularly when all other legal recourse is adversely prevented, and the State's system guarantees impoverishment; by default. Yet, the State fully protects its own workers.

2.4.1.15 Eighth Amendment – Cruel & Unusual Punishment?

The State cannot punish an individual without due process of law. [117] The Court seemed to feel that this only applied to prisoners in jail. However, WC Law, in Exclusivity, via the use of a closed medical system, and via improperly administered Procedural Due Process review, holds Claimant hostage in a manner which is no different than jail, and the cruel & unusual punishment of withholding medical care (*thus impugning Bodily Integrity*) from an individual who needs it, who further is legally prohibited from getting it anywhere else. This certainly qualifies as cruel and unusual punishment, and if not a physical jail, creates a "*virtual jail*".[118] How does the State of NY WC Program subject Injured Workers to Cruel & Unusual Punishment? Exh. 91e.

2.4.1.16 Resulting in a State Created Danger a/k/a Snake Pit Scenario?

How did the State Created Danger occur? [203] Exh. 91f-91g

The State of New York failed to follow its own procedural guidelines (*denial of hearings, inadequate hearings, or untimely hearings*) and/or developed MTG's which failed to provide access to reasonable medical care for any and all injuries, further predicated by a lack of participating providers. This led to unconscionable deprivation of access to critical medical care, resulting in total disablement where none should exist, both due to a lack of training on the part of Board Personnel, but also of Injured Workers and their Treating Providers (*adversely limited by a deficient fee schedule*), and by internal corruption which the Board denied and/or failed to investigate. Thus foreseeable harm occurred to which the Board responded with Deliberate Indifference despite multiple notifications of medical necessity. Plaintiff is a member of a discrete class of victims, i.e. Injured Workers, subject to foreseeable harm due to the combined Constitutional Violations, Corruption, and resultant State Created Danger that is WC law.

The State's failure to contractually protect the rights of the Injured Worker, via the Compensation Bargain, alleged to provide a compelling public interest, "*speedy*" and "*adequate*" reimbursement for the "*TAKING*", and access to critical medical care for this purpose (*guaranteed in multiple areas of the New York State Constitution*), results in a State Created Danger otherwise known as the Snake Pit. Exh's 48, 85-89, 93, 94-101. Per Justice Posner, "*If the State puts a man in a position of danger from private persons and then fails to protect him, it is as much an active tortfeasor as if it had thrown him into a snake pit.*" [273] Under the MTG's, it was the WC Judge's responsibility to manage the timeliness of the expedited hearing. (See Exh Pages 770-773) His deliberate oversight took away Petitioner's personal freedoms and liberties ongoing, to contract, work, prosper, live, and to be free, not only within her person and the sum total of a lifetime of education and experience in her craft, but also via the loss of her personal investment in education, a productive future, the right to be properly compensated for her loss, and to be provided access to medical care guaranteed in the interests of public welfare. Claimant wasn't just denied some medical care; Claimant was denied all medical care. Claimant has not obtained any medical care (*other than drugs via pain management*) for 8 years. Claimant repeatedly notified the NYS WC Board that medical damage was resulting, that inoperability would result, that they were placing her in a dangerous medical situation, and preventing access to timely medical care. [193-199] The emotional, physical, and financial damage cannot be measured, but deserves some type of financial

quantification. How do you speak to an oppressive, unmonitored, disingenuous State Government in a language they will understand?

In short, with the help of the State, the guidelines were used by insurers as a weapon, categorically denying all medical care for an approved injury; thus avoiding indemnity altogether. Reimbursements for out of pocket medical expenses, for example, have no statutory timeframe for payment. Thus, Petitioner has thousands of dollars in unpaid out of pocket expenses for compensable injuries, but could not get a judgment from the Board, the Appellate Div. or Court of Appeals to enjoin the carriers to pay what they legally owed. Exh's 92A

A surgical request is obviously time sensitive, the denial of which had foreseeable consequences. By all accounts, the Judge is the Board contact. In order to ascertain who is a policymaker, "*a court must determine which official has final, unreviewable discretion to make a decision or take action.*"[200]

The State must protect those it throws into Snake Pits. The State of New York effectively "*holds custody*" over Claimant under the concept of Exclusivity, in a virtual jail, whereby violations of Due Process, Equal Protection, Regulatory Takings and Exclusivity prevent Injured Workers from having any hope of waging a defense against the impoverishment which results. The entire process ignores the adverse limitations already placed on Disabled people, damaging, not protecting them. Exh's 21-24, 41, 46-73, 78, 83-101 De Shaney explicitly left open other possible constitutional avenues for attacking a state's failure to provide protection. The Court recognized that state law may create an "*entitlement*" to particular services protected by the Due Process Clause. [201-203] Those courts which have recognized the State-Created Danger theory have employed a Deliberate Indifference standard. Clearly the Judge and Claims Examiner, in deleting evidence, denying hearings, and/or preventing proper due process performance in the hearings, engaged in collusion, for there is Deliberate Indifference to the significant Bodily Harm which would obviously result when someone can't get surgery or lost income timely. With or without training, this would reasonably be *"known"*. Exh. 62 &93 (Judge Paul Georger & Claims Examiner Eileen Hryckowian).

2.4.2 On a Procedural Due Process basis: Exh. 93a

The absence of a Substantive right means there is NO circumstance under which the individual can compel a different outcome. To be removed of the right to speak at your own hearing, or to present a case, does in fact, create a hearing process that is a needless formality. [119-122] Exh's 64-66. In Claimant's case, the Procedural Due Process rules, which only require the agency to hold a hearing, not to insure the Injured Workers right to be heard at a meaningful time in a meaningful manner, with proper training and/or legal instruction or representation provided, led to an inherent inability to compel a different outcome. And this presuming that a hearing wasn't adversely delayed or denied for months or years to begin with.

The State WC's system, via the development of the "*Paper Nightmare*" overtly and covertly creates the opportunity for extensive delay capability, places an inordinate amount of power into the hands of the

insurers, further reviewed for medical "*reasonableness*", not by doctors, but by a non-medically trained hearing judge, allowing the Judge to liberally ignore objective evidence, with no impunity, creating the opportunity for collusion & fraud. Exh's 85-89 Under WC Law, the Judge can ignore perfectly credible evidence, including irrefutable medical X-rays or MRI's. He can just decide in his untrained medical wisdom that objective evidence is not credible, even if his reasons for doing so are unethical and corrupt.

In Mathews v. Eldridge, criteria were put in place by which government administration to a property right would be reviewed. [123-127, 13] The Board's Substantive Due Process violations extend not only to Medical Care, but also to denial of Lost Wages, timely received, to eat. Claimant was denied weekly wages for 8 years, and has obtained no medical care, for old or new injuries, in 8 years. As the "*interest*" prongs of the Mathews test suggest, the amount of due process hinges first on the private interest at stake. Exh's 21-25, 48, 56-58, 60-63. The Judge's actions were far from impartial.[128] NYS WC utilizes extremely loose procedures and policies, for the right to Bodily Integrity includes access to timely critical medical care, but has not been deemed worthy of more competent Substantive or Procedural Due Process judicial review. [129] This is ironic, as the right to REFUSE medical treatment is considered one of the un-enumerated rights that are "*implicit in the concept of ordered Liberty.*", but apparently the right to CHOOSE from appropriate options, or GET the medical care TIMELY isn't yet codified. [130-134] Per the Appellate Division, any doctor, even one doctor, is enough choice.

This exact same scenario occurred in relation to multiple consequential injuries deemed denied by the Board Panel, but the Board failed to provide Claimant the opportunity to present her evidence, notwithstanding the lack of a hearing altogether for that purpose for 6 consequential injuries. Exh. 92

Claimant was denied reimbursement for thousands of dollars per carrier, based on false claims that the consequential injuries were not covered, when the Board stated they were covered, and yet Claimant never got reimbursed nor did the Board order reimbursement. Exh. 92a Later the Board changes its mind; just like that. No hearing. No evidence. Just raw, unadulterated, collusive, corruptive Power.

Claimant notes two (2) kinds of due process violations. The first is the deprivation of her Personal Property Right interest in benefits guaranteed via the indemnity and exclusivity of WC Law, and the second is the "*TAKING*" of her Personal Property Rights without "*just compensation*". [135-137]

Claimant believes 20th century constitutional misconceptions such as these are fundamental to the "*abomination of exclusivity*", for in 1917, the legal premise of the day was that the personal property due process rights of the individual could be taken, and were not "*inalienable*" as Constitutional protections are today. Thus, workers not yet injured had "*not yet lost*". Under this premise, exclusivity took from Claimant before she was born. Thus her freedom of contract and liberty was diminished in a manner which violated the very equal protections of her birth. [138-139] Certain legal claims are inalienable. Claimant's damage has resulted prospectively and retroactively.

2.4.2.1 Via Failure to Train? Exh. 93b

The NYS WC Board has passed over 12 modifications to their increasingly restrictive MTG's. In each case, complete bedlam resulted, for hundreds of thousands of Injured Workers couldn't obtain timely medical care which logically results in some unnecessary permanent impairment due to the lack of timely access. The Paper Nightmare created by the State put Injured Workers' health and welfare, in fact their total viability, in the hands of medically untrained, legally untrained, Board employees, who suddenly had the power to delete requests for critical surgery, to turn back critical requests based on frivolous claims of missing information or the need for more information, when treating medical providers for injured workers could not physically stuff 20 years of history of a WC injury into a 1 inch size 8 font box as was unreasonably required. In short, a whole bunch of bullshit came raining down, due to the failure to properly vet the MTG's pursuant to the recommendations of actual doctors, as opposed to compromised Board employees. This resulted in the need for hundreds of immediate, expedited hearings, for which there simply were not enough hearing locations, or hours in the day, to satisfy. By June, 2011, when surgery was requested, the entire system was in meltdown.

Thus, a Substantive Due Process situation evolved, for this worker, and all Injured Workers. The Board's failure to properly "*think through*" their own MTG's nor to train their workers, let alone Injured Workers, their Legal Representatives, or their Treating Medical Providers, made it impossible to comply for injuries were mis-identified, such as Claimant's TOS, or falling within multiple MTG's, and were thus illogical and circuitous. The Board was consistently notified of ongoing deprivation, which began in or around July, 2011 with notifications of medical necessity from Claimant's physicians. Thereafter, the Board's failure to review their failures in relation to training, supervision, or corruption reflected their Deliberate Indifference to the plight of the Injured Workers under their command. [140] Exh's 59-64, 71 and 21. The Inspector General was notified of corruption 128 times. [141] Exh. 86 (Catherine Leahy Scott)

The failure of the NYS WC Board to train their personnel, the Board's list of treating medical providers, and the Injured Workers themselves, despite clear need in order to administer a closed medical system with very specific protocols established by the State itself, resulted in arbitrary and unreasonable denials of medical care, predicated on the insurance carrier's bad faith denials, the failure of which to either correct or mitigate on behalf of the Board, resulted in Deliberate Indifference to medical need. Any other explanation would result in the obvious conclusion that the judge and claims examiner in question (*who engaged in corruption, but were "exonerated" allegedly by an investigation*), engaged in a culpable act. [142] Exh's. 59-64, 71, 21 This, combined with inherently flawed medical policies resulted in a complete breakdown of accessibility for any medical condition; let alone "*any and all injuries*". [143-144] The Second Circuit agreed with its sister circuits that a municipality may be liable even if individual officers are not liable, so long as the injuries complained of are not attributable solely to the actions of named individual defendants. [145]

It is inconceivable that a State Agency can be declared blameless for "*merely*" being negligent, for then the State can live in a world of apathy; utterly immune to the needs of their constituents, let alone the laws of common sense. [146] The Board knew of the collusive acts of its employees and did nothing.

New York's WC Program is an entitlement program, because the law requires employers to provide reimbursement to Injured Workers via a complex, and ever changing array of statutes and procedural requirements, for damages sustained in the loss of employment due to no fault of their own, guaranteeing access and the right to be heard by an administrative agency designed for this purpose, further including, at least on paper, a proper right of medical review by trained employees; all of which is premised on the public health and welfare. Procedural violations result when access to benefits & services are adversely withheld due to the failure of the State to properly design, via consultation with medical and legal professionals, a system which effectively does what it is supposed to do, coupled with Procedural Due Process violations and corruption.

2.4.2.2 Via Failure to Establish Indemnity via allegations of Pre-Existing Medical Conditions?

Both the Affordable Care Act (ACA) and constitutional challenges articulate that pre-existing medical conditions cannot be used to avoid indemnity. [147] Exh. 16 Pages 26-27.

Yet, Claimant was denied access to timely medical review for her primary injuries and her consequential conditions (*Neck Kyphosis, Fibromyalgia, Intractable Migraine, Sleep Disorder (the real one, and the imagined one), Myofascial Pain Syndrome, Double Crush Syndrome*). Not one of these consequential conditions received a hearing. Eventually 2 of them were established by default (2016), years after they originated. In the interim, the carriers refused to provide medical care, and medical care denied did not receive a hearing, as was required by law. Claimant did not get to present evidence, rebuttal, testimony, or anything else. Why did this occur? Because the carrier deflected and delayed by eluding, without a shred of evidence, to hidden pre-existing medical conditions, and the Judge bought it; hook, line, and sinker. On this hearsay basis, the Judge ordered Claimant to sign HIPAA authorizations, wide open, under DURESS, or access to WC benefits & services would be withheld.

Claimant was 40 years old when this claim began, and had no pre-existing injuries other than her 1993 WC injuries. Claimant could dispute pre-existing injuries, if she had been granted the right to call witnesses or hold a hearing, which was known to the carriers, and is exactly why they conspired to avoid a hearing altogether. So, again, there is no continuous review which supports the Court of Appeals denial of finality, for denial of the right to be timely heard erases continuous review. Exh's 92 and 32. The Judge was complicit as the law specifically stipulates the timeframes required and the rights of the Injured Worker, which are not followed, but nonetheless, must be known to the "trained" Judge, who is trusted with the autonomy to ignore evidence.

2.4.2.3 Denial of Timely Permanency? Exhibit 93c

Another aspect of Procedural Due Process which has been challenged for Constitutionality, is the denial of Timely Permanency. Claimant's physicians filed permanency in 2010 and 2011 respectively. Exh's 29 and 31 Yet, a permanency hearing was not obtained until 2015. Further, for that hearing, the carriers were twice given the opportunity to obtain a permanency IME, which both carriers failed to do. Ultimately, years later, an IME was retained who held no specialization in any of the injuries. Despite this violation of statute, the Judge refused to disqualify the IME. Then again, 3 critical documents disappeared from "*evidence*" after being hand delivered to the Judge for this hearing. Given the previous corruption, it's not surprising the Judge, in his "*discretionary*" capacity, ruled for the carriers, even though the IME's testimony contradicted his own written IME reports, and instead alluded to mental illness and hypochondria. Exh's 34, 36, and 25.

2.4.2.4 In Relation to Denial of Medical Care? Exh. 93d

Surgery is adversely denied based on arguments over 2 separate MTG's when the 7 surgical codes were not able to be authorized based on the adverse "splitting" of MTG's for TOS. Exh's 21-22b Neither carrier, nor the Judge could agree on which guideline to use (*deliberately*). Meanwhile, the Medical Directors Office opinion, given they employ no medical specialists, was open to the highest bidder. Exh's 23-24 Thus, they said first one guideline applied, then another, when based on the system created by the Board, and unvetted as per the Legislative Sessions which follow, Exh 44 required both MTG's. Corruption will result, as the expedited hearing required by law is never scheduled, even though neither insurance carriers obtains an IME as required to dispute the surgery. Ultimately, Claimant becomes inoperable after begging for help. Exh's 25, 59-64, 66d, 67-75. The U.S. Supreme Court has identified specific areas where the government would have a duty to provide protection in relation to government services.[148-149]

The Board was repeatedly notified of Medical Necessity but with Deliberate Indifference, refused to respond to the plight they created. The Board didn't just fail to act at the hearing level, but at the Board Panel level, and again at the Appellate Division level; for the construct of the MTG's was deemed more important than the medical need itself. The Medical Reasonableness of Denial was never reviewed. Such delay in providing access to medical care qualifies as cruel and unusual for prison inmates due to their inability to obtain medical care by any other manner. The same is true for WC claimants, who are held hostage by a State Agency review of denial which is not timely via State actors who are untrained. [150] Clearly Claimant is bound to the State's limitation of legal rights in exclusivity which thus makes the State the sole medical protectors of an Injured Workers right of recovery; i.e. *"a virtual jail"*. [151]

Standard Medical Care was routinely denied, not just surgery. In transferring the IME review process from independent Board examiners to the carriers cherry picked IME's, who were clearly not impartial (*even receiving leading instructions from the carriers on the form requests sent to retain the IME, but withheld from the Board and Claimant, again, in violation of statute*), the State took a routine medical review process, and created an Adversarial Nightmare. While statutes require the insurance carrier to utilize an IME who holds medical specialization in the injury, this has never happened on Claimant's claim. Claimant has never had an insurance carrier IME approve treatment in 10 years for 9 injuries.[152-153] Exh. 93 Meanwhile, IME

regulations are routinely ignored, such that IME's are selected who hold no specialization in the injury (*as for Claimant's permanency hearing*), and yet are somehow found more credible by a Judge who is supposed to disqualify the IME by law. Exh. 41

However, this alone would not have caused the damage, unless the carriers counted on the complicity of the Judge, for they never bothered to comply with the procedural requirements. The damage occurred when the Judge failed to adhere to the letter of the law in throwing out the carriers bad faith denials without supporting IME reasons for denial, as the carriers failed to get an IME, properly trained in the specialty, timely, and thus had lost their right to dispute the medical care under the MTG's. The Judge assisted the State Actors. The State of New York is responsible for the damage created by either the incompetence or collusion which occurred, both of which were reported, and failed to be adequately investigated. [154-157]

The nine decisions incorporated in this appeal generate from 2013-2015. And, not a single medical request requiring a variance was authorized, all of which were reasonable and requested by the State's own "*approved*' medical providers. Claimant was left paying medical bills which stemmed from workplace injuries, and has not received any medical care, other than pain management, which is also threatened, in 8 years, which is clearly egregious. In point of fact, she never will. [158-162]

A Paper Nightmare was put in place which failed to properly allow for the inclusion of the very medical evidence that the Board now stated was required, for the Board's variance form couldn't possibly provide rebuttal for arguments not yet made, while simultaneously preventing treating providers from testifying; yet, per the Judge, the form had to stand on its own, the doctor could not testify, nor rebuttal be provided. Thus, the carriers IME has tremendous power, for the carrier can call witnesses, where Injured Workers cannot. Despite years of appeals, to this day, the Courts have failed to address why the surgery was unnecessary or excessive, let alone why Claimant was held to a standard which the insurance companies weren't.

The Mathews court was not convinced that reasonable and necessary medical review, if adversely withheld, meant that "*any governmental interest outweighs the private interest*".[163-164] Flagg Bros., Inc. v. Brooks, noted that simply putting in place the "*challenged statute does not delegate to the storage company an exclusive prerogative of the sovereign.*", for other remedies for the settlement of disputes between debtors and creditors remain available to the parties. [165] The Supreme Court referenced Blum and Jackson."[166-169] This does not apply in New York. The Board is directly responsible for everything from authorization of medical care, to review of payments, yet fail to expedite or monitor.

I cannot get my quality of life back now, nor my self-reliance or freedom. Denial of medical care at a reasonable time in a reasonable manner falls within a much tighter time constraint than due process. The idea that an administrative agency that employs no doctors, and administrative judges with no medical training, and no independent medical professionals, and no independent medical review, staffed by political appointees who are friends of the Governor, has the right to tell me I'm not good enough to be fixed, not broke enough to be broken, nor strong enough to deserve the right to fight, strongly misunderstands my Constitutional rights, under both State and Federal Law. For the State has created a medical system in isolation, without the

humanity which would be afforded in any other type of health system. Even prisoners in jail have more rights than Claimant. For without the right to defend myself, no matter what the excuse for the taking, I am not free; not by a long shot, with or without a jail cell. A virtual jail is actually more onerous, for you can't see the bars, let alone determine where the door is to find your way out, without legal instruction.

2.4.2.5 In Relation to Denial of Lost Income?

How did Claimant lose over $2 Million Dollars in Lost Income? [170-173] Exh. 93e

2.4.3 Is Workers Compensation Law a Regulatory Taking, adversely restricting access to actual and adequate compensation for damages sustained under the act, in addition to pain & suffering? Exh. 93f

NYS WC Law has gone way beyond its boundaries, taking access to benefits & services away from Disabled Workers in an egregious manner, without Just Compensation, as required by the New York Constitution, Article 1 Section 7. The State, who should have staunchly defended the remaining rights of the Disabled has instead become the largest "*taker*". The pretextual statements eluding to a Public Benefit, made in 1917, cannot sustain scrutiny today, for the "*heady weight of presumption*" used to justify the "*Taking*" of public benefits does not satisfy the Public Use Clause, whereby the "*Taking's*" actual purpose conveys a public benefit upon a private party; not even remotely for the benefit of Society. [174-177] Is the goal of exclusivity legitimate, and are the means of achieving it rational?

The NYS WC Law is the functional equivalent of a direct appropriation, for once you are "*in the system*", it is impossible to get out, all manner of self-protection is lost, retroactively and prospectively, in a manner which disproportionately affects a certain type of Injured Worker, but not all Injured Workers, and further creates disparity between one type of injury and another, simply to cut costs for "*employers*", which today, is really the Big Business Interests of the Insurance Industry. Exh's 10-15

The Supreme Court found in Eastern that statutes which impose severe retroactive liability have acted unreasonably,[1] thus affecting the economic impact of a specific group of individuals, interfering with their investment backed expectations in self, due to the character of the government action. Under the Penn Central test, the remedy for a taking, based on generalized monetary liability results in "*invalidation*" rather than "*compensation*". Claimant's income was stolen by the state, nor her employer.

The Due Process/Takings distinction emphasizes that the Article's purview is not the due process deprivation or withholding of a property right, but the *actual taking* away of that right from an individual by the sovereign, whether for its use or use by a third party. The creation of WC Law was a taking which resulted in deprivation the second the workplace injuries occurred, further aggravated by constant reduction in access to benefits promised thereunder; repeatedly. This benefits the third party insurance company.

Whereby the New York State Constitution demands just compensation for the "*TAKING*" of real property, it fails to comply with the Federal standard, whereby "*PROPERTY*" is defined as everything from liberty and freedom to tangible and intangible aspects of government benefits or Personal Property Rights. [178] Where the Court could not yet "*see*" the damage in 1917, or at times thereafter, today, 101 years later, it is easy to "*see*" how the regulations have been unconstitutionally applied. The concept of "*Personhood*" did not yet exist. [179] Even if the Court cannot "*see*" the loss of all viable use, partial loss of use would nonetheless require fair compensation. Claimant's Damages can plainly be seen, in lost salary alone. [180-184] Exh. 46 For Claimant to be heard, given denials of review based on lack of finality, will require death. This train will never come to a stop. [185-187] Without adequate Due Process hearings and real medical evaluation, to fight is futile. Yet, Society does not want to support me. Why not? This is the obvious result of the system created.

In essence, NYS WC Law comprises a regulatory taking, for the regulation of the Personal Property Right interests of the Injured Worker in Perpetuity, "*goes too far*", and there is no inverse condemnation action which can bring back Claimant's health. However, there is the potential to bring back the actual lost earnings and employment benefits. Why is there a Taking? There is a Taking because the regulatory system, i.e. Workers Compensation Exclusivity, was supposed to protect Injured Workers from Impoverishment, not engage in activities which would lead to Impoverishment. [188] While WC Benefits may only comprise a property right, their denial deprives an eligible recipient of their LIBERTY rights, which include Bodily Integrity rights of access to medical care which, by law, cannot be obtained elsewhere, and which deprive the individual of their ability to earn a living; another Liberty interest. [189-192]

Claimant's loss of earning power is substantial, compensable, and can be calculated. Exh. 46 To "*TAKE*" these benefits, when NYCRvW guaranteed adequate reimbursement, based on actual losses, in lieu of pain & suffering, not only creates an imbalance in the Compensation Bargain of astronomical proportions, but removes access to critical lifetime medical care via arbitrary means, also deemed unconstitutional. Exh. 16a. Likewise, to restrict or deny access to pain & suffering damages is egregious. How does restricting access to pain & suffering damages benefit the public? By letting the employer avoid indemnity while their 6 figure lawyers fight for years to avoid payment for $2.00 batteries? How does letting the State victimize workers contribute to Society? Who is picking up the tab? The Disabled Injured Worker, and Welfare.

2.4.4 Is Workers Compensation Law a Regulatory Taking in relation to its failure to address prospective losses, such as employee benefits, willfully ignoring Just Compensation?

Is Workers Compensation a Prospective Taking? Exh. 93g

3. Does Workers Compensation Law violate the Injured Worker's right of access to Equal Protection in relation to:

NYS WC Law, as administered by the State of New York, violates Injured Workers rights of Equal Protection, mimicking the Federal Law, under Article 1 Section 11. Further, the State of New York has waived their Sovereign Immunity such that they may be sued for Constitutional Wrongs,[25] without the need for Section 1983 Protection employed usually in Federal Court, including Discrimination. [193-204]

Under the Fourteenth Amendment, no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Where the law treats certain classes of people differently than others, a potential Equal Protection claim arises. Under Rational Basis Scrutiny, statutes which treat similarly situated individuals differently must be rationally related to a "*legitimate*" governmental interest. [205] Under Matthews v. Lucas, it was determined government must provide meaningful protection from the erratic and disparate treatment that are the hallmarks of invidious discrimination. The mere explication of a justification in the face of contrary evidence does not satisfy the rational basis test. [206-211]

WC Law does not benefit the Public, and thus fails in furthering a substantial interest to the State that premises its legality under Equal Protection Guidelines. [212] WC Law benefits Insurance Companies, and via the MTG's, deprives those most Disabled of medical care, because I cost too much to be fixed.

WC Law thus provides a private benefit to a 3rd party, not a public benefit, and hurts Society by proxy.

How are Equal Protection Laws violated by Workers Compensation in General? [213-220] Exh. 100a

3.1 The Americans with Disabilities Act (ADA);

Does Workers Compensation Law inherently violate ADA Title II Guidelines? [44, 221-230, 275]
ADA - Exh's. 94-100 Constitutionality - Exh. 16a Pages 3, 8-10, 17-20.

3.2 The Patient Protection and Affordable Care Act (ACA); Exh. 101

Does Workers Compensation Law Violate the Affordable Care Act (ACA)? Exh. 101a

3.3 The Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681;[231-234] Exh's 78 and 28

Does Workers Compensation Law Violate the Fair Credit Reporting Act? Exh. 101b

3.4 The Health Insurance and Portability Accessibility Act (HIPAA); Exh. 101c

The violation of privacy of recipients of benefits under State programs, particularly where benefits are withheld, has been deemed unconstitutional in relation to restrictions at both the Federal and State Level in relation to HIPAA privacy and use. [235-238] Exh. 16a Pages 6-8 (Florida), Pages 21-25 (IL), 82-84, 87a, 92-93.

3.5 Fourth Amendment Violations in Mandatory Drug Testing;

Does Workers Compensation Mandatory Drug Testing violate Equal Protection Rights against Search & Seizure? Exh. 101d This has been found to be unconstitutional in multiple states under the Fourth Amendment as a violation of an individual's right to be free of unreasonable search & seizure. [239-242] Exh. 16a Pages 19-25 (Florida, Illinois).

3.6 Eighth Amendment Right to Bodily Integrity; Exh. 101e

Does an inability to obtain medical care timely violate the 8th Amendment? [119, 243-250, 275]

3.7 Class Disparity; Exh. 101f, 43-54, 72, 93

There are Constitutional Implications via the use of WC Medical Treatment Guidelines which create Disparity - Exh. 16a, Pages 3-5 (Oregon), Pages 10-12 (Oregon), Pages 16-17 (Florida).

3.8 Double Jeopardy (Denial of Workers Compensation Compensability Prohibits Civil Suit);

How does Double Jeopardy imperil the Injured Worker? [251] Exh. 101g

The Lack of Remedy and Denial of Tort, i.e. the Double Jeopardy of being denied a cause of action under WC Law, while also being denied, either due to an inability to meet the Statute of Limitations (*given delays in the processing of WC claims*), or by outright prevention via State Law, of a 2nd cause of action against the negligent employer (*when the evidence ignored by a WC board more than meets the negligence tort requirement of a civil court*), has been deemed unconstitutional in Florida and Oregon. [252] This is another example of the "*Double Whammy*" that hammers down the Disabled. So you can be denied a WC claim, and then find yourself unable to pursue the private action due to statute of limitation requirements.

3.9 Corruption. Exh. 101h

How did Corruption lead to Impoverishment? [253-254] Exh. 16, 63-70a, 80-89

4. **Did the State, via its employees and via its alteration of the purpose of NYS WC Law, and/or under the administration of its employees, show Deliberate Indifference to Medical Need resulting in a Serious and Erroneous Deprivation (Section 1983)?**

Exh's 91f and 102 incorporating 27a, 37, 40-43, 46, 48-56, 59-60, 62, 64-73, 81-89, 92-93, 95, 99-100.

The NYS WC Board administers a government program charged with the enormity of providing medical care in a highly limited Closed Medical System for thousands of Disabled Workers, not just for hazardous occupational injuries, as premised under NYCRvW, but injuries ranging from simple falls to life changing occupational diseases or cancer. The creation of the Compensation Bargain entrusted the State with a

fiduciary responsibility to monitor the Compensation Bargain and to maintain the integrity of the Constitutional purpose of WC Law. It is impossible and further ludicrous to think that a State Agency can address every type of workplace injury in a closed system. The NYS WC Board members don't have the legal or medical training, skillset, or mindset to act as fiduciary agents for Disabled people. This is proven by the failure of the Board to even have parking spots for a girth of Disabled people attending hearings on a daily basis, let alone hearing sites in all counties. It is questionable whether or not the Board employees have even read the 12+ iterations of the MTG's, or even the fine print on Board forms. Therefore, it isn't surprising that Procedural Due Process violations are rampant, combined with Collusion and Corruption, in order to limit the already adversarial limitations to impoverishment levels, resulting in egregious Societal detriment, in stark contrast to the Regulatory Need envisioned under the Compensation Bargain. Board employees have absolutely no concern for the welfare of Disabled people, as evidenced by the hundreds of urgent notifications sent to the Board by Claimant, without even a response.

In short, the Injured Worker is forced into a virtual jail, forced to beg for access to benefits & services guaranteed under Exclusivity, which are not forthcoming, and have been whittled down to nothing. Add to this the non-independent use of insurance company IME's, the lack of participating treating providers, and the lack of legal representation, not to mention violation of a long list of Federal Law's and Constitutional Protections, and Workers Compensation can clearly be seen for what it is; a Government contrivance that violates the Liberties and Personal Freedoms of millions of Disabled Americans.

The failure to identify and adequately treat Claimant's TOS vascular condition, forcing the same into the wrong Orthopedic Shoulder MTG, thus preventing by default all proper medical care, despite perpetual notification by the Denver Doctors of the proper treatment protocol, including the creation of a Paper Nightmare designed to fail, while showing Deliberate Indifference to critical medical need, led to a State Created Danger. [203] Exh's 63-71

The Nexus test defined in Albert v. Caravano, requires governmental coercion or significant encouragement of the private actor. [255] Certainly, allowing the carriers to deny surgery without the required paperwork, indefinitely, while refusing to address the matter at a hearing (*when by law the carriers would have already needed to respond*), shows clear intent, for the Judge was aware surgery was necessary, and therefore should have scheduled the next hearing right there and then, in order to comply with the expedited hearing requirement, but didn't. (see Exhibits Pages 770-773) Both the Judge and Carriers seamlessly decided the use of Botox for pain of migraine was enough to halt urgent requests for surgery, indefinitely, for years, without a shred of medical testimony. Botox has nothing to do with anything. The Board was complicit, for they upheld this random, inexplicable, undocumented claim upon appeal.

The Supreme Court has established that state action is present when private persons act jointly or in concert with public officials. Under this doctrine, private persons, jointly engaged with state officials in the prohibited action, are acting "*under color*" of law. Defendant need not be an officer of the State. It is enough that he is a

willful participant in joint activity with the State or its agents. [256-262] Exh's 27a, 37, 40-42a, 43, 46, 48, 49-56, 59, 60, 62, 64-66, 67-73, 81-89, 92-93, 95, 99-100. Board members did not mediate the bad conduct.

To inexplicably ignore an urgent request for surgery, filed under both MTG's, from the top doctors in the country, saved the carriers $250,000 in surgical cost, knowing that under the Permanency Guidelines, the Judge would rule for a classification disablement, in contrast to what Claimant's doctors requested, resulting in a total body disablement of 300 weeks, not even for each hand, wrist, arm, chronic spasticity, intractable migraine, sleep disorder, or gastrointestinal collapse. Thus 6 injuries paid a total of $144,000 (as the Judge denied review of any other alleging they were still under appeal), less than 2 years of salary, and saved the insurance carriers the difference: $156,000. If it leaves the Injured Worker disabled for life, who cares. The sole goal is to get out of liability; game, set, match. The Judge's actions all along the way were suspect, including shelving evidence of a complete lack of in-state vascular providers to storage, when he was asked to issue a reserved decision on out of state treatment, and never did. He literally made the evidence disappear for in Binghamton storage it is virtually inaccessible for review. Exh. 87 Pg 58 In this manner, the Judge sought to assist the carriers in avoiding out of state surgery, knowing Claimant would not get in-state surgery for fear of being maimed by the only participating doctor who claimed to have TOS background, even if she didn't. Thus, they orchestrated a series of events designed to prevent surgery altogether, and to then lessen permanency to nothing by paying benefits not for the loss of total body function, but for the lowest common denominator, and then only at 50% loss of wage earning capacity (without any testimony on this issue either).

The Board has too much Power, and is not administering their power equally, fairly, or safely, which has led to permanent damage where none should exist with the help of corrupt individuals at the Board. [263] Exh's 70, 70a, 81-83b, 85-89. Is the Judge protected? [264-266] Exh's 62, 70-70a.

The Second Circuit has established Cat's Paw Theory. [267-268] Claimant was deprived of her Bodily Integrity by the adverse denial of medical care, for which no reasonable explanation for denial was ever obtained, which resulted in total permanency where none should have existed due to the Deliberate Indifference under Substantive and Procedural Due Process Guidelines, as well as the Board's wanton disregard for Equal Protection under Exclusivity, any care for the disabled under the ADA, and unaddressed Corruption. Then if that wasn't bad enough, the State "took" some more by denying total Permanency and then halved loss of wage earning capacity based on education which can no longer be used.

5. Is Petitioner entitled to Damages? Exh. 105

Did Claimant sustain Damages as against the State of New York? Exh. 105a What good will be done if damages are awarded? [269-271] Exh. 106

6. Conclusion:

Please send a message to this State Agency that they cannot operate with autonomy, willfully stepping on the individual's Constitutional Civil Rights, either at the State or Federal level, with impunity. The law has been modified to directly damage Disabled people via the denial of protections created under the guise of

exclusivity, substantially benefiting employers under the guise of cutting costs, but actually achieving such cost reductions on the backs of the Disabled by denying perfectly reasonable medical care, while never increasing any aspect of the employee's side of the equation, let alone the individual's Personal Property Right interests in full recovery of compensable damages, either as defined in NYCRvW, nor as exist in a 21st Century Environment. The State has not been a responsible Fiduciary Agent for the Compensation Bargain. And, they have utterly ignored the ADA.

Nor did the State investigate itself, when notified of Corruption or Fraud, for the Inspector General identified in the law, exists in name only, mailing all complaints of corruption right back to the Board, which, despite multiple notifications, failed to result in a "*real*" investigation, nor to even contact Claimant to address her concerns. Exh. 89 The NYS WC Board is defrauding Injured Workers of their dignity and their freedoms, and creating financial & medical damage with careless disregard for resulting impoverishment that results from their Deliberate Indifference to the needs of the very people they are supposed to be protecting "*on behalf of Society*". There is insidious organizational corruption, which cannot be remedied via correction of bad policies, even if the Board was actually concerned with their culpable acts, which they aren't. The law itself, in its very purpose, if it is allowed to stand on its own, is an abomination to those it is supposed to serve, creating impoverishment with reckless abandon as against the Disabled in general, but in a manner which flagrantly violates the ADA Title II protections the State is required to implement and enforce. (Catherine Leahy Scott, Inspector General)

Please make it stop. I speak on behalf of all Injured Workers. We do not deserve to be thrown away.

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

Sharon K. Bland

7/11/18

Dated: