2023 CASE REPORT

Legislative Reference Bureau
112 State Capitol
Springfield, Illinois 62706
(217) 782-6625

December 2023

JOINT COMMITTEE ON LEGISLATIVE SUPPORT SERVICES

EMANUEL "CHRIS" WELCH	Speaker of the House, Chair
TONY MCCOMBIE	House Minority Leader
JOHN CURRAN	Senate Minority Leader
DON HARMON	President of the Senate

LEGISLATIVE REFERENCE BUREAU BOARD

JOHN W. HOLLMAN	Clerk of the House, Chair
BRAD BOLIN	Assistant Clerk of the House
SCOTT KAISER	Assistant Secretary of the Senate
TIM ANDERSON	Secretary of the Senate

LEGISLATIVE REFERENCE BUREAU ATTORNEYS

Executive Director: James D. Stivers

Principal Attorneys: Andrea M. Creek, Wayne G. Hedenschoug

Senior Counsel: Nicole H. Truong

Senior Attorneys: Robert L. Cohen, Konjit T. Gomar, Heather L. Harding

Staff Attorneys: Jerricha A. Griffin, Andrew W. Janetzke, Michael Patterson, Richard P. Schaller, Lauren N. Smith, Stephen P. Spence, Courtnie E. Swearingen, Ronald J. Tittle

TABLE OF CONTENTS

LETTER FROM THE EXECUTIVE DIRECTOR 1

INTRODUCTION 2

QUICK GUIDE TO RECENT COURT DECISIONS 3

SUMMARIES OF RECENT COURT DECISIONS 7

CASE INDEX 33

STATUTE INDEX 33

State of Illinois
LEGISLATIVE REFERENCE BUREAU
112 State House, Springfield, IL 62706-1300
Phone: 217/782-6625

December 2023

To the Honorable Members of the General Assembly:

This is the Legislative Reference Bureau's annual review of decisions of the "Federal courts, the Illinois Supreme Court, and the Illinois Appellate Court that affect the interpretation of the Illinois Constitution or statutes," as required by Section 5.05 of the Legislative Reference Bureau Act, 25 ILCS 135/5.05.

The Bureau's attorneys screened all court decisions and prepared the individual case summaries.

Respectfully submitted,

James D. Stivers
Executive Director

INTRODUCTION

This 2023 Case Report contains summaries of recent court decisions and is based on a review, in the summer and fall, of federal court, Illinois Supreme Court, and Illinois Appellate Court decisions published from the summer of 2022 through the summer of 2023.

QUICK GUIDE TO RECENT COURT DECISIONS

Biometric Information Privacy Act A device manufacturer whose products have optional face and fingerprint recognition did not possess the plaintiffs' biometric information for purposes of the Act because the information remained on the plaintiffs' devices and was not in the defendant's control. *Barnett v. Apple Inc*. 7

Biometric Information Privacy Act A claim under the Act accrues each time a private entity scans or transmits an individual's biometric identifier or information in violation of the Act. *Cothron v. White Castle System, Inc.* 8

Cable and Video Competition Law of 2007 A unit of local government does not have a private right of action against a video service provider under the Law. *City of East St. Louis v. Netflix, Inc.* 9

Cannabis Regulation and Tax Act The odor of cannabis establishes probable cause to search a vehicle, and cannabis may be transported in a vehicle only in an odor-proof container. *People v. Molina*..... 9

Code of Civil Procedure A citation issued prior to a third-party purchase of assets is considered constructive notice of a lien on the property and satisfies the requirement for notice. *FirstMerit Bank v. McEnery* 10

Condominium Property Act The Act's reasonable fee limitation provision does not create an implied private right of action by condominium unit sellers against agents of a condominium association or its board of managers. *Channon v. Westward Management, Inc.* 11

Consumer Fraud and Deceptive Business Practices Act At the preliminary injunction stage, the plaintiffs met their burden of showing that Public Act 103-270 violated the First Amendment both facially and as applied. *National Institute of Family and Life Advocates v. Raoul*.....12

Criminal Code of 2012 Pretrial release provisions of the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act do not facially violate the bail clause, the crime victims' rights clause, or the separation of powers clause of the Illinois Constitution. *Rowe v. Raoul* 12

Criminal Code of 2012 Property owned by the government is public property regardless of whether that property is accessible to the public. *People v. Castillo* 13

Criminal Code of 2012 A person may not be charged with attempted first degree murder when the person believed that he or she was acting in self-defense. *People v. Guy* 14

Criminal Code of 2012 A conviction for possession of a defaced firearm requires the defendant to know, among other things, that the firearm is defaced. *People v. Ramirez* 14

Criminal Code of 2012 The curtilage of a person's apartment is not a public place of accommodation for purposes of enhancing a simple battery charge to a charge of aggravated battery. *People v. Whitehead* 15

Disposition of Remains Act In the absence of a written instrument indicating the decedent's wishes for disposition of his remains, it is permissible for the executor of the estate to retain control of the decedent's remains even if doing so might frustrate the decedent's wishes. *In re Nocchi* 16

Election Code Plaintiffs who filed a motion for a preliminary injunction to block the implementation of a referendum was that was adopted in a timely manner but was filed with the election commission after the deadline did not demonstrate a likelihood of success on the merits because the Code requires the referendum to be "adopted" by a certain date rather than "filed." *Alms v. Peoria County Election Commission* 16

Firearm Owners Identification Card Act Nonresidents who are prohibited from possessing a firearm in Illinois due to an Illinois domestic violence conviction may not seek a restoration of their firearms rights in Illinois under the Firearm Owners Identification Card Act. *Snedeker v. Will County State's Attorney's Office* 17

Freedom of Information Act The index of tables, columns within each table, and column data for the City of Chicago's Citation and Administration and Adjudication System are exempt from disclosure under the Act. *Chapman v. Chicago Department of Finance* 18

Freedom of Information Act The Act's exemption for records that "relate to or affect the security of correctional institutions and detention facilities" applies only when a public body demonstrates that disclosure of a requested record could pose a potential security risk to a correctional facility. *Glynn v. Department of Corrections*..... 18

Freedom of Information Act Disclosure of 9-1-1 calls may be required under the Freedom of Information Act if the caller's voice is distorted to mask his or her identity and if the office has the ability to distort the audio in that manner. *Edgar County Watchdogs v. Will County Sheriff's Office* 19

Freedom of Information Act A court's evaluation of a record exemption asserted by a public body should be made based on the circumstances as they were at the time the exemption was asserted. *Green v. Chicago Police Department*..... 20

Freedom of Information Act Hospital records that identify only the year in which a specific class of hospital admissions occurred are not exempt from disclosure under the Act. *Sun-Times v. Cook County Health and Hospitals System*..... 20

Freedom of Information Act A unit of local government did not act in bad faith when it charged a person requesting public records a fee to cover the cost of transferring those records to a recording medium. *Edgar County Watchdogs v. Joliet Township* ... 21

Illinois False Claims Act A taxpayer's failure to satisfy a payment obligation to the State does not establish liability under the Act's false record or statement liability theory. *People ex rel. Stephen B. Diamond, P.C. v. Henry Poole & Co., Ltd*..... 22

Illinois Insurance Code Attorney's fees, costs, and interest awarded to a reinsurer at arbitration against an insolvent insurance company are not considered "cost and expenses of administration" for purposes of the Act's priority distribution scheme for liquidating the insolvent company's assets. *In re Liquidation of Legion Indemnity Company* 23

Illinois Marriage and Dissolution of Marriage Act There is a split between appellate districts as to whether the list of factors established under the Act in 2015 for the granting of maintenance should be used to review maintenance awards granted before the effective date of the 2015 changes. *In re Marriage of Chapa* 24

Illinois Marriage and Dissolution of Marriage Act Changes made to the Act that remove a former spouse as beneficiary of a life insurance policy that is in force at the time a judgment dissolving a marriage is entered apply only to marriages that are dissolved on or after the effective date of the Public Act that made those changes. *Shaw v. U.S. Financial Life Insurance Company* 25

Illinois Pension Code The Downstate Firefighter Article of the Illinois Pension Code does not require the in-person or physical examination of a participant who is seeking an occupational disease disability pension. *City of East Peoria v. Melton*..... 26

Illinois Pension Code Duty death pensions under the Downstate Police Article of the Code may be granted only to a surviving spouse and not to the decedent's minor child. *Masterton v. Village of Glenview Police Pension Board* 27

Illinois Pension Code A supplemental annuity under the Chicago Police Article of the Code may only be awarded to the widow of a decedent who received a compensation annuity and who died before attaining age 63. *Salcedo v. Retirement Board of Policemen's Annuity & Benefit Fund of City of Chicago*..... 27

Illinois Vehicle Code Provisions of the Code subjecting a recreational cannabis user, but not a medical cannabis card holder, to a violation of driving under the influence with a THC concentration of at least five nanograms did not violate the equal protection clauses of the Illinois Constitution and United States Constitution. *People v. Lee* 28

Public Safety Employee Benefits Act The award of a line-of-duty disability pension under the Downstate Firefighter Article of the Illinois Pension Code establishes that the recipient suffered a catastrophic injury for purposes of qualifying for health insurance premium benefits under the Act. *Ivetic v. Bensenville Fire Protection District No. 2*..... 29

Unified Code of Corrections The trial court's use of the defendant's prior conviction for aggravated unlawful use of a weapon as both an element of the offense of unlawful possession of a weapon by a felon and as a factor for imposing a presumptive extended range sentence did not constitute an impermissible double enhancement. *People v. Donald*..... 29

Unified Code of Corrections A defendant's prior conviction for an offense committed when he was 17 years old was not a qualifying offense for Class X sentencing because the prior offense would have resulted in a juvenile adjudication if it had been committed on the date of the current offense. *People v. Stewart* 30

SUMMARIES OF RECENT COURT DECISIONS

BIOMETRIC INFORMATION PRIVACY ACT – CLAIM ACCRUAL

A device manufacturer whose products have optional face and fingerprint recognition did not possess the plaintiffs' biometric information for purposes of the Act because the information remained on the plaintiffs' devices and was not in the defendant's control.

In *Barnett v. Apple Inc.*, 2022 IL App (1st) 210187, the Illinois Appellate Court was asked to decide whether the circuit court erred when it dismissed the plaintiffs' class action suit under the Biometric Information Privacy Act (740 ILCS 14/1 *et seq.* (West 2020)) because the plaintiffs failed to allege sufficient facts to show that the defendant had complete control over the plaintiffs' biometric information. Subsection (a) of Section 15 of the Act provides that a "private entity in possession of . . . biometric information must develop a written policy . . . establishing a retention schedule and guidelines for permanently destroying . . . biometric information when the initial purpose for collection or obtaining such . . . information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever comes first." Subsection (b) of Section 15 of the Act further provides that "no private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric . . . information, unless it first [makes certain disclosures and obtains the person's or customer's written consent]." The plaintiffs' complaint alleged that the defendant violated subsections (a) and (b) of Sections 15 by offering users of its phone and computers the option of using face and fingerprint recognition features without either (1) instituting a written policy regarding the retention and destruction of the users' biometric information or (2) obtaining the users' written consent. On appeal, the plaintiffs argued that the circuit court erred in dismissing their complaint because the software enabled the defendant to possess, collect, capture, and analyze the plaintiffs' biometric information after the plaintiffs elected to use the software's features. However, the defendant argued that it did not possess, collect, or capture the plaintiffs' biometric information because (1) the facial and fingerprint features are optional for use, (2) the plaintiffs' biometric information is stored on the plaintiffs' personal electronic devices and not on the defendant's servers or databases, and (3) the plaintiffs have the ability to delete their stored biometric information at any time.

The court agreed with the defendant and affirmed the circuit court's judgment, finding that the plaintiffs failed to allege facts sufficient to demonstrate that the defendant possessed, captured, and collected the plaintiffs' biometric information within the meaning of subsections (a) and (b) of Sections 15 of the Act. The appellate court noted that the word "possession" is not defined under subsection (a) of Section 15. However, the appellate court determined that "the ordinary and popular meaning of the word . . . is to have control." Applying the dictionary definition of the word "possession," the appellate court determined that the defendant did not "possess" the plaintiffs' biometric information because the defendant "designed [the facial and fingerprint] features almost with the express purpose of handing control to the user." Additionally, the appellate court noted that "the features are completely elective . . . [and that a user must] undertake a series of steps in order to use them . . . [including utilizing] her own device in order to capture her own fingerprint or facial image." Moreover, the appellate court found that "there is no allegation that [the

defendant] stores [the biometric] information on a separate server or . . . has ever once prevented a user from deleting her own information."

The court also rejected the plaintiffs' contention that the defendant captures and collects biometric information following user activation of the recognition software. The court noted that the words "capture" and "collect" are not defined in subsection (b) of Section 15. Relying on Merriam-Webster's dictionary, the appellate court determined that "capture" means "to record in a permanent file (as in a computer)." The appellate court likewise determined that "collect" means "to bring together into one body and place" and "to gather or exact from a number of persons or sources." The appellate court found that "neither of these definitions . . . help the plaintiffs [because] to the extent the [biometric] information was captured or recorded in a permanent file, that permanent file was on the user's own device, not on the defendant's device. [Moreover], the information was not gathered or accumulated from a number of persons into one place." Therefore, the court found that the defendant did not collect or capture biometric information as those terms are used in subsection (b) of Section 15.

BIOMETRIC INFORMATION PRIVACY ACT – CLAIM ACCRUAL

A claim under the Act accrues each time a private entity scans or transmits an individual's biometric identifier or information in violation of the Act.

In *Cothron v. White Castle System, Inc.*, 2023 IL 128004, the Illinois Supreme Court was asked to decide whether claims under subsections (b) and (d) of Section 15 of the Biometric Information Privacy Act (740 ILCS 14/15 (West 2018)) accrue each time a private entity scans a person's biometric identifier and transmits such a scan to a third party or only upon the first scan and transmission. Subsection (b) of Section 15 of the Act provides that no private entity may "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information" unless the entity first obtains consent from and provides certain information to the person. Subsection (d) of Section 15 of the Act provides that "[n]o private entity in possession of a biometric identifier or biometric information may disclose, redisclose, or otherwise disseminate a person's or a customer's biometric identifier or biometric information" unless certain conditions are met. With regard to subsection (b) of Section 15, the defendant argued that a claim under the Act accrues only when the biometric data is initially collected or disclosed because the phrase "unless it first" refers to a singular point in time. With regard to subsection (d) of Section 15, the defendant argued that the terms "disclose, redisclose, or otherwise disseminate" refer to "the disclosure of biometrics by one party to a new, third party." The plaintiff argued that "under the plain language of both Section 15(b) and 15(d), a claim accrues each time that biometric identifiers or information are collected or disseminated by a private entity without prior informed consent," and asserted that this interpretation is "consistent with the plain meaning of the statutory language, gives effect to every word in the provision, and directly reflects legislative intent to provide an individual with a meaningful and informed opportunity to decline the collection or dissemination of their biometrics." The court agreed with the plaintiff, holding that a claim accrues each time there is a violation. The court reasoned that the phrase "unless it first" in subsection (b) of Section 15 refers to the defendant's obligation to obtain consent from and make disclosures to the person and not to the first collection of the biometric information. The court noted that "policy-based concerns about potentially excessive damage awards under the Act are best addressed by the legislature" and "respectfully [suggested] that the legislature review these policy concerns and make clear its intent regarding the assessment of damages under the Act." A dissenting opinion asserted, among other things, that the injury sought to be redressed by the Act, which is the loss of control and privacy over a

person's biometric data, occurs only the first time the biometric data is taken. The dissenting opinion also asserted that the use of the term "disclose" may occur only once with a party and the term "redisclose" may happen only when that information is disclosed to a downstream third party.

CABLE AND VIDEO COMPETITION LAW OF 2007 – RIGHT OF ACTION

A unit of local government does not have a private right of action against a video service provider under the Cable and Video Competition Law of 2007.

In *City of East St. Louis v. Netflix, Inc.*, 2022 WL 448868, the United States District Court was asked to decide whether to dismiss a putative class action suit brought by the City of East St. Louis alleging that a video streaming platform violated the Cable and Video Competition Law of 2007 (220 ILCS 5/21-100 *et seq*.), which provides, among other things, that persons or entities "seeking to provide cable service or video service" may obtain an authorization to do so from the Illinois Commerce Commission and imposes certain requirements on those entities, including a requirement to pay a service fee to the unit of local government in which the entity operates. Subsection (a) of Section 21-1301 of the Cable and Video Competition Law of 2007 provides that "[t]he Attorney General is responsible for administering [the Act] and ensuring holders' compliance . . . , provided that nothing . . . shall deprive local units of government of the right to enforce applicable rights and obligations." The plaintiff argued that the defendant failed to obtain a State-issued authorization for its video service, failed to provide notice to municipalities before providing its video service, and failed to pay municipalities the required fee for video service providers. The defendant argued that (i) the Law does not apply to the defendant because the defendant is not a facilities-based provider and does not have a physical infrastructure, (ii) the defendant is excluded under the public internet exemption, and (iii) the Cable and Video Competition Law of 2007 is preempted by federal law. The defendant also argued that the Cable and Video Competition Law of 2007 does not create a private right of action. The court agreed with the defendant, holding that the Law did not imply a private right of action for a unit of local government. The court reasoned that the law does not contain any express language authorizing a unit of local government to bring a suit for violations of the Law and that implying a private right of action for a unit of local government is not consistent with the underlying purpose of the Law.

CANNABIS REGULATION AND TAX ACT – PROBABLE CAUSE

The odor of cannabis establishes probable cause to search a vehicle, and cannabis may be transported in a vehicle only in an odor-proof container.

In *People v. Molina,* 2022 IL App (4th) 220152, the Illinois Appellate Court was asked to decide whether the trial court erred in granting the defendant's motion to suppress evidence of the defendant's possession of cannabis in a motor vehicle. The evidence was collected during a warrantless search of the defendant's vehicle, which was conducted after the police officer smelled the odor of raw cannabis in the vehicle during a traffic stop. Section 11-502.1 of the Illinois Vehicle Code (625 ILCS 5/11-502.1) provides that medical cannabis shall be stored in "a secured, sealed or resealable, odor-proof, and child-resistant medical cannabis container that is inaccessible." Similarly, Section 11-502.15 of the Illinois Vehicle Code provides that adult-use cannabis must be stored in a "sealed, odor-proof, child-resistant cannabis container" while being transported in a vehicle. Subsection

(a) of Section 10-35 of the Cannabis Regulation and Tax Act (410 ILCS 705/10-35) provides that the possession of cannabis in a vehicle is allowable only if the "cannabis is in a reasonably secured, sealed or resealable container and reasonably inaccessible while the vehicle is moving." The State argued that the Illinois Supreme Court's decision in *People v. Stout*, 106 Ill.2d 77 (1985), which held that the odor of cannabis provides probable cause to search a vehicle, is still good law. The defendant argued that *Stout* should be overruled because the legalization of some amounts of cannabis means that cannabis is no longer considered contraband. The defendant also argued that changes to the Cannabis Regulation and Tax Act that omitted the phrase "odor-proof" implicitly repealed the provisions of the Illinois Vehicle Code that required cannabis to be stored in an odor-proof container during transport. The court agreed with the State that the odor of cannabis still establishes probable cause for a search. The court reasoned that possession of cannabis exceeding certain specified amounts remains a crime. The court noted that the Illinois Supreme Court declined to overrule *Stout* in *People v. Hill*, 2020 IL 124595. The court also agreed with the State that the amendments to the Cannabis Regulation and Tax Act that omitted language requiring odor-proof containers did not implicitly repeal the provisions of the Illinois Vehicle Code that contained that requirement. To that point, the court reasoned that "if the legislature intended to amend the Illinois Vehicle Code to exclude the requirement that cannabis storage be odor-proof during vehicle transport, it could have–and would have–done so." On March 29, 2023, the Illinois Supreme Court granted the defendant's Petition for Leave to Appeal.

CODE OF CIVIL PROCEDURE – NOTICE OF LIEN FOR THIRD PARTY

A citation issued prior to a third-party purchase of assets is considered constructive notice of a lien on the property and satisfies the requirement for notice.

In *FirstMerit Bank v. McEnery*, 2022 IL App (3d) 210306, the Illinois Appellate Court was asked to decide whether the circuit court erred in granting summary judgment in favor of a judgment creditor and against a third-party purchaser that asserted an adverse claim as to certain shares of stock that had been owned by the judgment debtor in a case where the judgment creditor served a citation to discover assets on the judgment debtor before the judgment debtor sold the shares to the third-party purchaser. Subsection (m) of Section 2-1402 of the Code of Civil Procedure (735 ILCS 5/2-1402(m) (West 2010)) provides that "[t]he judgment or balance due on the judgment becomes a lien when a citation is served." It also provides that the lien "does not affect the rights of bona fide purchasers or lenders without notice of the citation." The plaintiff argued that the plaintiff's lien was perfected when the citation was served on the judgment debtor. The plaintiff further argued that the third-party purchaser was not a bona fide purchaser because, although the third-party purchaser did not have actual notice of the lien, it did have constructive notice. The third-party purchaser argued that it was a bona fide purchaser without notice of the plaintiff's citation when it purchased the subject property, and that the statute required that the third-party purchaser have actual notice of the lien for the plaintiff's lien to take priority. The third-party purchaser argued that, if the General Assembly had intended to include constructive notice, it could have. The court agreed with the plaintiff, holding that the circuit court's judgment was correct in finding that "notice" includes both actual notice and constructive notice. The court reasoned that the Black's Law Dictionary "definition of notice, which includes both actual and constructive notice, is in line with the well-established case law relating to bona fide purchasers." The court further reasoned, by examining a transcript of the floor debate of the Senate bill that created and passed the statute, that the plain language of the statute supports a finding "that a

creditor need not do anything other than serve a citation to the debtor or third-party to perfect its lien against subsequent creditors or purchasers."

CONDOMINIUM PROPERTY ACT – IMPLIED PRIVATE RIGHT OF ACTION

The Act's reasonable fee limitation provision does not create an implied private right of action by condominium unit sellers against agents of a condominium association or its board of managers.

In *Channon v. Westward Management, Inc.*, 2022 IL 128040, the Illinois Supreme Court was asked, via certified question, whether Section 22.1 of the Condominium Property Act (765 ILCS 605/22.1 (West 2016)) creates an implied private right of action for a condominium unit seller against an agent of a condominium association or its board of managers for allegedly violating the Act's reasonable fee limitation. Subsection (a) of Section 22.1 of the Act provides that "in the event of any resale of a condominium unit by a unit owner other than the developer such owner shall obtain from the Board of Managers and shall make available for inspection to the prospective purchaser, upon demand, [certain disclosure documents]." Subsection (c) of Section 22.1 provides that "a reasonable fee covering the direct out-of-pocket cost of providing [the disclosure documents] may be charged by the association or its Board of Managers to the unit seller for providing such information." Applying the four-pronged test adopted by the court in *Metzger v. DaRosa*, 209 Ill. 2d 36 (2004), the appellate court found that Section 22.1 creates an implied cause of action for condominium unit sellers such as the plaintiffs because "(1) the plaintiffs are members of the class the statute was intended to benefit, (2) the statute was designed to prevent the plaintiffs from suffering the injury they incurred, (3) the statute's purpose is consistent with the creation of a private right of action, and (4) it is necessary to imply a private right of action to provide an adequate remedy for the statutory violation."

Before the Illinois Supreme Court, the defendant argued that the appellate court's judgment was in error because, in order for the plaintiffs to satisfy the first prong of the *Metzger* test concerning class status, the plaintiffs "must establish that the legislature intended them to receive the *primary* benefit of the statutory protection." (Emphasis original.) The plaintiffs argued that "receiving even an incidental benefit will suffice" to confer class status under Section 22.1. The Illinois Supreme Court agreed with the defendant and reversed the appellate court's judgment, finding that the plaintiffs did not have an implied private right of action under the Act because they were "not members of the class the legislature primarily intended to benefit in Section 22.1." The court reasoned that "[a]pplying the plain meaning of the statutory language, sellers were given a duty to disclose, not a protection."

The court also rejected the plaintiffs' argument that the Act's reasonable fee limitation "shows a legislative intent to provide unit sellers with a benefit by limiting the sum they may be charged to obtain [the disclosure documents]." Instead, the court found that the reasonable fee limitation "can just as readily be viewed as aiding potential buyers by ensuring that information critical to their purchasing decisions is readily available." Although the court acknowledged that subsection (c) of Section 22.1 bestows a benefit to unit sellers, the court observed that the benefit is "merely incidental to the underlying purpose of Section 22.1." Since the plaintiffs were unable to establish class status by satisfying the first prong of the *Metzger* test, the court did not analyze the other 3 factors.

CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT – LIMITED SERVICES PREGNANCY CENTERS

At the preliminary injunction stage, the plaintiffs met their burden of showing that Public Act 103-270, which prohibits a limited services pregnancy center from engaging in specified unfair methods of competition or unfair or deceptive acts or practices, violated the First Amendment both facially and as applied.

In *National Institute of Family and Life Advocates v. Raoul,* 2023 WL 5367336, the United States District Court for the Northern District of Illinois was asked to grant the plaintiff's motion for injunctive relief against the enforcement of Public Act 103-270 as well as for a declaration that Public Act 101-270 facially violates the First and Fourteenth Amendments of the United States Constitution (U.S. CONST. amend. I; U.S. CONST. amend. XIV). Public Act 103-270 amends the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.*) to prohibit a limited services pregnancy center from "engaging in unfair methods of competition or unfair or deceptive acts or practices, including the use or employment of any deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of any material fact, with the intent that others rely upon the concealment, suppression, or omission of such material fact: (1) to interfere with or prevent an individual from seeking to gain entry or access to a provider of abortion or emergency contraception; (2) to induce an individual to enter or access the limited services pregnancy center; (3) in advertising, soliciting, or otherwise offering pregnancy-related services; or (4) in conducting, providing, or performing pregnancy-related services." The court granted the plaintiff's motion for a preliminary injunction enjoining the defendants from enforcing Public Act 103-270, determining that, at this stage of the proceedings, the plaintiffs met their burden by showing that the Public Act 103-270 "facially violate[d] the First Amendment and violate[d] Plaintiffs' First Amendment rights as applied," and by showing that the plaintiffs would suffer irreparable harm. The court reasoned that Public Act 103-270 discriminates based on the content and viewpoint of the speech because it imposes sanctions on the plaintiff's speech while specifically excluding abortion providers' speech. The court also reasoned that the Public Act was not narrowly tailored to meet the goal of preventing deception, which the court suggested could also be achieved through public awareness campaigns or by other means.

CRIMINAL CODE OF 2012 – SAFE-T ACT CONSTITUTIONALITY

Pretrial release provisions of the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act do not facially violate the bail clause, the crime victims' rights clause, or the separation of powers clause of the Illinois Constitution.

In *Rowe v. Raoul*, 2023 IL 129248, the Illinois Supreme Court was asked to decide whether the trial court erred in granting summary judgment in favor of the plaintiffs. The plaintiffs, several state's attorneys and sheriffs, argued that multiple pretrial release provisions of the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act facially violated the bail clause of the Illinois Constitution (ILL. CONST. Art. I, § 9), the crime victims' rights clause of the Illinois Constitution (ILL. CONST. art. I, § 8.1(a)(9)), and the separation of powers clause of the Illinois Constitution (ILL. CONST. art. II, § 1). The defendant, the Illinois Attorney General, appealed directly to the Illinois Supreme Court.

On appeal, the court agreed with the defendant, reasoning that the plain language of the bail clause does not include the term "monetary" or the phrase "amount of monetary

bail," so it does not cement the practice of monetary bail, even though that practice has been long-standing and prevalent across Illinois. While the bail clause does mention "sufficient sureties," the court reasoned that "sufficient sureties" are not limited to sufficient monetary sureties. The court further construed the term "amount" as quantity and concluded that the term included any quantity of sufficient sureties. The court noted that the Act's pretrial release provisions complement the bail clause by allowing the State to seek, and the trial court to order, pretrial detention of certain criminal defendants. In addition, the court indicated that the drafters of the Act understood that Illinois' approach to pretrial release had evolved since the State was established and would continue to evolve, so they used language that would allow that. The court posited that the General Assembly, in enacting the Act, has once again engaged in the process of bail reform, and its efforts are consistent with the intent of the drafters of the Illinois Constitution. The court reached a similar conclusion with respect to the crime victims' rights clause, reasoning that the clause mentions the "amount of bail," not the amount of monetary bail. As to the separation of powers clause, the court reasoned that the trial court overread the case it relied on to come to its decision.

A dissenting opinion argued that the majority altered the meaning of the word "amount" and that the majority's definition of the term did not hold up to scrutiny. The dissent further asserted that, since 1963, the Criminal Code provided for a procedure for the circuit courts to follow in determining the amount of monetary bail. The dissent also found that the judicial act of setting the "amount of bail" in this State unquestionably refers to monetary bail. Finally, the dissent noted that, while the abolition of monetary bail may promote the public-policy goal of greater fairness in the pretrial release process, the Act's infringement on the plain language of the Constitution cannot be ignored, even when unwise results may follow.

CRIMINAL CODE OF 2012 – AGGRAVATED BATTERY

Property owned by the government is public property regardless of whether that property is accessible to the public.

In *People v. Castillo*, 2022 IL 127894, the Illinois Supreme Court was asked to decide whether to uphold a prisoner's conviction for an aggravated battery that occurred in a State-owned prison facility. Subsection (c) of Section 12-3.05 of the Criminal Code of 2012 (720 ILCS 5/12-3.05(c) (West 2018)) provides that "[a] person commits aggravated battery when, in committing a battery, other than by the discharge of a firearm, he or she is or the person battered is on or about a public way, public property, a public place of accommodation or amusement, a sports venue, or a domestic violence shelter." The State argued that the plain and ordinary meaning of "public property" means any property owned by the public, and that the defendant was subject to the enhanced penalty under the aggravated battery statute because the conduct occurred at a State-owned prison facility. The defendant argued that the enhanced penalty should not apply because the conduct that gave rise to his conviction did not occur in a building that was accessible to members of the general public. The defendant relied on an Illinois Appellate Court, Second District, decision that held that, for the purposes of the aggravated battery statute, "public property" is property both owned by the government and accessible to the public, even if the access is limited. *People v. Ojeda,* 397 Ill. App. 3d 285, 336 Ill Dec. 876, 921 N.E.2d 490 (2009). The court agreed with the State, overruling the *Ojeda* decision and holding that the "plain, ordinary, and popularly understood meaning of 'public property' is property owned by the government, with no additional qualifiers." The court reasoned that the *Ojeda* decision was flawed because it looked to other definitions rather than "simply looking to the definition

of 'public property' itself" and, when statutory text is unambiguous, the court may not look beyond the plain language to interpret the meaning of the text.

CRIMINAL CODE OF 2012 – ATTEMPTED FIRST DEGREE MURDER

A person may not be charged with attempted first degree murder when the person believed that he or she was acting in self-defense.

In *People v. Guy*, 2023 IL App (3d) 210423, the Illinois Appellate Court was asked to decide whether a defendant's conviction for attempted first degree murder was inconsistent with a verdict of second degree murder that arose out of the same set of facts. Subsection (a) of Section 8-4 of the Criminal Code of 2012 (720 ILCS 5/8-4(a) (West 2002)) provides that "[a] person commits the offense of attempt when, with intent to commit a specific offense, he or she does any act that constitutes a substantial step toward the commission of that offense." The State argued that the specific intent required for attempted first degree murder is the "intent to kill." The State relied on *People v. Guyton*, 2014 IL App (1st) 110450, 391 Ill Dec. 424, 30 N.E.3d 1062, which held that "there is no difference between the mental state required to prove attempted first degree murder and second degree murder [and] . . . that first degree murder and second degree murder have the same elements, including the same mental states, but second degree murder requires the presence of a mitigating circumstance." The *Guyton* court further held that the defendant's belief in the need for self-defense, although unreasonable, was a mitigating factor to attempted first degree murder. However, the offense of second degree attempted murder did not exist and the jury was powerless to mitigate the offense. The defendant argued that, because the requisite mental state for attempted first degree murder is the "intent to kill without lawful justification," his conviction for attempted first degree murder was inconsistent with the jury's determination, in finding him guilty of second degree murder, that, at the time of the shooting, he believed, albeit unreasonably, in the need for self-defense. The court agreed with the defendant and reversed the trial court's decision without remanding. The court held that "a jury cannot legally find a defendant to have intended to kill without lawful justification when he believed in the need for self-defense." The court also held that "[w]hen a trier of facts determines the issues of ultimate fact as part of a valid and final judgment—here the second degree murder conviction—that issue cannot be litigated again between the same parties in any future lawsuit."

The court reasoned that, if a defendant intended to kill with the knowledge that such action is unwarranted, he has intended to kill without lawful justification and could be prosecuted under the first degree attempted murder statute. However, the case at hand involved a defendant who believed he was acting in self-defense, although unreasonably. The court also reasoned that the legislature did not address a sentencing mitigation for a defendant who commits attempted first degree murder and has unreasonable belief in the need for self-defense because there is no such legally convicted defendant.

CRIMINAL CODE OF 2012 – POSSESSION OF A DEFACED FIREARM

A conviction for possession of a defaced firearm requires the defendant to know, among other things, that the firearm is defaced.

In *People v. Ramirez*, 2023 IL 128123, the Illinois Supreme Court was asked to decide whether the Illinois Appellate Court erred when it held that the criminal offense of possession of a defaced firearm under Section 24-5 of the Criminal Code of 2012 (720 ILCS 5/24-5) required the State to prove only that the firearm was defaced and that the

defendant knowingly possessed the firearm and did not require the State to prove that the defendant knew that the firearm was defaced. Subsection (a) of Section 24-5 of the Criminal Code of 2012 provides that "[a]ny person who shall knowingly or intentionally change, alter, remove or obliterate the name of the importer's or manufacturer's serial number of any firearm commits a Class 2 felony." Subsection (b) of that Section provides that "[a] person who possesses any firearm upon which any such importer's or manufacturer's serial number has been changed, altered, removed or obliterated commits a Class 3 felony." Subsection (b) is silent about whether the defendant must know that the serial number had been changed, altered, removed, or obliterated. The State argued that it needed to prove only that the firearm had a defaced or obliterated serial number and that the defendant knew that he possessed the firearm. The State further asserted that it did not need to prove that the defendant knew that the serial number of the firearm was defaced. The defendant argued that the State had to prove beyond a reasonable doubt that the defendant knew that the serial number of the firearm was defaced. The court agreed with the defendant, holding that, to secure a conviction under subsection (b) of Section 24-5, the State must prove knowledge of both possession and defacement. The court reasoned that the defacement of the firearm is an essential fact and, therefore, an element of the offense. Because subsection (b) of Section 4-3 of the Criminal Code of 2012 (720 ILCS 5/4-3) provides that "[i]f the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element," the mental state prescribed with respect to the possession of the firearm must also apply to the defacement of the firearm. The court further reasoned that this construction of the statute was necessary to avoid the provision impermissibly burdening the federal constitutional right to bear arms. The Illinois Supreme Court, therefore, reversed the judgment of the Illinois Appellate Court and remanded the case to the circuit court for further proceedings.

CRIMINAL CODE OF 2012 – AGGRAVATED BATTERY IN PUBLIC

The curtilage of a person's apartment is not a public place of accommodation for purposes of enhancing a simple battery charge to a charge of aggravated battery.

In *People v. Whitehead*, 2023 IL 128051, the Illinois Supreme Court was asked to decide whether the Illinois Appellate Court erred when it affirmed the defendant's conviction for aggravated battery after finding that the stoop upon which the victim was battered was a public place of accommodation. Subsection (c) of Section 12-3.05 of the Criminal Code of 2012 (720 ILCS 5/12-3.05(c)) provides that a person commits aggravated battery when, "in committing a battery, … he or she is or the person battered is on or about . . . a public place of accommodation or amusement." The State argued that the enhancement from simple battery to aggravated battery was appropriate because the offense occurred on the stoop of the victim's apartment, which was accessible to the public. The defendant argued that the stoop upon which the offense occurred is within the curtilage of the home and is not a public space. The court agreed with the defendant, vacated his conviction for aggravated battery, and entered a conviction for simple battery. Because the phrase "public place of accommodation or amusement" is not defined in the statute, the court looked to the dictionary definitions of "accommodation" and "amusement" and found that the stoop of the apartment did not fit within those dictionary definitions. The court also reasoned that the legislative purpose of the statutory provision, which is to protect the public from increased harm in public places, is not advanced by enhancing the penalty for a battery committed within the curtilage of an apartment.

DISPOSITION OF REMAINS ACT – PERSON IN CONTROL OF REMAINS

In the absence of a written instrument indicating the decedent's wishes for disposition of his remains, it is permissible for the executor of the estate to retain control of a decedent's remains even if doing so might frustrate the decedent's wishes.

In *In re Nocchi*, 2023 IL App (2d) 220124, the Illinois Appellate Court was asked to decide whether the circuit court erred when it denied a motion filed by a decedent's widow to release the decedent's cremated remains to her for final disposition and, instead, ordered the remains turned over to the decedent's son for burial in accordance with the decedent's apparent religious beliefs. Section 5 of the Disposition of Remains Act (755 ILCS 65/5 (West 2020)) sets forth a priority list of persons who have the authority to control the disposition of a decedent's remains if the decedent did not leave a written directive. In the absence of a person "designated in a written instrument," the next two parties in the priority list are: (1) any person serving as executor or legal representative of the decedent's estate and acting according to the decedent's written instructions contained in the decedent's will and (2) the individual who was the spouse of the decedent at the time of the decedent's death. The decedent's widow argued that she was entitled to control the disposition of the decedent's remains under the terms of the Act because she was the executor of his estate. The decedent's son argued that the decedent wanted to be buried in accordance with Catholic tradition and that, while the language of the statute is neither unclear or ambiguous, the court must depart from a statute's literal meaning if it would yield an absurd, inconvenient, or unjust result. The court agreed with the widow, holding that, because the decedent did not plan for the disposition of the decedent's remains, the executor has the right to control the disposition of remains. The court reasoned that (1) a court may not rule against the plain requirements of a statute by drawing on its equitable powers and that honoring the petitioner's right to control the decedent's remains is not unjust simply because doing so might frustrate a decedent's wishes, (2) the decedent had the opportunity prior to death to plan for the disposition of his remains by will, prepaid funeral or burial contract, qualifying power of attorney, cremation authorization form, or written instrument designating an agent to control the disposition of the decedent's remains, and (3) agreeing with the decedent's son would allow others to challenge the statutorily-determined individual with the right to control remains and "inundate courts with litigation that the decedent's proper advance planning could easily avoid."

ELECTION CODE – ADOPTING/FILING REFERENDUM FOR ELECTIONS

Plaintiffs who filed a motion for a preliminary injunction to block the implementation of a referendum was that was adopted in a timely manner but was filed with the election commission after the deadline did not demonstrate a likelihood of success on the merits because the Code requires the referendum to be "adopted" by a certain date rather than "filed."

In *Alms v. Peoria County Election Commission*, 2022 IL App (4th) 220976, the Illinois Appellate Court was asked to decide whether the circuit court erred when it denied the plaintiff's motion for a preliminary injunction to bar the election commission from conducting a particular ballot referendum eliminating the office of county auditor. The injunction included, without limitation, "counting the ballots, canvassing the election, and

certifying and declaring the results of the referendum." The dispute arose when the county clerk sent an incorrect draft version of the referendum to the election commission but submitted a corrected version, stamped *nunc pro tunc,* after the deadline had passed for filing. Subsection (c) of Section 28-2 of the Election Code (10 ILCS 5/28-2(c)) provides that "[r]esolutions or ordinances of governing boards of political subdivisions which initiate the submission of public questions pursuant to law must be adopted not less than 79 days before a regularly scheduled election to be eligible for submission on the ballot at such election." The plaintiffs argued that the referendum was improper because (1) it was not timely filed with the Election Commission and (2) the language of the referendum was "argumentative" and "slanted." The defendants argued that the resolution was adopted on time and was merely filed late. The court agreed with the defendants, affirming the denial of a preliminary injunction, holding that the plaintiffs forfeited an argument regarding injury and did not show or raise a fair question regarding their likelihood of success on the merits of their argument. The court reasoned that "adopt" and "file" are treated differently under the Election Code and that the defendants complied with the Code's requirements of adopting the resolution before the required deadline under the Code. The court also found that the plaintiffs did not show or raise a fair question as to the likelihood of success that was needed to succeed on their motion.

FIREARM OWNERS IDENTIFICATION CARD ACT – RESTORE RIGHTS

Nonresidents who are prohibited from possessing a firearm in Illinois due to an Illinois domestic violence conviction may not seek restoration of their firearms rights in Illinois under the Firearm Owners Identification Card Act.

In *Snedeker v. Will County State's Attorney's Office*, 2022 IL App (3d) 210133, the Illinois Appellate Court was asked to determine whether the circuit court erred when it found that the plaintiff, a former Illinois resident who resided in Michigan at the time of the appeal, could not seek a restoration of his firearm rights under the Firearm Owners Identification Card Act (430 ILCS 65/) because the circuit court lacked subject matter jurisdiction to grant relief to non-Illinois residents. The plaintiff was prohibited under Section 8 of the Firearm Owners Identification Card Act (430 ILCS 65/8 (West 2022)) from possessing a firearm in Illinois due to his 2009 conviction for domestic battery in Will County. Consequently, the plaintiff was also barred from possessing a firearm under federal law. In order to meet federal firearm eligibility requirements, the plaintiff petitioned the circuit court in Will County to restore his Illinois firearm rights without issuing a Firearm Owner's Identification (FOID) Card. Section 8 of the Act provides that the "Illinois State Police has the authority to deny an application for or to revoke and seize a FOID Card previously issued under the Act only if the Illinois State Police finds that the applicant or the person to whom such card was issued is or was at the time of issuance . . . a person who has been convicted of domestic battery." Subsection (c) Section 10 of the Firearms Owners Identification Act (430 ILCS 65/10(c) (West 2022)) provides that "[a]ny person prohibited from . . . acquiring a FOID Card under Section 8 of this Act may . . . petition the circuit court in the county where the petitioner resides . . . requesting relief from such prohibition and the . . . court may grant such relief if it is established . . . to the court's satisfaction that [certain factors have been met]."

On appeal, the plaintiff argued that the circuit court erred in dismissing his petition because subsection (c) of Section 10 provides a "general process" for individuals, including non-Illinois residents, to restore their firearms rights in Illinois. The court disagreed with the plaintiff and upheld the circuit court's judgment, holding that "the plain language of Section 10(c) is unambiguous in that relief under it is limited to Illinois residents." The court reasoned that subsection (c) of Section 10 specifically requires the individual to

petition the circuit court in the county *where the petitioner resides*" (Emphasis added). More importantly, the court reasoned that the only relief available under subsection (c) of Section 10 for a person with a prohibition under Section 8 of the Act is the issuance of a FOID Card, which the plaintiff did not seek in this case. Although the court acknowledged that a person who petitions for Section 10(c) relief is essentially "seeking a restoration of their firearms rights so that they may acquire a FOID Card," the court noted that "the end result under Section 10(c) is the issuance of a FOID Card," not the restoration of firearms rights.

The court admitted that the plain language of Section 10(c) "may appear unfair to nonresidents with Illinois convictions" as they must reestablish residency in Illinois in order to petition for a restoration of their Illinois firearms rights. However, the court would not depart from the plain language of the statute and noted that the wisdom and efficacy of any Illinois statute is a matter for the General Assembly to resolve.

FREEDOM OF INFORMATION ACT – FILE LAYOUT EXEMPTION

The index of tables, columns within each table, and column data for the City of Chicago's Citation and Administration and Adjudication System are exempt from disclosure under the Act.

In *Chapman v. Chicago Department of Finance*, 2023 IL 128300, the Illinois Supreme Court was asked to decide whether the Illinois Appellate Court erred when it ordered the defendant to provide the plaintiff with certain information concerning the defendant's Citation Administration and Adjudication System in response to the plaintiff's Freedom of Information Act request. Subparagraph (o) of paragraph (1) of Section 7 of the Freedom of Information Act (5 ILCS 140/7(1)(o)(West 2018)) provides that "[a]dministrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of [exempt] materials" is exempt from inspection and copying under the Act. The plaintiff argued that his request did not fall within the scope of the exemption because the requested information was a schema ("a structured framework or plan: outline") and not a file layout. The defendant argued that the requested records were file layouts (the "description of the arrangement of the data in a file") and that Section 7(1)(o) expressly exempts file layouts from disclosure. The court agreed with the defendant, holding that the records requests are the exempted "file layouts" within the meaning of Section 7(1)(o), and "schema" is just another name for "file layouts." The court reasoned that "the reasonable, common sense interpretation of Section 7(1)(o) that gives meaning to the listed items, the catchall, and the entire exemption as a whole leads to the conclusion that file layouts are exempt from disclosure."

FREEDOM OF INFORMATION ACT – CORRECTIONAL FACILITIES

The Act's exemption for records that "relate to or affect the security of correctional institutions and detention facilities" applies only when a public body demonstrates that disclosure of a requested record could pose a potential security risk to a correctional facility.

In *Glynn v. Department of Corrections*, 2023 IL App (1st) 211657, the Illinois Appellate Court was asked to decide whether the circuit court erred when it granted summary judgment in favor of the Department of Corrections and against the plaintiff, finding that correctional facility security camera recordings were exempt from inspection and copying under the Freedom of Information Act. Subsection (e) of Paragraph (1) of Section 7 of the Act (5 ILCS 140/7(1)(e)(West 2020)) provides that "[r]ecords that relate to or affect the security of correctional institutions and detention facilities" are exempt from inspection and copying under the Act. The Department of Corrections argued that the requested security camera recordings related to or affected the correctional facility's security because the footage would reveal blind spots that are not covered by the cameras and because the footage would reveal staff and prisoner movement as well as the process for moving prisoners. The plaintiff argued that the exemption must be "construed narrowly to further the statutory purpose [of opening] governmental records to the light of public scrutiny" and that the Department of Corrections must show that the disclosure actually affects security. The court rejected the plaintiff's assertion that the Department of Corrections must show that the disclosure actually affects security, pointing to the use of the disjunctive "or" between the terms "relate to" and "affect." The court also found that the use of the phrase "relate to" in the exemption is ambiguous. The court reasoned that, since the Department of Corrections is responsible for maintaining custody over committed persons, most records that the Department possesses arguably relate to security in some way, and it determined that the exemption must be construed in the broader context of the Act as a whole. Accordingly, the court concluded that the exemption applies "only when a public body demonstrates that disclosure of a requested record could pose a potential security risk to a correctional facility." Ultimately, the court concluded that the affidavit submitted by the Department of Corrections regarding the potential security concerns raised by the disclosure of the footage was too vague to allow the trier of fact to determine whether the Department had met its burden of proof in showing that the non-disclosure was covered by the exemption. Therefore, it reversed the circuit court's judgment and remanded the matter to the circuit court for an *in camera* review.

FREEDOM OF INFORMATION ACT – DISCLOSURE OF 9-1-1 RECORDINGS

Disclosure of 9-1-1 calls may be required under the Freedom of Information Act if the caller's voice is distorted to mask his or her identity and if the office has the ability to distort the audio in that manner.

In *Edgar County Watchdogs v. Will County Sheriff's Office*, 2023 IL App (3d) 210058, the Illinois Appellate Court was asked to decide whether the trial court erred when it granted summary judgment in favor of the plaintiff in connection with the plaintiff's request to the Will County Sheriff's Office for disclosure under the Freedom of Information Act of certain 9-1-1 calls. Section 7(1)(d)(iv) of the Act (5 ILCS 140/7(1)(d)(iv)) exempts from disclosure "[r]ecords in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would . . . (iv) unavoidably disclose the identity of . . . persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies." The plaintiff argued that the Sheriff's Office wrongfully denied the plaintiff's request to produce unredacted recordings of the 9-1-1 calls because those calls do not contain identifying information. The plaintiff further argued that the Sheriff's Office could have avoided disclosing the identities of the callers by masking the callers' voices or by creating transcripts of the calls. The Sheriff's Office argued that all 9-1-1 recordings should be exempt under Section 7(1)(d)(iv) of the Act because individual callers could be identified

by their voices. In the alternative, the Sheriff's Office argued that masking the audio or creating a transcript of the recording constitutes the creation of a new record, which it is not required to do under the Act. The court declined to adopt a blanket rule exempting all 9-1-1 recordings from disclosure under the Act, and it held that the recordings are exempt only to the extent that the recordings would unavoidably disclose the identity of the caller. Although the court found that requiring the defendant to create a transcript of the recording would involve the creation of a new record, it also found that altering the audio of the recording is similar to redacting information from an existing record. Therefore, the defendant could be required to disclose an altered audio recording. Nevertheless, the court held that the Sheriff's Office in this case was not required to produce an altered recording because the record included an affidavit from the Sheriff's Office averring that the Sheriff's Office did not have the ability to scramble or disguise audio recordings so as to protect the identity of the speaker.

The dissent argued that the Sheriff's Office is obligated to produce the 9-1-1 recordings in either modified audio form or as transcripts because technology could be obtained by the Sheriff's Office to modify the audio and "precedents strongly support finding that so long as the modification does not involve the creation of new *content* not previously maintained by the agency, it does not create a new record," including an audio modification or a transcript of the recording.

FREEDOM OF INFORMATION ACT – WITHHOLDING RECORDS

A court's evaluation of a record exemption asserted by a public body should be made based on the circumstances as they were at the time the exemption was asserted.

In *Green v. Chicago Police Department*, 2022 IL 127229, the Illinois Supreme Court was asked to decide whether the appellate court erred in determining that the relevant point for evaluating whether a public record may be withheld under the Freedom of Information Act was at the time of the public body's denial of the request. Subsection (d) of Section 11 of the Freedom of Information Act (5 ILCS 140/11(d)) provides that "[t]he circuit court shall have the jurisdiction to enjoin the public body from withholding public records and to order the production of any public records improperly withheld from the person seeking access." The plaintiff argued that the Act places no temporal limit on the court's jurisdiction based on when the information was withheld, and the evaluation of a denied request should account for any change in circumstances that take place during litigation. The defendant argued that the denial of the request should be evaluated based on the circumstances that existed at the time the request was denied by the public body. The court agreed with the defendant, holding that the appropriate time to measure whether a record may be withheld is at the time the public body asserts the exemption and denies the request. The court reasoned that accounting for changed circumstances occurring during litigation would compel a public body to continually monitor the information and revise its responses, undermining the goal of producing public information expediently and efficiently.

FREEDOM OF INFORMATION ACT – HIPAA

Hospital records that identify only the year in which a specific class of hospital admissions occurred are not exempt from disclosure under the Act.

In *Sun-Times v. Cook County Health and Hospitals System*, 2022 IL 127519, the Illinois Supreme Court was asked to determine whether the Illinois Appellate Court erred

in determining that a medical provider could not claim an exemption under the Freedom of Information Act in response to a request for records pertaining to gunshot victims who were treated at the hospital but were not accompanied by law enforcement. Paragraph (1) of subsection (a) of Section 7 of the Freedom of Information Act (5 ILCS 140/11(7)(a)(1)) provides an exemption for "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The plaintiff argued that the appellate court's judgment should be affirmed because the plaintiff only requested information from the year field of the records, and the defendant could de-identify the records sufficiently to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The defendant argued that HIPAA prohibits it from using and disclosing patients' private health information to comply with a Freedom of Information Act request and that, even with unique identities redacted, the responsive records would still constitute medical records that are exempted under the Freedom of Information Act. The court agreed with the plaintiff, holding that the year of hospital admissions, after the information is de-identified, no longer meets the standard of individually indefinable health information subject to HIPAA protection. The court reasoned that the defendant had no knowledge that the year of admission could be used alone or in combination with other information to identify a specific individual in a class of as many as 2,000 individuals. A dissenting opinion argued that the issue in the case is whether the Freedom of Information Act requires a public body to review its records and create a new document based off those records in order to respond to a request for information. The dissent argued that the plaintiff's request in this case amounted to a request for general information, rather than a request for public records, and was therefore not a request for records protected under the Freedom of Information Act.

FREEDOM OF INFORMATION ACT – ATTORNEY'S FEES

A unit of local government did not act in bad faith when it charged a person requesting public records a fee to cover the cost of transferring those records to a recording medium.

In *Edgar County Watchdogs v. Joliet Township*, 2023 IL App (3d) 210520, the Illinois Appellate Court was asked to decide whether the trial court erred in denying the plaintiff's request for attorney's fees and civil penalties under the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq*. (West 2020)). The plaintiff submitted a FOIA request to the township for a "copy of the hard drive contents" of a particular township computer. The township notified the plaintiff that the township would need to employ the services of an outside IT company to copy the hard drive, and the township provided the plaintiff with an invoice for the service costs and the costs of the external hard drive. The plaintiff and the township engaged in subsequent communications, during which time the plaintiff filed suit alleging that the township had failed to produce the records. The trial court noted that there was some confusion about whether the plaintiff's original FOIA request was simply asking for a copy of the documents on the hard drive, which the township could have provided without expert technical support, or whether the request was asking for the contents of the hard drive with metadata included, which would have required outside technical assistance. Upon a motion for partial summary judgment, the trial court ordered the township to copy the documents on the hard drive without the metadata, and the township complied with that order. The plaintiff then filed a petition for attorney's fees, costs, and civil penalties.

Subsection (i) of Section 11 of the Act provides that, "[if] a person seeking the right to inspect or receive a copy of a public record prevails in a proceeding under this Section,

the court shall award such person reasonable attorney's fees and costs." The plaintiff argued that the trial court erred in denying its petition for attorney's fees because the plaintiff prevailed in its FOIA claim. The defendant argued that the plaintiff did not prevail in its FOIA claim because the plaintiff did not receive a copy of the hard drive with the metadata. The court agreed with the defendant, and further found that "the purposes of [the fee-shifting] provision are 'to ensure enforcement of the FOIA' and 'to avoid unnecessary litigation,' not to reward successful plaintiffs or punish the government." The court reasoned that, in this case, the plaintiffs could have avoided litigation simply by clarifying their request.

Additionally, subsection (j) of Section 11 of the Act provides that, "[if] the court determines that a public body willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith, the court shall also impose upon the public body a civil penalty [of a specified amount]." The plaintiffs argued that the trial court erred in denying their request for civil penalties because the defendant's demand for reimbursement constituted a "willful, intentional, and bad faith violation of the Freedom of Information Act." The defendant argued that its request for reimbursement from the plaintiff was reasonable and not made in bad faith. The court agreed with the defendant, holding that the defendant's request for reimbursement to recoup its cost in producing the requested records was not dishonest and, therefore, did not amount to bad faith. The court reasoned that, while no provision of the Freedom of Information Act expressly authorized the defendant to request reimbursement for the purchase of software required to transfer the requested records to the external hard drive, the defendant's request for reimbursement was merely an attempt to recoup its costs.

ILLINOIS FALSE CLAIMS ACT – FALSE RECORD OR STATEMENT

A taxpayer's failure to satisfy a payment obligation to the State does not establish liability under the Act's false record or statement liability theory.

In *People ex rel. Stephen B. Diamond, P.C. v. Henry Poole & Co., Ltd.*, 2023 IL App (1st) 220195, the Illinois Appellate Court was asked to determine whether the circuit court erred when it granted the defendant's summary judgment motion, finding that the defendant's failure to pay its use tax obligations did not satisfy the false record or statement liability theory under subparagraph (G) of paragraph (1) of subsection (a) of Section 3 of the Illinois False Claims Act (740 ILCS 175/3(a)(1)(G) (West 2018)). Under that subparagraph, civil liability for making a false claim to the State extends to any person who "knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State." The plaintiff argued that summary judgment was improper because the circuit court "wrongly relied on the false record or statement requirement [which] the legislature eliminated when it amended 3(a)(1)(G) by adding an alternative liability for any person who 'knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State.'" In addition, the plaintiff argued that "the act of avoiding or concealing an obligation to the State under Section 3(a)(1)(G) equates to the act of failing to meet an obligation to the State." The defendant, a London-based tailoring shop, argued that the General Assembly's 2010 amendment did not eliminate the false record or statement requirement, but instead "broadens the language of Section 3(a)(1)(G) by including knowing omissions to the false record and statement requirement."

The appellate court agreed with the defendant and upheld the circuit court's judgment, finding that, based on the case evidence and the plain language of the statute, the defendant lacked the mental state required to establish liability under Section 3(a)(1)(G). The court noted that, prior to the 2010 amendment, liability under Section 3(a)(1)(G) extended to any person who "knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property." However, the court found that the 2010 amendment expanded the statute to provide two separate liability theories: (1) liability for knowingly making a false record or statement and (2) liability for knowingly concealing or avoiding a payment obligation to the State. Consequently, the court held that, contrary to the plaintiff's assertion, the 2010 amendment indicates the General Assembly's "intent to create an alternative theory separate from the false record or statement requirement." The court also rejected the plaintiff's attempt to equate the act of avoiding or concealing an obligation to the act of failing to meet an obligation. After noting that "avoid" and "conceal" are undefined under the statute, the court found that the plain and ordinary meaning of those terms "[denotes] an intent to commit a violation, whereas the word "fail" lacks any connotation of intent." According to the court, the use of those terms in Section 3(a)(1)(G) indicates the General Assembly's intent "to cover only those persons who intentionally choose not to meet their tax obligation." The court, therefore, found that the defendant's failure to collect and remit use taxes on its Illinois-based internet and telephone sales was not enough to establish a knowing intent to avoid or conceal its tax obligations or a knowing intent to make a false record or statement material to its tax obligations.

ILLINOIS INSURANCE CODE – DISTRIBUTION OF LIQUIDATED ASSETS

Attorney's fees, costs, and interest awarded to a reinsurer at arbitration against an insolvent insurance company are not considered "costs and expenses of administration" for purposes of the Act's priority distribution scheme for liquidating the insolvent company's assets.

In *In re Liquidation of Legion Indemnity Company*, 2022 IL App (1st) 211370, the Illinois Appellate Court was asked to decide whether the circuit court erred when it determined that attorney's fees, costs, and interest awarded to a reinsurer at arbitration against an insolvent insurance company were general creditor claims and, therefore, not entitled to payment at the highest priority distribution level under Section 205 of the Illinois Insurance Code (215 ILCS 5/205 (West 2020)). Section 205 sets forth a nine-level priority distribution scheme for liquidating the assets of insolvent insurance companies. Subparagraph (a) of paragraph (1) of Section 205 is the highest priority level and is designated for "[t]he costs and expenses of administration, including, but not limited to . . . (i) [the] reasonable expenses of [specified State guaranty associations and] of any other similar organization in any other state, including overhead, salaries, and other general administrative expenses allocable to the receivership . . . [and] (ii) [the] expenses expressly approved or ratified by the Director [of Insurance] as liquidator or rehabilitator, including, but not limited to, [specified costs and fees related to the process of liquidating an insolvent insurance company]." Subparagraph (g) of paragraph (1) of Section 205 is the seventh priority level and is designated for "all other claims of general creditors not falling within any other priority [level]." The plaintiff reinsurer argued that the attorney's fees, costs, and interest awarded at arbitration were not Section 205(1)(g) general creditor claims. Rather, they were, in the view of the plaintiff, Section 205(1)(a) costs and administrative expenses and, therefore, entitled to payment at the highest priority level under Section 205's distribution scheme. The Director of Insurance, acting as the insolvent insurance company's court-appointed liquidator, argued that "all claims arising out of reinsurance

agreements are claims of general creditors." Therefore, any amounts owed to the plaintiff should be assessed at the priority (g) level.

The Illinois Appellate Court agreed with the Director of Insurance and affirmed the circuit court's judgment, holding that the awarded attorney's fees, costs, and interest were not "costs and expenses of administration" for purposes of Section 205(1)(a). The court reasoned that, even though Section 205(1)(a) does not define the phrase "costs and expenses of administration," the court can infer from the plain and ordinary meaning of the phrase and from the statute's express inclusion of certain costs and expenses that the General Assembly intended for Section 205(1)(a) to cover two prongs of costs and expenses: first, the reasonable expenses, such as overhead salaries and other general administrative expenses, of guaranty associations in Illinois and other states; and second, the amounts paid or charged, or the expenditures of money, time, and labor or resources of the Director of Insurance in marshaling and distributing the insolvent insurer's assets. In addition, the court found that "implicit in the term 'of administration' is the fact that the costs and expenses have a postliquidation or postrehabilitation basis because there can only be an administration of the estate of an insolvent insurance company after an order of liquidation or rehabilitation." Consequently, the court held that the General Assembly "did not intend to include as costs and expenses of administration an adverse award of attorney fees, costs, and interest . . . incurred [by a claimant] while defending a claim . . . in arbitration that had a preliquidation genesis."

The court also rejected the plaintiff's counterargument that the General Assembly intended for Section 205(1)(a) to be broadly interpreted because the phrase "including, but not limited to," precedes the lists of cost and expenses of administration set forth in that Section. Although the court acknowledged that the use of that phrase indicates that the list of costs and expenses "is not exhaustive," the court noted that "when our legislature uses this phrase, the class of unarticulated things will be interpreted as those that are similar to the named things." The court subsequently found that Section 205(1)(a)'s list of cost and expenses of administration are "fundamentally different than an adverse award of attorney fees, costs, and interest to a party in arbitration called upon to defend itself from a claim brought by the Director [of Insurance] on behalf of a company undergoing liquidation." Moreover, the court noted that it previously held in *In re Liquidations of Reserve*, 122 Ill.2d at 558, that "all claims [against an insurance company undergoing liquidation] arising out of reinsurance agreements are claims of general creditors" and, therefore, subject to payment at the Section 205(1)(g) priority level.

ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT – MAINTENANCE FACTORS

There is a split between appellate districts as to whether the list of factors established under the Act in 2015 for the granting of maintenance should be used to review maintenance awards granted before the effective date of the 2015 changes.

In *In re Marriage of Chapa*, 2022 IL App (2d) 210772, the Illinois Appellate Court was asked to decide whether the trial court erred in denying the plaintiff's petition to extend maintenance for failure to consider certain criteria set forth in the Illinois Marriage and Dissolution of Marriage Act. Subsection (a) of Section 504 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504(a) (West 2018)) provides that "[i]n a proceeding for dissolution of marriage, legal separation, declaration of invalidity of marriage, or dissolution of a civil union, a proceeding for maintenance following a legal separation or dissolution of the marriage or civil union by a court which lacked personal jurisdiction over the absent spouse, a proceeding for modification of a previous order for

maintenance . . . or any proceeding authorized under . . . this Act, the court may grant a maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, and the maintenance may be paid from the income or property of the other spouse. The court shall first make a finding as to whether a maintenance award is appropriate, after consideration of [specified relevant factors]." The plaintiff argued that the factors set forth in subsection (a) of Section 504 support an award of permanent maintenance, and that the language of the dissolution judgment required the court to consider those factors. The defendant argued that, because the plaintiff made no effort to become self-sufficient during the temporary maintenance award period, the plaintiff was not entitled to a review for the extension of maintenance. The court agreed with the plaintiff in part, holding that the circuit court was required to conduct a *de novo* review of the factors in subsection (a) of Section 504 in addition to considering whether the plaintiff had taken steps to become self-sufficient. However, the court mentions that there is a split among the appellate districts regarding which set of factors to apply to the review of a maintenance award entered before the effective date of the most recent version of the guidelines. The maintenance award in this case was initially decided in 2012, when subsection (a) of Section 504 contained a list of only 11 enumerated factors and one catchall factor. In 2015, however, the law changed to include two additional enumerated factors. The court in this case followed a holding it made in a previous case, *In re Marriage of Brunke,* 2019 IL App (2d) 190201, that the new maintenance guidelines do not apply to the review of an earlier maintenance award; however, the court acknowledged that other districts have held otherwise.

ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT – LIFE INSURANCE

Changes made to the Act that remove a former spouse as beneficiary of a life insurance policy that is in force at the time a judgment dissolving a marriage is entered apply only to marriages that are dissolved on or after the effective date of the Public Act that made those changes.

In *Shaw v. U.S. Financial Life Insurance Company*, 2022 IL App (1st) 211533, the Illinois Appellate Court was asked to decide whether the circuit court erred when it granted summary judgment in favor of a former spouse who was listed as the beneficiary of her former husband's life insurance policy as against the decedent's son who was listed as a contingent beneficiary on the policy. Public Act 100-871, which took effect on January 1, 2019, modified subsection (b-5) of Section 503 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(b-5)) to provide that, if an ex-spouse is designated as a life insurance beneficiary to a policy that is in force at the time a judgment dissolving a marriage is entered, then the designation is not effective as to the ex-spouse unless the dissolution judgment designates the former spouse as beneficiary, the insured redesignates the former spouse as beneficiary, or the former spouse receives the proceeds in trust for a child or dependent. In this case, the marriage was dissolved in March of 2016, prior to the effective date of Public Act 100-871, but the decedent died in February of 2020, after the effective date of that Public Act. The former spouse argued that the changes made by Public Act 100-871 apply prospectively to dissolution judgments entered on or after January 1, 2019. Since the dissolution judgment in this case was entered prior to that date, the former spouse would remain as the beneficiary of the life insurance policy. The decedent's son argued that the changes made by the Public Act apply prospectively to deaths that occur on or after January 1, 2019. Under that reading, the former spouse would no longer be the beneficiary of the policy. The court agreed with the former spouse, holding that the operative act was the dissolution of the marriage. Because the dissolution proceeding

happened before the effective date of the Public Act, the previous version of the statute, which does not provide for the automatic removal of the ex-spouse as beneficiary, would apply. The court reasoned that the use of the present tense in the statute, as well as the placement of the amendatory language in the Illinois Marriage and Dissolution of Marriage Act, indicates that the General Assembly intended dissolution to be the operative event. The court also noted that, "while [the son's] argument that a beneficiary's interest vests only upon death has some surface appeal, this argument is one that our supreme court has repeatedly rejected in the context of wills and the same reasoning would apply here."

ILLINOIS PENSION CODE – OCCUPATIONAL DISEASE DISABILITY PENSION

The Downstate Firefighter Article of the Illinois Pension Code does not require the in-person or physical examination of a participant who is seeking an occupational disease disability pension.

In *City of East Peoria v. Melton*, 2023 IL App (4th) 220281, the Illinois Appellate Court was asked to decide whether the Board of Trustees of the Firefighter's Pension Fund of the City of East Peoria violated Section 4-112 of the Illinois Pension Code (40 ILCS 5/4-112) by awarding the defendant firefighter an occupational disease disability pension after the firefighter suffered a stroke while off duty and, thereafter, required the permanent use of anticoagulants. Section 4-112 provides that a disability pension shall not be paid until disability has been established by the board by examinations of the firefighter at pension fund expense by 3 physicians selected by the board and such other evidence as the board deems necessary. The 3 physicians selected by the board need not agree as to the existence of any disability or the nature and extent of a disability." The City argued that the Board violated Section 4-112 by awarding the firefighter an occupational disease disability pension without first subjecting the firefighter to in-person physical examinations by 3 physicians. The defendants argued that the plain language of Section 4-112 does not explicitly require an in-person examination. The court agreed with the defendants that the plain language of Section 4-112 does not require that the examination of the firefighter be an in-person or a physical examination. The court reasoned that, when the legislature has intended an in-person or physical examination in other situations, the legislature has explicitly stated so. Since Section 4-112 does not have similar language requiring an in-person or physical examination, the court may not read such a requirement into the Section.

The City also argued that there was insufficient evidence in the record to suggest that the firefighter's stroke was a result of his work as a firefighter. The defendant argued that, under Section 4-110.1 of the Illinois Pension Code (40 ILCS 5/4-110.1), the stroke is presumed to have been caused by the defendant's firefighting duties. Section 4-110.1 provides that "[an] active firefighter with 5 or more years of creditable service who is found, pursuant to Section 4-112, unable to perform his or her duties in the fire department by reason of heart disease, stroke, tuberculosis, or any disease of the lungs or respiratory tract, resulting from service as a firefighter, is entitled to an occupational disease disability pension during any period of such disability for which he or she has no right to receive salary." That Section also provides that "the cancer must (and is rebuttably presumed to) arise as a result of service as a firefighter." The court found that, under the terms of Section 4-110.1, the only condition that is presumed to arise as a result of service as a firefighter is cancer. Because the firefighter's disability was not due to cancer, the firefighter had the burden of proving that a duty-related accident or illness contributed to his disability. However, in this case, the court determined that the Board's finding that the firefighter's

stroke resulted from his service as a firefighter was not against the manifest weight of the evidence.

ILLINOIS PENSION CODE – POLICE DUTY DEATH SURVIVOR BENEFITS

Duty death pensions under the Downstate Police Article of the Code may be granted only to a surviving spouse and not to a decedent's minor child.

In *Masterton v. Village of Glenview Police Pension Board*, 2022 IL App (1st) 220307, the Illinois Appellate Court was asked to decide whether the trial court erred when it affirmed the pension board's determination that a deceased police officer's minor son was not entitled to apply for a 100% act of duty death pension. Subsection (e) of Section 3-112 of the Illinois Pension Code (40 ILCS 5/3-112(e) (West 2014)) provides for an act of duty death pension to the surviving spouse of a police officer who dies "as a result of sickness, accident, or injury incurred in or resulting from the performance of an act of duty." The defendant argued that the police officer's son did not qualify for an act of duty death pension because he is not a surviving spouse. The plaintiff argued that the defendant's determination that the police officer's son did not qualify for a duty death pension "violated the spirit and intent of the [Code] and was inconsistent with the language of the statute, which should be construed liberally in favor of [the son]." The court agreed with the defendant, holding that only a surviving spouse is eligible for an act of duty death pension under subsection (e) of Section 3-112. The court reasoned that the plain language of the statute "clearly states that it is applicable only to the deceased officer's surviving spouse." The court further reasoned that the other subsections of Section 3-112, which provide for different benefits, reference a survivor sequence of benefits that would include benefits paid to a minor child. Accordingly, the court reasoned that "the fact that the legislature omitted the reference to the survivor sequence in Section 3-112(e) shows that the legislature intended that only a surviving spouse could benefit from the duty-related survivorship pension under that [provision]."

ILLINOIS PENSION CODE – SUPPLEMENTAL ANNUITY

A supplemental annuity under the Chicago Police Article of the Code may only be awarded to the widow of a decedent who received a compensation annuity and who died before attaining age 63.

In *Salcedo v. Retirement Board of Policemen's Annuity & Benefit Fund of City of Chicago,* 2023 IL App (1st) 220728, the Illinois Appellate Court was asked to decide whether the trial court erred when it affirmed the decision of the retirement board to deny a supplemental annuity to the widow of a police officer whose duty disability benefits had been converted to a lifetime retirement annuity when the police officer attained the mandatory retirement age of 63 two years before his death. Subsection (b) of Section 5-144 of the Illinois Pension Code (40 ILCS 5/5-144(b) (West 2020)) provides that "[u]pon termination of the compensation annuity, 'supplemental annuity' shall become payable to the widow" based on the salary "that the policeman would have been receiving when he attained age 63 if the policeman had continued in service at the same rank . . . that he last held in the police department." The defendant argued that, because the decedent's duty disability benefits had been converted to a lifetime retirement annuity as a result of the decedent reaching age 63, the plaintiff was not entitled to a supplemental annuity. The plaintiff argued that, because the mandatory retirement age for police officers varies in Illinois, the decedent police officer may have been able to work after the age of 63 but for

his disability. The court agreed with the defendant, holding that supplemental annuity benefits may only be awarded to "widows of officers who have died from on-duty injuries or whose injuries resulted in permanent disability before the age of 63." The court reasoned that Section 5-144 of the Code does not contain provisions for awarding a supplemental annuity for officers who die after attaining age 63 because a supplemental annuity is "meant to serve as 'extra compensation' to a widow whose husband could no longer receive standard compensation from the department, and who perhaps otherwise would be eligible for duty disability benefits that would cease upon age 63." The court noted that, even if the decedent police officer worked in a jurisdiction with a retirement age greater than 63, he would have been precluded from being eligible for a compensation or supplemental annuity. The court also reasoned that the plaintiff would not be eligible for supplemental annuity because the plaintiff was receiving a widow's annuity and not a compensation annuity, which is an eligibility requirement for a supplemental annuity.

ILLINOIS VEHICLE CODE – DUI BY A RECREATIONAL CANNABIS USER

Provisions of the Code subjecting a recreational cannabis user, but not a medical cannabis card holder, to a violation of driving under the influence with a THC concentration of at least five nanograms did not violate the equal protection clauses of the Illinois Constitution and United States Constitution.

In *People v. Lee*, 2023 IL App (4th) 220779, the Illinois Appellate Court was asked to decide whether provisions of the Code subjecting a recreational cannabis user, but not a medical cannabis card holder, to a violation of driving under the influence with a THC concentration of at least five nanograms were unconstitutional under the equal protection clauses of the Illinois Constitution (Ill. Const. art. I, § 2) and the United States Constitution (U.S. Const. amend. XIV). Paragraph (7) of subsection (a) of Section 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501(a)(7) (West 2018)) provides that "[a] person shall not drive or be in actual physical control of any vehicle within this State while . . . the person has, within 2 hours of driving or being in actual physical control of a vehicle, a tetrahydrocannabinol concentration in the person's whole blood or other bodily substance[, except that] . . . this paragraph (7) does not apply to the lawful consumption of cannabis by a qualifying patient licensed under the Compassionate Use of Medical Cannabis Pilot Program Act who is in possession of a valid registry card issued under that Act, unless that person is impaired by the use of cannabis." The defendant argued that subdivision (a)(7) of Section 11-501 violates equal protection (i) because a medical cannabis card holder and a noncard holder are similarly situated because they may both legally possess and ingest cannabis under State law and (ii) because the provisions irrationally treat those two similarly situated individuals differently. The State argued that it has a rational basis to distinguish between the two groups since medical use of cannabis can be used in moderation as directed by a physician while recreational users are more likely to use greater amounts of cannabis to achieve a high that poses an increased threat to roadway safety. The court agreed with the State, holding that subdivision (a)(7) of Section 11-501 does not violate equal protection because card-holding medical cannabis users were not similarly situated to non-card holders. The court further reasoned that, even if those two classes were similarly situated, the General Assembly had a rational basis for treating the classes differently because "[had] the legislature not subjected medical cannabis users to DUI cannabis convictions only for driving impaired, card holders might risk committing a DUI offense every time they operated a vehicle."

PUBLIC SAFETY EMPLOYEE BENEFITS ACT – INSURANCE PREMIUMS

The award of a line-of-duty disability pension under the Downstate Firefighter Article of the Illinois Pension Code establishes that the recipient suffered a catastrophic injury for purposes of qualifying for health insurance premium benefits under the Act.

In *Ivetic v. Bensenville Fire Protection District No. 2*, 2023 IL App (1st) 220879, the Illinois Appellate Court was asked to decide whether the trial court erred when it granted summary judgment in favor of a fire protection district, holding that a firefighter who was receiving a line-of-duty disability pension under Section 4-110 of the Illinois Pension Code (40 ILCS 5/4-110 (West 2010)) based on the firefighter's cancer was not entitled to have the entirety of his health insurance premium paid under the Public Safety Employee Benefits Act. Subsection (a) of Section 10 of the Public Safety Employee Benefits Act (820 ILCS 320/10 (a) (West 2014)) provides that "[a]n employer who employs a full-time . . . firefighter who . . . suffers a catastrophic injury or is killed in the line of duty shall pay the entire premium of the employer's health insurance plan for the injured employee, [and] the injured employee's spouse." The plaintiff firefighter argued that his cancer resulted from exposure to various carcinogens while responding to emergencies as a firefighter and was a catastrophic injury under the Act. The defendant argued that the plaintiff did not suffer a catastrophic injury because cancer is an illness rather than an injury. The defendant also argued that the plaintiff had not established that his cancer was the result of responding to an emergency. The court agreed with the plaintiff, holding that, as a matter of law, being awarded a line-of-duty disability pension "conclusively established that [the plaintiff] suffered a catastrophic injury" within the meaning of the Act. The court reasoned that the Illinois Supreme Court in *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 400, 789 N.E.2d 1211 (2003), construed the phrase "catastrophic injury" as synonymous with an injury resulting in a line-of-duty disability pension. The court further reasoned that the legislative history supported that construction because, during the debate before the final vote on the legislation, a senator stated that "catastrophically injured" is to be construed "as a police officer or firefighter who, due to injuries, has been forced to take a line-of-duty disability."

UNIFIED CODE OF CORRECTIONS – DOUBLE ENHANCEMENT

The trial court's use of the defendant's prior conviction for aggravated unlawful use of a weapon as both an element of the offense of unlawful possession of a weapon by a felon and as a factor for imposing a presumptive extended range sentence did not constitute an impermissible double enhancement.

In *People v. Donald*, 2023 IL App (1st) 211557, the Illinois Appellate Court was asked to decide whether the trial court erred by applying an impermissible double enhancement of the defendant's sentence when it used the defendant's prior conviction for aggravated unlawful use of a weapon as both an element of the offense of unlawful possession of a weapon by a felon (UUWF) and as a factor for imposing a presumptive extended range sentence for the defendant's UUWF conviction. Paragraph (1) of subsection (c) of Section 5-4.5-110 of the Unified Code of Corrections (730 ILCS 5/5-4.5-110) provides that "[w]hen a person is convicted of unlawful use or possession of a weapon by a felon, when the weapon is a firearm, and that person has been previously convicted of a qualifying predicate offense, the person shall be sentenced to a term of imprisonment within the sentencing range of not less than 7 years and not more than 14 years, unless the court finds that a departure from the sentencing guidelines under this paragraph is warranted." The defendant argued that the trial court "failed to take into consideration all

of the mitigating factors presented; considered improper aggravating factors; improperly ordered sentencing enhancements . . . and/or sentenced [defendant] to a term of imprisonment in excess of a term that would be considered reasonable under the facts and circumstances of the case." On appeal, the defendant also argued, for the first time, that the trial court improperly engaged in a double enhancement when imposing his sentence. The State argued that the defendant forfeited the double enhancement issue because he failed to raise it earlier. In the alternative, the State argued that no plain error occurred. After finding that it could review the defendant's double enhancement argument under the plain error doctrine, the court found that the plain language of the statute demonstrates that the General Assembly "intended for individuals convicted of UUWF with certain serious prior felony convictions . . . to be subject to the presumptive sentencing range of 7 to 14 years unless the court makes express findings that a downward departure is warranted." The court reasoned that "the statute's use of the word 'shall' here demonstrates that the legislature was acutely aware that it was prescribing an extended term sentence for *all* individuals convicted of UUWF who had committed one of the 26 enumerated offenses listed . . . unless the court finds 'substantial and compelling justification' to depart downward under 5-4.5-110(d)."

UNIFIED CODE OF CORRECTIONS – CLASS X FELONY SENTENCING

A defendant's prior conviction for an offense committed when he was 17 years old was not a qualifying offense for Class X sentencing because the prior offense would have resulted in a juvenile adjudication if it had been committed on the date of the current offense.

In *People v. Stewart*, 2022 IL 126116, the Illinois Supreme Court was asked to decide whether the Illinois Appellate Court erred when it vacated the defendant's Class X sentence, which was imposed under subsection (b) of Section 5-4.5-95 of the Unified Code of Corrections (730 ILCS 5/5-4.5-95(b)(West 2016)), for the defendant's 2017 conviction for possession of a stolen vehicle and remanded the case to the trial court with directions to resentence the defendant as a Class 2 offender. The defendant had been convicted of two prior offenses; however, the first prior offense, for residential burglary, was committed in 2013 when the defendant was 17 years old. In 2014, changes to the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.*) increased the age for exclusive juvenile court jurisdiction from 16 to 17, which would have subjected the defendant to juvenile adjudication for the residential burglary, rather than a felony conviction, if the offense had been committed at that time. At the time of the defendant's 2017 conviction, subsection (b) of Section 5-4.5-95 of the Code provided that "[w]hen a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now (the date the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater Class felony and those charges are separately brought and tried and arise out of a different series of acts, the defendant shall be sentenced as a Class X offender." At that time, the subsection also provided that the subsection does not apply unless: "(1) the first felony was committed after February 1, 1978 (the effective date of Public Act 80-1099); (2) the second felony was committed after conviction on the first; and (3) the third felony was committed after conviction on the second." In 2021, Public Act 101-652 added another requirement for Class X sentencing to provide that the first offense must have been committed when the person was 21 years of age or older. The defendant argued that his first offense was not a qualifying offense for Class X sentencing purposes because, if a 17-year-old had committed the offense of residential burglary on August 13, 2016 (the date on which the defendant's current offense was committed), that person would have been subject to

juvenile adjudication for the first offense, not a felony conviction. The State argued that the defendant's first offense is a qualifying offense because the offense of residential burglary in 2013 contained the same elements as the offense of residential burglary in 2016, and those elements did not include the defendant's age. The court agreed with the defendant, reasoning that, prior to the enactment of Public Act 101-652, there had been an appellate court split concerning the question of qualifying offenses committed when the defendant was a juvenile. In the court's view, that split, when coupled with the fact that the previous version of the statute was silent on the issue, indicated that the General Assembly's intent in enacting Public Act 101-652 was to resolve the conflict and clarify the meaning of the statute. The dissent asserted that it should be presumed that, in enacting Public Act 101-652, the General Assembly intended to change existing law.

CASES

Alms v. Peoria County Election Commission, 2022 IL App (4th) 220976 16
Barnett v. Apple Inc., 2022 IL App (1st) 210187 7
Channon v. Westward Management, Inc., 2022 IL 128040 11
Chapman v. Chicago Department of Finance, 2023 IL 128300 18
City of East Peoria v. Melton, 2023 IL App (4th) 220281 26
City of East St. Louis v. Netflix, Inc., 2022 WL 448868 9
Cothron v. White Castle System, Inc., 2023 IL 128004 8
Edgar County Watchdogs v. Joliet Township, 2023 IL App (3d) 210520 21
Edgar County Watchdogs v. Will County Sheriff's Office, 2023 IL App (3d) 210058 19
FirstMerit Bank v. McEnery, 2022 IL App (3d) 210306 10
Glynn v. Department of Corrections, 2023 IL App (1st) 211657 19
Green v. Chicago Police Department, 2022 IL 127229 20
In re Liquidation of Legion Indemnity Company, 2022 IL App (1st) 211370 23
In re Marriage of Chapa, 2022 IL App (2d) 210772 24
In re Nocchi, 2023 IL App (2d) 220124 16
Masterton v. Village of Glenview Police Pension Board, 2022 IL App (1st) 220307 27
National Institute of Family and Life Advocates v. Raoul, 2023 WL 5367336 12
People ex rel. Stephen B. Diamond, P.C. v. Henry Poole & Co., Ltd., 2023 IL App (1st) 220195 22
People v. Castillo, 2022 IL 127894 13
People v. Donald, 2023 IL App (1st) 211557 29
People v. Guy, 2023 IL App (3d) 210423 14
People v. Lee, 2023 IL App (4th) 220779 28
People v. Molina, 2022 IL App (4th) 220152 9
People v. Ramirez, 2023 IL 128123 14
People v. Stewart, 2022 IL 126116 30
People v. Whitehead, 2023 IL 128051 15
Rowe v. Raoul, 2023 IL 129248 12
Salcedo v. Retirement Board of Policemen's Annuity & Benefit Fund of City of Chicago, 2023 IL App (1st) 220728 27
Shaw v. U.S. Financial Life Insurance Company, 2022 IL App (1st) 211533 25
Snedeker v. Will County State's Attorney's Office, 2022 IL App (3d) 210133 17
Sun-Times v. Cook County Health and Hospitals System, 2022 IL 127519 20

Statutes

5 ILCS 140/1 21
5 ILCS 140/11 ..... 20, 21
5 ILCS 140/7 ..... 18, 19
10 ILCS 5/28-2 17
40 ILCS 5/3-112 27
40 ILCS 5/4-110 29
40 ILCS 5/4-110.1 26
40 ILCS 5/4-112 26
40 ILCS 5/5-144 27
215 ILCS 5/205 23
220 ILCS 5/21-100 9
410 ILCS 705/10-35 10
430 ILCS 65 17
625 ILCS 5/11-501 28
625 ILCS 5/11-502.1 9
720 ILCS 5/12-3.05 ..... 13, 15
720 ILCS 5/24-5 14
720 ILCS 5/4-3 15
720 ILCS 5/8-4 14
730 ILCS 5/5-4.5-110 29
730 ILCS 5/5-4.5-95 30
735 ILCS 5/2-1402 10
740 ILCS 14/1 7
740 ILCS 14/15 8
740 ILCS 175 22

750 ILCS 5/503 25
750 ILCS 5/504 24
755 ILCS 65/5 16
765 ILCS 605/22.1 11
815 ILCS 505/1 12
820 ILCS 320/10 29