

**BILL OF RIGHTS AND
DUE PROCESS
IN PUBLIC SECTOR
EMPLOYMENT**

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HISTORIC BACKGROUND

- Magna Carta
- Development of Canon and Secular Law based on Holy Scripture

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2

NECESSARY PREMISES

- Barron v Baltimore (1833)
- State Action Doctrine
- Incorporation Doctrine

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3

FIRST AMENDMENT

- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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4

FIRST AMENDMENT FREEDOM OF EXPRESSION

- *Gitlow v People of New York* (1925)(involving statutory crime of criminal anarchy)(incorporation)
- *Pickering v Board of Education* (1968)(involving dismissal of teacher for public comments on matter of public importance)
- *Givhan v Western Line Consolidated ISD* (1979)(involving dismissal of teach for private comments on matter of public importance)

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FIRST AMENDMENT FREEDOM OF EXPRESSION

- *Connick v Myers* (1983)(involving dismissal of ADA for exercising free speech)
- *Rankin v McPherson* (1987)(involving dismissal of probationary clerical staff in Constable's office for political speech comments related to attempted assignation of President Reagan)
- *Garcetti v Ceballos* (2006)(re-assessing what is protected speech when such speech involves claimaint's job duties)

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FOURTH AMENDMENT

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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FOURTH AMENDMENT UNREASONABLE SEARCHES

- Mapp v Ohio (1961), but see also Wolf v Colorado (1949)(re incorporation of 4th Amendment to the States)
- O'Connor v Ortega (1987)(involving search of hospital administrator's office; establishing rule of reason in connection with implicit privacy right)
- Lowe v Macon (4th Cir. 1989)(search of police officer's locker; criminal investigation vs administrative misconduct investigation)

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FIFTH AMENDMENT

- No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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**FIFTH AMENDMENT
Compelled Statements**

- Malloy v Hogan (1964)(incorporation of 5th Amendment protections against state action)
- Garrity v New Jersey (1967)(re compelled statements of public sector employees)
- Lingler v Fetchco (2002)(compelled statements okay if related to work performance and not used in criminal prosecution)

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10

FOURTEENTH AMENDMENT

- Section 1.
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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**FOURTEENTH AMENDMENT
LIBERTY / PROPERTY INTEREST**

- Chicago Burlington v Chicago (1897)(providing for compensation of private property taken by state)
- Board of Regents v Roth (1972); Perry v Sinderman (1972); Bishop v Wood (1976) (re procedural protections against loss of liberty (reputation), contractual property, and right to a name clearing hearing)
- Owen v City of Independence (1980)(re special harm to person's reputation); but not defamation (see Paul v Davis (1976))

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**FOURTEENTH AMENDMENT
EQUAL PROTECTION**

- Washington v Davis (1976)(Equal Protection Clause covers intentional discrimination in public employment, but not disparate impact theories)
- Ricci v Stefano, (2009)(disparate impact theory of discrimination covered by Title VII, but not Equal Protection; therefore statutory claim addressed first)

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FOURTEENTH AMENDMENT

- **Section 5.**
The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

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14

CONCLUDING REMARKS

- Heyday of judicial development of Bill of Rights based claims in a public sector employment brought under 42 U.S. C. Section 1983 is probably largely over
- Emphasis has now moved to statutory schemes, which are broader and more encompassing.
- These includes federal statutory provisions, as well as mirror legislation under state law.

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15
