



Ancel Glink
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Welcome to *Ancel Glink Defense E-News*, our electronic newsletter. In this newsletter, we focus on the latest court decisions and legislative changes in litigation which may affect you.

Ancel Glink Defense E-News is a publication of the defense litigation group of Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.

For more information about this edition of the *E-News*, please contact litigation partner, [Lucy Bednarek](#).

Third Quarter 2017

CASES YOU SHOULD KNOW ABOUT

Tort Immunity - no duty to pedestrians walking outside the crosswalk.

***Lewis v. City of Chicago*, 2017 IL App (1st) 16-1888-U (July 26, 2017).**

The plaintiff was exiting a CTA bus when he stepped into a pothole, injuring his ankle. The bus stopped one foot away from the curb, and the plaintiff exited through the rear exit of the bus as opposed to the exit in the front near the driver. The pothole the plaintiff stepped in was not in a crosswalk and was half covered by the bus, so the plaintiff could not see the pothole until he was on the ground. The City argued it was immune under Section 3-102 of the Tort Immunity Act because the plaintiff was not an intended and permitted user of the street. The Illinois Appellate Court agreed, finding that since the plaintiff was outside of the crosswalk when he fell into the pothole and injured his ankle, he was not an intended user of the street.

Transgender student restroom accommodations.

***Whitaker v. Kenosha Unified Sch. Dist. No. 1*, 858 F.3d 1034 (7th Cir. May 30, 2017).**

The plaintiff, a 17 year old high school senior, made a public female-to-male transition by sophomore year. The school administration informed him he was only permitted to use the girls' restroom or the gender-neutral restroom, claiming it was protecting the privacy interests of male students. The student filed suit pursuant to Title IX and the Equal Protection Clause of the Fourteenth Amendment, in addition to seeking a preliminary injunction that would prevent the school from interfering with the student's use of the boy's restroom. The district court granted the student's preliminary injunction and the Seventh Circuit affirmed. The Seventh Circuit found the student sufficiently demonstrated he was likely to suffer irreparable harm without such an injunction. The student was also likely to succeed on a Title IX sex discrimination claim based on a theory of sex-stereotyping and was likely to succeed on his equal protection claim.

Supreme Court finds unconstitutional a statute banning registered sex offenders from accessing social media sites.

***Packingham v. North Carolina*, 137 S. Ct. 1730 (June 19, 2017).**

North Carolina enacted a law making it a felony for a registered sex offender to access common social media platforms, such as Facebook and Twitter. The plaintiff a convicted sex offender, had a traffic ticket dismissed and, in response, he posted the following statement on his Facebook page: "Man God is Good! How about I got so much favor they dismissed the ticket before court even started? No fine, no court cost, no nothing spent..... Praise be to GOD, WOW! Thanks JESUS!" The plaintiff was then convicted for violating the statute. The plaintiff appealed his conviction, alleging the statute violated his First Amendment rights. The United States Supreme Court held in favor of the plaintiff. The Court determined that, although legislation can permissively pass laws which protect children and other victims of sexual assault, the statute at issue was not narrowly-tailored to serve a significant government interest in preventing child abuse. Preventing sex offenders from accessing social media websites is essentially barring them from gaining access to current events, employment advertisements, communicating in public forums, and an endless amount of information.

Chicago parks ordinance -- Illinois Constitution provision regarding the right of assembly will be interpreted in lockstep with federal precedent.

***City of Chicago v. Alexander*, 2017 IL 120350 (June 15, 2017).**

The Illinois Supreme Court upheld an ordinance which prohibited persons from being in

any city park "between the hours of 11:00 p.m. and 6:00 a.m. on the following day." The ordinance was challenged after members of the "Occupy Chicago" movement, who were protesting wealth inequality, were charged with violating the ordinance. This case presented a question of first impression as the Court addressed plaintiffs' contention that the Illinois Constitution provides greater protection for the right of assembly than the U.S. Constitution. The Court rejected plaintiffs' argument and held that both constitutional provisions are virtually identical and federal precedents interpreting the provision would apply. The Court also rejected plaintiffs' other arguments under the Illinois Constitution, holding the arguments were forfeited since they were not timely raised. Pursuant to precedent regarding the right to assembly from the United States Supreme Court, the appellate court properly applied the "time, place, and manner" analysis in upholding the constitutionality of the ordinance.

PSEBA - catastrophic injury is not synonymous with occupational disease disability pension.

***Bremer v. City of Rockford*, 2016 IL 119889 (April 7, 2017).**

A firefighter, who received an occupational disease disability pension for heart disease resulting from his service as a firefighter, filed suit against the City of Rockford after he was denied health care benefits under Public Safety Employee Benefits Act (PSEBA). The Act "provides premium-free health insurance benefits for a public safety employee, his or her spouse, and any dependent children when the employee is catastrophically injured or killed in the line of duty under the circumstances listed in section 10(b)." The firefighter argued his disability, which arose in the line of duty, qualified as a "catastrophic injury" within the meaning of the Act. The Illinois Supreme Court disagreed, holding it was not the legislature's intent that "catastrophic injury" be synonymous with an injury resulting in an occupational disease disability pension under the Pension Code. The Court did not believe the legislative history indicates an intent to expand the definition of "catastrophic injury" to include other types of disability pensions awarded under other sections of the Pension Code.

NEW AND PROPOSED LAWS THAT MAY AFFECT YOU

Law Enforcement Criminal Sexual Assault Investigation Act

Public Act 100-515, effective January 1, 2008, requires all law enforcement agencies to adopt a written policy regarding the investigation of officer-involved criminal sexual assaults that involve an officer employed by the agency or department. The Act requires that each investigation be conducted by at least 2 investigators who have completed a state approved training program. The investigators cannot be employed by the law enforcement agency that employs the officer being investigated, although the state police and municipalities over 1,000,000 (Chicago) are exempt from this particular limitation.

Reinstate "Public Duty Rule" in Illinois

House Bill 2349 would create the Public Duty Rule Codification Act. The Act would clarify that a local government and its employees do not owe a duty to provide governmental services to individual members of the general public. On March 31, 2017, the Bill was re-referred to the Rules Committee.

Amendment to Abused and Neglected Child Reporting Act

House Bill 3288 would amend the Abused and Neglected Child Reporting Act by removing a list of specified persons who are required to report to the Department of Children and Family Services suspected cases of child abuse or neglect. Instead the bill provides that any person, agency, organization, or entity that knows or in good faith suspects a child is being abused or neglected shall report it to the Department immediately. On March 31, 2017, the Bill was re-referred to the Rules Committee.

Bill Would Make Emails on Private Devices "Public Records"

House Bill 2385 would amend the Local Records Act by providing that all emails sent and received by a government agency, employee, staff member, or contractor are public records. The bill requires that (1) the agencies provide official email addresses to all officers of the agency if employees are provided with an official email address; (2) all officers, employees, and contractors use the official email address; and (3) all officers, employees, and contractors must forward any email sent or received on his or her personal email address to the agency-provided email if it relates to agency business, or if the agency does not have an official email account, then provide a copy of the email to the agency. On March 31, 2017, the Bill was re-referred to the Rules Committee.

RISK MANAGEMENT PUBLICATIONS & EVENTS

Darcy Proctor presented at CLM's Midwest Conference in Chicago in June, 2017, on defending sexual misconduct cases for non-profit and religious organizations.

Tom DiCianni and Lucy Bednarek spoke at the International Municipal Lawyers Association Mid-Year Seminar in Washington, D.C. in April, 2017 on *Practice Pointers in Defending Against Wrongful Conviction Claims*.

Darcy and Bob McCabe will be presenting a workshop session on *Hiring and Firing Without Litigation* at the 2018 IAPD/IPRA Soaring to New Heights Conference in January, 2018.

Katie O'Grady will be presenting a session on *Somebody Blew the Whistle! Now What?: To What Extent are Whistleblower Protected Globally?* in October, 2017, at the International Law Fall Conference in Miami, Florida.

Julie Tappendorf will present a session on the legal implications of social media at the Southern Association of Workers' Compensation Administrators (SAWCA) Conference in Hilton Head, South Carolina on November 16, 2017.

ABOUT ANCEL GLINK DEFENSE

The attorneys who comprise Ancel Glink's defense litigation group are dedicated almost exclusively to defending governmental entities in tort, civil rights, employment, business and other claims and lawsuits. In addition to defending municipalities, school districts, park districts, townships and other entities in lawsuits in state and federal courts, Ancel Glink's litigation group handles appeals, administrative hearings, critical incident crisis management, loss control training and seminars, file audits, and special consultation. Visit our web-site at www.ancelglink.com or email us at e-news@ancelglink.com.

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