



Spring 2019

# Ancel Glink

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, P.C.

For more information about this edition of the *E-News*, please contact Christy L. Michaelson.

## CASES YOU SHOULD KNOW ABOUT

### Tort Immunity - 2-201 and Evidence of Discretionary Authority

*Andrews v. Metropolitan Water Reclamation District of Greater Chicago*, 2018 IL App (1st) 170336 (Nov. 5, 2018), appealed allowed 426 Ill.Dec. 629 Jan. 31, 2019.

Plaintiff was seriously injured when he fell off a ladder while working on a Water Reclamation District construction project while trying to reach the bottom of settling tank. Andrews' wife brought suit but the Reclamation District argued it was entitled to discretionary immunity under the Tort Immunity Act because the supervisor acted with discretionary authority and was making policy determinations with respect to the site's safety. The Appellate Court held that the Reclamation District had not met its evidentiary burden of showing that it actually exercised discretion under Section 2-201 of the Tort Immunity Act when allowing the workers to use the allegedly unsafe method of climbing into the tanks. The Court concluded that just because a party has a right to exercise discretion does not mean that it did exercise discretion.

### Fourth Amendment Claim For Unlawful Pretrial Detention and Statute of Limitations

*Lewis v. City of Chicago*, No. 16-CV-7592 (7th Cir. Jan. 23, 2019).

Lewis spent over two years in pretrial detention in Cook County Jail based on false police reports. The charges against him were dropped. Lewis sued the City of Chicago and six officers under 42 U.S.C. § 1983 for damages for violation of his rights under the Fourth Amendment and Due Process Clause of the Fourteenth Amendment. The District court dismissed the suit, ruling that both claims were time-barred. Twelve days after the case was dismissed, the U.S. Supreme Court decided *Manuel I*, where it held that detention without probable cause violates the Fourth Amendment "when it precedes, but also when it follows, the start of legal process in a criminal case." The Supreme Court remanded to the Seventh Circuit to resolve *when* such claims accrue. In *Manuel II*, the Seventh Circuit panel held that a Fourth Amendment claim for wrongful pretrial detention accrues on the date the detention ends. The Seventh Circuit held that Lewis pleaded a viable Fourth Amendment claim for unlawful pretrial detention in the wake of *Manuel I* and *Manuel II*. *Manuel II* confirms that the claim is timely because Lewis filed it within two years of his release from detention. With respect to Plaintiff's Due Process claim, the Seventh Circuit held that the Fourth Amendment, not the Due Process Clause, governed his claim for wrongful pretrial detention.

### Parking Enforcement "Chalking" Found Unconstitutional by Sixth Circuit

*Taylor v. City of Saginaw*, 2019 WL 1757953 (6th Cir. 2019).

The Sixth Circuit Court of Appeals recently struck down a city's practice of "chalking" the tires of parked cars to track how long they have been parked as part of the city's parking enforcement program. On appeal the Sixth Circuit first held that the practice of "chalking" was a search under the Fourth Amendment. The Court then found that the search was unreasonable as it (1) lacked probable cause and (2) the city failed to show how the search related to the protection of public safety. The Court concluded that the City did not demonstrate the need to deter drivers from exceeding the time permitted for parking was sufficient to justify a warrantless search.

### Local Assault Weapons Ban Struck Down

*Easterday v. Village of Deerfield*, No. 2018 CH 427 (March 22, 2019).

A court ruled the Village of Deerfield cannot enforce its ordinance banning assault weapons. In 2013, the Illinois legislature provided a 10-day window of opportunity for municipalities to adopt certain gun control laws before it restricted municipal regulation of assault weapons. The Village did, in fact, adopt an ordinance within the time-frame but did not ban the weapons until 2018. The Village argued it simply amended the ordinance it had previously enacted in 2013 but the court ruled it had no authority to do so and, therefore, its ordinance was unenforceable. On April 29, 2019, a notice of appeal was filed.

### City Not Liable for Pothole Injury

*Ramirez v. City of Chicago*, 2019 IL App (1st) 180841.

Ramirez was injured when she stepped into a pothole in the street while returning to her parked car. The City argued that the individual was not an "intended and permitted" user of the street because she had parked her car five feet into a marked no-parking zone due to a nearby fire hydrant. Ramirez argued that most of her car was legally parked, and that the pothole was outside of the no-parking zone. The Court agreed with the City, finding that because Ramirez was illegally parked in violation of a City ordinance, she was not an "intended and permitted user" of the street where she fell. As a result, the City did not owe a duty to her under the Tort Immunity Act.

### Illinois Law Banning Stuns and Tasers in Public Found Unconstitutional

*People v. Webb*, 2019 WL 1291586.

The Illinois Supreme Court issued an opinion finding an Illinois statute that prohibits people from carrying stun guns or tasers in public or in a vehicle unconstitutional. Two individuals were arrested in DuPage County for carrying a stun gun. One had a stun gun in his jacket while in his vehicle and the other had a stun gun in his backpack in a forest preserve. The circuit court struck down the statute as unconstitutional under the Second Amendment. The Illinois Supreme Court affirmed the lower court noting that the Second Amendment applies to *all* bearable arms, not just those in existence at the time of the Second Amendment.

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## NEW AND PROPOSED LAWS THAT MAY AFFECT YOU

### Written Orders Required by Supreme Court Rule 557

**Supreme Court Rule 557** (effective March 1, 2019) now requires court to enter written orders imposing any sentence and all fines, fees, and costs against a defendant at the time of sentencing in traffic, conservation cases, and ordinance violation cases. More importantly, the municipal prosecutor is responsible for drafting the order and presenting it to the defendant or to the defendant's attorney for review before submitting it to the court.

### Recreational Cannabis Proposal Unveiled

**Amendment No. 1 to SB0007** (introduced May 4, 2019) would allow for the legal use of cannabis for adults over the age of 21 under Illinois law. The proposed law would allow residents over the age of 21 to possess up to 30 grams of cannabis and grow up to five plants per household. At this time SB0007 is only a proposal and still needs to pass both the Illinois House and Senate and be signed by the Governor before it becomes law.

### Tobacco 21 Law Signed into Law

**P.A. 101-002** (effective July 1, 2019) raises the legal age to 21 for the purchase or sale of tobacco products, electronic cigarettes, and alternative nicotine products. The law also provides a formal definition for electronic cigarettes to include electronic nicotine delivery systems, whether or not the solution contains nicotine.

### Bill Prohibiting "Right to Work" Zones

**P.A. 101-003** (effective April 12, 2019) bars local governments from establishing "right-to-work-zones" and provides that the state has exclusive authority to enact laws governing agreements between unions. The Act prohibits any local government from enacting any law or ordinance that prohibits the use of union security agreements between an employee and labor union.

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## 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 website at [www.ancelglink.com](http://www.ancelglink.com) or email us at [e-news@ancelglink.com](mailto:e-news@ancelglink.com).

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