The following is a compendium of research materials and case law that may be of interest to our AG offices working on affirmative and defensive civil rights matters. Neither the National Association of Attorneys General nor the National Attorneys General Training & Research Institute expresses a view as to the accuracy of any listed articles nor as to the position expounded by the authors of any hyperlinked articles.

APRIL 2015

FEDERAL CASE LAW

U.S. SUPREME COURT – DECIDED CASES

Employment Law – Discrimination against Pregnant Employees


In Young v. UPS, the Supreme Court issued its decision regarding the extent to which employers must accommodate employees whose ability to fulfill their duties is temporarily limited due to pregnancy. The facts of this case have been discussed previously in a prior Civil Rights Bulletin; in short, Young was fired from her job as a driver with UPS because she became pregnant and was considered unable to fulfill the physical obligations of her job. However, UPS offered accommodations to three groups of employees who became unable to work: (1) drivers injured on the job, (2) drivers who suffered from a disability covered by the ADA, and (3) drivers who lost their Department of Transportation certifications. Id. at *10-11. However, UPS did not offer similar accommodations to pregnant women. Id. The Pregnancy Discrimination Act requires that pregnant women be treated the same as “other persons not so affected but similar in their ability or inability to work.” 42 U.S.C. § 2000e(k). Young argued that this language required that pregnant women be treated the same as the members of the best-treated facially neutral class “similar in their ability or inability to work.” Young, 2015 U.S. LEXIS 2121 at *22-23. UPS adopted an opposite reading, arguing that the clause required only that pregnant women are not treated worse than members of the worst-treated facially neutral class (here, employees who were injured off the job and were therefore not eligible for accommodations). Id. at *25. The majority opinion declined either reading, however, and instead applied the McDonnell Douglas framework to a claim under the Pregnancy Discrimination Act. Id. at *36. Therefore, a plaintiff can make out a prima facie case by showing (1) she belongs to the protected class, (2) she sought accommodation, (3) the employer...
failed to accommodate, and (4) the employer did accommodate others “similar in their ability or inability to work.” Id. At that point the burden shifts to the employer to offer a legitimate, nondiscriminatory reason for denying an accommodation. Id. If the employer meets this burden, the plaintiff must then show that the proffered reasons are in fact pretextual. Id. Justice Alito filed a concurrence, urging a more limited reading of the statute, while Justice Scalia (joined by Justice Kennedy) dissented, arguing that UPS’s reading of the statute was correct.

**Voting Rights – Standard for a Racial Gerrymandering Claim**


The Supreme Court clarified the standards by which a racial gerrymandering claim should be evaluated this month in a voting rights case out of Alabama. The facts of this case have been discussed previously in a prior Civil Rights Bulletin; in short, during its last redistricting, Alabama created a plan with two principal goals: (1) minimizing the population deviation between districts, and (2) maintaining roughly the same proportionate minority population in each of the State’s majority-minority districts, as the state felt it was bound to do under Section 5 of the Voting Rights Act. Id. at *9. As many of Alabama’s majority-minority districts were underpopulated, this second goal meant that minority voters had to be pulled in great numbers from majority-white districts to majority-minority districts. Id. Several plaintiffs—organizations that represented minority voters—thus challenged this redistricting plan, claiming that the state was trying to minimize minority voting power in majority-white districts. Id. at *11. The district court dismissed the plaintiffs’ claims, and the appeal eventually reached the Supreme Court. The five-member majority identified four mistakes that the district court had made. Id. at *12-14. First, the district court had considered the racial gerrymandering claims as affecting all of the district boundaries that were drawn statewide. Id. at *14-15. The Supreme Court rejected this analysis, noting that racial gerrymandering claims are by their nature district-specific, and thus should be brought as challenges to the boundaries of each individual district that has been allegedly gerrymandered (as opposed to making challenges to the statewide plan of redistricting). Id. Second, the district court had sua sponte held that the Alabama Democratic Conference—one of the plaintiffs—lacked standing. Id. at *24. However, the Conference had alleged that it had members in almost every county in Alabama and that it endorsed candidates supportive of minority needs. Id. at *26. These allegations created a “commonsense inference” that the Conference had members in all the gerrymandered districts. Id. “[P]rinciples of procedural fairness” therefore required that the district court at least provide the Conference a chance to prove its standing before dismissing its case sua sponte. Id. at *28. Third, the district court held that race did not “predominate” the Alabama redistricting decision because the state relied equally heavily on minimizing the population deviation between districts. Id. at *29. The Supreme Court rejected this approach, stating that the one person, one vote principle is not one factor to be weighed against others when deciding whether race predominates. Id. Instead, the equal population requirement acts as a “background” or a “given” that a state must adhere to in any redistricting plan. Id. at *30. In other words, a state must point to “traditional redistricting principles” that it used alongside race other than the one person, one vote principle in order to avoid a
claim of racial gerrymandering.  Id.  Fourth and finally, the district court held that, even if race did predominate Alabama’s redistricting decisions, the State’s plan passed strict scrutiny because it was implemented to ensure compliance with Section 5 of the Voting Rights Act. The Supreme Court again took issue with this holding, stating that Section 5 does not require a district to maintain a “particular minority percentage.”  Id. at *35. Instead, Section 5 requires only that a majority-minority district maintain “a minority’s ability to elect a preferred candidate of choice.”  Id.  Alabama’s implementation of Section 5, in which it mechanically attempted to maintain the same percentage of minority voters, was therefore improper and failed to meet strict scrutiny.  Id. Justice Scalia, writing for himself and three other justices, dissented, largely taking issue with the deficiencies in the way the plaintiffs presented their cases.

U.S. SUPREME COURT – ORAL ARGUMENTS HELD

Prisoner Litigation – AEDPA Deference to State Court’s Harmless Error Ruling


The Supreme Court heard argument this month in Davis v. Ayala, a case that presents a nuanced question of when deference is due to a state court under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The case originated from a trial court after defendant Hector Ayala was tried, convicted, and sentenced to death for murdering three men and other felony offenses. However, during defendant Ayala’s trial at jury selection, the prosecution used its peremptory challenges to dismiss each black or Hispanic prospective juror eligible for challenge, resulting in a jury “devoid of any members of these ethnic groups.”  Id. at 660. Ayala’s lawyer challenged the use of these challenges as racially discriminatory under Batson v. Kentucky, at which point the prosecutor had to offer a facially neutral reason.  Id. at 661. However, “[a]t the prosecutor’s insistence,” the judge heard the prosecutor’s reasons in camera, without the presence of Ayala or his counsel.  Id.  Ayala was convicted and then appealed, challenging this ex parte procedure employed by the trial court.  Id. The California Supreme Court held that the trial court’s procedure was unlawful under state law; however, it also held that any error committed was harmless beyond a reasonable doubt.  Id.  The Ninth Circuit subsequently granted a petition from Ayala for habeas relief, overturning the state court’s decision.  Id. When reviewing the state court’s decision, the Ninth Circuit declined to give the state court’s harmlessness determination AEDPA deference.  Id. at 674. Instead, the court applied the harmless error analysis set forth in Brecht v. Abrahamson itself.  Id. at 678-84. After analyzing the prosecution’s use of peremptory challenges independently, the circuit court determined that Ayala suffered prejudice under Brecht, and was thus entitled to relief.  Id. at 685. The State appealed and the Supreme Court granted certiorari, adding a second question: Whether the Ninth Circuit correctly applied the harmless error standard set forth in Brecht v. Abrahamson. Oral argument in the case was held on March 3, 2015, and audio is available here.
**U.S. SUPREME COURT – CERTIORARI DENIED**

**Voting Rights – Validity of Voter Identification Laws**


The Supreme Court denied certiorari from an unsuccessful challenge to Wisconsin’s voter identification law, which requires voters to provide photographic identification at the polls. *Id.* at 745. This leaves in place the Seventh Circuit’s decision, holding that Wisconsin’s law does not differ “in ways that matter” from the law at issue in *Crawford v. Marion County Election Board*, and is therefore constitutionally acceptable. *Frank*, 768 F.3d at 746. The suggestion for rehearing en banc by the Seventh Circuit had previously been denied by an equally divided panel. *Id.*, *reh’g en banc denied*, 2014 U.S. App. LEXIS 19843. Judge Posner dissented from this denial of rehearing, arguing that the plaintiffs in this case had developed the record more than the plaintiffs in *Crawford*, and had thus sufficiently established a “compelling” case that the law violates Section 2 of the Voting Rights Act. *Id.* at *84 (Posner, J., dissenting).

**DECIDED FEDERAL CASES**

**First Amendment – Private Speech as a Public Employee**

*Matthews v. City of New York*, 779 F.3d 167 (2d Cir. 2015)

The Second Circuit held this month that a police officer reporting ticket quotas to his superiors was engaged in private speech, and was thus protected from retaliation by the First Amendment. According to Craig Matthews’s complaint, he worked as a police officer for the N.Y.P.D., which instituted a citation quota system during his tenure there. Matthews complained several times to his superiors about the system, and he alleged that his superiors then retaliated against him for these complaints. He therefore brought a retaliation suit against his superiors under the First Amendment, but the district court hearing his case dismissed his complaint. The district court reasoned that Matthews was speaking as a public employee instead of as a private citizen, and that his speech was therefore not protected by the First Amendment. On appeal, the Second Circuit overturned the district court’s holding. In order for Matthews to be speaking as a public employee, the circuit court noted that its precedents required that the speech must be “what he was employed to do,” or otherwise “part and parcel” of his regular job. *Id.* at 174. No part of Matthews’s job involved commenting on precinct-wide policy, nor did he have any role in setting the policy of the precinct. As Matthews’s duties did not involve “formulating, implementing, or providing feedback on a policy that implicates a matter of public concern,” his comments on that policy—made in a manner “in which ordinary citizens would be expected to engage”—were made as a private citizen, and not as a public employee. *Id.* Those comments thus enjoyed the protection of the First Amendment. Therefore, the Second Circuit remanded the case to the district court so that it could evaluate the other aspects of Matthews’s First Amendment claim.
Excessive Force – Use of Taser


The Sixth Circuit shed some light on exactly when officers may not use a taser in *Goodwin v. City of Painesville*. The facts of *Goodwin*, as told in the light most favorable to the plaintiffs, begin with a party hosted by David Lee and Rebecca Nall. During the party, police were called to the Nalls’ apartment by a neighbor complaining of loud noise. After talking once to the Nalls, the officers waited outside of the apartment. The noise did not abate, and eventually a woman left the apartment and stated that Mr. Nall was “crazy” and had threatened the guests. The police then approached the apartment with the intention of arresting Mr. Nall for disorderly conduct. Mr. Nall answered the door, but instead of stepping outside as the officers ordered, he walked back into his living room. At this point the officers entered the apartment and used a taser on Mr. Nall even though, according to Mrs. Nall, he was not otherwise resisting arrest. This tasing incident lasted for a total of twenty six seconds and led to a brain injury for Mr. Nall, who subsequently filed an excessive force suit against the officers under 42 U.S.C. § 1983. The officers claimed qualified immunity, which the district court denied. The officers then appealed this decision to the Sixth Circuit. The circuit court first held that a jury could reasonably find that a constitutional violation did occur: Mr. Nall’s tasing was “severe,” lasting well into the “risky period,” and unreasonable in relation to his offense and interactions with the officers. *Id.* at *21-22. The court then moved on to the question of whether the right violated was “clearly established at the time of the alleged violation. *Id.* at *21. The court separated this analysis into the following two distinct subquestions: (1) whether the initial tasering violated a clearly established right, and (2) whether the length of the tasering violated a clearly established right. *Id.* at *22. For both questions, the court answered in the affirmative. First, the court rejected the notion that reentering one's home after being told to step outside constituted “active resistance,” at least when the suspect was neither told he was under arrest nor otherwise subdued. *Id.* at *25. As Mr. Nall was not actively resisting, he had a clearly established constitutional right not to have a taser applied, and the officers were therefore not entitled to qualified immunity as a matter of law for initially tasering him. *Id.* Second, the court held that, even if a jury credited the officers’ account of events and found that Mr. Nall was resisting arrest at the doorway, the jury could still find that the twenty-six-second taser application was “gratuitous because it extended far past the point that he had ceased resisting.” *Id.* at *27. Even if Mr. Nall had originally resisted, once he had ceased resisting the application of the taser constituted excessive force, regardless of his earlier resistance. *Id.* at *28. Because Mr. Nall had a clearly established constitutional right not to be gratuitously tasered, the officers were not entitled to qualified immunity for the length of the tasing either. In short, “[b]ecause Mr. Nall had a clearly established constitutional right not to be tasered when he was at most offering passive resistance to an officer, and because he also had a clearly established constitutional right not to be gratuitously tasered after ceasing all resistance,” the Sixth Circuit affirmed the district court’s denial of summary judgment to the officers. Not only did this decision apply to the officer who actually tasered Mr. Nall, but it also applied to the other officers on the scene, who “had a clearly-established duty to protect Mr. Nall” from excessive tasing and “failed in this duty.” *Id.* at *33.
**PENDING FEDERAL CASES**

**Fourth Amendment – Unreasonable Seizure**


A Georgia man has filed suit under 42 U.S.C. § 1983, alleging that the state unreasonably detained him for violating a statute that prohibits cursing in a conversation with a 911 operator. Boyd Green is a resident of Rocky Face, Georgia. In 2013, he was arrested for driving under the influence.

According the complaint, Green was at that time taking care of his ailing mother and requested that the police check on her while he was incarcerated. The police officers did not check on Green’s mother, and five days later, while Green was still in custody, his mother was found deceased.

Approximately a year later, Green called the 911 dispatcher and asked to speak to the police officer who arrested him. During this conversation, Green twice used expletives—one when referring to the officer, and once when referring to the situation. After the phone call, officers reported to Green’s house and arrested him for using vulgar language during a 911 call, in violation of Georgia law. Green’s suit claims that the Georgia statute violates his First Amendment right to free speech and, further, that his arrest for violating the statute was an unreasonable seizure under the Fourth and Fourteenth Amendments. Green has also filed claims under state law for false imprisonment and malicious prosecution.

**Disability Law – Emotional Support Animals as Accommodations**


The U.S. District Attorney for the Southern District of New York is engaged in a legal battle to allow several residents of a housing community in Manhattan’s Lower East Side to keep their dogs. The complainants in the case—three residents of East River Housing Cooperation (East River) who suffer from various psychiatric illnesses—all brought dogs into their apartments. *Id.* at *2*. After having the dogs, each complainant found that the symptoms of his or her psychiatric illness were lessened. *Id.* Although their leases with East River required “prior written consent” to bring a dog into an apartment, none of the complainants received consent before adopting their respective dogs. *Id.* Nonetheless, once East River told the complainants to remove the dogs, the complainants all requested reasonable accommodations. *Id.* East River either ignored or denied all of these requests.

*Id.* The district attorney then brought suit against East River on behalf of the complainants under the Fair Housing Act, alleging that East River had discriminated against the complainants on the basis of their disabilities by refusing to grant them reasonable accommodations. *Id.* at *2*-3. The district court recently issued a ruling in the Government’s favor on several procedural issues, although it has not yet addressed the more substantive legal questions. *Id.* at *108.*
Title VII – Discrimination Based on Religion for Employer Requiring Direct Deposit of Checks


An Ohio man has filed suit against his former employer for firing him for failing to comply with the employer's direct deposit policy. According to a complaint filed by Lee Yeager, he was employed by FirstEnergy in 2005. Yeager identifies as a Christian Fundamentalist, and he alleges that his beliefs forbid him from having a bank account (because banks engage in usury, a practice forbidden by the Bible). However, FirstEnergy required its employees to accept their paychecks via direct deposit into a bank account. As Yeager did not have and was unwilling to obtain a bank account, he was unable to comply with FirstEnergy’s direct deposit policy. FirstEnergy therefore discharged Yeager. Yeager is now arguing that FirstEnergy violated his civil rights on the grounds that he was discriminated against on the basis of his religion.

Disability Law – Discrimination in Treatment for Opiate Addicts


A woman in Kentucky is filing a complaint under the Americans with Disabilities Act, arguing that the state’s policy of restricting access to medication for opiate addicts is creating a very high risk that she will relapse. *Id.* ¶ 12. According to the complaint, the Kentucky court system adopts an abstinence-only approach to recovering opiate addicts, barring them from using medication that may “dramatically diminish” the risk of relapse. *Id.* ¶ 14. The plaintiff claims that Kentucky has improperly interfered with her ability to receive medical treatment by forbidding the use of these medications in treatment. Further, the complaint states that Kentucky has discriminated against opiate-addicted individuals by denying them access to these medications. The plaintiff’s claims are based in the ADA, the Rehabilitation Act of 1973, the Equal Protection Clause, and the Due Process Clause. *Id.* ¶ 24.

Excessive Force – Interrogation Tactics by Police Officers


Plaintiffs in Chicago have filed suit, alleging that Chicago police officers engaged in interrogation practices in violation of their Fourth and Fourteenth Amendments after taking them to a warehouse in the area referred to as the Homan Square. The U.K. newspaper *The Guardian* first drew attention to Homan Square by running a series of stories likening the area to a “domestic black site” for individuals suspected of wrongdoing by the Chicago police. The complaint, brought in the Northern District of Illinois, claims that the plaintiffs were illegally arrested, held in cells without sinks or toilets, denied the assistance of counsel, and threatened them with potentially false charges if they failed to provide police specific information they sought or told anyone about their experiences. *Id.* ¶¶ 12-51. The plaintiffs are bringing their claims under a number of legal theories, including excessive force, false arrest, civil conspiracy, illegal search, failure to intervene, and claims against the city under *Monell*. 
STATE CASE LAW

DECIDED STATE CASES

Disability Law – State Sovereign Immunity under the ADA


The Appellate Division of the New Jersey Superior Court limited suits brought against the state under the ADA in *Royster v. New Jersey State Police*. Brian Royster, a detective with the New Jersey State Police (“NJSP”), brought suit under the ADA alleging that the NJSP had failed to accommodate his disability (ulcerative colitis) by depriving him of constant access to a bathroom. A jury awarded Royster $500,000 on his ADA claim, and the NJSP appealed, claiming that state sovereign immunity protected it from suits under the ADA. The Appellate Division agreed with the NJSP. Under New Jersey law (unlike under U.S. caselaw involving the Eleventh Amendment), the state does not waive its sovereignty by engaging in litigation conduct. *Id.* at *10-11*. Instead, the state must provide “legislative consent” in order to open itself up to suit. *Id.* at *11*. As the state had made no “clear and unequivocal statement[]” of consent to suit through the ADA, under New Jersey law the state maintained its sovereign immunity against such suits. *Id.* at *14*. Because the NJSP was an “arm of the state,” it too was immune from Royster’s suit. *Id.* Therefore, the Appellate Division overturned the jury’s verdict with respect to the ADA claim.

State Civil Rights Act – Retroactivity of Amendments


The Supreme Court of Iowa held that the state’s equal pay provisions did not allow damages to be collected for wage discrimination that occurred before the enactment of the law. In 2009, an equal pay amendment to Iowa’s Civil Rights Act (ICRA) provided a cause of action for an employee if an employer “discriminate[s] against any employee . . . by paying wages . . . at a rate less than the rate paid to other employees.” *Id.* at *11*. Two female plaintiffs, Erin Dindinger and Lisa Loring, brought suit against Allstate under the Federal Equal Pay Act and the ICRA equal pay amendment. *Id.* at *3*. The plaintiffs claimed that they worked at Allstate and were paid less than their male colleagues for the same or similar work. *Id.* This wage discrimination, the plaintiffs alleged, stretched as far back as 1999—thus, they needed the ICRA to apply retroactively to wage discrimination that occurred before its enactment in order to recover all of their damages. *Id.* at *3*. Under Iowa law, the retroactivity of a statute depends largely upon whether the change affected by the statute is “substantive” (in which case the statute is assumed to apply only prospectively) or “remedial” (in which case the statute is assumed to apply retroactively). Although the ICRA prohibited discriminating against an employee because of sex prior to the 2009 amendment, the equal pay provision added in 2009 barred unequal pay regardless of the employer’s intent. *Id.* at *7, 11*. The plaintiffs argued that, prior to 2009, they could have employed the *McDonnell Douglas* burden-shifting framework to show discrimination even without direct evidence of the defendant’s intent. *Id.* at *10*. Therefore, they claimed that the 2009 amendment merely codified a procedural
change to a substantive right that already existed—that is, plaintiffs could already win a wage discrimination suit without direct evidence of the employer’s intent to discriminate. *Id.* However, the Iowa Supreme Court disagreed. The Court held that the ICRA created a “substantive” change to the law because it completely removed the burden from the plaintiff to prove that an employer intended to discriminate because of sex. *Id.* at *10-11. Although the plaintiffs could have proved intent circumstantially under *McDonnell Douglas*, they still bore the ultimate burden of showing that the employer’s intent to discriminate was the “real reason” for the wage difference prior to 2009. *Id.* at *10. The 2009 amendment lifted that burden, and therefore represented a substantive change in the law which—under Iowa law—only applied prospectively. *Id.* at *15. However, the Court also concluded that the plaintiffs could state a claim for wage discrimination under the pre-2009 ICRA, though the statute’s limitation period limited their recovery to paychecks received in the 300 days prior to taking action upon their claim. *Id.* at *33.

**Prisoner Litigation – Discrimination in Jury Selection**


The Mississippi Supreme Court dealt with a rather unusual reverse-*Batson* challenge this month, in the case of *Hartfield v. Mississippi*. Ronald Hartfield was on trial for the murder of his wife, Tabitha Hartfield. During jury selection, Hartfield used seven successive peremptory challenges on white venire members. *Id.* at *26. The state objected, arguing that Hartfield was using his challenges in a racially discriminatory manner. *Id.* The trial court found that this constituted a prima facie case of discrimination and gave Hartfield an opportunity to offer race-neutral reasons for the use of his challenges. *Id.* at *28. For one juror, Hartfield’s counsel stated that the juror had been asleep; however, the court and state denied that the juror was sleeping. *Id.* The trial court therefore found the reason for striking that juror pretextual, although it did allow Hartfield’s other six challenges to stand. *Id.* Eventually, Hartfield was convicted of conspiracy to murder his wife (although he was acquitted of her murder). Hartfield challenged the reverse-*Batson* decision before the Mississippi Supreme Court, which affirmed the lower court’s holding. *Id.* at *31. The state supreme court, noting that the determination of whether or not strikes were exercised pretextually involved “evaluations of credibility and demeanor” and reviewed the trial judge’s ruling under the clearly erroneous standard. *Id.* The Court ultimately held that the ruling was not clearly erroneous and therefore could stand. *Id.*

**UNDECIDED STATE CASES**

**Voting Rights – Equal Representation under the Fourteenth Amendment**

Complaint in *Calvin v. Jefferson County Board of Commissioners*, No. 4:15-cv-00131-MW-CAS (N.D. Fla. Mar. 9, 2015)

The ACLU of Florida has filed a lawsuit alleging that a recent redistricting plan for Jefferson County violates the “one-person, one-vote” principle of the Equal Protection Clause by inappropriately including non-voting prisoners in its district population count. Specifically, the complaint alleges
that Jefferson County’s plan treats the 1157 inmates of the Jefferson Correctional Institution as residents of the district in which the Institution sits (“District 3”) when calculating the district’s population. These 1157 inmates make up 43.2% of the voting age population of District 3, although the majority of these inmates cannot actually vote in the district. Thus, the complaint follows, that the voting age population of District 3 who can actually vote in the district is roughly only 56.8 percent (100% – 43.2%) of the size of the population in neighboring district. This figure is in spite of the fact that the voting population of District 3 holds the same vote as its neighboring districts. The complaint concludes that citizens of District 3 therefore have their votes counted more heavily than citizens of other districts, in violation of the Equal Protection Clause.

**Disability Law – Discrimination against Individuals with Service Animals in Transportation**


Cab companies in D.C. are now facing a suit from the American Council for the Blind, which claims that cabs have been denying service to blind customers with service animals. The Council’s complaint alleges that cabs being operated by the defendant companies were witnessed driving past potential blind passengers with service animals in favor of sighted passengers without service animals. Under the Americans with Disabilities Act (ADA), cabs must offer blind passengers “the full and equal enjoyment” of their services, regardless of whether the passenger has a service animal. The Council is now claiming that the defendant companies failed to do this, thereby violating the ADA.

**OTHER STATE ACTIONS**

**Disability Law – Accommodation Requirements**

**Walt Disney Parks and Resorts US, Inc., FCHR No. 201401469 (Feb. 6, 2015)**

The Florida Commission on Human Relations (FCHR) issued a Determination of cause to believe that Disney’s disability accommodations fail to conform to Florida law. Prior to October 2013, Disney offered guests with disabilities a Guest Assistance Card (GAC) that allowed them to skip the lines for attractions. However, Disney found that the GAC program resulted in abuse and fraudulent misuse. As a result, Disney replaced the GAC program with the Disability Access Service (DAS). The DAS allows visitors with disabilities to check in to a ride and “virtually” wait in line while they walk around the park. The visitors can then come back and enjoy the attraction after their wait time has elapsed. The Complainant, a guest with a disabled son, argued that the DAS was insufficient because it did not take into account the nuances between various disabilities. For instance, the complainant’s child suffered from a mental disability that impaired his ability to wait for long periods. The FCHR agreed, stating that the accommodations offered did not allow children with certain disabilities to “enjoy the park as it was intended to be enjoyed by all other patrons.”
Therefore, the FCHR found reason to believe that Disney denied the Complainant’s son the full enjoyment of the establishment in violation of Florida law.

**Employment Law – Criminal History Inquiries**

*Virginia Executive Order No. 41 (2015)*

Governor Terry McAuliffe of Virginia has signed an executive order to remove questions regarding one’s criminal history from employment applications within the State’s executive branch. The order—entitled “Implementation of ‘Ban the Box’ Hiring Policies in the Commonwealth”—removes questions regarding criminal history from state employment applications and forbids hiring authorities within the executive branch from basing employment decisions on an individual’s criminal history “unless demonstrably job-related and consistent with business necessity,” or otherwise required by law. The order also requires the Virginia Department of Human Resource Management to provide guidance to ensure that a background check may only be conducted after an individual (a) has signed the appropriate waiver authorizing release, (b) has been found otherwise eligible for the position, and (c) is being considered for a certain position. The Department is also ordered to identify positions that should be classified as “sensitive,” for which initial disclosure of criminal history information will still be required.

**FEDERAL REGULATIONS**


Although this regulation is not directly tied to civil rights issues, it is pertinent for attorneys who advise state agency clients as to the treatment of children and potential due process rights violations for parents. The Indian Affairs Bureau has proposed a rule that may affect the methods by which state courts and child welfare agencies handle implementation of the Indian Child Welfare Act (ICWA). The proposed rule affects Indian child welfare proceedings in state courts by updating definitions and altering many of the procedural requirements for these of proceedings. Importantly for some states, the new rule also codifies that there is no “Existing Indian Family Exception,” or EIF, to ICWA.