Noteworthy Cases

A. *Most Significant Cases*

***In re Cincinnati Policing*, No. 1:99-cv-3170, 209 F.R.D. 395 (S.D. Ohio, Aug. 5, 2002) (Civil Rights).**

Bomani Tyehimba filed suit against the City of Cincinnati and two police officers in 1999. Tyehimba's complaint accused the Cincinnati Police Department ("CPD") of utilizing racially discriminatory policies and practices, and being deliberately indifferent to the constitutional rights of black citizens. The Cincinnati Black United Front ("United Front") and the American Civil Liberties Union of Ohio Foundation ("ACLU") joined Tyehimba's suit in 2001, accusing CPD of discriminating against black Cincinnatians for decades.

In addition to Tyehimba's claim, the U.S. District Court for the Southern District of Ohio simultaneously had several other racial-profiling cases pending against CPD. To maximize efficiency and increase the chances of finding a resolution, Judge Dlott granted a motion for class certification. United Front and the ACLU were appointed class representatives.

Just three weeks after the class was certified, a CPD officer shot and killed 19-year-old Timothy Thomas—an unarmed black man—while attempting to arrest him for nonviolent misdemeanors. Thomas was the 15th African-American to die in confrontations with CPD officers between 1995 and 2001. Thomas's death sparked civil unrest across Cincinnati.

Judge Dlott approved a collaborative process which required the City of Cincinnati, Plaintiffs, and the public to work together to resolve the racial-profiling lawsuit. Cincinnatians were given the opportunity to voice their opinions by responding to online and street surveys or by attending community meetings. Attorneys and the parties spent weeks in contentious negotiations hammering out what became known as the Collaborative Agreement.

The Collaborative Agreement required the following: (1) a "community problem-oriented policing" philosophy; (2) extensive data collection on crime, disorder, police activity, relationships between the police and the communities they serve, and the perceptions of each; (3) incorporation of the Memorandum of Agreement between the City of Cincinnati and the United States Department of Justice; (4) creating an organization to process citizen complaints of police misconduct; and (5) support of the District Court to resolve disputes arising under the agreement. Judge Dlott presided over the five-year implementation of the Collaborative Agreement, and an additional sixth year that the City requested, and it remains one of her proudest legacies.

***Hunter v. Hamilton Cnty. Bd. of Elections, et al.*, No. 1:10-cv-820, 850 F. Supp. 2d 795 (S.D. Ohio, Feb. 8, 2012) (Voting).**

Tracie Hunter, a candidate for Hamilton County Juvenile Court Judge, and the Northeast Ohio Coalition for the Homeless sued the Hamilton County Board of Elections ("Board"), alleging violations of due process and equal protection. The dispute arose from the November 2010 Hamilton County Juvenile Court Judge election and centered on the Board's decision to count some, but not all, provisional ballots miscast due to poll-worker error. The Board counted 27 "wrong precinct" provisional ballots cast at the Board's headquarters after concluding that the ballots resulted from "clear poll-worker error," but it refused to count 849 "wrong precinct" provisional ballots cast at polling locations without considering poll-worker error.

Hunter sought a stay of the election results and a preliminary injunction that would prohibit the Board from rejecting all provisional ballots miscast due to poll-worker error. Chief Judge Dlott issued an emergency order the next day, granting in part Hunter's motion. Chief Judge Dlott allowed the Board to proceed with certifying the results of the election, but she directed it to immediately investigate any potential impact caused by poll-worker error, noting that "[t]he right to vote includes the right to have one's vote counted on equal terms with others." 2010 WL 4878957, at *3 (S.D. Ohio Nov. 22, 2010).

The Board appealed the decision to the Sixth Circuit Court of Appeals. The Sixth Circuit agreed with Chief Judge Dlott that Hunter had shown a strong likelihood of success on the merits of her equal protection claim, and it remanded the case for additional fact-finding on which ballots had been miscast due to poll-worker error. 635 F.3d 219 (6th Cir. 2011), *reh'g and reh'g en banc denied* (March 29, 2011).

Upon remand, Chief Judge Dlott held a three-week evidentiary hearing during which Board staff, poll-workers, and voters testified. Poll-workers were required under Ohio law to direct provisional voters to the correct precinct. The evidence showed that poll-workers in multi-precinct locations did not reliably direct voters to the correct precinct table at a location.

Accordingly, Chief Judge Dlott found that provisional ballots cast at the correct multi-precinct voting location but at the wrong table were substantially similar to the "wrong precinct" ballots cast at the Board headquarters, and that the Board failed to justify its decision to treat these similar groups of ballots differently. She ordered the Board to count otherwise valid right location, wrong precinct provisional ballots. Chief Judge Dlott's ruling changed the outcome of the election for Hamilton County Juvenile Court Judge. Candidate John Williams, who was originally declared the winner by a margin of 23 votes, ultimately lost to Candidate Hunter by 74 votes.

B. *Other Noteworthy Cases in Chronological Order*

***Glover v. Williamsburg Local School Dist.*, No. 1:96-cv-896, 20 F. Supp. 2d 1160 (S.D. Ohio 1998) (Civil Rights).**

Public school teacher Bruce Glover sued Williamsburg Local School District ("School Board") alleging that its decision not to renew his teaching contract discriminated against him on the basis of his sexual orientation, gender, and the race of his partner. In addition to the alleged Fourteenth Amendment violation, Glover also claimed the School Board retaliated against him for exercising his free speech rights right under the First Amendment.

After reviewing the School Board members' testimony explaining Glover's termination, Judge Dlott found (1) the School Board's purported reasons for Glover's nonrenewal were pretextual; (2) Glover failed to produce sufficient evidence to support his claim that the School Board's decision was motivated by his gender or the race of his partner; and (3) although the School Board discriminated against Glover on the basis of his sexual orientation, Glover failed to prove that his public complaint against discrimination was an additional factor in the School Board's decision.

***United Food & Commercial Workers Union, Local 1099 v. Southwest Ohio Reg'l Transit Auth.*, No. 1:97-cv-512 (S.D. Ohio, Sept. 15, 1997) (First Amendment).**

United Food and Commercial Workers Union ("Union") brought a First Amendment action to enjoin the Southwest Ohio Regional Transit Authority's ("Transit Authority") rejection of Union's wrap-around bus advertisement. Transit Authority had rejected the advertisement based on its allegedly controversial nature and aesthetically displeasing appearance.

Judge Dlott granted a preliminarily injunction finding that (1) the Transit Authority's rejection of the advertisement was unreasonable, (2) the Union demonstrated a substantial likelihood of success on the merits of its First Amendment claim, and (3) the loss of First Amendment rights constituted irreparable injury that, in this case, was not outweighed by harm to others or any public interest. The Sixth Circuit Court of Appeals affirmed Judge Dlott's decision, holding that the Transit Authority had demonstrated an intent to designate advertising space on its buses as a public forum, and its policy of banning controversial advertisements adversely affecting bus ridership was constitutionally invalid under the overbreadth doctrine. 163 F.3d 341, 355 (6th Cir. 1998).

***Doe v. Barron*, No. 1:99-cv-611, 92 F. Supp. 2d 694 (S.D. Ohio 1999) (Abortion).**

Plaintiff, a female prisoner who was approximately nine weeks pregnant, sought a temporary restraining order and preliminary injunction against the Director of the River City Correctional Center ("Correctional Center") from denying her access to pregnancy termination services absent a court order.

Judge Dlott found Plaintiff was likely to succeed on the merits of her case because the Correctional Center's denial of access absent a court order bore no logical connection to penological interests. Judge Dlott further found Plaintiff would suffer irreparable harm if the injunction were not issued. Because the Supreme Court recognized a woman's right to choose to terminate her pregnancy, it was in the public's interest to uphold that right when it was arbitrarily denied by prison officials absent medical or other legitimate concerns. On these grounds, Judge Dlott held that the public interest was served by issuing the restraining order and granting the Plaintiff access to abortion services.

***Ganulin v. United States*, No. 1:98-cv-557, 71 F. Supp. 2d 824 (S.D. Ohio 1999) (Establishment Clause).**

Plaintiff sued the United States alleging that the statute making Christmas Day a legal public holiday violated the Establishment Clause and interfered with his equal protection and freedom of association rights under the First Amendment. Judge Dlott refused to dismiss his Amended Complaint for lack of standing. She held, however, that the establishment of Christmas Day as a legal public holiday did not violate the Constitution. She based her decision, in part, on findings that the Christmas public holiday had a secular purpose and cultural significance.

Her opinion was best known, however, for the *'Twas the Night Before Christmas*-style original poem which preceded the legal analysis. The poem was published in illustrated fashion as part of a full-page article in the *Cincinnati Enquirer*. The poem stated in part:

> CHRISTMAS IS ABOUT JOY AND GIVING AND SHARING; IT IS ABOUT THE CHILD WITHIN U.S. IT IS MOSTLY ABOUT CARING!
>
> ONE IS NEVER JAILED FOR NOT HAVING A TREE, FOR NOT GOING TO CHURCH, FOR NOT SPREADING GLEE!
>
> THE COURT WILL UPHOLD SEEMINGLY CONTRADICTORY CAUSES, DECREEING *"THE ESTABLISHMENT"* AND *"SANTA" BOTH* WORTHWHILE *"CLAUS(es)!"*

71 F. Supp. 2d at 825. The Sixth Circuit Court of Appeals affirmed Judge Dlott's decision. 238 F.3d 420 (6th Cir. 2000).

***Chabad of Southern Ohio v. City of Cincinnati*, Nos. 1:02-cv-840, 1:02-cv-880, 233 F. Supp. 2d 975 (S.D. Ohio 2002) (First Amendment).**

A Jewish organization and homeless advocacy organization challenged a portion of a City of Cincinnati ordinance which prohibited anyone but the City of Cincinnati from meeting, erecting a display/exhibit, or holding an event/protest on the main downtown square during the last two weeks of November, the month of December, and the first week of January. The ordinance provided for the issuance of permits on a first come, first served basis, except for this seven-week period which was reserved for the city's "exclusive use."

Judge Dlott held the "exclusive use" provision was a violation of the First Amendment, because (1) the ban was a content-based restriction on speech in public forum; (2) the ban was not narrowly tailored to satisfy the alleged compelling government interest; (3) the ban did not offer an open alternative means of communication; and (4) plaintiffs satisfied their likelihood of prevailing on the merits. The Sixth Circuit Court of Appeals affirmed. 363 F.3d 427 (6th Cir. 2004).

***Barnes v. City of Cincinnati*, No. 1:00-cv-780 (Civil Rights).**

Philecia Barnes, a transgender City of Cincinnati police officer, sued the City of Cincinnati, alleging employment and sex discrimination in violation of Title VII, 42 U.S.C. § 1983, and Ohio state law. Despite placing 18th out of 105 officers who sat for the sergeants exam, Barnes failed the probationary evaluation period. Barnes alleged that the City failed her on the basis of her perceived sexual orientation, gender identity, and failure to conform to sex stereotypes.

After Judge Dlott denied the City's motion for summary judgment, the case proceeded to a jury trial. The jury found in favor of Barnes on all her claims and awarded Barnes compensatory damages and front pay. Judge Dlott denied the City's motion for judgment as a matter of law or a new trial. The Sixth Circuit Court of Appeals affirmed Judge Dlott's ruling. 401 F.3d 729, 747 (6th Cir. 2005), *reh'*g *en banc denied* (June 8, 2005).

***TriHealth, Inc. v. Hamilton County Bd. of Comm'rs*, No. 1:02-cv-913, 347 F. Supp. 2d 548 (S.D. Ohio 2004) (Civil Rights).**

In November 2001, Hamilton County taxpayers approved a five-year tax levy to raise funds for adult indigent health care services. Several Cincinnati hospitals and health care organizations ("Hospitals") brought suit against the Hamilton County Board of Commissioners ("the County") to contest its decision to award University Hospital eighty percent of proceeds of the levy. The Hospitals argued that the County violated the Equal Protection and Due Process clauses of the Constitution by awarding the levy funds solely to University Hospital, providing

the Hospitals neither a share of the levy funds proportionate to the share of adult indigent healthcare that they provide, nor the opportunity to competitively bid for the contract.

Judge Dlott granted summary judgment for the County, finding that the Hospitals (1) failed to state a claim under the Equal Protection Clause and (2) had no constitutionally protected property interest in the contract that would support a due process claim. Judge Dlott held that the County had a rational basis for its decision to contract solely with University Hospital. The Sixth Circuit Court of Appeals affirmed Judge Dlott's ruling. 430 F.3d 783 (6th Cir. 2005).

***Miller v. Blackwell*, No. 1:04-cv-735, 348 F. Supp. 2d 916 (S.D. Ohio 2004) (Voting).**

The Ohio Democratic Party and two registered Ohio voters sought to restrain election officials from holding hearings on pre-election challenges to voter eligibility. In response to the last minute challenge of approximately 35,000 Ohio voters' eligibility, Boards of Election sent or intended to send notices of hearings on the voters' eligibility. The notices, sent to addresses from which mail had been returned, were sent no more than a week before the election and the hearings were to be held no more than five days before Election Day.

Judge Dlott found that, under the circumstances, the timing of and manner in which Defendants intended to send notice and conduct hearings were inadequate under the Due Process Clause and endangered those voters' fundamental right to vote. Judge Dlott preliminarily enjoined election officials from mandating or enforcing the hearings. Judge Dlott also certified a defendant class of all eighty-eight Ohio county Boards of Elections and enjoined them from sending further notices or conducting such hearings. The Sixth Circuit Court of Appeals denied an emergency stay of her order. 388 F.3d 546 (6th Cir. 2004).

***Albrecht v. Treon, M.D.*, No. 1:06-cv-274, 2009 WL 1373112 (S.D. Ohio May 15, 2009) (Civil Rights).**

Plaintiffs claimed that the county coroner's practice of removing, retaining, and disposing of autopsy specimens without prior notice to the next of kin denied them due process and violated Ohio law. Relying on *Brotherton v. Cleveland*, 923 F.2d 477, 482 (6th Cir. 1991), Plaintiffs claimed that Ohio law granted them a "legitimate claim of entitlement" to their son's autopsy specimens. However, an Ohio statute defined autopsy specimens as "medical waste" to be disposed of in accordance with federal and state law.

Finding it unclear whether Ohio law gave next of kin an interest in a decedent's autopsy remains, Judge Dlott certified the question to the Supreme Court of Ohio. The Supreme Court of Ohio answered the question in the negative, finding that Ohio law does not give next of kin a protected right in autopsy specimens. Because Plaintiffs did not have a state-created interest or

entitlement in their son's autopsy remains, Judge Dlott concluded that their claim under 42 U.S.C. § 1983 failed as a matter of law. The Sixth Circuit Court of Appeals affirmed. 617 F.3d 890 (6th Cir. 2010).

***Vanzant v. Brunner*, No. 1:10-cv-596 (S.D. Ohio Sept. 27, 2010) (Voting).**

Registered voters challenged Ohio's absentee voting policies, due to all counties not following the same procedures. Specifically, some but not all Ohio counties mailed absentee ballot applications to every elector, and some but not all prepaid postage to send back the application and ballot. Plaintiffs who lived in counties that did not automatically mail applications or prepay postage claimed the inconsistency resulted in a violation of their rights under the Equal Protection and Due Process Clauses of the Constitution.

Judge Dlott disagreed, noting that "not every difference amounts to a constitutional injury." Judge Dlott denied the voters' request for injunctive relief due to their failure to show how their right to vote on an equal basis was violated by allowing these different practices.

***Rheinfrank v. Abbott Laboratories, Inc.*, No. 1:13-cv-144, 119 F. Supp. 3d 749 (S.D. Ohio, Aug. 10, 2015) (Product Liability).**

This state-law product liability case arose from birth defects in the form of serious physical and cognitive disabilities suffered by Plaintiff Rheinfrank's child. The defects were allegedly caused by the antiepileptic drug Depakote, manufactured by Defendant Abbott Laboratories ("Abbott"), and taken by Rheinfrank while pregnant with the child. Rheinfrank contended that the labeling on the drug was not adequate.

Judge Dlott held that Rheinfrank's Ohio law failure-to-warn claim—to the extent it was based on Abbott's failure to warn of the risk of developmental delays—was preempted by federal drug labeling law because the Food and Drug Administration had rejected label changes containing such warnings even well after Rheinfrank's pregnancy. A jury found for Abbott on several remaining claims, and Rheinfrank appealed the overall judgment. The Sixth Circuit Court of Appeals affirmed Judge Dlott's preemption analysis, and with respect to the jury verdict, held the District Court did not abuse its discretion in putting limits on expert testimony related to the scope of the experts' respective expertise, or by rejecting requested jury instructions that were repetitive, confusing, or both. 680 F. App'x 369 (6th Cir. 2017).

***NAACP v. Entity Referring to Itself as NAACP, Cincinnati Branch*, No. 1:15-cv-433.**

In 2014, a dispute began between the NAACP's national organization and a group purporting to operate as the Cincinnati branch of the NAACP. The group purporting to operate as the

Cincinnati branch filed a state court suit against the national organization to stop the national organization from holding elections for a local branch. Then, the national organization sued the group purporting to operate as the Cincinnati branch in federal court for infringement of the NAACP trademark and conversion of bank account funds. On August 18, 2015, the Court granted a preliminary injunction barring the group purporting to operate as the Cincinnati branch from using the NAACP trademark and from using property belonging to the NAACP. However, there were more significant concerns raised by the parties' disputes than simply the issues in the cases.

The NAACP was set to hold its annual convention in Cincinnati in 2016 prior to that year's presidential election. The NAACP's ability to hold the annual convention in Cincinnati was at risk if the parties could not quickly resolve their lawsuits. Judge Dlott facilitated settlement discussions between the parties that resulted in a settlement of both lawsuits. The NAACP held its 107th annual convention in Cincinnati in July 2016. The NAACP offered the opportunity for both presidential candidates to speak at the convention. Hillary Clinton accepted and was featured as a keynote speaker.

***United States v Dennard*, No. 1:20-cr-42 (Public Corruption).**

Cincinnati City Council member Tamaya Dennard was the first of three City of Cincinnati Council members indicted for separate alleged bribery schemes. Dennard pled guilty to honest services wire fraud, in violation of 18 U.S.C. §§ 1343 and 1346. She admitted she had solicited and received $15,000 in exchange for favorable official action on a matter before Cincinnati City Council. Judge Dlott tackled the difficult task of sentencing a public servant who had ultimately put her personal needs above those of the community she vowed to serve.

After considering conflicting sentencing memoranda from the parties and more than 60 messages from community members, Judge Dlott sentenced Dennard in November 2020 to eighteen months in prison followed by three years of supervised release and ordered her to repay the $15,000 she illegally accepted. Judge Dlott found this sentence to be an appropriate balance between the harm caused to the electorate by public corruption, and Dennard's previous efforts to accomplish good within the community.

***Barnette v. City of Cincinnati, et al.*, No. 1:19-cv-309, 2021 WL 5579889 (S.D. Ohio, Nov. 29, 2021); *Hill v. City of Cincinnati, et al.*, Case No. 1:19-cv-308, 2021 WL 5579882 (S.D. Ohio, Nov. 29, 2021) (Civil Rights).**

Two City of Cincinnati Police Department ("CPD") officers filed separate suits against CPD, the Chief of Police, and the former City Manager after receiving disparate punishments for identical behavior, alleging racial discrimination and violation of their due process rights. In

September 2018, Donte Hill, an African American CPD officer, responded to a call of two men fighting at an apartment complex. During the interaction, Hill repeatedly used a variation of the N-word while addressing the men. Following the incident, Hill received a written reprimand for coarse language. In December 2018, Dennis Barnette, a white CPD officer, had a similar encounter. While on duty, Barnette observed a man and woman fighting. As Barnette attempted to separate the individuals, the woman struck Barnette in the face. In response, Barnette used a variation of the N-word in referring to the woman. Following the incident, Barnette was suspended and stripped of his police powers for four months.

After Barnette's police powers were suspended, the Chief of Police was informed of the inconsistent treatment of the two officers. In an attempt to rectify the situation, Hill was retroactively suspended and stripped of his police powers. Hill and Barnette then filed suit. After denying in part both Defendants' Motions for Summary Judgment, Judge Dlott consolidated the two cases for trial in July 2022. The trial ended in a hung jury. Hill and Barnette settled with the City before a second trial was held.