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controversy exists and the matter moot to which the court said Elevation questioned whether any of the City's ordinances were valid and enforceable when Elevation filed its sign permit applications - The court emphasized that at this point in the proceedings, when a motion for judgment on the pleadings is at issue, Elevation's complaint must be construed liberally in favor of Elevation as the non-moving party - The City's justiciability argument is unavailing

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the plausible inference that the child was indeed arrested - The complaint alleges facts giving rise to the plausible inference that the manner in which the offciers detained the child - by handcuffing her and putting her in the police car, respectively—was so disproportionate to their reasons for detaining her that, for Fourth Amendment purposes, it transformed her detention into an arrest - In determining whether an officer used excessive force in violation of the Fourth Amendment, the bottom-line inquiry is whether the totality of the circumstances justifies a particular level of force - Three factors guide this inquiry: [1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officers or others, and [3] whether he is actively resisting arrest or attempting to evade arrest by flight - Complaint alleges that police used excessive force and the facts alleged in the complaint, if true, would rise to the level of excessive force

WHITNEY HODGES, as personal representative of the estate of Honestie Hodges v. CITY OF GRAND RAPIDS et al., SPENCER SELLNER, ANTHONY BARBERINO, and JEFFREY DIONNE, Officers, in their individual and official capacities
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PERCY DWAYNE BROWN v. LOUISVILLE-JEFFERSON COUNTY METRO GOVERNMENT, et al. JEFFREY G. JEWELL, in his individual capacity
SIXTH CIRCUIT COURT OF APPEALS No. 23-5673 Decided and Filed: April 30, 2025 41

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officers rather than forensic scientists, but every reasonable scientist would have recognized that this extension of *Brady* covered them too

JEFFREY DEWAYNE CLARK, GARR KEITH HARDIN v. LOUISVILLE-JEFFERSON COUNTY METRO GOVERNMENT, ROBERT THURMAN, Kentucky State Police Crime Lab Forensic Serologist, in his individual capacity
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MISTY COLEMAN v. HAMILTON COUNTY BOARD OF COUNTY COMMISSIONERS, CHARMAINE MCGUFFEY; BETHANIE DREW; COLINA YATES; MORGAN BOLEN; TIMOTHY SCHOLZ; FRITZ ELSASSER; NAPHCARE, INC.; MICHAEL J. PEGRAM, JR.; LAUREN A. SLACK; JENNA N. WARD; DONALD L. HAUN
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ultimate result of a claim – The magistrate judge called for a general verdict on each of discrimination and retaliation - By awarding damages, the jury found in Debity's favor on its general verdict, but also found that the Board proved its affirmative defense - This is an irreconcilable inconsistency because, as a matter of law, the jury cannot find that the Board proved its affirmative defense but is liable nonetheless - The interrogatories for the discrimination claims are inconsistent with the general verdict, but not with each other – The court had no trouble concluding that an employer's desire to save money constitutes a legitimate business related reason - If a reasonable juror could believe that the Board was genuinely concerned about the budget, then their affirmative defense survives - Unequal wages that reflect market conditions of supply and demand are not prohibited by the EPA - Just because relying on supply and demand might lead to wage decisions based on factors unrelated to an individual's qualifications for a particular job, such policies are not necessarily gender biased - An employer may not use supply and demand as an excuse to discriminate generally by sex just because there are more people from a certain sex applying for a given job

MARINA DEBITY v. MONROE COUNTY BOARD OF EDUCATION
SIXTH CIRCUIT COURT OF APPEALS No. 24-5137 Decided and Filed: April 2, 2025..... 56

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DONALD FREED v. MICHELLE THOMAS, GRATIOT COUNTY, MICHIGAN, AND MICHIGAN DEPARTMENT OF ATTORNEY GENERAL
SIXTH CIRCUIT COURT OF APPEALS Nos. 24-1170/1197/1251 Decided and Filed: May 12, 2025..... 64

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STEVEN GILLMAN, as personal representative of the estate of Megan Miller, Deceased v. CITY OF TROY, MICHIGAN, JULIE GREEN-HERNANDEZ
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10. Excessive force claim - In the context of excessive-force claims, the qualified immunity inquiry is (1) whether the officer violated the plaintiff's

constitutional rights under the Fourth Amendment; and (2) whether that constitutional right was clearly established at the time of the incident - The sole constitutional standard for evaluating excessive force claims is the Fourth Amendment's criterion of reasonableness - The court applies an objective reasonableness' standard to excessive force claims - Intent is irrelevant: an officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional - The fact that a situation unfolds quickly is not sufficient to justify the application of deadly force, when it is not accompanied by a credible threat to the safety of an officer or the public - In the moments before Officer Reinink deployed deadly force, plaintiff did not present such a threat - The tumultuous scene is the only other factor weighing in Officer Reinink's favor, so a reasonable jury could find that Officer Reinink used excessive force when he fired Spede-Heat at the plaintiff at point-blank range - The court's precedent makes clear that officers have fair warning that they may not use deadly force where the suspect poses no immediate threat to the officer and no threat to others in the area - Municipal liability - Our precedent provides at least four methods to prove a municipality's illegal policy or custom—the plaintiff may prove (1) the existence of an illegal official policy or legislative enactment; (2) that an official with final decision making authority ratified illegal actions; (3) the existence of a policy of inadequate training or supervision; or (4) the existence of a custom of tolerance or acquiescence of federal rights violations - To establish *Monell* liability for ratification based on a failure to investigate, a plaintiff needs to show not only an inadequate investigation in this instance, but also a clear and persistent pattern of violations in earlier instances

SEAN HART; TIFFANY GUZMAN v. CITY OF GRAND RAPIDS, MICHIGAN; PHILLIP REININK, BRAD BUSH, and BENJAMIN JOHNSON, Officers, in their individual and official capacities
SIXTH CIRCUIT COURT OF APPEALS No. 23-1382 Decided and Filed: May 15, 2025 70

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when confronted with an armed and unknown person, the knowledge the Officers possessed regarding the reason they had been called to the scene, and the Officers' employment of their lights and sirens to make known their presence upon arrival at the scene, we conclude that it was reasonable for the Officers to have acted quickly without first issuing verbal commands to plaintiff to drop his weapon

CHARLES F. HOLLAND ET AL. v. CHEATHAM COUNTY ET AL.
COURT OF APPEALS No. M2024-00631-COA-R3-CV Filed January 28, 2025 79

12. Motion to dismiss granted by the trial court was upheld - Although it is clear that the complaint alleges tragically irresponsible conduct by the defendants, that conduct is not a clearly established constitutional violation - The *Monell* claim fails on both the lack of a clearly established constitutional violation and a failure to state facts supporting the claim - The validity of a qualified immunity defense, like most affirmative defenses, may be apparent from the face of the complaint, in which case dismissal is proper - A county official is entitled to qualified immunity from a § 1983 suit if either (1) his conduct did not violate a constitutional right or (2) that right was not clearly established at the time of the conduct - Because any constitutional violation alleged by the Martinez Family was not clearly established, the court affirmed the district court's dismissal - A right is clearly established if the contours of the right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right, and to ensure that, courts cannot define established law at too high a level of generality – No case in this circuit establishes a next of kin's right to recover when a failure to timely notify them of a death leads to the severe, but natural, decomposition of the decedent's body – To hold the government liable the plaintiff must show that an employee's unconstitutional conduct stems from a municipal policy or custom – A policy or custom is broadly defined to include more than written rules, it can also include a policy of inaction - To set forth a claim on this theory, the complaint must show (1) the existence of a clear and persistent pattern of unconstitutional conduct; (2) notice or constructive notice on the part of the municipality; (3) the municipality's tacit approval of the unconstitutional conduct, such that its deliberate indifference in [its] failure to act can be said to amount to an official policy of inaction; and (4) that the municipality's custom was the moving force or direct causal link in the constitutional deprivation - There can be no liability under *Monell* without an underlying constitutional violation - A municipality cannot deliberately shirk a constitutional duty unless that duty is clear - The lack of a clearly established constitutional violation alone spells the end of the Martinez Family's *Monell* claim

LUIS ANTONIO MARTINEZ, SR; ANA MARTINEZ DE JESUS; YARITZA MARTINEZ DE JESUS; DEBORA MARTINEZ DE JESUS; ENITH MARTINEZ DE JESUS v. WAYNE COUNTY, MICHIGAN, et al.
SIXTH CIRCUIT COURT OF APPEALS No. 24-1474 Decided and Filed June 23, 2025 85

CLASS ACTION

1. A district court has broad discretion to decide whether to certify a class - This Court will only reverse the district court's certification of the Water Lien Class if the City makes a strong showing that the district court's decision amounted to a clear abuse of discretion - An abuse of discretion occurs if the district court relies on clearly erroneous findings of fact, applies the wrong legal standard, misapplies the correct legal standard when reaching a conclusion, or makes a clear error of judgment - To obtain class certification, Plaintiffs must first satisfy the Rule 23(a) prerequisites of numerosity, commonality, typicality, and adequate representation - For numerosity, there is no strict numerical test, but substantial numbers will qualify, and Plaintiffs have identified at least 943 residents who would belong to the proposed Water Lien Class - Commonality is also satisfied, because Plaintiffs have demonstrated a common question that will yield a common answer for the class and that that common answer relates to the actual theory of liability in the case - Typicality exists because Plaintiffs' claims fairly encompass the claims of all unnamed class members - Finally, Plaintiffs have established the adequacy of class representation because the named representatives share common interests with the unnamed interests of the Water Lien Class and appear able to vigorously assert those interests for all - Under Rule 23(b)(2), the party opposing the class must have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole - Under Rule 23(b)(3), the district court must find that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof - This does not mean that all elements of a claim must be subject to class-wide proof - Rather, a class may be certified based on a predominant common issue even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members

ALBERT PICKETT, JR.; KEYONNA JOHNSON; JAROME MONTGOMERY; ODESSA PARKS, deceased; TINIYA SHEPHERD, on behalf of themselves and all others similarly situated v. CITY OF CLEVELAND, OHIO
SIXTH CIRCUIT COURT OF APPEALS No. 24-3395 Decided and Filed: June 9, 2025 90

CONSTITUTIONAL LAW (U.S.)

1. Contracts Clause, Procedural Due Process and Equal Protection claims - Amendment - For purposes of a procedural due process claim, an individual has no protected property interest in the procedure itself - This is because a mere failure to comply with state or local procedural requirements does not, alone, constitute a denial of due process - Instead, the alleged violation must result in a procedure which itself falls short of standards derived from the Due Process Clause - The Supreme Court has held that procedural due process does not govern the enactment of generally applicable legislative acts and the adoption of a generally applicable zoning ordinance is a legislative act - Equal protection class of one claim - Under a class-of-one theory, Lathfield must show that (i) the City intentionally treated it

differently from others similarly situated in all relevant respects, and (ii) that there is no rational basis for the difference in treatment - To prevail on this theory, Lathfield must show that it was treated differently than those similarly situated in all relevant respects - In addition, Lathfield must show that the City's actions were so unrelated to the achievement of any combination of legitimate purposes that the court can only conclude that the government's actions were irrational - Lathfield has not satisfied the first element of its class-of-one equal protection claim because it does not offer evidence demonstrating that the City treated it differently from similarly situated property owners - Bare allegations of differential treatment are insufficient to establish an equal protection violation - Contract clause claim -The Constitution provides that no State shall pass any Law impairing the Obligation of Contracts - The Supreme Court has outlined a three-part test for determining whether a law violates the Contract Clause - To prevail on a Contracts Clause claim, a plaintiff must show that (i) the legislation operates as a substantial impairment of a contractual relationship, (ii) the state lacks a significant and legitimate public purpose behind the regulation, and (iii) the adjustment of the rights and responsibilities of contracting parties is not based on reasonable conditions and is not of a character appropriate to the public purposes justifying the legislation - An alleged Contracts Clause violation cannot give rise to a cause of action under § 1983 - The challenged provision of the City Code, was enacted on December 20, 1999, long before Lathfield bought the property and because Lathfield's contracts with its tenants did not exist at the time the code section was enacted, the City could not have violated the Contracts Clauses of the United States and Michigan Constitution

LATHFIELD INVESTMENTS, LLC; LATHFIELD HOLDINGS, LLC; LATHFIELD PARTNERS, LLC v CITY OF LATHRUP VILLAGE; LATHRUP VILLAGE DOWNTOWN DEVELOPMENT AUTHORITY
SIXTH CIRCUIT COURT OF APPEALS No. 24-1318 Decided and Filed: April 28, 2025 94

2. First Amendment - Charter provision prohibiting board members from directing the appointment or removal of a city employee was not vague or overbroad - Plaintiff was a City Council member in the City of Albion, Michigan, and she was prosecuted for violating a provision in the City Charter prohibiting City Council members from directing the appointment or removal of any administrative officer or employee of the city - She alleges that her political opponents on the City Council engaged in retaliatory prosecution and arrest, malicious prosecution, and conspiracy to violate her civil rights, and she alleges that the relevant provision of the City Charter is unconstitutional - To state a claim for First Amendment retaliation, the complaint must allege that (1) the plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two—that is, the adverse action was motivated at least in part by the plaintiff's protected conduct - Where the alleged adverse action consists of a criminal prosecution, the plaintiff must plead the absence of probable cause - Probable cause requires only a probability or substantial chance of criminal

activity, not an actual showing of such activity - Where the adverse action consists of an arrest, the plaintiff generally must plead the absence of probable cause, but as discussed below, there are exceptions to this requirement - To state a claim for malicious prosecution, the complaint must allege that (1) a criminal prosecution was initiated against the plaintiff and the defendant made, influenced, or participated in the decision to prosecute; (2) there was a lack of probable cause for the criminal prosecution; (3) the plaintiff suffered a deprivation of liberty as a consequence of the legal proceeding; and (4) the criminal proceeding was eventually resolved in the plaintiff's favor - To state a claim for conspiracy to violate civil rights, the plaintiff must plead that (1) a plan existed; (2) the conspirators in the plan shared an objective to deprive the plaintiff of his or her constitutional rights; and (3) an overt act was committed in furtherance of the conspiracy that caused the plaintiff's injury

KENETTE BROWN v. CITY OF ALBION, MICHIGAN; ALBERT SMITH, GLENIANE REID, and SHANE WILLIAMSON, individually and in their official capacities as City Council Members for the City of Albion; DAVID ATCHISON, individually and in his official capacity as the Mayor of the City of Albion; SCOTT KIPP, individually and in his official capacity as Chief of Public Safety for the City of Albion; JASON KERN, individually and in his official capacity as the Deputy Chief of Public Safety for the City of Albion; CULLEN CHRISTOPHER HARKNESS, individually and in his official capacity as City Attorney for the City of Albion; NICOLE WYGANT, individually and in her official capacity as Detective/Sergeant for the City of Albion Department of Public Safety
SIXTH CIRCUIT COURT OF APPEALS No. 24-1522 Decided and Filed: April 29, 2025 103

3. **Fourth Amendment – Search of teacher's purse at school yielded a gun on school property during the school day – Employees that searched the teacher's purse did not conduct the search pursuant to to any state authority, and consequently, Lawson cannot satisfy the acting-under-color-of-state-law element for her § 1983 claim - Plaintiff was seized under the Fourth Amendment when she was taken to the office of the school resource officer - Once seized in Kelly's office, plantiff was entitled to the protections afforded to an investigative stop, and such a stop is proper where there is a reasonable, articulable suspicion that a person *has been*, is, or is about to be engaged in criminal activity - The stop also must be sufficiently limited in time, and the investigative means must be the least intrusive means reasonably available - An unreasonable duration or unreasonable means may convert an investigatory stop into an arrest requiring the more onerous showing of probable cause - Superintendent seized plaintiff as an investigative stop and under the circumstance it did not violate the Fourth Amendment – Plaintiff searched her own purse during the investigative stop and *herself* revealed the presence of the firearm in her bag without being directed to do so there was no illegal search**

HOLLY LAWSON v. KAYLA CREELY, individually; LORI FRANKE, individually, MARK KOPP, in his individual and official capacities; FRANKLIN COUNTY, KY BOARD OF EDUCATION
SIXTH CIRCUIT COURT OF APPEALS No. 24-5649 Decided and Filed: March 26, 2025 111

4. Eighth Amendment - Inmate in prison was injured by correction officers excessive force - Qualify immunity denied - Officer did not deliberately disregard prisoner's medical needs, since the officer did not know of the injuries - Prisoner did not have the types of injuries (such as a knife or a gunshot wound) that would have made it obvious to any onlooker that he needed immediate medical attention - Indeed, after officer left the holding cell, prisoner immediately jumped to his feet and paced around, and showed no visible signs of injury at that time - So officer's use of force, by itself, could not allow a reasonable jury to find that he subjectively knew of prisoner's need for medical aid

RANDY ERICKSON v. GOGEBIC COUNTY, MICHIGAN, et al., SCOTT VOIT
SIXTH CIRCUIT COURT OF APPEALS No. 24-1311 Decided and Filed April 7, 2025 117

5. Eighth and Fourteenth Amendments - Qualified immunity denied - Jail death of an inmate - Failure-to-protect claim arising from conduct occurring before 2021 so the standard applicable at that time applies - The first element is satisfied if the plaintiff proves that the inmate had an objectively serious medical need - The Estate satisfied this element - Next the plaintiff must prove that the officer knew of the facts creating the substantial risk of serious harm, that the officer believed that this substantial risk existed, and that the officer responded to the risk in an unreasonable way - The district court properly concluded that Watson was aware of a substantial risk to deceased if he did not timely receive his essential medications, but Watson did nothing to ensure that deceased received his blood-pressure medications—or any medication other than for his diabetes—in a timely manner, and this was unreasonable - Based on the evidence, a jury could find that Snow was aware of the substantial risk that the deceased faced, and that she unreasonably failed to ensure that the deceased timely received all his essential medications

DENNIS WIERTELLA, as father and administrator of the estate of Randy Wiertella, deceased v. LAKE COUNTY, OHIO, DIANA SNOW, RN and CHRISTINA WATSON, RN, in their individual and official capacities
SIXTH CIRCUIT COURT OF APPEALS No. 24-3311 Decided and Filed June 24, 2025 121

6. Fourteenth Amendment - Qualified immunity denied to local officers - Motion to dismiss - Water contaminated with lead - A defendant asserting qualified immunity at the motion-to-dismiss stage may argue both that the facts set out in the complaint do not plausibly allege a violation of the plaintiff's statutory or constitutional right—that the complaint fails to state a claim—and that, even if so, the right was not clearly established at the time of the challenged conduct - When a document attached to the complaint contradicts the allegations, the document trumps the allegations - The Fourteenth Amendment prohibits the state from depriving any person of life, liberty, or property, without due process of law - This due-process right has substantive and procedural components - The substantive component bars the state from depriving people of certain protected rights

regardless of the fairness of the procedures used to implement them, including right to bodily integrity, an indispensable right recognized at common law as the right to be free from unjustified intrusions on personal security and encompassing freedom from bodily restraint and punishment - Individuals possess a constitutional right to be free from forcible intrusions on their bodies against their will, absent a compelling state interest - Involuntarily subjecting nonconsenting individuals to foreign substances with no known therapeutic value—often under false pretenses and with deceptive practices hiding the nature of the interference—is a classic example of invading the core of the bodily integrity protection - To establish a constitutional violation, a plaintiff must demonstrate not only that her bodily integrity was infringed, but also that it was infringed by government officials' discretionary, constitutionally repugnant actions - Actions are constitutionally repugnant in the context of a bodily integrity violation when they shock the conscience - The complaint does not allege a constitutional violation by the State officials - To find deliberate indifference, the court must make some assessment that the officer did not act in furtherance of a countervailing governmental purpose that justified taking that risk - It is in the very nature of deliberative bodies to choose between and among competing policy options, and yet a substantive-due-process violation does not arise whenever the government's choice prompts a known risk to come to pass - Poor choices made in furtherance of a legitimate government interest are not deliberately indifferent - As for city officials there is rarely a justification for misleading the public about the extent of a lead-water crisis; Defendants have offered no legitimate government purpose for providing information that downplayed the extent of the danger - City is also liable under *Monell* - A municipality is liable under § 1983 only if the challenged conduct occurs pursuant to a municipality's official policy, such that the municipality's promulgation or adoption of the policy can be said to have caused one of its employees to violate the plaintiff's constitutional rights - Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law - Where action is directed by those who establish governmental policy, the municipality is equally responsible

IESHA MITCHELL, guardian and next friend of A.M., et al. v. CITY OF BENTON HARBOR, MICHIGAN; MARCUS MUHAMMAD; MICHAEL O'MALLEY; DARWIN WATSON; LIESL CLARK; ERIC OSWALD; ERNEST SARKIPATO; BRANDON ONAN; ELHORN ENGINEERING COMPANY
SIXTH CIRCUIT COURT OF APPEALS No. 23-1970 Decided and Filed: May 6, 2025 124

7. Fourteenth Amendment - Due process (procedural) - Octopus Group has failed to show that it possessed a protected property interest - Procedural due process requires state and local governments to employ fair procedures when they deprive persons of a constitutionally protected interest in life, liberty, or property, but procedural due process protections do not prevent deprivations of life, liberty, or property but rather guard against substantively unfair or mistaken deprivations of property - Octopus Group is challenging the denial of a special use permit and its inability to

reapply as of right for five years - Octopus Group fails to cite to any authority showing that being unable to reapply for a permit deprived it of a protected property interest, nor has Octopus Group asserted that it was entitled to the permit such that it had a property right in the permit itself - Octopus Group has failed to adequately show that it had a protected property interest in the permit or that it has been deprived of the physical property at issue - No due process violation - The determination of whether the Council acted illegally, arbitrarily, or fraudulently is a question of law - Illegal, arbitrary, or fraudulent actions include: 1) the failure to follow the minimum standards of due process; 2) the misrepresentation or misapplication of legal standards; 3) basing a decision on ulterior motives; and 4) violating applicable constitutional standards - Statutory rules of construction - Council acted pursuant to one of its published rules of procedure, which provided for reconsideration of a matter before the minutes of the previous meeting had been finalized - It is plain from the rules of procedure that, prior to the approval of the previous meeting's minutes, any matter which has appeared on the agenda and has been acted upon by either a majority vote for approval or rejection, may be brought before the Council for reconsideration - As a general rule, every citizen is presumed to know the law, so Octopus had notice that reconsideration was a possibility

PEOPLE FIRST AUTO SALES, LLC ET AL. v. CITY OF MEMPHIS, TENNESSEE ET AL.
COURT OF APPEALS No. W2024-00323-COA-R3-CVFiled February 11, 2025 135

8. Fourteeth Amendment - School shooting - School employees did not violate due process rights by their actions, which does not shock the conscience - This claims of the plaintiffs sounds in tort, not federal constitutional law - For the most part the Constitution sets forth rules for government, both creating (or constituting) its powers and limiting them - The limitation the plaintiffs invoke here is that of due process, and to proceed with those claims, the plaintiffs must allege more than that the school officials in these cases—a counselor and the dean of students—made bad decisions or could have done more to prevent this tragedy - What the plaintiffs must show in these cases, rather, is that the actions of these two defendants were so outrageous, and so callous in their disregard of the danger posed by the student shooter, as to shock the conscience - The Due Process Clause of the Fourteenth Amendment, imposes a limitation on the State's power to act, not a guarantee of certain minimal levels of safety and security - By its terms, the Fourteenth Amendment regulates only the state's actions—not those of private actors, and here the person who deprived the victims of their lives and health was a private actor - The Sixth Circuit has recognized a theory of state-created dangers—according to which, under narrow circumstances, state actors can be liable for harms caused by private actors - Such a claim has three elements (1) a state official must take an affirmative act that creates or increases the risk that a victim will be harmed by a private actor; (2) this risk must pose a special danger to a specific victim—meaning a danger, to that victim, greater than the danger to the public generally, and (3) the state official's conduct must

be so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience

JEFFREY FRANZ, et al.; STEVE ST. JULIANA, et al.; WILLIAM MYRE, et al.; KYLIE OSSEGE; MATTHEW MUELLER, et al.; NICHOLETTE ASCIUTTO, et al.; NICOLE BEAUSOLEIL; SANDRA A. CUNNINGHAM,; JARROD WATSON, et al. v. OXFORD COMMUNITY SCHOOL DISTRICT, et al. NICHOLAS EJAK; SHAWN HOPKINS
SIXTH CIRCUIT COURT OF APPEALS Nos. 23-1483 /1484 /1487 /1489 /1490 /1491 /1492 /1493 /1496 /1560 /1561/ 1563/ 1564/ 1565 Decided and Filed: March 20, 2025 135

9. Due process procedural violation - City tore down a dilapidated mobile home - City did not have a mechanism for a pre-deprivation hearing - City did not provide an opportunity to be heard, which it was required to do before demolition of the mobile home - There was no substantive process violation as the conduct did not shock the conscience - Due process requires a statement reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections - The idea is to give property owners a meaningful chance to object to the proposed destruction of their property - The notice thus must inform the homeowners 'of the availability of an opportunity to present [their] objections - If generally available state statutes detail procedures for obtaining a hearing before the destruction of the property, a municipality typically need not take other steps to inform the property owner of their options - As to the opportunity to be heard, due process requires some kind of a hearing *before* the State destroys the property, absent an emergency - No emergency existed in this instance, as a month passed between the condemnation notice and the actual demolition of the vacant home, precluding the City from claiming a necessity of quick action or other impracticability that might permit only post-deprivation remedies - That means the City needed to provide the plaintiffs with a hearing before the demolition - While the hearing requirement remains flexible to account for different situations—hence the reference to some kind of a hearing—it remains an imperative - Measured by these principles, the City met its obligation to provide notice to the property owners but did not meet its obligation to provide a pre-demolition hearing to them

MICHAEL MCINTOSH; REBECCA MCINTOSH v. CITY OF MADISONVILLE, KENTUCKY
SIXTH CIRCUIT COURT OF APPEALS No. 24-5383 Filed and Decided: January 21, 2025 138

CONSTITUTIONAL LAW (TENNESSEE)

1. Mootness -A court should consider whether to exercise its discretion to apply one of the recognized exceptions to the mootness doctrine - These exceptions are as follows: (1) when the issue is of great public importance or affects the administration of justice; (2) when the challenged conduct is capable of repetition and is of such short duration that it will evade judicial review; (3) when the primary subject of the dispute has become moot but

collateral consequences to one of the parties remain; and (4) when the defendant voluntarily stops engaging in the conduct - The Tennessee General Assembly did not intend for a construction of the Act that would defeat its very object and which would result in the death of the statutory scheme as it applied to existing metropolitan governments simply because litigation meant certain deadlines for jurisdictions to make the changes necessary under the Act could not be complied with - While subsection 1(b) is undisputedly moot, subsection 1(a) should not be construed as being conditioned or qualified by that provision - As a result, subsection 1(a) continues to carry the force of law unless prohibited by one of the constitutional provisions raised by Metro Nashville – Exemption clause does not prohibit legislation from imposing limits on the size of Metro government council - The plain language at issue mandates that legislative bodies meet certain requirements, including that the legislative body's membership not exceed twenty-five members, and it states that counties organized under a metropolitan government are exempt from the restrictions contained in this paragraph - Nothing in this language, however, indicates that other restrictions that derive outside of this paragraph are prohibited, nor does the plain language of this paragraph in any way circumscribe the power of the General Assembly to legislate the membership of metropolitan councils – The limitation on membership imposed by section 1 of the Act does not violate Article VII, section 1's exemption clause – Home rule provision and Local Legislation clause - In determining whether the Local Legislation Clause is implicated in a particular situation, three requirements must be met: 1) the statute in question must be local in form or effect; 2) it must be applicable to a particular county or municipality; and 3) it must be applicable to the particular county or municipality in either its governmental or proprietary capacity - If the legislation implicates the Local Legislation Clause but does not require approval by a majority of the county or municipality's local legislative body or voters, it is unconstitutional and void - The inclusion of the now-moot transitional provision does not render subsection 1(a) a local law violative of the Local Legislation Clause - The part of the Act reducing the number of council members is constitutional, as the law is general in its application, and it does not violate the Home Rule clause

METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY ET AL. v. BILL LEE ET AL.
COURT OF APPEALS No. M2024-01182-COA-R3-CV Filed June 3, 2025.....143

2. Home Rule Amendment – Statute violated the Home Rule clause of the Tennessee constitution – Statute was applicable only to Nashville Metro and does restrain Metro from performing duties it previously had appointed board members of the Airport Authority – The third requirement for implication of the Home Rule Amendment is that section two of the Act must be applicable to a particular county or municipality in either its governmental or proprietary capacity - Because section two of the Act implicates the Home Rule Amendment and does not require approval by a majority of the municipality's local legislative body or voters, it is unconstitutional and void - Section 2 of the Act is elided in its entirety – The layering of the statute's applicability requirements renders the possibility

that the Act could apply to any other county theoretical at best, and the trial court correctly determined section two of the Act to be local legislation - No equal protection violation as there was a rational basis to treat Nashville differently - Nashville airport differs from the other airports under the Metropolitan Airport Act Authority - Given the deferential rational basis standard, drawing a distinction between Nashville International Airport and Memphis International Airport, or Chattanooga or Knoxville, is not unreasonable - Nashville International Airport has more than five times as many boarded passengers as the next closest Tennessee airport, Memphis International Airport

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY v. GOVERNOR BILL LEE ET AL.
COURT OF APPEALS Appeal from the Chancery Court for Davidson County No. M2023-01678-COA-R3-CV Filed April 28, 2025 154

DECLARATORY JUDGMENT

1. Taxpayers suing the government are not required to allege a distinct injury as long as they (1) allege a specific illegality in the expenditure of public funds and (2) have made a prior demand on the governmental entity asking it to correct the alleged illegality - Plaintiffs have alleged specific illegality in the expenditure of the IMPROVE Act tax funds, but there is nothing in the complaint or the record to show that a demand to correct the alleged illegality was made, so plaintiffs' fail to have standing under the declaratory judgment act

COMMITTEE TO STOP AN UNFAIR TAX ET AL. v. FREDDIE O'CONNELL ET AL.
COURT OF APPEALS No. M2025-00072-COA-R3-CV Filed April 15, 2025 163

2. Declaratory judgment or writ of mandamus - Cities with municipal courts that exercise general sessions jurisdiction are not required to provide funding for an assistant district attorney position for the general sessions cases – Mandamus writ was not issued as the plaintiff had a right to declaratory judgment - The general rule regarding the issuance of a writ of mandamus is that the writ is not issued to control or coerce discretionary power by a board or officer but will lie to enforce the performance of an official duty and to compel the exercise of power - A court will generally not issue a writ of mandamus against a public official unless the proof shows that the official is clearly refusing to perform some nondiscretionary, ministerial act - A petitioner's ability to pursue a declaratory judgment meant that there was an alternative form of relief which provided the same relief sought by the writ of mandamus - The cities were entitled to a declaratory judgment stating that Tennessee Code Annotated section 8-7-103(1) does not require a municipality to provide prosecutorial personnel in order for the district attorney general's duty to prosecute cases to be triggered - Thus, there was another remedy available to the cities which was equally convenient, complete, beneficial, and effective as the writ of mandamus would have been - Therefore, despite our agreement with the trial court as to the interpretation of the statute, we must reverse its decision to grant the writ of mandamus

CITY OF MILAN, TENNESSEE, ET AL. v. FREDERICK H. AGEE
COURT OF APPEALS No. W2024-00200-COA-R3-CV Filed May 2, 2025.....168

ELECTIONS

1. Improve Act referendum - Under the election contest statutes, there are two grounds upon which an election contest may be based: (1) a claim that the election was valid, but that the outcome was not properly determined; and (2) a claim that the election itself was null and void - Nothing in the IMPROVE Act defines connectivity or sets parameters on the location of connected non-mass transit improvements, and in light of the discretion given by the act in this area, the court found that the proposal approved by the electorate is fully consistent with the IMPROVE Act, with one exception - The purchase of land for housing development and parks - The court failed to see how the purchase of property for housing development and parks is consistent with Tenn. Code Ann. § 67-4-3201(3) - Property purchased with the surcharge must be used for the public transit system as defined in Tenn. Code Ann. § 67-4-3201(3), and yet the purchase of land for housing development and parks is not a purchase for the transit system, nor does it provide connectivity for the transportation facility to any other non-mass transit system transportation infrastructure, including, but not limited to, interstates, highways, roads, streets, alleys, and sidewalks

COMMITTEE TO STOP AN UNFAIR TAX ET AL. v. FREDDIE O'CONNELL ET AL.
COURT OF APPEALS No. M2025-00072-COA-R3-CV Filed April 15, 2025 177

EMINENT DOMAIN

1. Order of possession does not require city to construct of replacement parking lot and there was no private use of the property - The court found that the Order of Possession did not require the City to construct replacement parking - Given that there is no dispute concerning the public purpose of the greenway project, we affirm the trial court's finding that the City's taking was for a public purpose

CITY OF PIGEON FORGE, TENNESSEE v. RLR INVESTMENTS, LLC
COURT OF APPEALS No. E2023-01802-COA-R3-CV Filed April 30, 2025.....178

GTLA

1. Plaintiff did not cross a public street at the crosswalk but rather mid-block - While crossing the street plaintiff was struck by a vehicle driven by a city employee - Remanded to trial court to reconsider the allocation of fault under comparative fault and the allocation of damages - To establish a claim for common law negligence, a plaintiff must establish the following elements: (1) a duty of care owed by defendant to plaintiff; (2) conduct below the applicable standard of care that amounts to a breach of that duty; (3) an injury or loss; (4) cause in fact; and (5) proximate, or legal, cause - Negligence per se is not a separate cause of action, but rather a

form of ordinary negligence, that enables the courts to use a penal statute to define a reasonably prudent person's standard of care - Under Tennessee's system of modified comparative fault, the trier of fact should first determine the total amount of the plaintiff's damages without regard to fault, and then apportion damages on the percentage of fault attributable to each tortfeasor

SANDRA EASLEY v. CITY OF MEMPHIS
COURT OF APPEALS No. W2023-00437-COA-R3-CV Filed January 2, 2025 188

2. Motion to dismiss granted - Public duty doctrine - The public duty doctrine provides an additional layer of defense to acts or omissions not immune under the GTLA - It shields governmental entities and their employees from suits for injuries that are caused by the breach of a duty owed to the public at large - The duties alleged in the complaint—to protect a citizen from harm and to arrest a suspected criminal—are public duties - No special duty alleged - The Tennessee Supreme Court has adopted three scenarios that justify application of a special duty of care - Ms. Franklin relies on two, (1) a special duty of care may exist if the officials, by their actions, affirmatively undertook to protect her, and she relied upon the undertaking or (2) if the complaint alleges a cause of action involving intent, malice, or reckless misconduct - The trial court determined that the first scenario could not apply because the complaint failed to allege an affirmative act and reliance - Ms. Franklin insists that she alleged both, and points out, the complaint alleged that the police department directed her to submit to a forensic medical examination to gather physical evidence of the crime,and she complied with this directive - But not every action by a police officer satisfies the exception's criteria - The formulation adopted by the Tennessee Supreme Court court requires an affirmative undertaking to protect the plaintiff - The alleged directive does not meet that standard, and does not indicate that the police department assumed a special duty to protect Ms. Franklin in particular - GTLA only waived immunity for ordinary negligence, not gross negligence or recklessness - In so doing it restricts the application of the special duty exception in tort actions against municipalities - Because Ms. Franklin cannot assert a claim for reckless misconduct against the City, she cannot avail herself of this method of satisfying the special duty exception

ALICIA FRANKLIN v. CITY OF MEMPHIS, TENNESSEE
COURT OF APPEALS No. W2023-01142-COA-R3-CV Filed May 14, 2025.....195

3. Comparative fault and statute of limitations - Plaintiff, was injured by tripping on a sidewalk, and filed suit against the private property owners and city but failed to properly serve the city - In their original answer, the private property owners asserted the city's comparative fault but not in express terms - Plaintiff voluntarily dismissed the city as a defendant, and in an amended answer, the private property owners expressly asserted comparative fault against the city - Plaintiff promptly amended her complaint to add the city as a defendant under T.C.A. section 20-1-119, which provides a plaintiff 90 days after the filing of an answer asserting comparative fault against a non-party to add that non-party as a defendant,

even if doing so would otherwise be barred by a statute of limitations - The city asserted this was not in accordance with the statute because the private property owners asserted comparative fault against the city in the original answer - The trial court determined that, although the original answer did raise comparative fault of the city, this did not trigger the 90-day window under the statute because the city was a party at the time - The trial court concluded that the amended answer was timely filed within 90 days of the filing of the first answer alleging comparative fault against a non-party, which was the amended answer - The court of appeals affirmed the decision - The determination of the city's status as a non-party is measured by considering the point when Ms. Sands sought to amend her complaint, which was the filing of her amended complaint - At that point, the city had been dismissed and qualified as a non-party, and this was within 90 days of the Williards asserting comparative fault against a non-party tortfeasor in their amended answer - The Williards' original answer did not, as asserted by the city, trigger Ms. Sands's 90-day window - At the time of the filing of the original answer, the city was still, as it concedes, a party. As was her right under T.C.A. section 20-1-119(a)(1), Ms. Sands properly filed within 90 days of the first amended answer in which comparative fault was asserted against the City as a non-party

BRENDA SANDS v. ROBERT WILLIARD ET AL
COURT OF APPEALS No. W2024-00772-COA-R9-CV Filed January 24, 2025.....199

4. **Negligent hiring claim and negligent act of that employee were the proximate cause of injuries to a child - No claim for negligence can succeed in the absence of any of the following elements: (1) a duty of care owed by the defendant to the plaintiff; (2) conduct falling below the applicable standard of care amounting to a breach of that duty; (3) an injury or loss; (4) causation in fact and (5) proximate, or legal cause - Teachers are not expected to be insurers of the safety of students and are not required to supervise all activities at all times - Teachers do, however, have a duty to safeguard students from reasonably foreseeable dangerous conditions - To establish a claim for negligent hiring, a plaintiff must first prove all of the elements of a negligence claim, a plaintiff in Tennessee may recover for negligent hiring, supervision or retention of an employee if he establishes, in addition to the elements of a negligence claim, that the employer had knowledge of the employee's unfitness of the job - But as the trial court found, the Wherrys failed to establish the elements of a negligence claim and the court affirmed the dismissal of the negligent hiring claim**

COURTNEY L. WHERRY ET AL. v. OBION COUNTY BOARD OF EDUCATION ET AL.
COURT OF APPEALS No. W2024-00693-COA-R3-CV Filed April 28, 2025.....205

EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Plaintiff filed a declaratory judgment action that its proposed use of its property was permitted under the Grandfather Act - Plaintiff did not submit any plans or apply for a permit - Where the relief sought in a declaratory judgment action is the same relief that is available under common law writ of certiorari, the action will be treated as a certiorari action, and the requirements of such action will be applied - Trial court treated declaratory judgment action as a writ of certiorari because the claimed use was a matter of discretion - Where the relief sought in a declaratory judgment action is the same relief that is available under common law writ of certiorari, the action will be treated as a certiorari action - If exhaustion of remedies is not mandated by the plain words of the statute governing the issue, then it is not statutorily required, then it is a matter of judicial discretion - There is no statutory requirement in the present case, thus, we use our discretion to determine whether Trezevant Enterprises should have been required to exhaust its administrative remedies before filing the subject action - The court found that Trezevant Enterprises was required to exhaust its administrative remedies prior to filing a petition for a common law writ of certiorari and the failure to do so meant 'a writ of certiorari was not available

TREZEVANT ENTERPRISES, INC. v. CITY OF GERMANTOWN, TENNESSEE
COURT OF APPEALS No. W2024-00420-COA-R3-CV Filed April 3, 2025 209

ORDINANCES

1. Amending an ordinance is a legislative act intended to protect the health, safety, and welfare of the citizens living in the community covered by the ordinance - Legislative bodies are given broad discretion in enacting or amending an ordinances - When the act of a local government body is legislative, judicial review is limited to whether any rational basis exists for the legislative action and, if the issue is fairly debatable, it must be permitted to stand as valid legislation - The General Plan approved by the local government contains express language reflecting the advisory nature of the land use classifications, and the density limitations are expressly recommendations, not requirement - Rezoning was consistent with the General Plan, which by statute is controlling

THOMPSON SCHOOL NEIGHBORHOOD ASSOCIATION, ET AL. v. KNOX COUNTY, TENNESSEE, ET AL.
COURT OF APPEALS No. E2024-00310-COA-R3-CV Filed February 2, 2025.....215

PRISON LITIGATION REFORM ACT

1. The Prison Litigation Reform Act (PLRA) requires prisoners to seek relief from state prison officials before filing a federal lawsuit - This is called an exhaustion requirement since prisoners must exhaust their administrative remedies before suing - Michigan statute of limitations tolling provision apply to the Act, so suit was timely filed

LAMONT BERNARD HEARD v. YARNICE STRANGE; JEFFREY OOSTERHOF; ADAM DOUGLAS; CHRISTIAN ALCORN
SIXTH CIRCUIT COURT OF APPEALS No. 23-1624 Decided and Filed: January 29, 2025 216

RECUSAL

1. Rule 10B of the Tenn.Sup. Ct. R. requires the filing of a written motion filed promptly after a party learns or reasonably should have learned of the facts establishing the basis for recusal - Plaintiff's attorney failed to move for recusal in a timely manner - Ms. Payne failed to timely move for recusal, and the court further noted that the alleged basis for recusal in this case was meritless - The mere existence of a friendship between a judge and an attorney is not sufficient, standing alone, to mandate recusal - The Code of Judicial Conduct does not require judges to remain isolated from other members of the bar and from the community

JACQUELINE PAYNE v. SHELBY COUNTY, TENNESSEE, ET AL.
COURT OF APPEALS No. W2024-00641-COA-R3-CV Filed May 23, 2025 218

SCHOOLS

1. Termination of tenured teacher - Teacher did not timely raise a procedural due process claim because she did not raise the issue during the hearing before the hearing officer, so the issue is waived - Teacher was provided with a letter which alerted her of the intention for charges to be brought before the board, and then another letter which listed charges, outlined the behavior supporting those charges, and informed her of her rights as a tenured teacher - She was also able to participate in a full hearing in which she challenged the charges brought against her, called multiple witnesses, testified on her own behalf, cross-examined SCBE's witnesses, and submitted her own exhibits - Had the teacher brought the issue forth either before or during the hearing, the hearing officer could have assessed the veracity of the claim and ordered any necessary relief- Court upheld hearing officer's finding that teacher was guilty of neglect of duty

LAGINA SCOTT v. SHELBY COUNTY BOARD OF EDUCATION, ET AL.
COURT OF APPEALS No. W2022-00914-COA-R3-CV Filed February 26, 2025 230

2. IDEA - School system ordered to provide compensatory education to dyslexic graduate because he failed to be able to read and did not meet any of the Individualized Education Plan (IEP) fluency goals - William's workarounds in reading simply did the work for him - Yet the point of a free and appropriate education under the IDEA is not simply to complete assignments - The school is right to point out that the IDEA does not guarantee any particular outcome, such as learning to read - But when a child is capable of learning to read, and his IEP does not aim to help him overcome his particular obstacles to doing so, that IEP does not provide him the free appropriate public education to which he is entitled

WILLIAM A., a student, by and through his parents, E.A. and C.A. v. CLARKSVILLE-MONTGOMERY COUNTY SCHOOL SYSTEM
SIXTH CIRCUIT COURT OF APPEALS No. 24-5591 Decided and Filed: February 3, 2025.....242

3. PROFESSIONAL EDUCATORS COLLABORATIVE CONFERENCING ACT OF 2011 (PECCA) – A change to student discipline code was not a working condition under PECCA and was not subject to collective conferencing, even if the change now required teacher to handle certain disciplinary infractions - Working conditions are the subject of collaborative conferencing under PECCA - Although the Tennessee General Assembly largely retained the 2002 definition of working conditions, it included additional language providing that the term is intended to be narrowly defined and does not include any matters not specifically designated under this part - T.C.A. § 49-5-602(13) requires the definition of working conditions contained in PECCA must be construed narrowly and does not include any matters not specifically designated under this part - Neither student discipline nor social and emotional learning support are specifically designated as topics for collaborative conferencing in PECCA - In light of the Tennessee General Assembly's decision to omit student discipline from T.C.A. § 49-5-608(a), as well as the court's duty to interpret the term working conditions' narrowly and without expanding it to include matters not specifically designated, the trial court erred in ruling that the changes to the Student Code of Conduct were subject to collaborative conferencing under PECCA

CLARKSVILLE MONTGOMERY COUNTY EDUCATION ASSOCIATION v. CLARKSVILLE MONTGOMERY COUNTY BOARD OF EDUCATION
COURT OF APPEALS No. M2024-00663-COA-R3-CV Filed June 30, 2025 245

TENNESSEE PUBLIC PARTICIPATION ACT (TPPA)

1. Plaintiff police officer filed a defamation suit – Defendants filed a motion to dismiss pursuant to the TPPA – Trial court dimissed defendants' petition and defendants appealed the denial, which was permitted by the TPPA – After the appeal plaintiff took a nonsuit of his original action and moved to dismiss the appeal - The trial court lacked subject matter jurisdiction to grant the officer's voluntary nonsuit, and therefore we deny the motion to dismiss this appeal - Whether a party established a prima facie case for purposes of a TPPA petition is a legal issue the appeals court reviews de novo - Likewise, issues of constitutional interpretation are questions of law, which the appeals court reviews de novo without any presumption of correctness given to the legal conclusions of the courts below - The officer's TPPA petition is no longer pending before the trial court - Instead, the officer's petition has been denied by the trial court and timely appealed to the appeals court in accordance with Tennessee Code Annotated § 20-17-106, the section of the TPPA governing appeals - Section 20-17-106 provides, in pertinent part, that a trial court's order dismissing or refusing to dismiss a legal action pursuant to a petition filed under the TPPA is immediately appealable as a matter of right to the court of appeals - The trial court dismissed the TPPA suit and the defendants appealed the

determination, which was immediately appealable - During the pendency of this appeal, the officer attempted to nonsuit the underlying defamation lawsuit and moved to dismiss this appeal as moot, but the trial court lost its authority over the case and the order granting to nonsuit was not valid - The filing of a TPPA petition immediately stays discovery in the pending lawsuit until the court has ruled on the petition - The court may allow specified and limited discovery relevant to the petition upon a showing of good cause - In ruling on a petition, a court may consider 'supporting and opposing sworn affidavits stating admissible evidence and admissible evidence presented by the parties

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TENNESSEE RECREATIONAL USE STATUTE (TRUS)

1. The TRUS provides an affirmative defense to a landowner when a person is injured while engaging in a recreational activity on the landowner's property - Since golf is comparable to at least four of the recreational activities listed under Section 102, the court held that golf is an unenumerated recreational activity covered by the TRUS - The Tennessee Supreme Court articulated the following test for determining whether a recreational use defense applies: (1) whether the activity alleged is a recreational activity as defined by the statute; and if so, (2) whether any of the statutory exceptions or limitations to the immunity defense are applicable - Importantly, the Supreme Court stated that the list of activities under Section 102 is neither exclusive nor exhaustive, so there is no bright line test - An activity need not be listed in Section 102 for the section to apply, but it must be comparable to those listed - It did not matter that the plaintiff paid to pay

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