

# Significant Decisions From the United States Court of Appeals for the First Circuit

Office of the Maine Attorney General  
Continuing Legal Education Program  
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# Topics Addressed

- Equal Protection
- Federalism
- Sovereign Immunity
- Commerce Clause
- First Amendment
- Equitable Estoppel
- Judicial Estoppel
- Younger Abstention
- Section 1983
- Proximate Causation

*Davis v. United States*  
670 F.3d 48 (1<sup>st</sup> Cir. 2012)

Proximate Causation

FBI agents, by protecting two gang member informants, were the proximate cause of two women killed by the informants

- Agents knew the informants were “extraordinarily violent men who had already seemingly murdered others” and it was foreseeable that they “might kill anyone who threatened or seriously inconvenienced them”

# *Gonzalez-Droz v. Gonzalez-Colon* 660 F.3d 1 (1<sup>st</sup> Cir. 2011)

## Equal Protection

Under rational basis test, regulation limiting practice of cosmetic medicine to plastic surgeons and dermatologists was constitutional

- Test: Rationally related to legitimate state interest
- Classification “falls within the universe of reasonable alternatives that might serve to foster improved patient care and safety”

*Massachusetts v. U.S. Dept. of Health  
and Human Services*

2012 WL 1948017 (1<sup>st</sup> Cir. 2012)

Equal Protection / Federalism

Provision of the federal Defense of Marriage Act denying federal benefits to same sex couples lawfully married under state law violated Equal Protection Clause

# *Massachusetts v. U.S. Dept. of Health and Human Services (cont.)*

## Strict Scrutiny

- Race, alienage, national origin
- Narrowly tailored to further compelling governmental interest

## Intermediate Scrutiny

- Gender
- Substantially related to further important governmental interest

## Rational Basis Review

- Rationally related to further legitimate governmental interest

# *Massachusetts v. U.S. Dept. of Health and Human Services (cont.)*

Applied a rational basis test but with a “closer than usual review”

- History of discrimination
- Principles of federalism (federal intervention in area where state regulation has traditionally governed)

# *Massachusetts v. U.S. Dept. of Health and Human Services (cont.)*

## Rationales for DOMA

- Preserve scarce federal resources
- Support child-rearing in stable marriages
- Promote institution of opposite-sex marriages
- Moral disapproval of homosexuality
- “Freeze” situation so Congress could reflect

*Bergemann v. Rhode Island Dept. of  
Environmental Management*  
665 F.3d 336 (1<sup>st</sup> Cir. 2011)

Sovereign Immunity

State may impliedly waive its sovereign immunity by engaging in affirmative conduct during litigation sufficient to evince consent to suit

- Removing a case to federal court results in a waiver only if the removal confers an unfair advantage on the removing state

*Antilles Cement Corp. v. Fortuno*  
670 F.3d 310 (1<sup>st</sup> Cir. 2012)

Commerce Clause

Under “Dormant” Commerce Clause, States generally may not discriminate against out-of-state commerce

- Prohibition does not apply when State is acting as a participant in the free market as opposed to a sovereign regulating the market

# *Glik v. Cunniffe*

655 F.3d 78 (1<sup>st</sup> Cir. 2011)

## First Amendment

First Amendment protects the right of citizens to videotape police officers carrying out their duties in public

- Government can impose reasonable time, place and manner restrictions

*Guay v. Burak*  
677 F.3d 10 (1<sup>st</sup> Cir. 2012)

Judicial Estoppel

Equitable doctrine prevents a litigant from pressing a claim that is inconsistent with a position taken by the litigant in a prior proceeding

- Positions must be directly inconsistent
- Court accepted prior position
- Showing of unfair advantage not necessary

# *Cahoon v. Shelton*

647 F.3d 18 (1<sup>st</sup> Cir. 2011)

## Equitable Estoppel

To succeed on equitable estoppel claim, party must establish that the defendant made an affirmative representation for the purpose of inducing the party to act (or fail to act) and party did act (or fail to act) in reliance on the representation

- For governmental entities, applies only if predicated on acts of public officials or entities acting within the scope of their authority

*Massachusetts Delivery Assoc. v. Coakley*  
671 F.3d 33 (1<sup>st</sup> Cir. 2012)

Younger Abstention

Federal court should abstain when requested relief would interfere 1) with an ongoing state judicial proceeding; 2) that implicates an important state interest; and 3) that provides an adequate opportunity for the federal plaintiff to advance his federal constitutional challenge

# *Massachusetts Delivery Assoc. v. Coakley* (cont.)

## Younger Abstention

Does not typically apply where the federal court plaintiff is not itself a party to the state-court proceedings

- Trade association and member of that association treated as separate entities

*Santiago v. Puerto Rico*  
655 F.3d 61 (1<sup>st</sup> Cir. 2012)

Section 1983

For private defendants to be held liable under Section 1983, they must have been acting “under color of state law”

- Assumed a traditional public function
- Were coerced or significantly encouraged by the State
- Engaged in “joint action” with the State