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Sixth Circuit Halts Qualified Immunity Claims for Bodily Integrity of Flint Residents

Written by Lucy Infeld, Kirstin Gruver and Eric Klein – 3/7/19

In *Guertin v. State of Michigan*, the Sixth Circuit held that officials responsible for the decision to change Flint, Michigan's water supply, leading to lead-contamination of water are not protected by qualified immunity. The Court also allowed a claim of violation of bodily integrity under the 14th Amendment Due Process Clause to continue.

The events at issue arose in 2016 when the City of Flint, facing economic turmoil, switched the source of its residential water from that supplied by the Detroit Water and Sewage Department to water from the Flint River. The Flint River water was known to be corrosive, and when it travelled untreated through old pipes, lead leached into the water. This leaching caused the drinking and bathing water for residents of Flint, Michigan to become lead-contaminated.

The plaintiffs pled a violation of their 14th Amendment Due Process right to bodily integrity. The defendants asserted a qualified immunity defense, which was denied by the District Court. The Sixth Circuit took up the appeal to decide if officials should be granted qualified immunity and protected from liability. Additionally, the Sixth Circuit took up an appeal from the City of Flint seeking sovereign immunity as an arm-of-the-state of Michigan due to Michigan's emergency takeover of city services.

Sixth Circuit Finds No Qualified Immunity with Known Risk to Bodily Integrity

Qualified immunity shields public officials from suit. For qualified immunity to apply, an individual must be acting in their capacity as a public official and must have made a reasonable, but mistaken, judgment about an open legal question.

The plaintiffs bear the burden of showing that a defendant is not entitled to qualified immunity. To do so, plaintiffs must demonstrate that the official violated a statutory or constitutional right and that the right was clearly established at the time of the conduct.

The 14th Amendment Due Process Clause restricts government action by preventing abuses of government power. The plaintiffs in *Guertin* allege a violation of their right to bodily integrity, which allows individuals “to be free from forcible intrusions on their bodies against their will, absent a compelling state interest.” The right to bodily integrity also includes the right to be free from “arbitrary and capricious government action that ‘shocks the conscience’ and violates the decencies of civilized conduct.”

While there is no fundamental right to water service or to live in a contaminant-free environment, the Sixth Circuit found that the defendants did not provide notice to Flint residents about the lead-laced water and encouraged residents to continue drinking water despite knowledge about the corrosive nature. The Court held that defendants knew that water treatment was necessary. However, the water treatment plant was not ready when the defendants decided to switch the water supply for Flint. Additionally, the defendants knew the water distribution system was corroded, but announced that the water

was safe to drink. In light of these actions, the Court concluded that “knowingly and intentionally introducing life-threatening substances into an individual without their consent” violates the right to bodily integrity.

Judge Griffin, writing for the majority, found that the lead-contamination was a predictable harm directly affecting plaintiffs' bodily integrity. However, these decisions did not arise out of a time-is-of-the-essence necessity, thus city officials were able to think through their decision making. Moreover, Flint is legally required to supply its residents with water and the residents are legally required to take and pay for the water. Defendants assured citizens of the water's potability, leading Flint residents to drink lead-contaminated water.

Lastly, the Court highlighted that there was no legitimate government purpose for deciding to switch Flint's water source. Judge Griffin found that the decision to switch water sources was purely economic and that the defendants' actions rose to the level of “deliberate indifference”. The Court found that these combined facts “shocked the conscience” and are “a classic example of invading the core of the bodily integrity protection.”

No Sovereign Immunity for Local Government Entities

The Sixth Circuit also upheld the District Court's denial of the City of Flint's sovereign immunity claims. The 11th Amendment precludes suit against a state by its own citizens, citizens of another state, or citizens or subjects of any foreign state. Moreover, the Supreme Court has held that sovereign immunity does not extend to counties and similar municipal corporations.

Flint noted that it was so financially distressed at the time of its decision to change water sources that the State of Michigan had taken over day-to-day government operations through emergency provisions. Flint contends that this made the city an arm of the state and therefore entitled to sovereign immunity.

The Court held that the City of Flint, however, did not meet its burden to show that it qualified as an arm of the state. The City of Flint is not a state. The Court noted that the City of Flint enjoyed significant autonomy over its local government functions, even with the state emergency manager present. Additionally, Judge Griffin observed that although the State of Michigan regulates water quality, Flint maintained control over its water service. Finally, local elected officials remained in place and local government functions still took place. Therefore, the Sixth Circuit found the City of Flint did not meet the standard to qualify as an arm of the state and is not entitled to sovereign immunity.

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