

# THE STATE OF THE COURT

## ILLINOIS SUPREME COURT SCORECARD 2000-2010

### JUSTICES UP FOR RETENTION IN 2010:

JUSTICE FREEMAN  
JUSTICE FITZGERALD  
JUSTICE KILBRIDE  
JUSTICES THOMAS



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Dear Voters:

As long as Judges are selected and retained by a process that includes elections, it is necessary that the voters have accurate and sufficient information about candidates to make reasoned choices. This year three Justices of the Illinois Supreme Court are up for retention review by the electorate. **Justices Freeman, Kilbride, and Thomas.** Chief Justice Fitzgerald, who announced his retirement from the bench on September 14<sup>th</sup>, 2010, has been included in the scorecard ratings, even though he will not be a candidate for retention in November's election.

Numerous Bar Associations have regularly evaluated candidates for the bench on the basis of legal experience and competence. These evaluations have been valuable and deserve more attention and greater weight than they have received. The Chamber of Commerce reports on how the Justices have voted in the many cases in which the Chamber has appeared. A limited number of other, often ad hoc groups have expressed opinions on judicial candidates. To date there has been no systematic evaluation of judicial candidates from a broader consumer and public interest perspective.

Citizen Action/Illinois has long evaluated candidates for state and local legislative and executive positions. Citizen Action has now developed an evaluation of Illinois Supreme Court candidates from a consumer and public interest perspective. As with most legal disputes that reach the Illinois Supreme Court, there is often more than one reasonable and legally valid understanding of the law and/or the facts. In such cases the Justices have to exercise judgment, prudence in choosing which value or rule ought to receive priority. In other words, judicial discretion is required. And exercise of discretion inevitably requires relying on ones sense of justice and fairness, on ones sense of the common good. This is not "result oriented" as critics of the Courts use the term. It is the essence of judging. This report is based on that common sense understanding of the importance of the role of judges in our system of government.

Citizen Action/Illinois enlisted Professor Walter J. Kendall III of the John Marshall Law School and a long time Board Member, to develop the case summaries and evaluations. The summaries and evaluations were written with the assistance of Thomas Bacon, Anthony Kudron, and Katie Simpson also of the John Marshall Law School and Patrick Keenan-Devlin of Loyola Law. The ratings of the Illinois Supreme Court Justices, which follow, are based upon their research. It is our hope that the ratings and report will provide you with a good gauge of each Justice's dedication to consumer justice.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynda DeLaforgue".

Lynda DeLaforgue  
Co-Director

A handwritten signature in black ink, appearing to read "William McNary".

William McNary  
Co-Director

## CA/IL'S RATINGS

**Excellent** (Greater than or equal to 30 Favorable Votes)

**Justice Kilbride**

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**Good** (Greater than or equal to 20 Favorable Votes)

**Justice Freeman**

**Chief Justice Fitzgerald**

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**Fair** (Less than 20 Favorable Votes)

**Justice Thomas**

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**Poor** (Less than 10 Favorable Votes)

## RESEARCHERS' REPORT

Dear Ms. DeLaforge and Mr. McNary,

At your request we read and summarized the opinions over the last 10 years of the four Justices of the Illinois Supreme Court who are up for a retention vote this November. We focused on cases where the Justices were not unanimous in the holding of the court, and the decisions directly affected consumers and working families according to the following long-standing positions of Citizen Action/Illinois.

### WORKER AND EMPLOYEE RIGHTS

Citizen Action/Illinois is committed to developing and supporting an economic system characterized by sustainable economic growth and opportunity for all Americans; a system designed to create jobs while meeting the needs of our society. Citizen Action/Illinois supports the right of all workers to organize democratically and bargain collectively concerning wages, benefits, and conditions of employment. Citizen Action/Illinois opposes all measures that restrict the right or reduce the benefits under workers compensation and other economic safety net laws and rules.

### CONSUMER RIGHTS AND PROTECTIONS

Citizen Action/Illinois believes that a strong civil justice system is necessary to protect individuals from corporate recklessness, professional negligence, and unsafe products. Citizen Action/Illinois opposes limitations on these essential rights of plaintiffs.

### CIVIL AND SOCIAL RIGHTS

Including access to the Courts, Citizen Action/Illinois believes that all people, regardless of race, ethnicity, gender identification, sexual orientation, disability, source of income, or immigration status deserve full and equal protection of the law, and opportunity to fulfill their potentials as active and productive members of society.

### FAMILY AND CHILDREN'S RIGHTS

Including education, Citizen Action/Illinois believes that our hope for the future lies in insuring better lives for our children. Citizen Action/Illinois believes that affordable high quality health care is a fundamental right. Citizen Action/Illinois strongly supports the right of everyone to the best possible integrated education, and fully supports a system of public education from preschool through university levels, in safe, accessible, and healthy schools. Citizen Action/Illinois believes that seniors have a right to equal opportunity to participate in society and to retirement with dignity.

#### POLITICAL AND CAMPAIGN REFORM

Citizen Action/Illinois believes that the democratic nature of the political electoral processes has been undermined by the undue influence of money. Citizen Action/Illinois supports reforms aimed at increasing the truly democratic and representative nature of local, state, and national government. Citizen Action/Illinois supports efforts to remove barriers to voter registration, and to facilitate voting. Citizen Action/Illinois supports public funding of elections.

There were a total of 50 opinions included in the evaluation. For each opinion in which the outcome of the case was consistent with the view of Citizen Action/Illinois and the Justice voted in a manner consistent with that view they received a plus. And for those where they disagreed a minus. If in a particular case the dissent expressed the Citizen Action/Illinois view, and the Justice dissented they received a plus.

We hope that this report is helpful in your efforts to improve the quality of justice in Illinois.

Respectfully,



Professor Walter J. Kendall III

& Thomas Bacon, Anthony Kudron Katie Simpson-Jones of the John Marshall Law School, as well as Patrick Keenan-Devlin of Loyola Law

# JUSTICES' VOTES

◆ = With the Public Interest

◆ - Against the Public Interest

NV – No Vote

	Fitzgerald	Freeman	Kilbride	Thomas
<i>Krywin v. Chicago Transit Authority</i>	◆	◆	◆	◆
<i>Passalino v. The City of Zion</i>	◆	◆	◆	◆
<i>Simmons v. On Stage Productions, Inc.</i>	◆	◆	◆	◆
<i>Lebron v. Gottlieb Memorial Hospital</i>	◆	◆	◆	NV
<i>Ryan v. Board of Trustees of General Assembly Retirement System</i>	◆	◆	◆	◆
<i>Citizens National Bank of Paris v. Kids Hope United, Inc.</i>	◆	◆	◆	◆
<i>Maddux v. Blagojevich</i>	◆	◆	◆	NV
<i>Ken Landis v. Marc Realty</i>	◆	◆	◆	◆
<i>Ready v. United/Goedecke Services, Inc.</i>	◆	◆	◆	NV
<i>Morr-Fitz Inc. v. Blagojevich</i>	◆	◆	◆	◆
<i>County of Du Page v. Illinois Labor Relations Board</i>	◆	◆	◆	◆
<i>O'Casek v. Children's Home &amp; Aid Society of Illinois</i>	◆	◆	◆	◆
<i>Loman v. Freeman</i>	◆	◆	◆	◆
<i>Illinois Department of Healthcare &amp; Family Services v. Warner</i>	◆	◆	◆	◆
<i>Hudson v. City of Chicago</i>	◆	◆	◆	◆
<i>Orlak v. Loyola University Health System</i>	◆	◆	◆	◆
<i>Brucker v. Mercola</i>	◆	◆	◆	◆
<i>Ultsch v. Illinois Mun. Retirement Fund</i>	◆	◆	◆	◆
<i>In re Application of the County Collector</i>	◆	◆	◆	◆
<i>The Board of Trustees of the Univ. of Illinois v. Illinois Labor Relations Board</i>	◆	◆	◆	◆
<i>Mohanty v. St. John Heart Clinic, S.C.</i>	◆	◆	◆	◆
<i>International Union of Operating Engineers v. Lowe Excavating Co.</i>	◆	◆	◆	NV
<i>Durand v. The Industrial Commission</i>	◆	◆	◆	◆
<i>Melena v. Anheuser-Busch, Inc.</i>	◆	◆	◆	◆
<i>Collinsville Community School Dist. 10 v. Regional Board of St. Clair County</i>	◆	◆	◆	◆
<i>Price v. Philip Morris, Inc.</i>	◆	◆	◆	NV
<i>Andrews v. Kowa Printing</i>	◆	◆	◆	◆
<i>Arthur v. Catour</i>	◆	◆	◆	◆
<i>Progressive Universal Insurance Co. of IL v. Liberty Mutual Fire Insurance Co.</i>	◆	◆	◆	◆
<i>International Union of Operating Engineers v. Illinois Dept. of Employment Sec.</i>	◆	◆	◆	◆
<i>In re D.T.</i>	◆	◆	◆	◆
<i>Girot v. Keith</i>	◆	◆	◆	◆

	Fitzgerald	Freeman	Kilbride	Thomas
<i>Horwitz v. Holabird &amp; Root</i>	♦	♦	♦	♦
<i>Adams v. Northern Illinois Gas Co.</i>	♦	♦	♦	♦
<i>Borowiec v. Gateway 2000, Inc.</i>	♦	♦	♦	♦
<i>Metzger v. DaRosa</i>	♦	♦	♦	♦
<i>William Van Meter v. The Darien Park District</i>	♦	♦	♦	NV
<i>City of Chicago v. Holland</i>	♦	♦	♦	♦
<i>Eads v. Heritage Enterprises, Inc.</i>	♦	♦	♦	♦
<i>Clemons v. Mechanical Devices Co.</i>	♦	♦	♦	♦
<i>Unzicker v. Kraft Food Ingredients Corporation</i>	♦	♦	♦	♦
<i>Daniels v. Industrial Commission, et.al.</i>	♦	♦	♦	♦
<i>Sarkissian v. Chicago Board of Education</i>	♦	♦	♦	♦
<i>Carpetland U.S.A, Inc. v. Illinois Department of Employment Security</i>	♦	♦	♦	♦
<i>People ex rel. Devine v. \$30,700.00 U.S. Currency</i>	♦	♦	♦	♦
<i>Arteman v. Clinton Community Unit School District No. 15</i>	♦	♦	♦	♦
<i>M.A.K. v. Rush-Presbyterian-St.-Luke's Medical Center</i>	♦	♦	♦	♦
<i>The Village of Bloomingdale v. CDG Enterprises, Inc.</i>	♦	♦	♦	♦
<i>Ferguson v. McKenzie</i>	♦	♦	♦	♦
<i>In re Consolidated Objections to Tax Levies of School Dist. No. 205</i>	NV	♦	NV	NV
<b>Total</b>	<b>20/49</b>	<b>28/50</b>	<b>40/49</b>	<b>14/43</b>

Please note that Justices were not penalized for a “NV” (No Vote)  
A "No Vote" indicates that a justice had an ethical reason for not participating in the decision of the court.”

## CASE SUMMARIES

\* Please note the cases appear in reverse chronological order

### 1. Consumer Rights and Protection

*Krymin v. Chicago Transit Authority*

<http://www.state.il.us/court/Opinions/SupremeCourt/2010/July/108888.pdf>

#### Summary:

A 76-year old woman fell as she stepped off a CTA train at the Sheridan Station as a result of slippery conditions. The plaintiff required surgery and a one-month stay in the hospital. **The court held that the CTA owed no duty to the plaintiff to remove natural accumulation from the platform.** In answering the question of whether a mass transit authority possesses a heightened obligation to its customers, the court held that it would be impracticable to have such an expectation.

#### Votes:

Justice GARMAN delivered the judgment of the court, with opinion

Chief Justice Fitzgerald concurred with the holding of the court (–)

Justice Freeman dissented (+)

Justice Kilbride dissented (+)

Justice Thomas concurred with the holding of the court (–)

### 2. Civil and Social Rights

*Passalino v. The City of Zion*

<http://www.state.il.us/court/Opinions/SupremeCourt/2010/April/107429.pdf>

#### Summary:

The case involved a change in zoning ordinance enacted by the City of Zion that rezoned 85 parcels of land as single-family dwellings. The plaintiffs, who owned several of the affected plots, filed suit when they were denied permits to develop land as multiple-family dwellings. The law only required notice of the zoning change be placed in a newspaper circulated in the affected area. The court concluded that while the city's conduct did satisfy the statutory requirements, it did not satisfy constitutional requirements, given that the plaintiff's current address was readily available. Therefore, the court held that the statute was unconstitutional; such notice would not necessarily be unconstitutional in every case, but where the addresses of affected persons were readily available, a city had a duty to send notice through the mail.

#### Votes:

Justice FITZGERALD delivered the judgment of the court, with opinion (+)

Justice Freeman dissented (–)

Justice Kilbride concurred with the holding of the court (+)

Justice Thomas concurred with the holding of the court (+)

### 3. Civil and Social Rights

*Simmons v. On Stage Productions, Inc.*

<http://www.state.il.us/court/Opinions/SupremeCourt/2010/March/108108.pdf>

#### Summary:

In 2006, a customer patronized a bring-your-own-booze strip club in DuPage County. The customer became intoxicated resulting in vomiting. The club's employees forced the customer to leave the establishment. The drunk driver consequently caused a collision. The accident resulted in the death of a pregnant woman and the driver's passenger. The husband of the deceased pregnant woman and father of the driver's passenger brought suit against the strip club, On Stage Productions. The circuit court asked interlocutory questions regarding the club's duty of care. The Illinois Supreme Court held that the Dramshop Act (*Host Liability*) did not preclude On Stage Productions from common law duties.

#### Votes:

Justice GARMAN delivered the judgment of the court, with opinion (+)

Chief Justice Fitzgerald concurred (+)

Justice Freeman concurred in part and dissented in part (-)

Justice Kilbride concurred with the holding of the court (+)

Justice Thomas concurred with the holding of the court (+)

### 4. Civil and Social Rights

*Lebron v. Gottlieb Memorial Hospital*

<http://www.state.il.us/court/opinions/supremecourt/2010/february/105741.pdf>

#### Summary:

The plaintiff suffered severe neurological injuries allegedly stemming from negligently performed Caesarean Section. **The court examined the constitutionality of a statute, which placed limits on noneconomic damages in medial malpractice cases.** The court concluded that the law violated the Separation of Powers clause in the Illinois Constitution. **The court noted that it was a judicial duty to decide whether a jury award was excessive or inadequate when weighed against the evidence presented.**

#### Votes:

Justice FITZGERALD delivered the judgment of the court, with opinion (+)

Justices Freeman concurred with the holding of the court (+)

Justice Kilbride concurred with the holding of the court (+)

Justice Thomas took no part in the decision

## 5. Political and Campaign Reform

*Ryan v. Board of Trustees of General Assembly Retirement System*

<http://www.state.il.us/court/Opinions/SupremeCourt/2010/February/108184.pdf>

### Summary:

In December 2003, a federal grand jury indicted former Governor George H. Ryan on felony charges for racketeering, conspiracy, mail fraud, making false statements to the Federal Bureau of Investigation, and income tax violations. In April 2006, a jury found Ryan guilty on all counts. The Illinois Pension Code states that no benefits shall be paid to any person convicted of any felony relating to or arising out of or in connection with his or her service as a member. The General Assembly Retirement System's Board of Trustees terminated Ryan's retirement benefits. Ryan sought review of the Board's decision. **The court held that Governor Ryan forfeited all of his pension benefits by betraying Illinois taxpayers.**

### Votes:

Chief Justice Fitzgerald concurred with the holding of the court (+)

Justice Freeman concurred with the holding of the court (+)

Justice Kilbride concurred with the holding of the court (+)

Justice THOMAS delivered the judgment of the court, with opinion (+)

## 6. Civil and Social Rights

*Citizens National Bank of Paris v. Kids Hope United, Inc.*

<http://www.state.il.us/court/Opinions/SupremeCourt/2009/December/107787.pdf>

### Summary:

Two sisters, who died in 1967 and 1971, left their income and farmland to the Edgar County Children's Home. The will instructed Citizens National Bank of Paris to hold the land in trust and distribute the income as directed. In 2003, Edgar County Children's Home merged with the Hudelson Baptist Children's Home. In 2004, the charity changed its name to Kids Hope United. One sister's will provided that her gift would lapse when the named charity "cease[d] to operate or exist," while the other provided for lapse when the charity "cease[d] to function in its present capacity." The court held that the original charity had not ceased to operate. The court ruled that Kids Hope United continued to satisfy the intent of the sisters' gift.

### Votes:

Chief Justice Fitzgerald concurred with the holding of the court (+)  
Justice FREEMAN delivered the judgment of the court, with opinion (+)  
Justice Kilbride concurred with the holding of the court (+)  
Justice Thomas concurred with the holding of the court (+)

## 7. Political and Campaign Reform

*Maddux v. Blagojevich*

<http://www.state.il.us/court/Opinions/SupremeCourt/2009/June/107416.pdf>

### Summary:

William Maddux, a Circuit Court Cook County Judge, reached the age of 75 before his term expired in 2010. Prior to this case, the courts held that judges, who attained the age of 75, could not run for retention; however, age did not preclude judges from running in a contested judicial race. Judge Maddux brought suit challenging the constitutionality of the rule. The court found the prior judicial interpretation unconstitutional. According to the court, the Illinois Constitution did not set a retirement age for judges. The court, however, reserved its right to set the retirement for judges or support a constitutional amendment.

### Votes:

Chief Justice Fitzgerald concurred with the holding of the court (+)  
Justice FREEMAN delivered the judgment of the court, with opinion (+)  
Justice Kilbride concurred with the holding of the court (+)  
Justice Thomas took no part in the decision

## 8. Civil and Social Rights

*Ken Landis v. Marc Realty*

<http://www.state.il.us/court/Opinions/SupremeCourt/2009/May/105568.pdf>

### Summary:

Four years after vacating their apartment, tenants filed suit against their landlords under the Chicago Residential Landlord and Tenant Ordinance for failing to return tenants' security deposit. The landlords motioned to dismiss the action, contending that a cause of action under the Code of Civil Procedure must be commenced within two years of the event that gave rise to the cause of action. The Illinois Supreme Court first held that the Code of Civil Procedure's limitation applied to city ordinances. **The court then held that the tenants' action was time barred, because the ordinance amounted to a statutory penalty since it imposed automatic liability for a violation and set forth a predetermined amount of damages.**

### Votes:

Justice BURKE delivered the judgment of the court, with opinion  
Justice Fitzgerald concurred with the holding of the court (–)  
Justice Freeman concurred with the holding of the court (–)  
Justice Kilbride dissented (+)  
Justice Thomas concurred with the holding of the court (–)

## 9. Civil and Social Rights

*Ready v. United/Goedecke Services, Inc.*

<http://www.state.il.us/court/Opinions/SupremeCourt/2009/March/103474.pdf>

### Summary:

Michael Ready died on a construction site following the collapse of scaffolding. Ready's estate then settled with the employer and general contractor. Defendant appealed, arguing that the fault of the "settling defendants" must also be considered in apportioning fault. **Freeman, writing for the majority, held that state statute excused settling tortfeasors from the apportionment of fault.**

### Votes:

Chief Justice Fitzgerald concurred with the holding of the court (+)  
Justice FREEMAN delivered the judgment of the court, with opinion (+)  
Justice Kilbride specially concurred (+)  
Justice Thomas took no part in the decision

## 10. Civil and Social Rights

*Morr-Fitz Inc. v. Blagojeich*

<http://www.state.il.us/court/Opinions/SupremeCourt/2008/December/104692.pdf>

### Summary:

Pharmacists brought action against state officials seeking a declaration that a departmental rule, requiring pharmacies to dispense "morning after" contraceptives, violated the Illinois Right of Conscience Act, Illinois Religious Freedom Restoration Act, and free exercise rights under the First Amendment. The rule provided that a pharmacy must dispense the contraceptive without delay upon receipt of a valid prescription, and if not in stock, the pharmacy must order it. The plaintiffs alleged that the rule contravened their moral and religious beliefs. The circuit court and appellate court dismissed this complaint believing it was not yet appropriate for judicial determination. The court held that by failing to adhere to the rules, the pharmacies and pharmacists were subject to penalties, which could include license revocation.

### Votes:

Chief Justice Fitzgerald concurred with the holding of the court (+)

Justice Freeman dissented (–)  
Justice Kilbride concurred with the holding of the court (+)  
Justice THOMAS delivered the judgment of the court, with opinion (+)

## 11. Employee Rights

*County of Du Page v. Illinois Labor Relations Board*

<http://www.state.il.us/court/Opinions/SupremeCourt/2008/December/105395.pdf>

### Summary:

The Metropolitan Alliance of Police (MAP) attempted to act as the exclusive bargaining representative for a unit of sheriffs in DuPage County. The Illinois Labor Relations board contended that the statute required evidence of authorization for the deduction of dues as well as other evidence. The court, however, held, from the plain language of state statute, as well as legislative history, that either of the two types of evidence were sufficient to support a finding of majority support. The court concluded that the state statute intended to ease the process of obtaining representation. The court further held that an employer was not entitled to view the evidence of majority support.

### Votes:

Justice FITZGERALD delivered the judgment of the court, with opinion (+)  
Justice Freeman concurred with the holding of the court (+)  
Justice Kilbride concurred with the holding of the court (+)  
Justice Thomas concurred in part and dissented in part (–)

## 12. Civil and Social Rights

*O'Casek v. Children's Home & Aid Society of Illinois*

<http://www.state.il.us/court/Opinions/SupremeCourt/2008/June/105050.pdf>

### Summary:

Plaintiff suffered complications following a tonsillectomy performed by the defendant. The court, in *Best v. Taylor Machine Works*, held unconstitutional a public act aimed at tort reform in Illinois. The General Assembly, a few weeks after this court's decision in *Best*, passed another public act that mirrored a portion of the law declared unconstitutional. The at-issue requirement dealt with whether a plaintiff in a medical malpractice action must file a certificate of merit, an opinion by a medical professional substantiating the likeliness of malpractice, on the date of filing or 90 days post-filing. Before *Best*, a plaintiff was permitted 90 days after the initial filing in which to produce a certificate of merit. The portion of the law struck down by *Best* required that a plaintiff would not be entitled to the 90-day extension if he or she had filed a claim based upon similar circumstances. The court held that the General Assembly's intention in passing the post-*Best* bill was to add naprapaths to the list of medical professionals – not to reenact the legislation struck down by *Best*. As such, the court held that the claim was

not time barred because the plaintiff was entitled to the 90-day extension, regardless of her voluntarily dismissal of the same claim in the previous year.

**Votes:**

Justice FITZGERALD delivered the judgment of the court, with opinion (+)

Justice Freeman concurred with the holding of the court (+)

Justice Kilbride concurred with the holding of the court (+)

Justice Thomas dissented (-)

### **13. Consumer Rights and Protection**

*Loman v. Freeman*

<http://www.state.il.us/court/Opinions/SupremeCourt/2008/April/104289.pdf>

**Summary:**

In 2001, a veterinary equine surgeon at the Large Animal Clinic of the University of Illinois College of Veterinary Medicine allegedly performed an unauthorized surgery on a racehorse preventing the horse from racing. The court held that the veterinarian provided professional expertise independent of his employment with the State of Illinois, which is immune from liability.

**Votes:**

Justice GARMAN delivered the judgment of the court, with opinion

Justice Fitzgerald concurred with the holding of the court (-)

Justice Freeman dissented (+)

Justice Kilbride dissented (+)

Chief Justice Thomas concurred with the holding of the court (-)

### **14. Family and Child's Rights**

*Illinois Department of Healthcare & Family Services v. Warner*

<http://www.state.il.us/court/Opinions/SupremeCourt/2008/January/103289.pdf>

**Summary:**

The natural father of two children sought relief for paying child support after being denied his parental rights in 2002. The father relied on section 17 of the Adoption Act, which states that “[a]fter \*\*\* entry of an order terminating parental rights \*\*\* the natural parents of a child sought to be adopted shall be relieved of all parental responsibility for such child.” The court denied the father’s petition, given that no adoption of the children had been sought out, and therefore the statute could not be applied.

**Votes:**

Justice Fitzgerald dissented (–)

Justice FREEMAN delivered the judgment of the court, with opinion (+)

Justice Kilbride dissented (–)

Justice Thomas concurred with the holding of the court (+)

**15. Civil and Social Rights**

*Hudson v. City of Chicago*

<http://www.state.il.us/court/Opinions/SupremeCourt/2008/January/100466.pdf>

**Summary:**

The five-year-old George Hudson, Jr., died from acute asthma exacerbation. The boy's mother called 911 and informed the operator that the child was having breathing problems. Instead of an ambulance, the city dispatched a fire engine. The fire engine was not equipped to help George. The plaintiff claimed that George Jr. died as a result of the delay in providing advanced life support. The father filed a negligence claim against the city, but then voluntarily dismissed the claims of negligence and willful and wanton misconduct. The father then refiled a wrongful death action against the city, alleging willful and wanton misconduct. The court found that pursuant to the Rules of Civil Procedure, when the father voluntarily dismissed the original claims, this effectively settled the merits for both claims. Ultimately, the court held that since the father possessed the opportunity to resolve his claims in the first legal action, he was barred from litigating under the Rules of Civil Procedure.

**Votes:**

Justice Fitzgerald dissented (+)

Justice Freeman concurred with the holding of the court (–)

Justice Kilbride dissented (+)

Justice THOMAS delivered the judgment of the court, with opinion (–)

**16. Civil and Social Rights**

*Orlak v. Loyola University Health System*

<http://www.state.il.us/court/Opinions/SupremeCourt/2007/December/102534.pdf>

**Summary:**

A former patient filed suit against Loyola University Health System alleging that the hospital was negligent when it failed to notify her in a timely manner that she may have contracted hepatitis C from a blood transfusion that she received during a hospitalization for injuries received in a work-related accident. Loyola University Health System filed a motion to dismiss claiming that the complaint was barred by a four-year medical malpractice statute of limitations. The circuit court granted the motion to dismiss. The appellate court affirmed, rejecting the former patient's argument that because she was no longer a patient and only filed suit on the basis of providing timely notice for testing that her cause of action

did not arise out of patient care. The question for review before the Illinois Supreme Court was whether the former patient's cause of action arose out of patient care so that it is time barred by the four-year medical malpractice statute of limitations. The court held that the former patient's claim arose out of patient care and was subject to the four-year medical malpractice statute of limitations because the phrase "arising out of patient care" covers any injuries that are incidental to the patient's medical care and treatment. Loyola University Health System's duty to notify the former patient about the risk of infection with Hepatitis C flowed from the blood transfusion procedure.

**Votes:**

Justice GARMAN delivered the judgment of the court, with opinion

Justice Fitzgerald concurred with the holding of the court (-)

Justice Freeman concurred with the holding of the court (-)

Justice Kilbride specially concurred (-)

Justice Thomas took no part in the decision

Justice BURKE dissented

**17. Civil and Social Rights**

*Brucker v. Mercola:*

<http://www.state.il.us/court/Opinions/SupremeCourt/2007/December/102440.pdf>

**Summary:**

Anna Marie Brucker and John Brucker as parents of Robert Grant Brucker, filed a complaint against Dr. Joseph Mercola, his medical practice, and his employee Barbara Pierce. The complaint alleged that Anna Brucker, who was pregnant at the time, went to Dr. Mercola for an allergy consultation. The physician prescribed the supplement L-glutamine, but his employee, Barbara Pierce, mistakenly filled the bottle with selenium. The Bruckers alleged that Anna became ill when she ingested a toxic amount of selenium. One count of the complaint alleged that Robert, the Bruckers unborn son, had been injured by selenium poisoning. The issue in this case was whether the time to file a complaint for Robert was tolled. The court found that a cause of action for prenatal injuries could not be brought until birth. The court held that the repose period does not begin to run until the child is born. The court therefore ruled that the complaint filed on behalf of Robert was timely filed.

**Votes:**

Justice Fitzgerald specially concurred (+)

Justice Freeman specially concurred (+)

Justice Kilbride concurred with the holding of the court (+)

Justice THOMAS delivered the judgment of the court, with opinion (+)

## 18. Worker and Employee Rights

*Ultsch v. Illinois Mun. Retirement Fund*

<http://www.state.il.us/court/Opinions/SupremeCourt/2007/August/102232.pdf>

### Summary:

Sharee Ultsch filed a claim for temporary disability benefits with the Illinois Municipal Retirement Fund. The claim was denied. Plaintiff appealed to the benefit review committee of the Fund's Board of Trustees. The committee recommended denial and the Board adopted the recommendation. Plaintiff then sought to have this result judicially reviewed. Within the appropriate 35-day time period, a complaint for such review was filed, but it named as defendant, and was served on, the Fund, rather than the Board. Plaintiff then sought leave to amend her complaint to add the Board. However, the trial court held that the statute allowing the amendment of the complaint violated the single subject rule of the Illinois Constitution. Foremost, the Illinois Supreme Court held that the trial court reached a constitutional conclusion when it did not need to do so. However, the court upheld the result reached by the trial court, given that administrative law requires a complainant to timely name an agency as a defendant.

### Votes:

Justice Fitzgerald concurred with the holding of the court (–)

Justice FREEMAN delivered the judgment of the court, with opinion (–)

Justice Kilbride dissented (+)

Justice Thomas concurred with the holding of the court (–)

## 19. Consumer Rights and Protection

*In re Application of the County Collector*

<http://www.state.il.us/court/Opinions/SupremeCourt/2007/April/97165.pdf>

### Summary:

In 1977, Mary Lowe purchased a single-family home located at 13250 South Riverdale in Chicago. Property taxes were paid on the home until 1992, when \$110.65 in assessed property taxes went unpaid for 1991. The county tax collector later sold this property to a purchaser, Apex Investments, because of the unpaid taxes. Lowe was not living in the home at the time. The issue in this case was whether Lowe was denied due process right to adequate notice for her property being sold. The court found that Apex did give Lowe adequate notice that her property would be sold, and that Lowe had time to object to the sale before it happened. The court also found that Apex took numerous additional steps to notify Lowe that her property had been sold. The court stated that Apex exceeded what would have been required under the relevant case law. Ultimately, the court held that Lowe was not denied her due process rights.

### Votes:

Justice Fitzgerald concurred with the holding of the court (–)

Justice Freeman concurred with the holding of the court (-)

Justice Kilbride dissented (+)

Justice THOMAS delivered the judgment of the court, with opinion (-)

## 20. Worker and Employment Rights

*The Board of Trustees of the Univ. of Illinois v. Illinois Labor Relations Board* (2007)

<http://www.state.il.us/court/Opinions/SupremeCourt/2007/January/101450.pdf>

### Summary:

In separate cases, the Service Employees International Union and the Illinois Fraternal Order of Police Labor Council filed suit on behalf of university employees against the Board of Trustees of the University of Illinois at Urbana for refusing to negotiate on proposals for a parking fee schedule. The reviewing Labor Relations Boards found that the proposals were subject to mandatory collective bargaining under the Illinois Educational Labor Relations Act and the Illinois Public Labor Relations Act. The appellate court reversed, holding that parking fees were part of the university's inherent managerial authority. The question for review before the Illinois Supreme Court was whether the unions' proposals for a parking fee schedule constituted a subject of mandatory collective bargaining. **The court held that the unions' proposals for parking fees were subject to mandatory collective bargaining, because the unions' parking proposals involved terms and conditions of the workers' employment.**

### Votes:

Justice Fitzgerald concurred with the holding of the court (+)

Justice Freeman concurred with the holding of the court (+)

Justice KILBRIDE delivered the judgment of the court, with opinion (+)

Chief Justice Thomas concurred with the holding of the court (+)

Justice Garman dissented

## 21. Consumer Rights and Protection

*Mohanty v. St. John Heart Clinic, S.C.*

<http://www.state.il.us/court/Opinions/SupremeCourt/2006/December/101251.pdf>

### Summary:

Two physicians who terminated their employment with St. John Heart Clinic in 2003 filed a declaratory judgment action seeking the court to nullify the restrictive covenant provisions within their contracts, which prohibited the doctors from practicing general medicine within a specified radius for three to five years following employment. **The court held that restrictive covenants are enforceable, as long as they are not unreasonable.**

**Votes:**

Justice BURKE delivered the judgment of the court, with opinion  
Justice Fitzgerald concurred with the holding of the court (-)  
Justice Freeman concurred in part and dissented in part and filed opinion (+)  
Justice Kilbride concurred with the holding of the court (-)  
Chief Justice Thomas concurred (-)

**22. Civil and Social Rights**

*International Union of Operating Engineers v. Lowe Excavating Co.*

<http://www.state.il.us/court/Opinions/SupremeCourt/2006/November/Opinions/101231.pdf>

**Summary:**

The court examined the extent to which a jury may award lost punitive damages in a legal malpractice suit. The case marked the culmination of nearly two decades of litigation, in which the plaintiff alleged that a local union had engaged in defamatory conduct while picketing its worksite. Here, the plaintiffs alleged that their attorneys in the initial suit had negligently handled the case, causing the trial judge to dismiss the action with prejudice. Having found the defendant attorneys liable, the jury awarded \$4,680 in compensatory damages and \$500,000 in punitive damages; the former is designed to make the victim whole, while the latter is aimed at punishing the defendant and deterring the same conduct. The appellate court lowered the punitive award to \$325,000. Here, applying the guideposts established by the U.S. Supreme Court, this court held that the \$325,000 punitive damage award was excessive and reduced it to \$50,000. The court reasoned that the punitive damages should be representative of the compensatory damages and that a 75:1 ratio was far too high. Although the court noted that it empathized with the plaintiff's \$500,000 legal bills, without statutory authority to do so, it could not award punitive damages in lieu of legal fees.

**Votes:**

Justice FITZGERALD delivered the judgment of the court, with opinion (-)  
Justice Kilbride concurred (-)  
Justice Freeman concurred (-)  
Justice Thomas took no part in the decision

**23. Employee Rights**

*Durand v. The Industrial Commission*

<http://www.state.il.us/court/Opinions/SupremeCourt/2006/October/101109.pdf>

**Summary:**

The plaintiff developed carpal tunnel syndrome over the course of three years, culminating in her being unable to perform her duties as a policy administrator. The issue raised by the complaint was the effective filing date for a workmen's compensation claim involving repetitive-trauma injury. **The court held that the effective date for filing a workmen's compensation claim was the date on which the employee was no longer able to perform his or her duties, and not the date upon which he or she first experienced symptoms.**

**Votes:**

Justice FITZGERALD delivered the judgment of the court, with opinion (+)

Justice Freeman concurred with the holding of the court (+)

Justice Kilbride concurred with the holding of the court (+)

Justice Thomas concurred with the holding of the court (+)

**24. Worker and Employee Rights**

*Melena v. Anheuser-Busch, Inc.*

<http://www.state.il.us/court/Opinions/SupremeCourt/2006/March/99421.pdf>

**Summary:**

An employee of Anheuser-Busch, Inc. filed suit, claiming retaliatory discharge as a result of his filing a worker's compensation claim. The court held that the arbitration agreement within the employment contract was enforceable. The court failed to see how arbitration would undermine the employee's rights under the Workers' Compensation Act. The court also made clear that the employer-employee contract permitted the arbitrator to award any remedy recognized under the law. Further, the agreement stipulated that the employee would only pay a \$125 fee for the arbitration proceedings.

**Votes:**

Justice Fitzgerald concurred with the holding of the court (–)

Justice FREEMAN delivered the judgment of the court, with opinion (–)

Justice Kilbride dissented (+)

Chief Justice Thomas concurred with the holding of the court (–)

**25. Family and Children's Rights**

*Collinsville Community Unit School Dist. No. 10 v. Regional Board of School Trustees of St. Clair County*

**Summary:**

A group of Fairmont City residents filed a petition with the St. Clair County Regional Board of School Trustees to detach a section of Fairmont City from East St. Louis School District No. 189 and annex it to Collinsville Community Unit School District No. 10. The petition was signed by over 400 individuals, more than two-thirds of the registered voters in the area. The petitioners were called the “Committee of Ten.” Both school districts opposed the petition. However, the Board granted the petition. The Board’s order did not identify the individual committee members by name. Collinsville filed a complaint for review of the Board’s order in the circuit court of St. Clair County. Because Collinsville did not name all the committee members individually, they amended their complaint. The issue in this case was whether it was proper to allow Collinsville to amend their complaint. The court held that the Committee of Ten was required to be named as defendants in this complaint and in the Board’s order. Because they were not, Collinsville rightfully had 35 days, pursuant to statute, to file a motion to amend their complaint.

**Votes:**

- Justices Freeman concurred with the holding of the court (+)
- Justice Fitzgerald dissented (–)
- Justice Kilbride dissented (–)
- Justice THOMAS delivered the judgment of the court, with opinion (+)

**26. Consumer Rights and Protection**

*Price v. Philip Morris, Inc.*

**Summary:**

Plaintiffs brought suit against Philip Morris, Inc. for fraudulent marketing–labeling cigarettes as “light” and/or “low tar.” The circuit court awarded plaintiffs \$10.1 billion in compensatory and punitive damages. The Illinois Supreme Court reversed and ordered the lower court to dismiss the case on remand. Garman, in writing for the majority, concluded that since the U.S. Federal Trade Commission had authorized the cigarette products, the Illinois Consumer Fraud Act was therefore not applicable.

**Votes:**

- Justice GARMAN delivered the judgment of the court, with opinion
- Justice Fitzgerald specially concurred (–)
- Justice Freeman, dissented (+)
- Justice Kilbride dissented (+)
- Justice Thomas took no part

## 27. Worker and Employee Rights

*Andrens v. Kowa Printing*

<http://www.state.il.us/court/Opinions/SupremeCourt/2005/October/Opinions/Html/99111.htm>

### Summary:

The plaintiffs in this case were 35 former union employees of Kowa Printing Corporation. They brought an action under the Illinois Wage Payment and Collection against defendants. Plaintiffs alleged they were owed unpaid vacation time and severance pay, and that all three defendants were their employers, and responsible for the amounts owed. Thomas Kowa owned 100% of Kowa Printing Corporation, a commercial printing firm located in Danville, and 97% of Huston-Patterson Corporation, a commercial printing firm located in Decatur. Both of these firms operated under “The Kowa Group.” Thomas Kowa eventually lost control of the business, and Kowa Printing was seized along with all of its assets. The issue in this case was whether Thomas Kowa and Huston-Patterson qualify as plaintiffs’ “employer,” as that term is defined in the Wage Act. The court found that neither Thomas Kowa nor Huston-Patterson qualified as plaintiffs’ “employer.” There was also no evidence that Thomas Kowa knowingly permitted the unlawful withholding of plaintiffs’ severance and vacation pay. The alleged violation did not occur until after Thomas Kowa lost control of the business. The court held that the plaintiff’s Wage Act claim was denied.

### Votes:

Justice Fitzgerald concurred with the holding of the court (–)

Justice Freeman concurred with the holding of the court (–)

Justice Kilbride concurred in part and dissented in part, with opinion (+)

Justice THOMAS delivered the judgment of the court, with opinion (–)

## 28. Civil and Social Rights

*Arthur v. Catour*

<http://www.state.il.us/court/Opinions/SupremeCourt/2005/July/Opinions/Html/97920.htm>

### Summary:

The plaintiff attended an auction in 1999 on a farm in Henry County. The plaintiff fell in a hole, resulting in a broken leg. The plaintiff filed suit against the property owners and auctioneers. The plaintiff’s medical expenses came to \$19,355.25. The health insurance company reduced the medical costs to \$5,777.28. The defendants filed for partial summary judgment arguing that the plaintiff should not be allowed to request the original costs as damages. **The court held that the plaintiff could present the total amount of bills to the jury, if reasonable.**

### Votes:

Justice Fitzgerald concurred with the holding of the court (+)

Justice FREEMAN delivered the judgment of the court, with opinion (+)

Justice Kilbride concurred with the holding of the court (+)

Justice Thomas concurred with the holding of the court (+)

## **29. Consumer Protections and Consumer Rights**

*Progressive Universal Insurance Co. of IL v. Liberty Mutual Fire Insurance Co.* (2005)

<http://www.state.il.us/court/Opinions/SupremeCourt/2005/April/Opinions/Html/98329.htm>

### **Summary:**

The policyholder's son was using her car to deliver pizzas when he struck and injured a pedestrian. Progressive Universal Insurance Company, policyholder's insurer, then filed a declaratory judgment action arguing that it did not have a duty to indemnify the policyholder's son because of a provision in the policy that excluded coverage when the incident that caused personal injury or damage arose out of the use of the vehicle for commercial purposes. The court held that Progressive Universal Insurance Company's exclusion did not violate state law mandating liability coverage for permissive users of a vehicle, because Illinois law mandating that operators of motor vehicles have liability insurance coverage does not expressly prohibit insurers from excluding certain risks from liability coverage.

### **Votes:**

Justice KARMEIER delivered the judgment of the court, with opinion

Justice Fitzgerald concurred with the holding of the court (-)

Justice Freeman concurred with the holding of the court (-)

Justice Kilbride dissented (+)

Justice Thomas concurred with the holding of the court (-)

## **30. Worker and Employee Rights**

*International Union of Operating Engineers v. Illinois Dept. of Employment Sec.*

<http://www.state.il.us/court/Opinions/SupremeCourt/2005/March/Opinions/Html/97695.htm>

### **Summary:**

Local 148 (Engineer's Union) and Local 702 (International Brotherhood of Electrical Workers) went on strike at CIPS (Public Utility) in 1992. The Engineers reached an agreement with CIPS before Local 702; however, the Engineers refused to cross Local 702's picket line. Following resolution between both unions and CIPS, the Engineers attempted to collect unemployment benefits for the period after their union reached an agreement with CIPS. The Illinois Supreme Court ruled that the Engineers Union held a direct interest in Local 702's contract negotiations, and therefore could not receive unemployment benefits.

### **Votes:**

Justice Fitzgerald concurred with the holding of the court (-)

Justice FREEMAN delivered the judgment of the court, with opinion (-)

Justice Kilbride concurred in part and dissented in part (+)

Justice Thomas specially concurred (–)

### 31. Family and Children’s Rights

*In re D.T.*

<http://www.state.il.us/court/Opinions/SupremeCourt/2004/October/Opinions/Html/96229.htm>

#### Summary:

This case involved an attempt by the Department of Child and Family Services (DCFS) to terminate the parental rights of D.T.’s mother Brenda. The issue before the court was the proper standard of proof for a ‘best interest’ hearing. Under the Juvenile Court Act, the DCFS must first file to have the parent(s) declared unfit at a hearing; then, the court must conduct a ‘best interest’ hearing, in which it decides whether to terminate parental rights. **The court held that a lower standard, requiring proof by a preponderance of the evidence, was proper for a ‘best interest’ hearing because a child’s interest in leaving an abusive home may be adverse to a parent’s interest in retaining their parental rights.** Furthermore, the court noted that by requiring a higher standard of proof at the ‘best interest’ hearing, a court would be providing additional safeguards for parental rights of persons already declared to be unfit parents. Thus, the court held that the lower standard of proof properly balanced a parent’s constitutional rights with the safety and well being of the child.

#### Votes:

Justice FITZGERALD delivered the judgment of the court, with opinion (+)

Justice Freeman concurred with the holding of the court (+)

Justice Kilbride concurred with the holding of the court (+)

Justice Thomas dissented (–)

### 32. Campaign and Political Reform

*Girov v. Keith*

<http://www.state.il.us/court/Opinions/SupremeCourt/2004/October/Opinions/Html/96963.htm>

#### Summary:

Following the petitioner’s filing of his statement of candidacy and nominating petitions for mayor of Braidwood, several objections were raised alleging that the petitioner failed to comply with certain requirements of the Illinois Election Code, such as properly binding the petition sheets and statement of candidacy. The Municipal Officers Electoral Board scheduled a meeting to hear the objections. At the meeting, the petitioner asked to have the city clerk removed from the electoral board because she had personally received the petitions and would be testifying as to whether they had been bound. The petitioner argued that having the city clerk sit on the electoral board would violate his fourteenth amendment right to due process. The electoral board disagreed, heard the objections, and held that the petitioner’s name could not be placed on the ballot. The question for review before the Illinois Supreme Court was whether the petitioner’s due process rights were violated when his

request that the city clerk be replaced on the electoral board because she would have to testify on the matter before the board was denied and, if so, whether the violation can be considered harmless error. The court held that the petitioner's due process rights had been violated because a member of the electoral board ultimately adjudicated contested issues of fact regarding her own credibility. The court held that a due process violation of this nature can never be held as harmless.

**Votes:**

Justice RARICK delivered the judgment of the court, with opinion

Justice Fitzgerald concurred with the holding of the court (+)

Justice Freeman concurred with the holding of the court (+)

Justice Kilbride dissented (-)

Justice Thomas concurred with the holding of the court (+)

**33. Consumer Rights and Protections**

*Horwitz v. Holabird & Root* (2004)

<http://www.state.il.us/court/Opinions/SupremeCourt/2004/May/Opinions/Html/89351.htm>

**Summary:**

Holabird & Root, an architectural business, retained the services of the law firm of Sabo & Zahn to collect a fee incurred by Horwitz Matthews. In response to discovery requests, Horwitz Matthews provided Sabo & Zahn with various tax returns. The tax returns were to remain confidential; however, Sabo & Zahn contacted at least 40 business associates of Horwitz Matthews, informing them of Matthews' devious business practices. Matthews then filed suit against Sabo & Zahn and Holabird & Root seeking relief for tortious interference with his business relationships. Holabird & Root filed a motion for summary judgment, arguing that it could not be held liable for its attorneys' actions. **The court held that clients could not be held vicariously liable for their attorneys' actions unless the clients directed or authorized the alleged misconduct.**

**Votes:**

Justice Fitzgerald concurred with the holding of the court (+)

Justice Freeman dissented (-)

Justice KILBRIDE delivered the judgment of the court, with opinion (+)

Justice Thomas concurred with the holding of the court (+)

### 34. Consumer Rights and Protection

*Adams v. Northern Illinois Gas Co.*

<http://www.state.il.us/court/Opinions/SupremeCourt/2004/April/Opinions/Html/94748.htm>

#### Summary:

Janice Adams died as a result of an explosion caused by a corroded connector between her home's kitchen range and gas supply. Ms. Adams' estate filed a claim against Northern Illinois Gas Supply (NI-Gas). NI-Gas possessed knowledge of the manufacturing flaw in this particular connector; however, the company argued that it owed no legal duty to warn the consumer. **Freeman, writing for the majority, held that Northern Illinois-Gas owed a common law duty of reasonable care to their customers regarding the defective connectors.** However, Freeman ruled that the question of whether NI-Gas' conduct satisfied the standard of reasonable care was for a trier of fact to determine. With regards to the question of whether the utility's tariff absolved the company of liability in this matter, **the court held that NI-Gas' tariff with the State of Illinois did not absolve the company of its common law duty owed to the plaintiff.** Freeman wrote that while a gas company is not an insurer for any injury sustained as the result of escaping gas, the company is nonetheless liable for its negligence.

#### Votes:

Justice Fitzgerald dissented (-)

Justice FREEMAN delivered the judgment of the court, with opinion (+)

Justice Kilbride concurred with the holding of the court (+)

Justice Thomas dissented (-)

### 35. Consumer Rights and Protection

*Borowiec v. Gateway 2000, Inc.*

<http://www.state.il.us/court/Opinions/SupremeCourt/2004/April/Opinions/Html/94235.htm>

#### Summary:

Consumers that purchased Gateway computers between November 1999 and January 2001 complained of mechanical problems and filed suit. Gateway motioned for the court to dismiss the case to arbitration as stipulated within the consumers' contract agreement. The court held that the plaintiffs' claims were subject to arbitration unless the plaintiffs could show that Congress intended to preclude a waiver of a judicial forum for their claims under the Federal Arbitration Act. Further, the court held that according to state law, the plaintiffs' claims may not be premised solely on the fact that a contract to arbitrate is at issue. However, Freeman recognized that the Federal Trade Commission determined that "informal dispute settlement" mechanisms were not legally binding. Freeman also noted that the FTC in 1999 affirmed their intent to continue prohibiting "warrantors from including binding arbitration clauses in their contracts with consumers that would require consumers to submit warranty disputes to binding arbitration." Freeman cited in his opinion decisions reached by the Fifth Circuit and the Eleventh Circuit holding the FTC's interpretation of the Magnuson-Moss Act invalid. Ultimately, Freeman held that the Magnuson-Moss Act did not bar arbitration of the consumers' claims.

**Votes:**

Justice Fitzgerald concurred with the holding of the court (–)

Justice FREEMAN delivered the judgment of the court, with opinion (–)

Justice Kilbride dissented (+)

Justice Thomas concurred with the holding of the court (–)

**36. Civil and Social Rights**

*Metzger v. DaRosa*

<http://www.state.il.us/court/Opinions/SupremeCourt/2004/February/Opinions/Html/95913.htm>

**Summary:**

An employee of the Illinois State Police filed suit in federal court against her employer alleging that her employer retaliated against her for reporting attendance violations by other employees. Along with other federal claims, the employee filed a claim under section 19c.1 of the Illinois Personnel Code, which prohibits retaliation against whistleblowers. At trial, the employee won only on the count alleging violation of section 19c.1 of the Illinois Personnel Code. On appeal the employer argued that there was no implied right of action under section 19c.1 of the Illinois Personnel Code. The U.S. Court of Appeals for the Seventh Circuit then certified the question to the Illinois Supreme Court. The question for review before the Illinois Supreme Court was whether section 19c.1 of the Illinois Personnel Code created an implied private right of action. **The court held that 19c.1 of the Illinois Personnel Code does not create an implied private right of action because the employee is not a member of the class for whose benefit the statute was enacted.** The Illinois Personnel Code was designed to benefit the state and the people of Illinois by ensuring competent employees for government offices, not prevent retaliation against state employees. The court held that a private right of action is not necessary to provide an adequate remedy for violations of the statute because the Illinois Personnel Code expressly provides procedures and sanctions for enforcing its provisions.

**Votes:**

Justice Fitzgerald concurred with the holding of the court (–)

Justice Freeman dissented (+)

Justice KILBRIDE delivered the judgment of the court, with opinion (–)

Justice Thomas concurred with the holding of the court (–)

### 37. Consumer Protections and Consumer Rights

*William Van Meter v. The Darien Park District* (2003)

<http://www.state.il.us/court/Opinions/SupremeCourt/2003/October/Opinions/Html/90541.htm>

#### Summary:

This case involved whether the Local Governmental and Governmental Employees Tort Immunity Act immunized the municipal defendants from alleged acts or omissions in the construction of a recreational park, which resulted in the plaintiffs' residence being flooded. The court reversed the trial court's granting of the defendants' motion to dismiss. The court further ruled that the municipal defendants failed to establish that their actions in constructing the park were the result of a determination of public policy and an exercise of discretion. **The court thus refused to apply blanket immunity to municipal defendants without a clear showing that their acts or omissions involved a determination of policy and an exercise of discretion.**

#### Votes:

Justice Fitzgerald dissented (-)

Justice Freeman concurred with the holding of the court (+)

Justice KILBRIDE delivered the judgment of the court, with opinion (+)

Justice Thomas took no part in the decision

### 38. Consumer Rights and Protection

*City of Chicago v. Holland*

<http://www.state.il.us/court/Opinions/SupremeCourt/2003/June/Opinions/Html/90585.htm>

#### Summary:

The City took legal action to prevent the Auditor General from proceeding with an auditing of the three airports in City of Chicago. Under the amended Auditing Act, ("Act") the Auditor General was required to conduct an audit of public funds of the state. The audit was supposed to include an examination of revenues, expenses, transfers of funds, purchasing and contracting policies and practices, staffing levels, and hiring practices and procedures. The trial court found that the Act violated the Illinois Constitution, and the Auditor appealed. The court noted that the Act did not explicitly define "public funds of the state." **The court found that the Auditor General could audit funds specifically selected for the city's airports, but that none of the three airports received any funding from the state treasury.** The court also found that federal grants do pass through the state's treasury prior to disbursement, but that does not convert them into public funds of the state. An audit of these airports would not serve the objective of the Act, which is to hold the state of Illinois accountable to the general assembly, and the citizens and taxpayers. Therefore, the grant of the injunction to prohibit the audit was proper.

#### Votes:

Justice RARICK delivered the judgment of the court, with opinion

Justice Fitzgerald concurred in part and dissented in part (-)

Justice Freeman concurred in part and dissented in part (-)  
Justice Kilbride concurred in part and dissented in part (-)  
Justice Thomas dissented (+)

### **39. Civil and Social Rights**

*Eads v. Heritage Enterprises, Inc.*

<http://www.state.il.us/court/Opinions/SupremeCourt/2003/February/Opinions/Html/92691.htm>

#### **Summary:**

Betty Lou Eads brought an action under the Nursing Home Care Act to recover damages for personal injuries stemming from a fall at Memorial ContinuCare. ContinuCare's three owners, Heritage Enterprises, Inc., Rutledge Joint Ventures, L.L.C., and Memorial Health Ventures, were named as defendants. The defendants challenged her cause of action based solely on the fact that the plaintiff failed to attach the certificate of merit and supporting report (of the incident) to her complaint. The court found that this injury did not involve the plaintiff's medical care, and that expert medical testimony would not be necessary. The court held that in such cases, a resident's complaint would not be dismissed for failure to attach the certificate.

#### **Votes:**

Justice RARICK delivered the judgment of the court, with opinion  
Justice Fitzgerald concurred with the holding of the court (+)  
Justice Freeman concurred with the holding of the court (+)  
Justice Kilbride concurred with the holding of the court (+)  
Justice Thomas dissented (-)

### **40. Worker and Employee Rights**

*Clemons v. Mechanical Devices Co.*

<http://www.state.il.us/court/Opinions/SupremeCourt/2002/November/Opinions/Html/91306.htm>

#### **Summary:**

In 1989, plaintiff claims that he was wrongfully discharged for seeking worker's compensation benefits. A jury verdict found in his favor in 1996; however, the appellate court reversed the jury's decision for evidentiary error—affirmed by the Illinois Supreme Court. The error arose when the defendant introduced evidence to show that the actual cause of the dismissal stemmed from a wage dispute. The plaintiff argued that the introduction of such evidence violated the Wage Act and failed to counter any pleading argued by the plaintiff. On remand, the plaintiff attempted to amend the complaint, in order to add a claim that he was wrongfully discharged for fighting for his rights protected under the Wage Act. The circuit and appellate courts denied the plaintiff's request. Justice Freeman held that the lower courts owed a duty to permit the plaintiff to amend his complaint.

**Votes:**

Justice Fitzgerald dissented (–)

Justice FREEMAN delivered the judgment of the court, with opinion (+)

Justice Kilbride concurred with the holding of the court (+)

Justice Thomas dissented (–)

**41. Civil and Social Rights**

*Unzicker v. Kraft Food Ingredients Corporation*

<http://www.state.il.us/court/Opinions/SupremeCourt/2002/November/Opinions/Html/92838.htm>

**Summary:**

The plaintiff, Marlin Unzicker, was injured while he was installing stainless steel piping at Kraft's plant in Champaign. Marlin was standing on a "manlift" and welding flanges to a pipe. Marlin's foreman, Mike Law, attempted to deliver some equipment to him by bringing it in the basket of a forklift that was owned by Kraft. The forklift collided with the manlift, causing Marlin to fall. Marlin received workers' compensation benefits and sued Kraft, alleging negligence and violations of the Structural Work Act. Kraft filed a third-party complaint for contribution against Nogle, the plaintiff's employer. The jury found for the plaintiff for the negligence action, and allocated 1% of the fault to Kraft and 99% to Nogle. The trial court applied a new section of the Code of Civil Procedure that modified the rule of joint and several liability. Before this section was enacted, a plaintiff could recover compensation for the full amount of his injury from any defendant responsible for the injury. The issue in this case was whether the new code section was constitutional. The court found that section was not in conflict with other law, and was not invalid on that basis. The court also held that the Code section was not vague to the point of being unconstitutional. Ultimately the court held that it was proper for Marlin's employer to be considered at fault under the new code section, and that the section was not unconstitutional.

**Votes:**

Justice Fitzgerald concurred with the holding of the court (–)

Justice Freeman concurred with the holding of the court (–)

Justice Kilbride dissented (+)

Justice THOMAS delivered the judgment of the court, with opinion (–)

**42. Worker and Employee Rights**

*Daniels v. Industrial Commission, et.al.*

**Summary:**

A 27-year employee of the Archibald Candy Company injured his back while lifting a kiln. An arbitrator awarded the employee benefits, which the Industrial Commission then reduced. On appeal, the plaintiff argued that two members of the Industrial Commission did not properly hold their seats. The Chairman of the Commission had made successive, temporary six-month appointments to fill vacancies, as opposed to the Governor appointing and Illinois Senate confirming. The court held that the cause should be remanded, in order for the matter to be heard by a constitutionally valid panel.

**Votes:**

Justice HARRISON delivered the judgment of the court, with opinion

Justice Freeman specially concurred (+)

Justice Fitzgerald dissented (-)

Justice Kilbride concurred with the holding of the court (+)

Justice Thomas dissented (-)

**43. Civil and Social Rights**

*Sarkissian v. Chicago Board of Education*

<http://www.state.il.us/court/Opinions/SupremeCourt/2002/July/Opinions/Html/88530.htm>

**Summary:**

The parent of an injured child filed petition against the municipal board of education and received a default judgment in the amount of \$10 million. The lower court vacated the default judgment based on improper service (notice of the petition), and the parent appealed. The issue in this case was whether leaving a copy of the summons with the defendant's receptionist was proper service. The court found that the Board President had delegated his authority to accept service to the receptionist. Ultimately, the court held that the summonses served on the receptionist constituted valid service.

**Votes:**

Justice McMORROW delivered the judgment of the court, with opinion

Justice Fitzgerald dissented (-)

Justice Freeman specially concurred, with opinion (+)

Justice Kilbride concurred with the holding of the court (+)

Justice Thomas dissented (-)

**44. Worker and Employee Rights**

*Carpetland U.S.A, Inc. v. Illinois Department of Employment Security*

**Summary:**

The Director of Employment Security held that the installers and measurers of Carpetland U.S.A, Inc. were employees, as opposed to independent contractors. The circuit court then subsequently ordered Carpetland to pay past due unemployment contributions. Parties argued over whether 12 measurers and 259 installers were actual employees of Carpetland. The Unemployment Insurance Act excuses employers from making unemployment contributions for individuals, who are: a) free from the employer's control or direction; and b) performing services outside the usual course of the employer's business; and c) engaging in an independently established profession. The court held that the installers were engaged in an independently established business; whereas, the measurers were legitimate employees of Carpetland.

**Votes:**

Justice GARMAN delivered the judgment of the court, with opinion

Justice Fitzgerald concurred with the holding of the court (–)

Justice Freeman concurred in part and dissented in part (+)

Justice Kilbride concurred with the holding of the court (–)

Justice Thomas concurred with the holding of the court (–)

**45. Civil and Social Rights**

*People ex rel. Devine v. \$30,700.00 U.S. Currency*

<http://www.state.il.us/court/Opinions/SupremeCourt/2002/March/Opinions/Html/90470.htm>

**Summary:**

On May 23, 1998, the Chicago Police searched Rashawn at the Drexel National Bank and discovered that Rashawn possessed a sock containing \$30,700. At the police station, Rashawn admitted that he was a member of the Gangster Disciples street gang. The police conducted a “money lineup”—discovering that the money in Rashawn’s possession had a residue odor of narcotics. The police also recovered \$20,811 from Ida’s, Rashawn’s grandmother, safety deposit box. They discovered a similar odor of narcotics on the currency. On August 4, 1998, the State filed a consolidated *in rem* complaint for forfeiture of the \$30,700 and \$20,811. The State mailed notice to Rashawn’s last known address. Rashawn did not respond to the state’s notices of forfeiture. It was later discovered that Rashawn did not respond to the notice of the forfeiture, because he was incarcerated. On September 2, 1998, the State sent notice of forfeiture by certified mail to Ida at her address. As with the previous mailing, the State concedes, it did not receive a return receipt from the September 2<sup>nd</sup> mailing. On October 13, 1998, the circuit court entered a default order forfeiting Rashawn's interest. On January 13, 1999, Rashawn and Ida filed a motion to vacate the forfeiture, alleging they never received notice. The court concluded that notice was reasonably calculated to apprise all interested parties of the pending proceedings.

**Votes:**

Justice FITZGERALD delivered the judgment of the court, with opinion (–)

Justice Freeman dissented (+)  
Justice Kilbride dissented (+)  
Justice Thomas concurred with the holding of the court (-)

#### **46. Family and Children's Rights**

*Arteman v. Clinton Community Unit School District No. 15*

<http://www.state.il.us/court/Opinions/SupremeCourt/2002/January/Opinions/Html/90701.htm>

##### **Summary:**

The plaintiff suffered injuries, including a broken leg, while rollerblading in his physical education class. The court examined whether a school should be held liable for failing to provide certain safety equipment in light of the Local Governmental Tort Immunity Act. The court held that under the plain language of the statute, the school was involved in a deliberative, policy-making process, whereby its decisions and any consequences were immune from litigation. The court noted, however, that it did not agree with the policy implications of its holding and stressed that any changes to the statute fell within the purview of the General Assembly.

##### **Votes:**

Justice FITZGERALD delivered the judgment of the court, with opinion (-)  
Justice Freeman concurred with the holding of the court (-)  
Justice Kilbride dissented (+)  
Justice Thomas concurred with the holding of the court (-)

#### **47. Consumer Rights and Protection**

*M.A.K. v. Rush-Presbyterian-St.-Luke's Medical Center*

<http://www.state.il.us/court/Opinions/SupremeCourt/2001/December/Opinions/Html/90527.htm>

##### **Summary:**

St. Luke's Medical Center disclosed to the plaintiff's insurance company the fact that he spent 6 weeks in alcohol-drug rehabilitation. The insurance company subsequently canceled his policy. The plaintiff sued for a violation of his privacy and infliction of emotional distress. The circuit court granted the defendant a judgment on the pleadings. The Illinois Supreme Court then upheld the circuit court's ruling.

##### **Votes:**

Justice GARMAN delivered the judgment of the court, with opinion  
Justice Fitzgerald concurred with the holding of the court (-)  
Justice Freeman specially concurred (-)  
Justice Kilbride dissented (+)

Justice Thomas concurred with the holding of the court (–)

#### **48. Civil and Social Rights**

*The Village of Bloomingdale v. CDG Enterprises, Inc.*

<http://www.state.il.us/court/Opinions/SupremeCourt/2001/June/Opinions/Html/89963.htm>

##### **Summary:**

CDG was the contract purchaser of five parcels of land adjacent to the Village of Bloomingdale. CDG claimed that the Village secretly formed a “task force” in order to obtain and develop a golf course, which was adjacent to the five parcels. The Village denied CDG’s petition to annex the land and rezone it for development. The Village voted down CDG’s project, and then the Village publicly revealed that it planned to acquire the golf course. The issue in this case was whether the Illinois Constitution would allow “corrupt or malicious motives” to apply to certain entities that would otherwise be immune under the Local Governmental and Governmental Employees Tort Immunity Act. The court found that the Act did not allow for an exception to immunity for “corrupt or malicious motives.” Nothing the Village relied on recognized an exception for conduct inspired by “corrupt or malicious motives.” The Village’s denial of the petition falls within the Act. The Village and its officials were authorized to either grant or deny CDG’s petition for rezoning and site plan approval. CDG alleged that it was injured by the denial of this petition. The court held that the Village was immune from liability under the Act for any injury resulting from that denial. The court also held the Village was not liable under contract law.

##### **Votes:**

Justice Fitzgerald concurred with the holding of the court (–)

Justice Freeman concurred with the holding of the court (–)

Justice Kilbride concurred with the holding of the court (–)

Justice THOMAS delivered the judgment of the court, with opinion (–)

#### **49. Civil and Social Justice**

*Ferguson v. McKenzie*

<http://www.state.il.us/court/Opinions/SupremeCourt/2001/ NotRel/Html/89144.htm>

##### **Summary:**

The decedent, Franklin Ferguson, went to Fantus Clinic of the Cook County Health and Hospital System for a cataract procedure. Following the surgery on October 10, 1991, the decedent suffered from a cardiac arrest and died. The plaintiff brought a medical malpractice and wrongful-death suit in the circuit court. On January 11, 1994, plaintiff amended the original wrongful-death count by naming herself and the decedent's four adult children as heirs. Also, plaintiff added a separate wrongful-death count, brought specifically on behalf of decedent’s daughter, Karen, which named Cook County as a defendant. The defendant filed a motion for summary judgment claiming that the suit was not filed within the one-year time frame stipulated under the Tort Immunity Act. The trial court and appellate court ruled that the one-year

limitation period of the Tort Immunity Act applied to all medical malpractice claims brought against governmental entities, including those claims brought on behalf of minors. The Illinois Supreme Court held that a party must comply with the Tort Immunity Act. In this case, Karen was afforded an additional seven months, until she reached 18 years of age, before the one-year limitation period began to run. Since plaintiff failed to add Karen to the action within that time, her claim was barred.

**Votes:**

Justice Fitzgerald concurred with the holding of the court (–)

Justice FREEMAN delivered the judgment of the court, with opinion (–)

Justice Kilbride dissented (+)

Justice Thomas concurred with the holding of the court (–)

**50. Civil and Social Rights**

*In re Consolidated Objections to Tax Levies of School Dist. No. 205*

<http://www.state.il.us/court/Opinions/SupremeCourt/2000/October/Opinions/Html/88267.htm>

**Summary:**

The federal courts entered desegregation orders for the Rockford School District. *People Who Care v. Rockford Board of Education School District No. 205*, 111 F.3d 528 (7th Cir. 1997). To satisfy the federal orders, the school system planned to levy taxes. Suit was then brought challenging the school district's authority to collect revenue for such a purpose. The federal court ruled that the school district had the authority under the Tort Immunity Act to levy taxes to pay for the desegregation remedies. The Seventh Circuit Court of Appeals then reversed on jurisdictional grounds and remanded the matter to the circuit court of Illinois. The issue before the Illinois judiciary was whether the school district was authorized under the Illinois Local Government Employees Tort Immunity Act to levy taxes to fund the cost of complying with injunctive remedies. Section 9-107 of the Act authorizes a local public entity to levy taxes upon all taxable property within its territory for purposes of section 9-102. 745 ILCS 10/9-107 (West 1998). Section 9-102 of the Tort Immunity Act in turn empowers a local public entity "to pay any tort judgment or settlement for compensatory damages for which it \*\*\* is liable in the manner provided in this Article." 745 ILCS 10/9-102 (West 1998). The court held that the remedies at issue involved mandatory injunctive relief and not compensatory damages. **Consequently, the court asserted that the Tort Immunity Act did not authorize the levying of taxes to fund desegregation remedies and to pay the debt service on general obligation bonds.**

Justice BILANDIC delivered the judgment of the court, with opinion

**Freeman dissented (+)**