

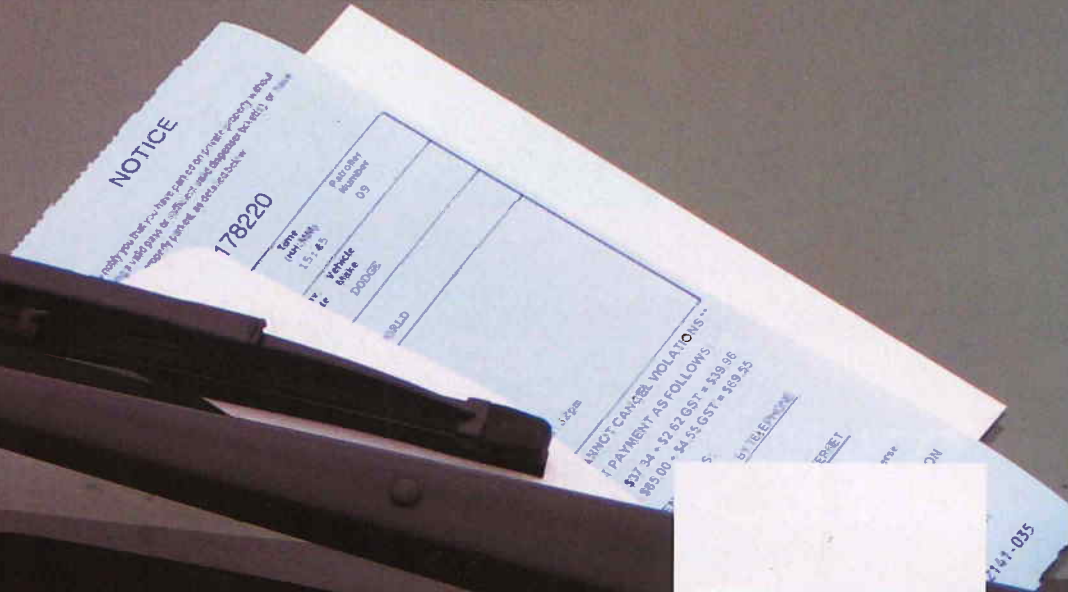
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## HOW A \$20 PARKING TICKET BECAME AN \$80 MILLION LIABILITY



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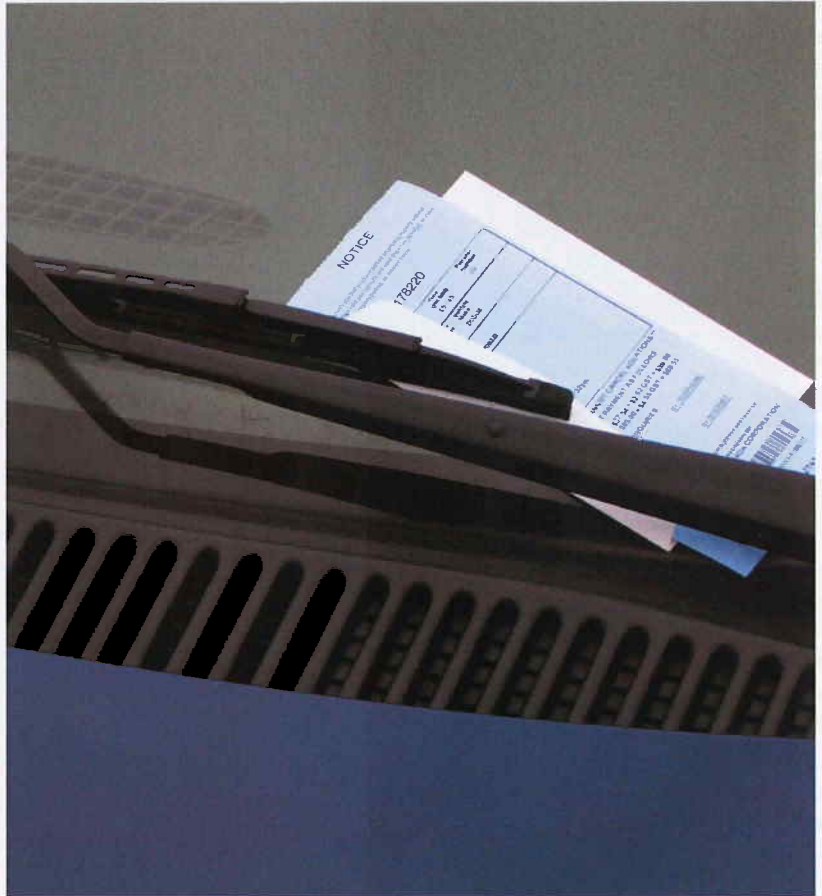
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## Senne v. Village of Palatine or how a \$20 parking ticket became an \$80 million liability

“Aggravating” is one way to describe a parking ticket. But when the ticket displays the car owner’s name and address, it becomes dangerous, at least according to the Seventh Circuit. The court’s *en banc* decision of *Senne v. Village of Palatine* held that the Illinois Village of Palatine violated the Driver’s Privacy Protection Act (“DPPA”), 18 U.S.C. §2721, by including Jason Senne’s name and address on a \$20 parking ticket issued to him.<sup>1</sup>

For those Illinois, Indiana and Wisconsin municipalities that include identifying information on parking tickets, the ruling is problematic. The DPPA includes statutory liquidated damages of \$2,500 per violation and a four-year statute of limitations.<sup>2</sup> From there, the math is easy. Exposure for some municipalities will be in the millions and, in a perverse twist, hit the most aggressive ticketers hardest.

Protecting privacy was Congress’ motivation in enacting the DPPA, and legislative intent was *Senne’s* fulcrum. An exasperated dissent argued that in emphasizing privacy, the majority ignored provisions of the DPPA exempting law enforcement. Before considering who had the better of the argument, the DPPA is examined.



the address of actress Rebecca Schaeffer from a California DMV.<sup>4</sup> Bardo, an obsessed fan who had been stalking Schaeffer for three years, went to her home and killed her.<sup>5</sup> This tragedy compelled Congress to pass the DPPA in 1994.

The DPPA prohibits states from disclosing a driver’s personal information without the driver’s express consent. A private cause of action lies against persons and entities that disclose “personal information . . . from a motor vehicle record.”<sup>6</sup> “Personal information” includes a Social Security number, driver identification number, name or address.<sup>7</sup> Each violation of the DPPA incurs statutory liquidated damages of not less than \$2,500, attorneys’ fees and punitive damages.<sup>8</sup> But the DPPA has numerous

exceptions, and curiously, the law would not have prevented Rebecca Schaeffer’s death. Robert Bardo hired a private investigator to get Schaeffer’s information from the DMV, and private investigators are exempt under the DPPA.<sup>9</sup>

An authorized recipient of personal information “may resell or redisclose [personal information] only for a use permitted under [section 2721(b)].”<sup>10</sup> That section provides 14 exceptions or “permissible uses.” Most of the exceptions, as the Eleventh Circuit observed, “are tied to a particular occupation or organization and its corresponding lawful need for the information.”<sup>11</sup> Those relevant to *Senne* include:

- (1) For use by any government agency, including any court



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### The essentials of the DPPA

State DMVs are a marketer’s goldmine. Congress discovered that many states had lucrative arrangements selling driver’s license information to businesses.<sup>3</sup> But a more nefarious information breach occurred when Robert Bardo obtained

or law enforcement agency, in carrying out its functions. ...

\* \* \*

- (4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court ... including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments ... .<sup>12</sup>

Additional exceptions relate to research activities, insurance claim investigations, commercial driver's licenses and toll facilities.<sup>13</sup>

Case law interpreting the DPPA is relatively limited. The Supreme Court upheld the law as a constitutional exercise of Congress' commerce power because the DPPA regulates the sale of drivers' information in interstate commerce.<sup>14</sup> Additionally, the Eleventh Circuit rejected qualified immunity for state officials sued for selling driver's license information to marketers, finding the statutory rights created by the DPPA enforceable both directly and under 42 U.S.C. §1983.<sup>15</sup> Finally, the Seventh Circuit determined a publishing company did not violate the DPPA by purchasing and reselling information from DMV records because an authorized recipient of personal information can do so.<sup>16</sup>

Thus, while courts have explored the contours of the DPPA, no case interpreted the statute's law enforcement exceptions until *Senne*.

### Senne's parking violation

Jason Senne was issued a citation for violating Palatine's ordinance prohibiting overnight street parking.<sup>17</sup> The ticket was printed electronically on an authorized form and placed on Senne's windshield. Senne discovered the ticket five hours later.<sup>18</sup> As Senne's vehicle was parked on a public street, the ticket was there as well.

The ticket, which doubled as a return envelope to pay the fine, had the caption:

IN THE NAME AND BY THE AUTHORITY OF THE VILLAGE OF PALATINE, ILLINOIS, A MUNICIPAL CORPORATION, PLAINTIFF VS JASON SENNE.<sup>19</sup>

Senne's home address, driver's license number, date of birth, sex,

height and weight were then listed. The citation also outlined Senne's legal options. He could mail a check or money order for \$20, pay in person at the Palatine Police Department, or request a hearing.

Finally, the ticket specified that process was served:

*(continued on page 12)* →

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## PARKING TICKET *continued from page 11*

I certify that I served a copy of the citation by affixing it to the Respondent's vehicle, and further state under the penalty of perjury as provided in Ill. Rev. Stat., Ch. 110, Sec. 1-109 that the above facts are true and correct ...<sup>20</sup>

Senne's ticket constituted service of process not only under Illinois law,<sup>21</sup> but also via a Palatine ordinance that permits administrative complaints to be served by affixing them to the property where the violation occurs.<sup>22</sup>

### Senne's class action

Senne alleged the Village of Palatine violated his privacy rights under the DPPA by including personal information on his parking ticket. While Senne averred the ticket was in plain view of the public, the only person alleged to see the ticket was Senne himself.<sup>23</sup> The putative class action sought \$80 million in statutory liquidated

damages — \$2,500 for each of the 32,000 potential class members receiving parking tickets in Palatine over the last four years.<sup>24</sup>

Before Senne certified the class, Palatine moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). Palatine first argued there was no disclosure of Senne's information because Senne failed to allege that anyone other than himself saw the ticket. But even if there was a disclosure, it was permitted because Palatine was enforcing traffic and parking ordinances.<sup>25</sup> Further, the ticket was an administrative complaint against Senne, and leaving it on his windshield was an authorized service of process.<sup>26</sup>

The district court granted Palatine's Motion to Dismiss, and the Seventh Circuit affirmed in a 2-1 decision.<sup>27</sup> The majority, Judges Easterbrook and Flaum, determined Palatine disclosed Senne's

personal information but did not violate the DPPA because the citation initiated an administrative complaint against Senne and effectuated service of process.<sup>28</sup> The court rejected Senne's argument that Palatine facilitated crime by publicizing a vehicle owner's personal information. Nor was the court concerned that the personal information did not aid service of process. Even if including identifying information on the ticket is "unnecessary, foolish, and a poor security practice," the DPPA "does not impose best practices on municipalities."<sup>29</sup>

Judge Ripple dissented, claiming Palatine violated the DPPA because it disclosed information unnecessary for service of process.<sup>30</sup> He contended the DPPA's exceptions must be interpreted with congressional intent (protecting privacy) in mind, and therefore the permissible uses must be read narrowly.<sup>31</sup> That view would ultimately prevail.

### The *en banc* decision

Rehearing the case *en banc*, the Seventh Circuit reversed the district court and revived the suit. With Judge Ripple writing for the majority, the court first determined that including Senne's personal information on the citation and placing it on his car was a disclosure. Under the DPPA, state DMVs may not "disclose or otherwise make available to any person or entity" personal information.<sup>32</sup> The court determined that attaching the phrase "'or otherwise make available' to the term 'disclose' leaves little doubt about the breadth of the transactions Congress intended to regulate."<sup>33</sup> That no one else was alleged to have seen Senne's ticket was of no import. Placing the ticket on the windshield was "sufficient to come within the activity regulated

*(continued on page 14)*



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## PARKING TICKET *continued from page 12*

by the statute regardless of whether another person viewed the information. ...”<sup>34</sup>

The court next considered whether Palatine’s disclosure was permitted under §2721(b)(1) or (4). Conceding the ticket was service of process and a function of Palatine’s police department, the court nevertheless refused to apply either exception because of Congress’ “overarching purpose of privacy protection” in drafting the DPPA.<sup>35</sup>

The court reached its determination as follows. Sections 2721(b)(1) and (4) both begin with the words “for use.” Honoring the statutory construction principle that meaning must be given to every word, the court determined “for use” performed “a critical function” in the statute.<sup>36</sup> “For use” contained “the necessary limiting principle” to the exceptions in §2721(b)(1) and (4).<sup>37</sup> In authorizing a disclosure “for use,” Congress intended that the information disclosed be used only for the purpose identified in the exception.<sup>38</sup> When disclosed information does not

effectuate the exception’s purpose, neither §2721(b)(1) nor (4) will apply. In support of this reading, the court emphasized the DPPA’s legislative history. The court also noted that Rebecca Schaeffer’s murder was a consequence of “open access to government records.”<sup>39</sup> Thus, based on Congress’ privacy concerns, the disclosed information must be appropriate or necessary for the purpose stated in the exception.

Determining the disclosure must align with the exception’s purpose, the court doubted Senne’s name and address were needed for the parking ticket. Nevertheless, whether Senne’s information effectuated §2721(b)(1) or (4) was a question reserved for remand. The court also deferred on damages, deeming any discussion of the issue “premature.”<sup>40</sup> Buried in a footnote, this was little solace for the dissent.

### **The en banc dissent**

Judges Flaum, Easterbrook, Posner and Sykes dissented. Judge Flaum argued the DPPA’s text and

legislative history conveyed no intent “to limit the information that may be disclosed in connection with a particular exception.”<sup>41</sup> Judge Flaum criticized the majority’s “for use” interpretation because it injected a threshold determination of “appropriateness” or “necessity” not found in the statute. This exposed municipalities “to substantial liability for incorrectly predicting exactly what information will be used in the course of carrying out an exception.”<sup>42</sup>

Echoing Judge Flaum, Judge Posner found the DPPA did not limit permissible uses to what was appropriate or necessary. Nor was there evidence Congress intended to restrict police from displaying personal information on parking tickets. “The majority’s free interpretation of the Act ... is unlikely to do any good” but rather “bound to do harm.”<sup>43</sup> Judge Posner scoffed at the danger a name and address on a ticket posed, describing it as “a problem that so far as anyone knows or can guess has never arisen and will never arise.”<sup>44</sup> The result of the decision was ruinous, but certainly foreseeable: “costly and time-consuming litigation and pointless wealth transfers from taxpayers to violators of the parking laws.”<sup>45</sup> Thus, the majority’s refusal to consider the issue of damages was “short sighted.”<sup>46</sup> Palatine filed a petition for writ of certiorari, which is pending as of this writing.



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### Senne's statutory interpretation

At the heart of *Senne* is the clash between privacy and policing. And while the majority's privacy concerns are compelling, the dissent's statutory interpretation appears more convincing.

The object of statutory interpretation is to determine Congress' intent.<sup>47</sup> This intent is best exemplified by the statute's language.<sup>48</sup> Congress' desire to exempt municipalities under the DPPA is demonstrated three ways. First, §2721(b)(1) permits the disclosure of personal information by any government agency "in carrying out its functions." Enforcing traffic laws is a common government function. Second, §2721(b)(4) permits disclosure for an "administrative or arbitral proceeding." Palatine processes parking tickets through administrative proceedings, and *Senne's* citation initiated that process. Third, "service of process" is a permissible use under §2721(b)(4). When the Palatine police ticketed *Senne's* car, process was served per Illinois law and Palatine ordinance.

The DPPA's plain language exempting local government in carrying out its functions and conducting administrative proceedings demonstrates Congress' intent not to ensnare municipalities in the law's onerous penalty scheme. Yet under the majority's reading of the DPPA, the rule swallows the exceptions.

A statute must be read as a whole, not piecemeal.<sup>49</sup> Plaguing the majority's statutory interpretation is its elevation of the phrase "for use" in §2721(b)(1) and (4). Essentially bridging language from the subsection's introductory paragraph, the court transformed these perfunctory words into the DPPA's most prominent. *Black's Law Dictionary* defines "for use"

as "for the benefit or advantage of another."<sup>50</sup> But this meaning was disregarded. The court instead read "for use" as disclosing information "only in a manner that does not exceed the scope of the authorized statutory exception."<sup>51</sup> There is no indication Congress intended this. Indeed, Congress never qualified the phrase "for

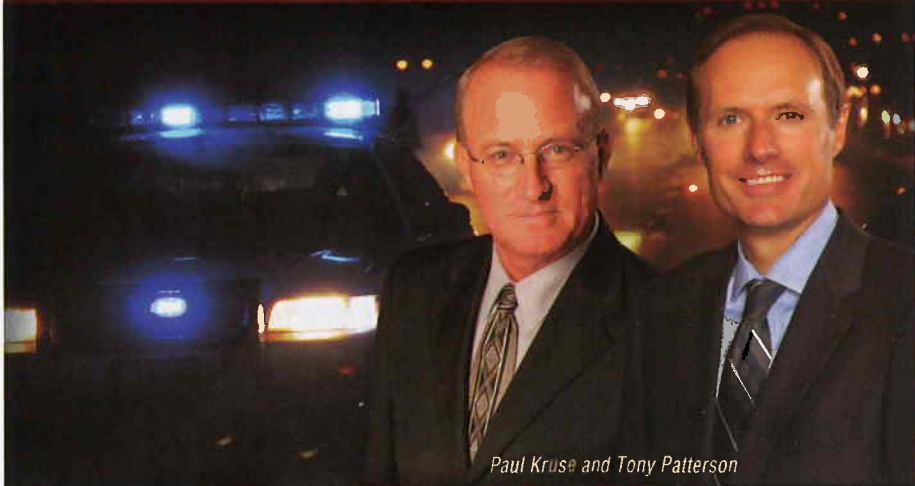
use" to limit disclosure to what information is appropriate or necessary.

To narrow the DPPA's exceptions, the clarity of §2721(b)(1) and (4) necessitated the majority magnify legislative intent. In doing so, the court sacrificed the statute's plain text for floor speeches.

(continued on page 16)

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## PARKING TICKET *continued from page 15*

Furthermore, the court provided no clear standard for determining what “exceed[s] the scope of the authorized statutory exception.” District courts must thus discern what information is needed to further an exception’s purpose. Yet they are rudderless. The DPPA says nothing about what information is appropriate or necessary.

The majority’s interpretation also raises federalism concerns. Unless Congress conveys its purpose clearly, “it will not be deemed to have significantly changed the federal-state balance.”<sup>52</sup> More so here where Congress did not want the DPPA’s exceptions to impede local government. Limiting the use of driver’s information by police was not Congress’ aim – Sen. Harkin stated the DPPA “will not in any way undermine law enforcement or community policing efforts.”<sup>53</sup> Yet *Senne*’s interpretation of the law does just that. Local authorities use driver’s personal information for many permissible purposes. However, due to *Senne*’s reading of §2721(b)(1) and (4), the DPPA will pervade the daily

functions of every municipality in the Seventh Circuit.

### **Senne’s privacy concerns**

Protecting privacy is a laudable goal, and the DPPA’s drafters were wise to pursue it. But even they knew that one’s identifying information is not sacrosanct. The law’s 14 exceptions confirm that personal information will enter the public sphere. Moreover, there is no privacy interest in personal information contained in public records. *Senne* appears to have overlooked these points.

The DPPA has curbed the flow of personal information from DMVs to people who lack a legitimate basis for such information. But with advances in technology, this success is fleeting. Passed in 1994, the DPPA did not envision how the Internet would shatter traditional notions of privacy. Whether volunteered through Facebook, Twitter or LinkedIn, or dredged up through countless “people finder” sites, the Internet is awash in personal information. And for those willing to pay a fee,

many websites will divulge individuals’ financial, employment and family information. Some sites even claim that users can access vehicle owners’ information via a license plate number.

In light of the more efficient and effective means of obtaining personal information, Palatine’s inclusion of drivers’ names and addresses on parking tickets is insignificant. No epidemic of individuals using parking tickets to commit identity theft or violent crimes exists. Nor, as *Senne*’s counsel conceded, are there even isolated incidents.<sup>54</sup> In sum, the evil the DPPA sought to prevent was stalkers using the DMV to locate their intended victims, not police including a name on a parking ticket.

### **Senne’s implications**

Indiana municipalities are now exposed to the prospect of \$2,500 in damages per ticket for conduct the DPPA does not apprise them is prohibited. The *Senne* majority downplayed concerns about the \$80 million in damages as “premature.” But with each ticket issued over four years incurring statutory liquidated damages of not less than \$2,500, attorneys’ fees and punitive damages, the issue looms large. To that end, the Association of Governmental Risk Pools filed an amicus brief in support of Palatine’s petition for certiorari.<sup>55</sup> The amicus warned *Senne* will cost local governments “tens of millions of dollars, and potentially billions nationally.”<sup>56</sup> The effect: “Local governments, particularly in the present economy, will be crippled.”<sup>57</sup> Given the DPPA’s statutory framework of liquidated damages and a four-year statute of limitations, it is hard to describe the amicus’ concerns as overblown.

*(continued on page 18)*



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**PARKING TICKET** continued from page 16

*Senne* did reserve the possibility that it might be permissible to include the vehicle owner's name on a ticket. But this is unfeasible since the recipient will know who the owner is. Furthermore, this argument would likely fail due to *Saukstelis v. City of Chicago*.<sup>58</sup> In *Saukstelis*, plaintiffs argued that parking tickets with license plate numbers but not names failed to confer proper notice. The Seventh Circuit disagreed, holding that a license plate number was enough to identify a vehicle owner.<sup>59</sup> Since a license plate number suffices to identify an individual, a name or address is unnecessary as a matter of law. As such, *Palatine's* efforts on remand will be futile, possibly rendering the parking ticket issued to Jason *Senne* the most costly in history. ☺

1. *Senne v. Vill. of Palatine*, 695 F.3d 597 (7th Cir. 2012) (en banc).

2. 18 U.S.C. §2724(b).
3. 139 Cong. Rec. 514381 (Oct. 26, 1993).
4. 139 Cong. Rec. E2747-48 (daily ed. Nov. 3, 1993) (statement of Rep. Moran).
5. *Id.*
6. 18 U.S.C. §2724(a).
7. 18 U.S.C. §2725(3).
8. 18 U.S.C. §2724(b).
9. 18 U.S.C. §2721(b)(8).
10. 18 U.S.C. §2721(c).
11. *Thomas v. George*, 525 F.3d 1107, 1113 (11th Cir. 2008).
12. 18 U.S.C. §2721(b)(1), (4).
13. 18 U.S.C. §2721(b).
14. *Reno v. Condon*, 528 U.S. 141, 148 (2000).
15. *Collier v. Dickinson*, 477 F.3d 1306, 1307 (11th Cir. 2007).
16. *Graczyk v. West Publ'g Co.*, 660 F.3d 275 (7th Cir. 2011), cert. denied, 132 S.Ct. 2391.
17. *Senne v. Vill. of Palatine*, 695 F.3d at 600.
18. *Id.*
19. *Senne v. Vill. of Palatine*, Brief of Defendant-Appellee, *Village of Palatine*, 2010 WL 6020494 at \*3.
20. *Id.* at \*4.
21. 625 ILCS 5/11-208.3(b)(3) (authorizing municipalities to serve process for parking violations by means of affixing the notice to the vehicle).
22. *Village of Palatine Ordinance 2-707(b)(3)*.
23. Complaint, ¶¶10-28, *Senne v. Vill. of Palatine*, (No. 1:10-cv-05434), 2011 WL 3459438.
24. *Id.*
25. 18 U.S.C. §2721(b)(1).
26. 18 U.S.C. §2721(b)(4).
27. *Senne v. Vill. of Palatine*, 645 F.3d 919 (7th Cir. 2011), vacated by *Senne v. Vill. of Palatine*, 695 F.3d 597.
28. *Senne*, 645 F.3d at 923.
29. *Id.* at 924.
30. *Id.* at 926 (Ripple, J., dissenting).
31. *Id.* at 928.
32. *Senne*, 695 F.3d at 600.
33. *Id.* at 602.
34. *Id.* at 603.
35. *Id.* at 609.
36. *Id.* at 606.
37. *Id.*
38. *Id.* at 606-07.
39. *Id.* at 607.
40. *Id.* at 609 n. 20.
41. *Id.* at 612 (Flaum, J., dissenting).
42. *Id.* at 617.
43. *Id.* at 609 (Posner, J., dissenting).
44. *Id.* at 611.
45. *Id.*
46. *Id.*
47. *See In the Matter of Lifschultz Fast Freight Corp.*, 63 F.3d 621, 628 (7th Cir. 1995).
48. *Id.*
49. *United States v. Morton*, 467 U.S. 822, 828 (1984).
50. *Black's Law Dictionary* 567 (Abridged 9th ed. 2010).
51. *Senne*, 695 F.3d at 606.
52. *United States v. Bass*, 404 U.S. 336, 349 (1971).
53. 139 Cong. Rec. S15962 (Nov. 17, 1993).
54. *Senne*, 695 F.3d at 610 (Posner, J., dissenting).
55. *Senne v. Vill. of Palatine*, Brief for the Association of Governmental Risk Pools as Amicus Curiae, Supporting Petitioner, 2012 WL 6184859 (2012).
56. *Id.* at 7.
57. *Id.* at 8.
58. *Saukstelis v. City of Chicago*, 932 F.2d 1171 (7th Cir. 1991).
59. *Id.* at 1174.

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