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Sterling v. City of Jackson and the limits of substantive due process in environmental harm cases

By Allison B. Rumsey, Esq., and Ryan Hartman, Esq., Arnold & Porter*

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The Fifth Circuit, sitting *en banc*, issued its long-awaited decision in *Sterling v. City of Jackson*[1] — a case that tested whether residents exposed to lead-contaminated municipal drinking water and lied to about its safety could sue the responsible municipality and public officials under 42 U.S.C. § 1983 for violating their substantive due process rights.

The majority's message is unambiguous: absent a right "deeply rooted" in history and tradition, environmental harms — even egregious, long-running, government-caused ones — belong to tort law and the political process, not the Constitution.

In a 10-5 decision, the court said no, affirming dismissal of the plaintiffs' constitutional claims and reversing the panel opinion that had allowed the case to proceed.[2]

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Residents of Jackson, Mississippi alleged that the city's water system leached lead into the drinking supply as a result of years of mismanagement — including a "catastrophic" switch from high-pH well water to low-pH surface water — and that city officials then affirmatively told the public the water was safe when they knew, or should have known, otherwise.

Plaintiffs alleged violations of the Safe Drinking Water Act and EPA regulations, and described repeated boil-water notices and system shutdowns. In addition to state-law tort claims, plaintiffs pursued a federal constitutional theory: that exposure to contaminated water violated their right to bodily integrity, and that being misled about its safety violated a right to truthful information from public officials.

The *en banc* majority applied the *Glucksberg/Dobbs* "history and tradition" framework and held:

(1) **No right to be free from government-caused water contamination**. The court reaffirmed that the Constitution imposes no affirmative duty on municipalities to provide services — even essential ones like water — "in a reasonably competent fashion."[3] It declined to stretch the bodily-integrity doctrine, which has historically covered things like forced medical procedures and sexual assault by police, to cover harm from contaminated infrastructure.

(2) **No right to truthful information from public officials during a public-health crisis**. Following the Second Circuit's post-9/11 air-quality cases, the court held that misrepresentations by officials do not rise to a distinct constitutional tort absent a historical analog.[4]

(3) **Qualified immunity would independently bar damages claims against the individual officials**. Even assuming a right existed, it was not "clearly established" at the time of the alleged conduct, so individual officials would be shielded from damages in any event.

The dissent: A circuit split widens

Judge Haynes, joined by four other judges, would have adopted the state-created-danger doctrine — citing the 10 circuits that have already done so, including the D.C. and Ninth Circuits.[5]

The dissent would have also held that plaintiffs plausibly alleged a bodily-integrity violation at the pleading stage,

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taking an approach consistent with the Sixth Circuit's *Guertin v. Michigan*[6] (the Flint water crisis case) and the more recent *Mitchell v. City of Benton Harbor*.[7]

The result is a clear circuit split: the Fifth and Second Circuits decline to constitutionalize certain contamination and official-misinformation harms, while the Sixth Circuit and a growing list of others are more willing to entertain bodily-integrity and state-created-danger theories in this context.

The dissent's core objection is procedural as much as substantive: at the Rule 12(b)(6) or 12(c) stage, plaintiffs are entitled to have well-pleaded facts taken as true and ambiguities resolved in their favor.

The result is a clear circuit split: the Fifth and Second Circuits decline to constitutionalize certain contamination and official-misinformation harms, while the Sixth Circuit and a growing list of others are more willing to entertain bodily-integrity and state-created-danger theories in this context.

That split, combined with the sharpness of the disagreement here, makes this a strong candidate for certiorari if plaintiffs seek further review.

Why this matters for environmental practitioners

- **Section 1983 is far less available (in the Fifth Circuit) as a fallback for contamination harms**. Plaintiffs alleging lead, PFAS, or other contamination exposure from a public water system — or from state actors more broadly — cannot use constitutional tort theories to circumvent the more demanding proof requirements, damages caps, and immunities that typically apply to state tort claims. The court is explicit: the remedy lies in tort law, the ballot box, and existing regulatory enforcement (SDWA, Clean Water Act, EPA orders), not the Fourteenth Amendment.
- **The regulatory backstop argument carries real weight**. The majority leaned heavily on the fact that EPA and the Mississippi State Department of Health had been actively monitoring and enforcing against the city for years, and that the federal government had, by then, taken over management of Jackson's water system pursuant to a separate SDWA/CWA enforcement action. Expect defendants in future contamination suits — municipal, industrial, or otherwise — to invoke ongoing or completed regulatory enforcement as evidence that adequate non-constitutional remedies exist, cutting against any due-process theory.
- **State-created danger remains unsettled in the Fifth Circuit — for now**. The court's continued silence on the doctrine, rather than express rejection of it, leaves the door open for plaintiffs to attempt other theories, even as the court signals hostility.
- **Watch for certiorari**. Given the depth of the circuit split (10 circuits versus the Fifth's continued silence on state-created danger, and now a direct conflict with the Sixth Circuit's *Guertin/Mitchell* line on bodily integrity), this case is a plausible Supreme Court candidate. Clients with relevant exposure in multiple circuits — including mining and industrial companies, utilities, and suppliers and service providers to municipalities — should watch this closely, since the outcome will shape whether affirmative government misconduct in environmental contamination cases can support substantive due-process liability on comparable allegations, or whether such claims remain confined to state tort and statutory enforcement frameworks.

Notes:

[1] No. 24-60370 (5th Cir. Sept. 4, 2026).

[2] See *Sterling v. City of Jackson*, 159 F.4th 361 (5th Cir. 2025), *reh'g en banc granted, opinion vacated*, 167 F.4th 806 (5th Cir. 2026).

[3] *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 197-98 (1989); see also *Youngberg v. Romeo*, 457 U.S. 307, 317 (1982); *Collins v. City of Harker Heights*, 503 U.S. 115, 129 (1992).

[4] *Lombardi v. Whitman*, 485 F.3d 73, 80, 85 (2d Cir. 2007); *Benzman v. Whitman*, 523 F.3d 119, 125, 128 (2d Cir. 2008) ("no court has ever held a government official liable for denying substantive due process by issuing press releases or making public statements").

[5] See *Butera v. District of Columbia*, 235 F.3d 637, 652 (D.C. Cir. 2001); *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1066 (9th Cir. 2006); *Irish v. Fowler*, 979 F.3d 65, 73-74 (1st Cir. 2020).

[6] 912 F.3d 907 (6th Cir. 2019).

[7] 137 F.4th 420 (6th Cir. 2025).

About the authors





Allison B. Rumsey (L) is a partner at **Arnold & Porter**. She is a co-chair of the firm's environmental practice group. Her practice focuses primarily on environmental litigation and enforcement matters. She is based in Washington, D.C., and can be reached at allison.rumsey@arnoldporter.com. **Ryan Hartman** (R) is a partner at the firm, where he represents clients in civil litigation, criminal investigations, and enforcement actions, and advises companies on strategic transactions and risk management. He also serves as a co-chair of the firm's energy and infrastructure industry group. He is based in Houston and can be reached at ryan.hartman@arnoldporter.com. This article was originally published Sept. 16, 2026, on the firm's website. Republished with permission.

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