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**IMMUNITY - GEORGIA**

## Fraser v. Glynn County

**Court of Appeals of Georgia - November 3, 2025 - S.E.2d - 2025 WL 3071906**

Person who acquired interest in reverter and heir of person who previously conveyed causeway and roads to county brought declaratory judgment action against county, challenging legality of abandonment and transfer of real property on and around barrier island to private company.

The Superior Court, Glynn County, dismissed the action, finding it was barred by sovereign immunity. Those persons appealed. Person who acquired interest in reverter to causeway and roads filed petition under state's Land Registration Law to assert her claim to property on and around barrier island that had been abandoned by county to private company. County and purported company owners of property moved to dismiss.

The Superior Court granted county's motion to dismiss but denied company owners' motion, issued certificate of immediate review, and Court of Appeals granted owners' application for interlocutory appeal. Appeals were consolidated.

The Court of Appeals held that:

- Valid waiver of sovereign immunity was not demonstrated;
- Actual or justiciable controversy sufficient to support declaratory judgment against county was not pleaded;
- Lack-of-subject-matter-jurisdiction dismissal had to be without prejudice;
- Registration action under Land Registration Law against private company could proceed only if all tenants in common joined application; and
- Person who acquired reverter interest did not plead in registration action that she was "possessing land" in which she sought to establish interest.

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**IMMUNITY - GEORGIA**

## Howard v. Coffee Regional Medical Center, Inc.

**Court of Appeals of Georgia - November 3, 2025 - S.E.2d - 2025 WL 3073948**

Hospital patient's wrongful death beneficiary brought action for wrongful death against hospital, physician, and physician's group, predicated on medical malpractice, arising out of patient's death due to defendants' failure to move him to intensive care unit (ICU), after he presented to emergency room with altered mental status, despite order that he be moved to ICU, and failure to monitor him accordingly, after which his blood pressure dropped to level that was inconsistent with life, as well as his temperature and oxygen level.

The trial court granted defendants' motions for summary judgment, and beneficiary appealed.

The Court of Appeals held that:

- Hospital was not auxiliary emergency management worker entitled to immunity from liability under Georgia Emergency Management Act (GEMA);
- Governor's COVID-19 executive order could not be construed as extending immunity from liability under GEMA to hospital;
- Hospital's nurses' immunity from liability under GEMA did not extend vicariously to hospital;
- Fact issues precluded summary judgment for physician on defense that she entitled to immunity under GEMA;
- Georgia COVID-19 Pandemic Business Safety Act (PBSA) did not apply retroactively to alleged medical malpractice that resulted in patient's death that occurred before PBSA's enactment; and
- Hospital's brief, isolated assertion in footnote of reply to beneficiary's opposition to hospital's motion for summary judgment that Public Readiness and Emergency Preparedness Act (PREP Act) "provide[d] further grounds for immunity" was insufficient to raise issue as alternative basis for summary judgment.

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**PUBLIC EMPLOYMENT - ILLINOIS**

## Moreland v. Retirement Board of Policemen's Annuity and Benefit Fund of City of Chicago

**Supreme Court of Illinois - November 20, 2025 - N.E.3d - 2025 IL 131343 - 2025 WL 3237801**

Injured police officer sought judicial review of a decision of the city retirement board that denied officer's application for duty disability benefits.

The Circuit Court affirmed the board's decision. Officer appealed. The Appellate Court reversed. Board petitioned for leave to appeal, which was allowed.

The Supreme Court held that:

- Before a pension board may award a disability pension to a police officer, the board must receive an opinion on the officer's disability status from at least one board-appointed doctor; overruling *Nowak v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 315 Ill. App. 3d 403, 248 Ill.Dec. 129, 733 N.E.2d 804, and
- Board's finding that officer could return to duty was not against manifest weight of evidence.

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**IMMUNITY - ILLINOIS**

## Haase v. Kankakee School District 111

**Supreme Court of Illinois - November 20, 2025 - N.E.3d - 2025 IL 131420 - 2025 WL 3237814**

Student, who allegedly was injured by second student while playing indoor soccer during gym class in junior high school, and his parent brought action against school district and teacher, asserting claim that teacher engaged in wilful and wanton conduct in failing to supervise class and that school district was vicariously liable and a claim for damages under Family Expense Act for parent's payment of student's medical expenses.

The Circuit Court granted school district and teacher's motion for summary judgment based on immunity under Local Governmental and Governmental Employees Tort Immunity Act. Student and parent appealed. The Appellate Court reversed and remanded. School district and teacher filed petition for leave to appeal, which was granted.

The Supreme Court held that:

- Failure of student and parent to plead in their complaint that school district had duty to inform teachers about second student's history of physical aggression and breached that duty precluded question of whether district acted willfully and wantonly in failing to disseminate history from being genuine issue of material fact;
- Failure of student and parent to refute teacher's sworn deposition testimony that teacher did not know about second student's history of physically violent behavior toward other students required trial court to accept deposition testimony as true; and
- Teacher's failure to be attentive to students when they were playing soccer did not rise to level of willful and wanton conduct, and thus teacher and school district were immune from liability.

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**EMINENT DOMAIN - OHIO**

## State ex rel. Boggs v. Cleveland

**Supreme Court of Ohio - November 13, 2025 - N.E.3d - 2025 WL 3166369 - 2025-Ohio-5094**

Homeowner brought mandamus action against city seeking to compel institution of appropriation proceedings for home located at edge of neighboring township near city's airport, alleging that low overhead flights and other airport operations interfered with occupants' use and enjoyment of home to such extent that a taking resulted.

The Court of Common Pleas granted city's motion for summary judgment. Homeowner appealed. The Court of Appeals affirmed. Homeowner sought further review.

The Supreme Court held that:

- Appropriation statute's section permitting municipality to appropriate property for establishing airports, landing fields, or other air navigation facilities did not apply, but
- Homeowner had standing to pursue action to obtain just compensation for government taking.

Appropriation statute's section permitting municipality to appropriate property for establishing airports, landing fields, or other air navigation facilities did not provide basis for homeowner's inverse-condemnation claim for home located at edge of neighboring township near city's airport, alleging that low overhead flights and other airport operations interfered with occupants' use and enjoyment of home to such extent that a taking resulted; section permitted appropriation of land or water only for purposes of establishing airport or landing field, but homeowner alleged a physical invasion of airspace by an already established airport.

Homeowner had standing to pursue mandamus action for inverse condemnation of home located at edge of neighboring township near city's airport, alleging that low overhead flights and other airport operations interfered with occupants' use and enjoyment of home to such extent that a taking resulted; while the home-rule provision of the Ohio Constitution was generally interpreted as limiting a municipality's authority to institute eminent-domain proceedings to appropriate property outside its boundaries, that did not mean that municipality was relieved of its duty to pay compensation under Constitution's eminent-domain provision if it did in fact take private property

outside its borders.

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**OPEN MEETINGS - TEXAS**

## Webb County v. Mares

**Court of Appeals of Texas, Houston (14th Dist.) - November 13, 2025 - S.W.3d - 2025 WL 3165692**

Director of county department brought action against county, alleging inadequate notice under Texas Open Meetings Act (TOMA) that her department might be restructured, her position changed, and her salary reduced at county commissioners' court meeting.

County subsequently terminated her employment, and director added claims for age discrimination, First Amendment retaliation under § 1983, retaliation under labor code, and alternative claim under Texas Whistleblower Act, and sought back pay and lost retirement benefits through declaratory judgment claim.

After county removed the action to federal court, the United States District Court for the Southern District of Texas granted the county's motion for summary judgment on all of director's claims except under TOMA and the Texas Whistleblower Act, remanding those claims back to state court. On remand, director dropped her Whistleblower Act claim and proceeded only on the TOMA claim. The 111th District Court, Webb County granted summary judgment to director on her TOMA claim, denied the county's cross-motion for summary judgment, granted director's motion for attorney's fees and costs, and entered a final judgment awarding director monetary damages for back pay and lost retirement benefits. County appealed.

The Court of Appeals held that:

- Mootness doctrine did not deprive trial court of subject-matter jurisdiction;
- Meeting notice was inadequate under TOMA to alert director that her department might be divided, her position changed, and her salary reduced;
- There was no evidence that county's action taken at meeting fell under its authority for budget preparation;
- County's statutory power to make changes to proposed budget did not insulate it from TOMA claim;
- TOMA did not waive county's immunity for director's declaratory judgment claim for back pay and lost retirement benefits;
- Monetary damages for TOMA violation were not available to director through injunctive or mandamus relief; and
- Trial court did not abuse its discretion in awarding attorney's fees and costs to director.

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**LIABILITY - GEORGIA**

## City of Blue Ridge v. BR 01035, LLC

**Court of Appeals of Georgia - October 30, 2025 - S.E.2d - 2025 WL 3033289**

Property owner sued city and city officials, alleging claims of trespass, continuing nuisance, inverse condemnation, and for attorney fees relating to ongoing water runoff from city property.

The trial court denied the city's motion to dismiss, but granted certificate of immediate review. City appealed.

The Court of Appeals held that owners' notice to city stating that runoff had resulted in continuing and ongoing damages to owners' property in the amount of $1.5 million "to date" did not sufficiently notify city of specific amount of damages that owners sought as an offer of compromise.

Property owners' ante litem notice to city stating that water runoff allowed by city had resulted in continuing and ongoing damages to owners' property in the amount of $1.5 million "to date" did not sufficiently notify city of specific amount of damages that owners sought as an offer of compromise, as would have been required to satisfy ante litem notice statute in action for trespass, continuing nuisance, and inverse condemnation; owners' notice advised that water runoff issue was continuous and ongoing, making it clear that damages incurred from such runoff were continuing, and notice did not state that owners sought only $1.5 million from city.

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**MUNICIPAL ORDINANCE - GEORGIA**

## Philip v. Pollock

**Court of Appeals of Georgia - October 30, 2025 - S.E.2d - 2025 WL 3033331**

Visitor brought personal injury action against dog's owner, owner's son, and dog's keeper, seeking to recover for injuries sustained when dog bit him as he stood outside owner's house waiting to take son on a planned outing.

The State Court denied visitor's motion for summary judgment, and granted defendants' motion. Visitor appealed.

The Court of Appeals held that:

- Fact issues existed as to whether dog's owner knew of dog's vicious propensity, and
- Fact issues existed as to whether county ordinance required that dog be restrained on leash at time of bite incident.

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**IMMUNITY - IOWA**

## In re Davenport Hotel Building Collapse

**Supreme Court of Iowa - November 7, 2025 - N.W.3d - 2025 WL 3116270**

Plaintiffs in multiple lawsuits brought negligence and nuisance claims against city and city employees, among others, relating to partial collapse of apartment building in which three people were killed and others suffered bodily or property injury.

The District Court consolidated lawsuits and denied city's and employees' pre-answer motion to dismiss on basis of qualified immunity. City and employees appealed.

The Supreme Court held that plaintiffs' claims were not based on "right, privilege, or immunity secured by law."

Plaintiffs' claims were not based on "right, privilege, or immunity secured by law," as would support application of qualified immunity under Iowa Municipal Tort Claims Act to city and city employees in

actions against city and employees, among others, relating to partial collapse of apartment building in which three people were killed and others suffered bodily or property injury; plaintiffs asserted claims for common law negligence and nuisance, rather than state constitutional tort claims or claims for violation of specific statutory right.

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**BOND VALIDATION - KANSAS**

## Vianello v. City of Prairie Village, Kansas

**United States District Court, D. Kansas - November 3, 2025 - Slip Copy - 2025 WL 3062462**

The City Council of the City of Prairie Village, Kansas approved – without public vote – Resolution 2025-04, which passed on June 16, 2025. The resolution authorized the issuance of general obligation bonds in the amount of up to $30 Million to pay for improvements to certain City buildings.

Plaintiff Marc Vianello filed an action in federal court challenging City's issuance of the bonds, arguing that the City was required to put Resolution 2025-04 to public vote due to City's obligations under the voter approval requirements and debt limitations of Kansas law (K.S.A. § 13-1024a).

Plaintiff argued that City illegally opted out of these requirements when it passed Charter Ordinance 28 titled, "A Charter Ordinance Exempting the City of Prairie Village, Kansas from the Provisions of K.S.A. § 13-1024a and Providing Substitute and Additional Provisions on the Same Subject Relating to the General Improvements and the Issuance of Bonds for the Purpose of Paying for Said Improvements; and Repealing Charter Ordinance 25."

Plaintiff asserted seven violations of his federal constitutional rights. Each of Plaintiff's federal claims concerned the same action taken by City: whether City legally exempted itself from K.S.A. § 13-1024a, and, in turn, acted legally when it then passed Resolution 2025-04.

Plaintiff did not allege a single instance of City taking an action that, irrespective of Kansas state law, violated a federal statute or constitutional right. Each request for declaratory judgment invoked a violation of Kansas state law with a purported federal cause of action stemming from that initial state law violation.

City moved to dismiss for lack of jurisdiction and for failure to state a claim.

The Court begins its analysis with City's Rule 12(b)(1) argument that Plaintiff lacked standing to bring any of his federal constitutional law claims. The Court agreed that Plaintiff lacked standing.

"In sum, the Court is unable to find standing for federal claims that effectively ask this Court to determine whether a municipality's actions violate state law. Federal court is not an appropriate forum for municipal taxpayers to challenge whether their municipality properly followed state law. To find otherwise would effectively allow for any municipal taxpayer to challenge any municipal spending action in federal court under the guise of constitutional injury. Such a finding would also run afoul of § 1983's prohibition of liability based solely on a violation of state law. Accordingly, the Court finds Plaintiff has failed to establish standing to bring his federal claims, and thus the Court lacks subject matter jurisdiction."

**EMINENT DOMAIN - SOUTH CAROLINA**

## Gulfstream Café, Inc. v. Georgetown County

**Supreme Court of South Carolina - October 29, 2025 - S.E.2d - 2025 WL 3019559**

Restaurant owner that held easement rights over shared parking lot in planned development brought action against county challenging validity of ordinance allowing construction of new restaurant in planned development, alleging due process and takings claims and a claim that ordinance was invalid due to county councilmember's improper involvement with original application for new restaurant.

After a bench trial, Circuit Court entered judgment for county, denied restaurant owner's claim for attorney fees, and granted county's motion for costs. Restaurant owner appealed.

The Supreme Court held that:

- Restaurant owner's easement rights were nonexclusive;
- Ordinance did not violate substantive due process;
- Ordinance was not a per se taking;
- Ordinance was not a regulatory taking;
- Ordinance was not a taking on theory of regulatory inverse condemnation;
- Ordinance was not invalid due to councilmember's improper involvement with original application; and
- Procedural due process was satisfied.

County ordinance allowing construction of new restaurant in same planned development as existing restaurant whose owner held nonexclusive easement rights over shared parking lot with 62 parking spaces was not a "regulatory taking"; county advanced legitimate land use concerns in approving new restaurant in a safer building that complied with modern day building and fire codes, new restaurant would serve the growing tourist population in area, restaurant owner was still able to operate its restaurant and enjoy its nonexclusive easement, restaurant owner did not lose access to any parking spaces, and there was no interference with restaurant owner's investment-backed expectations.

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**CONTRACTS - CALIFORNIA**

## County of Los Angeles v. Quinn Emanuel Urquhart & Sullivan, LLP

**Court of Appeal, Second District, California - October 23, 2025 - Cal.Rptr.3d - 2025 WL 2984701 - 2025 Daily Journal D.A.R. 10,029**

County, sheriff's department, and sheriff brought declaratory judgment action against law firm, seeking declaration that there was no valid agreement to arbitrate fee dispute under engagement agreement between sheriff and law firm.

The Superior Court issued preliminary injunction enjoining arbitration, granted summary judgment to county, and denied law firm's motion for leave to file a cross-complaint. Law firm then filed new complaint against county for breach of contract, quantum meruit, promissory estoppel, and open book account, arising out of same fee dispute.

The Superior Court, Los Angeles County, sustained county's demurrer and dismissed complaint. Law

firm appealed and cases were consolidated.

The Court of Appeal held that:

- Sheriff did not have authority to execute engagement agreement with law firm on behalf of county board of supervisors to retain firm and set attorney fees that county would pay firm;
- Firm's proposed cross-claims were compulsory and required to be alleged in a cross-complaint;
- Trial court did not err in denying firm's motion for leave to file cross-complaint under compulsory cross-complaint statute; and
- Firm's alleged notices of client's right to fee arbitration that it sent to county, sheriff, and sheriff's department did not satisfy presentation requirements of Government Claims Act.

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**EMINENT DOMAIN - CALIFORNIA**

## Pena v. City of Los Angeles

**United States Court of Appeals, Ninth Circuit - November 4, 2025 - F.4th - 2025 WL 3074588**

Shop owner filed suit against city under § 1983, seeking compensatory damages under Takings Clause for destruction of shop property and inventory when city police fired dozens of tear gas canisters through officers fired dozens of tear gas canisters through the walls, door, roof and windows of shop after armed fugitive that officers were pursuing barricaded himself within shop.

The United States District Court for the Central District of California denied shop owner's motion for partial summary judgment and shop owner appealed.

As matter of first impression, the Court of Appeals held that police officers' destruction of shop property and inventory in course of pursuit of armed fugitive came within "necessity exception" to compensable taking under Takings Clause.

Destruction of shop owner's property and inventory by city police officers during pursuit of armed fugitive who barricaded himself within shop, caused by officers' firing of dozens of tear gas canisters through shop's walls, door, roof, and windows, was necessary for protection of public, and thus, came within "necessity exception" to compensable taking under Takings Clause; shop was seized by hostile force outside city's control, namely, armed fugitive, and city was required to act, or otherwise risk abdication of its role as defender of public safety if it failed to do so.

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**DECLARATORY JUDGMENT - GEORGIA**

## Gwinnett County v. State

**Court of Appeals of Georgia - October 31, 2025 - S.E.2d - 2025 WL 3041523**

County brought action against state, seeking a declaratory judgment and injunctive relief based on allegations that senate bill providing for the creation of a city within the county was unconstitutional.

The trial court, after considering stipulation of facts filed by parties, granted state's motion to dismiss. County appealed.

The Court of Appeals held that:

- Consideration of matters outside pleadings in ruling on motion constituted treatment of the motion as one for summary judgment, and thus Court of Appeals would review grant of motion as grant of a motion for summary judgment;
- County's action satisfied Declaratory Judgment Act's actual-controversy requirement;
- County's action fell within constitutional waiver of sovereign immunity for superior-court actions seeking declaratory relief for alleged state acts outside the scope of lawful authority or in violation of state laws, state constitution, or federal constitution; and
- Court of Appeals would decline to exercise its discretion under right-for-any-reason rule to affirm based on state's argument that a county could never dispute the constitutionality of a state act.

County faced uncertainty as to its own future conduct arising from the various mandates imposed upon it by allegedly unconstitutional senate bill creating city within county, and thus the Declaratory Judgment Act's actual-controversy requirement was satisfied as to county's action against state seeking declaration that the bill was unconstitutional; bill required county to participate in two-year transition of services and government functions to city, to refrain from making any zoning modifications within city limits during transition period, and to renegotiate several of its intergovernmental agreements to account for city.

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**EMINENT DOMAIN - INDIANA**

## Hadley v. City of South Bend, Indiana

**United States Court of Appeals, Seventh Circuit - October 7, 2025 - 154 F.4th 549**

Homeowner brought § 1983 action in state court against city and county, alleging a taking without compensation stemming from city and county law enforcement officers' execution of search warrant at home, which allegedly caused significant damage to home. Case was removed.

The United States District Court for the Northern District of Indiana granted defendants' motion to dismiss for failure to state claim. Homeowner appealed.

The Court of Appeals held that alleged property damage to home was not a taking that would require just compensation.

Alleged property damage to home, including destruction of items from toxic gas fumes and damage to internal security cameras, resulting from city and county law enforcement officers' execution of valid search warrant, as part of officers' attempt to find a fugitive that officers incorrectly believed was inside the home, was not a "taking" of homeowner's property that would require just compensation, regardless of whether homeowner had any connection to the sought-after suspect; officers' actions were performed under police power rather than power of eminent domain.

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**CHARTER SCHOOLS - LOUISIANA**

## Daniels v. State

**Court of Appeal of Louisiana, Fourth Circuit - September 16, 2025 - So.3d - 2025 WL 2674504 - 2024-0833 (La.App. 4 Cir. 9/16/25)**

Former high school students and their parents brought putative class action against state and parish school boards, non-profit charter foundation that operated public high school, foundation's insurers, and organization that temporarily acted as foundation's CEO, alleging fraud, negligence, and gross

mismanagement of the educational process caused severe emotional distress and economic damages.

The District Court granted school boards' exceptions of no cause of action. On students and parents' appeal, the Fourth Circuit Court of Appeal reversed and remanded. Students and parents voluntarily dismissed school boards and organization from action and filed motion for class certification. On remand, the District Court certified class. Foundation and insurers appealed.

The Court of Appeal held that:

- Numerosity requirement for class certification was met;
- Commonality requirement for class certification was met;
- Typicality requirement for class certification was met;
- Proposed class representatives would adequately and fairly protect interests of all class members;
- Proposed class definition was sufficiently defined; and
- Students and parents identified common issue that predominated over any individual issues.

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**ZONING & PLANNING - CALIFORNIA**

## Save Our Access v. City of San Diego

**Court of Appeal, Fourth District, Division 1, California - October 17, 2025 - Cal.Rptr.3d - 2025 WL 2945714**

Nonprofit organization petitioned for writ of mandate against city, challenging city's approval of ballot measure to remove coastal zone building height limit from community planning area under California Environmental Quality Act (CEQA).

The Superior Court, San Diego County, denied organization's petition. Organization appealed.

The Court of Appeal held that:

- City failed to analyze potential impact of ballot measure on noise levels in area;
- City failed to analyze potential impact of ballot measure on air quality in area;
- City failed to analyze potential impact of ballot measure on biological resources in area;
- City failed to analyze potential impact of ballot measure on geological conditions in area; and
- Deferral of full environmental analysis of ballot measure until individual site-specific projects were proposed was not adequate.

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**ZONING & PLANNING - GEORGIA**

## Tussahaw Reserves, LLC v. Butts County

**Supreme Court of Georgia - October 21, 2025 - S.E.2d - 2025 WL 2955817**

Landowners, after their rezoning applications were denied, filed pleading in which they sought declaratory judgment and injunctive relief against county and a writ of certiorari against county board of commissioners and the individual commissioners, in their official capacities, as the respondents-in-certiorari, and county as defendant-in-certiorari.

The Superior Court granted county's motion to dismiss. Landowners filed an application for appeal in the Supreme Court, which transferred the application to the Court of Appeals. The Court of

Appeals affirmed. The Supreme Court granted landowners' petition for certiorari review.

The Supreme Court held that:

- Court would not consider landowners' constitutional argument regarding provision of state constitution waiving sovereign immunity for certain claims against the government by exclusively naming government as a defendant, and
- Landowners' failure to comply with provision did not deprive trial court of subject-matter jurisdiction to rule on pending motions to drop respondents-in-certiorari from case.

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**REFERENDUM - MONTANA**

## Cummings v. Kelly

**Supreme Court of Montana - April 2, 2025 - 421 Mont. 289 - 566 P.3d 523 - 2025 MT 68**

City residents brought action against city commissioners, city attorney, and city, seeking to annul or void election that authorized city to levy additional 15 mills to provide funds for operation, maintenance, and capital needs of city's public library, alleging mathematical error in ballot language and various election irregularities violated their rights of suffrage and due process.

City officials filed motion to dismiss for failure to state a claim, and after briefing was complete, residents moved for leave to amend petition. The District Court dismissed residents' petition and denied them leave to amend. Residents appealed.

The Supreme Court held that:

- Residents failed to state a claim for violation of right of suffrage;
- Residents suffered no due process violation from alleged errors and discrepancies;
- Residents were not entitled to hearing under statute related to challenges to local government bond elections;
- Residents were not entitled to relief under statutory provisions providing court with authority to void elections or enjoin acts prohibited or compelled by election laws; and
- Amendment of the petition would substantially prejudice defendants.

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**IMMUNITY - OHIO**

## Durig v. Youngstown

**Supreme Court of Ohio - October 16, 2025 - N.E.3d - 2025 WL 2933709 - 2025-Ohio-4719**

Executor of motorcyclist's estate brought action against city and city employees, asserting claims for survivorship, wrongful death, and negligent, reckless, and/or wanton hiring, retention, training, or supervision that alleged motorcyclist sustained serious injuries from tree falling on him on city street, which led to his death.

The Court of Common Pleas denied executor's motion for partial summary judgment and denied city leave to amend its answer to assert political subdivision immunity defense. City appealed. The Court of Appeals affirmed. City appealed.

The Supreme Court held that:

- City's assertion of defense of failure to state a claim upon which relief can be granted in its answer did not preserve the defense of political-subdivision immunity, and
- Trial court's denial of city's motion for leave to amend its answer to assert defense of political-subdivision immunity was not an abuse of discretion.

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**CIVIL RIGHTS - PENNSYLVANIA**

## Montanez v. Price

**United States Court of Appeals, Third Circuit - October 8, 2025 - 154 F.4th 127**

Inmate brought pro se action against Commonwealth, prison officials and medical personnel, private company contracted by Commonwealth to provide medical services in its prisons, and four employees of company, alleging under § 1983 that defendants were deliberately indifferent to his serious medical needs, and asserting claims under Title II of Americans with Disabilities Act (ADA) and Rehabilitation Act (RA).

The United States District Court for the Middle District of Pennsylvania granted defendants' motions to dismiss for failure to state claim and denied inmate's motion for leave to amend complaint. Inmate appealed.

The Court of Appeals held that:

- Inmate's spinal cord stenosis and edema, which caused paralysis requiring surgery, sudden incontinence, and herniated disc qualified as "serious medical needs," as supported § 1983 Eighth Amendment claim for inadequate medical care;
- Inmate stated § 1983 Eighth Amendment claims based on inadequate medical care and unsanitary conditions of confinement against physician who allegedly abandoned him in cell for three days while he was paralyzed and uncontrollably urinating on himself;
- Alleged actions of physician in denying inmate pain medication could not form basis of § 1983 Eighth Amendment claim based on inadequate medical care;
- Inmate failed to state § 1983 Eighth Amendment claim based on inadequate medical care against company;
- Neither officials nor employees were subject to suit in their personal capacities under Title II of ADA;
- Inmate stated claims for disability discrimination against Commonwealth and company under RA and Title II of ADA; and
- As matter of first impression, a state has obligation to ensure compliance with RA and Title II of ADA even when it contracts out operations of its programs, services, or activities to third parties.

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**IMMUNITY - VIRGINIA**

## Brooks-Buck v. Wahlstrom

**Supreme Court of Virginia - October 16, 2025 - S.E.2d - 2025 WL 2934033**

Former school administrator brought action against school board chairperson and school board member, asserting claims for defamation and defamation per se, based on allegedly defamatory statements in narrative attached to notice addressing disciplinary violations by another school board member.

Chairperson and board member filed demurrers, alleging that they were entitled to legislative, sovereign, and statutory immunity. The Suffolk Circuit Court overruled chairperson's and member's demurrers in part, finding no immunity. Chairperson and board member petitioned for interlocutory review, which was granted.

The Supreme Court held that:

- As matter of first impression, a local legislative body engages in a legislative act when it disciplines one of its members;
- School board chairperson and member were not entitled to common law legislative immunity;
- School board chairperson and member were not entitled to sovereign immunity; and
- School board chairperson and member were not entitled to statutory immunity.

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**OPEN MEETINGS - CALIFORNIA**

## Berkeley People's Alliance v. City of Berkeley

**Court of Appeal, First District, California. - September 30, 2025 - Cal.Rptr.3d - 2025 WL 2787867 - 2025 Daily Journal D.A.R. 9405**

Citizens' group brought action against city council members alleging violations of the Brown Act's open meeting requirements.

The Superior Court, Alameda County, sustained members' demurrer without leave to amend. Group appealed.

The Court of Appeal held that city council's conduct did not fall within exception to Brown Act allowing them to order meeting room cleared and continue in session.

City council's conduct in recessing meeting and reconvening it in another room without members of the public who were attending the meeting did not comply with exception to Brown Act's open meeting requirements allowing members of a legislative body to order meeting room "cleared and continue in session" in event of disorderly conduct of the general public.

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**ZONING & PLANNING - CALIFORNIA**

## New Commune DTLA LLC v. City of Redondo Beach

**Court of Appeal, Second District, California. - October 10, 2025 - Cal.Rptr.3d - 2025 WL 2886322**

Developers brought action against charter city, challenging city's housing element and seeking writ of mandate and declaratory relief.

The Superior Court, Los Angeles County denied developers' petition and complaint. Developers appealed.

The Court of Appeal held that:

- City's residential overlay zone permitting construction of housing on sites otherwise zoned for commercial and industrial use was subject to mandatory minimum density requirements under Housing Element Law;

- Overlay zone failed to comply with statutory requirements;
- Presumption of validity for housing element was rebutted by failure of overlay zone;
- Substantial evidence supported city's identification of parking lot as site that could accommodate 486 lower income housing units; but
- Substantial evidence did not support city's determination that existing use of other parking lot would be discontinued or not impede development of 175 housing units.

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**STATUTE OF LIMITATIONS - GEORGIA**

## Villeda v. City of Morven

**Court of Appeals of Georgia - October 14, 2025 - S.E.2d - 2025 WL 2910472**

Personal-injury plaintiff brought action against city, alleging city was liable for his injuries.

The trial court granted city's motion to dismiss, holding that plaintiff did not comply with statutory requirements for service of an ante litem notice against city because the notice was addressed to city's former mayor rather than its current mayor. Plaintiff appealed.

The Court of Appeals held that service of ante litem notice to city's former mayor, instead of current mayor, was statutorily sufficient.

Personal-injury plaintiff's service of ante litem notice to city's former mayor, instead of current mayor, was sufficient under statute governing claims for money damages against municipal corporations on account of injuries to person or property; even if notice was addressed to post office box rather than street address, included name of former mayor, and referred to title of "mayor" rather than office of "mayor" on the envelope, and was signed for by a person other than the mayor, notice was addressed to formal office of mayor and delivered to the office where the mayor worked.

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**UTILITY FEES - GEORGIA**

## Homewood Associates, Inc. v. Unified Government of Athens-Clarke County

**Supreme Court of Georgia - October 15, 2025 - S.E.2d - 2025 WL 2919059**

County government brought action against property owner in the Magistrate Court, Athens-Clarke County, to recover delinquent stormwater utility charges and property owner counterclaimed for declaratory judgment and injunctive relief.

After transfer to Superior Court, property owner and other owners of developed property in the county filed separate complaint for damages and declaratory and injunctive relief against county government alleging that the stormwater utility charge violated their rights under the taxation uniformity provision of the state constitution and the Takings Clause of the Fifth Amendment.

On the parties' joint motion, the actions were consolidated. The Superior Court granted county government's motion for summary judgment and denied property owners' motion for partial summary judgment. Property owners appealed.

The Supreme Court held that:

- Supreme Court would decline to overrule its prior holding that county's stormwater utility charge was a fee rather than a tax, and

- Stormwater utility charge did not violate property owners' rights under the Fifth Amendment's Takings Clause.

Supreme Court would decline to overrule its prior holding that county's stormwater utility charge was a fee rather than a tax subject to state constitution's taxation uniformity provision, even if some members of Court had doubt as to the correctness of its analysis; prior holding, which involved the same stormwater utility charge and some of the same parties, implicated strong reliance interests, and holding was not so clearly wrong that considerations of correctness outweighed other stare decisis considerations.

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**ANNEXATION - GEORGIA**

## Pilato v. State

**Supreme Court of Georgia - October 15, 2025 - S.E.2d - 2025 WL 2918741**

City and residents whose property was annexed by city brought action against State, challenging law providing that when corporate limits of city are extended by annexation into the boundaries of county school district, the boundaries of city school district shall not be extended to be coextensive therewith, as violating state constitution's Single Subject Rule.

The Superior Court granted motion to intervene filed by county school district, denied motions to dismiss filed by district and State, granted plaintiffs' motion for declaratory judgment and permanent injunction, and denied plaintiffs' request for default judgment against State. State and district appealed and plaintiffs cross-appealed.

The Supreme Court held that plaintiffs failed to establish an actual controversy sufficient to reach merits of their claims for declaratory judgment.

City and residents whose property was annexed by city failed to establish an actual controversy sufficient to reach merits of their declaratory judgment claims, in action against State, challenging law providing that boundaries of city school district would not be extended to be coextensive with extended city limits, as violating state constitution's Single Subject Rule; plaintiffs asserted that decision of city school district declining to enroll residents' children, not any enforcement action of the State, resulted in the alleged infringement of rights about which they complained, and thus a decision as to whether challenged law was constitutional would not resolve the disputed rights they asserted as the basis for their action.

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**ELECTIONS - PENNSYLVANIA**

## In re Appointment to Fill Vacancy in Office of County Commissioner

**Supreme Court of Pennsylvania - October 20, 2025 - A.3d - 2025 WL 2952835**

County commissioner filed petition challenging procedures set forth in county home rule charter for filling vacancy on county board of commissioners.

A three-judge panel of the Court of Common Pleas denied petition, and commissioner appealed. The Commonwealth Court affirmed. Commissioner's petition for review was granted in part.

The Supreme Court held that:

- Procedure set forth in county home rule charter for filling vacancy on county board of commissioners did not conflict with Supreme Court rule, and
- Charter did not impermissibly intrude on Supreme Court's powers to regulate procedure and supervise judiciary.

Procedure set forth in county home rule charter for filling vacancy on county board of commissioners did not conflict with Supreme Court rule setting forth procedures for court of common pleas to follow when filling vacancy in elected office pursuant to statutory duty, and thus rule—as law of state-wide application—did not override charter, even though charter required court to choose from three candidates identified by executive committee of appropriate political party, and rule required court to receive applications from "any interested candidates"; both required appointment of member of same political party as vacating commissioner, and rule did not purport to be exclusive, but instead reflected desire to be sufficiently flexible to accommodate many different triggering statutes.

Procedure set forth in county home rule charter for filling vacancy on county board of commissioners did not impermissibly intrude on Supreme Court's powers to regulate procedure and supervise judiciary, even if charter conflicted with Supreme Court rule setting forth procedures for court of common pleas to follow when filling vacancy in elected office pursuant to statutory duty; state constitution provided that procedure for filling vacancies in elected county offices was, at its core, legislative, not judicial, function.

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**BOND VALIDATION - CALIFORNIA**

## Alliance San Diego v. California Taxpayers Action Network

**Court of Appeal, Fourth District, Division 1, California - October 3, 2025 - Cal.Rptr.3d - 2025 WL 2813618**

Taxpayer advocacy organizations filed petition for writ of mandate and a reverse validation complaint, seeking determination that city's resolution declaring that a voters' ballot measure for hotel tax increase to fund expansion of city's convention center, address homelessness, and repair streets had passed was invalid.

City then filed a validation action seeking determinations that its resolution and related bond resolutions were valid. After consolidation, the Superior Court, San Diego County, granted organizations' motion for judgment on the pleadings. City appealed. The Court of Appeal reversed and remanded. After a bench trial, the Superior Court entered judgment for city. Organizations appealed.

The Court of Appeal held that:

- Trial court had subject matter jurisdiction over city's validation action;
- Validation action was ripe for adjudication;
- Special fund doctrine applied to exempt bond resolutions from two-thirds vote requirement for general obligation bonds;
- Measure was a citizens' initiative that required only a simple majority vote to pass;
- City did not have substantial control over measure that would preclude measure from being a citizens' initiative;
- Statements in newspaper articles were not admissible under hearsay exception for admissions by a party-opponent; and

- Any error in exclusion of hearsay statements in newspaper articles was harmless.

Trial court had subject matter jurisdiction over city's validation action seeking determinations of the validity of its resolution declaring that a voters' measure imposing hotel tax increase to fund expansion of city's convention center, address homelessness, and repair streets had passed and the validity of related bond resolutions, even though there were no specific bonds ready to be issued pursuant to measure or additional resolutions authorizing issuance of bonds based on provisions of measure; resolutions expressly authorized and approved preliminary steps necessary for, and therefore were inextricably bound up with, the ultimate issuance of specific bonds.

City's validation action seeking determinations of the validity of its resolution declaring that a voters' ballot measure imposing hotel tax increase to fund expansion of city's convention center, address homelessness, and repair streets had passed and the validity of related bond resolutions presented a dispute that was sufficiently concrete to be ripe for adjudication, even though city had not authorized or approved issuance of any existing bonds, where city passed other resolutions expressly authorizing and approving issuance and sale of bonds pursuant to provisions of measure.

City would suffer a hardship from the withholding of jurisdiction, and thus the second prong of ripeness doctrine was satisfied for city's validation action seeking determinations of the validity of its resolution declaring that a voters' ballot measure imposing hotel tax increase to fund expansion of city's convention center, address homelessness, and repair streets had passed and the validity of related bond resolutions; measure's programs and projects depended on bond revenues to be repaid by the special taxes imposed by measure, and if trial court did not adjudicate validation action, city might not have been able to proceed toward issuance of bonds for those programs and projects or their issuance at reasonable interest rates due to possibility of future litigation causing a chilling effect on third-party lenders.

Special fund doctrine applied to exempt city's bond resolutions related to voters' ballot measure for hotel tax increase to fund expansion of city's convention center, address homelessness, and repair streets from requirement under State Constitution and city charter of assent of two-thirds of voters for general obligation bonds; bonds related to measure would not be "general obligation bonds," since resolutions did not obligate city to make payments on bonds out of its general funds or any funds other than the special tax funds established by measure.

Special fund doctrine, as an exception to state constitutional provision requiring assent of two-thirds of voters for a municipality to incur any indebtedness or liability exceeding in any year the income and revenue provided for such year, is not limited to obligations only of a specific agency that would be benefited, as opposed to a special fund overseen by a local agency.

Mere fact of a city government official's involvement in a voter initiative imposing a special tax does not necessarily convert the voter initiative into a local government initiative that would need two-thirds supermajority vote to pass rather than a simple majority vote.

Hotel tax increase measure passed by voters to fund expansion of city's convention center, address homelessness, and repair streets was not a "city-sponsored ballot measure" but rather was a bona fide "citizens' initiative" that required only a simple majority vote to pass and not a two-thirds supermajority vote, where individual proponents of measure published a notice of intent to circulate an initiative petition, proponents filed notice with city clerk, and proponents subsequently submitted petitions signed by requisite number of city voters, and measure was thereafter placed on ballot for election and received 65.24 percent of the votes.

A local government entity or official's support of a citizens' initiative to adopt a special tax does not

convert the citizens' initiative into a government-sponsored measure that would need two-thirds supermajority vote to pass rather than a simple majority vote.

City and nonprofit convention center corporation controlled by city did not have substantial control over a hotel tax increase measure passed by voters to fund expansion of convention center, address homelessness, and repair streets, and thus the measure qualified as a bona fide "citizens' initiative" that required only a simple majority vote to pass and not a two-thirds supermajority vote, even though one proponent of measure was both vice president of city's regional chamber of commerce that was primary sponsor of measure and a volunteer member of corporation's board, and another board member voted in favor of board resolution supporting measure; vice president did not openly cite her unpaid board membership as a proponent of measure, the voting board member was not involved in proposing measure, and corporation's only action was a resolution passed by board supporting measure.

Statements in newspaper articles purportedly showing involvement of board members of nonprofit convention center corporation controlled by city in sponsoring and/or supporting voters' ballot measure imposing hotel tax increase to fund expansion of city's convention center were not admissible under hearsay exception for admissions by a party-opponent, in city's validation action seeking determinations of the validity of its resolution declaring that the measure had passed and the validity of related bond resolutions; neither member was a named party to the action, and their statements in articles were not authorized by a party to the action.

Statements that board members of nonprofit convention center corporation controlled by city made in newspaper articles were not admissible under hearsay exception for statements of a declarant's then existing mental or physical state, in city's validation action seeking determinations of the validity of its resolution declaring that a voters' ballot measure imposing hotel tax increase to fund expansion of city's convention center had passed and the validity of related bond resolutions, where proponent of statements did not show that members were unavailable to testify as witnesses or that the hearsay evidence was offered to prove or explain their conduct.

Statements that board members of nonprofit convention center corporation controlled by city made in newspaper articles were not admissible under hearsay exception for statements of a declarant's previously existing mental or physical state, in city's validation action seeking determinations of the validity of its resolution declaring that a voters' ballot measure imposing hotel tax increase to fund expansion of city's convention center had passed and the validity of related bond resolutions, where proponent of statements did not show that members were unavailable to testify as witnesses or that the hearsay evidence was offered to prove or explain their conduct.

Any error in trial court's exclusion of hearsay statements that board members of nonprofit convention center corporation controlled by city made in newspaper articles was harmless, in city's validation action seeking determinations of the validity of its resolution declaring that a voters' ballot measure imposing hotel tax increase to fund expansion of city's convention center had passed and the validity of related bond resolutions; there was no showing that it was reasonably probable that taxpayer advocacy organizations, as proponents of statements, would have received a more favorable result at trial had the error not occurred.

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**ZONING & PLANNING - CALIFORNIA**

## New Commune DTLA LLC v. City of Redondo Beach

**Court of Appeal, Second District, California - October 10, 2025 - Cal.Rptr.3d - 2025 WL**

**2886322**

Developers brought action against charter city, challenging city's housing element and seeking writ of mandate and declaratory relief.

The Superior Court denied developers' petition and complaint. Developers appealed.

The Court of Appeal held that:

- City's residential overlay zone permitting construction of housing on sites otherwise zoned for commercial and industrial use was subject to mandatory minimum density requirements under Housing Element Law;
- Overlay zone failed to comply with statutory requirements;
- Presumption of validity for housing element was rebutted by failure of overlay zone;
- Substantial evidence supported city's identification of parking lot as site that could accommodate 486 lower income housing units; but
- Substantial evidence did not support city's determination that existing use of other parking lot would be discontinued or not impede development of 175 housing units.

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**ZONING & PLANNING - NEVADA**

## Reno Real Estate Development, LLC v. Scenic Nevada, Inc.

**Supreme Court of Nevada - October 16, 2025 - P.3d - 2025 WL 2936256 - 141 Nev. Adv. Op. 48**

Scenic preservation organization petitioned for writ of mandamus and/or prohibition, challenging development agreement between city and developers for mixed-use entertainment area based on argument that area identification signs contemplated by agreement constituted billboards that violated city codes.

The District Court issued writ preventing city from issuing building permits for, and developers from erecting, two of three challenged signs. Parties filed cross-appeals.

The Supreme Court held that:

- Under city land use code, area identification signs existed independently from on-premises or off-premises advertising displays and thus did not need to meet the commercial interest requirement for advertising displays;
- City's classification of signs as "area identification signs" rather than advertising displays was not a manifest abuse of discretion;
- Organization did not have a beneficial interest in obtaining writ relief and thus did not have standing;
- Organization did not have standing on behalf of the public to challenge city's development agreement; and
- Organization's settlement agreement with city regarding billboards did not confer standing on organization to challenge development agreement.

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**OPEN MEETINGS - COLORADO**

## Sentinel Colorado v. Rodriguez

**Supreme Court of Colorado - October 7, 2025 - P.3d - 2025 WL 2835119**

Public-media corporation filed complaint against city records custodian seeking release of recording of city council executive session about censure charges against council member, alleging council committed Colorado Open Meetings Law (COML) violations at that executive session.

The District Court, upon reconsideration from initial order to release session recording, determined that COML violations were cured by a subsequent public city council meeting and ordered custodian not to release recording. Corporation appealed. The Court of Appeals reversed, but denied corporation's request for prevailing party attorney fees. Parties cross-petitioned for certiorari review, which petitions were granted.

The Supreme Court held that:

- As a matter of first impression, plain meaning of COML provision, along with legislative history, supported conclusion that corporations, including media organizations, are entitled to reasonable attorney fees when they are prevailing parties;
- City council did not waive attorney-client privilege by publishing special counsel's letter containing factual assertions; and
- Corporation was entitled to seek attorney fees related to litigation in Supreme Court and the court of appeals.

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**IMMUNITY - NEW YORK**

## Brown v. City of New York

**Supreme Court, Appellate Division, Second Department, New York - October 8, 2025 - N.Y.S.3d - 2025 WL 2845341 - 2025 N.Y. Slip Op. 05493**

Student, by his mother, brought action against city and other defendants to recover damages for injuries that student allegedly sustained when he attempted to do a cartwheel during gym class at school.

The Supreme Court, Kings County, granted defendants' motion for summary judgment dismissing the complaint. Student appealed.

The Supreme Court, Appellate Division, held that defendants were not liable for student's injuries.

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**IMMUNITY - OHIO**

## Durig v. Youngstown

**Supreme Court of Ohio - October 16, 2025 - N.E.3d - 2025 WL 2933709 - 2023-Ohio-4719**

Executor of motorcyclist's estate brought action against city and city employees, asserting claims for survivorship, wrongful death, and negligent, reckless, and/or wanton hiring, retention, training, or supervision that alleged motorcyclist sustained serious injuries from tree falling on him on city street, which led to his death.

The Court of Common Pleas denied executor's motion for partial summary judgment and denied city

leave to amend its answer to assert political subdivision immunity defense. City appealed. The Court of Appeals affirmed. City appealed.

The Supreme Court held that:

- City's assertion of defense of failure to state a claim upon which relief can be granted in its answer did not preserve the defense of political-subdivision immunity, and
- Trial court's denial of city's motion for leave to amend its answer to assert defense of political-subdivision immunity was not an abuse of discretion.

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**STUDENT HOUSING - ALABAMA**

## Campus Crest at Tuscaloosa LLC v. City of Tuscaloosa

**Supreme Court of Alabama - October 3, 2025 - So.3d - 2025 WL 2810889**

Taxpayers, who alleged that they were out-of-state owners, operators, or lessees of multifamily housing developments that city had designated as student-oriented housing developments (SOHDs), brought action against city, seeking declaratory judgment that city ordinance imposing enhanced business-license fees on SOHDs with more than 200 bedrooms was invalid and further seeking a refund of taxes collected under ordinance.

The Circuit Court entered judgment dismissing action for failure to state a claim. Taxpayers appealed.

The Supreme Court held that:

- Complaint contained sufficient factual averments that, if developed, could show that city had no rational basis for ordinance, and thus taxpayers stated a claim for a judgment declaring that ordinance violated equal protection;
- Taxpayers had standing to seek a judgment declaring that ordinance was void for vagueness on due-process grounds;
- Taxpayers stated claim that ordinance was void for vagueness on due-process grounds;
- Taxpayers stated claim that violated dormant Commerce Clause; but
- Ordinance was not effectively a zoning ordinance, and thus city was not required to adhere strictly to statutory notice and hearing requirements for zoning ordinances before adopting ordinance.

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**REFERENDUM(B) - CALIFORNIA**

## Move Eden Housing v. City of Livermore

**Court of Appeal, First District, California. - October 7, 2025 - Cal.Rptr.3d - 2025 WL 2837353**

Advocacy organization filed petition for writ of mandate seeking to compel city and city clerk to process referendum petition for purpose of proposed referendum on city's resolution authorizing development project that included construction of public park.

The Superior Court, Alameda County, denied petition. Organization appealed. The Court of Appeal reversed and directed trial court to issue peremptory writ of mandate. After trial court issued writ of mandate on remand, city repealed resolution and issued new resolution for same development, but without park project. Organization moved for order compelling compliance with writ of mandate.

The Superior Court granted motion. City appealed.

The Court of Appeal held that:

- City "entirely repealed" resolution that adopted development agreement, within meaning of referendum statute;
- City's adoption of second resolution approving development agreement without park provision did not violate stay provision of referendum statute; and
- As a matter of apparent first impression, in determining whether a subsequent enactment is essentially the same as the original enactment within meaning of stay provision of referendum statute, the relevant comparison is with the legislative act or acts in the original enactment that made the enactment subject to the referendum power.

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**MUNICIPAL GOVERNANCE - CALIFORNIA**

## People ex rel. Alameda County Taxpayers' Association, Inc. v. Brown

**Court of Appeal, First District, Division 4, California - September 30, 2025 - Cal.Rptr.3d - 2025 WL 2787891**

Taxpayer advocacy organization and residents brought quo warranto action against county supervisor appointed by county board of supervisors to fill vacancy, seeking judgment removing supervisor from office for allegedly failing to satisfy prior and continuous residency requirements.

The Superior Court ruled that prior residency requirement did not apply to vacancy appointments, and the Superior Court found continuous residency issue moot after supervisor's term ended and entered judgment in favor of supervisor. Organization and residents appealed and supervisor filed motion to dismiss appeal as moot.

The Court of Appeal held that:

- Court of Appeal would not take judicial notice of newspaper editorial, newsletter, or statute;
- Public interest exception to mootness doctrine applied;
- County administrative code's one-year prior residency requirement did not apply to a supervisor appointed to fill a vacancy;
- Remand was warranted for trial court to address whether supervisor satisfied requirement under county charter and county administrative code to reside in district during his term; and
- Trial court was not required to consider substance of motion by organization and residents for judgment on the pleadings.

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**EMINENT DOMAIN - GEORGIA**

## Department of Transportation v. 5.85 Acres of Land and Certain Easements Rights

**Court of Appeals of Georgia - October 2, 2025 - S.E.2d - 2025 WL 2801669**

Property owner appealed condemnation of 5.85 acres of property by Department of Transportation (DOT), which planned to use the condemned property to construct a bypass around the city and offered owner $37,200 as just and adequate compensation.

Following a jury verdict in owner's favor, awarding damages in the amount of $1,500,000, the Superior Court denied DOT's motion for new trial. DOT appealed.

The Court of Appeals held that jury's award to owner of $1,500,000 was so excessive as to justify inference of gross mistake or undue bias.

Jury's award to property owner of $1,500,000 was so excessive as to justify inference of gross mistake or undue bias, in proceeding, pursuant to takings clauses of federal and state constitutions, regarding condemnation of 5.85 acres of property by Department of Transportation (DOT) to construct bypass around city; considering possibility that jury applied cost of $124,565 per acre, the highest comparable sale amount used by an expert, 5.85 acres taken would only equal $728,705.25, expert who testified about setback did not assign a value to it, nor was she certain about size of setback, highest estimated value as to consequential damages was $445,600, leaving $325,694.75 unaccounted for, and any upward deviation for consequential damages in that amount was unsupported by evidence.

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**MUNICIPAL ORDINANCE - GEORGIA**

## Bailey v. McIntosh County

**Supreme Court of Georgia - September 30, 2025 - S.E.2d - 2025 WL 2790676**

County brought action against probate court judge for declaratory judgment and writ of prohibition to stop referendum on repeal of zoning which purportedly increased allowable maximum dwelling size in historic district on Sapelo Island.

The Superior Court concluded that county's exercise of its zoning powers was not subject to referendum process, granted county's petition, and issued writ of prohibition against probate judge, but also enjoined enforcement of ordinance pending appeal. County residents and probate judge appealed, and county appealed injunction.

The Supreme Court held that:

- Absence of ordinance in appellate record did not preclude Supreme Court from considering legal question of whether ordinance was subject to referendum procedures in Home Rule Provision of state constitution;
- Ordinance was subject to referendum under Home Rule Provision;
- Probate judge had authority under Home Rule Provision to consider referendum petition and set special election for referendum; and
- Supreme Court could not take judicial notice of ordinance and its predecessor not in appellate record and thus could not consider county's arguments for reversal of injunction.

Home Rule Provision, not the Zoning Provision, of state constitution provided express grant of legislative power enabling county to exercise its zoning power by ordinance, and, thus, county ordinance which purportedly increased allowable maximum dwelling size in historic district on Sapelo Island was subject to referendum under Home Rule Provision; Home Rule Provision did not prohibit county from exercising zoning power, and treating zoning ordinance as subject to Home Rule power did not diminish extent of zoning power granted to counties under the Zoning Provision or render that provision mere surplusage since power granted by Home Rule Provision encompassed more than enacting zoning ordinances, and power granted by Zoning Provision was broader than merely power to enact zoning ordinances.

**EMINENT DOMAIN - CALIFORNIA**

## Benedetti v. County of Marin

**Court of Appeal, First District, Division 4, California - August 29, 2025 - Cal.Rptr.3d - 113 Cal.App.5th 1185 - 2025 WL 2490638 - 2025 Daily Journal D.A.R. 8513**

Landowners filed petition for writ of mandate and complaint for declaratory relief against county, alleging that amended coastal program requirement that condition for constructing residential units in agriculturally-zoned lands in coastal zone, requiring landowners to record restrictive covenant in county's favor that would ensure owners of units would be engaged in agriculture, was facial unconstitutional condition and violated their due process rights.

The Superior Court, Marin County, denied petition and complaint. Landowners appealed.

The Court of Appeal held that:

- Challenge could proceed as facial Nollan/Dolan unconstitutional conditions claim;
- Restrictive covenant condition had the necessary nexus to government's land use interest;
- Restrictive covenant condition was proportional to each landowners' impact on land-use interest; and
- Landowners' due process rights were not violated.

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**WATER AND SEWER FEES - DISTRICT OF COLUMBIA**

## Capitol Park IV Condominium Association, Inc. v. District of Columbia Water and Sewer Authority

**District of Columbia Court of Appeals - September 18, 2025 - A.3d - 2025 WL 2670811**

Condominium association, which operated condominium complex that included over 200 individually owned townhomes that were not individually metered for water services, brought action against water and sewer authority, challenging method for calculating charges for stormwater runoff based on impervious surface area of property and seeking declaratory and injunctive relief.

On cross motions for summary judgment, the Superior Court granted authority's motion for summary judgment. Association appealed.

The Court of Appeals held that:

- Authority failed to provide sufficient explanation showing rational connection between how property was metered for water and that property's assessed charge for its impervious surface area pursuant to regulation, and thus, remand was required, but
- Entry of summary judgment in favor of condominium association was not warranted.

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**MUNICIPAL ORDINANCE - GEORGIA**

## WBY, Inc. v. City of Chamblee, Georgia

**United States Court of Appeals, Eleventh Circuit - September 23, 2025 - F.4th - 2025 WL 2699142**

Owner of former strip club that served alcohol brought action for declaratory and injunctive relief as well as for damages against city, alleging city ordinances relating to the sale of alcohol at adult establishments with nude dancing violated owner's rights under the First Amendment and the Contract Clauses and the Equal Protection Clauses of the United States and Georgia Constitutions.

The United States District Court for the Northern District of Georgia granted in part city's motion to dismiss for lack of standing and granted summary judgment to city on owner's remaining claims. Owner appealed.

The Court of Appeals held that:

- Owner did not have Article III standing to seek equitable relief;
- Owner suffered past injury that was traceable to the ordinances in form of loss of the economic use of its property, as required to have Article III standing to bring action for damages;
- Owner did not have redressable claim, for Article III standing purposes, with respect to ordinance that banned sale of alcohol at establishments offering nude dancing;
- Owner had redressable claim, for Article III standing purposes, with respect to ordinances that required adult establishments at midnight and prohibited fully nude dancing;
- Strict, rather than intermediate scrutiny applied to owner's First Amendment free speech claims;
- Ordinances that required adult establishments close for business at midnight and that prohibited fully nude dancing did not violate club owner's First Amendment free speech rights;
- There was no valid contract between the club and city upon which to base Contracts Clause claims; and
- City did not violate club owner's equal protection rights.

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**BONDS - OHIO**

## State Ex Rel. Springfield City School District Board of Education v. Hamilton

**Supreme Court of Ohio - September 25, 2025 - N.E.3d - 2025 WL 2724420 - 2025-Ohi--4427**

School district brought mandamus action seeking writ compelling county auditor to place voter-approved bond levy on tax list and duplicate for collection through 2031 to pay debt charges on bonds issued pursuant to the levy.

The Ohio Supreme Court denied auditor's motion for judgment on the pleadings, granted an alternative writ, and set schedule for presentation of evidence and filing of briefs on district's requested writ.

The Supreme Court held that:

- Auditor had no discretion to refuse to place voter-approved property tax levy on tax list and duplicate for collection while voter-approved bonds remained outstanding, but
- District had to pass legislation authorizing collection of taxes "in following year" to trigger auditor's duty for future years.

School district lacked an adequate remedy in ordinary course of law for county auditor's refusal to place voter-approved property tax levy on tax list and duplicate for collection while voter-approved bonds issued by district board of education remained outstanding, as element for mandamus relief, even though it could pursue declaratory-judgment action in common pleas court, where such judgment would not provide full relief unless coupled with mandatory injunction compelling auditor

to place bond levy on tax list and duplicate.

Fact that it was county treasurer, not the auditor, who had duty to collect property taxes did not prevent auditor from providing relief sought by school district, as element for mandamus relief, even though district asked for mandamus compelling auditor "to collect the bond levy" approved by voters, where district sought mandamus relief after auditor stated she would not place levy on tax list and duplicate for collection, and under statutory process for levying and collecting general obligation bonds, auditor's placement of bond levy on tax list and duplicate for collection was prerequisite to treasurer's duty to collect the property tax.

County auditor had no discretion under statutory process for levying and collecting general obligation bonds to refuse to place voter-approved property tax levy on tax list and duplicate for collection while voter-approved bonds issued by local school district board of education remained outstanding, based on her determination that levy duration had ended; auditor's duty to place bond levy on tax list and duplicate was ministerial.

County auditor did not have legal duty to include bond levy for voter-approved bond for improving school facilities on tax list and duplicate for collection until school district had passed legislation authorizing collection of taxes "in the following year," and thus, school district was not entitled to mandamus relief compelling auditor to place voter-approved property tax levy on tax list and duplicate for collection with respect to voter-approved multi-series bonds issued by local school district board of education to be repaid over maximum of 12 years for future years beyond levy's collection in 2026; governing statute triggered auditor's duty each year only after the taxing authority passed and filed the necessary legislation by November 30 for the following collection year.

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**EMINENT DOMAIN - TEXAS**

## Mesquite Asset Recovery Group, L.L.C. v. City of Mesquite, Texas

**United States Court of Appeals, Fifth Circuit - September 23, 2025 - F.4th - 2025 WL 2700591**

Development groups brought action against city in state court, asserting takings claim under federal and Texas constitutions and seeking declaratory relief and attorneys' fees for breach of contract and other state-law violations, after city allegedly refused to extend time for performance under contract and terminated it.

Following removal, city filed motion to dismiss. United States District Court for the Northern District of Texas granted the motion. Groups appealed.

The Court of Appeals held that:

- Groups failed to state a takings claim, and
- Federal Declaratory Judgment Act claim was subject to dismissal, following remand of claim for breach of contract under Texas law to state court.

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**PUBLIC EMPLOYMENT - ALABAMA**

## Personnel Board of Jefferson County v. City of Trussville

**Supreme Court of Alabama - September 12, 2025 - So.3d - 2025 WL 2627723**

County personnel board brought action against city, seeking declaration that act allowing certain municipalities to remove themselves from jurisdiction of their county's personnel board violated Alabama Constitution's provisions on special and local laws and that city's subsequent departure from board's jurisdiction pursuant to that act was void.

In response to motion by city, the Circuit Court dismissed action with prejudice. Board appealed.

The Supreme Court held that:

- Board was within group affected by act, as required for board to have standing to challenge act's constitutionality pursuant to test for standing as articulated in *Express Enterprise, Inc. v. Waites*, 979 So.2d 754;
- Board's loss of jurisdiction constituted injury-in-fact under the traditional and default test for standing in public-law actions;
- Board's imminent loss of $300,000 if city were allowed to depart from board's jurisdiction under act constituted injury-in-fact under the traditional and default test for standing in public-law actions;
- Board's injury-in-fact had direct causal link to act's passage;
- Board's injury-in-fact was redressable by a favorable court decision; and
- If it turned out to be true that city was the only municipality in the State that met act's requirements, then Legislature, before act's enactment, had to comply with Alabama Constitution's notice requirements for special and local laws.

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**IMMUNITY - ALABAMA**

## Ex Parte Riche

**Supreme Court of Alabama - September 19, 2025 - So.3d - 2025 WL 2679931**

Football game spectator who claimed that she had been injured in a trip and fall in walkway in stadium owned by city board of education brought action against stadium manager, in his official and individual capacities, and asserted claims of negligence, wantonness, premises liability, negligent and/or wanton undertaking, and "combining and concurring negligence."

The Circuit Court denied manager's motion for summary judgment. Manager petitioned for a writ of mandamus.

The Supreme Court held that:

- Manager, who was an employee of the board, had sovereign immunity from the claims insofar as they were asserted against him in his official capacity;
- Pursuant to statute providing for State-agent immunity to those exercising judgment in the discharge of duties in educating students, manager had State-agent immunity from the claims insofar as they were asserted against him in his individual capacity; and
- Manager's alleged failure to follow up regarding the sand that he had put in crack in stadium walkway and the orange cone that he had placed nearby did not defeat finding that he had State-agent immunity.

**NEGLIGENCE - INDIANA**

## Indianapolis Public Transportation Corporation v. Bush

**Supreme Court of Indiana - September 15, 2025 - N.E.3d - 2025 WL 2640911**

Pedestrian's mother, on behalf of his estate, brought wrongful death action against city public transportation corporation, alleging that when pedestrian was trying to board bus, he fell into the road as the bus left a curbside stop, and was run over and died of his injuries.

Following jury trial, the Superior Court entered judgment for estate, and denied corporation's motion to correct error. Corporation appealed. The Court of Appeals reversed and remanded. Estate petitioned for transfer, which was granted.

The Supreme Court held that:

- As matter of first impression, appropriate standard of review on denial of motion to correct error, when the motion asserts a verdict is clearly erroneous as contrary to the evidence, is de novo;
- Video footage created issue for jury of whether pedestrian was contributorily negligent;
- Evidence of pedestrian's blood alcohol content (BAC) created issue for jury as to whether pedestrian's intoxication was a proximate cause of his injuries;
- Issue of whether pedestrian violated statute prohibiting pedestrians from suddenly leaving a curb and walking into path of vehicle that is so close as to constitute an immediate hazard was for the jury; and
- Issue of whether pedestrian violated statute prohibiting a person from being intoxicated when using public transportation and endangering their own life was for the jury.

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**REFERENDA - OHIO**

## State ex rel M/I Homes of Cincinnati, L.L.C. v. Clermont County Board of Elections

**Supreme Court of Ohio - September 17, 2025 - N.E.3d - 2025 WL 2658638 - 2025-Ohi--4362**

Real estate developer requested writ of prohibition to prohibit county board of elections from placing referendum on general-election ballot challenging township board of trustees' approval of developer's application to rezone parcels of property to planned-development district for purposes of residential development or, alternatively, writ of mandamus to compel board of elections to sustain developer's protest against referendum petition.

The Supreme Court held that:

- Average person reading brief summary would have understood that proposal to be voted on would affect zoning status of roughly 120 acres of property spanning three parcels of land;
- Referendum petition's brief summary accurately stating that affected acreage would be rezoned to "PD" and clarifying that acronym stood for "Planned Development District," complied with governing statute;
- Petition accurately stating zoning change associated with affected acreage and accurately stating nature and number of homes proposed for development complied with governing statute;
- Board of elections did not abuse its discretion or clearly disregard applicable law when it denied protest that involved brief summary that did not mention every feature or condition of zoning

amendment;
- Statement from county board of elections' employee, at hearing on developer's protest, that "[t]hese two [maps] were submitted" was sufficient to verify that second map was filed with board of trustees;
- Map used in obtaining signatures that covered up inset "vicinity" map, but nevertheless displaying larger and more detailed map of affected area—as compared to inset vicinity map—on left side of document, complied with governing statute; and
- Developer forfeited its argument in reply brief that maps attached to referendum petition were misleading because they were faded and blurry by failing to raise it in its merit brief.

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**EMINENT DOMAIN - TEXAS**

## DM Arbor Court, Limited v. City of Houston, Texas

**United States Court of Appeals, Fifth Circuit - August 12, 2025 - 150 F.4th 418**

Operator of affordable housing apartment complex for low-income residents brought action against city, alleging that city's refusal to grant permits to operator to repair units damaged in hurricane and subsequent flooding was a regulatory taking under the Fifth Amendment.

Following a bench trial, the United States District Court for the Southern District of Texas ruled against owners, concluding property still had economic life despite permit denial. Operator appealed.

The Court of Appeals held that permit denial effected a categorical taking.

City's denial of a repair permit under city's flood control ordinance for property that was located in flood zone left no viable way for operator of affordable housing apartment complex for low-income residents to redevelop property after property was flooded by hurricane, and thus permit denial effected a categorical taking of property, although operator was technically free to redevelop property so long as it complied with elevation requirement, and notwithstanding any speculation as to a sale of the property, or fact that operator's Housing Assistance Payment Contract (HAP Contract) from Department of Housing and Urban Development (HUD) had value, which was a separate and distinct property interest; evidence indicated that permit denial ended property's economic life given that there was currently no identifiable economically feasible redevelopment for property without permit, redevelopment was prohibitively expensive and economically unfeasible because it would have required elevation of property, holding property for investment purposes was not an economically beneficial use.

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**LIABILITY - ALABAMA**

## Ex Parte City of Birmingham

**Supreme Court of Alabama - September 19, 2025 - So.3d - 2025 WL 2680098**

Motorist who suffered injuries in collision on interstate highway brought action against city, asserting claims of negligence, wantonness/recklessness, and negligent/wanton hiring, training, supervision and/or retention, which claims stemmed from allegation that city failed to maintain working streetlights at the collision site.

After granting city's motion to dismiss the wantonness/recklessness claim, the Circuit Court denied

city's motion for summary judgment. City petitioned for writ of mandamus, and motorist conceded in his answer to the petition that the claim for negligent hiring, training, supervision, and/or retention was due to be dismissed.

The Supreme Court held that, as is relevant to statute governing municipal liability for negligence, when a municipality chooses to provide for the public health, safety, and general welfare of its citizenry by voluntarily assuming the responsibility of maintaining the streetlights on an interstate highway, it does not impose upon itself a legal duty of care to an individual who is allegedly injured as the result of inoperable streetlights.

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**IMMUNITY - GEORGIA**

## Bray v. Watkins

**Court of Appeals of Georgia - September 4, 2025 - S.E.2d - 2025 WL 2537329**

As guardian of child, administratrix of estate of child's father, and in her individual capacity, child's mother sued county sheriff's lieutenant in both her official and individual capacities for damages, alleging that tornado caused tree to fall on bedroom of their home, which tree killed child's father and injured child and herself, and that lieutenant failed to activate a tornado warning system while working in county emergency center.

The Superior Court entered summary judgment for lieutenant and mother appealed. The Court of Appeals affirmed. Mother petitioned for certiorari review. The Supreme Court granted mother's petition for certiorari, vacated, and remanded. On remand, the Court of Appeals adopted the Supreme Court's opinion as its own, vacated the trial court's order, and remanded for trial court to resolve the sovereign immunity issue in the first instance. After remand, mother filed motion requesting that trial court deny lieutenant's motion for summary judgment. The trial court granted lieutenant's motion for summary judgment and found that sovereign immunity applied, and mother appealed.

The Court of Appeals held that:

- Sovereign immunity applied and barred mother's claims against lieutenant in her official capacity, and
- Mother's claims against lieutenant, in her individual capacity, were barred by the public duty doctrine.

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**EMINENT DOMAIN - IDAHO**

## Hansen v. Boise School District #1

**Supreme Court of Idaho, Boise, May 2025 Term - August 15, 2025 - P.3d - 2025 WL 2371200**

Guardians of minor student, in their individual capacities, as guardians of student, and as class representatives, brought proposed class action against school district for inverse condemnation under state constitution and violation of Fifth Amendment's Takings Clause, under § 1983, alleging fees charged for second half of full-day kindergarten violated Idaho Constitution's free common schools provision and constituted a taking without due process.

The Fourth Judicial District Court granted district's motion to dismiss. Guardians appealed.

The Supreme Court held that:

- Student did not suffer particularized injury-in-fact necessary to have standing, and
- Statute providing that time for the commencement of the action would exclude period while plaintiff was still a minor did not apply to toll limitations period.

Minor student did not suffer a deprivation of property due to tuition charged for second half of full-day kindergarten, and thus did not suffer particularized injury-in-fact necessary to have standing to bring proposed class action against school district for violation of Takings Clause, under § 1983, alleging tuition violated Idaho Constitution's free common schools provision and constituted a taking without due process, where tuition payments were made solely by minor's guardians, using their funds and not any property belonging to minor.

Statute, providing that time for the commencement of the action would exclude the period during which plaintiff was still a minor, did not apply to toll limitations period for proposed class action brought by guardians of minor student against school district for violation of Takings Clause, under § 1983, alleging tuition charged for second half of full-day kindergarten violated Idaho Constitution's free common schools provision and constituted a taking without due process, where it was guardians, not student, who had standing to bring the takings claim.

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**PUBLIC UTILITIES - OHIO**

## In re Application of Dayton Power and Light Company

**Supreme Court of Ohio - August 22, 2025 - N.E.3d - 2025 WL 2421810 - 2025-Ohio-2953**

Office of Ohio Consumer's Counsel (OCC) filed appeal from Ohio Public Utility Commission's decision in three cases finding that electric utility's electric security plan resulted in excessive earnings in two years, and that utility could offset its excessive earnings by making future capital investments.

Utility filed cross-appeal, and the cases were consolidated.

The Supreme Court held that:

- Commission's determination that utility could offset its significantly excessive earnings in two years through future committed investments was unlawful;
- Commission's finding that utility could offset its significantly excessive earnings by offsetting its future committed investments based on utility's financial condition was not reasonable or supported by evidence;
- Commission's inclusion of utility's distribution-modernization rider in calculating whether utility's electric security plan resulted in utility having significantly excessive earnings in two years was appropriate;
- Commission's exclusion of rate-stabilization charge amounts from electric utility's earnings was appropriate, in calculating whether utility's electric security plan resulted in utility having significantly excessive earnings in two years; and
- An appellee may defend a lower tribunal's decision by asserting alternative grounds for affirmance than those adopted by the tribunal, without having to file a protective cross-appeal; abrogating *In re Application of Duke Energy Ohio, Inc.*, 50 Ohio St.3d 437, 82 N.E.3d 1148.

**PUBLIC UTILITIES - PENNSYLVANIA**

## Transource Pennsylvania, LLC v. DeFrank

**United States Court of Appeals, Third Circuit - September 5, 2025 - F.4th - 2025 WL 2554133**

Electric utility brought action against Pennsylvania Public Utility Commission (PUC) seeking declaratory judgment that PUC's order denying utility's siting applications to build transmission lines, as part of project selected through a federal process aimed at identifying and relieving regional transmission congestion, was preempted under federal law and violated the dormant Commerce Clause.

The United States District Court for the Middle District of Pennsylvania granted utility's motion for summary judgment and denied PUC's cross-motion for summary judgment. PUC appealed.

The Court of Appeals held that:

- Issue preclusion did not apply to preclude litigation of preemption claim;
- PUC's order was preempted as posing obstacles to accomplishing federal objectives in regulating electricity industry; and
- Regional transmission organization (RTO) did not wield eminent-domain power under Pennsylvania law.

Pennsylvania Public Utility Commission's (PUC) order denying electric utility's siting applications to build transmission lines, as part of project selected through a federal process aimed at identifying and relieving regional transmission congestion, posed obstacles to accomplishing federal objectives in regulating the electricity industry, and thus PUC's order was preempted by federal law; Federal Energy Regulatory Commission (FERC) determined that the benefit-cost methodology used by regional transmission organization (RTO) for selecting project was a just and reasonable means by which to measure whether an economic-based enhancement or expansion should be included in a regional transmission expansion plan, and PUC's rejection of that measure arose from PUC's disagreement with constructing project.

Pennsylvania Public Utility Commission's (PUC) order denying electric utility's siting applications to build transmission lines, as part of project selected through a federal process aimed at identifying and relieving regional transmission congestion, was preempted as posing an obstacle to accomplishing federal objectives in regulating the electricity industry, despite argument that PUC's independent determination of public need for project was necessary to prevent a wasteful and counterproductive project due to decrease in congestion in years since project was approved; task of reevaluating need based on changing congestion patterns belonged with RTO and not with PUC since the need determination fell in the first instance to RTO.

Regional transmission organization (RTO) that was responsible for maintaining the bulk electricity transmission system of a 13-state region did not wield eminent-domain power of a public utility under Pennsylvania law when RTO identified areas of transmission congestion and proposed transmission-line construction project as solution to reduce congestion; RTO was not a public utility, and any utility was required to prevail in a condemnation action at the court of common pleas before private property could be condemned.

Even after the Pennsylvania Public Utility Commission (PUC) authorizes an electric utility to exercise the power of eminent domain, a condemnation is far from final; rather, the utility must still prevail in

a condemnation action at the court of common pleas.

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**IMMUNITY - VIRGINIA**

## Lytle v. City of Suffolk

**Court of Appeals of Virginia, Williamsburg - September 16, 2025 - S.E.2d - 2025 WL 2649524**

Motorist brought action against city for declaratory judgment and injunctive relief, alleging that he received speeding ticket in the mail for a fine detected by a photo speed camera, and that city failed to issue a proper summons, failed to follow the appropriate procedures for initiating a traffic case, failed to follow procedures for filing an affidavit for non-liability, committed fraud, and was guilty of maladministration of government.

City filed plea in bar, asserting sovereign immunity, and a demurrer. The Suffolk Circuit Court sustained plea in bar. Motorist appealed.

The Court of Appeals held that:

- City's use of third-party private vendor for administration of photo-speed-monitoring system did not indicate that implementation of system was proprietary function solely for city's benefit, and thus, did not preclude city from raising sovereign-immunity defense;
- City's use of photo-speed-monitoring system involved governmental function, and thus, city was entitled to sovereign immunity;
- Motorist, waived on appeal his argument that under Dillon's Rule there was exception to sovereign immunity by which a plaintiff could seek declaratory judgment against a municipality; and
- Motorist had recourse to challenge process involved in assessing his violation.

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**IMMUNITY - ALABAMA**

## Ex parte City of Montgomery

**Supreme Court of Alabama - August 29, 2025 - So.3d - 2025 WL 2487401**

Police officer employed by municipality brought action against municipality and other defendants, asserting claims for breach of contract, bad faith, fraudulent misrepresentation, failure to settle, violation of the Alabama Legal Services Liability Act, negligence, wantonness, conspiracy, and failure to procure insurance, based on allegations that municipality voluntarily acted as officer's insurer but refused to satisfy judgment obtained against officer in underlying negligence action brought by motorcyclist injured in collision with officer.

The Circuit Court denied municipality's motions to dismiss. Municipality petitioned for writ of mandamus.

The Supreme Court held that:

- Municipality waived statutory immunity defense that it might have asserted against some of police officer's claims;
- Municipality was not entitled at pleading stage to statutory immunity from police officer's fraudulent-misrepresentation claim; and

- Trial court's denial of municipality's motion to dismiss police officer's claim alleging violation of Alabama Legal Services Liability Act was not reviewable on municipality's petition for mandamus.

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**EMINENT DOMAIN - FEDERAL**

## Anaheim Gardens v. United States

**United States Court of Federal Claims - September 5, 2025 - Fed.Cl. - 2025 WL 2573359**

Owners of low-income housing projects brought consolidated actions against the United States Department of Housing and Urban Development (HUD), alleging that enactment of Emergency Low Income Housing Preservation Act (ELIHPA) and Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA) constituted temporary regulatory takings under Fifth Amendment in that they prevented owners from exercising their contractual right to prepay government-insured mortgages on their respective housing projects, to terminate government rent restrictions.

The Court of Federal Claims granted summary judgment in favor of government. Property owners appealed. The Court of Appeals affirmed in part, vacated in part, and remanded.

On remand, the Court of Federal Claims held that:

- Owner did not establish that expectation to prepay its mortgage and convert to market rate rentals after 20 years was primary or "but for" reason for its investment;
- Other owner established that expectation to prepay its mortgage and convert to market rate rentals after 20 years was primary or "but for" reason for its investment;
- Expectation of owner to prepay its mortgage and convert to market rate rentals after 20 years was objectively reasonable in view of industry practice as whole;
- Expectation of owner to prepay its mortgage and convert to market rate rentals after 20 years was objectively reasonable in view of testimony from former employees of Department of Housing and Urban Development (HUD) supporting owner's expectation and language used on owner's secured note;
- Testimony from certified public accountant (CPA), determining that early tax benefits were more valuable than hypothetical residual 20 years later, did not refute objectively reasonable expectation of owner;
- District court could not credit economic loss calculation of owners' primary expert who died prior to court's decision, as adopted and promulgated by secondary financial analyst;
- Methodology of government's expert for calculating economic loss was consistent, replicable, and reliable, and therefore admissible; and
- Economic impact of LIHPRHA on owners of between 5.9% and 27.4% did not constitute temporary regulatory taking.

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**EMINENT DOMAIN - IDAHO**

## Bear Crest Limited LLC v. State by and through Idaho Transportation Department

**Supreme Court of Idaho, Boise, February 2025 Term - September 3, 2025 - P.3d - 2025 WL 2525340**

Operator of drive-through wildlife park, property owner that leased land to operator, and owner of both operator and property owner brought action against state, acting by and through Idaho

Transportation Department (ITD), for breach of contract and inverse condemnation, alleging that closure of intersection of highway and county road near park was a taking and breached deed, which reserved access to county road connection.

The Seventh Judicial District Court granted ITD's motion for summary judgment and denied plaintiffs' motion for partial summary judgment. Plaintiffs appealed.

The Supreme Court held that:

- Property owner had standing to bring claims;
- Property owner had cognizable breach-of-contract claim against ITD based on deed's reservation for access to connection;
- Deed referenced express reservation of access to connection, not to county road itself;
- Deed's express reservation of access rights constituted an easement that ran with the land, and thus property owner could enforce easement against ITD through breach-of-contract action.
- Closure of intersection breached express reservation of access rights;
- Closure of intersection constituted taking of access rights that were reserved in deed; and
- Property owner's right of access as abutting landowner was substantially impaired, and thus a taking occurred.

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**ZONING & PLANNING - MISSISSIPPI**

## Busby Outdoor LLC v. City of Jackson

**Supreme Court of Mississippi - August 28, 2025 - So.3d - 2025 WL 2475952**

City, its former mayor, and a limited liability company (LLC) brought action against the Mississippi Department of Agriculture and Commerce (MDAC) and the operator of a billboard that was owned by MDAC and located on the State Fairgrounds seeking declaratory and injunctive relief based on claims that the billboard violated the city's sign ordinance and a zoning ordinance.

MDAC filed motion to dismiss and billboard operator filed motion to dismiss or for summary judgment.

The Chancery Court denied the motions to dismiss but dismissed former mayor and LLC for lack of standing, found that the billboard violated city's sign ordinance and was therefore a public nuisance, and issued a temporary injunction. MDAC filed motion to clarify or for entry of final judgment and motion for stay pending appeal, and both MDAC and billboard operator filed notices of appeal. The Chancery Court subsequently granted the motion to clarify and denied the motion for stay. Billboard operator petitioned for interlocutory appeal, which was granted, and the appeals were consolidated and the trial court proceedings were stayed.

The Supreme Court held that city's ordinance did not apply to the billboard.

City ordinance governing billboards did not apply to billboard owned by Mississippi Department of Agriculture and Commerce (MDAC) and located on State Fairgrounds; statutes that empowered municipalities to pass and enforce zoning laws such as the ordinance at issue did not specifically provide for such laws to be applicable against the state, and statutes empowering MDAC to use its property, including the State Fairgrounds, did not specifically subject MDAC to municipal zoning laws.

**MUNICIPAL ORDINANCE - NEBRASKA**

## Nebraska Firearms Owners Association v. City of Lincoln

**Supreme Court of Nebraska - August 29, 2025 - N.W.3d - 319 Neb. 723 - 2025 WL 2486649**

Firearm owners association and gun owners brought a pre-enforcement action against city and mayor for declaratory and injunctive relief raising state-law preemption challenges to mayor's executive order prohibiting weapons on city property and to ordinances regulating use and possession of firearms and weapons.

The District Court granted motion to dismiss for lack of standing. Association and gun owners appealed, and their petition to bypass was granted.

The Supreme Court held that:

- Association lacked standing to sue on behalf of its members;
- Owners had standing to challenge executive order and ordinance banning weapons on city property including parks;
- Owners had standing to challenge ordinance requiring reporting of sales of firearms in city;
- One owner had standing to challenge ordinance prohibiting sale or possession of multiburst trigger activators;
- Owners had standing to challenge ordinance prohibiting sale or possession of switchblade knives; and
- Owners lacked standing to challenge ordinance regulating storage of firearms in vehicles.

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**PUBLIC UTILITIES - OHIO**

## In re Application of Ohio Power Company

**Supreme Court of Ohio - August 27, 2025 - N.E.3d - 2025 WL 2456670 - 2025-Ohio-3034**

Power company sought review of Public Utilities Commission decision authorizing electric distribution company's implementation of its fifth electric-security plan, including provisions denying power company's motion to establish a reasonable protective agreement for discovery and authorizing electric distribution company to continue its basic-transmission-cost rider as nonbypassable.

The Supreme Court held that:

- Power company failed to establish that electric distribution company's proposed protective agreement harmed power company;
- Commission did not abuse its discretion when it authorized electric distribution company to continue the basic-transmission-cost rider as nonbypassable;
- Electric distribution company was not required to cite to statute in its application to implement a fifth electric-security plan in order for the commission to rely upon statute when issuing authorization of nonbypassable basic-transmission costs rider under statute;
- Supreme Court lacked jurisdiction to consider power company's argument that the commission should have analyzed transmission rider in electric distribution company's fifth electric-security plan only under repealed electric security plan statute;
- Commission did not violate administrative code; and
- Commission's approval of nonbypassable basic-transmission-cost rider did not violate electric

policies embodied in state policy statute.

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**PUBLIC RECORDS - PENNSYLVANIA**

## Penncrest School District v. Cagle

**Supreme Court of Pennsylvania - August 19, 2025 - A.3d - 2025 WL 2400297**

Records requester appealed school district's denial of his request for district school board members' social networking website posts and comments related to same sex relations and district, its officials, employees, students, curriculum, physical resources, or electronic resources in an 18-month period.

The Office of Open Records granted relief to requester. District appealed. The Court of Common Pleas affirmed. District appealed. The Commonwealth Court vacated and remanded with instructions.

The Supreme Court held that:

- Resolving whether social media posts of school board members were records within meaning of Right-to-Know Law (RTKL) required consideration of whether information documented transaction or activity of agency and whether information was created, received or retained pursuant to law or in connection with a transaction, business or activity of the contracting agency, and
- Resolving under RTKL whether profile or page on social media website was record "of an agency" required consideration of facts that would be relevant only to that particular form of communication, under those specific facts.

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**IMMUNITY - ALABAMA**

## Rogers v. Cedar Bluff Volunteer Fire Department

**Supreme Court of Alabama - August 29, 2025 - So.3d - 2025 WL 2487426**

Administratrix of deceased automobile accident victim's estate brought wrongful-death action against town's volunteer fire department, county association of volunteer fire departments, and volunteer firefighter, alleging that firefighter negligently or wantonly contributed to victim's death after responding to accident scene.

In addition to entering summary judgment for association, the Circuit Court also entered summary judgment for town, determining that department was a political subdivision of town and that, therefore, town, under the Volunteer Service Act (VSA), was immune from liability for the negligence of its volunteer firefighters.

Administratrix appealed after her postjudgment motion to alter, amend, or vacate the summary judgment was denied and the circuit court had entered an order certifying its judgment as final under rule on judgment upon multiple claims or involving multiple parties. The Supreme Court dismissed the appeal. In response to stipulations filed by the parties, the Circuit Court then entered an order of pro tanto dismissal, which dismissed all claims against association, and also entered a final consent judgment in favor of administratrix and against volunteer firefighter. Administratrix appealed.

The Supreme Court held that:

- Volunteer fire department was a political subdivision of town;
- Volunteer firefighter was acting within the scope of his official functions and duties as a volunteer; and
- Even if volunteer firefighter's conduct was wanton, that did not preclude town from having immunity from the wrongful-death claim.

Volunteer fire department was a political subdivision of town and did not exist separately from town, as would support finding under Volunteer Service Act (VSA) that town was vicariously immune from liability for allegedly negligent conduct of volunteer firefighter at scene of automobile accident; department was not a separately incorporated entity, town partially funded department, department's chief reported directly to town's mayor, and state statute expressly authorized municipalities to operate and maintain volunteer fire departments.

Volunteer firefighter was acting within the scope of his official functions and duties as a volunteer when he responded to scene of automobile accident, as required for firefighter to have immunity under Volunteer Service Act (VSA) from wrongful-death claim that administratrix of deceased automobile-accident victim's estate was asserting in regard to firefighter's allegedly negligent conduct at accident scene, even though scene was outside department's service area and department had not dispatched firefighter to scene; firefighter responded to scene after hearing about accident on department-issued radio, and firefighter, after advising that efforts to resuscitate purportedly dead victim should stop, stated over radio that death had occurred.

Even if alleged failure of volunteer firefighter with town's volunteer fire department to provide basic life support and first aid at automobile-accident scene was wanton, which would mean that he lacked immunity under Volunteer Service Act (VSA) from resulting wrongful-death claim, that did not preclude town from having vicarious immunity wrongful-death claim; town could not be liable for the wanton conduct of its servant.

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**WATER LAW - NEBRASKA**

## State ex rel. Seeman v. Lower Republican Natural Resources District

**Supreme Court of Nebraska - August 22, 2025 - N.W.3d - 319 Neb. 681 - 2025 WL 2423678**

Corporate landowner and individual landowner brought separate mandamus actions against board members and general manager of natural resources district (NRD), challenging NRD's cease-an--desist order reducing certified irrigated acres pursuant to Nebraska Ground Water Management and Protection Act as penalty for tampering with flow meters.

The District Court granted mandamus relief and attorney fees to both landowners. Members and general manager appealed and landowners cross-appealed.

The Supreme Court held that:

- NRD's order was void as to corporate landowner;
- Individual landowner failed to show that NRD's order was void as to him;
- NRD's order was not void as perpetual prohibition against irrigation and upon transfer of title and use of land;
- Individual landowner was not entitled to recover attorney fees; and
- Trial court acted within its discretion in awarding corporate landowner attorney fees.

**EMINENT DOMAIN - NORTH CAROLINA**

## Town of Apex v. Rubin

**Supreme Court of North Carolina - August 22, 2025 - S.E.2d - 2025 WL 2427569**

Town brought condemnation action to acquire an easement across landowner's property and to connect sewer access to an adjoining parcel.

After town installed sewer line, the Superior Court found the taking was for a private purpose, and entered judgment for landowner, and denied town's motion for reconsideration. Town appealed, and the Court of Appeals affirmed.

Landowner then filed motion to enforce the judgment, and town commenced separate action seeking a declaratory judgment that it had acquired an easement by inverse condemnation when it installed the sewer line.

Landowner filed motion to dismiss town's inverse condemnation action, and town filed motion for relief from judgment in the condemnation action. The Superior Court, Wake denied landowner's motions and granted town's motion for relief from the judgment. Property owner appealed.

In the condemnation action, the Court of Appeals affirmed in part, reversed in part, and vacated in part, while in the inverse condemnation action, the Court of Appeals affirmed in part, vacated in part, and remanded. Town filed petitions for discretionary review and landowner filed conditional petition for review, which were allowed.

The Supreme Court held that:

- Prior pending action doctrine precluded town's declaratory judgment action regarding inverse condemnation;
- Court's judgment that taking was for a private purpose revested title in the property to landowner;
- Trial court had inherent authority to order mandatory injunctive relief requiring town to remove sewer pipe; and
- Question of the proper remedy, including whether a mandatory injunction was warranted, required remand to the trial court.

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**CONSTITUTIONAL LAW - NORTH CAROLINA**

## Howell v. Cooper

**Supreme Court of North Carolina - August 22, 2025 - S.E.2d - 2025 WL 2427597**

Bar owners brought action against State, Governor, and other state officials, alleging that the Governor's executive orders issued in response to the COVID-19 pandemic, which closed bars or severely restricted their operations, violated their fundamental rights to earn a living under the "fruits of their labor" and "law of the land" clauses in state Constitution.

The Superior Court denied defendants' motion to dismiss. Defendants appealed. The Court of Appeals affirmed. Defendants' petition for discretionary review was granted.

The Supreme Court held that owners stated a colorable claim for violation of their fundamental right to earn a living under "fruits of their labor" and "law of the land" clauses in the Constitution.

Bar owners' allegations that Governor's executive orders in response to COVID-19 either overtly ordered them to close their facilities or so severely restricted their operations that owners found it no longer practicable to remain open stated a colorable claim against state and state officials for violating owners' fundamental right to earn a living under "fruits of their labor" and "law of the land" clauses in state Constitution; orders to remain closed, and then to not serve alcoholic beverages for onsite consumption and only allowing operation in outdoor seating areas, forced owners to keep doors shuttered either outright or in practice for nine months with no end then in sight.

Bar owners were not required to seek least intrusive remedy to avoid dismissal, based on sovereign immunity, of their claims alleging state and state officials abridged their fundamental right to earn a living under state Constitution's "fruits of their labor" and "law of the land" clauses, when Governor issued executive orders that shuttered their businesses during COVID-19 pandemic; since least intrusive remedy limitation was not incorporated into the test for pleading a valid claim that state action violated a state constitutional right, it could not be the basis for a viable motion to dismiss.

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**STUDENT HOUSING - SOUTH DAKOTA**

## South Dakota Board of Regents v. Madison Housing and Redevelopment Commission

**Supreme Court of South Dakota - August 20, 2025 - N.W.3d - 2025 WL 2416180 - 2025 S.D. 50**

State university which leased two apartment buildings from city housing and redevelopment commission for student housing brought action against commission, seeking a declaration of its rights under leases and alleging breach of contract regarding university's option to purchase.

Commission counterclaimed for declaratory relief and breach of contract. The Circuit Court granted university's motion for summary judgment, and commission appealed.

The Supreme Court held that:

- Leases did not constitute a single, continuous contract, and thus terms of original lease regarding commission's obligation to maintain reserve account were not still in effect when university exercised its option to purchase, and
- Option to purchase the property "for an amount equal to the then existing mortgage principal and interest balance" referred to the mortgage balance at the time of the exercise of the option.

Multiple leases between state university and city housing and redevelopment commission for two apartment buildings did not constitute a single, continuous contract, and thus terms of original lease regarding commission's obligation to maintain reserve account were not still in effect when university exercised its option to purchase the apartment buildings under lease executed 17 years after original lease; each lease stood on its own, expired on its own terms, and was not dependent upon the execution of another, and addenda to later lease which referenced the original lease were executed to continue the later lease after account dispute arose, and explicitly stated they did not admit any facts and could not be used against the parties.

Student apartment lease between state university and city housing and redevelopment commission which granted university the option to purchase the property "for an amount equal to the then existing mortgage principal and interest balance" referred to the mortgage balance at the time of

the exercise of the option, which had been refinanced, rather than the mortgage balance at the time of the original construction of the apartment buildings.

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**IMMUNITY - FLORIDA**

## Huggins v. School District of Manatee County

**United States Court of Appeals, Eleventh Circuit - August 15, 2025 - F.4th - 2025 WL 2374371**

Community member, who was allegedly removed from public school-board meeting at which he intended to speak about approval of funds for charter school, brought state-court action against public school board and, in their individual and official capacities, school superintendent, board's chief of security, board's communications director, and city police officer for speech restriction and retaliation under the First Amendment, and for violations of the Fourth Amendment, the equal-protection clause of the Fourteenth Amendment, the equal-benefit clause of § 1981, and state laws.

Following removal, defendants moved to dismiss for failure to state a claim. Member moved to amend his complaint. The United States District Court for the Middle District of Florida denied motion to amend and granted motion to dismiss as to federal claims and declined to exercise supplemental jurisdiction over state-law claims. Member appealed.

The Court of Appeals held that:

- Superintendent was not entitled to qualified immunity from member's First Amendment claims;
- Member stated First Amendment speech-restriction claim against superintendent;
- Member stated First Amendment retaliation claim against superintendent;
- Chief of security and police officer were entitled to qualified immunity from member's First Amendment claims;
- Communications director was entitled to qualified immunity from community member's First Amendment retaliation claim;
- Member failed to show that board had opportunity to review superintendent's decision to remove him from board meeting and agreed with both decision and decision's basis, precluding member's Monell claim against board based on ratification theory; and
- Member was not entitled to leave to amend.

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**ROADS - MASSACHUSETTS**

## Town of Concord v. Rasmussen

**Supreme Judicial Court of Massachusetts, Suffolk - August 15, 2025 - N.E.3d - 2025 WL 2370204**

Town brought action against abutters of disputed road, seeking declaration that public had access and use rights to road.

Following bench trial, the Land Court Department entered judgment in favor of town. Abutters appealed. The Appeals Court modified judgment and affirmed. Abutters sought further appellate review, which was granted.

The Supreme Judicial Court held that:

- Direct, as opposed to circumstantial, evidence documenting that a public way was laid out is not required to support a finding that a particular way is public on basis of layout by a public authority in accordance with statute;
- Evidence was sufficient to support finding that particular portion of road was properly laid out and thus was a public way;
- County commissioners' adjudication that road should be a "private way," pursuant to statute providing for adjudication of way as a private way whenever common convenience and necessity no longer required such way to be maintained in a condition reasonably safe and convenient for travel, did not eliminate public access to road but rather simply removed the requirement that town maintain the road; and
- Trial court acted within its discretion in excluding abutters' proffered evidence as to status of other public roads which had been adjudicated "private ways" pursuant to same statutory provision as was at issue in instant case.

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**CONTRACTS - MISSISSIPPI**

## Retro Metro, LLC v. City of Jackson by and through City Council

**United States Court of Appeals, Fifth Circuit - August 7, 2025 - F.4th - 2025 WL 2249348**

Commercial property lessor brought breach-of-contract action against city which leased the property after city purportedly terminated the lease.

The United States District Court for the Southern District of Mississippi granted summary judgment to city. Lessor appealed.

The Court of Appeals held that:

- Under Mississippi law, lease was not sufficiently placed in minutes of city council and thus, pursuant to "minutes rule," was not an enforceable contract;
- Mississippi law rather than federal law applied to determination of whether city was judicially estopped from asserting that lease was invalid based on "minutes rule";
- Under Mississippi law as predicted by Court of Appeals, city's admission in prior litigation between same parties that city had entered into lease could not judicially estop city from arguing that lease was invalid based on "minutes rule"; and
- Under Mississippi law as predicted by Court of Appeals, the "minutes rule" is not an affirmative defense that can be waived but rather goes to the issue of whether a contract was ever formed in the first place.

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**NEGLIGENCE - NEW YORK**

## Harris v. New York City Transit Authority

**Supreme Court, Appellate Division, Second Department, New York - August 13, 2025 - N.Y.S.3d - 2025 WL 2326682 - 2025 N.Y. Slip Op. 04635**

Subway passenger brought action against city transit authority to recover damages for injuries that she allegedly sustained after slipping and falling on snow and ice that accumulated on uncovered staircase at subway station.

The Supreme Court, Kings County, denied transit authority's motion for summary judgment

dismissing the complaint. Transit authority appealed.

The Supreme Court, Appellate Division, held that pursuant to storm-in-progress rule, transit authority was not liable for passenger's injuries.

At the time that subway passenger slipped and fell on snow and ice that accumulated on uncovered staircase at subway station, less than five hours had passed since the end of an extraordinary snowstorm, and thus, pursuant to storm-in-progress rule, city transit authority was not liable for injuries that passenger allegedly sustained as a result of her fall.

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**MUNICIPAL ORDINANCE - OHIO**

## Huron v. Kisil

**Supreme Court of Ohio - August 20, 2025 - N.E.3d - 2025 WL 2404306 - 2025-Ohio-2921**

City charged property owner with violating city ordinances requiring properties to be maintained and kept in clean, safe, and sanitary condition.

The Municipal Court granted property owner's motion to dismiss two of the six counts as unconstitutionally vague. City appealed. The Sixth District Court of Appeals reversed, and certified conflict. Property owner filed notice of certified conflict and notice of appeal.

The Supreme Court held that:

- Alleged condition of owner's property clearly fell within proscriptions of city ordinance requiring vacant structures and land be maintained in clean, safe, secure and sanitary condition, and
- Alleged condition of owner's property clearly fell within proscriptions of city ordinance requiring exterior property be maintained in clean, safe and sanitary condition.

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**IMMUNITY - UTAH**

## Armenta v. Unified Fire Authority

**Supreme Court of Utah - August 7, 2025 - P.3d - 2025 WL 2265589 - 2025 UT 26**

Patient, who suffered a heart attack one week after being treated for chest pain and shortness of breath by emergency medical technicians (EMTs) for governmental entity who told him everything looked normal, brought negligence action against governmental entity, alleging that failure of EMTs to properly diagnose his condition caused him injuries.

The Third District Court granted governmental entity's motion to dismiss, and patient appealed.

The Supreme Court held that:

- As matter of first impression, having immunized entities engaged in activities involving emergencies of certain type, what legislature had in mind when it enacted the "providing emergency medical assistance" exception to waiver of immunity under Utah Governmental Immunity Act (UGIA) is government's ability to respond to those types of emergencies, and
- As matter of first impression, the "providing emergency medical assistance" exception to waiver of immunity under UGIA did not apply.

**PUBLIC UTILITIES - CALIFORNIA**

## Center for Biological Diversity, Inc. v. Public Utilities Commission

**Supreme Court of California - August 7, 2025 - P.3d - 2025 WL 2253765**

Environmental and utility ratepayer advocacy groups petitioned for writ of review challenging the Public Utilities Commission's decision adopting a tariff that reduced the price utilities pay for customer-generated power, arguing the tariff was inconsistent with the Public Utilities Code.

The First District Court of Appeal granted the petition and affirmed the Commission's decision. Supreme Court granted review.

The Supreme Court held that Court of Appeal erred by upholding Commission's decision under unduly deferential standard of review instead of applying its independent judgment; disapproving *Southern Cal. Edison Co. v. Public Utilities Com.*, 117 Cal.App.4th 1039, 12 Cal.Rptr.3d 441, *The Utility Reform Network v. Public Utilities Com.*, 166 Cal.App.4th 522, 82 Cal.Rptr.3d 791, and *Ames v. Public Utilities Com.*, 197 Cal.App.4th 1411, 128 Cal.Rptr.3d 702.

Court of Appeal, in performing inquiry required by statutory amendments governing judicial review of Public Utilities Commission decisions when making its conclusion on Commission's adoption of successor tariff that utilities paid for energy from solar panel power systems, was required to independently review whether tariff was based on costs and benefits of renewable electrical generation facility as required by customer-generator provision of PUC, rather than apply unduly deferential standard of review, because amendments retained "regularly pursued its authority" standard, to which uniquely deferential review applied, only for decisions pertaining solely to water corporations.

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**EMINENT DOMAIN - GEORGIA**

## Fulton v. Fulton County Board of Commissioners

**United States Court of Appeals, Eleventh Circuit - July 31, 2025 - F.4th - 2025 WL 2166416**

Property owner brought action against county, alleging county took his horses without justification and without paying for them in violation of the Takings Clause of the Fifth Amendment.

The United States District Court for the Northern District of Georgia denied owner's motion to amend complaint to substitute county for board of commissioners and to add alternative claim directly under the Takings Clause, and dismissed claim against board of commissioners without prejudice. Owner appealed.

The Court of Appeals held that:

- District court had federal question jurisdiction to independently evaluate merits of Takings Clause claim that was not patently without merit;
- Owner's state-law claim for recovery of personal property taken by county seven years previously was barred for not providing that notice to county under state procedural requirement
- Four-year statute of limitations applied to claim directly under Takings Clause in Georgia for recovery of personal property taken by county;

- On issue of first impression, a litigant in Georgia can sue a county, a political subdivision of the state, directly under the Takings Clause to obtain just compensation for a taking;
- On issue of first impression, direct cause of action against county under Takings Clause was available to horse owner;
  Georgia, as exclusive forum, unilaterally and unconstitutionally imposed procedural bar on horse owner's Takings claim, assuming owner could have ever sought relief in Georgia courts, because of Monell; and
- On issue of first impression, sovereign immunity did not bar direct cause of action against county under Takings Clause by horse owner.

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**BOND ISSUANCE - KANSAS**

## Vianello v. City of Prairie Village, Kansas

**United States District Court, D. Kansas - August 4, 2025 - Slip Copy - 2025 WL 2208041**

Plaintiff Marc Vianello filed an action challenging Defendant City of Prairie Village's issuance of general obligation bonds associated with building a new City Hall. Plaintiff challenged the City's ability to issue general obligation bonds without voter approval, bringing claims under 42 U.S.C. § 1983 and Kansas law.

The dispute centered in large part around the City Council's approval of a resolution, which passed on June 16, 2025. The resolution authorized the issuance of general obligation bonds in the amount of up to $30,000,000.00 to pay for improvements to certain City buildings, including City Hall.

Defendant moved to dismiss for lack of jurisdiction and for failure to state a claim.

Defendant asked the Court to expedite its decision on the motion to dismiss, i.e., give it priority over other pending motions, because it claimed that this action functioned as an injunction and prevented it from issuing bonds and moving forward on its improvement plans. It asserted that "delays on the project would result in an increase in costs of $120,000 per month, or approximately $28,000 per week; expediting briefing by even a week could save $28,000 in taxpayer funds." In contrast, Defendant asserted that Plaintiff would suffer no damage if briefing was expedited.

The premise of Defendant's motion was that it "prevent[s] Defendant from issuing bonds that it is legally entitled to issue." This is because Defendant is required to obtain a non-litigation certificate prior to issuing the bonds authorized by the June 16, 2025 resolution. Defendant contends that "[w]ithout an expedited hearing, Defendant would be prevented from making an offering of bonds, effectively being enjoined from issuing bonds even without a court order that it should be enjoined." And Defendant contended that it would be prevented from issuing bonds in the current market, which it contemplated when preparing to issue them, which could increase the cost of the bonds and construction materials.

The US District Court denied the motion for expedited briefing and ruling on Defendant's motion to dismiss. The Court found the City's assertions of the cost associated with delay are speculative at best, particularly given the short period of time that had passed since the resolution was passed. And Defendant's assertion that the lawsuit operated as an injunction preventing it from issuing bonds that it was legally entitled to issue called for a decision on the merits.

"According to Defendant's own brief, it passed the resolution authorizing these bonds on June 16. Plaintiff filed his federal lawsuit one month later. Defendant quickly moved to dismiss. The normal schedule for briefing on this motion is 21 days to respond and 14 days to reply. Defendant asks the

Court to shorten this period to 14 and 7 days, respectfully. Given how quickly this case was filed after the bond resolution, the Court cannot find that expediting the briefing schedule by two weeks is warranted. It is not true that Plaintiff would suffer no damage from expediting deadlines. Plaintiff would be denied an extra week of briefing on this dispositive motion. Once fully briefed, the Court will endeavor to decide the motion to dismiss as soon as practicable given the demands of its caseload."

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**MUNICIPAL ORDINANCE - NORTH DAKOTA**

## Liquid Hospitality, LLC v. Board of City Commissioners of City of Fargo

**Supreme Court of North Dakota - July 31, 2025 - N.W.3d - 2025 WL 2166077 - 2025 ND 136**

Saloon brought action against city board of commissioners, challenging board's decision to uphold city liquor control board's determination that saloon violated municipal ordinance prohibiting service of alcoholic beverages to obviously intoxicated or impaired persons.

The District Court reversed, finding the ordinance unconstitutionally vague. Board appealed.

The Supreme Court held that:

- Ordinance placing restrictions on serving of obviously intoxicated or impaired persons was not unconstitutionally vague on its face in violation of due process, and
- Evidence supported determination that saloon had served an obviously intoxicated person in violation of city ordinance.

City ordinance placing restrictions on serving of obviously intoxicated or impaired persons was not unconstitutionally vague on its face in violation of due process; whether a person is intoxicated or impaired by alcohol or drugs is something a reasonable person can determine, and the criteria for obvious intoxication was clearly set forth in the ordinance.

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**REFERENDA - UTAH**

## Mathews v. Tooele County

**Supreme Court of Utah - August 7, 2025 - P.3d - 2025 WL 2265330 - 2025 UT 30**

Sponsors of referendum to repeal site specific zoning ordinance, which had rezoned parcel in unincorporated area of county from agricultural to planned-community zoning, brought action against county and governor after county clerk rejected referendum petition due to lack of signatures.

After ordinance went into effect, and parcel became part of newly-incorporated city, the Third District Court granted summary judgment for county and granted governor's motion for judgment on the pleadings. Sponsors appealed.

The Supreme Court held that:

- Action was moot in light of incorporation of town and the parcel's location within the new town's boundaries, and
- Potential impact on developer's alleged vested rights in zoning ordinance did not save action from mootness.

Action by sponsors of referendum petition rejected by county clerk, which proposed to repeal site specific zoning ordinance rezoning parcel in unincorporated area of county from agricultural to planned-community zoning, in which sponsors sought declaration that petition was legally sufficient and that Governor's actions imposing COVID-19 restrictions, which allegedly hampered signature-gathering, violated their constitutional rights, and sought order requiring placement of the measure on the ballot, was moot in light of incorporation of town and the parcel's location within the new town's boundaries; town, not county, was the current entity regulating the parcel, and had enacted zoning ordinances affecting the property.

Issue of whether nonparty developer had vested rights under county site specific zoning ordinance, which had rezoned parcel in unincorporated area of county from agricultural to planned-community zoning, was not before the Supreme Court on appeal by sponsors of referendum to repeal the ordinance following summary judgment on their claim that county clerk improperly rejected their referendum petition due to lack of signatures, and thus alleged vested rights could not save appeal from being moot after town was incorporated and took over zoning of the parcel.

Referendum sponsors failed to establish that potential impact on developer's alleged vested rights in zoning ordinance, which had rezoned parcel in unincorporated area of county from agricultural to planned-community zoning, precluded finding that sponsors' action to repeal the ordinance was moot on grounds that town had been formed which encompassed and governed the parcel; sponsors made no legal argument in support assumption that any future successful referendum would strip developer of vested rights, or that vested rights would not remain intact if referendum would repeal the ordinance prospectively only, and any successful referendum would not have retroactive effect.

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**ZONING & PLANNING - VERMONT**

## In re Costco Wholesale Administrative Decision

**Supreme Court of Vermont - August 8, 2025 - A.3d - 2025 WL 2264346 - 2025 VT 44**

Retail store appealed, and commercial neighbors cross-appealed, state and municipal determinations that amendment to land use permits was not necessary for retail store to begin operating gas station on its property at full-time hours.

Following two-day merits hearing in four coordinated proceedings, the Superior Court, Environmental Division, issued final judgment order stating that store had satisfied all conditions in existing permits and that it did not need an amendment to operate gas station at full-time hours. Neighbors appealed, and store cross-appealed.

The Supreme Court held that:

- Issues related to full-time operation of gas station were not moot;
- Environmental court had jurisdiction to review issues;
- Environmental court addressed all related matters raised in neighbors' statement of questions; and
- Store was not required to obtain permit amendments before it began operating gas station full-time.

Environmental court's determination that traffic mitigation conditions in retail store's state-level land use permit contemplated full-time operation of gas station on the property as part of initially approved project, such that amendment to permit was not required, did not create an invalid condition subsequent; conditions were not open-ended and they did not purport to vest state commission with authority to continuously amend the permit as necessary to redress future state permit violations, thus expropriating another agency's enforcement authority, but instead, they were type of reasonable, evidence-based conditions with prospective application that courts recognized as permissible.

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**BALLOT INITIATIVE - ARIZONA**

## Roundtree v. City of Page

**Supreme Court of Arizona - July 30, 2025 - P.3d - 2025 WL 2155408**

Residents filed a special action complaint against city and city clerks, challenging city's decision that an initiative they submitted to decree that a certain street in the city never be narrowed was non-legislative and thus would not be placed on the ballot.

Following an expedited show-cause hearing, the Superior Court, Coconino County denied residents' requests for declaratory, injunctive, mandamus, and other relief, agreed with the city that the subject matter of the initiative was administrative rather than legislative, and entered judgment for city. Residents appealed. The Court of Appeals affirmed. The Supreme Court granted residents' petition for review.

The Supreme Court held that:

- Residents, as qualified electors of city, had the power to propose an initiative on any matter legislative in nature, and
- Initiative set the public policy of preserving the street as it existed and preventing use of public funds to narrow the street was legislative in nature and therefore could proceed to the ballot.

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**EMINENT DOMAIN - FEDERAL**

## United States v. Bennett

**United States Court of Appeals, Fifth Circuit- July 24, 2025 - F.4th - 2025 WL 2078190**

United States, which built border wall on easement it held on private property abutting the border with Mexico, brought condemnation action to take that portion of the land and areas surrounding it to further build up the wall and make related improvements.

Landowner sought compensation for the value of the wall, contending the United States exceeded the scope of the easement when it built the wall, and sought to introduce expert testimony regarding the value of the wall, which the United States moved to exclude.

The United States District Court for the Southern District of Texas granted the motion to exclude and certified the question for interlocutory appeal.

The Court of Appeals sitting by designation, held that:

- Government built border wall in easement for public purposes and thus was acting through its

eminent domain power such that trespass rule could not apply to grant landowner title to the wall, and
- Wall did not exist when the taking occurred, and thus no compensation was due, as the government had not built the wall when it entered into possession.

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**PUBLIC EMPLOYMENT - MARYLAND**

## Nguyen v. State

**Supreme Court of Maryland - July 30, 2025 - A.3d - 2025 WL 2155720**

Following bench trial, defendant, who was former police officer, was convicted in the Circuit Court of reckless endangerment for failing to prevent unprovoked and spontaneous assault on individual by a third person that occurred in defendant's presence. Defendant appealed.

The Appellate Court affirmed. Defendant filed petition for a writ of certiorari.

The Supreme Court held that:

- State failed to prove that defendant owed duty to protect individual from third person's kicking individual in head, and
- State failed to establish that special relationship existed between defendant and individual for purposes of special relationship exception to public duty doctrine.

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**EMINENT DOMAIN - MINNESOTA**

## Fletcher Properties, Inc. v. City of Minneapolis

**Supreme Court of Minnesota - July 30, 2025 - N.W.3d - 2025 WL 2155530**

Residential landlords brought action against city, challenging ordinance prohibiting landlords from refusing to rent to tenants because of desire to avoid complying with Section 8 housing voucher program as preempted by state law, for unlawful interference with freedom of contract, and under Due Process, Takings, and Equal Protection Clauses of Minnesota Constitution.

The District Court granted summary judgment to landlords on due process and equal protection claims, and entered permanent injunction against enforcement of ordinance. City appealed. The Court of Appeals reversed and remanded, and the Supreme Court affirmed. On remand, the District Court, Hennepin County, granted city's motion for summary judgment, denied landlords' motion for summary judgment, and dissolved temporary injunction. Landlords appealed. The Court of Appeals affirmed. Landlords petitioned for review.

The Supreme Court held that:

- Ordinance did not cause a "physical taking" under Minnesota Takings Clause by appropriating landlords' right to exclude others from their property by allowing voucher holders to occupy it;
- Landlords failed to establish that ordinance would result in a negative economic impact that would rise to the level of a regulatory taking;
- Ordinance did not interfere with residential landlords' investment-backed expectations;
- The character of the government action weighed against finding that ordinance constituted a regulatory taking;
- Ordinance was not conflict preempted; and

- Minnesota Human Rights Act (MHRA) did not demonstrate any legislative intent to preempt local action by occupying the field of housing discrimination.

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**NUISANCE - UTAH**

## Barrani v. Salt Lake City

**Supreme Court of Utah - July 31, 2025 - P.3d - 2025 WL 2177876 - 2025 UT 25**

City residents brought public and private nuisance claims against city, alleging city's failure to eliminate unsheltered people's encampments on city-owned land adjoining their properties was interfering with their use and enjoyment of their land.

The Third District Court, Salt Lake County, granted city's motion to dismiss. Residents appealed.

The Supreme Court held that:

- Allegation that city's failure to eliminate encampments constituted a nuisance was a claim that city failed to adequately perform a public duty, and thus the public duty doctrine applied, and
- Special relationship exception to the doctrine did not apply.

City residents' allegation that city's failure to eliminate encampments created by unsheltered people on the city's public land constituted a nuisance was a claim that city failed to adequately perform a public duty, and thus the public duty doctrine applied to the claim; any actions the city could take stemmed from powers it had as a government actor, and city had a duty to exercise its enforcement authority for the benefit of all residents.

City residents did not have a special relationship with city in connection with encampments created by unsheltered people on the city's public land, even if they lived near the land, and thus special relationship exception to the public duty doctrine did not apply to preclude application of the doctrine to residents' claim that the city's failure to eliminate the encampments was a public and private nuisance; virtually all residents of the city "adjoined" city-owned land, encampments and the unsheltered people who lived in them were transient, and city had not done anything to reach out to the residents that would create a special relationship.

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**LIABILITY - ARIZONA**

## Sanchez v. Maricopa County

**Supreme Court of Arizona - July 21, 2025 - P.3d - 2025 WL 2025888**

Motorists brought action against county for negligence and negligence per se for injuries suffered when deputy sheriff rear-ended their vehicle while he was driving a vehicle owned by the county.

The Superior Court granted county's motion to dismiss for failure to state a claim. Motorists appealed. The Court of Appeals affirmed. The Supreme Court granted review.

As matters of first impression, the Supreme Court held that:

- County was not liable under the doctrine of respondeat superior for any negligence of deputy in rear-ending motorists' vehicle;
- When duties are imposed upon a county sheriff by law rather than by the county, the latter will not

be responsible for their breach of duty or for their nonfeasance or misfeasance in relation to such duty; and
- Sheriff was the public entity with whom a notice of claim could have been filed.

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**PUBLIC UTILITIES - MAINE**

## Snakeroot Solar, LLC v. Public Utilities Commission

**Supreme Judicial Court of Maine - July 15, 2025 - A.3d - 2025 WL 1934508 - 2025 ME 64**

Solar energy company brought petition before the Public Utilities Commission seeking a good-cause exemption from statutory deadline for qualifying its proposed photovoltaic generating facility for participation in state's net energy billing program.

The Maine Public Utilities Commission denied company's petition. Solar energy company appealed.

The Supreme Judicial Court held that:

- PUC's conclusion that "external delays" that would justify a good-cause exemption meant events that were "external" to, or outside of, the interconnection process was a reasonable interpretation of the statute;
- The record supported PUC's determination that delays in company's ability to complete a "cluster study" analyzing all energy projects in the area, and company's extended upgrade construction schedule, were routine parts of a typical interconnection process and thus not a external delay; and
- PUC did not abuse its discretion when it denied company's request for a good-cause exemption from operational deadline.

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**POLITICAL SUBDIVISIONS - MARYLAND**

## Trustees of Walters Art Gallery, Inc. v. Walters Workers United

**Supreme Court of Maryland - July 29, 2025 - A.3d - 2025 WL 2115486**

Labor unions filed complaint against art museum's board of trustees, board president, and museum director, seeking to compel production of records requested under the Maryland Public Information Act (MPIA).

On cross-motions for summary judgment, the Circuit Court entered summary judgment for unions and directed defendants to respond to the MPIA requests. Defendants appealed, and the Circuit Court stayed its ruling pending appeal. The Appellate Court affirmed. Defendants petitioned for further review.

After granting certiorari, the Supreme Court held that:

- Method and purpose of board's formation favored finding that board, which had been founded due to a bequest to mayor and city council and whose board of trustees had been incorporated by the General Assembly as an "educational corporation," was not a government instrumentality;
- General Assembly's decision to incorporate board by special act under Maryland Constitution's provision on formation of corporations did not reflect an intent to create a municipal entity; disapproving *Moberly v. Herboldsheimer*, 276 Md. 211, 345 A.2d 855.
- "Degree of governmental control" factor weighed against finding that board was a government

instrumentality;
- "Public funding" factor leaned modestly against finding that board was a government instrumentality;
- "Performance of traditionally governmental functions" factor went against finding that board was a government instrumentality;
- "Tax treatment" factor leaned in favor, albeit with relatively little weight, of finding that board was a government instrumentality;
- "Sovereign immunity" factor weighed against finding that board was a government instrumentality; and

Considering all factors, board was not a government instrumentality and thus was not subject to the MPIA.

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**EMINENT DOMAIN - MICHIGAN**

## Jackson v. Southfield Neighborhood Revitalization Initiative

**Supreme Court of Michigan - July 16, 2025 - N.W.3d - 2025 WL 1959046**

Former owners of real property that had been subjected to tax-foreclosure process by which county sold their properties to city for the minimum bid through right-of-first-refusal process under former version of General Property Tax Act (GPTA) brought action against city, county treasurer, and other defendants and alleged, among other things, violations of due process, equal protection, the takings clauses of the United States and Michigan Constitutions, and the GPTA, which were claims that all stemmed from former property owners' contention that they were entitled to any surplus proceeds.

The Circuit Court entered summary disposition for defendants. Former property owners appealed. The Court of Appeals affirmed. Former property owners sought leave to appeal. The Supreme Court vacated and remanded in lieu of granting leave to appeal. On remand, the Circuit Court granted defendants summary disposition. Former property owners appealed. The Court of Appeals affirmed in part, reversed in part, vacated in part, and remanded. County sought leave to appeal.

The Supreme Court held that:

- A violation of the Takings Clause of the Michigan Constitution occurs when there are no surplus funds from a public auction but instead the government obtains surplus value from tax-foreclosed properties that were transferred between governmental units for the minimum bid under the right-of-first-refusal process set forth in former version of the GPTA without ever offering the property for sale at a public auction;
- Although GPTA's newly enacted provision that set forth procedure for claimant to seek any surplus proceeds from eventual tax-foreclosure sale applied retroactively to existing claims, provision did not govern relief in the instant case; and
- Recent GPTA amendment that provides that any unit of government exercising its right of first refusal to purchase tax-foreclosed property must pay the foreclosing governmental unit (FGU) the greater of the minimum bid or the fair market value of the property applies only prospectively to claims accruing after the public act became effective.

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**MUNICIPAL GOVERNANCE - NEW JERSEY**

## Bulur v. New Jersey Office of Attorney General

**Supreme Court of New Jersey - July 23, 2025 - A.3d - 2025 WL 2055210**

In first case, city public safety director and city police chief brought action against Attorney General, Office of Attorney General, and officer in charge appointed to lead city police department, seeking declaratory judgment that Attorney General's decision to supersede control of city police department after officer-involved shooting exceeded his statutory authority, and seeking injunctive relief.

In second case, city mayor and police chief brought action against Attorney General, Office of Attorney General, and officer in charge, seeking declaratory and injunctive relief with respect to actions taken while in charge of police department.

In both cases, the Superior Court granted Attorney General's motion for transfer of venue to the Superior Court, Appellate Division. The Superior Court, Appellate Division, granted plaintiffs' motion to consolidate and reversed Attorney General's decision. Attorney General's petition for certification was granted.

The Supreme Court held that legislature authorized Attorney General's supersession of city police department.

Legislature authorized Attorney General's supersession of city police department after officer-involved shooting over objection of local authorities; after Attorney General's announcement that he had assumed control over department and appointed an officer in charge to lead department, legislature took affirmative steps to ensure that officer in charge, who was New York police officer, would succeed in his crucial role in that supersession by enacting law that waived training requirements established for New Jersey police officers, and legislature specifically appropriated funds for the State's operation of department during period in which municipal control was superseded.

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**EMINENT DOMAIN - VIRGINIA**

## Association of American Railroads v. Hudson

**United States Court of Appeals, Fourth Circuit - July 18, 2025 - F.4th - 2025 WL 2011675**

Railroad trade industry association brought pre-enforcement action to challenge Virginia statute establishing streamlined procedures by which internet broadband service providers could access railroad property and lay cable across railroad tracks, alleging federal preemption and an unconstitutional taking.

The United States District Court for the Eastern District of Virginia granted Virginia defendants' motion to dismiss for lack of jurisdiction based on finding that association lacked standing to pursue its claims. Association appealed.

The Court of Appeals held that:

- Association's claim that the Interstate Commerce Commission Termination Act (ICCTA) impliedly preempted the Virginia statute on grounds that the Virginia statute discriminated against railroads did not require participation of the association's individual member railroads, and thus association had standing to bring that claim;
- Association's claim that the ICCTA impliedly preempted the Virginia statute on grounds that the Virginia statute's application, cumulatively and in the aggregate, would unreasonably interfere with rail transportation in Virginia, did not require the participation of the association's individual members, and thus association had standing to bring that claim; and
- Takings challenge to Virginia statute involved individualized proof that required the participation

of the association's members, and thus association lacked standing to bring that claim.

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**ZONING & PLANNING - VIRGINIA**

## Oak Valley Homeowners Association, Inc. v. Prince William County Board of Supervisors

**Court of Appeals of Virginia, Arlington - July 22, 2025 - S.E.2d - 2025 WL 2043957**

Landowners sought declaratory judgment against county board of supervisors to invalidate amendment to comprehensive plan to build data centers, alleging board violated statutory public-hearing requirements by failing to listen to and consider public comments received at hearing before voting to adopt amendment.

The Prince William Circuit Court sustained board's demurrer. Landowners appealed.

The Court of Appeals held that:

- Landowners' allegations were sufficient to establish that they had standing to challenge board's land-use decision, but
- Statute governing advertising and written notice requirements relating to a comprehensive plan, an ordinance, or amendments to a comprehensive plan or ordinance for local governing body's land-use decision does not impose a listen-to-and-consider requirement.

Landowners' allegations were sufficient to establish that they had standing to challenge county board of supervisors' land-use decision, seeking declaratory judgment to invalidate amendment to board's comprehensive plan to build data centers; ten of 11 landowners owned and resided on parcels that abutted land where the comprehensive-plan amendment allowed data centers or owned land that was less than 2,000 feet away, landowners alleged that amendment had already reduced their property values, and they cited quantitative analysis and modeling that data centers would increase noise they currently experienced to over 75 decibels, making it similar to constant noise experienced while standing 50 feet from heavily traveled highway.

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**COUNTIES - WASHINGTON**

## Washington State Association of Counties v. State

**Court of Appeals of Washington, Division 2 - July 22, 2025 - P.3d - 2025 WL 2048214**

Counties and coordinating agency for county legislative authorities brought action for declaratory and injunctive relief against State, alleging that funding system for indigent defense services provided by counties violated rights to counsel, due process, and equal protection under federal and state constitutions.

The Superior Court granted State's motion to dismiss for failure to state a claim, based on lack of standing. Plaintiffs appealed.

The Court of Appeals held that:

- Counties were within zone of interest for constitutional rights to counsel and equal protection, as component for their standing

- Counties sufficiently alleged an injury in fact, as component for standing; and
- Liberal approach to standing was applicable.

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**PUBLIC CONTRACTS - LOUISIANA**

## 23rd Psalm Trucking, L.L.C. v. Madison Parish Police Jury

**Supreme Court of Louisiana - June 27, 2025 - So.3d - 2025 WL 1788077 - 2024-00808 (La. 6/27/25)**

Garbage collection company brought action against parish police jury for breach of contract and unfair trade practices after police jury terminated company's residential waste collection and disposal contract early.

The District Court granted police jury's motion for summary judgment. Company appealed, and the Second Circuit Court of Appeal affirmed. Company petitioned for certiorari review.

The Supreme Court held that:

- Police jury lacked authority to enter into trash disposal contract absent approval by the State Bond Commission or a non-appropriation clause in the contract, and
- Company did not detrimentally rely upon unequivocal advice from an unusually authoritative source.

Police jury lacked authority to enter into four-year, residential waste collection and trash disposal contract with garbage collection company absent approval by the State Bond Commission or a non-appropriation clause in the contract that would allow the police jury to terminate the contract for lack of funding without a penalty.

Garbage collection company did not detrimentally rely upon unequivocal advice from an unusually authoritative source, and thus could not maintain detrimental reliance claim against parish police jury following early termination of garbage collection contract, where company had the opportunity before executing the contract to seek legal advice from an attorney on the laws applicable to contracting with the police jury, but did not, and neither the police jury nor its attorney issued a legal opinion relating to the contract prior to signing it.

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**ZONING & PLANNING - GEORGIA**

## DeThomas Investments, LLC v. LMRK PropCo, LLC

**Court of Appeals of Georgia - July 14, 2025 - S.E.2d - 2025 WL 1923873**

Billboard easement holder brought action against owner of property neighboring property on which easement was located, city, and city development authority, asserting fraud, negligent misrepresentation, fraudulent concealment, civil conspiracy, tortious interference with contractual and business relations, nuisance, inverse condemnation, and breach of easement contract, and seeking punitive damages and litigation expenses, relating to alleged destruction of billboard easement through rezoning.

The trial court denied motions to dismiss by neighboring owner and city and authority. Neighboring owner and city and authority brought interlocutory appeals.

The Court of Appeals held that:

- Holder adequately pleaded claims against neighboring owner;
- Acts of city and authority in connection with rezoning were governmental functions, and thus, there was no waiver of sovereign immunity for such acts for holder's claims of fraud, fraudulent concealment, negligent misrepresentation, tortious interference with contract, and fraud-based civil conspiracy; and
- Holder did not state cause of action against city or authority for nuisance, inverse condemnation, or breach of easement contract.

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**NEGLIGENCE - MARYLAND**

## Mayor and City Council of Baltimore v. Wallace

**Supreme Court of Maryland - July 17, 2025 - A.3d - 2025 WL 1982241**

Bicyclist who fell and sustained injuries while biking home from work on promenade in city park brought negligence action against city.

The Circuit Court denied city's motion for summary judgment, and subsequently entered verdict in bicyclist's favor for $100,000 following jury trial and denied city's motion for judgment notwithstanding the verdict. City appealed. The Appellate Court affirmed. City's petition for writ of certiorari was granted.

The Supreme Court held that Recreational Use Statute's protection for landowners who make property available to public for recreational purposes did not apply to promenade in city park and thus did not preclude bicyclist's negligence action against city.

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**EMINENT DOMAIN - MICHIGAN**

## Yono v. County of Ingham

**Supreme Court of Michigan - July 16, 2025 - N.W.3d - 2025 WL 1957960**

Delinquent taxpayer brought action against county, county treasurer, and county land bank authority, alleging unconstitutional taking of property without just compensation after county foreclosed on property to recover delinquent taxes and property failed to sell at public auction.

The Circuit Court granted defendants' motion for summary disposition. Taxpayer appealed. The Court of Appeals affirmed in part, reversed in part, and remanded, directing trial court to calculate surplus owed to property owner. Defendants sought leave to appeal.

The Supreme Court held that because taxpayer's foreclosed real property did not sell at public auction, there were no "surplus proceeds" and, therefore, no taking that required just compensation.

Because delinquent taxpayer's foreclosed real property did not sell at public auction held in compliance with the General Property Tax Act (GPTA), there were no "surplus proceeds" and, therefore, no taking under state constitution that required just compensation; foreclosure sale demonstrated that value of the property interest the government retained was less than what taxpayer owed in property taxes because the property did not sell for the minimum bid, and because there were no proceeds from the sale, taxpayer was not entitled to any compensation.

For purposes of takings claim under state constitution, when property foreclosed upon to recover delinquent property taxes is sold at a public auction, the result of that sale determines the value of the property.

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**MUNICIPAL GOVERNANCE - NEW JERSEY**

## Bulur v. New Jersey Office of Attorney General

**Supreme Court of New Jersey - July 23, 2025 - A.3d - 2025 WL 2055210**

In first case, city public safety director and city police chief brought action against Attorney General, Office of Attorney General, and officer in charge appointed to lead city police department, seeking declaratory judgment that Attorney General's decision to supersede control of city police department after officer-involved shooting exceeded his statutory authority, and seeking injunctive relief.

In second case, city mayor and police chief brought action against Attorney General, Office of Attorney General, and officer in charge, seeking declaratory and injunctive relief with respect to actions taken while in charge of police department.

In both cases, the Superior Court, Law Division, Passaic County, granted Attorney General's motion for transfer of venue to the Superior Court, Appellate Division. The Superior Court, Appellate Division, granted plaintiffs' motion to consolidate and reversed Attorney General's decision. Attorney General's petition for certification was granted.

The Supreme Court held that legislature authorized Attorney General's supersession of city police department.

Legislature authorized Attorney General's supersession of city police department after officer-involved shooting over objection of local authorities; after Attorney General's announcement that he had assumed control over department and appointed an officer in charge to lead department, legislature took affirmative steps to ensure that officer in charge, who was New York police officer, would succeed in his crucial role in that supersession by enacting law that waived training requirements established for New Jersey police officers, and legislature specifically appropriated funds for the State's operation of department during period in which municipal control was superseded.

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**MUNICIPAL ORDINANCE - SOUTH CAROLINA**

## Whitehurst v. Town of Sullivan's Island

**Supreme Court of South Carolina - July 16, 2025 - S.E.2d - 2025 WL 1947815**

After denial of her motion to suppress, defendant was convicted in the Municipal Court, Town of Sullivan's Island, of violating town's disorderly conduct ordinance for loudly berating her ride-share driver with profanity and xenophobic epithets on public street in residential area at almost 2:00 a.m.

Defendant appealed. The Circuit Court affirmed. Defendant appealed.

The Supreme Court held that:

- Ordinance was a content-neutral time, place, and manner restriction that did not violate free

speech rights as applied;
- Ordinance was not unconstitutionally vague under Due Process Clause; and
- State established sufficient chain of custody to admit video from ride-share driver's dash camera.

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**FEES - CALIFORNIA**

## Dessins LLC v. City of Sacramento

**Court of Appeal, Third District, California., (Sacramento) - July 9, 2025 - Cal.Rptr.3d - 2025 WL 1891810**

Voter, a property owner who voted against storm drainage fee, filed petition for writ of mandate and complaint against city and city council, alleging that adoption of the fee violated constitutional amendment mandating that all property-related fees be approved by a majority vote of owners of property subject to the fee because city's votes should not have counted toward reaching the required majority approval.

The Superior Court entered judgment for city and city council. Voter appealed.

The Court of Appeal held that city was authorized to vote on fee because it was a "property owner of property subject to the fee."

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**ZONING & PLANNING - GEORGIA**

## Berlin v. City of Atlanta Urban Design Commission

**Court of Appeals of Georgia - July 2, 2025 - S.E.2d - 2025 WL 1822481**

Neighbors filed petition for certiorari challenging decision of city's urban design commission to approve certificate of appropriateness for the redevelopment of two residential parcels in historic district, naming commission and property owners as defendants and seeking declaratory judgment.

The Superior Court denied neighbors' motion for summary judgment and granted summary judgment sua sponte to defendants. Neighbors filed application for discretionary appeal, which was granted, and the Court of Appeals reversed and remanded. On remand, neighbors filed an amended certiorari petition challenging the commission's decisions on substantive grounds and on the ground that the commission did not comply with notice requirements. The Superior Court denied neighbors' motion for partial summary judgment and granted summary judgment to the defendants, and, following a hearing, issued a detailed final order affirming the commission's decision. neighbors appealed.

The Court of Appeals held that:

- Standard to evaluate the city's compliance with notice requirements was substantial compliance;
- City substantially complied with redevelopment ordinance's notice requirements; and
- Evidence was sufficient to support commission's approval of certificate of appropriateness.

City urban design commission's approval of certificate of appropriateness for the redevelopment of two residential parcels in historic district did not constitute rezoning, and thus correct standard to evaluate the city's compliance with notice requirements was substantial compliance, rather than strict compliance; while city exercising its zoning power when it established the district, the

commission was not concerned with use or density but with regulation of external architectural features, which was closer to the scope of the city's police power rather than its zoning power, and ordinance did not set forth a consequence for non-compliance with the notice provisions or prohibit other modes of proceeding.

City urban design commission, in proceeding for certificate of appropriateness for the redevelopment of two residential parcels in historic district, substantially complied with redevelopment ordinance's notice requirements, which provided that, before "any" meeting, notice of the application "shall" be published on the city website, signage "shall" be posted on the property, and notice of the hearing "shall" be mailed to nearby property owners, even if sign was posted on the properties before the first hearing, but not the second and third hearings, and notice of the first hearing was mailed to only two of the four neighbors and no notices of the second and third hearings were mailed to any affected property owners; neighbors all either attended or otherwise participated in at least one of the meetings, and were afforded a meaningful opportunity to be heard on the applications.

Evidence was sufficient to support city urban design commission's approval of certificate of appropriateness for the redevelopment of two residential parcels in historic district; commission adopted a ten-page city staff report, which addressed and examined the property configuration and characteristics of the properties and the general design of each house and analyzed, inter alia, the use, density, required parking, height limitations, lot coverage, open space, tree removal, and architectural elements.

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**IMMUNITY - MAINE**

## Rinaldi v. Maine Correctional Center

**Supreme Judicial Court of Maine - July 8, 2025 - A.3d - 2025 WL 1872908 - 2025 ME 60**

Inmate brought action against Department of Corrections, prison, and state, asserting various tort claims arising from injuries sustained in fall on outdoor paved road running through center of prison.

The Superior Court granted inmate's motion for partial summary judgment, concluding that state lacked immunity from suit under Maine Tort Claims Act (MTCA) because inmate's accident fell within MTCA's "public building" exception. State, Department, and prison appealed.

The Supreme Judicial Court held that:

- Road was not physically annexed to any of prison's buildings;
- Road was not adapted to realty; and
- Road was not intended to be irremovable from realty.

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**PUBLIC EMPLOYMENT - MARYLAND**

## Coates v. Charles County Board of Commissioners

**Appellate Court of Maryland - June 30, 2025 - A.3d - 2025 WL 1792907**

Two members of board of county commissioners brought action on board's behalf against commissioner for writ of mandamus or prohibition, permanent injunction, and declaratory judgment

as to commissioner's authority to vote on termination of county administrator's employment in light of board's previous Prompt and Remedial Action (PRA), which had restricted commissioner's conduct following independent investigation into administrator's personnel complaint against commissioner.

Commissioner asserted counterclaim for declaratory judgment that administrator had been terminated pursuant to board vote in which commissioner had participated. Administrator intervened as party plaintiff. After granting board's motion to quash foreign subpoenas and denying commissioner's motion to compel county attorney's deposition testimony, the Circuit Court granted permanent injunction enforcing PRA, enjoining commissioner and board from taking any action to modify PRA or rescind amendment to board's rules with vote that included commissioner, then denied commissioner's motion for reconsideration and dismissed counterclaim. Commissioner appealed.

The Appellate Court held that:

- Board members had standing to seek declaratory and injunctive relief to resolve internal governance dispute;
- Board members were required to exhaust administrative remedies before seeking declaration that commissioner violated
- Maryland Fair Employment Practices Act (FEPA);
- Action did not present nonjusticiable political question;
- PRA was administrative in nature;
- As a matter of apparent first impression, administrator was not "appointee on the policy making level" under Title VII or FEPA;
- Trial court did not abuse its discretion by consolidating hearing on preliminary injunction with merits of claim for permanent injunction; and
- Whether investigation's findings justified board's adoption of PRA was irrelevant to parties' claims.

County administrator was not "appointee on the policy making level," and thus, was not excluded from definition of "employee" in Title VII and Maryland Fair Employment Practices Act (FEPA); administrator acted primarily as administrative vessel for programs and policy priorities of county board of commissioners, having inward-focused duties concerning day-to-day management and operation of county government and execution and implementation of board's directives, initiatives, and policies, administrator's exercise of discretion largely involved internal affairs, referral of enforcement actions, and management of day-to-day operations, and board had not entrusted administrator with policymaking and decisionmaking authority or discretion as to high-impact issues of public interest.

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**CITY CHARTER - OHIO**

## State ex rel. Maumee v. Lucas County Board of Elections

**Supreme Court of Ohio - July 17, 2025 - N.E.3d - 2025 WL 1983414 - 2025-Ohio-2516**

City and qualified elector filed action against county board of elections for writ of prohibition preventing board from placing petitions for recall of mayor and six city councilmembers on special-primary election ballot and writ of mandamus ordering board to grant city's and elector's protests against recall petitions.

Recall petitioners intervened as respondents.

The Supreme Court held that:

- City charter did not foreclose recall as method of removing elected officials from office, and
- City's home-rule charter did not incorporate statute permitting removal of elected officials via recall petition, and, thus, mayor and councilmembers could not be removed through recall petition.

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**PREVAILING WAGE LAWS - CALIFORNIA**

## Palm Springs Promenade, LLC v. Department of Industrial Relations

**Court of Appeal, Fourth District, Division 1, California - June 13, 2025 - Cal.Rptr.3d - 111 Cal.App.5th 1294 - 2025 WL 1671615 - 2025 Daily Journal D.A.R. 5065**

Developer filed petition for writ of mandate challenging determination by Department of Industrial Relations that redevelopment project which included public and private improvements in charter city's downtown tourist area was not subject to city ordinance exempting projects deemed municipal affairs from state prevailing wage law pursuant to city's home rule authority.

City joined petition and filed position statement. The Superior Court, Riverside County, denied writ. Developer appealed.

The Court of Appeal held that:

- As a matter of first impression, where a charter city contributes money for construction of public improvements within a private development project, that undertaking does not necessarily transform the project into a "municipal affair" that may be exempted from the prevailing wage law pursuant to the city's home rule authority;
- First phase of redevelopment project was a public works project, as required for prevailing wage law to apply;
- De minimis exception to public works definition under prevailing wage law did not apply to redevelopment project; and
- As matter of first impression, redevelopment project was not a municipal affair.

Where a charter city contributes money for construction of public improvements within a private development project, that undertaking does not necessarily transform the project into a "municipal affair" that may be exempted from the prevailing wage law pursuant to the city's home rule authority.

First phase of redevelopment project that included public and private improvements in charter city's downtown tourist area was a "public works project," as required for prevailing wage law to apply to project, where city contributed city tax dollars toward constructions, alteration, and/or demolition of subject property.

De minimis exception to public works definition under prevailing wage law did not apply to redevelopment project that included public and private improvements in charter city's downtown tourist area, where city's contribution of funds toward project was more than 2% of total project cost, and financing agreement between developer and city was entered into before date specified in exception.

Redevelopment project that included public and private improvements in charter city's downtown

tourist area was not a “municipal affair,” within meaning of city ordinance exempting municipal affair projects from prevailing wage law pursuant to city’s home rule authority, even though city’s contribution of about $51.36 million for project was not insignificant and included funds for public infrastructure constructions; developer contributed almost three times the city’s contribution, selected contractors, entered into construction contracts for project, bore risk of any cost overruns for redevelopment of private improvements, and retained substantial control over how its funds were spent, and project was primarily built to enhance value of developer’s private improvements.

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**PUBLIC EMPLOYMENT - CALIFORNIA**

## Brown v. City of Inglewood

**Supreme Court of California - July 7, 2025 - P.3d - 2025 WL 1860244**

Elected city treasurer brought action against city, its mayor, and city council members, alleging retaliation, in violation of statute providing whistleblower protections to employees, for reporting purported illegal activity.

The Superior Court denied city and its officials’ motion to strike complaint under anti-SLAPP statute. On appeal by city and its officials, the Court of Appeal reversed, finding that anti-SLAPP statute applied and that treasurer was not “employee” entitled to whistleblower protections. The Supreme Court granted review.

The Supreme Court held that:

- Whether or not elected officials were included in statutory definition of “employee” for whistleblower statute was unclear from text of statute alone;
- Treasurer was not “employee” entitled to protections of statute; and
- Common law employment test was not applicable to determination of whether statutory definition of “employee” for whistleblower statute included elected officials.

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**IMMUNITY - GEORGIA**

## Guy v. Housing Authority of City of Augusta

**Supreme Court of Georgia - June 24, 2025 - S.E.2d - 2025 WL 1737207**

Tenant in low-income apartment complex owned by city housing authority brought premises-liability action against authority, alleging that authority was negligent in failing to provide property security or take measures to keep property safe, or both, leading to tenant being shot in the leg on the front porch of her apartment.

The State Court granted authority’s motion for summary judgment. Tenant appealed. The Court of Appeals affirmed. Tenant filed petition for writ of certiorari, which was granted.

The Supreme Court held that Court would remand for consideration of the issue of authority’s sovereign immunity under the proper analytical approach of examining common law of England as adopted by the General Assembly.

Supreme Court would remand for consideration of issue of city housing authority’s sovereign immunity under proper analytical approach of examining common law of England as adopted by the

General Assembly, on appeal in premises liability action against authority brought by tenant in low-income apartment complex owned by authority, where, because of framing of question in the Court of Appeals, briefing on issue of sovereign immunity did not engage with common law in a way that would aid the Supreme Court's consideration of the question under proper analysis, no court had yet performed an analysis of the common law for the Supreme Court to review, and it would be imprudent for the Supreme Court to reach out and decide that question in the first instance based on briefing before it.

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**ZONING & PLANNING - MARYLAND**

## County Council of Prince George's County v. Robin Dale Land LLC

**Supreme Court of Maryland - July 3, 2025 - A.3d - 2025 WL 1833494**

Landowners petitioned for judicial review of district council's adoption of sectional map amendments on court-ordered remand in proceeding concerning district council's comprehensive rezoning for two subregions of county, alleging that district council improperly downzoned their properties following a work session on remand without giving them notice and opportunity to be heard, and in a manner inconsistent with remand instructions.

The Circuit Court reversed and remanded. District council appealed. The Appellate Court affirmed and remanded. District council petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- Countywide rezoning after work session was not a comprehensive rezoning reflecting substantive change in law with retroactive application;
- Countywide rezoning after work session did not moot landowners' assertions of error in underlying appeal;
- District council's enactment of sectional map amendments on remand did not comply with laws on notice and right to a hearing;
- District council did not comply with remand instructions; and
- Work session was not the effective equivalent of a public hearing.

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**ANNEXATION - NEW JERSEY**

## Whiteman v. Township Council of Berkeley Township

**Supreme Court of New Jersey - July 10, 2025 - A.3d - 2025 WL 1900914**

Residents of barrier island community filed complaint in lieu of prerogative writs, seeking judicial review of township council's denial of their petition for deannexation from township.

The Superior Court, Law Division, entered judgment for residents and ordered deannexation. Township appealed. The Superior Court, Appellate Division, affirmed. Certification was granted.

The Supreme Court held that:

- Trial court's finding that township's denial of residents' deannexation petition was arbitrary and unreasonable under deannexation statute due to bias was supported by competent, relevant, and reasonably credible evidence;

- Substantial evidence supported trial court's finding that residents of barrier island community met their burden of establishing that township's denial of their deannexation petition was detrimental to economic and social well-being of a majority of residents of area sought to be deannexed; and
- Trial court's finding that deannexation of barrier island community would not have caused substantial economic or social harm to township was supported by competent, relevant, and reasonably credible evidence.

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**RELIGIOUS FREEDOM ACT - TEXAS**

## Perez v. City of San Antonio

**Supreme Court of Texas - June 13, 2025 - S.W.3d - 2025 WL 1675639 - 68 Tex. Sup. Ct. J. 1197**

Members of Native American church brought action alleging that city's development plan for public park prevented them from performing ceremonies essential to their religious practice, in violation of Free Exercise Clause, Texas Religious Freedom Restoration Act (RFRA), and the Religious Services Clause of the State Constitution.

The United States District Court for the Western District of Texas granted motion for preliminary injunction in part. Members appealed. The Court of Appeals certified question.

As matters of first impression, the Supreme Court held that:

- Force of Religious Services Clause is absolute and categorical, but
  Scope of Clause is not unlimited, and it does not extend to governmental actions for preservation and management of public
- lands.

When the Religious Services Clause of the State Constitution applies, its force is absolute and categorical, meaning it bars a governmental prohibition or limitation on religious services without regard to whether the prohibition or limitation passes strict scrutiny or any other test that balances the right against the government's interests.

Scope of the Religious Services Clause of the State Constitution, forbidding a law or governmental decision that prohibits or limits certain religious services, is not unlimited, and the Clause does not reach governmental actions taken to preserve and maintain public property for the safety and enjoyment of the public.

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**IMMUNITY - ALABAMA**

## Ex parte McGuire

**Supreme Court of Alabama - June 27, 2025 - So.3d - 2025 WL 1776553**

Arrestee brought action against city police chief and arresting officer, asserting claims that included ones for assault and battery, false arrest, defamation, and libel, all of which related to her arrest for theft and attempting to elude police.

The Circuit Court denied motion by police chief and officer for summary judgment based on immunity. Police chief and officer petitioned for a writ of mandamus.

The Supreme Court held that:

- Arresting officer had State-agent and statutory peace-officer immunity from arrestee's claims, and
- Police chief had State-agent and statutory peace-officer immunity from arrestee's claims.

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**EMINENT DOMAIN - GEORGIA**

## eCBI Warner, LLC v. Patrick

**Court of Appeals of Georgia - June 24, 2025 - S.E.2d - 2025 WL 1742187**

City contractors, which contracted with city to create a fiber optic wide area network, filed petition for writ of mandamus against city and related individual defendants to obtain right-of-way access permits to 48 fiber optic lines that contractors had placed that were seemingly not addressed by parties' contract.

After contractors dismissed with prejudice their federal action against the same defendants, city terminated lease agreement between city development authority and one of the contractors for 12 additional fiber optic lines, and contractors amended their complaint to include facts and claims based on the lease termination, seeking appointment of a receiver, a permanent injunction, and a writ of mandamus and asserting claims for inverse condemnation, breach of contract, nuisance, and expenses of litigation.

The Superior Court, Houston County granted defendants' motion for summary judgment. Contractors appealed. The Court of Appeals affirmed in part and reversed in part. On remand, the Superior Court granted defendants' motion to dismiss. Contractors appealed.

The Court of Appeals held that:

- Contractors stated a new claim for inverse condemnation of the 12 leased lines that was not barred by res judicata based on the dismissal with prejudice of the federal action;
- Contractors failed to state a claim for private nuisance based on the lease termination;
- Issuance of writ of mandamus requiring city to acknowledge that contractors owned originally asserted 48 lines was not warranted;
- Issuance of writ of mandamus requiring city to acknowledge the lease was not warranted; and
- Final judgment in federal action precluded the assertion in state court of any claims, federal or state, that were asserted in the federal action or were related to claims asserted therein.

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**IMMUNITY - GEORGIA**

## Paulk v. Wilson

**Court of Appeals of Georgia - June 25, 2025 - S.E.2d - 2025 WL 1751914**

Plaintiff filed complaint against county sheriff in his official capacity, alleging injuries caused by deputy's negligent operation of sheriff's department vehicle.

The trial court denied sheriff's motion to dismiss on grounds of sovereign immunity. Sheriff filed application for interlocutory review, which was granted.

The Court of Appeals held that statutes waiving sovereign immunity for certain motor vehicle claims against local government entities permitted claim against sheriff in his official capacity.

Statutes waiving sovereign immunity for certain motor vehicle claims against local government entities permitted plaintiff's claim against county sheriff in his official capacity alleging injuries caused by deputy's negligent operation of sheriff's department vehicle, although statutes did not permit claim against sheriff in his individual capacity for deputy's alleged negligence because sheriff was local government officer whose sovereign immunity was not waived by statutes; plaintiff's action against sheriff in his official capacity constituted claim against county itself, and county was local government entity whose sovereign immunity was waived under statutes.

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**BRIDGES - NEBRASKA**

## County of Hayes v. County of Frontier

**Supreme Court of Nebraska - June 6, 2025 - 319 Neb. 98 - 21 N.W.3d 474**

County filed petition in error for review of decision of board of commissioners of adjoining county denying county's claim under county bridge statutes for reimbursement for one-half of cost of replacing bridge.

The District Court denied and dismissed petition. County appealed.

The Supreme Court held that:

- Broad legal conclusion in petition in error was insufficient to raise claims about due process and board's closed session, and
- Board's determination that bridge was not located on road on county line was not arbitrary and capricious.

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**POLITICAL SUBDIVISIONS - TEXAS**

## Baumgardner v. Brazos River Authority

**Supreme Court of Texas - June 27, 2025 - S.W.3d - 2025 WL 1779081**

River authority brought action against landowner in state court seeking permanent injunction requiring landowner to remove portions of boat ramp and on-water boat dock facility located on, over, or above lake managed by authority.

The District Court granted river authority's request for permanent injunction. Landowner appealed to the Waco Court of Appeals, Tenth District. The Tenth Court determined that the appeal fell within the exclusive intermediate appellate jurisdiction of the Court of Appeals, Fifteenth District. Following Supreme Court's transfer of appeal to the Fifteenth Court, river authority moved to re-transfer appeal to Tenth Court.

The Supreme Court held that:

- River authority was a political subdivision, rather than an agency in the executive branch of the state government;
- noscitur a sociis canon of statutory production, providing that the meaning of a word or phrase, especially one in a list, should be known by words immediately surrounding it, did not apply; and
- Exceptions to Fifteenth Court's exclusive appellate jurisdiction for certain proceedings that could have involved counties, local governmental entities, and other political subdivisions did not imply

that the legislature intended for all other proceedings involving local governmental entities and political subdivisions, including river authorities, to fall within Fifteenth Court's exclusive jurisdiction.

River authority was a political subdivision, rather than an agency in the executive branch of the state government, for purposes of Fifteenth Court of Appeals' exclusive intermediate appellate jurisdiction over matters brought by or against the state or an entity in the executive branch of the state government; governing statutes implied that, at least for the jurisdictional statute at issue, authority existed not as part of the state government but as an entity distinct from, and subordinate to, the state, jurisdiction of authority was geographically limited, authority could have taxing powers, though it did not currently exercise them, and authority did not receive state appropriations, but instead was funded primarily through water sales and water-treatment-related services.

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**PUBLIC UTILITIES - VIRGINIA**

## Zinner v. Washington Gas Light Company

**Court of Appeals of Virginia, Fairfax - July 1, 2025 - S.E.2d - 2025 WL 1799975**

Natural gas local distribution company petitioned for certiorari review of county board of zoning appeals' (BZA) determination that a proposed high-pressure natural gas pipeline under road in landowners' neighborhood was a transmission line that required a special exception under zoning ordinance, and company also filed separate action seeking declaratory judgment that state law preempted zoning ordinance as applied to pipeline.

The Fairfax Circuit Court affirmed BZA's finding that landowners had standing, reversed BZA's determination that a special exception was required, and dismissed declaratory judgment action as moot. Landowners and company each appealed, and appeals were consolidated.

The Court of Appeals held that:

- One landowner had standing via loss of driveway access during workday for up to a week during pipeline construction;
- Proposed pipeline was a distribution line exempt from requirement of a special exception for transmission lines;
- Special exception did not require a distribution line to be a low-pressure line connected directly to customers' homes;
- Doctrine of judicial restraint precluded consideration of whether company's entire system qualified as exempt distribution lines;
- Circuit court properly declined to defer to BZA's interpretation of zoning ordinance;
- Declaratory judgment action was moot; and
- Capable-of-repetition exception to mootness doctrine did not apply.

Proposed high-pressure natural gas pipeline under road in neighborhood was a "distribution line" and not a "transmission line," and thus the pipeline was exempt from requirement of a special exception under county zoning ordinance; pipeline was not connected to a gathering line, storage facility, or large-volume customer that was not down-stream from a distribution center, natural gas company that sought pipeline was a local distribution company that only delivered gas to ultimate consumers of gas, company did not produce or resell gas, company would not operate pipeline at pressures that exceed threshold for designating it a transmission line, and company had not and would not voluntarily designate pipeline as a transmission line.

**MUNICIPAL ORDINANCE - FLORIDA**

## Martinez v. City of Lantana

**District Court of Appeal of Florida, Fourth District - April 23, 2025 - So.3d - 2025 WL 1172818**

Homeowner brought action against city, seeking declaratory and injunctive relief arising from pending fines for code violations related to homeowner's driveway, fence, and parking, alleging that the fines violated constitutional prohibition on excessive fines.

The Circuit Court granted summary judgment to city. Homeowner appealed.

The District Court of Appeal held that accumulated fine totaling over $160,000 did not violate constitutional prohibition on excessive fines.

Accumulated fine totaling over $160,000 for homeowner's code violations related to her driveway, fence, and parking did not violate constitutional prohibition on excessive fines, where per diem amount of fines ranged from $75 to $250.

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**LIABILITY - GEORGIA**

## Dates v. City of Atlanta

**Supreme Court of Georgia - June 10, 2025 - S.E.2d - 2025 WL 1632201**

Mother, individually and as son's parent and guardian, brought personal injury action against city after son was injured when a large tree branch fell on him while he was playing on property owned and managed by city.

The State Court granted city's motion to dismiss. Mother appealed, and the Court of Appeals affirmed. Mother sought certiorari, which was granted.

The Supreme Court held that minor tolling provision's extension of time does not apply to toll time in which minor must provide ante litem notice to municipality.

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**PUBLIC EMPLOYMENT - IOWA**

## Rheeder v. Gray

**Supreme Court of Iowa - June 6, 2025 - N.W.3d - 2025 WL 1599759**

Female police department employee brought action against police chief, deputy chief, and her superior, alleging she experienced sexual harassment and retaliation in violation of the Iowa Civil Rights Act (ICRA).

The District Court denied defendants' motions for summary judgment. Defendants sought interlocutory review, which was granted.

The Supreme Court held that:

- Deputy chief's alleged conduct was not actionable sexual harassment;

- Chief's memorandum directive to employee and deputy chief did not amount to an "adverse action" that would support a retaliation claim; and
- Superior's alleged actions did not constitute a "materially adverse action."

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**MUNICIPAL GOVERNANCE - MICHIGAN**

## Hackel v. Macomb County Board of Commissioners

**Supreme Court of Michigan - June 16, 2025 - N.W.3d - 2025 WL 1689298**

County commission, in response to county executive's complaint against it for declaratory relief concerning certain matters, filed a counterclaim for declaratory relief and a writ of mandamus ordering executive to comply with Michigan's Uniform Budgeting and Accounting Act (UBAA), county charter, and particular ordinance by granting commission or its designee real-time, read-only access to the county's financial-management software to the commission's director of legislative affairs.

After dismissal of executive's initial complaint, the parties filed cross-motions for partial summary disposition of commission's counterclaim. The Circuit Court denied commission's motion, granted executive's motion, determined that the ordinance at issue unlawfully infringed on executive's authority under the charter, and dismissed all remaining claims in the counterclaim by stipulation of the parties. Commission appealed by right. The Court of Appeals affirmed. Commission sought leave to appeal.

The Supreme Court held that county ordinance requiring that executive give commission or commission's agent real-time, read-only access to county's financial-management software was a valid exercise of commission's legislative powers under county charter.

County ordinance requiring that county executive give county commission or commission's agent real-time, read-only access to county's financial-management software was a valid exercise of commission's legislative powers under county charter; charter stated that executive's management and supervisory authority could be limited as otherwise provided by charter or law, ordinance imposed a degree of restriction upon executive's control over county's information-technology and finance departments, and there was no suggestion that ordinance was otherwise in conflict with or preempted by another charter provision or state law.

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**JURISDICTION - MISSISSIPPI**

## Promenade D'Iberville, LLC v. Jacksonville Electric Authority

**Supreme Court of Mississippi - June 12, 2025 - So.3d - 2025 WL 1659903**

Developer of retail shopping center in Mississippi brought action against Florida municipal utility, alleging that use of defective soil stabilizer product using material from utility's power plant in construction of shopping center caused extensive property damage.

The Circuit Court adopted special master's recommendation and denied utility's motion to dismiss for lack of subject matter jurisdiction based on sovereign immunity, denied utility's motion for summary judgment, and denied both parties' motions for partial summary judgment.

Following the United States Supreme Court's decision in *Franchise Tax Board of California v. Hyatt*

*(Hyatt II)*,578 U.S. 171, 136 S. Ct. 1277, 194 L.Ed. 2d 431, the Circuit Court granted utility's motion to reconsider, granted utility's motion for partial summary judgment, and denied developer's motion to amend the complaint.

After initially granting developer's motion for interlocutory appeal, the Mississippi Supreme Court subsequently dismissed and remanded for consideration based on the United States Supreme Court's decision in *Franchise Tax Board of California v. Hyatt*. On remand, the Circuit Court, Schmidt, J., granted utility's motion to dismiss for lack of subject matter jurisdiction based on sovereign immunity. Developer appealed.

The Supreme Court held that:

- Florida municipal utility did not enjoy interstate sovereign immunity from developer's action in Mississippi, and
- Allowing developer to proceed with its product liability claims against Florida municipal utility in a Mississippi court would not be either arbitrarily or fundamentally unfair to utility and would not be hostile to the Full Faith and Credit Clause or to Florida law.

Florida municipal utility did not enjoy interstate sovereign immunity from developer's action in Mississippi, alleging utility supplied a defective product which caused property damage to retail shopping center; utility was not an arm of the State of Florida for purposes of the Eleventh Amendment, but rather an electric utility operated by city and was an instrumentality of that municipality, and enjoyed only a limited waiver of statutory immunity under Florida law.

Allowing developer of shopping center to proceed with its product liability claims against Florida municipal utility in a Mississippi court would not be either arbitrarily or fundamentally unfair to utility and would not be hostile to the Full Faith and Credit Clause or to Florida law; utility was an instrumentality of a city and not entitled to sovereign immunity, there were genuine issues of material fact as to whether utility's product was designed in a defective manner which rendered it unreasonably dangerous such that it was the proximate cause of developer's damages, there was evidence that utility knowingly shipped its product to Mississippi, and developer asserted claims and sought damages in Mississippi similar to those that would be allowed against a public utility in Florida.

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**FEES - CALIFORNIA**

## Gluck v. City and County of San Francisco

**Court of Appeal, First District, California - May 30, 2025 - Cal.Rptr.3d - 2025 WL 1540871**

Property owners brought class action against city and county challenging constitutionality of sewer charges, alleging that city's new sewer rate structure, specifically regarding stormwater, violated state constitution's voter approval requirement and proportionality requirement for property related fees.

The Superior Court sustained city's demurrer to complaint without leave to amend. Property owners appealed.

The Court of Appeal held that:

- A city's combined wastewater and stormwater system is a "sewer," and thus subject to exception to voter approval requirement;

- Court would deny property owners' request for judicial notice of legislative history materials on senate bill providing guidance on how term "sewer" should be interpreted;
- Leave to amend was not warranted following the trial court sustaining demurrer with regard to owners' claims for violation of voter approval requirement;
- Owners stated claim that sewer rates violated proportionality requirement; and
- Issue of whether sewer rate structure violated proportionality requirement could not be resolved at demurrer phase because of factual dispute.

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**ZONING & PLANNING - CONNECTICUT**

## High Watch Recovery Center, Inc. v. Planning and Zoning Commission of Town of Kent

**Supreme Court of Connecticut - May 27, 2025 - A.3d - 352 Conn. 120 - 25 WL 1478736**

Operator of residential treatment program for substance use disorders sought review of town planning and zoning commission's denial of operator's application for special permit to build therapeutic greenhouse in connection with its preexisting nonconforming use of property for agricultural therapy.

The Superior Court dismissed. Operator appealed. The Appellate Court reversed and remanded. Commission petitioned for certification to appeal, which was granted.

The Supreme Court held that:

- Substantial evidence supported determination that proposed use of greenhouse would impermissibly expand a nonconforming use;
- Commission's failure to cite impermissible intensification of a seasonal nonconforming use did not preclude affirmance of its decision;
- Preexisting nonconforming use of property for agricultural therapy was not a year-round use; and
- A seasonal limitation on outdoor agricultural therapy program was implicit in scope of preexisting nonconforming use.

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**POLITICAL SUBDIVISIONS - NEVADA**

## Matter of Public Records Requests to Las Vegas Metropolitan Police Department

**Supreme Court of Nevada - May 29, 2025 - P.3d - 2025 WL 1535023 - 141 Nev. Adv. Op. 26**

Metropolitan police department filed petition under Judicial Confirmation Law (JCL) seeking an advisory opinion about its disclosure obligations under Nevada Public Records Act (NPRA) after media outlets requested records about police investigation of an alleged sexual assault by professional athlete, and alleged victim filed answer and counterclaim seeking declaratory relief that certain documents that were subject of prior federal ruling were not privileged.

The District Court granted motion to dismiss petition for failure to state a claim, denied motion to amend petition to assert claim for declaratory relief, and dismissed counterclaim. Police department appealed, and alleged victim cross-appealed.

The Supreme Court held that:

- As matter of first impression, police department was not a "municipality" with a governing body that could seek advisory opinion under JCL;
- As matter of first impression, sheriff was not a "governing body" under JCL section on advisory opinions;
- As matter of first impression, Nevada Public Records Act (NPRA) does not allow a governmental entity to seek declaratory relief in response to records request;
- Trial court properly denied police department's motion to amend petition;
- Alleged victim lacked standing to answer petition;
- Alleged victim was not a "party" who could file counterclaim for declaratory relief; and
- Issue preclusion barred counterclaim for declaratory relief.

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**IMMUNITY - TEXAS**

## City of Houston v. Manning

**Supreme Court of Texas - May 23, 2025 - S.W.3d - 2025 WL 1478506 - 68 Tex. Sup. Ct. J. 995**

Motorist brought action against city, asserting various claims including negligence and negligence per se and invoking the waiver of immunity in the Texas Tort Claims Act (TTCA) in connection with collision at intersection between motorist's vehicle that was traveling westbound and fire truck that was traveling southbound.

The 127th Judicial District Court denied city's summary judgment motion. City filed interlocutory appeal. The Houston Court of Appeals affirmed. City petitioned for review, which was granted.

The Supreme Court held that TTCA waived governmental immunity from suit for injuries caused by negligence per se alleged by motorist; disapproving Thoele v. Tex. Dep't of Crim. Just., 2020 WL 7687864; Tex. Dep't of Crim. Just. v. Parker, 2020 WL 5833869.

Texas Tort Claims Act (TTCA) waived governmental immunity from suit for injuries caused by negligence per se alleged by motorist against city in connection with claim that fire truck driver violated standards in statute providing that operator of an authorized emergency vehicle may proceed past a red or stop signal or stop sign after slowing as necessary for safe operation and in statute providing that operators are not relieved from duty to operate an authorized emergency vehicle with appropriate regard for safety of all persons, relating to collision that occurred when driver of fire truck that was traveling southbound above the posted speed limit when en route to an emergency call proceeded into intersection and struck vehicle driven by motorist who was traveling westbound on roadway; statutory standards of care used to measure negligence per se merely defined more precisely what conduct breached common-law standard of reasonable care, so that violating the statutory standards would have also been negligence under the common law; disapproving *Thoele v. Tex. Dep't of Crim. Just.*, 2020 WL 7687864; *Tex. Dep't of Crim. Just. v. Parker*, 2020 WL 5833869. Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1); Tex. Transp. Code Ann. §§ 546.001(2), 546.005(1).

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**EMINENT DOMAIN - VIRGINIA**

## City of Virginia Beach v. Mathias

**Court of Appeals of Virginia, Hampton - June 10, 2025 - S.E.2d - 2025 WL 1634117**

City filed condemnation petition, seeking to acquire property for construction and alteration of public road. The Virginia Beach Circuit Court invalidated city's certificate of take and dismissed the petition without prejudice. City appealed.

The Court of Appeals held that, as matters of first impression:

- Statutory amendment to condemnation laws requiring a condemnor to conduct an examination of title, to provide a report of the examination of title, and provide owners a copy of all recorded instruments identified in the report applied to city's action;
- City's act in providing landowners with a title commitment that included some of the documents from the 60-year chain of title did not comply with statutory requirement that city provide 60-year history;
- City's act in providing landowners with a title commitment did not comply with statutory requirement that city provide a examination of title; and
- City was required to strictly comply with statutory requirements.

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**CHARTER SCHOOLS - CALIFORNIA**

## Napa Valley Unified School Dist. v. State Bd. of Education

**Court of Appeal, Third District, California - March 14, 2025 - 110 Cal.App.5th 609 - 331 Cal.Rptr.3d 763 - 2025 Daily Journal D.A.R. 3072**

School district and school boards association filed separate complaints and petitions for writs of mandate against State Board of Education, challenging Board's decision finding that school district board of education and county board of education abused their discretion in denying charter school proponent's petition to establish charter middle school.

The Superior Court granted petitions and issued peremptory writ of mandate commanding Board to set aside its decision. Charter school proponent appealed grant of both petitions, and appeals were consolidated.

The Court of Appeal held that:

- Evidence was insufficient to support finding that district board's process was unfair on basis that it was not in accord with statute prohibiting denial of petition unless board made written factual findings;
- Evidence was insufficient to support finding that district board's process was unfair on basis that board members prejudged charter school petition;
- Evidence was insufficient to support finding that district board's process was unfair on basis that board members did not consider evidence rebutting report by district board's, evidence presented at public hearing, or public comments favoring approval of petition;
- Evidence was insufficient to support finding that district board's process was unfair on basis that it "discredited" petition because lead petitioners were parents, and not experienced school administrators;
- Evidence was insufficient to support finding that county board's denial was ineffective on basis that it failed to make written factual findings;
- Proponent perfected submission of its petition no earlier than date it sent email to school district superintendent, thus, county board's denial of petition was timely; and
- Evidence was sufficient to support county board's factual finding that charter school was demonstrably unlikely to serve interests of community, as statutory grounds for denying petition.

**PUBLIC UTILITIES - COLORADO**

## American Heritage Railways, Inc. v. Colorado Public Utilities Commission

**Supreme Court of Colorado - May 27, 2025 - P.3d - 2025 WL 1499006 - 2025 CO 27**

Railroad appealed decision of the Public Utilities Commission (PUC) which adopted ALJ's determination that PUC had jurisdiction over county's petition for declaratory ruling and that railroad's changes to train station's parking lot had to comply with county's land use code.

The District Court affirmed. Railroad appealed.

The Supreme Court held that:

- PUC had jurisdiction to interpret land use statute;
- County had standing to bring action;
- Railroad had adequate notice that ALJ would consider the issue of whether changes to station constituted extensions, betterments, or additions to buildings, structures, or plant or other equipment; and
- Enlargement of station parking lot was an extension, betterment, or addition to a building, structure, or plant or other equipment.

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**WATER LAW - COLORADO**

## Application for Water Rights of Town of Firestone v. BCL Colorado LP

**Supreme Court of Colorado - May 27, 2025 - P.3d - 2025 WL 1499979 - 2025 CO 33**

Town filed a water rights application and augmentation plan in connection with planned water system expansion, and wastewater service provider opposed the application.

Following a bench trial, the Water Court entered an order partially granting and partially denying provider's motion for involuntary dismissal, and dismissed without prejudice three of five claims for groundwater well fields from town's application and revised its augmentation plan accordingly. Town appealed.

The Supreme Court held that:

- Town was not entitled to use water court's retained jurisdiction to improperly delay its burden of demonstrating non-injury to senior water rights holders until after its conditional groundwater rights had been approved;
- Water court was within its discretion to allow provider to contest the issue of non-injury despite pretrial stipulation that the proposed depletion patterns were adequate to prevent injury; and
- Sufficient evidence supported water court's finding that town failed to meet its burden of demonstrating non-injury as to some of the proposed well sites.

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**MUNICIPAL ORDINANCE - ILLINOIS**

## Village of Lincolnshire v. Olvera

**Supreme Court of Illinois - May 22, 2025 - N.E.3d - 2025 IL 130775 - 2025 WL 1461453**

In prosecution by village, defendant was convicted following a bench trial in the Circuit Court, of driving under the influence (DUI) of cannabis, which conviction turned on issue of whether defendant could safely drive during driver's education lesson in high school.

Defendant appealed. The Appellate Court affirmed. Defendant petitioned for leave to appeal.

The Supreme Court held that:

- Although Vehicle Code provides that a municipality must have written permission from the state's attorney to prosecute a violation of the Code, Code does not impose an affirmative duty on a municipality to provide evidence of its written permission in the record of such a prosecution, and
- Evidence was sufficient to support DUI conviction.

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**CHARTER SCHOOLS - MISSOURI**

## Board of Education of City of Saint Louis v. Missouri Charter Public School Commission

**Missouri Court of Appeals, Eastern District - April 22, 2025 - S.W.3d - 2025 WL 1161476**

City board of education filed petition for declaratory judgment and injunctive relief against Missouri Charter Public School Commission and Missouri State Board of Education, challenging establishment of a charter school within its school district.

The Circuit Court issued judgment dismissing city board's petition for lack of standing. City board appealed.

The Court of Appeals held that city board had legally protectable interests that were sufficient to confer standing to bring underlying action for declaratory judgment and injunctive relief.

City board of education had legally protectable interests that were sufficient to confer standing to bring action for declaratory judgment and injunctive relief against Missouri Charter Public School Commission and State Board of Education, challenging establishment of a charter school within its district; city board had legally protectable interests, conferred by statute governing proposed charter requirements, in receiving a copy of any charter school application within its school district, in filing objections to any such application, and in Commission following its official policies and procedures when Commission was sponsor of charter, and city board was directly and adversely affected by alleged failures of Commission and State Board to follow procedures outlined in that statute.

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**PUBLIC RECORDS - NEW HAMPSHIRE**

## Ortolano v. City of Nashua

**Supreme Court of New Hampshire - May 29, 2025 - A.3d - 2025 N.H. 23 - 2025 WL 1521653**

Records requestor brought action against city and private for-profit corporation formed by city-owned non-profit corporation to aid city in federal tax credit process for construction of performing arts center, seeking to compel production of records under Right-to-Know Law.

The Superior Court granted defendants' motions to dismiss and denied requestor's motion to amend

her complaint. Requestor appealed.

The Supreme Court held that:

- Requestor failed to allege sufficient facts to establish an independent claim against city;
- Plain language of the Right-to-Know Law did not control whether for-profit corporation was exempt from Right-to-Know Law;
- Trial court was required to conduct a "government function" analysis to determine whether for-profit corporation was required to comply with Right-to-Know Law request for documents; and
- Records requestor was not entitled to amend her complaint to add allegations that did not cure any defect.

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**IMMUNITY - OHIO**

## Castner v. Jefferson County

**Court of Appeals of Ohio, Seventh District, Jefferson County - April 11, 2025 - N.E.3d - 2025 WL 1096937 - 2025-Ohio-1309**

Resident who was injured after stepping on unsecured meter-well cover on his neighbor's property following county repair to water line brought negligence action against county and three employees.

The Court of Common Pleas granted summary judgment to defendants, finding that county was immune from suit because water and sewer district was not performing proprietary function in making repair. Resident appealed.

As matter of first impression, the Court of Appeals held that maintenance of water supply system not operated by municipal corporation was not proprietary function.

Maintenance of water supply system operated by county regional water and sewer district was not proprietary function, and, thus, county was immune from suit in negligence action brought by injured resident following repair of water line; while statutory list of proprietary functions was non-exhaustive, specific reference to "municipal corporation water systems" evinced intent to exclude water supply systems operated by other entities, interpreting statute as providing that operation of water supply system was proprietary function regardless of operator would render modifier "municipal corporation" as surplusage, and there was no support for resident's claim that there was no reason to treat municipal corporation water supply systems differently than regional water and sewer districts.

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**LIABILITY - ARIZONA**

## Sanchez-Ravuelta v. Yavapai County, Town of Dewey-Humboldt State

**Supreme Court of Arizona - May 19, 2025 - P.3d - 2025 WL 1427953**

Adult and minor passengers, who were injured in multi-vehicle collision allegedly caused by intoxicated driver after he left bar, brought negligence action against state, town, and county, alleging that Department of Liquor Licenses and Control had statutory duty of care to take reasonable measures to prevent bar with liquor license from overserving customers, thereby creating hazardous conditions, and that Department breached such duty.

The Superior Court, Maricopa County, entered judgment that granted state's and county's motions to dismiss and town's motion for judgment on pleadings, dismissing all claims with prejudice, but then, after plaintiffs moved for new trial, entered second judgment, responding to minor plaintiffs' prior motion to dismiss their claims without prejudice, dismissing minor plaintiffs' claims against state and county without prejudice and all other claims with prejudice. After plaintiffs appealed both judgments, the Superior Court entered order vacating second judgment, granted in part and denied in part plaintiffs' motion for new trial, and issued third judgment, dismissing minor plaintiffs' claims without prejudice and adult plaintiffs' claims with prejudice. The Superior Court, Julian, J., thereafter entered fourth judgment, clarifying that it was entered as final judgment with no further matters pending. Plaintiffs appealed and town cross-appealed. The Court of Appeals affirmed in part, vacated in part, and remanded. Supreme Court granted further review.

The Supreme Court held that:

- Trial court's fourth judgment, rather than third judgment, was "final judgment" for purpose of determining timeliness of town's notice of cross-appeal;
- Plaintiffs complied with procedural rule governing notice of appeal filed during pendency of new trial motion and, thus, appellate jurisdiction was suspended and trial court retained jurisdiction to rule on new trial motion;
- Trial court judgment dismissing plaintiffs' claims did not, by failing to address their motion for new trial, deny such motion by operation of law;
- Permissive liquor statutes did not establish enforceable public policy duty of care on part of Department;
- Statute requiring director of Department to establish separate investigations unit whose sole responsibility was investigation of compliance with liquor laws did not create enforceable public policy duty;
- Statute providing that spirituous liquor license "shall" be issued by Department only after satisfactory showing of, among other things, capability, qualifications and reliability of applicant did not establish duty enforceable in plaintiffs' negligence case; and
- Statutes expressly regulating conduct of licensees in serving selling, or furnishing spirituous liquor to patrons did not regulate conduct of, or impose any penalty on, Department so as to establish public policy duty of care.

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**ZONING & PLANNING - IDAHO**

## Idaho Association of Realtors, Inc. v. City of Lava Hot Springs

**Supreme Court of Idaho, Boise, January 2025 Term - May 21, 2025 - P.3d - 2025 WL 1450018**

Property owners and real estate agent association brought action against city, seeking declaratory judgment that city's short-term rental ordinance, which only allowed non-owner or manager occupied vacation rentals in commercial zones, violated state law and exceeded city's statutory authority, and writ of prohibition precluding enforcement of ordinance.

The Sixth Judicial District Court granted city's motion for summary judgment. Property owners and association appealed.

The Supreme Court held that vacation rental ordinance violated the Short-term Rental and Vacation Rental Act.

City short-term vacation rental ordinance which prohibited vacation rentals in residential zones

except for owner or manager-occupied bed and breakfasts, but allowed rentals in commercial zones subject to regulation, violated the Short-term Rental and Vacation Rental Act, which precluded the city from enacting any ordinance that has the express effect of prohibiting short-term rentals in the city.

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**MUNICIPALITIES - MAINE**

## City of Portland v. Lesperance

**Supreme Judicial Court of Maine - May 20, 2025 - A.3d - 2025 WL 1439488 - 2025 ME 43**

City park ranger issued summons and complaint to dog owner for violating city ordinances requiring dogs to be leashed in city and specific city park.

Following dispositional hearing, the Portland District Court issued judgment fining dog owner $500. Dog owner appealed.

The Supreme Judicial Court held that city park ranger that issued citation to dog owner was at least a "de facto" officer under the de facto officer doctrine.

City park ranger that issued citation to dog owner for violating city ordinances requiring dogs to be leashed in city park was at least a "de facto" officer under the de facto officer doctrine and, thus, any uncertainty regarding the extent of park ranger's legal authority to enforce the ordinances was not a defense to the citation; issue as to whether a park ranger appointed as a constable under the city code was required to satisfy the training requirements of law enforcement officer to enforce a city ordinance was unresolved.

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**ENVIRONMENTAL LAW - NEW YORK**

## Glen Oaks Village Owners, Inc. v. City of New York

**Court of Appeals of New York - May 22, 2025 - N.E.3d - 2025 WL 1458090 - 2025 N.Y. Slip Op. 03101**

Group of building owners brought action against city, claiming local emissions law, intended to combat climate change and improve air quality and public health by imposing penalties for violating building emission limits, was preempted by state Climate Leadership and Community Protection Act (CLCPA), and otherwise violated the Due Process Clause.

The Supreme Court, New York County, granted city's motion to dismiss. Owners appealed. The Supreme Court, Appellate Division, affirmed as modified. City moved for leave to appeal, which the Appellate Division granted and certified question.

The Court of Appeals held that:

- CLCPA did not preempt city's local emissions law through field preemption, and
- CLCPA's savings clause did not only apply to local laws other than greenhouse gas emissions reduction measures.

State legislature neither expressed nor implied any intent to preempt field of regulating greenhouse gas emission in passing state Climate Leadership and Community Protection Act (CLCPA), and thus

CLCPA did not preempt city's local emissions law through field preemption; although CLCPA represented wide-ranging, statewide effort to address climate change that was, to some degree, forward-looking and aspirational in nature, establishing ultimate goals of reduction of greenhouse gas emissions and leaving mechanism for implementation of those goals to further study and eventual regulation, it was not so broad and detailed in scope as to require determination that it had precluded all local regulation in the area, particularly where local law would have only furthered State's policy interests.

Savings clause of state Climate Leadership and Community Protection Act (CLCPA), which addressed public's continuing obligation to comply with other applicable laws and regulations, whether federal, state, or local, in conjunction with section preserving existing authority of state entities to adopt and implement greenhouse gas emissions reduction measures, did not only apply to local laws other than greenhouse gas emissions reduction measures, as would support building owners' claim that the CLCPA preempted field of regulating greenhouse gas emissions with respect to city's local emissions law; given text of savings clause and CLCPA's structure and purpose, it was not reasonable to read savings clause as requiring compliance with federal emissions guidelines but not with local emissions requirements.

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**EMINENT DOMAIN - NORTH DAKOTA**

## Short v. Billings County

**United States Court of Appeals, Eighth Circuit - May 28, 2025 - F.4th - 2025 WL 1511037**

Landowners brought action in diversity against county and members of county board of commissioners, asserting claims including breach of contract, promissory estoppel, and claims for declaratory judgment, arising from county's use of quick take eminent domain process to condemn their land for construction of river bridge despite parties' settlement agreement stating county would not condemn any of the property.

The United States District Court for the District of North Dakota granted landowners' motion for preliminary injunction, and county appealed.

The Court of Appeals held that district court abused its discretion in preliminarily enjoining county and its agents from entering landowners' property.

County's power of eminent domain was hallmark of sovereignty that could not be contracted away, and thus district court abused its discretion in preliminarily enjoining county and its agents from entering landowners' property during pendency of federal eminent domain case and parallel state proceeding based on county's alleged breach of settlement agreement with owners in which it agreed not to pursue any legal action to condemn their property in connection with bridge project.

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**EMINENT DOMAIN - VIRGINIA**

## Norfolk Southern Railway Company v. State Corporation Commission

**Supreme Court of Virginia - May 22, 2025 - S.E.2d - 2025 WL 1461804**

Railroad appealed decision of the State Corporation Commission which rejected railroad's challenge to the constitutionality of a state statute permitting broadband providers to install fiber optic cables across the railroad's property.

The Supreme Court held that taking was not for a "public use," and thus the statute was unconstitutional as applied.

For-profit broadband service provider's installation of fiber optic cables across railroad's right of way, pursuant to statute permitting broadband service providers to install fiber optic cables across railroad property, was not for a "public use," and thus the statute was unconstitutional as applied; taking was by a private company for a private use, even if the public benefited from the taking.

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**INDENTURE TRUSTEE - WASHINGTON**

## UMB Bank, N.A. Trustee v. Eagle Crest Apartments, LLC

**Court of Appeals of Washington, Division 3 - May 15, 2025 - Not Reported in Pac. Rptr. - 2025 WL 1411267**

In 2013, John Sessions formed Eagle Crest Apartments, LLC (the limited liability company) to finance, construct, and operate a 168-unit multifamily Eagle Crest Apartments and related facilities in Williston ("Eagle Crest Project").

UMB Bank serves as the successor trustee for bonds issued by the City of Williston to finance the construction of the project.

In 2015, the limited liability company defaulted on its note securing repayment of the bonds. In 2019, UMB brought suit on the debt in North Dakota District Court, the Peace Garden State's court of general jurisdiction. After securing summary judgment on its foreclosure claim, UMB credit bid its judgment and acquired title to the Eagle Crest Project. The bid did not satisfy the entire debt. Based on evidence from a UMB representative regarding the remaining debt, the court entered a deficiency judgment against the limited liability company for $20,129,475.97.

Sessions also incorporated a variety of entities in North Dakota and Washington, including Historic Flight Foundation (HFF), a Washington nonprofit corporation, that subsequently became a judgment debtor.

On April 8, 2022, and before the North Dakota Supreme Court affirmed the judgment against John Sessions and his entities, UMB registered the North Dakota judgment in Spokane County Superior Court under the Uniform Enforcement of Foreign Judgments Act, RCW 6.36.035.

On August 2, 2022, HFF and the other defendants agreed to the appointment of an ancillary receiver for HFF and several other entities in King County Superior Court. HFF never challenged the validity of the North Dakota judgment in the receivership proceeding.

On July 20, 2023, HFF filed a motion, under CR 60(b)(5), in Spokane County Superior Court to vacate the registration of the foreign judgment.

HFF contended that the North Dakota judgment was void because the Washington State Attorney General did not receive notice of the North Dakota lawsuit required under RCW 24.03A.944 and .946. In so arguing, HFF emphasized that the North Dakota Constitution provides that the state district courts possess general jurisdiction over all matters "except as otherwise provided by law." In turn, North Dakota courts would look to Washington law to determine notice needed in a suit against a Washington nonprofit corporation. HFF argued that, due to the lack of notice to the Washington Attorney General, the North Dakota District Court lacked subject-matter jurisdiction over HFF.

On December 14, 2023, the Spokane County Superior Court denied HFF's motion to vacate the North Dakota judgment registered in Washington State. The superior court reasoned that Washington courts must recognize the North Dakota judgment under the Full Faith and Credit clause of the United States Constitution. U.S. Const., Art IV, § 1. Whereas a party may collaterally attack a foreign judgment if the issuing state lacked subject matter jurisdiction or personal jurisdiction, the North Dakota District Court possessed both.

On appeal, HFF asked this court to reverse the superior court's denial of his motion to vacate the judgment registered in Washington State.

In response to HFF's appeal, UMB argues, among other contentions, that HFF waived any right to object to the jurisdiction of the North Dakota court because HFF never argued a lack of jurisdiction before the North Dakota courts.

UMB also contended that, even if the Washington notice statutes, on which HFF relies, demanded notice of the North Dakota suit on the Washington State Attorney General, the statutes are not jurisdictional. Washington courts disfavor collateral attacks based on allegations of defective notice. Furthermore, UMB asserted that the North Dakota court needed to only apply its state's law, not Washington law, when assessing the need to serve interested parties.

The Court of Appeals stated that, "We do not address these alternative arguments because we agree with UMB that RCW 24.03A.944 and .946 do not require notice of the North Dakota lawsuit be given the Attorney General even assuming the North Dakota court should have applied Washington law.

"The North Dakota suit was an action to collect a debt owed by the Washington nonprofit corporation, HFF. RCW 24.03A.944 demands no notice to the Attorney General when a creditor or a bond trustee sues a nonprofit corporation in Washington State or in any other state. RCW 24.03A.944 does not read that its provisions extend to a suit in a foreign jurisdiction."

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**PUBLIC UTILITIES - WEST VIRGINIA**

## Huntington Sanitary Board v. Public Service Commission of West Virginia

**Supreme Court of Appeals of West Virginia - May 23, 2025 - S.E.2d - 2025 WL 1482207**

City sanitary board sought review of Public Service Commission's designation of sanitary board as the most suitable capable proximate utility to acquire and resume operations of nearby subdivision sewer district.

The Supreme Court of Appeals held that:

- Commission had continuing jurisdiction over subdivision's sewer district;
- Commission adequately considered alternatives to acquisition of sewer district by sanitary board;
- Commission did not err in determining that sanitary board was the most suitable capable proximate utility to acquire sewer district; and
- Fact that requiring sanitary board to acquire sewer district would have required city's council to approve the capital investment, enact a bond ordinance, and exercise eminent domain did not preclude designation of sanitary board as most suitable capable proximate utility to acquire sewer district.

Fact that requiring city sanitary board to acquire failing sewer district for nearby subdivision would have required city's council to approve the capital investment, enact a bond ordinance, and exercise

eminent domain to obtain sewer district's property did not preclude designation of sanitary board as most suitable capable proximate utility to acquire sewer district under Distressed and Failing Utilities Act; Commission considered those difficulties associated with the city's approval and participation in selecting sanitary board and directed that Commission staff would assist in navigating those difficulties.

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**BANKRUPTCY - ALABAMA**

## In re Jackson Hospital & Clinic, Inc.

**United States Bankruptcy Court, M.D. Alabama - May 15, 2025 - Slip Copy - 2025 WL 1419423**

In connection with the bankruptcy of Jackson Hospital and Clinic ("Debtors"), Debtors filed an Emergency Motion to Amend Employment Applications of the law firms and consultants (the "Professionals") retained by Debtors in connection with the bankruptcy. (the "Motion"). UMB Bank, N.A. filed an objection to the Debtors' Emergency Motion to Amend Employment Applications (the "Objection").

The Professionals sought to amend their employment applications, such that the scope of their employment is expanded to include the potential representation of The Medical Clinic Board of the City of Montgomery, Alabama (the "Medical Clinic Board") in any necessary restructuring efforts.

As the Bankruptcy Court explained, "The Debtors operate their businesses on real property and with the use of certain essential equipment and other personal property owned by the Medical Clinic Board pursuant to, without limitation, that certain Series 2015 Supplemental and Restated Lease Agreement between The Medical Clinic Board of the City of Montgomery, Alabama and Jackson Hospital & Clinic, Inc. dated as of December 1, 2015 (the "Lease Agreement"). Under the Lease Agreement, the Debtors pay rent that equals the debt service obligations under the Health Care Facility Revenue Bonds, Jackson Hospital & Clinic Series 2015. The bonds were issued by the Medical Clinic Board under the Series 2015 Bond Trust Indenture between the Medical Clinic Board and Regions Bank, as trustee, dated December 1, 2015. Under this debt and lease structure and through other transactions with the Medical Clinic Board, the Debtors have been able to purchase, finance, and utilize real and personal property owned by the Medical Clinic Board in a manner that provides favorable tax attributes to the Debtors."

"The Medical Clinic Board does not have a bank account and does not engage in day-to-day business operations. In most respects, the Medical Clinic Board serves primarily as a pass-through entity for the benefit of the Debtors. However, contrary to the Debtors' assertions, the Medical Clinic Board does have its own independent board of directors and officers. It was through the Medical Clinic Board's board of directors, for example, that bonds were authorized and the Lease Agreement was executed."

The Bankruptcy Court denied the Emergency Motion to Amend Employment Applications.

The Bankruptcy Court noted that the Debtors sought an order from the Court authorizing the Professionals to represent the Medical Clinic Board when the Medical Clinic Board currently is not a debtor. In addition, the Medical Clinic Board was not a debtor in possession. As such, the Medical Clinic Board is not a party that the Professionals can be employed to represent. The Medical Clinic Board has no duties under the Bankruptcy Code for which the Professionals can offer assistance. The Court lacks authority to approve or disapprove the selection of attorneys for non-debtor parties.

Accordingly, the Court concluded that it was the duty of the Court to refrain from granting the Motion.

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**PREEMPTION - COLORADO**

## County Commissioners of Boulder County v. Suncor Energy USA, Inc.

**Supreme Court of Colorado - May 12, 2025 - P.3d - 2025 WL 1363355 - 2025 CO 21**

City and county brought state court action against oil and gas producers, alleging injuries to plaintiffs' property and to their citizens arising from defendants' role in exacerbating climate change, and asserting claims for public and private nuisance, trespass, civil conspiracy, and unjust enrichment. Action was removed.

The United States District Court for the District of Colorado remanded action, and then denied defendants' motion to stay remand order pending appeal. Defendants appealed. The Court of Appeals affirmed in part and reversed in part.

Plaintiffs sought writ of certiorari. The United States Supreme Court granted writ, vacated judgment, and remanded action. On remand, the Court of Appeals affirmed the District Court's order remanding the action to state court. On remand, the District Court denied defendants' motion to dismiss for failure to state a claim. Defendants petitioned for order to show cause, which the Supreme Court granted.

The Supreme Court held that:

- Supreme Court would exercise its discretion to hear defendants' appeal since the questions presented had important implications for Colorado and its citizens;
- Federal common law concerning air pollution had been displaced by the Clean Air Act (CAA) and did not preempt plaintiffs' state law tort claims;
- The Clean Air Act (CAA) did not preempt plaintiffs' state law tort claims;
- Federal common law regarding claims brought against pollution emitters, even if not abrogated by the Clean Air Act (CAA), did not apply to preempt plaintiffs' state law tort claims; and
- Federal government's foreign affairs power did not preempt plaintiffs' state law tort claims.

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**EMINENT DOMAIN - FEDERAL**

## Kotis Associates, LLC v. United States

**United States Court of Federal Claims - April 23, 2025 - Fed.Cl. - 2025 WL 1197003**

Owners of 13 parcels of land underlying and immediately adjacent to railroad corridor filed suit seeking just compensation in amount upwards of $44,744,774 plus interest for taking of owner's property allegedly effected by rails-to-trails conversion, authorized by Surface Transportation Board (STB) by issuing notice of interim trail use (NITU), of former railroad right-of-way (ROW) into new easement for trail use subject to preservation for future rail use, known as interim trail use and railbanking (ITUR) easement, owned and operated by city as trail sponsor and created under railbanking provision of National Trails System Act Amendments.

After government conceded liability, owners moved for partial summary judgment as to applicable interest rate, bench trial was held on valuation, and government moved to reopen trial record.

The Court of Federal Claims held that:

- Corridor description adopted by STB was dispositive that ITUR easement was up to 100 feet wide either side of centerline;
- Government was judicially estopped from arguing that STB adopted incorrect description of corridor;
- Scope of city's ITUR easement was not controlled by width of railroad's former ROW;
- City's ITUR easement was exclusive so owners did not have right to use corridor;
- Railroad would have abandoned corridor but for conversion to trail;
- Owners were not entitled to recover cost of building privacy wall;
- Just compensation would be awarded in amount of $42,641,740; and
- Interest would be calculated using Moody's Aaa Corporate Bond rate compounded annually.

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**ZONING & PLANNING - RHODE ISLAND**

## Koziol Firearms, Inc. v. Marchand

**Supreme Court of Rhode Island - May 13, 2025 - A.3d - 2025 WL 1374672**

Landowner appealed decision of city zoning board of review, which denied its application for a use variance application for a use variance to operate a firearms manufacturing and sales business.

After landowner's motion for leave to present additional evidence was denied, landowner filed amended complaint against city, including members of city zoning board of review and city council, seeking declaration that amendment to zoning ordinance was null and void due to procedural defects.

The Superior Court denied landowner's zoning appeal and dismissed landowner's claim for declaratory relief without prejudice. Landowner appealed.

The Supreme Court held that Court was unable to conduct any meaningful review of landowner's request for declaratory relief.

Supreme Court was unable to conduct any meaningful review of request for declaratory relief by landowner, which sought a declaration that amendment to city zoning ordinance was null and void due to procedural defects, and thus vacatur in part of trial court's judgment that dismissed landowner's claim for declaratory relief and remand for trial court to conduct a new hearing was warranted; fact-finding that trial justice must ordinarily undertake in the course of determining whether to grant declaratory relief did not occur, in fact, trial justice made it clear that it was his view that he was unable to conduct the requisite fact-finding based on the record before him, and Supreme Court had no meaningful factual findings or legal determinations upon which to base an analysis.

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**RAILS TO TRAILS - GEORGIA**

## City of Albany v. South Georgia Rails to Trails, Inc.

**Court of Appeals of Georgia - May 6, 2025 - S.E.2d - 2025 WL 1302897**

Owner of inactive railroad corridor brought breach-of-contract action against city, alleging city failed to construct multi-use trail on property within five years as required by agreement under

which owner conveyed property to city in exchange for city developing it for public recreational purposes and installing utility lines.

The trial court denied city's motion to dismiss for failure to state a claim. City appealed.

The Court of Appeals held that agreement was not invalid, void, and enforceable because it allegedly violated statute government requirements for multiyear lease, purchase, or lease-purchase contracts between county or municipality.

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**IMMUNITY - IOWA**

## Doe v. Western Dubuque Community School District

**Supreme Court of Iowa - May 9, 2025 - N.W.3d - 2025 WL 1349436**

Minor student and her parents, individually and on behalf of their child, brought action under pseudonyms against school district and its officials and employees, asserting claims of negligence, breach of fiduciary duty, and loss of consortium after student was assaulted by another student during school.

The District Court granted defendants' motion to dismiss. Student and parents appealed.

The Supreme Court held that:

- Application of any heightened pleading standards of Iowa Municipal Tort Claims Act (IMTCA) to claims not subject to the IMTCA's qualified immunity defense was erroneous; overruling *Nahas v. Polk County*, 991 N.W.2d 770;
- IMTCA's heightened pleading standards were not applicable to the common law tort claims;
- Student's and parents' use of pseudonyms did not, by itself, preclude their action by depriving trial court of jurisdiction;
- Rule of electronic procedure, which provided that names of minor children were protected information, did not require use of fictitious names for student's parents;
- As matter of first impression, parents were not allowed to use "Doe" pseudonyms for themselves and student;
- As matter of first impression, remedy for unwarranted use of "Doe" pseudonym was to afford student and parents opportunity to amend their pleadings to use parents' real names and student's initials; and
- Fiduciary relationship did not exist between the parties.

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**EMINENT DOMAIN - NEW YORK**

## Village of Kiryas Joel v. Mezrich Estates Condominiums

**Supreme Court, Appellate Division, Second Department, New York - April 2, 2025 - 230 N.Y.S.3d 659 - 2025 N.Y. Slip Op. 01937**

Village commenced condemnation proceeding against condominium complex to acquire property for project to widen roads.

The Supreme Court, Orange County, granted complex's motion to dismiss proceeding as time-barred under Eminent Domain Procedure Law. Village appealed.

The Supreme Court, Appellate Division, held that:

- Three-year statute of limitations period began to run when public hearing on proposed project was held, and
- Village was not entitled to extension of three-year statute of limitations.

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**PUBLIC UTILITIES - OHIO**

## In re Application of Harvey Solar I, L.L.C.

**Supreme Court of Ohio - April 30, 2025 - N.E.3d - 2025 WL 1240101 - 2025-Ohio-1503**

Citizen's group and nearby residents sought judicial review of Power Siting Board's decision approving construction certificate for commercial solar farm. Applicant intervened.

The Supreme Court held that:

- Board did not act unlawfully or unreasonably by issuing construction certificate that did not require applicant to block neighbors' views of project;
- Applicant satisfied its obligations with respect to potential flooding;
- Applicant satisfied its obligation to provide information regarding project's potential impact on wildlife;
- Board did not act unlawfully or unreasonably in evaluating information regarding noise level provided by applicant;
- Applicant did not violate rule governing information to be provided regarding compliance with water quality regulations;
- Board did not act unlawfully or unreasonably in determining that solar farm would serve public interest, convenience, and necessity; and
- Applicant satisfied its obligation to provide information regarding glare.

Power Siting Board did not act unlawfully or unreasonably by issuing construction certificate for proposed commercial solar farm that did not require applicant to block neighbors' views of project; applicant's preliminary landscape plan used vegetative screening to partially screen facility from its neighbors, Board ordered applicant to work with licensed landscape architect to prepare final landscaping plan before beginning construction, and Board's obligation under statute governing issuance of certificate was to determine that facility represented minimum adverse environmental impact, not to ensure elimination of all adverse impacts.

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**EMINENT DOMAIN - PENNSYLVANIA**

## Pignetti v. Department of Transportation

**Supreme Court of Pennsylvania - April 25, 2025 - A.3d - 2025 WL 1196555**

Pennsylvania Department of Transportation (PennDOT) filed declaration of taking for two noncontiguous parcels of land for interstate improvement project.

Property owners filed petition seeking appointment of a board of viewers to determine just compensation for the taking. The Court of Common Pleas granted property owners' petition. PennDOT appealed. The Commonwealth Court reversed. Allowance of appeal was granted.

The Supreme Court held that property owner's two noncontiguous parcels were "used together for a unified purpose," as required for parcels to be valued as one.

Property owner's two noncontiguous parcels were "used together for a unified purpose," as required for parcels to be valued as one for purpose of Pennsylvania Department of Transportation's (PennDOT) condemnation of parcels for interstate improvement project; owner used the two parcels, which were separated by a few as ten feet in places, for the unitary purpose of storing vehicles and equipment used in his electrical business.

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**EMINENT DOMAIN - TEXAS**

## Commons of Lake Houston, Ltd. v. City of Houston

**Supreme Court of Texas - March 21, 2025 - S.W.3d - 2025 WL 876710 - 68 Tex. Sup. Ct. J. 539**

Developer of master-planned community in floodplain brought inverse condemnation action against city, alleging that city's amendment of floodplain ordinance following historic hurricane, to require residences to be built at least two feet above the 500-year floodplain, was a regulatory taking under the State Constitution.

The County Civil Court at Law denied city's plea to the jurisdiction. City filed interlocutory appeal. The Houston Court of Appeals reversed. Developer petitioned for review.

The Supreme Court held that:

- Amendment of ordinance as exercise of police power did not preclude regulatory takings claim;
- Amendment of ordinance to ensure compliance with federal flood insurance program did not preclude regulatory takings claim;
- Regulatory takings claim was ripe for adjudication; and
- Developer had standing to assert a regulatory takings claim

City's amendment of floodplain ordinance to require residences to be built at least two feet above the 500-year floodplain, as an exercise of police power following historic hurricane with catastrophic flooding, did not preclude developer of master-planned community within 100- and 500-year floodplains from having a regulatory takings claim against city under the State Constitution; a regulation could cause a compensable taking even if it resulted from a valid exercise of the government's police power.

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**PUBLIC UTILITIES - IDAHO**

## Edwards v. Idaho Public Utilities Commission

**Supreme Court of Idaho, Boise, February 2025 Term - April 24, 2025 - P.3d - 2025 WL 1185585**

Homeowners appealed decision of the Public Utilities Commission granting electrical utility's motion to dismiss formal complaint which homeowners' had filed with the Commission after utility stated it would terminate service if homeowners refused to allow utility to install a "smart" electrical meter at the property.

The Supreme Court held that electric service regulations of electrical utility's tariff granted utility authority to access homeowners' existing analog meter and replace it with a "smart" meter.

Homeowners failed to support with sufficient authority their claim that the Idaho Constitution protects their right to refuse replacement of an existing analog electrical meter with a new "smart" meter, while still benefiting from utility's services, due to health and safety concerns, and thus waived that argument on appeal of the Public Utilities Commission's dismissal of homeowners' complaint challenging utility's right to terminate service if homeowners would not consent to replacement of meter, where homeowners relied solely on an amicus brief filed in a Pennsylvania case for evidentiary support, without supplying any foundation for the factual assertions it contained, and homeowners did not offer any explanation for how the Idaho Constitution would allow a private cause of action and cited no cases interpreting or applying the Idaho Constitution to constrain the powers of a private entity.

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**WHISTLEBLOWING - MICHIGAN**

## Stefanski v. Saginaw County 911 Communications Center Authority

**Supreme Court of Michigan - April 14, 2025 - N.W.3d - 2025 WL 1107897**

Former employee of county 911 communications center brought action against center, alleging unlawful retaliation in violation of Whistleblowers' Protection Act (WPA) for reporting supervisor's gross negligence in handling of 911 call that resulted in victim's death.

The Circuit Court granted center's motion for summary disposition, and employee appealed. The Court of Appeals affirmed. Leave to appeal was granted.

The Supreme Court held that:

- As matter of first impression, word "law," as used in WPA, includes common law, and
- Fact issues remained as to whether employee's complaints about supervisor's purported gross negligence constituted report of violation or suspected violation of "a" law.

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**EMINENT DOMAIN - MISSOURI**

## Ferguson v. City of Sunrise Beach

**Missouri Court of Appeals, Southern District, In Division - April 1, 2025 - S.W.3d - 2025 WL 972195**

Past and current landowners of eight separate lots brought nuisance and negligence claims against city, alleging that city's wastewater treatment facility discharged improperly treated wastewater that flowed onto their properties and into nearby cove, causing loss of use and enjoyment of properties.

After jury returned verdicts for all landowners on their negligence claims and for several landowners on their nuisance claims, the Circuit Court denied city's motions for judgment notwithstanding the verdict and for new trial or remittitur. City appealed.

The Court of Appeals held that:

- Inverse condemnation was exclusive remedy for landowners, and

- Landowners were entitled to remand to amend their petition to plead inverse condemnation claim.

Inverse condemnation was exclusive remedy for landowners whose properties were allegedly damaged by city's wastewater treatment facility's discharge of improperly treated wastewater that flowed onto their lands; landowners' claims for damages amounted to claim that entity with power of eminent domain took privileges away from them regarding their use and enjoyment of their properties, such that loss of use of their properties from odor and other impacts of nuisance was not damages, but rather was part of analyzing what properties were fairly worth as factor to be considered when valuing properties for inverse condemnation purposes.

Landowners were entitled to remand to amend their petition to plead claim of inverse condemnation in their action against city alleging that city's wastewater treatment facility discharged improperly treated wastewater that flowed onto their properties and caused loss of use and enjoyment of properties; landowners chose to assert nuisance and negligence claims against city not as matter of trial strategy, but because they mistakenly believed that their tort claims, with valid waiver of city's sovereign immunity, could be brought in lieu of inverse condemnation claim, and simple fairness required that they be given meaningful day in court.

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**MUNICIPAL ORDINANCE - MISSOURI**

## City of Normandy v. Kehoe

**Supreme Court of Missouri, en banc - April 15, 2025 - S.W.3d - 2025 WL 1117732**

Municipalities and taxpayers filed petition challenging constitutionality of statutes relating to revenue that municipalities could generate from minor traffic and municipal ordinance violations, and which established reporting requirements for same.

The Circuit Court entered judgment enjoining state from enforcing statutes on grounds that statutes were unconstitutional special laws and amounted to unconstitutional unfunded mandate, and dismissed remaining claims. State appealed.

The Supreme Court affirmed. Following intervening Supreme Court decision that restored the rational basis analysis for special laws, State filed a motion for relief from injunctive portion of judgment. The Circuit Court granted State relief. Municipalities and taxpayers appealed, and the Supreme Court vacated and remanded after determining that Circuit Court had failed to properly weigh equities. On remand, the Circuit Court denied State's motion for partial relief from judgment and its request for discovery. State appealed.

The Supreme Court held that:

- It was not a per se abuse of discretion for circuit court to deny State relief from judgment imposing permanent injunction against enforcement of unconstitutional statutes;
- Determining that the equities did not weigh in favor of granting State's motion for relief from judgment was not an abuse of discretion; and
- Circuit court did not err in denying State's burdensome discovery requests.

It was not a per se abuse of discretion for circuit court to deny State relief from judgment imposing a permanent injunction against its enforcement of statutes relating to revenue that municipalities could generate from minor traffic and municipal ordinance violations, and which established reporting requirements for same, even though the decisional law on which the injunction was based had been overruled; State was bound by the law of the case in previous appeal which upheld circuit

court's injunction against enforcement of statutes as unconstitutional local or special laws, and State had made no showing of inequity demonstrating the necessity of vacating or modifying the permanent injunction.

It was not a per se abuse of discretion for circuit court to deny State relief from judgment imposing a permanent injunction against its enforcement of statutes relating to revenue that municipalities could generate from minor traffic and municipal ordinance violations, and which established reporting requirements for same, even though the decisional law on which the injunction was based had been overruled; the same judgment that imposed the permanent injunction also contained a declaratory judgment that the statutes were unconstitutional local or special laws, the declaration was affirmed on appeal, and the State had never sought relief from the declaration.

It was not an abuse of discretion for circuit court to decide the equities did not weigh in favor of granting State's motion for relief from judgment imposing a permanent injunction against its enforcement of statutes relating to revenue that municipalities could generate from minor traffic and municipal ordinance violations, and which established reporting requirements for same, even though the decisional law on which the injunction was based had been overruled; State had never previously argued for the rational-basis analysis that it now sought, and even if the permanent injunction was lifted the State had not challenged the declaratory judgment finding the statutes unconstitutional.

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**EMINENT DOMAIN - NORTH DAKOTA**

## WBI Energy Transmission, Inc. v. 189.9 Rods, More or Less, Located in Township 149 North

**United States Court of Appeals, Eighth Circuit - March 24, 2025 - 132 F.4th 1058**

Natural gas company filed condemnation action under Natural Gas Act (NGA) to obtain easements for pipeline.

The United States District Court for the District of North Dakota granted owners' motion for attorney fees, and company appealed.

The Court of Appeals held that owners were not entitled to recover attorney fees they expended in condemnation action.

Federal law, rather than state law, governed compensation that was due when natural gas company exercised federal eminent domain power pursuant to Natural Gas Act (NGA) to obtain easements for pipeline, and thus property owners were not entitled to recover attorney fees they expended in condemnation action, even though attorney fees were available under state law, and NGA did not address issue.

Under Fifth Amendment, property owners cannot recover for indirect costs in condemnation proceedings, like attorney fees and expenses.

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**INVERSE CONDEMNATION - SOUTH DAKOTA**

## Marlowe v. South Carolina Department of Transportation

**Supreme Court of South Carolina - March 26, 2025 - S.E.2d - 2025 WL 909152**

Landowners brought action against Department of Transportation (DOT), alleging inverse condemnation, negligence, and other claims arising from flooding of landowners' home that occurred during major storm events while DOT's construction of stretch of highway adjacent to home was ongoing.

The Circuit Court granted DOT's motion for summary judgment. Landowners appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. DOT petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- Stormwater Management and Sediment Reduction Act did not immunize DOT from liability, but
- Engineer's testimony on causation was too speculative to preclude summary judgment for DOT on inverse condemnation claim.

Stormwater Management and Sediment Reduction Act did not immunize Department of Transportation (DOT) from liability for flood damage to landowners' home that occurred during major storm events while DOT's construction of stretch of highway adjacent to home was ongoing, where Act provided that nothing contained Act and no action or failure to act under Act could be construed to relieve "the person engaged in the land disturbing activity" of the duties, obligations, responsibilities, or liabilities arising from or incident to the operations associated with the land disturbing activity.

Summary judgment evidence, including summary judgment affidavit of landowners' engineering expert that design of highway construction project adjacent to landowners' home was a "substantial contributor" to flood damage to home, was too speculative on issue of causation to preclude summary judgment for Department of Transportation (DOT) on landowners' inverse condemnation claim arising from flooding of home during major storm events while construction of new four-lane elevated highway was ongoing; expert could only testify there was a possibility that the flooding of home would not have occurred if the new highway had not been constructed as it was constructed.

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**BOND VALIDATION - TEXAS**

## Burns v. City of San Antonio by and Through City Public Service Board of San Antonio

**Court of Appeals of Texas (15th Dist.) - April 3, 2025 - S.W.3d - 2025 WL 996377**

In 2020, the City of San Antonio authorized the issuance, sale, and delivery of 26 public securities ("Public Securities") authorized by 20 bond ordinances ("Ordinances") for the purpose of building, improving, extending, enlarging, and repairing the City's gas and electric utility systems or refinancing previously issued revenue obligations.

The Public Securities issued were outstanding or authorized in the total principal amount of $6,189,680,000. The City obtained the Attorney General's approval of the Public Securities and registered them with the Comptroller of Public Accounts for the State of Texas. The Public Securities and their authorizing Ordinances thus became "incontestable" and "valid, binding, and enforceable according to [their] terms." Tex. Gov't Code § 1371.059(a).

In response to an Initiative Petition circulated by Appellants seeking significant changes to the composition of the Board ("Charter Amendments") the City filed a petition under the Expedited

Declaratory Judgment Act (EDJA) in District Court seeking to "adjudicate the legality, validity and enforceability" of the Public Securities and their corresponding Ordinances.

The City alleged that the Charter Amendments sought by the Initiative Petition posed an imminent threat to the validity of the Public Securities in the form of contractual impairment because the modifications would eliminate the City Public Service Board's ("Board") autonomy from City politics. The City further alleged the Initiative Petition directly conflicted with the Ordinances in that the Ordinances could only be amended using exclusive methods promulgated through the Ordinances and as relied upon by holders of the Public Securities.

Citing actual harm rather than "likely" harm, the City alleged that "at least one of the national credit rating agencies" had revised its outlook for the City from "stable" to "negative," based in part on the existence and pendency of the Initiative Petition. The City stated that it depended upon favorable credit ratings and outlooks to borrow money at low interest rates where even small incremental changes can have tremendous financial impact.

The trial court granted the City's requested declaratory relief, declaring the Public Securities and Ordinances "legal, valid, and incontestable."

Appellants challenged the trial court's judgment as (1) void for lack of subject matter jurisdiction; and (2) void for a denial of notice amounting to a constitutional due process violation.

This litigation became increasingly lengthy and complex.  As the Court of Appeals noted, "This case presents a cornucopia of issues—the review of cross motions for summary judgments, the Expedited Declaratory Judgment Act's interpretation, and the availability of different mechanisms for challenging judgments after the time for an appeal has expired."

After the court disposed of almost all issues in favor of City, it addressed Appellants' claim that they were prevented from asserting meritorious defenses due to the City's failure to serve them personally with notice of the bond-validation suit. Appellants did stipulate that the City had complied with the notice provisions of the EDJA, including notice by publication.

"We conclude that under the facts of this case the City's notice by publication did not violate Appellants' due process rights; therefore, the EDJA court had jurisdiction over the parties."

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**STATE BUDGETS - WISCONSIN**

## LeMieux v. Evers

**Supreme Court of Wisconsin - April 18, 2025 - 415 Wis.2d 422 - 2025 WI 12 - 19 N.W.3d 76**

Petitioners filed action to determine whether Governor exceeded his constitutional partial veto authority on biennial budget bill.

The Supreme Court held that:

- Governor's partial vetoes to biennial budget bill did not violate deletion veto principle providing that vetoes were constitutional as long as remaining text of bill constituted complete, entire, and

workable law;
- Governor's partial vetoes to biennial budget bill did not violate deletion veto principle providing governor may exercise deletion vetoes only on parts of bills containing appropriations within their four corners;
- Governor's partial vetoes to biennial budget bill did not violate deletion veto principle providing governor's deletion vetoes may not result in law that was totally new, unrelated or non-germane to original bill;
- Governor's partial vetoes to biennial budget bill did not violate deletion veto principle providing governor may strike words, letters, or numbers but cannot create new words by rejecting individual letters in words of enrolled bill or create new sentences by combining parts of two or more sentences of enrolled bill;
- Holding from *Citizens Utility Board v. Klauser*, 194 Wis. 2d 484, 534 N.W.2d 608, that governor had authority to exercise partial veto by striking numerical sum appropriated in bill and inserting different, smaller amount, under constitutional provision allowing governor to approve appropriation bill "in part," did not apply to invalidate governor's partial vetoes to biennial budget bill; and
- Constitutional provision, providing that governor, in approving appropriation bill in part, could not create new word by rejecting individual letters in words of enrolled bill, was not violated by governor while exercising partial veto to biennial budget bill.

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**NEGLIGENCE - CALIFORNIA**

## Whitehead v. City of Oakland

**Supreme Court of California - May 1, 2025 - P.3d - 2025 WL 1261981**

Bicyclist brought personal injury action against city after he struck pothole while cycling as part of training exercise for charity fundraiser.

The Superior Court granted city's motion for summary judgment based on release signed by bicyclist, and bicyclist appealed. The Court of Appeal affirmed, and bicyclist appealed.

The Supreme Court held that bicyclist's personal injury claim against city, alleging that city violated its statutory duty to maintain its streets in reasonably safe condition, was not barred by anticipatory release signed by bicyclist.

Bicyclist's personal injury claim against city, alleging that city violated its statutory duty to maintain its streets in reasonably safe condition for travel by the public, was not barred by anticipatory release signed by bicyclist, who was injured when he struck pothole while cycling as part of training exercise for charity fundraiser, pursuant to statute barring contracts purporting to exempt anyone, public or private, from responsibility for a violation of law; bicyclist alleged that pothole created dangerous condition in roadway, that city negligently breached its duty by failing to warn of, prevent, or correct road's dangerous condition or designate bicycle lane, and that he suffered injuries as result of city's violation of its statutory duty.

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**IMMUNITY - NEW YORK**

## Maharaj v. City of New York

**Court of Appeals of New York - April 15, 2025 - N.E.3d - 2025 WL 1105833 - 2025 N.Y. Slip Op. 02143**

Park user who was injured when he stepped into large crack in asphalt while playing cricket on tennis courts in city park brought action against city to recover for injuries.

The Supreme Court granted city's motion for summary judgment. Park user appealed. The Supreme Court, Appellate Division, affirmed, granted park user's motion for leave to appeal, and certified question of whether its decision and order were properly made.

The Court of Appeals held that risk of tripping and falling while playing on irregular surface was inherent in game of cricket, and therefore primary assumption of risk doctrine precluded imposition of liability on city.

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**IMMUNITY - TEXAS**

## City of Killeen–Killeen Police Department v. Terry

**Supreme Court of Texas - April 25, 2025 - S.W.3d - 2025 WL 1196743**

Vehicle owner brought action against city police department after police cruiser responding to 911 call struck his vehicle.

The 146th District Court denied department's plea to jurisdiction. Department appealed. The Austin Court of Appeals affirmed. Department petitioned for review.

The Supreme Court held that remand was necessary for further consideration of whether emergency exception to Tort Claims Act's waiver of governmental immunity applied to department.

Remand to Court of Appeals was necessary for further consideration of whether emergency exception to Tort Claims Act's waiver of governmental immunity applied to city police department in action brought against department by vehicle owner after police cruiser responding to 911 call struck his vehicle; in affirming denial of department's plea to jurisdiction, Court of Appeals applied categorical rule that governmental entity was immune from suits to recover damages resulting from emergency operation of emergency vehicle unless operator acted recklessly, but subsequent Supreme Court decision in Powell, 704 S.W.3d 437, held that court was to resolve officer's compliance with laws and ordinances applicable to emergency action before conducting any recklessness inquiry.

The emergency exception to the Tort Claims Act's waiver of governmental immunity contemplates two distinct inquiries to be undertaken in a particular order: first, the court must assess whether any laws or ordinances apply to the emergency action at issue in the case; if a law or ordinance applies to the emergency action or to some aspect of it, then the jurisdictional inquiry turns on whether the officer's action complied with the relevant law or ordinance, and only if no law or ordinance applies may the court move to the second inquiry—whether there is a fact issue as to that officer's recklessness in undertaking the action that led to the injury.

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**ZONING & PLANNING - VIRGINIA**

## Drewry v. Board of Supervisors of Surry County

**Court of Appeals of Virginia, Richmond - April 22, 2025 - S.E.2d - 2025 WL 1160824**

Neighboring landowner filed complaint seeking declaratory judgment that approval by county board

of supervisors of conditional use permit for methane gas conditioning facility to be operated on property zoned agricultural/residential was void ab initio due to board's alleged failure to follow required statutory procedures.

The Surry Circuit Court sustained board's and permit applicant's demurrers. Landowner appealed.

The Court of Appeals held that:

- Landowner waived any challenge on ground that he received deficient notice of planning commission's public hearing and county board of supervisors' subsequent hearings;
- Planning commission did not violate notice requirements by non-advertised, non-public meeting after holding public hearing; and
- Landowner had no private right of action to challenge planning commission's finding that proposed use was in substantial accord with comprehensive land use plan.

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**OPEN MEETINGS - WASHINGTON**

## McFarland v. Tompkins

**Court of Appeals of Washington, Division 3 - April 24, 2025 - P.3d - 2025 WL 1186580**

County resident brought action against county and members of county board of commissioners under Open Public Meetings Act (OPMA), seeking civil penalties and other relief based on contention that defendants failed to give advance notice of possible action taken during special board meeting, namely, board's approval of letter to Governor and state legislators advocating for restraints on measures taken to combat COVID-19 pandemic.

Parties cross-moved for summary judgment. The Superior Court initially granted summary judgment in favor of resident as to issues of standing and adequacy of notice of special meeting, but granted defendants' motion for reconsideration and granted summary judgment in defendants' favor. Resident appealed.

The Court of Appeals held that:

- Resident had standing to bring claim to void resolution under OPMA;
- County was proper defendant on claim to void resolution under OPMA;
- Resident's claims were not moot;
- Any unreasonable delay by resident in bringing suit did not warrant application of doctrine of laches;
- Notice of agenda topics to be discussed at special meeting was inadequate under OPMA; and
- Triable issue existed as to whether board members knew notice of special meeting agenda was inadequate.

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**BOND PROCEEDS - MINNESOTA**

## In re City of Edwardsville

**Court of Appeals of Minnesota - April 7, 2025 - Not Reported in N.W. Rptr. - 2025 WL 1024461**

In connection with redevelopment plan in which One10 Hotel HRKC, LLC was the Developer and UMB Bank the Indenture Trustee, City agreed to issue $23,280,000 in revenue bonds. These bonds

consisted of guest-tax revenue bonds, special-obligation-tax-increment revenue bonds, and community-improvement-district revenue bonds.

Separate indentures governed the administration of each of the three types of bonds, but the indentures were virtually identical in aspects material to this case. City issued the bonds in late October 2019, the proceeds of which were held in trust with UMB Bank.

One10 initially submitted two cost certifications pursuant to the terms of the Indentures, both of which the City approved. The Trustee reviewed these certifications and approved payment of approximately $9 million in bond proceeds.

Funding issues soon arose. On February 28, 2020, Altos (the funder of the $50-million construction loan), informed One10 that it was unable to provide funds under the loan. One10 soon suspended construction on the hotel while it sought a new lender. Shortly thereafter, One10 submitted a third cost certification to the City, in which it sought reimbursement for $829,247.32 in expenses. Although the city approved this third cost certification, UMB, as Trustee, refused to release the requested bond proceeds. UMB also informed One10 of its belief that One10 breached the development agreement and demanded that it cure the breach.

In June 2020, UMB filed a trust-instruction petition pursuant to Minn. Stat. § 501C.0202, subd. 24 (2024), in Hennepin County District Court. Subdivision 24 pertains to requests "to instruct the trustee regarding any matter involving the trust's administration or the discharge of the trustee's duties, including a request for instructions and an action to declare rights." UMB sought a number of declarations and judgments regarding the protection of the bondholders and the trust proceeds.

In February 2023, One10 filed a motion in limine seeking to prevent UMB from introducing events or conduct that are outside the scope of the petition, specifically (1) evidence related to alleged events of default other than those identified in the petition and (2) evidence or argument that relates to events and alleged defaults that postdate the petition. The district court reserved ruling on the relevant portion of the motion in limine.

In March 2023, the district court held a trial on UMB's petition. Following the trial, the district court denied One10's motion in limine. It also ordered that: (1) the Trustee is not required to distribute additional funds to One10, including funds requested in connection with the third cost certification; (2) the Trustee is authorized to declare the principal and interest on all bonds outstanding and due; (3) the Trustee is authorized to make a distribution from the trust estates on direction from a majority of the outstanding bond owners; and (4) the trust estates and the Trustee are not subject to continuing supervision of the court.

The district court later denied One10's posttrial motion for amended findings and conclusions of law or a new trial and One10 appealed.

One10 argued that the district court erred by failing to hold UMB to its petition for relief in two ways. First, One10 argued that the district court improperly considered events that postdated the June 22, 2020, filing of the petition. Second, One10 argued that the district court made a conclusion outside the scope of the petition that UMB could refrain from paying the third cost certification in the absence of uncured event of default.

The Court of Appeal held that:

- Postpetition events were within the scope of of the pleadings because, taken as a whole, UMB's requested instructions put One10 on notice that UMB broadly sought to avoid having to disburse

additional bond funds.
- UMB was not required to pay the third cost certification regardless of whether an event of default had occurred because the indentures provide the Trustee with discretion to withhold payment in this situation.

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**MUNICIPAL ORDINANCE - MISSISSIPPI**

## Mississippi Apartment Association v. City of Jackson

**Supreme Court of Mississippi - April 17, 2025 - So.3d - 2025 WL 1134565**

Apartment association and other owners and managers of city rental housing units brought action against city and director of city's planning department, seeking declaratory and injunctive relief with respect to newly-adopted city ordinance imposing registration and inspection requirements on rental housing units.

The Chancery Court granted defendants' motion to dismiss for lack of jurisdiction. Plaintiffs appealed.

The Supreme Court held that pursuant to statute governing appeals from decision of governing authority of municipality, chancery court lacked subject matter jurisdiction to address plaintiffs' claims for declaratory and injunctive relief.

Pursuant to statute governing appeals from decision of governing authority of municipality, circuit court had exclusive jurisdiction over appeal by apartment association and other owners and managers of city rental housing units from city council's decision to adopt ordinance imposing registration and inspection requirements on rental housing units and, thus, also had pendent jurisdiction over related claims regarding enforcement of ordinance, including those for declaratory and injunctive relief, which arose from common nucleus of operative fact, such that chancery court was deprived of subject-matter jurisdiction to address claims seeking declaratory and injunctive relief with respect to ordinance.

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**IMMUNITY - NEW YORK**

## Katleski v. Cazenovia Golf Club, Inc.

**Court of Appeals of New York - April 15, 2025 - N.E.3d - 2025 WL 1108976 - 2025 N.Y. Slip Op. 02178**

Golfer brought action against golf club seeking damages for injuries sustained when he was struck by errant golf ball while participating in golf tournament.

The Supreme Court, Madison County, denied golf club's motion for summary judgment, and it appealed. The Supreme Court, Appellate Division, reversed. Leave to appeal was granted. In separate action, patron brought action against county, its parks department, and its golf course for personal injuries allegedly sustained when golf cart that she was operating in golf course's parking lot was struck by motor vehicle. The Supreme Court, Erie County, granted patron's motion to strike defendants' primary assumption of risk defense and denied defendants' motion for summary judgment, and they appealed. The Supreme Court, Appellate Division reversed. Leave to appeal was

granted.

The Court of Appeals held that:

- Primary assumption of risk doctrine barred golfer's claim in first action, but
- Primary assumption of risk doctrine did not apply to bar patron's claim in second action.

Golfer assumed risk of being struck by golf ball while participating in golf tournament, and thus primary assumption of risk doctrine barred his claim against golf club for damages for injuries sustained when he was struck by errant golf ball while participating in golf tournament, despite golfer's contention that placement of tee box on adjacent hole increased risk to players on fairway beyond what they faced prior to box's installation or might have faced had barrier or other protective measure been implemented, absent evidence that course design unreasonably enhanced inherent risk of being struck by ball beyond what was customary in sport.

Patron was not engaged in athletic and recreational activity when golf cart that she was operating in golf course's parking lot with intention of retrieving her golf clubs from her car collided with car that was exiting, and thus primary assumption of risk doctrine did not apply to bar her negligence claim against county, its parks department, and its golf course to recover for her personal injuries.

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**LIMITATION OF ACTIONS - UTAH**

## Grillone v. Peace Officer Standards and Training Council

**Supreme Court of Utah - April 3, 2025 - P.3d - 2025 WL 1007306 - 2025 UT 7**

Former police officer sought judicial review of order of Peace Officer Standards and Training Division (POST) suspending his peace officer certification for three years after POST learned that officer had resigned from his position as a police officer while under investigation for providing false or misleading information to prosecutor handling a traffic citation against officer's mother.

The Court of Appeals affirmed, and officer filed petition for certiorari.

The Supreme Court held that:

- As matter of first impression, statutes of limitation for civil actions in judicial code do not apply to administrative disciplinary proceedings unless legislature has incorporated them by statute;
- Statute governing POST disciplinary proceedings did not subject POST-adjudicative proceedings to catch-all four year statute of limitations for relief not otherwise provided for by law; and
- POST disciplinary proceeding brought against officer at least five years after he had resigned from his position was not time barred.

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**ZONING & PLANNING - VIRGINIA**

## Drewry v. Board of Supervisors of Surry County

**Court of Appeals of Virginia, Richmond - April 22, 2025 - S.E.2d - 2025 WL 1160824**

Neighboring landowner filed complaint seeking declaratory judgment that approval by county board of supervisors of conditional use permit for methane gas conditioning facility to be operated on property zoned agricultural/residential was void ab initio due to board's alleged failure to follow required statutory procedures.

The Surry Circuit Court sustained board's and permit applicant's demurrers. Landowner appealed.

The Court of Appeals held that:

- Landowner waived any challenge on ground that he received deficient notice of planning commission's public hearing and county board of supervisors' subsequent hearings;
- Planning commission did not violate notice requirements by non-advertised, non-public meeting after holding public hearing; and
- Landowner had no private right of action to challenge planning commission's finding that proposed use was in substantial accord with comprehensive land use plan.

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**LOCAL INITIATIVES - WASHINGTON**

## Jewels Helping Hands v. Hansen

**Supreme Court of Washington, En Banc - April 17, 2025 - P.3d - 2025 WL 1132148**

Advocates for persons experiencing homelessness brought action against local voter, city, and county, seeking declaratory and injunctive relief against local initiative that sought to expand locations in city where camping was banned regardless of whether shelter space was available, on grounds that initiative exceeded scope of local initiative power.

The Superior Court dismissed the complaint. Advocates appealed, and the Court of Appeals affirmed. The Supreme Court granted review.

The Supreme Court held that:

- Trial court ruling was appealable, and
- Initiative was impermissibly administrative, and thus fell outside the scope of local initiative power.

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**POLITICAL SUBDIVISIONS - KENTUCKY**

## Louisville & Jefferson County Metropolitan Sewer District v. Albright

**Supreme Court of Kentucky - March 20, 2025 - S.W.3d - 2025 WL 890812**

Mother of deceased child brought action against county sewer district, alleging claims for negligence, failure to warn, negligence per se, attractive nuisance, negligent infliction of emotional distress, and loss of consortium, arising out of child's death when he was swept into drainage pipe.

The Circuit Court granted sewer district's motion for summary judgment. Estate appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Sewer District's motion for discretionary review was granted.

The Supreme Court held that:

- Sewer district was a "special district" under Claims Against Local Governments Act (CALGA) and a "special purpose governmental entity" under statute governing such special purpose governmental entities;
- Mother's allegations were sufficient to allege that district failed to fulfill its ministerial duty to non-negligently maintain and repair the drainage system for which it was responsible, and thus that district was not immune from mother's negligence action; and

- Sewer district's guideline relating to use of grates on drainage pipes did not arise out of its exercise of legislative or quasi-legislative authority, and thus could not form basis for district to have municipal immunity.

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**IMMUNITY - NEW HAMPSHIRE**

## Felts v. City of Rochester

**Supreme Court of New Hampshire - April 16, 2025 - A.3d - 2025 N.H. 16 - 2025 WL 1119269**

Pedestrian's husband, individually and as executor of pedestrian's estate, brought negligence action against city, alleging that pedestrian was struck and fatally injured by motor vehicle while she was walking across street within painted crosswalk and that, at time of collision, the painted crosswalk was not accompanied by any warning signs, signals, or traffic control devices.

The Superior Court granted in part and denied in part city's motion to dismiss, granting city's motion to dismiss negligence claim to extent the complaint alleged that city negligently maintained the crosswalk itself and denying the motion as to allegations that city negligently failed to place crossing signals, warning signs, or other traffic controls alerting motorists to crosswalk. City filed interlocutory appeal.

The Supreme Court held that:

- Term "highways" included pedestrian warning signs pursuant to statute providing that municipality shall not be held liable for damages in action to recover for personal injury or property damage arising out of its construction or repair of public highways unless such injury or damage was caused by insufficiency, and
- Statute governing municipal liability applied to husband's negligence claim to the extent that husband's claim was premised upon city's failure to place pedestrian warning signs at crosswalk.

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**PRIVATE CONDUIT BONDS - NEW YORK**

## State ex rel. Edelweiss Fund, LLC v. JPMorgan Chase & Co.

**Supreme Court, New York County, New York - April 4, 2025 - Slip Copy - 85 Misc.3d 1250(A) - 2025 WL 1075257 (Table) - 2025 N.Y. Slip Op. 50457(U)**

Plaintiff brought a qui tam action alleging that each of the Defendants in this case violated the New York False Claims Act (NYFCA) by fraudulently representing that they had exercised required "professional judgment" in determining the "minimum rate of interest necessary … to enable [them] to remarket all of the [Variable Rate Debt Obligation Bonds (the VRDOs)]… at par plus accrued interest" in connection with their demands for payment to NY (and certain Companies in the case of conduit bonds) pursuant to certain remarketing agreements, indentures, interest rate obligations, and letters of credit—which were each executed as part of an integrated transaction.

The Supreme Court dismissed the New York False Claims Act claims involving private conduit bonds because Edelweiss Fund, LLC (Relator) failed to establish that the State of New York (NY) incurred damages—an essential element of a NYFCA claim.

"Simply put, according to Relator, the damages stemming from the alleged violations of the NYFCA

were the payment of certain remarketing fees, liquidity fees and the payment of interest at a rate which was not the minimum rate necessary for the bonds to clear at par in the required judgment of the Defendants. On the fully developed record, with respect to the private conduit bonds at issue, none of these payments were made by NY such that NY suffered damages. As such, these claims must be dismissed with prejudice."

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**SPECIAL ASSESSMENTS - SOUTH DAKOTA**

## KJD, LLC v. City of Tea

**Supreme Court of South Dakota - April 9, 2025 - N.W.3d - 2025 WL 1075137 - 2025 S.D. 22**

Property owner appealed city's special assessment levied against its property to finance road construction project abutting the property, after the city council passed a resolution finding that the project conferred special benefits on abutting properties above and beyond that experienced by the public at large.

The Circuit Court denied property owner's objection and upheld the special assessment. Property owner appealed.

The Supreme Court held that:

- Circuit court may resolve a landowner's appeal of a special assessment via a trial on merits;
- Supreme Court would review circuit court's decision de novo;
- City's failure to quantify the special benefit in its resolution imposing special assessment, and city's use the cost of the project in calculating the assessment, did not perforce render the assessment unconstitutional; and
- Property owner failed to present substantial, credible evidence rebutting city's findings.

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**IMMUNITY - ALABAMA**

## Ex parte City of Orange Beach

**Supreme Court of Alabama - April 4, 2025 - So.3d - 2025 WL 1007962**

Widow, in her individual capacity and in her capacity as personal representative of husband's estate, brought wrongful-death action against city, asserting negligence and wantonness for city's failure to ensure that construction of subdivision in which the couple had lived complied with parking requirements for planned unit developments (PUDs), which failure allegedly led to husband's death from a heart attack when emergency services could not readily reach the home.

The Circuit Court denied city's motion for summary judgment. City petitioned for a writ of mandamus.

The Supreme Court held that:

- City had substantive immunity from the wantonness-based wrongful-death claim, and
- City had substantive immunity from the negligence-based wrongful-death claim.

City had substantive immunity from wantonness-based wrongful-death claim asserted by widow, who

was acting in her individual capacity and in her capacity as personal representative of husband's estate and who contended that city's failure to ensure that construction of subdivision in which the couple had lived complied with parking requirements for planned unit developments (PUDs) led to husband's death from a heart attack when emergency services could not readily reach the home; statute on municipal liability excluded liability for wanton misconduct.

City had substantive immunity from negligence-based wrongful-death claim asserted by widow, who was acting in her individual capacity and in her capacity as personal representative of husband's estate and who contended that city's failure to ensure that construction of subdivision in which the couple had lived complied with parking requirements for planned unit developments (PUDs) led to husband's death from a heart attack when emergency services could not readily reach the home; a governmental entity's failure to enforce its own ordinance did not give rise to a tort action, and any benefit that the couple would have received from a proper city investigation of the subdivision's construction would have been merely incidental to the benefit derived by the citizens of the county in general.

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**EMINENT DOMAIN - CALIFORNIA**

## United Water Conservation District v. United States

**United States Court of Appeals, Federal Circuit - April 2, 2025 - F.4th - 2025 WL 984454**

California water conservation district filed suit against United States, claiming that National Marine Fisheries Service (NMFS) effected Fifth Amendment physical taking of district's water rights by increasing bypass flow requirements to protect endangered steelhead trout, under Endangered Species Act (ESA).

The Court of Federal Claims granted government's motion to dismiss for lack of subject matter jurisdiction. District appealed.

The Court of Appeals held that:

- Alleged taking was regulatory in nature rather than physical, and
- Regulatory taking claim was not ripe for adjudication.

National Marine Fisheries Service's (NMFS) reasonable and prudent alternatives (RPAs) in biological opinion (BiOp), requiring California water district to increase bypass flow, so that more river water either remained in river or flowed through fish ladder located in river, in order to protect endangered southern California steelhead trout at dam owned and operated by district, represented regulatory restrictions on district's use of water, rather than physical taking, since BiOp RPAs represented nonpossessory government activity merely requiring that more river water, whether flown through fish ladder or not, had to remain in river, rather than completely cutting off district's access to water or causing district to return any volume of water that it had diverted to its possession in canal.

California water district's regulatory takings claim, arising from National Marine Fisheries Service's (NMFS) requirement that district increase bypass flow so more river water either remained in river or flowed through fish ladder located in river in order to protect endangered southern California steelhead trout, was not ripe for adjudication, since district had not yet obtained final agency action denying incidental-take permit under ESA.

**IMMUNITY - HAWAII**

## McGuire v. County of Hawai‘i

**Supreme Court of Hawai‘i - April 8, 2025 - P.3d - 2025 WL 1039365**

In federal court, plaintiff brought civil rights action under § 1983 against county, county prosecutor, and three deputy prosecutors in their official and individual capacities, asserting claims including malicious prosecution.

The United States District Court for the District of Hawai‘i certified question to the Supreme Court as to whether, under Hawai‘i law, a county prosecuting attorney or deputy prosecuting attorney acts on behalf of the county or the state when preparing to prosecute or prosecuting state crimes.

The Supreme Court held that:

- County prosecutors act on behalf of county, not state, when preparing to prosecute or prosecuting offenses, and
- County prosecutors do not have sovereign immunity from § 1983 claims.

The attorney general’s limited ability to supersede a county prosecuting attorney’s authority in compelling circumstances does not equate to control over the county prosecutor, as would render the prosecutor a state rather than county official for purposes of determining whether the county may be liable for the prosecutor’s conduct under § 1983; the attorney general does not exercise direct control over day-to-day county prosecutions.

Judicially-fashioned immunity shields county prosecutors and their deputies in their individual capacities from liability under § 1983, and where absolute immunity does not apply, prosecutors still have qualified immunity.

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**ZONING & PLANNING - IOWA**

## 1000 Friends of Iowa v. Polk County Board of Supervisors

**Supreme Court of Iowa - April 4, 2025 - N.W.3d - 2025 WL 1007321**

Landowners and land-use organization brought action challenging county board of supervisors’ approval of nonprofit entity’s application for zoning status change which rezoned parcel from agricultural to neighborhood commercial.

The District Court granted board’s motion to dismiss. Landowners and organization appealed.

The Supreme Court held that:

- Municipal Tort Claims Act’s heightened pleading standard, along with Act’s penalty of dismissal with prejudice for insufficient pleading, applies only to claims seeking monetary damages;
- As a matter of apparent first impression, landowners resided sufficiently near to property so as to be capable of having standing even though landowners’ properties were not adjacent to the rezoned property;
- Landowners alleged they were “aggrieved” by rezoning decision, as required for standing;
- Organization failed to allege that it was “aggrieved” by rezoning decision, as would be required for organizational standing; and

- Organization’s stated mission of preventing poorly-planned land use decisions and encouraging land use planning that protected farmland and natural areas was not a specific personal or legal interest that could confer private party standing on organization.

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**GAMING - LOUISIANA**

## Fremin v. Boyd Racing, LLC

**Supreme Court of Louisiana - March 21, 2025 - So.3d - 2025 WL 879737 - 2024-00995 (La. 3/21/25)**

Voters and residents in five parishes where historical horse racing was being, or could have been, conducted at offtrack betting facilities brought action against racetracks, seeking declaration that statutory amendments that incorporated historical horse racing as a form of authorized pari-mutuel wagering on horse racing without requiring prior voter approval was unconstitutional, as well as injunctive relief prohibiting historical horse racing.

The District Court denied racetracks’ exceptions of no right of action, granted summary judgment in favor of voters and residents, declared historical horse racing a new form of gaming requiring prior local voter approval, and declared the statutory amendments were unconstitutional. Racetracks appealed.

The Supreme Court held that:

- Voters and residents had standing to challenge constitutionality of statutory amendments that incorporated historical horse racing as a form of authorized pari-mutuel wagering on horse racing without requiring prior local voter approval, and
- Statutory amendments that incorporated historical horse racing as a form of authorized pari-mutuel wagering on horse racing without requiring prior local voter approval were unconstitutional.

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**IMMUNITY - ALABAMA**

## Ex parte City of Muscle Shoals

**Supreme Court of Alabama - March 28, 2025 - So.3d - 2025 WL 939487**

City residents brought action against city, asserting claim of negligence, claim of trespass, and claim for injunctive relief, all of which stemmed from the flooding of their houses allegedly caused by city’s purported mismanagement of stormwater-drainage pond that was overwhelmed by heavy rainfall.

The Circuit Court denied city’s motion to dismiss the claim for injunctive relief. City petitioned for writ of mandamus. The Supreme Court granted the petition and issued the writ. Thereafter, city answered the amended complaint and moved the summary judgment. The Circuit Court denied that motion. City petitioned for writ of mandamus.

The Supreme Court held that:

- Absent evidence that city breached any duty that it might have had by failing to plan for larger, less probable rainfall events, city employees or agents did not act with neglect, carelessness, or unskillfulness in designing improvements to or maintaining pond, insofar as that ground of municipal-immunity statute was implicated, and

- Absent evidence that city's design of improvements to pond was outside common practice and defective, city had immunity insofar as municipal-immunity statute's provision on municipal liability for failure to remedy known defects in public streets and buildings was implicated.

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**ANNEXATION - INDIANA**

## City of Bloomington v. Smith

**Court of Appeals of Indiana - February 18, 2025 - 252 N.E.3d 951**

City filed seven actions against county auditor, one for each territory city sought to annex, challenging constitutionality of state law that invalidated many of city's agreements with nearby landowners who waived their right to remonstrate against future annexation by city in exchange for provision of city sewage services.

State intervened to defend law and moved for partial summary judgment, and city moved for voluntary dismissal with prejudice of two of seven actions. The Circuit Court granted city's motion to dismiss, reconsolidated remaining five actions, and later granted state's motion for partial summary judgment. City appealed.

The Court of Appeals held that:

- Doctrine of claim preclusion did not bar city from litigating claims in five remaining actions;
- As municipality, city lacked enforceable rights under state Contract Clause to challenge constitutionality of statute; and
- Statute did not substantially impair city's contracts with landowners.

City that had voluntarily dismissed with prejudice two of seven actions it had brought against county auditor challenging constitutionality of statute that voided certain remonstration waivers was not barred by doctrine of claim preclusion from litigating claims in five remaining actions, even though actions in which city sought to proceed relied on same general constitutional arguments as actions that were dismissed; five remaining actions had been brought simultaneously with two dismissed actions, rather than after them, and matter now in issue involved annexation of five areas that were distinct from two areas in dismissed actions and could not have been determined in those actions.

As municipality of state, city lacked enforceable rights under state Contract Clause to challenge constitutionality of state statute that voided certain remonstration waivers as having impaired its contracts with nearby landowners with whom it had agreed to provide sewer service in exchange for waiver of their right to remonstrate against future annexation; in contract between municipality and private actor, state was real contracting party, and state was authorized to release obligations owed to city without violating Contract Clause.

Statute that voided certain remonstration waivers did not substantially impair city's contracts with nearby landowners to provide them sewer service in exchange for waiver of their right to remonstrate against future annexation so as to violate Contract Clauses of United States and Indiana Constitutions; contracts were principally for provision of sewer services, not for annexation, statute did not affect city's ability to provide or landowners' ability to pay for services, statute did not undermine contractual bargain to provide sewer services, as city provided services to many properties outside city limits for which it did not have remonstration waivers, and it was within parties' reasonable expectations that state could exercise its authority to modify municipal annexation powers.

**ZONING & PLANNING - NORTH CAROLINA**

## Ashe County v. Ashe County Planning Board

**Supreme Court of North Carolina - March 21, 2025 - S.E.2d - 2025 WL 879903**

County sought review of decision of county planning board granting applicant's permit to operate an asphalt plant under county's then-existing polluting industries development ordinances which were changed following a temporary moratorium.

The Superior Court affirmed. County appealed. The Court of Appeals affirmed. County's petition for discretionary review was allowed. The Supreme Court reversed in part and remanded. On remand, the Court of Appeals reversed. Applicant appealed.

The Supreme Court held that:

- Permit application was complete when it was initially submitted to county director of planning;
- Impermanence of mobile shed on quarry adjacent to site of proposed asphalt plant supported finding that it was not a "commercial building" for purpose of county's polluting industries development (PID) ordinance set-back requirements;
- Barn on farm near site of proposed asphalt plant was not a "commercial building" for purpose of PID ordinance set-back requirements; and
- County failed to show that applicant made material misrepresentation in its application.

Reasoning provided in dissenting opinion from Court of Appeals for why it would have affirmed county planning board's decision to grant applicant's permit to operate an asphalt plant under county's polluting industries development ordinance in effect when application was submitted conferred jurisdiction on Supreme Court to hear applicant's appeal of Court of Appeals' reversal of board's decision; although dissent did not address whether moratorium that temporarily prohibited all development of polluting industries while applicant's application was pending affirmatively authorized or compelled denial of application, it did hold that county planning director lacked authority to approve the application during moratorium and stated that it agreed with board's resolution of issues of law that were before Court of Appeals, necessarily rejecting any notion that moratorium required denial.

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**EMINENT DOMAIN - NORTH DAKOTA**

## Hoff v. City of Burlington

**Supreme Court of North Dakota - March 28, 2025 - N.W.3d - 2025 WL 942057 - 2025 ND 62**

Owner of property located in floodplain brought negligence and inverse condemnation action against city seeking writ of mandamus, declaratory judgment, and injunction arising from city's imposition, pursuant to floodplain ordinance, of additional construction requirements after city granted owner a building permit for an addition to owner's single-family home.

The District Court held bench trial on all claims except for negligence claim, entered judgment in favor of city on those claims, and granted summary judgment to city on negligence claim. Owner appealed.

The Supreme Court, held that:

- Any error in trial court's exclusion of certain exhibits from bench trial was not reversible error;
- Evidence was sufficient to support finding that owner's home remodel was a "substantial improvement" triggering additional construction requirements of floodplain ordinance;
- City's refusal to issue certificate of occupancy for addition was not a "total regulatory taking" that would trigger requirement of just compensation; and
- Any reliance by owner on city's approval of building permit was not justifiable, precluding existence of a special relationship that could support negligence claim arising from city's performance of its public duty of approving the building permit.

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**PUBLIC RECORDS - OHIO**

## State ex rel. Ames v. Concord Township Board of Trustees

**Supreme Court of Ohio - March 27, 2025 - N.E.3d - 2025 WL 920126 - 2025-Ohio-1027**

Public records requester filed a petition for a writ of mandamus that sought to compel township board of trustees to comply with records request, and an award of statutory damages, court costs, and attorney fees.

The Eleventh District Court of Appeals granted board of trustees summary judgment and dismissed mandamus petition. Records requester appealed.

The Supreme Court held that:

- Ohio law permitted the court of appeals to convert board of trustees' motion to dismiss for failure to state a claim upon which relief can be granted to a summary-judgment motion;
- The facts alleged in petition for a writ of mandamus were not deemed admitted by trustees' failure to file an answer to petition;
- Requester's mandamus claim against trustees was rendered moot;
- Court of appeals did not announce a rule of law that required a records requester to follow up about a request if the requester believed that the response was incomplete; and
- Modification of court of appeals judgment dismissing records requester's mandamus petition to instead enter judgment denying the petition as moot was warranted.

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**MUNICIPAL GOVERNANCE - WASHINGTON**

## Matter of Recall of Suggs

**Supreme Court of Washington, EN BANC - March 27, 2025 - P.3d - 2025 WL 922791**

Petitioner filed petitions seeking to recall mayor and three city council members.

The Superior Court found petitioner lacked standing and dismissed the recall petitions. Mayor and counsel members moved for attorney fees, which were granted. Petitioner appealed.

The Supreme Court held that:

- As a matter of first impression, petitioner lacked standing to file petition to recall mayor and city

council members;
- Mere fact that mayor and city council members participated in nonprofits outside of the political subdivision in which they had been elected did not result in mayor or city council members "opting out" of their political subdivision and creating a two-county political subdivision, which would have allegedly allowed petitioner to have standing to fill recall petitions;
- E-mail message from counsel which noted that entering into an agreed briefing schedule would not mean petitioner had to give up the issues he wished to raise did not create a contract wherein counsel agreed to have recall petitions decided on the merits;
- Actions of mayor and city council members in seeking sanctions, attorney fees, and entry of judgment did not result in waiver of their argument that petitioner lacked standing to file recall petitions;
- Mayor and city council members were entitled to an award of attorney fees; and
- Mayor and city council members were not equitably estopped from seeking an award of attorney fees.

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**EMINENT DOMAIN - FEDERAL**

## WBI Energy Transmission, Inc. v. 189.9 rods, more or less, located in Township 149 North

**United States Court of Appeals, Eighth Circuit - March 24, 2025 - F.4th - 2025 WL 891516**

Natural gas company filed condemnation action under Natural Gas Act (NGA) to obtain easements for pipeline.

The United States District Court for the District of North Dakota granted owners' motion for attorney fees, and company appealed.

The Court of Appeals held that owners were not entitled to recover attorney fees they expended in condemnation action.

Federal law, rather than state law, governed compensation that was due when natural gas company exercised federal eminent domain power pursuant to Natural Gas Act (NGA) to obtain easements for pipeline, and thus property owners were not entitled to recover attorney fees they expended in condemnation action, even though attorney fees were available under state law, and NGA did not address issue.

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**IMMUNITY - NEBRASKA**

## Scott v. Lancaster County School District 0001

**Supreme Court of Nebraska - March 28, 2025 - N.W.3d - 318 Neb. 670 - 2025 WL 938315**

Elementary school student brought negligence action against public school district under Political Subdivisions Tort Claims Act (PSTCA), alleging that classmate grabbed pool noodle that student was holding during game of tag in physical education class, causing student to fall.

The District Court denied school district's summary judgment motion alleging PSTCA sovereign immunity exemption for a claim arising out of a battery. School district filed interlocutory appeal.

The Supreme Court held that:

- Order denying summary judgment based on immunity was a final appealable order, and
- Factual dispute as to whether pool noodle was part of student's body for purposes of a battery precluded summary judgment based on immunity.

Order denying public school district's motion for summary judgment was a "final order" that could be immediately appealed, in elementary school student's negligence action against school district under Political Subdivisions Tort Claims Act (PSTCA) alleging that classmate grabbed pool noodle that student was holding during game of tag causing student to fall, where motion was based on the intentional torts immunity exemption to PSTCA.

Genuine issues of material fact existed as whether pool noodle was part of elementary school student's body during game of tag in physical education class, for purposes of an offensive contact battery under the intentional torts exemption to waiver of sovereign immunity under the Political Subdivisions Tort Claims Act (PSTCA), precluding summary judgment for public school district based on PSTCA immunity exemption, in student's negligence action against school district alleging that classmate acted against rules of the game and grabbed, yanked, and "swayed" the pool noodle that student was holding, causing student to fall and hit her head.

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**ANNEXATION - OHIO**

## Hinckley Township v. Calvin

**Court of Appeals of Ohio, Ninth District, Medina County - February 18, 2025 - N.E.3d - 2025 WL 518030 - 2025-Ohio-504**

Township appealed decision of county Board of Commissioners granting petition for annexation of five-acre township territory into city.

The Court of Common Pleas affirmed board's decision. Township appealed.

The Court of Appeals held that:

- Evidence supported Board's finding that no road maintenance problem would be created by annexation;
- Evidence supported Board's finding that annexation would serve general good of parcel; and
- Evidence supported Board's finding that benefits to parcel outweighed detriments, while benefits and detriments to surrounding area were in balance.

Evidence supported finding by county Board of Commissioners that no road maintenance problem would be created by annexation of township territory to city, even though annexation would result in segmentation of street with portion of northbound lane becoming part of city and other portions remaining in township; city had preexisting maintenance agreement with county that already provided that county would maintain stretch of road at issue both before and after annexation.

Evidence supported county Board of Commissioners' finding that general good of five-acre township territory proposed to be annexed by city would be served by annexation, even though pharmacy would be built on territory irrespective of whether it was annexed; property owner would receive 100% tax abatement for 15 years from city that would provide it with over $600,000 in tax savings, which was substantial amount for company, and property manager testified that, based on his experience with both city and township, development of property would be easier and more economical with city than with township.

Evidence supported finding by county Board of Commissioners that benefits to five-acre township territory proposed to be annexed by city and surrounding area would outweigh detriments from annexation to territory and surrounding area; while benefits and detriments to surrounding area were in balance, as township's loss of tax revenue would be offset by city's taking responsibility for providing services to annexed area, and pharmacy would be built on territory irrespective of whether territory was annexed, benefits to territory from city's tax abatement plan and city's easier and more economical property development process tipped scales in favor of annexation.

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**IMMUNITY - OKLAHOMA**

## Sanders v. Turn Key Health Clinics

**Supreme Court of Oklahoma - March 11, 2025 - P.3d - 2025 WL 762203 - 2025 OK 19**

Inmate's surviving spouse brought action against healthcare contractor at county detention facility for wrongful death. Contractor moved to dismiss for failure to state a claim.

The District Court, Creek County, granted motion with leave to amend. Spouse appealed. The Court of Civil Appeals reversed. Contractor's petition for certiorari was granted.

The Supreme Court held that:

- Order granting motion to dismiss with leave to amend did not become final and appealable when time to amend pleading expired;
- Recasting petition in error as original-jurisdiction petition for writ of prohibition without notice would not prejudice parties;
- Circumstances of case weighed in favor of recasting petition; and
- Contractor was state "employee" under Governmental Tort Claims Act (GTCA).

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**EMINENT DOMAIN - SOUTH CAROLINA**

## Marlowe v. South Carolina Department of Transportation

**Supreme Court of South Carolina - March 26, 2025 - S.E.2d - 2025 WL 909152**

Landowners brought action against Department of Transportation (DOT), alleging inverse condemnation, negligence, and other claims arising from flooding of landowners' home that occurred during major storm events while DOT's construction of stretch of highway adjacent to home was ongoing.

The Circuit Court granted DOT's motion for summary judgment. Landowners appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. DOT petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- Stormwater Management and Sediment Reduction Act did not immunize DOT from liability, but
- Engineer's testimony on causation was too speculative to preclude summary judgment for DOT on inverse condemnation claim.

Stormwater Management and Sediment Reduction Act did not immunize Department of Transportation (DOT) from liability for flood damage to landowners' home that occurred during

major storm events while DOT's construction of stretch of highway adjacent to home was ongoing, where Act provided that nothing contained Act and no action or failure to act under Act could be construed to relieve "the person engaged in the land disturbing activity" of the duties, obligations, responsibilities, or liabilities arising from or incident to the operations associated with the land disturbing activity.

Summary judgment evidence, including summary judgment affidavit of landowners' engineering expert that design of highway construction project adjacent to landowners' home was a "substantial contributor" to flood damage to home, was too speculative on issue of causation to preclude summary judgment for Department of Transportation (DOT) on landowners' inverse condemnation claim arising from flooding of home during major storm events while construction of new four-lane elevated highway was ongoing; expert could only testify there was a possibility that the flooding of home would not have occurred if the new highway had not been constructed as it was constructed.

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**EMINENT DOMAIN - TEXAS**

## City of Killeen v. Oncor Electric Delivery Company LLC

**Court of Appeals of Texas, Austin - February 28, 2025 - S.W.3d - 2025 WL 648521**

Electric transmission and distribution utility brought action against city, seeking declaratory judgment and injunctive relief to prevent city from condemning utility's streetlight system, alleging city lacked constitutional authority to condemn system and that taking by condemnation would violate Texas Constitution.

City filed plea to jurisdiction, arguing trial court lacked subject-matter jurisdiction over suit on bases of ripeness and governmental immunity. The District Court denied city's plea, and city filed interlocutory appeal.

The Court of Appeals held that:

- Utility's claims for declaratory and injunctive relief against city were ripe, although city had not yet voted to file a condemnation suit;
- As a matter of first impression, Property Code waived city's governmental immunity; and
- Utility had a viable constitutional takings claim against city regarding a going concern for which city's immunity was waived.

Electric transmission and distribution utility's claims for declaratory and injunctive relief against city to prevent city from condemning utility's streetlight system were ripe, although city had not yet voted to file a condemnation suit, as utility had shown a threat of litigation in the immediate future that could lead to the concrete injury of the loss of possession of the streetlights and the concomitant inability to comply with its statutory duty under the Public Utility Regulatory Act (PURA) to provide continuous and adequate service and the operational difficulties that would occur during a transfer of possession; city had followed all the necessary statutory steps to file a condemnation petition and had informed utility multiple times of its intent to file a condemnation suit if an agreement to purchase the streetlights could not be reached.

Texas Property Code waived city's governmental immunity for electric transmission and distribution utility's claims for declaratory judgment and injunctive relief to prevent city from condemning utility's streetlight system, where city had invoked its eminent-domain authority by taking all the steps required for a condemnation suit, and utility's claims against the city's threatened exercise of

that authority were ripe.

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**EMINENT DOMAIN - TEXAS**

## Commons of Lake Houston, Ltd. v. City of Houston

**Supreme Court of Texas - March 21, 2025 - S.W.3d - 2025 WL 876710**

Developer of master-planned community in floodplain brought inverse condemnation action against city, alleging that city's amendment of floodplain ordinance following historic hurricane, to require residences to be built at least two feet above the 500-year floodplain, was a regulatory taking under the State Constitution.

The County Civil Court at Law denied city's plea to the jurisdiction. City filed interlocutory appeal. The Houston Court of Appeals reversed. Developer petitioned for review.

The Supreme Court held that:

- Amendment of ordinance as exercise of police power did not preclude regulatory takings claim;
- Amendment of ordinance to ensure compliance with federal flood insurance program did not preclude regulatory takings claim;
- Regulatory takings claim was ripe for adjudication; and
- Developer had standing to assert a regulatory takings claim.

City's amendment of floodplain ordinance to require residences to be built at least two feet above the 500-year floodplain, as an exercise of police power following historic hurricane with catastrophic flooding, did not preclude developer of master-planned community within 100- and 500-year floodplains from having a regulatory takings claim against city under the State Constitution; a regulation could cause a compensable taking even if it resulted from a valid exercise of the government's police power.

City's amendment of floodplain ordinance to require residences to be built at least two feet above the 500-year floodplain, in order to ensure that city residents could obtain property insurance through federal flood insurance program following historic hurricane with catastrophic flooding, did not preclude developer of master-planned community within 100- and 500-year floodplains from having a regulatory takings claim against city under the State Constitution; a floodplain regulation could cause a compensable taking even when regulation was intended to promote compliance with the federal flood insurance program.

Finality requirement for ripeness was satisfied for residential developer's claim that city's amendment of floodplain ordinance, following historic hurricane, to require residences to be built at least two feet above the 500-year floodplain was a regulatory taking under the State Constitution, even though city had not formally denied developer a floodplain-development permit, where developer made series of attempts to obtain such a permit, city never responded to permit application, city rejected developer's applications for a site-wide permit, city did not respond for months to developer's repeated attempts to discuss the problem, and city asserted, for first time after two lawsuits spanning over six years, that developer had no right to obtain a floodplain-development permit and that its claim "cannot ever ripen."

Fact that residential developer did not build homes on its lots in master-planned community did not preclude developer from having standing for a regulatory takings claim against city under the State Constitution arising from city's amendment of floodplain ordinance, following historic hurricane, to

require residences to be built at least two feet above the 500-year floodplain; developer sued city to recover compensation for the damages it contended that the amended ordinance caused to developer's property interest, not to challenge or invalidate the amended ordinance, and developer indisputably possessed a vested interest in the property at issue and in the property's value.

Redressability component of constitutional standing was satisfied, thus giving developer of master-planned community standing on its regulatory takings claim alleging that city's amendment of floodplain ordinance, following historic hurricane, to require residences to be built at least two feet above the 500-year floodplain was a regulatory taking under the State Constitution; if the amended ordinance caused a compensable taking, an award of damages for a compensable taking would remedy developer's alleged injury.

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**TELECOM - CALIFORNIA**

## Volcano Telephone Company v. Public Utilities Commission

**Court of Appeal, Third District, California - March 13, 2025 - Cal.Rptr.3d - 2025 WL 798955**

Telephone company and its internet service provider (ISP) affiliate petitioned for writ of review, challenging Public Utilities Commission (PUC) decisions in telephone company's general rate case, arguing that PUC's implementation of broadband imputation constituted an unconstitutional taking and conflicted with federal law, and challenged the service quality reporting requirements as outside the scope of the proceedings, preempted by federal law, an abuse of discretion, and unsupported by necessary findings.

The Court of Appeal held that:

- Telephone company's rate of return under its approved rate was not clearly confiscatory due to PUC's imputation of company's internet service provider (ISP) affiliate's revenue to company, and thus broadband imputation did not constitute an unconstitutional taking;
- Ordering paragraph in PUC's rate-making decision, which required company to submit its ISP affiliate's broadband service quality metrics, did not exceed scope of company's rate case;
- Requirement that company submit its ISP affiliate's broadband service quality metrics was supported by PUC's findings of facts and record evidence;
- PUC's use of National Exchange Carrier Association's (NECA) inflation factors in setting expense caps and operating expense figures in telephone company's general rate case was not an abuse of discretion;
- Federal Communications Commission's (FCC) order did not expressly preempt PUC's rate decision; and
- FCC order did not preempt PUC's decision under conflict preemption.

Telephone company's rate of return under its approved rate was not clearly confiscatory due to Public Utilities Commission's (PUC) imputation of company's internet service provider (ISP) affiliate's revenue to company because it allowed ISP to use its broadband-capable facilities, for purpose of determining company's revenue requirements so that PUC could determine the amount of subsidy company needed to cover costs of providing services to rural areas, and thus broadband imputation did not constitute an unconstitutional taking; calculating company's revenue requirement without considering ISP's profits from company's broadband-capable facilities resulted in an inaccurate picture regarding company's true needs.

Ordering paragraph in Public Utilities Commission's (PUC) rate-making decision for telephone

company, which required company to submit its internet service provider (ISP) affiliate's broadband service quality metrics, did not exceed scope of company's rate case, where company's opening brief before PUC addressed whether expansion of service quality reports to ISP operations was appropriate and PUC's scoping memorandum stated that rate case would address necessity of plant improvements for providing safe, reliable, and high-quality voice and broadband services, and company was not prejudiced by any departure from the scoping memorandum.

Public Utilities Commission's (PUC) decision to include ordering paragraph requiring telephone company to submit its internet service provider (ISP) affiliate's broadband service quality metrics in its rate-making decision for telephone company was not an abuse of discretion, despite fact that it did not include such a requirement in three previous rate-making decisions for other providers, where first two other decisions were issued before COVID-19 pandemic, after which the need for high-quality broadband services increased, and third decision reflected a contentious discovery dispute and rejected a similar argument that provider was not required to provide information related to service quality of its ISP affiliate.

Ordering paragraph in Public Utilities Commission's (PUC) rate-making decision for telephone company, which required company to submit its internet service provider (ISP) affiliate's broadband service quality metrics, was cognate and germane to PUC's regulatory authority over company and over subsidies for providing services to rural areas, and thus PUC had authority to exercise limited jurisdiction over ISP for purpose of ordering paragraph, under statutes giving PUC authority to do all things necessary and convenient in the exercise of its power to regulate public utilities and directing PUC to set company's rates, include reasonable investments in broadband-capable facilities in company's rate base, and ensure that subsidization of company's provision of services to rural areas was not excessive.

Ordering paragraph in Public Utilities Commission's (PUC) rate-making decision for telephone company, which required company to submit its internet service provider (ISP) affiliate's broadband service quality metrics, was supported by PUC's findings of facts and record evidence; PUC explained that broadband service quality and the funding anticipated to go toward company's infrastructure upgrades were appropriate elements of company's revenue requirement and rate design and that annual reporting would provide a consistent record to allow PUC to evaluate broadband service quality over time and between rate cases in preparation for the next general rate case.

Ordering paragraph in Public Utilities Commission's (PUC) rate-making decision for telephone company, which required company to submit its internet service provider (ISP) affiliate's broadband service quality metrics, satisfied statutory requirement that every PUC decision contain separately stated findings of fact and conclusions of law on all issues material to the order or decision, where PUC explained that it ordered company to submit reports on ISP's service quality to help ensure company's investments in broadband-capable facilities were reasonable, and to, in turn, set reasonable rates and subsidy amounts for company.

Public Utilities Commission's (PUC) use of National Exchange Carrier Association's (NECA) inflation factors in setting expense caps and operating expense figures in telephone company's general rate case was not an abuse of discretion, despite fact that PUC had recognized that NECA's inflation factors were two years in arrears and not used by NECA to project future inflation; PUC explained that NECA's inflation factors being in arrears did not affect its adopted methodology, which relied on NECA's approved inflation factors and adjusted the inflation factor each calendar year.

Federal Communications Commission's (FCC) order, which forbore state public utilities commissions from enforcing certain requirements of Telecommunications Act insofar as they arose from

reclassification of broadband internet access service, did not expressly preempt California Public Utilities Commission's (PUC) rate decision that imputed company's affiliated internet service provider's (ISP) revenue to company and required company to submit ISP's broadband service quality metrics; PUC was not regulating ISP's rates directly or indirectly and FCC did not indicate a desire to preempt any attempt to obtain information concerning broadband service quality.

It was not impossible for telephone company to comply with Federal Communications Commission's (FCC) order, which forbore state public utilities commissions from enforcing certain requirements of Telecommunications Act insofar as they arose from reclassification of broadband internet access service, at the same time as California Public Utilities Commission's (PUC) rate decision that imputed company's affiliated internet service provider's (ISP) revenue to company and required company to submit ISP's broadband service quality metrics, nor did PUC's decision stand as an obstacle to implementation of FCC order, and thus FCC order did not preempt PUC's decision under conflict preemption; PUC decision did not regulate ISP's rates or regulate ISP's service quality.

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**IMMUNITY - GEORGIA**

## Warbler Investments, LLC v. City of Social Circle

**Supreme Court of Georgia - March 4, 2025 - S.E.2d - 2025 WL 676643**

Property owner sued city and city officials in their individual capacities, alleging defendants unlawfully rezoned property and seeking declaratory and injunctive relief, writ of mandamus, and writ of certiorari.

The Superior Court granted owner's unopposed motion to amend the complaint by dropping individual defendants, but then granted city's renewed motion to dismiss amended complaint, reasoning that naming individuals in original complaint violated Georgia Constitution's naming requirement for actions seeking declaratory relief from government acts. The Supreme Court granted property owner's application for discretionary appeal.

The Supreme Court held that:

- A complaint's failure to meet the requirement of the Georgia Constitution provision waiving sovereign immunity that claims must be brought exclusively against the government is not a jurisdictional bar to hearing the case, but is a procedural defect that carries a consequence of dismissal if not cured; overruling *South River Watershed Alliance v. DeKalb County*, 373 Ga. App. 285, 908 S.E.2d 204; and
- Property owner's failure to comply with the Georgia Constitution provision waiving sovereign immunity by including in its initial complaint claims against individual city officials was a procedural error that did not affect the government's waiver of sovereign immunity nor require dismissal of the action and was cured by amendment.

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**ANNEXATION - GEORGIA**

## Coweta County v. City of Newnan

**Court of Appeals of Georgia - March 10, 2025 - S.E.2d - 2025 WL 749951**

County brought action against city for declaratory judgment and injunctive relief, seeking to enjoin city from finalizing annexation of land without first resolving county's objection through statutory

dispute resolution process.

The trial court dismissed county's claim for injunctive relief as moot and resolved county's claim for declaratory judgment in favor of city. County appealed.

The Court of Appeals held that:

- County's claim for injunctive relief was rendered moot when activity sought to be enjoined had been completed, and
- As an issue of first impression, city's annexation of land was not void on the ground that city failed to comply with statutory dispute resolution process.

County's claim for injunctive relief against city, seeking to enjoin city from finalizing proposed annexation of land without first resolving county's objection through statutory dispute resolution process, was rendered moot when the activity sought to be enjoined had been completed; when county filed its petition for injunctive relief, city had proposed — but had not yet finalized — the annexation, and by the time county's petition was heard by the trial court, however, city had passed the annexation ordinance.

City's annexation of land was not void on the ground that city failed to comply with statutory dispute resolution process before adopting an ordinance annexing the property; although the statutory dispute resolution process used the word "shall" throughout and clearly described the arbitration process as a precursor step to annexation in the event of a county objection, there was no statutory provision stating that failure to comply with the statutory process resulted in annexation being invalid.

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**IMMUNITY - MASSACHUSETTS**

## Theisz v. Massachusetts Bay Transportation Authority

**Supreme Judicial Court of Massachusetts, Suffolk - March 14, 2025 - N.E.3d - 495 Mass. 507 - 2024 WL 5465208**

Commuter brought action against transportation authority, asserting claims under the Massachusetts Tort Claims Act (MTCA) for negligent hiring, training, supervising, and retaining bus driver with known history of anger management issues who allegedly assaulted and severely injured commuter.

The Superior Court Department denied authority's motion for summary judgment. Transportation authority filed interlocutory appeal. The Appeals Court affirmed. Transportation authority was granted further review.

The Supreme Judicial Court held that genuine issue of material fact as to whether transportation authority "originally caused" commuter's harm, such that transportation authority did not have public employer immunity under MTCA, precluded summary judgment.

Genuine issue of material fact as to whether transportation authority's decision, through its public employees responsible for supervising bus driver, to schedule bus driver with known history of assaultive behavior to operate bus route, without training him to manage his anger, "originally caused" commuter's harm, such that transportation authority did not have public employer immunity under Massachusetts Tort Claims Act (MTCA), precluding summary judgment on commuter's claim for negligence in hiring, promoting, retaining, and supervising bus driver in public-facing position,

arising from incident in which bus driver allegedly assaulted and severely injuring commuter.

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**REFERENDA - OHIO**

## State ex rel. Shamro v. Delaware County Board of Elections

**Supreme Court of Ohio - March 19, 2025 - N.E.3d - 2025 WL 854908 - 2025-Ohio-941**

Registered voter sought writ of mandamus ordering county board of elections to place zoning referendum on primary election ballot after board sustained election protest and decertified referendum, finding that referendum petition did not contain correct name of zoning amendment, contained misleading summary of amendment, and was accompanied by misleading map of property to be rezoned.

The Supreme Court held that failure of zoning referendum petition's summary to incorporate modifications to zoning amendment rendered the summary misleading.

Evidence, including minutes of township's board of trustees meeting, established that board had approved four modifications to proposed zoning amendment for brewery property, which included removing "agritourism" as a permitted use, prohibiting outdoor live music after 10:00 p.m., requiring dust mitigation, and requiring planting of additional trees, and thus failure of zoning referendum petition's summary to incorporate those modifications rendered the summary misleading.

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**NEGLIGENCE - GEORGIA**

## Usry v. City of Sandersville

**Court of Appeals of Georgia - February 21, 2025 - S.E.2d - 2025 WL 570648**

Motorist brought personal injury action against city, alleging that negligence of city employees resulted in her vehicle's collision with stopped waste collection truck.

Finding a fact issue as to whether truck's hazard lights were flashing at time of collision, the Superior Court denied city's motion for summary judgment. City applied for interlocutory appeal, which was granted. The Court of Appeals vacated and remanded. On remand, the Superior Court granted city's renewed motion for summary judgment, and motorist appealed.

The Court of Appeals held that city was not negligent and, thus, was not responsible for motorist's injuries.

City was not negligent and, thus, was not responsible for injuries that motorist sustained when her vehicle collided with stopped city waste collection truck; statute authorized municipal vehicles to stop on the road to collect waste, large, eight foot by eight foot collection truck was parked on a straight, flat section of the street, and trooper who investigated the accident stated that he could not explain why motorist did not see the truck beyond opining that motorist might have been following too closely or the sun could have been in her eyes.

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**ZONING & PLANNING - KANSAS**

## Austin Properties, LLC v. City of Shawnee

**Supreme Court of Kansas - March 7, 2025 - P.3d - 2025 WL 731911**

Developer filed petition for judicial review of city council's denial of its application for "rezoning" to develop mixed residential planned unit development, contending that city council's decision was unreasonable and was invalid for violation of zoning-procedure statutes, and that city violated due process by unlawfully expanding statutory right to protest.

The District Court granted city's motion for summary judgment. Developer appealed, and the Court of Appeals affirmed. The Supreme Court granted developer's petition for review.

The Supreme Court held that:

- Municipal provision and statute were both applicable to developer's claim that city failed to follow the necessary procedures;
- A valid protest petition simply increases the percentage of approval votes needed to approve the protested zoning amendment change; this is true at both the initial consideration and any subsequent consideration after an application has been remanded to the planning commission and resubmitted;
- City, after failing to gain a supermajority's approval of planned unit development application which was subject to protest petition, was required either to vote on denial or return the application to the planning commission with an explanation of why the application was not approved or denied; and
- Municipal code did not conflict with state law in subjecting planned unit development applications to protest petitions and a supermajority requirement for approval.

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**APPEALS - MINNESOTA**

## Lancaster v. Department of Human Services

**Supreme Court of Minnesota - March 12, 2025 - N.W.3d - 2025 WL 778892**

Licensed provider of foster care services for adults filed petition for writ of certiorari, seeking review of correction order issued by county on behalf of Minnesota Department of Human Services (DHS) concerning alleged violations of statute governing licensure of adult foster homes.

The Court of Appeals determined that correction order was not appealable and dismissed provider's appeal. Provider filed petition for review.

The Supreme Court held that correction order regarding violations of statute governing adult foster homes did not constitute binding decision, as required for order to be quasi-judicial conduct subject to writ of certiorari.

Correction order issued by county on behalf of the Minnesota Department of Human Services (DHS) concerning alleged violations of the statute governing licensure of adult foster homes by licensed provider of foster care services for adults did not constitute a binding decision regarding a disputed claim, as required for the order to be a quasi-judicial conduct subject to writ of certiorari; order did not bind and irrevocably fix provider's legal rights as a license holder, but rather, merely notified provider of the alleged violations, advised him of the possibility for sanctions if he failed to address the alleged violations, and provided him with an opportunity to seek reconsideration.

**VRDOs - NEW JERSEY**

## State ex rel. Edelweiss Fund, LLC v. JPMorgan Chase & Co.

**Superior Court of New Jersey, Appellate Division - December 27, 2024 - Not Reported in Atl. Rptr. - 2024 WL 5231309**

In this qui tam action, Edelweiss Fund LLC filed suit on behalf of the State of New Jersey. The complaint alleged that defendants, a number of financial institutions and their subsidiaries, violated the New Jersey False Claims Act (NJFCA) in connection with their resetting of interest rates of variable-rate, tax-exempt municipal bonds, defrauding the State of more than $100 million.

The Appellate Court held that NJFCA public disclosure bar precluded Edelweiss' fraud claims because the underlying transactions on which they are based were publicly disclosed data regarding VRDO rate resets.

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