
REFERENDA - MARYLAND

Maryland State Board of Elections v. Ambridge

Supreme Court of Maryland - October 10, 2024 - A.3d - 2024 WL 4456563

Voters of city filed petition for judicial review of ballot question that was to be included on general election ballot and that asked voters whether to amend certain provision of city's charter, and voters subsequently amended the petition to add a claim under statute allowing registered voters to seek judicial relief from any act or omission relating to an election.

After a hearing, the Circuit Court determined that ballot question violated state constitution in that it was not proper charter material and violated statute governing content of ballots. City's mayor and city council were allowed to intervene, and then the State Board of Elections, mayor, and city council appealed.

The Supreme Court held that statute providing for judicial review of the content and arrangement of a ballot, or to correct any administrative error on the ballot, was not a proper mechanism to challenge either whether proposed charter amendment was proper charter material or whether the language of proposed charter amendment comported with statute requiring a ballot to be easily understandable by voters.

NEGLIGENCE - NEW YORK

Orellana v. Town of Carmel

Court of Appeals of New York - October 17, 2024 - N.E.3d - 2024 WL 4505721 - 2024 N.Y. Slip Op. 05131

Motorist brought negligence action against town and its superintendent of highways, seeking to recover for personal injuries she sustained as result of motor vehicle accident and alleging superintendent was negligent in failing to look both ways before entering intersection and causing collision.

The Supreme Court granted defendants' motion for summary judgment dismissing negligence claim and denied motorist's cross-motion for summary judgment as to liability on that claim, and the Supreme Court, Appellate Division, affirmed. Court of Appeals granted motorist leave to appeal.

The Court of Appeals held that superintendent was not actually engaged in work on highway at time he collided with another motorist.

Town superintendent of highways was not actually engaged in work on highway at time he collided with another motorist, and thus superintendent and town were not exempted from liability for ordinary negligence, pursuant to statute that indicated traffic regulations applicable to drivers of vehicles owned or operated by town did not apply to people while actually engaged in work on

highway, in negligence action brought by motorist; accident occurred after superintendent had completed assessment of roadway conditions and mobilized team to salt roads, at time of accident superintendent was returning to work, and although superintendent saw snow accumulation shortly before collision, he took no action in response.

PUBLIC RECORDS - OHIO

State ex rel. Grim v. New Holland

Supreme Court of Ohio - October 9, 2024 - N.E.3d - 2024 WL 4446174 - 2024-Ohio-4822

Public records requester, proceeding pro se, brought action against village, seeking writ of mandamus ordering village to allow requester to inspect and copy certain public records, as well as statutory damages and court costs.

After mediation proceedings, village filed answer. Supreme Court granted alternative writ.

The Supreme Court held that:

- Requester's mandamus claim was moot;
- Requester did not waive claim for statutory damages;
- Requester was not entitled to statutory damages in connection with 22 purported requests for records made verbally;
- Purported request asking how the village handled its filings constituted request for information, not request for records, for purposes of calculating statutory damages under Public Records Act;
- Statutory damages were available for six requests for records submitted via email; but
- Requester failed to show by clear and convincing evidence dates on which he received public records he requested for which statutory damages were available, for purposes of calculating amount of damages; and
- Requester was not entitled to court costs.

PUBLIC UTILITIES - PENNSYLVANIA

Conyngham Township v. Pennsylvania Public Utility Commission

Commonwealth Court of Pennsylvania - October 4, 2024 - A.3d - 2024 WL 4395153

Township filed petition challenging orders of the Public Utility Commission (PUC) finding PUC lacked jurisdiction to review township's petition requesting that PUC order borough's sanitary sewer authority to cease providing wastewater treatment and disposal services in township without certificate of public convenience, granting authority's exceptions, dismissing township's complaint, and denying reconsideration. Authority intervened.

The Commonwealth Court held that PUC had jurisdiction to review township's petition.

Public Utility Commission (PUC) had jurisdiction to review township's petition requesting that PUC order borough's sanitary sewer authority to cease providing wastewater treatment and disposal services in township without a certificate of public convenience issued by PUC, and that authority return all collected monies to the residents until it obtained a valid certificate, even though the Municipality Authorities Act (MAA) granted the court of common pleas exclusive jurisdiction to determine questions involving utility rates or service; the issue in township's petition did not involve

rates or service.

BONDS - PUERTO RICO

Ambac Assurance Corporation v. Bank of New York Mellon

United States District Court, D. Puerto Rico - September 24, 2024 - Slip Copy - 2024 WL 4277670

Ambac Assurance Corporation brought an action seeking to recover damages against Bank of New York Mellon (BNYM) for BNYM's alleged "grossly negligent breach" of its contractual and common-law duties as trustee for certain bonds – insured by Ambac – that were issued by the Puerto Rico Sales Tax Financing Corporation (COFINA).

In essence, Ambac alleged that BNYM's failure to officially declare an Event of Default – although many events of default had in fact occurred – damaged Senior Bondholders and, consequently, Ambac itself.

The COFINA indenture included the release of Ambac's relevant breach of duty claims against BNYM other than those premised on claims of gross negligence, willful misconduct, or intentional fraud.

BNYM argued that Ambac's complaint failed to state gross negligence claims and, therefore, must be dismissed.

The District Court agreed, holding that the COFINA indenture preserved only Ambac's relevant ability to make claims premised on gross negligence, and that Ambac had failed entirely to state such a claim upon which relief may be granted.

While the District Court noted that Ambac had raised potentially colorable claims concerning BNYM's breach of contractual duties, pre- and post- default common law duties, and the covenant of good faith and fair dealing, none of these alleged breaches rose to the level of gross negligence.

"Beyond the ordinary negligence elements, a plaintiff must also allege facts plausibly suggesting that the defendant's conduct evinces a reckless disregard for the rights of others or smacks of intentional wrongdoing."

"Recklessness in the context of a gross negligence claim means an extreme departure from the standards of ordinary care, such that the danger was either known to the defendant or so obvious that the defendant must have been aware of it."

"A claim of gross negligence requires a plaintiff to prove that the defendant failed to exercise even slight care, scant care, or slight diligence, or that the defendant's actions evinced a reckless disregard for the rights of others."

"A mistake or series of mistakes alone, without a showing of recklessness, is insufficient for a finding of gross negligence."

PUBLIC EMPLOYMENT - WASHINGTON

U.S. Sportsmen's Alliance Foundation v. Smith

Supreme Court of Washington, En Banc - October 17, 2024 - P.3d - 2024 WL 4509254

Wildlife-conservation organization brought action against member of Washington Fish and Wildlife (WFW) Commission, who was also a member of county planning commission, alleging member was statutorily prohibited from holding both positions concurrently.

On cross-motions for summary judgment, the Superior Court entered judgment in favor of organization. Commission member sought direct review, which was granted.

The Supreme Court held that:

- Term "office," as used in statute providing that persons eligible for appointment as members of WFW Commission shall not hold another state, county, or municipal elective or appointive "office," means a position of authority, duty, or responsibility conferred by a governmental authority for a public purpose or to exercise a public function, and
- Position of commissioner on county planning commission was an "office" under such statute.

Term "office," as used in statute providing that persons eligible for appointment as members of Washington Fish and Wildlife (WFW) Commission shall not hold another state, county, or municipal elective or appointive "office," means a position of authority, duty, or responsibility conferred by a governmental authority for a public purpose or to exercise a public function, rather than only positions that independently exercise part of the government's sovereign power.

Position of commissioner on county planning commission was an "office" under statute providing that persons eligible for appointment as members of Washington Fish and Wildlife (WFW) Commission shall not hold another state, county, or municipal elective or appointive "office," and therefore member of WFW Commission was precluded from being a WFW Commission member and a county planning commissioner concurrently; county planning commission's authority was conferred by a governmental authority, it was created for a public purpose, serving on county planning commission was an appointed position, and county planning commission was authorized, and sometimes required, to hold public hearings in exercise of its duties.

PUBLIC MEETINGS. - FLORIDA

Moms for Liberty - Brevard County, FL v. Brevard Public Schools

United States Court of Appeals, Eleventh Circuit - October 8, 2024 - F.4th - 2024 WL 4441302

Parents group and its members filed § 1983 action alleging that school board's rules prohibiting abusive, personally directed, and obscene speech during public comment period of board meetings violated First Amendment facially and as applied.

The United States District Court for the Middle District of Florida entered summary judgment in board's favor, and plaintiffs appealed.

The Court of Appeals held that:

- Organization had standing to bring action;
- Plaintiffs had standing to seek prospective relief;
- Policy permitting board's presiding officer to interrupt speech that he or she deemed "abusive" violated First Amendment;
- Policy disallowing speakers from addressing or questioning board members individually was unreasonable restriction on speech as applied;
- Policy allowing presiding officer to stop speaker when speaker's remarks were "personally directed" at anyone not on board was facially unconstitutional; and
- Policy prohibiting obscene speech during public comment period violated First Amendment as applied.

ENVIRONMENTAL - HAWAI'I

Aloha Petroleum, Ltd. v. National Union Fire Insurance Company of Pittsburgh, PA

Supreme Court of Hawai'i - October 7, 2024 - P.3d - 2024 WL 4431797

Insured petroleum company brought action against commercial general liability (CGL) insurers for declaratory judgment that they had duty to defend suits by city and county over greenhouse gas emissions from insured's gasoline.

The United States District Court for the District of Hawai'i certified questions.

The Supreme Court held that:

- "Accident" as used in definition of "occurrence" included company's allegedly reckless conduct in producing fossil fuels contributing to climate change, but
- As a matter of first impression, carbon dioxide from burning gasoline was "contaminant" and thus "pollutant" within meaning of pollution exclusion.

"Accident" as used in commercial general liability (CGL) policy's definition of "occurrence" included petroleum company's allegedly reckless conduct in producing fossil fuels contributing to climate change; awareness of risk differed from awareness of certain harm, negligence and accident would be mutually exclusive if "accident" meant an event where the harm was unforeseeable, including recklessness in an "accident" honored fortuity, and principle of fortuity was more about concept of chance than insured's culpability.

Carbon dioxide from burning petroleum company's gasoline was "contaminant" and thus "pollutant" within meaning of total pollution exclusion of company's commercial general liability (CGL) policy; greenhouse gases contaminated atmosphere and were traditional environmental pollution, exclusion was unambiguous as applied to greenhouse gases, and company could not reasonably expect products liability coverage for pollution.

HIGHWAYS - MARYLAND

Bay City Property Owners Association, Inc. v. County Commissioners of Queen Anne's County

Appellate Court of Maryland - October 2, 2024 - A.3d - 2024 WL 4368287

Subdivision owners association brought action for declaratory judgment and to quiet title to intersection in subdivision.

Neighboring landowner, which sought to use the intersection for access to proposed development, alleged establishment of a public road by prescription.

The Circuit Court entered judgment for neighboring landowner, and association appealed.

The Appellate Court held that:

- Evidence was sufficient to support finding that disputed intersection in subdivision had been in continuous public use for at least 20 years, and
- Evidence was sufficient to support finding that the public's use disputed intersection was adverse, rather than permissive.

Evidence in subdivision's quiet title action was sufficient to support finding that disputed intersection in subdivision had been in continuous public use for at least 20 years, as required to establish a public right to use the intersection; several witnesses testified that they, and other members of the public, traveled freely through the intersection without having to request permission, and testimony and exhibits demonstrated that the county had improved and maintained the intersection, including construction, resurfacing, and plowing, for decades.

Evidence in subdivision's quiet title action was sufficient to support finding that the public's use of disputed intersection in subdivision was adverse, rather than permissive, as required to establish a public road by prescription; there was some evidence that members of the public had traversed the intersection in conjunction with their use of road whenever they saw fit and without asking leave of subdivision, there was no evidence in the record of any member of the public asking permission, paying a fee, or believing permission could be withheld with regard to their use of the intersection, and there was evidence that no public use had ever been restricted through signage or barricades.

SCHOOLS - MISSISSIPPI

Aldridge v. South Tippah County School District

Court of Appeals of Mississippi - August 20, 2024 - So.3d - 2024 WL 3870492

Mother of minor student brought negligence action against high school district for injuries he sustained when he was stabbed in locker room while coach was in gym.

The Circuit Court granted district's motion for summary judgment. Mother appealed.

The Court of Appeals held that coach had no duty to be present in locker room while students were changing into their practice attire.

Statute addressing educators' responsibilities to hold pupils to strict account for disorderly conduct, state educator ethics code, and basketball coach's usual procedure for supervising his classroom did not create duty for coach to be present in locker room while students were changing into their practice attire, and, thus, his failure to follow his usual practice of staying in locker room did not establish breach of duty by school district to provide appropriate supervision, in mother's negligence action against district for injuries sustained by student who was stabbed by another student; students were friends, neither coach nor district had notice of animosity between students or reason to believe that altercation between them would occur, and no one knew that other student had knife.

EMINENT DOMAIN - OHIO

State ex rel. Gideon v. Page

Supreme Court of Ohio - October 10, 2024 - N.E.3d - 2024 WL 4454448 - 2024-Ohio-4867

After Court of Common Pleas granted city's motion to vacate its dismissal of eminent domain action without prejudice due to parties purportedly having reached settlement agreement, and city moved to enforce settlement, property owner brought original action in Court of Appeals for writ of prohibition to prevent trial court judge from conducting any further proceedings in underlying case.

City and Judge filed motions to dismiss. Property owner filed objections to magistrate's report and recommendations. The Court of Appeals overruled the objections, granted the motions to dismiss, and denied the writ of prohibition. Property owner appealed, and filed motion for oral argument.

The Supreme Court held that:

- Court would deny motion for oral argument, and
- Judge did not patently and unambiguously lack jurisdiction to hear city's motion.

Supreme Court would deny property owner's motion for oral argument on direct appeal from the denial of property owner's writ of prohibition alleging that trial court judge lost jurisdiction over eminent domain case and could not schedule hearing on whether to enforce settlement agreement with city, as case did not involve complex issues, a matter of great public importance, a substantial constitutional issue, or a conflict among courts of appeals.

Court of common pleas judge did not patently and unambiguously lack jurisdiction to hear city's motion for relief from judgment and vacate dismissal without prejudice of eminent domain action; no statute removed the court's jurisdiction, at a minimum, judge had jurisdiction to determine whether grounds for relief from judgment existed, and, while motion did not cite rule governing relief from judgment, city argued at hearing that judge could vacate the dismissal under rule or her inherent authority.

PUBLIC UTILITIES - OHIO

In re Letter of Notification Application of Columbia Gas of Ohio, Inc.

Supreme Court of Ohio - October 3, 2024 - N.E.3d - 2024 WL 4375867 - 2024-Ohio-4747

Adjacent landowner appealed decision of the Power Siting Board which approved an accelerated application for the construction of a natural-gas-distribution pipeline less than five miles long.

Gas company intervened.

The Supreme Court held that:

- Record did not support claim that pipeline application required a permanent easement with a minimum width of 50 feet along the entire pipeline route, and
- Board did not give "artificial deference" to pipeline company regarding safety concerns.

Record on appeal of Power Siting Board's approval of accelerated application for natural gas pipeline did not support adjacent landowner's claim that pipeline application required a permanent

easement with a minimum width of 50 feet along the entire pipeline route; while pipeline company stated in one part of its application that the project would require a 50-foot-wide permanent easement and a 50-foot-wide temporary easement, those applied only to the pipeline route running through identified areas of ecological concern, attachment to the accelerated application indicated that construction rights-of-way would "typically" consist of a 50-foot-wide permanent easement and a 50-foot-wide temporary construction easement but that the easement widths would vary based on the circumstances, and the construction-plan drawings attached to the application depicted easements of varying widths.

Power Siting Board did not give "artificial deference" to pipeline company regarding safety concerns when considering accelerated application for natural gas pipeline; Board conditioned approval of the accelerated application on company complying with all relevant rules and regulations, including pipeline-safety standards established by the Pipeline and Hazardous Materials Safety Administration, Board also adopted staff's report, which required company, prior to beginning construction, to obtain and provide "on the case docket" copies of all permits and authorizations required by federal and state laws and regulations in areas that require such permits and authorizations, and pipeline was subject to the condition that issuance of the construction certificate "shall not exempt the facility from any other applicable and lawful local, state, or federal rules or regulations."

ZONING & PLANNING - ALASKA

Griswold v. City of Homer

Supreme Court of Alaska - September 20, 2024 - P.3d - 2024 WL 4246636

Neighbor of property owners who placed shipping container on their property to use as a vacation home sought judicial review of city board of adjustment's decision upholding city planning commission's decision upholding zoning permit issued to property owners.

The Superior Court affirmed and granted city's motion for attorney fees and costs. Neighbor appealed.

The Supreme Court held that:

- Board's interpretation of zoning code provisions to mean that a detached accessory dwelling unit that was a single-family residence was permitted without a conditional use permit was reasonable;
- Board had reasonable basis to conclude that property owner's shipping container was incidental and subordinate to mobile home, and thus constituted an "accessory detached dwelling unit" that did not require a special use permit;
- Board had reasonable basis for concluding that shipping container used by property owners as vacation home was not a nuisance;
- Zoning code requirement of stating the zoning use classification on an application for a zoning permit was "directory," rather than mandatory, such that only substantial compliance with the requirement was required;
- Owners' application for zoning permit substantially complied with requirement that applications state the zoning code use classification under which the permit is sought;
- City's decision to impose fine on property owners for failing to obtain permit before placing shipping container on their property, rather than denying zoning permit, did not constitute a prohibited waiver of the zoning code requirements; and
- Neighbor failed to show that member of city's planning commission held a disqualifying partiality

against him.

PUBLIC LAWSUITS ACT - GEORGIA

Clay v. Morgan County

Court of Appeals of Georgia - September 30, 2024 - S.E.2d - 2024 WL 4341890

Residents who owned, leased, and lived on property zoned for agricultural and residential use in county brought action against county, seeking declaratory and injunctive relief regarding project to build electric vehicle manufacturing facilities on state-owned property that was leased by multi-county joint development authority, which leased property to private manufacturer, asserting that project would violate local zoning ordinances.

After being permitted to intervene, state and authority filed motion to dismiss for lack of jurisdiction, and county filed separate motion to dismiss. The Superior Court dismissed action, rejecting defendants' argument that action was barred by Public Lawsuits Act but dismissing on other grounds. Residents, state, and authority appealed.

The Court of Appeals held that:

- Action was "public lawsuit" under Public Lawsuits Act;
- Resident's prior lawsuit regarding project was "commenced" when it was filed with the court, for purposes of Act's section prohibiting filing of other lawsuits against public improvement project after public lawsuit had been commenced; and
- Dismissal of current action, not residents' other nearly identical action that was pending in different county, was warranted under Act.

County residents' action seeking declaratory and injunctive relief regarding project to build electric vehicle manufacturing facilities on state-owned property that was leased by joint development authority, which leased property to private manufacturer, was "public lawsuit" under Public Lawsuits Act, which limited number of lawsuits that could be brought against public improvement project, though authority, in its bond resolution, stated that project was not public project under Local Government Public Works Construction Law and that statutes requiring contractors on certain public contracts to participate in federal work authorization program did not apply; residents alleged that project would violate local zoning laws, Act applied to broader array of projects than Construction Law, and statutes had no bearing on Act.

In the interest of judicial economy, Court of Appeals would exercise its discretion to decide question of law as to whether county residents' prior lawsuit was a "public lawsuit" under Public Lawsuits Act, which limited number of lawsuits that could be brought against public improvement project, even though it was voluntarily dismissed without prejudice, rather than remanding for trial court to address issue in the first instance, when reviewing dismissal of residents' action seeking declaratory and injunctive relief regarding project to build electric vehicle manufacturing facilities on state-owned property that was leased by joint development authority, which leased property to private manufacturer, on ground that project would violate local zoning laws; material facts were undisputed.

County residents' prior lawsuit regarding project to build electric vehicle manufacturing facilities on state-owned property that was leased by joint development authority, which leased property to private manufacturer, was "commenced" when it was filed with the court, for purposes of section of Public Lawsuits Act prohibiting filing of other lawsuits against public improvement project after

public lawsuit had been commenced, as supported conclusion that residents' subsequent lawsuit seeking declaratory and injunctive relief on ground that project would violate local zoning laws was barred under Act, even though prior lawsuit was voluntarily dismissed without prejudice prior to any ruling on its merits.

Under Public Lawsuits Act, which limited number of lawsuits that could be brought against public improvement project, dismissal of county residents' action seeking declaratory and injunctive relief regarding project to build electric vehicle manufacturing facilities on state-owned property that was leased by joint development authority, which leased property to private manufacturer, on ground that project would violate local zoning laws, not residents' other nearly identical action that was pending in different county, was warranted; other action was not before court, other action was filed earlier, and allowance of one public lawsuit was fulfilled before current action was filed.

SALE LEASEBACK - INDIANA

Luebke v. Indiana Department of Local Government Finance

Tax Court of Indiana - September 13, 2024 - N.E.3d - 2024 WL 4182290

Coalition of Allen County taxpayers objected to the Allen County Board of Commissioners' plan to build a new jail, challenging the legality of a lease approved by the Department of Local Government Finance (the "DLGF").

The new jail was projected to take at least three years to build, with an estimated cost of roughly $320 million. The Commissioners undertook several steps to move this project forward. For instance, they established the "Allen County, Indiana Building Corporation" to assist the County in financing its facilities by acquiring, owning, constructing, renovating, and leasing both existing and new county buildings. In addition, they planned to convey the historic Courthouse to this newly formed entity, which would then lease the property back to the County during the new jail's construction. The sale-leaseback plan for the Courthouse sought to reduce overall costs by avoiding approximately $28 million in capitalized interest expenses during the initial construction period, thereby lowering the lease payments for the new jail. The Building Corporation and the Commissioners executed a lease-purchase agreement ("the Lease") to implement the sale-leaseback plan and formalize the terms for leasing the new jail.

The objecting taxpayers contended that the lease was unlawful because the statutory framework for county leases did not permit the sale-leaseback of historical buildings long owned by the county, such as the Allen County Courthouse. They further argued that the jail's construction could not proceed because the resolution lacked the statutorily required determination of need for the Courthouse sale-leaseback.

The Commissioners argued that the taxpayers had not established an injury sufficient to confer standing because they had focused solely on the use of the Courthouse as a financing method for the new jail and that and that the lease and resolution comply with the law.

The Tax Court affirmed the final determination of the DLGF, holding that:

- The objecting taxpayers had standing to challenge the lease and the resolution; but

- The lease was legally valid under Indiana Code section 36-1-10-7(c).

“The Commissioners suggest that the Objectors have not been injured by the sale-leaseback of the Courthouse, when viewed as a separate, unrelated transaction from the jail project. However, they have provided no reason to consider these transactions in isolation. On the contrary, the Commissioners have consistently emphasized that the sale-leaseback of the Courthouse is integral to the new jail project. Indeed, the sale-leaseback is designed to generate revenue that will reduce lease payments by avoiding millions in capitalized interest during the new jail’s construction. This demonstrates that the construction of the new jail and the sale-leaseback of the Courthouse are inherently interrelated, with the financing and execution of one directly impacting and supporting the other.”

“An examination of the relationship between the sale-leaseback of the Courthouse and the new jail project confirms the Objectors’ standing in this case. The sale-leaseback of the Courthouse is a means of funding the new jail project that directly impacts each of the Objectors individually as taxpayers and property owners. The Commissioners and the Building Corporation executed a single lease encompassing both the Courthouse and the new jail, creating a unified funding structure. The sale-leaseback is not merely an isolated transaction, but plays a critical role in generating substantial revenue to reduce the overall financial burden on other funding sources. The funds required to cover lease payments are sourced from the Jail LIT, economic development revenues from a local income tax and, if necessary, the County’s property tax. Without this revenue stream, any shortfall would likely be offset by increasing reliance on the Jail LIT, economic development funds, or property taxes, directly affecting the taxpayer Objectors. Thus, the sale-leaseback and new jail project are not just parallel transactions, but form an interdependent funding framework that materially impacts the taxpayers and property owners of Allen County.”

“The Commissioners’ own arguments demonstrate that the sale-leaseback of the Courthouse is designed solely to fund the new jail project. Similarly, the Objectors challenge to the legality of the sale-leaseback, inherently involves the entire financing structure, which directly relies on taxpayer contributions, including the Jail LIT and potentially the County’s property tax. As taxpayers and property owners, the Objectors are directly impacted by the commitment of their tax liabilities in support of this funding arrangement. Thus, their challenge is not just to the isolated transaction of the sale-leaseback of the Courthouse, but to a funding scheme that imposes a personal and imminent financial burden. Consequently, the Court finds that this impact constitutes a personal and direct injury, satisfying the requirement for standing.”

ZONING & PLANNING - WASHINGTON

King County v. Friends of Sammamish Valley

Supreme Court of Washington, En Banc - September 19, 2024 - P.3d - 2024 WL 4231188

County appealed corrected determination by regional panel of growth management hearings board that most of county ordinance that amended land use code governing winery, brewery, and distillery facilities did not comply with the Growth Management Act (GMA) and the State Environmental Policy Act (SEPA).

The Superior Court transferred the appeal to the Court of Appeals pursuant to the Administrative Procedure Act (APA), and the Court of Appeals reversed and remanded for finding of compliance. The Supreme Court accepted review.

The Supreme Court held that:

- Amendment did not comply with the GMA, and
- Determination of nonsignificance (DNS) which county issued for amendment did not comply with the State Environmental Policy Act (SEPA).

County's amended land use code governing winery, brewery, and distillery facilities in rural and agricultural areas, which county determined was a nonproject action and made a threshold determination of nonsignificance (DNS), did not comply with the Growth Management Act (GMA); development of rural and agricultural land with no environmental review failed to maintain the natural resource industries and failed to protect water quality, while county's DNS checklist did not address any potential environmental impacts and concluded no potential environmental impacts existed, and ordinance allowed accessory uses of wine tasting and large-scale events with no adequate regulations and adequate setbacks to prevent conflicts with agricultural activities.

Threshold determination of nonsignificance (DNS) which county issued for amendment of land use code governing winery, brewery, and distillery facilities in rural and agricultural areas did not comply with the State Environmental Policy Act (SEPA); amendment created opportunities for new and existing businesses to open or expand operations within land classified as rural and agricultural, and it was very probable that the affected land, which was in a popular winery destination area, would be used in that manner, and SEPA checklist which county used did not disclose potential environmental impacts from the potential expansion of facilities in the area.

PUBLIC MEETINGS. - FLORIDA

McDonough v. Garcia

United States Court of Appeals, Eleventh Circuit - September 16, 2024 - F.4th - 2024 WL 4195557

City resident filed § 1983 action alleging that city and police officers violated First Amendment by banning him from city council meetings, and that officers lacked probable cause to arrest him for disorderly conduct and cyberstalking.

The United States District Court for the Southern District of Florida entered summary judgment in defendants' favor, and plaintiff appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Rehearing en banc was granted.

The Court of Appeals held that city council meetings were limited public forums, for First Amendment purposes.

City council meetings were limited public forums for First Amendment purposes, and thus its decision to bar city resident from meetings had to be reasonable in light of purposes served by meetings and could not discriminate on basis of viewpoint; though public comment periods were open to public at large, council limited speech to matters "pertinent to the City."

PUBLIC UTILITIES - MAINE

Deane v. Central Maine Power Company

Supreme Judicial Court of Maine - September 17, 2024 - A.3d - 2024 WL 4206506 - 2024

ME 72

Consumers brought action against electric utility, alleging fraudulent and negligent misrepresentation, statutory violations, and intentional infliction of emotional distress (IIED) arising from consumers' receipt of allegedly misleading disconnection notices from utility in winter for being behind on their electric bills.

The Business and Consumer Court dismissed in part for failure to state a claim, after which the Business and Consumer Court granted summary judgment to utility on IIED claim. Consumers appealed.

The Supreme Judicial Court held that:

- Consumers failed to sufficiently allege pecuniary harm to support claims of misrepresentation;
- Statute governing utility liability for civil damages did not confer a private right of action on consumers;
- Consumers did not suffer severe emotional distress, as element of IIED claim, based on objective symptomatology; and
- As matter of first impression, utility's conduct was not so extreme and outrageous that conduct alone would satisfy IIED element of severe emotional distress.

BALLOT INITIATIVE - NEBRASKA

State ex rel. Brooks v. Evnen

Supreme Court of Nebraska - September 13, 2024 - N.W.3d - 317 Neb. 581 - 2024 WL 4178278

Objectors brought mandamus proceeding and also requested a declaratory judgment to challenge voter ballot initiative that proposed to amend State Constitution to include a right to abortion, alleging violation of the single subject rule of the Constitution.

The Supreme Court held that:

- Availability of mandamus remedy precluded declaratory relief on same issue of alleged single subject rule violation, and
- Ballot initiative did not violate the single subject rule.

Declaratory relief was not available to objector who claimed that voter ballot initiative proposing to amend State Constitution to include a right to abortion violated the single subject rule of the Constitution, where objector also requested a writ of mandamus premised on a determination that the initiative violated the single subject rule, and mandamus was an equally serviceable remedy provided by law.

Voter ballot initiative that proposed to amend State Constitution to include a right to abortion did not violate the single subject rule of the Constitution, where initiative was not complex, proposed constitutional amendment contained two sentences, including one of which defined a key term used in other sentence, and initiative did not contain multiple subjects that were not naturally and necessarily connected to the general subject.

ADMINISTRATIVE PROCEDURE ACT - WASHINGTON

City of Tacoma v. Department of Ecology

Supreme Court of Washington, En Banc - September 5, 2024 - P.3d - 2024 WL 4048335

Municipalities and special purpose districts that operated wastewater treatment plants that discharged into Puget Sound filed petition for judicial review and declaratory judgment, alleging that the state's Department of Ecology had unlawfully promulgated rules in violation of the Administrative Procedure Act (APA) in issuing portions of report that identified the most likely sources of human-produced nitrogen in Puget Sound and in making commitment to environmental organization, in letter denying organization's rulemaking petition, to set nutrient-loading limits at current levels through the individual permitting process.

The Superior Court ruled in favor of the municipalities and districts. Department appealed. The Court of Appeals affirmed in part and reversed in part, upholding the ruling that the Department's commitment in denial letter was an unlawfully promulgated rule. Department filed petition for review, which was granted.

The Supreme Court held that Department's commitment in the denial letter was not a "directive of general applicability" and, thus, was not a "rule" under the APA.

Commitment made by state's Department of Ecology to environmental organization, in letter denying organization's rulemaking petition relating to nitrogen levels in Puget Sound, to set nutrient-loading limits at current levels through the individual permitting process was not a "directive of general applicability" and, thus, was not a "rule" subject to the rulemaking procedures of the Administrative Procedure Act (APA); Department's commitment in the denial letter did not eliminate staff discretion or prevent a case-by-case analysis of permit holder's operations when issuing permits, and denial letter was ultimately not binding on those regulated.

ADMINISTRATIVE PROCEDURE ACT - WYOMING

Bienz v. Board of County Commissioners, County of Albany

Supreme Court of Wyoming - September 25, 2024 - P.3d - 2024 WL 4284101 - 2024 WY 102

Property owners and livestock company sought judicial review under the Wyoming Administrative Procedure Act (WAPA) challenging the county board of county commissioners' amendments to zoning regulations referred to as the Aquifer Protection Overlay Zone (APOZ).

The District Court dismissed the petitions for review, concluding that it lacked jurisdiction because the amendments were legislative acts and not reviewable under the WAPA. Property owners and livestock company appealed.

The Supreme Court held that there is no common law or general statutory exception to judicial review of agency legislative actions; instead, the Wyoming Administrative Procedure Act (WAPA) provisions governing review, well-understood judicial principles, and separation of power principles guide the nature and scope of review; overruling *McGann v. City Council of City of Laramie*, 581 P.2d 1104, and abrogating *Sheridan Plan. Ass'n v. Bd. of Sheridan Cnty. Comm'rs*, 924 P.2d 988.

REFERENDA - NEBRASKA

State ex rel. Collar v. Evnen

Supreme Court of Nebraska - September 13, 2024 - N.W.3d - 317 Neb. 608 - 2024 WL 4178319

Relator filed petition for writ of mandamus directing the Secretary of State to withhold from general election ballot a referendum seeking to repeal act which established a program to provide $10 million in education scholarships to eligible students to pay costs associated with attending qualified private elementary and secondary schools.

The Supreme Court held that:

- Constitutional exception to the referendum power is narrow and prevents a referendum petition from being invoked only against any act or part of an act by the Legislature making appropriations for the expense of the state government or a state institution existing at the time of the passage of such act, and
- Act did not make an "appropriation" within meaning of constitutional exception to referendum power.

SPECIAL ASSESSMENTS - NORTH DAKOTA

Senske Rentals, LLC v. City of Grand Forks

Supreme Court of North Dakota - September 12, 2024 - N.W.3d - 2024 WL 4163014 - 2024 ND 172

Landowner petitioned for review of city's decision to specially assess its property in subdivision for street improvements.

The District Court affirmed. Landowner appealed.

The Supreme Court held that:

- Trial court acted within its discretion in denying motion to strike city's benefit and assessment chart from the record;
- Special assessment statute requires determination of special benefits independent of, and without regard to, cost of local improvement project; overruling *Holter v. City of Mandan*, 948 N.W.2d 858; and
- City's determination of special benefit to landowner's property was improperly based on costs of project.

Trial court acted within its discretion in denying landowner's motion to strike, from the record, a benefit and assessment chart of city special assessment commission, on landowner's appeal of city's decision to specially assess its property in subdivision for street improvements, where landowner filed motion approximately eight months after the record had been filed and months after deadline for filings related to completeness of record, landowner provided no reasonable grounds for delay, and court found the documents were appropriate to be included in the record on appeal.

Statute governing determination of municipal special assessments requires a determination of special benefits independent of, and without regard to, the cost of the local improvement project;

overruling *Holter v. City of Mandan*, 948 N.W.2d 858.

REFERENDA - OHIO

State ex rel. Valentine v. Schoen

Supreme Court of Ohio - September 6, 2024 - N.E.3d - 2024 WL 4100090 - 2024-Ohio-3439

Referendum petitioner sought a writ of mandamus to compel board of elections to place zoning referendum on general election ballot.

The Supreme Court held that petitioner failed to comply with appropriate-map requirement of statute governing township-zoning referendum petitions.

Referendum petitioner, who objected to township's zoning amendment that allowed property to be used as a tow lot and for vehicle storage, failed to comply with appropriate-map requirement of statute governing township-zoning referendum petitions, although petitioner claimed he received inaccurate map from township; petitioner submitted a map with referendum petition that outlined the approximately nine-acre area that property owner originally requested be rezoned, not the smaller portion that the board of township trustees voted to rezone, and no evidence indicated the board approved the map as reflecting the zoning amendment it approved.

EDUCATION FINANCE - SOUTH CAROLINA

Eidson v. South Carolina Department of Education

Supreme Court of South Carolina - September 11, 2024 - S.E.2d - 2024 WL 4141893

Advocacy organizations and parents, on behalf of themselves and their minor children, brought action against South Carolina Department of Education, state Superintendent of Education, and other state offices and officers, asserting that act establishing state-funded Education Scholarship Trust Fund which provided payments used for tuition at private schools violated the South Carolina Constitution, and seeking an injunction and declaratory judgment.

The Supreme Court held that:

- Plaintiffs satisfied the requirements for public importance standing to bring constitutional challenge to Education Scholarship Trust Fund;
- Money allocated to Education Scholarship Trust Fund remained public funds subject to constitutional provision prohibiting public funds from being used for the direct benefit of any religious or private educational institution;
- Payments disbursed from Education Scholarship Trust Fund to private schools violated the constitutional prohibition against direct aid to religious or other private educational institutions; and
- Portions of act establishing Education Scholarship Trust Fund which allowed payments to private schools would be stricken and Department of Education enjoined from disbursing scholarships for the tuition and fees of nonpublic educational service providers.

REFERENDA - TEXAS

In re Dallas HERO

Supreme Court of Texas - September 11, 2024 - S.W.3d - 2024 WL 4143401

Organizers of citizen petition drive which resulted in placement of three proposed city charter amendments on upcoming election ballot filed petition for writ of mandamus challenging three other proposed city charter amendments submitted by city council, which organizers contended would effectively nullify their proposed amendments.

The Supreme Court held that:

- Individual organizer had interest in electoral process sufficient to confer standing;
- Ballot language for council-initiated propositions was misleading; and
- Appropriate remedy for misleading ballot language was removal of council-initiated propositions from ballot.

Individual had interest in electoral process sufficient to confer standing to file petition for writ of mandamus challenging three proposed city charter amendments submitted by city council based on allegation that those proposed amendments would effectively nullify three other proposed city charter amendments submitted by citizens, where individual signed petitions for citizen-initiated propositions and individual alleged that ballot language of council-initiated propositions was misleading because it omitted effect those propositions would have on citizen-initiated propositions.

Voter who signed initiative petition for election to amend city charter has interest in valid execution of charter amendment election distinct from that of general public, for standing purposes, when there is colorable basis for arguing that another proposition on same ballot would have effect of negating proposition voter signed; invasion of that interest is no less distinct or particularized when allegedly misleading or confusing ballot language is located in separate proposition that otherwise duplicates same substantive measure.

Ballot language for three proposed city charter amendments submitted by city council omitted certain chief features that reflected their character and purpose, and thus language was misleading; each of three council-initiated propositions would, if approved by voters, conflict with three other proposed city charter amendments submitted by citizens, yet ballot language did not acknowledge conflicting character of those propositions so that voters could attempt to avoid dilemma by casting consistent votes, nor did it inform voters of conflict provisions council included in its propositions for purpose of resolving conflict between propositions in favor of council-initiated propositions.

Appropriate remedy for misleading ballot language for three proposed city charter amendments submitted by city council which were intended to nullify three other city charter amendments submitted by citizens was to remove council-initiated propositions from ballot; directing city to remove those propositions from ballot did not interfere with or delay upcoming election, but instead recognized that city could not confuse its voters by submitting converse of citizen-initiated propositions that were required to appear on ballot.

THE LOST CAUSE - VIRGINIA

Cowherd v. City of Richmond

Court of Appeals of Virginia, Richmond - September 17, 2024 - S.E.2d - 2024 WL 4204682

City filed petition for permission to disinter Confederate general’s remains from city-owned property

and reinter them in cemetery, and to gift monument erected above remains to museum.

The Richmond Circuit Court rejected general's collateral descendants counterclaim, and granted city's petition. Descendants appealed.

The Court of Appeals held that:

- Descendants' agreement to remove general's remains from city property and to relocate monument precluded them from objecting to city's relocation of monument on ground that monument site was publicly owned cemetery, and
- City, rather than general's collateral descendants, owned monument.

EMINENT DOMAIN - VIRGINIA

Town of Iron Gate v. Simpson

Court of Appeals of Virginia, Lexington - September 17, 2024 - S.E.2d - 2024 WL 4205418

Landowner filed declaratory judgment action alleging inverse condemnation, claiming that town allowed a stormwater drainage pipe to flood the property.

The Allegheny Circuit Court overruled town's demurrer, and following a bench trial on liability and a jury trial on just compensation, awarded damages and attorney's fees. Town appealed.

The Court of Appeals held that:

- Town's failure to provide a transcript of hearing on motion for recusal precluded review of claim that judge erred in refusing to recuse himself;
- Landowner's petition adequately alleged that town damaged her property for a public use;
- Court appropriately exercised its discretion in limiting town's ability to cross-examine appraisal expert with evidence of town's rejected offer to fix leaky stormwater drainage pipe;
- Statute requiring an award to "reimburse" a landowner for attorney's fees "actually incurred" in the inverse condemnation proceeding allowed landowner to recover attorney's fees; and
- Statute allowed landowner to recover appellate attorney's fees.

EMINENT DOMAIN - WASHINGTON

City of Sammamish v. Titcomb

Supreme Court of Washington, En Banc - September 12, 2024 - P.3d - 2024 WL 4156608

Municipality filed petition in eminent domain after enacting ordinance condemning property rights in water flowing through homeowners' property.

The Superior Court, denied city's motion for order adjudicating public use and necessity, denied municipality's motion for reconsideration, and granted homeowners' motion for attorney fees and costs. Municipality appealed. The Court of Appeals reversed. Homeowners appealed and review was granted.

The Supreme Court held that municipality was not divested of its statutory condemnation authority by project that had primary purpose of eliminating barriers to fish passage but that also included listed purpose of drainage infrastructure; limiting holding of *Cowlitz County v. Martin*, 142 Wash.

App. 860, 177 P.3d 102.

ZONING & PLANNING - CALIFORNIA

San Pablo Avenue Golden Gate Improvement Association, Inc. v. City Council of City of Oakland

Court of Appeal, First District, Division 4, California - June 28, 2024 - 103 Cal.App.5th 233 - 322 Cal.Rptr.3d 870

Neighborhood organizations petitioned for a writ of administrative mandamus following dismissal of administrative complaint against city in which they sought initiation of revocation review process for zoning clearance issued to applicant to operate commercial kitchen in "Housing and Business Mix-1 Commercial Zone," on basis that applicant's proposed use was incorrectly classified as "Light Manufacturing Industrial" and that zoning clearance contravened zoning regulations.

The Superior Court denied petition, and organizations appealed.

The Court of Appeal sitting by assignment, held that section of municipal code governing enforcement of zoning regulations, which was the provision relied upon by organizations, did not provide a legal basis to challenge city planning department's interpretations and determinations of zoning regulations, including use classifications and zoning clearances.

PUBLIC EMPLOYMENT - MASSACHUSETTS

Hartnett v. Contributory Retirement Appeal Board

Supreme Judicial Court of Massachusetts - September 11, 2024 - N.E.3d - 2024 WL 4138001

Retired public employee sought judicial review of decision by Contributory Retirement Appeal Board (CRAB) which affirmed the Division of Administrative Law Appeals (DALA) administrative magistrate's decision that the anti-spiking provision of the public employee pension statute limited her entitlement to pension benefits.

The Superior Court Department agreed with CRAB that the anti-spiking provision generally would apply, but that to do so would violate employee's vested pension rights. CRAB appealed and employee filed a cross appeal.

The Supreme Judicial Court held that employee's last year of public employment with the state before she left to work in the private sector and the first year of her reemployment with city more than a decade later were not two "consecutive years" within the meaning of the anti-spiking provision of the public employee pension statute.

ZONING & PLANNING - MONTANA

Montanans Against Irresponsible Densification, LLC v. State

Supreme Court of Montana - September 3, 2024 - P.3d - 2024 WL 4023334 - 2024 MT 200

Limited liability company (LLC) formed of interested homeowners brought action seeking declaratory and permanent injunctive relief prohibiting the State and its municipalities from implementing laws requiring cities to permit duplexes in single-family zones and permitting accessory dwelling units.

The District Court granted LLC's motion for a preliminary injunction, and the State appealed.

The Supreme Court held that:

- LLC had standing to seek a preliminary injunction;
- LLC failed to establish that implementation of statutes would lead to irreparable harm; and
- Balance of equities did not tip in favor of grant of preliminary injunction.

PUBLIC RECORDS - OHIO

State ex rel. Wells v. Lakota Local Schools Board of Education

Supreme Court of Ohio - September 3, 2024 - N.E.3d - 2024 WL 4017827 - 2024-Ohio-3316

Requester filed action against school board and its treasurer for writ of mandamus to compel school district to produce records responsive to her requests under the Public Records Act.

The Supreme Court held that:

- Requester was entitled to writ of mandamus to compel school board to produce demand letter, which threatened school board with litigation;
- Requester's mandamus claim to compel school board to produce unredacted or lesser-redacted legal invoices was moot;
- Requester was entitled to $1,000 in statutory damages due to school board's failure to produce demand letter;
- Requester was entitled to statutory damages of $1,000 for school board's delay in producing legal invoices;
- Requester was entitled to attorney's fees based on school board's failure to produce demand letter; and
- School district did not act in bad faith in its delay in disclosing legal invoices with proper redactions, and, thus, requester was not entitled to attorney's fees for school board's delay in producing invoices.

PUBLIC UTILITIES - OHIO

In re Application of Moraine Wind, L.L.C.

Supreme Court of Ohio - August 27, 2024 - N.E.3d - 2024 WL 3940615 - 2024-Ohio-3224

Renewable energy organization appealed order of Public Utilities Commission of Ohio (PUCO) approving applications of six out-of-state operators of wind farms for certification in Ohio.

PUCO moved to dismiss appeal.

The Supreme Court held that PUCO did not rule on organization's application for rehearing within 30 days, denying application as matter of law, and, thus, dismissal of appeal was not appropriate.

Public Utilities Commission of Ohio (PUCO) did not rule on renewable energy organization's application for rehearing within 30 days, denying application as matter of law, and, thus, dismissal of appeal from PUCO's order granting certification to six wind farm operators was not appropriate, although PUCO argued that its order granting rehearing for limited purpose of extending time to review application made it so application was still pending when organization appealed certification order; order extending PUCO's time to review application did not vacate prior certification order or reach any determination as to whether reconsideration of that order was warranted, and effect of order was to put off consideration of application under future date, such that order did not actually grant rehearing.

EMINENT DOMAIN - TEXAS

Alamo Heights Independent School District v. Jones

Court of Appeals of Texas, El Paso.August 28, 2024--- S.W.3d ----2024 WL 3970738

Three former residents of apartment complex, who were displaced when the complex was purchased by school district, sued the district and several of its officials, seeking relocation expenses, relocation assistance, and injunctive relief under eminent domain statutes, and bringing ultra vires claim alleging that defendants failed to provide such assistance.

After denying defendants' first motion for summary judgment on the merits, from which defendants did not appeal, the District Court denied defendants' motion for summary judgment, which made same arguments as first motion but also raised a jurisdictional plea based on governmental immunity. Defendants filed interlocutory appeal, and residents moved to dismiss appeal.

The Court of Appeals held that:

- Interlocutory appeal of second summary judgment motion was timely;
- Residents could not maintain an ultra vires suit against school district, as such suits could only be brought against the district officials acting in their official capacity;
- Relocation assistance provision of eminent domain statute did not apply to property acquired in ways other than eminent domain;
- Residents were not entitled to moving expenses under statute; and
- Residents could not maintain ultra vires action against school district officials.

PUBLIC UTILITIES - CALIFORNIA

Pacific Gas and Electric Company v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - August 23, 2024 - F.4th - 2024 WL 3908398

Investor-owned utility that provided electricity to most consumers in city petitioned for review of orders of the Federal Energy Regulatory Commission (FERC) with respect to utility's obligations under a tariff to transmit, or wheel, over its network electricity produced by a public utility with some customers in city, orders that FERC had issued on remand from a prior decision of the Court of Appeals, vacating FERC's prior orders with respect to the same issues.

The Court of Appeals held that:

- Investor-owned utility had Article III standing;
- FERC order with respect to investor-owned utility's transmission or wheeling obligations was contrary to law; and
- Term "ultimate consumer" in statute generally barring FERC orders requiring a utility to transmit or wheel energy except to a public entity that was providing electric service to "such ultimate consumer" as of date in grandfather clause refers to a discrete end user as of that date, not to a class or category of end users.

Investor-owned utility that provided electricity to most consumers in city experienced actual and ongoing injuries caused by orders of the Federal Energy Regulatory Commission (FERC) with respect to utility's obligations under a tariff to transmit, or wheel, over its network electricity produced by a public utility with some customers in city, and those injuries would be redressed if the appellate court set the orders aside, and investor-owned utility thus had Article III standing to petition for review of the orders, even though they related to a tariff that had been replaced by a later tariff, where FERC had required investor-owned utility to serve certain delivery points based on the earlier tariff, and the later tariff had not fully taken effect.

Order of the Federal Energy Regulatory Commission (FERC) with respect to obligations of investor-owned utility, which provided electricity to most consumers in city, under a tariff to transmit, or wheel, over its network electricity produced by a public utility with some customers in city was contrary to law, where FERC had erroneously given a broad, class-based interpretation to phrase "ultimate consumer" in grandfather clause in statute generally barring FERC orders requiring a utility to transmit or wheel energy except to a public entity that was providing electric service to "such ultimate consumer" as of a certain date, but phrase referred to a discrete end user, not a class or category of end users.

In statute barring Federal Energy Regulatory Commission (FERC) orders requiring the transmission or wheeling of electric energy "directly to an ultimate consumer" or to an entity that would sell that energy to an "ultimate consumer" unless, under statute's grandfather clause, the entity is a public entity that was providing electric service "to such ultimate consumer" as of a certain date, the term "ultimate consumer" refers to a discrete end user as of that date, not to a class or category of end users.

REFERENDA - CALIFORNIA

Bonta v. Superior Court of Sacramento County

Court of Appeal, Third District, California - August 13, 2024 - 104 Cal.App.5th 147 - 324 Cal.Rptr.3d 400

Objectors brought petition for writ of mandate that challenged ballot label for proposition that proposed an amendment to the California Constitution that would allow passage of local bonds for public infrastructure and affordable housing by 55% voter approval rather than the existing 2/3 margin.

The Superior Court, Sacramento County, granted relief in mandate and entered order and judgment that directed the Attorney General to revise the ballot label. Attorney General petitioned for writ of mandate.

The Court of Appeal held that the ballot label, which described proposition as allowing approval of the particular type of bonds with a 55% vote, complied with statutory requirements of a concise and

accurate description in terms that were not misleading, despite argument that label should have stated that existing law required a 2/3 vote to approve such bonds.

Ballot label that described proposition as allowing approval of local infrastructure and housing bonds for low- and middle-income Californians with 55% vote complied with statutory requirements of a concise and accurate description in terms that were not misleading, despite argument that label should have stated that existing law required a 2/3 vote to approve such bonds; while the ballot label was undoubtedly prominent in the voter information materials, the fact the title and summary contained information about the existing approval threshold substantially diminished the force of the argument that there was a danger voters would be misled.

LIABILITY - GEORGIA

City of Atlanta v. Perkins

Court of Appeals of Georgia - August 21, 2024 - S.E.2d - 2024 WL 3885489

Pedestrian brought action against city, alleging he was injured when he stepped on city water meter lid that flipped into water meter box and caused him to fall.

Following jury trial, the State Court awarded pedestrian $2,361,700 in damages for negligence and nuisance and $944,680 in attorney fees, then granted city's motion for judgment notwithstanding verdict with respect to attorney fees and overturned attorney fee award but denied remainder of city's motion for judgment notwithstanding verdict.

City and pedestrian appealed.

The Court of Appeals held that:

- Spoliation sanctions were warranted;
- Trial court acted within its discretion in imposing harsh spoliation sanctions;
- Evidence regarding alleged issues with other water meters and lids was admissible; and
- Pedestrian was precluded from raising new claim for attorney fees in pretrial order.

EMINENT DOMAIN - GEORGIA

Satcher v. Columbia County

Supreme Court of Georgia - August 13, 2024 - S.E.2d - 2024 WL 3802370

After property owners provided notice of claims to county but county declined to repair property, owners brought action against county, asserting claims for inverse condemnation, trespass, nuisance, and negligence, based on damage to property arising from allegedly defective stormwater drainage system, and seeking damages and a permanent injunction, among other things.

Before final bench trial, owners' property sustained alleged additional injury related to stormwater. Following bench trial, the Superior Court found in favor of owners, awarding money damages, for damages incurred both before notice was sent to county and after complaint was filed, and granting owners a permanent injunction that enjoined county from maintaining a defective stormwater drainage system that caused damage to owners' property. County appealed. The Court of Appeals, among other things, vacated the damages award as to harms occurring after notice was sent to

county but affirmed the grant of the injunction. The parties filed cross-petitions for writ of certiorari, which were granted.

The Supreme Court held that:

- Injunction exceeded the scope of the sovereign immunity waiver provided by the Just Compensation Provision, and
- Vacatur of order granting owners' petition for certiorari and denial of the petition were warranted.

Injunction entered in property owners' action against county, which enjoined county from maintaining a defective stormwater drainage system that caused damage to owners' property, exceeded the scope of the sovereign immunity waiver provided by the Just Compensation Provision; injunction was permanent, and, on its face, injunction's duration was not limited to what was necessary to stop the alleged taking or damaging until such time as county made prepayment of just and adequate compensation or exercised the power of eminent domain.

Court of Appeals' opinion vacating damages award as to harms occurring after property owners' notice-of-claims letter to county did not articulate a general rule of law of the sort that posed a question of gravity warranting Supreme Court's review, thus supporting vacatur of order granting owners' petition for certiorari as to that ruling and denial of the petition, in owners' action against county alleging damage to property arising from allegedly defective stormwater drainage system; Court of Appeals merely held that, on the particular facts of the case, owners could not obtain damages incurred after the presentation of notice.

EMINENT DOMAIN - IDAHO

Zeyen v. Bonneville Joint District, # 93

United States Court of Appeals, Ninth Circuit - August 23, 2024 - F.4th - 2024 WL 3909574

Students' parents brought § 1983 action against school districts, alleging that payment of fees associated with educational and extracurricular opportunities within public school districts constituted a taking of property without due process in violation of the Takings Clause of the Fifth Amendment.

Parties filed cross motions for summary judgment. First district judge denied school districts' motion and then denied school districts' motion for reconsideration. After case was reassigned to a second judge, the United States District Court for the District of Idaho granted school districts' second summary judgment motion. Parents appealed.

The Court of Appeals held that:

- Second judge's procedural error in revisiting first judge's order without conducting manifest justice analysis was harmless;
- Interest in free public education did not give rise to a vested private property interest subject to the Takings Clause;
- Fees did not amount to an exaction in violation of the Takings Clause; and
- Fees were not taken for a public use as required for a Takings Clause violation.

Second district judge's procedural error in revisiting first district judge's prior interlocutory order denying summary judgment to school districts in students' parents' action alleging that payment of fees for educational and extracurricular opportunities within public school district constituted a

taking of property under the Fifth Amendment without making necessary conclusion that enforcement of previous decision would work a manifest injustice was harmless, since second judge's decision on the merits of summary judgment motion under the Takings Clause was correct.

Neither students nor their parents could possess, use, dispose of, or sell their interest in free public education as provided by the Idaho Constitution's "free common schools" provision, and thus, interest in free public education did not give rise to a vested private property interest subject to the Takings Clause as would support students' parents' claim alleging that payment of fees for educational and extracurricular opportunities within public school district constituted a taking of property without due process in violation of the Fifth Amendment; public education was a variable product, not a consistent, standalone thing, tangible or intangible, over which student had exclusive dominion, as required minimum standards for public education could be, and had been, altered, modified, or abolished.

Fees charged by school districts for educational and extracurricular opportunities were charged on the happening of a contingency, election to enroll students in certain optional courses with associated fees, and as such, they lacked the direct governmental appropriation of a specific, vested monetary interest necessary to give rise to a per se monetary takings claim.

Fees charged by school districts for educational and extracurricular opportunities did not amount to an exaction in violation of the Takings Clause; fees were equitably paid by students who wished to exercise an option to participate in those activities and classes and not imposed generally on all students whether they participated in such activities or not.

Students parents could not allege that property, money paid for educational and extracurricular opportunities within school districts, was taken for public use, thus precluding claim under the Takings Clause; fees did not benefit the public because they wee directly tied to conferral of specific benefits extended to students in exchange for the fees.

PUBLIC UTILITIES - IDAHO

Wandruszka v. City of Moscow

Supreme Court of Idaho, Moscow, April 2024 Term - August 19, 2024 - P.3d - 2024 WL 3863546

Landlords brought declaratory judgment action against city challenging validity of city's revised utility billing process for city water service reflecting city's new policy of no longer contracting directly with tenants and requiring landlords to assume liability for tenants' unpaid water bills.

The Second Judicial District Court granted summary judgment in part and denied it in part to each party. Landlords and city both appealed.

The Supreme Court held that:

- Landlords had requisite injury-in-fact to have standing;
- City could use written agreements to guarantee utility payments from tenants;
- Utility billing agreements were not secured under duress;
- Utility billing agreements were contracts of adhesion;
- Utility billing agreements had vague and indefinite lien provisions rendering agreements unenforceable; and
- Neither party was entitled to attorney fees on appeal.

EMINENT DOMAIN - NORTH CAROLINA

Department of Transportation v. Bloomsbury Estates, LLC

Supreme Court of North Carolina - August 23, 2024 - S.E.2d - 2024 WL 3909395

Department of Transportation (DOT) initiated a taking action against condominium association and developer, and parties entered consent judgment that established $3,950,000 was just compensation for the taking but did no establish how the just compensation would be divided between developer and association.

During pendency of the taking action, developer and association each filed a separate collateral complaint against each other regarding the rights to the property. Developer then filed motion for an issues hearing in the DOT taking action.

The Superior Court consolidated all three actions and entered summary judgment for developer, concluding that it was entitled to $3,350,000 and remainder of compensation should be assigned to association, and then entered final judgment. Association appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Developer filed petition for discretionary review, and it was granted.

The Supreme Court held that:

- Trial court properly distributed just compensation from the taking based on adoption of ruling in developer's separate action under res judicata principles, and
- Trial court did not abuse its discretion in distributing just compensation in manner that compensated developer for loss of development rights and allocated residual to association.

Interlocutory order in developer's action against condominium association, allowing equitable reformation of fifth amendment to condominium declaration so as to extend developer's right to complete second phase of condominium project after Department of Transportation's (DOT) temporary taking had terminated, had preclusive effect in DOT's taking hearing held to determine just compensation allocated to developer and condominium association, and thus, trial court properly distributed just compensation from the taking prior to resolution of parties' issues in developer's and association's collateral actions; issue of validity of condominium declaration's fifth amendment was only issue that affected parties' rights and it was fully litigated in developer's action since association enjoyed full and fair opportunity to litigate issue.

Trial court did not abuse its discretion in distributing, on summary judgment, just compensation from Department of Transportation's (DOT) taking of property from a condominium construction project for a railroad right of way in a manner that compensated developer for loss of its development right and allocated residual to condominium association, despite association's contention that material issues of fact existed as to whether association owned property and development rights, where appraisers agreed, based on validity of amendment to condominium declaration that extended developer's right to complete second phase of condominium project after DOT's temporary taking had terminated, developer was entitled to compensation for loss of development rights.

EMINENT DOMAIN - PENNSYLVANIA

Wolfe v. Reading Blue Mountain

Supreme Court of Pennsylvania - August 20, 2024 - A.3d - 2024 WL 3868639

After railroad filed declaration of taking to condemn portion of private landowners property in order to place new rail siding to connect to its main rail line, owners filed complaint and emergency motion for preliminary injunction.

The Court of Common Pleas granted preliminary injunction pending hearing, and following hearing, sustained owners' objections, and then denied reconsideration. Railroad appealed.

The Commonwealth Court. Owners' petition for allowance of appeal was granted.

The Supreme Court held that railroad's proposed taking of owners' property was for private, rather than public purpose.

Public would not be primary and paramount beneficiary of railroad's proposed taking of private landowners' property in order to rebuild rail siding that Public Utility Commission (PUC) had previously suspended, in order to connect to main railroad line, thus barring railroad's taking of land, under Fifth Amendment and Pennsylvania Constitution; rail siding across owners property would not be used to transport either goods or passengers, only beneficiary of taking would be asphalt company, for which railroad sought reinstallation of rail siding to connect company to railroad's network, to facilitate company's ability to transport materials by rail, company used trucks and private haulers to transport materials it sought to import via rail, and railroad did not have to traverse owners' land to accomplish its goal of connecting company to rail network.

EMINENT DOMAIN - SOUTH DAKOTA

Betty Jean Strom Trust v. SCS Carbon Transport, LLC

Supreme Court of South Dakota - August 21, 2024 - N.W.3d - 2024 WL 3895866 - 2024 S.D. 48

Landowners who refused to allow pipeline company, which was developing an underground pipeline network to transport carbon dioxide, pre-condemnation survey access brought separate actions against company for declaratory and injunctive relief that would prevent the surveys.

Company brought one action in which it sought declaratory and injunctive relief permitting survey access.

The Circuit Court, Third Judicial Circuit and the Circuit Court, Fifth Judicial Circuit granted summary judgment to company on all issues in all the cases. Landowners appealed, and the appeals were consolidated on landowners' motion.

The Supreme Court held that:

- Recent amendments to the statute under which company wanted to conduct the pre-condemnation surveys did not render the appeals moot;
- Genuine issue of material fact as to whether pipeline would transport carbon dioxide for customers who would either retain ownership or sell it to other parties precluded finding on summary judgment that pipeline would serve the public as required for company to be a common carrier;
- Genuine issue of material fact as to whether the carbon dioxide that would be transported through pipeline would be put to any productive use precluded finding on summary judgment that the

carbon dioxide was a commodity, as required for company to be a common carrier;
- Landowners demonstrated their entitlement to a continuance to conduct further discovery;
- Examinations and surveys done under applicable former version of statute under which company wanted to conduct the pre-condemnation surveys were not "takings" under the Fifth Amendment's Taking Clause or the South Dakota Constitution's corresponding provision;
- The pre-condemnation surveys would be unconstitutional "takings" under the Fifth Amendment insofar as the surveys involved invasive geotech and deep-dig surveys; and
- Applicable former version of statute under which company wanted to conduct the pre-condemnation surveys did not violate procedural due process.

BANKRUPTCY - TEXAS

Porretto v. City of Galveston Park Board of Trustees

United States Court of Appeals, Fifth Circuit - August 21, 2024 - F.4th - 2024 WL 3886181

After Chapter 7 trustee abandoned privately owned beachfront property along Texas coastline back to debtor, debtor filed adversary complaint against city, city's park board, the Texas General Land Office (GLO), and GLO's Commissioner, alleging, inter alia, that defendants' postpetition actions on and near her beach constituted takings without just compensation in violation of the Fifth Amendment.

Following sua sponte transfer of case from bankruptcy court, defendants filed renewed motions to dismiss, and debtor requested opportunity to amend complaint. The United States District Court for the Southern District of Texas granted defendants' motion to dismiss and denied debtor leave to amend and subsequently denied debtor's motion for recusal, as well as her motion for new trial. Debtor appealed.

The Court of Appeals, held that:

- Debtor lacked standing to sue GLO and its Commissioner;
- As a matter of apparent first impression for the Court, the District Court lacked exclusive in rem jurisdiction over the beach property after it was abandoned back to debtor;
- The District Court lacked "related to" jurisdiction over debtor's claims;
- Debtor unambiguously pleaded constitutional claims and, thus, her failure to invoke § 1983 in her complaint should not have prevented the District Court from exercising federal question jurisdiction over her claims against city defendants;
- The District Court did not abuse its discretion by refusing to grant debtor's "bare bones" request to amend her operative third amended adversary complaint;
- The District Court did not abuse its discretion in denying recusal based on the $72,000 mechanic's lien that city council member's company had on judge's home; and
- Contributions of more than $9,000 that defendants' counsel donated to judge's judicial campaigns when he served on the state bench did not warrant recusal.

LABOR & EMPLOYMENT - CALIFORNIA

Stone v. Alameda Health System

Supreme Court of California - August 15, 2024 - P.3d - 2024 WL 3819163

Employees, who formerly worked at hospital, brought putative class action against employer, which was county health system established by county board of supervisors, for alleged violations of wage orders and statutes governing meal and rest breaks and full and timely payment of wages, for penalties under Labor Code Private Attorneys General Act of 2004 (PAGA), and for other claims. Employer demurred.

The Superior Court sustained demurrer without leave to amend, finding provisions of Labor Code and wage orders at issue did not apply to employer as public agency. The First District Court of Appeal reversed in part. Petition for review was granted.

The Supreme Court held that:

- Public employers were not "employers" within meaning of meal-and-rest-break provisions of Labor Code and wage order covering hospital workers;
- As a matter of first impression, Labor Code's definition of "person" excluded non-enumerated entities, including public entities;
- County health system was public entity excluded from Labor Code's definition of "person";
- County health system was "municipal corporation" excluded from certain wage-payment provisions of Labor Code; and
- PAGA exempts public employers from penalties for violations of Labor Code provisions carrying their own penalties; disapproving *Sargent v. Bd. of Trustees of Cal. State Univ.*, 61 Cal.App.5th 658, 276 Cal.Rptr.3d 1.

Government employers were not "employers" within meaning of Labor Code provisions imposing meal-and-rest-break obligations on employers and wage order provisions entitling hospital workers to meal and rest breaks; wage order required "employer" to be "person" as defined by Labor Code, Labor Code in turn limited definition of "person" to "any person, association, organization, partnership, business trust, limited liability company, or corporation," thereby excluding entities not expressly mentioned, legislature specified that other provisions of Labor Code applied to public employers, wage order, which covered hospital workers, expressly excluded public employees from its scope absent contrary language in a provision, and legislature chose not to displace wage order's exclusion.

Text of statute enabling specific county's board of supervisors to create county health system to provide medical care to indigent residents demonstrated that legislature considered health system to be quasi-governmental "public entity," for purpose of determining whether health system was exempt from meal-and-rest-break obligations imposed on employers under Labor Code and under wage order covering hospital workers; enabling statute described health system as "public agency" and made its affairs intertwined with and dependent upon county, health system as public hospital authority was "public entity" as defined in Health and Safety Code, and enabling statute set forth health system's rights, liabilities, and exemptions under laws applying specifically to public entities.

In statute enabling specific county's board of supervisors to create county health system, subdivision stating that health system "shall be a government entity separate and apart from the county, and shall not be considered to be an agency, division, or department of the county" did not indicate legislature meant to subject health system to meal-and-rest-break requirements of Labor Code and of wage order covering hospital workers notwithstanding such requirements' general exemption of public entities; subdivision expressly classified health system as "government entity," public-entity exemption did not extend only to divisions of a state or local government body, and enabling statute

gave health system some of the same powers, obligations, and protections as a division of government.

Definitions of "political subdivision" in False Claims Act, which included any "legally authorized local governmental entity with jurisdictional boundaries," and California Voter Participation Rights Act, which referred to "geographic area of representation created for the provision of government services," did not impose requirement of "geographic jurisdiction" for county health system or any other public employer to qualify as "political subdivision" under Labor Code's definition; Labor Code did not refer to need for "geographic jurisdiction," and similarly broad definitions of term "political subdivision" appeared in other codes without any requirement of geographic jurisdiction.

Whether a public entity is exempted from meal and rest break obligations imposed on employers by the Labor Code and the wage order covering hospital employees does not depend on whether applying those obligations to the public entity in question would cause infringement of sovereign powers; besides the absence of a statutory basis, such an outcome would frustrate the legislature's clear intent to exclude public entities from the Labor Code requirements at issue.

The term "municipal corporation" in the Labor Code section stating that certain wage-related provisions "do not apply to the payment of wages of employees directly employed by any county, incorporated city, or town or other municipal corporation" refers to something other than a county, incorporated city, or town; the only reasonable interpretation of this section is that the legislature knew from the decided cases that "incorporated city or town" referred to a municipal corporation in the strict sense, and intended that "or other municipal corporation" should refer to municipal corporations in the commonly accepted sense, that is, public corporations or quasi-municipal corporations, and this construction is consistent with legislative history and administrative interpretations.

County health system, which legislature authorized county board of supervisors to create to provide medical care to indigent residents, was "municipal corporation" within meaning of Labor Code section stating that certain wage-payment provisions, including those governing semimonthly payments and creating penalty and cause of action for failure to make payments, "do not apply to the payment of wages of employees directly employed by any county, incorporated city, or town or other municipal corporation."

The Labor Code Private Attorneys General Act (PAGA) exempts public employers from penalties for violations of Labor Code provisions which establish their own penalties recoverable by the Labor and Workforce Development Agency; PAGA specifies that the Labor Code's definition of person, which excludes public entities, applies throughout PAGA, including to the provisions referring to employers subject to suit as "persons," legislative history demonstrates that PAGA's use of this definition of "person" was intentional, and requiring public entities to pay PAGA penalties would contravene the public policy behind the statute shielding public entities from punitive sanctions; disapproving *Sargent v. Bd. of Trustees of Cal. State Univ.*, 61 Cal.App.5th 658, 276 Cal.Rptr.3d 1.

LIABILITY - NEBRASKA

Ryan v. State

Supreme Court of Nebraska - August 9, 2024 - N.W.3d - 317 Neb. 337 - 2024 WL 3732939

Inmate brought negligence action against State pursuant to the State Tort Claims Act (STCA), alleging that Department of Correctional Services (DCS) failed to fulfill its duty under state

regulations to investigate his allegation that other inmates stole his property.

The District Court dismissed for lack of subject matter jurisdiction. Inmate appealed.

The Supreme Court held that inmate disciplinary procedure statutes and regulations did not give rise to a tort duty of State to investigate alleged theft of inmate's property.

Inmate disciplinary procedure statutes and regulations did not give rise to a tort duty of State to investigate alleged theft of inmate's property by other inmates, and therefore inmate did not have an actionable negligence claim against State under the State Tort Claims Act (STCA); statutes and regulations were enacted to prescribe disciplinary procedures for inmates who allegedly engaged in such misconduct.

PUBLIC EMPLOYMENT - OHIO

Harmon v. City of Cincinnati

Supreme Court of Ohio - August 6, 2024 - N.E.3d - 2024 WL 3657975 - 2024-Ohio-2889

City employees, who were members of city employees union, appealed determination of city's civil service commission that employees were not entitled to hearing on their appeal to commission of city's decision to place them on leave under emergency leave program due to COVID-19 pandemic.

The Court of Common Pleas reversed. City and commission appealed. The First District Court of Appeals held that Court of Common Pleas had jurisdiction to consider employees' appeal. The Supreme Court accepted city and commission's appeal.

The Supreme Court held that:

- Specific layoff provisions of collective bargaining agreement (CBA) between city and city employees union prevailed over management rights clause of CBA to determine whether employees could appeal decision of civil service commission to court of common pleas;
- CBA allowed employees to enforce their individual employee rights concerning conditions of employment not specified in CBA through normal civil service, regulatory, or judicial processes, for purposes of whether employees could appeal decision of civil service commission to court of common pleas;
- Policy reasons did not preclude employees from appealing decision of civil service commission to court of common pleas; and
- Commission's decision that leave was not a layoff was from a "quasi-judicial proceeding," such that employees were permitted to appeal decision to court of common pleas.

CONDUIT BONDS - TEXAS

River Creek Development Corporation and City of Hutto, Texas v. Preston Hollow Capital, LLC

Court of Appeals of Texas, Austin - August 22, 2024 - Not Reported in S.W. Rptr. - 2024 WL 3892448

River Creek Development Corporation (River Creek) and the City of Hutto, Texas (the City), appealed from the trial court's final judgment rendered in favor of Preston Hollow Capital, LLC; 79

HCD Development, LLC; Public Finance Authority; and U.S. Bank National Association. The judgment granted the parties' respective summary-judgment motions and awarded each of them attorney's fees and costs.

In June 2018, the City passed a resolution authorizing creation of a Public Improvement District (the PID) to undertake and finance public improvements for the benefit of property within the PID. The PID's 2018 Service and Assessment Plan identified the initial improvements at a cost of $17.4 million.

In September 2018, the City passed a resolution authorizing the creation of River Creek, a local government corporation, to "assist with the financing" of the PID development pursuant to Tex. Transp. Code § 431.101.

In December 2018, the City, River Creek, and other parties executed a series of agreements to secure the development and financing of the PID. Among the parties in some of those agreements is appellee Public Finance Authority (PFA), a Wisconsin-based governmental entity. Rather than issue the bonds themselves, the City and River Creek chose to structure the transaction using PFA as a conduit issuer of the bonds to avoid potential liability and reduce financial risk.

Following a series of internal governmental disruptions, River Creek and the City brought this action for declaratory relief.

They sought the following declarations:

1. An "installment sales contract" described by the interlocal agreement provides "insufficient legal authority for all stated installment payments due under such a contract to be authorized costs of improvements under the PID Act";
2. The bonds were not issued in strict compliance with the PID Act and applicable state law;
3. Transportation Code Section 431.006 limits the applicability of the general authority of Chapter 22, Business Organizations Code, because of the express statutory requirement in Section 431.071 that "notes" be submitted to the attorney general or the express statutory statement in Section 431.108 that the operations of a local government corporation are governmental; and
4. Government Code Section requires all promissory notes issued by a Chapter 431 corporation or a local government corporation be submitted to the attorney general for examination.

Preston Hollow answered and filed a counterclaim seeking a declaratory judgment that:

1. The loan agreement and promissory note are valid and enforceable,
2. The bonds did not need to be submitted to the AG for review and approval, and
3. The City and River Creek lawfully entered the interlocal agreement.

The Court of Appeals held that:

1. The loan agreement was valid and enforceable;
2. The promissory note is valid and enforceable;
3. The bonds issued by PFA did not need to be submitted to the AG for approval; and
4. The City and River Creek lawfully entered into the interlocal agreement, including its provisions requiring the City to make payments from its levied assessments to River Creek to secure River Creek's issuance of indebtedness to finance the improvements.

"We conclude that the legislature's silence on the consequences of failure to obtain AG approval, its failure to expressly condition the validity and enforceability of a Section 431.070 bond or note on AG approval, and its express requirement that a corporation merely "submit" the subject instrument

"for examination" (as opposed to, e.g., "obtain AG approval") are dispositive and support the trial court's challenged first and second declarations."

"The 'indebtedness' that River Creek issued to PFA via the promissory note and loan agreement—including any 'costs of issuance,' such as transaction-financing costs or bond-issuance fees, that River Creek undertook as part of that indebtedness—falls under Section 372.026(f), and River Creek is entitled to recoupment of such costs through the interlocal agreement."

"We hold that Section 372.026 expressly authorizes the interlocal agreement to require the City to make payments from its assessments to River Creek to secure its costs of issuing debt to PFA and thus that the interlocal agreement is not void as appellants contend."

LABOR - ARIZONA

Gilmore v. Gallego

Supreme Court of Arizona - July 31, 2024 - P.3d - 2024 WL 3590669

City employees who belonged to collective bargaining unit but were not members of union brought action against city, alleging that provisions in memorandum of understanding (MOU) between city and union governing release time for union purposes violated plaintiff employees' rights to free speech and free association, their right to work, and the Gift Clause of state constitution.

Union intervened as defendant. The Superior Court entered summary judgment for city and union and granted them attorneys' fees against employees. Employees appealed. The Court of Appeals affirmed in part and vacated in part. Employees petitioned for review, which was granted.

The Supreme Court held that:

- Under MOU, it was city, not the non-member employees, who paid for the release time, and therefore the release time did not violate employees' free-speech or free-association rights or their right to work, but
- MOU's release-time provisions were not supported by adequate consideration and thus violated Gift Clause.

Under memorandum of understanding (MOU) between city and union governing release time of city employees for union purposes, it was city who paid for the release time, rather than employees who worked in bargaining unit but did not belong to union, and therefore the release time did not violate the non-member employees' free-speech or free-association rights or their right to work, even though MOU contained provision stating that the cost to city for the release positions "has been charged as part of the total compensation" detailed in MOU; "total compensation" referred to city's total expenditure under MOU, not sum entitlement of employees, and no evidence suggested that, absent release time, the non-member employees' pay or benefits would necessarily be commensurately increased.

Portions of memorandum of understanding (MOU) between city and union providing for release time of city employees for union purposes were not supported by adequate consideration and thus violated Gift Clause of state constitution, in case involving MOU which provided for, inter alia, four

full-time, paid release positions for union members “to engage in lawful union activities” and a bank of 3,183 additional paid release time hours per year for union members “to engage in lawful union activities”; annual cost of release time was estimated at $499,000, and benefits to city consisted of few tangible obligations along with the general promotion of cooperative labor relations.

PUBLIC RECORDS - MARYLAND

The Abell Foundation v. Baltimore Development Corporation

Appellate Court of Maryland - August 2, 2024 - A.3d - 2024 WL 3633431

Requestor of records relating to payment-in-lieu-of-taxes agreement (PILOT agreement) between city and developer brought action against city entities, including mayor’s office and city council, alleging city violated Maryland Public Information Act (MPIA) by withholding responsive documents, failing to explain redactions, and failing to justify its application of exemptions and privileges.

City moved to dismiss or for summary judgment. Developer intervened and joined city’s motion. The Circuit Court granted summary judgment in favor of city. Requestor appealed.

The Appellate Court held that:

- As a matter of first impression, showing of risk of competitive harm is not necessary for MPIA exemption for confidential commercial and financial information;
- Financial statements, estoppel certificate, and analyses constituted confidential commercial and financial information under MPIA;
- To the extent showing of risk of competitive harm was necessary, disclosure of financial statements, certificate, and analyses satisfied such requirement;
- City properly withheld model analysis under deliberative-process privilege;
- Trial court appropriately examined memoranda written by city’s lawyers in camera;
- Memoranda were protected by attorney-client privilege; and
- Requestor failed to establish that city actually possessed other documents.

STANDING - MINNESOTA

Minnesota Voters Alliance v. Hunt

Supreme Court of Minnesota - August 7, 2024 - N.W.3d - 2024 WL 3681675

Taxpayers and their association filed petition for writ of quo warranto or declaratory judgment, alleging that Re-Enfranchisement Act provision allowing individuals convicted of a felony to vote when not incarcerated for such offense violated provision of Minnesota Constitution prohibiting persons convicted of a felony from voting “unless restored to civil rights” and that Act’s authorization of use of public funds to educate voters about voting-right restoration was therefore unlawful.

Voters with felony convictions intervened as of right. District court denied petition for lack of standing. Taxpayers and association appealed, and accelerated review was granted.

The Supreme Court held that:

- Taxpayer standing is recognized only when the central dispute involves alleged unlawful

disbursements of public funds, overruling *Oehler v. City of St. Paul*, 174 Minn. 410, 219 N.W. 760, and *McKee v. Likins*, 261 N.W.2d 566, and
- Use of public funds to educate public about voting-right restoration was incidental to Re-Enfranchisement Act, precluding taxpayer standing.

Taxpayer standing does not exist when a taxpayer simply seeks to generally restrain illegal actions on the part of public officials; rather, taxpayer standing is recognized only when the central dispute involves alleged unlawful disbursements of public funds; overruling Oehler v. City of St. Paul, 174 Minn. 410, 219 N.W. 760, and McKee v. Likins, 261 N.W.2d 566.

Expenditures of public funds, pursuant to Re-Enfranchisement Act, to educate voters about Act's restoration of right to vote to non-incarcerated individuals convicted of a felony were incidental to Act's substantive restoration of voting right, and thus, taxpayers lacked taxpayer standing to bring petition for writ of quo warranto or declaratory judgment challenging Act based on contentions that voting-right restoration violated section of Minnesota Constitution prohibiting persons convicted of a felony from voting "unless restored to civil rights" and that Act's authorization of expenditures of public funds to educate voters about voting-right restoration was unlawful; voting rights could be restored without Legislature appropriating any money to educate voters about such change.

ZONING & PLANNING - MONTANA

Johnson v. City of Bozeman

Supreme Court of Montana - August 6, 2024 - P.3d - 2024 WL 3665299 - 2024 MT 168

City residents brought action to challenge zoning provision within city's amended unified development code which reclassified fraternity and sorority housing as "group living" which was permitted in neighborhood.

The District Court of the Eighteenth Judicial District granted residents' partial motion for summary judgment and declared the reclassification void ab initio. City appealed.

The Supreme Court held that:

- Amendment was not void ab initio due to insufficient notice to city residents, but rather the statute of limitations did not begin to run until the residents received notice of the revision, and
- 30-day statute of limitations for actions to set aside an agency decision, rather that default five-year statute of limitations, applied.

City's amended unified development code, which reclassified fraternity and sorority housing as "group living" that was permitted in neighborhood, was not void ab initio due to insufficient notice to city residents, but rather the 30-day statute of limitations on residents' right to challenge the revised ordinance did not begin to run until the residents received notice of the revision, or reasonably should have known of the revision.

Thirty-day statute of limitations for actions to set aside an agency decision, rather that default five-year statute of limitations, applied to residents' challenge to zoning provision within city's amended unified development code which reclassified fraternity and sorority housing as "group living" permitted in neighborhood.

HIGHER ED - MONTANA

Cordero v. Montana State University

Supreme Court of Montana - August 6, 2024 - P.3d - 2024 WL 3665298 - 2024 MT 167

Student brought action against state university, alleging breach of express contract, breach of implied contract, a due process violation, unjust enrichment, a taking, and inverse condemnation based on measures which university took to limit services during COVID-19 pandemic.

The District Court granted university's motion to dismiss for failure to state a claim, and student appealed.

The Supreme Court held that:

- As a matter of first impression, application for admission to state university created an express contract;
- University did not breach contract crated by admission application by limiting some services during COVID-19 pandemic;
- Fee descriptions in undergraduate catalog amounted to specific, written promises to provide those services, and thus created a contract;
- University did not breach its contractual duty to student regarding fees which student had paid for certain services which were limited during COVID-19 pandemic;
- Student lacked any claim for breach of implied contract due to express contract; and
- Student lacked any claim for unjust enrichment due to express contract.

TELECOM - OHIO

Towerco 2013, LLC v. Berlin Township Board of Trustees

United States Court of Appeals, Sixth Circuit - August 6, 2024 - F.4th - 2024 WL 3665539

During pendency of state court action brought by township Board of Trustees and township, which had been removed to federal court by company that was hired by wireless provider to construct cellular tower on school district property, and thereafter remanded back to state court, seeking a declaratory judgment that company was required to adhere to township's zoning regulations, and after negotiations towards a mutually agreeable resolution pursuant to joint stay agreement proved unsuccessful, company brought action in federal court against township and township's Board of Trustees, alleging claims including violations of the Telecommunications Act (TCA).

The United States District Court for the Southern District of Ohio granted plaintiff's motion for preliminary injunction to enjoin defendants from preventing completion and deployment of cell tower, and denied defendants' motion to stay injunction. Parties cross-appealed, and the Court of Appeals granted defendants' motion for stay pending outcome of appeal.

The Court of Appeals held that:

- As a matter of first impression, township's determination to file a state court lawsuit regarding purported immunity status from zoning regulations under Ohio law was not a "final action," precluding TCA relief;
- Plaintiff failed to bring claims within 30 days of purported final action, as would support denial of preliminary injunction;

- There was no evidence that the parties intended to toll any statute of limitations when entering into joint stay agreement;
- Federal Communications Commission's (FCC) ruling that clarified the application of specific time limits contained in TCA did not support application of equitable principles to read an implicit intention to toll 30-day deadline into parties' joint stay agreement;
- Possibility that company could lose provider's trust absent issuance of preliminary injunction was too speculative and theoretical to constitute irreparable harm; and
- Economic loss was not irreparable harm that could support issuance of preliminary injunction.

STANDING - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States Court of Appeals, First Circuit - July 25, 2024 - F.4th - 2024 WL 3533427

Following determination by court, under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), that "Law 29," Puerto Rico legislation purporting to eliminate burden on Puerto Rico's municipalities of complying with the Commonwealth's reformed public pension funding scheme, violated PROMESA and thus was "a nullity" and "of no effect," not-fo--profit membership organization comprised of municipalities' mayors brought adversary proceeding against the Financial Oversight and Management Board for Puerto Rico and others, asserting that Board lacked authority to recover the funds retained by municipalities under the auspices of Law 29 during the year before it was declared void.

Defendants moved to dismiss.

The United States District Court for the District of Puerto Rico granted motions. Organization appealed.

The Court of Appeals held that:

- Allegation that municipalities had been deprived of significant revenue to which they were entitled satisfied the "injury in fact" requirement for Article III standing
- The *Hunt* "indicia of membership" test, 97 S.Ct. 2434, was applicable to determine whether organization, which was made up of mayors, had organizational standing to sue on behalf of non-member municipalities;
- The injured municipalities had sufficient "indicia of membership" in organization for it to satisfy the requirements of organizational standing;
- Organization lacked standing to sue the executive branch defendants;
- Law 29 was invalidated from its inception, not merely going forward; and
- The Title III court had authority to nullify Law 29.

SPECIAL ASSESSMENTS - WASHINGTON

SHG Garage SPE v. City of Seattle

Court of Appeals of Washington, Division 1 - August 5, 2024 - P.3d - 2024 WL 3647666

Property owners sought review of local improvement district (LID) special assessments levied against them for improvements to waterfront area.

The Superior Court nullified assessments. City appealed.

The Court of Appeals held that:

- Expert appraiser's testimony was insufficient to overcome presumption that assessment was valid;
- City's method of assessment was not founded on fundamentally wrong basis;
- City's special benefit study complied with applicable professional appraisal standards governing mass appraisals;
- City did not act arbitrarily and capriciously by treating improvements as one continuous improvement;
- Hearing examiner did not misapply presumption of correctness by disregarding testimony from owners' expert witness; and
- City was not arbitrary and capricious for failing to independently review owners' appeal.

Testimony from expert appraiser did not demonstrate that properties in local improvement district (LID) did not benefit from improvements and was thus insufficient to overcome presumption that city's special assessment levied against property owners was valid; owners alleged that expert's testimony provided sufficient information to calculate an alternative special benefit amount and at same time, they contended that LID study and potential benefit estimates were too speculative to allow for a reliable counter-appraisal.

City's method of special assessment for local improvements to waterfront was not founded on a fundamentally wrong basis, as would provide grounds to correct or annul assessment, due to failure by its special benefit study to analyze how viaduct removal impacted property values by the waterfront; while study valued the before improvement scenario by assuming a viaduct had been removed, it provided enough information for owners to evaluate how properties were valued in before improvement scenario, such as relevant market information on rents and vacancy and market conditions, as well as how properties were valued in the after improvement scenario.

City's special benefit study's failure to account for property value changes due to COVID-19 pandemic was not basis on which to conclude special assessments for local improvements to waterfront area were founded on a fundamentally wrong basis, as required for court to correct or annul special assessments, where property appraisals were done before the onset of the pandemic.

Special assessment for local improvements to waterfront was not founded on a fundamentally wrong basis, as would provide grounds to correct or annul assessment, due to failure to comply with professional appraisal standards governing direct property appraisals, because property appraisal at issue was a mass appraisal, which was governed by separate standards.

City's special benefit study complied with applicable professional appraisal standards governing mass appraisals for determining special benefits and thus, valuations did not provide grounds to conclude special assessments for local improvements to waterfront area were founded on a fundamentally wrong basis, as required for court to correct or annul special assessments, absent evidence showing that the valuations were inaccurate; study considered recent sales of comparable commercial and residential properties, explained how it calculated cost/benefit ratio by dividing total assessment cap by total estimated special benefit assessable to the properties, and detailed how special benefits were calculated, with spreadsheets for each owners' properties that showed detailed before and after valuations.

Property owners who challenged city's special assessments for local improvements to waterfront area failed to show assessments were grounded on fundamentally wrong basis due to city benefit study's lack of property-specific analysis, as required for court to correct or annul assessments,

absent evidence showing that percentage increases were inaccurate; study adequately documented and explained its before and after-improvement property valuations, and since a mass appraisal rather than direct appraisal was conducted, city was not required to produce property-specific analysis sought by owners.

Property owners who challenged city's special assessments for local improvements to waterfront area failed to show assessments were arbitrary and capricious based on timing of property appraisal, as required for court to correct or annul assessments; owners contended that appraisal was completed too far in advance of improvements, but they provided no authority requiring that valuations be made immediately before special benefits attach, and they did not offer any evidence or argument suggesting that time between the appraisal and completion of improvements rendered valuations inaccurate.

City did not act arbitrarily and capriciously by instructing that its special benefit study treat separate local improvement district (LID) improvements as one continuous improvement when they were not, as required for court to correct or annul special assessments that were levied upon owners for improvements to waterfront area, where city complied with applicable statutes governing continuous and contiguous improvements.

Property owners who challenged city's special assessments for local improvements to waterfront area failed to show that city hearing examiner to whom owners presented their case misapplied presumption of correctness when examiner disregarded testimony from owners' expert witnesses, as required for court to correct or annul assessments, where record reflected that the examiner considered all the evidence and determined that city's evidence was more persuasive than owners' evidence.

City's process for special assessments in local improvement district (LID) was not arbitrary and capricious, as required for court to correct or annul special assessments, due to city's failure to independently review property owners' appeal of special assessment levied against them for improvements to waterfront area, where city appropriately chose to delegate review of appeal to a committee, as authorized by law.

ZONING & PLANNING - ALABAMA

City of Helena v. Pelham Board of Education

Supreme Court of Alabama - August 2, 2024 - So.3d - 2024 WL 3629519

City filed a complaint against board of education of neighboring city, seeking declaratory and injunctive relief based on its proposition that the board's construction of athletic fields on land that board owned but that was located within plaintiff's city corporate limits violated plaintiff city's zoning ordinance.

Board filed a counterclaim seeking monetary damages and declaratory and injunctive relief based on its claim that it was not subject to plaintiff city's zoning ordinance.

The Circuit Court granted the board a preliminary injunction. Plaintiff city appealed. The Supreme Court reversed and remanded. On remand, the Circuit Court entered judgment that plaintiff city lacked the authority to enforce its zoning ordinance against the athletic-field-construction project. Plaintiff city appealed.

The Supreme Court held that:

- The judgment was appealable as an interlocutory order on a request for injunctive relief;
- Statute stating general powers of a city board of education did not preclude the board from pursuing the athletic-field-construction project; and
- City was not permitted to enforce its zoning ordinance as to the project.

Trial court's judgment that city lacked authority to enforce its zoning ordinance against neighboring city's board of education as to board's construction of athletic fields on land that board owned and that was within city's corporate limits was appealable as an interlocutory order on a request for injunctive relief, even though court ostensibly was granting declaratory relief; both sides in the dispute had sought injunctive relief, trial court refused city's request for an injunction, and the order appeared, at least in part, to be injunctive in nature since it required city not to enforce its zoning ordinance with respect to the particular property and it expressly explained why board had sustained an irreparable injury and also lacked an adequate remedy at law.

Statute stating general powers of a city board of education did not preclude city board from constructing athletic fields on land that board owned but that was within a neighboring city's corporate limits; statute granted board all powers necessary or proper for administration and management of high school, which was located within corporate limits of board's city, those powers included purchase of property and development of property for management of high school, and statute did not set territorial limits on board's powers.

City was not permitted to enforce its zoning ordinance against property that was within city's corporate limits but that neighboring city's board of education owned and wished to develop into athletic fields; city boards of education, in their governance of public education, were agencies of the State, and board's construction of athletic fields on the property constituted the State operating in city's territory.

PUBLIC UTILITIES - CALIFORNIA

California Community Choice Association v. Public Utilities Commission

Court of Appeal, First District, Division 4, California - July 15, 2024 - 323 Cal.Rptr.3d 322

Organization that represented interests of community choice electricity aggregation programs filed petition for judicial review that sought reversal of Public Utilities Commission's (PUC) resolution setting effective dates for programs' expansions and its decision denying rehearing of the resolution.

The Court of Appeal held that:

- Organization had associational standing;
- PUC's resolution and decision were subject to limited scope of review;
- PUC had jurisdiction to set effective date to expand programs; and
- PUC did not abuse its discretion in setting effective date for programs' expansion based on concerns regarding future cost shifting.

Organization that represented interests of community choice electricity aggregation programs had standing under associational standing doctrine to file on programs' behalf a writ petition for judicial review of Public Utilities Commission's (PUC) resolution setting effective dates for programs' expansions and decision denying rehearing of the resolution, where there was no reason to question whether programs would otherwise have standing on their own, organization was seeking to protect interests that were germane to its purpose, and programs' participation was required.

Public Utilities Commission's (PUC) resolution setting delayed effective dates for community choice electricity aggregation programs' expansions and its decision denying rehearing of the resolution were quasi-legislative, rather than quasi-adjudicative, and thus, it was subject to limited scope of review under statute applicable to any proceeding other than the enumerated proceedings that were subject to full review standard; PUC determined, as a matter of policy or discretion, that expansions for the two programs should be delayed in order to ensure that expansion did not result in specific type of cost shifting, and decision did not specifically involve a complaint or enforcement proceeding or ratemaking or licensing decision of specific application that was addressed to particular parties.

Public Utilities Act section pertaining to aggregation of customer electric loads with community choice aggregators provided the Public Utilities Commission (PUC) jurisdiction to delay expansion dates of community choice aggregation programs upon conclusion that such expansion would result in impermissible cost shifting; statute prohibited a community choice aggregation program from furnishing electricity to customers until PUC had determined cost recovery that must be paid by customers of that program and that PUC must designate earliest possible effective date for implementation of a community choice aggregation program, taking into consideration impact on any annual procurement plan of the electrical corporation that has been approved by PUC.

Public Utilities Commission (PUC) did not act arbitrarily, capriciously, or entirely without evidentiary support in setting an effective date for expansion of two community choice electricity aggregation programs that was one year after date proposed by programs in their implementation plans, based on concerns that expansion would result in future cost shifting; given programs' history of resource deficiencies, which purportedly resulted in cost-shifting to non-customers, and programs' failure to present any evidence demonstrating that they had adequately addressed resource adequacy going forward, it was not unreasonable to conclude that programs' failure to procure adequate resources would result in greater cost shifting in they were permitted to expand to serve more customers.

LIABILITY - CALIFORNIA

West Contra Costa Unified School District v. Superior Court of Contra Costa County

Court of Appeal, First District, Division 5, California - July 31, 2024 - Cal.Rptr.3d - 2024 WL 3593932

High-school student who was allegedly the victim of sexual assaults by a school district employee brought action against school district, alleging negligence, negligence per se, negligent hiring, retention, and supervision of an unfit employee, negligent supervision of a minor, and negligent failure to warn, train, or educate.

The Superior Court overruled school district's demurrer to the extent it was based on constitutional prohibition of gifts of public funds. School district petitioned for writ of mandate, and contended that law resurrecting extinguished childhood sexual assault claims against public entities violated school district's right to due process under both the federal and California Constitutions.

The Court of Appeal held that:

- Retroactive waiver of Government Claims Act's (GCA) claim presentation requirement was not a gift of public funds;
- Law served valid public purpose; and

- School district lacked standing to assert claim that law violated right to due process.

Retroactive waiver of Government Claims Act's (GCA) claim presentation requirement for consent to suit by law providing a three-year window within which plaintiffs were permitted to bring childhood sexual assault claims that were otherwise barred by a lapsed claim presentation deadline did not create new substantive liability for the underlying alleged wrongful conduct, and thus law was not a "gift of public funds," within meaning of constitutional prohibition against gift of public funds; school district's substantive liability existed independently of GCA's claim presentation requirement when the alleged wrongful conduct occurred, and timely presentation of a claim was a condition to waiver of government immunity, but it was not necessary to render underlying conduct tortious.

Law providing a three-year window within which plaintiffs were permitted to bring childhood sexual assault claims that were otherwise barred by statutes of limitations or lapsed government tort claim presentation deadlines served valid public purpose of providing relief to victims of childhood sexual assault who failed to file timely claims by providing an opportunity for them to obtain compensation from public entities that employed abusers, so that public purpose exception to constitutional prohibition against gift of public funds applied, regardless of any deterrence as to future sexual assaults; class of persons benefited by law was sufficiently defined, even if victims were required to prove their eligibility for compensation in individual lawsuits.

School district forfeited argument that it had standing to assert constitutional rights of current students negatively impacted by potential liability under law that provided a three-year window within which plaintiffs were permitted to bring childhood sexual assault claims against public entities that would otherwise have been barred because of statutes of limitations or Government Claims Act's (GCA) claim presentation requirements, by making argument for the first time at oral argument.

EMINENT DOMAIN - FEDERAL

Russellville Legends, LLC v. United States

United States Court of Federal Claims - July 24, 2024 - Fed.Cl. - 2024 WL 3516861

Property owner filed Fifth Amendment takings claim against government based on Army Corps of Engineers' denial of owner's application for permit to add fill and construct housing on property over which Corps had previously purchased flowage easement and then later executed consent agreement with previous owner, permitting him to add up to 7,000 cubic yards of fill to property in easement area.

Government moved to dismiss for failure to state claim.

The Court of Federal Claims held that:

- Owner lacked property interest in executing proposed housing project;
- Corps did not release flowage easement when executing consent agreement;
- Owner had no rights under consent agreement; and
- Owner failed to state claim for regulatory taking.

Property owner lacked cognizable property interest in freely constructing housing on its property, as would be required for owner to state takings claim seeking just compensation based on Army Corps of Engineers' denial of owner's application for permit to add fill and construct housing on property over which Corps had purchased flowage easement from previous owner, since Corps asserted pre-

existing limitation on owner's title in that flowage easement over property was in effect when owner purchased property and gave government perpetual right to overflow, flood, and submerge land within easement, prohibited structures for human habitation in easement, and required Corps' approval for construction of any other structures and/or appurtenances, due to flooding risks.

Under Arkansas law, Army Corps of Engineers did not release its rights to flowage easement over current owner's property by executing consent agreement, stating that government "gives consent" to predecessor owner for placement of fill material onto easement, and thus, current owner lacked cognizable property interest in constructing housing on property that owner alleged passed to it upon purchasing property from predecessor, as would be required for owner to state takings claim based on Corps' denial of owner's application for permit to add fill and construct housing on property, since agreement did not contain words of transfer, as term "gives" only referred to consent, not to easement rights, and parties did not intend for government to release its rights under easement.

Under Arkansas law, owner of property had no rights under consent agreement, stating that government "gives consent" to predecessor owner for placement of fill material onto Army Corps of Engineers' flowage easement over property, and thus, current owner lacked cognizable property interest in constructing housing on property that owner alleged passed to it upon purchasing property from predecessor, as would be required for owner to state takings claim based on Corps' denial of owner's application for permit to add fill and construct housing on property, since agreement did not run with land because Corps granted consent to predecessor owner personally.

Penn Central factor considering economic impact of the alleged regulatory taking weighed against finding regulatory taking based on Army Corps of Engineers' denial of property owner's application for permit to add fill and construct housing on property over which Corps held flowage easement and had executed consent agreement with previous owner, permitting him to add up to 7,000 cubic yards of fill to property in easement area, since owner alleged that denial of permit caused property to decrease 55% in value, but that was on low end of spectrum of loss in value for which just compensation was required, and damage to owner's intended business of constructing housing on property was not compensable under Takings Clause.

OPEN MEETINGS - MICHIGAN

Pinebrook Warren, LLC v. City of Warren

Supreme Court of Michigan - July 31, 2024 - N.W.3d - 2024 WL 3610190

Unsuccessful applicants for medical marijuana dispensary licenses brought action against city, alleging violations of Open Meetings Act (OMA) during the applicant selection process by city's medical marijuana review committee.

License recipients intervened.

The Circuit Court granted applicants' motion for partial summary disposition, denied city's cross-motion for summary disposition, and denied recipients' motion for reconsideration. All parties appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Applicants sought leave to appeal, which was granted.

The Supreme Court held that medical marijuana review committee was a "public body" subject to OMA requirements.

City's medical marijuana review committee satisfied the definition of "public body" under the Open Meetings Act (OMA), and thus committee was required to comply with OMA when considering applications for medical marijuana dispensary licenses, even though city's marijuana ordinance stated that committee had only the power to make recommendations, where ordinance empowered committee to exercise the governmental function of scoring applications, committee's scoring of applications went to the essence of who would be selected for a license, and city council voted to approve applications that were the most highly ranked by committee without any independent consideration of the merits of applications.

Language in city's marijuana ordinance stating that license applications and plans for medical marijuana dispensaries were to be transmitted to city's medical marijuana review committee for approval did not mean, on its face, that the committee could approve applications for dispensary licenses; in context, the language meant that the committee was the body to whom applications were first submitted, and ordinance made clear that only city council could approve dispensary licenses.

City council delegated its job as a public body to city's medical marijuana review committee with respect to applications for medical marijuana dispensary licenses, and thus committee was subject to the requirements of the Open Meetings Act (OMA), where city's marijuana ordinance empowered committee to score license applications, committee scored applications, and city council voted to approve applications that were the most highly ranked by committee without any independent consideration of the merits of applications.

ELECTIONS - MINNESOTA

Jacobs v. City of Columbia Heights

Supreme Court of Minnesota - July 24, 2024 - N.W.3d - 2024 WL 3514670

Elected member of city council filed a petition seeking to invalidate the recall petition filed against her and to cancel the special recall election scheduled by the city.

The District Court denied council member's petition. The Supreme Court granted council member's petition for accelerated review.

The Supreme Court held that recall petition's allegation that council member made racially insensitive comments to candidate and subsequently lied about the incident failed to allege malfeasance or nonfeasance, the constitutional prerequisites to recall an elected municipal official, and consequently failed to lawfully trigger a special recall election.

POLITICAL SUBDIVISIONS - MONTANA

Town of Kevin v. North Central Montana Regional Water Authority

Supreme Court of Montana - July 30, 2024 - P.3d - 2024 WL 3579464 - 2024 MT 159

Town brought action against regional water authority, seeking a declaratory judgment under the Uniform Declaratory Judgment Act (UDJA) that the town was not, and never had been, a member of regional water authority, among other declaratory relief, and also seeking attorney fees.

Following a bench trial, the District Court entered judgment for town, and, following a hearing, granted town's motion for attorney fees. Regional water authority appealed attorney fee award.

The Supreme Court held that:

- UDJA provides a legal basis for attorney fees between two governmental subdivisions when appropriate, and
- Equities and tangible parameters supported award of attorney fees to town.

The Uniform Declaratory Judgment Act (UDJA) provides a legal basis for attorney fees between two governmental subdivisions when appropriate.

Equities and tangible parameters supported award of attorney fees to town under the Uniform Declaratory Judgment Act (UDJA) in its action against regional water authority seeking a declaration that it was not a member of the authority, even if water authority did not act in bad faith; town, which had approximately 175 residents, paid over $55,000 in legal fees, while water authority could spread out its costs over a much larger base and had access to grant funding from the state for much of the litigation, water authority possessed what the town needed and it was necessary to seek a declaration to get the relief and change the status quo, and town offered to settle the case numerous times and the water authority never seriously entertained the possibility of settlement but forced it to trial because it did not want to set a precedent for other members to withdraw.

MUNICIPAL CORPORATIONS - TEXAS

Rhone v. City of Texas City, Texas

United States Court of Appeals, Fifth Circuit - August 6, 2024 - F.4th - 2024 WL 3664535

Owner of three apartment buildings in city brought appeal, in state district court, from order of nuisance abatement issued by a Municipal Court of Record, asserting claims under § 1983 for inverse condemnation, denial of procedural due process, and unconstitutional seizure, and seeking declaratory judgment.

After removal by city, the United States District Court for the Southern District of Texas granted summary judgment to city on due process claim, and later granted summary judgment to city on remaining claims. Owner appealed and filed motion to restrain and enjoin damage to or demotion of buildings. The Court of Appeals denied the motion without prejudice, and buildings were demolished by city during pendency of appeal. The Court of Appeals ordered limited remand. On remand, the District Court conducted evidentiary hearing on city attorney's role in finalizing the Municipal Court's order of abatement and the effect of his role on the validity of that order.

The Court of Appeals held that city attorney's typed signature under phrase "approved as to form, substance, and entry" was formulaic way of explaining city attorney's acceptance of order.

Language in Texas municipal court's nuisance abatement order with city attorney's typed signature under phrase "approved as to form, substance, and entry" was formulaic way of explaining city attorney's acceptance of order, and the city attorney's and municipal judge's actions were therefore appropriate in apartment building owner's suit challenging abatement order; municipal judge did not need city attorney's approval before entering the order.

PUBLIC EMPLOYMENT - VIRGINIA

Williams v. Rappahannock County Board of Supervisors

Court of Appeals of Virginia, Arlington - August 6, 2024 - S.E.2d - 2024 WL 3657071

Removed officers and directors of volunteer fire company filed complaint against county board of supervisors, board members, and company for declaratory judgment, injunctive relief, and judicial review of election of directors, alleging board's removal of plaintiffs violated company's certificate of incorporation, bylaws, and the Code of Virginia.

The Circuit Court granted defendants' pleas in bar. Plaintiffs appealed.

The Court of Appeals held that statute mandating that fire chief and other officers be appointed in counties in which fire company was established did not authorize board to remove company's officers and directors.

Assuming that statute mandating that a fire chief and other officers be appointed in counties in which a fire company was established applied to volunteer fire company incorporated as a nonstock corporation, the statute did not authorize county's board of supervisors to remove company's officers and directors, supporting removed officers and directors' claims against county board of supervisors, company, and others for declaratory judgment, injunctive relief, and judicial review challenging board's resolution removing plaintiffs and appointing new officer and directors; statute only used the word "appointed" rather than "appointed and removed."

NEGLIGENCE - VIRGINIA

Marlowe v. Southwest Virginia Regional Jail Authority

Court of Appeals of Virginia, Christiansburg - July 30, 2024 - S.E.2d - 2024 WL 3571803

Pre-trial detainee who was injured during transport to regional jail after being processed brought action against regional jail employee who drove transport van, alleging gross negligence.

The Wise Circuit Court sustained employee's demurrer, but denied employee's plea in bar asserting that prisoner's claims were barred by the statute of limitations. Parties cross-appealed.

The Court of Appeals held that:

- Deadline for claim was tolled pursuant to COVID-19 judicial emergency orders;
- Status as pre-trial detainee was immaterial; and
- Detainee was confined in a local correction facility when claim accrued.

Deadline for pre-trial detainee's two-year claim for personal injury was tolled pursuant to COVID-19 judicial emergency orders that applied to all case-related deadlines for 126-day period.

Status as pre-trial detainee was immaterial to determination of applicability of one-year statute of limitations period that applied to claims concerning conditions of confinement, in detainee's action alleging gross negligence in connection with conditions of confinement regarding manner in which detainee was restrained and transported from processing facility to regional jail.

Pre-trial detainee was confined in a local correction facility when detainee's claim against regional jail employee who drove transport van accrued, alleging gross negligence in connection with conditions of confinement regarding manner in which detainee was restrained and transported from processing facility to regional jail in van owned by regional jail, and thus one-year statute of

limitations for conditions of confinement claims applied to detainee's gross negligence claim.

PUBLIC UTILITIES - CALIFORNIA

Coziahr v. Otay Water District

Court of Appeal, Fourth District, Division 1, California - July 15, 2024 - Cal.Rptr.3d - 2024 WL 3408627

Resident brought class action against water district, alleging that the district imposed tiered water rates on single family residential customers which were not proportional to the cost of the service in violation of Proposition 218.

Superior Court, San Diego County, entered judgment against district as to liability, and, following remedy phase, awarded $18 million refund, with monthly increases until water district imposed rates consistent with Proposition 218. Water district and resident both appealed, and appeals were consolidated.

The Court of Appeal held that:

- Evidence was sufficient to support finding that tiered water rates were based on nonspecific data and assumptions, rather than on the actual cost of service to each parcel, and thus violated Proposition 218;
- District's water conservation goals did not allow it to impose tiered water rates on single-family residential customers which violated Proposition 218;
- Evidence was sufficient to support finding that tiered water rates discriminated against single family residential customers;
- As a matter of first impression, court could grant a refund to resident as part of mandate claim;
- Evidence supported finding that residents were damaged by tiered water rates;
- Court's inclusion of all charged amounts, not just overcharges, when calculating refund due residents did not involve any unpled offset; and
- Court's calculation of refund which water district owed residents relied unnecessarily on projected and proxy data, and thus was unreasonable.

PUBLIC EMPLOYMENT - CALIFORNIA

Bailey v. San Francisco District Attorney's Office

Supreme Court of California - July 29, 2024 - P.3d - 2024 WL 3561569

Black former employee brought action against district attorney's office, former district attorney, city, and county, alleging racial discrimination, racial harassment, retaliation, and failure to prevent discrimination in violation of Fair Employment and Housing Act (FEHA).

The Superior Court, San Francisco County, granted summary judgment in favor of city. Employee appealed. The First District Court of Appeal affirmed and the Supreme Court granted review.

The Supreme Court held that:

- Isolated use of unambiguous racial epithet may be sufficiently severe to create hostile work environment under FEHA, disapproving *Aguilar v. Avis Rent A Car System, Inc.*, 21 Cal.4th 121, 87

Cal.Rptr.2d 132, 980 P.2d 846;
- Genuine issue of material fact existed as to whether co-worker's one-time use of the "N-word" was sufficiently severe so as to create hostile work environment;
- Remand was warranted to reconsider issue of city's liability for harassment under FEHA; and
- Genuine issue of material fact existed as to whether human resources representative's acts constituted course of conduct that rose to level of adverse employment action.

EMINENT DOMAIN - FEDERAL

McDonough Family Land, LP v. United States

United States Court of Federal Claims - July 12, 2024 - Fed.Cl. - 2024 WL 3405353

Ranches brought action seeking compensation for an alleged Fifth Amendment takings of their properties that occurred when the United States Forest Service directed ignition of backfires and burnouts on their land in an effort to stop the further spread of wildfire.

The United States filed a motion for summary judgment.

The Court of Federal Claims held that:

- Genuine dispute of material fact as to whether the Forest Service, acting through its incident commander agent, was sufficiently involved in setting of backfires and burnouts precluded summary judgment;
- Burning of trees and shrubs growing on ranch land as part of strategy to stop wildfire was potentially compensable as a taking;
- Appropriation of ranches' forage and timber during backfires and burnouts conducted to stop wildfire spread was a taking, rather than a trespass; and
- Genuine dispute of material fact as to whether Forest Service's actions caused ranches' injury, or whether their property would have been taken by the wildfire absent any actions by the Forest Service, precluded summary judgment.

PUBLIC UTILITIES - FEDERAL

Entergy Arkansas, LLC v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - July 26, 2024 - F.4th - 2024 WL 3546765

Companies that generated, transmitted, distributed, and sold electricity filed petitions for review, under Administrative Procedure Act (APA), of decisions of Federal Energy Regulatory Commission (FERC) approving electrical grid operator's proposed tariff changes, including switch from annual to seasonal capacity markets, change in method for calculating generator capacity, and change in rules regarding generator outages, as well as denying companies' request for rehearing.

Petitions were consolidated. Public utilities commissions in Mississippi, Louisiana, and Arkansas and nonprofit corporation that operated electrical grid in eastern Texas intervened in support of companies.

The Court of Appeals held that:

- FERC reasonably concluded that new accreditation methodology would more accurately predict

resources' future performance during periods of highest demand in general;
- FERC reasonably concluded that new methodology more accurately predicted individual resources' future performance;
- FERC adequately explained why it expected volatility to be low under new methodology;
- FERC reasonably concluded that any volatility was unlikely to unduly impact market participants;
- FERC adequately explained its approval of requirement that resources acquire replacement capacity if they are offline for more than 31 days in a season; and
- FERC adequately explained its approval of requirement that resource owners give operator 120 days' notice of planned outages.

In approving tariff changes proposed by electrical grid operator to switch from annual to seasonal capacity market, including new accreditation methodology under which 80% weight would be given to the 65 hours in each of the past three years in which electrical supply was tightest, Federal Energy Regulatory Commission (FERC) reasonably concluded that operator's new methodology would more accurately predict resources' future performance during periods of highest demand in general; FERC relied on operator's study, which examined 11 emergency days from past year and concluded that old methodology overestimated how much electricity would be offered into market by roughly 8% to 22%, whereas new methodology's estimates were off by only about 1%.

Energy companies failed to exhaust their arguments, on their petition for review of Federal Energy Regulatory Commission (FERC) decision approving electrical grid operator's proposed tariff changes to switch from annual to seasonal capacity markets and to change accreditation methodology for generator capacity, that study which FERC relied upon to determine that new accreditation methodology would be more accurate than existing methodology had too small sample size and did not convert intermediate seasonal capacity figures into final seasonal capacity figures, and thus, Court of Appeals lacked jurisdiction to consider arguments; companies did not discuss study at all when requesting rehearing of FERC's approval of rule changes.

In approving tariff changes proposed by electrical grid operator to switch from annual to seasonal capacity market, including new accreditation methodology under which 80% weight would be given to the 65 hours in each of the past three years in which electrical supply was tightest, Federal Energy Regulatory Commission (FERC) adequately explained its conclusion that new methodology more accurately predicted individual resources' future performance; FERC explained that new methodology addressed all reasons for unavailability, whereas old methodology only reflected forced outage rates, year-to-year variation in an individual resource's accreditation was warranted based on whether resource had under- or over-delivered in past, and new method considered three years of prior performance.

In approving tariff changes proposed by electrical grid operator to switch from annual to seasonal capacity market, including new accreditation methodology, Federal Energy Regulatory Commission (FERC) reasonably explained that it expected volatility to be low; FERC relied on operator's study, which used standard deviation for each market participant as measure of how much volatility each participant would have experienced over four planning years had new methodology been in use, and found standard deviation of less than 2% systemwide, with 75% of market participants having standard deviation of under 7.6%, and FERC reasonably chose to focus on across-the-board volatility rather than worst-case scenario of single participant with largest standard deviation after outliers were excluded.

In approving tariff changes proposed by electrical grid operator to switch from annual to seasonal capacity market, including new accreditation methodology, Federal Energy Regulatory Commission (FERC) reasonably concluded that any volatility under new methodology was unlikely to unduly impact market participants; FERC found that, even when volatility existed at resource-specific level,

volatility would usually be lower at market-participant level given participants' broad portfolios of resources, that using three-year rolling average as basis for methodology minimized impact of chance, that resource owners could rely on past performance data to estimate future capacity accreditations, and that electricity distributors could purchase additional capacity to make up any shortfalls.

In approving tariff changes proposed by electrical grid operator to switch from annual to seasonal capacity market, Federal Energy Regulatory Commission (FERC) adequately explained its approval of rule that resources that are offline for over 31 days in a three-month season must either acquire replacement capacity or pay penalty; 31-day threshold weighed competing interests of allowing generators to go offline to perform maintenance versus ensuring grid reliability within a season and ensuring that resources would fulfill commitments for which distributors had paid them, and owners of resources requiring extended maintenance could opt out of capacity market for a season, shorten maintenance, acquire replacement capacity, or schedule maintenance to straddle two seasons.

Energy companies adequately exhausted their argument that Federal Energy Regulatory Commission (FERC) failed to explain why electrical grid operator's proposed rule requiring owners of resources that went offline for more than 31 days in a three-month season to either purchase replacement capacity or pay penalty would not unduly burden resources that required extended maintenance longer than 31 days, as necessary for Court of Appeals to have jurisdiction to consider such argument on companies' petition for review for FERC's approval of rule and denial of rehearing; companies argued before FERC that its approval was irrational because duration of planned outages for nuclear units was commonly longer than 31 days and that 31-day threshold could impede maintenance of other generating units.

In approving tariff changes proposed by electrical grid operator to switch from annual to seasonal capacity market, Federal Energy Regulatory Commission (FERC) adequately explained its approval of rule requiring resource owners to give operator 120 days' notice of planned outages; FERC explained that requiring advance notice did not only ensure grid reliability, but also allowed operator and other stakeholders to plan for outages in advance, and 120-day notice period ensured that operator would have information it needed prior to start of three-month season in order to identify and mitigate potential reliability issues.

ZONING & PLANNING - KANSAS

American Warrior, Inc. v. Board of County Commissioners of Finney County, Kansas

Supreme Court of Kansas - July 26, 2024 - P.3d - 2024 WL 3544081

Landowner and owner of oil and gas lease brought action against board of county commissioners and operator of sand and gravel quarry, challenging validity of conditional use permit that county board of zoning appeals issued for quarry.

The District Court granted defendants' motion for summary judgment and denied plaintiffs' motion for summary judgment. Plaintiffs appealed. The Court of Appeals reversed and remanded. Defendants sought review, which was granted.

The Supreme Court held that:

- Lack of a yearly reapplication for permit for quarry operations did not moot the issue of validity of

permit, and
- County's procedures for issuing conditional use permits did not conflict with state law and thus were not preempted.

Issue of validity of conditional use permit that county board of zoning appeals issued for operation of sand and gravel quarry was not mooted by the lack of a yearly reapplication for permit, where county zoning regulation provided that the permit was valid for at least one year, which could extend beyond that year if the project was substantially completed, and neither side raised a substantial completion issue.

County's procedures for issuing conditional use permits, under which county zoning board was delegated issuing power and two of three board members needed to agree when deciding in favor of a permit applicant, did not conflict with statute requiring county to follow statutory procedure when changing zoning regulations by amendment, and thus the statute did not preempt county's procedures and a conditional use permit for operating a sand and quarry, obtained via county's procedures, was valid, where application for the quarry permit did not ask county to supplement, change, or revise county's zoning regulations but rather merely sought to use property that was zoned as agricultural for a quarry operation based on existing county regulations.

County's procedures for issuing conditional use permits, under which county zoning board was delegated issuing power and two of three board members needed to agree when deciding in favor of a permit applicant, did not conflict with statute specifying process to appeal a zoning officer's decision to a specific zoning appellate board, and thus statute did not preempt county's procedures and a conditional use permit for operating a sand and quarry, obtained via county's procedures, was valid, where county zoning board and not some individual officer through administrative action granted the permit, and county regulations complied with other portions of the statute, which specifically contemplated zoning board authority and special uses.

IMMUNITY - MINNESOTA

Berrier v. Minnesota State Patrol

Supreme Court of Minnesota - July 17, 2024 - N.W.3d - 2024 WL 3434557

Car dealership employee brought action against State Patrol under the strict liability dog-bite statute arising from an unprovoked attack on employee by a State Patrol canine when a patrol vehicle was in for service at dealership.

The District Court denied State Patrol's motion to dismiss. State Patrol appealed. The Court of Appeals reversed and remanded. Employee petitioned for review, which was granted.

The Supreme Court held that dog-bite statute waived sovereign immunity for claims brought under the statute.

Strict liability dog-bite statute plainly, clearly, and unmistakably waived sovereign immunity for claims brought under the statute, and thus the State Patrol was not immune from car dealership employee's claim arising from an unprovoked attack on employee by a State Patrol canine when a patrol vehicle was in for service at dealership, where statute provided that the "owner of the dog" was liable in damages to an injured person, the phrase "owner of the dog" bound a party based on their relationship to the thing that was owned and not based on the party's form of entity, statute contained no language otherwise suggesting that its application was limited to non-State entities,

statute served public policy interests that favored imposing liability on public bodies, and State was not exposed to broad liability under statute.

REFERENDA - NEBRASKA

City of Hastings v. Sheets

Supreme Court of Nebraska - July 12, 2024 - 317 Neb. 88 - 8 N.W.3d 771

City brought action against referendum petitioners under the Municipal Initiative and Referendum Act, seeking a declaration that city was not required to hold a special referendum election to put its decision to demolish viaduct before the voters, and petitioners counterclaimed seeking the opposite declaration.

After a stipulated trial, the District Court sustained city's request for a declaratory judgment. Petitioners appealed and filed a petition to bypass, which was granted.

The Supreme Court held that:

- Demolition of viaduct rendered the action moot, and
- Public interest exception to the mootness doctrine did not apply.

Public interest exception to mootness doctrine did not apply to allow appellate review of moot declaratory judgment case involving a dispute as to city's need to hold a special referendum election concerning its decision to demolish viaduct that was demolished during pendency of action, where the particular set of facts concerning initiative and referendum petitions were often greatly dissimilar, the specific circumstances of the case created a difficult, if not troublesome, situation to provide an authoritative adjudication to guide public officials in the future, and same or similar problems presented by the appeal were not likely to recur.

OPEN MEETINGS - OHIO

Look Ahead America v. Stark County Board of Elections

Supreme Court of Ohio - July 18, 2024 - N.E.3d - 2024 WL 3447280 - 2024-Ohio-2691

Political advocacy group filed complaint against county board of elections and its individual members alleging that board violated Open Meetings Act by entering executive sessions at four meetings to discuss purchase of voting equipment.

Following advocacy group's case-in-chief at bench trial, the Court of Common Pleas dismissed the case. Advocacy group appealed. The Fifth District Court of Appeals affirmed. The Supreme Court accepted advocacy group's discretionary appeal.

The Supreme Court held that premature-disclosure clause of statute governing executive sessions of a public body applied to all permissible reasons for entering executive session, and, thus, remand was necessary for trial court to apply that interpretation.

Premature-disclosure clause of statute governing executive sessions of a public body applied to all permissible reasons for entering executive session, including purchase of property for public purpose, and, thus, remand was necessary for trial court to apply that interpretation of the statute,

following dismissal of political advocacy group's action alleging that county board of elections' executive sessions violated the Open Meetings Act.

NUISANCE - SOUTH DAKOTA

Preserve French Creek, Inc. v. County of Custer

Supreme Court of South Dakota - July 24, 2024 - N.W.3d - 2024 WL 3532519 - 2024 S.D. 45

Creek preservation group petitioned for writ of mandamus to compel enforcement of county ordinance that was passed by citizen initiative and that declared city's discharge of treated wastewater into creek, pursuant to a state surface water discharge permit obtained from Department of Agriculture and Natural Resources (DANR), to be a nuisance.

The Circuit Court denied relief. Preservation group appealed.

The Supreme Court held that:

- State law preempted ordinance, and
- City and county were not estopped from asserting that ordinance was preempted.

County ordinance declaring that city's discharge of treated wastewater into creek was a nuisance conflicted with statute providing that nothing that was done or maintained under the express authority of the state could be deemed a nuisance, and thus the ordinance was preempted and unenforceable, where city's wastewater treatment facility was operating under a permit issued by the Department of Agriculture and Natural Resources (DANR) in compliance with state law including provisions of the Water Pollution Control Act.

INDUSTRIAL DEVELOPMENT CORPORATIONS - TEXAS

Hitchcock Industrial Development Corporation v. Cressman Tubular Products Corporation

Court of Appeals of Texas, Houston (14th Dist.) - July 18, 2024 - S.W.3d - 2024 WL 3447475

City brought action against pipe supply company for breach of economic development agreement, unjust enrichment, and fraud. Company filed third-party claims against industrial development corporation for breach of development agreement, negligent misrepresentation, and fraud.

The 405th District Court denied corporation's plea to the jurisdiction. Corporation appealed.

The Court of Appeals held that:

- It had jurisdiction over corporation's interlocutory appeal, and
- Corporation was not entitled to governmental immunity.

Court of Appeals had jurisdiction over industrial development corporation's appeal of trial court's order denying its plea to the jurisdiction with regard to pipe supply company's claims against corporation for negligent misrepresentation and fraud based on governmental immunity, under statute permitting interlocutory appeal of a decision granting or denying a plea to the jurisdiction by a governmental unit; corporation was a Type A economic development corporation, which was a

governmental unit pursuant to Tort Claims Act.

Industrial development corporation was not entitled to governmental immunity, and thus pipe supply company's claims against corporation for negligent misrepresentation and fraud were not barred on such basis; although Development Corporation Act, under which industrial development corporation was formed as a Type A economic development corporation, stated that a Type A corporation was a governmental unit and its actions were governmental functions, that provision did not purport to confer immunity, but only imported the Tort Claims Act's limitations on liability and damages.

CONDEMNATION - NORTH CAROLINA

Askew v. City of Kinston

Supreme Court of North Carolina - June 28, 2024 - 902 S.E.2d 722

African American property owners brought action against city alleging that city's racially discriminatory and arbitrary decisions in condemning their individual properties violated the equal protection and due process guarantees of North Carolina's Constitution.

The Superior Court granted summary judgment to city. Owners appealed. The Court of Appeals vacated and remanded. City appealed.

The Supreme Court held that:

- Court of Appeals improperly merged owners' claims and overlooked the distinct constitutional injuries and theories of recovery raised, and
- Court of Appeals improperly tied administrative exhaustion to subject-matter jurisdiction over *Corum* claims, 413 S.E.2d 276.

On appeal of trial court's grant of summary judgment to city on African American property owners' claims alleging city's property condemnation process was racially discriminatory in violation of equal protection and due process guarantees of State Constitution, Court of Appeals improperly merged owners' claims and overlooked the case-by-case inquiry that was required for discrete claims under *Corum* doctrine, 413 S.E.2d 276, replacing it with a blanket jurisdictional mandate, thus requiring remand; Court of Appeals addressed substantive due process claim and determined that proper relief could be provided by an injunction, but it sidestepped the equal protection challenge for which owners asserted a different injury and which required a different species of relief, a mandate of equal treatment.

On appeal of trial court's grant of summary judgment to city on African American property owners' claims alleging city's property condemnation process was racially discriminatory in violation of equal protection and due process guarantees of State Constitution, Court of Appeals improperly tied administrative exhaustion to subject-matter jurisdiction over *Corum* suits, 413 S.E.2d 276, transplanting the rules for run-of-the-mill agency disputes into *Corum's* unique framework that required evaluation of adequacy of relief, thus requiring remand; Court of Appeals vacated trial court's ruling on jurisdictional grounds by assuming that, without evaluating the administrative scheme and its congruence with owners' discrete Corum claims, that unjustified condemnation of owners' properties could be reviewed and redressed by administrative process.

MANDAMUS - OHIO

State ex rel. Black v. East Cleveland

Supreme Court of Ohio - July 17, 2024 - N.E.3d - 2024 WL 3432409 - 2024-Ohio-2688

Relator brought action against city, seeking writ of mandamus compelling city to pay $20 million in compensatory damages and $5.2 million in prejudgment interest awarded in relator's prior action against city alleging improper arrest and injuries inflicted by police officers.

The Supreme Court held that relator was entitled to mandamus relief compelling payment of damages and interest.

Relator's evidence was sufficient to establish exact amount of money that city owed to him, i.e., $20 million in compensatory damages and $5.2 million in prejudgment interest awarded in relator's action against city arising from improper arrest of relator and injuries inflicted by police officers, thus supporting relator's clear legal right to relief in his subsequent mandamus action against city; relator submitted jury's verdict and amount of compensatory damages to be awarded, trial court's judgment entering the verdict in relator's favor and ordering city to pay relator the damages awarded, trial court's order awarding relator prejudgment interest, and court of appeals' judgment affirming jury's verdict and monetary awards.

ZONING & PLANNING - PENNSYLVANIA

AUUE, Inc. v. Borough of Jefferson Hills Zoning Hearing Board

Supreme Court of Pennsylvania - July 17, 2024 - A.3d - 2024 WL 3432626

Landowner appealed decision of the borough zoning hearing board which reversed zoning officer's grant of use permit for five parcels on which landowner sought to construct medical center.

The Court of Common Pleas affirmed, and landowner appealed. The Commonwealth Court reversed, and neighbors appealed, which the Supreme Court allowed.

The Supreme Court held that:

- Zoning officer had authority under zoning ordinances to issue use permit to landowner for medical center, and
- Zoning hearing board was required to limit its review to whether landowner's desired/intended use for the property was permitted by right in the district.

Borough zoning officer had authority under zoning ordinances to issue use permit to landowner for medical center; zoning ordinances granted the zoning officer the broad and expansive authority to issue zoning permits for any purpose, however limited, provided that such purpose conformed to the requirements of the ordinance, zoning officer issued the zoning permit for the sole and limited purpose of establishing that landowner's desired/intended use for the property was permitted by right in the district, and letter granting the zoning permit specifically stated that landowner still needed to secure land development approval.

Borough zoning hearing board, on appeal of zoning officer's grant of use permit to landowner which sought to construct medical center on its property, was required to limit its review to whether landowner's desired/intended use for the property was permitted by right in the district; given the

limited purpose for which the zoning officer issued the permit, and the fact that the zoning officer was authorized to issue the permit, the question of overall compliance with the zoning ordinance was not before the board, and the board was not permitted to overturn the permit decision simply because the zoning application may have failed to comply with all relevant provisions of the zoning ordinance.

BONDS - PUERTO RICO

In re Puerto Rico Public Finance Corporation

United States Court of Appeals, First Circuit - July 17, 2024 - F.4th - 2024 WL 3439970

Financial Oversight and Management Board for Puerto Rico, as Administrative Supervisor for the Puerto Rico Public Finance Corporation (PFC), applied for approval of "qualifying modification" to restructure PFC's debts pursuant to Title VI of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).

After court approval of stipulation that bifurcated consideration of Board's application from parties' dispute concerning whether the Government Development Bank for Puerto Rico (GDB), which had issued standby letters of credit to bondholders of its subsidiary, PFC, and GDB's parent entity, the Puerto Rico Fiscal Agency and Financial Advisory Authority (AAFAF), had the right to direct the GDB Debt Recovery Authority (DRA) to issue bonds, several parties filed briefs in support of or in opposition to the proposed bond issuance, including DRA's servicing agent and collateral monitor, which objected to it.

Construing the parties' filings as cross-motions for summary judgment, the United States District Court for the District of Puerto Rico approved the qualifying modification, and subsequently overruled the objection to the new bond issuance. Objectors appealed.

The Court of Appeals held that under New York and Puerto Rico law, respectively, the bond indenture and the master transfer agreement, as the final transaction documents governing DRA's issuance of new bonds on GDB's outstanding bond claims, including its debt to PFC's bondholders, plainly permitted issuance of the bonds without any reference to a valid claim requirement.

"Qualifying modification" to restructure debts of the Government Development Bank for Puerto Rico (GDB) pursuant to Title VI of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) did not contain a valid claim requirement, that is, a requirement that, before GDB's Debt Recovery Authority (DRA) would issue new bonds, including to creditors of the Puerto Rico Public Finance Corporation's (PFC), a subsidiary of GDB whose bonds GDB had guaranteed, such creditors first had to demonstrate "valid claims"; under New York and Puerto Rico law, respectively, bond indenture and master transfer agreement, the final transaction documents governing DRA's issuance of bonds, only limited the maximum amount of bond issuance and included no valid claim requirement, and although preliminary documents did contain such requirement, those documents made clear that they were provisional, and the final documents stated that they replaced any earlier agreements.

Where, under New York and Puerto Rico law, respectively, neither bond indenture nor master transfer agreement, as final transaction documents governing issuance of bonds by the Government Development Bank for Puerto Rico's (GDB) Debt Recovery Authority (DRA) as part of GDB's debt restructuring under Title VI of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), was ambiguous, the District Court properly declined to permit discovery into the

negotiation process, on cross-motions for summary judgment by parties supporting or opposing proposed bond issuance.

ESTOPPEL - SOUTH CAROLINA

Cruz v. City of Columbia

Supreme Court of South Carolina - July 17, 2024 - S.E.2d - 2024 WL 3435968

City retirees under age 65 brought action against city asserting claims including promissory and equitable estoppel regarding city's alleged promise to provide them no-cost health insurance for their lifetimes. Retirees over age 65 also filed suit against city, alleging similar claims.

Cases were consolidated. Following a bench trial, the Circuit Court entered judgment for city. Retirees appealed, and the Court of Appeals affirmed. The Supreme Court granted retiree's petition for certiorari.

The Supreme Court held that:

- Retirees had no right to rely on promises made by city employees who had no authority to bind the city to on matters dealing with future health insurance benefits, and
- A promissory estoppel claim need only be proven by the greater weight of the evidence; abrogating *Barnes v. Johnson*, 402 S.C. 458, 470, 742 S.E.2d 6.

Retirees had no right to rely on promises made by their supervisors and city's human resources employees that the city would provide its retirees with free lifetime health insurance; city employees had no authority to bind the city to matters dealing with future health insurance benefits, and the exclusive authority to make health insurance benefits available to retirees rested with the city council which also had the authority to change the current policy.

Except in a case seeking specific performance of a land transfer, a promissory estoppel claim need only be proven by the greater weight of the evidence; abrogating *Barnes v. Johnson*, 402 S.C. 458, 470, 742 S.E.2d 6.

REFERENDA - UTAH

League of Women Voters of Utah v. Utah State Legislature

Supreme Court of Utah - July 11, 2024 - P.3d - 2024 WL 3367145 - 2024 UT 21

Nonprofit nonpartisan voter advocacy group brought suit against the Utah State Legislature and other state entities and officers, alleging inter alia that the Legislature violated the Utah Constitution when it repealed and replaced initiative enacted by voters aimed at ending partisan gerrymandering and its resulting map of Congressional districts, and that the Legislature's replacement map was likewise unconstitutional.

The Third District Court, Salt Lake County granted defendants' motion to dismiss the claim regarding the initiative's repeal and replacement, and denied defendants' motion to dismiss the claims regarding the replacement map.

The Supreme Court granted the parties' cross-petitions for interlocutory appeal.

The Supreme Court held that:

- As a matter of first impression, Utahns' exercise of their right to reform government through citizen initiative is protected from government infringement;
- As a matter of first impression, to prove that legislative action violated the people's right to reform the government through initiative requires two elements: (1) that the people exercised their initiative power to implement government reforms; and (2) the legislature infringed the exercise of these rights;
- As a matter of first impression, legislative action that impairs the people's right to reform the government is unconstitutional unless narrowly tailored to advance a compelling government interest;
- Legislature did not have unlimited authority to amend or repeal citizen initiative; abrogating *Carter v. Lehi City*, 269 P.3d 141;
- Advocacy group's challenge implicated enforceable rights under the Initiative Provision;
- Advocacy group brought a legally cognizable claim on which relief could be granted;
- Legislature's repeal and replacement of legislation enacted through initiative was not an exercise of the people's constitutional right to alter or reform the government; and
- Strict scrutiny was the appropriate level of review for advocacy group's claim.

POLITICAL SUBDIVISIONS - WASHINGTON

Horvath v. DBIA Services

Court of Appeals of Washington, Division 1 - July 8, 2024 - P.3d - 2024 WL 3325346

Public records requestor brought action against nonprofit corporation which provided services within city's business improvement district, alleging that corporation had failed to comply with the Public Records Act.

The Superior Court denied requestor's motion for summary judgment and granted corporation's motion for summary judgment and for declaratory judgment, concluding that corporation was not the functional equivalent of a governmental entity subject to the Public Records Act. Requestor appealed.

The Court of Appeals held that:

- Abuse-of-discretion standard of review applied to trial court order finding corporation was not subject to the Public Records Act;
- Trial court's conclusion that corporation was not a public agency under the Public Records Act was not an abuse of discretion;
- Trial court's error in concluding that government funding received by corporation weighed in favor of finding corporation to be the functional equivalent of a public agency did not require reversal;
- Business improvement district was not the functional equivalent of a public agency for purposes of the Public Records Act; and
- Requestor was not entitled to an award of attorney fees.

PUBLIC UTILITIES - CALIFORNIA

Golden State Water Company v. Public Utilities Commission

Supreme Court of California - July 8, 2024 - P.3d - 2024 WL 3321648

Class A water utilities and an association that represented investor-owned water utilities' interests petitioned for writs of review to have set aside the Public Utilities Commission's order 2020 WL 5407872, as modified by 2021 WL 4627678, that, among other things, did away with a water-conservation mechanism allowed certain water companies to structure their rates in a way that decoupled revenue from the amount of water sold.

After issuing the writs of review, the Supreme Court consolidated the cases.

The Supreme Court held that:

- Enactment of new legislation concerning conservation-related decoupling mechanisms did not render the case moot;
- Commission did not give adequate notice that it would consider elimination of the water-conservation mechanism; and
- Assuming that a showing of prejudice was required in order to set aside the Commission's order due to lack of adequate notice, petitioners demonstrated such prejudice.

Enactment of new legislation concerning conservation-related decoupling mechanisms did not render moot petitions for review that were filed by Class A water utilities and an association representing investor-owned water utilities' interests and that sought the setting aside of Public Utilities Commission's order that did away with a water-conservation mechanism allowed certain water companies to structure their rates in a way that decoupled revenue from the amount of water sold; new legislation referred only to consideration of a mechanism for decoupling revenue from sales, and the statute's requirement that the Commission consider authorizing such a mechanism was not necessarily equivalent to what the petitioners were asking for.

Public Utilities Commission did not give adequate notice that it would consider elimination of a water-conservation mechanism allowed certain water companies to structure their rates in a way that decoupled revenue from the amount of water sold, as would warrant setting aside Commission's order eliminating the mechanism; the scoping memos covered a forecasting issue that did not fairly include the possibility that the Commission would order petitioners not to propose continuing existing water-conservation mechanisms.

Class A water utilities and an association that represented investor-owned water utilities' interests were prejudiced by failure of Public Utilities Commission's scoping memos to cover the possible elimination of a water-conservation mechanism allowed certain water companies to structure their rates in a way that decoupled revenue from the amount of water sold, as would warrant, assuming that a showing of prejudice was even required, setting aside Commission's order eliminating the mechanism; the lack of notice of the possible elimination of the mechanism deprived petitioners of an adequate opportunity to present their case for preserving the mechanism.

PUBLIC UTILITIES - FEDERAL

Shell Energy North America (US), L.P. v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - July 9, 2024 - F.4th - 2024 WL 3335557

Sellers of wholesale electricity, California Public Utilities Commission (CPUC), and investor-owned utility petitioned for review of orders of Federal Energy Regulatory Commission (FERC), 2022 WL

1058002, 2022 WL 5243242, 2022 WL 1154871, 2022 WL 5243289, 2022 WL 1208000, 2022 WL 4397219, 2022 WL 1208033, 2022 WL 5243177, 2022 WL 1208013, 2022 WL 5243180, 2022 WL 1208004, 2022 WL 4397324, 2022 WL 1208037, 2022 WL 4397517, 2022 WL 1601920, 2022 WL 12179536, 2022 WL 1601924, 2022 WL 12186014, 2022 WL 1601918, 2022 WL 12193846, 2022 WL 2188379, 2022 WL 17077042, 2022 WL 2188380, 2022 WL 17077046, 2022 WL 2191889, and 2022 WL 17077044, determining that sellers failed to justify their short-term electricity sales above soft price cap in western United States during summer heat wave and requiring partial refunds of sale prices that exceeded cap.

The Court of Appeals held that:

- FERC was required to find sellers' negotiated contract rates seriously harmed public interest before ordering refunds, and
- Claim by CPUC and utility that FERC erroneously calculated refunds that would lead to higher future electricity prices was moot.

Federal Energy Regulatory Commission's (FERC) final order, determining that sellers failed to justify their short-term electricity sales above soft price cap and requiring partial refunds of sale prices that exceeded cap, violated Mobile-Sierra doctrine, United Gas Pipe Line Co. v. Mobile Gas Serv. Corp., 76 S.Ct. 373; Federal Power Comm'n v. Sierra Pac. Power Co., 76 S.Ct. 368, guiding FERC's just-and-reasonable review of market-based-tariff contracts under FPA; FERC ordered refunds for rates that were mutually contracted by sellers and customers in competitive marketplace, yet FERC altered those negotiated rates by ordering refunds without first finding that rates seriously harmed public interest or that Mobile-Sierra framework did not apply. Federal Power Act § 205, 16 U.S.C.A. § 824d(a).

Under the *Mobile-Sierra doctrine, United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 76 S.Ct. 373; *Federal Power Comm'n v. Sierra Pac. Power Co.*, 76 S.Ct. 368, Federal Energy Regulatory Commission (FERC) can rebut the presumption that the electricity rate set out in a freely negotiated wholesale-energy contract meets the just and reasonable requirement, imposed by the FPA, only by making a particularized finding that a given contract seriously harms the public interest, even if that contract's price exceeds the soft price cap, or can avoid that inquiry by demonstrating that the presumption should not apply at all. Federal Power Act § 205, 16 U.S.C.A. § 824d(a).

California Public Utilities Commission's (CPUC) and investor-owned utility's challenge to Federal Energy Regulatory Commission's (FERC) order, which allegedly would lead to higher future electricity prices by purportedly erroneously calculating refunds required from sellers that failed to justify their short-term electricity sales above soft price cap, was rendered moot by determination that FERC's refund orders failed to satisfy preconditions, in violation of *Mobile-Sierra doctrine, United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 76 S.Ct. 373; *Federal Power Comm'n v. Sierra Pac. Power Co.*, 76 S.Ct. 368, since any judicial pronouncement about correctness of calculated refunds would not presently affect parties' rights or have more-than-speculative chance of affecting them in future.

EMINENT DOMAIN - INDIANA

Indiana Land Trust #3082 v. Hammond Redevelopment Commission

United States Court of Appeals, Seventh Circuit - July 10, 2024 - F.4th - 2024 WL 3353836

Owner of property subject to condemnation proceeding filed state-court action against city, city redevelopment commission that had commenced condemnation proceeding, and city's mayor, asserting federal constitutional violations relating to alleged conspiracy regarding the eminent domain proceeding, including § 1983 claim alleging violation of equal protection and Monell claim.

Following removal, the United States District Court for the Northern District of Indiana denied property owner's request for leave to amend complaint to add claims for violations of substantive due process and civil conspiracy under § 1983 and granted city's motion to dismiss the remaining claims. Property owner appealed.

The Court of Appeals held that:

- Interests of justice did not favor Court's abstention under Colorado River doctrine;
- Building of road to connect neighborhood and major roadway was rational basis to seek condemnation, and thus, there was no violation of equal protection under class-of-one theory;
- Owner failed to allege any impairment to interest in property, and thus failed to state claim for violation of substantive due process; and
- Owner was required to seek recourse in state court for objectionable land-use decision rather than transform objections into substantive due process claim.

EMINENT DOMAIN - LOUISIANA

Watson Memorial Spiritual Temple of Christ v. Korban

Supreme Court of Louisiana - June 28, 2024 - So.3d - 2024 WL 3218549 - 2024-00055 (La. 6/28/24)

Landowners filed petition for writs of mandamus and fieri facias against executive director of city's sewerage and water board, in his official capacity, seeking to compel the payment of damages that had been awarded to landowners in their prior inverse-condemnation actions against board but for which board had not allocated funds.

The District Court denied executive director's exception of res judicata, declining to give preclusive effect to a decision of the United States District Court for the Eastern District of Louisiana, as affirmed by the United States Court of Appeals for the Fifth Circuit, dismissing landowners' § 1983 action against board and its executive director seeking to collect their judgment, but the District Court granted executive director's exception of no cause of action. On landowners' appeal, the Fourth Circuit Court of Appeal reversed and remanded. Executive director petitioned for a writ of certiorari.

The Supreme Court held that:

- Decision in prior federal suit did not have res judicata effect as to landowners' claims;
- As a matter of first impression, the payment of just compensation for a judgment arising from inverse condemnation is a ministerial, non-discretionary duty in light of the Louisiana Constitution's just-compensation clause, and mandamus may therefore issue to enforce a final judgment against a political subdivision for just compensation; and
- District court would be required, on remand, to tailor a plan to ensure satisfaction, within a reasonable period of time, of landowners' judgment for damages.

REFERENDUM PETITION - MARYLAND

Town of Bel Air v. Bodt

Supreme Court of Maryland - July 9, 2024 - A.3d - 2024 WL 3336797

Town residents brought action against town seeking declaratory relief, a writ of mandamus, and permanent injunctive relief after town commissioners refused to submit a purported referendum petition concerning a zoning ordinance to town board of election judges due to the petition's non-compliance with town charter.

Town and intervenor moved for summary judgment. The Circuit Court entered orders declaring the rights of the parties, directing town to take action, and partially granting injunctive and mandamus relief. Town and intervenor appealed, residents cross-appealed, and town petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- Commissioners could make preliminary determination of facial validity of purported referendum petition before verification of signatures;
- Petition did not satisfy requirements of town charter for being a referendum petition; and
- Commissioners were authorized to determine validity of petition by verbal motion at commissioners' meeting.

Whether town commissioners correctly determined that a purported referendum petition concerning a zoning ordinance did not comply with town charter, and whether commissioners were authorized to make such a determination by verbal motion at commissioners' meeting, were legal questions that the Supreme Court would consider de novo and without any deference to the trial court's conclusions, following the entry of a declaratory judgment on the basis of a motion for summary judgment.

Town commissioners had authority under town charter to make a preliminary determination as to facial validity of purported referendum petition concerning a zoning ordinance without first sending petition to town election board for verification of signatures, where text of charter did not contain any words that required a particular order or sequence when determining whether a petition satisfied the signature requirement, to be determined by board, and the general facial or textual requirement, to be determined by commissioners.

Purported referendum petition submitted to town following a comprehensive rezoning did not satisfy requirements of town charter for being a referendum petition, where information provided on signature pages of petition called for the reversal of a zoning decision without identifying the mechanism for reversal with words like "petition," "referendum," or "vote," and cover page that was affixed to petition as part of a refiling contained language seeking a referendum only on part of a zoning ordinance, which was impermissible.

Town commissioners were permitted under town charter to determine validity of a purported referendum petition concerning zoning ordinance by a verbal motion at a regular commissioners' meeting that was memorialized in the minutes of the meeting, where charter did not require commissioners to consider validity of a referendum petition in a particular manner, charter authorized commissioners to adopt both ordinances and resolutions, and commissioners' determination of validity of a referendum petition did not fall within any of the categories of government action that required an ordinance under the charter.

Verbal motion at a regular town commissioners' meeting was the equivalent of a "resolution" by which the commissioners had authority under town charter to determine validity of a purported referendum petition concerning zoning ordinance; motion constituted a formal expression of commissioners' opinion that was adopted by vote and memorialized in the minutes of the proceeding.

PUBLIC FINANCE - NORTH DAKOTA

East Central Water District v. City of Grand Forks

Supreme Court of North Dakota - July 5, 2024 - N.W.3d - 2024 WL 3308359 - 2024 ND 135

Water district brought federal action against city seeking, in part, a declaration that a water supply and service agreement with city was void ab initio due to absence of a public lending authority as a party to agreement.

The United States District Court for the District of North Dakota certified questions.

The Supreme Court held that:

- Supreme Court would exercise its discretion and answer certified questions, and
- As matter of first impression, failure to include public lending authority in a service agreement between political subdivisions makes the agreement void, not voidable.

Supreme Court would exercise its discretion and answer certified questions from federal court as to whether the failure to include the public lending authority that finances the construction of acquisition of an improvement in a service agreement between political subdivisions makes the agreement void or voidable pursuant to state statute governing protection of service during term of a loan, where interpretation of statute was a matter of first impression, and resolution of the questions of law could have been determinative of the matter, which involved a water supply and service agreement between city and water district.

Statutory language "invalid and unenforceable," in statute providing that the failure to include the public lending authority that finances the construction or acquisition of an improvement for a service as a party to an agreement between political subdivisions for the provision of the service makes the agreement invalid and unenforceable, means void ab initio, not voidable and capable of ratification.

IMMUNITY - TEXAS

Hensley v. State Commission on Judicial Conduct

Supreme Court of Texas - June 28, 2024 - S.W.3d - 2024 WL 3210043 - 67 Tex. Sup. Ct. J. 1369

Justice of the peace brought suit against State Commission on Judicial Conduct and Commission officials, alleging that Commission's investigation and sanction of her for refusing to perform same-sex weddings was an ultra vires act which violated the Texas Religious Freedom Restoration Act (TRFRA) and the right to freedom of speech under the Texas Constitution.

The 459th District Court, Travis County, granted Commission's and officials' plea to the jurisdiction

and dismissed the case. Justice petitioned for review, which was granted, and the Austin Court of Appeals affirmed. The Supreme Court granted justice's petition for review.

The Supreme Court held that:

- Justice of the peace was not required to exhaust her administrative remedies prior to bringing a suit to recover for violations of her rights under TRFRA and the Free Speech Clause;
- Notice sent by justice of the peace to the Commission was sufficient to invoke the TRFRA and its waiver of sovereign immunity;
- Statute providing that Commission was immune from liability did not create immunity from suit;
- Waivers of sovereign immunity found in the Uniform Declaratory Judgment Act (UDJA) and Texas Administrative Procedures Act (APA) did not apply to justice's request for declaratory relief; and
- Justice's allegation that Commission violated the TRFRA was sufficient to state a claim that the Commission engaged in an ultra vires act.

ZONING & PLANNING - VIRGINIA

Board of Supervisors of Fairfax County v. Leach-Lewis , Trustee of Rita M. Leach-Lewis Trust 18MAR13

Supreme Court of Virginia - June 20, 2024 - 902 S.E.2d 57

Trustee for trust homeowner church organization filed petition for a writ of certiorari challenging the decision of the Board of Zoning Appeals which concluded that home in residential conservation district was being used as an "office" in violation of a zoning ordinance.

The Fairfax Circuit Court upheld the decision. Trustee appealed, and the Court of Appeals reversed with instructions to remand. The Supreme Court granted the county board of supervisors an appeal.

The Supreme Court held that:

- Zoning ordinance did not provide that a zoning case cannot proceed if evidence is unconstitutionally seized or contain an rule calling for exclusion of evidence;
- Exclusionary rule did not apply;
- Statute did not require court to consider zoning ordinance when considering whether house was illegally being used as an office; and
- Church's use of houses it owned fell within the definition of "office."

IMMUNITY - VIRGINIA

Page v. Portsmouth Redevelopment and Housing Authority

Supreme Court of Virginia - July 3, 2024 - S.E.2d - 2024 WL 3281159

Building owner brought negligence action against adjacent building owner, which was city redevelopment and housing authority, alleging owner's building was damaged when adjacent owner demolished its building after city declared it to be unlawful nuisance.

The Portsmouth Circuit Court granted adjacent owner's plea in bar raising defense of tort immunity, and denied owner's motion to reconsider. Owner appealed. The Court of Appeals affirmed. Owner appealed.

The Supreme Court held that:

- Owner did not violate approbate-reprobate doctrine by asserting on appeal that adjacent owner was not entitled to tort immunity, and
- Housing authority's demolition was proprietary function to which tort immunity did not apply.

City redevelopment and housing authority's demolition of its building after city declared it to be unlawful nuisance was ministerial legal duty to perform a "proprietary function," not exercise of governmental discretion, and thus, housing authority was not entitled to immunity from adjacent building owner's negligence claim alleging its building was damaged during demolition; housing authority bought property that was unsafe for human occupancy, did nothing during ensuing five years to make it safe, allowed public to use building, and demolished building only after receiving notice from city that, if disobeyed, would have exposed housing authority to criminal prosecution and civil penalties, such that housing authority acted no differently than any other private landowner.

Building owner did not violate approbate-reprobate doctrine by asserting on appeal that adjacent building owner, which was city redevelopment and housing authority, was not entitled to immunity from owner's negligence claim alleging owner's building was damaged when adjacent owner demolished its building after city declared it to be unlawful nuisance; statement by owner's counsel before trial court that adjacent owner was acting in its proprietary role on behalf of city did not amount to concession that adjacent owner was acting on behalf of city, as statement included important qualifier of in "proprietary role," and counsel's next statement again asserted that adjacent owner was performing "a proprietary function."

SHORT TERM RENTALS - CONNECTICUT

9 Pettipaug, LLC v. Planning and Zoning Commission

Supreme Court of Connecticut - June 18, 2024 - A.3d - 349 Conn. 268 - 2024 WL 2982704

Homeowners sought review of decision of borough planning and zoning commission to approve a zoning amendment regulating short-term rentals of homes in borough that was a very small, largely seasonal community.

The Superior Court granted homeowners' motion for summary judgment after denying commission's motion to dismiss for lack of subject matter jurisdiction. Commission petitioned for certification to appeal, which was granted. The Appellate Court affirmed. Commission appealed.

The Supreme Court held that:

- Newspaper in which borough published notice of zoning changes satisfied the "substantial circulation" component of statutory notice requirement, and
- Borough's compliance with statutory notice requirement required dismissal of untimely zoning appeal.

Newspaper in which borough published notice of zoning amendment concerning short-term rentals of homes in borough was a newspaper having a substantial circulation in borough, under the "substantial circulation" component of statutory notice requirement for changes in zoning regulations, even though none of borough's 14 year-round households subscribed to newspaper and newspaper was not sold anywhere in borough, where newspaper focused on news items of general interest to borough residents, newspaper was readily available for purchase in commercial area of

town in which borough was located, content of newspaper was readily accessible online, newspaper's website allowed free access to legal notices, and borough planning and zoning commission had a long history of using newspaper for its legal notices.

Borough's compliance with statutory publication requirement for notice of zoning amendment concerning short-term rentals of homes in borough required dismissal of homeowners' zoning appeal, which was untimely because it was commenced more than 15 days from the date that notice of the decision was published, without the benefit of the statutory savings provision.

IMMUNITY - GEORGIA

Guy v. Housing Authority of City of Augusta

Court of Appeals of Georgia - July 2, 2024 - S.E.2d - 2024 WL 3268630

Tenant in low-income apartment complex owned by city housing authority, who was allegedly shot in the leg on the front porch of her apartment, 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.

The trial court granted authority's motion for summary judgment. Tenant appealed.

The Court of Appeals held that housing authority was an instrumentality of the city entitled to sovereign immunity.

City housing authority was a public corporation using public funds to perform for the city what the General Assembly had deemed to be an essential public and governmental purpose, and thus authority was an instrumentality of the city entitled to sovereign immunity, in premises-liability action brought against it by tenant who was allegedly shot on the front porch of her apartment in low-income apartment complex owned by the authority; authority was statutorily defined as a public body corporate and politic, legislation creating the authority provided that it exercised public and essential governmental functions, and General Assembly authorized authority's creation in order to address shortage of safe and sanitary dwelling accommodations that were affordable for persons of low income.

CHARTER AMENDMENTS - MAINE

Good v. Town of Bar Harbor

Supreme Judicial Court of Maine - July 2, 2024 - A.3d - 2024 WL 3262053 - 2024 ME 48

Residents brought action against town, seeking a declaratory judgment that voter-adopted modifications to the town's charter were null and void.

The Superior Court granted residents' motion for summary judgment and denied town's motion for summary judgment. Town moved to alter or amend the judgment, and the Superior Court denied the motion. Town appealed.

The Supreme Judicial Court held that:

- Charter commission's proposed changes to town's charter were modifications that could be

presented to voters in separate questions, and
- Any procedural irregularities did not have a material and substantial adverse effect on the outcome sufficient to justify invalidating the vote of charter amendments.

Charter commission's proposed changes to town's charter were modifications under the Home Rule Act that could be presented to voters in separate questions rather than revisions which required a single question; the commission's discrete proposals reflected limited changes in 19 areas within the town's current charter structure rather than a major, integrated revision of the charter in its entirety.

The appellate record did not support a finding that any procedural flaw under the Home Rule Act in the election of voters to town's charter commission materially and substantially affected the ultimate vote on the commission's recommendation for charter amendments sufficient to justify invalidating the vote; residents challenging the results of the vote did not submit a copy of the charter in effect at the relevant time to support their argument that the commission members were not properly elected.

ZONING & PLANNING - MICHIGAN

Jostock v. Mayfield Township

Supreme Court of Michigan - July 1, 2024 - N.W.3d - 2024 WL 3261121

Objector brought declaratory judgment action against township board and property owner, alleging board's decision to rezone property to general commercial district, and to allow use of property for drag racing, was unlawful.

The Circuit Court entered declaratory judgment in favor of objector. Property owner appealed. The Court of Appeals affirmed. Leave to appeal was granted.

The Supreme Court held that for a proposed use to be valid under provision of Michigan Zoning Enabling Act (MZEA) allowing conditional rezoning in which an owner of land voluntarily offers certain use and development of the land as a condition to a rezoning of the land or an amendment to a zoning map, the proposed use must be a permitted use within the proposed zoning district, either by right or after special approval.

EMINENT DOMAIN - MISSISSIPPI

Fly v. Yalobusha County, Miss.

United States District Court, N.D. Mississippi, Western Division - June 11, 2009 - Not Reported in F.Supp.2d - 2009 WL 1658096

A county's alleged taking of road by including it in an official road plan was for a public use and, thus, did not constitute an illegal taking for private use. The road was open to all members of the community and it provided access to the property of at least three other property owners. The road was also used for the connection of utilities to multiple residences.

EMINENT DOMAIN - VIRGINIA

School Board of Stafford County v. Sumner Falls Run, LLC

Supreme Court of Virginia - July 3, 2024 - S.E.2d - 2024 WL 3281914

Owner of property near sites where county planned to build schools filed petition against county school board and Virginia Department of Transportation (VDOT) seeking declarations that school board could access site through private easement or county-owned road, that property owner had vested right to maintain existing intersection, that existing entrance of intersecting roads was exempt from VDOT's Access Management regulations, and that any taking of property beyond extending current easement would violate doctrine of necessity and Virginia Takings Clause.

The Stafford Circuit Court denied respondents' plea of sovereign immunity. Respondents filed interlocutory appeal.

The Supreme Court held that:

- Declaratory Judgment Act, by itself, is not an across-the-board waiver of sovereign immunity, and
- Property owner's claim for declaratory judgment that any taking of property beyond extension of easement would violate Takings Clause was not ripe for adjudication.

Property owner's claim against county school board, which was building schools nearby such property, for declaratory judgment that any taking of property beyond extension of existing easement would violate Virginia Takings Clause was not ripe for adjudication, where no taking had yet occurred, property owner did not allege that Commonwealth of Virginia or school board was on the cusp of damaging its property within the intendment of Takings Clause, and property owner did not dispute that any such taking would be for public purpose, as necessary to comport with Takings Clause.

MUNICIPAL ORDINANCE - WASHINGTON

Potter v. City of Lacey

Supreme Court of Washington, En Banc - July 3, 2024 - P.3d - 2024 WL 3282452

Owner of travel trailer, a vehicle-sheltered individual who was allegedly issued citation and threatened with impoundment of trailer, filed § 1983 suit against city and police chief, challenging constitutionality of municipal parking ordinance barring parking such large vehicles and trailers on public lots and streets for more than four hours per day as violating his federal and state constitutional rights of freedom of travel and association, freedom from cruel and unusual punishment, and freedom from unreasonable searches and seizures.

After removal, the United States District Court for the Western District of Washington granted city's motion for summary judgment as to claims against city and police chief. Owner appealed. The United States Court of Appeals for the Ninth Circuit certified questions.

The Supreme Court held that parking ordinance of general applicability did not violate right to interstate travel as applied to owner, who sought to protect preferred method of residing in city.

City's ordinance barring parking of recreational vehicles, trailers, campers, and similar vehicles on public lots and streets for more than four hours per day did not violate state constitutional right to intrastate travel as-applied to owner of travel trailer, who was vehicle-sheltered individual who asserted that he had right not to intrastate travel, that is, right to reside in 23-foot trailer hitched to his truck on public streets and lots for indefinite period of time; city had right to enact health and

safety law of general applicability, even if it limited owner's preferred method of residing in city.

PUBLIC EMPLOYMENT - CALIFORNIA

Los Angeles County Employees Retirement Association v. County of Los Angeles

Court of Appeal, Second District, Division 7, California - June 24, 2024 - Cal.Rptr.3d - 2024 WL 3100166

County employee retirement association brought action against county, seeking declaratory relief and a writ of mandate requiring county board of supervisors to include the employment classifications and salaries for association employees in the county's employment classifications and salary ordinance.

The Superior Court denied association's request for declaratory relief and its petition for a writ of mandate.

Association appealed.

The Court of Appeal held that:

- County employee retirement board had the authority to hire the personnel it deemed necessary to fulfill the board's fiduciary responsibility for administration of the system, including the number and type of personnel and their compensation;
- Constitutional provision giving county employee retirement board plenary authority over the county retirement system did not conflict with county's home rule authority; and
- County board of supervisors had a mandatory statutory duty to include in county classifications and salary ordinance the employment classes and compensation adopted by retirement association board for their employees.

County employee retirement board had the authority to hire the personnel the board deemed necessary or appropriate to fulfill the board's fiduciary responsibility for investment of moneys and administration of the system; that authority included determining the number and type of personnel required to do the job, as well as their compensation, and could not be overruled by the county board of supervisors.

Constitutional provision giving county employee retirement board plenary authority and fiduciary responsibility over the county retirement system did not conflict with county's home rule authority; the county employee retirement board provision was more recently enacted, more specific, and applied "notwithstanding any other provisions of law or this Constitution to the contrary," and thus county employee retirement board's authority carved out an exception to county's authority to establish classifications and fix compensation for county employees.

County board of supervisors had a mandatory statutory duty to include in county classifications and salary ordinance the employment classes and compensation adopted by the county employee retirement association board for their employees; retirement association board had the exclusive authority to appoint staff as required to accomplish the necessary work of the board, to determine job responsibilities, reporting relationships, and salaries for its employees, to create their own budgets, and to charge administrative expenses against their earnings, and the board of supervisors had no knowledge of or supervisory authority over the necessary work of the retirement board, and

no control over retirement board's budget.

Statute stating that county employee retirement board appointments "shall be county employees" does not give county board of supervisors authority to classify and establish salaries for retirement system employees; retirement system employees are made county employees by statute for the limited purpose of participating in the retirement system and receiving county fringe benefits unless other benefits are established by the retirement system board.

EMINENT DOMAIN - MICHIGAN

Bruneau v. Michigan Department of Environment

United States Court of Appeals, Sixth Circuit - June 20, 2024 - F.4th - 2024 WL 3063766

Property owners, whose properties were flooded after dam collapsed after several days of rain due to static liquefaction, brought putative class action against counties in which dam was located, alleging gross negligence under Michigan law and violations of both Fifth Amendment's Takings Clause under § 1983 and Takings Clause of Michigan's constitution.

The United States District Court for the Eastern District of Michigan granted the counties' motion for summary judgment, and property owners appealed.

The Court of Appeals held that:

- Counties did not take the properties through petitioning efforts to maintain existing water levels behind dam, and
- Counties did not cause dam to collapse, and thus property owners lacked any inverse condemnation claim against counties under the Michigan Constitution.

Under the federal constitution, counties did not take landowners' properties, which were flooded after dam collapsed after several days of rain due to static liquefaction, through petitioning efforts to maintain existing water levels behind dam; petitions merely preserved the lake depth at the same level that had existed for roughly a century, counties played no part in regulating or controlling the dam's infrastructure, and lake levels had little to do with the dam's collapse, which was caused by soil vulnerabilities in place since the dam's construction.

Counties' action in petitioning to keep water levels behind dam at their historical level did not cause dam to collapse, and thus owners of properties flooded by the collapse lacked any inverse condemnation claim against counties under the Michigan Constitution; dam collapse was caused by heavy rains and static liquefaction, neither of which were caused by the county, and the Federal Energy Regulatory Commission's independent forensic team found that lowering the lake level would not necessarily have stopped the dam's eventual failure from static liquefaction.

EDUCATION - MINNESOTA

Cajune v. Independent School District 194

United States Court of Appeals, Eighth Circuit - June 26, 2024 - F.4th - 2024 WL 3169925

Plaintiffs, including municipal taxpayers, parent of children in public school district, and unincorporated association of district residents and taxpayers, brought § 1983 action against district

and its superintendent, asserting that district violated First Amendment Free Speech Clause by rejecting “All Lives Matter” and “Blue Lives Matter” posters and shirts while permitting the display of an inclusive poster series featuring two posters with the phrase “Black Lives Matter.”

Defendants moved to dismiss amended complaint, and unnamed plaintiffs moved to proceed using pseudonyms. United States District Court for the District of Minnesota granted defendants’ motion and denied unnamed plaintiffs’ motion. Plaintiffs appealed.

The Court of Appeals held that:

- Fear of reprisal from political activists was insufficient to support allowing unnamed plaintiffs to proceed pseudonymously;
- Plaintiffs pled sufficient facts to support plausible inference that display of posters was private, not government, speech;
- District created a limited public forum, thereby opening school walls to discussion of similar topics under Free Speech Clause, when it allowed private persons to display posters with phrase “Black Lives Matter” on school walls; and
- Allegations were sufficient to state claim that district violated Free Speech Clause.

POLITICAL SUBDIVISIONS - MISSOURI

Salamun v. Camden County Clerk

Supreme Court of Missouri, en banc - June 25, 2024 - S.W.3d - 2024 WL 3161573

Owners of property management companies along with their businesses brought separate actions against respective counties, business districts, and various county officials seeking a declaration that statutes creating advisory board and mandating that area business districts transfer tax public money to advisory board, a private nonprofit entity, facially violated section of Missouri Constitution which prohibits a political subdivision from granting public money to a private entity.

Following bench trials, the Circuit Court declared statutes unconstitutional and modified statutes by striking phrase “which shall be a nonprofit entity.” Challengers filed separate appeals and briefs in the Supreme Court.

The Supreme Court held that:

- Statutes, on their faces, violated Missouri Constitution, and
- Valid statutory sections were so inseparably connected with and dependent upon void unconstitutional sections thereby precluding severance.

Members of advisory board were not publicly elected nor appointed by public authority, and thus advisory board was a private entity and could not be delegated to disburse public tax money, such that statutes, on their faces, requiring area business districts to grant lodging tax, which was public money, to advisory board, which was a private entity, violated section of Missouri Constitution prohibiting a political subdivision from granting public money to a private entity, even though composition of advisory board was prescribed by statute, and even though advisory board was tasked with spending tax revenue for public purposes.

Valid statutes creating and dissolving lake area business districts were so inseparably connected with and dependent upon void statutes creating a governing body and its ability to impose and use lodging tax, which violated section of Missouri Constitution prohibiting a political subdivision from

granting public money to a private entity, that Supreme Court could not presume the legislature would have enacted remaining statutes without void statutes, thereby precluding severance of unconstitutional statutes so that the entire statutory scheme was required to be stricken; without advisory board, there could be no lodging tax or an entity to spend lodging tax, and without the lodging tax to be used to promote tourism in the lake area business districts there was no purpose for creating the lake area business districts and no need for a method to dissolve them.

COLLECTIVE BARGAINING - TEXAS

Borgelt v. Austin Firefighters Association, IAFF Local 975

Supreme Court of Texas - June 28, 2024 - S.W.3d - 2024 WL 3210046

Taxpayers brought action against firefighters' union and city, asserting claims including that provision of collective bargaining agreement between city and union which provided a shared bank of paid leave for city firefighters to use for union activities, subject to contractual requirements and restrictions on its use, violated state constitution's Gift Clauses.

State intervened in support of taxpayers' challenge. The 419th District Court granted union's motion to dismiss and for attorney fees and sanctions under Texas Citizens Participation Act (TCPA), granted partial summary judgment to city and union, and, after bench trial, entered judgment in favor of city and union. Taxpayer and State appealed. The Austin Court of Appeals affirmed. Petition for review was granted.

The Supreme Court held that:

- Agreement as a whole provided public benefit as consideration for public funds;
- Grant of "association business leave" was supported by consideration;
- Grant of leave had predominantly public purpose;
- Any past misuses of leave did not establish agreement's text violated Gift Clause;
- City's retention of control over leave was sufficient to comport with Gift Clause; but
- Taxpayers satisfied their rebuttal burden in opposition to TCPA motion.

UBI - TEXAS

In re State

Supreme Court of Texas - June 14, 2024 - S.W.3d - 2024 WL 2983176 - 67 Tex. Sup. Ct. J. 1107

State sued county, alleging that a proposed program to provide no-strings-attached monthly cash payments to 1,928 county residents with income below 200% of the federal poverty line violated the Texas Constitution, and seeking an injunction blocking implementation of the proposed program.

The 165th District Court denied state's motion for a temporary injunction. State appealed, and the Houston Court of Appeals, Fourteenth District, denied state's request for a temporary order staying payments under the program while its appeal proceeded.

State petitioned for a writ of mandamus and filed a motion for temporary relief. The Supreme Court administratively stayed the payments pending consideration of state's motion for temporary relief.

The Supreme Court held that state was entitled to temporary injunctive relief preventing implementation of county's program pending its appeal of trial court's denial of its motion for a temporary injunction.

In original mandamus proceeding before the Supreme Court, state was entitled to temporary relief preventing implementation of county's payments to individuals under a poverty-relief program pending its appeal of trial court order denying its motion for a temporary injunction; state demonstrated the likelihood of success on the merits by raising serious doubt about the constitutionality of county's no-strings-attached program, the potential violation of the Texas Constitution's provisions prohibiting counties from granting public money to individuals without retaining public control could not be remedied or undone if payments were to commence while the underlying appeal proceeded, and the county and the public would not be harmed by a stay pending determination of the constitutionality of the county's program.

EMINENT DOMAIN - WISCONSIN

Sojenhomer LLC v. Village of Egg Harbor

Supreme Court of Wisconsin - June 19, 2024 - 2024 WI 25 - 7 N.W.3d 455

Property owner filed an action to enjoin village from acquiring the property through condemnation in order to build a sidewalk.

The Circuit Court granted village summary judgment. Property owner appealed. The Court of Appeals reversed and remanded. Village petitioned for review.

The Supreme Court held that sidewalks are not "pedestrian ways" as that term is defined in statutes that prohibit condemnation, including condemnation by villages, to acquire property to establish or extend pedestrian way.

REFERENDA - ARKANSAS

Reynolds v. Thurston

Supreme Court of Arkansas - May 30, 2024 - S.W.3d - 2024 Ark. 97 - 2024 WL 2755297

Petitioners, who had submitted two proposed measures to amend state constitution which were both rejected by state Attorney General, brought original-action complaint against Secretary of State and Board of Election Commissioners, seeking to have Supreme Court independently certify the legal sufficiency of the measures' ballot titles and popular names and order them placed on upcoming ballot and to declare unconstitutional certain statutes governing proposed measures.

Secretary and Board moved to dismiss for lack of original jurisdiction and for failure to state claim.

The Supreme Court held that:

- Supreme Court can exercise original jurisdiction over the sufficiency of petitions for referendum or initiative only after the Secretary of State has made a sufficiency determination in the first instance, and
- In a concurring opinion for a majority of the court, Kemp, C.J., further held Court lacked original jurisdiction over claims for declaratory judgment challenging constitutionality of statutes.

ANNEXATION. - UTAH

Summit County v. Town of Hideout

Supreme Court of Utah - June 13, 2024 - P.3d - 2024 WL 2967609 - 2024 UT 16

County brought declaratory judgment action against town challenging town's annexation of unincorporated area in county without an annexation petition and without county's consent, alleging violations of annexation code, Municipal Land Use, Development, and Management Act (LUDMA), and Open and Public Meetings Act (OPMA).

The Fourth District Court denied town's motion for summary judgment based on standing, granted county's summary judgment motion on a merits issue, and denied reconsideration. Town appealed.

The Supreme Court held that:

- Annexation code did not provide county with a legally protectible interest as a basis for standing;
- County Land Use, Development, and Management Act (CLUDMA) did not provide basis for standing;
- Statutes concerning a county's general enforcement authority did not provide basis for standing;
- OPMA section giving county attorneys authority to enforce OPMA did not provide basis for standing;
- LUDMA sections concerning judicial review of land-use regulations did not provide basis for standing; and
- County could not use public interest standing to overcome its lack of statutory standing.

STANDING - OKLAHOMA

Hayes v. Penkoski

Supreme Court of Oklahoma - June 11, 2024 - P.3d - 2024 WL 2933086 - 2024 OK 49

Same sex couple, who were officers of an equal rights advocacy group, brought action for a protection order pursuant to the Protection from Domestic Abuse Act against pastor who created social media posts about advocacy group and the couple's church and who protested at a pride event.

The District Court issued a permanent order of protection. Pastor appealed.

The Supreme Court held that:

- Pastor and couple lacked the requisite personal relationship for pastor's conduct to be "harassment" under Act, an
- Pastor's alleged acts of stalking under Act were not directed at any individual person.

EMINENT DOMAIN - FEDERAL

Confederated Tribes and Bands of Yakama Nation v. United States

United States Court of Federal Claims - June 3, 2024 - Fed.Cl. - 2024 WL 2821840

Confederated Tribes and Bands of the Yakama Nation and tribal corporation brought action against

the United States alleging that United States breached its trust with the Tribe and a takings claim related to damages from wildfire.

The United States moved to dismiss.

The Court of Federal Claims held that:

- Yakama Nation plausibly pled that Government had conventional trust relationship and conventional fiduciary relationship, for purposes of establishing jurisdiction under Indian Tucker Act for claim of breach of trust;
- Yakama Nation plausibly alleged claim of breach of trust against United States;
- Yakama Nation's allegation that United States' authorized government action in failing to adequately address fire hazard was sufficient to allege that wildfire was direct, natural, or probable result of United States' action, as required to establish causation for takings claim;
- Yakama Nation's allegations of United States' general forest mismanagement and reallocation of firefighting resources were insufficient to state takings claim based on inverse condemnation;
- Yakama Nation plausibly alleged that United States preempted their right to enjoy their property for an extended period of time, as required to state takings claim based on inverse condemnation;
- Continuing claims doctrine applied to statute of limitations for Yakama Nation's claims; and
- Yakama Nation waived damages for harms or violations occurring before date of settlement agreement with United States.

PUBLIC RECORDS - IOWA

Teig v. Chavez

Supreme Court of Iowa - June 7, 2024 - N.W.3d - 2024 WL 2869282

Citizen filed suit against city, seeking production of records he had requested under the Open Records Act, statutory damages, and declaratory and injunctive relief.

The District Court granted city's motion for summary judgment and denied citizen's motion for additional discovery. Citizen appealed.

The Supreme Court held that:

- Citizen was not entitled to additional discovery after city had responded to more than 30 interrogatories;
- Applications from external job candidates were exempt from disclosure, but not applications submitted by then-current employees of the city;
- Legal opinion about whether the city council could review applications in a closed session was protected by attorney-client privilege and not subject to disclosure;
- City could recover the expense of searching and retrieving documents requested by citizen;
- City did not unreasonably delay responding to citizen's requests for documents related to requests by candidates to "close the interviews," city attorney job posting, or communications from city attorney to employees regarding citizen's litigation;
- Citizen was entitled to seek relief for city's 90-day delay in responding to his request for production of legal invoices;
- Citizen was entitled to costs and attorney fees related to his request for job applications from internal candidates, but not for damages for city's failure to produce the requested records or

injunctive relief; and
- City was responsible for paying citizen's costs and reasonable attorney fees.

LIABILITY - NEW JERSEY

Padilla v. Young Il An

Supreme Court of New Jersey - June 13, 2024 - A.3d - 2024 WL 2967043

Pedestrian brought negligence action against owners of vacant commercial lot, alleging injury from tripping and falling while walking on the public sidewalk abutting lot.

The Superior Court, Law Division, granted summary judgment to owners. Pedestrian appealed. The Superior Court, Appellate Division, affirmed. Pedestrian filed petition for certification, which was granted.

The Supreme Court held that all commercial landowners, including owners of vacant commercial lots, must maintain public sidewalks abutting their property in reasonably good condition and can be held liable to pedestrians injured as result of their negligent failure to do so; overruling Abraham v. Gupta, 281 N.J. Super. 81, 656 A.2d 850.

PUBLIC UTILITIES - RHODE ISLAND

North Farm Home Owners Association, Inc. v. Bristol County Water Authority

Supreme Court of Rhode Island - June 14, 2024 - A.3d - 2024 WL 2983640

Condominium owners association brought action against county water authority, alleging breach of contract and seeking restitution damages, injunctive relief, and other damages after water authority refused to repair water pipe unless condominium reverted to an individual meter system or took title to the water systems from county.

Water authority filed motion for summary judgment on claims for injunctive relief and remedies. The Superior Court granted the motion, and condominium association filed interlocutory appeal.

The Supreme Court held that:

- No binding contract existed for the permanent conversion of condominium property from an individual meter system to a master meter system or establishing that water authority had a contractual obligation to maintain a master meter system in perpetuity;
- Water authority rules and regulations did not imply any obligation on the part of water authority and association's to agree on the type of water meter at condominium property;
- Allegation that pass-through water metering rate for condominium property was "discriminatory and unlawful" was insufficient to put water authority on notice of the type of claim that owners association was asserting; and
- Association's catch-all demand for "such other relief as may be available by law or equity" did not entitle it to any monetary or injunctive relief.

ZONING & PLANNING - WEST VIRGINIA

Fleming v. Carmichael

West Virginia Intermediate Court of Appeals - May 13, 2024 - S.E.2d - 2024 WL 2126810

Residents of town which included area designated as tourism development district (TDD) under Tourism Development District Act brought action against Secretary of Department of Commerce and Director of Department of Economic Development in their official capacities, seeking to have Act declared void and to obtain injunction prohibiting Act's enforcement based on alleged constitutional violations.

The Circuit Court granted Secretary and Director's motion to dismiss and found that Act was constitutional. Residents appealed.

The Intermediate Court of Appeals held that:

- Act was "general law," and not constitutionally void "special legislation";
- Act was rationally related to achieve proper governmental purpose, and thus, was constitutional on equal protection grounds;
- Act did not impermissibly infringe upon constitutional rights of residents to regulate and control their town; and
- Act did nothing which would contravene anyone's constitutional right to vote in municipal elections.

MUNICIPAL GOVERNANCE - ARKANSAS

City of Helena-West Helena v. Williams

Supreme Court of Arkansas - June 6, 2024 - S.W.3d - 2024 Ark. 102 - 2024 WL 2855378

City resident filed a complaint against city and mayor, seeking a declaratory judgment that the previous mayor's veto of two city ordinances was proper and could not be rescinded by subsequent mayor.

Following a bench trial, the Circuit Court entered declaratory judgment for resident, finding that the veto had been proper and the ordinances were null and void. City and mayor appealed.

The Supreme Court held that:

- Previous mayor complied with statutory requirements to effectively veto ordinances passed by city council, and
- Previous mayor was not required to present his written statement of reasons for the veto to the council at its next meeting.

Previous mayor complied with statutory requirements to effectively veto ordinances passed by city council, where mayor timely filed a written statement of his reasons for the veto by leaving a letter on the city clerk's desk on a Saturday at 11 p.m., and there was no evidence to refute mayor's testimony that he placed the letter on the clerk's desk before his term ended at midnight that day.

To effectively veto an action by the city council, mayor was not required to personally present his written statement of reasons for the veto to the council at its next meeting; by statute, the veto was effective unless over-ridden by a vote of two-thirds of the council after the written statement was laid before it.

LABOR - CALIFORNIA

People ex rel. International Association of Firefighters , Local 1319, AFL-CIO v. City of Palo Alto

Court of Appeal, Sixth District, California - June 3, 2024 - Cal.Rptr.3d - 2024 WL 2813174

City petitioned for writ of extraordinary relief annulling decision by Public Employment Relations Board (PERB) ordering city to rescind resolution referring measure to voters to alter provision of city charter requiring submission of certain labor disputes with public safety unions to binding interest arbitration.

The Court of Appeals determined that city violated provision of Meyers-Milias-Brown Act (MMBA) requiring city to consult with public safety unions in good faith prior to adopting resolution, declined to order city to rescind resolution based on separation of powers principles, and remanded with instructions. After PERB vacated its prior decision and ordered city to restore its charter to preamendment status, public safety union sought leave from Attorney General to file quo warranto action, and leave was granted.

The Superior Court determined that city violated MMBA but entered judgment declining to invalidate provision in public interest. Union appealed.

The Court of Appeal held that trial court abused its discretion in declining to invalidate new charter provision, after determining that city violated MMBA by failing to consult with public safety union prior to adopting resolution referring measure to voters.

Even if trial court had authority to issue remedy other than exclusion, after determining that city, by failing to consult with public safety union, violated meet-and-confer procedures of Meyers-Milia--Brown Act (MMBA) in adopting resolution referring measure to voters to alter provision of city charter requiring submission of certain labor disputes to binding interest arbitration, trial court abused its discretion in declining to invalidate new charter provision, in quo warranto proceeding brought by the People on behalf of public safety union; Public Employment Relations Board (PERB) had ordered return to status quo and that determination was entitled to some deference, trial court's order did not effectively restore status quo or invalidate provision, order did not provide sufficient deference to Attorney General's explanation for authorizing suit which was to promote compliance with MMBA procedures, and trial court decision rested on factors inconsistent with prior findings by PERB.

ZONING & PLANNING - CONNECTICUT

9 Pettipaug, LLC v. Planning and Zoning Commission

Supreme Court of Connecticut - June 18, 2024 - A.3d - 2024 WL 2982704

Homeowners sought review of decision of borough planning and zoning commission to approve a zoning amendment regulating short-term rentals of homes in borough that was a very small, largely seasonal community.

The Superior Court granted homeowners' motion for summary judgment after denying commission's motion to dismiss for lack of subject matter jurisdiction. Commission petitioned for certification to appeal, which was granted. The Appellate Court affirmed. Commission appealed.

The Supreme Court held that:

- Newspaper in which borough published notice of zoning changes satisfied the "substantial circulation" component of statutory notice requirement, and
- Borough's compliance with statutory notice requirement required dismissal of untimely zoning appeal.

MUNICIPAL ORDINANCE - MICHIGAN

Oakland Tactical Supply, LLC v. Howell Township, Michigan

United States Court of Appeals, Sixth Circuit - May 31, 2024 - F.4th - 2024 WL 2795571

Potential customers of shooting range, who wished to practice long-distance target shooting in their local area should an appropriate shooting range be built, brought action against township, alleging that township's zoning ordinance violated the Second Amendment and seeking damages and declaratory and injunctive relief.

The United States District Court for the Eastern District of Michigan granted township's motion for judgment on the pleadings. Potential customers appealed. The Court of Appeals vacated and remanded for reconsideration in light of intervening precedent. On remand, the District Court again granted judgment for township. Potential customers appealed.

The Court of Appeals held that:

- Ordinance did not facially violate Second Amendment as an effective ban on shooting ranges in township;
- Proposed course of conduct of engaging in commercial firearms training in a particular part of the township was not protected by plain text of Second Amendment; and
- Proposed course of conduct of engaging in long-distance firearms training within the township was not protected by plain text of Second Amendment.

POLITICAL SUBDIVISIONS - MONTANA

City of Great Falls v. Board of Commissioners of Cascade County

Supreme Court of Montana - June 4, 2024 - P.3d - 2024 WL 2828039 - 2024 MT 118

City filed petition seeking declaratory judgment that, pursuant to interlocal agreement that created consolidated city-county public health board, the consolidated board, as opposed to county board of commissioners, was the "local governing body" or "governing body" referenced in statutes providing such bodies with certain means of direct control and oversight over local health boards and that city mayor remained full voting member of consolidated board.

The District Court granted summary judgment in city's favor. County board of commissioners appealed.

The Supreme Court held that:

- City's claims were justiciable;
- Consolidated board was "governing body" referenced in statutes governing local health boards;
- City mayor or another designated commissioner was full voting member of consolidated board; and

- Intervening amendment of statute redefining term “local governing body” or “governing body” did not render appeal moot.

City’s claims, seeking declaratory judgment that, pursuant to interlocal agreement forming consolidated city-county public health board, the consolidated board, not county board of commissioners, was “governing body” referenced in amended statutes providing local governing body or governing body with certain means of direct control and oversight over local health boards and that city mayor remained full voting member of consolidated board, were justiciable, not non-justiciable political questions; statutes did not invalidate, limit, or supersede terms of interlocal agreement, and issues did not involve determinations of local government policy, but effect of governing statutory law on contractual agreement the parties made in exercise of their respective legal and policy discretion.

Pursuant to interlocal agreement forming consolidated city-county public health board, the consolidated board, not county board of commissioners, was “governing body” referenced in amended statutes providing such body with certain means of direct control and oversight over local health boards, even though interlocal agreement made no reference to a governing body; legislature had long authorized counties and cities to create consolidated boards by mutual agreement, previous statutory scheme long required coequal representation of participating city and county governing bodies, and amended statutes did not manifest any express or implied legislative intent to alter such coequal representation or preclude consolidated board from being the “governing body.”

City mayor or another designated commissioner was full voting member of consolidated city-county public health board; comprehensive statutory scheme specifically granted participating cities legal authority to participate, through consolidated city-county health boards, in the approval and enforcement of local health and safety regulations affecting entire county without regard for city and county jurisdictional limits, and such authority did not disenfranchise county residents living outside jurisdictional limits of city, as consolidated board was created upon mutual agreement of elected city and county governing bodies, and pursuant to interlocal agreement, consolidated board consisted of members coequally appointed by city and county governing bodies.

Intervening amendment of statute redefining term “local governing body” or “governing body,” as referenced in statutes governing powers and duties of local boards of public health, local health officers, and local health regulations, did not render moot appeal by county board of commissioners from declaratory judgment that pursuant to interlocal agreement that created consolidated city-county public health board, the consolidated board, as opposed to county board of commissioners, was the “local governing body” or “governing body”; amendments continued to allow participating counties and cities to delegate all local public health regulatory authority to a consolidated board as the “local governing body” or “governing body.”

IMMUNITY - NEBRASKA

Garcia v. City of Omaha

Supreme Court of Nebraska - June 7, 2024 - N.W.3d - 316 Neb. 817 - 2024 WL 2869406

Driver of garbage truck brought negligence action against city under the Political Subdivisions Tort Claims Act (PSTCA), seeking to recover for injuries that he received when his truck fell into a sinkhole on city street.

The District Court denied city’s motion for summary judgment based on sovereign immunity. City

filed an interlocutory appeal.

The Supreme Court held that:

- Order denying summary judgment based on immunity was a final appealable order, and
- Factual issues as to whether city received notice of sinkhole and reasonable time to repair precluded summary judgment.

Order denying city's motion for summary judgment based on sovereign immunity was a final appealable order, in negligence action against city under the Political Subdivisions Tort Claims Act (PSTCA) arising from a garbage truck falling into a sinkhole on city street, where city asserted in its motion that it had PSTCA immunity from liability claims relating to spot or localized defects in roadways, and trial court denied the motion.

Genuine issues of material fact existed as to whether city had actual or constructive notice of sinkhole in city street and a reasonable time to repair it at the time that garbage truck fell into sinkhole, thus precluding summary judgment based on sovereign immunity in truck driver's negligence action against city under the Political Subdivisions Tort Claims Act (PSTCA) seeking to recover for his personal injuries.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States Court of Appeals, First Circuit - June 12, 2024 - F.4th - 2024 WL 2952154

Financial Oversight and Management Board for Puerto Rico filed adversary complaint seeking, inter alia, disallowance of proof of claim filed by parties holding certain revenue bonds that had been issued by the Puerto Rico Electric Power Authority (PREPA) before it entered reorganization proceedings under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).

Bondholders counterclaimed for declaratory judgment. Numerous entities were allowed to intervene. The United States District Court for the District of Puerto Rico granted in part and denied in part the parties' cross-motions for summary judgment and subsequently granted Board's motion to dismiss remaining counts of bondholders' counterclaim complaint. Bondholders appealed, Board and associated entities cross-appealed, and appeals were consolidated.

The Court of Appeals held that:

- Under Puerto Rico law, preamble of trust agreement under which revenue bonds were issued was not merely prefatory but, instead, was a granting clause;
- Trust agreement granted bondholders a lien on PREPA's "net revenues," not on its gross revenues;
- Bondholders' lien on PREPA's net revenues applied to future net revenues;
- Bondholders' lien was perfected with respect to net revenues that PREPA had acquired, and so lien could not be avoided by the Board using its powers as hypothetical judgment lien creditor;
- Proper amount of bondholders' allowed claim was face value of revenue bonds, that is, principal plus matured interest, or roughly $8.5 billion;
- Bondholders were nonrecourse creditors and, thus, if their collateral only satisfied part of their claim, they could not file deficiency claim for the remainder;
- PREPA was not itself a trustee with respect to all moneys received and, thus, the Title III court properly dismissed bondholders' breach-of-trust claim; but

- Bondholders properly pled a claim for an equitable accounting.

Under Puerto Rico law, preamble to trust agreement under which Puerto Rico Electric Power Authority (PREPA) issued revenue bonds was not merely a non-binding prefatory clause but, instead, was an operative lien-granting clause; although agreement began with table-setting "whereas" clauses, subsequent "Now, Therefore" clause stated that, in order to secure payment of revenue bonds, PREPA "[did] hereby pledge" to trustee the revenues of its system and other specified moneys, that language reflected a promise, not merely an aspiration or a description of background facts, and evinced an intent to create a security interest, and Commonwealth's Authority Act, which authorized PREPA to grant liens in its revenues, used same phrasing as preamble and thus expressly contemplated that "pledge" to "secure payment" of bond could create security interest.

Under Puerto Rico law, trust agreement under which Puerto Rico Electric Power Authority (PREPA) issued revenue bonds granted bondholders a lien on PREPA's net revenues, not on its gross revenues; although agreement did not define "revenues of the System" at issue, its "opinion of counsel" clause, which parties drafted to direct future counsel on how to describe collateral securing revenue bonds in connection with issuance and delivery of any such bonds, stated that agreement "create[d] a legally valid and effective pledge of the Net Revenues" and of "moneys, securities, and funds held or set aside" under agreement as security for bonds, nowhere did agreement state that bondholders' lien was secured by all of PREPA's revenues, and so agreement, read as a whole, clearly provided that "revenues of the System" meant "Net Revenues," that is, gross revenues minus current expenses.

Under Puerto Rico law, trust agreement under which Puerto Rico Electric Power Authority (PREPA) issued revenue bonds granted bondholders a lien on PREPA's net revenues, even if they were not placed in specified funds created by agreement; agreement's preamble stated in relevant part that PREPA pledged to trustee "the revenues of the System . . . and other moneys to the extent provided in [the] Agreement . . . as follows," and although more specific grants within agreement expressly provided for liens in certain "sinking" and "subordinate" funds, agreement's "opinion of counsel" clause drew clear grammatical distinction between PREPA's pledge of "Net Revenues" and its pledge of "moneys, securities, and funds held or set aside" under agreement, such that preamble's modifying phrase "to the extent provided" applied only to "other moneys," not to "revenues of the System," and agreement's pledge of net revenues was not limited to those deposited in sinking and subordinate funds.

Under Puerto Rico law, trust agreement under which Puerto Rico Electric Power Authority (PREPA) issued revenue bonds, which granted bondholders a lien on PREPA's net revenues, also granted a lien on the utility's future net revenues; Commonwealth law permitted bondholders to hold a security interest in yet-to-be-acquired net revenues, and the Bankruptcy Code, as incorporated by the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which governed PREPA's Title III restructuring proceeding, made clear that a lien on "special revenues" like those at issue in the case continued to attach to revenues acquired postpetition.

Under Puerto Rico law, even though floating lien in future net revenues granted to bondholders by trust agreement under which Puerto Rico Electric Power Authority (PREPA) issued revenue bonds did not permit bondholders to demand present payment of net revenues that PREPA would receive in five years, that did not mean that PREPA could not convey an initial overarching interest in any net revenues that would come through the door in five years.

Under Puerto Rico law, lien held by parties holding certain revenue bonds issued by Puerto Rico Electric Power Authority (PREPA) before it entered reorganization proceedings under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) was perfected with

respect to net revenues that PREPA had acquired by providing electricity, and so lien could not be avoided by Financial Oversight and Management Board for Puerto Rico using its powers as hypothetical judgment lien creditor; bondholders' security interest was in an "account," that is, a right to payment of a monetary obligation for energy provided or to be provided, not in "money" or "deposit accounts," bondholders had filed a timely financing statement as required to perfect their interest, and there was no contention that financing statement insufficiently described bondholders' collateral or suffered from any other flaw that would have rendered the net revenue lien unperfected.

Under any plausible conception of Puerto Rico law, lien held by parties holding certain revenue bonds issued by Puerto Rico Electric Power Authority (PREPA) before it entered reorganization proceedings under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), with respect to PREPA's future net revenues, was not avoidable by Financial Oversight and Management Board for Puerto Rico using its powers as hypothetical judgment lien creditor, whether under sweeping "stream" theory urged by bondholders, whereby their perfection of lien in net revenue "stream" meant they already held perfected interest in future-acquired net revenues, under modified "stream" theory whereby bondholders' lien would attach to future net revenues when PREPA acquired them, or under no "stream" theory at all, whereby perfection would occur as soon as PREPA acquired any future net revenues.

Upon determining, on appeal from Title III court's decision in adversary proceeding in which Financial Oversight and Management Board for Puerto Rico sought disallowance of proof of claim filed by parties holding revenue bonds issued by Puerto Rico Electric Power Authority (PREPA) before it entered reorganization proceedings under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), that bondholders' lien covered PREPA's present and future net revenues, and that lien was not avoidable with respect to net revenues already acquired, the Court of Appeals would decline to address how Title III court should account for bondholders' lien in PREPA's restructuring; there was no insight from Title III court, which, having held that no net revenue lien existed, had no occasion to discuss how to account for such lien during PREPA's restructuring, and there was no focused appellate briefing on issue from the parties.

Proper amount of allowed claim held by parties holding revenue bonds issued by Puerto Rico Electric Power Authority (PREPA) before it entered reorganization proceedings under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) was face value of bonds, that is, principal plus matured interest, or roughly $8.5 billion; bondholders had legal "right to payment" rooted in covenants outlined in governing trust agreement, to which Commonwealth's Authority Act applied, trust agreement clearly required PREPA to pay bonds in full and expressly permitted bondholders to proceed at law to challenge any breach of agreement's covenants, there was thus no need to estimate their "right to payment" under section of Bankruptcy Code governing allowance of claims or interests, and because bondholders' legal right to payment arose from debt instrument, proper amount of claim was full face amount of instrument.

Parties holding revenue bonds issued by Puerto Rico Electric Power Authority (PREPA) before it entered reorganization proceedings under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) were nonrecourse creditors and, thus, if their collateral only satisfied part of their claim, they could not file deficiency claim for the remainder; governing trust agreement expressly stated that revenue bonds were not general obligations of the Commonwealth of Puerto Rico, bondholders' secured claim was thus payable "solely" from special revenues, such that section of the Bankruptcy Code governing limitation on recourse against Chapter 9 debtors applied and bondholders' recourse was limited to their collateral, and nothing in the trust agreement said otherwise.

Under Puerto Rico law, Puerto Rico Electric Power Authority (PREPA) was not a trustee with respect to revenues and other moneys received, for purposes of breach-of-trust claim asserted by parties holding revenue bonds issued by PREPA before it entered reorganization proceedings under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA); governing trust agreement clearly identified a third-party financial institution and its successors, not PREPA, as trustee, particular section of agreement was properly read as requiring PREPA to deposit moneys with "depositories," which then held the moneys in trust and applied them in accordance with agreement, and did not make PREPA itself a trustee, and Commonwealth's Authority Act required PREPA to account "as if" it were the trustee of an express trust, which language would have been unnecessary if PREPA were already a trustee with respect to all moneys received.

Parties holding revenue bonds issued by Puerto Rico Electric Power Authority (PREPA) before it entered reorganization proceedings under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) properly pled claim for equitable "accounting" against PREPA under Puerto Rico law; bondholders alleged that PREPA wrongfully diverted net revenues from debt service by spending them on unreasonable current expenses, thereby starving certain funds created by governing trust agreement of cash and slowing debt payments to bondholders, Commonwealth's Authority Act required PREPA to "account as if [it] were the trustee of an express trust," and parties' agreement did not limit that authority.

MUNICIPAL CORPORATIONS - VIRGINIA

City of Emporia v. County of Greensville

Court of Appeals of Virginia, Richmond - June 11, 2024 - S.E.2d - 2024 WL 2925292

County brought action against city, seeking a declaratory judgment that the city was required to pay its share of the county sheriff's entire budget.

The Greensville Circuit Court denied city's motion craving oyer, granted the county's motion for partial summary judgment, and ordered city to pay $676,924.94 to the county. City appealed.

The Court of Appeals held that:

- City was statutorily required to pay its proportional share of the salary of the county sheriff but was not required to pay a proportionate share of the county sheriff's entire budget, and
- City's motion craving oyer was properly denied as seeking attachment of documents not essential to the county's claim.

Following its transition from a town to a city, city was statutorily required to pay its proportional share of the salary of the county sheriff, as well as its share of jointly used county buildings, but was not required to pay a proportionate share of the county sheriff's entire budget; statute providing for apportioning county costs and expenses required the costs and expenses of the circuit court to be apportioned, but only required apportionment of the salaries of county constitutional officers such as the sheriff, and statute itemized circuit court costs and expenses to be apportioned but did not mention costs or expenses of sheriff's office.

City's motion craving oyer, seeking to attach mutual aid document and other agreements between city and county in action by county for payment of city's proportional share of sheriff's expenses, was properly denied; the documents were not essential to county's claim which was based solely on

statutory interpretation and not for breach or enforcement of the parties' agreements, and the court was not asked to interpret or rule on any of the documents at issue in the motion craving oyer.

INVERSE CONDEMNATION - CALIFORNIA

Simple Avo Paradise Ranch, LLC v. Southern California Edison Company

Court of Appeal, Second District, Division 7, California - May 23, 2024 - Cal.Rptr.3d - 2024 WL 2347470

Avocado farm brought action, by filing a short-form complaint that adopted and incorporated a master complaint that other plaintiffs had previously filed in related, consolidated proceedings, against privately owned public utility and its parent company, alleging claim for inverse condemnation and seeking damages arising from a major fire allegedly caused by utility's unsafe electrical infrastructure.

Avocado farm and defendants settled, and a stipulated final judgment was entered by the Superior Court, under which farm was awarded $1.75 million in damages on its inverse-condemnation claim, but which stated that the judgment was without prejudice to utility's right to appeal both the judgment and a prior order, entered before farm filed its complaint, of the Superior Court denying utility's demurrer to the master complaint. Utility appealed.

The Court of Appeal held that:

- Appeal was not rendered moot by fact that judgment's award of $1.75 million was contingent on appeal's outcome;
- Stipulated judgment was appealable, despite appellate court's serious reservations about whether it should be;
- Farm's complaint sufficiently alleged that utility was a public entity, as required to state an inverse-condemnation claim;
- Farm's complaint sufficiently alleged that its damages were substantially caused by utility, as required to state an inverse-condemnation claim;
- Farm's complaint sufficiently alleged that its damages resulted from an inherent risk associated with utility's infrastructure, as required to state an inverse-condemnation claim; and
- Farm's complaint sufficiently alleged that utility's infrastructure was for the public use, as required to state an inverse-condemnation claim.

Appeal by privately owned public utility of stipulated judgment against it awarding, contingent on appeal's outcome, $1.75 million in damages to avocado farm on farm's inverse-condemnation claim against utility for damages from fire allegedly caused by utility's unsafe electrical infrastructure was not rendered moot by the potential that, if utility did not prevail on appeal, utility would have to pay the stipulated damages to farm, but appellate court discouraged what amounted to a side bet on the outcome of an appeal.

Stipulated judgment against privately owned public utility awarding, contingent on appeal's outcome, $1.75 million in damages to avocado farm on farm's inverse-condemnation claim against utility for damages from fire allegedly caused by utility's unsafe electrical infrastructure was appealable, despite general rule that a stipulated judgment is not appealable and despite appellate court's serious reservations about applying the exception to that rule for a stipulated judgment agreed on merely to facilitate an appeal following an adverse determination of a critical issue, where the trial court had previously denied public utility's demurrer to similar claims in related

consolidated cases, and the parties clearly intended to seek appellate review.

Allegations in avocado farm's complaint against privately owned public utility for inverse condemnation arising from damages to farm from fire allegedly caused by utility's unsafe electrical infrastructure were sufficient to allege that utility was a public entity, as required for farm to state an inverse-condemnation claim against it, where farm alleged that the utility enjoyed a state-protected monopoly or quasi-monopoly derived from its exclusive franchise provided by California, that its monopoly was guaranteed by the California Public Utilities Commission (CPUC), and that amounts the utility might have to pay in inverse condemnation could, under CPUC regulations, be included in rates and spread among ratepayers.

Allegations in avocado farm's complaint against privately owned public utility for inverse condemnation arising from damages to farm from fire allegedly caused by utility's unsafe electrical infrastructure were sufficient to allege that farm's damages were substantially caused by utility, as required for farm to state an inverse-condemnation claim against utility, where farm alleged that utility knew that its infrastructure was old and was improperly maintained for safety, but it failed to properly assess and remediate known risks of fire, including by failing to power down its infrastructure, despite warnings of high winds and hazardous conditions, before a major fire allegedly caused by electrical arcs in utility's distribution system.

Allegations in avocado farm's complaint against privately owned public utility for inverse condemnation arising from damages to farm from fire allegedly caused by utility's unsafe electrical infrastructure were sufficient to allege that farm's damages resulted from an inherent risk associated with the infrastructure, as required for farm to state an inverse-condemnation claim against utility, where farm alleged that utility deliberately chose to forgo regular monitoring and repair of its aging infrastructure, it did not meet its own target metrics for inspecting, assessing, and remediating electrical poles that did not meet modern safety standards, and it instead modified its monitoring software to recalculate safety factors and reduce the number of poles requiring remediation.

Allegations in avocado farm's complaint against privately owned public utility for inverse condemnation arising from damages to farm from fire allegedly caused by utility's unsafe electrical infrastructure were sufficient to allege that utility's infrastructure was for the public use, as required for farm to state an inverse-condemnation claim against utility, where farm alleged that the power lines that ignited the fire were part of an electrical distribution system that served thousands of acres in Central, Coastal, and Southern California.

JURISDICTION - CALIFORNIA

Eagle Fire and Water Restoration, Inc. v. City of Dinuba

Court of Appeal, Fifth District, California - May 30, 2024 - Cal.Rptr.3d - 2024 WL 2762495

Construction company brought action against city and city engineer, alleging breach of construction contract, negligence, and negligent misrepresentation in connection with construction project to reroof city's police station and courthouse building.

City filed cross-complaint alleging company did not perform the job in a workmanlike manner, failed

to adequately cover roof with protective sheeting, failed to ensure roof drains were not clogged, and failed to procure proper insurance coverage.

Engineer also filed a cross-complaint against company, alleging breach of contract and indemnity.

The Superior Court granted engineer's motion for summary judgment on claims against engineer, granted city's motion to enforce parties' oral settlement agreement, and filed a judgment dismissing complaint and cross-complaint with prejudice. Company appealed, engineer voluntarily dismissed his cross-complaint against company without prejudice, and city moved to dismiss appeal as frivolous.

The Court of Appeal held that:

- Trial court had authority to enter judgment, and was therefore not required to expressly retain jurisdiction to enforce agreement;
- Company's appearance as a cross-defendant gave the court personal jurisdiction over company to enforce settlement agreement which was made while court maintained jurisdiction over the matter and the parties;
- Trial court had subject matter jurisdiction to enter judgment enforcing terms of settlement agreement;
- Personal jurisdiction over city engineer was not necessary for trial court to have authority to enforce company's covenant in settlement agreement with city to dismiss its appeal against engineer;
- Company was estopped from arguing that reporter's transcript of settlement proceedings omitted things said at pre-trial hearing;
- Statements made by city's lawyer on the record constituted substantial evidence supporting trial court's implied finding of materiality with respect to broad settlement term that agreement barred all claims that arose out of incident that formed the basis of complaint and cross-complaint; and
- Substantial evidence supported reasonable inference that trial judge resolved ambiguity, if any, in reporter's transcript of cross-talk.

EMINENT DOMAIN - FEDERAL

Collective Edge, LLC Ferg's Sports Bar & Grill, Inc.

United States Court of Federal Claims - May 16, 2024 - Fed.Cl. - 2024 WL 2227724

Landowners adjacent to and underlying railroad easement brought separate inverse condemnation actions against the United States after Surface Transportation Board (STB) issued notice of interim trail use or abandonment (NITU) that resulted in railbanking and an easement for interim trail use, and the cases were consolidated.

After the government conceded liability, landowners sought damages for the diminished value of their land attributable to the new recreational trail use easement which trumped their prospective fee simple ownership upon the extinguishment of the historical railway easement. The United States thereafter filed a motion for reconsideration with respect to the nature and extent of the alleged Fifth Amendment taking, the parties filed cross-motions for partial summary judgment related to the size of one parcel of land vis-à-vis the railway easement, and a trial was held on damages.

The Court of Federal Claims held that:

- Execution of trail use agreement and transfer of ownership of railway easement through a duly-

recorded quitclaim deed during the pendency of NITU constituted a taking, even if STB years later decided to reopen the matter years afterward and rescind its authorization post hoc;
- Court would discount first property owner's appraisal of parcel in the "before" condition by 15%, while accepting proffered property valuation in the "after" condition;
- Court would discount second property owner's appraisal of restaurant parcel in the "before" condition by 10%, while accepting proffered property valuation in the "after" condition;
- Court would adopt second landowner's appraiser's opinion as to parking lot property's "before" and "after" value and award $1.361 million;
- Third landowners failed to establish ownership of easement area;
- Highest and best use of third landowners' property was consistent with permissible "grandfathered" uses at sites zoned industrial traditional; and
- Court would value third landowners' property by taking the Government's appraisal, multiplying it by 300% to arrive at the "before" figure, and then using the Government's concession as to the value of the remainder property.

PUBLIC UTILITIES - INDIANA

Duke Energy Indiana, LLC v. City of Noblesville

Supreme Court of Indiana - May 30, 2024 - N.E.3d - 2024 WL 2761911

City brought action against electric utility, seeking declaratory and injunctive relief to enforce its ordinance requiring a demolition permit and either an improvement-location or building permit associated with utility's plan to build facility in city.

The Superior Court found for city, ordered utility to comply with ordinances and obtain permits, fined utility $150,000 for starting demolition without permits, and awarded city $115.679.10 in attorney fees, expert fees, and costs.

Utility appealed. The Court of Appeals affirmed and remanded for determination of whether to award appellate attorney fees. Transfer was granted.

The Supreme Court held that:

- Trial court had discretion to give Utility Regulatory Commission primary jurisdiction over city's claim against electric utility;
- Commission had primary jurisdiction to decide utility's counterclaim; and
- Trial court could not rule on city's claim on remand.

Trial court had discretion to give Utility Regulatory Commission primary jurisdiction over city's claim against electric utility, which sought declaratory and injunctive relief to enforce its ordinance requiring demolition and building permits for utility to build facility in city, or to retain jurisdiction over city's action, as either the trial court or the Commission could decide a claim seeking to enforce an ordinance against a public utility.

Resolution of electric utility's counterclaim against city, challenging city's authority to enforce ordinance requiring demolition and building permits before utility could build facility in city, required a determination that was placed within the special competence of the Utility Regulatory Commission by the utility code, which gave Commission expansive authority to decide whether a local ordinance improperly impeded a public utility's service, and thus Commission had primary jurisdiction to decide counterclaim; utility's garage and office projects were necessary to maintaining its transmission lines, which in turn were critical to providing reliable utility service to

customers, and demolition of existing structure was an essential precursor to construction of new substation.

Trial court could not rule on city's request to enforce its ordinance requiring demolition and building permits before electric utility could proceed with building facility in city, on remand of city's action against utility seeking declaratory and injunctive relief to enforce its ordinance, as Utility Regulatory Commission had primary jurisdiction over utility's counterclaim challenging city's authority to enforce its ordinance against utility, which would dictate whether to grant city's request to enforce its ordinance.

IMMUNITY - MISSISSIPPI

Yazoo City v. Hampton

Supreme Court of Mississippi - May 30, 2024 - So.3d - 2024 WL 2760711

Following destruction of two properties by fire, the properties' respective owners brought action against city, alleging that fire department negligently failed to provide the knowledge and equipment to fight fires, to properly train and supervise firefighters, and to adequately maintain its fire hydrant system, and asserting claims for property damage, with one owner also asserting a personal injury claim seeking to recover for cardiac event and stroke allegedly caused by stress from the property damage.

Raising the Mississippi Tort Claims Act (MTCA) as a defense, city filed motion for summary judgment. The Circuit Court denied city's motion. City appealed.

The Supreme Court held that:

- City was immune under the MTCA from liability for property damage, and
- City was immune under the MTCA from liability on personal injury claim.

Absent any allegation that city fire department's actions were in reckless disregard of the safety and wellbeing of any person, city was immune under the Mississippi Tort Claims Act (MTCA) from liability for property damage allegedly caused by fire department's failure to effectively fight fire, in negligence action brought by property owners, based on lack of tank water in firetruck and delay in connecting to a fire hydrant; although property owners alleged that city showed reckless disregard by failing to provide the requisite knowledge and equipment to fight fires, property damage claims focused solely on criticizing how fire was fought, and thus claims arose directly from acts or omissions of municipal employees engaged in the performance of their duties relating to fire protection.

City fire department's ineffective fighting of fire, resulting in destruction of property, did not come within the exception to immunity under the Mississippi Tort Claims Act (MTCA) for actions in disregard of the safety and wellbeing of a person, and thus city was immune under the MTCA from liability on property owner's personal injury claim, seeking to recover for cardiac event and stroke allegedly resulting from the stress caused by destruction of his property in fire, notwithstanding that property owner argued that the fire department acted in reckless disregard of his property, and linked such disregard to his injury.

POLITICAL SUBDIVISIONS - NEW JERSEY

In re Protest of Contract for Retail Pharmacy Design

Supreme Court of New Jersey - May 23, 2024 - A.3d - 2024 WL 2335151

Disappointed bidder on University Hospital's request for proposals (RFP) regarding contract to design, construct, and operate pharmacy filed notices of appeal with the Superior Court, Appellate Division, after Hospital's hearing officer denied disappointed bidder's post-award bid protest and its protest of Hospital's post-award change in location of proposed pharmacy.

Successful bidder's motion to intervene was granted.

The Superior Court, Appellate Division, dismissed appeals, holding that University Hospital was not "state administrative agency" within meaning of court rule allowing appeals to be taken as of right to Appellate Division to review decisions or actions of such agencies. Disappointed bidder's petitions for certification and motion to consolidate appeals were granted.

The Supreme Court held that University Hospital was not "state administrative agency."

University Hospital was not "state administrative agency" within meaning of court rule governing appeals from final decisions of such agencies, and thus, disappointed bidder was not entitled to file appeals from University Hospital's denial of post-award bid protests in Appellate Division, even though legislature designated Hospital "body corporate and politic" and "instrumentality of the State"; legislature did not place Hospital in an executive department or declare it to be "in but not of" such a department, as constitutionally necessary for Hospital to constitute "state administrative agency," legislature gave Hospital operational independence and unique power to offer itself for sale, and legislature did not charge Hospital with implementing or administrating healthcare policies.

BALLOT INITIATIVES - TEXAS

In re Rogers

Supreme Court of Texas - May 24, 2024 - S.W.3d - 2024 WL 2490520

Relators, who were signatories of petition to have local board of an emergency services district place on the ballot a proposition to alter sales tax rates within the district, sought in district court a writ of mandamus compelling the board to determine whether the petition contained the statutorily required number of signatures or, alternatively, ordering the board to call an election on the petition.

During discovery, relators filed a petition for writ of mandamus in the Austin Court of Appeals, which denied relief without substantive opinion. Thereafter, relators filed their mandamus petition in the Supreme Court and then nonsuited their claims in the district court.

The Supreme Court held that:

- The Court had jurisdiction to grant mandamus relief against board;
- As long as the petition had the statutorily required number of signatures, the board had a ministerial, nondiscretionary duty to call an election; and
- Mandamus relief was an appropriate remedy.

The Supreme Court had jurisdiction to grant mandamus relief against the local board of an emergency services district in dispute in which relators, who were signatories of petition to have the board place on the ballot a proposition to alter sales tax rates within the district, were seeking a writ of mandamus compelling the board to determine whether the petition contained the statutorily required number of signatures or, alternatively, ordering the board to call an election on the petition; the Election Code waived any claim to immunity from mandamus relief by authorizing the Supreme Court, or a court of appeals, to compel the performance of a duty in connection with an election, and relators sought to compel performance of such a duty that the Health and Safety Code expressly assigned to the board of an emergency services district.

As a political subdivision of the State, an emergency services district is entitled to governmental immunity, which operates like sovereign immunity, and the district's board, as the governing entity, also retains immunity.

As long as petition had the statutorily required number of signatures, local board of an emergency services district had a ministerial, nondiscretionary duty to call an election on petition's proposition to alter sales tax rates within the district, despite argument that petition was legally defective as to the amount of the proposed change in the tax rate and as to the petition's alleged failure to match the mandatory ballot language to be used in an election to abolish the tax, which the proposition would arguably do in part; there was a strong preference in favor of holding elections on qualified ballot measures even where there was some question about whether the measure, if passed, would be subject to valid legal challenge, and board lacked discretion to conduct its own unauthorized legal analysis to keep an otherwise qualified petition off the ballot entirely.

Mandamus relief was an appropriate remedy for refusal of local board of an emergency services district to perform its ministerial, nondiscretionary duty to call an election on petition's proposition to alter sales tax rates within the district; the only factual question that could possibly be in dispute was the validity of the signatures, but the board had never challenged the qualifications or validity of any of the signatures, and the Election Code authorized appellate courts to grant mandamus relief to compel the performance of an election-related duty.

MUNICIPAL ORDINANCE - ALASKA

Alaska Trappers Association, Inc. v. City of Valdez

Supreme Court of Alaska - May 10, 2024 - P.3d - 2024 WL 2098108

State and national fur trappers associations brought action challenging city ordinance that limited trapping in certain areas, alleging that ordinance was invalid and unconstitutional, and preempted by state law.

The District Court granted summary judgment to city and denied associations' motion for summary judgment. Associations appealed.

The Supreme Court held that:

- Ordinance did not implicate area of pervasive state authority, and
- Ordinance was not impliedly prohibited by state law.

Municipal ordinance limiting trapping within certain areas in city limits did not implicate area of pervasive state authority so as to be impliedly prohibited by state law; while state's Constitution, statutes and regulations provided state with authority to regulate natural resources, ordinance was

explicitly enacted pursuant to two powers granted to home rule municipalities, public safety and land use, not to exercise control over natural resource management.

Municipal ordinance of home rule city limiting trapping in certain city areas for public safety purposes was not substantially irreconcilable with state's authority to adopt hunting and trapping regulations for purposes of conservation and development and was thus not impliedly prohibited by state law; ordinance did not directly manage taking of furbearers, create open and closed seasons, limit number, size, or sex of animals taken, and though it may have had incidental effect on number of furbearers taken, it did not have substantial effect on either the wildlife resource itself or Alaskans' use of that resource that was tantamount to wildlife resource regulation.

EMINENT DOMAIN - ARKANSAS

Watkins v. Lawrence County, Arkansas

United States Court of Appeals, Eighth Circuit - May 28, 2024 - F.4th - 2024 WL 2716422

Landowners brought action for damages and injunctive relief against county and county officials, alleging that the culvert bridge the county built over a slough to replace a wooden bridge acted as a dam and caused their farms to flood, resulting in an unlawful taking of their properties without providing just compensation, in violation of the United States Constitution and the Arkansas Constitution.

After the jury returned verdict for landowners, which awarded them less than they had requested, the United States District Court for the Eastern District of Arkansas denied the defendants' renewed motion for judgment as a matter of law and denied landowners' request for permanent injunctive relief ordering the county to remove the culvert bridge. The parties appealed.

The Court of Appeals held that:

- Whether fair and reasonable approximation of damages could be made, based on evidence of average daily rental value of landowners' farms and number of days they were flooded, was issue for jury;
- Issue of whether flooding that occurred on landowners' farms after a crop was gathered and sold could play into amount of damages was for the jury;
- Issue of whether $20,000 in repairs landowner made to his property were caused by additional flooding caused by the culvert bridge was for the jury;
- Evidence was sufficient for jury to conclude that the culvert bridge caused six tracts to flood even though they were outside reach of landowners' expert's model; and
- Trial court's heavy reliance on law of standing in denying permanent injunction made it unclear whether irrelevant considerations materially affected court's equitable discretion.

SCHOOLS - CALIFORNIA

Cajon Valley Union School District v. Drager

Court of Appeal, Third District, California - April 24, 2024 - Cal.Rptr.3d - 2024 WL 2207068

Public school districts brought action seeking a writ of mandate to compel county auditor-controller to make statutorily defined pass-through payments to them after the caps in their respective pass-through agreements with former redevelopment agency were reached.

The Superior Court denied the requested relief, and districts appealed.

The Court of Appeal held that statute did not require statutory payments in light of agreements between agency and districts.

Redevelopment agency statute, which provided that an agency shall pay "either" the amount required to be paid by a pass-through agreement if an agreement exists, or statutory pass-through amounts if an agreement does not exist, did not obligate county auditor-controller to make statutorily defined pass-through payments to school district after the caps in their respective pass-through agreements with former redevelopment agency were reached, as districts had agreements with the agency.

SCHOOLS - COLORADO

Education reEnvisioned BOCES v. Colorado Springs School District 11

Supreme Court of Colorado - May 20, 2024 - P.3d - 2024 WL 2264341 - 2024 CO 29

School district cooperative brought declaratory judgment action against nonmember school district, seeking to continue to operate a contract school within school district's boundaries without school district's consent, and school district filed counterclaim and third-party claim against school's operator also seeking a declaratory judgment.

The District Court denied school district's motion for partial summary judgment and granted cooperative and operator's motion for summary judgment. School district appealed. The Court of Appeals reversed and remanded. Cooperative and operator petitioned for certiorari review, which was granted.

The Supreme Court held that:

- School district's approval of charter school application for school did not moot the appeal;
- Case involved issue of great public importance as an exception to any mootness; and
- Cooperative lacked statutory authority to locate a contract school within a nonmember school district without that district's consent.

School district's approval, during pendency of proceedings, of charter school application for school district cooperative's contract school that served students with reading challenges did not moot appeal of grant of summary judgment for cooperative and school operator on claim seeking declaratory judgment that cooperative had statutory authority to locate a contract school within a nonmember school district's boundaries without that district's permission, where a charter contract had not yet been executed, and school continued to operate as a contract school within school district's boundaries and without school district's consent.

Whether school district cooperative had statutory authority to locate a contract school like its academy for students with reading challenges within a nonmember school district's boundaries without that district's consent was a matter of great public importance, as exception to mootness doctrine, on appeal of grant of summary judgment for cooperative and academy operator on claim seeking declaratory judgment on the issue, especially since cooperative planned to continue opening more schools like academy in the future.

Statute allowing a school district cooperative to construct, purchase, or lease sites, buildings, and equipment to provide facilities necessary for operation of cooperative service program at "any

appropriate location" does not give a cooperative authority to locate a contract school within a nonmember school district's boundaries without that district's consent.

SCHOOLS - MISSISSIPPI

Midsouth Association of Independent Schools v. Parents for Public Schools

Supreme Court of Mississippi - May 2, 2024 - So.3d - 2024 WL 1923257

Nonprofit organization, whose members included parents of public school children along with teachers and other public school officials, brought action against Department of Finance challenging constitutionality of laws allowing private schools to apply for reimbursable grants for investments in water, sewer, or broadband infrastructure projects.

The Chancery Court entered judgment for organization. Department appealed.

The Supreme Court held that:

- Organization lacked associational standing, and
- Organization lacked taxpayer standing.

Nonprofit organization, whose members included parents of public school children along with teachers and other public school officials, did not face adverse impact sufficient to confer associational standing for organization to challenge constitutionality of laws allowing private schools to apply for reimbursable grants for investments in water, sewer, or broadband infrastructure projects; funding for grants came from funds given to state by federal government and thus did not take finite government educational funding away from public schools.

Nonprofit organization, whose members included parents of public school children along with teachers and other public school officials, did not have taxpayer standing to challenge constitutionality of laws allowing private schools to apply for reimbursable grants for investments in water, sewer, or broadband infrastructure projects; members of organization were simply general taxpayers challenging general government spending, and funds at issue were federal funds earmarked for specific infrastructure needs.

FINES - NORTH CAROLINA

Fearrington v. City of Greenville

Supreme Court of North Carolina - May 23, 2024 - S.E.2d - 2024 WL 2338356

Motorists who received citations through city's red light camera enforcement program (RLCEP) brought action against city and county board of education, seeking declaratory judgments that the RLCEP violated the Fines and Forfeitures Clause (FFC) of the North Carolina Constitution governing county school fund, statutes governing the lawful practice of engineering, and due process.

The Superior Court granted defendants' motions to dismiss, denied motorists' motion for summary judgment, and granted summary judgment for city on remaining claims. Motorists appealed. The Court of Appeals affirmed in part, reversed in part, and remanded with instructions. Board and city petitioned for discretionary review, which was granted.

The Supreme Court held that:

- Plaintiffs effectively sued on behalf of county board of education by disclosing their status as taxpayers;
- Plaintiffs asserted a direct injury linked to allegedly unlawful government expenditure;
- Plaintiffs effectively demanded, and board effectively declined, to vindicate any claim to a larger share of red light penalties;
- Plaintiffs exceeded compass of taxpayer standing in seeking damages;
- Act allowing city to enter into a contract with a contractor for the lease, lease-purchase, or purchase of a red light camera system did not violate statute that promised county schools at least 90% of collected funds;
- Board retained clear proceeds of fines collected through RLCEP; and
- Act aligned with core purposes of FFC.

PUBLIC UTILITIES - OHIO

State ex rel. East Ohio Gas Company v. Corrigan

Supreme Court of Ohio - May 24, 2024 - N.E.3d - 2024 WL 2457106 - 2024-Ohio-1960

Gas company brought action against judge of Court of Common Pleas seeking writ of prohibition preventing judge from exercising jurisdiction over and to vacate orders issued in underlying case, in which executor of property owner's estate sued company on claims relating to shutoff of natural-gas service to property owner's residence.

The executor intervened as respondent.

The Supreme Court held that:

- Complaint against gas company alleged claims arising from termination of service, and, thus, claims required Public Utilities Commission's expertise to resolve, for purposes of determining whether Commission or Court of Common Pleas had jurisdiction over complaint, and
- Gas company's termination of natural-gas service was practice normally authorized by a public utility, for purposes of whether Public Utilities Commission or Court of Common Pleas had jurisdiction over claims against gas company.

Complaint against gas company alleged claims arising from termination of service, and, thus, claims required Public Utilities Commission's expertise to resolve, for purposes of determining whether Commission or Court of Common Pleas had jurisdiction over complaint; complaint repeatedly pointed to shutoff of gas service to residence as basis for claims asserted against gas company, including statutory limits on when during year gas service could be shut off, counts for negligence and wrongful death faulted gas company for shutting off gas and causing property owner's death, and count for destruction of property alleged that shutoff of gas caused property damage.

Gas company's termination of natural-gas service to property owner's residence was practice normally authorized by a public utility, for purposes of whether Public Utilities Commission or Court of Common Pleas had jurisdiction over claims against gas company related to shutoff of gas service to residence; caselaw, statutory law, and regulatory law recognized gas company's authority to terminate service, and gas company's tariff permitted it to disconnect service if customer refused access to company's equipment for testing and repairs.

EMINENT DOMAIN - OREGON

Walton v. Neskowin Regional Sanitary Authority

Supreme Court of Oregon - May 23, 2024 - P.3d - 372 Or. 331 - 2024 WL 2348864

Landowners brought inverse-condemnation action against regional sanitary authority for the physical occupation of a main sewer line installed on their property.

The Circuit Court granted sanitary authority's motion for summary judgment. Landowners appealed. The Court of Appeals affirmed. Landowners petitioned for review, which was allowed.

The Supreme Court held that:

- Even if discovery rule applied, landowners' inverse condemnation claim accrued, and six-year limitations period began to run, no later than when previous landowner allegedly entered into agreement with sanitary authority, and
- Landowners' inverse condemnation claim accrued, and six-year limitations period began to run, when sewer line was installed.

Even if discovery rule applied, landowners' inverse condemnation claim under state constitutional takings clause based on regional sanitary authority's installation of a main sewer line on their property accrued, and six-year limitations period began to run, no later than when previous landowner allegedly entered into agreement with sanitary authority for free hook-up to sewer system when needed in exchange for easement.

A property owner's inverse condemnation claim under the state constitutional takings clause based on a physical occupation of the property accrues, thereby triggering the six-year statute of limitations for an action for interference with or injury to any interest of another in real property, as soon as the state or other governmental entity physically occupies the owner's property, not when the owner requests and is denied compensation.

A property owner's inverse condemnation claim under the federal constitutional takings clause based on a physical occupation of the property accrues, thereby triggering Oregon's six-year statute of limitations for an action for interference with or injury to any interest of another in real property, as soon as the government takes the owner's property without paying for it, not when the owner requests and is denied compensation.

Landowners' inverse condemnation claim under state and federal constitutions alleging main sewer line on their property constituted a taking accrued, and six-year limitations period began to run, when regional sanitary authority installed sewer line, not when sanitary authority refused to honor alleged agreement with prior landowner for free hook-up to sewer system when needed in exchange for easement.

EMINENT DOMAIN - TEXAS

Texas Department of Transportation v. Self

Supreme Court of Texas - May 17, 2024 - S.W.3d - 2024 WL 2226295

Landowners brought action against Texas Department of Transportation (TxDOT) and its contractor, alleging inverse condemnation and negligence arising from contractor's alleged removal of trees

from portion of landowners' property that was outside TxDOT right-of-way across property while contractor was in the process of removing trees from the right-of-way.

The 97th District Court denied TxDOT's plea to the jurisdiction. TxDOT appealed, and the Fort Worth Court of Appeals affirmed in part and reversed in part.

The Supreme Court held that:

- Subcontractor's workers were not in the paid service of TxDOT and therefore were not TxDOT employees;
- TxDOT employees did not operate or use motor-driven equipment that cut down trees on landowners' property; and
- Allegations and evidence established claim for inverse condemnation, even if TxDOT did not intend to cut down any trees outside of easement.

BONDS - ALABAMA

Water Works and Sewer Board of City of Prichard v. Synovus Bank

Supreme Court of Alabama - May 17, 2024 - So.3d - 2024 WL 2229194

Trustee under bond indenture of city water works and sewer board brought breach-of-contract action against board, alleging that board defaulted in several respects under the indenture and requesting, among other things, the appointment of a receiver pursuant to the indenture.

The Circuit Court entered order appointing a receiver to administer the water works and sewer system. Board appealed.

The Supreme Court held that:

- Trial court properly considered not only the provision of the indenture allowing for the appointment of a receiver, but also the factors set forth in Carter v. State ex rel. Bullock Cnty., 393 So.2d 1368, for appointing a receiver pursuant to statute;
- Board had the power under state statute to agree contractually to the appointment of a receiver under an indenture;
- Sufficient evidence supported finding that irreparable harm would have occurred to the system had a receiver not been appointed; and
- Trial court properly exercised its discretion in vesting the receiver with all powers necessary to administer and operate the system.

When deciding motion by trustee under bond indenture of city water works and sewer board to have a receiver appointed, the trial court properly considered not only the provision of the indenture allowing for the appointment of a receiver, but also the factors set forth in *Carter v. State ex rel. Bullock Cnty.*, 393 So.2d 1368, for appointing a receiver pursuant to statute; the appointment of a receiver was an extraordinary remedy, and trustee sought the appointment of a receiver under the indenture and pursuant to Alabama law.

Water works and sewer board had the power under state statute to agree contractually to the appointment of a receiver under an indenture; although board could not contractually agree to the foreclosure of a mortgage or deed of trust encumbering the system, legislature did not prohibit a public-utility corporation, such as the board, from contractually agreeing to a receivership over its system.

Sufficient evidence supported finding that irreparable harm would occur to city water works and sewer system if a receiver were not appointed, as would support trial court's granting of motion by trustee under bond indenture of city water works and sewer board to have a receiver appointed pursuant to the indenture and Alabama law due to events of default; condition of the system had developed into a crisis because of years of mismanagement and fiscal irresponsibility.

When granting motion by trustee under bond indenture of city water works and sewer board to have a receiver appointed pursuant to the indenture and Alabama law due to events of default, trial court properly exercised its discretion in vesting the receiver with all powers necessary to administer and operate the system, despite argument that receiver's powers should have been limited to the enforcement of ministerial duties of the board and trustee's should not have had control of the receiver's decisions; trial court balanced the competing interests of the parties by considering their respective equities and obligations, all for the benefit of creating a viable system to provide water and sewer services that would enable the bondholders to not lose their investments.

ZONING & PLANNING - GEORGIA

Clay v. State

Court of Appeals of Georgia - February 2, 2024 - 370 Ga.App. 482 - 897 S.E.2d 886

Residents who owned, leased, and lived on property zoned for agricultural use filed action against state, seeking declaratory judgment that development and construction of electric vehicle manufacturing facilities on state-owned property violated local and state law, and seeking injunction to halt project.

State filed counterclaim seeking declaratory relief that zoning ordinances did not apply and moved for surety bond.

Following hearing, the Superior Court granted motion for bond and ordered residents to post surety bond in amount of $364,619.55. Residents appealed.

The Court of Appeals held that:

- Trial court did not improperly shift burden of proof to residents to show why surety bond should not be granted, but
- Imposition of bond was improper where trial court failed to address whether all claims asserted by residents were meritorious.

Trial court did not improperly shift burden of proof to residents who owned, leased, and lived on property zoned for agricultural use to show why surety bond should not be granted in action filed by residents against state, seeking declaratory judgment that project to develop and construct electric vehicle manufacturing facilities on state-owned property violated local and state law and seeking injunction to halt project; court placed burden on residents to show why bond should not be granted after first determining whether state had met its burden to show it was a political subdivision, that the lawsuit qualified as a public lawsuit to justify imposition of bond, that the claims lacked merit, and that the bond was in the public interest, which was consistent with statutory requirements.

Imposition of surety bond against residents who owned, leased, and lived on property zoned for agricultural use was improper in action against state seeking declaratory judgment that project to develop and construct electric vehicle manufacturing facilities on state-owned property violated local and state law and seeking injunction to halt project, where trial court determined that state

was likely to prevail by focusing only on claims regarding zoning issues without considering merits of other arguments asserted by residents, and it appeared from the record that at least one claim had merit.

ROADS - MISSISSIPPI

Newton County v. Deerfield Estates Subdivision Property Owners Association, LLC

Supreme Court of Mississippi - May 9, 2024 - So.3d - 2024 WL 2075094

Subdivision property owners association brought action seeking a declaratory judgment that subdivision roads were county roads and injunctive relief requiring county to add roads to official maps and mandating county to allocate funds for repair of roads.

County filed motion for summary judgment, alleging that claims were barred by the doctrine of laches or by the general statute of limitations and, in the alternative, arguing substantively that the roads were private roads.

The Chancery Court granted summary judgment in part, and, following bench trial, entered judgment declaring that roads were public roads by reason of express dedication and acceptance and requiring their inclusion on county maps. County appealed.

The Supreme Court held that:

- County had accepted common law dedication of subdivision roads at public meeting, and
- As a matter of first impression, county could not invoke the doctrine of laches or the general three-year statute of limitations to bar request for a declaratory judgment that roads were public.

County had accepted common law dedication of subdivision roads at public meeting, even though the minutes did not include a statement that the public interest or convenience required acceptance of the dedication and roads only served subdivision and county failed to add the roads to the registry and the county map in a timely manner; subdivision developer had sought to dedicate the roads to the county, minutes reflected that county had unanimously voted to accept the two roads into the county road system, and entry of acceptance of the dedication was a formal act of the proper authority competent to speak and act for the public.

County could not invoke the doctrine of laches or the general three-year statute of limitations to bar subdivision property owners association's request for a declaratory judgment that subdivision roads were public roads pursuant to an accepted dedication; minutes of meeting where county accepted the dedication operated as the controlling official record, and county had not complied with statutory requirements for abandoning county roads.

REFERENDA - MISSOURI

Lucas v. Ashcroft

Supreme Court of Missouri, en banc - April 30, 2024 - S.W.3d - 2024 WL 1904608

Mayor filed election-contest petition as original action in the Supreme Court, alleging that fiscal note summary printed on ballots cast in most recent general election materially misstated fiscal note for

proposed constitutional amendment increasing minimum funding for city's police force.

State moved to dismiss, and mayor filed amended petition with proper verification. The Supreme Court overruled State's motion.

The Supreme Court held that:

- Supreme Court had original jurisdiction over post-election contest involving constitutional amendment;
- Amended petition related back to date of original, unverified petition;
- Mayor had standing to bring post-election contest in his capacity as registered Missouri voter;
- Amendment's deemed approval 30 days after election did not preclude election contest filed more than 30 days after election;
- Fiscal note summary was materially inaccurate and misleading;
- Amendment had "fiscal impact" on city; and
- Defective fiscal note summary warranted new election on proposed amendment.

Provision of Missouri Constitution stating that contested elections for "executive state officers shall be had before the supreme court," that "trial and determination of contested elections of all other public officers in the state shall be by courts of law," and that "general assembly shall designate by general law the court or judge by whom the several classes of election contests shall be tried" authorized enactment of statute granting Supreme Court original jurisdiction over all election contests not involving statewide executive-branch officers, including challenge to voter-approved constitutional amendment; "the several classes of election contests" encompassed all election contests not constitutionally committed to Supreme Court, not only those involving public officers.

Mayor's amended, properly-verified election-contest petition, which he filed in Supreme Court's original jurisdiction and by which he challenged voter-approved constitutional amendment, related back to date of his original, unverified election-contest petition, for purpose of 30-day statute of limitations for election contests; mayor's amendment added no new parties and no new claims, but rather, merely cured defect in verification.

Statute allowing "one or more registered voters from the area in which [an] election was held" to contest result of any election granted mayor standing to file election contest challenging voters' approval of proposed constitutional amendment relating to minimum funding for city police force, even if city was directing the litigation and paying for mayor's representation using both city counselor's office and private counsel; mayor was registered Missouri voter and brought action in his individual capacity as voter.

Statutes allowing a registered voter to contest "result of any election on any question" after an election has been held, requiring "all contests to the results of elections on constitutional amendments" to be heard and determined by Supreme Court, and allowing a court to order new election on contested question upon determining "there were irregularities of sufficient magnitude to cast doubt on the validity of the initial election" authorized mayor, as registered voter, to file post-election contest challenging voter-adopted constitutional amendment on basis of allegedly inaccurate and misleading ballot title language, seeking new election on basis that fiscal note summary for proposed amendment was materially misstated.

Fact that, under Missouri Constitution, voter-approved constitutional amendment relating to minimum funding of city police force became effective 30 days after election did not preclude voter from filing election contest challenging such amendment on basis of allegedly inaccurate and misleading fiscal note summary, even though mayor failed to file election contest within 30 days of

election; Constitution explicitly authorized election contests to proceed in manner prescribed by statutes, and statutes governing election contests, which precluded filing of election contest before Secretary of State announced election results, avoided absurd results by stating proposed constitutional amendment is deemed approved or disapproved in accordance with election returns until contest is decided.

The amendment to the statute providing a pre-election vehicle to challenge a ballot title so as to state that "[a]ny action brought under this section that is not fully and finally adjudicated within one hundred eighty days of filing, and more than fifty-six days prior to the election in which the measure is to appear, including all appeals, shall be extinguished" does not preclude post-election contests to ballot language; the time limits in the amended statute apply only to any action under that section, saying nothing about post-election contests which arise other under statutes.

Fiscal note summary for proposed constitutional amendment that would authorize laws to "increase minimum funding for a police force established by a state board of police commissioners," which told voters only that "[s]tate and local governmental entities estimate no additional costs or savings related to the proposal," was materially inaccurate and misleading; fiscal note, which incorporated uncontradicted information from only city whose police force would be affected, stated that amendment would increase amount that city must fund its police department by $38,743,646, representing increase from 20% to 25% of city's general revenue, but summary omitted such information.

Voter-approved constitutional amendment authorizing legislature to increase minimum funding for city's police force had "fiscal impact" on city within meaning of statute requiring state auditor to assess fiscal impacts of a ballot proposition in fiscal note and to write fiscal note summary, and thus, auditor could not exclude from fiscal note summary city's estimate of fiscal impact of amendment, and of amendment-authorized bill increasing city's funding obligation from 20% to 25% of its general revenue, on basis that city was already funding police at 25% level; legislature's proposal of amendment showed it understood funding-increase bill would impose new or additional costs, and police funding increase would limit city's budgeting discretion and decrease funding for other services.

Materially inaccurate and misleading fiscal note summary for proposed constitutional amendment authorizing increase in mandatory funding for city's police force, which failed to disclose that amendment and amendment-authorized statute would require city to increase its police funding from 20% to 25% of its general revenue and instead told voters that state and local governments "estimate no additional costs or savings related to the proposal," was irregularity casting doubt on entire election sufficient to justify setting aside voters' approval of amendment and granting new election on the matter; fiscal note summary was last thing voters saw before voting, and majority of voters surveyed would likely have rejected amendment had they known of its negative fiscal impact on city.

EMINENT DOMAIN - TEXAS

Texas Department of Transportation v. Self

Supreme Court of Texas - May 17, 2024 - S.W.3d - 2024 WL 2226295

Landowners brought action against Texas Department of Transportation (TxDOT) and its contractor, alleging inverse condemnation and negligence arising from contractor's alleged removal of trees from portion of landowners' property that was outside TxDOT right-of-way across property while

contractor was in the process of removing trees from the right-of-way.

The 97th District Court denied TxDOT's plea to the jurisdiction. TxDOT appealed, and the Fort Worth Court of Appeals affirmed in part and reversed in part.

The Supreme Court held that:

- Subcontractor's workers were not in the paid service of TxDOT and therefore were not TxDOT employees;
- TxDOT employees did not operate or use motor-driven equipment that cut down trees on landowners' property; and
- Allegations and evidence established claim for inverse condemnation, even if TxDOT did not intend to cut down any trees outside of easement.

Landowners' allegations and evidence that Texas Department of Transportation (TxDOT) intended to damage their property while clearing trees from easement were sufficient to establish claim for inverse condemnation, even if TxDOT did not intend to cut down any trees outside of easement; landowners' allegations and evidence included that a TxDOT employee expressly directed TxDOT's agents to cut down the trees at issue, which destroyed their personal property, landowners owned the land on which the trees stood, and thus the trees themselves, both within and outside TxDOT's right-of-way easement, at least 20 of the felled trees were wholly or partially outside the easement, and there was evidence TxDOT directed the trees' destruction as part of exercising its authority to maintain the highway right-of-way for public use.

IMMUNITY - TEXAS

City of Houston v. Sauls

Supreme Court of Texas - May 10, 2024 - S.W.3d - 2024 WL 2096554

Bicyclist's heirs and estate brought wrongful death action against city arising from officer's automobile accident with bicyclist while responding to a suicide call.

The 113th District Court denied summary judgment, and city filed interlocutory appeal. Houston Court of Appeals affirmed and later denied rehearing and reconsideration en banc. City filed petition for review, which was granted.

The Supreme Court held that:

- Officer was performing a "discretionary" duty when responding to the suicide call;
- City satisfied burden of making prima facie showing officer acted in good faith based on need factor;
- City satisfied burden of making prima facie showing officer acted in good faith based on risk factor; and
- Heirs and estate failed to controvert city's showing of good faith.

WHISTLE BLOWING - WASHINGTON

Hockett v. Seattle Police Department

Court of Appeals of Washington, Division 1 - May 6, 2024 - P.3d - 2024 WL 1985784

Police sergeant who was exposed to excessive levels of carbon monoxide in patrol vehicle garage sued city and police department, alleging claims for negligence, failure to accommodate in violation of the Washington Law Against Discrimination (WLAD), and whistleblower retaliation in violation of the Seattle Municipal Code.

The Superior Court entered jury's $1,325,000 judgment for sergeant, and denied defendants' post-trial motion for judgment as a matter of law and motion for reconsideration. Defendants appealed.

The Court of Appeals held that:

- Sergeant satisfied the exhaustion requirement for a retaliation claim by filing a sufficient and timely administrative whistleblower complaint, and
- Defendants failed to make timely and sufficient objections to administrative finding that sergeant's whistleblower complaint was sufficient to state a claim for retaliation.

Police sergeant satisfied the exhaustion requirement for a retaliation claim under the Seattle Municipal Code by filing a sufficient and timely administrative whistleblower complaint; sergeant's administrative complaint alleged that, after he had reported his concerns about excess levels of car exhaust in the patrol vehicle garage to his superiors, police department personnel began mocking him by calling him derogatory names and writing his name on a whistleblower pamphlet, and placing a picture in his office calling him "institutionalized," the complaint alleged ongoing harassment and thus was filed within 180 days of when sergeant reasonably should have known of the retaliation, and the city's ethics and elections commission executive director found the complaint sufficient.

City and police department failed to make timely and sufficient objections to administrative finding that sergeant's whistleblower complaint was sufficient to state a claim for retaliation; if the city or department disagreed with the determination or believed it to be unclear, they were required to plead a claim for relief from or review of the determination, but they instead waited over a year until trial was about to begin to assert the argument that sergeant had failed to exhaust his administrative options before pursuing a private cause of action in superior court.

ZONING & PLANNING - ALABAMA

City of Orange Beach v. Lamar Companies

Supreme Court of Alabama - May 17, 2024 - So.3d - 2024 WL 2229839

Under case numbers assigned in billboard company's prior appeal from board of adjustment decision and company's separate action against city, city filed a "Motion to Enforce Judgment and for Finding of Contempt," pursuant to which it sought an order directing billboard company, pursuant to consent decrees entered in those prior cases, to remove a non-confirming billboard.

The Circuit Court entered order denying city's motion. City appealed.

The Supreme Court held that:

- The denial constituted a denial of a request for injunctive relief, and thus city could appeal the denial within 14 days, and
- The city could require the billboard's removal.

Circuit court's order denying city's motion to enforce consent decrees so as to require billboard

company to remove a billboard that did not conform with city zoning ordinance constituted a denial of a request for injunctive relief, and thus city could appeal the denial within 14 days, even though billboard company's motion to enjoin city from requiring billboard's removal remained pending before the circuit court.

Pursuant to consent decrees, city could require removal of billboard that did not conform to zoning ordinance; consent decrees' terms were unequivocal that billboard had to be removed 12 years after the date the permit for it was issued, it was undisputed that billboard had been removed even though the 12-year term had expired, and although billboard company had moved to enjoin billboard's removal on the basis of allegations of selective enforcement that had occurred since the consent decrees, that motion sought to challenge city's current manner of enforcing the zoning ordinance, which meant that billboard company had to raise such claims in a new action.

TELECOM - CALIFORNIA

Assurance Wireless USA, L.P. v. Reynolds

United States Court of Appeals, Ninth Circuit - April 26, 2024 - F.4th - 2024 WL 1819657 - 2024 Daily Journal D.A.R. 3576

Telecommunications carriers filed suit challenging California Public Utilities Commission's (CPUC) new access line rule, imposing surcharges on carriers based on number of active accounts, called access lines, rather than based on revenue, thereby changing mechanism for charging telecommunications providers to fund California's universal service program expanding public access to communications services, and claiming that new rule was expressly preempted by Telecommunications Act, as inconsistent with Federal Communications Commission's (FCC) rules that preserved and advanced universal service on equitable and nondiscriminatory basis, which FCC interpreted to require competitive neutrality, and as inequitable and discriminatory contrary to Telecommunications Act, which charged carriers by revenue.

The United States District Court for the Northern District of California denied carriers' motion for preliminary injunction preventing enforcement of access line rule, and denied stay pending appeal. Carriers appealed.

The Court of Appeals held that:

- In matter of first impression, Telecommunications Act's preemption of state regulations inconsistent with FCC rules requires abrogation or abandonment of federal rule;
- Carriers were not likely to succeed on merits of claim that access line rule was preempted as inconsistent with FCC rules;
- Carriers were not likely to succeed on merits of claim that access line rule was preempted as inequitable and discriminatory contrary to Telecommunications Act; and
- Preliminary injunctive relief was precluded regardless of irreparable harm to carriers from new access line rule.

The Telecommunications Act's use of "inconsistent with," in preempting state regulations promulgated to ensure the preservation and advancement of universal service in that state that are inconsistent with Federal Communications Commission (FCC) rules that preserve and advance universal service, unambiguously requires abrogation or abandonment of the federal rules.

Telecommunications carriers seeking preliminary injunction preventing enforcement of California

Public Utilities Commission's (CPUC) new access line rule, imposing surcharges on carriers to fund California's universal service program based on number of active access lines rather than revenue, were not likely to succeed on merits of their claim that rule was expressly preempted by Telecommunications Act as "inconsistent with" Federal Communications Commission (FCC) rule imposed on carriers for funding interstate universal service programs, even though CPUC's access line was different from FCC rule, since CPUC's access line rule did not burden interstate universal service programs funded by FCC rule, that said nothing about funding of state universal service programs.

Telecommunications carriers seeking preliminary injunction preventing enforcement of California Public Utilities Commission's (CPUC) new access line rule, imposing surcharges on carriers to fund California's universal service program based on number of active access lines rather than revenue, were not likely to succeed on merits of their claim that rule was expressly preempted by Telecommunications Act as "inequitable and discriminatory," since CPUC's access line rule was not unfairly discriminatory, as it treated all customers, including wireline, voice over internet protocol, and wireless, the same regardless of service type, it applied to all carriers, and it was fair response to real problem of declining revenues generated from landline services.

Telecommunications carriers seeking preliminary injunction against enforcement of California Public Utilities Commission's (CPUC) new access line rule, imposing surcharges on carriers to fund California's universal service program based on number of active access lines rather than revenue, were not likely to succeed on merits of their claim that rule was expressly preempted by Telecommunications Act as "inequitable and discriminatory" by treating carriers that received support under federal Affordable Connectivity Program (ACP) differently than carriers serving low-income participants in California LifeLine Program; federal and state programs were materially distinct as they were funded differently, only one member of household was eligible for LifeLine benefits, and carriers receiving ACP support could also join LifeLine.

Although telecommunications carriers faced irreparable harm, from lack of goodwill and injury to their pro-consumer brands by passing surcharge on to their customers or from inability to recover surcharges later from California, due to its Eleventh Amendment immunity, they still were not entitled to preliminary injunction preventing enforcement of California Public Utilities Commission's (CPUC) new access line rule, imposing surcharges on carriers based on number of active access lines rather than revenue, since carriers were not likely to succeed on merits of their claims that access line rule was preempted by Telecommunications Act.

BALLOT INITIATIVE - COLORADO

Colorado v. Griswold

United States Court of Appeals, Tenth Circuit - April 26, 2024 - 99 F.4th 1234

Organization and individuals who sponsored two tax reduction ballot measures, which were subject to recently enacted Colorado law that required the title of citizen-initiated ballot measures containing a tax change to incorporate a phrase stating the change's impact on state and local funding priorities, brought action against Secretary of State of Colorado alleging the law unconstitutionally compelled their political speech.

The United States District Court for the District of Colorado denied plaintiffs' motion for a preliminary injunction, and they appealed.

The Court of Appeals held that Colorado's titling system for citizen-initiated ballot measures was government speech, and thus, the titles did not unconstitutionally compel plaintiffs' political speech.

Colorado's titling system for citizen-initiated ballot measures, pursuant to which the titles of proposed ballot measures to limit property tax increases and reduce sales and use tax rates stated the impact of the proposed measures on state and local funding priorities, qualified as government speech under First Amendment, and thus, the titles did not unconstitutionally compel the political speech of the sponsors of the measures; Colorado Ballot Title Setting Board had existed and set ballot titles in similar manner for over 80 years, which reflected government's substantial control over initiative titles and its legitimate interest in providing standardized process for presenting measures to voters, and disclaimer shown immediately above ballot titles indicated the language was designated and fixed by the Board.

DEDICATION - COLORADO

Great Northern Properties, LLLP v. Extraction Oil and Gas, Inc.

Supreme Court of Colorado - May 6, 2024 - P.3d - 2024 WL 1979403 - 2024 CO 28

Successor-in-interest to real estate developer that dedicated a city street brought action against owners of lots that abutted street and mineral developer to quiet title to mineral estate beneath street.

The District Court entered a judgment quieting title in lot owners after grant of mineral developer's motion for a determination of a question of law and denial of successor-in-interest's motion for summary judgment. Successor-in-interest appealed. The Court of Appeals affirmed in part and reversed in part. Successor-in-interest petitioned for certiorari review, which was granted.

In a case of first impression, the Supreme Court held that:

- Conveyance of land abutting a right-of-way is presumed to carry title to the centerline of both the surface and mineral estates;
- Application of centerline presumption does not require a grantor to completely divest all property it owns abutting the right-of-way;
- Statutory dedication of street did not horizontally sever mineral estate under street from lots abutting street; and
- Centerline presumption applied so that lot owners took title to surface and mineral estates to centerline of road.

PACE FUNDING - FLORIDA

Florida PACE Funding Agency v. Pinellas County

District Court of Appeal of Florida, Second District - March 27, 2024 - So.3d - 2024 WL 1288194 - 49 Fla. L. Weekly D660

County brought action against Florida Property Assessed Clean Energy (PACE) Funding Agency (FPFA) for declaratory and injunctive relief, alleging that FPFA breached interlocal agreement by financing residential improvements in violation of county code.

The Circuit Court denied FPFA's motion to dismiss for improper venue. FPFA appealed.

The District Court of Appeal held that:

- Sword-wielder doctrine as exception to FPFA's home-venue privilege did not apply;
- Forum selection clause in interlocal agreement, at the least, applied to legal or equitable disputes that arose between the parties while agreement was still in effect;
- County's declaratory relief claim arose while agreement was still in effect, and thus forum selection clause applied to claim; and
- County's claim seeking injunctive relief arose while agreement was still in effect, and thus forum selection clause applied to claim.

Sword-wielder doctrine as exception to home-venue privilege did not apply based on county's allegations that bond validation judgment, which permitted Florida Property Assessed Clean Energy (PACE) Funding Agency (FPFA) to finance residential improvements statewide without regard to county ordinance, violated county's constitutional "home rule" powers, in action against FPFA; sword wielder doctrine's protections did not apply to showdown between two governmental parties, bond validation judgment purported to apply statewide, and primary purpose of county's complaint was a collateral attack on bond validation judgment, rather than contention that FPFA was directly violating county's constitutional rights.

Forum selection clause in interlocal agreement between county and Florida Property Assessed Clean Energy (PACE) Funding Agency (FPFA), which expressly covered "any legal or equitable action involving the County the Agency or its program in" county, at the least, applied to legal or equitable disputes that arose between the parties while the interlocal agreement was still in effect; FPFA and the county contracted for a broad forum selection clause that was not limited just to claims "arising under" the interlocal agreement or to claims requiring interpretation of the agreement's substantive provisions.

County's declaratory relief claim arose while interlocal agreement between county and Florida Property Assessed Clean Energy (PACE) Funding Agency (FPFA) was still in effect, and thus forum selection clause in agreement, which expressly covered "any legal or equitable action involving the County the Agency," applied to claim, in action against FPFA, seeking declaration that county could enforce its PACE ordinance against FPFA, notwithstanding bond validation judgment stating otherwise; FPFA wrote county before expiration that in light of judgment, it would operate without regard to county's ordinance, that it would offer financing for PACE improvements to residential property owners, and that it would do so even if it never entered into another interlocal agreement with county.

County's claim seeking injunctive relief arose while interlocal agreement between county and Florida Property Assessed Clean Energy (PACE) Funding Agency (FPFA) was still in effect, and thus forum selection clause in agreement, which expressly covered "any legal or equitable action involving the County the Agency," applied to claim, in action against FPFA, seeking an injunction enjoining FPFA from conducting any PACE business in county unless it complied with county code; county alleged that FPFA began providing PACE financing to residential property owners in violation of the county's ordinance immediately after bond validation judgment issued, well before the interlocal agreement expired, and that such operation violated state law, local ordinance, and the provisions of the agreement.

SURETY BOND - GEORGIA

Clay v. State

Court of Appeals of Georgia - February 2, 2024 - 370 Ga.App. 482 - 897 S.E.2d 886

Residents who owned, leased, and lived on property zoned for agricultural use filed action against state, seeking declaratory judgment that development and construction of electric vehicle manufacturing facilities on state-owned property violated local and state law, and seeking injunction to halt project. State filed counterclaim seeking declaratory relief that zoning ordinances did not apply and moved for surety bond.

Following hearing, the Superior Court granted motion for bond and ordered residents to post surety bond in amount of $364,619.55. Residents appealed.

The Court of Appeals held that:

- Trial court did not improperly shift burden of proof to residents to show why surety bond should not be granted, but
- Imposition of bond was improper where trial court failed to address whether all claims asserted by residents were meritorious.

Court of Appeals had jurisdiction to review grant of motion for surety bond on interlocutory review in action filed by residents who owned, leased, and lived on property zoned for agricultural use against state seeking declaratory judgment that development and construction of electric vehicle manufacturing facilities on state-owned property violated local and state law, and seeking injunction to halt project, where order was subject to direct appeal but residents did not file notice of appeal until after grant of interlocutory review.

Residents who owned, leased, and lived on property zoned for agricultural use abandoned argument for review that project to develop and construct electric vehicle manufacturing facilities on state-owned property did not involve political subdivisions and that action was not a public lawsuit, as would preclude imposition of surety bond on residents in action against state seeking declaratory judgment that project violated local and state law and seeking injunction to halt project; while residents challenged state's contention that project involved political subdivisions and that action was a public lawsuit at bond hearing, residents did not contest trial court's findings on appeal.

Use of state-owned land to develop and construct electric vehicle manufacturing facilities qualified as a government purpose, as would support grant of state's request for surety bond in action filed by residents who owned, leased, and lived on property zoned for agricultural use against state, seeking declaratory judgment that project violated local and state law and seeking injunction to halt project; project would provide extensive economic benefits to state through employment opportunities and additional tax revenue, as well as increased construction jobs, housing, and retail development.

Trial court did not improperly shift burden of proof to residents who owned, leased, and lived on property zoned for agricultural use to show why surety bond should not be granted in action filed by residents against state, seeking declaratory judgment that project to develop and construct electric vehicle manufacturing facilities on state-owned property violated local and state law and seeking injunction to halt project; court placed burden on residents to show why bond should not be granted after first determining whether state had met its burden to show it was a political subdivision, that the lawsuit qualified as a public lawsuit to justify imposition of bond, that the claims lacked merit, and that the bond was in the public interest, which was consistent with statutory requirements.

Imposition of surety bond against residents who owned, leased, and lived on property zoned for agricultural use was improper in action against state seeking declaratory judgment that project to

develop and construct electric vehicle manufacturing facilities on state-owned property violated local and state law and seeking injunction to halt project, where trial court determined that state was likely to prevail by focusing only on claims regarding zoning issues without considering merits of other arguments asserted by residents, and it appeared from the record that at least one claim had merit.

IMMUNITY - NEW YORK

Certain Underwriters at Lloyd's London v. Edouch Elsa Independent School District

United States District Court, S.D. New York - April 8, 2024 - F.Supp.3d - 2024 WL 1514020

After party-appointed arbitrators were unable to agree upon umpire, commercial property insurers filed petition asking court to designate and appoint umpire under arbitration agreement with insured school district and Federal Arbitration Act (FAA).

Insured moved to dismiss petition for lack of subject matter jurisdiction.

The District Court held that:

- School district was not arm of state and, thus, was not entitled to Eleventh Amendment immunity;
- District court had authority to appoint neutral umpire under arbitration agreement;
- Party-appointed arbitrator was not required to file petition asking court to designate and appoint umpire, and thus insurers properly filed petition; and
- Retired magistrate judge of Southern District of New York, rather than retired Texas state court judge, was best suited to serve as umpire.

IMMUNITY - OHIO

Heeter v. Bowers

United States Court of Appeals, Sixth Circuit - April 29, 2024 - 99 F.4th 900

Plaintiffs filed § 1983 action in state court against city police department and police officer alleging that officer used excessive force against suicidal individual and failed to administer aid after shooting him.

After removal, the United States District Court for the Southern District of Ohio denied defendants' motion for summary judgment, and they appealed.

The Court of Appeals held that:

- It had jurisdiction over defendants' interlocutory appeal;
- Summary judgment on qualified immunity grounds was not warranted on excessive force claim against officer;
- It was clearly established that suicidal individual had right not to be shot unless he posed threat of serious or deadly harm to officers;
- Summary judgment on qualified immunity grounds was not warranted on claim of deliberate indifference to serious medical need;
- It was clearly established at time of shooting that officer had obligation under Due Process Clause

to provide adequate medical care after shooting;
- It had jurisdiction to review district court's denial of state law immunity;
- City was statutorily immune from liability arising from incident; and
- Summary judgment on basis of state law immunity was not warranted with regard to officer.

ZONING & PLANNING - RHODE ISLAND

Thompson v. Town of North Kingstown Zoning Board of Appeals

Supreme Court of Rhode Island - May 7, 2024 - A.3d - 2024 WL 2003053

Neighbor brought action for declaratory judgment after unsuccessfully appealing planning commission's approval of golf course development application pursuant to consent judgment in federal court litigation between developers and town.

The Superior Court granted town's and developers' motion for summary judgment, and neighbor appealed.

The Supreme Court held that:

- Neighbor lacked standing or grounds for successful collateral attack against consent judgment;
- Town had authority to enter into consent judgment; and
- Consent judgment did not illegally amend the town's zoning ordinance.

Neighbor lacked standing or grounds for successful collateral attack, through state court declaratory judgment action, against consent judgment in federal court litigation between town and developers regarding development of golf course property; neighbor was not a party to the consent judgment, and, as a nonparty, lacked the requisite standing to challenge the agreement and was thus barred from making a collateral attack on what was a valid, final judgment in federal court.

Town had authority to enter into agreement with developer regarding development of golf course property, and consent judgment did not illegally constrain town planning commission's authority; town council approved the consent judgment, and the planning commission approved the developers' application for a preliminary plan, the proceedings were open to the public and did not occur behind closed doors or without a formal vote, and the town had authority to enter into the consent judgment pursuant to the town charter.

Consent judgment between town and developer regarding project to develop golf course property did not illegally amend the town's zoning ordinance; pursuant to the consent judgment, the developers were entitled to up to 26,000 square feet of nonresidential commercial space, which was consistent with the zoning ordinance at the relevant time, and the developers previously had obtained master plan approval for commercial space between 24,000 square feet and 40,000 square feet and had certain vested rights and preexisting approvals in the project when the town council revised the ordinances, which after amendment were inconsistent with the approvals that the developers had previously obtained.

IMMUNITY - TEXAS

Texas State University v. Tanner

Supreme Court of Texas - May 3, 2024 - S.W.3d - 2024 WL 1945340

Passenger who was thrown from golf cart being driven by employee of state university brought personal injury action under Texas Tort Claims Act against employee, university, and university system.

After system's plea to the jurisdiction was granted, university filed plea to the jurisdiction and alternative motion for summary judgment.

The 207th District Court granted university's plea on basis of sovereign immunity. Passenger appealed. The Austin Court of Appeals reversed and remanded. University filed petition for review.

The Supreme Court held that:

- Achieving timely service of process was "statutory prerequisite" within meaning of waiver-o--sovereign-immunity statute, and thus was jurisdictional requirement;
- Passenger failed to establish that she was diligent in attempting to serve university, precluding relation back of untimely service to date that petition was filed; but
- Remand was warranted for resolution, in first instance, of whether passenger's service on employee constituted service on university.

Compliance with two-year statute of limitations for personal injury actions under Texas Tort Claims Act and achieving timely service of process were "statutory prerequisites," and thus "jurisdictional requirements," within meaning of waiver-of-sovereign-immunity statute, in golf cart passenger's personal injury action against state university under Act.

Passenger thrown from golf cart being driven by employee of state university failed to establish diligence in attempting to serve university following running of two-year statute of limitations for personal injury claims under Texas Tort Claims Act, and thus, untimely service on university did not relate back to date she filed personal injury petition against university and employee under Act; university's alleged actual notice of the claim was not sufficient to satisfy service of process requirements since notice and service were separate issues, university's delay in moving to dismiss employee did not excuse passenger's delay in achieving service, and common representation between employee and university did not explain the delay between serving employee and university.

The Supreme Court would reverse the appellate court order granting state university's plea to the jurisdiction based on sovereign immunity and remand golf cart passenger's personal injury action against state university under the Texas Tort Claims Act for resolution, in the first instance, of the potentially dispositive legal question of whether passenger's service on state university employee constituted service on university itself, since passenger's argument presented an alternative legal basis to deem satisfied any obligation to serve the university.

ZONING & PLANNING - VIRGINIA

Rebh v. County Board of Arlington County

Court of Appeals of Virginia, Winchester - May 7, 2024 - S.E.2d - 2024 WL 2001066

Condominium building residents filed complaint for declaratory and injunctive relief against county board alleging that board's adoption of sector plan and zoning ordinance amendments allowing taller building heights and bigger densities for certain city zoning districts was void ab initio because board did not satisfy zoning statute's resolution and certification, notice, and uniformity requirements.

The Arlington Circuit Court sustained board's demurrer. Residents appealed.

The Court of Appeals held that:

- Resolution requirement was satisfied;
- Certification requirement was satisfied;
- Public notice did not satisfy the descriptive summary requirement; and
- Uniformity requirement was satisfied.

BOND VALIDATION - CALIFORNIA

City of San José v. Howard Jarvis Taxpayers Association

Court of Appeal, Sixth District, California - April 29, 2024 - Cal.Rptr.3d - 2024 WL 1855412

Charter city filed a complaint for validation of the issuance of pension obligation bonds and related agreements that were aimed to address unfunded liabilities in city's retirement plans.

Taxpayer advocacy groups filed an answer to the complaint for validation, alleging that the city lacked authority to issue the bonds and seeking a declaration that the resolution approving the bonds and the proposed issuance of the bonds were invalid.

The Superior Court entered judgment validating the resolution, the issuance and sale of the bonds, and related agreements. Advocacy groups appealed.

The Court of Appeal held that:

- Resolution allowing for the issuance of pension obligation bonds did not incur any new indebtedness that required voter approval under the California Constitution, and
- City had statutory authority to issue pension obligation bonds as refunding bonds to refund unfunded pension liabilities.

A municipal bond is not an "indebtedness or liability" within meaning of state constitutional debt limitation applicable to cities—it is only the evidence or representative of an indebtedness, and a mere change in the form of the evidence of indebtedness is not the creation of a new indebtedness within meaning of constitutional debt limitation.

The constitutional debt limitation was enacted for the purpose of curtailing "municipal extravagance" in the form of unchecked capital investments that resulted in large, long-term debt; in contrast to disfavored "municipal extravagance," public policy in California encourages pension plans as a means by which governments may induce and reward long-term public service to a municipality's citizens.

Under California law there is a strong preference for construing governmental pension laws as creating contractual rights for the payment of benefits, and when feasible to do so such laws should be construed as guaranteeing full payment to those entitled to its benefits with the provision of adequate funds for that purpose; actuarial soundness of the pension system is necessarily implied in the total contractual commitment, because a contrary conclusion would lead to express impairment of employees' pension rights.

The phrase "other evidence of indebtedness" in statute defining revenue bonds may include unfunded liability, such as a city's deferred obligation to pay its employees.

The refunding of an unfunded municipal liability using the proceeds from the issuing of refunding bonds converts the debt represented by the unfunded liability into debt in the form of bonds; such refunding does not create new debt for purposes of the constitutional debt limitation applicable to cities.

PUBLIC UTILITIES - CALIFORNIA

Sacramento Municipal Utility District v. Kwan

Court of Appeal, Third District, California - April 30, 2024 - Cal.Rptr.3d - 2024 WL 1874962

Municipal electric utility brought action against customer, asserting claims for power theft, conversion, and account stated, based on allegations that power was diverted for cannabis grow operation.

Following court trial, the Superior Court, Sacramento County found customer liable for aiding and abetting utility diversion and awarded $82,661.13 as treble damages plus $82,000 as costs and attorney fees. Customer appealed.

The Court of Appeal held that:

- Substantial evidence supported finding that customer aided and abetted power diversion;
- Utility established fact of proximately caused injury from date of account creation with reasonable certainty; and
- Trial court acted within its discretion in awarding treble damages and attorney fees.

IMMUNITY - IOWA

Randolph v. Aidan, LLC

Supreme Court of Iowa - May 3, 2024 - N.W.3d - 2024 WL 1944714

User of stairs at rental property brought personal injury action against rental property owner arising from fall on stairs, and owner filed third-party claim against city for negligent hiring, retaining, or supervising of an allegedly unqualified city employee who inspected the property.

The District Court denied city’s motion to dismiss the third-party claim. User and owner both sought interlocutory review, which was granted.

The Supreme Court held that city had statutory immunity from the negligent hiring claim.

ZONING & PLANNING - MICHIGAN

Long Lake Township v. Maxon

Supreme Court of Michigan - May 3, 2024 - N.W.3d - 2024 WL 1960615

Township filed action against homeowners for violating zoning ordinance, creating nuisance, and breaching previous settlement agreement.

The Circuit Court denied owners’ motion to suppress aerial photographs taken using drone, and

owners appealed. The Court of Appeals reversed. Township filed application for leave to appeal. In lieu of granting leave to appeal, the Supreme Court vacated and remanded. On remand, the Court of Appeals affirmed, and owners appealed.

The Supreme Court held that exclusionary rule did not apply to preclude township from introducing aerial photographs of property taken using drone without warrant or owners' consent.

Exclusionary rule did not apply to preclude township from introducing aerial photographs of property taken using drone without warrant or owners' consent in township's action alleging violation of its zoning ordinance, nuisance, and breach of settlement agreement; very little of property was visible from public vantage-point, without drone's photographs and video, township did not seek any criminal or monetary penalties, and applying exclusionary rule would prevent township from effectuating its nuisance and zoning ordinances and would do so for little benefit, given that exclusion of photographs and video would not deter future misconduct by law enforcement officers or their adjuncts, proxies, or agents.

ZONING & PLANNING - MISSOURI

Sachtleben v. Alliant National Title Insurance Co.

Supreme Court of Missouri, en banc - April 30, 2024 - S.W.3d - 2024 WL 1904591

Insured purchasers of real property brought action against title insurer, alleging breach of contract based on insurer's refusal to defend insureds against city's pre-existing lawsuit against vendors regarding alleged local zoning ordinance violations related to barn built by vendors.

The Circuit Court granted partial summary judgment in favor of insurer. Insureds appealed.

On transfer from the Court of Appeals, the Supreme Court held that:

- Trial court did not abuse its discretion in finding that partial summary judgment in favor of insurer was final for purposes of appeal;
- Insurer's actual notice of city's lawsuit did not trigger coverage under policy section providing coverage if notice was recorded in public records setting forth violation or intention to enforce building or zoning law, ordinance, permit, or governmental regulation;
- City's lawsuit did not constitute "public record" within meaning of same coverage provision; and
- Policy exclusion for loss from any ordinance restricting, regulating, prohibiting, or relating to land use or character, dimensions, or location of any improvement on land unless claim met requirements of same coverage provision applied.

IMMUNITY - NEBRASKA

Joshua M. v. State

Supreme Court of Nebraska - May 3, 2024 - N.W.3d - 316 Neb. 446 - 2024 WL 1946196

Foster siblings brought action against Department of Health and Human Services (DHHS) for alleged negligent acts or omissions of DHHS employees in failing to protect siblings from being physically and sexually abused by foster parent and by their biological father upon their placement with him.

The District Court denied DHHS's motion for directed verdict and, after bench trial, entered judgment for DHHS. Siblings appealed.

The Supreme Court held that:

- Assault or battery exemption to waiver of sovereign immunity under STCA and the Political Subdivisions Tort Claims Act (PSTCA) can apply to a claim framed as negligent failure to protect against assault or battery; overruling *Koepf v. County of York*, 198 Neb. 67, 251 N.W.2d 866, and
- Assault or battery exemption under STCA applied to bar siblings' claims.

EMINENT DOMAIN - NEW YORK

HBC Victor LLC v. Town of Victor

Supreme Court, Appellate Division, Fourth Department, New York - March 22, 2024 - N.Y.S.3d - 225 A.D.3d 1254 - 2024 WL 1227054 - 2024 N.Y. Slip Op. 01625

Following annulment of town's prior determination authorizing condemnation of vacant commercial real property, owner of property brought action against town under Eminent Domain Procedure Law (EDPL) to annul town's determination authorizing the condemnation of the property.

The Supreme Court, Appellate Division, held that:

- Town established legitimate qualifying public purpose or use of property, and
- Public purposes articulated by town's comprehensive plan were not merely incidental to private benefits arising from condemnation and were sufficient to support condemnation action.

Town established legitimate qualifying public purpose or use of owner's vacant commercial real property, as supported condemnation of property; one of town's stated public purposes was to facilitate economic redevelopment project that would permit vacant and underutilized property to be turned into space appropriate for lease to international department store and grocer, both of which had expressed interest in becoming tenants, and town's proposed use of a portion of the building for an 11,000-square-foot community and recreation space was a viable public purpose.

Public purposes articulated by town's comprehensive plan were not merely incidental to private benefits arising from condemnation and were sufficient to support town's condemnation action against owner of vacant commercial real property; despite property owner's contention that public use proposed for part of property to be leased by town was illusory, town initially stated at public hearing that it had not yet determined what it would do with that portion of the property, town subsequently narrowed its public use in its determination and findings to a community and recreation center space to provide for and enhance town's public services as part of creating a vibrant, sought-after retail, community and recreation destination on the property.

MUNICIPAL ADVISORS - NEW YORK

Securities and Exchange Commission v. City of Rochester, New York

United States District Court, W.D. New York - April 15, 2024 - F.Supp.3d - 2024 WL 1621541

Securities and Exchange Commission (SEC) brought action against city's municipal advisor, its

principals, and others for, among other things, failure to comply with Municipal Securities Rulemaking Board (MSRB) rules requiring municipal advisors to disclose material conflicts of interest and to establish, implement, and maintain written supervisory procedures, as well as breach of fiduciary duty and violation of Securities Exchange Act provision prohibiting municipal advisors from contravening MSRB rules.

SEC, advisor, and principals cross-moved for summary judgment as to liability on claims arising under MSRB rules.

The District Court held that:

- As a matter of apparent first impression, MSRB rule required advisor to disclose all contingency fee arrangements based on size or closing of a transaction;
- MSRB was authorized to depart from general securities-law definition of "materiality" in its disclosure rule;
- Disclosure rule was subject to rational review under First Amendment;
- Disclosure rule was reasonably related to legitimate government interest in regulating municipal securities market;
- As a matter of apparent first impression, negligence standard governed statutory and regulatory claims of a municipal advisor's breach of fiduciary duty to a municipal client;
- Advisor's email to clients inadequately disclosed conflicts of interest arising from contingency fee arrangements; and
- Failure to disclose conflicts of interest arising from contingency fee arrangements breached advisor's fiduciary duty of loyalty.

The unambiguous meaning of the Municipal Securities Rulemaking Board (MSRB) rule requiring a municipal advisor, "prior to or upon engaging in municipal advisory activities," to "provide to the municipal entity or obligated person client full and fair disclosure in writing of…all material conflicts of interest, including…any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice" is that conflicts of interest arising from contingency-fee arrangements based on the size or closing of the transaction are material conflicts of interest subject to mandatory disclosure.

The Municipal Securities Rulemaking Board (MSRB) rule requiring a municipal advisor, "prior to or upon engaging in municipal advisory activities," to "provide to the municipal entity or obligated person client full and fair disclosure in writing of…all material conflicts of interest, including…any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice" does not vest the municipal advisor with discretion to determine whether a contingency arrangement based on the size or closing of a transaction creates a material conflict of interest.

When fulfilling its congressional mandate to "provide professional standards" for municipal advisors and prescribe "means reasonably designed to prevent acts, practices, and courses of business" inconsistent with their fiduciary duties, Municipal Securities Rulemaking Board (MSRB) had authority to deem certain fee arrangements as presenting material conflicts of interest as a matter of law in its rule requiring municipal advisors to disclose all material conflicts of interest, even though federal securities laws generally treated materiality as mixed question of law and fact; deeming certain conflicts "material" was consistent with MSRB's mandate, and nothing in Exchange Act required MSRB to adopt general securities-law definition of materiality. Securities Exchange Act of 1934 § 15B.

The materiality of a municipal advisor's contingent fee arrangement, for purposes of the Municipal Securities Rulemaking Board (MSRB) rule requiring advisors to disclose all material conflicts of interest including "any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice," is not measured by whether a fee is material to the municipal advisor; rather, materiality is evaluated through the viewpoint of the municipal clients, whom the rule is meant to protect.

In imposing a fiduciary duty on investment advisers through the Investment Advisers Act of 1940, Congress created both an affirmative obligation to employ reasonable care to avoid misleading clients and an affirmative duty of utmost good faith; thus, investment advisers must tell their clients about all conflicts of interest which might incline an investment adviser, consciously or unconsciously, to render advice which is not disinterested. Investment Advisers Act of 1940 § 206.

Municipal Securities Rulemaking Board (MSRB) rule requiring municipal advisors to disclose all material conflicts of interest including "any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice" was informational disclosure rule, and thus, district court would apply rational review to determine whether rule comported with First Amendment; rule only required disclosure of factual, uncontroversial information about an advisor's own products and services, and rule did not limit what advisors could say in defense of contingency fee arrangements or prevent them from offering their opinions concerning any potential conflicts.

Municipal Securities Rulemaking Board (MSRB) rule requiring municipal advisors to disclose all material conflicts of interest including "any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice" was reasonably related to legitimate government interest in regulating municipal securities market, as necessary for such information disclosure rule to comport with First Amendment free speech principles; MSRB determined that mandatory disclosure of conflicts of interest inherent in contingency fee arrangements would protect municipal entity clients by allowing them to better evaluate advisors' advice and whether such advice might be colored by conflicts.

Municipal Securities Rulemaking Board (MSRB) rule requiring municipal advisors to disclose all material conflicts of interest including "any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice," which was intended to protect municipal entity and obligated person clients, did not unduly burden speech, and thus, such information disclosure rule comported with First Amendment free speech principles; advisors were free to make clear that information disclosed represented MSRB's views and to tell clients why, in their view, contingency nature of fee arrangements would not impact advice given or otherwise harm their clients.

Municipal Securities Rulemaking Board (MSRB) rule requiring municipal advisors to disclose all material conflicts of interest including "any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice" provided a person of ordinary intelligence a reasonable opportunity to know what conduct was required, and thus, rule comported with due process; rule unambiguously required disclosure of all material conflicts of interest and defined certain contingency agreements as posing material conflicts of interest as matter of law, and Securities and Exchange Commission (SEC) issued guidance on contingency-fee-related conflicts subject to disclosure.

Where the Securities and Exchange Commission (SEC) has, through its regulations, written guidance, litigation, or other actions, provided a reasonable person operating within the defendant's industry fair notice that their conduct may prompt an enforcement action by the SEC, it has satisfied its obligations against vagueness under the Due Process Clause.

Written supervisory procedures that municipal advisor implemented during specified time period were not reasonably designed to ensure that municipal advisory activities of advisor and its associated persons were in compliance with Municipal Securities Rulemaking Board (MSRB) rule requiring municipal advisors to disclose all material conflicts of interest, and thus, such procedures violated MSRB rule requiring municipal advisors to establish, implement, and maintain written supervisory procedures that were reasonably designed to ensure such conduct was in compliance with applicable MSRB rules, even if advisor monitored employees' outside business activities for conflicts; documents did not address conflicts of interest at all, and monitoring did not constitute written supervisory procedure.

The standard for determining whether a municipal advisor has breached a fiduciary duty owed to a municipal client under the Exchange Act and the Municipal Securities Rulemaking Board (MSRB) rule governing the fiduciary relationship between municipal advisors and their clients is the same negligence standard applied under the Investment Advisers Act. Securities Exchange Act of 1934 § 15B, 15 U.S.C.A. § 78o-4(c)(1); Investment Advisers Act of 1940 § 201, 15 U.S.C.A. § 80b-1 et seq.

Email that municipal advisor sent clients, which stated advisor "may have conflicts of interest arising from compensation for municipal activities to be performed that are contingent on the size or closing of such transaction…if [advisor] should fail to get paid for its work on a transaction in the event that the transaction does not close," did not satisfy Municipal Securities Rulemaking Board (MSRB) rule requiring advisor to disclose, before or upon engaging in municipal advisory activities, any conflicts of interest arising from contingency fee arrangements based on size or closing of a transaction; single email over six-year period was not sent at beginning of activities and suggested that only potential conflict was if advisor ultimately was not paid for its work, without disclosing conflicts were inherent to such arrangements.

Municipal advisor's failure to inform each municipal client, prior to or upon engaging in municipal advisory activities, each actual or potential conflict of interest that was inherently created by its contingent fee arrangements based on size or closing of transactions, which failed to satisfy Municipal Securities Rulemaking Board (MSRB) rule requiring disclosure of any material conflict of interest including any such fee arrangement, breached advisor's fiduciary duty of loyalty under Exchange Act and MSRB rules, even if advisor disclosed all forms of compensation it received in connection with any sales of debt securities and even if neither advisor nor its employees received any financial benefit from any other person. Securities Exchange Act of 1934 § 15B, 15 U.S.C.A. § 78o-4(c)(1).

MUNICIPAL ORDINANCE - PENNSYLVANIA

Barris v. Stroud Township

Supreme Court of Pennsylvania - February 21, 2024 - 310 A.3d 175

Landowner filed complaint seeking declaratory judgment that township ordinance prohibiting discharging of firearms within township, alongside zoning ordinances limiting shooting ranges to two non-residential districts in township, violated Second Amendment on its face.

The Court of Common Pleas entered summary judgment in township's favor, and landowner appealed. The Commonwealth Court reversed. Leave to appeal was granted.

The Supreme Court held that:

- Owner's conduct in discharging firearms on his own property in order to gain proficiency in their use was covered by Second Amendment, but
- Ordinance did not violate Second Amendment on its face.

Property owner's conduct in discharging firearms on his own property in order to gain proficiency in their use was covered by Second Amendment's plain text, where owner faced confiscation of his lawfully-owned firearms pursuant to township ordinance for doing so.

Township ordinance prohibiting discharging of firearms within township except in shooting ranges within non-residential districts was fully consistent with Nation's historical tradition of firearm regulation, and thus did not violate Second Amendment on its face; colonial, founding, and antebellum generations recognized states' longstanding power to regulate when and where firearms could be used for non-self-defense purposes, number of firearm discharge regulations proliferated after Second Amendment's ratification, number of regulations during this time were aimed specifically at shooting ranges and target practice, and township adopted ordinance for protection of public health and safety and general welfare of residents and visitors.

BLOWING OF THE WHISTLE - TEXAS

City of Denton v. Grim

Supreme Court of Texas - May 3, 2024 - S.W.3d - 2024 WL 1945118

Former city employees filed suit against city under Whistleblower Act, based on allegations that they were terminated for having reported violations of law by city council member who leaked confidential vendor information to reporter for local newspaper in context of story about controversial plan for construction of new power plant.

The 68th District Court, Dallas County, denied city's motions for directed verdict and for judgment notwithstanding verdict (JNOV), entered judgment on jury's verdict for employees, and denied city's motion for new trial.

City appealed, and Dallas Court of Appeals affirmed. Petition for review was granted.

The Supreme Court held that:

- Alleged violations by city council member, who was not public employee, of Public Information Act and Open Meetings Act, could not be imputed to city, and thus, council member's violations of law were not violations of law by city, as employing governmental entity, within meaning of

Whistleblower Act;

- Council member was not acting as agent for city when she allegedly violated law, and thus, council member's violations of law were not violations of law by city, as employing governmental entity;
- Whether government official who had no authority to act on behalf of government entity was acting in his or her individual or official capacity at time of violation of law had no bearing on issue whether official's violation of law constituted violation of law by employing government entity, within meaning of Whistleblower Act, disapproving *City of Cockrell Hill v. Johnson*, 48 S.W.3d 887; and
- Goal of Whistleblower Act to encourage public employee's reports of violations of law that were detrimental to public good or society in general without fear of retribution had no bearing on whether violation of law by governmental official who had no authority to act on behalf of governmental entity constituted violation of law by employing governmental entity, within meaning of Act, disapproving Housing Authority of the *City of El Paso v. Rangel*, 131 S.W.3d 542.

EMINENT DOMAIN - WISCONSIN

Antosh v. Village of Mount Pleasant

United States Court of Appeals, Seventh Circuit - April 25, 2024 - F.4th - 2024 WL 1786287

Property owners brought action challenging village's use of its eminent domain power to acquire their property.

The United States District Court for the Eastern District of WisconsiN granted village's motion to dismiss, and owners appealed.

The Court of Appeals held that:

- Owners' state and federal actions were parallel for purposes of Colorado River abstention, and
- District court did not abuse its discretion in dismissing action on basis of Colorado River abstention.

Property owners' state and federal actions challenging village's use of its eminent domain power to acquire their property were parallel for purposes of Colorado River abstention, even though state action contested amount of compensation they were owed, and federal action challenged validity of using eminent domain for private purpose; owners did not file federal action until two years after commencing state court, only after state court issued evidentiary ruling that limited compensation they could recover did they decide to file federal complaint, it was unlikely that owners were unaware of their Fifth Amendment claim prior to that ruling, and owners pled identical equal protection claims in both actions.

District court did not abuse its discretion in dismissing property owners' action challenging village's use of its eminent domain power to acquire their property on basis of Colorado River abstention; owners filed state action two years before federal action and did not file federal complaint until four days before trial and until after evidentiary ruling that limited compensation they could recover, both suits were about rights in same real property, village had already built road across property, and nothing would have prevented owners from asserting public-use takings claim in state action.

STATUTE OF LIMITATION - IDAHO

Hastings v. Idaho Department of Water Resources

Supreme Court of Idaho, Boise, - February 2024 Term - April 24, 2024 - P.3d - 2024 WL 1750063

Landowner brought action seeking declaratory judgment that Department of Water Resources could no longer pursue an enforcement action against him under Stream Channel Alteration Act, and Department counterclaimed for enforcement of consent order concerning landowner's unauthorized river alterations.

The Fourth Judicial District Court granted summary judgment for Department on counterclaim after taking judicial notice and denying motion for a continuance to conduct discovery. Landowner appealed.

In a case of first impression, the Supreme Court held that:

- Two-year statute of limitations for enforcement action under Act began running when landowner brought declaratory judgment action;
- Trial court acted within its discretion in taking judicial notice of conditional permit issued by Department for river restoration work;
- Trial court acted within its discretion in denying motion for a continuance to conduct discovery; and

  Department was not entitled to statutory attorney fees on appeal as prevailing party.

EMINENT DOMAIN - ILLINOIS

Alan Josephsen Co. Inc. v. Village of Mundelein

Appellate Court of Illinois, First District - March 8, 2024 - N.E.3d - 2024 IL App (1st) 230641 - 2024 WL 1005468

Recycling company sought judicial review of village's administrative decision, denying certain relocation expenses under federal Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (URA) claimed by recycling company whose property was taken by village through eminent domain.

The Appellate Court held that:

- Village did not violate URA by basing its relocation payments to recycling company on multiple estimates from different moving companies;
- Recycling company failed to demonstrate that village's designee for administrative official adjudged the facts or the law prior to hearing the case, as required for recycling company to show that administrative official was biased;
- Administrative proceedings comported with due process and did not require an evidentiary hearing or additional discovery;
- Village's estimates of self-move relocation costs under URA for recycling company satisfied language of regulations; and

  Sufficient evidence supported village's relocation payments to recycling company under URA, such that administrative official's factual findings were not against manifest weight of the evidence.

MUNICIPAL CORPORATIONS - LOUISIANA

Broome v. Rials

Supreme Court of Louisiana - April 26, 2024 - So.3d - 2024 WL 1825148 - 2023-01108 (La. 4/26/24)

Mayor-president of city-parish and member of council for city-parish filed petition challenging incorporation of area adjacent to city as new municipality against proponents of incorporation.

Proponents filed exceptions of no right of action, which the District Court denied. Following bench trial, the trial court entered judgment for plaintiffs, finding incorporation was unreasonable and would adversely affect city. Proponents appealed, and the First Circuit Court of Appeal granted proponents' re-urged exception of no right of action as to mayor, but denied it as to council member, and affirmed denial of incorporation. Proponents filed separate applications for writ of certiorari.

The Supreme Court held that:

- Member lacked standing to challenge sufficiency of petition for incorporation;
- Member had standing to challenge whether area could provide services within reasonable period of time, and whether incorporation was reasonable;
- Area had sufficient revenue to provide non-parish-provided services within reasonable time, supporting incorporation;
- Factor considering whether area proposed for incorporation had definite characteristics of village weighed in favor of finding that incorporation was reasonable;
- Factor considering whether area residents had taken initial steps toward incorporation weighed in favor of finding that incorporation was reasonable;
- Factor considering whether nearby city had initiated preliminary proceedings toward annexation weighed in favor of finding that incorporation was reasonable; and
- Factor considering whether there had been any financial commitments toward incorporation weighed in favor of finding that incorporation was reasonable.

EMINENT DOMAIN - NEW YORK

Brinkmann v. Town of Southold, New York

United States Court of Appeals, Second Circuit - March 13, 2024 - 96 F.4th 209

Property owners filed § 1983 action alleging that town violated Takings Clause by exercising eminent domain to take their property for creation of park as pretext for defeating their commercial use.

The United States District Court for the Eastern District of New York denied owners' motion for preliminary injunction and dismissed complaint. Owners appealed.

The Court of Appeals held that town's exercise of eminent domain to take property for creation of park did not violate Takings Clause.

Town's exercise of eminent domain to take property for creation of park did not violate Takings Clause, even if town took land to prevent owners' commercial use; public park was public use, town paid fair compensation, and there was no indication that town meant to confer any private benefit or intended to use property for anything other than public park.

POLITICCAL SUBDIVISION - RHODE ISLAND

Preserve at Boulder Hills, LLC v. Kenyon

Supreme Court of Rhode Island - April 24, 2024 - A.3d - 2024 WL 1750068

Following delays in approval of resort and hotel development project, developers brought action against town for violations of substantive due process, tortious interference with contract, tortious interference with prospective business advantages, civil liability for crimes and offenses, and a violation of the civil Racketeer Influenced and Corrupt Organizations (RICO) statute.

The Superior Court granted city's motion for judgment on the pleadings. Developers appealed, and town cross-appealed.

The Supreme Court held that:

- Three-year statute of limitations for claims in tort against a political subdivision applied to developers' claims for civil liability for crimes and offenses;
- As a matter of first impression, three-year statute of limitations for claims in tort against a political subdivision applied to developers' civil RICO claims; and
- Causes of action for tortious interference were not based on any continuing tort which tolled three-year statute of limitations.

EMINENT DOMAIN - TEXAS

Rhone v. City of Texas City, Texas

United States Court of Appeals, Fifth Circuit - February 14, 2024 - 93 F.4th 762

Owner of three apartment buildings in city brought appeal, in state district court, from order of nuisance abatement issued by a Municipal Court of Record, asserting claims under § 1983 for inverse condemnation, denial of procedural due process, and unconstitutional seizure, and seeking declaratory judgment.

After removal by city, the United States District Court for the Southern District of Texas granted summary judgment to city on due process claim, and later granted summary judgment to city on remaining claims. Owner appealed and filed motion to restrain and enjoin damage to or demotion of buildings. The Court of Appeals denied the motion without prejudice, and buildings were demolished by city during pendency of appeal.

The Court of Appeals held that:

- Owner satisfied requirement for exception to mootness, for issues capable of repetition yet evading review, that duration of challenges, to Municipal Court of Record's nuisance finding and court's constitutionality, was too short for complete judicial review and sufficient relief;
- Theoretical possibility of future procedural due process and seizure violations did not support exception to mootness;
- Appeal was not moot as to takings claim; and
- City's imposition of compliance costs for repairing conditions at apartment buildings did not violate doctrine of unconstitutional conditions.

PUBLIC UTILITIES - UTAH

Utah Associated Municipal Power Systems v. 3 Dimensional Contractors Inc.

Court of Appeals of Utah - March 21, 2024 - P.3d - 2024 WL 1202505 - 2024 UT App 35

Interlocal electric energy services agency, a political subdivision of the state formed under Utah Interlocal Cooperation Act (UICA), sued subdivision developer for nuisance and trespass and sought declaratory and injunctive relief, alleging that developer's placement of house on subdivision lot interfered with agency's utility easement.

Developer counterclaimed for declaratory and injunctive relief, seeking removal of agency's support pole and relocation of guy wires that were near house. The Fifth District Court granted summary judgment to agency on its claim for easement interference, awarding declaratory and injunctive relief. The District Court then entered summary judgment in favor of agency on developer's counterclaims and entered final judgment, finding that the agency's trespass and nuisance claims were moot due to agency's election of remedies, and ordering developer to remove any portions of the house encroaching on the easement. The District Court also denied developer's request for attorney fees, pertaining to agency's trespass and nuisance claims, under bad-faith statute. Developer appealed.

The Court of Appeals held that:

- Developer was not required to provide notice of counterclaims to agency under Utah Governmental Immunity Act (UGIA);
- Agency was subject to easement realignment statute, which gave servient estate owners the right to realign municipal easements;
- Realignment statute included right to relocate existing utility infrastructure in the process of realigning boundaries of easement;
- Doctrine of unclean hands did not prevent developer from asserting its rights under easement realignment statute;
- Developer bore burden of proof on realignment claim;
- Expert reports of developer's engineer and surveyor complied with disclosure rule; and
- Developer was not entitled, under bad-faith attorney fees statute, to attorney fees pertaining to agency's trespass claim.

INJUNCTION - WEST VIRGINIA

T & C Construction Services, LLC v. City of St. Albans

Supreme Court of Appeals of West Virginia - April 25, 2024 - S.E.2d - 2024 WL 1793824

City brought enforcement proceeding seeking injunctive relief against operators of residential rental building in connection with citations issued and criminal fines imposed by municipal court for fire prevention and building code violations.

The Circuit Court issued a cease-and-desist order that enjoined operators from operating rental business at building, granted city a money judgment for the criminal fines, and appointed city's counsel as special commissioner to sell the property and satisfy the judgment. Operators appealed.

The Supreme Court of Appeals held that:

- Statute that specifically applied to every judgment for a fine rendered by a circuit court, or other court of record having jurisdiction in criminal cases, rather than statute that referred generally to liens resulting from a judgment, applied;
- City had authority to bring a civil action in Circuit Court to obtain an injunction to enjoin operators from violating city's building and fire prevention codes;
- Circuit Court had jurisdiction to grant city's request for injunctive relief;
- Sufficient evidence supported circuit court's decision to grant injunctive relief; and
- Circuit Court's failure to follow fieri facias statutory process for execution of money judgment precluded, as premature, appointment of city's counsel as special commissioner to sell property to satisfy money judgment.

ZONING & PLANNING - WISCONSIN

Greenwald Family Limited Partnership v. Mukwonago

United States Court of Appeals, Seventh Circuit - April 29, 2024 - F.4th - 2024 WL 1854665

Developer brought action against village which challenged the use of eminent domain to take land for road from developer's five-acre parcel. After the village returned that strip of land, developer filed an amended complaint adding a class of one equal protection claim under the Fourteenth Amendment and several new claims under state law regarding previous unfavorable land use decisions.

Following removal to federal court, the village filed a motion for summary judgment on the equal protection claim. United States District Court for the Eastern District of Wisconsin granted the motion, entered summary judgment for the village, and relinquished jurisdiction over the state-law claims. Developer appealed.

The Court of Appeals held that:

- Village's requirements for final approval of developer's certified survey map before approving developer's proposed division of four-acre parcel from vendor's larger property were clearly rational;
- Village had a rational reason for refusing to construct developer's preferred north–south road connection;
- Villages' refusal to take over the maintenance of a private, unimproved roadway on developer's property without a developer's agreement in place was not a violation of developer's equal protection rights;
- Village's refusal to remove trees from one of developer's properties was reasonable;
- Village's denial of developer's request for tax-incremental financing (TIF) was rational; and
- Imposition of a special assessment on all properties, including developer's property, that benefited from the municipal improvements in development area was rational.

IMMUNITY - ALABAMA

Ex parte City of Montgomery

Supreme Court of Alabama - April 19, 2024 - So.3d - 2024 WL 1685063

Administrator and personal representative of suspect's estate filed a wrongful death complaint against city and police detectives after suspect was shot and killed after she refused detective's

commands and struck two detectives with her vehicle.

Defendants filed a motion for summary judgment based on peace-officer immunity. The Circuit Court denied the motion. City and detectives filed a petition for a writ of mandamus directing the circuit court to grant their motion for summary judgment.

The Supreme Court held that police detectives were entitled to peace-officer immunity from liability in wrongful death lawsuit.

EMINENT DOMAIN - FEDERAL

DeVillier v. Texas

Supreme Court of the United States - April 16, 2024 - 601 U.S. - 144 S.Ct. 938

Owners of properties near one side of interstate highway brought actions in state court against State, asserting inverse-condemnation claims under Takings Clause and Texas Constitution, based on allegations of flooding, during a hurricane and a tropical storm, caused by State's projects to facilitate use of highway as flood-evacuation route by installing barrier along highway median to act as dam to prevent stormwater from covering other side of highway.

After removal and consolidation, the United States District Court for the Southern District of Texas adopted the report and recommendation of the United States Magistrate Judge and denied State's motion to dismiss for failure to state a claim certified the order for permissive interlocutory appeal.

The United States Court of Appeals for the Fifth Circuit vacated and remanded, and rehearing en banc was denied. Certiorari was granted.

In a unanimous opinion, the Supreme Court held that inverse-condemnation cause of action under Texas law provides vehicle for claims under the Takings Clause.

The inverse-condemnation cause of action under Texas law provides a vehicle for takings claims based on both the Texas Constitution and the Fifth Amendment's Takings Clause.

ANNEXATION - KENTUCKY

Calhoun v. Tall Oak, LLC

Court of Appeals of Kentucky - March 22, 2024 - S.W.3d - 2024 WL 1222076

City residents, who lived next to property that was formerly country club, appealed decision of city commission to rezone property from agricultural to residential to allow for development of residential subdivision.

The Circuit Court affirmed commission's decision. Residents appealed.

The Court of Appeals held that:

- Residents waived argument that commission failed to comply with statute regarding amendment of comprehensive plan prior to annexation;
- Commission did not exceed its statutory powers in deciding to annex and rezone property without amending its comprehensive plan; and

- Property developer was not required by applicable city ordinances to submit storm water management plan along with rezoning request, and thus, commission's decision was not arbitrary.

City residents, who lived next to property that was formerly country club, waived argument that city commission failed to comply with statute regarding amendment of comprehensive plan prior to annexation, on resident's appeal of trial court's affirmance of commission's decision to rezone property from agricultural to residential to allow for development of residential subdivision, where residents did not raise such argument to city planning commission prior to developer's appeal to city commission.

City commission did not exceed its statutory powers in deciding to annex property that was formerly country club and to rezone property from agricultural to residential to allow for development of residential subdivision without amending its comprehensive plan; commission adopted ordinance expressing its intention to annex property prior to public hearing on application for city to annex and rezone property, commission took final action by adopting separate ordinance reversing decision of city's planning commission and annexing property, no amendment to plan was required to bring zoning amendment into conformity with it, requiring amendment of plan for every change to zoning map would yield absurd results, and other statutes contemplated changes to city zoning map without plan amendment.

Developer, who purchased property that was formerly country club with plan to develop it into residential subdivision, was not required by applicable city ordinances to submit storm water management plan along with request to have property rezoned from agricultural to residential, and thus, city commission's decision to annex and rezone property pursuant to developer's request was not arbitrary; ordinances required submission of storm water management plans as prerequisite for land disturbance activity, rather than initial approval of development plan or approval of rezoning request.

PUBLIC CONTRACTS - LOUISIANA

Robinson-Carter o/b/o Robinson-Carter v. St. John the Baptist Parish School Board

Court of Appeal of Louisiana, Fifth Circuit - April 3, 2024 - So.3d - 2024 WL 143208123-397 (La.App. 5 Cir. 4/3/24)

Unsuccessful bidder, individually and on behalf of her accounting firm, filed complaint against parish school board for detrimental reliance, fraud, and emotional distress, alleging board intentionally misrepresented aspects of its request for qualifications for contract to conduct tax collection services.

In a bench trial, the District Court rendered judgment in favor of board. Bidder appealed.

The Court of Appeal held that:

- Trial court's alleged mischaracterization of bidder's claims as being based on verbal agreement, and court's failure to address unsuccessful bidder's evidence did not constitute reversible error;
- Request's disqualification provision did not apply to warrant disqualifying or assessing lower score to successful bidder's response;
- Unsuccessful bidder could not recover costs incurred preparing response to request for qualifications under theory of detrimental reliance;

- Unsuccessful bidder failed to demonstrate that board misrepresented truth regarding process for analyzing responses to request for qualifications, as required to support fraud claim; and
- Unsuccessful bidder failed to demonstrate that board intended to obtain unjust advantage or to cause damage or inconvenience to bidder, as required to support fraud claim.

IMMUNITY - NEBRASKA

Barber v. State

Supreme Court of Nebraska - April 19, 2024 - N.W.3d - 316 Neb. 398 - 2024 WL 1694663

Inmate brought negligence action against State pursuant to the State Tort Claims Act (STCA), alleging that Department of Correctional Services' (DCS) staff negligently subjected him to an involuntary medication order (IMO) and injected him with antipsychotic medication against his will.

The District Court dismissed for lack of subject matter jurisdiction. Inmate appealed.

The Supreme Court held that:

- Inmate's claim of medical treatment without consent presented a claim of battery, and
- STCA's exception to waiver of sovereign immunity for claims arising out of a battery applied.

Inmate's claim that Department of Correctional Services' (DCS) staff injected him with antipsychotic medication against his will pursuant to an involuntary medication order (IMO) presented a claim of "battery," for purposes of the intentional tort exception to the State's waiver of sovereign immunity under the State Tort Claims Act (STCA); claim alleged medical treatment without consent.

Inmate's claim that Department of Correctional Services' (DCS) staff negligently subjected him to an involuntary medication order (IMO) and injected him with antipsychotic medication against his will was a claim that arose out of an alleged battery and, thus, the intentional tort exception to State's waiver of sovereign immunity under State Tort Claims Act (STCA) applied to bar inmate's claim; gravamen of inmate's complaint was that the acts or omissions of DCS staff in administering medication against his will resulted in his personal injury.

EMINENT DOMAIN - NEVADA

City of Las Vegas v. 180 Land Co., LLC

Supreme Court of Nevada - April 18, 2024 - P.3d - 2024 WL 1689634 - 140 Nev. Adv. Op. 29

Owner of 250-acre former golf course property brought action against city for inverse condemnation following the denials of landowner's development applications for 35-acre parcel, alleging a per se regulatory taking.

After taking evidence and holding multiple hearings, the District Court granted summary judgment for landowner on its takings claims and awarded just compensation, attorney's fees, and prejudgment interest which totaled $48,114,039.30. Landowner and city both appealed.

The Supreme Court held that:

- Zoning ordinance, which designated golf course property as residential planned unit development, prevailed over land designation in master plan which classified the property as

"Parks/Schools/Recreation/Open Space";
- Appropriate denominator parcel of land for per se regulatory takings claim was 35 acre parcel for which landowner sought approval of housing project, rather than entire 250 acres;
- Per se regulatory takings claim was ripe;
- Denials of landowner's applications for development constituted a per se regulatory taking;
- Evidence was sufficient to support finding that valuation of 35-acre parcel at its highest and best use was $34,135,000 as stated in landowner's expert's report; and
- Landowner was not entitled to interest at a rate that would reimburse it for the purported profit it lost had it been able to develop the land.

PREJUDGMENT INTEREST - OHIO

Vandercar, L.L.C. v. Port of Greater Cincinnati Development Authority

Supreme Court of Ohio - April 23, 2024 - N.E.3d - 2024 WL 1723420 - 2024-Ohio-1501

Purchaser of hotel brought action against assignee of purchaser's interest in hotel, which was city port authority, for breach of contract arising out of assignee's failure to pay purchaser redevelopment fee, under assignment agreement.

The Court of Common Pleas granted purchaser's motion for summary judgment but denied its motion for prejudgment interest. Both parties appealed. The First District Court of Appeals affirmed. Purchaser appealed, and the Supreme Court accepted jurisdiction.

The Supreme Court held that port authority, as assignee of purchaser's interest in hotel, was liable to pay prejudgment interest to purchaser for breach of redevelopment agreement, abrogating Beifuss v. Westerville Bd. of Edn., 37 Ohio St.3d 187, 525 N.E.2d 20, State ex rel. Brown v. Milton-Union Exempted Village Bd. of Edn., 40 Ohio St.3d 21, 531 N.E.2d 1297, and State ex rel. Stacy v. Batavia Local School Dist. Bd. of Edn., 105 Ohio St.3d 476, 829 N.E.2d 298.

Port authority, as assignee in assignment agreement, was liable to pay prejudgment interest to assignor, for port authority's breach of agreement by failing to pay redevelopment fee as required under agreement, although port authority argued that, because it was state actor, it was immune from liability for prejudgment interest; statutes governing immunity from liability for port authorities did not include immunity for prejudgment interest, and no exception to application of prejudgment interest for judgments requiring payment of money arising out of a contract existed.

Where a statute does not expressly exempt a subordinate political subdivision from its operation, the exemption therefrom does not exist; abrogating Beifuss v. Westerville Bd. of Edn., 37 Ohio St.3d 187, 525 N.E.2d 20, State ex rel. Brown v. Milton-Union Exempted Village Bd. of Edn., 40 Ohio St.3d 21, 531 N.E.2d 1297, and State ex rel. Stacy v. Batavia Local School Dist. Bd. of Edn., 105 Ohio St.3d 476, 829 N.E.2d 298.

MUNICIPAL ORDINANCE - ALABAMA

City of Gulf Shores v. Coyote Beach Sports, LLC

Supreme Court of Alabama - April 12, 2024 - So.3d - 2024 WL 1592183

Company that rented out motor scooters, which were deemed motor-driven cycles under state law, brought action against city for a judgment declaring that city ordinance that required renters of

motor scooters to have a motorcycle license or motorcycle license endorsement was invalid.

Company also sought monetary damages and attorney fees and costs.

After a jury trial, the Circuit Court entered final judgment that declared that the ordinance was preempted by state law and that awarded company compensatory damages pursuant to the jury's verdict. and the Court later entered an order that awarded company attorney fees. City appealed both the judgment and the order, and the Supreme Court consolidated those appeals.

The Supreme Court held that state law did not preempt the ordinance.

MUNICIPAL CORPORATIONS - CALIFORNIA

City of Santa Cruz v. Superior Court of Santa Cruz County

Court of Appeal, Sixth District, California - April 16, 2024 - Cal.Rptr.3d - 2024 WL 1633744

City filed petition for writ of mandate directing the Superior Court to vacate order sustaining in part and overruling in part city's demurrer and to enter new order sustaining demurrer to county's entire first amended complaint alleging county incurred more than $1.2 million in costs for emergency repairs to portion of road located within city's jurisdiction on ground that county failed to plead its compliance with city ordinance's claim-presentation requirement.

The Court of Appeal held that:

- City ordinance applied to claims expressly excepted by the Government Claims Act from its claim-presentation requirement, and
- City ordinance applied to all of county's claims against city, including cause of action for declaratory relief.

Phrase "not governed by," as used in city ordinance establishing pre-suit presentation requirement for claims which were not governed by Government Claims Act section imposing presentation requirement for all claims except for enumerated claims, encompassed claims expressly excepted by the Act from its claim-presentation requirement, even if using "not excepted by" instead of "not governed by" would have been clearer; ordinance expressed clear intent to broadly impose requirement, such that there would be no reason why city would adopt ordinance expressly excluding claims already excluded by Government Claims Act, and ordinance language and structure tracked Government Claims Act section empowering local public entities to establish presentation policies and procedures for exempted claims.

City ordinance establishing pre-suit presentation requirement for claims which were not governed by Government Claims Act section imposing presentation requirement for all claims except for enumerated claims applied to all of county's claims against city in connection with $1.2 million incurred by county for emergency repairs to portion of road located within city's jurisdiction, including cause of action for declaratory relief; primary purpose of county's action was to obtain damages.

LIABILITY - GEORGIA

Fleureme v. City of Atlanta

Court of Appeals of Georgia - April 12, 2024 - S.E.2d - 2024 WL 1594606

Plaintiff filed suit against city and city employee for injuries sustained when employee "failed to yield" and struck plaintiff on public sidewalk.

City filed motion to dismiss due to plaintiff's noncompliance with ante litem notice statute. The State Court granted motion, and plaintiff appealed.

The Court of Appeals held that:

- General service statute did not control over specific statute governing claim for money damages against municipality, which mandated that service of ante litem notice of such claim "shall be served" upon mayor or chairperson of city council or city commission "personally or by certified mail or statutory overnight delivery";
- Plaintiff's service by statutory overnight mail of ante litem notice of claim with envelope addressed to "[city] City Hall[, city] City Council" failed to strictly comply with statute mandating that notice of claim be served upon mayor or chairperson of city council or city commission, as prerequisite to suit; and
- Service by statutory overnight mail of ante litem notice with envelope mailing label addressed to "Office of the Mayor," failed to strictly comply with statute mandating that ante litem notice of claim be served upon mayor or chairperson of city council or city commission.

PUBLIC RECORDS - NEW JERSEY

American Civil Liberties Union of New Jersey v. County Prosecutors Association of New Jersey

Supreme Court of New Jersey - April 17, 2024 - A.3d - 2024 WL 1644543

Civil rights group brought action against nonprofit organization comprised of county prosecutors seeking order compelling production of requested documents, including meeting minutes and funding records, as well as declaratory judgment stating that organization was subject to Open Public Records Act (OPRA) and common law public right of access.

The Superior Court granted organization's motion to dismiss for failure to state a claim. Civil rights group appealed. The Superior Court, Appellate Division, affirmed. Civil rights group's petition for certification was granted.

The Supreme Court held that:

- Organization was not a "public agency" required to disclose records pursuant to OPRA, and
- Organization was not a "public entity" subject to common law right of access to records.

Nonprofit organization comprised of county prosecutors was not a "public agency" required to disclose its records pursuant to the Open Public Records Act (OPRA); organization was distinct from county prosecutors, not their alter ego, it instead constituted an association in which county prosecutors were members and had no constitutional or statutory powers of any kind, nor was it authorized to investigate, arrest, or prosecute anyone.

Nonprofit organization comprised of county prosecutors was not a "public entity" subject to common law right of access to records and accordingly was not required to provide requested documents

concerning meeting minutes and membership to civil rights group; organization was a private, tax-exempt, and unstaffed entity, its governing body was comprised of seven voting members, no statute, regulation, or other mandate required organization to create or maintain the documents in dispute, and the documents were not maintained in a public office.

SCHOOL FUNDING - OKLAHOMA

Independent School District #52 of Oklahoma County v. Walters

Supreme Court of Oklahoma - April 2, 2024 - P.3d - 2024 WL 1399463 - 2024 OK 23

School districts brought action for writs of mandamus against defendants including Department of Education, alleging that districts received insufficient state aid payments for certain years. Other school districts intervened, and case was consolidated with a separate action that had been filed with another school district.

The District Court granted summary judgment to intervening districts, finding no requirement for defendants to seek repayment of excessive state aid payments made to certain schools until an audit was performed by auditors approved by the State Auditor and Inspector.

Plaintiff districts appealed. The Supreme Court affirmed in part, reversed in part, and remanded for District Court to adjudicate whether school districts had standing to bring claims. On remand, the District Court granted defendants' summary judgment motion, and denied plaintiffs cross-motion for summary judgment. Plaintiffs appealed.

The Supreme Court held that:

- State aid funds were general revenue funds that had lapsed within 30 months of their appropriation;
- State Board of Education's statutory mechanism for recoupment of state aid funds did not confer standing on school districts to seek to recover funds from lapsed past appropriations of state aid through mandamus action;
- State aid funds sought by school districts were not ad valorem revenue;
- Tolling exception did not apply; and
- Date to determine whether state aid appropriations sought by school districts had lapsed was the date school districts commenced action in District Court.

PUBLIC CONTRACTS - TEXAS

Campbellton Road, Ltd. v. City of San Antonio by and through San Antonio Water System

Supreme Court of Texas - April 12, 2024 - S.W.3d - 2024 WL 1590000

Property developer, which owned 585 acres within city's extra-territorial division, brought breach of contract and declaratory judgment action against city by and through city's water agency, arising from water agency's agreement with developer that agency would provide sewer service for proposed residential developments on property.

The 150th District Court denied water agency's plea to the jurisdiction, and motion to dismiss for lack of subject matter jurisdiction. Water agency filed interlocutory appeal. On appeal, the San

Antonio Court of Appeals reversed and remanded, finding the Local Government Contract Claims Act did not apply to waive city's immunity. Developer filed petition for review.

The Supreme Court held that:

- Developer sufficiently pleaded that written, bilateral contract was formed, as would support waiver of city's sovereign immunity under the Act;
- Developer sufficiently pleaded that written, unilateral contract was formed, as would support waiver of city's sovereign immunity under the Act;
- Contract terms contemplated that agency had right to developer's participation in project upon contract signing, as would support waiver of city's sovereign immunity under the Act; disapproving *Big Blue Props. WF, LLC v. Workforce Res., Inc.*, 2022 WL 1793516; *W. Travis Cnty. Pub. Util. Agency v. Travis Cnty. Mun. Util. Dist. No. 12*, 537 S.W.3d 549; *CHW-Lattas Creek, L.P. v. City of Alice*, 565 S.W.3d 779;
- Contract terms contemplated provision of payment to developer, as required to trigger waiver of sovereign immunity under the Act; and
- Developer sufficiently pleaded that contract contemplated provision of services to agency, as required to trigger waiver of sovereign immunity under the Act.

PUBLIC CONTRACTS - TEXAS

San Jacinto River Authority v. City of Conroe

Supreme Court of Texas - April 12, 2024 - S.W.3d - 2024 WL 1590001

Private utilities filed suit against San Jacinto River Authority (SJRA), claiming breach of groundwater reduction plan (GRP contracts. SJRA filed counterclaims against utilities and third-party claims against cities, claiming breach of GRP contracts by failing to pay required water rates and pumpage fees for surface water sold to cities in order to transition from groundwater use to surface water use.

The 284th District Court granted cities' pleas to jurisdiction, asserting their statutory immunity had not been waived under Local Government Contract Claims Act, and dismissed SJRA's claims against cities. SJRA filed interlocutory appeal. The Beaumont Court of Appeals affirmed. SJRA petitioned for review.

The Supreme Court held that:

- In matter of first impression, contractual adjudication procedures made enforceable by Local Government Contract Claims Act are not limitations on Act's immunity waiver;
- Government Code provision stating that statutory prerequisites to suit were jurisdictional in suits against governmental entity did not apply;
- Pre-suit mediation procedures in GRP contracts did not apply; and
- GRP contracts stated essential terms so cities waived immunity.

COMMON INTEREST COMMUNITIES - CALIFORNIA

Colyear v. Rolling Hills Community Association of Rancho Palos Verdes

Court of Appeal, Second District, Division 4, California - March 1, 2024 - 100 Cal.App.5th 110 - 318 Cal.Rptr.3d 805 - 2024 Daily Journal D.A.R. 1805

Following initial dismissal of neighbor from lawsuit, subdivision filed amended complaint against community association, seeking declaratory relief, an injunction, quiet title relief, and damages for breach of fiduciary duty arising out of the association's tree-trimming covenant.

The Superior Court, Los Angeles County, entered judgment for lot owner on his claims for declaratory and injunctive relief and for breach of fiduciary duty, but denied quiet title claim. Association appealed, and lot owner cross-appealed.

The Court of Appeal held that:

- Original declaration containing tree cutting covenant, on its own terms, did not apply to lot owner's property;
- Subsequent subdivision declaration which applied to lot owner's property did not sufficiently incorporate tree cutting covenant;
- References to original subdivision declaration in subsequent declaration did not put lot owner on constructive or inquiry notice; and
- Lot owner's enjoyment of benefits of subdivision's roads, gates, and other facilities did not subject him to tree trimming covenant.

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EMINENT DOMAIN - FEDERAL

Hyatt v. United States

United States Court of Federal Claims = March 13, 2024 - Fed.Cl. - 2024 WL 1090727

In rails-to-trails case, owners of property adjacent to and underlying rail corridor right-of-way filed suit claiming just compensation for taking of their property allegedly effected by Surface Transportation Board (STB) issuing notice of interim trail use (NITU), railbanking corridor, and authorizing interim recreational trail use, under National Trails System Act.

Parties cross-moved for summary judgment.

The Court of Federal Claims held that:

- Taking was effected by issuing NITU and expanding easement that was meant specifically for railroad purposes;
- Genuine disputes of material fact remained as to precise dimensions of taking; and
- Owners were entitled to complete expert discovery as to property valuation.

EMINENT DOMAIN - FEDERAL

Sheetz v. County of El Dorado, California

Supreme Court of the United States - April 12, 2024 - S.Ct. - 2024 WL 1588707

Landowner filed petition for writ of mandate and complaint for declaratory and injunctive relief, challenging $23,420 traffic impact mitigation fee imposed by county, as a condition of issuing him a building permit for the construction of a single-family residence on his property, as violating the California Mitigation Fee Act as well as the Takings Clause of the United States Constitution.

The Superior Court sustained county's demurrer in part and denied the petition for writ of mandate. Landowner appealed, and the Third District Court of Appeal affirmed. After the California Supreme Court denied further review, landowner petitioned the United States Supreme Court for certiorari review. Certiorari was granted.

In a unanimous opinion, the Supreme Court held that the Nollan/Dolan test for determining whether a fee imposed as a condition for a land use permit constitutes an unconstitutional taking under the Fifth Amendment applies to both legislative and administrative permit conditions; abrogating St. Clair Cty. Home Builders Assn. v. Pell City, 61 So. 3d 992, and Home Builders Assn. of Central Ariz. v. Scottsdale, 187 Ariz. 479, 930 P. 2d 993.

BOND VALIDATION - FLORIDA

Florida PACE Funding Agency v. Pinellas County

District Court of Appeal of Florida, Second District - March 27, 2024 - So.3d - 2024 WL 1288194

Florida PACE Funding Agency (FPFA) is a local government entity created under section 163.01(7), Florida Statutes (2010). It finances energy conservation and hurricane "hardening" improvements on residential and commercial properties.

FPFA entered into an interlocal agreement in 2019 to operate a non-residential PACE program within Pinellas County. FPFA agreed that, in addition to the limitations and requirements of applicable state and federal law, it must also comply with the limitations and requirements of the County PACE Ordinance.

In October 2022, a circuit court in Leon County validated a series of FPFA bonds worth up to $5 billion. "Significantly, that same judgment includes language that seemingly permits FPFA to finance commercial and residential improvements statewide, without regard to municipal or county ordinances that regulate PACE local governments."

"With the bond validation judgment in its pocket, FPFA sent a letter to the County on January 20, 2023, notifying the County that it was terminating the interlocal agreement effective March 21, 2023, and stating, 'Henceforth, the [FPFA's] program will be conducted independently, and not under the Agreement.' FPFA asserted that the '[judicial validation] process clarified that the [FPFA] has independent authority to carry out its mission of offering PACE financing statewide, without requiring additional efforts from individual counties or cities.'

In the County's subsequent suit, and without weighing in on the merits of FPFA's claims, the District Court of Appeal upheld the interlocal agreement's broad forum selection clause and denied FPFA's motion for a change of venue.

EMINENT DOMAIN - GEORGIA

City of Canton v. Brandreth Holdings, LLC

Court of Appeals of Georgia - April 1, 2024 - S.E.2d - 2024 WL 1360766

Property owners, which were two limited liability companies (LLCs), brought inverse-condemnation action against city, alleging that city failed to maintain its sewer system and failed to make

necessary improvements and repairs in a timely manner, causing damage to owners' property that constituted a taking for which compensation was due.

The Superior Court denied city's motion to dismiss. Upon grant of its application for interlocutory appeal, city appealed.

The Court of Appeals held that owners were not required to provide notice pursuant to municipal ante litem notice statute before bringing their claim.

MUNICIPAL ORDINANCE - ILLINOIS

Cammacho v. City of Joliet

Supreme Court of Illinois - April 4, 2024 - N.E.3d - 2024 IL 129263 - 2024 WL 1449094

Commercial truck drivers filed complaint for review of decision of city administrative hearing officer finding drivers liable, under city ordinance, for driving semitruck trailers on posted "No Truck" routes and nondesignated state or local roadways, and imposing fines.

The Circuit Court affirmed. Drivers appealed. The Appellate Court reversed. City's appeal was allowed.

The Supreme Court held that:

- Municipal Code did not operate as jurisdictional limit on a home rule municipality's authority to administratively adjudicate violations of its ordinances; overruling Catom Trucking, Inc. v. City of Chicago, 351 Ill.Dec. 797, 952 N.E.2d 170, but
- City's ordinances regulating weight and length of vehicles driving over nondesignated state or local roadways were similar to Vehicle Code provisions regulating movement of vehicles over a certain weight or length, so that violations of ordinances were "reportable offenses," within meaning of Vehicle Code and city's administrative adjudication code, and thus, city ordinances required that drivers appear in circuit court.

Even if General Assembly intended that definition of "system of administrative adjudication" set forth in Municipal Code, which definition excluded municipal offenses that were similar to offenses prohibited in traffic regulations governing movement of vehicles or to reportable offenses under Vehicle Code, would operate as jurisdictional limit on a home rule municipality's authority to administratively adjudicate violations of its ordinances by issuing orders, General Assembly did not satisfy requirement, for valid limit of a home-rule municipality's constitutional powers, of expressly stating that a home-rule municipality's constitutional powers would be limited; overruling *Catom Trucking, Inc. v. City of Chicago*, 351 Ill.Dec. 797, 952 N.E.2d 170.

Home rule city's ordinances regulating weight and length of vehicles driving over nondesignated state or local roadways were similar to Vehicle Code provisions regulating movement of vehicles over a certain weight or length, so that violations of ordinances were "reportable offenses," within meaning of city's administrative adjudication code, which incorporated Code's definition of that term, and thus, city ordinances required that commercial truck drivers be issued uniform traffic citations, rather than notices of ordinance violation, and that drivers be required to appear in circuit court to have their objections adjudicated, rather than appearing at city's code hearing unit, though city ordinances differed from Code in method used to measure weight of vehicles, maximum weight allowed, and designation of specific truck routes in city.

PUBLIC EMPLOYMENT - MISSISSIPPI

Barker v. Ivory

Supreme Court of Mississippi - April 2, 2024 - So.3d - 2024 WL 1406576

Objector filed petition for judicial review challenging finding of political party's executive committee that candidate for city alderman was a qualified candidate.

After evidentiary hearing, the Circuit Court entered judgment finding candidate not qualified for failure to satisfy residency requirement. Candidate appealed.

The Supreme Court, en banc, held that evidence was sufficient to support finding that candidate was a resident of city in another state rather than of city in which candidate sought office of alderman, as would preclude candidate from being qualified to be placed on ballot.

Evidence was sufficient to support finding, after evidentiary hearing before bench, that candidate for city alderman was a resident of city in another state rather than of city in which candidate sought office of alderman, as would preclude candidate from being qualified to be placed on ballot; home in which candidate asserted he resided in city in which office was sought was owned by candidate's late aunt's husband rather than by candidate, candidate owned several properties in city in other state, candidate had claimed homestead exemption on one of those properties for previous 11 years, and candidate remained a registered voter in other state.

PUBLIC LANDS - MISSISSIPPI

State v. Aldrich

Supreme Court of Mississippi - April 4, 2024 - So.3d - 2024 WL 1455595

Owners of acre of coastal land and others filed complaint challenging Secretary of State's preliminary drawing of map demarcating boundary line between owner's property and State-owned Public Trust Tidelands.

State answered and filed counterclaim that it held fee simple title to disputed property.

The Chancery Court granted State's motion to dismiss plaintiffs' complaint for failure to prosecute, but did not dismiss State's counter-claim, granted motions by city, county, and public school district to intervene.

After both owners passed, owner's son filed amended answer to State's counterclaim. Following bench trial, the Chancery Court entered judgment for owner's son, and State appealed.

The Supreme Court held that:

- City, county, and public school district were entitled to intervene as of right;
- State did not acquire disputed acre of coastal land from United States in 1817 when Mississippi became state;
- Chancery court's dismissal with prejudice of son's complaint for failure to prosecute did not

conclusively establish boundaries in map as final and therefore no longer subject to revision, on son's answer to State's counterclaim that was not dismissed;
- Evidence supported finding that artificial accretions to subject coastal land from accumulation of oyster shells that were replanted on reefs and dredging operations by United States Army Corps of Engineers prior to July 1, 1973 were done pursuant to legislative enactment and for higher purpose, and thus property accretions accrued to owner's son, and not State; and
- Supreme Court would not apply doctrine of equitable estoppel to estop State from asserting that disputed acre of coastal land that lay north of shoreline was included in Public Trust Tidelands.

ZONING & PLANNING - NEW HAMPSHIRE

Mojalaki Holdings, LLC v. City of Franklin

Supreme Court of New Hampshire - April 9, 2024 - A.3d - 2024 N.H. 17 - 2024 WL 1514612

Landowner and solar energy company appealed decision of the city planning board that denied a site plan application to install a solar panel array.

The Superior Court affirmed, and landowner and company appealed.

The Supreme Court held that:

- Planning board improperly relied on purpose provisions of city site plan regulations when denying application, and
- Landowner and solar energy company were entitled to builder's remedy to construct proposed solar panel array.

City planning board improperly relied on purpose provisions of city site plan regulations when denying application to install solar panel array which satisfied all of the site-specific technical regulations applicable to the project; board, which had concerns about constructing the solar panel array in a rural residential area, relied on purpose provisions stating that the regulations were to provide for harmonious and aesthetically pleasing development, to provide for building purposes which would not endanger the health, safety, and welfare of the general public and the abutting properties, and provide for the protection of trees and other natural features.

Landowner and solar energy company were entitled to builder's remedy to construct proposed solar panel array, where their site plan application met the specific, applicable site plan regulations, and planning board improperly relied on purpose provisions of the city site plan regulations to deny the application.
