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**IMMUNITY - TEXAS**

## City of Killeen–Killeen Police Department v. Terry

**Supreme Court of Texas - April 25, 2025 - S.W.3d - 2025 WL 1196743**

Vehicle owner brought action against city police department after police cruiser responding to 911 call struck his vehicle.

The 146th District Court denied department's plea to jurisdiction. Department appealed. The Austin Court of Appeals affirmed. Department petitioned for review.

The Supreme Court held that remand was necessary for further consideration of whether emergency exception to Tort Claims Act's waiver of governmental immunity applied to department.

Remand to Court of Appeals was necessary for further consideration of whether emergency exception to Tort Claims Act's waiver of governmental immunity applied to city police department in action brought against department by vehicle owner after police cruiser responding to 911 call struck his vehicle; in affirming denial of department's plea to jurisdiction, Court of Appeals applied categorical rule that governmental entity was immune from suits to recover damages resulting from emergency operation of emergency vehicle unless operator acted recklessly, but subsequent Supreme Court decision in Powell, 704 S.W.3d 437, held that court was to resolve officer's compliance with laws and ordinances applicable to emergency action before conducting any recklessness inquiry.

The emergency exception to the Tort Claims Act's waiver of governmental immunity contemplates two distinct inquiries to be undertaken in a particular order: first, the court must assess whether any laws or ordinances apply to the emergency action at issue in the case; if a law or ordinance applies to the emergency action or to some aspect of it, then the jurisdictional inquiry turns on whether the officer's action complied with the relevant law or ordinance, and only if no law or ordinance applies may the court move to the second inquiry—whether there is a fact issue as to that officer's recklessness in undertaking the action that led to the injury.

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**ZONING & PLANNING - VIRGINIA**

## Drewry v. Board of Supervisors of Surry County

**Court of Appeals of Virginia, Richmond - April 22, 2025 - S.E.2d - 2025 WL 1160824**

Neighboring landowner filed complaint seeking declaratory judgment that approval by county board of supervisors of conditional use permit for methane gas conditioning facility to be operated on property zoned agricultural/residential was void ab initio due to board's alleged failure to follow required statutory procedures.

The Surry Circuit Court sustained board's and permit applicant's demurrers. Landowner appealed.

The Court of Appeals held that:

- Landowner waived any challenge on ground that he received deficient notice of planning commission's public hearing and county board of supervisors' subsequent hearings;
- Planning commission did not violate notice requirements by non-advertised, non-public meeting after holding public hearing; and
- Landowner had no private right of action to challenge planning commission's finding that proposed use was in substantial accord with comprehensive land use plan.

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**OPEN MEETINGS - WASHINGTON**

## McFarland v. Tompkins

**Court of Appeals of Washington, Division 3 - April 24, 2025 - P.3d - 2025 WL 1186580**

County resident brought action against county and members of county board of commissioners under Open Public Meetings Act (OPMA), seeking civil penalties and other relief based on contention that defendants failed to give advance notice of possible action taken during special board meeting, namely, board's approval of letter to Governor and state legislators advocating for restraints on measures taken to combat COVID-19 pandemic.

Parties cross-moved for summary judgment. The Superior Court initially granted summary judgment in favor of resident as to issues of standing and adequacy of notice of special meeting, but granted defendants' motion for reconsideration and granted summary judgment in defendants' favor. Resident appealed.

The Court of Appeals held that:

- Resident had standing to bring claim to void resolution under OPMA;
- County was proper defendant on claim to void resolution under OPMA;
- Resident's claims were not moot;
- Any unreasonable delay by resident in bringing suit did not warrant application of doctrine of laches;
- Notice of agenda topics to be discussed at special meeting was inadequate under OPMA; and
- Triable issue existed as to whether board members knew notice of special meeting agenda was inadequate.

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**BOND PROCEEDS - MINNESOTA**

## In re City of Edwardsville

**Court of Appeals of Minnesota - April 7, 2025 - Not Reported in N.W. Rptr. - 2025 WL 1024461**

In connection with redevelopment plan in which One10 Hotel HRKC, LLC was the Developer and UMB Bank the Indenture Trustee, City agreed to issue $23,280,000 in revenue bonds. These bonds consisted of guest-tax revenue bonds, special-obligation-tax-increment revenue bonds, and community-improvement-district revenue bonds.

Separate indentures governed the administration of each of the three types of bonds, but the indentures were virtually identical in aspects material to this case. City issued the bonds in late

October 2019, the proceeds of which were held in trust with UMB Bank.

One10 initially submitted two cost certifications pursuant to the terms of the Indentures, both of which the City approved. The Trustee reviewed these certifications and approved payment of approximately $9 million in bond proceeds.

Funding issues soon arose. On February 28, 2020, Altos (the funder of the $50-million construction loan), informed One10 that it was unable to provide funds under the loan. One10 soon suspended construction on the hotel while it sought a new lender. Shortly thereafter, One10 submitted a third cost certification to the City, in which it sought reimbursement for $829,247.32 in expenses. Although the city approved this third cost certification, UMB, as Trustee, refused to release the requested bond proceeds. UMB also informed One10 of its belief that One10 breached the development agreement and demanded that it cure the breach.

In June 2020, UMB filed a trust-instruction petition pursuant to Minn. Stat. § 501C.0202, subd. 24 (2024), in Hennepin County District Court. Subdivision 24 pertains to requests "to instruct the trustee regarding any matter involving the trust's administration or the discharge of the trustee's duties, including a request for instructions and an action to declare rights." UMB sought a number of declarations and judgments regarding the protection of the bondholders and the trust proceeds.

In February 2023, One10 filed a motion in limine seeking to prevent UMB from introducing events or conduct that are outside the scope of the petition, specifically (1) evidence related to alleged events of default other than those identified in the petition and (2) evidence or argument that relates to events and alleged defaults that postdate the petition. The district court reserved ruling on the relevant portion of the motion in limine.

In March 2023, the district court held a trial on UMB's petition. Following the trial, the district court denied One10's motion in limine. It also ordered that: (1) the Trustee is not required to distribute additional funds to One10, including funds requested in connection with the third cost certification; (2) the Trustee is authorized to declare the principal and interest on all bonds outstanding and due; (3) the Trustee is authorized to make a distribution from the trust estates on direction from a majority of the outstanding bond owners; and (4) the trust estates and the Trustee are not subject to continuing supervision of the court.

The district court later denied One10's posttrial motion for amended findings and conclusions of law or a new trial and One10 appealed.

One10 argued that the district court erred by failing to hold UMB to its petition for relief in two ways. First, One10 argued that the district court improperly considered events that postdated the June 22, 2020, filing of the petition. Second, One10 argued that the district court made a conclusion outside the scope of the petition that UMB could refrain from paying the third cost certification in the absence of uncured event of default.

The Court of Appeal held that:

- Postpetition events were within the scope of of the pleadings because, taken as a whole, UMB's requested instructions put One10 on notice that UMB broadly sought to avoid having to disburse additional bond funds.
- UMB was not required to pay the third cost certification regardless of whether an event of default had occurred because the indentures provide the Trustee with discretion to withhold payment in this situation.

**MUNICIPAL ORDINANCE - MISSISSIPPI**

## Mississippi Apartment Association v. City of Jackson

**Supreme Court of Mississippi - April 17, 2025 - So.3d - 2025 WL 1134565**

Apartment association and other owners and managers of city rental housing units brought action against city and director of city's planning department, seeking declaratory and injunctive relief with respect to newly-adopted city ordinance imposing registration and inspection requirements on rental housing units.

The Chancery Court granted defendants' motion to dismiss for lack of jurisdiction. Plaintiffs appealed.

The Supreme Court held that pursuant to statute governing appeals from decision of governing authority of municipality, chancery court lacked subject matter jurisdiction to address plaintiffs' claims for declaratory and injunctive relief.

Pursuant to statute governing appeals from decision of governing authority of municipality, circuit court had exclusive jurisdiction over appeal by apartment association and other owners and managers of city rental housing units from city council's decision to adopt ordinance imposing registration and inspection requirements on rental housing units and, thus, also had pendent jurisdiction over related claims regarding enforcement of ordinance, including those for declaratory and injunctive relief, which arose from common nucleus of operative fact, such that chancery court was deprived of subject-matter jurisdiction to address claims seeking declaratory and injunctive relief with respect to ordinance.

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**IMMUNITY - NEW YORK**

## Katleski v. Cazenovia Golf Club, Inc.

**Court of Appeals of New York - April 15, 2025 - N.E.3d - 2025 WL 1108976 - 2025 N.Y. Slip Op. 02178**

Golfer brought action against golf club seeking damages for injuries sustained when he was struck by errant golf ball while participating in golf tournament.

The Supreme Court, Madison County, denied golf club's motion for summary judgment, and it appealed. The Supreme Court, Appellate Division, reversed. Leave to appeal was granted. In separate action, patron brought action against county, its parks department, and its golf course for personal injuries allegedly sustained when golf cart that she was operating in golf course's parking lot was struck by motor vehicle. The Supreme Court, Erie County, granted patron's motion to strike defendants' primary assumption of risk defense and denied defendants' motion for summary judgment, and they appealed. The Supreme Court, Appellate Division reversed. Leave to appeal was granted.

The Court of Appeals held that:

- Primary assumption of risk doctrine barred golfer's claim in first action, but

- Primary assumption of risk doctrine did not apply to bar patron's claim in second action.

Golfer assumed risk of being struck by golf ball while participating in golf tournament, and thus primary assumption of risk doctrine barred his claim against golf club for damages for injuries sustained when he was struck by errant golf ball while participating in golf tournament, despite golfer's contention that placement of tee box on adjacent hole increased risk to players on fairway beyond what they faced prior to box's installation or might have faced had barrier or other protective measure been implemented, absent evidence that course design unreasonably enhanced inherent risk of being struck by ball beyond what was customary in sport.

Patron was not engaged in athletic and recreational activity when golf cart that she was operating in golf course's parking lot with intention of retrieving her golf clubs from her car collided with car that was exiting, and thus primary assumption of risk doctrine did not apply to bar her negligence claim against county, its parks department, and its golf course to recover for her personal injuries.

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**LIMITATION OF ACTIONS - UTAH**

## Grillone v. Peace Officer Standards and Training Council

**Supreme Court of Utah - April 3, 2025 - P.3d - 2025 WL 1007306 - 2025 UT 7**

Former police officer sought judicial review of order of Peace Officer Standards and Training Division (POST) suspending his peace officer certification for three years after POST learned that officer had resigned from his position as a police officer while under investigation for providing false or misleading information to prosecutor handling a traffic citation against officer's mother.

The Court of Appeals affirmed, and officer filed petition for certiorari.

The Supreme Court held that:

- As matter of first impression, statutes of limitation for civil actions in judicial code do not apply to administrative disciplinary proceedings unless legislature has incorporated them by statute;
- Statute governing POST disciplinary proceedings did not subject POST-adjudicative proceedings to catch-all four year statute of limitations for relief not otherwise provided for by law; and
- POST disciplinary proceeding brought against officer at least five years after he had resigned from his position was not time barred.

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**ZONING & PLANNING - VIRGINIA**

## Drewry v. Board of Supervisors of Surry County

**Court of Appeals of Virginia, Richmond - April 22, 2025 - S.E.2d - 2025 WL 1160824**

Neighboring landowner filed complaint seeking declaratory judgment that approval by county board of supervisors of conditional use permit for methane gas conditioning facility to be operated on property zoned agricultural/residential was void ab initio due to board's alleged failure to follow required statutory procedures.

The Surry Circuit Court sustained board's and permit applicant's demurrers. Landowner appealed.

The Court of Appeals held that:

- Landowner waived any challenge on ground that he received deficient notice of planning commission's public hearing and county board of supervisors' subsequent hearings;
- Planning commission did not violate notice requirements by non-advertised, non-public meeting after holding public hearing; and
- Landowner had no private right of action to challenge planning commission's finding that proposed use was in substantial accord with comprehensive land use plan.

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**LOCAL INITIATIVES - WASHINGTON**

## Jewels Helping Hands v. Hansen

**Supreme Court of Washington, En Banc - April 17, 2025 - P.3d - 2025 WL 1132148**

Advocates for persons experiencing homelessness brought action against local voter, city, and county, seeking declaratory and injunctive relief against local initiative that sought to expand locations in city where camping was banned regardless of whether shelter space was available, on grounds that initiative exceeded scope of local initiative power.

The Superior Court dismissed the complaint. Advocates appealed, and the Court of Appeals affirmed. The Supreme Court granted review.

The Supreme Court held that:

- Trial court ruling was appealable, and
- Initiative was impermissibly administrative, and thus fell outside the scope of local initiative power.

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**POLITICAL SUBDIVISIONS - KENTUCKY**

## Louisville & Jefferson County Metropolitan Sewer District v. Albright

**Supreme Court of Kentucky - March 20, 2025 - S.W.3d - 2025 WL 890812**

Mother of deceased child brought action against county sewer district, alleging claims for negligence, failure to warn, negligence per se, attractive nuisance, negligent infliction of emotional distress, and loss of consortium, arising out of child's death when he was swept into drainage pipe.

The Circuit Court granted sewer district's motion for summary judgment. Estate appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Sewer District's motion for discretionary review was granted.

The Supreme Court held that:

- Sewer district was a "special district" under Claims Against Local Governments Act (CALGA) and a "special purpose governmental entity" under statute governing such special purpose governmental entities;
- Mother's allegations were sufficient to allege that district failed to fulfill its ministerial duty to non-negligently maintain and repair the drainage system for which it was responsible, and thus that district was not immune from mother's negligence action; and
- Sewer district's guideline relating to use of grates on drainage pipes did not arise out of its exercise of legislative or quasi-legislative authority, and thus could not form basis for district to have municipal immunity.

**IMMUNITY - NEW HAMPSHIRE**

## Felts v. City of Rochester

**Supreme Court of New Hampshire - April 16, 2025 - A.3d - 2025 N.H. 16 - 2025 WL 1119269**

Pedestrian's husband, individually and as executor of pedestrian's estate, brought negligence action against city, alleging that pedestrian was struck and fatally injured by motor vehicle while she was walking across street within painted crosswalk and that, at time of collision, the painted crosswalk was not accompanied by any warning signs, signals, or traffic control devices.

The Superior Court granted in part and denied in part city's motion to dismiss, granting city's motion to dismiss negligence claim to extent the complaint alleged that city negligently maintained the crosswalk itself and denying the motion as to allegations that city negligently failed to place crossing signals, warning signs, or other traffic controls alerting motorists to crosswalk. City filed interlocutory appeal.

The Supreme Court held that:

- Term "highways" included pedestrian warning signs pursuant to statute providing that municipality shall not be held liable for damages in action to recover for personal injury or property damage arising out of its construction or repair of public highways unless such injury or damage was caused by insufficiency, and
- Statute governing municipal liability applied to husband's negligence claim to the extent that husband's claim was premised upon city's failure to place pedestrian warning signs at crosswalk.

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**PRIVATE CONDUIT BONDS - NEW YORK**

## State ex rel. Edelweiss Fund, LLC v. JPMorgan Chase & Co.

**Supreme Court, New York County, New York - April 4, 2025 - Slip Copy - 85 Misc.3d 1250(A) - 2025 WL 1075257 (Table) - 2025 N.Y. Slip Op. 50457(U)**

Plaintiff brought a qui tam action alleging that each of the Defendants in this case violated the New York False Claims Act (NYFCA) by fraudulently representing that they had exercised required "professional judgment" in determining the "minimum rate of interest necessary … to enable [them] to remarket all of the [Variable Rate Debt Obligation Bonds (the VRDOs)]… at par plus accrued interest" in connection with their demands for payment to NY (and certain Companies in the case of conduit bonds) pursuant to certain remarketing agreements, indentures, interest rate obligations, and letters of credit—which were each executed as part of an integrated transaction.

The Supreme Court dismissed the New York False Claims Act claims involving private conduit bonds because Edelweiss Fund, LLC (Relator) failed to establish that the State of New York (NY) incurred damages—an essential element of a NYFCA claim.

"Simply put, according to Relator, the damages stemming from the alleged violations of the NYFCA were the payment of certain remarketing fees, liquidity fees and the payment of interest at a rate which was not the minimum rate necessary for the bonds to clear at par in the required judgment of the Defendants. On the fully developed record, with respect to the private conduit bonds at issue, none of these payments were made by NY such that NY suffered damages. As such, these claims must be dismissed with prejudice."

**SPECIAL ASSESSMENTS - SOUTH DAKOTA**

## KJD, LLC v. City of Tea

**Supreme Court of South Dakota - April 9, 2025 - N.W.3d - 2025 WL 1075137 - 2025 S.D. 22**

Property owner appealed city's special assessment levied against its property to finance road construction project abutting the property, after the city council passed a resolution finding that the project conferred special benefits on abutting properties above and beyond that experienced by the public at large.

The Circuit Court denied property owner's objection and upheld the special assessment. Property owner appealed.

The Supreme Court held that:

- Circuit court may resolve a landowner's appeal of a special assessment via a trial on merits;
- Supreme Court would review circuit court's decision de novo;
- City's failure to quantify the special benefit in its resolution imposing special assessment, and city's use the cost of the project in calculating the assessment, did not perforce render the assessment unconstitutional; and
- Property owner failed to present substantial, credible evidence rebutting city's findings.

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**IMMUNITY - ALABAMA**

## Ex parte City of Orange Beach

**Supreme Court of Alabama - April 4, 2025 - So.3d - 2025 WL 1007962**

Widow, in her individual capacity and in her capacity as personal representative of husband's estate, brought wrongful-death action against city, asserting negligence and wantonness for city's failure to ensure that construction of subdivision in which the couple had lived complied with parking requirements for planned unit developments (PUDs), which failure allegedly led to husband's death from a heart attack when emergency services could not readily reach the home.

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

The Supreme Court held that:

- City had substantive immunity from the wantonness-based wrongful-death claim, and
- City had substantive immunity from the negligence-based wrongful-death claim.

City had substantive immunity from wantonness-based wrongful-death claim asserted by widow, who was acting in her individual capacity and in her capacity as personal representative of husband's estate and who contended that city's failure to ensure that construction of subdivision in which the couple had lived complied with parking requirements for planned unit developments (PUDs) led to husband's death from a heart attack when emergency services could not readily reach the home; statute on municipal liability excluded liability for wanton misconduct.

City had substantive immunity from negligence-based wrongful-death claim asserted by widow, who was acting in her individual capacity and in her capacity as personal representative of husband's estate and who contended that city's failure to ensure that construction of subdivision in which the couple had lived complied with parking requirements for planned unit developments (PUDs) led to husband's death from a heart attack when emergency services could not readily reach the home; a governmental entity's failure to enforce its own ordinance did not give rise to a tort action, and any benefit that the couple would have received from a proper city investigation of the subdivision's construction would have been merely incidental to the benefit derived by the citizens of the county in general.

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**EMINENT DOMAIN - CALIFORNIA**

## United Water Conservation District v. United States

**United States Court of Appeals, Federal Circuit - April 2, 2025 - F.4th - 2025 WL 984454**

California water conservation district filed suit against United States, claiming that National Marine Fisheries Service (NMFS) effected Fifth Amendment physical taking of district's water rights by increasing bypass flow requirements to protect endangered steelhead trout, under Endangered Species Act (ESA).

The Court of Federal Claims granted government's motion to dismiss for lack of subject matter jurisdiction. District appealed.

The Court of Appeals held that:

- Alleged taking was regulatory in nature rather than physical, and
- Regulatory taking claim was not ripe for adjudication.

National Marine Fisheries Service's (NMFS) reasonable and prudent alternatives (RPAs) in biological opinion (BiOp), requiring California water district to increase bypass flow, so that more river water either remained in river or flowed through fish ladder located in river, in order to protect endangered southern California steelhead trout at dam owned and operated by district, represented regulatory restrictions on district's use of water, rather than physical taking, since BiOp RPAs represented nonpossessory government activity merely requiring that more river water, whether flown through fish ladder or not, had to remain in river, rather than completely cutting off district's access to water or causing district to return any volume of water that it had diverted to its possession in canal.

California water district's regulatory takings claim, arising from National Marine Fisheries Service's (NMFS) requirement that district increase bypass flow so more river water either remained in river or flowed through fish ladder located in river in order to protect endangered southern California steelhead trout, was not ripe for adjudication, since district had not yet obtained final agency action denying incidental-take permit under ESA.

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**IMMUNITY - HAWAII**

## McGuire v. County of Hawai'i

**Supreme Court of Hawai'i - April 8, 2025 - P.3d - 2025 WL 1039365**

In federal court, plaintiff brought civil rights action under § 1983 against county, county prosecutor, and three deputy prosecutors in their official and individual capacities, asserting claims including malicious prosecution.

The United States District Court for the District of Hawai'i certified question to the Supreme Court as to whether, under Hawai'i law, a county prosecuting attorney or deputy prosecuting attorney acts on behalf of the county or the state when preparing to prosecute or prosecuting state crimes.

The Supreme Court held that:

- County prosecutors act on behalf of county, not state, when preparing to prosecute or prosecuting offenses, and
- County prosecutors do not have sovereign immunity from § 1983 claims.

The attorney general's limited ability to supersede a county prosecuting attorney's authority in compelling circumstances does not equate to control over the county prosecutor, as would render the prosecutor a state rather than county official for purposes of determining whether the county may be liable for the prosecutor's conduct under § 1983; the attorney general does not exercise direct control over day-to-day county prosecutions.

Judicially-fashioned immunity shields county prosecutors and their deputies in their individual capacities from liability under § 1983, and where absolute immunity does not apply, prosecutors still have qualified immunity.

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**ZONING & PLANNING - IOWA**

## 1000 Friends of Iowa v. Polk County Board of Supervisors

**Supreme Court of Iowa - April 4, 2025 - N.W.3d - 2025 WL 1007321**

Landowners and land-use organization brought action challenging county board of supervisors' approval of nonprofit entity's application for zoning status change which rezoned parcel from agricultural to neighborhood commercial.

The District Court granted board's motion to dismiss. Landowners and organization appealed.

The Supreme Court held that:

- Municipal Tort Claims Act's heightened pleading standard, along with Act's penalty of dismissal with prejudice for insufficient pleading, applies only to claims seeking monetary damages;
- As a matter of apparent first impression, landowners resided sufficiently near to property so as to be capable of having standing even though landowners' properties were not adjacent to the rezoned property;
- Landowners alleged they were "aggrieved" by rezoning decision, as required for standing;
- Organization failed to allege that it was "aggrieved" by rezoning decision, as would be required for organizational standing; and
- Organization's stated mission of preventing poorly-planned land use decisions and encouraging land use planning that protected farmland and natural areas was not a specific personal or legal interest that could confer private party standing on organization.

**GAMING - LOUISIANA**

## Fremin v. Boyd Racing, LLC

**Supreme Court of Louisiana - March 21, 2025 - So.3d - 2025 WL 879737 - 2024-00995 (La. 3/21/25)**

Voters and residents in five parishes where historical horse racing was being, or could have been, conducted at offtrack betting facilities brought action against racetracks, seeking declaration that statutory amendments that incorporated historical horse racing as a form of authorized pari-mutuel wagering on horse racing without requiring prior voter approval was unconstitutional, as well as injunctive relief prohibiting historical horse racing.

The District Court denied racetracks' exceptions of no right of action, granted summary judgment in favor of voters and residents, declared historical horse racing a new form of gaming requiring prior local voter approval, and declared the statutory amendments were unconstitutional. Racetracks appealed.

The Supreme Court held that:

- Voters and residents had standing to challenge constitutionality of statutory amendments that incorporated historical horse racing as a form of authorized pari-mutuel wagering on horse racing without requiring prior local voter approval, and
- Statutory amendments that incorporated historical horse racing as a form of authorized pari-mutuel wagering on horse racing without requiring prior local voter approval were unconstitutional.

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**IMMUNITY - ALABAMA**

## Ex parte City of Muscle Shoals

**Supreme Court of Alabama - March 28, 2025 - So.3d - 2025 WL 939487**

City residents brought action against city, asserting claim of negligence, claim of trespass, and claim for injunctive relief, all of which stemmed from the flooding of their houses allegedly caused by city's purported mismanagement of stormwater-drainage pond that was overwhelmed by heavy rainfall.

The Circuit Court denied city's motion to dismiss the claim for injunctive relief. City petitioned for writ of mandamus. The Supreme Court granted the petition and issued the writ. Thereafter, city answered the amended complaint and moved the summary judgment. The Circuit Court denied that motion. City petitioned for writ of mandamus.

The Supreme Court held that:

- Absent evidence that city breached any duty that it might have had by failing to plan for larger, less probable rainfall events, city employees or agents did not act with neglect, carelessness, or unskillfulness in designing improvements to or maintaining pond, insofar as that ground of municipal-immunity statute was implicated, and
- Absent evidence that city's design of improvements to pond was outside common practice and defective, city had immunity insofar as municipal-immunity statute's provision on municipal liability for failure to remedy known defects in public streets and buildings was implicated.

**ANNEXATION - INDIANA**

## City of Bloomington v. Smith

**Court of Appeals of Indiana - February 18, 2025 - 252 N.E.3d 951**

City filed seven actions against county auditor, one for each territory city sought to annex, challenging constitutionality of state law that invalidated many of city's agreements with nearby landowners who waived their right to remonstrate against future annexation by city in exchange for provision of city sewage services.

State intervened to defend law and moved for partial summary judgment, and city moved for voluntary dismissal with prejudice of two of seven actions. The Circuit Court granted city's motion to dismiss, reconsolidated remaining five actions, and later granted state's motion for partial summary judgment. City appealed.

The Court of Appeals held that:

- Doctrine of claim preclusion did not bar city from litigating claims in five remaining actions;
- As municipality, city lacked enforceable rights under state Contract Clause to challenge constitutionality of statute; and
- Statute did not substantially impair city's contracts with landowners.

City that had voluntarily dismissed with prejudice two of seven actions it had brought against county auditor challenging constitutionality of statute that voided certain remonstration waivers was not barred by doctrine of claim preclusion from litigating claims in five remaining actions, even though actions in which city sought to proceed relied on same general constitutional arguments as actions that were dismissed; five remaining actions had been brought simultaneously with two dismissed actions, rather than after them, and matter now in issue involved annexation of five areas that were distinct from two areas in dismissed actions and could not have been determined in those actions.

As municipality of state, city lacked enforceable rights under state Contract Clause to challenge constitutionality of state statute that voided certain remonstration waivers as having impaired its contracts with nearby landowners with whom it had agreed to provide sewer service in exchange for waiver of their right to remonstrate against future annexation; in contract between municipality and private actor, state was real contracting party, and state was authorized to release obligations owed to city without violating Contract Clause.

Statute that voided certain remonstration waivers did not substantially impair city's contracts with nearby landowners to provide them sewer service in exchange for waiver of their right to remonstrate against future annexation so as to violate Contract Clauses of United States and Indiana Constitutions; contracts were principally for provision of sewer services, not for annexation, statute did not affect city's ability to provide or landowners' ability to pay for services, statute did not undermine contractual bargain to provide sewer services, as city provided services to many properties outside city limits for which it did not have remonstration waivers, and it was within parties' reasonable expectations that state could exercise its authority to modify municipal annexation powers.

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**ZONING & PLANNING - NORTH CAROLINA**

## Ashe County v. Ashe County Planning Board

**Supreme Court of North Carolina - March 21, 2025 - S.E.2d - 2025 WL 879903**

County sought review of decision of county planning board granting applicant's permit to operate an asphalt plant under county's then-existing polluting industries development ordinances which were changed following a temporary moratorium.

The Superior Court affirmed. County appealed. The Court of Appeals affirmed. County's petition for discretionary review was allowed. The Supreme Court reversed in part and remanded. On remand, the Court of Appeals reversed. Applicant appealed.

The Supreme Court held that:

- Permit application was complete when it was initially submitted to county director of planning;
- Impermanence of mobile shed on quarry adjacent to site of proposed asphalt plant supported finding that it was not a "commercial building" for purpose of county's polluting industries development (PID) ordinance set-back requirements;
- Barn on farm near site of proposed asphalt plant was not a "commercial building" for purpose of PID ordinance set-back requirements; and
- County failed to show that applicant made material misrepresentation in its application.

Reasoning provided in dissenting opinion from Court of Appeals for why it would have affirmed county planning board's decision to grant applicant's permit to operate an asphalt plant under county's polluting industries development ordinance in effect when application was submitted conferred jurisdiction on Supreme Court to hear applicant's appeal of Court of Appeals' reversal of board's decision; although dissent did not address whether moratorium that temporarily prohibited all development of polluting industries while applicant's application was pending affirmatively authorized or compelled denial of application, it did hold that county planning director lacked authority to approve the application during moratorium and stated that it agreed with board's resolution of issues of law that were before Court of Appeals, necessarily rejecting any notion that moratorium required denial.

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**EMINENT DOMAIN - NORTH DAKOTA**

## Hoff v. City of Burlington

**Supreme Court of North Dakota - March 28, 2025 - N.W.3d - 2025 WL 942057 - 2025 ND 62**

Owner of property located in floodplain brought negligence and inverse condemnation action against city seeking writ of mandamus, declaratory judgment, and injunction arising from city's imposition, pursuant to floodplain ordinance, of additional construction requirements after city granted owner a building permit for an addition to owner's single-family home.

The District Court held bench trial on all claims except for negligence claim, entered judgment in favor of city on those claims, and granted summary judgment to city on negligence claim. Owner appealed.

The Supreme Court, held that:

- Any error in trial court's exclusion of certain exhibits from bench trial was not reversible error;
- Evidence was sufficient to support finding that owner's home remodel was a "substantial improvement" triggering additional construction requirements of floodplain ordinance;

- City's refusal to issue certificate of occupancy for addition was not a "total regulatory taking" that would trigger requirement of just compensation; and
- Any reliance by owner on city's approval of building permit was not justifiable, precluding existence of a special relationship that could support negligence claim arising from city's performance of its public duty of approving the building permit.

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**PUBLIC RECORDS - OHIO**

## State ex rel. Ames v. Concord Township Board of Trustees

**Supreme Court of Ohio - March 27, 2025 - N.E.3d - 2025 WL 920126 - 2025-Ohio-1027**

Public records requester filed a petition for a writ of mandamus that sought to compel township board of trustees to comply with records request, and an award of statutory damages, court costs, and attorney fees.

The Eleventh District Court of Appeals granted board of trustees summary judgment and dismissed mandamus petition. Records requester appealed.

The Supreme Court held that:

- Ohio law permitted the court of appeals to convert board of trustees' motion to dismiss for failure to state a claim upon which relief can be granted to a summary-judgment motion;
- The facts alleged in petition for a writ of mandamus were not deemed admitted by trustees' failure to file an answer to petition;
- Requester's mandamus claim against trustees was rendered moot;
- Court of appeals did not announce a rule of law that required a records requester to follow up about a request if the requester believed that the response was incomplete; and
- Modification of court of appeals judgment dismissing records requester's mandamus petition to instead enter judgment denying the petition as moot was warranted.

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**MUNICIPAL GOVERNANCE - WASHINGTON**

## Matter of Recall of Suggs

**Supreme Court of Washington, EN BANC - March 27, 2025 - P.3d - 2025 WL 922791**

Petitioner filed petitions seeking to recall mayor and three city council members.

The Superior Court found petitioner lacked standing and dismissed the recall petitions. Mayor and counsel members moved for attorney fees, which were granted. Petitioner appealed.

The Supreme Court held that:

- As a matter of first impression, petitioner lacked standing to file petition to recall mayor and city council members;
- Mere fact that mayor and city council members participated in nonprofits outside of the political subdivision in which they had been elected did not result in mayor or city council members "opting

out" of their political subdivision and creating a two-county political subdivision, which would have allegedly allowed petitioner to have standing to fill recall petitions;
- E-mail message from counsel which noted that entering into an agreed briefing schedule would not mean petitioner had to give up the issues he wished to raise did not create a contract wherein counsel agreed to have recall petitions decided on the merits;
- Actions of mayor and city council members in seeking sanctions, attorney fees, and entry of judgment did not result in waiver of their argument that petitioner lacked standing to file recall petitions;
- Mayor and city council members were entitled to an award of attorney fees; and
- Mayor and city council members were not equitably estopped from seeking an award of attorney fees.

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**EMINENT DOMAIN - FEDERAL**

## WBI Energy Transmission, Inc. v. 189.9 rods, more or less, located in Township 149 North

**United States Court of Appeals, Eighth Circuit - March 24, 2025 - F.4th - 2025 WL 891516**

Natural gas company filed condemnation action under Natural Gas Act (NGA) to obtain easements for pipeline.

The United States District Court for the District of North Dakota granted owners' motion for attorney fees, and company appealed.

The Court of Appeals held that owners were not entitled to recover attorney fees they expended in condemnation action.

Federal law, rather than state law, governed compensation that was due when natural gas company exercised federal eminent domain power pursuant to Natural Gas Act (NGA) to obtain easements for pipeline, and thus property owners were not entitled to recover attorney fees they expended in condemnation action, even though attorney fees were available under state law, and NGA did not address issue.

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**IMMUNITY - NEBRASKA**

## Scott v. Lancaster County School District 0001

**Supreme Court of Nebraska - March 28, 2025 - N.W.3d - 318 Neb. 670 - 2025 WL 938315**

Elementary school student brought negligence action against public school district under Political Subdivisions Tort Claims Act (PSTCA), alleging that classmate grabbed pool noodle that student was holding during game of tag in physical education class, causing student to fall.

The District Court denied school district's summary judgment motion alleging PSTCA sovereign immunity exemption for a claim arising out of a battery. School district filed interlocutory appeal.

The Supreme Court held that:

- Order denying summary judgment based on immunity was a final appealable order, and
- Factual dispute as to whether pool noodle was part of student's body for purposes of a battery

precluded summary judgment based on immunity.

Order denying public school district's motion for summary judgment was a "final order" that could be immediately appealed, in elementary school student's negligence action against school district under Political Subdivisions Tort Claims Act (PSTCA) alleging that classmate grabbed pool noodle that student was holding during game of tag causing student to fall, where motion was based on the intentional torts immunity exemption to PSTCA.

Genuine issues of material fact existed as whether pool noodle was part of elementary school student's body during game of tag in physical education class, for purposes of an offensive contact battery under the intentional torts exemption to waiver of sovereign immunity under the Political Subdivisions Tort Claims Act (PSTCA), precluding summary judgment for public school district based on PSTCA immunity exemption, in student's negligence action against school district alleging that classmate acted against rules of the game and grabbed, yanked, and "swayed" the pool noodle that student was holding, causing student to fall and hit her head.

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**ANNEXATION - OHIO**

## Hinckley Township v. Calvin

**Court of Appeals of Ohio, Ninth District, Medina County - February 18, 2025 - N.E.3d - 2025 WL 518030 - 2025-Ohio-504**

Township appealed decision of county Board of Commissioners granting petition for annexation of five-acre township territory into city.

The Court of Common Pleas affirmed board's decision. Township appealed.

The Court of Appeals held that:

- Evidence supported Board's finding that no road maintenance problem would be created by annexation;
- Evidence supported Board's finding that annexation would serve general good of parcel; and
- Evidence supported Board's finding that benefits to parcel outweighed detriments, while benefits and detriments to surrounding area were in balance.

Evidence supported finding by county Board of Commissioners that no road maintenance problem would be created by annexation of township territory to city, even though annexation would result in segmentation of street with portion of northbound lane becoming part of city and other portions remaining in township; city had preexisting maintenance agreement with county that already provided that county would maintain stretch of road at issue both before and after annexation.

Evidence supported county Board of Commissioners' finding that general good of five-acre township territory proposed to be annexed by city would be served by annexation, even though pharmacy would be built on territory irrespective of whether it was annexed; property owner would receive 100% tax abatement for 15 years from city that would provide it with over $600,000 in tax savings, which was substantial amount for company, and property manager testified that, based on his experience with both city and township, development of property would be easier and more economical with city than with township.

Evidence supported finding by county Board of Commissioners that benefits to five-acre township territory proposed to be annexed by city and surrounding area would outweigh detriments from

annexation to territory and surrounding area; while benefits and detriments to surrounding area were in balance, as township's loss of tax revenue would be offset by city's taking responsibility for providing services to annexed area, and pharmacy would be built on territory irrespective of whether territory was annexed, benefits to territory from city's tax abatement plan and city's easier and more economical property development process tipped scales in favor of annexation.

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**IMMUNITY - OKLAHOMA**

## Sanders v. Turn Key Health Clinics

**Supreme Court of Oklahoma - March 11, 2025 - P.3d - 2025 WL 762203 - 2025 OK 19**

Inmate's surviving spouse brought action against healthcare contractor at county detention facility for wrongful death. Contractor moved to dismiss for failure to state a claim.

The District Court, Creek County, granted motion with leave to amend. Spouse appealed. The Court of Civil Appeals reversed. Contractor's petition for certiorari was granted.

The Supreme Court held that:

- Order granting motion to dismiss with leave to amend did not become final and appealable when time to amend pleading expired;
- Recasting petition in error as original-jurisdiction petition for writ of prohibition without notice would not prejudice parties;
- Circumstances of case weighed in favor of recasting petition; and
- Contractor was state "employee" under Governmental Tort Claims Act (GTCA).

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**EMINENT DOMAIN - SOUTH CAROLINA**

## Marlowe v. South Carolina Department of Transportation

**Supreme Court of South Carolina - March 26, 2025 - S.E.2d - 2025 WL 909152**

Landowners brought action against Department of Transportation (DOT), alleging inverse condemnation, negligence, and other claims arising from flooding of landowners' home that occurred during major storm events while DOT's construction of stretch of highway adjacent to home was ongoing.

The Circuit Court granted DOT's motion for summary judgment. Landowners appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. DOT petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- Stormwater Management and Sediment Reduction Act did not immunize DOT from liability, but
- Engineer's testimony on causation was too speculative to preclude summary judgment for DOT on inverse condemnation claim.

Stormwater Management and Sediment Reduction Act did not immunize Department of Transportation (DOT) from liability for flood damage to landowners' home that occurred during major storm events while DOT's construction of stretch of highway adjacent to home was ongoing, where Act provided that nothing contained Act and no action or failure to act under Act could be

construed to relieve “the person engaged in the land disturbing activity” of the duties, obligations, responsibilities, or liabilities arising from or incident to the operations associated with the land disturbing activity.

Summary judgment evidence, including summary judgment affidavit of landowners’ engineering expert that design of highway construction project adjacent to landowners’ home was a “substantial contributor” to flood damage to home, was too speculative on issue of causation to preclude summary judgment for Department of Transportation (DOT) on landowners’ inverse condemnation claim arising from flooding of home during major storm events while construction of new four-lane elevated highway was ongoing; expert could only testify there was a possibility that the flooding of home would not have occurred if the new highway had not been constructed as it was constructed.

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**EMINENT DOMAIN - TEXAS**

## City of Killeen v. Oncor Electric Delivery Company LLC

**Court of Appeals of Texas, Austin - February 28, 2025 - S.W.3d - 2025 WL 648521**

Electric transmission and distribution utility brought action against city, seeking declaratory judgment and injunctive relief to prevent city from condemning utility’s streetlight system, alleging city lacked constitutional authority to condemn system and that taking by condemnation would violate Texas Constitution.

City filed plea to jurisdiction, arguing trial court lacked subject-matter jurisdiction over suit on bases of ripeness and governmental immunity. The District Court denied city’s plea, and city filed interlocutory appeal.

The Court of Appeals held that:

- Utility’s claims for declaratory and injunctive relief against city were ripe, although city had not yet voted to file a condemnation suit;
- As a matter of first impression, Property Code waived city’s governmental immunity; and
- Utility had a viable constitutional takings claim against city regarding a going concern for which city’s immunity was waived.

Electric transmission and distribution utility’s claims for declaratory and injunctive relief against city to prevent city from condemning utility’s streetlight system were ripe, although city had not yet voted to file a condemnation suit, as utility had shown a threat of litigation in the immediate future that could lead to the concrete injury of the loss of possession of the streetlights and the concomitant inability to comply with its statutory duty under the Public Utility Regulatory Act (PURA) to provide continuous and adequate service and the operational difficulties that would occur during a transfer of possession; city had followed all the necessary statutory steps to file a condemnation petition and had informed utility multiple times of its intent to file a condemnation suit if an agreement to purchase the streetlights could not be reached.

Texas Property Code waived city’s governmental immunity for electric transmission and distribution utility’s claims for declaratory judgment and injunctive relief to prevent city from condemning utility’s streetlight system, where city had invoked its eminent-domain authority by taking all the steps required for a condemnation suit, and utility’s claims against the city’s threatened exercise of that authority were ripe.

**EMINENT DOMAIN - TEXAS**

## Commons of Lake Houston, Ltd. v. City of Houston

**Supreme Court of Texas - March 21, 2025 - S.W.3d - 2025 WL 876710**

Developer of master-planned community in floodplain brought inverse condemnation action against city, alleging that city's amendment of floodplain ordinance following historic hurricane, to require residences to be built at least two feet above the 500-year floodplain, was a regulatory taking under the State Constitution.

The County Civil Court at Law denied city's plea to the jurisdiction. City filed interlocutory appeal. The Houston Court of Appeals reversed. Developer petitioned for review.

The Supreme Court held that:

- Amendment of ordinance as exercise of police power did not preclude regulatory takings claim;
- Amendment of ordinance to ensure compliance with federal flood insurance program did not preclude regulatory takings claim;
- Regulatory takings claim was ripe for adjudication; and
- Developer had standing to assert a regulatory takings claim.

City's amendment of floodplain ordinance to require residences to be built at least two feet above the 500-year floodplain, as an exercise of police power following historic hurricane with catastrophic flooding, did not preclude developer of master-planned community within 100- and 500-year floodplains from having a regulatory takings claim against city under the State Constitution; a regulation could cause a compensable taking even if it resulted from a valid exercise of the government's police power.

City's amendment of floodplain ordinance to require residences to be built at least two feet above the 500-year floodplain, in order to ensure that city residents could obtain property insurance through federal flood insurance program following historic hurricane with catastrophic flooding, did not preclude developer of master-planned community within 100- and 500-year floodplains from having a regulatory takings claim against city under the State Constitution; a floodplain regulation could cause a compensable taking even when regulation was intended to promote compliance with the federal flood insurance program.

Finality requirement for ripeness was satisfied for residential developer's claim that city's amendment of floodplain ordinance, following historic hurricane, to require residences to be built at least two feet above the 500-year floodplain was a regulatory taking under the State Constitution, even though city had not formally denied developer a floodplain-development permit, where developer made series of attempts to obtain such a permit, city never responded to permit application, city rejected developer's applications for a site-wide permit, city did not respond for months to developer's repeated attempts to discuss the problem, and city asserted, for first time after two lawsuits spanning over six years, that developer had no right to obtain a floodplain-development permit and that its claim "cannot ever ripen."

Fact that residential developer did not build homes on its lots in master-planned community did not preclude developer from having standing for a regulatory takings claim against city under the State Constitution arising from city's amendment of floodplain ordinance, following historic hurricane, to require residences to be built at least two feet above the 500-year floodplain; developer sued city to recover compensation for the damages it contended that the amended ordinance caused to

developer's property interest, not to challenge or invalidate the amended ordinance, and developer indisputably possessed a vested interest in the property at issue and in the property's value.

Redressability component of constitutional standing was satisfied, thus giving developer of master-planned community standing on its regulatory takings claim alleging that city's amendment of floodplain ordinance, following historic hurricane, to require residences to be built at least two feet above the 500-year floodplain was a regulatory taking under the State Constitution; if the amended ordinance caused a compensable taking, an award of damages for a compensable taking would remedy developer's alleged injury.

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**TELECOM - CALIFORNIA**

## Volcano Telephone Company v. Public Utilities Commission

**Court of Appeal, Third District, California - March 13, 2025 - Cal.Rptr.3d - 2025 WL 798955**

Telephone company and its internet service provider (ISP) affiliate petitioned for writ of review, challenging Public Utilities Commission (PUC) decisions in telephone company's general rate case, arguing that PUC's implementation of broadband imputation constituted an unconstitutional taking and conflicted with federal law, and challenged the service quality reporting requirements as outside the scope of the proceedings, preempted by federal law, an abuse of discretion, and unsupported by necessary findings.

The Court of Appeal held that:

- Telephone company's rate of return under its approved rate was not clearly confiscatory due to PUC's imputation of company's internet service provider (ISP) affiliate's revenue to company, and thus broadband imputation did not constitute an unconstitutional taking;
- Ordering paragraph in PUC's rate-making decision, which required company to submit its ISP affiliate's broadband service quality metrics, did not exceed scope of company's rate case;
- Requirement that company submit its ISP affiliate's broadband service quality metrics was supported by PUC's findings of facts and record evidence;
- PUC's use of National Exchange Carrier Association's (NECA) inflation factors in setting expense caps and operating expense figures in telephone company's general rate case was not an abuse of discretion;
- Federal Communications Commission's (FCC) order did not expressly preempt PUC's rate decision; and
- FCC order did not preempt PUC's decision under conflict preemption.

Telephone company's rate of return under its approved rate was not clearly confiscatory due to Public Utilities Commission's (PUC) imputation of company's internet service provider (ISP) affiliate's revenue to company because it allowed ISP to use its broadband-capable facilities, for purpose of determining company's revenue requirements so that PUC could determine the amount of subsidy company needed to cover costs of providing services to rural areas, and thus broadband imputation did not constitute an unconstitutional taking; calculating company's revenue requirement without considering ISP's profits from company's broadband-capable facilities resulted in an inaccurate picture regarding company's true needs.

Ordering paragraph in Public Utilities Commission's (PUC) rate-making decision for telephone company, which required company to submit its internet service provider (ISP) affiliate's broadband service quality metrics, did not exceed scope of company's rate case, where company's opening brief

before PUC addressed whether expansion of service quality reports to ISP operations was appropriate and PUC's scoping memorandum stated that rate case would address necessity of plant improvements for providing safe, reliable, and high-quality voice and broadband services, and company was not prejudiced by any departure from the scoping memorandum.

Public Utilities Commission's (PUC) decision to include ordering paragraph requiring telephone company to submit its internet service provider (ISP) affiliate's broadband service quality metrics in its rate-making decision for telephone company was not an abuse of discretion, despite fact that it did not include such a requirement in three previous rate-making decisions for other providers, where first two other decisions were issued before COVID-19 pandemic, after which the need for high-quality broadband services increased, and third decision reflected a contentious discovery dispute and rejected a similar argument that provider was not required to provide information related to service quality of its ISP affiliate.

Ordering paragraph in Public Utilities Commission's (PUC) rate-making decision for telephone company, which required company to submit its internet service provider (ISP) affiliate's broadband service quality metrics, was cognate and germane to PUC's regulatory authority over company and over subsidies for providing services to rural areas, and thus PUC had authority to exercise limited jurisdiction over ISP for purpose of ordering paragraph, under statutes giving PUC authority to do all things necessary and convenient in the exercise of its power to regulate public utilities and directing PUC to set company's rates, include reasonable investments in broadband-capable facilities in company's rate base, and ensure that subsidization of company's provision of services to rural areas was not excessive.

Ordering paragraph in Public Utilities Commission's (PUC) rate-making decision for telephone company, which required company to submit its internet service provider (ISP) affiliate's broadband service quality metrics, was supported by PUC's findings of facts and record evidence; PUC explained that broadband service quality and the funding anticipated to go toward company's infrastructure upgrades were appropriate elements of company's revenue requirement and rate design and that annual reporting would provide a consistent record to allow PUC to evaluate broadband service quality over time and between rate cases in preparation for the next general rate case.

Ordering paragraph in Public Utilities Commission's (PUC) rate-making decision for telephone company, which required company to submit its internet service provider (ISP) affiliate's broadband service quality metrics, satisfied statutory requirement that every PUC decision contain separately stated findings of fact and conclusions of law on all issues material to the order or decision, where PUC explained that it ordered company to submit reports on ISP's service quality to help ensure company's investments in broadband-capable facilities were reasonable, and to, in turn, set reasonable rates and subsidy amounts for company.

Public Utilities Commission's (PUC) use of National Exchange Carrier Association's (NECA) inflation factors in setting expense caps and operating expense figures in telephone company's general rate case was not an abuse of discretion, despite fact that PUC had recognized that NECA's inflation factors were two years in arrears and not used by NECA to project future inflation; PUC explained that NECA's inflation factors being in arrears did not affect its adopted methodology, which relied on NECA's approved inflation factors and adjusted the inflation factor each calendar year.

Federal Communications Commission's (FCC) order, which forbore state public utilities commissions from enforcing certain requirements of Telecommunications Act insofar as they arose from reclassification of broadband internet access service, did not expressly preempt California Public Utilities Commission's (PUC) rate decision that imputed company's affiliated internet service

provider's (ISP) revenue to company and required company to submit ISP's broadband service quality metrics; PUC was not regulating ISP's rates directly or indirectly and FCC did not indicate a desire to preempt any attempt to obtain information concerning broadband service quality.

It was not impossible for telephone company to comply with Federal Communications Commission's (FCC) order, which forbore state public utilities commissions from enforcing certain requirements of Telecommunications Act insofar as they arose from reclassification of broadband internet access service, at the same time as California Public Utilities Commission's (PUC) rate decision that imputed company's affiliated internet service provider's (ISP) revenue to company and required company to submit ISP's broadband service quality metrics, nor did PUC's decision stand as an obstacle to implementation of FCC order, and thus FCC order did not preempt PUC's decision under conflict preemption; PUC decision did not regulate ISP's rates or regulate ISP's service quality.

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**IMMUNITY - GEORGIA**

## Warbler Investments, LLC v. City of Social Circle

**Supreme Court of Georgia - March 4, 2025 - S.E.2d - 2025 WL 676643**

Property owner sued city and city officials in their individual capacities, alleging defendants unlawfully rezoned property and seeking declaratory and injunctive relief, writ of mandamus, and writ of certiorari.

The Superior Court granted owner's unopposed motion to amend the complaint by dropping individual defendants, but then granted city's renewed motion to dismiss amended complaint, reasoning that naming individuals in original complaint violated Georgia Constitution's naming requirement for actions seeking declaratory relief from government acts. The Supreme Court granted property owner's application for discretionary appeal.

The Supreme Court held that:

- A complaint's failure to meet the requirement of the Georgia Constitution provision waiving sovereign immunity that claims must be brought exclusively against the government is not a jurisdictional bar to hearing the case, but is a procedural defect that carries a consequence of dismissal if not cured; overruling *South River Watershed Alliance v. DeKalb County*, 373 Ga. App. 285, 908 S.E.2d 204; and
- Property owner's failure to comply with the Georgia Constitution provision waiving sovereign immunity by including in its initial complaint claims against individual city officials was a procedural error that did not affect the government's waiver of sovereign immunity nor require dismissal of the action and was cured by amendment.

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**ANNEXATION - GEORGIA**

## Coweta County v. City of Newnan

**Court of Appeals of Georgia - March 10, 2025 - S.E.2d - 2025 WL 749951**

County brought action against city for declaratory judgment and injunctive relief, seeking to enjoin city from finalizing annexation of land without first resolving county's objection through statutory dispute resolution process.

The trial court dismissed county's claim for injunctive relief as moot and resolved county's claim for declaratory judgment in favor of city. County appealed.

The Court of Appeals held that:

- County's claim for injunctive relief was rendered moot when activity sought to be enjoined had been completed, and
- As an issue of first impression, city's annexation of land was not void on the ground that city failed to comply with statutory dispute resolution process.

County's claim for injunctive relief against city, seeking to enjoin city from finalizing proposed annexation of land without first resolving county's objection through statutory dispute resolution process, was rendered moot when the activity sought to be enjoined had been completed; when county filed its petition for injunctive relief, city had proposed — but had not yet finalized — the annexation, and by the time county's petition was heard by the trial court, however, city had passed the annexation ordinance.

City's annexation of land was not void on the ground that city failed to comply with statutory dispute resolution process before adopting an ordinance annexing the property; although the statutory dispute resolution process used the word "shall" throughout and clearly described the arbitration process as a precursor step to annexation in the event of a county objection, there was no statutory provision stating that failure to comply with the statutory process resulted in annexation being invalid.

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**IMMUNITY - MASSACHUSETTS**

## Theisz v. Massachusetts Bay Transportation Authority

**Supreme Judicial Court of Massachusetts, Suffolk - March 14, 2025 - N.E.3d - 495 Mass. 507 - 2024 WL 5465208**

Commuter brought action against transportation authority, asserting claims under the Massachusetts Tort Claims Act (MTCA) for negligent hiring, training, supervising, and retaining bus driver with known history of anger management issues who allegedly assaulted and severely injured commuter.

The Superior Court Department denied authority's motion for summary judgment. Transportation authority filed interlocutory appeal. The Appeals Court affirmed. Transportation authority was granted further review.

The Supreme Judicial Court held that genuine issue of material fact as to whether transportation authority "originally caused" commuter's harm, such that transportation authority did not have public employer immunity under MTCA, precluded summary judgment.

Genuine issue of material fact as to whether transportation authority's decision, through its public employees responsible for supervising bus driver, to schedule bus driver with known history of assaultive behavior to operate bus route, without training him to manage his anger, "originally caused" commuter's harm, such that transportation authority did not have public employer immunity under Massachusetts Tort Claims Act (MTCA), precluding summary judgment on commuter's claim for negligence in hiring, promoting, retaining, and supervising bus driver in public-facing position, arising from incident in which bus driver allegedly assaulted and severely injuring commuter.

**REFERENDA - OHIO**

## State ex rel. Shamro v. Delaware County Board of Elections

**Supreme Court of Ohio - March 19, 2025 - N.E.3d - 2025 WL 854908 - 2025-Ohio-941**

Registered voter sought writ of mandamus ordering county board of elections to place zoning referendum on primary election ballot after board sustained election protest and decertified referendum, finding that referendum petition did not contain correct name of zoning amendment, contained misleading summary of amendment, and was accompanied by misleading map of property to be rezoned.

The Supreme Court held that failure of zoning referendum petition's summary to incorporate modifications to zoning amendment rendered the summary misleading.

Evidence, including minutes of township's board of trustees meeting, established that board had approved four modifications to proposed zoning amendment for brewery property, which included removing "agritourism" as a permitted use, prohibiting outdoor live music after 10:00 p.m., requiring dust mitigation, and requiring planting of additional trees, and thus failure of zoning referendum petition's summary to incorporate those modifications rendered the summary misleading.

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**NEGLIGENCE - GEORGIA**

## Usry v. City of Sandersville

**Court of Appeals of Georgia - February 21, 2025 - S.E.2d - 2025 WL 570648**

Motorist brought personal injury action against city, alleging that negligence of city employees resulted in her vehicle's collision with stopped waste collection truck.

Finding a fact issue as to whether truck's hazard lights were flashing at time of collision, the Superior Court denied city's motion for summary judgment. City applied for interlocutory appeal, which was granted. The Court of Appeals vacated and remanded. On remand, the Superior Court granted city's renewed motion for summary judgment, and motorist appealed.

The Court of Appeals held that city was not negligent and, thus, was not responsible for motorist's injuries.

City was not negligent and, thus, was not responsible for injuries that motorist sustained when her vehicle collided with stopped city waste collection truck; statute authorized municipal vehicles to stop on the road to collect waste, large, eight foot by eight foot collection truck was parked on a straight, flat section of the street, and trooper who investigated the accident stated that he could not explain why motorist did not see the truck beyond opining that motorist might have been following too closely or the sun could have been in her eyes.

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**ZONING & PLANNING - KANSAS**

## Austin Properties, LLC v. City of Shawnee

**Supreme Court of Kansas - March 7, 2025 - P.3d - 2025 WL 731911**

Developer filed petition for judicial review of city council's denial of its application for "rezoning" to develop mixed residential planned unit development, contending that city council's decision was unreasonable and was invalid for violation of zoning-procedure statutes, and that city violated due process by unlawfully expanding statutory right to protest.

The District Court granted city's motion for summary judgment. Developer appealed, and the Court of Appeals affirmed. The Supreme Court granted developer's petition for review.

The Supreme Court held that:

- Municipal provision and statute were both applicable to developer's claim that city failed to follow the necessary procedures;
- A valid protest petition simply increases the percentage of approval votes needed to approve the protested zoning amendment change; this is true at both the initial consideration and any subsequent consideration after an application has been remanded to the planning commission and resubmitted;
- City, after failing to gain a supermajority's approval of planned unit development application which was subject to protest petition, was required either to vote on denial or return the application to the planning commission with an explanation of why the application was not approved or denied; and
- Municipal code did not conflict with state law in subjecting planned unit development applications to protest petitions and a supermajority requirement for approval.

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**APPEALS - MINNESOTA**

## Lancaster v. Department of Human Services

**Supreme Court of Minnesota - March 12, 2025 - N.W.3d - 2025 WL 778892**

Licensed provider of foster care services for adults filed petition for writ of certiorari, seeking review of correction order issued by county on behalf of Minnesota Department of Human Services (DHS) concerning alleged violations of statute governing licensure of adult foster homes.

The Court of Appeals determined that correction order was not appealable and dismissed provider's appeal. Provider filed petition for review.

The Supreme Court held that correction order regarding violations of statute governing adult foster homes did not constitute binding decision, as required for order to be quasi-judicial conduct subject to writ of certiorari.

Correction order issued by county on behalf of the Minnesota Department of Human Services (DHS) concerning alleged violations of the statute governing licensure of adult foster homes by licensed provider of foster care services for adults did not constitute a binding decision regarding a disputed claim, as required for the order to be a quasi-judicial conduct subject to writ of certiorari; order did not bind and irrevocably fix provider's legal rights as a license holder, but rather, merely notified provider of the alleged violations, advised him of the possibility for sanctions if he failed to address the alleged violations, and provided him with an opportunity to seek reconsideration.

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**VRDOs - NEW JERSEY**

## State ex rel. Edelweiss Fund, LLC v. JPMorgan Chase & Co.

**Superior Court of New Jersey, Appellate Division - December 27, 2024 - Not Reported in Atl. Rptr. - 2024 WL 5231309**

In this qui tam action, Edelweiss Fund LLC filed suit on behalf of the State of New Jersey. The complaint alleged that defendants, a number of financial institutions and their subsidiaries, violated the New Jersey False Claims Act (NJFCA) in connection with their resetting of interest rates of variable-rate, tax-exempt municipal bonds, defrauding the State of more than $100 million.

The Appellate Court held that NJFCA public disclosure bar precluded Edelweiss' fraud claims because the underlying transactions on which they are based were publicly disclosed data regarding VRDO rate resets.

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**DEVELOPMENT REBATES - TEXAS**

## Ex parte City of Irving Texas

**Court of Appeals of Texas (15th Dist.) - December 19, 2024 - Not Reported in S.W. Rptr. - 2024 WL 5172273**

In 2010, the City of Irving filed suit under the EDJA, seeking declarations as to the validity of a series of municipal bonds. The City planned to issue the bonds to fund the construction of an entertainment center and hotel.

The City planned to secure payment of the bonds, in part, with pledges of state taxes that the City anticipated receiving as rebates under Section 351.102 of the Texas Tax Code. The City also sought declarations that its proposed pledges of tax rebates were legal and valid.

The City's EDJA action was opposed by the Texas Attorney General.

The suit was resolved in 2011 by an agreed final judgment. In general, the final judgment determined and declared that the "Proposed Public Securities," i.e., the proposed municipal bonds, were valid and lawful and that, as provided by Section 351.102, the City was entitled to receive certain state tax rebates "for use as a portion of the security for the Proposed Public Securities." The City never issued the proposed bonds, and the hotel was never built.

In 2019, after the City built another hotel and entertainment center, the City applied to the Comptroller for rebates for the completed project. In support of its application, the City provided documents from the 2010 EDJA action, including the 2011 agreed final judgment.

After considering the information provided by the City, in July 2020, the Comptroller issued a final decision on the City's rebate request. In his letter, the Comptroller explained that the final judgment in the 2010 EDJA action did not resolve the issue as to whether the current project qualified for tax rebates under Section 351.102.

The Comptroller subsequently concluded that (1) the City was an "eligible central municipality," entitled to the requested rebates for state taxes paid or collected for the hotel, and (2) 19 of the other 25 businesses in the project, including restaurants and parking garages, were considered part of the "hotel project," and therefore the City was also entitled to the requested rebates for state taxes generated from these businesses. Conversely, the Comptroller concluded that six of the 25 businesses did not qualify for rebates.

The City then filed a “petition for supplemental relief” in the 2010 EDJA suit. In its petition, the City alleged that the agreed final judgment “conclusively establishes” that all businesses in the “Project Area” qualify for rebates under Section 351.102. Further, the City alleged that the hotel project as built is fundamentally the same as the hotel project originally proposed and thus is “within the Project Area,” as that term is used in the final judgment. Thus, the City asked the trial court to “enforce” the EDJA final judgment by ordering the Comptroller to pay the tax rebates it had denied on the new hotel project.

The Court of Appeals disagreed with the City’s contention that its petition for supplemental relief constitutes an enforcement action. Instead, the City seeks relief that, if granted, would constitute “a material change in the substantive adjudicative portions” of the final judgment. In effect, the City seeks to expand or modify the substantive terms of the judgment. Because the trial court’s plenary jurisdiction to grant such relief has long expired, any action taken by the trial court on the City’s petition would be void. “Consequently, we conclude that the trial court erred in denying the Comptroller’s plea to the jurisdiction.”

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**ZONING & PLANNING - VIRGINIA**

## Morgan v. Board of Supervisors of Hanover County

**Court of Appeals of Virginia - March 4, 2025 - S.E.2d - 2025 WL 676542**

Homeowners near proposed grocery distribution center brought action against county board of supervisors and grocery store seeking declaratory judgment and injunctive relief, alleging that board violated state law when it approved grocery store’s rezoning request.

The Hanover Circuit Court sustained demurrers and dismissed homeowners’ amended complaint with prejudice. Homeowners appealed. The Supreme Court reversed and remanded. On remand, homeowners filed a second amended complaint. The Circuit Court, Hanover County, sustained demurrers as to four counts, overruled demurrers as to remaining counts, and entered voluntary nonsuit of those claims. Homeowners appealed.

The Court of Appeals held that:

- Board was not precluded from filing demurrers to homeowners’ second amended complaint on the basis that the claims did not state a cause of action and failed to state a claim upon which relief could be granted;
- Board’s in-person public hearing on rezoning request constituted an “operation of government,” and thus was not prohibited by Governor’s executive orders declaring a state of emergency due to COVID-19 pandemic;
- Board did not deprive homeowners of their right to adequate notice of hearing on rezoning request so that persons affected could appear and present their views;
- Board did not violate Virginia Freedom of Information Act (VFOIA) by limiting number of people who could be in room for hearing on rezoning request; and
- Proffered amendments to rezoning application made on day of hearing were more restrictive than proffers previously submitted, and thus were permitted under county ordinance.

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**PUBLIC RECORDS - ARIZONA**

## Sierra Club v. Salt River Project Agricultural Improvement and Power District

**Court of Appeals of Arizona, Division 2 - January 3, 2025 - 139 Arizona Cases Digest 29 - 563 P.3d 151**

Non-profit environmental organization filed statutory special action complaint under Public Records Law after agricultural improvement and power district denied, in part, its public records request, seeking order to show cause compelling production of certain documents.

The Superior Court, Maricopa County, dismissed the complaint, denied the order to show cause, and entered final judgment in favor of the district, but also determined that the district was a "public body" under the Public Records Law. Non-profit organization appealed, and the district cross-appealed.

The Court of Appeals held that:

- District was "public body" within meaning of Public Records Law;
- Superior court could consider whether requested records were confidential under statute making certain information held by public power entities confidential when the information relates to competitive activity and disclosure could give material advantage to another entity first, before conducting analysis under the Public Records Law;
- Statute making certain information held by public power entities confidential does not create a presumption of confidentiality;
- Statute making certain information held by public power entities confidential does not require showing of resultant competitive disadvantage or injury from disclosure;
- Superior court's abuse of discretion in misapplying statute governing confidentiality of certain information held by public power entities required remand for court to make findings regarding whether records were shielded from disclosure;
- Award of attorney fees to non-profit organization as sanction against district was not warranted; and
- Non-profit organization was entitled to award of costs on appeal against district.

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**NEGLIGENCE - NEW YORK**

## Fuentes v. 158 Management, LLC

**Supreme Court, Appellate Division, First Department, New York - February 20, 2025 - N.Y.S.3d - 2025 WL 554490 - 2025 N.Y. Slip Op. 01044**

Pedestrian, who allegedly sustained injuries when sidewalk collapsed, brought action against owner of building abutting sidewalk, city, city department of transportation, and city department of buildings to recover damages for injuries that she allegedly sustained when sidewalk collapsed and she fell to cellar vault below.

The Supreme Court, New York County, denied building owner's motion for summary judgment and cross-claims against it, granted pedestrian's motion for summary judgment on liability as against building owner, and granted city defendants' motion for summary judgment dismissing building owner's cross-claims. Building owner appealed.

The Supreme Court, Appellate Division, held that:

- Doctrine of res ipsa loquitur applied in pedestrian's action against building owner; and
- Building owner could not prevail on its cross-claims against city defendants.

Doctrine of res ipsa loquitur applied in pedestrian's action against owner of building abutting sidewalk that collapsed and caused pedestrian to fall to cellar vault below sidewalk; sidewalk collapse, which caused pedestrian's injuries, was not the type of event that ordinarily occurred in the absence of negligence, cellar vault was in exclusive control of owner and could only be accessed through basement door in the building, and pedestrian did not contribute to the accident, given that she was just standing on the sidewalk when it collapsed underneath her.

There was no evidence that any conduct by the city, city department of transportation, or city department of buildings caused or created the alleged defective condition of sidewalk, which collapsed and caused pedestrian to fall to cellar vault below, or that it made special use of the sidewalk, and thus, owner of building abutting sidewalk could not prevail on its cross-claims against city defendants, alleging that they were liable for pedestrian's injuries pursuant to city administrative code governing property owner's duty to maintain sidewalks.

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**IMMUNITY - TEXAS**

## Baylor County Special Utility District v. City of Seymour

**Court of Appeals of Texas, Eastland - January 30, 2025 - S.W.3d - 2025 WL 336966**

City filed breach-of-contract suit against special utility district, alleging district began purchasing water from third party in violation of contract requiring district to purchase all water from city.

District filed plea to jurisdiction based on governmental immunity. The 50th District Court granted plea in part, dismissing city's claims for declaratory judgment, injunctive relief, and attorney's fees, but denied plea as to city's breach-of-contract claim. District appealed denial of its plea, and city cross-appealed grant of plea as to declaratory judgment, injunctive relief, and attorney's fees.

The Court of Appeals held that:

- District was entitled to governmental immunity;
- Contract between city and district was a "requirements contract" for which there was a waiver of district's governmental immunity;
- Alleged lost profits claimed by city for breach of contract by district were consequential damages for which there was no waiver of district's governmental immunity; and
- City was not entitled to award of attorney's fees under statute providing waiver of immunity for reasonable and necessary attorney's fees but only if contract was executed after a specific date.

Special utility district, whose predecessor-in-interest entered into contract with city wherein city would issue bonds for construction of water treatment plant and district's predecessor would buy all water required for its own use and distribution of treated water to customers, did not convert into different type of domestic entity or non-business code organization, but instead did so under statute providing that special utility district may be created under and subject to authority, conditions, and restrictions of, and is considered a conservation and reclamation district under state constitution, and thus district was entitled to governmental immunity, where district did not file certificate of conversion, but instead filed certificate of termination with the Secretary of State.

Contract between city and special utility district wherein city would issue bonds for construction of water treatment plant and district would purchase all water required for its own use and distribution of treated water to customers was a "requirements contract" for which there was waiver of district's governmental immunity; contract's purpose was to establish water treatment facility in close

proximity to district's raw water source to be of sufficient capacity to treat not only water used by city for resale to its customers, but also to treat district's water to be used for resale to its customers, it expressly stated that district agreed to purchase all water it required during period of agreement, and directly permitted parties to alter amount or to expand facility based on parties' needs.

Alleged lost profits impliedly claimed by city for breach of contract by special utility district, whose predecessor-in-interest entered into contract with city wherein city would issue bonds for construction of water treatment plant and district would buy all water required for its own use and distribution of treated water to customers, were not for damages due and owed, and instead, were consequential damages for which there was no statutory waiver of district's governmental immunity; city sought damages it sustained being deprived of the benefit that it could have reasonably anticipated from full performance of the contract, and apparently sought profits it would have received had district continued to purchase treated water exclusively from city.

City and special utility district's contract wherein district would purchase from city all water required for its own use and distribution of treated water to customers was executed by district when it accepted its assignment of the contract by its predecessor-in-interest and operated in accordance of contract's terms, rather than when city and district's predecessor-in-interest entered into agreement, such that city was not entitled to award of attorney's fees under statute providing waiver of immunity for reasonable and necessary attorney's fees but only if contract was executed after a specific date; district's predecessor had no authority to execute contract on district's behalf, let alone do so more than 20 years prior to its existence, rather, only district could execute contract on its behalf.

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**BOND ISSUANCE - TEXAS**

## Jorolan v. Eads

**Court of Appeals of Texas, Fort Worth - February 26, 2025 - Not Reported in S.W. Rptr. - 2025 WL 628340**

In November 2022, voters approved a ballot measure authorizing the issuance of $650 million in general obligation bonds by Denton County for constructing, improving, repairing, and maintaining roads, bridges, and highways within the county.

After the Denton County Clerk certified the results of the election favoring the measure, citizens (Appellants) timely filed an original petition asserting an election contest against Andy Eads who, as Denton County Judge, was the presiding officer of the final canvassing authority for the election.

Appellants alleged as the basis for their contest that the electronic voting system employed by the county for the election was not properly certified by the Secretary of State, arguing that the votes counted were illegal, the true outcome of the election was unascertainable, and the result is void as a matter of law.

The Court of Appeals held that:

- Appellants lacked standing to bring this contest, depriving the Court of subject matter jurisdiction.

- Appellants did not allege a concrete injury, specific and particular to Contestants that could be redressed with a favorable decision by this Court.
- Appellants lacked standing because they did not allege some injury distinct from that sustained by the public at large.

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**PUBLIC UTILITIES - COLORADO**

## Holcim U.S. Inc. v. Colorado Public Utilities Commission

**Supreme Court of Colorado - January 13, 2025 - 562 P.3d 55 - 2025 CO 1**

Large retail electric customer sought judicial review of Public Utilities Commission's (PUC) approval of electric utility's method for recovering extraordinary natural gas costs incurred during severe winter storm through uniform volumetric charge on all customers over two years.

The District Court affirmed PUC's decision. Customer appealed.

The Supreme Court held that PUC adopted "just and reasonable rate" by approving utility's cost recovery method.

Public Utilities Commission (PUC) adopted "just and reasonable rate" by approving electric utility's method for recovering extraordinary natural gas costs incurred during severe winter storm through uniform volumetric charge on all customers over two years; method accurately reflected cost of service because utility had purchased natural gas based on total forecasted customer need, not based on actual individual consumption during winter storm, method would allow utility to recover costs it had incurred in anticipation of winter storm in exactly same way that it recovered its normal fuel costs, customers' ultimate billing would appropriately be based on their individual usage, and method would provide utility with reasonable rate of return.

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**IMPACT FEES - ILLINOIS**

## Habdab, LLC v. County of Lake

**Supreme Court of Illinois - November 21, 2024 - N.E.3d - 2024 IL 130323 - 2024 WL 4847454**

Developer brought declaratory judgment action against county and village, seeking determination that it was not obligated to pay highway improvement fees under intergovernmental agreement between county and village as a condition of annexation, on basis that fees did not meet requirements set forth in Road Improvement Impact Fee Law.

The Circuit Court, Lake County granted county's motion for summary judgment and denied developer's cross-motion for summary judgment. Developer appealed. The Appellate Court affirmed. Developer petitioned for leave to appeal, which was granted.

The Supreme Court held that:

- Fees did not constitute "road improvement impact fees" that would be required to comply with Road Improvement Impact Fee Law;
- Essential nexus existed between intergovernmental agreement's fee condition, which allegedly burdened developer's rights under takings clause, and legitimate state interest of minimizing

traffic congestion, supporting finding that condition did not violate the "unconstitutional conditions" doctrine; and
- Rough proportionality existed between alleged burden on developer's rights under takings clause and the harm sought to be remedied, and thus condition did not violate the "unconstitutional conditions" doctrine.

Highway improvement fees imposed by village on developer as condition of annexation of parcels in development project, on basis of intergovernmental agreement between county and village under which county agreed to design and construct road improvements in exchange for a portion of the construction costs being reimbursed by fees collected from developers within the area upon the occurrence of a triggering factor, including annexation, did not constitute "road improvement impact fee" that would be required to comply with Road Improvement Impact Fee Law; fees were imposed pursuant to a voluntary annexation, and Municipal Code specifically allowed municipalities to enter into annexation agreements and to have such agreements provide for contributions of monies to municipality.

Essential nexus existed between condition of agreement between county and village requiring village to impose highway improvement fees on developer upon annexation of development parcels into village, which allegedly burdened developer's rights under takings clause, and legitimate state interest of minimizing traffic congestion, supporting finding that condition did not violate the "unconstitutional conditions" doctrine; fees would provide for road improvements to ease that congestion.

Rough proportionality existed between burden allegedly imposed on developer's takings clause rights by condition of agreement between county and village, which required village to impose highway improvement fees on developer upon annexation of development parcels into village, and the harm of traffic congestion that county sought to remedy via the condition, and thus condition did not violate the "unconstitutional conditions" doctrine; parcels were zoned agricultural before annexation but were reclassified as single family residential after annexation, and fees paid by developer would go to county's design and construction of road improvements, with county paying for half of such improvements.

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**EMINENT DOMAIN - INDIANA**

## Indiana Land Trust #3082 v. Hammond Redevelopment Commission

**Court of Appeals of Indiana - January 31, 2025 - N.E.3d - 2025 WL 351997**

Landowners brought action against city, its mayer, city redevelopment commission, and commission members, alleging eminent domain action against landowners' property constituted abuse of process because the taking was for private, false ends.

The Superior Court granted defendants' motion to dismiss for failure to state a claim. Landowners appealed.

The Court of Appeals held that:

- Trial court was not collaterally estopped from finding that risk of inconsistent orders on same issues from two different courts warranted dismissal of landowners' action against defendants;
- Landowners could pursue their abuse of process claim separately from eminent domain action;
- Landowners stated abuse of process claim; and

- Issue of whether mayor and commission members were immune from prosecution under Indiana Tort Claims Act (ITCA) could not be resolved at motion to dismiss phase.

Landowners could pursue their claim against city, its mayor, city redevelopment commission, and commission members, alleging eminent domain action constituted abuse of process, separately from eminent domain action; compensation allowed under eminent domain action did not include all damages available from tort claim for abuse of process, as attorney fees were limited to $25,000 in eminent domain action but were not limited as such for abuse of process claim, and trial judge in eminent domain action acknowledged that landowners would not be prejudiced by pursuing their abuse of process claim in another forum when it denied landowners' motion for leave to file abuse of process counterclaim on ground that counterclaim was not type of pleading allowed in eminent domain action.

Landowners stated abuse of process claim against city, its mayor, city redevelopment commission, and commission members, based on city's eminent domain action, where landowners alleged that eminent domain action brought by city against landowners was substantively improper on the basis of fraud and bad faith, that proceeding was subterfuge to convey property for private use, that taking was for discriminatory private purposes, for private gain, and motivated by spite, and that taking was solely to take property for private development by political contributors.

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**ZONING & PLANNING - MONTANA**

## Protect the Gallatin River v. Gallatin County, Department of Planning and Community Development

**Supreme Court of Montana - February 18, 2025 - P.3d - 2025 WL 520527 - 2025 MT 34**

Action was brought by nonprofit environmental advocacy organization against county and landowners, who sought to develop "glamping" resort on unzoned river island, challenging county's issuance of conditional floodplain permit to landowners. Landowners also challenged county's modification of permit to include additional restriction.

Parties filed competing motions for summary judgment. The District Court ultimately affirmed issuance of conditional permit as modified by the county commission.

The Supreme Court held that:

- Administrator did not act arbitrarily or capriciously in declining to re-open public comment period;
- Administrator's preparation of staff report for county commission during administrative appeal did not constitute improper post hoc rationalization of his decision;
- Administrator's presentation to county commission during administrative appeal did not constitute improper post hoc rationalization of his decision;
- Administrator's preparation of county's written findings of fact, conclusions of law, and order was appropriate and lawful; and
- Commission's decision to affirm administrator's issuance of conditional permit was not arbitrary or capricious.

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**EMINENT DOMAIN - NEW JERSEY**

## Township of Jackson v. Getzel Bee, LLC

**Superior Court of New Jersey, Appellate Division - January 31, 2025 - A.3d - 2025 WL 350037**

Township brought condemnation actions against two separate condemnees, seeking to use eminent domain powers to take condemnees' properties in order to carry out land-swap contract with developer, under which contract township would acquire land owned by developer to use as open space in exchange for land township already owned combined with condemned properties.

The Superior Court, Law Division, entered identical orders authorizing condemnation and appointing condemnation commissioners. Condemnees appealed, and their appeals were consolidated.

The Superior Court, Appellate Division held that:

- Condemnation of properties lacked public purpose required for valid exercise of eminent domain power under Eminent Domain Act;
- Prior action by homeowners association challenging validity of land-swap contract did not collaterally estop condemnees from challenging, under Act, township's condemnation;
- Land-swap contract between township and developer was invalid as to two properties owned by condemnees; and
- Remand to township for evidentiary hearing to address condemnees' challenge to condemnation of their properties was not warranted.

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**EMINENT DOMAIN - PENNSYLVANIA**

## In re Condemnation of Property in Rem Identified as Tax Parcel Number 62-00-02014-00-3 in Township of Upper Salford Montgomery County

**Commonwealth Court of Pennsylvania - February 4, 2025 - A.3d - 2025 WL 376235**

Township filed declaration of taking to acquire title to property.

The Court of Common Pleas overruled preliminary objections raised by property owners and intervenors, who were potential purchasers, arguing that purpose of taking was to preserve open space, and, therefore, beyond township's authority. Property owners and intervenors appealed.

The Commonwealth Court held that:

- Substantial evidence supported Court of Common Pleas' determination that taking was for a recreational purpose, and
- Declaration's statement that one purpose was to preserve open space did not render the taking per se unlawful.

Substantial evidence supported trial court's determination that township's taking of property was for a recreational purpose, rather than to conserve open space or prevent development, and, thus, was within township's authority, as part of judgment denying preliminary objections to declaration of taking; township supervisor sent email to property owners over a year before declaration was filed, expressing that township was interested in acquiring property and including it in township's park and trail system, declaration was filed 14 years after property owners filed preliminary residential development plan, and grant applications regarding the land stated that acquisition would conserve open space but also that funding would allow expansion of trails, greenways, natural areas, and parks.

Township's taking of property was not per se unlawful based on fact that one of the stated purposes, as expressed in declaration of taking, was to preserve open space, even though only counties had authority to condemn for such purpose, pursuant to Open Space Lands Act; evidence showed that property was adjacent to or within area of importance and significance for nature conservation and would provide parks and active and passive recreational opportunities for township residents, wording of declaration did not defeat the fundamental recreational purpose for which land was condemned, and land conservation was inevitable in any passive recreational use, which was a public purpose expressly authorized by Township Code.

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**PUBLIC RECORDS - ARIZONA**

## Sierra Club v. Salt River Project Agricultural Improvement and Power District

**Court of Appeals of Arizona, Division 2 - January 3, 2025 - P.3d - 139 Arizona Cases Digest 29 - 2025 WL 21771**

Non-profit environmental organization filed statutory special action complaint under Public Records Law after agricultural improvement and power district denied, in part, its public records request, seeking order to show cause compelling production of certain documents.

The Superior Court dismissed the complaint, denied the order to show cause, and entered final judgment in favor of the district, but also determined that the district was a "public body" under the Public Records Law. Non-profit organization appealed, and the district cross-appealed.

The Court of Appeals held that:

- District was "public body" within meaning of Public Records Law;
- Superior court could consider whether requested records were confidential under statute making certain information held by public power entities confidential when the information relates to competitive activity and disclosure could give material advantage to another entity first, before conducting analysis under the Public Records Law;
- Statute making certain information held by public power entities confidential does not create a presumption of confidentiality;
- Statute making certain information held by public power entities confidential does not require showing of resultant competitive disadvantage or injury from disclosure;
- Superior court's abuse of discretion in misapplying statute governing confidentiality of certain information held by public power entities required remand for court to make findings regarding whether records were shielded from disclosure;
- Award of attorney fees to non-profit organization as sanction against district was not warranted; and
- Non-profit organization was entitled to award of costs on appeal against district.

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**LIABILITY - IDAHO**

## Bray v. Idaho Department of Juvenile Corrections

**Supreme Court of Idaho, BYU-Idaho, November 2024 Term - February 14, 2025 - P.3d - 2025 WL 496262**

Parents, as personal representatives of estate of son who died while in Idaho Department of Juvenile Corrections (IDJC) custody, brought action against IDJC, IDJC employees, and physician assistant

alleging wrongful death, negligence, and § 1983 claims.

The Sixth Judicial District Court granted summary judgment to physician assistant, granted summary judgment to IDJC and employees, and awarded IDJC and employees costs and attorney fees. Parents appealed.

The Supreme Court held that:

- Idaho Tort Claims Act's (ITCA) notice requirement does not create a "statutory prohibition" to filing an action that tolls the limitations period until a response is received; abrogating *Madsen v. Dept. of Health and Welfare*, 116 Idaho 758, 779 P.2d 433;
- Limitations periods for state-law claims against employees and physician assistant were tolled pursuant to federal supplemental jurisdiction statute;
- As matter of first impression, 30-day tolling period under federal supplemental jurisdiction statute begins to run after the dismissal of the state law claim, regardless of the continuation or dismissal of other claims in federal action;
- Limitations periods for state-law claims against IDJC were tolled pursuant to federal supplemental jurisdiction statute;
  IDJC was entitled to immunity under ITCA from claims;
- Trial court did not abuse its discretion by granting attorney fees under § 1988 to IDJC and employees; and
- IDJC, employees, and physician assistant were prevailing parties on appeal.

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**EMINENT DOMAIN - INDIANA**

## Indiana Land Trust #3082 v. Hammond Redevelopment Commission

**Court of Appeals of Indiana - January 31, 2025 - N.E.3d - 2025 WL 351997**

Landowners brought action against city, its mayer, city redevelopment commission, and commission members, alleging eminent domain action against landowners' property constituted abuse of process because the taking was for private, false ends.

The Superior Court granted defendants' motion to dismiss for failure to state a claim. Landowners appealed.

The Court of Appeals held that:

- Trial court was not collaterally estopped from finding that risk of inconsistent orders on same issues from two different courts warranted dismissal of landowners' action against defendants;
- Landowners could pursue their abuse of process claim separately from eminent domain action;
- Landowners stated abuse of process claim; and
- Issue of whether mayor and commission members were immune from prosecution under Indiana Tort Claims Act (ITCA) could not be resolved at motion to dismiss phase.

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**MUNICIPAL FINANCE - MASSACHUSETTS**

## Register of Deeds for Norfolk County v. County Director for Norfolk County

**Supreme Judicial Court of Massachusetts, Norfolk - February 14, 2025 - N.E.3d - 2025 WL 492144**

County register of deeds brought action against county commissioners for declaratory, mandamus, and injunctive relief arising from county director's refusal to make a series of transfers of funds within budget of county registry of deeds in order to fund ongoing litigation regarding county personnel matters.

The Superior Court Department granted summary judgment to register. Commissioners appealed.

After transfer of case on its own initiative, the Supreme Judicial Court held that statute governing transfers of appropriated funds as part of annual budget process for counties, granting certain officials the discretion to transfer funds within a main group of funds whenever in that official's "opinion" public necessity and convenience so requires, does not require the official to provide justification for his opinion.

Trial court order providing that "to the extent that the [particular fiscal year] transfers remain outstanding, the defendants are [ordered] to implement them" did not require that outstanding amounts be transferred from the budget for that fiscal year but rather that any payments that should have been transferred in that fiscal year, but were not, should be specifically authorized by the defendants, after county register of deeds prevailed on his action for declaratory, mandamus, and injunctive relief against county commissioners arising from county director's refusal to make a series of transfers of funds within budget of county registry of deeds in order to fund ongoing litigation regarding county personnel matters, after register of deeds determined that such transfers were appropriate under statute granting register discretion to transfer funds within a main group of funds whenever in register's opinion public necessity and convenience so required.

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**EMINENT DOMAIN - PENNSYLVANIA**

## In re Condemnation of Property in Rem Identified as Tax Parcel Number 62-00-02014-00-3 in Township of Upper Salford Montgomery County

**Commonwealth Court of Pennsylvania - February 4, 2025 - A.3d - 2025 WL 376235**

Township filed declaration of taking to acquire title to property.

The Court of Common Pleas overruled preliminary objections raised by property owners and intervenors, who were potential purchasers, arguing that purpose of taking was to preserve open space, and, therefore, beyond township's authority. Property owners and intervenors appealed.

The Commonwealth Court held that:

- Substantial evidence supported Court of Common Pleas' determination that taking was for a recreational purpose, and
- Declaration's statement that one purpose was to preserve open space did not render the taking per se unlawful.

Substantial evidence supported trial court's determination that township's taking of property was for a recreational purpose, rather than to conserve open space or prevent development, and, thus, was within township's authority, as part of judgment denying preliminary objections to declaration of taking; township supervisor sent email to property owners over a year before declaration was filed, expressing that township was interested in acquiring property and including it in township's park and trail system, declaration was filed 14 years after property owners filed preliminary residential development plan, and grant applications regarding the land stated that acquisition would conserve

open space but also that funding would allow expansion of trails, greenways, natural areas, and parks.

Township's taking of property was not per se unlawful based on fact that one of the stated purposes, as expressed in declaration of taking, was to preserve open space, even though only counties had authority to condemn for such purpose, pursuant to Open Space Lands Act; evidence showed that property was adjacent to or within area of importance and significance for nature conservation and would provide parks and active and passive recreational opportunities for township residents, wording of declaration did not defeat the fundamental recreational purpose for which land was condemned, and land conservation was inevitable in any passive recreational use, which was a public purpose expressly authorized by Township Code.

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**ZONING & PLANNING - SOUTH DAKOTA**

## DeCramer v. Dorale

**Supreme Court of South Dakota - February 12, 2025 - N.W.3d - 2025 WL 483341 - 2025 S.D. 5**

Neighbors filed petition for certiorari review of county board of adjustment decision granting homeowner's request for variance from county side yard setback requirements for house which he had constructed.

The Circuit Court denied the petition, and neighbors appealed.

The Supreme Court held that board of adjustment acted illegally and in excess of its authority when granting variance.

County board of adjustment acted illegally and in excess of its authority when granting variance to homeowner who allegedly was unaware of and violated nine-foot side yard setback requirements when building house; homeowner agreed in his building permit to comply with all zoning regulations and county ordinances, as well as permit conditions, which set forth a ten-foot setback requirement, board did not find that any special conditions existed, and board specifically found "nothing extraordinary in this residential district" when considering variance requirement that "extraordinary conditions or circumstances exist which are peculiar to the use or structure involved and are not applicable to other uses or structures in the same district."

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**PUBLIC UTILITIES - TEXAS**

## Baylor County Special Utility District v. City of Seymour

**Court of Appeals of Texas, Eastland - January 30, 2025 - S.W.3d - 2025 WL 336966**

City filed breach-of-contract suit against special utility district, alleging district began purchasing water from third party in violation of contract requiring district to purchase all water from city.

District filed plea to jurisdiction based on governmental immunity. The 50th District Court granted plea in part, dismissing city's claims for declaratory judgment, injunctive relief, and attorney's fees, but denied plea as to city's breach-of-contract claim. District appealed denial of its plea, and city cross-appealed grant of plea as to declaratory judgment, injunctive relief, and attorney's fees.

The Court of Appeals held that:

- District was entitled to governmental immunity;
- Contract between city and district was a "requirements contract" for which there was a waiver of district's governmental immunity;
- Alleged lost profits claimed by city for breach of contract by district were consequential damages for which there was no waiver of district's governmental immunity; and
- City was not entitled to award of attorney's fees under statute providing waiver of immunity for reasonable and necessary attorney's fees but only if contract was executed after a specific date.

Special utility district, whose predecessor-in-interest entered into contract with city wherein city would issue bonds for construction of water treatment plant and district's predecessor would buy all water required for its own use and distribution of treated water to customers, did not convert into different type of domestic entity or non-business code organization, but instead did so under statute providing that special utility district may be created under and subject to authority, conditions, and restrictions of, and is considered a conservation and reclamation district under state constitution, and thus district was entitled to governmental immunity, where district did not file certificate of conversion, but instead filed certificate of termination with the Secretary of State.

Contract between city and special utility district wherein city would issue bonds for construction of water treatment plant and district would purchase all water required for its own use and distribution of treated water to customers was a "requirements contract" for which there was waiver of district's governmental immunity; contract's purpose was to establish water treatment facility in close proximity to district's raw water source to be of sufficient capacity to treat not only water used by city for resale to its customers, but also to treat district's water to be used for resale to its customers, it expressly stated that district agreed to purchase all water it required during period of agreement, and directly permitted parties to alter amount or to expand facility based on parties' needs.

Alleged lost profits impliedly claimed by city for breach of contract by special utility district, whose predecessor-in-interest entered into contract with city wherein city would issue bonds for construction of water treatment plant and district would buy all water required for its own use and distribution of treated water to customers, were not for damages due and owed, and instead, were consequential damages for which there was no statutory waiver of district's governmental immunity; city sought damages it sustained being deprived of the benefit that it could have reasonably anticipated from full performance of the contract, and apparently sought profits it would have received had district continued to purchase treated water exclusively from city.

City and special utility district's contract wherein district would purchase from city all water required for its own use and distribution of treated water to customers was executed by district when it accepted its assignment of the contract by its predecessor-in-interest and operated in accordance of contract's terms, rather than when city and district's predecessor-in-interest entered into agreement, such that city was not entitled to award of attorney's fees under statute providing waiver of immunity for reasonable and necessary attorney's fees but only if contract was executed after a specific date; district's predecessor had no authority to execute contract on district's behalf, let alone do so more than 20 years prior to its existence, rather, only district could execute contract on its behalf.

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**EMINENT DOMAIN - FEDERAL**

## Gardens v. United States

**United States Court of Federal Claims - January 27, 2025 - Fed.Cl. - 2025 WL 318783**

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

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

On remand, the Court of Federal Claims held that:

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

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**EMINENT DOMAIN - MISSOURI**

## Becker v. City of Hillsboro, Missouri

**United States Court of Appeals, Eighth Circuit - January 7, 2025 - 125 F.4th 844**

Owners of 176 acres of land annexed to city brought action in state court against city for inverse condemnation under federal and state constitutions and violations of their constitutional rights under § 1983, based on allegations that they had been deprived of any and all economical and productive use of the property as result of city ordinances requiring them to connect to city water services at their own cost.

Following removal, both sides moved for summary judgment. The United States District Court for the Eastern District of Missouri entered summary judgment for city. Landowners appealed.

The Court of Appeals held that:

- Ordinances did not mandate a permanent physical invasion of landowner's property and thus did not amount to a "taking" on that ground;
- Ordinances did not deprive landowners of all economically beneficial use of their property;
- Court would treat landowners' parcel as a single parcel, rather than eight subdivided lots, when applying the Penn Central regulatory taking test;
- Economic effect on the landowner prong of the Penn Central regulatory taking test weighed in favor of city;
- Interference with reasonable investment backed expectations prong of the Penn Central regulatory taking test weighed in favor of city; and
- Character of the governmental action prong of the Penn Central regulatory taking test weighed in favor of city.

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**MANDAMUS - NEW YORK**

## South Blooming Grove Fire District v. Village of South Blooming Grove

**Supreme Court, Appellate Division, Second Department, New York - January 29, 2025 - N.Y.S.3d - 2025 WL 322155 - 2025 N.Y. Slip Op. 00454**

Fire district commenced article 78 proceeding against village seeking mandamus to compel authorization of land transfer and grant of easements that fire district alleged had been agreed upon by the parties.

The Supreme Court, Orange County, granted village's motion to dismiss the petition. Fire district appealed.

The Supreme Court, Appellate Division, held that village board of trustees' enactment of resolution authorizing land transaction was not a purely ministerial act for which mandamus was the proper remedy.

Village board of trustees' enactment of resolution authorizing land transaction consisting of land transfer and certain easements between village and fire district was not a purely ministerial act for which mandamus was the proper remedy for village's alleged failure to authorize agreed-upon land transfer and grant of easements; village was not required to enact or enforce resolution, and there was no otherwise clear legal right to land transaction.

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**NEGLIGENCE - NEW YORK**

## Mahar v. McDonald

**Supreme Court, Appellate Division, Second Department, New York - January 22, 2025 - N.Y.S.3d - 2025 WL 264148 - 2025 N.Y. Slip Op. 00315**

Victim brought negligence action against city, city police department, and police officer who was handler of the police dog that allegedly bit victim for personal injuries suffered from the bite.

The Supreme Court, Orange County, denied defendants' motion for summary judgment.

The Supreme Court, Appellate Division, held that defendants did not owe victim a special duty, thus precluding their liability for negligence.

When a negligence cause of action is asserted against a municipality, and the municipality was exercising a governmental function, the municipality may not be held liable unless it owed a special duty to the injured party; such a special duty can arise where the municipality took positive control of a known and dangerous safety condition.

City, city police department, and police officer who was handler of the police dog that allegedly bit victim did not owe victim a special duty, thus precluding their liability for negligence to victim from the dog bite; officer did not take control of a known and dangerous condition that gave rise to victim's injuries, as, at the time of the bite, officer was an attendee at a training program conducted by a state agency at a state facility, he merely participated in the training exercise, and he took direction from the canine instructor.

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**IMMUNITY - TEXAS**

## Val Verde Hospital District v. Salazar

**Court of Appeals of Texas, San Antonio - February 5, 2025 - S.W.3d - 2025 WL 395734**

Patient brought medical malpractice action against state hospital and staffing company, alleging negligence based on electrocardiogram (EKG) technician's inappropriate touching of her breasts during exam.

The 83rd District Court denied hospital's plea to the jurisdiction. Hospital appealed.

The Court of Appeals held that use of state hospital's EKG machine by technician merely furnished the condition for injury to patient, and thus was insufficient to waive hospital's immunity from suit.

Use of state hospital's electrocardiogram (EKG) machine by technician merely furnished the condition for injury to patient, and thus was insufficient to waive hospital's immunity from patient's medical malpractice suit under the Texas Tort Claims Act (TTCA); patient sought damages for physical pain, mental anguish, and emotional distress from technician's touching of her breasts while performing an EKG, but did not contend that she was injured by the EKG machine itself or its electrodes.

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**ZONING & PLANNING - MAINE**

## Day v. Town of Hiram

**Supreme Judicial Court of Maine - February 4, 2025 - A.3d - 2025 WL 379702 - 2025 ME 8**

Landowner appealed from decision of town planning board granting neighbors a conditional use permit to construct a microbrewery on property in residential district.

The Superior Court affirmed. Landowner appealed.

The Supreme Judicial Court held that planning board misconstrued and failed to consider zoning factor of "the need of a particular location for the proposed use."

Town planning board's consideration of permit applicants' need to construct microbrewery on their property in residential district misconstrued and did not satisfy zoning ordinance requirement to consider the factor of "the need of a particular location for the proposed use," when granting

conditional use permit, thus requiring vacatur of judgment affirming board's decision granting permit to applicants, and remand to the board for further consideration; board erroneously focused on permit applicants' need, but statement of purposes for residential district made clear that the factor referred instead to the community's need for businesses that promoted economic wellbeing in a manner compatible with residential uses.

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**CHARTER AMENDMENTS - MARYLAND**

## Baltimore City Board of Elections v. Mayor and City Council of Baltimore

**Supreme Court of Maryland - February 3, 2025 - A.3d - 2025 WL 366529**

Mayor, city council, and director and deputy director of city's department of finance sued city's board of elections, its president, and its election director, seeking judicial review of board's certification, for general election ballot, of citizen-initiated "Baby Bonus Amendment" to city charter, to mitigate childhood poverty by requiring payments of at least $1,000 to all new parents residing in city, and also sought writ of mandamus to compel board to perform its statutory duties, and declaratory and injunctive relief.

Amendment's sponsor intervened as defendant. The Circuit Court granted summary judgment to mayor, city council, and city officials, denied board's and sponsor's motions to dismiss or for summary judgment, declared that proposed amendment was not proper charter material under state Constitution's Home Rule Amendment, and enjoined placement of proposed amendment on ballot. Board and sponsor noted a direct appeal to the Supreme Court. The Supreme Court issued an order affirming the Circuit Court.

In an opinion in support of its order, the Supreme Court held that:

- Proposed amendment did more than address the form or structure of government and was therefore not proper charter material under Home Rule Amendment, and
- Provision of proposed amendment, mandating payments of at least $1,000, was not severable.

Proposed citizen-initiated "Baby Bonus Amendment" to Baltimore City's charter, to mitigate childhood poverty by requiring payments of at least $1,000 to all new parents residing in city, did more than address the form or structure of government and was therefore not proper charter material under state Constitution's Home Rule Amendment; proposal was akin to a legislative enactment because it mandated the making of mandatory minimum payments to certain residents of city and encroached on city's discretion to address matters of public health and welfare, which were areas that Home Rule Amendment recognized as having been specifically reserved to the particular city under General Assembly's delegation of powers.

Portion of proposed citizen-initiated "Baby Bonus Amendment" to Baltimore City's charter that was not proper charter material under state Constitution's Home Rule Amendment because it was akin to a legislative enactment, i.e., mandatory payments of at least $1,000 to all new parents residing in city, was not severable, where proposal's dominant purposes was mitigating childhood poverty in city; proposal would have no practical effect without $1,000 mandatory minimum payments.

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**EMINENT DOMAIN - OHIO**

## Lifestyle Communities, Ltd. v. City of Worthington, Ohio

**United States District Court, S.D. Ohio, Eastern Division - December 27, 2024 - F.Supp.3d - 2024 WL 5237674**

Real estate developer brought action against city, asserting claims under the First and Fifth Amendments and corresponding provisions of the Ohio Constitution, along with other claims, and seeking declaratory judgment after city denied developer's application to rezone recently purchased property as a planned unit development and replaced existing land use plan with a resolution that emphasized the desirability of a large contiguous greenspace on the property. Parties filed cross-motions for summary judgment.

The District Court held that:

- Factor concerning the economic impact of a regulation on the claimant weighed against a finding that city's actions were a partial regulatory taking;
- Factor concerning extent to which a regulation has interfered with distinct investment-backed expectations weighed against finding that city's actions resulted in a partial regulatory taking;
- City's actions involved adjusting the benefits and burdens of economic life to promote the common good, weighing against finding of a partial regulatory taking;
- City council did not direct staff to ignore real estate developer or developer's rezoning application;
- City's denial of rezoning application was not an adverse action motivated by developer's exercise of its right to petition;
- City's routine application of 40-year-old city ordinance by imposing 180-day waiting period before developer could reapply to have property rezoned was not an adverse action; and
- City's passage of resolution that emphasized desirability of a large contiguous greenspace on the property was not an adverse action motivated by developer's exercise of right to petition.

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**PUBLIC EMPLOYMENT - RHODE ISLAND**

## Providence Retired Police and Firefighter's Association v. City of Providence by and through Lombardi

**Supreme Court of Rhode Island - February 4, 2025 - A.3d - 2025 WL 378972**

Retired police and firefighters association brought action against city seeking declaratory judgment that city must process applications for occupational cancer disability benefits under state cancer benefits act for firefighters rather than under city ordinance.

The Superior Court granted association's motion for partial summary judgment and denied city's cross-motion for summary judgment. City appealed.

The Supreme Court held that general state statute providing benefits for firefighters with occupational cancer did not supersede special statute that established pension system for city firefighters and had different requirements for qualifying for cancer benefits.

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**EMINENT DOMAIN - ARIZONA**

## State v. Foothills Reserve Master Owners Association, Inc.

**Supreme Court of Arizona - January 28, 2025 - P.3d - 2025 WL 311248**

State Department of Transportation filed condemnation action to acquire subdivision's common areas for freeway construction, and homeowners sought proximity damages for a complete taking of positive easements to use the land and negative easements to preserve the open space.

Following cross-motions for summary judgment, the Superior Court determined homeowners were entitled to proximity damages, and a stipulated final judgment was entered. State appealed, and the Court of Appeals reversed and remanded. The Supreme Court granted homeowners' petition for review.

The Supreme Court held that as a matter of first impression, easements were severed from a larger parcel such that homeowners were entitled to severance damages for any injury to remaining property as a consequence of the freeway's proximity.

When determining whether property condemned is part of a "larger parcel," such that the landowner may be entitled to severance damages, a court must initially ask if the property condemned constitutes a portion of a single parcel, and if the answer to that initial inquiry is "no," the court must ask if the condemned property nevertheless forms part of a "larger parcel" with a separate, distinct parcel owned by the condemnee, and should examine the unities of use, ownership and contiguity to make that determination; if the court determines that the condemned property is not part of a "larger parcel," the inquiry ends, and the condemnee is not entitled to severance damages, but if the court determines that the condemned property forms part of a "larger parcel," the court should then decide whether the condemnation or any improvements built on the condemned property injured the remaining portion, and if so, the condemnee is entitled to severance damages.

Appurtenant easements which the State condemned as part of freeway construction project were severed from a larger parcel that included homeowners' physical real properties such that homeowners were entitled to severance damages for any injury to the homeowners' remaining property as a consequence of the freeway's proximity; homeowners were members of a subdivision homeowners' association and had a positive easement to use the subdivision's common areas for enjoyment and a negative easement which restricted the common areas to undevelopable open space, and the State condemned the common areas as part of its freeway project.

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**NEGLIGENCE - CALIFORNIA**

## Bakos v. Roach

**Court of Appeal, Third District, California - January 29, 2025 - Cal.Rptr.3d - 2025 WL 322879**

Owner brought action against humane society, two humane officers, individually and on behalf of humane society, and volunteer veterinarian, for negligence and abuse of process, after officers seized owner's dogs, chickens, roosters, and goose, pursuant to search warrant issued under animal protection law.

The Superior Court granted summary judgment in favor of defendants. Owner appealed.

The Court of Appeal held that:

- Triable issues of material fact as to whether owner was injured precluded summary judgment on negligence claims against humane society and humane officers;
- Veterinarian was not liable for negligence;

- None of the defendants were liable for abuse of process; and
- Officers were not entitled to discretionary immunity.

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**ELECTION DISTRICTS - GEORGIA**

## Nelson v. Strickland

**Supreme Court of Georgia - January 28, 2025 - S.E.2d - 2025 WL 309403**

Unsuccessful candidate for city commissioner filed pro se petition contesting election, alleging that the use of an outdated voting district map resulted in voters casting ballots in wrong districts, which potentially affected election outcome.

The Superior Court entered orders granting petition, vacating election, and directing that a new election be held using updated map. Election winner appealed, and appellate court granted motion to stay trial court's orders pending appeal.

The Supreme Court held that due to city's failure to meet filing requirements under the Municipal Home Rule Act, city charter amendment updating election districts for city commissioners never became effective.

City charter amendment updating election districts for city commissioners never became effective, and thus failure of election officials to use that map did not warrant vacating election for city commissioner; filings that the Municipal Home Rule Act required to be made with the Secretary of State and clerk of superior court were not actually made, and despite argument that city substantially complied with the requirements for amending its charter, making no filings of any kind could hardly be considered substantial compliance with a statutory requirement that consisted entirely of making filings.

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**STANDING - ILLINOIS**

## Waukegan Potawatomi Casino, LLC v. Illinois Gaming Board

**Supreme Court of Illinois - January 24, 2025 - N.E.3d - 2025 IL 130036 - 2025 WL 285175**

Unsuccessful applicant for casino owners' license, whose application city refused to certify to Illinois Gaming Board, filed complaint for declaratory and injunctive relief to prohibit Board from issuing casino owners' license for city due to city's alleged noncompliance with Illinois Gambling Act. After Board issued license to successful applicant, city and Board moved to dismiss for lack of standing.

The Circuit Court granted motions. Unsuccessful applicant appealed. During pendency of appeal, Board issued temporary operating permit and owners' license to successful applicant, and city and Board moved to dismiss appeal as moot. The Appellate Court denied motions, reversed, and remanded. City's and Board's petitions for leave to appeal were granted.

The Supreme Court held that:

- City's resolutions approving three proposals to operate casino complied with Act's certification requirements;
- Appeal was mooted by Board's issuance of casino owners' license;
- Supreme Court would review standing issue under public interest exception to mootness doctrine;

and

- Unsuccessful applicant lacked legal cognizable interest in licensing process before Board.

Unsuccessful applicant for casino owners' license, whose application city had refused to certify so that Illinois Gaming Board could consider it, lacked legal cognizable interest in process before Board, and thus, lacked standing to seek declaratory and injunctive relief precluding Board from issuing license based on argument that city's certification of three other applicants failed to comply with Illinois Gambling Act's criteria such that Board lacked jurisdiction over those applications; Act did not treat certification process as bidding process, but rather, gave city discretion to certify applicants and allowed it to reject applicants for any reason, and any right that unsuccessful applicant had to lawfully-conducted certification proceedings ended when Board proceedings began.

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**EMINENT DOMAIN - VIRGINIA**

## Mountain Valley Pipeline, LLC v. 9.89 Acres of Land

**United States Court of Appeals, Fourth Circuit - January 27, 2025 - F.4th - 2025 WL 301695**

Pipeline company brought condemnation action under Natural Gas Act for pipeline easement on landowner's property.

The United States District Court for the Western District of Virginia, Elizabeth K. Dillon, Chief Judge, 2021 WL 4398032, granted pipeline company's motion to exclude landowner's proffered expert evidence and awarded just compensation. Landowner appealed.

The Court of Appeals held that:

- Civil procedure rule providing that, in eminent domain proceedings, the court "tries all issues" except amount of just compensation does not alter the Federal Rules of Evidence in eminent domain proceedings;
- As a matter of first impression, when determining contested factual issue pursuant to civil procedure rule providing for court to try all issues in eminent domain proceedings, district courts should make findings of fact and conclusions of law, just as they would in bench trial; and
- Civil procedure rule providing that, in eminent domain proceedings, the court "tries all issues" except amount of just compensation did not increase district court's discretion as it existed under evidentiary rule governing admissibility of expert testimony and thus did not allow district court to exclude landowner's expert report based on purported questions regarding factual underpinnings of expert's opinion.

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**FIRE PROTECTION SERVICE FEES - ALABAMA**

## Johnson v. Four-C Volunteer Fire Department

**Supreme Court of Alabama - December 13, 2024 - So.3d - 2024 WL 5101169**

Volunteer fire departments brought action against county revenue commissioner, in his official capacity, for a declaratory judgment as to the correct interpretation and implementation of a local act that established fire-protection service fees in the county and for a writ of mandamus requiring commissioner to assess and collect fees in accordance with the act.

After a bench trial, the Circuit Court entered order granting declaratory relief in favor of volunteer

fire departments with respect to certain interpretations of the local act and issuing a writ of mandamus to the extent that commissioner was acting inconsistently with the declared interpretation of the act. Commissioner appealed.

In a case of first impression, the Supreme Court held that:

- Judgment was not entitled to an ore tenus-rule based presumption of correctness on appeal; Whether a delinquency in payment of the fees created a tax lien on the subject property was not an issue that was ripe for decision;
- Local act did not provide for the right to contest elections held under the act, and thus the failure of petitions that sought referendums to approve the fees to include a map or formal legal description of the fire districts did not warrant invalidating the fees as approved in the referendums;
- Term "business," as it was used in the local act, meant any building, structure, or other improvement to real property that was used or expected to be used as business establishment that did not also meet definition of "dwelling"; and
- Term "dwelling," as it was used in the local act, did not include fifth wheels, travel trailers, campers, and recreational vehicles (RVs).

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**LIABILITY - ALASKA**

## Tripp v. City and Borough of Juneau

**Supreme Court of Alaska - January 17, 2025 - P.3d - 2025 WL 225322**

Motorist and her husband filed suit against defendants including city, police department, and police chief, seeking to recover for injuries motorist sustained when her vehicle was rear-ended by intoxicated, off-duty city police officer in his personal vehicle, and alleging claims for negligent training and negligent supervision, as well as husband's claim for loss of consortium.

The Superior Court granted defendants' motion to dismiss for failure to state a claim. Motorist and husband appealed.

The Supreme Court held that:

- Statute establishing Police Standards Council policy did not impose a duty of care to train officers against excessive off-duty alcohol consumption;
- City's drug-free workplace policy did not impose duty on city to train officers against excessive off-duty alcohol consumption;
- Police department rule of conduct imposed no duty on department to protect motorist from conduct of off-duty intoxicated police officer;
- Police department had no statutory duty to train its officers to report colleagues' excessive off-duty alcohol consumption;
- Factor of foreseeability weighed against finding that public policy supported duty of care to train officers against excessive off-duty alcohol consumption;
- Factor of certainty of plaintiffs' injuries weighed in favor of finding that public policy supported duty of care to train officers against excessive off-duty alcohol consumption; and
- Factor of burden to police department and consequences to the community weighed against finding that public policy supported duty of care to train officers against excessive off-duty alcohol consumption.

**EMINENT DOMAIN - CALIFORNIA**

## Town of Apple Valley v. Apple Valley Ranchos Water

**Court of Appeal, Fourth District, Division 2, California - January 15, 2025 - Cal.Rptr.3d - 2025 WL 100520**

Town brought eminent-domain action to acquire private water utility system, and system's owner objected.

Following a bench trial, the Superior Court, San Bernardino County, entered judgment in favor of owner and awarded attorney fees to owner. Town appealed.

The Court of Appeal held that:

- In utility-condemnation cases, private utility must convince court that resolution of necessity is procedurally invalid or that public entity's findings are not supported by substantial evidence;
- Administrative record underlying town's resolutions of necessity was relevant;
- Trial court's error of finding administrative record irrelevant was harmless;
- Trial court's statement of decision failed to apply principles of independent-judgment review;
- Trial court could not rely solely on evidence of owner's management of system after town adopted resolution of necessity to find that owner met its burden of proof;
- Trial court had discretion to remand action to town at town's request for town to consider in the first instance evidence of owner's management of system after town adopted resolution of necessity; and
- Taken together, trial court's errors prejudiced town and thus warranted reversal of judgment and order awarding attorney fees.

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**BANKRUPTCY - FEDERAL**

## In re Ellingsworth Residential Community Association, Inc.

**United States Court of Appeals, Eleventh Circuit - January 13, 2025 - F.4th. - 2025 WL 78887**

Debtor, a Florida not-for-profit homeowners association (HOA), brought prepetition state-court action against homeowner for allegedly failing to conform her yard to association's covenants, and homeowner filed state-law counterclaims.

After state court dismissed lawsuit and directed debtor to pay homeowner's attorney fees and costs, debtor petitioned for Chapter 11 bankruptcy under subchapter V. Homeowner objected, arguing that debtor was ineligible and that its proposed plan of reorganization did not comply with Bankruptcy Code requirements.

The United States Bankruptcy Court for the Middle District of Florida entered orders confirming debtor's plan over homeowner's objections and denying homeowner's motions for stay relief, and for mandatory abstention. Homeowner appealed.

The District Court affirmed confirmation order and stay-relief order and dismissed appeal from abstention order. Homeowner, proceeding pro se, filed appeals, which were consolidated.

The Court of Appeals held that:

- Homeowner waived her arguments in support of her motions to supplement the record;
- As a matter of first impression for the Court, a not-for-profit company can be "engaged in commercial or business activities" as required to qualify for subchapter V of Chapter 11 of the Code;
- Debtor engaged in "business activities" and, thus, was eligible to be a subchapter V debtor, despite being a not-for-profit corporation;
- The Bankruptcy Court did not clearly err in determining that debtor's reorganization plan satisfied the Code's confirmation requirements;
- The Bankruptcy Court did not abuse its discretion in denying homeowner's request for stay relief; and
- A bankruptcy court order conclusively denying mandatory abstention is immediately appealable as a "final" order.

A not-for-profit company can be "engaged in commercial or business activities" as required to be eligible for subchapter V of Chapter 11 of the Bankruptcy Code; Congress did not include not-fo--profit companies alongside the list of other excluded debtors in the statute, nor did it include any textual requirement that a debtor pursue a profit, the broad eligibility of the Code's definition of "small business debtor" does not limit subchapter V to for-profit entities, but, instead, allows any entity involved in regular business-like functions—no matter if its primary goal is to earn a profit—to qualify for reorganization under subchapter V, and, since nonprofit entities are allowed to file for Chapter 11 relief, and subchapter V is within Chapter 11, it would be insensible to consider such entities capable of petitioning for Chapter 11 relief but not for relief under a subchapter of Chapter 11.

Florida not-for-profit corporation operating as a homeowners association (HOA) engaged in "business activities," and thus was eligible to be a debtor under subchapter V of Chapter 11; HOA's nonprofit status did not preclude it from engaging in business-like operations, but, to the contrary, Florida law permitted it to collect assessments, manage budgets, enforce rules, and maintain common areas, and, in practice, HOA operated much like a small business—overseeing the maintenance of shared properties, contracting with service providers, and negotiating with third parties on behalf of its members.

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**EMINENT DOMAIN - IOWA**

## Abbas v. Franklin County Board of Supervisors

**Supreme Court of Iowa - January 17, 2025 - N.W.3d - 2025 WL 223427**

Owners of farmland in drainage district appealed compensation determination of the county board of supervisors which reconstructed drainage ditch and restored it to an open ditch.

The District Court awarded right-of-way and severance damages, and directed one landowner to convey severed parcel to the board. Both parties appealed, and, upon transfer, the Court of Appeals affirmed in part and vacated in part. The Supreme Court granted further review.

The Supreme Court held that:

- Drainage district had an existing, non-abandoned easement and thus was not required to pay landowners additional compensation for any reconstruction within that easement;
- Landowners were not entitled to severance damages related to the diminution in value of their remaining farmland caused by reconstruction of ditch;

- Landowner was entitled to severance damages for parcel severed from remaining land following ditch reconstruction; and
- Board was not entitled to conveyance of that parcel.

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**PUBLIC UTILITIES - OHIO**

## Dayton Power & Light Company v. Federal Energy Regulatory Commission

**United States Court of Appeals, Sixth Circuit - January 17, 2025 - F.4th - 2025 WL 227515**

Electricity transmission utilities and Ohio Consumers' Counsel (OCC) petitioned for review of Federal Energy Regulatory Commission's (FERC) orders denying utilities' applications for incentive adders, in other words, surcharges or higher wholesale electricity rates, to their return on equity (ROE) for membership in regional transmission organization (RTO), pursuant to FERC rule promulgated under Federal Power Act (FPA), and removing existing RTO adder from only one utility's rates.

The Court of Appeals held that:

- In matter of first impression, very substantial risk standard applies to determining whether collateral attack on agency rule is impermissible;
- FERC's determination that voluntary participation in RTO was required to receive adder comported with FPA;
- Ohio law mandating participation in RTO was not preempted by FPA under conflict preemption doctrine;
- Ohio law mandating participation in RTO was not preempted by FPA under field preemption doctrine;
- FERC did not arbitrarily deny adder for utility whose RTO membership was state mandated; but
- FERC arbitrarily and capriciously removed adder from only one of three utilities.

Electricity transmission utilities' challenge to legality of Federal Energy Regulatory Commission's (FERC) order, creating incentive adder for utilities that joined regional transmission organization (RTO) in order to permit utilities to charge premium above their baseline returns on equity (ROEs), was not impermissible collateral attack, since reasonable firm in utilities' position would not have perceived very substantial risk that FERC's order precluded RTO adder for utilities legally mandated to join RTO, as FERC did not substantially indicate, in either order or on rehearing, any intent to categorically reject applications for adder based on compulsory rather than voluntary RTO membership.

Federal Energy Regulatory Commission's (FERC) determination, in denying applications of electricity transmission utilities for incentive adders to their return on equity (ROE) for membership in regional transmission organization (RTO), that utilities were ineligible for adders because Ohio law mandated their participation in RTO, comported with FPA that reserved RTO incentive adder for utilities that voluntarily chose to join RTO; consistent with Congress's goal in FPA of encouraging RTO participation, FERC excluded from receiving adder those utilities that were required to join RTO by state law because higher rate allowed by adder could not incentivize their membership in RTO.

Federal Energy Regulatory Commission's (FERC) abstention from determining whether FPA preempted Ohio law mandating electricity transmission utilities' participation in regional transmission organization (RTO), thereby disqualifying them from receiving incentive adders to their returns on equity (ROEs) for voluntary membership in RTO, was not warranted, since FERC's

sudden federalism concerns that prompted its abstention could not be reconciled with its past practices of resolving state law questions at the heart of ratemaking proceedings, FERC had authority to interpret validity of Ohio law as necessary to carry out its ratemaking function, and utilities were asking FERC to ignore Ohio law as preempted in agency ratemaking proceedings, not to invalidate that law writ large.

Ohio law, mandating electricity transmission utilities' participation in regional transmission organization (RTO), did not stand as obstacle to or frustrate purpose of FPA provision, reserving incentive adder for electricity utilities that voluntarily chose to join RTO, and thus, Ohio law was not preempted as conflicting with FPA, since Congress's decision not to mandate RTO membership federally in FPA did not imply intent to prevent states from imposing that requirement, especially given that Ohio law furthered Congress's overall goal of increasing RTO participation.

Ohio law, mandating electricity transmission utilities' participation in regional transmission organization (RTO), was not preempted by FPA, which did not occupy field of interstate electricity transmission and, instead, explicitly preserved state authority over certain transmission-related areas, including intrastate transmission and facilities supplying electricity to transmitting entity itself; Ohio's law fit within that scheme because it primarily regulated intrastate transmission.

Federal Energy Regulatory Commission's (FERC) rejection of electricity transmission utility's request for incentive adder to its return on equity (ROE) for membership in regional transmission organization (RTO), on ground that utility's participation in RTO was not voluntary as it was mandated by Ohio law, was not arbitrary and capricious, even though FERC approved similar adders for other utilities participating in same RTO in which utility was member as well as in nearby RTOs, some of which were subject to state RTO membership mandates, since FERC's differential treatment of utility was justifiable in that other members of RTO in which utility participated operated within state statutory schemes that did not mandate RTO participation.

Federal Energy Regulatory Commission's (FERC) rejection of electricity transmission utility's request for incentive adder to its return on equity (ROE) for membership in regional transmission organization (RTO), on ground that utility's participation in RTO was not voluntary as it was mandated by Ohio law, was not arbitrary or capricious due to utility's market disadvantage, particularly for capital improvements, without RTO adder, since neither FPA nor FERC's rule, creating adder for utilities that joined RTO which permitted them to charge premium above their baseline ROEs, required FERC to resolve economic disparities, and adder's purpose was not to ensure competitiveness or capital attraction.

Federal Energy Regulatory Commission (FERC) was permitted to revoke incentive adder given to electricity transmission utility for participating in regional transmission organization (RTO), without concluding utility's overall rate of return on equity (ROE) plus adder was unjust and unreasonable, under FPA, providing that whenever FERC found any "rate, charge, or classification," or "any rule, regulation, [or] practice" was "unjust, unreasonable, unduly discriminatory or preferential," FERC "shall determine the just and reasonable" rate, charge, rule, or practice and "shall fix [it] by order," since FERC found that its practice of granting RTO adders to Ohio utilities was wrong as their participation in RTO was mandated by Ohio law, not voluntary, so FERC "fixed it" by removing their adders.

Federal Energy Regulatory Commission (FERC) arbitrarily and capriciously removed incentive adder from only one of three electricity transmission utilities, whose participation in regional transmission organization (RTO) was mandated by Ohio law, rather than voluntary as required for utilities to qualify for RTO incentive adder, under FPA, even though FERC determined that three utilities were not similarly situated in that FERC could easily excise its approval of one utility's adder, while

removing adders from other two utilities would require disentangling them from multi-issue settlements, since settlements acknowledged that two utilities included 50-basis-point RTO adders, and other utility's rate had 50-basis-point RTO adder that similarly paralleled rates of those two utilities.

Federal Energy Regulatory Commission's (FERC) prior conclusion, in two-decades-old order from different context, that electricity transmission utility's parent company voluntarily integrated into regional transmission organization (RTO) under Public Utilities Regulatory Policy Act (PURPA) and Virginia law, did not estop FERC, under doctrine of regulatory estoppel, from finding that utility did not voluntarily join RTO because Ohio law mandated utility's membership in RTO, since inquiries were distinct and justifiably led to different conclusions, especially considering developments in law from two decades prior.

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**IMMUNITY - ALABAMA**

## Ex parte Scott

**Supreme Court of Alabama - January 10, 2025 - So.3d - 2025 WL 63936**

Residential landlords filed against city a class-action complaint that challenged city ordinance that required certificates of occupancy and inspections for rental properties.

After city repealed the ordinance following entry of a preliminary injunction, landlords filed an amended complaint that added as defendants, in their individual and representative capacities, the city's mayor, the president of the city council, and former council president and that sought damages from those officials due to the officials' enactment of the ordinance in the first place.

The Circuit Court denied the officials' motion to dismiss. Officials petitioned for a writ of mandamus.

The Supreme Court held that:

- Officials abandoned their argument that landlords' official-capacity claims were duplicative of their claims against city;
- Officials' failure to assert in their motion to dismiss or in their reply to landlords' response to the motion their argument that State-agent immunity barred landlords' official-capacity claims meant that such an argument could not be a basis for granting them mandamus relief;
- Officials' failure to assert in their motion to dismiss or in their reply to landlords' response to the motion their argument that legislative immunity barred landlords' official-capacity claims meant that such an argument could not be a basis for granting them mandamus relief; and
- Officials had legislative immunity from landlords' individual-capacity claims.

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**CHARTER SCHOOLS - CALIFORNIA**

## Alliance Marc & Eva Stern Math and Science High School v. Public Employment Relations Board

**Court of Appeal, Second District, Division 2, California - December 26, 2024 - Cal.Rptr.3d - 2024 WL 5231678**

Eleven public charter schools filed a petition for writ of extraordinary relief from order issued by Public Employment Relations Board (PERB) finding that schools violated Prohibition on Public

Employers Deterring or Discouraging Union Membership (PEDD) statute and ordering schools to cease and desist from doing so.

After the Court of Appeal denied the petition, schools filed a petition for review in the Supreme Court, which granted the petition and transferred the matter back to the Court of Appeal.

The Court of Appeal held that:

- PERB interpretation of PEDD was not clearly erroneous;
- Schools were not barred from asserting their free speech challenge under the federal and California Constitutions;
- PEDD statute was not a facially unconstitutionally overbroad form of viewpoint discrimination;
- PEDD statute was not an unconstitutionally restriction of speech as applied to public charter schools, principals and assistant principals, or private management organization;
- Substantial evidence supported PERB's finding that private management organization and school administrators who sent e-mails critical of labor organization were schools' actual agents such that schools could be held accountable for the communications; and
- Substantial evidence supported PERB's finding that private management organization and school administrators acted within the scope of their actual and apparent authority when sending e-mail communications critical of union organizing efforts, such that schools could be held accountable under PEDD.

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**PUBLIC UTILITIES - COLORADO**

## Holcim U.S. Inc. v. Colorado Public Utilities Commission

**Supreme Court of Colorado - January 13, 2025 - P.3d - 2025 WL 77772 - 2025 CO 1**

Large retail electric customer sought judicial review of Public Utilities Commission's (PUC) approval of electric utility's method for recovering extraordinary natural gas costs incurred during severe winter storm through uniform volumetric charge on all customers over two years.

The District Court affirmed PUC's decision. Customer appealed.

The Supreme Court held that PUC adopted "just and reasonable rate" by approving utility's cost recovery method.

Public Utilities Commission (PUC) adopted "just and reasonable rate" by approving electric utility's method for recovering extraordinary natural gas costs incurred during severe winter storm through uniform volumetric charge on all customers over two years; method accurately reflected cost of service because utility had purchased natural gas based on total forecasted customer need, not based on actual individual consumption during winter storm, method would allow utility to recover costs it had incurred in anticipation of winter storm in exactly same way that it recovered its normal fuel costs, customers' ultimate billing would appropriately be based on their individual usage, and method would provide utility with reasonable rate of return.

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**EMINENT DOMAIN - KENTUCKY**

## Transportation Cabinet, Department of Highways v. Atkinson

**Supreme Court of Kentucky - December 19, 2024 - S.W.3d - 2024 WL 5174259**

Transportation Cabinet, Department of Highways, filed condemnation petition against property owners, who had entered into coal lease with company, which granted company right to mine property's coal in exchange for royalty payments, seeking to condemn fee simple title to portion of property to complete highway construction.

Following a jury trial, the Circuit Court entered judgment in which jury awarded owners $550,000 as just compensation for the Cabinet's condemnation of their property. Cabinet appealed, and the Court of Appeals affirmed. Cabinet moved for discretionary review, which was granted.

The Supreme Court held that expert witness's testimony valuing condemned property's fair market value pre-condemnation did not run afoul of prohibition on price-per-unit evidence, and thus was admissible.

A valuation of condemned property's fair market value under income capitalization approach based on an elementary "price per unit" calculation, in which the quantity of minerals in the ground is estimated and then that figure is multiplied by the market price of the mineral to calculate a gross income to be derived from the condemned property, is irrelevant and inadmissible because it fails to account for the contingencies and uncertainties of business.

Expert witness's testimony valuing condemned property's fair market value at $2.1 million pre-condemnation under income capitalization approach did not afoul of prohibition on price-per-unit evidence, and thus was admissible, in condemnation proceeding brought by Transportation Cabinet, Department of Highways, against property owners, seeking to condemn fee simple title to portion of property to complete highway construction; expert's testimony made clear that he appropriately endeavored to consider contingencies and uncertainties of business while estimating fair market value of owners' property, he contemplated that not all of property's subsurface coal could have been feasibly mined and sold, and accounted for risk and inflation to calculate a net present value of owners' expected income stream.

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**STANDING - MINNESOTA**

## Clapp v. Sayles-Adams

**Supreme Court of Minnesota - January 8, 2025 - N.W.3d - 2025 WL 45219**

Taxpayer, a homeowner, brought action seeking declaratory and injunctive relief against public school district as well as its superintendent, in her official capacity, and the city's board of education, alleging provisions in the teachers' union collective bargaining agreement (CBA) that provided preferences based on race and ethnicity violated Minnesota Constitution's Equal Protection Clause.

The District Court granted defendants' motion to dismiss for lack of standing and ripeness. Taxpayer appealed. The Court of Appeals reversed. Defendants petitioned for review, which was granted by Supreme Court.

The Supreme Court held that taxpayer lacked taxpayer standing to bring action.

The disbursement of public funds to implement and monitor compliance with provisions in teachers' union collective bargaining agreement (CBA) that provided preferences based on race and ethnicity was merely incidental to claim of taxpayer, a homeowner, that provisions violated Minnesota Constitution's Equal Protection Clause and, thus, taxpayer lacked taxpayer standing to bring action seeking declaratory and injunctive relief against public school district as well as its superintendent,

in her official capacity, and the city's board of education in connection with claim; although funds could be used to implement provisions, they were merely incidental to substantive governmental action taxpayer sought to challenge.

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**REFERENDA - MONTANA**

## Cottonwood Environmental Law Center v. State

**Supreme Court of Montana - December 18, 2024 - P.3d - 2024 WL 5150626 - 2024 MT 313**

Environmental organization brought action seeking declaration that statute limiting the right of local citizen initiatives to regulate auxiliary containers facially violated the state constitutional provision governing initiative and referendum.

The District Court granted organization's motion for partial summary judgment, and certified order as final. State appealed.

The Supreme Court held that statute did not facially violate the state constitutional provision governing initiative and referendum.

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**ZONING & PLANNING - TEXAS**

## Keenan v. Robin

**Supreme Court of Texas - December 31, 2024 - S.W.3d - 2024 WL 5249568**

Subdivision lot owners brought action against owners of cattle ranch which occupied remaining subdivision lots, alleging trespass by cattle, as well as a claim for malicious prosecution, and requesting declaratory and injunctive relief regarding ranch owners' erection of fences, gates, or other obstructions across subdivision streets.

The District Court granted ranch owners' motion for summary judgment. Subdivision lot owners appealed, and the Amarillo Court of Appeals affirmed in part and reversed in part. The Supreme Court granted a petition for review.

The Supreme Court held that:

- Lot owner's declaration constituted some evidence that cattle from ranch trespassed on his subdivision lot;
- Lot owner did not establish past monetary damages from the alleged trespass;
- Subdivision plat of record established that subdivision streets were dedicated as public rights of way;
- Ranch did not have any right to place fences or gate across subdivision streets; and
- There was no evidence ranchers actually knew they did not own the subdivision area where subdivision lot owner tore down fence and gate installed by ranch when they reported the destruction to the sheriff.

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**IMMUNITY - TEXAS**

## City of Austin v. Powell

**Supreme Court of Texas - December 31, 2024 - S.W.3d - 2024 WL 5249451**

Motorist, who was injured when police officer involved in high-speed chase collided with motorist's vehicle, brought action against city to recover damages for his injuries.

The 353rd District Court, Travis County, denied city's plea to the jurisdiction. City appealed. The Austin Court of Appeals affirmed. The Supreme Court granted city's petition for review.

The Supreme Court held that:

- Statute requiring operator of motor vehicle to maintain distance between vehicles was law of general applicability and was not specifically applicable to emergency action, for purposes of whether emergency exception to waiver of immunity under Tort Claims Act applied to motorist's action;
- Statute permitting certain conduct in operating emergency vehicle did not make all other traffic laws binding in emergency contexts, for purposes of whether emergency exception applied to immunity waiver under Tort Claims Act;
- Whether police officer violated department policy was immaterial to inquiry of whether law or ordinance existed specifically addressing emergency response at issue, for purposes of whether emergency exception applied to immunity waiver under Tort Claims Act;
- Motorist did not establish that police officer's failure to control his speed was reckless, as required not to apply emergency exception to immunity waiver under Tort Claims Act;
- Motorist did not establish that police officer's failure to maintain distance with police vehicle that officer was following was reckless, as required not to apply emergency exception to immunity waiver under Tort Claims Act;
- Motorist did not establish that police officer's inattentiveness leading up to accident was reckless, as required not to apply emergency exception to immunity waiver under Tort Claims Act; and
- Motorist did not establish that combination of police officer's acts was reckless, as required not to apply emergency exception to immunity waiver under Tort Claims Act.

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**EMINENT DOMAIN - LOUISIANA**

## Tessier v. City of Denham Springs

**Court of Appeal of Louisiana, First Circuit - December 3, 2024 - So.3d - 2024 WL 4942841 - 2024-0351 (La.App. 1 Cir. 12/3/24)**

Property owner appealed city council's order of condemnation of his buildings for demolition due to being in a dangerous and/or unsafe condition.

The District Court affirmed order of condemnation and subsequently denied owner's motion for a new trial. Owner appealed.

The Court of Appeal held that:

- Character of city's decision to demolish owner's buildings weighed against finding city's condemnation of building to be an improper taking;
- Demolition of buildings would have little to no economic impact on owner, weighing against finding city's condemnation of buildings to be an improper taking; and
- Demolition of buildings would not interfere with any investment-backed expectations in the buildings, weighing against finding city's condemnation of buildings to be an improper taking.

**POLITICAL SUBDIVISIONS - MASSACHUSETTS**

## Attorney General v. Town of Milton

**Supreme Judicial Court of Massachusetts, Suffolk - January 8, 2025 - N.E.3d - 2025 WL 44969**

Attorney General brought action against town and its building commissioner seeking declaratory and injunctive relief to enforce compliance with Massachusetts Bay Transportation Authority (MBTA) Communities Act.

Town filed counterclaim against Attorney General and Executive Office of Housing and Livable Communities (HLC) seeking declaratory relief, challenging constitutionality of MBTA Communities Act and HLC's promulgation of guidelines under the Act. Single justice of the court reserved and reported the case to the full court.

The Supreme Judicial Court held that:

- Act did not violate separation of powers doctrine;
- Attorney General had authority to enforce Act;
- HLC guidelines issued under Act interpreted and implemented the Act, and thus were subject to Administrative Procedure Act (APA) requirements; and
- HLC's promulgation of guidelines implementing Act was not done in compliance with APA, and thus guidelines were legally ineffective.

Legislature did not vest Executive Office of Housing and Livable Communities (HLC) with power to make fundamental policy decisions in Massachusetts Bay Transportation Authority (MBTA) Communities Act, and thus Act did not violate separation of powers doctrine, despite fact that it tasked HLC with determining whether a city or town complied with Act's requirement that MBTA communities have at least one zoning district of reasonable size in which multifamily housing was permitted as of right; language of Act made policy goal plain, Act defined a "district of reasonable size," sufficiently demarcating boundaries of regulatory discretion, Act permitted subject-matter experts to tailor guidelines to fit actual conditions of each MBTA community, and Act provided intelligible principles to guide HLC in exercising its authority and required consultation with three other agencies.

Attorney General had authority to enforce Massachusetts Bay Transportation Authority (MBTA) Communities Act, which required that MBTA communities have at least one zoning district of reasonable size in which multifamily housing was permitted as of right; although Act did not refer to any such power, Attorney General had broad authority to act in the public interest and public had interest in enforcement of Act.

Fact that Massachusetts Bay Transportation Authority (MBTA) Communities Act included consequences for noncompliance with requirement that MBTA communities have at least one zoning district of reasonable size in which multifamily housing was permitted as of right did not preclude Attorney General from bringing enforcement action against town that failed to pass ordinance creating multifamily housing zoning district; only consequence to a town of failing to comply with Act would be loss of certain funding opportunities if Attorney General could not bring enforcement actions, leaving towns free to ignore Act's purpose of creating more opportunities for multifamily housing in areas benefiting from MBTA services, and turning legislative mandate into a matter of fiscal choice.

Executive Office of Housing and Livable Communities' (HLC) guidelines issued under Massachusetts Bay Transportation Authority (MBTA) Communities Act interpreted and implemented the Act, which required that MBTA communities have at least one zoning district of reasonable size in which multifamily housing was permitted as of right, and thus were subject to Administrative Procedure Act (APA) requirements, despite fact that Act referred to "guidelines" rather than "regulations;" guidelines categorized communities and detailed what each category had to do to be in compliance with Act, guidelines explained what it meant to allow multifamily housing "as of right," and established deadlines by which communities had to submit compliance applications to HLC.

Executive Office of Housing and Livable Communities' (HLC) promulgation of guidelines implementing Massachusetts Bay Transportation Authority (MBTA) Communities Act was not done in compliance with Administrative Procedure Act (APA), and thus guidelines were legally ineffective, despite HLC's claim it substantially complied with APA; HLC admitted that it failed to file a notice of proposed regulation with the Secretary of the Commonwealth and that it failed to prepare a small business impact statement, as required by APA, and strict compliance with APA was required.

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**EMINENT DOMAIN - MISSOURI**

## Becker v. City of Hillsboro, Missouri

**United States Court of Appeals, Eighth Circuit - January 7, 2025 - F.4th - 2025 WL 38068**

Owners of 176 acres of land annexed to city brought action in state court against city for inverse condemnation under federal and state constitutions and violations of their constitutional rights under § 1983, based on allegations that they had been deprived of any and all economical and productive use of the property as result of city ordinances requiring them to connect to city water services at their own cost.

Following removal, both sides moved for summary judgment. The United States District Court for the Eastern District of Missouri entered summary judgment for city. Landowners appealed.

The Court of Appeals held that:

- Ordinances did not mandate a permanent physical invasion of landowner's property and thus did not amount to a "taking" on that ground;
- Ordinances did not deprive landowners of all economically beneficial use of their property;
- Court would treat landowners' parcel as a single parcel, rather than eight subdivided lots, when applying the Penn Central regulatory taking test;
- Economic effect on the landowner prong of the Penn Central regulatory taking test weighed in favor of city;
- Interference with reasonable investment backed expectations prong of the Penn Central regulatory taking test weighed in favor of city; and
- Character of the governmental action prong of the Penn Central regulatory taking test weighed in favor of city.

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**EMINENT DOMAIN - MONTANA**

## Flathead Properties, L.L.C. v. Flathead County

**Supreme Court of Montana - December 31, 2024 - P.3d - 2024 WL 5252097 - 2024 MT 323**

Landowner brought inverse condemnation action against county, alleging that court-ordered removal of landowner's bridge, which landowner built pursuant to county permit that was later held void ab initio in litigation under Montana Lakeshore Protection Act, constituted a taking requiring just compensation.

The District Court granted county's motion to dismiss for failure to state a claim. Landowner appealed.

The Supreme Court held that:

- As matter of first impression, landowner stated a claim for inverse condemnation, and
- Landowner stated a claim for a regulatory taking.

Landowner stated a claim for inverse condemnation against county by alleging that landowner built bridge to portion of its lakeshore property in reliance on permit deliberately issued by county, that permit was later held to be void ab initio in litigation under Montana Lakeshore Protection Act, that landowner obtained a vested property right in bridge as a physical structure under remedial provision of Act, that landowner removed bridge pursuant to court order, that county created a public improvement through bridge via increase in property values, and that removal of bridge caused damages to landowner's property.

Landowner stated a claim for a regulatory taking against county by alleging that landowner built bridge to portion of its lakeshore property in reliance on permit deliberately issued by county, that permit was later held to be void ab initio in litigation under Montana Lakeshore Protection Act, that landowner obtained a vested property right in bridge as a physical structure under remedial provision of Act, that bridge added value to landowner's property, that removal of bridge pursuant to court order deprived landowner of all use of bridge, and that landowner relied on permit to expend money and construct bridge.

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**SCHOOL DISTRICTS - NEW JERSEY**

## I/M/O Proposed Creation of PK-12 All-Purpose Regional School District by Borough of Sea Bright

**Superior Court of New Jersey, Appellate Division - November 26, 2024 - A.3d - 2024 WL 4886708**

Two school districts with which municipality's nonoperating school district had merged sought review of Commissioner of Education's determination that municipality had standing to withdraw from merged districts and to petition to join newly-formed all-purpose regional school district.

As matters of first impression, the Superior Court, Appellate Division, held that:

- Despite its merger with other school districts, municipality's nonoperating school district continued to exist as a separate local school district with standing to withdraw from its merger;
- Municipality's governing body was entitled to stand in the place of a board of education for its nonoperating school district; and
- Statutory provisions for withdrawing from a regional school district applied to nonoperating district that had merged with other districts.

Despite its merger with other school districts, municipality's nonoperating school district continued to exist as a separate local school district with standing to withdraw from its merger; nonoperating

district's merger was part of legislative mandate to encourage financial accountability and the reduction of duplicative services through consolidation and regionalization of school districts, but nonoperating district retained its status as a local school district with sovereignty separate from merged districts.

Municipality's governing body was entitled to stand in the place of a board of education for its nonoperating school district for purposes of determining whether to withdraw nonoperating district from limited purpose regional district or consolidated district; statutory definition of "governing body" included the governing body of a municipality constituting a constituent district which lacked a board of education.

Statutory provisions for withdrawing from a regional school district applied to nonoperating district that had merged with other districts, where statutes provided that nonoperating district was to be treated as a constitute district of a consolidated or regional district.

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**TOLLS - RHODE ISLAND**

## American Trucking Associations, Inc. v. Rhode Island Turnpike and Bridge Authority

**United States Court of Appeals, First Circuit - December 6, 2024 - 123 F.4th 27**

Association representing trucking industry and trucking companies brought action against Rhode Island Turnpike and Bridge Authority as well as Director of Rhode Island Department of Transportation (RIDOT), alleging Rhode Island Bridge Replacement, Reconstruction, and Maintenance Fund Act, which imposed tolls on tractor-trailers to fund repair of Rhode Island's bridges, violated dormant Commerce Clause.

After bench trial, the United States District Court entered judgment for plaintiffs which, inter alia, permanently enjoined imposition of tolls under Act. Defendants appealed.

The Court of Appeals held that:

- Act did not effectively discriminate against interstate commerce, so as to violate dormant Commerce Clause, by exempting single-unit trucks from its tolls;
- Provisions of Act establishing caps on tolls paid by tractor-trailers to use bridges along major interstate and state highway corridors provided disproportionate competitive advantage to in-state tractor-trailers as compared to those from out-of-state and, thus, provisions were discriminatory in violation of dormant Commerce Clause;
- Provision of Act exempting single-unit and smaller trucks from tolls paid by tractor-trailers to use bridges along major interstate and state highway corridors "fairly approximated" use of and damage caused by tractor-trailers to state's bridges and, thus, exemption did not violate dormant Commerce Clause; and
- Provisions of Act establishing caps on tolls paid by tractor-trailers to use bridges along major interstate and state highway corridors found unconstitutional were severable from rest of Act.

Rhode Island Bridge Replacement, Reconstruction, and Maintenance Fund Act, which imposed tolls on tractor-trailers to fund repair of Rhode Island's bridges, did not effectively discriminate against interstate commerce, so as to violate dormant Commerce Clause, by exempting single-unit trucks from its tolls, as tractor-trailers and single-unit trucks were not "similarly situated"; exemption for single-unit trucks provided no competitive advantage to in-state competitors at expense of out-o-

-state competitors that used tractor-trailers, and there was no evidence demonstrating an increase in Rhode Island-based companies' use of un-tolled trucks, changes in vehicle fleets, or diversion, or that smaller trucks competed in same market as tractor-trailers.

Even if out-of-state tractor-trailers and in-state single-unit trucks were "similarly situated" with each other for dormant Commerce Clause purposes, they did not indirectly compete with each other and, thus, Rhode Island Bridge Replacement, Reconstruction, and Maintenance Fund Act, which imposed tolls on tractor-trailers to fund repair of Rhode Island's bridges, did not effectively discriminate against interstate commerce, so as to violate dormant Commerce Clause, by exempting single-unit trucks from its tolls.

Provisions of Rhode Island Bridge Replacement, Reconstruction, and Maintenance Fund Act establishing caps on tolls paid by tractor-trailers to use bridges along major interstate and state highway corridors provided disproportionate competitive advantage to in-state tractor-trailers as compared to those from out-of-state and, thus, provisions were discriminatory in violation of dormant Commerce Clause; Act created hybrid model of usage-based toll that was capped after certain number of gantries were passed and then was reset daily, and even though out-of-state and in-state tractor-trailers could both benefit from caps, 39.9 percent of the reductions in what the tolls would have been but for the caps went to Rhode Island intra-state tractor-trailers, even though they accounted for only 18.6 percent of the transactions.

Provision of Rhode Island Bridge Replacement, Reconstruction, and Maintenance Fund Act exempting single-unit and smaller trucks from tolls paid by tractor-trailers to use bridges along major interstate and state highway corridors "fairly approximated" use of and damage caused by tractor-trailers to state's bridges and, thus, exemption did not violate dormant Commerce Clause, as it was not "wholly unreasonable" for Rhode Island legislature to rely on certain studies in concluding tractor-trailers caused in excess of 70 percent of damage to state's transportation infrastructure on an annual basis; having so found, legislature granted state Department of Transportation (RIDOT) the authority to collect tolls on large commercial trucks only, with tolls to be fixed after conducting a cost-benefit analysis, based on costs of replacement, reconstruction, maintenance, and operation of Rhode Island's system of bridges.

Even assuming Rhode Island equated "use" of its bridges with bridge "damage," and assuming Rhode Island could show tractor-trailers caused most damage to its bridges, under Rhode Island Bridge Replacement, Reconstruction, and Maintenance Fund Act, which imposed tolls on tractor-trailers to fund bridge repairs, state was not required to also impose tolls on all users having more than "negligible" impact on tolled facilities in order for Act's exemption for single-unit and smaller trucks from tolls to "fairly approximate" use of bridges and comport with dormant Commerce Clause; Rhode Island concluded with at least some reason that tractor-trailers caused most wear and tear to its bridges and, thus, could collect a toll from most intensive users without also having to collect a toll from lesser users, and charging only largest trucks in reliance on pre-existing federal vehicle classification system was more administrable than charging each of tens of thousands of smaller vehicles.

Provisions of Rhode Island Bridge Replacement, Reconstruction, and Maintenance Fund Act establishing caps on tolls paid by tractor-trailers to use bridges along major interstate and state highway corridors, which violated dormant Commerce Clause, were severable from rest of Act; invalidating entire Act based on nothing more than unconstitutionality of caps would cut against legislature's resolve to raise funds for its bridges and its stated preference for, wherever possible, only excising the Act's defective provisions through its inclusion of express severability provision.

**EMINENT DOMAIN - TEXAS**

## Litinas v. City of Houston

**Court of Appeals of Texas, Houston (14th Dist.) - December 5, 2024 - S.W.3d - 2024 WL 4982561**

Landowner brought inverse condemnation action against city and local redevelopment authority, alleging that road and sidewalk modifications to accommodate bicycle lane and new sidewalk as part of capital improvement program would eliminate head-in parking for landowner's flower shop.

City filed plea to jurisdiction, arguing that landowner failed to plead or prove actionable vested property interest to pursue inverse condemnation claim. The County Civil Court at Law sustained the plea to the jurisdiction, and landowner appealed.

The Court of Appeals held that landowner sufficiently alleged that construction project would materially and substantially impair access to the shop.

Landowner sufficiently alleged that road construction project, which would eliminate head-in parking at landowner's fast-service florist shop, materially and substantially impaired access to the shop, as required to survive city's plea to the jurisdiction to landowner's inverse condemnation claim; while landowner had alternate access points to the shop, and also had a spillover parking lot across the street, overall impact of the curbing and other improvements effectively eliminated virtually all store-front head-in parking spots on the lot with the flower shop, and landowner alleged that head-in parking was critical to servicing repeat customers and impulse buyers.

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**BOND DEFAULT AND RECEIVERSHIP - ARIZONA**

## UMB Bank NA v. Harvest Gold Silica Incorporated

**United States District Court, D. Arizona - December 4, 2024 - Slip Copy - 2024 WL 4972002**

After Defendant defaulted on $22 million in revenue bonds issued by the Arizona Industrial Development Authority for the purpose of running a facility to turn tailings from gold mines into silica products, trustee UMB bank brought an action for receivership.

Defendant proceeded to appeal the appointment of the receiver and the impending liquidation of the operation, filed for bankruptcy in various other jurisdictions and engaged in a variety of procedural shenanigans.

The District Court ultimately held that the Defendants had not carried their burden to justify a stay and granted sanctions.

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**IMMUNITY - UTAH**

## Mariani v. Utah Department of Public Safety-Driver License Division

**Supreme Court of Utah - December 19, 2024 - P.3d - 2024 WL 5162622 - 2024 UT 44**

Motorist brought negligence action against Utah Department of Public Safety-Driver License Division (DLD) for injuries sustained when her scooter crashed during skills test for motorcycle endorsement on her driver's license.

DLD moved for summary judgment. The Third District Court granted motion based on licensing exception to waiver of immunity in Governmental Immunity Act (GIA), and motorist appealed. The Court of Appeals affirmed. Certiorari was granted.

The Supreme Court held that:

- Phrase "denial of a license or similar authorization" does not encompass entire licensing process or all licensing activities, and
- Motorist's injury did not arise out of or in connection with or result from licensing denial.

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**SHORT TERM RENTALS - MAINE**

## 15 Langsford Owner LLC v. Town of Kennebunkport

**Supreme Judicial Court of Maine - December 19, 2024 - A.3d - 2024 WL 5162050 - 2024 ME 79**

Applicant for short-term rental licenses for condominium units filed complaints pursuant to rule governing review of agency action and Uniform Declaratory Judgments Act seeking review of decision by town code enforcement officer denying applications.

The Superior Court vacated denial of applications. Town appealed.

The Supreme Judicial Court held that:

- Direct review of denial of applications was "otherwise available by law," within meaning of rule defining sources of jurisdiction to review agency action, and
- Units were "legally existing residential dwelling units" at time applicant offered units for short-term rental prior to enactment of ordinance, entitling applicant to licenses.

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**THE VRDOS ARE BACK IN TOWN! - NEW JERSEY**

## State of New Jersey ex rel. Edelweiss Fund LLC, v. JPMorgan Chase, et. al.

**Superior Court of New Jersey, Appellate Division - December 27, 2024 - Not Reported in Atl. Rptr - 2024 WL 5231309**

A Murders Row of commercial banks came together to fight an action brought by municipal advisor on behalf of the State of New Jersey, claiming that the banks – in connection with their resetting of interest rates of variable-rate, tax-exempt municipal bonds – defrauded the State of more than $100 million.

Essentially just the standard-issue claims from about a decade ago that had gone nowhere.

The Appellate Court dismissed the claim on the grounds (inter alia) that the information relied upon by plaintiffs to establish their robo-setting claims was at all times publicly-accessable and available to plaintiffs.

**POLITICAL SUBDIVISIONS - NORTH DAKOTA**

## City of Fargo v. State

**Supreme Court of North Dakota - December 19, 2024 - N.W.3d - 2024 WL 5162049 - 2024 ND 236**

City brought declaratory judgment action against State, seeking declaration that amended statutes limiting authority of political subdivisions regarding firearms and ammunition were unconstitutional, or alternatively, that amended statutes did not void two city zoning ordinances prohibiting firearm and ammunition sales.

The District Court granted State's motion for summary judgment, and denied city's motion for summary judgment. City appealed.

The Supreme Court held that:

- Amended statutes limiting authority of political subdivisions regarding firearms and ammunition were constitutional as applied, and
- Amended statutes limiting authority of political subdivisions regarding firearms and ammunition preempted and rendered city's zoning ordinances prohibiting firearm and ammunition sales void.

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**ZONING & PLANNING - NORTH DAKOTA**

## Cass County v. KNB Properties LLC

**Supreme Court of North Dakota - December 19, 2024 - N.W.3d - 2024 WL 5165068 - 2024 ND 226**

Home rule county brought action against owners of parcels in township, alleging that they had violated county's subdivision ordinance, which specified watercourse setbacks. Owners filed counterclaim, alleging selective enforcement of the subdivision ordinance and seeking a permanent injunction prohibiting county form enforcing ordinance against them.

The District Court entered summary judgment for county, granted county permanent injunctive relief, dismissed landowners' counterclaim with prejudice, and denied landowners' motion to alter or amend judgment. Owners appealed.

The Supreme Court held that:

- As a matter of apparent first impression, a county may impose setback requirements as conditions on its exercise of subdivision authority within an organized township;
- County's subdivision authority was not implicated until initial parcel was platted into two, the plats were recorded, and one of the two new parcels was conveyed; and
- Proper remedy for the two parcels at issue being in violation of the subdivision ordinance was to void the conveyance of one of them, thus restoring the two parcels to the original one.

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**MUNICIPAL ORDINANCE - IOWA**

## Singer v. City of Orange City

**Supreme Court of Iowa - December 20, 2024 - N.W.3d - 2024 WL 5173252**

Certain owners and renters of rental units brought action against city, asserting facial challenge against city ordinance requiring periodic inspections of rental properties and allowing inspector to obtain an administrative search warrant to search rental unit if entry was refused, claiming that ordinance's mandatory inspection regime violated state constitution's search and seizure provision, and seeking injunctive relief and nominal damages.

On cross-motions for summary judgment, the District Court denied city's motion for summary judgment and granted owners and renters' motion for summary judgment, and permanently enjoined city from seeking administrative warrant to conduct inspections authorized under the current language of the ordinance. City appealed.

The Supreme Court held that city ordinance requiring periodic inspections of rental properties and allowing inspector to obtain an administrative search warrant to search rental unit if entry was refused was not facially unconstitutional under state constitution's search and seizure provision.

City ordinance requiring periodic inspections of rental properties and allowing inspector to obtain an administrative search warrant to search rental unit if entry was refused was not facially unconstitutional under state constitution's search and seizure provision, in action brought by certain owners and renters of rental units against city; although owners and renters emphasized situations where traditional probable cause would have been absent, there were circumstances where traditional probable cause would be present, warrants were not city's only option as the ordinance authorized city to pursue legal options that did not involve warrants, and ordinance required inspections of rental properties, it did not require that a city official perform those inspections.

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**LIABILITY - LOUISIANA**

## Klumpp v. Ochsner Clinic Foundation

**Court of Appeal of Louisiana, Fifth Circuit - December 18, 2024 - So.3d - 2024 WL 5151093 - 24-175 (La.App. 5 Cir. 12/18/24)**

Pedestrian and his wife brought action against health clinic to recover damages from injuries that pedestrian allegedly sustained when he tripped on the concrete base of a handicap sign, which was elevated and encroached upon the sidewalk, and fell in the clinic's parking lot.

The District Court granted clinic's motion for summary judgment. Plaintiffs appealed.

The Court of Appeal held that:

- Under risk/utility balancing test, sign base was not an unreasonably dangerous condition, and
- Clinic was not liable for pedestrian's premises-liability claim.

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**PROJECT FINANCE - TEXAS**

## Cottonwood Development Corporation v. Preston Hollow Capital, LLC

**Court of Appeals of Texas, Austin (3rd Dist.) - November 27, 2024 - S.W.3d - 2024 WL 4906771**

Title company filed interpleader action against lender and borrower, a local-government corporation, seeking order to deposit certain escrowed funds into court registry, borrower filed

counterclaim against company for conversion, third-party claim against law firm retained by lender for conversion, civil conspiracy, and declaratory relief, and cross-claim against lender for breach of contract, violation of the Texas Open Meetings Act (TOMA), and declaratory relief under the Uniform Declaratory Judgments Act (UDJA), and lender filed cross-claims against borrower for breach of contract, and declaratory relief under the UDJA.

The 368th District Court granted firm summary judgment as to borrower's third-party claim, granted lender summary judgment as to its cross-claims, and awarded lender attorney fees, subsequently, the trial court denied borrower's motion to reconsider, then denied borrower's combined plea in bar and motion for summary judgment, next granted lender's motion for summary judgment on all remaining issues involving borrower, and finally, issued final judgment and order of foreclosure, and granted borrower's motion to sever its claims against lender and firm from company's interpleader action. Thereafter, the trial court denied borrower's motion to set aside deeds of trust, to place certain funds in court registry, and for temporary and permanent injunction suspending order of sale.

Borrower appealed.

The Court of Appeals held that:

- Judgment was not rendered as to state-law claims by court of competent jurisdiction in prior federal action, as required for federal judgment to be res judicata;
- Borrower lacked authority to bring action based on its own and city's alleged violations of TOMA;
- Loan documents were not void ab initio on basis that city had made illegal delegations of authority to city manager;
- Loan documents were not void ab initio on basis that lender failed to secure Attorney General's approval of note;
- Lender did not materially breach terms of loan agreement; and
- Conduct of attorney of firm representing lender was within scope of firm's representation, thus, attorney immunity applied to bar claims against firm.

Borrower, a local-government corporation, waived for appellate review its challenges to the trial court's orders denying borrower's motion to strike intervenor's petition in intervention, denying borrower's motion to set aside deeds of trust, and denying borrower's motion for temporary and permanent Injunction preventing the issuance of an order of sale of mortgaged property, in action in which lender asserted cross-claims for breach of contract and declaratory judgment that it was the lawful owner of advanced funds held in escrow, that it was legally entitled to foreclose on mortgaged property, and that the loan agreement and all other loan documents were valid and enforceable, where the arguments did not appear in borrower's appellate brief.

Judgment was not rendered as to lender's state-law claims by a court of competent jurisdiction after lender's only federal-law claim was dismissed in lender's prior action in federal court, as required for the federal judgment to be res judicata, in action in which lender asserted cross-claims against borrower for breach of contract and declaratory relief as to the validity of a lending agreement; federal judge would clearly have declined to exercise discretionary pendent jurisdiction over the state-law claims, as the judge expressly declined to exercise supplemental jurisdiction over the state-law claims when dismissing the federal claim, and the same judge declined to exercise jurisdiction over potential or pleaded state-law claims after dismissing federal-law claims in nine other cases.

Lender's alleged statement in a prior federal action that the contracts underlying its lending agreement with borrower were void were not res judicata on the basis that the statement was a judicial admission, in action in which lender asserted cross-claims against borrower for breach of

contract and declaratory relief as to the validity of the lending agreement; statement was not a judicial admission, as the statement was about a question of law for the court, and was not a fact that could be admitted.

Borrower, a local-government corporation created by city, lacked authority to bring an action based on its own and city's alleged violations of the Texas Open Meetings Act (TOMA) under TOMA provision authorizing an interested person to bring an action by injunction to reverse a violation of TOMA by members of a governmental body, as would support borrower's claim that the TOMA violations voided documents governing lender's loan of funds to borrower for a development project; statute distinguished between the "interested person" who could bring an action and the "members of a governmental body" who were the subjects of that action.

Borrower, a local-government corporation created by city, failed to preserve for appellate review its argument that it was entitled to summary judgment as to lender's cross-claims for breach of contract and declaratory judgment because the term sheet prepared in preparation for a loan agreement for a development project was void ab initio on the basis that it required illegal contract zoning, in action alleging lender was the lawful owner of advanced funds held in escrow, that it was legally entitled to foreclose on mortgaged property, and that the loan agreement and all other loan documents were valid and enforceable, where borrower's petition failed to plead any claim against lender alleging invalidity of the term sheet because it required "contract zoning."

Loan documents governing the terms of lender's loan of funds for a development project to borrower, a local-government corporation, were not void ab initio on the basis that city had made illegal delegations of authority to city manager, in action in which lender asserted cross-claims against borrower for breach of contract and declaratory judgment that it was the lawful owner of advanced funds held in escrow, that it was legally entitled to foreclose on mortgaged property, and that the loan agreement and all other loan documents were valid and enforceable; even if city had illegally delegated authority to the manager, the documents were executed by city's mayor and a city board member for corporation as the contracting party after the manager separated from city.

Agreement and related documents governing the terms of lender's loan of funds for a development project to borrower, a local-government corporation, were not void ab initio on the basis that lender failed to secure the Attorney General's approval of the note in violation of the Transportation Code, in action in which lender asserted cross-claims against borrower for breach of contract and declaratory judgment that it was the lawful owner of advanced funds held in escrow, that it was legally entitled to foreclose on mortgaged property, and that the loan agreement and all other loan documents were valid and enforceable; statute provided no consequence for failing to submit a note, but rather merely provided that a note could not be contested if the Attorney General approved it.

Lender did not materially breach the terms of the agreement for the loan of $35 million to borrower, a local-government corporation, by only tendering approximately $12.5 million of a promised $15 million advance and by failing to release from escrow the remaining funds, in action in which lender asserted cross-claims against borrower for breach of contract and declaratory judgment that it lawfully owned the escrowed funds, that it was legally entitled to foreclose on mortgaged property, and that the loan agreement and all other loan documents were valid and enforceable; lender disbursed the full $15 million into escrow for borrower's benefit at closing, consistent with the agreement, and city and corporation's representatives agreed that approximately $2.5 million could remain in escrow.

Conduct of attorney of firm representing lender, who instructed title company to pay $60,000 of attorney's fees to firm out of an initial advance to borrower of $15 million distributed pursuant to a loan agreement, was within the scope of firm's representation, and, thus, attorney immunity applied

to bar borrower's claims against firm for conversion, civil conspiracy, and declaratory judgment that firm was in wrongful and illegal possession of the attorney fee funds, and that such funds should be repatriated and transferred to borrower, where lender's attorney drafted a letter stating that the attorney fees were to be paid from borrower's funds, and borrower's attorney reviewed the letter and confirmed to company that the fees would be taken out of the initial advance.

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**EMINENT DOMAIN - VERMONT**

## Agency of Transportation v. Timberlake Associates, LLC

**Supreme Court of Vermont - December 13, 2024 - A.3d - 2024 WL 5100560 - 2024 VT 83**

Agency of Transportation (AOT) filed complaint seeking a determination of necessity for the proposed highway interchange project that would involve taking private land.

The Superior Court determined that the taking was necessary and that AOT satisfied its pre-suit obligation to negotiate with landowner. Landowner appealed.

The Supreme Court held that:

- Competent evidence supported finding that AOT taking of land for highway interchange project was necessary;
- Competent evidence supported finding that AOT considered the statutory factors for determining that taking of land for highway interchange project was necessary; and
- AOT complied with statutory mandate to negotiate with landowner prior to filing condemnation suit.

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**PUBLIC RECORDS - WASHINGTON**

## Valderrama v. City of Sammamish

**Court of Appeals of Washington, Division 1 - December 16, 2024 - P.3d - 2024 WL 5116865**

Requester, a former city council member, brought action alleging city violated Public Records Act (PRA) by failing to adequately search for and produce records of communications between certain current and former council members and city residents stored on council members' personal electronic devices.

City brought motion for summary judgment and requester brought motion for partial summary judgment. The Superior Court, King County, Paul M. Crisalli, J., granted city's motion and denied requester's motion. Requester appealed.

The Court of Appeals held that:

- City conducted adequate search for records;
- Council member's alleged delay in responding to city's request to search for responsive records on his personal devices did not amount to bad faith in executing his affidavit describing nature and scope of his search;
- Requester failed to show council member executed in bad faith his affidavit describing nature and scope of his search where there was no evidence council member used certain application for city business;

- Allegation that council member told former colleague he could feign a lack of member to manipulate depositions in connection with requester's action alleging city violated PRA did not amount to bad faith;
- Allegation that council member intentionally used encrypted digital messenger application to communicate with city residents did not amount to bad faith;
- Requester failed to show council member intentionally deleted responsive records;
- Requester failed to show fact dispute as to whether council member sought to delete responsive information was material to issue of whether city conducted adequate search;
- Message from city manager directing council member to delete emails was not evidence of bad faith; and
- Requester was not entitled to attorney fees on appeal.

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**PUBLIC RECORDS - WEST VIRGINIA**

## Town of South Hill v. Hawkins

**Court of Appeals of Virginia - December 10, 2024 - 82 Va.App. 801 - 908 S.E.2d 920**

Requester, who sought documents from town pursuant to Virginia Freedom of Information Act (VFOIA), petitioned for writ of mandamus after town produced responsive documents from one category of documents requested but indicated there were no nonexempt responsive documents for other categories, seeking to compel town to produce remaining documents.

The Mecklenburg Circuit Court granted writ as to two of seven documents at issue and determined town properly withheld others. The Supreme Court reversed and remanded for further proceedings, and on remand the Circuit Court ordered that previously-withheld documents be produced with minimal redactions and determined requester was entitled to costs, but not attorney fees. Town appealed, and requester cross-appealed.

The Court of Appeals held that:

- Court would unseal only specific facts mentioned in opinion;
- Demand letter from town employee's attorney, which requester sought, was not "contract" within meaning of VFOIA provision;
- Court of Appeals would affirm trial court's decision to require production of all documents requested with minimal redactions;
- Requester substantially prevailed on merits of case; and
- Remand for limited purpose of determining value of reasonable attorney fees of requester was necessary.

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**UTILITY FEES - GEORGIA**

## Hollis v. City of LaGrange

**Supreme Court of Georgia - December 10, 2024 - S.E.2d - 2024 WL 5048735**

City residents brought putative class action against city alleging it imposed excessive mandatory charges for utilities services that constituted unauthorized tax under state constitution.

The Superior Court granted city's motion for judgment on the pleadings. Residents appealed.

The Supreme Court held that constitutional provision prohibiting the General Assembly from regulating or fixing municipal public utilities charges did not prevent judicial review of residents' complaint.

Constitutional provision prohibiting the General Assembly from regulating or fixing charges of public utilities owned or operated by any county or municipality did not prevent trial court from reviewing putative class action complaint by city residents alleging that mandatory charges for utilities services provided by city that were in excess of actual cost of providing such services and used to generate general revenue for city constituted illegal tax; constitutional provision did not mention judicial branch at all, and residents' claims would not require trial court to regulate or fix city's utilities charges as matter of discretionary policymaking, but rather, claims asked trial court to exercise its judicial authority to determine whether charges were in fact taxes in the first place.

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**PUBLIC RECORDS - OHIO**

## State ex rel. Copley Ohio Newspapers, Inc. v. Akron

**Supreme Court of Ohio - December 6, 2024 - N.E.3d - 2024 WL 4996423 - 2024-Ohio-5677**

Newspaper filed a mandamus action seeking to compel city to produce public records without redaction of names of officers involved in lethal use of force incidents, and sought awards of statutory damages, court costs, and attorney fees.

The Supreme Court held that:

- Newspaper's requests for personnel files, discipline records, and internal investigations of unidentified city police officers were improper public-records request;
- Newspaper's public records requests, which sought "[a]ll administrative leave or reinstatement notices issued to any employees of the [city] Police Department" during period during which the two use of lethal force incidents occurred and "incident report, including supplemental notes of the investigating officers, witness statements and narratives" related to third lethal force incident, were proper public records requests;
- Names of eight police officers included within incident reports were properly redacted from records under the exception for confidential law-enforcement investigatory records (CLEIR);
- City's evidence did not demonstrate that the release of the unredacted administrative-leave or reinstatement notices would create a substantial risk of serious bodily harm or death to the police officers involved in two lethal use of force cases, and thus city was required to disclose the unredacted records;
- City's records custodian had reasonable bases for denying newspaper's public records requests for unredacted records, and thus newspaper was not entitled to an award of statutory damages; and
- Newspaper was entitled to an award of court costs.

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**PUBLIC EMPLOYMENT - TEXAS**

## City of Buffalo v. Moliere

**Supreme Court of Texas - December 13, 2024 - S.W.3d - 2024 WL 5099112**

Police officer brought action against city, mayor, and city council members, seeking declaration that city council acted without authority in terminating his employment, and alleging termination violated his due process rights.

The 278th District Court granted city's and mayor's plea to the jurisdiction and dismissed all claims against them and sua sponte dismissed claims against city council members. Officer appealed.

The Waco Court of Appeals reversed and remanded. City and mayor petitioned for review.

The Supreme Court held that city council had authority to terminate police officer, and thus officer's termination was not ultra vires and his action challenging his termination was barred by governmental immunity.

City council had authority to terminate police officer for violation of police department policy, under local government code provision governing the creation and regulation of municipal police forces, and thus officer's termination was not ultra vires and his action challenging his termination was barred by governmental immunity; grant of power to regulate the police force necessarily included ability to terminate officers, and although city had not adopted optional ordinance providing that officers served at the pleasure of the governing body, such an ordinance was necessary only to permit termination without cause, and officer was terminated for cause.

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**ZONING & PLANNING - VERMONT**

## In re Cathedral of Immaculate Parish Charitable Trust Appeal

**Supreme Court of Vermont - December 6, 2024 - A.3d - 2024 WL 4998077 - 2024 VT 77**

City residents appealed city development review board's decision granting religious organization's application for permit to demolish church buildings on its property.

After denying residents' motion to compel discovery regarding organization's pending sale of property to nonreligious prospective purchaser, the Superior Court, Environmental Division, granted organization's motion for summary judgment and denied residents' cross-motion for summary judgment. Residents appealed.

The Supreme Court held that:

- Applicability of statute limiting municipality's regulation of property that is used for enumerated purposes so that regulations do not interfere with intended functional use of property does not depend on identity of property owner;
- "Intended," as used in statute, refers to the intent for the present use, not to the future intent of the property owner;
- Organization's intended use of property when it applied for permit was religious in nature, and thus statute precluded city from applying its comprehensive development ordinance to restrain demolition; and
- Neither identity of prospective purchaser nor prospective purchaser's potential future uses of property were relevant, and thus residents were not entitled to discovery of terms of purchase and sale agreement.

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**EMINENT DOMAIN - IOWA**

## Brendeland v. Iowa Department of Transportation

**Supreme Court of Iowa - November 22, 2024 - N.W.3d - 2024 WL 4862386**

Landowners brought action against Department of Transportation (DOT) to block condemnation of their property for project to reconstruct and modernize interchange between highway and freeway, alleging that DOT was acquiring property rights in excess of minimum required for project.

Landowners filed separate action seeking judicial review of DOT's denial of landowners' request for declaratory order that DOT was compelled to provide them with commercial access to highway.

Following consolidation of actions, the District Court granted DOT's motion to dismiss. Landowners appealed. The Supreme Court issued single-justice order requiring landowners to file statement addressing Supreme Court's jurisdiction over appeal and subsequently ordered the matter submitted with the appeal.

The Supreme Court held that:

- Landowners' filing of notice of appeal with clerk of district court 35 days after electronically filing notice of appeal with Supreme Court and serving copy of notice on counsel for DOT was performed within reasonable time;
- Landowners' claim that it was unnecessary and illegal for DOT to condemn all access rights was subject to requirement in statute requiring an action seeking judicial review of eminent-domain authority to be brought within 30 days after notice of assessment; and
- Discovery rule did not apply and thus did not toll 30-day filing period.

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**ZONING & PLANNING - NEBRASKA**

## Main St Properties LLC v. City of Bellevue

**Supreme Court of Nebraska - December 6, 2024 - N.W.3d - 318 Neb. 116 - 2024 WL 4996916**

Landowner brought actions against city, seeking declaratory and injunctive relief and challenging, pursuant to a petition in error, the validity and enforcement of ordinance that rezoned landowner's property to its former status after landowner's repeat violations of conditional zoning agreement with city for landowner's vehicle and trailer rental business.

After consolidation of cases, the District Court granted summary judgment for city. Landowner appealed.

The Supreme Court held that:

- City's adoption of rezoning ordinance was a legislative act not subject to petition-in-error jurisdiction;
- Statutory stay during appeal to a zoning board of adjustment did not apply to preclude city from adopting rezoning ordinance;
- Landowner forfeited issue of any judicial admission relating to city's interpretation of agreement;
- Agreement did not require notice to rezone to former classification following three or more violations; and
- Any cure of violations by landowner did not preclude rezoning following three or more violations.

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**EMINENT DOMAIN - NEVADA**

## Mass Land Acquisition, LLC v. First Judicial District Court in and for County of Storey

**Supreme Court of Nevada - October 17, 2024 - 557 P.3d 493 - 140 Nev. Adv. Op. 67**

Investor-owned public utility brought eminent domain action, seeking to acquire easement for natural gas pipeline as well as immediate occupancy.

The District Court denied landowner's motion to dismiss and granted utility's motion for immediate occupancy. Landowner petitioned for writ of mandamus or prohibition, and filed motion to stay, which the District Court denied.

The Supreme Court held that:

- Petition was not moot, although pipeline had been constructed;
- Nevada Constitution did not preclude investor-owned public utility from exercising its delegated power of eminent domain to take easement across property; and
- Landowner lacked any right to a jury trial on issue of whether the Nevada Constitution allows a privately owned public utility to take an easement across private land for a natural gas pipeline.

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**IMMUNITY - OHIO**

## Schlegel v. Summit County

**Supreme Court of Ohio - December 6, 2024 - N.E.3d - 2024 WL 4996424 - 2024-Ohio-5678**

Resident filed negligence action against county, alleging that county's failure to maintain roadway resulted in a sinkhole and culvert collapse, which in turn caused resident's basement to flood.

The Court of Common Pleas granted in part and denied in part county's motion for summary judgment. County appealed and the Court of Appeals reversed. On remand, the Court of Common Pleas granted county's motion for summary judgment. Resident appealed, and the Court of Appeals affirmed. Resident appealed.

The Supreme Court held that statutory exception to political subdivision immunity for loss caused by a "negligent failure to keep public roads in repair" was not limited to motorists using the roads.

Statutory exception to political subdivision immunity for loss caused by a "negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads" was not limited to motorists using the road, and thus county potentially lacked immunity under statute for flood damage to resident's home resulting from the county's failure to keep roadway in repair, which allegedly led to roadway collapse and resulting debris which allegedly blocked drainage culvert.

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**MANAGEMENT AUTHORITIES ACT - RHODE ISLAND**

## Bronhard v. Thayer Street District Management Authority

**Supreme Court of Rhode Island - November 27, 2024 - A.3d - 2024 WL 4901769**

Owner of property serviced by district management authority filed complaint against authority for declaratory and injunctive relief, fraud, unjust enrichment, negligence, and violation of takings and due process clauses, and claiming district imposed and collected taxes on property without

authority, and engaged in extreme and outrageous conduct under the color of state law.

The Superior Court granted authority's motion for summary judgment, and denied owner's cross-motion for summary judgment. Owner appealed.

The Supreme Court held that:

- Factor considering whether dissolution provision of the District Management Authorities Act was aimed at public officers weighed in favor of finding that provision was directory, rather than mandatory;
- Factor considering whether dissolution provision of the District Management Authorities Act contained sanction weighed in favor of finding that provision was directory, rather than mandatory; and
- Factor considering whether dissolution provision of the District Management Authorities Act was essence of statute weighed in favor of finding that provision was directory, rather than mandatory.

Factor considering whether a statutory provision was aimed at public officers weighed in favor of finding that the dissolution provision of the District Management Authorities Act, which stated that a district management authority would automatically terminate at the end of the third full fiscal year after its creation unless its continued existence was approved in writing, was directory, rather than mandatory, in action against authority brought by owner of property in district for negligence, unjust enrichment, and other relief, alleging authority collected taxes on property without authority; authority performed public and essential municipal functions, and its officers and directors were qualified members of the public body for purposes of liability.

Factor considering whether a statutory provision contained a sanction weighed in favor of finding that the dissolution provision of the District Management Authorities Act, which stated that a district management authority would automatically terminate at the end of the third fiscal year after its creation unless its continued existence was approved in writing, was directory, rather than mandatory, in action against authority brought by owner of property in district for negligence, unjust enrichment, and other relief, alleging authority collected taxes on property without authority; provision was merely related to a matter of procedure, and provision's time constraint was not the essence of the statute, but rather, merely operated to prevent inactive authorities from continuing operations.

Factor considering whether a statutory provision was the essence of the statute weighed in favor of finding that the dissolution provision of the District Management Authorities Act, which stated that a district management authority would automatically terminate at the end of the third full fiscal year after its creation unless its continued existence was approved in writing, was directory, rather than mandatory, in action against authority brought by owner of property in district for negligence, unjust enrichment, and other relief, alleging authority collected taxes on property without authority; Act's purpose was to have active authorities serve the state's communities, which authority had done for more than ten years before owner filed suit, and without jeopardizing anyone's rights.

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**MUNICIPAL ADVISORS - CALIFORNIA**

## Securities and Exchange Commission v. Choice Advisors, LLC

**United States District Court, S.D. California - October 7, 2024 - Slip Copy - 2024 WL 4469095**

Securities and Exchange Commission (SEC) brought a civil law enforcement action against municipal advisors Choice Advisors, LLC (Choice) and Matthias O'Meara (together, Defendants) and obtained a judgment that they violated securities laws and breached their fiduciary duties in providing services to their charter school clients.

The SEC then moved for final entry of judgment seeking injunctive relief, disgorgement, and penalties against Defendants.

The District Court held that:

- Defendants knew that they had entered into an agreement to split fees with the underwriter and that O'Meara was employed by both the underwriter and his school clients. Defendants were well aware that they lacked registration status while representing their charter school clients.
- Defendants acted with a culpable degree of scienter in their dealings with their two charter school clients and this factor weighed in favor of an injunction.
- In weighing the need to issue an injunction in this case, the Court would consider whether Defendants' violations were isolated or recurrent in nature.
- The Isolated or Recurrent Nature of the Violations – the second Murphy and Fehn factor – was either split evenly or weighed slightly in favor of a need for an injunction.
- As to the Recognition of the Wrongfulness of Conduct, Defendants continued to advance arguments that minimized their wrongful conduct and still did not fully appreciate the problematic nature of their actions and their disservice to their clients.
- Defendants' failure to appreciate the wrongfulness of their conduct also weighed in favor of an injunction
- As to Defendants' Continued Employment in Securities Industry, Defendants' planned to continue to provide municipal advisory services to school clients.
- The Court found that an injunction against Choice and O'Meara individually was appropriate and needful given their past disregard of their obligations and their continued failure to appreciate the full wrongful nature of their conduct.
- The Court granted the SEC's requests for disgorgement in the amount of $79,899 plus $27,559 in prejudgment interest from Choice and disgorgement in the amount of $133,149 plus $45,932 in prejudgment interest from O'Meara.
- The Court imposed civil penalties against Choice in the amount of $79,899 and against O'Meara in the amount of $133,149.

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**IMPACT FEES - ILLINOIS**

## Habdab, LLC v. County of Lake

**Supreme Court of Illinois - November 21, 2024 - N.E.3d - 2024 IL 130323 - 2024 WL 4847454**

Developer brought declaratory judgment action against county and village, seeking determination that it was not obligated to pay highway improvement fees under intergovernmental agreement between county and village as a condition of annexation, on basis that fees did not meet requirements set forth in Road Improvement Impact Fee Law.

The Circuit Court granted county's motion for summary judgment and denied developer's cross-motion for summary judgment. Developer appealed. The Appellate Court affirmed. Developer

petitioned for leave to appeal, which was granted.

The Supreme Court held that:

- Fees did not constitute "road improvement impact fees" that would be required to comply with Road Improvement Impact Fee Law;
- Essential nexus existed between intergovernmental agreement's fee condition, which allegedly burdened developer's rights under takings clause, and legitimate state interest of minimizing traffic congestion, supporting finding that condition did not violate the "unconstitutional conditions" doctrine; and
- Rough proportionality existed between alleged burden on developer's rights under takings clause and the harm sought to be remedied, and thus condition did not violate the "unconstitutional conditions" doctrine.

Highway improvement fees imposed by village on developer as condition of annexation of parcels in development project, on basis of intergovernmental agreement between county and village under which county agreed to design and construct road improvements in exchange for a portion of the construction costs being reimbursed by fees collected from developers within the area upon the occurrence of a triggering factor, including annexation, did not constitute "road improvement impact fee" that would be required to comply with Road Improvement Impact Fee Law; fees were imposed pursuant to a voluntary annexation, and Municipal Code specifically allowed municipalities to enter into annexation agreements and to have such agreements provide for contributions of monies to municipality.

Essential nexus existed between condition of agreement between county and village requiring village to impose highway improvement fees on developer upon annexation of development parcels into village, which allegedly burdened developer's rights under takings clause, and legitimate state interest of minimizing traffic congestion, supporting finding that condition did not violate the "unconstitutional conditions" doctrine; fees would provide for road improvements to ease that congestion.

In determining whether there is a rough proportionality between the burden on plaintiff's constitutional rights and the harm the government sought to remedy via a condition burdening those rights, in analysis of whether, pursuant to "unconstitutional conditions" doctrine, condition burdening constitutional right can be imposed on the receipt of a benefit, no precise mathematical calculation is required, but the government must make some sort of individualized determination as to whether burden and harm sought to be remedied are related in both nature and extent.

Rough proportionality existed between burden allegedly imposed on developer's takings clause rights by condition of agreement between county and village, which required village to impose highway improvement fees on developer upon annexation of development parcels into village, and the harm of traffic congestion that county sought to remedy via the condition, and thus condition did not violate the "unconstitutional conditions" doctrine; parcels were zoned agricultural before annexation but were reclassified as single family residential after annexation, and fees paid by developer would go to county's design and construction of road improvements, with county paying for half of such improvements.

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**EMINENT DOMAIN - NEW YORK**

## 3649 Erie, LLC v. Onondaga County Industrial Development Agency

**Supreme Court, Appellate Division, Fourth Department, New York - November 15, 2024 - N.Y.S.3d - 2024 WL 4798235 - 2024 N.Y. Slip Op. 05673**

Property owner filed petition against county's industrial development agency and developer seeking to annul the agency's authorization of the condemnation of owner's property in connection with the redevelopment of a former shopping mall.

The Supreme Court, Appellate Division, held that:

- Agency's intended use for owner's property was not residential or retail in nature, and thus, agency's acquisition of the property was within agency's statutory jurisdiction;
- Any challenge to agency's authority to finance project that contained residential component was properly raised in an article 78 proceeding;
- Even if agency was constitutionally required to establish source of just compensation for owner, it did so;
- Agency's review pursuant to State Environmental Quality Review Act (SEQRA) was not improperly deferred or segmented; and
- Agency's redevelopment of the mall would serve a legitimate public use.

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**ZONING & PLANNING - NORTH DAKOTA**

## RMM Properties, L.L.L.P. v. City of Minot

**Supreme Court of North Dakota - November 21, 2024 - N.W.3d - 2024 WL 4846687 - 2024 ND 213**

Landowner appealed city's approval of developer's application to vacate plat that had a dedicated public access easement and to approve preliminary plat for subdivision on property that adjoined landowner's property.

The District Court affirmed. Landowner appealed.

The Supreme Court held that:

- Statute providing for vacatur of an entire plat, and not statute providing for vacatur of streets, alleys, or public grounds, was applicable statute, and
- Evidence supported finding that public access easement was not an "alley" in which landowner had a fee interest.

Statute providing for vacatur of an entire plat, and not statute providing for vacatur of streets, alleys, or public grounds, was appropriate statute for city to evaluate developer's application to vacate an entire plat that had a dedicated public access easement and to approve preliminary plat for a subdivision.

Evidence supported finding that a public access easement contained in plat was not an "alley" in which adjoining landowner had a fee interest, and thus landowner's consent was not required for developer to obtain a vacatur of the entire plat by city in connection with plan for a subdivision, where plat's description denoted a 24-foot public access easement dedicated for public use, and the dedication did not state the easement was an alley or grant a fee interest.

**IMMUNITY - VIRGINIA**

## Canter v. Commonwealth

**Court of Appeals of Virginia, Salem - November 19, 2024 - S.E.2d - 2024 WL 4819721**

Motorist who was injured when his tractor-trailer overturned brought gross negligence action against Commonwealth, alleging failure of Virginia Department of Transportation (VDOT) to safely maintain highway.

The Circuit Court sustained Commonwealth's demurrers and pleas in bar alleging sovereign immunity. Motorist appealed.

The Court of Appeals held that as a matter of first impression, Commonwealth's decision to maintain portion of interstate highway which contained a pool of water in left-hand lane by placing orange and white barrels in the median, instead of undertaking repairs or a more extensive warning, constituted the exercise of a "legislative function" and thus fell within legislative-function exception to Virginia Tort Claims Act (VTCA) waiver of sovereign immunity.

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**IMMUNITY - WEST VIRGINIA**

## Monongalia County Commission v. Stewart

**Supreme Court of Appeals of West Virginia - November 14, 2024 - S.E.2d - 2024 WL 4784676**

Daughter of man shot by deputy sheriff when responding to domestic dispute call brought action against deputy and county commission, alleging excessive force/wrongful death, negligence/wrongful death, and vicarious liability. Deputy and county commission filed motion to dismiss for failure to state a claim on immunity grounds.

The Circuit Court granted the motion in part. Deputy and county commission appealed, and daughter cross-appealed.

The Supreme Court of Appeals held that:

- County commission was not immune from liability to the extent that deputy sheriff was acting within the scope of his employment and in furtherance of a method of providing law enforcement protection;
- County commission had political immunity from claim it was directly liable on grounds that commission had the authority to formulate, implement, and administer the policies, customs, and practices of sheriff's department;
- Allegations against deputy sheriff were sufficient to communicate claim that deputy's acts were with malicious purpose, in bad faith, or in a wanton or reckless manner so as to deprive him of statutory immunity;
- County commission and deputy sheriff lacked qualified immunity;
- Governmental Tort Claims and Insurance Reform Act governs the liability of political subdivisions and their employees in a civil action for damages claiming death, injury, or loss to persons or property, as well as the immunities from those civil actions available to political subdivisions and their employees, and an insurance policy may not alter liabilities or immunities established by the Tort Claims Act, overruling *Bender v. Glendenning,* 219 W. Va. 174, 632 S.E.2d 330; and
- Daughter only sued deputy in his official capacity, and thus could not recover punitive damages.

**PUBLIC EMPLOYMENT - CALIFORNIA**

## Bedard v. City of Los Angeles

**Court of Appeal, Second District, Division 3, California - October 31, 2024 - Cal.Rptr.3d - 2024 WL 4634930 - 2024 Daily Journal D.A.R. 10,408**

Police officer filed petition for writ of mandate seeking to set aside city disciplinary appeals board's decision to terminate her for failure to comply with condition of employment requiring her to be vaccinated against COVID-19.

The Superior Court, Los Angeles County, denied petition but awarded her back pay based on finding that city violated her due process rights by giving her insufficient time to respond to charges against her. Officer appealed.

The Court of Appeal held that:

- Substantial evidence supported trial court's finding that officer was terminated for refusal to comply with mandate and thereby violated a condition of employment;
- Board did not abuse its discretion in finding that termination was appropriate remedy; and
- Award of back pay was sufficient remedy for city's due process violation.

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**ZONING & PLANNING - CALIFORNIA**

## West Adams Heritage Association v. City of Los Angeles

**Court of Appeal, Second District, Division 1, California - October 31, 2024 - Cal.Rptr.3d - 2024 WL 4633434 - 2024 Daily Journal D.A.R. 10,415**

Objectors petitioned for writ of administrative mandamus, seeking to set aside city's determination that a proposed residential housing development project near state university was exempt, as an urban in-fill development, from environmental review under California Environmental Quality Act (CEQA).

The Superior Court, Los Angeles County reversed and remanded. Objectors petitioned for review, which was granted. The Supreme Court transferred with instructions for vacatur and reconsideration.

The Court of Appeal held that:

- Court would take judicial notice of judgment in parties' other mandamus case;
- Appeal was not rendered moot by city's assertions in other mandamus case;
- Concern about noise and music from rooftop decks was not a significant environmental effect impeding application of urban in-fill exemption;
- Unusual-circumstance exception to urban in-fill exemption did not apply;
- City needed to determine under current law whether project was consistent with redevelopment plan before granting urban in-fill exemption;
- Zoning ordinance, not redevelopment plan, set maximum allowable density for project; and
- State density bonus law preempted any additional requirements in redevelopment plan for granting a density bonus.

**PUBLIC UTILITIES - CONNECTICUT**

## United Illuminating Company v. Public Utilities Regulatory Authority

**Supreme Court of Connecticut - October 29, 2024 - A.3d - 2024 WL 4611170**

Plaintiff, an electric distribution company (EDC), sought judicial review of two final decisions of Public Utilities Regulatory Authority (PURA) that plaintiff had violated its statutory obligations with respect to its emergency planning, storm recovery performance, and other actions taken in connection with tropical storm and its aftermath, reducing authorized return on equity (ROE), and imposing various civil penalties, including more than $1.2 million in fines.

Office of Consumer Counsel (OCC) intervened as a defendant in both administrative appeals, and appeals were consolidated. The Superior Court dismissed appeals. Plaintiff appealed to the Appellate Court, and appeal was transferred to the Supreme Court.

The Supreme Court held that:

- Voluntary cessation exception to the mootness doctrine did not apply;
- Collateral consequence exception to mootness did not apply;
- Vacatur was warranted for portion of PURA order authorizing penalty of reduction of ROE, and that portion of trial court's judgment upholding order;
- Statute imposing fine for each day that reporting of a minor accident is delayed for continued violation was ambiguous;
- Legislative history supported interpretation that delayed reporting of a minor accident should be subject only to a monthly fine;
- Plaintiff's failure to make monthly reports regarding two minor accidents pursuant to monthly reporting deadlines warranted imposition of civil penalties for each distinct offense; and
- Sufficient evidence supported PURA's finding that plaintiff violated an established performance standard by not timely and consistently providing a dedicated make safe crew to city.

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**BOND VALIDATION - MISSISSIPPI**

## Validation of Up to $27,600,000 Trust Certificates Evidencing Proportional Interests in a Lease by Simpson County School District

**Supreme Court of Mississippi - November 14, 2024 - So.3d - 2024 WL 4795292**

School district sought validation of trust certificates for a lease/leaseback transaction in order to fund the construction of a consolidated and centrally located high school pursuant to the Emergency School Leasing Authority Act (ESLA).

After an objection to the validation was timely filed, the Chancery Court granted the validation request. Objectors appealed.

The Supreme Court held that:

- It was lawful for the board to approve a nunc pro tunc amendment to prior meeting's minutes to add, by reference, the actual language of a "Capital Lease Resolution of Intent" that the board, at a prior meeting, had resolved to publish;
- Omission of a page from the meeting minutes in the official transcript sent to the state bond attorney was harmless and thus did not preclude validation;

- Board's published notice met ESLA's requirements;
- Objectors were afforded sufficient procedural due process under the Fourteenth Amendment and the Mississippi Constitution;
- Board could create a nonprofit corporation to aid in the financing of its lease/leaseback transaction; and
- Board could use ESLA for the lease/leaseback transaction, despite argument that ELSA was created for a kindergarten emergency that no longer was an ongoing issue.

As was relevant to validation of school district's trust certificates for a lease/leaseback transaction under the Emergency School Leasing Authority Act (ESLA), it was lawful for the school board to approve a nunc pro tunc amendment to prior meeting's minutes to add, by reference, the actual language of a "Capital Lease Resolution of Intent" that the board, at the prior meeting, had resolved to publish; the evidence presented supported finding that the amendment was a reflection of what actually occurred at that prior meeting.

The omission of a page from the meeting minutes in the official transcript sent to the state bond attorney was harmless and thus did not preclude validation of school district's trust certificates for a lease/leaseback transaction under the Emergency School Leasing Authority Act (ESLA); the missing page provided notice of the meeting where the Board would take final action on the "Capital Lease Resolution of Intent," and if the page had been included in what was sent to the state bond attorney, it would only have furthered evidence that proper procedure was followed.

As was relevant to validation of trust certificates, notice published by school board as to its "Capital Lease Resolution of Intent" for a lease/leaseback transaction met the statutory requirements of the Emergency School Leasing Authority Act (ESLA); despite argument that notice did not provide details on the financing or the specifics of the project, notice stated that a need existed for up to 10 school facilities, that the district could not provide the necessary funds to meet the present needs, and that the district would sell, lease, lend, grant, or otherwise convey facilities, and that title to any real property transferred by district would revert to district at expiration of term that would not exceed twenty years, and notice further informed reader of how to challenge board's resolution.

The opinion of the state bond attorney is not binding on the Supreme Court on review of a decision on a school board's request for a validation of trust certificates for a transaction under the Emergency School Leasing Authority Act (ESLA); it is merely a recommendation.

Objectors to validation of school district's trust certificates for a lease/leaseback transaction in order to fund the construction of a consolidated and centrally located high school pursuant to the Emergency School Leasing Authority Act (ESLA) were afforded sufficient procedural due process under the Fourteenth Amendment and the Mississippi Constitution; objectors were afforded notice and the opportunity to challenge and be heard as provided by the legislature in ESLA, board met ESLA's notice requirements by publishing their resolution in the newspaper of general circulation not less than 30 days before final action on the project was to be taken, and Board exceeded ESLA's publication requirement by publishing its resolution four times instead of the statutorily required three.

School board could create a nonprofit corporation to aid in the financing of its lease/leaseback project to fund the construction of a consolidated and centrally located high school pursuant to the Emergency School Leasing Authority Act (ESLA), as was relevant to board's request for validation of trust certificates; entities could create corporations under the Non-Profit Corporation Act, and the board, as a governmental subdivision of the state, was an "entity."

As was relevant to validation of trust certificates, school board could use Emergency School Leasing

Authority Act (ESLA) for lease/leaseback transaction that would fund construction of a consolidated and centrally located high school, despite argument that ELSA was created for a kindergarten emergency that no longer was an ongoing issue; the mere use of the word “emergency” in the title of the act did not create such a limitation on all sections throughout the chapter, ESLA did not require board to declare an emergency, and board was not required to use ESLA only to build kindergartens.

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**POLITICAL SUBDIVISIONS - MISSOURI**

## Good v. Department of Education

**United States Court of Appeals, Tenth Circuit - November 12, 2024 - F.4th - 2024 WL 4745213**

Consumer brought state court action against the United States Department of Education and Missouri Higher Education Loan Authority (MOHELA) alleging defendants violated Fair Credit Reporting Act (FCRA) as student loan lender and servicer, respectively, by failing to take corrective measures when consumer disputed accuracy of his credit reports.

Following removal, the United States District Court for the District of Kansas granted Department’s motion to dismiss based on sovereign immunity and granted MOHELA’s motion for judgment on the pleadings. Consumer appealed.

The Court of Appeals, Holmes held that:

- FCRA effects a clear waiver of the United States’ sovereign immunity;
- As a matter of first impression, characterization of MOHELA under Missouri law weighed in favor of considering it an arm of the state entitled to Eleventh Amendment immunity;
- As a matter of first impression, MOHELA’s autonomy weighed against considering it an arm of the state;
- As a matter of first impression, MOHELA’s finances weighed strongly against considering it an arm of the state;
- As a matter of first impression, MOHELA’s concern with state or local affairs weighed in favor of considering it an arm of the state;
- As a matter of first impression, effect on state treasury weighed strongly against considering MOHELA an arm of the state;
- As a matter of first impression, dignity of the state weighed against considering MOHELA an arm of the state; and
  As a matter of first impression, MOHELA was not an arm of the state

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**BANKRUPTCY - PUERTO RICO**

## In re Financial Oversight and Management Board for Puerto Rico

**United States Court of Appeals, First Circuit - November 13, 2024 - F.4th - 2024 WL 4763572**

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 the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the Financial Oversight and Management Board for Puerto Rico is empowered to place Commonwealth entities into "Title III" bankruptcy-type restructuring proceedings, which resemble municipal bankruptcy proceedings under Chapter 9 of the Bankruptcy Code.

Bondholders' ability to pursue any remedies against the Puerto Rico Electric Power Authority (PREPA) under Commonwealth law was automatically stayed when the Financial Oversight and Management Board for Puerto Rico commenced a Title III proceeding in district court to restructure PREPA pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).

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 grant, 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, in determining scope of lien created by trust agreement under which Puerto Rico Electric Power Authority (PREPA) issued particular revenue bonds, agreement's driveby references to "Revenues" had to take a back seat to drafters' focused description of the collateral in agreement's "opinion of counsel clause."

Under the Bankruptcy Code, any lien on a Chapter 9 debtor-utility's "special revenues" is subordinate to the debtor's reasonable and necessary postpetition operating 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.

Puerto Rico's version of the Uniform Commercial Code (UCC) sanctions security interests in after-acquired collateral, i.e., liens extending to property that the debtor does not possess at the time of the underlying security agreement, which are also known as "floating liens."

Congress has recognized, in the Bankruptcy Code, that a revenue bond can be secured by future income.

Under the Bankruptcy Code, a lien on after-acquired property generally does not attach to property acquired after the debtor files for bankruptcy.

Under the Bankruptcy Code, a lien on "special revenues" continues to attach to revenues acquired by a Chapter 9 debtor postpetition, notwithstanding the Code's general bar on liens on property acquired after the debtor files for bankruptcy.

Congress passed the section of the Bankruptcy Code governing Chapter 9 debtors' pledges of special revenue to alleviate the concern that municipalities would use the Code provision generally barring liens on property acquired postpetition to avoid long-term pledges of project-specific revenues.

Bankruptcy Code not only recognizes that a Chapter 9 debtor may grant a lien on future revenues —

it also expressly states that such liens continue to attach to revenues acquired after the filing of a bankruptcy petition.

Broadly, under the Bankruptcy Code, a creditor maintains a postpetition lien on the "proceeds" of collateral acquired prepetition.

Under Puerto Rico's version of the Uniform Commercial Code (UCC), a security interest generally cannot attach to property until (1) the property exists, and (2) the debtor has a transferable right in that property.

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 a "general intangible," 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 the Bankruptcy Code's preferences section, bankruptcy trustee may avoid a debtor's prepetition transfer of property to a creditor, if such transfer: (1) was made for an antecedent debt, (2) was made while the debtor was insolvent, (3) was made within a certain time period (usually 90 days), and (4) gives the creditor more than it would receive in a liquidation scenario that did not include the transfer.

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.

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**ZONING & PLANNING - VERMONT**

## In re Windham Windsor Housing Trust

**Supreme Court of Vermont - November 15, 2024 - A.3d - 2024 WL 4798899 - 2024 VT 73**

Following affirmance of conditional use permit granted for mixed-income residential development on two lots, neighbors appealed subsequent Environmental Commission opinion that the project did not

require an Act 250 environmental permit because it was exempt as a priority housing project, despite road separating the two lots.

The Superior Court, Environmental Division, affirmed, and neighbors appealed.

The Supreme Court held that lots were "contiguous" as required for exemption from Act 250 environmental review even though they were separated by town road.

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**CONTRACTS - ARIZONA**

## City of Chandler v. Roosevelt Water Conservation District

**Court of Appeals of Arizona, Division 1 - October 31, 2024 - P.3d - 2024 WL 4630924**

City filed complaint against state irrigation and water district for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory judgment that parties agreement for district to provide city water remained valid and that district had committed material breach, and seeking specific performance of agreement.

The Superior Court denied district's motion for summary judgment on statute of limitations grounds, and granted city's motion for summary judgment. District appealed.

The Court of Appeals held that:

- Doctrine of nullum tempus occurrit regi did not apply to exempt city from statute imposing one-year limitations period for claims against public entity;
- City's claims accrued no later than when district refused to provide city with water in accordance with city's letter notifying district of city's intent to order water; and
- Appellate court would award district appellate attorney fees and costs.

City's claims against irrigation and water district accrued, and the one-year limitations period began to run, no later than when district refused to provide city with water in accordance with city's letter notifying district of city's intent to order water for delivery for the following calendar year, which city sent in response to district's prior letter repudiating its agreement to provide city water, in city's action for breach of contract, declaratory judgment, and other relief, alleging district's unilateral termination of the agreement was a material breach of the agreement.

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**PUBLIC EMPLOYMENT - CALIFORNIA**

## Bedard v. City of Los Angeles

**Court of Appeal, Second District, Division 3, California - October 31, 2024 - Cal.Rptr.3d - 2024 WL 4634930**

Police officer filed petition for writ of mandate seeking to set aside city disciplinary appeals board's decision to terminate her for failure to comply with condition of employment requiring her to be vaccinated against COVID-19.

The Superior Court, Los Angeles County, denied petition but awarded her back pay based on finding that city violated her due process rights by giving her insufficient time to respond to charges against her. Officer appealed.

The Court of Appeal held that:

- Substantial evidence supported trial court's finding that officer was terminated for refusal to comply with mandate and thereby violated a condition of employment;
- Board did not abuse its discretion in finding that termination was appropriate remedy; and
- Award of back pay was sufficient remedy for city's due process violation.

Substantial evidence supported trial court's finding that police officer was not terminated just because she failed to sign notice enforcing COVID-19 vaccination mandate set forth in city ordinance, but also because she refused to comply with the mandate and thereby violated a condition of her employment, thus supporting city's disciplinary action, where officer did not apply for religious or medical exemption and disciplinary action occurred just days after she sent her commanding officer and other superiors an e-mail stating she would not be vaccinated for personal reasons.

Police officer's refusal to comply with COVID-19 vaccination mandate was likely to result in harm to public service, and thus, city disciplinary appeal board did not abuse its discretion in finding that termination was appropriate remedy; officer's refusal to vaccinate against a deadly disease placed herself, her coworkers, and public with whom she interacted while on duty at significant risk of harm on a daily basis.

Award of back pay for period during which discipline was invalid was sufficient remedy for city's due process violation in failing to afford police officer the required full 30 days to respond to charges against her for failing to comply with condition of employment requiring her to be vaccinated against COVID-19, and thus, officer was not entitled to reinstatement, given that discharge was justified and what made the discipline wrongful had nothing to do with whether there was legitimate basis for terminating employment.

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**IMMUNITY - FLORIDA**

## PEN American Center, Inc. v. Escambia County School Board

**United States District Court, N.D. Florida, Pensacola Division - October 18, 2024 - F.Supp.3d - 2024 WL 4527789**

Parents, authors, publisher, and literary organization brought action alleging that school board improperly removed or restricted certain library books based on viewpoint discrimination, in violation of First Amendment.

Board moved for protective order to prevent deposition of board members.

The District Court held that:

- Legislative privilege barred board members' depositions, and
- Board did not waive legislative privilege.

School board's actions regarding access to library books pending review of objections and its decision to remove or restrict access to books were legislative in nature, and thus legislative privilege barred school board members' depositions in action alleging that it improperly removed or restricted certain library books based on viewpoint discrimination, in violation of First Amendment; creation of district-wide policy regarding access to challenged books pending completion of review process was legislative decision, board members' votes were preceded by public notice,

consideration of input, and debate and discussion by board members, actions had policymaking function and general application, and members were making judgment call and engaging in line-drawing on matter of public concern.

School board did not waive legislative privilege to preclude deposition of its members in action alleging that their removed or restricted certain library books violated First Amendment by producing documents in discovery without making privilege objection; privilege belonged to members, and members were not parties, and were not responsible for responding to document production request.

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**LIABILITY - GEORGIA**

## City of Roswell v. Hernandez-Flores

**Court of Appeals of Georgia - October 31, 2024 - S.E.2d - 2024 WL 4633588**

Pedestrian filed negligence suit against city, seeking to recover for serious head, neck, and leg injuries sustained when pedestrian was struck on the sidewalk by a fleeing suspect's vehicle after suspect swerved to avoid tire-deflating spikes deployed by a city police officer.

The State Court denied city's motion for summary judgment based on sovereign immunity. City applied for interlocutory review, which was granted. The Court of Appeals reversed. On certiorari, the Supreme Court remanded for reconsideration in light of intervening precedent.

On remand, the Court of Appeals held that:

- Officer's conduct of driving in patrol car to an intersection where high-speed chase being conducted by others was headed, along with officer's storing of tire-deflating spikes in patrol car trunk and standing behind patrol car as officer deployed the spikes at such intersection, constituted the "use" of patrol car, as could support finding that city's sovereign immunity was waived as to such use pursuant to statute waiving sovereign immunity for losses arising out of claims for the negligent use of a covered motor vehicle; but
- Pedestrian's injuries did not "arise out of" officer's allegedly negligent use of patrol car in following chase on radio and driving to intersection where chase was headed;
- Pedestrian's injuries did not "arise out of" officer's allegedly negligent use of patrol car in storing tire-deflating spikes in patrol car trunk; and
- Pedestrian's injuries did not "arise out of" officer's allegedly negligent use of patrol car through his conduct of standing behind parked patrol car when deploying tire-deflating spikes.

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**PUBLIC UTILITIES - OKLAHOMA**

## City of Oklahoma City v. Oklahoma Corporation Commission

**Supreme Court of Oklahoma - November 6, 2024 - P.3d - 2024 WL 4687324 - 2024 OK 77**

City filed a petition in error, appealing final order issued by the Oklahoma Corporation Commission which granted an application filed by public utilities division (PUD) seeking a order that, under the February 2021 Regulated Utility Consumer Protection Act, city utility may not bill customers for franchise fees, municipal fees or taxes, and/or gross receipts taxes when such fees and taxes were based upon specific securitized revenue customer payments.

The Oklahoma Municipal League's request to intervene was granted by the Commission, and the League also filed a petition in error challenging the final order.

The Supreme Court held that:

- Corporation Commission exercised a legislative function when it considered PUD's application, and
- Commission's determination that the February 2021 Regulated Utility Consumer Protection Act changed utility's legal obligations concerning municipal franchise fees and gross receipts taxes was a determination not sustained by law.

The Oklahoma Municipal League possessed standing to participate in the Corporation Commission proceeding brought to prevent utilities from collecting franchise fees and gross receipts taxes based upon specific "securitized revenue"; the League's members had pecuniary interests which were affected by the Commission's order affecting utility rates.

Corporation Commission exercised a legislative function when it considered public utilities division's (PUD) application seeking an order that, under the February 2021 Regulated Utility Consumer Protection Act, city utility could not collect fees or taxes based upon securitization revenue customer payments; language of Commission's final order was primarily legislative and not judicial when combined with the PUD's application requesting that the Commission legislate a result consistent with the PUD's perception of fairness for customers by alleviating them from the PUD's perceived "windfall" for municipalities.

Corporation Commission's determination that the February 2021 Regulated Utility Consumer Protection Act changed, amended, or altered utility's legal obligations concerning municipal franchise fees and gross receipts taxes was a determination not sustained by law; the Act did not give the Commission the authority to determine the legality of a municipal franchise fee or whether a franchise fee liability is legally unenforceable via a utility rate or tariff because of the Act.

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**BOND VALIDATION - TEXAS**

## Hansard v. Zamora

**United States District Court, W.D. Texas, Pecos Division - September 19, 2024 - Slip Copy - 2024 WL 4249845**

In early summer 2022, George and Stacy Hansard became concerned about a $110 million school bond placed on the ballot for the May 2022 election cycle. The Hansards understood that no public funds could be used to advocate for the bond but learned that the Fort Stockton Independent School Board had done so anyway. They expressed these concerns to the bank underwriting the funds who then reached out to the School Board with a demand for all advertisements used in the election. The bond did not pass during the May 2022 election.

When the bond reappeared on the November election ballot, the Hansards sent the Texas Attorney General's office copies of the advertisements they believed had been paid for with public funds. They also appeared at two open meetings and began expressing their many concerns to the School Board.

Members of the School Board then commenced a truly shocking course of harassment against the Hansards.

The Hansards filed this suit in October 2023, bringing First Amendment retaliation, defamation, slander, slander per se, and libel per se claims under 42 U.S.C. § 1983, as well as federal conspiracy.

They also brought three state-law claims for defamation, intentional infliction of emotional distress, and civil conspiracy.

The Magistrate Judge issued his report and recommendation.  Both parties filed objections. The Court took up these objections on de novo review.

The District Court denied each of the Hansard's objections, finding that each highlighted the same misunderstanding of how qualified immunity plays out at the motion to dismiss stage, particularly when a group is alleged to have acted in unison. Where the actions of individuals within a group were previously discoverable, courts may no longer defer ruling on a defendant's assertion of qualified immunity to allow for such limited discovery.

Here, the Magistrate Judge found George Hansard's § 1983 claim against the School Board Defendants did not pass muster because "a § 1983 plaintiff who alleges mistreatment at the hands of a group [must] describe with particularity the actions taken by each of them individually."

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**ADMINISTRATIVE PROCEDURE - WYOMING**

## Bienz v. Board of County Commissioners, County of Albany

**Supreme Court of Wyoming - September 25, 2024 - 556 P.3d 227 - 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.

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**ZONING & PLANNING - CALIFORNIA**

## JCCrandall, LLC v. County of Santa Barbara

**Court of Appeal, Second District, Division 6, California - October 29, 2024 - Cal.Rptr.3d - 2024 WL 4599704**

Servient tenement owner petitioned for writ of administrative mandate challenging county's grant of conditional use permit to lessor of dominant tenement estate to cultivate cannabis on property, which required lessor to use easement over servient owner's land to access dominant tenement property.

The Superior Court, Santa Barbara County, denied petition. Servient owner appealed.

The Court of Appeal held that:

- Trial court's application of its independent judgment was proper standard of review;
- California statute providing that cannabis cultivation and transportation were legal in California was preempted by federal Controlled Substances Act; and
- Owner of servient tenement estate could not be forced to allow his property to be used to transport cannabis.

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**BOND VALIDATION - GEORGIA**

## State v. Decatur County-Bainbridge Industrial Development Authority

**Court of Appeals of Georgia - October 31, 2024 - S.E.2d - 2024 WL 4633664**

State petitioned to validate up to $300 million in taxable revenue bonds to fund construction and development of primate breeding facility.

The Superior Court granted petition and validated bond.

Area citizens subsequently moved to intervene in the proceeding, and the State filed a motion for reconsideration or, alternatively, to set aside the bond validation order.

In its motion, the State alleged that based on new information that had recently come to his attention, the district attorney who filed the petition now believed that certain requirements for the project had not been met.

Before the trial court ruled on the motion, however, the State filed a notice of appeal from the bond validation order.

"In the appeal presently before this Court, the State asks us to vacate a bond validation order that was issued pursuant to the State's own request. The State contends that the bond validation proceedings were improper, but the State acknowledges that at the time the trial court issued its order on the petition, the court was unaware of the deficiencies. Indeed, as the State acknowledges, the bond validation petition averred that all the requirements for a bond validation had been met."

The Court of Appeals held that state had no basis to appeal trial court's order, and thus, dismissal of state's appeal of order was warranted.

State had no basis to appeal trial court's order granting state's petition to validate taxable revenue bonds to fund construction and development of primate breeding facility, and thus, dismissal of state's appeal of order was warranted, where state was party who sought order.

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**IMMUNITY - KENTUCKY**

## Morales v. City of Georgetown

**Supreme Court of Kentucky - October 24, 2024 - S.W.3d - 2024 WL 4576332**

Former sheriff's deputy, who served on joint law enforcement group specially trained in tactical operations, brought action asserting negligence claims against city police lieutenant, who was group's co-commander, and city police officer, who also served on group, in their official and individual capacities, and asserting negligence and vicarious liability claims against city and city

police department, arising from incident in which deputy was shot and paralyzed during group's operation to apprehend alleged bank robber.

The Circuit Court granted summary judgment for defendants. Deputy appealed. The Court of Appeals affirmed in part and reversed in part. Parties filed cross-motions for discretionary review, which were granted.

The Supreme Court held that:

- City police officer was afforded qualified official immunity with respect to act of firing his service weapon during operation;
- Lieutenant was not afforded qualified official immunity with respect to alleged failure to formulate plan and to remove members from group for missing training;
- Lieutenant was afforded qualified official immunity with respect to alleged failure to adequately supervise his subordinates and ensure his subordinates wore tactical vests;
- Genuine issues of material fact precluded summary judgment as to claims against lieutenant insofar as they were based on alleged breach of duty to formulate plan and to remove members from group for missing training;
- City and city police department were not entitled to immunity with respect to claims of vicarious liability; and
- City and city police department were entitled to immunity with respect to direct negligence claims.

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**POLITICAL SUBDIVISIONS - LOUISIANA**

## Police Jury of Calcasieu Parish v. Indian Harbor Insurance Co.

**Supreme Court of Louisiana - October 25, 2024 - So.3d - 2024 WL 4579035 - 2024-00449 (La. 10/25/24)**

Political subdivision brought action against its domestic property insurers to recover for damage caused by hurricanes. Insurers removed case and filed motions to compel arbitration and stay proceedings based on clauses in foreign insurers' policies.

The United States District Court for the Western District of Louisiana certified questions.

The Supreme Court held that:

- Arbitration is prohibited by statute;
- As a matter of first impression, insurance policy with political subdivision is "public contract" within meaning of statute banning in public contracts any provision which requires suit or arbitration proceeding to be brought in forum or jurisdiction outside of state; and
- Domestic insurer may not use equitable estoppel to enforce arbitration via a foreign insurer's policy.

Statutory amendment which states that ban on insurance policy provisions depriving state courts of jurisdiction or venue of action against insurer do not prohibit forum or venue selection clause in policy form not subject to approval by Department of Insurance does not irreconcilably conflict with the ban and thus does not implicitly repeal it; forum selection clauses primarily concern location where parties can pursue litigation, but arbitration clauses primarily concern method of dispute resolution depriving any court of jurisdiction, and amendment creates limited exception in which forum or venue selection clause is permitted in certain types of insurance contracts and does not plainly indicate arbitration clauses are also permitted.

Insurance policy with political subdivision is “public contract” within meaning of statute banning in public contracts any provision which requires suit or arbitration proceeding to be brought in forum or jurisdiction outside of state or requires interpretation of the agreement according to laws of another jurisdiction.

Domestic insurer may not use equitable estoppel to enforce arbitration via a foreign insurer’s policy; contrary finding would violate state’s positive law prohibiting arbitration in Louisiana-issued insurance policies and invite domestic insurers’ misuse a doctrine of last resort to ceaselessly rely on insurance policies of foreign insurers to compel arbitration.

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**ZONING & PLANNING - NEW YORK**

## Bennett v. Troy City Council

**Supreme Court, Appellate Division, Third Department, New York - October 24, 2024 - N.Y.S.3d - 2024 WL 4557622 - 2024 N.Y. Slip Op. 05257**

Resident who lived adjacent to site for the proposed construction of an apartment complex on a vacant, forested, 11–acre parcel brought article 78 proceeding against city council challenging its decision under the State Environmental Quality Review Act (SEQRA) that the project would not result in any significant adverse environmental impacts and its adoption of an ordinance rezoning the site from single-family residential district to a planned development district.

The Supreme Court dismissed, and resident appealed.

The Supreme Court, Appellate Division held that:

- City council failed to take required hard look before determining project would not result in any significant adverse environmental impacts, but
- City council’s of rezoning ordinance did not involve illegal spot zoning.

City council failed to take the hard look, as required by the State Environmental Quality Review Act (SEQRA), at the significant environmental impact expected from a project to construct apartment complex on vacant, forested, 11–acre parcel before issuing a declaration that the project would not result in any significant adverse environmental impacts; city council’s characterization of project’s archaeological impact as “moderate” unduly minimized historic/archaeological significance of the project site, which contained a Middle to Late Archaic quarry with multiple loci, representing a full range of extraction and production activities, yet council omitted Native American community as a consulting party in formulating any required data retrieval plan.

City council’s adoption of ordinance rezoning the site for proposed apartment complex on a vacant, forested, 11–acre parcel along river from single-family residential district to a planned development district did not involve illegal spot zoning, or the singling out of small parcel of land for use classification totally different from that of surrounding area for benefit of parcel’s owner and detriment of other owners; although city’s planning commission initially rejected the project, record was expanded prior to council’s determination, and project maintained residential use and would establish multi-use trail along the shoreline opening public access to river.

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**ANNEXATION - UTAH**

## Erda Community Association Inc. v. Grantsville City

**Court of Appeals of Utah - September 12, 2024 - P.3d - 2024 WL 4156722 - 2024 UT App 126**

Sponsors for incorporation of new city brought action against neighboring city, seeking to invalidate, under Municipal Land Use, Development, and Management Act (MLUDMA) and state and federal constitutions, neighboring city's annexation of 550 acres of land that would have been part of new city, which annexation occurred before public vote on new city's incorporation.

The Third District Court denied sponsors' motion for summary judgment and granted neighboring city's competing summary judgment motion, finding that sponsors lacked standing, had failed to exhaust administrative remedies, and that annexation occurred within statutory window. Sponsors appealed.

The Court of Appeals held that:

- Sponsors lacked both statutory standing under Annexation Code and legally protectible interest that would allow them to seek declaratory relief for alleged violation of Code under Declaratory Judgment Act;
- Sponsors lacked statutory standing for judicial review under MLUDMA;
- Remand was warranted for district court to determine if sponsors had standing to challenge Code for purported state constitutional violations; and
- Sponsors were not required to exhaust administrative remedies prior to bringing action to challenge Code for purported state constitutional violations.

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**ZONING & PLANNING - VERMONT**

## In re Ranney Dairy Farm, LLC

**Supreme Court of Vermont - October 25, 2024 - A.3d - 2024 WL 4576460 - 2024 VT 66**

Neighbors brought action to challenge town development review board's issuance of subdivision permit to landowner.

The Superior Court affirmed, and neighbors appealed.

The Supreme Court held that:

- Environmental Division had jurisdiction to determine whether easement existed and evaluate evidence of whether a public road had been laid out;
- Environmental Division improperly required only a "threshold showing" of a "right to use" road; and
- Environmental Division's errors were prejudicial.

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**LIABILITY - ARIZONA**

## City of Mesa v. Ryan in and for County of Maricopa

**Supreme Court of Arizona - October 17, 2024 - P.3d - 2024 WL 4509603**

Bicyclist, who was struck by city police officer while driving patrol car during multi-vehicle accident,

brought personal-injury action against officer and city.

The Superior Court denied defendants' motion to dismiss for deficient notice of claim. Defendants filed petition for special action review, which was accepted. The Court of Appeals reversed and remanded with directions. Review was granted.

The Supreme Court held that bicyclist's offer to settle claims for the greater of $1 million or applicable insurance policy limits did not constitute "specific amount," for purposes of notice-o--claim statute's requirement that notice of claim contain specific amount for which claim could be settled.

Bicyclist's offer to settle personal-injury claims that were asserted against city and city police officer and that arose from multi-vehicle accident that occurred when officer was driving patrol car, which struck bicyclist, for the greater of $1 million or applicable insurance policy limits did not constitute "specific amount," for purposes of notice-of-claim statute's requirement that notice of claim contain specific amount for which claim could be settled; city's risk management claims analyst was unable to determine from notice of claim whether bicyclist was willing to settle for city's self-insured retention limit of $3 million, automobile-liability policy's $1 million limit, or excess-carrier policy's limit of $10 million to $50 million.

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**ZONING & PLANNING - MAINE**

## Moreau v. Town of Parsonsfield

**Supreme Judicial Court of Maine - October 22, 2024 - A.3d - 2024 WL 4537133 - 2024 ME 75**

Landowner filed zoning appeal against town and neighbor, seeking to vacate town zoning board of appeals' (ZBA) decision setting aside town planning board's approval of permit for landowner to operate automotive repair shop on his lot in residential district.

The Superior Court, York County, vacated ZBA's decision. Neighbor appealed.

The Supreme Judicial Court held that:

- An appealable decision, triggering time to appeal, occurred at second of two ZBA meetings;
- Administrative decision on review was that of planning board;
- Commercial use of lot was not grandfathered in as a nonconforming use; and
- Commercial road standards for private access roads serving a business on a rear lot applied to shop.

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**EMINENT DOMAIN - NEVADA**

## Mass Land Acquisition, LLC v. First Judicial District Court of in and for County of Storey

**Supreme Court of Nevada - October 17, 2024 - P.3d - 2024 WL 4510338 - 140 Nev. Adv. Op. 67**

Investor-owned public utility brought eminent domain action, seeking to acquire easement for natural gas pipeline as well as immediate occupancy.

The District Court denied landowner's motion to dismiss and granted utility's motion for immediate occupancy. Landowner petitioned for writ of mandamus or prohibition, and filed motion to stay, which the District Court denied.

The Supreme Court held that:

- Petition was not moot, although pipeline had been constructed;
- Nevada Constitution did not preclude investor-owned public utility from exercising its delegated power of eminent domain to take easement across property; and
- Landowner lacked any right to a jury trial on issue of whether the Nevada Constitution allows a privately owned public utility to take an easement across private land for a natural gas pipeline.

Landowner's petition for traditional writ relief and advisory mandamus to challenge investor-owned public utility's taking of gas pipeline easement by eminent domain and immediate occupancy was not moot, although pipeline had been constructed; issue presented an unsettled question of statewide importance that qualified for advisory mandamus, and landowner had potential remedies of ejectment or restoration and reversion.

Supreme Court would deny landowner's request that it grant writ relief from the district court's order denying landowner's motion for a stay of grant of immediate occupancy which was issued to investor-owned public utility in underlying eminent domain action in which utility acquired a natural gas pipeline easement over landowner's property; landowner's remedy was to seek a stay from the Supreme Court, which it waived when it withdrew its motion for a stay from the Supreme Court before it could be decided.

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**ZONING & PLANNING - NEW HAMPSHIRE**

## Rod v. Town of Peterborough

**Supreme Court of New Hampshire - October 25, 2024 - A.3d - 2024 N.H. 61 - 2024 WL 4575912**

Gun club, which had reoriented outdoor shooting range from east-west to north-south, appealed zoning board of adjustment's affirmance of examining officer's decision that the club did not have a lawful nonconforming use, the board's denial of club's special exception application, and the planning board's denial of the club's site plan application.

The Superior Court affirmed and denied club's motion for reconsideration. Club appealed.

The Supreme Court held that:

- Gun club's reoriented outdoor shooting range was not a continuation of its lawful, existing nonconforming use;
- Zoning board of adjustment did not act unlawfully or unreasonably in denying shooting club's request for a special exception for a nonconforming use; and
- Statute prohibiting application of an ordinance limiting shooting range activities to a range "in operation" prior to the date of the ordinance required lawful operation, and thus did not prevent application of town's ordinance requiring shooting ranges to be indoors to gun club's reoriented shooting range.

**IMMUNITY - NEW MEXICO**

## Sanders v. New Mexico Corrections Department

**Supreme Court of New Mexico - October 10, 2024 - P.3d - 2024 WL 4456675**

Victim's estate brought wrongful death action against New Mexico Corrections Department (NMCD), its secretary, and its bureau records chief, alleging that victim was killed by inmate that NMCD erroneously released.

The District Court granted defendants summary judgment on basis that they were immune from suit under Tort Claims Act (TCA). Victim's estate appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Defendants petitioned for review, which was granted.

The Supreme Court held that:

- There is no basis to conclude that there is a geographical limit on the location of an injury that would preclude the application of the building waiver of the TCA as a matter of law, abrogating *Archibeque v. Moya*, 116 N.M. 616, 866 P.2d 344, and
- Estate's claims were not barred simply because the death did not occur on or adjacent to NMCD's premises.

There is no basis to conclude that there is a geographical limit on the location of an injury that would preclude the application of the building waiver of the Tort Claims Act (TCA), which permits tort claims against governmental entities for damages resulting from wrongful death by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building, as a matter of law, abrogating *Archibeque v. Moya*, 116 N.M. 616, 866 P.2d 344.

Wrongful death claims brought by estate of victim killed by an inmate that had been erroneously released by New Mexico Corrections Department (NMCD) were not barred simply because the death did not occur on or adjacent to NMCD's premises; Tort Claims Act's (TCA) building waiver extended to negligence occurring beyond the physical premises.

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**LIABILITY - NEW YORK**

## Minahan v. New York City Transit Authority

**Supreme Court, Appellate Division, First Department, New York - October 17, 2024 - N.Y.S.3d - 2024 WL 4508114 - 2024 N.Y. Slip Op. 05140**

Pedestrian brought negligence action against city transit authority and metropolitan transit authority, alleging that she was tripped and fell on sidewalk grate due to crack in nearby sidewalk that abutted building.

The Supreme Court, New York County, denied pedestrian's motion for partial summary judgment and granted transit authorities' cross-motion for summary judgment. Pedestrian appealed.

The Supreme Court, Appellate Division, held that:

- Transit authorities were not bound by deemed admission relating to ownership of sidewalk grade, such that legal duty of care was conferred upon them, and

- Transit authorities did not owe a legal duty to pedestrian to maintain perimeter around grate.

Failure of transit authorities to respond to pedestrian's notice to admit did not prejudice pedestrian, and thus, defendants were not bound by deemed admission relating to ownership of sidewalk grate, onto which pedestrian allegedly tripped and fell due to crack in nearby sidewalk that abutted building, such that legal duty of care was conferred upon transit authorities, in pedestrian's negligence action against defendants; defendants' failure to respond was inadvertent, given that they had not admitted allegation of ownership in their answer, notice to admit was served by email at onset of pandemic shutdown and was not raised by pedestrian as outstanding discovery item at subsequent preliminary conference, and court took judicial notice of pedestrian's second suit relating to accident.

City and metropolitan transit authorities did not own sidewalk grate onto which pedestrian allegedly tripped and fell due to a crack in nearby sidewalk that abutted building, and thus did not owe a legal duty to pedestrian to maintain perimeter around grate; grate was not a subway grate that could have been owned or leased to defendants.

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**EMINENT DOMAIN - GEORGIA**

## YKH Realty, LLC v. Georgia Department of Transportation

**Court of Appeals of Georgia - October 8, 2024 - S.E.2d - 2024 WL 4440461**

Department of Transportation (DOT) issued declarations of taking for two parcels due to road construction and deposited estimated just compensation for the takings.

Holders of security interests in the parcels moved to set aside the takings and, as an alternative, to consolidate the DOT's petitions, which occurred by consent order, and also challenged the DOT's valuation by timely filing an appeal.

Record landowner filed an untimely notices of appeal contesting the valuation in each pre-consolidation case. The Superior Court granted the DOT's motion to dismiss the untimely appeal, and granted DOT's motion for partial summary judgment on claims for consequential damages. Record landowner and secured parties appealed.

The Court of Appeals held that:

- Secured parties' appeal preserved record landowner's valuation challenge for appeal, even though landowner did not file a timely notice of appeal or join the secured parties' appeal;
- DOT's removal of a 12-foot paved access lane did not result in any special damages to condemnees;
- Genuine issue of material fact regarding whether and to what degree the installation of curbing which allegedly narrowed entrance portals substantially impeded access to property precluded summary judgment; and
- Genuine issue of material fact as to whether or not the increased slope and grade of entrances to property amounted to a substantial impairment of access precluded summary judgment.

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**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.

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**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.

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**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.

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**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.

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**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."

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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."

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**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.

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**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."

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**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.

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**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."

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.”

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**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.

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**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.

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