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Freeny v. City of San Buenaventura

Court of Appeal, Second District, Division 6, California - June 4, 2013 - Cal.Rptr.3d - 2013 WL 2421601

The California Tort Claims Act (Act) confers immunity from tort liability on public employees when they make “basic policy decisions” in a legislative capacity. (Gov.Code, §§ 820.2, 821, 821.2.)

In this case, the court of appeal held that public employees’ tort immunity for legislative decision-making applies even when that decision-making is also alleged to involve the making of misrepresentations motivated by “actual fraud, corruption or actual malice.” (§ 822.2)

Reading section 822.2’s exception for misrepresentations motivated by actual fraud, corruption or actual malice as not qualifying the tort immunity that otherwise attaches to legislators’ policy making decisions best harmonizes the legislative intent behind all of these provisions. It effectuates the intent behind sections 820.2, 821 and 821.2 by eliminating the danger of harassment and chilling that springs from susceptibility to tort lawsuits while preserving oversight by criminal prosecution and by the electorate.