
INVERSE CONDEMNATION - ILLINOIS

Sorrells v. City of Macomb

Appellate Court of Illinois, Third District - October 23, 2015 - N.E.3d - 2015 IL App (3d) 140763 - 2015 WL 6437333

Landowners brought action against neighboring developer for flooding that occurred on their property allegedly caused by the development, and amended complaint to add claim for inverse condemnation against city.

The Circuit Court granted city's motion to dismiss for failure to state a cause of action, and landowners appealed.

The Appellate Court held that flooding was not a taking by the city.

Flooding of landowners' property from neighboring development was not a "taking" by the city, despite claim that development's streets had been dedicated to the city and city had taken landowners' property in the form of a "drainage easement" for the drainage of its streets, where development was not a public property, water allegedly invading the property was drainage from two storm water detention basins or other drainage basins rather than from the dedicated streets, and there was no claim that flooding was the intended or foreseeable result of the city's actions rather than that of the development.

EMINENT DOMAIN - MISSISSIPPI

Ward Gulfport Properties, L.P. v. Mississippi State Highway Com'n

Supreme Court of Mississippi - October 22, 2015 - So.3d - 2015 WL 6388832

Property owner brought action seeking injunction for State Highway Commission's alleged taking arising out of Commission seeking permit to fill wetlands in roadbed of proposed limited-access road and pledging 1,300 acres of property as wetlands mitigation.

The Circuit Court granted summary judgment for Commission. Owner appealed.

The Supreme Court of Mississippi held that:

- Owner's claims were not barred by res judicata;
- Owner's claims were not barred by collateral estoppel;
- Genuine issue of material fact as to whether seeking permit constituted categorical taking precluded summary judgment; and
- Genuine issue of material fact as to whether seeking permit constituted partial regulatory taking precluded summary judgment.

Property owner's claims against State Highway Commission, alleging unlawful taking arising out of Commission seeking permit to fill wetlands in roadbed of proposed limited-access road and pledging 1,300 acres of property as wetlands mitigation, were not barred by res judicata. While owner had previously filed action in federal court against entity that granted permit to have permit invalidated, owner did not split claim, as it filed one action against Commission and another against entity, and subject matter before federal court was whether entity violated specific federal acts in issuing permit, while subject matter in state court was whether Commission's actions in seeking permit effected cognizable taking.

Property owner's claims against State Highway Commission, alleging unlawful taking arising out of Commission seeking permit to fill wetlands in roadbed of proposed limited-access road and pledging 1,300 acres of property as wetlands mitigation, were not barred by collateral estoppel. While owner had previously filed action in federal court against entity that granted permit to have permit invalidated, causation issue decided by federal court was whether entity violated federal acts in issuing permit so that it could invalidate permit, while causation issue in state court was whether Commission's actions effectuated taking without just compensation, and any alleged wrongdoing by Commission was not necessary to resolution in federal court, just as entity's actions were not necessary to resolution in state court.

Genuine issue of material fact as to whether permit sought by State Highway Commission to fill wetlands in roadbed of proposed limited-access road and pledge of 1,300 acres of property as wetlands mitigation was a permanent restriction cut short which left property owner without economically viable use of the property for the duration of the permit, as to constitute categorical taking, precluded summary judgment for Commission, in owner's action seeking injunction against Commission for alleged taking.

Genuine issue of material fact as to whether permit sought by State Highway Commission to fill wetlands in roadbed of proposed limited-access road and pledge of 1,300 acres of property as wetlands mitigation constituted partial regulatory taking precluded summary judgment for Commission, in owner's action seeking injunction against Commission for alleged taking.

UTILITIES - NEW HAMPSHIRE

Aranosian Oil Co., Inc. v. State

Supreme Court of New Hampshire - October 27, 2015 - A.3d - 2015 WL 6473550

Oil importers and distributors brought action against State, seeking declaration that fees paid by importers and distributors into excess insurance fund were unconstitutional.

After bench trial, the Hillsborough Superior Court denied petition. Importers and distributors appealed.

The Supreme Court of New Hampshire held that:

- Fees paid into fund did not become unconstitutional taxes as result of State's recovery in unrelated litigation, despite argument that State obtained alternative source of funds that addressed same expense as fee program, and
- Equitable subrogation and unjust enrichment claims were barred by sovereign immunity.

Fees paid by oil importers and distributors into statutorily-created excess insurance fund for disposal and cleanup of underground storage tanks did not become unconstitutional taxes as result

of State's recovery in litigation against gasoline suppliers, pursuant to which State was awarded damages, despite argument that State's recovery rendered fees disproportionate because State obtained alternative source of funds that addressed the same expense as fee program.

Oil importers' and distributors' equitable subrogation and unjust enrichment claims against State, challenging fees paid by importers and distributors into excess insurance fund for disposal and cleanup of underground storage tanks, were barred by sovereign immunity, where equitable claims were unrelated to alleged constitutional deficiency in fees, and constitutional claims that plaintiffs did make were unsuccessful.

WHISTLEBLOWER STATUTE - NEW YORK

Tipaldo v. Lynn

Court of Appeals of New York - October 22, 2015 - N.E.3d - 2015 WL 6180903 - 2015 N.Y. Slip Op. 07698

Former city employee brought action against municipality and agency decisionmakers in their official capacity for violation of state "whistleblowers' statute."

The Supreme Court, New York County, granted summary judgment for defendants and employee appealed. The Supreme Court, Appellate Division reversed and remanded. On remand, the Supreme Court, New York County, after nonjury trial on issue of damages, awarded employee $175,000 in back pay without interest. Employee appealed. The Supreme Court, Appellate Division, modified the judgment to include prejudgment interest and ordered reinstatement of employee. Defendants appealed.

The Court of Appeals held that:

- Employee made good faith efforts to report misconduct under whistleblower statute, and
- Prejudgment interest was properly awarded.

Good-faith efforts of city employee in manner and timing of his reporting, first informally to his immediate supervisors and then soon thereafter to Department of Investigation, satisfactorily met requirements for reinstatement and compensation for retaliatory action taken by employer, where reporting of violation to internal "appointing authority" would have been futile in that individuals who employee alleged had improperly procured signs in connection with traffic reconfiguration project were Commissioner and First Deputy Commissioner.

Prejudgment interest is generally available to plaintiffs bringing claims under state's whistleblowers' statute, since intent of statute is to make plaintiffs whole.

When a statute does not specifically list interest as recoverable, interest may be available when the statute's legislative intent is to make its victims whole and its language does not limit the recovery available.

LIABILITY - TENNESSEE

Epperson v. City of Humboldt, Tenn.

United States District Court, W.D. Tennessee, Eastern Division - October 21, 2015 -

F.Supp.3d - 2015 WL 6440740

Decedent's mother, sister, and daughter filed § 1983 action in state court against city, its police chief, and police officers alleging that officers' use of excessive force during detention caused decedent's death. After removal, defendants' moved to dismiss.

The District Court held that:

- Decedent's mother and sister lacked standing to file § 1983 action;
- City was not subject to liability under § 1983;
- Officers did not deprive decedent of his substantive due process rights; and
- Court would not exercise supplemental jurisdiction over plaintiffs' claims under Tennessee Governmental Tort Liability Act (GTLA).

City was not subject to liability in § 1983 action alleging that its police officers used excessive force against mentally impaired person, absent showing that city was on notice of pattern or practice of unconstitutional uses of force by officers in its employ against mentally impaired persons or others who could not comply with instructions, that it had custom of ignoring violations or failing to discipline officers who engaged in such behavior, or that city failed to adequately prepare for recurring situations where constitutional violation would be likely to take place.

PUBLIC UTILITIES - CALIFORNIA

Green Valley Landowners Association v. City of Vallejo

Court of Appeal, First District, Division 1, California - October 16, 2015 - Cal.Rptr.3d - 2015 WL 6121779

Nonresident water customer brought class action seeking to preserve its alleged right to continue receiving water at reasonable rates from an historical water delivery system owned and operated by the City of Vallejo. Customer sued for breach of contract, breach of implied covenant of good faith and fair dealing, breach of duty to charge reasonable water rates, breach of fiduciary duty, specific performance, declaratory and injunctive relief, and accounting. The Superior Court sustained demurrer without leave to amend. Customer appealed.

The Court of Appeal held that:

- Charter city was governed by general law providing that all contracts with a city must be in writing to be valid;
- City could not be sued under an implied-in-law or quasi-contract theory;
- Right to Vote on Taxes Act precluded city from owing any fiduciary duty to continue prior fee ratio; and
- Injunction claims were premature.

INVERSE CONDEMNATION - COLORADO

American Family Mutual Insurance Company v. American National Property and Casualty Company

Colorado Court of Appeals, Div. I - September 24, 2015 - P.3d - 2015 WL 5607602 - 2015 COA 135

Insurers brought subrogation action against Water Board and Colorado Department of Public Safety, alleging inverse condemnation and negligence, after embers from prescribed burn on Water Board land caused wildfire which resulted in significant property damage. The District Court dismissed the inverse condemnation claims for failure to state a claim. Insurers appealed.

The Court of Appeals held that:

- Insurers had standing to assert inverse condemnation claims;
- Alleged taking of insureds' property did not serve nor was intended to serve a public purpose;
- Insurers lacked good cause to conduct discovery in order to respond to motion to dismiss; and
- Any error by trial court in denying insurers' request to conduct discovery was not prejudicial.

Insurers had standing to bring inverse condemnation claims against Water Board and Colorado Department of Public Safety after embers from prescribed burn on Water Board land caused wildfire which resulted in significant property damage, where insurers had paid or expected to pay claim to their insureds as a result of damage caused by the wildfire such that they were subrogated to their insureds' claims to the extent of monies paid and to be paid, and insureds held right to pursue inverse condemnation claim, as they were the property owners at the time of the wildfire and had suffered injuries-in-fact to legally protected interests as a result of the wildfire.

Alleged taking of insureds' property by Water Board and Colorado Department of Public Safety arising out of prescribed burn on Water Board land which resulted in wildfire that caused significant property damage, did not serve nor was intended to serve a public purpose, as required for insurance carriers to maintain inverse condemnation claims in subrogation action. While the prescribed burn may have been for a public purpose and the alleged taking may have been a natural or probable consequence of that burn, damage to private property was not for a public purpose and in fact was the opposite of the intent of the prescribed burn.

EMINENT DOMAIN - FLORIDA

General Commercial Properties, Inc. v. State Dept. of Transp.

District Court of Appeal of Florida, Fourth District - October 14, 2015 - So.3d - 2015 WL 5948530

Department of Transportation (DOT) brought eminent domain proceedings against landowner. After final judgment was entered awarding an amount for the parcel, landowner sought attorney's fees based on the DOT's offer to purchase the land made seven years prior to initiating eminent domain proceedings at an amount significantly lower than the judgment amount. The Circuit Court awarded fees based on percentage of difference between final judgment and pre-suit offer made closer to commencement of eminent domain proceedings. Landowner appealed.

The District Court of Appeal held that attorney's fee would be calculated using the later offer.

Department of Transportation's offer to purchase landowner's property seven years before initiation of eminent domain proceedings was not the "first written offer" under eminent domain statute, which provides for an award of attorney's fees to a landowner based on a percentage of the difference between amount of final judgment and first written offer. The offer was made in an arms-length negotiation during department's early acquisition program before project was funded or plans were finalized and before department was certain landowner's property would be needed, and offer was extended on condition that it not be used to determine attorney's fees in a subsequent

condemnation proceeding.

IMMUNITY - FLORIDA

City of Fort Lauderdale v. Israel

District Court of Appeal of Florida, Fourth District - October 14, 2015 - So.3d - 2015 WL 5948627

County sheriff brought action against city for breach of contract, unjust enrichment, and open account, and city moved for summary judgment based on sovereign immunity. The Circuit Court denied city's motion. City appealed.

The District Court of Appeal held that sovereign immunity barred sheriff's action.

Sovereign immunity barred county sheriff's action against city for breach of contract, unjust enrichment, and open account, arising out of payments allegedly owed to sheriff for services provided to city after contract had expired, where there was no written contract between sheriff and city.

A municipality waives the protections of sovereign immunity only when it enters into an express contract. When an alleged contract is merely implied, however, these sovereign immunity protections remain in force.

BALLOT INITIATIVES - FLORIDA

In re Advisory Opinion to Atty. Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply

Supreme Court of Florida - October 22, 2015 - So.3d - 2015 WL 6387952

The Attorney General of Florida petitioned for an advisory opinion as to the validity of a citizen initiative amendment to the state constitution and the corresponding financial impact statement submitted by the financial impact estimating conference.

The Supreme Court of Florida held that:

- Proposed citizen initiative amendment complied with single subject requirement;
- Proposed citizen initiative amendment complied with ballot title and summary requirement; and
- Financial impact statement accompanying amendment complied with constitutional requirements.

Proposed citizen initiative amendment to state constitution regarding limitations on local solar electricity supply complied with the single subject requirement of the state constitution. Although the proposed amendment contained a number of provisions, some dealing with economic barriers to supply of solar electricity and others dealing with government regulation with respect to rates, service, or territory, various provisions were all directly connected to the amendment's purpose of removing legal and regulatory barriers to local solar electricity suppliers who sought to supply and sell up to 2 megawatts of solar generated electricity to purchasers on the same or contiguous property to the supplier, and there was no indication that amendment would have interfered with state's energy policy.

Proposed citizen initiative amendment to state constitution regarding limitations on local solar electricity supply complied with statutory ballot title and summary requirements, where title and summary clearly and unambiguously informed the voter that the amendment would prevent government and electric utilities from imposing regulatory barriers to supplying local solar electricity up to 2 megawatts to customers at the same or contiguous property, and summary explained that the regulations which would be limited or prevented included government regulation of local solar electricity suppliers' rates, service and territory, and unfavorable electricity rates, charges, or terms of service.

Financial impact statement accompanying proposed citizen initiative amendment to state constitution regarding limitations on local solar electricity supply complied with requirements of the state constitution, where statement was 62 words in length, statement addressed only estimate increase or decrease in revenue and costs to state and local governments, statement clearly and unambiguously stated that there would be decreased revenues for state and local governments and that the fees may have offset a portion of any increased costs, and statement clearly and unambiguously explained that timing and magnitude of decreased revenues could not be determined because of various technological and economic factors.

LIABILITY - GEORGIA

Guice v. Brown

Court of Appeals of Georgia - October 20, 2015 - S.E.2d - 2015 WL 6143383

Motorist brought action against city employee, who was driving city-owned vehicle covered by city's liability insurance policy when he was struck by motorist's vehicle. The trial court denied employee's motion for summary judgment. Employee appealed.

The Court of Appeals held that:

- Motorist failed to demonstrate that employee violated city ordinance and county ordinance;
- Motorist failed to demonstrate that employee violated statute governing obedience to traffic-control devices; and
- Motorist failed to demonstrate that employee committed criminal trespass.

INDEBTEDNESS - IDAHO

Greater Boise Auditorium Dist. v. Frazier

Supreme Court of Idaho, Boise, September 2015 Term - October 15, 2015 - P.3d - 2015 WL 6080521

Auditorium district, a governmental subdivision, filed petition for judicial confirmation that proposed real estate transaction did not violate state constitution's prohibition on municipal bodies, without voter approval, incurring indebtedness or liabilities greater than it has funds to pay for in the fiscal year. The District Court denied the petition. District appealed.

The Supreme Court of Idaho held that:

- Courts have duty to examine other documents affecting question submitted in petition for confirmation;

- Lease did not violate constitution; and
- Overall agreement did not violate constitution.

In deciding petitions for judicial confirmation of the validity of agreements brought by the governing bodies of political subdivisions, courts have a duty to examine other documents which affect the questions submitted and then to determine the propriety of the contracts before them.

Lease between auditorium district, a governmental subdivision, and urban renewal agency did not subject district to more liability than it could pay in year in which it was entered, and therefore entering lease without voter approval did not violate state constitution, despite contention that entire financing structure could have failed and resulted in financier pursuing remedies against district. Lease bound district to pay rent of one year, which it had funds to do, lease allowed district option to renew lease in subsequent years if it had funds to do so, constitution did not bar government subdivisions from incurring all potential liabilities without voter approval, and whether lease was, in fact, equitable mortgage did not create specific liability.

Overall agreement entered into by auditorium district, a governmental subdivision, in which district was obligated to purchase facility upon completion of construction did not subject district to long-term liability greater than it had the funds to pay for in the year in which it was entered, and therefore entering agreement without voter approval did not violate state constitution, despite contention that district was subject to continuing liability of lender's right to impose security interest on facility. Cost of purchase was covered by urban renewal agency if overall agreement was confirmed by court or by district's cash on hand, and any liens imposed by lender would have had to be released before sale, based on requirement of developer to convey clear title.

MUNICIPAL ORDINANCE - ILLINOIS

Zollar v. City of Chicago Dept. of Administrative Hearings

Appellate Court of Illinois, First District, Third Division - October 14, 2015 - N.E.3d - 2015 IL App (1st) 143426 - 2015 WL 5996813

Dog owner sought review of city animal control commission declaring dog to be a dangerous animal. The Circuit Court affirmed. Owner appealed.

The Appellate Court held that:

- Dog was dangerous animal within meaning of city ordinance;
- Any error in admission of investigative report did not prejudice owner; and
- Dangerous animal ordinance was not void for vagueness.

EMPLOYMENT - LOUISIANA

Jackson v. St. John Baptist Parish School Bd.

Court of Appeal of Louisiana, Fifth Circuit - October 14, 2015 - So.3d - 2015 WL 6081000 - 15-254 (La.App. 5 Cir. 10/14/15)

Former school bookkeeper filed petition for payment of sick leave and restoration of sick leave days against school board, following diagnosis of anxiety order stemming from incident where student struck her on school campus. The District Court rendered judgment in favor of bookkeeper and

awarded her $9,105.71, plus interest and costs. School board appealed.

The Court of Appeal held that bookkeeper was not required to have diagnosis by licensed psychiatrist or psychologist to receive sick leave benefits.

Former school bookkeeper was not required to have a diagnosis by a licensed psychiatrist or psychologist to receive sick leave benefits from school board that employed her, following diagnosis of anxiety disorder stemming from incident where student struck her on school campus. While workers' compensation statute defining injury required clear and convincing evidence of a mental injury and a diagnosis by licensed psychiatrist or psychologist, bookkeeper sought sick leave benefits, not workers' compensation benefits, statute governing sick leave for school employees only required physician to certify an injury or disability, and bookkeeper provided school board with letter from her physician certifying that she was under his care for anxiety order and that it was his opinion that she should not return to work environment for foreseeable future.

ZONING - NEW JERSEY

Jacoby v. Zoning Bd. of Adjustment of Borough of Englewood Cliffs

Superior Court of New Jersey, Appellate Division - October 21, 2015 - A.3d - 2015 WL 6160248

Residents filed separate complaints in lieu of prerogative writs, challenging zoning board of adjustment's site plan approval and variance grants for 143.8-foot tall office building in business zone where maximum permitted height was 35 feet. After consolidation and grant of motions to intervene, the Superior Court affirmed, and residents and intervenors appealed.

The Superior Court, Appellate Division, held that:

- Landowner failed to establish undue hardship warranting variance;
- Board, when considering "special reasons" for variance, was required to consider the main building's effect on the general landscape;
- Board was required to address the historic and scenic importance of the unique location when considering variance;
- Landowner was not entitled to bulk variance from parking requirements on grounds that the physical condition of the property prevented it from conforming to parking requirements; and
- Evidence was sufficient to support grant of bulk zoning variance allowing reduction in required parking spaces on grounds that any harm was substantially outweighed by the benefits.

MUNICIPAL ORDINANCE - TEXAS

Weiderman v. City of Arlington

Court of Appeals of Texas, Fort Worth - October 15, 2015 - Not Reported in S.W.3d - 2015 WL 5461516

City resident filed suit for declaratory judgment against city and mayor, alleging that city charter did not permit citizen-initiated referendum to amend city's charter to ban use of red-light cameras. The District Court granted defendants' plea to jurisdiction and dismissed petition. Citizen appealed.

The Court of Appeals held that resident lacked standing to challenge amendment to city's charter to

ban use of red-light cameras that had been placed on ballot and approved by majority of voters.

City resident lacked standing to challenge ordinance adopting proposition to amend home-rule city's charter to ban use of red-light cameras that had been placed on ballot and approved by majority of voters, which challenge was based on resident's claim that city's charter did not provide for citizen-initiated referendum, where resident did not allege any injury separate and distinct from injuries suffered by any other voter who voted against proposition, but admitted that he was no different than any other citizen who believed that red-light camera program was good.

EDUCATION FINANCE - PENNSYLVANIA

U.S. ex rel. Oberg v. Pennsylvania Higher Educ. Assistance Agency

United States Court of Appeals, Fourth Circuit - October 21, 2015 - F.3d - 2015 WL 6163007

Relator, on behalf of United States, brought qui tam action under False Claims Act (FCA) alleging that state-created corporate entity intended to facilitate issuance of student loans, the Pennsylvania Higher Education Assistance Agency (PHEAA), defrauded the United States Department of Education.

The Court of Appeals held that:

- State was not functionally liable for FCA claim;
- Autonomy factor weighed against finding that PHEAA was an arm of the state;
- State concern factor weighed in favor of finding that PHEAA was an arm of the state;
- Treatment under state law factor weighed in favor of finding that PHEAA was an arm of the state; and
- PHEAA was not an arm of the state.

The Pennsylvania Higher Education Assistance Agency (PHEAA) was a political subdivision of the State of Pennsylvania, rather than an arm-of-the-state, and thus was a "person" subject to liability under a False Claims Act (FCA) claim by a relator bringing a qui tam action, notwithstanding that much of its revenue was generated from out-of-state activities, and that it was treated as an arm of the state under Pennsylvania law. Pennsylvania was not liable for judgments against PHEAA, and PHEAA exercised significant autonomy from the State.

PUBLIC UTILITIES - PENNSYLVANIA

GSP Management Co. v. Duncansville Mun. Authority

Commonwealth Court of Pennsylvania - October 19, 2015 - A.3d - 2015 WL 6119434

Operator of mobile home park brought declaratory judgment action against municipal authority, challenging on its face and as applied the authority's rate structure for sewer system use, pursuant to which the rate increased on sliding scale corresponding to amount of metered water supplied to customer. The Court of Common Pleas entered judgment in favor of authority. Operator appealed.

The Commonwealth Court held that:

- Authority's rate structure was valid on its face, but

- Operator was entitled to relief for months in which metered water delivered to park greatly exceeded amount of discharge into sewer system.

Municipal authority's rate structure for calculation of sewer bill, pursuant to which the rate for sewer use increased on sliding scale corresponding to amount of metered water supplied to customer, was not facially invalid under Municipality Authorities Act.

Relief from amounts municipal authority billed operator of mobile home park for use of sewer system during certain months was appropriate in operator's action challenging authority's rate structure, pursuant to which the rate for sewer use increased on sliding scale corresponding to amount of metered water supplied to customer. Operator consumed approximately 40,000 gallons of metered water per month on average, operator's metered water use ranged from 110,000 to 580,000 gallons per month during months at issue due to water loss between metering point and point of discharge into authority's sewer system, and unplanned increase in metered water imposed no increase on burden of sewer system.

Where there is an extraordinary water loss between the point of metering and the point of discharge into a municipal sewer system that is substantial in quantity and unplanned or unanticipated, relief from the sewer charges during those periods of extraordinary water loss would be warranted to ensure that the amount billed and collected is not unreasonable in relation to the service rendered, crossing the line between a permitted fee and an unauthorized tax.

PUBLIC UTILITIES - PENNSYLVANIA

Metropolitan Edison Co. v. City of Reading

Commonwealth Court of Pennsylvania - October 15, 2015 - A.3d - 2015 WL 5974066

Utility brought action against city, alleging that negligence of city's employees during excavation led to collapse of utility's electrical duct bank. City filed motion for summary judgment, asserting immunity under Political Subdivision Tort Claims Act. The Court of Common Pleas denied city's motion and, following bench trial, entered judgment in favor of utility. City appealed.

The Commonwealth Court held that exception to immunity under the Act for injury resulting from dangerous conditions of utility service facilities did not apply, and thus city was immune.

Exception to governmental immunity under Political Subdivision Tort Claims Act for dangerous conditions of utility service facilities did not apply in utility's action against city, in which utility alleged that city's excavation work led to collapse of utility's electrical duct bank, and thus city was immune from suit, where dangerous condition that led to collapse did not originate from city's facilities, but from the conduct of city's employees in excavating beneath the duct bank without using support or shoring to stabilize it.

PUBLIC UTILITIES - PENNSYLVANIA

PPL Elec. Utilities Corp. v. City of Lancaster

Commonwealth Court of Pennsylvania - October 15, 2015 - A.3d - 2015 WL 5974272

Public utility filed petition for review seeking declaratory and injunctive relief against city and Public Utility Commission, arguing that ordinances city enacted as part of comprehensive program for

management of city's rights-of-way were preempted by the Public Utility Code. Utility filed an application for summary relief.

The Commonwealth Court held that:

- Ordinance purporting to authorize city to inspect public utility facilities to ensure that such facilities did not constitute a public safety hazard and remained in compliance with Public Utility Commission (PUC) standards was preempted;
- Ordinance purporting to grant city the power to order a public utility to remove, relocate, change, or alter the position of any facilities within right-of-way was preempted;
- Ordinance which imposed an annual maintenance fee on any public utility with facilities in city's rights-of-way was not preempted; and
- Ordinance purporting to permit city to bring a complaint against public utilities for violation of a PUC regulation, standard, or order and to fine utility for such violations was preempted.

INSURANCE - ALABAMA

St. Paul Fire and Marine Insurance Company v. Town of Gurley

United States District Court, N.D. Alabama, Northeastern Division - September 8, 2015 - Slip Copy - 2015 WL 5286915

St. Paul Fire and Marine Insurance Company sought a declaratory judgment that it had no duty to defend the Town of Gurley from the claims and damages asserted in underlying litigation between the and M & N Materials, Inc.

M & N sued the Town for inverse condemnation and other causes of action after the Town annexed property on which M & N had planned to operate a rock quarry and subsequently implemented regulations prohibiting this use.

St. Paul had issued a Public Entity Composite Policy to the Town. The Policy contained Public Entity Management Liability Protection ("PEML") and Public Entity General Liability Protection ("PEGL").

The court held that St. Paul had a duty to defend the Town against M & N's claims. The court reserved the issue of indemnification, pending the outcome of the trial.

EMINENT DOMAIN - CALIFORNIA

Los Angeles County Metropolitan Transportation Authority v. KBG I Associates, LLC

Court of Appeal, Second District, Division 5, California - October 7, 2015 - Not Reported in Cal.Rptr.3d - 2015 WL 5841977

KBG I Associates, LLC (KBG) appealed from the trial court's orders excluding the property valuation reports prepared by KBG's expert in an eminent domain action.

According to KBG, the orders deprived it of its constitutional right to have a jury determine the issue of just compensation. KBG contended that the trial court erred when it ruled that KBG's appraiser could not consider the loss of direct access to its property caused by the construction of a public works project and the revocation by the Los Angeles County Metropolitan Transportation Authority

(MTA) of a revocable license providing access to the property. KBG also contended that the trial court erred when it excluded from KBG's property valuation other evidence of impaired access caused by the project.

The Court of Appeal held that the termination of a revocable license concerning access to a property, work on a public street, and non-substantial changes in access to the property are not compensable. Thus, the trial court's orders prohibiting KBG's expert from considering evidence of the loss of direct access and other impairments of access to KBG's property were correct.

BOND VALIDATION - CONNECTICUT

Arras v. Regional School Dist. Number 14

Supreme Court of Connecticut - October 20, 2015 - A.3d - 2015 WL 5945416

Town residents brought action against town and board of education, contending that failure to publish warning of referendum in newspaper as statutorily required rendered the referendum null and void ab initio. Both parties moved for summary judgment. The Superior Court denied residents' motion for summary judgment and granted defendants' motion. Residents appealed and the case was transferred.

The Supreme Court of Connecticut held that failure to strictly comply with statutory notice provisions by publishing an official warning of referendum did not require invalidation of the referendum, overruling *Pollard v. Norwalk*, 108 Conn. 145, 142 A. 807.

EMINENT DOMAIN - ILLINOIS

Forest Preserve District of Cook County v. Chicago Title and Trust Co.

Appellate Court of Illinois, First District, First Division - September 30, 2015 - N.E.3d - 2015 IL App (1st) 131925 - 2015 WL 5734706

Landowners filed petition seeking to vacate an agreed order they entered into with county forest preserve district in eminent domain proceedings, after discovering that the district's ordinance under which it brought the proceedings was not validly enacted. The Circuit Court vacated the agreed order. District appealed.

The Appellate Court held that:

- Circuit court had subject-matter jurisdiction over the underlying eminent domain proceedings;
- Landowners were not precluded from seeking relief from judgment by failing to file a traverse or motion to dismiss prior to the entry of the agreed order or by release language in challenged agreed order;
- Landowners presented meritorious defense as basis for relief from judgment;
- Landowners demonstrated due diligence in seeking relief from judgment; and
- Circuit court did not abuse its discretion by not allowing for additional discovery or an evidentiary hearing on amended petition.

BOND VALIDATION - FLORIDA

Florida Bankers Ass'n v. Florida Development Finance Corp.

Supreme Court of Florida - October 15, 2015 - So.3d - 2015 WL 5996764

Development finance company brought action seeking to determine validity of series of bonds to be issued by government corporation for qualified developments in county under Property Assessed Clean Energy (PACE) Act. The Circuit Court validated bonds. Bankers association and property owner appealed.

The Supreme Court of Florida held that:

- Association lacked standing to appear in appeal, and
- Owner was not denied due process by trial court's acceptance of company's amended financing agreement.

Bankers association lacked standing to appear in appeal of trial court's validation of bonds issued by government corporation for qualifying improvements in county, in development finance company's action seeking to determine validity of series of bonds proposed to be issued under Property Assessed Clean Energy (PACE) Act. Association did not intervene or appear in trial court proceedings, never showed that it was citizen, taxpayer, or property owner in any jurisdiction where company's bonds would support PACE improvements, and presented no evidence that it suffered any specific injury or had stake in matter sufficient for standing.

Property owner failed to preserve for appellate review the claim that he was denied due process when development finance company and trial court accepted amended financing agreement that removed language allowing judicial foreclosure as remedy from original financing agreement that had been attached to complaint, in company's action seeking to determine validity of series of bonds to be issued by government corporation for qualified developments in county under PACE Act. At bond validation hearing, when company's attorney offered amended agreement during testimony of company's executive director, owner's attorney did not object to admission of documents or testimony about it, but asked only to be allowed to inquire into document on cross-examination.

Property owner was not denied due process by trial court's acceptance of development finance company's amended financing agreement that removed language allowing judicial foreclosure as remedy from original financing agreement that had been attached to complaint, in company's action seeking to determine validity of series of bonds to be issued by government corporation for qualified developments in county under PACE Act. Owner had opportunity at show cause hearing and hearing on his motion for rehearing to raise objections to amended agreement and to bring those objections and arguments to court's attention.

Validation of series of bonds to be issued by government corporation for qualified developments in county under Property Assessed Clean Energy (PACE) Act was ripe for determination, in development finance company's action seeking to determine validity, even though company had not yet entered into any interlocal agreements under PACE program. Trial court had statutory jurisdiction to determine validity of bonds and certificates of indebtedness, company had statutory authority and appropriately enacted resolution to issue bonds and to seek determination of validity of bond issue before doing so, and company intended to execute interlocal agreements to provide for implementation of PACE program in localities that chose to participate, where local governments would levy and collect non-ad valorem special assessments at issue.

Remand was warranted for trial court to require development finance company to amend all bond documents that referred to company having, or being delegated, authority to levy non-ad valorem special assessments, to make clear that it was local government that would levy such assessments,

in company's action seeking to determine validity of bonds to be issued by government corporation for qualified developments in county under PACE Act. While Act did not authorize company to levy assessments, inclusion of language in bond documents did not provide basis to reverse court's amended final judgment that validated bonds, as court agreed that assessments would be collected by local government, but language of judgment was subject to misinterpretation so long as any documents continued to contain references to company imposing assessments.

Remand was warranted for trial court to require that amendment of bond documents remove all references to judicial foreclosure and that such amendments be approved by governing board of development finance company, in company's action seeking to determine validity of series of bonds to be issued by government corporation for qualified developments in county under PACE Act. Only collection method authorized by Legislature for special assessments was uniform method set forth by statute, Act did not provide for judicial foreclosure as remedy, and, while amended financing agreement removed one reference to foreclosure as remedy, other references still remained.

PENSIONS - LOUISIANA

Born v. City of Slidell

Supreme Court of Louisiana - October 14, 2015 - So.3d - 2015 WL 5972534 - 2015-0136 (La. 10/14/15)

Retired city employee brought action against city, seeking declaration of his right to continued health coverage under city's health insurance plan and injunction prohibiting city from removing him from plan.

The District Court denied city's exception raising the objection of prescription and entered judgment granting declaratory and injunctive relief. City appealed. The Court of Appeal affirmed. Certiorari was granted.

The Supreme Court of Louisiana held that:

- Claim for declaratory and injunctive relief accrued, and three-year prescriptive period began to run, when retired employee turned 65 years old and city failed to provide coverage under plan, and
- Retired employee had right to continue to participate in plan.

Retired city employee's claim for declaratory and injunctive relief regarding alleged entitlement to continued participation in city's health insurance plan after his 65 birthday accrued, and three-year prescriptive period began to run, when retired employee turned 65 years old and city failed to provide coverage under plan, not earlier date on which city modified ordinance governing health benefits for retirees 65 years of age or older. Prior to city removing retired employee from plan, there was no indication that city would apply ordinance retroactively to retired employee.

Retired city employee had right to continue to participate in city's health insurance plan after retired employee turned 65 years old, even though plan document reserved to city the right to terminate, suspend, discontinue, or amend plan. Retired employee had met all of the requisite conditions at time of his retirement to participate in plan, and city's attempt to remove retired employee from the plan and require him to enroll in Medicare Advantage plan, on basis of amended ordinance governing health benefits for retirees 65 years of age or older, would have divested employee of his vested right in the benefits which he was owed under his contract with the city.

MUNICIPAL ORDINANCE - MISSISSIPPI

Hopkins v. City of Mendenhall

Court of Appeals of Mississippi - October 6, 2015 - So.3d - 2015 WL 5797809

Citizens sought review of city's adoption of an ordinance to close portion of a road. The Circuit Court affirmed the board's decision and the citizens appealed. The Court of Appeals held that the record was insufficient for appellate review and reversed and remanded. After remand, the city made factual findings, and the Circuit Court upheld the ordinance. Citizens appealed.

The Court of Appeals held that:

- Citizens had standing to challenge the ordinance, and
- City's closure of the street was for the public good and was not arbitrary, capricious, or without substantial evidence.

Citizens of city had standing to challenge city's ordinance that closed portion of a street, where citizens owned property in the city located near the closed street, and alleged that the closure would have an adverse impact.

Substantial evidence supported city's finding that closing portion of road, which had church as only abutting landowner, was for the public good, and not for the sole private benefit of the church, and therefore closing the road was authorized. Church would benefit from closed street, but not through ownership, and testimony of six out of nine persons before city board in favor of closing supported the city's findings that the street needed to be closed for safety reasons.

PENSIONS - NEW YORK

Begley v. DiNapoli

Supreme Court, Appellate Division, Third Department, New York - October 8, 2015 - N.Y.S.3d - 2015 WL 5839186 - 2015 N.Y. Slip Op. 07323

Public employee applicant for disability retirement benefits brought article 78 proceeding to review decision of state Comptroller denying him enhanced benefits.

The Supreme Court, Appellate Division, held that incident in which employee slipped and fell in an icy parking lot was entirely foreseeable, and thus did not constitute an "accident" without meaning of Retirement and Social Security Law.

LIABILITY - NEW YORK

Moore v. City of New York

Supreme Court, Appellate Division, Second Department, New York - October 7, 2015 - N.Y.S.3d - 2015 WL 5827366 - 2015 N.Y. Slip Op. 07249

A 15-year old student brought action to recover damages for personal injuries against city, city police department, city department of education, and police officers, claiming that defendants were negligent in failing to protect student, who was involved in a physical altercation, after which student was shot in the back and paralyzed from the waist down. The Supreme Court, Kings County,

granted summary judgment to defendants. Student appealed.

The Supreme Court, Appellate Division, held that:

- Municipality's provision of heightened police protection did not create a special relationship with student, and
- There was no evidence that student justifiably relied on municipality's provision of heightened police protection.

PUBLIC UTILITIES - NORTH CAROLINA

City of Asheville v. State

Court of Appeals of North Carolina - October 6, 2015 - S.E.2d - 2015 WL 5797639

City brought action against State and sewerage district, challenging the constitutionality of legislation requiring it to cede ownership and control of its public water system to another political subdivision. The Superior Court entered summary judgment in favor of city. State and district appealed.

The Court of Appeals held that:

- City had standing to bring action challenging General Assembly's authority to enact Water/Sewer Act provision;
- It was not clear that provision requiring city to cede ownership violated constitutional provision prohibiting laws relating to health or sanitation;
- Provision did not violate Law of the Land Clause; and
- Provision did not exceed the State's authority to take property.

City had standing to challenge the authority of the General Assembly to enact Water/Sewer Act provision requiring it to cede ownership and control of its public water system to another political subdivision, where it had not accepted any benefit from the Act.

It was not plain and clear and beyond reasonable doubt that Water/Sewer Act clause requiring city to cede ownership and control of its public water system to another political subdivision violated constitutional provision prohibiting local laws relating to health or sanitation. Act did not expressly state that its purpose was to regulate health or sanitation, but rather its stated purpose was to address concerns regarding the quality of the service provided to the customers of public water and sewer systems.

It was not plain and clear and beyond reasonable doubt that Water/Sewer Act clause requiring city to cede ownership and control of its public water system to another political subdivision violated constitutional provision prohibiting local laws relating to non-navigable streams. Mere implication in legislation of a public water system which happened to derive water from a non-navigable stream did not necessitate a conclusion that the Act related to non-navigable streams in violation of the Constitution, and there was nothing in the Act which suggested that its purpose was to address some concern regarding a non-navigable stream.

Water/Sewer Act clause requiring city to cede ownership and control of its public water system to another political subdivision did not violate state constitution's Law of the Land Clause, which provided that no person shall be denied equal protection of the laws. If General Assembly irrationally singled out one municipality, it merely meant that the legislation was a local law and did not render

the legislation unconstitutional per se, and clause was included to provide better governance of the city's water system and allowed it to be governed by representatives from all areas served by the system.

Water/Sewer Act clause requiring city to cede ownership and control of its public water system to another political subdivision did not exceed the State's authority to take property or take property without paying just compensation. Transferring property and authority by act of the legislature from a city to another political subdivision where the property was still devoted to its original purpose did not invade the vested rights of the city.

EMPLOYMENT - OHIO

Mender v. Chauncey

Court of Appeals of Ohio, Fourth District, Athens County - September 25, 2015 - N.E.3d - 2015 WL 5782425 - 2015 -Ohio- 4105

Mayor brought action against village for gender discrimination, defamation, intentional infliction of emotional distress, and conspiracy. During a jury trial, the Court of Common Pleas granted village's motion for a directed verdict. Mayor appealed.

The Court of Appeals held that:

- The Court of Common Pleas did not impermissibly weigh evidence in granting motion;
- Evidence was insufficient to support prima facie case of gender discrimination;
- Evidence did not support actual malice element of defamation claim;
- Alleged conduct was not extreme and outrageous as required to support intentional infliction of emotional distress claim; and
- Mayor failed to bring viable primary claims as required to support derivative claims.

SIGNAGE - SOUTH DAKOTA

Lamar Advertising of South Dakota, Inc. v. City of Rapid City

United States District Court, D. South Dakota, Western Division - September 29, 2015 - F.Supp.3d - 2015 WL 5714869

Outdoor advertising company, together with company having ownership interest in several parcels of real property leased by first company for its outdoor advertising signs, brought action against city, asserting that two citizen-initiated billboard ordinances contradicted state law, resulting in a taking of private property without just compensation, and violated rights of freedom of speech and equal protection secured by the United States and South Dakota Constitutions.

The District Court held that:

- Plaintiffs failed to demonstrate "good cause" to amend their complaint to include theory of recovery based on defendants' pre-initiative denial of advertising company's six billboard applications, and
- Plaintiffs' regulatory takings claims were not ripe.

Plaintiffs, an outdoor advertising company and a landowner that brought action challenging city's

citizen-initiated billboard ordinances, failed to demonstrate "good cause" to amend their complaint, pursuant to motion made immediately prior to start of trial in response to court's pretrial ruling granting city's second motion in limine, to include theory of recovery based on defendants' pre-initiative denial of advertising company's six billboard applications. Plaintiffs were aware of their theory of damages for more than two years yet did not seek to amend their complaint, and nowhere in plaintiffs' oral or written arguments did they identify a reason, let alone demonstrate good cause, for their failure to include such theory in their complaint.

Regulatory takings claims asserted by plaintiffs, an outdoor advertising company and a landowner that brought action challenging city's citizen-initiated billboard ordinances, were not ripe. There was no evidence that compensation to plaintiffs was unavailable or otherwise foreclosed, plaintiff did not even apply for the permits necessary to convert the 11 signs at issue to digital, let alone seek any type of administrative remedy, and plaintiffs did not pursue an available state-court inverse-condemnation action, but, instead, chose to file their claims in federal court.

CLAIMS - CALIFORNIA

J.M. v. Huntington Beach Union High School District

Court of Appeal, Fourth District, Division 3, California - September 30, 2015 - Cal.Rptr.3d - 2015 WL 5722839

Student petitioned for relief from the Government Claims Act presentation requirement for his claim against school district. The Superior Court denied petition. Student appealed.

The Court of Appeal held that:

- Student's application to present late claim was deemed denied when district failed to act on it within 45 days, and
- District's failure to give written notice of denial of application to present late claim did not estop district from invoking six-month limitation period.

PUBLIC UTILITIES - TENNESSEE

Town of Smyrna, Tenn. v. Municipal Gas Authority of Georgia

United States District Court, M.D. Tennessee, Nashville Division - September 10, 2015 - F.Supp.3d - 2015 WL 5306058

Town brought action against gas authority under the Tennessee Consumer Protection Act (TCPA) and the Tennessee False Claims Act (TFCA) and asserted claims for breach of fiduciary duty and breach of contract, arising out of gas authority's placing multi-year hedges on its behalf. Gas authority moved for dismissal and summary judgment.

The District Court held that:

- Doctrine of quod nullum tempus occurit regi, under which the sovereign is exempt from the consequences of its laches, did not apply to town's untimely claim under TCPA;
- Town knew or should have known of gas authority's actions regarding execution of hedges over a year before town brought action, and thus action was not timely;
- Town failed to meet its burden of proof under doctrine of equitable estoppel to toll statute of

limitations on TCPA claim;
- Gas authority qualified as a person subject to TFCA;
- Fact issues precluded summary judgment on issue of whether gas authority violated TFCA;
- Fact issues precluded summary judgment on issue of whether gas authority was a fiduciary to town; (and
- Fact issues precluded summary judgment on towns breach of contract claim.

EMINENT DOMAIN - IOWA

Rasmuson v. U.S.

United States Court of Appeals, Federal Circuit - October 5, 2015 - F.3d - 2015 WL 5781506

Putative class of owners of real estate underlying or abutting allegedly abandoned railroad right-o--way brought action against United States, alleging that government effected Fifth Amendment taking of land by conversion of right-of-way to public use trail pursuant to National Trails System Act. The United States Court of Federal Claims determined in awarding damages that appraiser was not required to take physical remnants of railroad easement into account when determining value of land before taking occurred. Government appealed.

The Court of Appeals held that appraiser had to consider value of landowner's property before easement, which included physical remnants of railroad.

In Rails–to–Trails case, fair market value of land included physical remnants of railway that would have remained on landowners' property but for issuance of Notices of Interim Trail Use (NITUs) for corridors, since railway easements would have lapsed and land would have returned to landowners with physical remnants of railway but for government's easement, and proper appraisal methodology had to account for those physical conditions.

CONTRACTS - GEORGIA

Layer v. Barrow County

Supreme Court of Georgia - October 5, 2015 - S.E.2d - 2015 WL 5778796

Contractor who built sewer pumping station for county brought action against county, city, and county and city officials, alleging breach of contract, unjust enrichment, breach of the implied covenant of good faith and fair dealing, promissory estoppel, and an unconstitutional taking of his property without just compensation. The trial court dismissed action. Contractor appealed.

The Supreme Court of Georgia held that:

- Sovereign immunity barred contractor's contractual and quasi-contractual claims against county;
- Alleged oral contract between contractor and county was unenforceable;
- County officers, city, and city officers did not breach any alleged agreement; and
- City's use of pumping capacity was not unconstitutional taking.

ELECTED OFFICIALS - KANSAS

State v. Morrison

Supreme Court of Kansas - October 2, 2015 - P.3d - 2015 WL 5752472

State brought quo warranto action to oust city council member. The District Court entered order of ouster. Council member appealed. The Court of Appeals reversed and remanded. State petitioned for review, which was granted.

The Supreme Court of Kansas held that trial court was required to determine whether member's actions in providing homeless acquaintance access to city hall building for overnight shelter were, in addition to being unjustifiably illegal, the product of a bad or corrupt purpose.

ZONING - LOUISIANA

GBT Realty Corp. v. City of Shreveport

Court of Appeal of Louisiana, Second Circuit - September 30, 2015 - So.3d - 2015 WL 5717200 - 50, 104 (La.App. 2 Cir. 9/30/15)

Property developers brought action against city for wrongful denial of its site plan to build a thrift store, the construction and operation of which was a "use by right" within the property's zoning classification, after city's decision was overturned. The District Court entered judgment in favor of city. Developers appealed.

The Court of Appeal held that:

- City retained discretion to deny plan but denial was subject to strict scrutiny, and
- Denial of plan was a discretionary act that was genuinely based in city's attempt to ensure that use of property comported with the public interest, and thus city was immune from suit.

A municipality retains the discretion to deny a site or subdivision plan submitted in accordance with "use by right" zoning, but that denial is subject to strict scrutiny and the zoning ordinances and actions will be construed in favor of the use proposed by the owner.

City's action in denying developers' site plan to build a thrift store, construction and operation of which was a "use by right" within property's zoning classification, was a discretionary act that was genuinely based in its attempt to ensure that use of property comported with the public interest, and thus immunity applied to shield city from liability for claim of wrongful denial of plan, even though city's action was ultimately overturned. City's decision was based in part upon plan's provision for access into and out of store and the detrimental effect on traffic that the proposed access allowed, and store tenant did not approve plan after it was ultimately approved by trial court and instead asked developers to change plan's proposed access to property.

ZONING - NEW YORK

Roman Catholic Diocese of Rockville Centre, N.Y. v. Incorporated Village of Old Westbury

United States District Court, E.D. New York - September 3, 2015 - F.Supp.3d - 2015 WL 5178126

Non-profit religious corporation brought action against village, its board of trustees, and various

individual village trustees and officials, challenging village's imposition of restrictions, pursuant to zoning law, on proposed cemetery. Defendants moved for summary judgment, and religious corporation moved for partial summary judgment.

The District Court held that:

- Zoning law was neutral with respect to religion;
- Zoning law was generally applicable;
- Zoning law was constitutional under rational basis analysis;
- Genuine issues of material fact existed as to whether zoning law created substantial burden on exercise of religious corporation's religious beliefs;
- There was no evidence that village treated any comparable secular assembly or institution more favorably;
- Genuine issue of material fact existed as to whether village would have denied religious corporation's permit to build cemetery regardless of religious corporation's prior state-court suit;
- Village's application of zoning law was not motivated by anti-religious intent; and
- Genuine issue of material fact existed as to whether official entered religious corporation's property, and whether he had warrant or sufficient cause to do so.

OPEN RECORDS - PENNSYLVANIA

Ali v. Philadelphia City Planning Com'n

Commonwealth Court of Pennsylvania - October 1, 2015 - A.3d - 2015 WL 5727701

Requestor appealed determination of the Office of Open Records (OOR) that copyrighted materials submitted to city planning commission as part of redevelopment project were exempt from disclosure. The Court of Common Pleas affirmed. Requestor appealed.

The Commonwealth Court held that:

- Materials were not exempt from disclosure under Copyright Act, but
- Copyright Act provided a basis for commission to limit access to copyrighted materials.

Copyrighted materials that were submitted as part of redevelopment project were not exempt from disclosure under Copyright Act and were thus not exempt from disclosure under Right to Know Law (RTKL) on that ground. Copyright Act did not expressly make copyrighted material private or confidential, nor did it expressly preclude a government agency, lawfully in possession of the copyright material, from disclosing that material to the public.

Copyrighted materials that were submitted as part of redevelopment project were not "nonpublic" materials under Copyright Act and were thus not exempt from disclosure under Right to Know Law (RTKL) on that ground. Copyright Act did not expressly make copyrighted material private or confidential, nor did it expressly preclude a government agency, lawfully in possession of the copyright material, from disclosing that material to the public.

Under Right to Know Law (RTKL), Copyright Act provided a basis for city planning commission to limit access to copyrighted materials that were submitted as part of redevelopment project. Materials could be redacted in response to RTKL request but were to be made available for inspection under RTKL.

IMMUNITY - ALABAMA

Ex parte Hampton

Supreme Court of Alabama - September 30, 2015 - So.3d - 2015 WL 5725102

In underlying litigation, school employee brought action against county board of education members and superintendent for declaratory and injunctive relief, asserting employee had been improperly terminated. After the Circuit Court denied defendants' motion for summary judgment, defendants brought instant petition for writ of mandamus to compel trial court to vacate denial of summary judgment motion.

The Supreme Court of Alabama held that board members and superintendent did not have legal, nondiscretionary duty to recall employee to a position following her termination, and thus members and superintendent had sovereign immunity from employee's action.

School board members and superintendent did not have legal, nondiscretionary duty to recall school employee to a position following her termination, and thus members and superintendent had sovereign immunity from employee's action for declaratory and injunctive relief, seeking monetary relief for allegedly improper termination, despite argument that board's reduction in force (RIF) policy compelled employee's recall. A RIF was never implemented by board, employee did not receive correspondence from board or superintendent that her employment was being terminated as result of RIF, and adoption of RIF policy did not mandate its implementation whenever there was a termination based on lack of funding, particularly when the decrease in jobs was employee's part-time position.

BOND VALIDATION - FLORIDA

Reynolds v. Leon County Energy Improvement Dist.

Supreme Court of Florida - October 1, 2015 - So.3d - 2015 WL 5727823

The Circuit Court validated proposed bond issue. Objector appealed.

The Supreme Court of Florida held that objector who failed to appear at trial level lacked standing to appeal validation of proposed bond issue, as full party status was granted only to those who appeared and pleaded in the circuit court proceeding and thus only such parties were permitted to avail themselves of the statutory right of appeal; receding from *Meyers v. City of St. Cloud*, 78 So.2d 402, *Rowe v. St. Johns County*, 668 So.2d 196, *Lozier v. Collier County*, 682 So.2d 551, and *Bruns v. County Water–Sewer Dist.*, 354 So.2d 862.

In addition, faced in this case with a virtually identical financing agreement to that in *Thomas v. Clean Energy Coastal Corridor*, the court remanded with instructions for the circuit court to require Leon County Energy Improvement District to amend the financing agreement to remove all references to judicial foreclosure and to file the amended agreement in the circuit court following its approval by the district's governing board.

BOND VALIDATION - FLORIDA

Thomas v. Clean Energy Coastal Corridor

Supreme Court of Florida - October 1, 2015 - So.3d - 2015 WL 5727810

Energy authority filed complaint to validate proposed bond issue and non-ad valorem assessments securing them. The Circuit Court validated the bonds. County residents appealed.

The Supreme Court of Florida validated the bonds, but also held that references to judicial foreclosure as a remedy for collecting unpaid non-ad valorem assessments in financing agreement securing proposed bond for qualifying improvements to real property under Property Assessed Clean Energy (PACE) Act, required remand to circuit court to require amendment of the financing agreement to remove those references, as judicial foreclosure was not a remedy for such collection authorized by Florida law.

IMMUNITY - IDAHO

Hayes v. City of Plummer

Supreme Court of Idaho, Coeur d'Alene - August 2015, September 30, 2015 - P.3d - 2015 WL 5721600

Spectator injured at sporting event held at park maintained and operated jointly by city and school district brought premises liability action against city. City filed motion for summary judgment, claiming immunity under Recreational Use Statute. The District Court granted summary judgment in favor of city. Spectator appealed.

The Supreme Court of Idaho held that school district's payment of utilities, property insurance, and other maintenance expenses, pursuant to joint service agreement with city governing district and city's joint operation and use of a park, which was freely accessible to the public, was neither a "charge" nor "compensation" under immunity exception of Recreational Use Statute, and thus city was entitled to immunity in premises liability action brought by spectator who was injured at a sporting event at the park. The statute expressly provided immunity when a city leased land for recreational purposes and made it available for the public's free use, and city's joint service agreement with district was analogous to a land-lease agreement.

ZONING - IDAHO

Neighbors for Preservation of Big and Little Creek Community v. Board of County Com'rs of Payette County

Supreme Court of Idaho - September 25, 2015 - P.3d - 2015 WL 5655521

Neighboring landowner sought judicial review of decision of the county board of commissioners approving conditional rezone of parcel of land from agricultural to industrial in connection with project to build nuclear power plant. The District Court, Third Judicial District affirmed. Neighboring landowner appealed.

The Supreme Court of Idaho held that:

- Supreme Court had authority to review amended comprehensive plan;
- Amended comprehensive plan complied with general plans requirement of Local Land Use Planning Act (LLUPA);

- Conditional rezone did not constitute illegal spot zoning; and
- Landowner's procedural due process rights were not violated.

EMINENT DOMAIN - ILLINOIS

Enbridge Pipelines (Illinois), L.L.C. v. Troyer

Appellate Court of Illinois, Fourth District - September 22, 2015 - N.E.3d - 2015 IL App (4th) 150334 - 2015 WL 5560369

Gas utility that had obtained eminent-domain authority from the Illinois Commerce Commission (ICC) over certain real property upon which it was constructing a liquid petroleum pipeline brought action seeking preliminary injunction granting it right to access permanent and temporary easements it had obtained in condemnation proceedings. The Circuit Court granted injunction. Landowners filed interlocutory appeal.

The Appellate Court held that:

- Trial court had equitable authority to issue preliminary injunction, and
- Utility was entitled to grant of preliminary injunction.

Trial court had equitable authority to issue preliminary injunction prohibiting property owners from obstructing gas utility's access to easements after utility had been granted right to exercise eminent domain, but before jury had determined amount of just compensation due. When proceedings terminated, property owners would continue to hold title and possession of their tracts, and injunction simply prevented property owners from impeding utility's access to the tracts for the purpose of installing, operating, and maintaining a petroleum pipeline, rights which had been approved by the Illinois Commerce Commission (ICC) and judicially upheld.

Prior to jury determination of just compensation due, gas utility that had been granted right to exercise eminent domain in order to install petroleum pipeline was entitled to preliminary injunction prohibiting property owners from obstructing access to property, where utility had already succeeded on merits of condemnation proceeding, and utility had posted bond to cover full amount claimed by property owners as value of easements at issue.

UTILITIES - MONTANA

Gateway Village, LLC v. Montana Dept. of Environmental Quality

Supreme Court of Montana - September 29, 2015 - P.3d - 2015 WL 5714594 - 2015 MT 285

Real property owner petitioned for judicial review of decision of Department of Environmental Quality (DEQ) to grant wastewater discharge permit to county water and sewer district, and also alleged that discharge of wastewater into groundwater extending under owner's surface property constituted trespass. The District Court determined further environmental analysis was necessary, did not grant summary judgment to district on trespass claim, declined to entertain district's claim that it held a prescriptive easement, and denied owner's claim for attorneys' fees. District and DEQ appealed, and owner cross appealed.

The Supreme Court of Montana held that:

- The District Court should have declined to address trespass issue, and
- The District Court did not abuse its discretion in denying request for attorneys' fees.

Issue of whether discharge of wastewater into groundwater extending under owner's surface property constituted a trespass was not a justiciable controversy divisible from district court's remand of case for preparation of environmental impact statement regarding county water and sewer district's entitlement to discharge permit, and therefore district court should have declined to address issue. Preparation of statement would have resulted in substantial changes and additions to administrative record, and it was speculative whether district was entitled to discharge permit and whether trespass claim would have been reasserted.

District court did not abuse its discretion in denying real property owner's request for attorneys' fees under private attorney general doctrine in its petition for judicial review of decision of Department of Environmental Quality (DEQ) to grant wastewater discharge permit to county water and sewer district. Eown-gradient land owners were a relatively narrow class of persons, private attorney general doctrine has been invoked only sparingly, and DEQ neither mounted a frivolous defense nor acted in bad faith.

HOUSING - NEW YORK

County of Westchester v. U.S. Dept. of Housing and Urban Development

United States Court of Appeals, Second Circuit - September 25, 2015 - F.3d - 2015 WL 5616304

County brought action against United States Department of Housing and Urban Development (HUD) challenging its decision to withhold funds under grant programs as a violation of the Administrative Procedure Act (APA). The United States District Court granted summary judgment to HUD. County appealed.

The Court of Appeals held that:

- HUD's decision to reject county's analysis of impediments, submitted to HUD as required part of its certification that it would affirmatively further fair housing with HUD grant funds it was applying for, was not arbitrary or capricious, and
- HUD's decision to reject county's analysis of impediments did not ever condition the release of grant funds on certain municipalities changing their zoning laws, and thus did not violate statutes that prohibiting HUD from denying funds based on the adoption, continuation, or discontinuation of any policy or law.

Department of Housing and Urban Development's (HUD) decision to reject county's analysis of impediments, submitted to HUD as a required part of its certification that it would affirmatively further fair housing with HUD grant funds it was applying for, was not arbitrary or capricious under Administrative Procedure Act (APA), and thus HUD's decision to withhold county's funds based on rejection of the analysis of impediments was also permissible under APA, where exclusionary zoning could violate the Fair Housing Act (FHA), HUD was required to further the policies of the FHA, HUD's conclusion that the county's analysis of impediments was flawed and incomplete was based on detailed reports of consent decree monitor that determined that several municipalities' ordinances were exclusionary, and HUD provided a written explanation grounded in the evidentiary record, giving county multiple opportunities to make changes and submit a revised analysis of impediments.

Department of Housing and Urban Development's (HUD) decision to reject county's analysis of impediments, submitted to HUD as a required part of its certification that it would affirmatively further fair housing with HUD grant funds it was applying for, did not ever condition the release of grant funds on certain municipalities in county changing their zoning laws, and thus HUD's rejection of county's analysis and withholding of grant funds on that basis did not violate statutes that prohibited HUD from denying funds based on the adoption, continuation, or discontinuation of any policy or law. HUD's rejection of county's analysis was based on the county's failure to assess and analyze whether certain zoning laws in the jurisdiction impeded fair housing, its refusal to acknowledge the connection between zoning restrictions and the availability of affordable housing, and its failure to identify a plan to overcome the effects of such impediments.

MUNICIPAL ORDINANCE - PENNSYLVANIA

Kuziak v. Borough of Danville

Commonwealth Court of Pennsylvania - September 29, 2015 - A.3d - 2015 WL 5687678

Landlord sought judicial review of decision of borough residential rental registration and property maintenance hearing board, which directed him to pay rental registration fees. The Court of Common Pleas denied appeal. Landlord appealed.

The Commonwealth Court held that:

- Trial court did not abuse its discretion by failing to conduct a de novo hearing;
- Trial court did not abuse its discretion in dismissing landlord's argument that ordinance requiring payment of fees was not properly advertised; and
- Ordinance specifying due date of fees for the next calendar year was not retroactive, and thus borough could proceed under new or prior ordinances to collect outstanding fees.

Trial court did not abuse its discretion by failing to conduct a de novo hearing on landlord's appeal from decision of borough residential rental registration and property maintenance hearing board directing him to pay rental registration fees. Landlord testified at hearing before board and was provided with a full opportunity to address any arguments he wished to raise and to present evidence, landlord opted to limit his testimony regarding allegations of illegality and unconstitutionality of ordinances requiring payment of fees and did not present any evidence during hearing, and trial court conducted its own hearing and directed parties to address issues by way of briefs.

Trial court did not abuse its discretion in dismissing landlord's argument, on appeal of decision of borough rental registration and property maintenance hearing board, that ordinance requiring payment of residential rental registration fees was not properly advertised as required by the Sunshine Act and thus was void ab initio. Landlord failed to present any evidence in support of argument, record did not contain any allegation that hearing at which ordinance was enacted was closed to the public, and landlord was aware of ordinance but first challenged its validity well in excess of the 30-day limitations period in the Act or the Judicial Code.

Ordinance specifying due date of residential rental registration and rental occupancy license fees for the next calendar year was not retroactive, and thus borough could proceed under new or prior ordinances to collect outstanding fees against landlord. New ordinance merely provided that any owner of a residential rental unit must register unit and pay appropriate fee beginning with the calendar year, new ordinance did not impose retroactive fees on new units or give different effect to

landlord's obligations with respect to his units, and prior ordinance imposed identical registration requirements and fee schedules, which remained enforceable through and to its date of repeal.

UTILITIES - WASHINGTON

Singh v. Covington Water Dist.

Court of Appeals of Washington, Division 1 - September 28, 2015 - P.3d - 2015 WL 5681614

Real estate developer brought action against water district, seeking to recover amounts paid in incremental connection charges after developer abandoned project. The Superior Court granted summary judgment to district. Developer appealed.

The Court of Appeals held that:

- District's authority to charge connection fees and require performance security includes the authority to make fees nonrefundable;
- District's inclusion of nonnegotiable terms in system extension agreement (SEA), including nonrefundable incremental connection charges, did not constitute exercise of unlawful monopoly power; and
- Nonrefundable connection charges constituted fee rather than tax.

ZONING - ILLINOIS

Gurba v. Community High School Dist. No. 155

Supreme Court of Illinois - September 24, 2015 - N.E.3d - 2015 IL 118332 - 2015 WL 5608249

Residential owners of property adjacent to high school filed suit against school Board of Education and high school district seeking to privately enforce city's zoning restrictions with respect to construction of new bleachers for high school football stadium.

Board filed third-party complaint against city and school superintendent, seeking declaratory judgment that city lacked authority to enforce its zoning and storm water ordinances against Board.

The Circuit Court entered summary judgment for city, based on determination that school property was subject to ordinances. Board appealed. The Appellate Court affirmed. Board and superintendent's petitions for leave to appeal were allowed.

The Supreme Court of Illinois held that:

- City had home rule authority to enforce zoning and storm water management ordinances on school property;
- City's exercise of home rule authority to enforce zoning and storm water management ordinances did not interfere with constitutional authority of General Assembly to regulate public education system;
- City's home rule authority to enforce ordinances on school property was not limited to school property that was not used for school purposes; and
- Nothing in Health/Life Safety Code for Public Schools had any bearing on city's home rule authority to enforce ordinances on school property.

INVERSE CONDEMNATION - ALABAMA

Cooper v. Ziegler

Supreme Court of Alabama - September 18, 2015 - So.3d - 2015 WL 5511322

Property owners brought action against director of Alabama Department of Transportation (ALDOT) in his official capacity, asserting inverse-condemnation claim and seeking declaratory and injunctive relief to enjoin director from prohibiting property owners from obtaining legal permits to build houses on their property. The Circuit Court granted property owners injunctive relief. Director appealed.

The Supreme Court of Alabama held that director was entitled to sovereign immunity.

Denial by Director of the Alabama Department of Transportation (ALDOT), in his official capacity, of property owners' requests to build houses on their property was strictly in accordance with ALDOT's purchased rights in easement and were not done fraudulently, in bad faith, beyond his authority, or under mistaken interpretation of law, and therefore director was entitled to sovereign immunity in injunctive relief action by property owners seeking to enjoin director from prohibiting them from obtaining permits to construct houses on property subject to easement. Director contended that he denied requests to build homes because construction would have required digging, cutting trees, and removing soil, which could have compromised interstate bridge structure and integrity of peninsula on which property was located in flooding conditions by speeding up erosion and causing possible bridge failure.

REFERENDA - ARIZONA

Respect Promise in Opposition to R-14-02-Neighbors for a Better Glendale v. Hanna

Court of Appeals of Arizona, Division 1 - September 18, 2015 - P.3d - 2015 WL 5474447 - 721 Ariz. Adv. Rep. 33

Citizen filed application for writ of mandamus seeking to compel city and city clerk to accept and file referendum petitions challenging the city council's approval of a resolution and settlement agreement, under which city agreed to drop its opposition to Indian tribe's proposed casino project on land contiguous to city's border. The Superior Court denied the application. Citizen appealed.

The Court of Appeals held that:

- Provisions of resolution unrelated to settlement agreement were not legislative acts subject to referendum;
- Settlement agreement was not referable; and
- City clerk had authority to reject referendum petitions.

Provisions of city council resolution that affirmed or acknowledged prior resolutions of the council, expressed support for Indian tribe's proposed gaming project on land contiguous to city's border, and urged the State and its representatives to withdraw their opposition to the project, reflected the council's changed position and did not amount to "legislation," and thus provisions were not subject to referendum. Resolution merely reflected city council's changed position as to the proposed gaming project.

City council's approval of settlement agreement between city, Indian tribe, and gaming enterprise was not "legislation" subject to referendum, although the agreement was a substantive measure that obligated the city to construct infrastructure for the benefit of the gaming project. Council determined that it was in the city's best interests to stop its challenges to the tribe's proposed gaming facility and to end the disputes between them, city's agreement to initially fund off-site infrastructure was a non-referable administrative act, and allowing city's voters to control litigation would result in chaotic and absurd result if settlement agreement was later rejected by voters.

City clerk had authority to reject referendum petitions challenging city council's approval of a resolution and related settlement agreement in support of construction of a casino on land contiguous to city's borders, taken in trust by the Secretary of the Department of the Interior on behalf of Indian tribe, although statute governing challenges to a legislative measure via referendum couched clerk's duties in response to a petition in terms of what the clerk "shall" do in response. Petitions professed to challenge a non-legislative act of the city council, and statutory scheme and relevant constitutional provisions revealed that clerk had authority to reject petitions challenging non-legislative and non-referable acts.

MUNICIPAL SERVICES - CONNECTICUT

Turn of River Fire Dept., Inc. v. City of Stamford

Appellate Court of Connecticut - September 15, 2015 - A.3d - 159 Conn.App. 708 - 2015 WL 5245274

Volunteer fire department and its chief brought action for declaratory and injunctive relief against city, city fire chief, city fire marshal, and city's director of public safety, health, and welfare, alleging that new organizational structure of the fire department violated their corporate, statutory, and constitutional rights. Following trial, the Superior Court rejected all claims. Volunteer fire department and its chief appealed.

The Appellate Court held that:

- Charter amendments did not compel volunteer fire department to continue to provide firefighting services or usurp volunteer department's rights as a private corporation;
- Statute governing the authority of towns to establish a fire department did not apply to municipal fire department created by charter as opposed to an ordinance;
- Charter amendments did not "supersede" volunteer department in violation of statute;
- Charter amendments did not cause a per se regulatory taking in violation of the Fifth Amendment; and
- Volunteer chief did not have a constitutionally-protected property right to direct the volunteer department's fire protection services free from oversight.

PENSIONS - ILLINOIS

Village of Vernon Hills v. Heelan

Supreme Court of Illinois - September 24, 2015 - N.E.3d - 2015 IL 118170 - 2015 WL 5608128

Municipality brought action against police officer seeking declaratory judgment that municipality was not obligated, under the Public Safety Employee Benefits Act (Act), to pay health insurance

premiums for officer and his family after officer was awarded a line-of-duty disability pension by the board of trustees for the municipality's police pension fund.

The Circuit Court, Lake County, Margaret entered judgment in favor of officer but denied his motion for sanctions. Municipality appealed and officer cross-appealed. The Appellate Court affirmed. Municipality petitioned for leave to appeal.

The Supreme Court of Illinois held that:

- Where it is uncontroverted that a line-of-duty disability pension has been awarded to a police officer pursuant to the Pension Code, section of Act providing for health insurance benefits upon a "catastrophic injury" is satisfied as a matter of law, and
- Construction of Act as such did not deny due process to municipality.

Where it is uncontroverted that a line-of-duty disability pension has been awarded to a police officer pursuant to the Pension Code, section of the Public Safety Employee Benefits Act (Act) providing for health insurance benefits upon a "catastrophic injury" is satisfied as a matter of law, and there is no need to engage in discovery or present evidence regarding the officer's injury in order to recover benefits under the Act.

Construction of Public Safety Employee Benefits Act (Act) to provide that where it is uncontroverted that a line-of-duty disability pension has been awarded to a police officer pursuant to the Pension Code, section of Act providing for health insurance benefits upon a "catastrophic injury" is satisfied as a matter of law, did not deny due process to municipality, despite argument that construction of statute denied municipality opportunity to litigate nature of officer's injuries, in municipality's action seeking declaration that it was not obligated to pay health insurance premiums for officer and his family after officer was awarded line-of-duty disability pension. Enactment of Act itself afforded municipality all of the process that it was due.

IMMUNITY - ILLINOIS

O'Toole v. Chicago Zoological Society

Supreme Court of Illinois - September 24, 2015 - N.E.3d - 2015 IL 118254 - 2015 WL 5608152

Visitor who tripped and fell on pathway at zoo located on county forest preserve district land brought negligence action against zoological society, alleging it breached duty to inspect and maintain pathway. The Circuit Court dismissed the action on limitations grounds. Visitor appealed. The Appellate Court reversed and remanded. Zoological society petitioned for leave to appeal, which was granted.

The Supreme Court of Illinois held that zoological society did not conduct "public business," and was thus not a "local public entity" to which one-year limitations period would apply under Local Governmental and Governmental Employees Tort Immunity Act.

No factor is more important, in determining whether a not-for-profit is a "local public entity" under Local Governmental and Governmental Employees Tort Immunity Act, than control, since without evidence of local governmental control, it cannot be said that a not-for-profit corporation conducts "public business." Indicative of such control would be evidence that the entity remains subject to state statutes, such as the Open Meetings Act and the Freedom of Information Act, with which governmental units must comply, or even local ordinances that dictate the means and methods to be

used by the not-for-profit corporation in conducting its business.

Zoological society, a not-for-profit corporation located in county forest preserve district, did not conduct “public business,” and was thus not a “local public entity” to which one-year limitations period would apply to negligence action arising when visitor tripped and fell at zoo, under Local Governmental and Governmental Employees Tort Immunity Act. Contract between zoo and district gave zoological society entire control and management of zoo, including control over daily operations, maintenance of zoo building and collections, 90% of zoological society’s board of trustees and governing members were neither employees nor elected officials of district, and zoo employees were not entitled to state pension or state workers’ compensation.

EMPLOYMENT - MASSACHUSETTS

Sherman v. Town of Randolph

Supreme Judicial Court of Massachusetts, Suffolk - September 24, 2015 - N.E.3d - 2015 WL 5599144

Police officer sought review of Decision of the Civil Service Commission dismissing his appeal from town’s decision to bypass him for promotion to sergeant. The Superior Court Department entered judgment for Commission. Officer appealed, and petition for direct appellate review was allowed.

The Supreme Judicial Court of Massachusetts held that town’s decision to bypass officer was reasonably justified despite flaws in process.

Town’s decision to bypass police officer for promotion to sergeant was reasonably justified, even though town’s interview process was flawed. Officer received an overall low score, post-interview letters from member of panel articulated reasons why candidates’ interview performances warranted bypass, and officer’s supervisors had raised concerns that officer had difficulty in following through on case investigation and needed supervision.

A promotional decision may be reasonably justified on the merits, even where the appointing authority uses flawed procedures for selecting candidates, in the following limited circumstance: where the appointing authority had a reasonable justification on the merits for deciding to bypass a candidate, and the flaws in the selection process are not so severe that it is impossible to evaluate the merits from the record.

ZONING - NEW HAMPSHIRE

Merriam Farm, Inc v. Town of Surry

Supreme Court of New Hampshire - September 22, 2015 - A.3d - 2015 WL 5559892

Property owner that was previously denied a building permit for failure to satisfy the frontage requirement appealed from the denial by town’s zoning board of adjustment (ZBA) of its application for a variance from the frontage requirement. The Superior Court dismissed the appeal on the basis of res judicata. Owner appealed.

The Supreme Court of New Hampshire held that owner’s application for a variance was not the same cause of action as its application for a building permit.

Property owner's application to town's zoning board of adjustment (ZBA) for a variance from the frontage requirement was not the same cause of action as its earlier application for a building permit, which was denied for failure to satisfy the frontage requirement, and thus res judicata did not bar the variance application. Owner could not have added the variance claim to its appeal from the denial of the building permit application, since the building permit could have been granted without a variance if certain other conditions were met, and it was for the ZBA rather than the trial court to decide in the first instance whether to issue a variance.

EMINENT DOMAIN - NEW YORK

Smithline v. Town of Harrison

Supreme Court, Appellate Division, Second Department, New York - September 23, 2015 - N.Y.S.3d - 2015 WL 5568446 - 2015 N.Y. Slip Op. 06921

Homeowners brought action challenging town's exercise of its power of eminent domain.

The Supreme Court, Appellate Division held that homeowners were afforded full opportunity to raise their objections to town's proposed condemnation, and thus town's error was harmless in omitting information regarding homeowners' right to seek judicial review in both its notice of hearing and its notice of determination, which authorized eminent domain and resolved to condemn permanent easement across homeowners' property to install underground drainage and temporary easement for access and stockpiling of materials, where homeowners appeared and participated at public hearing and timely sought judicial review of town's determination.

IMMUNITY - NEW YORK

Lewis v. City of New York

Supreme Court, Appellate Division, Second Department, New York - September 23, 2015 - N.Y.S.3d - 2015 WL 5568629 - 2015 N.Y. Slip Op. 06896

Police officer brought action against city, alleging that injuries he sustained when he was shot in the torso while apprehending a suspect were caused by city's negligence in failing to provide him with bulletproof vest that covered a larger area of his torso, allegedly provided to most other officers and new recruits. City moved for summary judgment. The Supreme Court, Queens County, granted motion. Police officer appealed.

The Supreme Court, Appellate Division, held that city was entitled to qualified immunity.

City's decision-making process regarding particular type of bullet proof vests it issued to police officers was discretionary governmental function, and city's decision to issue certain vest to officer was not irrational or arbitrary, and thus city was entitled to qualified immunity in police officer's negligence action, alleging that city was negligent in issuing vest to officer that was not large enough to protect officer from injuries to his torso he sustained during shooting while apprehending suspect.

PUBLIC TRUSTS - NEW YORK

Gessin v. Throne-Holst

Supreme Court, Appellate Division, Second Department, New York - September 23, 2015 - N.Y.S.3d - 2015 WL 5569019 - 2015 N.Y. Slip Op. 06885

Town taxpayers residing in incorporated village brought action against town trustees, town board, and town comptroller, alleging waste and unlawful expenditure of public funds by town trustees, and seeking declaratory and injunctive relief. The Supreme Court, Suffolk County, denied trustees' motion to dismiss and granted plaintiffs' motion for preliminary injunction. Trustees appealed.

The Supreme Court, Appellate Division, held that:

- Statute granting town trustees control over their affairs and finances governed duties and powers of the trust, and
- Reference to trusts in town law governing town funds did not require revenue of trust to be turned over to town board.

Statute granting town trustees control over their affairs and finances, which was not codified, governed duties and powers of the town trust, precluding town taxpayer's claim that revenues of trust must be turned over to town board. Statute had never been repealed or amended, statute was enacted after creation of town officers further indicating that trustees' authority was independent of town control, and town laws defining town officers and town's administrative unit did not refer to trustees.

Reference to trusts in town law governing town funds did not require revenue of town trust to be turned over to town board, or amend definition of town officers to include town trustees, by instead merely required town boards to designate where trustees' funds were to be deposited and provided that by depositing their funds in such a manner, the trustees would be relieved of liability in the event that the depositing institution failed.

LIABILITY - NEW YORK

Gonzalez v. City of New York

Supreme Court, Appellate Division, First Department, New York - September 22, 2015 - N.Y.S.3d - 2015 WL 5552724 - 2015 N.Y. Slip Op. 06869

After city police officer fatally shot his girlfriend while off duty and then killed himself, girlfriend's estate brought wrongful death action against city, alleging that city was negligent in supervising and retaining officer. The Supreme Court, Bronx County, granted summary judgment to city. Estate appealed.

The Supreme Court, Appellate Division, held that:

- Estate sufficiently alleged a connection or nexus between girlfriend's injuries and officer's malfeasance;
- Person on whom injury was inflicted was foreseeable; but
- Fact issues existed as to breach of duty and proximate cause.

Estate of girlfriend of city police officer sufficiently alleged a connection or nexus between girlfriend's injuries and officer's malfeasance, in action against city for negligent retention and supervision, brought after officer fatally shot girlfriend while off duty and then killed himself. City was alleged to have played a part in both creating the danger, by training and arming the officer,

and in rendering the public more vulnerable to the danger, by allowing the officer to retain his weapon and ammunition after it allegedly learned of his dangerous propensities, so that officer's alleged tort was made possible through use of his pistol, which he carried by authority of city.

The person on whom the injury was inflicted was foreseeable, as required for duty element of claim against city for negligent retention and supervision, brought by estate of girlfriend of city police officer after officer fatally shot girlfriend while off duty and then killed himself. City could reasonably have anticipated that its alleged negligence in failing to discipline an officer who had violent propensities would result in the officer using his gun to injure a member of his own family, including his girlfriend.

Genuine issues of material fact regarding breach of duty and proximate cause, i.e., whether city had received complaints about city police officer's alleged abusive conduct toward his girlfriend and her infant daughter, and whether the intervening intentional tort of the off-duty officer was itself a foreseeable harm that shaped the duty imposed upon city when it failed to guard against a police officer with violent propensities, precluded summary judgment for city, in action for negligent retention and supervision, brought by girlfriend's estate after officer fatally shot girlfriend while off duty and then killed himself.

LIABILITY - TEXAS

Lawson v. City of Diboll

Supreme Court of Texas - September 18, 2015 - S.W.3d - 2015 WL 5458763

Softball game spectator, who sustained injuries in trip-and-fall accident while exiting baseball complex at city park, brought premises defect action against city. City filed plea to the jurisdiction. The District Court denied plea. City appealed. The Court of Appeals reversed. Spectator petitioned for review.

The Supreme Court of Texas held that spectating at youth softball game at city park was not "recreation" under recreational use statute, and thus statute did not limit city's liability for damages claimed by spectator.

EMINENT DOMAIN - COLORADO

Regional Transportation District v. 750 West 48th Ave., LLC

Supreme Court of Colorado - September 14, 2015 - P.3d - 2015 WL 5315555 - 2015 CO 57

Regional Transportation District filed a petition in condemnation and acquired from landowner property for a light rail project. The District Court appointed a commission of freeholders to determine property's reasonable value. Property owner appealed pretrial and instructional rulings by trial court and certain evidentiary rulings of commission, and the Court of Appeals affirmed. Property owner petitioned for certiorari review, which was granted.

The Supreme Court of Colorado held that:

- Supervising judge's explicit denial of motion to exclude expert witness testimony on relevance grounds precluded commission from sustaining relevance objection at hearing and deeming the evidence inadmissible, and

- Supervising judge had power to instruct commission at end of hearing to disregard certain evidence which the commission had deemed relevant and admissible during the hearing.

Although a condemnation compensation commission may rule on evidence if the judge has not already done so, when a judge issues a definitive ruling on the admissibility of evidence, either on a motion or through instructions, the commission is bound to follow the judge's ruling.

Supervising judge's explicit denial, on relevance grounds, of property owner's motion in condemnation compensation proceeding to exclude expert witness testimony regarding the alternate average-value and income-based approaches to industrial property valuation precluded commission of freeholders from sustaining property owner's relevance objection at hearing and deeming the evidence inadmissible absent any request that the judge revisit her previous in limine ruling.

INVERSE CONDEMNATION - FLORIDA

Caribbean Condominium v. City of Flagler Beach

District Court of Appeal of Florida, Fifth District. - September 18, 2015 - So.3d - 2015 WL 5456819

In February 2010, Appellants filed suit against the City seeking relief under the Bert Harris Act. Appellants subsequently amended their complaint to include claims for inverse condemnation. In March 2012, the City filed a motion for summary judgment as to all claims. The City's motion was granted only as to the Bert Harris Act claims. The case proceeded to a non-jury trial on the inverse condemnation claims where the trial court ultimately entered judgment in favor of the City after determining that there had been no taking of Appellants' property. The trial court's judgment was affirmed in all respects.

While the appeal was pending, the City filed its motion for attorney's fees and costs. The trial court properly awarded the City attorney's fees for time expended in successfully defending Appellants' claims under the Bert Harris Act. The trial court further awarded the City its legal costs incurred from the inception of the lawsuit through May 18, 2012 — the date on which the trial court advised the parties of its intent to enter summary judgment on the Bert Harris Act claims. However, the trial court declined to award costs subsequently incurred by the City based on its conclusion that a governmental entity is not entitled to recover costs in an inverse condemnation action even where it is the prevailing party.

The District Court of Appeal affirmed the trial court's award of attorney's fees to the City. However, it found merit to the City's cross-appeal. Because the City was the prevailing party on Appellants' inverse condemnation claims, the court concluded that it was entitled to recover costs pursuant to section 57.041, Florida Statutes (2010).

District Court of Appeal holds that a governmental entity is entitled to recover costs in an inverse condemnation action where it is the prevailing party.

ZONING - LOUISIANA

Holy Cross Neighborhood Ass'n v. City of New Orleans

Court of Appeal of Louisiana, Fourth Circuit - September 9, 2015 - So.3d - 2015 WL 5272381 - 2014-1317 (La.App. 4 Cir. 9/9/15)

Neighborhood association and three individual neighbors brought action against city, city council, developer, and property seeking declaratory and injunctive relief related to city ordinance regarding proposed development of property. The Civil District Court granted preliminary injunction declaring ordinance ineffective. Intervening property owner appealed.

The Court of Appeal held that ruling on ineffectiveness of ordinance was beyond scope of preliminary injunction proceeding.

Court's declaration of the ordinance's ineffectiveness was in effect a ruling on the merits of the property owners' petition for declaratory relief, and there was nothing in the record to suggest that the parties agreed to try the declaratory action at the hearing on the preliminary injunction.

ZONING - MASSACHUSETTS

Reynolds v. Zoning Bd. of Appeals of Stow

Appeals Court of Massachusetts, Middlesex - September 15, 2015 - N.E.3d - 2015 WL 5330370

Neighbor appealed issuance of comprehensive permit for construction of a low and moderate income elderly housing project. The Superior Court affirmed. Neighbor appealed.

The Appeals Court held that:

- Neighbor had standing to challenge the permit, and
- Waiver of the bylaw provision limiting the flow into waste disposal systems was unreasonable.

Neighbor, who presented expert testimony that well for proposed low and moderate income elderly housing project would have elevated nitrogen levels, had standing under "anti-snob zoning act" to challenge issuance of comprehensive permit for the project, even though the judge ultimately rejected the evidence, where judge's ultimate finding that the nitrogen would not reach the neighbor's well went to neighbor's success on the merits, and not his ability to challenge the acts of the zoning board of appeals.

Abutters have the benefit of a presumption of aggrievement, as would allow them to appeal waiver of local requirements and regulations pursuant to "anti-snob zoning act" regarding an affordable housing development, but if challenged by evidence warranting a contrary finding, the plaintiff must prove standing by introducing credible evidence of an injury special and different from the concerns of the rest of the community.

Waiver by zoning board of appeals of the bylaw provision limiting the flow into waste disposal systems within town's water resource protection district was unreasonable for proposed low and moderate income elderly housing project, and thus issuance of comprehensive permit for project was unwarranted, even though there was a local need for additional affordable housing, where it was more likely than not that the project would cause excessive nitrogen levels at neighboring well, and it was unreasonable to conclude that the local need for affordable housing outweighed neighbor's health concerns.

ASSESSMENTS - MINNESOTA

First Baptist Church of St. Paul v. City of St. Paul

Court of Appeals of Minnesota - August 31, 2015 - Not Reported in N.W.2d - 2015 WL 5089063

First Baptist Church of St. Paul and Church of St. Mary (the churches) challenged the 2011 right-o--way maintenance (ROW) assessment levied by respondent City of St. Paul (the city). The city maintains all of the streets and sidewalks within the city limits and uses an annual ROW assessment to recoup the costs related to street maintenance. The amount the city assesses each property depends on the property location, size, street material, and services provided.

The churches challenged the district court's grant of summary judgment to the city, arguing that the city's right-of-way maintenance assessment (1) is a tax, (2) does not meet the special-benefit standard, (3) is improperly based on estimated costs, (4) fails to comply with respondent's charter and policies, and (5) is arbitrary and capricious.

The Court of Appeals affirmed, concluding that the assessment is a regulatory service fee, not a tax.

INSURANCE - MINNESOTA

American Family Ins. v. City of Minneapolis

United States District Court, D. Minnesota - September 8, 2015 - F.Supp.3d - 2015 WL 5228287

A water-main break occurred on October 20, 2013 in the City of Minneapolis, causing water to flow into a condominium building resulting in significant damage.

The City settled fourteen claims for losses that were not covered by insurance. The City paid these claims without requiring any evidence that the water main broke as a result of the City's negligence. The claims denied by the City were each submitted by insurance companies.

The insurance companies (Plaintiffs) sued the City, asserting claims for negligence, trespass, takings, and violation of the Equal Protection Clause.

Plaintiffs alleged that the City violated the Equal Protection Clause by agreeing to reimburse certain residents of the Sexton Condominiums for their uninsured losses while refusing to reimburse Plaintiffs. The City argued that it was entitled to summary judgment because there was no evidence in the record that the City treated Plaintiffs, as corporations, differently than it treated individuals. Rather, the City asserted, it made settlement decisions based on the nature of the loss—i.e., insured versus uninsured—rather than the type of person who made the claim.

The District Court found no Equal Protection violation by the City.

MUNICIPAL ORDINANCE - NEW JERSEY

Redd v. Bowman

Supreme Court of New Jersey - August 11, 2015 - A.3d - 2015 WL 4726557

Mayor and city council president brought action to declare invalid a petition submitted by city voters for adoption of proposed ordinance that would prohibit city from disbanding its municipal police

department and joining newly-formed county police force.

The Superior Court ruled that proposed ordinance created undue restraint on future exercise of municipal legislative power. Voters appealed. The Superior Court, Appellate Division, reversed and remanded. Mayor and council president filed petition for certification, and voters filed cross-petition for certification, which were granted.

The Supreme Court of New Jersey held that:

- Appeal was not moot;
- Proposed ordinance did not constitute improper divestment of municipal governing body's legislative power;
- Proposed ordinance was not invalid by virtue of preemption; and
- Proposed ordinance was prohibited from being submitted to voters.

Appeal from determination that city voters' petition-initiated proposed ordinance that would have prohibited city from disbanding its municipal police department and joining newly-formed county police force did not constitute improper divestment of municipal governing body's legislative power was not moot in action brought by mayor and city council president to declare petition invalid, even though city had already disbanded its police force and contracted to receive its police services from county. Action was not direct action seeking to enjoin dissolution of municipal department and creation of county-wide police force, but rather question raised by parties was whether proposed ordinance was valid, which was justiciable issue to be resolved by court, and it was still possible to grant or deny remedy sought by mayor and council president.

City voters' petition-initiated proposed ordinance to prohibit city from disbanding its municipal police department and joining newly-formed county police force did not constitute improper divestment of municipal governing body's legislative power. Legislature authorized divestment, for prescribed period, of one aspect of succeeding governing body's authority when ordinance was enacted by initiative in accordance with statute governing petitions for proposed ordinances.

Local Budget Law (LBL), which required local municipalities to enact balanced budget every fiscal year, did not preempt properly-framed petition-initiated proposed ordinance under Faulkner Act to prohibit city from disbanding its municipal police department and joining newly-formed county police force. LBL imposed on municipalities detailed requirements with respect to process of enacting a municipal budget, but contained no evidence that legislature intended to preempt proposed ordinance at issue.

Special Municipal Aid Act (SMAA) and Transitional Aid to Localities program (TAL), pursuant to which city's transition from municipal to county police services were in part conducted, did not preempt properly-framed petition-initiated proposed ordinance under Faulkner Act to prohibit city from disbanding its municipal police department and joining newly-formed county police force. Although there was potential for dire fiscal consequences to result from municipality's failure to comply with state directives authorized by legislature under SMAA and TAL, neither statute barred municipality from enacting ordinances by initiative or referendum that contravened condition imposed be state.

Municipal Rehabilitation and Economic Recovery Act (MRERA), pursuant to which city's transition from municipal to county police services was in part conducted, did not preempt proposed ordinance, initiated by city voters under Faulkner Act, to prohibit city from disbanding its municipal police department and joining newly-formed county police force. Although it was possible that ordinance, however enacted, that undermined agreement reached by city pursuant to MRERA would

prompt state to withhold municipal aid under MRERA, there was nothing in MRERA that expressed legislative intent to preempt Faulkner Act process, but instead, MRERA reaffirmed city's status as Faulkner Act municipality, and by inference, initiative and referendum procedure at Faulkner Act's core.

Police force statute did not preempt petition for proposed ordinance, initiated under Faulkner Act, to prohibit city from disbanding its municipal police department and joining newly-formed county police force, since there was no legislative intent in statute to preempt police reorganization and there was noting in statute that precluded voter initiative and referendum procedures set forth in Act.

Proposed ordinance, initiated by city voters under Faulkner Act, to prohibit city from disbanding its municipal police department and joining newly-formed county police force was prohibited from being submitted to voters, since ordinance was out of date, inaccurate, and misleading. City had already disbanded its police force and contracted to receive its police services from county, voters who signed petition did so at time when police reorganization was in planning stage, and nothing suggested that those voters would have supported petition after city police force was disbanded, such that submission of ordinance to voters would have undermined objectives of Act.

BANKS - NEW YORK

New York Bankers Ass'n, Inc. v. City of New York

United States District Court, S.D. New York - August 7, 2015 - F.Supp.3d - 2015 WL 4726880

Association of commercial banks and federal savings associations brought action against city, alleging that city's Responsible Banking Act (RBA), which, inter alia, ranked and published information about banks with respect to certain criteria, including lending to low-income communities, was preempted by federal and state law. Association moved for summary judgment and city moved to dismiss for failure to state claim.

The District Court held that:

- RBA had regulatory, rather than proprietary, purpose;
- RBA conflicted with federal law; and
- Preempted provisions were not severable.

City's Responsible Banking Act (RBA) had regulatory, rather than proprietary, purpose, as required for RBA to be subject to federal preemption. RBA's stated purpose was to assess credit, financial, and banking services needs throughout city with particular emphasis on low and moderate income individuals and communities, legislators who sponsored RBA spoke about how federal and state laws were ineffectual in terms of both the collection of information and the influence over bank conduct regarding community reinvestment in city, RBA contained express procedures for adjudging, ranking, and publishing banks' efforts to comply with RBA's subjective criteria, RBA did not place conditions on deposits or transactions that city made as bank customer, city would not gain any discernible financial benefits from RBA, and RBA authorized city's Banking Commission to consider its rankings of banks when designating or de-designating banks that could hold city funds.

City's Responsible Banking Act (RBA), which regulated banks, conflicted with federal law, and thus was preempted. National Bank Act (NBA) stated that no national bank could be subject to any

visitorial powers except as authorized by federal law, RBA authorized data and information collection from banks, and banks could be subject to de-designation as bank that could hold city funds if it declined to provide information to city or if it did not meet RBA's criteria, including benchmarks for lending to low-income communities that were more burdensome than those under federal Community Reinvestment Act (CRA).

Under New York law, city council would not have enacted Responsible Banking Act (RBA) without provisions that were preempted by federal and state law, and thus preempted provisions were not severable. Provisions were subject of serious legislative debate concerning possibility of preemption, mayor initially vetoed RBA due to preemption concerns, council overrode mayor's veto and passed RBA as originally intended, RBA cost city more than $500,000 per year, and removal of preempted provisions would eliminate RBA's power to encourage certain behavior on part of banks, including lending to low-income communities.

EMINENT DOMAIN - NEW YORK

Incorporated Village of Westbury v. IACO Realty, Inc.

Supreme Court, Appellate Division, Second Department, New York - September 16, 2015 - N.Y.S.3d - 2015 WL 5436899 - 2015 N.Y. Slip Op. 06820

Village brought a condemnation proceeding, and bank, a nonparty, moved to enforce an equitable lien against the village and to hold the village jointly and severally liable for damages for the wrongful payment of condemnation proceeds. The Supreme Court, Nassau County, denied the motion, and bank appealed.

The Supreme Court, Appellate Division, held that:

- Notice of claim requirements of the General Municipal Law applied to bank's claims, and
- Claim accrued for limitations purposes on the date the condemnation proceeds were paid.

Bank's claims against village premised on the wrongful payment of condemnation proceeds sounded in tort, as required for the notice of claim requirements of the General Municipal Law to apply.

Doctrine of equitable estoppel did not apply so as to preclude the statute of limitations defense in bank's action against village premised upon the wrongful payment of condemnation proceeds, where bank did not allege any separate and subsequent act of wrongdoing that prevented it from timely bringing suit.

IMMUNITY - NORTH CAROLINA

Parker v. Town of Erwin

Court of Appeals of North Carolina - September 15, 2015 - S.E.2d - 2015 WL 5331924

Parents of almost four-year old pedestrian, who was killed in automobile accident after a parade, brought action individually and as administrator of pedestrian's estate against town and some of its employees in their official and individual capacities, chamber of commerce, landowners, and various emergency medical service providers for negligence and negligent infliction of emotional distress. The Superior Court denied town's motion to dismiss and granted motion to dismiss owner of the building located immediately adjacent to the site of the incident. Town and employees appealed, and

parents cross-appealed.

The Court of Appeals held that:

- Trial judge was responsible to weigh evidence in determining if court had personal jurisdiction;
- Competent evidence supported trial court's determination that town did not waive sovereign immunity through the purchase of its insurance policy;
- Town had sovereign immunity from parents' claims with regard to services recognized as governmental functions;
- Remand was required for findings reflecting determination of the weight and sufficiency of evidence on sovereign immunity; and
- Parents failed to sufficiently allege that landowner breached duty to illuminate alley.

Competent evidence supported trial court's determination on ruling on motion to dismiss for lack of personal jurisdiction that town did not waive sovereign immunity through the purchase of its insurance policy. Evidence established that policy contained an express non-waiver of sovereign immunity endorsement.

A municipality's sovereign immunity is waived by the purchase of liability insurance only to the extent that the municipality is indemnified by the insurance contract from liability for the acts alleged; thus, a governmental entity does not waive sovereign immunity if the action brought against it is excluded from coverage under its insurance policy.

Remand was required in negligence action by minor pedestrian's parents against town for findings reflecting trial court's determination of the weight and sufficiency of evidence, and to determine whether parents established that alleged violations of statute requiring town to keep streets and alleys free from obstructions and gave it the power to close streets directly proximately caused driver to strike pedestrian such that dismissal of action against town on the basis of sovereign immunity was warranted, where trial court's order indicated that it considered evidence beyond allegations in parents' complaint.

The extent to which particular municipal streets and roads are kept open for use by members of the public is a governmental function such that governmental immunity is available to municipalities as a defense to damage claims arising from such discretionary road closure decisions.

MUNICIPAL ORDINANCE - OHIO

State ex rel. Szymanowski v. Grahl

Supreme Court of Ohio - September 11, 2015 - N.E.3d - 2015 WL 5448549 - 2015 -Ohio-3699

Relators filed action for a writ of mandamus to compel city auditor to transmit referendum petition and certified copy of ordinance regarding removal of dam that was the subject of the petition to the county board of elections. The Court of Appeals denied writ. Relators appealed.

The Supreme Court of Ohio held that auditor was required to transmit petition and ordinance to board.

City council ordinance authorizing mayor to proceed with process of removing dam was "first" ordinance necessary for removal of dam, and thus city auditor was required to transmit referendum petition and certified copy of ordinance to county board of elections under statute providing that statutory provisions governing initiatives and referenda applied to "first" ordinance necessary to make and pay for any public improvement, even though city had passed prior ordinances calling for removal of dam. City's authorization to remove dam under one ordinance had expired, thus requiring new authorization restarting opportunity to pursue referendum, and other ordinances indicated city was not committed to the project and would not have called for vote on question of whether to remove dam.

BALLOT INITIATIVES - OHIO

State ex rel. Walker v. Husted

Supreme Court of Ohio - September 16, 2015 - N.E.3d - 2015 WL 5448584 - 2015 -Ohio-3749

Relators sought writ of mandamus to compel Secretary of State to reverse his decision sustaining protests against counties' petitions to adopt charters and compel placement of charter measures on ballots.

The Supreme Court of Ohio held that:

- Secretary lacked authority to invalidate petitions based on his own determination that measures were unconstitutional, if enacted;
- Secretary acted within his discretion in determining that petitions were invalid on ground that they failed to set forth form of government; and
- Relators' affidavits failed to comply with requirement that they be made on personal knowledge.

Secretary of State lacked authority to invalidate proposed county charter petitions based on his own assessment that measures, if enacted, unconstitutionally interfered with State's exclusive authority to regulate oil and gas operations by effectively banning high-volume hydraulic fracking as method of oil and gas extraction, and in some cases prohibiting new gas or oil exploration or extraction.

Secretary of State acted within his discretion when he determined that proposed county charter petitions were invalid on ground that they did not set forth the form of government. Although purporting to maintain the status quo on matters of county offices, officers, and their duties, and manner of election, proposed charters did not provide the form of government of the county or determine which of its officers would be elected and the manner of their election, thus requiring reference to sources outside the proposed charters to determine the form of government they purported to establish.

Affidavits by relators that were all made "to the best of my knowledge, information, and belief" were insufficient to comply with requirement that affidavits in original actions must be made on personal knowledge, in mandamus action seeking to compel Secretary of State to reverse decision sustaining protests to proposed county charter petitions and compel placement of charter measures on ballots.

UTILITIES - OHIO

Northeast Ohio Regional Sewer Dist. v. Bath Twp.

Supreme Court of Ohio - September 15, 2015 - N.E.3d - 2015 WL 5448303 - 2015 -Ohio-3705

Regional sewer district brought action against member communities, seeking declaratory judgment that district had authority to implement particular regional stormwater management (RSM) program. Property owners intervened. The Court of Common Pleas denied motion to dismiss, granted partial summary judgment to sewer district and, after bench trial, entered judgment in favor of district. Communities and property owners appealed. The Court of Appeals affirmed in part and reversed in part. Sewer district appealed.

The Supreme Court of Ohio held that:

- District was authorized to implement the RSM, and
- District had authority to charge fees to landowners to fund it.

Charter governing regional sewer district specifically authorized it to implement a regional stormwater management program, where charter stated, "The District will plan, finance, construct, operate and control waste water treatment and disposal facilities, major interceptor sewers, all sewer regulator systems and devices, weirs, retaining basins, storm water handling facilities, and all other water pollution control facilities of the District."

Regional sewer district had statutory authority to charge fees to landowners to pay for regional stormwater management (RSM) program that it was authorized to implement. Governing statute provided that a regional water and sewer district may charge for the use or services of any water resource project, and statutory definition of water resource project included a facility that was "to be acquired, constructed, or operated" by the sewer district.

Broad language of regional sewer district's charter, which provided that "any projects not financed through the Ohio Water Development Authority would be financed in such a manner as may be deemed appropriate by the Board of Trustees," encompassed the assessing of fees to pay for a stormwater management system, and thus fees charged to landowners to fund district's stormwater management program were authorized by the charter.

UTILITIES - OHIO

In re Application to Modify, in Accordance with R.C. 4929.08, the Exemption Granted to E. Ohio Gas Co.

Supreme Court of Ohio - September 8, 2015 - N.E.3d - 2015 WL 5255264 - 2015 -Ohio-3627

Objectors appealed determination of the Public Utilities Commission modifying order exempting natural-gas utility from traditional commodity-sales service regulations.

The Supreme Court of Ohio held that:

- Commission did not ignore or rewrite prior exemption order;
- Utility's filing of motion to modify rather than separate application did not require reversal;
- Record supported Commission's determination that findings from exemption order were no longer valid;

- Commission’s decision to modify exemption order was not against manifest weight of the evidence;
- Deference to Commission’s findings was warranted; and
- Commission properly adopted stipulation.

ZONING - PENNSYLVANIA

Gorsline v. Board of Supervisors of Fairfield Tp.

Commonwealth Court of Pennsylvania - September 14, 2015 - A.3d - 2015 WL 5313639

Neighboring landowners sought review of decision of township board of supervisors granting application of limited liability company (LLC) for conditional use permit to locate natural gas well on land it leased from individuals. The Court of Common Pleas reversed. LLC and individuals appealed.

The Commonwealth Court held that:

- Proposed conditional use met threshold requirements set forth in township’s zoning ordinance, and
- Evidence showed that well would not present detriment to health and safety of neighborhood.

Proposed conditional use, to locate natural gas well on land it leased from individuals, of limited liability company (LLC) that sought application for conditional use permit, met threshold requirements set forth in township’s zoning ordinance. Ordinance permitted wide range of conditional uses in residential agriculture district, where land was located, proposed well would have presented low physical profile, would have involved small footprint on land, and was similar to public service facility, which was expressly allowed in district, and well would not have conflicted with general purpose of ordinance, which expressly authorized extraction of minerals.

Evidence showed that proposed natural gas well of limited liability company (LLC) would not present detriment to health and safety of neighborhood, in context of LLC’s application for conditional use permit to locate well on land it leased from individuals. LLC’s oil and gas engineering expert testified that, once well was constructed and drilling was completed, its operation would not create noise, light glare, or odors noticeable to township residents and that well would be drilled far below subsurface water that served neighboring landowners’ wells, and township board of supervisors, in granting permit, responded to concerns of landowners by imposing numerous conditions related to roadway maintenance, traffic, and parking and by requiring LLC to provide emergency contact information upon request, to visually screen well from neighborhood, and to comply with all federal, state, and local permits and approvals.

EMINENT DOMAIN - CALIFORNIA

Rancho de Calistoga v. City of Calistoga

United States Court of Appeals, Ninth Circuit - September 3, 2015 - F.3d - 2015 WL 5158703

Owner of mobile home park filed petition for writ of administrative mandamus against city and administrative hearing officer, asserting regulatory takings and separate “as-applied private takings” challenges to city’s mobile home rent control ordinance, as well as due process and equal protection claims against officer. The United States District Court granted city’s motion to dismiss. Owner appealed.

The Court of Appeals held that:

- Owner's claims were ripe;
- Even if owner's claims were construed as an as-applied attack, no regulatory taking occurred here;
- Owner's self-styled "private takings claim" was not a separately cognizable claim but, rather, was part of its larger regulatory takings claim, which, viewed in this context, failed; and
- Officer's decision, rejecting owner's rent-increase application, did not violate equal protection.

BONDS - CALIFORNIA

City of Petaluma v. Cohen

Court of Appeal, Third District, California - July 30, 2015 - 238 Cal.App.4th 1430 - 190 Cal.Rptr.3d 703 - 15 Cal. Daily Op. Serv. 8389 - 2015 Daily Journal D.A.R. 8699

City brought a petition for a writ of mandate, seeking an order to require the Department of Finance (DOF) to approve expenditures for an interchange and roadway under-crossing that had been approved by the city's redevelopment agency prior to the redevelopment agency's dissolution. The Superior Court denied the petition. City appealed.

The Court of Appeal held that:

- City's planned expenditures were not an "enforceable obligation" under redevelopment agency dissolution law;
- DOF's disapproval of expenditures did not violate the covenant of good faith; and
- DOF's disapproval of expenditures did not result in an unconstitutional impairment of city's contract rights.

City's planned expenditures for an interchange and roadway under-crossing that had been approved by the city's redevelopment agency prior to the redevelopment agency's dissolution were not "payments required under the indenture" and thus were not an "enforceable obligation" under the redevelopment agency dissolution law, even if city's failure to use its bond proceeds for the roadway project would result in the bond losing tax-exempt status and the interest rate on the bonds being increased, where nothing in the language of the first supplement to indenture required that the roadway project actually be funded or constructed, absent evidence of whether the indenture itself contained such a requirement.

The provision of the redevelopment agency dissolution law requiring a redevelopment agency, until a successor agency is authorized, to preserve the tax-exempt status of interest payable on outstanding agency bonds did not preclude the Department of Finance (DOF) from disapproving items on a recognized obligation payment schedules (ROPS) submitted by a redevelopment agency's successor agency.

Department of Finance's (DOF) disapproval from city's recognized obligation payment schedules (ROPS) of expenditures for an interchange and roadway under-crossing that had been approved by the city's redevelopment agency prior to the redevelopment agency's dissolution did not violate the covenant of good faith in the first supplement to indenture, even if the failure to use bond proceeds to fund the roadway project would result in the loss of tax-exempt status and defeasance of the bonds, where those two potential consequences were expressly provided for in the supplement.

Department of Finance's (DOF) disapproval from city's recognized obligation payment schedules (ROPS) of expenditures for a bond-funded interchange and roadway under-crossing that had been

approved by the city's redevelopment agency prior to the redevelopment agency's dissolution did not result in an unconstitutional impairment of city's contract rights in impairing the security of the bonds, where city was not a bondholder, absent evidence of a "present, specific and substantial impairment."

ANNEXATION - INDIANA

American Cold Storage NA v. City of Boonville

Court of Appeals of Indiana - August 28, 2015 - N.E.3d - 2015 WL 5081405

Landowners who owned property in annexed territory brought declaratory judgment action and written remonstrance, asserting that city's annexation should not take place. The Superior Court entered partial judgment in favor of city on city's motion to dismiss and determined landowners had standing to pursue declaratory judgment action. City brought interlocutory appeal.

The Court of Appeals held that:

- Evidence supported finding that over 60 percent of the territory was subdivided, and
- Evidence supported conclusion that territory was both "needed" and "can be used" in the reasonably near future.

In determining whether territory had been sufficiently subdivided to permit annexation by municipality, trial court properly refused to limit the definition of "subdivided" to parcels of land that had actually gone through process set forth by county subdivision control ordinance, in finding that 60 percent of annexation territory was subdivided as required by annexation statute.

Evidence supported trial court's conclusion in bench trial that city had met its statutory burden that annexation territory was both "needed" and "can be used" for city's development in the reasonably near future. City needed the annexation territory to be able to grow and attract new business, city had plans for bringing new development to the territory, including sewer services and a major transportation linkage, and city provided fire protection an police patrols to the territory.

FORUM SELECTION - NEW MEXICO

Presbyterian Healthcare Services v. Goldman, Sachs & Co.

United States District Court, D. New Mexico - August 14, 2015 - F.Supp.3d - 2015 WL 4993571

On February 10, 2014, Presbyterian Healthcare filed a claim against Goldman Sachs with the Financial Industry Regulatory Authority ("FINRA") Division of Arbitration in New Mexico. The claim alleged the standard-issue ARS claims.

Goldman Sachs challenged the arbitrability of the matter, citing the forum selection clause (and the attendant broad merger clause) in the parties' Broker-Dealer Agreement. Goldman Sachs moved to transfer the case to the United States District Court for the Southern District of New York. Presbyterian Healthcare argued that Goldman Sachs was required to arbitrate pursuant to a written agreement it entered into when it became a FINRA member.

Presbyterian Healthcare contended its grievances arise from Goldman Sachs' role as an advisor, and

thus its arbitration claims related to transactions not contemplated exclusively by the Broker–Dealer Agreement.

The District Court concluded that:

- Presbyterian Healthcare's claims 'arise out of' the Broker–Dealer Agreement, because the claims concern Goldman Sachs' actions pursuant to that agreement; and
- Goldman Sachs' motion to transfer the case to the United States District Court for the Southern District of New York would be granted.

BONDS - NEW YORK

Emmet & Co., Inc. v. Catholic Health East

Supreme Court, New York County, New York - August 28, 2015 - N.Y.S.3d - 2015 WL 5122314 - 2015 N.Y. Slip Op. 25293

Holders of municipal bonds filed putative class action against issuer, claiming breach of contract and breach of duty of good faith and fair dealing based on issuer's coupling of tender offer with redemption of bonds that allegedly violated trust indenture governing bonds, after issuer defeased bonds so that issuer no longer had any payment obligations but bonds remained callable by compelling holders to sell their bonds to issuer at price set forth in indenture. Issuer moved to dismiss for failure to state claim, and holders moved for partial summary judgment on liability.

The Supreme Court, New York County, held that:

- Coupling of tender offer with redemption of bonds breached indenture;
- Issuer's synthetic total return swap with financial advisor breached indenture;
- Breach of covenant of good faith and fair dealing claim was duplicative; and
- Award of punitive damages was not warranted.

Issuer's coupling of tender offer with redemption of municipal bonds issued to refinance hospital's debt and subsequently defeased by issuer but remaining callable was impermissible under trust indenture provision, allowing issuer to redeem any percentage of outstanding bonds, but requiring issuer to randomly select which bonds to redeem if less than 100% of bonds were redeemed, where tender offer allowed bondholders to either tender their bonds at 101% or see them redeemed at 100% of bonds' principal amount, and issuer redeemed only 45% of non-tendered bonds after other 55% were tendered, so issuer effectuated non-random redemption of less than 100% of bonds by excluding its own tendered bonds from redemption.

Issuer's synthetic sale of municipal bonds to financial advisor through total return swap, after impermissible non-random redemption of bonds by coupling tender offer with redemption, was prohibited under trust indenture, providing that all bonds "paid, redeemed or purchased, either at or before maturity, when such payment, redemption or purchase is made, shall thereupon be cancelled by the Trustee and shall not be reissued but shall thereupon be destroyed by the Trustee," since bonds had to be cancelled and could not be resold once acquired by issuer.

Bondholders' claim for breach of implied duty of good faith and fair dealing by issuer of municipal bonds was duplicative, after holders prevailed on their express breach of contract claim against issuer regarding trust indenture that governed bonds, since breach of implied covenant was intrinsically tied to damages resulting from breach of indenture.

Issuer's coupling of tender offer with redemption of municipal bonds that resulted in non-random redemption and subsequent synthetic total return swap with financial advisor, in breach of trust indenture, did not justify award of punitive damages, since issuer's conduct was not intentional, deliberate, fraudulent, or conducted with evil motive, and even if intentional, controversy was between highly sophisticated financial professionals who disagreed about complex issues without clear precedent to guide them.

LIABILITY - NEW YORK

Caramanno v. City of New York

Supreme Court, Queens County, New York - September 3, 2015 - N.Y.S.3d - 2015 WL 5166177 - 2015 N.Y. Slip Op. 25301

Paving subcontractor brought action against city, city department of sanitation, and owner of junkyard after department removed subcontractor's legally parked steam roller following completion of paving work and subsequently sent it to junkyard, where it was destroyed. City and department moved for summary judgment.

The Supreme Court, Queens County, held that:

- Genuine issue of material fact as to whether department's actions were discretionary or ministerial precluded summary judgment, and
- Even if department engaged in ministerial act, subcontractor adequately alleged that it had special relationship with city and department, giving rise to a special duty supporting imposition of municipal liability.

Even if city department of sanitation engaged in ministerial act when it removed paving subcontractor's legally parked steam roller following completion of paving work and subsequently sent it to junkyard, where it was destroyed, subcontractor adequately alleged that it had special relationship with city and department, giving rise to a special duty supporting imposition of municipal liability. Subcontractor alleged that defendants affirmatively acted on its behalf by assuming control of its vehicle, that it had direct contact with department's employees, and that it detrimentally relied on employees' representations that department did not have the roller.

ANNEXATION - NEW YORK

Commandeer Realty Associates, Inc. v. Allegro

Supreme Court, Orange County, New York - August 18, 2015 - N.Y.S.3d - 2015 WL 4920070 - 2015 N.Y. Slip Op. 25276

Property owners commenced Article 78 proceeding seeking writ of prohibition temporarily restraining three municipalities from taking any action on two petitions to annex territory that overlapped with territory proposed for annexation in another municipality's prior annexation petition, on grounds that municipalities lacked jurisdiction to entertain those two petitions, under prior jurisdiction rule, pending final determination of prior petition, and also claiming two petitions were filed for illegitimate purpose of attempting to block prior petition. Municipalities asserted counterclaims and cross-claims for declaratory relief. Individual signatories to two petitions moved to dismiss.

The Supreme Court, Orange County, held that:

- Owners had standing to maintain Article 78 proceeding;
- Writ of prohibition was available for jurisdictional claim;
- Writ of prohibition was not available for illegitimacy claim;
- Article 78 proceeding was ripe;
- In matter of first impression, prior jurisdiction rule applies to municipal annexation proceedings; and
- Prior jurisdiction rule barred processing of two later-filed petitions.

ELECTIONS - OHIO

State ex rel. Morris v. Stark Cty. Bd. of Elections

Supreme Court of Ohio - September 9, 2015 - N.E.3d - 2015 WL 5255463 - 2015 -Ohio-3659

Challengers filed writ of prohibition to prevent Secretary of State and county board of elections from placing mayoral candidate on ballot as an independent candidate.

The Supreme Court of Ohio held that:

- Secretary acted within his discretion in determining that candidate had established a conforming residence within city, and
- Evidence supported finding that candidate had disaffiliated from political party.

Secretary of State acted within his discretion in concluding that mayoral candidate established a conforming residence within city, even though candidate ultimately spent only four consecutive nights at that residence before moving to another residence within city. Candidate moved into first residence without knowing when second residence would become available, and candidate had intended to reside at first residence indefinitely.

Evidence supported finding that mayoral candidate who wished to run as an independent candidate had disaffiliated from political party of which he had been a member, even though candidate did not resign his seat on county board of commissioners. Seats on county board were not assigned by political affiliation, and candidate took affirmative steps to resign from political party.

PENSIONS - OREGON

Moro v. State

Supreme Court of Oregon - April 30, 2015 - 357 Or. 167 - 351 P.3d 1

Active and retired members of the Public Employee Retirement System petitioned for judicial review of legislation aimed at reducing the cost of retirement benefits, which eliminated income tax offset benefits for nonresident retirees and modified the cost-of-living adjustment.

The Supreme Court of Oregon held that:

- Tax offsets were not contractual as required for their repeal to violate Contract Clause;
- Cost-of-living adjustment requirement was a term of the Public Employee Retirement System benefit offer;

- Public employers could revoke offer of cost-of-living adjustment to Public Employee Retirement System benefit for future work without violating the state Contract Clause, abrogating *Oregon State Police Officers' Ass'n v. State of Oregon*, 323 Or. 356, 918 P.2d 765;
- Legislation reducing cost-of-living adjustment cap and bank and imposing fixed rates on benefits received impaired the contractual obligations of public employers in violation of the Contract Clause;
- Supplemental payments were void in whole; and
- Prohibiting payment of tax offset benefits to non-residents did not violate the Privileges and Immunities Clause.

Tax offsets of 1995, which were calculated by applying a formula intended to negate from Public Employee Retirement System benefits the maximum Oregon personal income tax rate, were not contractual, as required for repeal of the tax offsets to violate state Contract Clause, even if the 1995 Legislative Assembly expected that a future legislature would repeal that provision. The legislature had not, in fact, repealed it, statute expressly stated that it was not contractual, and, thus, legislature clearly intended that the 1995 offset would not be contractual.

Tax offsets of 1991, which provided a benefit to both active and retired members of Public Employee Retirement System based on years of service, were not part of the Public Employee Retirement System contract, as required for repeal of the tax offsets to violate state Contract Clause, although it was intended to compensate Public Employee Retirement System members for the losses that they would incur when the state repealed the income tax exemption, as required by federal law. Statute itself was, neither an offer that members had accepted by rendering services nor initially supported by an exchange of consideration, and instead, legislature enacted offset as a type of pre-emptive damage payment to mitigate a claim for breach of Public Employee Retirement System contract that no court had yet sustained, and, thus, it was not a component of the type of employment compensation benefits otherwise found in the contract.

Cost-of-living adjustment requirement for Public Employee Retirement System benefits was a term of the Public Employee Retirement System benefit offer, as required for its amendment to violate the state Contract Clause, rather than merely a continuation of the discretionary dividend payment benefits system that preceded the requirement. By enacting the cost-of-living adjustment system, the legislature made the Public Employees Retirement Board's function ministerial and the application of the adjustment automatic, and legislature continued to make additional discretionary ad hoc payments during periods of particularly high inflation so that employees could reasonably expect that adjustment statute codified some minimum automatic protection of the purchasing power of their future benefits that was separate from any discretionary and gratuitous ad hoc benefits that the legislature might otherwise have provided.

Public employers could revoke offer of cost-of-living adjustment to Public Employee Retirement System benefit for future work without violating the state Contract Clause; benefit was not an irrevocable term of Public Employee Retirement System benefits offer such that it could not be changed prospectively; abrogating *Oregon State Police Officers' Ass'n v. State of Oregon*, 323 Or. 356, 918 P.2d 765.

Legislation that reduced the cost-of-living adjustment cap for Public Employee Retirement System benefits from plus or minus 2% to plus or minus 1.5% for 2013, and, beginning in 2014, eliminated the cap and bank and imposed a fixed rate of 1.25% on benefits received by retired members up to $60,000 and a fixed rate of 0.15% on retirement income in excess of $60,000 impaired the contractual obligations of public employers to apply cost-of-living adjustment provisions to Public Employee Retirement System benefits earned before the effective dates of those amendments in violation of the state Contract Clause. Case involved public employers's financial obligations and,

thus, did not automatically fall within reserved powers that could not be contracted away, public employers failed to establish that funding was so inadequate as to justify allowing the state to avoid its own financial obligations.

Amendments to cost-of-living adjustments for Public Employee Retirement System benefits were void as violative of the state Contract Clause only to the extent that they applied retrospectively to benefits already earned, and, thus, Public Employee Retirement System members who earned a contractual right to benefits by working for participating employers both before and after the effective dates of the amendments were entitled to receive during retirement a blended cost-of-living adjustment rate that reflected the different cost-of-living adjustment provisions applicable to benefits earned at different times. Prospective application of amendments was consistent with the legislative intent, because amendments provided employers with long-term savings.

Legislature could change prospectively, for benefits earned by Public Employee Retirement System members on or after the effective date of statutory amendments, cost-of-living adjustment for Public Employee Retirement System benefits without violating state Contract Clause.

Supplemental payments provided for in legislation amending cost-of-living adjustments for Public Employee Retirement System benefits by reducing cap and imposing a fixed rate could not be severed from the unconstitutional retrospective application of legislation to benefits already earned in violation of the state Contract Clause and were, therefore, void in whole, even though the supplemental payment provision itself was not unconstitutional. Impact on the benefits Public Employee Retirement System members would have received was adverse.

Prohibiting payment of tax offset benefits to non-residents of Oregon, who were members of Public Employee Retirement System, to compensate them for limitations to cost-of-living adjustments for retirement benefits did not upset the substantial equity between resident and non-resident members in violation of the federal Privileges and Immunities Clause, where nonresidents were not subjected to the tax that the tax offsets were intended to offset.

Prohibiting payment of tax offset benefits to non-residents of Oregon, who were members of Public Employee Retirement System, to compensate them for limitations to cost-of-living adjustments for retirement benefits did not violate the Equal Protection Clause. Objective was to remedy damages resulting from the imposition of Oregon income tax, and it was rational to provide that remedy to only those who suffered the damages by paying Oregon income tax.

UTILITIES - SOUTH CAROLINA

Azar v. City of Columbia

Supreme Court of South Carolina - September 9, 2015 - S.E.2d - 2015 WL 5247144

Objectors brought action against city, alleging city's expenditures of water and sewer revenues were unlawful. The trial court granted city summary judgment, and objectors appealed.

The Supreme Court of South Carolina held that:

- Genuine issue of material fact as to what nexus, if any, existed between economic development costs and city's provision of water and sewer services, precluded summary judgment, and
- Genuine issues of material fact as to whether city adequately funded ongoing operating and maintenance expenses, and satisfied the specific statutory set-asides, as a precondition for diverting $4.5 million from its water and sewer enterprise fund into its general fund each year,

precluded summary judgment.

REDEVELOPMENT AGENCIES - CALIFORNIA

City of Cerritos v. State

Court of Appeal, Third District, California - August 25, 2015 - Cal.Rptr.3d - 2015 WL 5014077 - 2015 Daily Journal D.A.R. 9807

After legislation requiring all redevelopment agencies to dissolve was declared constitutional, cities, successor agencies to several redevelopment agencies, community development commissions, nonprofit housing corporation, and individual taxpayer filed preliminary injunction against state and Director of Finance, seeking to enjoin legislation on additional constitutional grounds. The Superior Court denied preliminary injunction request. Plaintiffs appealed.

The Court of Appeal held that:

- Dissolution of redevelopment agencies did not render appeal moot;
- Legislation did not violate constitutional provision prohibiting legislature from raiding local property tax allocations to help balance budget;
- Legislation was not invalid as pre-budget act appropriation;
- Legislation did not violate single-subject rule;
- Legislation qualified for passage by majority vote by legislature; and
- Legislation did not unconstitutionally exceed scope of governor's emergency proclamation.

Legislation that provided for the dissolution and winding down of redevelopment agencies did not violate constitutional provision prohibiting legislature from raiding local property tax allocations to help balance budget, despite contention that legislation allocated ad valorem property taxes to local agencies on non-pro rata basis without having been passed by a two-thirds supermajority, as required under constitutional provision. Protections provided for by constitutional provision did not apply to redevelopment agencies, constitutional provision was intended to prevent legislature from statutorily reducing existing allocations of property taxes among cities, counties, and special districts, and legislation providing for dissolution of redevelopment agencies did not shift property taxes away from local governments.

LAND USE - CONNECTICUT

Hunter Ridge, LLC v. Planning and Zoning Com'n of Town of Newtown

Supreme Court of Connecticut - September 1, 2015 - A.3d - 318 Conn. 431 - 2015 WL 4940381

After developer filed administrative appeal of town zoning commission's denial of its application for a subdivision permit to develop parcel of land on ground that the developer's plan did not meet open space requirements in town's subdivision regulations, citizen intervened raising environmental concerns. The Superior Court ultimately set aside the commission's findings and enjoined development of the property without prior approval of the court.

Following transfer of the case, the Supreme Court of Connecticut held that court did not have the authority to issue an injunction.

PENSIONS - ILLINOIS

Hendricks v. Board of Trustees of Police Pension Fund of City of Galesburg

Appellate Court of Illinois, Third District - August 24, 2015 - N.E.3d - 2015 IL App (3d) 140858 - 2015 WL 5004550

Retired police officer sought review of the Board of Trustees of the Police Pension Fund's denial of police officer's application for police retirement benefits. The Circuit Court reversed. The Board appealed.

The Appellate Court held that police officer's prior job-related felony conviction, which was vacated by the trial court before officer applied for police pension benefits, did not disqualify officer from receiving his police pension.

PENSIONS - ILLINOIS

Village of Westmont v. Illinois Municipal Retirement Fund

Appellate Court of Illinois, Second District- August 13, 2015 - N.E.3d - 2015 IL App (2d) 141070 - 2015 WL 4763915

Village appealed Illinois Municipal Retirement Fund (IMRF) Board of Trustees' reclassification of village, requiring participation of part-time firefighters in IMRF despite oral assurance that village was not required to do so more than 20 years earlier. The Circuit Court affirmed Board's reclassification. Village appealed.

The Appellate Court held that:

- Village was unambiguously included in IMRF manual's group of municipalities excluded from participation in IMRF, but
- IMRF manual's administrative exclusion conflicted with statute.

Illinois Municipal Retirement Fund (IMRF) manual excluding those municipalities that had a population of 5,000 or more "and/or" had formed a fire pension fund from requirement of participation in IMRF on behalf of part-time firefighters unambiguously included village that had a population larger than 5,000 but did not form a fire pension fund, and therefore Appellate Court would not defer to IMRF's interpretation of manual as excluding only municipalities that met both elements. The inclusion of "or" marked an alternative indicating that the population requirement and the formation of a fund had to be taken separately, and IMRF's interpretation rendered the word "or" superfluous.

Illinois Municipal Retirement Fund's (IMRF) manual, which purported to exclude village from statutory requirement that it participate in IMRF on behalf of its part-time firefighters, conflicted with statute stating municipalities falling under umbrella of IMRF participation could be excluded only as expressly provided by statute, and therefore IMRF could not be estopped from discontinuing manual's exclusion of village from IMRF participation. Even though IMRF orally represented that village was not required to enroll firefighters in IMRF more than 20 years earlier, village was within umbrella of IMRF participation, statute did not exclude village from requirement to participate, and statute did not allow IMRF to create an independent, "second" exclusion.

FIRE PROTECTION DISTRICT - INDIANA

Anderson v. Gaudin

Supreme Court of Indiana - September 1, 2015 - N.E.3d - 2015 WL 5131480

County resident freeholders brought declaratory judgment action against county board of commissioners, alleging board lacked authority to amend ordinance that established a county-wide fire protection district. The Circuit Court granted summary judgment in favor of resident freeholders. Board and commissioners appealed. The Court of Appeals affirmed. The Supreme Court granted transfer.

The Supreme Court of Indiana held that county board of commissioners had statutory authority to amend ordinance that previously established county-wide fire protection district, where noting in Fire District Act expressly prohibiting amendment of an ordinance establishing a district, and, absent such a prohibition, the Home Rule Act applied to permit amendment; disapproving *Gaudin v. Austin*, 921 N.E.2d 895.

EMINENT DOMAIN - KANSAS

Kansas City Power & Light Co. v. Strong

Supreme Court of Kansas - August 28, 2015 - P.3d - 2015 WL 5081367

Condemnees appealed from court-appointed appraisers' award of $96,465 in damages in eminent domain proceeding. Following a jury trial, the District Court rendered judgment awarding condemnees $1,922,559 as compensation for the taking. Condemnor appealed.

The Supreme Court of Kansas held that:

- Condemnees' evidence was admissible and legally sufficient to support jury's post-taking value determination, and
- Court did not abuse its discretion by admitting developer's option to buy contract.

Landowners' evidence, testimony of professional developer and hypothetical buyer, and testimony of landowners' valuation expert, was admissible pursuant to eminent domain statute, and legally sufficient to support jury's post-taking remainder value determination, in proceeding to determine proper compensation for power company's partial taking of landowners' property for a power line easement.

Evidence introduced in eminent domain proceeding, to show that a developer had been interested in developing landowners' property into a single family residential subdivision, so interested that he had paid an undisclosed sum to obtain an option to purchase the property, was both material to existence of statutory factors to be considered in ascertaining amount of compensation and damages, and at least somewhat probative in that it tended to support the existence of such factors, and thus, evidence was admissible.

MUNICIPAL ORDINANCE - MASSACHUSETTS

Doe v. City of Lynn

Supreme Judicial Court of Massachusetts, Essex - August 28, 2015 - N.E.3d - 2015 WL 5052474

Certified class of sex offenders subject to municipal ordinance challenged the constitutionality of the ordinance, which imposed restrictions on the right of sex offenders to reside in city. The Superior Court invalidated the ordinance under the Home Rule Amendment, and city appealed.

The Supreme Judicial Court of Massachusetts held that ordinance was inconsistent with the comprehensive scheme of legislation intended to protect the public from convicted sex offenders and, thereby, manifested the "sharp conflict" that rendered it unconstitutional under the Home Rule Amendment.

LIABILITY - NEW YORK

Heather Fox Lima v. Village of Garden City

Supreme Court, Appellate Division, Second Department, New York - September 2, 2015 - N.Y.S.3d - 2015 WL 5125373 - 2015 N.Y. Slip Op. 06714

Pedestrian brought negligence action against municipality, seeking to recover damages for personal injuries allegedly sustained when she slipped on ice in parking lot. The Supreme Court, Nassau County, granted summary judgment's in municipality's favor. Pedestrian appealed.

The Supreme Court, Appellate Division, held that:

- Municipality could not be held liable for injuries allegedly sustained by pedestrian, and
- Municipality's failure to remove snow and ice from parking lot was passive and did not constitute affirmative act of negligence.

Municipality could not be held liable for injuries allegedly sustained by pedestrian who slipped on ice in parking lot, where municipality did not have prior written notice of icy conditions, municipality did not make a special use of parking lot where alleged injury occurred, and municipality did not create the icy condition.

Municipality's failure to remove all snow and ice from the parking lot was passive in nature, and did not constitute an affirmative act of negligence, as required to bring pedestrian's negligence action against municipality, based on allegation that she slipped on ice in parking lot, within exception to the prior written notice requirement.

PUBLIC RECORDS - WASHINGTON

Nissen v. Pierce County

Supreme Court of Washington, En Banc - August 27, 2015 - P.3d - 2015 WL 5076297

Sheriff's detective brought action under Public Records Act (PRA) against county and county prosecutor's office, seeking disclosure of call logs from prosecutor's personal cellular telephone and text messages. The Superior Court granted defendants' motion to dismiss. Defendant appealed. The Court of Appeals reversed and remanded. Defendants filed petitions for review.

The Supreme Court of Washington, en banc, held that:

- Record prepared, owned, used, or retained by agency employee in the scope of employment was "prepared, owned, used, or retained by a state or local agency," under PRA;
- Records an agency employee prepares, owns, uses, or retains on a private cellular telephone within the scope of employment can be a "public record";
- Call and text message logs prepared and retained by telephone company with respect to county employee's private cellular telephone were not "public records" of the county;
- Content of work-related text messages sent and received by county prosecutor were "public records," and
- Public employees are responsible for self-segregating private and public records contained on their private devices.

INVERSE CONDEMNATION - CALIFORNIA

The Inland Oversight Committee v. County of San Bernardino

Court of Appeal, Fourth District, Division 2, California - August 17, 2015 - 190 Cal.Rptr.3d 884 - 2015 Daily Journal D.A.R. 9509

Objectors brought action against county and landowner to challenge an inverse condemnation settlement agreement under the statute forbidding public officers from being financially interested in any contract made by them in their official capacity. The Superior Court denied landowner's anti-strategic lawsuit against public participation (SLAPP) motion. Landowner appealed.

The Court of Appeal held that:

- Objectors' action was "necessary" under the public interest exception to the anti-SLAPP statute, and
- Objectors adequately addressed the "necessity" element in their trial court briefing.

Objectors' action against county and landowner to challenge an inverse condemnation settlement agreement under the statute forbidding public officers from being financially interested in any contract made by them in their official capacity was "necessary" under the public interest exception to the anti-strategic lawsuit against public participation (SLAPP) statute, even if county was still evaluating whether to bring an action to recover the settlement funds, even if no demand had been made on the county, and regardless of the merits of objectors' claims, where no public entity had sought to enforce the rights the objectors sought to vindicate in their lawsuit.

Plaintiffs adequately addressed the issue of the "necessity" element of the public interest exception to the anti-strategic lawsuit against public participation (SLAPP) statute in their briefing in the trial court, thus preserving the issue for appeal, where plaintiffs' opposition to defendants' anti-SLAPP motion began with the argument that "it is undisputed that there has been no public enforcement for the disgorgement of the money illegally paid" under the settlement agreement that the plaintiffs challenged under the statute forbidding public officers from being financially interested in any contract made by them in their official capacity.

EMPLOYMENT - CALIFORNIA

Poole v. Orange County Fire Authority

Supreme Court of California - August 24, 2015 - P.3d - 2015 WL 4998965

Under the Firefighters Procedural Bill of Rights Act a firefighter has the right to review and respond to any negative comment that is "entered in his or her personnel file, or any other file used for any personnel purposes by his or her employer." (§ 3255.) This case presented the question whether section 3255 gives an employee the right to review and respond to negative comments in a supervisor's daily log, consisting of notes that memorialize the supervisor's thoughts and observations concerning an employee, which the supervisor uses as a memory aid in preparing performance plans and reviews.

Firefighter and union filed petition and verified complaint, seeking writ of mandate directing county fire authority to include adverse comments in firefighter's files only after complying with FireFighters Procedural Bill of Rights (FFBOR), and requesting declaratory relief, injunctive relief, civil penalties, and damages. The Superior Court denied relief. Firefighter and union appealed, and the Court of Appeal reversed and remanded. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that daily log kept by fire captain was not a "personnel file" or a file "used for any personnel purposes by his or her employer" subject to FFBOR.

Daily log kept by fire captain was not a "personnel file" or a file "used for any personnel purposes by his or her employer" subject to FireFighters Procedural Bill of Rights (FFBOR), even though captain used the log in the performance of his duties as a supervisor, and thus firefighter did not have any right to review and respond to negative comments in the log. Captain did not share his log with anyone but merely discussed with others some of the incidents that he had observed and also recorded in his log, preliminary to completing firefighter's evaluations and performance improvement plan, log was used to help captain remember past events, and captain did not have authority to take adverse disciplinary actions and thus his comments could adversely affect firefighters only if and when they were placed in a personnel file.

STANDING - CALIFORNIA

San Bernardino County v. Superior Court

Court of Appeal, Fourth District, Division 2, California - August 17, 2015 - Cal.Rptr.3d - 2015 WL 4882569

Objectors brought action against county and landowner to challenge an inverse condemnation settlement agreement under the statute forbidding public officers from being financially interested in any contract made by them in their official capacity. The Superior Court overruled demurrer. County petitioned for writ of mandate.

The Court of Appeal held that taxpayer organizations failed to establish that they had standing to challenge validity of settlement agreement based on county officials' financial interest.

Under the statute providing that a contract made by financially interested public officers in their official capacity "may be avoided at the instance of any party except the officer interested therein," the term "party" means a party to the contract at issue.

Taxpayer organizations failed to establish that they had standing to bring an action against county

and landowner challenging the validity of their inverse condemnation settlement agreement under the statute forbidding public officers from being financially interested in any contract made by them in their official capacity, after a former county supervisor pleaded guilty to various bribery-related charges related to his vote approving the settlement agreement, since neither taxpayer organization qualified as a "party" under the statute, and the county owed no mandatory duty to seek to have the settlement agreement declared void, absent evidence that any present county official was involved in fraud or collusion.

HOSPITALS - FLORIDA

Venice HMA, LLC v. Sarasota County

District Court of Appeal of Florida, Second District - August 14, 2015 - So.3d - 2015 WL 4771934

Private hospitals brought action for declaratory and injunctive relief against county hospital district, seeking reimbursement for providing medical care to indigent county residents in the amount of approximately $200 million under provision of a special law that required the county to reimburse private hospitals for providing such care. County counterclaimed, alleging that reimbursement would provide an unconstitutional privilege to private corporations. The Circuit Court entered summary judgment in favor of county. Private hospitals appealed.

The District Court of Appeal held that:

- Provision granted an unconstitutional privilege to private hospitals, and
- Unconstitutional provision was severable from remainder of legislation.

Provision of special law requiring county to reimburse private hospitals in the county for providing medical care to indigent patients granted an unconstitutional privilege to hospitals. Law would have allowed hospitals to enjoy the mandated privilege of reducing their operating cost shared by no other private hospital in the state by demanding taxpayer support in the county.

Unconstitutional provision in special law, requiring county to reimburse private hospitals in the county for providing medical care to indigent patients, was severable from the remainder of the legislation. The offensive provision could be separated from the valid provisions that remained, the legislative purpose of the valid provisions could be accomplished without the invalid provision, and the provision was not so substantively inseparable that the legislature would not have passed the legislation without it.

UTILITIES - IDAHO

City of Challis v. Consent of Governed Caucus

Supreme Court of Idaho, Boise, February 2015 Term - August 20, 2015 - P.3d - 2015 WL 4943521

City petitioned for judicial confirmation to permit it to incur debt to finance water distribution system project without a public vote. Citizen caucus intervened and opposed confirmation. The Seventh Judicial District Court ruled that project was ordinary and necessary expense that did not require public vote. Caucus appealed.

The Supreme Court of Idaho held that:

- Court was not authorized to disregard legal analysis articulated in *Frazier* and *Fuhriman*, as to what constitutes a "necessary expense" under constitutional proviso clause;
- Metering and telemetry upgrade component of proposed water system project was not a "necessary" expense; and
- Caucus was prevailing party entitled to award of attorney fees.

ANNEXATION - ILLINOIS

People ex rel. Geneva Public Library Dist. v. Batavia Public Library Dist.

Appellate Court of Illinois, Second District - August 6, 2015 - Not Reported in N.E.3d - 2015 IL App (2d) 100674-U - 2015 WL 4709534

Geneva and Batavia are both public library districts organized pursuant to the Illinois Public Library District Act (Act). Geneva provides library service to certain portions of Kane County; Batavia provides library services to certain portions of Kane and Du Page Counties. At issue in this appeal is land commonly referred to as Blackberry Township, which both parties have attempted to annex.

On October 18, 2006, Batavia passed Ordinance No.2006–011, which purported to annex Blackberry Township.

Geneva also sought to create an annexation that would safeguard Blackberry Township from future annexation attempts should Batavia's annexation pursuant to Ordinance No.2006–011 fail or be invalidated. Following advice of its counsel, on November 17, 2006, Geneva passed Ordinance No.2006–7, which purported to annex a block of the Blackberry Township territory extending 500 feet in depth and nearly 4,000 feet in width. The parties stipulated that the Geneva annexation, if given effect, would have precluded Batavia from annexing northwards into Blackberry Township.

On February 16, 2007, Geneva filed a petition for leave to file a complaint in quo warranto. Geneva sought to challenge all of Batavia's annexation ordinances. On November 7, 2007, Batavia filed a petition for leave to file a complaint in quo warranto, attacking the Geneva annexation of the block of Blackberry Township territory.

The trial court held that Geneva Ordinance No.2006–7 was "a legal gimmick aimed at preventing Batavia from exercising its lawful, even if unneighborly, right to annex territory" under the Public Library District Act of 1991 (Library Act) (75 ILCS 16/1–1 et seq. (West 2006)). The court further held that "Geneva failed to meet its burden" as the defendant to a quo warranto action and that Geneva's annexation ordinance was "null and void and of no effect." Geneva appealed.

The appeals court reversed, agreeing with Geneva that the trial court erred in determining that Ordinance No.2006–7 was a legal gimmick designed to interfere with and frustrate Batavia's ability to exercise its lawful authority to annex territory in Blackberry Township because the consideration of Geneva's intent was outside of its purview in reviewing an annexation under section 15–15 of the Act. The court also held that Batavia's annexation ordinance was invalid due to an incorrect legal description of the territory to be annexed.

"We note that, by holding that Geneva Ordinance No.2006–7 was not invalid (at least for the reasons stated by the trial court and raised by the parties), while Batavia Ordinance No.2006–11 was invalid, we have reversed the priority between the parties regarding their attempted annexations. We believe that the better practice in this situation is to allow another challenge to the annexation

ordinances, this time involving only proper grounds, such as contiguity and priority. Accordingly, we remand with directions to allow the parties to make appropriate challenges to the ordinances."

ZONING - MARYLAND

Friends of Frederick County v. Town of New Market

Court of Special Appeals of Maryland - August 25, 2015 - A.3d - 2015 WL 5021387

Objectors filed complaint against town, asserting that town's comprehensive plan failed to comply with state law. The Circuit Court entered summary judgment in favor of town. Objectors appealed.

The Court of Special Appeals held that a comprehensive plan is not required to include data to support the plan's goals, policies and recommendations.

INVERSE CONDEMNATION - MICHIGAN

HRT Enterprises v. City of Detroit

United States District Court, E.D. Michigan, Southern Division - August 13, 2015 - Slip Copy - 2015 WL 4771118

HRT Enterprises owns an eleven-acre parcel in the City of Detroit located directly across French Road from the Coleman A. Young International Airport.

The City's 2009 Airport Layout Plan contemplates an enlarged airport and includes the HRT property as designated for acquisition by the City in the event the development goes forward. HRT says that the City has inversely condemned the property by delaying its acquisition, and by taking actions that substantially reduce the property's value and deprive the property of any viable use.

In 2005, HRT initially sued the City in state court for inverse condemnation; however, a jury determined that the City's actions did not amount to a taking of the property. In this case, HRT sought a determination that the City's actions since 2005 amount to a taking of the property.

In March of 2013, the Court denied the City's motion for summary judgment. The Court explained in its decision that the additional facts that HRT says occurred after a state court jury reached an unfavorable verdict in 2005 "might lead a jury to conclude that today, in 2013, a taking of [the] property has occurred."

In May 2013, HRT filed a Motion for Summary Judgment on Liability, which was granted.

The court concluded that, although there were no approved plans to expand the airport or acquire the property, the City had effectively placed a hold on the property with no compensation to HRT.

"For all practical purposes, the City has effectively acquired HRT's property. The property is not commercially useable, and the City has not paid for its 'ownership.' It has inversely condemned the property.

The issue of damages would proceed to trial.

CONTRACTS - MINNESOTA

Rochester City Lines, Co. v. City of Rochester

Supreme Court of Minnesota - August 19, 2015 - N.W.2d - 2015 WL 4928213

Transit service provider brought declaratory judgment action against city, challenging bidding process by which city accepted competing contractor's bid and asserting defamation claim against city council member. The District Court granted summary judgment to city and council member. Provider appealed. The Court of Appeals affirmed. Provider appealed.

The Supreme Court of Minnesota held that:

- In the absence of a statutory standard, unreasonable, arbitrary, or capricious standard adopted in *Griswold* is the appropriate standard for reviewing a city's or county's decision to award a government contract after a "best value" bidding process;
- There was no evidence that winning bidder had an organizational conflict of interest as would render bidding process void; and
- Genuine issue of material fact existed as to whether city awarded the contract based on an unfair and biased process precluding summary judgment.

BOND VALIDATION - MISSISSIPPI

In re Lauderdale County

Supreme Court of Mississippi - August 20, 2015 - So.3d - 2015 WL 4945009

Objectors brought action against county board of supervisors to force election on the issuance of general obligation bonds, alleging board waived petition deadline by posting petition on the internet allowing signatories to remove their signatures after petition was submitted. The Chancery Court overruled the objection to bond validation, entered a validation judgment, and declined to require objectors to post a supersedeas bond for their appeal. Objectors appealed, and board cross-appealed.

The Supreme Court of Mississippi held that:

- Board did not waive deadline to file petition, and
- The Chancery Court did not abuse its discretion in declining request for supersedeas bond.

County board of supervisors did not waive initial deadline for objectors to file petition objecting to issuance of general obligation bonds by posting petition to a public forum on the internet for two weeks to ensure that signatories wanted their names on the petition, and allowing signatories to remove signatures if they so desired. Signatories had a right to withdraw their names before board finally heard the matter, board had duty to verify signatures on petition, and board did not publish names for an improper purpose or to actively persuade signatories to remove their names.

Chancery court did not abuse its discretion in declining county board of supervisors' request for supersedeas bond for objectors' appeal of judgment validating general obligation bonds. Even though stay of judgment was effectively accomplished merely by filing appeal, no stay was technically granted, no monetary judgment existed, board sought bond to cover damages and costs beyond the costs of litigation, judgment had no monetary basis on which court could have based bond amount, and court considered the potential costs to the parties.

MUNICIPAL ORDINANCE - MISSOURI

City of St. Peters Roeder

Supreme Court of Missouri, en banc - August 18, 2015 - S.W.3d - 2015 WL 4929090

After jury returned guilty verdict in City's prosecution under camera ordinance for failure to stop at red light, the Circuit Court granted defendant's renewed motion to dismiss charge. City appealed.

On transfer from the Court of Appeals, the Supreme Court of Missouri held that:

- Red light ordinance conflicted with state law to extent it prohibited assessment of points against driver's license and was therefore invalid;
- Charge Code Manual did not relieve state agency of statutory duty to assess points against driver's licenses for purposes of determining existence of conflict between ordinance and statute;
- Invalid points assessment portion of ordinance was severable from the ordinance; and
- Ordinance absent severed invalid portion could not be applied retroactively to defendant.

Municipal ordinance, creating an automated red light enforcement system under which motorists would be issued a notice of violation after being detected by a camera running a red light but would not have any points assessed against a motorist's driver's license, was in conflict with state statute requiring Director of Revenue to assess two points against the driver's license of any motorist convicted of a moving violation of a municipal ordinance, and was therefore void.

Although failure to obey a traffic control device, or running a red light, is not an offense specifically listed as a moving violation in state statute requiring Director of Revenue to assess two points against the driver's license of any person convicted of a moving violation of a municipal ordinance, the offense is nevertheless a moving violation encompassed in statute's catch-all category for moving violations not otherwise listed, as the motor vehicle involved in the violation is in motion at the time the violation occurs.

Assessment by Director of Revenue of two points against the driver's license of any person convicted of a moving violation of a municipal ordinance was a mandatory requirement under applicable state statute, such that any indication to the contrary in the Charge Code Manual, a standard manual of codes for all offenses maintained by Department of Public Safety, did not relieve Director or other agency from statutory duty to assess points, for purposes of determining whether municipal ordinance, creating an automated red light enforcement system under which a person would be issued a notice of violation but would not have any points assessed against that person's driver's license, was in conflict with state statute.

Invalid portion of municipal ordinance that conflicted with state statute to extent it prohibited assessment of points against motorist who was detected by camera running a red light was severable from the remaining valid portions. Ordinance contained severability clause, and invalid portion of ordinance did not further expressed intent to authorize the installation and use of automated red light enforcement systems as a means to enforce its traffic law prohibiting the running of a red light.

Remaining valid provisions of municipal ordinance, creating an automated red light enforcement system under which a person would be issued a notice of violation after being detected by a camera running a red light, could not be applied retroactively to defendant after invalid portion, which conflicted with state statute to extent it prohibited assessment of points against person's driver's license, was severed from the ordinance, as to do so would have violated due process and right of

protection against ex post facto laws in that defendant did not have fair notice that points would be assessed at the time of the violation.

MUNICIPAL ORDINANCE - MISSOURI

Tupper v. City of St. Louis

Supreme Court of Missouri, en banc - August 18, 2015 - S.W.3d - 2015 WL 4930313

Following dismissal of citations for violations of red light traffic ordinance, record owners of vehicles who were cited for violation of ordinance filed suit against city and Director of Revenue seeking declaratory and injunctive relief based on claim that ordinance, which carried mandatory rebuttable presumption that record owners were driving vehicle at time violation was captured on automated traffic control system, violated due process.

The Circuit Court declared ordinance unconstitutional and denied owners' request for attorney fees. All three parties filed notice of appeal. Appeals were consolidated.

On transfer from the Court of Appeals prior to opinion, the Supreme Court of Missouri held that:

- Owners did not have adequate remedy available at law to challenge constitutional validity of ordinance, as required to seek declaratory and injunctive relief in circuit court, after city dismissed prosecutions, overruling *Brunner v. City of Arnold*, 427 S.W.3d 201;
- Constitutional challenge was sufficiently ripe to raise justiciable controversy via action for declaratory judgment;
- Rebuttable presumption impermissibly shifted burden of persuasion to owner to prove that owner was not driving vehicle at time of violation, in violation of due process;
- Criminal law regarding presumptions applied to determination whether ordinance violated due process;
- Denial of owners' request for attorney fees was not abuse of discretion; and
- Director of Revenue lacked standing to appeal judgment.

OPEN MEETINGS - NEW JERSEY

Opderbeck v. Midland Park Bd. of Educ.

Superior Court of New Jersey, Appellate Division - August 18, 2015 - A.3d - 2015 WL 4997095

Students' father brought action against borough board of education, seeking injunction and alleging board violated Open Public Meetings Act (OPMA) by failing to include attachments to its agendas. The Superior Court entered injunction. Board appealed.

The Superior Court, Appellate Division, held that:

- Board was not required to post agenda on public website, and
- Board was not legally obligated to provide copies of any attachments or other documents referred to in agenda.

Term "agenda," within meaning of requirement under Open Public Meetings Act (OPMA) that borough board of education, as a public body, provide "adequate notice" to public, including by

publishing its “agenda,” before meeting to conduct official business, did not impose a legal obligation on the board to provide copies of any appendices, attachments, reports, or other documents referred to in its agendas.

Borough board of education was not required to post agenda of its official meetings on its public website under Open Public Meetings Act (OPMA), as OPMA did not state that public bodies were obligated to post agenda on website, but rather provided that no electronic notice was deemed to substitute for, or considered in lieu of, statutory adequate notice, which included publication in two newspapers.

CODE ENFORCEMENT - NEW YORK

New York Youth Club v. New York City Environmental Control Bd.

Supreme Court, Appellate Division, Second Department, New York - August 19, 2015 - N.Y.S.3d - 2015 WL 4922969 - 2015 N.Y. Slip Op. 06592

Petitioner filed article 78 proceeding for review of city environmental control board’s (ECB) determination denying its application to vacate default orders with respect to 230 notices of violation issued to petitioner, and seeking hearing with respect to all 461 notices of violation received by petitioner. The Supreme Court, Queens County, denied the petition. Petitioner appealed.

The Supreme Court, Appellate Division, held that petitioner was not served with 230 notices of violation by certified mail, as required for service of process of such notices.

Petitioner was not served with 230 notices of violation of administrative code regarding posting of handbills by certified mail at its last known business address, as required for service of process of such notices, and thus petitioner was entitled to annulment of city environmental control board’s (ECB) default order issued for petitioner’s failure to appear at hearing regarding violations, where affidavits of service merely stated that the notices were mailed to the addresses indicated on the notices in post paid envelopes deposited into United States Post Office depository, but did not indicate a certified mailing, nor did they indicate that delivery of the mailings was restricted to the petitioner.

VOTING - NORTH CAROLINA

City of Greensboro v. Guilford County Bd. of Elections

United States District Court, M.D. North Carolina - July 23, 2015 - F.Supp.3d - 2015 WL 4493790

In early July 2015, the North Carolina General Assembly passed a law that restructured both Greensboro city elections and the form of Greensboro city government. The City of Greensboro and six of its citizens filed suit, contending that the law violated their equal protection rights under the United States Constitution and the North Carolina Constitution.

The case presented two issues in the long run:

— Under what circumstances, if any, does the General Assembly’s decision to treat one municipality and its voters differently from all other municipalities and their voters in connection with referendum rights and local control over form of government, number and boundaries of districts,

method of electing council members, and style of elections violate the Equal Protection Clause?

— Did the General Assembly violate the "one person, one vote" principles of the Equal Protection Clause by the way it redistricted and reapportioned the eight Greensboro City Council seats?

In the short run, the question before the Court was whether the Court should enjoin the Guilford County Board of Elections from holding the 2015 municipal elections in conformity with the new statute in order to prevent irreparable harm to the plaintiffs caused by these alleged equal protection violations.

The District Court held that it appeared on the current record that the new statute deprived Greensboro voters, alone among municipal voters in the State, of the right to change the City's municipal government by referendum and otherwise treated the City of Greensboro and its voters differently from all other municipalities and municipal voters, without a rational basis.

Therefore, the plaintiffs were likely to prevail on the merits. The plaintiffs would suffer irreparable harm should the 2015 election go forward under the new law, and the public interest and the equities favored a return to the pre-existing status quo pending resolution of this lawsuit. The Court thus granted the plaintiffs' motion for preliminary injunction.

BALLOT INITIATIVE - OHIO

State ex rel. Lange v. King

Supreme Court of Ohio - August 25, 2015 - N.E.3d - 2015 WL 5039437 - 2015 -Ohio- 3440

Petitioner sought writ of mandamus to compel clerk of village to transmit a certified copy of a proposed initiative to the county board of elections.

Newton Falls Ordinance 2014–11 repealed a provision allowing residents a credit for income taxes paid to another municipality. Relator, Werner Lange, circulated petitions to place an initiative on the ballot to restore the tax credit and to mandate that the restoration of the credit be repealed only by popular vote.

The Supreme Court of Ohio held, in an expedited opinion, that:

- Initiative was properly filed with village clerk;
- Requirement that initiative petition contain only one proposal of law did not apply; and
- Clerk abused her discretion by considering initiative's fiscal impact.

Proposed initiative allowing residents a credit for income taxes paid to another municipality was properly filed with village clerk. Village was not a city and did not have an auditor, and statute required petition to be filed with city auditor or village clerk.

Requirement that initiative petition contain only one proposal of law applied only to statewide initiative and referendum petitions and, thus, did not apply to initiative allowing village residents a credit for income taxes paid to another municipality.

Village clerk abused her discretion by declining on the basis of its fiscal impact to transmit a certified copy of a proposed initiative to the county board of elections. It was an abuse of discretion for a village clerk to inquire into substantive questions not evident on the face of the petition, and fiscal impact fell outside the four corners of the document.

BALLOT INITIATIVES - TEXAS

In re Williams

Supreme Court of Texas - August 19, 2015 - S.W.3d - 2015 WL 4931372

Referendum proponents petitioned for writ of mandate challenging wording of ballot question.

The Supreme Court of Texas held that:

- Ballot question on referendum for repeal of ordinance had to be phrased so a "No" vote meant to repeal the ordinance, but
- Referring to ordinance as city's "Equal Rights Ordinance" was not improperly politically slanted.

Upon a referendum for the repeal of a city ordinance, a city charter provision stating that ballots used when voting upon proposed and referred ordinances shall set forth upon separate lines the words "For the Ordinance" and "Against the Ordinance" imposed a ministerial duty for the city to phrase the ballot question so that a "NO" or "AGAINST" vote meant to repeal the ordinance and a "YES" or "FOR" vote meant to maintain the ordinance, even though the city charter was preempted to the extent that it purported to require the specific words "For the Ordinance" and "Against the Ordinance."

The heading of the ballot question on a referendum for the repeal of a city ordinance was not improperly politically slanted in referring to the ordinance as the city's "Equal Rights Ordinance," where the ordinance itself contained the words "Equal Rights" in a heading, and the subject of the ordinance was discrimination in city employment, city services, city contracts, public accommodations, private employment, and housing.

EMPLOYMENT - WASHINGTON

Filo Foods, LLC v. City of Seatac

Supreme Court of Washington, En Banc - August 20, 2015 - P.3d - 2015 WL 4943967

Employers brought action against city, city clerk, and Port of Seattle, which was a special-purpose municipal corporation that, among other things, owned and operated the airport, challenging voter initiative that established a $15–per–hour minimum wage and other benefits and rights for employees in the hospitality and transportation industries. Committee that circulated petition as required to get initiative on the ballot intervened. The Superior Court entered partial summary judgment. Coalition and city sought review and employers sought cross-review.

The Supreme Court of Washington held that:

- Initiative did not violate the single-subject rule;
- Law resulting from initiative was enforceable at airport;
- Law was not entirely preempted by National Labor Relations Act;
- Initiative was not preempted by Americans with Disabilities Act (ADA); and
- Initiative did not violate the dormant Commerce Clause.

LIABILITY - CALIFORNIA

Cordova v. City of Los Angeles

Supreme Court of California - August 13, 2015 - P.3d - 2015 WL 4758177

Family of individuals who died in fatal automobile accident brought wrongful death action against city based on an alleged dangerous condition of public property. The Superior Court granted summary judgment for city. Family appealed, and the Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that family was not required to show that allegedly dangerous condition of tree in median caused third party conduct that precipitated accident in order to recover under the Government Claims Act based on a dangerous condition of public property.

A public entity is not, without more, liable under the Government Claims Act for the harmful conduct of third parties on its property containing a dangerous condition, but if a condition of public property creates a substantial risk of injury even when the property is used with due care, a public entity gains no immunity from liability simply because, in a particular case, the dangerous condition of its property combines with a third party's negligent conduct to inflict injury.

Parents of deceased victims of motor vehicle accident in which vehicle, which was speeding, collided with a second speeding vehicle, jumped curb, and struck tree in median, were not required to show in wrongful death action against city that allegedly dangerous condition of tree in median caused the third party conduct that precipitated the accident in order to recover under the Government Claims Act based on a dangerous condition of public property. Rather, they were only required to show dangerous condition of property, that is, a condition that created a substantial risk of injury to the public, proximately caused the fatal injuries the decedents suffered as a result of the collision with the other vehicle.

EMPLOYMENT - CONNECTICUT

Sidorova v. East Lyme Bd. of Educ.

Appellate Court of Connecticut - August 4, 2015 - A.3d - 158 Conn.App. 872 - 2015 WL 4528940

Terminated teacher brought action against board of education, alleging breach of contract, intentional infliction of emotional distress, negligent infliction of emotional distress, and breach of the covenant of good faith and fair dealing. The Superior Court entered summary judgment for board, and teacher appealed.

The Appellate Court held that:

- Teacher lacked standing individually to enforce the provisions of the collective bargaining agreement;
- Superintendent's manner of communicating teacher's termination was a discretionary act to which municipal immunity attached; and
- Teacher did not establish claim for breach of the covenant of good faith and fair dealing.

Terminated teacher lacked standing individually to enforce the provisions of the collective bargaining agreement since she failed to identify any provision in the agreement permitting her individually to enforce the agreement, she failed to allege that the union had breached its duty of fair representation, and she failed to allege a violation of her constitutional right to due process.

Superintendent's manner of communicating teacher's termination was a discretionary act to which municipal immunity attached. Collective bargaining agreement mandated no specific form or timing for the communication of a termination, it did not prescribe the manner in which the superintendent had to communicate the termination to the teacher, and instead, it merely provided that dismissal of teachers was a responsibility of the superintendent.

Terminated teacher did not establish claim for breach of the covenant of good faith and fair dealing. Teacher did not allege that board of education acted in bad faith, and she failed to set forth any factual allegations that board committed a fraud, sought to mislead or deceive teacher, acted with an improper motive, or with a dishonest purpose.

EMINENT DOMAIN - SOUTH CAROLINA

Columbia Venture, LLC v. Richland County

Supreme Court of South Carolina - August 12, 2015 - S.E.2d - 2015 WL 4751034

Real estate developer, which purchased 4,461 acres of land along a river for $18 million, brought action against county alleging unconstitutional taking and substantive due process violation, after developer was unable to remove county's floodway designation, which involved an effective prohibition on construction. The Circuit Court granted summary judgment to county on per se taking and substantive due process claims, and, after a bench trial, found in favor of county on regulatory taking claim. Developer appealed.

The Supreme Court of South Carolina held that:

- County did not take flowage easement on property;
- County did not engage in exaction of property;
- County's restrictions did not amount to a categorical taking of property; and
- County's restrictions did not constitute a regulatory taking of property.

County did not take flowage easement on real estate developer's property by adopting revised flood maps of Federal Emergency Management Agency (FEMA), which designated most of developer's property as lying within the regulatory floodway and triggered development restrictions that prevented expansion of preexisting levees, and therefore developer was not entitled to just compensation under the Takings Clause. County did not increase the flood hazard to which developer's property had historically been exposed, and county's action merely maintained the status quo in terms of flood risk.

County did not engage in exaction of real estate developer's property by adopting revised flood maps of Federal Emergency Management Agency (FEMA), which designated most of developer's property as lying within the regulatory floodway and triggered development restrictions, and therefore developer was not entitled to just compensation under the Takings Clause. County did not require developer to grant an easement or dedicate a portion of its property for public use.

County's developmental restrictions on property within regulatory floodway did not amount to a categorical taking of real estate developer's property that was partially located in a floodway, and therefore developer was not entitled to just compensation under the Takings Clause. 30% of developer's property was not designated as lying within floodway, and entire tract of property retained substantial value for agricultural and other purposes, evidenced by sale of approximately 3,000 acres of the property for almost $10 million.

County’s floodplain development restrictions prohibiting construction within regulatory floodway did not constitute a regulatory taking of real estate developer’s property partially located within floodplain. Even if restrictions significantly impaired the fair market value of developer’s property by preventing mixed-use development, developer lacked reasonable investment-backed expectations knowing property was likely subject to restrictions before purchasing it, and county had legitimate and substantial health and safety-related bases for restrictions that burdened more individuals that just developer and benefited property owners and taxpayers.

Real estate developer’s investment-backed expectations for development of its property located within regulatory floodway and subject to county’s developmental restrictions were unreasonable, which weighed against a finding that county had engaged in regulatory taking of property under the Fifth Amendment. Even though developer subjectively believed it would be allowed to develop property, county participated in National Flood Insurance Program (NFIP) for 18 years before property was purchased, developer was aware at the time of property’s purchase of revised flood map affecting over 70% of the developer’s property, and developer required approvals from Federal Emergency Management Agency (FEMA) and county to proceed with development plan.

The character of county’s floodplain development restrictions provided substantial and legitimate social and economic cost mitigation and health and safety-related benefits without unjustly burdening real estate developer with property located in floodplain, and therefore regulations weighed against a finding that county had engaged in regulatory taking of property under the Fifth Amendment. County ordinance encompassed over 16,500 acres throughout county and not just developer’s property, restrictions benefited all owners of floodplain property by allowing county to reduce flood hazards, and restrictions benefited all taxpayers by reducing potential liability for response and rescue to flooding emergencies.

UTILITIES - MAINE

Office of Public Advocate v. Public Utilities Com'n

Supreme Judicial Court of Maine - August 13, 2015 - A.3d - 2015 WL 4758241 - 2015 ME 113

Office of the Public Advocate and natural gas customer appealed from an order of the Public Utilities Commission approving an alternative rate plan for natural gas utility, claiming that the Commission should have utilized the acquisition cost of utility instead of utility’s original cost valuation to determine the value of the property that utility used in providing its customers with gas.

The Supreme Judicial Court of Maine held that Commission did not abuse its discretion by accepting the original cost valuation.

Public Utilities Commission did not abuse its discretion or exceed its statutory authority in authorizing alternative rate plan for natural gas utility, which had been sold by its previous owner, by accepting the original cost valuation as more accurately reflecting the reasonable value of the property that utility used in providing its customers with gas, rather than accepting the cost of acquiring utility, in fixing the just and reasonable rate base for utility. Commission gave due consideration to evidence of acquisition cost and to evidence of cost of utility’s property when previous owner first devoted the property to public use, and Commission did not discuss utility’s facilities in order to determine their current or fair market value.

Public Utilities Commission’s inclusion of 50% of natural gas utility’s regulatory proceeding

expenses in its revenue requirement calculation had no impact on its decision to approve utility's alternative rate plan, and therefore Supreme Judicial Court did not need to address whether Commission abused its discretion. Even though Commission conceded that utility did not strictly comply with the filing requirements for regulatory proceeding expenses, Commission's decision to normalize a portion of utility's regulatory proceeding expenses had no impact on alternative rate plan's ultimate starting point rates.

ZONING - NEBRASKA

Dowd Grain Company, Inc. v. County of Sarpy

Supreme Court of Nebraska - August 14, 2015 - N.W.2d - 291 Neb. 620 - 2015 WL 4856284

Property owner filed suit against county seeking declaratory judgment that amended overlay district zoning ordinance, which exempted certain class of property owners from ordinance that imposed design requirements for new development, was unconstitutional special law. The District Court entered judgment for county, and owner appealed.

The Supreme Court of Nebraska held that:

- Amended ordinance which created exemptions from enforcement of design ordinance for certain class of property owners did not create permanently closed class, and
- Amended ordinance did not arbitrarily benefit class of property owners that were eligible for exemption.

Amendment to overlay district zoning ordinance which had provided design guidelines for new development proposals, which amendment exempted land platted prior to adoption of ordinance and land within boundary of highway corridor overlay that was zoned anything other than agricultural prior to adoption of ordinance, did not create permanently closed class, for purposes of non-exempt property owner's claim that exemption was unconstitutional special law. Real property was alienable, and thus, number of parcels area that qualified for exemptions was subject to change.

Amendment to overlay district zoning ordinance which had provided design guidelines for new development proposals, which amendment exempted land platted prior to adoption of ordinance and land within boundary of highway corridor overlay that was zoned anything other than agricultural prior to adoption of ordinance, did not arbitrarily benefit class of property owners that were eligible for exemption, for purposes of non-exempt property owner's claim that exemption was unconstitutional special law. Rather, there was reasonable basis for exemption, namely, that class of property owners who filed plat prior to enactment of overlay ordinance had expended substantial sums of money in developing property, including employment of engineers, surveyors, and other professionals, paving of streets, documentation of easements, and other costs of development, enforcement of overlay ordinance after these owners had already submitted plat based on absence of those design requirements would be harsh and unfair, and limiting exemption to those property owners who had completed process of submitting plat was reasonable.

VOTER INITIATIVE - NEW JERSEY

Redd v. Bowman

Supreme Court of New Jersey - August 11, 2015 - A.3d - 2015 WL 4726557

Mayor and city council president brought action to declare invalid a petition submitted by city voters for adoption of proposed ordinance that would prohibit city from disbanding its municipal police department and joining newly-formed county police force. The Superior Court ruled that proposed ordinance created undue restraint on future exercise of municipal legislative power. Voters appealed. The Superior Court, Appellate Division, reversed and remanded. Mayor and council president filed petition for certification, and voters filed cross-petition for certification, which were granted.

The Supreme Court of New Jersey held that:

- Appeal was not moot;
- Proposed ordinance did not constitute improper divestment of municipal governing body's legislative power;
- Proposed ordinance was not invalid by virtue of preemption; and
- Proposed ordinance was prohibited from being submitted to voters.

Proposed ordinance, initiated by city voters under Faulkner Act, to prohibit city from disbanding its municipal police department and joining newly-formed county police force was prohibited from being submitted to voters, since ordinance was out of date, inaccurate, and misleading. City had already disbanded its police force and contracted to receive its police services from county, voters who signed petition did so at time when police reorganization was in planning stage, and nothing suggested that those voters would have supported petition after city police force was disbanded, such that submission of ordinance to voters would have undermined objectives of Act.

EMPLOYMENT - NEW MEXICO

Kane v. City of Albuquerque

Supreme Court of New Mexico - August 13, 2015 - P.3d - 2015 WL 4761421

Captain of fire department, who was nominated as a candidate for state House of Representatives, brought action against city, seeking injunctive relief to enable her to seek elective office despite prohibitions in city charter and personnel rules. The District Court granted captain a permanent injunction. City appealed. The Court of Appeals certified two related cases to the Supreme Court, which was accepted.

The Supreme Court of New Mexico held that:

- City's regulations were supported by a rational basis;
- Regulations did not violate captain's right to speak on a matter of public concern;
- Regulations were not unconstitutional qualifications for elective office;
- Municipalities have the legislative authority to enact qualifications for appointive positions;
- Statute protecting hazardous duty officers from prohibitions on political activity is not a general law regulating a topic of statewide concern; and
- City had power to prohibit hazardous duty officers from seeking elective office in its home rule charter.

LIABILITY - NEW YORK

Gregware v. City of New York

Supreme Court, Appellate Division, First Department, New York - August 4, 2015 - N.Y.S.3d - 2015 WL 4615591 - 2015 N.Y. Slip Op. 06408

Motorist and his wife brought action against city and road construction contractor, seeking to recover damages for personal injuries allegedly sustained in motor vehicle accident that occurred in construction zone. The Supreme Court, New York County, entered judgment following jury trial, apportioning liability 65% against city and 35% against contractor, and awarding plaintiffs damages of $2.2 million for past pain and suffering, $3.8 million for future pain and suffering, $700,000 for past loss of services and consortium, and $425,000 for future loss of services and consortium, and denied defendants' posttrial motions to set aside verdict and city's posttrial motion for summary judgment on its cross claim for contractual indemnification against contractor. Defendants appealed.

The Supreme Court, Appellate Division, held that:

- Narrowing of highway due to lane closures was proximate cause of motorist's injuries;
- Both city and contractor owed duty of care to motorist;
- Neither rear-ending driver nor motorist were negligent with respect to accident;
- Apportionment of fault was against weight of evidence;
- Awards for past and future pain and suffering constituted reasonable compensation;
- Awards for past and future loss of services and society constituted reasonable compensation; and
- Contractor was liable to city under contractual indemnity provision.

Apportioning 65% liability to city and remaining 35% to road construction contractor was against weight of evidence in motorist's personal injury suit against city and contractor, seeking to recover damages related to motor vehicle accident that occurred in construction zone in which lane closures and need to reduce speed allegedly were not adequately marked, where contractor was responsible for setting up and maintaining traffic pattern alleged to have caused accident, and, although single city representative observed traffic pattern and looked for "obvious problem," he disavowed any responsibility for setting up lane closures or ensuring compliance with contract provisions regarding placement of traffic control devices.

IMMUNITY - NEW YORK

Tara N.P. v. Western Suffolk Bd. of Co-op. Educational Services

Supreme Court, Appellate Division, Second Department, New York - August 12, 2015 - N.Y.S.3d - 2015 WL 4744397 - 2015 N.Y. Slip Op. 06498

Student brought action against, among others, county, county department of social services, county department of labor, alleged assailant, facility owner, and regional educational service agency, seeking damages for personal injuries she sustained when sexually assaulted while attending class at facility. County agencies moved for summary judgment dismissing complaint and all cross claims insofar as asserted against them. The Supreme Court, Suffolk County, denied motions. County agencies appealed.

The Supreme Court, Appellate Division, held that:

- County agencies were entitled to governmental immunity from student's claim, and
- Fact issues precluded summary judgment on contribution claim.

County, county department of social services, and county department of labor were entitled to governmental immunity from vocational student's claim seeking damages for personal injuries she sustained when sexually assaulted while attending class at facility where county referred level three sex offender for welfare to work program. County agencies did not voluntarily assume a special duty to student, student did not allege that county agencies violated any statutory duty, and county agencies did not assume positive direction and control in the face of a known, blatant, and dangerous safety violation.

Genuine issue of material fact existed regarding whether county, county department of social services, and county department of labor breached a duty of care to facility owner by referring level three sex offender to work at facility where vocational training was offered, precluding summary judgment on facility owner's claim for contribution against county agencies in student's action seeking damages for sexual assault at facility.

LABOR - PENNSYLVANIA

City of Allentown v. International Ass'n of Fire Fighters Local 302

Commonwealth Court of Pennsylvania - August 7, 2015 - A.3d - 2015 WL 4680890

Union and city petitioned to vacate final interest arbitration award. The Common Pleas Court entered order. City sought review.

The Commonwealth Court held that:

- Requiring city to employ a minimum number of firefighters per shift was not properly the subject of collective bargaining under Act 111, and
- Arbitration panel could not properly eliminate ability of firefighter to buy time for calculation of pension benefits and the ability to retire at any age.

By requiring city to employ a minimum number of firefighters per shift, arbitration award unduly burdened city's managerial responsibilities and, thus, was not properly the subject of collective bargaining under Act 111, which governed policemen and firemen collective bargaining.

Arbitration panel in proceeding under Act 111, which governed policemen and firemen collective bargaining, could not properly eliminate ability of firefighter employed by home-rule charter city to buy up to four years of time for calculation of pension benefits and the ability to retire at any age. Provisions were illegal under Third Class City Code, which governed the city prior to its adoption of home rule, and required a minimum of 20 years of continuous service and a minimum age of 50 years for receipt of pension funds.

IMMUNITY - PENNSYLVANIA

Southeastern Pennsylvania Transp. Authority v. City of Philadelphia

Commonwealth Court of Pennsylvania - August 7, 2015 - A.3d - 2015 WL 4680775

Southeastern Pennsylvania Transportation Authority (SEPTA) brought action against city and city commission on human relations, seeking injunctive and declaratory relief, alleging that commission was prohibited from exercising jurisdiction over SEPTA under city's anti-discrimination fair practices ordinance.

The Court of Common Pleas sustained city and commission's preliminary objections. SEPTA appealed. The Commonwealth Court reversed. City and commission appealed. The Supreme Court vacated and remanded.

On remand, the Commonwealth Court held that legislature did not intend for SEPTA to be subject to city fair practices ordinance.

Metropolitan Transportation Authorities Act established that SEPTA enjoyed sovereign immunity, legislature did not specifically waive SEPTA's immunity from actions brought under local anti-discrimination ordinances, city fair practices ordinance was not the only anti-discrimination law applicable in city, since SEPTA was subject to the Pennsylvania Human Relations Act, which prohibited SEPTA from discriminating against its employees and passengers, and subjecting SEPTA to local anti-discrimination ordinances could have overwhelming consequences, since SEPTA's legal obligations would change in course of a single bus trip.

IMMUNITY - UTAH

Scott v. Utah County

Supreme Court of Utah - August 5, 2015 - P.3d - 2015 WL 4642962 - 2015 UT 64

Victim of violent sexual assault by prisoner who had escaped from private business's work site brought negligence action, for improper screening and placing participants in county's work-release program, against county, placement company, and private business. The District Court granted county, placement company, and private business's motion to dismiss. Victim appealed.

The Supreme Court of Utah held that:

- To impose a duty to protect others from one in the custody of another, the "others" likely to be harmed need not be identifiable, overruling *Higgins v. Salt Lake County*, 855 P.2d 231, *Rollins v. Petersen*, 813 P.2d 1156, and *Ferree v. State*, 784 P.2d 149;
- A custodian of a dangerous individual has a duty to prevent that individual from harming members of the public;
- County owed duty to victim; but
- Victim's negligence claim was barred by the Governmental Immunity Act.

SIGNAGE - CALIFORNIA

Contest Promotions, LLC v. City and County of San Francisco

United States District Court, N.D. California - July 28, 2015 - Slip Copy - 2015 WL 4571564

Plaintiff is a corporation that organizes and operates contests and raffles whereby individuals are invited to enter stores for the purpose of filling out an application to enter a contest. Plaintiff brought suit against the City of San Francisco, challenging the constitutionality of its signage ordinances, which banned the use of "off-site" signage, known as General Advertising Signs, but permitted "on-site" signage, known as Business Signs. The primary distinction between the two types of signage pertains to where they are located. Broadly speaking, a Business Sign advertises the business to which it is affixed, while a General Advertising Sign advertises for a third-party product or service which is not sold on the premises to which the sign is affixed. The paradigmatic example of an off-site (or General Advertising) sign would be a billboard.

The Complaint alleged causes of action for (1) violation of the First Amendment, (2) denial of Due Process, (3) inverse condemnation, (4) denial of Equal Protection, (5) breach of contract, (6) breach of implied covenant of good faith and fair dealing, (7) fraud in the inducement, (8) promissory estoppel, and (9) declaratory relief.

The District Court granted City's motion to dismiss as to all causes of action. The state law claims were dismissed without prejudice so that a state court may decide the state law claims in the first instance.

ENVIRONMENTAL - CALIFORNIA

City of San Diego v. Board of Trustees of California State University

Supreme Court of California - August 3, 2015 - P.3d - 2015 WL 4605356

City, local association of governments, and metropolitan transit system (MTS) filed petitions for writ of mandate challenging state university system's certification of final environmental impact report (EIR) and approval of campus expansion project. The Superior Court denied the petitions. City, association, and MTS appealed. The Court of Appeal affirmed in part, reversed in part, and remanded with directions. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California concluded that the Board of Trustees was not justified in assuming that a state agency may contribute funds for off-site environmental mitigation only through earmarked appropriations, to the exclusion of other available sources of funding. That erroneous assumption invalidated both the Board's finding that mitigation was infeasible and its statement of overriding considerations. Accordingly, the Supreme Court affirmed the Court of Appeal's decision directing the Board to vacate its certification of the EIR.

Supreme Court, after determining that state university board of trustees improperly assumed that feasibility of mitigating campus expansion project's off-site environmental effects depended on a legislative appropriation for that specific purpose, would decline to consider whether particular sources of funding could legally be used for off-site mitigation, as question was not properly before the Court on appeal. In environmental impact report (EIR) issued pursuant to the California Environmental Quality Act (CEQA), board went no further in considering the feasibility of fair-share mitigation payments than to assume incorrectly that such payments would require a legislative appropriation for that specific purpose.

ZONING - CALIFORNIA

Carson Harbor Village, Ltd. v. City of Carson

Court of Appeal, Second District, Division 8, California - July 31, 2015 - Cal.Rptr.3d - 2015 WL 4600066

Mobile home park filed mandate action against city, challenging city's denial of park's application to convert park from rental spaces to subdivision of individually owned lots. The Superior Court entered judgment against city. City appealed. The Court of Appeal reversed in part, affirmed in part, and remanded with directions. Following remand, city held new public hearings and rejected park's application. Park brought another mandate action against city. The Superior Court found in favor of park. City appealed.

The Court of Appeal held that:

- Determination in prior appeal that inconsistency in city's general plan was not available ground for denying application was not law of the case;
- City was permitted to deny application based on inconsistency with open space element of city's general plan; and
- Evidence was sufficient to support city's finding that subdivision was inconsistent with open spaces element of general plan.

ANNEXATION - INDIANA

Town of Whitestown v. Rural Perry Tp. Landowners

Court of Appeals of Indiana - July 29, 2015 - N.E.3d - 2015 WL 4557062

Remonstrators challenged town's annexation of land. The Superior Court adopted remonstrators proposed findings and conclusions and entered judgment in their favor. Town appealed.

The Court of Appeals held that:

- Town met its burden of demonstrating that annexation area was "needed" and could be "used by the municipality for its development in the reasonably near future," as required to justify annexation, and
- Remonstrators failed to show that annexation would have "a significant financial impact," as required to defeat the otherwise valid annexation.

Town seeking to annex unincorporated portions of adjacent township met its burden of demonstrating that the annexation area was "needed" and could be "used by the municipality for its development in the reasonably near future," within meaning of statute governing requirements for annexation. Witnesses testified concerning rapid growth of town, annexation area was to be site of new waste water treatment plant, town had plans to run water mains through the area, town had plans to connect the plant to water lines from subdivision next to the annexation area, preventing annexation of a portion of the area could lead to substantial expense to town, and there was no evidence that town only sought to bolster its tax base.

Remonstrators challenging town's annexation of unincorporated portions of adjacent township failed to demonstrate that the annexation would have "a significant financial impact," as required to defeat town's otherwise valid annexation, even though annexation could result in an increase in property taxes of 52% to 74% for residents of the annexation area. Town's annexation ordinance provided that property taxes in the annexation area would remain at preannexation levels for 13 years, there was no evidence as to financial impact at the conclusion of the 13-year period, and town's 13-year plan of accommodation would not be regarded as an effort to "game the system," in absence of legislative provision barring such arrangement.

ANNEXATION - INDIANA

Town of Fortville v. Certain Fortville Annexation Territory Landowners

Court of Appeals of Indiana - July 2, 2015 - N.E.3d - 2015 WL 4040822

Landowners filed petition remonstrating against town's proposed annexation of territory. After a

bench trial, the Circuit Court concluded that town failed to demonstrate that the annexation was needed and could be used by town for its development in the reasonably near future. Town appealed.

The Court of Appeals held that, In determining whether a municipality seeking to annex territory fulfills the requirement that the territory sought to be annexed is needed and can be used by the municipality for its development in the reasonably near future, a trial court may, and should, consider non-physical brick and mortar development uses, such as using annexed territory for transportation linkages with other developing areas, to control adjacent development on its borders, and to prevent conflicting land uses.

MUNICIPAL ORDINANCE - LOUISIANA

Albe v. City of New Orleans

Court of Appeal of Louisiana, Fourth Circuit - July 29, 2015 - So.3d - 2015 WL 4598291 - 2014-1013 (La.App. 4 Cir. 7/29/15)

Motorist cited for traffic violation pursuant to Automated Traffic Enforcement System (ATES) ordinance brought putative class action, on behalf of herself and putative class of automobile owners ticketed for violating ordinance who paid fines directly, contested fines, lost, and paid, or had not yet paid fines and received delinquent notice, against city and automated traffic enforcement systems company, challenging overall validity of ordinance and seeking to have it declared unconstitutional on its face and as applied.

The Civil District Court denied class certification. Motorist and putative class appealed.

The Court of Appeal held that:

- Class failed to meet numerosity requirement for certification;
- Class failed to meet commonality requirement for certification; and
- Definition of class was overly broad.

BALLOT INITIATIVES - MINNESOTA

Minnesota Voters Alliance v. Anoka-Hennepin School Dist.

Court of Appeals of Minnesota - July 27, 2015 - N.W.2d - 2015 WL 4507988

The Anoka–Hennepin School District is funded in part by levies approved by voters in the district. In August 2011, the school board passed a resolution to present three levy-funding questions to voters in a special election on November 8, 2011. The ballot questions asked voters whether to: (1) renew an existing levy providing $1,044 per student per year for the next ten years; (2) approve a levy of $3 million each year for ten years for technology; and (3) approve a levy of $12 million per year for ten years as a stop-gap measure if the legislature fails to approve inflationary funding.

In the months before the election, the school district informed voters about the levy questions in multiple ways. The school district conducted two public meetings in September, provided an online property-tax calculator for voters to gauge the effect of each proposed levy, and mailed a one-page notice of special election and a one-page sample ballot to all 81,235 addresses in the district. And it created and disseminated the five-page brochure at issue in this appeal.

Nearly one year after the special election, the Minnesota Voters Alliance filed a complaint with the Minnesota Office of Administrative Hearings, alleging that the school district violated campaign-finance-reporting requirements under Minn.Stat. § 211A.02 (2014) and engaged in unfair campaign practices under Minn.Stat. § 211B.06 (2014) in connection with the brochure.

The Court of Appeals held that a school district's act of placing a levy question on the ballot is not an act to "promote" the levy question within the meaning of Minn.Stat. § 211A.01, subd. 4 (2014). A school district acts to "promote" a levy ballot question within the meaning of Minn.Stat. § 211A.01, subd. 4, only when it urges the adoption of the levy ballot question by express advocacy or by statements that, viewed as a whole, are the functional equivalent of express advocacy.

ZONING - MINNESOTA

Dean v. City of Winona

Supreme Court of Minnesota - August 5, 2015 - N.W.2d - 2015 WL 4637133

Residential property owners brought action to challenge municipal ordinance limiting to 30% the number of lots on a block eligible to obtain certification as rental properties. The District Court granted summary judgment for city, and property owners appealed. The Court of Appeals affirmed. Owners petitioned for review.

The Supreme Court of Minnesota held that:

- Following sale of property at issue, exception to mootness doctrine for issues that are capable of repetition, yet evade review did not apply;
- Appeal did not present an urgent question of statewide importance requiring immediate review; and
- Supreme Court would not consider Remedies Clause claim for nominal damages, raised for the first time on appeal.

Exception to mootness doctrine for issues that are capable of repetition, yet evade review did not apply, following sale of property at issue, to former property owners' appeal in action brought against city challenging ordinance limiting to 30% the number of lots on a block eligible to obtain certification as rental properties. City's enforcement of the ordinance was ongoing, and there was nothing about the case that was of inherently limited duration.

Former property owners' appeal in action brought against city challenging ordinance limiting to 30% the number of lots on a block eligible to obtain certification as rental properties did not present an urgent question of statewide importance supporting Supreme Court exercise of discretion to consider the case, despite its having been rendered moot by owners' sale of the property at issue. Although the right to rent property was an important property interest and the record was well-developed, the case, involving homeowners of one municipality, was not so urgent or having such broad impact as to require an immediate decision.

MUNICIPAL ORDINANCE - NEW JERSEY

Timber Glen Phase III, LLC v. Township of Hamilton

Superior Court of New Jersey, Appellate Division - August 6, 2015 - A.3d - 2015 WL 4643551

Owners of apartment buildings brought action in lieu of prerogative writs challenging an ordinance adopted by township assessing an annual licensing fee on residential apartment units. The Superior Court granted summary judgment in favor of township. Owners appealed.

The Superior Court of New Jersey, Appellate Division, held that Licensing Act did not grant township authority to adopt ordinance assessing annual licensing fee on residential apartment units, where Act limited municipalities' licensing authority to temporary residential uses, not permanent dwellings, such that municipalities could not mandate by ordinance licensure of residential rentals for 175 days or more.

UTILITIES - PENNSYLVANIA

Valley Forge Sewer Authority v. Hipwell

Commonwealth Court of Pennsylvania - July 31, 2015 - A.3d - 2015 WL 4598341

Sewer authority filed a writ of scire facias sur (what the hell is that?) municipal claim against customer, seeking to enforce a lien imposed pursuant to Municipal Claims and Tax Liens Act (MCTLA) for unbilled sewer service to property that was multi-family dwelling with four equivalent dwelling units (EDU) but listed in sewer authority's records as a single-family dwelling. The Court of Common Pleas entered judgment in favor of sewer authority. Customer appealed.

The Commonwealth Court held that:

- Sewer service contract did not allow customer to pay for only one EDU per quarter, and
- Customer's account was delinquent under MCTLA's attorney fee provision.

Sewer service contract did not allow customer to pay for only one equivalent dwelling unit (EDU) per quarter for his multi-family dwelling that was listed in sewer authority's records, and billed as, only a single-family dwelling despite having four EDUs, and therefore there was no unilateral mistake in the formation of contract barring sewer authority from obtaining payment for unbilled service for three EDUs per quarter. Standard contract terms provided for a uniform payment that could change based upon number of EDUs at location and, pursuant to Municipality Authorities Act and sewer authority's code of rules and regulations, all customers agreed to pay a quarterly fee of $75 per EDU in exchange for sewer service.

Customer's account was delinquent, as would allow sewer authority to recover attorney fees incurred in collection of account pursuant to Municipal Claims and Tax Liens Act (MCTLA), where sewer authority requested payment from customer for $2925 by a named date for unbilled sewer services for customer's three additional equivalent dwelling units (EDU) in his multi-family property that was listed in sewer authority's records, and billed as, only a single-family dwelling, but payment was not made, despite claim that customer did not pay while pursuing a reasonable contest.

BONDS - CALIFORNIA

City of Petaluma v. Cohen

Court of Appeal, Third District, California - July 30, 2015 - Cal.Rptr.3d - 2015 WL 4572444

City brought a petition for a writ of mandate, seeking an order to require the Department of Finance (DOF) to approve expenditures for an interchange and roadway under-crossing that had been

approved by the city's redevelopment agency prior to the redevelopment agency's dissolution. The Superior Court denied the petition. City appealed.

The Court of Appeal held that:

- City's planned expenditures were not an "enforceable obligation" under redevelopment agency dissolution law;
- DOF's disapproval of expenditures did not violate the covenant of good faith; and
- DOF's disapproval of expenditures did not result in an unconstitutional impairment of city's contract rights.

City's planned expenditures for an interchange and roadway under-crossing that had been approved by the city's redevelopment agency prior to the redevelopment agency's dissolution were not "payments required under the indenture" and thus were not an "enforceable obligation" under the redevelopment agency dissolution law, even if city's failure to use its bond proceeds for the roadway project would result in the bond losing tax-exempt status and the interest rate on the bonds being increased, where nothing in the language of the first supplement to indenture required that the roadway project actually be funded or constructed, absent evidence of whether the indenture itself contained such a requirement.

The court specified that, although the bonds at issue were enforceable obligations, no enforceable obligation to use those bond proceeds specifically to fund this particular highway project appeared in the record.

IMMUNITY - MARYLAND

Cooper v. Rodriguez

Court of Appeals of Maryland - July 24, 2015 - A.3d - 2015 WL 4497718

Parents of inmate murdered by fellow inmate on prison transport bus filed suit against State, individual correctional officers who staffed bus, and others, asserting wrongful death and other claims. Following jury trial, the Circuit Court granted correctional officers' motion for judgment notwithstanding the verdict (JNOV). Parents and State appealed. The Court of Special Appeals affirmed in part and vacated in part. Correctional officer, who was officer in charge, filed petition for writ of certiorari, which was granted.

The Court of Appeals held that:

- Evidence supported finding that corrections officer was grossly negligent and, thus, was not entitled to immunity under Maryland Tort Claims Act;
- Alleged special relationship between officer and inmates was not limitation on common law public official immunity; but
- As an issue of first impression, officer's gross negligence was exception to common law public official immunity.

IMMUNITY - MASSACHUSETTS

Murray v. Town of Hudson

Supreme Judicial Court of Massachusetts, Worcester - August 3, 2015 - N.E.3d - 2015 WL

4602258

Varsity high school relief pitcher who injured his knee while warming up in the visiting team bullpen brought action against town that maintained the park at which the baseball field was located for negligence. The Superior Court Department entered summary judgment in favor of town. Pitcher appealed.

The Supreme Judicial Court of Massachusetts held that:

- Recreational Use Statute did not shield town from liability, and
- Pitcher's presentment letter provided town with adequate notice of the circumstances of the player's negligence claim.

Recreational Use Statute did not shield town from liability for negligence resulting in injuries to visiting high school varsity relief pitcher, who was injured while warming up in the visiting team bullpen at baseball field in park maintained by town, where the town invited pitcher's team to play an interscholastic baseball game, and it owed the visiting team the same duty of care to provide a reasonably safe playing field that it owed its own students.

Baseball pitcher's presentment letter provided town, which maintained baseball field at which pitcher was injured while warming up in the visiting team's bullpen, with adequate notice of the circumstances of the player's negligence claim, without limitation to any specific theory of negligence, and town reasonably could have investigated those circumstances and determined whether it might have been liable on the claim under the Tort Claims Act, where letter claimed that bullpen was inherently dangerous and described what made it dangerous, including width of the pitching mound, use of wooden "timbers" to enclose the pitching mound, and the poor quality of lighting.

MUNICIPAL ORDINANCE - MICHIGAN

Shoemaker v. City of Howell

United States Court of Appeals, Sixth Circuit - July 29, 2015 - F.3d - 2015 WL 4548336

Homeowner brought action challenging constitutional validity of city ordinance requiring homeowners or occupants to maintain grassy area between sidewalk and street curb adjacent to their property so that grass, weeds, and other vegetation did not grow in excess of eight inches. The United States District Court entered order granting summary judgment in favor of homeowner. The same court entered order denying city's motion for stay of judgment pending appeal, and homeowner's motion for relief from judgment or order. City appealed.

The Court of Appeals held that:

- Notice to homeowner satisfied notice requirements of procedural due process;
- Procedures city provided to homeowner to challenge allegation that he violated ordinance did not violate homeowner's procedural due process rights;
- Homeowner was precluded from mounting procedural due process claim against city;
- Ordinance did not impair homeowner's fundamental rights; and
- Ordinance did not violate homeowner's substantive due process rights.

AFFORDABLE HOUSING ORDINANCE - NEW JERSEY

Fair Share Housing Center, Inc. v. Zoning Board of City of Hoboken

Superior Court of New Jersey, Appellate Division - July 28, 2015 - A.3d - 2015 WL 4530656

Housing center brought actions in lieu of prerogative writs seeking declaratory and injunctive relief against city zoning board and private developers, seeking compliance with city's affordable housing ordinance. The Superior Court dismissed with prejudice housing center's complaints. Housing center and city appealed. Appeals were consolidated.

The Superior Court, Appellate Division, held that:

- Neither Fair Housing Act (FHA) nor regulations promulgated by Council on Affordable Housing (COAH) pursuant to FHA required municipality to submit all ordinances impacting municipality's affordable housing obligation to COAH for approval, and
- Provisions in ordinance allowing for voluntary payments in lieu of compliance with ordinance's affordable housing requirements did not require approval of COAH under FHA or regulations promulgated by COAH as condition of enforcement.

IMPACT FEES - PENNSYLVANIA

Metro Bank v. Board of Com'rs of Manheim Tp.

Commonwealth Court of Pennsylvania - July 9, 2015 - A.3d - 2015 WL 4130405

Bank, which planned to build new branch, sought judicial review of the calculation township's board of commissioners used to assess transportation impact fee for new development, asserting that township should not have included "pass-by trips" when calculating the number of new peak-hour trips generated by the development. The Court of Common Pleas affirmed board's calculation. Bank appealed.

The Commonwealth Court held that the statute providing transportation impact fee calculation for a new development based, in part, on the estimated number of peak hour trips to be generated by the new development does not exclude pass-by trips. Pass-by trips are only excluded when evaluating whether a municipality can assess an additional transportation impact fee.

IMMUNITY - TEXAS

City of Ingleside v. City of Corpus Christi

Supreme Court of Texas - July 24, 2015 - S.W.3d - 2015 WL 4498005

City brought action against adjacent city for declaratory judgment that natural and artificial structures such as wharves, piers, and docks protruding into bay were functionally part of fast land above high water mark and were not within jurisdiction of adjacent city governing land from shoreline into bay waters. The District Court rejected adjacent city's plea to subject-matter jurisdiction, and it appealed. The Court of Appeals reversed. City petitioned for review.

The Supreme Court of Texas held that city's suit did not raise nonjusticiable political question regarding boundary. City did not seek declaration altering shoreline boundary, but merely asked court to clarify whether "shoreline" could be reshaped by protrusions of natural and artificial

fixtures on the fast land.

IMMUNITY - WYOMING

Fugle v. Sublette County School Dist. No. 9

Supreme Court of Wyoming - July 31, 2015 - P.3d - 2015 WL 45989542015 WY 98

High school student brought action against school and teacher after student suffered injuries during a demonstration of centripetal force in gymnasium, in which students sat in a wheeled cart, pushed the cart, and held onto a 20-foot rope while teacher held onto the other end. The District Court granted school and teacher's motion for summary judgment based on immunity under Governmental Claims Act. Student appealed.

The Supreme Court of Wyoming held that:

- Act's exception to immunity based on the operation or maintenance of a "building" did not apply, and
- Act's exception to immunity based on operation or maintenance of a "recreation area" does not apply to all activities undertaken within the area.

High school student did not present any evidence of a physical defect in gymnasium in his personal injury action against school and teacher for injuries suffered during science demonstration of centripetal force in gymnasium, and therefore exception to governmental immunity in Governmental Claims Act for operation or maintenance of a building did not apply. Even though student alleged a potential defect in lack of padding in gymnasium for demonstration, student's assertions related to the design and supervision of the demonstration, and student's expert reports did not mention defects inherent in gymnasium.

Under the Governmental Claims Act exception to governmental immunity based on the operation or maintenance of a "recreation area," the legislature did not intend for the waiver of immunity from liability to apply to all activities undertaken within a particular recreation area. Rather, the legislature intended to limit the waiver of immunity to negligence associated with the function of the physical attributes or structure of the recreation area.

IMMUNITY - GEORGIA

Fuciarelli v. McKinney

Court of Appeals of Georgia - July 16, 2015 - S.E.2d - 2015 WL 4313845

State university professor brought retaliation action against university, Board of Regents, university president, and former acting vice president under Taxpayer Protection and False Claims Act (TPFCA). The trial court dismissed claims. Professor appealed.

The Court of Appeals held that:

- University, Board, and president and former acting vice president in their official capacities were entitled to sovereign immunity, but
- Professor was not required to obtain Attorney General's approval before filing suit against president and former acting vice president in their individual capacities.

OPEN MEETINGS - GEORGIA

Gravitt v. Olens

Court of Appeals of Georgia - July 16, 2015 - S.E.2d - 2015 WL 4314382

Attorney General brought a civil action seeking to enforce Open Meetings Act (OMA), alleging city and city mayor had negligently violated the OMA by refusing to allow a member of the public to attend and videotape a meeting of the city council, and sought the imposition of civil penalties and the award of attorney fees pursuant to the OMA. The Superior Court denied the defendants' motion to dismiss the action on the basis of sovereign and official immunity, and granted summary judgment in favor of the Attorney General. Defendants appealed.

The Court of Appeals held that:

- City was not entitled to assert sovereign immunity to bar enforcement action;
- Mayor's actions were ministerial, and therefore he was not entitled to official immunity;
- City was not a "person" subject to imposition of civil penalties;
- Genuine issue of material fact existed as to whether citizen was removed from open public meeting at the direction of the mayor precluding summary judgment;
- Imposition of $2500 civil penalty each for second and third OMA violations was excessive; and
- Defendants' acts lacked substantial justification, such that attorney fees were recoverable under OMA.

TORTS - MASSACHUSETTS

Rodriguez v. City of Somerville

Supreme Judicial Court of Massachusetts - July 20, 2015 - N.E.3d - 2015 WL 4389881

Elementary school student's father brought negligence action against city under Massachusetts Tort Claims Act after student suffered injuries when metal door frame fell off school's front door and struck him in head. The Superior Court denied city's motion to dismiss on basis of improper presentment. City appealed. The Appeals Court dismissed appeal. Father sought further appellate review.

The Supreme Judicial Court of Massachusetts held that:

- Appeal was not moot;
- Denial of city's motion to dismiss action for failure to meet presentment requirements of Tort Claims Act was immediately appealable; and
- Letter sent to mayor on behalf of student did not meet presentment requirements set forth in Tort Claims Act.

City's appeal from denial of motion to dismiss student's negligence action was not moot, even though parties had both filed amended pleadings and additional parties had been joined since filing of appeal, where underlying issue was whether student had made proper presentment to city in the first instance.

Orders denying motions to dismiss based on immunity from suit fall into the limited class of cases for which an interlocutory order is immediately appealable under the doctrine of present execution.

Letter sent to mayor on behalf of injured second grade student did not meet presentment requirements of Massachusetts Tort Claims Act as a condition for filing negligence suit against city. Letter did nothing more than state that student was injured in accident at public school and that counsel was seeking a copy of school's report of incident as well as reports of any other incidents at same school, and letter did not identify any legal basis for a claim against city, much less actually present a claim that city could reasonably be expected to investigate.

LIABILITY - NEW HAMPSHIRE

Dolbeare v. City of Laconia

Supreme Court of New Hampshire - July 15, 2015 - A.3d - 2015 WL 4264718

Visitor to city-owned park who tripped and fell on a mat at playground brought negligence and nuisance action against city. The Superior Court denied city's motion to dismiss pursuant to the recreational use immunity statutes, but transferred questions for review. City brought interlocutory appeal.

The Supreme Court of New Hampshire held that:

- Visitor's use of playground equipment was "outdoor recreational activity," within meaning of statute eliminating a landowner's duty of care to keep premises safe for entry or use by others for outdoor recreational activity, and
- Visitor's use of playground equipment constituted the "use of land," within meaning of statute immunizing a landowner who without charge permits any person to use land for recreational purposes from liability for unintentional personal injury or property damage.

UTILITIES - NEW JERSEY

Township of Wyckoff v. Village of Ridgewood

Superior Court of New Jersey, Appellate Division - July 15, 2015 - Not Reported in A.3d - 2014 WL 10093617

The Village of Ridgewood ("Village") is a municipal corporation that owns and operates the Ridgewood Water Utility ("Utility"). In addition to providing water to the residents of Ridgewood, the Utility provides water to three other municipalities ("Plaintiffs") pursuant to franchise agreements.

Plaintiffs challenged the validity of three ordinances enacted by Ridgewood that increased the water rates charged by the Utility to its customers by a total of thirty-one percent over the course of 2010, 2011, and 2012. Plaintiffs claimed the water rates established in these three ordinances improperly permitted the Utility to include millions of dollars of Ridgewood's municipal operating expenses, such as the cost of providing health insurance to non-Utility employees, police department salaries and expenses, fire department salaries and expenses, and the fees charged by Ridgewood's corporation counsel.

Plaintiffs claimed Ridgewood used the Utility as a means of providing a clandestine form of municipal tax relief to its own residents, consequently imposing an improper tax burden on Plaintiffs' residents in the form of higher water rates. Stated differently, the net effect of these improper allocations of expenses by the Utility created a de facto lack of uniformity between the rates charged to Ridgewood's residents and those charged to non-residents.

Specifically, Plaintiffs claimed that the Utility rate ordinances Ridgewood adopted in 2010, 2011, and 2012 are: (1) inconsistent with N.J.S.A. 40A:31–10(a), which requires annual rental charges to be "uniform and equitable for the same type and class of use"; (2) in violation of N.J.S.A. 40A:31–10(c), which limits the type of costs that can be included in establishing water rates; (3) in violation of the Equal Protection Clause of the United States and New Jersey Constitutions; and (4) arbitrary, capricious, and unreasonable.

The Village asserted that the rates established by the three challenged ordinances are in accordance with the Act and were set at levels sufficient to pay all of its operational expenses, as authorized by N.J.S.A. 40A:31–10(c)(1), as well as include sufficient revenue to establish a surplus or contingency fund to meet unanticipated expenses, as permitted under N.J.S.A. 40A:31–10(c)(2). According to the Village, the Utility would have faced a budget deficit if it had not enacted the rate increases reflected in these three ordinances. Finally, the Village denied that the methodology used to establish the rates in these three ordinances created a de facto rate disparity favoring the residents of Ridgewood at the expense of the ratepayers who reside in the other municipalities. The Village maintains that every Utility customer was charged the same rate, regardless of the customer's place of residence.

Plaintiffs' case was certified as a class action on May 13, 2011. After nearly three years of discovery and motion practice, the parties filed cross-motions for summary judgment, with both sides claiming the case was ripe for disposition as a matter of law. Instead of deciding the summary judgment motions, the Law Division judge invoked her authority under Rule 1:13–4(a)2 and sua sponte transferred the case to the Board of Public Utilities (BPU). Plaintiffs appealed.

The appeals court reversed, finding nothing in the nature of this controversy and the relief Plaintiffs seek that falls outside the jurisdiction of the Superior Court or is inconsistent with its function and responsibilities under the Prerogative Writ Clause of the New Jersey Constitution.

UTILITIES - OREGON

Rogue Valley Sewer Services v. City of Phoenix

Supreme Court of Oregon - July 16, 2015 - P.3d - 2015 WL 4322642

Sanitary authority brought declaratory judgment action against city alleging city ordinance was invalid and sought to enjoin city from collecting a 5% franchise fee. The Circuit Court granted summary judgment in favor of city, and authority appealed. The Court of Appeals affirmed. Authority appealed.

The Supreme Court of Oregon held that:

- City had authority as home-rule municipality to impose the franchise fee on the authority;
- Imposition of fees on the sanitary authority by city was not preempted by state law; and
- Authority failed to preserve for appeal its argument that the Circuit Court erred when it granted summary judgment as to the calculation of city's franchise fee.

City ordinance provided for collection of a fee from sanitary authority, not a tax, and therefore city had authority as a home-rule municipality to impose franchise fee on the authority for its use of city's rights-of-way for the authority's operations within the city.

Statutory provisions governing municipal regulation of public utilities and taxation on public utilities operating without a franchise did not preempt the imposition of fees on a sanitary authority by city.

Neither provision unambiguously expressed a legislative intent to preempt local action, and provisions and legislative history suggested that the legislature in fact did not intend to preempt local governments from imposing such conditions on the use of their rights-of-way by sanitary authorities.

LABOR - PENNSYLVANIA

Philadelphia Firefighters' Union, Local 22, Intern. Ass'n of Firefighters, AFL-CIO ex rel. Gault v. City of Philadelphia

Supreme Court of Pennsylvania - July 20, 2015 - A.3d - 2015 WL 4401552

Firefighters' union and its officers brought action against city, mayor, and fire commissioner seeking peremptory judgment requiring city to promote employees from promotional lists for fire captain and fire lieutenant into all budgeted vacancies.

The Court of Common Pleas granted peremptory judgment. City, mayor, and commissioner appealed. The Commonwealth Court reversed. Union and officers appealed.

The Supreme Court of Pennsylvania held that neither city's home rule charter nor its civil service regulations required vacancies for positions of fire captain and fire lieutenant to be filled immediately by promotion, but rather, merely mandated that when vacancies were being filled, they should be filled by promotion as opposed to by outside hiring, and thus, firefighters' union was not entitled to peremptory judgment requiring city to exhaust promotional list before establishing a new list, or to promote from a particular list before it expired.

MUNICIPALITIES - PENNSYLVANIA

In re Concord Twp. Voters

Supreme Court of Pennsylvania - July 20, 2015 - A.3d - 2015 WL 4419023

Township resident filed petition to place on ballot a referendum question seeking to change township's governmental status from second class to first class. The Court of Common Pleas denied petition. Resident appealed. The Commonwealth Court affirmed. Resident filed petition for allowance of appeal.

The Supreme Court of Pennsylvania held that, as a matter of first impression, second-to first-class township referendum questions shall be submitted to voters at the first general or municipal election occurring at least ninety days after fulfilling both the population density ascertainment and petition signature filing requirements as set forth in the statute.

DEDICATION - SOUTH DAKOTA

State v. Niemi

Supreme Court of South Dakota - July 15, 2015 - N.W.2d - 2015 WL 42939742015 S.D. 62

Landowners filed declaratory judgment action against township seeking determination that road traversing property was not public road. Owners of land accessible by road intervened and filed

counterclaims asserting that road was public or that they were entitled to prescriptive easement. The Circuit Court found that road had been dedicated to public use by implication. Landowners appealed.

The Supreme Court of South Dakota held that evidence supported finding that roadway was public road by operation of implied common-law dedication.

Evidence supported finding that actions of landowners and predecessors in interest expressed intent to dedicate road traversing property as public road, and that township accepted dedication, so as to establish that roadway was public road by operation of implied common-law dedication. Original homesteader requested or acquiesced in township's maintenance of road, other predecessors in interest similarly acquiesced and allowed township to pay for and install cattle guard, female landowner's first husband requested road maintenance, after female landowner became record owner, she acquiesced in maintenance of road, township had maintained road at request of surrounding landowners for over 80 years, and public had used road to access dam, school, and adjacent properties for decades.

REFERENDA - TEXAS

In re Woodfill

Supreme Court of Texas - July 24, 2015 - S.W.3d - 2015 WL 4498229

Supporters of referendum petition challenging city's equal rights ordinance filed petition for writ of mandamus seeking to compel city council to either repeal the ordinance or submit it to popular vote.

The Supreme Court of Texas held that:

- City secretary certified that petition had a sufficient number of signatures, and thus city council had a ministerial duty to reconsider ordinance and either repeal it or submit it to popular vote;
- Supporters of petition did not have an adequate remedy by way of appeal; and
- Supporters of petition could seek mandamus relief in an original proceeding in the Supreme Court.

City secretary certified that referendum petition challenging city's equal rights ordinance had a sufficient number of signatures, and thus city council had a ministerial duty under city's charter to reconsider the ordinance and either repeal it or submit it to popular vote, even though secretary also noted city attorney's finding that there were an insufficient number of signatures due to the invalidity of many signature pages. Secretary unequivocally stated that she was "able to certify" that the number of signatures verified on the petition was more than required, and secretary did not adopt or certify city attorney's finding.

City council could not refuse to reconsider equal rights ordinance that was challenged in referendum petition that city secretary certified as having a sufficient number of signatures, despite city council's alleged concern that petition was tainted by forgery and perjury. City charter gave city council no discretion to reevaluate the petition once it was certified by city secretary, but rather required immediate action.

Supporters of referendum petition challenging city's equal rights ordinance did not have an adequate remedy by way of appeal for city council's failure to perform its ministerial duty after certification of the petition by the city secretary to either repeal the ordinance or submit it to popular vote, and thus supporters were entitled to mandamus relief. Appellate process would not resolve the case in time for referendum to be placed on next general election ballot.

Supporters of referendum petition challenging city's equal rights ordinance, who sought to compel city council to perform its ministerial duty after petition was certified by the city secretary to either repeal the ordinance or submit it to popular vote, could seek mandamus relief in an original proceeding in the Supreme Court, despite contention that petition should have been filed in District Court. Election Code expressly authorized Supreme Court or a Court of Appeals to "issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election."

REFERENDUM - WYOMING

City of Casper v. Holloway

Supreme Court of Wyoming - July 17, 2015 - P.3d - 2015 WL 4385984 - 2015 WY 93

City resident filed complaint challenging city clerk's determination that there was an insufficient number of signatures on municipal referendum petition. The District Court granted summary judgment to resident. City and clerk appealed.

The Supreme Court of Wyoming held that:

- Clerk's determination was subject to judicial review by way of declaratory judgment, and
- A signatory to a municipal referendum petition remains a qualified elector when his or her address within city is different from the one on the voter registration list.

IMMUNITY - ARIZONA

Fleming v. State Dept. of Public Safety

Supreme Court of Arizona - July 9, 2015 - P.3d - 2015 WL 4132665 - 716 Ariz. Adv. Rep. 17

Conservator for minor children of deceased arrestee brought action against Department of Public Safety (DPS), seeking to recover following arrestee's death, which occurred when police cruiser in which arrestee was seated was struck by another vehicle on shoulder of interstate highway. The Superior Court entered judgment on jury verdict in favor of DPS. Conservator appealed. The Court of Appeals affirmed. Conservator petitioned for review.

After granting review in part, the Supreme Court of Arizona held that as a matter of first impression, an injury to the "driver" of a motor vehicle, for which a public entity may have qualified immunity in certain circumstances, means an injury to a person who is driving or in actual physical control of a vehicle when she is injured.

UTILITIES - COLORADO

Energy and Environment Legal Institute v. Epel

United States Court of Appeals, Tenth Circuit - July 13, 2015 - F.3d - 2015 WL 4174876

Nonprofit energy organization brought action alleging that Colorado statute requiring that twenty percent of electricity sold to Colorado consumers come from renewable sources violated dormant Commerce Clause. After environmental groups intervened, the United States District Court entered summary judgment in state's favor, and organization appealed.

The Court of Appeals held that:

- Statute did not violate dormant Commerce Clause, and
- District court did not abuse its discretion in denying organization's request to defer ruling on state's summary judgment motion.

Colorado statute requiring electricity generators to ensure that twenty percent of electricity they sold to Colorado consumers come from renewable sources did not violate dormant Commerce Clause. Statute was not price control statute, it did not link prices paid in Colorado with those paid out of state, and it did not discriminate against out-of-staters.

District court did not abuse its discretion in denying plaintiff's request to defer ruling on defendant's summary judgment motion until additional discovery could take place, where court did not rule on motion until after discovery had closed, and plaintiff did not seek to supplement its summary judgment opposition papers with new evidence acquired from additional discovery it received, or indicate what additional discovery was still needed.

EMPLOYMENT - FLORIDA

Quiller v. Duval County School Bd.

District Court of Appeal of Florida, First District - July 15, 2015 - So.3d - 2015 WL 4256734

Teacher who was terminated by school board for her third offense of using profanity in front of students appealed.

The District Court of Appeal held that board's rejection of ALJ's recommendation of suspension without pay was not in compliance with collective bargaining agreement.

School board's termination of teacher for her third offense of using profanity in front of students was not in compliance with collective bargaining agreement, which required progressive steps in administering discipline unless a severe act of misconduct warranted circumventing the steps, where ALJ found that using profanity in front of students was not a severe act of misconduct, the board adopted this conclusion of law, and the ALJ recommended suspension without pay.

LABOR - NEW JERSEY

Borough of Keyport v. International Union of Operating Engineers

Supreme Court of New Jersey - July 14, 2015 - A.3d - 2015 WL 4207440

Unions for public employees brought scope-of-negotiation challenges to municipalities' layoff actions. The Public Employment Relations Commission (PERC), in three separate decisions, held that municipalities violated Employer-Employee Relations Act (EERA). Municipalities appealed and appeals were consolidated. The Superior Court, Appellate Division, reversed. Unions sought certification to appeal, which was granted.

The Supreme Court of New Jersey held that:

- Negotiation of layoffs was not preempted by civil service statutes or regulations;
- Negotiation of temporary layoffs would have significantly interfered with determination of

governmental policy; and
- Negotiation of elimination of positions as part of layoff plan would have significantly interfered with determination of governmental policy.

Neither civil service regulation that had permitted temporary layoffs of employees in State or local service, nor civil service statutes, preempted negotiation of temporary layoffs of public employees or elimination of positions as part of overall layoff plan, where statute and implementing regulations that authorized a layoff of public sector employees did not require that such action affecting terms and conditions of employment be taken.

Negotiation would have significantly interfered with management determination of governmental policy, and therefore municipalities' imposition on certain units of public employees mandatory, but temporary, layoffs, in the form of a reduced number of work days over a specified period of time was non-negotiable, such that municipalities did not violate Employer-Employee Relations Act (EERA) by imposing layoffs without negotiating with representatives from unions for public employees. Actions went directly to a substantive policy determination about whether and how to deliver public services when delivery was affected by serious and pressing economic considerations.

Negotiation would have significantly interfered with management determination of governmental policy, and therefore municipality's elimination, as part of an overall layoff plan, three full-time clerical positions and replacement of them with part-time positions, resulting in the affected employees losing their eligibility for health benefits, was non-negotiable, such that municipality did not violate Employer-Employee Relations Act (EERA) by taking action without negotiating with representatives from unions for public employees. Actions went directly to a substantive policy determination about whether and how to deliver public services when delivery was affected by serious and pressing economic considerations.

ZONING - NEW MEXICO

Village of Logan v. Eastern New Mexico Water Utility Authority

Court of Appeals of New Mexico - July 6, 2015 - P.3d - 2015 WL 4112526

This single-issue appeal concerned the clarification of the legal methodology that applies to resolve a zoning and land use conflict between a municipality and a water utility authority, both of which are political subdivisions of the state established by legislative processes.

The district court and the parties collectively identified five stand-alone tests used in varying jurisdictions to resolve disputes of this nature: (1) the statutory guidance test, (2) the balancing of interests test, (3) the eminent domain test, (4) the superior sovereign test, and (5) the governmental propriety test.

The water authority sought application of either the statutory guidance or eminent domain tests, while the municipality maintained that the balancing of interests test should be adopted in circumstances of sovereign equality.

The district court employed the statutory guidance test, which it found to be most consistent with New Mexico law, and the Court of Appeals affirmed.

ZONING - NORTH CAROLINA

China Grove 152, LLC v. Town of China Grove

Court of Appeals of North Carolina - July 7, 2015 - S.E.2d - 2015 WL 4082073

Land developers brought action against town for declaratory judgment to secure interest on impact fees that town charged pursuant to ordinance, which town reimbursed with a letter indicating that refund, without interest, was consideration for waiver of claims under ordinance. The Superior Court denied town's motion to dismiss, granted developers' motion for judgment on the pleadings, and awarded developers interest. Town appealed.

The Court of Appeals of North Carolina held that:

- Ordinance was invalid;
- Town was required to pay interest; and
- Accord and satisfaction of claims under ordinance did not bar interest sought under state statute.

Town ordinance requiring land developers to pay impact fees as a condition precedent for development approval used to fund police force, fire departments, and parks was invalid, despite contention that ordinance was merely a subdivision control ordinance. Ordinances requiring developers to pay fee for adequate public facilities were invalid absent specific authority from General Assembly, ordinance's stated purpose was to ensure that public facilities supporting new residential development met or exceeded standards, and statute governing subdivision control ordinances did not authorize municipalities to charge fees as a condition precedent to subdivision approval.

Fact that town had voluntarily returned to developers the principal amount of illegally exacted impact fee did not bar developers from recovering interest on the returned fee pursuant to statute, even though fee was not the subject of an underlying judgment entered against town. Statute unambiguously required payment of interest on illegally exacted fee, statute did not prevent a claim for interest when a town returned the principal amount, and statute did not bar a claim for interest that arose from a separate civil action.

Doctrine of accord and satisfaction did not bar land developers from seeking interest on fee illegally exacted pursuant to invalid town ordinance, even though town returned fee principal with letter containing mutual release of obligations and liabilities under ordinance, developers initialed letter, and developers cashed the check, where letter contained no reference to a waiver of any obligations or liabilities regarding interest payments allowed under state statute.

SEPARATION OF POWERS - NORTH DAKOTA

Kroschel v. Levi

Supreme Court of North Dakota - July 7, 2015 - N.W.2d - 2015 WL 4139734 - 2015 ND 185

Driver sought judicial review of decision by the Department of Transportation to suspend her driver's license for 180 days following arrest for driving under the influence (DUI) by state university police officer outside of university property. The District Court affirmed. Driver appealed.

The Supreme Court of North Dakota held that:

- Chief of police was not authorized to swear university officer as officer with authority throughout city;
- State Board of Education was not authorized to permit university officer to act outside of its institution;
- Officer was not authorized to arrest driver under statute permitting assistance and exchange of law enforcement officers; and
- Joint powers agreement between city and university did not authorize university officer to arrest driver.

ANNEXATION - TEXAS

City of Dallas v. D.R. Horton-Texas, Ltd.

Court of Appeals of Texas, Dallas - July 10, 2015 - Not Reported in S.W.3d - 2015 WL 4162286

In 1971, the City annexed an area of 466 acres. In 2008, D.R. Horton-Texas, Ltd. owned about 267 acres, more than 50%, of the area, which was more than fifty percent of the area.

In 2008, D.R. Horton filed a petition with the City requesting that the City disannex the area because the City had not provided services to the area that were substantially equivalent to the services the City provided to similar areas. The City did not act on the petition, and D.R. Horton took no further action at that time.

Five years later, on September 3, 2013, D.R. Horton filed a second petition for disannexation. When the City did not act on this petition within ninety days, D.R. Horton brought suit against the City on January 24, 2014, seeking disannexation of the area.

The City filed a plea to the jurisdiction asserting it was immune from suit and that the trial court lacked subject-matter jurisdiction over the suit. The trial court held a hearing on the City's plea to the jurisdiction and denied the plea. The City appealed.

The parties agreed that the Municipal Annexation Act of 1963 (Act) applied in this case because it was the statute under which the area was annexed in 1971. The Act expressly permits a petitioner seeking disannexation to file suit against a city if the city does not timely disannex the area. Therefore, in this case, the Act waived the City's governmental immunity from suit if D.R. Horton had alleged a valid claim for disannexation.

The City contended that the trial court erred by denying the plea to the jurisdiction because D.R. Horton's suit was time barred when it failed to file suit within sixty days of the City's refusal to disannex the area in 2008. The Court of Appeals disagreed, finding nothing in the applicable statute that would prohibit multiple disannexation petitions.

The Court of Appeals also held that the requirements of section 10.C that at least one voter sign the disannexation petition and that a voter sign the affidavits of posting and of voters and acreage do not apply when no voter resides in the area sought to be disannexed.

Finally, the Court was a bit baffled by the City's contention that the trial court lacked subject-matter jurisdiction over the suit because a bond-validation suit precluded D.R. Horton's challenge to the City's boundaries.

The plea to the jurisdiction was denied.

BONDS - ALABAMA

Allstate Ins. Co. v. Regions Bank

United States District Court, S.D. Alabama, Southern Division - July 2, 2015 - Slip Copy - 2015 WL 4073184

In December 2007, Allstate Insurance Company purchased $12.3 million in infrastructure bonds to finance a real estate project called the Town of SaltAire in Mobile County, Alabama. Most of the bond proceeds were initially held in trust pending authorization by Allstate to release the funds. For its part, Allstate was unwilling to provide the green light until Regions Bank had committed the sum of $16 million to the project.

Although Regions Bank never affirmatively said so, Allstate understood that Regions Bank had already invested $14.5 million in SaltAire. Regions Bank knew that Allstate was operating under that (mistaken) premise, yet made no attempt to correct it. In late January 2008, Regions Bank issued a commitment letter for an additional $2 million to the project, in reliance on which Allstate authorized release of the remaining bond proceeds. The loan contemplated by the commitment letter was never funded. Ultimately, the Town of SaltAire project failed and Allstate lost millions of dollars that it had invested in the bonds.

Allstate sued, contending that Regions Bank hatched a fraudulent scheme to induce Allstate to release the bond proceeds because the project was faltering and desperate for an infusion of cash to remain afloat. Specifically, Allstate alleged that the commitment letter was a sham, that the Region Bank officer that signed the letter had no authority to commit such funds, and that Regions never intended to fund the loan. Allstate brought claims of fraudulent/negligent misrepresentation, fraudulent concealment/suppression, and civil conspiracy.

Regions Bank moved for summary judgment.

The District Court held that:

- The tolling period for the five-year statute of limitations was a matter for the jury;
- A reasonable finder of fact could determine by clear and convincing evidence that the commitment letter was a sham, a false representation of a nonexistent deal, made for the sole purpose of deceiving Allstate into opening the cash spigot and releasing millions of dollars in bond proceeds to assuage SaltAire's short-term financial crisis, foreclosing summary judgment;
- Allstate's summary judgment evidence could support a finding of a duty to disclose under either the "actions contributing to misapprehension" or "silence accompanied by deceptive conduct" alternatives of Illinois law;
- A finder of fact applying Illinois law could reasonably find that Allstate was justified in relying on the commitment letter as documenting a legitimate, bona fide agreement (rather than a sham designed to dupe Allstate), and that Allstate was not required to perform any research or investigation antecedent to such reliance;
- Allstate could have discovered the truth regarding the fact that Regions Bank had not previously provided $14.5 million in funding for the project by simply asked the underwriter to obtain copies of Regions Bank's notes and mortgages on the project to confirm its total financial commitment, and thus Regions Bank was entitled to summary judgment on this count;
- Genuine questions of material fact precluded entry of summary judgment on the issue of whether the Moorman doctrine's limitations on negligent misrepresentation claims rooted in purely economic losses applied – i.e.
  whether the commitment letter was merely a "financial product" or whether it was "solely meant

to convey false information to Allstate"; and
- The foreclosure of the property was conducted in such a manner that Allstate's Alter Ego's (Holdco) bids did not extinguish the bond debt, rather, the bond debt remained intact and unaffected and thus the process (although likely flawed) had not extinguished the bond debt.

EDUCATION - COLORADO

Taxpayers for Public Education v. Douglas County School District

Supreme Court of Colorado - June 29, 2015 - P.3d - 2015 WL 3948220 - 2015 CO 50

Taxpayers and taxpayer advocacy group filed suit against Colorado Board of Education, Department of Education, county Board of Education, and school district, based on assertion that scholarship program which provided taxpayer-funded scholarships to qualifying elementary, middle, and high school students to attend private schools, including religious schools, violated Public School Funding Act and Colorado Constitution.

The District Court permanently enjoined implementation of program, and defendants appealed. The Court of Appeals reversed and remanded, based on determination that plaintiffs lacked standing to sue under Act, and that program did not violate Constitution. Petition for certiorari review was granted.

The Supreme Court of Colorado held that:

- Plaintiffs lacked standing to sue for violations of Act;
- Taxpayer standing to challenge constitutionality of statute did not apply to suit for violations of Act;
- Scholarship program violated provision of Colorado Constitution prohibiting use of public monies to aid schools controlled by religious or sectarian denomination; and
- Invalidating scholarship program would not violate First Amendment's Establishment Clause regarding government aid to religion.

Public School Finance Act did not confer legally protected interest upon taxpayers, and thus taxpayers and taxpayer advocacy group lacked standing to sue Colorado Board of Education, Department of Education, county board of education, and school district for violations of Act arising out of scholarship program that permitted qualifying elementary, middle, and high school students to use taxpayer-funded scholarships to pay tuition to attend private schools, including religious schools. Act did not create private right of action, nor could private right of action be implied, and implying civil remedy was inconsistent with over-arching purpose of Act to fulfill constitutional mandate to provide free public education to school-age children, the execution of which required both State Board and Department of Education to craft complicated procedures and devise detailed funding formulae, thus, requiring degree of flexibility for Act to function properly.

Scholarship program that permitted qualifying elementary, middle, and high school students to use taxpayer-funded scholarships to pay tuition to attend private schools, including religious schools, violated provision of Colorado Constitution prohibiting state, county, city, school district, or public corporation from ever making any appropriation, or paying from any public fund, for purpose of supporting or sustaining any school controlled by any church or sectarian denomination.

ELECTIONS - DISTRICT OF COLUMBIA

Wagner v. Federal Election Commission

United States Court of Appeals, District of Columbia Circuit - July 7, 2015 - F.3d - 2015 WL 4079575

Federal contractors brought action against Federal Election Commission (FEC), alleging that provision of Federal Election Campaign Act (FECA) that barred individuals and firms from making federal campaign contributions while they negotiated or performed federal contracts violated contractor's First Amendment and equal protection rights. The United States District Court for the District of Columbia denied contractors' motion for preliminary injunction granted FEC's motion for summary judgment. On appeal, the Court of Appeals vacated district court's orders and remanded case to district court to make appropriate findings of fact and certify those facts and relevant constitutional questions to Court of Appeals.

After remand, the Court of Appeals held that:

- Provision was closely drawn to government's interests, and
- Provision was not underinclusive to extent that it would violate First Amendment.

Provision of Federal Election Campaign Act (FECA) that barred individuals and firms from making federal campaign contributions while they negotiated or performed federal contracts was closely drawn to government's interests in preventing corruption and its appearance, and in protecting against interference with merit-based administration, and thus provision did not violate First Amendment. Provision only applied to government contractors during contracting period, corruption had been historically present in government contracting process, contractors' need for government contracts made them particularly susceptible to coercion from candidates and politicians, and contractors were free to volunteer in campaigns, speak in candidates' favor, and to host fundraisers to solicit contributions from others.

Provision of Federal Election Campaign Act (FECA) that barred individuals and firms from making federal campaign contributions while they negotiated or performed federal contracts was not underinclusive to extent that it would violate First Amendment. Political Action Committees (PAC), which were not included in FECA's ban, were distinct entities from corporations that formed them, shareholders of corporate contractors could still contribute, no one had ever used limited liability company (LLC) to circumvent ban, and federal employees, who were not included in FECA's ban, typically had less to gain from making contributions than contractors.

INVERSE CONDEMNATION - FLORIDA

Lacy v. City of St. Petersburg, Fla.

United States Court of Appeals, Eleventh Circuit - June 26, 2015 - Fed.Appx. - 2015 WL 3916683 (Mem)

In 2011, the City of St. Petersburg demolished Christine Lacy's house after it was damaged in a shoot-out between St. Petersburg police and Lacy's husband. Lacy brought a 42 U.S.C. § 1983 lawsuit, alleging that the demolition was an unconstitutional taking and violated her procedural due process rights.

The District Court dismissed the case and Lacy appealed.

The Court of Appeal affirmed, holding that Lacy had not pleaded facts showing that the relevant state procedure for seeking compensation for her property — an inverse condemnation action under Florida law — was inadequate.

Lacy acknowledged both that Florida courts recognize an inverse condemnation action through which she may seek compensation and that her complaint did not allege facts showing that such an action was inadequate. Nonetheless, she argued that pursuing state procedures would cause her "needless delay" and pointed to Supreme Court precedent holding that a plaintiff need not exhaust administrative remedies before filing suit in federal court to vindicate her constitutional rights. The court noted that this argument missed the mark because the issue was not one of exhaustion. Instead, there simply existed no constitutional injury for federal courts to redress unless and until Lacy showed that she could not seek just compensation under Florida procedures.

PABs - FLORIDA

Indian River County v. Rogoff

United States District Court, District of Columbia - June 10, 2015 - F.Supp.3d - 2015 WL 3616109

AAF Holdings, LLC is in the process of constructing and operating an express railway between Orlando and Miami. AAF requested that the United States Department of Transportation exempt from federal taxes $1.75 billion in PABs. The PABs would be issued by the Florida Development Finance Corporation, a Florida development agency, and then sold to investors by AAF, which would be solely responsible for the repayment obligation. The DOT provisionally authorized the requested $1.75 billion PAB allocation in December 2014.

Indian River and Martin Counties contend that construction and operation of the railway will cause a variety of environmental harms to them and their residents. The Federal Railroad Administration is currently conducting an environmental review of these potential environmental effects. The counties allege that DOT's authorization of the tax exemption prior to the completion of the ongoing environmental review violated the National Environmental Policy Act ("NEPA") and will slant the review towards approval of the railway as currently proposed. They also contend that the project does not qualify for tax-exempt financing under the applicable federal statute. The counties have moved for a preliminary injunction vacating DOT's authorization of the tax exemption.

DOT and AAF, which intervened as a defendant, mounted several defenses to the counties' motion. They first contend that the counties lack standing. They argue that because AAF would proceed with the project with or without the tax-exempt bonds, the counties' alleged injuries are not traceable to DOT's actions and would not be remedied ("redressed" in standing terminology) by the requested injunction. They also contended that the counties' alleged injuries are not irreparable as required for a preliminary injunction.

The District Court concluded that the counties lacked standing, holding that:

- The issuance of the PABs would not redress the counties' alleged environmental injuries, as the developer was prepared to proceed using alternate sources of financing; and
- The counties' concerns about the impact of PAB authorization on FRA's environmental review did not, standing alone, establish a redressable injury that could form the basis of a federal lawsuit.

LIABILITY - GEORGIA

City of Fitzgerald v. Caruthers

Court of Appeals of Georgia - July 2, 2015 - S.E.2d - 2015 WL 4069574

Pedestrian who was injured by falling tree branch brought negligence action against city. The trial court denied city's motion for summary judgment. City petitioned for interlocutory review, which was granted.

The Court of Appeals held that genuine issue of material fact as to whether city had actual or constructive notice of hazard posed by decaying tree precluded summary judgment.

MUNICIPAL ORDINANCE - MASSACHUSETTS

Showtime Entertainment, LLC v. Town Of Mendon

Supreme Judicial Court of Massachusetts, Suffolk - July 8, 2015 - N.E.3d - 2015 WL 4094282

Owner of lot within town's adult entertainment overlay district brought action against town and two members of town's board, alleging that bylaw prohibiting the sale or presence of alcohol at adult entertainment establishments constituted impermissible prior restraint on freedom of speech. The District Court granted summary judgment in favor of town. Owner appealed. The Court of Appeals reversed and certified a question to the Massachusetts Supreme Judicial Court.

The Supreme Judicial Court of Massachusetts held that:

- Town established sufficient countervailing State interest to support ban, but
- Ban was not sufficiently narrowly tailored.

Town established sufficient countervailing State interest to justify ban on alcohol service at adult entertainment businesses, so as to support determination that ban did not constitute unconstitutional prior restraint on freedom of speech under state constitution, where town considered studies showing increased crime was a secondary effect when adult entertainment and alcohol service were in physical proximity.

Town's ban on alcohol service in adult entertainment establishments was not sufficiently narrowly tailored, and therefore constituted an unconstitutional prior restraint on freedom of speech under state constitution. Banning all manner of expression at establishments licensed to serve alcohol on the basis that the expression featured nude dancing was not the logical response to the determination that alcohol service in physical proximity to adult businesses increased the incidence of crime.

DEVELOPMENT - NEW JERSEY

Pennsgrove Associates, LP v. Carneys Point Township Planning Bd.

Superior Court of New Jersey, Appellate Division - July 2, 2015 - Not Reported in A.3d - 2014 WL 9988553

Plaintiffs challenged the grant of site plan approval by the Carneys Point Township Planning Board

(Board) to Tri County Real Estate and Maintenance Company, Inc. Tri County's plan proposed construction of sixty affordable housing units in Carneys Point. Plaintiffs claimed that the agreement by Tri County to pay certain legal fees of the Township of Carneys Point and the Township's agreement to accept the payment constituted an unlawful quid pro quo arrangement, and, therefore, the action of the Board was arbitrary, capricious or unreasonable.

The appeals court concluded that the payment of the legal fees was not a quid pro quo for the Board's approval for several reasons. First, the Legal Fees Provision in the Redeveloper's Agreement was permitted by N.J.S.A. 40A:12A–8 of the LRHL. Second, the approval by the Board was not in any way conditioned on the payment of the legal fees. Third, the underlying litigation had been dismissed and payment was part of the settlement of appeal between the Township and Tri County. Most importantly, as opined to the Board by the Township Solicitor, Tri County had a right to the approval since "the project does not require any variances or design waivers."

ZONING - NEW JERSEY

Casser v. Township of Knowlton

Superior Court of New Jersey, Appellate Division - July 7, 2015 - A.3d - 2015 WL 4078128

Landowner brought action to challenge land use approvals issued for proposed subdivision. The Superior Court granted summary judgment and dismissed the complaint, and landowner appealed.

The Superior Court, Appellate Division, held that:

- Purported facial challenge to zoning ordinance was moot;
- Failure to file timely action in lieu of prerogative writs following land use approvals barred subsequent complaint challenging zoning ordinance; and
- Interests of justice did not warrant relaxing 45-day time limit to file an action in lieu of prerogative writs.

Landowner's purported facial challenge to zoning ordinance which required clustering and open space preservation was moot, as township had amended the farmland preservation chapter of its zoning ordinance such that the ordinance, which no longer required clustering as a condition for minor subdivisions, was not the most current applicable zoning ordinance.

Landowner's failure to file timely action in lieu of prerogative writs following land use approvals barred subsequent complaint challenging zoning ordinance; landowner had 45 days in which to file an action in lieu of prerogative writs, but instead waited three years to file lawsuit.

Interests of justice did not warrant relaxing 45-day time limit to file an action in lieu of prerogative writs and allow landowner to bring action to challenge land use approval for subdivision. Landowner was not deprived of the right to develop or sell her land, but rather owned about 100 acres of land subject to ten-acre zoning, decision safeguarded her right to subdivide the land and build 10 houses, landowner had sold 25-acre subdivided lot, fact that the variance terms may have prevented her from also selling development rights to the State did not give rise to a takings cause of action, and expert report thoroughly debunked landowner's theory that many other landowners were treated more favorably than she was.

DEDICATION - NEW YORK

Glick v. Harvey

Court of Appeals of New York - June 30, 2015 - N.E.3d - 2015 WL 3948188 - 2015 N.Y. Slip Op. 05593

Petitioners commenced Article 78 proceeding to challenge city council's approval of construction project, seeking an injunction of city's planned transfer of four parcels of municipal land and a declaration that city had unlawfully alienated impliedly dedicated public parkland in violation of the public trust doctrine. Respondents filed cross-motions to dismiss. The Supreme Court, New York County granted petition and issued injunction. Respondents appealed. The Supreme Court, Appellate Division, modified the judgment and affirmed. Petitioners appealed.

The Court of Appeals of New York held that City's acts were not unequivocal manifestation of intent to dedicate four parcels of municipal land as permanent public parkland, so as to cause parcels to fall under protection of the public trust doctrine.

Permit, memorandum of understanding, and lease/license relating to three of the parcels showed that any management of the parcels by the New York City Department of Parks and Recreation (DPR) was understood to be temporary and provisional, and that though city permitted and encouraged some use of those parcels for recreational and park-like purposes, it had no intention of permanently giving up control of the property, city's refusal of various requests to have streets de-mapped and re-dedicated as parkland further indicated that it had not unequivocally manifested an intent to dedicate those parcels as parkland, and fourth parcel, a dog run operated not by DPR, but by a non-profit corporation, and available only to paying members, was not used as parkland.

ZONING - NORTH DAKOTA

Dockter v. Burleigh County Bd. of County Com'rs

Supreme Court of North Dakota - July 2, 2015 - N.W.2d - 2015 WL 4041146 - 2015 ND 183

Property owners sought judicial review of county board of commissioners' decision to rezone a 311 acre tract of land from agricultural to industrial use. (North Dakota can't spare 311 acres of ag land?) The District Court affirmed. Property owners appealed.

The Supreme Court of North Dakota held that:

- County commissioners' decision did not constitute impermissible spot zoning, and
- Substantial evidence supported commissioners' decision to rezone.

Rezoning of landowner's 311 acre tract of land from agricultural to light industrial use did not constitute impermissible "spot zoning." Although landowner may have individually benefited from the zoning change, there was evidence the county commissioners' decision benefited the county as a whole, as the county needed large blocks of property for affordable industrial development and the size of the parcel and its proximity to the interstate could help satisfy that need and bolster economic development.

Substantial evidence supported county commissioners' decision to rezone landowner's 311 acre tract of land from agricultural to light industrial use, where county commissioners had found that rezoning would be consistent with the comprehensive land use plan because the rezoning

application promoted quality growth of manufacturing within the county convenient to transportation facilities.

BANKRUPTCY - PUERTO RICO

Franklin California Tax-Free Trust v. Puerto Rico

United States Court of Appeals, First Circuit - July 6, 2015 - F.3d - 2015 WL 4079422

Investors commenced action against Commonwealth of Puerto Rico, its Governor, its Secretary of Justice, and Government Development Bank to challenge validity of Puerto Rico Public Corporation Debt Enforcement and Recovery Act, Puerto Rico's own municipal bankruptcy law, and enjoin its implementation. The United States District Court permanently enjoined Recovery Act on ground that it was preempted. Defendants appealed.

The Court of Appeals held that:

- Recovery Act was preempted;
- Presumption against preemption was overcome; and
- Conflict preemption principles preempted Recovery Act.

Puerto Rico Public Corporation Debt Enforcement and Recovery Act, which was Puerto Rico's own municipal bankruptcy law, was preempted by provision in Bankruptcy Code stating that state law prescribing a method of composition of indebtedness of a municipality may not bind any creditor that does not consent to such composition. All municipalities seeking reorganization had to do so under federal law.

Presumption against preemption of Puerto Rico Public Corporation Debt Enforcement and Recovery Act, which was Puerto Rico's own municipal bankruptcy law, to the extent it applied, was overcome by provision in Bankruptcy Code stating that Puerto Rico was to be treated like a state, except for the power to authorize its municipalities to file under Chapter 9.

Conflict preemption principles preempted Puerto Rico Public Corporation Debt Enforcement and Recovery Act, which was Puerto Rico's own municipal bankruptcy law, since Congress wanted single federal law to be the sole source of authority if municipal bondholders were to have their rights altered without their consent, but Recovery Act frustrated that purpose.

MUNICIPAL ORDINANCE - ARIZONA

City of Scottsdale v. State

Court of Appeals of Arizona, Division 1 - June 30, 2015 - P.3d - 2015 WL 3982743

The superior court ruled that a state statute preempted a City of Scottsdale ordinance imposing sanctions for sign walkers who conducted business on public thoroughfares, including sidewalks. City appealed.

The Court of Appeals affirmed, holding that the state statute regulated a matter of statewide interest and preempted the municipal ordinance notwithstanding the City's right — as a charter city under Article 13, Section 2, of the Arizona Constitution — to regulate matters of local concern.

ANNEXATION - INDIANA

Town of Fortville v. Certain Fortville Annexation Territory Landowners

Court of Appeals of Indiana - July 2, 2015 - N.E.3d - 2015 WL 4040822

On March 28, 2013, the Town of Fortville adopted Resolution 2013–3A, which proposed to annex 5,944 acres of land adjacent to Fortville. On July 14, 2014, following notice and a public hearing on the matter, Fortville adopted Ordinance 2013–3A, which proposed to annex a reduced area of 644 acres of land (the Annexation). The Annexation was surrounded on three sides by Fortville's boundaries. In addition, Fortville adopted a fiscal plan and policy for the Annexation.

On October 11, 2013, the Remonstrators — who consisted of ninety-three percent of the owners of the parcels in the Annexation — filed their petition remonstrating against the proposed annexation. On October 30, 2013, Fortville filed an answer and affirmative defenses to the petition remonstrating against the proposed annexation.

The trial court denied the annexation, ruling in favor of the Remonstrators, and the Town appealed.

On appeal, Fortville argued that the trial court erred when it failed to apply substantial deference to Fortville's adoption of an annexation ordinance — a legislative function delegated to the Fortville Town Council by the Indiana General Assembly. Fortville also contended that the trial court erred when it found that Fortville had not presented evidence that the area to be annexed was needed and could be used for Fortville's development in the near future.

The Court of Appeals reversed, finding that the trial court erred by applying the wrong evidentiary standard when analyzing Fortville's need to annex the area and plans for the areas development. The Court concluded that a municipality need not demonstrate immediate plans to build on the annexed land in order to show that it needs and can use the land for its development in the reasonably near future.

"To allow the trial court's order to stand would be to hold that a city — if it does not have impending plans to build on land that it seeks to annex — must sit and watch the land be used and developed in ways that might harm or impede its future plans for urban management of the land, until the "long-term inevitability" of annexation takes place. This result would be bad policy and likely harm both the area to be annexed and the municipality that seeks to annex it. Thus, we determine that the trial court should not have limited its analysis to evidence of physical construction or development in determining whether Fortville fulfilled the requirements of Indiana Code section 36–4–3–13(c)(2)."

BONDS - GEORGIA

Savage v. State

Supreme Court of Georgia - June 29, 2015 - S.E.2d - 2015 WL 3937118

Development authority sought validation of revenue bonds to be used to construct professional baseball stadium. Objecting county residents were permitted to intervene. Following revenue bond validation hearing, the Superior Court confirmed and validated bonds. Residents appealed.

The Supreme Court of Georgia held that:

- Intergovernmental agreement did not violate Intergovernmental Contracts Clause of state

constitution;
- Authority's issuance of bonds did not violate Debt Limitation Clause of state constitution;
- County's promise to pay for bonds was not regulated by Debt Limitation Clause;
- Intergovernmental agreement did not violate Gratuities Clause of state constitution;
- Intergovernmental agreement did not violate Lending Clause of state constitution;
- Notices of validation hearing were sufficient; and
- Trial court acted within its discretion in refusing to admit evidence regarding negotiations.

Intergovernmental agreement between county and development authority, under which authority agreed to issue bonds for construction of professional baseball stadium and county agreed to pay principal and interest on bonds, did not violate Intergovernmental Contracts Clause of state constitution. Contract was between political subdivisions, its term did not exceed period of 50 years, contract was for provision of services by county and authority, including that authority agreed to issue bonds and county agreed to oversee design and construction of stadium, contract dealt with activities that county and authority were authorized by law to undertake, and stadium project was for public benefit, even though it also conferred private benefits on professional baseball organization.

Issuance of revenue bonds by development authority for construction of professional baseball stadium did not violate Debt Limitation Clause of state constitution, requiring that debt incurred by a political subdivision never exceed 10% of the assessed value of all taxable property, where, in accordance with revenue bond laws, the bond financing documents provided that stadium project bonds were limited obligations and were payable only from the pledged security, that, if authority defaulted on bonds, bond holders' only recourse was to step into the shoes of authority as to stadium project, and that only project property and revenues from intergovernmental agreement with county and professional baseball organization's licensing fees were pledged as security for the bonds.

County's promise to pay for revenue bonds issued by development authority for project to construct professional baseball stadium was not debt regulated by Debt Limitation Clause of state constitution, requiring that debt incurred by a political subdivision never exceed 10% of the assessed value of all taxable property and that vote be held before county acquired new debt, as county was incurring debt under constitutionally valid intergovernmental contract between county and development authority.

Intergovernmental agreement between county and development authority, under which the authority agreed to issue bonds for professional baseball stadium construction project and city agreed to pay amount sufficient to cover principal and interest on bonds in addition to other costs incurred by authority, did not violate Gratuities Clause of the state constitution, where services that authority would provide constituted contractual consideration to the county.

Intergovernmental agreement between county and development authority, under which authority agreed to issue revenue bonds for professional baseball stadium construction project and city agreed to pay amount sufficient to cover principal and interest on bonds and other costs incurred by authority, did not violate Lending Clause of state constitution prohibiting lending to any nonpublic corporation or association, since county was not paying, with appropriated funds or credit, for anything to be owned by professional baseball organization, but rather the stadium and site would be owned by the authority, with the professional baseball organization paying license fees to authority for at least 30 years, at the end of which the bonds that county was helping to pay would be fully redeemed.

Development authority was authorized to issue revenue bonds for construction of professional baseball stadium under constitutional provision allowing for issuance of bonds as provided for by

general law and statutes governing revenue bonds, where revenue bond law authorized authority to issue revenue bonds to finance construction of any undertaking, including stadiums.

Proposed revenue bonds to finance construction of professional baseball stadium met statutory and constitutional requirement that they be funded solely from revenues derived from the project. License fees paid by professional baseball organization to use stadium would cover part of bond payments, remainder would come from payments made by county under intergovernmental agreement with development authority, and although county promised to levy ad valorem taxes if necessary to satisfy its commitments under the intergovernmental agreement, county's liability was under contract, not bond, and county could pledge its full faith and credit to meet such contractual obligations.

Notices of validation hearing for proposed revenue bonds for construction of professional baseball stadium were sufficient under statute governing such notices; notices were published in local newspaper the proceeding two weeks, shortly after first notice was published, and although second notice contained change in presiding judge and courtroom, any potential confusion about location of hearing caused by change in presiding judge was sufficiently addressed by signs mounted throughout courthouse complex, including on original judge's courtroom door, directing people to the correct courtroom, and objecting county residents had made it to the right courtroom at the right time.

Failure of development authority, which sought validation of revenue bonds to finance construction of professional baseball stadium, to oppose issuance of bonds under statute assigning role of showing why bonds should not be validated to same entity that proposed to issue them, did not render validation proceedings improper. Although statutory scheme was unusual, more significant and realistic protection against improper validation was provided by statutory right of objecting residents to intervene and then appeal validation decision, authority asserted it did not present any reasons why bonds should not be issued because it did not have any good reasons, and objecting resident made no colorable claim that that decision was result of improper professional conduct by government's attorneys.

Trial court, in validation proceedings regarding proposed revenue bonds for construction of professional baseball stadium, acted within its discretion in refusing to admit documents and testimony offered by objecting residents regarding negotiations between professional baseball organization, the county, and the development authority, where objecting residents failed to show how negotiations would be relevant to whether proposal to issue bonds was sound, feasible, and reasonable, given that unambiguous financing documents that parties entered into were controlling, not the discussions that led up to them.

ZONING - GEORGIA

Elbert County v. Sweet City Landfill, LLC

Supreme Court of Georgia - June 29, 2015 - S.E.2d - 2015 WL 3937396

Company, after applying to county for a special use permit to construct a solid waste facility, brought action against county seeking declaratory and injunctive relief, including a ruling that county's solid waste ordinance was unconstitutional under dormant commerce clause and allowing company to proceed to build facility. The Superior Court granted company's motion for summary judgment and issued declaratory judgment to the effect that the ordinance was unconstitutional and that company had a vested right to develop the property. County filed application for discretionary

appeal.

The Supreme Court of Georgia held that:

- County's decision that did not relate to the special use permit application did not trigger 30-day limitations period for appeal;
- Futility exception to exhaustion of administrative remedies requirement did not apply; and
- The Superior Court was required to apply balancing test to address constitutionality of ordinance.

Decision of county board of commissioners to terminate a tolling agreement and to not enter into a host agreement with company, which was seeking a special use permit to construct solid waste facility, was not a final decision that could trigger 30-day limitations period for company's appeal of county's land use decision to superior court. No proposed host agreement had been prepared, board was addressing a framework for how a host agreement would later be prepared with general statements as to what it might contain, and the framework did not refer to a special use permit.

Futility exception to exhaustion of administrative remedies requirement did not apply to company's pursuit of a special use permit to construct a solid waste facility and company's claim to a vested right in a letter of zoning and development compliance, after county board of commissioners decided to terminate a tolling agreement and to not enter into a host agreement with company. Even though company claimed board's decision on special use permit application could have been predicted, board did not render a decision on company's special use permit, company was still required to seek the appropriate relief from county before appeal, and courts could not address whether company's vested rights had been violated until board denied it the alleged rights.

Trial court was required to apply balancing test to company's dormant-commerce-clause challenge of county's facially neutral ordinance containing criteria for placement of solid waste facilities, which no location within county could meet, despite contention that county's true intent behind ordinance was to ban all municipal solid waste facilities in county, making balancing test unnecessary. The effect of ordinance on interstate commerce if all other counties in state enacted similar ordinances was speculative, and applying the balancing test allowed for evaluation of the degree of burden depending on the nature of the local interest involved and on whether it could have been promoted with a lesser impact on state activities.

EMPLOYMENT - GEORGIA

Jones v. Boone

Supreme Court of Georgia - June 29, 2015 - S.E.2d - 2015 WL 3937411

Former city attorney petitioned for writ of quo warranto challenging the validity of his termination and interim city attorney's appointment. The trial court granted a writ of quo warranto, and interim city attorney appealed.

The Supreme Court of Georgia held that:

- Former city attorney had standing to seek writ of quo warranto;
- Order granting former city attorney leave to file a petition for quo warranto to challenge city council's termination of his services as city attorney, and their appointment of an interim city attorney, was not improper on the basis it was signed by the clerk of court, or that a different judge presided over the hearing to determine whether or not the petition should be granted;
- The sole authority to appoint a city attorney remained in the city council, and mayor's appointment

of an interim city attorney was invalid; and
- Trial court was not required to conduct a jury trial in quo warranto proceeding.

City mayor was without authority to treat abstention by city council member as a negative vote, and thus, because there was no tie vote on the motion to delegate to mayor the power to appoint a city attorney, mayor was not authorized to cast a vote in its favor, the sole authority to appoint a city attorney remained in the city council, and mayor's appointment of an interim city attorney was invalid. City charter, which set forth the sole power conferred by the city upon the mayor with regard to her right to vote on council matters, was silent as to how to treat an abstention, and therefore, council member's abstention from voting on the motion was in fact, no vote at all.

IMMUNITY - IOWA

Sanon v. City of Pella

Supreme Court of Iowa - June 26, 2015 - N.W.2d - 2015 WL 3930087

Parents brought action against city following drowning of children in municipal swimming pool, alleging negligence, conduct constituting a criminal offense, and premises liability. The District Court granted partial summary judgment to city. Parents appealed, and city cross-appealed.

The Supreme Court of Iowa held that:

- Fact issue as to whether city violated administrative rule promulgated by Department of Public Health governing municipal swimming pools, so as to amount to crime for which city would not be immune from liability, precluded summary judgment;
- Fact issue as to whether acts and omissions of city employee or officer constituted involuntary manslaughter, so as to amount to crime for which city would not be immune from liability, precluded summary judgment; and
- To avoid city's immunity defense with respect to claim of conduct by a city employee or officer constituting a criminal offense, parents were required to prove only by preponderance of the evidence, rather than beyond a reasonable doubt, that city employee or officer committed criminal act causing injury.

ZONING - LOUISIANA

Davenport v. City of Alexandria

Supreme Court of Louisiana - June 30, 2015 - So.3d - 2015 WL 3994850 - 2015-0454 (La. 6/30/15)

City sought mandatory injunction requiring removal of property owners' carport, which had been constructed in violation of city code of ordinances. The District Court granted injunction but allowed owners 84 days to comply with city code requirements. The Court of Appeal affirmed. Owners filed petition for writ of certiorari.

The Supreme Court of Louisiana held that judgment allowing property owners time to remedy city code violations that occurred when they rebuilt their carport was entitled to suspensive effect after owners perfected suspensive appeal from judgment. Time allowed for compliance was provided in judgment as an alternative to full demolition.

INVERSE CONDEMNATION - NEVADA

State v. Eighth Jud. Dist. Ct.

Supreme Court of Nevada - June 25, 2015 - P.3d - 2015 WL 3915819 - 131 Nev. Adv. Op. 41

Department of Transportation (DOT) filed petition for writ of mandamus or prohibition challenging district court's grant of partial summary judgment to property owner in inverse condemnation proceeding.

The Supreme Court of Nevada held that:

- Supreme Court would consider DOT's petition for writ of mandamus;
- City's amendment to its general master plan to allow for certain road widening did not constitute a regulatory taking of property;
- DOT did not take property within meaning of Fifth Amendment takings clause; and
- DOT did not take property within meaning of state takings clause.

Supreme Court would consider Department of Transportation's petition for writ of mandamus challenging district court's partial summary judgment for property owner in inverse condemnation action, where petition raised an important issue regarding state takings law, petition presented an important question of policy about an agency's ability to engage in efficient, long-term planning dependent on federal funding, and given highway project's magnitude as a 20 to 25 year, six-phase freeway improvement project requiring multiple acquisitions of private property and inevitability of other similar long-term projects in the future, addressing issues raised in petition would serve judicial economy.

City's amendment to its general master plan to allow for certain road widening did not constitute a regulatory taking of property; road-widening amendment had no demonstrated nexus to the property at issue so any impact on the property would be negligible, and given need to widen specific streets to ensure adequate access to private property and construction areas during a freeway project, character of government action was more akin to adjusting benefits and burdens of economic life to promote the common good than to a physical invasion.

Department of Transportation (DOT) did not take property within meaning of Fifth Amendment takings clause; environmental assessment only indicated that the owner's property would likely be needed 18 years in the future, loss of tenants was theoretically influenced by owner's highlighting DOT's anticipated need of property, and owner provided no evidence of fair market values or rental charges for similarly situated properties with which to determine any real decrease in fair market value or economic use of the property.

Department of Transportation (DOT) did not take property within meaning of state takings clause when it prepared an environmental assessment which indicated that it might need the property 18 years in the future as part of a 20 to 25 year freeway improvement project.

MUNICIPAL ORDINANCE - NEW YORK

Eric M. Berman, P.C. v. City of New York

Court of Appeals of New York - June 30, 2015 - N.E.3d - 2015 WL 3948182 - 2015 N.Y. Slip Op. 05594

Law firms involved in debt collection brought action in federal district court against city, city council, and others, alleging that amendments to city debt collection ordinance were contrary to New York state law, violated the Commerce and Contract Clauses of the United States Constitution, and rendered the ordinance unconstitutionally vague. On the parties' cross-motions for summary judgment District Court granted plaintiffs' motion in part, ruling that ordinance was invalid to the extent it purported to regulate the conduct of attorneys. Defendants appealed. The Court of Appeals certified questions of whether amended ordinance was preempted by state's statutory authority to regulate the conduct of attorneys and, if not, whether it violated city charter.

The Court of Appeals of New York held that the ordinance pertaining to debt-collection activities, insofar as it regulated attorney conduct, did not constitute an unlawful encroachment on the state's authority to regulate attorneys, nor was there a conflict between the ordinance and the state's authority to regulate attorneys, such that ordinance was not preempted.

Ordinance, by its terms, governed conduct of debt-collection agencies and did not purport to regulate attorneys as such even though attorneys who were acting in debt-collecting capacity might fall within its penumbra, ordinance expressly did not pertain to attorneys engaged in practice of law on behalf of particular client, no express conflict existed between courts' broad authority to regulate attorneys under Judiciary Law and licensing of individuals as attorneys engaged in debt-collection activity, and courts' authority to regulate attorney conduct did not evince intent to preempt field of regulating nonlegal services rendered by attorneys.

ANNEXATION - TEXAS

JNC Land Company, Inc. v. City of El Paso

Court of Appeals of Texas, El Paso - June 26, 2015 - S.W.3d - 2015 WL 3952680

On December 9, 1999, the City of El Paso and JNC Land Company entered into an agreement to annex property to El Paso (the Annexation Agreement). Under the Annexation Agreement, JNC agreed to develop the property in accordance with the rules and regulations of the City of El Paso. The Annexation Agreement required JNC to apply for and secure approval of a subdivision in accordance with the procedures of the El Paso Municipal Code prior to issuing any building permits or certificates of occupancy. Further, JNC agreed to dedicate and improve as part of any subdivision applications covering the property the necessary right-of-way for extensions of any arterial streets shown within the City's official "Major Thoroughfare Plan."

JNC alleged that it subsequently improved the property and made street improvements on arterial streets. This included the construction of two streets designated on the City's official Major Thoroughfare Plan in excess of the width determined by the Traffic Impact Study. JNC incurred costs of more than $300,000 to construct these two streets and it sought reimbursement for the excess-width paving, but the City refused to pay.

JNC filed suit against the City for breach of contract. The City filed a plea to the jurisdiction asserting its immunity had not been waived. The City argued that the Annexation Agreement is not a contract for which immunity is waived by Section 271.152 because it is not an agreement to provide goods or services to the City. The trial court granted the plea and dismissed the suit. JNC appealed.

The Court of Appeals reversed, finding that the services provided by JNC under the Annexation Agreement provided a direct and unattenuated benefit to the City and thus the City's immunity was waived.

“The City is correct that JNC’s development of the property was voluntary and it could not demand that JNC develop the subdivision, but once JNC proceeded with that development, the City had a right under the Annexation Agreement and the pertinent municipal ordinances to compel JNC to develop the property in accordance with the rules and regulations of the City. Consequently, the instant case is distinguishable from Church & Akin. The Annexation Agreement and the pertinent municipal ordinances required JNC to (1) improve certain right-of-way extensions and dedicate them to the City; (2) dedicate and improve neighborhood and public community parkland; and (3) set aside real property for future acquisition by the City. These services provide a direct and unattenuated benefit to the City.”

EMINENT DOMAIN - FLORIDA

Homestead Land Group, LLC v. City of Homestead

District Court of Appeal of Florida, Third District - June 3, 2015 - So.3d - 40 Fla. L. Weekly D1325

Purchaser of land, a portion of which had been acquired by city via eminent domain proceedings just prior to purchase, filed an objection to a proposed entry of final judgment in the eminent domain proceedings and filed an answer to city’s eminent domain petition requesting a jury trial on valuation. The Circuit Court denied relief to purchaser. Purchaser appealed.

The District Court of Appeal held that purchaser had no legal interest in the land at the time city acquired a portion of it.

Purchaser of land had no legal interest in the land at time city acquired a portion of it through eminent domain, and thus purchaser, after acquiring the land, could not contest valuation of the portion taken by city, even though vendor had assigned to purchaser its rights in the taken portion and its interest in the eminent domain proceedings. At time of the taking, vendor only had rights to the property via a reversionary clause, pursuant to which title reverted to vendor if owner could not obtain zoning for new church, but neither purchaser nor vendor were able to show that owner had not secured zoning or that it could not have done so in the future, and vendor never attempted to exercise its right to the property, so that the reversionary interest never matured.

LIABILITY - LOUISIANA

Scott v. City of Shreveport

Court of Appeal of Louisiana, Second Circuit - June 24, 2015 - So.3d - 2015 WL 3877121 - 49, 944 (La.App. 2 Cir. 6/24/15)

Individual who suffered heart attack after city police officer used stun gun on him brought negligence action against city. The District Court granted summary judgment for city. Individual appealed.

The Court of Appeal held that officer’s use of stun gun did not cause individual’s heart attack.

UTILITIES - MARYLAND

Washington Suburban Sanitary Com'n v. Lafarge North America, Inc.

Court of Appeals of Maryland - June 18, 2015 - A.3d - 2015 WL 3777597

Operator of concrete plant petitioned for judicial review of failure by Washington Suburban Sanitary Commission (WSSC) to timely act on operator's request for refund of allegedly erroneous charges for water and sewer service. The Circuit Court remanded the matter to WSSC with directions to determine and issue an appropriate refund. WSSC appealed. The Court of Special Appeals affirmed. WSSC petitioned for certiorari.

The Court of Appeals held that:

- Court of Special Appeals had jurisdiction over WSSC's appeal, and
- Remand for calculation of amount of refund was appropriate.

Court of Special Appeals had appellate jurisdiction, under section of Administrative Procedure Act (APA) authorizing appeals in contested cases, over appeal by Washington Suburban Sanitary Commission (WSSC) from order of circuit court, requiring WSSC to determine and issue a refund to operator of concrete plant for allegedly erroneous charges for water and sewer service. Even though statute governing judicial review by a circuit court of final action on a refund claim by the WSSC was silent regarding appellate review of that circuit court's judgment by the Court of Special Appeals, WSSC was a state agency subject to the requirements of the APA, and WSSC refund claims were contested cases.

Appropriate remedy for failure of Washington Suburban Sanitary Commission (WSSC) to timely act on concrete plant operator's request for refund of allegedly erroneous charges for water and sewer service, resulting in request being deemed denied, was a remand to the WSSC for calculation of the amount of the refund due, not a remand for WSSC to determine whether to issue refund, since denial of the refund was not supported by substantial evidence. WSSC's governing statute required WSSC to investigate the merits of the claim within 180 days, and the only administrative record existing with regard to the refund claim were letters from operator requesting refund and subsequently requesting a hearing.

EMERGENCY MANAGERS - MICHIGAN

Kincaid v. City of Flint

Court of Appeals of Michigan - June 11, 2015 - N.W.2d - 2015 WL 3631825

On August 15, 2011, the City of Flint's finance director, Michael Townsend, sent a notice of a proposed 3.5% water and sewerage rate increase to be effective September 16, 2011, to the city council and mayor. The increase was proposed to meet a projected fiscal year deficit in the water fund of $14,789,666 as well as a sewer fund deficit of $8,078,917. Council adopted the proposal and the mayor signed it.

Shortly thereafter Flint was declared to be in a state of financial emergency. On November 28, 2011, Michael Brown was appointed as the Emergency Manager (EM) of defendant under the Emergency Manager Law. On May 5, 2012, after being informed by newly appointed finance director Gerald Ambrose of the financial disarray of the City's water and sewer funds, EM Brown created Emergency Order No. 31. Order No. 31 ratified and confirmed the water and sewer rates implemented under Townsend on September 16, 2011, and additionally raised water and sewer rates, 12.5% and 45%, respectively.

Plaintiffs sued, alleging two claims of error: that water and sewer rate increases that occurred under Townsend in September 2011 were not authorized by Flint Ordinances and that EM Brown did not have the authority to ratify Townsend's unauthorized increases and then further increase water and sewer rates in violation of the same ordinances.

The Court of Appeals held that:

- Both the rate increases of September 2011 and those imposed by the EM failed to meet the notice and effective date requirements of the relevant ordinances; and
- As a matter of first impression, the Legislature did not delegate to an EM the power to ratify the unauthorized acts of another public official.

IMMUNITY - NEBRASKA

Kimminau v. City of Hastings

Supreme Court of Nebraska - June 19, 2015 - N.W.2d - 291 Neb. 133

Motorist filed suit against driver of truck that spilled corn mash onto county boulevard, driver's employer, city, fire district, and county, arising out of injuries received when her vehicle came in contact with corn mash that remained on boulevard after clean-up on previous day, which caused her to lose control of vehicle and crash. The District Court entered summary judgment for all defendants, and motorist appealed. Petition to bypass was granted.

The Supreme Court of Nebraska held that:

- Spilled corn mash presented single "spot or localized defect" on boulevard, for purposes of determining whether defendants had actual notice of defect, as required to waive immunity from suit under Political Subdivisions Tort Claims Act (PSTCA);
- Government defendants waived immunity from suit;
- "Discretionary function" exception to waiver of immunity did not apply; and
- Truck driver and driver's employer owed no duty to motorist to ensure clean-up after government defendants assumed responsibility for same.

Spilled corn mash on boulevard that remained after fire district undertook remediation efforts to clean boulevard, and after county highway superintendent and district volunteer captain observed that surface was clear of corn mash debris, presented single "spot or localized defect" on boulevard, for purposes of determining whether city, fire district, and county had actual notice of defect, as required to waive immunity from liability under Political Subdivisions Tort Claims Act (PSTCA) for motorist's injuries after her vehicle came into contact with spilled corn mash, which caused motorist to lose control of vehicle.

City, fire district, and county had actual notice of corn mash that had spilled from truck onto boulevard and remained after fire district undertook efforts to remediate spill and swept it off paved portion of boulevard onto unpaved shoulder and ditch, and thus, defendants waived immunity from suit, under Political Subdivisions Tort Claims Act (PSTCA), for injuries sustained by motorist on day after spill when her vehicle came into contact with corn mash, which caused her to lose control of vehicle.

"Discretionary function" exception to waiver of immunity did not apply to motorist's suit against city, fire district, and county for injuries sustained when her vehicle came into contact with corn mash that had been spilled onto county boulevard on previous day that remained after fire district

undertook efforts to remediate spill, which contact caused motorist to lose control of vehicle. County's obligation to remediate spot or localized defect on boulevard presented by spilled corn mash was ministerial act, not discretionary one.

Driver of truck from which corn mash spilled onto county boulevard, and driver's employer, did not owe duty to motorist to ensure that all spilled corn mash was cleaned off boulevard, and thus, were not liable for motorist's injuries sustained on day after spill when vehicle came into contact with corn mash, which caused motorist to lose control of vehicle, after fire district, which responded to state trooper's report of spill, assumed responsibility to clean spill, trooper closed boulevard to traffic during clean-up, and then later declared boulevard safe for vehicular travel and reopened it to traffic.

ECONOMIC DEVELOPMENT ZONES - NEW JERSEY

Hillsborough Properties, L.L.C. v. Township of Hillsborough

Superior Court of New Jersey, Appellate Division - June 23, 2015 - Not Reported in A.3d - 2015 WL 3843409

Trial court issued an order invalidating the Township of Hillsborough's twenty-five-acre minimum lot size for Economic Development Zones, finding that such a minimum lot size was arbitrary, capricious, and unreasonable. The court ordered the Township to amend its zoning ordinance to establish a minimum lot size of five acres. Township appealed.

The appeals court agreed that the trial court correctly determined that the twenty-five-acre minimum lot size was not reasonable when considered in light of the purposes of the zone and the lot sizes established for similar uses in the Township's other zoning districts.

However, the appeals court agreed with the Township that the trial court erred by ordering it to adopt a five-acre minimum lot size for the ED Zone. The appeals court remanded to the Township's Planning Board to review the lot sizes for the other non-residential districts and determine, in the first instance, the minimum lot size less than twenty-five acres that would reasonably achieve the purpose and goals of the zone.

TAXIS - NEW YORK

Greater New York Taxi Ass'n v. New York City Taxi and Limousine Com'n

Court of Appeals of New York - June 25, 2015 - N.E.3d - 2015 WL 3885462 - 2015 N.Y. Slip Op. 05514

Association of taxicab owners commenced proceeding against New York City Taxi and Limousine Commission, seeking to invalidate rule that established a particular make and model of vehicle as city's official taxicab. The Supreme Court, New York County, entered order declaring rule invalid, and the Supreme Court, Appellate Division, reversed and granted association leave to appeal.

The Court of Appeals held that Commission did not exceed its authority under city charter or intrude on city council's domain in violation of the separation of powers doctrine by enacting rule that established a particular make and model of vehicle as city's official taxicab.

City charter authorized the Commission to establish an overall public transportation policy

governing taxi services, the choice of the best possible vehicle for use as a taxi fit within the broad authority granted in the charter, and city council generally refrained from intervening in the Commission's broad regulation of the taxi industry, including the question at issue, for over four decades.

ZONING - NEW YORK

Acquest Wehrle, LLC v. Town of Amherst

Supreme Court, Appellate Division, Fourth Department, New York - June 19, 2015 - N.Y.S.3d - 2015 N.Y. Slip Op. 05346

Owner of property located partially in designated wetland brought action against town board and its members, alleging violation of its due process rights and equal protection rights, after board passed a resolution rescinding its request to the Environmental Protection Agency (EPA) to allow owner to tap into federally-subsidized sewer and terminated owner's office park project. The Supreme Court, Erie County, granted in part, and denied in part, motions for summary judgment, and entered judgment, following trial, in favor of owner, and awarded damages and attorney fees. Defendants appealed.

The Supreme Court, Appellate Division, held that:

- Owner had cognizable property interest in board's request to EPA to allow owner to tap into federally-subsidized sewer;
- Fact issues barred summary judgment, in substantive due process claim;
- Defendants did not violate owner's equal protection rights; and
- Evidence of conduct after termination of project was not relevant.

ATTORNEYS' FEES - RHODE ISLAND

Shine v. Moreau

Supreme Court of Rhode Island - June 18, 2015 - A.3d - 2015 WL 3799503

Mayor and city council of financially distressed city brought action against receiver for city, appointed by state Department of Revenue, challenging constitutionality of Financial Stability Act. The Superior Court held the act was constitutional. Mayor and council appealed. The Supreme Court of Rhode Island affirmed. On remand, the Superior Court ruled on remaining issues relating to reimbursement, indemnification and advance attorney fees. Mayor and council appealed.

The Supreme Court of Rhode Island held that:

- Receiver was not entitled to recover attorney fees incurred;
- Mayor was entitled to indemnification for legal costs incurred in obtaining a definitive ruling as to constitutionality of Act; and
- Independent counsel hired by city counsel was entitled to award of attorney fees in litigation challenging constitutionality of Act.

Provision of Financial Stability Act stating that an official would be personally liable for any funds "expended in excess of an appropriation" does not allow appointed receiver to recover for attorney fees incurred.

Mayor of financially distressed city was entitled to indemnification for legal costs incurred in litigation challenging the constitutionality of the Financial Stability Act and defending himself in declaratory action filed by appointed receiver. Although the actions of the mayor were in conflict with the clear mandates of the Act, such actions were taken to obtain a definitive ruling as to the constitutionality of a new statute that removed a significant amount of the power held by city's elected officials and vested that broad power in a receiver, lawsuits were undertaken on behalf of city, mayor had standing and arguably a duty to challenge constitutionality of Act in his official capacity, and it would be unjust and inequitable to leave mayor personally responsible for such lawsuits.

Independent counsel hired by city council of financially distressed city was entitled to recover attorney fees relating to actions challenging the constitutionality of the Financial Stability Act and defending council in declaratory action filed by appointed receiver, even though the resolutions of the council to hire independent counsel were rescinded by receiver pursuant to the Act. The hiring was authorized by city ordinance, council acted to obtain a definitive ruling as to the constitutionality of a new statute that removed a significant amount of the power held by city's elected officials and vested that broad power in a receiver, lawsuits were undertaken on behalf of city, council had standing and arguably a duty to challenge constitutionality of Act in its official capacity, and it would be fundamentally unfair to hold that attorney fees incurred in the city council's official capacity must be paid out of the personal funds of individual city council members.

EMPLOYMENT - TENNESSEE

State ex rel Byrge v. Yeager

Court of Appeals of Tennessee, at Knoxville - June 25, 2015 - Slip Copy - 2015 WL 3902052

Petitioners filed an action seeking to remove the respondent from the position of county law director of Anderson County pursuant to Tennessee's ouster law, found at Tennessee Code Annotated section 8–47–101. The respondent filed a motion to dismiss, which the trial court granted after concluding that the position of county law director is not a public office subject to the ouster law.

On appeal, the petitioners argued that the trial court erred in concluding that the position of county law director is not a public office. Because the county law director is subject to oversight by an advisory committee that may remove him or her at any time with the subsequent approval of the county legislature, the Court of Appeal affirmed the ruling of the trial court.

IMMUNITY - TEXAS

Suarez v. City of Texas

Supreme Court of Texas - June 19, 2015 - S.W.3d - 2015 WL 3802865

Suit was brought against city under Texas Tort Claims Act (TTCA) and under Wrongful Death Act, by mother of children who drowned in water off man-made beach, and as surviving spouse of children's father who drowned while attempting to save them. The District Court denied city's plea to jurisdiction and motion for summary judgment on grounds of immunity, and city appealed.

The Supreme Court of Texas held that:

- City's failure to replace warning signs along beach after hurricane did not constitute gross

negligence, as required for waiver of immunity from suit under TTCA based on limitation under recreational use statute;
- City's failure to re-designate swim area after hurricane was not gross negligence;
- Evidence of prior drownings did not show that city's failure to warn visitors about dangers rose to level of gross negligence; and
- Mayor's deposition testimony did not show that city's failure to warn visitors of risk rose to level of gross negligence.

PENSIONS - ALABAMA

Ex parte Retirement Systems of Alabama

Supreme Court of Alabama - June 12, 2015 - So.3d - 2015 WL 3648522

Public educators and their spouses brought action against teachers' retirement system, public education employees' health insurance plan, and their boards and officers, alleging that implementation of policy whereby a wife and husband who were both educators in the public school system and who had dependent children would receive a single allotment, rather than two, violated various provisions of state and federal constitution. The Circuit Court denied motion to dismiss based on sovereign immunity. Defendants petitioned for writ of mandamus.

The Supreme Court of Alabama held that:

- State-law claims against board members and secretary-treasurer were barred by state constitutional sovereign immunity, and
- Federal-law claims against board members and secretary-treasurer were barred by federal constitutional sovereign immunity.

State constitutional sovereign immunity barred public educators' state-law claims against members of the board of the public education employees' health insurance plan and the secretary-treasurer of the plan, stemming from implementation of policy whereby a wife and husband who were both educators in the public school system and who had dependent children would receive a single allotment, rather than two. There was no law, regulation, or internal rule cited that created legal duty for plan to allow participants access to employer contributions paid on their behalf to spend on insurance, there was no allegedly unconstitutional law identified being enforced by board members or secretary-treasurer, request for declaratory relief related to board members' conduct under policy, not to board's performance under any particular statute educators sought to have construed or applied in given situation, and restitution requested was more in nature of refund of amounts overpaid than request for liquidated or certain damages owed under contract.

Federal constitutional sovereign immunity barred public educators' federal-law claims for restitution against members of the board of the public education employees' health insurance plan and the secretary-treasurer of the plan stemming from implementation of policy whereby a wife and husband who were both educators in the public school system and who had dependent children would receive a single allotment, rather than two, where relief requested would have resulted in recovery of money from the State.

UTILITIES - CALIFORNIA

Pacific Gas and Electric Company v. Public Utilities Commission

Court of Appeal, First District, Division 2, California - June 16, 2015 - Cal.Rptr.3d - 2015 WL 3745792

After Public Utilities Commission (PUC) imposed civil penalties on underground gas pipeline operator for failing to promptly correct material misstatement of fact in pleading filed with PUC concerning internal pressure at which certain pipelines could be safely operated and for mischaracterizing correction when filed as routine and non-substantive correction, operator filed petition for writ review, which was granted.

The Court of Appeal held that:

- Mental state to mislead was not required for PUC to find that operator violated rule prohibiting person from misleading PUC;
- Proof of continuing misconduct was not required to impose penalties for continuing violation of rule;
- Operator received constitutionally adequate notice of potential fines PUC would impose for violating rule; and
- Penalties imposed on operator for violating rule were not constitutionally excessive.

ZONING - CALIFORNIA

California Bldg. Industry Ass'n v. City of San Jose

Supreme Court of California - June 15, 2015 - P.3d - 2015 WL 3650184

Building industry association brought action for declaratory and injunctive relief against city, city council, and mayor to invalidate city's "inclusionary housing" ordinance on its face. Affordable housing organizations intervened. The Superior Court granted declaratory and injunctive relief. Defendants and intervenors appealed, and the Court of Appeal reversed and remanded. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Requirement that a the developer sell 15 percent of its on-site for-sale units at an affordable housing price was not an unconstitutional exaction in violation of the takings clause, and
- Validity of an inclusionary housing ordinance does not depend upon a showing that the restrictions are reasonably related to the impact of a particular development to which the ordinance applies, disapproving *Building Industry Assn. of Central California v. City of Patterson*, 171 Cal.App.4th 886, 90 Cal.Rptr.3d 63.

City inclusionary housing ordinance requirement that a developer sell 15 percent of its on-site for-sale units at an affordable housing price was not an unconstitutional "exaction" in violation of the takings clause. Condition did not require dedication of property or money to the public, city had broad discretion to regulate the use of real property to serve the public interests, and price control was not confiscatory.

When a municipality enacts a broad inclusionary housing ordinance to increase the amount of affordable housing in the community and to disperse new affordable housing in economically diverse projects throughout the community, the validity of the ordinance does not depend upon a showing that the restrictions are reasonably related to the impact of a particular development to which the ordinance applies. Rather, the restrictions must be reasonably related to the broad general welfare

purposes for which the ordinance was enacted.
