

REDISTRICTING - TEXAS

In re Rodriguez

Court of Appeals of Texas, Beaumont - March 18, 2013 - S.W.3d - 2013 WL 1189005

Court of appeals holds that school board has a mandatory duty imposed by law to accept applications for the positions that came open as a result of census-based redistricting.

The results of the 2010 federal census required that the board redivide the district. The board apparently adopted a plan, the 5-2 plan, within the explicit deadline contained in the education code, but an objection by the Department of Justice prevented the initial redistricting. It is undisputed that the board officially recognized and acted upon the 2010 federal census. The board anticipated completing the redistricting process for the May 2013 election. The board entered into an election services agreement for a joint election with the City of Beaumont for May 2013, and set a deadline for the filing of applications to be placed on the ballot. It is also undisputed that the plaintiffs timely filed applications. The ultimate issue in this proceeding is whether the Board could properly reject those applications at a time when the Board planned to hold an election after redistricting.

The court of appeals held that the school board had a mandatory duty imposed by law to accept the applications for the positions that were timely presented.

PLANNING / ZONING - TEXAS

Town of Bartonville Planning and Zoning Bd. of Adjustments v. Bartonville Water Supply Corp.

Court of Appeals of Texas, San Antonio - March 27, 2013 - S.W.3d - 2013 WL 1222939

Court of appeals agrees with zoning board's assertion that question of applicability of local ordinance to water supply corporation exceeds the board's authority; board possesses only the authority to enforce ordinance.

Town planning and zoning board of adjustments denied water supply corporation's application for a building permit for the construction of a water tower.

At trial, the water supply corporation argued that the board's order was illegal because the board should have determined that its own zoning ordinances do not apply to the corporation because of provisions in the Texas Water Code. The board replied that it had no authority to make any such determination. It only had the authority to enforce the ordinance.

The court of appeals held that it was not within the board's jurisdiction to make a determination concerning the applicability of the zoning ordinances, nor was it within the trial court's jurisdiction in a limited petition for writ of certiorari review. The court agreed with the board that the trial court

exceeded its subject matter jurisdiction and remanded.

TAX - NORTH CAROLINA

[In re Blue Ridge Housing of Bakersville LLC](#)

Court of Appeals of North Carolina - March 19, 2013 - S.E.2d - 2013 WL 1110672

In case of first impression, court holds that nonprofit organization was the “owner” of low income housing development and thus development entitled to property tax exemption, even though nonprofit had only a 0.1% legal ownership interest in the development.

County appealed Property Tax Commission decision finding that housing development qualified for ad valorem tax exemption as a low income housing development owned by a nonprofit organization.

The court of appeals held that:

- As a matter of first impression, nonprofit organization was the “owner” of the development; and
- Decision did not violate equal protection or tax uniformity principles.

Legal title is not determinative as to the question of ownership for purposes of a property tax exemption; instead, where an entity qualifying for a tax exemption possesses a sufficient interest in the property, the property is said to belong to that entity, even where legal title to the property is held by another party.

Factors suggesting ownership of a property by an entity otherwise qualified for a tax exemption may include, but are not limited to: 1) the entity’s control of the venture’s operations; 2) the entity’s status as trustee of LLC property; 3) the possibility of future increased actual ownership interest; and 4) the intent of the participating parties.

In this case, the court found that nonprofit organization was the “owner” of low income housing development and thus development entitled to property tax exemption, even if nonprofit had only a 0.1% legal ownership interest in the development. Nonprofit was the sole manager of the development and made the operational decisions. Nonprofit was the trustee of the active trust involved with the development. Nonprofit had the right of first refusal to purchase the entire 100% legal ownership interest in the development. Nonprofit spearheaded the development of the project and only partnered with other owner to finance the project.

LAND USE - NEW YORK

[Marinaccio v. Town of Clarence](#)

Court of Appeals of New York - March 21, 2013 - N.E.2d - 2013 N.Y. Slip Op. 01868

In case of intentional flooding, court finds considerable injury and undeniably intentional tortious acts but holds that evidence is insufficient for an award of punitive damages.

Property owner brought action against town and subdivision developer asserting causes of action for trespass and private nuisance and seeking damages for flooding on his property allegedly caused by intentional flow of water onto his property.

The question in this case was whether the evidence was sufficient to find defendant liable for punitive damages. The court found that, although the injury was considerable and the tortious acts undeniably intentional, the evidence was insufficient for an award of punitive damages.

Because the standard for imposing punitive damages is a strict one and punitive damages will be awarded only in exceptional cases, the conduct justifying such an award must manifest spite or malice, or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of others that the conduct may be called wilful or wanton.

In this case, developer of subdivision did not willfully and wantonly cause danger to health, safety, and welfare of public through diversion of storm water to mitigation pond. Although developer failed to ensure that town followed through with plan to obtain an easement from property owner to allow water to flow onto his property, developer complied with all federal, state, and local planning and development laws and regulations, and worked closely with Army Corps, town engineer, and town planner to secure all required permits and approvals, and hired wetlands expert, engineering expert, and soil expert to assist in those regards.

SCHOOLS - NEW YORK

[Board of Educ. of Mineola Union Free School Dist. v. Mineola Teachers Ass'n](#)
Supreme Court, Appellate Division, Second Department, New York - March 27, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 02070

Appeals court finds that policy granting paid days off for observance of religious holidays violates Establishment Clause.

Collective bargaining agreement between school district and teachers association provided that members of the association could receive up to five religious holidays as paid days off.

In October 2010, the school district advised the association that it would no longer abide by the religious holidays provision because it was unconstitutional. The association filed a grievance, which was denied, and then sought to invoke its contractual right to arbitration. The school district then commenced a proceeding pursuant to permanently stay the arbitration, and the association moved to compel arbitration.

The appeals court stated that, "There is no firmer or more settled principle of Establishment Clause jurisprudence than that prohibiting the use of the State's power to force one to profess a religious belief." Here, the clear wording of the religious holidays provision rewarded members of the association who claimed to be religiously observant with more paid days off than those afforded to agnostics, atheists, and members who were less observant. As a result, the religious holidays provision violated the Establishment Clause.

MUNICIPAL LIABILITY - MARYLAND

[Ross v. Housing Auth. of Baltimore City](#)

Court of Appeals of Maryland - March 22, 2013 - A.3d - 2013 WL 1164525

Court finds that expert witness was not qualified to provide expert testimony as to source of lead paint exposure, however, expert testimony not sole means of establishing causation as

circumstantial evidence could suffice.

Former resident of home owned by city housing authority brought action against housing authority, alleging claims for negligence and unfair trade practices under the Consumer Protection Act, and alleging that resident had been injured by being exposed to lead in home while living there as a child.

The circuit granted housing authority's motion in limine to exclude testimony of resident's expert on source of resident's lead exposure, and entered summary judgment in favor of housing authority. Resident appealed.

The court of appeals held that:

- Expert testimony lacked factual basis; but
- Causation was not required to be established by expert testimony.

Pediatrician was not qualified to provide expert testimony as to source of plaintiff's lead exposure that resulted in elevated lead levels. Pediatrician's training and experience was to determine blood lead level and to treat patients with elevated blood lead levels, and she was not trained or experienced in quantifying lead exposure, identifying lead hazards, abating lead hazards, or in determining causality with respect to relative exposures.

However, proof of causation – the link between property owned by city housing authority and plaintiff's exposure to lead paint and dust – was not required to be established by expert testimony, but instead could be established through circumstantial evidence. Remanded.

ANNEXATION - MARYLAND

[Koste v. Town of Oxford](#)

Court of Appeals of Maryland - March 26, 2013 - A.3d - 2013 WL 1197204

Petition seeking to bring a municipal annexation resolution to referendum could not be circulated and signed by members of the relevant electorate before final enactment of the targeted resolution.

The Town of Oxford, Maryland introduced a resolution proposing to annex a sizable number of acres of submerged lands adjacent to the Town's boundaries. Following first publication in a local newspaper of a legal notice of the pendency of the resolution and of the date and time of a public hearing, as required by the governing annexation statute, petition circulators among the voters of Oxford prepared and began circulating a petition for referendum regarding the proposed resolution.

A registered voter filed a complaint for declaratory judgment and writ of mandamus that sought a determination that referendum petition signatures could be lawfully obtained before final enactment of an annexation resolution.

The court of appeals held that a petition seeking to bring a municipal annexation resolution to referendum could not be circulated and signed by members of the relevant electorate before final enactment of the targeted resolution.

The annexation statute's 45-day period following the final enactment of the resolution for obtaining the signatures of registered voters to petition for a referendum on resolution acted as a substantial restriction on when petitions could be circulated, as only after enactment of a resolution could

voters be fully informed about all pertinent information of the given resolution.

PUBLIC EMPLOYEES - LOUISIANA

[West Monroe Firefighters Local 1385 v. City Of West Monroe](#)

Supreme Court of Louisiana - March 19, 2013 - So.3d - 2012-1937 (La. 3/19/13)

Court holds that nothing in the statute governing minimum monthly salaries of firemen in certain municipalities requires the “minimum monthly salary” to independently meet the federal minimum wage laws.

Louisiana pays firefighters a state supplement of \$500 per month beginning after a firefighter’s first year. The legislature in 2006 amended the law to allow a municipality to pay first-year firefighters a supplemental monthly payment “in the amount equivalent to the state supplemental pay, or any portion thereof.” City of West Monroe paid a city supplement in the amount of \$300 to its first-year firefighters.

State law sets forth the minimum salaries to be paid to the differing ranks of firefighters, basing the pay differential on specified percentages above the “minimum monthly salary” of a first-year firefighter. The City did not include the \$300 supplemental payment in its computation of the “minimum monthly salary.”

City firefighters brought action against city alleging failure to comply with statute setting forth minimum salary requirements for firefighters, and failure to comply with the Louisiana Wage Act

The Supreme Court of Louisiana held that city supplemental pay of \$300 per month to firefighters in their first year of employment was not included in the calculation of a first-year firefighters’ “minimum monthly salary” for purposes of determining wage differentials for higher-ranking firefighters.

Nothing in the statute governing minimum monthly salaries of firemen in certain municipalities requires the “minimum monthly salary” to independently meet the federal minimum wage laws. If the legislature had intended for the base pay of firemen to be governed by the mandates of the Fair Labor Standards Act, it could have directly referenced it therein.

TAX - GEORGIA

[City of Atlanta v. City of College Park](#)

Supreme Court of Georgia - March 28, 2013 - S.E.2d - 2013 WL 1247932

Court holds that city can levy an occupation tax on Atlanta for its proprietary operations occurring within the city; municipalities not “local authorities.”

The Cities of Atlanta and College Park entered into an agreement in 1969 for purposes of expanding Atlanta Hartsfield-Jackson International Airport. One of the provisions of the agreement granted Atlanta the exclusive right to collect and levy occupation taxes from businesses located at the airport that were within the city limits of College Park. In 2007, after commissioning a study for the purpose of reassessing this relationship, College Park informed Atlanta and airport businesses that it would no longer honor the 1969 Agreement and that it would now seek to collect occupation taxes from the

airport businesses including Atlanta's proprietary business operations.

Atlanta filed a declaratory action seeking a judgment that the 1969 Agreement controlled the collection of occupation taxes from businesses operating at the airport within College Park.

The court of appeals affirmed the trial court's judgment invalidating the 1969 Agreement, but reversed the trial court's finding that the term "local authority" as used in the Georgia statute included municipalities. Accordingly, because Atlanta was not a "local authority" that was exempt from the imposition of occupation taxes, the court of appeals found that College Park could properly levy an occupation tax on the City of Atlanta for its proprietary operations occurring within College Park. The Supreme Court of Georgia affirmed.

TAX - GEORGIA

[First Congregational Church v. Fulton County Bd. of Tax Assessors](#)

Court of Appeals of Georgia - March 27, 2013 - S.E.2d - 2013 WL 1223852

Court finds that primary purpose of church's income-producing parking lot is commercial, not charitable, and thus taxable.

Tax-exempt church purchased a parking lot for use by its parishioners. The church subsequently entered into a lease agreement with a company that operated a commercial parking business on those days on which it was not used for church parking.

The superior court ruled in favor of the county board of tax assessors, holding that an income-producing parking lot did not qualify for an exemption from ad valorem property taxation.

The church appealed, arguing that it had purchased the property for the purpose of creating a parking lot, and that after it converted the property into a paved parking lot, it indeed used the property for overflow parking for its parishioners and guests attending religious activities or obtaining charitable services. The church acknowledged that it derived income from the property by way of its contract with a third party, but pointed out that the income received by it (as opposed to whatever income was received by the commercial operator) was used to support its religious services and charitable pursuits. In light of these circumstances, the church maintained that the property's "primary" use was the provision of overflow parking, that income production of \$90,000 yearly was an "incidental" use of its property its property was entitled to the claimed tax exemptions.

The appeals court concluded that most of the activities that took place on the church's property were patently not at the core of its religious or charitable purposes, affirming the trial court's opinion.

BONDS - GEORGIA

[Sherman v. Development Authority of Fulton County](#)

Court of Appeals of Georgia - March 22, 2013 - S.E.2d - 2013 WL 1165280

Appeals court rejects sufficiency of trial court's findings of fact and conclusions of law in bond validation proceeding.

This case arose from a bond validation proceeding in which the State of Georgia petitioned a superior court for a judgment approving the issuance of certain taxable revenue bonds by the Development Authority of Fulton County ("DAFC") and validating the bonds and various bond security documents.

Mr. Sherman, a taxpayer and citizen of Fulton County appealed from the order of the trial court validating and confirming the bonds and bond security. Mr. Sherman asserting that the trial court erred by failing to set forth therein findings of fact or conclusions of law sufficient to support its ultimate holdings that: 1) the method used by DAFC to value the leasehold estate was valid under the requirements of Harris and Sherman I; 2) the structure of the bond transaction did not violate OCGA § 36-62-8; 3) the Memorandum was not ultra vires, in violation of OCGA § 36-30-3(a);9 and 4) the structure of the bond transaction did not create an unconstitutional tax exemption.

The court of appeals largely agreed with Mr. Sherman regarding the insufficiency of the findings of fact or conclusions of law. The appeals court found that the trial court labeled some of its holdings as "findings of fact." Instead of being actual factual findings, however, these statements were summary conclusions that contain no hint about the evidence or analysis the court relied on to arrive at them. Similarly, the trial court's "conclusions of law" challenged by Sherman on this appeal cite no legal authority and contain no analysis that explains them. Accordingly, these findings of fact and conclusions of law fail to satisfy the requirements of OCGA § 9-11-52(a).

The appeals court vacated the trial court's order and remanded to allow the trial court to enter a new order on the Bond Validation Petition. Such order to contain specific factual findings and conclusions of law necessary to explain any ultimate holdings of the trial court that: 1) the method used by DAFC to value the leasehold estate is valid under the requirements of Harris and Sherman I; 2) the structure of the bond transaction does not violate OCGA § 36-62-8(b); 3) the execution of the Memorandum did not violate OCGA § 36-30-3(a) and therefore did not constitute an ultra vires act; and 4) the structure of the bond transaction does not create an unconstitutional tax exemption.

MUNICIPAL GOVERNANCE - FLORIDA

[Atheists of Florida, Inc. v. City of Lakeland, Fla.](#)

United States Court of Appeals, Eleventh Circuit - March 26, 2013 - F.3d - 2013 WL 1197772

Court holds that city's practice of allowing clergy to perform invocations at city commission meetings did not violate federal or state establishment clauses; validates city's new procedures for selecting invocation speakers.

Atheist organization brought §1983 action against city and mayor, alleging that practice of allowing religious ministers to perform invocations before city commission meetings violated establishment clauses of First Amendment and Florida Constitution.

The court of appeals held that:

- Defendants' new practices for selecting invocation speakers did not violate establishment clauses;
- Organization's claims related to defendants' former practices for selecting invocation speakers were moot; and
- Defendants' expenditures toward selecting invocation speakers did not violate no-aid provision of Florida's establishment clause.

City commission's selection of speakers to deliver invocation at commission's did not proselytize, advance, or disparage any one faith or belief and did not affiliate city with any discrete faith or belief, and thus did not violate establishment clauses of First Amendment and Florida Constitution. Procedures required commission to update congregations list annually, based on search of local phone books and Internet listings, potential speakers from congregations outside county were included on list if city resident who was member of that congregation requested it, and every congregation on list then received invitation to give invocation at commission meetings.

City commission's expenditure of \$1,200 to \$1,500 per year to arrange for speakers to give invocation before commission meetings did not advance religion, precluding Atheist organization's §1983 claim that commission violated no-aid provision in Establishment Clause of Florida Constitution. Funds merely went to mailing invitations to various religious leaders in community, and no religious group received any pecuniary benefit, either direct or indirect, from those expenditures or received financial assistance from commission for promotion and advancement of its theological views.

EMINENT DOMAIN - CALIFORNIA

[Monks v. City of Rancho Palos Verdes](#)

Court of Appeal, Second District, California - March 28, 2013 - Not Reported in Cal.Rptr.3d - 2013 WL 1248251

City not liable to landowners for decline in their property value during the pendency of a long-running eminent domain dispute.

On remand in a long-running eminent domain dispute, city opted to allow plaintiffs to build homes on their lots. Plaintiffs asserted they were also entitled to compensation for the decline in the fair market value of their properties. The trial court disagreed, stating that the city had remedied the permanent taking by repealing the offending resolution and enacting a new resolution allowing plaintiffs to develop their properties.

The court of appeal agreed, stating that the city did not have to pay compensation to plaintiffs for the permanent taking because it provided a constitutionally acceptable alternative remedy - allowing plaintiffs to build homes on their lots.

MUNICIPAL GOVERNANCE - CALIFORNIA

[Rubin v. City of Lancaster](#)

United States Court of Appeals, Ninth Circuit - March 26, 2013 - F.3d - 13 Cal. Daily Op. Serv. 3357

Court finds preponderance of Christian prayers at city council meeting a function of demographics, rather than an unconstitutional establishment of religion.

Attendees of city council meetings brought action against city in a California state court requesting declaratory and injunctive relief from the city's policy of permitting prayers that mention Jesus, arguing that both the invocations and the policy amounted to an establishment of religion.

The court of appeals held that city council's facially neutral practice of opening its meetings with

privately led prayers did not effect an unconstitutional establishment of religion in violation of First Amendment and California constitution.

Notwithstanding that the majority of city-council invocations had been Christian, city council's facially neutral practice of opening its meetings with privately led prayers did not effect an unconstitutional establishment of religion in violation of First Amendment and California constitution. The court found that the city had taken proactive measures to deliver on its promise of inclusivity, stressing, both to the public and to invited prayer-givers, the policy's nonsectarian aims. The fact that most so far had been Christian was merely a function of local demographics and the choices of the religious leaders who responded out of their own initiative to the city's invitation.

MUNICIPAL GOVERNANCE - CALIFORNIA

[Harris v. Rizzo, et al.](#)

Court of Appeal, Second District, Division 3, California - March 20, 2013 - Cal.Rptr.3d - 13 Cal. Daily Op. Serv. 3209

Court concludes that state Attorney General has standing, on behalf of city, to bring an action against allegedly corrupt individuals, to remove the city from their control, and require them to pay restitution to the city.

"When it appears that a charter city is under the control of individuals who are looting the city's coffers for their own benefit, can the Attorney General, on behalf of the city, bring an action against the allegedly corrupt individuals, to remove the city from their control and require them to pay restitution to the city? We conclude that the Attorney General may bring such an action, and seek recovery from the corrupt individuals to the extent their acts were unauthorized."

This case concerned the city of Bell. The appeals court concluded that the Attorney General does have standing to pursue an action on behalf of the City. It further concluded that, although separation of powers and legislative immunity bar pursuit of this action with respect to acts within the discretion of City officials, these doctrines do not prevent the action from proceeding with respect to defendants' allegedly ultra vires acts.

EMPLOYMENT - ALASKA

[Mills v. Hankla](#)

Supreme Court of Alaska - March 22, 2013 - P.3d - 2013 WL 1165508

Supreme Court of Alaska finds that genuine issue of material fact exists as to whether police chief was a "supervisor" of employees during alleged acts of sexual harassment, precluding summary judgment.

In 2008, city promoted a police officer to police chief. The city's hiring determination and the officer's subsequent conduct led four police department employees to sue the police chief and the city. The employees asserted several claims including wrongful termination, sexual harassment, and negligent hiring.

The Supreme Court of Alaska held that:

- Evidence supported finding that employer did not engage in spoliation of evidence;
- Genuine issue of material fact as to whether employee was constructively discharged precluded summary judgment on wrongful termination claim;
- Genuine issue of material fact as to whether police chief was a “supervisor” of employees during alleged acts of sexual harassment precluded summary judgment on sexual harassment action;
- State Human Rights Act does not provide for individual liability of employees for hostile work environment sexual discrimination or hostile work environment sexual harassment; and
- Employer’s hiring decision in hiring of police chief was discretionary, and thus official immunity applied to decision.

VOTER INITIATIVE - WASHINGTON

[League of Educ. Voters v. State](#)

Supreme Court of Washington, En Banc - February 28, 2013 - P.3d - 2013 WL 791807

Voter-enacted initiative that required any bill containing a tax increase to be passed by a two-thirds majority vote of the legislature held unconstitutional, but severable.

Voter associations, individual legislators, and individual taxpayers brought action challenging constitutionality of voter-enacted initiative requiring supermajority vote on any tax . The superior court determined that challenge to both provisions was justiciable and that both provisions violated state constitution. State appealed.

The Supreme Court of Washington held that:

- Challenge to supermajority provision was justiciable controversy;
- Challenge to referendum provision was not justiciable controversy;
- Challenge to referendum provision did not constitute matter of great public importance;
- Supermajority provision violated state constitution; and
- Supermajority provision was severable from remainder of statute.

The court concluded that the voter-enacted initiative requiring any bill containing a tax increase to be passed by a two-thirds majority vote of the legislature violated the state constitutional provision governing legislature’s passage of bills. But it also found that the supermajority provision was severable from the remainder of the statute. The initiative contained a severability clause. The purpose of the initiative was to make passing tax increases more difficult and the remainder of the statute served that purpose, even without the supermajority requirement, as another provision of the legislation required a referendum for passage of a tax increase.

LITIGATION - AUCTION RATE SECURITIES - MARYLAND

[Mayor and City Council of Baltimore, Md. v. Citigroup, Inc.](#)

United States Court of Appeals, Second Circuit - March 5, 2013 - F.3d - 2013 WL 791397

City fails to establish requisite elements of an antitrust conspiracy in connection with the collapse of the ARS market.

City’s mayor and council brought putative class action against banks and various financial institutions, alleging conspiracy to stop buying auction rate securities for their own proprietary

accounts, in violation of the Sherman Act, which then triggered collapse of market for such securities. The United States District Court for the Southern District of New York granted defendants' motion to dismiss. Plaintiffs appealed.

The U.S. Court of Appeals held that:

- Plaintiffs pled only parallel conduct on part of defendants, with no common motive to conspire, and
- Plaintiffs failed to allege "high level" of inter-firm communications.

In the absence of "smoking gun" proving the existence of an antitrust conspiracy, the complaint may, in order to survive a motion to dismiss, present circumstantial facts supporting the inference of a conspiracy. This circumstantial evidence might include the existence of a horizontal agreement based on conscious parallelism. When such interdependent conduct is accompanied by circumstantial evidence and additional factors, including a common motive to conspire, evidence that shows that the parallel acts were against the apparent individual economic self-interest of the alleged conspirators, and evidence of a high level of inter-firm communications, will help a complaint survive a motion to dismiss.

City's mayor and council pled only parallel conduct on part of banks and various other financial institutions that had no common motive to conspire. Although defendants withdrew from the market "in a virtually simultaneous manner," plaintiffs' allegations were consistent with finding that market was already collapsing when defendants withdrew, so that defendants acted rationally and in anticipation of similar actions taken by competitors.

PARCEL TAX - CALIFORNIA

[Borikas, et al. v. Alameda Unified School District](#)

Court of Appeal, First District, Division 1, California - March 6, 2013 - Cal.Rptr.3d - 2013 WL 820593

Court finds that parcel tax's residential/commercial property classifications and differential tax burdens based on property size exceed the school district's taxing authority.

This case involves the validity of a parcel tax approved by Alameda Unified School District (District) voters as Measure H. The issue before the court was whether the tax violates Government Code section 50079, which authorizes school districts to levy "qualified special taxes." Such taxes are statutorily defined as "taxes that apply uniformly to all taxpayers or all real property within the school district, except that 'qualified special taxes' may include taxes that provide for an exemption from those taxes for taxpayers 65 years of age or older or for persons receiving Supplemental Security Income for a disability, regardless of age." Measure H provides exemptions for some senior and disabled taxpayers. It also imposes different tax rates on residential and commercial/industrial properties, as well as different rates on different sized commercial/industrial properties.

Plaintiffs contended that Measure H's property classifications, differing tax rates and conditional exemptions violated section 50079's definitional language that special taxes apply "uniformly" to all taxpayers or all real property within the district. The District contended that this statutory language reflected long-established equal protection principles which allow a governmental entity to create reasonable tax classifications, so long as all taxpayers within a classification are treated the same.

After examining the language and legislative history of section 50079, and that of the correlative enabling statutes, the court of appeal concluded that the legislature did not include this definitional

language in order to acknowledge established equal protection principles. Rather, the language at issue was intended to be a constraint on the extent of the taxing authority delegated to the local governmental entities. The court therefore concluded Measure H's property classifications and differential tax burdens exceed the District's taxing authority under section 50079. The court also concluded that these provisions could be severed from the measure and that Measure H's exemptions for senior and disabled taxpayers are permissible under the statute.

EMINENT DOMAIN - TEXAS

[Texas Municipal Power Agency v. Johnston](#)

Court of Appeals of Texas, Houston (1st Dist.) - February 28, 2013 - S.W.3d - 2013 WL 744395

Landowner's petition for injunctive relief premature, as municipal power agency had initiated negotiations regarding easement but had taken no concrete steps to condemn his property.

Landowner sought temporary and permanent injunctive relief against the Texas Municipal Power Agency (TMPA) to prohibit TMPA from entering onto his property to conduct surveys and inspections and attempting to condemn a portion of his property. TMPA contended that landowner's petition was premature and did not present a justiciable controversy.

TMPA is a municipal power agency created pursuant to Texas Utilities Code and is a political subdivision of the State. As a political subdivision, TMPA thus possesses eminent domain powers, but before TMPA can initiate condemnation proceedings, it must first authorize the initiation of such proceedings at a public meeting by a record vote.

Although TMPA had indicated its desire to use its eminent domain powers to obtain an easement on a portion of landowner's property, the board had not yet authorized the initiation of a condemnation proceeding. Until it authorized such a proceeding, TMPA could not file a petition initiating condemnation. Thus, until the Board authorized the condemnation of landowner's property and TMPA actually filed a condemnation proceeding, the landowner had not suffered a concrete injury. The court concluded that landowner's claim for injunctive relief, at that point, presented an "abstract, hypothetical, and remote dispute" that was not ripe for adjudication.

TAX INCREMENT FINANCING - COLORADO

[Northglenn Urban Renewal Authority v. Gil Reyes, in His Official Capacity As Adams County Assessor; and Board of County Commissioners of the County of Adams](#)

Colorado Court of Appeals, Div. V - February 28, 2013 - P.3d - 2013 WL 781920

Appeals court rejects county assessor's TIF calculation that included property in the base value while removing that same property from the newly assessed value.

City council approved an urban renewal plan created by for the redevelopment of blighted areas. The plan included tax increment financing (TIF). "TIF is a form of public funding that allows for the sale of municipal bonds to raise money for public improvements pursuant to the Colorado Urban Renewal Law."

The city council subsequently passed a resolution that substantially amended the urban renewal plan, adding several tracts of new property to the Urban Renewal Area. No significant redevelopment activity occurred, however, on much of the newly added property. Therefore, the city council passed another resolution to suspend TIF for those properties within the renewal area without active urban renewal projects.

The county assessor later calculated the TIF revenue by removing the suspended property from the total assessed value but including the suspended property in the base value. The Assessor also concluded that the TIF period for all properties, including the later added properties, would expire in 2017, a date twenty-five years after the effective date of the original 1992 renewal plan.

The urban renewal authority filed a complaint alleging that, a) the assessor improperly calculated the base value of the property in the urban renewal area, and b) the assessor improperly shortened the duration of the applicable TIF period for the additional properties.

The court of appeals agreed, concluding that a calculation that creates an imbalance in an authority's TIF by including property in the base value while removing the same property from the new assessed value impedes the goals of addressing and financing renewal of blighted areas.

ANNEXATION - LOUISIANA

[Little Capitol of Louisiana, Inc. v. Town of Henderson](#)

Court of Appeal of Louisiana, Third Circuit - March 6, 2013 - So.3d - 2012-1089 (La.App. 3 Cir. 3/6/13)

Reasonableness of annexation is a fact-driven inquiry that requires a weighing of evidence and is thus not suited to summary judgment proceedings.

Opponents objected to town's annexation of land, filing a Petition in Opposition to Annexation and Extension of the Corporate Limits of the Town. Plaintiffs asserted that the annexation was solely for the purpose of providing revenue to the town, that the town could not provide any services to the area to be annexed, and that, as a result, the annexation was unreasonable.

The trial court granted plaintiff's motion for summary judgment, stating that, "Plaintiffs have sustained their burden of proof that the annexation is unreasonable by an abundance of the evidence."

The court of appeal reversed, stating, "In an annexation contest, what is reasonable or unreasonable depends largely upon the particular facts in any given situation. Such a fact-driven inquiry necessarily involves a weighing of evidence. Consideration of the weight of the evidence is improper on a motion for summary judgment, and it is not the function of the trial court on a motion for summary judgment to determine or even inquire into the merits of the issues raised."

"After reviewing the 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits submitted,' this court cannot, without weighing the evidence, assess the reasonableness of the annexation. Therefore, we find that a grant of summary judgment is not appropriate. Accordingly, the judgment of the trial court is reversed, and the matter is remanded to the trial court for further proceedings."

LITIGATION - ARIZONA

In re Allstate Life Ins. Co. Litigation

United States District Court, D. Arizona - March 1, 2013 - Not Reported in F.Supp.2d - 2013 WL 789106

Court finds that genuine issue of material fact exists as to defendant's control person status in ongoing bond issuance litigation.

At issue in this lawsuit was the offering and sale of \$35 million in revenue bonds used to finance the construction of a 5,000 seat event center. Plaintiffs are entities and individuals who purchased in the bond offering.

The relevant Defendants for the purposes of this portion of the ongoing litigation were Prescott Valley Event Center LLC ("PVEC-LLC"), Global Entertainment Corporation ("Global"), and Treliving. PVEC-LLC is the entity that received the proceeds of the bond sale and was responsible for managing the construction and financing of the Event Center. Global was the majority shareholder of PVEC-LLC, owning between 50% of PVEC-LLC's stock during the times relevant to this suit. In turn, the majority shareholder of Global was a holding company named Western Professional Hockey League ("WPHL"). Treliving is the chairman and a minority shareholder of both Global and WPHL.

This suit was based on a number of misstatements purportedly made by the defendants. These misstatements were allegedly made in the Preliminary Official Statement and the Official Statement. Plaintiffs alleged that Defendants Global and PVEC-LLC contributed to the allegedly misleading statements in the OS. They asserted claims against Treliving as a control person of Global and thus PVEC-LLC under Section 20(a) of the Exchange Act, A.R.S. § 44-1999(B) of the Arizona Securities Act, and 815 ILCS § 5/13 of the Illinois Securities Law. Plaintiffs also asserted a claim against Treliving for negligent misrepresentation. Treliving moved for summary judgment on all claims.

The court concluded that the plaintiffs had shown that a genuine issue of material fact exists as to whether Treliving was a control person of Global under both Section 20(a) of the Exchange Act and § 44-1991 of the Arizona Securities Act. However, Plaintiffs had failed to establish any fact issue as to Treliving's liability under the Illinois Securities Law or Arizona's common-law negligent misrepresentation claim. Thus, Treliving's Motion for summary judgment was denied as to the Section 20(a) and § 44-1991 claims, but granted as to the Illinois Securities Law and negligent misrepresentation claims.

ZONING - MAINE

Summerwind Cottage, LLC v. Town of Scarborough

Supreme Judicial Court of Maine - March 5, 2013 - A.3d - 2013 ME 26

Town's shoreland zoning map entitled to deference by the zoning board of appeal and the court even though ordinance stated that map was "merely illustrative" of boundary locations.

Neighbors appealed decision of town zoning board of appeals to grant a setback variance to landowners.

The Supreme Judicial Court of Maine held that:

- Shoreland zoning map was entitled to deference;
- Lot was not required to meet minimum lot width requirement or obtain a variance from width requirement in order to obtain setback variance;
- Evidence was sufficient to support finding that lot required variance from setback requirement due to the unique circumstances of the property; and
- Evidence was sufficient to support finding that variance was required in order to allow a reasonable return.

Town's shoreland zoning map was part of shoreland zoning ordinance such that it was the result of the legislative process by the town council and was entitled to deference by the zoning board of appeals and the court, even though ordinance stated that map was "merely illustrative" of boundary locations.

In the interest of judicial economy the Supreme Judicial Court agreed to consider neighbors' challenge to the validity of town's shoreland zoning map, although the proper method of challenging the map's validity was through a declaratory judgment action. By hearing the challenge, the Supreme Judicial Court could avoid remand to the Superior Court to amend the complaint and to address an issue that the court had already heard.

ZONING - ARIZONA

[Stagecoach Trails MHC, L.L.C. v. City of Benson](#)

Supreme Court of Arizona, En Banc - March 5, 2013 - P.3d - 2013 WL 792825

Court holds that mobile home park operator was not required to appeal again to the city's board of adjustment after the zoning administrator reaffirmed his earlier denial of a permit; remanded on issue of nonconforming use.

Mobile home park operator brought action seeking judicial review of city zoning administrator's denial of a permit to install a new mobile home, and to challenge zoning ordinance.

The Supreme Court of Arizona held that:

- Park operator was not required to appeal again to the city's board of adjustment after the zoning administrator reaffirmed his earlier denial of a permit, and
- Park operator was not entitled mandamus relief or attorney fees.

The park operator argued that the entire park is the nonconforming use and replacing individual manufactured homes within the park is merely a continuation of the existing use that does not alter the park's nonconforming status. In contrast, the city argued that, because the individual space is the nonconforming use, placing a new home on the space is a different use that must satisfy current zoning requirements. The City did not argue, however, that if the park is the nonconforming use, replacing an individual home would alter the use and subject the park, and each space, to current zoning regulations. The court remanded to a lower court to decide these issues.

TAX - NEW JERSEY

[Borough of Paramus v. County of Bergen](#)

Tax Court of New Jersey - February 22, 2013 - 2013 WL 706315

Tax court holds that leasing tax-exempt hospital property to a third-party on a for-profit basis does not affect the exempt status of the property since the hospital continues to serve the public purpose set forth by the tax statute.

Property at issue is a public hospital exempt from local property taxes based on a provision of the New Jersey code which provides an exemption for county owned property put to public use. In 1997 the county elected to transition the management of the hospital to a for-profit third party health care management firm.

The property continued to be designated as exempt on the tax rolls. In 2001, the manager entered into contracts to lease space within the hospital to service providers. The borough assessor placed a partial assessment on the property in 2005 meant to tax those spaces within the hospital buildings leased by the manager to for-profit service providers. The Borough filed a tax appeal in 2008, and for later years, challenging the exempt status of the hospital and seeking to increase both the non-taxed assessment on the exempt portion of the property and the taxed assessment on the hospital's leased spaces.

The tax court found that the act of leasing the property to a third-party on a for-profit basis does not affect the exempt status of the property since the hospital continues to serve the public purpose set forth by the statute. Because the exemption statutes at issue require that the property be used for a public purpose, the tax exemption code provision has no application to these facts. In addition, the nature and use of the leased spaces remain to be determined at trial, the outcome of which will either render the property wholly exempt or wholly taxable.

SCHOOL BOARD - KENTUCKY

[Banks v. Breathitt County Bd. of Educ.](#)

United States District Court, E.D. Kentucky, Central Division, at Lexington - February 28, 2013 - F.Supp.2d - 2013 WL 716315

While school board employees may be sued for constitutional violations in two capacities - official and individual, suing government employee in his or her official capacity is simply another way of pleading action against entity of which employee is an agent.

County school system employee filed suit asserting violation of his substantive due process rights under Fourteenth Amendment, wrongful abridgement of his rights under First Amendment, discrimination in violation of Kentucky statute prohibiting teachers and school board employees from being discriminated against because of their political opinions, violation of Kentucky statute prohibiting employers from subjecting public employees to reprisal for reporting information relating to employer's violation of the law, alleged fraud, or abuse, and intentional infliction of emotional distress.

The district court held that:

- 1983 claims against individual school board members in their official capacities were redundant of claim against school board itself;
- Board of education was not entitled to immunity from claims based on Kentucky statute prohibiting teachers and school board employees from being discriminated against because of their political opinions;
- Kentucky statute prohibiting employers from subjecting public employees to reprisal for reporting

- information relating to employer's violation of the law, alleged fraud, or abuse waived any government immunity to which school board might otherwise be entitled;
- School board was not entitled to governmental immunity on claim for intentional infliction of emotional distress;
 - Official capacity state law claims against individual school board members were redundant of claims against school board itself; and
 - Complaint sufficiently stated claims against interim superintendent and two school board members at time of alleged discriminatory events.
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SCHOOL BOARDS - TAX - MISSISSIPPI

Jones County School Dist. v. Mississippi Dept. of Revenue

Supreme Court of Mississippi - March 7, 2013 - So.3d - 2013 WL 829010

Supreme Court of Mississippi holds that school districts are not liable for oil and gas severance taxes on sixteenth-section royalty interests.

This case concerned three main issues: 1) whether a school district is liable for oil and gas severance taxes on its royalty interests derived from oil and gas production on sixteenth-section land; 2) whether the statute of limitations restricts the time period in which a school district can seek a refund of severance taxes that it had paid erroneously; and 3) whether a school district is liable for administrative expense taxes on its royalty interests derived from oil and gas production on sixteenth-section land.

The Supreme Court of Mississippi found that:

- School districts are not liable for oil and gas severance taxes on sixteenth-section royalty interests, as political subdivisions of the state are not included within the definition of "persons" made subject to these taxes.
 - Pursuant to Article 4, Section 104 of the Mississippi Constitution, statutes of limitation in civil causes do not run against the state or its subdivisions.
 - School districts are liable for administrative expense taxes on sixteenth-section royalty interests. These assessments are "fees," not "taxes"; the legislature has expressly made the state and its subdivisions subject to these fees; and no constitutional provision or other law is violated by requiring school districts to pay them.
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EMPLOYMENT - OREGON

Webber v. First Student, Inc.

United States District Court, D. Oregon., Medford Division - February 26, 2013 - F.Supp.2d - 2013 WL 773732

Bus driver fails to establish sufficient nexus between his private contractor employer and school district to sustain civil rights action; Confederate flags frowned upon.

Employee was terminated by his employer, First Student, Inc., for insubordination after he refused to remove a 3-by-5 foot Confederate flag from his pickup truck while the truck was parked on school district property. First Student is a private contractor that provides transportation services to the school district. Employee claimed the termination violated his First Amendment rights and that

First Student and the district acted together to deprive him of his right to freedom of speech and expression.

To state a claim for violation of his First Amendment rights under § 1983, employee must first show that First Student acted under color of state law. The court begins with the presumption that conduct by private actors is not taken under color of state law. Thus, the plaintiff bears the burden of establishing that a nominally private entity was a state actor. The basic question under the color of state law inquiry is whether the necessary “close nexus” between the state, the private entity, and the challenged conduct exists.

The Supreme Court has articulated four tests for determining whether a private entity’s actions amount to state action: 1) public function; 2) compulsion; 3) joint action; and 4) governmental nexus. The district court’s analysis revealed that the employee failed to meet any of these tests.

INVERSE CONDEMNATION - GEORGIA

[Barngrover v. City of Columbus](#)

Supreme Court of Georgia - March 4, 2013 - S.E.2d - 2013 WL 776731

Equitable relief granted to homeowner in inverse condemnation action against city entitled the city to raze and rebuild homeowner’s house.

Property owner filed suit seeking monetary and equitable relief for inverse condemnation and a continuing nuisance and trespass on his property resulting in sinkholes and the presence of fecal coliform bacteria allegedly caused by leakage from the City’s network of storm water and sewage pipes running under his property. A special master was appointed, issued a report, the superior court adopted the special master’s recommendation as to equitable relief, and ordered that the structures on the property be razed and rebuilt. Property owner appealed.

The Supreme Court of Georgia held that:

- The trial court had the discretion to enter an order requiring house to be razed and rebuilt, and
- The trial court’s failure to remove special master was not an abuse of discretion.

The Supreme Court found that the jury’s equitable remediation verdict effectively revoked the city’s existing pipeline easements through homeowner’s property and re-directed said pipelines and easements through another portion of his property. This was not an illegal exercise of the power of eminent domain, was not an illegal seizure of his property, and was not a violation of his right to equal protection of the laws.

ANNEXATION - TEXAS

[City of Harlingen v. Lee](#)

Court of Appeals of Texas, Corpus Christi-Edinburg - February 28, 2013 - S.W.3d - 2013 WL 772661

Texas appeals court declines to recognize re-annexation as a power separate and distinct from annexation.

A Texas home-rule municipality purported to enact three separate ordinances: (1) Ordinance Number 08-65, annexing two tracts of land; (2) Ordinance Number 11-44, disannexing the area in question; and (3) Ordinance Number 12-1, repealing and rescinding Ordinance Number 11-44.

Local resident challenged the validity of these ordinances. The court found that the resident had standing to sue for disannexation because he alleged a distinct injury, traceable to the municipality's conduct, which is likely to be redressed by the requested relief.

The court of appeals found that the municipality had not offered any authority to establish that, in addition to its power to annex and power to disannex, it has a third power to re-annex. The court reviewed the relevant provisions of the Texas Local Government Code and the case law interpreting and applying those provisions and found no authority to establish that the city has a third and distinct power to re-annex. Accordingly, the court declined to recognize re-annexation as a power separate and distinct from annexation.

The court also held that the resident lacked standing to prosecute refund claims on behalf of third parties.

ZONING - NEW JERSEY

Motley v. Borough of Seaside Park Zoning Bd. of Adjustment

Superior Court of New Jersey, Appellate Division - March 4, 2013 - A.3d - 2013 WL 776544

Total destruction of a non-conforming structure, whether by the owner's design or by accident, terminates a nonconforming use and terminates the owner's right to continue that use.

Property owner, who sought to restore nonconforming house after pipes burst and caused significant water damage, filed action in lieu of prerogative writs seeking to overturn decision of borough zoning board of adjustment denying owner's application to lift stop work order.

The superior court held that:

- Owner, by removing every part of structure except foundation and footings, effected a total destruction of property, and
- "Stop work" order was justified by owner's improper conduct in exceeding limitations of zoning permit.

Given the statutory objective to eradicate nonconforming uses over time, local governing bodies may not adopt ordinances that authorize the restoration or replacement of all nonconforming structures, even on the condition that the cubic size of the replacement structure does not exceed the size of the existing structure. A nonconforming use or structure may be restored or repaired in the event of partial destruction thereof; by contrast, total destruction of such a structure, whether by the owner's design or by accident, terminates a nonconforming use and the owner's right to continue that use likewise ceases.

MUNICIPAL GOVERNANCE - NEW JERSEY

In re Advisory Letter No. 7-11 of Supreme Court Advisory Committee on

Extrajudicial Activities

Supreme Court of New Jersey - March 6, 2013 - A.3d - 2013 WL 811863

Judge allowed to serve in the same municipality where his son had been sworn in as police officer, but with significant limitations.

Chief municipal court judge petitioned for review of opinion issued by Advisory Committee on Extrajudicial Activities that judge could no longer serve as judge in same municipality where judge's son had been sworn in as police officer.

The Supreme Court of New Jersey held that chief municipal court judge could serve, but was disqualified from presiding over any case in which his son or any fellow police officers or coworkers were party or witness in any case in municipal court, and was disqualified from acting in any supervisory capacity over other municipal court judges.

FORECLOSURE - MAINE

Stoops v. Nelson

Supreme Judicial Court of Maine - March 5, 2013 - A.3d - 2013 ME 27

Court upholds town's foreclosure of property for unpaid taxes and subsequent conveyance via municipal quitclaim deed.

Town foreclosed on property for unpaid taxes and subsequently conveyed the property via municipal quitclaim. Original owners brought action to quiet title against subsequent purchaser and town, alleging violations of their due process rights.

The Supreme Judicial Court of Maine held that:

- Town complied with statutory notice requirements for imposition of tax lien, as prerequisite to automatic foreclosure;
- Provision of tax lien foreclosure statute that municipality "shall notify" record property owner of automatic foreclosure did not require that taxpayers received actual notice of pending foreclosure; and
- Automatic foreclosure on tax lien did not violate due process.

MUNICIPAL GOVERNANCE - TEXAS

In re Lee

Court of Appeals of Texas, Austin - February 28, 2013 - S.W.3d

City Secretary does not have the authority to determine the legal sufficiency of the allegations contained in a recall petition.

Citizens completed a petition to recall town mayor. Upon completion, the recall petition was filed with the City Secretary, who reviews the petition to determine if it is sufficient or insufficient. In this case, the City Secretary deemed the petition insufficient. The next day, at its next regular session, the city council approved the City Secretary's certification of insufficiency and refused to order a mayoral recall election. Citizens brought a motion to compel.

The city did not contend that the recall petition lacked the required number of valid signatures. Rather, it contended that the City Charter authorized the City Secretary to review the factual allegations supporting the recall and to determine, in his or her discretion, if the allegations are sufficient to give rise to a claim “for reason of incompetence, noncompliance with this Charter, misconduct or malfeasance in office.”

The court roundly rejected this contention, finding that a review of the sufficiency of the allegations supporting recall would, in essence, amount to a non-judicial determination by the City Secretary and the City Council of whether the facts as alleged give rise to a legal basis for recall under the City Charter.

“The Charter for the City of Brady creates a ministerial duty for the City Secretary to certify a recall petition upon determining that it contains the requisite number of signatures. Likewise, the City Charter creates a ministerial duty for the City Council to order a recall election if the official whose removal is sought refuses to resign. Here, there is no dispute that the recall petition included the correct number of signatures. Further, there is no explicit discretionary duty relied upon by the City Secretary for refusing to certify the recall petition as sufficient or by the City Council for refusing to order a recall election. Under these facts, we conclude that mandamus relief is warranted.”