# Bond Case Briefs

# Issue 495

*Municipal Finance Law Since 1971*

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- MSRB Seeks Input on Rate Card Fee-Setting Framework.
- Muni Disclosure: Time to Bring In SEC?
- S&P Sustainability Insights: Rising Insurance Costs And Mounting Affordability Challenges Could Weigh On Some U.S. Governments' Creditworthiness [Risk Factor candidate. Is there some other kind of candidate thingy going down today?]
- CDFA Advanced Tax Increment Finance Course. [Nov 13!]
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- Arizona Town Ditches Illegal Attempt to Dump $70 Million Debt on Residents.
- State v. Decatur County-Bainbridge Industrial Development Authority – Georgia Court of Appeals holds that state had no basis to appeal trial court's order granting state's petition to validate taxable revenue bonds to fund construction and development of primate breeding facility, and thus, dismissal of state's appeal of order was warranted, where state was party who sought order (based upon alleged newly-discovered defects in the validation petition).
- And Finally, A Truly Warranted Sick Day is brought to us this week by *Morales v. City of Georgetown*, in which Sheriff's Deputy Jaime Morales had a particularly, uh, challenging day on the job. When the court's opinion in your case includes phrases such as, – "threat matrix assessment" "at the Cracker Barrel" "The actual events that transpired that night however, did not unfold according to the *purported* plan" (Ouch. Yeah, I did add that emphasis. What you gonna do about it?) "When the SRT members saw that Reynolds was brandishing a gun, they fired their own weapons, killing Reynolds." "Amid this chaos, however, Morales was also shot in the spine." "The bullet that injured Morales is still lodged in his spine, and therefore unable to be subjected to ballistics testing." ("You can't really dust for vomit.") "made t-shirt to raise money for his recovery" – there's a reasonable likelihood that it has truly been a crap day. Up to and including the shot in the spine business, what truly breaks my heart is the Cracker Barrel part. And maybe also the t-shirt part.

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**ZONING & PLANNING - CALIFORNIA**

## JCCrandall, LLC v. County of Santa Barbara

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

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

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

The Court of Appeal held that:

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

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**BOND VALIDATION - GEORGIA**

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

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

State petitioned to validate up to $300 million in taxable revenue bonds to fund construction and development of primate breeding facility.

The Superior Court granted petition and validated bond.

Area citizens subsequently moved to intervene in the proceeding, and the State filed a motion for reconsideration or, alternatively, to set aside the bond validation order.

In its motion, the State alleged that based on new information that had recently come to his attention, the district attorney who filed the petition now believed that certain requirements for the project had not been met.

Before the trial court ruled on the motion, however, the State filed a notice of appeal from the bond validation order.

"In the appeal presently before this Court, the State asks us to vacate a bond validation order that was issued pursuant to the State's own request. The State contends that the bond validation proceedings were improper, but the State acknowledges that at the time the trial court issued its order on the petition, the court was unaware of the deficiencies. Indeed, as the State acknowledges, the bond validation petition averred that all the requirements for a bond validation had been met."

The Court of Appeals held that state had no basis to appeal trial court's order, and thus, dismissal of state's appeal of order was warranted.

State had no basis to appeal trial court's order granting state's petition to validate taxable revenue bonds to fund construction and development of primate breeding facility, and thus, dismissal of state's appeal of order was warranted, where state was party who sought order.

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**IMMUNITY - KENTUCKY**

## Morales v. City of Georgetown

**Supreme Court of Kentucky - October 24, 2024 - S.W.3d - 2024 WL 4576332**

Former sheriff's deputy, who served on joint law enforcement group specially trained in tactical operations, brought action asserting negligence claims against city police lieutenant, who was group's co-commander, and city police officer, who also served on group, in their official and individual capacities, and asserting negligence and vicarious liability claims against city and city police department, arising from incident in which deputy was shot and paralyzed during group's operation to apprehend alleged bank robber.

The Circuit Court granted summary judgment for defendants. Deputy appealed. The Court of Appeals affirmed in part and reversed in part. Parties filed cross-motions for discretionary review, which were granted.

The Supreme Court held that:

- City police officer was afforded qualified official immunity with respect to act of firing his service weapon during operation;
- Lieutenant was not afforded qualified official immunity with respect to alleged failure to formulate plan and to remove members from group for missing training;
- Lieutenant was afforded qualified official immunity with respect to alleged failure to adequately supervise his subordinates and ensure his subordinates wore tactical vests;
- Genuine issues of material fact precluded summary judgment as to claims against lieutenant insofar as they were based on alleged breach of duty to formulate plan and to remove members from group for missing training;
- City and city police department were not entitled to immunity with respect to claims of vicarious liability; and
- City and city police department were entitled to immunity with respect to direct negligence claims.

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**POLITICAL SUBDIVISIONS - LOUISIANA**

## Police Jury of Calcasieu Parish v. Indian Harbor Insurance Co.

**Supreme Court of Louisiana - October 25, 2024 - So.3d - 2024 WL 4579035 - 2024-00449 (La. 10/25/24)**

Political subdivision brought action against its domestic property insurers to recover for damage caused by hurricanes. Insurers removed case and filed motions to compel arbitration and stay proceedings based on clauses in foreign insurers' policies.

The United States District Court for the Western District of Louisiana certified questions.

The Supreme Court held that:

- Arbitration is prohibited by statute;
- As a matter of first impression, insurance policy with political subdivision is "public contract" within meaning of statute banning in public contracts any provision which requires suit or arbitration proceeding to be brought in forum or jurisdiction outside of state; and
- Domestic insurer may not use equitable estoppel to enforce arbitration via a foreign insurer's

policy.

Statutory amendment which states that ban on insurance policy provisions depriving state courts of jurisdiction or venue of action against insurer do not prohibit forum or venue selection clause in policy form not subject to approval by Department of Insurance does not irreconcilably conflict with the ban and thus does not implicitly repeal it; forum selection clauses primarily concern location where parties can pursue litigation, but arbitration clauses primarily concern method of dispute resolution depriving any court of jurisdiction, and amendment creates limited exception in which forum or venue selection clause is permitted in certain types of insurance contracts and does not plainly indicate arbitration clauses are also permitted.

Insurance policy with political subdivision is “public contract” within meaning of statute banning in public contracts any provision which requires suit or arbitration proceeding to be brought in forum or jurisdiction outside of state or requires interpretation of the agreement according to laws of another jurisdiction.

Domestic insurer may not use equitable estoppel to enforce arbitration via a foreign insurer’s policy; contrary finding would violate state’s positive law prohibiting arbitration in Louisiana-issued insurance policies and invite domestic insurers’ misuse a doctrine of last resort to ceaselessly rely on insurance policies of foreign insurers to compel arbitration.

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**ZONING & PLANNING - NEW YORK**

## Bennett v. Troy City Council

**Supreme Court, Appellate Division, Third Department, New York - October 24, 2024 - N.Y.S.3d - 2024 WL 4557622 - 2024 N.Y. Slip Op. 05257**

Resident who lived adjacent to site for the proposed construction of an apartment complex on a vacant, forested, 11–acre parcel brought article 78 proceeding against city council challenging its decision under the State Environmental Quality Review Act (SEQRA) that the project would not result in any significant adverse environmental impacts and its adoption of an ordinance rezoning the site from single-family residential district to a planned development district.

The Supreme Court dismissed, and resident appealed.

The Supreme Court, Appellate Division held that:

- City council failed to take required hard look before determining project would not result in any significant adverse environmental impacts, but
- City council’s of rezoning ordinance did not involve illegal spot zoning.

City council failed to take the hard look, as required by the State Environmental Quality Review Act (SEQRA), at the significant environmental impact expected from a project to construct apartment complex on vacant, forested, 11–acre parcel before issuing a declaration that the project would not result in any significant adverse environmental impacts; city council’s characterization of project’s archaeological impact as “moderate” unduly minimized historic/archaeological significance of the project site, which contained a Middle to Late Archaic quarry with multiple loci, representing a full range of extraction and production activities, yet council omitted Native American community as a consulting party in formulating any required data retrieval plan.

City council’s adoption of ordinance rezoning the site for proposed apartment complex on a vacant, forested, 11–acre parcel along river from single-family residential district to a planned development district did not involve illegal spot zoning, or the singling out of small parcel of land for use classification totally different from that of surrounding area for benefit of parcel's owner and detriment of other owners; although city's planning commission initially rejected the project, record was expanded prior to council's determination, and project maintained residential use and would establish multi-use trail along the shoreline opening public access to river.

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**ANNEXATION - UTAH**

## Erda Community Association Inc. v. Grantsville City

**Court of Appeals of Utah - September 12, 2024 - P.3d - 2024 WL 4156722 - 2024 UT App 126**

Sponsors for incorporation of new city brought action against neighboring city, seeking to invalidate, under Municipal Land Use, Development, and Management Act (MLUDMA) and state and federal constitutions, neighboring city's annexation of 550 acres of land that would have been part of new city, which annexation occurred before public vote on new city's incorporation.

The Third District Court denied sponsors' motion for summary judgment and granted neighboring city's competing summary judgment motion, finding that sponsors lacked standing, had failed to exhaust administrative remedies, and that annexation occurred within statutory window. Sponsors appealed.

The Court of Appeals held that:

- Sponsors lacked both statutory standing under Annexation Code and legally protectible interest that would allow them to seek declaratory relief for alleged violation of Code under Declaratory Judgment Act;
- Sponsors lacked statutory standing for judicial review under MLUDMA;
- Remand was warranted for district court to determine if sponsors had standing to challenge Code for purported state constitutional violations; and
- Sponsors were not required to exhaust administrative remedies prior to bringing action to challenge Code for purported state constitutional violations.

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**ZONING & PLANNING - VERMONT**

## In re Ranney Dairy Farm, LLC

**Supreme Court of Vermont - October 25, 2024 - A.3d - 2024 WL 4576460 - 2024 VT 66**

Neighbors brought action to challenge town development review board's issuance of subdivision permit to landowner.

The Superior Court affirmed, and neighbors appealed.

The Supreme Court held that:

- Environmental Division had jurisdiction to determine whether easement existed and evaluate evidence of whether a public road had been laid out;
- Environmental Division improperly required only a "threshold showing" of a "right to use" road;

and
- Environmental Division's errors were prejudicial.

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## [SIFMA US Municipal Bonds Statistics.]

SIFMA Research tracks issuance, trading, and outstanding data for the U.S. municipal bond market. Issuance data is broken out by bond type, bid type, capital type, tax type, coupon type and callable status and includes average maturity. Trading volume data shows total and average daily volume and has customer bought/customer sold/dealer trade breakouts. Outstanding data includes holders' statistics. Data is downloadable by monthly, quarterly and annual statistics including trend analysis.

YTD statistics include:

- Issuance (as of October) $446.5 billion, +39.3% Y/Y
- Trading (as of October) $13.2 billion ADV, +2.0% Y/Y
- Outstanding (as of 2Q24) $4.1 trillion, +1.8% Y/Y

Download xls

November 1, 2024

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## S&P U.S. Public Finance Annual Reviews Processed.

S&P Global Ratings has performed annual reviews of the credit ratings of the issuers/issues listed below.

In an annual review, S&P Global Ratings reviews current credit ratings against the latest issuers/issues performance data as well as any recent market developments. Annual reviews may, depending on their outcome, result in a referral of a credit rating for a committee review, which may result in a credit rating action. The below list is not an indication of whether or not a credit rating action is likely in the near future.

The key elements underlying the credit rating can be found in the issuer's latest related publication, which can be accessed by clicking on links below. Additionally, for each issuers/issues listed below, S&P Global Rating's regulatory disclosures (PCRs) can be accessed on the relevant page on www.spglobal.com/ratings by clicking on Regulatory Disclosures underneath the current credit ratings.

Continue reading.

29-Oct-2024 | 07:02 EDT

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## S&P U.S. Municipal Water And Sewer Utilities Rating Actions, Third Quarter 2024

**Overview**

S&P Global Ratings took 48 rating actions, revised 22 outlooks, and took four CreditWatch actions within the U.S. municipal water and sewer utilities sector in third-quarter 2024. One hundred and three ratings were maintained with no outlook revisions. Two were removed from CreditWatch, and two were placed on CreditWatch with negative implications.

Negative rating actions exceeded positive actions by two to one. Unfavorable outlook revisions exceeded favorable revisions by thirteen to eight. Bond issuance increased relative to second-quarter 2024 and is stronger compared to the same quarter in 2023.

Continue reading.

29 Oct, 2024

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## S&P Sustainability Insights: Rising Insurance Costs And Mounting Affordability Challenges Could Weigh On Some U.S. Governments' Creditworthiness

**Key Takeaways**

- With economic losses from Hurricanes Helene and Milton estimated to exceed $60 billion, S&P Global Ratings expects homeowners' insurance premiums will continue to rise in many regions of the U.S.
- Higher insurance premiums and diminishing coverage and availability could exacerbate existing U.S. housing affordability issues.
- Regions experiencing a spike in the cost of living could be susceptible to demographic and demand shifts that pressure long-term tax base growth and credit stability.

**Higher Housing And Insurance Costs Could Constrain Economic Growth And Weigh On Government Credit**

**Why it matters:** By 2022, more than 55% of households earning the median income or lower were spending over 30% of disposal income on housing costs (also known as housing burdened), according to the U.S. Census Bureau's American Community Survey data. Existing affordability challenges are amplified when combined with costs from increasingly frequent and damaging storms and flooding. And weaker economic growth and property value decreases could occur in the long term without offsetting tax-base growth. This confluence of events could lead to a downward credit trend for some U.S. governments.

**What we think and why:** When higher insurance premiums compound existing housing affordability problems, it can affect location and purchase decisions for homebuyers and employers. If these conditions persist, it could lead to lower taxable property values, affecting local government revenues and long-term growth. Playing catch-up to replace losses keeps governments from pursuing new economic growth and can affect long-term financial stability.

Continue reading.

[FREE REGISTRATION REQUIRED]

31 Oct, 2024

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## [Muni Lender Preston Hollow Is Exploring a Sale.]

- **Firm is working with adviser to explore strategic options**
- **Preston Hollow has raised $1.6 billion from investors over time**

Preston Hollow Community Capital, a municipal finance lender, is exploring strategic options including a sale, according to people with knowledge of the matter.

The Dallas-based company is working with an adviser to solicit interest from potential suitors, said the people, who requested anonymity to discuss confidential information. No final decisions have been made and a transaction isn't guaranteed.

Preston Hollow has invested more than $5.2 billion in municipal bonds since its founding in 2014 and has raised $1.6 billion from investors including Stone Point Capital, HarbourVest Partners and Nuveen LLC's TIAA, according to a September release.

Continue reading.

**Bloomberg Markets**

By Gillian Tan

October 29, 2024

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## [Florida Rail Brightline's Riskiest Munis Lure Investors on Expansion Bet.]

- **Railroad's unrated muni bonds gain about 13% since April**
- **John Miller fills First Eagle's muni portfolio with the debt**

Bond investors are snapping up the riskiest chunk of Brightline's debt in a wager on the private railroad as it expands west across Florida.

Investors, drawn by a 12% coupon, have bid up Brightline's $925 million of unrated-tax exempt bonds so much that they're valued at about 105 cents on the dollar. They've returned some 13% since April, when the Fortress Investment Group-backed company refinanced its debt with nearly $4.5 billion in muni bonds and junk notes.

Among the reasons the unrated debt is appealing to investors: collateral. They're secured by a lien on current and future assets including design contracts, permits, and rights-of-way that are earmarked for Brightline's project to stretch its tracks from Orlando to Tampa.

Continue reading.

**Bloomberg Markets**

By Martin Z Braun

October 31, 2024

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## [Bloomberg: University of Texas Launches New Center Focused on Muni Market.]

- **Center to be housed within the public affairs graduate school**
- **Program to meet infrastructure needs due to climate, energy**

The University of Texas at Austin is launching a new center dedicated to the municipal bond market, ahead of an anticipated boom in infrastructure investments.

Dubbed the Center on Municipal Capital Markets, the new initiative will be housed under the institution's Lyndon B. Johnson School of Public Affairs. It's part of a broader push by university president Jay Hartzell to address extreme weather as a result of climate change and the energy grid's transition to renewable power.

"Our future as a growing, resilient society depends upon our ability to wisely invest in infrastructure, especially in the important energy sector," Hartzell said in an emailed statement. "Tomorrow's leaders need to understand the role of capital markets in making those investments possible."

A rush of public projects is anticipated after decades of infrastructure disinvestment and increasing needs driven by climate change, said Martin Luby, a professor of public affairs and the center's founding director.

"There's clearly a need for education, training and thought leadership in this area, and I think it's just even more acute given what we think is going to happen in terms of increased infrastructure investment in the future," Luby said in an interview. "When we think about capital financing it's all hands on deck and we're going to try to cover it as much as possible."

Municipal bond sales have already surged this year, totaling $426 billion since the start of January, a 41% increase from the same period in 2023, according to data compiled by Bloomberg. Texas issuance is a major chunk of that deluge, with about $60 billion of debt.

That comes as Texas' public finance market has been in flux for several years after state lawmakers passed two laws targeting Wall Street banks for their policies regarding fossil fuels and firearms — legislation that has reshuffled the muni underwriter rankings in the state.

The new center will train students on how to use the capital markets to strengthen communities and their infrastructure. Starting in September 2025, some students will conduct fellowships with municipal-finance firms including Moody's Corp. and Public Financial Management, Inc, according to Luby.

The center will also produce research and policy reports, as well as host an annual conference and outreach events for issuers. The first research report is slated for publication next year and examines the reserves needed for certain borrowers to absorb shocks related to natural disasters including wildfires, tornadoes, hurricanes and drought.

Continuing education courses for public finance professionals are expected to launch in the 2026-2027 academic year.

Luby said the center is looking to bring on a new hire with experiencing raising money in the muni market to focus on fundraising.

“Whether that’s someone who’s a former investment banker or CFO-type — that wants to transition into higher ed and help us build out this program,” he said.

The center’s advisory council includes industry professionals including Municipal Securities Rulemaking Board’s chief executive Mark Kim.

**Bloomberg Markets**

By Erin Hudson

October 29, 2024

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## [New Training and Research Center to Leverage Private Capital for Public Infrastructure Launches at University of Texas.]

AUSTIN, Texas — One of the nation’s only university-based centers to focus on capital market financing for public infrastructure projects will strengthen the ability of communities to build schools, roads and hospitals and make critical infrastructure, including energy systems, more resilient. The Center on Municipal Capital Markets (CMCM), launched by the LBJ School of Public Affairs at The University of Texas at Austin, will provide specialized training and research so that government entities can effectively leverage private capital for these public needs.

The center will train graduate students and host programs to educate professionals about how to leverage markets to have sufficient funding for projects they are pursuing. The importance of leveraging government resources for infrastructure development and maintenance has grown as recent federal initiatives aim to revitalize infrastructure after years of disinvestment.

“Our future as a growing, resilient society depends upon our ability to wisely invest in infrastructure, especially in the important sectors of health care, transportation and energy. Tomorrow’s leaders need to understand the role of capital markets in making those investments possible,” said UT President Jay Hartzell. Hartzell holds degrees in economics and finance and has expertise in corporate finance. “The LBJ School will equip both governmental leaders and capital market participants with the expertise to think creatively to solve the financial challenges of infrastructure development and maintenance, and to ultimately change the world for generations to come.”

Municipal capital markets allow government entities to raise funds for essential public infrastructure projects — such as schools, highways, hospitals, water, wastewater and energy systems — by selling bonds to private investors. These investments enhance the quality of life in communities and promote long-term economic growth by ensuring access to vital services. They also improve community resilience by preparing public systems to withstand challenges such as extreme weather while ensuring sustainability and reliability over time. This makes municipal capital markets a crucial tool for financing large-scale infrastructure projects that would otherwise be unaffordable through traditional funding methods.

CMCM will focus on four key areas:

- Undergraduate, graduate and continuing education for emerging and seasoned public finance professionals.
- Hands-on training and experiential learning.
- Applied research.
- Public outreach.

The foundation for CMCM was built during an event in December 2023, where more than 100 leaders from various public finance organizations, convened by LBJ School professor and the center's inaugural director, Martin Luby, in collaboration with the Bond Dealers of America, discussed innovative approaches to infrastructure finance.

"Developing the next generation of professionals and advancing research and dialogue on the municipal capital markets is especially salient given the huge infrastructure needs we have in the United States," said Luby, who teaches public and municipal finance courses at UT. "The Center on Municipal Capital Markets will address how such capital investments affect the macroeconomy, the local economies of state and local governments, as well as the day-to-day lives of all citizens."

Luby has published widely on innovative government financial instruments, federal financing techniques, regulation of the municipal securities market, and the role of financial intermediaries in state and local government financings. He also has extensive banking, consultant and advisory experience with many state and local governments, as well as with the federal government. In addition to his research and advising, Luby has been at the forefront of initiatives to cultivate talent for the public finance sector, teaching more than 1,000 students and developing opportunities for research, education and experience in the public finance field.

CMCM has constituted a 16-member advisory council composed of national leaders in the municipal capital.

"I am honored to serve on the inaugural advisory council for the launch of the Center on Municipal Capital Markets at the LBJ School of Public Affairs," said Mark Kim, CEO of the Municipal Securities Rulemaking Board. "I applaud CMCM's dual mandate of teaching undergraduate and graduate students about the critical role of the municipal securities market in financing this nation's public infrastructure, as well as empowering government finance professionals with a greater understanding of the capital markets through continuing education, training opportunities and academic research."

CMCM has already introduced a Certificate in State and Local Finance for LBJ School students and is producing technical reports for clients on municipal finance.

"We are not only exploring solutions to the world's most pressing problems but also developing innovative financing strategies for these solutions," said LBJ School Dean JR DeShazo. "I am thrilled about the career opportunities this center will create and the impactful solutions our students will develop."

Oct 29, 2024

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## Arizona Town Ditches Illegal Attempt to Dump $70 Million Debt on Residents.

Taxpayers in Payson, Ariz., are no longer on the hook for a massive debt after the Goldwater Institute and local residents raised concerns about the legality of the town's inclusion of a so-called “emergency clause” for the sale of $70 million in bonds.

Payson officials had authorized the sale of $70 million in municipal bonds in August, using an “emergency” clause to bypass the democratic process and deny residents the opportunity to put the controversial bond measure to a popular vote. The purported “emergency” was nothing more than the Town Council’s desire to secure a bond quickly, as officials speculated that interest rates might slightly increase in the coming months.

The Goldwater Institute filed a lawsuit challenging the sham “emergency” measure on behalf of a local resident, pointing out that the Arizona Constitution and state statute guarantee the right of referendum—that is, voters’ rights to refer a bill, ordinance, or resolution to the ballot and vote on it.

The case is currently on appeal, but in the meantime, Payson voters and taxpayers have already received some great news. Last week, the Town Council voted to repeal the problematic resolution, cancelling the “emergency” bond sale.

The court battle against governments’ abuse of emergency clauses isn’t over—indeed, local governments throughout the state routinely bypass democratic accountability using “emergency” clauses. We’re fighting back to ensure government can’t steamroll its own citizens and deny them rights afforded under Arizona’s constitution.

You can read more about the case here.

**The Goldwater Institute**

by John Thorpe

October 30, 2024

*John Thorpe is a Staff Attorney at the Goldwater Institute.*

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## Hollywood Alma Mater Harvard-Westlake Taps Munis for New Campus.

- **Expanded grounds will house athletic facilities, public park**
- **$88 million in bonds will bridge the project’s fundraising gap**

Harvard-Westlake School, one of the country’s most exclusive private schools famous for educating generations of Hollywood stars, is tapping the public debt markets for the first time.

The school plans to borrow nearly $90 million of municipal bonds to finance a new athletic campus in Los Angeles’ Studio City. The project, which is years in the making, will transform the former site of a neighborhood tennis and golf facility into a sprawling park that will house state-of-the-art spaces for Harvard-Westlake’s 90 sports teams, according to bond documents. The undertaking — mostly funded through donations — will feature an Olympic-sized swimming pool, eight tennis courts, a club house and putting green.

“We’re so limited with space on this campus,” Beth Slattery, head of Harvard-Westlake’s Upper School, told the school’s student newspaper earlier this year. “This really frees us up to be able to do things and I’m excited about it.”

Continue reading.

**Bloomberg Markets**

By Erin Hudson

October 29, 2024

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## Muni Disclosure: Time to Bring In SEC?

After decades of what investors see as inadequate disclosure from cities, towns and states, it's time to consider a fundamental change in the $4 trillion municipal bond market: direct federal oversight.

That's the argument from a pair of market veterans who admit it's a provocative position for a market that is famously distinctive in its power of self-regulation.

Issuers and their bond counsel, unsurprisingly, are dead set against the proposal.

In a pair of articles posted on University of Chicago Booth School of Business academic journal Promarket, public finance attorney David Dubrow, a partner at ArentFox Schiff, and former director of the Office of State and Local Finance at the U.S. Treasury Kent Hiteshew lay out their case for why it's time for the Securities and Exchange Commission to step in and directly oversee issuer disclosure or, at the least, expand its anti-fraud powers over underwriters to include specific disclosure requirements.

The first piece, published Oct. 22, is titled "Decades of Regulatory Exemptions Have Been to the Detriment of the Municipal Bond Market," and outlines the history of issuer exemption and the later adoption of indirect regulation through underwriters.

The second piece, published Oct. 23, is titled "The Case for Modernizing Municipal Bond Disclosure Transparency," and outlines an argument for increased oversight, either through Congress or the SEC, and offers guidelines to enhance consistency and transparency and bring muni disclosure "into the modern era."

"We understand some of the things we said will be controversial," Hiteshew said. "But we have, in the span of several years, the largest defaults ever in Detroit, Jefferson County [Alabama] and Puerto Rico, and we've had no discussion of whether improved disclosure may be appropriate," he said. "We thought it would be a good time to have that conversation."

They sent the articles to the SEC and Municipal Securities Rulemaking Board.

The debate over disclosure by government entities issuing municipal bonds stretches back decades. While the muni market has been partially exempt from Securities and Exchange Commission oversight since the commission's creation in 1933, there have been tweaks along the way to increase oversight.

Most of the changes came in the wake of high-profile troubled municipal events, Dubrow and Hiteshew noted in their article.

It was New York City's near default in 1974 that created the Municipal Securities Rulemaking Board as a self-regulatory body. The Washington Public Power Supply System's bankruptcy and default on $2.2 billion of bonds in 1983 prompted the SEC to use its anti-fraud powers for indirect regulation through the creation of Rule 15c2-12 requiring underwriters to impose disclosure requirements, which was amended in 1994 to include continuing disclosure.

In addition to the defaults, " the municipal market has changed a lot," Dubrow said. One-third of the market now consists of private activity bonds issued for borrowers who often act more like private entities than traditional muni issuers, said Dubrow, who works on restructurings, workouts and bankruptcies.

"That's a big deal in the sense that the disclosure and requirements in the municipal market are different than when these private entities go to market in the corporate market, and so there's certain advantages to using the muni market, but the disclosure requirements really shouldn't be different," he said.

Increasing oversight could either come through Congress repealing the Tower Act, which restricts direct SEC and MSRB authority, so the two bodies could directly regulate issuer offering statements, or by expanding the SEC and MSRB anti-fraud regulatory authority over broker-dealers to include specified disclosure requirements within Rule 15c2-12.

Dubrow and Hiteshew prefer the statutory route. "That's very straightforward and they'd be passing a law that would require issuers to do these things," Dubrow said.

Congress could direct the SEC to differentiate between different issuers, they proposed. "For example, conduit borrowers should be treated more akin to the corporate-like issuers they truly represent and subjected to more rigorous standards consistent with their much higher default experience. In addition, small, infrequent governmental issuers might be afforded more abbreviated standards than larger, regular governmental issuers."

The pair outline eight guidelines for enhancing transparency in offering documents, including readability, robust risk sections, and timely audits.

From the perspective of the local governments and states who issue bonds, and the bond counsel who represent them, direct regulation is an unnecessary overreach of federal power.

Repeal of the Tower Amendment "is a nonstarter for us," said Jason Akers at Foley & Judell, LLP, president of the National Association of Bond Lawyers, in an email.

"We recognize the need for disclosure practices to evolve with changes in the market, but we don't need to burn the existing system to the ground to foster greater transparency," Akers said. "It would be more productive to have inclusive industry discussions about if and how we move toward some of these guidelines, rather than asking Congress or regulators to force it upon such a sizeable and diverse market," he said. "Market practices are constantly evolving and improving, and industry efforts within the existing regulatory paradigm have led to some of the most positive developments in municipal disclosure over the years."

Issuers themselves are well aware of the importance and market benefits of solid disclosure and work hard at meeting best practices, said Emily Brock, federal liaison for the Government Finance Officers Association.

The GFOA's best practices ranges "from primary through continuing and to voluntary disclosure practices and are practiced by issuers throughout the United States," Brock said. "The articles fail to acknowledge the voluntary work issuers have already done and will continue to do to move the needle forward on municipal disclosure."

As someone who has been tracking the disclosure debate since the 1980s, Rich Ciccarone, president emeritus of Merritt Research Services, said while some disclosure areas, like accessibility and comparability, have improved, others, like timeliness, remain a big problem. States like Illinois and California have still not filed their 2023 audits, he noted.

"That creates a serious vulnerability in the integrity of the municipal bond market," said Ciccarone, who penned an article for the Wall Street Journal in 1987 titled "Municipal bondholders need more information."

"The history of self-regulatory improvements have met a lot of our expectations and created a very substantial framework to complete the job," he said. "But I would say right now that I think a measured response from the regulatory arena is in order."

By Caitlin Devitt

BY SourceMedia | MUNICIPAL | 11/01/24 11:29 AM EDT

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## Presidential Election Puts Muni Bonds in Focus.

It's not yet clear who will occupy the White House in 2025. It's also not known what the makeup of the two chambers of Congress will look like. With the Tax Cut & Jobs Act (TCJA) set to expire next year, changes in the tax code are likely afoot. The mere specter of higher taxes could be an impetus for advisors and investors to more closely examine muni bonds and ETFs like the ALPS Intermediate Municipal Bond ETF (MNBD).

In any environment, muni bonds offer tax benefits. And those perks could be amplified should various TJCA provisions be eliminated next year.

Muni bonds, including those held by MNBD, could be further supported by additional interest rate cuts by the Federal Reserve. That's expected to happen over the course of 2025. Plus, state- and city-level tax collections should remain sturdy, further bolstering the case for munis.

Politics Could Benefit MNBD
Bonds have disappointed following the Fed's September rate cuts as Treasury yields remained stubbornly high,. But MNBD has traded mostly sideways since then. And muni bonds may have found support from money managers looking to prepare for 2025 tax changes.

"Eric Golden, founder and CEO of fixed income-focused fintech Canopy Capital Group, says advisors on his platform are likely to increase their allocations to municipal bonds as the TCJA approaches its sunset in 2025. The rationale behind this shift is rooted in the potential for higher taxes, which would turn up the spotlight on the tax-exempt nature of municipal bonds," reported Gregg Greenberg for Investment News.

Some advisors are already boosting exposure to munis. And that buying, particularly if it increases, could boost passive muni ETFs and active funds such as MNBD. Additionally, some advisors are hinting their pre-election buying of muni bonds and funds won't stop after Election Day. Rather, they expect to continue embracing the asset class over the course of next year.

"Similarly, Stash Graham, managing director & chief investment officer of Graham Capital Wealth Management, foresees increasing his allocation to tax-free municipal bonds. Still, he is waiting on a host of factors before making a [move. Those include] the result of the Presidential Election, the yield curve's shape, credit quality, and the direction of interest rates are in general," added Greenberg in his Investment News piece.

**etftrends.com**

by Todd Shriber

November 1, 2024

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## When to Consider Munis From Outside Your Home State.

A major benefit of municipal bonds, or "munis," is that the interest they pay is generally exempt from federal income taxes. They're also generally exempt from state income taxes if the issuer is from the investor's home state. That may seem like a compelling argument for sticking with in-state munis. However, many muni investors may benefit by diversifying outside of their home state, even if it results in a higher state tax bill.

We've identified five factors when it could make sense to consider munis from other states. After considering all five, we think that muni investors in all states, with the exception of two high-tax states—California and New York—could benefit from investing in a national, not state-specific, portfolio of muni bonds. Even investors in California who are not in a high state tax bracket could achieve higher after-tax yields by diversifying nationally.

**1. You live in a state with low or no state income tax.**

If you live in a state with low or no state income tax, you will likely benefit from diversifying your muni portfolio with munis from issuers outside your home state.

Continue reading.

**advisorperspectives.com**

by Cooper Howard of Charles Schwab, 10/31/24

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## What Does the Expiration of Washington's Tax Cuts Mean for Munis?

Nicholos Venditti, senior portfolio manager at Allspring Global Investments, sits down with InvestmentNews anchor Gregg Greenberg to offer his outlook for municipal bonds and the sunsetting of the Tax Cuts and Jobs Act (TCJA).

Watch podcast

**investmentnews.com**

October 30, 2024

## Wealth Managers Eyeing Municipal Bonds Ahead of Tax Cut Sunsets.

**Some advisors are waiting for the election before adding more muni-bonds. Others are getting a head start.**

The Tax Cut and Jobs Act (TCJA) enacted by President Trump in 2017 increased the standard deduction and eliminated personal exemptions. It lowered marginal income tax rates across the scale. It imposed a $10,000 cap on the deductibility of state and local taxes (SALT). It increased the tax credit for each child under 17 from $1,000 to $2,000. It provided a 20 percent deduction for small businesses and also hiked the AMT exemption.

It’s also sunsetting in 2025 leaving financial advisors with some big portfolio decisions to make. One of the bigger ones being whether to raise their clients’ municipal bond allocations and, if so, by how much.

Munis are tax free, you know.

Continue reading.

**investmentnews.com**

By Gregg Greenberg

OCT 31, 2024

## Election-Related Tax Concerns Looming? Look to Muni Bond ETF TAXF.

With U.S. elections just under a week from now, many investors may be tuning in with questions about taxes. Overlapping with a time of year when many advisors look to mitigate tax impacts for clients, it may be worth considering ETFs to help. A muni bond ETF, for example, can provide a way to move assets into more tax-efficient holdings. The American Century Diversified Municipal Bond ETF (TAXF) provides an option therein that can particularly intrigue.

TAXF charges 29 basis points for its active investing approach. The fund combines investment-grade and high-yield muni bonds to offer both income and tax benefits. The active muni bond ETF invests up to 35% of its portfolio to “riskier” municipal bonds.

That active approach can help the fund parse the sometimes-complicated world of bonds. Where passive ETFs must track a list of bonds and can’t adapt, active funds can scrutinize bonds more closely. That fundamental analysis can make a big difference especially when diving into riskier muni bond areas.

The muni bond ETF has returned 10.8% over the last year, per American Century Investments data, outperforming the S&P National AMT-Free Municipal Bond Index. Having launched in 2018, the strategy’s AUM is very close to half a billion, per YCharts data. It offers a weighted average coupon of 4.8% as of Sept.30, with a 3.89% yield to maturity, as well.

Should U.S. elections project higher taxes, adding muni bonds could provide a helpful countermeasure. A strategy like TAXF, with its active muni bond approach, may provide performance, income, and yield on top of its tax advantages. Especially for those moving out of fixed income mutual funds or looking to tax loss harvest, TAXF can appeal.

**etftrends.com**

by Nick Peters-Golden

October 30, 2024

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## Bloomberg: JPMorgan, Baird Keen on Muni Bonds Ahead of Election Sale Dip.

- **Munis are attractive as yields have climbed after a selloff**
- **Supply expected to drop in the first two weeks of November**

Some investors are eager to buy municipal bonds before supply tapers off because of the elections.

Supply is expected to drop next month: JPMorgan Chase & Co. strategists see tax-exempt issuance declining 70% to $7 billion in the first two weeks of November from the last two weeks of October.

Since muni bonds have been offering higher yields after a recent selloff, investors may want to take advantage of the elevated issuance this week, the strategists led by Peter DeGroot said. Municipal benchmark bond yields inched up again on Tuesday, rising as much as four basis points. The JPMorgan strategists expect yields to drop by the end of 2024 — making this week a good time to buy.

Continue reading.

**Bloomberg Markets**

By Lily Meier

October 29, 2024

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## Passive Indexing Takes a Backset to Active: Bloomberg Masters of the Muniverse

Not a new theme but a continual one in that passive strategy start ups seem to be taking a back seat to sexier active strategies. In the latest Masters of the Muniverse episode of our FICC Focus podcast, Eric Kazatsky and Karen Altamirano are joined by Alex Petrone, Managing Director and Director of Fixed Income for Rockefeller Asset Management. We discuss Rockefellers views on the municipal marketpkace, how quickly the fixed income asset management space is changing and what 2025 may bring us.

Watch video.

**Bloomberg**

Oct 29, 2024

## Private-Jet Boom Comes to Muni Market With High-Yield Bond Deal.

- **Muni market sees return of fixed-base operator company**
- **Million Air to expand facility in Austin that opened in 2019**

Million Air, a luxury aviation company catering to the ultra-rich and high-flying executives, is borrowing $120.5 million from Wall Street to expand its operations in Austin to meet pent-up demand for hangar space to park private jets.

Originally founded for the Mary Kay Inc. cosmetics company, a wholly-owned subsidiary of Million Air's parent company plans to tap the municipal debt market in November. Proceeds from the sale will be used to roughly double the size of Million Air's facilities at the Austin-Bergstrom International Airport, which is among the top 25 busiest in the US for business jet operations.

Some of the bond money will also go toward adding enhancements to the company's facilities in Marathon, Florida. Raymond James is underwriting the unrated bond offering.

Continue reading.

**Bloomberg Wealth**

By Erin Hudson and Amanda Albright

October 28, 2024

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## CDFA Advanced Tax Increment Finance Course.

**November 13, 2024 | 9:00 AM – 4:00 PM Eastern | Baltimore, MD**

The Advanced Tax Increment Finance Course builds upon curriculum from the Intro Tax Increment Finance Course by focusing more concretely on structuring the deal and developing short- and long-term policies. Attendees will also learn about performance monitoring, feasibility analysis, and using TIF in conjunction with other development finance tools.

This course is taking place as part of CDFA's 2024 National Development Finance Summit. Learn more about the National Summit here.

This course qualifies for the CDFA Training Institute's Development Finance Certified Professional (DFCP) Program. Join us in Baltimore, and start down the road to personal and professional advancement today.

Click here to learn more and to register.

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## Bond Financing for Manufacturers & Non-Profits: CDFA // BNY Development Finance Webcast Series

**Tuesday, November 19, 2024 | 2:00 PM – 3:00 PM**

Tax-exempt bond financing offers a powerful tool for manufacturers and 501(c)(3) organizations to fund essential capital improvements at lower interest costs. During this installment of the CDFA // BNY Development Finance Webcast Series, panelists will tap into the core principles of tax-exempt financing for manufacturers and 501(c)(3) organizations, covering key aspects such as eligible issuers, assets, and projects, private business use test, and best practices.

Click here to learn more and to register.

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## Exploring Common Bond Reserve Funds: CDFA // BNY Development Finance Webcast Series

**Tuesday, December 17, 2024. | Tue 2:00 PM – 3:00 PM**

Through Common Bond Reserve Funds, development finance agencies can issue tax-exempt or taxable revenue bonds on behalf of private borrowers to provide lower interest rates on long-term financing, providing credit enhancement for businesses and projects in need of affordable rates. During this installment of the CDFA // BNY Development Finance Webcast Series, local practitioners will present their Common Bond Reserve Fund program models to demonstrate the potential of this innovative pathway for increasing access to capital.

Click here to learn more and to register.

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## SEC Division of Examinations 2025 Exam Priorities - a Focus on Artificial Intelligence, Private Funds, and Cybersecurity: MoFo

On October 21, 2024, the U.S. Securities and Exchange Commission's ("SEC") Division of Examinations ("EXAMS") announced its 2025 Examination Priorities (the "2025 Priorities"), highlighting areas that it expects to target during examinations in 2025. The 2025 Priorities reinforce many of the same areas of focus as the 2024 priorities, including investment advisers to private funds, conflicts of interest disclosures, Regulation Best Interest ("Reg BI"), cybersecurity, and crypto assets. The 2025 Priorities also signal heightened attention to emerging areas of concern, including the use of artificial intelligence ("AI") and client exposure to commercial real estate.

Registered investment advisers ("RIAs"), registered investment companies ("RICs"), and broker-dealers should carefully review the 2025 Priorities to ensure their compliance systems and policies are up to date, monitored, and enforced. Indeed, given the SEC's history of pursuing enforcement actions in areas highlighted in prior years as Examination Priorities, appropriate attention to the 2025 Priorities today could save regulated entities considerable resources down the road.[1]

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> **Ed. Note:** "The 2025 Priorities note that EXAMS will continue to focus on:
>
> Municipal advisors, including whether they have met their fiduciary duty to municipal entity clients, as well as whether municipal advisors have complied with MSRB Rule G-42, which establishes the core standards of conduct and duties applicable to non-

solicitor municipal advisors."

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Continue reading.

**Morrison & Foerster LLP** – Kelley A. Howes, Sarah Y. Hanni, Derek N. Steingarten, Michael D. Birnbaum, Haimavathi V. Marlier, Val Dahiya and Aaron J. Russ

November 1 2024

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## SEC Division of Examinations Announces 2025 Exam Priorities: Mayer Brown

*Priorities Include Artificial Intelligence and Other Emerging Technologies, Complex Products, Reg BI, Cybersecurity, Outsourcing, Private Funds and Compliance with New and Amended SEC Rules*

On October 21, 2024, the Division of Examinations ("EXAMS" or the "Division") of the U.S. Securities and Exchange Commission ("SEC") released its examination priorities (the "2025 Priorities") for fiscal year 2025 (which started October 1, 2024).1 Over the course of 2025, the Division intends for its examinations to focus on the use of artificial intelligence ("AI") and other emerging technologies (including digital engagement practices ("DEPs")), complex products, cybersecurity, outsourcing, private fund advisers, and compliance with new and amended SEC rules, such as the recent amendments to Regulation S-P and SEC rule changes relating to the securities industry's transition to a T+1 standard settlement cycle for most securities transactions.

In this Legal Update, we provide a brief overview of the 2025 Priorities, with a focus on topics relevant to broker-dealers and investment advisers.

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> **Ed. Note:** "Please see Additional areas for examination include broker-dealers' trading practices associated with trading in pre-IPO companies, sales of private company shares in secondary markets, and execution of retail orders. Regarding retail order execution, the Division's reviews will include: (1) whether retail orders are marked as "held" or "not held," and the consistency of such markings with retail instructions, and (2) *the pricing and valuation of illiquid or retail-focused instruments such as variable rate demand obligations, other municipal securitie*s, and non-traded real estate investment trusts (REITs). Finally, in relation to Regulation SHO, the Division will review whether broker-dealers are appropriately relying on the bona fide market making exception, including whether quoting activity is away from the inside bid/offer."

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Continue reading.

**Mayer Brown LLP** – Steffen Hemmerich, Adam D. Kanter, Timothy B. Nagy, Anna T. Pinedo, Stephen Vogt, Mark X. Zhuang and Leslie S. Cruz

November 4 2024

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## MSRB Seeks Input on Rate Card Fee-Setting Framework.

**Initiative Reinforces MSRB's Focus on Financial Transparency and Stakeholder Engagement**

Washington, D.C. – The Municipal Securities Rulemaking Board (MSRB) has issued a Request for Information (RFI) seeking input on its fee-setting process to evaluate potential modifications to its rate card model. The RFI follows extensive stakeholder dialogue and engagement efforts throughout 2024 to better understand the perspectives of market participants, specifically related to the impact of market volatility on fees. The RFI seeks further input from regulated entities, issuers, investors and the public to better inform MSRB's retrospective review of the rate card process.

"MSRB's primary objectives in establishing the rate card model has been to increase transparency, maintain an equitable balance of fees among regulated entities and mitigate the impact of market volatility on MSRB's revenues, all while managing the MSRB's reserves to target levels," MSRB CEO Mark Kim said. "Through our retrospective review of the rate card model and the RFI released today, MSRB looks forward to receiving public comments to help inform improvements to our fee-setting process to responsibly fund the future of regulation, while advancing MSRB's Congressional mandate."

The rate card model applies to the establishment of the underwriting, transaction, and trade count fees for dealers under MSRB Rule A-13, and the municipal advisor professional fee under MSRB Rule A-11, with such rate card fees anticipated to be set generally on an annual basis.

MSRB will not file a new set of rate card fees for calendar year 2025. Instead, it plans to leverage input from the RFI to determine whether any modifications to the model are warranted so that any changes can be instituted, and new rate card fees can be established for calendar year 2026 if necessary or appropriate.

MSRB seeks input on the following topics:

- Rate-setting process for dealers;
- Rate-setting process for municipal advisors;
- Fee distribution across regulated entities; and
- Management of organizational reserves

Responses to the RFI are due January 31, 2025.

Read the Request for Information.

Date: October 30, 2024

Contact: Aleis Stokes, Chief External Relations Officer
202-838-1500
astokes@msrb.org

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