LEAGUE OF CALIFORNIA CITIES

General Municipal Litigation Update

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GENERAL MUNICIPAL LITIGATION UPDATE

2026 ANNUAL CONFERENCE
LEAGUE OF CALIFORNIA CITIES

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RWG LAW

TABLE OF CONTENTS*

Page(s)

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RWG LAW

General Municipal Litigation Update

I. *3PAK LLC v. City of Seattle* (2026) 174 F.4th 1180

Holding: City of Seattle's choice to withdraw its law enforcement presence at the site of a sixteen-block, weeks-long, occupation-style protest did not amount to either a per se physical taking or a right-of-access taking under the Fifth Amendment. Additionally, the business and property owners who alleged purely economic harm from the City's decision to withdraw police protection did not have a claim under the state-created danger doctrine because that doctrine protects only against dangers to life or liberty and does not extend to purely economic loss.

Facts / Background: In June 2020, following the murder of George Floyd, protestors occupied a sixteen-block area of Seattle's Capitol Hill neighborhood, forming the Capitol Hill Occupied Protest (CHOP). The Seattle Police Department abandoned its nearby East Precinct and dramatically reduced policing of the area until CHOP was forcibly disbanded in July 2020, though protests and encampments continued in the general area until as late as December 2020.

3PAK LLC and Hugo Properties, LLC, two businesses located across from Cal Anderson Park at the center of CHOP, alleged that for six months they endured vandalism, trespass, theft, unsanitary conditions, road blockades, and near-nightly gunfire (including two deaths) while the City declined to intervene, and that the City affirmatively supported the occupation through public statements and by providing barriers, sanitation facilities, lighting, and other material resources to protestors. Their claimed losses were economic: broken leases, rent concessions, property damages, and deterred customers and prospective tenants.

The two businesses, which had been absent putative class members in an earlier class action raising similar claims, filed their own suits after class certification was denied in that case. They asserted claims under 42 U.S.C. § 1983 for violation of substantive due process, invoking the state-created danger doctrine, and for violation of the Takings Clause on both per se and right-of-access theories, along with a state-law nuisance claim. The district court dismissed the constitutional claims for failure to state a claim and dismissed the nuisance claim as barred by Washington's two-year statute of limitations. The businesses appealed.

Analysis: First, the Ninth Circuit noted that the state-created danger doctrine, which permits recovery for a state actor's role in creating or exposing a person to danger that they otherwise would not have faced, has been applied by the Ninth Circuit and other circuits exclusively to dangers implicating life or liberty (e.g., death, serious injury, sexual abuse). Courts have never applied the doctrine to solely economic or property harm. Because the businesses alleged only lost profits, revenue, and property damage, they failed to state a due process claim under the state-created danger doctrine, and the Ninth Circuit declined to expand the doctrine to a new category of harm.

On the Takings Clause claims, the Ninth Circuit held that a per se taking requires an affirmative government invasion or physical appropriation of the claimant's own property, which the businesses did not allege; mere proximity to a government-sponsored occupation does not suffice. The City's material support for protestors occupying nearby streets and sidewalks, without more, was insufficient, and unlawful acts of vandalism or trespass by third parties were not attributed to any intentional act of the City. Nor could a policy of government inaction be construed as the government physically taking property for itself or for others. The right-of-access takings claim also failed. Such a claim requires an interest protected by state law, and the businesses cited no authority that a temporary restriction to access is compensable under Washington law.

Impact: Through this decision, the Ninth Circuit confirmed for the first time that the state-created danger doctrine is confined to bodily and liberty interests and cannot be used to recover purely economic losses stemming from a municipality's withdrawal of police protection, foreclosing a novel theory of municipal liability for harms arising from tolerated civil unrest. The ruling also narrows the availability of Takings Clause claims arising from a decision not to police or actively clear an area during prolonged protests, requiring plaintiffs to show either an affirmative physical appropriation or a legally cognizable, non-temporary restriction on access.

II. *County of Del Norte v. Britt,* 121 Cal.App.5th 36 (2026)

Holding: A prevailing respondent in a receivership proceeding may recover attorney fees and costs even when the petitioner is a public entity. Health and Safety Code Section 17980.7(c)(11), which awards fees to the prevailing party, creates an exception to Health and Safety Code Section 17984, which generally prohibits imposing costs against a public entity.

Facts and Background: Robert Kurtz died intestate in 2020 owning residential property in Del Norte County. After his death, the property fell into severe disrepair and became occupied by squatters, resulting in nuisance conditions such as debris, overgrown vegetation, and drug activity. After attempting administrative enforcement efforts, the

County filed a petition under Health and Safety Code Section 17980.7(c) seeking appointment of a receiver to rehabilitate and sell the property.

The County named as respondents the "Estate of Robert D. Kurtz" and Kurtz's two sisters, Darla Britt and Sheryl Allsop, despite the sisters having informed the County they had no interest in rehabilitating or acquiring the property. The petition did not allege that either sister owned any legal interest in the property.

The trial court appointed a receiver, who rehabilitated and sold the property. The proceeds from the property sale were approximately $38,700 short of the receivership expenses. The receiver sought an order making the sisters jointly liable for the remaining costs plus the County's attorney fees under Health and Safety Code Section 17980.7(c)(15).

The sisters retained counsel and opposed the request, arguing that they were neither owners nor successors in interest because Kurtz's estate had never been probated and they had inherited no ownership interest in the property. The trial court agreed, finding that the County should never have named the sisters as parties and the court refused to impose liability upon them.

The sisters thereafter moved to recover attorney fees and costs under Health and Safety Code Section 17980.7(c)(11), which provides that "[t]he prevailing party in an action pursuant to this section shall be entitled to reasonable attorney's fees and court costs." The trial court denied the motion, reasoning that Health and Safety Code Section 17984 bars awards of costs against public entities enforcing State Housing Law and finding that the County, not the sisters, was the prevailing party because it successfully obtained appointment of the receiver. The sisters appealed.

Analysis: The Court of Appeal first addressed the apparent conflict between two provisions of the State Housing Law. Section 17980.7(c)(11) broadly provides that the prevailing party in a receivership proceeding is entitled to reasonable attorney fees and costs. By contrast, Section 17984 generally provides that neither an enforcement agency nor the city or county on whose behalf it acts is liable for costs in enforcement proceedings brought under the article.

Applying established principles of statutory construction, the court concluded that Section 17980.7(c)(11) controls. When statutes cannot be harmonized, courts construe the more specific statute as an exception to the more general one. The court observed that Section 17980.7(c)(11) applies only to proceedings under Section 17980.7, whereas Section 17984 broadly governs all enforcement proceedings under State Housing Law. Additionally, Section 17980.7(c)(11) was enacted almost three decades after section 17984. Because it is both more specific and more recent, Section 17980.7(c)(11) creates a limited exception permitting prevailing parties to recover fees against public entities in receivership proceedings.

The court also examined the legislative history of the 1990 amendments creating the receivership provisions. That history demonstrated that the Legislature intended the prevailing party attorney fee provision to apply broadly to proceedings under Section 17980.7 and did not indicate any intent to preserve governmental immunity from fee awards in receivership actions. The court rejected the County's argument that the fee provision was intended only to govern disputes between private parties.

The court distinguished *City and County of San Francisco v. Ballard* 136 Cal.App.4th 381 (2006), explaining that *Ballard* involved no receivership proceeding and therefore never required resolution of the conflict between Sections 17980.7(c)(11) and 17984. Any discussion in *Ballard* regarding the interaction of those statutes was therefore dicta and did not control.

The court then considered whether the sisters qualified as prevailing parties. Although the County successfully obtained appointment of a receiver and ultimately achieved its primary objective of rehabilitating the property, the court emphasized that prevailing party status must be evaluated from a practical perspective by examining each party's litigation objectives.

The sisters entered the litigation only after the receiver sought to impose personal liability upon them for the unpaid receivership expenses. Their sole objective was to avoid liability by establishing that they had no ownership interest in the property and therefore should never have been named in the proceeding. They obtained success on that issue.

The court found persuasive the reasoning in *Burkhalter Kessler Clement & George LLP v. Hamilton* 19 Cal.App.5th 3 (2018) , where multiple parties in the same lawsuit were each deemed prevailing parties on separate claims. Similarly, while the County prevailed on its nuisance abatement claim, the sisters prevailed on the County's attempt to extend liability to them personally. Accordingly, both could qualify as prevailing parties for different aspects of the litigation.

Impact: The decision clarifies that prevailing respondents in Health and Safety Code Section 17980.7 receivership proceedings may recover attorney fees against public entities despite the general immunity from costs provided by Section 17984. The opinion establishes that Section 17980.7(c)(11) creates a statutory exception for receivership actions and confirms that courts should determine prevailing party status by examining each litigant's practical litigation objectives rather than identifying a single prevailing party for the proceeding as a whole. The decision also provides important protection for individuals who are improperly named in nuisance abatement receivership actions solely because of their familial relationship to a deceased property owner.

III. *Del Biaggio v. Bansen,* 121 Cal.App.5th 831 (2026)

Holding: An attorney may be subject to: (1) a reduction in attorney fees awarded pursuant to a court ruling if the attorney incurred fees for claims that were unwarranted under law or unsupported by evidence; and (2) sanctions for misrepresenting case law by utilizing fictional quotations created by Artificial Intelligence ("AI") in court documents and relying on paralegals to verify its accuracy.

Facts/Background: Mr. Floyd, an attorney representing Mr. Del Biaggio, a dairy worker, brought an action against the Bansens for breach of contract, unjust enrichment, and conversion, claiming they failed to transfer livestock and pay money owed under a dairy succession plan. After a jury trial, the court awarded damages and attorney fees to the dairy worker, but reduced attorney hours and excluded paralegal fees. Mr. Del Biaggio then moved for reconsideration of the court's order denying the recovery of paralegal fees, contending that numerous cases have held that paralegal fees are recoverable as attorney fees.

However, Bannens' attorneys opposed the motion, arguing it was procedurally improper as it inappropriately cited AI-generated case law quotations, and requested sanctions under Code of Civil Procedure Section 128.5. The trial court denied the motion for reconsideration on the grounds that no new law or facts were presented. However, the court ordered Mr. Del Biaggio to pay Bannens' attorneys $2,250 in fees, representing the five hours of attorney time that Bannens' attorneys spent opposing the motion.

Analysis: The Court of Appeal affirmed the trial court's reduction of attorney hours but reversed its ruling that paralegal fees were not within the scope of the contract and vacated the sanctions imposed in connection with the motion for reconsideration. However, the Court of Appeal ordered Mr. Floyd to pay sanctions to the trial court for filing court documents that included generated Artificial Intelligence ("AI") that misrepresented case law.

Regarding the trial court's first ruling, the Court of Appeal held that the court did not abuse its discretion by reducing compensable attorney hours from 283.1 to 140, resulting in an award of $56,000 in attorney fees. The court's reasoning referenced Civil Code Section 1717, which gives trial judges the authority to assess whether attorney fees awarded are reasonable. Additionally, the court concluded the requested $400 hourly rate was a reasonable rate based on the attorney's experience comparable with hourly rates charged by other attorneys in the same county.

The Court of Appeal also agreed with the trial court that the number of hours expended by the attorney was unreasonable. While the court characterized the legal dispute as a "fairly straightforward breach of contract case," it noted that counsel complicated the case by asserting multiple causes of action that were either unwarranted under the law or unsupported by evidence. Additionally, many of the attorney's time sheet entries were block billed, and the court was unable to determine how much time was spent on these unreasonable endeavors. As a result, the Court of Appeal found no abuse of discretion in the trial court's decision and found the reduction of attorney hours reasonable.

However, the Court of Appeal did conclude that the trial court erred insofar as it held that the agreement at issue did not authorize the recovery of paralegal fees. In its reasoning, the Court highlighted that the agreement at issue included a fee-shifting provision that allowed for the recovery of attorney fees if a party prevailed in litigation matters. Although the phrase "attorney fees" was not defined, the Court noted that published case law expressly addressing whether paralegal fees are recoverable as attorney fees has uniformly answered the question affirmatively. The Court emphasized that although paralegal fees are allowable as part of attorney-recovery fees, the trial court, on remand, should evaluate whether and to what extent the paralegal's hours and rate were reasonable.

Regarding the sanctions paid by Mr. Del Biaggio, the Court of Appeal concluded that the trial court's characterization of Mr. Del Biaggio's motion for reconsideration as "frivolous" was a significant overreach. The Court observed that Civil Code Section 128.5 permits sanctions against parties and their attorneys if attorneys submit court papers in bad faith, frivolously, or improperly. The Court emphasized that Mr. Del Biaggio's motion for reconsideration in the trial court was procedurally proper because the court decided sua sponte that paralegal fees could not be recovered under the Agreement. Furthermore, although the motion contained fictitious AI-generated quotations, the Court of Appeal considered his arguments in the trial court otherwise meritorious.

Nevertheless, the Court of Appeal instructed Mr. Floyd to pay sanctions to the trial court for conduct that unnecessarily burdens the court and taxpayers. The Court of Appeal acknowledged that Mr. Floyd admitted to the unverified use of AI, and failed to prevent the errors and to satisfy his obligation to personally review the legal authorities. The Court noted that Mr. Floyd failed to comply with California State Bar guidance, which states that "a lawyer must review all outputs from AI tools for accuracy, including analysis and citations, before court submission," when he indicated that he intended for his paralegal to "simply check the citations before filing the brief." Secondly, although the Court accepted Mr. Floyd's representation that there was no intent to mislead, the Court found his declarations vague about how the "communication error" arose. Mr. Floyd emphasizes that, because he was in trial, he had "limited time for review." Yet his general unavailability to supervise the brief's finalization made it even less appropriate for Mr. Floyd to expect his paralegal to verify the written statements about cases he had not personally reviewed. Lastly, in failing to rectify his motion, Mr. Floyd failed his duty of candor that requires counsel to "correct any errors or misleading statements made to the court, regardless of whether such outputs were generated with or without real-time human direction." Mr. Floyd filed a letter withdrawing the misstatements just days before oral arguments, and more than three months after realizing only from the Bansens' sanctions motion that the opening brief lacked proper verification of quotations and citations.

Impact: Attorneys should be advised that attorney fees pursuant to a court ruling may be reduced if the attorney incurred fees for claims that were unwarranted under the law or unsupported by evidence. Additionally, attorneys are required to strictly follow California State Bar Guidance regarding the use of Artificial Intelligence ("AI"), and any violations of such guidance can result in sanctions.

IV. *Dummer v. City and County of San Francisco,* 120 Cal.App.5th 1009 (2026)

Holding: A public agency does not have a ministerial duty to immediately apply for an amended water supply permit or open a drinking water reservoir to public fishing after determining that fishing may be feasible. Because the Health and Safety Code, implementing regulations, and CEQA require the agency to exercise discretion in developing a fishing program, conducting environmental review, and proposing permit conditions before seeking approval from the State Water Resources Control Board ("SWRCB"), mandamus will not lie to compel immediate action.

Facts and Background: Tim Dummer, a licensed California fisherman, sought public fishing access to the Calaveras Reservoir, a drinking water reservoir owned by the City and County of San Francisco and managed by the San Francisco Public Utilities Commission. The reservoir provides drinking water to 2.7 million residents in the Bay Area and is governed by the Alameda Watershed Management Plan, which prohibited public access and fishing.

In an earlier 2019 action ("*Dummer I*"), Dummer successfully obtained a writ of mandate to compel San Francisco to determine that public fishing would not affect the purity and safety of the reservoir's drinking water under Health and Safety Code Section 117045. The trial court held that while San Francisco had a ministerial duty to make that determination, it had no other ministerial duties at that time. San Francisco subsequently adopted a resolution concluding that shoreline fishing could occur without compromising water quality, subject to CEQA review, SWRCB review, and development of appropriate terms and conditions for a fishing program.

Following the resolution, San Francisco began planning for a fishing program and identified various infrastructure improvements needed to ensure the safety of the public and staff, and to protect the watershed and drinking water quality. These included road improvements, parking, restrooms, security fencing and signage. Upon learning that the reservoir would not open immediately for fishing, Dummer filed a second petition for writ of mandate. The trial court denied the petition, finding San Francisco had not failed to perform any ministerial duty and finding that the Fish and Game Code did not entitle Dummer to immediate fishing access. The trial court also ruled that San Francisco did not abuse its discretion in failing to apply for an amended water supply permit at that time, as it worked to address and resolve preconditions necessary to obtain the permit. Dummer appealed.

Analysis: The Court of Appeal began by reiterating the requirements for traditional mandamus. A writ of mandate requires the petitioner to establish a clear, present ministerial duty on the part of the respondent and a corresponding beneficial right to performance of that duty. Although mandamus may compel a public agency to exercise discretion as lawfully prescribed, it cannot compel the agency to exercise that discretion in a particular manner. A statutory command does not become ministerial simply because it uses mandatory language if significant discretion is necessary to perform the duty.

The court determined that three interacting statutes must be examined together to resolve the claim. Fish and Game Code Section 5943, which grants the public a qualified right to fish in reservoirs; the Health and Safety Code provisions governing recreational use of water supply reservoirs; and CEQA. Health and Safety Code Section 117045 requires a reservoir owner to obtain a water supply permit after determining fishing will not impair drinking water quality; however, neither the statute nor its implementing regulations establishes a deadline requiring immediate submission of a permit application. Instead, the statutory and regulatory framework contemplates that the reservoir owner will first exercise judgment in developing a proposed fishing program and assembling the detailed information necessary for SWRCB's review.

The court rejected Dummer's argument that only SWRCB possesses authority to determine the terms and conditions governing fishing access. Although SWRCB ultimately decides whether to approve a permit and what conditions it should contain, the Health and Safety Code and Title 17 regulations require the reservoir owner to propose the program, describe the facilities and operations necessary to manage recreational use, and provide any required environmental documentation. These requirements necessarily involve discretionary decision-making by the public agency before the application can be submitted.

The court also rejected Dummer's reliance on the Fish and Game Commission's statewide regulations authorizing year-round fishing at Calaveras Reservoir. The Commission's CEQA review addressed only statewide fishing regulations such as seasons, bag limits, and gear restrictions. It did not evaluate the site-specific environmental impacts associated with opening a previously closed drinking water reservoir or constructing the infrastructure needed to safely accommodate public access. The commission's regulations did not eliminate San Francisco's obligation to conduct its own environmental review or develop an appropriate fishing program.

Next, Dummer argued that he had a constitutionally guaranteed right to fish. The court concluded that neither article I, Section 25 of the California Constitution nor Fish and Game Code Section 5943 creates an absolute right to fish free from regulatory requirements. Relying heavily on *State of California v. San Luis Obispo Sportsman's Assn.* (1978) 22 Cal.3d 440, the court explained that the public's right to fish must be balanced against the State's inherent police power to protect public safety and welfare.

The court also rejected Dummer's argument that various immunity statutes governing recreational use of natural lands required immediate public access. Those statutes limit liability; they do not excuse compliance with permitting requirements or eliminate a public agency's discretion to determine the terms and conditions necessary to control fishing access at the reservoir. Similarly, San Francisco's actions did not violate Water Code Section 6026 because San Francisco was not attempting to regulate reservoirs generally, but rather was complying with statutes requiring submission of a complete permit application to SWRCB.

Finally, the court emphasized that substantial evidence supported the trial court's finding that San Francisco was actively moving forward with the required permitting process. San

Francisco was developing the fishing program, conducting CEQA review, amending its watershed management plan, and preparing the information required by the Health and Safety Code and implementing regulations. Because no statutory deadline required earlier action, mandamus relief was unavailable to control the manner in which San Francisco exercised its discretion. The court noted, however, that nothing in its decision prevented Dummer from seeking judicial relief if the San Francisco or SWRCB later acted unlawfully or arbitrarily during the permitting process.

Impact: The decision confirms that Health and Safety Code Section 117045 does not impose a ministerial duty requiring a public agency to immediately seek a water supply permit after determining that fishing may be feasible at a drinking water reservoir. Instead, reservoir owners retain discretion to develop fishing programs, conduct CEQA review, determine appropriate operational conditions, and prepare a complete permit application before submitting it to SWRCB. The opinion also reinforces that California's constitutional and statutory right to fish is qualified rather than absolute and must be harmonized with the State's interests in protecting drinking water, public safety, and the environment.

V. *Eagle Colton 55 LP v. City of Colton,* 121 Cal.App.5th 1143 (2026)

Holding: The trial court erred in denying the City of Colton's special motion to strike under the anti-SLAPP statute (Code of Civil Procedure § 425.16). Plaintiff asserted four causes of action: (1) intentional interference with prospective economic advantage; (2) negligent interference with prospective economic relations; (3) breach of the implied covenant of good faith and fair dealing; and (4) defamation. Each arose from Colton's protected activity: its analysis of a municipal loan and its communications with the neighboring city of Yucaipa concerning the financing and development of an affordable senior-housing project, a matter of public interest. The plaintiff, moreover, could not demonstrate the minimal merit required at the second step of the anti-SLAPP analysis, because it failed to comply with the claim-presentation requirement of the Government Claims Act (Government Code § 810 et seq.). The Court of Appeal reversed the order denying the motion and remanded with directions to grant it and to determine the attorney fees to which Colton is entitled.

Facts and Procedure: In 2012, the City of Colton and the plaintiff developer, Eagle, entered into an agreement for the development of an affordable senior-housing community, financed in part by a $2.5 million loan from Colton that was secured by a promissory note. The note required Eagle to make annual payments based on the project's residual receipts and to furnish annual financial statements reviewed by an independent certified public accountant, together with a written opinion that the statements fairly presented the project's financial position. Colton's own auditors repeatedly noted that Colton was not adequately monitoring Eagle's compliance with the note. In January 2019, Colton served a notice of breach for Eagle's failure to provide independent audited financial statements. Eagle disputed the requirement but cured the asserted breach by providing audited statements, which it has since furnished annually. Colton rescinded the notice of breach.

In late 2023, Eagle was in advanced negotiations with the neighboring city of Yucaipa to develop a similar project, following years of exclusive negotiation. After a Yucaipa official contacted Colton's finance director to inquire about Colton's receipts on the Eagle note, and after discussions between Yucaipa and Colton officials, Yucaipa allowed its exclusive-negotiation agreement with Eagle to expire.

In September 2024, Eagle filed suit against Colton, alleging that Colton's finance director made false statements to Yucaipa officials that caused the collapse of the Yucaipa project and, according to Eagle, at least $65 million in lost profits. Colton moved to strike the complaint, arguing both that the claims arose from protected activity and that Eagle could not prevail because its claims were barred by the Government Claims Act. The trial court found that the claims arose from protected activity, but concluded that Eagle had shown a likelihood of prevailing, and it denied the motion. Colton appealed, and the Court of Appeal reviewed the order de novo.

Analysis:

Timeliness: As a threshold matter, the Court of Appeal held that Colton's motion was timely. The motion was filed sixty days after the amended complaint was served. Additionally, a trial court has discretion under Code of Civil Procedure § 425.16, subdivision (f) to entertain an anti-SLAPP motion at a later time. Given that no discovery had been conducted, no deposition taken, and no trial date set, the trial court did not abuse its discretion in hearing the motion.

Protected Activity: The court held that each cause of action arose from protected activity. All four claims were based on Colton's analysis of its note with Eagle and its communications with Yucaipa concerning the financing and development of a senior-housing project. The commercial and residential development of a substantial parcel is a matter of public interest, and communications between officials of different public entities concerning municipal contract are made "in connection with an issue under consideration or review by a legislative body" within the meaning of Code of Civil Procedure § 425.16, subdivision (e). *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.*, 106 Cal.App.4th 1219 (2003); *Rand Resources, LLC. v. City of Carson*, 6 Cal.5th 610 (2019). The statute's protections extend to governmental speakers and public officials addressing matters of public concern, and to communications preparatory to official action. *Vargas v. City of Salinas*, 46 Cal.4th 1 (2009).

Probability of Prevailing: The court held that Eagle could not establish the minimal merit required because it failed to comply with the Government Claims Act's claim-presentation requirement. Under Government Code Section 915, a claim must be delivered or mailed to the clerk, secretary, or auditor of the public entity, or to its governing body at its principal office, or actually received by one of the statutorily designated recipients. Eagle's delivery of a letter to a single city council member, alone, off-site, at a private meeting, where the member did not recognize the letter as a claim and did not forward it, did not constitute actual receipt by the "board," which the Act defines as the governing body. Relying on *DiCampli-Mintz v. County of Santa Clara*, 55 Cal.4th 983 (2012), the court explained that it could not expand the list of authorized recipients or shift to the public entity the claimant's burden of proper claims presentation. The court further observed that the letter, styled a "Confidential Settlement Communication," was not readily identifiable as a claim, and that Eagle had filed suit after only forty-one days without affording Colton the forty-five day response period the Act contemplates. *Schaefer Dixon Associates v. Santa Ana Watershed Project Authority*, 48 Cal.App.4th 524 (1996). Finally, the court held that Eagle's allegation, made on information and belief that the clerk had received the letter, was inadmissible and could not establish a probability of prevailing. *Evans v. Unkow*, 38 Cal.App.4th 1490 (1995).

Impact: There are three main implications for public entities.

First, a public entity sued in tort over its officials' communications may invoke Code of Civil Procedure § 425.16, because the statute protects governmental speakers addressing matters of public interest. Where a suit is based on a public official's statements about a municipal contract, loan, or development project, including unfavorable assessments shared with another agency, those statements are likely to constitute protected activity, and counsel should evaluate the availability of an anti-SLAPP motion at the outset of the litigation.

Second, a defendant who prevails on an anti-SLAPP motion is entitled to a mandatory award of attorney fees.

Third, the Government Claim Act's presentation requirement is applied strictly. Delivery of a communication framed as a settlement overture to an individual council member is not a claim.

VI. *Fix the City, Inc. v. City of Los Angeles,* 118 Cal.App.5th 957 (2026)

Holding: Los Angeles Administrative Code (LAAC) § 8.33, which authorizes the mayor to declare a "local housing and/or homelessness emergency" and to exercise a range of emergency powers upon that declaration, is a valid exercise of the City of Los Angeles's authority as a charter city over its own municipal affairs. The California Emergency Services Act (CESA; Government Code § 8550 et seq.) does not preempt LAAC § 8.33. The ordinance concerns a municipal affair, it does not actually conflict with CESA, and CESA neither expressly nor impliedly occupies the field of local emergency response. The more general local-emergency definition in LAAC § 8.22 likewise does not invalidate § 8.33. The Court of Appeal affirmed the trial court's order sustaining the City's demurrer without leave to amend. Because the absence of any actual conflict resolved the matter at the second step of the home-rule analysis, the court expressly declined to decide whether CESA's procedural requirements under Government Code § 8630 apply to charter cities.

Facts and Procedure: LAAC § 8.33 empowers the mayor of Los Angeles to declare a local housing and/or homelessness emergency when certain statutory metrics are met (e.g., housing supply projected to be at least 40 percent below the City's production goals or defined homelessness-crisis thresholds). Upon such a declaration, the mayor may, among other things, promulgate rules and directives to address the emergency, commandeer property to meet interim housing needs, requisition City personnel and materials, and suspend competitive-bidding restrictions otherwise imposed by the Charter and the administrative code.

On July 7, 2023, Mayor Bass declared an emergency under LAAC § 8.33. The City Council affirmed and renewed the declaration, and the mayor exercised the powers it conferred to address conditions affecting unhoused residents. The mayor lifted the declaration on November 4, 2025, while this appeal was pending. The appeal was not rendered moot, however, because LAAC § 8.33 remains part of the administrative code. Fix the City, Inc., a nonprofit organization, petitioned for writ and declaratory relief, contending that LAAC § 8.33 was invalid on two grounds: (1) it argued that CESA preempted the ordinance because a housing shortage and homelessness are not among the conditions that support a "local emergency" under Government Code § 8558, subdivision (c)(1), and because LAAC § 8.33 does not require the seven-day City Council ratification or the 60-day review that Government Code § 8630 imposes; and (2) it argued that LAAC § 8.33 was inconsistent with the general definition of "local emergency" in LAAC § 8.22. The trial court sustained the City's demurrer without leave to amend and entered a judgement of dismissal. Fix the City appealed.

Analysis:

Home-Rule Framework: The court applied the four-part framework the California Supreme Court developed to determine whether a state law unconstitutionally infringes the home-rule authority that article XI, section 5, subdivision (a) of the California Constitution grants charter cities. Under that framework, the court asks (1) whether the local law regulates a municipal affair; (2) whether there is an actual conflict between the state law and the local law; (3) whether the state law addresses a matter of statewide concern; and (4) whether the state law is reasonably related to resolving that concern and is narrowly tailored to avoid unnecessary interference in local governance. As the court emphasized, if there is no actual conflict between the state statute and the local enactment, the analysis ends at the second step, and no choice between "municipal affair" and "statewide concern" is required, *California Fed. Savings & Loans Assn. v. City of Los Angeles*, 54 Cal.3d 1 (1991); *City of Huntington Beach v. Becerra*, 44 Cal.App.5th 243 (2020).

- *Municipal Affair:* LAAC § 8.33 concerns a municipal affair because it governs the City's own response to conditions existing exclusively within its territory and confers powers on the City's own executive to address those conditions. Thus, it falls within the City's home-rule authority.
- *Absence of Actual Conflict:* The court held there was no actual conflict between LAAC § 8.33 and CESA. CESA authorizes political subdivisions to proclaim the type of emergency it describes but does not purport to bar

> them from declaring other kinds of emergencies. The two enactments address different circumstances and confer different powers. CESA is directed at conditions of disaster or extreme peril that are likely to exceed a subdivision's own resources and require the combined forces of other political subdivisions, and its principal benefits are mutual aid and statutory immunities. LAAC § 8.33, by contrast, is directed at a housing or homelessness emergency specific and limited to the City. It confers different powers (e.g, the authority to commandeer property and requisition City personnel) without accompanying immunity provisions.

Because no conflict existed, the court did not proceed to the third and fourth steps of the analysis.

Field Preemption: The court also rejected the contention that CESA preempts the field of local emergencies. Preemption exists where the Legislature has expressly manifested an intent to fully occupy the field or has impliedly done so under the indicia set out in Sherwin-Williams Co. v. City of Los Angeles, 4 Cal.4th 893 (1993). The Legislature manifested no such intent here. Government Code § 8668, subdivision (b) provides that nothing in CESA diminishes the authority granted to cities by article XI, section 7 of the Constitution, which independently empowers cities to enact local ordinances not in conflict with general law. CESA's definition of "local emergency" is not all-inclusive; it is focused on conditions that can spread among or overwhelm multiple subdivisions. A statutory scheme providing for coordination and mutual aid does not evince an intent to preclude local legislation addressing emergencies unique to a particular city.

LAAC § 8.33: The general local-emergency definition in LAAC § 8.22 does not invalidate LAAC § 8.33. The court reasoned that, because the City Council adopted LAAC § 8.33 after LAAC § 8.22, it either understood the conditions supporting a LAAC § 8.33 declaration to constitute an "occurrence" within the meaning of LAAC § 8.22, or intended to establish an additional category of emergency. Under either reading, the provisions do not conflict.

Impact: A charter city may legislate categories of local emergency beyond those described in CESA. Where an ordinance is directed at conditions within the city and addressed through the city's own resources, it concerns a municipal affair that CESA does not preempt.

VII. *City of Fresno v. Superior Court,* 119 Cal.App.5th 418 (2026)

Holding: The phrase "great bodily injury," in the California Public Records Act ("CPRA") provision—which states that records concerning incidents involving force by a peace officer resulting in great bodily injury are not confidential—should be construed consistently with Penal Code Section 12002.7, which defines “great bodily injury” as a “significant or substantial physical injury”.

Facts/Background: Until recently, law enforcement investigatory records were categorically exempt from disclosure under CPRA. However, Government Code Section 832.7(b)(1) now contains an exception to this categorical exemption, making certain law enforcement investigatory records subject to disclosure if they relate to the report, investigation, or findings of “[a]n incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.”

On March 27, 2023, the American Civil Liberties Union of Southern California (“ACLU”) submitted a CPRA request to the City of Fresno seeking public records regarding the City's Police Department’s use of police K-9s. The request sought records concerning K-9 bites or injuries and K-9 incidents involving force leading to death, excessive force, failure to intervene, dishonesty, or discrimination.

City produced responsive records but also indicated it withheld use-of-force records that did not result in great bodily injury, which the City defined as serious bodily injury. Shortly after, ACLU sent correspondence to City alleging the City had improperly withheld and/or redacted records in response to ACLU's request. City responded, affirming that the redacted or withheld documents were properly exempt or not subject to disclosure because punctures, lacerations, and contusions caused by K-9s did not constitute a serious bodily injury, and therefore no exception to nondisclosure applied.

On April 22, 2024, the ACLU filed in the Fresno Superior Court a verified petition for writ of mandate and complaint for injunctive and declaratory relief, alleging the City had disregarded its legal obligations to disclose public records by withholding responsive records and redacting information from responsive records that were subject to disclosure.

ACLU requested the court issue (1) a peremptory writ of mandate directing the City to immediately disclose all nonexempt and requested public records, or parts thereof, in its possession; (2) an injunction requiring the City to produce all records subject to disclosure and to reproduce records without improper redactions; and (3) a declaration that City's conduct violates the CPRA. On May 19, 2025, the superior court issued a writ of mandate directing City to provide to the requester specified records in incidents where great bodily injury was inflicted. The City then filed a petition for writ of mandate.

Analysis: The meaning of the phrase “great bodily injury” is the central issue in this case. ACLU argued, and the superior court held, that the phrase “great bodily injury” as used in Penal Code Section 832.7 should be construed to have the same meaning as “great bodily injury” as defined in Penal Code Section 12022.7(f)(1): “a significant or substantial physical injury.” The City, however, argued that “great bodily injury” as used in Penal Code Section 832.7 should be construed more narrowly and have the same meaning as “serious bodily injury” as defined in Government Code Section 12525.2(d)(4): “a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ."

Here, the Court of Appeal agreed with the superior court and denied the City's petition for writ of mandate, holding that the Legislature intended for the phrase "great bodily injury" in Section 832.7 to be construed consistently with Section 12022.7.

In reasoning, the Court of Appeal noted that the Legislature chose to use the phrase "great bodily injury," which has a well-established legal meaning set forth in Penal Code Section 12022.7(f)(1) and cases interpreting that provision when amending subdivision (b)(1)(A)(ii) of Penal Code Section 832.7 to render certain records subject to disclosure under the CPRA. It highlighted that because the Legislature deliberately chose to use a phrase with a familiar and well-established meaning, the Legislature's choice of words most accurately reflects its intent.

Additionally, the Court emphasized that the legislative history of Senate Bill 1421, which adopted Government Code Section 832.7(b)(1), reflects the Legislature's express rejection of the phrase "serious bodily injury," and does not reflect an intent to limit disclosure to only those incidents involving injuries encompassed by Government Code Section 12525.2(d)(4).

The Court rejected the City's argument that the definition of serious bodily injury in Government Code Section 12525.2 is more appropriate because, like the CPRA, that section is within the Government Code. In its reasoning, the Court noted that although this section is located within the Government Code, Section 12525.2 is not contained within the CPRA, does not relate to the disclosure of records to the public, and is set forth in an unrelated part of the code pertaining to law enforcement's reporting obligations. The Court also observed that sections 832.7 and 12022.7 are both located within the Penal Code, as evidence that the provisions are to be construed consistently.

Impact: When determining if law enforcement investigatory records are subject to disclosure pursuant to CPRA, public agencies should construe the phrase "great bodily injury" in Penal Code Section 832.7(b)(1) as "a significant or substantial physical injury" as defined in Penal Code Section 12022.7(f)(1).

VIII. *Gibbs v. County of Humboldt* (2026) 120 Cal.App.5th 565

Holding: The Court of Appeal held that a former public employee has two independent causes of action against their employer under Government Code section 815.6 when the employer failed to timely enroll the employee in CalPERS upon eligibility and, separately, when the employer failed to maintain the employee's personnel records or to permit the employee to inspect them.

Facts / Background: Kay Marie Gibbs worked as a court reporter for the Humboldt County Superior Court for nearly forty years. Although she became eligible for enrollment in CalPERS in December 1983, the County did not enroll her until November 1989. As she prepared to retire in 2019, Gibbs learned that she would not receive CalPERS service credit for her early, unenrolled years and that she needed the County to certify her full employment history to CalPERS in order to purchase "prior service credit."

Despite repeated requests and promises from County employees, the County was ultimately only able to produce an incomplete compilation of her pay-period records, leaving several periods of her employment history missing. Gibbs sued the County and three individual County human resources employees, alleging common law negligence and failure to discharge mandatory duties under Government Code section 815.6 for failing to maintain and produce her personnel records and for failing to timely enroll her in CalPERS. Gibbs claimed she was forced to delay her retirement and would lose hundreds of thousands of dollars in retirement benefits. The trial court sustained demurrers to all of these claims without leave to amend, and Gibbs appealed. The Court of Appeal held that Gibbs had stated viable causes of action.

Analysis: The court applied the three-part test for liability under Government Code section 815.6: a mandatory duty, an enactment designed to protect against the kind of risk suffered, and proximate causation. The court held that (1) Labor Code section 1198.5 and Government Code section 31011 impose a nondiscretionary duty on public employers to maintain personnel records for at least three years after termination and to allow employees to inspect them, (2) these statutes were designed to let employees guard against or correct errors affecting their rights and benefits, and (3) the County's failure to maintain and produce Gibbs's records could directly and proximately cause the kind of harm that Gibbs alleged - the inability to enforce her employee rights and benefits.

The court likewise held that the Public Employees' Retirement Law under Government Code sections 20281, 20283, and 20502, and 20028 imposes a mandatory, nondiscretionary duty on contracting public agencies to timely enroll eligible employees in CalPERS, reasoning that treating the obligation as discretionary, and therefore unenforceable, would render the statutes' benefit "illusory." This duty is designed to protect employees' pension rights, as well as the system's solvency, and the County's breach could directly cause the loss of retirement benefits that Gibbs alleged.

The Court of Appeal rejected the County's argument that its 2004 transition of court reporters from county employees to court employees because of the Trial Court Employment Protection and Governance Act (TCEPGA) extinguished its duty. Gibbs's employment was never terminated as she worked as a court reporter both before and after the Act, so the three-year retention period in Labor Code section 1198.5(c)(1) never began to run. The TCEPGA also expressly preserved the County's and trial court's joint CalPERS-related obligations.

Finally, the Court of Appeal rejected the County's contention that a writ of mandate was Gibbs's exclusive remedy, distinguishing cases involving challenges to CalPERS's own quasi-adjudicatory determinations.

Impact: The decision gives California public employees causes of action under Government Code section 815.6 when a public agency fails to maintain or provide access to personnel records under Labor Code section 1198.5, or when it fails to timely enroll an eligible employee in CalPERS under the Public Employees' Retirement Law. It clarifies that a public agency's records-retention and CalPERS-enrollment duties toward employees who worked before a subsequent change in employment structure (such as the TCEPGA's shift of trial court employees from county to court employment) are not automatically extinguished by that structural change so long as employment continues without a break.

IX. *Louisiana v. Callais* 146 S.Ct. 1131 (2026)

Holding: The State of Louisiana's congressional district map -- redrawn after courts found Louisiana's prior map likely violated the federal Voting Rights Act (VRA) -- violates the Equal Protection Clause of the Fourteenth Amendment as an impermissible racial gerrymander.

Facts and Procedure: The State of Louisiana redrew its congressional district maps after the 2020 census in response to population changes ("Prior Map"). The Prior Map included only one majority-black district. A group of black voters then filed a lawsuit challenging the Prior Map for violating the VRA by including only one majority-minority district. In 2022, a federal district court ruled that the Prior Map likely violated Section 2 of the VRA because it did not include an additional majority-minority district. The court entered a preliminary injunction requiring Louisiana to implement a new map before the 2022 election. Louisiana appealed the decision, and the U.S. Court of Appeals for the Fifth Circuit instructed the district court to provide time for a new map to be drawn.

Louisiana then drew a new map with the additional majority-minority district ("New Map"). The New Map was challenged, and a three-judge federal district court panel ruled that the New Map was an impermissible racial gerrymander that violated the Equal Protection Clause of the Fourteenth Amendment. Louisiana appealed that decision to the U.S. Supreme Court.

Analysis:

The U.S. Supreme Court applied strict scrutiny to the New Map and upheld the ruling that the New Map was an unconstitutional racial gerrymander. The Court determined that the VRA did not require Louisiana to create an additional majority-minority district, and therefore there was no "compelling interest" justifying the use of race in creating the New Map.

Historically, strict scrutiny applied in a racial gerrymandering case when a challenger showed that race was the government's predominant consideration. Strict scrutiny also required the government to prove that the use of race in drawing a district map was "narrowly tailored" to further a "compelling governmental interest."

The Supreme Court declared that compliance with the VRA may be a compelling interest for race-based districting only when the circumstances give rise to a strong inference of intentional discrimination. The Court explained that Section 2(a) of the VRA prohibits a districting map that results in denial or abridging of the right to vote on account of race or color. Interpreting Section 2(b) of the VRA, the Court declared that a denial or abridgement occurs when the political processes are not equally open to participation by members of a racial group of voters, in that such group has "less opportunity than other members of the electorate to ... elect representatives of their choice." In sum, the Court concluded that a violation of the VRA occurs only when the circumstances give rise to a strong inference that intentional discrimination occurred (i.e., districts were intentionally drawn to provide minority voters with less opportunity because of their race).

The case substantially affects the burden of proof in VRA litigation. Persons challenging a districting map must now produce an alternative map with a proposed majority-minority district that does not "use race as a districting criterion" and that complies with the government's legitimate districting objectives and political goals. The Supreme Court explained that if a government entity's goals in drawing a map include partisan gerrymandering, protecting incumbents, or other constitutional goals, then the challengers must produce an alternative map that also achieves those goals. Also, challengers now must provide an analysis that controls for party affiliation by showing that voters engage in racial bloc voting that cannot be explained by partisan affiliation. Finally, the analysis for a VRA Section 2 violation now must focus on evidence related to current-day *intentional* discrimination in voting based on race — as opposed to racial discrimination that occurred in the past.

Impact:

A. Implications for the California Voting Rights Act (CVRA)

Although the CVRA was not at issue in *Callais*, the decision creates the possibility of a future challenge to the constitutionality of the CVRA. The CVRA requires jurisdictions to transition from an at-large election system to a district-based election system if a challenger proves that the at-large election system, either through vote dilution or by abridging the rights of minority voters, impairs the ability of those voters to elect candidates of their choice or their ability to influence the outcome of an election. In order to force that transition, the CVRA does not require a showing of a strong inference that intentional discrimination occurred, which is required under *Callais* to prove a VRA violation. Instead, challengers may establish that the CVRA has been violated based on certain discriminatory effects of an at-large election system on a minority group. In other words, while the VRA is focused on addressing discriminatory intent, the CVRA is aimed at the effect of a voting system. A challenger to the CVRA might contend that under *Callais* the CVRA's explicitly race-conscious framework violates the Equal Protection Clause. It is unclear whether that challenge would be successful.

B. SB 1164

To provide the State of California with a defense against a potential constitutional challenge to the CVRA following the *Callais* decision, the Legislature is considering SB 1164. This bill passed in the Senate in May 2026, and as of this writing in August 2026 is pending in the Assembly. The bill would repeal and replace the CVRA with the "California Voting Rights Act of 2026." It would make significant changes to the CVRA — including amendments that appear to be aimed at insulating the CVRA from the *Callais* decision. Examples include deleting references to the federal VRA in the definitions of "protected class" and "racially polarized voting," and providing that the CVRA does not enforce any rights established under the United States Constitution or federal law.

X. *Moving Oxnard Forward, Inc. v. Lopez,* 173 F.4th 1070 (9th Cir. 2026)

Holding: City voters can approve per-candidate contribution limits and aggregate contribution limits for municipal elections, provided that they are closely drawn to a city's interest in preventing actual or apparent *quid pro quo* corruption.

Facts/Background: In 2020, voters in the City of Oxnard voted to approve Measure B, which included per-candidate contribution limits and aggregate contribution limits for municipal elections. The per-candidate contribution limits prohibited a person from making a contribution to a candidate that exceeded five hundred ($500) dollars, and political action committees from making a contribution to a candidate that exceeded one thousand ($1,000) dollars. The aggregate limits meant that per-candidate contribution limits applied not only to direct contributions made to candidates but also to indirect contributions made to candidates, such as those made to committees controlled by candidates. A political advocacy nonprofit organization challenged the City's two contribution limits, arguing that the per-candidate contribution limits violated the First Amendment and the aggregate contribution limits violated the First and Fourteenth Amendment.

The District Court for the Central District of California granted summary judgment in favor of the City. The District Court held that the per-candidate contribution limits did not violate the First Amendment because the City had demonstrated a sufficiently important governmental interest and the limits were closely drawn to that interest. The District Court held that the aggregate limits did not limit contributions made to committees formed to campaign for ballot measures, and thus the aggregate limits did not treat candidates who both ran for office and campaigned for ballot measures any differently than candidates who ran only for office. The political advocacy nonprofit organization appealed this decision.

Analysis: The Court of Appeals for the Ninth Circuit sitting *en banc* affirmed the District Court's decision. The Court recognized that the City had a sufficiently important governmental interest in targeting *quid pro quo* corruption or its appearance. The Court noted that the City needed only to demonstrate that the risk of *quid pro quo* corruption or its appearance was more than mere conjecture. Here, the City's evidence was sufficient: there were newspaper article alleging corruption by City officials; investigation and report by the District Attorney relating to corruption; a survey of residents favoring more accountability; and votes by 82% of the voters in the City that approved the contribution limits.

The Court next assessed whether the contribution limits were closely drawn to the City's interest in preventing *quid pro quo* corruption or its appearance by inspecting whether there were "danger signs" that the limits were so low as to harm the electoral process. *Randall v. Sorrell*, 548 U.S. 230 (2006) established four such danger signs, whether: (1) the limits are set per election cycle; (2) the limits apply to contributions from political parties; (3) the limits are the lowest in the nation; and (4) the limits are below those the Supreme Court has previously upheld.

Here, the Court found that the first three signs were not present because (1) the City's contribution limits were per candidate per election, not per office per election cycle; (2) the limits did not apply to political parties; and (3) the limits were comparable to those imposed by other California cities of comparable size.

For the (4) danger sign, the Court did not decide if it was present because, even if it was present, the limits were closely drawn to the City's legitimate interest. Assuming a sign was present, the Court considered "five sets of considerations" to determine whether the contribution limits were closely drawn: (1) whether the limits significantly restricted the amount of funding available for challengers to run competitive campaigns; (2) whether political parties had to follow the same low contribution limits that applied to other contributors; (3) whether volunteer services were considered to be contributions that counted toward the limits; (4) whether the limits were adjusted for inflation; and (5) whether any special justification warranting the limits existed.

Here, the Court found the following: (1) the limits did not significantly restrict the amount of funding available for challengers to run competitive campaigns because contributions in elections that exceeded the limits were likely to be small and the limits affected only a few candidates at best; (2) political parties did not have to abide by the limits, only people or political action committees; (3) volunteer's expenses were generally not considered to be contributions; and (4) the limits were adjusted for inflation. Since the first four factors weighed in the City's favor, the City did not need a special justification under (5). Therefore, the limits were closely drawn to the City's interest.

The Court also found that the aggregation limits did not discriminate between candidates who controlled ballot measure committees and those who did not because the limits applied *only* to direct and indirect contributions *made to candidates*. That is, the limits did not apply to contributions made to support ballot measure committees. (If they did, then candidates who also controlled ballot measures would be subject to contribution limits, whereas non-candidates would not be.)

Impact: The major impact of this case is that it shows voters in a city may approve per-candidate contribution limits and aggregate contribution limits. However, a city must be aware of two critical factors: (1) the city must be able to show a legitimate governmental interest in targeting *quid pro quo* corruption or its appearance; and (2) the limits must be closely drawn to that interest in accordance with the four *Randall* danger signs and the "five sets of considerations."

XI. *Theis v. InterMountain Education Service District,* No. 25-8039 (9th Cir. July 16, 2026)

Holding: A public school employee's display of books in his office while interacting with students constituted speech made pursuant to his official duties, not private citizen speech protected by the First Amendment. Speech that occurs in a student-facing educational setting and owes its existence to the employee's professional responsibilities can be regulated by the school district without violating the First Amendment.

Facts and Background: Roderick Theis served as an Education Specialist for the InterMountain Education Service District (IMESD), working in offices located within two Oregon public schools. Although he did not teach in a classroom, he regularly met with students in his offices to conduct evaluations and supervise standardized testing. Like other employees, Theis decorated his offices with personal items. During the 2024-2025 school year, in one office Theis displayed two children's books, *He is He* and *She is She*, that expressed support for a binary view of biological sex and gender identity. In the other office he displayed *Johnny the Walrus*, a children's book that some consider to convey an anti-transgender message. After receiving a complaint that the book displays were transphobic and in violation of an "Every Student Belongs" policy, IMESD directed Theis to remove the books. The policy defines a "bias incident" as a "hostile expression of animus" based on a protected characteristic, including gender identity.

Theis filed suit under 42 U.S.C. Section 1983, alleging the directive violated his First Amendment rights. The district court granted only partial preliminary relief, permitting him to display the books when students were not present but allowing IMESD to prohibit the displays during student interactions. After Theis continued to display the books while students were in his office, IMESD initiated disciplinary proceedings and ultimately terminated him. Theis appealed the denial of broader preliminary injunctive relief and the denial of his motion to enforce the injunction.

Analysis: The Ninth Circuit affirmed, concluding that Theis was unlikely to succeed on the merits. The court explained that the threshold inquiry in any public employee speech case is whether the employee spoke as a private citizen or as part of his governmental employment. Only speech made as a private citizen receives First Amendment protection.

Applying the fact-intensive inquiry required by the Supreme Court's 2006 decision in *Garcetti v. Ceballos*, the Ninth Circuit concluded that Theis' displays occurred within his professional role. The books were displayed in the offices where he met with students, were visible during evaluations and meetings, and were directed toward students rather than a general public audience. The court also reasoned that the displays "owed their existence" to his position as a public school employee because only by virtue of his employment could he use his office as a platform to communicate with students. Accordingly, the displays were government-controlled employee speech rather than private expression.

The court rejected Theis' argument that the Supreme Court's 2022 decision in *Kennedy v. Bremerton School District* altered the analysis. Unlike the football coach in *Kennedy*, whose private prayer occurred after his official duties had concluded, Theis displayed the books while actively performing his assigned responsibilities and interacting with students. The court emphasized that *Kennedy* protects private expression outside an employee's official duties but does not undermine longstanding precedent permitting school districts to control messages conveyed to students by employees acting within their professional roles. The Ninth Circuit also relied on consistent authority from numerous federal circuits holding that K-12 educators have no First Amendment right to present personal viewpoints to students contrary to school policy.

The court did not reach the balancing test under *Pickering v. Board of Education* because Theis' speech fell outside the First Amendment's protection under *Garcetti*. Without a likelihood of success on the merits, Theis could not obtain preliminary injunctive relief, and the district court properly denied both his motion for a preliminary injunction and his motion to enforce the existing injunction.

Impact: The *Theis* decision reinforces that public school employees generally speak as government employees and not private citizens when communicating messages to students in K-12 educational settings. The opinion rejects a broad application of *Kennedy v. Bremerton*, finding that the Supreme Court did not expand First Amendment protection to employee speech occurring during the performance of official duties or while interacting with students. School districts therefore retain broad authority to regulate employee speech and visual displays directed at students as part of the education setting.

XII. *Toy v. City and County of San* Francisco (2026) 121 Cal.App.5th 1292

Holding: City and County of San Francisco (City) did not waive application of validation statutes to a challenge to water rates by participating in litigation prior to raising non-compliance. Under Government Code section 53759, a challenge to water rates adopted after January 1, 2022 must be brought as a reverse validation action under Code of Civil

Procedure section 860 et seq. Compliance with the reverse validation procedures is a prerequisite to the court's jurisdiction, not an affirmative defense. The trial court also did not abuse its discretion in finding no good cause for plaintiffs' noncompliance.

Facts / Background: Government Code section 53759 (Section 53759) provides that any judicial action attacking an ordinance, resolution, or motion adopting or modifying a fee or charge for water or sewer service must be commenced within 120 days and must be brought pursuant to the validation statutes (Code Civ. Proc., § 860 et seq.). Section 53759 applies only to a fee or charge adopted, modified, or amended after January 1, 2022.

In May 2022, plaintiffs filed a class action against the City (the Toy Action) challenging water rates adopted by the San Francisco Public Utilities Commission (SFPUC) in 2018, alleging the rates improperly included costs for fire hydrant water flows and infrastructure in violation of Proposition 218. In May 2023, while the Toy Action was pending, the City adopted Resolution 23-103 (the Resolution) increasing water rates for July 1, 2023 through June 30, 2026. Before adopting the Resolution, the SFPUC sent notices to all retail water ratepayers providing the information required by Proposition 218, "and included notice to ratepayers they would have 120 days to file any legal challenge to the proposed water rates under the applicable reverse validation procedures."

On October 3, 2023, one of the Toy plaintiffs and two others filed a second class action against the City (the Aquilina Action) challenging the Resolution under Proposition 218. The Aquilina Action was styled "Refund, Declaratory Relief, and Equitable Relief, and Petition for Writ of Mandate" and affirmatively alleged that plaintiffs had presented Government Claims Act claims, which were denied. Plaintiffs served a summons on the City only and never published a summons directed to all interested persons.

The City answered the Aquilina Action in November 2023 without asserting that the action was procedurally improper because it was not brought pursuant to the validation statutes. For roughly 14 months the City defended the Aquilina Action without raising plaintiffs' failure to comply with the validation statutes, including by requesting a jury trial, participating in discovery and depositions, stipulating to consolidation of the two actions, and paying roughly half of the cost of class notice.

The trial court certified classes in both actions in June 2024, and the parties filed cross-motions for summary judgment in November. On the day oppositions were due in January 2025, the City filed a motion for judgment on the pleadings (MJOP) in the Aquilina Action, asserting that the complaint was untimely under Section 53759 and failed to comply with the validation procedures. The trial court granted the MJOP without leave to amend, holding that the validation procedures are mandatory and jurisdictional, that plaintiffs failed to comply, and that plaintiffs' claimed showing of good cause "does not remotely qualify." Plaintiffs appealed.

Analysis: The Court of Appeal (First District, Division Two) affirmed.

Validation statutes apply and supersede other remedies. "[W]hen the validation statutes apply, 'they supersede other mechanisms by which an interested private party might seek to challenge' the agency matter." (*Toy*, *supra*, 121 Cal.App.5th at p. 1296, quoting *Davis v. Fresno Unified School District* (2023) 14 Cal.5th 671, 685.) Section 53759 expressly incorporates the validation statutes, so plaintiffs had to file an in rem action and, within 60 days, serve a summons in the prescribed form, directed to all interested persons and to the City, by publication. (*Toy*, *supra*, 121 Cal.App.5th at pp. 1302-1303, citing Code Civ. Proc., §§ 861, 861.1, 863.) Plaintiffs did not, and the summons served on the City alone did not meet the statutory requirements. The Court of Appeal noted that in a validation action, the "only way for the court to acquire jurisdiction over the matter is to ensure that notice is given to all interested persons so that the resulting judgment can be conclusive as against them" and failure to comply with the requirement to publish the summons "deprives the court of the power to rule upon the matter." (*Toy*, *supra*, 121 Cal.App.5th at p. 1307, quoting *Katz v. Campbell Union High School Dist.* (2006) 144 Cal.App.4th 1024, 1032.)

No waiver by the City. Plaintiffs did not meaningfully dispute on appeal that the validation statutes applied. Instead, they argued that by answering, litigating, and moving for summary judgment, the City elected, under Code of Civil Procedure section 869, to contest its rates through ordinary litigation and thereby waived the validation procedures. The court disagreed. Waiver is the intentional relinquishment of a known right and must be proved by clear and convincing evidence, and plaintiffs did "not even attempt to show, much less show, such intentionality." (*Toy*, *supra*, 121 Cal.App.5th at p. 1304.) The court also found that plaintiffs' reliance on Section 869 was misplaced. Section 869 requires an interested person to bring a challenge "'within the time and the manner' set forth in the reverse validation procedures" or be forever barred. (*Id*. at p. 1305, quoting Code Civ. Proc., § 869.) Although a public agency may, as a plaintiff, contest its actions through other means, it "does not 'make a contest' of its water rates by defending them in litigation." (*Toy*, *supra*, 121 Cal.App.5th at p. 1306.) Further, the other remedies section 869 preserves for public agencies are forms of relief an agency may seek as an initiating party, not a dispositive motion, such as summary judgment. The court found compliance with the reverse validation procedures "is a prerequisite for the court's jurisdiction, not an affirmative defense to be proven by the agency." (*Id*. at p. 1305.)

No good cause. The court reviewed the trial court's good-cause determination for abuse of discretion. Section 53759 clearly incorporates the validation statutes and applies to a resolution adopting or changing a water fee. The court found the governing law was neither novel nor complex or debatable. The court held that plaintiffs' failure to comply could not be excused, and no abuse of discretion appeared.

Impact: The decision reinforces the need for plaintiffs to comply with the validation procedures when a statute makes those procedures applicable. Under Government Code section 53759 a challenge to a water or sewer rate adopted, modified, or amended after January 1, 2022, must be challenged by way of a reverse validation action, and a plaintiff's characterization of the action as one for a refund or challenge under Proposition 218 does not avoid the requirement. Because compliance "is a prerequisite for the court's jurisdiction, not an affirmative defense to be proven by the agency," an agency does not waive the requirement by answering and litigating the merits, and may raise it by a motion for judgment on the pleadings more than a year into the case.

To ensure the protections provided by the validation statutes, a public agency's Proposition 218 notice should have the statutorily required "statement that there is a 120-day statute of limitations for challenging any new, increased, or extended fee or charge." (Gov. Code, § 53759(d).)

XIII. *Ventura Harbor Rest. Assocs., Inc. v. Ventura Port Dist.,* 121 Cal. App. 5th 809 (2026)

Holding: When a city leases commercial real property to a tenant and the lease contains a percentage rent clause based on a percentage of the tenant's gross income, the clause does not impose a tax in violation of Article XIII C of the California Constitution. Additionally, if the tenant is a restaurant that sells food and alcoholic beverages, a percentage clause does not violate Article XX, Section 22 of the California Constitution, which grants the State the exclusive right to license and regulate alcohol sales.

Facts/Background: In 1996, voters passed Proposition 218, which added Article XIII C to the California Constitution. Article XIII C requires voter approval of all taxes imposed by local governments. In 2010, voters passed Proposition 26, which expanded the definition of "tax" to include any levy, charge, or exaction of any kind imposed by a local government. Article XX, Section 22 provides that the State has the exclusive right to regulate the sale and purchase of alcoholic beverages.

In 2016, a restaurant operator in Ventura Harbor agreed to sublease commercial real property under a master lease with the Ventura Port District ("Port District"). Both the master lease and the sublease stated that the lessee or sublessee must pay a percentage of gross income derived from all sales conducted on or from the premises. The sublease provided that the premises must be used and occupied only for a commercial restaurant and bar business and related purposes.

In 2022, the restaurant operator sued the Port District, arguing that the percentage rent clause violated Article XIII C and Article XX, Section 22 of the California Constitution. However, the Superior Court ruled against the restaurant operator and granted the Port District's motion for summary judgment, determining that the percentage rent clause did not violate Article XIII C and Article XX, Section 22. The restaurant operator appealed this decision.

Analysis: The Court of Appeal for the Second District affirmed. The Court held that the percentage rent clause "clearly falls within the …. exception" in Proposition 26 for charges imposed for the purchase, rental, or lease of local government property found in Article XIII C, Section 1, subdivision (e)(4). The percentage rent clause met this exception because it imposed a charge for the rental or lease of the Port District's property.

The Court also held that the exception for charges imposed for the purchase, rental, or lease of local government property is not subject to the reasonableness requirement found in other exceptions in Proposition 26. The Court noted that the specific exception under Article XIII C, Section 1, subdivision (e)(4) does not contain a reasonableness requirement, and that it would be “absurd” to think otherwise, as the property rent would become largely uncorrelated with the value of the property being leased. The Court distinguished Zolly v. City of Oakland, 47 Cal. App. 5th 73 (2020) from this case because a local government’s charge of percentage lease of commercial real property could not be characterized as a franchise fee.

The restaurant operator also argued that the percentage rent clause violated Article XX, Section 22 because it applied to revenue from the sale of alcoholic beverages, for which the State has the exclusive right and power to license and regulate. However, the Court found that the percentage rent clause did not conflict with Article XX, Section 22 because it was not created to regulate the manufacture, sale, or purchase of alcoholic beverages. The percentage rent clause applied to all sales conducted on or from the premises, not just to sales of alcoholic beverages.

Impact: The major impact of this case is that it upholds a city’s ability to require a percentage rent clause when it leases commercial real property to a tenant under Article XIII C, Section 1, subdivision (e)(4). The case also helpfully clarifies that the amount of a charge under Article XIII C, Section 1, subdivision (e)(4) is not subject to a reasonableness requirement.

XIV. *Voice of San Diego v. San Diego Unified School District,* 120 Cal.App.5th 923 (2026)

Holding: Under the California Public Records Act (CPRA; Government Code § 7920.000 et seq.), the requirement in § 7922.530, subdivision (a) that an agency make disclosable records “promptly available” does not impose any fixed deadline, measured in days, for the actual production of records. Whether an agency has produced records promptly is a fact-intensive determination, made case-by-case, turning on the scope and burden that the particular request imposes on the particular agency. Because a taxpayer action under Code of Civil Procedure § 526a does not lie where the challenged governmental conduct is lawful, and the District’s records practices were lawful under this construction, the Court of Appeal affirmed the judgment denying relief.

Publication Note: Only Part I of the court’s Discussion, its construction of Government Code § 7922.530, is certified for publication. Parts II and III, which review the trial court’s factual findings for substantial evidence, address the plaintiff’s asserted “399-day average” production time, and resolve certain forfeited claims, are unpublished. They are summarized below only as background.

Facts and Procedure: Voice of San Diego, an online news service that reports extensively on local government, and its editor-in-chief, alleged that the San Diego Unified School District, the second largest school district in California, engaged in a regular and ongoing practice of delaying, obstructing, and withholding public records in violation of the CPRA. In addition to its CPRA causes of action, Voice asserted a taxpayer claim under Code of Civil Procedure § 526a, seeking to enjoin what it characterized as the District's illegal expenditure of public funds to carry out that unlawful practice.

The litigation spanned six years and extensive discovery. The trial court summarily adjudicated and later denied the CPRA causes of action, and, following a bifurcated hearing supported by more than 5,500 pages of exhibits, denied the taxpayer cause of action after finding that the District did not maintain an unlawful practice of delaying or withholding records. On appeal, Voice challenged only the denial of its taxpayer claim, the viability of which turned on whether the District's production practices were lawful, and therefore, on the meaning of "promptly available."

Analysis:

Statutory Text and Structure: The court began with the language of Government Code § 7922.530, subdivision (a), which requires an agency to make records "promptly available," but sets no deadline expressed in a number of days. The court contrasted the neighboring duty-of-determination provision, Government Code § 7922.535, subdivision (a), which does impose a precise deadline (10 days from receipt, extendable to twenty-four in enumerated "unusual circumstances"). Because the Legislature demonstrated in the same statutory scheme that it knew how to set a firm deadline, its decision not to do so for the production of records was significant. The court declined to adopt a "days or weeks" requirement on the statute, reasoning that courts may not add language the Legislature omitted.

Federal Authority: The court found Voice's reliance on the D.C. Circuit's decision in Citizens for Responsibility and Ethics in Washington v. Federal Election Commission (D.C. Cir. 2013) unpersuasive. 711 F.3d 180. California courts are not bound by decisions construing the federal Freedom of Information Act (FOIA), and parallel construction is appropriate only where warranted by the question presented. Citizens construed the federal equivalent to the CPRA's duty of determination, not its duty of disclosure, and its statement that production should ordinarily follow "within days or a few weeks" was unaccompanied dictum that offered no guidance on Government Code § 7922.530.

Meaning of "Promptly": Giving the term its ordinary meaning, "ready and quick to act as occasion demands," the court held that whether a disclosure is prompt depends on the circumstances of each case and necessarily requires consideration of the scope and burden imposed on the responding agency by the particular request. The court identified a non-exhaustive list of relevant factors (e.g., specificity and breadth of the request, nature and location of the records, volume of data to be searched, storage medium, level of review required for exemptions and redactions, complexity of the request, and size, scope, and complexity of the responding agency). The court further held that external circumstances beyond an agency's control, are proper considerations, paralleling the "unusual circumstances" the Legislature recognized at the determination stage. At the same time, the court cautioned that the inquiry is not boundless, and a court should not accept every reason an agency offers.

Taxpayer Claim: Because a taxpayer action under Code of Civil Procedure § 526a does not lie against lawful conduct, and the District's production practices were lawful under the proper construction of "promptly," the taxpayer claim failed.

Unpublished Portions (Background Only): In the unpublished portions of its opinion, the court held that substantial evidence supported the trial court's finding that the District maintained no unlawful practice. The court explained that Voice's asserted "399-day average" production time was unsupported and misleading. Voice had selected only 31 of the more than 75 requests it submitted during the relevant period, relied on the date of last production while disregarding the first dates of rolling productions, and in some instances measured "delay" from immaterial later supplements. The records showed that Voice's requests were frequently overbroad, sought records in multiple formats, spanned numerous departments and schools, required extensive redactions, and were processed amid a high volume of requests and, in part, during COVID-19 closures. The court also held that Voice had forfeited its arguments under Government Code § 7922.535.

Impact:

The CPRA imposes no bright-line deadline for the production of records. An agency's obligation is to act promptly in light of the circumstances, and the reasonableness of its production time is measured against the scope and burden of the particular request. Because "promptness" is assessed through multiple factors, an agency's ability to prevail depends on documenting the burden a request imposed. The duty of determination (Government Code § 7922.535) carries a firm ten-day (or twenty-four-day) deadline; the duty of disclosure (Government Code § 7922.530) does not. The flexible "promptly" standard governs only the production of records.