



General Municipal Litigation Update

2026 Annual Conference League of California Cities

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

- **FACTS** – Businesses near the Capitol Hill Occupied Protest (CHOP) sued the City of Seattle after it withdrew police presence from a large area for six months, during which they suffered vandalism, blocked access, and gunfire, resulting in purely economic losses.
- **CHALLENGE** – The businesses argued the City's withdrawal of police protection created a state-created danger violating due process, and the City's toleration and support of the occupation amounted to a per se physical taking and a right-of-access taking.
- **HOLDING** – The City's withdrawal of police presence was neither a per se physical taking nor a right-of-access taking under the Fifth Amendment, and the state-created danger doctrine does not extend to purely economic harm.

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

TAKEAWAYS:

- 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, is confined to bodily and liberty interests; courts have declined to extend it to lost profits or property damage.
- A per se taking requires an affirmative government invasion or physical appropriation of the claimant's own property; mere proximity to a tolerated protest or occupation is not enough.
- A right-of-access takings claim requires a state-law-protected access interest; a temporary restriction was not shown compensable under Washington law.

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

- **FACTS** – County obtained appointment of a receiver to abate nuisance conditions on a deceased owner's property and later sought to hold the owner's sisters personally liable for unpaid receivership costs.
- **CHALLENGE** – After successfully defeating personal liability, the sisters sought attorney fees under Health & Safety Code Section 17980.7(c)(11), while the County argued Section 17984 barred fee awards against public entities.
- **HOLDING** – Section 17980.7(c)(11)'s prevailing-party fee provision controls over section 17984, allowing prevailing parties to recover attorney fees against a public agency in receivership proceedings.

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

TAKEAWAYS:

- Prevailing parties may recover attorney fees against a public agency in Health & Safety Code Section 17980.7 receivership actions notwithstanding Section 17984.
- Multiple parties may each qualify as a “prevailing party” based on their own litigation objectives.
- Public agencies should evaluate whether individuals have a legal ownership interest before naming them in receivership proceedings.

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

Use of Artificial Intelligence

- Appellant's opening brief inappropriately cited AI-generated case law.
- Court instructed the attorney to pay sanctions to the court for conduct that unnecessarily burdens the court and taxpayers.
- The court noted the attorney failed to comply with California State Bar guidance, which states that “a *lawyer* must review all outputs produced using AI tools for accuracy, including but not limited to analysis and citations to authority before submission to the court,” when he indicated that he intended for his paralegal to “simply check the citations before filing the brief.”
- 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.

Dummer v. City & County of San Francisco (2026)

120 Cal.App.5th 1009

- **FACTS** – A fisherman sought to compel San Francisco to immediately obtain a water supply permit and open a drinking water reservoir to public fishing after the City determined fishing could be feasible.
- **CHALLENGE** – The petitioner argued the Health & Safety Code imposed a ministerial duty to immediately apply for a permit and open the reservoir.
- **HOLDING** – The City had no ministerial duty to immediately seek a permit because the statutory and regulatory scheme requires the City to exercise discretion in developing a fishing program, completing CEQA review, and preparing a permit application before seeking SWRCB approval.

Dummer v. City & County of San Francisco (2026)

120 Cal.App.5th 1009

TAKEAWAYS:

- Agencies may complete discretionary planning, CEQA review, and permit preparation before a court can compel submission of a water supply permit application.
- The right to fish under the Fish and Game Code and California Constitution is not absolute and must be harmonized with drinking water protection and environmental laws.
- Mandamus cannot be used to dictate how an agency exercises discretion where the governing statutory scheme requires the agency to exercise its judgment before acting.

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

- **FACTS:** Developer sued Colton (interference, defamation, implied covenant) alleging Colton's finance director falsely told neighboring Yucaipa that Eagle had "defaulted" and that Colton was writing off the loan, killing a ~\$65M project. Developer did not present a Government Claim as required by Government Code section 915, but instead handed a councilmember a letter labeled "Confidential Settlement Communication" during an off-site private meeting. Trial court denied Colton's anti-SLAPP motion; the Court of Appeal, reviewing de novo, reversed and ordered the motion granted.
- **HOLDING:** Both anti-SLAPP prongs favored the city; the claims arose from protected activity, and Eagle failed to show claims had minimal merit because they did not comply with the Government Claims Act; the motion must be granted, with mandatory defense attorney fees to be fixed on remand.

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

■ TAKEAWAYS:

- Inter-agency communications are protected public-interest speech;
- Anti-SLAPP is a public-entity defense that also shifts fees;
- The Government Claims Act's presentation requirement is applied strictly. The council member was not statutorily authorized to accept and process Eagle's claim against Colton, and the letter was not "readily identifiable" as a claim. As such, Eagle's claims were barred by the Government Claims Act.

Fix the City, Inc. v. City of Los Angeles (2026)

118 Cal.App.5th 957



- **FACTS:** Nonprofit challenged LAAC § 8.33, which lets the LA mayor declare a “local housing and/or homelessness emergency” and exercise emergency powers; Mayor Bass declared one in 2023 (lifted Nov. 2025); the nonprofit argued the CESA preempts LAAC § 8.33; trial court sustained the demurrer; Court of Appeal affirms
- **HOLDING:** LAAC § 8.33 concerns a municipal affair, and CESA neither actually conflicts with it nor occupies the field; the ordinance is a valid exercise of charter-city home-rule authority

Fix the City, Inc. v. City of Los Angeles (2026)

118 Cal.App.5th 957



- **TAKEAWAYS:** 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.

City of Fresno v. Superior Court (2026) 119 Cal.App.5th 418 - California Public Records Act



- ACLU submitted a CPRA request seeking public records regarding police K-9s. The request sought records concerning K-9 bites, injuries, and K-9 incidents involving force leading to death, excessive force, failure to intervene, dishonesty, or discrimination.
- City produced responsive records but also withheld use-of-force records that did not result in great bodily injury, which the City defined as “serious bodily injury” pursuant to Government Code Section 12525.2(d)(4).

City of Fresno v. Superior Court (2026) 119 Cal.App.5th 418 - California Public Records Act



- The court held that the Legislature intended for the phrase “great bodily injury” in Penal Code Section 832.7 to be construed consistently with Penal Code Section 12022.7.
- Public agencies should take notice that the phrase “great bodily injury” in Penal Code Section 832.7(b)(1) should be interpreted to have the same meaning as in Penal Code Section 12022.7(f)(1), which defines it as “a significant or substantial physical injury.”

Gibbs v. County of Humboldt (2026) 119 Cal.App.5th 565



- **FACTS** – A retiring court reporter sought to compel Humboldt County to certify her employment history for CalPERS after the County failed to timely enroll her in the retirement system and could not produce complete personnel records documenting her tenure.
- **CHALLENGE** – Gibbs argued the County owed nondiscretionary duties under the Public Employees' Retirement Law to timely enroll her in CalPERS, and under Labor Code section 1198.5 to maintain and produce her personnel records, and that breach of both duties caused her lost retirement benefits.
- **HOLDING** – Gibbs stated viable causes of action that the County had mandatory, nondiscretionary duties under Government Code section 815.6 to timely enroll Gibbs in CalPERS and to maintain and produce her personnel records.

Gibbs v. County of Humboldt (2026) 119 Cal.App.5th 565



TAKEAWAYS:

- Public employers owe a mandatory, nondiscretionary duty to timely enroll eligible employees in CalPERS; treating it as discretionary would render the pension benefit illusory.
- Labor Code section 1198.5 and Government Code section 31011 impose a nondiscretionary duty to retain personnel records for three years post-termination and permit employee inspection.
- A structural change in employment, such as the shift of court reporters from county to court employment under the Trial Court Employment Protection and Governance Act (TCEPGA), does not extinguish these duties where employment continues without a break.

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

- **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** - The State of Louisiana redrew its congressional district maps after the 2020 census in response to population changes ("Prior Map"). Federal district court ruled 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.
- The new map, with the additional majority-minority district ("New Map"), was challenged. A three-judge federal district court panel ruled 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.

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

- The U.S. Supreme Court applied strict scrutiny and upheld the ruling that the New Map was an unconstitutional racial gerrymander.
- The Court determined that the VRA did not require creation of an additional majority-minority district, and therefore there was no “compelling interest” justifying the use of race in creating the New Map.
- The 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 (i.e., districts were intentionally drawn to provide minority voters with less opportunity because of their race).

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

- The case substantially affects the burden of proof in VRA litigation.
 - Challengers must now produce an alternative map with a proposed majority-minority district that does not “use race as a districting criterion.”
 - Alternative map must also achieve the government’s legitimate districting objectives and political goals, which can include partisan gerrymandering, protecting incumbents, or other constitutional goals.
 - 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.

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

- **Implications for CVRA** – The decision creates the possibility of a future challenge to the constitutionality of the CVRA. 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.
- **SB 1164** 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.
- **SB 1164** has passed in the Senate and Assembly.

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

- Voters in the City of Oxnard approved per-candidate contribution limits and aggregate contribution limits for municipal elections.
- A political advocacy nonprofit organization challenged the City's contribution limits on First Amendment and Fourteenth Amendment grounds.
- District Court upheld the contribution limits. Court of Appeals affirmed: the City had a legitimate governmental interest in imposing contribution limits to target actual or apparent *quid pro quo* corruption, and the contribution limits were closely drawn to that interest. The contribution limits did not improperly discriminate between candidates in violation of the Fourteenth Amendment.

Theis v. InterMountain Education Service District (2026) 182 F.4th 1091

- **FACTS** – Theis, an Educational Specialist, displayed children’s books that expressed a binary view of gender in his office while meeting with students. After receiving a complaint, IMESD investigated and determined that the display constituted a bias incident under district policy and directed Theis to remove the display when students were present. Theis resumed displaying the books around students and was subsequently terminated from employment.
- **CHALLENGE** – The employee argued that the displays constituted protected private speech and IMESD violated his First Amendment rights by directing him to remove the books from his office and later terminating his employment.
- **HOLDING** – The displays were not protected private speech because they occurred in a student-facing office while Theis was performing his official duties. As government speech under *Garcetti*, IMESD could regulate the displays without violating the First Amendment.

Theis v. InterMountain Education Service District (2026) 182 F.4th 1091

TAKEAWAYS:

- Public school employees generally speak pursuant to their official duties when conveying messages to students in student-facing settings.
- Whether employee speech is protected turns first on the *Garcetti* inquiry into whether the employee spoke as a private citizen or pursuant to official duties before the *Pickering* balancing test is applied.
- The Ninth Circuit distinguished *Kennedy v. Bremerton School District*, finding that *Kennedy* does not protect speech occurring while an employee is performing official duties in a student-facing setting.

Toy v. City and County of San Francisco (2026)

121 Cal.App.5th 1292 – Validation Statutes

- Under Government Code section 53759 any attack on an ordinance, resolution, or motion adopted or amended after January 1, 2022 that adopts or modifies 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.).
 - The validation statutes require the summons be directed to “all persons interested in the matter” and that the summons be served by publication within 60 days.
- In May 2023, following compliance with Prop. 218 notice requirements, the City and County of San Francisco adopted Resolution 23-103, increasing its water rates.
- In October 2023, Plaintiffs filed a class action lawsuit alleging the water rates exceed the cost of service in violation of Prop. 218 because they included costs associated with public fire service.
- Plaintiffs’ lawsuit was styled: “Refund, Declaratory Relief, and Equitable Relief, and Petition for Writ of Mandate.” Plaintiffs’ summons did not meet the requirements for a reverse validation action, and was not published in the manner required by the validation statutes.

Toy v. City and County of San Francisco (2026)

121 Cal.App.5th 1292

- Over a year after answering the complaint, the City filed a MJOP asserting, for the first time, that the complaint failed to comply with the validation procedures.
- The trial court granted the MJOP without leave to amend.
- Plaintiffs appealed, arguing the City waived compliance with the validation statutes by litigating the case, and that good cause existed for their failure to comply with the procedures.

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

■ The Court of Appeal affirmed.

- Waiver is “the intentional relinquishment or abandonment of a known right.” (*Id.* at p. 1303.) “Plaintiffs do not even attempt to show, much less show, such intentionality.” (*Id.* at p. 1304.)
 - Litigating the case for over a year, including filing cross-motions for summary judgment and paying over \$80,000 in costs to distribute notices to class members, was not a waiver.
- Furthermore, the court reaffirmed that in a validation action, publication of the summons is the only way for the court to acquire jurisdiction over the matter, and “[f]ailure to publish a summons in accordance with the statutory requirements ... deprives the court of the power to rule upon the matter.” (*Id.* at p. 1307.)
- The trial court's conclusion that there was no good cause for Plaintiffs' failure to comply “was amply supported and, at a minimum, did not constitute an abuse of discretion.” (*Id.* at p. 1309.)

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

- A restaurant operator in Ventura Harbor was the sublessee of commercial real property under a master lease with the Ventura Port District.
- The sublease required the restaurant operator to pay a percentage of gross income derived from all sales conducted on or from the premises.
- The restaurant operator sued the District, arguing that the percentage rent clause violated Article XIII C and Article XX, Section 22 of the California Constitution.

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

- **Ventura County Superior Court upheld the rent clause and ruled against the restaurant operator. The Court of Appeal for the Second District affirmed for the following reasons:**
 - The percentage rent clause was not a tax because it met the exception provided under Article XIII C, Section 1, subdivision (e)(4). Additionally, the percentage rent clause was not subject to a “reasonableness” requirement because the exception itself did not have such a requirement.
 - The percentage rent clause did not violate 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 on or from the premises, not just sales of alcoholic beverages.

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



- **FACTS:** News org alleged the District routinely delays/withholds records in violation of CPRA and brought a CCP § 526a taxpayer claim to enjoin the spending on that practice; trial court found no unlawful practice; Court of Appeal affirms.
- **HOLDING:** Gov. Code § 7922.530(a) “promptly available” sets no fixed deadline for producing records; promptness is a case-by-case question.
- **TAKEAWAY:** there is no bright-line production deadline; promptness depends on breadth/specificity, data volume, storage medium, redaction and exemption review, and agency size, plus external disruptions, but courts won’t accept “any and every reason.”



Thank you!

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