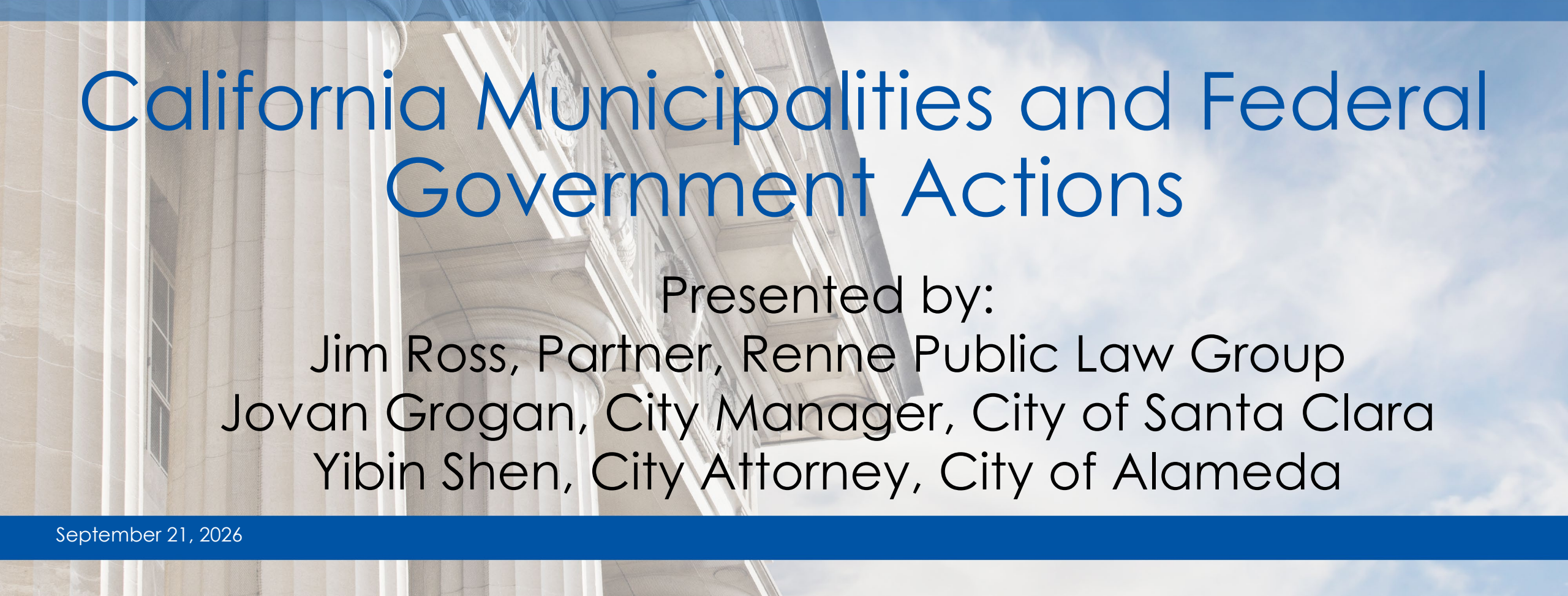


The logo for Renne Public Law Group (RPLG) features the letters "RPLG" in a bold, blue, serif font, centered within a white rectangular box.

RPLG

Renne Public Law Group®

The background of the slide is a photograph of a classical building with tall, white columns and ornate architectural details. The image is slightly faded and serves as a backdrop for the text.

California Municipalities and Federal Government Actions

Presented by:

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From the City Managers Perspective

- Why did we decide to join litigation challenging Federal grant decisions?
- Consequences of not being protected by a preliminary injunction.
- Impacted programs and downstream impacts.
- Staff concerns – grant conditions v. litigating
- Talking with Councilmembers

Strategic Considerations – City Manager's Perspective

- Motivations for a board to join:
 - Philosophical opposition
 - Political motivations
 - Apolitical legal issues
- What about retaliation:
 - As the number of litigating entities grows, the risk of retaliation is reduced
 - For the Council, keeping discussion of litigation apolitical to ideology or motivation for joining
 - Both in legal arguments and press

From the City Attorneys Perspective

- Legal review of grant agreements/NOFOs
- Questions from staff regarding execution of grant agreements/applications
- Considering litigation
 - Risks v. benefits
 - Evaluating cases
- Talking with the Council
- Working with other entities/joining coalitions

Strategic Considerations – City Manager's Perspective

Why the need for Federal Grant Litigation?

- Post-CASAWorld
- Issuance of Executive Orders
- Conditioning grants on compliance with Executive Orders
- The question for many was, can they comply with the new grant conditions

Legal Issues

- Constitutional
 - Vague
 - Violation of separation of powers
 - Lack of nexus
 - Immigration enforcement violates the 10th Amendment
- Violation of the APA
 - Conditions are not committed to agency discretion by law
 - Federal agency actions at issue are "final agency action" reviewable under APA
 - Conditions are in excess of statutory jurisdiction

Examples of Executive Orders of Concern

- EO No. 14151 Ending Radical and Wasteful Government DEI Programs and Preferencing
- EO No. 14173 Ending Illegal Discrimination and Restoring Merit-Based Opportunity
- EO No. 14168 Defending Women from Gender Ideology Extremism
- EO No. 14182 Enforcing the Hyde Amendment
- EO No. 14218 Ending Taxpayer Subsidization of Open Borders
- EO No. 14287 Protecting American Communities from Criminal Aliens
- EO No. 14332 Improving Oversight of Federal Grantmaking

Reactions by local entities

- Coalitions of litigating entities begin to form
- The Venn diagram of litigation
 - Roughly 20-30 individual cases filed in various Federal District Courts
 - Some cases have up to 70 or more plaintiffs
- Impact of the patchwork of litigation

Legal Reasons to Participate in Grant Conditions Litigation: Risk of Non-Compliance

- Contractual Penalties:
 - Clawing back grant funds
 - Denial of future grants
 - Termination of Grants
- Civil Penalties:
 - False Claims Act – personal liability
 - Fine of \$5,000-10,000 and three times damages to Federal Gov
 - Administration has indicated intent to use False Claims Act
 - Qui Tam actions allow for recovery from False Claims Act
- Criminal Penalties:
 - Violation of the False Claims Act can be charged as a Felony

From the City Attorneys Perspective

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Strategic Considerations – City Attorney's Perspective

- Trump v. CASA, Inc.
 - Limited the ability of federal courts to issue nationwide injunctions
- Nat'l Insts. of Health v. Am. Pub. Health Ass'n
 - Cases involving the termination of grants must be brought in the Court of Claims
 - One may be forced to litigate in the Court of Claims if a grant is terminated without litigation having been first brought

Strategic Considerations – City Attorney's Perspective

- SB 54 (California Values Act)
 - Prohibits law enforcement agencies from “[i]nquiring into an individual’s immigration status”
 - “[D]etaining an individual on the basis of a hold request
 - “[P]roviding information regarding a person’s release date” or other “personal information,” such as “the individual’s home address or work address”; and
 - “[a]ssisting immigration authorities” in certain activities

Strategic Considerations – City Attorney's Perspective

- Risks for Non-Compliance with Grant Conditions
 - Recoupment or “clawing back” grant funds, where the local agency must pay back funds that were improperly received under the agreement
 - “Improper payment” - payment that should not have been made under a statutory, contractual, administrative, or other legally applicable requirement, and includes payments to ineligible grant recipients. (31 U.S.C. 3351(4)(A).)
 - Civil Penalties (False Claims Act)
 - (1) A fine of \$5,000 to \$10,000, adjusted for inflation, and (2) three times the damages sustained by the federal government (i.e. the amount of funds received as a result of the false claim)

Strategic Considerations – City Attorney's Perspective

- Risks for Non-Compliance with Grant Conditions
 - Civil Penalties (Qui Tam or Whistleblower Actions Claims Act)
 - A private party who brings a qui tam action is entitled to 15% to 30% of the proceeds if it is successful
 - Criminal Penalties

Strategic Considerations – City Attorney's Perspective

- Considerations for litigating individually or collectively
 - Cost
 - Efficiency
 - Cover

A low-angle photograph of a classical building facade featuring large, fluted columns and a pediment with sculptural carvings. The sky is blue with light clouds. The text 'Questions? Concerns? Discussion' is overlaid in a bold, blue, serif font on the right side of the image.

Questions? Concerns? Discussion