

General Municipal Litigation Update

League of California Cities
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Agenda

- Initiatives
- Housing
- Local Government
- Municipal Finance

Initiatives



Legislature of the State of California v. Weber 🗳️

- Article XVIII allows for amendments to the Constitution by initiative, but not revisions that substantially alter the state's basic governmental framework.
- In 2022, the California Business Roundtable placed "Taxpayer Protection and Government Accountability Act" on the November 2024 ballot. Required voter approval of "any new or higher tax" and legislative action on "all fees or other charges." Net effect was all government levies were subject to voter approval.
- Supreme Court granted pre-election review, found an unconstitutional revision to constitutional structure by:
 - Taking away legislature's power to tax
 - Requiring legislature to pass all levy, subjecting all revenue to referendum
 - Forbidding administrative fee setting

Housing



City of Grants Pass, Oregon v. Johnson 🗺️

- In *Martin v. Boise* (920 F.3d 584), Ninth Circuit held that criminalizing public camping when number of homeless exceeded number of available shelter beds violated Eighth Amendment, as it criminalized “involuntary status” of homelessness.
- In *Grants Pass*, U.S. Supreme Court overturned *Martin*, holding that “cruel and unusual punishment” does not focus on conduct being criminalized, but on how it is punished, such as to add terror, pain, or disgrace. The punishment at issue in Grants Pass (fines and a 30-day jail sentence) did not qualify.
- Court distinguished *Robinson v. Cal.* (370 U.S. 660), where Court struck down statute criminalizing narcotics addiction, which Court saw as a “status.” Court held *Robinson* was narrow and that Grants Pass was criminalizing conduct, not status.
- Court noted that homelessness is complex and has no single cause (*i.e.*, not just a lack of shelter space). It further held that unregulated encampments can cause significant problems for a jurisdiction, and that anti-camping regulations are an important tool to address these issues.

Housing



AIDS Healthcare Foundation v. Bonta

- To help address housing crisis, SB 10 (Gov. Code 65913.5) allows local legislatures, including those of charter cities, to zone urban-infill parcels for 10 units of residential density, regardless of local density caps, even if adopted by initiative.
- Challengers claimed SB 10 violated Cal. Const. by allowing local legislatures to override will of voters. The court held:
- (1) Housing crisis is a statewide concern, thus allowing SB 10 to override regulations of charter cities. Also, handling at state level helps avoid NIMBY concerns.
- (2) SB 10 preempts local caps because they prohibit what state expressly allows.
- (3) State may preempt local initiatives upon “clear showing” or “definite indication.”
- (4) State may exercise preemptive power by delegating to local legislative bodies the discretion to exercise that preemptive power on a parcel-by-parcel basis.

Local Government



Cohen v. Superior Court of Los Angeles County 🗺️

- Neighbor sued over landscaping allegedly violating LA Muni. Code.
- Cited Government Code section 36900(a) and *Riley v. Hilton Hotels Corp.* for private right of action to enforce municipal code violations.
- Court noted a private right of action exists only where the language of statute and legislative history show a manifest intent to create a right to sue.
- Section 36900(a) states “The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, **or redressed by civil action.**”
- Court found the language ambiguous, but noted earlier statutes gave the power to bring a civil case only to city authorities, and the legislative history showed subsequent amendments were not designed to make substantive changes.
- Court also acknowledged Cities’ interest in controlling legal interpretation of ordinances.
- Review granted September 18, 2024.

Municipal Finance



Sheetz v. County of El Dorado, California 🗺️

- Fifth Amendment Takings Clause prohibits land dedications or monetary exactions as permit conditions except where they meet the *Nollan/Dolan* test of “rough proportionality” and an “essential nexus.”
- California law did not apply these tests to legislatively enacted fee schedules.
- El Dorado imposed traffic-impact fee of \$23,420 on owner attempting to place prefabricated home off Highway 50.
- Owner sued, and California Court of Appeal found legislative fee not subject to *Nollan/Dolan* test.
- SCOTUS reverses, resolving split, finding that both legislative and administrative exactions subject to Takings Clause.
- Mitigation Fee Act already requires similar findings.
- *Koontz* and *Sheetz* used to challenge all fees as takings, but see *McMillan v. Gridley*.

Municipal Finance



Coziahr v. Otay Water District 🗺️

- Plaintiff class challenged water district's "tiered rate" structure under Prop. 218's "proportionality requirement," which states that fee or charge imposed on a particular parcel "shall not exceed the proportional cost of the service attributable to the parcel." ([Cal. Const., art. XIII D, § 6](#), subd. (b)(3).)
- Under "tiered rates," users are charged more per unit as usage increases, even though costs to agency per unit presumably do not increase.
- Trial court determined that district did not meet its burden of showing that its costs increased as usage by individual parcel increased. Court of appeals affirmed.
- Court held that independent judgment standard applied to review of district's decision, which was entitled to no deference. In addition, trial court's factual determinations (including on interpretation of those rate studies and expert testimony) was entitled to substantial evidence standard.

Municipal Finance



Coziahr v. Otay Water District (cont.)

- Court upheld determination that district did not meet its burden primarily because:
 - (1) district's rate studies, expert, and board noted that tiered rates were at least partially adopted for conservation, not cost recovery;
 - (2) district's expert at trial admitted costs per unit did not increase with usage;
 - (3) difference between tiers was based on industry manual, not district data; and
 - (4) reliance on "peaking factors" did not show link between costs and usage, and could not do so without time-of-use data (which district did not have).
- Court upheld award of \$18 million in overcharged fees (an issue of first impression), and held that tort claim was required for recovery.
- **Recent Laws**: SB 1072 and AB 1827, signed in Sept., could undermine *Coziahr*. SB 1072 requires that surplus funds collected from water and wastewater customers be used to reduce future fees (undoing damages claims). AB 1827 states that meter charges and peak usage associated with higher costs of water service are appropriate components of water fees (may or may not save "peaking factors").

Questions