General Municipal Litigation Update

Friday, May 9, 2025

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GENERAL MUNICIPAL
LITIGATION UPDATE
FOR

LEAGUE OF CALIFORNIA CITIES
ANNUAL CONFERENCE
SPRING 2025

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A. *Moving Oxnard Forward, Inc. v. Ascension* (9th Cir. 2024) 124 F.4th 605

Holding: A nonprofit corporation brought an action under 42 U.S.C. section 1983 challenging a voter-approved measure that placed limits on campaign contributions to candidates in city elections. The Ninth Circuit held that, although local agencies are normally provided deference on their determinations of campaign-contribution limits, heightened scrutiny was justified here because of facts indicating that a particular individual (who was affiliated with the nonprofit-entity plaintiff) was the target of the city council when it proposed the measure, and that the measure raised a sufficient danger of "invidious discrimination" against that individual. Under heightened scrutiny, the Court held that the measure was not "closely drawn" to match the city's interest in avoiding quid pro quo corruption, and that the measure therefore violated the First Amendment's Free Speech Clause.

Facts/Background: In October of 2019, the City Council of the City of Oxnard placed "Measure B" on the ballot for the election scheduled for March of 2020. Measure B proposed to (1) limit contributions to City Council candidates per election to $500 for individuals and $1,000 for political action committees, and (2) limit contributions to City-wide candidates (such as for Mayor) per election to $750 for individuals and $1,500 for PACs. The voters approved Measure B at the March 2020 election, and it took effect on May 1, 2020.

Shortly after Measure B took effect, a nonprofit entity called Moving Oxnard Forward, Inc. ("MOF") filed a lawsuit under 42 U.S.C. section 1983, claiming that Measure B violated the Free Speech Clause of the First Amendment.

The president of MOF was an individual named Aaron Starr, who had been very active in Oxnard politics, and who consistently relied on larger-dollar contributions compared to other City candidates. The year prior to the adoption of Measure B, Starr had orchestrated an unsuccessful recall effort against a majority of the City Council, and had come in second in the race for Mayor. Prior to that, Starr and MOF had successfully supported a ballot initiative that overturned an increase in certain fees that was passed by the City Council and that then became the subject of litigation between Starr and the City.

In response to cross-motions for summary judgment, the district court granted summary judgment in favor of the City, and MOF appealed.

Analysis: The Ninth Circuit analyzed MOF's First Amendment claim as follows: Under the Supreme Court case of *Randall v. Sorrell* (2006) 548 U.S. 230, campaign-contribution limits "are permissible as long as the Government demonstrates that the limits are 'closely drawn' to match a 'sufficiently important interest.'" (*Id.* at 247.) Moreover, the Supreme Court has "identified only one legitimate governmental interest for restricting campaign finances: preventing corruption or the appearance of corruption"—specifically, "quid pro quo corruption," defined as "a direct exchange of an official act for money." (*McCutcheon v. FEC* (2014) 572 U.S. 185, 192, 206-07.)

According to the Court, this analysis is normally applied with a fair amount of deference to the local legislature. First, in order to justify any limit on campaign contributions, the legislative record must simply reflect *some* threshold evidence—which the Ninth Circuit described as a "low burden"—that "would tend to identify a big donation with a corrupt purpose." (*Nixon v. Shrink Mo. Gov't PAC*, (2000) 528 U.S. 377, 391-92; *Lair v. Motl* (9th Cir. 2017) 873 F.3d 1170, 1178.) If the government meets this burden, the court must then consider whether the contribution limits are "closely drawn" to the legitimate interest of curbing quid pro quo production. (*Lair*, 873 F.3d at 1180.) On this issue, the Supreme Court has noted that local legislative bodies are "better equipped to make such empirical judgments," and that the courts therefore should "ordinarily" "defer[ ] to the legislature's determination of such matters." (*Randall*, 548 U.S. at 248.)

However, there is an exception to such deference where there are "strong indicia in a particular case, i.e., danger signs," that the contribution limits will present "constitutional risks to the democratic electoral process" that are "too great." (*Randall*, 548 U.S. at 248.) In such cases, courts are required to exercise "independent judicial judgment" and review the record "independently and carefully" to assess the "proportionality of the restrictions." (*Id.* at 249.) In this context, courts must determine whether there is "any special justification" that would warrant upholding the statute's restrictions in light of the constitutional concerns. (*Id.* at 261.)

Applying these standards, the Court in *Move Oxnard Forward* held that the City's contribution limits presented sufficient "danger signs" of constitutional risks to the democratic electoral process to require heightened scrutiny. Specifically, the record showed that the City may have engaged in "invidious discrimination" against Starr. The legislative record, including staff reports and Council comments on Measure B, indicated that (1) Starr and his contributions were an express target of the City Council when it proposed and promoted Measure B; (2) Starr was the person who would be most affected by Measure B, if not the only person affected; and (3) there was a considerable history of antipathy between Starr and the City's elected officials in recent years. In terms of the particular impact on Starr, a study on campaign contributions in recent City elections showed that the vast majority of the money received by Starr (who had run for Mayor) came from contributions over $750, whereas most other candidates received few or no contributions over that limit.

Reviewing the record under heightened scrutiny, the Court concluded that Measure B's contribution limits were not narrowly tailored to match the City's interest in avoiding quid pro quo corruption. Although the City cited a 2010 City corruption scandal as a basis for the limits, the Court held that this scandal bore little to-no-relationship to Measure B, as the scandal involved gifts to elected officials, not campaign contributions. According to the Court, under the record as a whole, Measure B's contribution limits seemed much more closely drawn to the prohibited objective of stopping Starr than remedying corruption concerns.

Impact: This case creates a risk that campaign-contribution limits will be subject to heightened scrutiny where the legislative record indicates that certain individuals will be disproportionately impacted by them. On the other hand, because the facts of this case are fairly extreme—*i.e.*, one person with a certain history of animosity and campaign challenges against the current city council was the only person significantly impacted by the limits—the case may have limited reach. At the very least, the case provides a roadmap to avoid heightened scrutiny by ensuring that contribution limits are fair and address legitimate corruption concerns.

B. *Bonta v. Superior Court (2024) 104 Cal.App.5th 107 (Third District)*

Holding: The Court of Appeal held that the ballot label for Proposition 5, which would have amended the California Constitution to allow local bonds for infrastructure and affordable housing to be approved by a vote of 55% of the electorate, was not false or misleading, and provided a concise and accurate description of the measure as required by law, despite the fact that the label failed to mention that existing law would require a two-thirds vote. In addition to determining the terms of the ballot label to be accurate, the Court noted that the label as a whole indicated that the measure would relax the standards for the adoption of the bonds, and that other ballot materials, such as the title and summary, mentioned the current two-thirds voting requirement.

Facts/Background: Proposition 13, adopted in 1978, requires that local bonds, and taxes to support those bonds, must generally be approved by a two-thirds vote of the electorate. (Cal. Const., Art. XIII A, § 1, subd. (b)(2).) Proposition 5, which was on the ballot for the November 2024 election, would have amended the California Constitution to permit local bonds for public infrastructure and affordable housing to be approved with 55-percent voter approval.

Pursuant to its statutory duties, Attorney General Rob Bonta prepared both a ballot title and summary for the measure, which was limited to 100 words, and a ballot label, which was limited to 75 words. Under the Elections Code, the ballot label was supposed to be a "condensed version" of the title and summary. Unlike the 100-word limit for the title and summary, the 75-word limit for the ballot label had to account for and include the Legislative Analyst's "fiscal impact" statement for the measure. (Elec. Code §§ 9051(b), 303(b).)

Against this backdrop, the ballot label for Proposition 5 consisted of the following: "**ALLOWS LOCAL BONDS FOR AFFORDABLE HOUSING AND PUBLIC INFRASTRUCTURE WITH 55% VOTER APPROVAL. LEGISLATIVE CONSTITUTIONAL AMENDMENT.** Allows approval of local infrastructure and housing bonds for low- and middle-income Californians with 55% vote. Accountability requirements. **Fiscal Impact**: Increased local borrowing to fund affordable housing, supportive housing, and public infrastructure. The amount would depend on decisions by local governments and voters. Borrowing would be repaid with higher property taxes."

Howard Jarvis Taxpayers Association filed an action challenging the ballot label as false and misleading because it failed to mention the existing two-thirds vote requirement. The trial court agreed, and ordered the Attorney General to amend the phrase "with 55% vote" to "with 55% voter approval, rather than current two-thirds approval requirement." In response, the Attorney General filed a petition for writ of mandate in the Court of Appeal, seeking review.

Analysis: The Court of Appeal reversed the trial court and upheld the original terms of the ballot label as accurate, non-misleading, and as an appropriate exercise of the Attorney General's discretion in preparing a "condensed version" of the ballot title and summary.

The Court began its analysis by noting that the Elections Code requires the Attorney General to prepare both the ballot title and summary, and the ballot label, in true and impartial terms that are neither argumentative nor misleading. The Court noted that, in performing this discretionary function, the Attorney General is entitled to considerable deference, and that a reviewing court must "indulge all legitimate presumptions in favoring the propriety of the Attorney General's actions." The Court further noted that ballot materials prepared by the Attorney General may only be invalidated upon clear and convincing evidence that they are false, misleading, or inconsistent with the requirements of the Elections Code.

Under these standards, the Court held that the ballot label—even if viewed on its own—was both factually accurate and non-misleading. On the two-thirds vote requirement, the Court noted that the ballot label (1) referred to "allowing" approval of the subject bonds with a 55% vote requirement, and (2) stated that this would increase "local borrowing." According to the Court, this language would cause voters to understand the measure to be "relaxing the rules for authorizing" the subject bonds. According to the Court, "[w]hat Proposition 5 would itself effectuate is couched in concise language that is easy to understand."

Although the Court held that the ballot label was accurate and non-misleading when read in isolation, it nevertheless noted that the title and summary included a reference to the two-thirds voting requirement, which the Court stated would reduce any risk that the public would be misled.

Finally, the Court noted that the deference to be afforded to the Attorney General is heightened in the context of the ballot label, where the Attorney General is required to provide a "condensed version" of the title and summary, and where, in applying the 75-word limit, it must also account for the Legislative Analyst's "fiscal impact," which the Attorney General often receives (as it did in this case) at the last minute.

In this context, the Court held that, "[t]he fact that the Attorney General included language in the title and summary that is omitted in the ballot label is entirely consistent with his discretion and the statutory requirement that the label be a 'condensed version of the ballot title and summary.'"

Impact: This case reduces the risk of successful challenges to ballot materials. The case both highlights the deference to which elections officials are entitled in preparing such materials, and supports an argument that a ballot label may be read in conjunction with other ballot materials when determining whether it is false and misleading.

II. BROWN ACT

A. *Burton v. Campbell* (2024) 106 Cal.App.5th 953 (Fourth District, Division 1)

Holding: The Court of Appeal held that a city resident could not bring an action under the Brown Act challenging a city decision where the resident herself did not first send a pre-litigation "cure or correct" letter to the city as required by Government Code section 54960.1, even though a timely letter raising the resident's claim had been sent by someone else. According to the Court, the plaintiff in a Brown Act challenge under Section 54960.1 must be the same person who sent the pre-litigation letter. The Court reached this conclusion even though the letter raising the issue was sent by the plaintiff's attorney, because the attorney had not yet been retained by the plaintiff at the time the letter was sent, and the letter did not mention the plaintiff.

Facts/Background: In May of 2021, the San Diego City Council voted to approve franchise agreements that give San Diego Gas & Electric Company ("SDG&E") the exclusive right to provide gas and electric services to San Diego residents.

A few days before that decision, attorney Maria Severson of Aguirre & Severson, LLP sent a letter to the City alleging that the City Council members engaged in a "secret serial meeting" in violation of section 54952.2, subdivision (b)(1), of the Brown Act, with respect to the franchise agreements. Citing section 54960.1 of the Brown Act (the provision that authorizes lawsuits to invalidate actions taken in violation of certain sections of the Act), the letter requested that the City "cure and correct" the issue by taking the franchise agreement off the agenda for the upcoming City Council meeting.

The City nevertheless moved forward with the meeting and approved the agreements. The next day, Severson sent a second letter, claiming that the agreements had been discussed in an unlawful serial meeting, citing section 54960.1, and requesting that the City "cure and correct" the violation by rescinding its approval of the agreements.

Thereafter, in early June, Plaintiff Kathryn Burton retained Severson's firm to represent her. On Burton's behalf, the firm filed a complaint against the City and SDG&E under the Brown Act, seeking to invalidate the City's approval of the franchise agreements under section 54960.1. During discovery, Burton admitted that she did not retain the Severson firm until after the cure-and-correct letters were sent, and that she was not involved in preparing the letters.

SDG&E thereafter filed a motion for summary judgment on the ground that Burton had not sent a "cure or correct" letter to the City prior to filing suit as required by section 54960.1. In response, Burton sought to rely on the letters sent by Severson, which she claimed to have "adopted, authorized, and ratified" in her complaint. The trial court rejected this argument and granted the motion. Burton appealed.

Analysis: Government Code section 54960.1 authorizes lawsuits to invalidate actions taken in violation of certain provisions of the Brown Act. Amongst those provisions is section 54953, which requires that meetings of the legislative bodies of local agencies be "open and public."

Lawsuits permitted by section 54960.1 may be filed by “the district attorney or any interested person.” (Gov. Code § 54960.1(a).) However, section 54960.1 requires that, before such a lawsuit can be filed, “the district attorney or interested person” must submit a written demand to the legislative body to “cure or correct” the action. (Gov. Code § 54960.1(b).) This demand must be sent within 90 days of the challenged action, unless the alleged violation involves section 54954.2 (relating to the posting of meeting agendas), in which case it must be sent within 30 days of the challenged action.

Based on this language, the Court of Appeal held that, in order to satisfy section 54960.1’s demand requirement, the plaintiff in the lawsuit must have been the same person who sent the demand. In reaching this conclusion, the Court stated that, although subsection (a) of section 54960.1 authorizes lawsuits to be filed by “*any* interested person,” subsection (b) then states that the pre-litigation demand must be sent by “*the* . . . interested person,” implying that the demand must have been sent by the suing plaintiff.

Based on this law, the Court held that Burton could not satisfy section 54960.1’s demand requirement because no letter was sent by her or on her behalf. In reaching this conclusion, the Court noted that (1) Burton had not retained the Severson firm until after it had sent the two “cure or correct” letters, (2) the letters did not mention Burton, and (3) Burton admitted in her deposition that she was not involved in the preparation of the letters.

In response, Burton claimed that she could “adopt and ratify” the Severson letters after the fact. However, the Court rejected this argument. The Court held that ratification involves a person adopting the act of another when the act was “purportedly done on [their] behalf,” citing *Cavey v. Tualla* (2021) 69 Cal.App.5th 310, 339, fn. 9, and *Anderson v. Fay Improvement Co.* (1955) 134 Cal.App.2d 738, 748. Here, because it was undisputed that the letters were not sent on Burton’s behalf, the doctrine did not apply.

The Court also rejected Burton’s argument that she had substantially complied with section 54960.1. According to the Court, this argument failed because (1) Burton raised this argument for the first time on appeal, and (2) the doctrine requires at least some attempt at compliance, which did not occur here, at least not on behalf of Burton. The Court also noted that, at the time her lawsuit was filed in June of 2021, Burton still had time to submit a cure-or-correct demand on her own behalf.

Impact: This case narrows the circumstances under which a “cure or correct” demand will be deemed compliant with section 54060.1, and broadens the public agency’s potential arguments in a Brown Act lawsuit under that provision. Also, because of the similarity in statutory language, the reasoning likely also applies to cases brought under section 54960.2, which applies to lawsuits seeking to apply the Brown Act to past violations, without seeking to invalidate them.

III. ANTI-SLAPP

A. *Howard Jarvis Taxpayers Association v. Powell (2024) 105 Cal.App.5th 955 (Fourth District, Division 2)*

Holding: The Court of Appeal held that the "public interest" exemption to the anti-SLAPP statute, set forth in Code of Civil Procedure section 425.17, did not apply to a lawsuit against a water district, its board members, and its general manager, because the relief requested could only be provided by the water district itself, not its board members or staff, and "the public interest is not advanced when individual members of an official government body are sued for relief only the government body can provide."

Facts/Background: A resident (later joined by the Howard Jarvis Taxpayers Association) sued the Coachella Valley Water District, as well as its five board members, its general manager, and three of its consulting firms. The plaintiffs claimed that certain replenishment charges imposed by the District were unconstitutional and forced taxpayers and ratepayers in one part of the Valley to subsidize agricultural property owners in other parts of the Valley. The lawsuit alleged several causes of action, including claims for writ of mandate and conversion against the District, its board members, and its general manager.

All defendants except the District filed an anti-SLAPP motion pursuant to Code of Civil Procedure section 425.16. That section, known as the "anti-SLAPP statute," allows a defendant to bring a special motion to strike against any cause of action that "arises from" an act in furtherance of the defendant's constitutional rights of petition or free speech. (Code Civ. Proc. § 425.16(b)(1).) If the defendant can show that the claim arises from such activity, to defeat the motion, the plaintiff must then demonstrate a probability that it will prevail on the claim. (*Id.*)

The moving defendants claimed that the protected conduct for which they were being sued consisted of (1) the board members' vote to set the replenishment charges, (2) the general manager's discussion of the cost-of-service study with board members, and (3) the consultants' preparation of a cost-of-service study that the board relied on in setting the replenishment charges

In response to the anti-SLAPP motion, the plaintiffs asserted that their lawsuit was exempt from the anti-SLAPP statute under the "public interest" exemption, contained in Code of Civil Procedure section 425.17, subdivision (b). That exemption states that the anti-SLAPP statute "does not apply to any action brought solely in the public interest or on behalf of the general public," subject to certain conditions stated in that section. (Code Civ. Proc. § 425.17(b).)

The trial court agreed with the plaintiffs and held that the public-interest exemption applied to their lawsuit. The defendants then sought a writ of mandate on the issue, which the Court of Appeal summarily denied. At the conclusion of the case, the anti-SLAPP defendants appealed.

Analysis: The Court of Appeal overturned the decision of the trial court and held that the public-interest exemption set forth in Section 425.17, subdivision (b), did not apply.

The Court first noted that, to qualify for the public-interest exemption, three conditions must be met, as set forth in the section itself: (1) the plaintiff cannot seek any relief greater than or different from the relief sought for the general public or a class of the public, (2) the action, if successful, "would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons," and (3) private enforcement is deemed to be "necessary" and "disproportionate financial burden on the plaintiff." (Code Civ. Proc. § 425.17(b).)

In addition, case law establishes that, to qualify for the exemption, the "action" as a whole, as opposed to the challenged causes of action themselves, must be brought solely in the public interest. Thus, according to the Court, "[i]f *any* portion of the lawsuit contravenes section 425.17, subdivision (b), then the public interest exemption does not apply *at all*."

Under these rules, the Court held that the public-interest exemption did not apply because the individual board members and the general manager were included as defendants even though only the District itself could provide the requested relief, and "the public interest is not advanced when individual members of an official government body are sued for relief only the government body can provide."

In reaching this conclusion, the Court focused on the writ of mandate and conversion claims, which sought to direct defendants to stop collecting the replenishment charges, vacate all resolutions imposing the charges, and return the charges collected to date. The Court stated that this relief can only be provided by the District itself, and that including the individual defendants in the case was therefore "gratuitous" and had a "chilling effect" on the exercise of their rights.

The Court further noted that, had the individual defendants not been included, the exemption would have applied. However, because at least a portion of the case did not meet the requirements of the exemption, the exemption did not apply to any portion of it.

Impact: This case provides further protection against a common trend of plaintiffs suing individual board members and staff members where only the local agency itself is a proper defendant. In addition, its sweep is broad enough to allow for anti-SLAPP motions on behalf of all defendants, including the agency itself, where individual board members are sued unnecessarily.

IV. MUNICIPAL FINANCE

A. *Howard Jarvis Taxpayers Association v. Coachella Valley Water District* (2025) 108 Cal.App.5th 485 (Fourth District, Division 2).

Holding: The Court of Appeal ruled against Coachella in a proportionality challenge to water rates. The Court ruled Coachella failed to demonstrate the rate charged to domestic customers did not exceed the proportional cost of providing the customers water. The Court held the pay under protest requirement in Health and Safety Code section 5472 applicable to city and county ratepayers, does not apply to special district ratepayers. The Court further held domestic customers were entitled to a refund of overcharges. Finally, the Court ruled the injunction requiring Coachella to comply with Proposition 218 was overbroad.

Facts/Background: The case concerns Coachella's charges for canal water. Canal water is primarily low cost Colorado River water allotted under various water allotment agreements. It also includes supplemental river water purchased from other agencies at a significantly higher cost. Coachella primarily uses canal water for agriculture and groundwater replenishment. Domestic customers benefit from the use of canal water for groundwater replenishment because they use groundwater. While domestic customers are not directly billed for canal water, the cost of canal water is incorporated in their bills indirectly through Coachella's interfund transfers. Coachella charged agricultural customers Class 1 rates for canal water which are substantially less than the Class 2 rates allocated to domestic customers.

A class of domestic customers challenged the canal rates as violating Propositions 218 and 26. The class sought a writ directing Coachella to stop using the canal water rate structure and a refund of all amounts overcharged for Class 2 rates.

The trial court ruled Coachella's canal rates violate proposition 218's proportionality requirement. The trial court rejected Coachella's historical argument the rates are lawful because Class 1 customers primarily bore the expense for the canal infrastructure. On damages, the trial court refused to consider Coachella's expert evidence and instead awarded $17.5 million in damages. The order held that former customers would be paid damages from a common fund and current customers would receive bill credits. The trial court issued an injunction directing canal rates imposed by Coachella in the future shall comply with Proposition 218.

Analysis: On appeal, Coachella contested the liability and remedies rulings. The Court ruled against Coachella on liability. Coachella argued that because the Class 1 customers paid assessments to fund the canal infrastructure, Coachella lawfully allocated the cheap canal water solely to agricultural customers and the expensive canal water solely to domestic customers. The Court rejected the argument as unsupported by the evidence. For example, evidence showed domestic customers also paid assessments that funded canal infrastructure.

On the monetary remedy, Coachella argued no refund relief is authorized for violations of Propositions 218 and 26. Coachella also argued the amount awarded was excessive.

First, Coachella argued Health and Safety Code section 5472 bars a refund because the domestic customers failed to pay the water rates under protest. Section 5472 states "[a]fter fees, rates, tolls, rentals or other charges are fixed pursuant to this article [i.e., Article 4 of the Health and Safety Code], any person may pay such fees, rates, tolls, rentals or other charges under protest and bring an action against *the city or city and county* in the superior court to recover any money which the legislative body refuses to refund." The Court rejected Coachella's argument because it is not a city or city and county. While "cities, city and counties, counties, sanitary districts, county sanitation districts, and sewer maintenance districts may all impose what we will call Article 4 exactions, refund actions were limited to those against the city or city and county." Therefore, section 5472's pay under protest requirement did not bar a refund.

Next, Coachella argued a refund remedy is not available under *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300. The Court recognized *Coziahr v. Otay Water District* (2024) 103 Cal.App.5th 785 recently upheld a refund in a Proposition 218 case. The Court agreed with the holding in *Coziahr* that refunds are allowed but on different grounds. Relying on *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, Department of Business Regulation of Florida* (1990) 496 U.S. 18, the Court found the Due Process Clause of the U.S. Constitution mandates when a government does not allow a predeprivation process for tax relief, it must provide a meaningful opportunity for postpayment relief. The Court then reasoned the only meaningful postpayment relief in this instance is an opportunity for a refund. Therefore, a refund remedy is required "no matter what answer the *Katzberg* framework might yield, to avoid a violation of federal due process."

The Court then rejected Coachella's argument regarding the refund amount. The Court reviewed the trial court's refund amount decision for abuse of discretion. Coachella argued the trial court was required to remand the rate issue to Coachella to allow it to determine a "lawful rate" or allow Coachella's experts to testify during the remedies phase of the trial. The Court found Coachella failed to show the trial court abused its discretion by taking a different approach to determining the refund amount.

Finally, the Court reversed the trial court's injunction mandating "any Canal rates and Charges … imposed by Coachella in the future shall comply with the requirements of Proposition 218." Citing *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 416, the Court found the injunction overbroad because "Charges" was not defined in the judgment, therefore the injunction may subject Coachella to contempt proceedings for behavior unrelated to the original allegations in the litigation.

Impact: There are two key takeaways from this case. First, this case serves as a reminder a city bears the burden to produce evidence documenting their reasoning to prove a levy, charge, or other exaction is allocated in a manner that no customer is charged more than the proportional cost of providing service to that customer. Also, it is unclear whether the holding the federal Due Process clause requires a refund remedy conflicts with recently enacted Government Code section 53758.5 which denies a monetary refund in

Proposition 218 cases and mandates any refund award instead be credited to reduce the cost of service in future ratemakings.

B. *City of Gridley v. Superior Court* (2024) 104 Cal.App.5th 1201 (Third District).

Holding: On a petition for writ of mandate, the Court of Appeal issued a writ directing the trial court to set aside its order denying the City of Gridley's motion for summary judgment and to enter an order granting the motion. The Court held claimants cannot challenge Gridley's electric rates imposed in June 2020 by challenging the city's September 2020 action to reduce rates within 120 days because Gridley did not impose, increase, or extend the electric rates when it reduced the rates. Further, claimants cannot state a claim under the federal and state takings because the unconstitutional conditions doctrine does not apply to a user fee rather than a land use permit.

Facts/Background: Gridley set electric rates in June 2020. Gridley used five rate tiers. Claimants did not challenge the June 2020 action. In September 2020, Gridley reduced the rates of the first three tiers and eliminated the top two tiers.

On the last day to challenge Gridley's September approval of the reduced rates, claimants—four residential ratepayers—filed a petition for writ of mandate and class action complaint alleging Gridley violates Proposition 26 because it sets electric rates higher than necessary, collects excessive revenues from ratepayers, and transfers the excess revenues to its general fund. Claimants also alleged Gridley's rates violate the state and federal takings clauses under the unconstitutional conditions doctrine because the unlawfully high rates subjected them to a constitutionally impossible choice—either pay excessive electric charges or forego its property right to continued electric service altogether.

Gridley moved for summary judgment. The trial court denied Gridley's motion. It rejected the City's argument rate revenues do not finance the transfers to the general fund, stating the transfers are evidence there may be excessive charges and triable issues of fact remained on the issue. It also rejected Gridley's argument Proposition 26 is inapplicable because it applies only when a local government imposes, extends, or increases a tax. It concluded claimants could challenge Gridley's approved rate changes in September 2020, even though Gridley's action only decreased rates. For the takings cause of action, the trial found triable issues of fact precluded it from finding claimants lack a property interest in continued electric service. Gridley filed a petition for writ of mandate in the Court of Appeal to reverse the trial court.

Analysis: The Court of Appeal granted the writ. The Court found Proposition 26 inapplicable because Gridley did not "impose, extend, or increase" any tax covered by Proposition 26 when it approved reduced electric rates in September 2020. The Court rejected the trial court's and claimants' argument *Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685 requires a different result. *Barratt American* considered whether a city's reenactment of certain fees—without any change in the amount of these fees—constituted a modification or amendment of an existing fee within the meaning of the Mitigation Fee Act provision allowing a challenge to an action "modifying or amending an existing fee." The trial court and claimants focused on *Barratt American*'s language saying the city, in reenacting its fees, implicitly represented that the fees did not exceed the estimated reasonable cost of the services. The Court rejected this use of *Barratt American* because the Mitigation Fee Act uses different language than Proposition 26. Proposition 26 does not broadly allow challenges to any modification or amendment. It instead covers a challenge to action imposing, extending, or increasing the tax. The Court found decreasing an electric rate "is none of these things."

Prior to oral argument, the Court requested supplemental briefing regarding the application of the U.S. Supreme Court's discussion of the unconstitutional conditions doctrine in *Sheetz v. County of El Dorado* (2024) 601 U.S. 267, 274.

Citing *Koontz v. St. Johns River Water Management District.* (2013) 570 U.S. 595, 607, the Court recognized the unconstitutional conditions doctrine mandates the government violates the federal takings clause when it makes "[e]xtortionate demands for property in the land-use permitting context." To ensure against "extortionate demands" against a permit applicant, courts apply a two-part test for evaluating land use permitting conditions. *Nollan v. California Coastal Commission* (1987) 483 U.S. 825; *Dolan v. City of Tigard* (1994) 512 U.S. 374. The exaction must have an essential nexus to the government's land-use interest, and the permit conditions must have rough proportionality to the development's impact on the land-use interest.

The Court found the unconstitutional conditions doctrine does not apply to the claim electric rates violate the state and federal takings clauses because the claim involves a user fee rather than a land use permit. First, the Court noted *Koontz* specifically carved out user fees such as electric rates from the *Nollan/Dolan* test by holding the unconstitutional conditions doctrine "does not affect the ability of governments to impose property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners." *Koontz, supra,* 570 U.S. at p. 615. Second, the Court rejected claimant's invitation to craft an expanded application of the unconstitutional conditions doctrine to fit this case. The Court refused to apply a modified *Nollan/Dolan* test to require an essential nexus and rough proportionality showing any time government demands money under threat of a penalty that may impact a person's property rights. The Court concluded the unconstitutional conditions doctrine does not apply outside the land use permitting context.

Impact: Claimants frequently challenge rates and fees under new liability theories like the unconstitutional conditions claim in *Gridley* in order to increase the avenues to sue governments and to have all or part of a dispute decided by a jury. Cities must vigorously defend against these new liability theories and seek published appellate decisions rejecting the theories when possible.

C. *Beck v. City of Canyon Lake* (2025) 2025 WL 866966, Case No. D083322 (Fourth District, Division 1) (UNPUBLISHED).

Holding: Deciding a question of first impression, the Court of Appeal affirmed a trial court's ruling invalidating the City of Canyon Lake's general utility user's tax ("UUT") on water and sewer service for violating sections 3 and 6 of article XIII D of the California Constitution. The Court of Appeal held the City may only impose a UUT on property-related services (water, sewer and trash service) as a voter-approved special tax that segregates and uses the tax revenues for the specific purpose approved by the voters.

Facts/Background: In 2014, a majority of Canyon Lake's electorate approved a UUT on numerous utility services, including water and sewer service. In 2018, 77% of the City electorate voted to extend the UUT. The UUT was imposed on every person in the City using water and sewer services. The City did not operate a water or sewer utility. Instead, the Elsinore Valley Municipal Water District ("EVMWD") provides water or sewer services. EVMWD collected the UUT from water and sewer customers and remitted the tax revenue to the City. Although deposited in the general fund, the City used the UUT revenues to fund a fire station and to improve emergency response times. The UUT on all utilities accounted for approximately 20% of Canyon Lake's general fund.

In July 2022, Beck filed a petition for writ of mandate and complaint for declaratory relief challenging the water and sewer portions of the UUT as unconstitutional. Beck alleged the UUT is imposed as an incident of property ownership and violates the restrictions placed on property-related fees and property taxes by article XIII D of the California Constitution.

After full briefing by the parties, the trial court declared the City's water and sewer UUT violates the California Constitution, article XIII D, sections 3 and 6. The trial court granted Beck's petition for writ of mandate and directed the City to rescind the portions of the UUT on water and sewer service.

Analysis: Article XIII D, section 3 prohibits local governments from assessing any tax, assessment, fee, or charge upon any parcel of property or upon any person as an incident of property ownership except: (1) ad valorem property tax; (2) special tax; (3) assessments; and (4) fees or charges for property related services.

Beck argued Article XIII D, section 3 is clear on its face and the Court need not look at the ballot materials to aid interpretation. According to Beck, because water and sewer service are property-related services governed by Article XIII D, section 6, taxes on such services are imposed "as an incident of property ownership." The City argued Article XIII D, section 3 must be harmonized with Article XIII C, section 2 allowing voter approval of general taxes. The City also argued Beck's interpretation of section 3 conflicts with the proponent's statements in the Proposition 218 ballot materials promising voters the right to vote on UUTs. Finally, relying on *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 839, the City argued the UUT imposed on water or sewer service is not imposed "as an incident of property ownership" because it is imposed not because the parcel is owned but because the owner makes a voluntary use of the property.

Relying on *Richmond v. Shasta Community Services District* (2004) 32 Cal.4th 409, 420 and *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 216, the Court held a fee for ongoing water or sewer service through an existing connection is imposed "as an incident of property ownership" because it requires nothing other than normal ownership and use of property. The Court agreed with *Richmond's* reliance on the legislative analysis in the Proposition 218's ballot materials: "The Legislative Analyst apparently concluded that water service has a direct relationship to property ownership, and thus is a property-related service within the meaning of article XIII D because water is indispensable to most uses of real property; because water is provided through pipes that are physically connected to the property; and because a water provider may, by recording a certificate, obtain a lien on the property for the amount to any delinquent service charges." The Court also found Article XIII D's exclusion of electricity and gas service implies similar charges for water and sewer are property-related fees subject to article XIII D, section 3.

The Court then agreed with the language discussing section 3 in *Lejins v. City of Long Beach* (2021) 72 Cal.App.5th 303, 311: "Article XIII D makes clear that regardless of whether the imposition is characterized as a tax, assessment, fee, or charge, if it is imposed upon a parcel of property or upon a person as an incident of property ownership—as we have concluded the [m]easure ... is—it must satisfy one of the exceptions to the prohibition on an agency's imposition of a tax, assessment, fee, or charge upon a parcel of property or upon a person as an incident of property ownership, enumerated in article XIII D, section 3."

Regarding the City's argument the ballot materials promised taxpayers a right to vote on utility taxes, the Court stated: "We reject the City's attempt to use this shield protecting the electorate's ability to reduce or repeal a tax or fee as a sword to carve out article XIII D's express limitations and requirements."

Impact: About 100 cities and counties have voter-approved general UUTs on water and sewer service – many of which were imposed, increased, or extended after Proposition 218's adoption in 1996. While this unpublished opinion directly impacts only Canyon Lake's UUT, we believe all UUTs on water and sewer service are now at risk. Cities and counties with UUTs on water and sewer service should consider returning the issue to the electorate to: (1) obtain two-thirds voter approval of a UUT on water and sewer service as a special tax proposed by the local government; or (2) obtain approval from a majority of the electorate for a UUT on water and sewer service as a special tax proposed by citizen initiative. In each instance, the tax revenues must be used for the specific purpose identified in the ballot measure.

V. UTILITY FRANCHISES

A. *California Resources Production Corporation v. Antioch City Council* (2024) 107 Cal.App.5th 481 (First District, Division 4).

Holding: In a partially published opinion, the Court of Appeal affirmed the trial court's decision sustaining the City of Antioch's demurrer and judgment of dismissal in a case arising from Antioch's refusal to extend the term of California Resources Production Corporation's ("CRPC") franchise to operate a natural gas pipeline within the city's right-of-way. In the published portion of the opinion, the Court rejected CRPC's equal protection claim and mandate claim based on the Franchise Act of 1937 (Cal. Public Utilities Code § 6201 et seq.).

Facts/Background: CRPC began operating a gas pipeline in Antioch's public right-of-way in 1991 pursuant to a franchise granted under the Franchise Act. In 2021, CRPC applied to extend the franchise. At the public hearing on the extension, protestors and councilmembers expressed concerns regarding environmental justice, natural gas pipeline safety, and climate change. The City Council voted against the extension.

CRPC sued Antioch. After two sustained demurrers with leave to amend, CRPC's third amended complaint alleged causes of action for violation of equal protection, deprivation of rights under section 1983, writ of mandate, and declaratory relief.

CRPC's "class of one" equal protection and section 1983 claims argued Antioch previously granted all pipeline franchise extensions, and Antioch's decision to deny CRPC's extension was therefore intentional, arbitrary discrimination against CRPC without any rational basis. CRPC's mandate claim sought to compel Antioch to perform a ministerial duty purportedly imposed by the Franchise Act to "hear and pass upon" all public objections to the franchise and argued Antioch abused its discretion by denying the franchise extension.

The trial court sustained Antioch's demurrer to the third amended complaint without leave to amend.

Analysis: The Court found the trial court did not abuse its discretion in ruling CRPC's allegations did not establish a viable equal protection claim. To survive demurrer on a "class of one" equal protection claim, CRPC was required to allege Antioch treated CRPC differently from other similarly situated persons, the difference in Antioch's treatment of CRPC was intentional, and there was no rational basis for Antioch's different treatment of CRPC. The Court found CRPC was not similarly situated with the prior entities that received franchise extensions because the extensions were years prior or involved transport of different materials. Changes in public sentiment regarding fossil fuels and the makeup of the City Council reasonably explain the different treatment of CRPC's extension application. Therefore, Antioch demonstrated a rational basis for its decision to deny CRPC's extension.

The Court rejected CRPC's mandate claim. Mandate relief is available to compel performance of a ministerial duty by a local government. Mandate is also available to correct a local government's unreasonable and arbitrary exercise of discretionary legislative power.

The Franchise Act establishes the process for a city to consider and grant a pipeline franchise. Pursuant to section 6234, a city is required to "to hear and pass upon all protests" against granting the franchise. The Court rejected CRPC's argument that "pass upon" required Antioch make express findings as to the merits of each objection before denying the franchise extension. Instead, section 6234 only required Antioch "determine" the protests were "insufficient" or "overrule or deny" the protests before *granting* a franchise extension. The section imposes no duties on Antioch before denying a franchise extension. Finally, the Court held CRPC's allegations failed to overcome the presumption under Evidence Code section 664 that the Antioch City Council determined the merits of the protests before denying the extension.

Finally, the Court determined Antioch's extension denial was not unreasonable or arbitrary. The Court rejected CRPC's argument Antioch improperly relied on generalized concerns expressed by protestors regarding environmental justice, natural gas pipeline safety, and climate change constituting an abuse of discretion that rendered the decision unreasonable and arbitrary. The Court ruled Antioch was not required to tie the protesters' concerns to CRPC safety records before denying the extension. The Court also determined Antioch's treatment of CRPC was not arbitrary because Antioch reasonably explained the different treatment of CRPC's extension application from pipeline franchises and extensions granted in prior years.

Impact: The decision provides a pathway for local governments to take action to reduce the environmental risk posed by fossil fuel transport in the right-of-way. It also allows local governments to answer constituent demands for local action to address climate change.