General Municipal Litigation Update

League of California Cities
City Attorneys Spring Conference
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Agenda

- Elections/First Amendment
- Brown Act
- Anti-SLAPP
- Municipal Finance
- Utility Franchises

Elections/First Amendment

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

- Nonprofit challenged voter-approved measure that placed limits on campaign contributions to city candidates.
- Measure limited contributions to city council candidates to $500 for individuals and $1,000 for PACs, and limited contributions to city-wide candidates to $750 for individuals and $1,500 for PACs, per election.
- Under the Supreme Court case of *Randall v. Sorrell* (2006) 548 U.S. 230, campaign-contribution limits are permissible if "'closely drawn' to match a 'sufficiently important interest.'"
- In addition, the only "legitimate governmental interest for restricting campaign finances" is to prevent "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.)

Elections/First Amendment

Moving Oxnard Forward (cont.)

- Normally, local agencies are provided broad deference on their determinations of campaign-contribution limits.
- However, heightened scrutiny is justified where there are “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.)
- Such “danger signs” existed here because a particular individual (Aaron Starr, who was affiliated with the nonprofit) was the apparent target of the measure.
- This was supported by statements about Starr in the city council record when it proposed the measure, as well as analysis showing that Starr would be the only person significantly impacted by the measure. Also, there was a history of antipathy between Starr and the council.

Elections/First Amendment

Moving Oxnard Forward (cont.)

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

Elections/First Amendment

Bonta v. Superior Court (2024) 104 Cal.App.5th 147 (Third District)

- Prop. 13 requires local bonds to be approved by a two-thirds vote of the electorate. (Cal. Const., Art. XIII A, § 1, subd. (b)(2).)
- Prop. 5, which was on the ballot for the November 2024 election, would have amended this requirement to permit local bonds for public infrastructure and affordable housing to be approved with 55-percent voter approval.
- The AG's office prepared 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).)

Elections/First Amendment

Bonta v. Superior Court (cont.)

- The ballot label 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 challenged 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."

Elections/First Amendment

Bonta v. Superior Court (cont.)

- On a petition for writ of mandate, the Court of Appeal reversed.
- The Attorney General is entitled to deference in preparing the ballot label, and the label may only be invalidated upon "clear and convincing evidence" that it is false, misleading, or inconsistent with the Elections Code.
- Here, the label was both factually accurate and non-misleading. On the two-thirds vote requirement, 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." This language implied that the measure was "relaxing the rules for authorizing" the subject bonds.
- Also, the title and summary referenced the two-thirds vote requirement, helping to rectify any confusion.

Brown Act

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

- San Diego voted to approve franchise agreements that gave SDG&E the exclusive right to provide gas and electric services to San Diego residents.
- Shortly before this decision, attorney Maria Severson sent a “cure or correct” letter under section 54960.1 of the Brown Act, alleging that the city council members engaged in a “secret serial meeting” regarding the agreements in violation of section 54952.2(b)(1).
- After the decision, Ms. Severson sent a second, similar letter, raising the same claim, also citing section 54960.1.
- Section 54960.1 authorizes lawsuits to invalidate actions taken in violation of certain provisions of the Brown Act, but only if a letter is first sent to the agency asking it to “cure or correct” the violation.

Brown Act

Burton v. Campbell (cont.)

- Later, Plaintiff Kathryn Burton retained Severson’s firm to file a complaint against the city, seeking to invalidate the city’s approval of the franchise agreements under section 54960.1.
- SDG&E filed a motion for summary judgment on the ground that Burton herself had not sent a “cure or correct” letter prior to filing suit as required by section 54960.1.
- 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.
- The Court of Appeal affirmed. According to the Court, the plaintiff in an action under section 54960.1 must be the same person who sent the “cure or correct” letter.

Anti-SLAPP

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

- Resident and HJTA sued water district, as well as its five board members, its general manager, and three of its consulting firms, challenging certain replenishment charges.
- All defendants except the District filed an anti-SLAPP motion under CCP section 425.16.
- The moving defendants claimed that they were being sued for their protected conduct, including (1) the board members' votes, (2) the general manager's discussion of the cost-of-service study with the board, (3) the consultants' preparation of the cost-of-service study.

Anti-SLAPP

Howard Jarvis Taxpayers Association v. Powell (cont.)

- The plaintiffs asserted that their lawsuit was exempt from the anti-SLAPP statute under the "public interest" exemption in CCP section 425.17(b), which 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.
- The trial court agreed and denied the motion, and the defendants appealed.
- The Court of Appeal reversed.
- To qualify for the exception, a lawsuit must fully meet all requirements of the statute. "If *any* portion of the lawsuit contravenes section 425.17, subdivision (b), then the public interest exemption does not apply *at all*."

Anti-SLAPP

Howard Jarvis Taxpayers Association v. Powell (cont.)

- Here, 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.
- According to the court, “the public interest is not advanced when individual members of an official government body are sued for relief only the government body can provide.”
- Court focused on writ of mandate and conversion claims, which sought to direct defendants to stop collecting the replenishment charges, vacate all resolutions, and return the charges collected. This was relief that only the District could provide, and suing the individuals had a “chilling effect.”
- Had the individual defendants not been included, the exemption would have applied.

Municipal Finance

Howard Jarvis Taxpayers Association v. Coachella Valley Water District

- Class action seeking refund for violation of Prop 218 proportionality.
- District charged ag customers substantially less for water than domestic customers under theory that ag customers previously paid for infrastructure.
- Court upheld trial court decision for Plaintiffs. Court very deferential to trial court finding that infrastructure argument was unsupported by evidence.
- H&S § 5472 pay under protest requirement does not apply to special districts.
- When pay first required, the Due Process Clause mandates a refund remedy.

Municipal Finance

City of Gridley v. Superior Court

- Gridley set electric rates in June 2020 then reduced the rates in September 2020. Rates recovered revenue to support transfer to General Fund.
- Class action alleges recovery of general fund transfer amount through rates violates Prop 26 and constitutes a constitutional taking. Trial court denied Gridley's MSJ. Court of Appeal took case on Gridley's writ.
- Gridley did not "impose, extend, or increase" any tax covered by Proposition 26 when it approved reduced electric rates in September 2020.
- No unconstitutional conditions takings clause claim under *Koontz*, *Nollan/Dolan* and *Sheetz* because claim involves a fee and not a land use permit.

Municipal Finance

Beck v. City of Canyon Lake

- Majority of voters approved UUT as a general tax in 2014 and voted to extend UUT in 2018. UUT imposed on all utilities, including water and sewer.
- Class action challenged UUT on water and sewer as violating Prop 218, Article XIII D, sections 3 which prohibits local governments from assessing any charge "upon any parcel of property or upon any person as an incident of property ownership" except as a voter-approved special tax.
- Court of Appeal ruled a UUT on water and sewer is only allowed if approved as a special tax because water and sewer charges are imposed upon a person as an incident of property ownership. Court ignored ballot materials language.

Utility Franchises

California Resources Production Corporation v. Antioch City Council (partially published)

- After hearing protests, City Council voted not to extend P's gas pipeline franchise.
- The Court affirmed demurrer ruling and rejected Plaintiff's Equal Protection and Franchise Act claims.
- No evidence supported "class of one" equal protection claim because Antioch had a rational basis for treating P different from utilities granted franchise extensions in prior years for different materials.
- Franchise Act § 6234 requires a city to "to hear and pass upon all protests" when considering a franchise. Court found no requirement to make findings on each objection. Section only applies when granting (not denying) a franchise.

Questions