

# General Municipal Litigation Update

League of California Cities  
City Attorneys Conference  
Spring 2023



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HIGHSMITH  
WHATLEY, PC

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# Agenda

- Municipal Finance
- Government Claims Act
- Elections
- Open Government
- Miscellaneous

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## Municipal Finance

### *Department of Finance v. Commission on State Mandates*

- Must the State reimburse cities for costs to comply with stormwater discharge permits? (Art. XIII B, § 6)
  - Yes, for a "new program" or "higher level of service" to abate water pollution.
  - No, if the permittee can levy a fee without voter approval.
- Cities cannot impose **stormwater drainage fees** for costs of non-development permit conditions (without voter approval).
- Cities can impose **street-sweeping fees**.
- Cities can impose valid **regulatory fees on developers** for costs to comply with development-related conditions.

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# Municipal Finance

## *Cultiva La Salud v. State of California*

- The Keep Groceries Affordable Act (R&T § 7284.8) penalty provision is unconstitutional.
  - The penalty deprives charter cities of significant sales and use tax revenue if they tax sodas.
  - Charter cities cannot be chilled through penalties from exercising their home-rule power to tax.
- No ripeness issue: proper facial challenge.
- No severance: not to rewrite legislative intent.



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# Gov't Claims Act

## *Malear v. State of California*

- Claim presentation met even though plaintiff sued before the public entity denied his government claim.
- Substantial compliance: Plaintiff filed an amended complaint after claim rejection, but before service.
- GC § 945.4 requirements are not jurisdictional.
- Are the goals met? Sufficient notice to agency to investigate, and ability to consider fiscal impact.
- Narrow holding based on the facts.

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# Elections

## ***Lathus v. City of Huntington Beach***

- Volunteer member of Citizen Participation Advisory Board is the “public face” of the appointing elected official.
- No First Amendment issue where volunteer was dismissed for failing to denounce Antifa.
- First Amendment protection limited where political affiliation / views are a requirement for effective performance of office.
- Not improper compelled speech.



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# Elections

## ***Law Office of Carlos R. Perez v. Whittier Union High School District***

- CVRA entitled law firm to collect “cost of work product.”
- Trial court applied an overly restrictive read of CVRA’s “prospective plaintiff” requirement.
  - No obligation to show retained, versus prospective, clients.
  - No requirement plaintiffs pay the work product expert costs. Law firm can advance costs of demographer, purchasing GIS data, and software licenses.
  - Such limitations would turn the CVRA on its head.
- Remanded to determine whether attorney’s fees are recoverable costs of work product.

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# Elections

## ***Clark v. Weber***

- State recall procedure doesn't violate 14<sup>th</sup> Amendment's "one-person, one-vote".
  - Even those who reject recall can cast vote on a successor candidate.
  - No voter dilution where incumbent must receive a majority vote to remain in office, whereas a successor can be elected with mere plurality.
- Recall law does not violate 14<sup>th</sup> Amendment right to vote for a candidate of your choice.
  - Prohibiting an incumbent from re-running in recall election doesn't severely restrict right to vote.



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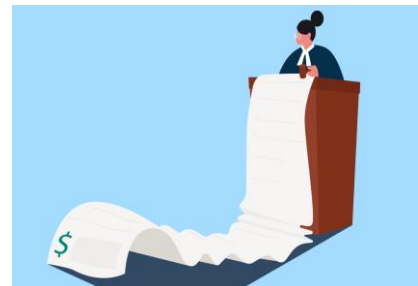
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# Open Government

## ***Travis v. Brand***

- GC § 91003(a): courts have discretion to award fees "to a plaintiff or defendant who prevails".
- Different standards apply for recovering attorney fees under Political Reform Act:
  - Plaintiff: must prevail.
  - Defendant: action was "objectively without foundation" when brought, or plaintiff continued to litigate after it became so.
- Asymmetrical standard promotes Act's private enforcement. Financial disclosure requirements promote transparency and an informed electorate.



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# Open Government



## ***Freedom Foundation v. Superior Court***

- PRA's exemption for records related to collective bargaining by State extends to records revealing agency's evaluations, opinions, strategy and bargaining positions.
  - Exemption is not limited to information revealing agency's deliberative process. (GC § 7298.405)
  - No duty to attempt selective disclosure of records that are not reasonably segregable, particularly where disclosure would still reveal agency's research and evaluations under the Dills Act.
- Agency has "possession" if they have the right to control the records directly or through another. Mere access is not enough.

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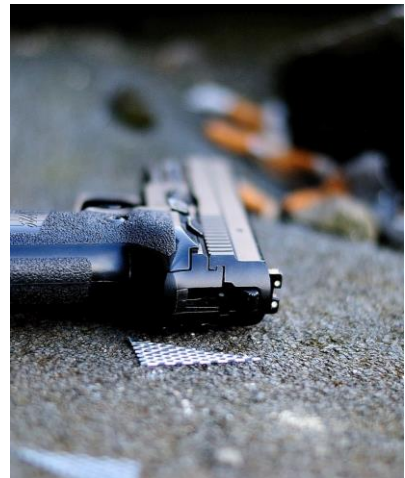
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# Miscellaneous

## ***Kirk v. City of Morgan Hill***

- Local law requiring reporting of stolen gun in shorter window than under state law (Prop. 63) not preempted.
- Local government may impose stricter gun regulations than state law where law doesn't conflict with more permissive state standard.
- This isn't an area the Legislature intended to occupy completely.
  - Legislature has preempted certain areas like licensing requirements and manufacture / possession / sale of imitation firearms.
  - But local regulation of gun control is generally allowed.



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# Miscellaneous

## *Trujillo v. City of Los Angeles*

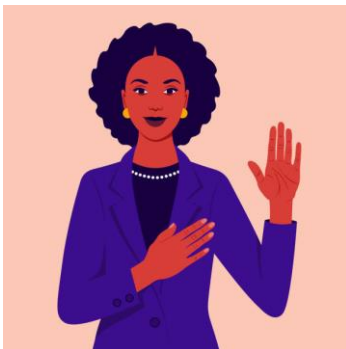
- CCP 998 Offers:
  - Made “prior to commencement” of trial or arbitration “of a dispute to be resolved”.
  - Offer generally open for 30 days, unless unequivocally rejected or formally revoked.
- A CCP 998 settlement offer automatically expires when a trial court orally grants the offeror’s summary judgment motion.
  - Plaintiff’s acceptance of the CCP 998 offer **after** the court’s grant of MSJ – but before entry of judgment – was inoperative.
  - No dispute remains to be resolved after oral or written grant of MSJ.
- Contrary rule would defy CCP 998’s goal of early settlement.



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# Miscellaneous

## *Bolden-Hardge v. Office of the California State Controller*



- Plaintiff stated claims under Title VII and FEHA for SCO’s refusal to allow a religious addendum to the public-employee loyalty oath (Art. XX, § 3).
- SCO employee, a Jehovah’s Witness, requested oath addendum stating her allegiance first to God and that she would not take up arms.
- Properly pleaded failure to accommodate religion – she held a bona fide religious belief conflicting with the oath’s “faith and allegiance” component.
- No presumption of undue hardship or business necessity.
- Standing for damages under Title VII and FEHA.

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# Questions?

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