



# MUNICIPAL TORT AND CIVIL RIGHTS LITIGATION UPDATE



GREINES, MARTIN, STEIN & RICHLAND LLP

Tim Coates

[tcoates@gmsr.com](mailto:tcoates@gmsr.com)

310.859.7811

Fall 2021 | LEAGUE OF CALIFORNIA CITIES ANNUAL  
CONFERENCE

1

Civil Rights  
Law Enforcement Liability

2

*Caniglia v. Strom*, \_\_ U.S. \_\_,  
141 S.Ct. 1596 (2021)



3

## *Caniglia v. Strom*— Facts

- After domestic dispute where wife leaves, she calls for a welfare check on husband.
- Officers meet wife at residence, find plaintiff danger to self and others.
- Plaintiff offers to go voluntarily, if officers won't seize his guns. They agree.
- Plaintiff leaves, and officers then enter and seize his weapons.
- Plaintiff sues, but district court and appellate court reject Fourth Amendment claim, applying community caretaking doctrine.

4

## *Caniglia v. Strom* Supreme Court Decision

- Reverses and remands.
- No general “community caretaking” exception to the Fourth Amendment.
- *Cady v. Dombrowski*, 413 U.S. 433 limited to automobiles.
- Must apply general Fourth Amendment exigent circumstances principles to each case.

5

## *Caniglia v. Strom*– Impact

- Ruling extremely narrow.
- Does not suggest that officers cannot enter a home without a warrant to conduct a welfare check on an elderly or ill person for example, or even to seize firearms from a person suffering from mental illness.
- The focus in such cases will be on whether exigent circumstance may justify the entry or seizure, even outside the criminal context.

6

*Lange v. California, \_\_ U.S \_\_,  
141 S.Ct. 2011 (2021)*



7

*Lange v. California – Facts*

- Officer attempts to stop suspect for DUI.
- Suspect drives into his garage, officer follows and arrests him for a misdemeanor.
- Motion to suppress denied – hot pursuit constituted exigent circumstances.
- Appellate court affirms and California Supreme Court denies review.

8

## *Lange v. California* Supreme Court Decision

- Reverses and remands.
- Unlike felonies (*United States v. Santana*, 427 U.S. 38 (1976)), there is no per se “hot pursuit” exception for misdemeanors.
- Entry and search might still be justified by ordinary exigent circumstances, i.e., loss of evidence, escape, etc.

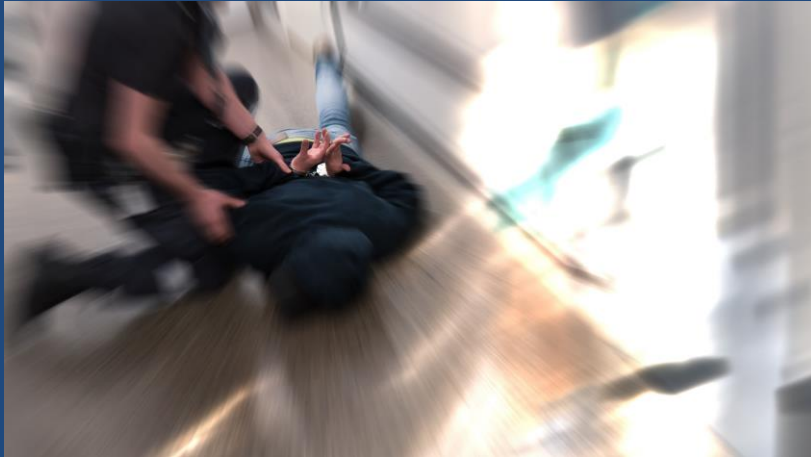
9

## *Lange v. California*– Impact

- Very narrow holding.
- Most suppression motions would come out the same as entry would likely be justified based on ordinary exigent circumstances.
- However, California previously applied a per se rule, so officer training may be required to document exigency.

10

*Lombardo v. City of St. Louis,*  
\_\_\_ U.S. \_\_\_, 141 S.Ct. 2239 (2021)



11

*Lombardo v. City of St. Louis*— Facts

- Jail inmate violently resists officers attempting to restrain him.
- Multiple officers grapple with him, he loses consciousness and dies.
- District court dismisses excessive force suit: Qualified immunity applies because no clearly established law.
- Eight Circuit affirms: No constitutional violation because plaintiff was resisting.

12

## *Lombardo v. City of St. Louis* – Supreme Court

- Reverses and remands.
- Eighth Circuit improperly applied per se rule of reasonable force.
- Force claims always require analysis of the *Graham v. Connor* reasonableness factors.

13

## *Lombardo v. City of St. Louis* – Impact

- Another extremely narrow holding.
- Likely to be cited by plaintiffs arguing against MSJ or JNOV on reasonableness of force.
- Dissent accuses majority of dodging underlying qualified immunity issue.

14

*Valenzuela v. City of Anaheim,*  
 \_\_\_ F.4th \_\_\_ 2021 WL 3362847 (9th Cir. 2021)



15

*Valenzuela v. City of Anaheim*– Facts

- Suspect dies after several minute struggle with officers attempting to apply carotid restraint hold after he physically resisted arrest.
- Jury: Officers negligent under California law, used excessive force in violation of the Fourth Amendment under section 1983 and violated Unruh Act.
- \$13.2 million in damages.
- \$3.6 million as wrongful death damages under California law.
- \$6 million in damages for pre-death pain and suffering incurred by the decedent
- \$3.6 million as damages for decedent's loss of future life.

16



## *Valenzuela v. City of Anaheim*—Ninth Circuit

- 2-1 affirms.
- California’s prohibition on loss of future life damages is inconsistent with purposes of section 1983.
- If applied, there might be some cases in which there would be little or no recovery.
- Applies *Chaudhry v. City of Los Angeles*, 751 F.3d 1096 (9th Cir. 2014) where court held that California prohibition on recovery of pre-death pain and suffering does not apply to section 1983 claims.

17

## *Valenzuela v. City of Anaheim*— Impact

- Very problematic decision.
- Expands public entity exposure to damages in civil rights cases.
- Amorphous nature of such damages invites open-ended speculation by a jury untethered to any concrete standard.
- Could prompt seven figure recoveries in cases where there are few heirs, or the decedent had strained familial relations, factors which might otherwise reduce an award.
- Strong dissent and a clear circuit split on the issue.
- Rehearing petition pending.

18

*Evans v. Skolnik*,  
997 F.3d 1060 (9th Cir. 2021)



19

*Evans v. Skolnik*– Facts

- Jail prisoner sues officer for Fourth Amendment violation, asserting officer listened in on the prisoner's call to his civil attorney.
- District Court grants summary judgment to officer based on qualified immunity.
- No clearly established law about eavesdropping on an inmate's call to a civil attorney.
- Prisoner appeals.

20

## *Evans v. Skolnik*– Ninth Circuit

- Ninth Circuit affirms.
- Acknowledges case law holding that a prisoner’s calls to his criminal attorney cannot be monitored.
- Qualified immunity applies because no case addressed listening in on calls to counsel regarding civil matters.
- General rules concerning attorney client privilege not sufficient to put an officer on notice of potential constitutional violation.

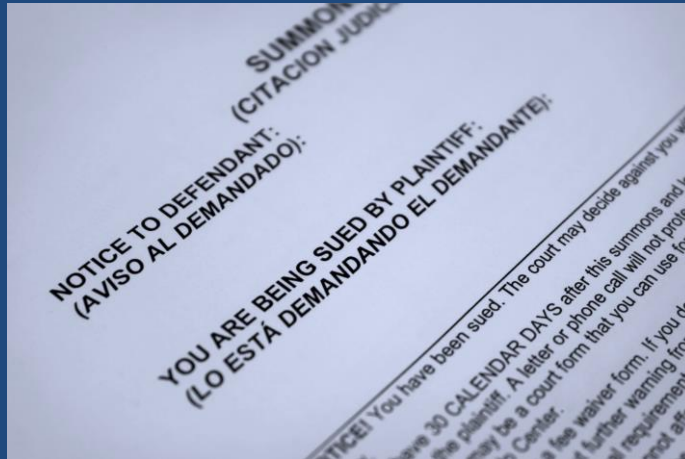
21

## *Evans v. Skolnik* – Impact

- Extremely helpful decision on qualified immunity.
- Strongly reaffirms and stringently applies the clearly established law test for qualified immunity.

22

## *Sales v. City of Tustin*, 65 Cal.App.5th 265 (2021)



23

### *Sales v. City of Tustin*– Facts

- Plaintiff files excessive force complaint in federal court asserting section 1983 and state law claims.
- District court dismisses federal claims with prejudice, and the state claims without prejudice to re-filing in state court.
- Plaintiff loses federal appeal, and 14 days after mandate issues, re-files the state claims in state court.
- Defendants successfully move for summary judgment.
- 28 U.S.C. section 1367(d) tolls any state statute of limitations for 30 days after the state claim is dismissed – here the state claims were dismissed years earlier.

24

## *Sales v. City of Tustin* – Court of Appeal

- Reverses.
- State suit was timely.
- Based upon the statutory language and purpose of section 1367, the 30-day tolling period did not commence until after the federal appellate proceedings were final upon issuance of the Ninth Circuit's mandate.

25

## *Sales v. City of Tustin* – Impact

- Addresses a very common situation.
- Not ideal result, but clarifies law in common scenario.
- State claims may therefore be pursued even years after initial dismissal in federal court.
- Court declined to speculate whether pursuit of certiorari on the federal appeal would toll the limitations period, notwithstanding issuance of mandate by a federal appellate court.
- Depending on when a cert petition is filed, final disposition of the petition may take several months or close to a year, thus increasing the delay in re-filing state claims.

26

## *Lemos v. County of Sonoma*, 5 F.4th 979 (9th Cir. 2021)



27

### *Lemos v. County of Sonoma*— Facts

- Plaintiff was involved in a verbal and physical altercation with police officer and convicted for violation of PC section 148.
- Jury specifically instructed that for conviction they would have to find that the officer was lawfully performing his duties.
- Plaintiff files a federal civil rights excessive force claim.
- District court dismissed the action as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994).
- A plaintiff cannot pursue a federal civil rights claim where success on that claim would necessarily imply the invalidity of a state court conviction.

28

## *Lemos v. County of Sonoma* – Ninth Circuit

- Affirms 2-1.
- State court jury specifically directed to consider the lawfulness of the officer's conduct.
- If plaintiff were to succeed on her excessive force claim in federal court it would undermine the legitimacy of the state court conviction in violation of *Heck*.
- The court acknowledges that plaintiff engaged in various acts of resistance that could have formed the basis of her conviction, but for purposes of *Heck* it need not be determined exactly which act prompted the conviction.

29

## *Lemos v. County of Sonoma* – Impact

- One of the few cases to stringently apply the *Heck* bar based on a PC section 148 conviction.
- Dissent notes court previously did not apply *Heck* to conviction based on a plea bargain where several acts of resistance would support the PC section 148 charge, because without knowing the specific act, cannot determine that success on the federal claim would *necessarily* imply the invalidity of the state court conviction.
- Likely to be ongoing litigation on application of *Heck* to PC Section 148 convictions.

30

*Gordon v. County of Orange*,  
\_\_\_ F.4th \_\_\_, 2021 WL 3137954 (9th Cir. 2021)



31

*Gordon v. County of Orange* – Facts

- Prisoner dies in jail as a pre-trial detainee.
- Family sues: Proper medical screening by nurse would have revealed need for specialized care, and deputy improperly failed to directly monitor him.
- District court grants summary judgment on qualified immunity: Plaintiffs could not show that defendants had a subjective belief that particular medical treatment or monitoring was required.
- Grants summary judgment on *Monell* claims: No custom, policy or practice shown.

32



## *Gordon v. County of Orange* Ninth Circuit

- Affirms in part, reverses in part.
- District court applied incorrect legal standard: Subjective intent irrelevant to due process claim by a pre-trial detainee.
- Test is whether objective facts indicated the need for screening.
- No qualified immunity for nurse: Clear law that pre-trial detainees have right to screening for critical medical needs.
- Deputy has qualified immunity: No case holding that direct, as opposed to indirect physical monitoring was required here.
- No *Monell* liability: No prior incidents and mere later change in policy standing alone, not enough.

33

## *Gordon v. County of Orange* – Impact

- A mixed bag.
- Helpful because stringently applies the clearly established law prong of qualified immunity, as well as the requirements for *Monell* liability.
- Creates an arguably new and more rigorous monitoring requirement for at risk prisoners.
- Could be challenging for local municipalities which maintain interim holding facilities for prisoners prior to transfer to a county jail.

34

## *Leon v. County of Riverside,* 64 Cal.App.5th 837 (2021)



35

### *Leon v. County of Riverside*— Facts

- Widow of victim who was fatally shot sues county and deputies for negligent infliction of emotional distress.
- Deputies failed to promptly cover or remove victim's body while investigating the shooting.
- The trial court grants defendants' motion for summary judgment.
- Deputy defendants entitled to immunity for malicious prosecution under Government Code section 821.6, because conduct occurred in the course of a criminal investigation.
- County entitled to summary judgment because no statute imposed liability on the county for this sort of conduct by its employees.

36

## *Leon v. County of Riverside* Court of Appeal

- Affirms.
- Section 821.6 immunity broadly interpreted to include virtually all conduct related to criminal prosecution.
- Includes underlying investigation of crimes.
- No liability could be imposed on a public entity absent statutory authorization and no statute imposes liability on the county here.

37

## *Leon v. County of Riverside*— Impact

- Helpful because it reinforces the broad scope of malicious prosecution immunity under section 821.6.
- Concurring opinion notes the Ninth Circuit has observed that the California Supreme Court has never directly addressed the scope of the immunity outside of the context of direct prosecutorial acts, such as filing or prosecuting charges.
- California Supreme Court has granted review, so can only be cited as persuasive, not binding authority.

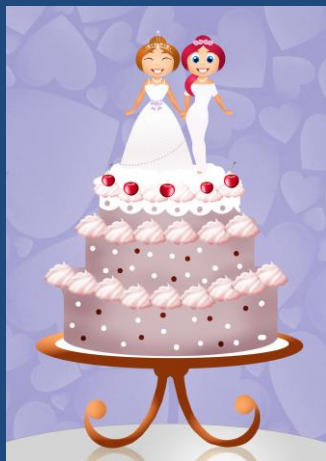
38

# Civil Rights

## First Amendment

39

*Fulton v. City of Philadelphia,*  
\_\_ U.S \_\_, 141 S.Ct. 1868 (2021)



40

## *Fulton v. City of Philadelphia*— Facts

- State-licensed foster care agency affiliated with the Roman Catholic Archdiocese, and foster parents affiliated with the agency, sue City and officials under section 1983.
- City's refusal to contract with the agency unless it agreed to certify same-sex couples as foster parents violates Free Exercise and Free Speech Clauses of the First Amendment.
- District court denies injunction and Third Circuit affirms.
- As a law of general applicability, rational basis review applies under *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), and regulation meets standard by broadening pool of potential foster parents.

41

## *Fulton v. City of Philadelphia* Supreme Court

- Reverses.
- Regulation provides for discretionary exceptions, so not a generally applicable statute under *Smith*.
- Regulation plainly burdens plaintiffs' right to free exercise of religion, subject to strict scrutiny and fails.
- Not narrowly tailored. City failed to show that granting plaintiffs an exception will imperil goal of increasing pool of available foster parents.
- Significant interest in promoting non-discrimination as a general policy, but since regulation allowed exceptions at all, indicates general interest was not an overriding policy.

42

## *Fulton v. City of Philadelphia* – Impact

- Even when drafting regulations that are generally applicable, municipalities must be aware of the potential impact on religious organizations.
- Mindful not to include exceptions unless a showing can be made that the provision meets the exacting standards of strict scrutiny.
- *Smith* in question. Gorsuch, Thomas and Alito would overrule *Smith* outright and apply strict scrutiny in all such cases.
- Barrett and Kavanaugh suggest that the ultimate standard to be applied is not clear, and should be resolved in a proper case.

43

## Municipal Tort Liability

44

*Los Angeles Unified School Dist. v. Sup.Court,*  
64 Cal.App.5th 549 (2021)



45

*Los Angeles Unified School Dist. v. Sup.Court*  
Facts

- High school student sues school district, alleging that a school district employee sexually assaulted her and that the district had covered up prior attacks.
- Trial court denies school district's motion to strike the claims for treble damages that were sought under CCP section 340.1.
- School district files a writ petition.

46

## *Los Angeles Unified School Dist. v. Sup.Court* Court of Appeal

- Writ granted. Treble damages claim must be stricken.
- Government Code section 818 expressly bars a claim for punitive damages against a public entity.
- Since treble damages are designed to be punitive in effect, they are barred by section 818.
- Court distinguishes civil penalties that have a compensatory component.

47

## *Los Angeles Unified School Dist. v. Sup.Court* Impact

- Very helpful decision .
- Reaffirms that the limitation on punitive damages in Government Code section 818 should be broadly applied.
- Reduces damages exposure in cases seeking statutory treble damages.

48



*Shalabi v. City of Fontana*,  
11 Cal.5th 842 (2021)



49

*Shalabi v. City of Fontana*-Facts

- Plaintiff files state court section 1983 wrongful death action against police officers, for death of his father. Alleged assault occurred when plaintiff was a minor, and he turned 18 on December 3, 2011. Plaintiff files suit on December 3, 2013.
- Defendants successfully argued that tolling under CCP section 352 ended on December 2, 2011, the 2-year limitations period began on plaintiff's birthday, hence the suit was one day late.
- Court of Appeal reverses: CCP section 12 requires that the first day is excluded in calculating time periods, so, the day plaintiff turned 18 was excluded from the limitations period.

50

## *Shalabi v. City of Fontana* California Supreme Court

- Affirms.
- Section 12 provides a uniform method of calculating time, and general rule of excluding the first day of a period should not be discarded simply because the triggering event –a plaintiff’s birthday– occurred at midnight thus leaving a full court day in which to immediately pursue any legal claim.
- Excluding the day a plaintiff turns 18 from the limitations period furthers underlying purpose of section 352 to protect the interests of minors.

51

## *Shalabi v. City of Fontana* Impact

- Clarifies law on an issue that arises with great frequency
- Allows public entities to more accurately calculate windows of potential liability in claims involving minors.

52

## *Haytasingh v. City of San Diego,* 66 Cal.App.5th 429 (2021)



53

### *Haytasingh v. City of San Diego – Facts*

- Plaintiff injured when he jumped off his surfboard to avoid collision with a city lifeguard jet ski.
- Trial court dismisses general negligence claim: Immunity under Government Code section 831.7 -- surfing is a hazardous recreational activity.
- Trial on whether lifeguard was grossly negligent in speeding.
- Trial court refuses to instruct jury lifeguard was required to comply with speed limits set by the Harbors and Navigation Code. As a political subdivision of the state, city exempt from the Code. Jury finds for defendants.

54

## *Haytasingh v. City of San Diego* Court of Appeal

- Affirms in part and reverses in part.
- Affirms dismissal of general negligence claim on immunity.
- Reverses judgment on gross negligence claim. Jury should have been instructed on Harbors and Navigation Code limits.
- Cities are not political subdivisions of the State under the Constitution.
- Harbors and Navigation Code did not expressly expand political subdivision to include cities, hence City subject to speed limits.

55

## *Haytasingh v. City of San Diego* – Impact

- Excellent discussion of the broad scope that should be given to the hazardous recreational activity immunity of Government Code section 831.7.
- However, as the concurring opinion recognizes, the court's extremely narrow interpretation of the term political subdivision as excluding cities is somewhat strained and may have an impact beyond interpretation of these particular provisions of the Harbors and Navigation Code.

56

*City of Chico v. Superior Court*,  
\_\_Cal.App.5th \_\_\_\_, 2021 WL 3855292 (2021)



57

*City of Chico v. Superior Court* – Facts

- Plaintiff injured by a falling tree branch while walking in a city park.
- Sues the city: Improperly pruned and failed to maintain the tree, causing the branch to fall.
- City moves for summary judgment: Tree is unimproved public property and hence city was immune from liability under Government Code section 831.2.
- Trial court denies the motion and the city sought writ relief in the Court of Appeal.

58

## *City of Chico v. Superior Court* Court of Appeal

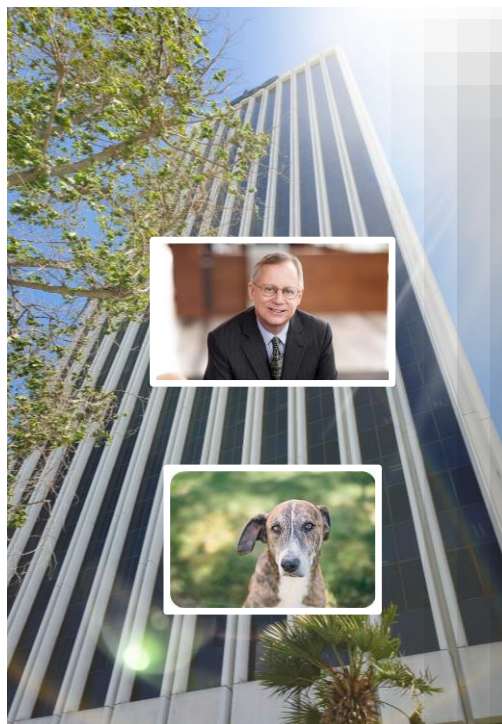
- Writ granted.
- The tree was not planted by the city and pre-dated park.
- Construction of adjacent sidewalk did not constitute an improvement to the tree that would defeat the immunity.
- Rejects argument that once the city pruned or maintained the tree, tree was no longer in a natural condition -- growth of the tree itself was a natural condition.

59

## *City of Chico v. Superior Court* – Impact

- Very helpful case.
- Court of Appeal applies a broad definition of natural condition of property for purposes of the immunity.
- Opinion underscores that even where a public entity has altered some natural conditions, say by constructing improvements in portions of a park, the immunity applies to suits based on injuries arising from portions of an area that remain in a natural condition.
- Given the ubiquity of trees in public parks which pre-date construction of the parks, case could have a significant impact on liability claims arising from tree-related injuries.

60



## THANK YOU !

### Tim Coates

Greines, Martin, Stein & Richland

tcoates@gmsr.com

310.859.7811

### Monty

The Big Comfy Chair

feedmepetme@gmail.com

555.555.5555