

For the International Municipal Lawyer's Association - IMLA's 5 things to know for May 17th

1. The Tenth Circuit decided an interesting flow control case that also involves preemption under the Federal Aviation Administration and Authorization Act (FAAAA). The Court pointed to the legislative history of the Act specifically noting the understanding that garbage haulers were not included in the term "motor carrier" under the Act. The panel also concluded that the contract language was supported by the city's position that its decision to direct garbage to its transfer station fell within the contract's terminology. So, it seems the case was decided not on the basis of a limitation on the city's ordinance, but as a term of the contract.

<https://www.ca10.uscourts.gov/opinions/16/16-8123.pdf>

2. The 11th Circuit dealt with an inverse condemnation case that raises a couple of interesting questions. The beach front landowner acquired property to a strip of land between the owner's property and the beach and in a proceeding several years before agreed with the City that the city would not use the parcel for public access. Apparently, the city changed its mind and people used the property for access and to hold gatherings such as weddings. The owner claimed a taking and a jury awarded damages at the full level of what the appraiser claimed was the easement plus the value of the property severed from the easement. The city sought conveyance of the property in fee based on that damage determination. The panel upheld the damage award for the taking, determined the city could not claim the fee but did require that the owner provide a permanent easement to the city. My guess is no one is really happy with this result and may be a message to litigants to be careful what you wish for.

<http://media.ca11.uscourts.gov/opinions/pub/files/201616402.pdf>

3. In Washington State, its Supreme Court decided that emails exchanged between county attorneys and officials of a company working with the county in an environmental enforcement action were work product and could be withheld under the state's public records act. The court concluded that the privilege was not waived under the terms of the distribution as distribution of the emails was not made with significant risk that the adversary would receive them.

<https://www.courts.wa.gov/opinions/pdf/935629.pdf>

4. In an internecine battle within a union and police department a police officer sued asserting retaliation for his speech at union meetings. The 2<sup>nd</sup> Circuit concluded that the city had no liability and that two officials escaped liability based on Qualified Immunity. As to the union president, the court remanded the issue to determine if the actions that the union president took against the officer amounted to state action.

[http://www.ca2.uscourts.gov/decisions/isysquery/6a6b9fae-2564-41e2-8941-bb25cd77f382/3/doc/17-76\\_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/6a6b9fae-2564-41e2-8941-bb25cd77f382/3/hilite/](http://www.ca2.uscourts.gov/decisions/isysquery/6a6b9fae-2564-41e2-8941-bb25cd77f382/3/doc/17-76_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/6a6b9fae-2564-41e2-8941-bb25cd77f382/3/hilite/)

5. In an interesting blog post about the consequences of *Murphy vs NCAA*, Professor Daniel Hemel notes that the decision most likely brings into question the validity of Section 1373 used to justify DOJ's position as to sanctuary cities. He also notes several laws that prohibit states from passing certain tax measures that likely violate the rule discussed in *Murphy*.

<https://medium.com/whatever-source-derived/justice-alito-state-tax-hero-333830d097ab>

We're already getting ready for our conference in Houston. Have you heard of the Art Car House? It's in Houston and you'll want to be registered for a land use tour that goes there. Remember, it's a city without zoning. Register now before the rates go up. Get more from IMLA by joining. Not a member? Contact us. Sign up at [www.imla.org](http://www.imla.org). Have a great day and make it an inspirational one.