

For the International Municipal Lawyer's Association - IMLA's 5 things to know for May 3rd

1. Yesterday, I went into apoplectic shock reading the 9th Circuit's decision protecting the rights of a homeless man's sidewalk aviary and am trying to recover. So, in New York that State's highest court recently concluded that the state's three year statute of limitations applies to suits under the state's no fault tort laws. The case proves something more, however. Justice in the United States sleeps more than it performs. The events in this case began in 2001 with an accident, suit was filed in 2007 and now 11 years later the State's highest court finally resolves the claim. Is justice denied when justice is delayed?

<https://www.nycourts.gov/ctapps/Decisions/2018/May18/39opn18-Decision.pdf>

2. In Maryland its intermediate appellate court recently upheld a rain tax so called because the assessment charges all properties a fee or tax based on the property's impervious surface. A synagogue sought relief claiming that the charge was a property tax for which religious institutions are exempt. It also argued that RLUIPA applied to prevent the charge on its property. The court ruled in favor of Baltimore and against the religious institution.

<https://mdcourts.gov/data/opinions/cosa/2018/2645s15.pdf>

3. In the 11th Circuit, that court dealt with a DPPA case having significant importance to local governments. A deputy sheriff misused access to the driver's records over 40,000 times. One person whose records were improperly searched sued trying to bring a class action. The court concluded that she could not bring a class action because the Act did not contemplate such suits. However, the court approved a punitive damage award against the Sheriff's department; i.e., the local government and approved the multiplication of the statutory liquidated damages for the two events the Plaintiff proved. The issue of multiplication of statutory damages under the DPPA can be significant for local governments.

<http://media.ca11.uscourts.gov/opinions/pub/files/201616388.pdf>

4. In an important land use decision, Maryland's highest court recently concluded that a legislatively imposed development impact fee should not be analyzed under the Nollan/Dolan rule because as the Supreme Court noted its decisions in those case arose from administrative determinations rather than legislatively adopted exactions. At issue in the case was a legislatively imposed development impact fee with a legislatively adopted schedule of fees.

<https://mdcourts.gov/data/opinions/coa/2018/23a17.pdf>

5. In my law school class, our case book includes an article from the 50's by renowned professor Charles Tiebout discussing the concept of "consumer voters" and their ability

to vote with their feet. In other words, if a community's laws or taxation reach a certain level of intolerability they'll leave or vice versa if the community's benefits are great like a Field of Dreams they'll come if you build it. The Seattle City Council has announced plans to impose a head tax on employers charging an amount for each employee so the city can raise funds to combat its dramatic homeless crisis. Amazon, certainly one of the city's largest employers has announced that it will put on hold any plans for expansion or that may tie it to long term leases in the city until the issue is resolved. So, in Seattle the homeless keep coming and its largest employer may not be staying – Tiebout's theory played out in reality.

https://www.seattletimes.com/business/amazon/amazon-pauses-plans-for-seattle-office-towers-while-city-council-considers-business-tax/?utm_source=referral&utm_medium=mobile-app&utm_campaign=ios

We're already getting ready for our conference in Houston. Have you been to the beer can house? A land use tour will get you there. Register now before the rates go up. Get more from IMLA by joining. Not a member? Contact us. Sign up at www.imla.org . Have a great day and make it an inspirational one.