There is no question that the denial of the proposed zoning amendment had its most direct and immediate impact on AIC. It also affected the property's owner, who lost the opportunity to sell the property to AIC. In addition, the property that AIC wished to buy will remain zoned for manufacturing activity regardless of who comes to own it, unless and until the city council amends the zoning map. For these reasons, the city council's actions are properly characterized as legislative, not executive or administrative. When the council denied the zoning amendment and passed the later resolution rejecting the amendment, it was engaging in legislative acts.

Although it is unclear whether this decision will be appealed, the case highlights the importance of the crucial distinction between legislative and administrative or executive actions when raising immunity. The court's determination that the councilmembers' decision was a legislative matter reveals that merely because an action impacts a single property it may nevertheless have a broader legislative character.

http://www.scribd.com/doc/214332626/American-Islamic-Ctr-v-City-of-Des-Plaines (last accessed Apr. 3, 2014).

Public Records: E-mails and Text Messages to or from Public Officials on Private Electronic Devices and Personal Accounts Are Not Public Records

City of San Jose v. Superior Court, No. H039498 (Cal. Ct. App. Mar. 27, 2014)

Note: This summary has been adapted from a posting originally provided by Ruthann Ziegler and Nicholaus Norvell of the San Francisco office of IMLA member Meyers Nave LLC.

A California Court of Appeal has held that when officers and employees of a public agency use private accounts and personal electronic devices to send or receive messages, the messages do not qualify as "public records" under the California Public Records Act (CPRA), even when the messages concern public agency business.
In 2009, Ted Smith filed a request with the City of San Jose seeking public records related to downtown redevelopment. The request sought several categories of records, including "voicemails, emails or text messages sent or received on private electronic devices" used by the Mayor and Council members. When the City objected to this aspect of the request, Smith sought a court order for disclosure of the messages under the CPRA.

Smith argued that unless private messages related to the public agency are made available under the CPRA, public officials could avoid public scrutiny while conducting

the public's business. Others, such as the League of California Cities, argued that disclosure of these messages is impractical because the public agency has no access to the messages.

In 2013, the trial court ordered the Mayor and City Council members to turn over e-mails, voicemails, and text messages sent or received on private electronic devices and related to downtown redevelopment.

HELD: The Court of Appeal reversed the trial court's order, relying on the CPRA's definition of "public records," which are writings relating to the public's business "prepared, owned, used, or retained" by a state or local agency. (Government Code § 6252(e).)

DISCUSSION: The court concluded that because a public agency cannot access or control messages on private accounts or devices, the agency itself cannot prepare, own, use or retain them. The court acknowledged that the decision might result in public officials using private accounts or devices to conduct public business. However, the court noted that the legislature is best equipped to address this issue, as well as the practicality and privacy concerns involved in disclosing records from private accounts and devices.

It is likely this case is not the end of the matter; Smith will probably request a hearing before the Supreme Court, which the Court has the discretion to grant or deny. The California legislature may also take up the appellate court's invitation to address this matter.

http://www.courts.ca.gov/opinions/documents/H039498.PDF (last accessed Apr. 3, 2014).

Search and Seizure: Where Fourth Amendment Violations Arose Out of Novel Fact Pattern, Rights Were Not "Clearly Established"

Bray v. Planned Parenthood Columbia-Willamette, Inc., No. 12-4476 (6th Cir. Mar. 21, 2014)

In a case involving obvious violations of plaintiffs' Fourth Amendment rights, the Court of Appeals for the Sixth Circuit has nevertheless cleared U.S. Marshals executing a writ of execution because the legal and factual scenario had no precedent within the Circuit or before the Supreme Court.

"If the facts as alleged in the complaint are true, this case involves an incident that is more like the home raids by Red Guards during China's Cultural Revolution than like