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Regulating Short-term Rentals: A Federal Circuit Roundup

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By: Katie Hodgdon, Association Counsel, Association of Towns of the State of New York, Albany, New York
Airbnb and other short-term rental apps have revolutionized lodging worldwide—in the process reducing the stock of residential housing and driving rents skyward. Local governments across the US have instituted a range of mechanisms to slow the negative impacts, often encountering legal challenges.
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AMICUS

By: ERICH EISELT,
IMLA Deputy General Counsel and Director of Legal Advocacy

Where We've Been, and Where We Are Headed.

As the new 2024-2025 Supreme Court Term, now a month old, swings into full activity, it seemed appropriate to provide *ML* readers with information recently reported to our Board of Directors about IMLA's amicus activity for the prior six months, and to flag new cases where IMLA is filing as an amicus.

Mission: As the data below indicates, our Legal Advocacy program serves IMLA members across the country, filing not only in major cases before the US Supreme Court, in federal circuits and state supreme courts, but also in lower courts where appropriate. All requests for IMLA amicus support are given serious consideration, and where they are consistent with IMLA's purposes are sent to our Legal Advocacy Committee for a vote and subsequent action. IMLA's amicus filings over the prior six month period have supported some of America's largest cities as well as localities with fewer than 15,000 residents.

The LGLC: IMLA's leadership in local government advocacy has been strengthened with our formation of the Local Government Legal Center (LGLC), a collaboration of the National League of Cities (NLC-representing 2,700+ American cities), the National Association of Counties (NACo-serving nearly 40,000 elected county officials nationwide), the Government Finance Officers Association (GFOA-serving more than 20,000 federal, state/provincial, and local finance officers in the US and Canada), and most recently the International City/County Management Association (ICMA - representing 13,000+ local government managers). An LGLC amicus brief thus represents a substantial proportion of America's local governments, and we believe commands serious attention by the Court.

Other filings: IMLA also files in many lower courts without LGLC participation, aligning with state advocacy groups and other interested entities, as indicated below.

Pro-bono authors: The credibility and success of IMLA's Legal Advocacy program is heightened by our ability to obtain pro-bono participation by highly talented legal authors, many of whom operate at the highest levels of appellate practice, and who we honor at our Annual Mid-Year Seminar in Washington DC.

Highlights: Below are some highlights of IMLA's Legal Advocacy activities during the six months from April to September 2024:

Cases in which IMLA filed: thirty cases.

States where cases originated: Seventeen states – WA, OR, CA, NV, UT, NM, TX, ID, Al, GA, FL, VA, MD, PA, OH, MO, TN

US Supreme Court cases in which IMLA filed: sixteen cases - nine have been decided: *Grants Pass*, *Muldrow*, *Sheetz*, *Gonzalez*, *Chiaverini*, *Rahimi*, *Culley*, *Murthy*, *Vullo*; five cases yet to be decided: *SF/EPA*, *Lackey*, *Vanderstok*, *EMD*, and *Stanley;* two petitions which sought cert: *Nelson*, *Tekoh*. IMLA was joined by the other members of the LGLC in ten of the sixteen Supreme Court cases.

Originating Federal Circuits: Six Circuits – Fourth, Fifth, Sixth, Eighth, Ninth, Eleventh

Amendments at issue: Six Amendments – First, Second, Fourth, Fifth, Eighth, Fourteenth

Federal statutes at issue: more than seven – ADA, FLSA, Title VII, 18 USC §922(g)(8), Clean Water Act, §1988, Gun Control Act, etc.

Originating State Supreme Courts: three states - ID, UT, PA

Recap of Results: Our assessment is that, of the cases in which IMLA participated, outcomes were positive or avoided damaging precedent in many (US Supreme Court cases unless otherwise noted):

Grants Pass – prohibitions against camping on public property do not violate Eighth Amendment.

Rahimi-Second Amendment does not invalidate federal law criminalizing gun possession by individuals subject to domestic violence restraining orders.

Culley-Fourteenth Amendment does not require separate hearing before civil forfeiture hearing.

Murthy-plaintiffs have no standing—but result avoids challenge to government speech.

Sheetz-no outright requirement for individualized nexus/proportionality assessment in permit fees.

Muldrow-in Title VII discrimination actaion, plaintiff must show "some harm" resulting from change in employment term or condition- more than plaintiffs' "no harm" proposed rule, but less than "significant harm" rule proposed by IMLA.

Vullo-no erosion of government speech generally, although governmental advisory backed by implicit regulatory sanctions crosses line into coercion.

Slaybaugh-property damage during legitimate police activity is not Fifth Amendment taking.

Sacramento Homeless Union (E.D. Cal. to 9th Cir.)-dismissal of plaintiffs' appeal seeking injunction against movement of homeless encampment during high temperatures as moot.

US News and World Report (E.D. Cal. to 9th Cir.)-San Francisco's administrative subpoena is not violation of First Amendment.

Van Wandruzska (Idaho Dist. Ct. to Idaho Sup. Ct.)-Municipalities may hold landlords liable for tenants' unpaid utility bills.

In the period following our report to the Board, IMLA has already filed or agreed to file amicus briefs in another six cases:

NHL et al v. City of Pittsburgh (Pennsylvania Commonwealth Court to Pennsylvania Supreme Court-merits amicus brief in support of Respondent City of Pittsburgh): Whether new 3% Facilities Fee on non-resident athletes/performers who use City's stadiums violates Pennsylvania Uniformity Clause because all 3% goes to the General Fund, whereas of the 3% paid by resident athletes or performers, 2% goes to School Districts.

City of Seattle v. Kia/Hyundai (Central District of California to Ninth Circuit-merits amicus brief in support of Plaintiff/Appellee City of Seattle): Appeal by Hyundai/Kia of denial of motions to dismiss (municipal cost recovery, preemption, no duty) in public nuisance case for failure to install anti-lock devices.

Sheetz v. County of El Dorado (US Supreme Court remand to California Court of Appeals – merits amicus brief in support of Respondent County of El Dorado) – whether El Dorado's Traffic Impact Mitigation fee satisfies Nolan/Dollan nexus and proportionality tests, or is an individualized determination required.

Perttu v. Richards (Sixth Circuit to US Supreme Court – merits amicus brief in support of Petitioner Perttu) - whether, in cases subject to the Prison Litigation Reform Act, prisoners have a right to a jury trial concerning their exhaustion of administrative remedies where disputed facts regarding exhaustion are intertwined with the underlying merits of their claim.

McGlaughlin Chiropractic Associates Inc. v. McKesson Corp. (Ninth Circuit to US Supreme Court – merits amicus brief in support of Petitioner McGlaughlin Chiropractic Associates Inc.) - whether the Hobbs Act requires the district court to accept the Federal Communication Commission's interpretation of the Telephone Consumer Protection Act.

Ames v. Ohio Department of Youth Services (Sixth Circuit to US Supreme Court – merits amicus brief in support of Respondent Ohio Department of Youth Services) - Whether, in addition to pleading the other elements of an employment discrimination claim under Title VII, a majority-group plaintiff must show "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority.