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FEATURE:

First Circuit Holds That Conclusory and Speculative Claims Regarding Property Values Are Not Particularized Enough to Create Standing

Kolackovsky v. Town of Rockport, No. 25-1275 (1st Cir. January 22, 2026)

The plaintiffs in this case were eleven residents, registered voters, and taxpayers of Rockport, Massachusetts (Town), some of whom live on property abutting the Rockport commuter rail station or within the overlay district at issue. In Massachusetts, the law requires municipalities to provide an of-right, high-density multifamily housing district within a half mile of a mass transit station and permits certain multifamily housing zoning amendments to pass by a simple majority at town meeting. In May 2022, Rockport adopted, by simple majority only, a Transit Oriented Village Overlay District (TOVOD), with at least one plaintiff attending and voting against it, and more than a third but less than half of the votes cast opposing the TOVOD. The Town's board then proposed the Communities Multi-Family Overlay District (MCMOD), encompassing the TOVOD and two other districts. The Town voted by simple majority on April 29, 2024, to add the MCMOD. However, the day before the MCMOD vote, plaintiffs filed a federal complaint seeking a declaration that the MCMOD required a two-thirds vote at the town meeting and alleging that the proposed MCMOD materially affected the property values of plaintiffs within the district and dramatically undermined their expectations under prior single-family and greenspace zoning. In their response to the Town's motion to dismiss, plaintiffs newly asserted that several had attended the April 2024 town meeting and voted against the MCMOD, and that more than a third but less than half voted in opposition. The district court dismissed for lack of standing, reasoning that plaintiffs failed to show specific harm tailored to each plaintiff and could not assert legislator standing because they were not singled out for unfavorable treatment and their votes were not completely nullified. Plaintiffs appealed.

Legal Question(s):

1. Whether the plaintiffs demonstrated an "injury in fact" that was "concrete and particularized" and "actual or imminent," as required to establish Article III standing for

their claims, including alleged impacts to property values, expectations regarding property, traffic, and access to light and air.
2. Whether some plaintiffs, as town meeting voters, could claim "legislator standing" or any other type of standing to challenge the vote threshold used to adopt the zoning overlay, based on their participation in the meeting and the argument that their votes were potentially dispositive.

Holdings:

The First Circuit held that the plaintiffs lacked standing to challenge the creation of the new zoning district in Rockport, Massachusetts, and therefore the federal court lacked subject-matter jurisdiction to hear their claims. The court affirmed the district court's dismissal on this basis.

Analysis:

The court began by restating the three parts of standing: injury in fact, causation, and redressability, applicable even to declaratory-judgment claims. It defined injury in fact as concrete and particularized, actual or imminent, rather than conjectural, recognizing that future harm must be certainly impending or pose a substantial risk, not merely possible. It emphasized that generalized grievances are insufficient and that the complaint must allow for a determination of whether each particular plaintiff may litigate each particular claim.

Turning to the complaint, the court found the injury allegations "remarkably vague," noting plaintiffs listed names, residences, voter status, and abutter/overlay-resident status, but provided no specific harm for each plaintiff; instead they asserted only that the proposed overlay "affected sharply" property values and "undermined dramatically" owners' expectations, leaving the court to guess whether values decreased or increased and what expectations were implicated. The court did not deny that a loss in property value as a direct result of the Town's actions could constitute an injury in fact, but merely stating a conclusion that rezoning would cause their property values to fall did not rise to the level of a concrete injury.
The court held that new assertions in appellate briefing, such as diminished values, increased traffic, and loss of light and air, could not cure the pleading defects because allegations in briefs cannot amend a complaint. Comparing the complaint to prior standing cases, the court noted that, unlike *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 397 (1926)), where approximate before-and-after values were alleged, plaintiffs offered no similarly particularized allegations, and that its prior finding of standing in a zoning context involved specific allegations of impacts on use and enjoyment; thus, injury in fact was not adequately alleged.

The court also rejected "abutter standing" as a basis for federal standing, explaining that state-law grants of standing are generally irrelevant to federal standing analysis and cannot backfill a failure to plead Article III elements. However, the court pointed out that even for state-law claims, the Massachusetts statute did not apply because plaintiffs challenged a town meeting's adoption of an overlay district, not actions of a zoning board of appeals or special permit authority.

Finally, the court rejected legislator-standing arguments regarding the town meeting's vote threshold because the supporting facts arose from the April 29, 2024, meeting and appeared only in briefing, not in the complaint or any amended/supplemental pleading, which cannot be considered on a motion to dismiss. With all federal claims dismissed, the district court could decline supplemental jurisdiction over the state-law vote-threshold claim as well.

While the true merits of this case were not sincerely litigated, which might be a bummer for some readers (and me), I still thought this case was worth featuring, as I have become well aware in my time at IMLA that localities that try to build more housing are often met with resistance similar to the

plaintiffs in this case. This case serves as a reminder to read their complaints carefully, as they are often not pleaded with particularity, which can help our members avoid litigating the merits of their city councils' and zoning boards' decisions in full. Stay warm, everyone!

Kolackovsky v. Town of Rockport

SHORT SUMMARIES:

9th Circuit – Real Estate/Property – Short Term Rentals

Clark County enacted an ordinance prohibiting unlicensed short-term property rentals and authorizing penalties, including fines of $1,000 to $10,000 per violation and potential criminal liability for property owners. Diamond Sands owned and operated a 360-unit apartment complex in Las Vegas with leases that prohibit tenants from renting to third parties without authorization. After numerous complaints that certain units at Diamond Sands were being used as short-term rentals, including for loud parties, the County's Code Enforcement Unit investigated, communicated with property management, and confirmed via inspections and resident interviews that units had been rented for short-term stays through Airbnb. Based on the investigations, the County issued notices of abatement to Diamond Sands and, after follow-up inspections confirmed continued violations, issued two administrative citations imposing $2,000 fines for each violation, identifying additional violations for which it did not cite; Diamond Sands paid one citation and disputed the other. Diamond Sands sued in the District of Nevada, bringing facial and as-applied Eighth Amendment Excessive Fines Clause challenges and sought to enjoin enforcement. The district court denied its motion for a preliminary injunction for failure to show likelihood of success on the merits, and Diamond Sands appealed.

Applying the Bajakajian gross disproportionality framework and Pimentel factors, the appellate court affirmed the lower court's decision. Diamond Sands was made aware of the short-term rental use of their properties by many of their tenants through the abatement notices sent to them by the county, as well as tenant complaints, and therefore bore some culpability for the illegal activity taking place on their premises. The county also imposed fines at the lower end of the authorized range and did not include any additional penalties authorized by the ordinance, so Diamond Sands' Eighth Amendment claims were also rejected.

Diamond Sands Apartments, LLC v. Clark County Nevada

D.C. Circuit – Airport Law – Cybersecurity

In response to rising cybersecurity threats against the aviation sector, including ransomware, foreign state-affiliated cyberespionage, and attacks by pro-Russia hacktivists targeting airports and related entities, TSA in August 2022 proposed amending certain large airports' TSA-approved security programs to require cybersecurity measures. In 2023, TSA issued an emergency amendment, Joint Emergency Amendment 23-01, requiring specified airport and aircraft operators to identify critical systems within 30 days, submit cybersecurity implementation plans within 90 days, implement measures and controls for those systems, and conduct annual effectiveness assessments. TSA invoked federal statutes to proceed without notice and comment on the basis that an emergency requiring immediate action to protect national and transportation security existed. Spokane Airport

Board petitioned TSA for reconsideration with procedural and substantive objections; TSA denied reconsideration, and Spokane petitioned the D.C. Circuit for review under 49 U.S.C. § 46110(a).

Spokane raised 4 main arguments, some of which were dismissed on procedural grounds and others of which were rejected by the court. One argument that was fully analyzed by the court was on regulatory inconsistency. Spokane contended the Amendment was inconsistent with TSA regulations because it did not relate to "criminal violence" or "aircraft piracy" and did not directly amend the content of airport security programs as required by relevant regulatory provisions. However, the court held that airport security program requirements are non-exclusive because § 1542.101(a)(3) requires inclusion of applicable items listed in § 1542.103, and “includes” means “includes but is not limited to,” and TSA may amend program content, including via emergency procedures; thus adding cybersecurity plans fit TSA’s regulatory authority. This is definitely a case worth reading if you practice airport law.

Spokane Airport Board v. TSA

6th Circuit – Dog Attack – State Created Danger

Joshua Steeb accompanied his friend Teresa Fitzgerald to the home of Fitzgerald’s relative, Linda Motter, to facilitate the removal of a “large, dangerous dog” that had previously been quarantined, had bitten Steeb, and had been reported via 911 for removal; Fitzgerald and Steeb waited in a car while the dog remained inside the house. Battle Creek animal control officer Mike Ehart then arrived, knowing of the dog’s violent history from returning it after quarantine and understood the risks the dog posed. Yet he insisted that Fitzgerald remove and secure the dog in a containment area in his truck while he waited in the cab, despite her expressed apprehension and the lack of any immediate need to act without backup or alternative methods. Ehart briefly demonstrated how to close the gate, did not tranquilize the dog or provide tools such as a catchpole, and then returned to the cab while Fitzgerald attempted to coax the dog. Unsurprisingly, the dog attacked and mauled Fitzgerald, prompting Steeb to leave his car to rescue her by striking the dog, which then turned on him, clamped onto his leg, and would not release. Ehart then exited his truck, stated he did not know what to do, called for backup at Steeb’s urging, and a responding officer eventually shot and killed the dog. Steeb underwent multiple surgeries and suffered substantial, permanent injuries.

Steeb sued Ehart and the City under 42 U.S.C. § 1983 on a state-created-danger theory and alleged municipal liability for failure to train, supervise, and equip, along with Michigan tort claims; defendants moved to dismiss under Rule 12(b)(6), and Ehart asserted qualified immunity. The district court dismissed the federal claims for failure to plead a constitutional violation, declined supplemental jurisdiction over the state-law claims, and dismissed them without prejudice; Steeb appealed.

The court held Steeb failed to plausibly plead a substantive due process violation under the state-created-danger doctrine because he did not satisfy the first element, an affirmative act that directly increased his risk of harm. The court explained that the affirmative-act inquiry aligns with proximate cause and asks whether the officer directly increased vulnerability to third-party danger without the victim’s consent, and that intervening causes can break the chain. The court concluded Fitzgerald voluntarily assumed the risk by agreeing, despite initial reluctance and absent immediacy, to retrieve a known dangerous dog when it remained secured in the house, which broke causation; therefore, Ehart’s insistence did not constitute an affirmative act under precedent. The court rejected Steeb’s arguments that Ehart’s “insistence” converted Fitzgerald’s decision into an involuntary one, noting Ehart did not order her and lacked apparent coercive authority, and that being safer before the request does not satisfy the affirmative-act requirement. Because the affirmative-act element was

not met as to Fitzgerald, the causal chain likewise failed as to Steeb as a foreseeable rescuer. The court affirmed dismissal of Steeb's claim against Ehart and, consequently, the municipal liability claim against the city.

Steeb v. Ehart

4th Circuit – Free Speech – Employment Law

The Montgomery County Board of Education adopted Guidelines for Student Gender Identity before the 2019–20 school year, requiring all staff, including substitute teachers, to address students by the name and pronouns corresponding to the gender identity consistently asserted at school and to keep a student's gender identity confidential, including from parents, unless legally required or authorized by the student to disclose. Beginning in 2022–23, all staff were required to complete compliance training and attest to their understanding of and adherence to the guidelines. Kimberly Ann Polk applied in 2020, with the guidelines in effect, and during the 2021–22 school year substituted ten times across eight elementary schools. As part of retention, she was instructed to check a box confirming that she had watched, understood, and would fully adhere to the guidelines. She declined based on sincerely held Christian beliefs that using non-birth-sex pronouns would be unethical and that concealing a student's transition from parents would be unethical. In November 2022, she requested a religious accommodation, which was denied in December 2022. Polk sued the Board, asserting Title VII failure to accommodate, Free Speech, and Free Exercise claims, seeking damages and declaratory and injunctive relief. The district court dismissed the Free Exercise and Free Speech claims under Rule 12(b)(6), denied dismissal of the Title VII claim, and denied a preliminary injunction. Polk Appealed.

On review, the court adopted the district court's analysis and affirmed dismissal of both constitutional claims. As to Free Exercise, the court held that the guidelines, while burdening Polk's beliefs, are neutral and generally applicable: they are facially neutral with no religious targeting, there were no plausible allegations of religious animus, and the policy provides no mechanism for individualized exemptions despite discretionary discipline, so only rational basis review applied. Applying rational basis, the court held the guidelines are rationally related to legitimate interests, and Polk's allegations did not defeat the presumption of validity. As to Free Speech, the court held that the speech at issue is pursuant to official duties, not citizen speech on matters of public concern, and therefore it is unprotected by the First Amendment.

Polk v. Montgomery County Public Schools