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The Pickleball Problem You May Not Have Seen Coming

How Municipal Attorneys Prevent Pickleball Noise Conflicts Before They Become Litigation



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LETTER FROM THE PRESIDENT

By Susana Alcala Wood
City Attorney
San Jose, CA

LEADING WITH EMPATHY

Dear Colleagues,

Greetings! I write this as I reflect on the events of this past week at our mid-year conference in Washington, D.C. If I could sum up the experience in one word, it would be this: Community. We gather to learn so as to better serve our client agencies, but this gathering also serves many other purposes. Where else can a bunch of self-professed "local government geeks" get together and talk about geeky government stuff to a group of people who you know are just as interested in the topic as you are? We understand each other, we get each other, and we support each other. We build community, and I, for one, feel like my battery has been charged to 100% again, ready to tackle whatever comes my way – knowing that I have this formidable community to plug into. We truly learn and grow the best when we learn from each other. It's in that spirit of shared growth that has me still thinking about one of the sessions at the conference in particular. It was a panel led by IMLA Board member Alan Bojorquez on how we, as public agency counsel, can build strong relationships with our elected-body clients. The title of the session was: Expectations for Attorney-Client Relationships: Establishing Clear, Strong and Effective Commitments, and five days later, I am still making notes to myself about the actions I'm going to take to improve my communication and relationship with my City Council.

In that session, we were reminded that, as public agency attorneys, our effectiveness relies on the trust we build with our clients, and that trust is the cornerstone of our work. Meaningful trust is achieved through relentless commitment to providing our clients with consistency and open communication. Yes, our primary role is to provide legal analysis and advice. But to meet the requirements set out in the ABA Model Rules, such as Rule 3.3 (Candor Toward the Tribunal) and Rule 2.3 (Evaluation for Use by Third Persons), we must also serve them as Counselors and be prepared to evaluate all issues and counsel them on a variety of scenarios. The model rules dictate our professional obligations to the court and the law, but they also provide the framework for the integrity we bring to our relationships with clients, particularly elected officials. While our role requires us to always remain neutral and apolitical, that is not a mandate for detachment. Staying out of politics does not mean we avoid the people and the issues. In fact, investing and building strong relationships with our clients provides us the ability to successfully navigate the tough times that are part of the job.

One of the lessons that will stick with me most is the encouragement to lead with empathy. No matter how difficult or tense the situation may be, try your best to understand the person in front of you – to really understand their point of view and not just wait for them to stop talking so you can respond. We were reminded that even when we feel under fire or personally attacked, resist the natural urge to react in kind. We are their lawyers. We are their legal counsel. It is incumbent upon us to remain professional and seek to understand the issue so that we can help them through it. And always represent yourself well by respecting the office – even when the person currently holding that office is not being respectful towards you. When interactions become tense or heated during difficult meetings, you may occasionally feel attacked or undervalued. I encourage you to resist the natural urge to react defensively. Instead, lean into the tension and use those moments as an opportunity to educate yourself about your client's perspective or frustrations, so you can better see the underlying issue at the root of the tension. Easier said than done? Of course. So, we learn how to get better, and we practice, practice, practice. We continue to refine our empathetic skills so that they become more of who we are as attorneys rather than just something we do. Meeting our clients with empathy isn't just a soft skill—it is a necessary, professional ingredient for success.

By deepening your own understanding, you become better equipped to advise and counsel your clients through the issue at hand and create another opportunity to sow trust. The foundation of our effectiveness is ultimately the trust and confidence they place in us; built through the relationship we have cultivated with our consistent efforts. Our agency clients face immense pressure, and when we meet them with empathy and strive to truly understand the person behind the question—their goals, constraints, and fears—we become better advocates and advisors. And never fail to acknowledge when an error was made or recognize that, in hindsight, a matter could have been handled differently. True professionalism involves the humility to admit when a different approach might have yielded a better result.

So, I leave you with the following "best practices" notes that I took away from the session:

• Hit Reset: It is always possible to restart and improve a client relationship. Owning our past performance is often the fastest way to build future credibility.

• Lead with Empathy: Try to understand the person asking the questions. When you feel attacked, resist the urge to react defensively. Instead, educate yourself on their perspective so you can better educate your client on the law.

• Build Relationships: Staying neutral and apolitical does not mean being isolated. Strong, professional relationships are the bedrock of effective legal counsel.

I also challenge you to utilize the Model Rules as a checklist in your next client meeting, as we did in the session. Share these ethical standards openly and transparently, explaining how they guide our advice and ensuring they receive reliable, honest, and high-quality legal guidance. By doing so, you can set a successful course for a more enriching and satisfying relationship with your clients.

Thank you for your integrity, professionalism, and public service, and remember that our best work is done when we pair legal expertise with human understanding.

All my best,

Susana



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EDITOR'S NOTE

By Christine Evangelides Dodd
IMLA Managing Editor
Boise, ID

ONE YEAR IN, AND STILL CURIOUS

Dear *ML* Readers,

This issue marks my one-year anniversary with *ML* magazine, and I find myself more curious than ever. We recently returned from the Mid-Year Seminar in Washington, D.C., and I was reminded—again—how thoughtful, candid, and grounded local government attorneys are. The openness with which you discuss both successes and challenges is remarkable. In particular, the conversation at the Wonk breakfast on construction project delivery systems has stayed with me and is firmly on my radar for a future issue.

I arrived at the seminar already thinking about qualified immunity, having committed to two pieces in this issue that engage with the topic. During the SCOTUS Update, Paul Clement raised a question that continues to resonate: whether a strong originalist justification for qualified immunity exists, and how that inquiry aligns with the Court's continued willingness to summarily reinforce the doctrine. It's a tension that sits at the intersection of legal theory and real-world application.

In this issue of *ML*, contributors approach that conversation from a practice-oriented perspective. Joey Gutmann examines *Zorn v. Linton* and emerging trends in qualified immunity. Robert Higgason and Melissa Azadeh provide a practical roadmap for dispositive motions in use-of-force cases in their article, "Just Go Away!"

Switching gears, many of you may have encountered the growing—and sometimes surprising—impact of pickleball in your communities. In "The Pickleball Problem You May Not Have Seen Coming," Charles E. Leahy offers a thoughtful analysis of planning and strategies to avoid noise-related disputes before they escalate into litigation. He reasons that municipalities relying solely on governmental immunity or ordinance compliance as legal defenses are prone to deepening community conflict and eroding goodwill.

We also highlight innovative work from the field. Suntrease Williams-Maynard shares insights on the City of Mobile, Alabama's traffic warrant clinics. MCM Consulting provides a curated set of recent case summaries from Canada. The IMLA Mentor community offers practical advice on rethinking memo writing, and Darren Shulman explores an intriguing legal question inspired by *Project Hail Mary*.

Thank you for being part of this past year. I am grateful for your engagement, ideas, and contributions, which continue to shape *ML* Magazine. I look forward to what we will build together in the year ahead.

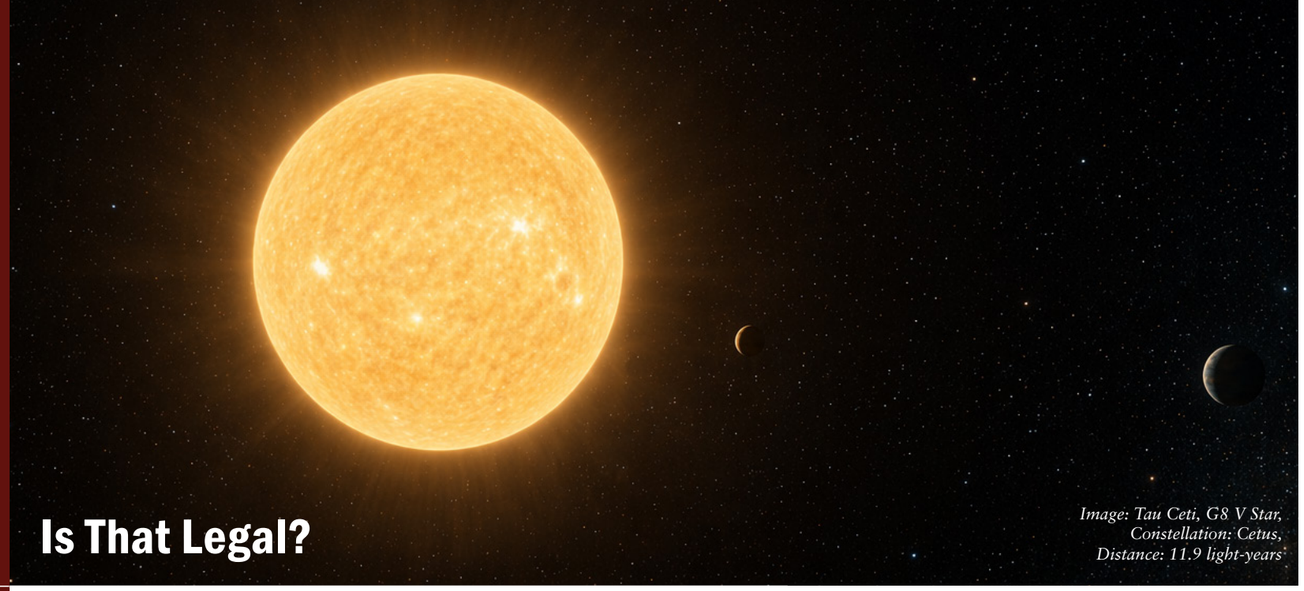
With warm regards,

Christine



MOVIE REVIEW

Contributed by
Darren Shulman
City Attorney
Upper Arlington, OH



Is That Legal?

Image: Tau Ceti, G8 V Star, Constellation: Cetus, Distance: 11.9 light-years

Project Hail Mary

Project Hail Mary is based on a 2021 book of the same name by Andy Weir. I enjoyed the book immensely (Weir also wrote *The Martian*), but I considered it impossible to turn into a movie. Unlike *Star Trek* and *Star Wars*, Weir writes hard science fiction that tries to be as scientifically accurate as possible. The scientific processes in the book were fun to read about, but I didn't see how a movie could make them interesting. I guess I should have remembered how good *The Martian* movie was, because *Project Hail Mary* is surprisingly good.

Project Hail Mary shouldn't work as a movie. First, it's basically about a guy stuck alone on a ship working through science problems. Ryland Grace wakes up alone on a spaceship with amnesia, needing to figure out who he is and how to save Earth from astrophage[1] eating the sun. This doesn't seem like a great role for Ryan Gosling, as I just can't see him as a scientist. It turns out that his awkward charm brought a lot to the role, and the prop glasses he wore did just enough work to sell his brainpower. Gosling pleasantly surprised me, but the movie also wastes no time in bringing in its secret weapon – an alien named Rocky. His appearance is less of a surprise in the movie (he's in all the promotional materials), and he is the engine that makes this movie go. While Gosling's performance proved surprisingly effective, Rocky is the film's true accomplishment. I'm still wondering how the filmmakers gave a ball of rock so much personality and emotion.

Even with a cool alien, *Project Hail Mary* is basically about scientific problem-solving. The movie sidesteps a lot of the tedium of experimentation by condensing the process. While the book's story beats are there, the movie strips out much of the scientific explanation and speeds things up. For example, the book spends a lot of time describing how Grace and Rocky learn to communicate with each other. In the movie, it is reduced to 'a computer helps them talk to each other.'

Fans of the book will enjoy the movie. Those who haven't read the book might be somewhat confused by some of the glossed-over science and plot explanations. I recommend reading the book first to truly appreciate how well the movie adapts the original material, but you do not need to have read it to enjoy the movie. If you read the book first, you will already know the biggest plot point of the movie's climax, which is the subject of this review's legal analysis, so if you want to avoid spoilers, stop reading now.

MAJOR MOVIE ALTERING SPOILER AHEAD **THIS IS YOUR FINAL WARNING!**

Grace's memories come back slowly as the movie progresses. *Project Hail Mary*'s major twist is the fact that Grace isn't actually a hero. Flashbacks reveal that after problems arise with the crew, only Grace is fit to take their place on the one-way mission to space (the book does a better job of explaining this). While he's the only one who can save humanity, he chickens out and refuses to go. As a result, the government basically conscripts him, gives him amnesia, and forces him onto the ship against his will. This got me wondering, can they do that?

Under the Fourth Amendment, people have the right to be "secure in their persons…against unreasonable ...seizures."[2] Assuming Grace had access to a legal system, would he have any recourse?

Selective Service System. Could the government use the Selective Service System to draft Grace? Under our current system, males over the age of 18 are required to register with the Selective Service System. In a national emergency, the system will use the registry "to provide personnel to the Department of War and alternative service for conscientious objectors, if authorized by the President and Congress."[3]

Authority for the draft is derived from the Constitution, which grants Congress the power to "declare War," "raise and support Armies," and "provide and maintain a Navy."[4] While the Constitution itself does not use the word 'draft,' the Supreme Court has upheld it, noting "mind cannot conceive of an army without the men to compose it…the objection that [the Constitution] does not give power to provide for such men would seem to be too frivolous for further notice."[5]

The power to raise and support armies is not limited to time of war. Congress has the power to compel military service of a citizen in peacetime or wartime, whenever it declares that it is necessary or that an emergency exists requiring the raising of an army.[6]

So, could this body of law apply to snatching poor Ryland Grace, injecting him with space coma/amnesia juice, and rocketing him into the cosmos to save the world? Space bugs eating the sun would seem to qualify as a national emergency. However, NASA is a "civil space program" and not part of the military.[7] As such, I have doubts that the Constitutional provisions underpinning the right to draft people would apply to a space mission.

But only this guy can save the world! In *Star Trek II, The Wrath of Khan*, Spock said: "Logic clearly dictates that the needs of the many outweigh the needs of the few." This sounds legit, especially since a Vulcan said it and Vulcans are super logical[9] - but is there precedent in our legal system using that philosophy to force someone to go on a one-way trip to space to save everyone else?

The Supreme Court of Tennessee had a chance to examine this philosophy but decided to take a pass:

"The [appellee] would have us base our interpretation …on the idea that 'the good of the many outweighs the good of the few.'[8] We decline to engage in this sort of delicate philosophical balancing…"[10]

Ok, that's not particularly helpful, so let's look at emergency powers.

Declaration of Emergency

Given the dire situation facing the planet, could a declaration of emergency support sending Grace to space against his will? There are many cases involving emergency powers.[11] While many examples involve some impact on people, the typical use of emergency declarations is to suspend regulations or processes that would "prevent, hinder, or delay the mitigation of the effects of the emergency."[12] The Hawaii Supreme Court held that it would not disturb an emergency proclamation when it is related to the health, safety, and welfare of the public and the action is necessary to address the emergency.[13]

Trying to prevent the planet from freezing over seems to be related to the health, safety, and welfare of the public. Arguably, sending poor Mr. Grace into space was necessary to address that emergency. Even taking into account that many emergency actions seem to be a bit of a stretch, I tend to think selecting a particular person to go on a one-way trip to space, not to mention the drug-induced coma and amnesia, would fall outside the government's emergency authority.

Conclusion: Had Grace been able to get in front of a judge before takeoff, I think there's a decent chance he could have blocked the order sending him to space. This would have resulted in a worse movie (not to mention the end of the world), so I guess the ends justify the means in this case.[14]

Score: A-

Darren Shulman is the city attorney for Upper Arlington, Ohio. A graduate of Northwestern University and Harvard Law School, Darren previously served as the City Attorney for Delaware Ohio, Associate Legal Counsel for the Ohio Department of Administrative Services, and as an Assistant Prosecuting Attorney for the Montgomery County Prosecutor's Office. When Darren was the Delaware City Attorney, he co-hosted a movie review show called *Through the Lens* on local radio, which is now a podcast. Writing movie reviews through a legal lens allows Darren to combine his love of movies with his profession.

ENDNOTES

[1] Basically space bugs.

[2] U.S. Const., 4th Amendment.

[3] Selective Service System, http://www.sss.gov

[4] U.S. Const., Art. 1, § 8.

[5] Arver v. U.S., 245 U.S. 366, 377 (1918). This case, which combined six suits challenging the Selective Draft Law of May 18, 1917 is also known under the general caption of "Selective Draft Law Cases."

[6] U.S. v. Richmond, 274 F.Supp. 43 (1967).

[7] National Aeronautics and Space Administration, http://www.nasa.gov/organization/

[8] *Star Trek II: The Wrath of Khan* (Paramount Pictures 1982).

[9] For those reluctant to quote Star Trek, this is also consistent with Jeremy Bentham's utilitarian thesis: "the greatest happiness of the greatest number." Zimmerman v. Norfolk Southern, 706 F.3d 170, 204 (3rd Cir. 2013)

[10] Estate of Bell v. Shelby Count Health Care Corp., 318 S.W.3d 823 (Tenn. 2010).

[11] Examples include COVID-19 declarations (too numerous to cite); tariffs, Learning Res., Inc. v. Trump, 146 S.Ct.628 (2026)); prison overcrowding, Cal. Corr. Peace Officers Ass'n. v. Schwarzenegger, 163 Cal. App.4th 802 (Cal. Ct. App. 3rd Dist. 2008); suspending laws and establishing emergency rules to expedite affording housing project approval and constriction, Nakoa v. Governor, 156 Haw. 416 (Haw, 2025); and gun violence and drug use (Amdor v. Grisham, 578 P.3d 971 (N.M. 2025).

[12] *Schwarzenegger* at 811.

[13] *Id.* at 424.

[14] No one wants to watch a movie where the judge has to explain to an angry mob that, yeah the world is turning into an ice ball, but at least we upheld our legal principles. If you are a movie producer who thinks people *do* want to watch this movie, hit me up and we can work on a script.



MENTOR'S CORNER

Forget What You Learned in Law School About Memo Writing



Most of us learned legal writing the same way: issue, rule, analysis, conclusion. If we really wanted to impress, we checked all our case citations for proper format, included multiple footnotes, and either tried to adhere to Brian Garner's simple legal writing advice or ignored him and stuck stubbornly with our "heretofores" and "forthwiths." Law professors appreciated our efforts and graded us accordingly.

Then we started working for cities.

And for many of us, we learned quickly that those finely crafted, near-perfect works of art earned you not a high grade but a phone call, *IF* you're lucky enough to get one. "Can you just tell me the answer in plain English?" Or "I don't have time to read this, what does it say?" But usually, you don't get a call; you can just tell later that they never read your memo.

Tamara Niles, city attorney of Englewood, CA, has experienced the same. "Rarely do staff members or elected officials read the entirety of legal analysis or recommendation memos. Multiple elected officials—who are busy professionals with their own primary careers—admitted to me that they often don't read past the first few sentences."

The vast majority of executives and electeds don't have time to read your entire legal analysis. All they want is the C in IRAC.

Once you accept this reality, your job becomes much easier and much more effective.

1. Start With the Answer. Always. Shaun Jacobs of the Los Angeles City Attorney's Office says: "Often your target audience does not read your full memo or legal analysis, so it is important to put your 'ask' or recommendation (e.g., settle, not settle, go to trial, etc.) right up front." What some attorneys do is start their memo with a "Short Answer" section, usually no more than a paragraph, and in plain, simple language, followed by a more traditional analysis section. Tamara includes her Short Answer directly in the body of the email and bolds the most relevant portions. She added, "I suspect that many Council Members only read these bolded portions."

2. Analyze for Those Who Need It. Starting with the end doesn't mean you can't ever include the explanation of how you got there. Everyone has a communication style, and some clients do want all the analysis and details. Part of being a good attorney for your client is to learn who prefers what style of communication and then write the memo they need, rather than the memo you prefer. You may also want to include the analysis for other reasons. For example, Tamara says she leaves the analysis in because it is "for the benefit of my team and for future reference should a similar issue come up again."

If the communication isn't a legal memo but rather a presentation in executive session or in a public meeting, you'll need to tailor your message to the situation.

3. Context Matters. Shaun noted that communication style can evolve as matters progress. He says communication style "depends on whether you have discussed the case or matter with the target audience in the past. If you have, you may be able to use shorthand to refer to the case or some of the issues it raises."

4. Keep It Simple. Most attorneys have large vocabularies, which we tend to pepper with legal terms and Latin. Your average client, no matter how smart they are, generally doesn't want to hear it and prefers things presented to them in a more conversational manner, with simplicity and clarity. Tamara, who has a background in journalism, shared that she was taught to write at a sixth-grade level, which is a standard she now applies to her Short Answer sections.

5. Tailor the Message. If the communication isn't a legal memo but rather a presentation in executive session or in a public meeting, you'll need to tailor your message to the situation. Ensure your PowerPoint slides have plenty of clear space, minimizing the number of words you include and the difficulty of the words. Practice your presentation in front of non-lawyers to make sure you can hold attention and drive home the main points in easy-to-understand language.

6. Use AI. (When Non-Confidential) When it comes to public presentations or written documents that don't contain confidential information, you can run them through AI and ask it to reword them so that they are on a sixth-grade level (or the grade level of your choice). While you must be careful to never put anything confidential in AI due to attorney-client privilege obligations, a public presentation or document is one area where it can be of some use to you.

Municipal law is a service profession. Our writing should serve the decision-makers we advise and help them make the hard decisions they face every day.

So, write the short answer. Put it at the top. Bold it if you must. Save the big words for later. Your clients will appreciate it. M.

This Mentor's Corner is provided by the mentors from the following cities:

Nathan M. Nickolaus, Of Counsel, Lauber Municipal Law; Chris Balch, Balch Law Group; Mandana D. Vidwan, Senior Asst. City Attorney, City of Charlotte, North Carolina; Marion C. Moore, Chief Asst. Corporation Counsel, Special Federal Litigation, City of Chicago Dept. of Law; Jeannine Williams, Chief Assistant City Attorney, City of St. Petersburg, Florida; Shaun Jacobs, Supervising Asst. City Attorney, Los Angeles, California; and Leann Guzman, Fort Worth, Texas.

BOOT CAMP

ANATOMY OF A SHOOTING TRIAL: TRIAL PRACTICE 101

ETHICS 101

LAND USE 101

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CASE STUDY

Contributed by
Suntrease Williams-Maynard
Deputy City Attorney
Mobile, AL



Aniyah Vines, GRAE Volunteer Warrant Clinic Coordinator; Angela Miller, Court Operations Supervisor; Kenya Turner, Exec. Assistant to Director of Courts; Debbie McGowin, Director of Courts; Judge Carvine Adams, Judge-Municipal Court, Jennifer Burroughs, Municipal Court Bailiff; Suntrease Williams-Maynard, Deputy City Attorney; Lana Mosley, Exec. Assistant to Deputy City Attorney; Grant Gibson, Criminal Chief Assistant City Attoney.

Bringing the Court to the Community

The City of Mobile's Innovative Traffic Warrant Clinic Partnership

Across the country, municipal legal departments are increasingly called upon to think beyond traditional enforcement models and toward solutions that promote access to justice, reduce barriers to compliance, and strengthen community trust. In Mobile, Alabama, a groundbreaking partnership between the City of Mobile Legal Department, the Mobile Municipal Court, and Growing Real Alternatives Everywhere (GRAE), founded by Anza Bencal, is demonstrating how local governments can do exactly that.

Since May 2024, the City of Mobile has hosted biannual Traffic Warrant Clinics designed to resolve outstanding traffic warrants in a community-centered environment. Launched in recognition of Law Day 2024, the initiative marked a historic first: Mobile became the first city in Alabama to partner with GRAE to host this innovative model. In less than two years, the program has cleared more than 3,500 warrants — transforming lives while also reducing court backlog and improving administrative efficiency.

A New Model for Municipal Courts

Outstanding traffic warrants often stem from missed court dates, unpaid fines, or minor infractions that escalate over time. For many residents, these warrants can create cascading consequences: suspended driver's licenses, barriers to employment, difficulty securing housing, and fear of arrest during routine traffic stops. The City of Mobile recognized that traditional court processes — while legally sound — were not always accessible or welcoming for individuals who felt overwhelmed or intimidated by the system. In response, city leadership sought a solution that would uphold the integrity of the law while removing unnecessary barriers to resolution. The result was the Traffic Warrant Clinic model. Rather than requiring residents to navigate formal courthouse settings, the City made a deliberate decision to "bring the court to the community." Clinics are held at neighborhood venues, such as community recreation centers, where residents can voluntarily appear to address eligible warrants in a structured yet welcoming environment. The setting is intentional. There is no formal dress code. Judges and court staff wear plain clothes. A local DJ provides music. Families are welcome. Free food is available. Community organizations host informational tables offering resources on workforce development, continuing education, legal services, and social support programs. The atmosphere is one of resolution — not reprimand.

The Role of GRAE and Its Founder, Anza Bencal

GRAE, founded by Anza Bencal, brings extensive experience facilitating warrant resolution clinics nationwide. The organization emphasizes accessibility, dignity, and proactive engagement, helping municipalities create welcoming and effective events. In Mobile, GRAE's collaboration ensures that residents are aware of the clinics and understand that they provide a safe opportunity to resolve qualifying non-violent traffic warrants without fear of arrest at the event. The nonprofit's outreach — which includes canvassing, neighborhood engagement, and partnerships with community groups — ensures that residents who might otherwise remain disconnected from the court system have the information and support they need to participate. By combining municipal authority with GRAE's community expertise and leadership under Anza Bencal, Mobile has developed a model that is both effective and replicable in other jurisdictions.

Municipal Legal Leadership at the Forefront

This initiative has been spearheaded by Deputy City Attorney Suntrease Williams-Maynard and Deborah McGowin, Director of Courts for the City of Mobile. Their leadership reflects a broader evolution in municipal law practice — one that balances enforcement responsibilities with community-centered problem-solving. From a municipal law perspective, the clinics require careful coordination among the Legal Department, Municipal Court, clerks, judges, law enforcement, and community partners. Policies and procedures must be clearly defined to determine eligibility criteria, warrant resolution mechanisms, documentation requirements, and compliance safeguards. The success of the program demonstrates that innovation in municipal law does not require abandoning structure; rather, it requires thoughtful adaptation of existing authority to meet residents where they are.

Measurable Impact

Since the program's launch in May 2024:

- More than 3,500 traffic warrants have been cleared.
- Hundreds of residents have appeared voluntarily to resolve outstanding matters.
- Court backlog related to qualifying traffic warrants has been meaningfully reduced.
- Residents have regained stability in areas such as employment and transportation.

Equally important, the program has strengthened public confidence in local government. By offering a dignified path toward resolution, the City reinforces the message that municipal courts exist not only to enforce laws but also to serve communities.

High attendance at subsequent clinics — including events where doors opened early to accommodate demand — signals that residents view the clinics as credible and beneficial opportunities.

Operational Considerations for Other Municipalities

For municipalities interested in replicating this model, several operational insights from Mobile's experience may prove valuable:

1. Cross-Department Coordination Is Essential. Legal, court administration, communications, and law enforcement must collaborate closely to ensure clarity and consistency.

2. Clearly Defined Eligibility Criteria. The clinics focus on qualifying non-violent traffic-related warrants. Clear guidelines protect legal integrity and public confidence.

3. Community-Based Venue Selection. Hosting events in accessible, familiar locations reduces psychological barriers and encourages participation.

4. Resource Integration. Including workforce development agencies, educational institutions, and legal aid organizations broadens the impact beyond warrant resolution.

5. Messaging Matters. Public communications should emphasize safety, accessibility, and the voluntary nature of participation.

Broader Implications for Municipal Practice

Municipal attorneys are uniquely positioned to shape policies that intersect law, public administration, and community trust. The City of Mobile's Traffic Warrant Clinics illustrate how legal departments can lead innovative efforts that simultaneously:

- Improve compliance rates,
- Reduce administrative burdens,
- Advance equitable access to justice, and
- Strengthen relationships between residents and local government.

Importantly, this initiative does not compromise public safety or legal standards. Instead, it enhances accountability by creating structured opportunities for voluntary resolution. For many participants, the clinic represents the first positive interaction they have had with the court system in years. That shift in perception carries long-term benefits for civic engagement and institutional legitimacy.

A Model Worth Sharing

As cities nationwide explore alternatives to traditional enforcement-heavy models for low-level offenses, Mobile's experience offers a compelling case study. By partnering with GRAE under Anza Bencal's leadership and leveraging strong municipal legal leadership, the City has created a sustainable, twice-yearly program that delivers measurable results. The clinics are not one-time amnesty events. They are structured, recurring opportunities embedded into the City's annual calendar, beginning each year in May in recognition of Law Day.

In doing so, the City of Mobile has reframed what access to municipal justice can look like: accessible but orderly, welcoming but accountable, efficient yet compassionate. For members of the International Municipal Lawyers Association, this model underscores an important reality: municipal innovation often begins not with sweeping legislative reform, but with thoughtful adaptation of existing authority and collaborative partnerships.

Municipal Court Presiding Judge Carvine Adams has presided over each of the City of Mobile's Traffic Warrant Clinics. She embraced the idea of a "community court" when it was initially presented and has been a consistent component contributing to it's success.

Mobile's Traffic Warrant Clinics demonstrate that when municipal legal departments take proactive leadership roles, they can design programs that advance both justice and community wellbeing. M.

INSIDE CANADA

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Kamloops, BC

Wrecked Vehicles, Law Errors, Refuse Removal, Land Use, and Remedial Actions



Municipality Not Compelled to Accept Wrecked Vehicles in its Disposal Site

Haas v. Baie Verte (Town)
https://canlii.ca/t/kjlhg

This was an appeal by a property owner, Sherry Haas, from the Central Newfoundland Regional Appeal Board's dismissal of her appeal from the Town's denial of her business permit application.

Hass intended to buy, partially destruct, and sell end-of-life vehicles on her property located in the Town's rural zone. She applied for a business permit to run a "Solid Waste" disposal operation, which is a discretionary use under the Town's development regulations in effect at the time of the Town's decision. The Town denied the business permit application on the grounds that the business was a "Scrap Yard," which is not a permitted use in the rural zone.

Haas appealed the Town's decision to the Central Newfoundland Regional Appeal Board. The Board confirmed the Town's decision that the business was a Scrap Yard and, as it is not a permitted use, the Town cannot issue a business permit.

Haas appealed the Board's decision to the Supreme Court.

HELD: Appeal dismissed.

DISCUSSION: The Supreme Court held that the Board did not make a legal error when it upheld the Town's decision that the operation was a "Scrap Yard." Firstly, the Court considered the proper standard of review. Given that this was a statutory appeal under section 46(1) of the *Urban and Rural Planning Act, 2000*, S.N.L. 2000, c. U-8, and considering the Supreme Court of Canada's decision in *Vavilov*, Haas was able to appeal some questions of mixed fact and law, and the standard of review is correctness if an extricable legal question or issue of principle is at stake. However, Haas is unable to appeal a factual decision.

The Court first considered whether the Board's decision was a factual one. On this issue, the Supreme Court found that whether the activity proposed by Haas is a Scrap Yard or a Solid Waste disposal yard is a question of fact alone. There is no extricable legal question, and Haas was unable to appeal this decision. This is so even if the Board made a palpable and overriding error in so deciding.

The Supreme Court also held that the Board did not make a legal error in failing to find that the Town was in conflict of interest. Haas argued that the Town ran a similar business when it rejected Haas's application and rejected her application to get rid of Haas as a competitor. The Court stated that there was no evidence before it that the Town was a competitor and rejected this argument.



Municipality's Rescission Motion Cannot Stand If It Contains an Error of Law

Churchill v. Eastern Newfoundland Regional Appeal Board
https://canlii.ca/t/kj2p2

In this case, the property owner, Mr. Churchill, owns oceanfront property at 0 Mullowney's Lane, in the Town of Witness Bay. Mr. Churchill built this property with the proper town permits. While it may have the outward appearance of a cabin, the property does not have kitchen or bathroom facilities. On August 8, 2021, the property owner made a development application to the town, seeking approval to consult with the provincial department to design and develop an environmental septic system for his oceanfront property. He described the "proposed development" for his property as "approval to consult with Service NL to design/develop an environmental septic system." He described in a section of the development application called "other buildings already on the lot," a 34m2 recreational building. The parties refer to this at various times as either a gazebo or a leisure property. He said under "Other Details" of the development application that he was "seeking approval for well and septic system for appropriate waste disposal + environmental stewardship as recommended by Service NL."

At a meeting on August 17, 2021, the town said that "the Council has been asked to approve a septic system and well for existing development at 0 Mullowney's Lane." This existing development is the gazebo. The town passed a motion during their council meeting supporting this application and referring it back to the province for final system approval. The motion said: "Moved by Councilor Paul, seconded by Councilor Swain, to support the application and refer back to Service NL for final system approval" (the "original motion").

On October 14, 2021, Service NL approved "the construction and installation of a sewage system/water supply to service a premises with three bedrooms at 0 Mullowney's Lane...." It said, "The sewerage/water supply must be installed precisely as indicated on the Approved Designer's drawings..." Service NL also said, "This Certificate of Approval does not release the applicant from the obligation to obtain appropriate approvals from other concerned provincial, federal, and municipal agencies..."

On November 9, 2021, the Council rescinded the approval motion by a rescission motion. Mr. Churchill appealed that rescission to the Regional Appeal Board (the "Board"). The Board upheld the town's decision. The owner appealed the Board's decision.

The basis for the rescission motion and the claimed "error" was an assertion that the original motion was just a motion to support consultation with the province and not a motion to approve the development application.

HELD: Appeal allowed.

DISCUSSION: The applicable standard of review was correctness, which means the Court gives no deference to a decision-maker on questions of law or jurisdiction. The main issue before the Court was whether the Board erred in deciding that the Town has the ability to rescind the original motion.

The Court revoked the Board's decision and referred it back to the Board for reconsideration. The Newfoundland and Labrador Supreme Court found that the Board erred in concluding that the municipality had discretion to rescind its previous motion because the town's rescission motion was based upon the conclusion that the original motion was just a motion to support an application to Service NL, not a motion by the town approving a development permit.

The basis for the rescission motion and the claimed "error" was an assertion that the original motion was just a motion to support consultation with the province and not a motion to approve

the development application. However, it had already been determined by a court decision that the original motion was, in fact, a motion to approve the development permit. The town's rescission motion was based on the conclusion that the original motion was merely a motion to support the application to the province, not a motion approving the development permit.

In these circumstances, it was determined that the Board's decision contained an error of law and was not legally correct. The decision was vacated, and the matter was referred back to the Board to be re-decided.



Municipalities Not Required to Inventory or Account for Items Removed as Refuse

Desmarais v. Fort Erie (Town)
https://canlii.ca/t/kjjw4

The plaintiff was an occupier and the primary resident of the subject property, where he operated a mechanic business, but was not the legal owner. The Town of Fort Erie issued a Property Standards Order in February 2020, requiring the repair or demolition of four specific structures on the property, including two garages, a tall barn, and a lean-to shed, and the removal of all refuse and debris from the property, including a long list of damaged or derelict motor vehicles, boats, trailers, tools, and mechanical equipment. Neither the property owner, Tammy Franzen, nor the plaintiff complied with the order. The plaintiff brought an appeal to the Property Standards Committee, which was dismissed.

After giving further notice, the town entered the property in February 2021, demolished the four structures that were the subject of the order, and removed many items of personal property that were listed in the February 2020 order, including motor vehicles, boats, trailers, tools, and mechanical equipment. Some of the personal property was set aside for the plaintiff.

The plaintiff brought a claim seeking $200,000 in damages for wrongful entry, removal, and destruction of personal property. The plaintiff alleged that he owned the personal property removed by the town. The plaintiff further alleged that the February 2020 order was invalid or unauthorized, that the town did not have the authority to enter onto the property, that the personal property removed by the town did not constitute refuse or debris, that the town did not take reasonable care in enforcing the order, and that the town failed to account to him for the items that were removed from the property.

The town argued that it had the authority to make the February 2020 order and enter onto the property pursuant to the provisions of the *Building Code Act*, 1992, S.L. 1992, c. 23, that the February 2020 order was final and binding pursuant to the BCA, and that it lawfully enforced the order.

HELD: Claim dismissed.

DISCUSSION: The Ontario Superior Court of Justice upheld the municipality's authority to enforce a property standards order, finding it acted lawfully, reasonably, and in good faith. The plaintiff's claims of trespass, improper enforcement, and damages were dismissed because the order was final and binding and no liability or damages were proven.

The Court found that the town properly accounted for the location and disposition of the plaintiff's property. The town did not owe the plaintiff a duty of care for the items classified as refuse, debris, or derelict vehicles under the Property Standards Order. The town was found to have upheld its duty to act reasonably in disposal of the items, and the plaintiff was aware of the destination of most if the items. Municipalities are not obligated to inventory or account for each item removed as refuse.



Municipality Acted Ultra Vires by Requiring Aviation Safety Compliance

The Corporation of the Township of Clearview v. 12966344 Canada Inc.
https://canlii.ca/t/kj147

The subject property (the "site") comprises 172.38 acres of vacant land zoned airport industrial, with a small portion zoned environmentally protected. The site was adjacent to an aerodrome used commercially for aviation, which was unregulated and had no registered zoning bylaws under the federal *Aeronautics Act*; thus, the site was not restricted by any regulations thereunder concerning its use.

The site owners commenced construction of a privacy berm to shield the intended development from fill operations. The Township issued a stop-work order and notified the owners that they must obtain a fill permit. The owners submitted extensive documentation but eventually abandoned

The town did not owe the plaintiff a duty of care for the items classified as refuse, debris, or derelict vehicles under the Property Standards Order.

efforts with the Township and filed notice of appeal with the Ontario Land Tribunal. When the owners resumed placing fill on the site, the Township issued a notice of contravention under the fill bylaw and a stop-work order, but the owners nonetheless continued.

The Corporation of the Township of Clearview in Ontario brought an application seeking a permanent injunction restraining the corporation, 12966344 Canada Inc., and Ms. Williams (the "respondents") from placing, dumping, or otherwise depositing fill on the subject property, except in strict compliance with the Township's Bylaw 02-62. The respondents/owners brought a counterapplication for a declaration that the bylaw was invalid, and alternatively, for a declaration that they complied with the bylaw and the permit should be issued forthwith.

HELD: Application dismissed. Counterapplication granted.

DISCUSSION: The Township was ordered by the Ontario Superior Court of Justice to issue a fill permit to the owners. The Court found that the Township's requirement that owners verify compliance with the Obstacle Limitation Surfaces Guidelines, which are Transport Canada's Aerodrome Standards and Recommended Practices, was *ultra vires* its authority.

While the Township was not prepared to grant a fill permit until the owners demonstrated that the berm would be constructed in accordance with proper engineering practices and would not pose a risk to aviation safety, the Township did not have the authority to regulate the height placement or scope of the proposed berm; aviation safety falls within the sole purview of the federal government, NAV CANADA, the body with operational authority with respect to aeronautics and aviation, indicated that berm posed no safety risk.

The Court ruled that the municipality acted *ultra vires* by requiring aviation safety compliance for a fill permit near an unregulated aerodrome. The Court found that the applicant met all requirements and ordered the municipality to issue the permit. An injunction sought by the municipality was denied.



Order By Municipality Requiring Removal of Two Buildings Found to be Reasonable

Ferstel v. Nanaimo (Regional District)
https://canlii.ca/t/kjcnm

The respondent municipality, the Regional District of Nanaimo in British Columbia, issued a remedial order requiring the applicant, Mr. Brian Ferstel, to remove two buildings from a property formerly owned by the applicant's deceased father. The property had not yet been transferred to Mr. Ferstel, but the municipality conceded that the applicant had a right of redemption over the property. As a result, the applicant was served with all materials related to the municipality's proposed remedial action requirement.

The applicant demolished one building but claimed that the remaining two buildings were not unsafe or hazardous. The applicant brought a petition for judicial review of the municipality's decision to issue the remedial order and for a reconsideration of the decision.

HELD: Petition dismissed.

DISCUSSION: The municipality acknowledged that the applicant had made significant progress in addressing the property's unsightliness, such that there were no longer any grounds to impose a remedial action requirement on the basis of unsightliness. The municipality found, however, that work had been done on the property without permits and that the two remaining buildings were still structurally unsound. Promised engineering assurances had still not been provided, and what was provided to the municipality was insufficient to reassure the British Columbia Supreme Court that the work done since reconsideration of the decision did anything more than lessen the extent of the severely compromised structural integrity of one building.

The Court found that the municipality's decision that the two buildings on the property remained structurally unsound was reasonable. The stay of the remedial order was lifted to allow the municipality to proceed with the demolition of buildings at the landowner's cost. ML

2026 MID YEAR SEMINAR - WASHINGTON DC



For more information about IMLA upcoming events visit: https://imla.org/calendar-of-events/

2026 AMICUS AWARD RECIPIENTS

IMLA's Legal Advocacy program provides support to advance the interests of local governments by filing approximately 40 amicus briefs each year in appellate courts nationwide, including state supreme courts, federal circuit courts, and the United States Supreme Court. Working both independently and with partner organizations, IMLA ensures that the perspectives of localities are represented, particularly in Supreme Court cases where it supports both merits arguments and petitions for certiorari. Across all forums, IMLA's goal is to provide courts with the legal analysis and information needed to support decisions favorable to local governments.

IMLA can only provide this robust support to local government through the time and talents of many leading appellate practitioners around the country who contribute their authorship on a pro bono basis. We are pleased to honor the outstanding lawyers receiving the 2026 IMLA Amicus Awards:

NADIA SARKIS, Miller Barondess LLP, Partner
JAMES NIKRAFTAR, Miller Barondess LLP, Associate
Case v. Montana (Supreme Court Merits)
Issue: Whether probable cause required for community caretaker warrantless entry, or is objectively reasonable belief sufficient.

JOHN J. KORZEN,
Wake Forest University School of Law Appellate Advocacy Clinic, Director
First Choice Women's Resource Centers, Inc. v. Platkin (Supreme Court Merits)
Issue: Whether constitutionally-based challenges to state or local administrative subpoenas can be heard in federal court before state proceedings have concluded.
The Summit Church-Homestead Heights Baptist Church, Inc. v. Chatham County (Fourth Circuit)
Issue: Whether a court can require a local government to enact a rezoning requested by a church, despite the fact that zoning is the province of the legislature.

MEAGHAN VERGOW, O'Melveney & Myers LLP, Partner
ALYSSA NEGVESKY, O'Melveney & Myers LLP, Associate
NINA OAT, O'Melveney & Myers LLP, Associate
Pung v. Isabella County (Supreme Court Merits)
Issue: Whether taking/selling home to satisfy government debt and keeping surplus violates Takings Clause when sale is artificially depressed auction price; whether taking of real estate worth more than debt and sold for fraction of fair market value is excessive fine under Eighth Amendment.

CHARLES B. GALVIN, FBT Gibbons LLP, Partner in Charge
YAZAN S. ASHRAWI, FBT Gibbons LLP, Partner
STEPHEN J. SMITH, FBT Gibbons LLP, Partner
JESSE J. SHAMP, FBT Gibbons LLP, Managing Associate
ANTHONY R. SEVERYN, FBT Gibbons LLP, Associate
City of Cleveland v. Pickett (Supreme Court Petition)
Issue: Whether non-injured residents can be included within a proposed class consistent with the requirements of CPLR 23A.

AMY HOYT, Best, Best & Krieger LLP, Partner
GREGG KETTLES, Best, Best & Krieger LLP, Partner
Estate of Johnson v. Rakes (Supreme Court Petition)
Issue: Whether officer's incorrect statement about length of husband's hospital stay, after which wife returns home and is killed by husband, is state created danger.

STEPHANIE A. ANGOLKAR, Lockridge, Grindal, Nauen PLLP, Partner
Hanneman v. Wells/Estate of Locke (Supreme Court Petition)
Issue: Whether SCOTUS can consider BWC footage blatantly contradictig plaintiffs' facts; whether QI can be based on decedent's pointing gun outwards, but not at officer, and was QI adequately pleaded.

T. PETER PIERCE,
Richards, Watson & Gershon, Shareholder & Chair of Litigation
SOSE TEZYAN, Richards, Watson & Gershon, Associate
Nyarecha v. County of Los Angeles (Supreme Court Petition)
Issue: Whether 13-hour period of failure to check on at-risk inmate is "custom or practice" sufficient to satisfy Monell standards for Section 1983 liability.

SEBASTIAN WAISMAN, Husch Blackwell LLP, Senior Counsel
DANIEL G. SOLOMON, Husch Blackwell LLP, Senior Associate
SPENCER TOLSON, Husch Blackwell LLP, Senior Associate
ALYSSA M. LEROY, Husch Blackwell LLP, Associate
Salter v. City of Detroit (Supreme Court Petition)
Issue: Whether police officer's use of single photo to identify defendant / use of line up photo without defendant is protected by QI; whether Brady violation gives rise to Sectiion 1983 police officer liability for damages, whether police officer is responsible for evidentiary decisions by prosecutor or judge.

CHRIS BALCH, Balch Law Group, Partner
City of Milton v. Chang (Georgia Supreme Court)
Issue: Whether design/placement of objects in right of way is ministerial or discretionary/governmental duty; whether planter in right of way is "defect" in roadway.

KATIE BERAN, Hausfeld LLP, Partner
DANIEL WEICK, Hausfeld LLP, Partner
B. ANNABELLE EMUZE, Hausfeld LLP, Associate
ZELLY ROSA, Hausfeld LLP, Associate
Diemert v. City of Seattle (Ninth Circuit)
Issue: Whether content/comments in DEI program constitute harassment; whether City's response to complaints of harassment are retaliation.

RANDY AUTIO, New Mexico Local Government Law LLC, Attorney
ROBERT KIDD, New Mexico Local Government Law LLC, Attorney
RANDALL VAN VLECK, New Mexico Local Government Law LLC, Attorney
Hill v. City of Santa Fe (New Mexico Court of Appeals)
Issue: Whether Excise tax on residential sales over $1 million is permissible services charge under Home Rule powers.

NATHAN INKS, Bloom Slugget PC, Attorney
ERIC D. WILLIAMS, Attorney
Peninsula Township v. Wineries of the Old Mission Peninsula Association (Sixth Circuit)
Issue: Whether Township's ordinances limiting wineries' commercial activities and requiring local produce in wines served violate due process, Dormant Commerce Clause, etc.

JESSICA SKELTON, Pacifica Law Group LLP, Partner
Uber Technologies, Inc. / Maplebear, Inc. v. City of Seattle (Ninth Circuit)
Issue: Whether Seattle's app worker ordinance requires compelled speech by Uber/Instacart, violating the First Amendment.



2026 Scholarship Award Recipients

Inaugurated in 2023, the **Charles W. Thompson, Jr. Local Government Law Scholarships** are competitive awards intended to recognize rising 2Ls and 3Ls with demonstrated interest and accomplishment in the study of municipal law. All candidates submit written expressions of interest, law school transcripts, and letters of recommendation. In addition, those seeking the larger $5,000 scholarship are required to submit an original work relating to local government law. The 2026 IMLA Scholarship Committee consisted of Alan Bojorquez (City Attorney of Buda, Texas), Lori Bluhm (City Attorney of Troy, Michigan), Stephen Louis (Counsel to Center for New York City and State Law at New York Law School), Ben Mount (Senior Assistant General Counsel for North Carolina League of Municipalities) and Erich Eiselt (IMLA Deputy General Counsel and Director of Legal Advocacy)

$5,000 Winner: CHASE HOWARD University of North Carolina Law School, Chapen Hill, NC *(Due to length, scholarship included in IMLA Newsletter)*
$2,500 Winner: KATIE ELLIS University of Washington Law School, Seattle, WA
$2,500 Winner: DAVID SONG University of Washington Law School, Seattle, WA

For more information about IMLA Scholarship programs visit: https://imla.org/scholarships/

IMLA is proud to have been able to offer the following four local governments **Mid-Year Seminar scholarships**:

Kimberly Guzman	Miranda Jordan	Sarah L. Hartnett	Alex Lindvall
Assistant City Attorney	Staff Attorney	Senior Assistant City Attorney	Assistant City Attorney
Lakewood, Colorado	Douglasville, Georgia	El Paso, Texas	Arlington, Texas

For more information about this Scholarship programs visit: https://imla.org/2026/03/2026-seminar-scholarship/

THOMPSON SCHOLARSHIP RUNNER UP

JORDAN MURRAY
Northeastern Univ. School of Law, Boston, MA
Hometown: Tacoma, WA

Is There a Government Purpose in Providing Affordable Housing to Middle-Income Households?

While efforts have been made to provide housing for low-income and homeless families in major metropolitan cities, "middle-income" households are also having difficulties finding and keeping housing in city centers. Typically, "low-income" is considered a total household income that does not exceed 80% area median income (AMI).[1]

Recently, some Washington cities have proposed funding affordable housing for middle-income families, but there are doubts as to whether these public expenditures are constitutional. This memorandum will address Washington State's constitutional limits on the expenditure of public funds and discuss whether middle-income housing qualifies as an exception to Washington's constitutional prohibitions on gifts of public funds and the lending of public credit.

The Washington State Constitution Prohibits Gifts of Public Funds or Lending of Public Credit

Article VIII, Section 7 of Washington State's Constitution prohibits cities from making gifts of money or property or lending money or public credit except for the "necessary support" of the poor or infirm.[2]

Washington courts use a two-pronged test to determine whether a gift of public funds has occurred. First, the court asks whether the funds were expended to carry out a fundamental government purpose. If so, there is no gift of public funds.[3] Second, the court determines if the funds were given with "donative intent" and what the public received in exchange for the funds.[4] Courts have stated that a "fundamental governmental purpose" exists when the government plays a basic role, such as law enforcement, garbage collection or disposal, or public enforcement of child support.[5]

As discussed in more detail below, providing housing to middle-income households may constitute a fundamental governmental purpose, but this has not been examined by Washington courts.

The Washington Constitution Prohibits Gifts of Public Funds

In 1914, the Washington Supreme Court held in *Johns v. Wadsworth* that government donations, even to "worthy" charitable organizations, are unconstitutional gifts of public funds.[6] Since then, courts have approved transactions in which local governments have accepted a range of consideration from recipients of public spending. The current rule, as stated in *King Cnty. v. Taxpayers of King Cnty.*, is that "In the absence of donative intent or grossly inadequate return, the Court's review is limited to the legal sufficiency of the consideration…."[7] In sum, the review is limited to whether the government funder receives something it has determined to be of value, even if some would argue it "made a bad deal."[8] If a municipal government receives consideration for funds used to develop middle-income housing, even if the consideration is minor, there is no gift of public funds. For example, cities may be able to provide funding to non-profit organizations to develop affordable housing if the non-profit agrees to provide services to city residents as consideration in exchange for the funds.

Additionally, the government may spend for a public purpose and provide an "incidental benefit" to a private party. For example, building a road that would primarily benefit a private developer but also relieve traffic pressure is allowed.[9] It is permissible for a city to partner with a private developer to create affordable middle-income housing as long as the municipality receives consideration in exchange for the funds.

Despite Washington courts clarifying gifts issues, *Johns* has not been overturned. In each subsequent case, the court first looked to whether there was "donative intent" in the government program before turning to a flexible test for sufficiency of consideration.

Loans of Public Funds Are Prohibited Under the Washington Constitution

In a separate line of cases interpreting the prohibition on lending, Washington State's Supreme Court held in *Lassila v. City of Wenatchee* that municipalities lending money or credit for property transactions is illegal under Washington's Constitution regardless of the expectation of future public benefit.[10] A city "lends its credit" when it uses its governmental status or authority to enable a private corporation or individual to obtain property or money it would not otherwise acquire for the same price.[11] Although no case has overturned *Lassila* to hold that a future public benefit would justify a loan, subsequent case law has declined to follow *Lassila* and upheld a variety of transactions against assertions they were gifts of public funds because of expected future public benefit.[12]

In *Wash. State Hous. Fin. Comm'n. v. O'Brien* the Washington State Supreme Court found a legislature-established program allowing the state to use nonrecourse bonds to invest in, purchase, or pledge to purchase home mortgages to provide "decent, safe, sanitary, and affordable housing for eligible persons," including moderate-income persons, did not violate the Article VIII, Section 5 prohibition against the lending of state credit.[13] There, the court found there was a legitimate governmental purpose to benefit a "deserving" class, so that there was necessary "consideration" for the funds.[14] The Washington State Housing Finance Commission was also created with the purpose of fulfilling the "recognized governmental function to assist in making affordable and decent housing available throughout the state."[15]

Although the court did not consider whether the program at issue in *O'Brien* provided for the "necessary support to the poor and infirm," the court did state it would defer to legislative determinations of need:

> Nor should we be understood as taking upon ourselves the business of determining who belongs in the benefited

class. In early cases upholding aid to the "poor and infirm," we deferred to the legislative determination of what constituted need. Our only task is to assess the reasonableness of that determination.[16]

Lasilla and *O'Brien* are in conflict. A court may determine that a city's funding of affordable housing for middle-income households is an illegal lending of credit, because loans are unconstitutional regardless of whether there is a future public benefit, as in *Lasilla*. However, it is more likely that a court would allow a city to lend money for the development of affordable housing for middle-income households if the city could articulate the public benefit being obtained (such as increased housing availability), and if the benefit to a private developer, if any, was only incidental.

"Poor and Infirm" Means Really, Really Poor

Few Washington courts have interpreted the "necessary support" of the poor or infirm exception to the constitutional prohibition, but it is clear that to qualify for the exception, a household must be very poor. It is unlikely that a middle-income household would be poor enough to qualify for the exception.

In *Morgan v. Dep't of Social Security* the Washington State Supreme Court found an act authorizing financial assistance to seniors earning less than $480 per year was not unconstitutional.[17] Today, $480 would be an annual income of approximately $9,500. The Washington State Supreme Court later found in *State v. Guaranty Trust Co. of Yakima* that the act analyzed in *Morgan* was unconstitutional to the extent it funded funeral expenses if the senior left enough property to pay for his funeral.[18] The court further opined that the legislature has authority, "within reasonable limitations," to determine what income or resources provide the basis for need:

> It will be seen from what we have said in deciding the *Morgan* case that the only legal justification for the aid of citizens of the state is that those aided must be without resources or income and upon the basis of need alone. The lawmaking power of the state has the authority, within reasonable limitations, to declare what shall be deemed a resource or income, and it has done so in the act.[19]

Because legislatures can determine what resources are considered income, within reasonable limitations, if a city seeks a legislative finding that proving middle-income housing advances a city's governmental purpose, the finding should also include information on how resources are included in income calculations.

In a 1991 Washington State Attorney General's Office (AGO) opinion, the AGO opined that a single person with no dependents and an annual income of $30,000 would make too much money to qualify for financial assistance: "we cannot say precisely where the court will draw the line between assistance to the poor and an impermissible gift. In our view $30,000 is too high, certainly, it relates to an individual without dependents."[20] In 2025 dollars, $30,000 would be approximately $71,000, 65% of the Seattle AMI for a household of one.

It is clear that Washington courts consider "poor" to be significantly low income. As such, a household with a 120% AMI, the maximum middle-income income limit contemplated under the "2021 King County Countywide Planning Policies," is unlikely to qualify for the "poor" exception under Washington law.

Courts Have Not Determined Whether Affordable Housing Is a Fundamental Governmental Function

There are no Washington cases determining whether affordable housing is a fundamental governmental function; although Washington courts have stated that, "The adequacy of private housing and the health of the state's economy have traditionally been concerns of state government."[21]

In 2006, the AGO issued an opinion that a county making grants that aid individuals in moderate-income households with incomes in excess of 80% AMI would likely be considered a governmental function that would not violate Article VIII, Section 7 of the Washington Constitution.[22] The opinion arose following questions about RCW 82.246.075, which allows counties to impose real estate excise taxes for developing affordable housing. The taxes are limited to funding housing for "very low, low, and moderate-income persons."[23] The court compared the proposed grants to "entitlement payments," which are a form of public assistance that further, "an overriding public purpose or satisfy a moral obligation."[24]

While a court might find that a governmental interest is compelled by providing funding to high-income residents to build additional housing, a court may state that there is not a nexus between the benefited class of high-income individuals and the need for additional low and middle income housing.

Other States Have Determined Middle-Income Housing Is a Fundamental Governmental Purpose

Though Washington courts have not considered whether affordable housing is a legitimate governmental purpose, other states have concluded that promoting affordable housing is a governmental purpose. In California, a court found that an "inclusionary" zoning ordinance requiring 10% of newly constructed units to be dedicated to affordable housing was not facially invalid.[25] The court held that the ordinance would advance the important governmental interest of providing affordable housing to low and moderate income households.[26] Similarly, in New Jersey, the court upheld a department decision that conditioned a development permit on 10% of the housing units being dedicated to low-income residents and 10% to moderate-income residents. *In Matter of Egg Harbor Assoc.*[27] There, the court opined that restrictions on the use of property, in furtherance of a valid governmental purpose, are a proper exercise of police power and serve the public interest, even if they result in an economic disadvantage.[28]

Washington Cities Should Seek Guidance from Legislatures or Courts

Although no Washington court has stated that affordable housing is a fundamental governmental purpose, there is an argument that providing middle-income housing is one. Washington courts have stated that legislatures are ultimately responsible for determining who belongs in the class of people to be benefited by a government-funded program. Therefore, it would be in a municipality's best interest to obtain a city council finding, a determination from the Washington State legislature, or a court ruling establishing that providing middle-income housing is a fundamental governmental purpose to avoid creating an unlawful gift of public funds or lending of public credit. ML

ENDNOTES

[1] *What is Area Median Income (AMI)?*, U.S. Department of Housing and Urban Development (Dec. 31, 2025), https://www.hud.loans/hud-loans-blog/what-is-area-median-income-ami/; *see also* Wash. Rev. Code §§ 35.21.685, 35.82.070; *see also King County Countywide Planning Policies (2021)*.

[2] Article VIII, Section 7 of Wash. State Const.

[3] CLEAN v. State, 928 P.2d 1054, 1061 (1996), as amended (Jan. 13, 1997).

[4] *Id*.

[5] *See e.g.* Hudson v. City of Wenatchee, 974 P.2d 342, 346 ("The police power is a fundamental purpose of government…It extends not only to the preservation of the public health, safety, and morals, but also to the preservation and promotion of the public welfare).

[6] Johns v. Wadsworth, 141 P. 892 (1914).

[7] King Cnty. v. Taxpayers of King Cnty., 949 P.2d 1260, 1269.

[8] *Id*. *See also* City of Tacoma v. Taxpayers of City of Tacoma, 743 P.2d 793 (1987) (upholding a program where the city paid for the installation of energy conservation devices in private buildings and received energy savings in return).

[9] Friends of N. Spokane Cnty. Parks v. Spokane Cnty., 184 Wash. App. 105 (2014).

[10] Lassila v. City of Wenatchee, 576 P.2d 54 (1978).

[11] Wash. Higher Educ. Facilities Auth. v. Gardner, 699 P.2d 1240, 1247 (1985).

[12] *See e.g.* U.S. v. Town of N. Bonneville, 621 P.2d 127 (1980) (holding that city's land acquisition to relocate city was not an unconstitutional loan; distinguishing from *Lassila* because no private developer stood to gain from city's loan).

[13] Wash. State Hous. Fin. Comm'n. v. O'Brien, 671 P.2d 247 (1983). Although Article VIII, Section 5 of the Washington State Constitution prohibits state funds from being given or loaned, as opposed to Section 7's prohibition on municipalities, courts have stated the two sections have identical meanings and should be interpreted the same. *CLEAN*, 928 P.2d 1054, 1061 (1996), as amended (Jan. 13, 1997). *Id*. at 249 (citing Laws of 1983, ch. 161, § 5, p. 697).

[14] *O'Brien*, 671 P.2d at 251.

[15] Wash. Rev. Code § 43.180.010.

[16] State v. Guaranty Trust Co. of Yakima, 148 P.2d 323 (1944).

[17] Morgan v. Dep't of Social Security, 127 P.2d 686, 692 (1942).

[18] State v. Guaranty Trust Co. of Yakima, 148 P.2d 323 (1944).

[19] State v. Guaranty Trust Co. of Yakima, 20 Wn.2d at 592, 148 P.2d at 325.

[20] 1991 Op. Wash. Att'y Gen. No. 7.

[21] *O'Brien*, 671 P.2d 247, 250 (1983). *See also* Hous. Auth. v. Seattle, 351 P.2d 117 (1960)

[22] 2006 Op. Wash. Att'y Gen. No. 12.

[23] Wash. Rev. Code § 82.46.075(1).

[24] 2006 Op. Wash. Att'y Gen. No. 12 (citing City of Seattle v. State, 668 P.2d 1266, 1270-71 (1983)). There is no gift of public funds when entitlement payments are made by a government carrying out its fundamental purposes. *City of Seattle*, 668 P.2d at 1270-71. The AGO stated, "there need only be a 'reasonable nexus between the recognized need and the persons to be benefited.'" 2006 Op. Wash. Att'y Gen. No. 12 citing *O'Brien*, 671 P.2d at 251.

[25] Home Builders Ass'n of No. Cal. v. City of Napa, 90 Cal. App. 4th 188 (1st Dist. 2001), as modified, (July 2, 2001).

[26] *Id*.

[27] *In Matter of Egg Harbor Assoc.*, 449 A.2d 1324 (App. Div. 1982), judgment aff'd on other grounds, 464 A.2d 1115 (1983).

[28] *Id*.

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The Pickleball Problem You May Not Have Seen Coming

How Municipal Attorneys Prevent Pickleball Noise Conflicts Before They Become Litigation

Contributed by
Charles E. Leahy, B.M.E., J.D.
Cathedral City, CA



THE PUBLIC MEETING

It usually begins the same way. A public meeting that was expected to be routine suddenly fills with residents. Though not on the agenda, the item is a park improvement project—two tennis courts were converted to eight pickleball courts.

A neighbor approaches the microphone first. She describes the noise coming through her bedroom window at 7:00 a.m. She says she cannot use her patio anymore. She says the sound continues all day.

Next come the pickleball players. They explain that the sport is enormously popular and that the courts are full every day. They describe the health benefits and the growing social community.

The room divides. Residents demand quiet in their homes. Players demand access to courts. Elected officials struggle to reconcile the two. Within weeks the controversy spreads to social media, local newspapers, and possibly attorneys. Across North America, municipal governments are discovering that pickleball can create unexpected legal and political challenges when courts are placed near residential areas.

For municipal attorneys, the central lesson is simple: This is a problem that must be prevented, not merely defended.

WHY PICKLEBALL NOISE IS DIFFERENT

At first glance, pickleball appears similar to tennis. Both sports use a net court and involve players striking a ball back and forth. Acoustically, however, the two sports are dramatically different. Tennis uses a soft felt ball and a flexible stringed racquet. The resulting sound is relatively muted. Pickleball uses a hard plastic ball and a solid paddle. Each paddle strike produces a sharp impulse sound with a fast onset and short duration.

Normal pickleball play produces approximately 15 paddle impacts per minute per court, or roughly 900 impacts per hour. With multiple courts operating simultaneously, the number of noise events grows quickly. Four courts can generate more than 3,600 impulse sounds per hour, repeated continuously throughout the day. Residents describe the noise not simply as loud but as relentless.

The issue is not just the decibel sound pressure level. It is the combination of:

- high-frequency impulse sounds
- random timing between impacts
- thousands of repetitions
- and long daily hours of play, often 10-12 hours.

In one field study of four courts, the average daily count exceeded 16,000 distinct noise events spread over 10 hours of play each day. Together these characteristics produce a sound environment that nearby residents find intrusive and overwhelming.

THE NOISE THAT COMES INTO THE HOUSE

A critical point for municipal attorneys is that pickleball noise often enters nearby homes. Residents frequently report hearing the paddle impacts inside bedrooms and living rooms, even with windows closed. Outdoor spaces such as patios and gardens become unusable as the residents seek distance and escape from the noise.

When noise penetrates property lines and into the home environment, the issue shifts from recreational inconvenience to interference with the residential use and enjoyment of the property. That shift is significant from a legal perspective. Statewide nuisance law becomes the last hope, and the legal action moves from local ordinance enforcement to court.

Chronic Noise Is a Public Health Issue

Municipal attorneys evaluating pickleball disputes should recognize that the issue is not limited to recreation policy or neighborhood preference. Decades of research summarized by the American Public Health Association conclude that chronic noise—even at relatively low levels—can cause annoyance, sleep disruption, and stress, which are associated with:

- cardiovascular and cerebrovascular disease
- metabolic disturbances
- exacerbation of psychological disorders
- impaired cognition and learning
- reduced productivity
- and premature mortality

These general principles are directly relevant to pickleball noise. The sound has several characteristics associated with elevated human impact:

- impulsive (sharp, sudden onset)
- high frequency (within the range of greatest human sensitivity)
- repetitive and irregular (difficult for the brain to habituate)
- prolonged (often occurring for many hours per day)

Residents often report hearing the sound inside their homes, where expectations of quiet and recovery are highest. When intrusive noise repeatedly enters the home environment, the body's stress-response systems may remain activated over time. This can contribute to sleep disturbance, fatigue, irritability, and physiological stress, even where measured decibel levels appear modest.

For municipal decision-makers, the key point is not that every complaint reflects a diagnosable medical condition. Rather, chronic, repetitive noise exposure in residential settings is not a trivial concern.





Most municipal noise ordinances rely on A-weighted decibel measurements, which were designed primarily for continuous sounds such as traffic, HVAC systems, or amplified music.

WHY RESIDENTS FEEL BETRAYED

When residents experience intrusive noise from pickleball courts, their first instinct is to consult the local noise ordinance. Most municipal noise codes begin with language like "The purpose of this ordinance is to protect the public health, safety, and welfare by preventing excessive noise." Residents understandably assume that the ordinance will protect them.

However, when enforcement officers measure the sound and determine that it falls below the ordinance's decibel limits, residents often receive a different message: the noise ordinance does not apply.

At the same time, complaints directed to recreation departments are frequently rebuffed or minimized. Residents may be told "you'll get used to it" or "you chose to live next to a park."

When the issue reaches elected officials, public comment periods are dominated by the much larger presence of pickleball players. Nearby homeowners — who may number only a handful — can feel drowned out by the larger and more organized group of recreational users.

From the residents' perspective, the situation appears contradictory. The municipality has adopted an ordinance declaring its intent to protect residents from excessive noise, yet the noise source may be a government-operated recreational facility, and the institutions responsible for addressing complaints appear dismissive of the impact.

The result is a growing sense of betrayal. Residents who initially expected protection under the law often conclude that the municipality has failed to honor its own stated commitment to protect the health, safety, and welfare of its citizens.

Once that perception takes hold, disputes that might have been resolved administratively often escalate into political conflict, organized protest, and sometimes litigation.

HOW TRADITIONAL NOISE ORDINANCES FAIL

In practice, noise ordinances rarely resolve the problem. The limitations arise from three distinct factors:

1. Technical Limitations in Measuring Impulsive Noise

Most municipal noise ordinances rely on A-weighted decibel measurements, which were designed primarily for continuous sounds such as traffic, HVAC systems, or amplified music.

Pickleball noise behaves differently. Each paddle strike produces a short, impulsive sound lasting only a few milliseconds. These brief impulses may not raise average sound levels enough to violate ordinance limits, even though the repeated impacts remain clearly audible and disruptive.

A typical one-minute measurement near active courts might produce readings such as:

- LAeq: 54 dB
- Maximum level: 71 dB
- Peak level: 89 dB

Each of these measurements may be technically correct, yet each describes a different aspect of the sound environment. None fully captures the cumulative annoyance created by thousands of impulsive sounds occurring throughout the day.

Municipal enforcement personnel also face practical challenges. Measuring impulsive noise accurately often requires:

- Specialized training
- Careful selection of meter settings (A-weighting, C-weighting, or peak measurements)
- Equipment capable of capturing short impulse events

Most ordinances do not specify these measurement protocols, leaving enforcement officers without clear guidance.

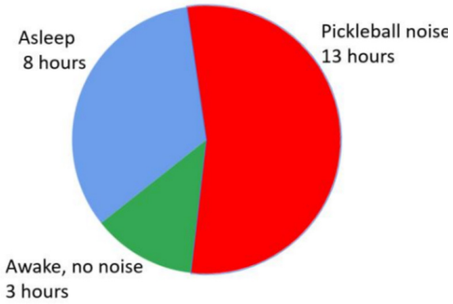
2. Noise Enforcement Is Reactive, Not Preventive

Even when measurement challenges can be overcome, noise ordinances operate after the problem has already occurred.

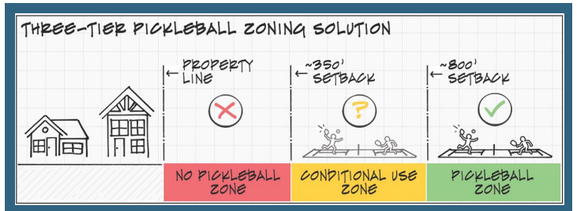
Decibel Limits Fall Short in CUPs

Decibels measure sound pressure level — not human annoyance. Relying solely on decibel thresholds in CUPs is inadequate for pickleball noise, which has unique acoustic traits: a sharp, high-frequency "pop" concentrated around 1250 Hertz, repeated randomly hundreds of times per hour, often for many hours a day. This creates a highly intrusive and chaotic soundscape that standard dBA limits fail to capture.

Annoyance is shaped not just by loudness, but by frequency, repetition, duration, time of day, and a person's loss of control over their home environment. Courts can meet decibel targets while still provoking substantial complaints. Non-acoustic factors critical to land use compatibility — such as perceived fairness and social conflict — remain unresolved when CUPs focus narrowly on sound pressure alone. More effective tools include setbacks, limited hours, quiet paddles, and planning that prevents conflict before it starts.



Graph Courtesy of: Kathleen Romito, M.D. and Daniel Fink, M.D., Pickleball noise: The physiological and psychological effects on nearby residents



THE ZONING ORDINANCE CREATES THREE ZONES:

The Prohibited Zone: Outdoor pickleball not allowed within approximately 350–500 feet of residential property.

Conditional Use Zone: Courts may be allowed through a conditional use permit (CUP), where mitigation measures such as noise barriers, hours restrictions, and quiet equipment can be imposed.

By-Right Zone: Courts permitted beyond approximately 800 feet, where sound impacts are significantly dissipated, and the risk of conflict is greatly reduced.

Residents must report disturbances, enforcement officers must respond, and measurements must be taken during active play. By that point, the land-use conflict already exists.

Noise ordinances, therefore, function primarily as reactive tools, attempting to manage an ongoing problem rather than preventing incompatible uses from being located near one another.

3. Institutional Constraints Within Government

A further complication arises when the noise source is a government operated facility. Code enforcement officers find themselves in the unusual position of investigating complaints against another department.

In practice, it is politically and institutionally difficult for a code enforcement department to issue citations to the recreation department operating a city park. As a result, enforcement efforts often stall before meaningful action occurs.

THE TWO MAJOR LITIGATION PATHWAYS

We see pickleball litigation arrive at the law department principally through two distinct pathways. Understanding these patterns can help municipal attorneys anticipate and avoid exposure.

1. Neighbor Lawsuits

The first pathway occurs when residents sue the municipality after courts are installed near homes, often through the conversion of tennis courts for pickleball use.

Plaintiffs allege that a noise nuisance has been created or maintained that interferes with residential enjoyment. Relief sought includes an injunction closing the courts and money damages.

2. Zoning Litigation With Private Operators

The second pathway occurs when private entities seek permits to construct pickleball facilities. Examples include country clubs, private sports clubs, commercial pickleball franchises, residential developments, and even individual homeowners wanting courts in their backyards.

When attempting to manage these projects through existing zoning and permitting practices, litigation quickly exposes that zoning and permitting ordinances are outdated and ill-suited to this new, surprisingly unexpected noise source.

THE MUNICIPAL ATTORNEY'S LEADERSHIP ROLE

Pickleball conflicts often arise because decisions are made in departmental silos. Recreation departments focus on meeting public demand for facilities. Planning departments focus on land-use compatibility. Code enforcement can only react after the fact. Attorneys often become involved only after controversy arises. Municipal attorneys are uniquely positioned to bridge these gaps.

By advising officials early — before courts are installed — attorneys can help ensure that recreational planning aligns with zoning principles and legal risk management.

In this role, legal counsel becomes the guardian of sound decision-making.

A ZONING SOLUTION IS EMERGING

As pickleball disputes have spread, leading jurisdictions are adopting zoning ordinances specifically tailored to pickleball courts, treating the sport as a distinct noise-generating land use rather than simply another form of recreation. These ordinances shift the focus from after-the-fact noise enforcement to preventing incompatible siting of courts near residential neighborhoods.

A common framework is a distance-based three-zone zoning structure. Under this approach, outdoor pickleball courts are prohibited within a defined setback from homes where conflict is most likely, allowed only through discretionary review in an intermediate zone where mitigation may succeed, and permitted by right at greater distances where sound impacts are substantially reduced. The zoning ordinance creates three zones:

The Prohibited Zone

Outdoor pickleball not allowed within approximately 350–500 feet of residential property.

Conditional Use Zone

Courts may be allowed through a conditional use permit (CUP), where mitigation measures such as noise barriers, hours restrictions, and quiet equipment can be imposed.

By-Right Zone

Courts permitted beyond approximately 800 feet, where sound impacts are significantly dissipated, and the risk of conflict is greatly reduced.

THE MOST RELIABLE MITIGATION TOOL: DISTANCE

Among the various strategies proposed for mitigating pickleball noise, one consistently proves the most reliable: distance.

Sound energy decreases naturally as distance increases. Unlike other mitigation measures, setbacks:

- requires no enforcement
- imposes no operational burden
- operates continuously

Municipalities are sometimes tempted to adopt a relatively small "No Pickleball" setback, such as 150 or 250 feet, in an effort to accommodate court placement within existing parks or recreational facilities. However, practical experience as well as emerging research on the health and annoyance impacts of impulsive noise suggests that these smaller distances often fail to prevent conflict, and the addition of mitigation measures such as barriers, limited hours, or quiet equipment is far less likely to resolve the dispute.

Selecting a larger distance of 350 feet or more allows sufficient natural dissipation of sound energy, making additional mitigation tools deployed through a conditional use permit (CUP) far more likely to succeed. In effect, the initial minimum setback provides the first layer of protection, while other measures serve as supplemental controls.

Communities that adopt larger setback distances therefore reduce the likelihood of persistent complaints, political controversy, and litigation.

ZONING ORDINANCE CHOICES FOR BEST CHANCE OF SUCCESS

- **Define Pickle Ball Play:** A distinct land use of permanent courts or portable nets.
- **Capture Public Uses :** Recreation Dept. applies to the Zoning Dept. for project approval.
- **List Protected Receptors:** Residential, schools, senior living, office, hospitals.
- **Retain Ongoing Review:** CUP can be modified if conditions change or complaints.
- **Choose Large Setbacks**
- **Prohibited Zone:** 350 or 500 feet because it is very difficult to cure noise at lesser setbacks
- **Conditional Use Zone:** Barriers, limited hours and quiet equipment can succeed.
- **By-Right Zone:** At 800+ feet, noise will be audible sometimes but less annoying.

WHY BARRIERS OFTEN FAIL

Sound walls are a common response once complaints arise Unfortunately, their effectiveness is often overestimated. Sound does not travel like a bullet that can be stopped by a wall. It radiates outward in a three-dimensional wave. As a result sound travels:

- Over barriers,
- Around barrier ends, and
- Reflects off nearby surfaces.

Municipalities have sometimes spent hundreds of thousands of dollars installing barriers only to discover that nearby residents still hear the impulsive paddle impacts clearly.

QUIET EQUIPMENT: PROMISING BUT DIFFICULT

Manufacturers have begun producing quieter paddles and balls designed to reduce vibration. These innovations can significantly reduce noise levels. However, enforcement presents challenges.

Players strongly prefer using their own equipment, and even a single player using conventional gear can negate the benefits of quiet equipment rules.

Facilities that successfully implement quiet equipment policies typically provide:

- equipment rental or checkout systems
- staff supervision
- controlled access to courts

ARE BARRIERS A SOLUTION?

Mass-loaded vinyl barriers—often marketed under brand names such as Acoustifence—have quickly become a popular choice for reducing pickleball noise. These flexible, dense, one-eighth inch-thick vinyl sheets easily attach to existing fences. The material performs well in lab tests that judge its ability to block noise from passing straight through.

Yet real-world effectiveness frequently falls short. Outdoor noise control is complicated by sound diffraction, the natural phenomenon where sound waves spread over or around barrier edges. Resident accounts often paint a critical picture, pointing out that each of the impulsive popping noises remains clearly audible, although the barrier advocates may be technically correct in saying that the measured decibels of loudness are somewhat lessened.

A prominent example arose at San Gorgonio Park in San Clemente, California. In 2018, the city converted two tennis courts to eight pickleball courts. City staff added 10-foot tall Acoustifence panels in 2021. A frustrated homeowner living about 350 feet away filed a 45-page lawsuit, representing herself and recounting the long history of interactions with city hall. In November 2024, the city council voted four to one to revert the courts to tennis play, thus ending the lawsuit.

This case underscores two critical lessons. One, barriers are often insufficient for noise mitigation at residences as far as 350 feet, and two the standard solution is to simply return the facility to tennis play.

Public parks without supervision often struggle to enforce such rules. Charging a $5.00 fee to play can fund on-site supervisors.

WHEN THE MISTAKE HAS ALREADY BEEN MADE

Some pickleball courts were installed before the scale of the issue was widely understood.

Once complaints begin, municipalities may consider relying on governmental immunity or ordinance compliance as legal defenses. While those defenses may have merit from a lawyer's perspective, relying solely on them can deepen community conflict.

Municipal attorneys can provide stronger leadership by guiding their electeds toward firm corrective solutions. In many cases, this has meant converting the courts back to tennis or hiring park rangers to enforce quiet equipment programs and an aggressive reduction in hours of play.

CONCLUSION: THE MUNICIPAL ATTORNEY AS GUARDIAN OF GOOD DECISIONS

Pickleball is one of the fastest-growing recreational sports in North America. Communities will continue to build courts to meet demand.

The challenge is not whether to allow the sport. The challenge is where and how to allow it without harming nearby neighborhoods. Municipal attorneys play a critical role in guiding these decisions.

By ensuring that recreation planning, zoning policy, and legal risk management work together, attorneys can help their communities avoid the cycle of protests, lawsuits, and expensive mitigation projects that many municipalities are now experiencing.

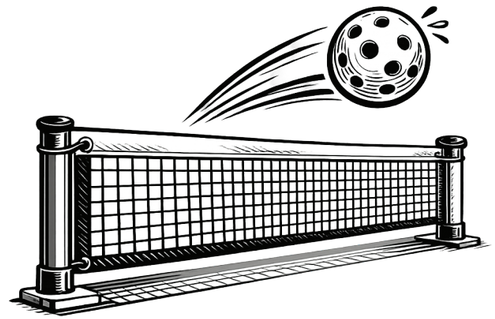
In short, the municipal lawyer's responsibility is not merely to defend after a mistake has been made. It is to ensure that the mistake never happens in the first place. **M.**

MORE INFORMATION

More About the Health Impact

• American Public Health Association, *Noise as a Public Health Hazard* (2021). A strong general source on the health effects of chronic noise and related public-health concerns. https://www.apha.org/policy-and-advocacy/public-health-policy-briefs/policy-database/2022/01/07/noise-as-a-public-health-hazard?utm_source=chatgpt.com

• Kathleen Romito, M.D. and Daniel Fink, M.D., *Pickleball Noise: The Physiological and Psychological Effects on Nearby Residents* (Acoustical Society of America, May 2025). For a plain-language summary visit: https://acoustics.org/



pickleball-noise-raises-health-concerns-for-neighbors-living-near-courts/?utm_source=chatgpt.com

• Kathleen Romito, M.D. and Jamie Banks, Ph.D., *A Survey of the Community Impact of Pickleball Noise: A Pilot Study* (Acoustical Society of America, Feb. 2026). Available at: https://acoustics.org/the-noise-nobody-planned-for-a-community-perspective-on-pickleball-noise/?utm_source=chatgpt.com

Learn More About Noise and Pickleball

• Quiet Communities, Inc.: a nonprofit organization focused on environmental noise and public health, has a multi-disciplinary task force (medical, acoustical, public health, public policy, legal) and developed a dedicated resource page addressing pickleball noise. The site includes research summaries, policy discussions, community case studies, and links to scientific papers and presentations on both acoustic and non-acoustic impacts. For more information: https://www.quietcommunities.org/news-resources

Charles Leahy is a retired mechanical engineer and attorney who became involved in a pickleball noise dispute while serving on the board of a California homeowners' association. Four tennis courts were converted into 13 pickleball courts, resulting in a nuisance lawsuit. Intrigued by the science and politics of noise, he researched and wrote the book, *Managing Pickleball Noise Through Zoning, Zoning Practice* (American Planning Association, Nov. 2025). and gives training on pickleball zoning and permitting for the International Municipal Lawyers Association.

Kathleen Romito, M.D., is a physician and pickleball player who became involved in pickleball noise research after courts were installed approximately 57 feet from her home. Observing the effects on nearby residents, she began studying the physiological and psychological impacts of chronic exposure to pickleball noise. She has co-authored research on community impacts and health effects and is affiliated with Quiet Communities, Inc., where she contributes research and public education on environmental noise and health.

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ZORN V. LINTON NEW TRENDS IN QUALIFIED IMMUNITY

Contributed by Joey Gutmann
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Westbury, NY

Recently, the Supreme Court expanded its qualified immunity doctrine in *Zorn v. Linton*, 607 U.S. ____. This decision both emphasizes the importance of municipal defendants aggressively utilizing the qualified immunity defense in all § 1983 cases and provides additional avenues for doing so.

The case arose from a 2015 sit-in protest at the Vermont state capitol, where Sergeant Jacob Zorn used a rear wristlock to lift protester Shela Linton to her feet after she refused to leave when the capitol closed to the public. Linton sued Zorn under 42 U.S.C. § 1983, claiming the arrest constituted excessive force in violation of the Fourth Amendment and left her with permanent wrist and shoulder injuries as well as post-traumatic stress disorder. The Second Circuit denied Zorn qualified immunity, relying on its earlier decision in *Amnesty America v. West Hartford*, as a clearly established holding that using a rear wristlock on a passively resisting protester constitutes excessive force.[1]

The Supreme Court summarily reversed in a per curiam opinion, holding that *Amnesty America* did not clearly establish that Zorn's specific conduct violated the Fourth Amendment.

First, the Court noted that *Amnesty America* only established that a "reasonable jury could ... find that the officers gratuitously inflicted pain," while noting that it was "entirely possible that a reasonable jury would find ... that the police officers' use of force was objectively reasonable given the circumstances." This, the Court stated, did not constitute a holding that any of the discussed actions violated the Constitution.

The Court further reasoned that *Amnesty America* did not address circumstances where an officer gave repeated warnings before using force. The Court therefore held that the Second Circuit defined the clearly established law at too high a level of generality in relying on *Amnesty America*, despite the clear factual similarities between the two cases. Because no sufficiently specific precedent put Zorn on notice that his actions were unlawful, the Court concluded he was entitled to qualified immunity.

Justice Sotomayor dissented, continuing her recent pattern of challenging the modern Court's definition of what constitutes a sufficiently low level of generality.[2] Sotomayor made the point that Sergeant Zorn did not issue any warning until after physically engaging with Linton, making *Amnesty America* a fundamentally similar case to the instant matter, which is all that is required to clearly establish the law here. Justice Sotomayor's thorough understanding of the factual discrepancies is unsurprising, given that she wrote the *Amnesty America* opinion herself twenty-two years ago.

She further criticized the Court's "one-sided approach to qualified immunity" as effectively shielding officers from liability, and noted that the majority now appears to require a factually identical case to clearly establish the law moving forward. While Sotomayor's description may be an exaggeration of the Court's holding, the Court has been consistently raising the bar on what it takes for plaintiffs to beat the qualified immunity defense. The onus is now on municipal defendants to demand that trial level courts take notice.

Zorn represents a meaningful expansion of what has now become a clear 20+ year trend of the Court urging lower-level judges to be vigilant in defining clearly established law at a lower level of generality than in the past. However, this is the first time that the Court has taken the time to do so in a seemingly 'run of the mill' § 1983 excessive force case. The Court previously dipped its toes into this pool in *City of Escondido, Cal. v. Emmons*, but it merely remanded to the Ninth Circuit to defend its use of a generalized passive resistance case as clearly established case law rather than overturning it altogether.[3] The Court's decision in *Zorn*, which drew distinctions between similarly situated plaintiffs facing identical uses of force based on the timing of warnings, provided a beacon for municipalities and officers nationwide to cite in excessive force cases, even with the smallest factual discrepancies, compared to previously established case law.

Plaintiffs (and courts denying dispositive motions) are required to cite to sufficiently similar clearly established law at a low level of generality. Municipal defendants should be aggressive in arguing that generalized use of force decisions are no longer sufficient for this purpose. *Zorn* makes clear that this must include factual similarities even at a granular level. If

Zorn makes clear that differing facts and environmental factors are important avenues to attack what was previously thought to be sufficiently similar, clearly established law.

Zorn draws a distinction between identical uses of force based solely on when warnings were given, municipal defendants can certainly argue that cases involving uses of force that are not identical (e.g., tight handcuffing vs. wristlock) cannot serve as relevant, clearly established law. Beyond that, *Zorn* makes clear that differing facts and environmental factors are important avenues to attack what was previously thought to be sufficiently similar, clearly established law.

Municipal defendants can, and should, also take advantage of the Court's clear implication in *Zorn* that nothing short of a final judgment can clearly establish what is and is not unconstitutional. Under this new holding, denials of summary judgment are rendered inert as potential sources of clearly established law. Attorneys writing reply briefs in support of their qualified immunity defense should read cases cited by plaintiffs in opposition with a critical eye for those that do not flatly declare officers' actions to be unconstitutional and alert the deciding court that it cannot take such cases into account based upon the *Zorn* holding. In addition, this holding can serve as a vehicle to prompt reconsideration of recent qualified immunity decisions at the district court level, particularly to the extent they cite to non-final judgment decisions.

In the coming days, expect to see an uptick in appeals citing *Zorn* and carving out increasingly narrow discrepancies between prior clearly established case law and new fact patterns. This may range from arrests involving individuals making minor movements, rather than entirely passive resistance, to officers engaging in uses of force similar to, though not identical to, those dealt with by courts in the past. It will also be interesting to see how quickly the Circuits and Districts begin to shy away from relying on non-final judgments in their qualified immunity analysis. This alone will change the calculus for qualified immunity arguments and decisions in all areas going forward.

On a final note, the current Court once again raised the specter, as they have done before in *Rivas-Villegas v. Cortesluna*, that the bar for what constitutes clearly established case law may not merely be high, but astronomically so.[4] The Court dropped a footnote noting that "[w]e assume without deciding that 'controlling Circuit precedent' can clearly establish law for qualified-immunity purposes." The Court's now repeated choice to note its own lack of decision regarding how the law can be clearly established serves as an invitation for a basic challenge to the use of Circuit-level case law in the coming years that could render qualified immunity a nigh unbeatable force should the Court choose to make it so.

The vast majority of cases used to demonstrate clearly established law, particularly at the levels of generality now required by the Court, are Circuit Court precedents. The removal of those from the equation would be devastating to those seeking to overcome the qualified immunity defense. At a minimum, it may be prudent for municipal defendants to include a short argument in their briefs that anything short of Supreme Court precedent cannot clearly establish the law, simply to preserve the defense. Now that the Court has again opened the door to such arguments, it seems likely that a municipal defendant will soon step through for a challenge that could change the face of Section 1983 litigation as we know it. M.

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ENDNOTES

[1] Amnesty America v. West Hartford, 361 F.3d 113 (2d Cir. 2004).

[2] *See*, *e.g.*, Mullenix v. Luna, 577 U.S. 7 (2015); Kisela v. Hughes, 584 U.S. 100 (2018); Stokes v. Kansas City Board of Police Commissioners, 143 S.Ct. 2422 (2023).

[3] City of Escondido, Cal. v. Emmons, 586 U.S. 38 (2019).

[4] Rivas-Villegas v. Cortesluna, 595 U.S. 1, 5 (2021)



Dispositive Motions in Use of Force Cases

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Officers need our protection from civil rights lawsuits. Depositions and trials take them away from their jobs and require other officers to cover for them when the lawsuit makes the defendant officer unavailable. This increases costs to the city while the officer faces potentially life-changing litigation.

Cities are exposed to potentially unlimited damages based on claims that should never go to trial and should, on the contrary, be eliminated early after filing. The federal rules provide us with procedural mechanisms to dispose of civil rights lawsuits at or near the front end of the case, avoiding trial and often even avoiding discovery. This article covers some of the more frequently used dispositive motions under Federal Rule of Civil Procedure 12(b)(1), Rule 12(b)(6), and Rule 56 that can protect officers and municipalities against use-of-force claims.

Rule 12(b)(1) provides for motions to dismiss for lack of subject-matter jurisdiction. Rule 12(b)(6) allows dismissal for failure to state a claim upon which relief can be granted. And Rule 56 governs summary judgments. Each of these motions can be filed on behalf of individual officers or the municipality. The claims against the city will differ from the claims against the officers, as will the challenges for the plaintiffs to overcome qualified immunity to reach the officers and to satisfy the *Monell* elements for municipal liability.

Rule 12(b)(1): Motion to Dismiss for Lack of Subject Matter Jurisdiction

Some advantages to a Rule 12(b)(1) motion to dismiss are that the defense can attach evidence, the court can weigh credibility, and the plaintiff then has a burden to attach controverting evidence.

12(b)(1) Standard of Review

A motion to dismiss under Rule 12(b)(1) challenges a federal court's subject matter jurisdiction.[1] "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."[2] "'A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case.'"[3] The Court "must presume that a suit lies outside [its] limited jurisdiction, and the burden of establishing federal jurisdiction rests on the party seeking the federal forum."[4] The party asserting jurisdiction must allege the jurisdictional basis "affirmatively and distinctly"; it cannot be "established argumentatively or by mere inference."[5]

Several useful applications

These motions are useful for officers who did not participate in the use of force, who fired but missed, or who did not personally and intentionally cause a legitimate constitutional injury. They also can challenge claims that are, at most, recklessness on the part of an officer—i.e., when the plaintiff's allegations do not state a constitutional or statutory deprivation resulting from conduct that was intentional or due to deliberate indifference.[6] "The guarantee of due process has never been understood to mean that the State must guarantee due care on the part of its officials."[7] "[T]he Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property."[8]

They are also useful for the City when the alleged City policy or custom did not cause the alleged use-of-force injury. "It is well established that in a §1983 case a city or other local governmental entity cannot be subject to liability at all unless the harm was caused in the implementation of 'official municipal policy.'"[9] The injury must be caused by the City to establish standing. The Supreme Court has held it is not enough for the plaintiff to identify a constitutional problem in some City policy.[10] Nor can she "identify one injury and then bootstrap it to complain about others."[11] For example, if the absence of the City's alleged restraint policy would not have prevented the only physical injury that the plaintiff claimed, the plaintiff has not alleged facts to establish subject-matter jurisdiction.[12]

Getting a video before the judge

Rule 12(b)(1) also enables the defense to get a video before the judge. If the video were attached to a Rule 12(b)(6) motion, that would require converting it to a Rule 56 motion for summary judgment. Even where a complaint presents a false narrative that would survive a 12(b)(6) motion, the 12(b)(1) with a video attached can change the perspective and pressure the plaintiff and can even dispose of the case.

Frivolous cases

Moreover, 12(b)(1) motions are available to dismiss federal claims that are wholly insubstantial and frivolous. It is rarely used but can be appropriate—for example, in response to certain pro se complaints. In federal question cases, a district court will not have subject matter jurisdiction over any claim that "clearly appears to be immaterial . . . or where such claim is wholly insubstantial and frivolous."[13]

Facial and Factual Attacks

The Fifth Circuit recognizes two types of challenges to a federal court's subject-matter jurisdiction: "facial" attacks, which are based solely on the pleadings, and "factual" attacks, which are based on affidavits, testimony, and other evidentiary material.[14] Whether the attack is facial or factual, however, the plaintiff seeking a federal forum "constantly bears the burden of proof that jurisdiction does in fact exist."[15]

When a defendant files a Rule 12(b)(1) motion to dismiss without evidentiary materials supporting it, the attack is facial, and the Court need only consider the sufficiency of the allegations in the plaintiff's complaint.[16] If the defendant makes a factual challenge, on the other hand, to defeat it, "a plaintiff 'must prove the existence of subject-matter jurisdiction by a preponderance of the evidence' and is 'obliged to submit facts through some evidentiary method to sustain his burden of proof.'"[17]

Rule 12(b)(6): Motion to Dismiss for Failure to State a Claim

Rule 12(b)(6) is a powerful tool for disposing of cases early in the process. Plaintiffs must plead facts that, if true, would entitle them to the relief requested. Defense counsel must carefully evaluate the complaint for conclusory allegations and allegations of facts that would be immaterial. The two primary guiding cases from the Supreme Court are *Ashcroft v. Iqbal*[18] and *Bell Atlantic Corp. v. Twombly*.[19] In addition to those and some other Supreme Court cases, this article cites Fifth Circuit cases that follow *Iqbal* and *Twombly*. Municipal attorneys will find that their own circuits might apply *Iqbal* and *Twombly* differently from the Fifth, leading to variable contours of pleading analysis and Rule 12(b)(6) dismissal.

Rule 12(b)(6) Standard of Review

The court of appeals reviews *de novo* a grant or denial of a Rule 12(b)(6) motion to dismiss.[20]

A complaint may be dismissed as a matter of law if it fails to state a claim upon which relief can be granted.[21] A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims stated in the complaint and must be evaluated solely on the pleadings.[22] Rule 12(b)(6) must be read in conjunction with Rule 8(a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief."[23] "An unadorned, the defendant-unlawfully-harmed-me accusation" will not suffice.[24] Thus, "dismissal is appropriate only if the complaint fails to plead enough facts to state a claim of relief that is plausible on its face."[25]

Plausibility

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.[26] A claim is plausible on its face only "when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[27] "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully."[28]

Threadbare Recitals

"When considering a motion to dismiss, the court accepts as true the well-pled factual allegations in the complaint and construes them in light most favorable to the plaintiff."[29]

However, courts are not bound to accept as true "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," or legal conclusions couched as factual assertions.[30] And courts need not "accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions."[31]

A "plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and formulaic recitation of the elements of a cause of action."[32] Dismissal is therefore appropriate if the complaint lacks an allegation regarding a required element necessary to obtain relief.[33] Conclusory allegations or legal conclusions masquerading as factual conclusions cannot prevent dismissal.[34]

Not limited to pleadings

In reviewing a 12(b)(6) motion, the court is not limited to the pleadings; it can also consider documents the defendant attaches to the motion that are referenced in the pleadings and central to the claims (such as videos or offense reports). These attachments are considered part of the complaint for purposes of 12(b)(6). It also includes records subject to judicial notice; judicial records are particularly useful to establish a *Heck* bar or the independent



A municipality may not be held vicariously liable for its employees' unconstitutional torts; unconstitutional conduct must be directly attributable to the municipality through official action.

intermediary doctrine—e.g., a judicial probable cause finding, a warrant issued by a judge, an indictment, or a plea agreement.[35]

Qualified Immunity—Officers

To state a claim under 42 U.S.C.S. § 1983, a plaintiff is required to allege facts demonstrating that: (1) the defendant violated the Constitution or federal law; and (2) the defendant was acting under the color of state law while doing so.[36]

Governmental officials performing discretionary functions are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.[37] Qualified immunity is an "immunity from suit rather than a mere defense to liability."[38] In this manner, "one of the most important benefits of the qualified immunity defense is 'protection from pretrial discovery, which is costly, time-consuming, and intrusive.'"[39]

Once a defendant has invoked the defense of qualified immunity, the plaintiff carries the burden of demonstrating its inapplicability.[40] The threshold inquiry in resolving an issue of qualified immunity is whether, taking the facts in the light most favorable to the plaintiff, the officer's conduct violated a constitutional right.[41]

Next, the Court considers whether the allegedly violated right is "clearly established" in that "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."[42] "Answering in the affirmative requires the court to be able to point to controlling authority—or a robust consensus of persuasive authority—that defines the contours of the right in question with a high degree of particularity."[43] "This requirement establishes a high bar."[44]

When there is no controlling authority specifically prohibiting a defendant's conduct, the law is not clearly established for the purposes of defeating qualified immunity.[45] Officials "who reasonably but mistakenly commit a constitutional violation are entitled to immunity."[46]

On a motion to dismiss, "a district court must first find 'that the plaintiff's pleadings assert facts which, if true, would overcome the defense of qualified immunity.'"[47] "Thus, a plaintiff seeking to overcome qualified immunity must plead specific facts that both allow the court to draw the reasonable inference that the defendant is liable for the harm he has alleged and that defeat a qualified immunity defense with equal specificity."[48]

Monell—Municipalities

Under 42 U.S.C. § 1983, a city may be held liable only for constitutional violations resulting from an official policy or custom.[49] A municipality may not be held vicariously liable for its employees' unconstitutional torts; unconstitutional conduct must be directly attributable to the municipality through official action.[50] Isolated unconstitutional actions by municipal employees will almost never trigger liability.[51]

To establish liability, a plaintiff must show: 1) a policymaker; 2) an official policy; and 3) a violation of constitutional rights whose "moving force" is the policy or custom.[52] The standard is stringent, and all elements must be established to impose liability. If the elements of the *Monell* test are not followed, the municipal liability inquiry will collapse into a respondeat superior analysis.[53] A municipality may not be subject to liability merely for employing a tortfeasor.[54] Municipal liability requires deliberate action attributable to the municipality that is the direct cause of the alleged constitutional violation.[55]

To show an official policy, there must be a written policy or policy statement announced by the policy maker, or a "persistent widespread practice of city officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well-settled as to constitute a custom that fairly represents municipal policy."[56]

Rule 56: Motion for Summary Judgment

If the plaintiff survives the two earlier dispositive motions and the case proceeds to discovery, both the officers and the City still have an opportunity to avoid trial by filing motions for summary judgment. For the officers, the basic argument often would be that the plaintiff did not show a constitutional violation or that the law was not clearly established at the time. Of those two potential rulings, the more powerful is that there was no constitutional violation. That's the end of the case for the officers and for the City. The easier ruling, however, is that the law was not clearly established at that time. The officers are then free from liability, while there is at least a theoretical avenue for municipal liability.

An evidence-based argument would be that the plaintiff did not bring evidence to establish a genuine dispute of material fact about the officer's actions—e.g., whether the officer was involved in the use of force, or whether the amount of force was reasonable.

When evaluating the plaintiff's evidence and the plaintiff's arguments, defense counsel should focus on whether the plaintiff's disputed facts are actually material. This is often overlooked, even by district courts.

For the City, the argument would focus on the plaintiff's failure to satisfy the *Monell* factors listed above. If, for example, the discovery process did not uncover a policy or practice known to the policymakers and so widespread that it effectively constituted an unwritten policy of the City, then the plaintiff has not met the *Monell* standard.

Rule 56 Standard of Review

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Where the burden of proof at trial is on the non-moving party, the movant satisfies its initial burden by "'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case."[57] The nonmovant must then identify specific evidence in the record and articulate how that evidence supports the party's claim.[58]

Conclusory allegations, speculation, unsubstantiated assertions, and legalistic arguments are not an adequate substitute for specific facts showing a genuine issue for trial.[59] Although factual controversies are to be resolved in the nonmovant's favor, that is "only when . . . both parties have submitted evidence of contradictory facts."[60] The plaintiff is not entitled to go to trial on an allegation; instead, he must present significant probative evidence that makes it necessary to resolve the factual dispute at trial.[61]

Officers do not have to present evidence to support their qualified immunity defense. Once an officer raises the defense of qualified immunity, the burden shifts to nonmovants to establish that the officer's alleged wrongful conduct violated clearly established law and that no objectively reasonable officer could have thought the officer's actions were constitutional.[62] Summary judgment should be granted if no reasonable juror could properly find for the nonmoving party on the evidence presented.[63]

Defense counsel should remember that Rule 56 also allows for what is effectively a "no-evidence" motion for summary judgment: "A complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial and mandates the entry of summary judgment for the moving party."[64] This is particularly relevant when qualified immunity is properly invoked by showing that the officer is a government employee performing within her authority and exercising discretion.

"At summary judgment, the movant must show that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The Court reviews all facts in the light most favorable to the nonmoving party. The City has the burden for its own motion against the *Monell* claims. The denial of a City's motion for summary judgment is not appealable by right, although a permissive appeal may sometimes be granted.

But it's different for the officer. When a public official asserts the qualified immunity defense, the burden shifts to the plaintiff to show that: (1) the official violated a statutory or constitutional right; and (2) the right was clearly established at the time of the challenged conduct. Under this burden shifting regime, the public official asserting qualified immunity does not bear the initial burden of showing an absence of genuine disputes of material fact and entitlement to judgment as a matter of law."[65] This is very different from summary judgment in other contexts, and plaintiffs' attorneys will sometimes argue that the officer did not meet his burden, even though the burden rests on the plaintiff. Some district courts apparently are uncomfortable with this, as well, so municipal attorneys should be prepared with the authorities cited herein (as well as those specific to the relevant federal circuit) to lay out how the burden shifting works with qualified immunity. And during the qualified immunity analysis, if the court concludes that the officer did not commit a constitutional violation, that is also the end of the *Monell* claims against the City. M.

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ENDNOTES

[1] Fed. R. Civ. P. 12(b)(1).

[2] Fed. R. Civ. P. 12(h)(3).

[3] Home Builders Ass'n of Miss., Inc. v. City of Madison, 143 F.3d 1006, 1010 (5th Cir. 1998)(*quoting* Nowak v. Ironworkers Local 6 Pension Fund, 81 F.3d 1182, 1187 (2d Cir. 1996)).

[4] Howery v. Allstate Ins. Co., 243 F.3d 912, 916 (5th Cir. 2001)(citations omitted); *see also* Pullen-Walker v. Roosevelt Univ., 405 F. App'x 46, 49 (7th Cir. 2010)("the incantation of a federal statute will not automatically trigger federal jurisdiction").

[5] Ill. Cent. Gulf R.R. Co. v. Pargas, Inc., 706 F.2d 633, 636 & n.2 (5th Cir. 1983)(citations omitted); *accord* Getty Oil Corp. v. Ins. Co. of N. Am., 841 F.2d 1254, 1259 (5th Cir. 1988).

[6] *See, e.g.*, Farmer v. Brenan, 511 U.S. 825, 828-29 (1994).

[7] Davidson v. Cannon, 474 U.S. 344, 348 (1986).

[8] Daniels v. Williams, 474 U.S. 327, 328 (1986).

[9] Lozman v. City of Riviera Beach, 585 U.S. 87, 95 (2018) (*quoting* Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978); and citing Los Angeles Cnty v. Humphries, 562 U.S. 29, 36 (2010)).

[10] In re Gee, 941 F.3d 153, 160 (5th Cir. 2019) (emphasis in original; citations omitted) (discussing the Supreme Court's holding in Lewis v. Casey, 518 U.S. 343, 358 (1996)).

[11] *Id*.

[12] *See* Parr v. Cougle, 127 F.4th 967, 975-76 (5th Cir. 2025) (*quoting* Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 107 (1998), "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement.").

[13] John Corp. v. City of Houston, 214 F.3d 573, 576 (5th Cir. 2000) (*quoting* Steel Co., 523 U.S. at 89 (*in turn quoting* Bell v. Hood, 327 U.S. 678, 682-83 (1946))).

[14] *See* Paterson v. Weinberger, 644 F.2d 521, 523 (5th Cir. May 1981); *see also* Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001) (per curiam) ("Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.") (citation omitted).

[15] *Ramming*, 281 F.3d at 161 (citation omitted).

[16] *Paterson*, 644 F.2d at 523.

[17] Superior MRI Servs., Inc. v. All. Healthcare Servs., Inc., 778 F.3d 502, 504 (5th Cir. 2015) (*quoting* Irwin v. Veterans Admin., 874 F.2d 1092, 1096 (5th Cir. 1989), aff'd sub nom., Irwin v. Dep't of Veterans Affairs, 498 U.S. 89 (1990)).

[18] 556 U.S. 662, 677 (2009).

[19] 550 U.S. 544, 555 (2007).

[20] Bradford v. Law Firm of Gauthier, Houghtaling & Williams, L.L.P., 696 F. App'x 691, 693 (5th Cir. 2017) (per curiam); Cousin v. Small, 325 F.3d 627, 631 (5th Cir. 2003).

[21] Fed. R. Civ. P. 12(b)(6).

[22] Jackson v. Procunier, 789 F.2d 307, 309 (5th Cir. 1986); Morin v. Caire, 77 F.3d 116, 120 (5th Cir. 1996).

[23] Fed. R. Civ. P. 8(a)(2); Iqbal, 556 U.S. at 677; Twombly, 550 U.S. at 555.

[24] Iqbal, 556 U.S. at 678-79.

[25] Leal v. McHugh, 731 F.3d 405, 410 (5th Cir. 2013) (*quoting* Twombly, 550 U.S. at 570; internal quotation marks omitted).

[26] Iqbal, 556 U.S. at 678 (*quoting* Twombly, 550 U.S. at 570).

[27] Montoya v. FedEx Ground Package Sys., Inc., 614 F.3d 145, 148 (5th Cir. 2010) (*quoting* Iqbal, 556 U.S. at 678).

[28] Iqbal, 556 U.S. at 678 (*quoting* Twombly, 550 U.S. at 556).

[29] Taylor v. Books A Million, Inc., 296 F.3d 376, 378 (5th Cir. 2002); *see also* U.S. ex rel. Willard v. Humana Health Plan of Tex., Inc., 336 F.3d 375, 379 (5th Cir. 2003) (citation omitted).

[30] Iqbal, 556 U.S. at 678; *see also* Hale v. King, 642 F.3d 492, 499 (5th Cir. 2011) ('Plaintiffs must allege facts that support the elements of the cause of action in order to make out a valid claim').

[31] Arnold v. Williams, 979 F.3d 262, 266 (5th Cir. 2020) (citing Gentilello v. Rege, 627 F.3d 540, 544 (5th Cir. 2010)).

[32] Twombly, 550 U.S. at 544.

[33] Apani Sw., Inc. v. Coca-Cola Enters., Inc., 300 F.3d 620, 624 (5th Cir. 2001) (*quoting* Blackburn v. City of Marshall, 42 F.3d 925, 931 (5th Cir. 1995)); *see also* Hale, 642 F.3d at 499.

[34] Taylor, 296 F.3d at 378 (*quoting* Fernandez-Montes v. Allied Pilots Ass'n., 987 F.2d 278, 284 (5th Cir. 1993)).

[35] Johnson v. Bowe, 856 F. App'x 487, 488 (5th Cir. 2021) ("Documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim. Documents can also be considered part of the pleadings if the court may take judicial notice of them."); Story v. Williamson Cty. Judge Bill Gravell, No. 1:23-CV-1120-DII, 2024 U.S. Dist. LEXIS 116709, at *12-13 (W.D. Tex. Apr. 25, 2024) ("Defendants attached to their Motion the video recording of the commissioners court meeting at which Story alleges Gravell violated his rights. Dkt. 11-1. A video recording of the meeting is also available at https://williamsoncountytx.new.swagit.com/videos/150724. Under Texas law, the recording is a public record. Tex. Gov't Code, § 551.022. "[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record." Norris v. Hearst Trust, 500 F.3d 454, 461, n. 9 (5th Cir. 2007). "[W]here video recordings are included in the pleadings, as is the case here, the video depictions of events, viewed in the light most favorable to the plaintiff, should be adopted over the factual allegations in the complaint if the video 'blatantly contradict[s]' those allegations." Harmon v. City of Arlington, 16 F.4th 1159, 1163 (5th Cir. 2021) (quoting Scott v. Harris, 550 U.S. 372, 380 (2007))."). *See also* Sligh v. City of Conroe, 619 F. Supp. 3d 735, 740-41 (S.D. Tex. 2022) (same, and collecting cases).

[36] *See* Wilson v. Dallas Cty. Hosp. Dist., 715 F. App'x 319, 323 (5th Cir. 2017).

[37] Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

[38] Pearson v. Callahan, 555 U.S. 223, 237 (2009).

[39] Carswell v. Camp, 54 F.4th 307, 310 (5th Cir. 2022) (*quoting* Backe v. LeBlanc, 691 F.3d 645, 648 (5th Cir. 2012).

[40] Club Retro, L.L.C. v. Hilton, 568 F.3d 181, 194 (5th Cir. 2009).

[41] Saucier v. Katz, 533 U.S. 194, 201 (2001); Scott v. Harris, 550 U.S. 372, 377-78 (2007).

[42] Saucier, 533 U.S. at 201.

[43] Wyatt v. Fletcher, 718 F.3d 496, 503 (5th Cir. 2013).

[44] *Id*.

[45] *Id*.

[46] Collins v. Ainsworth, 382 F.3d 529, 537 (5th Cir. 2004) (*quoting* Bazan ex rel. Bazan v. Hidalgo County, 246 F.3d 481, 490 (5th Cir. 2001)).

[47] *Backe*, 691 F.3d at 648 (*quoting* Wicks v. Mississippi State Emp't Servs., 41 F.3d 991, 994-95 (5th Cir. 1995)).

[48] *Id*. at 648. *See also* Cole v. Carson, 935 F.3d 444, 474 (5th Cir. 2019) (Ho & Oldham, JJ., dissenting)(noting thirteen cases in the last sixteen years in which the Supreme Court applied the "extraordinary remedy of a summary reversal" to correct failures "not only to identify a clearly established rule of law, but to do so with great specificity."(emphasis added)).

[49] Bd. of Cnty. Comm'rs of Bryan Cnty., Okla. v. Brown, 520 U.S. 397, 403 (1997).

[50] *Monell*, 436 U.S. at 691 n.55.

[51] Piotrowski v. City of Houston, 237 F.3d 567, 578 (5th Cir. 2001).

[52] *Monell*, 436 U.S. at 693-94.

[53] *Brown*, 520 U.S. at 415.

[54] City of Canton, Ohio v. Harris, 489 U.S. 378, 392 (1989).

[55] *Id*. at 391-92.

[56] Webster v. City of Houston, 735 F.2d 838, 841 (5th Cir.), rev'd en banc on other grounds, 739 F.2d 993, 993-94 (1984).

[57] Celotex Corp. v. Catrett, 477 U.S. 317, 322-25 (1986).

[58] Baranowski v. Hart, 486 F.3d 112, 119 (5th Cir. 2007).

[59] TIG Ins. Co. v. Sedgwick James of Wash., 276 F.3d 754, 759 (5th Cir. 2002); Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc).

[60] Little, 37 F.3d at 1075.

[61] Celotex, 477 U.S. at 323.

[62] Estate of Davis v. City of North Richland Hills, 406 F.3d 375 (5th Cir. 2005); *see also* Pierce v. Smith, 117 F.3d 866, 872 (5th Cir. 1997). ("We do not require that an official demonstrate that he did not violate clearly established federal rights; our precedent places that burden upon plaintiffs.") (internal quotation marks omitted).

[63] Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251 (1986).

[64] Alvarez v. City of Brownsville, 904 F.3d 382, 389 (5th Cir. 2018) (en banc)(internal quotations and citations omitted).

[65] Donalson v. McLeaish, No. 22-40758, 2023 WL 8715368, at *1 (5th Cir. 2023)(internal footnotes and quotations marks omitted).



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