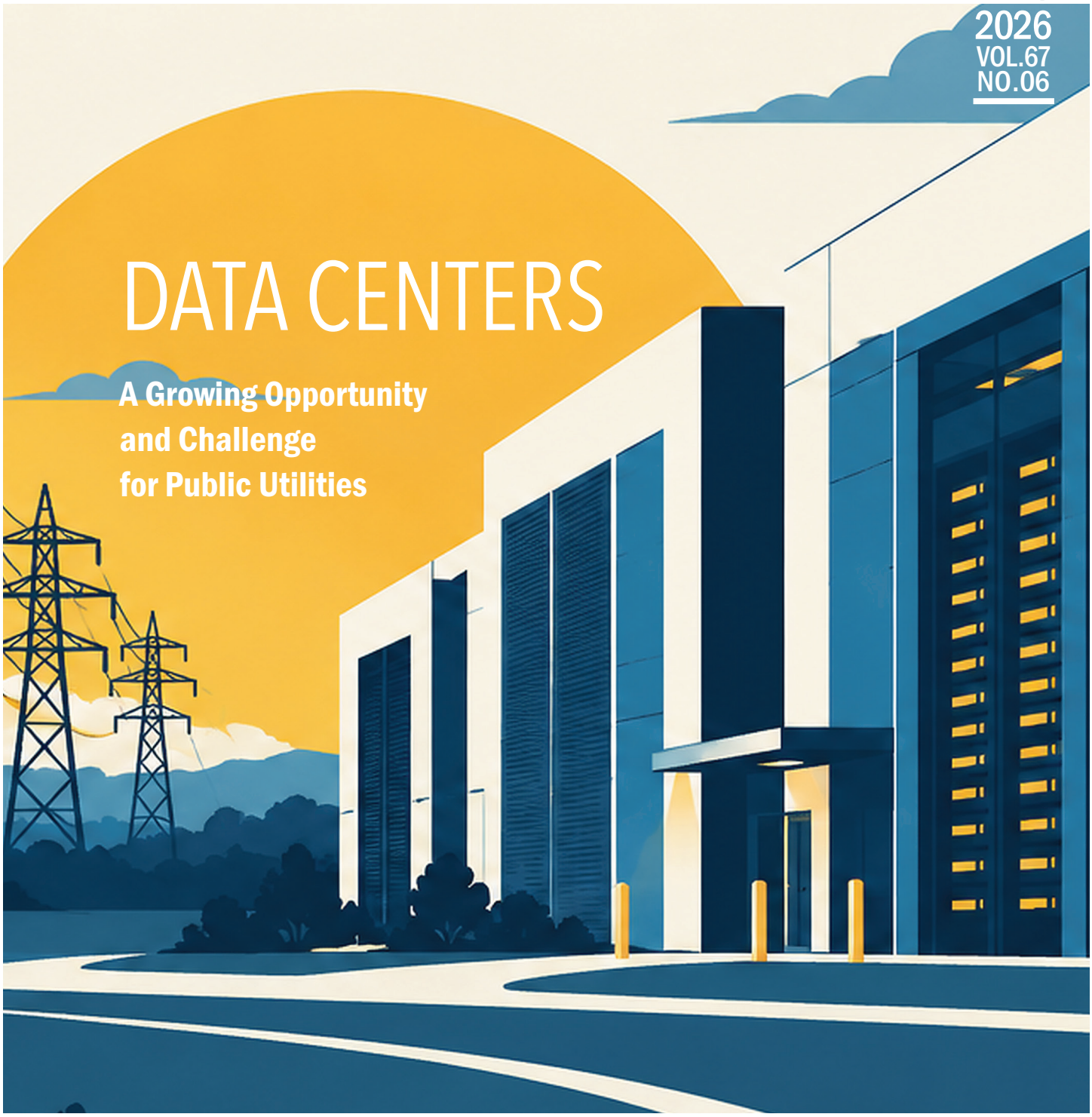
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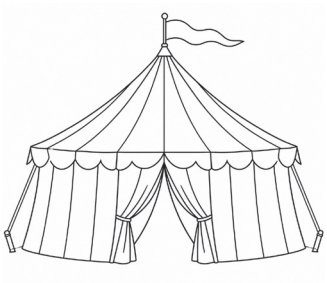
DATA CENTERS

A Growing Opportunity and Challenge for Public Utilities



LETTER FROM THE PRESIDENT

By Beth Anne Childs
Assistant City Attorney
Owasso, Oklahoma



NAVIGATING THE BIG TOP

At the end of the movie *Argo*, CIA operative Tony Mendez's boss, Jack O'Donnell, tells him that he'll be receiving the Intelligence Star, one of the highest honors in the clandestine services. Tony asks to delay receiving the award by a week so his son can attend. Jack advises him that the award is classified and that no one can know about it. Tony's response is, "So they are going to give me an award, and then take it back." Jack acknowledges that is the case and says, "If we'd wanted applause, we would have joined the circus." As a municipal attorney, Jack's quote has always resonated with me because it drives home the point that legal work for local governments should not be done to earn accolades, but to advance communities for the public good.

There is little doubt that the practice of municipal law can certainly be viewed as a circus. However, our practice is more than just a series of entertaining events. It supports projects and issues that most directly impact citizens every day. The advice we give and the guidance we provide are not always popular or easy and certainly may not result in a standing ovation. It is, however, important.

Over the years, my municipal law career has been highlighted by kangaroos, miniature horses, algae-eating grass carp, hospitals, falling walls, sewer back-ups, and witnesses showing up to Municipal Court in all forms of attire, including (my personal favorite) SpongeBob SquarePants pajama pants, flip-flops, and a very thin, grey shirt (no undergarments). In fact, several years ago, I was sitting in a Board Meeting when an astonishingly large roach ran past me. Being raised in Alabama, I am adept in all manner of personal roach eradication and was prepared to use my high heel to rapidly address the issue. Fortunately for the roach, the successful bidder on the sanitary sewer lagoon mowing contract was much quicker than me. He leaped out of his chair, removed his hat, scooped up the roach, and tossed it out the back door. It was a remarkable feat exemplifying quick thinking, physical adeptness, and selflessness. I remember thinking to myself, "What an interesting job I have."

Most municipal attorneys I know would describe their client's daily operations as a three-ring circus. In addition to practicing in more than thirty-three different areas of the law in any given week, local government attorneys are also brought under the big top of their

client's operations and required to provide not just legal advice, but legal guidance. It takes a special kind of attorney to manage the challenges presented by citizens, elected officials, and employees. I want to personally thank you all for the excellent service that you provide to your clients. These are especially challenging times, but what you do is important work that lays the foundation for your community's success in the short and long term. Thank you for doing it without the need for applause.

In recent years, I have concentrated my practice on the representation of smaller municipalities. One evening I had a gentlemen approach me following a Board Meeting where the feasibility of hiring a Police Chief was discussed at length. He told me that hiring a Police Chief was very important to the community and that while he didn't have much, he worked hard for what he had. I have never forgotten what he said and frequently use his remarks as a reminder to work hard to help communities find solutions to their most important issues.

Thank you for your membership in and support of IMLA. Hopefully you find that the programs, services, and community of attorneys significantly enhance your practice and enable you to navigate the ongoing circuses of our chosen area of practice.

Warm regards,

Beth Anne

IMLA

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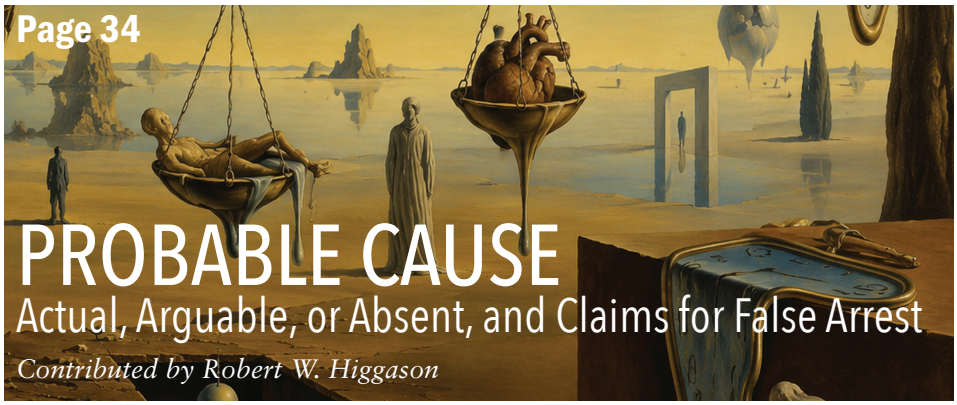
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Actual, Arguable, or Absent, and Claims for False Arrest

Contributed by Robert W. Higgason



LETTER FROM THE EXECUTIVE EDITOR

By Amanda Karras
IMLA Executive Director
Rockville, Maryland

"IN A TIME OF TURBULENCE AND CHANGE, IT IS MORE TRUE THAN EVER THAT KNOWLEDGE IS POWER."

— SIR FRANCIS BACON

We just returned from a rejuvenating and inspiring conference in Salt Lake City. The programming was excellent and, let's be honest, sometimes cathartic and humorous (if you missed Public Comment 2.0, don't worry; Todd and Neal will hopefully be back). Our members' energy was palpable as conversations and connections hummed throughout the receptions and between sessions. And the Wasatch Mountains provided a stunning backdrop.

As an aside, IMLA plans these conferences years in advance, so we had no way of knowing that FanX, Salt Lake City's version of Comic Con, would be happening next door. But that also provided for some entertaining moments and visuals, as you can imagine.

While the IMLA staff puts in a tremendous amount of work to pull off these conferences (shout out to the best staff out there!), I think we all find it incredibly rewarding to meet our members in person, hear about your challenges and triumphs, and know we are helping you carry out your important work. This last point gives my work as IMLA's Executive Director great meaning: knowing we are advancing excellence in local government law.

That excellence is evident in your work, which touches and improves the lives of people in your community. Many of you have been planning for the upcoming election for months with other State and local leaders. That has involved all the usual election-related work, but this year it has been accompanied by numerous Executive Orders involving elections and a flurry of litigation challenging those orders. The Supreme Court has weighed in on this litigation on the emergency order docket, requiring you to keep track of a rapidly changing legal landscape. At the same time, members of the public and some elected officials have increased

the temperature for this election. Whatever the concern, local government leaders and election officials will turn to you for answers to difficult questions. What always impresses me is our members' ability to be a steady hand and a calming voice in turbulent times.

That steady hand and calming voice are necessary not just during election season, but in all aspects of your work. Consider the public-comment example. How many times have your elected officials considered borrowing a page from Riviera Beach's playbook circa 2006 and having a local gadfly (or breakdancer, see the reference to Public Comment 2.0 above) hauled out of the council meeting for their comments? But you've read the Supreme Court's First Amendment cases, including *Lozman v. Riviera Beach*, and you are there to ensure that frustration does not lead to costly litigation when cooler heads should prevail.

I'd like to think our CLE programming, including our annual conference, spring Seminar, and virtual events, helps keep you abreast of legal developments so you can keep the ship pointed in the right direction and away from legal trouble. To that end, I hope you'll join us for the IMLA Seminar in Washington, DC, April 16-19, 2027, and our Annual Conference in Denver, Colorado, from October 14-18, 2027. Information about registering for both events is on our website, and you should take advantage of the early bird deals and bundle options.

We also recognize budgets are tight, and that can make travel difficult. We offer many online CLE opportunities, including virtual code enforcement, employment law, and Section 1983 litigation. Our Kitchen Sink webinar package offers 40+ CLE webinars for your entire office, and I still maintain this is the best bang for your buck for CLE out there, especially given how relevant and practical the programming is.

As always, thank you for all that you do to make your communities and IMLA great. It is a privilege to support the important work you do every day, and we look forward to continuing that work together in the year ahead.

Warm regards,

Amanda

HELPING LOCAL GOVERNMENT NAVIGATE SHIFTING FEDERAL LANDSCAPES

In a time of extraordinary change at the federal level — including the issuance of 142 Executive Orders in just the first 100 days of the current administration — local governments are facing new and often complex legal challenges. From dramatic changes to federal funding frameworks, to shifts in immigration enforcement and evolving standards for diversity programs, local government lawyers are on the front lines of interpreting and responding to legal uncertainty that directly affects their communities. As the oldest and largest organization devoted to local government lawyers, the International Municipal Lawyers Association has stepped up to meet the moment.

IMLA is here to help.

IMLA

INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

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MOVIE REVIEW

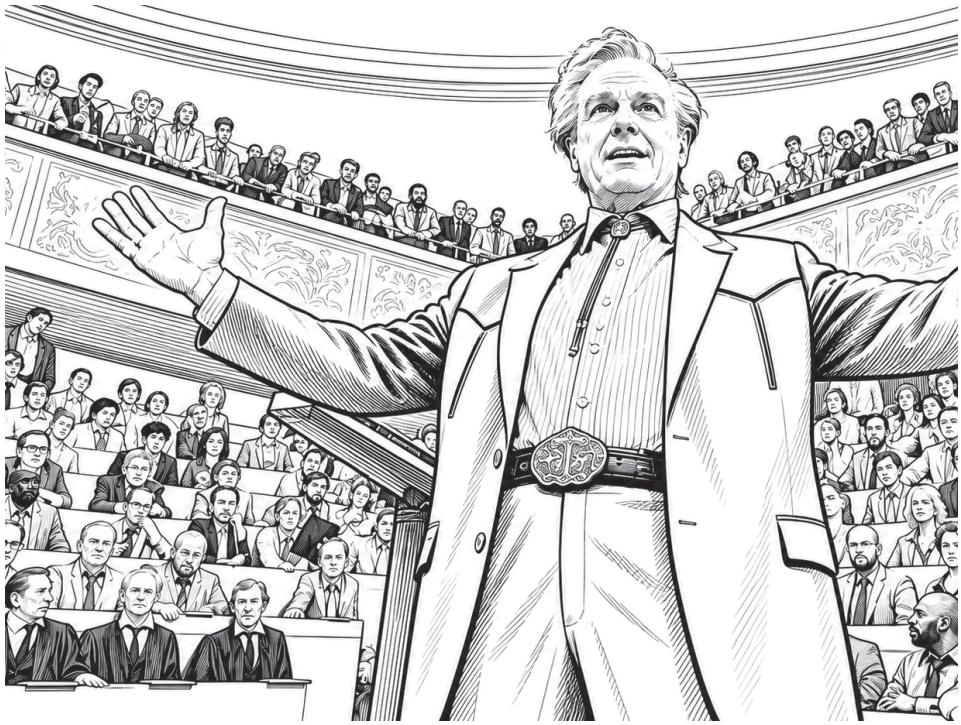
Is That Legal?

Contributed by

Darren Shulman

City Attorney

Upper Arlington, OH



Digger CAN YOU DIG IT?

I had no idea what to expect going into *Digger*,[1] and when the movie ended, I wondered out loud, "What the heck did I just watch?" *Digger* is clearly an attempt to get Tom Cruise an Oscar, using the time-honored award-bait tactic of heavy makeup and/or prosthetics.[2] Cruise plays an old Texas oilman who bears only a slight resemblance to the famous actor who seems to refuse to age. Cruise carries the movie, appearing in every scene. At times, he melts into the character, but when charisma is needed, the old Tom Cruise shines through, reminding you that you are basically seeing a movie star in makeup. While Cruise deserves credit for his effort, the direction and script undermine it.

Digger was directed, co-written, and co-produced by Alejandro Iñárritu. Iñárritu directed *Birdman* (2014), which won four Academy Awards,[3] and it's clear he was trying to recreate that magic with *Digger*. *Digger* apes the tone and one-character focus of *Birdman*, but where *Birdman* soared,[4] *Digger* sinks.[5] Cruise should be applauded for dominating the movie, but Iñárritu's script and direction is so purposely over the top that Cruise's performance often becomes ridiculous.[6]

The best way I can describe *Digger* is that it has something to say, but unfortunately, it has so many things to say that most of it gets lost. It is meta, absurdist, surreal, and a satirical farce, all without being funny. It hits you over the head with its main message, but you get the sense that there are more messages that don't land. The film's narrative structure is novel, but it comes across as trying to be different for the sole sake of being different. Iñárritu also adds unnecessary subplots that only serve to confuse things. As a result, *Digger* tries to do too much and ends up accomplishing little. In sum, *Digger* is a bit of a mess.

Minor spoiler ahead

The plot revolves around an environmental disaster caused by Digger's oil company. The subject is timely given a case being heard in the current Supreme Court term. In *Suncor Energy v. County Commissioners of Boulder County*, the Court will determine if a suit seeking to hold oil companies liable for their role in climate change can proceed.[7] The City of Boulder and Boulder County brought state court action against oil and gas producers alleging injuries to their property and citizens arising from the producers' impact on climate change.[8] Claims include public and private nuisance, trespass, civil conspiracy, and unjust enrichment. The defendants argue these claims are preempted by the federal Clean Air Act under both field and conflict preemption, which provides a great excuse to review the three types of preemption.[9]

Explicit/Express Preemption: The easiest type of preemption to spot is when a statute contains an express preemption provision.[10]

Field Preemption: Field preemption occurs when "1) Congress has adopted a framework of regulation that is so pervasive that Congress has left no room for states to supplement it or (2) a federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject."[11] In this case, Defendants claim that Congress has occupied the entire field of emissions regulation.[12]

Conflict Preemption: Conflict preemption is when a state law "actually conflicts with federal law."[13] There are two types of conflict preemption: impossibility and obstacle. Impossibility preemption applies when (1) compliance with both federal and state law is physically impossible, (2) state law penalizes what federal law requires;[14] or (3) state law directly conflicts with federal law.[15] Obstacle preemption applies when a state law is an obstacle to the accomplishment and execution of Congress's purposes and objectives.[16] The defendants argue that the state claims are "an obstacle to the enforcement of federal law because those claims would interfere with the careful balance struck by Congress between promoting fossil fuel production… and environmental protection."[17]

The Supreme Court of Colorado found the claims were not preempted, setting up a Supreme Court decision that will have a major impact on the types of cases local governments can bring.

The Verdict: While I generally enjoyed Cruise's performance and never checked my watch, I found the last few seconds (which kind of come out of nowhere) the most interesting part of the movie. *Digger* seems to be trying to add to the discourse on the environment, but its heavy-handed and muddled approach largely falls flat. This movie is worth seeing if you liked *Birdman* (though it's nowhere near as good), are interested in movies that take big swings, or are curious about Tom Cruise playing against type.[18] Otherwise, your time may be better spent watching the Supreme Court oral argument.

Score: C

ML

NOTES:

1. The trailer basically shows Tom Cruise as an old guy dancing around with a shovel. Why? No idea!
2. *See* e.g. Charlize Theron (*Monster*, 2003), Brendan Fraser (*The Whale*, 2022), Gary Oldman (*Darkest Hour*, 2017).
3. Best Picture, Best Director, Best Original Screenplay, and Best Cinematography.
4. Pun intended.
5. Not sure what the best digging pun is. Burrows?
6. John Goodman's (*Roseanne*) performance is similarly impacted. The only actor to give a nuanced performance is Jesse Plemons (you've seen him in lots of stuff but you probably don't know who he is), whose subtle delivery of his monologue is a highlight of the film.
7. Suncor Energy (U.S.A.) Inc. v. Cnty. Commissioners of Boulder Cnty., 146 S. Ct. 1605, 224 L. Ed. 2d 3 (2026).
8. The procedural history on this case rivals the confusion I got from watching *Digger*. The case was filed in state court. The defendants then removed the case to federal court, which then remanded it back to state court. Defendants appealed the remand order, and while the appeal was pending, they moved to dismiss the state court case…which was stayed pending the resolution of the federal appeal. Cnty. Commissioners of Boulder Cnty. v. Suncor Energy USA, Inc., 2025 CO 21, 586 P.3d 161, 166 *cert. granted sub nom*. Suncor Energy (U.S.A.) Inc. v. Cnty. Commissioners of Boulder Cnty., 146 S. Ct. 1605, 224 L. Ed. 2d 3 (2026).
9. *Id*. at 169.
10. *Id*. at 169.
11. *Id*. at 169, citing Fuentes-Espinoza v. People, 2017 CO 98, ¶ 18, 408 P.3d 445.
12. *Id*.
13. *Id*. at 169, citing English v. General Elec. Co., 496 U.S. 72, 79 (1990).
14. *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873, 120 S.Ct. 1913, 146 L.Ed.2d 914 (2000)
15. *Am. Tel. & Tel. Co. v. Cent. Off. Tel., Inc.*, 524 U.S. 214, 227–28, 118 S.Ct. 1956, 141 L.Ed.2d 222 (1998)
16. *Fuentes-Espinoza*, ¶ 26, 408 P.3d at 449
17. *Boulder County* at 169-170. The Supreme Court of Colorado noted that the Supreme Court has only found obstacle preemption in limited cases, "when (1) the federal legislation at issue involves a uniquely federal area of regulation (e.g., foreign affairs, sanctioning fraud on federal agencies, and regulating maritime vessels) or (2) Congress has deliberately chosen to preclude state regulation because a federal law struck a particular balance of interests that would be disturbed or impeded by state regulation (e.g., when federal safety regulations sought a gradual phase-in of airbags but a state law required the immediate installation of such airbags)."
18. Fun fact. Tom Cruise already did all of this (and arguably better) in *Tropic Thunder* (2008), where he deftly played a crass, bald studio executive named Les Grossman.

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.



MENTOR'S CORNER

Productive Meetings for New Attorneys

Meetings suffer from a bad reputation. Social media derides and pokes fun at them all the time, but the bad rap started well before Reels and TikToks. Dave Barry, the popular comedian from the 1980s and 1990s (aka, the Dark Ages, according to teenagers today), said, "If you had to identify, in one word, the reason why the human race has not achieved, and never will achieve, its full potential, that word would be 'meetings.'"

But once you attend a well-run, well-managed, productive meeting, you will experience how great the benefits are of getting all the necessary people in the room and accomplishing something.

The key, then, is to do your part to ensure the meetings you are asked to attend meet these criteria, even if you aren't in charge. Here are a few important ways newer attorneys (and more experienced ones, too) can avoid suppressing the full potential of the human race.

Before the Meeting.

1 **Understand the purpose.** Ensure you know why the meeting was called and why you're in it; don't walk in the door wondering why you're there. On occasion, (1) the meeting isn't necessary at all because you can answer over the phone or in email; (2) a lawyer isn't necessary, and you can politely decline; (3) the lawyer is necessary, but you need to prepare the answer or research the issue; or (4) the organizer isn't even sure why the meeting is necessary, and you can influence them to articulate the purpose before you attend.

2 **Manage and meet expectations.** "Many times, the client is looking for a policy decision determination rather than legal advice and input to inform a policy decision. This is not our role. It's important to establish the parameters of the meeting before the discussion begins," says Jeannine Williams, Chief Assistant City Attorney for the City of St. Petersburg. Further, understand what role they expect you to take in the meeting. "Some cities want you to take an active, even aggressive role. Others want you to sit back and speak only when spoken to," says Nathan Nickolaus from Lauber Municipal Law in Jefferson City, MO.

3 **Make sure the right people are in the room.** Time is wasted when the people who need to listen/speak aren't there. Suggest additional attendees if necessary.

4 **Follow ethics rules and laws.** For meetings that include external people or other parties, find out in advance whether they're represented by counsel. For meetings with individual city councilmembers and other electeds, be mindful of Open Meeting Law requirements about whether a private meeting with individual councilmembers is appropriate, should be part of an agendized council or committee meeting, and whether the meeting should be in public or in closed session.

5 **Prepare.** Read any material provided; research what you need to know. If you need technology of any kind for the meeting, check in advance whether it is working and charged, and that you know how to operate it. Also, know the culture you're walking into. Each town has its own way of doing things: some are strict on procedure; others are not. Some dress formally; others do not. Be respectful of their culture.

During the Meeting.

1 **Ask Questions.** "Don't be afraid to ask questions when you don't understand a concept or an acronym," suggests Mandana Vidwan, Senior Assistant City Attorney of Charlotte, NC.

2 **Maintain calm.** Pause or stop a meeting that is getting too heated. Whether it's you or another person losing their cool, it isn't professional or productive to continue until emotions calm down.

3 **Limit Personal Device Usage.** "Limit use of laptop or other technology, unless related to the meeting. I have occasionally been advised that attendees think I'm checking unrelated email or doing unrelated tasks when I am on my laptop during meetings. So now, I limit use of my laptop, actively listen, and announce that I am taking notes or assigning follow-up tasks regarding the meeting where necessary," says Tamara Niles, City Attorney, City of Englewood.

4 **Be present.** If possible, attend a meeting in person, even if a remote option is provided. Many smaller cues are missed virtually, and it is harder to read the room. And even if you're physically present, make sure your attention and focus show. Take thorough notes; this will help you stay in the moment, keep you focused, and create a good record for later, which leads us to…

After the Meeting.

1 **Make a Record.** Input any necessary information into your files or project management system and add follow-up tasks to your calendar.

2 **Memorialize Advice.** "If you provided legal advice during the meeting, it can be helpful to send the client a follow-up communication that reiterates your advice. This serves two purposes: it provides an opportunity to confirm that everyone is on the same page, and it documents your advice in the event there are issues in the future," says Patricia Link, Division Chief, Austin City Attorney's Office.

3 **Follow-up.** Ensure timely completion of follow-up tasks. If you commit to responding with additional information or legal opinions at a later date, fulfill your commitment. Your word is your bond! ML

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

MUNICIPAL FINANCE 101

NEGOTIATIONS 101

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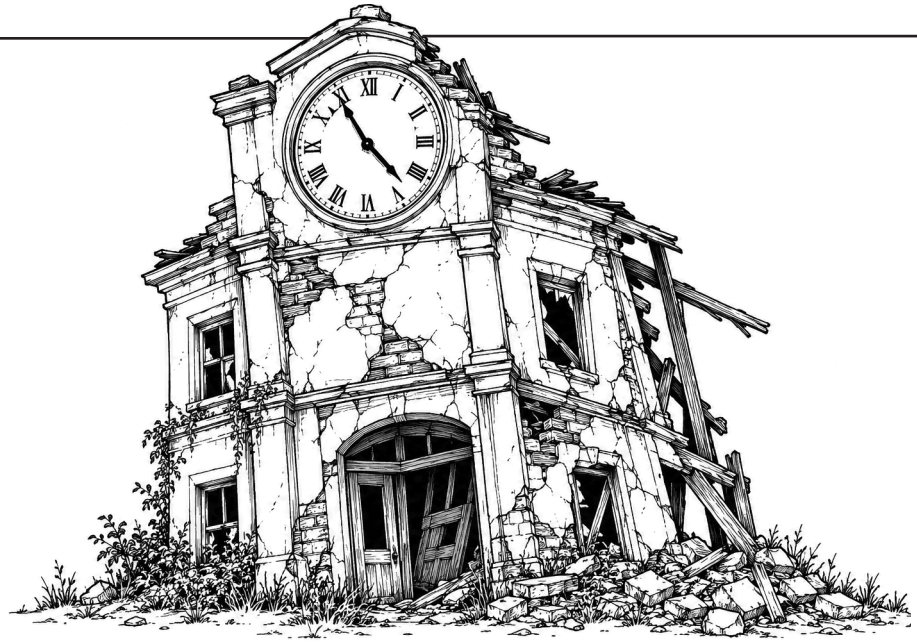
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INSIDE CANADA

Frivolous Appeal, Unauthorized Waste, Reasonable Processes, and Covid-19 Restrictions

Contributed by
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Kamloops, BC



Litigant Motivated by Desire to Continue Litigation Despite Being Statute-Barred has Matter Dismissed

Morgan v. The City of Fredericton

https://canlii.ca/t/knj2q

On December 1, 2025, the City of Fredericton sent a Notice of Compliance to Mr. Adam Morgan. The letter informed him that a property he owned had been reported to a City department, namely Communications and Public Safety Services, as posing a danger to public safety. Mr. Morgan was advised that he must secure the Property or demolish it, pursuant to By-law No. S-16. He was further informed that if he failed to comply with the requirements of the Notice by December 15, 2025, immediate action would be taken by the City.

On January 5, 2026, the City served Mr. Morgan with a notice ordering him to demolish the building located on the property. On January 5, 2026, Mr. Morgan filed an appeal with the City Clerk. Clear instructions on the appeal process are provided on the second page of the form. On January 27, 2026, the Public Safety Committee heard the appeal. Both parties appeared and presented their respective arguments.

On January 29, 2026, the Public Safety Committee issued its decision. It concluded that the building posed a danger to public safety due to its being uninhabited or unoccupied and its state of disrepair. The Public Safety Committee dismissed the appeal. However, it extended the deadline for complying with the notice of compliance from February 4 to March 2, 2026. Mr. Morgan did not appeal this decision to the Court of King's Bench within the 14-day period stipulated by the process prescribed in the form.

On April 27, 2026, Fredericton City Council passed a resolution authorizing the Director of Local Government Bylaw Enforcement and Parking Services to obtain a demolition permit and then take steps toward the demolition of the house situated on the property. On April 29, 2026, the City issued a demolition permit. On 5 May 2026, Mr. Morgan filed a notice of motion with the Court of King's Bench seeking an interlocutory injunction. The hearing date was set for 6 May 2026.

On May 6, 2026, the parties appeared before the Court of King's Bench. The City argued that the Court lacked jurisdiction to hear the motion, due to the expiry of the 14-day period prescribed by the order for filing an appeal. The judge delivered an oral decision on May 6, 2026, dismissing Mr. Morgan's motion on the grounds that the Court lacked jurisdiction to extend the time limit for filing the appeal and therefore lacked jurisdiction to grant the remedy sought. On May 11, 2026, the Court of King's Bench issued an order dismissing the motion. On June 8, 2026, Mr. Morgan filed a notice of appeal.

The City applied, by way of motion, pursuant to Rule 62.23 of the *Rules of Procedure*, for the dismissal of the appeal filed by Mr. Morgan.



HELD: Motion to dismiss the appeal granted.

DISCUSSION: The City filed the motion to dismiss the appeal on the grounds that the appeal is "frivolous, vexatious or without merit." After reviewing the available file and hearing Mr. Morgan's oral submissions, the New Brunswick Court of Appeal found that one of Mr. Morgan's main arguments was that the written decision of the Public Safety Committee issued on January 29, 2026 did not contain instructions regarding the 14-day limitation period for appealing the decision to the Court of King's Bench. However, Form 4, served on him on January 5, 2026, clearly defined the applicable time limit.

It was found that the judge correctly concluded that he lacked jurisdiction to continue the proceedings. Mr. Morgan's appeal was found to be without valid basis and frivolous. The Court of Appeal also stated that Mr. Morgan was motivated by a desire to continue pursuing the matter despite the statute of limitations. The City's motion to dismiss the appeal was allowed, and the City was awarded costs of $2,500.

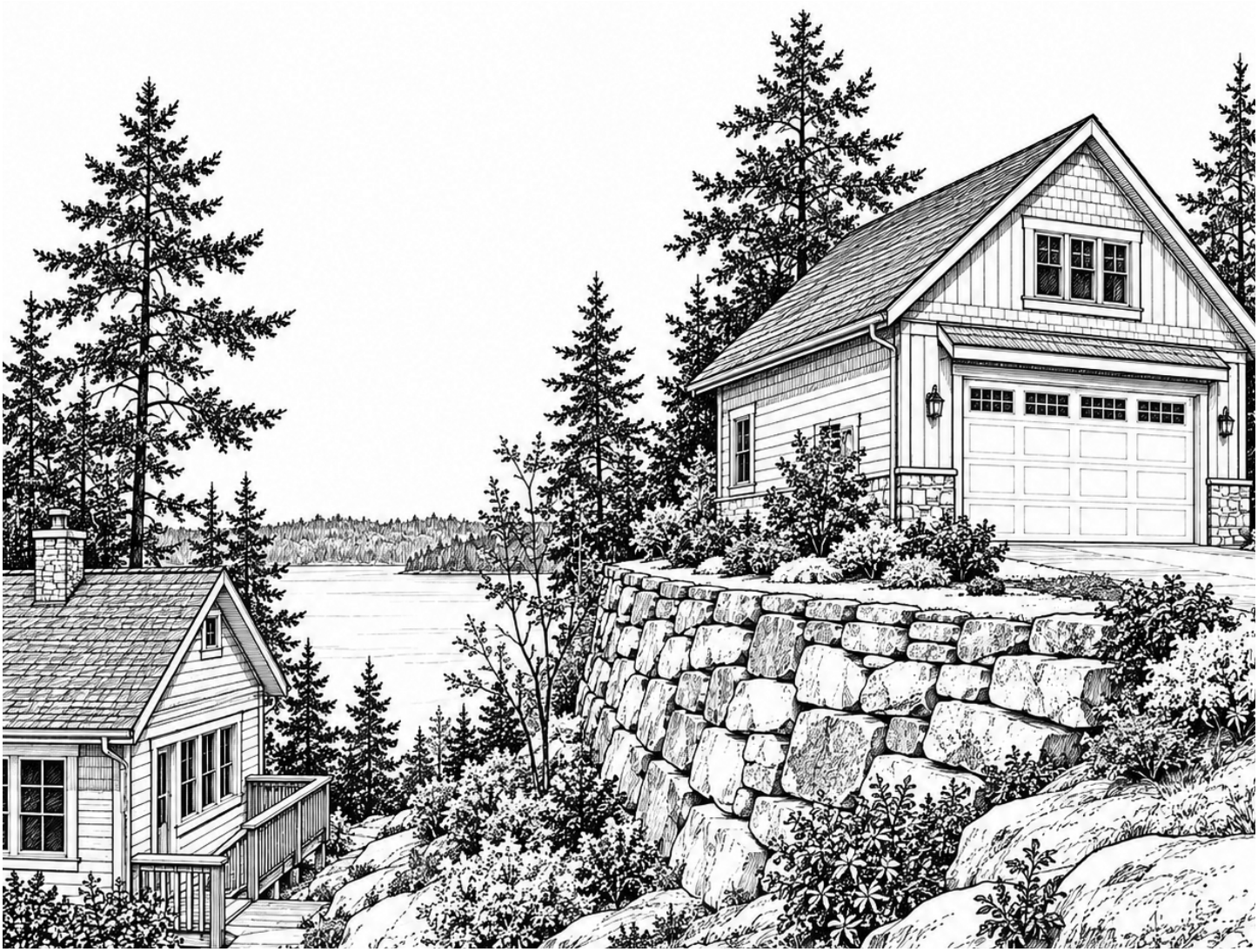
Recycling Company Ordered to Remove Unauthorized Waste from Site

Calgary (City) v. Ecco Recycling & Energy Corporation

https://canlii.ca/t/kn6fm

The respondent recycling company, Ecco, operated a recycling facility in the applicant municipality of Calgary, Alberta. The municipality alleged that the Respondent was storing dry waste on the site of its materials recycling facility contrary to the terms of their development permit, which governed Ecco's use of the site. The City sought a statutory injunction under section 554 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA") compelling Ecco to cease the unlawful storage activity and remove the unauthorized materials from the site.

Section 554 of the MGA provides, among other things, that when a contravention of the MGA, another enactment that a municipality is authorized to enforce, or a bylaw is of a continuing nature, in addition to any other remedy and penalty imposed by the MGA or any other enactment or a bylaw, the municipality may apply to the Court of King's Bench for an injunction.



HELD: Application granted.

DISCUSSION: Ecco submitted the matter should be referred to a trial because Ecco should receive the opportunities of pre-hearing disclosure of the City's relevant and material records and to challenge by cross-examination the City personnel who attended the Ecco site and gathered the evidence of its operations and condition. After assessing the common law, the Court of King's Bench found that it was fair, just and proportionate that the City's application be determined in the present special chambers application, without a trial or other oral evidence hearing.

The Court of King's Bench found that Ecco permitted a significant amount of dry waste to accumulate on the premises in contravention of its development permit. There was no explanation from Ecco that it somehow erred in its understanding of the relevant legal restrictions on its activities, exercised diligence in ascertaining its obligations, or was now prepared to comply with the legal requirements. The Court found that Ecco willfully refused to comply with a stop order that the municipality issued, and displayed open and continuous disregard of the legal requirements. The Court also found that Ecco was in breach of the designated land use bylaw.

Given the findings, there were no exceptional circumstances or other consideration that would support refusing an injunction. Ecco was enjoined from accumulating and storing waste material as indicated and ordered to remove the waste materials.

Neighbour Making Unsuccessful Application for Removal of Adjacent Garage, Wall, and Fill

Croft v. Muskoka Lakes (Township)

https://canlii.ca/t/kmz09

The applicant-owner, Mr. Croft, owned property adjacent to Ms. Ann Wyganowski, his neighbour, in the Township of Muskoka. Ann's property contains a cottage building and a garage. Ann wanted to build a garage with a habitable space above the parking area on the ground level so that visitors would have a place to sleep that was not in the cottage, and so that her husband, who had Alzheimer's disease, would have a sheltered space to enter and exit their vehicle. Throughout the summer of 2021, Ann identified the ideal area for the new garage, which was close

...jurisprudence has made it clear that demolition should be ordered only as a last resort, when it is evident that remediation is impossible and/or the property owner has been persistently non-compliant.

to the existing septic bed; retained landscaping and septic system professionals, who advised her to replace her septic system with one that could support both the cottage and the new habitable space above the garage; applied for and received a building permit, signed by the Chief Building Official, permitting the installation of the new septic system to "service existing dwelling and proposed sleeping cabin"; and retained Muskoka Lumber, as represented by Timothy Van Kruistum, to design the new garage. Mr. Van Kruistum advised Ann to apply for and obtain a permit that permitted the installation of the garage space only, and to apply for and obtain permission to implement the habitable space once the garage space was complete. Ann understood this to be a common practice in Muskoka.

Construction of the new septic system commenced after the issuance of the septic permit on November 1, 2021. The septic permit also contemplated the installation of a landscaping/foundation wall. Sandy Bos, a building inspector assigned by the Township to manage and inspect the works, inspected and approved the new septic system on December 1, 2021. During the relocation of the septic, large amounts of fill were brought onto the Wyganowski property in close proximity to the property line shared with the Croft property.

Mr. Croft began raising issues of safety and illegality with the Township, including contacting the Director of Development Services and Environmental Sustainability, the Chief Building Official, and the Mayor and Ward Councillors about the situation.

In November 2021 and April 2022, the Township rejected two applications for the building permits required to build the garage. The first application was rejected because the Township was unclear as to whether the soils on the property could support the new garage. The second application was rejected because the footprint of the garage structure was too large and the landscaped wall needed to be inspected by an engineer. Ann's third application for the building permits was successful, and construction of the new garage began on August 8, 2022. Ann obtained an amended garage permit on January 26, 2023, for the habitable space. The CBO completed the remaining required inspections and certified that the new garage was ready for occupancy on August 31, 2023.

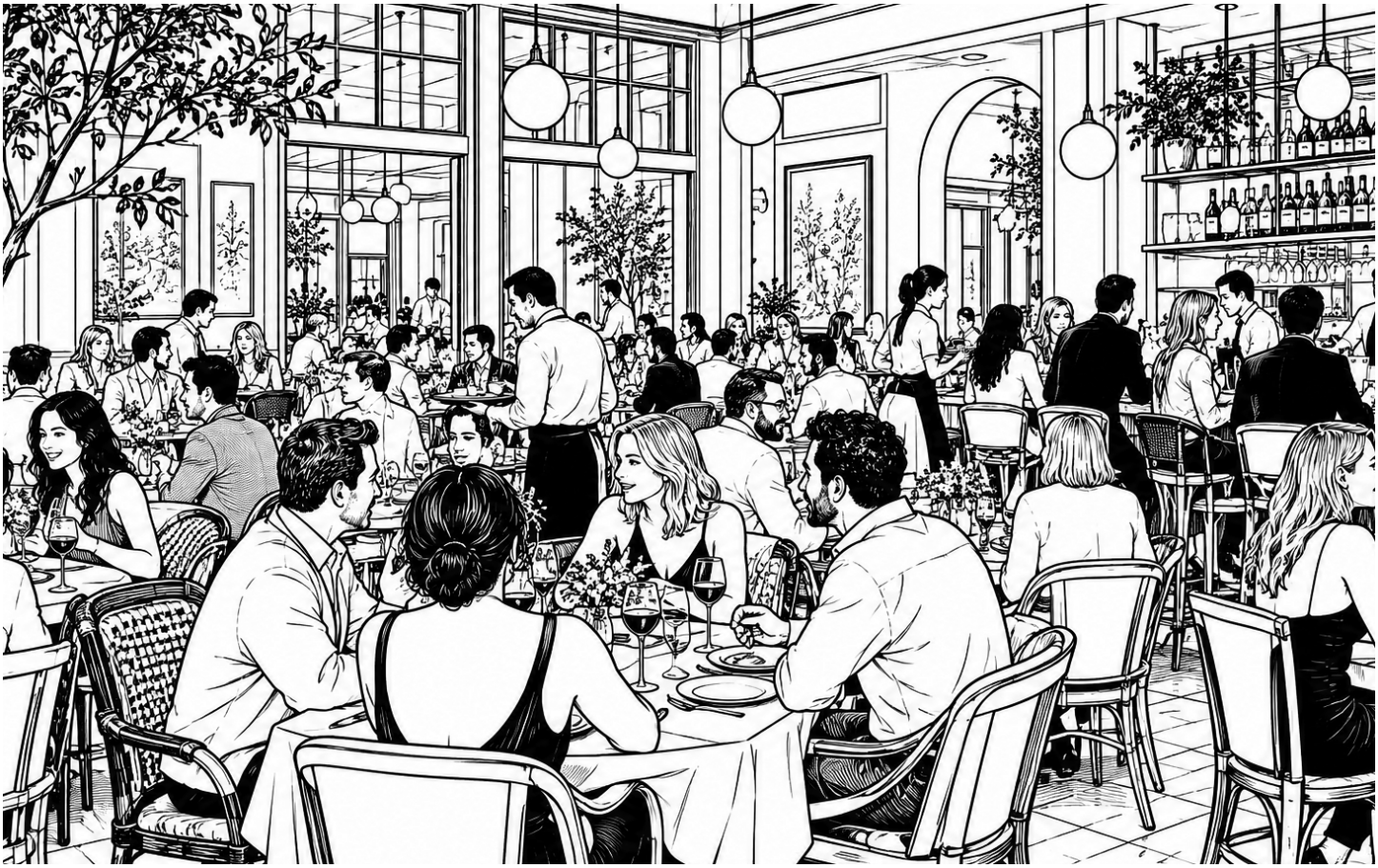
Mr. Croft commenced this proceeding on August 24, 2022. He brought an application for an order rescinding the building permit issued by the municipality and requiring removal of the garage, wall, and fill.

HELD: Application dismissed.

DISCUSSION: The Ontario Superior Court of Justice found that the Chief Building Official took all reasonable steps in processing Ann's permit applications and obtained expert engineering evidence for all technical issues. The Court found that the CBO was entitled to rely upon those experts in issuing the permit.

The Court concluded that with the continued involvement of engineers, Ann could address any potential safety issues with the landscaped wall and the garage. The Court found that Mr. Croft will suffer little prejudice if Ann is afforded the opportunity to investigate and remediate, as there was little or no evidence that the landscaped wall or garage would collapse onto Mr. Croft's property prior to remediation. The Court noted that any drainage or water flow concerns could be resolved by raising the topmost rock layer of wall by eight inches at the edge of the landscaped wall.

The Court noted that the jurisprudence has made it clear that demolition should be ordered only as a last resort, when it is evident that remediation is impossible and/or the property owner has been persistently non-compliant. Accordingly, the Court granted an order dismissing the relief sought by the applicant Mr. Croft, and ordered Ms. Wyganowski to undertake any work necessary to address the drainage and water flow issues, slope stability and grade considerations to ensure that the landscaped wall and garage comply with good engineering practices applicable to the Ontario Building Code as determined by the CBO.



COVID-19 Restrictions Deemed Not Contrary to Principles of Fundamental Justice by Virtue of Being Arbitrary, Overbroad, or Grossly Disproportionate

Skelly v. Ontario

https://canlii.ca/t/kk10n

On March 17, 2020, Ontario declared a state of emergency in response to the COVID-19 pandemic. When a new set of restrictions under the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020 (ROA) came into effect as of November 23, 2020, under Regulation 82/20 and "Rules for Stage One", a restaurateur decided to defy the law in protest by reopening his restaurant to indoor dining. The City of Toronto's Medical Officer of Health (MOH) issued an order under section 22 of the *Health Protection and Promotion Act* (HPPA) to close the restaurant, which the restaurateur defied. The MOH issued an order under section 24 of HPPA directing the City of Toronto to ensure that the restaurant remained closed. Provincial offences were issued under section 10 of the ROA for breaches under the ROA.

The City had a locksmith change locks, police prevented entry to the restaurant, and the MOH issued the restaurateur a trespass notice under the *Trespass to Property Act* preventing his access. Nonetheless, the restaurateur gained access, kicked open the locked entry, and began serving food to the public again in protest. Police arrested the restaurateur and charged him with *Criminal Code* and provincial offences, to which he later pled guilty, with sentencing adjourned pending this application.

The restaurateur brought an application for judicial review of the MOH and City actions.

HELD: Application dismissed.

DISCUSSION: The Ontario Superior Court of Justice found that the provincial legislation was *intra vires* the provincial government. The restaurateur's rights under the *Canadian Charter of Rights and Freedoms* were not infringed, and in any event, the legislation and actions of the MOH and the City were justified under section 1 (reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society) of the *Charter*.

In November 2020, Ontario law restricting operation of restaurants in the context of a global pandemic served a pressing and substantial objective (maintaining the health of individuals by legislating measures aimed at reducing risk of the spread of COVID-19), was rationally connected to that objective, was minimally impairing and was not disproportionate in its effects (created limits but not bans on restaurant sector economic activity) and thus to the extent that legislation might have infringed on the restaurateur's *Charter* rights, was justified by section 1 of the *Charter*. **ML**


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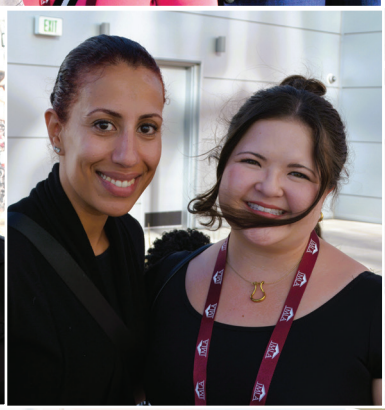









KYLE




EXIT
BEN

KATHY U'LANI

MATTHEW







NATALIE






AK, HI, OR, WA


BRIAN




GREG


LORI








IMLA SOFTBALL

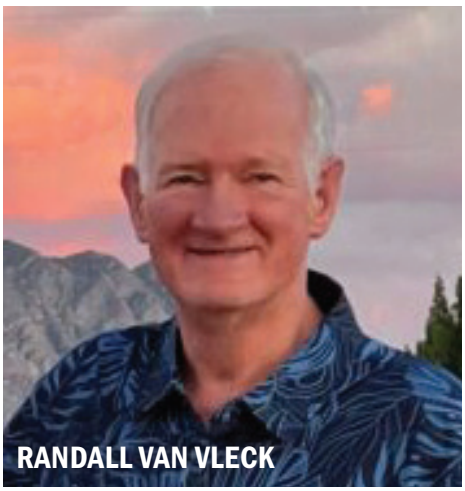

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DAVID



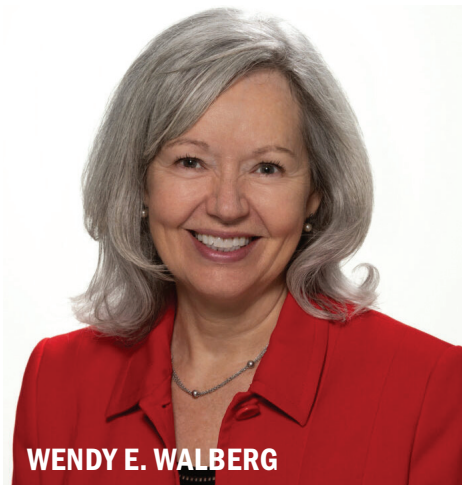
2026 IMLA AWARDS

On September 24th during our 91st Annual Conference in Salt Lake City, Utah, IMLA announced and recognized the following 2026 award winners. These award winners are IMLA members who have gone above and beyond the field of municipal law and were nominated by their colleagues to receive these awards.

The Charles S. Rhyne Lifetime Achievement In Municipal Law Awards



RANDALL VAN VLECK



WENDY E. WALBERG

IMLA James H. Epps, III Award for Longevity of Service To A Community



Lawrence K. Copeland
Senior Attorney – Philadelphia, PA

Daniel J. Curtin, Jr. Young Public Lawyer Award



Delanté S. Thomas
Chief Ethics Officer
Cleveland, Ohio

Brown, Mulligan, Rocha Distinguished Public Service Award



Sharon L. Dickgrafe
Chief Deputy City Attorney
Wichita, Kansas

Outstanding State League Counsel Award



Rebecca A. O'Hara
Deputy General Counsel – Florida League of Cities

MORE INFORMATION IS AVAILABLE ONLINE AT:
https://imla.org/2026/09/imla-celebrates-2026-awards-winners/

Brad D. Bailey Assistant City/County Attorney Awards



Morgan D. Davis
Senior Assistant City Attorney –
Las Vegas, Nevada



Megan K. DiSanto
Deputy City Solicitor
Providence, Rhode Island

Burk E. (Buck) Delventhal Legal Advocacy Award



Lynette M. Perez
Chief Deputy City Attorney
Little Rock, Arkansas

Diversity, Equity and Inclusion Award



Aqueelah A. Jordan
Assistant City Attorney
Cleveland, Ohio

President's Award: Outstanding State/Provincial Chair



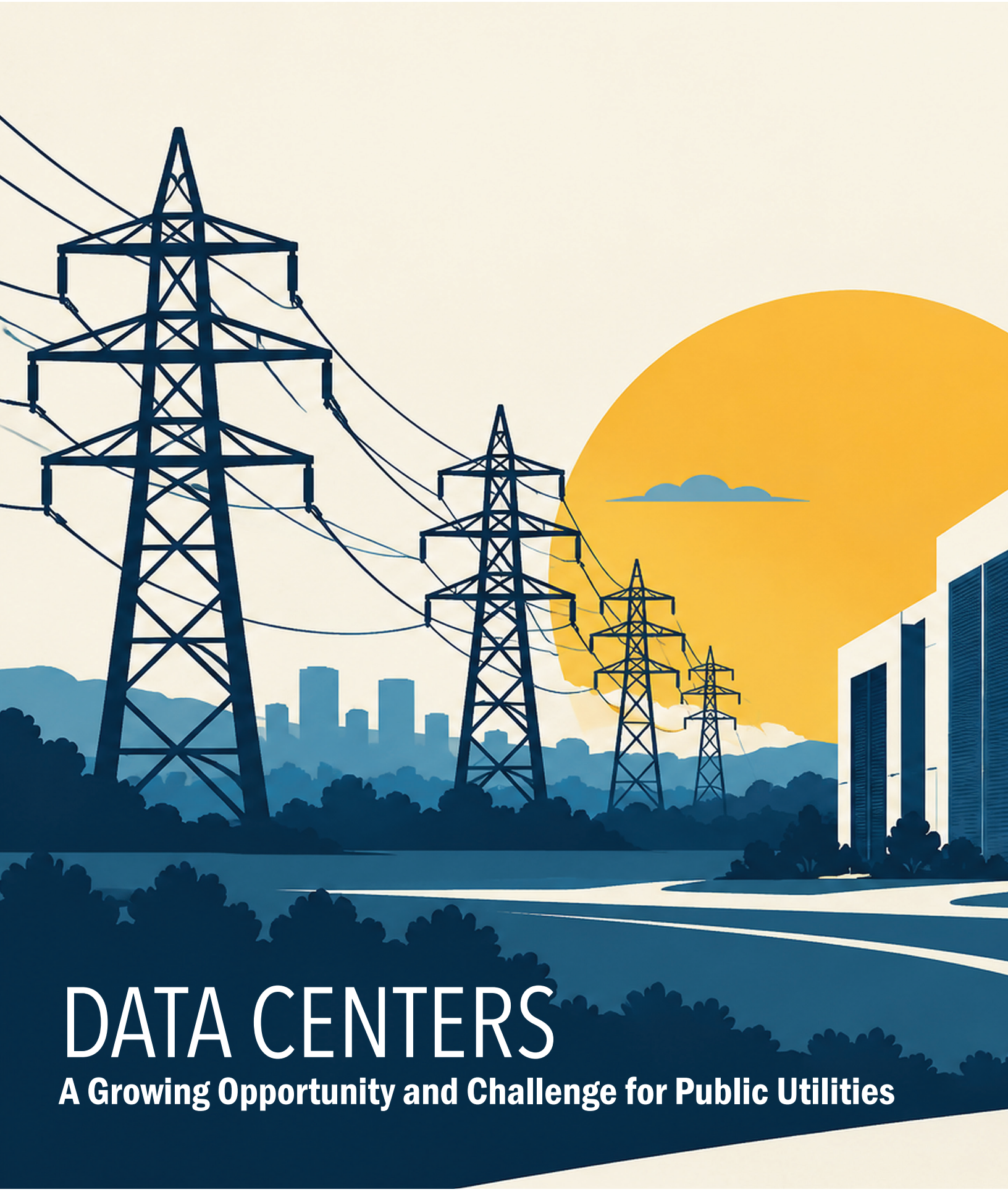
M. Kent Lesesne
Director of Governmental Affairs
South Carolina Association
of Counties

Outstanding Associate Member Award



Stephen J. Smith
Partner – FBT Gibbons LLP





DATA CENTERS

A Growing Opportunity and Challenge for Public Utilities



2026 McCarley Scholarship Winner

DILINI LANKACHANDRA

Associate Counsel for the Unified Government of Wyandotte County /Kansas City, Kansas

With the continued spread of data centers across the country, publicly owned utilities (POUs) are in the difficult position of balancing the potential economic benefits large-load customers can bring with the cost of financing new capacity needs, all while protecting existing customers from the rate shock that might occur with increased generation and capacity costs. Since data center development is likely to continue at its current rapid rate, most POUs will have to address these concerns in the near future, if they have not already. This article will explore how POUs can meet the needs of large-load customers like data centers while protecting the interests of the communities and existing ratepayers they serve.

Building Energy Capacity

Data centers require previously unimaginable amounts of power, sometimes more than a utility's entire existing energy use. According to the Electric Power Research Institute, data centers already consume 4-5% of the United States's energy and could potentially use 9-17% of the country's electricity generation by 2030.[1] To accommodate this change, many utilities that are considering onboarding data center customers will have to make significant investments in improving grid reliability from the potential power swings associated with such large loads. These improvements add to the usual interconnection costs—like building new substations, upfront connection costs, and localized distribution upgrades—associated with bringing on larger energy users. This is because data center energy use is far beyond what POUs have previously seen, even among their largest historical consumers, which often have loads under 25 MW (as opposed to data centers, which can have loads up to 300 MW). To give a sense of the sheer scale of the capacity increase data centers require, many utilities bringing on data center customers expect to double their generation capacity in just a few years.



POUs facing this dramatic increase in energy usage will have to invest heavily in reinforcing their electrical infrastructure to ensure continued usability and reliability, and will likely want to do so without burdening existing ratepayers. In fact, backlash is growing against cost-allocation approaches that spread the cost of system upgrades among existing and new ratepayers. In May 2026, Maryland's Office of People's Counsel filed a complaint with the Federal Energy Regulatory Commission (FERC) asserting that the cost allocation rules used by PJM (the regional transmission organization whose jurisdiction includes Maryland) "are unjust and unreasonable because they result in the imposition of costs on Maryland electric customers that are not commensurate with any benefits Maryland customers receive."[2] Specifically, the complaint alleges that "PJM's cost allocation rules have assigned Maryland ratepayers $2.0 billion in capital costs… for transmission infrastructure driven overwhelmingly by data center load growth occurring outside Maryland's borders."[3]

Perhaps in response to this complaint, the Federal Energy Regulatory Commission recently ordered the six regional grid operators under its jurisdiction to show cause "why their current tariffs remain just and reasonable without provisions tailored to large loads."[4] Importantly, these operators will have to address how to prevent cost-shifting when large-load customers come online and will generally have to provide greater transparency into the allocation of their transmission costs.[5]

While state public utility commissions, rather than FERC, govern POU tariffs, the same fairness principles apply. POUs should thus carefully consider how they allocate data centers' interconnection costs. Increasingly, the preferred approach is for data center operators to pay 100% of the upfront connection costs, dedicated substations, and localized distribution upgrades. Many hyperscalers (that is, the large cloud providers like Meta, Google, and Amazon utilizing the new wave of data centers) have made similar commitments to pay for 100% of the grid upgrades required to bring their facilities online, giving POUs increasing leverage to ask the same of all of its large-load customers.

Setting Rates

A well-considered rate structure is another way that POUs can ensure that local data center development does not adversely affect existing ratepayers. To adequately protect existing ratepayers, POUs should consider how to structure rates to mitigate risks associated with incoming data centers, such as load departure and nonpayment.

POUs generally have two options for setting rates for data centers: issuing individual contracts or developing a tariff specifically for large-load customers. Developing a large-load tariff has two major benefits. First, the public nature of a rate-setting hearing allows for greater community engagement, which is especially important given the growing public discomfort with the spread of data centers.[6] Second, individualized contracts with a minimum demand provision[7] and a term of over three years[8] may jeopardize the tax-exempt status of municipal bonds.[9] This risk to a POU's tax-exempt status occurs when too much of its business is considered to be for a private business use.[10] Several POUs as well as the Large Public Power Council have requested that the Treasury Department revisit its private business use regulations so that POUs, like privately-owned investor-owned utilities, can implement long-term contracts with large-load customers, but the Department has yet to take action on the issue.[11] Needless to say, while these regulations remain in effect, individual long-term contracts with very large customers carry a significant risk to a POU's municipal bonds.

At least 25 utilities have created a new tariff category for large-load customers.[12] These specialized tariffs are intended to ensure that data centers pay their share for

not only the electricity that they use, but also the cost of dramatically increasing a utility's capacity, which is usually a necessary precursor to bringing on data center customers. Common provisions in those data center tariffs include a higher base rate, extended-term contracts, minimum demand commitments, collateral and/or credit requirements, and steep exit/early termination fees.

• Higher base rate: Data center tariffs can require large-load users to pay a higher electrical rate than other industrial customers to ensure they cover their own infrastructure costs rather than passing those costs to residential and/or existing customers.

• Extended term contracts: Data centers are usually required to enter into long-term contracts (upwards of 12 years) to avoid the risk of load departure. These terms ensure that data centers do not leave before a utility can recover what it spent on capacity generation and grid infrastructure.

• Minimum demand commitments: Data center customers are billed a certain percentage of their forecasted (contract) demand, whether or not they actually use that much power.

• Collateral and/or credit requirements: Up-front collateral requirements in the form of cash, letters of credit, or parent guarantees help avoid the risk of load departure since utilities can retain the collateral if a data center customer does not fulfill its long-term contract. Credit requirements also ensure that potential customers have the financial ability to complete a large-scale data center project.

• Exit/early termination fees: Steep early termination fees help protect against data centers exiting the contract before the term ends, which would leave existing ratepayers responsible for the increased capacity procured on the data center's behalf.

To provide a concrete example of these large-load tariffs, Evergy, a utility operating in Kansas and Missouri, recently developed a Large Load Power Service (LLPS) Rate Plan, [13] which applies to new facilities with an anticipated monthly maximum demand of at least 75 MW. It contains most of the provisions described above, including:

• A minimum contract term of 12 years, with an optional five-year on-ramp period and extends automatically in five-year increments;

• A minimum monthly bill of 80% of their contract demand;

• A collateral requirement of two years' worth of minimum monthly bills, which can be reduced by a certain percentage if the customer or its guarantor meets certain credit worthiness criteria; and

• An early termination fee of the value of the minimum monthly bills for the remaining length of the contract term or twelve months, whichever is longer.

A final rate consideration deals with demand flexibility. While none of the existing large-load tariffs do so, POUs could consider offering certain benefits to data center customers (such as prioritized grid access) in exchange for agreeing not to operate during peak times.[14] This approach, which could also take the form of more traditional demand charges, could reduce strain on the grid at times of peak demand and mitigate the risk of insufficient energy procurement. Texas passed a law in 2025 requiring such demand flexibility, directing the Electric Reliability Council of Texas (ERCOT) to establish a voluntary demand reduction program for large-load customers.[15]

Conclusion

As the rapid expansion of data centers continues to reshape the nation's energy landscape, publicly owned utilities stand at a pivotal crossroads. The choices made today—regarding the allocation of infrastructure development costs and rates for large-load customers like data centers—will determine whether communities can capture the economic benefits of data center development without exposing existing customers to undue financial risk. By adopting thoughtful interconnection policies, embracing tariff structures tailored to large-load customers, and exploring innovative approaches such as demand flexibility incentives, POUs can position themselves to manage unprecedented load growth responsibly. **ML**

NOTES:

1. Electric Power Research Institute, *Powering Intelligence 2026: Updated Scenarios of U.S. Data Center Electricity Use and Power Strategies* (Feb. 25, 2026), available at https://www.epri.com/research/products/000000003002034696
2. Complaint Requesting Fast Track Processing of the Maryland Office of People's Counsel , Maryland Office of People's Counsel v. PJM Interconnection, FERC Docket No. EL26-_____-000 at p. 1, available at https://opc.maryland.gov/Portals/0/Files/Publications/Others/20260507 - RTEP complaint FINAL 932.pdf?ver=g-tF-_4Avtsm8DfgEozavA%3D%3D.
3. *Id*. at p. 2.
4. Federal Energy Regulatory Commission, *FERC Launches Aggressive Targeted Action to Speed Large Load Integration* (June 18, 2026), available at https://www.ferc.gov/news-events/news/ferc-launches-aggressive-targeted-action-speed-large-load-integration
5. *Id*.
6. See American Public Power Association, *What Public Power Needs to Know About Serving Data Centers* (October 2025), p. 12, available at https://www.publicpower.org/resource/what-public-power-needs-know-about-serving-data-centers
7. 26 CFR § 1.141-7©(3).
8. 26 CFR § 1417 (f)(3).
9. 26 CFR § 1417.
10. See Large Public Power Council, *Private Use: Modernizing Outdated Treasury Regulations* (March 2026), pp. 1113, available at https://www.lppc.org/private-use
11. *Id*. at 2.
12. Latitude Intelligence, *The Terms of Power: Inside the New Utility Rates for Data Centers* (March 2026), p. 2, available at https://www.latitudemedia.com/research/the-terms-of-power-inside-the-new-utility-rates-for-data-centers/
13. *See* Order Approving Unanimous Settlement Agreement, Kan. Corp. Comm. Docket No. 25-EKME315 TAR (Nov. 6, 2025).
14. *The Terms of Power* at pp. 7-8.
15. S.B. 6, 89th Leg., R.S. (Tex. 2025).

2026 McCarley Scholarship Winner
CAROLINE LETTRICH
Assistant Director of Law City of Cleveland

NOTICE PLEADING IN THE AGE OF ARTIFICIAL INTELLIGENCE
The Growing Burden on Municipal Defendants



Artificial intelligence (AI) is rapidly reshaping the legal profession. What began as a technological novelty has quickly become an everyday tool, integrating itself into every stage of litigation. As generative artificial intelligence (GAI) becomes increasingly sophisticated and widely available, courts now face questions that would have been unimaginable just a few years ago. Much of judges' attention focuses on a familiar concern—attorneys relying on AI-generated work product containing fabricated citations, nonexistent quotations, and unsupported legal schemes.

I. Courts Are Consistent on Their AI Stances

Federal courts have responded with a consistent message: although AI may assist attorneys, it cannot replace the independent professional judgment required in the practice of law. Attorneys remain responsible for every filing submitted to the court, regardless of whether they used AI to draft it. The Ninth Circuit recently said as much when it concluded that counsel violated their duty of candor by failing to identify fabricated authorities generated through AI.[1] Likewise, the Fifth Circuit recognized that submitting briefs with fabricated quotations and assertions unsupported by the law falls squarely within a court's authority to sanction for abuses of the judicial process.[2] The Sixth Circuit reached the same conclusion, explaining that an attorney's "failure to verify the artificial-intelligence output still resulted in the submission of false quotations and misleading legal arguments to th[e] Court," and attorneys' professional obligations "demand more."[3]

Ohio courts reach a similar conclusion.[4] In *State v. Coleman*, the Eleventh District recognized that "[t]he rapid integration of artificial intelligence into the practice of law presents both extraordinary promise

and extraordinary peril."[5] The court acknowledged that artificial intelligence is "an inevitable and potentially beneficial feature of modern legal practice," but emphasized that its use does not diminish an attorney's obligations under the Rules of Professional Conduct, the Rules of Court, or the attorney's oath upon admission to the bar.[6] Instead, the court reiterated a view universally accepted by judges: an attorney who files a document containing AI-generated content remains fully responsible for every word contained within it.[7]

II. While Courts Focus on Attorney Misconduct, Municipalities Face a Different Challenge

The legal profession has therefore centered much of its discussion on attorney misconduct. Continuing legal education programs, ethics opinions, and judicial decisions have largely examined the professional responsibilities accompanying the use of artificial intelligence. Those discussions are both appropriate and necessary. Lawyers occupy a unique role within the judicial system, and the duty of candor demands careful review of every citation, quotation, and legal argument presented to a court. Yet, focusing exclusively on attorney misuse overlooks a quieter development occurring in courthouses across the country.

Artificial intelligence is no longer reserved for attorneys. Today, freely available generative AI platforms can produce complaints, motions, discovery requests, and legal memoranda within seconds. Unlike traditional legal research platforms, these tools require little legal training. A litigant need only describe the dispute in plain language before receiving what appears to be a professionally drafted pleading. While those pleadings often contain legal deficiencies, they are increasingly coherent, organized, and able to meet the basic structural requirements expected of court filings.

This development represents one of the most significant shifts in access to the civil justice system in decades. For many unrepresented litigants, artificial intelligence offers something that previously required either retained counsel or extensive independent legal research: the ability to produce documents that resemble professionally prepared pleadings. To many, this represents an important step toward expanding access to justice by reducing financial barriers to litigation and enabling individuals to better understand and articulate potential legal claims.

Courts have recognized this reality while emphasizing that the availability of artificial intelligence does not lessen the obligations imposed upon those appearing before them. Addressing AI-assisted filings submitted by a pro se litigant, the Seventh Circuit recently observed that anyone who files a pleading in federal court makes representations governed by Rule 11 of the Federal Rules of Civil Procedure, regardless of whether that person is represented by counsel.[8] Rule 11 requires both attorneys and unrepresented litigants to pause and confirm, after a reasonable inquiry under the circumstances, that their factual contentions have evidentiary support and that their legal arguments are supported by existing law or present a nonfrivolous basis for changing the law. In other words, parties cannot rely on speculation or assumption; they must have a factual foundation and a legally supportable basis for what they are filing.[9] Artificial intelligence does not alter those obligations. It merely changes how legal documents are produced.

III. Lower Barriers, Higher Costs

The consequences of this technological shift extend well beyond questions of ethics or professional responsibility. Artificial intelligence has dramatically reduced the time, cost, and legal expertise previously required to initiate litigation. One commentator recently observed that AI "lowers the barrier to producing facially competent filings," allowing unrepresented litigants to generate complaints, motions, and responses at virtually no cost.[10] Unsurprisingly, practitioners have begun reporting a noticeable increase in AI-assisted litigation filed by pro se parties.[11] Some have cautioned that litigation teams should anticipate higher defense costs and lengthier case lifecycles as AI-generated filings become increasingly common.[12] National media have likewise documented courts experiencing an influx of home-generated lawsuits prepared with artificial intelligence tools.[13]

This phenomenon should not necessarily be viewed as an abuse of the judicial system. Expanding access to legal information and improving an individual's ability to present legitimate claims are commendable goals. Indeed, many litigants who otherwise could not afford

legal representation may now have tools that help them navigate an increasingly complex legal system.[14] Artificial intelligence may ultimately improve access to justice by narrowing longstanding disparities between represented and unrepresented parties.[15]

At the same time, technological advancements inevitably interact with procedural rules that were developed under very different assumptions. Notice pleading, as adopted in Ohio and many other jurisdictions, was designed to eliminate unnecessarily technical pleading requirements.[16] Rather than demanding detailed factual allegations or precise legal theories, notice pleading requires only enough information to place the opposing party on notice of the claims asserted against it.[17] The system reflects a deliberate policy choice to prioritize resolving cases on the merits rather than disposing of them on technical pleading defects.[18] It also developed during a period in which preparing even a basic complaint required meaningful time, legal research, and drafting ability.

Artificial intelligence has fundamentally altered that assumption. What once required hours of legal research, access to form books, or consultation with an attorney can now be generated almost instantaneously. The result is not necessarily a greater number of meritorious claims. Rather, it is a substantial increase in pleadings that appear facially competent and survive the initial scrutiny traditionally associated with notice pleading. While artificial intelligence cannot manufacture valid legal claims where none exist, it can present allegations in a manner sufficiently organized and coherent to satisfy relatively forgiving pleading standards.

For municipal defendants, this distinction carries significant consequences. Unlike private litigants, municipalities cannot simply treat litigation as a private business expense. Every complaint filed against a public entity immediately requires public resources. Counsel must be assigned. Relevant departments notified—public records identified and preserved. Employees interviewed. Litigation holds implemented where appropriate. Insurance implications evaluated. Responsive pleadings prepared. These obligations arise before any court determines whether the complaint ultimately states a viable cause of action.[19]

As artificial intelligence continues to lower the barriers to filing lawsuits, municipal law departments are seeing not just more cases, but more complaints that meet the basic notice pleading standard without clearly explaining what is actually being claimed. These filings often look organized and legally sufficient on their face, even when the underlying facts are unclear or underdeveloped. At this point—where generative artificial intelligence meets a pleading system built for a different time—a new procedural strain is emerging.

IV. The Limits of Notice Pleading in the Age of AI

Notice pleading jurisdictions such as Ohio were built on a simple premise: access to the courts should not depend on technical drafting skill. A plaintiff need only provide a "short and plain statement of the claim showing that the party is entitled to relief" and a demand for judgment.[20] The purpose is not to prove the case at the pleading stage, but to provide fair notice sufficient to allow the opposing party to respond.[21] Ohio courts have consistently reaffirmed this standard. A complaint will survive dismissal so long as there exists a set of facts consistent with the plaintiff's allegations that would entitle them to relief.[22] In notice-pleading states like Ohio, the pleading stage is not intended to be a screening mechanism for evidentiary sufficiency. Instead, it is a notice mechanism.

That design choice matters. Notice pleading assumes that drafting a complaint still requires some threshold of legal understanding.[23] Even when pleadings are imperfect, courts historically encountered predictable indicators of pro se status: disorganized facts, unclear legal theories, or missing procedural framing. Those deficiencies often stemmed from limited legal training. Artificial intelligence disrupts that assumption. Generative AI systems can now convert loosely described grievances into structured complaints that track procedural rules, identify causes of action, and present allegations in a format indistinguishable from attorney drafting.[24] The resulting complaint may be legally incorrect in places, but it is rarely visually deficient.

V. The Municipal Cost of AI-Generated Pleadings

For municipal defendants, the consequences of this shift are not theoretical. They are administrative and immediate. Every complaint filed against a municipality triggers a sequence of mandatory internal responses that occur before any judicial evaluation of the claim's merit. Departments must be notified, records preserved, litigation holds issued, and relevant employees identified. These obligations arise regardless of whether the complaint ultimately survives a motion to dismiss. In many cases, municipalities must also evaluate indemnification issues, insurance notice requirements, and interdepartmental coordination needs. Even facially deficient pleadings can require substantial administrative response.

Artificial intelligence increases the frequency with which these obligations are triggered by enabling litigants to produce complaints that are structurally complete but factually underdeveloped. The issue is not merely volume. It is ambiguity. AI-generated pleadings frequently combine constitutional claims, statutory theories, and tort allegations without clearly linking facts to elements. From a procedural standpoint, such complaints often satisfy Ohio Civil Rule 8(A), which requires only a short and plain statement of the claim.[25]

Taken together, compliance with Rule 8 does not eliminate uncertainty. Municipal counsel must still determine what conduct is actually being challenged, what actors are implicated, and what defenses—particularly statutory immunity under R.C. Chapter 2744—may apply. That uncertainty carries cost. Municipal attorneys frequently must conduct preliminary factual investigation simply to interpret the pleading. This includes reviewing incident reports, gathering departmental records, and consulting with involved personnel. These tasks occur before any dispositive motion practice and before the sufficiency of the complaint has been tested.

Unlike private litigants, municipalities do not evaluate cases only in terms of private risk. Each response uses public resources. Attorney time, administrative work, and disruption to operations are all borne by the public entity. As a result, even weak or unclear claims create costs beyond the case outcome. As one commentator has observed in the context of artificial intelligence and litigation trends, AI-assisted drafting may contribute not only to an increase in filed complaints but also to a broader rise in motion practice within those cases by enabling pro se litigants to generate additional motions that must be addressed or stricken, further increasing burdens on the defense.[26]

VI. Is Rule 12(e) the Answer?

Civil Rule 12(E) permits a party to move for a more definite statement when a pleading is "so vague or ambiguous that the party cannot reasonably prepare a response."[27] The rule is intended to address complaints that are too unclear to allow a meaningful answer at the outset of litigation.[28] In practice, however, courts often disfavor Rule 12(E) motions.[29] They are more likely to resolve pleading deficiencies through Rule 12(B)(6) motions or through discovery rather than requiring early clarification. As a result, Rule 12(E) is frequently treated as an exceptional rather than routine procedural tool.[30]

Artificial intelligence complicates this framework. AI-generated complaints are often structured enough to survive Rule 12(B)(6) scrutiny, yet still lack the factual specificity needed for efficient response. They are not always incoherent pleadings;[31] rather, they are often overgeneralized and internally broad, making it difficult to identify the precise scope of the claims asserted.

This creates a procedural gray zone in which defendants must respond without a clear understanding of the case's factual or legal contours. In municipal litigation, that ambiguity is particularly consequential because it affects early case assessment, immunity analysis, and internal investigation. Rule 12(E) therefore becomes a logical—but underutilized—mechanism for addressing this type of uncertainty. From a municipal litigation perspective, this dynamic creates practical tension. A motion for a more definite statement may streamline litigation by forcing early clarification of vague claims. However, courts may view such motions as unnecessary if they believe that discovery will ultimately cure factual uncertainty.[32] The result is inconsistent application of a rule that is directly implicated by the rise of AI-assisted pleadings and greatly increases the defendant's time and money investments in the case.

Artificial intelligence increases the number of cases that fall into this category by enabling litigants to produce complaints that are formally sufficient under Rule 8 but substantively muddy in practice. This shift raises a broader question: whether procedural tools designed to address the shortcomings of human drafting remain adequate in a system where pleadings can now be generated instantly through artificial intelligence, often without the informational clarity those tools were built to secure.

VII. Looking Ahead: Can Notice Pleading Keep Up with AI?

Artificial intelligence is not slowing down. Every day, it becomes easier for litigants to generate complaints, motions, and other filings that look legally sufficient, even when the facts and legal theories are anything but clear. Whether those claims ultimately survive is almost beside the point. By the time a court reaches that question, municipal defendants have already spent significant public resources investigating the allegations, coordinating with departments, preserving records, and preparing responses.

The timing of this discussion is also worth noting. The Supreme Court of Ohio recently accepted *Bethel Oil & Gas, LLC v. Redbird Dev., LLC*, 177 Ohio St.3d 1454, 2025-Ohio-705, to decide whether Ohio should



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continue applying traditional notice pleading or move toward the federal plausibility standard announced in *Twombly* and *Iqbal*. It is difficult to ignore that this question is reaching the Court at the same time artificial intelligence is making it easier than ever to produce pleadings that satisfy the form of Rule 8 without necessarily providing meaningful notice of the claims being asserted.

Whether that timing is coincidence or not, the underlying problem is unlikely to disappear. Artificial intelligence is changing litigation faster than procedural rules can adapt. As courts continue to grapple with that reality, municipalities will remain on the front lines, responding to an increasing number of complaints that satisfy the technical requirements of notice pleading while requiring substantial public resources to determine what claims are actually being made. **ML**

NOTES:

1. Malkeet Lnu v. Blanche, No. 24-4790, 2026 WL 1587554, at *6 (9th Cir. June 3, 2026).
2. Fletcher v. Experian Info. Sols., Inc., 168 F.4th 231, 240 (5th Cir. 2026).
3. United States v. Farris, 171 F.4th 920, 923 (6th Cir. 2026).
4. For Ohio state case citations, I will use the accepted Ohio state format with Webcite numbers.
5. State v. Coleman, 2026-Ohio-965, ¶ 132 (11th Dist.).
6. *Id*.
7. *Id*.
8. Jones v. Kankakee Cnty. Sheriff's Dep't, 164 F.4th 967, 970 (7th Cir. 2026).
9. Fed. R. Civ. P. 11(b).
10. Kate Asche & Jay M. Thomas, *AI-Powered Pro Se Litigation Is Flooding Federal Courts: What Businesses Need to Know*, ArentFox Schiff (June 22, 2026), https://www.afslaw.com/perspectives/consumer-products-watch/ai-powered-pro-se-litigation-flooding-federal-courts-what
11. Or Cohen-Sasson, *The New Pro Se: Generative AI and the Surge in Federal Civil Self-Representation*, ArXiv (May 28, 2026), https://arxiv.org/abs/2605.29493
12. Jefferey D. Mokotoff & Jesica P. Fico, *"Hey Claude – Write Me a Lawsuit:" The Alarming Rise of Pro Se Plaintiffs Using AI Chatbots in Employment Law Claims*, FordHarrison (June 25, 2026), https://www.fordharrison.com/hey-claude-write-me-a-lawsuit-the-alarming-rise-of-pro-se-plaintiffs-using-ai-chatbots-in-employment-law-claims
13. Mattathias Schwartz & Zach Montague, *Artificial Intelligence Floods Court Dockets with Home-Brewed Lawsuits*, New York Times (May 28, 2026), https://www.nytimes.com/2026/05/25/us/politics/artificial-intelligence-courts.html
14. *See* eg. Richard Susskind, *Online Courts and the Future of Justice* (2019).
15. *See* eg. Maura R. Grossman & Paul W. Grimm, *Disruptive Innovations in Legal Services*, 62 Vill. L. Rev. 173 (2017).
16. *See* Ohio Civ.R. 8(A); York v. Ohio State Highway Patrol, 60 Ohio St.3d 143, 145 (1991).
17. *See* Conley v. Gibson, 355 U.S. 41 (1957) (abrogated by Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)).
18. Parrish v. United States, 605 U.S. 376, 384 (2025) ("decisions on the merits ought not be avoided on the basis of . . . mere technicalities.").
19. *See* Tom Stebbins, *The Strain of Excessive Litigation on Municipal Budgets*, The Progressive Policy Institute (Nov. 4, 2016), https://www.progressivepolicy.org/governing-strain-excessive-litigation-municipal-budgets/
20. Vandemark v. Reder, 2026-Ohio-50, ¶ 10 (1st Dist.).
21. Wells Fargo Bank, N.A. v. Horn, 2015-Ohio-1484, ¶ 13.
22. *York*, 60 Ohio St.3d at 145.
23. *See* Alexander A. Reinhart, *Notice Pleading's Quiet Return*, 103 Wash. U. L. Rev. 353, 359–60 (2025) (Explaining that *Conley* interpreted Federal Rule of Civil Procedure 8 as imposing only a minimal factual pleading burden, intended to avoid premature dismissal of potentially meritorious claims while still balancing screening out insufficiently grounded allegations.).
24. *See* Shlomo Klapper, *The Responsive Court: AI, Legitimacy, and the Future of Adjudication*, SSRN (Feb. 4, 2026), https://ssrn.com/abstract=6178798 (Explaining that AI could help judges sort and review pro se complaints more consistently and may reduce bias that can come from handwritten or poorly formatted filings.)
25. *Vandemark*, 2026-Ohio-50 at ¶ 10.
26. *More Lawsuits Thanks AI*, Michael Best & Friedrich LLP (June 8, 2026), https://www.michaelbest.com/insights/more-lawsuits-thanks-ai-102n0r9/ (noting that AI-assisted litigation may increase both the number of filings and subsequent motion practice within individual cases, thereby compounding litigation costs for defendants).
27. Loggins v. Costco Wholesale Corp., No. 2:22-cv-02026-TLP-tmp, 2022 WL 2161521, at *2–3 (W.D. Tenn. June 15, 2022); *see* Ohio Civ.R. 12(E).
28. *Id*.
29. *Increasing Efficiency in Litigation Through Rule 12(e)*, Sandberg Law (2007), https://www.sandberglaw.com/media/increasing-efficiency-in-litigation-through-rule-12e.
30. *Id*.
31. Though that is also not uncommon in municipal litigation in 2026.
32. *Increasing Efficiency in Litigation Through Rule 12(e)*.

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PROBABLE CAUSE

Actual, Arguable, or Absent, and Claims for False Arrest

By Robert W. Higgason[1]





Police officers make arrests with or without an arrest warrant, but in either case, a constitutional arrest requires probable cause. For a variety of reasons, not all arrests end with a conviction. Charges are often dropped shortly after the arrest. Arrestees whose charges are dropped often become plaintiffs in civil rights lawsuits under 42 U.S.C. § 1983, alleging false arrest and violations of the Fourth and Fourteenth Amendments because they were arrested without probable cause. Does that mean the arrest lacked probable cause and, therefore, violated the arrestee's constitutionally protected rights? What is the consequence of a court finding that an officer lacked probable cause? The implications of the absence of probable cause differ depending on whether the question arises in a criminal or civil context.

If the officer undeniably had probable cause for the arrest, then a false arrest claim will be dismissed even if the underlying criminal charge was dropped. On the other hand, if the officer's assertion of probable cause for a warrantless arrest does not withstand reasonable scrutiny under existing law, then the false arrest claim under § 1983 likely will go forward.

What about cases where the officer reasonably perceived that the facts supported probable cause at the time of the arrest, but the facts known later show that there was no probable cause? It seems that simply applying qualified immunity would protect the officer based on information known to him at the time. And so, it should. But when it is determined after the fact that there was no probable cause, what is needed to show that there was "arguable" probable cause at the time of the arrest?

Some circuits explicitly recognize "arguable" probable cause. This article is intended to dispel concerns about whether every circuit considers it.



Where officers have relied on an independent intermediary, it is prudent to anticipate that plaintiffs will claim there is some "taint" that undermines the indictment or the warrant.

The Foundation

The Foundation for False Arrest Claims is the Fourth Amendment, quoted here:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[2]

If an officer arrests someone without probable cause, that violates the arrestee's constitutionally protected rights under the Fourth Amendment. In a criminal context, that violation can lead to dismissal of the criminal case, the exclusion of evidence at trial, or acquittal. Our concern here is the civil context, where a violation of the Fourth Amendment can lead to lawsuits against officers and their municipal employer.

Under 42 U.S.C. § 1983, a plaintiff can bring a claim for false arrest against officers alleging the absence of probable cause for the arrest. This can, in turn, serve as the basis for a *Monell* claim against the municipality.[3] To prevail under *Monell*, the plaintiff must plead and show that the city has a policy or custom of permitting its officers to make warrantless arrests without probable cause.[4]

An action against the officer, however, can proceed without such broad pleadings. Merely alleging facts that would support a claim of false arrest can, in some instances, overcome qualified immunity—at least at the district court level. The officers can immediately appeal

those rulings, which will be reviewed de novo.[5] Thus, it helps to know how the relevant circuit court views probable cause in false arrest civil rights cases.

Qualified Immunity

As noted above, an officer's primary defense against false arrest claims is qualified immunity, which protects officers not only from liability but also from suit.[6] An officer has no burden to prove that he is entitled to qualified immunity. He needs only assert it in good faith; the burden is on the plaintiff to show that the officer is not entitled to qualified immunity.[7]

The defense is broad: "The doctrine of qualified immunity shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'"[8] To put a finer point on it: "Put simply, qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'"[9]

Qualified Immunity for False Arrest

In the false arrest context, the officer's analysis of the suspect's conduct is central to determining if the arrest is lawful and, if it is not, whether the officer is protected by qualified immunity. Qualified immunity will ***not*** protect officers who are "plainly incompetent" in evaluating probable cause, or officers who "knowingly violate the law" regarding probable cause. Qualified immunity ***will*** protect officers for a false arrest if it reasonably appears to the officer that the suspect either has committed a crime or is in the process of committing a crime.

Probable Cause

Officers may arrest with or without a warrant, and each situation requires probable cause, but they are analyzed a bit differently. "Probable cause for a warrantless arrest exists when all of the facts known by a police officer are sufficient for a reasonable person to conclude that the suspect had committed, or was in the process of committing, an offense."[10] Probable cause "is not a high bar."[11] A "fair probability" that the suspect has committed a crime is enough to establish probable cause.[12] The likelihood that he has done so "is something more than a bare suspicion, but need not reach the fifty percent mark."[13]

Attempting to clarify what constitutes "fair probability" when determining whether a person has probably committed a crime, courts have held that it is far less than the "more likely than not" standard.[14] "The probable cause issue must be analyzed under the 'totality of the circumstances' as to whether there is a 'fair probability' that a crime is occurring."[15]

Probable Cause and the Independent Intermediary Doctrine

Another powerful defense officers have against false-arrest claims is the independent intermediary doctrine. Even when an officer arrests a suspect ***without*** probable cause, the independent intermediary doctrine shields him from liability if a grand jury subsequently indicts the suspect.[16] A grand jury's indictment, or a magistrate's warrant, can break the chain of causation and shield the officer from a false arrest claim.[17] One circuit court emphasized the importance of this doctrine in *Espinal v. City of Houston*: "Because a grand jury indicted Espinal, we can start (and end) our analysis with the independent intermediary doctrine. So, we assume arguendo that the officers lacked probable cause to arrest Espinal."[18] In *Espinal*, the Fifth Circuit, working on the assumption that the officer did ***not*** have probable cause, held that he was protected by the independent intermediary doctrine. But there is an exception to that doctrine (regardless of any given circuit court's terminology) that obviates that protection.

Independent Intermediary Doctrine and the "Taint" Exception

The independent intermediary doctrine will not protect an officer if the actions of the intermediary (grand jury or magistrate) were "tainted" by an officer's "purposely false or incomplete rendition of the facts"—i.e., lying in testimony to a grand jury or on an application for a warrant.[19] The "taint" exception arises from *Franks v. Delaware*, wherein the Supreme Court held that a criminal defendant who had made a "substantial preliminary showing" that "a false statement [that was] necessary to the finding of probable cause" was "knowingly and intentionally, or with reckless disregard for the truth" included in a probable cause affidavit for a search warrant.[20] Where officers have relied on an independent intermediary, it is prudent to anticipate plaintiffs will claim that there is some "taint" that undermines the indictment or the warrant.

Lawful Arrest vs. False Arrest

The issue that obviously underlies this article is that officers make arrests with probable cause and sometimes without probable cause. While we hope that the former is the norm, we must acknowledge the latter and study the differences.

Probable cause can exist with a warrant or without a warrant. A warrant must be based on an affidavit setting out probable cause for an arrest. The magistrate who

It is essential to focus on the difference between the lack of actual probable cause and the lack of arguable probable cause. Where there is no arguable probable cause, there is simply no probable cause.

issues the warrant will be an independent intermediary who breaks the chain of causation, thereby protecting the officers who execute the warrant.[21]

The independent intermediary doctrine may not be recognized in every circuit, and, like qualified immunity, it is under attack. Where the circuit recognizes the independent intermediary doctrine, it will also be subject to the "taint" exception, even if the circuit does not use that terminology.[22]

An officer can make an arrest without a warrant when he observes a crime being committed in his presence, however small that crime might be. Even if the crime is punishable only by a fine (i.e., no jail time), the officer can arrest the offender.[23] "[A] warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed."[24] Moreover, the crime charged does not have to be the same as the crime for which the plaintiff was arrested.[25]

Warrantless Arrest: Probable cause defeats claims of False Arrest

Sometimes prosecutors decide to drop charges rather than prosecute. In those situations, it's common for an arrestee whose charges were dropped to file a civil rights lawsuit alleging false arrest. But where officers make an arrest without a warrant, as long as they can show probable cause, the arrestee cannot prevail on a false arrest claim, even if the charges are dropped.[26]

Why are we discussing "Arguable" Probable Cause?

Prosecutors deal in probable cause, not arguable probable cause. It's there, or it isn't there. Probable cause to make an arrest or conduct a search sets the framework for a criminal case to move forward. If a fact finder determines that the officers lacked probable cause, that can undermine the prosecution. A prosecution cannot proceed on arguable probable cause; actual probable cause is required.

The "vindicated" criminal defendant or arrestee often becomes a plaintiff in a civil rights case, where he claims that the officers had no probable cause for the arrest or search. This is where "arguable probable cause" becomes relevant.

The officers are now the defendants, and their actions are scrutinized. Even if there was no actual probable cause, the officers are protected if it reasonably appeared to them at the time that they had probable cause. This is arguable probable cause.

Where does Arguable Probable Cause fit into the mix?

This seems like it might be a simple spectrum running from the certainty of probable cause at one end to the certainty of no probable cause at the other end. That description works except for what happens in between those ends—i.e., with arguable probable cause or the lack thereof.

As a practical matter, arguable probable cause overlaps actual probable cause to a large, albeit unquantifiable, extent. Sometimes arguable probable cause, on later analysis, turns out to be no probable cause. But even in those cases where it is later determined that there was no probable cause, the arresting officers will be covered by qualified immunity if, at the time of the arrest, the existence of probable cause was arguable.

It is essential to focus on the difference between the lack of actual probable cause and the lack of arguable probable cause. Where there is no arguable probable cause, there is simply no probable cause. Thus, the lack of arguable probable cause is encompassed within the lack of actual probable cause. And the attention returns to arguable probable cause, which will often serve as the basis for an officer's qualified immunity for an arrest that ultimately provokes a § 1983 claim of false arrest.

In defending officers against false arrest claims, it would be best if we can establish probable cause beyond argument. But all we ***have to do*** is show ***arguable*** probable cause. If, in the totality of circumstances known to the officer at the time of the arrest (to use the language of qualified immunity), it is objectively reasonable for the officer to believe that the arrestee has committed a crime, however small, then it is arguable that probable cause exists. The officer can make a reasonable mistake and still be protected by qualified immunity.

All federal circuits acknowledge Arguable Probable Cause.

The Supreme Court has not yet explicitly held that "arguable" probable cause protects officers from a false arrest claim, but that is implicit in the Court's rulings on qualified immunity. Since there are many challenges to qualified immunity nationwide, it helps to have this additional argument to raise—even though "arguable" probable cause is essentially an application of qualified immunity.

Each of the federal circuit courts of appeals One through Eleven, as well as D.C., has recognized "arguable" probable cause.[27] Just as with qualified immunity, each judicial determination of actual probable cause or arguable probable cause depends on the specific facts. To understand the rough contours of arguable probable cause, counsel should review the doctrine of qualified immunity and the rules governing actual probable cause. The cases collected in the footnote are intended to (1) show that each circuit recognizes arguable probable cause, and (2) provide a starting point for researching arguable probable cause in a given circuit.

Summary

In defending against claims of false arrest, apply the qualified immunity standard of objective reasonableness in the totality of circumstances known to the officer. Show that it was reasonable to believe the suspect had committed a crime or was in the process of committing a crime. The crime later charged need not be the crime for which the officer arrested the suspect. It is best to show probable cause, but it is essential to show at least arguable probable cause. The independent intermediary doctrine (regardless of whether it is called by that name) will protect the arresting officer, but beware of the "taint" exception.

ML

Notes

1. Thanks to Chuck Thompson for bringing the topic of arguable probable cause to my attention by way of his case summary emails.
2. U.S. Const., Amend. IV.
3. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694-45 (1978).
4. *Monell* requires the plaintiff to plead and show a policy or custom, a policymaker, a constitutional violation, and that the policy or custom was the "moving force behind the constitutional violation." City of Canton, Ohio v. Harris, 489 U.S. 378, 379 (1989) (citing *Monell*, 436 U.S. at 694).
5. Elder v. Holloway, 510 U.S. 510, 516 (1994) (citing Mitchell v. Forsyth, 472 U.S. 511, 528 (1985), Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Pierce v. Underwood, 487 U.S. 552, 558 (1988)).
6. *Mitchell*, 472 U.S. at 526 ("The entitlement is an *immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.") (emphasis in original); *Elder*, 510 U.S. at 514.
7. Williams v. Zachary, No. 21-60753, 2022 WL 2101518 at *3 (5th Cir. June 10, 2022) (citing Joseph v. Bartlett, 981 F.3d 319, 328-29 (5th Cir. 2020).
8. Mullenix v. Luna, 577 U.S. 7, 11 (2015) (quoting Pearson v. Callahan, 555 U.S. 223, 231 (2009)).
9. *Mullenix*, 577 U.S. at 12 (quoting Malley v. Briggs, 475 U.S. 335, 341 (1986)).
10. Loftin v. City of Prentiss, 33 F.4th 774, 780 (5th Cir. 2022) (internal quotation marks omitted); Espinal v. City of Houston, 96 F.4th 741, 745 (5th Cir. 2024).
11. Kaley v. United States, 571 U.S. 320, 338 (2014).
12. United States v. Garcia, 179 F.3d 265, 269 (5th Cir. 1999).
13. *Garcia*, 179 F.3d at 269; *Espinal*, 96 F.4th at 745.
14. *See* United States v. Antone, 753 F.2d 1301, 1304 (5th Cir. 1985) (warrantless arrest); United States v. Adcock, 756 F.2d 346, 347 (5th Cir. 1985) (search warrant)
15. *Antone*, 753 F.3d at 1304 (citing Illinois v. Gates, 462 U.S. 213, 238-39 (1983)).
16. *Espinal*, 96 F.4th at 745 (citing Deville v. Marcantel, 567 F.3d 156, 170 (5th Cir. 2009) (per curiam); Buehler v. City of Austin/Austin Police Dep't, 824 F.3d 548, 554 (5th Cir. 2016).
17. Some circuits apply this doctrine without using the term "independent intermediary doctrine." Some will discuss the acts of a third-party bringing an indictment, or approving a warrant after the fact, as an action that breaks the chain of causation.
18. *Espinal*, 96 F.4th at 745.
19. *Espinal*, 96 F.4th at 745.
20. 438 U.S. 154, 155-56 (1978).
21. *Espinal*, 96 F.4th 745 (and authorities cited therein).
22. As previously noted, the "taint" exception has its roots in Franks v. Delaware, 438 U.S. 154 (1978).
23. Atwater v. City of Lago Vista, 532 U.S. 318 (2001).
24. Devenpeck v. Alford, 543 U.S. 146, 152, (2004).
25. District of Columbia v. Wesby, 583 U.S. 48, 54 n.2 (2018) ("Because probable cause is an objective standard, an arrest is lawful if the officer had probable cause to arrest for any offense, not just the offense cited at the time of arrest or booking.")
26. *Wesby*, 583 U.S. at 53-54, 62.
27. Some exemplary cases are cited here. **First Circuit**: Wilber v. Curtis, 872 F.3d 15 (1st Cir. 2017) (arguable probable cause=>QI); Cox v. Hainey, 391 F.3d 25 (1st Cir. 2004) (arguable probable cause=>QI); Santiago v. Fenton, 891 F.2d 373 (1st Cir. 1989) (no arguable probable cause=>no QI); **Second Circuit**: Triolo v. Nassau County, 24 F.4th 98 (2nd Cir. 2022) (arguable probable cause=>QI); Ackerson v. City of White Plains, 702 F.3d 15 (2nd Cir. 2012) (no probable cause=>no QI); **Third Circuit**: Gilles v. Davis, 427 F.3d 197 (3d Cir. 2005) (arguable probable cause=>QI); **Fourth Circuit**: Orem v. Gillmore, 813 Fed.Appx. 90 (4th Cir. 2020) (arguable probable cause=>QI); Merchant v. Bauer, 677 F.3d 656 (4th Cir. 2012) (no probable cause=>no QI); **Fifth Circuit**: Davidson v. City of Stafford, Texas, 848 F.3d 384 (5th Cir. 2017) (no probable cause=>no QI); Petersen v. Johnson, 57 F.4th 225 (5th Cir. 2023) (arguable probable cause=>QI); Arizmendi v. Gabbert, 919 F.3d 891 (5th Cir. 2019) (probable cause=>QI);**Sixth Circuit**: Novak v. City of Parma, Ohio, 33 F.4th 296 (6th Cir. 2022) (arguable probable cause=>QI); **Seventh Circuit**: Cibulka v. City of Madison, 992 F.3d 633 (7th Cir. 2021) (arguable probable cause=>QI); Gaddis v. DeMattei, 30 F.4th 625 (7th Cir. 2022) (probable cause=>QI); Pierner-Lytge v. Hobbs, 60 F.4th 1039 (7th Cir. 2023) (arguable probable cause=>QI); **Eighth Circuit**: Just v. City of St. Louis, Missouri, 7 F.4th 761 (8th Cir. 2021) (arguable probable cause=>QI); Webster v. Westlake, 41 F.4th 1004 (8th Cir. 2022) (no probable cause=>no QI); **Ninth Circuit**: Ma v. City of Los Angeles, 756 Fed.Appx. 735 (9th Cir. 2019) (arguable probable cause=>QI); C.L. by and through Leibel v. Grossman, 798 Fed.Appx. 1015 (9th Cir. 2020) (no probable cause=>no QI); **Tenth Circuit**: Bickford v. Hensley, 832 Fed.Appx. 549 (10th Cir. 2020) (no arguable probable cause=>no QI); Clark v. Murch, No. 22-1330, 2023 WL 5012096 (10th Cir. August 7, 2023) (arguable probable cause=>QI); Jordan v. Jenkins, 73 F.4th 1162 (10th Cir. 2023) (no arguable probable cause=>no QI); Kaufman v. Higgs, 697 F.3d 1297 (10th Cir. 2012) (no probable cause=>no QI); **Eleventh Circuit**: Edger v. McCabe, 84 F.4th 1230 (11th Cir. 2023) (no arguable probable cause=>no QI); Garcia v. Casey, 75 F.4th 1176 (11th Cir. 2023) (arguable probable cause=>QI); **District of Columbia Circuit**: Moore v. Hartman, 644 F.3d 415 (D.C. Cir. 2011) (no arguable probable cause=>no QI)

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