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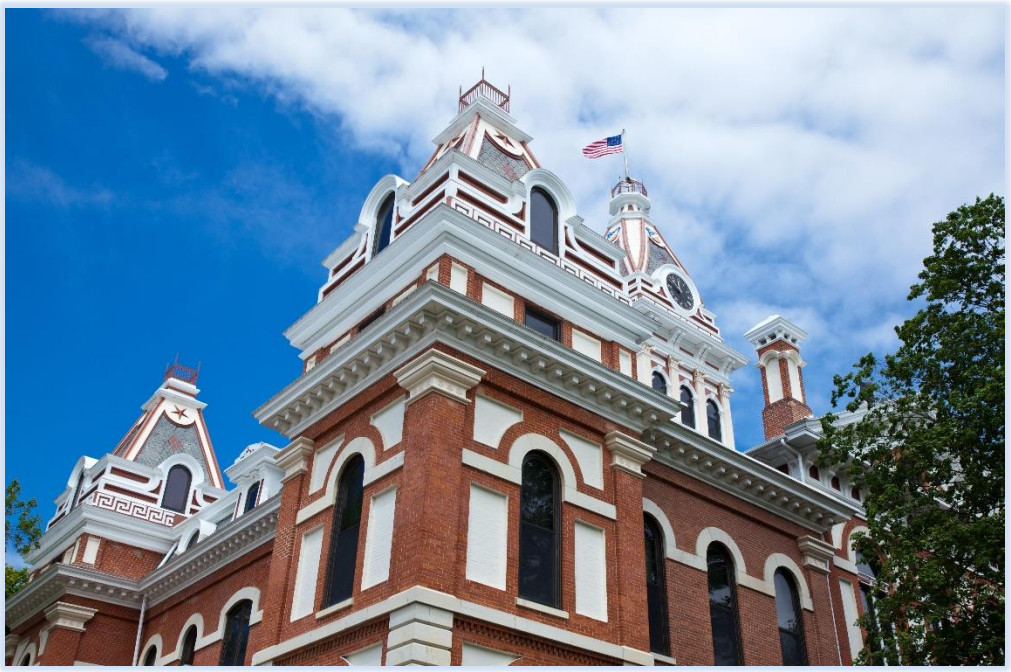

Livingston County Courthouse, Pontiac, IL

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DIRECTOR'S COLUMN

DEI and Local Governments

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Note from the Author: An Update on the Executive Orders Impacting DEI was the subject of one of the presentations at the ILGL Spring Seminar held online the afternoons of June 12 and June 13, 2025. This timely and very informative session was presented by J. Patrick White and Matthew Wagner of Hahn Loeser & Parks LLP. Employment issues affected by recent developments in DEI were also discussed by Marron Mahoney of Laner Muchin during the Labor and Employment Law Update presentation at the ILGL Spring Seminar.

Contact ILGL Executive Director Alli Aiston at ahoebing1@niu.edu about options to access the ILGL Spring Seminar if you missed it.

At the April 17, 2025, Nuts n Bolts Workshop, an ILGL member asked: "What steps, if any, are ILGL members taking to identify any issues for federal grant eligibility in light of the recent Executive Orders issued by President Trump on diversity, equity, and inclusion?" The question was also discussed during the May 21, 2025 ILGL Labor and Employment Special Interest Group.

An example of a recent grant condition required by the United States Environmental Protection Agency was provided:

> Federal Anti-Discrimination Laws (Added 3/25/2025)
>
> > By accepting this EPA financial assistance agreement, (A) the recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and (B) the recipient certifies that it does not operate any programs promoting Diversity, Equity and Inclusion that violate any applicable Federal anti-discrimination laws.

The representation required by this USEPA grant condition is the result of Executive Order 14173 issued by President Trump on January 21, 2025 entitled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity". EO 14173 revoked four prior Executive Orders including Executive Order 11246 signed by President Lyndon B. Johnson in 1965 which required federal contractors to adopt affirmative action plans. Under EO 14173, federal contractors must certify that they do not operate any programs promoting DEI that violate Federal anti-discrimination laws.

The day before issuing EO 14173, President Trump issued EO 14151 titled "Ending Radical and Wasteful Government DEI Programs and Preferencing". While EO 14151 primarily dealt with DEI programs within the federal government, it also required each agency, department, or commission head, within 60 days of issuance of the Order, and in consultation with the Attorney General, the Director of OMB, and the Director of OPM, as appropriate, to "terminate, to the maximum extent allowed by law all. . . 'equity-related' grants or contracts; and all DEI or DEIA performance requirements for employees, contractors, or grantees." (EO 14151, Section 2(b))

President Trump's Executive Orders 14173 and 114151 (and the numerous other Executive Orders he has signed since taking office for the second time) have had the effect of putting not only federal agencies into a state of confusion and uncertainty, but is also having a direct impact on local government entities.

One of the critical problems identified by those who have studied and written about these issues is the lack of clarity as to what constitutes an "equity-related" grant that would violate Federal anti-discrimination laws. Failure to find the right answer, if there is one, could result in our clients' loss of federal grant funding as well as civil and criminal liability under the False Claims Act.

GRANT FUNDS

Public bodies that have a construction project which will use both state and federal funding will likely find themselves in a no-win situation. They will be required to comply both with President Trump's Executive Orders and with state and federal laws and regulations regarding DEI. Since those requirements cannot typically be read to stand together, it will be difficult, if not impossible, to help our clients find a reasonable path forward.

An excellent article about Executive Order 14173 titled: *"Executive Order 14173: What it Means for Federal Contractors and Subcontractors"*, dated February 11, 2025, was written by Matthew K. Grashoff, Sonja C. Rice, and Matthew F. Wagner with the law firm of Hahn, Loeser, & Parks LLP and is linked here: https://www.hahnlaw.com/wp-content/uploads/2025/02/Executive-Order-14173-2.pdf.[1]

The following is an excerpt from Executive Order 14173 which includes the federal contractor and subcontractor certification requirement:

> Sec. 3. Terminating Illegal Discrimination in the Federal Government.
>
> * * *
>
> (ii) The Office of Federal Contract Compliance Programs within the Department of Labor shall immediately cease:
>
> (A) Promoting ''diversity'';
>
> (B) Holding Federal contractors and subcontractors responsible for taking ''affirmative action''; and
>
> (C) Allowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.
>
> (iii) In accordance with Executive Order 13279 of December 12, 2002 (Equal Protection of the Laws for Faith-Based and Community Organizations), the employment, procurement, and contracting practices of Federal contractors and subcontractors shall not consider race, color, sex, sexual preference, religion, or national origin in ways that violate the Nation's civil rights laws.
>
> (iv) The head of each agency shall include in every contract or grant award:
>
> (A) A term requiring the contractual counterparty or grant recipient to agree that its compliance in all respects with all

[1] Note from the Author: In light of the very fluid nature of the law in this area, the Hahn Loeser & Parks LLP law firm requested that the following disclaimer be included in reference to any cites to their articles: "Please note that this area of law is the subject of multiple pending lawsuits and continues to evolve on a daily basis. Please check www.hahnlaw.com/insights for updates. This legal alert was created for general informational purposes only and does not constitute legal advice or a solicitation to provide legal services."

> applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and
>
> (B) A term requiring such counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.

Making the certification "material" to the government's payment decisions raises the threat of possible civil or criminal action under the False Claims Act ("FCA") if the contractor does not comply with the vague requirements of the certification. A person found to have violated the FCA is liable for civil penalties of not less than $5,000 and not more than $10,000 plus 3 times the amount of damages sustained by the government, plus the government's costs to bring the action. 31 U.S.C. § 3729. In addition, a claim under the FCA may be brought by private individuals on behalf of the government who may share in a portion of the government's recovery. Criminal penalties may also be sought, including fines and/or imprisonment. 18 U.S.C. § 287.[2]

Concerns about the use of the False Claims Act in the context of DEI were escalated by a May 19, 2025 Memorandum issued by U.S. Department of Justice through an Assistant Attorney General titled "Civil Rights Fraud Initiative", https://www.justice.gov/dag/media/1400826/dl?inline , which states in part:

> The False Claims Act is the Justice Department's primary weapon against government fraud, waste, and abuse. Liability results in treble damages and significant penalties. It is implicated when a federal contractor or recipient of federal funds knowingly violates civil rights laws-including but not limited to Title IV, Title VI, and Title IX, of the Civil Rights Act of 1964-and falsely certifies compliance with such laws. Accordingly, a university that accepts federal funds could violate the False Claims Act when it encourages antisemitism, refuses to protect Jewish students, allows men to intrude into women's bathrooms, or requires women to compete against men in athletic competitions. Colleges and universities cannot accept federal funds while discriminating against their students. The False Claims Act is also implicated whenever federal-funding recipients or contractors certify compliance with civil rights laws while knowingly engaging in racist preferences, mandates, policies, programs, and activities, including through diversity, equity, and inclusion (DEI) programs that assign benefits or burdens on race, ethnicity, or national origin….

An article regarding the May 19, 2025 DOJ Memorandum can be found on the Hahn, Loeser, and Parks LLP's website at: https://www.hahnlaw.com/insights/doj-civil-rights-fraud-initiative-set-to-target-federal-government-contractors-and-grantees/. One of the issues addressed in this article is "…the fact that the Memorandum 'strongly encourages' private enforcement of civil rights fraud through whistleblower complaints from members of the public. Whistleblower lawsuits, also known as *qui tam* lawsuits, allow whistleblowers to sue on behalf of the government for fraud and receive a share of any monetary recovery as an award for coming forward."

An even more recent article, also found on the Hahn, Loeser, and Parks website, dated May 23, 2025 and titled "DOJ Civil Rights Fraud Initiative Set to Investigate Federal Government Contractors and Grantees" by Matthew K. Grashoff, Sonja C. Rice, Matthew F. Wagner, J. Patrick White bluntly states:

> The implications of the Civil Rights Fraud Initiative are that contractors and grantees are now subject to increased risk for fraud investigations for alleged civil rights violations and for falsely certifying compliance with civil rights laws.

(*See* https://www.hahnlaw.com/insights/doj-civil-rights-fraud-initiative-set-to-target-federal-government-contractors-and-grantees/**).**

There are several cases in litigation relative to President Trump's Executive Orders which may or may not help local government bodies contend with the pressures of being caught between a rock and a hard place. One of them (*Chicago Women in Trades v. Trump et al.* 2025 U.S. Dist. LEXIS 70459) was brought in the Northern District of Illinois where

[2] A helpful article regarding the interplay between the False Claims Act and DEI requirements entitled "False Claims Act Liability Based on a DEI Program? Let's Think it Through" was written by the law firm of Blank Rome LLP on February 19, 2025 and is linked here: https://www.blankrome.com//publications/false-claims-act-liability-based-dei-program-lets-think-it-through

Judge Kennelly issued a preliminary injunction preventing the U.S. Department of Labor from requiring government contractors and grant recipients to certify that they do not operate any diversity, equity, and inclusion programs that violate anti-discrimination laws. This is the subject of another HLP article found on their website and is still pending.

One Real Life Example:

A municipality in the Chicagoland area recently encountered the problem of being caught between a federal rock and a state hard place in the context of a federal grant for a road project that had both state and federal grant funding. The DCEO (the Illinois Department of Commerce and Economic Opportunity) required the municipality to sign a Business Enterprise Program (BEP) letter consistent with the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (30 ILCS 575/0.01 *et seq*.) that sets goals for percentages of grant dollars going towards minority, women, and persons with disabilities owned businesses. The representations in that form conflicted with Executive Orders related to DEI programs per guidance provided to the municipality by the federal Office of the Assistant Secretary for Transportation Policy.

What to do? No one knows. The choices? Give up the federal funding or sign what you have to and hope for the best. Poor choices at best.

EMPLOYMENT

On March 19, 2025, the U.S. Equal Employment Opportunity Commission issued two technical assistance documents relative to DEI: "What to Do If You Experience Discrimination Related to DEI at Work", https://www.eeoc.gov/what-do-if-you-experience-discrimination-related-dei-work, and "What You Should Know About DEI-Related Discrimination at Work." https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work

The introduction to "What You Should Know About DEI-Related Discrimination at Work", which is in a Q & A format, states that:

> Diversity, Equity and Inclusion (DEI) is a broad term that is not defined in Title VII of the Civil Rights Act of 1964 (Title VII). Title VII prohibits employment discrimination based on protected characteristics such as race and sex. Under Title VII, DEI initiatives, policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee's or applicant's race, sex, or another protected characteristic.

The Q & A notes that Title VII protects not only employees, but also applicants and training or apprenticeship program participants, and in some instances, interns.

The thrust of the guidance from the EEOC seems to be that DEI policies that generally recognize that there are differences among people are probably okay so long as individuals are not segregated into different groups during training or work place programs (based on race, sex, or any other protected characteristics), and so long as people are not in any way *treated* differently based upon any protected characteristic. The EEOC states that any employment provisions or policies which disparately treat a group of people will not be tolerated, including in hiring; firing; promotion; demotion; compensation, fringe benefits; access to or exclusion from training (including training characterized as leadership development programs); access to mentoring, sponsorship or workplace networking/networks; internships (including internships labeled as "fellowships" or "summer associate" programs); selection for interviews (including placement or exclusion from a candidate "slate" or pool); job duties or work assignments. Bottom-line: no preferential treatment in any way for anyone for any reason.

Of particular concern in the EEOC's Q & A is the suggestion that employees may be able to allege and prove that a diversity or other DEI-related training caused a hostile work environment.

An article dated March 27, 2025 by the Jackson Walker law firm does a nice job of summarizing the EEOC's guidance in an article is titled "*DEI Under Scrutiny: What Employers Must Know About New EEOC and DOJ Guidance"* and can be found at https://www.jw.com/news/insights-eeoc-dei-discrimination-guidance/ The article also makes practical recommendations as to how best to approach EEOC's guidelines.

USSC REVERSE DISCRIMINATION CASE – *AMES V. OHIO DEPARTMENT OF YOUTH SERVICES*.

Indirectly related to DEI is the unanimous decision of the U.S. Supreme Court issued on Thursday, June 5, 2025 in *Ames v. Ohio Department of Youth Services*. 2025 U.S. LEXIS 2198;

https://www.supremecourt.gov/opinions/24pdf/23-1039_c0n2.pdf

The plaintiff in *Ames* was a 20-year employee of the Ohio Department of Youth Services who claimed that she was the subject of reverse discrimination when she was denied a promotion, and was then demoted because she was straight. Plaintiff Ames alleged that the job she applied for and the one she was demoted from were both given to individuals who were LGBTQ.

The federal District court granted defendant's motion for summary judgment and dismissed the case. 2023 U.S. Dist. LEXIS 44979 ¶35. The dismissal was affirmed by the Sixth Circuit Court of Appeals. 87 F.4th 822 (2023).

On June 5, 2025, in a unanimous opinion by the U.S. Supreme Court written by Justice Ketanji Brown Jackson, the U.S. Supreme Court vacated the Sixth Circuit's decision and remanded the case "for application of the proper prima facie standard." 2025 U.S. LEXIS 2198 at ¶13. At issue in the U.S. Supreme Court's decision was the lower courts' application of an additional criteria required to establish a prima facie case of discrimination in an employment case by which a plaintiff who is a member of a majority group who claims reverse discrimination must also allege "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority". 2025 U.S. LEXIS 2198, ¶2.

The *Ames* decision will make it easier for plaintiffs to pursue claims of reverse discrimination in those federal circuits, including the Seventh Circuit, that applied the background circumstances requirement. Disposing of cases at the summary judgment stage will obviously be more difficult. It will be interesting, however, to see the ultimate outcome of the *Ames* case since at least some of the facts described in the District Court's decision appear to be very strong in support of plaintiff's claim of discrimination, most notably that the individuals who made the employment decisions plaintiff complained of had no knowledge of plaintiff's sexual orientation or the sexual orientation of the individual who was promoted to the job she wanted. 2023 U.S. Dist. LEXIS 44979, ¶¶24, 25.

GENERAL COUNSEL'S COLUMN

Public Employees and Social Media

By: Barbara A. Adams
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The intersection of use of social media by public sector employees and the status of their public employment regularly impacts the employment relationship and frequently results in litigation.

In the recent Fourth Circuit Court of Appeals decision in *Misjuns v. City of Lynchburg,* No. 24-1782 (6/5/2025), the Court upheld the dismissal of a fire department captain for offensive social media posts attacking transgender individuals, affirming the decision of the District Court dismissing all claims.

Plaintiff Misjuns maintained two Facebook pages, a personal page and a public figure page that identified him as the chair of the First Ward Republican City Committee in Lynchburg. The posts on the public figure page attracted attention by individuals who identified him as a member of the Lynchburg Fire Department, and the City received complaints from members of the public about the content of his posts regarding transgender persons. After various investigations and two interrogations, he was fired by the Fire Chief.

The Fourth Circuit focused on the three Section 1983 claims brought against the City: two under the First Amendment and one equal protection claim under the Fourteenth Amendment. In order to establish City liability for any of these Constitutional violations by showing the actions were taken under a City policy or custom, Plaintiff first alleged that the actions taken against him were through decision by a person with policy-making authority and that the Fire Chief was such a person. The Court disagreed, finding that while the Chief had authority to fire Plaintiff, his acts were subject to review or supervision by others, who were policy makers (the Mayor, Vice-Mayor and City Manager). The authority to fire employees did not equate to policy making authority.

Plaintiff's second set of allegations were that the actions taken against him were so "persistent and widespread" that they created a "custom or usage with the force of law." In support of his allegations, Plaintiff pointed to many emails between city officials and a local organization called Hill City Pride. However, the Court found that these emails alone did

not demonstrate a policy or custom of the City, and custom) were not alleged.

In addition, Plaintiff brought a breach of contract claim, alleging that the City's employment handbook was a contract. The Court determined that Virginia is an employment at-will state, which was explained in the handbook. Thus, the handbook does not constitute a contract.

Early in the opinion, the Court noted "there were already deep-seated tensions" between Plaintiff and the City, including Plaintiff's support for Republican candidates who ran against Democratic-sponsored candidates for City Council in a 2020 election where those Democratic-sponsored candidates won. The Facebook posts in question were made in early 2021, and Plaintiff's lawsuit was filed in March 2021, two days after he was interrogated about the posts for the first time.

A fact not mentioned in the opinion, but of interest to local government attorneys and government wonks is that during the pendency of this litigation, Plaintiff ran for an at-large seat on the City Council in 2022 and won. He began his term in January 2023. *See* the election results at the Virginia elections website https://historical.elections.virginia.gov/elections/view/156756 and his City website biography at https://www.lynchburgva.gov/directory.aspx?eid=149.

* * *

If you work in the field of Section 1983 law and litigation, you will want to check out the International Municipal Lawyers Association's (IMLA) 2025 Section 1983 Virtual Program, to be held July 24 and 25, 2025. https://imla.org/events/2025-section-1983-program/

* * *

If you have particular interest in the subject matter of this issue's Director's Column by Pat Lord, you will want to check out another IMLA program: a webinar regarding grant terminations, federal funding, false claims act, and DEI issues, to be held on July 15, 2025. https://imla.org/events/grant-terminations-and-dei-webinar-7-15-25/

* * *

This issue brings you excellent substantive content, including an update on DEI and local governments, a primer on bankruptcy law, and articles discussing when a document is a public record under FOIA and the use of injunctive relief in connection with municipal code violations. Also in this issue is the winning article in this year's Franklin W. Klein Student Writing Competition – an analysis of the requirements for public comment at public meetings under the Open Meetings Act. Also included are reports on the recent ILGL Spring Seminar and summaries of several recent Nuts n Bolts Workshops.

* * *

Have you written something on a topic or case that could be of interest to ILGL members? The *Journal* is a great option for publishing your original works. Feel free to contact me at badams@drlawpc.com or (312) 541-1077 or Alli Aiston at ilgl@niu.edu or (815) 753-5333.

SOMETHING TO THINK ABOUT

Former ILGL President Affirmed by the Fifth (5th) District Appellate Court in *Shehadeh v. City of Taylorville*, 2024 IL App (5th) 220824-U – When considering a FOIA request, always get back to the basics and ask if the document requested is a "public record" that pertains to public business, and was prepared by or for, … used by, received by, in the possession of, or under the control of" a "public body" (5 ILCS 140/2(a),(c)).

By: Frederick W. Keck, ILGL Director
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In 2013, at the request of the now Honorable Douglas C. Gruenke, I joined ILGL. Some years later, Jim Rhodes and Fred Stavins convinced me to join the Board of Directors. Before I get into Judge Gruenke's recent FOIA Circuit Court decision that was subsequently affirmed by the Firth (5th) District Appellate Court, I offer up the following advice. If you are thinking about getting involved in something in life – adopt the trademarked slogan of Nike – and just do it. Get involved in your local bar association. Get involved in your local community. Get involved in a local philanthropic organization. And pertinent herein – get more involved in ILGL. Do it because you never know what doors it might open – or what might happen. You might just end up on the Board of Directors, serving a term as President, and then writing about the very person that convinced you to get involved in the first place some twelve (12) years later.

In *Shehadeh,* the Plaintiff filed a FOIA complaint against the Defendant, the City of Taylorville (City), after its FOIA officer sent him a letter denying his request for a copy of his own letter to the Mayor of Taylorville. The specific facts presented were as follows:

While incarcerated in the Christian County jail, the Plaintiff sent a letter to the Mayor of Taylorville complaining "about the City Attorney and other matters." The letter contained complaints about attorney Rocci L. Romano's conduct while representing the City in another lawsuit that was pending between the Plaintiff and the City. The City's FOIA officer denied the Plaintiff's request for a copy of his letter to the Mayor. She indicated that the Plaintiff's letter constituted "an improper and illegal attempted communication" with representatives of the City who were represented by counsel (as notably, the Plaintiff was also suing the City, the Village of Kincaid, Taylorville Police Chief Dwayne Wheeler, and various other County and municipal officials in separate actions).

In response to that denial, the Plaintiff proceeded to file a complaint under FOIA. In it, the Plaintiff argued that when his letter was received by the Mayor, "it became a public record as defined by the FOIA." He further argued that the City had no legal basis for denying his request for a copy of the letter.

The City filed a motion to dismiss the Plaintiff's complaint, arguing that (1) the letter was an improper attempt by a litigant to make direct contact with a represented opposing party in another pending case rather than a legitimate FOIA request; and (2) the letter was not a "public record" under FOIA because it was addressed to the Mayor, who was not a "public body" under FOIA.

In addressing the Plaintiff, Judge Gruenke stated that "the stated purpose of FOIA in section one . . . is not so that you can get confirmation that somebody received it. The purpose of FOIA is to . . . make sure that the records are open to the public and people have access to those records." Judge Gruenke ruled from the bench in favor of the City (something I wish more Judges would do these days – as opposed to taking arguments under advisement for months and months). The Plaintiff then appealed to the Appellate Court, who concluded that the letter was not a "public record" as that term is defined under FOIA.

The Appellate Court noted that FOIA's statutory definition of a "public record" is broad, and includes all "writings [and] letters" that are "prepared by or for, . . . received by, in the possession of, or under the control of any public body." It recognized two important limitations to that, however. First, that the requested material must pertain "to the transaction of public business." And second, that the record must have been prepared or received by or be under the possession or control of a public body as that term is defined under FOIA. 5 ILCS 140/2(c)(West 2020) citing *City of Champaign v. Madigan*, 2013 IL App (4th) 120662.

The Appellate Court extrapolated that whether a document "pertains to 'public business'" is a "threshold question," and specifically held that the Plaintiff acknowledged during his own argument to the Circuit Court that his letter contained complaints regarding the conduct of the attorney representing the City in other actions filed against it by the Plaintiff. Accordingly, the Appellate Court held that complaints

concerning the conduct of opposing counsel in the Plaintiff's own litigation against the City did not involve community interests. As such, they did not "pertain to public business" within the meaning of FOIA.

The Appellate Court next considered whether the letter addressed to and received by the Mayor was in fact received by or under the possession or control of a "public body." It specifically noted that said statutory definition of "public body" did not include individuals. *City of Champaign*, 2013 IL App (4th) 120662, ¶ 30; *see also Korner v. Madigan*, 2016 IL App (1st) 153366. Accordingly, the Appellate Court held that the Mayor was not a "public body" as that term is defined under FOIA.

Significantly, the Appellate Court further found that FOIA defines the term "head of the public body" to include Mayor or an "individual otherwise holding primary executive and administrative authority for the public body." 5 ILCS 140/2(e) (West 2020). Accordingly, the Court held that the statute clearly distinguished between a public body and the individual who serves as the head of a public body, such as a Mayor. So ultimately, the Appellate Court held that the Mayor was not a public body, and that the Plaintiff's letter was not received by or under the control of or in possession of a public body in this case.

This just serves as a reminder to get back to FOIA basics, and further, to get involved in ILGL. Attend the Nuts n Bolts sessions. Attend the Special Interest Group sessions. Attend the Spring/Fall Seminars and the Annual Conference. Join a Committee. Do so to better yourself and your practice. You just never know where you may find yourself twelve (12) years later.

WHAT TO DO WHEN THE BANKRUPTCY COMES?

By: James Joyce
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THE BEGINNING:

Someday a local government client will contact you and advise that it has received a notice of bankruptcy and want direction on what to do. This article provides the basics of bankruptcy to assist you in advising your client.

The first inkling a local government will get concerning the filing of a bankruptcy case is a "Notice of Commencement of Case". Receipt of the Notice indicates the debtor believes he owes you money or that you have property of his. This Notice provides several important facts, including:

a. The name of the debtor that filed the bankruptcy.

b. The type of bankruptcy that was filed, i.e. under what "Chapter" of the Bankruptcy Code the bankruptcy was filed.

c. The name of debtor's counsel and when the Meeting of Creditors will occur.

d. The date that the Bankruptcy Petition was filed.

"Chapter" refers to the section of the United States Bankruptcy Code ("Code") (Title 11 U.S. Code Secs. §§101-1532) under which the case is filed. The Chapters you are likely to see are the following:

a. Chapter 7 *(Section 109(b)*): A debtor that files under this Chapter is seeking to discharge his unsecured debts and obtain what is colloquially known as a "fresh start". Chapter 7 filings are considered "no-asset" cases because the debtor believes his bankruptcy estate ("Estate") has no assets which can be liquidated for the benefit of creditors. A debt that is discharged under Chapter 7 is gone forever (unless the discharge was fraudulently obtained) and recovery for that debt is barred forever. However, many obligations to governmental entities are nondischargeable.

   i. Nondischargeability: Of interest to municipalities, debts arising from certain acts, such as taxes, drunk driving accidents, fraud, willful malicious injury and court-ordered restitution are not dischargeable (Section 523).

   ii. Section 523(a) of the Code lists the types of debt for which the debtor will not receive a discharge.

   iii. Nondischargeability does not mean the debtor will voluntarily pay, but only that the debtor's bankruptcy will not eliminate that debt. The debt will survive bankruptcy and collection efforts can re-commence.

b. Chapter 13 *(Section 109(e)*): A debtor, either an individual or married couple, (corporations and unmarried couples living together are not eligible for Chapter 13) must file a Plan at the time the Bankruptcy Petition is filed. The Plan provides how much (based on Debtor's income) they will turn over to the Chapter 13 Trustee each month for distribution pro rata to creditors. Plans typically run for 3-5 years; if there is a proposed Plan for shorter or longer times, special attention and court permission is required. Once all Plan payments are made, those debts are discharged.

   i. Under a Chapter 13 Plan, and during its pendency, the debtor is responsible for making all post-petition payments to governmental entities such as municipalities or town departments for utilities, etc. While utilities should be paid in bankruptcies under all Chapters, Chapter 13 cases can be dismissed for failure to do so. (Chapter 7 debtors usually do not pay them, and Chapter 11 debtors always do so).

   ii. If a creditor objects to its treatment under the Plan, the case may be dismissed on the creditor's motion, or the Debtor will be given the option of revising the Plan to pay all creditors in full. *(Section 1325(b))*. It therefore behooves a Chapter 13 creditor to review the proposed Plan carefully.

c. Chapter 11: A debtor (usually a corporation) files a Chapter 11 case seeking some "breathing room" to usually obtain a source of financing and make a Plan of Reorganization to pay back its creditors *Czyewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 983 (2017). Chapter 11 has a lot of factors at play for a successful reorganization to take place, but the most important things to remember are that (i) the Chapter 11 debtor must keep current on all post-petition obligations and (ii) as a rule, since the Chapter 11 debtor usually wants to stay in business, the debtor will make sure that a town (either where it is based or where it operates at least in part) is happy and paid. If the Chapter 11 debtor proposes to pay arrearages on a municipal

claim through the Plan, review the terms of proposed payment to confirm the terms are acceptable.

d. The debtor's filing of a bankruptcy creates an Estate. The Estate consists of all the debtor's interests in tangible and intangible property. Tangible property includes cars or real estate. Intangible property can be interests in a probate estate or right to receive insurance payments. Each Estate is overseen by a trustee ("Trustee"), a third party appointed to administer the Estate for the benefit of creditors. In a Chapter 7 case, if there are assets that can be sold by the Trustee, the Trustee will do so. In a Chapter 13 case, the debtor's assets are not sold but instead a Plan is created for repayment of debt under the auspices of the Chapter 13 Trustee. In a Chapter 11 case, the debtor serves as the trustee with oversight from the Office of the U.S. Trustee.

e. There are also Chapter 9 and 12 bankruptcy chapters but those are for railroads and farmers/fishermen, respectively.

THE PETITION:

Like any court case, an initial pleading must be filed to begin. In bankruptcy cases, the debtor starts the case by filing his Petition. A Bankruptcy Petition is likened to a snapshot of the debtor and his financial situation as of the date he files his case. A Petition is comprised of "Schedules", A-H, each of which contains important information:

a. Lists the debtor's address, whether he owns or rents, whether it's his first bankruptcy, if he owns real estate and if so, where and if it's encumbered by debt.

b. Lists ALL of the debtor's other assets, referred to as personal property. This includes cars, boats, clothes, stock/ownership interests in anything, etc.

c. List of exemptions for certain personal property which for statutory reasons the federal government has decided the debtor gets to keep. An example is an IRA/401(k) account. The government has determined that Americans need to save for retirement and therefore the debtor will retain all such accounts. See Section 522 for a full list.

d. Lists priority unsecured debts such as back taxes, or past due child support or alimony. Many times, governmental debt will be listed here.

e. List of all secured debts: those debts owed to entities that have a lien, such as the bank holding a mortgage or car loan, or a judgment creditor that has recorded its judgment. A municipality with a recorded lien or judgment may be located here.

f. Lists all unsecured non-priority debts: debts for which there is no security for the claim for payment. An example of this is credit card or medical debt.

g. Lists any executory contracts such as leases.

h. Lists all co-debtors such as guarantors of the debtor's debts.

i. Lists all sources of debtor's monthly income.

j. Lists all debtor's monthly expenses.

List of Creditors: The debtor must file a list of all the creditors to whom he owes money. This list is used to generate the Notice of Commencement of Case.

Statement of Financial Affairs: Lists all the debtor's financial information for the last 3 years prior to filing, such as tax return reporting, any lawsuits or repossessions to which the debtor was a party, and any loans made or received.

Means Test Reporting: The debtor is required to show his financial situation qualifies for Chapter 7 as opposed to Chapter 13. Congress wanted more debtors in Chapter 13 repayment plans as opposed to non-paying Chapter 7 cases (Chapter 11 filers do not have to complete a Means Test) and thus enacted a Means Test requirement, requiring parties that seek to file Chapter 7 must show they make under a certain amount. If the debtor makes over that amount, that debtor must file a Chapter 13 petition. There are federal guidelines showing the income levels applicable to Chapter 7 versus 13. Check *Illinois.bankruptcy.com*. For example, as of 2025, a single debtor that makes $69,611.00 or more must file a Chapter 13 case.

THE AUTOMATIC STAY:

The major benefit, and the principal rationale, for filing bankruptcy, is the statutory imposition of the Automatic Stay. As soon as the debtor files his Petition and is assigned a case number, the restraining provisions of the automatic stay come into effect. (*See Crespo Torres v. Santander*, 532 B.R. 195, 200 (2015)).

a. The debtor does not need to do anything to have the automatic stay come into effect. As soon as the

case is filed, the debtor is protected by the automatic stay.

b. Protected from what? From just about everything that anyone such as a creditor can do to someone in court. If A is suing B, and B files bankruptcy; That case comes to a halt. If A is garnishing B's wages, conducting post judgment discovery, or trying to record a judgment, all of these activities must come to an immediate halt. (*See* 11 U.S.C. §362)

c. Upon receipt of the Notice of Commencement of the case, it is imperative that all collection actions stop. If a lien or judgment has not been recorded, stop. If garnishment or citations are in process, stop. Bankruptcy courts DO NOT like creditors that disregard the automatic stay and there are numerous cases of significant sanctions issued against creditors who continued to send billing notices, repossessed collateral, or continued collection calls after the filing of a bankruptcy notice. Also, the accrual of interest or late charges is not permitted. However, under Section 362(b)(4), a governmental entity can initiate or continue acts to stop fraud, environmental protection, or safety.

d. Any funds recovered by a creditor within thirty days prior to the filing of the bankruptcy should be held by the creditor pending further order of Court. The Code presumes any transfer from the Debtor within 30 days of the filing were made knowing a bankruptcy was imminent and the Trustee can, pursuant to Section 547 of the Code, order that the creditor return those funds to the Estate. There are several defenses a creditor can assert but in general, the Trustee usually prevails.

e. The principle behind the automatic stay is that the Trustee appointed for the debtor's Estate is now in control of the debtor's non-exempt assets and cannot be interfered with. (*See In Re Curtis*, 40 B.R. 795, 799 (1984)). The debtor's estate consists of those assets that are claimed to exist <u>at the time of filing</u>. For instance, if a debtor wins the lottery sometime after filing, that is generally <u>NOT</u> an asset of the estate (however, some federal courts differ on this issue).

f. There are means by which the automatic stay can be "lifted" or otherwise modified, based on very fact-specific situations, such as the failure of the debtor to keep up with post-petition obligations. Section 362(d) governs this. For municipalities, if a Chapter 7 or 13 debtor does not pay utilities, the municipality can seek a court order, either to dismiss the case or proceed against liened property.

g. Of special interest to municipalities: if a municipality has possession of a debtor's driver's license or automobile, it must be made available for turnover to the trustee on request. Under Section 541, the Trustee is to take control or possession of all the debtor's property on commencement of the case which includes property like this. Any accompanying fines that exist will either be nondischargeable or paid through the Plan.

<u>THE TRUSTEE</u>:

a. The Code provides that for each bankruptcy filed, a Trustee is assigned to take command of the Estate and administer the assets for the benefit of creditors. The Office of the U.S. Trustee is a branch of the federal Department of Justice, and each federal District has a U.S. Trustee. That U.S. Trustee maintains a list of "trustees" and from that list, a random trustee is appointed to oversee each individual case filed. Section 704(a) governs the Trustee's powers and duties.

b. The Trustee in a Chapter 7, named on the Notice of Commencement, will convene a "341 Meeting". So named after Section 341 of the Code, all the debtors' creditors are notified as to the date, time and place of the 341 Meeting and can, if they wish, attend to see the Trustee examine the debtor as to his assets and even ask questions themselves.

c. In a Chapter 7, the Trustee will review the debtor's Petition and Schedules and try to see if there are any assets that can be liquidated and the proceeds turned over to creditors. In a Chapter 13 case, the Chapter 13 Trustee collects the monthly payment from the debtor and pays out pro rata to creditors. In a Chapter 11 case, usually the debtor acts as the Trustee, since it presumed the corporation is acting with the same goal as the creditors.

d. Once a Chapter 7 Trustee determines there are no assets to be liquidated, a No-Asset Report is filed, and the Court will enter an Order of Discharge. That means all the debts, except those specified as surviving bankruptcy (taxes, fines/penalties where appropriate, alimony/child support) are forever discharged and no effort can be made to collect on those.

FILING A CLAIM:

The Notice of Commencement may say that no claim is to be filed at this time; or (usually in Chapter 13 cases) there is a listed deadline to file a Claim. In a Chapter 7 there is no reason to file a claim until the Trustee has determined there will be assets to liquidate and therefore proceeds to distribute. When the Trustee does know that, a Notice will be generated that will set a Claims Bar date by which claims must be filed.

NOTE: Regardless of the chapter under which bankruptcy is filed, missing the deadline for filing a claim is fatal. There is virtually no basis in which the Court will permit a late-filed claim. Filing a Proof of Claim requires the completed Proof of Claim form, available on the Bankruptcy Court's website, and attaching any documents that will prove the claim, such as a bill or a judgment.

DISCHARGEABILITY:

a. A recorded lien or judgment will survive bankruptcy. A judgment may be uncollectable if there is a lien on certain real estate or other property and if the debtor ever wants to sell that property, the lien must be satisfied in some fashion. Example: your client has a second lien on real estate and hasn't been paid at all but the first lienholder, such as the mortgage holding bank, is getting paid. The client can either move in the bankruptcy court to lift the stay and foreclose its lien in state court, or wait until the Chapter 7 case is done, and just sit until such time as the real estate is to be sold; at that time, the lien will show up on title and to clear title you will have to get paid because the lien will still show. This is only in Chapter 7 cases. In cases under Chapters 13 and 11, you have made sure the debtor's plan has provided for payment of the local government's claim.

b. In a Chapter 7 bankruptcy, debts to a governmental unit for fines and penalties are not dischargeable and the debt is still owed.

c. Chapter 13 debtors get more of a break than those in a Chapter 7. Debts classified as "penalties" are dischargeable in a Chapter 13. The key will be the nature of the debt. If the debt is classified as a penalty, it will be discharged in a Chapter 13 case. The determination is very fact-specific. A court order finding someone in contempt for instance is generally a penalty, but a traffic ticket amount ordered is a fine, for example. The other note of interest concerning Chapter 13 cases concerns traffic tickets that have led to license suspensions. The court will require the municipality to return the license to the Debtor even though he must pay the fines due (see above).

d. Remember that the date of the filing of the bankruptcy is the key line of demarcation; debts the Debtor incurs after the case filing are not dischargeable and the debtor is 100% responsible for the payment of this debt. Debt incurred prior to the case filing is covered by the bankruptcy and is under the control of the Trustee.

e. Utilities: Sec. 366(a) prevents a municipality from disconnecting utilities and requires the debtor to make adequate assurance of payments going forward.

CONCLUSION:

Bankruptcy practice is, as my law school professor said, "An attempt to bring structure and reason to chaos." There are few things in the law that are more chaotic than trying to address the positions of numerous creditors all clamoring to be paid a debt owed. The Bankruptcy Code represents the best means to date to try and organize and structure a process whereby the most equitable results are obtained. Being knowledgeable about the process will make one a better attorney and of more service to the client.

IN THE COURTS

Aiming for Relief: Local Ordinance Permitting Injunction Bars Balancing the Equities

By: John A. Wall, jawall@ktjlaw.com and Kaylee M. Hartman, kmhartman@ktjlaw.com
Klein, Thorpe & Jenkins, Ltd.

CITY OF ROCK FALLS v. AIMS INDUSTRIAL SERVICES, LLC 2024 IL 129164

The Illinois Supreme Court ruled that the trial court erred when it denied a city's petition for injunctive relief authorized by municipal ordinance because doing so stepped into the realm of legislative determinations.

The traditional elements of injunctive relief, *i.e.*, a clearly ascertainable right, an inadequate remedy at law, and irreparable harm if no relief is granted, are well known to municipalities seeking injunctive relief. Once the three elements are recited, the courts end the injunctive analysis by determining whether the balance of equities between the parties fall heavily to one side or the other.

For municipalities, the equitable balance often tips in their favor when a public safety, health, or nuisance issue or consideration is in play. Often, municipalities can seek injunctive relief pursuant to statutory authority and, based on prior Illinois Supreme Court ("Court") opinions, are thus relieved from proving the "traditional" elements required for an injunction. *See Sherman v. Cryns*, 203 Ill.2d 264, 277-78 (2003).

It is under this authority that the City of Rock Falls ("City") filed its petition for injunctive relief based on ongoing municipal code violations. At the trial court level, the petition was denied due to the undue hardship it posed for the property owner. At the appellate level, the analysis found that the trial court erred by considering how the equities would balance.

Upon reaching the Supreme Court, two important findings led to affirmation of the appellate court and reversal of the trial court's ruling.

A New Owner, A New Problem

In March 2017, Aims Industrial Services, LLC ("Aims") purchased 2103 Industrial Park Road ("Property"), a commercial property within the City of Rock Falls ("City"). The Property utilized private sewage disposal, rather than the City's public sewage disposal system.

The City notified Aims that it would need to connect with the City's public sewage disposal system pursuant to the Rock Falls Municipal Code ("Code"). The Court shared the applicable provisions, which include Section 32-189(g), 32-186, and 32-190. *Rock Falls Municipal Code*, §§ 32-189(g), 32-186, 32-190.

At the time, the Code provided that a sale or transfer of property would require connection with the City's sewer system "when available" under sections 32-186 and 32-190. *Rock Falls Municipal Code*, § 32-189(g).

A property is "available" for connection under Section 32-186 "whenever the sewer mains of the sewerage system of the city are adjacent to his property." *Rock Falls Municipal Code*, § 32-186. Section 32-190 lists criteria for determining availability and imposes a sixty (60) day window for connection upon notice.

Despite the notification, Aims did not connect to the public sewage disposal system. On August 5, 2019 City filed a verified petition for injunctive relief under Section 1-41(n) of the Code, which provides: "Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief." *Rock Falls Municipal Code*, § 1-41(n).

The Trial Court Weighs In

At a bench trial, the court found that, while Section 32-189(g) applied to the Property and that Aims violated the Code by not connecting, forcing connection would impose an undue hardship on Aims. Testimony at trial estimated the connection would cost around $150,000. The City's administrator also testified that in 2020, the City had excused another business from connection because of undue hardship and prohibitive expense.

Relying on the exception granted in 2020 to a different business and the estimated cost of compliance, the City's petition for injunctive relief was denied. The trial court emphasized this decision was out of fairness to the parties and noted that the City did not show the private sewage system was a threat to public health. *City of Rock Falls*, 2024 IL 129164, ¶12.

The Appellate Court Reversal

The City appealed, arguing that the trial court should not have balanced the equities. The appellate court recognized that injunctive relief generally requires balancing the equities between the parties but cited the express exception to the traditional equitable elements when the governmental agency is authorized to seek injunctive relief by statute. *Id.* at ¶15.

The appellate court reversed the trial court's denial, reaffirming that there is a presumption of public harm when an ordinance is violated and that, when authorized by statute to seek injunctive relief, the party need not prove all the traditional elements of an injunction.

Distinguishing Between Inherent Equitable Authority and Statutory Relief

Reaching the highest court in the state, Aims challenged the appellate court's finding that the trial court lacked the authority to weigh the equities when reviewing the City's petition for injunctive relief.

The issue boils down to a difference between a suit in equity versus one based on statutory authority. Aims pushed for an analysis under the equitable lens, which requires the traditional elements of a mandatory injunction. *Id.* at ¶19. The City advances the court rule created in *Cryns*, 203 Ill.2d. There, the Court stated that, when authorized by statute, the petitioner need only show the statute was violated and that the relied-upon statute allows for injunctive relief. *Id.* at 277-78.

The Court explained where injunctive relief is authorized by statute, the court presumes "the equities have, in effect, already been balanced by the legislative body." *City of Rock Falls*, 2024 IL 129164, ¶21. When that happens, the reviewing court cannot disregard or "rebalance" the legislative body's policy determinations. *Id.* Thus, a continuous violation of statutory law renders the trial court with "no discretion or authority to balance the equities so as to permit that violation to continue." *Id.* at 21 (quoting Zygmunt J.B. Plater, *Statutory Violations and Equitable Discretion*, 70 Cal. L. Rev. 524, 527 (1982)).

"Statute" Includes Municipal Ordinances

Aims attacked the reliance on the standard set forth in *Cryns* by arguing that the present case involved injunctive relief authorized by a municipal ordinance, not a statute. However, the Court quickly disposed of this argument because it is well settled that a "municipal ordinance has the force of law over the community in which it is adopted and, within the corporate limits, operates as effectively as a law passed by the legislature." *City of Rock Falls*, 2024 IL 129164, ¶22 (quoting *City of Chicago v. Roman*, 184 Ill.2d 504, 511 (1998)).

In the City, the relevant sewage ordinances hold the same full force of law as a state statute. There was no indication of an improper or unconstitutional use of municipal powers that would otherwise invalidate the ordinances. Section 1-41(n) of the Code authorized the City to seek "injunctive or other equitable relief," which has the same force as a state statute authorizing the same.

Aims Misses the Mark in Case Law Interpretation

Relying on *County of Kendall v. Rosenwinkel*, Aims interpreted the *Cryns* standard as relief from the "three traditional elements" for an injunction, but not from balancing the equities before granting relief. 353 Ill. App. 3d, 539-40 (2004). *Rosenwinkel* concluded that the trial court must still balance the equities, even if the law expressly permits injunctive relief. *City of Rock Falls*, 2024 IL 129164, ¶24.

But the *Rosenwinkel* interpretation "would effectively permit a trial court to second-guess the legislative body as to whether a particular regulatory scheme was equitable or otherwise in the best interests of the public." *Id.* This directly contradicts the *Cryns* Court holding that "*no discretion* is vested in the circuit court to refuse to grant the injunctive relief authorized by that statute" once a violation is established. 203 Ill.2d at 278 (emphasis added).

To that end, the Supreme Court overruled *Rosenwinkel* to the extent it conflicted with *Cryns*. *City of Rock Falls*, 2024 IL 129164, ¶25.

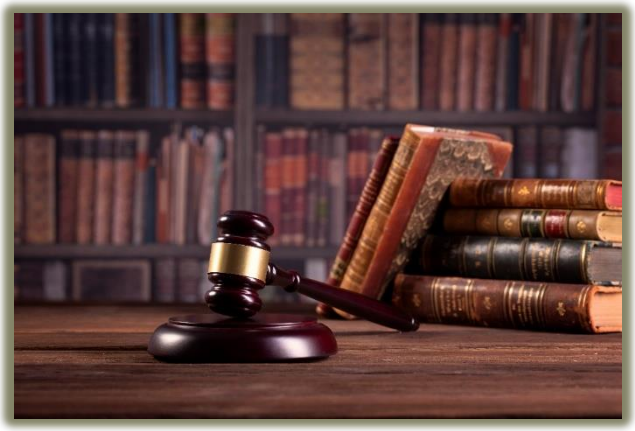
Affirmed and Reversed

Because the Code authorized the City to seek injunctive relief, the *only* question for the trial court was whether the City demonstrated a continuous violation of the applicable Code provisions. There was *no* discretion to balance the equities. With this in mind, the Court affirmed the appellate court's decision and reversed the circuit court judgment.

Conclusion

Matthew D. Cole of Ward, Murray, Pace & Johnson, PC, was awarded the ILGL Award for Litigation for his representation of the City of Rock Falls in this important case.

The use of injunctive relief to combat continuing municipal code violations is an excellent enforcement tool that all municipalities should have in their municipal codes.



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SPRING SEMINAR SUMMARY

On June 12 and 13, 2025, ILGL held its annual *virtual* Spring Seminar via Zoom. This year's seminar included a focus on Federalism, with updates on Presidential executive orders and how they affect local governments. Four afternoon sessions made up the two-day seminar. There were 49 registrants for the webinar.

The sessions presented at the Seminar included:

- The Duties and Ethical Responsibilities of Government Lawyers
- Labor and Employment Law Update
- Update on the Executive Orders Impacting DEI
- Finding Balance: Enhancing Your Personal Wellness and Mental Health

The post-seminar evaluation survey revealed that attendees were overall very pleased with the quality of sessions and the ease of the registration process. Attendees were pleased with the scope and depth of the seminar's material and shared that the seminar will be very useful in their future work.

ILGL would like to thank all who attended and the speakers and Professional Development Committee members that volunteered their time and expertise to help make this Spring Seminar another great professional development event!

The Franklin W. Klein Law Student Writing Competition – First Place

What Every Municipal Attorney Needs to Know About Public Comment Restrictions in 2025

By: Kayla Beckley, University of Illinois College of Law Class of 2026

In light of recent media coverage of the Village of Dolton's board meetings, there has been much discussion about public meeting policies. The media has reported that, among other things, the Dolton Village Board held meetings in a space too small for the crowd it anticipated, restricted access by blocking nearby streets and parking spots, and silenced and removed commentors.[i] PAC 24-010. These events highlight the need for municipal bodies to re-evaluate acceptable public comment policies for their meetings under the Illinois Open Meetings Act ("OMA"). 5 ILCS 120/2.06(g).

Public meetings provide a crucial means of communication between a public body and the community it serves. Public bodies need to navigate the delicate balance of conducting public business meetings smoothly while protecting the public's right to free speech. To do so, it is important that public officials understand what restrictions on free speech are allowed under the law. This article discusses: (1) the scope of the right to public comment under the Illinois Open Meetings Act; (2) examples of unreasonable public comment rules as determined by the Public Access Counselor; (3) an analysis of a recent First Amendment case applying Illinois law; and (4) recommendations to ensure that public meetings comply with the First Amendment and the OMA.

The First Amendment of the United States Constitution and Article I, Section 4 of the Illinois Constitution protect a person's freedom of speech. U.S. Const. amend. I; Ill. Const. 1970, art. I, sec. 4. These provisions encompass many forms of speech and action critical to our democratic nation. Yet their scope is not unlimited. The OMA implicates the right to free speech. It requires that during a public meeting, "any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." 5 ILCS 120/2.06(g). This section guarantees the public right to speak but permits the public body to make limiting rules. How can municipal bodies best strike a balance between maintaining efficient, orderly meetings and upholding individuals' freedom of speech?

History and Purpose of the Illinois Open Meetings Act

In 1957, the General Assembly passed the Open Meetings Act in the spirit of full disclosure of government affairs to the public. 5 ILCS 120/1. At its most basic level, the OMA requires public body meetings to be open and accessible to the public – not held in secret. *People ex rel. Graf v. Vill. of Lake Bluff*, 321 Ill. App. 3d 897, 907 (2001). Other states have similar laws, generally referred to as "Sunshine Laws," which "are designed to limit corruption within the affected organization and increase public trust through willing transparency."[ii]

In 2011, the General Assembly amended the OMA to create a right for meeting attendees to formally address public bodies. The provision states: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." 5 ILCS 120/2.06(g). The addition essentially codified a practice that had already been in place for many public body meetings. Because the General Assembly added section 2.06(g), all public meetings must provide a time for comment under established rules.

Scope of the Right to Speak

The rules a government body can create for public comment may not violate the public's freedom of speech. Protection of speech comes not only from the First Amendment, but also from the Illinois Constitution's own freedom of speech provision in Article 1, Section 4. The relationship between state and federal protections is important for understanding the scope of the OMA's right to speak. This year, the First District Appellate Court held that for comments at public meetings, Article 1, Section 4 of the Illinois Constitution does not provide greater protection than the First Amendment. *Eberhardt v. Vill. of Tinley Park*, 2024 IL App (1st) 230139, ¶ 55. Accordingly, rules established for a period of public comment may not violate the First Amendment.

Public Forum Analysis

The extent to which public bodies can restrict speech without violating the First Amendment depends on the nature of the forum where the speech occurs. The United States Supreme Court recognizes four types of forums: traditional, designated, limited, and nonpublic. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45-46 (1983) (establishing three types of forums: traditional, designated, and nonpublic); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106-07 (2001) (adding the fourth type of forum: limited). Restrictions on speech in traditional and designated forums must pass the highest level of scrutiny. *Perry Educ. Ass'n*, 460 U.S. at 45 ("The state may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication."). Restrictions on speech in a limited and nonpublic forum must pass a lower level of scrutiny. *Good News Club*, 533 U.S. at 106–07 (stating that the restriction on speech must be viewpoint-neutral and reasonable in light of the purpose served by the forum). It is important that municipal attorneys understand the forum of public meetings so the municipal bodies can make and enforce appropriate rules regarding comments.

DISCUSSION

The OMA grants the public the right to address public officials under the rules established and recorded by the public body. 5 ILCS 120/2.06(g). Illinois courts and the Attorney General, acting as the Public Access Counselor (PAC), have been tasked with interpreting this section.[iii] Their binding opinions articulate the types of rules a public body can create surrounding comments and interpret the scope of the right to speak in light of the First Amendment.

The PAC's Interpretation of Reasonable Restrictions

Beginning with the PAC's opinions, the PAC concluded that any rules that restrict the right to speak during a meeting must be reasonable and narrowly tailored to further a significant governmental interest. PAC 14-012. Maintaining order and promoting efficiency at public meetings are significant governmental interests. *Id*. Reasonable time, place, and manner restrictions may be made after balancing the public's statutory right to speak against the interests in order, decorum, and efficiency. *Id*. In 14-012, the PAC held that though a public body may require a speaker to sign up in advance to comment, requiring the speaker to obtain a recommendation of a board member or submit a request five days in advance was not a reasonable rule. *Id.*

Rules surrounding public comment must be enacted formally and documented in a policy or code that is accessible to the public. PAC 23-013. In PAC 23-013, a board told a speaker that a board policy restricted her from commenting on personnel matters. *Id.* However, the board only pointed to an unpublished, annotated agenda referencing the limitation; the PAC held that the agenda was not established and recorded within the meaning of the OMA. *Id.*

Furthermore, a commentor need not be a resident within the boundaries of the public body, nor could a public body require the speaker to state his or her home address. PAC 19-009; PAC 14-009. Public

bodies may impose reasonable time limits on public comments; this keeps comments from being too lengthy and ensures others have an opportunity to comment. 2011 PAC 12740; 2011 PAC 17388. The PAC upheld two- and three-minute time limits per comment so long as the public body properly established and recorded the time limit in its policy. 2011 PAC 1274; 2011 PAC 17388.

Severity of Restrictions on Speech Depend on the Type of Public Meeting

Municipal attorneys must ensure that a public body's meeting policy neither violates the OMA's right to speak nor the First Amendment. Where the PAC's opinions help articulate reasonable rules under the OMA's right to speak, case law helps determine how far a public body may go in restricting the right without violating the First Amendment. Specifically, Illinois courts have applied the First Amendment forum analysis to public meetings and hold that a public meeting can either be a designated or limited public forum depending on whether it is a regular or special meeting.

"Neither the Supreme Court nor the Seventh Circuit Court of Appeals has assigned a single forum label to all public-comment periods taking place during government bodies' meetings." *SEIU Loc. 73 v. Bd. of Trs. Of the Univ. of Ill.*, 2023 WL 3587534, at *4 (C.D. Ill. 2023). But the First District Appellate Court stated: "Generally, courts have treated the public comment portion of municipal council meetings, where any member of the public may talk on any subject, as a *designated* public forum, which is subject to strict scrutiny." *Eberhardt*, 2024 IL App (1st) 230139, ¶ 37 (emphasis added). Accordingly, municipalities, during *regular* meetings, must make reasonable time, place, and manner restrictions on public comment that are content-neutral.

A different level of scrutiny applies to *special* meetings held to discuss a particular topic. In *Eberhardt*, the First District Appellate Court discussed the nuances of public meetings and asked whether a village could restrict comments during a *special* Village Board meeting to only comments germane to the agenda items. *Id.* ¶ 7. This rule would be content-based. The court concluded that the special village board meeting was a *limited* public forum because the board intentionally restricted discussion to only the agenda topics rather than opening discussion up to all topics. *Id.* ¶ 42. Accordingly, in a limited public forum the restrictions on public comment only need to be *viewpoint-neutral* and reasonable; the court found the germaneness requirement satisfied that standard. *Id.* ¶ 56; *see Serv. Emps. Int'l Union Loc. 73*, 2023 WL 3587534, at *8 (finding that a university's board meeting was a limited public forum because it required speakers to obtain advance permission).

Recently, the Eleventh Circuit held that a regular city council meeting was a *limited* public forum rather than a *designated* public forum as Illinois courts have held. *McDonough v. Garcia*, 116 F.4th 1319, 1329 (11th Cir. 2024). The court determined that the council meetings were limited public forums because they restricted speech to matters "pertinent to the City." *Id.* at 1328–29. Under this analysis, the city council could create rules that were content-based so long as they were viewpoint-neutral. *Id.* Unlike the Eleventh Circuit's holding that even general city council meetings are limited public forums, Illinois case law currently holds that general city council meetings, which typically require that comments pertain to city matters, are *designated* public forums. *See Eberhardt*, 2024 IL App (1st) 230139, ¶ 37. Thus, in Illinois, public comment rules must be reasonable, content-neutral, and narrowly tailored to a significant government interest.

A Public Body May Prohibit Disruptive Behavior During Its Meetings

Efficiency, decorum, and order are all significant government interests for a public body. However, a public body must balance its own interest against the public's right to speak under the OMA and freedom of speech under the First Amendment. Generally, courts hold that prohibiting disruptive behavior in a meeting does not violate the First Amendment. But disruptive behavior that justifies removal from a public

meeting must actually impede the meeting's order of business. *Surita v. Hyde*, 655 F.3d 860, 871 (7th Cir. 2011). The Seventh Circuit wrote: "A speaker may disrupt a council meeting by speaking too long, being unduly repetitious, or by extended discussion of irrelevancies. The meeting is disrupted because the Council is prevented from accomplishing its business in a reasonably efficient manner." *Id.*

In *Vega v. Chicago Board of Education*, a woman was removed and subsequently banned until further notice after her angry and critical comments. 338 F. Supp. 3d 806, 809 (N.D. Ill. 2018). During the meeting she violated the time limit for comments, threatened to continue to do so at every meeting, interrupted another speaker, and rushed towards the dais yelling "BOOO! COWARD!" at the council members. *Id.* The woman violated the time limit for comments on several previous occasions. *Id.* The court held that because she continued to violate the time limit, interrupted another speaker, and acted in a threatening manner by rushing forward, she disturbed the meeting. *Id.* at 811-12. Removing the woman for her disruption was content-neutral and did not violate the First Amendment. *Id.*

In *Surita v. Hyde*, a mayor barred the plaintiff from speaking during a city council meeting until the plaintiff apologized for "g[etting] in [the mayor's] face" at a rally a few days prior. *Surita,* 655 F.3d. at 871. The Seventh Circuit found that the mayor violated the plaintiff's First Amendment right because the speaker's prior actions did not actually disrupt the city council meeting, so barring his comment did not further a significant interest. *Id.* at 871-72.

If a member of the public acts disruptively, the consequence for the behavior must be proportional to the offense so that it is narrowly tailored towards the government's interest in maintaining order at the meeting. *See Ward v. Rock Against Racism*, 491 U.S. 781, 798-800 (1989) (explaining that the government's means should not be broader than necessary to achieve its interest). Depending on the extent of the disruption, it may be appropriate for a public official to cut the speaker off, remove the speaker, or prohibit the speaker from returning to meetings. *See Vega*, 388 F. Supp. 3d at 809 (banning the speaker until further notice was justified because the speaker repeatedly violated and threatened to continue to violate the time limit for comments at meetings).

APPLICATION

In Illinois, a regular public meeting is a designated public forum. Therefore, any rules established for the public comment period must be reasonable, narrowly tailored to a significant interest, and content-neutral. This standard of scrutiny protects the public's First Amendment rights. But, the First Amendment does not provide an unlimited right: speakers must not violate time limits or rules of order, cannot make comments that are unduly repetitious or irrelevant, or make comments or actions deemed threatening. A public body must permit all other comments because the OMA affords the public the right to address the governing body.

City of Surprise, Arizona

A compelling example of limiting freedom of speech occurred during a city council meeting in Surprise, Arizona.[iv] During the public comment portion of the meeting, Rebekah Massie criticized the City Attorney's salary increase. In the middle of her comments, the mayor stopped Massie and told her that she could not orally complain about city employees during the public comment period pursuant to the city's "Criticism Policy" which prohibited public comments that criticized City employees. [v] Massie continued her comments and was removed from the premises, arrested, and charged with trespassing. Following the heated confrontation, Massie sued the City of Surprise alleging that the city violated her First Amendment rights.

Applying Illinois law, the city's criticism policy, even though it was established and recorded as the OMA requires, would likely fail scrutiny. Prohibiting critical comments is a content-based restriction. Even if the lower level of scrutiny were to apply to the council meeting, the policy is not viewpoint-neutral because it only prohibits complaints and charges against City employees. Furthermore, it is unlikely that restricting all critical comments is narrowly tailored to the council's interests in efficiency and order as there are narrower and content-neutral ways to promote these interests. Finally, the council's action in removing Massie from the premises and citing her for trespassing is not a proportional response to her conduct because she was not violating any other rules of order or acting in a threatening manner.

Since the meeting, the City of Surprise repealed its criticism policy and a judge dismissed the city's case against Massie for trespassing, writing: "The Defendant should not have faced criminal prosecution once for expressing her political views."[vi]

RECOMMENDATIONS

To uphold the spirit of the OMA and the First Amendment, public bodies should be slow to restrict comments during their meetings, even when restrictions may be legally permissible. If the government uses its maximum authority to restrict speech, it could undermine a relationship of trust between the public and the governing body. In 2011, the legislature amended the OMA to add a guarantee that public attendees can address the government body. The right to speak does not limit comments to only positive ones: it permits comments that express frustration, criticism, and complaints. Likewise, the First Amendment protects angry and critical speech. It is through this type of speech that a democratic government hears the concerns of its community and can act accordingly to serve the public's best interests.

But First Amendment freedoms are not unlimited and subsequently, neither is the right to speak at public meetings under the OMA. A public body maintains some ability to restrict speech during its meetings. Illinois courts hold that a regular public meeting, like a city council meeting, is a designated public forum. In this type of forum, a public body may create content-neutral rules that are narrowly tailored to the government's interest in order, decorum, and efficiency during its meeting. When a speaker violates rules of order at a meeting, the public body may silence the speaker, remove the speaker from the meeting, and prohibit the speaker from returning to future meetings, depending on the extent and nature of the disruptive behavior.

Public bodies must formally adopt their meeting policies, record them in writing, and make them publicly available. Public bodies can create rules of order including requiring speakers to sign up to comment. This promotes efficiency and organization, while not restricting the opportunity to comment on any subject. Any sign-up should be as accessible as possible; for example, the sign-up should be available in-person and online before the meeting and should occur within a reasonable amount of time before the meeting. To promote efficiency, public bodies may establish reasonable time limits for each comment: three minutes is common throughout Illinois. If hosting a special meeting, the public body may go further and restrict comments to those germane to agenda items.

Next, meeting policies should provide for circumstances in which the government can act to the full extent of its authority to restrict speech. A policy should first codify the rules of order for the meeting, including public comment procedures and individual comment time limits. Next, the policy should warn that a speaker who acts disruptively and disregards rules of order may forfeit her right to comment. Finally, the policy should enumerate the progressive steps that the public body will take if disruptive behavior occurs during a meeting.

A public body should take a progressive approach in responding to disruptive behavior. It should give multiple warnings to speakers before silencing them or removing them. Also, it should only ban speakers who repeatedly disrupt meetings – not just one-time offenders. Even a short-term ban must be narrowly tailored to the interests in efficiency and order. Of course, in extreme cases of threatening behavior, the governing body can act immediately and remove speakers to protect public safety.

Being slow to restrict speech will also protect public bodies from lawsuits and liability. Circuits are split about whether a city council meeting is a designated or limited forum which may signal upcoming changes in the law. Currently, the courts in Illinois hold that a regular city council meeting is a designated public forum. Accordingly, rules and actions restricting speech are subject to higher scrutiny than they would be in a limited public forum. There is a possibility that in the future Illinois courts and the Seventh Circuit will follow the Eleventh Circuit and hold that meetings are limited public forums and subject to lower scrutiny. Notwithstanding this possibility, public bodies should be cautious and conservative in their restrictions on public comment to best protect themselves against lawsuits.

CONCLUSION

Under both federal and state law, the public's freedom to speak to its government is protected because the right to free speech is necessary for democracy. Open meetings require the government to be open to the public's voices, meaning that a public body must oftentimes endure critical, angry, and harsh speech from its community members. In order to provide sound legal advice to their clients, municipal attorneys need to understand how to properly balance the governmental interest in efficient and orderly public meetings against the public's right to freedom of speech – a right that merits protection because, in the words of former Supreme Court Justice Anthony Kennedy, "[t]he right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought." *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 253 (2002).

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[i] Jermont Terry, *Chaos Breaks Out at Dolton, Illinois Village Board Meeting with Mayor Under Fire*, CBS NEWS (June 4, 2024, 4:45AM), https://www.cbsnews.com/chicago/news/chaos-dolton-illinois-village-board-meeting/; Ben Bradley, *Dolton Meetings Devolve Into Chaos While Residents Decry Village Hall Lockdowns*, WGN9 (Last updated July 15, 2024, 8:26 AM), https://wgntv.com/news/wgn-investigates/wgn-investigates-dolton-village-hall-meeting-lockdowns/.

[ii] Adam Hayes, *What Are Sunshine Laws? Definition, Purpose, Examples*, INVESTOPEDIA (Sept. 13, 2023), https://www.investopedia.com/terms/s/sunshinelaws.asp#:~:text=Key%20Takeaways%20*%20Sunshine%20laws%20stipulate%20that,and%20the%20Freedom%20of%20Information%20Act%20(FOIA).

[iii] The OMA permits the Attorney General to mediate or resolve an alleged violation extrajudicially or issue a binding opinion after a review of the circumstances. 5 ILCS 120/3.5. Accordingly, the Attorney General has a powerful role in interpreting the OMA and determining its scope.

[iv] Courtney P. Willits, *City's "Criticism Policy" Faces Uphill Legal Challenge Under the First Amendment*, ELROD FRIEDMAN LLP (Oct. 28, 2024), https://www.elrodfriedman.com/news-and-insights/criticism-policy/.

[v] The policy states: "Oral communications during the City Council meeting may not be used to lodge charges or complaints against any employee of the City or members of the body, regardless of whether such person is identified in the presentation by name or by any other reference that tends to identify him/her. Any such charges or complaints should be submitted during normal business hours to the City Manager for appropriate action."

[vi] Jessica Johnson & FOX 10 Staff, *Surprise City Council Oks Repeal That Restricts Public Complaints Against City Employees at Meetings*, FOX 10 (Sept. 18, 2024, 9:31pm), https://www.fox10phoenix.com/news/surprise-city-council-oks-repeal-restricts-public-complaints-against-city-employees-meetings; Zach Buchanan, *Judge Dismisses Case Against Surprise Woman Arrested at Public Meeting*, PHOENIX NEW TIMES (Oct. 24, 2024), https://www.phoenixnewtimes.com/news/arizona-judge-dismisses-case-against-woman-arrested-at-public-meeting-20420107.

NUTS N BOLTS WORKSHOP SUMMARY
March 20, 2025 (12 – 1 pm)

MODERATOR: Frederick W. Keck, ILGL Director, KeckBrown, P.C., fred@keckbrown.com

The session focused on new cases impacting municipalities, and new/pending legislation, with specific discussions on recent FOIA cases, election-related cases, and cases involving video gaming activities.

More in-depth discussion focused on a recent FOIA case involving the release of unlocked versions of Microsoft Excel records. A member shared experience with a similar ongoing case wherein a municipality was claiming proprietary information in an Excel spreadsheet, and the group discusses potential arguments on both sides, as well as potential outcomes.

Fred Keck also presented and discussed a case from Cook County in which the Appellate Court recently ruled that including American flags on nomination petitions was acceptable. A member shared recent election experiences from his jurisdiction, where more than fifteen (15) election objections were filed, including residency challenges.

The session also included discussions of recent cases involving casino licensing, referendum authority for home rule municipalities, durational residency requirements for candidates, and conflicts of interest on electoral boards. Additionally, new cases were discussed pertaining to proper service requirements in election challenges and a firefighter's successful appeal for PSEBA benefits. Fred Keck also presented and discussed a new case in which a municipality was found to be not liable for a motorcyclist's injuries due to lack of notice of the hazardous condition.

The group also discussed the current state of video gaming terminals in municipalities, and the potential for legislative amendments to the current law. Fred Keck and another member discussed the outcome of a lawsuit involving video gaming activities and the imposition of a one penny push tax by the City of Waukegan. It was pointed out that there are currently twelve (12) lawsuits pending in Lake County wherein similar arguments are being made. The group discussed the challenges of collecting the push tax and the ongoing cases in both Lake and Cook counties.

Fred Keck also presented and discussed the grocery sales tax and non-home rule sales tax, noting that some local non-home rule municipalities have already passed these measures. Another member shared some thoughts on the issue, noting that some municipalities are not considering the 1% tax due to upcoming elections/political fallout.

Finally, the group discussed two newly proposed bills that could significantly impact municipalities. House Bill 1429 would prohibit local governments from enforcing policies against the homeless occupying public property. It was shared that Peoria has successfully reduced tent encampments by providing alternative housing, but that this proposed bill could impact that process. The group also discussed House Bill 1814 that purports to regulate "middle housing." A member noted that this bill aligned with the governor's push for more affordable housing.

NUTS N BOLTS WORKSHOP SUMMARY
April 17, 2025 (12 – 1 pm)

MODERATOR: Paul L. Stephanides, ILGL Director, Village Attorney, Village of Glen Ellyn, pstephanides@glenellyn.org

I. PARTICIPANT ISSUES

A. Cases

1. Village of Arlington Heights v. City of Rolling Meadows, 2025 IL 130461 (March 20, 2025) (guest presenter Kelsea Neal Nolot, Elrod Friedman LLP)

In this case, the Illinois Supreme Court ruled that the Illinois Department of Revenue (IDOR) has exclusive jurisdiction over disputes regarding sales tax revenue allocation between municipalities, specifically concerning a misallocation between the two named municipalities. This decision affirmed the trial court's dismissal of Arlington Heights' lawsuit against Rolling Meadows, as the court lacked subject-matter jurisdiction to hear the case.

The issue arose from a coding error at the IDOR that led to the misallocation of sales tax from a restaurant in Arlington Heights to Rolling Meadows. Arlington Heights noticed the error in March 2020 and notified IDOR, which corrected the coding error and reimbursed Arlington Heights. Rolling Meadows initially filed a motion to dismiss, arguing that the Circuit Court lacked subject matter jurisdiction over sales tax disputes. The First District Appellate Court reversed the Circuit Court decision, but the Illinois Supreme Court disagreed, establishing a bright line rule that the IDOR has exclusive jurisdiction over all tax matters, including business allocation disputes. The Supreme Court further elaborated that the legislature provided a comprehensive statutory scheme that governs tax collection, disbursement, and dispute resolution, and that it does not permit the trial court to fashion additional remedies beyond a 6-month look-back period.

Kelsea discussed the importance of municipalities reviewing tax reports diligently to identify and rectify errors as quickly as possible. She also mentioned the limited statutory remedy available. In response to questions, Kelsea clarified that the court's decision was based on the statutory scheme allowing for remedy, and the window for this had been missed.

2. Halpern v. Village of Spring Grove, 2025 IL App (2d) 240553-U (March 18, 2025) (guest presenter Jeff Stein, Wilmette Assistant Village Manager/Corporation Counsel)

This case involved the death of the plaintiffs' father, who was 93 years old, and the plaintiffs' belief that his death was due to natural causes. The responding officer and coroner, however, suspected suspicious circumstances. The family members were not allowed into the room where the plaintiffs' father had passed away during their investigation, which led to their complaint. The court ruled that the plaintiffs' allegations did not rise to the level of a cognizable claim.

3. Robinson v. City of Chicago, 2025 IL App (1st) 232174 - Corrected 04/07/25 (March 24, 2025 – corrected April 7, 2025) (guest presenter Patrick Hayes, City of Peoria Corporation Counsel)

In this case, the Appellate Court upheld the trial court's grant of summary judgment to the City of Chicago, upholding the City's designation of a historic district which was challenged on due process and equal protection grounds. The court held that the City's decision bore a rational relationship to preservation of historic properties.

4. City of Oakbrook Terrace v. Illinois Department of Transportation, 2025 IL App (3d) 230264-U (April 4, 2025)

The case involves the City of Oakbrook Terrace challenging the Illinois Department of Transportation's (IDOT) revocation of a permit for a red light camera system. The Appellate Court affirmed IDOT's decision, ruling that the permit was a privilege, not a vested property right, and that the city failed to comply with required reporting regarding the system. The court upheld IDOT's authority to enforce permit requirements for systems on state-owned roadways, rejecting the City's argument that it did not have to follow IDOT's rules after the installation.

B. Legislation

1. Grocery Tax (reminder) 65 ILCS 5/8-11-24. The applicable time to adopt an ordinance to implement a grocery tax was discussed considering the State's repeal effective January 1, 2026. A certified copy of such an ordinance must be submitted to the Illinois Department of Revenue (IDOR), postmarked prior to October 1, 2025, for the tax to be imposed by the IDOR beginning January 1, 2026. A discussion was held on various municipalities that have adopted a grocery tax ordinance or are considering it.

2. Low-Speed Electric Scooters 625 ILCS 4/1-140.11 and 625 ILCS 5/11- 1518 (Illinois

General Assembly - Full Text of Public Act 103-0899) A discussion was held on whether any municipalities are considering an ordinance to either allow or prohibit low-speed electric scooters and low-speed electric bicycles in their jurisdictions in light of Public Act 103-0899.

C. Participant Discussion Items

1. Executive Orders and Grants. A member inquired about what steps, if any communities are taking to identify any issues for federal grant eligibility and the residential Executive Orders on diversity, equity, and inclusion. This recently United States Environmental Protection Agency grant condition was discussed:

> Federal Anti-Discrimination Laws (Added 3/25/2025)
>
> By accepting this EPA financial assistance agreement, (A) the recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and (B) the recipient certifies that it does not operate any programs promoting Diversity, Equity and Inclusion that violate any applicable Federal anti-discrimination laws.

The group discussed the legal consequences of the recent Executive Orders related to Federal grant eligibility. The group discussed the need to identify current policies, programs, and ordinances that might be implicated by the orders and the risks of signing off on grant agreements which require compliance with the orders.

2. Release of closed session recordings. A member discussed the potential release of closed session recordings and the concerns over privacy issues with their release.

NUTS N BOLTS WORKSHOP SUMMARY

May 15, 2025 (12 – 1 pm)

MODERATOR: Frederick Stavins, ILGL Director, City Attorney (Retired), City of Champaign, stavinswork@gmail.com

Pope's Background and Baseball Fans

Fred Stavins led a casual discussion about the new Pope, revealing that Pope Leo XIV is a White Sox fan and attended Villanova University despite being close to Notre Dame.

Municipal Fiber Optic Rights Management

The discussion focused on how municipalities manage requests from fiber optic companies to utilize public rights-of-way. One member raised concerns about the authority to charge for regulatory costs under the Telecommunications Act and the Simplified Municipal Telecommunications Tax Act. Fred Stavins shared Champaign's approach of requiring companies to provide evidence of local service provision or sign an agreement with annual fees. The group discussed the challenges of verifying if companies are actually providing local services and paying taxes, as well as potential issues with directional boring damaging underground infrastructure. Contributors emphasized the importance of proper permitting, insurance requirements, and regular inspections during installation.

Glen Ellen Short-Term Rental Ban

It was reported that Glen Ellen adopted a short-term rental prohibition in April 2023, which bans rentals of 30 days or less across all zoning districts. The village is being sued by a homeowner for violation of due process and taking of property as well as free speech violations, as the ordinance prohibits advertising short-term rentals. Input was requested from other municipalities on similar ordinances and litigation experiences, noting that Naperville's ordinance was used as a reference. Fred Stavins suggested sharing the complaint on the Listserv for further review. It was clarified that the ordinance is not a complete prohibition as it allows rentals longer than 30 days. There is also the question of how amortization might impact the lawsuit.

Naming Rights Agreement Insights

Fred Stavins discussed the new Listserv's ability to attach files and mentioned the next topic, naming rights agreements. A member shared her experience with a naming rights agreement, indicating this included review of the agreement that she had received from Evanston, highlighting a clause that allows for the removal of a business' name if it negatively impacts the city's reputation. A member suggested sharing this agreement with Alli Aiston or posting it on the ILGL website. Another member recommended review of Joliet's naming rights agreements for a minor league baseball stadium, which has a robust

agreement with various sponsors over the years. Fred inquired about the Corn Crib stadium, and a member clarified it is not owned by the town but is within Normal. A member mentioned that Bill Veeck's grandson is now part owner of the team that plays in Joliet's stadium, along with Bill Murray.

HOA Disbanding and Maintenance Issues

The group discussed the issue of homeowners' associations (HOAs) disbanding or becoming inactive, leaving detention ponds and other common elements in disrepair. A member shared that some HOAs have estimated repair costs of up to $500,000 for detention ponds. Suggestions for addressing this problem include creating backup special service areas, requiring HOAs to submit annual reports, creating ordinances to prohibit disbanding, and including provisions in development agreements for joint liability of homeowners if the HOA disbands or becomes inactive. Another member suggested giving municipalities the right, but not the obligation, to maintain common elements at the homeowners' expense, with the ability to place liens on individual property if necessary.

Municipal Wireless Pricing Strategies

The group discussed pricing strategies for wireless providers deploying on municipal property. A member shared that his average monthly price is $4,000 with a 4% annual escalator, noting that providers often pay this rate if they want the location. Another member mentioned that Peoria has received substantial offers to convert cell tower leases to permanent easements, with one offer increasing from $1 million to $1.5 million after they mentioned hiring a consultant. A member cautioned against granting permanent easements, explaining that the amounts offered are typically recouped in about 18 years, resulting in a loss of 22 years of rental payments in a typical 40-year agreement.

Peoria Shooting Case: *Hernandez v. City of Peoria*, No. 23-2851 (April 21, 2025) 7th Circuit (ROVNER) (Affirmed C.D. Ill.).

Chrissie Kapustka presented a case from Peoria where officers pursued a suspect with 49 warrants, leading to a shooting where an officer killed a man who pointed a gun at another officer. The appellate court upheld the trial verdict in favor of the city and officers, noting issues with the plaintiff's attorney's refusal to bifurcate the case despite multiple judge recommendations, and the lack of a DNA expert witness. Chrissie highlighted two key takeaways: judges should be taken seriously when recommending case bifurcation, and formal written procedures are needed for officer-involved shooting investigations to prevent potential collusion.

Insurance Case: Starstone Insurance SE v. City of Chicago (April 2, 2025)

https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2025/D04-02/C:23-2712:J:Easterbrook:aut:T:fnOp:N:3354541:S:0

Bob Long presented a case summary involving Starstone Insurance and the City of Chicago, highlighting the importance of carefully reading insurance policies. The City recovered a portion of attorney fees paid to the plaintiff in the case because of the specific wording of the policy.

Upcoming Events

Fred reminded attendees to use the new Listserv for attaching documents and announced upcoming events, including a spring seminar on federalism and executive orders, and a labor and employment special interest group.

He also encouraged law firms with summer clerks to encourage those students to participate in the student writing competition.

ILGL Nuts n Bolts Workshop

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Please take a minute to mark your calendars:
July 17, 2025 — Brian Day
August 21, 2025 — Mike Santschi
September 18, 2025 — Jim Rhodes

If you have issues for discussion for July, please submit those to the moderator Brian Day at bday@normal.org and for August, please submit to the moderator Mike Santschi at msantschi@spesia-taylor.com.

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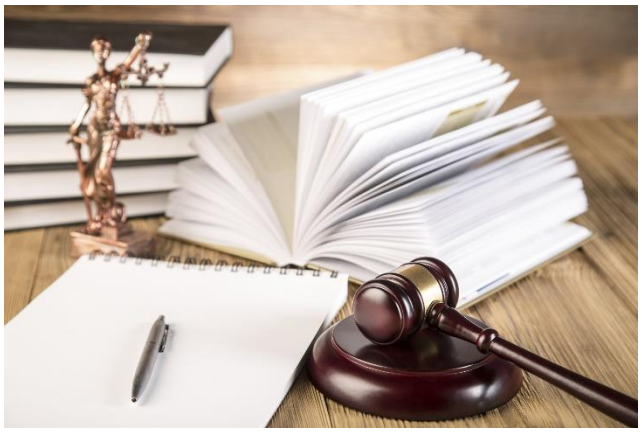

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