General Municipal Litigation Update

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Notes:_____

General Municipal Litigation Update

Cases Reported from September 15, 2017
Through April 12, 2018

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League of California Cities
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I. Land Use

***Weiss v. People ex rel. Dept. of Transportation*, 20 Cal.App.5th 1156 (2018)**

Holding: CCP Section 1260.040, which allows for motions on compensation issues in eminent domain cases, cannot be used to bring a motion to decide a liability issue in an inverse condemnation case.

Facts: Four separate property owners, alleging noise, viewshed, and other concerns relating to a freeway wall in San Clemente, filed an inverse condemnation action against CalTrans and the Orange County Transportation Authority. As the litigation proceeded, CalTrans and OCTA filed motions seeking to dismiss the inverse condemnation claim, on the ground that the Plaintiffs could not establish liability. Rather than seek dismissal through, for example, a Motion for Summary Judgment, CalTrans and OCTA filed the motion under CCP Section 1260.040, which allows for pretrial resolution of "issue[s] affecting the determination of compensation" in eminent domain cases. Although the Plaintiffs challenged the motions as being improper, the trial court considered the motion on the merits, and found Plaintiffs had not established liability in CalTrans and OCTA, dismissing the case. Plaintiffs appealed.

Analysis: The Court of Appeal reversed, finding CCP Section 1260.040 inapplicable to what is (a) a liability issue; (b) in an inverse condemnation case. The court disagreed with *Dina v. People ex rel. Dept. of Transportation*, 151 Cal.App.4th 1029 (2007) (viewing the statute as applicable to inverse condemnation actions). The court found that an approach like that approved in *Dina* would improperly "engraft, *ipse dixit*, a new pretrial procedure in the nature of a nonsuit motion to decide the issue of liability in inverse condemnation cases." The court further explained that it would not "import" Section 1260.040 into inverse condemnation cases, as such an approach is not supported by the text of the statute, the broader statutory framework, or legislative history.

***City of Vallejo v. NCORP4, Inc.*, 15 Cal.App.5th 1078 (2017)**

Holding: City entitled to injunction shutting down marijuana business for failure to pay marijuana tax.

Facts: In 2011, voters approved a city-sponsored ballot measure imposing a tax on marijuana businesses. Marijuana businesses were not permitted under zoning rules, but over 20 illegal marijuana businesses were still operating at the time. In 2015, when over 40 marijuana businesses were operating, the City Council established a procedure to allow existing marijuana businesses with "limited civil immunity," if they obtained tax certificates and paid taxes required under the 2011 ballot measure. The Defendant had paid a single quarterly payment of marijuana tax in 2012. The city then sued the Defendant for continued operation of an illegal marijuana business. The trial court ultimately denied the city's motion for a preliminary injunction. The city appealed.

Analysis: The Court of Appeal reversed, directing the trial court to enter a preliminary injunction. The court found that the city may lawfully preclude operation of a marijuana business that has a history of unpaid taxes, such as Defendant's business. The court noted that "past compliance shows a willingness to follow the law, which suggests future lawful behavior." The court also held that the *ex post facto* clauses of the California and U.S. Constitutions did not apply, as they only apply to criminal statutes punishing conduct prior to a law's enactment – and not to a local ordinance regulating marijuana businesses.

***Urgent Care Medical Services v. City of Pasadena*, ___ Cal.App.5th ___, 2018 WL 1149371 (2018)**

Holding: City entitled to injunction shutting down medical marijuana dispensaries, where city's permissive zoning scheme established dispensaries as a nuisance *per se*.

Facts: The city employs a permissive zoning system, where zoning prohibits any land use not specifically set forth in the zoning code. Medical marijuana

dispensaries are not permitted uses in the zoning code. The zoning code further provides that non-permitted uses are nuisances. Plaintiffs, the operators of several medical marijuana dispensaries, agreed that, in general, cities may prohibit dispensaries. However, Plaintiffs took the position that the zoning code did not sufficiently state that a dispensary is a nuisance, precluding a finding of nuisance *per se*. The city sought injunctions shutting down the Plaintiffs' dispensaries, which the trial court granted. Plaintiffs appealed.

Analysis: The Court of Appeal affirmed. The court noted that the city's permissive zoning structure is sufficient to establish a nuisance *per se*. This *UCMS* decision follows existing case law allowing cities to ban dispensaries, such as *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal.4th 729 (2013). The *UCMS* case is still helpful, however, as it is one of the few post-Proposition 64 cases to consider a local ban on dispensaries. The decision therefore clarifies that, while most marijuana activities may now be decriminalized through Proposition 64, local land use control over cannabis businesses remains intact.

***Teixeira v. County of Alameda,* 873 F.3d 670 (9th Cir. 2017) (*en banc*)**

Holding: County's denial of conditional use permit did not violate potential gun store customers' Second Amendment rights. Additionally, the Second Amendment does not confer a freestanding right of a business to sell firearms.

Facts: Plaintiffs applied for a conditional use permit to operate a gun store, which the Zoning Board granted. A local homeowners association challenged the decision to the County Board of Supervisors, which overturned the Zoning Board and revoked the CUP. Plaintiffs filed suit, alleging a series of constitutional violations. Of note, the Plaintiffs alleged the county prevented potential customers from buying a gun, and by prohibiting the Plaintiffs from selling firearms. The District Court granted the county's Motion to Dismiss, without leave to amend. Plaintiffs appealed. A three-judge panel of the Ninth Circuit, in relevant part, reversed the dismissal of the Second Amendment claims, remanding for further

proceedings. The Ninth Circuit granted *en banc* review to address the Second Amendment claims alone.

Analysis: The *en banc* panel, by a 9-2 vote, affirmed the District Court's dismissal. As to the Plaintiffs' potential customers, the panel found that gun buyers have no right to have a gun store in a particular location, so long as access to firearms is not meaningfully constrained. As to the Plaintiffs themselves (proposing to operate the gun store), after reviewing a detailed history of English and American law on the right to bear arms, the panel concluded that the acting of selling firearms is not part of the Second Amendment's right to bear arms. In other words, the panel held that the Second Amendment does not confer a "freestanding right" to sell firearms.

***Epona, LLC v. County of Ventura*, 876 F.3d 1214 (9th Cir. 2017)**

Holding: Requirement of conditional use permit for outdoor weddings, without sufficient guidance to permitting officials, and without a time limit to issue a permit, violates the First Amendment.

Facts: A county ordinance provided that, to hold a temporary outdoor event in agriculturally-zoned property, a conditional use permit is required. The CUP scheme provides that a permit "shall" issue if relevant standards are satisfied. Here, the Plaintiff, who owned a 40-acre property, created a garden area and wished to rent out for wedding ceremonies. Plaintiff applied for a CUP to conduct up to 60 temporary outdoor events per year, including weddings. The Planning Commission denied the application. The County Board of Supervisors split its vote, which had the effect of affirming the denial. Plaintiff then filed suit, alleging, among other things, a violation of the First Amendment. The District Court granted the county's Motion to Dismiss, and the Plaintiff appealed.

Analysis: The Ninth Circuit reversed, in relevant part, finding that the ordinance violates the First Amendment. First, the ordinance gives permitting officials insufficient guidance in the area of five separate conditions, such as consistency with the general plan and various compatibility requirements. The court held that

these conditions were not "definite and specific." Second, the ordinance does not identify a time period within which a CUP application must be decided. The court found that the two aspects of the ordinance, taken together, confer unbridled discretion on permitting officials in violation of the First Amendment.

II. Civil Rights and Torts

***District of Columbia v. Wesby*, ___ U.S. ___ 138 S.Ct. 577 (2018)**

Holding: Officers had probable cause to arrest individuals for unlawful entry at a raucous party at what appeared to be a vacant house, and officers would be entitled to qualified immunity even if probable cause were lacking, under the facts.

Facts: Officers responded to a complaint of loud music and illegal activities at a vacant house. When the officers arrived, the house looked like a vacant property, and did not have furniture downstairs, other than a few chairs. The officers observed a makeshift strip club operating in the living room, and in a bedroom, the officers observed a naked woman and several men, in the room with a bare mattress on the floor. 21 people inside the house did not offer a clear or consistent story of why they were at the house. Two women said a woman named "Peaches" or "Tasty" was renting the house, and gave them permission to be there. The officers were not able to get Peaches' real name, but two officers separately called Peaches on her phone, and Peaches refused to come to the house. Peaches finally admitted to officers that she did not have permission to use the house. The 21 partygoers were arrested for unlawful entry, but the charges were ultimately dropped. 16 of the 21 partygoers filed suit, alleging false arrest under the Fourth Amendment. The District Court granted the partygoers' Motion for Summary Judgment, and, at trial, a jury awarded the partygoers $680,000 in damages and over $1 million in fees. The District of Columbia Circuit affirmed, and the U.S. Supreme Court granted certiorari.

Analysis: The Supreme Court reversed, finding the officers had probable cause to arrest the partygoers. The officers made an "entirely reasonable inference" that the

partygoers were making use of the vacant house for a party, noting that "[m]ost homeowners do not live in near-barren houses." The court also emphasized that a probable cause analysis requires courts to look at "the whole picture," which suggested criminal activity – not individual facts, standing alone. Additionally, the court found that, even if the officers lacked probable cause, they would be entitled to qualified immunity. The court noted there was no controlling case establishing a lack of probable cause here – and, in fact, "several precedents suggest[] the opposite."

***Kisela v. Hughes*, ___ U.S. ___, 138 S.Ct. 1148 (2018) (*per curiam*)**

Holding: Police officer entitled to qualified immunity where suspect was armed with a large knife, was within striking distance of her roommate, ignored officers' orders to drop the knife, and the incident unfolded in less than one minute.

Facts: Police officers responded to a 911 call that a woman was hacking a tree with a kitchen knife. Plaintiff emerged from the house with a large kitchen knife, and she matched the description of the woman who was seen hacking the tree. Plaintiff walked toward her roommate and stopped, no more than six feet away from her. The officers told Plaintiff to drop the knife at least twice. Plaintiff's roommate then said "take it easy" to Plaintiff and the officers, and Plaintiff appeared calm, albeit not responsive. One officer then shot Plaintiff four times, and officers then handcuffed Plaintiff, who suffered non-life-threatening injuries. The entire incident lasted less than one minute. After the fact, it was learned that Plaintiff, in an effort to seek attention, has "episodes" where she acts inappropriately, such as threatening to kill her roommate's dog, Bunny. Plaintiff filed suit, alleging that the officer used excessive force in violation of the Fourth Amendment. The District Court granted summary judgment in favor of the officer. The Ninth Circuit reversed the grant of summary judgment. Plaintiff then petitioned the U.S. Supreme Court for certiorari.

Analysis: The Supreme Court granted certiorari, and issued a 7-2 *per curiam* opinion. The court found the officer was entitled to qualified immunity. The officer had "mere seconds" to assess the Plaintiff's potential danger to the

roommate. Plaintiff was just seen hacking a tree with a kitchen knife, and was erratic enough to cause a bystander to call 911. Plaintiff also failed to acknowledge at least two commands to drop the knife. Officers are not required to anticipate court decisions that do not yet exist, "where the requirements of the Fourth Amendment are far from obvious." Here, the court found that a reasonable officer could have believed that Plaintiff posed an immediate threat to her roommate.

***Thompson v. Rahr*, 885 F.3d 582 (9th Cir. 2018)**

Holding: Deputy sheriff entitled to qualified immunity where he pointed his gun and threatened to kill Plaintiff, who was not handcuffed but was complying, during a felony arrest arising from a nighttime traffic stop.

Facts: A deputy sheriff pulled over Plaintiff for traffic violations. When the deputy ran Plaintiff's information, he discovered Plaintiff had a suspended driver's license, that he was a convicted felon, and his most recent felony was for possessing a firearm. The deputy then decided to arrest the Plaintiff, and asked Plaintiff to exit his vehicle. Plaintiff then sat on the bumper of the patrol car, while the deputy waited for backup. After backup arrived, the deputy then saw a loaded gun in an open garbage bag in the rear floorboard of the Plaintiff's vehicle. Plaintiff, who was not yet handcuffed, alleged that the deputy pointed his gun at Plaintiff's head, demanded Plaintiff surrender, and threatened to kill him if he did not. Plaintiff complied and was arrested for being a felon in possession of a firearm. A state court later dismissed the criminal charges against Plaintiff. Plaintiff filed suit, alleging that the deputy used excessive force in violation of the Fourth Amendment, in pointing his gun at Plaintiff, and threatening to kill him. The District Court dismissed the Plaintiff's claims through a Motion for Summary Judgment, finding the deputy was entitled to qualified immunity. Plaintiff appealed.

Analysis: The Ninth Circuit affirmed. At the outset, the court noted that, accepting Plaintiff's allegations at the summary judgment stage, it was objectively unreasonable for the deputy to point his gun and threatened to kill Plaintiff. The

Plaintiff was under control, and he was not in close proximity to an accessible weapon. However, the law was not clearly established that every reasonable officer would have known they were violating the Constitution. The deputy was conducting a nighttime felony arrest arising from a traffic stop, a gun was found at the scene, Plaintiff did have a prior felony firearm conviction, and Plaintiff was taller and heavier than the deputy.

***Rodriguez v. Dept. of Transportation*, ___ Cal.App.5th ___, 2018 WL 1514987 (2018)**

Holding: "Discretionary approval" element of design immunity is satisfied even where engineers did not consider the safety feature the Plaintiff asserts would have prevented injury.

Facts: Plaintiff was a passenger in a pickup truck on a state highway. The truck veered onto the shoulder and off the road to the right, then struck the end of a guardrail, went over an irrigation ditch, and came to rest, catching fire with the occupants inside. Another passenger died, and Plaintiff and the driver were injured. Plaintiff filed suit against Caltrans, alleging a dangerous condition of public property cause of action. Plaintiff asserted that the guardrail was inadequate, and the roadway did not have warning features, such as a "rumble strip," for drivers who veer onto the shoulder. Caltrans moved for summary judgment, asserting design immunity, supported by design plans from 1992, 2002, and 2011. Plaintiff did not dispute that Caltrans engineers had discretionary authority to approve the plans. However, more specifically, Plaintiff pointed out that Caltrans engineers did not even consider rumble strips – and that they therefore did not exercise their discretion, in that regard, to be entitled to design immunity. The trial court rejected Plaintiff's argument, and granted summary judgment for Caltrans, finding design immunity applied. Plaintiff appealed.

Analysis: The Court of Appeal affirmed. The court noted that Caltrans failure to consider rumble strips is irrelevant to discretionary approval element of design immunity. The court found that Plaintiff's argument over Caltrans' failure to consider rumble strips was "too narrow," and the wisdom of Caltrans design

decision is not reviewed through the discretionary approval element of design immunity. Here, the plans were approved by an engineer with discretionary authority. And the plans included the alleged dangerous feature – a paved highway without rumble strips. Therefore, Caltrans proved it made a decision – to build the road with a bare shoulder – which satisfies the discretionary approval element.

III. Pensions

***Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn.*, 19 Cal.App.5th 61 (2018) (rev. granted, 3/28/18)**

Holding: Impairment of vested rights of public employees may only be accomplished through "compelling evidence" that the impairment bears a material relation to the successful operation of a pension system. Rising pension costs alone are generally insufficient.

Facts: In 2012, Governor Brown signed into law the Public Employee Pension Reform Act of 2013 and related legislation to address a variety of pension issues. In particular, PEPRA modified the calculation of "compensation earnable" under Government Code Section 31461. Various employees and unions in three counties challenged the constitutionality of PEPRA, as applied to employees hired prior to PEPRA's 2013 effective date (legacy members). In a consolidated action, the trial court ruled on a series of legal issues, and a number of parties appealed.

Analysis: In relevant part, the Court of Appeal concluded that PEPRA only modified the County Employees Retirement Law of 1937 (and did not change it) relating to two of the four challenged types of compensation (on-call and standby pay). The court then sought to ascertain whether the changes to these two types of compensation were a reasonable modification of existing law, or whether they impaired the vested rights of legacy members. However, since the trial court did look at this issue, the Court of Appeal remanded for consideration of whether there is "compelling evidence" that the impairments bear a material relation to the successful operation of a pension system. The court also noted that, generally

speaking, rising pension costs alone are not sufficient to impair vested rights. In requiring a more individualized analysis of an impairment, the court declined to follow the more generalized approach suggested in *Marin Assn. of Public Employees v. Marin County Employees' Retirement Assn.*, 2 Cal.App.5th 674 (2016) (rev. granted 11/22/16).

IV. Propositions 218/26

City of San Buenaventura v. United Water Conservation District, 3 Cal.5th 1191 (2017)

Holding: Groundwater pumping charges are not property-related charges, and are therefore not subject to Proposition 218.

Facts: The city filed suit to challenge a series of groundwater pumping charges imposed by United Water for their conservation and management services to augment groundwater supplies. The charges are assessed by virtue of Water Code Section 75594, which requires such fees for non-agricultural use of groundwater to be at least three times the fee imposed on agricultural users. However, the city argued the charges violate, among other things, Proposition 218. The trial court ruled in the city's favor, ordering refunds of over $1.3 million for a two-year period, plus interest. The Court of Appeal reversed, ruling in favor of United Water, and the California Supreme Court granted review.

Analysis: The Supreme Court affirmed, in part, and reversed, in part. The court held that groundwater pumping charges are not property-related charges, and fall outside of article XIII D of the California Constitution, added by Proposition 218. Rather, the charges are only imposed on the city because the city extracts groundwater that it manages for the benefit of the public. The court then found that Proposition 26 imposes two separate requirements for (non-tax) fees; namely, that (a) the fee is justified by the cost of service; and (b) the payor of the fee is charged a reasonable relationship to the burdens on or the benefits received from

the service. The court held the Court of Appeal failed to consider the latter Proposition 26 requirement, and remanded for further proceedings on that issue.

V. Contracts

***San Diegans for Open Government v. Public Facilities Financing Authority of the City of San Diego*, 16 Cal.App.5th 1273 (2017) (rev. granted, 1/24/18)**

Holding: Allegation of interest on behalf of taxpayer who is a city resident is sufficient to confer organizational interest standing to challenge city contract under Government Code Section 1090.

Facts: The city and its public financing authority adopted a resolution authorizing the issuance of bonds to refund and refinance the remaining amount owed by the city on bonds used to construct the Petco Park baseball stadium. Thereafter, Plaintiff, a non-profit allegedly comprised of taxpayers in the city filed suit, challenging the validity of the bonds. Plaintiff alleged that one or more members of the financing team that participated in the bond transaction had a financial interest in the sale of bonds, in violation of Government Code Section 1090. Prior to trial starting, trial court determined, as a matter of law, that Plaintiff lacked standing to bring a Section 1090 claim. The court concluded Plaintiff was not a "party" to the bond transaction, as that term is defined in Government Code Section 1092. Plaintiff appealed.

Analysis: The Court of Appeal reversed. The court concluded that Section 1092's reference to "any party" means any litigant with an interest in the contract sufficient to support standing. To that end, the court held that Plaintiff had standing, through its interest on behalf of a taxpayer who was a resident of the city. However, the court noted that recent cases have reached "somewhat conflicting conclusions" in this area of standing to bring a Section 1090 action.

***West Coast Air Conditioning Co., Inc. v. California Department of Corrections and Rehabilitation*, 21 Cal.App.5th 453 (2018)**

Holding: Unsuccessful bidder for public works contract was entitled to award of bid preparation costs under promissory estoppel theory, where contract award was set aside by trial court.

Facts: CDCR sought bids for a public works contract, and obtained bids from Hensel Phelps for $88 million, from Plaintiff for $98 million, and from four other bidders. Both HP's and Plaintiff's bids were less than CDCR's engineer's estimate of $103 million. CDCR awarded the contract to HP, and Plaintiff filed suit. Plaintiff alleged that HP's bid had myriad defects, including mathematical errors, that materially affected HP's bid price, and that CDCR, as a matter of law, was prevented from waiving the defects. The trial court granted Plaintiff's motion to set aside CDCR's award to HP. After trial, the court awarded Plaintiff $250,000 for its bid preparation costs against CDCR, under the equitable theory of promissory estoppel. CDCR appealed.

Analysis: The Court of Appeal affirmed the award of bid preparation costs to Plaintiff under promissory estoppel. A bidder deprived of a public contract because of a "misaward" has neither a tort nor a contract action, but rather, must rely on promissory estoppel. Here, the court concluded that it would be inadequate to just set aside CDCR's award of the HP contract, without awarding either (a) the contract to Plaintiff, who was the lowest responsive bidder; or (b) damages equal to Plaintiff's bid preparation costs. Here, the court noted it was "quite clear" that neither party is interested in a contractual relationship with the other, so it concluded the trial court properly awarded the Plaintiff its bid preparation costs.

VI. Elections

***San Bruno Committee for Economic Justice v. City of San Bruno*, 15 Cal.App.5th 524 (2017)**

Holding: Resolution authorizing sale of property, which implemented prior legislative decisions, is an administrative act, not subject to referendum.

Facts: In 2001, the city certified an environmental impact report approving a specific plan for a former U.S. Naval facility site, calling for a hotel and retail space. In 2012, the city purchased the site for $1.4 million. The city then selected a hotel developer through a request-for-proposal process. In 2016, the City Council adopted a resolution authorizing the execution of a $3.9 million purchase and sale agreement where a hotel developer would purchase the property. The city paid no subsidy or public funds to the developer. Plaintiffs filed signatures supporting a referendum petition challenging the 2016 resolution. The city declined to process the referendum petition. The city took the position that the 2016 resolution was not a legislative act, and therefore not subject to a referendum. Plaintiffs filed a petition for writ of mandate, which the trial court denied. Plaintiffs appealed.

Analysis: The Court of Appeal affirmed. The power of referendum applies only to legislative acts – not to executive or administrative acts. Here, the court noted that the resolutions were not done in the exercise of legislative power. Rather, the selling of the property implemented prior legislative decisions – making the resolutions administrative, not legislative, acts. The agreement authorized by the 2016 resolution merely pursues an existing legislative plan. It mirrors the development criteria discussed in the specific plan. The city had already purchased the property back in 2012. The site would be developed by a hotel developer already selected through an RFP process. The city was selling land to a private developer, and no subsidy was provided. The hotel developer would be engaging in a purely private business.

***Save Lafayette v. City of Lafayette*, 20 Cal.App.5th 657 (2018)**

Holding: Voters could validly utilize the power of referendum to reject zoning ordinance, even if successful referendum would make a parcel's zoning designation inconsistent with previously approved general plan amendments.

Facts: The City Council amended its general plan to allow for a residential development in an area formerly designated as administrative and office space. One month later, the City Council approved an ordinance changing the

zoning designation of the area to residential, consistent with the (previously-approved) general plan amendment. Plaintiffs filed a referendum challenging the approval of the zoning ordinance. The City Council refused to repeal the ordinance or to place it on the ballot. The city argued that a repeal of the ordinance would create an inconsistency between the zoning designation and the general plan. Plaintiffs filed a petition for writ of mandate, which the trial court denied. Plaintiffs appealed.

Analysis: The Court of Appeal reversed, finding the referendum should have been submitted to the voters. The court noted that the referendum does not seek to enact a new or different zoning ordinance. The act of putting a referendum on the ballot merely maintains the status quo – which, here, is a zoning ordinance that was inconsistent at the time the City Council amended the general plan. In this regard, the court followed *City of Morgan Hill v. Bushey*, 12 Cal.App.5th 34 (2017) (rev. granted 8/23/17). The court further stressed the need for cities to amend its general plan and any conflicting zoning ordinances concurrently, to avoid the result of creating an inconsistent zoning ordinance.

VII. Public Records

Labor & Workforce Development Agency v. Superior Court, 19 Cal.App.5th 12 (2018)

Holding: Index of responsive documents is exempt from disclosure under Public Records Act through deliberative process privilege. Additionally, certain materials confidentially provided by Legislative Counsel to client state agency are also exempt from disclosure, under the work product privilege.

Facts: The Legislature passed AB 1513 in 2015, which revised rules governing the payment of piece-rate compensation, building on two 2013 appellate court decisions. In response to the 2013 court decisions, the Governor directed the Labor & Workforce Development Agency to take the lead in drafting legislation to address the court decisions. The Agency also sought confidential input from key

business and labor stakeholders. Two agricultural businesses made public records requests to the Agency, essentially seeking documents that would include who communicated confidentially with the Agency, which took the lead in formulating the policies enacted in AB 1513. After a series of hearings and orders, the trial court ordered the Agency to produce (a) an index of responsive documents that identifies the author, recipient, and general subject matter; and (b) material that the Agency contended was subject to the attorney work product privilege. The Agency petitioned the Court of Appeal for review.

Analysis: The Court of Appeal issued a writ of mandate, ordering the trial court to vacate its prior orders. The court found that revealing even the identities of the persons whom the Agency confidentially communicated with in gathering information to draft AB 1513, would run afoul of the deliberative process privilege. Such disclosure would "tend to dissuade stakeholders on issues subject to future legislative efforts from commenting frankly, or at all, on matter which only varying viewpoints can provide a more complete picture." Additionally, the court found the Legislative Counsel's attorney-client relationship with the Governor extends to the Agency, which acted at the Governor's direction in formulating AB 1513. Here, the Legislative Counsel confidentially sent drafts of AB 1513, legal opinions, and recommendations to the Agency. The court found the work product privilege to have not been waived – as the Agency was the client for receiving drafting assistance and advice on AB 1513.