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2019-20 Survey of Local Government Law

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Campaigns and Elections





Campaigns and Elections

- Does pandemic justify petitioning via email?
 - *Ritchie v. Polis*
- Pandemic doesn't justify deficient petition signatures
 - *Griswold v. Ferrigno Warren*
- Devolution of responsibility to process FCPA complaints
 - *Day v. Chase for Colorado*
- Petitioning guidelines and equitable estoppel
 - *Bedrooms Are for People v. City of Boulder*



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Employment Law





Employment Law

- Title VII forbids discrimination on the basis of sexual orientation
 - *Bostock v. Clayton County*
- New exposure for damage claims under CADA?
 - *Williams v. Elder*
- Terminated employee denied two bites of the apple
 - *Gale v. City and County of Denver*



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Firearms





Firearms

- 2013 ban on high capacity magazines upheld
 - *Rocky Mountain Gun Owners v. Polis*
- Tenth Circuit abstains on test of Boulder assault weapon ordinance
 - *Caldara v. City of Boulder*
- Federal ban on “bump stocks” pending in Tenth Circuit
 - *Aposhian v. Barr*



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First Amendment





First Amendment

- “Blaine Amendments” violated Free Exercise Clause
 - *Espinoza v. Montana Dept. of Revenue*
- How to regulate solicitation from medians
 - *Evans v. City of Sandy*
- Curfew on door-to-door solicitation struck down
 - *Aptive Environmental v. Town of Castle Rock*



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Governmental Immunity Act





Governmental Immunity Act

- Conscious disregard of a health danger to prisoner could be “willful and wanton”
 - *Duke v. Gunnison County Sheriffs Office*
- Private partner in public project can enjoy tort immunity
 - *Martinez v. CSG Redevelopment Partners, LLP*
- CGIA doesn’t bar enforcement of environmental regulations
 - *Board of County Commissioners of the County of La Plata v. Colorado Department of Public Health and Environment*



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Marijuana





Marijuana

- IRS can access MED records while investigating dubious MJ businesses
 - *Standing Akimbo LLC v. U.S.*
- MJ businesses must comply with federal regulatory laws
 - *Kenney v. Helix TCS, Inc.*
- Presumptive right to use MMJ while on probation
 - *Walton v. People*



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Municipal Court Prosecution





Municipal Court Prosecution

- Burden on prosecutor to prove defendant is able to pay restitution
 - *Williams v. People*
- Sealing of municipal domestic violence convictions still possible
 - *Huffman v. City and County of Denver*
- New interpretation of Colo. traffic laws
 - Eluding
 - Wheelchairs and crosswalks
 - Traffic circles and turn signals
 - Broken tail light



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Open Meetings/Open Records



ParadiseCanvasPrints.com



Open Meetings/Open Records

- State agency not subject to Open Meetings Law
 - *Doe v. Colorado Dept. of Public Health and Environment*
- Under the Colorado Open Meetings Law, motion to go into executive session must specifically identify topic of the session.
 - *Guy v. Whitsitt*, 2020 WL 3088844 (Colo. App. June 11, 2020)



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Police Civil Liability





Police Civil Liability

- Authority to impound vehicles under “community caretaking doctrine”
 - *People v. Allen*
- Targeted video surveillance may violate the Fourth Amendment
 - *People v. Allen*
- Damage to property during police action
 - *Lech v. Jackson*
- Trends in “qualified immunity”



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Public Works





Public Works

- Liability for defects and deficiencies of sidewalks under the ADA
 - Each day a sidewalk stays out of compliance constitutes a “repeated violation”
 - On February 21, federal magistrate judge rules that a sidewalk system is a “program or service” under ADA Title II
 - March 30, city settles the case without further appeal
 - *Hamer v. City of Trinidad*



Public Works/Metro Districts

- Should metro districts be able to tax property that derives no benefit from the district?
 - *See Landmark Towers Assn. v. UMB Bank (2018)*
- Districts in Weld County derive millions of dollars from oil and gas
- Owners of mineral estate can be included in metro districts without their consent
 - *Bill Barrett Corp. v. Lembke*



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Taxation and Finance





Taxation and Finance

- SOS fees survive TABOR challenge
 - Griswold v. National Federation of Independent Businesses
- Digital motion pictures subject to municipal use tax
 - American Multi-Cinema Inc. v. City of Aurora
- Taxation of vacant residential lots in the mountains: the Gallagher effect
 - Mook v. BOCC; et al



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Zoning and Land Use





Zoning and Land Use

- **This year's slate of "wrongful approval" cases**
 - "SLAPP Suit" over Cordillera drug rehab facility
 - *CSMN Investments v. Cordillera Metropolitan District*
 - Gravity coaster in Estes Park
 - *Yakutat Land Corp. v. Langer*
 - Organic chicken farm in Boulder County
 - *Hajek v. Board of County Commissioners*



Takings and Eminent Domain

- No need to compensate for restrictive covenants
 - *Decker v. Town of Monument*
- Consequence of abandonment of eminent domain action
 - *Aurora Public School District v. Stapleton Gateway, LLC*



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Miscellany





Miscellany

- Sex offender registration as an Eighth Amendment violation?
 - *People in the interest of T.B.; Millard v. Camper*
- Local governments suing the oil industry for nuisance damages
 - Board of County Commissioners of Boulder County v. Suncor Corp.
- Criminal dimensions of absconding with public property
 - *People v. Barry*



Miscellany

- IEC jurisdiction over home rule cities still undetermined
 - *Dunafon v. Jones*
- Colorado General Assembly allowed to split their 120-day session into non-consecutive days
 - In re Interrogatory on House Joint Resolution 20-1006



CML Amicus Activity in 2019-20

- Thirteen cases active in the past year
- Of cases decided in the last year, success rate of 6-3 for municipalities
- Four cases pending currently



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Questions?

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