

# 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



# **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



## **Firearms**



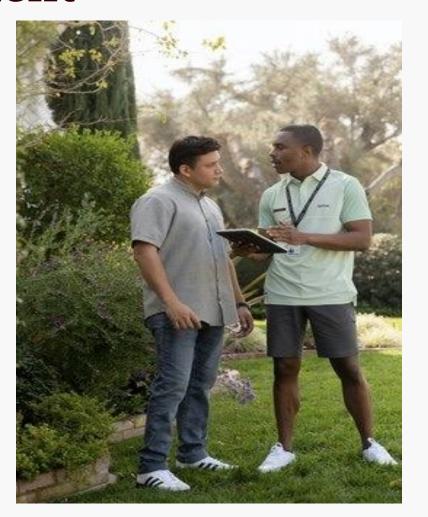


#### **Firearms**

- 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



#### **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



## **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



# Marijuana



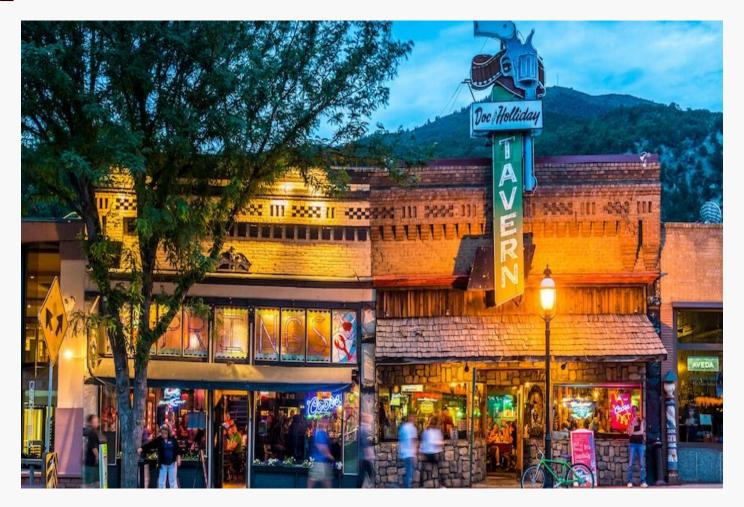


## Marijuana

- 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



# **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



## Open Meetings/Open Records



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## 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)



# **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"



## **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



## **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



## **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



# **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



