



COLORADO
MUNICIPAL
LEAGUE

303 831 6411 / 866 578 0936 

303 860 8175 

www.cml.org 

1144 Sherman St., Denver, CO 80203 

2024-2025 Survey of Local Government Law

October 10, 2025

Robert Sheesley, General Counsel
Colorado Municipal League
rsheesley@cml.org

This outline contains a review of selected published appellate decisions of interest to municipal attorneys from the Colorado Supreme Court and Court of Appeals, the Tenth Circuit Court of Appeals, and the United States Supreme Court, reported from September 17, 2024, to October 7, 2025.

1. Contracts
2. Criminal Justice
3. Employment
4. First Amendment
5. Governmental Immunity & Liability
6. Open Meetings Law
7. Open Records
8. Police Civil Liability
9. Special Districts
10. Taxation and Finance
11. Zoning & Land Use
12. Miscellaneous

1. Contracts

City successfully recovers against software vendor's fraudulent proposal

City of Fort Collins v. Open International, 146 F.4th 929 (10th Cir. 2025)

The City of Fort Collins prevailed at trial against the vendor of utility billing software for the vendor's fraudulent misrepresentations in its proposal, which was incorporated into the contract. The Tenth Circuit Court of Appeals affirmed. The court held that the economic loss rule didn't bar the city's fraudulent inducement tort claim arising from precontractual representations; that claim existed independently of the city's breach of contract claim. The court further held that the contract's merger clause and warranty limitations did not affect the duties that arose independently of the contract. Further, the city didn't waive its right to rescind the contract based on its decision to continue the contract before finally suing; the city's knowledge of the software's deficiency was different than its knowledge of the vendor's awareness that its representations were fraudulent.

Economic loss rule: no willful and wanton exception

Mid-Century Insurance Co. v. HIVE Construction, Inc., 567 P.3d 153 (Colo. 2025)

A contractor was found liable for negligence in its construction of a restaurant that resulted in a fire. The trial court held that the economic loss rule did not apply to bar the tort claim because of alleged willful and wanton conduct. The Colorado Supreme Court reversed and held that the economic loss rule did not contain an exception for willful and wanton conduct.

Fees on fees allowed under fee-shifting provision

1046 Munras Properties, L.P. v. Kabod Coffee, --- P.3d --- (Colo. App. Aug. 7, 2024)

In the first published opinion in Colorado on this issue, the Colorado Court of Appeals held that a fee-shifting provision in a contract included fees incurred in seeking fees. The provision in question (for any action to enforce or interpret the agreement's provisions) was broad enough to include seeking fees for litigating the underlying contract claims.

Integration clause applies to related agreements only

LTCPRO, LLC v. Johnson, 564 P.3d 663 (Colo. App. 2024)

The Colorado Court of Appeals applied the rule of the Restatement (Second) of Contracts that an integration clause supersedes prior agreements only to the extent they are within the scope of the later agreement. The court remanded the action to review the terms of a noncompete agreement and later employment-related agreement with an integration clause.

2. Criminal Justice

Reasonable suspicion continued through frisking of burglary suspect

U.S. v. Campbell, --- F.4th --- (10th Cir. Sept. 30, 2025)

Immediately responding to a 911 call about a person stealing items from a back porch, an officer interacted with a man matching the description in an alley who asserted he lived at the address and made no attempt to flee. The officer noticed a magazine in the man's waistband and placed the man in his car while trying to verify his identity, finding a firearm during a frisk. The 10th Circuit Court of Appeals held that the officer had reasonable suspicion to detain the defendant at the outset and that the reasonable suspicion did not dissipate given the defendant's lack of cooperation and the length of time needed to confirm the man's identity.

No warrantless detention of vehicle driver after arrest of other occupant complete

U.S. v. Tyler, 139 F.4th 1212 (10th Cir. 2025)

While arresting a person who had an outstanding warrant, officers detained the driver of the car she was riding in for over 15 minutes in the back of the car. During that time, officers searched the vehicle and discovered incriminating evidence. The 10th Circuit Court of Appeals held that the warrantless detention of the driver was not justified because the other arrest was completed by handcuffing and confinement even though she had not been transported from the scene.

No expectation of privacy in images uploaded to reportable chatroom

U.S. v. Rosenschein, 136 F.4th 1247 (10th Cir. 2025)

A chatroom service identified that child pornography had been uploaded and, as required by federal law, notified the National Center for Missing and Exploited Children (NCMEC). After NCMEC identified the IP address associated with the uploads, police obtained a search warrant and discovered 21,000 files of child pornography on the defendant's devices. The Tenth Circuit Court of Appeals held that the warrantless search of files to a chatroom was not invalid. The chatroom service was not acting as an agent of the government and, even if it had been, the defendant had no expectation of privacy in files uploaded to strangers in a reportable online chatroom.

Vehicle search for relevant evidence incident to arrest justified

U.S. v. Pinder, 121 F.4th 1367 (10th Cir. 2024)

During a speeding stop, an officer arrested a driver for providing false identification (under Utah law) and discovered illegal drugs during a subsequent search of the car when looking for the driver's license. Applying *Arizona v. Gant*, 556 U.S. 332 (2009), the Tenth Circuit Court of Appeals held that the search incident to arrest was valid because of the officer's reasonable belief that evidence of the crime would be found in the car, despite having already confirmed the driver's real identity at the time of the search. The court

declined to apply a standard articulated by the Colorado Supreme Court in *People v. Chamberlain*, 229 P.3d 1054 (Colo. 2010) that would require something more to justify the search.

No expectation of privacy for trespasser in storage unit

U.S. v. Lowe, 117 F.4th 1253 (10th Cir. 2024)

A parolee, while in jail on an unrelated charge, called a friend to ask him to “clean out” a place where he kept his “extra tools.” At the time, officers had a tip that the man stored drugs and weapons in a storage locker in his apartment building that he previously denied having and had not rented. The Tenth Circuit Court of Appeals held that the parolee had no reasonable expectation of privacy in the unit because he had no lawful or legitimate use or possession of the locker.

No restitution for “buy money”

People v. Hollis, --- P.3d --- (Colo. Sept. 8, 2025)

The Colorado Supreme Court determined that restitution was not available for unrecovered “buy money” was not “money advanced by law enforcement agencies” under C.R.S. § 18-1.3-602 (3)(a) or “extraordinary direct public and all private investigative costs” under C.R.S. § 18-1.3-602(3)(b).

Virtual option doesn’t make courtroom closure “nontrivial”

Rios v. People, 572 P.3d 113 (Colo. 2025)

During the COVID-19 pandemic, a district court closed the courtroom so that only trial participants could attend but the public could only view via WebEx. The Colorado Supreme Court confirmed that the 6th Amendment right to a public trial means that the public has a reasonable opportunity to be physically present. Because the closure excluded the public, it was nontrivial but justified by public health restrictions justified under *Waller v. Georgia*, 467 U.S. 39 (1984).

Social pressure to cooperate does not invalidate consensual search

People v. Ganaway, 568 P.3d 780 (Colo. 2025)

While walking to the same apartment as officers who were serving an arrest warrant on someone else, the defendant consented to a pat down search that revealed drugs. The trial court found that the encounter was not consensual and suppressed all evidence. The Colorado Supreme Court reversed. The initial encounter was not a seizure because the officers didn’t attempt to control the defendant, used friendly tones and were not threatening; the defendant’s cooperation was voluntary. The consensual search was valid because the defendant agreed in response to a request for a consent; there was no duress or limitation on the defendant’s capacity.

Text message conversation under police direction held admissible

People v. Nkongolo, --- P.3d --- (Colo. May 12, 2025)

To assist an investigation, a sexual assault victim's father sent text messages provided by the investigating officer to the defendant. The defendant sought to suppress several messages used to convict him of sexual assault on a child. The Colorado Supreme Court held that, although the father was acting as an agent of the police and the texts were an interrogation, the defendant's statements were voluntary, given the lack of coercion, the defendant's freedom to consult an attorney and choose the location, and his understanding of the situation. Even if the father's texts had been coercive, they had no impact on the statements because the defendant maintained a consistent response.

Dog search during traffic stop unconstitutional without probable cause

People v. Pham, 562 P.3d 894 (Colo. 2025)

After properly stopping a driver in a high crime area for a lane change violation, officers ordered the driver out of the vehicle and allowed a drug detection dog to sniff around the vehicle and briefly in an open door left open by an officer. The Colorado Supreme Court held that allowing the dog to sniff inside the vehicle was a search and unconstitutional without a warrant or probable cause.

Mismatched license plate justifies traffic stop

People v. Barnett, 559 P.3d 250 (Colo. 2024)

A sheriff's deputy initiated a traffic stop on a vehicle that had a license plate registered to another vehicle. The driver was charged with drug offenses based on evidence obtained from a search of the vehicle during the stop. The Colorado Supreme Court held that the mismatched plate provided reasonable suspicion for the stop and the officer could require the occupants to exit the vehicle for safety reasons without requiring additional belief that the occupants were armed or dangerous.

3. Employment

ADA employment protections do not extend to retiree's benefits

Stanley v. City of Sanford, 606 U.S. --- (June 20, 2025)

During her employment, a firefighter's employer reduced its benefits to offer only limited health insurance coverage to personnel who retired early due to disability. The U.S. Supreme Court held that Title I of the Americans with Disabilities Act did not protect retirees from discrimination because they were not "qualified individuals" who held a job and could perform the essential functions of the job.

Uniformity among groups for Title VII disparate treatment claims

Ames v. Ohio, 605 U.S. 303 (June 5, 2025)

A heterosexual employee brought gender discrimination claims under Title VII of the Civil Rights Act of 1964 asserting she was treated differently than homosexual employees. The U.S. Supreme Court unanimously rejected imposing a heightened evidentiary burden on Title VII disparate treatment plaintiffs who are members of a majority group. The Court confirmed that there is no distinction between groups when it comes to discrimination on the basis of race, color, religion, sex, or national origin.

Burden of proof for FLSA exemptions

E.M.D. Sales v. Carrera, 604 U.S. 45 (2025)

The U.S. Supreme Court unanimously held that an employer must prove whether an employee is exempt from the Fair Labor Standard Act's minimum wage and overtime provisions by a preponderance-of-the-evidence standard.

Disability discrimination plaintiff not required to meet pretext-plus standard

Jenny v. L3Harris Technologies, Inc., 144 F.4th 1194 (10th Cir. 2025)

The district court granted summary judgment for an employer on an employee's disability-related employment discrimination and retaliation claims. The 10th Circuit Court of Appeals reversed and held that the district court improperly applied the exceptions to the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) created in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000). *Reeves* requires either conclusive proof of the nondiscriminatory reason for the employer's action or only a weak issue of fact as to the truth of the nondiscriminatory reason contrasted with abundant proof to support it.

PIP requirement for counseling was sufficient to state ADA claim

Scheer v. Sisters of Charity of Leavenworth Health System, Inc., 144 F.4th 1212 (10th Cir. 2025)

An employee was terminated for refusing to attend mental health counseling as required by her performance improvement plan (PIP). Applying *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024) to an Americans with Disabilities Act claim, the 10th Circuit Court of Appeals reversed summary judgment for the employer because the counseling requirement did not have to impose a significant harm to constitute an adverse employment action.

Title VII claims precluded by earlier suit arising from same employment relationship

Watkins v. Genesh, Inc., 135 F.4th 1224 (10th Cir. 2025)

While her EEOC charges were pending, an employee filed suit under 42 U.S.C. § 1981, but the claim was dismissed because the facts asserted sexual harassment and not racial discrimination. She later filed a Title VII action after a final judgment on the merits was issued in the first action and she received a right-to-sue letter from the EEOC. Following *Wilkes v. Wyoming Dept. of Employment*, 314 F.3d 501 (10th Cir. 2002), the 10th Circuit

Court of Appeals held that the subsequent Title VII claim arising from the same employment relationship was barred by the doctrine of claim preclusion. The lack of a right-to-sue letter did not prohibit the plaintiff from raising Title VII claims in the earlier suit.

4. First Amendment

Intermediate scrutiny for online pornography age verification requirement

Free Speech Coalition v. Paxton, 606 U.S. 461 (2025)

The U.S. Supreme Court (6-3) held that a Texas law The Court (6-3) held that a law requiring age verification to access adult websites was valid under the First Amendment. Applying intermediate scrutiny because the law had only an incidental effect on protected speech, the Court held that the law advanced an important governmental interest in shielding minors from sexual content and was sufficiently tailored to the state's interest. The Court characterized the age verification requirement as not directly regulating the protected speech of adults, discounting the burden on adult's rights to access speech that is obscene to minors as incidental.

Religious employer tax exemption applied discriminatorily

Catholic Charities Bureau v. Wisconsin, 605 U.S. 238 (2025)

The State of Wyoming declined to exempt a religious-affiliated organization from that state's unemployment compensation tax as a religious employer. Applying strict scrutiny, the U.S. Supreme Court unanimously held that the exemption's focus on whether the organization was "operated primarily for religious purposes" improperly differentiated between religions based on theological lines and evaluated inherently religious choices. The exemption was not narrowly tailored to the state's interest in ensuring unemployment compensation and avoiding entanglement with employment decisions touching on faith and religious doctrine.

Program's nondiscrimination requirements do not infringe on First Amendment rights

St. Mary Catholic Parish in Littleton v. Roy, --- F.4th --- (10th Cir. Sept. 30, 2025)

Catholic schools challenged Colorado's Universal Pre-K Program because of the requirement that recipients agree to comply with Colorado's antidiscrimination law. The Tenth Circuit Court of Appeals held that the program did not violate the First Amendment because religious schools were not excluded from the program. Instead, the program included only a generally applicable requirement that applied equally to religious and secular schools. As a result, the program did not restrict funds from being used for religious purposes and any infringement on rights was incidental.

No qualified immunity for threatening frivolous litigation targeting social media page

Tachias v. Sanders, 130 F.4th 836 (10th Cir. 2025)

A school superintendent threatened litigation against the moderators of a Facebook page discussing her district if they didn't remove the page. The 10th Circuit Court of Appeals held that the superintendent was not entitled to qualified immunity from the moderators'

First Amendment retaliation lawsuit. First Amendment rights to be free from frivolous lawsuits retaliating for speech critical of the government were clearly established by *Beedle v. Wilson*, 422 F.3d 1059 (10th Cir. 2005).

Rule 12(b)(6) dismissal inappropriate for officer's First Amendment claims

Brown v. City of Tulsa, 124 F.4th 1251 (10th Cir. 2025)

A police officer was terminated based on social media posts that preceded his employment. The 10th Circuit Court of Appeals reversed the Rule 12(b)(6) dismissal of the officer's subsequent First Amendment claim and the grant of qualified immunity to the police chief. Highlighting the intricacies of the claim and potentially crucial facts, the court held that the claims requiring the application of the balancing test of *Pickering v. Board of Education*, 391 U.S. 563 (1968) could not be resolved before discovery.

5. Governmental Immunity & Liability

No attorney fees for claim made moot after preliminary injunction

Lackey v. Stinnie, 604 U.S. --- (2025)

The State of Virginia repealed a statute that required the suspension of driver's licenses for failure to pay court fines or costs. At the time, the state had been preliminarily enjoined from enforcing the law in a Section 1983 action by drivers challenging the law's constitutionality. The U.S. Supreme Court held that the drivers were not entitled to attorney's fees and costs under 42 U.S.C. § 1988(b) because they were not prevailing parties. They only obtained a preliminary injunction; the enduring change was the result of legislative action that mooted the claim that only sought injunctive relief.

Spoliation sanctions appropriate where litigation was reasonably foreseeable

Terra Management v. Keaton, 572 P.3d 126 (Colo. 2025)

The Colorado Supreme Court affirmed a trial court's decision to draw an adverse inference against a party who destroyed or otherwise failed to preserve relevant evidence when the party knew or should have known that litigation was pending or reasonably foreseeable. Foreseeable litigation is litigation that is "imminent, likely, or reasonably anticipated," but more than the "existence of a potential claim or the distant possibility of a lawsuit." Factors for the court to consider may include in the plaintiff's or defendant's conduct (including consulting an attorney or notifying an insurer) and the nature and extent of injuries.

Burden to prove immunity waiver reasonableness of government response

Jefferson County v. Dozier, 570 P.3d 482 (Colo. 2025)

The Colorado Court of Appeals reversed the dismissal of a slip-and-fall claim against a county because, in its view, the trial court had impermissibly considered the reasonableness of the county's response to a puddle of water known to it for less than five minutes. The Colorado Supreme Court reversed and held that, where the disputed

jurisdictional facts under the Colorado Governmental Immunity Act are inextricably intertwined with the merits, a standard of likelihood or reasonable probability of success on the merits applied. The plaintiff was required to prove that the condition was caused by negligence and simply showing “minimal causal connection” was not sufficient.

Plaintiff can appeal CGIA ruling anytime

Smith v. City and County of Denver, --- P.3d --- (Colo. App. July 31, 2025)

The Colorado Court of Appeals held as a matter of first impression that a plaintiff could appeal a finding of immunity under the Colorado Governmental Immunity Act (CGIA) immediately or when other remaining claims are resolved. Although the CGIA states that a ruling on a motion asserting sovereign immunity is a “final judgment” subject to an interlocutory appeal, the court reasoned that a plaintiff was not required to immediately appeal the ruling finding immunity, just as a public entity defendant can appeal a denial of immunity at any time. The court, however, found that the defendants were immune under CGIA’s emergency vehicle exception given the totality of the circumstances.

CGIA requires notice when government sues its own employees

BNC Metro District 1 v. BNC Metro District 3, 573 P.2d 129 (Colo. App. 2025)

Metropolitan districts brought breach of fiduciary duty claims former board members who had been designees and employees of the original developer. The district never sent notices to themselves under the Colorado Governmental Immunity Act (CGIA). The Colorado Court of Appeals held that the CGIA required notice still applied when the government sued its own employee, absent factual allegations that the board members had acted outside of the scope of their employment.

A low bar to waive immunity for operation of a motor vehicle

Giron v. Hice, 568 P.3d 20 (Colo. App. 2025)

On remand, the Colorado Court of Appeals evaluated whether an officer’s failure to use lights and sirens for the last 5-10 seconds of a pursuit “could have contributed” to a collision resulting in a waiver of immunity. Answering affirmatively, the court appears to have interpreted the immunity waiver of C.R.S. § 24-10-106(1)(a) (relating to operation of a motor vehicle) to require the elimination any possibility that the lights or sirens by an emergency vehicle, if used, might have been perceived by the injured person.

Health whistleblower law subject to CGIA notice requirement

Bakes v. Denver Health and Hospital Authority, 572 P.3d 146 (Colo. App. 2025)

Colorado’s Health Care Worker Protection Act (HCWPA) prohibits retaliation against health care workers for making good faith reports regarding patient safety or care. The Colorado Court of Appeals held that HCWPA claims were noncontractual, statutory claims that sounded in tort like the state Whistleblower Act. The statutory claims had some basis in common law and did not implicate broad constitutional concerns or basic governmental

responsibilities. As a result, the claims were subject to the notice requirements of the Colorado Governmental Immunity Act.

CGIA cap includes costs and prejudgment interest

Caylao-Do v. Logue, 571 P.3d 909 (Colo. App. 2025)

A jury awarded damages to a plaintiff that exceeded the damages cap of the Colorado Governmental Immunity Act, and the trial court reduced the award to the cap amount. The Colorado Court of Appeals affirmed the reduction and confirmed that costs and prejudgment interest were subject to the cap.

Manager may lack immunity for allegedly defamatory letter

Southway v. Crone, No. 24CA0219 (Colo. App. Dec. 19, 2024)

In an unpublished opinion, the Colorado Court of Appeals held that the Colorado Governmental Immunity Act's exclusion of willful and wanton conduct did not require the harm to be physical. As a result, an allegedly defamatory letter sent by a town manager could fall outside of the Act's protections even though he sent it in the course of his employment. The case was remanded to reconsider whether the manager consciously disregarded the risk of causing reputational harm by spreading untrue facts painting the subject of the statement in a negative light under the facts of the case.

6. Open Meetings Law (OML)

Corporations can recover OML fees but attorney-client privilege not waived

The Sentinel Colorado v. Rodriguez, --- P.3d --- (Colo. Oct. 7, 2025)

The OML allows only a "citizen" to recover attorneys fees as a prevailing party under that law. The Colorado Supreme Court (6-1), however, viewed "citizen" as being interchangeable with "person" in the statute and held that a corporation was entitled to recover attorney fees under the OML in its challenge to an improperly convened executive session. The Court also held that an attorney's letter included in a public agenda packet did not waive the attorney-client privilege that applied to an executive session. The letter described only unprivileged facts regarding a stipulation to be considered at the meeting and did not detail the communications between the council and its attorney. The Court refused to apply *Guy v. Whitsitt*, 469 P.3d 546 (Colo. App. 2020) to require the release of attorney-client privileged communications simply because of an improperly noticed executive session.

Open meetings violations can be cured

O'Connell v. Woodland Park School District, --- P.3d --- (Colo. Sept. 15, 2025)

Affirming *Colorado Off-Highway Vehicle Coalition v. Colorado Board of Parks and Outdoor Recreation*, 292 P.3d 1132 (Colo. App. 2012), the Colorado Supreme Court confirmed that a public body can cure a violation of the OML, retroactively, by a subsequent action that is not merely a rubber-stamp of the prior invalid decision. The OML does not consider whether an act is intentional or unintentional. Further, the Because the plaintiff's

lawsuit prompted the curing action, however, the plaintiff was entitled to attorney fees for establishing the violation. The decision provides some contours for both the OML's agenda requirements and the cure doctrine. The initial meeting may have violated the OML because the action at issue (the approval of a controversial agreement) was not included in the agenda and was approved as a "housekeeping" item. The first cure attempt was likely invalid because it included public comment and a clear agenda item but no substantive discussion by the board or explanation of the agreement; the second effort included a one-hour discussion in which each member participated.

7. Open Records Act

No CORA litigation exception

Archuleta v. Roane, 560 P.3d 399 (Colo. 2024)

Archuleta county denied a Colorado Open Records Act (CORA) request by the plaintiff in an OML case against the county and asserted a "litigation exception" to CORA, relying on *Martinelli v. District Court* and C.R.S. § 24-72-204(1)(c), prohibiting inspection where prohibited by supreme court rules or court orders. The Colorado Supreme Court confirmed that no litigation exception exists in CORA and that litigants can obtain records under CORA even if they are relevant to the litigation and the litigant hasn't attempted to obtain the records through discovery. The Court declined to find such an exception in the rules of civil procedure and viewed *Martinelli* as an "adjacent opinion" addressing a different subject. The opinion did not limit court authority to regulate discovery or evidence.

POST records subject to CCJRA a criminal justice agency

Gazette v. Bourgerie, 560 P.3d 964 (Colo. 2024)

Relying on the Colorado Criminal Justice Records Act (CCJRA), the Peace Officers Standards and Training Board (POST) denied a request for records regarding peace officer demographics, certification, and decertification. The Colorado Supreme Court held that POST was a "criminal justice agency" and the records were governed by the CCJRA because the agency "performs activities 'directly relating to the detection or investigation of crime.'" The law didn't require this to be the agency's primary function; POST's director and investigator are peace officers, and POST investigated certain potential crimes by peace officers.

Blurring of face adequately protects minor's privacy interest in shooting video

Ion Media Networks, Inc. v. West, --- P.3d --- (Colo. App. July 10, 2025)

Media requests for release of a police shooting video were denied based on the privacy interest of the decedent – a minor - and her family, who had filed a notice of intent to file a claim. The Colorado Court of Appeals held that C.R.S. 24-31-902 unambiguously required disclosure and the city could protect the substantial privacy interest and the rights of the next of kin by blurring of the minor's head. The court also rejected the argument that

the video was a nondisclosable juvenile record under the Juvenile Code or that courts had authority to remove sound of the audio recording.

No CORA fees if requestor doesn't obtain order requiring inspection

Migoya v. Wheeler, 564 P.3d 1052 (Colo. App. 2024)

A trial court held that school administrator disciplinary records weren't exempt from disclosure to a newspaper as personnel files, but the paper wasn't entitled to see the records because of CORA's substantial injury exception. The Colorado Court of Appeals affirmed on other grounds, holding that the Colorado Licensed Personnel Performance Evaluation Act (C.R.S. § 22-9-109(1)) prevented disclosure. The paper was not entitled to a fee award because the school district incorrectly denied access on a different basis; the paper never succeeded in obtaining a court order requiring the inspection of the records. "CORA does not authorize fee and cost awards on the grounds that the requester won a preliminary legal skirmish if the requester ultimately failed to win a ruling granting access to the requested documents."

8. Police Liability

Supreme Court rejects "moment of threat" evaluation of use of deadly force

Barnes v. Felix, 605 U.S. 73 (2025)

An officer shot and killed the driver of a vehicle during a traffic stop for unpaid toll violations. The officer jumped onto the door sill and fired into the car when driver appeared to be attempting to drive away. The U.S. Supreme Court rejected the lower courts' application of the "moment of threat" rule that the 5th Circuit Court of Appeals used to evaluate the reasonableness of the use of deadly force. As applied, the rule considered only the precise time the officer perceived the threat (in this case, about two seconds), but the Court held that courts must consider the totality of the circumstances in the evaluation of the use of force.

Shooting of man believed to be holding AR-15 was objectively reasonable

Cruz v. City of Deming, 138 F.4th 1257 (10th Cir. 2025)

Responding to a 911 call about a man with a "big gun" shooting at traffic, officers encountered a man in a field armed with a rifle they mistakenly believed to be an AR-15. The man behaved erratically, repeatedly touched and moved the weapon (which turned out to be a pellet gun), and failed to comply with commands during the 44-second encounter. Officers shot and killed the man when he shifted the position of the rifle in their direction. The 10th Circuit Court of Appeals held that the officers were entitled to qualified immunity because the use of lethal force was objectively reasonable. The officers' knowledge that the man suffered from mental health issues did not override the officers' legitimate fear that they would be shot. Whether the suspect was subjectively trying to comply with officer's instructions when he moved the weapon was irrelevant.

No qualified immunity in dog shooting

Love v. Grashorn, 134 F.4th 1109 (10th Cir. 2025)

An officer shot a dog that ran out of a couple's truck and got within a few feet of him. The Tenth Circuit Court of Appeals affirmed the denial of qualified immunity based on the district court's factual conclusions and "common sense" that a peace officer can't reasonably shoot a dog, without considering non-lethal options, in the absence of immediate danger. The facts supported a conclusion that the off-leash dog was not "at large," the owners might have been able to regain control, a reasonable officer might have responded using non-lethal means, and the officer had time to respond differently.

No qualified immunity in dog attack case

Luethje v. Kyle, 131 F.4th 1179 (10th Cir. 2025)

Sheriff's deputies responded to a call that a man had approached a residence, broken a window, and fled. The deputies removed a window screen and put a canine into the house where the animal bit a sleeping resident. The 10th Circuit Court of appeals affirmed the denial of qualified immunity from claims of unlawful entry, unlawful arrest, and excessive force. The entry, arrest, and severe force used were unjustifiable given the lack of probable cause, resistance, or danger.

No qualified immunity for officer shooting elderly woman with knife

Baca v. Cosper, 128 F.4th 1319 (10th Cir. 2025), petition for cert. pending

An officer responded to a domestic violence call about a woman with a history of behavioral issues who had threatened to kill a person in their house. The officer encountered the woman, who was holding 2 knives, speaking with 2 women in the house. The officer was allegedly to have shot and killed the woman who was about 10 feet away after she took 2 steps toward him. The woman made no threatening movements with the knives. The 10th Circuit Court of Appeals affirmed the trial court's denial of qualified immunity because the allegations could reasonably support a finding that the use of force was excessive and that the law was clearly established as of the date of the shooting.

Reasonable, mistaken belief supported use of deadly force

Alcala v. Ortega, 128 F.4th 1298 (10th Cir. 2025)

A deputy shot and killed a man after the man fled on foot from a car crash. Witnesses had reported that the man brandished a gun at bystanders. When the officer approached, the man crouched and turned away from the officer with his hand near his waist. He ignored the officer's commands for six seconds before suddenly turning to stand with his arm extended, at which point the officer shot and killed him. Although the man was found to have no weapon, the 10th Circuit Court of Appeals affirmed summary judgment for the officer based on qualified immunity under standards for the officer's mistaken, but reasonable, belief of the need to use deadly force. Uncontroverted dash cam video showed the man's motions in relation to the officer's firing of his weapon.

Qualified immunity in shooting of man in basement inferno

Estate of Waterhouse v. Direzza, 129 F.4th 1212 (10th Cir. 2025)

After several hours of a standoff, a man under the influence of methamphetamine set fire to the basement where he had barricaded himself. Officers entered the basement briefly and were evacuating when the man charged from a room. The two last officers in the basement fired their weapons, resulting in the man's death. The 10th Circuit Court of Appeals affirmed that the officer who fired the fatal rounds was entitled to qualified immunity under the dangerous circumstances of the case. A reasonable officer could believe that the man had committed a dangerous felony (arson), was resisting arrest, and, even though unarmed, posed an immediate threat in the smoke-filled, fiery basement.

Warrantless search exception must be proven as affirmative defense to LEIA claim

Mosely v. Daves, --- P.3d --- (Colo. App. Oct. 2, 2025)

A police officer was sued under Colorado's deprivation of rights statute, C.R.S. § 13-21-131, for conducting an unlawful warrantless search of a vehicle. In the Colorado Court of Appeals held as a matter of first impression that, once the plaintiff proved the officer conducted a warrantless search, the defendant officer bore the burden of establishing the lawfulness of the search as an affirmative defense to the claim.

Negligent errors in search warrant affidavit do not support deprivation of rights claim

Johnson v. Staab, 571 P.3d 939 (Colo. App. 2025)

In a claim brought under C.R.S. § 13-21-131, a jury found that police officers illegally searched the plaintiff's home based on errors in the search warrant affidavit. The Colorado Court of Appeals reversed the \$3.75 million judgment and held that no constitutional violation arose from false statements and omissions in a search warrant affidavit that were caused by negligence or mistake. A constitutional violation would require intentional misstatements or a reckless disregard for the truth.

Cost recovery not permitted without a frivolous deprivation of rights claim

Waugh v. Veith, 571 P.3d 376 (Colo. App. 2025)

Officers successfully defended against claims brought under Colorado's deprivation of rights statute, C.R.S. § 13-21-131. The Colorado Court of Appeals reversed an award of costs to the officers under C.R.S. § 13-16-105 and Rule 54(d), holding that defendants can recover costs only for frivolous claims under C.R.S. § 13-21-131.

Unconstitutional law does not provide deprivation of rights claim

Bullock v. Brooks, 565 P.3d 1091 (Colo. App. 2025)

A man was charged under an ordinance prohibiting the intended use of a "deadly weapon" to defeat crowd dispersal measures. At trial, the court held that officers lacked probable cause to believe that his intended use was criminal or that a bat fell into a catch-all category of deadly weapons. In the man's civil action under C.R.S. § 13-21-131(1), the

Colorado Court of Appeals held that Bullock’s constitutional rights were not violated when he was arrested, with probable cause, under an unconstitutionally vague law.

9. Special Districts

Safety concerns excuse variance from special district service plan

Trinidad Area Health Association v. Trinidad Ambulance District, 562 P.3d 928 (Colo. App. 2024)

Colorado’s special districts must conform to their service plans “so far as practicable.” C.R.S. § 32-2-201(1). An ambulance district modified the transportation services it provided by restricting long-distance transfers of patients between hospitals to prioritize 911 response and crew safety. Although the district’s plan obligated it to provide unrestricted services, the Colorado Court of Appeals affirmed the district court’s ruling that strict conformance was not practicable due to bona fide safety concerns. The court viewed “practicable” as meaning “reasonably capable of being accomplished” and “feasible in a particular situation.”

10. Taxation and Finance

Revision of telecom tax was “new tax” under TABOR

MetroPCS California, LLC v. City of Lakewood, --- P.3d --- (Colo. Sept. 8, 2025)

In 1969, the City of Lakewood enacted a business and occupations tax on utility companies based on their occupation and business of maintaining a telephone exchange and lines connected and supplying local exchange telephone service to city inhabitants. In 1996 and again in 2015, the city amended its tax ordinance without voter approval to cover provision of newer forms of telecommunications services. The Colorado Supreme Court held that the amendments were “new taxes” under TABOR and invalid without voter approval because they expanded the scope of the original tax from a limited class of providers and specific service to all persons and all forms of telecommunications services. The Court also held that revenue changes were not excused as “incidental” to non-revenue purposes because revenue increases were obvious outcomes that were known to the city at the time. The court did not rule as to whether the revenue change was de minimis or whether the amendments were a “tax rate increase” or “tax policy change.”

Digital subscription is taxable tangible personal property

Netflix v. Department of Revenue, --- P.3d --- (Colo. July 3, 2025)

Colorado applied its retail sales tax to sales of digital goods – including videos, PDF files, and e-books – and in 2021 issued an administrative rule declaring that digital goods were taxable and that the method of delivery – including through a streaming service - did not affect taxability. The state codified the rule in statute in 2022 (C.R.S. § 39-26-102(15)(b.5)). Netflix successfully argued to a trial court that subscriptions of its streaming service did not constitute “tangible personal property” because it could not be touched. The Colorado Court of Appeals reversed and held that corporeal property need only be able to

be perceived by any of the senses, as opposed to incorporeal property that is abstract and “exists only in contemplation.”

11. Zoning & Land Use

Pedestrian mall ordinance not preempted by federal motor carrier law

Colorado Motor Carriers Association v. Town of Vail, --- F.4th --- (10th Cir. Aug. 29, 2025)

A federal district court enjoined the 2023 ordinance that prohibited most vehicles (including commercial carriers) from using its pedestrian malls and required deliveries in those areas to be completed by handcart or a town contractor. The court held that the Federal Aviation Administration Authorization Act and Airline Deregulation Act protected commercial carriers from local regulation of their routes despite the town’s asserted safety interests. The Tenth Circuit Court of Appeals reversed and held that the district court misapplied the statutory safety exceptions for local laws regulating “with respect to motor vehicles” that are “genuinely responsive to safety concerns.” The presence of additional legitimate goals (e.g., guest experience) did not erase the safety concern and the ordinance bore a logical nexus to safety. The district court improperly substituted its own judgment about the best ways to enhance safety and “shortchanged the primacy of local policymaking.” The panel also held that the district court could properly discount CMCA’s claim of irreparable injury when it waited over a year before seeking an injunction of the 2022 ordinance.

Noise Abatement Act preempts local noise permits

Hobbs v. City of Salida, 550 P.3d 193 (Colo. Sept. 8, 2025)

Colorado’s Noise Abatement Act, CRS 25-12-101 to -110, sets statewide decibel limits based on location and time and allows local governments to regulate noise in a way that is not less restrictive than state law. The law also includes an exemption for “the use of property by this state, any political subdivision of this state, or any other entity not organized for profit, including, but not limited to, nonprofit corporations, or any of their lessees, licensees, or permittees, for the purpose of promoting, producing, or holding cultural, entertainment, athletic, or patriotic events, including, but not limited to, concerts, music festivals, and fireworks displays.” C.R.S. § 25-12-103(11). The Colorado Supreme Court held that the exemption did not permit a local government to issue local amplified sound permits that were less restrictive than state law. The Court held that the exception was ambiguous and only extended to the use of property by “lessees, licensees, and permittees” when associated with the primary entity’s use of property for a qualifying purpose. Note: the authority of home rule municipalities to regulate less restrictively than the Act remains an open question.

12. Miscellaneous

Federal courts lack equitable authority to issue nationwide injunctions

Trump v. CASA, 606 U.S. 831 (2025)

The U.S. Supreme Court (6-3) dissolved a district court’s “universal” injunction prohibiting enforcement of the birthright citizenship executive order. The Court held that federal courts lacked authority under the Judiciary Act of 1789 because there was no sufficient analogous power in courts of equity at the time of founding. The Court declined to address the question of birthright citizenship, either on the merits or as to the government’s likelihood of success or irreparable harm. Instead, the Court viewed the issue before it as only the scope of judicial authority.

Courts can review agency interpretations in enforcement proceedings

McLaughlin Chiropractic Associates v. McKesson Corp., 606 U.S. 146 (2025)

The U.S. Supreme Court (6-3) held that the Hobbs Act does not preclude a party from challenging an agency’s interpretation of a statute in an enforcement proceeding, absent express preclusion by statute.

EPA cannot impose “end-result” conditions in discharge permits

City and County of San Francisco v. Environmental Protection Agency, 604 U.S. 334 (2025)

Through the federal Clean Water Act, the Environmental Protection Agency (EPA) administers the National Pollutant Discharge Elimination System (NPDES), which makes it unlawful to discharge pollutants into covered bodies of water unless authorized by permit. EPA created “end-result” requirements that made a permittee responsible for the quality of water into which the permittee discharges pollutants instead of specifying what the permittee must do or not do. The U.S. Supreme Court held that the agency lacked authority to impose end-result requirements and was allowed only to identify steps for permittees to achieve water quality.

Fact-specific standard applied to application for conditional groundwater rights

Firestone v. BCL Colorado, LP, 569 P.3d 89 (Colo. 2025)

The Colorado Supreme Court affirmed the dismissal of a town’s claims for groundwater well fields as part of an application for conditional groundwater rights and related augmentation plan. The Court reiterated that the water court must evaluate such matters on a case-by-case basis to determine whether the proposed water use would injure those with vested, senior water rights. The Court affirmed the water court’s requirement that the town “demonstrate that its augmentation plan would replace out-of-priority depletions in the proper time, place, and amount to prevent injury.”

Climate change tort claims allowed to proceed

Boulder County v. Suncor Energy, --- P.3d --- (Colo. May 12, 2025), petition for cert. pending

Boulder County sued oil and gas producers for climate change related damages on tort theories of public and private nuisance, trespass, unjust enrichment, and civil conspiracy. The Colorado Supreme Court held that the claims were not preempted by federal laws, including the Clean Air Act or even the foreign affairs power, under theories of express, field, or conflict preemption.

Mandatory injunction against governing body without mandamus action

League of Women Voters v. Weld County, 563 P.3d 1192 (Colo. 2025)

The Colorado Supreme Court held that Weld County was required to comply with state redistricting statutes as a mandatory county function, consistent with the limited independence of home rule counties. As expressed by Chief Justice Marquez's concurrence, the Court took an extraordinary step of enjoining a legislative body to compel an action using the implied right of action standards of *Allstate Insurance v. Parfrey*, 830 P.2d 905 (Colo. 1992).

Home rule municipality exempt from Amendment 41 and IEC jurisdiction

City of Glendale v. Independent Ethics Commission, No. 2020CV34205 (Dist. Ct., City & Cnty. of Denver Dec. 6, 2024)

The district court determined that the City of Glendale, a home rule municipality, was not subject to Amendment 41 regarding ethics (Art. XXIX of the Colorado Constitution). Local laws "address[ed] matters covered" by Amdt. 41, meeting the constitutional exception. The district court held that Independent Ethics Commission lacked authority to determine its own jurisdiction.