

ABA Government Law News

State and Local

A 60-Second Update on What's Happening

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No Taxpayer Standing to Challenge State Tax Credits: Having raised interest among commerce clause enthusiasts, the Supreme Court changed its mind and dismissed the case for lack of standing. In [Daimler Chrysler Corp. v. Cuno](#) the 6th Circuit had held that the Ohio statute used by Toledo to grant investment tax credits to Daimler Chrysler violated the Commerce Clause. If you enjoy reading decisions on standing, or more likely, if you find it necessary to do so, see <http://www.supremecourt.us/opinions/05pdf/04-1704.pdf>

States May Regulate Dams Under Clean Water Act: In [S.D. Warren Co. v. Maine Dept of Environmental Protection](#), the Supreme Court held that federal licenses to operate hydropower dams are subject to state certification that the "discharge" meets state water quality standards - such as minimum instream flows to protect fish - under §401 of the Clean Water Act. <http://www.supremecourt.us/opinions/05pdf/04-1527.pdf> With new FERC rules relaxing the federal demands on dam operators, this reaffirmation of state power is particularly important as more than 200 in 36 states are due to apply for new licenses by 2020. See "Groups Sue Federal Government over New Dam Relicensing Rules," <http://www.bluefish.org/damrules.htm>

Council Members in Body But not in Spirit: When two council members, who recused themselves from voting on a rezoning request due to conflicts of interests, left the meeting room, the three left voted on the petition. The Virginia Supreme Court said that while state law granted the remaining council members the authority to act, a quorum was still necessary, and establishment of a quorum requires the physical presence of sufficient members. The court did not say whether they had to pay attention to the proceedings or indeed whether they had to stay awake. [Jakabcin v. Town of Front Royal](#), 628 S.E.2d 319 (Va.2006). <http://www.courts.state.va.us/opinions/opnscvwp/1050722.pdf>

Just Move Along: Los Angeles (like Seattle, Portland and likely hundreds of other cities) makes it a crime to "sit, lie or sleep on any street, sidewalk or other public way." Unlike those cities that require an element of obstructing traffic or X violations within Y duration, LA's ban is (or was) absolute. In [Jones v. City of Los Angeles](#), the 9th Circuit found the ordinance violates the 8th Amendment by cruel and unusual punishment. Finding a severe shortage of available shelter and that "human beings [cannot] remain in perpetual motion," it's a crime to be homeless. [http://www.ca9.uscourts.gov/coa/newopinions.nsf/8138B5E4723C6FE988257150005B327E/\\$file/0455324.pdf](http://www.ca9.uscourts.gov/coa/newopinions.nsf/8138B5E4723C6FE988257150005B327E/$file/0455324.pdf)

Private Taking? Go Directly to Federal Court, if you Wish: With such a "to do" about takings for a private use, a recent decision, [Schudmak v. Bossetta](#), 2006 WL 1207958 (E.D.La.2006), reminds us that seeking compensation in state court first is not a prerequisite to suit in federal court. This seems obvious, but, oddly, the 7th Circuit requires suit in state court. See [Daniels v. Area Plan Com'n of Allen County](#), 306 F.3d 445 (7th Cir.2002). [Schudmak](#) follows the 5th Circuit,

which like the Sixth and Ninth, do not impose this ripeness requirement. See footnote 6 in *Daniels* for case cites. <http://caselaw.lp.findlaw.com/data2/circs/7th/011158p.pdf>

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