

ABA Government Law News

State and Local

A 60-Second Update on What's Happening

Vol. 3 September 2006

Editor: Thomas E. Roberts, Wake Forest Univ. Law School, troberts@law.wfu.edu

Asst. Editor William Scheiderich, Law Dept., City of Beaverton, OR, bscheiderich@ci.beaverton.or.us

Public employee personal email not public record: The mere fact an email is transmitted on and retained in a publicly owned computer does not *ipso facto* make it a public record, the Arizona Court of Appeals holds; what matters is the nature of the information, not the location.

http://www.apltwo.ct.state.az.us/Decisions/CV20060052_Opinion.pdf

NYC subway searches OK: The 2nd Circuit holds in *MacWade v. Kelly* that “government may employ random, suspicionless container searches to safeguard mass transit facilities from terrorist attack.” The city’s policy allows random searches of persons entering the subway system who may decline but then must leave the station (without being detained). The court found the “special needs” doctrine makes such searches reasonable under the 4th Amendment.

<http://caselaw.lp.findlaw.com/data2/circs/2nd/056754p.pdf>

Let your mouse do the walking: The Government Law Center of Albany Law School offers “Government Law On-Line,” a no-charge source for papers, studies and reports on various state and local government law issues including land use, ethics, eminent domain, police oversight, aging law & policy, and racing & gaming law. www.governmentlaw.org

Ninth Circuit finds Religious Land Use Act first prong constitutional: The court rejected a constitutional challenge to the land use prong of the Religious Land Use and Institutionalized Persons Act (RLUIPA) in a case concerning consecutive denials of a conditional use permit to construct a Sikh temple. The Court found that Congress had identified a “history and pattern of unconstitutional regulation [of religious uses] by the states” sufficient to qualify RLUIPA as remedial legislation under Article 14 Section 5. *Guru Nanak Sikh Soc. of Yuba City v. County of Sutter*, 456 F.3d 978 (9th Cir.2006). Recall that the Supreme Court found the institutionalized persons prong of the Act constitutional last term, in *Cutter v. Wilkinson*.

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/14EE3242A2D973BA882571BC007D8F7F/\\$file/0317343.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/14EE3242A2D973BA882571BC007D8F7F/$file/0317343.pdf?openelement).

Preview of coming attractions in the Supreme Court: In *Massachusetts v. EPA* the Supreme Court will hear whether the EPA may forego emission standards for cars based on policy considerations not enumerated in the statute and whether the EPA has authority to regulate carbon dioxide and other pollutants associated with climate change.

<http://www.supremecourtus.gov/qp/05-01120qp.pdf> In *Meredith v. Jefferson County* (Kentucky) and a companion case, the Court will hear whether a race conscious student assignment plan meets the compelling interest test. <http://www.supremecourtus.gov/qp/05-00915qp.pdf>

And a new freebie: Also, beginning with the October 2006 term, the Supreme Court will make the transcripts of oral arguments available free to the public on its website, <http://www.supremecourtus.gov/>, on the same day that the Court hears the argument.

Linked articles are copyrighted by their respective publications.

Visit the Section [website](#) for Section programs.

If you would like to make comments, suggestions, or provide news items, [click here](#).

Your e-mail address will only be used within the ABA and its entities. We do not sell or rent e-mail addresses to anyone outside the ABA. To change your e-mail address or remove your name from any future general distribution e-mails, complete the form at <https://www.abanet.org/members/join/coa2.html>>. If you prefer, call us at 800-285-2221 or write to:

American Bar Association, Service Center
321 N Clark Street, Floor 16
Chicago, IL 60610

To review our privacy statement, go to http://www.abanet.org/privacy_statement.html>.

Links are provided only as a convenience and no affiliation with the linked entity should be inferred. Use of the link is strictly at the user's own risk.

Government Law News is published by
Section of State and Local Government Law, American Bar Association
321 N. Clark Street, Chicago, IL 60610

[Unsubscribe](#) | [Contact Us](#) | [Privacy Policy](#) | [Section Home](#)

© Copyright 2004 American Bar Association