

## Municipalities and Government Entities

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**Bird Marella represents and challenges governmental authorities, including municipalities, at the local, state and federal levels.**

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### Overview

We have resolved a range of sophisticated disputes and Constitutional challenges that have resulted in both published decisions and new precedents. Our expertise includes trials and appeals related to the function of municipalities as permitting and contracting agencies, political referenda, civil rights, wrongful arrests, and prosecutorial misconduct.

Several of our attorneys are former Assistant United States Attorneys. They provide deep experience and understanding of various governmental processes and procedures in both the civil and criminal context.

Frequently, clients engage us following adverse decisions in a case handled by other counsel. Bird Marella has earned a reputation as valued strategists in sophisticated and protracted litigation and in matters demanding accountability from a government authority. Our appellate practice provides extensive resources in sophisticated municipal matters requiring resolution by higher courts.

### Experience

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**Represented City of Hermosa in Oil Drilling Dispute:** We provided trial and appellate counsel in a “bet the city” contractual dispute with Macpherson Oil Company related to drilling rights. The case involved unique issues connected to the city’s function as both a permitting and contracting agency, the political referendum process, and local residents’ ability to control their environment and lifestyle. Our representation included *City of Hermosa Beach v. Superior Court*, 2010 Westlaw 459609 (Cal. App. 2010), in which we acted on behalf of Hermosa Beach on a petition for writ of mandate attacking the trial court’s entry of summary adjudication in favor of the plaintiff,

Macpherson. The court adopted the firm's contention that there was a triable issue of fact as to whether the city's alleged breach of a contract to allow oil drilling within its jurisdiction was the proximate cause of massive lost-profits damages allegedly suffered by the oil company.

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**Counseling in CA Franchise Tax Board Credit Challenge:** The firm successfully appealed the dismissal of our corporate client's claims against the California Franchise Tax Board for tax credits under the Enterprise Zone Act of 1996. The firm is now representing the client as this hotly disputed issue proceeds to the California Supreme Court. *Dicon Fiberoptics, Inc. v. FTB*, 99 Cal.Rptr.3d 560 (2009).

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**Defending CA Power Authority on Stray Voltage Injury Claims:** The firm is providing ongoing representation, at the trial and appellate levels, to a Joint Powers Authority agency comprised of 11 cities and one irrigation district. We are defending the authority, including on jurisdictional issues, in claims made by agricultural plaintiffs in Utah that stray voltage from an 800-mile power line that runs to Los Angeles is allegedly damaging livestock.

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**Reversed Adverse Ruling in Civil Rights Claim, Beck v. City of Upland:** We obtained a reversal of summary judgment in a federal civil rights action handled by another firm before the district court. The client, a government contractor, brought a civil rights claim for damages after having been falsely arrested for allegedly "making a threat" to municipal officials. While the district court ruled based on a long-established Ninth Circuit precedent that the contractor could not establish that any damages were proximately caused by the improper arrest, the Ninth Circuit's 36-page opinion in *Beck v. City of Upland*, 527 F. 3d 853 (9th Cir. 2008), adopted the firm's contention that this precedent could not stand in light of a recent U.S. Supreme Court decision. The Ninth Circuit adopted a new causation standard for wrongful arrest / prosecution cases whenever First or Fourth Amendment rights are implicated.

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**Reversed City's Decision Prohibiting Telecom Deal:** We defended a leading cable television and Internet-access provider in a lawsuit filed by the city seeking to nullify its acquisition of another cable television company's operating assets. Following an adverse trial decision, we quickly filed an appeal. The Ninth Circuit reversed the district court's entry of a preliminary injunction that had prohibited the multimillion dollar acquisition. *City of Thousand Oaks v. Verizon / Adelphia*, 2003 Westlaw 21421721 (9th Cir. 2003).

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**Defended Art Dealer in Multiple Government Ownership Claims:** We represented an internationally known art dealer through a federal pre-indictment criminal investigation involving pre-Colombian art. After lengthy proceedings, the court ordered the U.S. government to return the pre-Colombian art it had seized from our client. Based on our presentations, the government declined to bring criminal charges against our client. The Government of Peru then brought a parallel civil suit against our client claiming that his pre-Colombian art collection was its own under its patrimony laws. After a trial, the court returned a verdict in our client's favor on all counts. The U.S. Court of Appeals for the Ninth Circuit affirmed in an unpublished opinion. *Government of Peru v. Johnson*, 720 F. Supp. 810 (C.D. Cal. 1989).

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**Provided Civil Defense in Biggie Smalls' Claims against City of Los Angeles:** We defended City of Los Angeles in a civil case related to the death of prominent rap music star Biggie Smalls. Won the case on summary judgment.

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**Defended Against Constitutional Challenge to Funding Referendum:** In our counsel to a regional transportation authority, we argued before the CA Supreme Court. We successfully defended against a Constitutional challenge to the referendum establishing a benefit assessment district to fund a portion of the Metro Line. *So. Cal. Regional Transportation: District v. Bolen*, 1 Cal.4th 654

(1992).

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**Obtained Favorable Prosecutorial Misconduct Ruling for Convicted Client:** We represented a defendant appealing his conviction in a case where the U.S. Court of Appeals for the Ninth Circuit accepted the firm's contention that the federal government had engaged in prosecutorial misconduct at trial. The case was dismissed in its entirety following remand to the trial court. *United States v. Kojayan*, 8 F.3d 1315 (9th Cir. 1993).