



Navigating Data Center Development Risks & Emerging Litigation Trends

April 16, 2026

GIBSON DUNN

Confidential. Not for further distribution.

Table of Contents

01 Presenters

02 Introduction

03 Zoning Disputes

04 Energy Regulatory Disputes

05 Environmental Disputes

06 Tax Disputes

07 Deal-Related Disputes

Today's Presenters



David Casazza

Partner
Washington, D.C.



Tory Lauterbach

Partner
Washington, D.C.



John F. Craig III

Of Counsel
Washington, D.C.

Introduction

02

Introduction

- Tremendous growth in data center demand and capacity.
- Global demand for data center capacity is expected to triple by 2030, driven by investment in artificial intelligence.

THE WALL STREET JOURNAL






REAL ESTATE

Commercial Builders Are Losing Their Appetite to Build Anything but Data Centers

Spending on data-center construction is expected to rise by 23% in 2026

By *Will Parker* [Follow](#)

Jan. 19, 2026 at 5:30 am ET

 Share  Resize   Listen (1 min) 

Introduction

Spending as percentage of GDP, annual average

Louisiana Purchase (1803)



Projected capital spending for Meta, Amazon, Microsoft and Alphabet in 2026



U.S. railroads (1850-59)



U.S. interstate highway system (1955-70)*



Apollo space program (1960-73)



*Federal highway spending

Sources: National Archives and Measuring Worth (Louisiana Purchase); the companies (Tech capital spending); Visible Alpha (projected Microsoft capital spending) Louis P. Cain (U.S. Railroads); Robert Gordon (U.S. interstate highway system); Planetary Society (Apollo); Wall Street Journal calculations (all ratios)

Introduction

KPIs

Main Indicators about US Data Centers

Total Data Centers Facilities

Power Capacity

Facilities Size

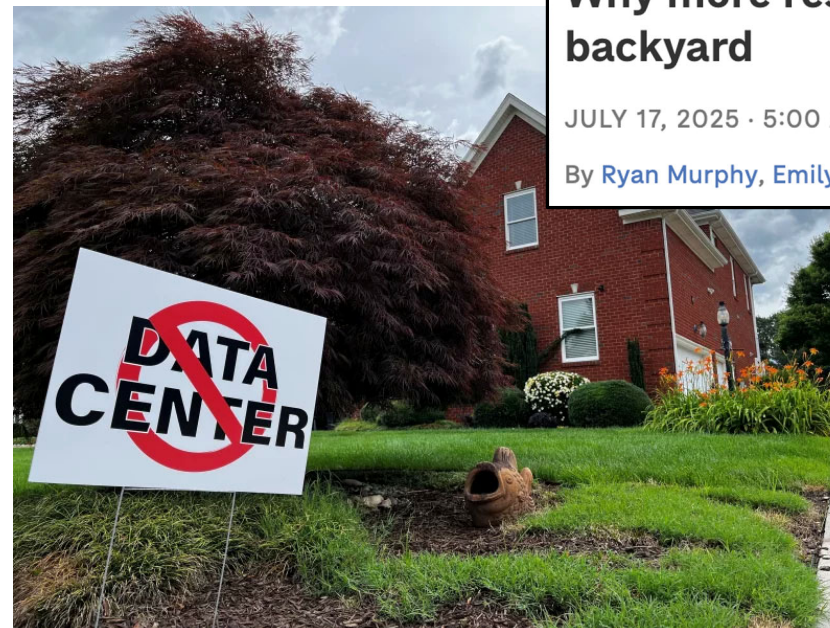
		Total Data Centers Facilities	Power Capacity	Facilities Size
Pre-Developmental	Data Centers Announced	2,970 Facilities	238.14 Gigawatts	583.93 M SqFt
	Data Centers Not Approved/Withdrawn	391 Facilities	18.95 Gigawatts	79.01 M SqFt
Under-Development	Data Centers Under Construction	673 Facilities	47.69 Gigawatts	172.29 M SqFt
	Data Centers Construction Delayed	71 Facilities	5.46 Gigawatts	14.98 M SqFt
	Data Centers Construction Cancelled	18 Facilities	1.02 Gigawatts	3.47 M SqFt

Cast of Characters

- **Hyperscalers:** Large-scale cloud providers with legacy cloud and AI workloads
- **Neoclouds:** AI-first cloud providers
- **AI Research Companies:** Designers of AI algorithms, models, and systems
- **Data Center Developers:** Infrastructure developers that build, and sometimes own and operate, data centers
- **Electric Utility Companies:** Traditional utility providers; sometimes “wires only,” sometimes “wires and generation”
- **Regional Transmission Organizations:** Grid operators (not owners)
- **Power Generation Companies:** Owners, and often developers, of power plants
- **Public Utility Commissions (PUCs):** Regulators of utility rates & permits
- **Consumer Advocates:** Government agencies tasks with ratepayer protection
- **Public Interest Groups:** NGOs that advocate for certain policies or groups
- **State Governments:** Legislatures, governors, other executive officials
- **Local Regulators:** County boards, city councils, tax authorities

Opposition

- Local opposition to data center projects is a growing concern.
- **Grassroots groups** – ad hoc collections of individuals with limited experience; considerable variability.
- **Legacy organizations** – expanded resources, experience, and coordination.
- One industry watcher tracked \$18 billion of data center projects blocked and \$46 billion of projects delayed by opposition in the past two years



☰ npr WNYC ♥ DONATE

BUSINESS

Why more residents are saying 'No' to AI data centers in their backyard

JULY 17, 2025 · 5:00 AM ET

By [Ryan Murphy](#), [Emily Feng](#)

Litigation

Emerging Areas

Litigation has followed in the wake of data center development:



Tax

State and local governments are drawn to the value of data center projects, and disputes arise as governments attempt to extract that value.



Regulatory

Local, state, and federal regulatory hurdles. Litigation risk both at construction and ongoing during and after operation. NIMBYism is growing.

- Energy
- Environmental
- Land Use



Commercial

Complicated multi-party undertakings with potential for litigation if relationships deteriorate.

States of Interest

Virginia

“Focal point” for legacy data center development; pioneer on policy, economic, and regulatory structures

Texas

Second behind Virginia in data center capacity, first-mover on regulatory structures

Georgia

Considerable growth in recent capacity—ongoing debates among policymakers in legislature and state agencies

Minnesota

Hotspot of recent environmental litigation



Zoning and Takings Disputes

03

Zoning and Takings

Local Challenges

- Land use governed by state and local law—most land use litigation is procedural
- Zoning litigation targeting data center developments is widespread and likely to increase as groups mobilize to oppose projects
- Changing legislative and regulatory landscape may impact litigation

Georgia

Citizens sued a county alleging procedural gaps in the granting of a permit for a data center



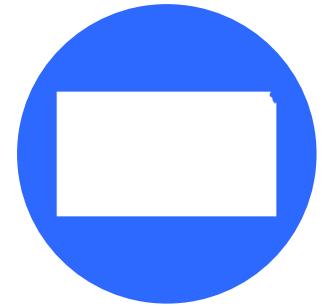
Virginia

Multiple pending cases challenging proposed data center projects on procedural grounds



Kansas

Citizen is appealing a zoning approvals by Kansas City and its county for data center project



Alabama

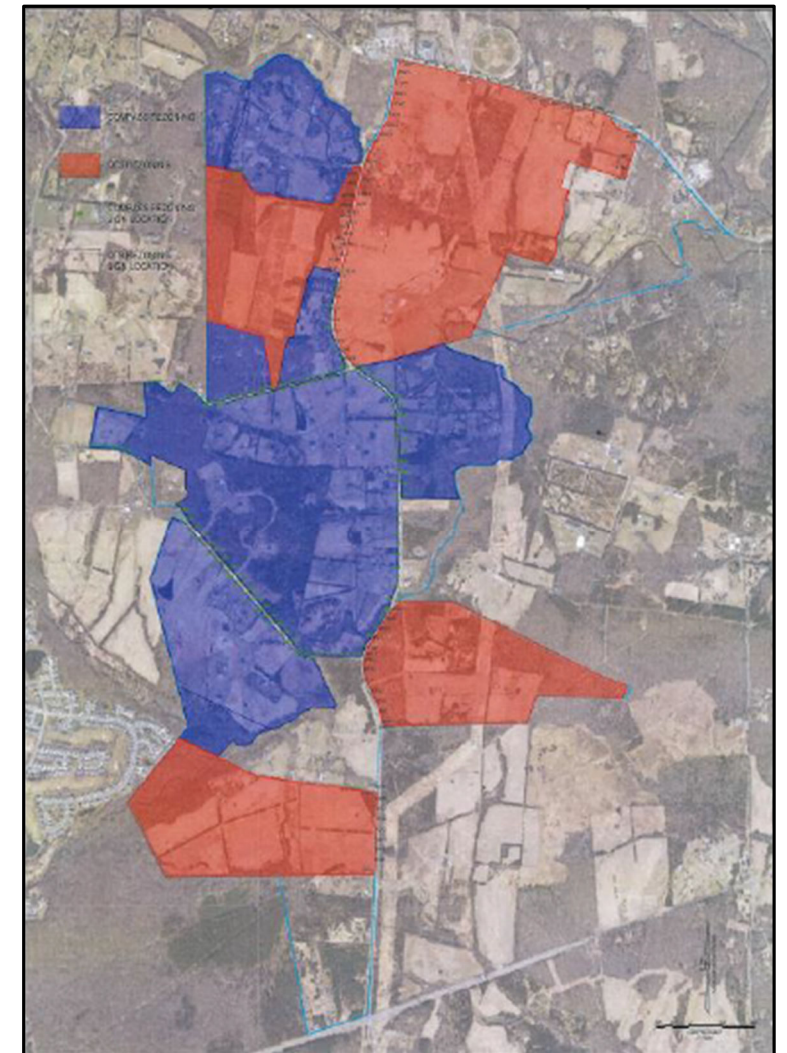
Residents mounted a procedural challenge, related to notice requirements after the rezoning decision for a proposed data



Case Study:

Board of County Supervisors of Prince William County v. Oak Valley Homeowners Association

- Board of Supervisors of Prince William County Virginia passed three rezoning ordinances to permit as many as 37 data center developments on land previously approved for agricultural uses.
- Individual landowners and a homeowners association brought separate state court actions challenging various procedural aspects of the rezoning decision.
- Lower courts divided on the merits—one court dismissed the landowners' challenge; another court ruled for the landowners and invalidated the rezoning.
- Virginia Court of Appeals considered cases in consolidated appeal and issued a procedural ruling for the challenging landowners. Court applied Virginia statute requiring public advertisement of proposed zoning changes and concluded County had not met requirements. Voided rezoning ordinances.
- Further appeal to Virginia Supreme Court is possible.



Zoning and Takings

Constitutional Claims

OCTOBER TERM, 1991 1003

Syllabus

LUCAS *v.* SOUTH CAROLINA COASTAL COUNCIL

CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

No. 91-453. Argued March 2, 1992—Decided June 29, 1992.

In 1986, petitioner Lucas bought two residential lots on a South Carolina barrier island, intending to build single-family homes such as those shown in the following photograph.

SUPREME COURT OF THE UNITED STATES

No. 15-214

JOSEPH P. MURR, ET AL., PETITIONERS *v.*
WISCONSIN, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF
WISCONSIN, DISTRICT III

[June 23, 2017]

JUSTICE KENNEDY delivered the opinion of the Court.

Fifth and Fourteenth Amendments

- “Nor shall private property be taken for public use, without just compensation”
- Takings come in two forms: actual seizure or regulatory takings
- Regulatory takings protections are slight – “where regulation denies all economically beneficial or productive use of land.” *Lucas*
- Baseline disputes matter
 - Baseline use: “productive use that was previously permissible under relevant property and nuisance principles.” *Lucas*
 - Baseline unit of property: multi-factor test – state law boundaries, physical characteristics, impact on value and expected uses. *Murr*

Zoning and Takings

State Takings Law

Virginia

Expressly follows federal decisions including *Lucas* on compensable regulatory takings.

City of Virginia Beach v. Bell,
255 Va. 395 (1998)

Texas

Broader protection than federal law – 25% diminution in property value results in a compensable taking – but limited scope.

Tex. Gov't Code Ann.
§ 2007.002

Georgia

A regulatory taking must be “so onerous that its effect is tantamount to a direct appropriation or ouster.”

Also recognizes due process right against arbitrary zoning law. Difference of relief.

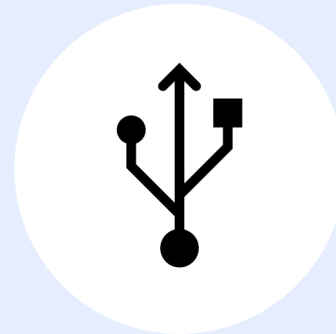
Diversified Holdings, LLP v. City of Suwanee,
302 Ga. 597 (2017)

Energy Regulatory Disputes

04

Energy Regulatory Disputes, Generally

- Data center projects have high power needs. Projects can require new infrastructure, triggering state and federal regulatory approvals, that can become a hook for disputes regarding data center development.



State Public Service Commissions are required to approve systemwide transmission upgrades or utility tariffs, which control the cost of electric service for data centers.



Federal Energy Regulatory Commission (FERC) has jurisdiction over interstate transmission of electricity.

Case Study:

Michigan Public Service Commission

- Electric utility Consumers Energy filed an application at the Michigan Public Service Commission to modify rates for electric service.
- Various groups intervened and created a contested case.
- The Michigan Public Service Commission partially approved the application in November 2025.
- In February 2026, the Michigan Public Service Commission denied a petition for rehearing.

Case Study:

Virginia State Corporation Commission

- Proceeding where a utility requested a certificate to construct new transmission line at the Virginia State Corporation Commission
- Proceeding created an opportunity to intervene, though the certificate was eventually approved.
- Dissatisfied parties can appeal to challenge a state regulatory approval in court.



Case Study:

FERC Third Circuit Challenge

- Challenge to FERC's rejection of an interconnection agreement between a nuclear power plant operator, grid operator PJM, and utility PPL Electric
- Parallel action from FERC requiring PJM to implement new transmission services



A rendering from 2021 of the data centre campus next to the Susquehanna power plant (Image: Linxon)

Environmental Disputes

05

Environmental Disputes

Litigation Risks

- State and federal environmental law regimes
 - National Environmental Policy Act, Clean Water Act, Clean Air Act, Endangered Species Act, State equivalents
 - Government enforcement actions
 - Environmental litigation by private parties
- Freedom of Information Act litigation
 - Protections on disclosure are available but there is risk
- Potential environmental tort risks
 - Liabilities are difficult to predict and value—can extend decades



Environmental Impact Litigation Case Studies:

Legacy Organizations

Minnesota

- Minnesota Center for Environmental Advocacy—legacy environmental advocacy organization. Currently conducting a coordinated campaign targeting data center developments in Minnesota
- Pending lawsuits challenging environmental permits for five projects across Minnesota
- Some claims have been unsuccessful—one court denied request for temporary restraining order
- But litigation pressure has delayed or cancelled some projects



Alabama



- Center for Biological Diversity petitioned United States Fish and Wildlife Service seeking protection for “Birmingham Darter” as an endangered species
- Petition alleges fish is “imperiled by proposed construction of a hyperscale data center”
- Harkens back to *Tennessee Valley Authority v. Hiram Hill*, 437 U.S. 153 (1978)

Case Study:

City of Imperial v. County of Imperial

- Proposal to build large data center in Imperial County, California. Data center would be located outside boundaries of, but close to, City of Imperial.
- City government has sued in Superior Court of California to block development of the property. Lawsuit raises procedural objections to the project under the California Environmental Quality Act. City seeks to block development and force comprehensive CEQA review.
- Court granted county's motion for judgment on the pleadings with leave to amend; later denied city's request for emergency relief to block lot merger.
- Developer responded with lawsuit in federal court bringing due process, first amendment, and equal protection claims against city and city officials.

8	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
9	COUNTY OF IMPERIAL	
10	CITY OF IMPERIAL, a general law city	CASE NO. ECU004457
11	Petitioner and Plaintiff,	
12	vs.	VERIFIED PETITION AND COMPLAINT
13	COUNTY OF IMPERIAL, a general law	BY THE CITY OF IMPERIAL FOR: (1)
14	county, IMPERIAL COUNTY BOARD	WRIT OF MANDATE [CODE CIV.
15	OF SUPERVISORS; and DOES 1 to 20,	PROC., § 1085 AND PUB. RES. CODE, §§
16	inclusive,	21168.5 AND 21168.9]; (2) WRIT OF
17	Respondents and Defendants.	ADMINISTRATIVE MANDAMUS [CODE
18		CIV. PROC., § 1094.5 AND PUB. RES.
		CODE, §§ 21168 AND 21168.9]; (3)
		DECLARATORY RELIEF; AND (4)
		INJUNCTIVE RELIEF



Environmental Disputes

Takeaways

- Developers and users should ensure appropriate permits are secured. Neither over- nor under-permitting a project.
- Important to monitor agency proceedings and develop appropriate record in anticipation of litigation.
- Consider potential that information shared with regulators may be subject to public release through FOIA actions.
- Anticipate possibility of long-tail liabilities from future environmental torts. Can plan for risks even if likelihood or extent of liability is indeterminate.



Tax Disputes

06


Tax Disputes, Generally

- **Federal tax issues** concerning data centers are arising in audits. Those issues are beginning to reach litigation.
- **State tax disputes** frequently involve:
 - 1) Appraisal and valuation disputes
 - 2) Disagreements regarding tax rate classifications
- State procedures vary widely.

REGULATIONS BUSINESS OPERATIONS & MANAGEMENT INDUSTRY TRENDS

U.S. Data Center Tax Incentives: A Special Report

Discover how changing regulations, energy requirements, and tax incentives are transforming the future of data center development.

 **Jack Vaughan**
May 21, 2025

Bloomberg Tax



Federal Tax Issues: Transfer Pricing

- Companies are required to price intercompany transactions consistent with the arm's-length standard. This requirement is particularly important to companies operating across international borders.
- Enforcement focuses on whether the returns earned by each legal entity are consistent with its functions, assets, and risks.
- International structures involving data centers should delineate the appropriate transactions and put intercompany agreements in place that support the selected arrangement.
- Transfer pricing is a primary focus of tax enforcement in the United States and around the world.
 - Audits often result in large adjustments and associated penalties.
 - Tax administrations are already challenging returns allocated to data centers supporting SaaS; expect accelerated scrutiny for GenAI arrangements.

Case Study:

Nordhoff-Net LLC v. IRS

The IRS is actively examining data center acquisitions, challenging taxpayer cost allocations and depreciation methods.

- In *Nordhoff-Net LLC v. Commissioner* (T.C. Dkt. No. 1750-26), the IRS proposed a \$24.1 million imputed underpayment based on reallocation of data center acquisition costs.
- Key disputed issues include:
 - Reclassification of assets to different depreciation recovery periods
 - Allocation of basis among land, non-structural components (Section 1245), and buildings/structural components (Section 1250)

Case Study:

Underwood Family Farm v. Prince William County

- In 2024, landowners sued Prince William County, seeking review of their real estate assessments, claiming the assessments were arbitrary and capricious.
- The suit alleged that Prince William County incorrectly reassessed their agricultural/open-space parcels as high-value data-center land because the assessments relied on future, contingent development rather than the present value of the land.
- Plaintiffs sought judicial review and correction of the assessments and rollback taxes, along with refunds of amounts already paid.



State Efforts to Extract Value and Narrow Incentives

- State and local jurisdictions use tax incentives to attract data center developments. Once projects are underway or complete, those same jurisdictions may seek to extract value from projects by revoking or reversing those incentives.
- Case study: **Virginia Tangible Property Tax**
 - Business equipment has historically been taxed at a single rate.
 - Virginia introduced a rate classification for data-center computers and equipment that was originally used to incentivize data-center construction.
 - But recently localities in Virginia have begun imposing higher rates on data-center computers and equipment than those rates imposed on other classes of business equipment.

LOCAL NEWS

Keshia Lynn, Community Journalist

Published: March 18, 2026 at 5:49 PM

Updated: March 18, 2026 at 6:23 PM

Budget Stalemate: Data Center Tax Breaks Stall Virginia Spending Plan

Future Tax on “Throughput”

- Scholars and policymakers are exploring taxes based not on income or asset value, but on the volume of data transmitted, processed, or collected—treating data flow as the taxable event.
- These proposals may tax the bandwidth supplied into a market, like a consumption tax on digital throughput.
- No U.S. jurisdiction taxes property based on throughput, but the intellectual groundwork is being laid for jurisdictions to consider new avenues for extracting tax revenue from the data-center industry.

The screenshot shows the top portion of a news article on the website of The Augusta Chronicle. At the top left, there is a 'MARKETPLACE' section with the text 'Search For & Place Classifieds'. To the right is the newspaper's name, 'The Augusta Chronicle', in a large, stylized font. Below this is a navigation bar with links for 'News', 'Sports', 'Things To Do', 'Lifestyle', 'Real Estate', 'Advertise', 'Obituaries', 'eNewspaper', and 'Legals'. The main content area features the word 'STATE' in all caps, followed by a large, bold headline: 'Report: Data centers a boon to Georgia economy despite tax giveaway'. Below the headline, the author is listed as 'Ty Tagami Capitol Beat News Service' and the date and time are 'Jan. 6, 2026, 3:51 a.m. ET'.

Deal-Related Disputes

07

Deal-Related Disputes

- Data center developments are complicated, multi-party undertakings that involve a variety of entities. Large investments required bring together variety of parties to support and finance data center projects.
- Breakdown in relationships, funding concerns, construction delays—common friction points that can lead to litigation.
- Development relationships frequently governed by contract and involve private parties—arbitration and alternative dispute resolution mechanisms are more common.

Contract Disputes

Multitude of contracts involved in projects—real estate, financing, construction, end user agreements—disputes about agreements can turn into litigation

Intellectual Property Disputes

Complex undertakings involving trade secrets, patents, and other intellectual property; opportunistic claims targeting high value defendants

Bankruptcy

If default or insolvency arises, projects can be forced into reorganization proceedings—potential to disrupt expectations both on process and substance

Case Study:

Switch, Ltd. v. NVLCO Storey County, LLC

- Property and contract dispute about scope of restrictive covenant in real estate agreements between two buyers of parcels from the same landowner.
- Covenant restricted use of land for “colocation facility” defined as “any building or other structure in which a party provides access to space for, and/or manages, computer infrastructure, voice and/or data networking and other communications for more than one third-party customer.”

5	FIRST JUDICIAL DISTRICT OF NEVADA	
6		
7	IN AND FOR STOREY COUNTY	
8	* * * * *	
9	SWITCH, LTD., a Nevada limited liability company; and SUPERNAP RENO, LLC, a Nevada limited liability company,	Case No. 23 RP 00005 1E
10		Dept. No. 1
11	Plaintiffs,	
12	v.	
13	NVLCO STOREY COUNTY, LLC, a foreign limited liability company; PSO NEVADA, LLC, a foreign limited liability company; TRACT MANAGEMENT COMPANY LP, a Delaware limited partnership, TRACT (LANDCO) I, LP, a Delaware limited partnership; NVPRU01, Inc., a Delaware corporation; NVPRU01, Inc., a Delaware corporation; NVPRU03, Inc., a Delaware corporation; DOES I through X, inclusive; and ROE ENTITIES XI through XX, inclusive,	ORDER DENYING PLAINTIFFS/ COUNTERDEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND GRANTING DEFENDANTS/ COUNTERCLAIMANT'S MOTION FOR SUMMARY JUDGMENT ON NVLCO'S COUNTERCLAIM FOR DECLARATORY JUDGMENT
14		
15		
16		
17		
18		
19	Defendants.	

- Switch sought to bar use as cloud facilities even where only a single tenant physically occupied the space if the single tenant offered services to multiple end users.
- Court agreed with defendant that covenant only barred multi-tenant data centers and that owner-occupied facilities and single tenant facilities were permissible even when they provide cloud services to multiple end users.

The background of the slide is a high-resolution, aerial photograph of a semiconductor die. The die is a square chip with a complex, grid-like pattern of circuitry. The colors are vibrant and varied, including shades of green, yellow, orange, red, purple, and blue, which likely represent different materials or layers used in the manufacturing process. The perspective is from a high angle, looking down at the chip, which creates a sense of depth and complexity.

Thank You

GIBSON DUNN

Confidential. Not for further distribution.

Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.
© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit our [website](#).

An aerial, high-angle photograph of a city street grid. The streets and buildings are rendered in a vibrant, multi-colored palette, including shades of blue, green, yellow, orange, red, and purple. The perspective is slightly tilted, creating a sense of depth and movement. The text 'GIBSON DUNN' is centered in the middle of the image in a clean, white, sans-serif font.

GIBSON DUNN