Supreme Court Local Government Preview 2014

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The State and Local Legal Center (SLLC) files Supreme Court amicus *briefs on behalf of the Big Seven national organizations representing state and local governments.*

*Indicates cases where the SLLC has or will file an *amicus* brief.

In *Reed v. Town of Gilbert, Arizona** the Court will decide whether Gilbert's sign code violates the First Amendment. The Good News church objected to Gilbert's sign code which treats temporary direction signs less favorably than political signs and ideological signs. A majority of the Ninth Circuit concluded the distinctions between the three sign categories are content-neutral because all signs in each category are treated the same regardless of their content even if the three categories of signs are treated differently. A dissenting judge would have compared the three sign categories with each other stating: "Gilbert's sign ordinance plainly favors certain categories of non-commercial speech (political and ideological signs) over others (signs promoting events sponsored by non-profit organizations) based solely on the content of the message being conveyed."

In *T-Mobile South v. City of Roswell** the Court will decide whether a letter denying a cell tower construction application that doesn't explain the reasons for the denial meets the Telecommunications Act's (TCA) "in writing" requirement. T-Mobile applied to construct a 108-foot cell tower in a residential area in the shape of a man-made tree that would be about 25-feet taller than the pine trees surrounding it. After a hearing, where city councilmembers stated various reasons why they were going to vote against the application, the City of Roswell sent T-Mobile a brief letter saying the application was denied and that T-Mobile could obtain hearing minutes from the city clerk. The district court and other circuit courts have held that "in writing" means a written explanation of why the city council's majority rejected the application. The Eleventh Circuit disagreed. The TCA does not say that "the decision [must] be 'in a separate writing' or in a 'writing separate from the transcript of the hearing and the minutes of the meeting in which the hearing was held' or 'in a single writing that itself contains all of the grounds and explanations for the decision.'"

In *Heien v. North Carolina* a police officer pulled over a car because he thought that North Carolina law required that motor vehicles have two working brake lights. It turns out the officer was wrong. The Court will decide whether a traffic stop is permissible under the Fourth Amendment when it is based on an officer's misunderstanding of the law. The North Carolina Supreme Court held that mistakes of law that are objectively reasonable do not invalidate traffic stops. Reasonableness is the "primary command" of the Fourth Amendment, "[a]ccordingly, requiring an officer to be more than reasonable, mandating that he be perfect, would impose a greater burden than that required under the Fourth Amendment."

In *Comptroller v. Wynne** the Court will determine whether the U.S. Constitution requires states to offer a credit to its residents for all income taxes paid to another jurisdiction. The Wynnes of Howard County, Maryland, received S-corporation income that was generated and taxed in numerous states. Maryland law allowed them to receive a tax credit against their Maryland state taxes but not their Maryland county taxes. Maryland's highest state court held that offering no credit against their county taxes violated the dormant Commerce Clause, which denies states the power to unjustifiably discriminate against or burden interstate commerce. If every state imposed a county tax without a credit, interstate commerce would be disadvantaged. Taxpayers who earn income out of state would be "systematically taxed at higher rates relative to taxpayers who earn income entirely within their home state." A decision against Maryland will limit state and local taxing authority nationwide.

Is the time employees spend in security screenings compensable under the Fair Labor Standards Act (FLSA)? The Court will decide this seemingly simple question in *Integrity Staffing Solutions v. Busk*.* Warehouse employees claimed they should have been paid for the time they spent waiting and going through security screenings to prevent theft at the end of each shift, up to 25 minutes. The FLSA requires that hourly employees be paid for "preliminary" and "postliminary" activities if they are "integral and indispensable" to an employee's principal activities. While the Ninth Circuit agreed with the employees, Integrity Staffing Solutions argues that "walking through a security screening is no more integral or indispensable to warehouse work than time spent commuting, walking from the parking lot to the workplace, waiting to pick up protective gear, or waiting in line to punch the time clock." Numerous hourly state and local government employees go through security checks at the beginning—and sometimes the end—of the workday.

The issue in *Holt v. Hobbs* is whether a state prison grooming policy violates the Religious Land Use and Institutionalized Persons Act (RLUIPA) because it prohibits an inmate from growing a half-inch beard in accordance with his religious beliefs. Per RLUIPA, the government may not impose a substantial burden on the religious exercise of an institutionalized person unless it is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. The Eighth Circuit agreed with the state prison that its grooming policy was the least restrictive means of furthering the compelling penological interest of prison safety and security. Reasons cited for maintaining the grooming policy were preventing the concealing of contraband, inmates with beards can quickly change their appearance by shaving, and special privileges lead to inmates being targeted. At stake in this case is when and how much to defer to prison officials under RLUIPA regarding the least restrictive means of accomplishing prison security.

The Railroad Revitalization and Regulation Reform Act (4-R) prohibits states from taxing railroads in a discriminatory manner. In Alabama railroads pay a 4% sales tax on diesel fuel, trucks pay a 19 cents per gallon excise tax, and water carriers pay no tax. In *Alabama Department of Revenue v. CSX Transportation**the Court will first decide who to compare taxation of railroads to: competitors only or other commercial and industrial taxpayers. The Court will also decide whether it should consider the fact that trucks pay roughly the same in excise taxes as railroads pay in sales taxes when determining whether Alabama's sale tax discriminates against railroads. The Eleventh Circuit ruled Alabama violated 4-R. It compared CSX to competitors only and did not include the excise tax trucks pay when comparing their taxation to railroads. At least 10 other states—and some local governments within those states—charge railroads a sales tax on diesel fuel.

Colorado requires online retailers who don't have to collect sales tax to comply with tax notice and reporting requirements. Direct Marketing Association sued Colorado in federal court claiming these requirements are unconstitutional. The issue in *Direct Marketing Association v. Brohl** is whether the Tax Injunction Act (TIA) bars the federal court from hearing this case even though DMA isn't a taxpayer and Colorado "neither imposes a tax, nor requires the collection of a tax, but serves only as a secondary aspect of state tax administration." The Tenth Circuit held federal court jurisdiction is barred. "Nothing in the language of the TIA indicat[es] that our jurisdiction to hear challenges to state taxes can be turned like a spigot, off when brought by taxpayers challenging their own liabilities and on when brought by third parties challenging the liabilities of others." Regarding the argument that the notice and reporting obligations aren't taxes, the TIA uses the term "restrain." DMA's lawsuit seeks to retrain state tax collection.

The issue in *Perez v. Mortgage Bankers Association** is whether a federal agency must engage in notice-and-comment rulemaking pursuant to the Administrative Procedure Act before it can significantly alter an interpretive rule that interprets an agency regulation. Since 1997 the D.C. Circuit has required notice-and-comment reasoning that an agency is effectively changing the underlying regulation when it significantly alters an interpretive rule. In this case, without notice-and-comment, the Department of Labor issued an Administrator's Interpretation saying mortgage loan officers are eligible for overtime, withdrawing an earlier opinion letter to the contrary. Because state and local governments are often regulated by federal agencies or regulate in the same space as federal agencies, they generally prefer more opportunity to be informed of and comment on significant alterations to interpretive rules.