Supreme Court and the States 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.

A group of agencies providing supported living services to Medicaid-eligible individuals sued Idaho's Department of Health and Welfare for failing to implement a cost study that recommended substantial increases in Medicaid reimbursement rates. The issue in *Armstrong v. Exception Child Center** is whether the Supremacy Clause gives Medicaid providers a private right of action to enforce 42 U.S.C. § 1396a(a)(30)(A) against a state where Congress chose not to create enforceable rights under that statute. This statute requires states to ensure that Medicaid reimbursement rates for healthcare providers "are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers." In 2012 in *Douglas v. Independent Living Center of Southern California* the Court was asked to decide the very same issue but ultimately didn't reach it because the Centers for Medicare and Medicaid indicated that California's Medicaid plan complied with 42 U.S.C. § 1396a(a)(30)(A). Four dissenting Justices would have held that the Supremacy Clause provides no cause of action to sue a state under 42 U.S.C. § 1396a(a)(30)(A).

In a provision added by citizen initiative, the Arizona Constitution removes congressional redistricting authority from the Arizona State Legislature and places it in an unelected commission. In *Arizona State Legislature v. Arizona Independent Redistricting Commission** the Court will decide whether this violates the U.S. Constitution's Elections Clause which requires that the time, place, and manner of congressional elections be prescribed in each state by the "Legislature thereof." The Arizona district court ruled against the Arizona legislature reasoning that the Supreme Court previously held in two cases that a state may allow state bodies other than the legislature to redistrict. A dissenting judge didn't disagree with this, but pointed out that in those cases the state legislature still was able to participate in the redistricting process "in some very significant and meaningful capacity." While the use of redistricting commissions is popular for drawing state legislative district lines, only Arizona, California, and Montana have mandated them for congressional redistricting.

For the third time the Court has accepted a case involving the issue of whether disparate-impact claims can be brought under the Fair Housing Act. The Inclusive Communities Project sued the Texas Department of Housing and Community Affairs claiming it was disproportionately approving Low Income Housing Tax Credits in minority-concentrated neighborhoods and disproportionately disapproving them in predominately white neighborhoods so as to maintain segregated housing patterns. It remains to be seen if *Texas Department of Housing and Community Affairs v. The Inclusive*

Communities Project will settle like its predecessors, *Mt. Holly v. Mt. Holly Citizens in Action* and *Magner v. Gallagher*. The 11 federal circuits that have decided this issue have all held that disparate-impact claims are actionable. The Supreme Court is expected to rule to the contrary.

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.

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.

In *North Carolina State Board of Dental Examiners v. FTC** the Court will decide whether, for purposes of the state-action exemption from federal antitrust law, a state regulatory board will be treated as "private" because a majority of its board members are market participants elected by other market participants. The North Carolina State Board of Dental Examiners is a state agency made up of a majority of dentists who are elected by their peers. It regulates the unlicensed practice of dentistry and "successfully expelled non-dentist providers from the North Carolina teeth-whitening market." The state action doctrine exempts states from federal anti-trust laws. It applies to private parties if they are acting pursuant to a "clearly articulated and affirmatively expressed as state policy" *and* are being actively supervised by the state. The Federal Trade Commission (FTC) argued that the board is a private actor that isn't actively supervised, while the board argued that because it is a state agency it does not have to

be actively supervised. The Fourth Circuit agreed with the FTC that because the majority of dental board members are elected by their peers it is a private actor. Members of state boards and commissions nationwide are elected by their peers. These boards may lose their state-action exemption depending on how the Court rules.

In *Alabama Legislative Black Caucus v. Alabama* and *Alabama Democratic Conference v. Alabama* the Court will decide whether Alabama's 2010 redistricting plan violates Section 2 of the Voting Rights Act and the Fourteenth Amendment's Equal Protection Clause. While Alabama's plan maintains the number of House and Senate majority-black districts, it shifts more black voters into majority-black districts which limits their potential influence in other districts. The federal district court found no vote dilution or racial gerrymandering. Race wasn't the predominate motiving factor in creating the districts, instead the legislature "maintained the cores of existing districts, made districts more compact where possible, kept almost all of the incumbents within their districts, and respected communities of interest where possible." Redistricting in compliance with the Voting Rights Act and the U.S. Constitution is a perennial issued for state legislatures.

In *Williams-Yulee v. The Florida Bar* the Court will decide whether Florida's Cannon 7C(1), which prohibits candidates for judicial office from personally soliciting campaign funds, violates the First Amendment. The Florida Supreme Court held Cannon 7C(1) does not violate the First Amendment because it is narrowly tailored to serve a compelling state interest. The Florida Supreme Court previously held that Florida "has a compelling interest in protecting the integrity of the judiciary and maintaining the public's confidence in an impartial judiciary" and concluded that Cannon 7C(1) serves these goals. Cannon 7C(1) was narrowly tailored because it seeks to "insulate judicial candidates from the solicitation and receipt of funds while leaving open, ample alternative means for candidates to raise the resources necessary to run their campaigns." Thirty-nine states have some form of popular election for judges. Thirty of those states prohibit judges from personally seeking campaign contributions.

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 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.

The issue in *Oneok Inc. v. Learjet, Inc.* is whether the Natural Gas Act (NGA) preempts state-law antitrust claims brought by retail natural gas purchasers. Retail purchasers sued natural gas traders claiming they manipulated the price of natural gas by reporting false information to price indices. While the NGA preempts rate practice claims involving *wholesale* natural gas sales, it has no jurisdiction over *retail* natural gas sales. The Ninth Circuit held the retail natural gas purchasers' claims weren't preempted just because wholesale prices were also affected by price manipulation affecting retail sales. "Under the broad reading . . . that [the traders] propose, there is no 'conceptual core' delineating transactions falling within FERC's jurisdiction and transactions outside of FERC's jurisdiction." This case arose out of the energy crisis of 2000-2003 and is the only preemption case the Court has accepted so far this term.

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.

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 *Rodriguez v. United States* the Court will decide whether a police officer violates the Fourth Amendment by extending (for just a few minutes) an already-completed traffic stop for a dog sniff. Officer Struble gave Dennys Rodriguez a written warning after he veered onto the shoulder of the highway and jerked back on the road. Officer Struble then called for backup. When backup arrived, Officer Struble walked his sniffer dog around Rodriguez's car. The Eighth Circuit held the search was reasonable. Officer Struble waited only seven or eight minutes after the traffic stop was completed before deploying his dog because he wanted backup given that there were two people in the stopped car.

The question the Court will decide in *M&G Polymers v. Tackett* is whether retiree health-care benefits vest (continue indefinitely) when a collective bargaining agreement (CBA) expires if the CBA is silent about the duration of the benefits. Based on circuit precedent, the Sixth Circuit held that they vest. But the Third Circuit has held that a clear statement is required, and the Second and Seventh Circuits have concluded that some language in the agreement must reasonably support indefinite continuation. This case will be decided under the federal Labor Management Relations Act, which does not govern state and local government collective bargaining. Many public sector CBAs also don't specify the duration of retiree health care benefits. So, an arbitrator or judge interpreting similar contract language in a public sector case would likely give significant weight to the Court's ruling in this case.