

Supreme Court Midterm Review

Presented by the **State and Local Legal Center**

Featuring **Jeff Wall**, Sullivan & Cromwell, **Lori Alvino McGill**,
Quinn Emanuel, and **Richard Wolf**, USA Today

About the Webinar

- Type your questions in anytime
- A recording of the webinar will be available on the SLLC's website following the webinar
- The views expressed in this webinar do not necessarily reflect the views of the SLLC member groups

About the SLLC

- Members:
 - National Governors Association
 - National Conference of State Legislatures
 - Council for State Governments
 - National Association of Counties
 - National League of Cities
 - U.S. Conference of Mayors
 - International City/County Management Association
- Associate members: International Municipal Lawyers Association and Government Finance Officers Association

About the SLLC

- Since 1983 the SLLC has filed over 300 briefs
- The SLLC will file 12 briefs before the Supreme Court this term
- The SLLC is a resource for Big Seven members on the Supreme Court—this webinar is an example

About the Speaker

- Jeff Wall, Sullivan & Cromwell
- Lori Alvino McGill, Quinn Emanuel
- Richard Wolf, USA Today

Administrative Law: Cost-Benefit Analysis

- *EPA v. EME Homer City Generation* (D.C. Circuit; 6-2 decision by J. Ginsburg)
 - EPA may use cost-benefit analysis in allocating emission reductions to States under the Clean Air Act.
- *Michigan v. EPA* (D.C. Circuit)
 - Is the agency required to use cost-benefit analysis?
 - Under the Clean Air Act, EPA must determine whether regulating power-plant emissions is “appropriate and necessary.” Does the term “appropriate” require consideration of costs?

Fourth Amendment: Suspicionless Dog Sniffs

- *Caballes* (2005): dog sniff conducted during a traffic stop is permissible.
- *Rodriguez v. United States*: what if the dog sniff occurs after the officer writes a ticket?
 - What are the essential components of a traffic stop? Why not a dog sniff?
 - What about sequencing issue: officer will do the sniff before completing the stop?
 - Should there be “40 minutes of free time” to investigate unrelated crimes?

Due Process and Pretrial Detainees

- *Kingsley v. Hendrickson*: what is the legal standard for an excessive-force claim brought by a pretrial detainee?
 - Fourth Amendment: whether force was objectively reasonable under the circumstances.
 - Eighth Amendment: whether officer subjectively intended to use extreme force for the purpose of causing harm.
- Pretrial detainees stand in between suspects and convicts. Which Amendment should due process protections track?

Sheehan v. City & County of San Francisco

Issues Presented

- Whether the Americans with Disability Act limits the power of police officers when they seek to arrest a person they know to be mentally disabled
 - Yes: 4th, 9th, 11th
 - No: 5th, 6th, 8th
- Whether an entry into a residence may be unreasonable under the Fourth Amendment where it is clearly established that an exception to the warrant requirement applies
 - Yes: 9th
 - No: 1st, 5th, 11th

ADA & Fourth Amendment

- Exigency
- Reasonableness
- ADA's "Safety Principle"

Qualified Immunity

- *As phrased by the Solicitor General:* Was it “clearly established” in 2008 that the Fourth Amendment prohibited police officers from making an otherwise lawful entry under the emergency aid and exigent circumstances exceptions to the warrant requirement to arrest an armed and violent individual known to have mental illness due to the individual’s foreseeable resistance?
- 9th Circuit: “The officers’ decision to force an entry was in effect a decision to cause a violent—and potentially deadly— confrontation with a mentally ill person without a countervailing need.”

Los Angeles v. Patel

Issues Presented

- Whether facial challenges to ordinances and statutes are permitted under the Fourth Amendment
 - Yes: 9th Cir (implied)
 - No: 6th Cir
- Whether a hotel has a privacy interest in a hotel guest registry, and if so, whether a hotel and motel registry ordinance is facially unconstitutional under the Fourth Amendment unless it expressly provides for pre-compliance judicial review before the police can inspect the registry
 - Yes: 9th Cir
 - No: Massachusetts Supreme Court (regarding privacy interest only)

Facial Challenges Under Fourth Amendment

- *Sibron*: concrete factual context and as-applied challenges
- Hypothetical scenarios
- Categorical prohibition

Search & Pre-Compliance Review

- Search
- Reasonableness of search
- *See*: pre-compliance judicial review
- *Burger*: closely regulated industry exception

Marriage Equality

Issues Presented

- Whether the Equal Protection Clause requires states to allow same-sex marriages
 - Yes: 4th, 7th, 9th, 10th
 - No: 6th
- Whether States must recognize same-sex marriages performed out-of-state
 - Yes: 10th
 - No: 5th, 6th (implied)

Arguments

Federalism and democratic processes

No original right to same-sex marriage

No animus concerns

Original meaning of EPC

Fundamental right

Suspect class

Prediction...

- Recent Supreme Court Inaction
- Recent Supreme Court Decisions
- Public Opinion

King v. Burwell

Walker v. Texas Division, Sons of Confederate Veterans

Glossip v. Gross
