Supreme Court Review for Local Governments

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*Indicates a case where the SLLC filed an *amicus* brief.

Last term the Supreme Court decided six—arguably seven—"big" cases. Five of those big cases impacted local governments in some way. In some of these cases being down a Justice made all the difference—in at least two cases it made no difference at all. Beyond the big cases, the Court decided a number of "bread and butter" issues—qualified immunity, public employment, and Fourth Amendment searches—affecting local governments.

The big cases

In *Friedrichs v. California Teachers Association*, the Supreme Court issued a 4-4 opinion affirming the lower court's decision to not overrule *Abood v. Detroit Board of Education* (1977).

In *Abood*, the Supreme Court held that the First Amendment does not prevent "agency shop" arrangements--where public employees who do not join the union are still required to pay their "fair share" of union dues for collective-bargaining, contract administration, and grievance-adjustment.

In two recent cases in 5-4 opinions written by Justice Alito and joined by the other conservative Justices (including Justice Scalia and Justice Kennedy), the Court was very critical of *Abood*. The Court heard oral argument in *Friedrichs* in January before Justice Scalia died, and the five more conservative Justices seemed poised to overrule *Abood*. Justice Scalia, who ultimately didn't participate in this case, likely would have voted to overrule *Abood*.

In *Reynold v. Sims* (1964), the Supreme Court established the principle of "one-person, one-vote" requiring state legislative districts to be apportioned equally.

The question in *Evenwel v. Abbott* was what population is relevant—total population or voter-eligible population.

The maximum total-population deviation between Texas Senate districts was about 8 percent; the maximum voter-eligible population deviation between districts exceeded 40 percent.

The Court's unanimous opinion concluded Texas may redistrict using total population "based on constitutional history, this Court's decisions, and longstanding practice."

Over the last 25 years the Supreme Court refused to decide this issue at least three times (all the previous cases involved local governments).

The Supreme Court split 4-4 in *United States v. Texas* on whether the President's deferred action immigration program violates federal law.

As a result, the Fifth Circuit's nationwide temporary stay of the program remains in effect.

The Deferred Action for Parents of Americans (DAPA) program allows certain undocumented immigrants who have lived in the United States for five years, and either came here as children or already have children who are U.S. citizens or permanent residents, to lawfully stay and work temporarily in the United States.

The National League of Cities and the U.S. Conference of Mayors joined an *amicus* brief in this case supporting the United States.

In *Fisher v. University of Texas at Austin*, the Court ruled 4-3 that the University of Texas at Austin's race-conscious admissions program is constitutional.

Per Texas's Top Ten Percent Plan, the top ten percent of Texas high school graduates are automatically admitted to UT Austin, filling up to 75 percent of the class. Other students are admitted based on a combination of their grades, test scores, and "personal achievement index." Race is considered as one factor in one of the two components of an applicant's "personal achievement index."

The Court rejected Abigail Fisher's argument that the university's use of race is unnecessary. This is the first time an education institution has won an affirmative action case since *Grutter v. Bollinger* (2003).

In *McDonnell v. United States*, the Court unanimously reversed former Virginia Governor Robert McDonnell's federal bribery conviction.

While in office McDonnell accepted more than $175,000 in loans, gifts, and other benefits from Jonnie Williams. Williams wanted a Virginia state university to test a dietary supplement, Anatabloc, his company had developed.

The federal government claimed McDonnell committed at least five "official acts" of bribery, including arranging for Williams to meet with Virginia government officials and hosting and attending events at the Governor's mansion designed to encourage Virginia university researchers to study Anatabloc.

The Court held that setting up meetings, calling other public officials, and hosting events do not alone qualify as "official acts."

The lower court will decide whether charges against McDonnell should be dismissed based on its new definition of "official acts" or whether McDonnell should receive a new trial.

Bread and butter cases

Local government officials can be sued for money damages in their individual capacity if they violate a person's constitutional rights. Qualified immunity protects government officials from such lawsuits where the law they violated isn't "clearly established."

In *Mullenix v. Luna*, Israel Leija Jr. led officers on an 18-minute chase at speeds between 85 and 110 miles an hour after officers tried to arrest him. Leija called police twice saying he had a gun and would shoot police officers if they did not abandon their pursuit. While officers set up spike strips under an overpass, Officer Mullenix decided to shoot at Leija's car to disable it.

Officer Mullenix killed Leija but not disabling his vehicle. Leija's estate sued Officer Mullenix claiming that he violated the Fourth Amendment by using excessive force.

The Court concluded Officer Mullenix should be granted qualified immunity, stating: "Given Leija's conduct, we cannot say that only someone 'plainly incompetent' or who 'knowingly violate[s] the law' would have perceived a sufficient threat and acted as Mullenix did."

In *Heffernan v. City of Paterson, New Jersey*,* the Court held 6-2 that a public employer violates the First Amendment when it acts on a *mistaken* belief that an employee engaged in First Amendment protected political activity.

Police officer Jeffery Heffernan worked in the office of the police chief. The mayor was running for reelection against a friend of Heffernan's, Lawrence Spagnola. Heffernan was demoted after another member of the police force saw Heffernan picking up a Spagnola yard sign and talking to the Spagnola campaign manager and staff. Heffernan was picking up the sign for his bedridden mother.

The Court agreed that Heffernan has a First Amendment claim even though he engaged in no political activity protected by the First Amendment, because the City's motive was to retaliate against him for political activity.

A police officer stopped Edward Streiff after he left a suspected drug house. The officer discovered Streiff had an outstanding warrant, searched him (legally), and discovered he was carrying illegal drugs.

The Court held 5-3 in *Utah v. Strieff* that even though the initial stop was illegal, the drug evidence could be admissible against Streiff in a trial.

The Court first concluded that the discovery of a valid, pre-existing, untainted arrest warrant triggered the attenuation doctrine, which is an exception to the exclusionary rule. The Court then concluded that the discovery of the warrant "was [a] sufficient intervening [attenuating] event to break the causal chain" between the unlawful stop and the discovery of drugs.

In *Birchfield v. North Dakota*,* the Court held 5-3 that states may criminalize an arrestee's refusal to take a warrantless *breath* test. If states criminalize the refusal to take a *blood* test, police must obtain a warrant.

Per the search-incident-to-arrest exception to the Fourth Amendment, police officers are allowed to search an arrestee's person, without first obtaining a warrant, to protect officer safety or evidence. To determine if this exception applies, the Court weighed the degree to which the search "intrudes upon an individual's privacy" with the need to promote "legitimate government interests."

The Court concluded the privacy intrusion of breath tests was minimal but the privacy intrusion of blood tests was not.

What's next?

The Supreme Court has accepted three cases of interest to local governments to be decided in its 2016-2017 term. The issue in *Wells Fargo v. City of Miami* and *Bank of America v. City of Miami* is whether cities have standing to sue banks under the Fair Housing Act over loses cities have experienced caused by discriminatory lending practices. In *Manuel v. City of Joliet* the Court will decide whether it is possible to bring malicious prosecution claims under the Fourth Amendment possible. The question in *Murr v. Wisconsin* is whether merger provisions in state law and local ordinances, where nonconforming, adjacent lots under common ownership are combined for zoning purposes, may result in the unconstitutional taking of property.