Supreme Court Preview for State and Local Governments 2016

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

*Indicates a case where the SLLC has filed or will file an *amicus* brief.

In *Trinity Lutheran Church of Columbia v. Pauley* the Supreme Court will decide whether Missouri can refuse to allow a religious preschool to receive a state grant to resurface its playground based on Missouri's "super-Establishment Clause." The Missouri Department of Natural Resources (DNR) offers grants to "qualifying organizations" to purchase recycled tires to resurface playgrounds. The DNR refused to give a grant to Trinity Church's preschool because Missouri's constitution prohibits providing state aid directly or indirectly to churches. Trinity Church argues that excluding it from an "otherwise neutral and secular aid program" violates the federal constitution's Free Exercise and Equal Protection Clauses, which Missouri's "super-Establishment Clause" may not trump. In *Locke v. Davey* (2004) the Supreme Court upheld Washington State's "super-Establishment Clause," which prohibits post-secondary students from using public scholarships to receive a degree in theology. The lower court concluded *Locke* applies in this case where: "Trinity Church seeks to compel the direct grant of public funds to churches, another of the 'hallmarks of an established religion.'"

Most states, including Colorado, and the federal government have a "no-impeachment" rule which prevents jurors from testifying after a verdict about what happened during deliberations. After a jury convicted Miguel Angel Pena-Rodriguez of three misdemeanors related to making sexual advances toward two teenage girls, two jurors alleged that another juror made numerous racially biased statements during jury deliberations. In *Pena-Rodriguez v. Colorado*, Pena-Rodriguez argues that if Colorado's "no-impeachment" rule bars admission of the juror's racially biased statements it violates his Sixth Amendment right to be tried by an "impartial" jury. The

Colorado Supreme Court disagreed. In two previous cases the Supreme Court ruled that the federal "no-impeachment" rule wasn't unconstitutional where it barred admission of evidence that the jury was "one big party" where numerous jurors used drugs and alcohol (*Tanner v. United States*, 1987) and that a juror in a car-crash case said in deliberations that her daughter caused a car accident and had she been sued it would have ruined her life (*Warger v. Shauers*, 2014). These two cases stand for a "simple but crucial principle: Protecting the secrecy of the jury deliberations is of paramount importance in our justice system."

The issue in *Wells Fargo v. City of Miami** and *Bank of America v. City of Miami** is whether Miami has statutory standing to sue banks under the Fair Housing Act (FHA) for economic harm caused to the City by discriminatory lending practices. The FHA allows "aggrieved person[s]" to sue. The banks argue that in *Thompson v. North American Stainless* (2011), the Supreme Court defined "aggrieved person," under another federal statute, to require that a plaintiff fall within the zone of interests protected by the statute and have injuries proximately caused by the statutory violation. Unsurprisingly, the banks argue that the City doesn't fall within the zone of interests protected by the FHA and that the banks' conduct didn't cause economic injury to the City. The Eleventh Circuit concluded Miami had statutory standing relying on a much older case, *Trafficante v. Metropolitan Life Insurance Company* (1972), where the Supreme Court stated that statutory standing under the Fair Housing Act is "as broad[] as is permitted by Article III of the Constitution." The parties do not dispute that the City of Miami has Article III standing in this case. So if the Court agrees that only Article III standing is required to also have statutory standing Miami has statutory standing to sue the banks.

In *Ivy v. Morath** the Supreme Court will decide when state and local governments are responsible for ensuring that a private actor complies with the Americans with Disabilities Act (ADA). In Texas, state law requires most people under age 25 attend a state-licensed private driver education school to obtain a driver's license. None of the schools would accommodate deaf students. So a number of deaf students sued the Texas Education Agency (TEA) arguing it was required to bring the driver education schools in to compliance with the ADA. The ADA states that no qualified individual with a disability may be excluded from participation in or be denied the benefits of public entity "services, programs, or activities" because of a disability. The Fifth Circuit concluded that the ADA does not apply to the TEA because it does not *provide* "services, programs, or activities." "Here, the TEA itself does not teach driver education, contract with driver education schools, or issue driver education certificates to individual students."

In *Murr v. Wisconsin** the Supreme Court will decide 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. The Murrs owned contiguous lots E and F which together are .98 acres. Lot F contained a cabin and lot E was undeveloped. A St. Croix County merger ordinance prohibits the individual development or sale of adjacent lots under common ownership that are less than one acre total. But the ordinance

treats commonly owned adjacent lots of less than an acre as a single, buildable lot. The Murrs sought and were denied a variance to separately use or sell lots E and F. They claim the ordinance resulted in an unconstitutional uncompensated taking. The Wisconsin Court of Appeals ruled there was no taking in this case. It looked at the value of lots E and F in combination and determined that the Murrs' property retained significant value despite being merged. A year-round residence could be located on lot E or F or could straddle both lots. And state court precedent indicated that the lots should be considered in combination for purposes of takings analysis.

Elijah Manuel was arrested and charged with possession of a controlled substance even though a field test indicated his pills weren't illegal drugs. About six weeks after his arrest he was released when a state crime laboratory test cleared him. If Manuel would have brought a timely false arrest claim it is almost certain he would have won. But such a claim would not have been timely because Manuel didn't sue within two years of being arrested or charged. So he brought a malicious prosecution claim under the Fourth Amendment. An element of a malicious prosecution claim in that the plaintiff prevails in the underlying prosecution. Manuel "prevailed" when the charges against him were dismissed; and he brought his lawsuit within two years of the dismissal. The question the Supreme Court will decide in *Manuel v. City of Joliet** is whether malicious prosecution claims can be brought under the Fourth Amendment in the first place. The Supreme Court left this question open in *Albright v. Oliver* (1994). The Seventh Circuit concluded that if malicious prosecution violates the federal constitution, cases must be brought as due process claims not Fourth Amendment claims. The lower court found no violation of federal due process in this case because Illinois allows state malicious prosecution claims to be brought.

In *Rigsby v. State Farm* the Supreme Court will decide what standard applies when deciding whether to dismiss a False Claims Act case because of a seal violation. State Farm insurance adjusters alleged that after Hurricane Katrina, State Farm instructed them to falsely determine houses and property were damaged by flooding, instead of by wind. State Farm had to pay for wind claims and the federal government had to pay for flooding claims. The adjusters admitted in oral argument that they violated the seal. The Fifth Circuit applied a three-part test to determine whether the seal violation in this case should result in dismissal of the FCA case and concluded it should not. First, the federal government was not likely harmed because "none of the disclosures appear to have resulted in the publication of the existence of this suit *before* the seal was partially lifted"; so State Farm didn't know about the case before the seal was lifted. Second, the seal wasn't completely violated because the adjusters' disclosures related to State Farm misleading policy holders, not the federal government. Third, the adjusters didn't act in bad faith as no evidence indicates they (as opposed to their former lawyers) disclosed the existence of the FCA action in news interviews.

In *Moore v. Texas* the Supreme Court will review a Texas Court of Criminal Appeals decision to apply a previous definition of "intellectually disabled" adopted in a 1992 death penalty case

rather than the current definition. In *Atkins v. Virginia* (1992) the Supreme Court held that executing the intellectually disabled violates the Eighth Amendment's prohibition against cruel and unusual punishment. The Court tasked states with implementing *Atkins*. In 1980, Bobby Moore was convicted of capital murder and sentenced to death for fatally shooting a seventy-year-old grocery clerk during a robbery. The Texas Court of Criminal Appeals, relying on a 2004 case that adopted the definition of intellectual disability stated in the ninth edition of the American Association on Mental Retardation manual published in 1992, concluded that Moore wasn't intellectually disabled. According to the court it was up to the Texas Legislature to implement *Atkins*. Until it did so, the court would continue to apply this 1992 definition.

In *Bethune-Hill v. Virginia State Board of Elections* what those challenging the plan seem most upset about is that the lower court concluded race does not "predominate" in redistricting unless the use of race resulted in an "actual conflict" with traditional redistricting criteria. Voters from 12 Virginia House of Delegates districts claim their districts were unconstitutionally racially gerrymandered following the 2010 census. Both parties agrees that one of the goals of the redistricting plan was to ensure that these 12 districts had at least a 55% black voting age population (BVAP). To prove an unconstitutional racial gerrymander, challengers must prove that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." To show that race predominated, challengers must show that the legislature "subordinated traditional race-neutral districting principles . . . to racial considerations" in drawing districts. Traditional race-neutral districting principles include compactness, contiguity, adherence to boundaries provided by political subdivisions, etc. According to the lower court, predominance demands a showing of "'actual conflict between traditional redistricting criteria and race that leads to the subordination of the former." The lower court only found actual conflict in one "very irregular" district that required "drastic maneuvering" to have a 55% BVAP.

When North Carolina redistricted in 2010 it added two majority black voting age population (BVAP) districts. The two state legislators chairing the joint redistricting committee claimed that per *Bartlett v. Strickland* (2009) "districts created to comply with section 2 of the Voting Rights Act, must be created with [BVAP] . . . at the level of at least 50% plus one." Section 2 of VRA prohibits minority vote dilution in redistricting. While previously neither district was majority BVAP, African-American preferred candidates "easily and repeatedly" won reelection in the last two decades. Plaintiffs in *McCrory v. Harris* claim that creating these two majority BVAP districts was an unconstitutional racial gerrymander, which violated the Fourteenth Amendment Equal Protection Clause. An unconstitutional racial gerrymander occurs when race is the predominant consideration in redistricting and the use of race serves no narrowly tailored, compelling state interest. Two of the three judges on the panel had little trouble concluding that race was a predominant factor in drawing both of the districts. The North Carolina legislature argued it had a compelling interest in relying predominately on race in redistricting to avoid vote dilution under section 2 of the VRA. But the court found no "strong basis in evidence" of a risk

of vote dilution requiring a majority BVAP. Previously, the white majority hadn't voted as a bloc to defeat African-Americans' candidates of choice.