



Supreme Court Preview for 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.

While the Supreme Court is still down a Justice, its docket is about half full, which is typical for this time of the year. Four cases in particular on the Court's docket, described below, will directly impact local governments. In two of those cases a city is a named party. Interestingly, the Court agreed to decide the takings case before Justice Scalia died last winter.

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 Eleventh Circuit concluded Miami had "statutory standing" relying on an 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.

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. Deaf students sued the Texas Education Agency

(TEA) arguing it was required to bring the driver education schools—none of which would accommodate deaf students—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.”

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.

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 is 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).

Absent from the Court's docket this term so far are a lot of routine issues the Court regularly takes up including Fourth Amendment searches, qualified immunity, and employment. The Court has plenty of time and space on the docket to agree to decide cases raising those issues.