Supreme Court Preview for the States 2016

September 2016

By: Lisa Soronen, State and Local Legal Center, Washington, D.C.

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. Five cases in particular on the Court's docket, described below, will directly impact at least some states. Interestingly, the Court agreed to decide the religion and the takings case before Justice Scalia died last winter.

In *Trinity Lutheran Church of Columbia v. Pauley* the Supreme Court will decide whether Missouri can refuse to give a religious preschool 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 legislature's decision to prohibit post-secondary students from using public scholarships to receive a degree in theology, based on its "super-Establishment Clause." 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, 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 U.S. 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).

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.

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.

Three types of cases of interest to the states are notably absent from the Court's current docket: big, controversial cases; preemptions cases, and cases raising 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 fitting in any of these three categories.