



## Supreme Court Review for Local Governments 2017

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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.

When it comes to big cases, the most recent Supreme Court term was its quietest in at last half a decade. For local governments though the Court's term was business as usual. The Court decided a number of police and First Amendment case which affect local governments directly and indirectly, respectively. Local governments were named parties in a number of cases this term. The biggest Supreme Court cases for local governments are discussed below.

In a unanimous opinion in [\*County of Los Angeles v. Mendez\*](#)\* the Supreme Court rejected the "provocation rule," where police officers using *reasonable* force may be liable for violating the Fourth Amendment because they committed a separate Fourth Amendment violation that contributed to their need to use force.

Police officer entered the shack Mendez was living in without a warrant and unannounced. Mendez thought the officers were the property owner and picked up the BB gun he used to shoot rats so he could stand up. When the officers saw the gun, they shot him resulting in his leg being amputated below the knee.

The Ninth Circuit concluded that the use of force in this case was reasonable. But it concluded the officers were liable per the provocation rule--the officers brought about the shooting by entering the shack without a warrant.

The Court rejected the provocation rule noting that its “fundamental flaw is that it uses another constitutional violation to manufacture an excessive force claim where one would not otherwise exist.”

In *Manuel v. City of Joliet*\* the Supreme Court held 6-2 that even after “legal process” (appearing before a judge) has occurred a person may bring a Fourth Amendment claim challenging pretrial detention.

Elijah Manuel was arrested and charged with possession of a controlled substance even though a field test and a lab test indicated his pills weren’t illegal drugs. A county court judge further detained Manuel based on a complaint inaccurately reporting the results of the field and lab tests.

Forty-eight days later Manuel was released when another laboratory test cleared him. Manuel brought an unlawful detention case under the Fourth Amendment.

The Seventh Circuit held that such a case had to be brought under the Due Process Clause, which Manuel failed to do.

The Court explained pretrial detention after legal process can be challenged under the Fourth Amendment where, as in this case, legal process has gone forward but “nothing [has been done] to satisfy the Fourth Amendment’s probable-cause requirement.”

In *Bank of America v. Miami*\* the Supreme Court held 5-3 that local governments have “standing” to bring Fair Housing Act (FHA) lawsuits against banks alleging discriminatory lending practices. But to win these claims local governments must show that their injuries were more than merely foreseeable.

Miami claims that Bank of America and Wells Fargo intentionally issued riskier mortgages on less favorable terms to African-American and Latino customers than similarly situated white customers in violation of the FHA. Miami further claims these discriminatory practices caused foreclosures and vacancies which harmed the city by decreasing property values, reducing property tax revenue, and increasing costs to the city.

The Court concluded, based on precedent, that Miami’s claims of financial injury are sufficient to meet the FHA’s standing requirement.

Regarding causation, the lower court concluded that the banks’ alleged discriminatory lending practices proximately caused the city’s economic injuries because they were the foreseeable result of the banks’ misconduct. The Supreme Court concluded foreseeability isn’t enough to prove causation. Instead, proving proximate-cause under the FHA requires “some direct relation between the injury asserted and the injurious conduct alleged.”

In *Murr v. Wisconsin*\* the Supreme Court concluded 5-3 that no taking occurred where state law and local ordinance “merged” nonconforming, adjacent lots under common ownership, meaning the property owners could not sell one of the lots by itself.

The Murrs owned contiguous lots E and F, which together are .98 acres. Lot F contained a cabin and lot E was undeveloped. State law and a St. Croix County merger ordinance prohibit the individual development or sale of adjacent lots under common ownership that are less than one acre total.

The Murrs claimed the ordinance resulted in an unconstitutional uncompensated taking.

According to the Court, the question in this case was whether the lots should be viewed as a single parcel when concluding whether a taking took place. The Court applied a three-factor test which lead it to conclude that the lots should be viewed as one parcel. First, state law and local ordinance treat the property as one for a “specific and legitimate purpose.” Second, the physical characteristics of the property in this case indicate the parcels should be combined for purposes of takings analysis. Third, the “special relationship of the lots is further shown by their combined valuation.” Lot E appraised at \$40,000; lot F at \$373,000; but the combined lots appraise at \$689,300.

Looking at the parcels as a whole the Court concluded no compensable taking occurred in this case. The Murrs could still build a bigger house on the combined lots, and they cannot claim they “reasonably expected to sell or develop their lots separately given the regulations which predated their acquisition of both lots.”