Supreme Court Review for States 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. But the most controversial case of the term, involving the eligibility of a religious preschool to receive a grant, did involve a state. As usual about one-third of the cases decided this term affect states in some way. Four of the biggest cases for states are summarized below.

In *Trinity Lutheran Church of Columbia, Inc. v. Comer* the Supreme Court held 7-2 that Missouri violated Trinity Lutheran Church's free exercise of religion rights when it refused, on the basis of religion, to award the Church a grant to resurface its playground with recycled tires.

Trinity's preschool ranked fifth among 44 applicants to receive a grant from Missouri's Scrap Tire Program. Missouri's Department of Natural Resources (DNR) informed the preschool it didn't receive a grant because Missouri's constitution prohibits public funds from being used "directly or indirectly, in aid of any church, sect, or denomination of religion." Trinity sued the DNR claiming it violated the Church's First Amendment free exercise of religion rights.

The Supreme Court sided with the church. As the policy expressly discriminated against otherwise eligible recipients on the basis of religion, the Court reached the "unremarkable" conclusion that it must be able to withstand "the most exacting scrutiny." It did not because the DNR "offers nothing more than Missouri's policy preference for skating as far as possible from religious establishment concerns."

The Supreme Court held unanimously in *Endrew F. v. Douglas County School District* that public school districts must offer students with disabilities an individual education plan (IEP)

"reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."

Per the federal Individuals with Disabilities Education Act (IDEA), a student with a disability receives an IEP, developed with parents and educators, which is intended to provide that student with a "free and appropriate public education" (FAPE).

Board of Education v. Rowley (1982) was the first case where the Supreme Court defined FAPE. In that case the Court failed to articulate an "overarching standard" to evaluate the adequacy of an IEP because Amy Rowley was doing well in school. But the Court did say in *Rowley* that an IEP must be "reasonably calculated to enable a child to receive educational benefits."

For a child receiving instruction in the regular classroom an IEP must be "reasonably calculated to enable the child" to advance from grade to grade. If "progressing smoothly through the regular curriculum" isn't "a reasonable prospect for a child, his IEP need not aim for grade level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom."

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."

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 with limited exceptions that do not include that a juror expressed racial bias.

A jury found Miguel Angel Pena-Rodriguez guilty of unlawful sexual contact and harassment involving two teenage sisters. Subsequent to his conviction, two jurors alleged that another juror made numerous statements during deliberations indicating he believed Pena-Rodriguez was guilty because he is Mexican.

In a 5-3 decision the Court in *Pena-Rodriguez v. Colorado* concluded that the "Constitution requires an exception to the no-impeachment rule when a juror's statements indicate that racial animus was a significant motivating factor in his or her finding of guilt." "An effort to address the most grave and serious statements of racial bias is not an effort to perfect the jury but to ensure that our legal system remains capable of coming ever closer to the promise of equal treatment under the law that is so central to a functioning democracy."