

State & Local Legal Center



Supreme Court Preview for Local Governments 2018

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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.

Most of the Supreme Court's interesting grants for its new term beginning the first Monday of October usually come in the fall. It is rare that the Supreme Court's docket for the next term is this interesting for local governments—much less anyone else—at the end of June. But it is hard to get more interesting than the travel ban, religious liberty, and technology and parties and the Fourth Amendment. Four of the most interesting cases for local governments accepted so far are discussed below in detail.

The so-called travel ban executive order prevents people from six predominately Muslim countries from entering the United States for 90 days, freezes decisions on refugee applications for 120 days, and caps total refugee admissions at 50,000 for fiscal year 2017.

The Fourth Circuit ruled it likely violates the Establishment Clause, noting that it's "text speaks with vague words of national security but in context drips with religious intolerance, animus and discrimination."

The Supreme Court concluded that until it rules on the merits of this case the executive order cannot be enforced against persons, including refugees, who have a "bona fide relationship with a person or entity in the United States."

In [*Trump v. International Refugee Assistance Project*](#) the Supreme Court will decide whether the decision to deny a visa is reviewable in this case, whether the travel ban violates the Establishment Clause, and whether the travel ban became moot on June 14.

In [*United States v. Carpenter*](#) the Supreme Court will decide whether police must obtain warrants per the Fourth Amendment to require wireless carriers to provide cell-site data.

Cell-site data showed that Timothy Carpenter and Timothy Sanders placed phone calls near the location of a number of robberies around the time the robberies happened. The federal government obtained the cell-site data from Carpenter's and Sanders' wireless carriers using a court order issued under the Stored Communications Act, which requires the government to show "reasonable grounds" for believing that the records were "relevant and material to an ongoing investigation."

The defendants argued obtaining the information was a "search" under the Fourth Amendment requiring a warrant.

The Sixth Circuit held that obtaining the cell-site data does not constitute a search under the Fourth Amendment because while "content" is protected by the Fourth Amendment "routing information" is not.

In [*District of Columbia v. Wesby*](#)* the Supreme Court will decide whether, when the owner of a vacant house informs police he has not authorized entry, an officer assessing probable cause to arrest those inside for trespassing may discredit the suspects' claims of an innocent mental state.

Police officers arrested a group of late-night partygoers for trespass. The party-goers gave police conflicting reasons for why they were at the house (birthday party v. bachelor party). Some said "Peaches" invited them to the house; others said they were invited by another guest.

Police officers called Peaches who told them she gave the partygoers permission to use the house. But she admitted that she had no permission to use the house herself; she was in the process of renting it. The landlord confirmed by phone that Peaches hadn't signed a lease.

The partygoers sued the police officers for violating their Fourth Amendment right to be free from false arrest.

D.C. Circuit granted the partygoers summary judgment reasoning police officers lacked probable cause to make the arrest for trespass because: "All of the information that the police had gathered by the time of the arrest made clear that Plaintiffs had every reason to think that they had entered the house with the express consent of someone they believed to be the lawful occupant."

The issue in [*Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*](#)* is whether Colorado's public accommodations law, which prohibits discrimination on the basis of sexual orientation, violates a cake artist's First Amendment free speech and free exercise rights.

The owner of Masterpiece Cakeshop, Jack C. Phillips, declined to design and make a wedding cake for a same-sex couple because of his religious beliefs.

The couple filed a complaint against Masterpiece claiming it violated Colorado's public accommodations law. Masterpiece argued that being required to comply with the law violates Phillips' free speech and free exercise rights.

The Colorado Court of Appeals rejected both of Masterpiece's claims.

Masterpiece argued that wedding cakes inherently communicate a celebratory message about marriage and that, by forcing it to make cakes for same-sex weddings, it is being unconstitutionally compelled to express a celebratory message about same-sex marriage that it does not support.

For speech to be protected by the First Amendment it must convey a particularized message. According to the Colorado Court of Appeals: "Masterpiece does not convey a message supporting same-sex marriages merely by abiding by the law and serving its customers equally."

Regarding Masterpiece's free exercise of religion claim, the Colorado Court of Appeals applied rational basis analysis to Colorado's law and "easily conclude[d] that it is rationally related to Colorado's interest in eliminating discrimination in places of public accommodation."

Conclusion

The billion dollar question for local governments is whether the Supreme Court will take a case where it is asked to overturn [*Quill Corp. v. North Dakota*](#) (1992). In *Quill*, the Supreme Court held that states cannot require retailers with no in-state physical presence to collect sales tax. In [*Direct Marketing Association v. Brohl*](#) (2015), Justice Kennedy stated that the "legal system should find an appropriate case for this Court to reexamine *Quill*." South Dakota passed a law requiring remote vendors to collect sales tax, which is currently being litigated in state court. If the South Dakota Supreme Court strikes down this law by the end of August it is possible the Supreme Court could decide this question by June 2018.