

Supreme Court Preview

Presented by the **State and Local Legal Center**

Hosted by the **National Association of Counties**

Featuring **Todd Kim, Ashley Johnson, and Kevin Daley**

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About the SLLC

- Members:
 - National Governors Association
 - National Conference of State Legislatures
 - Council for State Governments
 - National League of Cities
 - National Association of Counties
 - International City/County Management Association
 - U.S. Conference of Mayors
- Associate members: International Municipal Lawyers Association and Government Finance Officers Association

About the SLLC

- Since 1983 the SLLC has filed over 350 briefs
- This term the SLLC has already filed four *amicus* briefs before the Supreme Court
- The SLLC is a resource for Big Seven members on the Supreme Court—this webinar is an example!

Speakers

- **Todd Kim**
- **Ashley Johnson**
- **Kevin Daley**

District of Columbia v. Wesby

Police officers found late-night partiers inside a vacant home belonging to someone else. After giving conflicting stories for their presence, some partiers claimed they had been invited by a different person who was not there. The lawful owner told the officers, however, that he had not authorized entry by anyone. The officers arrested the partiers for trespassing. The questions presented are:

1. Whether the officers had probable cause to arrest under the Fourth Amendment, and in particular whether, when the owner of a vacant home informs police that he has not authorized entry, an officer assessing probable cause to arrest those inside for trespassing may discredit the suspects' questionable claims of an innocent mental state.
2. Whether, even if there was no probable cause to arrest the apparent trespassers, the officers were entitled to qualified immunity because the law was not clearly established in this regard.

Collins v. Virginia

Whether the Fourth Amendment's automobile exception permits a police officer, uninvited and without a warrant, to enter private property, approach a home, and search a vehicle parked a few feet from the house.

Byrd v. United States

A police officer may not conduct a suspicionless and warrantless search of a car if the driver has a reasonable expectation of privacy in the car—i.e., an expectation of privacy that society accepts as reasonable. Does a driver have a reasonable expectation of privacy in a rental car when he has the renter's permission to drive the car but is not listed as an authorized driver on the rental agreement?

Artis v. District of Columbia

Section 1367 of Title 28 authorizes federal district courts in certain circumstances to exercise supplemental jurisdiction over claims arising under State law.

Section 1367 further provides that “[t]he period of limitations for any [such] claim ... shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.” 28 U.S.C. § 1367(d).

The question presented is whether the tolling provision in § 1367(d) suspends the limitations period for the state-law claim while the federal suit is pending and for thirty days after the claim is dismissed, or whether the tolling provision does not suspend the limitations period but merely provides 30 days beyond the dismissal for the plaintiff to refile.

Hays v. Vogt

- **Issue:** Whether the Fifth Amendment is violated when statements are used at a probable cause hearing but not at a criminal trial.
 - Fifth Amendment: No one “shall be compelled in any criminal case to be a witness against himself.”
- **Background:**
 - Police officer was compelled by his employer to make statements about how he came into possession of a knife.
 - Because of officer’s statements, police department investigated officer, charged him with a criminal offense.
 - His statements were used against him at a probable cause hearing.

Hays v. Vogt

- Do Fifth Amendment protections apply only at trial or to pre-trial proceedings as well?
 - Circuit split
- Outcome of case will likely provide clear guidance to municipalities about the scope of their Fifth Amendment constitutional obligations.

Masterpiece Cakeshop v. Colorado Civil Rights Comm'n

- **Issue:** Whether applying Colorado's public accommodations law to compel the petitioner to create an artistic expression that violates his sincerely held religious beliefs about marriage violates the free speech or free exercise clauses of the First Amendment.
- **Background:**
 - Same-sex couple ordered a custom wedding cake; Masterpiece's owner refused to create it on the basis that it violated his religious beliefs
 - Colorado public-accommodations law prohibits public businesses from discriminating against customers on the basis of sexual orientation

Masterpiece Cakeshop v. Colorado Civil Rights Comm'n

- Free Speech Claim: Creating custom cakes is a form of art that conveys messages about marriage and the couple being married
- Free Exercise Claim: The state cannot compel the owner to design cakes bearing messages that violate his religious beliefs
- Outcome of the case could impact the scope of the authority of local and state governments to enforce non-discrimination laws against some businesses

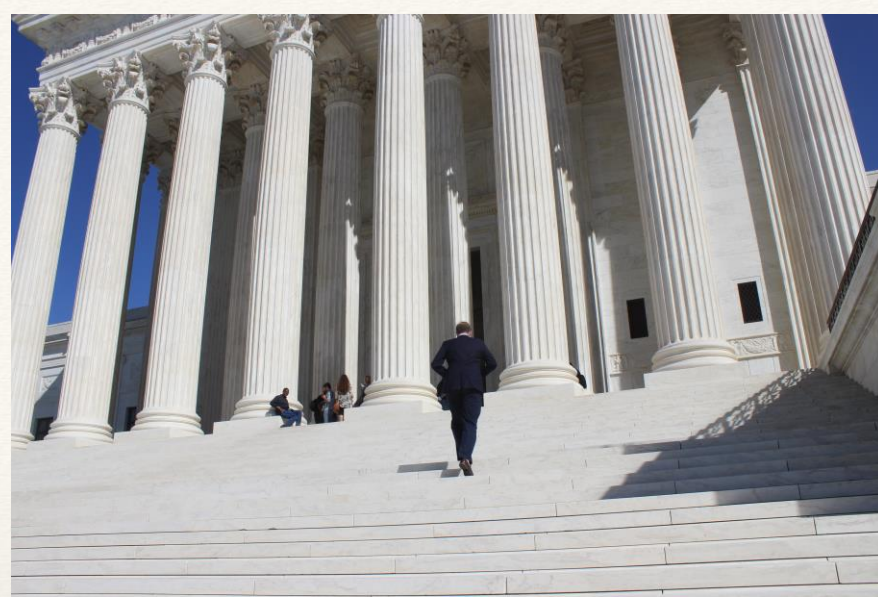
Christie v. NCAA

- **Issue:** Whether the anti-commandeering doctrine prevents the federal government from prohibiting States from repealing or modifying state laws.
- **Background:**
 - Professional and Amateur Sports Protection Act (“PASPA”)
 - Statute forbids a State “to sponsor, operate, advertise, promote, license, or authorize by law or compact” sports betting
 - New Jersey repealed its ban on sports betting
 - NCAA and major sports leagues sued

Christie v. NCAA

- Commandeering vs. Preemption
- *New York v. United States* (1992)
- *Printz v. United States* (1997)
- Significant federalism case that will address the scope of state authority and whether Congress can dictate the content of state law

SLLC Supreme Court Preview



October Term 2017

Kevin J. Daley. Supreme Court Reporter, Daily Caller News Foundation.

Gill v. Whitford

- ❖ Justice Kennedy unsure as to the exact injury, but seemed persuaded by the First Amendment argument.
- ❖ Justice Alito leading skeptic of the efficiency gap.
- ❖ If Wisconsin prevails, expect a fractured majority.
- ❖ Chief's "gobbeldygook" comment will continue to dominate commentary around the case.

Husted v. Philip Randolph Institute

- ❖ Challenge to Ohio's voter registry maintenance regime.
- ❖ 144,000 voters purged from the rolls in Ohio's largest counties in recent years, per Reuters studies.
- ❖ The Court will (hopefully) clarify how HAVA interacts with the NVRA's confirmation procedure.
- ❖ U.S. will argue for Ohio as amicus.
- ❖ Red states, blue states divide in the amicus briefing.

Carpenter v. United States

- ❖ Challenge to warrantless collection of so-called cell-site data.
- ❖ Verizon and AT&T received 125,000 requests for cell-site data from law enforcement in 2016.
- ❖ Key question: does the third-party doctrine retain relevance in the digital world? If so, how?
- ❖ Is the "eyewitness rule" relevant here?

Janus v. AFSCME

- ❖ Challenge to so-called union fair-share fees.
- ❖ 5.5. million public sector employees participate in the “agency shop” arrangements at issue in this case.
- ❖ Redux of the 2016 *Friedrichs* case, so Justice Gorsuch will cast the deciding vote.
- ❖ *Abood* a longstanding boogeyman for the conservative justices.
- ❖ No merits briefing as yet.

Questions

Thanks for attending!