



## Supreme Court Preview for States 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.

With half of the docket set for its October 2018 term the Supreme Court has accepted a number of interesting and important cases for the states. Though it hasn't yet accepted any blockbuster cases, involving the states or any other parties, remarkably, it has accepted three cases where it will consider overturning precedent. All of these cases, summarized below, involve issues relevant to states. While the Supreme Court overturned two significant precedent last term, in the internet sales tax case and the union dues case, it has been very unusual for the Roberts Court to overrule past cases.

In [\*Knick v. Township of Scott\*](#)\* the Supreme Court has agreed to decide whether to overrule [\*Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City\*](#) (1985), holding that before a takings claim may be brought in federal court landowners must comply with state law procedures and remedies enacted to provide just compensation.

The Township of Scott adopted an ordinance requiring cemeteries, whether public or private, to be free and open and accessible to the public during the day. Code enforcement could enter any property to determine the "existence and location" of a cemetery.

The Constitution's Takings Clause states that "private property [shall not] be taken for public use, without just compensation." Rose Mary Knick sued the county in federal (rather than state) court claiming the ordinance was invalid per the Takings Clause after code enforcement went onto her property without a warrant looking for a cemetery.

The Third Circuit agreed with the Township that Knick failed to comply with the *Williamson County* because she filed her case in federal court instead of pursuing her takings claim under Pennsylvania's Eminent Domain Code.

The Fifth Amendment's Double Jeopardy Clause prohibits a person from being prosecuted more than once for the same conduct. The "separate sovereigns" exception allows states and the federal government to convict and sentence a person for the same conduct.

In [\*Gamble v. United States\*](#),\* Terance Gamble asks the Supreme Court to overrule this exception. Gamble was prosecuted for and convicted of possession of a firearm by a convicted felon under both Alabama and United States law.

His challenge to the "separate sovereigns" exception is unsurprising given that Justice Thomas joined Justice Ginsburg's concurring opinion in *Puerto Rico v. Sanchez-Valle* (2016), which suggested the Court do a "fresh examination" of the "separate sovereigns" exception.

According to Gamble, the separate-sovereigns exception "has its origins" in an 1847 Supreme Court case, and it "fully crystallized" in a pair of 1959 cases. Gamble argues it should be overruled because it "flunks every test of constitutional interpretation."

The United States argues that "if a federal prosecution could bar prosecution by a State, the result would be a significant interference with the States' historical police powers."

In [\*Franchise Tax Board of California v. Hyatt\*](#) the Supreme Court will decide whether to overrule [\*Nevada v. Hall\*](#) (1979), which permits a state to be sued in the courts of another state without its consent.

Gilbert Hyatt was audited by the Franchise Tax Board of California (FTB) in 1993. He sued FTB in Nevada state court for a number of intentional tort and bad faith conduct claims. FTB argued that the Nevada courts were required to give FTB the full immunity to which it would be entitled under California law.

In 2003, the U.S. Supreme Court held in *Hyatt I* that Nevada courts did not have to give FTB full immunity. The Nevada courts eventually awarded Hyatt over \$400 million in damages, which led to a second U.S. Supreme Court case.

In *Hyatt II* the Court limited the amount of damages that Nevada courts could award to the amount that they could award against their own agencies. Following *Hyatt II* the Nevada Supreme Court capped damages for FTB at \$50,000.

[FTB](#) now argues that *Hall* was decided incorrectly. "*Hall* stands in sharp conflict with the Founding-era understanding of state sovereign immunity. Before the adoption of the Constitution, it was widely accepted that the States enjoyed sovereign immunity from suit in each other's courts."

The absence of Justice Kennedy and the addition of Justice Gorsuch and possible addition of Judge Kavanaugh will affect the outcome of all the cases the Supreme Court hears this term. Particularly because all the above cases involve overturning precedent it is possible that all could be decided 5-4 (or 4-4 if Judge Kavanaugh isn't confirmed by the time the Court hears oral argument in these cases).