
# Supreme Court Preview for the States 2016

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By: Lisa Soronen, State and Local Legal Center, Washington, D.C.

*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.

In *Trinity Lutheran Church of Columbia v. Pauley* the Supreme Court will decide whether Missouri can refuse to give a religious preschool a state grant to resurface its playground based on Missouri's "super-Establishment Clause." The Missouri Department of Natural Resources (DNR) offers grants to "qualifying organizations" to purchase recycled tires to resurface playgrounds. The DNR refused to give a grant to Trinity Church's preschool because Missouri's constitution prohibits providing state aid directly or indirectly to churches. Trinity Church argues that excluding it from an "otherwise neutral and secular aid program" violates the federal constitution's Free Exercise and Equal Protection Clauses, which Missouri's "super-Establishment Clause" may not trump. In *Locke v. Davey* (2004) the Supreme Court upheld Washington State legislature's decision to prohibit post-secondary students from using public scholarships to receive a degree in theology, based on its "super-Establishment Clause." The lower court concluded *Locke* applies in this case where: "Trinity Church seeks to compel the direct grant of public funds to churches, another of the 'hallmarks of an established religion.'"

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. After a jury convicted Miguel Angel Pena-Rodriguez of three misdemeanors related to making sexual advances toward two teenage girls, two jurors alleged that another juror made numerous racially biased statements during jury deliberations. In *Pena-Rodriguez v. Colorado*, Pena-Rodriguez argues that if Colorado's "no-impeachment" rule bars admission of the juror's racially biased statements it violates his Sixth Amendment right to be tried by an "impartial" jury. The Colorado Supreme Court disagreed. In two previous cases the U.S. Supreme Court ruled that the

federal "no-impeachment" rule wasn't unconstitutional where it barred admission of evidence that the jury was "one big party" where numerous jurors used drugs and alcohol (*Tanner v. United States*, 1987) and that a juror in a car-crash case said in deliberations that her daughter caused a car accident and had she been sued it would have ruined her life (*Warger v. Shauers*, 2014). These two cases stand for a "simple but crucial principle: Protecting the secrecy of the jury deliberations is of paramount importance in our justice system."

In *Ivy v. Morath** the Supreme Court will decide when state and local governments are responsible for ensuring that a private actor complies with the Americans with Disabilities Act (ADA). In Texas, state law requires most people under age 25 to attend a state-licensed private driver education school to obtain a driver's license. None of the schools would accommodate deaf students. So a number of deaf students sued the Texas Education Agency (TEA) arguing it was required to bring the driver education schools in to compliance with the ADA. The ADA states that no qualified individual with a disability may be excluded from participation in or be denied the benefits of public entity "services, programs, or activities" because of a disability. The Fifth Circuit concluded that the ADA does not apply to the TEA because it does not *provide* "services, programs, or activities." "Here, the TEA itself does not teach driver education, contract with driver education schools, or issue driver education certificates to individual students."

In *Murr v. Wisconsin** the Supreme Court will decide whether merger provisions in state law and local ordinances, where nonconforming, adjacent lots under common ownership are combined for zoning purposes, may result in the unconstitutional taking of property. The Murrs owned contiguous lots E and F which together are .98 acres. Lot F contained a cabin and lot E was undeveloped. A St. Croix County merger ordinance prohibits the individual development or sale of adjacent lots under common ownership that are less than one acre total. But the ordinance treats commonly owned adjacent lots of less than an acre as a single, buildable lot. The Murrs sought and were denied a variance to separately use or sell lots E and F. They claim the ordinance resulted in an unconstitutional, uncompensated taking. The Wisconsin Court of Appeals ruled there was no taking in this case. It looked at the value of lots E and F in combination and determined that the Murrs' property retained significant value despite being merged. A year-round residence could be located on lot E or F or could straddle both lots. And state court precedent indicated that the lots should be considered in combination for purposes of takings analysis.

In *Moore v. Texas* the Supreme Court will review a Texas Court of Criminal Appeals decision to apply a previous definition of "intellectually disabled" adopted in a 1992 death penalty case rather than the current definition. In *Atkins v. Virginia* (1992) the Supreme Court held that executing the intellectually disabled violates the Eighth Amendment's prohibition against cruel and unusual punishment. The Court tasked states with implementing *Atkins*. In 1980, Bobby Moore was convicted of capital murder and sentenced to death for fatally shooting a seventy-year-old grocery clerk during a robbery. The Texas Court of Criminal Appeals, relying on a 2004

case that adopted the definition of intellectual disability stated in the ninth edition of the American Association on Mental Retardation manual published in 1992, concluded that Moore wasn't intellectually disabled. According to the court it was up to the Texas Legislature to implement *Atkins*. Until it did so, the court would continue to apply this 1992 definition.

In *Bethune-Hill v. Virginia State Board of Elections* what those challenging the plan seem most upset about is that the lower court concluded race does not "predominate" in redistricting unless the use of race resulted in an "actual conflict" with traditional redistricting criteria. Voters from 12 Virginia House of Delegates districts claim their districts were unconstitutionally racially gerrymandered following the 2010 census. Both parties agrees that one of the goals of the redistricting plan was to ensure that these 12 districts had at least a 55% black voting age population (BVAP). To prove an unconstitutional racial gerrymander, challengers must prove that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." To show that race predominated, challengers must show that the legislature "subordinated traditional race-neutral districting principles . . . to racial considerations" in drawing districts. According to the lower court, predominance demands a showing of "actual conflict between traditional redistricting criteria and race that leads to the subordination of the former." The lower court only found actual conflict in one "very irregular" district that required "drastic maneuvering" to have a 55% BVAP.

When North Carolina redistricted in 2010 it added two majority black voting age population (BVAP) districts. The two state legislators chairing the joint redistricting committee claimed that per *Bartlett v. Strickland* (2009) "districts created to comply with section 2 of the Voting Rights Act (VRA), must be created with [BVAP] . . . at the level of at least 50% plus one." Section 2 of VRA prohibits minority vote dilution in redistricting. While previously neither district was majority BVAP, African-American preferred candidates "easily and repeatedly" won reelection in the last two decades. Plaintiffs in *McCrory v. Harris* claim that creating these two majority BVAP districts was an unconstitutional racial gerrymander, which violated the Fourteenth Amendment Equal Protection Clause. An unconstitutional racial gerrymander occurs when race is the predominant consideration in redistricting and the use of race serves no narrowly tailored, compelling state interest. Two of the three judges on the panel had little trouble concluding that race was a predominant factor in drawing both of the districts. The North Carolina legislature argued it had a compelling interest in relying predominately on race in redistricting to avoid vote dilution under section 2 of the VRA. But the court found no "strong basis in evidence" of a risk of vote dilution requiring a majority BVAP. Previously, the white majority hadn't voted as a bloc to defeat African-Americans' candidates of choice.