

# Supreme Court Preview

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

Hosted by the **National Association of Counties**

Featuring **Misha Tseytlin, Deepak Gupta, and Amy Howe**

# About the Webinar

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- By email you should have received speakers' bios and a handout
- The views expressed in this webinar do not necessarily reflect the views of the SLLC member groups

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# About the SLLC

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- SLLC files *amicus curiae* briefs before the Supreme Court on behalf of the “Big Seven” national organizations representing the interests of state and local government:
  - 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

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- Since 1983 the SLLC has filed over 300 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

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- **Misha Tseytlin**
- **Deepak Gupta**
- **Amy Howe**



## *Murr v. Wisconsin*

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- Issue: Whether, in a regulatory taking case, the “parcel as a whole” concept as described in [\*Penn Central Transportation Company v. City of New York\*](#), establishes a rule that two legally distinct but commonly owned contiguous parcels must be combined for takings analysis purposes.

## *Manuel v. City of Joliet*

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- Issue: Whether an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a malicious prosecution claim based upon the Fourth Amendment.

*Bank of America Corp v. City of Miami*  
*Wells Fargo & Co. v. City of Miami*

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- (1) Whether the term “aggrieved person” in the Fair Housing Act imposes a zone-of-interest requirement more stringent than the case or controversy requirements of Article III, and whether the City falls within the zone of interests when the City alleges it was injured by discriminatory lending practices in violation of the FHA.
- (2) Whether widespread violations of the Fair Housing Act that directly and foreseeably harm the City’s interests in fair housing and result in other economic harms to the City satisfy the Act’s proximate cause requirements.

# *Expressions Hair Design v. Schneiderman*

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Ten states have enacted laws that allow merchants to charge higher prices to consumers who pay with a credit card instead of cash, but require the merchant to communicate that price difference as a cash “discount” and not as a credit-card “surcharge.”

The question presented is:

- Do these state no-surcharge laws unconstitutionally restrict speech conveying price information (as the Eleventh Circuit has held), or do they regulate economic conduct (as the Second and Fifth Circuits have held)?

## *Hernández v. Mesa*

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- (1) Does a formalist or functionalist analysis govern the extraterritorial application of the Fourth Amendment's prohibition on unjustified deadly force, as applied to a cross-border shooting of an unarmed Mexican citizen in an enclosed area controlled by the United States?
- (2) May qualified immunity be granted or denied based on facts—such as the victim's legal status—unknown to the officer at the time of the incident?
- (3) Whether the claim in this case may be asserted under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971)

# *Ashcroft v. Turkmen*

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- (1) Whether the judicially inferred damages remedy under *Bivens* should be extended to the context of this case, which seeks to hold the former Attorney General and Director of the FBI personally liable for policy decisions in the aftermath of the September 11, 2001 terrorist attacks.
- (2) Whether the former Attorney General and FBI Director are entitled to qualified immunity for their alleged role in the treatment of respondents.
- (3) Whether respondents' allegations that the Attorney General and FBI Director personally condoned the implementation of facially constitutional policies because of an invidious animus against Arabs and Muslims are plausible, as required by *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

## *Ivy v. Morath*

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- Whether the prohibitions against disability discrimination in Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), apply to Texas's development and administration of a state-designated driver education curriculum and issuance of course completion certificates that are prerequisites to obtaining a Texas driver's license.

*Pena-Rodriguez v. Colorado*

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Argued October 11, 2016



# Background

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- Arrest
- Trial
- Conviction
- Post-trial discussions with jurors

# Sixth Amendment

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- In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . .

# “No impeachment” rule

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- Federal Rule of Evidence 606(b)
- Colorado Rule of Evidence 606(b)

# Relevant Supreme Court decisions

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- *Tanner v. United States*
- *Warger v. Shauers*

# Pena-Rodriguez's arguments

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- No state interest outweighs the infringement on Pena-Rodriguez's constitutional rights that ensues when an evidentiary rule bars him from introducing evidence of racial bias in jury deliberations.
- This case is different from *Tanner* and *Wargers*. In fact, the safeguards discussed there are less effective at guarding against racial bias than against other kinds of biases.

# Colorado's arguments

- Racial bias is “reprehensible” and “has no place in the jury room,” but the Constitution does not *require* courts to allow defendants to ask about racial bias in jurors after the jury’s verdict.
- The Supreme Court has made clear that there are safeguards in place to protect against juror misconduct or bias, rendering “post-verdict invasion of juror deliberations” “unnecessary.”
- Other trial procedures also safeguard against racial bias in jurors.
  - The Sixth Amendment
  - *Batson v. Kentucky*
  - Unanimity requirement

# Tuesday's oral arguments

Predictions?



# “Race and . . .” at the Court this year

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- *Buck v. Davis*
- *Pena-Rodriguez*
- *Wells Fargo/ Bank of America v. City of Miami*
- *Redistricting cases*

*Trinity Lutheran Church v.  
Pauley*

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Not yet scheduled for oral arguments

# Background

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- About Trinity Lutheran Church
- Recycled tire program
- Trinity Lutheran's application
- State's response

# Procedural history

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- Federal district court
- U.S. Court of Appeals for the Eighth Circuit
- Supreme Court granted review January 15, 2016

# *Locke v. Davey*

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- 2004 Supreme Court case
- Rejected a challenge to a Washington scholarship program that did not provide funding for students pursuing degrees in devotional theology.

# Trinity Lutheran's arguments

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- The state's exclusion of the church from the playground program violates the Constitution's Free Exercise Clause and the Equal Protection Clause.
- Strict scrutiny applies to the state's refusal to provide funds to churches; the program fails that test.
- *Locke v. Davey* does not apply here

# Missouri's arguments

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- The church can still exercise its religion; the state just won't pay for it.
- The rational basis test should be used rather than strict scrutiny, and the playground program passes that test.
- This case is on all fours with *Locke v. Davey*.

# Broader implications of the case – church's supporters

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- If the state wins, all kinds of programs that provide public funds to faith-based organizations could be in jeopardy.



## Broader implications of the case – from the state's supporters

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- If the church prevails, governments could be precluded from treating churches differently.

# When will it be argued and decided?

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- Granted January 15
- Not on October or November calendars

# Questions

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Thanks for attending!