Supreme Court Preview for Local Governments 2016

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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.

The issue in *Wells Fargo v. City of Miami** and *Bank of America v. City of Miami** is whether Miami has statutory standing to sue banks under the Fair Housing Act (FHA) for economic harm caused to the City by discriminatory lending practices. The FHA allows "aggrieved person[s]" to sue. The banks argue that in *Thompson v. North American Stainless* (2011), the Supreme Court defined "aggrieved person," under another federal statute, to require that a plaintiff fall within the zone of interests protected by the statute and have injuries proximately caused by the statutory violation. Unsurprisingly, the banks argue that the City doesn't fall within the zone of interests protected by the FHA and that the banks' conduct didn't cause economic injury to the City. The Eleventh Circuit concluded Miami had statutory standing relying on a much older case, *Trafficante v. Metropolitan Life Insurance Company* (1972), where the Supreme Court stated that statutory standing under the Fair Housing Act is "as broad[] as is permitted by Article III of the Constitution." The parties do not dispute that the City of Miami has Article III standing in this case. So if the Court agrees that only Article III standing is required to also have statutory standing Miami has statutory standing to sue the banks.

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 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.

Elijah Manuel was arrested and charged with possession of a controlled substance even though a field test indicated his pills weren't illegal drugs. About six weeks after his arrest he was released when a state crime laboratory test cleared him. If Manuel would have brought a timely false arrest claim it is almost certain he would have won. But such a claim would not have been timely because Manuel didn't sue within two years of being arrested or charged. So he brought a malicious prosecution claim under the Fourth Amendment. An element of a malicious prosecution claim in that the plaintiff prevails in the underlying prosecution. Manuel "prevailed" when the charges against him were dismissed; and he brought his lawsuit within two years of the dismissal. The question the Supreme Court will decide in *Manuel v. City of Joliet** is whether malicious prosecution claims can be brought under the Fourth Amendment in the first place. The Supreme Court left this question open in *Albright v. Oliver* (1994). The Seventh Circuit concluded that if malicious prosecution violates the federal constitution, cases must be brought as due process claims not Fourth Amendment claims. The lower court found no violation of federal due process in this case because Illinois allows state malicious prosecution claims to be brought.

In *Rigsby v. State Farm* the Supreme Court will decide what standard applies when deciding whether to dismiss a False Claims Act case because of a seal violation. State Farm insurance adjusters alleged that after Hurricane Katrina, State Farm instructed them to falsely determine houses and property were damaged by flooding, instead of by wind. State Farm had to pay for

wind claims and the federal government had to pay for flooding claims. The adjusters admitted in oral argument that they violated the seal. The Fifth Circuit applied a three-part test to determine whether the seal violation in this case should result in dismissal of the FCA case and concluded it should not. First, the federal government was not likely harmed because "none of the disclosures appear to have resulted in the publication of the existence of this suit *before* the seal was partially lifted"; so State Farm didn't know about the case before the seal was lifted. Second, the seal wasn't completely violated because the adjusters' disclosures related to State Farm misleading policy holders, not the federal government. Third, the adjusters didn't act in bad faith as no evidence indicates they (as opposed to their former lawyers) disclosed the existence of the FCA action in news interviews.