Supreme Court Review

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

Hosted by the **National Association of Counties**

Featuring **John Bursch**, **Warner Norcross & Judd, Tony Mauro, The National Law Journal/ Legal Times/ ALM, Joe Palmore, Morrison & Foerster,** and

About the Webinar

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- The views expressed in this webinar do not necessarily reflect the views of the SLLC member groups

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

About the SLLC

- Since 1983 the SLLC has filed over 300 briefs

- The SLLC filed 12 briefs before the Supreme Court this term

- The SLLC is a resource for Big Seven members on the Supreme Court—this webinar is an example

About the Speaker

- John Bursch, Warner Norcross & Judd

- Tony Mauro, The National Law Journal/ Legal Times/ ALM

- Joe Palmore, Morrison & Foerster

Obergefell v. Hodges

- Issue: Whether the Fourteenth Amendment requires states to issue marriage licenses to same-sex couples

- Holding: Yes

- Reasoning

- Dissents

- What this means for state and local governments

Texas Dept of Housing & Community Affairs v Inclusive Communities Project

- Issue: Whether disparate-impact claims are cognizable under the Fair Housing Act

- Holding: Yes

- Reasoning

- Dissents

- What this means for state and local governments

Alabama Legislative Black Caucus v. Alabama

- Whether Alabama's legislative redistricting plans unconstitutionally classify black voters by race by intentionally packing them in districts designed to maintain supermajority percentages

- Holding: Maybe

- Reasoning

- Dissents

- What this means for state and local governments

Arizona State Legislature v. Arizona Independent Redistricting Commission

- Issues Presented:

- Whether the Constitution's Elections Clause and federal law permit Arizona voters to delegate to a commission the task of adopting congressional districts?

  - Yes, by 5-4 vote. The people are "originating source of all the powers of government. Ginsburg writing for majority, Roberts the main dissent.

- Does the Arizona Legislature have standing to bring this suit?

  - Yes, because injury is concrete, imminent.

Perez v. Mortgage Bankers Association

- Issue presented:
- Must a federal agency engage in a notice-and-comment procedure before it can significantly alter an interpretation of a rule of agency regulation?
  - No, by unanimous vote, though Scalia and Alito concurred in the judgment only. Sotomayor for the majority.
  - Victory for the administrative state, overturns D.C. Circuit precedent in 20-year-old Paralyzed Veterans case.

Walker v. Texas Division, Sons of Confederate Veterans

- Issues presented:

- Do specialty license plates constitute government speech that is immune from any requirement of viewpoint neutrality?

  - Yes, by 5-4 vote. Breyer for majority, finding that specialty plates are not a forum for private speech, but constitute government speech – and not viewpoint discrimination. Alito authors dissent.

  - Leaves Pleasant Grove v. Summum precedent intact.

Glossip v. Gross

- Issue presented:

- Does Oklahoma's use of midazolam as the initial drug in the execution protocol violate the Eighth Amendment's prohibition against cruel and unusual punishment?

  - No, by 5-4 vote. Alito for the majority, finding insufficient evidence that midazolam causes risk of severe pain.

  - Breyer, joined by Ginsburg, writes dissent asserting it is "highly likely" that capital punishment, as now carried out, violates the Eighth Amendment.

Michigan v. EPA

- Clean Air Act regulation of power plants
- Congress directed EPA to "regulate" emissions from power plants if the agency "findings . . . Regulation is appropriate and necessary." 42 U.S.C. § 7412(n)(1)(A)
- Question presented: Was it reasonable for EPA to refuse to consider cost when making this finding?
- Court's answer: No
  - Not "appropriate" to make a decision to regulate without factoring in the cost impact

King v. Burwell

- Availability of premium tax credits under the Affordable Care Act
- Tax credits "shall be allowed" for any "applicable taxpayer." 26 U.S.C. § 36B(a).
  - Amount of the tax credit dependent in part on whether the taxpayer has enrolled in an insurance plan through "an Exchange *established by the State* under section 1311 of the Patient Protection and Affordable Care Act."
- Question presented: Are tax credits available in states where the federal government, not the state, established and operates the exchange?
- Court's answer: Yes
  - In context, the phrase "Exchange established by the State" is ambiguous – it could mean just state exchanges or it could mean all exchanges
  - Broader structure and purpose of the Act "compels" the conclusion that Congress intended tax credits to be available in both kinds of exchanges

Armstrong v. Exceptional Child Center, Inc.

- Private enforcement of the Medicaid statute against States
- Section 30(A) of the Medicaid Act requires state plans to offer rates to providers "sufficient to enlist enough providers"
- Question presented: Can providers sue state officials to seek injunctive relief against inadequate rates?
- Court's answer: No
  - Supremacy Clause does not provide a right for private parties to enforce federal laws against the States
  - No such right under general equitable authority either
  - No implied right of action under the Medicaid Act

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