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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• Members:
  • National Governors Association
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  • National League of Cities
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  • International City/County Management Association

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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.
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
• 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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