SEVEN SIGNIFICANT SUPREME COURT CASES FOR LOCAL GOVERNMENTS

by Lisa Soronen

That same-sex couples have a constitutional right to marry and the Affordable Care Act remains intact will forever outshine every other decision from this Supreme Court term. However, local governments will ignore the rest of this term at their peril. The Court issued many decisions affecting local governments — most of which had unfavorable outcomes. From upsetting sign codes to allowing disparate treatment claims under the Fair Housing Act, this is a term for local governments to remember. Below is a summary of the top seven cases.

Content-Based Sign Codes Unconstitutional

In *Reed v. Town of Gilbert*, the Court held unanimously that Gilbert's sign code, that treats various categories of signs differently based on the information they convey, violates the First Amendment.

Gilbert's sign code treated temporary directional signs less favorably (in terms of size, location, duration, etc.) than political signs and ideological signs.

Content-based laws are only constitutional if they pass strict scrutiny;that is, if they are narrowly tailored to serve a compelling government interest.

While the SLLC argued in its amicus brief that Gilbert's sign categories are based on function, the Court concluded they are based on content.

Gilbert's sign code failed strict scrutiny because its two asserted compelling interests, preserving aesthetic and traffic safety, were "hopelessly under inclusive."

Temporary directional signs are "no greater an eyesore" and pose no greater threat to public safety than ideological or political signs.

Many, if not most communities like Gilbert, regulate some categories of signs in a way the Supreme Court has defined as content-based. Communities will need to change these ordinances.

Hotel Registry Searches Need Subpoenas

In *City of Los Angeles v. Patel*, the Court held 5-4 that a Los Angeles ordinance requiring hotel and motel operators to make their guest registries available for police inspection without, at least, a subpoena violates the Fourth Amendment.

The purpose of hotel registry ordinances is to deter crime, such as drug dealing, prostitution, and human trafficking, on the theory that criminals will not commit crimes in hotels if they have to provide identifying information.

According to the Court, searches permitted by the City's ordinance are done to ensure compliance with recordkeeping requirements. While such administrative searches do not require warrants, they do require "pre-compliance review before a neutral decision maker." Absent at least a subpoena, "the ordinance creates an intolerable risk that searches authorized by it will exceed statutory limits, or be used as a pretext to harass hotel operators and their guests."

In dissent, Justice Scalia cited the SLLC's amicus brief that notes local governments in at least 41 states have adopted similar ordinances. Eight states also have hotel registry statutes: Indiana, Florida, Massachusetts, Maine, New Hampshire, New Jersey, Wisconsin, and the District of Columbia.

It is likely following this decision that other record inspections done by governments outside the hotel registry context will also require subpoenas.

Fair Housing Act Disparate Impact Claims Recognized

In *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, the Court held 5-4 that disparate-impact claims may be brought under the Fair Housing Act (FHA).

In a disparate-impact case, a plaintiff is claiming that a particular practice isn't intentionally discriminatory, but instead has a disproportionately adverse impact on a particular group.

The Inclusive Communities Project claimed the Texas housing department's selection criteria for federal low-income tax credits in Dallas had a disparate impact on minorities.

In prior cases the Court held that disparate-impact claims are possible under Title VII (prohibiting race, etc. discrimination in employment) and the Age Discrimination in Employment Act relying on the statutes' "otherwise adversely affect" language. The FHA uses similar language, "otherwise make unavailable," in prohibiting race, etc. discrimination in housing.

This decision more or less continues the status quo for local governments. Nine federal circuit courts of appeals had previously reached the same conclusion. But, Justice Kennedy's majority opinion contains a number of limits on when and how disparate impact housing claims may be brought.

Reasons For Cell Tower Denials Must Be In Writing

In *T-Mobile South v. City of Roswell*, the Court held 6-3 that the Telecommunications Act (TCA) requires local governments to provide reasons when denying an application to build a cell phone tower.

The reasons do not have to be stated in the denial letter, but must be articulated "with sufficient clarity in some other written record issued essentially contemporaneously with the denial" that can include council meeting minutes.

The TCA requires that a local

government's decision denying a cell tower construction permit be "in writing and supported by substantial evidence contained in a written record."

Local governments must provide reasons for why they are denying a cell tower application so that courts can determine whether the denial was supported by substantial evidence. Council meeting minutes are sufficient. But, because wireless providers have only 30 days after a denial to sue, minutes must be issued at the same time as the denial.

Following this decision, local governments should not issue any written denial of a wireless siting application until they (1) set forth the reasons for the denial in that written decision, or (2) make available to the wireless provider the final council meeting minutes or transcript of the meeting.

No Dog Sniffs After Traffic Stops

In a 6-3 decision in *Rodriguez v. United States*, the Court held that a dog sniff conducted after a completed traffic stop violates the Fourth Amendment.

In *Illinois v. Caballes*, the Court upheld a suspicionless dog search conducted during a lawful traffic stop stating that a seizure for a traffic stop "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket for the violation. Officers may lengthen stops to make sure vehicles are operating safely or for an officer's safety. A dog sniff, however, is aimed at discovering illegal drugs, not at an officer or highway safety.

In dissent, Justice Alito suggests savvy police officers can skirt the Court's ruling by learning "the prescribed sequence of events even if they cannot fathom the reason for that requirement."

Objectively Unreasonable Is The Standard For Pretrial Detainee Excessive Force Claims

In *Kingsley v. Hendrickson*, the Court held 5-4 that to prove an excessive force claim, a pretrial detainee must show that the officer's force was objectively unreasonable, rejecting the subjectively unreasonable standard that is more deferential to law enforcement.

Pretrial detainee Michael Kingsley claimed officers used excessive force in transferring him between jail cells to remove a piece of paper covering a light fixture that Kingsley refused to remove.

The objective standard applies to excessive force claims brought by pretrial detainees because in a previous case involving prison conditions affecting pretrial detainees, the Court used the objective standard to evaluate a prison's practice of double bunking. And, the objective standard applies to those who, like Kingsley, have been accused but not convicted of a crime, but who, unlike Kingsley, are free on bail.

A standard more deferential to law enforcement applies to post-conviction detainees, who are housed with pretrial detainees, making this ruling difficult for jails to comply with. Following this decision, it will be easier for pretrial detainees to bring successful excessive force claims against corrections officers.

Tax On Internet Purchases

In *Direct Marketing Association v. Brohl*, Justice Kennedy wrote a concurring opinion stating that the "legal system should find an appropriate case for this Court to reexamine Quill."

In 1992, in *Quill Corp. v. North Dakota*, the Court held that states cannot require retailers with no in-state physical presence to collect use tax.

To improve tax collection, Colorado began requiring remote sellers to inform Colorado purchasers annually of their purchases and send the same information to the Colorado Department of Revenue. The Direct Marketing Association sued Colorado in federal court claiming that the notice and reporting requirements are unconstitutional under *Quill*.

The question the Court decided was whether this case could be heard in federal court (as opposed to state court). The Court held yes unanimously. This case is significant for local governments because the Court's most influential Justice expressed skepticism about whether *Quill* should remain the law of the land.

Conclusion

While this article ends on a high note, overall, this Supreme Court term will require many, if not most, local governments to make some changes to keep in compliance with the law.❑

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