2018 Supreme Court Review For States And Local Governments

South Dakota v. Wayfair

In *South Dakota v. Wayfair** the Supreme Court ruled that states and local governments can require vendors with no physical presence in the state to collect sales tax. In a 5-4 decision, the Court concluded "economic and virtual contacts" are enough to create a "substantial nexus" with the state, allowing the state to require collection. In an opinion written by Justice Kennedy, the Court offered three reasons for why it was abandoning the physical presence rule from *Quill v. North Dakota* (1992). "First, the physical presence rule is not a necessary interpretation of the requirement that a state tax must be 'applied to an activity with a substantial nexus with the taxing state.' Second, *Quill* creates rather than resolves market distortions. And third, *Quill* imposes the sort of arbitrary, formalistic distinction that the Court's modern Commerce Clause precedents disavow." To require a vendor to collect sales tax, the vendor must still have a "substantial nexus" with the state. The Court found a "substantial nexus" in this case based on the "economic and virtual contacts" Wayfair has with the state, reasoning that a business could not do $100,000 worth of business or 200 separate transactions in South Dakota "unless the seller availed itself of the substantial privilege of carrying on business in South Dakota."

Lozman v. City of Riviera Beach

In an 8-1 decision in *Lozman v. City of Riviera Beach*,* the Supreme Court held that a citizen who was arrested for making comments at a city council meeting (possibly because the City had an official policy of retaliating against him) was not barred from bringing a First Amendment retaliatory arrest claim against the City even if it had probable cause to arrest him. Fane Lozman was an "outspoken critic" of the city of Riviera Beach's proposed plan to redevelop the city-owned marina using eminent domain, and sued the City claiming it violated open meetings law. He alleged that the city council held a closed-door meeting in which it devised an official plan to intimidate him in retaliation for his lawsuit. Five months after the closed-door meeting, a councilmember had Lozman arrested during the public comment period for discussing issues unrelated to the City and refusing to leave the podium. Lozman conceded that the City had probable cause to arrest him, but he claimed the City should be liable for violating the First Amendment because its strategy to intimidate him to stop speaking was a "but for" cause of his arrest. In contrast, the City argued that Lozman could not sue it for retaliatory arrest under any circumstances *(Cont'd on page 20.)*

***Indicates a case where the SLLC has filed or will file an amicus brief.**

if probable cause existed to arrest him. In an opinion written by Justice Kennedy, the Court declined to decide whether to extend either the "but for" cause rule proposed by Lozman or the absolute bar to retaliatory arrest claims proposed by the City to the "mine run" of First Amendment retaliatory arrest claims. Instead, the Court held that because of the unique facts of the case Lozman "need not prove the absence of probable cause to maintain a claim of retaliatory arrest against the City."

Collins v. Virginia

In an 8-1 decision in *Collins v. Virginia*, the Supreme Court held that the Fourth Amendment automobile exception does not permit police officers to search vehicles parked in the curtilage of a home without a warrant. Per the automobile exception to the Fourth Amendment, police officers may search vehicles without a warrant if they have probable cause to believe they will find contraband or a crime has been committed. But officers may not enter the curtilage of a home to gather evidence without a warrant. In an opinion written by Justice Sotomayor, the Supreme Court concluded that the automobile exception "extends no further than the automobile itself." Two rationales justify the automobile exception: the "ready mobility" of vehicles and their "pervasive regulation." "To allow an officer to rely on the automobile exception to gain entry into a house or its curtilage for the purpose of conducting a vehicle search would unmoor the exception from its justifications, render hollow the core Fourth Amendment protection the constitution extends to the house and its curtilage, and transform what was meant to be an exception into a tool with far broader application. Indeed, its name alone should make all this clear enough: It is, after all, an exception for automobiles."

Byrd v. United States

In *Byrd v. United States,* the Supreme Court held unanimously that the driver of a rental car generally has a reasonable expectation of privacy in the rental car even if he or she isn't listed as an authorized driver on the rental agreement. A state trooper pulled Terrance Byrd over for a possible traffic infraction. Byrd's name was not on the rental agreement, and he told the officer a friend had rented it. Officers searched the car and found 49 bricks of cocaine and body armor. While the Fourth Amendment prohibits warrantless searches, generally probable cause a crime has been committed is needed to search a car. To claim a violation of Fourth Amendment rights a defendant must have a "legitimate expectation of privacy in the premises" searched. The United States argued drivers not listed on rental agreements always lack an expectation of privacy based on the rental company's lack of authorization. The Supreme Court, in an opinion written by Justice Kennedy, rejected this argument, reasoning that "the government fails to explain what bearing this breach of contract, standing alone, has on expectations of privacy in the car." The Court also noted that a legitimate expectation of privacy may be tied to property rights—including the right to exclude others. The United States agreed that Byrd could exclude third parties from the rental car even though he wasn't listed on the rental agreement.

National Association of Manufacturers v. Department of Defense

In *National Association of Manufacturers v. Department of Defense*, the Supreme Court held unanimously that a legal challenge

to the definition of "waters of the United States" (WOTUS) must begin in a federal district court, not a federal court of appeals. In 2015, the Obama administration issued a new WOTUS definitional rule per the Clean Water Act (CWA). While most challenges to EPA actions must be fil1ed in federal district court first, the CWA lists seven categories of EPA actions where "review lies directly and exclusively" in the federal courts of appeals. One of the categories providing courts of appeals exclusive jurisdiction is an EPA action "in approving or promulgating any effluent limitation or other limitation" under various sections of the CWA. The Court rejected the argument the WOTUS rule is an "effluent limitation or other limitation" because both terms refer to EPA restrictions on the discharge of pollutants. The second category providing courts of appeals exclusive jurisdiction is an EPA action "in issuing or denying any permit" under a particular section of the CWA. According to the Court, the WOTUS rule "neither issues nor denies a permit" under the EPA permitting program at issue.

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