Recent Supreme Court rulings were game-changers for the states—and not just because of the decisions on health care and same-sex marriage.

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The U.S. Supreme Court’s recent rulings on same-sex marriage and Obamacare drew enormous interest from court watchers and the public alike. Several other cases—on redistricting, fair housing and Medicaid, for example—got less notice, but could have far-reaching consequences for the states.

Here’s a recap of what was decided and a note on what lies ahead as the court enters its 10th year with Chief Justice John Roberts in the center seat.

**Redistricting**

By a 5-4 decision in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, the court held that the Constitution’s Elections Clause permits voters to vest congressional redistricting authority entirely in an independent commission. The ruling is an affirmation of direct democracy. NCSL filed an amicus brief supporting the Arizona Legislature.

Justice Ruth Bader Ginsburg’s majority opinion relies on the history and purpose of the Elections Clause, and the “animating principle of our Constitution that the people themselves are the originating source of all the powers of government,” in ruling that redistricting commissions may operate independently of state legislatures.

Founding-era dictionaries typically defined legislatures as the “power that makes laws.” In Arizona, that includes the voters, who may pass laws through initiatives.

**EPA Regulations**

In *Michigan v. EPA*, the justices held 5-4 that the Environmental Protection Agency acted unreasonably in failing to consider cost when deciding whether to regulate mercury emissions from power plants. Twenty-three states challenged the regulations.

The Clean Air Act requires the EPA to regulate air pollution from stationary sources based on how much pollution the source emits. But the agency may only regulate emissions from fossil-fuel-fired power plants if it finds that regulation is “appropriate and necessary.”

EPA found it appropriate and necessary to regulate mercury emissions, but did not consider costs when determining whether power plants should be regulated. The majority of the court, in an opinion written by Justice Antonin Scalia, concluded that the agency’s interpretation of appropriate and necessary to exclude costs wasn’t reasonable.

The opinion leaves unanswered questions, including how the EPA may account for costs and whether the agency may consider ancillary benefits in the cost-benefit analysis.

**Fair Housing**

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.

In a disparate-impact case, a
plaintiff claims that a policy used by a government agency, private real estate firm or developer isn’t intentionally discriminatory but nonetheless has a disproportionately adverse impact on a particular group.

The federal courts of appeals had ruled that such claims were possible. The Supreme Court, which had twice agreed to take up this question only to have the cases settle before the justices could rule, has finally resolved it.

While state and local governments are more likely to be sued under the FHA, they do occasionally sue others for violating it. Justice Anthony Kennedy pointed out at the end of his majority opinion that the city of San Francisco filed an amicus brief supporting disparate-impact liability under the FHA despite being a “potential defendant.”

**Same-Sex Marriage**

*Obergefell v. Hodges* has been both celebrated and condemned.

In a 5-4 decision written by Justice Kennedy, the court held that same-sex couples have a constitutional right to marry. All state laws and court decisions banning same-sex marriage are now invalid.

The court relied on the 14th Amendment’s Due Process and Equal Protection clauses in its opinion, rejecting the argument that sufficient debate had not occurred on this issue. It noted that “individuals need not await legislative action before asserting a fundamental right.”

Kennedy wrote in his majority opinion that the “hope [of the same-sex couples in this case] is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.”

**Affordable Care Act**

The third time was a charm for the Affordable Care Act. *King v. Burwell* is the first complete victory for the law. In a 6-3 decision, the court ruled that health insurance tax credits are available when insurance is purchased through “an Exchange established by the State.” So the technical question in this case was whether a federal exchange is “an Exchange established by the State” that may offer tax credits.

The court said yes, and as a result, the status quo remains unchanged. If a person otherwise eligible for a tax credit buys health insurance on a state or federal exchange, the tax credit will be available.

**Free Speech and Governments**

You know it’s going to be a good day for state government when the Supreme Court begins the analysis portion of its opinion with this: “When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says.”

In *Walker v. Sons of Confederate Veterans*, the court held 5-4 that Texas may deny a proposed specialty license plate design featuring the Confederate flag, because specialty plate designs are government speech.

In a vigorous dissent, Justice Samuel Alito questioned much of the majority’s analysis. He pointed out that only within the last 20 years has Texas allowed private groups to put messages on license plates, adding that the state allows messages on license plates to make money, not to convey ideas it supports.

Nine states—Alabama, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee and Virginia—allow Confederate flag specialty plates, according to The New York Times. States may ban these plates and others as a result of this decision.

**State Boards and Commissions**

In *North Carolina State Board of Dental Examiners v. FTC*, the court held 6-3 that state licensing boards whose members are market participants are not immune from antitrust laws. Immunity applies only if the state actively supervises the board.

The North Carolina’s Board of Dental Examiners is a state agency mainly charged with licensing dentists. Six of its eight members must be practicing, licensed dentists. After the board issued cease-and-desist letters to teeth-whitening service providers, who were not dentists, the Federal Trade Commission charged it with violating antitrust law.

In a previous case, the court held that states are immune from antitrust law when acting in their sovereign capacity. In this case, the court said that even though the board is a state agency, it must be supervised by the state in order to enjoy immunity. The “formal designation given by the States” does not necessarily create immunity, wrote Justice Kennedy. “When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest.”

Although it’s generally seen as a win for consumers, the case reduces the authority of state legislatures to compose state agencies, boards and commissions as they prefer and could require additional state resources to actively supervise boards.

**Medicaid Reimbursement**

In *Armstrong v. Exceptional Child Center*, the court held 5-4 that Medicaid
providers cannot rely on the Supremacy Clause to sue states to enforce a Medicaid reimbursement statute. Medicaid requires states to ensure that Medicaid providers are reimbursed at rates “consistent with efficiency, economy and quality of care” while “safeguard[ing] against unnecessary utilization of ... care and services.” Medicaid providers sued Idaho, claiming that its reimbursement rates were too low.

Congress did not create a private right of action in the Medicaid statute allowing providers to sue states to enforce the statute. The court rejected the argument that the Supremacy Clause creates a private right of action. “It instructs courts what to do when state and federal law clash, but is silent regarding who may enforce federal laws in court, and in what circumstances they may do so.”

The court’s rejection of a private cause of action under the Supremacy Clause has implications well beyond this case. Had the Supreme Court ruled otherwise, the Supremacy Clause would have provided a cause of action for every federal statute that arguably conflicts with state law.

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

To improve tax collection, the Colorado legislature in 2010 began requiring remote sellers to annually inform Colorado shoppers of their purchases and send the same information to the state 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). Although the justices said yes unanimously, the case is significant for states because the court’s most influential justice expressed skepticism about whether *Quill* should remain the law of the land.

**Death Penalty**

In *Glossip v. Gross*, the court held 5-4 that death-row inmates are unlikely to succeed on their claim that using midazolam as a lethal injection drug amounts to cruel and unusual punishment. Death-penalty opponents have persuaded manufacturers to stop producing sodium thiopental and an alternative, pentobarbital. As a result, Oklahoma and other states began using midazolam as the first of three drugs administered during executions. But prisoners claimed the state’s use of midazolam violates the prohibition against cruel and unusual punishment because it fails to render them insensate. In Justice Alito’s majority opinion, the court concluded that because the use of midazolam does not likely violate the Eighth Amendment, states may continue to use it in executions.

In his dissent, Justice Stephen Breyer, joined by Ruth Bader Ginsburg, called for a “full briefing on the basic question” of whether capital punishment is unconstitutional. His statement invites a case challenging the constitutionality of capital punishment, one that could have far-reaching and significant implications for states where the death penalty is used.

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**What’s Ahead for the Court’s Next Term?**

- The court agreed to hear a major affirmative action case concerning a public university’s use of race as a factor in student admissions. It will be the second time the court has heard *Fisher v. University of Texas at Austin*, a challenge from a Texas woman, Abigail Fisher, who is white, targeting the admissions policies at the school.

- The court will decide whether public-sector unions may require workers who are not members to help pay for collective bargaining. A ruling against them could deal a severe blow to organized labor. That case, *Friedrichs v. California Teachers Association*, was brought by California teachers who said that being compelled to pay union fees to subsidize activities they disagreed with violated their First Amendment rights.

- The court surprised observers when it decided to hear *Evenwel v. Abbott*. The issue in the case is whether state legislatures can use total voter population—rather than simply total population, which is the long-standing precedent—when apportioning state legislative districts. Over the last 25 years, the court has repeatedly refused to hear cases arguing that voter population must be equalized. The court will also decide two other redistricting cases next term.

- The court has accepted three death penalty cases and one case involving life in prison without parole.

- Although nothing was on the court’s calendar as of press time, the justices also are likely to hear a case involving state restrictions on abortion.