U.S. Supreme Court October 2012 Term Cases Affecting State Government

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***Cases where the SLLC filed an *amicus* brief**

Shelby County, Alabama v. Holder

In a 5-4 decision, the Court found §4 of the Voting Rights Act of 1965 (VRA) unconstitutional. Section 4 contained the formula for determining which jurisdictions are subject to "preclearance" under §5 of the VRA, which requires prior approval from federal authorities before any change in voting procedures could take effect.

The VRA was passed in response to widespread racial discrimination in voting procedures in the 1960s. The preclearance provision was necessary because of the frequency with which certain jurisdictions implemented new voting requirements designed to deprive minorities of the ability to vote. Traditional litigation was too slow to respond to these rapid changes, so preclearance prevented any new tests or devices designed to restrict voting from taking effect at all. Section 4 was "reverse-engineered" to target the worst offending jurisdictions and was reauthorized several times, most recently in 2006 for an additional 25 years. Although jurisdictions could (and several did) "bail out" of the preclearance requirement by maintaining a clean record for a number of years or could be "bailed in" to the requirement by a federal court, the coverage formula was primarily based on whether a jurisdiction maintained a discriminatory voting test in the 1960s or 1970s and had low voter registration or turnout at that time. Shelby County, a covered jurisdiction, challenged the constitutionality of the VRA in federal court. The district court upheld the Act and was affirmed by the D.C. Circuit on appeal.

The Supreme Court reversed in a 5-4 decision written by Chief Justice Roberts. Although the coverage formula had been justified at the time of its passage and upheld following previous authorizations, the criteria used to impose the significant burden of preclearance on jurisdictions no longer bore a sufficient relationship to "current needs." Section 4 violated the "fundamental principle of equal sovereignty" of the states by imposing substantial federalism costs on some but not others despite

the transformation in the conditions that had led to the enactment of the VRA in the first place. Since 1965, "disparities in voter registration and turnout due to race were erased, and African-Americans attained political office in record numbers." According to the Court, Congress had simply "reenacted a formula based on 40-year-old facts having no logical relationship to the present day." Although allowing for the possibility that "Congress may draft another formula based on current conditions," the Court struck down §4's coverage formula and released all covered jurisdictions from the preclearance requirement. Justice Ginsburg authored a sharp dissent, arguing that "first-generation" voting barriers had simply been replaced by "second-generation" mechanisms of vote dilution and pointing to the sizable record amassed by Congress as sufficient justification for reauthorization of the provision.

This ruling will have a significant impact on previously covered state and local governments. These jurisdictions will no longer need to seek approval from the Attorney General or the District Court for the District of Columbia prior to implementing changes in electoral procedures. At the same time, the absence of federal preclearance may lead to increased lawsuits under §2 of the VRA, which creates liability for discriminatory voting practices and remains in full effect.

United States v. Windsor

The Court held 5-4 that §3 of the Defense of Marriage Act (DOMA) is unconstitutional under the Equal Protection Clause of the Fifth Amendment.

Edith Windsor and Thea Spyer were married in Ontario, Canada in 2007. They returned to their home in New York, a state which recognizes same-sex marriages. Spyer passed away in 2009, leaving her estate to Windsor. Under federal law, surviving spouses are exempt from paying estate taxes on money left by their partners, and Windsor applied for the exemption. However, DOMA, which defined marriage as only between a man and a woman for the purposes of federal law, barred her from claiming the exemption. Windsor paid $363,053 in taxes and challenged the constitutionality of the DOMA definition. The Executive Branch announced that it also believed the act to be unconstitutional and refused to defend it in court, but continued to enforce it. The Bipartisan Legal Advocacy Group (BLAG) of the House of Representatives was permitted to intervene to defend DOMA. Both the district court and the Second Circuit ruled in Windsor's favor and declared DOMA unconstitutional, and BLAG appealed to the Supreme Court on behalf of the US Government.

The Court, in an opinion authored by Justice Kennedy, ruled that the definitional provision of DOMA violates the Equal Protection Clause of the Fifth Amendment. As a threshold matter, the majority found that it had jurisdiction to hear the case under Article III of the US Constitution. Although the Executive chose not to defend the provision, the refund of Windsor's estate taxes gave the United States a sufficient stake in the outcome of the case and BLAG presented a substantial adversarial argument on the government's behalf.

Proceeding to the merits, Justice Kennedy noted that "the Federal Government, throughout our history, has deferred to state-law policy decisions with respect to domestic relations" and that the regulation and recognition of marriage is a cornerstone of state authority. Unlike the broad-sweeping DOMA, prior federal laws creating marriage definitions had narrow applications to fields of special federal concern such as immigration. By contrast, "DOMA's unusual deviation from the usual tradition of recognizing and accepting state definitions of marriage here operates to deprive same-sex couples of the

benefits and responsibilities that come with the federal recognition of their marriages," which "impose[d] a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States." Because DOMA operated to deprive the class of same-sex married couples of a liberty extended by the states, it violated the Due Process Clause of the Fifth Amendment and was found unconstitutional.

The Court's ruling extends federal benefits to same-sex couples married under state law. Because it confirms the traditional role of the states in defining and regulating marriage while striking down a law that created a form of "second-class marriage" denying federal benefits to some but not all married couples within a single jurisdiction, this case is a victory for states. Furthermore, although the case does not directly implicate the constitutionality of same-sex marriage, the Court indicated a general willingness to defer to state definitions that may serve to anchor future cases on the issue.

Hollingsworth v. Perry

The Supreme Court held in a 5-4 decision that the sponsors of a California ballot initiative lacked standing to appeal a district court order enjoining state officials from enforcing their initiative when the officials themselves declined to appeal the ruling.

Passed in 2008, California Proposition 8 amended the state constitution to define marriage as between a man and a woman, effectively overruling an earlier decision by the California Supreme Court that had permitted same-sex marriages in the state. Kristin Perry, her partner, and another same-sex couple challenged Proposition 8 under the Fourteenth Amendment Due Process and Equal Protection Clauses of the United States Constitution in federal district court. The officials named as defendants declined to defend the law in court but continued to enforce it. The trial judge allowed Dennis Hollingsworth and other sponsors of the initiative to intervene to defend Proposition 8 in their stead. The district court struck down the amendment and enjoined state officials from enforcing it, but the officials chose not to appeal the ruling. Hollingsworth and the sponsors attempted to appeal the order to the Ninth Circuit. Uncertain of whether they could do so under California law, the Ninth Circuit certified a question to the California Supreme Court, which unanimously decided that a ballot initiative's citizen sponsors were authorized by state law to appeal a judgment invalidating the measure if state officials declined to do so. Accordingly, the Ninth Circuit found that the sponsors had standing to appeal and affirmed the district court's order declaring Proposition 8 unconstitutional on equal protection grounds.

In a 5-4 opinion authored by Chief Justice Roberts, the Court held that the sponsors lacked standing under Article III to challenge the district court's decision. After Proposition 8 passed, Hollingsworth and others had no role in its enforcement and no "particularized interest" in seeing it upheld beyond that of any other citizen of California. Such "generalized grievance[s]" are insufficient to create standing under Article III. Because the District Court "had not ordered them to do or refrain from doing anything," and in spite of the California Supreme Court's finding, the Court ruled that the sponsors lacked the necessary "direct stake" in the outcome of the appeal and could not challenge the lower court's ruling. The Ninth Circuit's ruling was vacated and the District Court's permanent injunction against the enforcement of Proposition 8 was reinstated. Justice Kennedy dissented, joined by Justices Thomas, Alito, and Sotomayor, arguing that the Supreme Court was bound to accept California's interpretation of who was permitted to represent the state's interests under California law and that the standing requirement was therefore satisfied.

This case may have detrimental effects on states with voter-sponsored ballot initiative systems. Although sponsors may still intervene on the state's side when state officials are unwilling to defend an initiative at the trial level, an adverse ruling from a federal district court will be effectively unreviewable if state officials decline to appeal. More significantly, as the dissent points out, the Supreme Court declined to accept a state's own interpretation regarding who may represent state interests under a state's own laws. Nevertheless, the peculiar procedural posture of this case may limit its future applications. Finally, because the case was dismissed on standing grounds, it will have no impact on the issue of same-sex marriage beyond the state of California.

Fisher v. University of Texas at Austin

The Court decided 7-1 to remand a challenge to the University of Texas's admission policy to the Fifth Circuit to determine whether the use of race as an admission factor was "narrowly tailored" to achieving diversity at the school.

The University of Texas at Austin is the flagship school of the state's higher education system. Dissatisfied with the diversity of the student body under a race-neutral admissions policy and the Texas Top Ten Percent Law—which automatically admits all students in the top 10% of their class at qualifying Texas high schools—university administrators implemented a program that considers race as a factor of a "holistic metric" that also includes "leadership and work experience, awards, extracurricular activities, community service, and other special circumstances that give insight into a student's background." This "Personal Achievement Index" is used in conjunction with indicia of academic performance to make admission decisions. Abigail Fisher applied to the University in 2008, was denied admission, and challenged the program's use of race as a factor. The federal district court upheld the practice and was affirmed by the Fifth Circuit, which deferred to the University's good-faith judgment that consideration of race was necessary to achieve greater diversity.

The Supreme Court remanded to the Fifth Circuit, elaborating on the appropriate standard to apply to the challenge. The lower courts had correctly deferred to the "University's conclusion, 'based on its experience and expertise,' . . . that a diverse student body would serve its educational goals" and was therefore a compelling government interest for Fourteenth Amendment equal protection purposes. However, under the Court's precedent in *Grutter v. Bollinger,* 539 U.S. 306 (2003), no such deference should have been given to the University regarding whether "the means chosen by the University [are] narrowly tailored to that goal." It is "the University's obligation to demonstrate, and the Judiciary's obligation to determine" whether the use of racial classifications is "'necessary' . . . to achieve the educational benefits of diversity." On remand, the University must show that "available, workable race-neutral alternatives do not suffice."

This decision clarifies the standard applied by courts in considering the constitutionality of admissions programs that consider race as a factor. The Court affirms that diversity is a compelling government interest that can justify considerations of race in the context of education. However, in order to survive judicial review, an institution must be able to demonstrate that there are no viable race-neutral alternatives that will achieve the same results.

*Wos v. E.M.A.**

The Court held that a state's fixed designation of one-third of a tort recovery as medical expenses is preempted by Medicaid's anti-lien provision.

E.M.A suffered serious injuries during her birth that will require extensive care for her entire life and prevent her from being able to live independently as she grows older. Her parents filed a medical malpractice suit which settled before trial. The settlement did not designate which portion of the recovery represented medical expenses. North Carolina, which had paid for some of E.M.A.'s treatment through its Medicaid program, has a statute that sets aside the lesser of either the cost of medical expenses or one-third of a tort recovery to reimburse the state for its expenditures. Accordingly, the trial court set aside one-third of E.M.A.'s recovery. Her parents challenged the law in federal court, claiming that it violated the Medicaid's anti-lien provision as interpreted in *Arkansas Department of Health and Human Services v. Ahlborn*, 547 U.S. 268, 284 (2006), which held that states may only take the portion of a tort recovery "designated as payments for medical care." The federal district court ruled for North Carolina, but was reversed by the Fourth Circuit, which held that the anti-lien provision preempted the state's statutory definition of medical expenses.

In a 6-3 decision authored by Justice Kennedy, the Court affirmed the Fourth Circuit. Because *Ahlborn* "held that the Medicaid statute sets both a floor and a ceiling on a state's potential share of a beneficiary's tort recovery," states may take only as much of a settlement as represents medical expenses. Where, as here, the settlement does not specifically allocate those expenses, a state may not create "an irrebuttable, one-size-fits-all statutory presumption" that some percentage of the recovery may be claimed by the state because "in some circumstances . . . the statute would permit the State to take a portion of a Medicaid beneficiary's tort judgment or settlement not 'designated as payments for medical care.'" Instead, North Carolina should have provided for case-by-case determinations or established "*ex ante* administrative criteria . . . backed by evidence suggesting that they are likely to yield reasonable results in the mine run of cases." Because one-third was an "arbitrary" designation that would not necessarily reflect medical expenses, the North Carolina statute was struck down.

This case limits state options for structuring both their Medicaid programs and their own tort laws. As the dissent points out, flexibility is vital in a state-administered federal program such as Medicaid, and bright-line rules "are easy, cheap, and administrable—laudable qualities in the context of a vast and intricate program." The SLLC's brief argued the state statute was not unreasonable; because it designated the *lesser* of actual expenses or one-third of the total recovery, it could not have operated to take more of a beneficiary's judgment or settlement than the state paid in treatment costs. A better outcome would have respected North Carolina's state statute establishing a clear and fair method for recovering its expenses.

*Decker v. Northwest Environmental Defense Center**

In a 7-1 decision, the Court held that it was not necessary to obtain National Pollutant Discharge Elimination System (NPDES) permits for discharging stormwater runoff from logging roads into navigable waters under the Clean Water Act (Act) and Environmental Protection Agency (EPA) regulations.

In 2006, the Northwest Environmental Defense Center sued logging companies and Oregon state and local officials under the Act for failing to obtain NPDES runoff permits for logging roads in the Tillamook State Forest. The Act requires permits for any stormwater discharge from a "point source" which is "associated with industrial activity." The EPA issued a regulation interpreting the Act to include "discharge . . . that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant . . . includ[ing] . . . immediate access roads," but interpreted its regulation to not include logging roads. The district court dismissed the suit because it found that the drainage system for the roads was not a point source under the Act. The Ninth Circuit reversed, finding that the roads were "associated with industrial activity" under the Act and the EPA regulation and that permits were therefore required.

The Court, in an opinion written by Justice Kennedy, reversed the Ninth Circuit and held that the Act did not apply to the logging roads in question. The Court deferred to the EPA's understanding that its regulation applied to "industrial sites more fixed and permanent than outdoor timber-harvesting operations." "It was reasonable for the agency to conclude" that the roads and their drainage systems were "'directly related' only to the harvesting of raw materials, rather than to 'manufacturing,' 'processing,' or 'raw materials storage areas,'" and the Court will defer to an agency's reasonable interpretation of its own regulation. Furthermore, the State of Oregon provides comprehensive guidance and regulation with respect to stormwater runoff from logging roads, justifying a conclusion by EPA that additional federal regulation would be duplicative or counterproductive.

This case is a huge win for state and local governments. Countless miles of logging roads are owned or administered by state and local governments, which, like Oregon, often have their own comprehensive regulations to mitigate the environmental impact of stormwater runoff. As argued in the SLLC's brief, interpreting the Act to apply to logging roads would have forced already overburdened state and local agencies to administer a time-consuming and expensive permitting process, and might have exposed governments to liability as the owners of these roads. State and local governments are free to continue to regulate their logging roads in a manner that best suits the needs and conditions of each locality.

*Los Angeles County Flood Control District v. Natural Resources Defense Council**

The Court held unanimously that a "discharge of pollutants" under the Clean Water Act (CWA) does not occur when polluted water flows from an improved portion of a navigable waterway into an unimproved portion of the same waterway.

Los Angeles County Flood Control District (LACFCD) operates a municipal separate storm sewer system (MS4) that collects, transports, and discharges stormwater. MS4 operators must obtain National Pollutant Discharge Elimination System (NPDES) permits before discharging stormwater into navigable waters. Pollution testing in concrete channels in the Los Angeles and San Gabriel Rivers revealed that water quality standards were exceeded. The Ninth Circuit held that LACFCD was responsible for the polluted water that flowed out of the concrete-lined portions of the rivers because LACFCD controlled the concrete channels, regardless of the fact that thousands of other dischargers discharged into the rivers upstream of the concrete channels.

The Court disagreed with the Ninth Circuit in an opinion written by Justice Ginsburg. Per the CWA, the "discharge of a pollutant" means "any *addition* of any pollutant to navigable waters from any point source." In *South Florida Water Management District v. Miccosukee Tribe*, 541 U.S. 95 (2004) the

Supreme Court held that an "addition" of a pollutant only occurs if a pollutant is transferred from one "meaningfully distinct" water body into another. In that case polluted water was removed from a canal, transported through a pump station, and deposited into a nearby reservoir. According to the Court, "[i]t follows…from *Miccosukee* that no discharge of pollutants occurs when water, rather than being removed and then returned to a body of water, simply flows from one portion of the water body to another."

The significance of this case for state and local governments who are tasked with complying with the CWA is that the Court did not expand the definition of "discharge of pollutants," a key term in the CWA.

*City of Arlington, Texas v. FCC**

The Court held 6-3 that courts must apply *Chevron* deference to an agency's interpretation of a statutory ambiguity concerning the scope of an agency's jurisdiction.

The Telecommunications Act of 1996 requires state and local governments to act on wireless siting applications "within a reasonable period of time after the request is duly filed." The Federal Communications Commission (FCC) issued a declaratory ruling determining that a "reasonable period of time" is 90 days or 150 days. Some state and local governments claimed the FCC lacked authority to define this phrase. Relying on circuit precedent the Fifth Circuit held that C*hevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) applies to the question of whether the FCC possessed statutory authority to adopt the 90- and 150-day timeframes.

In an opinion written by Justice Scalia the Court concluded that courts must defer under *Chevron* to an agency's interpretation an ambiguous statute grants it jurisdiction because there is no difference between jurisdictional and nonjurisdictional statutory interpretations. According to the court, "[n]o matter how it is framed, the question a court faces when confronted with an agency's interpretation of a statute it administers is always, simply, whether the agency has stayed within the bounds of its statutory authority." The Court rejected the argument that *Chevron* deference should not apply here because the FCC has asserted jurisdiction over matters of traditional concern to state and local government. According to the Court, this is a "faux-federalism" argument because this case isn't a debate about what states are allowed to do, instead it is about whether the FCC or federal courts "draw the lines to which they must hew."

As this case illustrates, agencies regulate state and local government and regulate in the same space where state and local government regulate. The Court's holding gives federal agencies more authority to decide whether they want to regulate—which at least some of the time will be at the expense of state and local government.

*McBurney v. Young**

A unanimous Court held that Virginia's Freedom of Information Act (VFOIA), which grants only Virginians access to public records, violates neither the Constitution's Privileges and Immunities Clause nor the dormant Commerce Clause.

Mark McBurney and Roger Hurlbert are citizens of Rhode Island and California respectively. Both were denied information they requested under VFOIA because of citizenship. McBurney requested general policy information about how the Commonwealth's Division of Child Support Enforcement

handles child support claims like his after it delayed nine months in filing a child support petition on his behalf. Hurlbert owns a business that requests real estate tax records and was denied access to real estate records in Henrico County, Virginia. McBurney and Hurlbert sued Virginia claiming violations of the Privileges and Immunities Clause and the dormant Commerce Clause, and the Fourth Circuit affirmed the district court's motion for summary judgment for Virginia.

In an opinion written by Justice Alito, the Court rejected the argument that Virginia's citizens-only FOIA provision violates four fundamental privileges or immunities or the dormant Commerce Clause. VFOIA doesn't abridge Hulbert's ability to earn a living in the sense prohibited by the Privileges and Immunities Clause because VFOIA wasn't enacted for the "protectionist purpose of burdening out-of-state citizens." Instead it was enacted so that the citizens of the Virginia could hold public officials accountable. VFOIA doesn't abridge Hulbert's right to own and transfer property because tax assessment records are not necessary to transfer property. The Court rejected McBurney's argument that Virginia's citizens-only FOIA impermissibly burdens his access to Virginia courts because noncitizens are able to engage in discovery and issue subpoenas. Virginia's FOIA doesn't violate the Privileges and Immunities Clause by denying noncitizens the right to access public information because there is no constitutional right to obtain all information provided by FOIA laws. Regarding the dormant Commerce Clause claim the Court stated, "Virginia's FOIA law neither 'regulates' nor 'burdens' interstate commerce; rather it merely provides a service to local citizen that would not otherwise be available."

For the eight states that have citizens-only requirements in their public records statutes, this case is a victory. And to the extent the Court affirms that there is no constitutional right of access to public information, this case is a victory for all state and local government.

*Maryland v. King**

The Court held 5-4 that when police make an arrest supported by probable cause for a serious offense, taking and analyzing a cheek swab of the arrestee's DNA is reasonable under the Fourth Amendment.

A DNA sample was taken from the inside of Alonzo King's cheek when he was arrested for assault. His DNA matched with DNA taken from a rape victim. King moved to suppress the DNA match on the grounds that Maryland's DNA collection law violated the Fourth Amendment. The Maryland Court of Appeals agreed with King reasoning that King's "expectation of privacy is greater than the State's purported interest in using King's DNA evidence to identify him."

The Supreme Court reversed, in an opinion written by Justice Kennedy, concluding the search was reasonable after weighing the legitimate government interest against the intrusion into King's privacy. DNA collection furthers the legitimate government interest of safely and accurately identifying persons in custody. And DNA is an "extension of methods of identification long used in dealing with persons under arrest" including photographing and fingerprinting. When compared to the government interest in identification, the "intrusion of a cheek swab to obtain a DNA sample is a minimal one."

Not only is this case a significant victory for state and local law enforcement, it is also a significant victory for state legislatures. At the time of the opinion, 28 states and the federal government had adopted laws similar to Maryland's DNA arrest law.

*Koontz v. St. Johns River Water Management District**

The Court held that there must be a "nexus" and "rough proportionality" between the government's conditions for issuing a land-use permit and the effects of the proposed development even when the government denies the permit and even when the demand is for money.

Mr. Koontz sought permits to develop a portion of wetlands that he owned. St. Johns River Water Management District told Koontz he could proceed with the development if he would reduce its impact or, alternatively, pay for improvements on District-owned property several miles away. Koontz refused, was denied a permit, and sued, claiming his property was taken without just compensation. In two previous Supreme Court cases, *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994) the Court held that the government may condition approval of a permit on the dedication of property to the public as long as there is a "nexus" and "rough proportionality" between the property demanded and the social cost of the applicant's proposal. The Florida Supreme Court did not apply *Nollan* and *Dolan* for two reasons. First, the District had denied the application because Koontz refused to make a concession rather than issuing the permit subject to conditions, and so had not "taken" anything. Second, the District requested money instead of an interest in land.

The Court reversed the Florida Supreme Court and applied *Nollan* and *Dolan* to both permit denials and demands for money. All nine Justices agreed that *Nollan* and *Dolan* should apply whether or not the permit is ultimately issued. According to the Court, *Nollan* and *Dolan* reflect the reality that the government may abuse the permitting process to coerce people into giving up land by denying a permit worth far more than the property the government wants to take. At the same time, land uses can impose social costs that land dedications can offset. Five Justices agreed that *Nollan* and *Dolan* should apply to monetary conditions to avoid the government demanding "extortionate" amounts of money in exchange for a permit. The dissenting Justices were sympathetic to the argument in the SLLC *amicus* brief that there is no principled way to distinguish between demands for money in the land use context and taxes.

In a New York Times Op-Ed State and Local Legal Center (SLLC) brief writer John Echeverria writes that this case "creates a perverse incentive for municipal governments to reject applications from developers rather than attempt to negotiate project designs that might advance both public and private goals — and it makes it hard for communities to get property owners to pay to mitigate any environmental damage they may cause."

Arizona v. Inter Tribal Council of Arizona

In a 7-2 opinion, the Supreme Court held that an Arizona law requiring proof of citizenship for voter registration was preempted by the National Voter Registration Act of 1993 (NVRA).

The Elections Clause gives states the duty of prescribing the "time, place, and manner" of federal elections, but also provides that "Congress may at any time by Law make or alter such Regulations." In 1993, pursuant to its Elections Clause authority, Congress passed the NVRA. The NVRA requires states to "accept and use" a uniform federal form for voter registration. The federal form requires only that a prospective voter attest under penalty of perjury that he or she is a citizen of the United States, but does not demand documentation. Under Arizona law, only citizens of the United States are permitted to vote.

Proposition 200, passed by ballot initiative in 2004, changed the state election code to require election officials to "reject" any registration application not accompanied by documentary proof of citizenship such as a birth certificate or passport. Multiple individuals and non-profit organizations, among them the Inter Tribal Counsel of Arizona, challenged the law in federal court. The district court granted summary judgment to Arizona, but the Ninth Circuit reversed, holding that "Proposition 200's documentary proof of citizenship requirement conflicts with the NVRA's text, structure, and purpose."

The Supreme Court, in a 7-2 opinion authored by Justice Scalia, affirmed the Ninth Circuit ruling. The Elections Clause specifically empowers Congress to preempt state regulations regarding the "time, place, and manner" of federal elections, a phrase the Court reads broadly to "embrace authority to provide a complete code for congressional elections." Any Congressional action on federal elections necessarily displaces conflicting state regulations, and in the context of the NVRA, a command to "accept and use" the federal form does not leave room for a state law allowing officials to "reject" the form based on additional criteria. However, states do have the authority to define who may register in elections, and Arizona could have requested that the federal agency administering elections change the form to include any information the state deems necessary for determining eligibility. If the agency refuses, then Arizona may request judicial review of that action. Nevertheless, Arizona cannot unilaterally impose additional requirements on the Federal Form, and Proposition 200 is therefore preempted.

This case restricts the ability of states to control their election process. While states are free to maintain their own forms with whatever requirements they like, the availability of a Federal Form allows applicants to circumvent state requirements by complying with the federally mandated minimum, and holding elections for state officials separately from those for federal officials would be prohibitively expensive. The uniform federal requirement ultimately weakens local control over local elections.

Dan's City Used Cars, Inc. v. Pelkey

The Court ruled in a unanimous opinion that New Hampshire law regarding the storage and disposal of towed vehicles is not preempted by the Federal Aviation Administration Authorization Act (FAAAA).

Robert Pelkey's car was towed by Dan's City without his knowledge while he was incapacitated by a serious medical condition. Unable to contact Pelkey, Dan's City scheduled an auction in order to recover towing and storage fees. Following his discharge from the hospital, Pelkey informed Dan's City that he would like to claim the vehicle and pay any outstanding charges. Dan's City ignored the request and traded the car to a third party without notifying or compensating Pelkey. Pelkey brought suit under New Hampshire's Consumer Protection Act and state tort law, but the trial court held that the FAAAA, which in relevant part prohibits enforcement of state laws "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property," preempted Pelkey's claims. The New Hampshire Supreme Court reversed, holding that the claims were not preempted because they did not relate to "the transportation of property," but to Dan's City's conduct after transportation.

Writing for a unanimous Court, Justice Ginsburg agreed that the FAAAA did not preempt state-law claims arising from storage and disposal of towed vehicles. The phrase "with respect to the transportation of property" restricts the FAAAA to services involving the movement of property, not its disposal after arriving at its destination. Because the Consumer Protection Act and state tort claims

address Dan's City's conduct long after the transportation service had ended, they fall outside the scope of the FAAAA and are not preempted by that provision. Furthermore, if New Hampshire's laws were preempted under the FAAAA, there would be no law to govern the disposal of towed vehicles at all, as federal law is silent on the point. Justice Ginsburg concluded that "no such design can be attributed to a rational Congress."

This ruling reinforces the limitations of federal preemption doctrine and is a win for state and local legal and regulatory schemes in the towing context and beyond.

Adoptive Couple v. Baby Girl

The Court ruled that the Indian Child Welfare Act of 1978 (ICWA) did not bar the termination of the parental rights of a Cherokee biological father who had never had actual or legal custody of his daughter when the child was put up for adoption by the biological mother.

Birth Mother and Biological Father broke up after Birth Mother became pregnant with Baby Girl in 2009. When asked to pay child support, Biological Father relinquished his parental rights via text message. Birth Mother decided to put Baby Girl up for adoption and selected Adoptive Couple, a non-Indian couple from South Carolina. Following the birth, Adoptive Couple took Baby Girl home. Four months later, Adoptive Couple notified Biological Father of the adoption proceedings. Biological Father contested the adoption in South Carolina Family Court. The court denied Adoptive Couple's petition and awarded custody to Biological Father, who then met his two-year-old daughter for the first time. The South Carolina Supreme Court affirmed, holding that the ICWA barred the termination of Biological Father's parental rights because Adoptive Couple had not shown, pursuant to the law, that "active effort ha[d] been made to . . . prevent the breakup of the Indian family" or that the father's "continued custody . . . [was] likely to result in serious emotional or physical damage to the child."

The Supreme Court reversed in a 5-4 opinion authored by Justice Alito. The Court observed that the ICWA's "primary goal" was to prevent the *removal* of Indian children from Indian families. Its provisions do not apply when the Indian parent has never had legal or physical custody of the child, as is indicated by the terms "continued custody" and "breakup of the Indian family." Because Baby Girl's family had broken up before her birth and Biological Father had "made no meaningful attempts to assume his responsibility of parenthood" until the adoption proceedings started, the ICWA did not prevent the termination of his parental rights. It made no sense, Justice Alito argued, to "put certain vulnerable children at a great disadvantage solely because an ancestor—even a remote one—was an Indian." The dissenters disagreed, claiming that the ICWA "was intended to provide uniform federal standards for child custody proceedings involving Indian children and their biological parents" and that the majority's approach rendered it "an illogical piecemeal scheme" by drawing distinctions between different classes of parents, which may negatively impact the rights of natural parents in future cases.

The Court's ruling restricts the scope of the federal ICWA. In situations factually similar to this case, where an Indian parent has never had legal or physical custody of a child, the proceedings will be governed by the same state adoption laws that apply to proceedings involving non-Indian children. Ultimately, this opinion reduces the role of the federal government in an area of traditional state authority, family law.