State & Local Legal Center

Supreme Court Update

NCSL Fall Forum
Friday December 7, 2012 10:30-12:00 PM
Washington Hilton
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Arizona v. Inter-Tribal Council of Arizona

Facts: The National Voter Registration Act ("NVRA") created a "Federal Mail Voter Registration Form" (the "Federal Form") and requires the States to "accept and use" that form when registering voters by mail. In 2004, voters in Arizona passed Proposition 200, which required election officials to "reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship." Such evidence is not required by the Federal Form, which requires only an attestation of citizenship.

Issue: Whether Proposition 200's evidence-of-citizenship requirement is void as preempted by the NVRA.

Lower court ruling: The en banc Ninth Circuit held that the NVRA preempts Proposition 200, rendering it void as applied in federal elections. The Court concluded that the preemption analysis was appropriately conducted under not under the Supremacy Clause of Article VI, cl.2, but under the Elections Clause of Article I, Sec. 4, which provides that the time, place, and manner of holding Congressional elections "shall be prescribed" by the state legislature, but also that Congress may "make or alter such Regulations" as it sees fit. Noting that "the states' sole authority to regulate" federal elections "aris[es] from the Constitution itself," the Ninth Circuit explained that the Elections Clause confers far greater authority on Congress than does the Supremacy Clause, and so is not subject to the need for "delicate balancing" of state and federal interests that characterizes Supremacy Clause preemption. Specifically, the court ruled, "the 'presumption against preemption' and 'plain statement rule' that guide Supremacy Clause analysis are not transferable to the Elections Clause context." Thus, if a state election statute does not "operate harmoniously" with federal voter registration laws, "then Congress has exercised its power to 'alter' the state's regulation, and that regulation is superseded" by the

disparate geographic coverage is sufficiently related to the problem that it targets." It answered both questions in the affirmative. With respect to the justification of the law's burdens by current needs, the court pointed to evidence in the Congressional record indicating continuing disparities in minority voter registration and in minority representation in statewide offices; evidence of continuing racial discrimination against minority voters; and evidence that case-by-case litigation would be inadequate to address those continuing harms, especially when compared to the deterrent effect created by Section 5 preclearance. With respect to the law's "disparate geographic coverage," the court pointed to record evidence that racial discrimination in voting (measured by successful legal challenges mounted under Section 2 of the Voting Rights Act) remains concentrated in covered jurisdictions—a fact made more salient by the deterrent effects of Section 5 in the covered jurisdictions. The court also relied on the law's "bail-in" and "bail-out" provisions, which enable non-covered jurisdictions to be subjected to Section 5 preclearance if circumstances warrant such coverage, and also enable covered jurisdictions to be relieved of their preclearance obligations if those obligations are no longer warranted. Those provisions, the court explained, help ensure a greater degree of "fit" between actual evidence of discriminatory practices and the law's geographic scope.

Significance of issue: Because Shelby County brought its case as a facial challenge, a decision striking down Section 5 would render the law unenforceable in all circumstances. That would represent a sea change in election law—particularly in the southern states that constitute most of the "covered jurisdictions" under Section 5. Such a decision might also signal the existence of a Court majority that is willing aggressively to revisit the constitutionality of other civil-rights-era legislation.

Tennant v. Jefferson County Commission

Facts: Following the 2010 census, West Virginia adopted redistricting plan that resulted in a population variance of 0.79%--that is, the population difference between the largest smallest districts equaled 0.79% of the population of the average district. That population variance was the second-largest variance of any redistricting plan considered by the state. The Jefferson County Commission sued to enjoin implementation of the plan, alleging that the relatively large population variance violated the principle of "one person, one vote," as required by the Apportionment Clause of Article I, § 2 of the Constitution.

Issue: Whether the state's interest in avoiding splitting counties across electoral districts, preventing contests between sitting incumbents, and moving citizens from district into another was sufficient to justify a population variance of 0.79%, where a lower variance could have been achieved in derogation of the state's other avowed interest.

Ruling: In a per curiam opinion, the Court upheld the West Virginia redistricting plan. Noting that the state had already conceded that it could have produced a redistricting plan with a lower population variance, the Court framed the issue as "whether the State can demonstrate that the

Significance of this case: The Eleventh Circuit's ruling in this case is clearly favorable to state and local government (and, according to the FTC, is contrary to every other court hearing a similar case). If the Supreme Court rules in favor of the FTC, for the state action doctrine to apply, state legislatures will have to be much clearer in legislation that they are okay with anti-competition. Interestingly, Georgia is listed as a party on the same side as the FTC at the Eleventh Circuit level.

Koontz v. St. Johns River Water Management District

Facts: Koontz sought a permit to develop part of his property that was contained within the Riparian Habitat Protection Zone, which is subject to the jurisdiction of the St. Johns River Water Management District. St. Johns asked Koontz to deed the rest of his land to St. Johns and perform off-site mitigation by either replacing culverts about five miles from his property or plugging drainage canals on other property seven miles away. Koontz agreed to deed the rest of his land to St. Johns but wouldn't agree to the off-site mitigation. So, St. Johns never issued him a permit. Koontz sued St. Johns for a temporary taking and was awarded almost $400,000.

Issues: (1) Whether a land-use agency can be held liable for a taking when it refused to issue a land-use permit on the sole basis that the permit applicant did not accede to a permit condition that, if applied, would violate the essential nexus and rough proportionality tests set out in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard* (2) whether the nexus and proportionality tests set out in *Nollan* and *Dolan* apply to a land-use exaction that takes the form of a government demand that a permit applicant dedicate money, services, labor, or any other type of personal property to a public use.

Lower court ruling: The Florida Supreme Court first held that *Nollan* and *Dolan* only apply to the dedication of land or conditions imposed upon the land and not other things like mitigation to *other* land, as in this case. *Nollan* and *Dolan* both involved exactions that required the property owner to dedicate real property in exchange for a permit. In two Supreme Court cases after *Nollan* and *Dolan*, which didn't directly address mitigation of other land, the Supreme Court stated that *Nollan* and *Dolan* were limited to exactions that involved dedication of real property.

The Florida Supreme Court also held that *Nollan* and *Dolan* don't apply when a permit is denied. According to the Florida Supreme Court, state and local governments should be encouraged to negotiate with landowners over exactions and not penalized with a lawsuit if they try to negotiate conditions and are unsuccessful and issue no permit.

Significance of this case: It appears that this case may be the biggest regulatory takings case since *Nollan* and *Dolan*. The Florida Supreme Court states that the clearest circuit divide on *Nollan* and *Dolan* issues involves whether *Nollan* and *Dolan* apply only to the dedication of land. It seems likely that mitigation and things other than the dedication of land would fail under *Nollan* and *Dolan* because *Nollan* and *Dolan* weren't designed for any context other than the dedication of land. And the Florida Supreme Court's point that if no permit was issued in this

a similar federal law, have been challenged in court cases: California, Minnesota, Nebraska, Arizona, and Virginia. Local (and state) law enforcement also have an interest in this case because, as this case illustrates, collecting DNA from arrestees may help solve cold cases.

SLLC brief: The SLLC's brief will first argue that state statutes—particularly criminal statutes like Maryland's DNA arrest law—are presumed to be constitutional. Second, our brief will argue that all state DNA arrest laws are narrowly tailored and reasonable. Finally, the SLLC's brief will argue that DNA arrest laws support numerous important state interests.

Fisher v. University of Texas at Austin

Facts: Texas's Top Ten Percent Law requires Texas public universities to accept all Texas high school seniors graduating in the top ten percent of their class. This 1997 law was designed to increase minority student attendance at Texas's public universities after the Fifth Circuit struck down using race in university admission decisions in 1996. By 2008, the Top Ten Percent Law increased minority attendance at the University of Texas at Austin (UT) to over 20% for African-American and Hispanic students combined. After the Supreme Court ruled in *Grutter v. Bollinger*, 539 U.S. 306 (2003) that race could be a factor in college admissions, UT began using race as one factor in evaluating candidates who were not admitted under Texas's Top Ten Percent Law.

Issue: Whether this Court's decisions interpreting the Equal Protection Clause of the Fourteenth Amendment, including *Grutter v. Bollinger*, permit the University of Texas at Austin's use of race in undergraduate admissions decisions.

Lower court ruling: In a lengthy opinion the Fifth Circuit held that UT's use of race in admissions is constitutional. The plaintiffs, white students who were denied admissions to UT, argued that the Top Ten Percent Law allows UT to attain a critical mass of minority students meaning that relying on race-conscious admissions is unnecessary. The Fifth Circuit disagreed poiting out that even with the Top Ten Percent Law minority stuents were still significantly underrepresented in particular majors and classes. A concurring judge argued that so few minority students are likely helped by the consideration of race that UT's plan isn't narrowly tailored. Specifically, only about 1,200 (20%) of in-state students admitted to UT are non-Top Ten Percent. In 2008, less than 200 admitted African-American and Hispanic students (about 3.5%) out of 6,322 in-state admitted students were evaluated using race as a factor.

Significance of this issue: The constitutionality of Texas's Top Ten Percent Law is not being challenged in this case. Yet, Texas's Top Ten Percent Law is the most crucial factor in this case. The pro-state's rights argument in this case is that *Grutter* provides universities greater latitude to consider race in admission than Texas's Top Ten Percent Law (that doesn't explicitly consider race at all). In other words, the plaintiffs should not be able to use Texas's Top Ten Percent Law as a ceiling for creating diversity at UT's campus when the U.S. Constitution, per *Grutter*, (arguably) allows for more.

(DHHS) paid over $1.9 million in medical expenses to cover the cost of her care. Her parents ultimately settled a medical malpractice claim on her behalf for $2.8 million. The settlement didn't allocate separate amounts for medical expenses or other damages. DHHS asserted a lien against 1/3 of the settlement pursuant to North Carolina statute § 108A-57 which gives North Carolina the right to collect the lesser of actual medical expenses or 1/3 of a Medicaid recipient's total recovery.

Issue: Whether North Carolina statute § 108A-57 is preempted by Medicaid's anti-lien provision as construed in *Arkansas Department of Health and Human Services v. Ahlborn*, 547 U.S. 268 (2006).

Additional background: The Medicaid statute prohibits states from asserting liens against individuals prior to their death *except* for medical expenses individuals recover from third parties for tort claims. In *Ahlborn* the Supreme Court struck down an Arkansas statute that allowed the state to recover *all* of the costs it paid on behalf of a Medicaid recipient regardless of whether that amount exceeded the portion of the Medicaid recipient's settlement for past medical expenses.

Lower court ruling: The Fourth Circuit held that North Carolina's statute failed to comply with Medicaid as interpreted by *Ahlborn.* Basically, *Ahlborn* makes clear that a state's recovery is limited to past medical expenses. In this case it is unclear how much of E.M.A's settlement was for past medical expenses. According to the Fourth Circuit, "[i]n the event of an unallocated lump-sum settlement exceeding the amount of the state's Medicaid expenditures, as in this case, the sum certain allocable to medical expenses must be determined by way of a fair and impartial adversarial procedure that affords the Medicaid beneficiary an opportunity to rebut the statutory presumption in favor of the state that allocation of one-third of a lump sum settlement is consistent with the anti-lien provision in federal law."

Significance of this case: This is a preemption case where a state agency has relied on a state statute. While tort recoveries may not happen often, they frequently occur in cases, like this one, where someone is very seriously injured and their recovery, paid for by Medicaid, is costly. So the state wants to collect as much money as possible from the tort settlements. North Carolina's statute is particularly useful when a settlement is unallocated. The Fourth Circuit's opinion points out that many states after *Ahlborn* changed their state statutes to only allow recovery for the portion of the settlement equaling actual medical expenses. However, at least five other states have statutory caps for Medicaid reimbursements. If the Court rules in favor of North Carolina, more states may adopt statutes similar to North Carolina's.

SLLC's brief: First, the SLLC's brief argues that it is impractical for states to become involved in every settlement negotiation with tortfeasors being sued by Medicaid recipients. State statutes that allocate a specific amount for medical expenses to the state avoid this result. Second, the SLLC's brief argues that the Court should interpret the Medicaid statute and *Ahlborn* flexibly as

SLLC's brief: The SLLC's brief will first point out the state and local governments wholeheartedly support public records laws and open government. The brief will also note that state and local governments face many challenges in fulfilling public records requests. Finally, the brief will argue that Virginia's citizen's only provision supports open government, provides a reasonable limit to open government, and is a state's preference and prerogative.

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

Facts: The Natural Resources Defense Council claims Los Angeles County Flood Control District and Los Angeles County are responsible for pollutant levels detected in four navigable rivers in Southern California exceeding levels allowed in permits. The District and the County own and operate municipal separate storm sewer systems (MS4s), which collect polluted urban stormwater runoff, located in these rivers.

Issue: When water flows from one portion of a river that is navigable water of the United States through an MS4 into a lower portion of the same river can there be a "discharge" from an "outfall" under the Clean Water Act, notwithstanding this Court's holding in *South Florida Water Management District v. Miccosukee Tribe of Indians*, 541 U.S. 95, 105 (2004), that transfer of water within a single body of water cannot constitute a "discharge" for purposes of the Act.

Lower court opinion: The Ninth Circuit held that the District violated its permits related to two rivers. In the case of both of those rivers, the emission stations are located in a section of the MS4 owned and operated by the District so "it is beyond dispute that the District is discharging pollutants from the MS4 to [these two rivers] in violation of the Permit."

Additional background: You wouldn't know from reading the Ninth Circuit's opinion that this case involves individual rivers where the MS4 is part of the river. This fact is apparently irrelevant to the Ninth Circuit's analysis. Yet in the County and the District's opinion this is a key fact because, as the question presented states, *Miccosukee Tribe* holds that transfer of water within a single body of water cannot constitute a "discharge" for purposes of the Clean Water Act.

SLLC's brief: The Clean Water Act prohibits "any addition of any pollutant to navigable waters from any point source," including MS4s, without an NPDES permit. The SLLC's brief argues that instead of being prohibited from discharging certain amount of pollutants, like other NPDES-regulated dischargers, MS4s are only required to adopt best management practices to "reduce" the discharge of pollutants "to the maximum extent practicable" because MS4s have limited control over the pollutants contained in the stormwater runoff they collect. In *Miccosukee Tribe* 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. The SLLC's brief argues that the segments of the rivers above and below the MS4s in this case aren't "meaningfully distinct," so no addition of a pollutant has occurred. The SLLC's brief also