

In Brief



FEDERAL UPDATE

The Supreme Court's Impact on State and Local Government

BY LISA SORONEN AND MICHAEL BELARMINO

Members are familiar with GFOA's legislative and regulatory activity in Washington, D.C., but our efforts extending to the judicial branch may not be as well known. GFOA is an associate member of the State and Local Legal Center (SLLC), which files *amicus curiae* briefs in support of states and local governments in the U.S. Supreme Court. Other SLLC members include the National Governors Association, National Conference of State Legislatures, Council of State Governments, National Association of Counties, National League of Cities,

United States Conference of Mayors, and International City/County Management Association. All GFOA members and associate members may join SLLC *amicus* briefs, which advocate for legal positions favorable to state and local governments and provide the court with policy and practical reasons to rule in favor of the SLLC's position.

The SLLC files briefs for cases that cover a range of topics affecting states and local governments, including federalism, preemption, First Amendment free speech rights, qualified immunity (usually for police

officers), Fifth Amendment takings, public employment, deference to federal agency rules, and taxation. Finance officers need to be aware of these types of cases as they wind through the judicial system because their final rulings can shape public policy. Below are some of the cases of import to state and local governments that either the Supreme Court has decided or will be deciding in the coming months.

*Note: *Indicates a case where the State and Local Legal Center has filed or will file a Supreme Court amicus brief.*

Recently decided cases

Torres v. Madrid.* In a 5-to-3 decision, the Supreme Court held that per the Fourth Amendment, a person may be considered seized even if that person gets away.

In this case, police officers intended to execute a warrant in an apartment complex. Although they didn't think she was the target of the warrant, they approached Roxanne Torres in the parking lot. According to Torres, she was experiencing methamphetamine withdrawal and didn't notice the officers until one tried to open her car door. Although the officers wore tactical vests with police identification, Torres claimed she only saw the officers had guns. She thought she was being carjacked and drove away.

She claimed the officers weren't in the path of the vehicle, but they fired 13 shots, hitting her twice. Torres drove to a nearby parking lot, asked a bystander to report the attempted carjacking, stole another car, and drove 75 miles to a hospital.

Torres sued the police officers, claiming their use of force was excessive in violation of the Fourth Amendment's prohibition against "unreasonable searches and seizures."

The officers argued, and the lower court agreed, that Torres couldn't bring an excessive force claim because she was never "seized" per the Fourth Amendment, since she got away. However, the Supreme Court disagreed and held that "application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person."

Caniglia v. Strom.* The court unanimously held that police community caretaking duties don't justify warrantless searches and seizures in the home.

During an argument with his wife, Edward Caniglia put a handgun on their dining room table and asked his

wife to "shoot [him] now and get it over with." After spending the night at a hotel, Caniglia's wife couldn't reach him by phone and asked police to do a welfare check.

Caniglia agreed to go to the hospital for a psychiatric evaluation after officers allegedly promised not to confiscate his firearms. The officers went into his home and seized his guns regardless.

Finance officers
need to be aware
of these types of
cases as they wind
through the judicial
system because
their final rulings can
shape public policy.

Caniglia sued the officers for monetary damages, claiming that he and his guns were unconstitutionally seized without a warrant, in violation of the Fourth Amendment.

The First Circuit ruled in favor of the police officers by extending a concept established in a prior Supreme Court decision, *Cady v. Dombrowski* (1973). In *Cady*, the Supreme Court held that a warrantless search of an impounded vehicle for an unsecured firearm didn't violate the Fourth Amendment since "police officers who patrol the 'public highways' are often called to discharge noncriminal 'community caretaking functions,' such as responding to disabled vehicles or investigating accidents." The lower court extended this exception beyond the automobile to the home.

Justice Thomas, writing for the court, rejected the First Circuit's extension of *Cady*.

Cedar Point Nursery v. Hassid.*

The Supreme Court held 6-to-3 that a California regulation allowing union organizers access to agriculture employers' property to solicit support for unionization up to three hours a day, 120 days a year, is a per se physical taking under the Fifth and Fourteenth Amendments.

The Fifth Amendment Taking Clause, applicable to the states through the Fourteenth Amendment, states: "[N]or shall private property be taken for public use, without just compensation."

In this case, agriculture employers argued that the State of California's union access regulation "effected an unconstitutional per se physical taking...by appropriating without compensation an easement for union organizers to enter their property." The Supreme Court agreed.

According to Chief Justice Roberts, writing for the majority, when the government "instead imposes regulations that restrict an owner's ability to use his own property," the restrictions don't require "just compensation" unless they go "too far."

The court held that the access regulation "appropriates a right to invade the growers' property" and therefore constitutes a per se physical taking rather than a regulatory taking. "Rather than restraining the growers' use of their own property, the regulation appropriates for the enjoyment of third parties the owners' right to exclude."

Government officials routinely go onto private property temporarily to do police work and conduct inspections, among many other reasons. Importantly, the court stated that "government searches that are consistent with the Fourth



The Supreme Court ruled in favor of PennEast Pipeline Company in the case *PennEast Pipeline v. New Jersey*.

Amendment and state law cannot be said to take any property right from landowners” and “government health and safety inspection regimes will generally not constitute takings.”

PennEast Pipeline v. New Jersey.*

The Supreme Court held 5-to-4 that the federal government may constitutionally grant pipeline companies the authority to condemn necessary rights-of-way in which a state has an interest. Pipeline companies likewise may sue states to obtain the rights-of-way.

Per the Natural Gas Act (NGA), natural gas companies, upon a showing of “public convenience and

necessity,” may receive a certificate from the Federal Energy Regulatory Commission allowing them to use federal eminent domain power to obtain land to locate a pipeline.

After receiving such a certificate, PennEast filed a complaint to condemn land in which the State of New Jersey has an interest. New Jersey claimed that sovereign immunity prevented PennEast from being able to sue the state in federal court.

In an opinion written by Chief Justice Roberts, the Supreme Court held that the NGA follows precedent allowing private parties to exercise federal eminent domain over state land and that sovereign immunity doesn’t bar the lawsuit in this case.

City of Chicago v. Fulton.* In an 8-to-0 decision, the Supreme Court held

that the City of Chicago, Illinois, didn’t violate the bankruptcy code’s automatic stay provision by holding onto a vehicle impounded after a bankruptcy petition was filed.

The City of Chicago impounds vehicles when debtors have three or more unpaid fines, and Robbin Fulton’s vehicle was impounded for this reason. She filed for bankruptcy and asked the city to return her vehicle, and it refused.

The Seventh Circuit held that the city violated the bankruptcy code’s automatic stay provision. The Supreme Court unanimously reversed.

When a bankruptcy petition is filed, an “estate” is created that includes most of the debtor’s property. An automatic consequence of the bankruptcy petition is a “stay” that prevents creditors from trying to collect outside of the bankruptcy forum.

The bankruptcy code also has a “turnover” provision that requires those in possession of property of the bankruptcy estate to “deliver to the trustee, and account for” that property.

The Supreme Court held that “mere retention” of a debtor’s property after a bankruptcy petition is filed doesn’t violate the automatic stay.

According to the court, “[a]ny ambiguity in the text of [the automatic stay provision] is resolved decidedly in the city’s favor” by the turnover provision.

Cases to be decided

Gallardo v. Marsteller.* The Supreme Court will decide whether the federal Medicaid Act allows a state Medicaid program to recover reimbursement for Medicaid’s payment of a beneficiary’s past medical expenses by taking funds from the beneficiary’s legal settlement that compensate for future medical expenses.

Gianinna Gallardo has been in a persistent vegetative state since she was hit by a pickup truck while exiting a school bus. The State of Florida’s Medicaid program has paid almost \$900,000 for her medical care. Her parents settled a case against multiple parties for \$800,000.

Per the settlement agreement, approximately \$35,000 was for past medical expenses. The settlement also said that some of its balance may represent compensation for future medical expenses. The Florida Agency for Health Care Administration (FAHCA) didn’t participate in the settlement.

The Medicaid statute requires states to enact laws under which “the state is considered to have acquired the rights...to payment by any other party...to the extent that payment *has been made* under the state plan for medical assistance.”

Per Florida law, if a Medicaid recipient receives a settlement for injuries caused by a third party, FAHCA is automatically entitled to half of the recovery (after 25 percent attorney’s fees and costs), up to the total amount of medical assistance Medicaid has provided, from the settlement allocated for past and *future* medical expenses.

FAHCA sought to recover not only the \$35,000 specifically allocated by the parties for past medical expenses but also argued that it was entitled to recover the portion of the settlement representing compensation for Gallardo’s *future* medical expenses, to pay for past medical costs. The Eleventh Circuit agreed.

Gallardo argued that FAHCA could collect only the portion of the settlement allocated for past medical expenses because of the past tense of the language in the Medicaid statute, which says that states have a right to payment from third parties “to the extent that payment *has been made*.”

According to the Eleventh Circuit, this language “simply provides *for what* the state can get reimbursed now that it has a general assignment on all medical expenses—it can recover medical expenses it has already paid.” “[W]hile the language of the federal Medicaid statutes clearly prohibits FAHCA from seeking reimbursement *for* future expenses it has not yet paid (which it is not seeking to do in this case), the language does not in any way prohibit the agency from seeking reimbursement *from* settlement monies for medical care allocated to future care.”

City of Austin, Texas v. Reagan National Advertising of Texas Inc.* The City of Austin allows on-premises billboards to be digitized, but not off-premises billboards. In this case, two outdoor advertising companies claim that this distinction is “content-based” under the First Amendment.

In the court’s previous decision in *Reed v. Town of Gilbert* (2015), it held that content-based restrictions on speech are subject to strict scrutiny, meaning they are “presumptively unconstitutional” under the First Amendment. In *Reed*, the court defined the term “content-based” broadly to include distinctions based on “function or purpose.”

Per Austin’s sign code, “off-premises” signs advertise “a business, person, activity, goods, products or services not located on the site where the sign is installed.” The city argued that the definition of off-premises is a time, place, or manner restriction based on the location of signs.

The Fifth Circuit disagreed, stating: “*Reed* reasoned that a distinction can be facially content based if it defines regulated speech by its function or purpose. Here, the Sign Code defines ‘off-premises’ signs by their purpose: advertising or directing attention to a business, product, activity, institution, etc., not located at the same location as the sign.”

Conclusion

The Supreme Court will begin hearing cases for its next term on October 4, 2021. The court’s docket for the term is already about half full, including the sign and Medicaid cases summarized above. The court is likely to agree to hear many more cases of interest to state and local governments in the coming months. You can find SLIC *amicus* brief at statelocallc.org/briefs. ☐

Lisa Soronen is the executive director of the State and Local Legal Center. **Michael Belarmino** is a senior policy advisor in GFOA’s Federal Liaison Center.