

Supreme Court Hears A Number of Significant Federalism Cases

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In its October Term 2011, the U.S. Supreme Court will decide four significant and prominent federalism cases involving states. These cases include the Affordable Care Act cases, the Arizona immigration case, the Texas redistricting case and the California Medicaid case. The State and Local Legal Center (SLLC) filed amicus curiae briefs in four cases to be decided this term affecting state and local government, including the California Medicaid case.

Arguably the two most prominent cases of the United States Supreme Court's October Term 2011 are the Affordable Care Act cases and the Arizona immigration case. States are a party in both cases and states' rights are a central issue in both cases. Two other cases from this term where states are a party, the Texas redistricting case and the California Medicaid case, also involve important federalism questions. What makes these four cases different from many of the prominent federalism cases of the past few decades is that they involve politically charged topics—health insurance and immigration in particular—and concern issues that directly impact the lives of your average American. And as usual, the implications of the court's decisions in these cases may extend well beyond the specific facts litigated.

Affordable Care Act

The court is considering four questions in the Affordable Care Act cases—two of which address federalism head on. First, the court will decide whether the individual mandate, which requires almost all Americans by 2014 to obtain health insurance or pay a fine, violates the Commerce Clause. One of the reasons the 11th Circuit concluded the individual mandate is unconstitutional is that insurance and health care are traditional areas of state concern. Second, the Affordable Care Act requires states to expand Medicaid coverage or lose *all* federal Medicaid funding, not just additional federal funding that will cover the cost of the expansion. The court will decide whether the Medicaid expansion is permissible under the Spending Clause or fails the coercion test because states are essentially compelled to participate in Medicaid.

Whether the court considers the requirement to buy health insurance interstate commerce or the Medicaid expansion coercive will impact both legal

doctrines in contexts well beyond the individual mandate and Medicaid. The argument that Congress can regulate inactivity (not buying health insurance) is novel. Likewise, the court has only twice ruled on the coercion doctrine in the Spending Clause context, making any ruling—much less a ruling regarding a program as big as Medicaid—significant.

Arizona Immigration

In *Arizona v. United States*, the Supreme Court will decide whether four provisions of Arizona's immigration statute are pre-empted by federal law. Arizona argued in its *certiorari* petition that Senate Bill 1070 "authorizes cooperative law enforcement and imposes sanctions that consciously parallel federal law." But the Ninth Circuit disagreed, concluding that federal immigration law pre-empts all four provisions of Senate Bill 1070.

Regarding police being required to determine if a person is in the United States legally, the Ninth Circuit concluded that the federal Immigration and Naturalization Act allows state and local police to aid in immigration enforcement *only* under the supervision of the U.S. attorney general. Regarding state criminalization of failing to carry immigration papers, the Ninth Circuit concluded this requirement is pre-empted because Congress did not provide for state participation in this section of the immigration act, though it did in other sections of the law. Regarding Arizona criminalizing employment for undocumented immigrants, the Ninth Circuit noted that the Immigration and Naturalization Act only sanctions employers. Regarding police officers being allowed to arrest a person, without a warrant, who is likely subject to deportation, because of a crime committed, the Ninth Circuit concluded this section is pre-empted because "states do not have the inherent authority to enforce the civil provisions of federal immigration law."

Other states have adopted immigration laws similar to Arizona's. These laws also may be pre-empted by federal law, depending on how the court rules in this case.

Texas Redistricting

The issue in *Perry v. Perez* was whether and how much a federal district court must defer to a state legislature's drawing of electoral maps when the federal district court creates *interim* electoral maps. Texas gained four U.S. House of Representative seats due to population growth, requiring the Texas state legislature to redraw its electoral maps. The state legislature's redistricting plan likely would allow Republicans to gain three of the four additional seats.

Per the Voting Rights Act, Texas' redistricting plan had to be precleared to ensure it wasn't discriminatory on the basis of race or color. While preclearance of Texas' plan was being litigated in a federal district court for the District of Columbia, the candidate filing period for the 2012 election was closing. So a federal district court in San Antonio drew an interim redistricting map. The court's interim map would likely give Democrats two of the new Congressional seats and, according to Texas, substantially changed all but nine of the 36 districts. Texas sued, claiming the federal district court should have deferred to the state legislature's electoral map when drawing up an interim map.

The Supreme Court's opinion in this case was favorable to the Texas legislature. The court vacated the federal district court's interim maps. It instructed the district court to "take guidance from the State's recently enacted plan in drafting an interim plan. That plan reflects the State's policy judgments on where to place new districts and how to shift existing ones in response to massive population growth."

California Medicaid

In a 5-4 decision in *Douglas v. Independent Living Center of Southern California*, the Supreme Court left it to the Ninth Circuit to decide whether a Supremacy Clause claim can be brought against a state to enforce Medicaid.

The California legislature passed three statutes reducing state Medicaid payments to various providers and placing a limit on state contributions for certain services. Medicaid providers and beneficiaries sued California, arguing that the rate reductions were pre-empted by § (30)(A) of the federal Medicaid statute that involves state payments. The Ninth Circuit held that plaintiffs could sue California under the Supremacy Clause and that § (30)(A) of Medicaid

pre-empted the state laws. After the Supreme Court heard oral argument in this case, the Centers for Medicare and Medicaid Services approved several of California's statutory amendments to its Medicaid plan, indicating that it did not believe Medicaid pre-empted California's statutes.

The Supreme Court remanded this case to the Ninth Circuit to determine whether the Supremacy Clause claim against California may proceed in light of the Centers for Medicare and Medicaid Service's action. The majority of the court seemed skeptical that the Supremacy Clause provides a cause of action in this case, noting that the Medicaid providers and beneficiaries may now be required to seek review of the Centers for Medicare and Medicaid Services' decision under the Administrative Procedure Act instead of suing California under the Supremacy Clause. The dissent concluded that the Supremacy Clause provides no private right of action to enforce § (30)(A) of the Medicaid statute, as the Supremacy Clause is "not a source of any federal rights."

At least one significant concern for states following this case, particularly if the Ninth Circuit allows the Supremacy Clause claim to proceed, is that lower courts and the Supreme Court will allow Supremacy Clause causes of action to be read into other federal statutes.

Conclusion

The Supreme Court already has issued an opinion in the Texas redistricting case and the California Medicaid case. It will issue an opinion in the Affordable Care Act and Arizona immigration cases no later than the end of its term in June 2012.

Not all the cases from this term affecting state and local government have been as prominent, controversial or partisan as the cases described. The State and Local Legal Center filed an *amicus curiae* brief supporting California in *Douglas v. Independent Living Center of Southern California*. The SLLC also filed *amicus* briefs in the three cases below. All these cases will likely have a greater impact on local government than state government. Visit the SLLC's website at <http://www.statelocallc.org/> for more information about these cases and to read the SLLC's briefs. To read opinions in these cases decided after this article is published, visit the Supreme Court's website.

Filarsky v. Delia

In a unanimous decision in *Filarsky v. Delia*, the court held that contract attorneys and other individuals working for the government on a part-time basis are eligible for qualified immunity from lawsuits, like their full-time government employee counterparts.

FEDERALISM

Reichle v. Howards

The issue in *Reichle v. Howards* is whether a person arrested based on probable cause can bring a First Amendment retaliatory arrest claim.

Armour v. Indianapolis

The issue in *Armour v. Indianapolis* is whether a city violated the Equal Protection Clause when it forgave the assessments of homeowners who paid for sewer improvements in multi-year installments, but issued no refunds to homeowners who paid for the same improvements in a lump sum.

About the Author

Lisa Soronen is the executive director of the State and Local Legal Center. She files *amicus curiae* briefs to the U.S. Supreme Court on behalf of members of the Big Seven in cases involving federalism, organizes moot courts for attorneys representing state and local government at the Supreme Court, and is a resource to Big Seven members on legal issues affecting state and local government, particularly at the Supreme Court level. Members of the Big Seven are The Council of State Governments, National Governors Association, National Conference of State Legislatures, National League of Cities, U.S. Conference of Mayors, National Association of Counties and the International City/County Management Association.