Bond Case Briefs

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NACo: Public Prayer, Fair Housing Claims Among Local Issues on SCOTUS Docket.

The next U.S. Supreme Court term is already shaping up to be an important one for local governments, and the court is likely to accept some 30 more petitions before February.

The cases set for argument so far may lack the glamour and media hype of this summer's rulings on same-sex marriage, voting rights and affirmative action, but they deal with some of the essential mechanisms of local governance across the country.

The highest court in the land has agreed to hear cases affecting local government on everything from legislative prayer and demonstrations near abortion clinics to the proper route for age discrimination lawsuits and federal court abstention. Here are a few cases to watch for next term, which begins Oct. 7, that may have a big impact on local government.

Town of Greece v. Galloway

This could redefine the court's approach to legislative prayer practices. Under the 1983 case Marsh v. Chambers, the court held that a state Legislature could hire a chaplain to deliver a prayer at the beginning of its sessions as long as the practice was not "exploited to proselytize or advance any one, or to disparage any other, faith or belief."

The Town of Greece, N.Y.'s official policy allows any person of any or no denomination to deliver an invocation at the beginning of Town Board meetings, and the town does not approve or even examine the prayer in advance.

In practice, all but four invocations (two Jewish, one Baha'i and one Wiccan) have been led by Christians.

The court will review a "totality of the circumstances" test employed by the 2nd Circuit to declare the town's practice a violation of the Establishment Clause of the U.S. Constitution and revisit its holding in Marsh for the first time in three decades. The case could impact many local governing bodies that begin their sessions with a prayer.

Mount Holly Gardens Citizens in Action v. Township of Mount Holly

The question presented by this case is whether a policy or action (here, a plan to redevelop a low-income minority neighborhood in New Jersey) that disproportionately affects a protected class of citizens without intentionally discriminating on the basis of race or other factors can also give rise to a Fair Housing Act (FHA) claim. Because redevelopment plans frequently, though unintentionally, can have disparate impacts on minorities, Mount Holly could expose cities and other local governments to increased liability.

The court will decide whether the FHA allows plaintiffs to bring disparate-impact claims in addition to disparate-treatment claims. The act makes it unlawful to "refuse to sell or rent . . . or otherwise

make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." If a person is treated differently on account of a protected status, he or she may sue under the FHA.

McCullen v. Coakley

The court will examine the constitutionality of a Massachusetts law that creates a 35-foot "buffer zone" around reproductive health care facilities which demonstrators are not allowed to enter.

A 2008 case, Hill v. Colorado, upheld a similar law against a First Amendment challenge because it: 1) addressed a legitimate state concern for the safety and privacy of individuals using the facilities; 2) was "content-neutral" in that it applied to all demonstrators equally regardless of viewpoint; and 3) regulated the "time, place, and manner" of speech without foreclosing or unduly burdening the right of demonstrators to communicate their message.

A broad ruling by the justices could have sweeping consequences beyond this particular context, since local governments are continually challenged to strike a balance between free speech rights and the duty to protect their citizens from harassment at clinics, funerals, political events and other locations. The State and Local Legal Center (SLLC) will file an amicus brief in this case.

Madigan v. Levin

Harvey Levin claims he was fired from his job as an assistant attorney general in Illinois for being too old. In Madigan v. Levin, the Supreme Court will decide whether he and others like him must follow the procedures of the federal Age Discrimination in Employment Act (ADEA) before initiating a lawsuit, or whether terminated employees may go to court directly under the Fourteenth Amendment and Section 1983 of Title 42 of the U.S. Code (42 U.S.C. Section 1983). The ADEA contains a comprehensive scheme that requires potential plaintiffs to file a complaint with the Equal Employment Opportunity Commission, which will attempt to resolve the issue informally before the former employee can sue. A Section 1983 claim would circumvent this process and end up costing employers, including local governments, substantially more time and money.

Sprint Communications Company v. Jacobs

This case arose out of a telecommunications dispute in Iowa. Sprint refused to pay another company's intrastate access charge for a service and asked the Iowa Utility Board (IUB) for confirmation that it was under no obligation to do so. The IUB ordered Sprint to pay, and Sprint challenged the IUB's decision in U.S. district and state courts simultaneously.

The 8th Circuit ruled that the district court should not hear the case until the state court review of the IUB decision was complete — if at all — citing the so-called "Younger abstention doctrine," which requires that a federal court abstain to avoid interfering with a pending state court case.

The Supreme Court took the case to decide whether it mattered for the purposes of abstention that Sprint initially asked the IUB for approval — a remedial proceeding — or if Younger abstention only applies where the state brings a party before the court or administrative board in a coercive proceeding. Most remedial proceedings happen on the local level and involve zoning variances, the denial of gun permits, and the like. The question is whether a federal court should be able to review this type of decision immediately or whether it should abstain until the state proceedings have ended. The SLLC will file an amicus brief in this case.

By Victor Kessler

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