The Supreme Court Cases for State and Local Governments to Watch

In the cases the justices will hear this fall, legal observers say "state sovereignty is a really big issue."

by Graham Vyse | October 1, 2018

People lined up at the Supreme Court
People lined up at the Supreme Court on Monday, the first day of the new term. (AP/J. Scott Applewhite)
The U.S. Supreme Court began a new term on Monday amid the ongoing confirmation fight over President Donald Trump’s latest nominee, Brett Kavanaugh. The U.S. Senate is expected to hold a floor vote on the judge after the FBI completes an investigation this week into sexual assault allegations against him.

In the meantime, the eight current justices face a quiet docket without any headline-grabbing blockbuster cases. Still, there are several cases with implications for state and local governments.

“State sovereignty is a really big issue this term,” says Lisa Soronen, executive director of the State and Local Legal Center. Chuck Thompson, executive director of the International Municipal Lawyers Association, adds that several of this term’s cases “have the potential to expand the amount of litigation against local government.”

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Here's a rundown of the most important cases for state and local government officials to watch:

Madison v. Alabama

Tuesday will bring oral arguments in a death penalty case about whether states can execute people whose mental disabilities leave them unable to remember their crimes. Vernon Madison has been on death row for three decades after killing a police officer but has developed dementia with severe memory loss and cognitive impairment. Though he claims not to remember committing murder, a court-appointed psychologist concluded Madison does understand he is to be executed for this crime, which the state says makes it constitutional. Bryan Stevenson of the Equal Justice Initiative is leading Madison’s legal team, which argues that no “penological justification or retributive value can be found in executing a severely impaired and incompetent prisoner.”

Franchise Tax Board of California v. Hyatt

The court will consider overruling its 1979 decision in Nevada v. Hall, which permitted a state to be sued in another state’s court system without its consent. More recently, Gilbert Hyatt sued California’s Franchise Tax Board (FTB) through Nevada’s courts, and FTB argues Nevada was mandated to grant it
immunity. Fundamentally, the issue now is that FTB believes Hall was wrongly decided, arguing that the '79 ruling “stands in sharp conflict with the Founding-era understanding of state sovereign immunity. Before the adoption of the Constitution, it was widely accepted that the States enjoyed sovereign immunity from suit in each other’s courts.”

**Merck Sharp & Dohme Corp. v. Albrecht**

This will tackle whether a state-level “failure-to-warn” claim is preempted if the Food and Drug Administration (FDA) rejects a drug manufacturer’s proposal to warn consumers about the risk of its product based on scientific data. In this instance, the Merck company gave the FDA data supporting a change to warning labels, with the goal of warning about the risk of atypical bone fractures. The FDA didn’t buy the justification for new language. Then plaintiffs sued Merck, alleging that its drug caused them severe bone fractures and that Merck didn’t do enough -- under state law -- to warn them. “If a drug manufacturer candidly brings a risk to the FDA’s attention and proposes an on-point warning, the FDA’s rejection should suffice as a matter of law to preempt claims alleging failure to warn of that risk,” Merck argues.

**Mount Lemmon Fire District v. Guido**

This case, which was argued today, concerns whether the federal Age Discrimination in Employment Act covers state and local government employers with fewer than 20 employees. Two of the oldest employees at a small Arizona fire district were laid off, and they’re claiming discrimination. CNBC reports that “the fire district has said that the layoffs were forced by a budget shortfall so intense the district resorted to bake sales. It will argue that the age discrimination statute doesn't apply because it has so few employees.”

**Nieves v. Bartlett**

This Alaska case involves Russell Bartlett, who declined to talk to a police officer named Luis Nieves at a snowmobile race. Later that day, Nieves arrested Bartlett for yelling at another police officer and, Nieves believed, posing a threat. Bartlett claims Nieves said “bet you wish you had talked to me now” while arresting him, alleging that the arrest violated the First Amendment’s retaliatory-arrest claims. The court will decide whether probable cause makes those type of claims moot.

**Knick v. Township of Scott**

Oral arguments involving Scott, Pa., begin Wednesday. The central issue here is “takings claims” made when government uses, regulates and seizes private property. Specifically, the court will decide whether to overrule its previous holding that people challenging government “taking” must go through state court before federal court. The case revolves around property owner Rose Mary Knick, who filed a federal lawsuit to challenge a local cemetery ordinance permitting town officials to enter any property in search of grave sites. The town believes stones on Knick’s property are grave markers, which would mean -- under the ordinance -- that her property would need to remain open to the public during the day. A federal judge dismissed her case, and a Philadelphia appeals court told her she must first seek justice at the state level. Knick is appealing that ruling.
Gamble v. United States
This case involves the Fifth Amendment, specifically its “separate sovereigns” exception, which bars the federal government and states from convicting and sentencing someone for the same crime. The court is being asked to overrule this exception by Terance Gamble, a felon convicted of illegal firearm possession under both Alabama and federal law.

The State and Local Legal Center’s full preview of this fall’s Supreme Court term is available here.

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