The State and Local Legal Center (SLLC) files Supreme Court amicus curiae briefs on behalf of the Big Seven national organizations representing state and local governments.

The Supreme Court’s docket for its 2019-2020 term is full. The SLLC Supreme Court Preview for Local Governments noted that at the time that article was published, before the beginning of the Court’s term in October 2019, it had agreed to hear two big cases in which a local government was a party: a gun case and a case involving Deferred Action for Childhood Arrivals recipients. Additionally, at that time the Court had accepted an important water case and a case involving sexual orientation and gender identity in employment. Since October 2019 the Court has added numerous cases to its docket. The three most impactful cases for local governments, which the Court has agreed to hear post-October 2019, are summarized below.

The question the Court will decide in Barr v. American Association of Political Consultants appears to have nothing to do with local governments. It is whether allowing robocalls for government-debt only violates the First Amendment.

The Telephone Consumer Protection Act prohibits automatic dialing or prerecorded calls to cell phones with three exceptions—emergencies, consent, and debt collection owed to or guaranteed by the United States. The American Association of Political Consultants claims the third exception violates the First Amendment.

In Reed v. Town of Gilbert (2015), the Supreme Court held that strict-scrutiny applies to content-based restrictions on speech, and the Court defined content-based broadly.

Applying Reed, the Fourth Circuit concluded that the government-debt exception is content-based because “automated calls made to cell phones that deal with other subjects — such as efforts to collect a debt neither owed to nor guaranteed by the United States — do not qualify for the debt-collection exemption and are prohibited by the automated call ban.”

The Fourth Circuit’s application of Reed in this case seems correct; so, local governments are hoping the Supreme Court agreed to hear it to modify Reed.
In *City of Chicago, Illinois v. Fulton* the Supreme Court will decide whether a local government must return a vehicle impounded because of code violations immediately upon a debtor filing for bankruptcy.

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

Fulton claims the Bankruptcy Code’s “automatic stay” provision requires the City to immediately return her vehicles even though she didn’t pay her outstanding tickets.

The Seventh Circuit agreed.

The “automatic stay” provision provides that a bankruptcy petition “operates as a stay, applicable to all entities, of … any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.”

In a previous case, the Seventh Circuit concluded that “exercise control” includes holding onto an asset and that “exercise control” isn’t limited to “selling or otherwise destroying the asset.”

So, the lower court reasoned in this case, the City of Chicago “exercised control” over Fulton’s car in violation of the automatic stay by not returning it after she filed the bankruptcy petition.

The Supreme Court has held that excessive force violates the Fourth Amendment’s prohibition against “unreasonable searches and seizures.” The question in *Torres v. Madrid* is whether police have “seized” someone who they have used force against who has gotten away.

Police officers approached Roxanne Torres thinking she may be the person they intended to arrest. At the time Torres was “tripping” from using meth for several days. She got inside a car and started the engine. One of the officers repeatedly asked her to show her hands but could not see her clearly because the car had tinted windows. When Torres “heard the flicker of the car door” handle she started to drive thinking she was being carjacked.

Torres drove at one of the officers who fired at Torres through the wind shield. The other officer shot at Torres as well to avoid being crushed between two cars and to stop Torres from driving toward the other officer. Torres was shot twice. After she hit another car, she got out of the car she was in and laid on the ground attempting to “surrender” to the “carjackers.” She asked a bystander to call the police but left the scene because she had an outstanding warrant. She then stole a car, drove 75 miles, and checked into a hospital.

The Tenth Circuit found no excessive force in this case because Torres wasn’t successfully “seized.” In a previous case the Tenth Circuit held that “a suspect's continued flight after being shot by police negates a Fourth Amendment excessive-force claim.” This is so, because “a seizure requires restraint of one's freedom of movement.” Therefore, an officer's intentional shooting of a suspect isn’t a seizure unless the “gunshot . . . terminate[s] [the suspect's] movement or otherwise cause[s] the government to have physical control over him.”
Conclusion

The three most important cases for local governments accepted since October 2019 aren’t likely to receive much interest from the general public. But all three of these cases will impact the day-to-day operations of local governments. Between these cases and the other cases mentioned at the beginning of this article, local governments might need to make more than one change when this Supreme Court term is over.