Supreme Court Review for Local Governments
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By: Lisa Soronen, State and Local Legal Center, Washington, D.C.

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.

*Indicates a case where the SLLC has filed or will file an amicus brief.

Even though the Supreme Court heard fewer cases than usual this term due to COVID-19, the Court decided numerous cases impacting local governments. A county was a named party in one of the Court’s blockbuster decisions, discussed below, involving gay and transgender employees. The two other significant cases for local governments discussed in this article involve water and the constitutionality of a search.

In a 6-3 decision in Bostock v. Clayton County, the Supreme Court held that gay and transgender employees may sue their employers under Title VII for discriminating against them because of their sexual orientation or gender identity.

Title VII of the Civil Rights Act of 1964 outlaws employment discrimination on the basis of race, color, religion, sex, and national origin.

The Court, in an opinion written by Justice Gorsuch, first considered the definition of the word “sex.” The Court assumed that the term refers only to biological distinctions between male and female.

According to Justice Gorsuch: “From the ordinary public meaning of the statute’s language at the time of the law’s adoption, a straightforward rule emerges: . . . If the employer intentionally relies in part on an individual employee’s sex when deciding to discharge the employee—put differently, if changing the employee’s sex would have yielded a different choice by the employer—a statutory violation has occurred.”

In County of Maui, Hawaii v. Hawaii Wildlife Fund* the Supreme Court held 6-3 that when there is a “functional equivalent of a direct discharge” from a point source to navigable waters an appropriate permit is required under the Clean Water Act.
The Clean Water Act forbids the “addition” of any pollutant “from a point source” to “navigable waters” without a National Pollutant Discharge Elimination System (NPDES) permit. In this case, the County of Maui wastewater reclamation facility pumps treated wastewater (pollutants) from wells (point sources) which travels through groundwater to the ocean (a navigable water).

Maui argued that an NPDES permit is only required when a point source or series of point sources is “the means of delivering pollutants to navigable waters.” In this case, groundwater lies “between the point source [the wells] and the navigable water [the ocean].”

Hawaii Wildlife Fund agreed with the Ninth Circuit “that the permitting requirement applies so long as the pollutant is ‘fairly traceable’ to a point source even if it traveled long and far (through groundwater) before it reached navigable waters.”

The Supreme Court, in an opinion written by Justice Breyer, rejected both positions holding instead that a permit is required when there is a functional equivalent of a direct discharge.

The Ninth Circuit’s interpretation of “from” was too broad, the Court opined, because it would lead to “surprising, even bizarre, circumstances, such as for pollutants carried to navigable waters on a bird’s feathers.” The Court likewise rejected as too narrow Maui’s argument that if a pollutant travels from a point source through groundwater before reaching navigable water no NPDES permit is required.

According to the Court, the functional equivalent of a direct discharge test “best captures, in broad terms, those circumstances in which Congress intended to require a federal permit.”

In an 8-1 opinion, the Supreme Court held that a police officer may initiate a traffic stop after learning the registered owner of the vehicle has a revoked license unless the officer has information negating the inference the owner of the vehicle is the driver.

In *Kansas v. Glover*, Deputy Mehrer ran the license plate of a vehicle he saw being driven lawfully, matched it to the vehicle he observed, and learned it was registered to Charles Glover who had a revoked driver’s license. Deputy Mehrer then initiated a traffic stop and discovered Charles Glover was in fact driving the vehicle.

Glover claims that Deputy Mehrer lacked the necessary reasonable suspicion to stop him. The Supreme Court disagreed with Glover and found there was reasonable suspicion in this case.

According to the Court: “Before initiating the stop, Deputy Mehrer observed an individual operating a 1995 Chevrolet 1500 pickup truck with Kansas plate 295ATJ. He also knew that the registered owner of the truck had a revoked license and that the model of the truck matched the observed vehicle. From these three facts, Deputy Mehrer drew the commonsense inference that Glover was likely the driver of the vehicle, which provided more than reasonable suspicion to initiate the stop.”

The Court did note that additional facts might dispel reasonable suspicion. “For example, if an officer knows that the registered owner of the vehicle is in his mid-sixties but observes that the driver is in her mid-twenties, then the totality of the circumstances would not ‘raise a suspicion that the particular individual being stopped is engaged in wrongdoing.’”
Conclusion

The Supreme Court moved 10 cases it was supposed to hear in its 2019-2020 term to next term. Two of these cases involve local governments. Oral argument has been scheduled in October for both cases. The question in *Torres v. Madrid* is whether police have “seized” someone they have used force against who has gotten away. In *City of Chicago, Illinois v. Fulton* the Court will decide whether a local government must return a vehicle impounded because of code violations immediately upon a debtor filing for bankruptcy.