Supreme Court Midterm for States Governments 2019-20

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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 the State Governments summarized a number of cases on topics relevant to the states including: guns, Deferred Action for Childhood Arrivals, sexual orientation and gender identity in employment, and state aid to religious organizations. Since that article was published, at the beginning of the Court’s term in October 2019, the Court has accepted many more cases of interest to the states. The three most impactful cases are summarized below.

In June Medical Services LLC v. Gee the Supreme Court will decide whether Louisiana’s law requiring physicians performing abortions to have admitting privileges at a local hospital conflicts with Supreme Court precedent.

In 2016 in a 5-4 decision the Supreme Court struck down Texas’s admitting privileges law.

Louisiana’s Unsafe Abortion Protection Act requires physicians performing abortions to have admitting privileges, meaning be a member of the hospital in good standing able to perform surgery on patients, at a hospital not further than 30 miles from the abortion clinic.

The Supreme Court has held that while the state has a legitimate interest in seeing that abortions are performed safely, unnecessary health regulations may not impose an undue burden on the right to seek an abortion.

The Supreme Court struck down the Texas law because half of the abortion clinics in the state had to close because physicians couldn’t get admitting privileges. Many Texas hospitals condition admitting privileges on having a minimum number of patient admissions per year.

The Fifth Circuit found no undue burden in the Louisiana case because the majority of Louisiana hospitals do not require a minimum number of admissions to maintain privileges. The lower
court concluded that if most abortion doctors in Louisiana put forth a “good-faith effort” they should be able to get admitting privileges.

The question the Supreme Court will decide in *Colorado Department of State v. Baca* and *Chiafalo v. Washington* is whether state law can force presidential electors to vote for the winner of the state’s popular vote for President.

When Michael Baca of Colorado voted for John Kasich he was removed as an elector and his vote was discarded. When Peter Chiafalo of Washington State voted for Collin Powell he was fined $1,000. Baca and Chiafalo challenge the constitutionality of their state’s faithless elector statute.

Before lower courts Baca won and Chiafalo lost.

Baca claims that the Colorado law violates Article II and the Twelfth Amendment to the United States Constitution. The Tenth Circuit agreed.

Article II states: “[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors.” The Twelfth Amendment states that electors “vote by [distinct] ballot for President and Vice-President.”

The Tenth Circuit concluded that Colorado lacks the authority to require electors to vote for the candidate receiving the most votes because “the definitions of elector, vote, and ballot [contained in Article II and the Twelfth Amendment] have a common theme: they all imply the right to make a choice or voice an individual opinion.”

Before the Supreme Court, Chiafalo argues that Washington’s law “penalizing an elector for exercising his or her constitutional discretion to vote,” violates the First Amendment. The Washington Supreme disagreed reasoning: “The power of electors to vote comes from the State, and the elector has no personal right to that role.”

A 2013 final rule exempted churches from the Affordable Care Act (ACA) contraceptive mandate. The rule included an accommodations process which allowed women covered by exempted plans to still receive covered contraception.

In 2017 a number of federal agencies issued two interim final rules that “expanded the existing exemption and Accommodation framework, made the Accommodation process voluntary, and offered similar protections to organizations with moral objections to contraceptives.”

In *Trump v. Pennsylvania* two states sued the agencies noting that thousands of women will be without birth-control coverage due to these rules and may turn to state-funded programs to receive contraception.

The Trump administration lost on all the issue litigated in this case in the Third Circuit.

On the question most at the heart of the case—whether there is statutory authority to expand the conscience exemption—the lower court concluded that “neither of the statutes upon which the Agencies rely, the ACA and RFRA [Religious Freedom Restoration Act], authorize or require the Final Rules.”
Conclusion

Abortion and anything to do with the Affordable Care Act are hot button issues which will be watched closely by both states and the general public. The faithless elector cases give the Supreme Court a unique opportunity to resolve a constitutional crisis before it happens in real life. Between these cases and all the other controversial topics the Court has taken up this term June—when most of the big cases are decided—promises to be exciting.