



Supreme Court Preview for Local Governments 2021-22

July 2021

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 or will file an *amicus* brief.

Most U.S. Supreme Court cases of interest to local governments fly under the radar, even if they are very important to local governments. That is true of all local government cases the Court has agreed to hear so far in its 2021-22 term—except one. The Court’s gun case, involving the question of whether states and local governments can limit concealed-carry permits based on cause, is against a state. But local governments have adopted similar regulations. This preview of the Court’s upcoming term summarizes the gun case and three other cases significant to local governments.

In [*New York State Rifle and Pistol Association v. Corlett*](#)* the Supreme Court will decide whether states may prevent persons from obtaining a concealed-carry license for self-defense if they lack “proper cause.”

Per New York state law, in order to carry a concealed handgun for self-defense purposes a person must show “proper cause.” New York case law requires an applicant to “demonstrate a special need for self-protection distinguishable from that of the general community” to satisfy the proper cause standard.

Relying on circuit precedent, the Second Circuit ruled this requirement doesn’t violate the Second Amendment. The Second Circuit cited to *Kachalsky v. County of Westchester* (2012), where it applied intermediate scrutiny and upheld New York’s law stating: “New York has substantial, indeed compelling, governmental interests in public safety and crime prevention” and “the proper cause requirement is substantially related to these interests.”

The City of Austin allows on-premises billboards to be digitized but not off-premises billboards. In [*City of Austin, Texas v. Reagan National Advertising of Texas Inc.*](#)* two outdoor advertising companies claim that this distinction is “content-based” under the First Amendment.

In *Reed v. Town of Gilbert* (2015), the Supreme Court held that content-based restrictions on speech are subject to strict scrutiny, meaning they are “presumptively unconstitutional” under the First Amendment. In *Reed* the Court defined “content-based” broadly to include distinctions based on “function or purpose.”

Per Austin’s Sign Code, “off-premises” signs advertise “a business, person, activity, goods, products or services not located on the site where the sign is installed.”

The City argued that the definition of off-premises is a time, place, or manner restriction based on the location of signs.

The Fifth Circuit disagreed, stating: “*Reed* reasoned that a distinction can be facially content based if it defines regulated speech by its function or purpose. Here, the Sign Code defines ‘off-premises’ signs by their purpose: advertising or directing attention to a business, product, activity, institution, etc., not located at the same location as the sign.”

In [*Houston Community College System v. Wilson*](#) the Supreme Court will decide whether the First Amendment restricts the authority of an elected body to issue a censure resolution in response to a member’s speech.

David Wilson was an elected trustee of the Houston Community College System (HCC). In response to the board’s decision to fund a campus in Qatar, he arranged robocalls and was interviewed by a local radio station expressing his disagreement with the decision. He filed a lawsuit against HCC after it allowed a trustee to vote via videoconference, which he contended violated the bylaws. He sued the board again when it allegedly excluded him from an executive session.

The board publicly censured him for acting in a manner “not consistent with the best interests of the College or the Board, and in violation of the Board Bylaws Code of Conduct.” Wilson sued HCC and the trustees, asserting that the censure violated his First Amendment right to free speech.

HCC argued that “it had a right to censure Wilson as part of its internal governance as a legislative body and that Wilson’s First Amendment rights were not implicated.”

The Fifth Circuit disagreed noting it has repeatedly held that “a reprimand against an elected official for speech addressing a matter of public concern is an actionable First Amendment claim.” In this case, Wilson was censured because of his speech.

In [*Cummings v. Premier Rehab Keller*](#)* the Supreme Court will decide whether people who are discriminated against in violation of Title VI, Title IX, Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, or the Affordable Care Act may sue for emotional distress damages.

Jane Cummings has been deaf since birth and is legally blind. She communicates mostly through American Sign Language (ASL). She contacted Premier, which offers physical therapy services, to treat her chronic back pain. She repeatedly requested that Premier provide an ASL interpreter, but it refused. She sued Premier under the Rehabilitation Act and the ACA for disability discrimination and sought emotional distress damages.

The Fifth Circuit held that emotional distress damages aren't available under these statutes.

The Rehabilitation Act and the ACA are Spending Clause legislation. According to the Fifth Circuit, the Supreme Court has "repeatedly" likened Spending Clause legislation to contract law—"in return for federal funds, the [recipients] agree to comply with federally imposed conditions."

In *Barnes v. Gorman* (2002), the Supreme Court explained compensatory damages are available under Spending Clause legislation because federal-funding recipients are "on notice" that accepting such funds exposes them to liability for monetary damages under general contract law. In *Barnes*, the Supreme Court also held that punitive damages *aren't* available under Spending Clause legislation because they aren't generally available for breach of contract.

According to the Fifth Circuit, emotional distress damages, like punitive damages are "traditionally unavailable in breach-of-contract actions." So, the court held, federal-funding recipients aren't on notice of them and can't be held liable for them.

Conclusion

While the gun case will steal the spotlight, all of the cases summarized in this article have relatively far-reaching consequences for local governments. *Reed v. Town of Gilbert* has resulted in the invalidation of numerous state laws and local ordinances. The sign case gives the Court an opportunity to clarify—and ideally—narrow *Reed*. The censure case could affect any city council or county board. And the emotional distress damages case is relevant to numerous statutes which apply to local governments. Only time will tell how any of these cases come out.