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

In a 5-4 decision the Court held in *Town of Greece v. Galloway* that Greece did not violate the First Amendment by opening its meetings with a prayer. From 1999-2007 all pray givers were Christian, and some referred to Jesus. The Court concluded that legislative prayer is not required to be nonsectarian and that the prayers in this case weren't coercive. In *Marsh v. Chambers*, the Court held the Nebraska Legislature didn't violate the First Amendment by opening its sessions with a prayer delivered by a chaplain paid from state funds. The proposition that *Marsh* allows only nonsectarian prayer "is irreconcilable with the facts of *Marsh* and with its holding and reasoning." Only allowing nonsectarian prayer would require state legislatures and local governments to "act as supervisors and censors of religious speech" and it isn't clear when a prayer is sectarian. Prayer before town board meetings isn't coercive just because citizens who attend meetings often have business before the board. Prayers in this context—and the state legislative context where citizens can only address the legislature by invitation—aren't intended for the public but for the lawmakers "who may find that a moment of prayer or quiet reflection sets the mind to a higher purpose and thereby eases the task of governing."

In a unanimous opinion in *McCullen v. Coakley* the Court held that a Massachusetts statute making it a crime to stand on a public road or sidewalk within 35 feet of an abortion clinic violates the First Amendment. The Court reasoned the law "burden[s] substantially more speech than necessary" to achieve the state's interests in ensuring public safety, preventing harassment, and combatting obstruction at clinic entrances. The Court offered state and local governments three suggestions, other than generic criminal statutes, to deal with public safety problems at abortion clinics: passing legislation similar to the federal Freedom of Access to Clinic Entrances Act which prohibits injury, intimidation, or interference toward someone seeking an abortion; criminalizing following and harassing people entering a clinic; and criminalizing obstruction of clinic entrances. The SLLC's *amicus* brief asked the Court not to rule in a way that would limit state and local government's ability to use buffer zones to protect public safety in a variety of contexts.

In *Lane v. Franks* the Court held unanimously that the First Amendment protects a public employee who provides truthful sworn testimony, compelled by a subpoena, outside the course of his or her ordinary responsibilities. Edward Lane, a program director at a public community college, claimed he was fired in retaliation for testifying at a criminal trial that he fired a state legislator who was on his payroll but wasn't doing any work. The First Amendment protects public employee speech made as a citizen on a matter of public concern. In *Garcetti v. Ceballos* the Court held that when public employees speak pursuant to their official job duties they are speaking as employees and not as citizens for First Amendment purposes. It was undisputed that Lane's ordinary job duties did not include testifying in court proceedings. Lane learned about what he spoke about at work but "the mere fact that a citizen's speech concerns information acquired by virtue of his public employment does not transform that speech into employee-rather than citizen-speech. The critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties." The Court did not decide whether the First Amendment protects truthful subpoenaed speech made as part of a public employee's ordinary job duties.

The Court held 6-2 in *Schuette v. Coalition to Defend Affirmative Action* that voters may by ballot prohibit affirmative action in public university admission decisions. In 2006 Michigan voters adopted a constitutional amendment which prohibited preferential treatment in admissions to public universities on the basis of race, sex, color, ethnicity, or national origin. The majority of the Court concluded this amendment does not violate the Equal Protection Clause of the Fourteenth Amendment. Justice Kennedy, in a plurality opinion joined only by Chief Justice Roberts and Justice Alito, concluded that this case is about who and not how the debate over racial preferences should be resolved. "There is no authority in the Constitution of the United States or in this Court's precedents for the Judiciary to set aside Michigan laws that commit this policy determination to the voters." Justices Sotomayor and Ginsburg dissented; Justice Kagan did not participate in the case. While this case was limited to the use of race in public university admission decisions, Michigan's constitutional amendment also prohibits the use of racial-preference in state and local government employment and contracting. Presumably, these provisions are also constitutional.

In *Burwell v. Hobby Lobby* the Court held 5-4 that the Affordable Care Act's birth control mandate violates the Religious Freedom Restoration Act (RFRA), as applied to closely held corporations. RFRA provides that the federal government "shall not substantially burden a **person's** exercise of religion." As relevant to state and local governments, the Court concluded closely held corporations are "persons" under FRFA. The Dictionary Act defines person to include corporations, and the Court saw "nothing in FRFA that suggests a congressional intent to depart from the Dictionary Act definition." The Religious Land Use and Institutionalized Persons Act (RLUIPA) bars state and local governments from enforcing land use regulations that substantially burden "the religious exercise of a **person**." If for-profit corporations are "persons" under RFRA they are also likely "persons" under RLUIPA. As

Justice Ginsburg points out in her dissenting opinion quoting the SLLC's *amicus* brief, this will have negative consequences for state and local governments: "[I]t is passing strange to attribute to RLUIPA any purpose to cover entities other than 'religious assembl[ies] or institution[s].' That law applies to land-use regulation. To permit commercial enterprises to challenge zoning and other land-use regulations under RLUIPA would 'dramatically expand the statute's reach' and deeply intrude on local prerogatives, contrary to Congress' intent. Brief for National League of Cities et al. as *Amici Curiae* 26."

In *Harris v. Quinn* the Court held 5-4 that the First Amendment prohibits the collection of an agency fee from home health care providers who do not wish to join or support a union. Medicaid recipients who would otherwise be institutionalized may hire personal assistants. In Illinois, the Medicaid recipient is the employer and is responsible for almost all aspects of the employment relationship, but the personal assistant is a state employee for collective bargaining purposes. A number of personal assistants did not want to join the union or pay it dues. In *Abood v. Detroit Board of Education* the Court held that state and local government employees who don't join the union may still be compelled to pay an agency fee to cover the cost of union work related to collective bargaining. The Court refused to extend *Abood* to personal assistants who aren't "full-fledged" public employees. What justifies an agency fee is that unions must promote the interests of members and nonmembers alike, meaning they cannot negotiate higher pay for members or only represent members in grievances. This justification has little force where a union cannot negotiate pay or represent nonmembers (or members) in grievances. While the Court was highly critical of *Abood*, it did not overrule it. This ruling is a setback for personal assistants in other states that followed Illinois lead and allowed them to unionize.

In *Marvin M. Brandt Revocable Trust v. United States* the Court held 8-1 that the United States does not own abandoned railroad rights-of-way it granted in the General Railroad Right-of-Way Act of 1875. The Court ruled against the United States "in large part because it won when it argued the opposite before this Court more than 70 years ago in the case of *Great Northern Railway Co. v. United States*." The United States and the SLLC argued that the Court should not read *Great Northern* so broadly and that a series of federal statutes grant the United States title to abandoned 1875 rights-of-way (*unless* a state or local government establishes a "public highway," including a recreational trail, within one year of abandonment). While the Justices discussed at oral argument the SLLC's argument that state and local governments have relied on these statutes, the Court concluded they don't apply because "[they] do not tell us whether the United States has an interest in any particular right of way; they simply tell us how any interest the United States might have should be disposed of." This case only impacts abandoned 1875 rights-of-way, not all abandoned railroad corridors. *See* RAILS TO TRAILS CONSERVANCY, HOW WILL THE DECISION AFFECT MY LOCAL RAIL-TRAIL, http://www.railstotrails.org//resources/images/graphics/SCOTUS-decision-affects-infographic_Rails-to-Trails-Conservancy02.png.

In *Sandifer v. U.S. Steel Corporation* the Court held that donning and doffing protective gear qualifies as "changing clothes" under Section 29 U.S.C. 203(o) of the Fair Labor Standards Act. This section allows parties to decide as part of a collective bargaining agreement whether time spent changing clothes at the beginning and end of the work day is noncompensable, which is what U.S. Steel agreed to in a collective bargaining agreement. Clifton Sandifer argued donning and doffing protective gear does not constitute "changing clothes." The Court disagreed reasoning that clothing can include items worn for protection, and that changing clothes can include altering street clothes with protective gear. The Court concluded that the majority of items at issue in this case—hard hats, work gloves, flame-retardant jackets, etc.—were clothes. While safety glasses, earplugs, and respirators were not, time spent donning and doffing them was minimal. Some state and local government employees may wear protective gear. This case affirms that employers and unions may agree in collective bargaining agreements to not compensate employees for taking off and on protective gear.

The Clean Air Act's (CAA) Good Neighbor Provision prohibits upwind states from emitting air pollution in amounts that will contribute significantly to downwind states failing to attain air quality standards. In *EPA v. EME Homer City Generation* the lower court concluded that upwind states must be given a chance to allocate their emissions budgets when they are known, before the federal government can do so, and that EPA can only rely on physical contributions to air pollution when determining responsibility for downwind pollution. The Court, in a 6-2 opinion, disagreed. The Court concluded the CAA does not require that states be given a second opportunity to file State Improvement Plans (SIPs) after EPA has informed them of their emissions budgets. The CAA makes it clear that once EPA has found a SIP inadequate, EPA has a statutory obligation to issue a Federal Improvement Plan. The Court further concluded that the Good Neighbor Provision does not require EPA to disregard costs and consider only each upwind state's physically proportionate responsibility for each downwind state's air quality problem. "EPA's cost-effective allocation of emission reductions among upwind States, we hold, is a permissible, workable, and equitable interpretation of the Good Neighbor Provision." States and local governments filed on both sides in this case.

In *Utility Air Regulatory Group v. EPA* the Court held 5-4 that EPA cannot require stationary sources to obtain Clean Air Act permits only because they emit greenhouse gases. But, the Court concluded 7-2, EPA may require "anyway" stationary sources, which have to obtain permits based on their emissions of other pollutants, to comply with "best available control technology" (BACT) emission standards for greenhouse gases. The Court reasoned that permitting all newly covered stationary sources for greenhouse gas emissions "would place plainly excessive demands on limited governmental resources is alone enough reason for rejecting it." EPA's regulations would increase the number of permits by the millions and the cost of permitting by the billions. To avoid the result described above, EPA issued the "Tailoring Rule," which increased the permitting threshold for greenhouse gases from 100 or 250 tons per year to 100,000 tons per year initially. The Court concluded EPA "has no power to