United States Supreme Court Local Government Cases 2024 Term Review / 2025 Term Preview

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United States Supreme Court Local Government Update-Agenda

- Introducing IMLA and LGLC / role as amicus
- Review: Local Government Decisions from the '24-'25 Term
  - A look at the Second Amendment
- Preview: Local Government Cases for the '25-'26 Term

Introducing IMLA:

- Founded 1935-serves 2500+ local governments / 8,000+ attorneys
  - **Education**-Conferences, webinars, *Municipal Lawyer*, eNews, etc.
  - **Collaboration**-more than 20 working groups/listservs, including:
    - Code Enforcement
    - **Police Advisors**
    - **Affirmative Litigation**
    - University Cities
    - Homelessness
    - Rural Communities
  - Currently, emphasis on **Executive Orders**:
    - Federal funding
    - Immigration
    - Diversity
  - **"I in IMLA"** - Canadian membership, international comparative law

Introducing IMLA:

- **Legal advocacy program** – file 40+ amicus briefs each year at US Supreme Court, federal Circuits, state appellate courts.
- **Supreme Court Rule 37. Brief for an Amicus Curiae**
  An amicus curiae brief that brings to the attention of the Court **relevant matter not already brought to its attention by the parties** may be of considerable help . . . [One] that does not serve this purpose burdens the Court, and its filing is not favored.
- Particular significance in support of **petitions for cert**.
- Recurring themes: financial/logistical impact, policy challenges, social impact - also home rule, separation of powers, federalism, **circuit split**, etc.
- Can reference/add evidence outside the record.

Introducing IMLA:

- **Local Government Legal Center (LGLC)**
  - Formed in 2023; mission is to shape US Supreme Court cases through persuasive advocacy
    - **NLC** - 2,700+ elected city officials
    - **NACo** - 40,000+ elected county officials
    - **GFOA** - 20,000+ federal, state/provincial, local finance officers
    - **ICMA** - 13,000+ city/county managers
  - Filed 16 briefs as LGLC in 2024-25 Term. Cited repeatedly in *City of Grants Pass v. Johnson*.

SCOTUS Local Government Cases-'24 Term Review

- ***San Francisco v. EPA*** – can EPA add "generic prohibitions" per CWA?
- ***Lackey v. Stinnie*** – are §1988 fees due for preliminary injunctions?
- ***EMD Sales v. Carrera*** – must FLSA evidence be clear and convincing?
- ***Stanley v. City of Sanford*** – are former employees covered by ADA?
- ***Ames v. Ohio Dep't of Youth S'vces*** – must majority group show additional evidence of discrimination under Title VII?
- ***FCC v. Consumers' Research*** – does USF violate nondelegation rule?
- ***Barnes v. Felix*** – does moment of the threat apply in excessive force?
- ***Catholic Charities Bureau v. Wisconsin Labor & Ind. Review Comm.*** – what can be reviewed in considering religion-based tax exemptions?
- ***Bondi v. VanDerStok*** – are ghost gun components covered by GCA?

SCOTUS Local Government Cases-'25 Term Preview

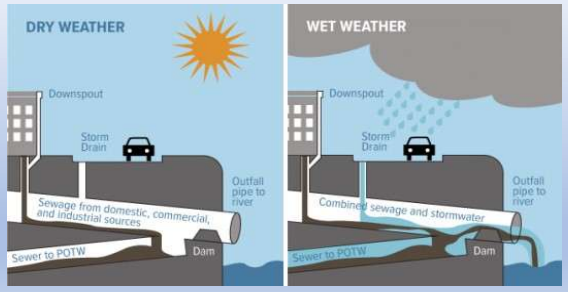
Cert granted for October 2025 Term:

- ***United States v. Hemani*** – can habitual marijuana users be barred from having guns?
- ***Wolford v. Lopez*** – does concealed carry require permission from owners of private property open to the public?
- ***Olivier v. City of Brandon*** – when does *Heck* bar apply?
- ***First Choice Women's Resource Center v. Platkin*** – when can administrative subpoenas be challenged in federal court?
- ***Case v. Montana*** – grounds for warrantless entry in welfare checks?
- ***Pung v. Isabella County*** – must home tax forfeitures yield FMV?

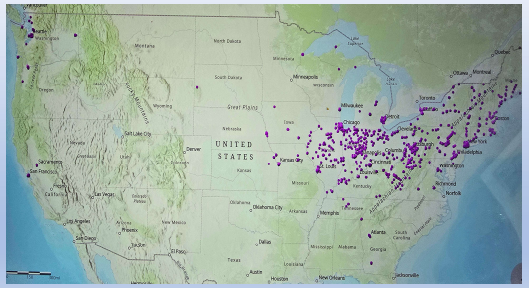
City and County of San Francisco v. EPA, no. 23-753 (cert to 9th Cir.)

- **Facts:** NPDES permits are required for all discharges of pollutants from a "point source" into WOTUS—industrial, municipal, agricultural, etc.
- must set "effluent limitations"—end-of-pipe restrictions "on quantities, rates, and concentrations of . . . constituents . . . discharged from point sources." (States can issue permits within 3 miles, US beyond 3 miles).
- SF's NPDES permit included numeric limitations, but also two "generic prohibitions": a discharge "**may not cause or contribute to a violation** of any applicable water quality standard. . . ." and no "discharge of pollutants shall create **pollution, contamination, or nuisance** as defined by California Water Code §13050."
  - In essence, **SF was responsible for water quality at the discharge point far into the Pacific Ocean, despite other sources of pollution.**

City and County of San Francisco v. EPA, no. 23-753



City and County of San Francisco v. EPA, no. 23-753



City and County of San Francisco v. EPA, no. 23-753

- **Ruling below:** CWA authorizes EPA to include in the Oceanside NPDES permit the challenged provisions, and that EPA's decision to do so was **rationally connected to evidence** in the administrative record."
  - Because Generic Prohibitions are "consistent with the CWA and its implementing regulations," the EPA and States may impose those prohibitions against violating water quality standards when they find it "necessary" to do so. (Second Circuit holds otherwise).
- **Issue: Whether the CWA allows EPA (or an authorized state) to impose generic prohibitions in NPDES permits that subject permitholders to enforcement for exceedances of water quality standards without identifying specific limits to which their discharges must conform.**

City and County of San Francisco v. EPA, no. 23-753

- **Judgment: Reversed and remanded**, Alito (5-4)-**Challenged provisions** making the permittee responsible for water quality in the body of water into which the permittee discharges pollutants-**exceed EPA's authority** under the CWA.
- **Importance**: Big issue for CSO and coastal jurisdictions-increasingly violent rainstorms create more frequent overflows; older cities in particular are finding it challenging to meet regulatory standards.
  - CWA provides for **"Permit Shield"**-- compliance with terms of NPDES permit generally shields locality from prosecution.
  - Violations ave huge consequences -- the CWA allows injunctive relief and carries **civil penalties of more than $66,000 per day, per violation**; cases can be brought via citizen suit, including attorney's fees.

City and County of San Francisco v. EPA

Final Sanitary Sewer Connection Eliminates Future Sewage Overflow into Des Moines River

DES MOINES, IOWA — Wednesday, May 14, 2025 — The Des Moines Metropolitan Wastewater Reclamation Authority (WRA) and the City of Des Moines have officially **eliminated the last combined sewer overflow (CSO)** as mandated in a consent decree by the State of Iowa and the Iowa Department of Natural Resources.

The final connection of the Ingersoll Run Outlet Sewer at 22nd Street and High Street was made earlier this week by contractors, which, along with the recently completed replacement of the Birdland Pump Station, completes the last of several EPA-mandated CSO removal projects. The yearslong series of CSO removal projects involved **hundreds of millions of dollars of construction**, with contractors working throughout Des Moines to install new sanitary sewer lines.

Lackey v. Stinnie, no. 23-621 (cert to 4th Cir.)

- **Facts:** Virginia law required automatic suspension of driver's licenses for failure to pay traffic fines; indigent plaintiffs challenged on due process grounds and won preliminary injunction. Law was then repealed.
  - The parties agreed the case was moot--but plaintiffs sought **attorney's fees** under Section 1988.
- **Ruling below:** Fourth Circuit, *en banc*, reversing--state precedent holds open the possibility of attorney's fees for preliminary injunction.
  - "When a preliminary injunction provides the plaintiff concrete, irreversible relief on the merits of her claim and becomes moot before final judgment . . . the subsequent mootness of the case does not preclude an award of attorney's fees."
  - Respondent -- 11 Circuits hold that preliminary injunction on the merits can accord prevailing-party status, even where the case is later mooted.

Lackey v. Stinnie, no. 23-621

- **Issue**: **Whether litigants obtaining preliminary injunctions are "prevailing parties" entitled to Section 1988 attorney's fees.**
- **Judgment: Reversed and remanded**, Roberts (7-2)-litigants are not "prevailing part[ies]" eligible for Section 1988 attorney's fees because **no court conclusively granted "enduring relief" on the merits:**
  - "Because preliminary injunctions do not conclusively resolve the rights of parties on the merits, they do not confer prevailing party status. A plaintiff who secures a preliminary injunction has achieved **only temporary success** at an intermediary 'stage[ ] of the suit.'"
- **Importance**: Significant win for local governments; Section 1988 fees for preliminary relief would be extremely costly ($767,000 was sought here) and would discourage voluntary changes in governmental policy.

E.M.D. Sales, Inc. v. Carerra, no. 23-217 (cert to 4th Cir.)

- **Facts**: **FLSA** requires that employers pay minimum wage, as well as **time and a half to employees working more than 40 hours per week**, subject to 34 exemptions. Food distributor EMD employs sales reps who check inventory and take orders; reps worked more than 40 hours and sought overtime, but EMD claimed they were exempt.
  - EMD argued that employers need to demonstrate that employees are exempt from overtime by **preponderance of the evidence** (more than 51%); employees argued for a much more demanding **clear and convincing** standard.
- **Ruling below:** Fourth Circuit, affirming-based on Circuit precedent, applicable standard is clear and convincing evidence. (At odds with majority of Circuits).

E.M.D. Sales, Inc. v. Carerra, no. 23-217

- **Issue: Whether the burden of proof that employers must satisfy to demonstrate the applicability of a FLSA exemption is a mere preponderance of the evidence or clear and convincing evidence.**
- **Judgment: Reversed and remanded**, Kavanaugh (9-0)-**Preponderance of the evidence standard applies** when employer seeks to demonstrate that an employee is **exempt from FLSA minimum-wage and overtime-pay rules**.
- **Importance**: FLSA claims are very common, making up 45% of all new federal labor cases filed in court. They can also be extremely costly, including double and treble damages, as well as attorney's fees.
  - Local governments are collectively among the nation's largest employers; the less demanding evidentiary standard for exemptions from FLSA's minimum wage and overtime rules will be beneficial.

Stanley v. City of Sanford, no. 23-217 (cert to 11th Cir.)

- **Facts:** Stanley joined Sanford FD in 1999; diagnosed with Parkinson's disease in 2016. Unable to perform, she retired in 2018 at age 47.
  - Under FD policy in 1999, employees had free healthcare until age 65 if retiring for a qualified disability reason or served 25 years. But Sanford changed policy in 2003-thereafter, 25 years' service needed for coverage to age 65; disability retirees only covered for 24 months after retiring.
  - Stanley sued, arguing that Sanford's decision to discontinue her health insurance subsidy discriminated against her due to her disability.
- Unlawful under **ADA** to "**discriminate against a qualified individual with a disability**" regarding "employee compensation, . . . and other terms, conditions, and privileges of employment." A "qualified individual with a disability" is someone "who, **with or without reasonable accommodation, can perform the essential functions of the employment position** . . . "

Stanley v. City of Sanford, no. 23-217

- **Ruling below:** Eleventh Circuit, affirming-**former employee is not "qualified individual with a disability"-** only applies to those who **"hold or desire to hold a job" -** must be able to **"perform the essential functions of a job."** No discrimination occurred while Stanley was employed or desired to be.
- **Issue: Whether, under the ADA, a former employee-who was qualified to perform her job and who earned post-employment benefits while employed-loses her right to sue over discrimination with respect to those benefits solely because she no longer holds her job.**
- **Judgment: Affirmed**, Gorsuch (9-0)-ADA discrimination rules **only apply to those employed/desire to be employed/can perform essential job functions**.
- **Importance:** Major implications for public budgets. Local governments may need to reduce retirement benefits to ensure financial stability, and local leaders need flexibility to make these difficult-but legal-decisions.

Ames v. Ohio Dep't of Youth S'vces, no. 23-1039 (cert to 6th Cir.)

- **Facts:** Ohio Dep't of Youth Services employed Ames, a heterosexual woman. In Ames' performance evaluation, her supervisor, a gay woman, said Ames "met expectations" in ten competencies and "exceeded" them in only one.
- Ames later sought a promotion but was passed over; Dep't hired gay woman for the position. Ames then demoted on performance grounds--her pay dropped from $47.22/hr to $28.40/hr. Gay man given her former position.
- Ames sued, claiming discrimination under Title VII, arguing that:
  (1) she was a **member of a protected class**;
  (2) she was subject to an **adverse employment decision**;
  (3) she was **qualified** for the relevant position; and
  (4) her employer **treated more favorably** a similarly qualified person who was **not a member of the same protected class.**

Ames v. Ohio Dep't of Youth S'vces, no. 23-1039

- **Refresher--*McDonnell Douglas Corp. v. Green*, 411 US 792 (1973):**
- Green was laid off in RIF, then McDonnell Douglas advertised a position for which Green was qualified—but he was not hired. He alleged racial discrimination under Title VII. After losing at district court and Eighth Circuit, Green won 9-0 at the Supreme Court:
  - **Plaintiff must establish prima facie case**, showing (i) he **belongs to a protected class**; (ii) he **applied and was qualified** for a job advertised by the employer; (iii) though qualified, he **was rejected**; and (iv) employer **continued to seek applicants** with complainant's qualifications.
  - **Employer must show non-discriminatory reason** for its actions.
  - Plaintiff must then show inference of discrimination---**employer's explanation is pretextual**.

Ames v. Ohio Dep't of Youth S'vces, no. 23-1039

- ***McDonnell Douglas* Assumption:** Plaintiff is a member of a **socially disfavored/racial minority group**.
- But in *Parker v. Baltimore & Ohio Railroad Co*. (D.C. Cir. 1981), a white male complained of being passed over by women and black candidates.
  - The Circuit acknowledged that "[w]hites are also a protected group under Title VII," but "it **defies common sense to suggest that the promotion of a black employee justifies an inference of prejudice against white co-workers in our present society.**"
- Thus, "to prove a prima facie case of intentionally disparate treatment," a majority-group plaintiff must point to **"background circumstances [which] support the suspicion that the defendant is that unusual employer who discriminates against the majority."**

Ames v. Ohio Dep't of Youth S'vces, no. 23-1039

- **Ruling below**: Sixth Circuit found Ames met prima facie factors for a typical Title VII discrimination claim-discriminated against due to sexual orientation.
- **But Ames was in a majority group-heterosexuals**. Sixth Circuit required "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority."
  - Plaintiffs typically satisfy "background circumstances" with evidence that a **member of the relevant minority group made the employment decision,** or with statistical evidence showing **a pattern of discrimination by the employer against members of the majority.**
- Ames could not meet that burden: the ultimate decisionmakers were heterosexual and she could not point to statistical evidence of a pattern of anti-heterosexual discrimination. Her claim failed.

Ames v. Ohio Dep't of Youth S'vces, no. 23-1039

- **Circuit Split**: The Sixth, Seventh, Eighth, Tenth, and DC Circuits apply the heightened "background circumstances" standard.
  - The Third and Eleventh Circuits explicitly reject it.
  - The First, Second, **Fourth**, Fifth and Ninth Circuits do not apply it.
- **Issue: Whether, in addition to pleading the other elements of Title VII, a majority-group plaintiff must show "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority."**

Ames v. Ohio Dep't of Youth S'vces, no. 23-1039

- **Judgment**: **Vacated and remanded**, Jackson (9-0)- "In *McDonnell Douglas*, this Court laid out a three-step burden-shifting framework for evaluating . . . a disparate-treatment case—whether 'the defendant intentionally discriminated against the plaintiff.' **[The] 'background circumstances' requirement is not consistent with Title VII's text or our case law . . ."**
- **Concurrence**: Thomas-"Judge-made doctrines . . . **distort the underlying statutory text, impose unnecessary burdens on litigants, and cause confusion for courts**. **[T]he *McDonnell Douglas* framework lacks any basis in the text of Title VII and has proved difficult for courts to apply. . . . I would be willing to consider whether [*McDonnell Douglas*] is a workable and useful . . . tool."**
- **Importance:** Ruling in favor of Ames and rejecting the "background circumstances/unusual employer" standard expands the opportunity for majority plaintiffs to file discrimination claims.

FCC / Schools, Health and Libraries Broadband Coalition v. Consumers' Research, no. 22-354 / 22-422)(cert to Fifth Cir.)

- **Facts:** Communications Act of 1934 requires FCC to make affordable telecom services available nationwide. FCC established **Universal Service Fund (USF)** to collect funds from telecoms and distribute to low income, rural, hospitals, schools and libraries, to pay for telecom and broadband.
  - FCC authorized **Universal Service Administrative Company (USAC)** to calculate each telecom company's share of total USF collections and to distribute funds to rural, low income, schools, libraries, hospitals, etc.
- **Ruling below**: Fifth Circuit, on remand, found that Congressional controls over the FCC regarding USF were "minimal, contentless," and "a hollow shell," resulting in an **unconstitutional delegation of the taxing power, a "quintessentially legislative" function**. And FCC's controls over USAC caused a further impermissible delegation of that authority.

FCC / Schools, Health and Libraries Broadband Coalition v. Consumers' Research, no. 22-354 / 22-422)

- **Issue: Whether Congress violated nondelegation doctrine by authorizing FCC to determine amounts that providers contribute to USF; and whether FCC violated nondelegation doctrine by using USAC financial projections--private company appointed to compute universal service contribution rates.**
- **Judgment: Reversed and remanded** (Kagan, 6-3)**-No violation of nondelegation requirement. Congress satisfies "intelligible principle,"** making clear "the **general policy**" the FCC must pursue and "the **boundaries** of [its] delegated authority." And the FCC retains authority over USAC—appoints Board, approves budget, requires adherence to FCC guidelines.
- **Importance**: USF funds broadband for more than 100,000 schools across the country, and to countless others via "E-rate" ($8.1 billion+ in 2023).

FCC / Schools, Health and Libraries Broadband Coalition v. Consumers' Research, no. 22-354 / 22-422)

OFFICE OF THE CHAIRWOMAN

Why Does the Universal Service Fund Matter in South Carolina?

- **Connecting Schools and Libraries (E-Rate Program):** From 2022-2024, 1,354 schools and 232 libraries received $94,111,898 for broadband connectivity and internal connections. These programs benefited 810,792 students.
- **Broadband for Health Care Providers (Rural Health Care Program):** From 2021-2023, 312 health care providers received $44,035,056 for connections.
- **Basic Phone and Internet for Low-Income Households (Lifeline Program):** In March 2024, 115,755 subscribers received discounted phone and/or internet.
- **High-Speed Internet in Hard-to-Connect Communities (High-Cost Program):** In 2023, S.C. carriers received $148,185,845 to connect rural households.

Barnes v. Felix, no. 23-1239 (cert to 5th Cir.)

- **Facts:** Officer Felix initiated a traffic stop for a vehicle with toll violations, asking Barnes for his license and proof of insurance. Barnes indicated that his girlfriend had rented the car two weeks earlier and he "might" have the documentation in the trunk.
  - Felix ordered Barnes to open the trunk, and he did so from inside the car. Felix then ordered Barnes to get out of the vehicle. Barnes opened the door but did not exit, and turned the ignition back on.
  - Officer Felix drew his weapon and shouted "don't f'ing move" as the vehicle started to roll forward. Felix jumped onto the door sill of the moving car, head above the roof of the vehicle, weapon drawn.
  - As the car sped up, Felix fired twice, unable to see where he was aiming.
  - Barnes was hit; soon after, he was pronounced dead at the scene.

Barnes v. Felix, no. 23-1239

- **Ruling below:** Fifth Circuit affirmed the district court: there was no constitutional violation because **Officer Felix did not draw his weapon until Barnes turned the ignition back on.**
  - The court found that the "moment of threat occurred in **the two seconds before Barnes was shot.** At that time, [Officer] Felix was still hanging onto the moving vehicle and believed it would run him over, which could have made Officer Felix **reasonably believe his life was in imminent danger."**
  - Felix's actions leading up to the actual moment the threat occurred -- including the fact he "jumped onto the door sill"-- had "**no bearing on the officer's ultimate use of force."**

Barnes v. Felix, no. 23-1239

- **Circuit Split:** Four federal circuits—Second, **Fourth**, Fifth, and Eighth—evaluate a Fourth Amendment claim under the "moment of the threat" doctrine (analyzes **reasonableness of officer's use of force at the time when his/her safety was threatened)**.
- ***Elliott v. Leavitt***, 99 F.3d 640 (4th Cir. 1996) **"The court's focus should be on the circumstances at the moment force was used and on the fact that officers on the beat are not often afforded the luxury of armchair reflection."**
- Also ***Anderson v. Russell***, 427 F.3d 125 (4th Cir. 2001) "The `reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." A court must make "allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving." (citing *Graham* 490 US at 396-97).

Barnes v. Felix, no. 23-1239

- Eight circuits—the First, Third, Sixth, Seventh, Ninth, Tenth, Eleventh, and D.C.—reject the moment of the threat doctrine and use the **objective reasonableness and totality of the circumstances** analysis in ***Graham v. Connor***, 490 U.S. 386 (1989), evaluating additional factors leading up to the officer's use of force, including:
  - **The nature of the underlying crime**
  - **Whether the person poses an immediate threat to the officer or public**
  - **Whether the person is violent and/or resisting arrest**

Barnes v. Felix, no. 23-1239

- **Issue: Whether courts should apply the moment of the threat doctrine when evaluating an excessive force claim under the Fourth Amendment.**
- **Judgment: Reversed and remanded**, Kagan (9-0)-**moment of the threat principle is rejected; evaluation of law enforcement excessive force claims requires *Graham* "totality of the circumstances" inquiry.**
  - Taking account of [the] context may benefit either party in an excessive-force case. Prior events may show, for example, why a reasonable officer would have perceived otherwise ambiguous conduct of a suspect as threatening. Or instead they may show why such an officer would have perceived the same conduct as innocuous. **The history of the interaction. . . may inform the reasonableness of the use of force**.
- **Importance:** Will expand findings of Fourth Amendment violations and increase Section 1983 claims in four Circuits, limiting Qualified Immunity and opening local governments to increased liability.

Catholic Charities Bureau v. Wisconsin Labor & Ind. Review Comm., no. 24-154 (cert to WI Sup. Ct.)

- **Facts:** Wisconsin's unemployment insurance statute exempts religious entities based on the purpose and nature of their operations.
  - "employment" does not include those "in the employ of an organization **operated primarily for religious purposes** and operated, supervised, controlled, or principally supported by a church . . . "
- Bureau manages nonprofits (separate corporate entities) providing more than 60 programs for elderly/disabled, special needs children, low-income families, and people suffering from disasters, regardless of religion. Seeks an exemption from unemployment taxes based on their religious mission: **"to provide service to people in need, to advocate for justice in social structures and to call the entire church and other people of good will to do the same."**
  - They argue they are "operated primarily for religious purposes" and any contrary reading of the Wisconsin law violates the First Amendment.

Catholic Charities Bureau v. Wisconsin Labor & Ind. Review Comm., no. 24-154

- **Ruling below:** Upholding the Commission, the WI Supreme Court examined Charities' **activities as well as motives,** finding they are **not "operated primarily for religious purposes"** in part because they **do not engage in proselytization** or **limit their charitable services to Catholics**.
  - "The record demonstrates that CCB and the sub-entities, which are organized as separate corporations apart from the church itself, neither attempt to imbue program participants with the Catholic faith nor supply any religious materials to program participants or employees."
- If it looked only "to the church's **purpose** in operating the organization . . . then **any religiously affiliated organization would always be exempt**."
- **Issue: Whether a state violates the First Amendment's religion clauses by denying a religious group an otherwise-available tax exemption because the organization does not meet the state's criteria for religious behavior.**

Catholic Charities Bureau v. Wisconsin Labor & Ind. Review Comm., no. 24-154

- **Opinion**: **Reversed and remanded** (Sotomayor 9-0): **Strict scrutiny applies**: decisions about whether to "**express and inculcate religious doctrine**" while performing charitable work are **fundamentally theological choices** driven by religious doctrine. Must be narrowly tailored to further a compelling government interest.
  - **No compelling interest in unemployment coverage** for Wisconsin's citizens--Charities provide their own unemployment compensation, with similar benefits.
  - **Inconsistent—"churches" would get exemption even if they don't proselytize / serve only co-religionists**.
- **Thomas**, concurring: First Amendment guarantees "**church autonomy doctrine,**" meaning that that a religious institution is **not defined by the corporate entities** it chooses to form.

Catholic Charities Bureau v. Wisconsin Labor & Ind. Review Comm., no. 24-154

- Other laws use similar language:
  - Neb. Rev. Stat. § 77-2704.12(1): Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by (a) any nonprofit organization **created exclusively for religious purposes** . . .
  - Kan. Stat. Ann. § 79-3606(aaa) (exempts "all sales of tangible personal property and services purchased by a religious organization . . . used exclusively for **religious purposes**"
  - 35 Ill. Comp. Stat. 200/15-40(b) (exempts "[p]roperty used exclusively for . . . **religious purposes**"
  - 72 Pa. Stat. Ann. § 7204(10) (exempts "sale at retail to or use by a religious organization for **religious purposes**"

Catholic Charities Bureau v. Wisconsin Labor & Ind. Review Comm., no. 24-154

- **Remember RLUIPA?** - response to *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990), which held that neutral and generally applicable laws may be applied to religious practices **even if not supported by a compelling government interest.**
  - **RLUIPA and land use:** "No government shall . . . implement a land use regulation . . . that imposes a **substantial burden on the religious exercise** of a person, including a religious assembly or institution, unless . . . in furtherance of **a compelling governmental interest** and is the least restrictive means . . ."

Catholic Charities Bureau v. Wisconsin Labor & Ind. Review Comm., no. 24-154

- **RLUIPA and inmates**: No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability, **unless . . . the burden . . . is in furtherance of a compelling governmental interest**; and is the least restrictive means of furthering that compelling governmental interest.

- "Religious exercise" is based on "sincerely held religious beliefs":
  - For native Americans, powwows and sweat lodges must be allowed.
  - For Muslims/Rastafarians, limits on beards/hair length are suspect.
  - For many, dietary restrictions must be honored.

Moving from 2024 Term to 2025--Local Government Cases-GUNS

We know *Heller*, *McDonald*, and *Bruen*:

- *District of Columbia v. Heller* (2008)-individual right to possess firearm in the home for self-defense.
- *McDonald v. City of Chicago* (2010)-individual right to keep and bear arms for self-defense at home or in public.
- *Bruen v. New York Pistol & Rifle Club* (2022)-"May issue" licensing, showing of "proper cause" and "special need for self-protection," violates Second Amendment. Rejects means-end analysis: "To justify its regulation, the government may not simply posit that the regulation promotes an important interest. . . **Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command**.'"

But don't forget the Gun Control Act of 1968-

Bondi v. VanDerStok, no. 23A82 (2025) (cert to 5th Cir.)

- **Facts:** GCA requires firearm dealers and makers to be licensed, run background checks, keep records of private party sales, apply serial numbers. "Firearm" includes "(A) **any weapon** . . . which will or is designed to or may readily be **converted to expel a projectile** by the action of an explosive; [and] (B) the **frame or receiver** of any such weapon."
  - ATF added rule: "firearm" includes **"weapon parts kit"** that can be **converted to expel projectile**; **"frame or receiver" includes "partially complete" or "nonfunctional"** frame/receiver that "may readily be converted"
- **Ruling below:** Fifth Circuit, affirming-ATF rules facially violate GCA.
- **Issue: Whether ATF rules that (1) weapons kit convertible to expel projectile is "firearm" and (2) partial/nonfunctional frame or receiver convertible to functionality is a "frame or receiver" facially violate GCA.**

Bondi v. VanDerStok, no. 23A82

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Bondi v. VanDerStok, no. 23A82

- **Opinion: Reversed and remanded**, Gorsuch (7-2)-**ATF rules are not facially inconsistent w/GCA.** Some gun kits-for example Polymer80's "*Buy, Build, Shoot*"-**convert to a functional weapon in 21 minutes-**and meet the rules.
- **Dissent: Thomas**-Holding invites **"serious unintended consequence"** under National Firearms Act (NFA), which bans "machineguns," including "frame or receiver" of "such weapon." **AR-15 receivers may be "machineguns"** because they can be converted "to function as machinegun receivers."
- **Majority:** "The government represents that AR–15 receivers do not 'qualify as the receiver of a machinegun.'. . . NFA and the GCA are different statutes passed at different times to address different problems using different language. **Our analysis . . . does not begin to suggest that ATF possesses authority to regulate AR–15 receivers as machineguns under the NFA**."

Bondi v. VanDerStok, no. 23A82

- **Importance**: Significant win for local governments; unserialized ghost guns are major problem for law enforcement:
  - Ghost gun kits are purchased online, allowing minors and felons who are otherwise prohibited under federal law to obtain them **without background checks or serialization requirements.**
  - Exponential increase in the availability and use of ghost guns. In 2022, DOJ recovered nearly 26,000 ghost guns domestically – 7,000 more than 2021 which was already a 1000% increase from the year 2017.
- **BUT not the last word**: ***"[E]ven if ambiguities at the outer boundaries of subsections (A) and (B) emerge in future disputes*** *involving the application of those provisions to particular products*, no room for doubt exists about the answer to the question the parties have posed to us.

Gun Control Act of 1968-more limits on gun owners

- **18 U.S.C. 922(g) prohibits gun possession by any person:**

(1) convicted of crime punishable by imprisonment exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance;

(4) who has been adjudicated a mental defective or committed to a mental institution;

(8) who is subject to a court order . . . that restrains such person from harassing, stalking, or threatening an intimate partner . . . or includes a finding that such person represents a credible threat to the physical safety of such intimate partner . . .

United States v. Rahimi **(2024),** no. 22-925 (cert to 5th Cir.)

- **Facts:** Rahimi assaulted partner, threatened her with violence if she reported it; Texas court imposed a restraining order, and advised Rahimi of federal law criminalizing firearms possession.
- Continued to act violently, resulting in search of his home—guns found. Federal grand jury indicted Rahimi for possessing a firearm while under a domestic violence restraining order, in violation of 18 U.S.C. §922(g)(8):
  - Unlawful for any person subject to a court order that "includes a finding that such person represents **a credible threat to the physical safety of [an] intimate partner or child**" to possess "any firearm or ammunition..."
- Rahimi pleaded guilty and was convicted to six years' imprisonment, then challenged the statute under the Second Amendment.

United States v. Rahimi, no. 22-925

- **Ruling below:** Fifth Circuit initially upheld Rahimi's conviction, but the Supreme Court thereafter issued *Bruen*-
  - Applying *Bruen*, the Circuit reversed itself, finding 922(g)(8) unconstitutional under the Second Amendment: **none of the historical analogues identified by the federal government supported depriving Rahimi of his right to possess firearms**.
- **Issue: Whether 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to domestic-violence restraining orders, violates the Second Amendment on its face.**

United States v. Rahimi, no. 22-925

- **Judgment-Reversed and remanded** (Roberts, 8-1). "When a restraining order contains a finding that an individual poses a credible threat to the physical safety of an intimate partner, that individual may . . . be banned from possessing firearms while the order is in effect. **Since the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms."**
- **"*Heller* never established a categorical rule** that the Constitution prohibits regulations that forbid firearm possession in the home. Indeed, *Heller* stated that **many such prohibitions**, like those on the possession of firearms by "felons and the mentally ill," are **"presumptively lawful."**

United States v. Rahimi, no. 22-925

- **DISSENT: Thomas:** Question is not whether Rahimi can be disarmed consistent with the Second Amendment. Instead, the question is **whether the Government can strip the Second Amendment right of anyone subject to a protective order—even if he has never been accused or convicted of a crime. It cannot.**
  - "The Court and Government do not point to a single historical law revoking a citizen's Second Amendment right based on possible interpersonal violence."

Gun Control Act of 1968-more limits on gun owners

- **18 U.S.C. 922(g) prohibits gun possession by any person:**

(1) convicted of crime punishable by imprisonment exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance;

(4) who has been adjudicated a mental defective or committed to a mental institution;

(8) who is subject to a court order . . . that restrains such person from harassing, stalking, or threatening an intimate partner . . . or includes a finding that such person represents a credible threat to the physical safety of such intimate partner . . .

United States v. Hemani, no. 24-1234 (cert to 5th Cir. 10-20-2025)

- **Facts:** FBI searches home of Ali Hemani, an alleged Iranian sympathizer. Find guns, cocaine, and marijuana. Hemani admits to habitual use of marijuana-not high at the time. Arrested under GCA § 922(g)(3).
- **Ruling below:** Magistrate's report found **no analogous history**: "The Government bears the burden of proffering 'relevantly similar' historical regulations that imposed 'a comparable burden on the right of armed self-defense' that were also 'comparably justified.'" (citing *Rahimi* / *Bruen*). To meet its burden, the Government asserts 18 U.S.C. § 922(g)(3) has historical analogues in statutes **penalizing those who use firearms while intoxicated, statutes disarming the mentally ill, and statutes disarming the "untrustworthy" or "potentially dangerous persons.**"
- The Court . . . finds these statutes are **insufficient** historical analogues . . .

United States v. Hemani, no. 24-1234

- SG Sauer's petition argues that although Second Amendment rights are sacrosanct, some narrow limits are appropriate:

  "The restriction provides a **modest, modern analogue of much harsher founding-era restrictions on habitual drunkards . . .** And habitual illegal drug users with firearms present unique dangers to society—especially because they pose a **grave risk of armed, hostile encounters with police officers while impaired**."

- **Issue: Whether 18 U.S.C. § 922(g)(3), which prohibits possession of firearms by person who is "an unlawful user of or addicted to any controlled substance" violates Second Amendment as applied to Respondent.**

Wolford v. Lopez, no. 24-1046 (cert to 9th Cir. 10-3-2025)

Wolford v. Lopez, no. 24-1046 (cert to 9th Cir. 10-3-2025)

- **Facts:** Gun owners challenge **Hawaii and California laws** which criminally prohibit concealed carry onto various types of sensitive property (parks, beaches, alcohol-serving establishments, churches, etc.) and **flip default rule on private property open to the public:**
  - Prior law allowed person with carry permit to bring firearms onto private property open to the public **unless the owner prohibited it**. New legislation generally **prohibits firearms on private property open to the public unless the owner affirmatively gives permission** by "**[u]nambiguous written or verbal authorization**" or by the "**posting of clear and conspicuous signage**."
- **Ruling below:** Ninth Circuit upheld prohibition against guns in alcohol establishments, parks, beaches, public libraries, casinos, etc. but reversed as to churches, financial institutions, public transit. Also upheld injunction against California private property consent requirement, but **reversed injunction against Hawaii private property rule.**

Wolford v. Lopez, no. 24-1046

- **Ruling below, cont'd**:
- **Hawaii's modern law falls well within the historical tradition.** The law prohibits the carrying of firearms onto private property **unless the owner has posted signs, otherwise has given written consent, or has given oral consent. We therefore conclude that Plaintiffs in the Hawaii case are unlikely to succeed on the merits.**
- But we conclude that **California's law falls outside the historical tradition**. As noted at the outset of this section, California prohibits the carry of firearms on private property **only if the owner has consented in one specific way: posting signs of a particular size**. We find **no historical support for that stringent limitation.**

Wolford v. Lopez, no. 24-1046

- **Issue: Whether . . . the 9th Circuit erred in holding that Hawaii may . . . prohibit the carry of handguns by licensed concealed carry permit holders on private property open to the public unless the property owner affirmatively gives express permission to the handgun carrier.**

SCOTUS Local Government Cases-'25 Term Preview

Cert granted for October 2025 Term:

- *United States v. Hemani* – can habitual marijuana users be barred from having guns?
- *Wolford v. Lopez* – does concealed carry require permission from private property owners?
- ***Olivier v. City of Brandon*** – when does *Heck* bar apply?
- ***First Choice Women's Resource Ctr. Inc. v. Platkin*** – when can administrative subpoenas be challenged in federal court?
- ***Case v. Montana*** – grounds for warrantless entry in welfare checks?
- ***Pung v. Isabella County*** – must home tax forfeitures yield FMV?

Olivier v. City of Brandon, no. 24-993 (cert to 5th Cir.)

- **Facts:** Brandon Code §50-45 bans loudspeakers "**clearly audible more than 100 feet**" near Amphitheater "**regardless of content and/or expression.**"
- Olivier evangelized via loudspeaker, arrested for misdemeanor. Pleaded out, paid $304 fine, 10-day sentence suspended- agreed not to violate Ordinance again for a year.
- Then sued City under §1983, claiming damages and seeking to enjoin the Ordinance on First- and Fourteenth Amendment grounds. Dropped damages claim on appeal to Fifth Circuit.
- **Ruling below:** Fifth Circuit affirms dismissal-**claim barred by *Heck v. Humphrey***. Rehearing en banc denied 9-8.

Olivier v. City of Brandon, no. 24-993

- **What is *Heck*?** *Heck v. Humphrey* (1994 - Scalia 9-0) limits rights of state court prisoners from suit for damages in federal court under §1983 if granting such relief **would imply the invalidity of the underlying charges**.
- Per *Heck*, conviction below **must have been overturned or invalidated**, via reversal, executive pardon, expungement, or habeas.
- ***Heck* was a prisoner; his claim was analogous to habeas petition-and he was seeking damages. Olivier was not incarcerated, so no habeas opportunity, and he was seeking prospective injunctive relief.**
- **Issues: (1) Whether *Heck* bars claims under §1983 seeking purely prospective relief where the plaintiff has been punished under the law challenged as unconstitutional; and (2) whether *Heck* bars §1983 claims where plaintiffs never had access to federal habeas relief.**
- Circuit split on both questions.

Olivier v. City of Brandon, no. 24-993

- **Importance to local government:** Holding that the *Heck* bar does not apply where the relief sought is prospective, or where the plaintiff was never incarcerated so could not bring a habeas action, will greatly expand the scope/number of claims by state court plaintiffs seeking federal relief under §1983 civil actions.
- **Bottom line** -- not a First Amendment/religious expression case. A case about keeping state court actions in state court unless/until a reversal etc. opens the possibility of a federal §1983 civil action.
- Argued 12-3-2025.

First Choice Women's Resource Centers, Inc. v. Platkin, no. 24-781 (cert to 3d Cir.)

- **Facts:** New Jersey AG Platkin served investigatory subpoena on First Choice (faith-based pregnancy organization) due to concerns about violation of NJ Consumer Fraud Act, seeking donor information. Subpoena is **not self-executing / requires enforcement** from NJ Superior Court.
- Before contesting Subpoena in state court, First Choice challenged it under §1983 in federal court--violation of First Amendment free association right.
- **Ruling below:** First Choice's constitutional claims are **not ripe for federal review** pending further litigation in the state courts.
- **Issue: Whether, when the subject of a state investigatory demand has established a reasonably objective chill of its First Amendment rights, a federal court in a first-filed action is deprived of jurisdiction because those rights must be adjudicated in state court.**

First Choice Women's Resource Centers, Inc. v. Platkin, no. 24-781

- **Importance to local government:** Administrative subpoenas are valuable tool in enabling state and local agencies to investigate potential wrongdoing—consumer fraud, etc. They are confidential, not self-executing/do not require enforcement in state court, and do not necessarily result in further litigation.
- Diversion to federal court on §1983 grounds will short-circuit legitimate state/local investigatory efforts.
  - First Choice argues that under *Knick,* state proceedings need not be exhausted before going to federal forum; if it loses constitutional claims in state court, res judicata will deprive it of opportunity to litigate those claims in federal court via §1983.
- Argued 12-2-2025.

First Choice Women's Resource Centers v. Platkin, no. 24-781

"Politically influential law firm under investigation by New York AG"

The probe is scrutinizing the firm's handling of debt collection lawsuits on behalf of its nursing home clients, according to court records.

https://subscriber.politicopro.com/article/2025/09/politically-influential-law-firm-under-investigation-by-new-york-ag-00561739

"City Attorney reaches settlement with U.S. News & World Report that requires greater transparency in financial disclosures"

https://sfcityattorney. org/2025/09/04/city-attorney-reaches-settlement-with-us-news-world-report-that-requires-greater-transparency-in-financial-disclosures/

Case v. Montana, no. 24-624 (cert to 9th Cir.)

- **Facts:** Case said he was going to commit suicide, girlfriend heard gunshot sound; she called 911. Police called out and knocked, then entered unlocked door. Case jumped at officer; was shot, gun found nearby.
- Charged with "knowingly or purposefully caus[ing] reasonable apprehension of serious bodily injury in [the officer] when he pointed a pistol, or what reasonably appeared to be a pistol, at [the officer.]"
- Challenged under Fourth Amendment—probable cause needed to enter.
- **Ruling below:** Montana Supreme Court upholds denial of motion to suppress based on "emergency aid" doctrine: officers had **"objective, specific, and articulable facts"** to conclude that Case required help; no warrant needed.

Case v. Montana, no. 24-624

- **Issue: Whether law enforcement may enter home without search warrant based on less than probable cause that an emergency is occurring, or whether the emergency-aid exception requires probable cause.**
- **Importance to local government:** Community caretaker/welfare check/emergency aid scenarios should not require criminal level "probable cause" to believe that occupant is a risk to himself or others. Otherwise preventable deaths, suicides, violence will go unanswered.
- Higher threshold of certitude will give law enforcement reasons NOT to respond—welfare checks can be the most dangerous scenarios.

Pung v. Isabella County, no. 25-95 (cert to 6th Cir.)

- **Facts:** Estate failed to pay $2,241.93 property tax bill after denial of Primary Residence Exception; County foreclosed, property sold at auction for $76,008. Estate received balance—less than $74,000.
- Plaintiff points to County tax assessment valuing home at $194,400--also, speculator who purchased Pung's property resold it for $195,000.
- Argues that discrepancy ($195K vs. $76K) is Taking, and payment of only $74K amounts to Excessive Fine. "**Here, Isabella County actually took $192,158.07 in equity, not merely the surplus proceeds. And if Isabella County did not take it, it otherwise inflicted an excessive fine under the Eighth Amendment."**
- **Ruling below**: Sixth Circuit affirms lower court: Estate entitled to "surplus proceeds" of $73,766.07.

Pung v. Isabella County, no. 25-95

- **Issues:**

(1) Whether taking and selling a home to satisfy a debt to the government, and keeping the surplus value as a windfall, violates the **takings clause of the Fifth Amendment** when the compensation is based on the **artificially depressed auction sale price rather than the property's fair market value**; and

(2) Whether the forfeiture of real property worth far more than needed to satisfy a tax debt but sold for a fraction of its real value constitutes an **excessive fine under the Eighth Amendment**, particularly when the debt was never actually owed.

Pung v. Isabella County, no. 25-95

- **Importance to local government:** Property taxes account for **up to 70 percent** of local government revenues, for schools, police/fire/EMT, public works, etc.
  - **Huge challenges:** If government must pay FMV, how is "FMV" determined, is government responsible to maintain / preserve / improve for sale?
- **Homeowner self-help:** foreclosure statutes require long lead times, notice of foreclosure sale, opportunity to participate
- **Encourage default:** will more owners default if government liable for FMV?

Pung v. Isabella County, no. 25-95

FY 2024 SOUTH CAROLINA Total Revenues (School Dist., Counties, Cities, & Special Dist.)	**29,544,451,548**
Revenues from Local Sources	**16,883,020,670**
Current Property Taxes	**7,926,866,608**
Current Real & Personal Property Taxes	**7,553,998,878**
Fee In Lieu of Property Tax (only Counties and Cities)	**153,794,337**
All Other	**219,073,392**
Local Option Sales Tax	**782,365,518**
Local Hospitality Tax	366,671,075
Local Accommodations Tax	125,082,565
Capital Projects & Other Local Taxes	1,138,637,220
Licenses, Fees, Charges, & Bonds	6,543,397,684
Licenses & Permits	982,091,609
Service Revenue & Charges	1,831,731,038
Bonds & Leases	2,402,885,313
Miscellaneous	1,326,689,724

Beyond SCOTUS—Other IMLA Amicus Cases

- ***Tucson v. City of Seattle*** – anti-graffiti ordinance / First Amendment
- ***Hill v. City of Santa Fe*** – "mansion tax" / Home Rule powers
- ***City of Milton v. Chang*** – roadside planter / Ministerial duty
- ***Berry v. Fairfax County*** – electronic zoning vote / Open Meetings
- ***Castanares v. City of Chula Vista*** – police drone files / Public Records
- ***Scott v. Baltimore County*** – inmate wages / FLSA
- ***NHL v. City of Pittsburgh*** – nonresident facility fee / Uniformity Clause
- ***von Wandruszka v. City of Moscow*** – landlord utilities / Due Process
- ***Simon v. City of San Francisco*** – location data / Fourth Amendment

Thanks again, SCMAA-

Please let us know if IMLA can be of amicus assistance
(eeiselt@imla.org)
and join us for IMLA's *Annual Midyear Conference in Washington DC* / April 10-13, 2026