Supreme Court Preview 2023-2024 Term

By: Amanda Karras (Executive Director / General Counsel)

International Municipal Lawyers Association

IMLA

Membership organization for local government attorneys. Provide education and advocacy services for local governments.

File 30-40 amicus briefs in the lower courts and at the Supreme Court each year in support of local governments.

Put on conferences and webinars for local government attorneys. Come to Washington DC in April!

Local Government Legal Center

- New Coalition formed between NLC, NACo, IMLA, and GFOA to advocate on behalf of local governments at the Supreme Court.
- The LGLC's mission is to raise awareness of the importance of Supreme Court cases to local governments and to help shape the outcome of cases of significance to local governments at the Supreme Court through persuasive and effective advocacy
- The LGLC will serve as a resource to local governments and local government officials on issues related to the Supreme Court.

Practice Pointers Before the Supreme Court

- 10,000 petitions each year. Grants argument in about 60-70.
- Review Rule 10 of the Supreme Court in determining whether to seek certiorari. SCOTUS is not a court of error. (Circuit split is primary reason Court will grant certiorari).
- Framing the question.
- Consider retaining Supreme Court counsel.
- Amici at the petition stage are incredibly important. But only if you are the petitioner!
- Contact Georgetown Supreme Court Institute immediately if Court grants cert and ask for a moot court.

Preview of 2023 Term

- *O'Connor-Ratcliff v. Garnier / Lindke v. Freed (*public officials' use of social media / 1st Amendment)
- *Murthy v. Missouri & NRA v. Vullo (1st A. State Action)*
- *Gonzelz v. Trevino* (First Amendment / retaliatory arrest)
- *Muldrow v. City of St. Louis* (Title VII employment law case)
- *Sheetz v. El Dorado County* (Takings / legislative exactions)
- *Loper Bright Enterprises v. Raimondo* (overruling *Chevron*)
- *United States v. Rahimi* (Second Amendment case)
- *Harrington v. Purdue Pharma* (opioid litigation / bankruptcy)
- *Culley v. Attorney General of Alabama (*civil forfeiture / due process)

Social Media Cases – Two Nearly Identical Cases But Not Consolidated

***Lindke v. Freed* Issue**: Whether a public official's social media activity can constitute state action only if the official used the account to perform a governmental duty or under the authority of his or her office.

***O'Connor-Ratcliff v. Garnier* Issue**: Whether a public official engages in state action subject to the First Amendment by blocking an individual from the official's personal social-media account, when the official uses the account to feature their job and communicate about job-related matters with the public, but does not do so pursuant to any governmental authority or duty.

Is the Act of Banning/Blocking Someone from a Public Official's Social Media Account "State Action" for the Purposes of Section 1983/First Amendment?

- ✓ Second Circuit – Yes. *See Knight Institute v. Trump*, 928 F.3d 226 (2019)
- ✓ Fourth Circuit – Yes. *See Davison v. Randall*, 912 F.3d 666 (2019)
- X Sixth Circuit – No. *Lindke v. Freed*, 37 F4th 1199 (6th Cir. 2022)
- X Eighth Circuit – No. *Campbell v. Reisch*, 986 F.3d 822 (8th Cir. 2021).
- ✓ Ninth Circuit – Yes. *Garnier v. O'Connor-Ratcliff*, 41 F.4th 1158 (9th Cir. 2022).

Lindke v. Freed, 37 F.4th 1199 (6th Cir. 2022) - Facts

Facebook page started out as private, but Freed had more than 5,000 friends so he converted it to a "page" which allows for unlimited followers.

His page was public (anyone could follow it). And for the page category, chose "public figure."

In 2014, he was appointed the city manager of Port Huron, Michigan and he added that to his Facebook page.

Contact information listed as Port Huron's (linked to the city website, city email, etc).

Facts

Posted about personal and professional things, including daughter's birthday pictures, but also COVID-19 policies.

Lindke was a citizen and unhappy with the City's COVID policies.

He would post negative comments on Freed's Facebook page and Freed deleted those comments and eventually blocked Lindke from the page.

Was he Acting "Under the Color of State Law"?

- Sixth Circuit applies the "state-official test," which asks if the official "is performing an actual or apparent duty of his office or if he could not have behaved as he did without the authority of his office."
- Court says the "state official test" is akin to the Supreme Court's "nexus test", which asks "whether a defendant's action may be fairly treated as that of the State itself." *See Jackson v. Metro Edison Co.*, 419 U.S. 345 (1974).

This Photo by Unknown Author is licensed under CC BY-SA

How Does the Test Apply to Social Media in the Sixth Circuit?

Look to the page as a whole (not individual posts).

Examples of when a social media site would constitute state action:		
When the law requires the official to maintain the page.	The use of state resources in running the account.	The use of state authority

Freed's Account was not "State Action"

1) No state law compels the Facebook page

2) No state/city funds or resources went into the running of the Facebook page.

3) The page belongs to Freed, not the office of city manager and it will stay with Freed if he leaves his job.

4) No government employees help Freed maintain the Facebook page.

Distinguishes the Case from *Trump* case in Second Circuit

- Although Freed listed his City address, email, etc., Second Circuit emphasized in the *Trump* case that the then-President used the account in a way that created "substantial and pervasive government involvement with, and control over" the Twitter account.
- Unlike in the *Trump* case, no official account directed users to Freed's Facebook page
- Freed did not use government employees to maintain the account, as did President Trump.

Garnier v. O'Connor-Ratcliff, 41 F.4th 1158 (9th Cir. 2022)

Two school district officials created public Facebook and Twitter pages to promote their campaigns for office. (They had separate private accounts for family/friends)

After they won, they used their public social media pages generally promote School Board business.

About section lists their positions as school trustees, and links to official trustee emails.

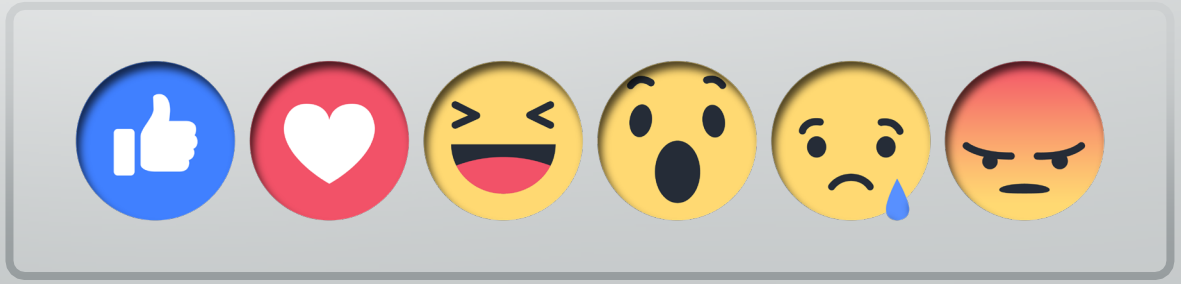
Only trustees themselves could post on their public Facebook pages, but members of the public could comment on a post (or react to it).

Filtering Comments

The Garniers would post repetitive lengthy comments / replies

The trustees deleted these at first and then blocked the Garniers.

Used a word filter on Facebook which allows the user to preclude comments with certain words. Effect was that no comments, just reactions.



This Photo by Unknown Author is licensed under CC BY-NC

State Action

Court looked to precedent involving off-duty governmental employees for "under color of state law" analysis.

Question is whether the public official's conduct, even if "seemingly private," is sufficiently related to the performance of his or her official duties to create "a **close nexus** between the State and the challenged action," or whether the public official is instead "pursu[ing] private goals via private actions."

Ninth Circuit Held that they Engaged in State Action

- The court reasoned that Petitioners had "us[ed] their social media pages as public fora" because "they clothed their pages in the authority of their offices and used their pages to communicate about their official duties."
- The court emphasized "appearance and content": the accounts prominently featured Petitioners' "official titles" and "contact information" and predominantly addressed matters "relevant to Board decisions."
- They were exercising their apparent authority related to their duties.

Not Personal Campaign Pages

After their election in 2014, the Trustees virtually never posted overtly political or self-promotional material on their social media pages. Rather, their posts either concerned official District business or promoted the District generally.

Note: Given the fact-sensitive nature of state action analyses, "not every social media account operated by a public official is a government account."

The Two Tests / Holdings

- **Sixth Circuit:** Freed was not acting under the color of state law. Test = the "state duty and authority test," which asks if the official "is performing an actual or apparent duty of his office or if he could not have behaved as he did without the authority of his office."
- **Ninth Circuit:** School district officials were acting under the color of state law. Test= whether the public official's conduct even if "seemingly private," is sufficiently related to the performance of his or her official duties to create "a close nexus between the State and the challenged action," or whether the public official is instead "pursu[ing] private goals via private actions."

LGLC Amicus Brief (IMLA/ NACo/ NLC)

Advocates for a test that would limit liability for local government officials but more than anything we want a clear test so that we can help train officials and avoid liability.

The Ninth Circuit test is too subjective and would be more difficult to train officials and also easier for courts to find state action and therefore liability.

Oral Argument Highlights

- A lot of hypotheticals and many different tests discussed.
- Several of the parties seemed to coalesce around duties and authorities as the test, but the question will be how is duty defined – narrowly or broadly. One of the lawyers was advocating for duties to include customs as well, which could be more ambiguous and also broader.
- Justice Kavanaugh continues to be a pragmatist on the Court.

Murthy v. Missouri

This Photo by Unknown Author is licensed under CC BY-SA-NC

- **Issue**: whether the government's challenged conduct transformed private social media companies' content-moderation decisions into state action and violated respondents' First Amendment rights.

Murthy Facts

Communications between the federal government (the White House, Surgeon General, CDC, and FBI) and private social media companies requesting the private companies take down certain posts on their sites pertaining to alleged misinformation related to COVID and elections.

What constitutes legitimate government speech versus governmental threats and coercion which converts private speech to state action?

Individuals and two states sued the federal government, claiming the Administration's communications with social media sites crossed the line into coercion and "significant entanglement," converting the private social media platforms into state actors and interfering in the states' First Amendment rights when the private social media companies removed certain information from their sites.

National Rifle Ass'n v. Vullo

- **Issue**: Whether the First Amendment allows a government regulator to threaten regulated entities with adverse regulatory actions if they do business with a controversial speaker, as a consequence of (a) the government's own hostility to the speaker's viewpoint or (b) a perceived "general backlash" against the speaker's advocacy.

Vullo Facts

NY Department of Financial Services investigating NRA-endorsed affinity insurance programs that provided insurance for licensed firearm use to protect persons/property even if insured was found to have acted with criminal intent.

Head of DFS made anti-NRA statements publicly in the wake of Parkland school shooting but after the investigations into these insurance companies had begun.

Entered into Consent Decree with insurance carriers.

Threats/Coercion – where is the line between government speech and threats if you have the power to regulate?

Second Circuit

- Recognizing the importance of government speech and ability of government officials to have views even on politically controversial topics.
- But… Governments must refrain from speech that "can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official's request." The Second Circuit looks at four factors to determine if the government official's speech crosses the constitutional line into coercion: "(1) word choice and tone; (2) the existence of regulatory authority; (3) whether the speech was perceived as a threat; and, perhaps most importantly, (4) whether the speech refers to adverse consequences."
- Here, the court found the speech did not cross that line.

Gonzalez v. Trevino

- **Issues**: (1) Whether the probable-cause exception in Nieves v. Barlett can be satisfied by objective evidence other than specific examples of arrests that never happened; and (2) whether *Nieves* is limited to individual claims against arresting officers for split-second arrests.

Background – Nieves v. Bartlett – Remember the Arctic Man Festival?

- Supreme Court held that a plaintiff must *generally* plead and prove the absence of probable cause to move forward with a retaliatory arrest claim under the First Amendment. But, the Court left open a "narrow qualification" for the situation where an officer has probable cause to arrest but where officers "typically exercise their discretion not to do so."
- Jaywalking example. The Court explains that because so few people are arrested for jaywalking, if a plaintiff can demonstrate "**objective evidence that he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been**" then the plaintiff cam proceed with a retaliatory arrest claim even if the officer had probable cause to arrest.

Facts

Gonzalez was elected to a seat on the city council for Castle Hills, Texas, a town with fewer than 5,000 residents. As her first act in office, she called for the removal of the city manager by organizing a nonbinding petition. During her first city council meeting, a resident submitted the petition to remove the city manager to council. The council meeting grew contentious.

After the meeting, Gonzalez left her belongings on the dais and went to speak to a constituent. The Mayor, Edward Trevino, who was supposed to have the petition, asked Gonzalez to look for the petition in her belongings and she was surprised to find the petition there.

Facts

The Mayor informed the police that he wished to file a criminal complaint for taking the petition without consent. The police officer investigating the allegation determined that Gonzalez violated Texas Penal Code §§37.10(a)(3) and (c)(1), which provide that "[a] person commits an offense if he … intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record." The investigation took over a month.

Gonzalez sued under Section 1983, claiming that she was arrested in retaliation for her protected speech. Gonzalez claims that this criminal statute has not been used in the county to criminally charge someone trying to steal a nonbinding or expressive document in the last decade. While there were 215 grand jury indictments under the statute, she claims none remotely resembled the facts of this case.

Fifth Circuit Ruling

- Held that this case does not fall within the Nieves exception because Gonzalez did not present "objective evidence that she was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been." The court reasoned that she failed to provide evidence of others who had mishandled a government petition and were not prosecuted.
- Instead, she provided evidence of who was prosecuted under the statute and argued their offenses were different than hers. The Fifth Circuit rejected her invitation to infer that because nobody else was prosecuted for similar conduct her arrest must have been motivated by her speech.

Muldrow v. St. Louis

- **Issue**: Whether Title VII of the Civil Rights Act of 1964 prohibits discrimination in transfer decisions absent a separate court determination that the transfer decision caused a signification disadvantage.

Facts

- A new police commissioner for St. Louis announced staffing changes, which included transferring a total of seventeen male and five female officers to new assignments.
- One such transferee was Muldrow, a police sergeant. She was transferred out of the Intelligence Division and was laterally transferred to the Fifth District, where the Department needed additional sergeants. She retained her pay and rank, a supervisory role, and responsibility for investigating violent crimes.
- Thereafter, she sought a transfer to the Second District and that was denied (the position remained unfilled due to a staffing shortage) and she was eventually transferred back to the Intelligence Division.

Title VII Operative Language

703(a): “It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to **discriminate against** any individual with respect to his compensation, **terms, conditions, or privileges of employment**, because of such individual's race, color, religion, sex, or national origin;”

Eighth Circuit Decision

- She sued claiming both the initial transfer and failure to transfer her to her desired district violated Title VII of the Civil Rights Act.
- The Eighth Circuit held in favor of the City, concluding she did not experience an adverse employment action.
- "[M]inor changes in duties or working conditions, even unpalatable or unwelcome ones, which cause no materially significant disadvantage, do not rise to the level of an adverse employment action."

Implications for Local Governments

- Local governments are collectively one of the largest employers in the nation. The proposed rule by the petitioner is that any change in employment conditions, even trivial and frivolous ones, can result in a Title VII lawsuit.
- A ruling in favor of the employee will create huge increases in potential litigation and liability for cities and counties. As well as a significant drain on local government resources in responding to these complaints.
- Local governments must have the ability to assign employees where needed, given the critical nature of governmental services, and this is especially true for public safety employees like police and fire.

Implications Law Enforcement / Public Safety

- We are facing a heightened shortage of police officers in most cities around the country. This can result in increases in crime.
- Police Chiefs and Sheriffs need discretion to move officers into different positions to ensure critical needs are met. This means, if there is an officer shortage, officers who were on a specialized unit may be moved to patrol because we must be able to respond to emergency calls.
- Allowing Title VII claims in these types of situations will turn courts into the overseers of everyday operations of city employee management.

Sheetz v. El Dorado County

- **Issue**: The question presented is whether a permit exaction is exempt from the unconstitutional conditions doctrine as applied in *Nollan* and *Dolan* simply because it is authorized by legislation.

Facts

- County adopted a General Plan that required new development to pay for road improvements necessary to mitigate the traffic impacts from such development, including a traffic impact mitigation fee (TIM) to finance the construction of new roads and the widening of existing roads within its jurisdiction.
- The amount of the fee is set by formula and generally based on the location of the project and the type of project.
- In assessing the fee, the County does not make any "individualized determinations" as to the nature and extent of the traffic impacts caused by a particular project on state and local roads.

Facts

Mr. Sheetz applied for a building permit to construct a single-family home on his property.

The County agreed to issue the permit on the condition that he pay a TIM fee.

He paid and the permit was issued, but he then challenged the TIM fee as invalid under the Takings Clause of the Fifth Amendment.

Legal Background

- The Supreme Court has identified “land-use exactions" as a special kind of taking under the Fifth Amendment.
- A land use-exaction occurs when the government demands real property or money from a land-use permit applicant as a condition of obtaining a development permit.
- Courts apply the doctrine of “unconstitutional conditions,” which sets forth that the government may not request a person to give up a constitutional right “in exchange for a discretionary benefit conferred by the government where the benefit sought has little of no relationship to the property.”

Nollan and *Dolan* Test

- The Court explained in *Koontz*, "[u]nder *Nollan* and *Dolan* the government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an **essential nexus** and **rough proportionality** to those impacts." Thus, the government must satisfy an "essential nexus" between the government's legitimate interest and the exaction (*Nollan*) and it must show "rough proportionality" between the exactions and proposed impact of the development (*Dolan*).

California Court of Appeals Holding

- Court held that the *Nollan* and *Dolan* "essential nexus" and "rough proportionality" tests do not apply to legislative exactions that are generally applicable to a broad class of property owners like the one at issue in this case.
- The court distinguished legislative exactions from those fees that are done on an individual or ad hoc basis and which require discretion like the ones imposed in *Nollan* and *Dolan*.
- The court reasoned that the heightened scrutiny required under *Nollan* and *Dolan* is not applicable where there is no discretion involved in the fee process, as is the case with legislatively enacted fees. Because the fee applied to all new development projects in the County and did not require discretion, the court used a lower standard to review it and upheld the fee.

Significance to Local Governments

- Impact fees have become an important tool to help local governments balance the need for smart growth with the impacts of that growth on the community.
- Impact fees often cover things like roads, utilities, sewers, schools, parks, police and fire stations and are assessed on new development to help offset the need to expand capital infrastructure.
- When done prudently, impact fees can help each new development pay for their pro-rata share of the costs of this infrastructure which allows communities to have the growth help pay for itself without burdening the remainder of the community.
- A ruling in favor of the homeowner in this case would negatively impact all local governments' ability to assess impact fees as they would have to meet more demanding legal standards than most states currently require.

Loper Bright Enterprises v. Raimondo

- **Issue**: Whether the Court should overrule *Chevron v. Natl Resources Defense Council*, or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency.

Chevron's Framework

Under *Chevron*, if a statute considered as a whole is ambiguous, then the court defers to any "permissible construction of the statute" adopted by the agency. This is known as *Chevron* deference.

Facts

- The case involves the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (the "Act"), which authorizes the Secretary of Commerce, and the National Marine Fisheries Service ("the Service") to implement a comprehensive fishery management program.
- Pursuant to the Act, the Service promulgated a rule that required the fishing industry to fund at-sea monitoring programs.
- A group of commercial herring fishing companies contend that the statute does not specify that industry may be required to bear such costs , which they estimate are "at $710 per day," and which in the aggregate could reduce annual returns by "approximately 20 percent."

DC Circuit

- The court concluded that the text of the statute was clear that the Service could direct vessels to carry at-sea monitors, but it was unclear whether the Service could require the industry to bear the costs of at-sea monitoring mandated by a fishery management plan.
- The court explained *Chevron* is a deferential standard and so long as the agency's interpretation of the Act is reasonable, it will prevail.
- In this case, the court found that various clauses of the Act read together including "necessary and appropriate" clauses supported the conclusion that the agency's interpretation of the Act was reasonable.

Significance of the Case / Implication for Local Governments

If the Court overrules *Chevron*, it will mean a smaller regulatory state. Whether that is good for local governments depends on the regulation in many cases and can carry political implications.

In general, overruling *Chevron* may return more power to local governments to enact democratically driven ordinances on particular issues, unencumbered by regulations.

At the same time, there may be instances in which local governments prefer federal regulations (e.g., to address climate change) in certain areas where local governments cannot or do not want to regulate or because the regulations are favorable to local governments.

United States v. Rahimi

- 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.

Facts

- A Texas court issued a domestic violence restraining order against Rahimi after he assaulted his girlfriend and warned her that he would shoot her if she told authorities about the attack. The order barred Rahimi from possessing a firearm and notified him that, while the order was in effect, his gun possession might constitute a felony under federal law.
- Shortly thereafter, he broke the restraining order, threatened another woman with a gun, and then was involved in 5 separate shooting incidents leading officers to search his home with a warrant and where they found numerous weapons.

Facts

- A 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).
- The statute makes it 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…" (The statute requires that the person subject to the order have the opportunity to participate in a hearing regarding the order).
- Rahimi pleaded guilty and challenged the statute under the Second Amendment.

Fifth Circuit Ruling

- The Fifth Circuit initially upheld the lower court conviction but then, the Supreme Court issued its decision in *Bruen*, which set forth a new test for how firearm regulations should be analyzed under the Second Amendment.
- Applying *Bruen*, the Fifth Circuit reversed itself and found the statute unconstitutional under the Second Amendment.
- The question is whether the regulation / statute falls within the nation's history and tradition regarding gun possession. The Fifth Circuit found none of the historical analogues identified by the federal government applied.

Implications for Local Governments

Local governments and local government officials have varied views on firearm regulations.

Responding to domestic violence incidents is one of the most dangerous calls for law enforcement and the presence of a firearm significantly increases the risk of death for law enforcement in these cases.

An analysis of law-enforcement fatalities from 2010 to 2016, by DOJ, concluded: "[C]alls related to domestic disputes and domestic-related incidents represented the highest number of fatal types of calls for service . . . ."

Harrington v. Purdue Pharma

- This case arises out of the opioid epidemic and the resulting bankruptcy by Purdue Pharma, manufacturer of Oxycontin.
- Under the plan of reorganization proposed by Purdue, the Sackler family members, who transferred some $11 billion to accounts outside the US during their ownership and management of the company, will receive complete releases from personal liability in exchange for their contribution of $6 billion to the estate.
- But the Sacklers have not themselves declared bankruptcy, meaning that creditors of the estate-individual plaintiffs, local governments and others, are being forced to grant absolute releases to non-parties. This is contrary to traditional bankruptcy law.

Lower Court Proceedings

- The Second Circuit approved the Purdue bankruptcy plan, including the family member releases.
- But the federal government did not agree with that, and the Solicitor General sought relief at the Supreme Court. The Court granted the Biden administration's emergency request for relief, blocking the Second Circuit decision.
- The Supreme Court granted certiorari on the following issue: Whether the Bankruptcy Code authorizes a court to approve, as part of a plan of reorganization under Chapter 11 of the Bankruptcy Code, a release that extinguishes claims held by nondebtors against nondebtor third parties, without the claimants' consent.

Implications for Local Governments

- This case cuts both ways for cities/counties. On the one hand, allowing the Sacklers to be released from liability against nondebtor parties seems to fly in the face of justice for their part in the opioid epidemic. It is possible that if they are not released, some of the money they have (legally) moved off-shore could become available to help bolster the settlement amounts. Some local governments have taken this position.
- But, if the bankruptcy plan is jettisoned, cities/counties will have to continue to wait for any settlement funds to abate the problems associated with the crisis. And the whole plan could blow up and there could be less money. A group of 1,300 cities, counties, and other governmental entities have taken this position.

Culley v. Marshall

- **Issue**: Whether district courts, in determining whether the due process clause requires a state or local government to provide a post-seizure probable-cause hearing prior to a statutory judicial-forfeiture proceeding and, if so, when such a hearing must take place and what is the test.

Facts

- This case involves the seizure and forfeiture of cars that were involved in illegal activity.
- The person driving the car was found with drugs and arrested;
- But the owner of the vehicle was not in the car, was not involved in the crime, and was not arrested.
- Instead, they were made defendants under Alabama's Civil Asset Forfeiture ("CAF") statute. Ala. Code § 20-2-93.
- In Alabama state courts, the plaintiffs prevailed on summary judgment by asserting the innocent owner defense available under the CAF. However, they had to wait many months in order to prevail on the merits in the underlying CAF cases.

Lower Court Holding

- The Eleventh Circuit held that the Sixth Amendment "speedy trial" standard articulated in United States v. $8850, 461 U.S. 553 (1983) and Barker v. Wingo, 407 U.S. 514 (1972) allows the State to retain property seized incident to arrest without holding a prompt post-deprivation probable cause hearing that the property will ultimately be forfeitable.

Implications for Local Governments

- Asset forfeiture is an important law enforcement tool and state law provides for adequate procedural protections for claimants.
- Forfeiture allows law enforcement to stop defendants from using seized items and preserves forfeitable assets in which the government has an interest.
- Civil forfeiture is an especially important tool for property that can easily be concealed or destroyed outside government custody.
- Thus, "seizing currency and assets to reduce the financial incentives for criminals" is a key feature of drug-control policy.

Questions?

- Amanda Karras: akarras@imla.org or 202-742-1018