

Supreme Court Update

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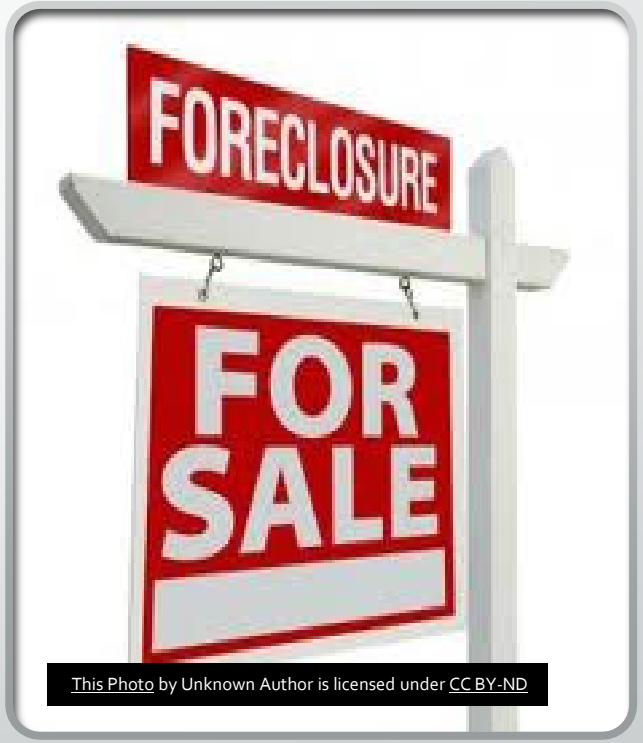
International Municipal Lawyers Association

Supreme Court 2025-2026 Term (Merits Docket)

- **Tax Foreclosure / Finances:** *Pung v. Isabella County*
- **Election Law**: *Louisiana v. Callais* & *Watson v. RNC*
- **Law Enforcement**: *Chatrie v. United States*, *Case v. Montana*, Zorn v. Linton
- **Second Amendment**: *Wolford v. Lopez* & *United States v. Hemani*
- **Executive Power & Administrative Agencies**: *Slaughter v. Trump* & *Cook v. Trump*
- **Other Important Cases**: Tariffs & Birthright Citizenship

Pung v. Isabella County – Issues

- 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
- 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.



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Tyler v. Hennepin County Refresher

- County violated the Takings Clause by keeping the surplus equity in a condominium that it sold after the homeowner failed to pay her property taxes.
- Because the majority concluded this was a Taking, the Court did not reach the excessive fines question. (But Justices Gorsuch and Jackson would have likely found this to be an excessive fine as well).

Facts

- Petitioner had a $2,200 unpaid real estate tax debt. Isabella County foreclosed in June 2018. Foreclosure sale yielded ~$76,000.
- Petitioner sued alleging a taking and excessive fines violation.
- The district court ordered the County to pay the petitioner the excess equity after retaining the amount necessary to satisfy the debt. But the petitioner argued that he was **entitled to the fair market value** ($194,000) minus the tax debt, not the lower auction price that was actually paid.

Sixth Circuit Ruling

On the Taking claim, the court ruled that a plaintiff whose property is foreclosed on and sold at public auction for failure to pay taxes is not entitled to recoup the fair market value of the property.

On the excessive fines question, the court held that the law does not punish property owners for failing to pay their taxes, instead, "its aim is to encourage the timely payment of property taxes." Therefore, the tax forfeiture scheme did not fall within the Eight Amendment's excessive fines ambit.

Implications for Local Governments



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- Could result in huge financial losses for counties if they must reimburse former property owners for delta of fair market value and tax debt, rather than the actual sales price and tax debt.
- Who decides fair market value? How is it decided? Will lead to more litigation and costs.
- Local governments are not realtors and are not in the business of getting the best price for a home that is foreclosed on.
- LGLC filed an amicus brief (joined by ICMA).

Holding: 9-0 (Justice Alito)

- The Fifth Amendment's Takings Clause does not require the government to use fair market value as a baseline when it sells a foreclosed property at a tax auction and returns only the surplus proceeds above the outstanding tax debt.
- The Court also rejected the taxpayer's claim that the County's forfeiture process constituted an excessive fine in violation of the Eighth Amendment.
- Remands for further inquiry into the County's tax sale procedures
- **Requires that the tax sale auction process was procedurally fair.**

Decision Adopts Rationale Argued in LGLC Amicus Brief

- "[T]he Pungs had years to take these steps and avoid foreclosure. They failed to do so. In such a situation, the traditional rule, under which the taxpayer receives only the difference between the auction sale price and unpaid taxes, is 'just.'"
- "Pung's fair-market-value theory would impose unprecedented burdens on jurisdictions that wish to collect unpaid taxes and might well make tax sales impractical. In order to obtain something like fair market value for homes on which they have foreclosed, jurisdictions would have to do what homeowners typically do when they want to sell their homes: either shoulder the burden of selling the property themselves or employ a real estate agent. In the meantime, local governments would have to do without the unpaid taxes and bear the costs and risks that go with the ownership of unoccupied homes."

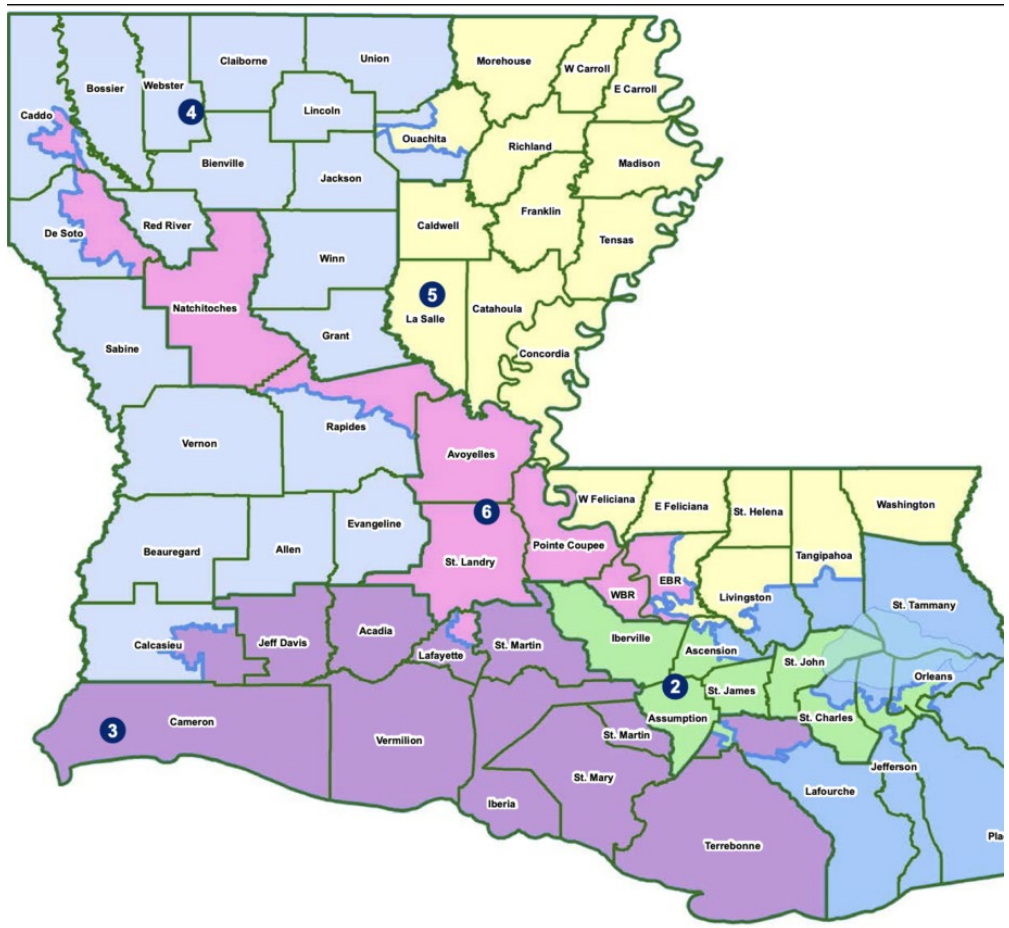
Election Law Cases



- Redistricting
- Mail-in Ballots
- Election Executive Order Cases

Louisiana v. Callais

- Issue(s): Whether Louisiana's intentional creation of a second majority-minority congressional district violates the 14th or 15th Amendments to the U.S. Constitution.



Background Facts

- After LA drew new congressional maps in the wake of the 2020 census which resulted in one majority-Black district, despite the State's population being roughly 1/3 Black, a group of voters sued, claiming the new map violated Section 2 of the Voting Rights Act.
- District court held the 2022 map likely violated the VRA and ordered the state to draw a new map with two majority-Black districts. Fifth Circuit affirmed.
- The State then drew a new map with a second majority Black district …

Current Lawsuit

A group "non-African American" voters challenged the State's new map as an unconstitutional racial gerrymander in violation of the 14th Amendment's equal protection clause.

A 3-judge panel held the map violated the Constitution's equal protection clause by sorting voters by race.

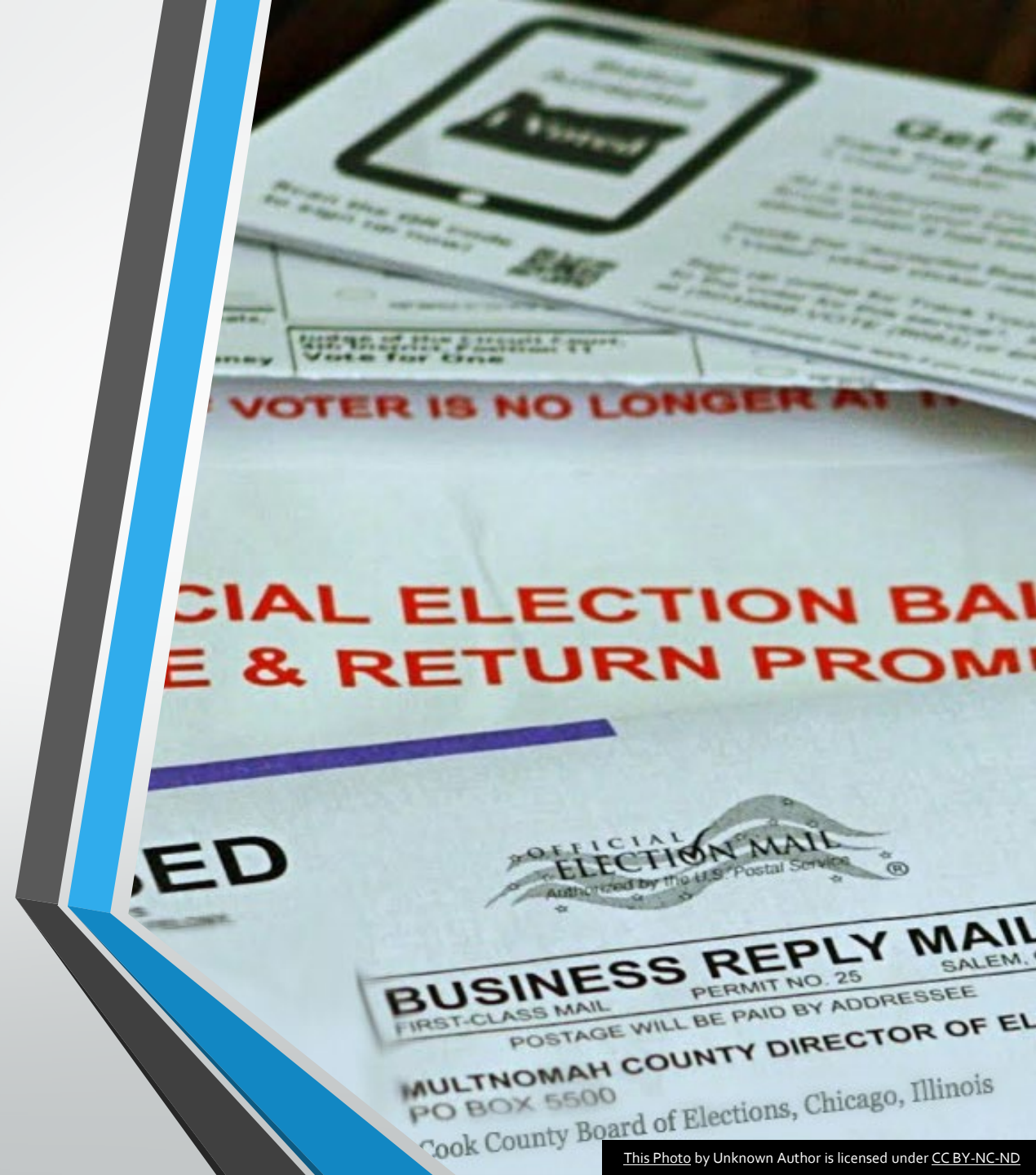
The Supreme Court stayed the panel's decision, which allowed the maps to be used in the 2024 election cycle.

Holding 6-3: Upholds Section 2 but Significantly Modifies the Test

- **New test**: The focus is discriminatory intent, separate from any intent to gain a partisan advantage, rather than the prior focus on discriminatory results/impacts.
- **Bottom Line**: If a map can be explained by the legislature seeking a partisan advantage, then because race and politics are so intertwined, that will likely doom a Section 2 claim.
- Under the new test, the Court struck down Louisiana's map because the State's goal in the creation of the second minority district was an unconstitutional racial gerrymander.

Watson v. Republican National Committee

- **Issue**: Whether the federal election-day statutes, 2 U.S.C. § 7, 2 U.S.C. § 1, and 3 U.S.C. § 1, preempt a state law that allows ballots that are cast by federal election day to be received by election officials after that day.
- **Facts:** In this case, Mississippi law allows absentee ballots to be counted if they are postmarked by election day and received up to five days later. Approximately 30 states have similar laws.



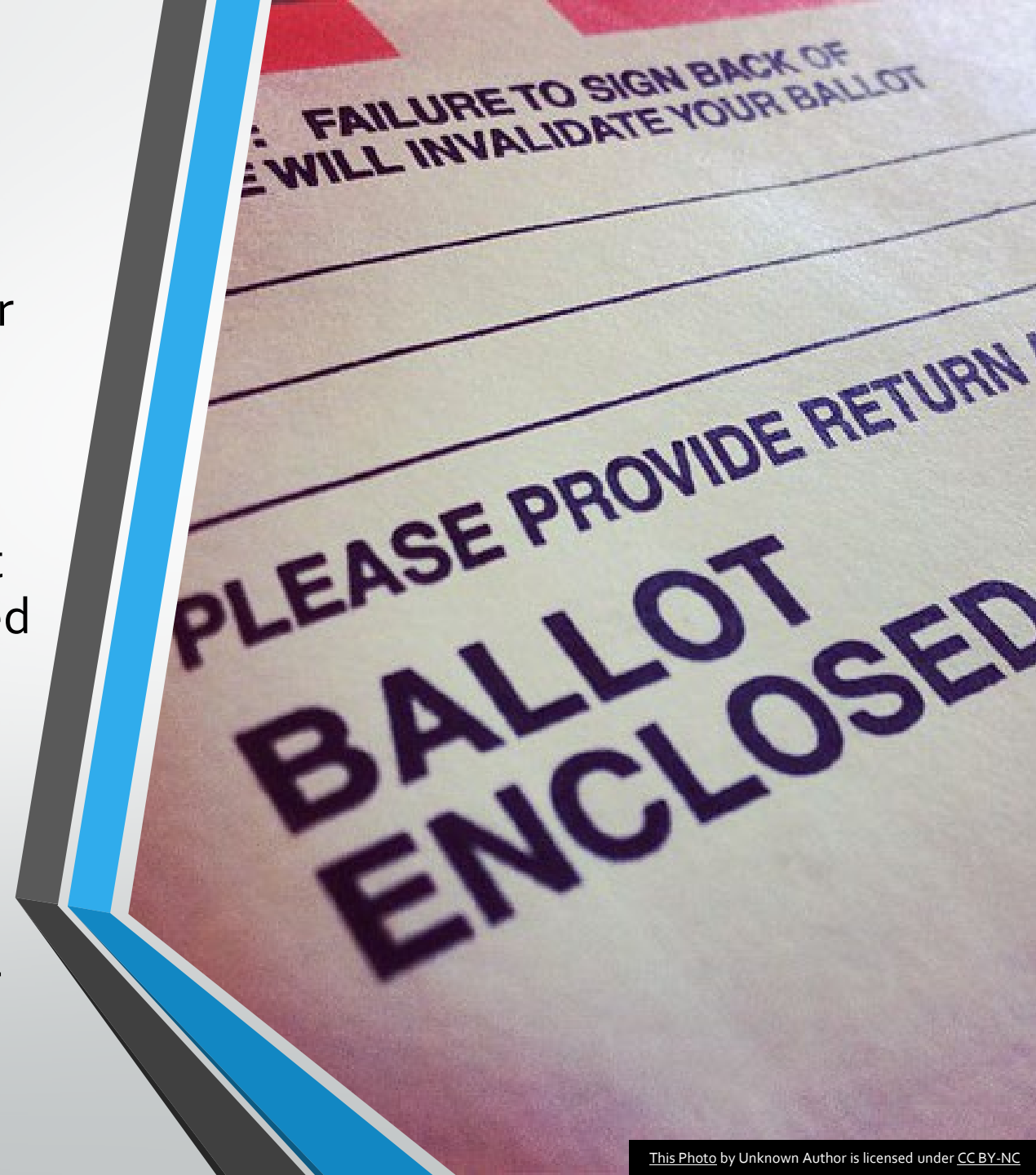
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Watson: Holding (6-3 Barrett)

- **Held:** The federal election day statutes that set the day for the election of U.S. Representatives, Senators, and the President do not preempt state laws that allow for the counting of absentee ballots that are postmarked by election day but received after election day.
- **Reasoning:** That is because at all relevant times, the term "election" is about the choice of candidate and "[t]he electorate's choice is made when voting is complete, not when ballots are received."
- **Congress**: Congress can change the law at any time. This is a statutory construction case.

Trump v. California

- President Trump issued an Executive Order entitled "Ensuring Citizenship Verification and Integrity in Federal Elections."
- The EO established that DHS would compile a citizenship list and transmit that to the State election officials and it directed the AG to prioritize investigations and prosecutions of individuals who aid and abet those that are ineligible to vote in federal elections.
- The EO also directed the Postmaster General to establish uniform standards for mail-in ballots.



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Trump v. California

- A group of States challenged the EO as unconstitutional & a lower court enjoined the government from implementing the EO.
- The Supreme Court issued a pre curiam order granting the federal government's application for a stay of that injunction.
- Supreme Court concluded the order was an internal directive from the President to his subordinates, and the challenge was not yet ripe and the States lacked standing to challenge the order
- No concrete harm – any injury would be downstream action the agency might take. No final USPS rule yet.

United States Postal Service v. California

- USPS issued its final rule on mail-in-ballots and the States again sued and the district court issued an injunction of the final rule.
- The federal government sought an emergency stay with the Supreme Court and the Supreme Court denied the application, leaving the injunction in place.
- Justice Kavanaugh concurred to say that the Rule could fall within the Postal Service's statutory authority but that it was too close to the 2026 elections to apply the Rule at this juncture.



Department of Homeland Security v. League of Women Voters (Emergency Order Docket: 6-3 Per Curiam)

- Dispute centers on the Executive Order entitled "Preserving and Protecting the Integrity of American Elections" (March 2025)
- Supreme Court stayed a lower court injunction that had had prevented DHS from using a modified SAVE database that had incorporated Social Security Administration (SSA) records and that allowed state and local authorities to conduct bulk searches of multiple individuals at once.

Department of Homeland Security v. League of Women Voters

- The League of Women Voters argued that members of their organization were likely to erroneously be taken off the voters rolls even though they are citizens and eligible to vote. The Supreme Court credited this argument for standing purposes but rejected the plaintiffs' claims on the merits. In doing so, the Supreme Court relied on the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), finding Congress "necessarily authorized DHS to request and receive" the disclosure of information regarding citizenship status to DHS.
- The Court noted that the National Voter Registration Act, which prohibits state and local election authorities from clearing voter rolls in the weeks leading up to the federal election, limits the impact of staying the injunction in this case.

Law Enforcement Cases: *Case v. Montana*

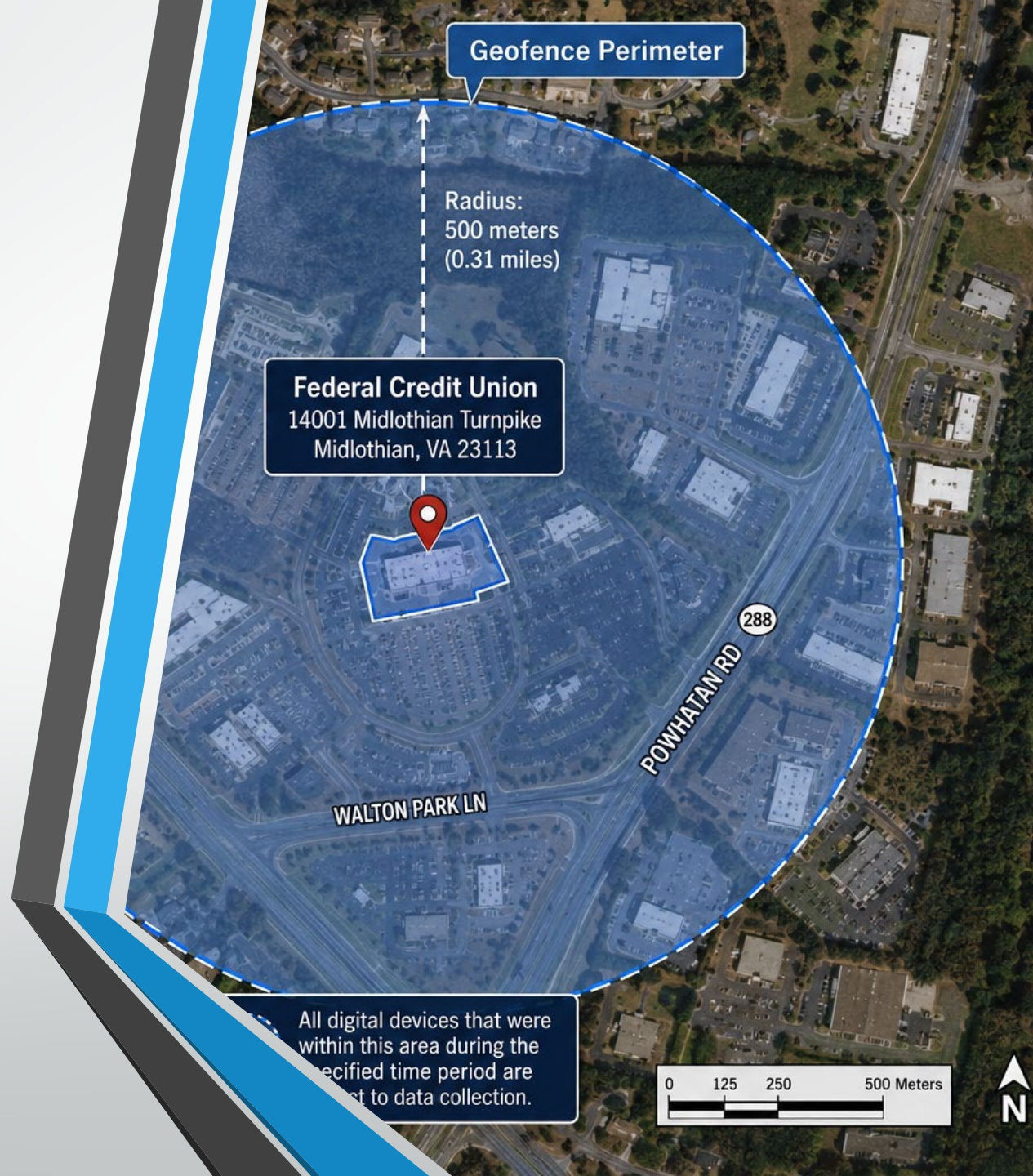
Holding: The Fourth Amendment allows police officers to enter a home without a warrant if they have an "objectively reasonable basis for believing" that someone inside needs emergency assistance; that standard was met here

Implications: Police have latitude when operating in their community caretaker function and do not need a warrant demonstrating criminal probable cause. Provides more certainty and will decrease liability for law enforcement.

Law Enforcement Cases: *Chatrie v. United States*

Issue: Whether the execution of a geofence warrant violated the Fourth Amendment.

Implications: geofences have the potential to be important tools in solving crimes / identifying suspects. There are privacy concerns on the other side.



Chatrie Facts

- Concerns a geofence warrant sent to Google that enabled police to review cell phone location history for various users pursuant to the warrant.
- On May 20, 2019, an armed suspect robbed a Federal Credit Union in Midlothian, Virginia, taking $195,000 from the vault. The initial investigation into the robbery did not lead to any suspects. Then, a detective applied for a geofence warrant from the Virginia circuit court.
- That multi-step process with Google, which starts with anonymized location data but ultimately narrows down to particular people led to the arrest of Chatrie.

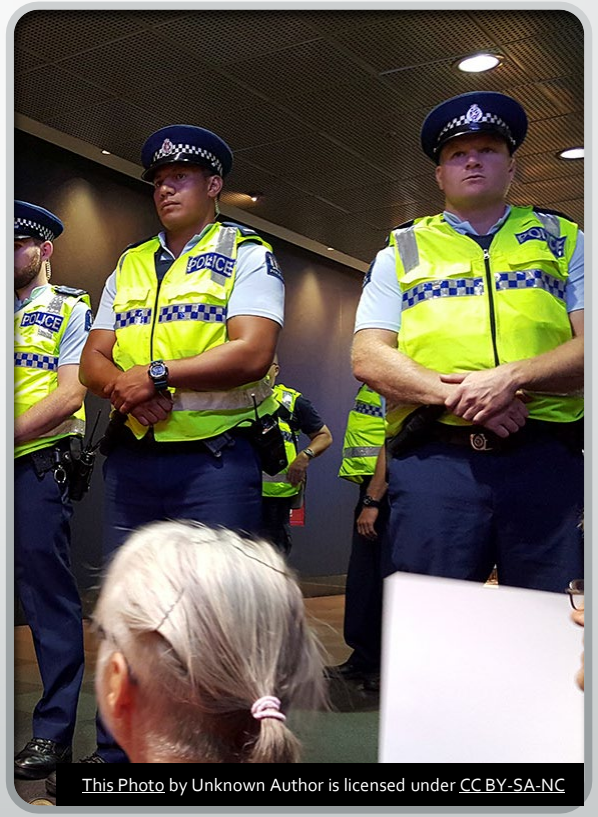
Holding: 5-4 (Justice Kagan)

- Law enforcement conducted a search under the Fourth Amendment when they gained access to the location data.
- The Court reasoned "[a]n individual has a reasonable expectation of privacy in records about his cell phone's location, and police intrude on that constitutionally protected interest when they demand the information—even though for only a limited time, and from a third-party tech company."
- Remanded to the lower court to determine whether the geofence warrant was reasonable.

Law Enforcement Cases: *Zorn v. Linton* - Facts

- 200 protestors staged a sit-in during the January 2015 inauguration of then-Vermont Governor Shumlin. Officers informed the protestors that the capitol was closed to the public. About 30 remained. Ms. Linton kept her arms interlocked with a fellow protestor.
- Officer Zorn put her in a rear wristlock and repeatedly asked her to standup. He warned he would use more pain compliance and she did not stand. He then put pressure on her wrist. She fell back on the floor, had to be lifted up and carried outside.

She sued for excessive force.



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Supreme Court Summary Reversal

- **Second Circuit:** Denied QI relying on *Amnesty America v. West Hartford*, 361 F. 3d 113 (2004), to conclude that it was clearly established that the "gratuitous use of a rear wristlock on a protester passively resisting arrest constitutes excessive force."
- **Supreme Court:** Summarily reversed concluding *Amnesty* did not clearly establish the law (the officer in *Amnesty* did not give warnings and the facts involved other allegations of excessive force).

Implications of Zorn for Local Governments

- Another case that allows local governments to argue that what constitutes clearly established law must be sufficiently particularized – generalized use of force rules are not enough.
- The majority also noted that the case relied on by the Second Circuit to clearly establish the law did not *hold* that any of the officers' actions in that case violated the Fourth Amendment – instead it remanded to a jury. This could be used as an argument that a jury must find the officer's actions unconstitutional and cases at summary judgment should not be cited by the other side.
- May also be cited in cases involving warnings and wristlocks to say these do not violate the Fourth Amendment.

Other Major SCOTUS Cases involving Federal Executive Action

- ***Trump v. Barbara*:** Executive Order No. 14,160, purporting to end birthright citizenship violates the citizenship clause of the 14th Amendment.
- ***Trump v. Slaughter:*** FTC Act's protection of commissioners by requiring for-cause removal is "contrary to the separation of powers enshrined in the Constitution." and *Humphrey's Executor v. United States* was expressly overruled.
- ***Trump v. Cook:*** The Supreme Court declined to stay a district court ruling preventing the president from firing a member of the Federal Reserve Board of Governors.
- ***Learning Resources v. Trump*** (Tariffs): Held: The International Emergency Economic Powers Act does not authorize the President to impose tariffs.

Supreme Court 2026 Term Preview

- Suncor Energy, Inc. v. County Commissioners of Boulder
- St. Mary Catholic Parish v. Roy
- Grand v. City of University Heights
- Missionaries v. Saint John the Baptist v. Frederic
- Viramontes v. Cook County
- Association for Education Fairness v. Montgomery County Board of Education
- Jouppi v. Alaska

Suncor Energy v. County Commissioners of Boulder

- **Issues:** (1) Whether federal law precludes state-law claims seeking relief for injuries allegedly caused by the effects of interstate and international greenhouse-gas emissions on the global climate; and (2) whether this court has statutory and Article III jurisdiction to hear this case.
- Suncor's reply brief states that there are nearly 60 similar lawsuits currently moving through the lower courts.





Facts

- **Damages Claims:** City & County of Boulder brought **state law claims** against Suncor and ExxonMobil for public nuisance, private nuisance, trespass, unjust enrichment, and civil conspiracy, seeking damages for the substantial role the companies played in altering the climate and damaging Boulder's property.
- They are not seeking to regulate GHGs.
- **Modeled on Tobacco Litigation:** Claims are based on allegations that the companies knowingly contributed to climate change while intentionally concealing and misrepresenting the dangers associated with fossil fuels.
- **Colorado Supreme Court:** Held that Boulder's claims **were not preempted** by federal law and remanded the case to the district court to proceed with the case.

Parties' arguments

- **Boulder** argues the Supreme Court lacks jurisdiction because there is no final judgment from the State Supreme Court. State courts have not even determined if Boulder states a claim under state law. It also argues on the merits the claims are not preempted. And as a remedy, Boulder argues that Suncor's arguments should be addressed to Congress, not the Court.
- **Suncor** argues for broad preemption principles – it argues that the Constitution structurally bars these claims, that they are preempted by the Clean Air Act, and that the Constitution further bars the claims because they are international in nature.

Oral Argument

- Justice Alito recused himself, which means if there is a 4-4 tie, the decision of the lower court would be affirmed, and the case would be remanded.
- Chief Justice Roberts (likely swing vote) had hard questions for both sides:
- Opioid litigation was brought up several times as a similar type of case. Justice Kagan: "in multiple respects, this suit appears to be based on the old 1990s tobacco suits that were brought by states and local governments basically saying that big tobacco had made representations, misrepresentations, which had caused people to use the product in -- to overuse the product, causing harm to those governments. I suppose the opioid litigation recently follows the same model. This is chapter 3. So, if this is chapter 3, were chapters 1 and 2 also preempted?"





St. Mary Catholic Parish v. Roy

- **Issues:** (1) Whether proving a lack of general applicability under *Employment Division v. Smith* requires showing unfettered discretion or categorical exemptions for identical secular conduct;
- (2) whether *Carson v. Makin* displaces the rule of *Employment Division v. Smith* only when the government explicitly excludes religious people and institutions.

Facts

- Colorado implemented a universal pre-K program in 2023 (UPK), which is open to public and private schools, including religious schools. Colorado funds the cost for all Colorado children.
- Schools seeking UPK participation must confirm that they "provide eligible children an equal opportunity to enroll and receive preschool services regardless of race, ethnicity, religious affiliation, sexual orientation, gender identity, lack of housing, income level, or disability[.]"
- Two Catholic parishes sought to enjoin the UPK program on the basis that its policies requiring non-discrimination for sexual orientation or gender identity prevented them from participation in the program due to their religious principles, in violation of the First Amendment.

Parties' Arguments

- Colorado relies on *Employment Division v. Smith*, arguing its nondiscrimination ordinance is a neutral law of general applicability and its equal-opportunity requirement does not discriminate against religion.
- The Solicitor General (in support of Petitioner's) argues that *Smith* does not apply to public benefits cases or cases involving parents overseeing children's education.
- The Respondents argue the law is not generally applicable because it applies exemptions for low-income children pursuant to Head Start and for children with disabilities pursuant to the IDEA.

Implications

- The Court expressly declined to take up a separate question as to whether *Employment Division v. Smith* should be overruled (which it had rejected back in 2021).
- However, the two questions it did grant invite a narrowing of the case, which would implicate a host of local government regulations and programs including in employment law (drug testing, work schedules, holidays), taxes, animal cruelty laws, environmental protection laws, noise, public nuisance, building codes, etc.

Grand v. City of University Heights

- **Issues**: Whether the First Amendment's established chilling-effect doctrine, under which a credible government threat that deters the exercise of fundamental rights constitutes a complete and independently actionable constitutional injury, is displaced by *Williamson Cty. Planning v. Hamilton Bank* land-use finality requirement.



Facts

- Grand, an Orthodox Jew, sent an email to a group of friends that he would like to open his home to pray with a group of ten men or more (a "minyan"). In the invitation, he mentioned that they could meet the Rabbi and referenced the entrance to the "shul" (i.e., his home). Some of those invitations went to his neighbors who complained to the City that he was violating the zoning laws.
- Grand's home is zoned U-1, which prohibits the use of a home as a place of religious assembly. The Mayor had the Law Director draft a cease-and-desist letter directing him not to use his home as "a place of religious assembly" in violation of the zoning code.
- Grand then sought a permit to use his home as a "place of religious assembly" pursuant to the City's zoning law.

Facts

- At the Planning Commission public hearing, Grand described this was for a prayer group to meet once a week and on high holidays. Not a formal synagogue.
- Several neighbors spoke out against the proposal.
- The Planning Commission requested more information from Grand and scheduling another hearing for a few days later. **Just before that next meeting, Grand withdrew his application.**
- That meeting went forward without Grand present and the mayor at the meeting reiterated that Grand could not "operate a house of worship" without a permit.
- The Commission never acted on the application due to its withdrawal.

Litigation

- About 18 months later, Mr. Grand sued in federal court, alleging violations of RLUIPA, the First Amendment, and other state and federal laws.
- In addition to the cease-and-desist letter, Mr. Grand emphasized the mayor's statements at the second hearing and that other arms of the government were chilling his rights, including instruction to have police officers drive by his home to report citations, sending a housing inspector there, and the mayor suggesting to neighbors that they report violations.
- The Sixth Circuit held that Mr. Grand's claims were not ripe for review because there was no concrete and final decision by the local authorities on the question of whether he could obtain a permit to use his home as a place of religious worship since he withdrew his application.

Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City – Finality Requirement

- Supreme Court held that a claim challenging "application of government [land-use] regulations" is "not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue."

Implications for Local Governments

- If the finality requirement does not apply to land use and zoning decisions it will invite judicial intervention into local processes over hypothetical injuries. This will increase litigation and costs for local governments.
- These local processes help local decisionmakers hear from all sides of the community and often help broker compromise.



Missionaries of Saint John the Baptist v. Frederic

- **Issue**: Whether a land-use regulation that prohibits a religious institution from building a religious structure on its own property constitutes a "substantial burden" on religious exercise under the Substantial Burden Provision of the Religious Land Use and Institutionalized Persons Act.

Facts

- Concerns a zoning dispute between a religious group that wants to build a grotto next to its church on an adjacent plot it purchased and neighboring residents seeking enforcement of a local ordinance that prohibits such development on a plot not served by an arterial road.
- The church is in a residential zone, but it is a permissible nonconforming use as its presence predated the zoning code.
- The church acquired the adjacent property it wishes to build the 16 X 39-foot grotto despite knowing that such a use was prohibited by the code.
- The City granted the church's request for a variance despite the code provision prohibiting the use and neighbors sued.

Kentucky Supreme Court

- Rejected Missionaries' argument that denial of its building a grotto on the adjacent tract would violate RLUIPA's "substantial burden" or "equal terms" provision.
- The court weighed several factors for the substantial burden analysis. 1) "whether the religious institution has a feasible alternative location" for its religious exercise. 2) "whether the religious institution will suffer substantial delay, uncertainty, and expense due to the imposition of the regulation." 3) whether the institution "imposed a burden upon itself" by, for example, "obtain[ing] an interest in land without a reasonable expectation of being able to use that land for religious purposes." And 4) "whether there is evidence that the municipality's decisionmaking process was arbitrary, capricious, or discriminatory."

Parties' Arguments

- The Church argues that "a complete prohibition on a claimant's chosen means of religious exercise qualifies as a substantial burden" under RLUIPA.
- Neighbors argue whether a land-use regulation imposes a substantial burden on religious exercise turns largely on whether the organization has instead imposed the challenged burden on itself and whether it has alternative means to observe its practice.

Implications for Local Governments

- This is the first time the Supreme Court will interpret the "substantial burden" test in RLUIPA.
- Lowering the bar on what constitutes a substantial burden will hollow out local zoning ordinances anytime a landowner seeks a variance for religious reasons.
- And it will increase potential liability for local governments as they will have to satisfy strict scrutiny if they deny the request.

Viramontes v. Cook County

- **Issue:** Whether the Second and 14th Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.





Implications for Local Governments

- Hot button issue as AR-15s as widely popular.
- Local authority - whether a locality wishes to ban semi-automatic rifles may be quite different in urban versus rural environments.
- Law enforcement implications – County notes mass shooting events involving these weapons and the impact on law enforcement safety.
- This will be another opportunity to better understand the Court's text, history, tradition framework post-*Rahimi* & how much does "common use" matter?
- What arms are covered by the Second Amendment?

AFEF v. Montgomery County Board of Education

- **Issue:** Whether a plaintiff challenging a facially neutral admissions policy as racially discriminatory must establish that the targeted racial group suffered an aggregate disparate impact relative to its share of the applicant pool



Implications for Local Governments

- The dispute has been over how impact is measured, and whether failing a group-level impact test ends the case. How to evaluate impact in this case will bleed over to other disparate impact claims.
- Poverty and race can be intertwined in some communities. If a community wants to provide more resources aimed at ameliorating poverty, that could create a disparate impact claim based on race.
- Context could include public parks/infrastructure or homelessness.

Jouppi v. Alaska

- **Issue:** Whether, in determining whether a fine contravenes the **excessive fines** clause – which holds the amount of the fine "must bear some relationship to the gravity of the offense that it is designed to punish" – courts may consider the gravity of the underlying offense purely in the abstract or should consider the gravity of the specific defendant's wrongdoing.
- Or: "the six-pack for an airplane" forfeiture case.







A Uniquely Alaska Problem

- Alaska has more land than Texas, California, and Montana combined
- 225 isolated villages with an average population of 300 people. Most villages are not connected to the road system and are only reachable by plane, boat, or snow machine.
- Alaska Natives comprise the majority of this population in rural Alaska
- Vulnerable to alcohol-related problems due to lack of emergency services, police, hospitals, & extreme weather.
- Alaska Legislature studied the problem between 1976-1980 and learned that the mortality rate for alcohol was 418% higher than the national average. And 78% of violent crimes and 55.6% of property crimes were committed under the influence of alcohol.

Local Option Communities

- In the 1980s, the Alaska legislature adopted a local option law, allowing villages to vote to prohibit the sale & importation and possession of alcohol.
- If it passed, then the state law prohibited any person from "knowingly send[ing], transport[ing], or bring[ing] alcoholic beverages into the … village."
- Over the decades, Alaska continued to refine the law to address continuing problems. In 2004 the legislature unanimously adopted a law that made forfeiture of an aircraft mandatory if a pilot knowingly flies alcohol into a dry village.

Local Option Communities



Location of Law Enforcement



Tale of Two Briefs

- **IJ/Jouppi:** Alaska forfeited his airplane over a six-pack of beer. Jouppi argues excessive fines clause must focus on defendant's own wrongdoing and not in the abstract. Argues under the respondent's theory, law enforcement could forfeit cars going 1 mile over the speed limit because speeding kills millions of people each year.
- **Alaska:** Tells a compelling story about the destructive history alcohol has wrought in Alaska's isolated and rural communities that you can only reach by plane. This is about Alaska's struggle with alcohol fueled crime, how its legislature empowered Native Alaskans through local democratic efforts, which has resulted in a reduction in mortality and crime. Court must look at that whole picture in determining proportionality. And emphasizes this is a **criminal** forfeiture case.

Implications

- This is a criminal forfeiture case, not civil. To apply, a defendant must be found guilty of a crime beyond a reasonable doubt.
- Importance of legislative deference in these cases.
- Implications for other mandatory forfeiture laws involving drunk driving. And there may be problems local governments want to solve with mandatory criminal forfeiture like street takeovers.



Photo credit LA Times, Myung J. Chun

Questions?

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