

Money SCOTUS Cases

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Big Money Supreme Court Cases

- Getting money paying it
- Often in large amounts (or in smaller amounts across the board)
- Mostly tax cases (Medicaid)
- Very few Supreme Court cases

Little Money Supreme Court Cases

- Paying money
- Randomly—if your state violates the law/gets unlucky
- Could be anything—takings, police shooting, employment
- Many, many Supreme Court cases

How Do the Justices Feel About Money Cases?

- Big money
 - Bad idea to generalize
 - Conservative Justices are more skeptical of taxes (more skeptical of government)
- Little money
 - Impossible to generalize

Most Recent Tax (Big Money) Cases

- *Armour v. Indianapolis* (2012) (state tax scheme had a rational basis)
- *DMA v. Brohl* (2015) (the Tax Injunction Act does not bar a federal court from deciding whether a state law that attempts to increase use tax collection on purchases from remote vendors is unconstitutional)
- *Comptroller v. Wynne* (2014) (Maryland's failure to offer residents a full credit against income taxes paid to other states is unconstitutional)
- *Alabama Department of Revenue v. CSX Transportation* (2015) (railroads can be compared to their competitors when determining whether a tax is discriminatory in violation of the 4-R Act; different taxes paid by railroads and their competitors must be compared with determining whether a tax railroads pay is discriminatory)

Three Money Case

- Hopefully to be decided this term
- Scheduled to be decided this term
- To be decided who knows when

South Dakota v. Wayfair

- This case is about...
 - States and local governments being able to force out of state retailers to collect sales tax

Quill v. North Dakota

- In 1992 SCOTUS ruled that states can't force out of state retailers to collect sales tax
- Wasn't such a big deal in 1992—is a \$23 billion dollar a year deal today
- Few fun facts:
 - Decision was begrudging—based on a 1967 precedent from *Bellas Hess*
 - Court was quick to remind Congress it can overturn *Quill*
 - Kennedy and Thomas are still the Court

Fast Forward to 2015

- Colorado has passed a law where online retailers have to inform taxpayers and the department of revenue of online purchases—prompting people to pay sales tax on their own
- Question before the Supreme Court was which court should decide whether this scheme violates *Quill*—a state or a federal court
- Who cares right?

SLLC Filed an *Amicus* brief

- One sentence saying the case should be heard in state court
- Rest of the brief talked about how terrible *Quill* is and how it needs to be overturned

Justice Kennedy Says...

- Court rules 8-0 that this case should be heard in federal court
- Justice Kennedy writes a concurring opinion:
 - We were wrong in *Quill*
 - I was wrong in *Quill*
 - Times have changed
 - Legal system bring us a case to overturn *Quill*

Three Problems

- No one joins the Kennedy concurrence
 - Disagree?
 - Case didn't raise the issue of overturning *Quill*?
- Kennedy isn't a young man
- State legislatures must pass a law that violates *Quill*

The Plot Thickens

- Colorado's notice and reporting case goes back to the 10th Circuit which rules the law doesn't violate *Quill*
- Judge Gorsuch writes a concurring opinion strongly suggesting he thinks *Quill* should be overturned

States Respond

- About 10 states have passed laws requiring out-of-state retailers to collect sales tax and/or notice and reporting laws
- South Dakota was first
- South Dakota state trial court declared the law unconstitutional in March 2017
- South Dakota Supreme Court declared the law unconstitutional in March 2017 about two weeks ago
- South Dakota has filed a cert petition

The Court Holds All the Cards

- *South Dakota v. Wayfair* isn't on the docket yet
- It is possible the Court could hear this case this term (opinion by July 2018)
- It is possible *Wayfair* could slow down the case so it would not be heard until next term (opinion by July 2019)
- SCOTUS doesn't so much have to agree to hear the case much less overturn *Quill*

Christie v. NCAA

- This case is about...
 - States being able to allow sports gambling
 - Sports gambling legal=easier for states to collect taxes
 - States rights more generally
- How many of you think your states would legalized sports betting if it could?

Christie v. NCAA

- Chris Christie argues that because the Professional and Amateur Sports Protection Act (PASPA) prohibits the state from repealing laws restricting sports gambling it amounts to unconstitutional commandeering
- PASPA, adopted in 1992, makes it unlawful for states and local governments to **authorize** sports gambling

Christie v. NCAA

- The New Jersey constitution prohibited sports gambling
- New Jersey amended its constitution to allow some sports gambling
- The Third Circuit held that doing so violated PASPA as an “authorization” of sports gambling but concluded that repealing restrictions on sports gambling would be okay (and that New Jersey could completely allow sports gambling)
- New Jersey then passed a law repealing restrictions on sports gambling
- The Third Circuit changed course ruling the repeal violates PASPA
- It reasoned that the repeal “authorizes sports gambling by selectively dictating where sports gambling may occur, who may place bets in such gambling, and which athletic contests are permissible subjects for such gambling”

Christie v. NCAA

- Per the anti-commandeering doctrine, “Congress ‘lacks the power directly to compel the States to require or prohibit’ acts which Congress itself may require or prohibit”
- In both cases Christie argued that PASPA unconstitutionally commandeers states because it forces states to either completely prohibit sports gambling or completely allow it
- CRS: “*Christie* presents the Court with challenging questions. On the one hand, the Court has made clear that Congress has the authority to displace state laws regulating private activity. But PASPA, as construed in the *Christie* litigation, is arguably unique insofar as it may bar states from partially repealing laws in a fashion deemed to undermine a federal policy.”

Christie v. NCAA

- Practical implication of this case: all sports gambling bans enacted before PASPA must stay in place
- Beyond sports gambling, the SLLC *amicus* brief argues that “rationale of the Third Circuit’s decision upholding its reading of PASPA would permit Congress to order state and local governments to freeze state and local law . . . on other issues of critical importance,” ranging from issues such as physician-assisted death for the terminally ill to self-driving cars

Court's Options

- PASPA totally constitutional
- Strike down PASPA entirely allowing states unfettered sports gambling-\$\$\$
- Strike down the restrictions on “authorizing sports gambling” but still disallow most sports gambling
 - Keep language that states can't sponsor, operate, advertise, promote, or **license** sports gambling
 - Keep the provision that makes it unlawful for “person[s] to sponsor, operate, advertise, or promote” various forms of sports gambling “pursuant to the law or compact of a governmental entity”

Delaware MoneyGram Case

- This case is about...
 - Which state gets to claim unclaimed “official checks”
 - State where the “official checks” was purchased
 - State where check issuer is incorporated

Delaware MoneyGram Case

- Supreme Court has original jurisdiction in this case
 - State on state violence
- Currently being considered by a special master
- Delaware is keeping a lot of the money as many corporations are incorporated in its borders

Delaware MoneyGram Case

- MoneyGram's main business office is in Texas; incorporated in Delaware
- MoneyGram was giving all its "official checks" for unclaimed property to Delaware
- "Official checks" work like money orders/travelers checks
 - The piece of paper is a guaranteed form of payment that works like cash; in other words, it won't "bounce" for lack of sufficient funds behind it
- 1,900 banks or other institutions across the country are using instead of cashier's or teller's checks

Delaware MoneyGram Case

- Disposition of Abandoned Money Orders and Traveler's Checks Act says for a "money order, traveler's check, or **other similar written instrument** (other than a third party bank check) on which a banking or financial organization or a business association is directly liable," go to the State in which such the instrument was purchased
- If "official checks" **aren't** "money order, traveler's check, or **other similar written instrument**" they go to the state where the check issuer is incorporated

Delaware Says...

- Official Checks differ from money orders etc. because
 - They are not labeled as money orders
 - They are generally issued by financial institutions and not by convenience stores and similar small businesses
 - They are capable of being issued in **substantially larger dollar amounts** than money orders
 - They are treated differently under various federal regulations relating to monetary instruments
- If Delaware wins my guess it is it will be because of the third factor