Supreme Court for Local Governments 2021-22

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

*Indicates a case where the SLLC has filed an *amicus* brief.

In *New York State Rifle & Pistol Association v. Bruen** the U.S. Supreme Court held 6-3 that states and local governments may not require "proper cause" to obtain a license to carry a handgun outside the home. In New York to have "proper cause" to receive a conceal-carry handgun permit an applicant must "demonstrate a special need for self-protection distinguishable from that of the general community." Justice Thomas, writing for the Court, articulated the standard the Court would apply to determine whether New York's law violates the Second Amendment. "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" Both parties agreed that the Second Amendment guarantees a general right to public carry. As Justice Thomas pointed out "[n]othing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms." So, the burden fell to New York to show that its proper-cause requirement is "consistent with this Nation's historical tradition of firearm regulation." The Court looked at gun regulation from the following time periods: (1) medieval to early modern England; (2) the American Colonies and the early Republic; (3) antebellum America; (4) Reconstruction; and (5) the late-19th and early-20th centuries. It concluded there is no historical tradition justifying a "proper cause" requirement. "Throughout modern Anglo-American history, the right to keep and bear arms in public has traditionally been subject to well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms. But apart from a handful of late 19th-century jurisdictions, the

historical record compiled by respondents does not demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense. Nor is there any such historical tradition limiting public carry only to those law-abiding citizens who demonstrate a special need for self-defense."

First Amendment cases

In *Kennedy v. Bremerton School District** the U.S. Supreme Court held 6-3 that the First Amendment protects an assistant football coach who "knelt at midfield after games to offer a quiet prayer of thanks." The Supreme Court also overruled *Lemon v. Kurtzman* (1971). The majority and the dissent disagree about the facts of this case. Both sides agree assistant football coach Joseph Kennedy had a long history of praying alone and with students at midfield after football games and praying with students in the locker room pregame and postgame. When directed to, Kennedy stopped the latter practice. But he told the district he felt "compelled" to continue offering a "post-game personal prayer" midfield. The district placed Kennedy on leave for praying on the field after three particular games. Justice Gorsuch, writing for the Court, concluded Kennedy was able to make the initial showing that the school district violated his free exercise of religion and free speech rights by not allowing him pray on the field after games. Regarding Kennedy's Free Exercise Clause claim, the Court concluded the school district burdened his sincere religious practice pursuant to a policy that is neither "neutral" nor "generally applicable." The district's actions weren't neutral because "[b]y its own admission, the District sought to restrict Mr. Kennedy's actions at least in part because of their religious character." The district's actions weren't "generally appliable" either the Court concluded. While the district stated it refused to rehire Kennedy because he "failed to supervise student-athletes after games," the district "permitted other members of the coaching staff to forgo supervising students briefly after the game to do things like visit with friends or take personal phone calls." Regarding Kennedy's Free Speech Clause claim, the Court first had to decide whether Kennedy was speaking as a government employee (who isn't protected by the First Amendment) or as a citizen (who receives some First Amendment protection). The Court determined Kennedy was acting as a citizen. "When Mr. Kennedy uttered the three prayers that resulted in his suspension, he was not engaged in speech 'ordinarily within the scope' of his duties as a coach. He did not speak pursuant to government policy. He was not seeking to convey a government-created message. He was not instructing players, discussing strategy, encouraging better on-field performance, or engaged in any other speech the District paid him to produce as a coach." While the Court would have normally shifted the burden to the school district to defend its actions under the Free Exercise and Free Speech Clauses, the Court didn't in this case noting that under whatever test it applied the school district would lose. The district explained it suspended Kennedy because of Establishment Clause concerns namely that a "reasonable observer" would conclude the district was endorsing religion by allowing him to pray on the field after games. In response the Court overturned the so-called *Lemon* test. *Lemon* "called for an examination of a law's purposes, effects, and potential for entanglement with religion. In time, the approach also

came to involve estimations about whether a 'reasonable observer' would consider the government's challenged action an 'endorsement" of religion.'" In its place the Court stated it has adopted a view of the Establishment Clause that "accor[ds] with history and faithfully reflec[ts] the understanding of the Founding Fathers." The Court also found insufficient evidence students were coerced to pray.

In *City of Austin, Texas v. Reagan National Advertising** the U.S. Supreme Court held 6-3 that strict (fatal) scrutiny doesn't apply to Austin allowing on-premises but not off-premises signs to be digitized. Austin's sign code prohibits any new off-premises signs but has grandfathered such existing signs. On-premises signs, but not off-premises signs, may be digitized. Reagan National Advertising argued that this distinction violates the First Amendment's Free Speech Clause. Per *Reed v. Town of Gilbert* (2015), a regulation of speech is content based, meaning strict scrutiny applies, if the regulation "applies to particular speech because of the topic discussed or the idea or message expressed." According to the Fifth Circuit because the City's on-/off premises distinction required a reader to determine "who is the speaker and what is the speaker saying," the distinction was content based. According to the Court the lower court's interpretation of *Reed* was "too extreme." In *Reed*, the Town of Gilbert's sign code "applied distinct size, placement, and time restrictions to 23 different categories of signs." For example, ideological signs were treated better than political signs and temporary directional signs were most restricted. The Court reasoned these categories were content based because Gilbert "single[d] out specific subject matter for differential treatment, even if it [did] not target viewpoints within that subject matter." Justice Sotomayor, writing for the Court, opined: "Unlike the sign code at issue in *Reed* . . . the City's provisions at issue here do not single out any topic or subject matter for differential treatment. A sign's substantive message itself is irrelevant to the application of the provisions; there are no content-discriminatory classifications for political messages, ideological messages, or directional messages concerning specific events, including those sponsored by religious and non-profit organizations. Rather, the City's provisions distinguish based on location: A given sign is treated differently based solely on whether it is located on the same premises as the thing being discussed or not. The message on the sign matters only to the extent that it informs the sign's relative location."

In *Shurtleff v. City of Boston** the U.S. Supreme Court held unanimously that Boston's refusal to fly a Christian flag on a flagpole outside city hall violated the First Amendment. On the plaza, near Boston City Hall entrance, stands three 83-foot flagpoles. Boston flies the American flag on one (along with a banner honoring prisoners of war and soldiers missing in action) and the Commonwealth of Massachusetts flag on the other. On the third it usually flies Boston's flag. Since 2005 Boston has allowed third parties to fly flags during events held in the plaza. Most flags are of other countries, marking the national holidays of Bostonians' many countries of origin. Third-party flags have also been flown for Pride Week, emergency medical service workers, and a community bank. When Camp Constitution asked to fly a Christian flag Boston refused, for the first time ever, citing Establishment Clause concerns. The flag has a red cross on

a blue field against a white background. Camp Constitution sued arguing that Boston opens its flagpole for citizens to express their views in which case it can't refuse to fly Camp Constitution's flag based on its (religious) viewpoint. Boston argued it "reserved the pole to fly flags that communicate governmental messages" and was "free to choose the flags it flies without the constraints of the First Amendment's Free Speech Clause." The Supreme Court held that Boston's flag-raising program doesn't constitutes government speech, meaning the First Amendment applies and it couldn't reject Camp Constitution's flag based on its viewpoint. Justice Breyer, writing for the majority, noted that "[t]he boundary between government speech and private expression can blur when, as here, a government invites the people to participate in a program." Conducting a "holistic inquiry" which considered "the history of the expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression," he didn't find government speech. According to the Court the "general history" of flying flags "particularly at the seat of government" favors Boston. But "even if the public would ordinarily associate a flag's message with Boston, that is not necessarily true for the flags at issue here" where "Boston allowed its flag to be lowered and other flags to be raised with some regularity." While neither of these two factors resolved the case, Boston's record of not "actively control[ling] these flag raisings and shap[ing] the messages the flags sent" was "the most salient feature of this case." Boston had "no written policies or clear internal guidance—about what flags groups could fly and what those flags would communicate."

In a unanimous opinion in *Houston Community College v. Wilson*, the U.S. Supreme Court held that when a government board censures a member it doesn't violate the First Amendment. As Justice Gorsuch describes in his opinion David Wilson's tenure on the Houston Community College board was "stormy." He accused the board of violating its bylaws and ethics rules in the media, he hired a private investigator to determine whether another board member lived in the district which elected her, and he repeatedly sued the board. The board censured him stating his conduct was "not consistent with the best interests of the College" and "not only inappropriate, but reprehensible." The Supreme Court held that Wilson has no actionable First Amendment free speech claim arising from the Board's purely verbal censure. The Court began its analysis by noting that "elected bodies in this country have long exercised the power to censure their members. In fact, no one before us has cited any evidence suggesting that a purely verbal censure analogous to Mr. Wilson's has ever been widely considered offensive to the First Amendment." The Court also reasoned that Wilson could only have a First Amendment claim if he had been subject to an adverse action. The Court concluded a censure of a board member by a board isn't an adverse action. First, "[i]n this country, we expect elected representatives to shoulder a degree of criticism about their public service from their constituents and their peers—and to continue exercising their free speech rights when the criticism comes." Second, Wilson can't use the First Amendment "as a weapon to silence" his board colleagues who want to "speak freely on questions of government policy," just as he does.

In *Carson v. Makin* the U.S. Supreme Court held 6-3 that Maine's refusal to provide tuition assistance payments to "sectarian" schools violates the First Amendment's Free Exercise Clause. Maine's constitution and statutes require that students receive a free public education. Fewer than half of Maine's school administrative units (SAUs) operate their own public secondary schools. If those SAUs don't contract with a particular public or private school, they must "pay the tuition . . . at the public school or the approved private school of the parent's choice." To be approved a private school must be "nonsectarian." Two sets of Maine parents argued that the religious schools where they send or want to send their children can't be disqualified from receiving state tuition payments because they are religious. In an opinion written by Chief Justice Roberts the U.S. Supreme Court agreed. The Court began its analysis by noting that "we have repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits." The Court then concluded that the "unremarkable" principles applied in two recent U.S. Supreme Court cases "suffice to resolve this case." In *Trinity Lutheran Church of Columbia v. Comer* (2017) the lower court held Trinity Lutheran Church's preschool wasn't allowed to receive a state playground resurfacing grant because it was operated by a church. The Supreme Court reversed holding the Free Exercise Clause did not permit Missouri to "expressly discriminate[] against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character." In *Espinoza v. Montana Department of Revenue* (2020) the Montana Supreme Court held that to the extent a Montana program providing tax credits to donors who sponsored private school tuition scholarships included religious schools, it violated a provision of the Montana Constitution which barred government aid to religious schools. The U.S. Supreme Court reversed stating: "A State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious." The U.S. Supreme Court opined that the facts of this case are very similar to those in *Trinity Lutheran* and *Espinoza:* "Just like the wide range of nonprofit organizations eligible to receive playground resurfacing grants in *Trinity Lutheran*, a wide range of private schools are eligible to receive Maine tuition assistance payments here. And like the daycare center in *Trinity Lutheran*, [the religious schools at issue in this case] are disqualified from this generally available benefit "solely because of their religious character." The U.S. Supreme Court concluded Maine's exclusion of religious schools doesn't comply with strict scrutiny because "a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause."

Police cases

In *Vega v. Tekoh** the U.S. Supreme Court held 6-3 that police officers can't be sued for money damages for failing to recite *Miranda* rights. The State and Local Legal Center (SLLC) filed an *amicus* brief in this case arguing for this result. Terrance Tekoh was tried for unlawful sexual penetration. The parties disagree about whether Deputy Carlos Vega used "coercive investigatory techniques" to obtain a confession from Tekoh, but they agree Deputy Vega didn't

inform Tekoh of his *Miranda* rights. His confession was admitted into evidence and Tekoh was acquitted. Tekoh sued Deputy Vega under 42 U.S.C. Section 1983 claiming Vega violated his Fifth Amendment right against self-incrimination by not advising him of his *Miranda* rights. In an opinion written by Justice Alito the Court held failing to recite *Miranda* doesn't provide a basis for a claim under §1983 because the failure isn't a violation of the Fifth Amendment. The Fifth Amendment states that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." Per Supreme Court precedent it "permits a person to refuse to testify against himself at a criminal trial in which he is a defendant" and "also 'privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'" According to the Court, "[i]n *Miranda,* the Court concluded that additional procedural protections were necessary to prevent the violation of this important right when suspects who are in custody are interrogated by the police." So, *Miranda* imposed a set of prophylactic rules. "At no point in the opinion did the Court state that a violation of its new rules constituted a violation of the Fifth Amendment right against compelled self-incrimination. Instead, it claimed only that those rules were needed to safeguard that right during custodial interrogation." The Court rejected Tekoh's argument that *Dickerson v. United States* (2000) "upset the firmly established prior understanding of *Miranda* as a prophylactic decision." In *Dickerson* the Court held that Congress couldn't abrogate *Miranda* by statute because *Miranda* was a "constitutional decision" that adopted a "constitutional rule." Despite the Court using the term "constitutional decision" and "constitutional rule," "the Court made it clear that it was not equating a violation of the *Miranda* rules with an outright Fifth Amendment violation."

In a 6-3 decision in *Thompson v. Clark** the U.S. Supreme Court held that to demonstrate a favorable termination of a criminal prosecution in order to bring a Fourth Amendment malicious prosecution case a plaintiff need only show that his or her prosecution ended without a conviction. Larry Thompson's sister-in-law, who lived with him and suffers from mental illness, reported to 911 that he was sexually abusing his one-week-old daughter. Thompson refused to let police in his apartment without a warrant. After a "brief scuffle" police arrested Thompson and charged him with obstructing governmental administration and resisting arrest. Medical professionals at the hospital determined Thompson's daughter had diaper rash and found no signs of abuse. Before trial the prosecutor moved to dismiss the charges and the trial judge agreed to do so without explaining why. Thompson then sued the officers who arrested him for malicious prosecution under the Fourth Amendment. Per Second Circuit precedent a malicious prosecution case can only be brought if the prosecution ends not merely without a conviction but with some affirmative indication of innocence. In an opinion written by Justice Kavanaugh the Supreme Court disagreed with the Second Circuit and held that a Fourth Amendment malicious prosecution case may be brought as long as there is no conviction. Thompson brought his Fourth Amendment malicious prosecution case under 42 U.S.C. §1983, which was adopted in 1871. One of the elements of a malicious prosecution claim is "favorable termination" of the underlying criminal prosecution. The other elements include whether the prosecution was

"instituted without any probable cause" and was motivated by "malice." According to the Court, to determine what favorable termination entails, the Court had to determine what courts required in 1871. The parties "identified only one court that required something more, such as an acquittal or a dismissal accompanied by some affirmative indication of innocence." So, the Supreme Court reasoned, no conviction is enough for a prosecution to be favorably terminated.

In *Rivas-Villegas v. Cortesluna* the Court reversed the Ninth Circuit's denial of qualified immunity to Officer Rivas-Villegas. A girl told 911 she, her sister, and her mother had shut themselves into a room because their mother's boyfriend, Ramon Cortesluna, was trying to hurt them and had a chainsaw. Officers ordered Cortesluna to leave the house. They noticed he had a knife sticking out from the front left pocket of his pants. Officers told Cortesluna to put his hands up. When he put his hands down, they shot him twice with a beanbag shotgun. Cortesluna then raised his hands and got down as instructed. Officer Rivas-Villegas placed his left knee on the left side of Cortesluna's back, near where Cortesluna had the knife in his pocket, and raised both of Cortesluna's arms up behind his back. Another officer removed the knife and handcuffed Cortesluna. Rivas-Villegas had his knee on Cortesluna's back for no more than eight seconds. The Ninth Circuit concluded that circuit precedent, *LaLonde v. County of Riverside*, indicated that leaning with a knee on a suspect who is lying face-down on the ground and isn't resisting is excessive force. The Supreme Court disagreed that *LaLonde* clearly established that Officer Rivas-Villegas couldn't briefly place his knee on the left side of Cortesluna's back. The Supreme Court reasoned *LaLonde* is "materially distinguishable and thus does not govern the facts of this case." "In *LaLonde*, officers were responding to a mere noise complaint, whereas here they were responding to a serious alleged incident of domestic violence possibly involving a chainsaw. In addition, LaLonde was unarmed. Cortesluna, in contrast, had a knife protruding from his left pocket for which he had just previously appeared to reach. Further, in this case, video evidence shows, and Cortesluna does not dispute, that Rivas-Villegas placed his knee on Cortesluna for no more than eight seconds and only on the side of his back near the knife that officers were in the process of retrieving. LaLonde, in contrast, testified that the officer deliberately dug his knee into his back when he had no weapon and had made no threat when approached by police."

In *City of Tahlequah v. Bond*, the Supreme Court held that two officers who shot Dominic Rollice after he raised a hammer "higher back behind his head and took a stance as if he was about to throw the hammer or charge at the officers" were entitled to qualified immunity. Dominic Rollice's ex-wife told 911 that Rollice was in her garage, intoxicated, and would not leave. While the officers were talking to Rollice he grabbed a hammer and faced them. He grasped the handle of the hammer with both hands, as if preparing to swing a baseball bat, and pulled it up to shoulder level. The officers yelled to him to drop it. Instead, he came out from behind a piece of furniture so that he had an unobstructed path to one of the officers. He then raised the hammer higher back behind his head and took a stance as if he was about to throw it or charge at the officers. Two officers fired their weapons and killed him. The Tenth Circuit concluded that a few circuit court cases—*Allen v. Muskogee* in particular—clearly established

that the officers' use of force was excessive. The Supreme Court disagreed. "[T]he facts of *Allen* are dramatically different from the facts here. The officers in *Allen* responded to a potential suicide call by sprinting toward a parked car, screaming at the suspect, and attempting to physically wrest a gun from his hands. Officers Girdner and Vick, by contrast, engaged in a conversation with Rollice, followed him into a garage at a distance of 6 to 10 feet, and did not yell until after he picked up a hammer."

Miscellaneous

In *West Virginia v. EPA* the U.S. Supreme Court held 6-3 that the Environmental Protection Agency (EPA) lacked the statutory authority to issue the Clean Power Plan (CPP). Per the Clean Air Act, for new and existing powerplants EPA may come up with air-pollution standards which reflect "the best system of emission reduction" (BSER). Before the CPP when EPA regulated under this provision of the Clean Air Act it required existing powerplants to make technological changes—like adding a scrubber—to reduce pollution. In the 2015 EPA released the Clean Power Plan which determined that the BSER to reduce carbon emissions from existing powerplants was "generation-shifting." This entailed shifting electricity production from coal-fired power plants to natural-gas-fired plants and wind and solar energy. The Court, in an opinion written by Chief Justice Roberts, held that generation shifting exceeds EPA's authority under the Clean Air Act because Congress didn't give EPA "clear congressional authorization" to regulate in this matter. "As a matter of 'definitional possibilities,' generation shifting can be described as a 'system'—'an aggregation or assemblage of objects united by some form of regular interaction' capable of reducing emissions. But of course almost anything could constitute such a 'system'; shorn of all context, the word is an empty vessel. Such a vague statutory grant is not close to the sort of clear authorization required by our precedents." EPA had to show it had "clear congressional authorization" to adopt the CPP because the Court applied the major questions doctrine. This doctrine applies, according to the Court, in "extraordinary cases"—cases in which the "history and the breadth of the authority that [the agency] has asserted," and the "economic and political significance" of that assertion, provide a "reason to hesitate before concluding that Congress" meant to confer such authority. The Court opined this is a major questions doctrine case because "[i]n arguing that [the relevant provision of the Clean Air Act] empowers it to substantially restructure the American energy market, EPA 'claim[ed] to discover in a long-extant statute an unheralded power' representing a 'transformative expansion in [its] regulatory authority.' It located that newfound power in the vague language of an 'ancillary provision[]' of the Act, one that was designed to function as a gap filler and had rarely been used in the preceding decades. And the Agency's discovery allowed it to adopt a regulatory program that Congress had conspicuously and repeatedly declined to enact itself."

In *Cummings v. Premier Rehab Keller** the U.S. Supreme Court held 6-3 that emotional distress damages aren't available if funding recipients violate four federal statutes adopted using Congress's Spending Clause authority. The relevant statutes include Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, the Section 1557 of the Affordable Care Act, and Title IX of the Education Amendments Act of 1972. Depending upon the statute, they prohibit funding recipients from discriminating on the basis of race, color, national origin, sex, disability, or age. Jane Cummings is deaf and legally blind. She sought physical therapy from Premier Rehab Keller and requested it provide an American Sign Language interpreter at her appointments. Premier Rehab Keller declined to do so. She sued claiming disability discrimination in violation of the Rehabilitation Act and the Affordable Care Act. Among other remedies she sought emotional distress damages. None of the four statutes relevant to this case expressly provides victims of discrimination a private right of action to sue the funding recipient for money damage so they don't list available damages. In *Cannon v. University of Chicago* (1979) the Supreme Court found an implied right of action in Title VI and Title IX, which the Supreme Court later concluded Congress ratified. The Rehabilitation Act and the Affordable Care Act expressly incorporate the rights and remedies available under Title VI. In an opinion written by Chief Justice Roberts, emotional distress damages aren't available under these statutes because a funding recipient wouldn't have had clear notice it might face such liability. According to the Chief Justice, the Supreme Court has applied a "contract-law analogy in cases defining the scope of conduct for which funding recipients may be held liable for money damages" in Spending Clause cases. Spending Clause legislation operates based on consent: "in return for federal funds, the [recipients] agree to comply with federally imposed conditions." A particular remedy is available in a private Spending Clause action "only if the funding recipient is on notice that, by accepting federal funding, it exposes itself to liability of that nature." In *Barnes v. Gorman* (2002) the Supreme Court held that punitive damages are unavailable in private actions brought under the statutes at issue in this case because such damages aren't "*usual"* contract remedies. Similarly, according to the Court, it is "hornbook law that 'emotional distress is generally not compensable in contract.'"

In *Oklahoma v. Castro-Huerta* the U.S. Supreme Court held 5-4 that states (along with the federal government) may prosecute crimes committed by non-Indians against Indians in Indian country. Victor Manuel Castro-Huerta in a non-Indian who lived in Tulsa, Oklahoma. He was sentenced to 35 years imprisonment after Oklahoma convicted him for child neglect of his stepdaughter who is a Cherokee Indian. A federal grand jury indicted Castro-Huerta for the same conduct. He accepted a plea agreement for a 7-year sentence and removal from the United States. Following the Supreme Court's decision in *McGirt v. Oklahoma* (2020), that Congress never properly disestablished the Creek Nation's reservation in eastern Oklahoma, Tulsa is now recognized as Indian country. Castro-Huerta argued the federal government has exclusive jurisdiction to prosecute crimes committed by a non-Indian against an Indian in Indian country and that therefore Oklahoma lacked jurisdiction to prosecute him. In an opinion written by Justice Kavanaugh the Court disagreed. The Court began its analysis by noting "the Court's

precedents establish that Indian country is part of a State's territory and that, unless preempted, States have jurisdiction over crimes committed in Indian country." The Court applied a two-part test to determine whether a state's jurisdiction in Indian country may be preempted in this case "(i) by federal law under ordinary principles of federal preemption, or (ii) when the exercise of state jurisdiction would unlawfully infringe on tribal self-government." The Court concluded it could not. Castro-Huerta argued that the General Crimes Act and Public Law 280 preempt Oklahoma's authority to prosecute crimes committed by non-Indians against Indians in Indian country. The General Crimes Act states: "Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States . . . shall extend to the Indian country." According to the Court, "[b]y its terms, the Act does not preempt the State's authority to prosecute non-Indians who commit crimes against Indians in Indian country. The text of the Act simply 'extend[s]' federal law to Indian country, leaving untouched the background principle of state jurisdiction over crimes committed within the State, including in Indian country." Castro-Huerta also argued that Public Law 280, which grants certain states broad jurisdiction to prosecute state-law offenses committed by or against Indians in Indian country, is a source of preemption. The Court responded: "Public Law 280 does not preempt any preexisting or otherwise lawfully assumed jurisdiction that States possess to prosecute crimes in Indian country." The Supreme Court has held that even when federal law does not preempt state jurisdiction under ordinary preemption analysis, preemption may still occur if "the exercise of state jurisdiction would unlawfully infringe upon tribal self-government." Per *White Mountain Apache Tribe v. Bracker* (1980) the Court considers tribal interests, federal interests, and state interests. First, the Court opined that the exercise of state jurisdiction here would not infringe on tribal self-government because tribes generally can't prosecute crimes committed by non-Indians even when non-Indians commit crimes against Indians in Indian country. Second, a state prosecution of a non-Indian won't harm the federal interest in protecting Indian victims because state prosecution would supplement not supplant federal authority. Third, states have "a strong sovereign interest in ensuring public safety and criminal justice within its territory, and in protecting all crime victims."