# Fact Sheet
# Selected Supreme Court Access to Court Opinions from the 2014 Term[1]

Prepared By: Jane Perkins
Date: July 30, 2015

## Background

The Supreme Court's 2014-2015 Term was like most others--it included momentous decisions. For example, in *Obergefell v. Hodges*, Nos. 14-556, 14-562, 14-571, and 14-574, _ S. Ct. _, 2014 WL 2473451 (Jun. 26, 2015), the Court voted 5-4, that the Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed outside the State.[2]

In *Brumfield v. Cain*, 135 S. Ct. 2269 (2015), another 5-4 decision, the Court reviewed the standards for deciding when an inmate has an intellectual disability that entitles him to a hearing to decide whether his disability exempted him from the death penalty. *Compare Atkins v. Virginia*, 536 U.S. 304 (2002) (banning application of the death penalty for individuals convicted of murder who are intellectually disabled).

Cases such as *Obergefell* and *Brumfield* will continue to receive attention in mass media reporting and future law review articles. Rather than discuss the blockbuster aspects of these and other decisions, however, this Fact Sheet will focus on Court cases that addressed questions that are often confronted by health and disability advocates as they are litigating: What do the words of the statute mean? Does the Supremacy Clause provide a cause of action? Is 42 U.S.C. § 1983 available in a lawsuit against the state? Should the court defer to the federal agency's interpretation of the statute?

---

[1] Produced with a grant from the Herb Block Foundation and the Training Advocacy Support Center (TASC), which is sponsored by the Administration on Intellectual and Developmental Disabilities (AIDD), the Substance Abuse and Mental Health Services Administration (SAMHSA), the Rehabilitation Services Administration (RSA), the Social Security Administration (SSA), and the Health Resources Services Administration (HRSA). TASC is a division of the National Disabilities Rights Network (NDRN).

[2] The just-completed Term was also memorable for its volatility on a personal level. *See, e.g., Obergefell*, 2014 WL 2473451 at *42-45 (Scalia, J., dissenting) (describing Justice Kennedy's majority opinion as "lacking even a thin veneer of law … couched in a style that is as pretentious as its content is egotistic").

## Summary of Selected Cases

### Statutory construction

A number of the past term's cases turned, in part, on the Supreme Court's application of the rules of statutory construction. *E*.g., *Texas Dep't of Housing & Community Affairs v. Inclusive Communities Project, Inc*., No. 13-1371, _ S. Ct. _, 2015 WL 2473449 (Jun. 25, 2015) (comparing the text of three antidiscrimination statutes and stating that "antidiscrimination laws must be construed to encompass disparate-impact claims when their text refers to the consequences of actions and not just to the mindset of actors, and where that interpretation is consistent with statutory purpose"); *Kellogg Brown & Root Servs., Inc. v. U.S ex rel. Carter*, 135 S. Ct. 1970, 1978-79 (2015) (reading the word "pending" in its common sense, noting that under petitioner's interpretation *Marbury v. Madison* would still be pending, as would Socrates' trial); *Direct Marketing Ass'n v. Brohl*, 135 S. Ct. 1124, 1132 (2015) ("To resolve .. ambiguity, we look to the context in which the word is used."); *Yates v. United States*, 135 S. Ct. 1074, 1082 (2015) (stating that "identical language may convey varying content when used in different statues, sometimes even in different provisions of the same statute"). This Fact Sheet will focus on yet another case, *King v. Burwell*—which was, for health advocates, the most notable of the Court's statutory construction cases.

### *King v. Burwell*, No. 14-114, _ S. Ct. _, 2015 WL 2473448 (Jun. 25, 2015)

In recent months, think tanks across the political spectrum have issued multiple reports assessing the potential impact of the pending decision in *King v. Burwell*. During the month of June, thousands of lawyers and Supreme Court watchers sat glued to the SCOTUSblog live feed each Monday and Thursday morning so that they can get the real-time answer to how the case had been decided.

With all this build up, the June 25th decision in *King* bordered upon anti-climactic. By a comfortable 6-3 margin, the Court upheld the ability of low- and middle-income individuals, nationwide, to use any Exchange established under the Affordable Care Act (ACA) to enroll in a health plan and obtain financial assistance with paying their health insurance premiums.

The ACA requires an Exchange to operate in each state and provides that such Exchange will be operated by the federal government in a state that does not or cannot operate its own Exchange. *King* was filed by four residents of Virginia, where the Exchange is operated by the federal government. They contended that financial assistance was not available in federal Exchange states because the ACA included a provision stating that tax credits are available to individuals in an "Exchange established by the State." 26 U.S.C. §§ 36B(b)-(c) (cross referencing 42 U.S.C. § 18031, defining "Exchange"). Without the tax credits, the plaintiffs and millions of others, would not be able to afford to purchase health insurance, and they would, thus, be exempted from the ACA's "individual mandate" to purchase insurance or pay a

penalty. *See King*, 2014 WL 2473448, at *5, 12 (discussing the health insurance "death spiral" that would be triggered by petitioners' argument). The district court dismissed the plaintiffs' suit, and the Fourth Circuit affirmed, holding that the ACA provision is ambiguous but that IRS regulations authorizing tax credits, nationwide, were entitled to controlling deference. *See* 997 F. Supp. 2d 415 (E.D. Va.), ***aff'd***, 759 F.3d 358(4th Cir. 2014). The Supreme Court granted certiorari.

The issue before the Supreme Court is, by now, well-known: What did Congress mean in the ACA when it used the phrase "Exchange established by the State" in the provision addressing the availability of premium tax credits? As noted, IRS regulations determined that this could include not only state-run Exchanges but also Exchanges operated by the federal government. Writing for the majority, Chief Justice Roberts—while agreeing that the phrase was ambiguous--did not defer to the regulation:

> Whether those credits are available on Federal Exchanges is thus a question of deep 'economic and political significance' that is central to this statutory scheme; had Congress wished to assign that question to an agency, it would have done so expressly…. This is not a case for the IRS.

2014 WL 2473448, at *8 (citation omitted). This decision by the Court is significant. The separation of powers between the three branches of government is constantly in play. By refusing to defer to the federal agency's interpretation of the ACA provision (although ultimately agreeing with the agency's conclusion), the Supreme Court reaffirmed its role as the final arbiter of all things legal. And with respect to the tax credits themselves, the decision means that a subsequent Administration cannot change the availability of premium tax credits by issuing a regulation. That change must come from Congress.

Rather than deferring to the federal agency, the Court answered the question before it by applying rules of statutory construction. The phrase unquestionably says, "Exchange operated by the State." However, rather than assessing the phrase in isolation, the Court construed the words "in their context and with a view to their place in the overall statutory scheme." *Id*. ("Our duty, after all, is 'to construe statutes, not isolated provisions.'") (citation omitted). Rather easily, the majority decided that Congress did not intend to foreclose the availability of premium assistance for individuals based on whether they happened to live in a state that is operating the Exchange or in a state that has left operation of such Exchange to the federal government. As explained by the Court, the entire purpose of the ACA is to make health insurance available to Americans by making it more affordable and to stabilize the health insurance market through guaranteed issue requirements (*e.g.*, no exclusions based on pre-existing conditions). Of course, premium tax credits are an essential component of this scheme. The *King* Court, thus, made the rather common-sense conclusion that Congress would not have buried such a critical feature as the state-operation requirement in a "sub-sub-sub section of the Tax Code" (and mid-way into a 900+ page law that repeatedly stated that its purpose was to insure all

Americans). *Id*. at *12 ("We cannot interpret federal statutes to negate their own stated purpose." (citation omitted).

**Supremacy Clause**

***Armstrong v. Exceptional Child Care Center*, 135 S. Ct. 1378 (2015)[3]**

On March 31, 2015, *Armstrong v. Exceptional Child Care Center* held that health care providers cannot enforce the Supremacy Clause to make a state comply with the Medicaid Act's payment provision. The case was decided by a razor thin, 5-4 margin. The line-up of the justices did not reflect the usual ideological split, however. Justice Breyer voted with the majority; Justice Kennedy, with the dissent.

Supremacy Clause cases have been filed for hundreds of years and, with respect to the Social Security Act (of which Medicaid is a part), since at least the 1970s. *See*, *e.g.*, *Townsend v. Swank*, 404 U.S. 282,285 (1971) (recognizing that beneficiaries of Social Security Act programs can bring preemption actions to enjoin state laws that conflict with federal law and are, thus, "invalid under the Supremacy Clause"). Forced by the dissent to acknowledge this "long-established practice," Justice Scalia said that it does not justify a rule that denies the "fairest reading." *Armstrong*, 135 S. Ct. at 1386.

According to his fairest reading, the health care providers did not have an implied cause of action under the Supremacy Clause because that provision creates a "rule of decision" that merely "instructs courts what to do when state and federal law clash, but is silent regarding who may enforce federal laws in court, and in what circumstances they may do so." *Id.* at 1383 (citations omitted). The Court gave a couple of examples of how the Supremacy Clause comes into play, notably including: when an "individual claims federal law immunizes him from state regulation, the court may issue an injunction upon finding the state regulatory actions preempted." *Id*. at 1384 (citing *Ex parte Young*, 209 U.S. 123, 155-156 (1908)).[4]

With hundreds of years of Supremacy Clause enforcement history, the Court, next, explained how individuals are able to sue to enjoin unconstitutional actions by government officials and found the ability to sue is a "creation of courts of equity." *Id.* at 1384. While still not explaining the source of the cause of action, the Court turned to whether the plaintiffs could bring their suit against the Idaho Medicaid officials in equity, stating: "The power of federal courts of equity to enjoin unlawful executive action is subject to express and implied statutory limitations." *Id.* at 1385. In other words, the court must discern congressional intent.

The *Armstrong* majority found that the Medicaid Act "implicitly precludes private enforcement of § (30)(A) [the Medicaid payment provision]," and the health care

[3] This case was previously discussed, *see* Jane Perkins, NHeLP, *Q&A: Armstrong v. Exceptional Child Care Center* (Apr. 23, 2015) (available from TASC or NHeLP).

[4] This recognition was critical because most Medicaid and Social Security Act cases seek prospective injunctive relief under *Ex parte Young*.

providers could not invoke the court's equitable powers to "circumvent Congress's exclusion of private enforcement." *Id.* at 1385. The Court found two indications of congressional intent. First, the "sole remedy" Congress provided in the Medicaid Act authorities the Secretary of Health and Human Services (HHS) to terminate federal funding to all or parts of the state Medicaid program until the state stops violating the federal law. *Id.* (citing 42 U.S.C. § 1396c). The *Armstrong* majority found this "express provision of one method of enforcing a statute suggests that Congress intended to preclude others." *Id*. (quoting *Alexander v. Sandoval*, 532 U.S. 275, 290 (2001)).

There are a couple of problems with this reading. When Congress enacted Medicaid, it was working under Supreme Court precedent that recognized a remedial imperative—the right of individuals to claim protection of the law and the duty of courts to accord an appropriate remedy in the absence of any express statutory authorization of a federal cause of action. So, the enacting Congress would not have thought it necessary to insert provisions about private enforcement. Second, a statutory enforcement scheme either substitutes for private enforcement or it does not. In *Wilder v. Virginia Hospital Association*, the Court had already held that the Medicaid Act does not contain a statutory scheme that would replace private enforcement. 496 U.S. 498, 521-22 (1990). Interestingly, in a 2005 case, Justice Scalia listed Medicaid as a statute whose private judicial enforcement is not foreclosed based on a statutory enforcement scheme. *See City of Rancho Palo Verdes v. Abrams*, 544 U.S. 113, 121-22 (2005).

The *Armstrong* majority's second big point is that, while the termination of funding provision might not, by itself, preclude the provider's lawsuit, the Medicaid payment provision does because it is so broad and non-specific as to be "judicially unadministrable." 135 S. Ct. at 1385. Notably, prior to this opinion, courts had enforced the Medicaid payment provision dozens of times.

According to the Supreme Court majority, the Medicaid providers' remedy is to get the Secretary of HHS to take action against the state. 135 S Ct. at 1387. As noted, the action that the Medicaid Act authorizes the Secretary to take is the termination of all or part of the state's federal Medicaid funding. In other words, health care providers, who are not being paid enough by the state Medicaid agency, can ask the federal government to deny the state the federal funding that the state needs to operate its Medicaid program.

**42 U.S.C. § 1983**

**Pleading standards: *Johnson, et al. v. City of Shelby*, 135 S. Ct. 346 (2014)**

In this case, police officers sought damages against the City of Shelby, alleging that they were terminated by the board of aldermen in violation of their due process rights. 135 S. Ct. 346 (2014) (per curiam). The Fifth Circuit Court of Appeals concluded that the complaint was not adequately pled because it did not emphasize that the case

was brought under 42 U.S.C. § 1983 and, thus, the City was not put on notice of the theories and responsive that were available to it. *See* 743 F.3d 59 (5th Cir. 2013).

Reversing, the Supreme Court held that the case should not have been dismissed because the plaintiffs failed to expressly invoke § 1983 in their complaint. The Court noted that the federal pleading rules only call for "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2). "[T]they do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted." 135 S. Ct. 346. The Court held, "[N]o heightened pleading rule requires plaintiffs seeking damages for violations of constitutional rights to invoke §1983 expressly in order to state a claim." *Id*. at 347 (citing *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993)).

Importantly, the Court distinguished its decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U. S. 662 (2009) as not on point because they concern the *factual* allegations that a complaint must contain to show that the claim has "substantive plausibility" and thus survive a motion to dismiss. *Id*.[5]

The Count found that the factual allegations of police officers' complaint were "simply, concisely, and directly" set forth and were not deficient. However, for "clarification" purposes, the Court ordered that, on remand, the police officers be given the opportunity to amend their complaint to include a citation to § 1983. *Id*.

**Qualified immunity: *Taylor v. Barkes*, 135 S. Ct. 2042 (2015)**

Christopher Barkes entered the Howard R. Young Correctional Institution in Wilmington, Delaware following a probation violation. During a mental health screen, he indicated that he had previously attempted suicide and that he had a history of psychiatric treatment that required medication. The nurse referred him to mental health services but did not take any additional preventive measures. Barkes called his wife and told her that he was going to kill himself. She did not notify anyone at the institution. Barkes hung himself the next morning. Barkes's family sued under §1983, arguing in part that facility officials violated Barkes's Eighth Amendment right to be free from cruel and unusual punishment. The lower court denied the officials' claims for immunity against the suit, finding a clearly established Eighth Amendment right to "proper implementation of adequate suicide prevention protocols." 766 F.3d 307 (3d Cir. 2014).

The Supreme Court reversed in a per curiam opinion. 135 S. Ct. 2042 (2015). The Court finds that for a right to be clearly established it must be established beyond debate, and it notes that there is no Supreme Court decision finding an Eighth Amendment right to proper implementation of suicide prevention protocols. Rather, the

[5] For discussion of these cases, see, e.g., Jane Perkins, NHeLP, *Q&A: The Iqbal Decision Affects Civil Pleading* (July 2009) (on file with TASC and NHeLP).

cases address matters such as ensuring services for serious medical conditions (which do not encompass screening for suicidal tendencies) and training of deputies. Accordingly, no previous case clearly placed the burden on jail officials to screen for suicidal tendencies. *Id*. at 2044-45 (citations omitted). *See also City & County of San Francisco, California v. Sheehan*, 135 S. Ct. 1765 (2015) (holding that police officers were entitled to immunity from suit under § 1983 because controlling precedent at the time of the incident did not clearly require them to accommodate the petitioner's mental illness before reentering her room).[6]

**Deference to the administrative agency**

***Young v. United Parcel Service, Inc.*, 135 S. Ct. 1338 (2015)**

*Young v. United Parcel Service* is most noted for establishing standards for proving discrimination under the Pregnancy Discrimination Act. However, the opinion also includes notable discussion concerning the circumstances under which the Court will defer to the interpretation of an administrative agency.

Peggy Young worked for UPS when she became pregnant and her doctor advised her not to lift more than 20 pounds. UPS required its workers to be able to lift up to 70 pounds of weight, and it refused Ms. Young's request that she be allowed to lift lighter weights under an accommodation that UPS allowed for workers injured on the job. She sued UPS under the Pregnancy Discrimination Act (PDA), which requires employers to treat "women affected by pregnancy ... the same for all employment-related purposes ... as other persons not so affected but similar in their ability or inability to work." 42 U.S.C. § 2000e(k). The lower courts granted summary judgment for UPS, but the Supreme Court reversed in a 6-3 vote.

Ms. Young and the United States argued that the PDA requires an employer to provide the same accommodations to workplace disabilities caused by pregnancy that it provides to workplace disabilities that have other causes but have similar effects on the ability to work. However, the Court refused to grant such a "most-favored-nation" status for pregnant women that would essentially allow them to obtain an accommodation based on their pregnancy without proving they were being discriminated against

[6] Justices Scalia, joined by Justice Kagan, concurred in part and dissented in part. In addition to the question addressed by the majority, the Court had also granted certiorari to decide whether the ADA requires police officers to provide accommodation "to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody"—a question over which there is a circuit split. However, San Francisco did not pursue the ADA question. Justice Scalia said the Court should not have decided this "bait-and switch" case at all, stating, "I would not encourage future litigants to seek review premised on arguments they never plan to press, secure in the knowledge that once they find a toehold on this Court's docket, we will consider whatever workaday arguments they choose to present in their merits briefs. " 135 S. Ct. at 1779 (Scalia, J., dissenting).

because of their pregnancy. *Id*. at 1349. In rejecting this argument, the Court discussed when deference is to be given to the interpretation of an administrative agency.

Deference is a favorite subject of the Supreme Court. Over the years, the Court has announced three major types of deference:

- *Chevron* deference, which requires a reviewing court to giving controlling weight to an administrative agency's reasonable construction of a statute if Congress has not directly spoken to the precise question at issue, *see Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984);

- *Skidmore* deference, which entitles agency statements to respect, but only to the extent they have the power to persuade, *Skidmore v. Swift & Company*, 323 U.S. 134 (1944); and

- *Aue*r deference, which provides for the reviewing court to defer to the agency's interpretation of its own regulation if the regulation is ambiguous, *see Auer v. Robbins*, 519 U.S. 452, 461, 462 (1997).

*Young v. UPS* considers *Skidmore* deference. The issue arose in connection with a July 2014 guideline issued by the EEOC that instructs employers to treat pregnancy-related disabilities like non-pregnancy-related disabilities. 135 S. Ct. 1351-52 (discussing 2 EEOC Compliance Manual § 626-1(A)(5), p. 626:0009 (July 2014), which states: "An employer may not refuse to treat a pregnant worker the same as other employees who are similar in their ability or inability to work by relying on a policy that makes distinctions based on the source of an employee's limitations (e.g., a policy of providing light duty only to workers injured on the job."); *Id.* (giving the refusal to grant a 20-pound lifting accommodation as an example of disparate treatment that would violate the PDA). Notably, the Solicitor General argued that the Court should give this EEOC guidance controlling weight, but the Supreme Court, citing *Skidmore*, refused.

The Court noted that, under *Skidmore*, the weight given to an agency judgment "will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors that give it power to persuade, if lacking power to control." 135 S. Ct. at 1352 (quoting *Skidmore*, 323 U.S. at 140). While acknowledging that the EEOC has no lack of experience and informed judgment, the Court found that the 2014 guideline lacked the "timing, consistency, and thoroughness of consideration" necessary to give it power to persuade. *Id.* Specifically, the Count noted, the guideline was promulgated in 2014 after certiorari was granted in *Young.* The guideline took a position over which previous guidelines were silent, and the position was inconsistent with that advocated by the government in the past. Moreover, the EEOC did not explain the basis for the 2014 guidance. *Id.* at 1352. With all these questions surrounding the issuance of the guidance, the Court held that is could not rely on the EEOC's determination.

But while Ms. Young and the United States did not entirely prevail on their legal arguments, the Court did not dismiss their claims as UPS requested. Rather, the Court established the framework for how PDA discrimination claims filed by pregnant workers are to be adjudicated and remanded the case to be decided under these standards. *Id.* at 1353-55.

**Other cases of note**

**Certiorari denied**. Of course, the Court denied the vast majority of petitions for certiorari, including:

- *Fortyune v. City of Lomita*, 766 F.3d 1098 (9th Cir. 2014), *cert denied*, 2014 WL 407488 (Jun. 29, 2015) (allowing plaintiff to proceed with suit alleging that a public entity violated the Americans with Disabilities Act and the California Disabled Persons Act by failing to provide handicap accessible parking in its on-street diagonal stalls; holding the broad, comprehensive language of the ADA "bring[s] within its scope anything a public entity does")

- *Mayhew v. Burwell*, 772 F.3d 80 (1st Cir. 2014 ), *cert. denied*, 2015 WL 686884 (Jun. 8, 2015) (upholding constitutionality of 42 U.S.C. § 1396a(gg), an ACA Medicaid maintenance of effort provision that requires Medicaid-participating states to maintain eligibility standards for children until October 1, 2019 and rejecting argument that the MOE provision was unconstitutionally coercive under *National Federal of Independent Business v. Sebelius*, 132 S Ct. 2566 (2012)).

**Conclusion and advocacy tips**

Even as they resolve some disputes, cases decided this term are sure to generate new litigation. In the coming months, advocates should:

1. Watch for additional ACA litigation. *King v. Burwell* has settled questions about the availability of premium tax credits. Yet, hundreds of cases remain open in the lower courts. Cases that are particularly worth watching include: *United States House of Representatives v. Burwell,* No. 1:14-cv-01967 (D.D.C. Complaint filed Nov. 21, 2014). The House is alleging that the Administration is illegally paying ACA cost sharing reductions without an express congressional appropriation. (In addition to premium tax credits, the ACA makes some lower-income people eligible for assistance with their cost sharing).

   Two appellate courts have rejected arguments that the ACA is unconstitutional because its enactment violated the Origination Clause (which requires bills that raise revenue to originate in the House of Representatives). *See Sissel v. U.S. Dep't of Health & Human Servs.*, 760 F.3d 1 (D.C. Cir. 2014); *Hotze v. Burwell*, 784 F.3d 984 (5th Cir. 2015). Contraceptive coverage cases continue to work their way through the court.

To date, all five appellate courts to have decided the question after the Court issued its ruling in *Burwell v. Hobby Lobby Stores, Inc*., 134 S. Ct. 2751 (2014) (concerning small for-profit entities), have rejected arguments by non-profit religiously affiliated entities that they are substantially burdened by HHS's accommodations of their religious beliefs with respect to the ACA's contraceptive coverage requirements. See *Little Sisters for the Poor Home for the Aged v. Burwell*, No. 13-1540 (10th Cir. July 14, 2015) (ECF No. 01019459253); *Wheaton College v. Burwell*, No. 14-2396, 2015 WL 3988356 (7th Cir. Jul. 1, 2015); *E. Tex. Baptist Univ. v. Burwell*, Nos. 14-20112, 14-10241, 14-40212, 14-10661, 2015 WL 3852811 (5th Cir. June 22, 2015); *Univ. of Notre Dame v. Burwell*, 786 F.3d 606, 612 (7th Cir. 2015); *Geneva Coll. v. Sec'y U.S. Dep't of Health & Human Servs*., 778 F.3d 422, 436 (3d Cir. 2015); *Priests for Life v. U.S. Dep't of Health & Human Servs*., 772 F.3d 229 (D.C. Cir. 2014).

The Supreme Court has entered orders in some of the pending contraception appeals, but it is not clear what, if anything, those orders mean for the Court ultimately deciding to hear another contraceptive coverage case.[7] Perhaps Chief Justice Roberts' parting words in *King* have signaled that most of the justices are ready to move beyond ACA litigation: "Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them. If at all possible, we must interpret the Act in a way that is consistent with the former, and avoid the latter." 2014 WL 2473448, at *15.

2. Beware of the fall-out from the *Armstrong*, in terms of litigation advocacy (*i.e.*, pleading a cause of action) and administrative advocacy (*i.e.*, addressing inadequate Medicaid payment rates). After *Armstrong*, Medicaid-participating health care providers cannot enforce the Medicaid payment provision against states in federal court. On its face, this is a narrow ruling about health care providers and about a rate setting provision of one federal statute; however, some state attorneys may seek to stretch the boundaries of the *Armstrong* holding. Indeed, it remains to be seen whether and, if so, how this case will affect the ability of other plaintiffs to obtain relief in federal court (*e.g.*, Medicaid beneficiaries), other defendants (*e.g*., the Secretary of HHS) and other provisions of federal law (e.g. other Medicaid provisions, other federal laws).

[7] The Court granted injunctions pending appeal in two suits brought by religious non-profit organization. *See Wheaton Coll. v. Burwell*, 134 S. Ct. 2806 (2014); *Little Sisters of the Poor*, 134 S. Ct. 1022 (2014). In a third suit, the Court declined to recall or stay a circuit court mandate in favor of the Government, but granted an injunction to religious non-profit organizations pending final disposition of their petition for certiorari. *See Zubik v. Burwell*, Nos. 14A1065, 14-1418, 2015 WL 3947586, at *1 (U.S. June 29, 2015).

3. Take care when filing cases under 42 U.S.C. § 1983. Section 1983 continues to be a minefield for disability and health advocates. *Armstrong* does not concern private enforcement under § 1983; however, that may not keep state attorneys from citing *Armstrong* as the grounds for dismissing claims brought under § 1983. Thus, It will be critical to carefully consider § 1983 enforcement of a Medicaid Act provision. Do not seek to enforce provisions that have a poor enforcement track record, and do not ask a judge to apply a provision to facts in novel ways, unsupported by the direct words of the statute and discussion in the case law.

   *City of Shelby* clarified that § 1983 complaints will not be held to strict pleading standards when setting forth the legal claims. The Court also signaled that lower courts should not apply overly demanding factual pleading standards under *Iqbal* and *Twombly*; rather, simple, concise, and direct allegations will do. But while heightened pleading is not required when invoking a § 1983 claim, the best practice is for the plaintiff to invoke 42 U.S.C. § 1983 in the complaint--both as an aspect of the jurisdictional statement (*i.e.*, including an allegation that jurisdiction rests under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4)) and in the claims for relief (*i.e*., noting that the constitutional and/or rights-creating federal statutory provisions that form the legal basis for the suit are enforceable under 42 U.S.C. § 1983).

4. Continue to pay close attention to whether deference is being given to agency statements. While there is some internal debate about the extent to which the judiciary should defer to the executive branch, on balance, this is not a Supreme Court that is hesitant to accord *Chevron* deference to the formal interpretations of administrative agencies. Yet, members of the Court are questioning the continued viability of the lesser forms of *Skidmore* and *Auer* deference. *See*, *e.g*., *Christensen v. Harris Co.*, 529 U.S. 576, 589 (2000) (Scalia, J., concurring) (labelling *Skidmore* deference an "anachronism" from an era that ended with *Chevron*). The Court did not grapple with the vitality of *Skidmore* in *Young v. UPS*; however, that does not mean that the debate is over.

5. Monitor activities at the Supreme Court. The Court is already taking cases for its next term, and some of these will be of interest to health and disabilities advocates. This includes two cases taken from the Ninth Circuit:

   - *Campbell-Ewald Company v. Gomez*, 135 S. Ct. 2311 (May 18, 2015) (No. 14-857): (1) Whether a case becomes moot, and thus beyond the judicial power of Article III, when the plaintiff receives an offer of complete relief on his claim; (2) whether the answer to the first question is any different when the plaintiff has asserted a class claim under Federal Rule of Civil Procedure 23, but receives an offer of complete relief before any class is certified.

- *Spokeo v. Robins*, 135 S. Ct. 1892 (Apr. 27, 2015) (No. 13-1339): Whether Congress may confer Article III standing upon a plaintiff who suffers no concrete harm, and who therefore could not otherwise invoke the jurisdiction of a federal court, by authorizing a private right of action based on a bare violation of a federal statute.(The Petition for Certiorari listed statutes what would be affected by the ruling and included the ADA, the Fair Housing Act and ERISA, see Pet. for a Writ of Cert., 2014 WL 1802228 (May 1, 2014)).

And, it includes the following case from the Second Circuit:

- *Gobeille v. Liberty Mutual Insurance Company*, No. 14-181, 2015 WL 2473478 (Jun. 29, 2015): Whether the Second Circuit – in a two-to-one panel decision that disregarded the considered opinion advanced by the United States as amicus – erred in holding that the Employee Retirement Income Security Act of 1974 (ERISA) preempts Vermont's health care database law as applied to the third-party administrator for a self-funded ERISA plan.