Market pulse

July 2018

Elza A. Carter

Senior Municipal Analyst
Foresters Financial

Recent Supreme Court rulings and their impact on state governments

The Supreme Court of the United States has recently rendered a number of decisions that may potentially have significant impacts on state and local governments. We highlight three such cases below.

- **Janus v. American Federation of State, County, and Municipal Employees (AFSCME):** The Court ruled that agency fees (also known as fair-share fees) collected by unions from non-union members in the public sector violate the First Amendment of the Constitution. Essentially, non-union members will no longer be forced to pay union dues, which impacts public workers across 22 states that allow the collection of agency fees from non-union members.

  What does that mean? In a post-Janus world, government unions appear poised to lose members, money, and likely political influence, due to the loss of non-member fees. As a result, some state and local governments may now have more flexibility in their decisions regarding benefits and compensation that unions had previously secured for their memberships which have, at times, exacerbated governments' fixed costs and taxpayers' financial burdens.[1] From a fiscal perspective, this ruling looks positive for state governments. Early reporting suggests that unions will attempt to seek a way around this ruling, so close monitoring of this matter is recommended.

- **South Dakota v. Wayfair, Inc.:** The Court ruled that states may charge taxes on purchases made from out-of-state sellers, even if the seller does not have a physical presence in the taxing state. While the majority of states that impose sales taxes have already expanded their sales tax collection authority to sellers without a brick and mortar location, it is likely states will need to make changes to their sales tax laws to allow for tax collection of internet purchases.[2] Many states have adopted a system that standardizes the approach to these taxes in order to reduce administrative and compliance costs.[3]

  What does that mean? This new-found source of revenue is likely to help state finances overall, as there is an expectation of a modest increase in state revenues in the short term. Further out, there is the potential for e-commerce revenue to increase faster than more traditional revenue sources, potentially leading to a sizable increase in aggregated sales tax revenues. Finally, these "new" revenues could possibly provide states with the flexibility to earmark funds for several needs, such as pension funding. We would add that there is some interest by a group of lawmakers to look into the possibility of seeking a Congressional decision to modify this ruling, so there may be more to this story.

- **Murphy v. National Collegiate Athletic Association (NCAA):** The Court favored the State of New Jersey and its current governor in its attempt to have the Professional and Amateur Sports Protection Act overturned, striking down federal law that prohibited sports gambling for those states that did not already permit such activity at that time. This essentially meant the majority of the states would be excluded. Hence, state-sponsored sports betting is now legal.

  What does that mean? The State of New Jersey, as well as its local governments, are expected to benefit from this new revenue source. It also will allow Atlantic City casinos to diversify their gambling operations. Overall, this could be a substantial windfall for New Jersey as more than $15 billion was wagered nationally on both the Super Bowl and NCAA men's basketball tournament in 2016, with nearly all of it being placed illegally.[4] And, not to be overlooked, other states may impose new or modify their existing gambling laws to potentially benefit from this court ruling as well.

Foresters Financial

[1] "Pensions in the Trenches: Are Rising City Pension Costs Crowding Out Public Services?"; Anzia, Sarah F. University of California, Berkley, 8/17.
[2] Tax Foundation, No. 579, "31 States Tax Internet Sellers Without Physical Presence; Congress Considers Action Before Wayfair Case Expands It to All"; Bishop-Henchman, Joseph, 3/18.
[3] Streamlined Sales and Use Tax Agreement, streamlinedsalestax.org, 5/3/18.
[4] American Gaming Association, 1/30/18.

A final word

Owing to the *Janus* ruling, public sector unions may now feel it necessary to increase their education and promotion efforts with both existing and potential members. With access to online taxes, a number of states are likely to widen their reach and seek to obtain access to formerly excluded tax sources. Investors in state-specific, tax exempt municipal funds should be aware of these developments, particularly in New Jersey which, given the NCAA verdict, may see a positive impact on the state's financial position in the months ahead.

Foresters Financial