

## Supreme Court rulings on Oklahoma cases to have lasting impact, legal scholars say

By: Wayne Greene, *World Senior Writer* – July 23, 2013

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Two cases with Oklahoma ties decided by the U.S. Supreme Court this year will help define legal thinking for the future, state Solicitor General Patrick Wyrick told a gathering of attorneys Monday night.

Wyrick was part of a three-person panel that spoke about 2013 Supreme Court decisions to the local lawyers' chapter of the Federalist Society. Joining Wyrick on the panel were Ilya Shapiro, editor-in-chief of the Cato Institute Supreme Court Review, and James McDonald, visiting professor at the University of Tulsa College of Law.

The high court's unanimous decision that Texas cannot take water from Oklahoma without the state's consent was a huge victory for the state, Wyrick said.

"We take our sovereignty pretty seriously, and the idea that another state can come in here and take our most important natural resource is kind of a big deal," he said.

Attorneys for a Fort Worth-area water district had argued that a particular reading of one portion of a multistate agreement on use of water in the Red River drainage area gave the Texas community a right to any water in that area for its own use.

The Supreme Court ruled that the agreement did not specifically give other states rights to take water outside their border and that without that specific authority, the water would stay under Oklahoma's control, Wyrick said.

The high court's recent decision in the so-called Baby Veronica case also has big implications in the state, he said.

The case involves a custody dispute between a potential adoptive family in South Carolina and the child's biological father in Oklahoma.

During a period when the child's father was not a part of her life, the biological mother gave the girl up for adoption, and the South Carolina couple raised the girl for her first 27 months of life.

Subsequently, the father, a member of the Cherokee Nation, argued that he should be allowed to raise the girl, asserting rights under the Indian Child Welfare Act.

The South Carolina Supreme Court agreed with the father's reading of the federal law and granted him custody, but the U.S. Supreme Court overruled the South Carolina court's reading of the law.

The high court ruled that the law did not apply to the Baby Veronica case because the girl wasn't

part of an existing Indian family prior to the state court's decision.

Despite the Supreme Court decision, the dispute over the child continues in courts in Oklahoma and South Carolina and in the Cherokee Nation.

Wyrick said the high court's decision may force reconsideration of Oklahoma statutes based on the Indian Child Welfare Act and remold the way some future custody cases are considered.

The emotional and difficult case is a troubling one for everyone involved, Wyrick said.

"This is as bad a case as you can have factually," Wyrick said "There were no winners in this case. Everybody was going to be a loser."

Shapiro reviewed some of the highest-profile decisions from the Supreme Court, including a higher education affirmative action decision and a case that overturned a portion of the federal Defense of Marriage Act.

Anyone who thought the Supreme Court would allow legal waters to calm after its 2012 decision upholding most of the Affordable Care Act was wrong, Shapiro said.

"If you thought you were going to get a breather after last year's contentious term, well, sorry to disappoint," he said.

McDonald reviewed three criminal cases decided by the court, including one that broadened the ability of police to take DNA evidence from people who are under arrest but not convicted of any crimes.

Wyrick said another Oklahoma case - a challenge to a state law severely limiting the use of RU-486, a drug than can cause abortions - could become one of the highest-profile cases next year.

Shortly before recessing, the high court took up the case but also sent questions to the Oklahoma Supreme Court for clarification on details of the law.