

Supreme Court Review

Virgin Islands Conference St. Croix, Virgin Islands February 24, 2020

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October Term 2018

I. Criminal cases

A. Fourth Amendment

Mitchell v. Wisconsin, 139 S.Ct. 2525 (2019). There are almost always exigent circumstances that justify the police taking blood from an unconscious motorist without a warrant.

B. Due process

Flowers v. Mississippi, 139 S.Ct. 2228 (2019). *Batson v. Kentucky* was violated when the same prosecutor struck 41 of 42 African-American jurors over six trials involving the same defendant.

C. Sixth Amendment

United States v. Haymond, 139 S.Ct. 2369 (2019). The U.S. Court of Appeals for the 10th Circuit was correct in holding “unconstitutional and unenforceable” the portions of 18 U.S.C. § 3583(k) that required the district court to revoke the respondent’s 10-year term of supervised release, and to impose five years of reimprisonment, following its finding by a preponderance of the evidence that the respondent violated the conditions of his release by knowingly possessing child pornography.

II. First Amendment

A. Speech

Iancu v. Brunetti, 139 S.Ct. 2294 (2019). Section 2(a) of the Lanham Act’s prohibition on the federal registration of “immoral” or “scandalous” marks is facially invalid under the free speech clause of the First Amendment.

Nieves v. Bartlett, 139 S.Ct. 1715 (2019). Probable cause generally defeats a First Amendment retaliatory-arrest claim under 42 U.S.C. § 1983.

B. Religion

American Legion v. American Humanist Association; Maryland-National Capital Park and Planning Commission v. American Humanist Association, 139 S.Ct 2067 (2019). The establishment clause does not require the removal or destruction of a 93-year-old memorial to American servicemen who died in World War I solely because the memorial bears the shape of a cross.

III. Voting rights

Rucho v. League of Women Voters, 139 S.Ct. 2484 (2019). Challenges to partisan gerrymandering are non-justiciable political questions.

IV. Federalism

Franchise Tax Board of California v. Hyatt, 139 S.Ct. 1485 (2019). *Nevada v. Hall*, which permitted a sovereign state to be haled into another state's courts without its consent, is overruled.

Knick v. Township of Scott, Pennsylvania, 139 S.Ct. 2162 (2019). *Williamson County Regional Planning Commission v. Hamilton Bank*, which required property owners to exhaust state court remedies to ripen federal takings claims, is overruled.

V. Administrative law

Gundy v. United States, 139 S.Ct. 2116 (2019). The federal Sex Offender Registration and Notification Act's delegation of authority to the attorney general to issue regulations under 42 U.S.C. § 16913 does not violate the nondelegation doctrine.

Department of Commerce v. New York, 139 S.Ct. 2551 (2019). The secretary of the Department of Commerce did not violate the enumeration clause or the Census Act in deciding to reinstate a citizenship question on the 2020 census questionnaire, but the district court was warranted in remanding the case back to the agency where the evidence tells a story that does not match the secretary's explanation for his decision.

October Term 2019

I. Abortion rights

June Medical Services LLC v. Gee, 905 F.3d 787 (5th Cir. 2018). Whether the U.S. Court of Appeals for the 5th Circuit's decision upholding Louisiana's law requiring physicians who perform abortions to have admitting privileges at a local hospital conflicts with the Supreme Court's binding precedent in *Whole Woman's Health v. Hellerstedt*.

Gee v. June Medical Services LLC, 905 F.3d 787 (5th Cir. 2018). (1) Whether abortion providers can be presumed to have third-party standing to challenge health and safety regulations on behalf of their patients absent a "close" relationship with their patients and a "hindrance" to their patients' ability to sue on their own behalf; and (2) whether objections to prudential

standing are waivable – per the U.S. Courts of Appeals for the 4th, 5th, 7th, 9th, 10th and Federal Circuits – or non-waivable per the U.S. Courts of Appeals for the D.C., 2nd, and 6th Circuits.

II. Civil Rights Litigation

A. Employment discrimination

Zarda v. Altitude Express, Inc., 883 F.3d 100 (2nd Cir. 2018) (en banc). Consolidated with *Bostock v. Clayton County, Georgia*, 723 Fed.Appx. 964 (11th Cir. 2018).

Whether the prohibition in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1), against employment discrimination “because of . . . sex” encompasses discrimination based on an individual’s sexual orientation.

R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission, 884 F.3d 560 (6th Cir. 2018).

Whether Title VII prohibits discrimination against transgender people based on (1) their status as transgender or (2) sex stereotyping under *Price Waterhouse v. Hopkins*.

B. Section 1981

Comcast Corp. v. National Association of African American-Owned Media
National Association of African American-Owned Media v. Comcast Corp., 743 F. Appx. 106 (9th Cir. 2019).

Whether a claim of race discrimination under 42 U.S.C. § 1981 fails in the absence of but-for causation.

III. Criminal cases -- Fourth Amendment

Kansas v. Glover, 422 P.3d 64 (Kansas 2018). Whether, for purposes of an investigative stop under the Fourth Amendment, it is reasonable for an officer to suspect that the registered owner of a vehicle is the one driving the vehicle absent any information to the contrary.

Torres v. Madrid, 769 Fed.Appx. 654 (10th Cir. 2019). Whether an unsuccessful attempt to detain a suspect by use of physical force is a “seizure” within the meaning of the Fourth Amendment, as the U.S. Courts of Appeals for the 8th, 9th and 11th Circuits and the New Mexico Supreme Court hold, or whether physical force must be successful in detaining a suspect to constitute a “seizure,” as the U.S. Court of Appeals for the 10th Circuit and the District of Columbia Court of Appeals hold.

IV. Deferred Action for Childhood Arrivals

Department of Homeland Security v. Regents of the University of California, 908 F.3d 476 (9th Cir. 2018); *Batalla Vidal v. Nielsen*, 291 F. Supp. 3d 260, 279–81 (E.D.N.Y. 2018); *Trump v. NAACP*, 298 F.Supp.3d 209 (D.D.C. 2018).

(1) Whether the Department of Homeland Security’s decision to wind down the Deferred Action for Childhood Arrivals policy is judicially reviewable; and (2) whether DHS’s decision to wind down the DACA policy is lawful.

V. Free exercise of religion

Espinoza v. Mont. Dep't of Rev., 393 Mont. 446 (2018)

Whether it violates the religion clauses or the equal protection clause of the United States Constitution to invalidate a generally available and religiously neutral student-aid program simply because the program affords students the choice of attending religious schools.

FNU Tanzin v. Tanvir, 894 F.3d 449 (2d Cir. 2018). Whether the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb, permits suits seeking money damages against individual federal employees.

Our Lady of Guadalupe School v. Morrissey Beru, 769 Fed.Appx. 460 (9th Cir. 2019); *St. James School v. Biel*, 911 F.3d 603 (9th Cir. 2018). Whether the First Amendment's religion clauses prevent civil courts from adjudicating employment-discrimination claims brought by an employee against her religious employer, when the employee carried out important religious functions.

VI. Intellectual property

Google LLC v. Oracle America, 886 F.3d 1179 (Fed. Cir. 2018). (1) Whether copyright protection extends to a software interface; and (2) whether, as the jury found, the petitioner's use of a software interface in the context of creating a new computer program constitutes fair use.

VII. Personal jurisdiction

Ford Motor Co. v. Bandemer, 931 N.W.2d 744 (Minn. S.Ct. 2019). Whether the "arise out of or relate to" requirement of the 14th Amendment's due process clause is met when none of the defendant's forum contacts caused the plaintiff's claims, such that the plaintiff's claims would be the same even if the defendant had no forum contacts. *Ford Motor Co. v. Montana Eighth Judicial District Court*, 443 P.3d 407 (Mont. S.Ct. 2019). Whether the "arise out of or relate to" requirement for a state court to exercise specific personal jurisdiction over a nonresident defendant under *Burger King Corp. v. Rudzewicz* is met when none of the defendant's forum contacts caused the plaintiff's claims, such that the plaintiff's claims would be the same even if the defendant had no forum contacts.

VIII. Presidential power

Trump v. Deutsche Bank. Whether the Committee on Financial Services and the Intelligence Committee of the U.S. House of Representatives have the constitutional and statutory authority to issue a subpoena to creditors for President Donald Trump and several of his business entities demanding private financial records belonging to the president.

Trump v. Mazars USA. Whether the Committee on Oversight and Reform of the U.S. House of Representatives has the constitutional and statutory authority to issue a subpoena to the accountant for President Trump and several of his business entities demanding private financial records belonging to the president.

Trump v. Vance. Whether a grand-jury subpoena served on a custodian of the president's personal records, demanding production of nearly 10 years' worth of the president's financial papers and his tax returns, violates Article II and the Supremacy Clause of the Constitution.

IX. Second Amendment

New York State Rifle and Pistol Ass'n, Inc. v. Cuomo, 804 F.3d 242 (2d Cir. 2015).

Whether New York City's ban on transporting a licensed, locked and unloaded handgun to a home or shooting range outside city limits is consistent with the Second Amendment, the commerce clause and the constitutional right to travel.