

Supreme Court: October Terms 2017 and 2018

Virgin Islands Conference

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I. Criminal cases

A. Fourth Amendment

Byrd v. United States, 138 S.Ct. 1518 (2018). A driver has a reasonable expectation of privacy in a rental car when he has the renter's permission to drive the car but is not listed as an authorized driver on the rental agreement.

United States v. Carpenter, 138 S.Ct. 2206 (2018). The warrantless seizure and search of historical cellphone records revealing the location and movements of a cellphone user over the course of 127 days is not permitted by the Fourth Amendment.

Collins v. Virginia, 138 S.Ct. 1663 (2018). The Fourth Amendment's automobile exception does not permit the warrantless entry of a home or its curtilage in order to search a vehicle therein.

Mitchell v. Wisconsin, 914 N.W.2d 151 (Wis. 2018), *cert. granted*, 139 S.Ct. ____ (2019). Whether a statute authorizing a blood draw from an unconscious motorist provides an exception to the Fourth Amendment warrant requirement.

B. Sixth Amendment right to counsel.

McCoy v. Louisiana, 138 S.Ct. 1500 (2018). The Sixth Amendment guarantees a defendant the right to choose the objective of his defense and to insist that his counsel refrain from admitting guilt, even when counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty.

C. Double jeopardy

Gamble v. United States, 694 F. App'x. 750 (11th Cir. 2017), *cert. granted*, 138 S.Ct. 2707 (2018). Whether the Supreme Court should overrule the "separate sovereigns" exception to the double jeopardy clause.

II. First Amendment

A. Speech

Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission, 138 S.Ct. 1719 (2018). The Colorado Civil Rights Commission's actions in assessing a cakeshop owner's reasons for declining to make a cake for a same-sex couple's wedding celebration violated the free exercise clause because of the expression of hostility to religion.

National Institute of Family and Life Advocates v. Becerra, 138 S.Ct. 2361 (2018). Whether the disclosures required by the California Reproductive FACT Act violate the protections set forth in the free speech clause of the First Amendment, applicable to the states through the 14th Amendment.

Janus v. American Federation, 138 S.Ct. 2448 (2018). Abood v. Detroit Board of Education is overruled. Non-union members cannot be forced to pay the share of the union dues that support the collective bargaining activities of the union.

Iancu v. Brunetti, 877 F.3d 1330 (Fed. Cir. 2018), *cert. granted*, 139 S.Ct. ____ (2019). Whether 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.

B. Religion

American Legion v. American Humanist Association; Maryland-National Capital Park and Planning Commission v. American Humanist Association, 874 F.3d 195 (4th Cir. 2018), *cert. granted*, 139 S.Ct. ____ (2018). Whether the establishment clause requires 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. Immigration

Trump v. Hawaii, 138 S.Ct. 2392 (2017). President Trump's proclamation limiting immigration from eight designated countries is consistent with federal law and does not violate the Establishment Clause of the First Amendment.

IV. Voting rights

Gill v. Whitford, 138 S.Ct. 1916 (2018). Challenge to partisan gerrymandering in Wisconsin is dismissed for lack of standing.

Rucho v. Common Cause, 318 F. Supp. 3d 777 (M.D.N.C. 2018), *cert. granted*, 139 S.Ct. ____ (2019). (1) Whether plaintiffs have standing to press their partisan gerrymandering claims; (2) whether plaintiffs' partisan gerrymandering claims are justiciable; and (3) whether North Carolina's 2016 congressional map is, in fact, an unconstitutional partisan gerrymander.

Lamone v. Benisek, 2018 WL 5816831 (D.Md. 2018), *cert. granted*, 139 S.Ct. ____ (2019). In case in which the plaintiffs allege that a Maryland congressional district was gerrymandered to retaliate against them for their political views: (1) whether the various legal claims articulated by the three-judge district court are unmanageable; (2) whether the three-judge district court erred when, in granting plaintiffs’ motion for summary judgment, it resolved disputes of material fact as to multiple elements of plaintiffs’ claims, failed to view the evidence in the light most favorable to the non-moving party, and treated as “undisputed” evidence that is the subject of still-unresolved hearsay and other evidentiary objections; and (3) whether the three-judge district court abused its discretion in entering an injunction despite the plaintiffs’ years-long delay in seeking injunctive relief, rendering the remedy applicable to at most one election before the next decennial census necessitates another redistricting.

V. Federalism

Franchise Tax Board of California v. Hyatt, 407 P.3d 717 (Nev. 2017), *cert. granted*, 138 S.Ct. 2710 (2018). Whether *Nevada v. Hall*, which permits a sovereign state to be haled into another state’s courts without its consent, should be overruled.

Timbs v. Indiana, 84 N.E.3d 1179 (Ind. 2017), *cert. granted*, 138 S.Ct. 2650 (2018). Whether the Eighth Amendment’s excessive fines clause is incorporated against the states under the Fourteenth Amendment.

VI. Federal statutes

Epic Systems v. Lewis, 138 S.Ct. 1612 (2018) Congress has instructed in the Federal Arbitration Act that arbitration agreements providing for individualized proceedings must be enforced, and neither the Arbitration Act’s saving clause nor the National Labor Relations Act suggests otherwise.