

11<sup>th</sup> Annual D. Brook Bartlett Lectures  
United States District Court for the Western District of Missouri  
Kansas City, Missouri

Supreme Court Review: October Term 2010

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Erwin Chemerinsky  
Dean and Distinguished Professor of Law,  
University of California, Irvine School of Law

Ken Starr  
President  
Baylor University

**I. Criminal procedure**

A. Fourth Amendment

Kentucky v. King, 131 S.Ct. 1349 (2011). Warrantless entry to prevent the destruction of evidence is allowed where police do not create the exigency through actual or threatened Fourth Amendment violation

Davis v. United States, 131 S.Ct. \_\_\_\_ (June 16, 2011). Evidence is admissible under the good-faith exception to the exclusionary rule when it is discovered during a search that was conducted in objectively reasonable reliance on existing Fourth Amendment precedent, but subsequent to the search, that precedent is overturned by the Court.

B. Fifth Amendment privilege against self-incrimination

J.D.B. v. North Carolina, 131 S.Ct. \_\_ (June 16, 2011). In determining whether a statement complied with the *Miranda* requirements governing custodial interrogation, the age of a suspect may be taken into consideration in determining whether a reasonable person in the juvenile's position would have felt he was free to terminate the police questioning.

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<sup>1</sup> This handout includes decisions through Monday, June 20, 2011. Cases decided of that date are underlined; cases still pending as of that date are in italics.

### C. Sixth Amendment: Confrontation Clause

Michigan v. Bryant, 131 S.Ct. 1143 (2011). Statement to police by gravely wounded person identifying and describing of the shooter and the location of the shooting were not testimonial statements because they had a “primary purpose ... to enable police assistance to meet an ongoing emergency.” Therefore, their admission at trial did not violate the Confrontation Clause.

*Bullcoming v. New Mexico*, 147 N.M. 487, 226 P.3d 1 (2010), *cert. granted*, 131 S.Ct. 62 (2010). Does the Confrontation Clause permit the prosecution to introduce a forensic laboratory report through the in-court testimony of a supervisor or other person who did not perform or observe the report?

### D. Sixth Amendment: Right to Counsel

Turner v. Rogers, 131 S.Ct. \_\_\_ (June 20, 2011). Due process does not automatically require that the state provide counsel at civil contempt proceedings even if the individual faces incarceration so long as there are adequate procedural safeguards. In this case, due process was violated because there was neither counsel provided nor adequate procedural safeguards.

### E. Habeas corpus

Cullen v. Pinholster, 131 S.Ct. 1388 (2011). A federal court on habeas corpus is limited to the evidence that was before the state court in deciding whether to give relief under 28 U.S.C. §2254(d)(1).

## II. Civil procedure

### A. Class actions

AT & T Mobility v. Concepcion, 131 S.Ct. 1740 (2011). The Federal Arbitration Act preempts a California court decision that held that a class ban embedded in an arbitration clause is unenforceable.

Wal-Mart Stores, Inc. v. Dukes, 131 S.Ct. \_\_\_ (June 20, 2011). The certification of an employment discrimination class action involving millions of female Wal-Mart employees throughout the United States violated the Rule 23(a) threshold class certification requirements for commonality, typicality, and adequacy. Wal-

Mart is entitled to an individual determination of claims for back pay.

## B. Standing

Arizona Christian School Tuition Organization v. Winn, 131 S.Ct. 1436 (2011). Taxpayers lack standing to challenge a state law program providing tax credits for tuition for parochial schools as violating the Establishment Clause of the First Amendment.

Bond v. United States, 131 S.Ct. \_\_\_\_ (2011). An individual does have standing to raise a claim that a federal law violates the Tenth Amendment.

## C. Bankruptcy proceedings

*Stern v. Marshall*, 600 F.3d 1037 (9<sup>th</sup> Cir. 2010), *cert. granted*, 131 S.Ct. 63 (2010). Whether a claim of tortious interference is a “core” matter, or is it only “related to” the bankruptcy case, so it was not an issue that the bankruptcy court could decide in a final way.

## III. First Amendment: Freedom of Speech

Snyder v. Phelps, 131 S.Ct. 1207 (2011). Liability for intentional infliction of emotional distress and intrusion on to seclusion violates the First Amendment for those who held anti-gay and anti-lesbian demonstrations at funerals of those who died in the military.

*Schwarzenegger v. Entertainment Merchants Ass’n*, 556 F.3d 950 (9<sup>th</sup> Cir. 2009), *cert. granted*, 130 S.Ct. 2398 (2010). Whether a law prohibiting the sale or rental of violent videogames to those under 18 without parental approval violates the First Amendment.

Borough of Duryea v. Guarnieri, 131 S.Ct. \_\_\_\_ (June 20, 2011). A government employee may bring a claim for violation of the First Amendment right to petition government for redress of grievances unless the speech involves a matter of public concern.

*Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 611 F.3d 510 (9<sup>th</sup> Cir. 2010), *cert. granted*, 131 S.Ct. 644 (2010). Does Arizona’s public financing system, which provides matching funds to a participating candidate roughly equal to the spending by his or her opponent and the opponent’s supporter’s, suppress

speech by nonparticipating candidates and their supporters in violation of the First Amendment?

*Sorrell v. IMS Health, Inc.*, *Cert. granted*, 131 S.Ct. 857 (2011). Does the First Amendment trump a statute which restricts access to non-public prescription drug records and allows physicians the right to refuse to allow their identifying information to be sold or used for marketing purposes?

#### **IV. Civil rights litigation**

##### **A. Employment discrimination**

Thompson v. North American Stainless, 131 S.Ct. 863 (2011). The federal law's prohibition against retaliation against those filing a complaint of employment discrimination also forbids an employer from inflicting reprisals on a third party, such as a spouse, family member, or fiancé.

Staub v. Proctor Hospital, 131 S.Ct. 1186 (2011). When a supervisor is motivated by an impermissible animus (in this instance an anti-military bias) and that is the proximate cause of an adverse employment action, there is a basis for liability.

##### **B. Local government immunity**

Los Angeles County v. Humphries, 131 S.Ct. 447 (2011). Suing a local government for declaratory or injunctive relief requires proof of a municipal policy or custom.

Connick v. Thompson, 131 S.Ct. 1350 (2011). A local government cannot be held liable on a theory of deliberate indifference for a single instance of a failure of its officers to comply with the requirements of *Brady v. Maryland*.

##### **C. Religious Land Use and Institutionalized Persons Act**

Sossamon v. Texas, 131 S.Ct. 1651 (2011). A state government or state official cannot be sued for money damages for violating the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §2000cc.

##### **D. Prison litigation**

Brown v. Plata, 131 S.Ct. 1910 (2011). The federal court had authority to order

the release of prisoners as a remedy for prison overcrowding which resulted in a violation of the Eighth Amendment through deliberate indifference to the medical needs of prisoners.

#### E. Qualified immunity

Camretta v. Greene, 131 S.Ct. 1910 (2011). A party which prevails on qualified immunity grounds may nonetheless appeal a ruling against it on constitutional grounds.

Ashcroft v. Al-Kidd, 131 S.Ct. \_\_\_\_ (2011). The Attorney General is protected by qualified immunity when sued for money damages for improperly detaining an individual under the material witness statute.

#### V. Preemption

Bruesewitz v. Wyeth LLC, 131 S.Ct. 1068 (2011). The National Childhood Vaccine Injury Act (NCVIA) preempts all design-defect claims against vaccine manufacturers brought by plaintiffs who seek compensation for injury or death caused by vaccine side effects.

Williamson v. Mazda Motors of America, 131 S.Ct. 1131 (2011). The Federal Motor Vehicle Safety Standard giving auto manufacturers choice of installing either simple lap belts or lap-and-shoulder belts on rear inner seats did not preempt state tort law claims

Chamber of Commerce of US v. Whiting, 131 S.Ct. 1968 (2011). Provision of Arizona law allowing suspension and revocation of business licenses fell within Immigration Reform and Control Act's (IRCA) savings clause. Provision of Arizona law allowing suspension and revocation of business licenses was not impliedly preempted for conflicting with federal law. Arizona law's requirement that every employer verify the employment eligibility of hired employees through a specific Internet-based system did not conflict with federal law.

American Electric Power v. Connecticut, 131 S.Ct. \_\_\_\_ (June 20, 2011). A suit by eight states, New York City, and three private land trusts against five private power companies and the federal Tennessee Valley Authority for nuisance under federal common law for greenhouse gas emissions is precluded by the federal Clean Air Act and the EPA's actions.