

Supreme Court Review*

Bartlett Lecture

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I. Criminal Law and Procedure

A. Fourth Amendment

Utah v. Streiff, 136 S.Ct. ____ (June 20, 2016). Evidence seized incident to a lawful arrest on an outstanding warrant should not be suppressed when the warrant was discovered during an investigatory stop later found to be unlawful. Discovery of a valid, pre-existing, and untainted arrest warrant attenuated the connection between the unconstitutional investigatory stop and the evidence seized incident to a lawful arrest.

Bernard v. Minnesota, 859 N.W.2d 762 (Mn. 2015), *cert. granted*, 136 S.Ct. 615 (Dec. 15, 2015). Whether, in the absence of a warrant, a state may make it a crime for a person to refuse to take a chemical test to detect the presence of alcohol in the person's blood.

B. Eighth Amendment

Montgomery v. Louisiana, 136 S.Ct. 718 (2016). Miller v. Alabama adopts a new substantive rule that applies retroactively on collateral review to people sentenced to life without possibility of parole for crimes committed as juveniles.

C. Vagueness and the Armed Career Criminal Act

Welch v. United States, 136 S.Ct. 1257 (2016). Johnson v. United States announced a new substantive rule of constitutional law that applies retroactively to cases that are on collateral review.

D. Due process

Williams v. Pennsylvania, 136 S.Ct. ____ (June 9, 2016). Under the Due Process Clause, there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case.

* This handout is current through the decisions issued on Monday, June 20, 2016.

Foster v. Chatman, 136 S.Ct. 1737 (2016). (1) The Court has jurisdiction to review the judgment of the Georgia Supreme Court denying Timothy Foster a certificate of probable cause on his claim, under *Batson v. Kentucky*, that the state's use of peremptory challenges to strike all four black prospective jurors qualified to serve on the jury for his capital murder trial was racially motivated; and (2) the decision of the Georgia Supreme Court that Foster failed to show purposeful discrimination was clearly erroneous.

II. Constitutional rights

A. Freedom of Speech

Friedrichs v. California Teachers Association, 136 S.Ct. 1083 (2016). Affirmed by an evenly divided Court. (1) Whether *Abood v. Detroit Board of Education* should be overruled and public-sector “agency shop” arrangements invalidated under the First Amendment; and (2) whether it violates the First Amendment to require that public employees affirmatively object to subsidizing nonchargeable speech by public-sector unions, rather than requiring that employees affirmatively consent to subsidizing such speech.

Heffernan v. City of Patterson, 136 S.Ct. 1412 (2016). The First Amendment bars the government from demoting a public employee based on a supervisor's perception that the employee supports a political candidate.

B. Voting

Evenwel v. Abbott, 136 S.Ct. 1120 (2016). The “one-person, one-vote” principle under the Equal Protection Clause allows States to use total population, and does not require States to use voter population, when apportioning state legislative districts.

C. Reproductive rights

Zubik v. Burwell, 136 S.Ct. 1557 (2016). Whether the HHS contraceptive-coverage mandate and its “accommodation” violate the Religious Freedom Restoration Act by forcing religious nonprofits to act in violation of their sincerely held religious beliefs, when the government has not proven that this compulsion is the least restrictive means of advancing any compelling interest. Case remanded to the Courts of Appeals for possible settlement.

Whole Women's Health v. Cole, 790 F.3d 563 (5th Cir. 2015), *cert. granted*, 136 S.Ct. 499 (2015). 1) Whether, when applying the “undue burden” standard of *Planned Parenthood v. Casey*, a court errs by refusing to consider whether and to what extent laws that restrict abortion for the stated purpose of promoting health actually serve the government's interest in promoting health; and (2) whether the Fifth Circuit erred in concluding that this standard permits Texas to enforce, in nearly all circumstances, laws

that would cause a significant reduction in the availability of abortion services while failing to advance the State's interest in promoting health - or any other valid interest.

D. Equal protection

Fisher v. University of Texas, Austin, 758 F.3d 633 (5th Cir. 2014), *cert. granted*, 135 S.Ct. 2888 (2015). Whether the Fifth Circuit's re-endorsement of the University of Texas at Austin's use of racial preferences in undergraduate admissions decisions can be sustained under this Court's decisions interpreting the Equal Protection Clause of the Fourteenth Amendment, including *Fisher v. University of Texas at Austin*

III. Civil rights statutes

CRST Van Expedited, Inc. v. EEOC, 136 S.Ct. 1642 (2016). A favorable ruling on the merits is not a necessary predicate to find that a defendant is a prevailing party

Green v. Brennan, 136 S.Ct. 1769 (2016). When there is a constructive discharge claim, the "matter alleged to be discriminatory" includes the employee's resignation and the 45-day clock for a constructive discharge begins running only after the employee resigns.

IV. Executive power

United States v. Texas, 809 F.3d 134 (5th Cir. 2015), *cert. granted*, 136 S.Ct. 906 (2016). (1) Whether a state that voluntarily provides a subsidy to all aliens with deferred action has Article III standing and a justiciable cause of action under the Administrative Procedure Act (APA) to challenge the Secretary of Homeland Security's guidance seeking to establish a process for considering deferred action for certain aliens because it will lead to more aliens having deferred action; (2) whether the guidance is arbitrary and capricious or otherwise not in accordance with law; (3) whether the guidance was subject to the APA's notice-and-comment procedures; and (4) whether the guidance violates the Take Care Clause of the Constitution, Article II, section 3.