

D. Brook Bartlett Lectures  
United States District Court for the Western District of Missouri  
June 22, 2018

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## I. Criminal law and procedure

### A. Fourth Amendment

Byrd v. United States, 138 S.Ct. \_\_\_\_ (May 14, 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, 819 F.3d 880 (6<sup>th</sup> Cir. 2016), *cert. granted*, 137 S.Ct. 2211 (2017). Whether 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 permitted by the Fourth Amendment.

Collins v. Virginia, 138 S.Ct. \_\_\_\_ (May 29, 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.

District of Columbia v. Wesby, 138 S.Ct. 577 (2018). (1) The police officers had probable cause to arrest several partygoers who later sued for false arrest under the Fourth Amendment and District of Columbia law, and (2) the officers are entitled to qualified immunity.

### B. Sixth Amendment right to counsel.

McCoy v. Louisiana, 138 S.Ct. \_\_\_\_ (May 14, 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.

## II. First Amendment

Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission, 138 S.Ct. \_\_\_\_ (June 4, 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.

Janus v. American Federation, 851 F.3d 746 (7<sup>th</sup> Cir. 2017), *cert. granted*, 138 S.Ct. 54 (2017). Whether Abood v. Detroit Board of Education should be overruled and public-sector "agency shop" arrangements invalidated under the First Amendment.

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\* This handout was prepared on June 18, 2018.

*National Institute of Family and Life Advocates v. Bacerra*, 839 F.3d 823 (9<sup>th</sup> Cir, 2017), *cert. granted*, 138 S.Ct. 446 (2017). 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.

*Minnesota Voters Alliance v. Mansky*, 138 S.Ct. \_\_\_\_ (June 14, 2018). Minnesota statute Section 211B.11, which broadly bans all political apparel at the polling place, is facially overbroad under the First Amendment.

*Lozman v. City of Riviera Beach, Florida*, 138 S.Ct. \_\_\_\_ (June 18, 2018). The existence of probable cause does not defeat a First Amendment retaliatory-arrest claim as a matter of law.

### **III. Voting rights**

*Gill v. Whitford*, 138 S.Ct. \_\_\_\_ (June 18, 2018). Plaintiffs lacked standing to challenge partisan gerrymandering of the Wisconsin legislature.

*Benisek v. Lamone*, 138 S.Ct. \_\_\_\_ (June 18, 2018). District court did not err in denying a preliminary injunction against the partisan gerrymandering.

### **IV. Immigration**

*Sessions v. DiMaya*, 138 S.Ct. \_\_\_\_ (2018). 18 U.S.C. 16(b), as incorporated into the Immigration and Nationality Act's provisions governing an alien's removal from the United States, is unconstitutionally vague.

*Trump v. Hawaii*, 878 F.3d 622 (2017), *cert. granted*, 138 S.Ct. 923 (2018). (1) Whether the respondents' challenge to the president's suspension of entry of aliens abroad is justiciable; (2) whether the proclamation – which suspends entry, subject to exceptions and case-by-case waivers, of certain categories of aliens abroad from eight countries that do not share adequate information with the United States or that present other risk factors – is a lawful exercise of the president's authority to suspend entry of aliens abroad; (3) whether the global injunction barring enforcement of the proclamation's entry suspensions worldwide, except as to nationals of two countries and as to persons without a credible claim of a bona fide relationship with a person or entity in the United States, is impermissibly overbroad; and (4) whether the proclamation violates the establishment clause of the Constitution.

### **V. Federalism**

*Murphy v. NCAA*, 138 S.Ct. \_\_\_\_ (May 14, 2018). Provisions of the Professional and Amateur Sports Protection Act that prohibit state authorization and licensing of sports gambling schemes violate the Constitution's anticommandeering rule; no other PASPA provisions are severable from the provisions at issue.

*South Dakota v. Wayfair, Inc.*, 901 N.W.2d 754 (2017), *cert. granted*, 138 S.Ct. 735 (2018). Whether the Supreme Court should abrogate *Quill Corp. v. North Dakota*'s sales-tax-only, physical-presence requirement.