

Supreme Court: October Term 2018*
Bartlett Lecture
United States District Court for the Western District of Missouri
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I. Criminal cases

A. Fourth Amendment

Mitchell v. Wisconsin, 914 N.W.2d 151 (Wis. 2018), *cert. granted*, 139 S.Ct. 915 (2019). Whether a statute authorizing a blood draw from an unconscious motorist provides an exception to the Fourth Amendment warrant requirement.

B. Double jeopardy

Gamble v. United States, 139 S.Ct. ____ (2019). The “separate sovereigns” exception to the double jeopardy clause is reaffirmed

C. Eighth Amendment

Bucklew v. Precythe, 139 S.Ct. 1112 (2019). *Baze v. Rees* and *Glossip v. Gross* govern all Eighth Amendment challenges alleging that a method of execution inflicts unconstitutionally cruel pain; Russell Bucklew’s as-applied challenge to Missouri’s single-drug execution protocol -- that it would cause him severe pain because of his particular medical condition -- fails to satisfy the *Baze-Glossip* test.

D. Due process

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

E. Sixth Amendment

United States v. Haymond, 139 S.Ct. ____ (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

* This handout was prepared on Wednesday, June 26, and includes the decisions through that day. Cases in italics had not yet been decided when the handout was prepared.

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. ____ (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. ____ (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. Common Cause, 318 F. Supp. 3d 777 (M.D.N.C. 2018), *probable jurisd. noted*, 139 S.Ct. 782 (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), *probable jurisd. noted*, 139 S.Ct. 782 (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.

IV. Federalism

Timbs v. Indiana, 139 S.Ct. 682 (2019). The Eighth Amendment’s excessive fines clause is incorporated against the states under the Fourteenth Amendment.

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. ____ (2019). *Williamson County Regional Planning Commission v. Hamilton Bank* that 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. ____ (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.

Kisor v. Wilkie, 139 S.Ct. ____ (2019) The Supreme Court does not overrule *Auer v. Robbins* and *Bowles v. Seminole Rock & Sand Co.*, which direct courts to defer to an agency's reasonable interpretation of its own ambiguous regulation.

Department of Commerce v. New York, 2019 WL 190285, *cert. granted*, 139 S.Ct. 953 (2019). (1) Whether the district court erred in enjoining the secretary of the Department of Commerce from reinstating a question about citizenship to the 2020 decennial census on the ground that the secretary's decision violated the Administrative Procedure Act, 5 U.S.C. 701 et seq; and (2) whether, in an action seeking to set aside agency action under the APA, a district court may order discovery outside the administrative record to probe the mental processes of the agency decisionmaker -- including by compelling the testimony of high-ranking executive branch officials -- without a strong showing that the decisionmaker disbelieved the objective reasons in the administrative record, irreversibly prejudged the issue, or acted on a legally forbidden basis.

VI. Civil rights

Fort Bend County, Texas v. Davis, 139 S.Ct. 1843 (2019). Title VII's administrative-exhaustion requirement is not a jurisdictional prerequisite to suit; it is a waivable claim-processing rule.