

October Term 2006 - Pending Merits Cases

*Meredith v. Jefferson County*

05-915 CA6

In tandem with 05-908

Categories: Civil Rights Non-Business Constitutional School Diversity

Timeline: Pet: 1/23/2006 Grant: 6/5/2006 Arg: 12/4/2006 Dec:

Disposition: Res: Auth:

(1) Should *Grutter v. Bollinger* and *Regents of University of California v. Bakke* and *Gratz v. Bollinger* be overturned and/or misapplied by the Jefferson County Board of Education to use race as the sole factor to assign students to the regular (non-traditional) schools in the Jefferson County public schools? (2) Whether the race-conscious Student Assignment Plan with mechanical and inflexible quota systems of not less than 50% of African American students without individually or holistic review of any student, meets the 14th Amendment requirement of the use of race which is a compelling interest narrowly tailored with strict scrutiny? (3) Did the District Court abuse and/or exceed its remedial judicial authority in maintaining desegregative attractiveness in the public schools of Jefferson County, Kentucky?

Parents Involved v. Seattle School

05-908 CA9

In tandem with 05-915

Categories: Civil Rights Non-Business Constitutional School Diversity

Timeline: Pet: 1/20/2006 Grant: 6/5/2006 Arg: 12/4/2006 Dec:

Disposition: Res: Auth:

(1) How are the Equal Protection rights of public high school students affected by the jurisprudence of *Grutter v. Bollinger* and *Gratz v. Bollinger*? (2) Is racial diversity a compelling interest that can justify the use of race in selecting students for admission to public high schools? (3) May a school district that is not racially segregated and that normally permits a student to attend any high school of her choosing deny a child admission to her chosen school solely because of her race in an effort to achieve a desired racial balance in particular schools, or does such racial balancing violate the Equal Protection Clause of the 14th Amendment?

Washington v. Wash. Edu. Assoc.

05-1657 S. Ct. of Wash.

Consol. with 05-1589

Categories: Civil Rights Non-Business Constitutional First Amendment

Timeline: Pet: 6/14/2006 Grant: 9/26/2006 Arg: 1/10/2007 Dec:

Disposition: Res: Auth:

Where state law does not prohibit the practice, collective bargaining agreements may contain a union security provision, which requires employees, who are not members of the union, to pay an agency shop fee to the union as a condition of employment. *Abood v. Detroit Board of Education*, 431 U.S. 209 (1986), held that, to protect these nonmembers' First Amendment rights, the union is prohibited from using these fees to support its political agenda if the nonmember objects (opt-out). Wash. Rev. Code § 42.17.760 provides additional protection for nonmembers by requiring them to affirmatively consent (opt-in) before their fees may be used for political purposes.

Does the requirement in Wash. Rev. Code § 42.17.760 that nonmembers must affirmatively consent (opt-in) before their fees may be used to support the union's political agenda violate the union's First Amendment rights?

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*Davenport* v. *Wash. Edu. Assoc.*

05-1589 S. Ct. Wash.

Consol. with 05-1657

Categories: Civil Rights Non-Business Constitutional First Amendment

Timeline: Pet: 6/13/2006 Grant: 9/26/2006 Arg: 1/10/2007 Dec:

Disposition: Res: Auth:

I. Do labor union officials have a First Amendment right to seize and use for politics the wages of employees who have chosen not to become union members?

II. Does a state campaign finance law that prohibits labor unions and their officials from seizing and using the wages of nonmembers for partisan political campaigns without obtaining the nonmembers' affirmative consent violate the First Amendment rights of labor unions?

Rita v. *US*

06-5754 CA4

Categories: Criminal Non-Business Constitutional Sentencing

Timeline: Pet: 7/28/2006 Grant: 11/3/2006 Arg: 2/20/2007 Dec:

Disposition: Res: Auth:

1) Was the district court's choice of within-Guidelines sentence reasonable?

2) In making that determination, is it consistent with *United States v. Booker*, 543 U. S. 220 (2005), to accord a presumption of reasonableness to within-Guidelines sentences?

3) If so, can that presumption justify a sentence imposed without an explicit analysis by the district court of the 18 U. S.C. Sec. 3553(a) factors and any other factors that might justify a lesser sentence?.

Hein v. *Freedom From*

06-157 CA7

Categories: Civil Rights Non-Business Constitutional First Amendment

Timeline: Pet: 8/1/2006 Grant: 12/1/2006 Arg: 2/28/2007 Dec:

Disposition: Res: Auth:

Whether taxpayers have standing under Article III of the Constitution to challenge on Establishment Clause grounds the actions of Executive Branch officials pursuant to an Executive Order, where the plaintiffs challenge no Act of Congress, the Executive Branch actions at issue are financed only indirectly through general appropriations, and no funds are disbursed to any entities or individuals outside the government.

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*Wilkie v. Robbins*

06-219 CA10

Categories: General Civil Business Statutory Takings

Timeline: Pet: 8/11/2006 Grant: 12/1/2006 Arg: 3/19/2007 Dec:

Disposition: Res: Auth:

1. Whether government officials acting pursuant to their regulatory authority can be guilty under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 et seq., of the predicate act of extortion under color of official right for attempting to obtain property for the sole benefit of the government and, if so, whether that statutory prohibition was clearly established.

2. Whether respondent's Bivens claim based on the exercise of his alleged Fifth Amendment rights is precluded by the availability of judicial review under the Administrative Procedure Act, 5 U.S.C. 701 et seq., or other statutes for the kind of administrative actions on which his claim is based.

3. Whether the Fifth Amendment protects against retaliation for exercising a "right to exclude" the government from

Morse v. Frederick

06-278 CA9

Categories: Civil Rights Non-Business Constitutional Freedom of Speech

Timeline: Pet: 8/28/2006 Grant: 12/1/2006 Arg: 3/19/2007 Dec:

Disposition: Res: Auth:

1. Whether the First Amendment allows public schools to prohibit students from displaying messages promoting the use of illegal substances at school-sponsored, faculty-supervised events.

2. Whether the Ninth Circuit departed from established principles of qualified immunity in holding that a public high school principal was liable in a damages lawsuit under 42 U.S.C. § 1983 when, pursuant to the school district's policy against displaying messages promoting illegal substances, she disciplined a student for displaying a large banner with a slang marijuana reference at a school-sponsored, faculty-supervised event.

Leegin Creative v. PSKS

06-480 CA5

Categories: General Civil Business Statutory Antitrust

Timeline: Pet: 10/4/2006 Grant: 12/7/2006 Arg: 3/26/2007 Dec:

Disposition: Res: Auth:

This Court has held that antitrust "per se rules are appropriate only for conduct that . . . would always or almost always tend to restrict competition." Modern economic analysis establishes that vertical minimum resale price maintenance does not meet this condition because the practice often has substantial competition-enhancing effects. The question presented is whether vertical minimum resale price maintenance agreements should be deemed per se illegal under Section 1 of the Sherman Act, or whether they should instead be evaluated under the rule of reason.

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*Bowles* v. *Russell*

06-5306 CA6

Categories: Criminal Non-Business Statutory Criminal Procedure

Timeline: Pet: 7/18/2006 Grant: 12/7/2006 Arg: 3/26/2007 Dec:

Disposition: Res: Auth:

Whether an appellate court may sua sponte dismiss an appeal which has been filed within the time limitations authorized by a district court after granting a motion to reopen the appeal time under Rule 4(a)(6) of the Federal Rules of Appellate Procedure.

CSFB v. *Billing*

05-1157 CA2

Categories: General Civil Business Statutory Antitrust

Timeline: Pet: 3/8/2006 Grant: 12/7/2006 Arg: 3/27/2007 Dec:

Disposition: Res: Auth:

Whether, in a private damages action under the antitrust laws challenging conduct that occurs in a highly regulated securities offering, the standard for implying antitrust immunity is the potential for conflict with the securities laws or, as the Second Circuit held, a specific expression of congressional intent to immunize such conduct and a showing that the SEC has power to compel the specific practices at issue.

Tellabs v. *Makor*

06-484 CA7

Categories: General Civil Business Statutory Securities Fraud

Timeline: Pet: 10/3/2006 Grant: 1/5/2007 Arg: 3/28/2007 Dec:

Disposition: Res: Auth:

Whether, and to what extent, a court must consider or weigh competing inferences in determining whether a complaint asserting a claim of securities fraud has alleged facts sufficient to establish a "strong inference" that the defendant acted with scienter, as required under the Private Securities Litigation Reform Act of 1995.

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*Powerex v. Reliant*

05-85 CA9

Categories: General Civil Business Statutory Sovereign Immunity

Timeline: Pet: 7/15/2005 Grant: 1/19/2007 Arg: 4/16/2007 Dec:

Disposition: Res: Auth:

1. Whether an entity that is wholly and beneficially owned by a foreign state's instrumentality, and whose sole purpose is to perform international treaty and trade agreement obligations for the benefit of the foreign state's citizens, may nonetheless be denied status as an "organ of a foreign state" under the Foreign Sovereign Immunities Act of 1976 ("FSIA"), 28 U.S.C. § 1603(b)(2), based on an analysis of sovereignty that ignores the circumstances surrounding the entity's creation, conduct, and operations on behalf of its government.

2. Whether an entity is an "organ of a foreign state" under the FSIA when its shares are completely owned by a governmental corporation that, by statute, performs all of its acts as the agent of the foreign sovereign.

EPA v. Defenders of

06-549 CA9

Consol. with 06-340

Categories: General Civil Non-Business Statutory Environmental

Timeline: Pet: 10/23/2006 Grant: 1/5/2007 Arg: 4/17/2007 Dec:

Disposition: Res: Auth:

Whether Section 7(a)(2) of the Endangered Species Act of 1973, 16 U.S.C. 1536(a) (2), which requires each federal agency to insure that its actions do not jeopardize the continued existence of a listed species or modify its critical habitat, overrides statutory mandates or constraints placed on an agency's discretion by other Acts of Congress.

IN ADDITION TO THE QUESTIONS PRESENTED BY THE PETITIONS, THE PARTIES ARE REQUESTED TO BRIEF AND ARGUE THE FOLLOWING QUESTION: "WHETHER THE COURT OF APPEALS CORRECTLY HELD THAT THE ENVIRONMENTAL PROTECTION AGENCY'S DECISION TO TRANSFER POLLUTION PERMITTING AUTHORITY TO ARIZONA UNDER THE CLEAN WATER ACT, SEE 33 U.S.C. §1342(b), WAS ARBITRARY AND CAPRICIOUS BECAUSE IT WAS BASED ON INCONSISTENT INTERPRETATIONS OF SECTION 7(a)(2) OF THE ENDANGERED SPECIES ACT OF 1973, 16 U.S.C. §1536(a)(2); AND, IF SO, WHETHER THE COURT OF APPEALS SHOULD HAVE REMANDED TO

NAHB v. Defenders of

06-340 CA9

Consol. with 06-549

Categories: General Civil Business Statutory Environmental

Timeline: Pet: 9/6/2006 Grant: 1/5/2007 Arg: 4/17/2007 Dec:

Disposition: Res: Auth:

1. Can a court append additional criteria to Section 402(b) of the Clean Water Act that require state NPDES programs to include protections for endangered species?

2. Does Section 7(a)(2) of the Endangered Species Act constitute an independent source of authority, requiring federal agencies to take affirmative action to benefit endangered species even when an agency's enabling statutes preclude such action?

3. Did the Ninth Circuit incorrectly apply the holding of *Department of Transp. v. Public Citizen*, 541 U.S. 752 (2004), in concluding that EPA's approval of Arizona's NPDES permitting program was the legally relevant cause of impacts to endangered species resulting from future private land use activities?

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*TSSAA* v. *Brentwood*

06-427 CA6

Categories: Civil Rights Non-Business Constitutional First Amendment

Timeline: Pet: 9/25/2006 Grant: 1/5/2007 Arg: 4/18/2007 Dec:

Disposition: Res: Auth:

Whether the Sixth Circuit correctly held, in conflict with decisions of this Court and other courts of appeals, that TSSAA violated the First Amendment and Due Process rights of Brentwood Academy when it imposed contractual penalties for violations of the recruiting rule that Brentwood agreed to follow?

Panetti v. *Quaterman*

06-6407 CA5

Categories: Criminal Non-Business Constitutional Death Penalty

Timeline: Pet: 9/6/2006 Grant: 1/5/2007 Arg: 4/18/2007 Dec:

Disposition: Res: Auth:

Does the Eighth Amendment permit the execution of a death row inmate who has a factual awareness of the reason for his execution but who, because of severe mental illness, has a delusional belief as to why the state is executing him, and thus does not appreciate that his execution is intended to seek retribution for his capital crime?

Brendlin v. *California*

06-8120 S. Ct. of CA

Categories: Criminal Non-Business Constitutional Fourth Amendment

Timeline: Pet: 11/28/2006 Grant: 1/19/2007 Arg: 4/23/2007 Dec:

Disposition: Res: Auth:

Whether a passenger in a vehicle subject to a traffic stop is thereby “detained” for purposes of the Fourth Amendment, thus allowing the passenger to contest the legality of the traffic stop.

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*Perm. Mission of* v. *New York*

06-134 CA2

Categories: General Civil Non-Business Statutory Sovereign Immunity

Timeline: Pet: 7/25/2006 Grant: 1/19/2007 Arg: 4/24/2007 Dec:

Disposition: Res: Auth:

1. Does the exception to sovereign immunity for cases “in which ... rights in immovable property situated in the United States are in issue,” 28 U.S.C. § 1605 a) (4), provide jurisdiction for a municipality’s lawsuit seeking to declare the validity of a tax lien on a foreign sovereign’s real property when the municipality does not claim any right to own, use, enter, control or possess the real property at issue?

2. Is it appropriate for U.S. courts to interpret U.S. statutes by relying on international treaties that have not been signed by the U.S. Government and that do not accurately reflect international practice because they have only been signed by a limited number of other nations?

McCain v. *Wisc. Right to Life*

06-970 D. D. C.

Consol. with 06-969

Categories: Civil Rights Non-Business Constitutional Campaign Finance

Timeline: Pet: 1/12/2007 Grant: 1/19/2007 Arg: 4/25/2007 Dec:

Disposition: Res: Auth:

Whether the three-judge district court erred in holding that the federal statutory prohibition on a corporation’s use of general treasury funds to finance “electioneering communications” is unconstitutional as applied to three broadcast advertisements that appellee proposed to run in 2004.

FEC v. *Wisc. Right to Life*

06-969 D. D. C.

Consol. with 06-970

Categories: Civil Rights Non-Business Constitutional Campaign Finance

Timeline: Pet: 1/12/2007 Grant: 1/19/2007 Arg: 4/25/2007 Dec:

Disposition: Res: Auth:

Whether the three-judge district court erred in holding that the federal statutory prohibition on a corporation’s use of general treasury funds to finance “electioneering communications” is unconstitutional as applied to three broadcast advertisements that appellee proposed to run in 2004.