

SCOTUSblog “StatPack”

Edition 4: Following the Orders and Opinions of June 4, 2007

Included in this download:

1. Opinion Authors by Sitting
2. State of the Docket for OT07
3. Decisions by Final Vote (*New)
4. The Court’s Workload (*New)
5. Details and Questions Presented for Pending Cases in OT06
6. Details and Questions Presented for Granted Cases for OT07 (New)

Key Dates for OT06:

3 Remaining Conferences:

- June 7
- June 14
- June 21

Scheduled days for Orders and Opinions (more will likely be added soon):

- June 11
- June 18
- June 25

Opinion Authors by Sitting

Cases in color are pending; cases in red are highest profile outstanding

| OCT | Author | Count | |
|------------------|--------|-------|---|
| Lopez/T-F | DHS | JGR | 1 |
| Belmontes | AMK | JPS | 1 |
| MedImmune | AS | AS | 1 |
| BP America | SAA | AMK | 1 |
| Global Crossing | SB | DHS | 1 |
| Norfolk Southern | JGR | CT | 1 |
| Resendiz-Ponce | JPS | RBG | 1 |
| Cunningham | RBG | SGB | 1 |
| Musladin | CT | SAA | 1 |

| NOV | Author | Count | |
|---------------------|--------|-------|---|
| Haley | RBG | JGR | 1 |
| Williams/Bock | JGR | JPS | 1 |
| Philip Morris | SB | AS | 1 |
| Lawrence | CT | AMK | 1 |
| Bockting | SAA | DHS | 1 |
| Duke Energy | DHS | CT | 1 |
| Wallace | AS | RBG | 1 |
| Marrama | JPS | SB | 1 |
| Burton | PC | SAA | 2 |
| James | SAA | | |
| Pl. Parent./Carhart | AMK | | |

| DEC | Author | Count | |
|-------------------|--------|-------|---|
| Ledbetter | SAA | JGR | 0 |
| Bell Atlantic | DHS | JPS | 1 |
| KSR | AMK | AS | 1 |
| Weyerhaeuser | CT | AMK | 1 |
| Mass v. EPA | JPS | DHS | 1 |
| Watters | RBG | CT | 1 |
| Jeff. County/PICS | | RBG | 1 |
| Rockwell | AS | SB | 1 |
| Duenas-Alvarez | SB | SAA | 1 |

| JAN | Author | Count | |
|--------------------|----------|-------|----|
| United Hauler's | JGR | JGR | 1 |
| Limtiaco | CT | JPS | 2* |
| Landrigan | CT | AS | 0 |
| Sinochem | RBG | AMK | 1 |
| Zuni | SB | DHS | 1 |
| WEA (consol) | | CT | 2 |
| Travelers | SAA | RBG | 1 |
| Safeco/Geico | DHS | SB | 1 |
| Smith | AMK | SAA | 1 |
| Brewer/Abdul-Kabir | JPS (x2) | | |

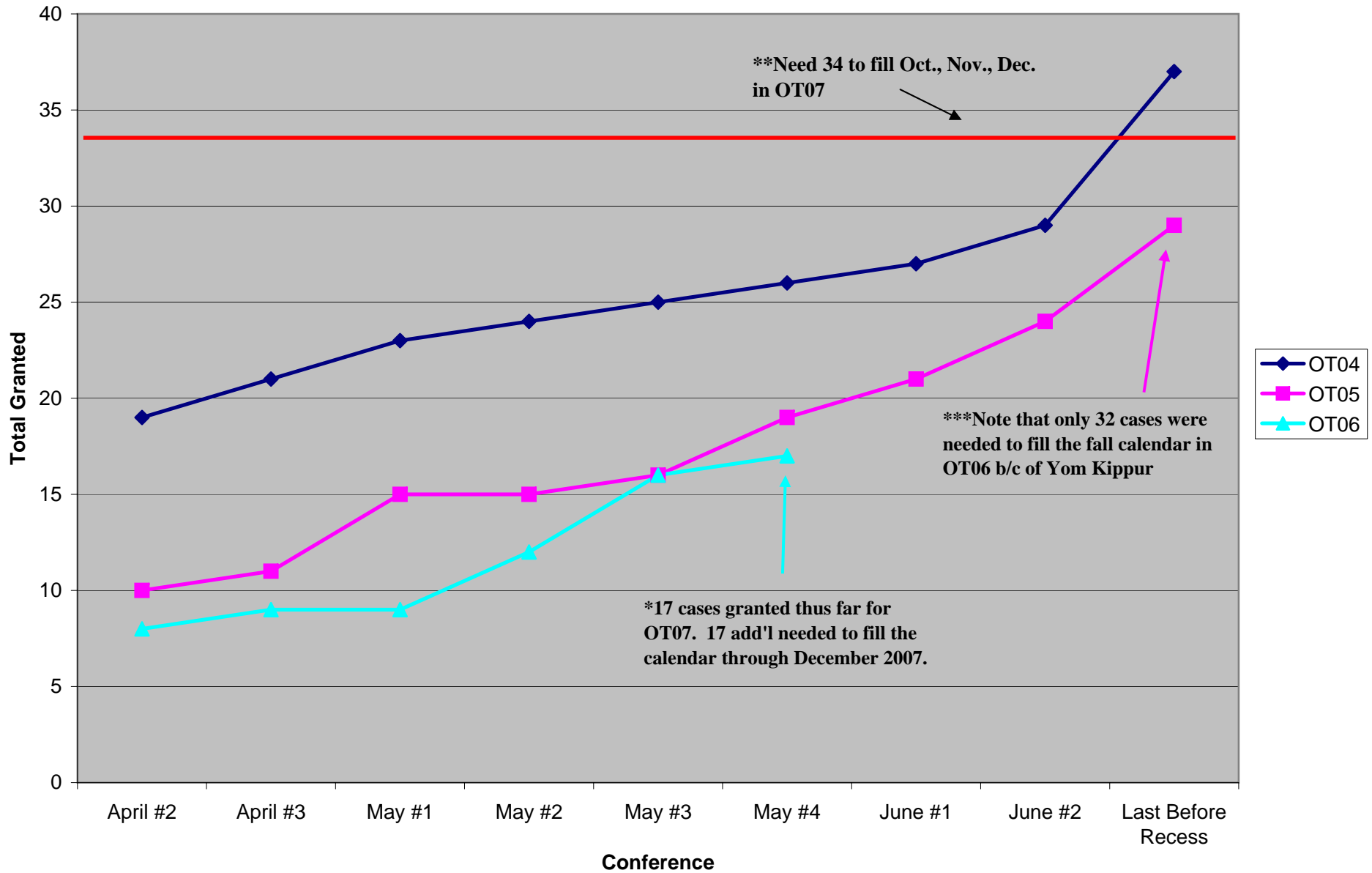
| FEB | Author | Count | |
|------------------|--------|-------|---|
| Claiborne | PC | JGR | 0 |
| Rita | | JPS | 0 |
| AT&T | RBG | AS | 1 |
| EC Term of Years | DHS | AMK | 1 |
| Scott | AS | DHS | 1 |
| Winkelman | AMK | CT | 0 |
| Hein | | RBG | 1 |
| | | SB | 0 |
| | | SAA | 0 |

| MAR | Author | Count | |
|-----------------|--------|-------|---|
| Morse | | JGR | 0 |
| Wilkie | | JPS | 0 |
| Fry | | AS | 0 |
| Weaver | PC | AMK | 0 |
| Leegin Creative | | DHS | 0 |
| Bowles | | CT | 0 |
| CSFB | | RBG | 0 |
| Tellabs | | SB | 0 |
| | | SAA | 0 |

| APR (Wk 1) | Author |
|------------------|--------|
| Powerex | |
| LI Care at Home | |
| Uttecht | AMK |
| Wyner | RBG |
| Def. of Wildlife | |
| TSSAA | |
| Panetti | |
| | |

| APR (Wk 2) | Author | All Apr Count | |
|------------|--------|---------------|---|
| Hinck | JGR | JGR | 1 |
| Atl Rsrch | | JPS | 1 |
| Brendlin | | AS | 0 |
| Beck | | AMK | 1 |
| Perm. Miss | | DHS | 0 |
| Dayton | JPS | CT | 0 |
| Watson | | RBG | 1 |
| McCain/FEC | | SB | 0 |
| | | SAA | 0 |

Granted Cases Heading Into Summer



Note: In OT04, the Court added an additional Conference at the end of June, on the last Monday of the Term, to consider relists. Thus, the final jump of 8 cases reflects the grant of 5 cases in Conference on June 23, 2005 and an additional 3 on June 27, 2005.

OT06 - Decisions by Final Vote

| 9-0 (or unan.) | 8-1 (or 7-1) | 7-2 (or 6-2) | 6-3 (or 5-3) | 5-4 |
|-------------------------|------------------------|------------------------|------------------------|-----------------------|
| 22 (43%) | 6 (12%) | 5 (10%) | 4 (8%) | 14 (27%) |
| <i>Sole</i> | <i>Erickson (PC)</i> | <i>Twombly</i> | <i>Roper (PC)</i> | <i>Uttecht</i> |
| <i>Safeco</i> | <i>Scott</i> | <i>Global Crossing</i> | <i>United Hauler's</i> | <i>Ledbetter</i> |
| <i>Rettele (PC)</i> | <i>MedImmune</i> | <i>Wallace</i> | <i>Cunningham</i> | <i>Schiro</i> |
| <i>Winkelman</i> | <i>Resendiz-Ponce</i> | <i>Osborn</i> | <i>Watters (5-3)</i> | <i>Smith</i> |
| <i>Hinck</i> | <i>Lopez</i> | <i>Rockwell (6-2)</i> | | <i>Brewer</i> |
| <i>EC Term of Yrs</i> | <i>Microsoft (7-1)</i> | | | <i>Abdul-Kabir</i> |
| <i>KSR</i> | | | | <i>James</i> |
| <i>Duke Energy</i> | | | | <i>Carhart</i> |
| <i>Limtiaco</i> | | | | <i>Zuni</i> |
| <i>Travelers</i> | | | | <i>Mass v. EPA</i> |
| <i>Lance (PC)</i> | | | | <i>Marrama</i> |
| <i>Sinochem</i> | | | | <i>PM v. Williams</i> |
| <i>Whorton</i> | | | | <i>Lawrence</i> |
| <i>Weyerhaeuser</i> | | | | <i>Belmontes</i> |
| <i>Jones</i> | | | | |
| <i>Duenas-Alvarez</i> | | | | |
| <i>Norfolk Southern</i> | | | | |
| <i>Burton (PC)</i> | | | | |
| <i>Musladin</i> | | | | |
| <i>Purcell (PC)</i> | | | | |
| <i>Dayton (8-0)</i> | | | | |
| <i>BP America (7-0)</i> | | | | |

| DIG | Otherwise Dismissed |
|-----------------------|---------------------|
| <i>Roper (6-3)</i> | <i>Burton</i> |
| <i>Toledo-Flores*</i> | <i>Dayton</i> |
| | <i>Claiborne</i> |

The per curiam dismissals in *Toledo-Flores* and *Claiborne* are not included in the voting breakdown. The summary reversals in *Rettele*, *Lance*, *Purcell*, and *Erickson* are. A look at which justices form the majority and the minority in all of the cases can be found at: http://dailywrit.com/?page_id=55.

Detailed voting relationships between each pair of justices will be released immediately upon Term's end.

*Note that this issue was decided in *Lopez v. Gonzales*

The Court's Workload in OT06

| | |
|---------------------------------------------------|----|
| Cases Granted or Probable Jurisdiction Noted: | 73 |
| Dismissed Before Argument: | 2 |
| Hours of Argument: | 71 |
| ----- | |
| Argued Merits Cases Disposed of (as of 6/4/07): | 48 |
| Non-merits Dispositions After Argument: | 4 |
| Expected Remaining Merits Opinions: | 22 |
| Expected Merits Opinions in OT06 After Argument*: | 66 |
| Summary Reversals of Non-Argued Cases: | 4 |
| Total Expected Merits Decisions: | 70 |

Notes: These numbers assume that the two school integration cases, which were argued separately, will be decided with one majority opinion; it further assumes that no remaining consolidated cases which were argued in one hour (i.e. the union fees cases, campaign finance cases, and *Defenders of Wildlife*) will be decided with multiple opinions. The total number of expected merits decisions also assumes that no additional summary reversals will be issued.

Thus, the final number of expected merits opinions after argument is calculated by taking the number of cases argued (71), subtracting the per curiam opinions or dismissals (-4), subtracting the number of times that cases argued separately were disposed of with one opinion (-2: *Carhart* and, presumably, the school integration cases), and adding the number of times that cases that were originally consolidated but disposed of with two majority opinions (+1: *Brewer* and *Abdul-Kabir*).

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. *Aboud 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?

October Term 2006 - Pending Merits Cases



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.

October Term 2006 - Pending Merits Cases

*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.

Fry v. Pliker

06-5247 CA9

Categories: Criminal Non-Business Statutory Trial Error

Timeline: Pet: 6/17/2006 Grant: 12/7/2006 Arg: 3/20/2007 Dec:

Disposition: Res: Auth:

If constitutional error in a state trial is not recognized by the judiciary until the case ends up in federal court under 28 U.S.C. § 2254, is the prejudicial impact of the error assessed under the standard set forth in *Chapman v. California*, 386 U.S. 18 (1967), or that enunciated in *Brecht v. Abrahamson*, 507 U.S. 619 (1993)? Does it matter which harmless error standard is employed? And, if the *Brecht* standard applies, does the petitioner or the State bear the burden of persuasion on the question of prejudice?

October Term 2006 - Pending Merits Cases

*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.

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.

October Term 2006 - Pending Merits Cases

*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.

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.

LI Care at Home v. Coke

06-593 CA2

Categories: General Civil Business Statutory Employment

Timeline: Pet: 10/26/2007 Grant: 1/5/2007 Arg: 4/16/2007 Dec:

Disposition: Res: Auth:

1. Whether the Second Circuit erred in refusing to give deference under *Chevron, U.S.A., Inc. v. Natural Res. Def Council, Inc.*, 467 U.S. 837 (1984), to a thirty-yearold Department of Labor regulation—a regulation that has twice been upheld by the Tenth Circuit—on the ground that, even though it was promulgated under express grants of legislative authority and after full notice-and-comment rulemaking, the regulation was contained in a subpart headed “Interpretations.”

2. Whether, in holding that a longstanding Department of Labor regulation was not persuasive and thus undeserving of any deference under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), the Second Circuit erred by failing to address the governing provisions of the Fair Labor Standards Act and by declining to give any weight to the Department’s interpretation of its own regulations.

October Term 2006 - Pending Merits Cases

*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?

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?

October Term 2006 - Pending Merits Cases

*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?

US v. *Atlantic Research*

06-562 CA9

Categories: General Civil Business Statutory Environmental

Timeline: Pet: 10/24/2006 Grant: 1/19/2007 Arg: 4/23/2007 Dec:

Disposition: Res: Auth:

Whether a party that is potentially responsible for the cost of cleaning up property contaminated by hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq., but that does not satisfy the requirements for bringing an action for contribution under Section 113(f) of CERCLA, 42 U.S.C. 9613(f), may bring an action against another potentially responsible party under Section 107(a), 42 U.S.C. 9607(a).

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.

October Term 2006 - Pending Merits Cases



Beck v. Pace Int'l Union 05-1448 CA9

Categories: General Civil Business Statutory ERISA

Timeline: Pet: 5/10/2006 Grant: 1/19/2007 Arg: 4/24/2007 Dec:

Disposition: Res: Auth:

Whether a pension plan sponsor's decision to terminate a plan by purchasing an annuity, rather than to merge the pension plan with another, is a plan sponsor decision not subject to ERISA's fiduciary obligations.

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?

Watson v. Philip Morris 05-1284 CA8

Categories: General Civil Business Statutory Federal Jurisdiction

Timeline: Pet: 4/7/2006 Grant: 1/12/2007 Arg: 4/25/2007 Dec:

Disposition: Res: Auth:

Whether a private actor doing no more than complying with federal regulation is a "person acting under a federal officer" for the purpose of 28 U.S.C. § 1442(a)(1), entitling the actor to remove to federal court a civil action brought in state court under state law.

October Term 2006 - Pending Merits Cases

*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.

October Term 2007 - Merits Cases

Logan v. *US*

06-6911 CA7

Categories: Criminal Non-Business Statutory Armed Career Criminal

Timeline: Pet: 9/29/2006 Grant: 2/20/2007 Top: 5/25/2007 Bot: Arg:

Whether the “civil rights restored” provision of 18 U.S.C. §921(a)(20) applies to a conviction for which a defendant was not deprived of his civil rights thereby precluding such a conviction as a predicate offense under the Armed Career Criminal Act, 18 U.S.C. §924(e)(1)?

NY Bd. of Election v. *Lopez-Torres*

06-766 CA2

Categories: Civil Rights Non-Business Constitutional Election Law

Timeline: Pet: 11/28/2007 Grant: 2/20/2007 Top: 5/7/2007 Bot: Arg:

1. In *American Party of Texas v. White*, 415 U.S. 767 (1974), this Court held that it is “too plain for argument” that a State may require intraparty competition to be resolved either by convention or primary. Did the Second Circuit run afoul of *White* by mandating a primary in lieu of a party convention for the nomination of candidates for New York State trial judge?

2. What is the appropriate scope of First Amendment rights of voters and candidates within the arena of intraparty competition, and particularly where the State has chosen a party convention instead of a primary as the nominating process?

(a) Did the Second Circuit err, as a threshold matter, in applying this Court’s decision in *Storer v. Brown*, 415 U.S. 724 (1974) and related ballot access cases, which were concerned with the dangers of “freezing out” minor party and non-party candidates, to internal party contests?

Watson v. *US*

06-571 CA5

Categories: Criminal Non-Business Statutory Drug Trafficking

Timeline: Pet: 10/23/2006 Grant: 2/26/2007 Top: 5/4/2007 Bot: Arg:

18 U.S.C. § 924(c)(1)(A) criminalizes the “use” of a firearm during and in relation to a drug trafficking offense and imposes a mandatory consecutive sentence of at least five years’ imprisonment. In *Bailey v. United States*, 516 U.S. 137 (1995), this Court held that “use” of a firearm under § 924(c) means “active employment.” *Id.* at 144. The question presented in this case is:

Whether mere receipt of an unloaded firearm as payment for drugs constitutes “use” of the firearm during and in relation to a drug trafficking offense within the meaning of 18 U.S.C. § 924(c)(1)(A) and this Court’s decision in *Bailey*.

October Term 2007 - Merits Cases

NY Sch. Bd. v. Tom F.

06-637 CA2

Categories: Civil Rights Non-Business Statutory IDEA

Timeline: Pet: 11/3/2006 Grant: 2/26/2007 Top: 5/14/2007 Bot: Arg:

Does the holding of the United States Court of Appeals for the Second Circuit, stating that the Individuals with Disabilities Education Act permits tuition reimbursement where a child has not previously received special education from a public agency, stand in direct contradiction to the plain language of 20 U.S.C. § 1412(a)(10)(C)(ii) which authorizes tuition reimbursement to the parents of a disabled child “who previously received special education and related services under the authority of a public agency”?

Wash. v. Wash. St. Rep.

06-730 CA9

Consol. with 06-713

Categories: Civil Rights Non-Business Constitutional Election Law

Timeline: Pet: 11/20/2007 Grant: 2/26/2007 Top: 5/14/2007 Bot: Arg:

In *California Democratic Party v. Jones*, 530 U.S. 567, 585-586 (2000), this Court specified how States could structure a top-two primary system that does not violate the associational rights of a political party. Pursuant to the Initiative power which the People of the State of Washington reserved to themselves in their State Constitution, the voters of the State of Washington enacted a top-two primary law that the Washington State Grange had drafted to comply with Jones. That law makes the State primary a contest to select the two most popular candidates for the November ballot - regardless of party nominations or party selection. That law also allows candidates for certain offices to disclose on the ballot the name of the party (if any) which that candidate personally prefers.

Does the First Amendment prohibit top-two election systems that allow a candidate to disclose on the ballot the name of the party he or she personally prefers?

Wash. St. Grange v. Wash. St. Rep.

06-713 CA9

Consol. with 06-730

Categories: Civil Rights Non-Business Constitutional Election Law

Timeline: Pet: 11/20/2007 Grant: 2/26/2007 Top: 5/14/2007 Bot: Arg:

In *California Democratic Party v. Jones*, 530 U.S. 567, 585-586 (2000), this Court specified how States could structure a top-two primary system that does not violate the associational rights of a political party. Pursuant to the Initiative power which the People of the State of Washington reserved to themselves in their State Constitution, the voters of the State of Washington enacted a top-two primary law that the Washington State Grange had drafted to comply with Jones. That law makes the State primary a contest to select the two most popular candidates for the November ballot - regardless of party nominations or party selection. That law also allows candidates for certain offices to disclose on the ballot the name of the party (if any) which that candidate personally prefers.

Does the First Amendment prohibit top-two election systems that allow a candidate to disclose on the ballot the name of the party he or she personally prefers?

October Term 2007 - Merits Cases

Stoneridge v. *Scientific-Atlanta*

06-43 CA8

Categories: General Civil Business Statutory Securities

Timeline: Pet: 7/26/2006 Grant: 3/26/2007 Top: 6/11/2007 Bot: Arg:

Whether this Court's decision in *Central Bank, N.A. v. First Interstate Bank, N.A.*, 511 U.S. 164 (1994), forecloses claims for deceptive conduct under § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 (a) and (c), 17 C.F.R. 240.10b-5(a) and (c), where Respondents engaged in transactions with a public corporation with no legitimate business or economic purpose except to inflate artificially the public corporation's financial statements, but where respondents themselves made no public statements concerning those transactions.

US v. *Williams*

06-694 CA11

Categories: Criminal Non-Business Constitutional Child Pornography

Timeline: Pet: 11/17/2006 Grant: 3/26/2007 Top: 6/11/2007 Bot: Arg:

Section 2252A(a)(3)(B) of Title 18 (Supp. IV 2004) prohibits "knowingly * * * advertis[ing], promot[ing], present[ing], distribut[ing], or solicit[ing] * * * any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material" is illegal child pornography.

The question presented is whether Section 2252A(a)(3)(B) is overly broad and impermissibly vague, and thus facially unconstitutional.

US v. *Santos*

06-1005 CA7

Categories: Criminal Non-Business Statutory Money Laundering

Timeline: Pet: 1/22/2007 Grant: 4/23/2007 Top: Bot: Arg:

The principal federal money laundering statute, 18 U.S.C. 1956(a)(1), makes it a crime to engage in a financial transaction using the "proceeds" of certain specified unlawful activities with the intent to promote those activities or to conceal the proceeds. The question presented is whether "proceeds" means the gross receipts from the unlawful activities or only the profits, i.e., gross receipts less expenses.

October Term 2007 - Merits Cases

Medellin v. *Texas*

06-984 Tx. Ct. of Cr.

Categories: Criminal Non-Business Constitutional ICJ

Timeline: Pet: 1/16/2007 Grant: 4/30/2007 Top: Bot: Arg:

1. Did the President of the United States act within his constitutional and statutory foreign affairs authority when he determined that the states must comply with the United States' treaty obligation to give effect to the Avena judgment in the cases of the 51 Mexican nationals named in the judgment?

2. Are state courts bound by the Constitution to honor the undisputed international obligation of the United States, under treaties duly ratified by the President with the advice and consent of the Senate, to give effect to the Avena judgment in the cases that the judgment addressed?

Danforth v. *Minnesota*

06-8273 S. Ct. of Minn.

Categories: Criminal Non-Business Constitutional Retroactivity

Timeline: Pet: 12/6/2006 Grant: 5/21/2007 Top: Bot: Arg:

1. Are state supreme courts required to use the standard announced in *Teague v. Lane*, 489 U.S. 288 (1989), to determine whether United States Supreme Court decisions apply retroactively to state-court criminal cases, or may a state court apply state-law- or state-constitution-based retroactivity tests that afford application of Supreme Court decisions to a broader class of criminal defendants than the class defined by *Teague*?

Klein & Co. v. *Bd. of Trade of NY*

06-1265 CA2

Categories: General Civil Business Statutory Commodities Futures

Timeline: Pet: 3/14/2007 Grant: 5/21/2007 Top: Bot: Arg:

Whether the court of appeals erred in concluding that futures commission merchants lack statutory standing to invoke that right of action because, in the court's view, they do not engage in such transactions, despite the statutory requirement that the merchants enter into and execute their transactions on, and subject to the rules of, a board of trade and the fact of the merchants' financial liability for the transactions.

October Term 2007 - Merits Cases

Kentucky v. Davis

06-666 KY Ct. of App.

Categories: General Civil Business Constitutional Municipal Bonds

Timeline: Pet: 11/9/2006 Grant: 5/21/2007 Top: Bot: Arg:

Whether a state violates the dormant Commerce Clause by providing an exemption from its income tax for interest income derived from bonds issued by the state and its political subdivisions, while treating interest income realized from bonds issued by other states and their political subdivisions as taxable to the same extent, and in the same manner, as interest earned on bonds issued by commercial entities, whether domestic or foreign.

Hall Street v. Mattel

06-989 CA9

Categories: General Civil Business Statutory Arbitration

Timeline: Pet: 1/12/2007 Grant: 5/29/2007 Top: Bot: Arg:

Did the Ninth Circuit Court of Appeals err when it held, in conflict with several other federal Courts of Appeals, that the Federal Arbitration Act ("FAA") precludes a federal court from enforcing the parties' clearly expressed agreement providing for more expansive judicial review of an arbitration award than the narrow standard of review otherwise provided for in the FAA?

John R. Sand & v. US

06-1164 CAFed

Categories: General Civil Business Statutory Jurisdiction

Timeline: Pet: 2/26/2007 Grant: 5/29/2007 Top: Bot: Arg:

Whether the court of appeals erred by addressing the timeliness of petitioner's complaint even though the government did not argue on appeal that the suit was barred by the six-year limitations period contained in 28 U.S.C. 2501.

October Term 2007 - Merits Cases

CSX v. *Georgia Bd. of* 06-1287 CA11

Categories: General Civil Business Statutory Tax

Timeline: Pet: 3/23/2007 Grant: 5/29/2007 Top: Bot: Arg:

Whether, under the federal statute prohibiting state tax discrimination against railroads, 49 U.S.C. § 11501(b)(1), a federal district court determining the “true market value” of railroad property must accept the valuation method chosen by the State.

Ali v. *BOP* 06-9130 CA11

Categories: General Civil Non-Business Statutory Sovereign Immunity

Timeline: Pet: 1/25/2007 Grant: 5/29/2007 Top: Bot: Arg:

Under 28 U.S.C. 2680(c), the Federal Tort Claims Act’s waiver of sovereign immunity does not extend to “[a]ny claim arising in respect of * * * the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer.” The question presented, over which ten circuits are divided six-to-four is: Whether the term “other law enforcement officer” is limited to officers acting in a tax, excise, or customs capacity.

FedEx v. *Holowecki* 06-1322 CA2

Categories: General Civil Business Statutory Employment

Timeline: Pet: 3/30/2007 Grant: 6/4/2007 Top: Bot: Arg:

Whether the Second Circuit erred in concluding, contrary to the law of several other circuits and implicating an issue this Court has examined but not yet decided, that an “intake questionnaire” submitted to the Equal Employment Opportunity Commission (“EEOC”) may suffice for the charge of discrimination that must be submitted pursuant to the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. (“ADEA”), even in the absence of evidence that the EEOC treated the form as a charge or the employee submitting the questionnaire reasonably believed it constituted a charge.