

Supreme Court Review: October Term 2016 – Civil

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## I. Constitutional rights

### A. First Amendment

#### 1. Speech

Matal v. Tam, 137 S.Ct. 1744 (2017). The disparagement provision of the Lanham Act, 15 U.S.C. 1052(a), which provides that no trademark shall be refused registration on account of its nature unless it “[c]onsists of . . . matter which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute” is facially invalid under the Free Speech Clause of the First Amendment.

Expressions Hair Design v. Schniederman, 137 S.Ct. 1144 (2017). State no-surcharge laws restrict speech conveying price information; case is remanded to determine constitutionality.

Packingham v. North Carolina, 137 S.Ct. 1730 (2017). Under the court’s First Amendment precedents, a law that makes it a felony for any person on the state’s registry of former sex offenders to “access” a wide array of websites – including Facebook, YouTube, and nytimes.com – that enable communication, expression, and the exchange of information among their users, if the site is “know[n]” to allow minors to have accounts, is unconstitutional.

#### 2. Religion

Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012 (2017). The Free Exercise Clause prohibits a state from denying an otherwise qualified religious entity a public benefit (here, grants to help in the purchase of rubber playground surfaces made from recycled tires) solely because of its religious character. This case involves express discrimination based on religious identity with respect to playground resurfacing. The Court does not address religious uses of funding or other forms of discrimination.

### B. Voting rights

Cooper v. Harris, 137 S.Ct. 1455 (2017). (1) North Carolina’s victory in a similar state-court lawsuit does not dictate the disposition of this case or alter the applicable standard of review; (2) the district court did not err in concluding that race furnished the predominant rationale for District 1’s redesign and that the state’s interest in complying with the Voting Rights Act of 1965 could not justify that consideration of race; and (3) the district court also did not clearly err by finding that race predominated in the redrawing of District 12.

### **C. Takings Clause**

Murr v. Wisconsin, 137 S. Ct. 1933 (2017). In this regulatory takings case, the Court of Appeals of Wisconsin was correct to analyze the lot owners' property as a single unit in assessing the effect of the challenged governmental action on the "parcel as a whole."

### **D. Sexual orientation discrimination**

Pavan v. Smith, 137 S. Ct. 2075 (2017). Having chosen to require the name of the male spouse of a new mother to appear on the child's birth certificate regardless of his biological relationship to the child, Arkansas may not, consistent with Obergefell v. Hodges, 135 S. Ct. 2584 (2015), refuse to issue birth certificates that include the female spouses of women who give birth in the state.

## **II. Civil rights**

### **A. Housing Discrimination**

Bank of American v. City of Miami, 137 S.Ct. 1296 (2017). (1) A city is an "aggrieved person," under the Fair Housing Act and has standing to sue based on its economic losses; and (2) proximate cause requires more than just the possibility that a defendant could have foreseen that the plaintiff might ultimately lose money.

### **B. Availability of suits**

Ziglar v. Abassi, 137 S.Ct. 1843 (2017). The judicially inferred damages remedy under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, should not be extended to the context of this case, which seeks to hold the former Attorney General and Director of the Federal Bureau of Investigation (FBI) personally liable for policy decisions made about national-security and immigration in the aftermath of the September 11, 2001 terrorist attacks.

### **C. Individuals with Disabilities Act**

Andrew F. v. Douglas County, 137 S.Ct. 988 (2017). To meet its substantive obligation under the Individuals with Disabilities Education Act, a school must offer an "individualized education program" reasonably calculated to enable a child to make progress appropriate in light of each child's circumstances.

## **III. Jurisdiction and Procedure**

Goodyear Tire & Rubber Co. v. Haeger, 137 S. Ct. 1178 (2017). When a federal court exercises its inherent authority to sanction bad-faith conduct by ordering a litigant to pay the other side's legal fees, the award is limited to the fees that the innocent party incurred solely because of the misconduct.

TC Heartland LLC v. Kraft Food Group Brands LLC, 137 S. Ct. 1514 (2017). The patent venue statute, 28 U.S.C. § 1400(b), provides that "[a]ny civil action for patent infringement may be

brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.” As applied to domestic corporations, “reside[nce]” in § 1400(b) refers only to the state of incorporation; the amendments to § 1391 did not modify the meaning of § 1400(b) as interpreted in Fourco Glass Co. v. Transmirra Products Corp., 353 U.S. 222 (1957).

Bristol-Myers Squibb Co. v. Superior Court of California, 137 S. Ct. 1773 (2017). California courts lack specific jurisdiction to entertain the claims in this case brought by plaintiffs who are not California residents, because there is an insufficient connection between the forum and the claims at issue.

#### **IV. President Trump’s Travel Ban**

Trump v. International Refugee Assistance Project, 137 S. Ct. 2080 (2017) (per curiam). Both of the federal government’s petitions for certiorari are granted and the cases are consolidated for argument. The government’s applications to stay the injunctions entered by the lower courts are granted to the extent the injunctions prevent enforcement of §§ 2(c) (suspending for 90 days the entry of nationals from six predominantly Muslim countries), 6(a) (suspending all refugee admissions for 120 days), and 6(b) (capping refugee admissions in 2017 at 50,000) with respect to foreign nationals who lack any bona fide relationship with a person or entity in the United States. The injunctions entered by the lower courts are left in place with respect to respondents and those similarly situated.