

## The Supreme Court: Recent and Forthcoming Decisions

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Erwin Chemerinsky

Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science, University of Southern California

### I. Equal protection and due process

Grutter v. Bollinger, 123 S.Ct. 2325 (2003); Gratz v. Bollinger, 123 S.Ct. 2411 (2003). Public colleges and universities may engage in affirmative action and use race as one factor in admissions decisions to benefit minorities. But colleges and universities may not use set-asides or assign additional points to applications by minority students.

Lawrence v. Texas, 123 S.Ct. 2472 (2003). State laws prohibiting private, consensual homosexual activity are unconstitutional. Bowers v. Hardwick is overruled.

Vieth v. Jubelirer, 241 F.Supp.2d 478 (M.D.Pa. 2003), *cert. granted*, 123 S.Ct. 2652 (2003). Does partisan gerrymandering violate equal protection?

### II. Criminal procedure

#### A. Fourth Amendment

United States v. Banks, 123 S.Ct. 521 (2003). Law enforcement officers executing a search warrant for illegal drugs did not violate the Fourth Amendment and 18 U.S.C. §3109 when they forcibly entered a small apartment in the middle of the afternoon 15 to 20 seconds after knocking and announcing their presence.

Maryland v. Pringle, 124 S.Ct. 795 (2003). In a case in which drugs and a roll of cash are found in a passenger compartment of a car with multiple occupants, and all deny ownership, the police had probable cause to arrest any individual in the car.

Illinois v. Lidster, 124 S.Ct. 895 (2004). Police may use a roadblock to gain information about a hit-and-run accident at an intersection and handout flyers, and

may they arrest a driver for driving under the influence of alcohol.

Groh v. Ramirez, 124 S.Ct. 1284 (2004). Search warrant that utterly failed to describe the persons or things to be seized was invalid on its face, notwithstanding that requisite particularized description was provided in search warrant application. Residential search that was conducted pursuant to this facially invalid warrant could not be regarded as "reasonable," though items to be seized were described in search warrant application, and though officers conducting search exercised restraint in limiting scope of search to that indicated in application.

United States v. Flores-Montano, 124 S.Ct. 1582 (2004). Defendant did not have a privacy interest in his vehicle's fuel tank, and thus disassembly of a gas tank as part of a border search does not require reasonable suspicion.

Thornton v. United States, 325 F.3d 189 (4<sup>th</sup> Cir. 2003), cert. granted, 123 S.Ct. 463 (2003). When the police arrest a recent occupant of a vehicle outside of the vehicle, are they precluded from searching the vehicle unless the arrestee was actually or constructively aware of the police before getting out of the vehicle?

Hiibel v. Sixth Judicial Dist. Court of Nevada, 59 P.3d 1201 (Nev. 2002), cert. granted, 124 S.Ct. 430 (2003). Does a state statute requiring a person to identify him or herself when stopped by a police officer violate his or her right to privacy as protected under the Fourth Amendment?

## B. Fifth Amendment

Missouri v. Seibert, 93 S.W.3d 700 (Mo. 2002), cert. granted, 123 S.Ct. 2091 (2003). If the police intentionally question a suspect without administering Miranda warnings and receive a statement, is a subsequent repeating of that statement by the suspect after the administration of Miranda warnings admissible?

United States v. Pattane, 304 F.3d 1013 (10<sup>th</sup> Cir. 2002), cert. granted, 123 S.Ct. 1788 (2003). Does a failure to give a suspect Miranda warnings require suppression of physical evidence derived from the suspect's unwarned but voluntary statement?

## C. Jury selection

Johnson v. California, 1 Cal.Rptr.3d 1 (Cal. 2003), cert. granted, 124 S.Ct. 817 (2003). Does demonstrating a prima facie case under *Batson v. Kentucky* require

showing that it is more likely than not that peremptory challenges, if unexplained, were based on impermissible group bias?

#### D. Sixth Amendment – Apprendi issues

Schiro v. Summerlin, 341 F.3d 1082 (9<sup>th</sup> Cir. 2003) (en banc), cert. granted, 124 F.3d 833 (2003). Does Ring v. Arizona, requiring juries in capital cases to find aggravating factors to impose a death sentence, apply retroactively?

Blakely v. Washington, 47 P.3d 149 (Wash. 2002), 124 F.3d 429 (2003). Does it violate the Sixth Amendment for a judge to impose an “upward departure,” but within the maximum sentence, without having a jury make the fact-finding to justify an upward departure?

#### E. Sixth Amendment – confrontation

Crawford v. Washington, 124 S.Ct. 1354 (2004). Out-of-court statements by witnesses that are testimonial are barred under the Confrontation Clause unless witnesses are unavailable and defendants had prior opportunity to cross-examine witnesses, regardless of whether such statements are deemed reliable by court. Admission of wife's out-of-court statements to police officers, regarding incident in which defendant, her husband, allegedly stabbed victim violated the Confrontation Clause.

#### F. Sixth Amendment – ineffective assistance of counsel

Wiggins v. Smith, 123 S.Ct. 2527 (2003). The failure of an attorney to investigate and present mitigating evidence concerning a capital defendants’ background is ineffective assistance of counsel.

### III. Federalism

Nevada Department of Human Resources v. Hibbs, 123 S.Ct. 1972 (2003). State governments be sued for violating the provision of the Family and Medical Leave Act which requires that employees be given leave from work to care for sick family members.

Frew v. Hawkins, 123 S.Ct. 899 (2004). If a state enters into a consent decree, state

officers may be sued to enforce the agreement barred by sovereign immunity.

Tennessee v. Lane, 315 F.3d 680 (6<sup>th</sup> Cir. 2003), *cert. granted*, 123 S.Ct. 2622 (2003). Can state governments be sued for violating Title II of the Americans with Disabilities Act, which prohibits government discrimination against people with disabilities in government programs, services, and activities?

Tennessee Student Assistance Corp. v. Hood, 319 F.3d 755 (6<sup>th</sup> Cir. 2003), *cert. granted*, 123 S.Ct. 45 (2003). Does sovereign immunity apply in bankruptcy courts; is section 106(a) of the Bankruptcy Code, which overrides sovereign immunity, constitutional?

#### IV. First Amendment

##### A. Speech

United States v. American Library Association, 123 S.Ct. 2297 (2003). The Children's Internet Protection Act which requires public libraries to use Internet filters as a condition for receipt of federal funds, to ensure that library patrons do not access visual depictions that are obscene, child pornography, or harmful to minors, does not violate the First Amendment.

McConnell v. Federal Election Commission, 124 S.Ct. 619 (2003). Key provisions Bipartisan Campaign Finance Reform Act of 2002 are constitutional, including prohibiting political parties from raising and spending soft money; preventing corporations and unions from engaging in broadcast advertisements for or against identifiable candidates 30 days before primary elections or 60 days before general elections. However, the prohibition of contributions by those 17 and younger is unconstitutional.

Ashcroft v. American Civil Liberties Union, 322 F.3d 240 (3<sup>rd</sup> Cir. 2003), *cert. granted*, 124 S.Ct. 399 (2003). Does the Child Online Protection Act, which requires that commercial websites containing sexually explicit material exclude minors, violate the First Amendment?

##### B. Religion

Locke v. Davey, 124 S.Ct. 1307 (2004). The First Amendment is not violated when a state, because of a state constitutional provision, refuses to allow its scholarships

to be used by a student studying theology at a religiously affiliated university.

Elk Grove Unified School District v. Newdow, 328 F.3d 466 (9th Cir. 2003), cert. granted, 124 S.Ct. 384 (2003). Does it violate the Establishment Clause to have the words “under God” in the Pledge of Allegiance recited in public schools?

Hibbs v. Wine, 307 F.3d 1011 (9<sup>th</sup> Cir. 2002), cert. granted, 124 S.Ct. 45 (2003). Does the Tax Injunction Act prevent federal courts from enjoining state statute providing tax credits for contributions supporting parochial schools?

## V. Civil rights statutes

Chavez v. Martinez, 123 S.Ct. 1994 (2003). There is no cause of action under §1983 for violations of *Miranda v. Arizona* and the Fifth Amendment privilege against self-incrimination.

General Dynamics Land Systems v. Cline, 124 S.Ct. 1236 (February 24, 2004). Discrimination against the relatively young is outside ADEA's protection, and employer therefore did not violate ADEA's prohibition against discrimination by eliminating health insurance benefits program for workers under 50 but retaining program for workers over 50.

Muhammad v. Close, 124 S.Ct. 1303 (2004). A plaintiff who wants to bring section 1983 action challenging only conditions, rather than fact or duration, of his confinement need not satisfy *Heck v. Humphrey*. A prisoner who was, but no longer is in administrative segregation, may bring a suit challenging the conditions without meeting the requirements of *Heck v. Humphrey*.

## VI. Civil liberties and the war on terrorism

Hamdi v Rumsfeld, 337 F.3d 335 (4<sup>th</sup> Cir. 2003), cert. granted, 124 S.Ct. 981 (2004). May the United States detain as an enemy combatant an American citizen apprehended in Afghanistan and brought to the United States?

Padilla v. Rumsfeld, 352 F.3d 695 (2d Cir. 2003), cert. granted, 124 S.Ct. 1468 (2004). May the United States detain as an enemy combatant an American citizen arrested in the United States for a crime in the United States?

United States v. Odah, 321 F.3d 1134 (D.C. Cir. 2003), cert. granted, 124 S.Ct. 534 (2003). Do United States courts lack jurisdiction to consider challenges to the

legality of the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at the Guantanamo Bay Naval Base, Cuba?