

Supreme Court Preview: October Term 2014

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Selected Cases*

I. Constitutional law

A. Separation of powers

Zivotofsky v. Kerry, 733 F.3d 1059 (D.C. Cir. 2013), *cert. granted*, 134 S.Ct. 1873 (2014). Whether a federal statute that directs the Secretary of State, on request, to record the birthplace of an American citizen born in Jerusalem as born in "Israel" on a Consular Report of Birth Abroad and on a United States passport is unconstitutional on the ground that the statute "impermissibly infringes on the President's exercise of the recognition power reposing exclusively in him."

B. First Amendment

Elonis v. United States, 730 F.3d 321 (3d Cir. 2013), *cert. granted*, 134 S.Ct. 2819 (2014). (1) Whether, consistent with the First Amendment and *Virginia v. Black*, conviction of threatening another person under 18 U.S.C. § 875(c) requires proof of the defendant's subjective intent to threaten, as required by the Ninth Circuit and the supreme courts of Massachusetts, Rhode Island, and Vermont; or whether it is enough to show that a "reasonable person" would regard the statement as threatening, as held by other federal courts of appeals and state courts of last resort; and (2) whether, as a matter of statutory interpretation, conviction of threatening another person under 18 U.S.C. § 875(c) requires proof of the defendant's subjective intent to threaten.

Reed v. Town of Gilbert, Arizona, 707 F.3d 1057 (9th Cir. 2013), *cert. granted*, 134 S.Ct. 2900 (2013). Whether the Town of Gilbert's mere assertion that its sign code lacks a discriminatory motive renders its facially content-based sign code content-neutral and justifies the code's differential treatment of petitioners' religious signs.

II. Criminal procedure and criminal law

* This handout was prepared on Monday, September 29, 2014, and does not include any cases where review was granted on Tuesday, September 30.

Heien v. North Carolina, 749 S.E.2d 278 (N.C. 2013), *cert. granted*, 134 S.Ct. 1872(2014). Whether a police officer’s mistake of law can provide the individualized suspicion that the Fourth Amendment requires to justify a traffic stop.

III. Federal jurisdiction

Wellness Int’l Network, Limited v. Sharif, 727 F.3d 751 (7th Cir. 2013), *cert. granted*, 134 S.Ct. 2901 (2014). (1) Whether the presence of a subsidiary state property law issue in a 11 U.S.C. § 541 action brought against a debtor to determine whether property in the debtor’s possession is property of the bankruptcy estate means that such action does not “stem[] from the bankruptcy itself” and therefore, that a bankruptcy court does not have the constitutional authority to enter a final order deciding that action; and (2) whether Article III permits the exercise of the judicial power of the United States by the bankruptcy courts on the basis of litigant consent, and if so, whether implied consent based on a litigant’s conduct is sufficient to satisfy Article III.

IV. Civil rights

Young v. United Parcel Service, 707 F.3d 437 (4th Cir. 2013), *cert. granted*, 134 S.Ct. 2898 (2014). Whether, and in what circumstances, the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k), requires an employer that provides work accommodations to non-pregnant employees with work limitations to provide work accommodations to pregnant employees who are “similar in their ability or inability to work.”

Holt v. Hobbs, 509 Fed.Appx. 561 (2013), *cert. granted*, 134 S.Ct. 1512 (2014). Whether the Arkansas Department of Corrections grooming policy violates the Religious Land Use and Institutionalized Persons Act of 2000, 42 U. S. C. § 2000cc *et seq.*, to the extent that it prohibits petitioner from growing a one-half-inch beard in accordance with his religious beliefs.

Alabama Legislative Black Caucus v. Alabama, and *Alabama Democratic Conference v. Alabama*, 2013 BL 351514 (M.D. Ala. Dec. 20, 2013), *cert. granted*, 134 S.Ct. 2695 (2014). Whether Alabama’s effort to redraw the lines of each majority-black district to have the same black population as it would have using 2010 census data as applied to the former district lines, when combined with the state’s new goal of significantly reducing population deviation among districts, amounted to an unconstitutional racial quota and racial gerrymandering that is subject to strict scrutiny and that was not justified by the putative interest of complying with the non-retrogression aspect of Section 5 of the Voting Rights Act; and whether these plaintiffs have standing to bring such a constitutional claim.