# US SUPREME COURT REVIEW

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South Carolina Women Lawyers Association Luncheon
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| | CASE | MAJORITY | DISSENT | HOLDING |
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| 36 | *Glossip v. Gross*<br>No. 14-7955<br>(6/29/15) | **Alito**<br>Roberts<br>**Scalia**<br>Kennedy<br>**Thomas** | **Breyer**<br>Ginsburg<br>**Sotmayor**<br>Kagan | Oklahoma death-row inmates failed to establish the likelihood of success on the merits of their claim that Oklahoma's use of midazolam in lethal injection violates the Eighth Amendment. |
| 35 | *Arizona State Legislature v. Arizona Independent Redistricting Comm'n*<br>No. 13-1314<br>(6/29/15) | **Ginsburg**<br>Kennedy<br>Breyer<br>Sotomayor<br>Kagan | **Roberts**<br>**Scalia**<br>**Thomas**<br>Alito | Case involved a voter initiative to address "partisan gerrymandering."<br>A. Arizona Legislature had standing to bring the action.<br>B. The Elections Clause and 2 USC § 2a(c) permit Arizona's use of a commission to adopt congressional districts.<br>C. The Framers may not have imagined the modern initiative process in which the people's legislative power is coextensive with the state legislature's authority, but the invention of the initiative was in full harmony with the Constitution's conception of the people as the font of governmental power. It would thus be perverse to interpret "Legislature" in the Elections Clause (US Const. art. I, § 4, cl. 1) to exclude lawmaking by the people, particularly when such lawmaking is intended to advance the prospect that Members of Congress will in fact be "chosen ... by the People of the several States." Art. I, § 2. |
| 34 | *Michigan v. EPA*<br>No. 14-46<br>(6/29/15) | **Scalia**<br>Roberts<br>Kennedy<br>**Thomas**<br>Alito | **Kagan**<br>Ginsburg<br>Breyer<br>Sotomayor | EPA interpreted 42 USC § 7412(n)(1)(A) (Clean Air Act) unreasonably when it deemed cost irrelevant to the decision to regulate power plants. EPA must consider costs – including costs of compliance – before deciding whether regulation is appropriate and necessary. |

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| 33 | *Obergefell v. Hodges*<br>No. 14-556<br>(6/26/15) | **Kennedy**<br>Ginsbrg<br>Breyer<br>Sotomayor<br>Kagan | **Roberts**<br>**Scalia**<br>**Thomas**<br>**Alito** | A. The right to marry is a fundamental right inherent in the liberty of the person; under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. Overruled *Baker v. Nelson*, 409 U.S. 810 (1972); abrogating *Citizens for Equal Protection v. Bruning*, 455 F.3d 859 (8th Cir. 2006), *Adams v. Howerton*, 673 F.2d 1036 (9th Cir. 1982), and numerous other cases.<br><br>B. States must recognize lawful same-sex marriages performed in other states. |
| 32 | *Johnson v. U.S.*,<br>No. 13-7120<br>(6/26/15) | **Scalia**<br>Roberts<br>**Kennedy**<br>**Thomas**<br>Ginsburg<br>Breyer<br>Sotomayor<br>Kagan | **Alito** | Imposing an increased sentence under the residual clause of the Armed Career Criminal Act for a "violent felony" violates the Constitution's guarantee of due process. The statute was an unconstitutionally vague criminal law.<br>Discussing "*stare decisis*" and overruling *James v. U.S.*, 550 U.S. 192 (2007) and *Sykes v. U.S.*, 564 U.S. 1 (2011); abrogating *U.S. v. White*, 571 F.3d 1218 (), *U.S. v. Daye*, 571 F.3d 225 (2d Cir. 2009), and *U.S. v. Johnson*, 616 F.3d 85 (2d Cir. 2010). |
| 31 | *King v. Burwell*,<br>No. 14-114<br>(6/25/15) | **Robert**<br>Kennedy<br>Ginsburg<br>Breyer<br>Sotomayor<br>Kagan | **Scalia**<br>Thomas<br>Alito | Under the Patient Protection and Affordable Care Act, Section 36B's tax credits are available to individuals in states that have the Federal Exchange. Court declined to apply *Chevron* deference to the IRS.<br>Strong language supporting the Act. |
| 30 | *Texas Dept. of Housing v. Inclusive Comm. Project, Inc.*<br>No. 13-1371<br>(6/25/15) | **Kennedy**<br>Ginsburg<br>Breyer<br>Sotomayor<br>Kagan | **Thomas**<br>**Alito**<br>Roberts<br>Scalia | Disparate impact claims are cognizable under the Fair Housing Act. Unlike a "disparate-treatment case," where a plaintiff must establish that the defendant had a discriminatory intent or motive, a plaintiff bringing a "disparate-impact"claim challenges practices that have a "disproportionate adverse effect on minorities" and are otherwise unjustified by a legitimate rationale. |

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| 29 | *Kimble v. Marvel Entertainment, LLC*<br>No. 13-720<br>(6/22/15) | **Kagan**<br>Scalia<br>Kennedy<br>Ginsburg<br>Breyer<br>Sotomayor | **Alito**<br>Roberts<br>Thomas | In *Brulotte v. Thys Co.*, 379 U.S. 29 (1964), the Court held that a patent holder cannot charge royalties for the use of his invention after its patent term has expired. Adhering to *stare decisis*, the Court declined to do so, and suggested critics seek relief from Congress.<br>Spider man web slinger toy - humor in the opinion is worth the read. "In this world, with great power there must also come – great responsibility." |
| 28 | *City of Los Angeles v. Patel*<br>No. 13-1175<br>(6/22/15) | **Sotomayor**<br>Kennedy<br>Ginsburg<br>Breyer<br>Kagan | **Scalia**<br>Roberts<br>Thomas<br>**Alito** | A. Facial challenges under the Fourth Amendment are not categorically barred or especially disfavored;<br>B. L.A. municipal code 41.49(3)(a) requires hotel operators to record and keep specific information about guests on the premises for 90 days and to make the records available to LAPD, and failure to do so is a misdemeanor. The code is facially unconstitutional because it fails to provide the hotel operators with an opportunity for precompliance review before a neutral decisionmaker, which is required for administrative searches. |
| 27 | *Kingsley v. Hendrickson*<br>No. 14-6368<br>(6/22/15) | **Breyer**<br>Kennedy<br>Ginsburg<br>Sotomayor<br>Kagan | **Scalia**<br>Roberts<br>Thomas<br>**Alito** | A. In an excessive force claim under 42 USC § 1983, a pretrial detainee must show only that the force purposely and knowingly used against him was objectively unreasonable to prevail (objective standard) and not that the officers were subjectively aware that their use of force was unreasonable.<br>B. The trial court instructed the jury plaintiff was required to prove that the officers "recklessly disregarded [Kingsley's] safety" and "acted with reckless disregard of [his] rights." Applying the correct standard under § 1983, the jury instruction suggested that the jury should weigh the officers' subjective reasons for using force and subjective view about the excessiveness of that force. |

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| 26 | *Brumfeld v. Cain*<br>No. 13-1433<br>(6/18/15) | **Sotomayor**<br>Kennedy<br>Ginsburg<br>Breyer<br>Kagan | **Thomas**<br>Roberts<br>Scalia<br>**Alito** | Death penalty case involving a claim under *Atkins v. Virginia*, 536 U.S. 304 (2002)(prohibits execution of intellectually disabled). The issue involved whether Brumfeld established a federal *habeas corpus* claim under 28 USC §§ 2254(d)(1), (2). Because Brumfeld satisfied § 2254(d)(2)'s requirements, he was entitled to have his *Atkins* claim considered on the merits in federal court. |
| 25 | *Davis v. Ayala*<br>No. 13-1428<br>(6/18/15) | **Alito**<br>Roberts<br>Scalia<br>**Kennedy**<br>**Thomas** | **Sotomayor**<br>Ginsburg<br>Breyer<br>Kagan | Ayala brought a *Batson v. Kentucky* challenge to 7 of the state's peremptory challenges. Court permitted prosecutor to give reasons outside the presence of the defense and concluded the prosecutor had valid, race-neutral reasons for the strikes. The state court held the *ex parte* proceeding violated *Batson* and the state counterpart, but any error was harmless.<br>Held: Any federal constitutional error that may have occurred by excluding Ayala's attorney from part of the *Batson* hearing was harmless under *Brecht v. Abrahamson*, 507 U.S. 619 (1993) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 USC § 2254(d). |
| 24 | *Ohio v. Clark*<br>No. 13-1352<br>(6/18/15) | **Alito**<br>Roberts<br>**Scalia**<br>**Thomas**<br>Kennedy<br>Ginsburg<br>Breyer<br>Sotomayor<br>Kagan | | Clark was convicted of abusing his girlfriend's children. He claimed the introduction of statements one child, L.P., gave to the child's teachers violated the Confrontation Clause under *Crawford v. Washington*, 541 U.S. 36 (2004) (generally prohibiting introduction of "testimonial" statements by a nontestifying witness, unless the witness is available to testify, and the defendant had had a prior opportunity for cross-examination. A statement qualifies as testimonial if the "primary purpose" of any conversation was to "create an out-of-court substitute for trial testimony." *Michigan v. Bryant*, 562 U.S. 344 (2011). The primary purpose test is a necessary, but not always sufficient, condition for the exclusion of out-of-court statements under the Confrontation Clause. Also, mandatory reporting obligations do not convert a conversation between a concerned teacher and her student into a law enforcement mission aimed at gathering evidence for prosecution. |

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| 23 | *Walker v. Texas Div. Sons of Confederate Veterans*<br>No. 14-144 | **Breyer**<br>Thomas<br>Ginsburg<br>Sotomayor<br>Kagan | **Alito**<br>Roberts<br>Scalia<br>Kennedy | The Texas DMV Board rejected a design for a specialty license plate that included the Confederate battle flag. Texas's specialty license plate designs constitute government speech, and thus Texas was entitled to refuse to issue plates featuring SCV's proposed design. When government speaks, the First Amendment does not bar the government from determining the content of what it says. |
| 22 | *McFadden v. U.S.*<br>No. 14-378<br>(6/18/15) | **Thomas**<br>**Roberts**<br>Scalia<br>Kennedy<br>Ginsburg<br>Breyer<br>Alito<br>Sotomayor<br>Kagan | | McFadden was charged with distributing controlled substance analogues ("bath salts") in violation of the Controlled Substance Analogue Enforcement Act of 1986, 21 USC § 802(32)(A) and § 813.<br>When a controlled substance is an analogue, § 841(a)(1) requires the Government to establish that the defendant knew he was dealing with a substance regulated under the Controlled Substances Act or the Analogue Act. |
| 21 | *Zivotofsky v. Kerry*<br>No. 13-628<br>(6/8/15) | **Kennedy**<br>Ginsburg<br>**Breyer**<br>Sotomayor<br>Kagan | **Thomas**<br>**Roberts**<br>Alito<br>**Scalia** | Zivotofsky was born to US citizens living in Jerusalem. Pursuant to § 214(d) of the Foreign Relations Authorization Act, his mother asked Embassy officials to list his place of birth as "Israel" on his passport. Officials refused, citing the Executive Branch's longstanding position that the US does not recognize any country as having sovereignty over Jerusalem.<br>A. The President has the exclusive power to grant formal recognition to a foreign sovereign.<br>B. Because the power to recognize foreign states resides in the President alone, § 214(d) infringes on the Executive's consistent decision to withhold recognition with respect to Jerusalem. |

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| 20 | *Taylor v. Barkes*<br>No. 14-939<br>(6/1/15) | *Per Curiam* | | Commissioner of Department of Corrections has qualified immunity because at the time of inmate's suicide, because there was no "clearly established" right for an incarcerated person to the proper implementation of adequate suicide prevention protocols. Even if the institution's suicide screening and prevention measures contained the shortcomings that Barkes alleged, no precedent on the books in November 2004 (when Barkes was arrested and killed himself while in custody) would have made clear to the Commissioner that he was overseeing a system that violated the Constitution. Because, at the very least, the Commissioner was not contravening clearly established law, he was entitled to qualified immunity under for Eighth Amendment violations. |
| 19 | *EEOC v. Abercrombie & Fitch*<br>No. 14-86<br>(6/1/15) | **Scalia**<br>Roberts<br>Kennedy<br>Ginsburg<br>Breyer<br>**Alito**<br>Sotomayor<br>Kagan | **Thomas** | A&F refused to hire Samantha Elauf, a practicing muslim, because the headscarf that she wore pursuant to her religious obligations conflicted with A&F's dress policy.<br>To prevail in a disparate-treatment claim, an applicant need show only that his need for an accommodation was a motivating factor in the employer's decision, not that the employer had knowledge of his need. Title VII's disparate-treatment provision required Elauf to show that A&F (1) failed to hire her (2) because of (3) her religion (including religious practices). 42 USC § 2000e-2(a)(1). Thus, rather than imposing a knowledge standard, § 2000e-2(a)(1) prohibits certain *motives*, regardless of the state of the actor's knowledge: An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions. Title VII contains no knowledge requirement. Furthermore, Title VII's definition of religion clearly indicates that failure-to-accommodate challenges can be brought as disparate-treatment claims. And Title VII gives favored treatment to religious practices, rather than demanding that religious practices be treated no worse than other practices. |

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| 18 | *Elonis v. U.S.*<br>No. 13-983<br>(6/1/15) | **Roberts**<br>Scalia<br>Kennedy<br>Ginsburg<br>Breyer<br>Sotomayor<br>Kagan | **Alito**<br>**Thomas** | After his wife left him, Elonis, under the name "Tone Dougie," used Facebook to post self-styled rap lyrics containing graphically violent language and imagery concerning his wife, co-workers, a kindergarten class, and state and federal law enforcement. The FBI investigated and arrested him for violating 18 USC § 875(c) (making it a federal crime to transmit in interstate commerce "any communication containing any threat ... to injure the person of another." He was convicted and the Third Circuit affirmed, holding § 875(c) requires only the intent to communicate words that the defendant understands, and that a reasonable person would view as a threat, rather than that he intended to communicate a "true threat."<br>The Third Circuit's instruction, requiring only negligence with respect to the communication of a threat, is not sufficient to support a conviction under § 875(c). |
| 17 | *Kellogg Brown & Root Services, Inc. v. U.S.*<br>No. 12-1497<br>(5/26/15) | **Alito**<br>Roberts<br>Scalia<br>Thomas<br>Kennedy<br>Ginsburg<br>Breyer<br>Sotomayor<br>Kagan | | The Wartime Suspension of Limitations Act (WSLA) suspends the running of any statute of limitations applicable to any offense involving fraud against the Government. 18 USC § 3287.<br>A. The WSLA applies only to criminal offenses, not to civil claims like those in this case (*aui tam* action under the Federal False Claims Act (FCA), 31 USC § 3729(a)(1)).<br>B. The FCA's first-to-file bar keeps new claims out of court only while related claims are still alive, not in perpetuity. |

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| 16 | *Henderson v. U.S.*<br>No. 13-1487<br>(5/18/15) | **Kagan**<br>Roberts<br>Scalia<br>Thomas<br>Kennedy<br>Ginsburg<br>Breyer<br>Alito<br>Sotomayor | | A court-ordered transfer of a felon's unlawfully owned firearms from Government custody to a third party is not barred by 18 USC § 922(g) if the court is satisfied that the recipient will not give the felon control over the firearms, so that he could either use them or direct their use.<br>Federal courts have equitable authority to order law enforcement to return property obtained during the course of a criminal proceeding to its rightful owner. Section 922(g), however, bars a court from ordering guns returned to a felon-owner because that would place the owner in violation of the law. And because § 922(g) bans constructive as well as actual possession, it also prevents a court from ordering the transfer of the felon's guns to someone willing to give the felon access to them or to accede to the felon's instructions about their future use. |
| 15 | *City and County of San Francisco v. Sheehan*<br>No. 13-1412<br>(5/18/15) | **Alito**<br>Roberts<br>Kennedy<br>Thomas<br>Ginsburg<br>Sotomayor<br><br>Breyer NP | **Scalia**<br>Kagan | A. The question whether 42 USC § 12132 of the Americans with Disabilities Act (ADA) requires law enforcement officers to provide accommodations to an armed, violent and mentally ill suspect in the course of bringing the suspect into custody was dismissed as improvidently granted.<br>B. Public officials are immune from suit under 42 USC § 1983 unless they have violated a statutory or constitutional right that was "clearly established" at the time of the challenged conduct, an exacting standard that gives government officials breathing room to make reasonable but mistaken judgments.<br>Scalia takes the petitioners to task for "bait and switch" tactics to get the Court to grant cert. |

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| 14 | *Coleman v. Tollefson*<br>No. 13-1333<br>(5/18/15) | **Breyer**<br>Roberts<br>Scalia<br>Thomas<br>Kennedy<br>Ginsburg<br>Alito<br>Sotomayor<br>Kagan | | Ordinarily, a federal litigant who is too poor to pay court fees may proceed *in forma pauperis* and commence a civil action without prepaying fees or paying certain expenses. 28 USC § 1915(a). But a special "three strikes" provision prevents a court from affording *in forma pauperis* status to a prisoner who has, on 3 or more occasions, while incarcerated, brought an action or appeal in a court of the US that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted. § 1915(g).<br>A prior dismissal on one of the statutory grounds under 28 USC § 1915(g) counts as a "strike," even if the dismissal is the subject of an ongoing appeal. A prisoner who has accumulated three prior qualifying dismissals under § 1915(g) may not file an additional suit *in forma pauperis* while his appeal of one such dismissal is pending. |
| 13 | *Mach Mining, LLC v. EEOC*<br>No. 13-1019<br>(4/29/15) | **Kagan**<br>Roberts<br>Scalia<br>Thomas<br>Kennedy<br>Ginsburg<br>Breyer<br>Alito<br>Sotomayor | | A. Courts have authority to review whether the EEOC has fulfilled its Title VII duty to attempt conciliation. 42 USC § 2000e-5(b).<br>B. The appropriate scope of judicial review of EEOC's conciliation activities is narrow, enforcing only the EEOC's statutory obligation to give the employer notice and an opportunity to achieve voluntary compliance. |

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| 12 | *Williams-Yulee v. Florida Bar*<br>No. 13-1499 | **Roberts**<br>**Ginsburg**<br>**Breyer**<br>Sotomayor<br>Kagan | **Scalia**<br>Thomas<br>**Kennedy**<br>**Alito** | Florida is one of 39 states where voters elect judges at the polls. Florida's Supreme Court adopted Rule 7C(1), Code of Judicial Conduct, which provides that judicial candidates "shall not personally solicit campaign funds...but may establish committees of responsible persons" to raise money for election campaigns. The Florida Bar disciplined Williams-Yulee for violating Canon 7(C)(1), but she contended that the First Amendment protected a judicial candidate's right to personally solicit campaign funds in an election. The Florida Supreme Court upheld the rule as narrowly tailored to serve the State's compelling interest. The US Supreme Court affirmed.<br>A. Florida's interest in preserving public confidence in the integrity of its judiciary is compelling. "Judges are not politicians, even when they come to the bench by way of the ballot. And a State's decision to elect its judiciary does not compel it to treat judicial candidates like campaigners for political office. A State may assure its people that judges will apply the law without fear or favor – and without having personally asked anyone for money."<br>B. Canon 7C(1) raised no fatal underinclusivity concerns.<br>C. Canon 7(C)(1) is not overinclusive. |
| 11 | *U.S. v. Wong*<br>No. 13-1074<br><br>*U.S. v. June*<br>No. 13-1075<br><br>(4/22/15) | **Kagan**<br>Kennedy<br>Ginsburg<br>Breyer<br>Sotomayor | **Alito**<br>Roberts<br>Scalia<br>Thomas | The deadlines under the Federal Tort Claims Act, 28 USC 2401(b), are not jurisdictional and are subject to equitable tolling. |

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| 10 | *Rodriguez v. U.S.*<br>No. 13-9972<br>(4/21/15) | **Ginsburg**<br>Roberts<br>Scalia<br>Breyer<br>Sotomayor<br>Kagan | **Kennedy**<br>**Thomas**<br>**Alito** | In *Illinois v. Cabelles*, 543 U.S. 405 (2005), the Court held that dog sniff conducted *during* a lawful traffic stop did not violate the Fourth Amendment. However, the Fourth Amendment does not tolerate a dog sniff conducted after completion of a traffic stop. A police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation.<br>A. Absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the Constitution's shield against unreasonable seizures.<br>B. The determination adopted by the District Court that detention for the dog sniff was not independently supported by individualized suspicion was not reviewed by the Eighth Circuit and remains open for consideration on remand. |

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| 9 | *Grady v. North Carolina* No. 14-593 (3/30/15) | *Per Curiam* | | North Carolina's satellite-based monitoring of a recidivist sex offender constitutes a "search" within the meaning of the Fourth Amendment. Compare U.S. v. Jones, 565 U.S. ___ (2012) (police officers had engaged in a "search" within the meaning of the Fourth Amendment when they installed and monitored a GPS tracking device on a suspect's car; Court held "where, as here, the Government obtains information by physically intruding on a constitutionally protected area, ... a search [under the Fourth Amendment] has undoubtedly occurred."); *Florida v. Jardines*, 569 U.S. ___ (2013) (having a drug-sniffing dog nose around a suspect's front porch was a "search" because police had gathered information by physically entering and occupying the curtilage of the house to engage in conduct not explicitly or implicitly permitted by the homeowner). Hence, a State also conducts a search when it attaches a device to a person's body, without consent, for the purpose of tracking that individual's movements. However, the Fourth Amendment only prohibits "unreasonable" searches, and the reasonableness of a search depends on the totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations. The Court remanded to North Carolina to examine whether the State's monitoring program was reasonable – when properly viewed as a search. |

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| 8 | *Holt v. Hobbs*<br>No. 13-6827<br>(1/20/15) | **Alito**<br>Roberts<br>Scalia<br>Thomas<br>Kennedy<br>**Ginsburg**<br>Breyer<br>**Sotomayor**<br>Kagan | | Inmate, who was a devout Muslim, wished to grow a ½-inch beard in accordance with his religious beliefs. Arkansas DOC prohibited prisoners from growing beards, except inmates who had a diagnosed skin condition who could grow 1/4-inch beards.<br>A. Under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 USC § 2000cc-1(a), the challenging party bears the initial burden of proving that his religious exercise is grounded in a sincerely held religious belief, (*Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ___ (2014)), and that the government's action substantially burdens his religious exercise.<br>B. Once the challenging party satisfies his burden, the burden shifts to the government to show that substantially burdening the religious exercise of the "particular claimant" is "the least restrictive means of furthering [a] compelling governmental interest." *Hobby Lobby*; § 2000cc-1(a). |
| 7 | *Whitfield v. U.S.*<br>No. 13-9026<br>(1/13/15) | **Scalia**<br>Roberts<br>Thomas<br>Kennedy<br>Ginsburg<br>Breyer<br>Alito<br>Sotomayor<br>Kagan | | 18 USC § 2113 establishes enhanced penalties for anyone who "forces any person to accompany him without the consent of such person" in the course of committing or fleeing from a bank robbery."<br>A bank robber "forces [a] person to accompany him," for purposes of § 2113(e), when he forces that person to go somewhere with him, even if the movement occurs entirely within a single building or over a short distance.<br>"Accompany" means to "go with" someone. The word does not connote movement over a substantial distance. |
| 6 | *Dart Cherokee Basin Operating Co., LLC v. Owens*<br>No. 13-719<br>(12/15/14) | **Ginsburg**<br>Roberts<br>Breyer<br>Alito<br>Sotomayor | **Scalia**<br>**Thomas**<br>Kennedy<br>Kagan | A. As specified in 28 USC § 1446(a), a defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold; the notice need not contain evidentiary submissions.<br>B. The District Court erred in remanding the case for want of an evidentiary submission in the notice of removal. The Tenth Circuit abused its discretion in denying review of that decision under 28 USC § 1453(c)(1). |

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| 5 | *Integrity Staffing Solutions, Inv. v. Busk* No. 13-433 (12/9/14) | **Thomas** Roberts Scalia Kennedy Ginsburg Breyer Alito **Sotomayor** Kagan | | The time that employees spent waiting to undergo and undergoing security screenings was not compensable under the Fair Labor Standards Act. Under the "Portal to Portal" Act, 29 USC 251(a), employers are exempt from FLSA liability for claims based on "activities which are preliminary to or postlimitary to" the performance of the principal activities which are an integral and indispensable part of the principal activities. The security screenings are noncompensable postliminary activities.<br>An activity is integral and indispensable to the principal activities that an employee is employed to performed – and thus compensable under the FLSA – if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities. Employees' time spent waiting to undergo and undergoing Integrity Staffing's security screenings does not meet these criteria. |
| 4 | *Warger v. Shauers* No. 13-517 (12/9/14) | **Sotomayor** Roberts Scalia Thomas Kennedy Ginsburg Breyer Alito Kagan | | Warger sued Shauers for injuries in a car wreck. The jury returned a verdict for Shauers. A juror contacted Warger's counsel, claiming the jury foreperson revealed during deliberations that her daughter had been at fault in a fatal wreck and "a lawsuit would have ruined her daughter's life." The juror gave an affidavit and Warger moved for a new trial, claiming the foreperson lied during *voir dire* about her impartiality and ability to award damages. The District Court denied the motion under Fed.R. Evid. 606, and the 8th Circuit affirmed.<br>A. Rule 606(b), Fed.R. Evid., applies to juror testimony during a proceeding in which a party seeks to secure a new trial on the ground that the jury lied during *voir dire*.<br>B. The affidavit in this case was not admissible under Rule 606(b)(2)(A)'s exception for evidence of "extraneous prejudicial information." Generally speaking, extraneous information derives from a source "external" to the jury. Here, the excluded affidavit fell on the a "internal" side. |

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| 3 | *Glebe v. Frost*<br>No. 14-95<br>(11-17-14) | *Per Curiam* | | Washington State prevented Frost's lawyer from simultaneously arguing the State failed to prove Frost was an accomplice in a series of crimes or, alternatively, that Frost acted under duress. The Federal Court of Appeals reversed the dismissal of Frost's petition for habeas corpus under 28 USC § 2254. Under the Antiterrorism and Effective Death Penalty Act of 1996, the Court of Appeals had the power to grant Frost habeas corpus only if the Washington Supreme Court's affirmance of his conviction was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the US Supreme Court, or was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 USC § 2254(d). The Ninth Circuit held that the Washington Supreme Court unreasonably applied clearly established federal law by failing to classify the trial court's restriction of closing argument as structural error. The Supreme Court reversed.<br>Most constitutional mistakes call for reversal only if the government cannot demonstrate harmlessness. Only the rare type of error – in general, one that infects the entire trial process and necessarily renders it fundamentally unfair – requires automatic reversal.<br>Even though *Herring v. New York*, 422 U.S. 853 (1975) held that complete denial of summation violates the Assistance of Counsel Clause, it did not clearly establish that the *restriction* of summation also amounts to structural error. Furthermore, the Ninth Circuit erred in relying upon two of its own prior cases. Circuit Court precedent does not constitute clearly established Federal law, as determined by the Supreme Court. Lastly, reasonable minds could disagree over whether requiring the choice amounted to forcing an admission of guilt, or impermissibly shifts the burden of proof. |

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| 2 | *Johnson v. City of Shelby, Mississippi* No. 13-1318 (11/10/14) | *Per Curiam* | | Police officers sued the city, asserting they were fired for bringing to light criminal activity by a city alderman. They sued, asserting violations of the Fourteenth Amendment's due process clause, and they sought compensatory relief. The District Court granted summary judgment because the officers failed to invoke 42 USC § 1983 in their complaint, and the Court of Appeals affirmed. The Supreme Court summarily reversed.<br>A. Fed. R. Civ. P. 8 does not countenance dismissal of a complaint for an imperfect statement of the legal theory supporting the claim asserted. In particular, no heightened pleading rule requires plaintiffs seeking damages for violations of constitutional rights to invoke § 1983 expressly in order to state a claim.<br>B. The decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) were not in point, for they concerned the *factual* allegations a complaint must contain to survive a motion to dismiss – plaintiff must plead facts sufficient to show that her claim has substantive plausibility. "For clarification and to ward off further insistence on a punctiliously stated 'theory of the pleadings,' petitioners, on remand, should be accorded the opportunity to add to their complaint a citation to § 1983." |

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| 1 | *Carroll v. Carman*<br>No. 14-212<br>(11-10-14) | *Per Curiam* | | A governmental official sued under 42 USC § 1983 is entitled to qualified immunity unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct. A right is clearly established only if its contours are sufficiently clear that a reasonable official would understand that what he is doing violates that right. In other words, existing precedent must have placed the statutory or constitutional question beyond debate.<br>The Court did not decide whether cases discussing the "knock and talk" exception to the warrant requirement of the Fourth Amendment were correctly decided or whether a police officer may conduct a "knock and talk" at any entrance that is open to visitors rather than only the front door. Rather, the Court found that whether or not the constitutional rule applied by the court below was not "beyond debate" – thus, the officer was entitled to qualified immunity. |