Civil Rights and the Supreme Court: October 2019 End-of-Term Briefing

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LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Supreme Court

- Recent Changes to the Court:
  - In 2017, Justice Gorsuch was confirmed to replace Justice Scalia
  - In 2018, Justice Kavanaugh was confirmed to replace Justice Kennedy, who had served as the swing vote in key civil rights cases, creating a commanding 5-4 conservative majority on the Court
- This term was busy for civil rights advocates as the Court weighed in on the:
  - Fate of DACA,
  - Protections for the LGBTQ community under Title VII,
  - Sec. 1981 standard,
  - Access to abortion,
  - Sixth Amendment's unanimous jury requirement,
  - Death sentence resentencing, and
  - Religious and moral objection exemptions from the Affordable Care Act's contraceptive mandate

October 2019 Term

- *McKinney v. Arizona*: Death Sentence Resentencing
  - *Argument Date: Dec. 11, 2019; Decided Feb. 25, 2020*
- *Ramos v. Louisiana:* Unanimous jury
  - *Argument: Oct. 7, 2019; Decided Apr. 20, 2020*
- *Comcast Corp. v. National Association of African American-Owned Media, et al.:* Sec. 1981
  - Argument Date: Nov. 13, 2019; Decided: Mar. 23, 2020
- *Republican National Committee, et al. v. Democratic National Committee, et al.*
  - *Decided Apr. 6, 2020*
- *Bostock v. Clayton County, Ga; Altitude Express Inc. v. Zarda; R.G. & G.R. Harris Funeral Homes Inc. v. EEOC: Title VII-Sexual Orientation and Gender Identity*
  - *Argument Date: Oct. 8, 2019 ; Decided: June 15, 2020*
- *Department of Homeland Security v. Regents of the University of California:* DACA
  - Argument Date: Nov. 12, 2019; Decided: June 18, 2020
- *June Medical Services v. Russo*: Undue Burden/Access to abortion
  - *Argument Date: Mar. 4, 2020; Decided: June 29, 2020*
- *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*: Religious Exemptions from Contraceptive Coverage
  - *Argument Date: May 6, 2020; Decided July 8, 2020*

McKinney v. Arizona

5-4 Decision by Justice Kavanaugh

- **Background:**
  - In 1993, James McKinney was convicted of first-degree murder. At McKinney's capital sentencing hearing, under Arizona law at the time, the judge was not permitted to consider the psychologist's testimony concerning his PTSD diagnosis resulting from his horrific childhood, and the judge sentenced him to death.
  - The Arizona Supreme Court affirmed the sentence on appeal. McKinney filed a habeas petition in federal court, which eventually made its way to the Ninth Circuit which granted a rehearing en banc and held that the AZ courts violated the Supreme Court's Eddings v. Oklahoma decision by refusing to consider McKinney's PTSD, and remanded the case to federal district court to either correct the constitutional error or vacate the sentence and impose a lesser sentence.
  - AZ moved for independent review of the sentence by the AZ Supreme Court, which was opposed by McKinney on the ground that he was entitled to resentencing by a jury. The AZ Supreme Court found that McKinney was not entitled to resentencing because his case was "final" before SCOTUS issued its decision in Ring v. Arizona that juries, not judges, must make the findings necessary to impose the death penalty.

- **Holding:**
  - Affirming Arizona Supreme Court, held that when a capital sentencing errors under Eddings v. Oklahoma is found on collateral review, the state appellate court may reweigh the aggravating and mitigating evidence, not a jury, as permitted by Clemons v. Mississippi

- **Implications:**
  - While this case directly impacts a limited number of cases, it is a negative one for criminal defendants that are affected by it.

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Ramos v. Louisiana

6-3 Decision by Justice Gorsuch

- **Background:**
  - In 2018, Louisiana repealed a state law, which allowed criminal defendants not in capital cases to be convicted without a unanimous jury verdict
  - Evangelisto Ramos was convicted of second-degree murder and sentenced to life in prison without parole. Mr. Ramos maintained his innocence .Ten of 12 jurors voted to convict Mr. Ramos.
  - Mr. Ramos argued that his conviction by a non-unanimous jury verdict violated his federal constitutional rights.
- **Holding:**
  - Reversing the Louisiana Court of Appeals decision, held that the Sixth Amendment right to a trial by jury, as incorporated against the states under the Fourteenth Amendment, requires a unanimous verdict to convict a defendant of a serious offense.
- **Implications:**
  - This case ends the battle over non-unanimous jury rule and recognizes the discriminatory origin of those laws in Oregon and Louisiana. Next term, the Court will consider whether Ramos should have retroactive application.

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Comcast Corp. v. National Association of African American-Owned Media, et al.

9-0 Decision by Justice Gorsuch

- **Background:**
  - This case involves allegations that Comcast engaged in discriminatory contracting by intentionally excluding the National Association of African American-Owned Media (NAAOM) and Entertainment Studios Networks, Inc. (ESN), a Black-owned television media company that operates and distributes seven cable television channels, in violation of 42 U.S.C. §1981.
  - Ninth Circuit held that ESN only needed to show that race was one "motivating factor" in Comcast's decision not to carry the channels it offered; ESN did not need to show "but for" causation.

- **Holding:**
  - Vacated and remanded to the Ninth Circuit to look at ESN's complaint in light of the "but for' causation rule; Plaintiffs suing for racial discrimination under 42 U.S.C. §1981 must show that race was the "but-for" cause of the plaintiff's injury and that burden remains constant over the life of the lawsuit.

- **Implications:**
  - "But for" is considered to be a difficult standard for plaintiffs and the Court unanimously applied the standard to Section 1981, a reconstruction statute intended to prevent discrimination in contracting. We won't know how negative the impact of this decision is until we see it play out in the federal courts.

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Republican National Committee, et al. v. Democratic National Committee, et al.

Per Curiam Decision

- **Background:**
  - Wisconsin decided to proceed with their election on April 7, 2020 for the Democratic presidential primary, a seat on the state's high court, and other state and local races
  - U.S. District Court Judge William Conley extended Wisconsin's deadline for absentee ballots past April 7th, due to the COVID-19 pandemic creating a backlog of requests that would make it difficult for most voters to receive an absentee ballot and return it by election day.
  - On April 4, 2020, the Republican National Committee sought an emergency stay of the District Court's injunction on the grounds that: 1) the Supreme Court and Courts of Appeals have repeatedly stayed changes to elections laws on the eve of election day, 2) the state's interests in avoiding a 2-track election in which numerous voters might cast ballots after election day results are announced are overwhelming, and 3) applicants would suffer irreparable harm absent a stay.
  - On April 6th, Gov. Tony Evers issued an executive order suspending in-person voting until June 9 unless the legislature and the Governor approved a different date for in-person voting. Republicans asked the Wisconsin Supreme Court to overturn Gov. Evers' order, which it did in a 4-2 vote.
- **Holding:**
  - Application for stay granted, the District Court's order granting a preliminary injunction is stayed to the extent it requires Wisconsin to count absentee ballots postmarked after April 7, 2020, the date of the state's election
- **Implications:**
  - The Court will not be shy to intervene in staying lower court decision during the 2020 election cycle. The question is whether the Court will be even-handed in doing so.

Bostock v. Clayton County, Ga

6-3 Decision by Justice Gorsuch

- **Background:**
  - Consolidated with *Altitude Express Inc. v. Zarda* (Title VII-Sexual Orientation) and *R.G. & G.R. Harris Funeral Homes Inc. v. EEOC* (Title VII-Gender Identity)
  - Bostock involved a child-welfare-services coordinator for Clayton County, Ga who received good performance reviews yet was fired. He alleged that he was fired because of his sexual orientation.
  - *Zarda* involved a skydiving instructor who occasionally told women clients he was gay to make them feel more comfortable when they were strapped to him for a jump, who also alleged that he was fired because of his sexual orientation.
  - *R.G. & G.R Harris Funeral Homes Inc.* involved a funeral director who, during most of her employment presented as a man. She informed her employer that she was transitioning and was terminated. She alleged that she was fired because of her gender identity.

- **Holding:**
  - An employer who fires an individual merely for being gay or transgender violates Title VII of the Civil Rights Act of 1964.

- **Implications:**
  - Justice Gorsuch stressed that the opinion only applies to cases where an employer fires an individual for being gay or transgender. This case will likely lead to more lawsuits regarding statutes where sex is protected basis and someone's rights were violated because of their LGBTQ status.

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Department of Homeland Security v. Regents of the University of California

5-4 Decision by Chief Justice Roberts

- **Background:**
  - Consolidated with *Trump v. NAACP* and *McAleenan v. Vidal*
  - This case involves the allegation that the rescission of Deferred Action for Childhood Arrivals (DACA) violated the Administrative Procedure Act because it was arbitrary and capricious, and because it was a substantive rule that did not comply with the APA's notice-and-comment requirements.
  - The plaintiffs also asserted that the rescission deprived DACA recipients of constitutionally protected liberty and property interests without due process of law and violated the Equal Protection Clause because it was motivated by discriminatory animus.

- **Holding:**
  - Vacated in part, reversed in part and remanded, the Department of Homeland Security's decision to rescind the Deferred Action for Childhood Arrivals program was arbitrary and capricious under the Administrative Procedure Act .

- **Implications:**
  - DACA will remain in place for the foreseeable future, but the Trump Administration has signaled they're working on rescinding it again. This is the 2nd year in a row where Chief Justice Roberts cast the deciding vote in a case finding the federal government violated the Administrative Procedure Act. Last term it was the Census case.

June Medical Services LLC v. Russo

5-4 Decision by Justice Breyer

- **Background:**
  - In 2014, Louisiana passed an admitting privileges law, the Unsafe Abortion Protection Act ("Act 620"), which requires physicians who perform abortions to have "active admitting privileges" at a hospital located within 30-miles of an abortion clinic.
  - If enacted, Act 620 would leave just one abortion provider at a single clinic in the entire state of Louisiana. That clinic is located in Shreveport, Louisiana—320 miles (approximately five hours) from New Orleans.
  - Act 620 is similar to the Texas admitting privileges statute struck down by the Supreme Court in 2016 in *Whole Woman's Health v. Hellerstedt*.
- **Holding:**
  - Reversed 5th Circuit, Louisiana' Unsafe Abortion Protection Act, requiring doctors who perform abortions to have admitting privileges at a nearby hospital, is unconstitutional
- **Implications:**
  - Chief Justice Roberts' vote was solely based on stare decisis and made it clear that he would have found in favor of Louisiana were it not for *Whole Woman's Health*

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Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania

7-2 Decision by Justice Thomas

- **Background:**
  - The Affordable Care Act's Women's Health Amendment ("Contraceptive Mandate") requires employers to provide contraception in their health insurance plans. The rule allowed nonprofit religious organizations to file for an exemption.
  - Burwell v. Hobby Lobby and Wheaton College v. Burwell extended the exemption to certain for-profit privately-held religious organizations and allowed religious organizations to simply notify the Department of Human Services that they do not intend to provide contraception.
  - In 2017, Trump admin promulgated a rule (without public comment) that expanded the scope of the religious exemption under the ACA and the Religious Freedom Restoration Act and added a "moral" exemption that also allowed non-religious employers to refuse providing birth control in the health plans for their employees.
  - Pennsylvania and New Jersey challenged the 2017 rule and religious employers, Little Sisters of the Poor and Paul Home, intervened.
  - The district court issued a nationwide injunction, preventing the rule from going into effect, and the Third Circuit affirmed.
- **Holding:**
  - Reversing the 3rd Circuit, the Administration had authority under the Affordable Care Act to promulgate rules exempting employers with religious or moral objections from providing contraceptive coverage to their employees.
- **Implications:**
  - Any employer or university can deny contraceptive coverage to employees as long as it claims a religious or moral objection for doing so, which could render the ACA requirement that insurance plans cover contraception without out-of-pocket expense meaningless.

Thank you. For questions or additional information, please contact:

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