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TWO THINGS CERTAIN®

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For this month's newsletter, we asked our summer associate Erin McNamara to provide a briefing on the major cases from last year's historic Supreme Court docket. Erin is a rising third-year law student at the Marshall-Wythe School of Law at William and Mary.

Supreme Court Recap: Summer 2015

In the past few months, the Supreme Court came down with a number of interesting and monumental decisions that will shape America for years to come. Check out summaries of this year's cases below.

Lethal Injection -- *Glossip v. Gross* (decided June 29)

After a botched execution in 2014, several Oklahoma death row inmates sued claiming the use of midazolam as the initial drug in a three-drug lethal injection procedure violated the Eighth Amendment's prohibition on cruel and unusual punishment. The Court held that states may continue to use the drug to carry out death sentences because there was insufficient evidence that midazolam entailed a substantial risk of severe pain compared to available alternatives, and the Eighth Amendment does not require a constitutional execution method be free of any risk of pain.

Pollution Limits -- Three cases (decided June 29)

Industry groups and about twenty states challenged the Environmental Protection Agency's decision to regulate emissions of mercury and other toxic pollutants from coal-fired power plants. The Court found that the EPA violated the Clean Air Act's requirement that regulations be "appropriate and necessary" because the agency failed to undertake a cost-benefit analysis before deciding to limit emissions.

Partisanship and Redistricting -- *Arizona State Legislature v. Arizona Independent Redistricting Commission* (decided June 29)

In 2000, Arizona voters passed a proposition amending the state constitution to strip the legislature of its redistricting authority and vest it in the newly created Arizona Independent Redistricting Commission (IRC). The legislature sued the IRC claiming that the proposition violated the Elections Clause of the

federal Constitution, but the Supreme Court upheld the voter proposition because it was in accordance with the state constitution's structure of lawmaking.

Same-Sex Marriage -- *Obergefell v. Hodges* (decided June 26)

Same-sex couples from Ohio, Michigan, Kentucky, and Tennessee challenged the constitutionality of state bans on same-sex marriage or refusal to recognize legal same-sex marriages performed in other jurisdictions. Plaintiffs argued that the states' statutes violated the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment. Siding with the plaintiffs, the Court found that the Fourteenth Amendment requires states to license and acknowledge same-sex marriages. Judicial precedent has held that the right to marry is a fundamental liberty, and under the Due Process Clause that analysis applies to same-sex couples in the same manner as it does to opposite-sex couples. The Equal Protection Clause also guarantees same-sex marriage because denial of that right would deny same-sex couples equal protection under the law.

Health Care Subsidies -- *King v. Burwell* (decided June 25)

The Affordable Care Act (ACA) requires states establish an "exchange" through which people can purchase health insurance, or if they elect not to do so, the federal government will establish an exchange in that state. Although the wording of the ACA only refers to tax credits in state-run exchanges, an IRS regulation allowed for tax credits in federally run exchanges as well. The federal subsidies were challenged by a group of Virginia residents who would otherwise fall under the unaffordability exception and be exempt from having to purchase health insurance. The Court upheld the ACA, ruling that the language of the statute clearly indicates that Congress intended the subsidies be available through both state and federal exchanges.

Housing Discrimination -- *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* (decided June 25)

A Texas group that helps mostly lower-income African American families find housing in the Dallas suburbs argued that low income housing tax credits were being disproportionately granted to developments in minority neighborhoods, thereby perpetuating segregation under the Fair Housing Act. The Court held that plaintiffs could prove their discrimination claim using statistics that show the challenged practice produced a "disparate impact."

Religious Signs and Free Speech -- *Reed v. Town of Gilbert, Arizona* (decided June 18)

A church sued after receiving notice that its signs violated a town ordinance limiting the size, number, duration and location of political, ideological, and directional signs. The Supreme Court held that the town ordinance violated the Free Speech Clause of the First Amendment.

The Confederate Flag and Free Speech -- *Walker v. Texas Division, Sons of Confederate Veterans* (decided June 18):

Texas Department of Motor Vehicles denied the Sons of Confederate Veterans' proposal for specialty license plates featuring the Confederate battle flag, on the grounds that the flag was offensive. While the State maintained that specialty plates are government speech and thus immune from any requirement of viewpoint neutrality, the Sons of Confederate Veterans argued the plates' rejection violated their First Amendment free speech and Fourteenth Amendment equal protection rights. The Court sided with the State, holding that specialty plate designs constitute government speech and thus Texas was entitled to reject the group's proposal.

Separation of Powers in Foreign Affairs -- *Zivotofsky v. Kerry* (decided June 8):

Zivotofsky's parents requested that his place of birth on his passport be recorded as "Israel" in accordance with Section 214(d) of the Foreign Relations Authorization Act, but the State Department refused and instead listed "Jerusalem." The Court held the federal statute impermissibly infringes on the President's power to recognize foreign states.

Social Media and Free Speech -- *Elonis v. United States* (decided June 1)

After posting threatening rap lyrics on Facebook directed at his wife, Elonis was convicted of transmitting threats in interstate commerce under 18 U.S.C. § 875 (c). On appeal, Elonis argued "true threats" require a subjective intent to threaten. The Supreme Court agreed with Elonis, holding that an objective standard does not go far enough to separate innocent, accidental conduct from purposeful, wrongful acts.

Employment Discrimination -- *Equal Opportunity Employment Commission v. Abercrombie & Fitch Stores* (decided June 1):

Elauf, a practicing Muslim, was denied employment at Abercrombie & Fitch because the headscarf she wore during her interview did not conform with the store's "Look Policy." Elauf sued for religious discrimination under Title VII of the Civil Rights Act. Abercrombie argued that Elauf should have informed the interviewer she required an accommodation from the look policy, and that the headscarf was not the expression of a sincerely held religious belief. The Court found for Elauf, holding that job applicants are not required to make a specific request for religious accommodation, and that Title VII creates an affirmative duty for employers to accommodate religious practices.

Judicial Elections and Free Speech -- *Williams-Yulee v. Florida Bar* (decided April 29)

A judicial candidate in Florida solicited campaign contributions despite a bar rule prohibiting a candidate from personal solicitation of funds. On appeal, she argued the rule violated her First Amendment free speech rights. The Supreme Court found no violation, as the speech restriction served the compelling state interest of preserving public confidence in the integrity of the judiciary and was sufficiently narrowly tailored to that interest.

Race and Redistricting -- *Alabama Legislative Black Caucus v. Alabama; Alabama Democratic Conference v. Alabama* (decided March 25)

In two consolidated cases, African American and Democratic lawmakers claimed that Republican legislators had engaged in “racial gerrymandering” in Alabama’s 2012 redistricting. Siding with the plaintiffs, the Supreme Court held that the state Legislature placed too much emphasis on race by maintaining high concentrations of African American votes in some districts.

Pregnancy Discrimination -- *Young v. United Parcel Service* (decided March 25)

A female driver sued UPS under the Pregnancy Discrimination Act after the company forced her to take an extended, unpaid leave of absence during her pregnancy. The Court held the Act does not require employers provide the same work accommodations to a pregnant employee as to employees with similar, but non-pregnancy related, work limitations; however, courts must evaluate the extent to which an employer’s policy treats pregnant workers less favorably and determine whether there are legitimate reasons for such differences.

Religious Freedom in Prison -- *Holt v. Hobbs* (decided January 2015)

A Muslim inmate sued the Arkansas Department of Corrections for forbidding him to grow a half-inch beard for religious purposes. The Supreme Court unanimously held the grooming policy violates the Religious Land Use and Institutionalized Persons Act, as prison officials failed to show that preventing inmates from growing beards furthered a compelling government interest and this policy was the least restrictive means of interference.

Sources: Adam Liptak and Alicia Parlapiano, *Major Supreme Court Cases in 2015*, NEW YORK TIMES (July 1, 2015), http://www.nytimes.com/interactive/2015/us/major-supreme-court-cases-in-2015.html?_r=0; Adam Liptak and Coral Davenport, *Supreme Court Blocks Obama’s Limits on Power Plants*, NEW YORK TIMES (June 29, 2015), <http://www.nytimes.com/2015/06/30/us/supreme-court-blocks-obamas-limits-on-power-plants.html>; The Oyez Project at IIT Chicago-Kent College of Law, <http://www.oyez.org>.



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