2019-2020 Supreme Court Preview: Contents

Institute of Bill of Rights Law at the William & Mary Law School

Repository Citation
https://scholarship.law.wm.edu/preview/294

Copyright c 2019 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
https://scholarship.law.wm.edu/preview
The Institute of Bill of Rights Law was established at William & Mary in 1982 to support research and education on the Constitution and the Bill of Rights. One of the principal missions of the Institute is to facilitate interaction between the professions of law and journalism. Through a discussion of key cases on the Supreme Court’s docket at the start of each term, the annual Supreme Court Preview provides in-depth education for journalists on the underlying issues to enhance press coverage of the decisions.

Neal Devins
Sandra Day O’Connor Professor of Law
Director of the Institute of Bill of Rights Law

Rebecca Green
Professor of Practice

Student Editors
Victoria Vaccaro, Chief Student Editor
Sammy Carey Lamb, Sirena Rowland, and Susan Thomas, Assistant Student Editors

The College of William & Mary
Law School
Williamsburg, Virginia 23187-8795
(757) 221-3810 • FAX (757) 221-3775
IBRL@wm.edu • http://www.IBRL.org
Supreme Court Preview

Table of Contents

Introduction

In This Section:

Schedule of Events .......................................................................................................................... p. 11
Panel Members ..................................................................................................................................... pp. 12 – 26

I. Moot Court: Bostock v. Clayton County, Georgia; Altitude Express, Inc. v. Zarda

Moot Court: Bostock v. Clayton County, Georgia; Altitude Express, Inc. v. Zarda .................... p. 27

“SUPREME COURT TO DECIDE WHETHER LANDMARK CIVIL RIGHTS LAW APPLIES TO GAY AND TRANSGENDER WORKERS”
Adam Liptak ........................................................................................................................................... p. 79
“ON L.G.B.T. RIGHTS, THE SUPREME COURT ASKS THE QUESTION”
Linda Greenhouse ................................................................................................................................. p. 82
“SUPREME COURT TO RULE ON GAY, TRANSGENDER EMPLOYMENT RIGHTS”
Jess Bravin and Brent Kendall ............................................................................................................. p. 86
“COURT TO TAKE UP LBGT RIGHTS IN THE WORKPLACE”
Amy Howe ............................................................................................................................................... p. 89
“TITLE VII AND LGBT DISCRIMINATION: THE PATH TO THE HIGH COURT”
Melissa Legault ....................................................................................................................................... p. 91
“THIS LANDMARK RULING COULD BRING LOGIC TO CIVIL RIGHTS LAWS”
Caroline Polisi ........................................................................................................................................ p. 95
“TWO NEW PETITIONS CALL ON SCOTUS TO DECIDE WORKPLACE PROTECTIONS FOR GAYS, LESBIANS”
Alison Frankel ......................................................................................................................................... p. 98
“11TH CIRCUIT Draws Judge’s Ire With En Banc Review Refusal”
Kat Green ................................................................................................................................................. p. 100
“11TH CIRCUIT Joins Others in Holding Sexual Orientation Discrimination Not Covered Title VII”
Julie Furer Stahr ...................................................................................................................................... p. 103
“2ND CIRCUIT Demolishes Key DOJ Argument Against Workplace Protection for Gays”
II. What to Expect from the Roberts Court

In This Section:

“After 14 Years, Chief Justice Roberts Takes Charge”
Adam Liptak ........................................................................................................... p. 115

“Chief Justice John Roberts Is About to Show His Cards”
Joan Biskupic ........................................................................................................ p. 119

“Chief Justice Tried to Assure the Supreme Court Is Apolitical, But Term’s Biggest Cases Present Partisan Challenges”
Robert Barnes ........................................................................................................ p. 122

“Supreme Court Wrap-Up: A Slate of Conservative, If Less Predictable, Rulings”
Jess Bravin and Brent Kendall ................................................................................ p. 126

“Supreme Court with Roberts in Charge: Conservative, But Not Always Predictable”
David Savage .......................................................................................................... p. 129

“Supreme Court Term Found Trump’s Justices, and Others, Forming Unpredictable Alliances”
Pete Williams ......................................................................................................... p. 132

“Empirical Scouts: Changes are afoot — 5-4 Decision during October Term 2018”
Adam Feldman ........................................................................................................ p. 134

“Trump on Collision Course with Supreme Court; Justices May Avoid Interference in 2020 Election”
Richard Wolf .......................................................................................................... p. 137

“They’re Not ‘Wonder Twins’: Gorsuch, Kavanaugh Shirt the Supreme Court, But Their Differences Are Striking”
Robert Barnes ........................................................................................................ p. 140

“The Latest Chapter in The Gorsuch-Kavanaugh Saga Is the Most Revealing Yet”
Leah Litman ........................................................................................................... p. 143
# III. Criminal Law

In This Section:

**New Case: Kahler v. Kansas** .................................................................................. p. 147
   “**SUPREME COURT TO EXAMINE INSANITY DEFENSE, NEED FOR JURY UNANIMITY**”
   Jess Bravin ............................................................................................................. p. 181
   “**KANSAS QUADRUPLE KILLER’S SCOTUS APPEAL COULD CHANGE INSANITY DEFENSES NATIONWIDE”**
   Nick Viviani ........................................................................................................ p. 183
   “**CONSSENSUS OF CONFUSION: DETERMINING THE CONSTITUTIONALITY OF THE INSANITY DEFENSE”**
   Rafael Santa Maria ................................................................................................. p. 186
   “**KANSAS SUPREME COURT UPHOLD JAMES KAHLER’S MURDER CONVICTION, DEATH SENTENCE”**
   Morgan Chilson ................................................................................................. p. 188

**New Case: Kelly v. United States** .................................................................. p. 189
   “**HIGH COURT TAKES ON ‘BRIDGEGATE’ APPEAL”**
   Bill Wichert ........................................................................................................ p. 219
   “**EX-CHRISTIE AIDE GETS SUPREME COURT HEARING ON BRIDGE SCANDAL”**
   Greg Stohr ........................................................................................................ p. 221
   “**SUPREME COURT TO HEAR APPEAL IN BRIDGEGATE CASE”**
   RYAN HUTCHINS .............................................................................................. p. 223
   “**WHY THE ‘BRIDGEGATE’ SCANDAL COULD BACKFIRE ON PROSECUTORS”**
   NICK CORASANITI ............................................................................................. p. 225
   “**BARONI SENTENCED TO 2 YEARS IN PRISON FOR ROLE IN BRIDGEGATE SCANDAL; KELLY GETS 18 MONTHS”**
   RYAN HUTCHINS .............................................................................................. p. 229
   “**BRIDGEGATE CONVICTIONS FOR BARONI AND KELLY MOSTLY UPHeld”**
   MATT FRIEDMAN ............................................................................................. p. 233

**New Case: Ramos v. Louisiana** ......................................................... p. 235
   “**SUPREME COURT TO EXAMINE WHETHER UNANIMOUS JURIES ARE REQUIRED FOR CRIMINAL CONVICTIONS”**
   Robert Barnes ..................................................................................................... p. 245
   “**JURY UNANIMITY BID GETS HIGH COURT LOOK”**
   Jordan S. Rubin .................................................................................................. p. 247
   “**ARE UNANIMOUS JURIES REQUIRED IN STATE CRIMINAL CASES? SCOTUS WILL CONSIDER OVERRULING PRECEDENT”**
   Debra Cassens Weiss ....................................................................................... p. 248

**New Case: Mathena v. Malvo** ................................................................. p. 249
   “**SUPREME COURT WILL HEAR CASE OF LEE MALVO, THE D.C. SNIPER”**
   Adam Liptak ..................................................................................................... p. 261
IV. Immigration Law

In This Section:

New Cases: Department of Homeland Security v. Regents of the University of California; Trump v. NAACP; McAleenan v. Vidal .......................................................... p. 270
“IT’S NOW THE SUPREME COURT’S TURN TO TRY TO RESOLVE THE FATE OF THE DREAMERS”
Michael D. Shear and Adam Liptak ........................................................................ p. 306
“SUPREME COURT TO REVIEW DACA PROGRAM PROTECTING YOUNG UNDOCUMENTED IMMIGRANTS”
Robert Barnes ........................................................................................................ p. 309
“SUPREME COURT DOESN’T ACT ON TRUMP’S APPEAL IN ‘DREAMERS’ CASE”
Adam Liptak ........................................................................................................ p. 312
“APPEALS COURT FINDS TRUMP ADMINISTRATION’S MOVE TO END DACA ‘ARBITRARY AND CAPRICIOUS’”
Ann E. Marimow and Robert Barnes ...................................................................... p. 314
“FEDERAL APPELLATE COURT SIDES WITH UC REGENTS IN FIGHT TO PRESERVE DACA”
Megana Sekar ........................................................................................................ p. 316
“U.S COURT ORDERS TRUMP ADMINISTRATION TO FULLY REINSTATE DACA PROGRAM”
Andrew Chung ........................................................................................................ p. 318
“FEDERAL JUDGE SAYS TRUMP ADMINISTRATION FAILED TO JUSTIFY DACA RESCISSION”
Miriam Valverde .................................................................................................... p. 319
“SUPREME COURT SAYS WHITE HOUSE CAN WITHHOLD DACA DOCUMENTS FOR NOW”
Jess Bravin and Brent Kendall ................................................................................ p. 320
“DACA HAS NOT BEEN SAVED—AND IT MAY BE IN ITS LAST DAYS”
Jack Herrera ........................................................................................................... p. 323

New Case: Kansas v. Garcia .................................................................................. p. 327
“SUPREME COURT TO RULE ON IDENTITY FRAUD BY UNDOCUMENTED IMMIGRANTS”
Greg Stohr ............................................................................................................. p. 342
“SUPREME COURT TAKES UP KANSAS IDENTITY THEFT CASE”
Lawrence Hurley ................................................................................................... p. 344
“FEDS, CONSERVATIVES WEIGH STATES’ USE OF I-9S IN PROSECUTIONS”
Tiffany Hu .............................................................................................................. p. 346
“SHOCKER: KANSAS SUPREME COURT LICENSES IDENTITY THEFT—BUT ONLY BY ILLEGAL ALIENS”
V. Business Law

In This Section:

New Case: Moda Health Plan Inc. v. United States; Maine Community Health Options v. United States; and Land of Lincoln Mutual Health Insurance Co. v. United States ........................................ p. 398
“U.S. SUPREME COURT TO HEAR MODA HEALTH’S $24 MILLION ACA APPEAL”
Elizabeth Hayes .................................................................................................................. p. 426
“SUPREME COURT TO CONSIDER CASES ACCUSING US OF SHORTING HEALTH INSURERS $12B IN PROMISED PAYMENTS”
Debra Cassens Weiss ........................................................................................................ p. 427
“SUPREME COURT TO HEAR INSURERS’ SUIT ON OBAMACARE”
Adam Liptak ......................................................................................................................... p. 428
“INSURER WINS FIRST CSR PAYMENT DECISION; UPDATES ON BHP AND RISK CORRIDORS LITIGATION”
Katie Keith ......................................................................................................................... p. 430
“MODA TAKES A HIT IN COURT OF APPEALS DECISION”
Tom Holt ............................................................................................................................... p. 434
<table>
<thead>
<tr>
<th>Author</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evan Sweeney</td>
<td>&quot;INSURERS PREPARE TO APPEAL RISK CORRIDOR CASE TO THE SUPREME COURT&quot;</td>
<td>436</td>
</tr>
<tr>
<td>Bill Donahue</td>
<td>&quot;HIGH COURT TO TACKLE PIRATE SHIP COPYRIGHT FIGHT&quot;</td>
<td>438</td>
</tr>
<tr>
<td>Krista L. Cox</td>
<td>&quot;SCOTUS TO DECIDE WHETHER STATES CAN BE SUED FOR COPYRIGHT INFRINGEMENT IN CASE INVOLVING BACKBEARD’S SHIP&quot;</td>
<td>455</td>
</tr>
<tr>
<td>Steve Brachmann</td>
<td>&quot;SUPREME COURT TO RULE WHETHER CONGRESS APPROPRIATELY ABROGATED STATE SOVEREIGN IMMUNITY FOR COPYRIGHT CLAIMS IN ALLEN V. COOPER&quot;</td>
<td>457</td>
</tr>
<tr>
<td>Rebecca Harker Duttry</td>
<td>&quot;YO HO NO: LACK OF EXPRESS LANGUAGE SCUTTLES CLAIM OF SOVEREIGN IMMUNITY WAIVER&quot;</td>
<td>460</td>
</tr>
<tr>
<td>Brain Esler</td>
<td>&quot;THE STATE CAN PLUNDER YOUR COPYRIGHT: ALLEN V. COOPER&quot;</td>
<td>463</td>
</tr>
<tr>
<td>Bill Donahue</td>
<td>&quot;SUPREME COURT WILL HEAR CASE OVER COPYRIGHTS TO LEGAL TEXTS&quot;</td>
<td>468</td>
</tr>
<tr>
<td>The New York Times Editorial Board</td>
<td>&quot;THE LAW©?: NO ONE OWNS THE LAW, AND NO ONE SHOULD BE ABLE TO COPYRIGHT IT&quot;</td>
<td>492</td>
</tr>
<tr>
<td>Adam Liptak</td>
<td>&quot;ACCUSED OF ‘TERRORISM’ FOR PUTTING LEGAL MATERIALS ONLINE&quot;</td>
<td>494</td>
</tr>
<tr>
<td>Steve Bachmann</td>
<td>&quot;ELEVENTH CIRCUIT FINDS NO VALID COPYRIGHT IN OFFICIAL CODE OF GEORGIA ANNOTATED&quot;</td>
<td>496</td>
</tr>
<tr>
<td>Greg Stohr, Michelle Kaske, and Steven Church</td>
<td>&quot;UPDATE 1- U.S. SUPREME COURT TO DECIDE LEGALITY OF PUERTO RICO FINANCIAL BOARD APPOINTMENTS&quot;</td>
<td>501</td>
</tr>
<tr>
<td>Lawrence Hurley</td>
<td>&quot;PUERTO RICO’S BANKRUPTCY PLAN IS ALMOST DONE, AND IT COULD START A FIGHT&quot;</td>
<td>520</td>
</tr>
<tr>
<td>Mary Williams Walsh</td>
<td>&quot;PUERTO RICO FACES HEDGE FUND LAWSUITS AS U.S. REPRIEVE ENDS&quot;</td>
<td>522</td>
</tr>
<tr>
<td>Michelle Kaske</td>
<td>&quot;FIRST CIRCUIT DECLARES APPOINTMENT OF FOMB MEMBERS VIOLATES APPOINTMENTS CLAUSE&quot;</td>
<td>523</td>
</tr>
</tbody>
</table>

6
VI. Civil Rights

In This Section:

“SUPREME COURT TO DECIDE WHETHER LANDMARK CIVIL RIGHTS LAW APPLIES TO GAY AND TRANSGENDER WORKERS”
Adam Liptak .............................................................................................................................................. p. 566
“TRUMP ADMINISTRATION ASKS SUPREME COURT TO PERMIT EMPLOYMENT DISCRIMINATION AGAINST TRANSGENDER WORKERS”
Tara Law ..................................................................................................................................................... p. 569
“EEOC’S TRANS BIAS WIN EXPOSES SHAKINESS OF RFRA DEFENSE”
Vin Gurrieri .................................................................................................................................................. p. 571
“TITLE VII DOESN’T PROTECT TRANS WORKERS, FUNERAL HOME SAY”
Danielle Nichole Smith ................................................................................................................................ p. 574
“DOJ ARGUES THAT LAW DOESN’T PROTECT TRANSGENDER WORKERS, OPPOSING THE EEOC”
Lorelei Laird ............................................................................................................................................... p. 577

**New Case: Comcast Corp. v. National Association of African-American Owned Media** ........................................ p. 579
“SUPREME COURT TO HEAR RACIAL DISCRIMINATION CASE AGAINST COMCAST”
Adam Liptak ................................................................................................................................................ p. 582
“SUPREME COURT WILL DECIDE STANDARD FOR PROVING RACIAL BIAS IN DISCRIMINATION SUIT AGAINST COMCAST”
Debra Cassens Weiss .................................................................................................................................. p. 584
“SUPREME COURT TO CONSIDER CURBING RACIAL DISCRIMINATION CLAIMS”
Greg Stohr .................................................................................................................................................... p. 586
“JUSTICE COULD BLUNT RACIAL BIAS CASES WITH COMCAST RULING”
Anne Cullen ................................................................................................................................................. p. 588
“COMCAST, TIME WARNER CABLE HIT WITH $20 BILLION RACIAL BIAS LAWSUIT”
Jonathan Stempel ......................................................................................................................................... p. 592
“BLACK-OWNED NETWORK’S BIAS SUIT AGAINST COMCAST”
Judy Greenwald ........................................................................................................................................... p. 594
“APPEALS COURT REJECTS CHARTER/COMCAST MOTION TO DISMISS BYRON ALLEN’S MULTIBILLION-DOLLAR CIVIL RIGHTS SUIT- UPDATE”
Dawn C. Chmielewski .................................................................................................................................. p. 596
“CALIF. JUDGE DISMISSED $20B RACE BIAS SUIT AGAINST COMCAST”
Bonnie Eslinger ............................................................................................................................................... p. 599

**New Case: Babb v. Wilkie** ......................................................................................................................... p. 602
“JUSTICES TO REVIEW HOW FEDERAL WORKERS PROVE JOB BIAS CLAIM”
Hassan A. Kanu ............................................................................................................................................. p. 613
“JUSTICES TO MULL REQUIREMENTS FOR FED. WORKER ADEA CLAIMS”
Danielle Nichole Smith ................................................................................................................................. p. 615
VII. Constitutional Law

In This Section:

“SUPREME COURT ACCEPTS FIRST GUN CASE IN NEARLY A DECADE”
Jess Bravin .................................................................................................................... p. 685
“FEARING SUPREME COURT LOSS, NEW YORK TRIED TO MAKE GUN CASE VANISH”
Adam Liptak ................................................................................................................ p. 688
“NEW YORK EASED GUN LAW HOPEFUL SUPREME COURT WOULD DROP SECOND AMENDMENT CASE – BUT THAT HASN’T HAPPENED YET”
Robert Barnes ............................................................................................................. p. 691
“NRA, GUN RIGHTS GROUP USING NEW YORK CITY RULE TO SEEK EXPANSION OF SECOND AMENDMENT IN SUPREME COURT”
Richard Wolf ............................................................................................................... p. 694
“A CALL TO ARMS AT THE SUPREME COURT: CONSERVATIVE JUDGES WORRY THAT THE SECOND AMENDMENT HAS BECOME ‘A SECOND-CLASS RIGHT.’”
Linda Greenhouse ..................................................................................................... p. 697
“TRUMP SAYS NRA IS ‘UNDER SIEGE BY CUOMO’ AFTER NEW YORK AG OPENS INVESTIGATION INTO GUN GROUP”
Tucker Higgins ......................................................................................................... p. 702
“NEW YORK CITY LAW SURVIVES GUN RIGHTS GROUP’S LEGAL CHALLENGE”
Jonathan Stempel .................................................................................................... p. 704
New Case: Espinoza v. Montana Department of Revenue ........................................ p. 706
“SUPREME COURT TO HEAR SCHOOL CHOICE CASE”
Lauren Camera ........................................................................................................ p. 739
“RELIGIOUS-SCHOOL SCHOLARSHIPS DRAW U.S. SUPREME COURT REVIEW”
Greg Stohr ............................................................................................................. p. 741
“If the Supreme Court hears this case, it could change the face of public education”
Peter Greene ......................................................................................................... p. 742
“The Supreme Court has a chance to uphold school choice and religious liberty”
Jamie Gass and Ben Degrow ............................................................................. p. 744
“Montana Supreme Court strikes down tax-credit program for private schools”
Mark Walsh ......................................................................................................... p. 746

New Case: June Medical Services v. Gee ................................................................. p. 748
“SUPREME COURT ON 5-TO-4 VOTE BLOCKS RESTRICTIVE LOUISIANA ABORTION LAW”
Robert Barnes ...................................................................................................... p. 785
“SUPREME COURT BLOCKS LOUISIANA ABORTION LAW”
Adam Liptak ......................................................................................................... p. 788
“ABORTION CASE PROVIDES AN UNEXPECTED QUICK TEST FOR SUPREME COURT CONSERVATIVES”
Robert Barnes ...................................................................................................... p. 792
“A TEMPORARY WIN FOR ABORTION RIGHTS”
Garrett Epps ......................................................................................................... p. 795
“When judges defy the Supreme Court”
Linda Greenhouse .............................................................................................. p. 798
“SUPREME COURT ISSUES A GO-SLOW SIGNAL IN ITS FIRST ABORTION DECISION OF THE YEAR”
David Savage ....................................................................................................... p. 802
“NEW LOUISIANA ANTI-ABORTION LAW ON HOLD AS DOCTORS CHALLENGE RECENT COURT RULING”
Mark Ballard ........................................................................................................ p. 806
“SUPREME COURT WILL NOT HEAR BID TO REVIVE ALABAMA ABORTION BAN”
Adam Liptak ......................................................................................................... p. 809
“SUPREME COURT SIDESTEPS ABORTION QUESTION IN RULING ON INDIANA LAW”
Adam Liptak ......................................................................................................... p. 811