

The Supreme Court - June 19, 2017

The Supreme Court of the United States issued decisions in four cases today:

Matal v. Tam, No. 15-1293: A dance-rock band called “The Slants” filed an application for a federal trademark registration for that name. The group knew that the name was a derogatory term for people of Asian descent, but the band members, who themselves were Asian-Americans, hoped to “reclaim” and “take ownership” of stereotypes about people of Asian ethnicity. The Patent and Trademark Office (“PTO”) denied the application, citing the statutory prohibition on the registration of trademarks that may “disparage . . . or bring . . . into contemp[t] or disrepute” any “persons, living or dead.” 15 U.S.C. §1052(a). The en banc Federal Circuit, however, found that provision in the law facially unconstitutional under the First Amendment’s Free Speech Clause. Today the Court affirmed, holding that §1052(a) violates the First Amendment of the Constitution.

The Court’s decision is available [here](#).

Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty., No. 16-466: More than 600 plaintiffs brought suit in California state court against Bristol-Myers Squibb Company (“BMS”), for purported injuries caused by the drug Plavix. BMS asserted that, although it engages in business activities in California, including generating almost a billion dollars in sales of Plavix in California between 2006-2012, the California court lacked specific jurisdiction over the claims of nonresident plaintiffs who did not allege any personal nexus between their claims and California. The California Supreme Court disagreed, and found specific jurisdiction to exist. The Court today reversed, holding that the California courts do not have specific jurisdiction to entertain the nonresidents’ claims.

The Court’s decision is available [here](#).

McWilliams v. Dunn, No. 16-5294: In *Ake v. Oklahoma*, 470 U.S. 68 (1985), the Court established that when certain threshold criteria are met, the State must provide indigent defendants with access to a mental health expert independent from the prosecution to

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effectively "assist in evaluation, preparation, and presentation of the defense." Here, James Edmond McWilliams Jr. was charged with rape and murder one month after Ake was decided. Prior to trial, a three-member commission examined McWilliams and concluded he was competent to stand trial and had not been suffering from mental illness at the time of the offense. McWilliams was convicted by a jury, which recommended the death penalty. Before the trial court's sentencing hearing, the court granted McWilliams' motion for further exams, which resulted in a report by a doctor, two days before the sentencing hearing, that, despite some likely exaggeration by McWilliams of his symptoms, he appeared to have some genuine neuropsychological problems. Over defense counsel's request for additional time to evaluate this report and other records, and assistance in doing so, the trial court sentenced McWilliams to death. A petition for federal habeas relief, arguing a failure to comply with Ake, was denied by the District Court, and the Eleventh Circuit affirmed. Today, the Court reversed, concluding that the high bar for habeas relief was satisfied based on the failure to comply with Ake's requirements for assistance in the preparation and presentation of the defense.

The Court's decision is available [here](#).

Packingham v. North Carolina, No. 15-1194: North Carolina passed a statute making it a felony offense for a registered sex offender "to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages." N.C. Gen. Stat. Ann. §§14–202.5(a), (e) (2015). This has led to the prosecution of over 1,000 people for visiting sites such as Facebook or Twitter, including petitioner Lester Gerard Packingham, who was convicted after making a Facebook post elated about the dismissal of a traffic ticket. The Court of Appeals of North Carolina struck down the statute on First Amendment grounds, but the North Carolina Supreme Court reversed. The Court today reversed, holding that the North Carolina law violates the general rule under the First Amendment that the Government may not suppress lawful speech as the means to suppress unlawful speech.

The Court's decision is available [here](#).

The Supreme Court of the United States agreed to hear one case today:

Gill v. Whitford, No. 16-1161: Whether the district court violated *Vieth v. Jubelirer*, 541 U.S. 267 (2004), with respect to its holdings regarding Wisconsin's redistricting plans; whether defendants are entitled, at a minimum, to present additional evidence showing that they would have prevailed under the district court's test, which the court announced only after the evidence had closed; and whether partisan-gerrymandering claims are justiciable.