

The Supreme Court - June 20, 2019

The Supreme Court of the United States issued four decisions this morning:

PDR Network, LLC v. Carlton Harris Chiropractic, Inc., No. 17-1705: Petitioner PDR produces the *Physicians' Desk Reference*, which is distributed to health care providers for free, and instead makes money by charging pharmaceutical companies that wish to include their drugs in the *Reference*. PDR advertised its new e-book version of the *Reference* by sending health care providers faxes saying they could reserve a free copy online. Respondent Carlton & Harris Chiropractic received one of the faxes and brought a putative class action under the Telephone Consumer Protection Act ("TCPA"), seeking statutory damages for what it claimed was an "unsolicited advertisement" prohibited by the Act. The TCPA's text was silent as to whether this prohibition included goods offered for free, but gave the Federal Communications Commission ("FCC") authority to prescribe regulations. And in a 2006 Order, the FCC stated that the term "unsolicited advertisement" includes faxes that "promote goods or services even at no cost" The District Court, however, found in PDR's favor that the fax was not an "unsolicited advertisement," despite recognizing that the FCC Order might be read to indicate the contrary, and that the Hobbs Act gave appellate courts, rather than district courts, "exclusive jurisdiction" to "determine the validity" of certain FCC "final orders." See 28 U.S.C. §2342(1). The Fourth Circuit vacated that decision, holding that the Hobbs Act required the District Court to apply the interpretation in the FCC Order. Today, the Court vacated and remanded, concluding that whether district courts were bound to follow the FCC Order may depend on two preliminary questions the Court of Appeals should first consider: (1) whether the Order is the equivalent of a legislative rule, which has the force and effect of law, or an interpretative rule, which does not; and (2) whether petitioners had a "prior" and "adequate" opportunity to seek judicial review of the Order. Justice Breyer authored the Court's opinion, joined by Chief Justice Roberts, and Justices Ginsburg, Sotomayor, and Kagan. The remaining justices concurred in the judgment.

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

Related Capabilities

- Appellate

American Legion v. American Humanist Assn., No. 17-1717: Respondent, the American Humanist Association, brought a First Amendment Establishment Clause challenge to the Bladensburg Peace Cross, which was erected in 1925 on public land as a tribute to 49 soldiers in that area of Prince George’s County, Maryland, who had given their lives in World War I. Respondent asked the court to order the relocation or demolition of the Cross, or at least the removal of its arms. The District Court rejected the Establishment Clause challenge, but the Fourth Circuit reversed and found the Cross unconstitutional. The Court today reversed, concluding that the Bladensburg Cross does not violate the Establishment Clause. That judgment was announced by Justice Alito, although the opinion was not fully joined by a majority of the Court, and Justices Breyer, Kavanaugh, Kagan, Thomas, and Gorsuch all filed separate concurring opinions. Justice Ginsburg dissented, joined by Justice Sotomayor.

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

Gundy v. United States, No. 17-6086: Congress enacted the Sex Offender Registration and Notification Act (“SORNA”) to create a national system for sex offender registration, including registration requirements and criminal penalties for anyone who knowingly fails to register in accord with SORNA’s requirements. Although the Act contains detailed “initial registration” requirements for those convicted after SORNA’s enactment, for pre-Act offenders – those convicted of a sex offense before SORNA’s enactment – the law provided that “[t]he Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter . . . and to prescribe rules for the registration of any such sex offenders” 34 U.S.C. §20913(d). The Attorney General correspondingly issued a rule reiterating that SORNA applies to all pre-Act offenders. Petitioner Herman Gundy, a pre-Act offender, was convicted for failing to register, but argued that Congress unconstitutionally delegated legislative power in contravention of the nondelegation doctrine when authorizing the Attorney General to “specify the applicability” of SORNA’s registration requirements to pre-Act offenders. The District Court rejected that argument and the Second Circuit affirmed. Today, a fractured Court affirmed. Justice Kagan, joined by Justices Ginsburg, Breyer, and Sotomayor, concluded that the delegation easily passes constitutional muster. Justice Alito concurred in the judgment, stating that he would support an effort by the majority of the Court to reconsider the Court’s prior approach to the nondelegation doctrine, but with that not being the case here, could not say that the statute lacks a discernable standard that is adequate under the approach the Court has taken for many years. Justice Gorsuch dissented, joined by Chief Justice Roberts and Justice Thomas. Justice Kavanaugh did not participate.

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

McDonough v. Smith, No. 18-485: Petitioner Edward McDonough brought a §1983 case against respondent Youel Smith, claiming that Smith had fabricated evidence and used it in pursuing criminal charges against McDonough. The statute of limitations on a §1983 claim is three years, and McDonough brought his suit just under the three-year mark from the date of his acquittal. The District Court dismissed the fabricated-evidence

claim as untimely, and the Second Circuit affirmed, holding that the limitations period ran from when McDonough learned the evidence was false and used against him in criminal proceedings, and when he suffered a loss of liberty as a result – which had occurred more than three years before the complaint was filed, when McDonough was arrested and stood trial. The Court today reversed, holding that the statute of limitations period for the fabricated evidence §1983 claim began to run when the criminal proceedings against McDonough terminated in his favor, *i.e.*, when he was acquitted. Justice Sotomayor delivered the Court's opinion. Justice Thomas dissented, joined by Justices Kagan and Gorsuch.

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