

The Supreme Court - June 26, 2017

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

California Public Employees' Retirement System v. ANZ Securities, Inc., No. 16-373: Lehman Brothers' collapse led to a number of securities lawsuits that were consolidated in multidistrict litigation. Petitioner California Public Employees' Retirement System was a putative class member in a complaint filed around late 2008 raising claims under §11 of the Securities Act of 1933 concerning registration statements for Lehman's 2007 and 2008 securities offerings. Petitioner filed its own complaint in February 2011 raising identical claims, and later opted out of the class action. Respondents moved to dismiss petitioner's individual lawsuit, invoking §13 of the Act, which provides that, "[i]n no event shall any such action be brought to enforce a liability created under [§11] more than three years after the security was bona fide offered to the public" 15 U.S.C. §77m. Petitioner instead claimed that the three-year period was tolled by *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974). The District Court found that §13 is not subject to tolling, and the Second Circuit affirmed. The Court today affirmed, holding that §13 is a statute of repose intended and designed to protect defendants against future liability, and as such, displaces equitable tolling principles applicable under *American Pipe*.

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

Trinity Lutheran Church of Columbia, Inc. v. Comer, No. 15-577: The Trinity Lutheran Church Child Learning Center applied for a grant from the Missouri Department of Natural Resources ("Department") to resurface the playground for its preschool and daycare center with a rubber surface. The Department offers such grants to qualifying public and private schools, nonprofit daycare centers, and other nonprofit entities. The Center would have received the grant, but for the fact it was deemed categorically ineligible based on the Department's rule, based on the Missouri constitution, that it could not provide financial assistance directly to a church. Trinity Lutheran filed a federal lawsuit alleging that its denial violated the Free Exercise Clause of the First Amendment.

Related Capabilities

- Appellate
- Securities & Financial Services Litigation & Enforcement
- Class Action Litigation
- Immigration

The District Court dismissed the claim, and the Eighth Circuit affirmed. Today, the Court reversed, holding that the Free Exercise Clause prohibits a state from denying a qualified religious entity a public benefit solely because of its religious character.

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

Davila v. Davis, No. 16-6219: Petitioner Erick Daniel Davila was convicted by a Texas state court jury of capital murder, and sentenced to death. At trial, Davila's counsel had objected to a jury instruction regarding transferred intent that the trial court overruled. On appeal, Davila's counsel challenged the sufficiency of the evidence, but did not challenge the transferred intent instruction. The state appellate court affirmed, and state habeas relief was denied, where Davila's counsel did not challenge his appellate counsel's failure to raise the transferred intent instruction on direct appeal. This argument was instead raised for the first time when Davila sought federal habeas relief. The District Court denied Davila's petition and the Fifth Circuit denied a certificate of appealability. The Court today affirmed, holding that there is not an exception allowing a federal habeas court to consider for the first time a defaulted claim of ineffective assistance of appellate counsel.

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

Hernandez v. Mesa, No. 15-118: Sergio Adrián Hernández Güereca, a 15-year old Mexican national, was playing with some friends between the U.S./Mexico border, running to touch the U.S. embankment and then running back down to Mexico territory. Border Patrol Agent Jesus Mesa detained one of Hernández's friends in U.S. territory, and then shot and killed Hernández, who was standing in Mexican territory and was unarmed and unthreatening. Hernández's parents brought a federal suit against Mesa under *Bivens*, alleging Mesa violated their son's Fourth and Fifth Amendment rights. The District Court dismissed the suit and the *en banc* Fifth Circuit affirmed. Today, the Court vacated and remanded, holding that the Fifth Circuit should (1) address the *Bivens* issue in light of the Court's recent ruling in *Ziglar v. Abbasi*; (2) address the Fourth Amendment question if necessary after deciding the *Bivens* issue; and (3) reconsider the Fifth Amendment analysis in light of the fact that qualified immunity is not determined based on facts an officer learns after the incident ends – here, Hernández's nationality and the extent of his ties to the U.S.

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

Pavan v. Smith, No. 16-992: Two married same-sex couples – Leigh and Jana Jacobs, and Terrah and Marisa Pavan – each conceived children through anonymous sperm donation and gave birth in Arkansas. Each couple filled out paperwork for birth certificates listing both spouses as the parents. In both circumstances, however, Arkansas issued birth certificates bearing only the birth mother's name. Under Arkansas law, the name of the mother's male spouse is generally required to appear on the child's birth certificate, regardless of the male spouse's biological relationship to the child. The petitioners brought suit in Arkansas state court, seeking a declaration that the birth-certificate law violates the Constitution. The trial court found that the law was inconsistent

with the Court's decision in *Obergefell v. Hodges*, 576 U.S. ____ (2015), which held that the Constitution entitles same sex-couples to civil marriage on the same terms and conditions as opposite-sex couples. The Arkansas Supreme Court, however, disagreed, and found that the birth certificate statute passed constitutional muster. The Court today reversed, holding that the differential treatment here infringes *Obergefell's* commitment to provide same-sex couples the constellation of benefits that States have linked to marriage.

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

The Supreme Court of the United States granted certiorari in three cases today:

Trump v. International Refugee Assistance Project, Nos. 16-1436 and 16-1540: The Court granted the Government's petitions for certiorari to review the travel ban in Executive Order No. 13780, Protecting the Nation from Foreign Terrorist Entry Into the United States. The Court also granted in part the Government's applications to stay the lower courts' preliminary injunction orders. The Court stayed the injunctions to the extent they prevented enforcement of the §2(c) entry suspension with respect to foreign nationals who lack any bona fide relationship with a person or entity in the United States. The Court also partially stayed the injunction as to §6(a)'s suspension of refugee admissions and the §6(b) refugee cap. The Court ordered that §§6(a) and 6(b) may not be enforced against an individual seeking admission as a refugee who can credibly claim a bona fide relationship with a person or entity in the United States, but may be applied to all other individuals. The Court granted certiorari as to the following questions: (1) Whether respondents' challenge to the temporary suspension of entry of aliens abroad is justiciable; (2) Whether Section 2(c)'s temporary suspension of entry violates the Establishment Clause; (3) Whether the global injunction, which rests on alleged injury to a single individual plaintiff, is impermissibly overbroad; and (4) Whether the challenges to §2(c) became moot on June 14, 2017.

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

Masterpiece Cakeshop, et al. v. Co. Civil Rights Comm'n, et al., Nos. 16-111:

Whether applying Colorado's public accommodations law to compel Phillips to create expression that violates his sincerely held religious beliefs about marriage violates the Free Speech or Free Exercise Clauses of the First Amendment.

Digital Realty Trust, Inc. v. Somers, Nos. 16-1276: Whether the anti-retaliation provision for "whistleblowers" in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 extends to individuals who have not reported alleged misconduct to the Securities and Exchange Commission and thus fall outside the Act's definition of a "whistleblower."