

The Supreme Court - June 26, 2019

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

Tennessee Wine and Spirits Retailers Assn. v. Thomas, No. 18-96: The State of Tennessee has a number of laws imposing durational-residency requirements on individuals and businesses seeking to obtain or renew a license to operate a liquor store. Although the 21st Amendment to the Constitution specifically grants States authority with respect to the regulation of alcohol, the State Attorney General and Tennessee Alcoholic Beverage Commission ("TABC") refused to enforce these durational-residency requirements on the basis that they impermissibly discriminated against interstate commerce. But when respondents Tennessee Fine Wines and Spirits, LLC – a company doing business as Total Wines and owned by Maryland residents – filed for Tennessee licenses, an in-state trade association – petitioner Tennessee Wine and Spirits Retailers Association – filed a declaratory judgment action to settle the laws' constitutionality and to seek the laws' enforcement. The District Court found the requirements unconstitutional, and on the Association's appeal, the Sixth Circuit affirmed. The Association petitioned the Court only as to one of the State's more modest requirements – a two-year residency requirement for initial licenses. The Court today affirmed, holding that the two-year residency requirement – which blatantly favors the State's residents and has little relationship to public health and safety – violates the Commerce Clause and is not shielded by the 21st Amendment. Justice Alito authored the Court's opinion. Justice Gorsuch filed a dissent, joined by Justice Thomas.

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

Kisor v. Wilkie, No. 18-15: Petitioner James Kisor is a Vietnam War veteran who sought disability benefits from the Department of Veterans Affairs ("VA"). His first request in 1982 was denied, but in 2006 he moved to reopen his claim. That second request was granted, but the VA only awarded benefits back to the date of the motion to reopen, rather than to the date of Kisor's first request. The Board of Veterans' Appeals affirmed based on its interpretation of an agency rule governing such claims. The Federal Circuit

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likewise affirmed, applying *Auer* deference (also called *Seminole Rock* deference), under which a court defers to what it deems to be the agency's reasonable interpretation of a genuinely ambiguous regulation. Today, the Court held that *Auer v. Robbins*, 519 U.S. 452 (1997) and *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945) are not overruled, yet vacated and remanded, holding that a "redo is necessary" because "the Federal Circuit jumped the gun in declaring the regulation ambiguous," and "assumed too fast that *Auer* deference should apply in the event of genuine ambiguity." Justice Kagan authored the Court's opinion, which was joined in full by Justices Ginsburg, Breyer, and Sotomayor, and joined in part by Chief Justice Roberts. Justice Gorsuch concurred in the judgment (*i.e.*, vacatur), criticizing *Auer*, and was joined in full or in part by Justices Thomas, Kavanaugh and Alito. Chief Justice Roberts filed an opinion concurring in part, to emphasize that the distance between the majority and Justice Gorsuch "is not as great as it may initially appear," and to emphasize that issues surrounding deference to agency interpretations of their own regulations are distinct from those related to deference to agency interpretations of statutes. Justice Kavanaugh, joined by Justice Alito, wrote an additional concurrence in the judgment agreeing with Justice Gorsuch that the *Auer* deference doctrine should be formally retired, while also agreeing with the two separate points made by Chief Justice Roberts in his concurrence.

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

United States v. Haymond, No. 17-1672: Respondent Andre Haymond was convicted and sentenced in federal court for possessing child pornography. While on supervised release, the government discovered new child pornography images on Haymond's computers and cellphone, which the district court – applying a preponderance of the evidence standard – found made it more likely than not that Haymond knowingly downloaded and possessed 13 of the images. On sentencing, the district court reluctantly imposed an additional term of five years, being bound by 18 U.S.C. §3583(k), which requires that if a judge finds by a preponderance of the evidence that a defendant on supervised release possessed child pornography, the judge must impose an additional prison term of at least five years and up to life without regard to the length of the prison term authorized for the initial crime of conviction. The Tenth Circuit found that §3583(k) violated the Fifth and Sixth Amendments by imposing a new prison term with a new and higher mandatory minimum based on facts found by a judge by a preponderance of the evidence. It then vacated Haymond's new sentence and remanded for resentencing without regard to the provisions in §3583(k). Today, the Court vacated and remanded. Justice Gorsuch announced the judgment of the Court, in a plurality opinion joined by Justices Ginsburg, Sotomayor, and Kagan, which found that §3583(k) violates the Fifth and Sixth Amendments, but remanded to determine the remedy. Justice Breyer concurred in the judgment, agreeing that §3583(k) is unconstitutional, but declining to transplant the *Apprendi* line of cases to the supervised release context. Justice Alito dissented, joined by Chief Justice Roberts, and Justices Thomas and Kavanaugh.

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

