

The Supreme Court - March 29, 2017

The Supreme Court of the United States issued a decision in the following case today:

Related Capabilities

- Appellate

Expressions Hair Design v. Schneiderman, No. 15-1391: Five businesses in New York, petitioners here, wanted to pass along the transaction fee charged by credit card companies each time a customer pays with a credit card, to the customers using the card. Petitioners wished to employ differential pricing by imposing a surcharge for the use of a credit card, rather than by offering a discount for the use of cash. New York General Business Law §518, however, prohibits merchants from imposing a surcharge. Petitioners brought suit against New York's Attorney General, challenging §518 as violating the First Amendment by regulating how they communicated their prices, and also as unconstitutionally vague. The District Court ruled for the merchants, but the Second Circuit vacated with orders to dismiss, concluding there were no First Amendment violations. Today, the Court vacated and remanded, holding that §518 does regulate speech, that the law is not vague as applied to petitioners, and remanding for the Second Circuit to determine in the first instance whether §518 survives First Amendment scrutiny as a speech regulation.

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

Yesterday, the Supreme Court of the United States issued the following decision:

Moore v. Texas, No. 15-797: In 1980, petitioner Bobby James Moore was convicted and sentenced to death for fatally shooting a store clerk during a robbery. He was resentenced to death in 2001 after his first sentence was vacated for ineffective assistance of trial counsel. On habeas proceedings in 2014, a Texas state court conducted hearings and held that under *Atkins v. Virginia*, 536 U.S. 304 (2002) and *Hall v. Florida*, 572 U.S. ___ (2014), Moore was intellectually disabled and his death sentence violated the Eighth Amendment. The Texas Court of Criminal Appeals ("CCA"), however,

did not adopt that judgment, finding that the court had improperly used current intellectual-disability guidelines in the medical community, rather than the 1992 guides the CCA adopted in *Ex parte Briseno*, 135 S.W.3d 1 (2004). The CCA further concluded that the *Briseno* evidentiary factors weighed heavily against disturbing Moore's sentence. Yesterday, the Court vacated the CCA's judgment, reaffirming that *Hall* instructs that intellectual disability should be "informed by the views of medical experts," and that does not permit courts to diminish the force of the medical community's consensus, as the CCA's reliance on the *Briseno* factors did.

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