

## Supreme Court Review

### Guam District Court Conference

December 7, 2009

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#### **I. Civil procedure**

Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009). Rule 8 requires sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Two working principles underlie *Bell Atlantic v. Twombly*. First, the tenet that a court must accept a complaint's allegations as true is inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements. Second, determining whether a complaint states a plausible claim is context-specific, requiring the reviewing court to draw on its experience and common sense.

#### **II. Criminal procedure**

##### A. Fourth Amendment

Herring v. United States, 129 S.Ct. 695 (2009). Evidence should not be excluded when police rely in good faith on erroneous information from another jurisdiction in conducting an arrest. Exclusionary rule should be applied only when there is substantial additional deterrence of police misconduct to be gained.

Arizona v. Gant, 129 S.Ct. 1710 (2009). Police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.

Safford Unified School Dist. v. Redding, 129 S.Ct. 2633 (2009). School officials violated the Fourth Amendment in strip searching a seventh grade girl on suspicion that she has prescription strength ibuprofen. However, school officials were protected by qualified immunity because there was not clearly established law at the time this occurred.

#### B. Confrontation Clause

Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527 (2009). Crawford v. Washington applies to laboratory analyst's reports because they are testimonial.

Briscoe v. Virginia, 275 Va. 283, 657 S.E.2d 113 (Va. 2008), *cert. granted*, 129 S.Ct. 2043 (2009). Is the Sixth Amendment right to confrontation violated if the prosecution can introduce laboratory analyst's certificate if the defense has the right to call the analyst as its own witness?

#### C. Right to counsel under the Fifth and Sixth Amendments

Montejo v. Louisiana, 129 S.Ct. 2079 (2009). Jackson v. Michigan is overruled. The invocation of the Sixth Amendment right to counsel does not bar further police-initiated contacts with a defendant, although Edwards v. Arizona still might do so.

Maryland v. Shatzer, 954 A.2d 1118 (Md. 2009), *cert. granted*, 129 S.Ct. 1043 (2009). Is the Fifth Amendment right to counsel violated if questioning occurs without counsel three years after the right to counsel was invoked?

#### D. DNA testing for criminal defendants

District Attorney for Third Judicial District v. Osborne, 129 S.Ct. 2308 (2009). Brady v. Maryland does not extend to the post-conviction process. Due process is not violated by Alaska rule of allowing post-conviction DNA testing only if (1) that the conviction rested primarily on eyewitness identification evidence, (2) that there was a demonstrable doubt concerning the defendant's identification as the perpetrator, and (3) that scientific testing would likely be conclusive on this issue.

## E. Cruel and unusual punishment

*Graham v. Florida*, 982 So.2d 43 (Fla. 2008), *cert. granted*, 129 S.Ct. 2157 (2009); *Sullivan v. Florida*, 987 So.2d 83 (Fla. 2008), *cert. granted*, 129 S.Ct. 2157 (2009). Is a sentence of life in prison with no possibility of parole cruel and unusual punishment when imposed for crimes committed by juveniles?

## III. Due process

### A. Judicial impartiality

*Caperton v. A.T. Massey Coal Co.*, 129 S.Ct. 2252 (2009). Due process is violated when a judge participates in a case after having received substantial campaign contributions from one of the litigants.

### B. Incorporation

*McDonald v. City of Chicago*, *cert. granted*, 129 S.Ct. \_\_\_\_ (September 30, 2009). Does the Second Amendment apply to state and local governments?

## IV. First Amendment

### A. Speech

*Pleasant Grove v. Sumnum*, 129 S.Ct. 1125 (2009). If a local government places a religious symbol on government property, it is not required to allow other religions to place their symbols on the government property.

*Citizens United v. Federal Election Commission*, rehearing ordered, 129 S.Ct. 2893 (2009). Do corporations have a First Amendment right to expend money in election campaigns and should prior decisions which upheld restrictions on corporate expenditures be overruled?

*United States v. Stevens*, 553 F.3d 218 (3d Cir. 2008), *cert. granted*, 129 S.Ct. 1984 (2009). Does a federal statute that prohibits “knowingly creat[ing], sell[ing], or possess[ing] a depiction of animal cruelty violate the free speech clause of the First Amendment?

*Milavetz v. United States*, 531 F.3d 785 (8<sup>th</sup> Cir. 2008), *cert. granted*, 129 S.Ct. 2769 (2009). Do provisions of the Bankruptcy Abuse and Consumer Protection of 2005 violate the First Amendment in preventing attorneys from advising clients to take on lawful non-fraudulent debt and in requiring statements in advertisements that the lawyers are “debt relief agencies”?

## B. Religion

*Salazar v. Buono*, 527 F.3d 758 (9<sup>th</sup> Cir. 2008), *cert. granted*, 129 S.Ct. 1313 (2009). Does a large cross on previously owned federal land in the Mojave desert violate the establishment clause of the First Amendment? Does the plaintiff have standing to challenge this? Does the transfer of the land from the federal government to private owners avoid a violation of the establishment clause?

## V. Preemption

*Wyeth v. Levine*, 129 S.Ct. 1187 (2009). The approval of a warning label on a prescription drug does not preempt state tort liability for failure to adequately warn of the risks of a prescription drug.

## VI. Employment discrimination

*Crawford v. Metropolitan Government of Nashville & Davidson County, Tennessee*, 129 S.Ct. 846 (2009). Employee who spoke out about sexual harassment in response to an internal investigation is protected from retaliation.

*Gross v. FBL Financial Services*, 129 S.Ct. 2343 (2009). A mixed motives jury instruction is never proper in a case under the Age Discrimination in Employment Act. A plaintiff must prove that age discrimination was the “but for” cause of the adverse employment action.

*Ricci v. DeStefano*, 129 S.Ct. 2658 (2009). Under Title VII, before an employer can engage in intentional discrimination for the asserted purpose of avoiding or remedying an unintentional, disparate impact, the employer must have a strong basis in evidence to believe it will be subject to disparate-impact liability if it fails to take the race-conscious, discriminatory action.

## **VII. Civil rights**

Northwest Austin Municipal Utility District v. Holder, 129 S.Ct. 2504 (2009). The congressional extension of section five of the Voting Rights Act is interpreted to avoid the constitutional issue by allowing local governments to have the ability to “bail out” of its requirements.

Van De Kamp v. Goldstein, 129 S.Ct. 855 (2009). Supervisors in a prosecutor’s office may not be held liable for failure to develop adequate procedures to ensure that impeachment evidence is turned over to the defendant as is constitutionally require.

Pearson v. Callahan, 129 S.Ct. 808 (2009). When a court is considering qualified immunity, it does not have to first determine if there is a constitutional violation before deciding whether there is clearly established law that the reasonable officer should know.

## **VIII. Federalism and separation of powers**

### **A. Federalism**

*United States v. Comstock*, 551 F.3d 274 (4<sup>th</sup> Cir. 2008), *cert. granted*. Does Congress have the authority under the commerce clause and the necessary and proper clause to commit “sexually dangerous” persons after they have completed their sentences?

### **B. Separation of powers**

*Free Enterprise Fund v. Public Company Accounting Oversight Board*, 537 F.3d 637, *cert. granted*, 129 S.Ct. 2378 (2009). Is separation of powers violated by a provision of the Sarbanes-Oxley Act which insulates members of an accounting oversight board from appointment or removal by the President?

*Kiyemba v. Obama*, *cert. granted*, 130 S.Ct. \_\_\_\_ (October 20, 2009). Do federal judges have the power to order the release of prisoners from Guantanamo? Is it constitutional for Congress to prevent this?

### **I. Fourth Amendment**

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Arizona v. Johnson, 129 S.Ct. 781 (2009). When police lawfully detain a passenger after a traffic stop, they may frisk the person if there is reasonable suspicion that the individual has a weapon.

Arizona v. Gant, 129 S.Ct. 1710 (2009). Police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.

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