

SUPREME COURT OF THE UNITED STATES
LOPEZ v. SMITH

Defense:

- ◆ Smith could not have delivered the fatal blow due to rotator cuff surgery several weeks before the murder
- ◆ Police had observed him wielding a 6-foot-long 2-by-4 to pry something out of a concrete slab at a construction site the week after the murder
- ◆ Also, one of Smith's former employees had committed the crime to get money to pay a debt he owed Smith

◆ Prosecution requested an aiding-and-abetting instruction??

◆ The jury convicted on first-degree murder without specifying which theory of guilt it adopted

SUPREME COURT OF THE UNITED STATES
LOPEZ v. SMITH

California Court of Appeal rejected Smith's assertion of inadequate notice of the aiding-and-abetting theory. California Supreme Court denied Smith's petition for review.

◆ Ninth Circuit grants relief – Smith's 5th Amend. right to due process to notice violated

Per Curiam SCOTUS Reverses 9th Cir.
"Supreme Court's case law does not establish that a prosecutor's focus on one theory of liability can render earlier notice of another theory of liability inadequate"

SUPREME COURT OF THE UNITED STATES
HOLT v. HOBBBS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
No. 13-8837 Decided January 20, 2015



- ◆ RLUIPA - Religious Land Use and Institutionalized Persons Act of 2000
- ◆ Petitioner is an Arkansas inmate and devout Muslim who wishes to grow a 1/2-inch beard as religious belief
- ◆ Arkansas DOC prohibits its prisoners from growing beards
- ◆ Beards allow contraband, and shaving disguises identity

◆ **Held:** ALITO, J. + Unanimous Court

- ◆ Policy violates RLUIPA
- ◆ Even if petitioner's belief were idiosyncratic, RLUIPA's guarantees are "not limited to beliefs which are shared by all of the members of a religious sect"

RLUIPA, like RFRA
Burwell v. Hobby Lobby Stores, Inc., 573 U.S. _____, n. 28,

"I have to at least look consistent!"

GINSBURG + SOTOMAYOR concur:
 "Unlike the exemption this Court approved in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ____ (2014), accommodating petitioner's religious belief in this case would not detrimentally affect others who do not share petitioner's belief."

The Culture Wars and Religion Today

HOBBY LOBBY

SUPREME COURT OF THE UNITED STATES
OBERGEFELL V. HODGES
 576 U.S. ____ (2015)

- ✦ The fundamental right to marry is guaranteed to same-sex couples
- ✦ Due Process Clause and the Equal Protection Clause of the 14th Amendment

✦ 5-4 decision

The Culture Wars are Over

Most Americans Agree:

- Same sex marriage
- Contraceptives
- Abortion
- Prayer in Public School

Value Voter Summit

Recasting the Culture Wars as Religious Freedom

Definitions and defining the debate...

No one argued whether contraceptives = preventative health care.

- Most Americans believe in Preventative health care
- Most Americans believe in using contraceptives
- Arguing against these are a loser

Americans believe in Religious Freedom

TYRANNY DISGUISED

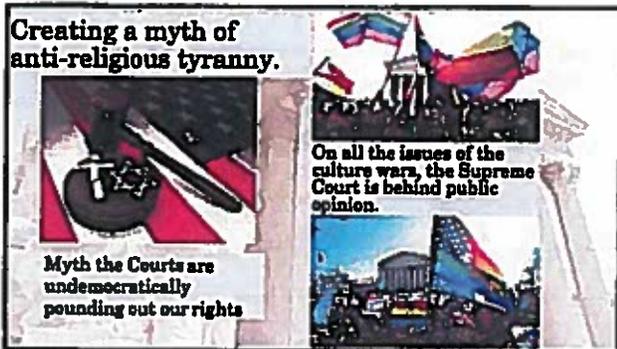
The Constitutional Arguments Trump Political Arguments

RELIGIOUS FREEDOM FOR ALL

Cast as a debate between Religious and Reproductive Freedom

Constitutionalizing a political argument

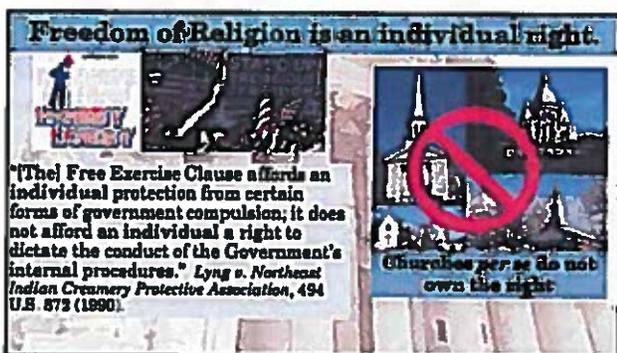
Creating a myth of anti-religious tyranny.



Myth the Courts are undemocratically pounding out our rights

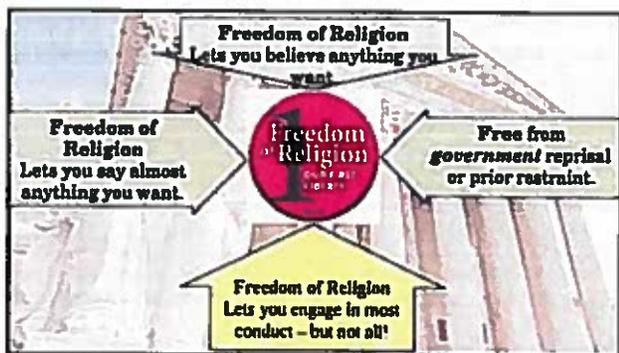
On all the issues of the culture wars, the Supreme Court is behind public opinion.

Freedom of Religion is an individual right.



"[The] Free Exercise Clause affords an individual protection from certain forms of government compulsion; it does not afford an individual a right to dictate the conduct of the Government's internal procedures." *Lynch v. Northeast Indian Creamery Protective Association*, 494 U.S. 873 (1990).

Churches *per se* do not own the night



Boundries of religious freedom
Religious Conduct is not absolute




Aztec Sacrifices are out!

Reynolds v. United States, 98 U.S. 145, 166-67 (1878) = Mormon Polygamy

"Can a man excuse his practices (contrary to the law) because of his religious beliefs? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself? Government could exist only in name under such circumstances."

Regarding Religious Liberty:

- Government is not forcing individual to use or not use contraception.
- Government is not forcing any religion to conduct same-sex ceremonies.
- Government is not forcing individual to pray or not pray in school.
- Government is not forcing any individual to have or not have an abortion.



Boundaries of Behavior and Rights

Can a county clerk deny a same-sex couple a marriage license?

Can a Catholic clerk deny a protestant a marriage license or Protestant deny a Catholic a marriage license?

Can a Christian clerk deny Muslims a marriage license?

No moose stew tonight!

Can a traditional Inuit clerk deny Sarah Palin a hunting license?



Can a racist judge uphold the conviction of Richard and Mildred Loving for violating Virginia's "Racial Integrity Act of 1924"?

Virginia is for Lovers

Judge Leon A.L. Bazile - "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix."

Loving v. Virginia, 388 U.S. 1 (1967)
Answer = No

The Free Exercise vs. The Establishment Clause

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...

Kim Davis = Government

Establishing Her Religion

By refusing marriage license based on her faith Kim imposes/establishes her religion over others.

What about the religious freedom of the same sex couples?

History of American Baptists

Nothing is more evident, both in reason and The Holy Scriptures, than that religion is ever a matter between God and individuals, and, therefore, no man or men can impose any religious test without invading the essential prerogatives of our Lord Jesus Christ."

Baptist Reverend Isaac Backus during the Mass. ratifying

Virginia had 1600s Protestant Quakers from assembling. Non-Anglican preachers had to get a special license to preach. Between 1763-78, Virginia jailed 45 Baptist ministers for not getting the license.



Justice Robert Jackson

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

SUPREME COURT OF THE UNITED STATES
OBERGEFELL V. HODGES
576 U.S. (2015)

Reactions



Former Alabama Chief Justice Roy Moore

"States should resist a potential Supreme Court ruling on marriage equality ..."

"Congress and the states should defy a court decision they disagree with because "there is no right to redefine marriage" in the U.S. Constitution."

SUPREME COURT OF THE UNITED STATES
OBERGEFELL V. HODGES
576 U.S. (2015)

Reactions



"We have justices on the Supreme Court right now who have actually performed same-sex marriages, Ginsburg and Kagan. Congress should do something about this."

"Ginsburg is undermining the rule of law in our country and ushers in an age of chaos."

"Alabama is not bound by the federal judiciary and can ignore federal court rulings."

Moore had been expelled from the Alabama state Supreme Court because he declared Alabama can ignore federal court rulings.



John C. Calhoun

- >Nullification
- >The concurrent majority theory through the doctrine of nullification—the right of a State to interpose an unconstitutional act of the General Government within its borders.
- >The Southern States had minority rights to be a "concurrent majority."
- >Slavery is a "positive good" rather than as a "necessary evil".

1832 the Nullification Crisis = Compromise Tariff of 1833
 Calhoun's doctrine found in *Dred Scott v. Sandford* ruling the federal government could not prohibit slavery in the territories.




"The whole South is the grave of Calhoun"



SUPREME COURT OF THE UNITED STATES
OBERGEFELL V. HODGES
2015 2015

Reactions

Cruz Hearings:
"With Prejudice: Supreme Court Activism and Possible Solutions."

"Much to my great disappointment this past term, the court crossed a line and continued its long descent into lawlessness to a level that I believe demands action."

Searching for "options the American people have to rein in judicial tyranny"



Those Nasty Activist Judges!

STOP JUDICIAL ACTIVISM

"Activist judge" - a judge based on personal or political considerations rather than on existing law.

Apply to opposed liberal or progressive things.

"Conservative" judges never get called activist judges."

WANTED
SEEKING TO ARREST
ACTIVIST JUDGES

Old Arguments

Federal courts are an "unnecessary encroachment on the jurisdiction [of the States]."

"I see arising from the extensive jurisdiction of these permanent Courts, the State Courts must soon be annihilated."

John Rutledge of S. Carolina

The Constitution is "a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please."

SUPREMACISTS
THE TYRANNY OF JUDGES
AND HOW TO STOP IT
PHYLLIS SCHULAFELY

Marbury v. Madison (1803)

Judicial review = Courts can invalidate legislative and executive actions

Nothing is written "unconstitutional."

Let the People

Judicial Review not explicitly in the constitution.

But, clearly intended.

The Framers intended the courts to be active in both defining and defending individual (minority) rights.

The Declaration of Independence indicted King George's attacks on judicial independence.

"He has made Judges dependent on his Will alone for the tenure of their offices, and the amount and payment of their salaries."

The Framers intended the courts to be active in both defining and defending individual (minority) rights.

"The People" over the States

"Repeated violations of these parchment barriers have been committed by overbearing majorities in every state."

"Independent tribunals of justice (who would) consider themselves in a peculiar manner... able to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights."

The Federal Courts were the answer.

The Framers intended the courts to be active in both defining and defending individual (minority) rights.

The need for federal courts

"Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government from which nothing but contradiction and confusion can proceed."

...the courts are the best guardians of rights because, the court "has no influence over either the sword or the purse (and is) beyond comparison the weakest of the three departments of power."

Origins of Judicial Review



Edward Coke, Chief Justice Court of Common Pleas
Dr. Bonham's Case (1610)

"In many cases, the common law will control Acts of Parliament, and sometimes adudge them to be utterly void: for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adudge such Act to be void."

Common Law trumps Parliament

Origins of Judicial Review



John Lilburne
Agreement of the People (1647-1649)

"That which is done by one Parliament ... may be undone by the next Parliament: but an Agreement of the People begun and ended amongst the People can never come justly within the Parliament's cognizance to destroy."

Constitutions trump Parliament

Origins of Judicial Review



1 William Blackstone
Commentaries at *43-43 (1765-69)

COMMENTARIES

"no human legislature has power to abridge or destroy... [t]hose rights which God and nature has established."

Natural Law trumps Parliament

Marbury v. Madison (1803)

William Marbury was a federalist who wanted his commission to be a federal magistrate under the Judiciary Act of 1789.

Secretary of State. James Madison loses it? - Marbury sues.

John Marshall puts off a judicial sleight-of-hand

Holds the Judiciary Act of 1789 unconstitutional because it expanded the Courts original jurisdiction - Jefferson wins but loses because the Supreme Court established the greater power of judicial review.

Jefferson wins, but loses ...

Unfortunately, you don't choose your relatives!

To Madison on March 15, 1789

A Bill of Rights is good because "the legal check which it puts into the hands of the judiciary."

The Constitution is "a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please."

Jefferson in 1800

Jefferson in 1791

BILLS, QUILLS, AND STILLS:
AN ABSTRACTLY ILLUSTRATED AND DETERMINATELY HISTORICAL HISTORY OF THE BILL OF RIGHTS

Break

BILLS, QUILLS, AND STILLS:
AN ABSTRACTLY ILLUSTRATED AND DETERMINATELY HISTORICAL HISTORY OF THE BILL OF RIGHTS

Bill of Rights
George Mason's Hand-drawn
Bill of Rights

The Tenth Amendment???

10th Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The 10th Amendment is Play after 210 Years

Prior case:
BOND v. UNITED STATES,
 131 S.Ct. 2365 (2011).

- Carol Anne Bond put poison on Myrlinda's car door, door knob, and mailbox at least 24 times
- Myrlinda = Bond's former BFF
- Myrlinda gave birth to a daughter
- Father = Bond's husband, Clifford

"I'm going to make your life a living hell, and 'dead people are going to visit you."

"Today we have highly educated microbiologists who do crazy, stupid things!"

- Myrlinda called local police, who good-heartedly suggested the powder must be cocaine.
- She turned to the U.S. Postal Service, which did take her situation seriously and caught Bond with surveillance cameras.

Feds charged Bond with violating 18 U.S.C. § 229, a statute implementing the 1993 Chemical Weapons Convention.



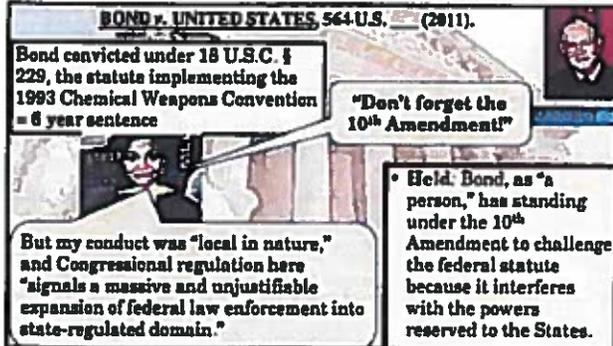
BOND v. UNITED STATES, 564 U.S. (2011).

Bond convicted under 18 U.S.C. § 229, the statute implementing the 1993 Chemical Weapons Convention = 6 year sentence

"Don't forget the 10th Amendment!"

But my conduct was "local in nature," and Congressional regulation here "signals a massive and unjustifiable expansion of federal law enforcement into state-regulated domain."

- Held: Bond, as "a person," has standing under the 10th Amendment to challenge the federal statute because it interferes with the powers reserved to the States.

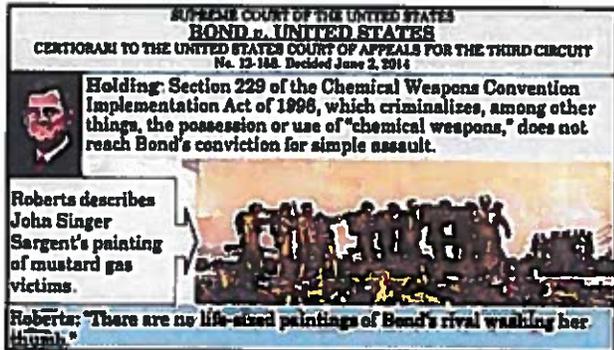


SUPREME COURT OF THE UNITED STATES
BOND v. UNITED STATES
 CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
 No. 12-148. Decided June 2, 2014

Holding: Section 229 of the Chemical Weapons Convention Implementation Act of 1998, which criminalizes, among other things, the possession or use of "chemical weapons," does not reach Bond's conviction for simple assault.

Roberts describes John Singer Sargent's painting of mustard gas victims.

Roberts: "There are no life-sized paintings of Bond's rival washing her thumb."



OCTOBER TERM 2014
 SUPREME COURT OF THE UNITED STATES
HEIEN v. NORTH CAROLINA
 CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA
 No. 13-604 Argued October 6, 2014—Decided December 11, 2014

- Nicholas Brady Heien = brake light "not working"
- Sergeant Matt Darisse pulls him over
- Occupants = suspicious actions and answers to questions
- Consent search
- Cocaine



Brake Light "not working" vs. "broken brake light"

SUPREME COURT OF THE UNITED STATES
HEIEN v. NORTH CAROLINA

Arizona Revised Statutes § 28-925 - Tail lamps - "A motor vehicle . . . shall be equipped with at least one tail lamp mounted on the rear."
See State v. Moreno

- Trial court denied Heien's motion to suppress
 - Faulty brake light gave Darisse reasonable suspicion
- North Carolina Court of Appeals reversed
 - N.C. Gen. Stat. Ann. § 20-129(g), requires only a single lamp
 - Justification for the stop was objectively unreasonable
- North Carolina Supreme Court reversed
 - Darisse's mistaken understanding of the law was reasonable

SUPREME COURT OF THE UNITED STATES
HEIEN v. NORTH CAROLINA

U.S. Supreme Court

- ◆ Fourth Amendment requires government officials to act reasonably, not perfectly
- ◆ Searches and seizures based on mistakes of law may be reasonable

Reasoning:

- ◆ The Fourth Amendment tolerates only objectively reasonable mistakes
- ◆ "Ignorance of the law is no excuse" correctly implies that the State cannot impose punishment based on a mistake of law - but a reasonable mistake of law can justify an investigatory stop.



SUPREME COURT OF THE UNITED STATES
HEIEN v. NORTH CAROLINA

➤ Majority = ROBERTS + SCALIA, KENNEDY, THOMAS, ALITO, KAGAN
➤ Concurring = KAGAN + GINSBURG
➤ Dissent: SOTOMAYOR



➤ Dissent: SOTOMAYOR
➤ "The better approach would be to hold that an officer's mistakes of law, no matter how reasonable, cannot support the individualized suspicion necessary to justify a seizure under the Fourth Amendment."



OCTOBER TERM 2014
SUPREME COURT OF THE UNITED STATES
RODRIGUEZ v. UNITED STATES
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
No. 13-8772 Argued January 21, 2015—Decided April 21, 2015

Another Dog in a Case

Issue: "This case presents the question whether the Fourth Amendment tolerates a dog sniff conducted after completion of a traffic stop."

Case Key:
Traffic Stops
vs.
Probable Cause Stops



Aldo Franky

OCTOBER TERM 2013
SUPREME COURT OF THE UNITED STATES
FLORIDA v. HARRIS
CERTIORARI TO THE SUPREME COURT OF FLORIDA
No. 11-817 Decided February 18, 2013

OCTOBER TERM 2013
SUPREME COURT OF THE UNITED STATES
FLORIDA v. JARDINES
CERTIORARI TO THE SUPREME COURT OF FLORIDA
No. 11-564 Decided March 26, 2013

RODRIGUEZ v. UNITED STATES
No. 13-8772 Argued January 21, 2015



Holding: "[A] police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures."

Prolonging a traffic stop to conduct a dog sniff violates the 4th Amendment.

- Officer Struble stopped Rodriguez for driving on a highway shoulder.
- Struble attended to everything relating to the stop.
- Ask permission to walk his dog around the vehicle.
- Rodriguez refused.
- Struble detained him until a second officer arrived.
- Struble then retrieved his dog who alerted to methamphetamine.
- Time = Seven or eight minutes.

RODRIGUEZ v. UNITED STATES
 No. 13-0972. Argued January 21, 2015—Decided April 21, 2015

• GINSBURG, J. with ROBERTS, SCALIA, BREYER, SOTOMAYOR, and KAGAN, JJ.
 • Dissent: KENNEDY and Dissent: THOMAS + ALITO + KENNEDY and Dissent ALITO

RODRIGUEZ v. UNITED STATES
 No. 13-0972. Argued January 21, 2015—Decided April 21, 2015

Case Keys
 Traffic Stops
 vs.
 Probable Cause Stops

➤ Reasoning: A routine traffic stop is like *Terry v. Ohio*

➤ A traffic stop "become[s] unlawful if it is prolonged beyond the time reasonably required to complete the mission" of issuing a warning ticket.

➤ A dog sniff is not part of the mission.

➤ Can't use dogs as a pretext

➤ By contrast, a stop based on probable cause affords an officer considerably more leeway.

➤ A warrantless search incident to arrest of the vehicle is allowed, if it is reasonable to believe evidence relevant to the crime of arrest might be found. *Arizona v. Gant*, 556 U. S. 332, 335 (2009).

Police Immunities under the Fourth and Fourteenth Amendments
 Sec. 1983 Actions

October Term 2014
SUPREME COURT OF THE UNITED STATES
JEREMY CARROLL v. ANDREW CARMAN, ET UX.
 ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
 FOR THE THIRD CIRCUIT
 No. 14-312. Decided November 10, 2014

- ◆ Federal 42 U.S.C. § 1983 action
- ◆ A government official under § 1983 has immunity unless he violated a clear statutory or constitutional right at the time of the challenged conduct.
- ◆ *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) - Qualified immunity shields government officials who violate someone's constitutional or statutory rights when "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

SUPREME COURT OF THE UNITED STATES
CARROLL v. CARMAN

- ◆ Pennsylvania State Police hear "Zita" was at Carman's house with a stolen car and two loaded handguns
- ◆ Officers Carroll and Roberts walked around Carman's house to knock on a sliding glass door
- ◆ They have an altercation with Mr. Carman but get consent to search from Ms. Carman - No Zita
- ◆ The Carmans sued for unlawful entry under 4th Amend. for entering backyard and deck without a warrant
- ◆ Carroll argued the "knock and talk" exception:
 - ◆ "Knock and talk" allows officers to knock if they stay on part of the property where the general public is allowed



SUPREME COURT OF THE UNITED STATES
CARROLL v. CARMAN

- ◆ Carroll could have reasonably concluded he was allowed to knock on any door that was open to visitors

OCTOBER TERM 2012
SUPREME COURT OF THE UNITED STATES
FLORIDA v. JARDINES
 CERTIORARI TO THE SUPREME COURT OF FLORIDA
 No. 11-554. Argued October 31, 2012 - Decided March 26, 2013

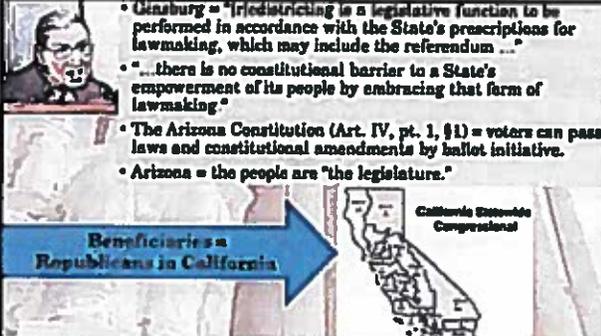
The Girl Scout Test: - "This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters."





Elbridge Gerry

- Original 1812 cartoon of "The Gerry-Mander"
- District created by Massachusetts legislature to favor the incumbent Democratic-Republican party candidates of Governor Elbridge Gerry over the Federalists.



- Ginsburg = "redistricting is a legislative function to be performed in accordance with the State's prescriptions for lawmaking, which may include the referendum ..."
- "...there is no constitutional barrier to a State's empowerment of its people by embracing that form of lawmaking."
- The Arizona Constitution (Art. IV, pt. 1, §1) = voters can pass laws and constitutional amendments by ballot initiative.
- Arizona = the people are "the legislature."

Beneficiaries = Republicans in California

California Statewide Comprehensives

Cite as 574 U.S. ____ (2014)
 SUPREME COURT OF THE UNITED STATES
 No. 14A483
MARICOPA COUNTY, ARIZONA, ET AL., v. ANGEL LOPEZ-VALENZUELA, ET AL.
 ON APPLICATION FOR STAY
 [November 13, 2014]
 Statement of JUSTICE THOMAS, with whom JUSTICE SCALIA joins, respecting the denial of the application for a stay.



"At the very least, we owe the people of Arizona the respect of our review before we let stand a decision facially invalidating a state constitutional amendment."

SUPREME COURT OF THE UNITED STATES
YATES v. UNITED STATES
 CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
 No. 13-7451. Argued November 4, 2014—Decided February 25, 2015

◆ **Holding:** GINSBURG — Fish are not “tangible objects” under § 1519



SUPREME COURT OF THE UNITED STATES
WHITFIELD v. UNITED STATES
 CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
 No. 13-9284. Decided January 23, 2015



• **Holding:** A bank robber “forces [a] person to accompany him,” for purposes of 18 U.S.C. § 2113(e), when he forces that person to go somewhere with him, even if the movement occurs entirely within a single building or over a short distance.

SUPREME COURT OF THE UNITED STATES
LOUGHRIN v. UNITED STATES
 CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
 No. 13-916. Decided June 23, 2014

◆ **Government** charged Loughrin with bank fraud after he forged stolen checks, bought goods at a Target store, and then returned the goods for cash

◆ **Held:** Section 1344(2) does not require the Government to prove a defendant intended to defraud a financial institution




SUPREME COURT OF THE UNITED STATES
JOHNSON v. UNITED STATES
 Decided June 25, 2015

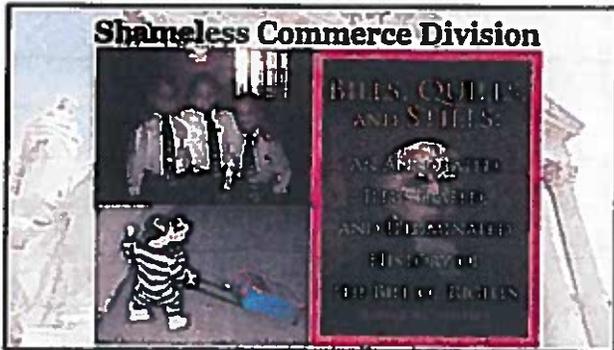


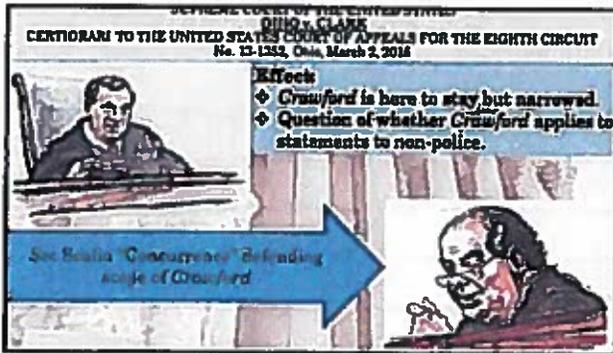
Issue: Armed Career Criminal Act (ACCA) imposes a 15 year sentencing boost for defendants convicted of unlawful weapons possession if they have 3 prior “violent felonies.”

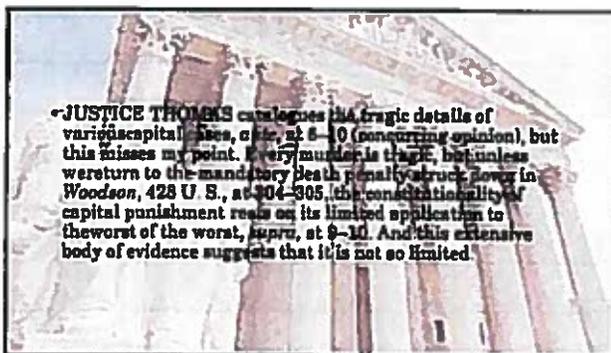
◆ Under 18 U.S.C. § 924(2)(B) “Violent felony” = a crime punishable by a year in prison and involves force or arson, burglary, extortion, explosives

◆ or otherwise involves conduct that presents a serious potential risk of physical injury to another.



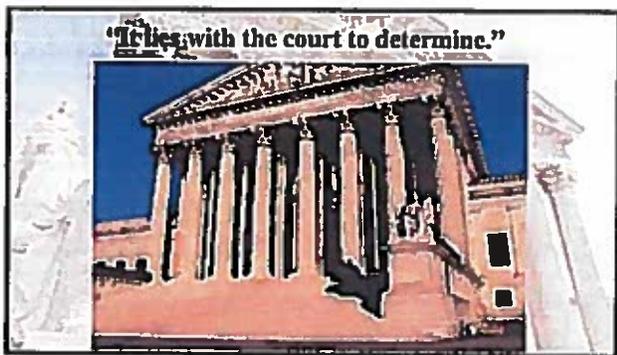


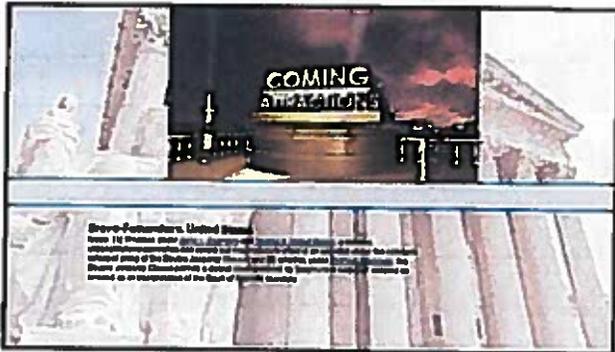


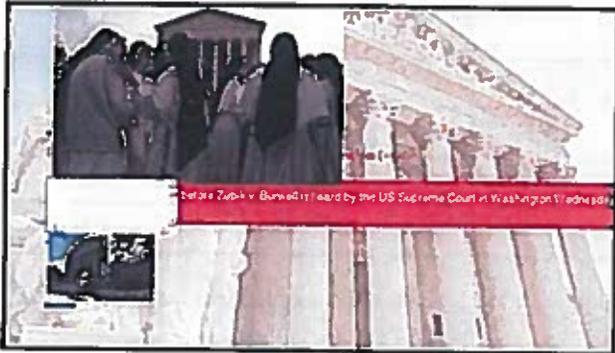


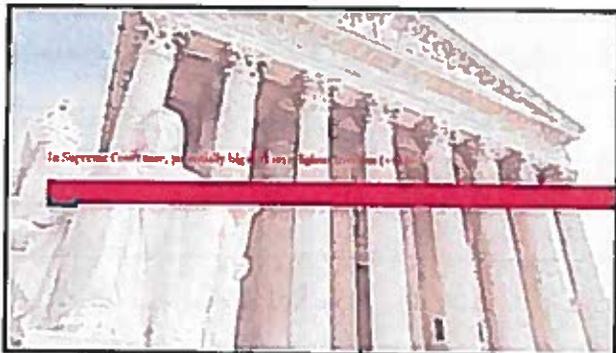




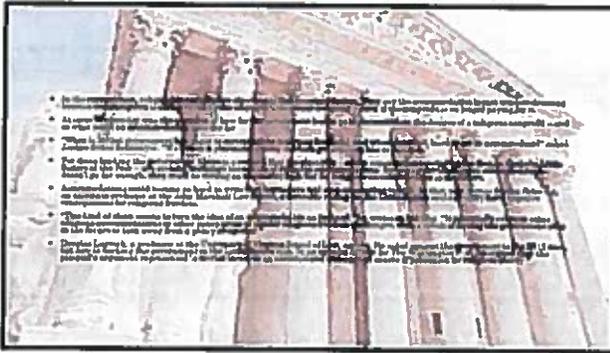


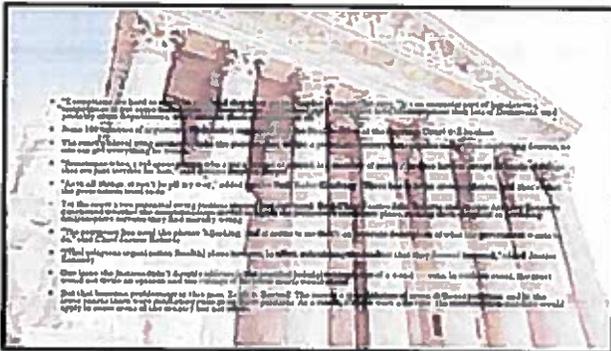












NO VACANCY **Game Changers** **NO VACANCY**

- Justice Ginsburg just turned 82
- Decided not to retire in 2014
- Senate now is Republican controlled
- Next Presidential election = ?

This is still Justice Kennedy's world and we are just living in it!

- In Majority 95%
- In 5-4 splits, in Majority 100%

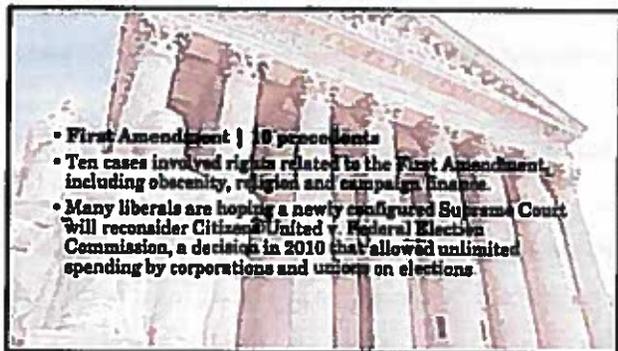
"All for one and one for all!"

- Supreme Court decided 68 cases in 2013 term
- 66% unanimous
- Only ten 5-4 decisions in 2013 term

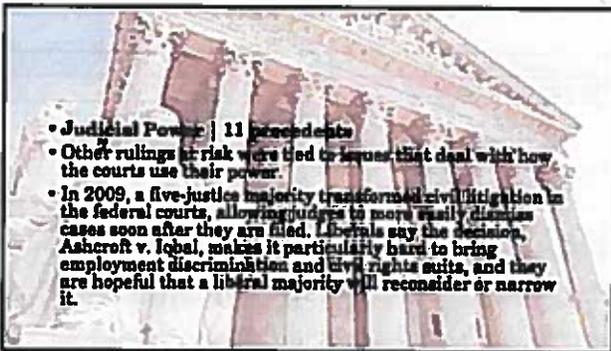
Roberts = goal of consensus vs. ducking the hard issues?

Economic Activity | 12 precedents

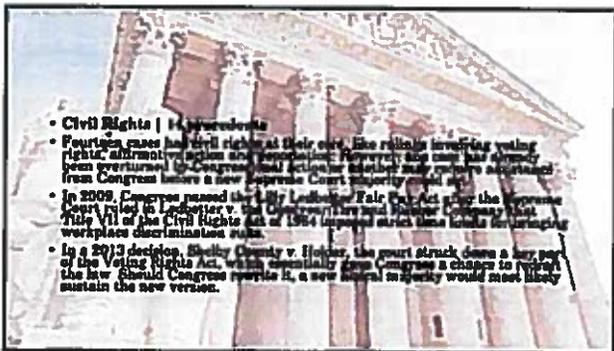
- Twelve rulings affected how corporations and people conduct business, like rules for mergers, arbitration and government protection.
- In a 2011 case, AT&T Mobility v. Concepcion, a five-justice majority allowed companies to escape class actions by insisting on one-by-one arbitrations, even over trivial amounts, in standard-form contracts. A new liberal majority is most likely to be more sympathetic to plaintiffs wanting to avoid arbitration and pursue class actions.



- **First Amendment | 16 precedents**
- Ten cases involved rights related to the First Amendment, including obscenity, religion and campaign finance.
- Many liberals are hoping a newly configured Supreme Court will reconsider *Citizens United v. Federal Election Commission*, a decision in 2010 that allowed unlimited spending by corporations and unions on elections.



- **Judicial Power | 11 precedents**
- Other rulings at risk were tied to issues that deal with how the courts use their power.
- In 2009, a five-justice majority transformed civil litigation in the federal courts, allowing judges to more easily dismiss cases soon after they are filed. Liberals say the decision, *Ashcroft v. Iqbal*, makes it particularly hard to bring employment discrimination and civil rights suits, and they are hopeful that a liberal majority will reconsider or narrow it.



- **Civil Rights | 14 precedents**
- Fourteen cases had civil rights at their core. Like rulings involving voting rights, affirmative action and gun rights. However, the case has already been overturned by Congressional action or other means, or were abandoned from Congress before a new Supreme Court majority could act.
- In 2009, Congress passed the *Lilly Ledbetter Fair Pay Act* after the Supreme Court ruled in *Ledbetter v. Goodyear Tire and Rubber Company* that Title VII of the Civil Rights Act of 1964 imposed strict time limits for bringing workplace discrimination suits.
- In a 2013 decision, *Shelby County v. Holder*, the court struck down a key part of the Voting Rights Act, which essentially gave Congress a chance to repeal the law. Should Congress rewrite it, a new liberal majority would most likely sustain the new version.
