

Recent Civil Decisions of the United States Supreme Court: The 1999-2000 Term

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In this exciting Supreme Court Term, the Court addressed many crucial civil-law topics. Of particular note are the various First Amendment issues that the Court examined, including freedom of expression, freedom of association, and the establishment of religion. Additionally, the Court addressed race qualifications in voting, age discrimination, and several federalism issues.¹

FIRST AMENDMENT

In *Boy Scouts of America v. Dale*,² a divided Court held that applying New Jersey's public accommodations law to require the Boy Scouts to admit a homosexual assistant scoutmaster violates the Boy Scouts' First Amendment right of expressive association. The Court began its analysis by enumerating the right of expressive association. Citing *Roberts v. United States Jaycees*,³ the Court stated that "[i]mplicit in the right to engage in activities protected by the First Amendment' is 'a corresponding right to associate with others in the pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.'" The Court explained that "[f]orcing a group to accept certain members may impair the ability of the group to express those views, and only those views, that it intends to express." Thus, "[f]reedom of association . . . plainly presupposes a freedom not to associate." Citing *New York State Club Ass'n, Inc. v. City of New York*,⁴ the Court stated that "forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association if the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints." Therefore, the Court concluded that "[t]he state interests embodied in New Jersey's public accommodations law do not justify such a severe intrusion on the rights to freedom of expressive association." As such, the Court held that "the First Amendment prohibits the State from imposing such a requirement through the application of its public accommodations law."

In *California Democratic Party v. Jones*,⁵ the Court held that California's blanket primary violates a political party's First Amendment right of association. The Court stated that while they recognize "States have a major role to play in structuring and monitoring the election process, including primaries,"

they have not held "that the processes by which political parties select their nominees are wholly public affairs that states may freely regulate." Justice Scalia stated, "To the contrary, we have continually stressed that when states regulate parties' internal processes they must act within limits imposed by the Constitution." Furthermore, the Court noted that "[r]epresentative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views." The majority called attention to the fact that "[t]he formation of national political parties was almost concurrent with the formation of the Republic itself." The Court, citing *Tashjian v. Republican Party of Connecticut*,⁶ thus concluded that "[c]onsistent with this tradition, the Court has recognized that the First Amendment protects 'the freedom to join together in furtherance of common political beliefs.'"

In *Hill v. Colorado*,⁷ the Court held that a Colorado statute regulating speech-related conduct within 100 feet of the entrance to any medical care facility did not offend the First Amendment. The Court focused on the fact that the instant statute was designed to protect the unwilling listener and stated that "[t]he unwilling listener's interest in avoiding unwanted communication has been repeatedly identified in our cases." Though the Court has "recognized that the 'right to persuade' . . . is protected by the First Amendment," the Court, citing *Rowan v. Post Office Dept.*,⁸ stated that "no one has a right to press even 'good' ideas on an unwilling recipient." The Court explained that "[w]hile the freedom to communicate is substantial, 'the right of every person 'to be let alone' must be placed in the scales with the right of others to communicate.'"

Justice O'Connor delivered an opinion for a split Court in *Erie v. Pap's A.M.*⁹ and held that the city's public nudity ban did not violate the First Amendment. The city of Erie, Pennsylvania, enacted a statute banning public nudity following the Supreme Court's decision in *Barnes v. Glen Theater*¹⁰ in which the Court upheld a "strikingly similar" law. Respondent, Pap's A.M., operated a nude-dancing establishment in Erie called Kandyland and raised a constitutional challenge to the statute, charging that it was an impermissible

Footnotes

1. For a more in-depth review of the decisions of the past Term, see CHARLES H. WHITEBREAD, RECENT DECISIONS OF THE UNITED STATES SUPREME COURT, 1999-2000 (Amer. Acad. Of Jud. Educ. 2000).
2. 530 U.S. 640 (2000).
3. 468 U.S. 609 (1984).
4. 487 U.S. 1 (1988).

5. 530 U.S. 567 (2000).
6. 479 U.S. 208 (1986).
7. 530 U.S. 703 (2000).
8. 397 U.S. 728 (1970).
9. 529 U.S. 277 (2000).
10. 501 U.S. 560 (1991).

restriction on First Amendment freedom of expression. In determining the level of scrutiny to be applied, the Court, citing *Texas v. Johnson*,¹¹ looked at “whether the State’s regulation is related to the suppression of expression.” Finding the Erie statute to be a “general prohibition on public nudity” that “does not target nudity that contains an erotic message,” the Court determined the statute was subject to analysis under *United States v. O’Brien*.¹² In *O’Brien*, the Court reasoned that a justification for regulation unrelated to the suppression of expression is content-neutral and thus is subject to a lower level of scrutiny than content-based distinctions. The Court, in the instant case, rested its analysis on the asserted interest of Erie to “combat the negative secondary effects associated with adult entertainment establishments like Kandyland.” This, said the Court, “is unrelated to the suppression of the erotic message conveyed by nude dancing.” Finding the Erie ordinance to be content-neutral, and in compliance with the *O’Brien* standard, the Court reversed the Pennsylvania Supreme Court and remanded for further proceedings consistent with their holding.

The Court, in *Santa Fe Independent School District v. Doe*,¹³ held that a student-led prayer delivered over a public address system before a high school football game violated the Establishment Clause of the First Amendment of the Federal Constitution, which provides that “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof.” The Court relied on its decision in *Lee v. Weisman*,¹⁴ as did the District Court, in which the Court held that a prayer by a rabbi at a middle school graduation ceremony violated the Establishment Clause. The Court reasoned that “[a]lthough this case involves student prayer at a different type of school function, our analysis is properly guided by the principles that we endorsed in *Lee*.” Petitioner argued that the messages at issue in this case were private student speech and not public speech. The Court, however, did not agree. Justice Stevens stated that “[t]hese invocations are authorized by a government policy and take place on government property at government-sponsored school-related events.” The Court saw the selection process by which students were allowed to deliver an invocation or benediction as being restrictive, noting that “the school allows only one student, the same student for the entire season, to give the invocation.” The Court found this particularly troubling because “the majoritarian process implemented by the District guarantees, by definition, that minority candidates will never prevail and that their views will be effectively silenced.” The Court drew parallels between the instant case and its recent decision in *Board of Regents of the University of Wisconsin System v. Southworth*¹⁵ in which school elections were used in order to determine which programs would receive funding. The Court explained that “[l]ike the student referendum for funding in *Southworth*, this student election does nothing to protect minority views but rather places the

students who hold such views at the mercy of the majority.” Quoting its decision in *West Virginia Board of Education v. Barnette*,¹⁶ the Court unequivocally stated, “[F]undamental rights may not be submitted to vote: they depend on no elections.” Applying the test articulated in *Lemon v. Kurtzman*,¹⁷ the Court found the instant policy invalid since it “lack[ed] a secular legislative purpose.” The Court concluded by stating, “We refuse to turn a blind eye to the context in which this policy arose, and that context quells any doubt that this policy was implemented with the purpose of endorsing school prayer.”

In *Mitchell v. Helms*,¹⁸ the Court held that Chapter 2 of the Education Consolidation and Improvement Act of 1981, as amended, 20 U.S.C. §§ 7301-7373, was not a law respecting the establishment of religion. Chapter 2 of the Act channels federal funds to local education agencies (LEAs) through state education agencies (SEAs) to assist in the education of primary and secondary students. The Court stated the applicable precedent was *Agostini v. Felton*¹⁹ in which the Court established a test for determining the purpose and effect of a statute in the establishment of religion. In *Agostini*, the Court held that to show a statute has such an effect, it must “result in governmental indoctrination; define its recipients by reference to religion; or create an excessive entanglement.” Here, however, the Court stated that “[i]n this case, our inquiry under *Agostini*’s purpose and effect test is a narrow one.” The Court explained that “[b]ecause respondents do not challenge the District Court’s holding that Chapter 2 has a secular purpose, and because the Fifth Circuit also did not question that holding, we will consider only Chapter 2’s effect.” The Court found that “Chapter 2 does not result in governmental indoctrination, because it determines eligibility for aid neutrally, allocates the aid based on the private choices of the parents of schoolchildren, and does not provide aid that has an impermissible content.” The Court further found that Chapter 2 does not “define its recipients by reference to religion.” Therefore, the Court concluded that in “[a]pplying the two relevant *Agostini* criteria, we see no basis for concluding that Jefferson Parish’s Chapter 2 program ‘has the effect of advancing religion.’”

In *Los Angeles Police Department v. United Reporting Publishing Company*,²⁰ the Court held that a private company may not make a facial challenge to an amended state statute when there is neither the threat of prosecution nor a possible cutoff of funding as a result of the amendment. The Court stated that “[t]he traditional rule is that ‘a person to whom a

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11. 491 U.S. 397 (1989).
12. 391 U.S. 367 (1968).
13. 530 U.S. 290 (2000).
14. 505 U.S. 577 (1992).
15. 529 U.S. 217 (2000).

16. 319 U.S. 624 (1943).
17. 403 U.S. 602 (1971).
18. 530 U.S. 793 (2000).
19. 521 U.S. 203 (1997).
20. 528 U.S. 32 (1999).

The Court . . . held that *Buckley v. Valeo* is controlling authority with regards to state campaign contribution

statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court.” However, an important exception to this rule is a statutory challenge based on First Amendment overbreadth. This challenge must

be protected because of the cherished societal value associated with personal expression. The Court saw no such situation in this case. Following the traditional rule, the Court underscored two “cardinal principles” of its constitutional analysis: “the personal nature of constitutional rights and the prudential limitations on constitutional adjudication.” The Court thus held that the exception to the rule, First Amendment overbreadth analysis, is “strong medicine” not to be “casually employed.”

The Court, in *Nixon v. Shrink Missouri Government PAC*,²¹ held that *Buckley v. Valeo*²² is controlling authority with regards to state campaign contribution limitations. In *Buckley*, the Court upheld a \$1,000 limitation on individual political contributions per candidate. However, the Court struck down a similar limitation on independent expenditures linked to specific candidates. The Court reasoned that a limit on expenditures “precludes most associations from effectively amplifying the voice of their adherents.” The majority found *Buckley* applicable to the instant statute and stated that “[t]here is no reason in logic or evidence to doubt the sufficiency of *Buckley* to govern this case in support of the Missouri statute.” The Court was suspicious of respondent’s claim that he would not be able to run an effective campaign given the limitations on campaign contributions. The Court stated that “[e]ven if we were to assume that the contribution limits affected respondent Fredman’s ability to wage a competitive campaign (no small assumption given that Fredman only identified one contributor, Shrink Missouri, that would have given him more than \$1,075 per election), a showing of one affected individual does not point up a system of suppressed political advocacy that would be unconstitutional under *Buckley*.” The Court further dismissed the argument of respondent that the limitations were unconstitutional as too low because of inflation since the *Buckley* decision. Justice Souter noted that “the issue in later cases cannot be truncated to a narrow question about the power of the dollar, but must go to the power to mount a campaign with all the dollars likely to be forthcoming.” The Court, therefore, upheld the statute as constitutional, reversing the Court of Appeals for the Eighth Circuit and remanding for proceedings consistent with its opinion.

In *Board of Regents of the University of Wisconsin System v.*

Southworth,²³ the Court held that mandatory university programming fees do not violate the First Amendment rights of students, so long as those fees are distributed without regard for the viewpoints of the organizations that receive them. The Court began its analysis with *Abood v. Detroit Board of Education*²⁴ and *Keller v. State Bar of California*.²⁵ In *Abood*, union members paid mandatory fees that were being used to subsidize political expression that went against their personal beliefs. The Court found this to be a violation of First and Fourteenth Amendment Rights of the union members. *Keller*, in which mandatory bar membership and fees were upheld with respect to California lawyers, reiterated this point. Justice Kennedy saw this only as a roadmap, however, stating that “[w]hile those precedents identify the interests of the protesting students, the means of implementing First Amendment protections adopted in those decisions are neither applicable nor workable in the context of extracurricular student speech at a university.” The Court saw the mandatory fee at the University of Wisconsin as a valuable way to stimulate the academic and social discourse of its students. However, in order to protect the First Amendment rights of objecting students, the Court utilized the viewpoint neutrality principle enunciated in *Rosenberger v. Rector and Visitors of University of Virginia*.²⁶ The Court stated that “[w]hen a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others.” Thus, the Court concluded that “[t]he proper measure, and the principal standard of protection for objecting students . . . is the requirement of viewpoint neutrality in the allocation of funding support.” Here, Justice Kennedy found that the justification for allowing the mandatory fund in the first place was its ostensibly inherent viewpoint neutrality.

In *United States v. Playboy Entertainment Group*,²⁷ the Court held that § 505 of the Telecommunications Act of 1996 (the Act) violated the First Amendment because it was not the least restrictive means of accomplishing a legitimate government objective. Appellee Playboy Entertainment Group produces programming for adult television networks. Cable operators receive programs from appellee and, in turn, broadcast them to subscribers in scrambled form. Although all homes in a given area may receive the signal, only customers who have paid for the adult programming will have the converter box necessary to descramble the signal. In some instances, however, imperfections in the scrambling scheme allow for portions of audio and/or video from these adult programs to “bleed through.” Section 505 of the Act²⁸ was enacted in order to deal with the problem of children hearing and seeing sexually explicit material on television because of signal bleed. This section required cable operators who provide channels “primarily dedicated to sexually-oriented programming” either to “fully scramble or otherwise block” those channels or to limit their transmission

21. 528 U.S. 377 (2000).

22. 424 U.S. 1 (1976).

23. 529 U.S. 217 (2000).

24. 431 U.S. 209 (1977).

25. 496 U.S. 1 (1990).

26. 515 U.S. 819 (1995).

27. 529 U.S. 803 (2000).

28. 47 U.S.C. § 561(a) (1994 ed., Supp. III).

to hours when children are unlikely to be viewing, between 10 p.m. and 6 a.m. The Court began by noting that the material at issue was presumed to be offensive, while at the same time fully protected by the First Amendment. In determining the level of scrutiny to be applied to § 505, Justice Kennedy explained that “[t]he speech in question is defined by its content; and a statute which seeks to restrict it is content based.” The Court noted that, “[n]ot only does § 505 single out particular programming content for regulation, it also singles out particular programmers.” The majority, wary of such a statute, stated that “[l]aws designed or intended to suppress or restrict the expression of specific speakers contradict basic First Amendment principles.” After determining that § 505 was a content-based speech regulation, the Court, citing *Sable Communications of California, Inc. v. FCC*,²⁹ found that the statute “can stand only if it satisfies strict scrutiny.” The Court went on to explain that, under strict scrutiny analysis, “[i]f a statute regulates speech based on its content, it must be narrowly tailored to promote a compelling Government interest . . . [and] [i]f a less restrictive alternative would serve the Government’s purpose, the government must use that alternative.” The majority focused on the “less restrictive alternative” available to the government in this case. Following the reasoning of the three-judge district court, the Court concluded that § 504, the section preceding § 505 in the Act, was a less restrictive alternative. Section 504 allows a cable subscriber to have any channel fully blocked by the cable provider, free of charge. The Court reasoned that, if properly publicized to cable customers, § 504 would provide the protection of children that the government was looking for without having to effectively block an entire category of protected speech during the daytime hours. Justice Kennedy explained, “Simply put, targeted blocking is less restrictive than banning, and the Government cannot ban speech if targeted blocking is a feasible and effective means of furthering its compelling interests.” The Court then turned to the probable effectiveness of “targeted blocking” and stated that “[w]hen a plausible, less restrictive alternative is offered to a content-based speech restriction, it is the Government’s obligation to prove that the alternative will be ineffective to achieve its goals.” During the time that § 504 was in effect, very few households made any request to have channels blocked in their homes. In looking at the “tepid” response that cable customers had toward § 504, the Court, in following the district court panel, was unconvinced of the severity of the “signal bleed” problem. The Court thus stated that “[t]he District Court’s thorough discussion exposes a central weakness in the Government’s proof: There is little hard evidence of how widespread or how serious the problem of signal bleed is.” Justice Kennedy characterized the government’s evidence as largely anecdotal, noting that “[i]f the number of children transfixed by even flickering pornographic images in fact reached into the millions we, like the District Court, would have expected to be directed to more than a handful of complaints.” The Court further noted that “[t]he First Amendment requires a more careful assessment and char-

29. 492 U.S. 115 (1989).
30. 528 U.S. 62 (2000).

acterization of an evil in order to justify a regulation as sweeping as this.” Finding the evidentiary basis for the government’s assertion of § 504’s ineffectiveness to be lacking, the Court found that “[t]here is no evidence that a well-promoted voluntary blocking provision would not be capable at least of informing parents about signal bleed . . . and their rights to have the bleed blocked.” The Court offered other solutions as well, namely, technological innovations within the marketplace like televisions that display a blue screen when receiving a scrambled signal. Finding the government’s restriction of speech in the instant case to be impermissible under the First Amendment, the Court invalidated § 505.

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FEDERALISM

In *Kimel v. Florida Board of Regents*,³⁰ the Court held that the Age Discrimination in Employment Act (ADEA) is not a valid exercise of Congress’s power under § 5 of the Fourteenth Amendment, and thus does not abrogate the sovereign immunity guaranteed to the States by the Eleventh Amendment. The ADEA makes it unlawful for an employer to “fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of an individual’s age.”³¹ The Court began by addressing whether “Congress unequivocally expressed its intent to abrogate (the States’) immunity.” Invoking its decision in *Dellmuth v. Muth*,³² the Court stated that “Congress may abrogate the States’ constitutionally secured immunity from suit in federal court only by making its intention unmistakably clear in the language of the statute.” The ADEA passed this “simple but stringent” test. The Court concluded that “the plain language of these provisions clearly demonstrates Congress’ intent to subject the States to suit for money damages at the hands of individual employees.” Rebutting the arguments of respondents, as well as the assertions of Justice Thomas, the Court found no ambiguity in the intention of Congress to abrogate the states’ Eleventh Amendment immunity. The Court stated that “[o]ur examination of the ADEA’s legislative record confirms that Congress’ 1974 extension of the Act to the States was an unwarranted response to a perhaps inconsequential problem.” The Court noted a general lack of evidence pointing to a need for the legislation in the first place, in addition to a complete lack of evidence linking states to unconstitutional age discrimination. This evidentiary dearth, combined with the “indiscriminate” scope of the Act’s requirements upon employers,

31. 29 U.S.C. § 623 (a)(1).
32. 491 U.S. 223 (1989).

[T]he Court held that . . . the civil remedies provision of the Violence Against Women Act violated the Commerce Clause

led the Court to hold that “the ADEA is not a valid exercise of Congress’ power under § 5 of the Fourteenth Amendment.” Thus, the “purported abrogation of the States’ sovereign immunity” associated with the ADEA was invalid.

In *United States v. Morrison*,³³ the Court held that 42 U.S.C. § 13981, the civil remedies provision of the Violence Against Women Act,

violated the Commerce Clause and the Enforcement Clause of the Fourteenth Amendment. The majority began by looking at the statute’s constitutionality under Article I, § 8 of the Constitution (the Commerce Clause). Resting its analysis on its decision in *United States v. Lopez*,³⁴ the Court found that § 13981 falls well beyond the scope of authority granted to Congress by the Commerce Clause. Even though “Congress has had considerably greater latitude in regulating conduct and transactions under the Commerce Clause than . . . previous case law permitted,” the Court was unwilling to extend that latitude to this statute. The Court next examined the validity of § 13981 under § 5 of the Fourteenth Amendment. While the Court found that Congress may “‘enforce’ by ‘appropriate legislation’ the constitutional guarantee that no State shall deprive any person of ‘life, liberty, or property, without due process of law,’ nor deny any person ‘equal protection of the laws,’” the majority found that limitations “inherent in § 5’s text and constitutional context have been recognized since the Fourteenth Amendment was adopted.” Those limitations proved to be determinative in the instant case as “[f]oremost among these limitations is the time-honored principle that the Fourteenth Amendment, by its very terms, prohibits only state action.” This limitation on congressional power is “necessary to prevent the Fourteenth Amendment from obliterating the Framers’ carefully crafted balance of power between the States and the National Government.”

In *United States v. Locke*,³⁵ the Court held that Washington’s regulations enforcing requirements on the operation, manning, and design of oil tankers were preempted by the Ports and Waterways Safety Act of 1972 (PWSA), in reliance on the Court’s interpretation of that statute in *Ray v. Atlantic Richfield Co.*³⁶ The Court analyzed the instant Washington regulations under field preemption. The Court thus found that Washington had legislated where only the federal government had power to do so. The regulations at issue created training requirements, English proficiency requirements, and navigation watch requirements for the crews of tanker vessels. These

types of regulations were preempted “as an attempt to regulate a tanker’s ‘operation’ and ‘manning’” inconsistent with federal regulations of the same nature. In invalidating the regulations, the Court concluded that “[t]he issue is not adequate regulation, but political responsibility; and it is, in large measure, for Congress and the Coast Guard to confront whether their regulatory scheme, which demands a high degree of uniformity, is adequate.”

The Court, in *Reno v. Condon*,³⁷ held that the Driver’s Privacy Protection Act (DPPA) is a proper exercise of Congress’s authority to regulate interstate commerce under the Commerce Clause, and does not violate the Tenth Amendment principles enunciated in *New York v. United States*³⁸ and *Printz v. United States*.³⁹ The Court explained that “[i]n *New York* and *Printz*, we held federal statutes invalid, not because Congress lacked legislative authority over the subject matter, but because those statutes violated the principles of federalism contained in the Tenth Amendment.” In *New York*, the Court struck down a congressional measure that required the state to “enact a particular kind of law.” The Court additionally noted that its decision in *Printz* “invalidated a provision of the Brady Act which commanded ‘state and local enforcement officers to conduct background check[s] (sic) on prospective handgun purchasers.’” In distinguishing the instant case, the Court “agree[d] with South Carolina’s assertion that the DPPA’s provisions will require time and effort on the part of state employees, but reject[ed] the State’s argument that the DPPA violates the principles laid down in either *New York* or *Printz*.” The Court, alternatively, relied on its decision in *South Carolina v. Baker*,⁴⁰ in which it “upheld a statute that prohibited States from issuing unregistered bonds because the law ‘regulate[d] state activities,’ rather than ‘seek[ing] to control or influence the manner in which States regulate private parties.’” Chief Justice Rehnquist explained that “[l]ike the statute at issue in *Baker*, the DPPA does not require the States in their sovereign capacity to regulate their own citizens.” Furthermore, “[i]t does not require the South Carolina Legislature to enact any laws or regulations, and it does not require state officials to assist in the enforcement of federal statutes regulating private individuals.” The Court therefore concluded that “the DPPA is consistent with the constitutional principles enunciated in *New York* and *Printz*.”

In *Crosby v. National Foreign Trade Council*,⁴¹ the Court held that a Massachusetts law, which restricted business practices with Burma, was invalid under the Supremacy Clause of the Federal Constitution. The Court began by stating that “[a] fundamental principle of the Constitution is that Congress has the power to preempt state law” and explained that federal law preempts state law when either the federal law “occup[ies] the field” of the state law, or when the state law is at conflict with the federal law. The Court, applying the standard enunciated

33. 529 U.S. 598 (2000).

34. 514 U.S. 549 (1995).

35. 529 U.S. 89 (2000).

36. 435 U.S. 151 (1978).

37. 528 U.S. 141 (2000).

38. 505 U.S. 144 (1992).

39. 521 U.S. 898 (1997).

40. 485 U.S. 505 (1988).

41. 530 U.S. 363 (2000).

in *Hines v. Davidowitz*,⁴² viewed “the state Burma law as an obstacle to the accomplishment of Congress’s full objectives under the federal Act.” Furthermore, the Court found that “the state law undermine[d] the intended purpose and ‘natural effect’ of at least three provisions of the federal Act, that is, its delegation of effective discretion to the President to control economic sanctions against Burma, its limitation of sanctions solely to United States persons and new investment, and its directive to the President to proceed diplomatically in developing a comprehensive, multilateral strategy towards Burma.”

In *Jones v. United States*,⁴³ the Court held that an owner-occupied private residence is not property “used in” commerce or commerce-affecting activity. Petitioner Jones threw a Molotov cocktail through a window in a personal dwelling owned and occupied by his cousin. The ensuing fire severely damaged the home. A federal grand jury indicted petitioner on three separate counts, the first of which was a violation of 18 U. S.C. § 844(i): arson. Under this statute, it is a federal crime to damage or destroy, “by means of fire or explosive, any . . . property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce.” The unanimous Court was hesitant to adopt the government’s “expansive” interpretation of the instant statute, which would render virtually every building within its scope stating that “[p]ractically every building . . . is constructed with supplies that have moved in interstate commerce, served by utilities that have an interstate connection . . . or bear some other trace of interstate commerce.” The Court relied on its decision in *United States v. Lopez*⁴⁴ wherein it invalidated the Gun-Free School Zones Act, former 18 U.S.C. § 922(q) (1988 ed., Supp. V), as an improper exercise of Commerce Clause power that essentially abrogated the state’s duty to regulate violent crime. The Court in the instant case drew a comparison to *Lopez* where there is “legislation aimed at activity in which ‘neither the actors nor their conduct has a commercial character.’” Thus, the Court concluded that “[section] 844(i) is not soundly read to make virtually every arson in the country a federal offense.” Consequently, the Court found that the activity in the instant case fell within “traditional state concern” and held that the statute was an invalid exercise of power under the Commerce Clause.

THE FOURTEENTH AMENDMENT

The Court, in *Stenberg v. Carhart*,⁴⁵ held that Nebraska’s statute criminalizing the performance of “partial birth abortion[s]” violates the federal Constitution, as interpreted in *Roe v. Wade*⁴⁶ and *Planned Parenthood of Southeastern Pennsylvania v. Casey*.⁴⁷ The Court began by listing the appropriate standards as set forth by the Court in *Casey*. “First, ‘before viability . . . the woman has a right to choose to terminate her pregnancy.’ Second, ‘a law designed to further the State’s interest in fetal life which imposes an undue burden on the woman’s deci-

sion before fetal viability’ is unconstitutional. . . . Third, ‘subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.’” The Court concluded that the Nebraska law at issue violates

the federal Constitution for two reasons. “First, the law lacks any exception ‘for the preservation of the . . . health of the mother.’” Secondly, “it imposes an undue burden on a woman’s ability’ to choose a D & E abortion, thereby unduly burdening the right to choose abortion itself.” Looking to the third substantive holding of *Casey*, the Court discussed the lack of a “health” exception in the statute and stated that “[s]ince the law requires a health exception in order to validate even a postviability abortion regulation, it at a minimum requires the same in respect to previability regulation.” Nebraska argued that there is no need for such an exception as “safe alternatives remain available.” The Court, like the district court below, was unconvinced. Justice Breyer explained that “[t]he problem for Nebraska is that the parties strongly contested this factual question in the trial court below; and the findings and evidence support Dr. Carhart.” As such, the Court found the instant statute violated the Fourteenth Amendment to the federal Constitution.

In *Troxel v. Granville*,⁴⁸ the Court held that Wash. Rev. Code § 26.10.160(3), as applied, is an unconstitutional infringement of the fundamental parental right to make decisions concerning the care, custody, and control of one’s children. The Court began by noting the impetus for nonparent rights statutes like the one at issue, stating that “it is difficult to speak of an average American family.” Furthermore, the Court noted that oftentimes, many third parties, like grandparents, may have a valuable stake in relationships with children, especially those that live in “non-traditional” settings. However, the Court was unwilling to extend the rights of grandparents in a way that eclipsed what it believed were the more central rights of parents. The Court relied on the Fourteenth Amendment, which provides that no state shall “deprive any person of life, liberty, or property, without due process of law,” and, citing *Meyer v. Nebraska*,⁴⁹ stated that “the ‘liberty’ protected by the Due Process Clause includes the right of parents to ‘establish a home and bring up children’ and to ‘control the education of their own.’” The Court viewed the instant statute as infringing upon this fundamental right and, therefore, held it was unconstitutional.

[T]he Court was unwilling to extend the rights of grandparents in a way that eclipsed what it believed were the more central rights of parents.

42. 312 U.S. 52 (1941).

43. 529 U.S. 848 (2000).

44. 514 U.S. 549 (1995).

45. 530 U.S. 914 (2000).

46. 410 U.S. 113 (1973).

47. 505 U.S. 833 (1992).

48. 530 U.S. 57 (2000).

49. 262 U.S. 390 (1923).

The Court concluded that “[a]ncestry can be a proxy for race,” as it was here, and thus, held the statute unconstitutional.

ELECTIONS

The Court, in *Rice v. Cayetano*,⁵⁰ held that a Hawaii statute limiting voters to those persons of “Hawaiian” or “native Hawaiian” ancestry violates the Fifteenth Amendment as an impermissible denial or abridgement of voting rights based on race. The Court began by stating that “[t]he purpose and command of the Fifteenth

Amendment are set forth in language both explicit and comprehensive. The National Government and the States may not violate a fundamental principle: They may not deny or abridge the right to vote on account of race.” The Court explained that “[t]he design of the Amendment is to reaffirm the equality of races at the most basic level of the democratic process, the exercise of the voting franchise.” Furthermore, “[f]undamental in purpose and effect and self-executing in operation, the Amendment prohibits all provisions denying or abridging the voting franchise of any citizen or class of citizens on the basis of race.” Citing its decision in *Guinn v. United States*,⁵¹ the Court explained that “[t]he Fifteenth Amendment was quite sufficient to invalidate a scheme which did not mention race but instead used ancestry in an attempt to confine and restrict the voting franchise.” The Court concluded that “[a]ncestry can be a proxy for race,” as it was here, and thus, held the statute unconstitutional.

CIVIL STATUTORY INTERPRETATION - ENVIRONMENT

In *Friends of the Earth v. Laidlaw*,⁵² the Court held that the proper inquiry when determining Article III standing with regards to Clean Water Act suits is injury to the plaintiff, not injury to the environment. Additionally, the Court held that a defendant’s voluntary cessation of allegedly unlawful conduct ordinarily does not suffice to moot a case. In addressing the issue of Article III standing, the Court, citing *Hunt v. Washington State Apple Advertising Commission*,⁵³ explained that “[a]n association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” The Court felt, as did the district court, that the statements of petitioner organization’s members “adequately allege[d] injury in fact,” as they documented the experiences of persons “‘for whom the aesthetic and recreational values of the area will be lessened’ by the challenged activity,” citing *Sierra Club v. Morton*.⁵⁴ Consequently, petitioner had Article III standing to sue as an organization on behalf of its

members. In addressing the issue of mootness, the Court, citing *United States v. Concentrated Phosphate Export Ass’n*,⁵⁵ stated that the test for determining mootness based on voluntary defendant conduct is whether “subsequent events ma[k]e it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” Noting that the Court of Appeals “confused mootness with standing,” Justice Ginsburg was unsatisfied with that court’s characterization of mootness as “standing set in a time frame,” which she felt was, at best, “not comprehensive.” The Court did not believe that the “formidable burden” of showing that the toxic emissions could not “reasonably be expected to recur” had been met by respondent. Not only did respondent retain its NPDES permit, but “[t]he effect of both Laidlaw’s compliance and the facility closure on the prospect of future violations is a disputed factual matter.” Therefore, the Court concluded that the instant case was not moot.

CIVIL STATUTORY INTERPRETATION - HEALTH

The Court, in *Food and Drug Administration v. Brown & Williamson Tobacco Corp.*,⁵⁶ held that the Food and Drug Administration (FDA) lacks authority to regulate tobacco products as customarily marketed. The Court, led by Justice O’Connor, followed the reasoning of the Court of Appeals and stated that “[t]he FDA’s findings make clear that tobacco products are ‘dangerous to health’ when used in the manner prescribed.” Given this conclusion by the FDA, the Court found that “there are no directions that could make tobacco products safe for obtaining their intended effects.” Therefore, the Court concluded that if “tobacco products [were] within the FDA’s jurisdiction, the Act would deem them misbranded devices that could not be introduced into interstate commerce.”

CIVIL STATUTORY INTERPRETATION - AGE DISCRIMINATION

In *Reeves v. Sanderson Plumbing Products, Inc.*,⁵⁷ the Court held that a prima facie case of age discrimination, and sufficient evidence of pretext, may permit a trier of fact to find unlawful discrimination, though such a showing will not always be adequate to sustain a jury’s finding of liability. The Court also held that a court, in entertaining a motion for judgment as a matter of law, should review all evidence on the record. The Court, finding sufficient evidence in the instant case to warrant a jury verdict for petitioner, reversed the Fifth Circuit.

PRODUCTS LIABILITY

The Court, in *Geier v. Honda*,⁵⁸ held that “no air bag” tort claims are at opposition with the objectives of Federal Motor Vehicle Safety Standard 208, and are thus preempted. Petitioner Alexis Geier was involved in a solo vehicle accident in her 1987 Honda Accord. Although she was wearing her seatbelt, petitioner was severely injured. The vehicle was not

50. 528 U.S. 495 (2000).
51. 238 U.S. 347 (1915).
52. 528 U.S. 167 (2000).
53. 432 U.S. 333 (1977).
54. 405 U.S. 727 (1972).

55. 393 U.S. 199 (1968).
56. 529 U.S. 120 (2000).
57. 530 U.S. 133 (2000).
58. 529 U.S. 1913 (2000).
59. 15 U.S.C. § 1397(k) (1988 ed.).

equipped with an airbag or any other passive restraint device. Federal Motor Vehicle Safety Standard 208 (FMVSS 208), promulgated by the Department of Transportation under the authority of the National Traffic and Motor Vehicle Safety Act of 1966 (the Act), required automobile manufacturers to equip some, but not all, of their 1987 cars with passive restraint systems. The Court began by addressing whether the Act's express preemption provision preempted the instant lawsuit. The preemption provision, which prohibits any state from establishing its own vehicle safety requirements where the federal government has already created its own standards, is followed by a "saving clause." This clause provides that "[c]ompliance with" a federal safety standard "does not exempt any person from any liability under common law."⁵⁹ The Court favored a narrow reading of the preemption provision that excludes common-law suits. Justice Breyer explained that "[w]e have found no convincing indication that Congress wanted to pre-empt, not only state statutes and regulations, but also common-law tort actions, in such circumstances." Furthermore, "[g]iven the presence of the saving clause, we conclude that the pre-emption clause must be so read." The Court next inquired as to whether ordinary preemption principles apply in light of its reading of the materials. The Court, answering in the affirmative, concluded that the saving clause "does not bar the ordinary working of conflict pre-emption principles." Justice Breyer stated that "[n]othing in the language of the saving clause suggests an intent to save state-law tort actions that conflict with federal regulations." In addition, the Court found that "[i]t is difficult to understand why Congress would have insisted on a compliance-with-federal-regulation precondition to the provisions applicability had it wished the Act to 'save' all state-law tort actions, regardless of their potential threat to the objectives of the federal safety standards promulgated under that Act." Justice Breyer also questioned why Congress would have want-

ed to eschew ordinary preemption doctrine in favor of a more "complex" system in which "state law could impose legal duties that would conflict directly with federal regulatory mandates." Thus, the Court concluded that "there is no reason to believe congress has done so here."

CONCLUSION

The Court, having tackled some of the most divisive issues existing today during its latest Term, continues to serve as the ultimate crucible of the ideology of right and wrong. The firestorm of public reaction to several decisions this Term illustrates a growing awareness of the importance of the Court. The proliferation of close decisions during the 1999-2000 Term further exemplifies the delicate balance that exists with respect to some of the nation's most hotly contested issues. In the 2000 election, the American people had the opportunity to tip the ideological scales of the Court to a greater extent than in any other election year in recent memory. Notwithstanding the election, however, the Court will likely bring us another exhilarating Term for 2000-2001.



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