

TWO VIEWS ON THE LATEST CONSTITUTIONAL LAW DECISIONS

2017 TERM

PRIVACY CASES. Do these cases suggest a left/right alliance on privacy that might establish a trend for the future? Does the confirmation of Justice Kavanaugh undermine it?

1. **Carpenter v. U.S.**, No. 16-402 [Arg: 11.29.2017 Trans./Aud.; Decided 06.22.2018]

Holding: The government's acquisition of Timothy Carpenter's cell-site records from his wireless carriers was a Fourth Amendment search; the government did not obtain a warrant supported by probable cause before acquiring those records.

2. **Byrd v. U.S.**, No. 16-1371 [Arg: 1.9.2018 Trans./Aud.; Decided 5.14.2018]

Holding: The mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not defeat his or her otherwise reasonable expectation of privacy protected by the Fourth Amendment.

3. **Collins v. Virginia**, No. 16-1027 [Arg: 1.9.2018 Trans./Aud.; Decided 05.29.2018]

Holding: The Fourth Amendment's automobile exception does not permit the warrantless entry of a home or its curtilage in order to search a vehicle therein.

ANTI-DISCRIMINATION AND RELIGIOUS OBJECTIONS. Did the Court say anything useful on this issue? How is the tension between anti-discrimination law and religious objections going to play out in future cases?

1. **Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission**, No. 16-111 [Arg: 12.5.2017 Trans./Aud.; Decided 06.04.2018]

Holding: The Colorado Civil Rights Commission's actions in assessing a cakeshop owner's reasons for declining to make a cake for a same-sex couple's wedding celebration violated the free exercise clause.

THE BILL OF RIGHTS ABROAD. What constitutional rights, if any, do non-citizens abroad have? What limits, if any, are there on the national government's power to exclude aliens?

1. **Trump v. Hawaii**, No. [17-965](#) [Arg: 4.25.2018 [Trans./Aud.](#); Decided [06.26.2018](#)]

Holding: The president has lawfully exercised the broad discretion granted to him under 8 U. S. C. §1182(f) to suspend the entry of aliens into the United States; respondents have not demonstrated a likelihood of success on the merits of their claim that Presidential Proclamation No. 9645 violates the establishment clause.

FIRST AMENDMENT RETALIATION.

1. **Lozman v. City of Riviera Beach, Florida**, No. [17-21](#) [Arg: 2.27.2018 [Trans./Aud.](#); Decided [06.18.2018](#)]

Holding: The existence of probable cause for Fane Lozman's arrest for disrupting a city council meeting does not bar his First Amendment retaliatory arrest claim under the circumstances of this case.

2018 TERM

FIRST AMENDMENT RETALIATION. Will this case continue a series of wins for the First Amendment? Does it test how Justice Kavanaugh measures First Amendment values against law enforcement values?

1. **Nieves v. Bartlett**, No. [17-1174](#) [Arg: 11.26.2018]

Issue(s): Whether probable cause defeats a First Amendment retaliatory-arrest claim under 42 U.S.C. § 1983.

THE LEFT/RIGHT ALLIANCE CASES. Might these be cases where we see an emerging left/right alliance reacting to government overreaching? Where is Justice Kavanaugh going to come out?

1. **Timbs v. Indiana**, No. [17-1091](#) [Arg: 11.28.2018]

Issue(s): Whether the Eighth Amendment's excessive fines clause is incorporated against the states under the Fourteenth Amendment.

2. [**Gundy v. U.S.**](#), No. [17-6086](#) [Arg: 10.2.2018 [Trans./Aud.](#)]

Issue(s): Whether the federal Sex Offender Registration and Notification Act's delegation of authority to the attorney general to issue regulations under 42 U.S.C. § 16913 violates the nondelegation doctrine.

3. [**Gamble v. U.S.**](#), No. [17-646](#) [Arg: 12.5.2018]

Issue(s): Whether the Supreme Court should overrule the “separate sovereigns” exception to the double jeopardy clause.

CRIMINAL LAW/PROCEDURE CASES. Are these cases also measures of the extent of the shift from Justice Kennedy to Justice Kavanaugh?

1. [**Madison v. Alabama**](#), No. [17-7505](#) [Arg: 10.2.2018 [Trans./Aud.](#)]

Issue(s): (1) Whether, consistent with the Eighth Amendment, and the Supreme Court's decisions in [Ford v. Wainwright](#) and [Panetti v. Quarterman](#), a state may execute a prisoner whose mental disability leaves him with no memory of his commission of the capital offense; and (2) whether evolving standards of decency and the Eighth Amendment's prohibition of cruel and unusual punishment bar the execution of a prisoner whose competency has been compromised by vascular dementia and multiple strokes causing severe cognitive dysfunction and a degenerative medical condition that prevents him from remembering the crime for which he was convicted or understanding the circumstances of his scheduled execution. [**Gundy v. U.S.**](#), No. [17-6086](#) [Arg: 10.2.2018 [Trans./Aud.](#)]

Issue(s): Whether the federal Sex Offender Registration and Notification Act's delegation of authority to the attorney general to issue regulations under 42 U.S.C. § 16913 violates the nondelegation doctrine.

2. [**Garza v. Idaho**](#), No. [17-1026](#) [Arg: 10.30.2018]

Issue(s): Whether the “presumption of prejudice” recognized in [Roe v. Flores-Ortega](#) applies when a criminal defendant instructs his trial counsel to file a notice of appeal but trial counsel decides not to do so because the defendant's plea agreement included an appeal waiver.