

## Cases Remaining for October Term 2012

*as of Tuesday, June 19, 2013*

Case Name	Docket	Court	Argued	Issue
Adoptive Couple v. Baby Girl	12-399	ST	Apr 16, 2013	(1) Whether a non-custodial parent can invoke the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. §§ 1901-63, to block an adoption voluntarily and lawfully initiated by a non-Indian parent under state law; and (2) whether ICWA defines “parent” in 25 U.S.C. § 1903(9) to include an unwed biological father who has not complied with state law rules to attain legal status as a parent.
Agency for International Development v. Alliance for Open Society International	12-10	CA2	Apr 22, 2013	Whether the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, 22 U.S.C. § 7631(f), which requires an organization to have a policy explicitly opposing prostitution and sex trafficking in order to receive federal funding to provide HIV and AIDS programs overseas, violates the First Amendment. (Kagan, J., recused.)
American Express Co. v. Italian Colors Restaurant	12-133	CA2	Feb 27, 2013	Whether the Federal Arbitration Act permits courts, invoking the “federal substantive law of arbitrability,” to invalidate arbitration agreements on the ground that they do not permit class arbitration of a federal-law claim. (Sotomayor, J., recused)
Descamps v. United States	11-9540	CA9	Jan 7, 2013	Whether, in a case under the Armed Career Criminal Act, when a state crime does not require an element of the federal crime of burglary, the federal court may find the existence of that element by examining the record of the state proceedings under the “modified categorical approach.”
Fisher v. University of Texas	11-345	CA5	Oct 10, 2012	Whether this Court’s decisions interpreting the Equal Protection Clause of the Fourteenth Amendment, including Grutter v. Bollinger, permit the University of Texas at Austin’s use of race in undergraduate admissions decisions. (Kagan, J., recused)
Hollingsworth v. Perry	12-144	CA9	Mar 26, 2013	(1) Whether the Equal Protection Clause of the Fourteenth Amendment prohibits the State of California from defining marriage as the union of a man and a woman; and (2) whether petitioners have standing under Article III, § 2 of the Constitution in this case.

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Koontz v. St. Johns River Water Management	11-1447	ST	Jan 15, 2013	(1) Whether a land-use agency can be held liable for a taking when it refused to issue a land-use permit on the sole basis that the permit applicant did not accede to a permit condition that, if applied, would violate the essential nexus and rough proportionality tests set out in <i>Nollan v. California Coastal Commission</i> (1987) and <i>Dolan v. City of Tigard</i> (1994) (2) whether the nexus and proportionality tests set out in <i>Nollan</i> and <i>Dolan</i> apply to a land-use exaction that takes the form of a government demand that a permit applicant dedicate money, services, labor, or any other type of personal property to a public use.
Mutual Pharmaceutical v. Bartlett	12-142	CA1	Mar 19, 2013	Whether the First Circuit Court of Appeals erred when it created a circuit split and held – in clear conflict with this Court’s decisions in <i>PLIVA v. Mensing</i> , <i>Riegel v. Medtronic</i> , and <i>Cipollone v. Liggett Group</i> – that federal law does not preempt state law design-defect claims targeting generic pharmaceutical products because the conceded conflict between such claims and the federal laws governing generic pharmaceutical design allegedly can be avoided if the makers of generic pharmaceuticals simply stop making their products.
Sekhar v. United States	12-357	CA2	Apr 23, 2013	Whether the "recommendation" of an attorney, who is a salaried employee of a governmental agency, in a single instance, is intangible property that can be the subject of an extortion attempt under 18 U.S.C. § 1951 (a)(the Hobbs Act) and 18 U.S.C. § 875(d).
Shelby County v. Holder	12-96	CADC	Feb 27, 2013	Whether Congress’ decision in 2006 to reauthorize Section 5 of the Voting Rights Act under the pre-existing coverage formula of Section 4(b) of the Voting Rights Act exceeded its authority under the Fourteenth and Fifteenth Amendments and thus violated the Tenth Amendment and Article IV of the United States Constitution.
United States v. Kobedaux	12-418	CA5	Apr 17, 2013	(1) Whether the court of appeals erred in conducting its constitutional analysis on the premise that respondent was not under a federal registration obligation until the Sex Offender Registration and Notification Act (SORNA) was enacted, when pre-SORNA federal law obligated him to register as a sex offender; and (2) whether the court of appeals erred in holding that Congress lacks the Article I authority to provide for criminal penalties under 18 U.S.C. § 2250(a)(2)(A), as applied to a person who was convicted of a sex offense under federal law and completed his criminal sentence before SORNA was enacted.

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United States v. Windsor	12-307	CA2	Mar 27, 2013	(1) Whether Section 3 of the Defense of Marriage Act (DOMA) violates the Fifth Amendment's guarantee of equal protection of the laws as applied to persons of the same sex who are legally married under the laws of their State; (2) whether the Executive Branch's agreement with the court below that DOMA is unconstitutional deprives this Court of jurisdiction to decide this case; and (3) whether the Bipartisan Legal Advisory Group of the United States House of Representatives has Article III standing in this case.
University of Texas Southwestern Medical Center v. Nassar	12-484	CA5	Apr 24, 2013	Whether the retaliation provision of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a), and similarly worded statutes require a plaintiff to prove but-for causation (i.e., that an employer would not have taken an adverse employment action but for an improper motive), or instead require only proof that the employer had a mixed motive (i.e., that an improper motive was one of multiple reasons for the employment action).
Vance v. Ball State University	11-556	CA7	Nov 26, 2012	Whether the "supervisor" liability rule established by Faragher v. City of Boca Raton and Burlington Industries, Inc. v. Ellerth (i) applies to harassment by those whom the employer vests with authority to direct and oversee their victim's daily work, or (ii) is limited to those harassers who have the power to "hire, fire, demote, promote, transfer, or discipline" their victim.