

Cases Remaining for October Term 2012

as of Monday, June 10, 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.)
Alleyne v. United States	11-9335	CA4	Jan 14, 2013	Whether this Court’s decision in <i>Harris v. United States</i> , holding that the Constitution does not require facts which increase a mandatory minimum sentence to be determined by a jury, should be overruled.
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)
American Trucking Association v. Los Angeles, California	11-798	CA9	Apr 16, 2013	Whether 49 U.S.C. § 14501(c)(1), which provides that “a State [or] political subdivision . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property,” contains an unexpressed “market participant” exception and permits a municipal governmental entity to take action that conflicts with the express preemption clause, occurs in a market in which the municipal entity does not participate, and is unconnected with any interest in the efficient procurement of services.
Arizona v. Inter Tribal Council	12-71	CA9	Mar 18, 2013	(1) Whether the Ninth Circuit erred in creating a new, heightened preemption test under Article I, Section 4, Clause 1 of the U.S. Constitution (“the Elections Clause”) that is contrary to the Supreme Court’s authority and conflicts with other circuit court decisions; and (2) whether the Ninth Circuit erred in holding that under that test the National Voter Registration Act preempts an Arizona law that requests persons who are registering to vote to show evidence that they are eligible to vote.

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Association for Molecular Pathology v. Myriad Genetics	12-398	CAFC	Apr 15, 2013	Whether human genes are patentable.
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."
Federal Trade Commission v. Actavis	12-416	CA11	Mar 25, 2013	Whether reverse-payment agreements are per se lawful unless the underlying patent litigation was a sham or the patent was obtained by fraud (as the court below held), or instead are presumptively anticompetitive and unlawful (as the Third Circuit has held). (Alito, J., recused)
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 <i>Grutter v. Bollinger</i> , 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.
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.

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Maracich v. Spears	12-25	CA4	Jan 9, 2013	(1) Whether the Fourth Circuit erred in holding that lawyers who obtain, disclose, or use personal information solely to find clients to represent in an incipient lawsuit – as opposed to evidence for use in existing or potential litigation – may seek solace under the litigation exception of the Driver’s Privacy Protection Act of 1994 (DPPA), 18 U.S.C. §§ 2721-2725; and (2) whether the Fourth Circuit erred in reaching the conclusion that a lawyer who files an action that effectively amounts to a “place holder” lawsuit may thereafter use DPPA-protected personal information to solicit plaintiffs for that action through a direct mail advertising campaign on the grounds that such use is “inextricably intertwined” with “use in litigation.”
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.
Salinas v. Texas	12-246	ST	Apr 17, 2013	Whether or under what circumstances the Fifth Amendment’s Self-Incrimination Clause protects a defendant’s refusal to answer law enforcement questioning before he has been arrested or read his Miranda rights.
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.

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Tarrant Regional Water District v. Herrmann	11-889	CA10	Apr 23, 2013	(1) Whether Congress's approval of an interstate water compact that grants the contracting states "equal rights" to certain surface water and – using language present in almost all such compacts– provides that the compact shall not "be deemed . . . to interfere" with each state's "appropriation, use, and control of water . . . not inconsistent with its obligations under this Compact," manifests unmistakably clear congressional consent to state laws that expressly burden interstate commerce in water; and (2) whether a provision of a congressionally approved multi-state compact that is designed to ensure an equal share of water among the contracting states preempts protectionist state laws that obstruct other states from accessing the water to which they are entitled by the compact.
United States v. Davila	12-167	CA11	Apr 15, 2013	Whether the court of appeals erred in holding that any degree of judicial participation in plea negotiations, in violation of Federal Rule of Criminal Procedure 11(c)(1), automatically requires vacatur of a defendant's guilty plea, irrespective of whether the error prejudiced the defendant.
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.
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).

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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.
