Supreme Court Update
Law and Criminal Justice Committee
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Connick v. Thompson

**Issue:** whether a district attorney’s office can be held liable under Section 1983 for failure to train its prosecutors based on a single violation of the Brady rule.

The Brady rule (Brady v. Maryland, 373 U.S. 83 (1963)) provides that withholding exculpatory evidence violates due process "where the evidence is material either to guilt or to punishment“.

**Facts:**
- The Defendant Thompson was tried and convicted of murder in Orleans Parish, LA. He received the death penalty.
- The District Attorney’s Office did not disclose the existence or results of an exculpatory lab report. There was no history in this office of routine failure to disclose evidence.
- One month before Thompson’s execution, the lab report was discovered. Thompson’s conviction was vacated, he was retried and found not guilty.
- Thompson filed a 1983 suit based on the failure to train prosecutors.
Connick v. Thompson

**Parties' Arguments:**
- Thompson argued a ‘single incident’ theory and that the rule of law to be applied was found in *Canton v. Harris*, 489 U.S. 378.
  - Deliberate indifference to the rights of others
- The D.A.’s office argues that for a violation under 1983 to occur, there must be a pattern of similar constitutional violations and that was not the case here.

**Rationale:**
- Under *Monell v. New York City Dept. of Social Servs.* Local gov’t liability must be based on an injury caused by action pursuant to official municipal policy.
- Gov’t’s decision not to train certain employees may rise to the level of official gov’t policy if deliberate indifference can be shown.
This case is not illustrative of deliberate indifference rising to the level of municipal policy. Prosecutors are ethically bound to know the Brady rule and to conduct legal research when they are unsure. Thus, recurring constitutional violations are not the “obvious consequence of failing to provide formal in-house training for prosecutors.

Holding:

A district attorney's office cannot be held liable under Section 1983 for a failure to train its prosecutors based on a single Brady violation.
Martinez v. Regents of the University of CA

- **Issue:** Whether a state statute allowing illegal immigrants who attend high school in CA for at least 3 years to receive in-state tuition to state universities, confers upon them “a benefit based on residence”, in violation of federal immigration law. Also, whether California Education Code is impliedly preempted by federal law although Congress expressly authorized states to make unlawful aliens eligible for postsecondary education benefits subject to certain conditions.

- **Facts:**
  - United States citizens paying nonresident tuition at state colleges and universities brought action challenging a state statute exempting certain nonresidents including unlawful aliens from paying nonresident tuition.
  - Section 68130.5 of the California Education Code allows any person, including an illegal immigrant, who meets the statutory requirements (three years of attendance of a California high school and graduation from that institution) to receive in-state college tuition.
  - 8 U. S.C. sec. 1623 has prohibited the states from making unlawful aliens eligible for postsecondary education benefits under certain circumstances.
Parties' Arguments:

- Petitioners argue the CA statute provides preferential treatment to illegal immigrants by offering them the same benefits as students who are US citizens, but are non-residents of California. The grant for in-state tuition is being offered based on the immigrant’s residence in CA, which violates federal law, and the state statute is therefore preempted by federal law.

- Respondents argue that the CA statute does not confer benefits based on residency and the statute was carefully written NOT to do this.

Rationale:

- Only if a state statute touching on aliens is in fact a regulation of immigration, i.e., a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain, is there preemption; otherwise, the usual rules of statutory preemption analysis apply, and state law will be displaced only when express congressional action requires it.

- California statute exempting certain unlawful aliens from paying nonresident tuition at California state colleges and universities is not subject to “structural and automatic” preemption, since it does not regulate who may enter or remain in the United States.
Martinez v. Regents of the University of CA

- **Holding:**
  - CA’s statute exempting certain nonresidents and unlawful aliens from nonresident tuition did not violate statute prohibiting education benefits to unlawful aliens on the basis of residence.
Issue: Whether an Arizona statute that imposes sanctions on employers who hire unauthorized aliens is invalid under a federal statute that expressly “preempt[s] any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.”

Whether the Arizona statute is impliedly preempted because it undermines the “comprehensive scheme” that Congress created to regulate the employment of aliens.

Facts:
- Arizona passed the Legal Arizona Workers Act in 2007 to require the use of E-Verify by businesses in that state. Pursuant to this statute, the state can revoke the business license of any companies that knowingly employ illegal aliens.
- The Immigration Reform and Control Act (IRCA) makes it unlawful to knowingly hire an unauthorized alien. IRCA preempts “any State law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ… unauthorized aliens.”
- The feds developed E-Verify as an internet-based alternative to the I-9 process.
Parties' Arguments:

The Chamber of Commerce argues that unauthorized worker provisions of the Arizona Act are pre-empted by federal law. The federal system is “exclusive” and does not leave room for state regulation.

Federal law does not pre-empt Arizona’s (or any other state’s) employer sanctions law. It is not expressly prevented, and the legislation is consistent with the IRCA’s savings clause.

Rationale:

Although the federal immigration law prohibited states from punishing employers who hired undocumented workers, it also contained a “savings clause,” or exception, that allowed the states to use “licensing or similar laws” to punish those employers. The AZ law is a “licensing law” and is therefore not preempted by IRCA.

AZ was simply implementing the sanctions that Congress expressly allowed AZ to pursue through licensing laws.
Chamber of Commerce v. Whiting

- AZ’s definition of “license” is consistent with the dictionary definition of the word and held it is “contrary to common sense to invalidate it because it operates only to suspend and revoke licenses rather than to grant them.

- **Holding:**
  - Federal law does not prevent Arizona from revoking the business licenses of state companies that knowingly hire undocumented workers, or from requiring employers in that state to use a federal electronic system to check that their workers are authorized to work in the United States.
Brown v. Entertainment Merchants Association

**Issue:** Whether states have the right, under the First Amendment, to restrict the sale of violent video games to minors.

**Facts:**
- In 2005, California issued a ban on the sale or rental of violent video games to minors, called the “Violent Video Games Act”. This law defined a violent video game as one that depicts “killing, maiming, dismembering, or sexually assaulting an image of a human being” in a manner that a reasonable person would find appeals to “a deviant or morbid interest” of minors, is “patently offensive” to prevailing standards of what is suitable for minors and causes the game as a whole, to lack “serious, artistic, political or scientific value” for minors.
- Under the law, video games deemed as violent were required to be labeled, and each violation of this resulted in civil penalties up to $1,000.
Parties’ Arguments:

- CA argued that this case was very much like the NY case of *Ginsburg v. New York*, 390 U.S. 629 (1968). In *Ginsburg*, the Court upheld the constitutionality of a state statute prohibiting the sale to minors of sexual material that would be obscene from the perspective of a child.

- Video Software industry argued that video games are protected speech under the First Amendment. The CA statute should be reviewed under the strict scrutiny standard. The state has no “free-floating” power to regulate/censor materials for minors.

Rationale:

- Video games are “speech,” just like books, plays, and movies. Justice Scalia explained that although Mortal Kombat may not be as worthwhile as Dante’s Divine Comedy, it still is entitled to protection under the First Amendment. The U.S. does not have a history of treating speech aimed at children differently, therefore the Court did not want to create a new kind of speech that is not protected by the First Amendment – the way that obscenity, for example, is not.

- Even though some people (including some of the Justices) find the video games offensive, the Framers included the First Amendment in the Constitution to protect unpopular speech. Parents who are concerned about their children playing violent games, the Court explained, could simply supervise their activities.
Brown v. Entertainment Merchants Association

**Holding:**
- The Court held that the CA law was unconstitutional (7-2) stating video games qualify for First Amendment protection. Like protected books, plays, and movies, they communicate ideas through familiar literary devices and features distinctive to the medium. And “the basic principles of freedom of speech . . . do not vary” with a new and different communication medium.
Borough of Duryea v. Guarnieri

**Issue:** whether a private workplace grievance that does not involve speech on a matter of public concern is protected by the First Amendment.

**Facts:**
- Borough fires the Police Chief Guarnieri.
- Chief Guarnieri files a grievance resulting in his reinstatement.
- Borough creates 11 directives for the Chief to follow as a condition to his reemployment.
- After subsequent disputes over the directives Guarnieri files a Section 1983 lawsuit against the Borough claiming retaliation.
Borough of Duryea v. Guarnieri

**Parties' Arguments:**

- Chief Guarnieri argues that the Borough retaliated against him for filing a grievance by issuing the 11 directives. This retaliation violates his First Amendment rights under the Petition Clause.
- The Borough argues that Guarnieri’s grievances were not protected activity because they concerned purely private matters.

**Rationale:**

- Court found it persuasive that purely private complaints in court against a governing body would disrupt government operations. By way of example, the Court pointed to Guarnieri’s attorney who invited the jury to review “myriad details relating to government decisionmaking.”
Borough of Duryea v. Guarnieri

- Employees may file grievances on a variety of employment matters, including working conditions, pay, discipline, promotions, leave, vacations, and terminations. Every government action in response could present a potential federal constitutional issue.

Holding:

- A public worker complaining of retaliation on the job may sue under the Petition Clause only if the claim does not involve an “ordinary workplace grievance,” but rather involves a policy matter of public concern.
Fox v. Vice and Town of Vinton

- **Issue:** Whether Petitioner Fox should pay attorneys fees to Respondent Town of Vinton for bringing frivolous federal civil rights claims (Section 1983) in federal court against the Town.

- **Facts:**
  - Case arises out of a contentious election for Vinton Police Chief.
  - Fox filed suit against Vice and the Town alleging both state and federal claims so case was removed to federal court.
  - During the hearings and trial on the state claims, Fox admitted that he really had no basis for any federal claims so the federal district court dismissed Fox’s federal claims with prejudice and sent the remaining state law claims back to state court.
  - Fox then challenged the awarding of attorneys fees to the Town.
Fox v. Vice and Town of Vinton

Parties' Arguments:
- Fox argues that because he had valid state law claims, and only the federal claim was frivolous no fees should be awarded because suit was only frivolous in part.
- The Town argues that attorney’s fees were properly awarded because Fox knew his federal claim was frivolous, but did not voluntarily dismiss it thereby forcing the Town to expend time and resources defending against the frivolous claim.

Rationale:
- The Court rejected Vice’s proposal to award fees for work “fairly attributable” to the frivolous portion of the lawsuit. The Court held that this was not a legal standard and would put trial courts in the position of having to invent one.
- The Court went with the “but for” test: “Section 1988 permits the defendant to receive only the portion of his fees that he would not have paid but for the frivolous claim.”
Fox v. Vice and Town of Vinton

Holding:

When there are both frivolous and non-frivolous claims in a plaintiff’s civil rights suit, a court may grant reasonable attorney’s fees to the defendant, but only for costs that the defendant would not have incurred but for the frivolous claims.
**Pliva Inc. v. Mensing**

- **Issue:** Whether state failure to warn claims against makers of generic drugs are preempted by federal law.

- **Facts:**
  - Two years ago in *Wyeth v. Levine*, the U.S. Supreme Court held that state failure to warn cases against brand name drug manufacturers are not preempted by federal law.
  - Plaintiffs claim they incurred an involuntary movement disorder after taking metoclopramide, a generic equivalent to the branded drug *Reglan* which is used to treat gastric reflux and that there was no warning info on the generic version of *Reglan*.
  - Under federal law, generic drugs have to carry the same warning label as their brand name counterparts, but in order to keep the cost of generics down, they are not required to undertake original research and testing as their brand name equivalents do.
Pliva Inc. v. Mensing

**Parties' Arguments:**
- Plaintiffs argue that generic drug companies should have the same responsibilities as brand name companies do to keep their labels current and in this case, the generic company did nothing even though there was considerable information available indicating their label was not current.
- The Defendants argue that federal law governs under *Buckman v. Plaintiff’s Legal Committee*, 531 U.S. 341 (2001) which held that a federal matter (such as drug labeling) trumps state tort laws where the matter is inherently federal.

**Rationale:**
- The 5th and 8th Circuits ruled below that state law is not preempted.
- Court ruled in favor of conflict preemption - allowing the individuals to sue the generic drug manufacturers for failure to warn of risks would put them in an impossible situation: they would have to comply with state law requirements, but they couldn’t because they are following federal law.
Pliva Inc. v. Mensing

- **State Interest:**
  - Most states have laws that allow or even mandate the substitution of generic for brand name drugs unless the prescribing physician directs otherwise.

- **Holding:**
  - Federal drug regulations applicable to generic drug manufacturers directly conflict with, and thus preempt, state-law tort claims alleging a failure to provide adequate warning labels.
  - Preemption applied because it was impossible for the party to comply with both state and federal law.
**Issue:**

- Whether legislators have a personal First Amendment right to vote on any given matter.
- Whether the correct legal standard for determining constitutionality is “strict scrutiny.”

**Facts:**

- Nevada law prohibits public officials from voting on, or arguing for or against, any matter about which a reasonable person would have difficulty being impartial, in part because of a close relationship to someone affected by the vote.
- Michael A. Carrigan, an elected member of the City Council in Sparks, Nevada, voted on a casino construction project in which his campaign manager was involved. He disclosed the connection prior to the vote, but was censured by the Nevada Commission on Ethics for a violation of state law.
- The Nevada Supreme Court invalidated the state’s Ethics in Government law as unconstitutionally overbroad in violation of the First Amendment.
Nevada Commission on Ethics v. Carrigan

**Parties’ Arguments:**

- Carrigan’s right to vote was protected by the First Amendment, and the specific provision of the law that he had been accused of violating was too broad because it prohibits someone from voting if his relationship to the person affected by the vote is “substantially similar” as defined by statute.
- State and local legislators have no personal “free speech” right to cast votes, especially ones in which they have a personal interest. The Nevada Supreme Court fundamentally erred by applying strict scrutiny.

**Rationale:**

- In ruling that there is no First Amendment right to vote, the Court stated, “...a legislator’s vote is the commitment of his apportioned share of the legislature’s power to the passage or defeat of a particular proposal. The legislative power thus committed is not personal to the legislator but belongs to the people; the legislator has no personal right to it.”
Nevada Commission on Ethics v. Carrigan

- **State Interest:**
  - State governments played a huge role in getting this case to the Supreme Court. Eight states lobbied and pleaded with the court to hear the case, in order to protect their state’s governments from unethical behaviors. This decision will allow the states to have more freedom. They can now feel comfortable expanding laws on ethics, especially within the government, without fear of stepping on the federal government’s or Constitution’s toes.

- **Holding:**
  - The Nevada Ethics in Government Law, which prohibits a legislator who has a conflict of interest from both voting on a proposal and from advocating its passage or failure, is not unconstitutionally overbroad.
Brown v. Plata

**Issue:**
- The first is whether or not a three-judge district court has the jurisdiction to issue a “prisoner release order”, pursuant to the Prison Litigation Reform Act.
- The second is whether or not that same court has correctly interpreted and applied the sections of that Act which state that “crowding is the primary cause of the violation of a Federal right”, and the only way to remedy this violation is by issuing a “prisoner release order”.
- The final issue is whether the issued release order properly weighs public safety and the potential adverse societal effects that this release may have in the operation of its criminal justice system.

**Facts:**
- Prisoners joined together to protest severe overcrowding and poor medical care in the state’s prisons.
- A federal three-judge panel (required by PLRA) held that the prisoners’ claims had validity and required that California cap its prison population 137.5% of the institution’s total capacity. This means the release of 46,000 inmates.
Parties’ Arguments:
- California argued that the release would create a public safety issue and that it needed more time to evaluate and resolve the overcrowding issue.
- Prisoners argue that their Eighth Amendment rights have been violated. California has not solved the prison overcrowding problem and should be required to follow the decision of the three judge panel.

Rationale:
- The three judge panel properly considered all of the evidence offered on the state of prisons in California. California could not provide any evidence to show the contrary or that given more time the situation would improve.
Brown v. Plata

State Interest:

This case should act as a cautionary tale for other states. In the cases in which the state was unable to provide adequate care to its prisoners, the federal government appointed others to take control of the system, which ultimately failed and may result in the release of prisoners into society. Other states should examine California’s policy, and be prepared to make changes if it recognizes Eighth Amendment violations, or to institute reentry programs for prisoners.

Holding:

The lower federal court lawfully ordered California to reduce its prison population to remedy long-standing constitutional violations arising from prison overpopulation.

1) The court below did not err in concluding that overcrowding in California prisons was the “primary” cause of the continuing violations of prisoners’ constitutional rights to adequate health care.

2) The evidence supported the conclusion of the three-judge panel that a population limit was necessary to remedy the overcrowding problem.

3) The relief ordered by the three-judge court – the population limit – was narrowly drawn, extended no further than necessary to correct the violation, and was the least intrusive means necessary to correct the violation.
Sorrell v. IMS Health

**Issue:**
- Whether a law that restricts access to information in nonpublic prescription drug records and affords prescribers the right to consent before their identifying information in prescription drug records is sold or used in marketing runs afoul of the First Amendment.

**Facts:**
- Data miners purchase information from pharmacies and sell it to drug manufacturers to be used in product marketing. Vermont passed a statute that restricts the sale and use of this information. Under the statute, the release of personal prescription information is permitted if the prescribing doctor signs a consent form.
Sorrell v. IMS Health

Parties’ Arguments:

Vermont’s believes that the law is a valid restriction on access to non-public information. This type of restricted access does not violate the First Amendment, and that the decisions thus far lead to untenable results. Secondly, even if the law is treated as a regulation of commercial speech, it should still be upheld because it satisfies the “intermediate scrutiny” standard established by previous cases, especially Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n. The law directly advances Vermont’s interest in protecting medical privacy, and in controlling healthcare costs and public health. Lastly, the law is narrowly tailored and has minimal impact on core First Amendment values.

The pharmaceutical industry that the statute violated the First Amendment because it restricts the constitutionally protected speech of information providers, the publisher respondents, and the pharmaceutical companies. It gives prescribers control over the dissemination of their prescription histories, and does not further a legitimate interest in restricting pharmaceutical detailing to induce physicians not to prescribe brand name products.

Rationale:

The court said that the Vermont statute is not “mere commercial regulation” and applied strict scrutiny to hold that the statute was unconstitutional because it lacked content neutrality.

the creation and dissemination of information are speech for First Amendment purposes.
Sorrell v. IMS Health

**State Interest:**
- Any decision annuls Vermont’s law would greatly affect many other states, especially its neighboring northern New England states. This will affect the viability of their proposed legislation, and could invalidate the state’s ability to legislate this part of healthcare policy and information sharing. If the decision upholds the law, it will give a green light to states that are weighing whether or not to adopt similar patient and practitioner protection.

**Holding:**
- Vermont’s Prescription Confidentiality Law, which – absent the prescriber’s consent – prohibits the sale of prescriber-identifying information, as well as the disclosure or use of that information for marketing purposes, is subject to heightened judicial scrutiny because it imposes content- and speaker-based burdens on protected expression. Vermont’s justifications for the prohibition cannot withstand such heightened scrutiny.
Maxwell-Jolly v. Independent Living Center

**Issue:** When can private parties impacted by state statutes challenge those state statutes on constitutional grounds in federal court?

**Facts:**
- CA enacted a statute reducing the rates paid to certain Medicaid providers in the state.
- Providers sued under the Supremacy Clause claiming that Sec. 30(a) of the federal Medicaid Act preempts the CA statute.
- 9th Circuit held that state law was preempted by federal law, but ignored the threshold question of whether the private parties had standing to sue the state in federal court.
- U.S. Supreme Court granted review on the standing question.
Maxwell-Jolly v. Independent Living Center

**Parties' Arguments:**
- Providers claim that CA law is preempted by the Medicaid Act because CA failed to do a pre-enactment study to ensure that the reduced rates would comply with federal law (Section 30(A)).
- CA argues that under the 9th Circuit’s reasoning, a private party may seek to enforce ANY federal statute and enjoin state conduct merely by invoking the Supremacy Clause and alleging a conflict between state and federal law.

**Legal Theories:**
  - Must be clear evidence that Congress intended to create a privately enforceable federal right.
Maxwell-Jolly v. Independent Living Center

- Virtually every Circuit (including the 9th) has held that Sec. 30(A) of the Medicaid Act does not create a privately enforceable right under Sec. 1983.

- **State Interest:**
  - If SCOTUS rules in favor of providers, there will be new and unforeseen obligations on the state not called for by statute and potentially creating new funding burdens.
  - Upsets the state/fed balance in Medicaid area.
Court is Now Adjourned!

Feel free to contact me with any questions!

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