

2017-2018 SUPREME COURT REPORT



**JUSTICE IS
NOT NEUTRAL**

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JUSTICE IS NOT NEUTRAL

INTRODUCTION BY JOHN W. WHITEHEAD

"The Constitution is not neutral. It was designed to take the government off the backs of the people."—Justice William O. Douglas

Given the turbulence of our age, with its police overreach, military training drills on American soil, domestic surveillance, SWAT team raids, asset forfeiture, wrongful convictions, profit-driven prisons, and corporate corruption, the need for a guardian of the people's rights has never been greater.



Certainly, America's founders intended the courts within the American judicial system to serve as Courts of Justice. What we have been saddled with, however, are Courts of Order. This is true at all levels of the judiciary, but especially so in the highest court of the land, the U.S. Supreme Court, which is seemingly more concerned with establishing order and protecting government interests than with upholding the rights of the people enshrined in the U.S. Constitution.

Whether it's police officers breaking through people's front doors and shooting them dead in their homes or strip searching innocent motorists on the side of the road, these instances of abuse are continually validated by a judicial system that kowtows to virtually every police demand, no matter how unjust, no matter how in opposition to the Constitution.

As a result, the police and other government agents have been generally empowered to probe, poke, pinch, taser, search, seize, strip and generally manhandle anyone they see fit in almost any circumstance, all with the general blessing of the courts. Rarely do the concerns of the populace prevail.

When presented with an opportunity to loosen the government's noose that keeps getting cinched tighter and tighter around the necks of the American people, what does our current Supreme Court usually do? It ducks. Prevaricates. Remains silent. Speaks to the narrowest possible concern. More often than not, it gives the government and its corporate sponsors the benefit of the doubt, which leaves "we the people" hanging by a thread. Every so often, the justices toss a bone to those who fear they have abdicated their allegiance to the Constitution. Too often, however, the Supreme Court tends to march in lockstep with the police state.

In recent years, for example, the Court has ruled that police officers can use lethal force in car chases without fear of lawsuits; police officers can stop cars based only on "anonymous" tips; Secret Service agents are not accountable for their actions, as long as they're done in the name of security; citizens only have a right to remain silent if they assert it; police have free reign to use drug-sniffing dogs as "search warrants on leashes," justifying any and all police searches of vehicles stopped on the roadside; police can forcibly take your DNA, whether or not you've been convicted of a crime; police can stop, search, question and profile citizens and non-citizens alike; police can subject Americans to virtual strip searches, no matter the "offense"; police can break into homes without a warrant, even if it's the wrong home; and it's a crime to not identify yourself when a policeman asks your name.

The cases the Supreme Court refuses to hear, allowing lower court judgments to stand, are almost as critical as the ones they rule on. Some of these cases have delivered devastating blows to the rights enshrined in the Constitution. By remaining silent, the Court has affirmed that: legally owning a firearm is enough to justify a no-knock raid by police; the military can arrest and detain American citizens; students can be subjected to random lockdowns and mass searches at school; and police officers who don't know their actions violate the law aren't guilty of breaking the law.

What a difference nine people can make.

We have come a long way from Justice William O. Douglas' view that the Constitution—and, in turn, the Courts—are supposed to take the government off the backs of the people. For most Americans, justice remains out of reach, while the courts themselves remain out of sync with the spirit of the Constitution.

The Rutherford Institute remains a consistent and persistent voice advocating for the rule of law and working to restore America's judiciary to its rightful role as an institution that intervenes and protects "we the people" against the government and its agents when they overstep their bounds.

Deeply committed to protecting the constitutional freedoms of every American and the integral human rights of all people, The Rutherford Institute also strives to make justice accessible for all Americans by sounding the alarm over government misconduct, educating Americans about threats to their liberties, and working in and out of the courts to make the government play by the rules of the Constitution.

John W. Whitehead, President
The Rutherford Institute

THE U.S. SUPREME COURT'S 2017-2018 TERM

With major changes taking place at the U.S. Supreme Court, this is a critical time for our country.

The end of the U.S. Supreme Court's 2017-2018 term brought not only a spate of last-minute rulings many Court-watchers had been waiting on for months, but a blockbuster announcement that could affect the Court, and the constitutional rights of citizens, for decades. With Justice Anthony Kennedy's announcement of his retirement, the American people are bracing for seismic changes to the direction of a Court that has for three decades been largely defined by Justice Kennedy's decisions as the "swing vote" on many of the great issues of modern time, such as same-sex marriage, abortion and campaign spending.

Although the Court is often considered the forgotten Third Branch of federal government, lost in the shadow of an imperial executive branch and an ineffective legislative branch, it will doubtless be a focus of attention in the coming months as confirmation of a new Justice proceeds and it embarks on a new, and likely more conservative, course.

As past is often prologue, the Court's most recent decisions offer a glimpse into where it may be headed, especially with a new judicial appointment on the horizon and under a President committed to disrupting existing order. Indeed, this past term the Court was not hesitant about reversing precedent that had stood for decades despite its professed aversion to doing so. It overturned a doctrine that allowed public sector labor unions to extract payments from non-member employees, and it altered the legal landscape for the booming business of e-commerce when it changed the rules on whether states can impose taxes on internet sales to their citizens.



On the other hand, this past year the Court did not hand down rulings that could be considered a significant retreat on First Amendment rights of expression. It refused to rule that persons give up their right to freedom of speech by going to vote or by providing state-regulated services to the public. Indeed, the Court actually reclaimed the First Amendment rights of public employees by overruling precedent and limiting the power of unions to force unwilling employees to pay union fees.

The rights of persons suspected or accused of criminal offenses also were not significantly diminished by the Supreme Court's decisions from the past term. Declaring that individuals have a privacy interest in the data collected by cell phone service providers, the Court acknowledged the importance and pervasiveness of electronic devices in society and the danger their use poses to individual privacy. The Court also refused to further limit the privacy interest individuals have in vehicles under the Fourth Amendment. However, the Court also refused to take on cases that might have imposed limits on law enforcement practices that are clearly dangerous to the safety and liberty of the public. Thus, it declined the opportunity to place limits on the doctrine of "qualified immunity" that continues to shield police from responsibility for using deadly force against citizens.

Voting rights were also on the Court's agenda, but it failed to issue decisions that could have made our system of elections more democratic. In two cases presenting the question of whether electoral districts can be rigged to favor the political party in power, the Court refused to declare that this violates our Constitution and instead disposed of the cases on procedural grounds. In doing so, the Court merely delayed addressing a fundamental structural problem with the nation's electoral system that entrenches the status quo and prevents democracy from flourishing. The threat to democracy was compounded by a Court ruling making it easier for states to eliminate persons from their voting rolls.

The following cases represent some of the more critical rulings handed down by the Supreme Court during its 2017-18 term.

THE U.S. SUPREME COURT 2017-2018 CASE REVIEW

SPEECH, RELIGIOUS LIBERTY AND THE FIRST AMENDMENT

MASTERPIECE CAKESHOP, LTD V. COLORADO CIVIL RIGHTS COMMISSION - NO. 16-111

Facts: In Colorado, the owner of Masterpiece Cakeshop declined to create a wedding cake for a same-sex wedding based on his religious beliefs. The aggrieved couple subsequently filed discrimination charges with the Colorado Civil Rights Commission (CCRC), which found that the baker had violated a state law that forbids businesses from discriminating on the basis of sexual orientation.

Conclusion: The Supreme Court ruled in favor of Masterpiece Cakeshop, finding that the proceedings before the CCRC included statements by CCRC members that demonstrated bias against and even hostility toward the baker's religious beliefs. As a result, the CCRC's decision against the baker was in violation of the First Amendment's Free Exercise Clause.

Ramifications: Individuals should not be discriminated against by any branch of government because of their religious beliefs. The baker was entitled to a hearing before impartial decision-makers who would not be affected by their personal opinions about the baker's beliefs. The right of individuals to object to something they believe is wrong, especially when it contradicts their religious beliefs, whether it is war, abortion, homosexuality or a number of other issues, and the right to freedom of conscience because of those religious beliefs is guaranteed under federal law and under the First Amendment to the U.S. Constitution.

JANUS V. AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31

Facts: In 1977, in *Abood v. Detroit Board of Education*, the Supreme Court upheld state laws requiring public employees to pay union fees, even if employees are not members of the union. The Court justified the *Abood* ruling on the grounds that nonunion employees still receive benefits from union bargaining. In 2018, public employees in Illinois challenged

a similar law, asserting the decision in *Abood* was a violation of the First Amendment.

Conclusion: Weighing in before the Supreme Court in *Janus*, The Rutherford Institute advanced the argument that the First Amendment forbids the government from dictating what citizens should say, whom they should support or with whom they should associate. The Supreme Court agreed and ruled in favor of *Janus*. As a result, *Abood v. Detroit Board of Education* was overruled. The Court argued that union "agency fees" charged to non-member public employees were tantamount to forced political speech, thus a clear violation of the First Amendment.

Ramifications: The right to hold a position that is neither *yea* nor *nay* carries with it a simultaneous right not to be perceived as taking sides. This right is both a speech right and a privacy right. The very purpose of the First Amendment, as Justice Hugo L. Black recognized, is to ensure that Americans are free to think, speak, write and worship as they please, not as the government (or employee unions) dictate.



LOZMAN V. CITY OF RIVIERA BEACH, FLORIDA - NO. 17-21

Facts: In 2006, Fane Lozman attended and spoke before a city council meeting regarding his opposition to the use of eminent domain in the redevelopment of a marina. When he refused to stop discussing corruption within the local government, Lozman was arrested and charged with disturbing a lawful assembly. In turn, Lozman sued, asserting his arrest was in violation of the First Amendment.

Conclusion: The Supreme Court ruled in favor of Lozman, asserting that probable cause to arrest

Lozman for disruption did not prevent him from claiming that the council's arrest order was retaliatory and in violation of the First Amendment.

Ramifications: One of the key ingredients in a democracy is the right to freely speak our minds to those who represent us. In fact, it is one of the few effective tools we have left to combat government corruption and demand accountability. But now, even that right is being chipped away by statutes and court rulings which weaken our ability to speak freely. Activities which were once considered a major component of democratic life in America are now being criminalized. Making matters worse, politicians have gone to great lengths in recent years to evade their constitutional duty to make themselves available to us and hear our grievances. That is what representative government is all about. Government action that is meant to silence dissent is an abuse of power. Even if some justification can be conjured up to explain an arrest, if the true reason for the arrest is censorship then the First Amendment is violated.

MINNESOTA VOTERS ALLIANCE V. MANSKY - NO. 16-1435

Facts: A Minnesota statute prohibits individuals from wearing political apparel at or around polling places on primary or election days. In 2010, a voter was temporarily prevented from voting while wearing a T-shirt with a Tea Party logo. In turn, the Minnesota Voters Alliance sued, asserting the statute was unconstitutional.

Conclusion: The Rutherford Institute filed an amicus in favor of the Minnesota Voters Alliance, urging the Supreme Court to strike down the Minnesota law. The brief argued that the Minnesota law opened the door to abuse of voters' free speech rights by giving appointed election officials unlimited discretion to determine what political speech should be censored. The Supreme Court agreed, ruling that the Minnesota law was in violation of the Free Speech Clause of the First Amendment because it was vague and overbroad on what messages were barred from polling places.

Ramifications: The polling site is one of the few remaining places where citizens can effectively voice their discontent with their government. Shutting down this traditional forum for expression threatens

the very democratic principles that this nation was founded on, and undermines the purpose of the First Amendment. Thankfully, the court's acknowledgment that the Minnesota clothing ban statute is a violation of the fundamental right to freedom of speech will help to preserve the integrity of the First Amendment and the polling place.

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES V. BECERRA - NO. 16-1140

Facts: A California law required pro-life pregnancy crisis centers to disclose information regarding optional state-provided pregnancy services, including abortion. In challenging the enforcement of the law, The National Institute of Family and Life Advocates (NIFLA) argued that the law compelled crisis pregnancy centers to provide information that is in direct opposition to their stated missions.

Conclusion: The Supreme Court ruled in favor of NIFLA, arguing that the law violates the First Amendment because it compels pro-life pregnancy centers to speak about abortions. Furthermore, the Court argued that the state had not shown that there was a compelling interest for the forced disclosures.

Ramifications: No person should be forced by the government to make statements that violate their personal convictions or religious beliefs. The right to speak and protest, or alternatively the right to remain silent, cannot be infringed simply because the government dictates it.



TRUMP V. HAWAII - NO. 17-965

Facts: In 2017, President Trump issued a proclamation that restricted travel to the United States by citizens from eight, primarily Muslim countries. In light of a litany of provocative statements Trump made during

his presidential campaign calling for a “Muslim ban,” the proclamation was challenged on grounds of religious discrimination.

Conclusion: The Supreme Court ruled the President’s proclamation did not violate the Establishment Clause and was a lawful exercise of his core authority to regulate immigration under federal laws.

Ramifications: The Court’s ruling ostensibly gave the president the power to discriminate on the basis of religion, while simultaneously overturning the Court’s World War II-era ruling in *Korematsu v. United States* that saw nothing wrong with the government imprisoning Japanese-Americans in internment camps. In other words, the Court righted one wrong (*Korematsu*) while sanctioning another. As Justice Sotomayor concluded in her dissent, “By blindly accepting the government’s misguided invitation to sanction a discriminatory policy motivated by animosity toward a disfavored group, all in the name of a superficial claim of national security, the Court redeploys the same dangerous logic underlying *Korematsu* and merely replaces one ‘gravely wrong’ decision with another.”

PRIVACY AND THE FOURTH AMENDMENT

DISTRICT OF COLUMBIA V. WESBY NO. 15-1485

Facts: Responding to a noise complaint and allegations of illegal activities occurring within a vacant house, District of Columbia police discovered and subsequently arrested several partygoers who falsely claimed to have permission to be on the premises. Sixteen of the arrested individuals sued the officers and the District of Columbia for wrongful arrest in violation of the Fourth Amendment.

Conclusion: The Supreme Court ruled the officers had probable cause to make the arrests due to the totality of the circumstances. Furthermore, the court ruled the officers were entitled to qualified immunity because their actions were not clearly unlawful at the time.

Ramifications: The decision continues the Court’s trend to side with police when citizens seek to hold police personally accountable for deprivations of constitutional rights. As a result, law enforcement officers have less incentive to respect the rights of

citizens. This judicial tendency towards granting government officials “qualified immunity” in lawsuits over alleged constitutional violations incentivizes government officials to violate constitutional rights without fear of repercussion. By increasingly deferring to law enforcement and prioritizing security over civil liberties, the courts have given government officials free rein to disregard the law, immune from reproach.

CARPENTER V. U.S. - NO. 16-402

Facts: In 2001, police arrested Timothy Carpenter for allegedly being connected to a series of armed robberies. After Carpenter provided cell phone numbers belonging to other alleged suspects, police obtained a court order under the Stored Communications Act that required cell phone companies to provide records showing the area where each cell phone was located at the time of the robberies. This location evidence was used at Carpenter’s trial to convict him of robbery.

Conclusion: The Rutherford Institute weighed in on the case, asking the Supreme Court to require police agencies to secure a warrant before executing a cell phone search and using that data to track a person’s movements over time. The Supreme Court ruled in favor of Carpenter, asserting the government violated the Fourth Amendment when it obtained cell site location information without a warrant and without showing probable cause.

Ramifications: The Court’s ruling sends a strong message about privacy rights in an age of government surveillance and signifies a victory for the right of the people to be safe and secure from unreasonable and warrantless searches and seizures by government agents not only in their persons, houses, papers, and effects, but also as the right to privacy pertains to the ever-evolving technological realm. This new era of surveillance technology, one that was completely unimaginable to the men who drafted the Constitution and the Bill of Rights, requires an updated legal code to enshrine the right to privacy.

BYRD V. U.S. - NO. 16-1371

Facts: Terrence Byrd was pulled over by police while driving a rental car for which he was not listed as an authorized driver. After conducting an additional investigation, Pennsylvania State Troopers sought

consent to search the car. Byrd refused. The police conducted a search anyway and found heroin in the trunk. At his criminal trial, the court denied Byrd's motion to suppress the evidence, ruling that he had no standing to challenge the search because he was not listed as an authorized user.

Conclusion: The Supreme Court ruled in favor of Byrd. Whether listed as an authorized driver or not, the Court argued that a person in lawful possession of a rental car has a reasonable expectation of privacy and has standing to claim that an unlawful search is in violation of the Fourth Amendment.

Ramifications: The Court correctly took a common-sense view of the Fourth Amendment. Society recognizes and understands that a person who has been loaned a car by another person has a privacy interest in the vehicle. Few protections, as the Supreme Court recognized, are as essential to individual liberty as the right to be free from unreasonable searches and seizures. At a time when the government has the tools to spy on virtually all our private communications and continues to expand the surveillance state, personal privacy is in jeopardy. Thus, it is vital that the courts safeguard and strictly enforce whatever laws remain in place to protect the privacy of citizens.

COLLINS V. VIRGINIA - NO. 16-1027:

Facts: While investigating a traffic incident, a Virginia police officer, acting without a warrant, entered an open carport and discovered a tarped, stolen motorcycle. Police subsequently arrested Ryan Collins and charged him with theft. Collins sought to suppress the evidence that police uncovered while in the carport, but the Virginia Supreme Court ruled the search was valid under the automobile exception— a legal rule which allows police to search a vehicle without a warrant if there is probable cause.

Conclusion: Weighing in before the Supreme Court, The Rutherford Institute argued that the "automobile exception" to the Fourth Amendment should not be extended to cases where the vehicle is within the constitutionally-protected areas of a home. The Supreme Court agreed, ruling in favor of Collins that the automobile exception does not apply to the vehicles that are within the curtilage of a home. As a result, the warrantless search violated the Fourth Amendment.

Ramifications: The "automobile exception" arose out of the Prohibition era in order to crack down on bootleggers who were using vehicles to smuggle liquor. Yet even with this exception on the books, police cannot merely disregard the Fourth Amendment whenever it suits their purposes. As the Supreme Court has recognized, "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure."



DAHDA V. U.S. - NO. 17-43

Facts: In Kansas, two brothers were indicted for conspiracy to distribute marijuana. Some of the evidence against the brothers was obtained under a federal court order that allows cell phones to be wiretapped. The order, however, allowed surveillance to occur when the phones were not in Kansas. The brothers moved to suppress the evidence obtained under the wiretap order, arguing the order violated a federal law that limits wiretap surveillance outside of the court's territorial jurisdiction.

Conclusion: The Rutherford Institute urged the Supreme Court to strictly enforce the nation's federal wiretapping law and maintain core privacy protections enacted by Congress in 1968 to guard against the misuse of bugs and wiretaps by government agents. However, the Supreme Court was unmoved, ruling that the wiretap order issued by the judge was valid because the order did not lack any information the wiretap statute required them to include.

Ramifications: We now find ourselves operating in a strange paradigm where the government not only views the citizenry as suspects but treats them as suspects, as well. Thus, the news that the National Security Agency and its intelligence counterparts routinely operate outside of the law and overstep their legal authority by carrying out surveillance on Amer-

ican citizens is not really much of a surprise. This is what happens when you give the government broad powers and allow government agencies to routinely sidestep the Constitution. Yet unlawful surveillance of any kind by the government and its corporate partners-in-crime hasn't made America any safer, and it certainly isn't helping to preserve our freedoms. Whether or not the surveillance is undertaken for "innocent" reasons, surveillance of all citizens, even the innocent sort, gradually poisons the soul of a nation. Surveillance limits personal options—denies freedom of choice—and increases the powers of those who are in a position to enjoy the fruits of this activity.

VOTING RIGHTS

GILL V. WHITFORD - NO. 16-1161

Facts: Following the 2010 census and in accordance with the Wisconsin Constitution, the Wisconsin Legislature, comprised of a Republican majority, drafted a new districting plan known as Act 43. Twelve Democratic voters challenged the law, claiming it was unconstitutional partisan gerrymandering and argued that it weakened Democratic voters.



Conclusion: The Supreme Court remanded the case, returning it to the lower courts for further consideration. In doing so, the Court argued that the plaintiffs, the Democrats, lacked standing to the claim that their Fourteenth Amendment right—the right to equal protection—was violated.

Ramifications: If the government is to truly represent the people, there must be a way for the courts to prevent a political party from "stacking the deck" in their favor by rigging electoral districts to ensure their party remains in power. The Court has left open the possibility that it will strike down partisan gerrymandering, but its reluctance to actually do so is not a good sign for democracy in this country.

HUSTED V. A. PHILIP RANDOLPH INSTITUTE - NO. 16-980

Facts: In order to remove inactive voters from its list of registered voters, the state of Ohio sends address confirmation notifications to any registered voter who has not voted within a two-year span. If the voter does not respond to the verification notice, does not re-register, or does not vote over the following four years, the voter is presumed to have had a change of residence and is removed from the list of registered voters. This system for removing voters from the registration rolls was challenged as violating the National Voter Registration Act.

Conclusion: The Supreme Court ruled that the Ohio voter list maintenance law was not in violation of federal law and was a reasonable method for determining whether voters have moved out of their precinct of registration.

Ramifications: Congress and the courts should be removing impediments to vote, not making it more difficult. This decision continues the Court's distressing trend of upholding laws, such as those requiring a photo-ID to vote, that result in voter suppression. Despite the propaganda being advanced by the government, the purpose of voter ID laws is not to eliminate voter fraud and protect the integrity of elections. Rather, its aim is to silence and suppress as many American voters as possible and increase the already widening chasm between the electorate and our government representatives. Voter ID laws effectively erode our system of representative government by blocking access to the seats of power by those who need it most: the young, the old, women and minorities.

RIGHTS OF THE ACCUSED

CLASS V. U.S. - NO. 16-424

Facts: In May 2013, Rodney Class was arrested for illegally possessing firearms on the U.S. Capitol grounds. Class represented himself in court where he pleaded guilty. He then filed for appeal on grounds of constitutional and statutory error. The appellate court affirmed the judgment of the district court, ruling that Class's guilty plea waived his claim that the firearms statute was unconstitutional under the Second Amendment.

Conclusion: The Supreme Court sided with Class, ruling that a guilty plea alone does not bar a federal criminal defendant from challenging on appeal the constitutionality of the statute that is the basis of the conviction.

Ramifications: The Court correctly recognized that a guilty plea is not always an admission that one is lawfully charged with a crime. Defendants should be given every opportunity to assert that the law they are charged with itself is contrary to the Constitution. This ruling serves as an important reminder of what justice in America should be about. Americans have long adhered to the notion that a person is innocent until proven guilty. However, we cannot pick and choose when or to whom that principle should be applied. In the hasty rush to judgment and conviction, we risk more than just locking up individuals who might be innocent. We risk undermining the fundamental democratic principles that hold our government and its leaders in check.

AYESTAS V. DAVIS - NO. 16-6795

Facts: In July 1997, Carlos Ayestas was convicted and sentenced to death for murder. After his appeals were denied, Ayestas sought habeas corpus relief in federal court by claiming ineffective assistance of counsel in violation of the Sixth Amendment. Ayestas asked the federal court for funding for an investigator to uncover evidence that his trial attorney was ineffective. The lower federal courts denied his request, claiming Ayestas did not show a “substantial need” for the investigation.

Conclusion: In a unanimous decision, the Supreme Court ruled in favor of Ayestas, arguing that a habeas petitioner’s request for funding for an investigator should be granted if he shows it is “reasonably necessary.” Furthermore, the Court argued that the lower court’s use of the “substantial need” standard was in error.

Ramifications: Habeas corpus, a fundamental tenet of English common law, does not appear anywhere in the Bill of Rights. Its importance was such that it was enshrined in the Constitution itself. And it is of such magnitude that all other rights, including those in the Bill of Rights, are dependent upon it. Translated as “you should have the body,” habeas corpus is a legal

action, or writ, by which those imprisoned unlawfully can seek relief from their imprisonment. Derived from English common law, habeas corpus first appeared in the Magna Carta of 1215 and is the oldest human right in the history of English-speaking civilization. Without habeas corpus, the significance of all other rights crumbles. Throughout the twentieth century, the importance of the right of habeas corpus has repeatedly been confirmed by the U.S. Supreme Court. And one federal appeals court observed that the Supreme Court has “recognized the fact that ‘[t]he writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.’”



MCCOY V. LOUISIANA - NO. 16- 8255

Facts: In May 2008, Robert McCoy was arrested for first degree murder. Maintaining his innocence and desiring to plead not guilty, McCoy was advised by his counsel to take a plea. McCoy refused and asked the court to discharge his counsel. The court denied McCoy’s motion and his counsel proceeded to concede McCoy’s guilt over McCoy’s explicit objections.

Conclusion: The Supreme Court sided with McCoy, ruling that it is a violation of the Sixth Amendment right to counsel for an attorney to concede the defendant’s guilt over the express objection of the defendant.

Ramifications: The Constitution requires that a defendant receive effective assistance from his attorney, and the defendant does not receive that level of assistance if his attorney fails to protect the defendant’s right to be presumed innocent. Because the text of the Constitution permits all criminally accused defendants “to have the assistance of counsel for...defense,” the U.S. Supreme Court has determined that a

criminally charged defendant who is unable to afford an attorney shall have one appointed free of charge if he or she desires. The reasons behind these rights are twofold: first and foremost, a defendant benefits from a speedy and public trial by jury because an open trial suggests a fair hearing of his or her grievances. Second, democratic society benefits from the ability to witness local courts of law in action.

STATES' RIGHTS

MURPHY V. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (NCAA) - NO. 16-476

Facts: In 2012, the New Jersey legislature, backed by the will of voters, moved to legalize sports gambling schemes within the state. However, a federal law—the Professional and Amateur Sports Protection Act (PASPA)—prohibits most state-sanctioned sports gambling. The NCAA sued New Jersey seeking a declaration that the law allowing sports gambling in the state was invalid under this federal law.

Conclusion: The Supreme Court ruled in favor of New Jersey, holding that parts of PASPA violated the Tenth Amendment's anti-commandeering rule that forbids Congress from mandating what laws states may or may not enact.

Ramifications: The federal government's power has expanded far beyond what the framers of the Constitution intended. This ruling is a triumph for federalism and returns authority to states. The 10th Amendment reserves to the States (and the people) the powers not delegated to the United States by the Constitution, nor prohibited by it. Although this case was factually about the right of the states to legalize sports gambling despite a federal law prohibiting it, the ramifications of the ruling could extend into the area of marijuana legalization.

SOUTH DAKOTA V. WAYFAIR - NO. 17-494

Facts: In 2017, South Dakota passed a law that required the collection of sales tax from out-of-state vendors whose sales to South Dakota residents exceeded \$100,000 or who had conducted 200 or more sales transactions. Due to the vast increase in online commerce, the law was passed as a means to recover and secure revenue for state and local services. However, under the Commerce Clause of Ar-

ticle One of the Constitution, a state cannot require an out-of-state seller with no physical presence in the state to collect sales taxes on goods sold to residents of the state.

Conclusion: The Supreme Court sided with South Dakota, agreeing that the Commerce Clause does not forbid a state from requiring sellers to collect sales taxes for goods sold within the state, regardless of a physical presence.

Ramifications: In another victory for federalism, the Court limited the reach of the Commerce Clause, which has been used to justify expansion of federal power, and leveled the playing field, at least when it comes to collecting sales tax, between online e-commerce retailers and traditional businesses with a physical presence in a particular state.

HUMAN RIGHTS

JESNER V. ARAB BANK, PLC - NO. 16-499

Facts: In recent years, several foreign nationals have been injured, kidnapped and killed by terrorist attacks that occurred outside of the United States. Family members and survivors accused Arab Bank of financing the organizations involved in these attacks and sued Arab Bank under the Alien Tort Statute (ATS), a federal statute that allows foreign citizens to seek justice within American courts for human rights violations.

Conclusion: The Supreme Court ruled in favor of Arab Bank, arguing that the Alien Tort Statute does not allow lawsuits against corporate defendants.

Ramifications: The Court failed to affirm the foundational principle that corporations are not above the rule of law and should not be used as a vehicle to circumvent domestic or international laws that punish participation in egregious human rights violations. Permitting corporations to escape civil liability for crimes against humanity is a fundamental departure from the constitutional theory of the rule of law upon which the U.S. Constitution rests. We have operated too long under a double standard that favors corporations, recognizing them as persons for the purposes of profit but failing to hold them equally accountable for their abuses. This discrepancy gives corporations carte blanche authority to operate above the law.