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Costco Wholesale Corp. v. Omega, S.A. (08-1423)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Sept. 3, 2008)

Oral argument: Nov. 8, 2010

Costco Wholesale Corporation sold watches manufactured in Switzerland by Omega S.A. without Omega's prior authorization. Omega sued under the Copyright Act, claiming the sale of the watches was an infringement of the company's U.S. copyright. Costco defended itself on the grounds of the first-sale doctrine, which generally allows retailers or distributors to resell goods manufactured in the United States. Costco claims that the doctrine applies to foreign-manufactured goods as well. The district court granted Costco's motion for summary judgment, but the Ninth Circuit reversed the ruling. The U.S. Supreme Court must now decide whether the first-sale doctrine applies to goods manufactured abroad.

Background

Omega is a corporation that manufactures high-end watches in Switzerland and sells watches worldwide through an authorized network of distributors and retailers. Omega engraves a symbol on the underside of each watch. Known as the "Omega Globe Design," the symbol has a U.S. copyright.

Costco is a U.S. corporation that has offices in Europe and Asia. The company is a warehouse-based retailer, selling wholesale brand-name goods at low retail prices. For many years, Costco sold Omega watches that Costco legally obtained through third-party distributors.

Omega sold watches bearing the copyrighted Omega Globe Design to an authorized foreign distributor. A third party bought the watches and sold them

to a New York company called ENE Limited. ENE Limited sold the watches to Costco, and Costco in turn sold the watches to its customers in California. The watches intended for certain foreign markets are less expensive than those made for the U.S. market; thus, this multi-step process allowed Costco to purchase and sell Omega watches at a lower cost than other U.S. distributors could. Omega did not expressly permit Costco to sell the particular watches within the United States.

Omega sued Costco for obtaining and selling the watches in California without Omega's authorization. Omega claimed that Costco's actions amounted to infringement under the Copyright Act, which gives the authors of copyrighted works the exclusive right to reproduce, distribute, perform, display, license, and prepare their work. Costco moved for summary judgment on the grounds that Omega's initial foreign sale precluded claims based on subsequent sales. The U.S. District Court for the Central District of California ruled in favor of Costco's motion for summary judgment, and the Ninth Circuit Court of Appeals reversed the ruling on appeal. Costco now appeals to the Supreme Court, arguing that the first-sale doctrine should provide a defense to copyright infringement for goods manufactured overseas.

Implications

This case will address whether the first-sale doctrine applies to goods manufactured abroad and imported to the United States. The Supreme Court's decision could affect the market for the resale of copyrighted goods and copyright law. In addition, property rights of purchasers of copyrighted goods and the property rights of copyright owners could be affected by the Court's decision.

Effect on Commerce

The Retail Industry Leaders Association (RILA) argues that the first-sale doctrine protects openness in commerce, because retailers and distributors can sell their goods on the market without fear of liability for copyright infringement. RILA contends that the first-sale doctrine protects aftermarkets, which are markets for the resale of goods, because purchasers are assured that they can resell their goods. The group also argues that loss of first-sale rights "likely will reduce purchasing in primary market sectors, both by reducing the initial incentive to purchase, and by denying consumers the proceeds from sales of used goods."

The United States responds that Congress determined that the benefits of keeping the law of international market copyrights separate from domestic copyright law outweighs the potential impact on the aftermarket. The United States further maintains that Congress intended to restrict foreign goods from coming into the United States via third parties.

Effect on Copyright Law

Public Knowledge contends that a decision in favor of Omega would allow copyright owners' distribution rights to essentially exist in perpetuity as long as the item is manufactured abroad. According to Public Knowledge, each time a new owner resells the item, he or she would have to get authorization from the copyright owner. Public Knowledge further argues that a decision in favor of Omega would encourage manufacturers to work overseas and foreclose secondary markets altogether.

Effect on Property Rights

Public Citizen argues that owners should be able to resell their property, even if it is copyrighted. Public Knowledge asserts that owners of books or other copyrighted materials manufactured abroad will not be able to dispose of their goods without prior authorization. Therefore, Public Knowledge argues that a ruling for Omega would chill the aftermarket and harm companies that sell used goods.

The Association of American

Publishers (AAP) responds that the rights of copyright owners are of paramount importance. AAP argues that a core incentive of the Copyright Act is the right to exclusive distribution, which protects the copyright owner against unauthorized sale of the works. The association also maintains that the right to control the distribution of imports allows copyright owners to control the content, packaging, and timing of the distribution of their goods. Therefore, the group argues that a ruling in favor of Costco would infringe on a copyright owner's ability to control the distribution of his or her work.

Legal Arguments

A part of the Copyright Act—17 U.S.C. § 106—grants copyright holders exclusive rights to distribute copies of a copyrighted product or authorize others to do so. The first-sale doctrine, codified in 17 U.S.C. § 109(a), allows resale of copyrighted goods by the owner of a particular copyright only when it was “lawfully made under this title.” The dispute in this case surrounds the interpretation of the phrase “lawfully made under this title.” Costco argues that “lawfully made under this title” includes any product made by the copyright holder, even if the place of manufacture is in a foreign country. Omega contends that “lawfully made under this title” means any product made under the authority of § 109(a) and, because U.S. statutes only have effect in U.S. territory, foreign manufactured goods do not fall under the statute.

Competing Interpretations of “Lawfully Made Under This Title”

Costco states that, in normal usage by Congress, the phrase “lawfully made under this title” means “‘lawfully made’ according to, or as defined by, this title ... [the Copyright Act].” Thus, Costco concludes that, because Omega is the U.S. copyright holder, any copies that it makes, regardless of the place of manufacture, are lawful according to § 106 and subject to the first-sale doctrine codified in § 109(a).

Omega interprets “lawfully made under this title” to mean that a copy is lawfully made under this title if the making is both “governed by and consistent with the Copyright Act.” Omega

argues that § 106 governs a copyright holder's exclusive rights to distribute a product, but that those exclusive rights do not apply to manufacturing that takes place outside the United States. Omega contends that copies made in a foreign country are governed by the foreign country's copyright law and not U.S. law. Finally, Omega concludes that, when a copy is made outside the United States and intended for distribution outside the United States, the copy is not governed by either § 106 or § 109(a).

Purpose of the First-Sale Doctrine

Costco argues that the purpose of the first-sale doctrine is to limit the amount of control exercised by the copyright holder. According to Costco, the first-sale doctrine allows a copyright holder to control the initial distribution of his or her product but prevents the copyright holder from controlling a copy's distribution once it has entered the stream of commerce.

Omega argues that the purpose of the first-sale doctrine is to allow a copyright holder to generally realize the full value of the copyrighted product in the initial authorized sale. Assuming the copyright holder realizes the full value in the initial sale, Omega contends that there is less justification for granting the copyright holder further control over the product's distribution. Omega then argues that, when a copyrighted product intended for foreign distribution is unexpectedly distributed in the United States, the copyright holder has not bargained for full value, because the holder did not intend for the product to be distributed in the United States.

Statutory Interaction Between 17 U.S.C. § 109(a) and 17 U.S.C. § 602(a)

Omega states that Costco's interpretation of “lawfully made under this title” would make the majority of 17 U.S.C. § 602 “superfluous.” Omega asserts that § 602 prevents the importation of both unauthorized and authorized copies of works acquired outside the United States. Omega argues that § 602(a)(2) and § 602(b) specifically deal with unauthorized copies. Omega then states that Costco's interpretation of “lawfully made under this title”

would apply § 109(a) to all authorized copies, limiting § 602(a)(1) to unauthorized copies. Thus, Omega argues that Costco's interpretation cannot be valid, because the copies covered by § 602(a)(2) and § 602(b)—that is, unauthorized copies—would be the same as copies covered under § 602(a)(1).

Costco responds to Omega by arguing that Congress was merely trying to close a loophole when it created the separate categories for § 602(a)(2) and § 602(b). Costco maintains that § 602(b) was designed to prevent importation of goods considered counterfeit under U.S. law but lawful under foreign law. Finally, Costco argues that all three sections overlap but cover different goods and have different remedies.

Which Interpretation of 17 U.S.C. § 109(a) Controls Under *Quality King*?

Omega argues that the Court's decision in *Quality King* bars Costco's interpretation of § 109(a), because different distribution rights can be granted in foreign and domestic markets. Omega contends that *Quality King* allows a copyright owner to grant distribution rights under U.S. copyright law to a U.S. distributor and distribution rights under foreign copyright law to a foreign distributor.

Costco argues that the *Quality King* ruling does not bar the interpretation of “lawfully made under this title.” Costco concedes that § 602(a) applies to a category of copies that are made under a foreign country's copyright laws. The company argues that Omega misconstrues this discussion to mean that all copies necessarily are produced under a foreign country's copyright laws. Furthermore, Costco states that, even if a product is made under a foreign country's copyright law, that product may still also conform to U.S. copyright law.

Conclusion

The Court's decision in this case will determine whether a retailer that resells goods imported to the United States through a third party may invoke the first-sale doctrine and defend its action on the grounds that sales subsequent to

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the first sale of the item do not require the copyright holder's prior authorization. Costco argues that the first-sale doctrine is applicable to any product made by a U.S. copyright holder, even if it is manufactured abroad. On the other hand, Omega argues that a copy manufactured in a foreign country is made under the foreign country's copyright law and thus not subject to the first-sale doctrine. The outcome of the case will affect copyright policy, property rights, and the ability of retailers to resell imported goods. Full text is available at topics.law.cornell.edu/supct/cert/08-1423. **TFL**

*Prepared by Sara Myers and John Sun.
Edited by Joanna Chen.*

Schwarzenegger v. Entertainment Merchants Association (08-1448)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Feb. 20, 2009)
Oral argument: Nov. 2, 2010

California enacted California Civil Code §§ 1746–1746.5, which imposed restrictions on the sale of violent video games to minors. The Entertainment Merchants Association and the Entertainment Software Association sought declaratory relief in federal court, alleging that the law was an impermissible restriction of speech in violation of the First Amendment. The district court and the Ninth Circuit ruled in favor of Entertainment Merchants. California has appealed the ruling, asserting that the First Amendment does not protect the sale of violent video games to minors and that California need not show a direct causal link between violent video games and physical or psychological harm to minors before restricting the sale of violent video games to minors.

Background

On Oct. 7, 2005, California's governor, Arnold Schwarzenegger, signed into law California Civil Code §§ 1746–1746.5, which prohibits the sale of violent video games to minors. This law defined “violent video games” as depicting the “killing, maiming, dismembering, or sexually assaulting an

image of a human being” possessing “substantially human characteristics.” The statute reflected the California legislature's belief that exposure to violent video games leads to an increased likelihood of “violent antisocial or aggressive behavior” and “psychological harm” to minors.

Entertainment Merchants Association and Entertainment Software Association, two trade associations representing manufacturers of video games, sued in the U.S. District Court for the Northern District of California, seeking a declaratory judgment on whether banning violent video games is unconstitutional. The trade associations argued that the law violated the First and Fourteenth Amendments of the Constitution. Ultimately, the district court applied a strict scrutiny standard to the law and found that it violated the First Amendment.

On appeal, the Ninth Circuit Court of Appeals affirmed the lower court's decision. The Ninth Circuit declined to place violent video games in the same category as obscenity, thus rejecting California's argument that a lower level of scrutiny should apply to California Civil Code §§ 1746–1746.5. Applying strict scrutiny, the Ninth Circuit acknowledged that California had a compelling interest in protecting the physical and psychological welfare of minors but was unconvinced that the ban on video games would actually accomplish this purpose. The Supreme Court granted certiorari on April 26, 2010.

Implications

A Supreme Court decision in favor of California may expand the categories of speech that states may constitutionally keep away from children. California does not dispute that video games are a form of expression covered by the First Amendment; rather the state argues that violent video games are a form of expression to which the government has a right to restrict minors' access. Entertainment Merchants points out that, so far, the Court has identified sexual obscenity as the only area of expression to which state governments may restrict minors' access, and, according to Entertainment Merchants, violent content

does not warrant a similar exception from First Amendment protection.

The Court's decision will also affect the states' ability to protect minors from what the states believe are dangerous products. California believes banning violent video games is necessary to protect minors because of modern video games' increasingly realistic depictions of violence. California also cites evidence of a causal link between exposure to violent video games and violent behavior in real life. Eleven states support California and worry about the states' ability to protect children's welfare if the Court affirms the unconstitutionality of the ban. These states see California's ban on violent video games as an effort to supplement parental authority. Ten other states are concerned with the effects of increased government interference with free speech—namely state regulators' imposition of “necessarily subjective value judgments” and the requirement that law enforcement agents serve as “constitutional arbiters.”

Many also believe that the video game industry currently polices itself effectively. As several amici for Entertainment Merchants point out, the Entertainment Software Rating Board already reviews commercially marketed video games for content—including violent content—and assigns age-based ratings accordingly. These amici fear that a ruling for California will not only burden freedom of speech unnecessarily but also undermine parents' decision-making power. In response, California argues that the rating system is voluntary and ineffective in preventing children from buying violent video games.

More broadly speaking, there is a “chilling” concern that excessive restrictions on free speech may stifle people's willingness to exercise their First Amendment rights. The U.S. Chamber of Commerce cautions that a victory for California may cause businesses to be more reluctant to invest in mass media for fear of violating state restrictions on violent content. In addition, the American Civil Liberties Union worries that this outcome would “deprive minors of a substantial amount of speech to which they are constitutionally entitled.”

Legal Arguments

This case considers whether the First Amendment right to freedom of speech protects the sale of violent video games to minors and, if so, whether a state must demonstrate that violent video games cause physical or psychological harm to minors before a state can restrict the sale of violent video games to them.

Does the First Amendment Protect the Sale of Violent Video Games to Minors?

California first argues that states are permitted to regulate material that is harmful to minors, because minors do not have the same First Amendment rights as adults. California asserts that minors have fewer First Amendment rights than adults do, because minors do not possess the same mental capabilities as adults do and therefore lack the ability to make rational choices. California cites cases where public schools have curtailed students' rights to free speech and argues that California should be allowed the same authority. California adds that parents are entitled to support from the legislature in deciding what materials are appropriate for their children.

Entertainment Merchants disagrees with California's contention that minors have fewer First Amendment rights than adults have and argues that the government can only restrict minors' constitutional rights in special circumstances, such as regulating speech made in schools or through broadcasting. Entertainment Merchants also rejects California's assertion that the cases in which public schools curtailed students' free speech rights give the state the general power to regulate material available to minors, arguing that those cases apply only to the school environment. Entertainment Merchants also argues that California did not provide evidence that parents needed governmental assistance in raising their children.

Do Cal. Civ. Code §§ 1746–1746.5 Violate the First Amendment?

Restrictions on First Amendment rights are generally evaluated under the strict scrutiny standard, which requires that a law restricting speech must be narrowly tailored to serve a compelling

state interest. However, in *Ginsberg v. New York*, the Supreme Court created an exception to the strict scrutiny rule, holding that states could restrict the sale of sexual material to minors if it was reasonable for the state legislature to find that the material was harmful to minors.

California argues that the *Ginsberg* standard should apply instead of strict scrutiny, extending *Ginsberg* to allow states to restrict minors' access to any material that is harmful to them. According to California, the *Ginsberg* standard is appropriate, because violent material is equally harmful to minors as obscene or sexual material is, and that standard strikes the right balance between minors' interests and the interests of parents and the state in preventing minors from having access to harmful material.

Entertainment Merchants rejects California's argument that the *Ginsberg* standard applies, arguing that *Ginsberg* applies only to sexual material and does not authorize the government to regulate other types of speech. Entertainment Merchants dismisses California's comparison of violent material to obscenity, claiming that only works that depict sexual conduct are obscene. Entertainment Merchants finally argues that California ignores the reality that violence is pervasive in children's entertainment, from the Bible and classic literature to modern children's books, such as the *Harry Potter* series.

California argues in the alternative that Cal. Civ. Code §§ 1746–1746.5 satisfy the strict scrutiny standard, because it serves the compelling state interest of supporting parents in raising their children and protecting children from harm. California also argues that §§ 1746–1746.5 are the least restrictive means to accomplish this goal, because video game publishers are not required to have their games rated by the Entertainment Software Rating Board, and parental filtering systems are ineffective. California adds that §§ 1746–1746.5 are the least restrictive means of protecting children from violent video games, because they prohibit only direct sales to minors; the law does not prevent adults from purchasing the video games for themselves or for their children.

Entertainment Merchants contends that Cal. Civ. Code §§ 1746–1746.5 fail strict scrutiny review and asserts that California does not have a compelling state interest in preventing minors from having access to constitutionally protected speech that the state finds offensive. Entertainment Merchants reasons that minors have fundamental rights and that they cannot become well-functioning and independent adults if the state restricts the speech to which they are exposed. According to Entertainment Merchants, §§ 1746–1746.5 are also not narrowly tailored because they are too broad: under California law, a 17-year-old could not purchase a video game deemed inappropriate for a young child. Entertainment Merchants offers less restrictive alternatives to §§ 1746–1746.5, such as the Entertainment Software Rating Board's current ratings and parental filtering systems.

Does a State Need to Prove that Violent Video Games Cause Physical and Psychological Harm to Minors?

California argues that the First Amendment does not require a state to provide a direct causal link between violent video games and physical and psychological harm to minors. California cites studies showing a relationship between playing violent video games and minors' aggressive or antisocial behavior. Relying on the standard in *Turner Broadcasting Inc. v. FCC*, which requires courts to uphold the legislature's judgment if its determinations were based upon substantial evidence, California asserts that these studies were more than sufficient to support California's decision that violent video games are harmful to minors.

Entertainment Merchants maintains that the studies cited by California do not prove that video games cause minors to act aggressively. Entertainment Merchants further argues that even the studies that show that there is a relationship between violent video games and aggressive behavior do not indicate whether the video games cause minors to act aggressively, or merely if aggressive minors tend to play violent video games.

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Conclusion

In this case, the Supreme Court will decide whether the First Amendment bars a restriction on the sale of violent video games to minors. California argues that the First Amendment does not protect the sale of violent video games to minors, because the government has a right to limit minors' access to violent video games. California further argues that the state does not need to demonstrate a direct causal connection between violent video games and physical or psychological harm to minors in an effort to restrict the sale of video games. On the other hand, Entertainment Merchants contends that violent video games are protected speech under the First Amendment, because minors have the same right to free speech rights that adults have. The Supreme Court's decision will affect minors' constitutional rights, the power of states to control which materials children are exposed to, and the expression of media with violent content. Full text is available at topics.law.cornell.edu/supct/cert/08-1448. **TFL**

Prepared by Natanya DeWeese and James Rumpf. Edited by Joanna Chen.

Arizona Christian School Tuition Org. v. Winn (09-987) and Gariott, Director, Arizona Dept. of Revenue v. Winn (09-991) (consolidated)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Oct. 21, 2009)

Oral argument: Nov. 3, 2010

Arizona taxpayers brought claims alleging that Arizona's tuition tax credit violates the Establishment Clause of the First Amendment. The tax credit gives taxpayers a reduction in their tax liabilities for their donations to school tuition organizations that give scholarships to students to attend religious schools. The taxpayers contend that they have the right to sue the government and these organizations. The petitioners claim that the taxpayers do not assert a sufficiently personal injury to initiate a lawsuit. The Supreme Court will decide whether the taxpayers have

the right to sue and, if so, whether Arizona's tuition tax credit violates the Establishment Clause. Full text is available at topics.law.cornell.edu/supct/cert/09-987. **TFL**

Prepared by Melissa Koven and Sarah Pruett. Edited by Joanna Chen.

AT&T Mobility LLC v. Conception (09-893)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Oct. 27, 2009)

Oral argument: Nov. 9, 2010

The Conceptions signed a service contract with AT&T Mobility that provided free cell phones, but because AT&T charged sales tax on the phones, the Conceptions sued, alleging that AT&T had fraudulently advertised the phones as free. The federal district court consolidated the Conceptions' claim with a class action suit pending on the same issue. However, the contract the Conceptions signed contained a clause requiring arbitration. The district court denied AT&T's motion to compel arbitration, and AT&T unsuccessfully appealed to the Ninth Circuit, arguing that the Federal Arbitration Act pre-empted state law conditioning the enforceability of arbitration agreements on the availability of certain consumer protections. The Supreme Court will determine whether the FAA pre-empts state law under these circumstances. Full text is available at topics.law.cornell.edu/supct/cert/09-893. **TFL**

Prepared by Kristen Barnes and Jessica Meneses. Edited by Catherine Suh.

Cullen, Acting Warden v. Pinholster (09-1088)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Dec. 9, 2009)

Oral argument: Nov. 9, 2010

During Scott Pinholster's federal habeas corpus proceeding, the federal district court allowed an evidentiary hearing on new facts regarding Pinholster's medical and family history that were available during the

sentencing phase of Pinholster's state trial but were not presented. The federal district court granted habeas relief, and the Ninth Circuit Court of Appeals affirmed the decision. The warden at San Quentin State Prison now argues that the new facts presented during the federal evidentiary hearing violated § 2254 of the Antiterrorism and Effective Death Penalty Act, because these facts were not first presented in state court. Full text is available at topics.law.cornell.edu/supct/cert/09-1088. **TFL**

Prepared by Colin O'Regan and Edan Shertzer. Edited by Joanna Chen.

CSX Transportation Inc. v. Alabama Dep't. of Revenue (09-520)

Appealed from the U.S. Court of Appeals for the 11th Circuit (Sep. 1, 2009)

Oral argument: Nov. 10, 2010

Because of findings of tax discrimination against interstate railroads, Congress enacted the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act). CSX Transportation challenges an Alabama tax that applies to interstate railroads but exempts motorized and water-carrier competitors. CSX Transportation argues that the plain meaning of the 4-R Act and Congress' clear intention to protect railroads permits its challenge. The Alabama Department of Revenue argues that the plain meaning of the statute and case precedent preclude challenges to tax exemptions. In this case, the Supreme Court will resolve a circuit split on the issue. Full text is available at topics.law.cornell.edu/supct/cert/09-520. **TFL**

Prepared by Jacqueline Bender and Rachel Sparks Bradley. Edited by Kate Hajjar.

Flores-Villar v. United States (09-5801)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Aug. 6, 2008)

Oral argument: Nov. 10, 2010

Ruben Flores-Villar was convicted under 8 U.S.C. § 1325 for being a deported alien found in the United States. Flores-Villar was born in Mexico, out of wedlock, to a U.S. citizen father and foreign mother. Under 8 U.S.C. §§ 1401 and 1409, U.S. citizen fathers of nonmarital children born abroad may transmit U.S. citizenship to the child only if the father resided in the U.S. continuously for at least five years after the age of 14. U.S. citizen mothers with foreign-born nonmarital children are only required to have one-year residency in the United States to transmit citizenship to the child. Flores-Villar challenged his § 1325 conviction on the grounds that §§ 1401 and 1409 make an impermissible gender classification, resulting in his alien status. The Supreme Court granted certiorari to determine whether the gender-based differentiation in §§ 1401 and 1409 is constitutionally permissible. Full text is available at topics.law.cornell.edu/supct/cert/09-5801. **TFL**

Prepared by James McHale. Edited by Chris Maier.

Mayo Foundation v. United States (09-837)

Appealed from the U.S. Court of Appeals for the Eighth Circuit (June 12, 2009)

Oral argument: Nov. 8, 2010

The Mayo Foundation is suing for a refund of FICA taxes paid on behalf of its medical residents. The IRS claims that medical residents are not students and thus are not eligible for the FICA exemption for student employment. The Treasury Department released regulations that deny the student exemption to any employee who works more than 40 hours per a week. The Mayo Foundation contends that the IRS's interpretation of the term "student" is incorrect and contrary to congressional intent. If the Court rules that medical residents are students, the decision could lead to significant tax savings for hospitals and

residents while reducing the availability of worker protections for medical residents. Full text is available at topics.law.cornell.edu/supct/cert/09-837. **TFL**

Prepared by Teresa Lewi and Omair Khan. Edited by Sarah Chon.

Ortiz v. Jordan (09-737)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (March 12, 2009)

Oral argument: Nov. 1, 2010

After being assaulted in a federal prison, Michelle Ortiz sued two prison guards for constitutional violations under 42 U.S.C. § 1983. The district court denied the defendant's motion for summary judgment based on a defense of qualified immunity. A jury returned a verdict in favor of Ortiz, but the Sixth Circuit reversed the decision on the basis of qualified immunity. Ortiz argues that the Sixth Circuit did not have jurisdiction to hear an appeal based on qualified immunity, because the issue, originally raised on summary judgment, was not preserved for appeal. Jordan argues that the issue was preserved because a motion for summary judgment was filed. Full text is available at topics.law.cornell.edu/supct/cert/09-737. **TFL**

Prepared by So Jung Choo and Eli Kirschner. Edited by Eric Johnson.

Sossamon v. Texas (08-1438)

Appealed from the U.S. Court of Appeals for the Fifth Circuit (Feb. 7, 2009)

Oral argument: Nov. 2, 2010

Harvey Leroy Sossamon III is an inmate at a Texas state prison. The prison warden refused to allow inmates who were restricted to their cells to attend religious services and denied all inmates use of the prison chapel for religious purposes. Sossamon filed suit, alleging that the Texas prison violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court held that Texas has sovereign immunity under the 11th Amendment, and the Fifth Circuit affirmed the decision. Sossamon argues that the RLUIPA waives the state's immunity from damages. Texas counters that the RLUIPA does not

provide clear notice, which is required before a state may waive its sovereign immunity. Full text is available at topics.law.cornell.edu/supct/cert/08-1438. **TFL**

Prepared by Priscilla Fasoro and Justin Haddock. Edited by Kate Hajjar.

Staub v. Proctor Hospital (09-400)

Appealed from the U.S. Court of Appeals for the Seventh Circuit (March 25, 2009)

Oral argument: Nov. 2, 2010

In 2008, Vincent Staub received a favorable jury verdict in an employment discrimination trial against his former employer, Proctor Hospital. Proctor Hospital appealed the case to the Seventh Circuit Court of Appeals, which reversed the verdict based on the "cat's paw" theory of employer liability. The court held that, unless the ultimate decision maker was under the "singular influence" of another employee, only the decision maker's unlawful reasons for adverse employment decisions are actionable. The Supreme Court granted certiorari to decide whether the motivations of other employees who influence employment actions, but do not make the ultimate decision, may be taken into consideration in employment discrimination suits. Full text is available at topics.law.cornell.edu/supct/cert/09-400. **TFL**

Prepared by Alexander Malaboff. Edited by Sarah Chon.

United States v. Tohono O'odham Nation (09-846)

Appealed from the U.S. Court of Appeals for the Federal Circuit (March 16, 2009)

Oral argument: Nov. 1, 2010

Tohono O'odham Nation, an Indian tribe from Southern Arizona, filed suit against the United States in the D.C. District Court, alleging that the United States had breached its fiduciary duties to the tribe and seeking equitable relief. The tribe subsequently filed suit in the Court of Federal Claims seeking monetary damages for the same alleged breach. The United States argued that 28

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Alan C. Youngs
Samuel J. Zermeno
John A. Zick
Jennifer M. Zwilling

ADVOCACY *continued from page 31*

That said, as Judge Gertner stated during one panel at the Sentencing Commission Conference, the purpose of the sentencing guidelines, both before and after *Booker*, was not to avoid all disparities among the various district courts in sentences for defendants convicted of similar crimes and conduct but, rather, to avoid unwarranted disparities. The 2010 amendments to the sentencing guidelines and Attorney General Holder's memorandum both appear to recognize this

aspect, and in so doing, provide defense attorneys and sentencing consultants with more room to argue than they have had in years. **TFL**

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U.S.C. § 1500 barred the Court of Federal Claims from hearing the case, because the same claim was already before the D.C. District Court. The Supreme Court's decision will determine the extent to which parallel claims must be related before 28 U.S.C. § 1500 bars jurisdiction in the Court of Federal Claims. Full text is available at topics.law.cornell.edu/supct/cert/09-846. **TFL**

Prepared by L. Sheldon Clark and Benjamin Rhode. Edited by Catherine Sub.

Williamson v. Mazda Motor of America (08-1314)

Appealed from the California Court of Appeals, Fourth Appellate District, Division Three (Oct. 22, 2008)

Oral argument: Nov. 3, 2010

Delbert Williamson sued Mazda Motor of America following the death of his wife in a car accident while she was riding in the couple's Mazda MPV minivan. Williamson claimed that Mazda was liable under state tort law for installing lap-only seatbelts—as opposed to lap-and-shoulder seatbelts—in the rear aisle seat, where his wife was seated during the crash. Mazda argues that William-

son's state law claim is pre-empted by a federal regulation granting manufacturers the choice between lap-only and lap-and-shoulder seatbelts in rear aisle seats. The Supreme Court's decision in this case will address the extent of pre-emption of state law claims by federal regulations. Full text is available at topics.law.cornell.edu/supct/cert/08-1314. **TFL**

Prepared by Kelly Halford and Eric Schulman. Edited by Chris Maier.