The previews are contributed by the Legal Information Institute, a nonprofit activity of Cornell Law School. This department includes an in-depth look at two cases plus executive summaries of other cases before the Supreme Court. The executive summaries include a link to the full text of the preview.

Arizona Free Enterprise v. Bennett (10-238); McComish v. Bennett (10-239) (consolidated)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (May 21, 2010)
Oral argument: March 28, 2011

At issue in these consolidated cases is the constitutionality of Arizona's Citizens' Clean Elections Act. Petitioners—several past and present candidates for elected office and two political action committees—claim that the matching public funding provision of the act burdens the free speech of candidates who do not use public funding. The respondent, Ken Bennett, in his official capacity as Arizona's secretary of state, contends that the Citizens' Clean Election Act is designed to prevent corruption and does not impose any actual burden on protected political speech. The Ninth Circuit Court of Appeals held that the act did not violate the First Amendment because the act furthered a compelling government interest in preventing corruption. In resolving this question, the U.S. Supreme Court must strike a balance between the First Amendment right to protected political speech and clean election measures implemented by a state.

Background

In 1998, Arizona passed the Citizens' Clean Election Act, which created a framework through which the state provides public financing to candidates for statewide political offices. Under the act, candidates who choose to receive public funding for their campaigns may not accept campaign donations from private parties.

The petitioners—a group that includes six past and future Arizona political candidates and two political action committees (PACs)—challenge a provision of the act that gives matching public funds to participating candidates when their nonparticipating opponents' private fund raising exceeds a statutorily prescribed amount. The petitioners allege that this matching funds provision violates their rights under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. The crux of the petitioners' suit is that the Citizens' Clean Election Act substantially burdens their exercise of political speech by effectively punishing them for raising enough funds to trigger the matching funds provision of the act.

The plaintiffs in the original suit—John McComish, Nancy McLain, Tony Bouie, and Robert Burns—all ran for seats in the Arizona House of Representatives. McComish complained that the act had forced "self-censorship" upon him by delaying fund-raising and promotional efforts to avoid triggering matching funds for his opponent. Similarly, McLain claimed that the provision imposed a "competitive disadvantage" on her campaign because she deliberately avoided raising enough money to trigger the provision. Tony Bouie's campaign triggered matching funds for his opponent, and he argued that the matching funds put him (Bouie) at a "continuous tactical disadvantage."

McComish and the other petitioners sued Arizona in federal district court, which granted summary judgment in favor of McComish. The Ninth Circuit Court of Appeals reversed the ruling, concluding that the act did not violate the petitioners' First Amendment rights. The Ninth Circuit's opinion diverged from decisions made by the Eighth and Eleventh Circuit Courts that held that similar matching fund schemes violated the First Amendment.

Implications

This case will allow the Supreme Court to settle a split among circuit courts over the question of whether matching public funding laws violate the First Amendment right to free speech. This ruling will have a direct impact on campaign fund raising and campaign contributions by political action committees.

Reducing Corruption in Public Elections

The petitioners—McComish, McLain, Bouie, and Burns—argue that the act's matching funds provision imposes a substantial burden on protected political speech. According to the petitioners, the act creates a significant disadvantage to candidates who do not participate in the matching funds program yet trigger the matching funds provision through traditional campaign fund raising and spending. Furthermore, the petitioners claim that by rewarding election opponents with matching funds, the act does not protect against actual or apparent corruption—Arizona's stated interest in passing the law. Thus, McComish and his co-petitioners conclude that the matching funds provision punishes traditional candidates without serving an anticorruption purpose.

Arizona claims that the Citizens' Clean Election Act will prevent corruption in public elections and creates only potential, indirect burdens on protected speech. Arizona points out that, since the act was passed, campaign funding expenditures have consistently increased, which undermines the conclusion that the act will impede political speech in the future. Furthermore, Arizona claims that the act serves the interest of preventing actual and apparent corruption by minimizing the influence of PACs. Finally, Arizona notes that the act was born as a result of a long, undisputed history of corruption in the state and was passed as an affirmative mechanism to restore the public's faith in the electoral process.

Chilling Political Speech

The petitioners' central concern is that the act unfairly influences the strategic campaign choices of nonparticipating candidates. The Justice and Freedom

Fund argues that the act creates a chilling effect on independent advocacy associations that support nonparticipating candidates because their financial contributions may trigger public funding to their publicly funded opponents. Similarly, four former chairmen and one former commissioner of the Federal Election Commission argue that triggered public funding schemes result in government actors "micromanaging" the spending decisions of candidates and advocacy groups, thereby burdening protected speech. Thus, nonparticipating candidates are not able to raise funds freely and spend money without fearing that their campaign expenditures and political speech will trigger matching public funds.

A group of self-financed candidates for elected office in Arizona argue that the primary purpose of the act is not to "equalize electoral opportunities" but to assure that participating candidates will be competitive against well-funded nonparticipating opponents. The Committee for Economic Development agrees, adding that the act increases competition in elections, and—as is true in the marketplace—increased competition leads to better outcomes for the public. Furthermore, the Campaign Legal Center points out that the public funding scheme encourages participation by assuring that participating candidates will remain competitive against their privately funded, high-spending opponents.

Legal Arguments

In this case, the U.S. Supreme Court will decide whether the act violates the First Amendment rights of individual candidates for state office or independent expenditure groups. At the heart of the controversy is the matching funds provision of the act, which allows Arizona to provides publicly financed candidates with additional funds beyond the initial disbursement if, in the aggregate, privately financed candidates and their independent financial supporters spend more than the initial disbursement when running against the publicly financed candidate.

Level of Scrutiny

According to the petitioners, the matching funds provision triggers strict scrutiny—the highest level of judicial scrutiny—because it penalizes independent financial supporters and privately financed candidates for spending money above the trigger amount. To withstand strict scrutiny, a state must prove that a piece of legislation is narrowly tailored to a compelling governmental interest. Petitioners liken the provision to the Millionaire's Amendment in *Davis v. Federal Elections Commission*, in which the Supreme Court held that a system in which political opponents received benefits when self-financed candidates spent their own money beyond a certain threshold created a "drag" on free speech and triggered strict scrutiny. Petitioners contend that the matching funds provision creates a similarly impermissible burden on free speech.

Petitioners also rely upon *Pacific Gas & Electric Co. v. Public Utilities Co*, in which the Supreme Court held that the First Amendment is violated whenever the government forces private citizens "to help disseminate hostile views" in order to exercise their right to free speech. The *Pacific Gas* Court reasoned that, when the government mandates the dissemination of opposing views, citizens will limit their own speech in an effort to prevent the dissemination of views they oppose.

Furthermore, the petitioners argue that the regulation is content-based because it releases funds to publicly financed candidates when independent groups support a privately financed candidate, but matching funds will not be triggered if an independent group opposes a privately financed candidate. McComish and his co-petitioners contend that. because of this content-based government action, strict scrutiny should apply.

Arizona argues that the appropriate level of scrutiny is intermediate scrutiny. For the provision to survive intermediate scrutiny, a state must show that the statute is substantially related to a sufficiently important governmental interest. Arizona argues that this case is different from *Davis* because *McComish v. Bennett*, does not discriminate against any one candidate's speech. Instead, the provision releases funds according to the total financial activity in the race and does not differentiate between self-funded and other privately funded candidates. Arizona attempts to differentiate the present case from *Pacific Gas* because privately financed candidates are not forced to state things with which they disagree with nor are they forced to associate themselves in any way with their opponents' messages. Arizona also contends that the provision is not content-based, because public funds are available to all publicly funded candidates regardless of the message they disseminate with those funds, and those funds are released based on financial reporting requirements that have been upheld in prior cases.

Governmental Interest and Relation of Means to that Interest

The petitioners argue that the government's interest in enforcing the act is not even a sufficiently important interest under intermediate scrutiny, let alone a compelling interest under strict scrutiny. The petitioners argue that the main purpose of the law is to "level the playing field" or to ensure that the publicly financed candidate can be competitive with the privately financed candidate. McComish and his co-petitioners argue that burdening free speech for this reason is unjustifiable at both levels of scrutiny, because the government's involvement in regulating speech is inherently suspect. They also contend that the interest in reducing actual corruption or the appearance of corruption in state elections is served only indirectly by the act. The petitioners further argue that strict contribution limits and public disclosure requirements by themselves are sufficient to ward off quid pro quo corruption.

Arizona responds that the government's interest in fighting corruption is the main purpose of the Citizens' Clean Election Act and is both sufficiently important and compelling. Arizona argues that quid pro quo corruption is a real problem than is widely acknowledged. Arizona claims that the public financing option eliminates even the appearance of such corruption and removes any coercive effect that dependence on private funds may put on a privately financed candidate. Arizona also stresses that the matching funds provision is essential to making public financing a viable option for political candidates. Without the op-

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tion of matching funds, the state would have to provide a lump sum, resulting in dramatic underfunding or overfunding of races.

Conclusion

The Supreme Court's decision in this case will clarify whether a public funding scheme for elections impermissibly violates the First Amendment when the state provides matching funds to a publicly financed candidate without placing any cap on spending for the privately financed candidate. The petitioners argue that this law violates their First Amendment right to speak without supporting the speech of their political opponents. Arizona argues that this law is a constitutional method of fighting actual and apparent political corruption. Full text is available at topics.law.cornell.edu/supct/cert/10-238. **TFL**

Prepared by James McHale and Alexander Malahoff. Edited by Joanna Chen.

Turner v. Rogers (10-10)

Appealed from the Supreme Court of South Carolina (March 29, 2010)
Oral argument: March 23, 2011

By the beginning of 2008, Michael Turner was $6,000 behind in his child support payments. A South Carolina family court eventually ordered Turner to appear to explain his failure to make any payments for the past year and a half. Turner alleged that his personal and physical problems rendered him unable to pay. The family court imposed civil contempt sanctions as a result of Turner's failure to comply with the earlier court order to pay child support. Turner appealed his 12-month sentence, arguing that, because of the possibility that he would face imprisonment, the court should have provided him with counsel. The U.S. Supreme Court's decision is likely to determine whether indigent defendants in civil cases are entitled to representation in cases in which incarceration is a possibility. The Court could, however, determine that it does not have jurisdiction to hear the case.

Background

In January 2008, a South Carolina family court ordered Michael Turner, the petitioner, to appear in court to explain his failure to pay $6,000 in child support to the respondent, Rebecca Rogers, the mother of Turner's child. Although Turner was indigent, he was not provided counsel at this hearing. The court found Turner in willful contempt as a result of his failure to abide by the court's earlier order to pay child support and sentenced him to 12 months in detention unless he paid the money owed immediately.

In Turner's appeal to the Supreme Court of South Carolina, he argued that the lower court's proceedings violated his Sixth and Fourteenth Amendment rights because the court sentenced him to one year in jail without appointing him an attorney. The court disagreed, stating that civil contempt sanctions do not provide the same protections as criminal contempt sanctions do. In addition, the family court was prepared to release Turner if he paid the money due at any time prior to the conclusion of his sentence; therefore, the Supreme Court of South Carolina found Turner was not entitled as a matter of constitutional right to appointed counsel, because the family court had not imposed a fixed or unconditional term of imprisonment. By the time the Supreme Court of South Carolina published its opinion in 2010, Turner had already served his one-year sentence.

Implications

Turner argues that a defendant needs counsel in order to present an effective defense in a civil contempt proceeding and to avoid erroneous incarceration. The Constitution Project agrees, noting that individuals in civil cases are often confronted with a more difficult burden of proof than defendants in criminal cases face. The Constitution Project explains that, in criminal cases, the government has the burden of establishing the commission of a crime, whereas in civil cases, the burden is on the defendant to prove that he or she is incapable of paying for legal representation.

Rogers, the respondent, counters that civil contempt cases are relatively simple and there is little risk of an incorrect outcome; therefore, legal representation is unnecessary. In an amicus brief, nine states argue that, even if attorneys are present at trial, there is always a risk that a court may erroneously conclude that an individual is able to abide by a court order. A group of senators argue that guaranteeing counsel in civil contempt cases actually gives the noncustodial parent an unfair advantage over the custodial parent, who is not entitled to an attorney and often does not have one.

The United States notes that the government has an interest in avoiding the imprisonment of parents who are held in civil contempt, because incarcerated offenders are unlikely to have the financial resources needed to pay child support. Thus, the American Bar Association contends that attorneys may prove effective in advocating for reduced sanctions, allowing their clients to pay a portion of what they owe and avoid the costs of incarceration.

Rogers counters that actual incarceration rarely occurs because the mere threat of detention often results in payment of child support that is overdue. The senators warn that imposing counsel requirements might reduce the effectiveness of this technique and may actually discourage defendants from paying child support because defendants know that the court will provide them with an attorney if they are ever sued for child support.

The ABA argues that providing counsel supports a more efficient judicial system and asserts that, when individuals proceed without counsel, judges are often required to spend a great deal of time trying to understand the submissions, thereby slowing the progress of all cases on their dockets. In addition, the involvement of attorneys, says the ABA, may help reduce repeat offenses, court appearances, and postponements resulting from defendants' lack of preparation for proceedings.

The respondent contends that providing the right to counsel in this situation would not just lead to a greater financial burden on the states but also result in the courts being swarmed with litigants demanding their right to counsel in other types of civil cases

involving a risk of detention. The states agree, warning that, by requiring courts to provide attorneys in all cases involving the possibility of incarceration, the Court would open the door to similar arguments in habeas corpus cases. Moreover, the states argue that a conclusion that the Sixth Amendment applies in this context would make defendants entitled not only to attorneys but also to jury trials and additional evidentiary safeguards, thereby imposing even greater costs upon the states.

Legal Arguments

The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right … to have the assistance of counsel for his defense." This provision entitles criminal defendants to the right to counsel. The Sixth Amendment applies to the states through the Due Process Clause of the Fourteenth Amendment. The Supreme Court maintains that the Due Process Clause requires not only that state felony criminal defendants be assured the right to counsel but also that, in certain civil matters, defendants be given the same right.

Due Process: Right to Counsel

Turner argues that indigent defendants facing incarceration through civil contempt hearings should have the right to appointed counsel under the Due Process Clause of the Fourteenth Amendment. Turner claims that the Court's Sixth Amendment cases involving the right to counsel focus on the defendant's need for the guidance that counsel provides and the seriousness of the stakes involved. Turner asserts that, in *In re Gault*, the U.S. Supreme Court determined that a juvenile is entitled to the right to counsel in civil juvenile delinquency hearings that may result in institutionalization. The Court reasoned the juvenile had a right to counsel, because the hearings could result in incarceration comparable to sentences handed down in felony prosecutions and because the juvenile requires counsel to navigate the law and present an adequate defense. Similarly, Turner asserts that, in *Vitek v. Jones*, the Court determined that prisoners have a right to counsel in civil commitment proceedings because commitment results in a substantial restriction of liberties, and it was likely that defendants would require counsel to exercise and protect their rights adequately. Turner argues that these cases stand for the proposition that a defendant in a civil proceeding who faces incarceration has the right to counsel.

Rogers claims that Turner's proposition is incorrect, because the due process does not create a presumptive right to counsel in civil cases that can lead to the defendant's incarceration. Rogers explains that, in *Gagnon v. Scarpelli*, the Court held that minors do not have the right to counsel when facing commitment to a mental hospital. The Court found a "presumption that there is no right to appointed counsel in the absence of at least a potential deprivation of physical liberty." Thus, Rogers asserts that potential incarceration is not in itself sufficient to create an exception to the general rule that defendants in civil cases do not have a right to counsel.

Rogers further argues that due process does not require the court to provide counsel to a defendant in a civil contempt hearing for failure to pay child support. To prove a complete defense to contempt, the defendant need only show that he or she cannot pay by bringing in tax forms or letters from an employer or a doctor. Rogers claims that defendants do not need counsel because their civil cases have relaxed procedural and evidentiary rules, and technical issues involving the statute of limitations or res judicata rarely arise. Rogers asserts that, if the defendant in a child support proceeding did have a right to counsel, then the proceedings would become unbalanced: the plaintiff who is seeking child support payments would not have a corresponding right to counsel and probably could not afford to hire a private attorney.

Jurisdiction

The petitioner argues that the U.S. Supreme Court has jurisdiction to decide the case. The Supreme Court generally has jurisdiction to review final decisions made by the highest state courts related to actual cases or controversies. According to Turner, the Court does not have the authority to hear cases that are moot, and a case is moot when "the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *FEC v. Wisconsin Right to Life Inc.* provides an exception to this rule where "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." Turner asserts that his case fits under the first exception because civil contempt orders are short in duration. Moreover, because South Carolina requires the family court to initiate contempt proceedings when any child support account becomes past due, Turner claims it is virtually certain that he will face another contempt hearing.

On the other hand, the respondent asserts that the Supreme Court does not have jurisdiction because the case is moot. Rogers argues that an appeal usually is moot once the defendant has served his or her sentence, and Turner's sentence ended two years before his case was brought to the U.S. Supreme Court. Rogers argues that this appeal also does not fit the exception to the case or controversy requirement. She notes that any defendant in a civil contempt case may seek a stay postponing imprisonment until the case is appealed, thereby preserving the controversy through the appeals process. Because Turner did not seek a stay, Rogers argues that the case became moot upon the completion of Turner's sentence. Rogers also contends that the possibility that Turner could face another contempt hearing is a matter of pure speculation.

Conclusion

The Supreme Court's decision in this case will determine whether indigent individuals facing civil contempt sanctions are entitled to court-appointed counsel. If the Court decides that individuals are entitled to representation in this situation, noncustodial parents might have a better opportunity to defend themselves against an alleged inability to comply with a court order. However, affirming an individual's right to counsel might mean that courts should provide similar safeguards in other civil contexts

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in which a person's liberty rights are at stake, thereby increasing costs to the states. Full text is available at topics.law.cornell.edu/supct/cert/10-10. **TFL**

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

Ashcroft v. Al-Kidd (10-98)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Sept. 4, 2009)
Oral argument: March 2, 2011

The FBI arrested Abdullah al-Kidd as a material witness in a terrorism case. Al-Kidd sued the former U.S. attorney general, John Ashcroft, alleging that he used the material witness statute, 18 U.S.C. § 3144, as a pretext to hold and investigate al-Kidd as a terrorism suspect in violation of his Fourth Amendment rights. Ashcroft asserts absolute immunity, claiming that the use of a material arrest warrant constituted a prosecutorial function. He also claims qualified immunity, on the grounds that there was no established constitutional violation for using a material arrest warrant at the time of the arrest. Al-Kidd contends that Ashcroft is not entitled to either form of immunity because the arrest had an investigative function, and no reasonable official could believe that a material witness warrant would authorize the arrest of a suspect without any intent to use the suspect as a witness. Full text is available at topics.law.cornell.edu/supct/cert/10-98. **TFL**

Prepared by Kelly Halford and Eric Schulman. Edited by Catherine Suh.

Board of Trustees of Leland Stanford Junior University v. Roche Molecular Systems Inc. (09-1159)

Appealed from the U.S. Court of Appeals for the Federal Circuit (Sept. 30, 2009)
Oral argument: Feb. 28, 2011

In the late 1980s, Dr. Mark Holodniy, a researcher at Stanford University, conducted part of his research at Cetus Corporation, a private biotechnology company. Holodniy's work, which was partially funded by the government, resulted in an improved method for testing the effectiveness of HIV treatments. Over the next few years, Roche Molecular Systems, which owned Cetus, incorporated Holodniy's method into its publicly sold HIV testing kits. Simultaneously, Stanford began the process of patenting the invention under the Bayh-Dole Act. In 2005, Stanford sued Roche for patent infringement, arguing that the Bayh-Dole Act gave Stanford University the exclusive first right to acquire ownership of Holodniy's invention. The district court ruled for Stanford, but the Federal Circuit reversed, holding that an earlier agreement between Holodniy and Cetus trumped Stanford University's ownership rights. Now, the Supreme Court must decide whether the Bayh-Dole Act prevents individual inventors from assigning to third parties their ownership rights in federally funded inventions. Full text is available at topics.law.cornell.edu/supct/cert/09-1159. **TFL**

Prepared by Colin O'Regan and Edan Shertzer. Edited by Kate Hajjar.

Bond v. United States (09-1227)

Appealed from the U.S. Court of Appeals for Third Circuit (Sept. 17, 2009)
Oral argument: Feb. 22, 2011

Carol Anne Bond spread chemicals around the home of Myrlinda Haynes to seek revenge for Haynes' impregnation by Bond's husband. Bond was charged with several crimes, including use of a chemical weapon under 18 U.S.C. § 229(a)(1), a statute enacted by Congress under the Chemical Weapons Convention of 1993. Bond appealed to the Third Circuit Court of Appeals on several grounds, including a claim that § 299(a)(1) violates the Tenth Amendment because the police power to prosecute criminals is a power reserved to the states. The Third Circuit found that, as a private party attempting to claim a violation of state sovereignty under the Tenth Amendment, Bond lacked standing, and Bond now appeals the court's decision. In addition to resolving the question on standing, the decision may also have an impact on the scope of Congress' authority to enact statutes implementing obligations imposed by international treaties. Full text is available at topics.law.cornell.edu/supct/cert/09-1227. **TFL**

Prepared by Sara Myers and John Sun. Edited by Eric Johnson.

Bullcoming v. New Mexico (09-10876)

Appealed from the Supreme Court of New Mexico (Feb. 12, 2010)
Oral argument: March 2, 2011

Following an arrest for driving while under the influence, Donald Bullcoming's blood was tested at the New Mexico Department of Health to determine his blood alcohol content. At trial, the laboratory's report was admitted into evidence, even though the analyst who performed the test was not a witness. Instead, another analyst from the Department of Health testified as to the laboratory's procedures and the machinery used to conduct the blood alcohol content. On appeal, Bullcoming argues that the information in the report was testimonial and, because the actual analyst was not a witness subject to cross-examination, the defendant's Sixth Amendment right to confront his accuser as violated. New Mexico contends that the report is not testimonial because the analyst who performed the test merely transcribed raw data and, even if it is testimonial, Bullcoming's confrontation rights were satisfied by the opportunity to retest the sample and cross-examine another analyst. Full text is available at topics.law.cornell.edu/supct/cert/09-10876. **TFL**

Prepared by Jacqueline Bendert and Rachel Sparks Bradley. Edited by Sarah Chon.

Camreta v. Greene (09-1454); Alford v. Greene (09-1478) (consolidated)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Oct. 12, 2010)
Oral argument: March 1, 2011

When the Oregon Department of Human Services received a report

of alleged abuse against a nine-year-old child, a caseworker and a police officer decided to interview the child at school, without parental consent or a warrant. After the charges against the child's father, Mr. Greene, were dropped, the child's mother, Mrs. Greene, sued the caseworker and officer for violating her daughter's Fourth Amendment right against unreasonable search or seizure. Mrs. Greene argues that probable cause is a necessary prerequisite to interviewing children about their alleged sexual abuse because the interviews may cause irreparable harm to the children. The caseworker and the police officer argue that reasonableness is the proper standard because it would be difficult to obtain probable cause when the child is often the only witness to the abuse. Full text is available at topics.law.cornell.edu/supct/cert/09-1478. **TFL**

Prepared by Sarah Pruett and Melissa Koven. Edited by Eric Johnson.

Freeman v. United States (09-10245)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (Nov. 20, 2009)
Oral argument: Feb. 22, 2011

William Freeman was indicted on multiple charges, including the possession of crack cocaine. Freeman pleaded guilty and received a 106-month sentence under a plea agreement. Following Freeman's sentencing, the U.S. Sentencing Commission amended the Sentencing Guidelines, reducing the sentencing range for crack cocaine possession to eliminate disparities between crack cocaine and powder cocaine offenses. Under 18 U.S.C. § 3582(c)(2), a court may alter a sentence after its imposition if the Sentencing Commission lowers the sentencing range. The Sixth Circuit Court of Appeals rejected Freeman's request for a sentence reduction because the sentence was imposed under a plea agreement and therefore was not calculated under the Sentencing Guidelines. The Supreme Court granted certiorari to determine whether an individual whose sentence is imposed under a plea agreement may seek a sentence reduction following amendments to the Sentencing Guidelines. Full text is available at topics.law.cornell.edu/supct/cert/09-10245. **TFL**

Prepared by Kristen Barnes and Jessica Meneses. Edited by Sarah Chon.

Global-Tech Appliances Inc. v. SEB S.A. (10-6)

Appealed from the U.S. Court of Appeals for the Federal Circuit (Feb. 5, 2010)
Oral argument: Feb. 23, 2011

SEB S.A. owns a patent for a deep fryer featuring an inexpensive insulated plastic outer shell. In 1997, Global-Tech Appliances Inc. developed and manufactured a deep fryer that copied SEB's deep fryer. SEB sued Global-Tech for patent infringement, and the jury found Global-Tech liable for direct and active inducement of patent infringement. Global-Tech appealed to the Court of Appeals for the Federal Circuit, which affirmed the decision, finding that Global-Tech acted with deliberate indifference to the risk of infringing SEB's patent. Global-Tech appealed, arguing that the Federal Circuit applied the wrong standard for the mental state element of actively inducing patent infringement under 35 U.S.C. § 271(b). Global-Tech asserts that the proper standard is "purposeful, culpable expression and conduct to encourage an infringement." On the other hand, SEB argues that a patent infringer does not need to have actual knowledge of a patent to be liable for actively inducing patent infringement. Full text is available at topics.law.cornell.edu/supct/cert/10-6. **TFL**

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

Schindler Elevator Corp. v. United States, ex rel. Daniel Kirk (10-188)

Appealed from the U.S. Court of Appeals for the Second Circuit (April 6, 2010)
Oral argument: March 1, 2011

Daniel Kirk filed a qui tam suit against Schindler Elevator Corporation, alleging that Schindler violated the False Claims Act (FCA). Section 3730(e)(4) of the FCA expressly states that federal courts do not have jurisdiction over claims based on "public disclosure of ... administrative ... report[s] ... or investigation[s]." Kirk's FCA claim used information requested from the Department of Labor under the Freedom of Information Act (FOIA). The district court dismissed the case, holding that information obtained through an FOIA request constitutes a "report" or "investigation" under the FCA, but the U.S. Court of Appeals for the Second Circuit reversed the district court's decision. Schindler now appeals, claiming that FOIA responses, by virtue of being produced by federal agencies, are "reports" or "investigations" and therefore fall under the FCA public disclosure bar. Full text is available at topics.law.cornell.edu/supct/cert/10-188. **TFL**

Prepared by James McHale and Alexander Malahoff. Edited by Joanna Chen.

United States v. DePierre (09-1533)

Appealed from the U.S. Court of Appeals for the First Circuit (March 17, 2010)
Oral argument: Feb. 28, 2011

The Anti-Drug Abuse Act of 1986 (ADAA) imposes a 10-year mandatory minimum prison sentence for offenses involving "50 grams or more of a substance … which contains a cocaine base." Frantz DePierre was sentenced to 10 years in prison for distributing 50 grams or more of a substance that has a "cocaine base." The appeals court affirmed the sentence, holding that the term "cocaine base" covers all base forms of cocaine, including but not limited to, crack. DePierre argues that, in light of the purpose and language of the statute, "cocaine base" applies only to crack cocaine. The United States claims that interpreting the ADAA to include all chemical base forms of cocaine is consistent with the ADAA as a whole. The Supreme Court's decision in this case will resolve a circuit split by establishing the scope of "cocaine base" and will ultimately determine the mandatory minimum sentence lengths for offenses involving non-crack cocaine. Full text is available at topics.law.cornell.edu/supct/cert/09-1533. **TFL**

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Prepared by Justin Haddock and Omair Khan. Edited by Christopher Maier.

United States v. Tinklenberg (09-1498)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (Sept. 3, 2009)
Oral argument: Feb. 22, 2011

The United States indicted Jason Tinklenberg for illegal possession of a handgun and materials used in the manufacture of methamphetamine. On the last business day before trial, Tinklenberg filed a motion to dismiss the indictment because of a violation of the Speedy Trial Act. The Speedy Trial Act requires certain federal criminal trials to begin within 70 days of the defendant's first appearance before the court, unless certain "delays," including the filing of pretrial motions, occur. The government argues that two of its pretrial motions qualify as excludable delays. Tinklenberg argues that, because these pretrial motions did not result in a postponement of the trial date, the Speedy Trial Act does not exclude them from the 70-day count. The Supreme Court's decision will settle which pretrial motions are excludable from the Speedy Trial Act's 70-day count and could affect the trial strategy of prosecutors and criminal defendants. Full text is available at topics.law.cornell.edu/supct/cert/09-1498. **TFL**

Prepared by So jung Choo and L. Sheldon Clark. Edited by Kate Hajjar.

CSX Transportation v. McBride (10-235)

Appealed from the U.S. Court of Appeals for the Seventh Circuit (March 16, 2010)
Oral argument: March 28, 2011

Robert McBride, a railroad engineer for CSX Transportation Inc., sued CSX under the Federal Employers' Liability Act (FELA), claiming that CSX was responsible for a hand injury that McBride suffered while operating the brakes of a train. In its appeal of the jury verdict in favor of McBride, CSX alleges that proximate causation is required for recovery under the FELA. McBride contends that proximate causation is not the proper standard of causation, based on recent court rulings. CSX also argues that public policy supports using the proximate cause standard, whereas McBride argues that requiring proximate causation actually discourages employers from maintaining safe workplaces. The Supreme Court's ruling will elucidate the proper standard of causation required under the FELA. Full text is available at topics.law.cornell.edu/supct/cert/10-235. **TFL**

Prepared by So jung Choo and Eli Kirschner. Edited by Sarah Chon.

Davis v. United States (09-11328)

Appealed from the U.S. Court of Appeals for the Eleventh Circuit (March 11, 2010)
Oral argument: March 21, 2010

Officer Curtis Miller arrested Willie Davis after a routine traffic stop. Incidental to the arrest, Officer Miller searched Davis' vehicle and discovered a gun. Davis was subsequently charged with being a convicted felon in possession of a firearm. At trial, Davis filed a motion to suppress the evidence about the gun, but the motion was denied. While Davis' appeal was pending, the Supreme Court handed down its decision in *Arizona v. Gant*, which held that searches like the one conducted in Davis' case violate the Fourth Amendment. Davis argued on appeal that the retroactive application of *Gant* to his case should result in exclusion of the evidence. The Eleventh Circuit Court of Appeals ruled against Davis, who now appeals on the same grounds. The United States maintains that the evidence of the gun should not be suppressed because Officer Miller, in objectively reasonable good faith, believed his search was proper when he conducted it. Full text is available at topics.law.cornell.edu/supct/cert/09-11328. **TFL**

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

Duryea v. Guarnieri (09-1476)

Appealed from the U.S. Court of Appeals for the Third Circuit (Feb. 4, 2010)
Oral argument: March 22, 2011

In 2003, the borough of Duryea, Pa., fired its police chief, Charles J. Guarnieri Jr. Guarnieri filed a grievance, which led to arbitration and his eventual reinstatement. When Guarnieri returned to his position, Duryea issued a number of directives limiting the tasks he could do on the job. Guarnieri filed a second grievance, which led to modification of the directives. Subsequently, Guarnieri sued Duryea, alleging that the directives were issued in retaliation for his filing the grievance in 2002 and therefore violated his First Amendment right to petition. After a jury found for Guarnieri, Duryea appealed to the Third Circuit, which affirmed the jury's verdict. The Supreme Court granted certiorari to determine whether public employees may sue their employers for retaliation upon filing grievances based on private matters rather than issues of public concern. Full text is available at topics.law.cornell.edu/supct/cert/09-1476. **TFL**

Prepared by Kristen Barnes and Jessica Meneses. Edited by Sarah Chon.

Fowler v. United States (10-5443)

Appealed from the U.S. Court of Appeals for the Eleventh Circuit (April 14, 2010)
Oral argument: Mar. 29, 2011

Charles Fowler murdered a local police officer and was convicted under 18 U.S.C. § 1512(a)(1)(C), which makes it a federal crime to murder a witness to a federal crime with the intent of preventing that witness from communicating with federal law enforcement officials. Fowler challenged his conviction, arguing that the government did not show that the officer he had murdered was reasonably likely to communicate with federal authorities, had he not been killed. Fowler asserts that not requiring proof of a reasonable likelihood of such communication is inconsistent with the

statutory language and would disrupt the balance between state and federal criminal jurisdiction. The United States responds that requiring such a standard would undermine the statute's purpose of maintaining the integrity of the federal justice system. Full text is available at topics.law.cornell.edu/supct/cert/10-5443. **TFL**

Prepared by Teresa Lewi and Benjamin Rhode. Edited by Eric Johnson.

Fox v. Vice (10-114)

Appealed from the U.S. Court of Appeals for the Fifth Circuit (Jan. 19, 2010)
Oral argument: March 22, 2011

In 2005, Ricky D. Fox ran for police chief of Vinton, La., the respondent. During the campaign, Billy Ray Vice, the incumbent police chief, attempted to blackmail Fox and damage his public image. Fox won the election but sued Vice and the town of Vinton for attempting to derail his campaign. Among Fox's claims was an allegation that his federal civil rights had been violated. Following discovery, Vice and the the town moved for summary judgment on the federal claim, which Fox withdrew; however, he continued to pursue his state-based tort claims. The defendants then moved to recover the attorneys' fees they had paid under 42 U.S.C. § 1988, arguing that Fox's federal claim was frivolous. The district court granted the defendants' motion, and the Fifth Circuit affirmed the decision on appeal. Fox argues that, in a case with factually intertwined claims, a defendant must prevail over an entire lawsuit in order to receive attorneys' fees. Vice and the town of Vinton, however, claim that nothing in 42 U.S.C. § 1988 prevents defendants from recovering attorneys' fees for individual frivolous claims. Full text is available at topics.law.cornell.edu/supct/cert/10-114. **TFL**

Prepared by Colin O'Regan and Edan Shertzer. Edited by Catherine Suh.

J.D.B. v. North Carolina (09-11121)

Appealed from the Supreme Court of North Carolina (Dec. 11, 2009)
Oral argument: March 23, 2011

J.D.B. was suspected of being involved in two break-ins when he was 13 years old. The police questioned him while he was at school without giving him a *Miranda* warning, and J.D.B. made incriminating statements. At his trial, J.D.B. moved to suppress those statements, arguing that he had been subjected to custodial interrogation. Specifically, J.D.B. argued that a court should take account of his age when determining whether he was in custody. The North Carolina trial court and appellate courts held that J.D.B. was not in custody for purposes of *Miranda* and allowed the statements into evidence. J.D.B. appealed to the Supreme Court, arguing that age should be a factor in determining whether he was in custody for *Miranda* purposes. North Carolina contends that age is a subjective factor and should not be part of the objective custody inquiry. Full text is available at topics.law.cornell.edu/supct/cert/09-11121. **TFL**

Prepared by Kelly Halford and Eric Schulman. Edited by Kate Hajjar.

Pliva Inc. v. Mensing (09-993); Actavis Elizabeth, LLC v. Mensing (09-1039); Actavis Inc. v. Demahy (09-1501) (consolidated)

Appealed from the U.S. Court of Appeals for the Eighth Circuit (Nov. 27, 2009); U.S. Court of Appeals for the Fifth Circuit (Jan. 8, 2010)
Oral argument: March 30, 2011

Doctors prescribed both Gladys Mensing and Julie Demahy the drug Reglan®. Each woman filled her prescription with the generic equivalent of the name brand drug. After long-term use of this drug, both Mensing and Demahy developed severe neurologic disorders. The women separately sued Pliva and Actavis, the manufacturers of the generic drug, under state law's "failure-to-warn" claims, alleging that the drug's warning label had failed to warn them of the risks adequately. Pliva and Actavis argue that the Federal Food, Drug, and Cosmetic Act as well as the Food and Drug Administration's regulations pre-empt Mensing and Demahy's state law claims because it was impossible for the companies to comply with both federal law and state law. In deciding this case, the Supreme Court will weigh the costs of an additional burden on both generic drug manufacturers and the public against incentivizing manufacturers to create the safest drugs with the most complete warnings. Full text is available at topics.law.cornell.edu/supct/cert/09-993. **TFL**

Prepared by Jacqueline Bendert and Rachel Sparks Bradley. Edited by Sarah Chon.

Talk America v. Michigan Bell Telephone Co. (10-313); Isiogu v. Michigan Bell Telephone Co. (10-329) (consolidated)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (Feb. 23, 2010)
Oral argument: March 30, 2011

The Telecommunications Act allows regulators to require that former telephone monopolies provide their competitors with access to incumbent telephone companies' local networks at a regulated rate. The Sixth Circuit, rejecting an argument filed by the Federal Communications Commission (FCC) in its amicus brief, determined that incumbent companies cannot be required to provide access to "entrance facilities"—that is, the cables that connect two local networks—at a regulated rate. AT&T, an incumbent telephone company, argues that competitors can build their own entrance facilities and therefore former monopolies do not need to provide access at a regulated rate. By contrast, various competitors maintain that, under the Telecommunications Act, AT&T is required to provide discounted access to its local infrastructure, and that access necessarily includes entrance facilities. The competitors also assert that the Sixth Circuit improperly over-

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ruled the FCC's interpretation of the act. The Supreme Court's decision in this case will affect the relationship between former monopolies and newer competitors in the telecommunications industry and may also have broader implications for the legal weight of agencies' amicus briefs. Full text is available at topics.law.cornell.edu/supct/cert/10-313. **TFL**

Prepared by L. Sheldon Clark and Omair Khan. Edited by Catherine Suh.

Tolentino v. New York (09-11556)

Appealed from the New York State Court of Appeals (March 30, 2010)
Oral argument: March 21, 2011

Following an automobile stop, New York police officers ran Jose Tolentino's driver's license through the Department of Motor Vehicles' database and discovered that his driver's license had been suspended and that at least 10 suspensions were for failure to answer a summons or to pay a fine. Tolentino was subsequently indicted for aggravated unlicensed operation of a motor vehicle. On appeal, Tolentino argues his DMV records must be suppressed because the information provided was the fruit of an unlawful stop. New York argues that, even if the stop was unlawful, the exclusionary rule has never been applied to information the government already possessed, because such an application would be unreasonable. The Supreme Court will have to balance the cost of suppressing highly probative evidence against the potential benefit of discouraging police from conducting random automobile stops without probable cause. Full text is available at topics.law.cornell.edu/supct/cert/09-11556. **TFL**

Prepared by Priscilla Fasoro and Justin Haddock. Edited by Eric Johnson.

Wal-Mart Stores Inc. v. Betty Dukes (10-277)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (April 26, 2010)
Oral argument: March 29, 2011

Betty Dukes and other women brought a Title VII employment discrimination suit against Wal-Mart Stores. The district court certified the class action, and the appeals court affirmed. Wal-Mart now appeals to the Supreme Court, arguing that the class certification does not meet the requirements of Federal Rule of Civil Procedure 23(a). Wal-Mart also claims that class certification was improper under Federal Rule of Civil Procedure 23(b)(2), because the employees primarily seek monetary compensation in the form of back pay. However, the employees assert that they meet the requirements under Rule 23(a), because the class members share the common issue of discriminatory treatment under Wal-Mart policies. The employees further argue that class actions certified under Rule 23(b)(2) are not precluded from seeking monetary relief and deny that back pay is a form of monetary compensation. The Supreme Court's decision will affect the evidence required to bring an employment discrimination class action suit, the relief available to plaintiffs in a class action, and employers' willingness to settle cases in order to avoid liability in class actions. Full text is available at topics.law.cornell.edu/supct/cert/10-277. **TFL**

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

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During Armed Conflict, in letter dated Oct. 2, 2008, from the Permanent Rep. of Switzerland to the United Nations addressed to the Secretary-General, UN Doc. A/63/467-S/2008/636 (Oct. 6, 2008) (hereinafter cited as Montreux Document). There are 36 participating states, including the United States; *see also*, Parsons, *supra* note 17, at 172–75.

[48]Montreux Document, *supra* note 47; Parsons, *supra* note 17, at 172–73.

[49]International Code of Conduct for Private Security Companies and Private Military Companies (Nov. 9, 2010), available at www.icoc-psp.org/.

[50]*See* Carolin Liss, *Privatizing the Fight Against Somali Pirates*, 1–18 (Murdoch University Asia Research Centre, Working Paper No. 152, 2008); Parsons, *supra* note 17, at 169, 176–77.

[51]International Chamber of Shipping Press Release, *Shipping Industry Changes Stance on Armed Guards*, (Feb. 15, 2011).

[52]*Id.*

[53]*Id.; see also* Kraska and Wilson, *supra* note 13, at 262 (explaining that many believe protection of commercial vessels is the responsibility of states); Liss, *supra* note 50, at 9.

[54]Ploch, *supra* note 2, at 14; Parsons, *supra* note 17, at 176.

[55]*See* Ploch, *supra* note 2, at 12, 14; Liss, *supra* note 50, at 8; Parsons, *supra* note 17, at 176-177.

[56]*Pirates Target the* Maersk Alabama *Again*, CNN World (Mar. 9, 2011), available at www.cnn.com/2011/WORLD/africa/03/09/somalia.pirates.maersk/index.html.

[57]Parsons, *supra* note 17, at 169–177; James Kraska and Brian Wilson, *Piracy Repression, Partnering and the Law*, 40 J. Mar. L. & Com. 43, 47–48 (2009).

[58]Ploch, *supra* note 2, at 35–36; Kraska & Wilson, *supra* note 13, at 262–63; Parsons, *supra* note 17, at 177–78.

[59]Kraska and Wilson, *supra* note 13, at 263.

[60]*Id.* at 262–63; Parsons, *supra* note 17, at 169.

[61]Staff of House Committee on Transportation and Infrastructure, 112th Cong., U.S. Response to Piracy 11 (Comm. Print 2011).

[62]Kraska and Wilson, *supra* note 13, at 263.