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.

Altria Group Inc. v. Good (07-562)

Appealed from the U.S. Court of Appeals for the First Circuit (Aug. 31, 2007)
Oral argument: Oct. 6, 2008

Defendants Altria Group and Philip Morris (Altria's subsidiary) manufactured and sold two brands of cigarettes, Marlboro Lights™ and Cambridge Lights™. Altria's advertising claimed that both brands were "light" cigarettes and were "lower in tar and nicotine." Stephanie Good and several other smokers filed a class action suit against Altria Group and Philip Morris (collectively Altria), claiming this advertising was a misrepresentation under the Maine Unfair Trade Practices Act. Altria argues that state law claims of fraudulent misrepresentation against cigarette companies are pre-empted by federal law. Given the diversity of state laws and the widespread use of "light" descriptors, the outcome of this case could expose tobacco companies to different levels of liability based on the content of their advertising. This case may affect other federally regulated industries, potentially subjecting them to state law claims for fraudulent misrepresentation on the ground that federally permissible advertising and testing is misleading under various state laws.

The Federal Trade Commission (FTC)—and, later, the cigarette companies themselves—used a test known as the "FTC Method" to determine the amount of tar and nicotine in a cigarette. The FTC Method uses a machine to "smoke" a cigarette. The machine collects residue from the cigarette smoke on a filter pad, which is then tested. Under the FTC Method, Marlboro Lights and Cambridge Lights contained less tar and nicotine than other, "full-flavored" brands. Based on formal and informal FTC regulation, Altria claims the "light" descriptors were authorized.

Stephanie Good and the other smokers claim that the way consumers actually smoke Marlboro Lights and Cambridge Lights results in more consumption of tar and nicotine than the FTC Method suggests. For instance, smokers might unconsciously cover ventilation holes on the sides of the cigarettes, causing a reduction in the amount of air added to the inhalation, which results in a greater delivery of tar and nicotine. Good claims that, given the differences between the way people smoke and the methodology of the FTC Method, Altria's advertising containing the terms "light" or "lower in tar and nicotine" is deceptive.

Under the Federal Cigarette Labeling and Advertising Act (FCLAA), which was passed by Congress in 1965, "[n]o requirement or prohibition based on smoking and health shall be imposed under state law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter." Altria argues that this language pre-empts the plaintiff's state law claims.

Implications on Informal Regulation and Other Regulated Industries

This case concerns the nature and effect of federal regulation and has consequences not just for the tobacco industry and smokers but potentially also for any federally regulated industry. Informal regulation is an important part of federal regulation and may be one ground for pre-emption. Informal regulation allows government actors, such as the FTC, to control an area without the expensive and time-consuming efforts of formal regulation. However, Good argues that the informal control that the FTC exerts over the tobacco industry is insufficient to warrant barring their claims. Thus, Altria claims, a victory for Good could undermine the legitimacy of informal rule making.

Furthermore, this case potentially threatens any federally regulated industry with lawsuits claiming that federally permissible advertising and testing are misleading. For instance, the Food and Drug Administration may allow a company to call a food "reduced fat," but because of "compensatory" behaviors by consumers, such as eating more, the claim that a food item has "reduced fat" could be characterized as a misrepresentation. Moreover, some plaintiffs might argue that federal testing is inadequate and thus constitutes a misrepresentation. Thus, the Chamber of Commerce of the United States argues that, if Good prevails, federally regulated industries may be forced to apply confusing, state-specific labeling that is potentially at odds with federal law or face severe liability. On the other hand, if Altria prevails, those industries would be able to use federal regulation as a strong defense, even if that regulation were arguably inadequate.

If Good prevails, states could regulate the tobacco companies by imposing further restrictions on advertising. Putting the power to regulate in 50 state governments instead of the unified federal government could result in a patchwork of advertising regulation. "Light" cigarettes sold in one state might be called "full-flavor" cigarettes in another—one state's consumers seeking their favorite cigarettes in another state may find that the cigarettes are sold under another name or the consumers may become confused as to the tar and nicotine content.

A more serious—though less likely—possibility is a de facto ban on cigarettes. States might regulate cigarette labeling and advertising in stringent and conflicting ways, such that, as a practical matter, cigarettes cannot be sold. However, given the support for cigarettes found in the FCLAA, a de facto ban would likely remain academic.

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Legal Arguments

Express Pre-emption

Congress enacted the Federal Cigarette Labeling and Advertising Act with the purpose of requiring cigarette companies to inform the public of the dangers of smoking and to prevent "diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." 15 U.S.C. § 1331. In order to inform the public of the health risks associated with smoking cigarettes, the FCLAA requires all cigarette packaging and advertising to bear health warnings in accordance with the act's detailed specifications. State laws establishing additional requirements or prohibitions in relation to the advertising or promotion of cigarettes are expressly pre-empted by the FCLAA.

Under *Cipollone v. Liggett Group*, 505 U.S. 504 (1992), claims of fraudulent misrepresentation against cigarette companies may not be pre-empted if they are predicated on the general duty not to deceive, rather than on a duty specifically related to smoking and health. The district court applied the framework established in *Cipollone* to Good's claims and found they were expressly pre-empted by the FCLAA. The FCLAA expressly prohibits state law from establishing requirements or prohibitions related to cigarette advertising or labeling with respect to any relationship between smoking and health. The district court found that Altria had not made any affirmative misstatements, because use of the descriptors "light" and "lower in tar and nicotine" was supported by the results of testing according to the FTC Method.

However, this determination was reversed by the U.S. Court of Appeals for the First Circuit, which found that Good's claim was based on the general duty not to deceive, not on a duty related to smoking and health, and that therefore the claim was not pre-empted under *Cipollone*. Taking this view, it follows that the FCLAA does not pre-empt a claim alleging that a cigarette manufacturer has perpetrated fraud by claiming that its light brand is lower in tar and nicotine than its full-strength brand is. Thus, the First Circuit found that, because Good's claim is not that use of the descriptors diluted the required warnings but that the descriptors deceived consumers into purchasing Altria's products, it is not pre-empted by the FCLAA.

Implied Pre-emption

It is well established that, even if a state law claim is not expressly pre-empted by the language of a federal statute, the claim may be pre-empted to the extent that it actually conflicts with federal law and makes compliance with both federal and state law impossible, or to the extent that the state law stands as an obstacle to the accomplishment and execution of the full purposes of the law as intended by Congress. According to Altria, the FTC's authority to regulate smoking and health claims in cigarette advertising is part of the uniform regulatory framework established by Congress under the FCLAA. Altria argues that a finding that Good's claims are not pre-empted would impede the FTC's objective of encouraging competition among cigarette manufacturers to develop cigarettes that are lower in tar.

Good argues that the FTC has "never made a regulatory decision to authorize or encourage the use of "light" descriptors and has never required cigarette companies to use the [FTC] Method or to disclose tar and nicotine yields." Good further asserts that, because the FTC did not have industrywide rulemaking authority at the time the FCLAA was enacted, Congress could not have intended to invest the FTC with exclusive authority to police fraud in cigarette advertising. Good states that Congress could not have intended to exempt cigarette companies from prosecution under state law for fraudulent business practices and that, if Congress had intended to create such an exemption, it would have expressed that intent clearly.

Altria rejects the view that FTC regulation of the cigarette industry is not compulsory because it has not involved formal rule-making actions. According to Altria, from the time the FCLAA was enacted, the FTC has regulated the cigarette industry's claims related to smoking and health through litigation, industry agreements, advisory opinions, policy statements, and consent decrees. Both Altria and former commissioners and senior staff of the FTC, as amici curiae, argue that the FTC has consistently exercised comprehensive oversight regarding the claims cigarette companies make about the tar and nicotine yields of their products. It is well-established law that regulations promulgated by a federal agency by means other than formal rulemaking procedures may have a pre-emptive effect when they reflect a considered policy judgment.

Conclusion

The Supreme Court's decision in *Altria Group* will determine the scope of federal pre-emption of state law claims regarding deceptive advertising in cigarettes. A decision for Altria is likely to provide a shield to state law claims regarding deceptive advertising, generally maintaining the status quo. A decision for Good may result in a patchwork of state law regulations regarding cigarette advertising. Furthermore, a decision for Good might compromise the authority of federal regulation, potentially subjecting any federally regulated industry to similar state law claims of fraudulent misrepresentation. **TFL**

Prepared by Valerie Robart and James McConnell. Edited by Joe Hashmall.

Bartlett v. Strickland (07-689)

Appealed from the Supreme Court of North Carolina (Aug. 24, 2007)
Oral argument: Oct. 14, 2008

Section 2 of the Voting Rights Act (VRA) declares that a state may not act in a way that impairs or dilutes, on account of race or color, a citizen's opportunity to participate in the political process and to elect representatives of his or her choice. In 2003, North Carolina's General Assembly redrew its district lines and created House District 18 with the intention of complying with Section 2 of the Voting Rights Act. The "controlling majority" of citizens in the new House District 18 consisted of 39 percent African-American voters and enough non-African-American crossover voters to allow the African-American voters to elect a leader of their choice. This redistricting was chal-

lenged on the grounds that the Voting Rights Act does not require the creation of districts in which African-Americans or other ethnic minorities do not, by themselves, constitute a voting majority. The question the Supreme Court will decide is whether a racial minority group must constitute a "controlling majority" or an actual majority in order to trigger the districting requirements of Section 2 of the Voting Rights Act.

In 2003, North Carolina's General Assembly redrew voting district lines throughout North Carolina in response to the 2000 census. It split Pender County into two separate voting districts in order to create House District 18, in which African-Americans made up 39 percent of the population that was of voting age. Because District 18 shared portions of two counties, Dwight Strickland, a county commissioner of Pender County sued Gary Bartlett, the executive director of the North Carolina State Board of Elections, claiming that its redistricting violated the Whole County Provision (WCP) of North Carolina's constitution. The WCP states that a county shall not be divided in the formation of a voting district.

Bartlett's defense of North Carolina's plan was that Section 2 of the Voting Rights Act, which prohibits vote dilution, required the creation of House District 18 despite the resulting split of Pender County. Vote dilution occurs when the voting strength of a racial or other minority group is minimized or canceled out by state action, which includes drawing voting districts. North Carolina legislators believed that Section 2 mandated the creation of House District 18, because the African-American voters there had a "controlling majority," which consisted of African-American voters and a sufficient number of white voters who voted with them to elect the African-Americans' preferred candidates for office. The General Assembly thus approved the redistricting plan as one that was safe from any vote dilution claims and one that properly complied with the WCP as fully as possible without violating federal law, which trumps state law in the area of redistricting requirements.

In determining whether Section 2 of the VRA did, in fact, require the North Carolina General Assembly to split Pender County into two voting districts and create a crossover district, the U.S. Supreme Court will look to *Thornburg v. Gingles*, 478 U.S. 30 (1986), the leading Supreme Court case interpreting the statute. *Gingles* lays out three "necessary preconditions" a plaintiff must demonstrate to establish that a legislative district must be drawn to comply with Section 2, or that an existing district violates Section 2. First, a racial minority population must be "sufficiently large and geographically compact to constitute a majority in a single-member district." Second, the racial minority population must be "politically cohesive." Third, the racial majority population must "vote[] sufficiently as a bloc to enable it … usually to defeat the minority's preferred candidate."

The North Carolina Supreme Court held that the VRA did not mandate the creation of a crossover district in this case because the African-American minority group did not constitute 50 percent of the voting population. The U.S. Supreme Court granted certiorari to decide whether Section 2 of the VRA requires a state to protect a racial minority group's voting power if the group constitutes less than 50 percent of the voting population of a proposed district. Bartlett argues that both past decisions by the Supreme Court, as well as Section 2 of the VRA, do not impose a bright-line 50 percent rule but an opportunity-to-elect standard instead. On the other hand, Strickland argues that the language of the VRA and the *Gingles* test point to using a 50 percent rule.

Floodgates of Litigation and the Ease of Application

Many parties supporting Strickland cite a concern that, if the Court refuses to accept the 50 percent rule and, instead, adopts the more flexible opportunity-to-elect standard, the floodgates of litigation will open. They argue that an opportunity-to-elect standard is too subjective, making it overly burdensome for courts to "discern equity" and giving them too much "unbridled discretion." These parties contend that, under the opportunity-to-elect standard, conceivably any redistricting plan could be challenged if there were enough disparate racial minorities in a district to argue that they had some potential to elect a leader of their choice. Therefore, some argue, without a clear and objective 50 percent rule, states will be more likely to have to defend their redistricting plans in court and will spend more money doing so.

Others—including 14 states around the country—argue that an opportunity-to-elect standard is indeed clear and judicially manageable. More important, some amici posit that an opportunity-to-elect standard "is a far more accurate measure of minority voter effectiveness than an arbitrary numerical population standard." In support of this contention, they cite additional unanswered questions that the 50 percent rule would present, such as "50 percent of what?" and "Who should count as an African-American?" The Campaign Legal Center argues that it is easier to determine the more relevant question of a racial minority's ability to vote simply by analyzing historical voter turnout differentials in a particular district. Other amici assert that, because the *Gingles* three-prong test already requires this type of analysis, it would be simple to apply it to an opportunity-to-elect standard.

What Standard Best Remedies Past Discrimination?

Aside from the issues of potential burdens and judicial economy, many amici assert that what is more important is the need to have the opportunity-to-elect standard in order to remedy the history of ongoing racial discrimination at the polls. These proponents refer to "extensive findings of past and continuing discrimination" in the area of District 18, evidenced by the failure of African-American voters to participate effectively in legislative elections there until the last two reapportionment cycles. The amici further point out that racial minority groups represent less than 50 percent of the population in many districts that elect leaders who are racial minorities, and that, in fact, in *Pender County v. Bartlett*, the Supreme Court of North Carolina found that an African-American voting-age population of 38.37 percent was sufficient in past elections to elect African-American leaders in Pender County. Amici argue that racial minority groups in districts where they do not

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constitute 50 percent of the population but nevertheless do elect their preferred leaders "are no less in need of the vote dilution protections of Section 2 than are [racial minority groups] in districts where they happen to constitute 50 [percent] of the population."

In response, others argue that the opportunity-to-elect standard would go beyond the purpose of Section 2 of the Voting Rights Act. They maintain that the VRA's purpose is to ensure that a minority group is not denied an equal opportunity to elect a leader of its choice, not to "give a minority group more voting power." These advocates contend that, for any group to be able to elect a leader of its choice, it must form an actual majority, and that without this actual majority, the group can claim only the ability to influence an election not the ability to elect its preferred candidate. Therefore, they argue, adopting the opportunity-to-elect standard would go beyond merely protecting racial minority groups and would, instead, give them more voting power than they otherwise would have.

Conclusion

In *Bartlett v. Strickland*, the Supreme Court will rule on the issue of whether a racial minority group that constitutes less than 50 percent of a proposed district's voting-age population, but enough to enable it to elect the leader of its choice with the help from crossover voters, can state a vote dilution claim under Section 2 of the Voting Rights Act. The Court has issued rulings interpreting the meaning of Section 2 only rarely in recent years, and its decision in this case will surely meet with criticism and commentary both when it is issued and in the future. In deciding whether an absolute majority is required for Section 2 protection, the Court will inevitably discuss the original purpose of the Voting Rights Act in light of the way voting patterns have changed since the law was passed in 1965. The Court's decision will have a broad effect on racial minorities' voting rights in districts where they have strong political influence but constitute less than a majority of the voting-age population, and it will also influence the rules legislatures across the country will have to follow when redistricting in the future. **TFL**

Prepared by Kelly Terranova and Isaac Lindbloom. Edited by Carrie Evans.

Arizona v. Gant (07-542)

Appealed from the Arizona Supreme Court (July 25, 2007)
Oral argument: Oct. 7, 2008

Police arrested Rodney Gant for driving with a suspended license. During a warrantless search of Gant's car incident to his arrest, officers found a weapon and cocaine. Gant moved to suppress this evidence; the court denied his motion, and he was convicted of possession of drugs and drug paraphernalia. Gant claims the search was unreasonable under the Fourth Amendment, because he was arrested for an unrelated charge and because neither officer safety nor the integrity of the evidence was imperiled. The state of Arizona argues that the U.S. Supreme Court should adopt a clear bright-line rule that automatically permits officers to conduct a vehicle search contemporaneous to an arrest. The outcome of this case will affect law enforcement officers' conduct during motor vehicle stops and accompanying arrests and vehicle searches. Full text is available at www.law.cornell.edu/supct/cert/07-542.html. **TFL**

Prepared by Conrad Daly and Rebecca Vernon. Edited by Courtney Zanocco.

Crawford v. Metropolitan Gov't of Nashville and Davidson County, Tenn. (06-1595)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (Nov. 14, 2006)
Oral argument: Oct. 8, 2008

Vicky Crawford, a former employee of the Metro School District for Nashville and Davidson County, Tenn., brought a Title VII anti-retaliation suit against her employers when she was fired from her job after participating in an internal investigation into rumors of sexual harassment. During the investigation, Crawford confirmed the rumors by discussing specific incidents of sexual harassment and was fired shortly after the investigation was completed. Crawford filed a Title VII anti-retaliation suit, which the trial court dismissed at summary judgment. The Sixth Circuit upheld this decision, ruling that Title VII did not extend to employees who had taken part in an employer's internal investigations but had not themselves instigated Equal Employment Opportunity Commission claims. How the Supreme Court decides the case will determine the scope of Title VII as applied to employee participation in internal investigations as well as what protections Title VII offers to employees and employers alike. Full text is available at www.law.cornell.edu/supct/cert/06-1595.html. **TFL**

Prepared by Lara Haddad and Courtney Bennigson. Edited by Allison Condon.

Hedgpeth v. Pulido (07-544) (formerly Chrones v. Pulido)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (May 30, 2007)
Oral argument: Oct. 15, 2008

Michael Pulido was convicted of robbery-murder in California after a jury received instructions on two valid theories and one constitutionally impermissible theory of guilt. Pulido obtained a writ of habeas corpus from the District Court for the Northern District of California on the grounds of alternative-legal-theory error. The Ninth Circuit upheld the grant of the writ, finding that the error was "structural" in nature and required automatic reversal of the conviction. The attorney general of California sought review before the Supreme Court, maintaining that Supreme Court precedent requires review for "harmlessness" of the constitutional error rather than automatic reversal. This case will clarify the Antiterrorism and Effective Death Penalty Act's provision requiring federal courts to limit the granting of writs of habeas corpus to those state decisions that are "contrary to" or "unreasonable" in the light of "currently established federal law" as determined by the Supreme Court. Full

text is available at www.law.cornell.edu/supct/cert/07-544.html. **TFL**

Prepared by Victoria Bourke. Edited by Hana Bae.

Herring v. United States (07-513)

Appealed from the U.S. Court of Appeals for the Eleventh Circuit (Oct. 11, 2007)
Oral argument: Oct. 7, 2008

In 2004, Alabama police officers arrested Bennie Dean Herring and recovered methamphetamines and a handgun during a search conducted immediately following the arrest. The officers arrested Herring because they were erroneously told that there was a warrant for his arrest. Herring moved to suppress the evidence of the methamphetamines and the gun, arguing that they were recovered as a result of an unlawful search and, consequently, that the exclusionary rule should apply. The U.S. Court of Appeals for the Eleventh Circuit denied his motion, finding that the good faith exception to the exclusionary rule extends to police officers' good faith reliance on erroneous information that is provided by law enforcement personnel. In reviewing this case, the Supreme Court will decide whether the deterrent effect of excluding evidence obtained as a result of negligent error by law enforcement personnel outweighs the costs of excluding such evidence, or whether the good faith exception to the exclusionary rule should be extended. Full text is available at www.law.cornell.edu/supct/cert/07-513.html. **TFL**

Prepared by Evan Ennis and Gary Liao. Edited by Lauren Buechner.

Kennedy v. Plan Adm. for DuPont Savings (07-636)

Appealed from the U.S. Court of Appeals for the Fifth Circuit (Aug. 15, 2007)
Oral argument: Oct. 7, 2008

Under the federal Employee Retirement Income Security Act (ERISA), a divorcing spouse can waive the right to an ex-spouse's pension benefits by obtaining a Qualified Domestic Relations Order (QDRO). When William and Liv Kennedy divorced, Liv voluntarily waived her right to receive the pension benefits that William received from E.I. DuPont de Nemours and Company, but she did not submit a QDRO waiving her right to the DuPont benefits. Upon William's death, DuPont disbursed the pension benefits to Liv, claiming that Liv's non-QDRO waiver was invalid under ERISA's anti-alienation provision. William's estate sued DuPont to recover William's pension benefits, contending that obtaining a QDRO is one exception to ERISA's anti-alienation provision—but not the only one—and that Liv's waiver was valid under applicable federal common law. In deciding this case, the Supreme Court will determine whether a divorcing spouse must obtain a QDRO to waive his or her right to receive an ex-spouse's pension benefits under ERISA. Full text is available at www.law.cornell.edu/supct/cert/07-636.html. **TFL**

Prepared by Lauren Jones and Sarah Soloveichik. Edited by Courtney Zanocco.

Locke v. Karass (07-610)

Appealed from the U.S. Court of Appeals for the First Circuit (Aug. 8, 2007)
Oral argument: Oct. 6, 2008

Maine has designated the Maine State Employees Association (MSEA) the exclusive "collective bargaining agent" for state employees, including employees who are not members of the union. As a result, the nonmembers are required to pay service fees to MSEA, with part of the nonmembers' fees pooled into the resources of a larger union. A group of nonmembers recently sued MSEA, claiming that this pooled arrangement violates their First Amendment rights, because some of their fees end up contributing to units outside MSEA. The district court held that the arrangement was constitutional, and the Court of Appeals for the First Circuit affirmed. At issue before the Supreme Court is whether such a pooling arrangement for extra-unit, collective-bargaining litigation expenses is constitutional. The Court's decision will affect the financial burden on both nonmembers and local unions. Full text is available at www.law.cornell.edu/supct/cert/07-610.html. **TFL**

Prepared by Katy Hansen and Zsaleh Harivandi. Edited by Hana Bae.

Oregon v. Ice (07-901)

Appealed from the Supreme Court of Oregon (Oct. 11, 2007)
Oral argument: Oct. 15, 2008

The U.S. Supreme Court has determined that sentencing decisions that exceed the statutory maximum prescribed for a crime violate the Sixth Amendment right to a jury trial if they are based on additional fact finding by the trial judge. Thomas Ice was convicted of six crimes by a jury, and, under a state statutory scheme, the trial judge sentenced him to serve sentences for four of the convictions consecutively rather than concurrently. Ice argued that, because his sentence exceeded the statutory maximum for any one of his convictions and was based on determinations made by the trial judge rather than by the jury, it was unconstitutional. The Oregon Supreme Court agreed and reversed his conviction. In this case, the U.S. Supreme Court will consider whether its prior rulings apply to consecutive sentencing based on fact-finding determinations made by a judge rather than by a jury. Full text is available at www.law.cornell.edu/supct/cert/07-901.html. **TFL**

Prepared by Bill Kennedy and Michael Selss. Edited by Carrie Evans.

Pearson v. Callahan (07-751)

Appealed from the U.S. Court of Appeals for the Tenth Circuit (July 16, 2007)
Oral argument: Oct. 14, 2008

The Utah police, without obtaining a warrant, arrested Afton Callahan and searched his home after he was caught selling methamphetamine to an informant. Callahan brought a civil suit alleging that the officers had violated his Fourth Amendment rights. The officers assert that Callahan waived his privacy rights when he invited the informant into his home, because Callahan had assumed the risk that the informant would

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divulge illegal activity to the police. The police also argue that the "consent once removed" doctrine allows a warrantless search once a confidential informant is invited into the home and establishes probable cause. Callahan claims that the officers' reasoning is unfounded; inviting the confidential informant into his home does not mean that officers can subsequently enter and search his home without a warrant. Furthermore, he argues that "consent once removed" is not settled doctrine. Full text is available at www.law.cornell.edu/supct/cert/07-751.html. **TFL**

Prepared by Brian Chung and Jennelle Menendez. Edited by Lauren Buechner.

Summers v. Earth Island Institute (07-463)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (June 8, 2007)
Oral argument: Oct. 8, 2008

Earth Island Institute and other conservation groups sued the United States Forest Service after it authorized application of several federal regulations to a planned logging project. The conservation groups claimed that the regulations—which limit requirements for public notice, comment, and administrative appeals—were invalid under the Administrative Procedure Act. The parties settled the dispute over the regulations as they were applied to the logging, but the suit continued as a direct facial challenge to the regulations themselves. At issue before the Supreme Court in this case is whether the conservation groups established standing and ripeness to challenge the regulations after settling the controversy over the regulations' application to the specific project. The outcome of the case will influence federal agencies' requirements to provide administrative appeals, the ability of the public to challenge administrative actions, and the scope of equitable remedies against improper applications of agency regulations. Full text is available at www.law.cornell.edu/supct/cert/07-463.html. **TFL**

Prepared by Lucienne Pierre and Kaci White. Edited by Hana Bae.

Vaden v. Discover Bank (07-773)

Appealed from the U.S. Court of Appeals for the Fourth Circuit (June 13, 2007)
Oral argument: Oct. 6, 2008

Under the Federal Arbitration Act (FAA), a party to a private arbitration agreement may petition a court to compel arbitration only if federal law is implicated. A credit card agreement between Discover Bank and Betty Vaden contained an arbitration provision obligating card members to arbitrate disputes arising under the agreement. Discover's affiliate sued Vaden in state court when she failed to make payments, and Vaden counterclaimed under state law. Discover then petitioned the U.S. District Court of Maryland to compel arbitration under the FAA. The district court found that a federal question existed in the underlying dispute and granted the petition. On appeal, the Fourth Circuit affirmed the district court's finding that it had jurisdiction, because federal banking law pre-empted Vaden's state law claims. The Supreme Court's decision in this case will resolve a circuit split on when a federal court has jurisdiction over FAA petitions. Full text is available at www.law.cornell.edu/supct/cert/07-773.html. **TFL**

Prepared by Deepa Sarkar. Edited by Lauren Buechner.

Waddington v. Sarausad (07-772)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (March 19, 2007)
Oral argument: Oct. 15, 2008

In 1994, Cesar Sarausad was convicted of second-degree murder in a Washington state court for his role as a driver in a gang-related shooting. At trial, the prosecution argued that Sarausad could be found guilty of murder under Washington's statute related to the liability of an accomplice, even though he only drove the car. After repeated requests for clarification on the law, which the trial judge answered only by referring the jurors back to the Washington statute, the jury returned a guilty verdict. On appeal, Sarausad argued unsuccessfully that the instruction relieved the state of its burden to prove each element of the offense charged. Sarausad sought federal habeas corpus relief, which the Ninth Circuit granted. In deciding this case, the Supreme Court may determine if a federal court is required to defer to state court determination of state law when interpreting the constitutionality of jury instructions. Full text available at www.law.cornell.edu/supct/cert/07-772.html. **TFL**

Prepared by Tom Kurland, Joe Rancour. Edited by Courtney Zanocco.

Winter v. Natural Res. Def. Council (NRDC) (07-1239)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Feb. 29, 2008)
Oral argument: Oct. 8, 2008

On March 22, 2007, the Natural Resources Defense Council (NRDC) sued the U.S. Navy in the District Court for the Central District of California to enjoin the Navy from conducting training exercises off the coast of southern California. Specifically, the NRDC sought to prevent the Navy from using mid-frequency active (MFA) sonar during these exercises because such use harmed whales and other marine mammals. In January 2008, the district court issued a preliminary injunction. In response to the injunction, both the President and the Council for Environmental Quality (CEQ) exempted the Navy from two environmental statutes, finding that emergency circumstances existed that allowed the training to continue. The district court, however, found the exemptions were improper and upheld its preliminary injunction; the Ninth Circuit affirmed the decision. How the Supreme Court decides this case will not only reflect its view on balancing environmental protection and national security but also clarify the roles each federal branch has in these matters. Full text is available at www.law.cornell.edu/supct/cert/07-1239.html. **TFL**

Prepared by Joe Tucci and Sun Kim. Edited by Joe Hashmall.