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Cuomo v. The Clearing House Association LLC (08-453)

Appealed from the U.S. Court of Appeals for the Second Circuit (Dec. 4, 2007)

Oral Argument: April 28, 2009

Suspecting racially discriminatory lending practices, the attorney general of New York state sent letters of inquiry to numerous national banks requesting information about their lending practices and warning them of the potential illegality of their acts. The Office of the Comptroller of the Currency (OCC) and the Clearing House Association, which consists of several national banks, maintained that the National Bank Act's "visitorial powers" provisions bar states from enforcing state laws against national banks. New York's attorney general argues that the OCC's interpretation of the law violates the Administrative Procedures Act, and that the National Bank Act's visitorial powers provisions do not interfere with state enforcement of their generally applicable laws. The decision in this case may affect lending practices and the balance of power between the federal government and state governments.

Background

In 2005, Eliot Spitzer, in his official capacity as the New York state's attorney general, began investigating several national banks and their residential real estate lending practices for evidence of racial discrimination. Spitzer began his investigation after reviewing public data from the Home Mortgage Disclosure Act (HMDA) that suggested that some national banks issued a higher percentage of high-interest home mortgage loans to African-American and Hispanic borrowers than to white borrowers. Spitzer sent "letters of inquiry" to some of the mortgage lenders represented in the data, warning that their

actions "unless legally justified may violate federal and state antidiscrimination laws such as the Equal Credit Opportunity Act and its state counterpart, New York State Executive Law § 296-a." Instead of issuing a subpoena, Spitzer requested that lenders voluntarily provide the attorney general with data concerning loans related to property located in New York state.

After Spitzer's letter was sent, the Office of the Comptroller of the Currency, an independent bureau of the Department of the Treasury created to supervise the actions of national banks, sued to enjoin Spitzer's "investigative and enforcement efforts." The OCC is the agency in charge of implementing the National Bank Act, which lets national banks engage in numerous activities "and also limits the exercise of 'visitorial powers'" over national banks. A "visitation" occurs when a "superior" officer visits a corporation to observe and enforce its laws and regulations on the visited party. The OCC's suit to enjoin Spitzer's investigation was based on a recently promulgated regulation, which interprets the NBA's visitorial powers provision. In the regulation, the OCC interpreted the visitorial powers provision to preclude state officials from forcing national banks to comply with state or federal laws related to activities authorized by the NBA. In addition, the Clearing House Association LLC, a group of national banks, including several that received letters of inquiry, filed a similar complaint to enjoin Spitzer from investigating or enforcing federal and state discrimination-in-lending laws against Clearing House members. Spitzer filed a counterclaim, arguing that the OCC regulation was unlawful under the Administrative Procedures Act, that his investigation was not a prohibited use of visitorial powers, and alternatively, that he could sue

the banks under the Fair Housing Act (FHA).

The district court gave the OCC interpretation of the NBA's visitorial powers provision deference under *Chevron U.S.A. Inc. v. Natural Res. Def. Council*. The district court also held that the "FHA does not create an exception authorizing the exercise of visitorial powers. ..."

After Andrew Cuomo assumed the position of New York's attorney general, he was automatically substituted for Spitzer when the U.S. Court of Appeals for the Second Circuit reviewed the two lower court opinions. On appeal, the Second Circuit agreed that the OCC's interpretation of 12 U.S.C. § 484 deserved deference under *Chevron* and that it was proper to grant injunctive relief from Spitzer's attempts to investigate the national banks but vacated the holding that the attorney general cannot sue under the FHA. Attorney General Cuomo petitioned the U.S. Supreme Court for certiorari, which it granted on Jan. 16, 2009.

Possible Implications

In this case, the Supreme Court will address the balance of state and federal authority in the context of banks and lending practices. Petitioner Andrew Cuomo, in his official capacity as attorney general of state of New York, argues that the term "visitorial powers" used in the National Bank Act cannot reasonably be interpreted to encompass state enforcement of state consumer protection and anti-discrimination laws. Cuomo further maintains that deference under *Chevron* does not apply to the way the Office of the Comptroller of the Currency interprets the NBA. The Clearing House Association and the OCC, on the other hand, argue that the NBA precludes state investigations and enforcement covering the powers that national banks are authorized to hold. They further argue that the OCC's interpretation of the NBA's visitorial powers deserves *Chevron* deference because it is a reasonable interpretation that is well within Congress delegation of authority to the OCC.

Amici supporting Cuomo argue that a decision favoring Clearing House

and the OCC could affect the balance of power between the federal government and the states. Amici, which include the other 49 states and the District of Columbia, warn that a finding that precludes states from enforcing their nonpre-empted laws against federally chartered banks under the NBA is “a serious assault on our federal system.” The states argue that the political accountability and representation that citizens receive from their state governments are essential elements of federalism, and that the OCC’s exclusive enforcement of federal and state banking laws would interfere with this political accountability. In addition, the Conference of State Bank Supervisors and members of Congress emphasize that, if the Supreme Court sustains the OCC’s authority to regulate national banks, the responsibility for enforcing local laws would fall to executive branch officials, who are “insulated” from accountability to state citizens.

The OCC, the Clearing House Association, and their amici, on the other hand, argue that deferring to the OCC’s interpretation of visitorial powers will not disturb the balance of federalism between the states and the federal government. The OCC points to a case that is nearly 200 years old, *McCulloch v. Maryland*, to show that in regard to national banking, the Supreme Court has long held that federal law is superior to state law. The OCC further points to the recent case of *Watters v. Wachovia Bank N.A.*, which reaffirms that the states can exercise control over national banks only to the extent that Congress permits states to do so. In light of the federal government’s traditional dominance in this field, the OCC and the American Bankers Association contend that the regulation in question simply reserves to the federal government its traditional responsibility to enforce laws that regulate national banks and does not give rise to concerns about federalism.

However, amici for Cuomo maintain that upholding the OCC’s claim that it has the exclusive authority to enforce federal banks’ compliance with federal and state laws interferes with states’ ability to combat abusive and discriminatory lending practices. The Lawyers’ Committee for Civil Rights Under Law

explains that lending discrimination is a long-standing and widespread practice; therefore, both federal and state means must be available to remedy this discrimination. In addition, the committee contends that the current credit crisis continues to provide new examples of discrimination against minority borrowers that both states and the federal government must address. The states further argue that the problem of unfair mortgage lending, which underlies this case, will be exacerbated if the OCC’s interpretation is upheld. The states argue that they have been the primary vehicle for combating predatory mortgage lending and loans for years and point out that at least 25 states have enacted their own laws since 1999. The states claim that the OCC has a less effective history of enforcing consumer protections.

Does OCC’s Interpretation of the Statute Pass the *Chevron* Test?

The National Bank Act prohibits state officials from exercising visitorial powers over national banks except in specific circumstances. According to OCC, the agency responsible for overseeing the NBA, visitorial powers prohibit states from enforcing their laws against national banks. The issue in this case is whether the agency’s interpretation warrants deference. In *Chevron*, the U.S. Supreme Court held that courts must defer to an agency’s interpretation of a statute when the statute is ambiguous and the agency’s interpretation is reasonable.

Andrew M. Cuomo argues that the OCC’s interpretation fails both parts of the *Chevron* test: the statute unambiguously forecloses the interpretation; furthermore, he argues that, even if the statute is ambiguous, OCC’s interpretation is unreasonable. According to Cuomo, visitorial powers have historically referred to supervisory authority over corporations and not to general law enforcement. Therefore, he claims, the NBA only prohibits states from supervising national banks through on-site examinations to ensure that the banks are complying with their federal charters. Cuomo argues that the NBA does not prohibit states like New York from enforcing their own laws against national banks.

On the other hand, the Clearing House Association and the OCC counter that the OCC’s interpretation passes the *Chevron* test, because it provides a reasonable interpretation of the ambiguous term “visitorial powers.” Respondents emphasize the historical background of the term to prove that the prohibition on visitation has long been understood to restrict state law enforcement of regulations that apply to national banks.

Conclusion

In this case, the U.S. Supreme Court will determine to what extent states can enforce their laws against national banks. The respondents, the Clearing House Association and Office of the Comptroller of the Currency, argue that the NBA’s prohibition, which prevents states from exercising visitorial powers over national banks, also prevents states from enforcing their own laws against national banks. The petitioner, Andrew M. Cuomo, the attorney general of the state of New York, counters that the NBA’s visitorial powers provision only bars states from exercising supervisory authority over a national bank’s internal activities but does not impede states from enforcing their generally applicable laws. The Court’s decision in this case could significantly affect the balance between the federal and state governments’ authority. **TFL**

Prepared by Bill Kennedy and Sarah Soloveichik. Edited by Courtney Zanicco.

Northwest Austin Municipal Utility District Number One v. Mukasey (08-322)

Appealed from the U.S. District Court for the District of Columbia (May 30, 2008)

Oral Argument: April 29, 2009

In 1965, Congress passed the Voting Rights Act (VRA) under § 2 of the 15th Amendment to the U.S. Constitution. The VRA prohibits state actors from imposing discriminatory practices that cut into the voting rights of citizens. Congress specifically intended for the VRA to address the disenfranchisement

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of African-Americans by southern states that used literacy tests to prevent black citizens from voting. The VRA provides nationwide protection of voting rights but also supplies additional oversight to specific states and political subdivisions that have “particularly egregious histories of racial discrimination in voting.” Section 5 of the VRA prohibits these “covered jurisdictions” from changing any voting law without first going through a process called “preclearance.” This means that covered jurisdictions must get approval of any changes from the federal government through either the U.S. attorney general or a U.S. district court before those changes can go into effect. Section 4(b) of the VRA outlines a two-part test that establishes which jurisdictions are covered by these extra measures: namely, those that both used a “test or device” that limited voting (literacy tests, for instance) and had turnout or registration rates that were lower than 50 percent of the registered voting age population. Congress also provided for a “bailout” provision in § 4(a), which allowed for a covered jurisdiction with a clean record in recent years to earn an exemption from § 5 from a federal court through a declaratory judgment.

Sections 4 and 5 were originally temporary measures that had been set to expire in 1970. Congress, however, amended the VRA continuously over the years, renewing and expanding the scope of these two provisions to cover more jurisdictions. A significant change came in 1982, when Congress increased the scope of jurisdictions eligible for § 4(a) bailouts. Now, political subdivisions within covered states can apply for exemptions, which they could not do before.

Shortly after Congress extended the Voting Rights Act in 2006, Northwest Austin Municipal Utility District Number One filed an action in the U.S. District Court for the District of Columbia. The suit set forth two claims in the plaintiff’s complaint. First, the Municipal Utility District sought a declaratory judgment for an exemption from preclearance requirement that § 5 provides under § 4(a) of the VRA. Second, the plaintiff argued that § 5 was an unconstitutional

exercise of congressional power. The three-judge panel held that the Municipal Utility District was not entitled to a preclearance exemption, because it did not qualify as a political subdivision within the meaning of the VRA. The court then went on to uphold the constitutionality of § 5. In doing so, the court determined that the appropriate standard of review was the rationality standard set out in the Supreme Court’s decision in *South Carolina v. Katzenbach*, which held that Congress “may use any rational means to effectuate the constitutional prohibition of racial discrimination.” 383 U.S. 301, at 324. Using this deferential test, in the case of the Northwest Austin Municipal Utility District Number One, the court found that § 5 was a rational exercise of congressional authority, thus striking down the plaintiff’s facial challenge.

Discussion

Northwest Austin Municipal Utility District Number One was created in the late 1980s as a governmental entity within both Austin and Travis counties, but independent of both. Although the entire state of Texas is covered under the Voting Rights Act, the Municipal Utility District wants to exempt itself from the VRA’s provisions. What the Supreme Court decides could ultimately answer whether we, as a country, still need the corrective measures for which the VRA was enacted.

The Municipal Utility District argues that the need for many of the VRA’s provisions has passed, pointing to the recent election of Barack Obama as the first African-American president as a prime example of how far the country has come. The Municipal Utility District then argues that the VRA has not kept up with recent social changes and that Congress is using outdated data to intrude on state and local governments “when every indication demonstrates that the original emergency has now passed.”

Other jurisdictions trying to release themselves from the restrictions imposed by § 5 of the VRA include states like Alabama, which was one of the original covered jurisdictions under the VRA in 1965. Alabama’s governor, Bob

Riley, contends that, in the 34 years that the state has been covered by the VRA, Alabama has vastly improved its voting system, surpassing the national average in minority voter registration and voting for the past 16 years. The governor points out that, in 2006, when Congress extended § 5 for 25 more years, African-Americans made up 25 percent of Alabama’s state legislature, reflecting the similar percentage of the African-American population in the state. Moreover, the governor argues that, in the 10 years preceding the 2006 amendments, out of the 3,279 times any political subdivision in Alabama tried to preclear any changes in the voting system under § 5, the U.S. Department of Justice has objected only twice. He claims that, in extending the VRA, Congress did not have evidence that Alabama would engage in discriminatory voting practices without a preclearance requirement. The result, he concludes, forces the state to go through burdensome, time-consuming procedures to preclear any voting-related changes, thus impeding the efficient passage of beneficial or urgent laws. Georgia’s governor makes similar arguments, pointing to data showing increased participation in the government and voting system by the African-American population.

The federal government and amici are just as vocal about upholding the constitutionality of § 5 of the VRA. Many minority rights groups have come forward, arguing that § 5 is necessary in light of the discrimination still faced by minorities in political participation. For instance, the Leadership Conference on Civil Rights (LCCR) contends that the federal government needs to continuously provide opportunities for minority citizens to participate in the political process in order to protect their voting rights. Several caucuses in the U.S. House of Representatives agree with this position, arguing that the gains minorities have achieved over the years are a result of measures such as § 5 of the VRA. Both groups of amici fear that, in the absence of § 5, progress that was made in assuring voting rights to minorities and facilitating their participation in the political process would backslide, especially in light of the

continued political discrimination Congress found before it decided to extend the provisions defined in § 5 again in 2006.

Several other minority interest groups argue for the ongoing necessity of § 5. For instance, the Asian American Legal Defense and Education Fund and other Asian-American rights organizations argue that § 203 of the VRA, which provides for language assistance at the polls—combined with the pre-clearance requirement of § 5—form a powerful tool to ensure that Asian-Americans can exercise their right to vote in covered jurisdictions. The Asian-American rights organizations argue that, if these jurisdictions are not required to preclear any changes to the language assistance provision, many jurisdictions will attempt to get rid of these programs as a way to discourage minorities with limited English proficiency from voting. Voters from Alaskan native tribes with limited English skills also argue that § 5 is still necessary to address ongoing discriminatory practices in Alaska's voting system. The Navajo Nation makes similar arguments about the ongoing necessity of § 5 of the Voting Rights Act.

Interpretation of the Bailout Provision

Section 4(a) of the VRA allows any state or separately defined political subdivision subject to the federal preclearance requirements of § 5 to bail out of federal supervision, providing these jurisdictions meet a number of independent criteria. The Municipal Utility District argues that it is a political subdivision within the meaning of § 4 and is eligible to bail out of the federal preclearance requirement. The Municipal Utility District asserts that the bailout provision is required to limit the reach of § 5 to only the most severe "problem areas." This proposition is evidenced by the fact that, in 1982, Congress specifically expanded the bailout provision to include not just states but also political subdivisions. The Municipal Utility District urges the Court to follow *United States v. Board of Commissioners of Sheffield*, 435 U.S. 110 (1978), which held that any political entity that regulates voting could be subject to the enforcement provisions of § 5.

The government counters that the

Municipal Utility District has misinterpreted the ruling in *Sheffield* and that the bailout provision cannot apply to the district. The government contends that the approach offered by the Municipal Utility District is contrary to basic rules of statutory interpretation and urges the Court to follow the reasoning of *City of Rome v. United States*, 446 U.S. 156 (1980), which held that a municipality could not avail itself of a bailout independently of the state in which it sits. Furthermore, the government argues that, because the 15th Amendment applies specifically to the states, there is no constitutional requirement to extend a bailout to local governments.

The Constitutionality of § 5

Northwest Austin Municipal Utility District Number One also challenges the facial constitutionality of the 2006 reauthorization of the Voting Rights Act. At the outset, the Municipal Utility District argues that the district court wrongly concluded that legislation based on the 15th Amendment was subject to a constitutional standard that is more deferential to legislative determinations. The Municipal Utility District urges the Court to hold that whenever Congress enacts prophylactic legislation it should be clearly related to a substantively guaranteed right. The Municipal Utility District derives this proposed standard from the congruence and proportionality test announced in *City of Boerne v. Flores*, 521 U.S. 507 (1997) and argues that § 5 fails this test, because its prescreening requirements apply to any and all voting regulations, regardless of their effect on voter discrimination.

The government responds that the Court has repeatedly upheld the constitutionality of § 5 despite a number of similar challenges in the past. The National Association for the Advancement of Colored People echoes that stare decisis weighs heavily in favor of deferential review. Furthermore, the government argues that *City of Boerne* is particularly instructive in this case, precisely because § 5 was singled out in that opinion as being an example of "appropriate legislation" that is not subject to a heightened standard of review. According to the government, the Supreme Court has repeatedly upheld

deferential review when Congress has acted to protect a right that the courts have identified. The government distinguishes the ruling in *City of Boerne* as being about a general right created by the 14th Amendment, as opposed to a specific right created by the 15th Amendment.

Conclusion

This case presents the Supreme Court with the opportunity to rule on whether or not the federal government is still constitutionally authorized to regulate voting rules in states that have a history of racially based voter discrimination. In doing so, the Court can clarify the appropriate standard of review for legislation enacted on 15th Amendment grounds. Ultimately, this case will force the Court to examine two core values of our democracy: the right to vote and the principles of federalism. **TFL**

Prepared by Sun Kim and Tom Kurland. Edited by Joe Hashmall.

Bobby v. Bies (08-598)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (March 11, 2008)

Oral Argument: April 27, 2009

Michael Bies was convicted of kidnapping, murder, and attempted rape of a 10-year-old boy in 1992. Despite expert testimony indicating that he was mentally retarded, a jury recommended a death sentence and the judge delivered it. On appeal, the Ohio Supreme Court recognized that Bies was mentally retarded but upheld his sentence. However, in a case heard by the U.S. Supreme Court in 2002—*Atkins v. Virginia*—the Court ruled that execution of mentally retarded individuals violated the Eighth Amendment. Bies argues, that in light of that ruling, his death sentence should be commuted, because the Ohio Supreme Court had already recognized that he was mentally retarded, and therefore relitigating the issue would violate the Double Jeopardy Clause of the Fifth Amendment. Ohio argues that, because the issue of Bies' mental retardation was not necessary for the state's decision

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prior to the *Atkins* ruling, contesting the issue of his mental state is not a violation of the Double Jeopardy Clause. This case will help to determine whether states can have the opportunity to relitigate the issue of whether a person convicted of a capital offense is mentally retarded before the person's sentence is commuted in light of *Atkins*. Full text is available at topics.law.cornell.edu/supct/cert/08-598. **TFL**

Prepared by Kaci White and Katie Worthington. Edited by Hana Bae.

Forest Grove School District v. T. A. (08-305)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (April 28, 2008)

Oral Argument: April 28, 2009

In 2000, T.A.'s parents realized that their son was a troubled teenager, and though it was suspected that he might have a learning disability, his school district determined that he was not disabled and therefore not entitled to special education under the Individuals with Disabilities Education Act. T.A.'s problems continued, and in 2003 his parents placed him in a private school. In 2004, a hearing officer determined that T.A. was disabled and that, because Forest Grove School District had failed to offer him free appropriate public education, the district had to reimburse T.A.'s parents for the cost of the private school. The school district appealed, and the Ninth Circuit reversed the decision, holding that damages were not required because T.A.'s parents removed him unilaterally, without his ever having received special education services from a public agency. In this case, the Supreme Court will determine whether parents can unilaterally make this decision and then expect the school district to reimburse them, or parents must wait for the school district to take action. Full text is available at topics.law.cornell.edu/supct/cert/08-305. **TFL**

Prepared by Conrad C. Daly and Evan Ennis. Edited by Carrie Evans.

Horne v. Flores (08-289) and Speaker of the Arizona House v. Flores (08-294)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Feb. 22, 2008)

Oral Argument: April 20, 2009

Since 1992, Miriam Flores has been claiming that Arizona does not provide equal education opportunities to students who do not speak English as their first language, in violation of the Equal Education Opportunities Act (EEOA). In 2000, a district court found that Arizona's English Language Learners (ELL) programs were underfunded and ordered Arizona to provide adequate funds for the state's ELL programs. Arizona did not comply with the order to the court's satisfaction but did improve its ELL programs by making changes in the program's management. The speaker of Arizona's House of Representatives and the president of the state's senate sought Rule 60(b) relief from the district court's order, claiming that the improvements made by the schools constituted "appropriate action," as required by the EEOA. The U.S. Court of Appeals for the Ninth Circuit denied relief; now the U.S. Supreme Court will have to decide (1) whether Arizona's improvements to its ELL programs, although not achieved through court-ordered increases in sufficient funding, constituted "appropriate action" and thus were sufficient for Rule 60(b) relief from the court order and (2) whether the court should define "appropriate action" using the specific standards for the implementation of adequate English Language Learner programs established in the No Child Left Behind Act of 2001. Full text is available at topics.law.cornell.edu/supct/cert/08-289. **TFL**

Prepared by Isaac Lindbloom and Kelly Terranova. Edited by Lauren Buechner.

Iraq v. Beatty (07-1090) and Iraq v. Simon (08-539)

Appealed from the U.S. Court of Appeals for the District of Columbia Circuit (Nov. 21, 2007, and June 24, 2008, respectively)

Oral Argument: April 20, 2009

The Foreign Sovereign Immunities Act (FSIA) prevents foreign governments from being sued in courts of the United States. 28 U.S.C. § 1605(a)(7) creates an exception that allows U.S. courts to hear cases involving foreign governments that sponsor terrorism. Alleged victims of Saddam Hussein's regime sued the current Iraqi government in U.S. federal court under this exception. However, as a result of the Emergency Wartime Supplemental Appropriations Act of 2003 (EWSAA) and the National Defense Authorization Act for Fiscal Year 2008 (NDAA), the issue of whether U.S. courts have subject-matter jurisdiction over such claims has come into question. Iraq argues that both the EWSAA and the NDAA make the exception to sovereign immunity inapplicable to them. In both cases, the U.S. Court of Appeals for the District of Columbia ruled that, in spite of the EWSAA and the NDAA, U.S. courts maintain subject-matter jurisdiction. Iraq appealed, and the Supreme Court granted certiorari. The Supreme Court's decision will have an impact on U.S.-Iraqi relations, U.S. efforts to rebuild and support the current Iraqi government, and the ability of victims of Saddam Hussein's regime to sue the current Iraqi government. Full text is available at topics.law.cornell.edu/supct/cert/07-1090. **TFL**

Prepared by Lauren Jones and Gary Laio. Edited by Joe Hashmall.

Nijhawan v. Holder (08-495)

Appealed from the U.S. Court of Appeals for the Third Circuit (May 2, 2008)

Oral Argument: April 27, 2009

Manoj Nijhawan was convicted of conspiracy to commit bank, mail, and wire fraud, as well as for conspira-

cy to commit money laundering. Upon his conviction, proceedings in the Immigration Court were brought against him, and he was found to be subject to deportation under 8 U.S.C. § 1101(a)(43)(M)(i), which provides that an “aggravated felony,” for purposes of deportation, includes a conviction for “an offense that (i) involves fraud or deceit in which the loss to the victim exceeds \$10,000.” On appeal, the Third Circuit Court of Appeals held that the loss determination used for sentencing was sufficient to meet Subsection (M)(i), even though it was not a necessary element of his conviction. Nijhawan has challenged this ruling, arguing that both the “fraud or deceit” and “loss” elements must be found by a jury in order for Subsection (M)(i) to apply. The United States argues that the loss element follows a “qualifier” and therefore need not be an element of the conviction for Subsection (M)(i) to apply. Full text is available at topics.law.cornell.edu/supct/cert/08-495. **TFL**

Prepared by Zsaleb Harivandi and Joseph Tucci. Edited by Lauren Buechner.

Ricci v. DeStefano (07-1428) and Ricci v. DeStefano (08-328)

Appealed from the U.S. Court of Appeals for the Second Circuit (June 13, 2008)
Oral Argument: April 22, 2009

This case raises questions about what steps employers may take when avoiding discrimination against one group may mean discrimination against another group. The city of New Haven, Conn., administered a civil service examination for promotion of fire department personnel. The examination produced racially disproportionate results, favoring white candidates over black candidates. As a result, New Haven ultimately did not certify the examination. Ricci and other candidates who scored higher on the examination sued New Haven, claiming racial discrimination against the candidates who had higher scores. The district court granted summary judgment for New Haven, and the Second Circuit affirmed this decision. Ricci and the other petitioners claim that New Haven discriminated against them on the basis of

race, in violation of the Equal Protection Clause and Title VII. New Haven, on the other hand, claims that it was complying with Title VII in declining to certify the exam and did not violate either the Equal Protection Clause or Title VII. Full text is available at topics.law.cornell.edu/supct/cert/07-1428. **TFL**

Prepared by James McConnell and Lucienne Pierre. Edited by Hana Bae.

Safford Unified School District #1 et al. v. Redding (08-479)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (July 11, 2008)
Oral Argument: April 21, 2009

Safford Middle School officials strip searched a 13-year-old student, Savana Redding, seeking prescription pills; the search was based on uncorroborated information provided by another student. This case concerns whether the school violated Redding’s Fourth Amendment rights and, if so, whether qualified immunity shields the school officials from liability. After a district court and a Ninth Circuit panel found the search to be lawful, the Ninth Circuit reheard the case en banc and reversed the decision, holding that qualified immunity did not protect the school official who had ordered the search. The school district argues that the search was reasonable given the fellow student’s tip and the threat of prescription drug abuse, but that, even if the search was not reasonable, school officials must have qualified immunity so they can be free to exercise their judgment regarding drug abuse in schools. This case promises to provide guidance both to school officials seeking to carry out their duties effectively without violating students’ rights and to lower courts responsible for assessing school officials’ conduct. Full text is available at topics.law.cornell.edu/supct/cert/08-479. **TFL**

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

U.S., Ex Rel. Eisenstein v. New York, NY (08-660)

Appealed from the U.S. Court of Appeals for the Second Circuit (Aug. 19, 2008)
Oral Argument: April 21, 2009

Fifty-four days after the district court dismissed Irwin Eisenstein’s qui tam action against the city of New York, Eisenstein filed a notice of appeal with the Second Circuit. The Second Circuit asked the parties to provide briefs as to whether the notice of appeal had been filed in time. According to the Federal Rules of Appellate Procedure, parties have only 30 days to file a notice of appeal; the deadline is extended to 60 days when the United States is a party to the case. Eisenstein claimed that, even though the United States had declined to intervene, it was a “real party of interest” and therefore he was entitled to the 60-day limit. The city of New York conceded that, even though the United States was a “party of interest,” it was not a party for the purpose of measuring the time line on appeal. The Supreme Court granted certiorari to determine whether the relator in a qui tam action is entitled to the extended 60-day time limit for appeal when the United States chooses not to intervene in the action. Full text is available at topics.law.cornell.edu/supct/cert/08-660. **TFL**

Prepared by Jennelle Menendez and Joe Rancour. Edited by Carrie Evans.