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Christian Legal Society Chapter v. Martinez (08-1371)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (March 17, 2009)
Oral argument: April 19, 2010

The Hastings Christian Legal Society (CLS) required that its student officers agree with CLS's core religious beliefs and pledge to live accordingly. Because of this requirement, the University of California's Hastings College of Law refused to recognize CLS as a registered student organization, claiming that it violated the school's nondiscrimination policy prohibiting registered student organizations from discriminating on the basis of religion or sexual orientation. The Supreme Court's decision will settle a circuit split over whether the First Amendment's protection of freedom of association permits a public school to require religious student organizations to open their membership to all students, regardless of their beliefs.

Background

Hastings College of Law maintains a program to support registered student organizations (RSOs), which provides, among other benefits, funding and access to school facilities. In order to qualify as an RSO and receive support from the school, organizations are required to follow a nondiscrimination policy forbidding unlawful discrimination based on race, religion, sex, or sexual orientation. Even though RSOs may impose neutral membership and leadership requirements, "status or beliefs" cannot serve as grounds for exclusion according to Hastings' stated policy. Unregistered groups may still meet on campus in unused public spaces and use certain bulletin boards, e-mail, and other means of electronic communication to contact students.

The Hastings Christian Legal Society, the petitioner, is affiliated with the Christian Legal Society, a national religious organization devoted to providing support and counseling to Christian law students as well as promoting Christian values in the legal profession. The membership policy of CLS states that "unrepentant participation in or advocacy of a sexually immoral lifestyle … may be regarded by CLS as disqualifying such an individual from CLS membership"; the "immoral lifestyle" restriction includes all sexual conduct outside of marriage, including homosexual conduct. After CLS applied for recognition as an RSO, Hastings informed CLS that it would need to amend its membership policy to comply with the religion and sexual orientation provisions of the law school's nondiscrimination policy before becoming an RSO.

CLS sued in the U.S. District Court for the Northern District of California, arguing that Hastings had violated the group's rights to freedom of association, free speech, and free exercise of religion under the First Amendment by refusing to grant CLS an exemption to the nondiscrimination policy. *Christian Legal Soc. Chapter of Univ. of Cal. v. Kane*, 2006 WL 997217 (N.D. Cal. 2006). The district court rejected CLS's free speech claim, because the school's policy was viewpoint-neutral in that it was generally imposed on all student organizations and furthered Hastings' educational mission. The district court also rejected CLS's freedom of association claim, because Hastings had not directly ordered CLS to admit certain students but only placed conditions on using parts of its campus as a forum. The district court rejected CLS's free exercise claim on the ground that the school's policy itself did not single out religious beliefs. The Ninth Circuit Court of Appeals affirmed the district court's decisions. *Christian Legal Soc. Chapter of Univ. of Cal. v. Kane*, 319 Fed. Appx. 645 (9th Cir. 2009). The U.S. Supreme Court granted certiorari to decide whether it is constitutionally permissible for a public school to deny recognition to a religious group because the group requires its members to agree with its core beliefs.

Implications

The First Amendment protects the right to free association, which prohibits the government from burdening the right to associate with like-minded people to further shared goals and beliefs. Implicit in the First Amendment is the right of groups of people to assemble in order to express ideas (known as "expressive association"). This case will settle a circuit split over whether a public school may deny recognition to a religious student organization, because it did not comply with the school's antidiscrimination policy. Central to the case is a disagreement over whether an RSO serves as a representative of a single viewpoint in the larger campus community or whether the RSO itself is a forum for debate that should be open to all.

The Hastings Christian Legal Society contends that the school's requirement that student organizations admit all students, without regard to beliefs, violates CLS's right to expressive association. CLS argues that this policy restricts access to a "public forum" for speech. In support, 14 states writing as amici contend that prohibiting CLS from exercising its right to expressive association would undermine the state interest of promoting a diverse range of thought on the campuses of its public schools. These states further emphasize the importance of protecting diverse thoughts and active debate in fostering the marketplace of ideas at large. The Cato Institute points out that, in general, the only permissible restrictions on the freedom of association are those that relate to the risks of coercion, monopolies, or threats to public health and safety.

In contrast, Hastings College of Law emphasizes that the forum for speech created at the school by its RSO program is a limited one that is subject to reasonable viewpoint-neutral restrictions. Hastings contends that its policy is permissible, because it involves the gov-

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ernment's ability to attach reasonable conditions to participation in government-funded programs. The Association of American Law Schools emphasizes the importance of an open membership policy for student organizations in providing students the opportunity to learn from peers through their differences as well as their commonalities. Similarly, the American Bar Association argues that Hastings' policy is consistent with a school's interest in fostering an environment that promotes active participation in student activities and in obtaining a diverse student body.

According to CLS, the right of a group to limit its membership to those sharing its viewpoints is at the core of the First Amendment right to association. CLS contends that permitting the school to infringe on this right will have the effect of making smaller or unpopular groups vulnerable to being suppressed by larger groups through takeover or harassment. Smaller groups would be particularly vulnerable, CLS claims, because of larger groups' ability to "sabotage" the membership and leadership of the smaller groups by forming a voting majority. The Foundation for Individual Rights in Education and Students for Liberty expresses concerns that applying a nondiscrimination policy in this manner will threaten all student organizations that are centered around shared beliefs, whether they are religious, political, or related to some other ideology. The Foundation for Individual Rights in Education argues that protecting the right to expressive association in schools is necessary to preserve the diversity of viewpoints on campus.

However, Hastings responds that its nondiscrimination policy strengthens minority viewpoints by encouraging debate *within* as well as *among* groups. Hastings notes that the law school has never had an incident in which leadership was sabotaged. In addition, the National Lesbian, Gay, Bisexual, and Transgender Bar Association and 55 of its affiliated law student organizations emphasize that Hastings' refusal to permit discrimination is necessary to further society's interest in equality, especially in light of the long history of discrimination against gays and lesbians. These groups contend that promoting equal treatment in law school is particularly salient, given the need to eliminate the discrimination that still exists within the legal profession. The American Civil Liberties Union and the National Education Association add that CLS's claim to a religious exemption from a neutral rule has potentially far-reaching consequences in light of historical instances of religious beliefs being invoked to justify differential treatment on the basis of race, gender, national origin, and sexual orientation.

Legal Arguments

The First Amendment prohibits the government from discriminating against expression based on the speaker's viewpoint. *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 829–30 (1995). Hastings' nondiscrimination policy prohibits any registered student organization from discriminating "unlawfully on the basis of race, color, religion, national origin . . . or sexual orientation." The Christian Legal Society argues that Hastings' policy is viewpoint-discriminatory and subject to strict scrutiny, requiring a showing of a compelling government interest. CLS maintains that the government has no legitimate interest in prohibiting people from organizing around shared religious beliefs or from selecting leaders based on their religious views. CLS argues that Hastings' policy unconstitutionally excludes their local chapter from participating in a public forum, infringing on its First Amendment right to expressive association. CLS asserts that participation in a campus forum is necessary for the group to continue functioning in the student community.

Conversely, Hastings contends that its nondiscrimination policy is constitutional, because it is viewpoint-neutral and its conditions are reasonable. Hastings argues that the state can attach reasonable conditions to any program it funds, provided the conditions do not create a coercive environment. Hastings points out that a public university is a limited forum for student speech; therefore, viewpoint-neutral restrictions on speech are constitutional.

CLS argues that allowing "unrepentant" homosexuals into their leadership and voting membership is detrimental to the group's message and poses a severe burden on their ability to associate freely. CLS stresses that its requirements for leadership positions are not based on conduct, but on religious and moral beliefs, and the prohibition on sexual discrimination infringes on its right to advance a viewpoint based on those beliefs. CLS argues that, whereas other groups based on political or cultural views restrict their officers to those who hold a certain belief, Hastings' policy prohibits religious groups from selecting leaders based on their beliefs. CLS insists that its belief that "unrepentant" homosexuality is morally wrong does not mean that CLS seeks to create a hostile environment for homosexuals or to antagonize them. CLS notes that its rules do not exclude anyone based solely on sexual orientation, but based on beliefs and behavior that apply to homosexuals and heterosexuals alike.

Conversely, Hastings maintains that its open membership policy applies to all student groups, without targeting religion or particular beliefs, and is therefore viewpoint-neutral. Moreover, Hastings points out that CLS entered into a joint stipulation in the lower court proceedings acknowledging that the antidiscrimination policy requires every student group to be open to "any student regardless of their status or beliefs." Hastings contends that the fact that the nondiscrimination requirement may have a greater effect on a particular group does not mean that the policy is viewpoint-discriminatory. Hastings points out that various Christian groups have "thrived" at the school and contends the nondiscrimination policy does not prohibit speech based on religious viewpoints. Hastings stresses that it has never barred CLS's presence and has even allowed the group to use the school's facilities. Hastings argues that CLS has been given the same viewpoint-neutral choice as every other RSO has: a student group is free to abide by the open membership rule and receive certain benefits or disregard the rule and lose the school's recognition.

CLS responds that the ability for the group to exist apart from the benefits the school provides to RSOs does not lessen the discriminatory impact of the restriction. CLS maintains that Hastings' policy is unconstitutional even though noncompliance does not ban the group from

meeting or using school facilities. CLS argues that student funding is collected from every student at the school for the purpose of creating a space for diverse viewpoints, and a denial of such benefits infringes on the organization's ability to have a meeting space in a public forum.

Hastings maintains that allowing students equal access to its RSOs is the best way to enhance the student experience. Hastings further argues that it is reasonable to conclude that the mandatory student activity fee only underscores the need for students to fund activities in which everyone can partake. In addition, Hastings argues that it is reasonable to deny resources to RSOs that support discriminatory practices to use the Hastings' name because it may give the impression that the school supports those practices.

Conclusion

This case will determine whether a law school's nondiscrimination policy unconstitutionally restricts certain groups from receiving school funding and infringes their First Amendment right to expression and association. The Hastings Christian Legal Society argues that the policy infringes its First Amendment rights, because the policy discriminates on the basis of viewpoint. Hastings argues that the policy is viewpoint-neutral and reasonable. This case may have a wide impact on student organizations' ability to impose restrictions on the process used to admit members and select leaders and may affect the ability of student groups to receive school funding and recognition. **TFL**

Prepared by Sarah Chon and Frederick Wu. Edited by James McConnell and Joseph Rancour.

City of Ontario, Calif. v. Quon (08-1332)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (June 18, 2008)
Oral argument: April 19, 2010

The respondent, Officer Jeff Quon, a member of the SWAT team in the city of Ontario, Calif., was given a text-capable pager by the Ontario Police Department. The department ordered a review of the contents of the pager's text messages to determine how many of them were work-related. The search revealed that Quon had sent personal messages to friends and sexually explicit texts to both his wife and mistress. Quon sued the city of Ontario for violating his Fourth Amendment protection against unreasonable searches. The district court granted summary judgment in favor of the city, but the Ninth Circuit reversed the decision and granted summary judgment in favor of Quon. The U.S. Supreme Court will determine the degree of protection the Fourth Amendment provides for government employees' communications made using employer-issued devices.

Background

The city of Ontario contracted with Arch Wireless to provide the city with two-way pagers and text messaging services. The pagers were distributed to employees, including Sgt. Jeff Quon and Sgt. Steve Trujillo of the Ontario Police Department. When a text message is sent from one Arch Wireless pager to another, a copy of the message is archived on the Arch Wireless server. Although the city had no official policy concerning text messages on the pager, the city did have a general policy related to computer usage, Internet, and e-mail. The policy indicated that these devices were limited to communication related to the business of the city of Ontario and were subject to monitoring. During a staff meeting, Lt. Steve Duke, who managed the communications contract with Arch Wireless, informed Quon and other employees that pager messages were considered e-mails for purposes of the policy and that they were subject to being monitored.

Despite the lack of an official policy explicitly concerning the pagers, the city had an informal policy governing their use. Each pager had a limit of 25,000 characters; if an officer went above this limit, overage charges were assessed, and Lt. Duke was responsible for collecting these fees. According to Quon, Duke told him that if he paid the overage fee, the text messages would not be monitored to see whether or not they were work-related. If an employee wished to challenge the overage fee, Duke claimed he would audit the messages and make a determination. Quon went over the monthly character limit numerous times and paid the overage fees that were assessed for doing so.

Transcripts of pager messages were requested in order to determine whether or not the messages were work-related to allow the department to consider increasing the monthly limit if employees' work-related messages accounted for the overages. The city requested transcripts from Arch Wireless, including those of Jeff Quon's text messages. The audit revealed that many of Quon's text messages were personal in nature and some were sexually explicit and were directed to, among others, Quon's wife, Quon's mistress, and Sgt. Steve Trujillo—all of whom are also respondents in this case.

In 2003, Quon brought an action against the city of Ontario, the Police Department, Arch Wireless, and Police Chief Lloyd Scharf (collectively "the city") in the District Court for the Central District of California alleging violations of the Stored Communications Act (SCA), which restricts the circumstances under which a service provider may divulge the content of communications as well as his rights under the Fourth Amendment. *Quon v. Arch Wireless Operating Co. Inc.*, 529 F.3d 892, 898 (9th Cir. 2008). The district court found that Arch Wireless had not violated the SCA and that the city had not violated the Fourth Amendment. On appeal, the Court of Appeals for the Ninth Circuit found that the search violated the Fourth Amendment, because Quon had a reasonable expectation of privacy in the content of the messages, and the search was unreasonable in scope. *Id.* at 909, 911. The Ninth Circuit also determined that the chief of the Ontario Police Department was shielded by qualified immunity, but the city and the department itself were not immune to suit. The city petitioned for a writ of certiorari, which the Supreme Court granted on Dec. 14, 2009.

Implications

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The city of Ontario argues that Quon did not have a reasonable expectation of privacy in his text messages, and even if he did, that the search was reasonable. Conversely, Quon believes

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that he had a reasonable expectation of privacy in these text messages and that the search regarding his text messages was unreasonable in scope.

The National League of Cities, among others, writing in support of the city, stresses the strong interest of police departments in monitoring their employees' communications in order to ensure efficiency and effective operation. The league points out that the SWAT team deals with high-stakes emergencies. Precluding review of employee communications threatens to undermine policies that are important to the efficient management of the department, and personal use of pagers may put SWAT operations at risk because it may distract officers. The National School Boards Association and other education groups, which are concerned about the impact this decision could have on public schools, claim that the school districts' interest in keeping public schools safe far outweighs employee privacy interests in communication services that are provided by the employer.

News publication companies, including the *Los Angeles Times* and Associated Press, are concerned about the effect of a decision in favor of Quon on the free flow of information to the public. They argue that public records allow for oversight of government operations, which, in turn, amplifies the obligation of government agencies to monitor their employees' activities to make sure they are operating efficiently. These news organizations point out that pager messages may reveal information about the flaws in government operations that should be corrected.

The American Civil Liberties Union and others note the importance of this case in addressing the applicability of the Fourth Amendment to new mediums, such as text messages. The ACLU is concerned about the implications this case will have on employer-provided communication systems. These groups argue that allowing government access to employees' communications takes away the incentive for employee to use such communication systems, thereby reducing part of the business advantage of employer-provided systems, because an employee who uses a single mobile device for both work and personal purposes will be more readily reached by the employer when away from work than an employee who uses the device only for work-related purposes.

Supporting Quon, the New York Intellectual Property Law Association emphasizes that communication methods are rapidly changing and points out that the line between personal and professional communications in the workplace is often blurred; therefore, the scope of an employer's communication policies is inherently unclear. The association believes that a finding in favor of Quon will motivate private businesses and government agencies to clarify their communication policies and educate their employees on appropriate usage.

Legal Arguments

The city of Ontario argues that the search of Quon's text messages was constitutional, because he did not have a reasonable expectation of privacy in his communications on a work-issued pager. Quon counters that the search violated the Fourth Amendment, because the search was unnecessarily intrusive and his superior had authorized personal communication on the pager. The parties agree that the case is governed by *O'Connor v. Ortega*, 480 U.S. 709 (1987), which established the standard for noninvestigative searches of government employees by their employers under the Fourth Amendment. In *O'Connor*, the Court indicated that the "operational realities of the workplace" and the need for efficiency lessen Fourth Amendment protection for government employees. 480 U.S. at 717. However, the Court also cautioned that the search must still be reasonable within the context. *See id*. at 725ñ26. For these purposes, a search must be both "justified at its inception" and "reasonably related in scope to the circumstances which justified the interference in the first place." *Id*. at 726.

Did Quon have a reasonable expectation of privacy?

The city of Ontario claims that Quon did not have a reasonable expectation of privacy, because the pager was issued by the Ontario Police Department for use in SWAT activities, not for employees' personal use. The city also notes that Quon signed a form acknowledging the department's no-privacy policy covering e-mail, Internet, and computer use and that it was made clear to Quon that the policy applied to the pagers. The city further argues that, because Quon's text messages could be disclosed under the California Public Records Act, he could not have had any legitimate expectation of privacy. Finally, the city notes that Lt. Duke's statements that the pager would not be monitored apart from checking for issues related to overage charges did not create an expectation of privacy, because Duke had no authority to override the department's policy and because the statements concerned accounting issues that were not related to privacy in the content of messages.

In response, Quon notes that it was Lt. Duke who stated that the department's policy related to computer and e-mail usage would apply to the pagers. However, it was also Duke who told Quon that he would not audit the pager if Quon paid for overages. Quon claims that the city's position is inconsistent: the city would allow Duke to lower expectations of privacy by unilaterally establishing that the policy applied to pagers, yet it would not allow Duke to increase expectations of privacy by assuring Quon that he would not audit the texts if the overages were paid. Quon maintains that the city cannot claim that Duke is a policy-making official in one instance and not in the other. Quon also asserts that *O'Connor* requires a flexible assessment of the entire employment context, not just an evaluation of formal policies. Finally, Quon argues that the California Public Records Act does not apply in this case, because the text messages are not "public records," but were maintained by Arch Wireless, a private company. Quon claims that, under the Stored Communications Act, Arch Wireless could not disclose the contents of the messages without Quon's consent because the act permits "electronic communication service" providers to divulge contents of messages only with the consent of the intended recipient or addressee of the communications. *See* 18 U.S.C. § 2702(b)(1), (b)(3).

Was the search unreasonable?

The city of Ontario argues that, even if Quon had had a legitimate expectation of privacy as to the content of his text messages, the city's search of the text messages was reasonable. The city claims that, under *O'Connor*, privacy interests in the workplace are much lower than those in the home because of the government's interest in running an efficient workplace. The city argues that the Ninth Circuit erroneously applied a "less intrusive means" test, which finds a search unreasonable if the government could have used a less invasive procedure. The city argues that the Supreme Court and the majority of circuit courts have not applied this "less intrusive means" test, because it is too easy for a judge to determine a less invasive method after the fact. Rather, the city asserts that, under *O'Connor*, a court must look only at the actual search to determine its reasonableness.

The city further maintains that the review was reasonable, because it was undertaken to address efficiency concerns—specifically, to determine if the character limit in the communication plan was too low to meet the department's needs. The city claims that the search was reasonable in scope, because it allowed the department to determine what percentage of the texts was business-related. The city also argues that that search was reasonable even if it was conducted for the purpose of investigating potential misconduct by Quon, because excessive personal use of pagerswas never allowed, and the city has an interest in its employees working efficiently.

However, Quon argues that, because he had a reasonable expectation of privacy in his pager communications, the Fourth Amendment requires that the search be justified at its inception and reasonable in its scope. Quon argues that the search was not justified at its inception, because the department could not access the text messages under the Stored Communications Act without Quon's consent. Quon also claims that the search was unnecessary, because he had paid the overage charges, and the city had not been burdened by the personal text messages. Quon points out that, if the purpose of the search was to find out if officers were paying overage charges for work-related communications, the search was unnecessary because the officers had the right to challenge overage fees based on work-related messages.

Conclusion

This case will address the scope of the Fourth Amendment's protection against unreasonable searches in the context of a government employee's electronic communications. The Court's decision may have implications for government agencies' ability to promote efficiency by monitoring employee communications. This case may also signal how the Court is prepared to apply the Fourth Amendment to new mediums of communication and devices that are used for both personal and professional purposes. **TFL**

Prepared by Michelle Lynn and Chris Maier. Edited by Katie Worthington and Joe Rancour.

Doe # 1 v. Reed (09-559)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Oct. 22, 2009)
Oral argument: April 28, 2010

The dispute in this case centers on the state of Washington's Public Records Act (PRA), which requires state and local governments to make public the identities of signers of referendum petitions. Petition signers challenged the constitutionality of this disclosure, but the Ninth Circuit held that disclosure of petition signers' identities serves an important government interest and promotes government accountability. Specifically, petitioners, John Doe #1, et al., argue that petition signing is core political speech and, therefore, is subject to First Amendment protections. The respondents, Washington state's Secretary of State Sam Reed, et al., contend that petition signing, especially the signing of referendum petitions, is not necessarily political speech. Rather, Reed asserts that signing a referendum is a legislative act and a "quintessentially public" exercise. The Supreme Court will decide (1) whether petition signers' First Amendment rights to privacy in political speech, association, and belief requires strict scrutiny when a state compels public release of identifying information and (2) whether compelled disclosure of petition signers' identities is narrowly tailored to further a compelling state interest. Full text available at topics.law.cornell.edu/supct/cert/09-559. **TFL**

Prepared by Barbara Bispham and Kate Hajjar. Edited by Joseph Rancour.

Dolan v. United States (09-367)

Appealed from the U.S. Court of Appeals for the Tenth Circuit (June 26, 2009)
Oral argument: April 20, 2010

In 2007, Brian Russell Dolan, pleaded guilty to assault resulting in serious bodily injury. At sentencing, the federal district court recognized that the Mandatory Victims Restitution Act required him to pay restitution, but the court declined to issue a specific restitution order without first receiving more information regarding payments owed. Two hundred and nine days after sentencing, the district court issued a restitution order requiring Dolan to pay $104,649.78 to his victim. Dolan, claiming that 18 U.S.C. § 3664(d)(5) precludes ordering restitution more than 90 days after sentencing, argued that the district court lacked the authority to order him to pay restitution. Both the district court and the Tenth Circuit rejected Dolan's claim, holding that district courts retain permanent authority to impose an order of restitution. The Supreme Court will resolve the issue of whether a district court may enter a restitution order beyond the time limit prescribed in 18 U.S.C. § 3664(d)(5). Full text available at topics.law.cornell.edu/supct/cert/09-367. **TFL**

Prepared by Will Rosenzweig and Daniel Shatz. Edited by Lauren Jones.

Hardt v. Reliance Standard Life Ins. (09-448)

Appealed from the U.S. Court of Appeals for the Fourth Circuit (July 14, 2009)
Oral argument: April 26, 2010

Bridget Hardt, a former employee of Dan River Inc., brought suit against Reliance Insurance Co., Dan River's insurance provider, in an attempt

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to recover attorneys' fees for a suit she had brought in the Eastern District of Virginia to recover benefits pursuant to Dan River's Group Long-Term Disability Insurance Program Plan. The Eastern District remanded the case to Reliance, which, under ERISA, not only administers the plan but also decides whether an applicant is entitled to benefits. On remand, Reliance provided Hardt with the requested benefits. Hardt now seeks attorneys' fees under ERISA § 502(g)(1). Reliance argues that Hardt did not succeed on the merits in the lower court and, therefore, cannot satisfy ERISA's definition of "prevailing party." Hardt argues that the text of the statute does not include a prevailing party standard as a prerequisite to recovering attorneys' fees. The Supreme Court will decide whether ERISA § 502(g)(1) requires a party to succeed on the merits before attorneys' fees may be awarded and, if so, whether Hardt satisfies that requirement. Full text available at topics.law.cornell.edu/supct/cert/09-448. **TFL**

Prepared by Catherine Suh and Andrew Kaplan. Edited by Lara Haddad.

Krupski v. Costa Crociere (09-337)

Appealed from the U.S. Court of Appeals for the Eleventh Circuit (June 22, 2009)
Oral argument: April 21, 2010

Wanda Krupski suffered an injury as a passenger on a cruise ship owned and operated by Costa Crociere S.p.A. Her lawyer filed suit against Costa Cruise, N.V., LLC, Costa Crociere's booking agent, in a federal district court. The parties dismissed that suit by stipulation, because the owner or operator of a cruise ship is subject to liability, not its booking agent. Krupski filed an amended complaint against Costa Crociere—the correct party. Costa Crociere filed a motion to dismiss. The district court granted the motion, finding that Krupski had not made a "mistake" within the meaning of Federal Rule of Civil Procedure 15(c) that would allow the amendment to relate back to the original filing of the complaint. The Eleventh Circuit affirmed the district court's ruling. The Supreme Court's decision will clarify what constitutes a "mistake" within the meaning of Rule 15(c). Full text available at topics.law.cornell.edu/supct/cert/09-337. **TFL**

Prepared by Matthew Benner and Mian R. Wang. Edited by Lucienne Pierre.

Monsanto v. Geertson Seed Farm, et al. (09-475)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (June 24, 2009)
Oral argument: April 27, 2010

In 2005, the Animal and Plant Health Inspection Service (APHIS) deregulated RRA, a genetically engineered alfalfa seed developed by the Monsanto Corporation, the petitioner. The respondent, Geertson Seed Farm, a grower of conventional alfalfa, alleged that APHIS violated the National Environmental Policy Act (NEPA) by not conducting an environmental impact statement before deregulating RRA. A district court found that the NEPA had been violated and enjoined all future use of RRA until AHPIS completed its environmental impact statement. The Ninth Circuit affirmed the decision. Monsanto argues that the standard the lower courts employed to grant the injunction erroneously equated the NEPA violation with the likelihood of irreparable harm. Geertson maintains that the standard used was correct and that the company had demonstrated a likelihood of irreparable harm should RRA enter widespread use without further agency review. The Supreme Court's decision will clarify the standard plaintiffs must meet in order to enjoin federal action that violates the NEPA. Full text available at topics.law.cornell.edu/supct/cert/09-475. **TFL**

Prepared by Kevin Jackson and Eric Johnson. Edited by Lucienne Pierre.

Rent-A-Center West v. Jackson (09-497)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Sept. 9, 2009)
Oral argument: April 26, 2010

Antonio Jackson was an employee of Rent-A-Center West Inc. (RAC), the petitioner. Jackson sued RAC, alleging racial discrimination. Because Jackson had signed an arbitration clause as part of his employment contract, RAC asked the court to refer the case to arbitration. Jackson, however, argued the employment contract was unconscionable and therefore invalid. The arbitration clause contains a provision that only an arbitrator can decide validity. Jackson argues that a court must decide the validity of the arbitration clause before requiring arbitration. RAC argues that the parties agreed in the contract to submit this question to arbitration. The Ninth Circuit held that, when a party attacks the validity of an arbitration clause because of unconscionability, a court must decide its validity. The Supreme Court's decision will influence how arbitration clauses will function in the future and the degree of court involvement in arbitration agreements. Full text available at topics.law.cornell.edu/supct/cert/09-497. **TFL**

Prepared by Joanna Chen and Oliver Reimers. Edited by James McConnell.