*The previews are contributed by the Legal Information Institute, a nonprofit activity of Cornell Law School. The previews include 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.*

## HOLLINGSWORTH V. PERRY (12-144)

*Appealed from the U.S. Court of Appeals for the Ninth Circuit*

***Oral argument: Mar. 26, 2013***

### Questions presented

1. Whether the Equal Protection Clause of the Fourteenth Amendment prohibits the state of California from defining marriage as the union of a man and a woman.
2. Whether petitioners have standing under Article III, § 2 of the Constitution in this case.

### Issues

1. Does a state violate the Equal Protection Clause of the Fourteenth Amendment by defining marriage solely as the union of a man and a woman?
2. Do the official proponents of a state ballot initiative have standing to appeal a judgment invalidating that initiative?

### Facts

In 2000, California voters adopted Proposition 22, which amended the state's Family Code to provide that "only marriage between a man and a woman is valid or recognized in California." *See Perry v. Brown*, 671 F.3d 1052, 1065 (9th Cir. 2012). In May 2008, the California Supreme Court invalidated Proposition 22, finding that it violated the due-process and equal-protection guarantees of the California Constitution. In response to the California Supreme Court decision on Proposition 22, five California residents (proponents) collected voter signatures and filed petitions with the state to place Proposition 8 on the November 2008 ballot. After a contentious campaign, 52.3 percent of California voters approved Proposition 8, and it took effect as an amendment to the California Constitution.

In May 2009, after being denied marriage licenses, two California same-sex couples filed suit under 42 U.S.C. § 1983 in the U.S. District Court for the Northern District of California, alleging that Proposition 8 violated the Fourteenth Amendment equal protection guarantee of the U.S. Constitution. Because the State of California refused to argue in favor of Proposition 8's constitutionality, the district court allowed the original proponents of Proposition 8 to intervene under Federal Rule of Civil Procedure 24(a) to defend the lawsuit. After a lengthy bench trial, the district court ruled that Proposition 8 violated the Fourteenth Amendment's Equal Protection and Due Process Clauses and enjoined its enforcement.

The proponents appealed to the Ninth Circuit. The Ninth Circuit held that the proponents had standing to appeal—in other words, authority to defend Proposition 8 when state officials declined to do so—but it affirmed the district court's decision that Proposition 8 violated the Fourteenth Amendment. After the Ninth Circuit denied rehearing, the proponents appealed to the U.S. Supreme Court. *See* Brief for Petitioners, Dennis Hollingsworth et al., at 1, 11.

### Implications

This case presents the Supreme Court with the opportunity to consider whether a state can define marriage solely as the union of a man and a woman. *See* Brief for Petitioners at i. Hollingsworth argues that a state may do so because this definition is a "bedrock social institution" that "advances society's vital interest in responsible procreation and childrearing." Perry contends that gay men and lesbians should have fundamental and equal rights to marry and that "'[r]esponsible procreation' is not the defining purpose of marriage." *See* Brief for Respondents, Kristin M. Perry et al., at i.

#### *Optimal Familial and Societal Structure*

Hollingsworth and numerous amici argue that limiting marriage to a union between a man and a woman ("traditional marriage") optimizes responsible procreation and childrearing. *See, e.g.*, Brief for Petitioners at i; Brief of Amici Curiae State of Indiana et al. (Indiana) in Support of Petitioners at 16. According to these states, traditional marriage promotes cohabitation and mutual dedication of biological parents, a behavior that is exclusive to opposite-sex couples, necessary for their children's welfare and protection, and optimal for family structure as well as society as a whole.

Perry and supporting *amici*, including the United States, counter that excluding same-sex couples from marriage destabilizes and stigmatizes their relationships and thereby harms their children. *See, e.g.*, Brief for Respondents at 3; Brief for United States in at 22–23. The American Psychological Association (APA) and several supporting medical and social welfare organizations assert that homosexuality is immutable and that gay men and lesbians form stable, committed relationships; deserve the social, psychological, and health benefits of marriage; and are as fit and capable of parenting as heterosexuals. *See* Brief for APA at ii.

#### *Religion and Morality*

Many of Hollingsworth's supporters present religious and moral arguments in favor of limiting marriage to between a man and a woman. *See, e.g.*, Brief of Amici Curiae National Association of Evangelicals et al. (NAE) in Support of Petitioners at 18. For example, the NAE and several supporting religious organizations explain that their religions "extol the personal, familial, and social virtues of traditional marriage," while "condemning hatred and

mistreatment of homosexuals." The U.S. Conference of Catholic Bishops further cautions that defining marriage to include homosexual unions burdens religious liberty and marginalizes individuals who morally disagree.

In its support of Perry, the United States maintains that homosexual marriage does not burden religious liberty and asserts that mere use of the democratic process cannot render discriminatory laws legal. The Anti-Defamation League, meanwhile, argues that some religious and moral justifications for traditional marriage are simply a pretext for discrimination and that religious and moral views about marriage are changing.

## Legal Analysis

*Before* reaching the issue whether the Equal Protection Clause prohibits California from defining marriage as the union of a man and a woman, the Court must determine whether petitioners have standing to bring the suit before the Court. Hollingsworth argues that he has standing as an official proponent of Proposition 8 to defend the constitutionality of the initiative in lieu of state officials who have refused to do so. Perry contends that proponents of Proposition 8 have suffered no injury and have no continuing stake in the litigation, and thus do not have standing.

### *Do Petitioners Have Standing?*

Hollingsworth notes that California has a clear interest in the continued enforceability of its laws and has standing to defend the constitutionality of those laws. Because, according to petitioners, the state has failed to defend the constitutionality of Proposition 8, proponents of the amendment have standing to defend the initiative as "'agents of the people' of California." *See* Brief for Petitioners at 15 (quoting *Karcher v. May*, 848 U.S. 43, 65 (1997)). Moreover, Hollingsworth contends that California courts routinely permit the official proponents of an initiative to appear in defense of that initiative in Court.

Perry asserts that proponents of Proposition 8 will suffer no judicially cognizable harm if same-sex couples are allowed to marry. Lacking any showing or even assertion of harm, Perry claims that Hollingsworth does not have a sufficient stake in the litigation to justify standing. Perry claims that mere status as a proponent of an initiative is insufficient to confer Article III standing.

### *Does Proposition 8 Violate the Equal Protection Clause of the Fourteenth Amendment?*

Under the Equal Protection Clause, laws that categorize people on the basis of suspect classifications are subject to heightened scrutiny. *See, e.g.*, *Loving v. Virginia*, 388 U.S. 1 (1967) (quoting *Korematsu v. United States,* 323 U.S. 214, 216 (1944)) (applying "the 'most rigid scrutiny'" to classification based on race); *Craig v. Boren*, 429 U.S. 190 (1976) (applying intermediate scrutiny to classification based on sex). Laws that categorize based on some other classification must only pass rational-basis review. *See, e.g.*, *City of Cleburne v. Cleburne Living Ctr. Inc.*, 473 U.S. 432 (1985) (applying rational-basis review to classification based on mental disability).

Hollingsworth argues that sexual orientation is not a suspect classification, so the Court should subject Proposition 8 to rational-basis review. Hollingsworth argues that Proposition 8 only classifies based on a biological distinction between opposite-sex couples, who are capable of having children together, and same-sex couples, who are not. Thus, Hollingsworth contends that the Court need not determine what level of scrutiny might apply to laws that treat people differently based on sexual orientation alone.

Perry claims that Proposition 8 creates unequal access to marriage based on sexual orientation. Thus, Perry argues that the law should be subjected to heightened scrutiny because gay men and lesbians share many characteristics with other recognized suspect classes. Perry asserts that gay men and lesbians have faced and continue to face severe discrimination, citing the fact that in twenty-nine states it is legal to fire an employee and deny housing on the basis of sexual orientation. Furthermore, Perry argues that sexual orientation, like race or sex, is an immutable characteristic that has no bearing on an individual's ability to contribute to society.

### *Can Proposition 8 be sustained under rational-basis review or heightened scrutiny?*

Hollingsworth claims that the government has a legitimate interest in promoting opposite-sex marriage in furtherance of "responsible procreation and childrearing." Hollingsworth claims that Proposition 8 is rationally related to the government's interest because it channels potentially procreative conduct into stable, committed relationships. Thus, Hollingsworth contends that distinguishing between same- and opposite-sex couples does not violate the Equal Protection Clause because the distinction is relevant—*i.e.,* rationally related—to the government's interests.

Perry disputes that the amendment is at all concerned with the *promotion* of opposite-sex marriage or procreation, instead arguing that Proposition 8 only serves to *exclude* same-sex couples from marriage. Perry argues that prohibiting same-sex couples from entering into relationships designated as "marriage" is not rationally related to the state's interest in channeling more opposite-sex couples into marriage. Noting that many opposite-sex couples are unwilling or unable to procreate and thus as unlikely to procreate as same-sex couples, Perry contends that Proposition 8 is so overly underinclusive as to undermine the credulity of Hollingsworth's purported state interest in procreation.

## Conclusion

In this case, the U.S. Supreme Court will consider whether a state can define marriage solely as the union of a man and a woman and whether the proponents of Proposition 8 have standing to bring suit in federal court. The Court must also determine whether Proposition 8 violates the Equal Protection and Due Process guarantees of the Fourteenth Amendment. ⊙

*Written by Thomas Santoro and Stephen Wirth. Edited by Lisa Schmidt. The authors would like to thank former Supreme Court Reporter of Decisions Frank Wagner for his assistance in editing this preview. Additional sources: CBS News, Jennifer De Pinto & Stephanie Condon: Poll: 51 percent support same-sex marriage (Nov. 30, 2012); The Inquisitr: President Obama Formally Asks Supreme Court To Strike Down Gay Marriage Ban (Feb. 23, 2013); National Catholic Reporter, Richard Wolf: Gay marriage opponents make their case to Supreme Court (Feb. 19, 2013).*

## *UNITED STATES V. WINDSOR, (DOCKET NO. 12-307)*

*Appealed from the U.S.Court of Appeals, for the Second Circuit*

***Oral argument: Mar. 27, 2013***

### Question presented

Section 3 of DOMA defines the term "marriage" for all purposes under federal law, including the provision of federal benefits, as "only a legal union between one man and one woman as husband and wife." 1 U.S.C. 7. It similarly defines the term "spouse" as "a person of the opposite sex who is a husband or a wife." *Ibid*. The question presented is: Whether Section 3 of DOMA violates the Fifth Amendment's guarantee of equal protection of the laws as applied to persons of the same sex who are legally married under the laws of their state.

In addition to the question presented by the petition, the parties are directed to brief and argue the following questions: whether the executive branch's agreement with the court below that DOMA is unconstitutional deprives this court of jurisdiction to decide this case; and whether the BLAG has Article III standing in this case.

### Issue

The substantive issue is whether Section 3 of the Defense of Marriage Act violates the right to equal protection of same-sex couples who are legally married under state law. The procedural issue is whether the Supreme Court has jurisdiction over this case in light of the executive branch's refusal to defend the law in court.

### Facts

Edith Windsor and Thea Clara Spyer first met in New York City in 1963. The couple decided to formally wed in Canada in 2007. Spyer passed away in February 2009, leaving Windsor as her widow and sole executor of the estate.

Their marriage was recognized by New York state law but, upon Spyer's death, Windsor was denied a spousal deduction for her federal estate taxes under a federal law. DOMA's Section 3 states that for the purposes of federal law the words "marriage" and "spouse" refer only to legal unions between one man and one woman. Windsor commenced this suit seeking a full refund of the federal estate tax and a declaration that DOMA's Section 3 is unconstitutional under the equal protection clause of the Fifth Amendment.

The president and the attorney general eventually changed positions and announced that they would no longer defend DOMA in court. Accordingly, the Bipartisan Legal Advisory Group of the U.S. House of Representatives, (BLAG), has taken up defense of DOMA. After the U.S. District Court for the Southern District of New York ruled in favor of Windsor on summary judgment, the Second Circuit Court of Appeals affirmed.

### Implications

The Obama Administration argues Section 3, which defines marriage as between one man and one woman, is unconstitutional under the equal protection clause and advocates for heightened scrutiny of laws discriminating on the basis of sexual orientation. BLAG argues that the Court should apply the lowest level of scrutiny, rational basis review, because the lesbian, gay, bisexual, and transgender (LGBT) community is not a protected class.

Since all parties agree the Supreme Court has jurisdiction, the Court appointed an amica curiae to argue against jurisdiction. The amica curiae argues there is no injury to Congress if DOMA is overturned, that BLAG violates the separation of powers, and that no Article III controversy exists.

#### *DOMA's Effects on the Economy*

DOMA supporters claim the law will save the federal government money by limiting tax savings and avoiding Social Security and other payments to same-sex spouses. *See* Brief for BLAG at 38–39. According to BLAG, upholding DOMA is in the best financial interests of the government because recognizing same-sex marriages would have a negative net impact on the federal budget.

There are 278 businesses that are opposed to DOMA and argue the law is another form of government regulation burdening businesses, inevitably leading to the waste of resources. *See* Brief of 278 Employers and Organizations Representing Employers as *Amici Curiae* in Support of Respondent (On the Merits) at 25. The businesses argue the law creates a burden for employers by forcing them to discriminate against same-sex couples when administering healthcare plans and other benefits.

#### *The Social Implications of DOMA*

BLAG argues DOMA serves a federal interest by preserving traditional marriage to encourage responsible procreation. BLAG claims responsible procreation is at the heart of society's interest in regulating marriage because of the inextricable link between marriage and children.

Those opposed to DOMA argue it is bad social policy and claim that all Americans—regardless of their sexual orientation—deserve the rights afforded to their peers because all are contributing members of society. *See* Brief for *Amici Curiae* Leadership Conference on Civil and Human Rights, *et al.* in Support of Respondent at 20-21. They also argue that burdens placed on members of the LGBT community are based on harmful stereotypes with no basis in the individuals' abilities.

#### *Federalism Concerns*

Proponents of DOMA claim the law protects states' sovereignty and neither creates a federalism problem nor hinders state autonomy. *See* Brief on the Merits of *Amici Curiae* United States Senators Orrin G. Hatch, *et al.* in Support of Respondent at 21–22. DOMA ensures states can independently decide to refuse same-sex marriages because DOMA allows each state to define marriage for itself under state law, and does not allow any state's definition to eclipse another's.

Those opposed to DOMA claim Congress disregarded federalism concerns, even as legislators in Congress championed states' rights. *See* Brief for the Petitioner, United States on the (On the Merits) at 44. Although the policy was born from conservative states' concern that they might be forced to recognize same-sex marriages from other states, opponents argue DOMA interferes with states' rights by hampering some states' decisions to treat all of their citizens equally.

#### *Jurisdictional Issues*

If the Court rules that it does not have jurisdiction because of the Obama administration's decision not to defend DOMA, the Second Circuit's ruling would remain in place and DOMA would be considered unconstitutional and unenforceable in the states within the Second Circuit. *See* Brief for Court-Appointed Amica Curiae Addressing Jurisdiction at 23, 33. If the Court holds that there is a lack of jurisdic-

tion, then it will not decide the constitutionality of DOMA. *See* Brief for Respondent (On Jurisdiction) at 12–13.

**Legal Analysis**

***Level of Scrutiny***

The Obama administration, arguing on behalf of the United States, takes the position that DOMA's Section 3 is unconstitutional and advocates for heightened scrutiny. First, the United States points out gay and lesbian people have been subject to a history of discrimination, in society aspects such as employment, immigration, and voter referenda. Also, the United States argues that sexual orientation is a discernible characteristic that distinguishes gay and lesbian people as a discrete minority group. Moreover, the United States contends that gay and lesbian people are both a minority and politically powerless.

BLAG argues that the Court should apply rational basis review to DOMA. In BLAG's view, none of the factors that would qualify a class for suspect treatment are adequate in this case. BLAG also notes that it has been over 40 years since the Court has decided a new group should be considered a suspect or semi-suspect class, demonstrating the Court is weary of adding to the very limited list of groups that trigger higher levels of scrutiny.

***Whether DOMA Should Survive Review on the Merits***

Under the rational basis standard of review, the government needs to demonstrate a legitimate purpose for using the suspect classification, which in this case would be classifying same-sex marriage differently from traditional opposite-sex marriage. BLAG argues that the legitimate purpose Congress advanced is a uniform national definition of marriage to ensure couples in different states will be treated the same. BLAG also points to the historical prevalence of marriage being defined as between a man and a woman as a reason why DOMA's definition is rational.

On the other side, the United States argues that DOMA is a violation of the Equal Protection Clause of the Fifth Amendment. The United States does not believe tradition alone can justify discrimination. Additionally, the United States dismisses the justification of supporting Congress' general interest in defending the institution of traditional marriage as lacking a sound basis. The legislative record does not contain evidence that denying federal benefits to same-sex couples would encourage responsible procreation or child-rearing.

***Role of Federal Government in Defining Marriage***

BLAG contends that Congress was acting within its sovereign authority and other groups support DOMA as being allowed under the "Necessary and Proper" clause, which is an expansive provision of the Constitution allowing the government an unenumerated power so long as that power is necessary and proper to an enumerated power, which in this case is the federal government's power to tax.

Federal law scholars argue that DOMA is not necessary and proper for Congress to carry out any enumerated power as DOMA affects many different kinds of benefits, not just benefits related to the power of the purse. See Brief for Amicus Curiae Federal Law professors at 12-14.

***Whether Jurisdictional Concerns Should Prevent the Court From a Decision on the Merits***

BLAG, the Obama administration, and Windsor all agree that with BLAG defending DOMA and the executive branch enforcing DOMA, there is still a live controversy for the Supreme Court to decide.

The amica curiae argues that BLAG lacks standing because there is no injury to Congress if DOMA is overturned; members of Congress do not have a personal stake in this litigation.

**Conclusion**

In this case, the Supreme Court will determine the Constitutionality of Section 3 of DOMA. Windsor argues that DOMA is unconstitutional as it tramples on her right to equal protection under the Fifth Amendment. BLAG argues that DOMA is constitutional and the law should undergo minimal scrutiny under a rational basis test because sexual orientation is not a historically protected class. The Court's decision may uphold the federal government's definition of marriage as between one man and one woman, which would continue to allow for each state to decide for itself whether to recognize same-sex unions in its own state and those from other states. ⊙

*Written by Michaela Dudley and Allison Nolan Edited by Jenny Liu. The authors would like to thank Professor Michael C. Dorf for his insights into this case and former Supreme Court Reporter of Decisions Frank Wagner for his assistance in editing this preview.*

## BULLOCK V. BANKCHAMPAIGN, N.A.

*Appealed from the U.S. Court of Appeals for the Eleventh Circuit*
***Oral argument: March 18, 2013***

Randy Bullock filed for bankruptcy in 2009 to discharge a judgment debt from a 1999 lawsuit brought by his brothers. His brothers had sued him for breach of fiduciary duty as trustee of their father's trust. Bullock was appointed trustee in 1978, and without the beneficiaries' knowledge, took three loans from the trust, which he ultimately paid back in full. In 2002, an Illinois state court awarded the brothers damages of $285,000, concluding that Bullock did not appear to have malicious intent, but that he indisputably engaged in self-dealing, thus violating his fiduciary duty. After filing for bankruptcy, BankChampaign N.A., who was appointed successor trustee, sued Bullock pursuant to 11 U.S.C. § 523(a)(4), claiming that he could not discharge the judgment debt because it arose from a "defalcation." The court concluded that Bullock's self-dealing constituted defalcation, and the district court and Eleventh Circuit affirmed. The Supreme Court's decision will determine what level of misconduct by a trustee rises to "defalcation" under the Bankruptcy Code. Full text is available at www.law.cornell.edu/supct/cert/11-1518. ⊙

*Written by Alexandra Cowen and Chanwoo Park. Edited by Brooks Kaufman.*

## DAN'S CITY USED CARS INC. V. PELKEY

*Appealed from the New Hampshire Supreme Court*
***Oral argument: March 20, 2013***

Robert Pelkey's car was towed from his apartment complex for failure to move it during a snowstorm. At the time, Pelkey was quite ill and eventually was sent to the

hospital to have his left foot amputated. When he returned home and was made aware that his car was towed, he had his attorney track down the car at Dan's City towing and ask for it back. When they disposed of the car, Pelkey sued for violations of New Hampshire's consumer protection laws and common law negligence. Dan's City claimed that the Federal Aviation Administration Authorization Act (FAAAA) controlled motor carriers and preempted any state law claims. Pelkey argues that his state law remedies were not preempted because they dealt with the disposal of property and debt collection on a lien, rather than the "services" of the towing company. Dan's City contends these actions are incidental to their towing and storage of the vehicle and therefore are properly construed as services of their company. The Supreme Court granted certiorari to resolve a circuit split on the scope of preemption under the FAAAA. Full text is available at www.law.cornell.edu/supct/cert/12-52. ⊙

*Written by Dillon Horne and Matthew Soares. Edited by Jenny Liu.*

## FTC V. WATSON PHARMACEUTICALS INC.

*Appealed from the U.S. Court of Appeals for the Eleventh Circuit*
***Oral argument: March 25, 2013***

Solvay Pharmaceuticals Inc. sued Watson Pharmaceuticals Inc., a generic drug manufacturer, for infringement of Solvay's patent for its drug AndroGel. In response, Watson argued that Solvay's patent was invalid. *Before* a judgment, however, the parties settled the case. As part of the agreement, Solvay would pay Watson in exchange for Watson's agreement to delay entering the market with a generic version of AndroGel. The FTC then brought an action against all of the parties to the AndroGel case, contending that the agreement amounted to an anticompetitive attempt to share in the profits afforded by a patent that, but for the settlement agreement, would have been invalidated in court. The district court dismissed the FTC's claims and the court of appeals affirmed. The Supreme Court's decision in this case may determine whether agreements such as those in this case, commonly referred to as reverse payments, constitute unfair competition in violation of federal law. Full text is available at www.law.cornell.edu/supct/cert/12-416.

*Written by Zachary Glantz and Jonathan Goddard. Edited by Brooks Kaufman.*

## MARVIN D. HORNE, ET AL., V. DEPARTMENT OF AGRICULTURE

*Appealed from the U.S. Court of Appeals for the Ninth Circuit*
***Oral argument: March 20, 2013***

In 2002, California raisin farmers Marvin and Lena Horne substantially reorganized their raisin business in order to handle the raisins that they produced to try to avoid the requirement under the Agricultural Marketing Agreement Act of 1937 (AMAA) to turn over a percentage of handled raisins to the government. After Horne's failure to comply, the USDA brought an action against Horne according to the required AMAA procedure. Although the Ninth Circuit Court of Appeals initially ruled against Horne on his takings claim, the Ninth Circuit amended its opinion and determined that Horne's takings claim was "unripe" because Horne had to raise his takings claim in the Court of Federal Claims pursuant to the Tucker Act. Horne and the USDA disagree over whether Horne's takings claim is ripe for adjudication. Specifically, the USDA believes that the AMAA does not displace the Tucker Act's otherwise-mandatory procedures, while Horne asserts that the AMAA's comprehensive statutory scheme displaces the Tucker Act for all related claims. Full text is available at www.law.cornell.edu/supct/cert/12-123. ⊙

*Written by Ethan Roman and Dan Youngblut. Edited by Brandon Bodnar.*

## MUTUAL PHARMACEUTICAL CO. V. BARTLETT

*Appealed from the U.S. Court of Appeals for the First Circuit*
***Oral argument: March 19, 2013***

After receiving a prescription for sulindac, the generic version of Clinoril, Karen Bartlett developed Stevens-Johnson Syndrome and toxic epidermal necrolysis, rare skin disorders that causes the sufferer's skin to deteriorate by either being burned off or by turning into an open wound. A New Hampshire federal jury awarded Bartlett $21.06 million for her injuries based on a New Hampshire products liability claim for defective design. Mutual Pharmaceutical Company, a sulindac manufacturer, now challenges that decision by arguing that federal law regulating generic drugs preempts New Hampshire's design-defect law. The U.S. Court of Appeals for the First Circuit upheld the lower court design, finding no preemption, despite Supreme Court precedent finding preemption in similar contexts. Mutual Pharmaceutical argues that the Food, Drug, and Cosmetic Act *pre-empt*s the state design-defect law because the act requires generic drug manufacturers to produce generic medications that are bioequivalent to the corresponding name brand version of the drug. Bartlett responds that the state law does not conflict with federal law because the state law imposes no duty for sellers to change their product from the name brand version. Full text is available at www.law.cornell.edu/supct/cert/12-142. ⊙

*Written by Nathan Taylor and Cristina Quinones-Betancourt. Edited by Charlotte Davis.*

## OXFORD HEALTH PLANS, LLC V. SUTTER

*Appealed from the U.S. Court of Appeals for the Third Circuit*
***Oral argument: March 25, 2013***

Petitioner Oxford Health Plans, LLC (Oxford) agreed to pay Respondent Dr. Ivan Sutter for providing medical services to members of Oxford's managed care network. Their contract contains a broad arbitration clause which prohibits litigation of their disputes in court and instead requires that they arbitrate their disputes. In 2002, Sutter complained that Oxford failed to pay him and other primary healthcare providers for medical services. After an arbitrator decided that their contract clause allowed "class arbitration," or the consideration of an arbitration claim on behalf of a group of similar claims, Oxford went to federal court to vacate the arbitration award, arguing that the arbitrator exceeded his power to arbitrate. Both the district court and

the U.S. Court of Appeals for the Third Circuit denied Oxford's motion to vacate and instead upheld the arbitrator's decision to hear Sutter's claim in class arbitration. Oxford argues that the arbitrator's decision for class arbitration must be vacated because Oxford and Sutter never agreed to class arbitration in their contract exchanging medical services for compensation. In contrast, Sutter argues that the Court should uphold the award because the arbitrator acted within his powers and based his decision on the terms of the agreement between the parties. Full text is available at www.law.cornell.edu/supct/cert/12-135. ⊙

*Written by Ali Paradis and Alfonso Dulcey. Edited by Charlotte Davis.*

## SEBELIUS V. CLOER

*Appealed from the U.S. Court of Appeals for the Federal Circuit*
***Oral argument: March 19, 2013***

Respondent Dr. Melissa Cloer was vaccinated against hepatitis-B in 1996 and 1997. Subsequently, Cloer noticed an electric shock sensation go through her body and numbness in her arm and hand, which later medical exams identified as multiple sclerosis resulting from her vaccinations. Cloer filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986. Although her petition was dismissed due to the expiration of the statute of limitations, Cloer believes she is entitled to, at a minimum, a reward of her attorneys' fees associated with the initial filing. Petitioner Sebelius, secretary of health and human services, argues however, that the text, structure, and purpose of the Vaccine Act as well as three canons of construction prove that a person who files an untimely petition should not receive compensation. The Supreme Court's decision will affect the efficiency and timely resolution of petitions for compensation and reward of attorneys' fees for vaccine-related injury claims. Moreover, the Court's ruling will impact the confidentiality and privacy of claimants' medical histories and personal information. Full text is available at www.law.cornell.edu/supct/cert/12-236. ⊙

*Written by Z. Lu and Sherry Jarons. Edited by Judah Druck.*

## STATE OF ARIZONA V. INTER TRIBAL COUNCIL OF ARIZONA

*Appealed from the U.S. Court of Appeals for the Ninth Circuit*
***Oral argument: March 18, 2013***

The state of Arizona passed Proposition 200 by popular referendum. Proposition 200 requires that a person must present proof of citizenship when registering to vote and a voter must present identification when casting a ballot. Multiple parties sued the state of Arizona, arguing that Congress had preempted the states in this area of election law with the National Voter Registration Act. While the Ninth Circuit ruled that the National Voter Registration Act superseded the registration requirement, the court also held that the identification requirement at a polling place is legal. Arizona is now appealing the registration requirement to the Supreme Court, arguing that this falls within their powers and the lower courts are taking a broader view of preemption that is not in line with the past rulings of the Supreme Court. The outcome of this case will play a large role in the ability of the states to pass laws governing voter registration, and the Court's evaluation of *preempt*ion will likely have a large effect on the balance of power between the states and federal government. Full text is available at www.law.cornell.edu/supct/cert/12-71. ⊙

*Written by Dean Caruvana and Claire Holton-Basaldua. Edited by Brandon Bodnar.*