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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS V. THE INCLUSIVE COMMUNITIES PROJECT (13-1371)

Court below: United States Court of Appeals for the Fifth Circuit

Oral argument: Jan. 21, 2015

Issues

Does the Fair Housing Act (FHA) include a right of action for disparate-impact claims?

Question as Framed for the Court by the Parties

Are disparate-impact claims cognizable under the Fair Housing Act?

Facts

The Texas Department of Housing and Community Affairs (TDHCA) is a state agency that allocates low-income housing tax credits (LIHTC) to housing developers based on its qualified allocation plan, prioritizing, in descending order, the development's financial feasibility, community support, and tenant income levels, along with other criteria. Inclusive Communities locates families eligible for the Dallas Housing Authority's Section 8 housing choice vouchers. Under the LIHTC program, developments receiving tax credits are not permitted to refuse housing to Section 8 voucher holders on that basis alone. Because of this restriction, where LIHTC-funded developments are located in the Dallas area is important to the individuals who are aided by Inclusive Communities.

This case arose when Inclusive Communities brought a federal civil suit against the TDHCA in U.S. District Court for the Northern District of Texas alleging that TDHCA abused its discretion by allocating tax credits in a way that deprived individuals of housing assistance because of race. Specifically, Inclusive Communities argued that the TDHCA gave tax credits to developments built primarily in minority-dominated areas, thus fostering racially segregated communities in violation of the FHA.

The district court found that the TDHCA's allocation practices created a disparate impact and ordered the TDHCA to create a remedial plan. The TDHCA created such a plan, which the district court adopted in part. On appeal, the Fifth Circuit reversed, holding that HUD's then-newly promulgated regulations allowing for disparate-impact housing discrimination cases controlled. Specifically, the Fifth Circuit ruled that the district court applied the wrong legal test for assessing disparate-impact claims and remanded for further proceedings, but still acknowledged that the FHA allows for disparate-impact liability. The Fifth Circuit's reversal also eliminated the TDHCA's remedial plan. The TDHCA then filed a petition for a writ of certiorari, which was granted by the Supreme Court on Oct, 2, 2014.

Discussion

The Court is presented with an opportunity to resolve whether Congress intended for disparate-liability claims to be brought under the FHA in relation to federally subsidized affordable housing. The TDHCA and amici contend that the FHA unambiguously speaks only to intentional racial discrimination. Inclusive Communities and amici counter that disparate-impact discrimination has consistently been a contemplated mode of liability under the FHA. Each side of this policy debate centers upon two different considerations: (1) how the FHA was intended to operate within our society, and (2) the costs on the insurance market that may arise from construing liability for disparate-impact claims under the FHA.

Consequences of Disparate-Impact Liability on Society

The American Civil Rights Union (ACRU), as amicus supporting the TDHCA, cautions that disparate-impact liability under the FHA would prohibit necessary practices in our society. For example, the ACRU explains, there are many housing qualifications that are correlative to race, including credit scores, crime records, and financial accumulations. In fact, amicus the Consumer Data Industry Association, a service that screens prospective tenants' financial information, argues that imposing disparate-impact liability would undermine responsible landlord screening that ensures a safe living environment.

Conversely, the National Association for the Advancement of Colored People Legal Defense and Educational Fund (NAACP LDEF), writing as an amicus supporting Inclusive Communities, counters that disparate-impact liability is necessary to further the FHA's aims to root out and eliminate housing discrimination. Specifically, the NAACP LDEF focuses on socioeconomic data highlighting the effects of segregated neighborhoods on social mobility and community health. Because intentionally discriminatory laws are unlikely to exist, the NAACP continues, disparate-impact liability targets the social conditions that promote racial segregation. Indeed, the NAACP concludes, disparate-impact liability is a fair and workable standard because its burden-shifting legal framework protects fair policies while eliminating unjust ones.

Effects Of Disparate-Impact Liability on the Insurance Market

In support of the TDHCA, several insurance groups suggest that inferring a disparate-impact liability framework in the FHA would impose additional costs that would create uncertainty in the insurance market, which requires predictive risk assessment. In particular, the insurance groups maintain that risk classification is race neutral, but calculating risk necessarily contemplates statistical

information that would be undermined by disparate-impact liability under the FHA.

However, the NAACP and its Milwaukee, Wisconsin, branch, in support of Inclusive Communities, argue that the disparate-impact claims will not necessarily be taxing on the insurance industry. The NAACP argues that the FHA's disparate-impact test permits justified business practices, which incorporates the insurance industry's risk assessment models. But, the NAACP continues, the FHA does target past and present business practices that are not based on objective, actuarial risk models. To the extent that unjustifiable business practices continue, the NAACP notes, there may be a "cost" to the insurance companies in modifying their practices.

Analysis

The parties disagree about how to interpret the text of the FHA's discrimination rules. The TDHCA argues that the FHA's text cannot reasonably be interpreted as HUD does—to allow for disparate-impact liability—and that the Court must therefore reject that interpretation. Inclusive Communities counters that because HUD's interpretation is reasonable, the Court should defer to that interpretation.

Giving Deference to HUD's Interpretation of the FHA's Text

The TDHCA argues that the FHA's text unambiguously establishes that a plaintiff may only bring a claim if there has been intentional discrimination, and therefore, that HUD's interpretation is not entitled to *Chevron* deference because the text is not ambiguous. The TDHCA points to the FHA's phrase "because of race," and argues that in a case where there is no discriminatory intent, but only a disparate-impact, the alleged infringer has not discriminated "because of race." To impose liability under the FHA in that situation, the TDHCA therefore concludes, would be inconsistent with the statute's plain language.

The TDHCA argues that if the Court accepts that a disparate-impact claim is, in fact, consistent with the "because of race" language, then HUD does not have the authority to create situations where a lender has discriminated "because of race," but is not subject to liability based on HUD's "legally sufficient justification" defense.

Inclusive Communities counters that HUD's interpretation of the FHA's text is entitled to *Chevron* deference because that interpretation is not unreasonable. Rather than stating exactly how a plaintiff may prove an FHA claim, Inclusive Communities asserts, Congress gave HUD the power to interpret the FHA, to implement it, and to adopt rules necessary for doing so.

Inclusive Communities further asserts that the FHA's text does not require proof of intent to establish a discriminatory housing practice and therefore allows for an interpretation of the statute permitting disparate-impact claims. Inclusive Communities concludes Congress did not require proof of intent, and the Court should not read such a requirement into the FHA.

The Effect of Precedent on Interpreting the FHA's Text

Inclusive Communities argues that judicial authority and precedent establish that HUD's interpretation is reasonable. Specifically, respondent contends that the Court's opinion in a case under Title VII of the Civil Rights Act of 1964, *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971), supports allowing disparate-impact liability under the FHA. The statute at issue in *Griggs* contained the language "because of race." The Court there determined that the plaintiff did not need to show intent in order for the lower court to find discrimination. Inclusive Communities asserts that this indicates that this phrase should not be used as proof of an intent requirement in the FHA. Further, Inclusive Communities argues that the FHA's text parallels Title VII's text, which supports the conclusion that, like Title VII, the FHA allows for disparate-impact claims. In *Griggs*, the Court held that Title VII allows for such claims because it prohibits actions that would "otherwise adversely affect" employees on the basis of race. Inclusive Communities argues that the phrase "otherwise make unavailable" in the FHA is similar to the phrase in Title VII, which indicates that the FHA permits disparate-impact claims.

The TDHCA counters that previous judicial decisions do not indicate that the Court should accept HUD's FHA interpretation. The TDHCA asserts that the *Griggs* court did not hold that any statute that uses the phrase "because of race" permits a disparate-impact construction and points out that the Court has also construed statutes with this phrase to require a showing of intent. The TDHCA emphasizes that in *Smith* v. *City of Jackson*, 544 U.S. 228 (2005), the Court interpreted a Title VII section that contained both the phrases "because of race" and "otherwise adversely affect." The TDHCA rejects the Inclusive Communities argument that the FHA's phrase "otherwise make unavailable" is similar to the "otherwise adversely affect" language. According to the TDHCA, the FHA phrase focuses on the reasons behind a challenged action, not the action's effects. Therefore, the TDHCA argues, this language still requires an intent to discriminate.

Legislative History

The TDHCA argues that the 1988 amendments to the FHA indicate that Congress did not intend for plaintiff to bring disparate-impact claims under the FHA. According to the TDHCA, the 1988 amendment, which established specific types of conduct that the FHA does not prohibit, presumes court decisions that accept disparate-impact liability exist but "do not signify approval" of those decisions. Rather, the TDHCA argues, Congress was creating "safe harbors for defendants who were forced to litigate in courts that had adopted [a] misguided construction" of the FHA. Further, the TDHCA points out that when President Ronald Reagan signed the FHA, he was on record as opposing disparate-impact liability. The TDHCA thus argues that the fact that Reagan signed the FHA rather than vetoing it indicates that as it was written, it did not permit disparate-impact liability.

Inclusive Communities counters that Congress intended to create disparate-impact liability in the FHA because, in the Congressional record of a hearing on the statute, the American Bankers Association objected that, as written, the FHA might leave a lender open to liability simply for good business practices, even without intent, but Congress nonetheless approved the statute. Further, Inclusive Communities argues that the 1988 FHA amendments indicate that Congress assumed disparate-impact claims could

be brought, and that business necessity would be an exception to this type of liability.

Conclusion

The Supreme Court has the opportunity here to clarify whether the FHA requires an intent to discriminate or whether a claim can be established based merely on an action's disparate impact. The case will determine whether the HUD's interpretation of the FHA is a reasonable one, and is thus entitled to deference. The outcome will affect the breadth of the type of discrimination the FHA will prevent and may affect the business practices of the insurance industry. ⊙

Written by Mary Beth Picarella and Andrew Huynh. Edited by Gabriella Bensur.

WELLNESS INTERNATIONAL NETWORK V. SHARIF (13-935)

Court below: U.S. Court of Appeals for the 7th Circuit

Issues

1. Do bankruptcy courts have constitutional authority to make a final judgment on state law claims?

2. May a bankruptcy court resolve claims otherwise outside its jurisdiction so long as the litigants consent expressly or impliedly?

Questions as Framed for the Court by the Parties

1. Whether the presence of a subsidiary state property law issue in a 11 U.S.C. § 541 action brought against a debtor to determine whether property in the debtor's possession is property of the bankruptcy estate means that such action does not "stem[] from the bankruptcy itself" and therefore, that a bankruptcy court does not have the constitutional authority to enter a final order deciding that action.

2. Whether Article III permits the bankruptcy courts to exercise the judicial power of the United States over claims against a debtor where the debtor has consented to theexercise of such judicial power by voluntarily filing for bankruptcy relief.

This case also presents the two questions currently before the Court in *Executive Benefits Insurance Agency* v. *Arkison*, 133 S. Ct. 2880. Because of the procedural posture of *Executive Benefits*—there the district court reviewed the bankruptcy court's summary judgment order de novo—it is possible that the Court may conclude that no constitutional violation occurred and thus, not reach the issues on which certiorari was granted. In such event, this case presents the opportunity to address those questions, about which there is also a split among the circuits:

3. Whether Article III permits the exercise of the judicial power of the United States by the bankruptcy courts on the basis of litigant consent, and if so, whether implied consent based on a litigant's conduct is sufficient to satisfy Article III.

4. Whether bankruptcy courts have the statutory authority to submit proposed findings of fact and conclusions of law for de novo review by a district court in a "core" proceeding under 28 U.S.C. § 157(b).

Facts

The proceedings began in 2003 in the Federal District Court for the Northern District of Illinois (Illinois District Court), where Sharif sued Wellness International Network, Ltd., (Wellness), for its alleged participation in a pyramid scheme. The Illinois District Court dismissed Sharif's claim and the Seventh Circuit affirmed. Sharif re-filed the suit in the Northern District of Texas (Texas District Court), but ignored all discovery requests. The Texas District Court granted Wellness summary judgment and the Fifth Circuit affirmed, noting Sharif's "dilatoriness" and "hollow posturing." On remand, the Texas District Court awarded Wellness approximately $655,000 in attorney's fees as punishment against Sharif. Wellness initiated post-judgment discovery to ascertain Sharif's assets. Even after Wellness moved to compel discovery, Sharif continued to refuse, and was arrested and held in civil contempt.

In 2009, Sharif filed for bankruptcy in the Illinois District Court, listing Wellness as a creditor. Wellness filed a proof of claim, which included an approved loan application showing that Sharif had assets worth over $5 million. Sharif refused to comply with any of Wellness's discovery requests in the bankruptcy proceedings. He maintained that assets he claimed on the application did not belong to him but were owned by the Soad Wattar Trust, of which he was a trustee.

In July 2010, the bankruptcy court entered a default judgment against Sharif, finding numerous discovery violations. The bankruptcy court, in four separate judgments, ordered him to pay fees and costs.

In August 2011, Sharif appealed to the Illinois District Court. He claimed that the bankruptcy court abused its discretion in awarding the default judgment because he was a trustee of Soad Wattar Trust rather than a beneficiary. In December 2011, his sister filed a motion to withdraw the case, arguing that the *Stern v. Marshall* decision denied the bankruptcy court jurisdiction to enter a final judgment on Wellness's state law complaint. The district court denied this motion as untimely and affirmed.

Sharif again appealed to the Seventh Circuit, asserting that the bankruptcy court lacked constitutional authority to enter final judgment under *Stern*. In August 2013, the Circuit held, on the *Stern* question, that the bankruptcy court had jurisdiction to enter final judgment on issues relating to discharge of debts, but lacked constitutional authority to enter judgment on a state law alter-ego claim. The Supreme Court granted certiorari on July 1, 2014.

Discussion

In this case, the Supreme Court may clarify (1) the allocation of power between federal district courts and bankruptcy courts and (2) the role of *Stern v. Marshall* within that framework. Typically, under the 1984 Act and *Northern Pipeline v. Marathon Pipeline*, bankruptcy judges may issue final judgments in "core" proceedings, but may only enter final judgments in "non-core" proceedings with the parties' consent. Final bankruptcy court judgments are subject to review in the district court. The *Stern* decision shifted that framework by re-categorizing "core" versus "non-core" claims on the basis of whether federal district courts could constitutionally delegate power to hear certain state law claims in non-Article III forums.

Wellness argues that bankruptcy courts may issue final judgments on whether a debtor's property is part of the debtor's bankruptcy estate because this action "stems from the bankruptcy itself," notwithstanding *Stern*. Sharif argues that there is a "clear, administrable distinction" between issues that can receive a final bankruptcy court decision and issues that must receive final federal district court decision to comport with the Constitution.

Allocation of Responsibility Between District and Bankruptcy Courts

Supporting Wellness, multiple amici argue that interpreting *Stern* to say that bankruptcy courts cannot finally adjudicate certain claims

will severely impact those courts' ability to assist district courts in efficiently administering justice. The National Association of Bankruptcy Trustees (NABT) describes *Stern*'s characterization of core claims as those that "stem from the bankruptcy itself", "arise[] under" the Bankruptcy Code. The NABT says that characterizing an alter ego claim as outside the bankruptcy court's jurisdiction because it turns on issues of state law undermines that court's ability to determine a debtor's assets. The NABT warns that this would result in an inefficient bifurcation of jurisdiction with the district courts for many issues already codified in the Bankruptcy Code.

Sharif counters that his interpretation of *Stern*—as not allowing bankruptcy courts to finally adjudicate certain common law claims—will not unequivocally bar bankruptcy courts "from deciding all state-law issues, even when there are 'incidental.'" Rather, he maintains, his interpretation is "only what *Stern* already requires" and thus does not significantly alter the present allocation of responsibilities between the district and bankruptcy courts.

Waiver of Non-Existent Rights by Party Inaction

A group of lender/defendants in *In Re TOUSA Inc.*, support Sharif by raising the concern that *Stern* was decided after the instant proceedings were already underway, yet the Seventh Circuit ruled that Sharif's *Stern* argument had been waived because it was not asserted from the outset. These TOUSA defendants argue that because the waiver in question implicates a constitutional right, it requires extra scrutiny, and the waiver should be "knowing and unequivocal." They maintain that *Stern* was an "intervening change in the law" and thus "an exception to normal waiver rules." They point out that the Court has held that parties cannot be clairvoyant, and thus should be allowed to raise a new issue after the typical waiver period if the law has changed. Otherwise, they caution, parties will be expected to predict the future and will fill their complaints with every conceivable argument, supported or not.

Amicus United States addresses this "clairvoyance" concern in support of Wellness. The government argues that, although *Stern* was not decided until after the instant case, Sharif was on notice of the likely outcome based on the Court's *Granfinanciera, S.A. v. Nordberg* decision. The United States asserts that Sharif could not have "knowingly" waived his rights, but "the principal building blocks of *Stern's* reasoning" were already in place, and the parties in *Stern* were litigating for over ten years. The Court does not require clairvoyance, the United States says, but litigants are required to stay abreast of the law; the legal system does not cure faulty pleas after the fact.

Analysis

Wellness insists it was permissible for the bankruptcy court to decide that Sharif's trustee property is part of his bankruptcy estate. Sharif argues, however, that bankruptcy courts do not have jurisdiction to resolve such a claim. Wellness believes that this argument is unavailing to Sharif, who consented to the bankruptcy court adjudicating his interest in the trust. Sharif counters that he did not and could not consent, because separation of powers limitations are structural and not waivable by parties.

May a Bankruptcy Court Constitutionally Decide an Alter Ego Claim?

The Supreme Court's *Stern v. Marshall* opinion defined bankruptcy courts' jurisdictional limits. The Seventh Circuit relied on *Stern* in holding that the bankruptcy court here had no authority to resolve Wellness's claim—using an alter ego theory—that the property for which Sharif was a trustee could be considered part of his bankruptcy estate. Specifically, it found that Wellness's alter ego claim "is a common law claim for which state law provides the rule of decision, and it is intended only to augment the bankruptcy estate."

Wellness argues the Seventh Circuit extended *Stern*'s holding beyond what the Supreme Court intended. Framing *Stern*'s "operative question" as "whether the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process," Wellness argues that determining property in the bankruptcy estate is part and parcel of a bankruptcy proceeding, i.e., it "stems from the bankruptcy itself." By contrast, where a third party presents a colorable claim to possessing the property, he argues, a bankruptcy court has no authority to order that property to be included as part of the bankruptcy estate.

May A Debtor Nonetheless Consent To A Bankruptcy Court Adjudicating A Question Reserved For Article Iii Courts?

Relying on the Court's 1986 *Commodity Futures Trading Commissioner v. Schor* decision, Wellness characterizes the right to have certain claims heard by an Article III court as waivable by litigants because Article III protects "personal," as opposed to "structural" interests. Wellness notes there are no structural concerns here because the bankruptcy court operates subject to Article III courts' control. Wellness notes that the Supreme Court acknowledged this in *Stern*, stating it held "only that" Congress could not give bankruptcy courts the power to adjudicate traditional state law claims "without consent of the litigants." Wellness emphasizes that even if the bankruptcy court's determination of the alter ego claim implicates structural concerns, that is not dispositive because the Court has previously stated that structural independence is not inherently unwaivable.

While Sharif acknowledges he mistakenly agreed in his answer to Wellness that its alter ego claim was core, he maintains that such a mistake still cannot constitute the knowledge and voluntariness that express consent requires. And finally, he contends that his filling for summary judgment in the bankruptcy court does not constitute express consent. He notes he was "never given notice that he could prevent a final adjudication of the alter ego claim simply by withholding his consent."

Conclusion

The Supreme Court has the opportunity to decide two issues critical to defining the scope of bankruptcy court jurisdiction. First, it will consider whether a common law claim, such as an alter ego claim directed at a debtor's alleged assets, is within a bankruptcy court's jurisdiction where that claim is meant to define the assets available to a creditor. And second, the Court will consider whether litigants may nonetheless consent to a bankruptcy court's deciding common law claims even if they are not within the bankruptcy court's jurisdiction. The case will have implications for the separation of powers between Article III and bankruptcy courts, and will clarify litigation purporting to make bankruptcy court jurisdiction comport with the Constitution. ⊙

Prepared by Matthew Valenti and Christa Maiorano. Edited by Dan Rosales.

ARMSTRONG V. EXCEPTIONAL CHILD CENTER INC.

Court below: U.S. Court of Appeals for the Ninth Circuit

Oral argument: Jan. 20, 2015

Issues

The Supreme Court will consider whether individual Medicaid providers have a private right of action under the supremacy clause to enforce section (30)(A) of the Medicaid Act (§ (30)(A)), which requires state Medicaid agencies to take provider costs into account when setting reimbursement rates, when Congress has not explicitly granted a private right of action. Richard Armstrong, the director of Idaho's Department of Health and Welfare, argues that individuals do not have a private right of action under § (30)(A) or the supremacy clause, because a private remedy cannot exist without congressional intent, and private litigants should not play a role in determining whether a state gets federal funding. According to Exceptional Child Center, however, when a state law conflicts with federal law, individuals have a private right of action under the supremacy clause to bring an injunction and prevent harm that would result from the conflicting state statute. The Court's ruling will impact the right of individuals to recover under the supremacy clause, as well as the administration of Medicaid and other statutory schemes that provide funding to states as long as they comply with federal law. Full text available at www.law.cornell.edu/supct/cert/14-15. ⊙

Written by Carolina Morales and Shaun Martinez. Edited by Rose Nimkiins Petoskey.

KELLOGG BROWN & ROOT V. UNITED STATES EX REL. CARTER

Court below: U.S. Court of Appeals for the Fourth Circuit

Oral argument: Jan. 13, 2015

Benjamin Carter brought an action under the False Claims Act (FCA) alleging that Kellogg Brown & Root (KBR) had misrepresented water purification work and falsified time sheets in order to overbill the U.S. government. In this case, the Supreme Court will have the opportunity to resolve whether the Wartime Suspension of Limitations Act (WSLA) applies to civil suits brought under the FCA and whether the FCA bars all subsequent suits after a party files a suit based on the same underlying facts. KBR contends that the WSLA tolls the statute of limitations only for criminal suits and that the FCA bars every suit subsequent to the first suit filed on similar facts. Carter counters that the WSLA tolls both criminal and civil suits and that the FCA bars subsequent suits only when a similar suit is pending before a court. The Court's ruling will affect whistle-blowers as well as businesses and health-care providers who supply services to the U.S. government. Full text available at www.law.cornell.edu/supct/cert/12-1497_0. ⊙

Written by Edward Flores and Michael Duke. Edited by L. Alyssa Chen.

MACH MINING V. EEOC

Court below: U.S. Court of Appeals for the Seventh Circuit

Oral argument: Jan. 13, 2015

The Supreme Court will determine the extent to which courts can review efforts by the Equal Employment Opportunity Commission (EEOC) to informally mediate discrimination claims before filing a lawsuit. Mach Mining LLC argues that judicial review of the EEOC's pre-suit conciliation efforts is permissible pursuant to the statutory language of 42 U.S.C. § 2000e-5(b). Contrarily, the EEOC asserts that Congress did not intend for judicial review of the EEOC's pre-suit conciliation efforts. The Supreme Court will have the opportunity to resolve a circuit split regarding judicial review of the EEOC's pre-conciliation efforts. Further, the Supreme Court will clarify the boundaries of the EEOC's responsibilities in the conciliation process. Full text available at www.law.cornell.edu/supct/cert/13-1019. ⊙

Written by Neil Philip O'Donnell and Agbeko Petty. Edited by Rose Nimkiins Petoskey.

MELLOULI V. HOLDER

Court below: U.S. Court of Appeals for the Eighth Circuit

Oral argument: Jan. 14, 2015

The Supreme Court will determine when a state drug-paraphernalia conviction sufficiently "relates to" a substance listed under the Controlled Substances Act to justify removing a permanent U.S. resident under the Immigration and Nationality Act (INA). Moones Mellouli argues that, even though Adderall is a federally controlled substance, his deportation was impermissible because his state conviction record did not identify the substance found in his drug paraphernalia and thus did not relate to a federally controlled substance. U.S. Attorney General Holder contrastingly argues that deportation is permissible under the INA because a state drug-paraphernalia conviction itself sufficiently relates to a federally controlled substance. The Supreme Court's decision will impact immigration and safety in the United States. Full text available at: www.law.cornell.edu/supct/cert/13-1034. ⊙

Written by Njeri Chasseau and Cesie Alvarez. Edited by Paul Kang.

ONEOK V. LEARJET

Court below: U.S. Court of Appeals for the Ninth Circuit

Oral argument: Jan. 12, 2015

The Supreme Court will decide whether the Natural Gas Act (NGA) preempts state laws that regulate the retail of natural gas. Oneok and other sellers of natural gas argue that the NGA preempts the claims that these sellers of natural gas violated antitrust laws by illegally manipulating the retail price of natural gas and engaging in wash sales. Learjet, however, contends that while wholesale rates are regulated by the NGA, the NGA does not preempt state law that regulates retail rates. The Supreme Court's resolution of this case could impact federalism concerns as well as the future of the natural gas market. Full text available at www.law.cornell.edu/supct/cert/13-271. ⊙

Written by Ellen Taylor and Nathan K. Koskella. Edited by Gabriella Bensur.

REED V. TOWN OF GILBERT

Court below: U.S. Court of Appeals for the Ninth Circuit

Oral argument: Jan. 12, 2015

The Supreme Court granted certiorari to address a circuit split regarding the

constitutionality of sign ordinances that treat signs differently depending on the type of noncommercial speech displayed. The town of Gilbert's sign code stipulated size requirements and posting times that differed depending on whether the signs were classified as political, ideological, or "temporary directional signs" for religious or nonprofit events. The latter category's size and timing requirements were more restrictive than those for political or ideological signs. Good News Community Church and its pastor, Clyde Reed, argue that Gilbert's sign code violates the First Amendment. Conversely, Gilbert contends that the sign code does not violate the Constitution because it does not favor certain viewpoints or ideas over others and serves an important government interest in regulating safety and aesthetics. The Court's ruling could have important consequences for free speech as well as for local governments' ability to manage community safety and aesthetics. Full text available at www.law.cornell.edu/supct/cert/13-502. ⊙

Written by Carolyn Wald and Chris Milazzo. Edited by Jacob Brandler.

RODRIGUEZ V. UNITED STATES

Court below: United States Court of Appeals for the Eighth Circuit
Oral argument: Jan. 21, 2015

The Supreme Court will determine whether an officer may extend a traffic stop, even after the stop has been completed, to conduct a canine sniff without reasonable suspicion of criminal activity or some other legal justification. Dennys Rodriguez claims that any extension of a completed stop to conduct further investigation, no matter how brief, violates the Fourth Amendment unless the extension is independently justified by reasonable suspicion. The United States counters that officers may lawfully engage in further investigations during a traffic stop so long as the officer does not unreasonably prolong the stop. The Supreme Court's decision might curb law enforcement's investigative powers with respect to routine traffic stops by potentially creating bright-line restrictions on those powers. Full text available at www.law.cornell.edu/supct/cert/13-9972. ⊙

Written by Allison Eitman and Alice Chung. Edited by Oscar Lopez.

WILLIAMS-YULEE V. FLORIDA BAR

Court below: Florida Supreme Court
Oral argument: Jan. 20, 2015

The Supreme Court will determine whether states may issue rules of judicial conduct that prohibit judicial candidates from personally soliciting campaign funds. Williams-Yulee contends that Canon 7C(1), a Florida rule of judicial conduct prohibiting judicial candidates from personally soliciting campaign funds, is unconstitutional because it restricts judicial candidates' speech and fails strict scrutiny review because it is not narrowly tailored to serve a compelling state interest. The Florida Bar counters that the rule is constitutional because it serves Florida's interest in ensuring judicial impartiality and is narrowly tailored because candidates can exercise free speech and may raise funds through alternative means. The Supreme Court's ruling in this case implicates the type of fundraising initiatives judicial candidates are permitted to take when running their campaigns. Full text available at www.law.cornell.edu/supct/cert/13-1499. ⊙

Written by Aida Nieto and Cesar Sanchez. Edited by Oscar Lopez.