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Dollar General Corp., et al. v. The Mississippi Band of Choctaw Indians, et al. (13-1496)

Oral argument: Dec. 7, 2015

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

Issue

Does an Indian tribal court have jurisdiction to adjudicate civil tort claims against nonmembers of the tribe, including nonmembers who enter into a consensual relationship with the tribe or its members?

Question as Framed for the Court by the Parties

Whether Indian tribal courts have jurisdiction to adjudicate civil tort claims against nonmembers, including as a means of regulating the conduct of nonmembers who enter into consensual relationships with a tribe or its members.

Facts

Petitioners Dollar General Corp. and Dolgencorp LLC (collectively, Dollar General) operate a store on the Choctaw reservation in Mississippi, pursuant to a lease agreement and a business license with the tribe. The tribe operates the Youth Opportunity Program (YOP), a job-training program aimed at placing young tribe members in short-term positions with local businesses for educational purposes. In 2003, Dale Townsend, the store manager, agreed to participate in the YOP. Respondent John Doe, a 13-year-old tribe member, was assigned to work at the Dollar General store. Doe alleges that, during his placement there, Townsend sexually molested him.

In 2005, Doe sued Dollar General and

Townsend in Choctaw Tribal Court. Doe alleged that Dolgencorp is vicariously liable for Townsend's actions, and that Dolgencorp negligently hired, trained, or supervised Townsend. Doe alleged that the assault caused him severe mental trauma, and he sought \$2.5 million in damages. Dollar General and Townsend moved to dismiss Doe's claims for lack of subject-matter jurisdiction, but the tribal court denied both motions. They successfully petitioned the Choctaw Supreme Court for interlocutory review of the lower court's denial of the motions to dismiss. That court held that the lower court's exercise of subject-matter jurisdiction was proper, dismissed the appeal, and remanded the case.

In 2008, Dollar General and Townsend filed suit in the District Court for the Southern District of Mississippi against the Mississippi Band of Choctaw Indians, the Tribal Court, Tribal Court Judge Christopher A. Collins, and John Doe (collectively, Choctaws). Dollar General and Townsend alleged that the tribal court lacked jurisdiction to adjudicate Doe's claims, and each filed a motion for a temporary restraining order and preliminary injunction. The district court granted Townsend's motion, holding that the tribal courts had no jurisdiction over him because he did not have a sufficient consensual relationship with Doe or the tribe. The district court denied Dollar General's motion, however, holding that the company implicitly consented to the tribe's jurisdiction when it agreed to provide a position for Doe at its store.

Dollar General and the Choctaws then filed cross motions for summary judgment. The district court granted the Choctaws' motion but denied Dollar General's motion. The court found that, as a result of Townsend's

agreement to participate in the YOP on Dollar General's behalf, Dollar General implicitly consented to the jurisdiction of the tribe with respect to matters associated with this relationship. Since Doe's tort claims "arose directly from this consensual relationship," the court held that the required sufficient nexus between the consensual relationship and exertion of tribal authority was satisfied.

Dollar General appealed and asserted that the district court erred in its legal determination that the company satisfied the consensual relationship exception. A divided panel of the Fifth Circuit affirmed the district court's judgment. The appeals court denied Dollar General's request for rehearing en banc. The Supreme Court then granted certiorari.

Discussion

The Supreme Court's resolution of this case may affect the scope of tribal sovereignty and the economic relationships between tribes and nonmembers. Dollar General maintains that without the defendant's unambiguous consent or congressional authorization, tribal courts lack jurisdiction over nonmembers. The Choctaws counter that the ability to exercise adjudicative authority over nonmembers who have implicitly or explicitly consented to jurisdiction is essential to the Indians' right to govern themselves.

TRIBAL SOVEREIGNTY

Amici in support of Dollar General believe that tribes can retain sovereignty sufficient to govern their internal affairs without asserting jurisdiction over nonmembers who have not expressed clear and unequivocal consent. The Association of American Railroads asserts that the great variation in tribal courts and their legal systems, and the absence of federal review of federal questions arising from tribal court determinations, could deprive nonmember litigants of their federally protected civil rights. Additionally, Oklahoma and other states (Oklahoma) assert that tribal courts do not offer nonmember litigants the same "jurisprudential certainty" that they would have in state or federal courts.

Amici in support of the Choctaws contend that Dollar General's narrow reading

of the consensual relationship exception would severely constrain tribal sovereignty. The Puyallup Tribe of Indians, joined by other tribes and tribal courts, contend that supporting tribal courts is an essential part of the modern federal policy of tribal self-determination. Mississippi and other states (Mississippi) argue that a tribe's ability to regulate conduct of nonmembers who enter into consensual relationships with a tribe or its members is essential for that tribe to function as an interdependent sovereign. Additionally, the United States claims that petitioners' concerns about prejudice against nonmember litigants are without merit because many tribal courts are effective institutions for administering justice.

ECONOMIC RELATIONSHIPS

Amici in support of Dollar General assert that expanding tribal court jurisdiction will chill companies' willingness to invest in tribal communities. The South Dakota Bankers Association (SDBA) contends that broader interpretation of the consensual relationship exception adds uncertainty to litigation in tribal courts. This uncertainty increases the risks of doing business with tribes or tribal members, the SDBA asserts, which will lead to further economic hardships for those living on and near Indian reservations. The Retail Litigation Center Inc. echoed these concerns, maintaining that a straightforward test of "clear and unequivocal express consent" will limit needless litigation in both tribal and federal courts over which system has jurisdiction.

Amici in support of the Choctaws counter that the express consent standard proposed by Dollar General will adversely affect tribal communities and their ability to regulate their economies. The National Congress of American Indians (NCAI) contends that a less stringent standard is needed to protect against trespass and conduct on tribal lands that harms tribal natural and cultural resources. Moreover, NCAI argues that an express consent requirement would undermine the ability of tribes to exercise their regulatory powers over nonmembers permitted on tribal land. Tribes often impose licensing or taxation requirements on such nonmembers, but NCAI maintains that an express consent requirement would provide a perverse incentive for nonmembers to "withhold consent" by engaging in the regulated activity without a license or permit.

Analysis

Dollar General asserts that Indian tribal courts should not have the authority to decide civil tort claims against nonmembers, even if there is a consensual relationship between the tortfeasor and the tribe or its members. The Choctaws contend that tribal courts should have the authority to decide civil tort claims against nonmembers. The parties disagree over the interpretation of the principles that guide courts' application of the exceptions set forth in *Montana v. United States*. Their arguments focus on whether Dollar General consented to tribal-court authority, whether finding such authority to hear tort claims will overbroaden the *Montana* category exception, and whether the tribe's inherent sovereign authority authorizes tribal courts to hear civil tort claims.

THE APPLICABILITY OF THE MONTANA CATEGORIES

Dollar General maintains that a tribe's legislative jurisdiction over nontribal members is limited to the two categories the Supreme Court articulated in *Montana* and that neither of these categories is applicable in this case. The company contends that the Court's application of the first *Montana* category is guided by three principles and that these principles favor finding against tribal-court jurisdiction for a civil tort claim. In addition, the company points out that the Choctaws are not challenging this case under the second *Montana* category.

The Choctaws counter that Dollar General's tort liability fits squarely within the first *Montana* category. Further, the tribe posits that the guiding principles of *Montana* will result in the Court finding that tribal courts have jurisdiction over civil torts.

PRINCIPLE ONE: THE REQUIREMENT OF EXPRESS CONSENT OR CONSENT BY ACTING

Dollar General argues that the first principle, requiring that tribal "laws and regulations may be fairly imposed on nonmembers only if the nonmember has consented either expressly or by his actions," should be construed narrowly, and requires the nonmember's unequivocal consent. The company contends that merely doing business on Choctaw land does not give the required, heightened level of commensurate consent. First, Dollar General argues that there is no express consent because there is no signed contract or similar express consent between

Dollar General and the Choctaws. Second, the company argues that it could not have given implied consent, because in order for a nonmember to do so she must have clear notice of what activities will subject her to tribal authority, which Dollar General did not have. Third, the company cites various Supreme Court precedents to show that the Court has not applied the first principle to tort law. Because of the lack of express or implied consent, Dollar General argues that the first principle favors the Court's finding against tribal-court jurisdiction.

The Choctaws argue that express and implied consent existed in this case, and thus the first principle favors allowing civil tort liability within the first *Montana* category. The tribe points to Dollar General's relationship with the tribe and Doe and the fact that numerous oral and written agreements between the two parties existed. The Choctaws posit that Doe's participation in the YOP program is the exact type of consensual agreement *Montana* contemplated. The tribe notes that implied consent would also exist through Dollar General's willing and voluntary participation in the YOP program. The tribe also points to the lease agreement entered into between the company and the tribe. The Choctaws posit that because the lease agreement included choice-of-law and forum-selection provisions, Dollar General consented to the tribal-court system. Thus, the tribe argues that the first principle favors finding jurisdiction.

PRINCIPLE TWO: THE FEAR OF OVER-CONSTRUING THE CATEGORY

Dollar General posits that the *Montana* categories should be construed in a limiting way and not as shrinking or swallowing the rule that "inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." The company points out that the Supreme Court in *Montana* required that the first *Montana* category not swallow or shrink the above-mentioned rule. Dollar General argues that finding civil tort liability in this case will result in the above category swallowing the rule. The company contends that because tort law applies to a large range of conduct, allowing tribes to impose tort-law liability would allow for tribal regulation of nearly all activities. Out of fear of over-construing the *Montana* category, Dollar General posits that tribal courts should not have jurisdiction over civil tort claims.

The Choctaws argue that the *Montana* category would not be over-broadened by allowing tribal courts to hear tort claims. Instead, the tribe asserts that tort law is no different from other forms of tribal regulation and that because tribal courts have jurisdiction over tribal regulation, a tribal court should have jurisdiction over a tort claim. The Choctaws argue that whether tort law is pervasive is irrelevant because nonmembers will not be subjected to all of tribal tort law but only to the extent that the *Montana* categories would allow—in instances with the required nexus and an event that triggers the tribe's inherent sovereign authority. Thus, the tribe argues that tort law would not over-construe the *Montana* category.

PRINCIPLE THREE: DOES THE TRIBE'S INHERENT AUTHORITY STEM FROM ITS "INHERENT SOVEREIGN AUTHORITY TO SET CONDITIONS ON ENTRY, PRESERVE TRIBAL SELF-GOVERNMENT, OR CONTROL INTERNAL RELATIONS?"

Dollar General posits that imposing tort-law liability on nearly everything a corporation does on tribal land extends the tribes' inherent sovereign authority beyond what it is needed to satisfy the third principle. The company recognizes that tribes may want to govern nonmember conduct, but argues that tribes have always been expected to turn to state and federal law when governing nonmembers. Thus, Dollar General asserts that the third principle favors the Court's finding that the tribal court does not have the authority to hear the civil tort case.

The Choctaws contend that tribal jurisdiction over the tort claim arises from the tribe's inherent sovereign authority to govern its territory, and that conduct on tribe-owned land implicates a tribe's inherent sovereign interest. Therefore, because the alleged sexual assault occurred on tribal land, the tribe asserts that the incident implicates the tribe's sovereign authority. Thus, the tribe argues that the third principle also favors allowing tribal jurisdiction.

Conclusion

The Supreme Court will decide whether Indian tribal courts have jurisdiction over civil tort claims against nonmembers of the tribe, including those who enter into consensual relationships with the tribe or its members. To resolve this issue, the Court will consider whether it finds Dollar General's or the Choctaws' argument more persuasive with

respect to the application of the *Montana* categories. This ruling will affect the scope of tribal sovereignty and the economic relationships between tribes and nonmembers. Full text available at www.law.cornell.edu/supct/cert/13-1496. ☉

Prepared by Nicole Greenstein and Gerard Salvatore. Edited by Allison Hoppe.

Fisher v. University of Texas at Austin, et al. (14-981)

Oral Argument: Dec. 9, 2015

Court Below: U.S. Court of Appeals for the Fifth Circuit

Issue

Does the University of Texas at Austin's use of racial preferences in its admissions process violate the Equal Protection Clause of the Fourteenth Amendment?

Question as Framed for the Court by the Parties

Can the Fifth Circuit's re-endorsement of the University of Texas at Austin's use of racial preferences in undergraduate admissions decisions be sustained under this Court's decisions interpreting the Equal Protection Clause of the Fourteenth Amendment, including *Fisher v. University of Texas at Austin*?

Facts

Abigail Fisher applied for admission to the fall 2008 class of the University of Texas at Austin (UT). UT's admissions scheme included three paths for accepting applicants. First, through its Top Ten Percent Plan, UT admitted any Texas students that graduated in the top 10 percent of their high school classes. Second, UT admitted applicants with "exceptionally high Academic Index (AI) score[s]," which were calculated using standardized test scores, class rank, and high school work. Third, students not admitted under either of those programs were considered in UT's holistic review process, which evaluated applicants' AI scores and Personal Achievement Index (PAI) scores. PAI scores were calculated by combining the "weighted average score" of the applicant's admissions essays, with a score based on a review of the student's entire file, including extracurricular activities, leadership experience, community service, honors, work experience,

socioeconomic status, and race. Ultimately, UT denied Fisher admission because her PAI scores "were too low ... [for] her preferred academic programs." Fisher would not have received a seat in the 2008 class with a perfect PAI score, regardless of race.

Fisher filed suit for injunctive relief and damages in the District Court for the Western District of Texas, alleging that UT's use of racial preferences in its admissions process violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. UT defended its use of race as a "narrowly tailored means of pursuing" its compelling interest in "racial diversity." UT argued that it had not attained a "critical mass" of underrepresented minorities.

The district court granted UT's motion for summary judgment. The Fifth Circuit affirmed. The appeals court recognized that a university's use of race as a differentiating factor in its admission program is normally given strict scrutiny. However, the appeals court applied a deferential standard, which limited its review to whether UT's "decision to reintroduce race as a factor in admissions was made in good faith." The court deferred to UT's good-faith determination that it lacked a critical mass of minorities.

The Supreme Court vacated and remanded the Fifth Circuit's decision, instructing the appeals court to use strict scrutiny to determine whether summary judgment for UT was appropriate. The Court advised the Fifth Circuit to determine whether UT used a narrowly tailored means of achieving diversity.

On remand, the Fifth Circuit affirmed the grant of summary judgment to UT, holding that UT's consideration of race in its admissions process was narrowly tailored to achieving its compelling interest of cultivating a diverse student body. The appeals court denied rehearing en banc, and the Supreme Court granted certiorari.

Discussion

The Court's decision may affect the demographics of universities and how they consider race in admissions. Fisher argues that UT's interest in increasing racial diversity is not a clearly articulated, compelling government interest, and that its admissions scheme is not narrowly tailored because a race-neutral approach can satisfy UT's interest in diversity. UT argues that the Court has already held that a university's interest in diversity is compelling, and UT's admis-

sions scheme is narrowly tailored because race-neutral approaches are insufficient to achieve its diversity interest.

DISCRIMINATORY EFFECT OF RACIAL-PREFERENCE ADMISSIONS SCHEMES

Some amici supporting Fisher argue that racial preferences, even if they are considered in a “holistic” manner, can still discriminate against minorities. The Cato Institute (Cato) asserts that some schools, under the guise of holistic review, “pool” applicants by personal characteristics, such as race; applicants “who are non-white U.S. citizens” receive special preference” but other applicants must compete for a limited number of seats. Cato contends that this process marginalizes other applicants, such as “low-income students.” The Asian American Legal Foundation and similar organizations (collectively, AALF) argue that UT’s racial-preference admissions scheme discriminates against Asian Americans. AALF notes that while the Fifth Circuit found that Hispanics were insufficiently represented at UT, more Hispanics attend UT than Asian-Americans. AALF suggests that UT’s true goal in considering race is not creating a diverse student body; rather, its goal is to match the demographics of UT to the demographics of Texas.

In support of UT, the American Jewish committee and others (collectively, the committee), argue that there is no evidence that UT used its admissions scheme to limit or prevent admission of any racial group. The committee acknowledges that “some amici argue ... UT’s race-conscious admission policy” discriminates against Asian-Americans in a manner similar to discrimination against Jewish students in the 1920s. But the committee argues that UT did not award points to students from any particular racial group and did not seek any specific percentage of minority enrollment. In fact, the committee notes that 80 percent of UT’s class “is admitted on class rank alone.” The Asian-American Legal Defense and Education Fund and others acknowledge “longstanding racial discrimination against Asian Americans,” but contend that Asian Americans have varied socio-economic backgrounds that are given due weight in UT’s holistic approach.

THE EFFECT OF GAPS IN ENTERING ACADEMIC CREDENTIALS

Members of the U.S. Commission on Civil Rights (USCCR) assert that race-preferential admissions lead universities to

admit minority students whose academic credentials “put them toward the bottom of the class.” USCCR contends that gaps emerge between these minority students and their peers because students tend to perform at the academic level “that their entering credentials suggest.” USCCR contends that these gaps disadvantage minority students. USCCR contends that racial-preference beneficiaries are less likely to seek a graduate degree and become college professors than underrepresented minorities who attend universities where their entering academic credentials match those of the median student at their school.

However, the American Educational Research Association (AERA), in support of UT, contends that there is little research supporting the claim that entering academic credential gaps harm minority students and that more recent and better-designed research contradicts the purported problems of mismatch. AERA cites “a national study focusing on minority students who entered selective public institutions in 1999,” which found that black male students graduated at higher rates “than black students in the same GPA interval who went to less selective institutions.” AERA also cites a Texas-specific study, which found that minority students who were purportedly mismatched based on their credentials had higher graduation rates than students at “better matched” schools. AERA concludes that minority students benefit educationally and economically when they attend selective universities.

ECONOMIC INEQUALITY AND SOCIOECONOMIC DIVERSITY

Richard Kahlenberg, a senior fellow at the Century Foundation, argues in support of neither party that colleges are ignoring socioeconomic diversity in their pursuit of racial diversity. Kahlenberg explains that, in a study of elite universities, being an underrepresented minority increased an applicant’s admission chances by 27.7 percent, while being in the bottom income quartile had no beneficial impact. By ignoring socioeconomic background, Kahlenberg argues that universities are missing out on “a richer, more nuanced emphasis on socioeconomic alongside racial diversity.” Kahlenberg contends that race-neutral admissions schemes that account for socioeconomic diversity still create racial diversity, “because economic disadvantage is often shaped by racial discrimination.”

AERA concedes that “encouraging the admission of students from lower economic classes may itself be a desirable end.” But AERA argues that race-neutral admissions schemes that focus on socio economic status are not as effective as race-conscious admissions schemes at increasing racial diversity. In fact, AERA argues that socio economic admissions may reduce the number of minority students admitted. AERA cites a recent study finding the presence of minorities among low-income students would be insufficient to create a level of minority representation close to its current level.

Analysis

In *Grutter v. Bollinger*, 539 U. S. 306 (2003), the Supreme Court held that university admissions policies that use racial classifications must satisfy strict scrutiny under the Fourteenth Amendment. To satisfy strict scrutiny, universities must show that the classifications are a narrowly tailored means of furthering a compelling interest. In *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411, 2421 (2013) (*Fisher I*), the Court remanded to the Fifth Circuit to apply the strict scrutiny standard; the Fifth Circuit affirmed its grant of summary judgment to UT in *Fisher I*.

Fisher argues that UT has not clearly articulated a compelling interest and that UT’s proposal is not narrowly tailored to achieve its purported goal of intra-racial diversity. UT counters that its compelling interest is the educational benefit of a diverse student body and that its holistic approach is narrowly tailored to achieving that goal.

SPECIFIC AND COMPELLING INTEREST

Fisher argues that UT failed to demonstrate that its use of race in the admissions process addressed clearly defined interests. She claims that, to satisfy the Equal Protection Clause, the Court requires universities to “demonstrate with clarity that [their] purpose or interest is both constitutionally permissible and substantial, and that [their] use of the classification is necessary ... to the accomplishment of [their] purpose.” According to Fisher, UT’s proposed interests—(1) alignment of the university’s racial demographics with Texas’ and (2) achieving “classroom diversity”—do not clearly explain what UT’s goal is or how and when UT will meet its goal. Accordingly, Fisher argues that the Court cannot give UT’s admissions policy “meaningful review,” and thus the policy must

be struck down. Fisher asserts that UT suggests that its interest is “intra-racial diversity.” But Fisher contends that UT did not identify the characteristics it is targeting to achieve this interest. Fisher suggests that UT’s shifting justifications indicate that its use of race was illegitimate and motivated by “notions of racial inferiority or simple racial politics.”

UT contends that it has clearly and consistently stated its compelling interest. Rather than seek demographic parity or classroom diversity, UT argues that its policies sought to achieve the educational benefits of diversity, which the Court recognized as a legitimate compelling interest in *Grutter*. UT disagrees with Fisher’s assessment that it has altered its proposal to combat litigation. UT contends that its policies provide a holistic view of students and attempt to counterbalance segregation by admitting minority students who come from a variety of backgrounds and experiences.

NARROWLY TAILORED

Fisher argues that UT’s admission policy is not narrowly tailored to achieve a compelling government interest. She asserts that UT’s proposal relies on overbroad generalizations and racial stereotypes that are not supported by evidence. For example, Fisher argues, the Fifth Circuit blindly accepted UT’s assumption that minority students admitted through the Top Ten Percent Plan fail to satisfy UT’s diversity interest, because those students typically come from economically disadvantaged school districts in which a majority of students are racial minorities. She contends that UT believes minority students from predominately white, affluent schools offer “distinct ways” to enrich diversity. Fisher argues that UT’s attempts to admit more affluent minorities runs contrary to the traditional goal of race-conscious admissions, which Fisher sees as providing opportunities “to minority students with limited access to education resources.” Fisher concludes that UT’s use of racial classifications does not create diversity but rather creates a student body “with wealthy minority students [who] have the *same* experiences and viewpoints as the majority of UT’s freshman class.”

Fisher contends that UT has failed to demonstrate that race-neutral alternatives will not succeed in achieving its goals of increasing the number of minorities from affluent communities enrolled in the university. Specifically, Fisher argues that UT failed to examine whether the Top Ten Percent

Plan was sufficient to achieve the desired diversity. If the Top Ten Percent Plan was determined to be insufficient, Fisher claims that UT could have relied on other race-neutral alternatives to meet its goals, such as removing socioeconomic status from PAI calculation.

UT asserts that Fisher’s attempt to exclude the consideration of race as a factor in admissions is inconsistent with the Court’s decisions. UT disagrees with Fisher’s contention that it is attempting to increase enrollment for affluent minorities. Instead, UT contends that it uses a holistic review to attract minorities from a variety of backgrounds, and that it encourages admission of students who have overcome economic adversity. UT argues that, under *Grutter* and *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 299 (1978), it is permitted to consider race as part of a holistic review process, because the university made a good-faith effort to use race-neutral alternatives. When those alternatives proved insufficient, UT developed a proposal to allow for “modest and individualized” consideration of race.

UT argues that it considered many race-neutral alternatives, including using socioeconomic status as a proxy for race, before adopting its current practice in 2004. Despite UT’s efforts to enroll minority students using these race-neutral alternatives, UT saw a reduction in underrepresented minorities under its policy of race-blind holistic reviews. In particular, African-American enrollments were significantly underrepresented during the period leading up to 2004, and UT determined that race-neutral alternatives were insufficient to achieve a diverse student body. Contrary to Fisher’s suggestion, UT asserts that it did not reach a “critical mass” of minority students by 2003, considering that in 2004, African-American students were only 4.5 percent of UT’s freshman class. Fisher suggests that the Top Ten Percent Plan was sufficient to achieve UT’s goals, but UT claims the Court found in *Grutter* that percentage plans do not provide a workable alternative to holistic review of individual students. UT asserts that Fisher cannot and does not suggest that the Top Ten Percent Plan completely solves UT’s diversity problems. UT argues that “no selective university in America” chooses its entire student body “based solely on class rank ... because such a one-dimensional method... sacrifices ... diversity in the broad sense recognized by this Court.”

ARTICLE III STANDING

UT argues that Fisher lacks standing to sue for relief under Article III of the U.S. Constitution. But Fisher argues that the Court rejected UT’s standing arguments in *Fisher I* and thus does not need to address the arguments again. Moreover, Fisher contends that her claim for \$100 in restitution is permissible, because it is based on the denial of an opportunity to have her application equally considered.

But UT argues that Fisher is unable to establish “injury in fact,” an Article III requirement, because Fisher would not have been admitted to the class of 2008, regardless of race, considering her AI and PAI scores. Even if Fisher could demonstrate that she suffered injury as a result of UT’s policy, UT contends that her requested relief—declaratory and injunctive relief and repayment of her application fees—will not redress her injury. UT explains that Fisher already completed her degree at another university.

Conclusion

The Supreme Court will decide whether UT’s use of racial preferences is constitutional under the Court’s decisions interpreting the Equal Protection Clause of the Fourteenth Amendment. Fisher argues that UT has failed to clearly articulate a compelling interest and that UT’s proposal is not narrowly tailored to achieve its purported goal of intra-racial diversity. UT counters that its interest in the benefits of racial diversity is the same interest that the Court found compelling in *Grutter* and that its reliance on holistic review of individual students is narrowly tailored. The Court’s ruling may affect the admissions procedures and racial demographics of universities. Full text available at www.law.cornell.edu/supct/cert/14-981. ☉

Written by Samantha Ostrom and Kelsey Ferguson. Edited by Cesar Sanchez.

Merrill Lynch, et al. v. Greg Manning, et al. (14-1132)

Oral argument: Dec. 1, 2015

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

In this case, the Supreme Court will decide whether Section 27 of the Securities Exchange Act of 1934 (Exchange Act) provides federal courts with exclusive jurisdiction over state law claims based on violations of the Exchange Act or whether state courts are permitted to hear such state law claims. Merrill Lynch argues that because Manning relies on Regulation SHO, a federal regulation, and therefore federal courts have exclusive jurisdiction under the Exchange Act. On the other hand, Manning argues that, because his claims are based on state law, state courts have jurisdiction over this case, even if some elements of his claim rely on federal law. Ultimately, the Court's decision has the potential to affect whether uniformity in decision-making is necessary to enforce Regulation SHO and whether state courts can govern duties arising under federal regulations. Full text available at www.law.cornell.edu/supct/cert/14-1132 ☉

Menominee Indian Tribe of Wisconsin v. United States of America, et al. (14-510)

Oral argument: Dec. 1, 2015

Court below: U.S. Court of Appeals for the D.C. Circuit

The U.S. Supreme Court will decide whether the D.C. Circuit misapplied the Court's decision in *Holland v. Florida* when the D.C. Circuit ruled that the statute of limitations was not subject to equitable tolling for the Menominee Indian Tribe of Wisconsin's (the tribe) 1996–98 claims for contract support costs. The tribe argues that despite the D.C. Circuit's interpretation of the *Holland* standard for equitable tolling as rigid and mechanical, the *Holland* standard should instead conform to the Federal Circuit standard, which is a comprehensive and unified analysis that also follows the proper interpretation of *Holland*. In contrast, the United States argues that the elements within a comprehensive analysis do not provide an independent basis for equitable tolling and that equitable tolling should not excuse the tribe's miscalculations and legal misunderstandings. Full text available at www.law.cornell.edu/supct/cert/14-510 ☉

Gobeille v. Liberty Mutual Insurance Company (14-181)

Oral argument: Dec. 2, 2015

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

Vermont enacted legislation that created a “unified health care database” designed to improve the affordability and quality of health care in Vermont by collecting and analyzing statewide data on insurance claims. Liberty Mutual offers a health insurance benefit plan to Vermont residents; the Employee Retirement Income Security Act of 1974 (ERISA) governs benefit plans. ERISA requires benefits plans to make claim data reports to the Department of Labor, and generally preempts any state laws that relate to an employee benefit plan. In August 2011, the Vermont Department of Banking, Insurance, Securities, and Health Care Administration (the department) subpoenaed claims data from Blue Cross and Blue Shield of Massachusetts, the company that administers Liberty Mutual's Plan. In district court, Liberty Mutual sought to enjoin the subpoena, arguing ERISA preempted Vermont's reporting requirements. On appeal, the Court of Appeals for the Second Circuit held that ERISA did preempt the reporting requirements. But Alfred Gobeille, chair of the Vermont Green Mountain Care Board, maintains that ERISA does not preempt Vermont's law, because (1) Vermont's law falls under the traditional state power to regulate health care, (2) the law does not infringe any core function of ERISA, and (3) Congress intended for states to retain the ability to collect health care data. Liberty Mutual counters, arguing that Vermont's reporting requirements conflict with Congress's intent to create a uniform federal reporting regime and thus constitute precisely the kind of state law that Congress intended ERISA to preempt. The Supreme Court's resolution of this case will impact the cost to consumers of purchasing health care, the quality of that care, and the resources that the insurance companies must spend on claims data reporting procedures. Full text available at www.law.cornell.edu/supct/cert/14-181 ☉

Franchise Tax Board of the State of California v. Hyatt (14-1175)

Oral argument: Dec. 7, 2015

Court below: Nevada Supreme Court

The Supreme Court must determine the boundaries of Eleventh Amendment sovereign immunity and comity as applied to a state that has been unwillingly brought into another state's courts. The Franchise Tax Board of the state of California (FTB) looks to reverse *Nevada v. Hall* by expanding sovereign immunity to suits brought by private citizens in other states or, alternatively, to find that Nevada violated principles of full faith and credit, comity, and equality, by treating the FTB differently than it would a similar Nevada agency. Conversely, Hyatt argues that *Nevada v. Hall* must be upheld as a matter of stare decisis and that the privilege of comity does not require the forum state, in all circumstances, to treat another state's agency the same as the forum state's equivalent agency. The Supreme Court's decision will determine where states may be haled into court by a private citizen and to what degree states can be civilly liable for violating the law. Full text available at www.law.cornell.edu/supct/cert/14-1175 ☉

Harris, et al. v. Arizona Independent Redistricting Commission (14-232)

Oral argument: Dec. 8, 2015

Court below: U.S. District Court, District of Arizona

The Supreme Court will decide whether Arizona's redistricting plan violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution by diluting the voting power of its residents. The Court will also consider whether Arizona must justify deviations in population between districts, and what kind of justification Arizona may properly raise. In 2000, Arizona voters approved a ballot initiative creating the Arizona Independent Redistricting Commission (the commission), entrusted with redrawing the state's legislative and congressional districts for future elections. In 2011–12, the commission created a new legislative map, which caused population deviation between districts. On April 27, 2012, appellant Wesley W. Harris and others brought suit against the commission in the District of Arizona,

challenging the new legislative map. Harris argues that the commission violates the one-person, one-vote principle of the Equal Protection Clause by drawing unequal districts that dilute the voting power of citizens depending on where they live. According to Harris, neither advancing partisan goals nor obtaining preclearance under Section 5 of the Voting Rights Act are legitimate reasons to draw voting districts of unequal population. The commission contends that where the difference between the most densely and least densely populated districts is less than ten percent, the commission does not need to justify why those districts were not drawn to be precisely equal. Moreover, the commission argues that the deviations in population were the result of a good-faith effort to satisfy Section 5 preclearance. The Court's decision will affect redistricting plans nationwide and could impact the way in

which states consider race or ethnicity in the redistricting process. Full text available at www.law.cornell.edu/supct/cert/14-232 ◉

Evenwel, et al. v. Abbott, et al. (14-940)

Oral argument: Dec. 8, 2015

Court below: U.S. District Court, Western District of Texas

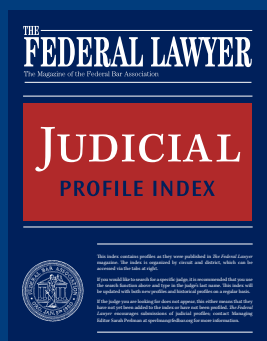
In this case, the Supreme Court will decide whether the Fourteenth Amendment's "one-person, one-vote" principle requires states to apportion eligible voters equally across districts. The Texas Constitution requires that the state legislature reapportion its legislative districts after each federal decennial census. In 2013, Texas adopted a new redistricting plan (Plan S172). Texas drew its senatorial districts based only on total population. Sue Evenwel is a regis-

tered Texas voter. Evenwel argues that the one-person, one-vote principle requires states to divide their districts so that they each comprise a substantially equal number of eligible voters. Texas Gov. Greg Abbott contends that the constitution does not require states to utilize any specific measure, and thus they are free to equalize districts on the basis of total population. The Court's decision could affect the voting power of eligible voters and the method and amount of data collection states must engage in to constitutionally apportion voting districts. Full text available at www.law.cornell.edu/supct/cert/14-940 ◉



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