



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.

## Life Technologies Corp., et al. v. Promega Corp. (14-1538)

**Court below:** U.S. Court of Appeals for the Federal Circuit

**Oral argument:** Dec. 6, 2016

### Question as Framed for the Court by the Parties

Section 271(f)(1) of Title 35 of the U.S. Code provides that it is an act of patent infringement to “suppl[y] . . . in or from the United States all or a substantial portion of the components of a patented invention, . . . in such manner as to actively induce the combination of such components outside the United States.” Despite this Court’s clear dictate in *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437 (2007), that § 271(f) should be construed narrowly, the Federal Circuit held that Life Technologies is liable for patent infringement for worldwide sales of a multi-component kit made abroad because just a single, commodity component of the kit was shipped from the United States.

The question presented is:

Whether the Federal Circuit erred in holding that supplying a single, commodity component of a multicomponent invention from the United States is an infringing act under 35 U.S.C. § 271(f)(1), exposing the manufacturer to liability for all of its worldwide sales.

### Facts

Promega Corporation owns four patents for methods of amplifying particular “short tandem repeats” (STR) loci in a DNA strand and has an exclusive license over a fifth method for the same. The patents not only encompass protection for the methods of amplification but also for the determinations of which STR

loci can be successfully amplified. Each of these methods carry out the amplification process with the main goal of determining the multiple alleles in a person’s DNA. Ultimately, these methods can be used to “create a DNA ‘fingerprint’ unique to [a particular] individual,” that can be used for genetic testing.

Life Technologies Corporation et al. manufacture genetic testing kits that provide several components needed to amplify STR loci. Law enforcement uses these kits for forensic investigations, and clinical and research institutions use them for medical purposes. Several of the STR loci combinations that these kits can amplify are protected by the Promega patents. One component that the kit contains is called *Taq* polymerase, which is the only component that Life Technologies manufactures in the United States. After production of the *Taq* polymerase, Life Technologies then ships the component to its manufacturing facility in the United Kingdom for assemblage and sale worldwide.

In 2006, Promega granted a Life Technologies subsidiary a nonexclusive cross license to use the patents for “forensics and human identity applications.” This license limited Life Technologies’ use of these patents to activities involving legal proceedings. In 2010, Promega sued Life Technologies for selling the kits to parties who used them for activities not covered by the license. The United States District Court for the Western District of Wisconsin held, among other things, that under the relevant statute Life Technologies did not “actively induce” another party to combine the components nor did Life Technologies ship a “substantial portion” of the components of the kits abroad.

The United States Court of Appeals for the Federal Circuit reversed the trial court on both issues. Specifically, the Federal Circuit

held that the phrase “all or a substantial portion” does not exclusively refer to quantity of components but can also encompass the necessity of a component to the assembled, patented invention. Further, it held that although to “induce” usually implies to induce another party, “inducement” may also mean to cause or to bring about. Based on this interpretation, the Federal Circuit found that Life Technologies did induce the components’ assembly abroad. Life Technologies appealed to the United States Supreme Court.

### Analysis

#### The Text and Structure of § 271(f)(1)

Life Technologies argues that the word choice and the structure of the text in § 271(f)(1) requires that courts read § 271(f)(1) in a quantitative way, as opposed to a qualitative way. Life Technologies posits that a quantitative interpretation of § 271(f)(1) asks courts to focus on the number of components supplied as opposed to the individual significance of the components. Life Technologies argues that the structure and text of § 271(f)(1) supports a quantitative reading for several reasons. First, Life Technologies argues that while “substantial” can be used to mean “important,” it is also often used synonymously with “large.” Second, Life Technologies points out that in § 271(f)(1), the term “substantial” follows the term “all” and that “all” is a “quantitative term.” Because of the order of “all” and “substantial,” Life Technologies posits that the only logical interpretation of § 271(f)(1) requires the court to look to the number of components as opposed to the importance of the components.

To counter, Promega argues that § 271(f)(1)’s text requires a “case-specific factual analysis” regarding whether a component of an invention constitutes a “substantial” component. To support this qualitative and quantitative reading of § 271(f)(1), Promega points to the statute’s use of the terms “substantial” and “portion.” Promega posits that the term “portion” means “a part of any whole” and thus a “substantial portion” is an important part of a whole. Thus, Promega argues that under § 271(f)(1), a court must

focus on both the number of components that make up the invention and the importance of the individual components.

### The Purpose of § 271(f)(1)

Life Technologies also maintains that the purpose of § 271(f)(1) requires the statute to be interpreted only with regards to quantity. Life Technologies argues that the Federal Circuit improperly construed the relationship between § 271(f)(1) and the Supreme Court's decision in *Deepsouth Packaging Co. v. Laitram Corp.*, 406 U.S. 518 (1972). Life Technologies asserts that *Deepsouth* stood for the proposition that U.S. patent law did not apply when *all* of the components of a U.S. patent-protected invention were produced in the United States and then sold and assembled abroad. Life Technologies also argues that § 271(f)(1) was enacted in clear response to *Deepsouth*. Thus, Life Technologies contends that the purpose of § 271(f)(1) was to preclude instances when either all or important components of a patented invention were manufactured in the United States and not when only trivial components were manufactured in the United States. Therefore, Life Technologies argues that the purpose of § 271(f)(1) is not to prevent single components from being manufactured in the United States and shipped abroad to be used in the assembling of a multicomponent invention.

In response, Promega argues that § 271(f)(1) was meant to not only close the "loophole" created in *Deepsouth* but also to go further and prevent individuals from circumventing U.S. patent law by sending components abroad for assembly. Promega suggests that looking at Senate hearings and legislative history demonstrates that Congress intended § 271(f)(1) to be broader than the Supreme Court's holding in *Deepsouth*. Thus, Promega argues that Congress never intended to limit § 271(f)(1) to only those instances when a certain number of components are produced within the United States. Therefore, Promega contends that Congress intended § 271(f)(1) to prevent parties from circumventing U.S. patent law regardless of the number of components being produced in the United States.

### Does the Presumption Against Extraterritoriality Apply?

The presumption against extraterritoriality is a form of statutory interpretation. When a Court invokes the presumption against

extraterritoriality, it is noting that while Congress has the power to regulate U.S. citizens outside of the country, it will not assume that Congress intended its power to extend beyond the country's borders. Thus, a court will only apply U.S. law to regulate citizens outside of the United States if Congress has made it clear that the statute is intended to apply outside of the country's borders.

Life Technologies argues that the presumption against extraterritoriality applies with great force in the patent law context. Further, Life Technologies notes that U.S. patent law is not meant to "rule the world" or operate outside of the United States, except in very limited circumstances. While Life Technologies concedes that § 271(f) expands U.S. patent law into foreign markets, Life Technologies maintains that it does so in a very limited way. Thus, Life Technologies suggests that § 271(f)(1) should be interpreted in a way that would limit its international impact. Life Technologies posits that § 271(f)(1) would have a minimal international impact if it is applied in a quantitative way. Life Technologies argues that a more expansive reading of § 271(f)(1) would result in the U.S. patent law impacting foreign countries and governments' access to products protected by U.S. patents.

On the other hand, Promega argues that presumption against extraterritoriality is not applicable in this case. Promega notes that when enacting § 271(f), Congress focused on domestic suppliers who wanted to circumvent U.S. patent law. Thus, Congress wanted to regulate the activity of domestic producers, not the sale of international products. Promega furthers its argument by noting the two-step test that the Supreme Court adopted to determine whether the presumption against extraterritoriality weighs in favor of finding the presumption not to apply. Promega focuses on the second prong of this test, which asks "whether the conduct relevant to the statute's focus occurred in the United States." Promega argues that this prong is dispositive that the presumption against extraterritoriality should not apply because Congress, in enacting § 271(f) was only focusing on conduct that occurred domestically.

### Discussion Extraterritoriality in Patent Law

A group of intellectual property (IP) professors argues that the United States has a strong policy against passing laws that will apply beyond the territorial boundaries

of the United States. Although conceding that Congress does have the authority to regulate acts beyond the territorial limits of the United States, IP professors assert that the presumption against extraterritoriality should hold "unless a contrary intent appears." IP professors contend that the Federal Circuit has consistently failed to apply this presumption against extraterritoriality, not just in this case but in many others as well. IP professors conclude, then, that because Congress has not expressly noted its intention to regulate behavior abroad, the Supreme Court should uphold this non-extraterritoriality presumption.

The New York Intellectual Property Law Association (NYIPLA) responds to the IP professors' argument by contending that the presumption against extraterritoriality applies to *conduct* abroad, not to the *impact* abroad that occurs from actions within the United States. That presumption, however, is not triggered in this case, NYIPLA continues, because the statute only addresses materials that are "supplie[d] ... from the United States." So, NYIPLA contends, because the conduct in question is the shipping of materials from the United States, the extraterritoriality doctrine should not be implicated at all. NYIPLA concludes that Life Technologies' claimed worry about extraterritoriality is really a way to veil its concern that the broader reading of § 271(f)(1) will affect trade and foreign commerce.

### Do Modern Supply Chain Systems Circumvent United States Patent Law?

Agilent Technologies Inc. denies the claim that extraterritorial shipping conduct, such as in the present case, is just a way to circumvent United States patent law. Rather, Agilent contends, this is characteristic of the "supply chain management system," a business model that was developed at least two years before Congress passed § 271(f)(1). Agilent says that this model has helped to cut costs and mitigate the inefficiencies caused by natural disasters and other disruptions. The use of a globally sourced component-supply chain system, Agilent argues, has developed to competitively deliver high-quality products, and not to circumvent the law.

NYIPLA disagrees, stating that Congress passed § 271(f)(1) specifically to close up the loophole of circumventing U.S. patent law by shipping components to a protected invention abroad for assembly. To construe the statute to allow such conduct, NYIPLA

argues, would lead to “frustrate the purpose of the statute.” NYIPLA asserts that it would encourage gaming the system by, for example, allowing a party to ship the most important components of an invention abroad in order to actively induce its combination, thereby getting around U.S. patent law. This, NYIPLA says, is contrary to the purpose of the statute. ☺

*Written by Andrew R. Maury and Scott Benjamin Cohen. Edited by Gerard Salvatore.*

## Czyzewski v. Jevic Holding Corp. (15-649)

**Court below:** U.S. Court of Appeals for the Third Circuit  
**Oral argument:** Nov. 28, 2016

### Question as Framed for the Court by the Parties

Whether a bankruptcy court may authorize a distribution of settlement proceeds that violates the priority scheme established by the Bankruptcy Code, over the objection of priority creditors whose rights are impaired by the proposed distribution.

### Facts

On May 19, 2008, Jevic Holding Corporation fired its 1,800 employees—including the petitioners (the drivers), a certified class of truck drivers—without warning. The next day, Jevic voluntarily filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the District of Delaware. Under the Bankruptcy Code, the drivers had claims against Jevic’s bankruptcy estate that needed to be paid in full before any general unsecured creditors could be paid. Jevic also owed major debts to other creditors, however, including \$53 million to its first-priority secured creditors, CIT Group and Sun Capital Partners, and \$20 million to its general unsecured creditors. In June 2008, the bankruptcy court appointed an Official Committee of Unsecured Creditors to represent Jevic’s unsecured creditors. During these proceedings, the committee brought a related fraudulent conveyance suit, and the drivers brought a class action lawsuit against Jevic which alleged violations of federal and state Worker Adjustment and Retraining Notification (WARN) Acts.

In March 2012, the relevant parties, including the remainder of Jevic, the committee, and the drivers, negotiated a structured dismissal, or an ending of the bankruptcy subject to certain conditions. The Commit-

tee agreed to release its fraudulent conveyance claims pending against Jevic’s two largest creditors (Sun and CIT), provided that CIT pay \$2 million to cover Jevic’s and the Committee’s legal fees and other administrative expenses and that Sun assign its lien on \$1.7 million of Jevic’s remaining assets to a trust to pay tax and administrative creditors, followed by general unsecured creditors. Under this structured dismissal, the drivers would not receive any payment although they held priority wage claims against Jevic’s bankruptcy estate under 11 U.S.C. § 507(a) (4) and lower-priority general unsecured creditors would receive payment. The drivers also did not get the chance to present their damages claim in bankruptcy court.

The drivers objected to the structured dismissal because it distributed the property of the estate to creditors in violation of the priority scheme set out in § 507 of the Bankruptcy Code. The bankruptcy court approved the structured dismissal anyway, citing the “dire circumstances” of having limited options other than the existing settlement and holding that bankruptcy settlements need not comply with the Bankruptcy Code’s priority scheme.

The drivers appealed to the U.S. District Court for the District of Delaware, which affirmed the Bankruptcy Court’s approval of the structured dismissal. The drivers then appealed to the U.S. Court of Appeals for the Third Circuit. The Third Circuit held that a bankruptcy court could in rare cases authorize Chapter 11 settlements that deviated from the priority scheme so long as there were credible grounds for the deviation; the court concluded this was such a case. The drivers filed for a writ of certiorari to the Supreme Court of the United States on Nov. 16, 2015, the Court granted writ on June 28, 2016.

### Analysis

#### Whether the Bankruptcy Code Priority Scheme Applies to Settlements

The drivers argue that the Bankruptcy Code does not authorize a bankruptcy court to approve a Chapter 11 settlement or a structured dismissal that violates the priority scheme set out in Bankruptcy Code §§ 507 and 1129(b). The drivers argue that, unless creditors give consent, Chapter 11 settlements, dismissals, and other devices, in addition to Chapter 11 plans, must comply with the priority principles established in these sections.

Jevic counters that although the plain text

of § 1129(b)(2)(B)(ii) states that a Chapter 11 plan must follow the code’s absolute priority rule, no provision in the code makes the priority scheme applicable to settlements. Jevic asserts that even the title of § 1129, “Confirmation of plan,” makes it clear that Congress intended the priority schemes to apply only to Chapter 11 plans and not settlements. Jevic further asserts that in light of how detailed and meticulous the Bankruptcy Code is, if Congress intended the absolute priority rule to apply to Chapter 11 settlements, it would have expressly stated so in one of the provisions of the code.

The drivers, however, argue that under the code, a debtor may exit Chapter 11 bankruptcy proceedings in only one of three ways: (1) by confirming a Chapter 11 plan of reorganization, (2) converting the proceedings to a Chapter 7 liquidation, or (3) dismissing the case altogether. The drivers assert that none of these alternatives allows deviation from the code’s priority scheme. Accordingly, the drivers argue that because the code’s priority scheme cannot be altered under either a confirmed plan, a Chapter 7 liquidation, or a dismissal, parties should not be able to circumvent the priority scheme through a structured dismissal or a settlement either.

On the other hand, Jevic argues that as long as the Chapter 11 plan follows the priority system as the code requires, it should not matter if various pre-plan components of Chapter 11 proceedings, including settlements, follow the priority system.

#### Whether Specific Provisions Can Override General Provisions

The drivers contend that the courts should interpret the Bankruptcy Code holistically so that its individual provisions are compatible with the rest of the code. The drivers assert that, as a matter of statutory interpretation, the code’s general provisions cannot override its specific priority scheme provisions that apply to Chapter 11 plans. The drivers suggest that the priority scheme of the code makes up the specific provisions that, rather than the more general settlement provisions, govern the distribution of Jevic’s assets in this case.

Jevic argues that the contention that specific provisions override general provisions actually defeats the drivers’ argument because none of the “specific” provisions that the drivers reference (such as § 1129(b)) pertains to settlements. Jevic argues that the

drivers essentially rely on the code's general priority scheme provision under § 507 to circumvent specific provisions of § 1129, which mandates that the priority scheme applies to plans and not to settlements. Jevic argues that if specific provisions, such as §§ 507 and 103(a), impose the priority scheme broadly to all Chapter 11 matters, including settlements, Congress would not need to specify in § 1129 that the absolute priority rule applies to Chapter 11 plans. Thus, specific provisions such as § 1129 that exclude settlements from their scope actually override the general priority scheme provision of § 507.

### Whether the Code Provides Courts with Rights to Approve Chapter 11 Settlements

The drivers argue that a bankruptcy court's power to approve settlements under Federal Rule of Bankruptcy Procedure 9019 or § 363 of the Bankruptcy Code does not allow the court to violate the code's priority scheme through a structured dismissal. The drivers argue that because Rule 9019 is merely a procedural rule, it cannot modify the substantive rights granted by the code's priority scheme. The drivers contend that while § 363 (the provision allowing a debtor-in-possession to sell estate property in the ordinary course of business) might authorize a debtor to make settlements outside of a plan, it does not authorize the court to make any distributions that would violate the priority scheme.

Jevic agrees with the drivers that Federal Rule of Bankruptcy Procedure 9019 cannot provide a substantive standard for the court's review of settlements because it is merely a rule of procedure, and the substantive standard allowing the courts to review settlements must come from the code. Jevic asserts, however, that no substantive provision in the code permits the courts to review settlements in such a way. Jevic argues that because no provision in the Bankruptcy Code authorizes bankruptcy courts to review or approve settlements, the drivers' assertion that bankruptcy courts must reject Chapter 11 settlements that deviate from the priority system is ungrounded.

### Discussion

#### Wage Claim Priority: An Important Inducement

The drivers argue that giving priority to unpaid employee wage claims is an important inducement to employees: it prevents them

from abandoning a failing business for fear of not being paid. In addition, the drivers argue that Congress intended the priority rules to alleviate some of the hardship employees face when a business enters bankruptcy; if bankruptcy courts do not enforce the priority rules, the harshest impact will be on employees because they do not have another source of income. The National Employment Law Project et al., in support of the drivers, argue that allowing bankruptcy courts to deviate from the priority scheme, even on rare occasions, will have a detrimental impact on employees in bankruptcy negotiations; the threat of being skipped over will pressure priority creditors to give in to unfavorable settlement terms.

In contrast, Jevic asserts that the drivers should be "careful what they wish for" because under the current regime, courts routinely approve the payment of pre-petition wages to employees at the outset. Jevic contends that employees like the drivers would be worse off under a strict application of the priority scheme because they would not be able to jump ahead of other priority and secured creditors, and they would not receive any compensation until those creditors are paid in full. A group of law professors emphasizes that a reversal of the Third Circuit's decision would actually do more overall harm than good because it would result in a loss of money from the bankruptcy estate and would negatively impact more than 1,000 general unsecured creditors.

### Circumvention of Congressional Intent or Expansion of Scope

The drivers contend that if bankruptcy courts can authorize a settlement agreement that violates the Bankruptcy Code's priority scheme, the courts will in effect be authorizing parties to do through settlement what Congress specifically prohibited parties from doing directly: circumvent the priority scheme. Furthermore, the drivers maintain that allowing such priority-violating structured dismissals raises the concern that debtors and senior creditors will collude to "squeeze out" objecting intermediate creditors when distributing estate assets.

Jevic contends that the priority rule has never been absolute and the priority scheme has always been shrouded with exceptions necessary for corporate reorganization, such as the exception for "critical vendors" who receive payments for their pre-petition invoices before other creditors are paid. Law

professors in support of Jevic argue that the rule advanced by the drivers would not only foreclose these exceptions but also expand the scope of the absolute priority rule. They further contend that such an expansion would have dangerous unintended consequences.

### Facilitation of Settlement

The drivers argue that long-standing clear-cut rules regarding priority of asset distribution facilitates settlement by making both the law and litigation outcome more predictable to all parties. The states also note that a dependable structure with clear-cut rules is necessary for parties to properly determine their positions and effectively negotiate.

On the contrary, Jevic argues that giving the bankruptcy courts flexibility by allowing them to depart from the priority distribution scheme would facilitate settlement.

The drivers argue that "flexibility" will not facilitate settlement but "rather it would simply redistribute settlement proceeds away from the priority creditors whom Congress intended to protect." The drivers state that if the Court holds that settlements between creditors can violate the priority of another creditor over that creditor's objection, the bargaining power of every intermediate creditor will be compromised in future cases.

Jevic maintains, however, that a holding in favor of the drivers would allow a single holdout creditor to block a potential settlement agreement that benefits the debtor and maximizes the payment made to other creditors. ☉

*Written by Michele Korkhov and Anna Marienko. Edited by Jessica S. Kim.*

## EXECUTIVE SUMMARIES

### Beckles v. United States (15-8544)

**Court below:** *United States Court of Appeals for the Seventh Circuit*

**Oral argument:** Nov. 28, 2016

The Supreme Court will decide whether the holding in *Johnson v. United States*, 135 S. Ct. 2551 (2015), makes the residual clause in § 4B1.2(a)(2) of the U.S. Sentencing Guidelines void for vagueness and, if so, whether this new rule gives relief to Petitioner Travis Beckles by retroactively applying to collateral cases challenging federal sentences under § 4B1.2(a)(2)'s residual clause. Beckles argues that § 4B1.2(a)(2)'s residual



clause is void for vagueness under *Johnson* because the residual clauses in both cases are identical, and the Court held that the clause in *Johnson* was void for vagueness. Beckles also asserts that this new rule applies retroactively under the Court's test in *Teague v. Lane*, 489 U.S. 288 (1989). Respondent the United States argues, however, that Beckles' new rule would not apply retroactively because it is a procedural rather than a substantive rule, and thus the Court should reject his request at this threshold. The United States further argues that if the Court does reach the merits, § 4B1.2(a)(2)'s residual clause is not void for vagueness with respect to those applications expressly specified in the commentary to § 4B1.2(a)(2) because this commentary clarifies the otherwise vague guideline. This case will address whether retroactive resentencing for "career offenders" will burden the federal system and will clarify the advisory nature of the Sentencing Guidelines in terms of due process concerns. Full text available at: [www.law.cornell.edu/supct/cert/15-8544](http://www.law.cornell.edu/supct/cert/15-8544). ☉

## **Moore v. Texas (15-797)**

**Court below:** Texas Court of Criminal Appeals  
**Oral argument:** Nov. 29, 2016

After the Supreme Court prohibited the execution of the intellectually disabled in *Atkins v. Virginia* in 2002, Bobby James Moore petitioned for habeas relief from his death sentence on the grounds of intellectual disability. A Texas habeas court found that Moore was intellectually disabled under the American Association on Intellectual and Developmental Disabilities' (AAIDD) current definition of intellectual disability. The Texas Court of Criminal Appeals, however, rejected Moore's claim and held that Texas courts must apply AAIDD's 1992 intellectual disability definition, which was adopted in a 2004 Texas case. Moore claims that mandating the use of outdated and nonclinical criteria violates the Eighth Amendment and Supreme Court precedent. Texas maintains that its definition of intellectual disability is within the national consensus and, therefore, does not violate the Eighth Amendment. The Court will determine the breadth of the Eighth Amendment's protections for intellectually disabled defendants, and the case will have significant consequences for all defendants with intellectual disabilities that are on death row or facing the death penalty in Texas and may have wider effects across

the country. Full text available at: [www.law.cornell.edu/supct/cert/15-797](http://www.law.cornell.edu/supct/cert/15-797). ☉

## **Jennings v. Rodriguez (15-1204)**

**Court below:** U.S. Court of Appeals for the Ninth Circuit  
**Oral argument:** Nov. 30, 2016

In this case, the Supreme Court will determine whether immigrants to the United States, who are being detained under civil immigration detention statutes, must be brought before an immigration judge for a bond hearing at six-month intervals throughout their detention and whether the immigration judge must consider alternatives to a detained immigrant's prolonged detention if the government fails to show through clear and convincing evidence that the immigrant is a flight risk or danger to the community. David Jennings et al. argue that statutory language and congressional intent prohibit immigration judges from releasing noncitizens detained under the civil immigration detention statutes on bond. Meanwhile, Alejandro Rodriguez et al. argue that Congress did not authorize prolonged detention through the immigration statutes and that without periodic bond hearings or the government's justification of continued detention, individuals would be needlessly deprived of their liberty. The Supreme Court's decision in this case will impact detained noncitizen's constitutional rights and their ability to exercise their legal rights during removal proceedings. Full text available at: [www.law.cornell.edu/supct/cert/15-1204](http://www.law.cornell.edu/supct/cert/15-1204). ☉

## **Bethune-Hill v. Virginia State Bd. of Elections (15-680)**

**Court below:** U.S. District Court for the Eastern District of Virginia  
**Oral argument:** Dec. 5, 2016

This case gives the Supreme Court the opportunity to determine whether a state's use of a black voting age population (BVAP) floor in crafting new legislative districts is permissible if the state also considers other race-neutral criteria. Appellants, Bethune-Hill et al., argue that the Virginia State Board of Elections' (BOE) use of a 55 percent BVAP floor violated the Equal Protection Clause because the BOE acknowledged that complying with the racial target was the most important factor in the redistricting

process. Bethune-Hill argues that racial targets demean minorities, regardless of whether the state also considers race-neutral factors. Appellees, the BOE, contend that their use of the BVAP floor was a lawful way of complying with the demands of the Voting Rights Act. The BOE claims that the fact that the challenged districts conform to traditional race-neutral redistricting standards illustrates that minority voters were not harmed in the way the Equal Protection Clause contemplates because the state grouped them according to communities of interest, not solely according to their skin color. This case will impact what measures states can take in order to comply with the Voting Rights Act. Full text available at: [www.law.cornell.edu/supct/cert/15-680](http://www.law.cornell.edu/supct/cert/15-680). ☉

## **McCrorry v. Harris (15-1262)**

**Court below:** United States District Court for the Middle District of North Carolina  
**Oral argument:** Dec. 5, 2016

The Court must consider whether the proposed redistricting plans to North Carolina's Congressional District 1 and Congressional District 12 constitute unconstitutional gerrymandering. Appellants Patrick McCrorry, governor of North Carolina, and A. Grant Whitney Jr., chairman of the North Carolina State Board of Elections, contend that the redistricting plans were not drawn based on race but rather were politically motivated. Appellees David Harris and Christine Bowser claim that direct and circumstantial evidence demonstrates that race was the predominant factor in the redrawing of district lines. The case is significant because it will address whether complying with the Voting Rights Act satisfies a compelling government interest and whether gerrymandering challengers must provide an alternative map when they present direct and circumstantial evidence of race-based redistricting. Full text available at: [www.law.cornell.edu/supct/cert/15-1262](http://www.law.cornell.edu/supct/cert/15-1262). ☉