KEY CASES FROM OCTOBER 2016 TERM

DECIDED CASES

Samsung Electronics Co. Ltd. v. Apple Inc., No. 15-777 (December 6, 2016)

Breakdown: SOTOMAYOR, J., delivered the opinion for a unanimous Court.

Facts: Section 289 of the Patent Act makes it unlawful to manufacture or sell an "article of manufacture" to which a patented design or a colorable imitation of a patented design has been applied. It also makes an infringer liable to the patent holder "to the extent of his total profit." A jury found that smartphones manufactured by Samsung infringed design patents owned by Apple that covered a rectangular front face with rounded edges and a grid of colorful icons on a black screen. Apple was awarded $399 million in damages, which was Samsung's entire profit from the sale of the infringing smartphones. The Federal Circuit affirmed the damages award, rejecting Samsung's argument that damages should be limited because the relevant articles of manufacture were the smartphones' screen, not the entire smartphone.

***Held*:** In the case of a multicomponent product, the relevant "article of manufacture" to be used when calculating a §289 damages award need not be the end product sold to the consumer but may be a component of that product.

Life Technologies Corporation v. Promega Corporation, No. 14-1538 (February 22, 2017)

Breakdown: 7-0 SOTOMAYOR, J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, BREYER, and KAGAN, JJ., joined, and in which THOMAS and ALITO, JJ., joined as to all but Part II–C. ALITO, J., filed an opinion concurring in part and concurring in the judgment, in which THOMAS, J., joined. ROBERTS, C. J., took no part in the decision of the case.

Facts: Respondent Promega sublicensed a patent over a genetic testing toolkit to petitioner Life Technologies for the manufacture and sale of the kits for use in licensed law enforcement fields worldwide. One of the

kit's five components, an enzyme known as the Taq polymerase, was manufactured by Life Technologies in the United States (and then shipped to the United Kingdom, where four other components were made, for combination in the United Kingdom). When Life Technologies began selling the kits outside the licensed fields of use, Promega sued, claiming that patent infringement liability was triggered under §271(f)(1) of the Patent Act. That section prohibits the supply from the United States of "all or a substantial portion of the components of a patented invention" for combination abroad. The District Court held that §271(f)(1)'s phrase "all or a substantial portion" did not encompass the supply of a single component of a multicomponent invention. The Federal Circuit reversed. It determined that a single important component could constitute a "substantial portion" of the components of an invention under §271(f)(1) and found the Taq polymerase to be so substantial.

***Held*:** The supply of a single component of a multicomponent invention for manufacture abroad does not give rise to §271(f)(1) liability.

Pena-Rodriguez v. Colorado, No. 15-606 (March 6, 2017)

Breakdown: 5-3 KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion. ALITO, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS, J., joined.

Facts: A Colorado jury convicted the petitioner. After the jury was discharged, petitioner's defense counsel obtained affidavits from two jurors describing another juror's anti-Hispanic bias, expressed during the jury's deliberations, towards petitioner and his alibi witness. The trial court denied petitioner's motion for a new trial on the basis that Colorado Rule of Evidence 606(b) generally prohibits a juror from testifying as to statements made during deliberations in an inquiry into the validity of a verdict. The Colorado Court of Appeals and the Colorado Supreme Court both affirmed, relying on *Tanner v. United States*, 483 U. S. 107, and *Warger v. Shauers*, 574 U. S. ___ (rejecting constitutional challenges to the federal no-impeachment rule as applied to evidence of juror misconduct or bias).

***Held*:** When a juror makes a clear statement indicating that he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.

> ***SCA Hygiene Products Aktiebolag v. First Quality Baby Products, L.L.C.***, No. 15-927 (March 21, 2017)

Breakdown: 7-1 ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. BREYER, J., filed a dissenting opinion.

Facts: In 2003, SCA notified Fist Quality that their adult incontinence products infringed an SCA patent. First Quality responded that its own patent antedated SCA's patent and made it invalid. In 2004, SCA sought reexamination of its patent in light of First Quality's patent, and in 2007, the Patent and Trademark Office confirmed the SCA patent's validity. SCA sued First Quality for patent infringement in 2010. The District Court granted summary judgment to First Quality on the grounds of equitable estoppel and laches. While SCA's appeal was pending, this Court held that laches could not preclude a claim for damages incurred within the Copyright Act's 3-year limitations period. *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U. S. ___, ___. A Federal Circuit panel nevertheless affirmed the District Court's laches holding based on Circuit precedent, which permitted laches to be asserted against a claim for damages incurred within the Patent Act's 6-year limitations period. The en banc court reheard the case in light of *Petrella* and reaffirmed the original panel's laches holding.

***Held*:** Laches cannot be invoked as a defense against a claim for damages brought within §286's 6-year limitations period.

Star Athletica, L.L.C. v. Varsity Brands, Inc., No. 15-866 (March 22, 2017)

Breakdown: 6-2 THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and ALITO, SOTOMAYOR, and KAGAN, JJ., joined. GINSBURG, J., filed an opinion concurring in the judgment. BREYER, J., filed a dissenting opinion, in which KENNEDY, J., joined.

Facts: Section 101 of the Copyright Act makes "pictorial, graphic, or sculptural features" of the "design of a useful article" eligible for copyright protection as artistic works if those features "can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." Varsity Brands had more than 200 copyright registrations for two-dimensional designs—various lines, chevrons, and colorful shapes—appearing on the surface of the cheerleading uniforms that they design, make, and sell. They sued Star Athletica, who also markets cheerleading uniforms, for copyright infringement. The District Court granted Star Athletica summary judgment, holding that Varsity Brands' designs could not be conceptually or physically separated from the uniforms and were therefore ineligible for copyright protection. The Sixth Circuit reversed, holding that the graphics could be "identified separately" and were "capable of existing independently" of the uniforms under §101.

***Held*:** A feature incorporated into the design of a useful article is eligible for copyright protection only if the feature (1) can be perceived as a two- or three-dimensional work of art separate from the useful article, and (2) would qualify as a protectable pictorial, graphic, or sculptural work—either on its own or fixed in some other tangible medium of expression—if it were imagined separately from the useful article into which it is incorporated. Varsity Brands' registrations satisfied that test.

Bank of America Corp. v. City of Miami, No. 15-1111; ***Wells Fargo & Co. v. City of Miami***, No. 15-1112; (May 1, 2017)

Breakdown: 5-3 BREYER, J., delivered the opinion of the Court, in which ROBERTS, C.J., and GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed an opinion concurring in part and

dissenting in part, in which KENNEDY and ALITO, JJ., joined. GORSUCH, J., took no part in the consideration or decision of the cases.

Facts: The City of Miami sued Bank of America and Wells Fargo, alleging violations of the Fair Housing Act. The Act prohibits racial discrimination in connection with real-estate transactions, 42 U. S. C. §§3604(b), 3605(a), and permits any "aggrieved person" to file a civil damages action for a violation of the Act, §§3613(a)(1)(A), (c)(1). The City alleged that the Banks intentionally targeted predatory practices at African-American and Latino neighborhoods and residents, lending to minority borrowers on worse terms than equally creditworthy nonminority borrowers and inducing defaults by failing to extend refinancing and loan modifications to minority borrowers on fair terms. The City alleged that the Banks' discriminatory conduct led to a disproportionate number of foreclosures and vacancies in majority-minority neighborhoods, which impaired the City's effort to assure racial integration, diminished the City's property-tax revenue, and increased demand for police, fire, and other municipal services. The District Court dismissed the complaints on the grounds that (1) the harms alleged fell outside the zone of interests the Act protects and (2) the complaints failed to show a sufficient causal connection between the City's injuries and the Banks' discriminatory conduct. The Eleventh Circuit reversed.

***Held*:**

1. The City is an "aggrieved person" authorized to bring suit under the Fair Housing Act.

2. The Eleventh Circuit erred in concluding that the complaints met the Fair Housing Act's proximate-cause requirement based solely on the finding that the City's alleged financial injuries were foreseeable results of the Banks' misconduct. Rather, proximate cause under the Act requires some direct relation between the injury asserted and the injurious conduct alleged.

TC Heartland L.L.C. v. Kraft Foods Group Brands L.L.C., No. 16-341 (May 22, 2017)

Breakdown: 8-0 THOMAS, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the case.

Facts: The patent venue statute, 28 U. S. C. §1400(b), provides that "[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." In *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U. S. 222, 226, the Court concluded that for purposes of §1400(b) a domestic corporation "resides" only in its State of incorporation. Since *Fourco*, Congress has twice amended §1391 (the general venue statute), but not the patent venue statute. The general venue statue now provides that, "[e]xcept as otherwise provided by law" and "[f]or all venue purposes," a defendant corporation "shall be deemed to reside . . . in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question." §§1391(a), (c). The petitioner is incorporated and headquartered in Indiana, but ships particular products into Delaware. Respondent filed a patent infringement suit in the District Court for the District of Delaware against petitioner, alleging an infringement of respondent's patent over those products. Petitioner moved to transfer venue to a District Court in Indiana, claiming that venue was improper in Delaware. Citing *Fourco*, petitioner argued that it did not "resid[e]" in Delaware and had no "regular and established place of business" in Delaware under §1400(b). The District Court rejected these arguments. The Federal Circuit denied a petition for a writ of mandamus, concluding that §1391(c)–the general venue statute with its amended, broader definition of "resides–supplied the definition of "resides" for §1400(b), the patent venue statute. The Federal Circuit reasoned that because petitioner resided in Delaware under the broader definition of "resides" in §1391(c), it also resided there under §1400(b).

***Held*:** As applied to domestic corporations, "reside[nce]" in §1400(b) (the patent venue statute) refers only to the State of incorporation. The

amendments to §1391 did not modify the meaning of §1400(b) as interpreted by *Fourco*.

Cooper v. Harris, No. 15-1262 (May 22, 2017)

Breakdown: 5-3 KAGAN, J., delivered the opinion of the Court, in which THOMAS, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. THOMAS, J., filed a concurring opinion. ALITO, J., filed an opinion concurring in the judgment in part and dissenting in part, in which ROBERTS, C. J., and KENNEDY, J., joined. GORSUCH, J., took no part in the consideration or decision of the case.

Facts: The Equal Protection Clause of the Fourteenth Amendment prevents a State, in the absence of "sufficient justification," from "separating its citizens into different voting districts on the basis of race." *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U. S. ___, ___. When a voter sues state officials for drawing race-based lines, a two-step analysis follows. First, the plaintiff must prove that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller v. Johnson*, 515 U. S. 900, 916. Second, if racial considerations did predominate, the State must prove that its race-based sorting of voters serves a "compelling interest" and is "narrowly tailored" to that end, *Bethune-Hill*, 580 U. S., at ___. The Court has long assumed that one compelling interest is compliance with the Voting Rights Act of 1965. When a State invokes the Act to justify race-based districting, it must show (to meet the "narrow tailoring" requirement) that it had "good reasons" for concluding that the statute required its action. *Alabama Legislative Black Caucus v. Alabama*, 575 U. S. ___, ___. This case concerned North Carolina's redrawing of two congressional districts, District 1 and District 12, after the 2010 census. Prior to that redistricting, neither district had a majority black voting-age population, but both consistently elected the candidates preferred by most African-American voters. The new map significantly altered both District 1 and District 12. The State needed to add almost 100,000 people to District 1 to comply with the one-person-one-vote principle, and it chose to take most of those people from heavily black areas of Durham—increasing the district's black voting-age population from 48.6% to 52.7%. The State also reconfigured District 12, increasing its

black voting-age population from 43.8% to 50.7%. Registered voters in those districts filed suit against North Carolina officials, complaining of impermissible racial gerrymanders. The District Court held both districts unconstitutional. It found that racial considerations predominated in the drawing of District 1's lines and rejected the State's claim that this action was justified by the Voting Rights Act. As for District 12, the court found that race predominated, and the State made no attempt to justify its attention to race in drawing that district.

***Held*:** The District Court did not err in concluding that race predominated in the redrawing of District 1 and District 12 and that the State's interest in complying with the Voting Rights Act could not justify that consideration of race.

Impression Products, Inc. v. Lexmark International, Inc., No. 15-1189 (May 30, 2017)

Breakdown: 7-1 ROBERTS, C. J., delivered the opinion of the Court, in which KENNEDY, THOMAS, BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. GINSBURG, J., filed an opinion concurring in part and dissenting in part. GORSUCH, J., took no part in the consideration or decision of the case.

Facts: A United States patent entitles the patent holder to "exclude others from making, using, offering for sale, or selling [its] invention throughout the United States or importing the invention into the United States." 35 U. S. C. §154(a). Whoever engages in one of these acts "without authority" from the patentee may face liability for patent infringement. §271(a). When a patentee sells one of its products, however, the patentee can no longer control that item through patent laws—its patent rights then "exhaust." Respondent Lexmark International, Inc. designs, manufactures, and sells toner cartridges to consumers in the United States and abroad. It owns a number of patents that cover components of those cartridges and the manner in which they are used. When Lexmark sells toner cartridges, it gives consumers two options: One option is to buy a toner cartridge at full price, with no restrictions. The other option is to buy a cartridge at a discount through Lexmark's "Return Program." In exchange for the lower price, customers who buy through the Return Program must sign a contract agreeing to use the cartridge only once and to refrain from

transferring the cartridge to anyone but Lexmark. Companies known as remanufacturers acquire empty Lexmark toner cartridges—including Return Program cartridges—from purchasers in the United States, refill them with toner, and then resell them. They do the same with Lexmark cartridges that they acquire from purchasers overseas and import into the United States. Lexmark sued a number of these remanufacturers, including petitioner Impression Products, Inc., for patent infringement with respect to two groups of cartridges. The first group consisted of Return Program cartridges that Lexmark sold within the United States. Lexmark argued that, because it expressly prohibited reuse and resale of these cartridges, Impression Products infringed the Lexmark patents when it refurbished and resold them. The second group consists of all toner cartridges that Lexmark sold abroad and that Impression Products imported into the country. Lexmark claimed that it never gave anyone authority to import these cartridges, so Impression Products infringed its patent rights by doing just that. Impression Products moved to dismiss on the grounds that Lexmark's sales, both in the United States and abroad, exhausted its patent rights in the cartridges, so Impression Products was free to refurbish and resell them, and to import them if acquired overseas. The District Court granted the motion to dismiss as to the domestic Return Program cartridges, but denied the motion as to the cartridges sold abroad. The Federal Circuit then ruled for Lexmark with respect to both groups of cartridges.

***Held*:**

1. Lexmark exhausted its patent rights in the Return Program cartridges that it sold in the United States. A patentee's decision to sell a product exhausts all of its patent rights in that item, regardless of any restrictions the patentee purports to impose. As a result, even if the restrictions in Lexmark's contracts with its customers were clear and enforceable under contract law, they do not entitle Lexmark to retain patent rights in an item that it has elected to sell.

2. An authorized sale outside the United States, just as one within the United States, exhausts all rights under the Patent Act.

Advocate Health Care Network v. Stapleton, No. 16-74 (June 5, 2017)

Breakdown: 8-0 KAGAN, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the cases. SOTOMAYOR, J., filed a concurring opinion.

Facts: ERISA generally obliges private employers offering pension plans to adhere to an array of rules designed to ensure plan solvency and protect plan participants. Church plans, however, are exempt from those regulations. ERISA initially defined a "church plan" as "a plan established and maintained . . . for its employees . . . by a church." Congress then amended the statute to expand that definition, adding this provision: "A plan established and maintained for its employees . . . by a church . . . includes a plan maintained by an organization . . . the principal purpose . . . of which is the administration or funding of [such] plan . . . for the employees of a church . . . , if such organization is controlled by or associated with a church." (Referred to in the opinion as a "principal-purpose organization.") Petitioners are three church-affiliated nonprofits that run hospitals and other healthcare facilities, and offer their employees defined-benefit pension plans. Those plans were established by the hospitals themselves, and are managed by internal employee-benefits committees. Respondents, current and former hospital employees, filed class actions alleging that the hospitals' pension plans do not fall within ERISA's church-plan exemption because they were not established by a church. The District Courts, agreeing with the employees, held that a plan must be established by a church to qualify as a church plan. The Courts of Appeals affirmed.

***Held*:** A plan maintained by a principal-purpose organization qualifies as a "church plan," regardless of who established it.

Town of Chester v. Laroe Estates, No. 16-605 (June 5, 2017)

Breakdown: 9-0 ALITO, J., delivered the opinion for a unanimous Court.

Facts: Land developer Steven Sherman paid $2.7 million to purchase land in the town of Chester for a housing subdivision. He also sought the Town's approval of his development plan. About a decade later, he filed suit in New York state court, claiming that the Town had obstructed his plans for the subdivision, forcing him to spend around $5.5 million to comply with its demands. Sherman asserted, among other claims, a regulatory takings claim under the Fifth and Fourteenth Amendments. The Town removed the case to a Federal District Court. A real estate development company Laroe Estates, Inc. filed a motion to intervene of right under Federal Rule of Civil Procedure 24(a)(2). Laroe alleged that it had paid Sherman more than $2.5 million in relation to the development project, that its resulting equitable interest in the property would be impaired if it could not intervene, and that Sherman would not adequately represent its interest. Laroe filed an intervenor's complaint asserting a regulatory takings claim that was substantively identical to Sherman's and seeking a judgment awarding Laroe compensation for the taking of Laroe's interest in the property at issue. The District Court denied Laroe's motion to intervene, concluding that its equitable interest did not confer standing. The Second Circuit reversed, holding that an intervenor of right is not required to meet Article III's standing requirements.

***Held*:** A litigant seeking to intervene as of right under Rule 24(a)(2) must meet the requirements of Article III standing if the intervenor wishes to pursue relief not requested by a plaintiff.

> ***Kokesh v. Securities and Exchange Commission***, No. 16-529 (June 5, 2017)

Breakdown: 9-0 SOTOMAYOR, J., delivered the opinion for a unanimous Court.

Facts: In 2009, the SEC brought an enforcement action, alleging that petitioner Charles Kokesh violated various securities laws by concealing the misappropriation of $34.9 million from four business-development companies from 1995 to 2009. The Commission sought monetary civil penalties, disgorgement, and an injunction barring Kokesh from future violations. After a jury found that Kokesh's actions violated several securities laws, the District Court determined that §2462's 5-year limitations period applied to the monetary civil penalties. With respect

to the $34.9 million disgorgement judgment, however, the court concluded that §2462 did not apply because disgorgement is not a "penalty" within the meaning of the statute. The Tenth Circuit affirmed, holding that disgorgement was neither a penalty nor a forfeiture.

***Held*:** Because SEC disgorgement operates as a penalty under §2462, any claim for disgorgement in an SEC enforcement action must be commenced within five years of the date the claim accrued.

Matal v. Tam, No. 15-1293 (June 19, 2017)

Breakdown: 8-0 ALITO, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, and III–A, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined, and in which THOMAS, J., joined except for Part II, and an opinion with respect to Parts III–B, III–C, and IV, in which ROBERTS, C. J., and THOMAS and BREYER, JJ., joined. KENNEDY, J., filed an opinion concurring in part and concurring in the judgment, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed an opinion concurring in part and concurring in the judgment. GORSUCH, J., took no part in the consideration or decision of the case.

Facts: Simon Tam, lead singer of a rock group "The Slants," chose the group's name in order to "reclaim" the term and remove its stain as a derogatory term for Asian people. Tam sought federal registration of the mark "The Slants." The Patent and Trademark Office (PTO) denied the application under a Lanham Act provision prohibiting the registration of trademarks that may "disparage or bring into contempt or disrepute" any "persons, living or dead." 15 U.S.C. §1052(a). An en banc Federal Circuit found the disparagement clause facially unconstitutional under the First Amendment's Free Speech Clause.

***Held*:** The disparagement clause violates the First Amendment's Free Speech Clause. Contrary to the Government's contention, trademarks are private, not government speech. The disparagement clause denies registration to any mark that is offensive to a substantial percentage of the members of any group. That is viewpoint discrimination in the sense relevant here: Giving offense is a viewpoint. The "public

expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." *Street v. New York*, 394 U. S. 576, 592.

Packingham v. North Carolina, No. 15-1194 (June 19, 2017)

Breakdown: 8-0 KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in the judgment, in which ROBERTS, C. J., and THOMAS, J., joined. GORSUCH, J., took no part in the consideration or decision of the case.

Facts: North Carolina law makes it a felony for a registered sex offender "to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members orto create or maintain personal Web pages." N. C. Gen. Stat. Ann. §§14–202.5(a), (e). The petitioner was indicted after posting a statement on his personal Facebook profile about a positive experience in traffic court. The trial court denied petitioner's motion to dismiss the indictment on the ground that the law violated the First Amendment. On appeal, the State Court of Appeals struck down §14–202.5 on First Amendment grounds, but the State Supreme Court reversed.

***Held*:** The North Carolina statute impermissibly restricts lawful speech in violation of the First Amendment. A fundamental First Amendment principle is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more. Today, one of the most important places to exchange views is cyberspace, particularly social media, which offers relatively unlimited, low-cost capacity for communication of all kinds to users engaged in a wide array of protected First Amendment activity on any number of diverse topics. Here, in one of the first cases the Court has taken to address the relationship between the First Amendment and the modern Internet, the Court must exercise extreme caution before suggesting that the First Amendment provides scant protection for access to vast networks in that medium.

Trinity Lutheran Church of Columbia, Inc. v. Comer, No. 15-577 (June 26, 2017)

Breakdown: 7-2 ROBERTS, C. J., delivered the opinion of the Court, except as to footnote 3. KENNEDY, ALITO, and KAGAN, JJ., joined that opinion in full, and THOMAS and GORSUCH, JJ., joined except as to footnote 3. THOMAS, J., filed an opinion concurring in part, in which GORSUCH, J., joined. GORSUCH, J., filed an opinion concurring in part, in which THOMAS, J., joined. BREYER, J., filed an opinion concurring in the judgment. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG, J., joined.

Facts: The Trinity Lutheran Church Child Learning Center is a Missouri preschool and daycare center. The Center operates under the Church's auspices on church property. Among the facilities at the Center is a gravel-surfaced playground. In 2012, the Center sought to replace a large portion of the gravel with a pour-inplace rubber surface by participating in Missouri's Scrap Tire Program. The program, run by the State's Department of Natural Resources, offers reimbursement grants to qualifying nonprofit organizations that install playground surfaces made from recycled tires. The Department had a strict and express policy of denying grants to any applicant owned or controlled by a church. Pursuant to that policy, the Department denied the Center's application. Although the Center ranked fifth out of the 44 applicants, it did not receive a grant because it is a church. Trinity Lutheran sued in Federal District Court, alleging that the Department's failure to approve its application violated the Free Exercise Clause of the First Amendment. The District Court dismissed the suit. A divided panel of the Eighth Circuit affirmed.

***Held*:** The Department's policy violated the rights of Trinity Lutheran under the Free Exercise Clause of the First Amendment by denying the Church an otherwise available public benefit on account of its religious status. Denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion.

CERT. GRANTED FOR OT 2017

Trump v. Int'l Refugee Assistance Project, No. 16-1436

Issue(s): (1) Whether respondents' challenge to the temporary suspension of entry of aliens abroad under Section 2(c) of Executive Order No. 13,780 is justiciable; (2) whether Section 2(c)'s temporary suspension of entry violates the Establishment Clause; (3) whether the global injunction, which rests on alleged injury to a single individual plaintiff, is impermissibly overbroad; and (4) whether the challenges to Section 2(c) became moot on June 14, 2017.

New Jersey Thoroughbred Horsemen's Association v. National Collegiate Athletic Association, No. 16-477

Issue(s): Whether a federal statute that prohibits adjustment or repeal of state-law prohibitions on private conduct impermissibly commandeers the regulatory power of states in contravention of *New York v. United States* and *Printz v. United States*.

Carpenter v U.S., No. 16-402

Issue(s): Whether the warrantless seizure and search of historical cell-phone records revealing the location and movements of a cell-phone user over the course of 127 days is permitted by the Fourth Amendment.

Oil States Energy Services LLC v. Greene's Energy Group, LLC, No. 16-111

Issue(s): Whether inter partes review, an adversarial process used by the Patent and Trademark Office (PTO) to analyze the validity of existing patents, violates the Constitution by extinguishing private property rights through a non-Article III forum without a jury

Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, No. 16-111

Issue(s): Whether applying Colorado's public accommodations law to compel the petitioner to create expression that violates his sincerely held religious beliefs about marriage violates the free speech or free exercise clauses of the First Amendment.

Gill v. Whitford, No. 16-1161

Issue(s): (1) Whether the district court violated *Vieth v. Jubelirer* when it held that it had the authority to entertain a statewide challenge to Wisconsin's redistricting plan, instead of requiring a district-by-district analysis; (2) whether the district court violated *Vieth* when it held that Wisconsin's redistricting plan was an impermissible partisan gerrymander, even though it was undisputed that the plan complies with traditional redistricting principles; (3) whether the district court violated *Vieth* by adopting a watered-down version of the partisan-gerrymandering test employed by the plurality in *Davis v. Bandemer*; (4) whether the defendants are entitled, at a minimum, to present additional evidence showing that they would have prevailed under the district court's test, which the court announced only after the record had closed; and (5) whether partisan-gerrymandering claims are justiciable.