



Joshua Matz

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Monday round-up

After its Conference last Friday, the Court announced two new cert. grants, both of which Lyle covered for [this blog](#). In [Salazar v. Ramah Navajo Chapter](#), the Court will consider whether the federal government must repay Indian tribes all of what they actually spend when they run a federal program in place of a government agency. And in [Florida v. Jardines](#), the Court will have an opportunity to clarify when police may use a drug-sniffing dog at the front door of a house. The grant in *Jardines* drew coverage from [Bloomberg News](#), the [Los Angeles Times](#), the [Washington Post](#), the [Christian Science Monitor](#), [BBC](#), [Wired](#), the [Hawaii News Daily](#), the [Huffington Post](#), the [Wall Street Journal Law Blog](#), and the [Associated Press](#), [Reuters](#); Kent Scheidegger of [Crime & Consequences](#) weighs in on the merits (as did Orin Kerr of the [Volokh Conspiracy](#) back in late December).

As Lyle [reports](#), Friday was an exciting day at the Court for another reason: the federal government filed its opening [merits brief](#) in the health care litigation, defending the individual mandate, while [twenty-six states](#) and a [business trade group](#) filed their merits briefs arguing that the mandate cannot be severed from the rest of the Affordable Care Act. [Bloomberg News](#), the [Washington Post](#), [CNN](#), the [National Journal](#), the [Washington Times](#), [ABC News](#), [ACS Blog](#), the [Huffington Post](#), the [Associated Press](#), [Reuters](#), the [Constitutional Law Prof Blog](#), and [Politico](#) provide coverage of the filings.

Analysis of the health care briefs and the broader significance of the litigation quickly followed the filings. At the [Volokh Conspiracy](#), Orin Kerr opines that the U.S. brief “strikes me as significantly better than the briefs that DOJ was filing in the early mandate cases,” while the [Wall Street Journal Law Blog](#) notes that the U.S. brief “probably ranks in the top 10 [most important] of the last half century.” Andrew Cohen of [the Atlantic](#) provides “5 quick takes” on the federal government’s brief. At [CATO@Liberty](#), Ilya Shapiro reports on an *amicus* brief filed by the CATO Institute, which contends that the mandate cannot be severed from Titles I and II of the Affordable Care Act. At the [Huffington Post](#), [Al Sharpton](#) argues that the Court’s health care and immigration cases will define “whether we are a cohesive country of laws or whether we are a divided states that would like to make up our own rules as we go along,” while [Miles J. Zaremski](#) argues that “health care as a right . . . in a kind of human rights or moralistic way” constitutes “the foundation from which any Supreme Court analysis should begin.” The

[Kaiser Health News Blog](#) and [The Hill](#) report on comments by administration officials on the federal government's filing.

This afternoon, the Court will hear seventy minutes of oral argument in the Texas redistricting case, [Perry v. Perez](#) (which we [discussed](#) last week in the Community). Lyle recently [previewed](#) the case, noting that it has “developed potentially historic proportions” because of its implication for the Voting Rights Act of 1965. Other coverage of the cases comes from Greg Stohr of [Bloomberg Businessweek](#), Ariane de Vogue of [ABC News](#), [Reuters](#), Mark Sherman of the [Associated Press](#), Gary Martin of the [San Antonio Express-News](#), Aman Batheja of the [Fort Worth Star-Telegram](#), Enrique Rangel of the [Lubbock Avalanche-Journal](#), Warren Richey of the [Christian Science Monitor](#), Michael Kirkland of [UPI](#), and Tim Eaton of the [Austin American-Statesman](#) also provide coverage. And at the [Washington Post](#), Robert Barnes previews the arguments, which he characterizes as “only the first of the cases that will call upon the court to get involved in partisan electoral fights or revisit campaign finance decisions.”

Before it hears arguments in the Texas redistricting cases, however, the Court will first hear oral argument in [Sackett v. EPA](#), in which the Justices will consider whether the plaintiff-property owners may seek pre-enforcement judicial review of an order by the Environmental Protection Agency requiring compliance with wetlands regulations. Lyle [previewed](#) the case last week, which was [discussed](#) last month in the Community; [McClatchy](#), [NPR](#), [Greenwire](#), and the [Philadelphia Inquirer](#) also provide coverage. Larry Levine of the [National Resource Defense Counsel Switchboard Blog](#) argues that, “if the court rules in favor of the Sacketts and these industry giants, the agency will have a much harder time stopping environmental harm.” The editorial board of the [New York Times](#) concurs, arguing that “if the Supreme Court allows [the Sacketts] to seek pre-enforcement review, it will be handing a big victory to corporations and developers who want to evade the requirements of the Clean Water Act.” Taking a different view, Mark Hyman, writing in the [Washington Examiner](#), characterizes the case as a chance for the Court to “end abuses committed by federal bureaucrats in the name of environmental protection against fundamental constitutional rights that are every American’s birthright;” Rob Bluey and Lachlan Markay of the [Heritage Foundation](#) and the editorial board of the [Las Vegas Review-Journal](#) also weigh in against the EPA. Michael Doyle of the [Sacramento Bee](#) profiles Damien Schiff, who will argue on behalf of the Sacketts.

Tomorrow at oral arguments in [Federal Communication Commission v. Fox](#), the Court will consider the constitutionality of the FCC’s “fleeting expletives” policy for indecency on television. Joan Biskupic of [USA Today](#), Ariane de Vogue of [ABC News](#), and Robert Barnes of the [Washington Post](#) all preview the case. [Jezebel](#) describes the case as a chance for the Court to “determine whether or not network TV and broadcast radio can finally be freed from the shackles of decency requirements,” while Michael Foust of the [Baptist Press](#) notes that “conservative groups are warning the justices that if the television networks win, profanity and nudity will flood TV broadcasts.” Finally, at [Radio Survivor](#), Brendan O’Neill observes that the “[t]he case will revive a discussion, and hopefully start a process to determine, on what federal indecency restrictions should be placed on radio and television broadcasters.”

Briefly

- Adam Liptak of the [New York Times](#) reports on a recent [Brennan Center study](#) challenging the “conventional wisdom” that the Roberts Court is “exceptionally supportive of free speech.”
- Kevin Russell recently [previewed](#) Wednesday’s argument in [Coleman v. Court of Appeals of Maryland](#), in which the Court will consider whether state employers can be sued for damages when they violate the self-care provision of the Family and Medical Leave Act (FMLA).
- In an op-ed for the [New York Times](#), Lakhdar Boumediene – the lead plaintiff in *Boumediene v. Bush* – writes that “my Supreme Court case is now read in law schools ... but so long as Guantánamo stays open and innocent men remain there, my thoughts will be with those left behind in that place of suffering and injustice.”
- Stephen Wermiel has [posted](#) a “SCOTUSblog for Law Students” discussion of student speech and the Internet, noting that “the question of whether and under what circumstances public schools may punish Internet communications by students outside of school may soon present that challenge to the Justices.”
- In the [Chronicle of Higher Education](#), Richard Kahlenberg discusses [Fisher v. Texas](#), a challenge to affirmative action currently before the Court on a petition for certiorari.
- Jonathan Backer of the [Brennan Center](#) suggests that the Montana Supreme Court’s recent decision upholding a ban on corporate independent expenditures (covered by Lyle for [this blog](#)) may provide “an opportunity for the Court to face facts and recognize the corrupting influence of corporate independent expenditures.”
- Rick Hasen of the [Election Law Blog](#) notes that the orders released by the Court on Friday did not act on [Bluman v. FEC](#), a case seeking review of a lower court’s decision upholding the constitutionality of a ban on political contributions by non-citizens; he predicts a summary affirmance (over dissents).
- At [NOLA.com](#), Jarvis DeBerry criticizes the Court’s opinion last Term in [Connick v. Thompson](#), arguing that it cost us “the ability to hold our prosecutors accountable if their lust for convictions gets ahead of their obligation to see justice prevail.”
- The [Zambo Times](#) reports that the Court’s opinion last month in [Judulang v. Holder](#) “could slow down the deportation of nearly 393,000 people in the fiscal year that ended Sept. 30, half of whom were considered criminals.”
- During a speech in Washington on Saturday, Justice Breyer defended the Justices’ recusal and ethical practices. The [Associated Press](#) and [NBC Washington](#) provide coverage.