



Wednesday Round up

Connor McEvily March 20th, 2013

Yesterday was an active one for Court watchers as the Court released opinions in two argued cases and heard oral argument in two others.

In the first opinion, *Kirtsaeng v. John Wiley & Sons, Inc.*, the Court held by a vote of six to three that the “first sale” doctrine, which allows the owner of a copyrighted work to sell or otherwise dispose of that copy as he wishes, applies to copies of a copyrighted work lawfully made abroad. At this blog, Ronald Mann analyzes the opinion, remarking that “[f]or a topic that has divided the Justices so evenly for so many years, the vigorous and uncompromising tone of Breyer’s [majority] opinion is surprising.” Other coverage comes from Greg Stohr of Bloomberg, Nina Totenberg and Caitlin Kenney of NPR, Adam Liptak of The New York Times, NBC’s Pete Williams for CNBC, Brent Kendall of the Wall Street Journal (subscription required), Robert Barnes of The Washington Post, David G. Savage and Dawn Chmielewski of the Los Angeles Times, Daniel Fisher of Forbes, Mark Sherman of the Associated Press, Lawrence Hurley and Jonathan Stempel of Reuters, Joe Mullin at Ars Technica, and Eriq Gardner at the Hollywood Reporter. (Thanks to Howard Bashman for the last link.) Commentary on the decision comes from Margot Kaminski of Concurring Opinions, John Elwood, Eugene Volokh, and Jonathan H. Adler at the Volokh Conspiracy, and Philip Bump at the Atlantic Wire.

The Court’s second opinion was *The Standard Fire Insurance Co. v. Knowles*, in which the Court unanimously held that a stipulation by a class-action plaintiff that he and the class that he purports to represent will seek damages that are less than the threshold for jurisdiction under the Class Action Fairness Act of 2005 does not defeat federal jurisdiction under the Act. Mark Sherman of the Associated Press, Walter Olson at Cato@Liberty, Lawrence Hurley of Reuters, Brent Kendall of The Wall Street Journal (subscription required), and Alison Frankel of the Thomson Reuters blog *On the Case* cover the opinion.

The Court also heard oral argument in two cases yesterday. In *Sebelius v. Cloer*, the Court is considering whether a person whose petition under the National Vaccine Injury Compensation Program is dismissed as untimely may recover an award of attorney’s fees and costs. And in *Mutual Pharmaceutical Co. v. Bartlett*, the Court is considering whether federal law preempts state law design-defect claims targeting generic pharmaceutical products. Coverage of the latter case came from Greg Stohr of Bloomberg, Adam Liptak of The New York Times, Robert Barnes of The Washington Post, David G. Savage of the Los

Angeles Times, Sam Baker of The Hill, David Sell of the Philadelphia Inquirer, Terry Baynes of Reuters, and Jesse J. Holland of the Associated Press.

Links to the transcripts of the arguments in both of yesterday's argued cases are available at this blog.

Today the Court will hear oral argument in two cases. In *Horne v. Department of Agriculture*, the Court will consider whether a party may raise the Takings Clause as a defense to a "direct transfer of funds mandated by the Government," or instead must pay the money and then bring a separate, later claim requesting reimbursement of the money under the Tucker Act in the Court of Federal Claims. Lyle Denniston previewed the case for this blog, with additional coverage coming from Jeremy P. Jacobs at Greenwire. And in *Dan's City Used Cars, Inc. v. Pelkey*, the Court will consider whether state statutory, common law negligence, and consumer protection act enforcement actions against a tow-motor carrier based on state law regulating the sale and disposal of a towed vehicle are preempted by federal law. Deepak Gupta previewed the case for this blog.

In other news, coverage of next week's oral arguments in *United States v. Windsor* and *Hollingsworth v. Perry* – challenging the federal Defense of Marriage Act (DOMA) and California's Proposition 8, respectively – continues apace. At this blog, Lyle Denniston reports that the Court will release same-day audiotapes and written transcripts of the arguments in *Windsor* and *Hollingsworth*. Joe Palazzolo of The Wall Street Journal Law Blog (subscription required) also covers the Court's announcement.

Also at this blog, Lyle Denniston reports on the reply brief filed yesterday in *Hollingsworth* by the sponsors of California's ban on same-sex marriage. In The New York Times, Adam Liptak profiles the San Francisco city attorney's office, which "nine years ago . . . sued to strike down a state ban on same-sex marriage [and] set in motion a legal chain reaction that gave rise to [the *Hollingsworth*] case to be argued next Tuesday." Anetta Sookhdeo at the Constitutional Law Prof Blog discusses an amicus brief filed in *Windsor* on behalf of the constitutional rights of children in support of the respondent in that case, and at ACSblog Nicole G. Berner discusses another amicus brief filed in support of Edith Windsor by a "broad coalition of labor unions, representing more than 20 million American workers, and the interest of working people more broadly." Finally, The Washington Post (video) has announced that it will host a series of Google "Hangouts" for discussions on the evolution of same-sex marriage in the United States, as well as the Proposition 8 and DOMA cases.

Briefly:

At the Constitution Center Lyle Denniston examines the claim that the Second Amendment does not contain any exceptions to the Second Amendment's right to keep and bear arms.

At ACSblog, Spencer Overton discusses the suggestion, made by Justice Alito during Monday's oral arguments in *Arizona v. The Inter Tribal Council of Arizona, Inc.*, that the Justices "would create a 'crazy' double standard by requiring that Arizona election officials accept the federal registration form."

Writing for this blog, Ronald Mann analyzes Monday's argument in *Bullock v. BankChampaign, N.A.*

Also at this blog, John Elwood reviews Monday's relisted cases in this blog's "Relist watch."

And Ann E. Marimow of The Washington Post reports on Bryant Johnson, a D.C. personal trainer whose clients include, among others, Justices Ginsburg and Kagan. (Thanks to Howard Bashman for the link.)