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SUPREME COURT OF THE UNITED STATES BLOG

Nabiha Syed Round-up

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Tuesday round-up

With only a few weeks remaining before the summer recess, yesterday was a busy one at the Court: it released four opinions in argued cases, granted certiorari in one new case, and invited the Solicitor General to file briefs expressing the views of the United States in two new cases.

The Court issued two opinions in cases involving Indian tribes; in both cases – as Jonathan Adler of the Volokh Conspiracy and Lawrence Hurley of Greenwire point out – the federal government was on the losing side. In *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, the Court held that the federal government waived its sovereign immunity from a suit challenging the government's acquisition of land in trust for an Indian tribe. Kevin Russell analyzes the eight-to-one opinion for this blog, while UPI and the Associated Press (via The Washington Post) have more coverage. And in *Salazar v. Ramah Navajo Chapter*, the Court held that the federal government must pay in full each tribe's contract support costs incurred by a tribal contractor even if Congress has failed to appropriate sufficient funds to cover all the contract costs owed to all contractors collectively. Lyle Denniston summarizes the ruling for this blog as boiling down to the idea that "a promise is a promise, even if the government doesn't have immediately available enough money." And at Concurring Opinions, Gerard Magliocca notes the unusual configuration of the opinions in *Salazar*: "Sotomayor, Scalia, Kennedy, Thomas, and Kagan in the majority; Roberts, Ginsburg, Breyer, and Alito in dissent. You might never see that one again."

In *Christopher v. SmithKline Beecham Corp.*, the Court held that pharmaceutical sales representatives qualify as "outside salesmen" for purposes of the Fair Labor Standards Act and the Department of Labor regulations interpreting the Act, thereby exempting them from the FLSA's overtime requirements. Greg Stohr of Bloomberg reports that the decision "saves the industry billions of dollars and marks a defeat for the Obama administration." Other coverage of the decision comes from Adam Liptak of The New York Times, Trevor Burrus of CATO@Liberty, Jonathan Adler of the Volokh Conspiracy, Robert Barnes of The Washington Post, Mark Sherman of the Associated Press, Barbara Leonard of Courthouse News Service, Daniel Fisher of Forbes, Reuters, JURIST, and Politico. [Disclosure: The law firm of Goldstein & Russell, P.C., whose attorneys contribute to this blog in various capacities, represented the petitioners in the case.]

And finally, in *Williams v. Illinois*, the Court agreed with the Supreme Court of Illinois that admission of expert testimony about the results of DNA testing performed by non-testifying analysts did not violate the Confrontation Clause. Nina Totenberg of NPR characterizes the decision – which was made up of "four separate opinions that spanned 92 pages" – as "anything but clear," while David Savage of the Los Angeles Times describes the "splintered vote" as "a victory, albeit a tentative one, for prosecutors and state lawyers." Other coverage comes from Adam Liptak of The New York Times, Mark Sherman of the Associated Press, , Robert Barnes of The Washington Post, Scott Lemieux of The American Prospect, and Reuters. At the Volokh Conspiracy, Eugene Volokh cites the fact that all three female Justices voted in favor of the petitioner, a convicted rapist, as evidence that we should be "cautious of claims" that the Justices' views are sometimes influenced by their gender; Walter Olson makes a similar argument at Cato@Liberty.

The Court added one new case to its merits docket for next Term: *Smith v. United States*, in which it will consider the burden of persuasion when a defendant withdraws from a conspiracy; JURIST briefly summarizes the issues in the case. The Court denied certiorari in a challenge to a Pennsylvania school districting plan that takes racial demographics into account *(*SchoolLaw*)* and continued what Kenneth Jost of Jost on Justice describes as a "hands-off policy" on Guantanamo cases. As Lyle Denniston of this blog reports, the Court did not act on the Montana campaign finance case *American Tradition Partnership, Inc. v. Bullock*, but it will "take another look" at the case at its Conference this Thursday. At Time, Alex Altman argues that "if the polarized Court opts to take the case, it would set up a pivotal showdown over a law that has reshaped American politics."

And finally, coverage continues to focus on some of the decisions expected in the next two weeks. At Reuters, Joan Biskupic analyzes the history of the *Arizona v. United States* immigration case, while at ABC News, Ariane de Vogue traces the history of the litigation over the Affordable Care Act. Others try to read the tea leaves for the Affordable Care Act litigation: Avik Roy of Forbes focuses on comments from Justices Ginsburg and Scalia, while Jonathan Adler of the Volokh Conspiracy dismisses the idea that portions of Justice Scalia's new book were written with the individual mandate litigation in mind.

Briefly:

- At Dorf on Law, Michael Dorf criticizes a question at the heart of Supreme Court opinion polling.
- Gerard Magliocca of Concurring Opinions considers the present-day norm of each Justice writing an roughly equal number of majority opinions and asks whether the development is "a good change."