

Wrap Up of US Supreme Court 2016-2017 Term

The Senate's unprecedented obstruction of former Supreme Court nominee Judge Merrick Garland cast a dark shadow over the 2016-2017 term. With only 8 justices for the first two thirds of the term, the Court moved at a slower past than in past years, but nonetheless managed to hand down important decisions on pressing issues, including those outlined below. The controversial confirmation of now-Justice Neil Gorsuch and the Court's recent announcement that it will hear the case of Trump's travel ban in the fall signal what is sure to be a blockbuster next term. Below are the results of some of the cases that NCJW was watching this term.



Check out [NCJW's press statement](#) from the last day of the term for more information.

SEPARATION OF RELIGION AND STATE

[Trinity Lutheran Church of Columbia, Inc. v. Comer](#)

Missouri provides funds to qualified organizations to buy recycled tires to use in resurfacing playgrounds. The preschool and day care center at Trinity Lutheran Church, which has an open admission policy but includes daily religious instruction, applied for funding from the state program. In accordance with the Missouri State Constitution, which explicitly bars any state funds from directly or indirectly aiding "any church, section, denomination of religion," Trinity was turned down, despite its application being ranked higher than others that were granted. Trinity sued, claiming violation of their rights under the Equal Protection Clause of the 14th Amendment and freedom of religion as guaranteed by the 1st Amendment.

The Supreme Court **held** that the church cannot be denied the right to compete with secular institutions for public benefits under the Free Exercise Clause of the First Amendment. The case does not condone state-sponsored religion, however; a footnote attached to the majority opinion specifies that this case applies only to playground resurfacing and does not address public funding for religious use generally.

IMMIGRATION

[Jennings v. Rodriguez](#): Alejandro Rodriguez was brought to the US as an infant and became a lawful permanent resident. In 2003, he was convicted of a crime and the federal government subsequently initiated removal (deportation) proceedings. Rodriguez then spent three years in detention without a bond hearing, which he argued is unconstitutional. The 9th Circuit ruled in favor of Rodriguez, holding that an individual may not be held in detention for more than six months without a bond hearing. The federal government asked the Supreme Court to decide whether a noncitizen, lawful permanent resident held in detention for six months is entitled to a bond hearing before an Immigration Judge.

The Supreme Court **ordered** that this case be reargued during the 2017-2018 term, since the original oral arguments occurred before Justice Gorsuch took the bench. The future decision will impact federal detention policy for immigrants and refugees.

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DISABILITY RIGHTS

Fry v. Napoleon Community Schools: Elhena Fry, a 12-year-old Michigan student with cerebral palsy, was not allowed to bring her service dog to school. The school eventually relented, but put restrictions on the dog, thus forcing Fry to transfer to another school. Her parents sued the school district for violating the Americans with Disability Act (ADA) and the Rehabilitation Act of 1973. Their case was dismissed because the Fry family had not exhausted the administrative processes available under the Individuals with Disabilities Education Act (IDEA). The family appealed, arguing that Fry had no complaint about the quality of her education, thus making it unnecessary to undergo administrative hearings before seeking redress under federal disability laws.

In an unanimous (8-0) decision, the Supreme Court remanded the case to the 6th Circuit, holding that IDEA administrative remedies need not be exhausted when the principal matter in a case is unrelated to the core guarantee of IDEA (a “free appropriate public education,” or FAPE).

Ivy v. Morath: In order to obtain a driver’s license in Texas, individuals under 25 must submit a certificate from a private driver’s education school licensed by the Texas Education Agency (TEA). Donnika Ivy was under 25 and hearing impaired, but could not find any TEA-licensed driver’s education school that would accommodate her disability. As a result, she was unable to obtain a driver’s license. The TEA asserted that it did not have to enforce the ADA with private vendors contracted to provide services. Ivy and five other hearing impaired individuals sued the TEA, and the 5th Circuit Court found that the TEA need not enforce the ADA with its private vendors.

The Supreme Court did not render a substantive decision, instead ordering that the 5th Circuit’s decision be vacated, and returned the case back to the 5th Circuit with instructions to dismiss the case as moot, as the plaintiffs have all received Texas licenses or moved out of state.

Andrew F. v. Douglas County School District:

The Individuals with Disabilities Education Act (IDEA) provides federal funding to states that agree to provide a “free appropriate public education” or FAPE to all students with disabilities. Andrew, a fourth grader with autism in Colorado, had an Individualized Education Program (IEP) pursuant to the IDEA, but fell behind in school. His parents placed him in a specialized private school, where he made extensive educational progress. Andrew’s parents sought compensation from Colorado based on the state’s apparent inability to provide a FAPE through public school and were denied. The lower courts agreed with the state that any educational benefit whatsoever is enough to satisfy a FAPE, and thus the school did not have to compensate the parents.

In an unanimous (8-0) decision, the Supreme Court held that public schools must offer an individualized education program (IEP) that is “reasonably calculated” to meet the unique needs of the special needs students in order to ensure their educational progress and constitute a FAPE under the IDEA. The “reasonable” qualification of a program considers, among other things, both the views of the parents and the judgement of school officials.

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RACE AND REDISTRICTING

Bethune-Hill v. Virginia State Board of Elections: Virginia lawmakers used race to create 12 state legislative districts, each of which was required to have a population of at least 55 percent voting age African Americans. The federal district court upheld the districts due to their geographic consistency, as opposed to disjointed and misshaped districts that are sometimes the result of redrawing districts.

The Supreme Court **held** that the district court's legal standard for determining whether race predominated in determining 11 of the 12 state legislative districts was too restrictive, and remanded the case to the district court to consider the districts under a more expansive rule. (NCJW signed on to an [amicus brief](#) in support of *Bethune-Hill*.)

McCrorry v. Harris: After the 2010 Census, North Carolina legislators created a requirement that two particular voting districts have a Black voting age population of 50 percent plus one. After the two districts were redrawn, thus adding two additional Black-majority districts in the state, two residents sued on the basis that the redistricting was racially motivated and diluted African American voters' influence in other districts. The federal district court found that unconstitutional racial gerrymandering did occur.

The Supreme Court **affirmed** that the redrawing of North Carolina's districts was predominately determined by race and that the State's interest in complying with the Voting Rights Act as reason for such redistricting did not justify its racial considerations.

RACIAL BIAS IN THE COURTROOM

Buck v. Davis: Duane Buck was convicted in Texas of a double murder in 1995. During sentencing, his lawyer presented an expert witness who testified that Buck's race (black) made him more likely to be dangerous in the future. This perceived danger was a key factor in determining Buck's sentence, and the jury ultimately recommended the death penalty.

The Supreme Court **held** that Buck had ineffective assistance of counsel from his lawyer; namely, his lawyer knowingly called an expert witness who linked his client's race to his "future dangerousness," which affected the outcome of his case. At a time in our nation's history when many people of color are questioning how racism impacts their access to fair and just treatment under the law, this decision penned by Chief Justice Roberts is especially important.

Pena-Rodriguez v. Colorado: Miguel Pena-Rodriguez was convicted of unlawful sexual conduct and harassment. After reaching a verdict, two jurors signed sworn affidavits stating that another juror made racially biased statements about the defendant and his alibi witness, both of whom are Hispanic. Pena-Rodriguez's request for a new trial was denied. The lower court held that the affidavits were inadmissible because of a rule that bars jurors from testifying about jury deliberations.

The Supreme Court **held** that when a juror clearly states that he or she relied upon racial stereotypes or bias in reaching a decision, the secrecy of jury deliberations (the "no-impeachment rule") must be waved under the 6th Amendment. This would allow the statement to be considered in a trial court as evidence in order to determine whether the right to an impartial jury was denied.

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CAPITAL PUNISHMENT

Moore v. Texas: Bobby James Moore was sentenced to death in 1980 for killing a store clerk. Moore is intellectually disabled and has unsuccessfully pursued several appeals. This particular appeal was brought on the heels of *Atkins v. Virginia* (2002), in which the court ruled that intellectual disability is a bar to capital punishment based on the 8th Amendment's prohibition against "cruel and unusual punishment," but failed to set forth a uniform standard for determining such a disability.

The Supreme Court did not rule on the overall constitutionality of the death penalty, but held that Moore's death sentence was unconstitutional under the 8th Amendment given that Texas used an outdated definition of intellectual disability when evaluating Moore.

For questions or more information on how to get involved in BenchMark: NCJW's Judicial Nominations Campaign, contact Caroline Ostro at caroline@ncjwdc.org.