What’s at Stake?

US Supreme Court 2018-19 Term

The US Supreme Court began its term on October 1, 2018, with Justice Brett Kavanaugh joining the bench on October 9 after a bitter and partisan confirmation battle. On December 10, the Court voted 6-3 against hearing a challenge to a ban prohibiting Medicaid recipients from accessing Planned Parenthood health care services. This leaves in place lower court decisions that bar states from excluding Planned Parenthood as an option for breast and cervical screenings and other health services. On January 22, 2019 the Court voted 5-4 to reinstate the Trump administration’s ban on military service by transgender people while appeals were ongoing in the lower courts. On the same day, the Court declined to take up an appeal of lower court decisions to uphold the DACA program, rebuffing the administration’s attempts to end it. This leaves DACA in place for the time being.

Below are some of the cases that the Court has and will hear this term that NCJW is watching closely.

Immigration

Nielsen v. Preap

The Supreme Court will consider the extent of the federal government’s power to detain immigrants for deportation who have served time for criminal acts. In this case, three lawful permanent residents were taken into custody and detained by immigration authorities years after they had completed their criminal sentences. In response, they filed a class action for habeas relief in the US District Court for the Northern District of California. The Ninth Circuit held that if the immigrant is not detained by the Department of Homeland Security immediately upon release, they are exempt from mandatory detention under the Immigration and Nationality Act, and the Supreme Court will now hear the case on appeal.

Oral Argument: October 10, 2018

Why We’re Watching: NCJW supports due process for immigrants. If overturned, this ruling would enable immigrants to be detained by the Department of Homeland Security indefinitely while they wait for deportation proceedings regardless of when they committed and served time for their crimes.
**Department of Commerce v. New York**

In March of 2018, Secretary of Commerce Wilbur Ross, granting a request originally made by the Department of Justice, announced that the 2020 Census would include the question, "Is this person a citizen of the United States?" New York and seventeen other states sued to prevent the question from being added to the census, arguing that it would have a chilling effect on participation of non-citizen immigrants and their families, ultimately leading to undercounting these already vulnerable populations. Secretary Ross argued that the Justice Department requires an answer to the question in order to better enforce the Voting Rights Act. The federal district court in New York ruled that the citizenship question violated the Administrative Procedures Act (APA) in "multiple independent ways," including violating two federal statutes, constituting arbitrary and capricious agency action, and more. Bypassing the Second Circuit Court of Appeals because of timing, the US Supreme Court granted certiorari and will decide whether the district court properly prohibited the Department of Commerce from including the citizenship question.

**Oral Argument: TBD**

**Why We’re Watching:** NCJW opposes adding a citizenship question to the census as it would suppress response rates in communities of color, ultimately impacting the allocation of government resources and political representation for these communities. NCJW signed on as an amicus curiae (friend of the court) to two briefs filed in the Northern District of California (California v. Ross and San Jose v. Ross) challenging the Commerce Department’s decision to add a citizenship question to the 2020 Census.

**Criminal Justice**

**Madison v. Alabama**

Consistent with past cases that deal with whether a state may execute a prisoner with mental disabilities, this case considers whether a state may execute a prisoner whose mental disabilities leave him unable to remember the capital offense and unable to understand the circumstances of his execution. The prisoner in question, Vernon Madison, has dementia and is blind, unable to walk, and speaks with slurred speech as a result of a series of strokes. The Supreme Court stayed his execution in January 2018.

**Oral Argument:** October 2, 2018
Why We’re Watching: NCJW supports the abolition of the death penalty.

Anti-Discrimination

Mount Lemmon Fire District v. Guido

When John Guido and Dennis Rankin were terminated from their employment with the Mt. Lemmon Fire District in Arizona they were the oldest employees. They filed age discrimination charges with the Equal Employment Opportunity Commission which found reasonable cause that the Fire District was in violation of the federal Age Discrimination in Employment Act (ADEA). The Fire District maintained that they were too small to be covered based on the 25-employee threshold that applies to private employers. The Ninth Circuit ruled that as a political subdivision of the state, the Fire District and all other subdivisions fall under the ADEA regardless of size. Four other federal circuit courts disagreed.

Oral Argument: October 1, 2018
Decided: November 6, 2018

Decision: In an 8-0 decision written by Justice Ginsburg (Justice Kavanaugh did not take part as he had not yet joined the Court when it heard oral arguments), the Court ruled that all public employers—regardless of the number of employees—must abide by the ADEA. NCJW opposes discrimination on the basis of age and applauds this decision to protect workers.

Religious Freedom

The American Legion v. American Humanist Association

This case, which was consolidated with Maryland-National Capital Park and Planning Commission v. American Humanist Association, challenges a 40-foot tall cross erected nearly 100 years ago in Bladensburg, Maryland, as part of a memorial park to veterans. The Maryland-National Capital Park and Planning Commission took over the memorial, including the cross, and spent money to repair and maintain the cross and set aside funds in 2008 to continue renovations. Individuals living nearby took offense to the cross on public land because they felt it showed government affiliation with Christianity. The American Humanist Association joined them in a suit asserting that the religious display and use of government funds to maintain it was a violation of the First Amendment’s Establishment Clause. A district court decided that the cross did not violate the Establishment Clause, but the Fourth Circuit Court of Appeals reversed that
decision. The Supreme Court will now decide whether the cross-shaped memorial violates the Establishment Clause and what test it must use to make this determination.

**Oral Argument:** February 27, 2019

**Why We’re Watching:** NCJW supports the separation of religion and state and believes that the use of government funds to support religion—in this case to maintain a religious symbol—constitutes excessive entanglement with religion, which is a violation of the Establishment Clause.

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**Gun Violence Prevention**

*New York State Rifle and Pistol Association v. City of New York*

New York State has strict gun-licensing procedures required for possession of a firearm. The state separates “carry” licenses from “premises” licenses for handguns. Premises licenses require handguns to be kept at a specific address and not removed except under very specific circumstances, one of which is to transport the gun unloaded to an authorized small arms range/shooting club (all of which are located in New York City). Three individuals with premises licenses sued to be allowed to transport their handguns to shooting clubs and competitions outside of New York City. One individual sought to carry the handgun from his New York City home listed on the premises license to his second home outside of the city. The plaintiffs were joined by the New York State Rifle and Pistol Association in the suit stating that the restrictions were unconstitutional. **A district court held that the regulation did not restrict the right to possess a gun nor did it violate any other constitutional right.** The Second Circuit agreed. The Supreme Court has agreed to hear an appeal.

**Oral Argument:** TBD

**Why We’re Watching:** NCJW supports laws, policies, and programs that regulate firearms and ammunition to promote gun safety and prevent gun violence.
Voting Rights

**Virginia House of Delegates v. Bethune-Hill**

In 2014, a group of voters charged that Virginia’s House of Delegate districts were racially gerrymandered in violation of the 14th Amendment’s Equal Protection Clause. The case made its way to the Supreme Court where, in 2017, one district was upheld. The other eleven were sent back to the lower courts and were ultimately struck down as unconstitutional racial gerrymandering and out of compliance with voting rights laws. The House of Delegates appealed and the Supreme Court will decide the case.

**Oral Argument:** March 18, 2019

**Rucho v. Common Cause and Lamone v. Benisek**

These are combined cases from North Carolina and Maryland that the Supreme Court will hear together. The North Carolina case is an appeal from a district court decision holding that the state’s 2016 congressional districts were drawn based on partisan gerrymandering. The lower court barred the state from using the map after the November 2018 elections. North Carolina Republicans appealed to the Supreme Court. The Maryland case concerns a 2011 redistricting plan that resulted in the Sixth Congressional District being designated as a “likely Democratic win” by the Cook Partisan Voting Index. Prior to redistricting, the district was considered safe for Republicans. Elections following the redrawing of the district saw Democratic wins resulting in a suit to bar Maryland from using the 2011 map in the 2018 elections. The lower court rejected the suit, awaiting a decision by the Supreme Court in a Wisconsin redistricting case, *Gill v. Whitford*, which the Supreme Court sent back to the lower courts without a ruling. In these combined cases, **the Supreme Court will address the constitutionality of partisan gerrymandering.**

**Oral Argument:** March 26, 2019

**Why We’re Watching:** The justices’ decisions on these two cases will impact how districts are drawn after the decennial census in 2020. NCJW supports election laws, policies, and practices that ensure easy and equitable access and eliminate obstacles to the electoral process so that every vote counts and can be verified.