

# 2017-18 US Supreme Court Term: What's At Stake?

October 2, 2018 marks the first day of a high-stakes US Supreme Court term. The Court will examine President Trump's Muslim ban, forced arbitration, religious discrimination, partisan gerrymandering, and much more. It will also reconsider at least two cases from last term now that it has a ninth (and presumably tie-breaking) member — Justice Neil Gorsuch. These are Supreme Court cases that NCJW will be watching this term:

## Immigration

### *Trump v. Hawaii & Trump v. International Refugee Assistance Project*

The Supreme Court will consider the constitutionality of President Trump's executive order issued in March banning entry to the US from seven Muslim-majority countries for a period of 120 days, with some exceptions. The ban was struck down by the Fourth and Ninth Circuit Courts of Appeal, though the Supreme Court permitted the ban to take partial effect until it rules on the case. The Fourth Circuit ruled that the ban is unconstitutional under the First Amendment's Establishment Clause, while the Ninth Circuit found that it exceeded the statutory authority granted to the president by Congress. In June, the Supreme Court permitted the ban to take partial effect until it rules on the case. **The Court is expected to consider these cases together to decide whether the entry ban is unconstitutional and/or exceeds the president's statutory authority.** In late September, President Trump issued a revised, indefinite order banning entry from eight countries, two of which are not predominantly Muslim. The Supreme Court has ordered the parties to submit new briefs on whether their cases are now moot based on the new order.

**Oral Argument:** Canceled pending submission of briefs.

**Why We're Watching:** The Muslim ban is mired in xenophobia, discrimination, and hate. NCJW continues to fight its implementation and promote a fair and just policy for immigrants and refugees, regardless of religion. NCJW signed onto an [amicus brief](#) in support of Hawaii and the International Refugee Assistance Project.

### ***Sessions v. Dimaya***

In this holdover case from last term, the Supreme Court will re-consider the case of James Garcia Dimaya, who legally immigrated to the US from the Philippines in 1992. He was twice convicted of burglarizing homes, though no violence was involved in either incident. Federal law requires the mandatory deportation of a lawful permanent resident who is convicted of an “aggravated felony,” and the Immigration and Nationality Act (INA) defines “aggravated felony” so broadly that it included Dimaya’s nonviolent convictions. The Ninth Circuit Court of Appeal overturned Dimaya’s order of deportation, finding that the definition of “aggravated felony” is unconstitutionally vague. Prior to the addition of Justice Gorsuch, the Supreme Court was deadlocked. **The Supreme Court will determine whether “aggravated felony” is unconstitutionally broad under the INA and whether Dimaya may be rightfully removed from the country under the statute.**

**Oral Argument:** Monday, October 2, 2017

**Why We’re Watching:** NCJW opposes anti-immigrant policies and overly broad standards for deportation, instead supporting efforts to ensure that our country continues to be a welcoming place.

### ***Jennings v. Rodriguez***

In another holdover case from the last term, the Supreme Court will consider the case of Alejandro Rodriguez, who was brought to the US as an infant and is now a lawful permanent resident. In 2003, Rodriguez was convicted of a crime and the federal government subsequently initiated deportation proceedings. Rodriguez then spent three years in detention without receiving a bond hearing, which he argued was unconstitutional. The Ninth 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 Supreme Court will decide whether a noncitizen, lawful permanent resident held in detention for six months is entitled to a bond hearing before an immigration judge.** Prior to the addition of Justice Gorsuch, the Supreme Court was deadlocked.

**Oral Argument:** Tuesday, October 3, 2017

**Why We’re Watching:** Like *Sessions v. Dimaya*, this case will impact federal detention policy for immigrants, and potentially refugees as well.

## Voting

### *Gill v. Whitford*

In 2011, the Republican-controlled legislature of Wisconsin implemented a redistricting plan. William Whitford, a retired law professor, challenged the plan in court, arguing that Wisconsin Republicans could control the legislature even if they lost the majority of popular support by “cracking” (dividing Democrats into different districts to prevent a majority) and “packing” (drawing districts around heavily Republican districts to rack up high vote margins). Last year, the district court ruled that the redistricting amounted to partisan gerrymandering and was thus unconstitutional. **The Court will determine, among other things, whether it can rule on partisan gerrymandering claims, and if so, what test the Court should use to evaluate them.**

**Oral Argument:** Tuesday, October 3, 2017

**Why We’re Watching:** 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. NCJW signed onto an [amicus brief](#) in support of Whitford.

### *Husted v. Randolph Institute*

The state of Ohio sends registered voters a warning notice if they have not voted in the past two federal elections. If they do not respond to the notice and do not vote in the next four years, their voter registration is cancelled with no further notice. Many voters did not receive or understand the notice, and only learned they had been purged from the voter rolls when they were turned away from polling stations on Election Day. The Sixth Circuit ruled in favor of the challengers, citing the National Voter Registration Act of 1993 in which states have a right to prune their voter lists only when registered voters die or move to other states, and explicitly bans infrequent voting as a reason to revoke voter registration. Ohio is now appealing the decision to the Supreme Court. **The Supreme Court will decide whether revoking an individual’s voter registration on the basis of inactivity violates the law, even if inactive voters are theoretically forewarned.**

**Oral Argument:** Wednesday, November 8, 2017

**Why We’re Watching:** It should be as easy as possible for those eligible to register to vote and stay registered. NCJW joined an [amicus brief](#) in support of the Randolph Institute.

## Workers' Rights

### *National Labor Relations Board v. Murphy Oil USA*

In three consolidated cases, the Supreme Court will address the right of private sector employees to band together. **Specifically, the Court will determine whether employers can legally ask employees to waive their right to collective action, such as class action lawsuits, and instead participate only in individual arbitration (legally binding mediation) should an issue arise.** Lower courts cited the National Labor Relations Act's core protection of employees to combine forces regardless of union status, and the Supreme Court will decide whether this forced arbitration is an unfair labor practice.

**Oral Argument:** Monday, October 2, 2017

**Why We're Watching:** NCJW has long worked for economic justice for low-income and working Americans. The right to take collective action, including class action lawsuits, is a vital protection for workers, regardless of union status.

### *Janus v. American Federation of State, County & Municipal Employees*

Mark Janus is a public sector employee in Illinois. Though not a union member himself, he benefits from AFSCME's collective bargaining agreements, and is required to pay a fee that goes towards the union's collective bargaining and contract administration costs, known as a "fair share" fee. The district court and the Seventh Circuit, citing existing Supreme Court precedent, rejected Janus' argument that requiring him to pay the fee violated his rights under the First Amendment. **The Supreme Court will determine whether to overrule its 1977 case allowing unions to charge "fair share" fees.**

**Oral Argument:** TBD

**Why We're Watching:** NCJW believes that strong unions are a vital tool in furthering economic justice. Doing away with "fair share" fees would take a significant financial toll on unions, weakening their bargaining power and minimizing the political presence of organized labor.

## Privacy

### *Carpenter v. United States*

In 2011, four men were arrested on suspicion of involvement in a series of armed robberies. One man confessed and gave the FBI his cell phone number, along with the cell phone numbers of the other suspects. The FBI accessed their phone records with a judge's order, not a warrant, to log the movement and location of the suspects in relation to the robberies. Another suspect, Timothy Carpenter, was charged with aiding and abetting the robberies. He sued, arguing that the FBI needed to demonstrate probable cause and obtain a warrant in order to access his phone records. **The Supreme Court will consider whether the Fourth Amendment's privacy protection against warrantless search and seizure extends to cell phone records.**

**Oral Argument:** TBD

**Why We're Watching:** The right to privacy, deeply rooted in the US Constitution, is the legal foundation for the right to an abortion, LGBTQ equality, and other progressive ideals.

## Anti-Discrimination

### *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission*

In 2012, the owner of Masterpiece Cakeshop, refused to bake a cake for the wedding celebration of a gay couple. Phillips claimed that his religious beliefs as a Christian prevented him from designing a cake for a same-sex wedding, and that compelling him to make the cake was a violation of his religious freedom. He also argued that his custom cakes were a form of free expression protected under the First Amendment. The Colorado Civil Rights Commission ruled against Phillips for discriminating against the couple on the basis of sexual orientation, which is not permitted under the state's public accommodations law. **The Supreme Court will determine whether enforcing public accommodations laws violates the First Amendment.**

**Oral Argument:** TBD

**Why We're Watching:** A democratic society and its people must value diversity and promote mutual understanding and respect for all. This case will set a precedent in future cases in which businesses defy civil rights laws on the grounds of their personal religious beliefs. NCJW joined an amicus brief in support of the Colorado Civil Rights Commission.