NCJW
National Council of Jewish Women

What's at Stake?

Wrap Up of US Supreme Court 2017-18 Term

Immigration

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

Beginning in January 2107, President Trump issued different iterations of an executive order banning entry to the United States from several Muslim-majority countries. Each of the three executive orders were blocked by lower federal courts. The Supreme Court allowed the third version of the ban to go into full effect during the appeal process. This ban limited entry to the US from eight nations, six of which were majority Muslim. The Supreme Court heard the appeal on the constitutionality of the ban in April, 2018.

Decided June 26, 2018: In a 5-4 decision, the Supreme Court ruled to uphold President Trump's ban on US travel for nationals of several predominantly Muslim countries. The Supreme Court determined that Trump's Muslim Ban was within his statutory authority as president. Read NCJW's full statement here.

Sessions v. Dimaya

James Dimaya, a legal immigrant to the United States from the Philippines in 1992, was convicted of non-violent burglaries twice. Federal law requires the mandatory deportation of a lawful permanent resident who is convicted of an "aggravated felony," The Ninth Circuit Court of Appeal overturned Dimaya's order of deportation, finding that the definition of "aggravated felony" is unconstitutionally vague. The US government appealed to the Supreme Court which, in January 2017 with only eight justices, deadlocked. A new oral hearing was held in October after Justice Neil Gorsuch joined the Supreme Court.

Decided April 17, 2018: In a 5-4 decision, in which Justice Gorsuch joined the court's more liberal justices, the Supreme Court held that the language used to define "violent felony" for the purpose of the Immigration and Nationality Act's removal provisions is unconstitutionally vague. This is a win for immigrant rights as it makes it more difficult to deport immigrants.

Jennings v. Rodriguez

Alejandro Rodriguez, a lawful permanent resident of the US, was brought to the US as an infant. In 2004, 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 and other detainees who were part of the suit, 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.

Decided February 27, 2018: With the addition of Justice Gorsuch, the Supreme Court held that Title 8 of the U.S. Code do not give detained noncitizens the right to periodic bond hearings during the course of their detention. This means immigrants and refugees can be detained until the end of all applicable proceedings, however long that length of time may be, because Title 8 does not mention bail.

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.

Decided June 4, 2018: The Supreme Court ruled 7-2 that the Colorado Civil Rights Commission had not adequately taken into account the religious beliefs of baker Jack Phillips in the case. This decision opens the door to allowing religious freedom to be used as a means to harm marginalized communities instead of as a shield to protect religious minorities as originally intended. Read NCJW's full statement here.

Voting

Benisek v. Lamone and Gill v. Whitford

These are two cases challenging gerrymandering. *Benisek v. Lamone* concerned a Maryland redistricting plan from 2011 that favored Democratic Party candidates. *Gill v. Whitford* involved a 2010 redistricting plan in Wisconsin designed to ensure Republican candidates' success.

Decided June 18, 2018: The Supreme Court ordered the Wisconsin case be sent back down to the lower courts to decide whether the voters challenging partisan gerrymandering have legal standing to do so. Likewise, the Supreme Court did not decide the merits in the Maryland case.

Husted v. Randolph Institute

The state of Ohio mails 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 cull their voter lists only when registered voters die or move to other states. It explicitly bans infrequent voting as a reason to revoke voter registration.

Decided June 11, 2018: In a 5-4 decision, the Supreme Court ruled that Ohio's process to maintain its voter rolls does not violate the National Voter Registration Act. This means revoking an individual's voter registration on the basis of inactivity does not violate the law. Going forward, this practice, which disproportionately disenfranchises low income people and people of color, can continue, and that other states may adopt similar, punitive purges. Read NCJW's full statement here.

Workers' Rights

Epic Systems Corp. V. Lewis; Ernst & Young LLP v. Morris; and National Labor Relations Board v. Murphy Oil USA, Inc.

In three consolidated cases, the Supreme Court addressed the right of private sector employees to band together to seek redress**.** The Court determined 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.

Decided May 21, 2018: The Supreme Court ruled that the Federal Arbitration Act's provision for individualized proceedings must be enforced. This means companies can require employees to participate only in individual actions, as opposed to class actions, against the company if issues arise. This means from sexual harassment to pay discrimination employees can be prevented from banding together to file suit against their employer.

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 "fair share" fee that goes towards the union's collective bargaining and contract administration costs. The district court and the Seventh Circuit, citing existing Supreme Court precedent, rejected Janus' argument that his First Amendment rights were violated by the fair-share fee requirement.

Decided June 27, 2018: The Supreme Court decided, 5-4, to overrule its 1977 case which allowed public-sector unions to charge non-union workers "fair share" fees in the workplace. This decision which has the effect of weakening unions, allows workers to benefit from unions' collective bargaining power without financially contributing. Read NCJW's full statement here.

Reproductive Rights

National Institute of Family and Life Advocates v. Becerra

The 2015 California Reproductive Freedom, Accountability, Comprehensive Care, and Transparency (FACT) Act requires crisis pregnancy centers to post signs conveying certain messages regarding abortion access. The law mandates that nonprofits licensed to provide medical services post notices to inform their patients about the availability of free or low-cost abortions and other family planning services and to provide the telephone number of the state agency that can put patients in touch with providers of those abortions. The groups that are not licensed to provide medical services — but try to support pregnant women by supplying them with diapers and formula, for example — must include disclaimers in their advertisements to make clear, in up to 13 languages, that their services do not include medical help. National Institute of Family and Life Advocates (NIFLA), an organization that represents more than a thousand crisis pregnancy centers around the country, sued on the basis that the Reproductive FACT Act violates the First Amendment by requiring them to convey specific messages.

Decided June 26, 2018: The Supreme Court ruled 5-4 that fake women's health centers, also known as crisis pregnancy centers, can continue to mislead women about their services and intentions. The Court ruled that the FACT Act is a violation of free speech. Read NCJW's full statement here.

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.

Decided June 22, 2018: The US Supreme Court ruled that the Fourth Amendment's right to privacy requires law enforcement officials to obtain a warrant before searching an individual's cell site location records.