

## What's at Stake?

# Wrap Up of US Supreme Court 2018-19 Term

The scandal-ridden confirmation of Justice Brett Kavanaugh in October of 2018 imposed a sense of partisanship on our nation's highest court, calling its impartiality and independence into question. This spring, in two separate 5-4 rulings along partisan lines, the justices outright overturned 40- and 34-year-old decisions (in [\*Franchise Tax Board of California v. Hyatt\*](#) and [\*Knick v. Township of Scott, PA\*](#), respectively), leaving many to wonder what long-standing precedent the Court will sacrifice next.

Stay tuned! Next term the Supreme Court will hear cases arguing the constitutionality of the Trump Administration's termination of DACA (a program granting legal status to young immigrants) and whether the federal ban on employment discrimination "because of sex" applies to discrimination based on sexual orientation or gender identity — setting up what is sure to be a blockbuster term this fall.

*Below are the results of some of the cases that NCJW has been 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.**

**Decided March 19, 2019:** In a [5-4](#) decision, the Court held that federal authorities may detain indefinitely immigrants who commit crimes, no matter how minor or how long ago, without a hearing or possibility of bond. **This is a loss in the fight for due process rights for immigrants.**

## ***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In March of 2018, Secretary of Commerce Wilbur Ross, granting a request originally made by the Department of Justice, announced that the 2020 Census would include the question, "Is this person a citizen of the United States?"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.

**Decided June 27, 2019:** In a [5-4](#) decision, the justices held that the Commerce Department did not violate the Constitution or Census Act by attempting to reinstate a citizenship question on the 2020 census, but that the stated reason for including the question was a pretext. This ruling leaves the door open for the Commerce Department to present an alternative rationale to the federal district court for its review. While the Commerce Department sent the 2020 census forms to the printer without a citizenship question after the ruling, President Trump later announced via Twitter that he would continue fight to include the question on the 2020 census.

[NCJW](#) **opposes adding a citizenship question to the 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.

**Decided February 27, 2019:** In a [5-3](#) decision, the court ruled that executing a prisoner who does not remember the crime may be permitted by the 8<sup>th</sup> Amendment to the US Constitution, while executing a prisoner who suffers from dementia or another disorder may be prohibited. The Supreme Court ordered the lower court to determine whether Madison can reach a "rational understanding" of why the State wants to execute him before the case may proceed further.

[NCJW](#) **supports 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.

**Decided November 6, 2018:** In an [8-0](#) decision written by Justice Ginsburg (Justice Kavanaugh was not seated on the Court at the time of 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*

A 40-foot tall cross was 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.

**Decided June 20, 2019:** In a [7-2](#) decision, the Court found that the Bladensburg cross does not violate the First Amendment's Establishment Clause, thus allowing extreme entanglement of

religion and state. **NCJW opposes the use of government funds for such an outwardly religious display.**

## **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.

***After the Supreme Court agreed to hear this case, changes were made to the city’s rules and the state’s laws allowing freer transport of handguns. New York City asked the Supreme Court to send the case back to the lower court with instructions to dismiss the case, as the argument is now moot. 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 Delegates **districts were racially gerrymandered in violation of the 14<sup>th</sup> 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.

**Decided June 17, 2019:** In a [5-4](#) decision, the Supreme Court held that the House of Delegates alone, a single chamber of a bicameral legislature, lacked the legal right to appeal the invalidation of Virginia's redistricting plan. While this did not create any new gerrymandering jurisprudence, it had the practical effect of ensuring that Virginia's voting districts are not unconstitutionally gerrymandered in future elections. **NCJW supports election laws, policies, and practices that ensure that every vote counts.**

### *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. **The Supreme Court combined these cases to evaluate the constitutionality of partisan gerrymandering.**

**Decided together on June 27, 2019:** In a [5-4](#) decision, the Court found that partisan gerrymandering claims present political questions that fall beyond the reach of federal courts, meaning that the Court will not weigh in on the legality of partisan gerrymandering. **This is a [major setback](#) in the fight to ensure that every vote counts.**