

What's at Stake?

US Supreme Court 2019-20 Term

On October 7, US Supreme Court will begin its fall term, and its nine justices have their work cut out for them. The Court will consider the fate of Dreamers, whether employers can discriminate based on sexual orientation and gender identity, and how difficult it will be to access justice in this country. With the cloud of partisanship still hanging over our nation's highest court following Justice Kavanaugh's confirmation nearly one year ago, public trust in the institution is faltering and controversy surrounding his confirmation persists. In August, members of the US House of Representatives requested previously undisclosed records from Kavanaugh's service in the White House, while members of the US Senate requested information from the FBI regarding its investigation of sexual misconduct allegations against Kavanaugh. The outcome of these congressional investigations remains to be seen, but they deepen the shadow that hangs over the highest court as it decides whether to advance or roll back our rights.

Below are some of the cases that NCJW is watching closely this term. The Court is likely to add other cases to its docket as the term progresses.

Reproductive Health, Rights, & Justice

June Medical Services v. Gee

In 2014, Louisiana passed a law that would require every doctor who provides abortions to have admitting privileges at a hospital within thirty miles of the clinic. This law, like other Targeted Regulation of Abortion Providers (TRAP) laws, was designed to close abortion clinics by imposing onerous and medically unnecessary regulations on facilities and providers. In 2016, the Supreme Court struck down as unconstitutional an identical Texas law, recognizing that the admitting privilege requirement "provides few, if any, health benefits for women, poses a substantial obstacle to women seeking abortions, and constitutes an 'undue burden' on their constitutional right to do so."

Oral Argument: March 4, 2020

Why We're Watching: NCJW opposes all measures that restrict access to safe abortion and prevent patients from receiving care. This is the first major abortion case since the additions of Justices Gorsuch and Kavanaugh; we are concerned that the Court, in accepting this case, has signaled its disregard for abortion precedent and will allow lower courts to do the same.

Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania and Trump v. Pennsylvania

In these consolidated cases, the Court will examine the Trump administration's attempts to limit the birth control benefit of the Affordable Care Act (ACA). In 2017, the administration issued a rule dramatically expanding which employers qualify as exempt from the benefit, meaning that far fewer employees would receive contraceptive insurance coverage. New Jersey and Pennsylvania successfully challenged the rule in federal court, but the administration issued another nearly identical rule in November 2018. A district court issued a nationwide injunction preventing the rule from going into effect, and the US Court of Appeals for the Third Circuit upheld the decision. The justices will now address whether the Third Circuit should have upheld a nationwide injunction and whether the administration's rules can go into effect.

Oral Argument: TBD

Why We're Watching: NCJW believes that affordable access to contraception is a basic reproductive right and applauds the gains made by the ACA in this area.

Employment Discrimination

Altitude Express Inc. v. Zarda and Bostock v. Clayton County, Georgia

In these consolidated cases, the Supreme Court will determine whether discrimination against an employee because of sexual orientation constitutes prohibited employment discrimination "because of . . . sex" within the meaning of Title VII of the Civil Rights Act of 1964. In one case, Donald Zarda, who is now deceased, sued his former employer, claiming that he was fired because he was gay. The US Court of Appeals for the 2nd Circuit held that Title VII does indeed apply to discrimination based on sexual orientation because such discrimination "is a subset of sex discrimination." In the other case, Gerald Bostock, a former Clayton County employee, argued that after the county learned that he is gay, it falsely accused him of mismanaging public money so that it could fire him — when it was in fact firing him because he is gay. The US Court of Appeals for the 11th Circuit held that Title VII does not apply to discrimination based on sexual orientation, thus barring Bostock's discrimination claim. The Supreme Court will resolve this split among the circuits.

Oral Argument: October 8, 2019

Why We're Watching: NCJW believes that a person's sexual orientation should never affect their employment status or economic security and condemns discrimination in all forms.

R.G. & G.R. Harris Funeral Homes v. EEOC

Aimee Stephens, a transgender woman, was fired from her job of six years as funeral director at R.G. and G.R. Harris Funeral Homes after she informed the owner that she identifies as a woman and planned to wear women's clothing to work. The owner of the funeral home, Thomas Rost, argued that not only would Stephens violate the funeral home's dress code by dressing as a woman, but that he himself would be "violating G-d's commands" by allowing her to do so. The US Court of Appeals for the 6th Circuit ruled that the funeral home unlawfully discriminated against Stephens, and Rost asked the Supreme Court to reverse that ruling. The Supreme Court will address whether Title VII's prohibition of discrimination "based on sex" means gender identity and includes transgender status.

Oral Argument: October 8, 2019

Why We're Watching: NCJW supports the right of all transgender individuals to live and work free from discrimination or oppression.

Immigration

Department of Homeland Security v. Regents of the University of California, Trump v. NAACP, and McAleenan v. Vidal

These three consolidated cases concern the Trump Administration's decision to terminate the Deferred Action for Childhood Arrivals (DACA) program. Under DACA, undocumented immigrants brought to the US as minors may apply for protection from deportation and permission to work in the US, among other benefits. Ending DACA would make many of the 800,000 young adults who qualified for DACA eligible for deportation. Currently, people with DACA can keep their status, but newly eligible individuals cannot apply to the program. The Supreme Court will determine whether the Department of Homeland Security's decision to end DACA is one that can be adjudicated by a court and, if so, whether that decision was lawful.

Oral Argument: November 12, 2019

Why We're Watching: NCJW supports DACA recipients and joined a [number](#) of [amicus briefs](#) in support of the program.

Access to Justice

Hernandez v. Mesa

In 2010, Sergio Hernández, a 15-year-old Mexican national, was playing with friends in a culvert on the US/Mexico border when a Border Patrol agent detained one of Hernández's friends on US territory. Hernández ran into Mexican territory and the agent, standing on US territory, fired at least two shots across the border, killing Hernández. Hernández's family sued, claiming that their son's Fourth and Fifth Amendment rights were violated, but there is no federal law specifically allowing for damages to non-citizens under these circumstances. Pursuant to a 1971 Supreme Court decision, however, individuals may seek damages for unconstitutional conduct by individual federal officers. The US Court of Appeals for the 5th Circuit held that these circumstances do not warrant such a claim — known as a Bivens action — which would allow the Hernández's family to hold the Border Patrol agent liable. The US Supreme Court will now review that decision.

Oral Argument: November 12, 2019

Why We're Watching: Courts matter. Among other important roles, federal courts serve as a check on the limitations of government power and provide a remedy when a state actor violates the constitution.

Comcast Corp. v. National Association of African American- Owned Media

Comcast decided not to carry channels produced by Entertainment Studios Network (ESN), the only 100% African American-owned multi-channel media company in the country. ESN, which is owned by actor and comedian Byron Allen, and the National Association of African American-Owned Media, an entity created by Allen, then sued Comcast, alleging that it violated a federal statute barring racial discrimination in contracts. Five federal circuits have held that a claim under this statute requires but-for causation, meaning racial animus must be the actual cause of the refusal to engage in a contract. In this case, the US Court of Appeals for the 9th Circuit held that race need only be one "motivating factor" in such a decision. The Supreme Court will determine whether this type of race discrimination claim requires actual causation, or whether race as a motivating factor is sufficient.

Oral Argument: November 13, 2019

Why We're Watching: NCJW believes that all forms of discrimination must be eliminated and works for laws and policies that provide equal rights for all. This case will have larger and lasting ramifications on whether and how justice is delivered to victims of race discrimination.

Government Ethics & Accountability

Kelly v. United States

Bridget Kelly served as deputy chief of staff to former New Jersey governor Chris Christie. Kelly was convicted and sentenced to 18 months in prison for her role in “Bridgegate” — the decision to change the traffic patterns on the George Washington Bridge, creating gridlock in nearby Fort Lee, New Jersey. Officials cited a traffic study to justify the change, but prosecutors say that the real reason was a desire to punish the city’s mayor for not endorsing Christie’s re-election bid. The Supreme Court will decide whether a public official defrauds the government of its property when she provides a “public policy reason” for an official decision that is not her actual reason for making the decision.

Oral Argument: January 14, 2020

Why We’re Watching: This case will decide on a key limit of executive power: must a public official tell the truth about why a policy is implemented? And if they do not, is it fraud?

Religious Liberty

Espinoza v. Montana Department of Revenue

In 2015, Montana legislators enacted a tax-credit scholarship program that provides funding for low-income families to send their children to private schools. Because Montana’s state constitution prohibits “direct or indirect” public funding of religiously affiliated educational programs, the state subsequently promulgated an administrative rule prohibiting scholarship recipients from using their funding at religious schools. Several parents, including Espinoza, who wanted to use the scholarship funding for private religious school, filed a lawsuit challenging the exclusion of religious school funding. The Montana Supreme Court found that the scholarship program was constitutional so long as students could not use the financial aid for religious schools, and the parents appealed. The Supreme Court will determine whether it violates the religion clauses or the Equal Protection Clause of the US Constitution to invalidate a generally available and religiously neutral student-aid program because the program affords students the choice of attending religious schools.

Oral Argument: January 22, 2020

Why We’re Watching: NCJW opposes school voucher programs that funnel taxpayer dollars to private schools, religious organizations, or schools with discriminatory policies toward students, teachers, and/or other school personnel.

Our Lady of Guadalupe School v. Morrissey-Berru and St. James School v. Biel

In these consolidated cases, the Supreme Court will examine the “ministerial exception” to federal employment discrimination laws, which protects religious institutions from certain discrimination claims brought by their “ministers” based on the First Amendment’s guarantee of religion/state separation. The Court will determine whether school teachers with limited religious duties are considered ministers for the purpose of this exception. If the Court defines minister broadly, school teachers and other employees with limited religious duties will no longer benefit from vital civil rights protections against unlawful mistreatment, solely on the basis that their employer is a religious institution.

Oral Argument: TBD

Why We’re Watching: NCJW strongly opposes all laws and policies that permit discrimination under the guise of religious freedom.

Gun Violence Prevention

New York State Rifle & Pistol Association Inc. 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, joined by the NY State Rifle & Pistol Association, sued to be allowed to transport their handguns to shooting clubs and competitions outside of New York City. 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 will determine whether New York City’s ban on transporting a licensed, locked, and unloaded handgun to a home or shooting range outside city limits is consistent with the Second Amendment, the Commerce Clause and the constitutional right to travel.

Oral Argument: December 2, 2019

Why We’re Watching: NCJW supports policies that regulate firearms to promote gun safety, and this case will determine how far states and cities can go in doing just that.