AMERICAN BAR ASSOCIATION
Division for Public Education

Religion

Case Study 1

Reynolds v. United States (1879)

Facts

George Reynolds, a member of the Church of Latter-Day Saints, married a woman while still married to his previous wife. Reynolds was charged with bigamy under the Morrill Anti-Bigamy Act of 1862. Reynolds challenged the law as unconstitutional. According to Reynolds, the law violated his First Amendment right to exercise his religion given that his religion permitted him to marry multiple women.

Issue

Does the federal anti-bigamy law violate the Free Exercise Clause under the First Amendment?

Holding

No; Congress cannot outlaw a religious belief, but it can outlaw the practices of certain beliefs.

Chief Justice Waite wrote the unanimous opinion, reasoning that although Congress cannot prohibit the free exercise of religion, the anti-bigamy act did not rise to that level. The Court relied on historical precedent and long-held views on marriage status and polygamy to find that "to permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

From the Opinion

From the majority opinion by Chief Justice Waite:
Accordingly, at the first session of the first Congress, the amendment now under consideration was proposed with others by Mr. Madison. It met the views of the advocates of religious freedom, and was adopted. Mr. Jefferson afterwards, in reply to an address to him by a committee of the Danbury Baptist Association, took occasion to say:

> "Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the government reach actions only, and not opinions -- I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties."

Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus

secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.

Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, was almost exclusively a feature of the life of Asiatic and of African people. At common law, the second marriage was always void, and from the earliest history of England, polygamy has been treated as an offence against society. After the establishment of the ecclesiastical courts, and until the time of James I, it was punished through the instrumentality of those tribunals not merely because ecclesiastical rights had been violated, but because upon the separation of the ecclesiastical courts from the civil the ecclesiastical were supposed to be the most appropriate for the trial of matrimonial causes and offences against the rights of marriage, just as they were for testamentary causes and the settlement of the estates of deceased persons.

Resources

Opinion: https://supreme.justia.com/cases/federal/us/98/145/

Quimbee Case Brief: https://www.youtube.com/watch?v=I4T0eIdemxU

Case Summary 2

Minersville v. Gobitis (1940) and *West Virginia BoE v. Barnette* (1943)

Gobitis Facts

The Gobitis family, who were Jehovah's Witnesses, lived in Minersville, Pennsylvania, a predominantly Catholic area. The local school, like many at the time, required students to salute the American flag and say the Pledge of Allegiance. Such actions went against the teachings for Jehovah's Witnesses; the Gobitis children refused to partake, and they were expelled.

Issue

Does a mandatory flag salute rule infringe upon the liberties protected by the First and Fourteenth Amendments?

Holding

No; the First Amendment does not require states to excuse public school students from saluting the American flag and reciting the Pledge of Allegiance on religious grounds.

In an 8-1 decision, Justice Frankfurter wrote the opinion of the Court, finding that government officials could require such speech and action in order to protect national security. The Court reaffirmed that religious liberty does not exempt individuals from the promotion of the common good.

From the Opinion

From the majority opinion by Justice Frankfurter:

National unity is the basis of national security. To deny the legislature the right to select appropriate means for its attainment presents a totally different order of problem from that of the propriety of subordinating the possible ugliness of littered streets to the free expression opinion through handbills.
….
The preciousness of the family relation, the authority and independence which give dignity to parenthood, indeed the enjoyment of all freedom, presuppose the kind of ordered society which is summarized by our flag. A society which is dedicated to the preservation of these ultimate values of civilization may, in self-protection, utilize the educational process for inculcating those almost unconscious feelings which bind men together in a comprehending loyalty, whatever may be their lesser differences and difficulties. That is to say, the process may be utilized so long as men's right to believe as they please, to win others to their way of belief, and their right to assemble in their chosen places of worship for the devotional ceremonies of their faith, are all fully respected.

Judicial review, itself a limitation on popular government, is a fundamental part of our constitutional scheme. But to the legislature no less than to courts is committed the guardianship of deeply cherished liberties. Where all the effective means of inducing political changes are left free from interference, education in the abandonment of foolish legislation is itself a training in liberty. To fight out the wise use of legislative authority in the forum of public opinion and before legislative assemblies, rather than to transfer such a contest to the judicial arena, serves to vindicate the self-confidence of a free people.

From the dissenting opinion by Justice Stone:

The guarantees of civil liberty are but guarantees of freedom of the human mind and spirit and of reasonable freedom and opportunity to express them ... The very essence of the liberty which they guarantee is the freedom of the individual from compulsion as to what he shall think and what he shall say ...

Barnette **Facts**

In 1942, following a state statute, the West Virginia Board of Education adopted a resolution requiring public school teachers and students to participate in saluting the American flag. Failure to comply was to be viewed as "insubordination" and could result in expulsion. The Barnette family were Jehovah's Witnesses and the father instructed his children to not salute the flag or recite the Pledge of Allegiance. The Barnette children were expelled.

Issue

Does compulsory flag-salute for public school children violate the First Amendment?

Holding

Yes; compelling school children to salute the flag violates freedom of speech protected by the First Amendment.

In a 6-3 decision, the Court directly overruled *Gobitis*, finding that requiring the flag salute was a form of speech and such compelled speech was in conflict with the First Amendment. The Court rejected the *Gobitis* reasoning that the flag-salute requirement was necessary to build a "cohesive sentiment" that helped ensure national unity. According to the Court, "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

From the majority opinion by Justice Jackson:

The case is made difficult not because the principles of its decision are obscure but because the flag involved is our own. Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order. If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of

opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

Resources

Gobitis Opinion: https://supreme.justia.com/cases/federal/us/310/586/

Barnette Opinion: https://supreme.justia.com/cases/federal/us/319/624/

Quimbee Case Brief: https://www.youtube.com/watch?v=rrY2Sw7Sk5Q

Case Summary 3

Kennedy v. Bremerton School District (2022)

Facts

Joseph Kennedy was the long-serving football coach at Bremerton High School in Washington. Kennedy would lead players in prayer on the field both before and after football games. The school district asked Kennedy to stop in order to avoid a potential claim the district was violating the Establishment Clause. Kennedy continued to lead the prayers on the field, although he claimed they were personal in nature, and sued the school district, arguing it had violated his First Amendment rights.

Issue

Is a public-school employee's prayer during school sports activities protected speech?

Holding

Yes; the First Amendment protects an individual engaging in a personal religious observance from government reprisal; the Constitution neither mandates nor permits the government to suppress such religious expression.

In a 6-3 decision, the Court held that the school could not show that its decision to limit Kennedy's prayer served a compelling purpose or was narrowly tailored to achieve that purpose, the standard by which government action impacting religion is reviewed. The Court rejected the long-used *Lemon* test and instead, that the Establishment Clause must be interpreted by "'reference to historical practices and understandings."

From the Opinion

From the majority opinion by Justice Gorsuch:

In reaching its contrary conclusion, the Ninth Circuit stressed that, as a coach, Mr. Kennedy served as a role model "clothed with the mantle of one who imparts knowledge and wisdom." The court emphasized that Mr. Kennedy remained on duty after games. Before us, the District presses the same arguments. And no doubt they have a point. Teachers and coaches often serve as vital role models. But this argument commits the error of positing an "excessively broad job descriptio[n]" by treating everything teachers and coaches say in the workplace as government speech subject to government control. On this understanding, a school could fire a Muslim teacher for wearing a headscarf in the classroom or prohibit a Christian aide from praying quietly over her lunch in the cafeteria. Likewise, this argument ignores the District Court's conclusion (and the District's concession) that Mr. Kennedy's actual job description left time for a private moment after the game to call home, check a text, socialize, or engage in any manner of secular activities. Others working for the District were free to engage briefly in personal speech and activity. That Mr. Kennedy chose to use the same time to pray does not transform his speech into government speech. To hold differently would be to treat religious expression as second class speech and eviscerate this Court's repeated promise that teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

From the dissenting opinion by Justice Sotomayor:

[The Court's ruling] elevates one individual's interest in personal religious exercise, in the exact time and place of that individual's choosing, over society's interest in protecting the separation between church and state, eroding the protections for religious liberty for all. Today's decision is particularly misguided because it elevates the religious rights of a school official, who voluntarily accepted public employment and the limits that public employment entails, over those of his students, who are required to attend school and who this Court has long recognized are particularly vulnerable and deserving of protection. In doing so, the Court sets us further down a perilous path in forcing States to entangle themselves with religion, with all of our rights hanging in the balance. As much as the Court protests otherwise, today's decision is no victory for religious liberty.

Resources

Opinion link: https://www.supremecourt.gov/opinions/21pdf/21-418_i425.pdf

Oral Argument Audio:
https://www.c-span.org/video/?519490-1/kennedy-v-bremerton-oral-argument

LGBTQ Cases

Case Summary 1

Bowers v Hardwick (1986)

Facts

Michael Hardwick was charged with violating Georgia's criminal sodomy law after he was observed having consensual sex with another man in the bedroom of his house. The statute did not differentiate between heterosexual and homosexual sodomy. The local prosecutor chose not to move forward with prosecution; nevertheless, Hardwick challenged the constitutionality of the Georgia statute on the basis that as gay man, it put him at risk of being prosecuted in the future.

Issue

Does the Constitution confer a fundamental right upon homosexuals to engage in consensual sodomy, thereby invalidating the laws of many states which make such conduct illegal?

Holding

No; there is no constitutional protection for the right to engage in sodomy and states may criminalize such acts.

In a 5-4 ruling, the Court found that the actions at issue in *Bowers* did not rise to the standard of Constitutional protection as they were not "deeply rooted in the Nation's history and tradition."

From the Opinion

From the majority opinion by Justice White:

Sodomy was a criminal offense at common law, and was forbidden by the laws of the original 13 States when they ratified the Bill of Rights. In 1868, when the Fourteenth Amendment was ratified, all but 5 of the 37 States in the Union had criminal sodomy laws. In fact, until 196, all 50 States outlawed sodomy, and today, 24 States and the District of Columbia continue to provide criminal penalties for sodomy performed in private and between consenting adults. Against this background, to claim that a right to engage in such conduct is "deeply rooted in this Nation's history and tradition" or "implicit in the concept of ordered liberty" is, at best, facetious.

Nor are we inclined to take a more expansive view of our authority to discover new fundamental rights imbedded in the Due Process Clause. The Court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution. … There should be, therefore, great resistance to expand the substantive reach of those Clauses, particularly if it requires redefining the category of rights deemed to be fundamental. Otherwise, the Judiciary necessarily takes to itself further authority to govern the country without express constitutional authority. The claimed right pressed on us today falls far short of overcoming this resistance.

From the dissenting opinion by Justice Blackmun:

Only the most willful blindness could obscure the fact that sexual intimacy is "a sensitive, key relationship of human existence, central to family life, community welfare, and the development of human personality." The fact that individuals define themselves in a significant way through their intimate sexual relationships with others suggests, in a Nation as diverse as ours, that there may be many "right" ways of conducting those relationships, and that much of the richness of a relationship will come from the freedom an individual has to choose the form and nature of these intensely personal bonds.

From the dissenting opinion by Justice Stevens:

Our prior cases make two propositions abundantly clear. First, the fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice; neither history nor tradition could save a law prohibiting miscegenation from constitutional attack. Second, individual decisions by married persons, concerning the intimacies of their physical relationship, even when not intended to produce offspring, are a form of "liberty" protected by the Due Process Clause of the Fourteenth Amendment. Moreover, this protection extends to intimate choices by unmarried, as well as married, persons.

Resources

Opinion link: https://supreme.justia.com/cases/federal/us/478/186/

Quimbee Case Brief Video: https://www.youtube.com/watch?v=loFfmF3u-NQ

Case Summary 2

Romer v. Evans (1996)

Facts

Colorado voters approved an initiative to amend the state constitution, Amendment 2, that precluded any state government action designed to protect individuals from discrimination on the basis of their sexual orientation. The Amendment stated:

Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be in all respects self-executing.

Issue

Does Amendment 2 of Colorado's State Constitution, forbidding the extension of official protections to those who suffer discrimination due to their sexual orientation, violate the Fourteenth Amendment's Equal Protection Clause?

Holding

Yes; an amendment to the Colorado Constitution that prevents protected status under the law for homosexuals or bisexuals violates the Equal Protection Clause because it is not rationally related to a legitimate state interest.

In a 6-3 decision, the Court reasoned that Amendment 2 did not satisfy the Equal Protection Clause's requirements in order to disadvantage a specific group because it failed to "advance a legitimate government interest." The Court noted that "It is not within our constitutional tradition to enact laws of this sort.

From the Opinion

From the majority opinion by Justice Kennedy:

The Fourteenth Amendment's promise that no person shall be denied the equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons. We have attempted to reconcile the principle with the reality by stating that, if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end. Amendment 2 fails, indeed defies, even this conventional inquiry. First, the amendment has the peculiar property of imposing a broad and undifferentiated disability on a single named group, an exceptional and, as we shall explain, invalid form of legislation. Second, its sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests.

….

The primary rationale the State offers for Amendment 2 is respect for other citizens' freedom of association, and in particular the liberties of landlords or employers who have personal or religious objections to homosexuality. Colorado also cites its interest in conserving resources to fight discrimination against other groups. The breadth of the amendment is so far removed from these particular justifications that we find it impossible to credit them. We cannot say that Amendment 2 is directed to any identifiable legitimate purpose or discrete objective. It is a status-based enactment divorced from any factual context from which we could discern a relationship to legitimate state interests; it is a classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit. "[C]lass legislation ... [is] obnoxious to the prohibitions of the Fourteenth Amendment .... "

We must conclude that Amendment 2 classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do. A State cannot so deem a class of persons a stranger to its laws. Amendment 2 violates the Equal Protection Clause[.]

From the dissenting opinion by Justice Scalia:

The constitutional amendment before us here is not the manifestation of a "'bare ... desire to harm' " homosexuals but is rather a modest attempt by seemingly tolerant Coloradans to preserve traditional sexual mores against the efforts of a politically powerful minority to revise those mores through use of the laws. That objective, and the means chosen to achieve it, are not only unimpeachable under any constitutional doctrine hitherto pronounced (hence the opinion's heavy reliance upon principles of righteousness rather than judicial holdings); they have been specifically approved by the Congress of the United States and by this Court.

In holding that homosexuality cannot be singled out for disfavorable treatment, the Court contradicts a decision, unchallenged here, pronounced only 10 years ago, see *Bowers* v. *Hardwick,* and places the prestige of this institution behind the proposition that opposition to homosexuality is as reprehensible as racial or religious bias. Whether it is or not is *precisely* the cultural debate that gave rise to the Colorado constitutional amendment (and to the preferential laws against which the amendment was directed). Since the Constitution of the United States says nothing about this subject, it is left to be resolved by normal democratic means, including the democratic adoption of provisions in state constitutions. This Court has no business imposing upon all Americans the resolution favored by the elite class from which the Members of this institution are selected, pronouncing that "animosity" toward homosexuality is evil.
….

Today's opinion has no foundation in American constitutional law, and barely pretends to. The people of Colorado have adopted an entirely reasonable provision which does not even disfavor homosexuals in any substantive sense, but merely denies them preferential treatment. Amendment 2 is designed to prevent piecemeal deterioration of the sexual morality favored by a majority of Coloradans, and is not only an appropriate means to that legitimate end, but a means that Americans have employed before. Striking it down is an act, not of judicial judgment, but of political will.

Resources

Opinion link: https://supreme.justia.com/cases/federal/us/517/620/

Quimbee Case Video: https://www.youtube.com/watch?v=0vxeQlhb9I0

Case Summary 3

Lawrence v. Texas (2003)

Facts

Houston Police received a complaint about a weapons disturbance at a private residence. When police entered the home, they saw John Lawerence and another man engaging in private, consensual sexual intercourse. Both men were arrested and charged with violating a Texas state statute that criminalized certain sexual conduct between two people of the same sex. On appeal, the lower courts found the conviction constitutional under *Bowers*.

Issue

Do criminal convictions for adult consensual sexual intimacy in private homes violate vital interests in liberty and privacy protected by the Due Process Clause of the Fourteenth Amendment?

Should *Bowers v. Hardwick*, 478 U.S. 186 (1986), be overruled?

Holding

Yes; a state statute criminalizing two persons from engaging in consensual same sex violates the Due Process Clause of the Fourteenth Amendment and Bowers *is overruled.*

In a 6-3 vote, the Court ruled that the petitioners' "right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government." Accordingly, the Court determined that the state has no legitimate interest justifying such an invasion into an individual's privacy.

From the Opinion

From the majority opinion by Justice Kennedy:

To say that the issue in *Bowers* was simply the right to engage in certain sexual conduct demeans the claim the individual put forward, just as it would demean a married couple were it to be said marriage is simply about the right to have sexual intercourse. The laws involved in *Bowers* and here are, to be sure, statutes that purport to do no more than prohibit a particular sexual act. Their penalties and purposes, though, have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home. The statutes do seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals.

This, as a general rule, should counsel against attempts by the State, or a court, to define the meaning of the relationship or to set its boundaries absent injury to a person or abuse of an institution the law protects. It suffices for us to acknowledge that adults may choose to enter upon this relationship in the confines of their homes and their own private lives and still retain their dignity as free persons. When sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring. The liberty protected by the Constitution allows homosexual persons the right to make this choice.

It must be acknowledged, of course, that the Court in *Bowers* was making the broader point that for centuries there have been powerful voices to condemn homosexual conduct as immoral. The condemnation has been shaped by religious beliefs, conceptions of right and acceptable behavior, and respect for the traditional family. For many persons these are not trivial concerns but profound and deep convictions accepted as ethical and moral principles to which they aspire and which thus determine the course of their lives. These considerations do not answer the question before us, however. The issue is whether the majority may use the power of the State to enforce these views on the whole society through operation of the criminal law. "Our obligation is to define the liberty of all, not to mandate our own moral code."

From the dissenting opinion by Justice Scalia:

I turn now to the ground on which the Court squarely rests its holding: the contention that there is no rational basis for the law here under attack. This proposition is so out of accord with our jurisprudence–indeed, with the jurisprudence of *any* society we know–that it requires little discussion.

The Texas statute undeniably seeks to further the belief of its citizens that certain forms of sexual behavior are "immoral and unacceptable," –the same interest furthered by criminal laws against fornication, bigamy, adultery, adult incest, bestiality, and obscenity. *Bowers* held that this *was* a legitimate state interest. The Court today reaches the opposite conclusion. The Texas statute, it says, "furthers *no legitimate state interest* which can justify its intrusion into the personal and private life of the individual," The Court embraces instead Justice Stevens' declaration in his *Bowers* dissent, that "the fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice," *ante*, at 17. This effectively decrees the end of all morals legislation. If, as the Court asserts, the promotion of majoritarian sexual morality is not even a *legitimate* state interest, none of the above-mentioned laws can survive rational-basis review.

Resources

Court Opinion: https://www.law.cornell.edu/supct/html/02-102.ZS.html

Quimbee Case Brief: https://www.youtube.com/watch?v=FsPngPpSWxY

Case Summary 4

Obergefell v. Hodges (2015)

Facts

Groups of same-sex couples sued in Ohio, Michigan, Kentucky, and Tennessee to challenge the constitutionality of those states' bans on same-sex marriage or refusal to recognize legal same-sex marriages that occurred in states that recognized such marriages. The plaintiffs argued that the states' statutes violated the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment, and one group of plaintiffs also brought claims under the Civil Rights Act. In all the cases, the trial court found in favor of the plaintiffs. The U.S. Court of Appeals for the Sixth Circuit reversed and held that the states' bans on same-sex marriage and refusal to recognize marriages performed in other states did not violate the couples' Fourteenth Amendment rights to equal protection and due process.

Issue

Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex? Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex that was legally licensed and performed in another state?

Holding

Yes; the Due Process Clause of the Fourteenth Amendment guarantees the right to marry as one of fundamental liberty. This liberty applies to same-sex couples in the same manner as it does to opposite-sex couples.

In a 5-4 vote, the Court based its reasoning on the fact that right to marry is inherent in our concepts of individual autonomy and that it protects families, children, and the overall social order; according to the Court, there is no difference in such interests as they apply to opposite-sex or same-sex marriage.

From the Opinion

From the majority opinion by Justice Kennedy:

The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to further generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. . . in interpreting the Equal Protection Clause, the Court has recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged. . .

Of course, the Constitution contemplates that democracy is the appropriate process for change, so long as that process does not abridge fundamental rights. . .

The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right. The Nation's courts are open to injured individuals who come to them to vindicate their own direct, personal stake in our basic charter. An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act. The idea of the Constitution "was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." This is why "fundamental rights may not be submitted to a vote; they depend on the outcome of no elections." It is of no moment whether advocates of same-sex marriage now enjoy or lack momentum in the democratic process. The issue before the Court here is the legal question whether the Constitution protects the right of same-sex couples to marry.

….

No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.

From the dissenting opinion by Chief Justice Roberts:

But this Court is not a legislature. Whether same-sex marriage is a good idea should be of no concern to us. Under the Constitution, judges have power to say what the law is, not what it should be. The people who ratified the Constitution authorized courts to exercise "neither force nor will but merely judgment." The Federalist No. 78.

Although the policy arguments for extending marriage to same-sex couples may be compelling, the legal arguments for requiring such an extension are not. The fundamental right to marry does not include a right to make a State change its definition of marriage. And a State's decision to maintain the meaning of marriage that has persisted in every culture throughout human history can hardly be called irrational. In short, our Constitution does not enact any one theory of marriage. The people of a State are free to expand marriage to include same-sex couples, or to retain the historic definition.

…

Federal courts are blunt instruments when it comes to creating rights. They have constitutional power only to resolve concrete cases or controversies; they do not have the flexibility of legislatures to address concerns of parties not before the court or to anticipate problems that may arise from the exercise of a new right. Today's decision, for example, creates serious questions about religious liberty. Many good and decent people oppose same-sex marriage as a tenet of faith, and their freedom to exercise religion is—unlike the right imagined by the majority—actually spelled out in the Constitution. Amdt. 1.

Respect for sincere religious conviction has led voters and legislators in every State that has adopted same-sex marriage democratically to include accommodations for religious practice. The majority's decision imposing same-sex marriage cannot, of course, create any such accommodations. The

majority graciously suggests that religious believers may continue to “advocate” and “teach” their views of marriage. The First Amendment guarantees, however, the freedom to “*exercise*” religion. Ominously, that is not a word the majority uses.

Hard questions arise when people of faith exercise religion in ways that may be seen to conflict with the new right to same-sex marriage—when, for example, a religious college provides married student housing only to opposite-sex married couples, or a religious adoption agency declines to place children with same-sex married couples. Indeed, the Solicitor General candidly acknowledged that the tax exemptions of some religious institutions would be in question if they opposed same-sex marriage. There is little doubt that these and similar questions will soon be before this Court. Unfortunately, people of faith can take no comfort in the treatment they receive from the majority today.

Resources

Opinion link: https://www.law.cornell.edu/supremecourt/text/14-556

Quimbee Case Brief Video: https://www.youtube.com/watch?v=1rWSvCNBZxY

AAPI Cases

Case Summary 1

Yick Wo v. Hopkins (1886)

Facts

An 1880 San Francisco city ordinance required all laundries in wooden buildings to hold a permit issued by the city's Board of Supervisors. The Board had total discretion over who would be issued a permit. Although workers of Chinese descent operated 89 percent of the city's laundry businesses, not a single Chinese owner was granted a permit. Yick Wo and Wo Lee each operated laundry businesses without a permit and, after refusing to pay a $10 fine, were imprisoned by the city's sheriff, Peter Hopkins. Each sued for writ of habeas corpus, arguing the fine and discriminatory enforcement of the ordinance violated their rights under the Equal Protection Clause of the Fourteenth Amendment. Noting that, on its face, the law is nondiscriminatory, the Supreme Court of California and the Circuit Court of the United States for the District of California denied claims for Yick Wo and Wo Lee, respectively

Issue

Did the unequal *enforcement* of the otherwise *nondiscriminatory city ordinance* violate Yick Wo and Wo Lee's rights under the Equal Protection Clause of the Fourteenth Amendment?

Holding

Yes; racially discriminatory application of a racially neutral statute violates the Equal Protection Clause.

According to the Court, even if the law is impartial on its face, if it is applied unequally by government officials in a discriminatory manner, such an application violates the Fourteenth Amendment. The kind of biased enforcement experienced by the plaintiffs, the Court concluded, amounted to "a practical denial by the State of that equal protection of the law."

From the Opinion

From the majority opinion by Justice Matthews:
There is nothing in the ordinances which points to such a regulation of the business of keeping and conducting laundries. They seem intended to confer, and actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent not only as to places, but as to persons. So that, if an applicant for such consent, being in every way a competent and qualified person and having complied with every reasonable condition demanded by any public interest, should, failing to obtain the requisite consent of the supervisors to the prosecution of his business, apply for redress by the judicial process of mandamus to require the supervisors to consider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent without reason and without responsibility. The power given to them is not confided to their discretion

in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint.
…

The rights of the petitioners, as affected by the proceedings of which they complain, are not less because they are aliens and subjects of the Emperor of China. … The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says:

> "Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality, and the equal protection of the laws is a pledge of the protection of equal laws.
…

When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.
…

Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this court.

It appears that both petitioners have complied with every requisite deemed by the law or by the public officers charged with its administration necessary for the protection of neighboring property from fire or as a precaution against injury to the public health. No reason whatever, except the will of the supervisors, is assigned why they should not be permitted to carry on, in the accustomed manner, their harmless and useful occupation, on which they depend for a livelihood. And while this consent of the supervisors is withheld from them and from two hundred others who have also petitioned, all of whom happen to be Chinese subjects, eighty others, not Chinese subjects, are permitted to carry on the same business under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which, in the eye of the law, is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution.

Resources

Opinion link: https://supreme.justia.com/cases/federal/us/118/356/

Quimbee Case Brief Video: https://www.youtube.com/watch?v=nj3M1CDCqvE

Case Summary 2

U.S. v. Wong Kim Ark (1897)

Facts

The Chinese Exclusion Acts (1882) denied citizenship to Chinese immigrants. Moreover, by treaty no Chinese person with status as a "subject" of the government of China in the United States could become a naturalized citizen. Wong Kim Ark was born in San Francisco to parents who were both Chinese citizens residing in the United States at the time. At age 21, he returned to China to visit his parents. Before they returned to China, Wong's parents had lived in the United States for 20 years. When he returned to the United States, Wong was denied entry on the ground that he was not a citizen.

Issue

Is a child, who was born in the United States to Chinese-citizen parents who are lawful permanent residents of the United States, a U.S. citizen under the Citizenship Clause of the Fourteenth Amendment?

Holding

Yes; the Citizenship Clause grants U.S. citizenship to almost all children born to alien parents in the United States.

In a 6-2 decision, the Court determined that because Wong was born in the United States and his parents were not "employed in any diplomatic or official capacity under the Emperor of China," the Citizenship Clause of the Fourteenth Amendment automatically makes him a U.S. citizen." The Court established the parameters of the concept known as *jus soli*—the citizenship of children born in the United States to non-citizens.

From the Opinion

From the majority opinion by Justice Gray:

The foregoing considerations and authorities irresistibly lead us to these conclusions: the Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes. The Amendment, in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States.

His allegiance to the United States is direct and immediate . . . although but local and temporary . . . . It can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides – seeing that, as said by Mr. Webster, when Secretary of State, in his Report to the President on *Thrasher's Case* in 1851, and since repeated by this court, ". . . it is well known that, by the public law, an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for

treason, or other crimes, as a native-born subject might be, unless his case is varied by some treaty stipulations." . . .

Whatever considerations, in the absence of a controlling provision of the Constitution, might influence the legislative or the executive branch of the Government to decline to admit persons of the Chinese race to the status of citizens of the United States, there are none that can constrain or permit the judiciary to refuse to give full effect to the peremptory and explicit language of the Fourteenth Amendment, which declares and ordains that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States."

Chinese persons, born out of the United States, remaining subjects of the Emperor of China, and not having become citizens of the United States, are entitled to the protection of, and owe allegiance to, the United States so long as they are permitted by the United States to reside here, and are "subject to the jurisdiction thereof" in the same sense as all other aliens residing in the United States. . . .

Upon the facts agreed in this case, the American citizenship which Wong Kim Ark acquired by birth within the United States has not been lost or taken away by anything happening since his birth. . . .

The evident intention, and the necessary effect, of the submission of this case to the decision of the court upon the facts agreed by the parties were to present for determination the single question stated at the beginning of this opinion, namely, whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicil and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States. For the reasons above stated, this court is of opinion that the question must be answered in the affirmative.

Resources

Opinion Link: https://www.law.cornell.edu/supremecourt/text/169/649

PBS American Experience Video:
https://www.pbs.org/video/chinese-exclusion-act-wong-kim-ark-6ynevh/

Case Summary 3

Matal v. Tam (2017)

Facts

Simon Tam and his band, The Slants, sought to register the band's name with the U.S. Trademark Office. The Office denied the application because it found that the name would likely be disparaging towards "persons of Asian descent." The office cited the Disparagement Clause of the Lanham Act of 1946, which prohibits trademarks that "[consist] of or [comprise] immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute." Tam appealed the trademark officer's decision, and the name was refused a second time by a trademark office board. Tam appealed to a panel of judges on the U.S. Court of Appeals for the Federal Circuit, which found that the trademark officials were within their rights to refuse the trademark application under the Disparagement Clause. The appellate court then reviewed the case en banc ("on the bench," or all of the judges of the court together) and found that the trademark office was incorrect in refusing the trademark application and that the Disparagement Clause violated the First Amendment.

Issue

Is the Disparagement Clause of the Lanham Act invalid under the First Amendment?

Holding

Yes; the Lanham Act's prohibition against registering disparaging trademarks caused discrimination based on viewpoint and clearly violates the First Amendment.

The unanimous Court determined that the plain meaning of the text clearly indicated that the Disparagement Clause applied to racial and ethnic groups, and therefore the Clause applied to the mark at issue in this case. Because the PTO simply approved trademarks, the approvals were not government speech—to which the First Amendment prohibitions on viewpoint regulation did not apply--and holding otherwise would constitute a massive and unwise expansion of the government speech doctrine. According to the Court, any asserted interest of avoiding offense clearly contravened the purpose of the First Amendment's protection of free speech, and the Clause was too broad to serve the government's other stated interest of protecting the orderly flow of commerce.

From Oral Argument, Justice Ruth Bader Ginsburg

It's not because of the content or the viewpoint expressed, it's just it's a short phrase, and any short phrase would be no good. This is -- this is -- you can't say Slants because the PTO thinks that's a bad word. Does it not count at all that everyone knows that The Slants is using this term not at all to disparage, but simply to describe? ... It takes the sting out of the word.

From the Opinion

From the majority opinion by Justice Alito:

We have said time and again that "the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." …

For this reason, the disparagement clause cannot be saved by analyzing it as a type of government program in which some content- and speaker-based restrictions are permitted.

… The Government and *amici* supporting its position argue that all trademarks are commercial speech. They note that the central purposes of trademarks are commercial and that federal law regulates trademarks to promote fair and orderly interstate commerce. Tam and his *amici*, on the other hand, contend that many, if not all, trademarks have an expressive component. In other words, these trademarks do not simply identify the source of a product or service but go on to say something more, either about the product or service or some broader issue. The trademark in this case illustrates this point. The name "The Slants" not only identifies the band but expresses a view about social issues.

…

There is also a deeper problem with the argument that commercial speech may be cleansed of any expression likely to cause offense. The commercial market is well stocked with merchandise that disparages prominent figures and groups, and the line between commercial and non-commercial speech is not always clear, as this case illustrates. If affixing the commercial label permits the suppression of any speech that may lead to political or social "volatility," free speech would be endangered.

From Simon Tam's *Slanted: How an Asian American Troublemaker Took on the Supreme Court* (2019)

[PG 123]

I started the Slants because I wanted to challenge assumptions about Asian Americans, it was always about asserting our own approach to things. …

[PG 124-125]
Reappropriation, or the process of reclaiming disparaging terms, isn't something that is universally understood or appreciated. That's because it is messy. It involves shifting cultural norms, and like any kind of social evolution, will leave people in different degrees of acceptance. … Sometimes, the reclamation process is so powerful that it shifts discourse for the general population as well. For example, the term *queer* is often the preferred umbrella term for sexual and gender minorities in the LGBTQ spectrum. Yet other terms, such as *the n-word* remain controversial, with some embracing it while others reject its usage altogether, even within community contexts.

Because there's no cut-and-dry standard for what is acceptable, some don't believe reclaiming language is effective at all. But every published [study] conducted on reappropriation has confirmed that reclaiming terms results in a shift of power from dominant groups to those they've oppressed. … When communities co-opt terms for self-reference or self-empowerment, it's saying you can't use that word against me. *It belongs to me now.* In that sense, refusing to be defined by others is an act of creation. It is both activism and art.

[PG 149-150]

If I couldn't speak for my community, … why did this one employee at the Trademark Office have the right to do so? … With just a few keystrokes, a single attorney in a government office could brush away the voices of … Asian Americans who wanted to reclaim this slur. To me, it was even more ridiculous that the government had already registered "slant" over and over again for other people. It was like the rules were different for me.

[PG 156]

This problem with Section 2(a) of the Lanham Act was always hinted at, but no one ever explicitly stated it: it allowed the Trademark Office to deny rights based on race, gender, sexual orientation, or unpopular political beliefs. It chilled speech. Most legal analyses dealt with the inconsistencies in how Trademark Office decisions were made.

[PG 157]

It was as if, for the first time, I truly realized the full extent of how genuine government ignorance in this area could further inequity. Of course, there are far worse examples of injustice…, but I also realized we needed to use small victories in order to build momentum so we could address the larger complexities of systemic racism. … In the name of fighting against racism, the government was denying me rights based on my race. Perhaps if we could show the absurdity of how one seemingly innocuous area of government could get things so wrong, it could highlight how our intricate system of laws built on slavery, genocide, and oppression could easily further injustice.

Resources

Opinion Link: https://www.supremecourt.gov/opinions/16pdf/15-1293_1o13.pdf

Quimbee Case Brief Video: https://www.youtube.com/watch?v=EIL6p4IGI0U

Tam, Simon. *Slanted: How an Asian American Troublemaker Took on the Supreme Court* (2019)

Native American Rights

Case Study 1

Elk v. Wilkins (1884)

Facts

John Elk was born a member of the Winnebago tribe in Nebraska. As an adult, Elk moved off the tribal reservation to Omaha and renounced his tribal allegiance. Claiming birthright citizenship under the Fourteenth Amendment, Elk tried to register to vote in 1880. The Omaha registrar of voters, Charles Wilkins, denied Elk's application.

Issue

Is an Indian born a member of one of the Indian tribes within the United States, merely by reason of their birth within the United States and of their afterward voluntarily separating themself from the tribe and taking up residence among white citizens, a citizen of the United States within the meaning of the Fourteenth Amendment?

Holding

No; An Indian cannot make himself a citizen of the United States without the consent and the co-operation of the government.

Chief Justice Waite wrote the opinion for a 7-2 majority, reasoning that although Elk was born within the United States, he owed his allegiance to his tribe and was therefore not subject to the jurisdiction of the United States at the time of his birth.

The Indian Citizenship Act of 1924 eventually granted U.S. citizenship to all indigenous people of the United States. Under the act, tribal citizens did not have to apply for citizenship, nor did they have to give up their tribal citizenship to become U.S. citizens.

From the Opinion

From the majority opinion by Chief Justice Waite:

Under the Constitution of the United States as originally established, "Indians not taxed" were excluded from the persons according to whose numbers representatives and direct taxes were apportioned among the several states, … The Indian tribes, being within the territorial limits of the United States, were not, strictly speaking, foreign states, but they were alien nations, distinct political communities, with whom the United States might and habitually did deal as they thought fit, either through treaties made by the President and Senate or through acts of Congress in the ordinary forms of legislation. The members of those tribes owed immediate allegiance to their several tribes, and were not part of the people of the United States. They were in a dependent condition, a state of pupilage, resembling that of a ward to his guardian.

The alien and dependent condition of the members of the Indian tribes could not be put off at their own will without the action or assent of the United States. They were never deemed citizens of the

United States except under explicit provisions of treaty or statute to that effect either declaring a certain tribe, or such members of it as chose to remain behind on the removal of the tribe westward, to be citizens or authorizing individuals of particular tribes to become citizens on application to a court of the United States for naturalization and satisfactory proof of fitness for civilized life, for examples of which see treaties in 1817 and 1835 with the Cherokees, and in 1820, 1825, and 1830 with the Choctaws…

The national legislation has tended more and more toward the education and civilization of the Indians, and fitting them to be citizens. But the question whether any Indian tribes, or any members thereof, have become so far advanced in civilization that they should be let out of the state of pupilage, and admitted to the privileges and responsibilities of citizenship, is a question to be decided by the nation whose wards they are and whose citizens they seek to become, and not by each Indian for himself.

From the dissent by Justice Harlan:
It seems to us that the Fourteenth Amendment, insofar as it was intended to confer national citizenship upon persons of the Indian race, is robbed of its vital force by a construction which excludes from such citizenship those who, although born in tribal relations, are within the complete jurisdiction of the United States. There were, in some of our states and territories at the time the amendment was submitted by Congress, many Indians who had finally left their tribes and come within the complete jurisdiction of the United States. They were as fully prepared for citizenship as were or are vast numbers of the white and colored races in the same localities. Is it conceivable that the statesmen who framed, the Congress which submitted, and the people who adopted that amendment intended to confer citizenship, national and state, upon the entire population in this country of African descent (the larger part of which was shortly before held in slavery), and, by the same constitutional provision, to exclude from such citizenship Indians who had never been in slavery and who, by becoming bona fide residents of states and territories within the complete jurisdiction of the United States, had evinced a purpose to abandon their former mode of life, and become a part of the people of the United States? If this question be answered in the negative, as we think it must be, then we are justified in withholding our assent to the doctrine which excludes the plaintiff from the body of citizens of the United States upon the ground that his parents were, when he was born, members of an Indian tribe, for, if he can be excluded upon any such ground, it must necessarily follow that the Fourteenth Amendment did not grant citizenship even to Indians who, although born in tribal relations, were at its adoption, severed from their tribes, subject to the complete jurisdiction as well of the United States as of the state or territory in which they resided.

Resources

Opinion: https://supreme.justia.com/cases/federal/us/112/94/

iCivics Lesson and Handouts: https://www.icivics.org/teachers/lesson-plans/elk-v-wilkins-1884

Quimbee Case Brief: https://www.quimbee.com/cases/elk-v-wilkins

Case Summary 2

United States v. Wheeler (1978)

Anthony Wheeler, a member of the Navajo tribe, was charged and convicted in the tribal justice system with disorderly conduct and contributing to the delinquency of a minor. One year later, a federal district court indicted Wheeler for statutory rape based on the same conduct he had already been convicted of in tribal court. Wheeler moved to dismiss the federal charges as barred by the Double Jeopardy Clause.

Issue

Does the Double Jeopardy Clause of the Fifth Amendment bar the prosecution of an Indian in a federal district court under the Major Crimes Act, 18 U.S.C. § 1153, when he has previously been convicted in a tribal court of a lesser included offense arising out of the same incident?

Holding

No; the Double Jeopardy Clause does not bar federal prosecution of a Native American who has already been prosecuted by the tribe.

In a unanimous decision, Justice Stewart reasoned that Indian tribal sovereignty allows tribes to punish members for offenses and such power continues unless explicitly withdrawn by statute or treaty; which had not occurred here. According to the Court, this tribal authority comes from a different sovereign source than the federal power to prosecute crimes for double jeopardy purposes.

From the Opinion

From the majority opinion by Justice Stewart:

The powers of Indian tribes are, in general, "inherent powers of a limited sovereignty which has never *been extinguished.*" F. Cohen, Handbook of Federal Indian Law 122 (1945) (emphasis in original). Before the coming of the Europeans, the tribes were self-governing sovereign political communities. Like all sovereign bodies, they then had the inherent power to prescribe laws for their members and to punish infractions of those laws.

Indian tribes are, of course, no longer "possessed of the full attributes of sovereignty." Their incorporation within the territory of the United States, and their acceptance of its protection, necessarily divested them of some aspects of the sovereignty which they had previously exercised. By specific treaty provision, they yielded up other sovereign powers; by statute, in the exercise of its plenary control, Congress has removed still others.

In sum, Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.

The Indian tribes are "distinct political communities" with their own mores and laws,… which can be enforced by formal criminal proceedings in tribal courts as well as by less formal means. They have a significant interest in maintaining orderly relations among their members and in preserving tribal customs and traditions, apart from the federal interest in law and order on the reservation. Tribal laws

and procedures are often influenced by tribal custom and can differ greatly from our own. Thus, tribal courts are important mechanisms for protecting significant tribal interests. Federal preemption of a tribe's jurisdiction to punish its members for infractions of tribal law would detract substantially from tribal self-government, just as federal preemption of state criminal jurisdiction would trench upon important state interests.

Resources

Opinion: https://supreme.justia.com/cases/federal/us/435/313/

Quimbee Case Brief: https://www.youtube.com/watch?v=rzUep6pKlAg

Case Summary 3

Santa Clara Pueblo v. Martinez (1978)

Facts

Julia Martinez was a full member of the Santa Clara Pueblo tribe; she had several children, including a daughter, Aubrey Martinez, one of the named parties to the case, with her husband who was a Navajo Indian. A Santa Clara membership ordinance prevented the Martinez children from tribal membership as their father was not a member (if he had been a member and Julia not, the ordinance would not apply to them). Even though they were born and raised on the reservation, the Martinez children had no right to vote in tribal elections as adults and in the event of their mother's death, they would not be able to remain on the reservation and would not inherit her possessions or interest in communal lands.

Martinez claimed that the tribal ordinance discriminated against her in violation of the equal protection requirement of the Indian Civil Rights Act (ICRA). Martinez claimed that the ICRA gave her the ability to sue the tribe over these alleged violations in federal court.

Issue

Are Indian tribes subject to suit in federal court under the ICRA?

Holding

No; suits such as this one for declaratory or injunctive relief under the ICRA are barred by sovereign immunity. (Suits for habeas corpus were explicitly authorized under the statute).

In a 7-1 decision written by Justice Thurgood Marshall, the Court reasoned that as part of their tribal sovereignty, tribes have the ability to pass substantive laws on internal matters, including membership. Constitutional protections, such as the Fourteenth Amendment, do not apply to tribes without explicit authorization.

From the Opinion

From the majority opinion by Justice Marshall:

We note at the outset that a central purpose of the ICRA and in particular of Title I was to "secur[e] for the American Indian the broad constitutional rights afforded to other Americans," and thereby to "protect individual Indians from arbitrary and unjust actions of tribal governments." There is thus no doubt that respondents, American Indians living on the Santa Clara Reservation, are among the class for whose especial benefit this legislation was enacted. Moreover, we have frequently recognized the propriety of inferring a federal cause of action for the enforcement of civil rights, even when Congress has spoken in purely declarative terms.

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it is highly unlikely that Congress would have intended a private cause of action for injunctive and declaratory relief to be available in the federal courts to secure enforcement of 1302. Although the only Committee Report on the ICRA in its final form, sheds little additional light on this question, it would hardly support a contrary conclusion. Indeed, its description of the purpose of Title I, as well as

the floor debates on the bill, indicates that the ICRA was generally understood to authorize federal judicial review of tribal actions only through the habeas corpus provisions of § 1303. These factors, together with Congress' rejection of proposals that clearly would have authorized causes of action other than habeas corpus, persuade us that Congress, aware of the intrusive effect of federal judicial review upon tribal self-government, intended to create only a limited mechanism for such review, namely, that provided for expressly in § 1303.

By not exposing tribal officials to the full array of federal remedies available to redress actions of federal and state officials, Congress may also have considered that resolution of statutory issues under § 1302, and particularly those issues likely to arise in a civil context, will frequently depend on questions of tribal tradition and custom which tribal forums may be in a better position to evaluate than federal courts.

From the dissent by Justice White

Given Congress' concern about the deprivations of Indian rights by tribal authorities, I cannot believe, as does the majority, that it desired the enforcement of these rights to be left up to the very tribal authorities alleged to have violated them. In the case of the Santa Clara Pueblo, for example, both legislative and judicial powers are vested in the same body, the Pueblo Council. To suggest that this tribal body is the "appropriate" forum for the adjudication of alleged violations of the ICRA is to ignore both reality and Congress' desire to provide a means of redress to Indians aggrieved by their tribal leaders. Although the Senate Report's statement of the purpose of the ICRA refers only to the granting of constitutional rights to the Indians, I agree with the majority that the legislative history demonstrates that Congress was also concerned with furthering Indian self-government. I do not agree, however, that this concern on the part of Congress precludes our recognition of a federal cause of action to enforce the terms of the Act. The major intrusion upon the tribe's right to govern itself occurred when Congress enacted the ICRA and mandated that the tribe "in exercising powers of self-government" observe the rights enumerated in § 1302. The extension of constitutional rights to individual citizens is intended to intrude upon the authority of government. And once it has been decided that an individual does possess certain rights *vis-a-vis* his government, it necessarily follows that he has some way to enforce those rights.

Resources

Opinion link: https://supreme.justia.com/cases/federal/us/436/49/

Quimbee Case Brief: https://www.youtube.com/watch?v=3F_bzh7Oj44

Case Summary 4

McGirt v. Oklahoma (2020)

Facts

Jimcy McGirt was a member of the Seminole Tribe; in 1997, he was convicted by Oklahoma for rape and two other sexual offenses. He argued that the state lacked the ability to prosecute him because he was an enrolled tribe member and his crimes took place on land belonging to the Muscogee (Creek) Nation. Under the Major Crimes Act (MCA) "[a]ny Indian who commits" certain offenses within "Indian country," "shall be subject to the same law and penalties as all other persons committing any of [those] offenses, within the exclusive jurisdiction of the United States."

Issue

Is the land occupied by the Muscogee (Creek) Nation an Indian Reservation for the purposes of the Major Crimes Act?

Holding

Yes; the Muscogee (Creek) Nation is "Indian lands" for the purposes of the Major Crimes Act such that McGirt was not under the jurisdiction of Oklahoma at the time of his crime.

In a 5-4 decision, Justice Gorsuch reasoned that although the crimes occurred on lands that were not formally referred to as "reservations" in the initial treaties, the language used to reference the land was similar to language the Court has said was sufficient to create a reservation. According to the Court, once a reservation has been established, it can only be disestablished with clear congressional intent, which is not present here.

From the Opinion

From the majority opinion by Justice Neil Gorsuch:

These early treaties did not refer to the Creek lands as a "reservation"—perhaps because that word had not yet acquired such distinctive significance in federal Indian law. But we have found similar language in treaties from the same era sufficient to create a reservation. And later Acts of Congress left no room for doubt. In 1866, the United States entered yet another treaty with the Creek Nation. …But Congress explicitly restated its commitment that the remaining land would "be forever set apart as a home for said Creek Nation," which it now referred to as "the reduced Creek reservation." Throughout the late 19th century, many other federal laws also expressly referred to the Creek Reservation. There is a final set of assurances that bear mention, too. In the Treaty of 1856, Congress promised that "no portion" of the Creek Reservation "shall ever be embraced or included within, or annexed to, any Territory or State." And within their lands, with exceptions, the Creeks were to be "secured in the unrestricted right of self-government," with "full jurisdiction" over enrolled Tribe members and their property. So the Creek were promised not only a "permanent home" that would be "forever set apart"; they were also assured a right to self-government on lands that would lie outside both the legal jurisdiction and geographic boundaries of any State. Under any definition, this was a reservation.

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To determine whether a tribe continues to hold a reservation, there is only one place we may look: the Acts of Congress. This Court long ago held that the Legislature wields significant constitutional authority when it comes to tribal relations, possessing even the authority to breach its own promises and treaties. But that power, this Court has cautioned, belongs to Congress alone. Nor will this Court lightly infer such a breach once Congress has established a reservation. Under our Constitution, States have no authority to reduce federal reservations lying within their borders. Just imagine if they did. A State could encroach on the tribal boundaries or legal rights Congress provided, and, with enough time and patience, nullify the promises made in the name of the United States. That would be at odds with the Constitution, which entrusts Congress with the authority to regulate commerce with Native Americans, and directs that federal treaties and statutes are the "supreme Law of the Land." It would also leave tribal rights in the hands of the very neighbors who might be least inclined to respect them. Likewise, courts have no proper role in the adjustment of reservation borders. Mustering the broad social consensus required to pass new legislation is a deliberately hard business under our Constitution. Faced with this daunting task, Congress sometimes might wish an inconvenient reservation would simply disappear. Short of that, legislators might seek to pass laws that tiptoe to the edge of disestablishment and hope that judges—facing no possibility of electoral consequences themselves—will deliver the final push. But wishes don't make for laws, and saving the political branches the embarrassment of disestablishing a reservation is not one of our constitutionally assigned prerogatives.

Resources

Opinion link: https://www.supremecourt.gov/opinions/19pdf/18-9526_9okb.pdf

Quimbee Case Brief: https://www.quimbee.com/cases/mcgirt-v-oklahoma

PBS NewsHour feature on decision (5 minutes): https://www.youtube.com/watch?app=desktop&v=_UH3B5MLCEU

Disability

Case Summary 1

O'Connor v. Donaldson (1975)

Facts

In 1957, Kenneth Donaldson's father committed Kenneth; shortly thereafter, he was admitted to a state hospital and diagnosed with paranoid schizophrenia. The judge in his original hearing told Donaldson he was being committed for "a few weeks" when in reality, he was institutionalized for almost 15 years. During this time, Donaldson was provided no more than six therapy sessions and kept in a locked building; Donaldson challenged his confinement a number of times and each time was denied. In 1971, Donaldson sued claiming that hospital officials violated his civil rights. At trial, the evidence showed that Donaldson could likely take care of himself and was neither dangerous to himself nor others.

Issue

May the state confine a mentally ill individual in an institution against their wishes if the individual is not a danger to themselves or others?

Holding

No; a state cannot constitutionally confine, without more, a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.

In a unanimous opinion by Justice Potter Stewart, the Court acknowledged that the state cannot constitutionally confine a non-dangerous mentally ill person capable of living outside an institution.

From the Opinion

From the majority opinion by Justice Stewart:

A finding of "mental illness" alone cannot justify a State's locking a person up against his will and keeping him indefinitely in simple custodial confinement. Assuming that that term can be given a reasonably precise content and that the "mentally ill" can be identified with reasonable accuracy, there is still no constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom.

May the State confine the mentally ill merely to ensure them a living standard superior to that they enjoy in the private community? That the State has a proper interest in providing care and assistance to the unfortunate goes without saying. But the mere presence of mental illness does not disqualify a person from preferring his home to the comforts of an institution.

May the State fence in the harmless mentally ill solely to save its citizens from exposure to those whose ways are different? One might as well ask if the State, to avoid public unease, could

incarcerate all who are physically unattractive or socially eccentric. Mere public intolerance or animosity cannot constitutionally justify the deprivation of a person's physical liberty.

In short, a State cannot constitutionally confine, without more, a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends. Since the jury found, upon ample evidence, that O'Connor, as an agent of the State, knowingly did so confine Donaldson, it properly concluded that O'Connor violated Donaldson's constitutional right to freedom.

Resources

Opinion link: https://supreme.justia.com/cases/federal/us/422/563/

Case Summary 2

Youngberg v. Romeo (1982)

Facts

Nicholas Romeo was a 33-year-old man with the mental capacity of an 18-month-old; after the death of his father, Romeo's mother was unable to provide care for him and had him permanently committed to a state hospital. While confined, Romeo suffered numerous injuries and was physically restrained. When Romeo's mother became aware of his injuries, she sued on his behalf, arguing that the state had violated Romeo's Due Process protections and his Eighth Amendment right to be free from cruel and unusual punishment.

Issue

Does the Constitution grant individuals involuntarily committed the right to be free from bodily restraints and the right to safe confinement?

Holding

Yes; the Due Process Clause of the Fourteenth Amendment requires that committed individuals have safe confinement and be free from bodily restraints.

Justice Lewis F. Powell wrote the unanimous decision explaining that a court must balance the liberty interests of committed individuals with the states in order to determine whether an individual is being adequately protected. The Court acknowledged that deference was owed to the professionals in these settings but that the substantial departures in this violated the Constitution.

From the Opinion

From the majority opinion by Justice Powell:

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish. The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes a "historic liberty interest" protected substantively by the Due Process Clause. And that right is not extinguished by lawful confinement, even for penal purposes. If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed -- who may not be punished at all -- in unsafe conditions.

Next, respondent claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action." This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment.

We have established that Romeo retains liberty interests in safety and freedom from bodily restraint. Yet these interests are not absolute; indeed, to some extent, they are in conflict. In operating an institution such as Pennhurst, there are occasions in which it is necessary for the State to restrain the

movement of residents -- for example, to protect them as well as others from violence. Similar restraints may also be appropriate in a training program. And an institution cannot protect its residents from all danger of violence if it is to permit them to have any freedom of movement. The question then is not simply whether a liberty interest has been infringed, but whether the extent or nature of the restraint or lack of absolute safety is such as to violate due process.

…

Accordingly, whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests. If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or jury. We therefore turn to consider the proper standard for determining whether a State adequately has protected the rights of the involuntarily committed mentally retarded.

Resources

Opinion link: https://supreme.justia.com/cases/federal/us/457/307/

Case Summary 3

Board of Education of Hendrick Hudson Central School District v. Rowley (1982)

Facts

Amy Rowley was a student at Furnace Woods Elementary School in Cortland, New York. Amy was deaf, although she had some minimal residual hearing and was a strong lip reader. The school refused to provide Amy with a sign language interpreter after determining that Amy could succeed in school without one. Amy's parents sued the school, alleging a violation of the Education of All Handicapped Children Act of 1975. Amy was a good student and did better academically than the average hearing student, but Amy's parents claimed she was not fulfilling her full potential.

The Act requires all schools that accept federal funds to provide a "free appropriate public education" to all handicapped students. However, the Act also gives schools discretion to determine what steps were necessary to accommodate handicapped students.

Issue

What does "free and appropriate public education" require in the context of the Education of All Handicapped Children Act of 1975?

Holding

It is up to school administrations to determine what is required to meet a handicapped student's individual needs; in this case, the school was within its discretion to determine that it did not need to provide Amy with a sign language interpreter.

Justice William H. Rehnquist wrote the opinion for a 6-3 majority, finding that the Act's requirement of a "free appropriate public education" is satisfied when the state provides personalized instruction with sufficient support services to permit the handicapped child to benefit educationally from that instruction. According to the Court, the Act's language contains no express substantive standard prescribing the level of education to be accorded handicapped children.

From the Opinion

From the majority opinion by Justice William H. Rehnquist:

According to the definitions contained in the Act, a "free appropriate public education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's individual education plan. Thus, if personalized instruction is provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" as defined by the Act.

Other portions of the statute also shed light upon congressional intent. Congress found that, of the roughly eight million handicapped children in the United States at the time of enactment, one million were "excluded entirely from the public school system," and more than half were receiving an inappropriate education. In addition, as mentioned in Part I, the Act requires States to extend educational services first to those children who are receiving no education and second to those children who are receiving an "inadequate education." § 1412(3). When these express statutory findings and priorities are read together with the Act's extensive procedural requirements and its definition of "free appropriate public education," the face of the statute evinces a congressional intent to bring previously excluded handicapped children into the public education systems of the States and to require the States to adopt *procedures* which would result in individualized consideration of and instruction for each child.

Noticeably absent from the language of the statute is any substantive standard prescribing the level of education to be accorded handicapped children. … Although we find the statutory definition of "free appropriate public education" to be helpful in our interpretation of the Act, there remains the question of whether the legislative history indicates a congressional intent that such education meet some additional substantive standard. For an answer, we turn to that history.

>>>>>

That the Act imposes no clear obligation upon recipient States beyond the requirement that handicapped children receive some form of specialized education is perhaps best demonstrated by the fact that Congress, in explaining the need for the Act, equated an "appropriate education" to the receipt of some specialized educational services. The Senate Report states:

> [T]he most recent statistics provided by the Bureau of Education for the Handicapped estimate that, of the more than 8 million children . . . with handicapping conditions requiring special education and related services, only 3.9 million such children are receiving an appropriate education.

This statement, which reveals Congress' view that 3.9 million handicapped children were "receiving an appropriate education" in 1975, is followed immediately in the Senate Report by a table showing that 3.9 million handicapped children were "served" in 1975, and a slightly larger number were "unserved." A similar statement and table appear in the House Report. H.R.Rep. at 11-12.

It is evident from the legislative history that the characterization of handicapped children as "served" referred to children who were receiving some form of specialized educational services from the States, and that the characterization of children as "unserved" referred to those who were receiving no specialized educational services. … By characterizing the 3.9 million handicapped children who were "served" as children who were "receiving an appropriate education," the Senate and House Reports unmistakably disclose Congress' perception of the type of education required by the Act an "appropriate education" is provided when personalized educational services are provided.

Resources

Opinion - https://supreme.justia.com/cases/federal/us/458/176/#tab-opinion-1954657

Case Summary 4

Olmstead v. L.C. (1999)

Facts

Two female patients with mental disabilities were committed in Georgia state hospitals in psychiatric isolation. Advocates for the women sued on their behalves, arguing that the Americans with Disabilities Act (ADA) required that the women be moved to a more community-based setting. Government officials agreed that the women were medically cleared for such a setting, but that financial constraints prevented this from being feasible.

Issue

Under the Americans with Disabilities Act, can financial concerns appropriately determine whether a state must comply with the guidelines concerning community-based settings for individuals with mental disabilities?

Holding

No; the ADA requires that mentally disabled individuals be placed in community-based settings if such a placement is medically appropriate, the individual favors such a placement, and the placement can be reasonably accommodated by the state.

In a 6-3 majority opinion, Justice Ginsburg reasoned that unjustified isolation of a person with a disability is a form of discrimination under the ADA and that institutionalization is inappropriate if those three factors can be demonstrated.

From the Opinion

From the majority opinion by Justice Ginsburg:

Recognition that unjustified institutional isolation of persons with disabilities is a form of discrimination reflects two evident judgments. First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. Unlike the ADA, § 504 of the Rehabilitation Act contains no express recognition that isolation or segregation of persons with disabilities is a form of discrimination. Section 504's discrimination proscription, a single sentence attached to vocational rehabilitation legislation, has yielded divergent court interpretations. Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment. Dissimilar treatment correspondingly exists in this key respect: In order to receive needed medical services, persons with mental disabilities must, because of those disabilities, relinquish participation in community life they could enjoy given reasonable accommodations, while persons without mental disabilities can receive the medical services they need without similar sacrifice.

Resources

Court Opinion: https://supreme.justia.com/cases/federal/us/527/581/

Video from Olmstead Rights, including interviews with the attorneys and more recent challenges: https://youtu.be/oezulXzBt2k

Case Summary 5

PGA Tours v. Martin (2001)

Facts

Casey Martin was a professional golfer with the PGA Tour, Inc. Martin had a degenerative circulatory disorder that prevented him from walking and qualified as a disability under the Americans with Disability Act (ADA). Martin requested permission to use a golf cart during tournaments; the PGA refused. Martin claimed that such a refusal violated the ADA requirements that entities make "reasonable modifications" "when... necessary to afford such...accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such...accommodations."

Issue

Under the ADA, can a disabled contestant be denied the use of a golf cart because it would "fundamentally alter the nature" of the tournaments to allow him to ride when all other contestants must walk?

Holding

No; the ADA prohibits the PGA from denying Martin equal access to the tour.

Justice John Paul Stevens, in a 7-2 majority, determined that modification Martin requested did not “fundamentally alter” the game.

From the Opinion

From the majority opinion by Justice Stevens:

In the ADA, Congress provided that broad mandate. In fact, one of the Act's "most impressive strengths" has been identified as its "comprehensive character," and accordingly the Act has been described as "a milestone on the path to a more decent, tolerant, progressive society," To effectuate its sweeping purpose, the ADA forbids discrimination against disabled individuals in major areas of public life, among them employment public services and public accommodations. At issue now, as a threshold matter, is the applicability of Title III to petitioner's golf tours and qualifying rounds, in particular to petitioner's treatment of a qualified disabled golfer wishing to compete in those events.

In our view, petitioner's tournaments (whether situated at a "golf course" or at a "place of exhibition or entertainment") simultaneously offer at least two "privileges" to the public-that of watching the golf competition and that of competing in it. Although the latter is more difficult and more expensive to obtain than the former, it is nonetheless a privilege that petitioner makes available to members of the general public. In consideration of the entry fee, any golfer with the requisite letters of recommendation acquires the opportunity to qualify for and compete in petitioner's tours. Additionally, any golfer who succeeds in the open qualifying rounds for a tournament may play in the event. That petitioner identifies one set of clients or customers that it serves (spectators at tournaments) does not preclude it from having another set (players in tournaments) against whom it may not discriminate. It

would be inconsistent with the literal text of the statute as well as its expansive purpose to read Title III's coverage, even given petitioner's suggested limitation, any less broadly.

To be sure, the waiver of an essential rule of competition for anyone would fundamentally alter the nature of petitioner's tournaments. As we have demonstrated, however, the walking rule is at best peripheral to the nature of petitioner's athletic events, and thus it might be waived in individual cases without working a fundamental alteration. Therefore, petitioner's claim that all the substantive rules for its "highest-level" competitions are sacrosanct and cannot be modified under any circumstances is effectively a contention that it is exempt from Title III's reasonable modification requirement. But that provision carves out no exemption for elite athletics, and given Title III's coverage not only of places of "exhibition or entertainment" but also of "golf course[s]," 42 U. s. C. §§ 12181(7)(C), (L), its application to petitioner's tournaments cannot be said to be unintended or unexpected, see §§ 12101(a)(1), (5). Even if it were, "the fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth."

Resources

Opinion link: https://supreme.justia.com/cases/federal/us/532/661/case.pdf

Quimbee Case Brief Video: https://www.quimbee.com/cases/pga-tour-inc-v-martin