Supreme Court Term Review: Same–Sex Marriage, Healthcare, and Redistricting

Catherine E. Hawke

The 2014–2015 Supreme Court term defies conventional attempts to label it. In its last week alone, the Court issued blockbuster rulings in such diverse legal areas as same-sex marriage, the Affordable Care Act, housing discrimination, and the death penalty. While the Court issued other major rulings in important topic areas, including free speech and criminal law, these cases did not receive the breadth of coverage one might otherwise have expected due to the end-of-session blockbusters.

Court watchers also found it difficult to categorize the term as conservative or liberal. On the one hand, the Supreme Court went out of its way to uphold one of President Obama’s key legislative initiatives, health care, the same week it granted same-sex couples the right to marry despite state laws to the contrary. Looking at these two cases in isolation, the Court would appear to have lurched to the left. However, the Court also upheld the use of lethal injection in death penalty cases and refused to recognize an individual cause of action for challenging violations of federal Medicaid laws. These decisions coincide with the more conservative end of the political spectrum.

Even though the 2014–15 term is difficult to categorize, no one doubts the impact of the cases decided. The following is a brief review of some of the higher-profile cases, as well as a look at some cases that may prove more significant in future years.

Obergefell v. Hodges

By now, everyone knows the outcome, and many of the nuances of the “same-sex marriage case,” or Obergefell v. Hodges. However, no recap of the 2014 Supreme Court term would be complete without giving this historic case some review. In Obergefell, five justices held that the Fourteenth Amendment requires states to issue marriage licenses to same-sex couples and to recognize same-sex marriages validly performed in other states. That seemingly simple statement was the capstone on a multi-generational fight for marriage equality on behalf of gay and lesbian Americans; in his majority opinion, Justice Anthony Kennedy told the story through which gay and lesbian Americans have slowly gained recognitions and equal rights. As Justice Kennedy noted,

In the late 20th century, following substantial cultural and political developments, same-sex couples began to lead more open and public lives and to establish families. This development was followed by a quite extensive
discussion of the issue in both governmental and private sectors and by a shift in public attitudes toward greater tolerance. As a result, questions about the rights of gays and lesbians soon reached the courts, where the issue could be discussed in the formal discourse of the law.

However, the results in Obergefell were by no means a given. Four of the justices strongly dissented, each writing their own opinion to emphasize their personal disagreement with the Court’s ruling. For example, Chief Justice John Roberts recognized that many Americans would celebrate the decision. However, according to the chief justice, this was no time for celebration:

Many people will rejoice at this decision, and I begrudge none their celebration. But for those who believe in a government of laws, not of men, the majority’s approach is deeply disheartening. Supporters of same-sex marriage have achieved considerable success persuading their fellow citizens—through the democratic process—to adopt their view. That ends today. Five lawyers have closed the debate and enacted their own vision of marriage as a matter of constitutional law. Stealing this issue from the people will for many cast a cloud over same-sex marriage, making a dramatic social change that much more difficult to accept.

King v. Burwell
Another case with which everyone is familiar by now, King v. Burwell, marked a victory for President Obama’s administration and for those who actively fought for universal health care. King questioned whether the Affordable Care Act (ACA) provided tax credits to individuals who purchased their health insurance on federally facilitated health insurance exchanges; the law specifically stated the credits applied
to health insurance purchased “through an Exchange established by the State...” No one questioned whether these credits applied to insurance purchased through state programs, but the parties disagreed over whether they applied to purchases made on the federal market. However, without extending credits to federal purchases, the proponents of the ACA claimed the entire program would falter and enter into a “death spiral.” In a 6–3 ruling, the justices upheld ACA and found that the credits were available to individuals in states that used the federal exchange. According to the chief justice who wrote for the majority opinion,

A fair reading of legislation demands a fair understanding of the legislative plan. Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them. If at all possible, we must interpret the Act in a way that is consistent with the former, and avoids the latter.

An important twist to the decision that seemed to get lost in the headlines was the fact that the Court did not simply defer to the IRS on this issue. The Fourth Circuit, the last court to review King before it went to the Supreme Court, deferred to the IRS’s decision to extend the credits to federal exchange purchases. Rather than merely following that course, the Supreme Court indicated that this was an issue too important to be left in the hands of an agency. According to the Court,

The tax credits are among the Act’s key reforms, involving billions of dollars in spending each year and affecting the price of health insurance for millions of people. Whether those credits are available on Federal Exchanges is thus a question of deep ‘economic and political significance’ that is central to this statutory scheme; had Congress wished to assign that question to an agency, it surely would have done so expressly.... It is especially unlikely that Congress would have delegated this decision to the IRS, which has no expertise in crafting health insurance policy of this sort.... This is not a case for the IRS.

As the Court did not set any boundaries on what sort of issues are “too important” to be left to agencies, we have yet to see how King will apply outside of this particular law; constitutional law professor Steve Schwinn noted, King “represents a potential restriction on executive enforcement of the law in future cases. Only time will tell whether this restriction is significant.”

Election Law Cases
In a pair of voting cases this term, the Court took a strong stance: at least when it comes to voting issues, we should defer to the rights of the people over the rights of state legislatures and law makers. In Arizona State Legislature v. Arizona Independent Redistricting Commission, the Supreme Court upheld Arizona Proposition 106 which had amended the state constitution to create the Arizona Independent Redistricting Commission (AIRC), taking away redistricting authority from the state legislature and giving it to an independent commission. This move was intended to protect against political gerrymandering; however, the state legislature argued that it violated the U.S. Constitution’s Elections Clause, an argument the Court rejected.

In the other case, Alabama Legislative Black Caucus v. Alabama, the Court similarly deferred to the citizens of a state, but in a slightly different context: Alabama Legislative Black Caucus dealt with a challenge by state citizens to Alabama’s plan to redistrict. The citizens argued that the plan was a racial gerrymander and, in crafting the plan, the state placed the greatest weight on maintaining equal populations between districts and maintaining existing majority-minority districts. Given the demographics of the state, this meant that a disproportionate number of black voters were packed into existing majority-minority districts. The state claimed that such a move was required by the Voting Rights Act in order to limit the negative effect on racial minorities’ ability to elect their preferred candidates. The lower court agreed with the state, holding that the plan was permissible; according to the lower court, the new districts did not amount to gerrymander when one looked at the state as a whole.

The Supreme Court disagreed and ruled in favor of the groups of citizens challenging the redistricting. Rather than getting to the actual merits of the claim, the Court found that the lower court had improperly reviewed the state “as a whole” as opposed to looking at each challenged district individually. While not a final ruling in this case, the Court certainly tipped its hand towards allowing state legislatures to shield their actions under the Voting Rights Act.

Glossip v. Gross
The case Glossip v. Gross may have some of the most serious consequences of the term, yet it received limited headline coverage. In Glossip, the Court upheld Oklahoma’s three-drug protocol for lethal injection. The Glossip plaintiffs, death-row inmates, challenged Oklahoma’s use of a sedative, midazolam, which they claim would not leave them insensate to the pain caused by the subsequent two drugs. Oklahoma had recently started using midazolam when other, more effective, drugs had become unavailable. (These drugs, barbiturates, were no longer sold to states to be used in the administration of the death penalty after much lobbying by anti-death-penalty advocates.) The plaintiffs argued that the pain and suffering that resulted from the use of midazolam violated the Eighth Amendment.

A divided Court ruled against the
Another Action Packed Term Is on the Docket for 2016

Mark A. Cohen

After an undeniably historic year of landmark cases, the U.S. Supreme Court has no plans to back off from tackling some of the most contentious issues of the day in its upcoming term.

With about half its 2015–16 docket filled, the Court has already accepted the review of cases with potentially far-ranging implications for affirmative action, public employee unions, and voting rights.

“Important, controversial issues are already dotting the docket and more may be on their way,” observed Stephen Wermiel, a constitutional law professor at American University Washington College of Law. “The justices have waded back into the debate over the constitutional role for affirmative action in higher education, and there is at least the potential for them to cut back on the use of race in admissions policies.”

The justices also face “important new tests of the meaning of the 50-year-old fundamental concept of one-person-one-vote,” he continued. “And a recurring item is back on their docket, the extent to which compelled payment of union dues for government workers violates the free speech rights of workers who object to union policies or practices.”

This all-star lineup of potential blockbusters is coming on the heels of a session that saw the recognition of same-sex marriage as a constitutional right, the rejection of a potentially devastating challenge to Affordable Care Act, and an affirmation of the use of the current method of lethal injection for death-penalty cases.

“The Supreme Court often takes a pause after a term as controversial and fractious as this past one to resolve more routine cases in order to salve institutional wounds. But, the early grants in the public teacher union and affirmative action cases in particular suggest that the justices are prioritizing their ability to make a mark on history over institutional healing,” said ITT-Chicago Kent College of Law Dean J. Harold Krent.

Wermiel predicted that the number of high-profile controversial cases will continue to multiply as the Court looks to round out its 2015–16 docket.

“The justices will be under pressure to add one or more appeals involving state regulation of abortion, certain to be a volatile and divisive issue,” he said. “So at least for the year ahead, the Supreme Court looks more like it will face storm after the storm, not calm.”

Teacher Unions and College Admissions

The case currently on the docket with the most direct potential for impact on teachers is Friedrichs v. California Teachers Association, which involves a challenge to a requirement that teachers in a state public school system, even those who choose not to join a union, pay union fees. Prior Supreme Court precedent allows all public employees to be assessed mandatory union fees for bargaining done on their behalf, including non-union members. (These arrangements are sometimes referred to as “fair-share” requirements.) The California teachers challenging the mandatory union fees argue that requiring payment of the fees as a condition of employment violates their free-speech and free-association rights.

John Marshall Law School Professor Steven D. Schwinn warned this could mark the beginning of the end of public sector unions. “Without fair share requirements, no individual public sector employee in a union shop would have an incentive to pay union dues and join the union,” he explained. “Instead, every individual employee would seek to ride free on the union’s work. This free-rider problem is one of the reasons why the [Supreme] Court upheld fair share requirements in the first place. If every individual employee acts this way, support for public sector unions will soon erode from the inside out.”

A second key case, Fisher v. University of Texas at Austin, could have major implications for the college-admissions process and the use of affirmative action in promoting a diverse student body.

The Fisher case began in 2008, when Abigail Fisher, a white female applicant denied admission to the University of Texas at Austin, filed a discrimination claim alleging that she had been wrongfully denied admission because of the school’s race-preference policy.

Texas high school seniors who graduate in the top 10 percent of their class are automatically admitted to the university. In addition to this “Top Ten Percent” program, the school considers race and other factors for admission. Since Fisher did not finish in the top of 10 percent of her class, she applied with other non-Top 10 applicants, some of whom received racial preferences. Fisher contends that but for these racial preferences, she would have been accepted and that her rejection constitutes illegal race discrimination.

Potentially at stake in Fisher is a line of Supreme Court cases stretching back to 1978 allowing the use of race as a factor in assessing incoming college applicants to promote a more diverse class.

In accepting review of this case, the Supreme Court may be poised to raise the bar for affirmative action even higher, or even to strike race-based affirmative action altogether, said Schwinn.

Elections

That 2016 is a presidential election year provides extra poignancy to the fact that the Court has added an election law case to its 2015–16 docket. Evenwel v. Abbott, a case arising out of Texas, presents the issue of whether the “one-person, one-vote” principle under the Equal Protection Clause allows states to use total population, or requires states to use voter population, when apportioning state legislative districts.

The conservative-backed challenge to the current Texas system, which utilizes total population, argues that it violates “one-person, one vote” by providing over-representation to districts that include large numbers of noncitizens, children, felons and others ineligible to vote.

However the justices decide this case, the Supreme Court is likely to be a topic of discussion during the upcoming presidential discussion. Candidates from both sides of the aisle are likely to weigh in on the Court’s blockbuster rulings during the last couple of terms and on what they believe the Court’s proper role is in resolving societal issues.

You can learn more about the Supreme Court’s 2015–16 docket—and find a complete catalogue of briefs for all cases filed before the Court—by visiting www.supremecourtpreview.org.

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plaintiffs, finding that they had failed to show that the protocol resulted in pain, and further, they had failed to identify an alternative that would be less painful. According to the Court, unless and until the plaintiffs could make such a showing, (which one would have to imagine would be difficult) the current protocol did not violate the Eighth Amendment. Justice Samuel Alito, in his majority decision, noted that “because some risk of pain is inherent in any method of execution, we have held that the Constitution does not require the avoidance of all risk of pain. After all, while most humans wish to die a painless death, many do not have that good fortune. Holding that the Eighth Amendment demands the elimination of essentially all risk of pain would effectively outlaw the death penalty altogether.”

*Texas Department of Housing and Community Affairs v. Inclusive Communities Project*

Another case that did not dominate the Supreme Court news coverage is *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* (it was announced the same day as *King v. Burwell*); yet it will likely change the way fair housing advocates and civil rights attorneys do their work for years to come. *Texas Department of Housing and Community Affairs* involved a challenge to a complicated tax credit program for housing developers. Fair housing advocates claimed the program allocated the credits in a way that exacerbated segregated housing patterns, which in turn, violated the Fair Housing Act. According to the advocates, although the program did not purposely discriminate in housing, the program, in practice, was discriminatory. This theory is usually referred to as disparate impact. In *Texas Department of Housing and Community Affairs*, the Supreme Court ruled for the first time that disparate impact claims could be made in housing cases.

This case was a huge win for fair housing advocates. It will likely bring the courts and legal system into many future housing disputes and could result in greater diversity in neighborhoods across America. As the Court concluded:

... since the passage of the Fair Housing Act in 1968 and against the backdrop of disparate-impact liability in nearly every jurisdiction, many cities have become more diverse. The FHA must play an important part in avoiding the Kerner Commission’s grim prophecy that ‘[o]ur Nation is moving toward two societies, one black, one white—separate and unequal.’ ... The Court acknowledges the Fair Housing Act’s continuing role in moving the Nation toward a more integrated society.