

## Supreme Court: October Term 2018

American Judges Association  
Chicago, Illinois  
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### I. Criminal cases

#### A. Fourth Amendment

Mitchell v. Wisconsin, 139 S.Ct. \_\_\_\_ (2019). There are almost always exigent circumstances that justify the police taking blood from an unconscious motorist without a warrant.

#### B. Double jeopardy

Gamble v. United States, 139 S.Ct. \_\_\_\_ (2019). The “separate sovereigns” exception to the double jeopardy clause is reaffirmed.

#### C. Eighth Amendment

Bucklew v. Precythe, 139 S.Ct. 1112 (2019). *Baze v. Rees* and *Glossip v. Gross* govern all Eighth Amendment challenges alleging that a method of execution inflicts unconstitutionally cruel pain; Russell Bucklew’s as-applied challenge to Missouri’s single-drug execution protocol -- that it would cause him severe pain because of his particular medical condition -- fails to satisfy the *Baze-Glossip* test.

#### D. Due process

Flowers v. Mississippi, 139 S.Ct. \_\_\_\_ (2019). *Batson v. Kentucky* was violated when the same prosecutor struck 41 of 42 African-American jurors over six trials involving the same defendant.

### II. First Amendment

#### A. Speech

Iancu v. Brunetti, 139 S.Ct. \_\_\_\_ (2019). Section 2(a) of the Lanham Act’s prohibition on the federal registration of “immoral” or “scandalous” marks is facially invalid under the free speech clause of the First Amendment.

Nieves v. Bartlett, 139 S.Ct. 1715 (2019). Probable cause generally defeats a First Amendment retaliatory-arrest claim under 42 U.S.C. § 1983.

## **B. Religion**

American Legion v. American Humanist Association; Maryland-National Capital Park and Planning Commission v. American Humanist Association, 139 S.Ct. \_\_\_\_ (2019). The establishment clause does not require the removal or destruction of a 93-year-old memorial to American servicemen who died in World War I solely because the memorial bears the shape of a cross.

## **III. Voting rights**

Rucho v. Common Cause, 139 S.Ct. \_\_\_\_ (2019). Challenges to partisan gerrymandering are non-justiciable political questions.

## **IV. Federalism**

Timbs v. Indiana, 139 S.Ct. 682 (2019). The Eighth Amendment's excessive fines clause is incorporated against the states under the Fourteenth Amendment.

Franchise Tax Board of California v. Hyatt, 139 S.Ct. 1485 (2019). *Nevada v. Hall*, which permitted a sovereign state to be haled into another state's courts without its consent, is overruled.

Knick v. Township of Scott, Pennsylvania, 139 S.Ct. \_\_\_\_ (2019). *Williamson County Regional Planning Commission v. Hamilton Bank*, which required property owners to exhaust state court remedies to ripen federal takings claims, is overruled.

## **V. Administrative law**

Gundy v. United States, 139 S.Ct. \_\_\_\_ (2019). The federal Sex Offender Registration and Notification Act's delegation of authority to the attorney general to issue regulations under 42 U.S.C. § 16913 does not violate the nondelegation doctrine.

Kisor v. Wilkie, 139 S.Ct. \_\_\_\_ (2019) The Supreme Court does not overrule *Auer v. Robbins* and *Bowles v. Seminole Rock & Sand Co.*, which direct courts to defer to an agency's reasonable interpretation of its own ambiguous regulation.

Department of Commerce v. New York, 139 S.Ct. \_\_\_\_ (2019). The secretary of the Department of Commerce did not violate the enumeration clause or the Census Act in deciding to reinstate a citizenship question on the 2020 census questionnaire, but the district court was warranted in remanding the case back to the agency where the evidence tells a story that does not match the secretary's explanation for his decision.