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Supreme Court Roundup

Charles F. Williams

Reactions to the retirement of Justice Sandra Day O'Connor and debate over the president's replacement nomination, Judge John Roberts, Jr., of the D.C. Circuit, dominated this summer's Supreme Court recess. Subsequently, after Chief Justice William H. Rehnquist's death on September 3, 2005, President Bush nominated Roberts for the chief justice slot. (At press time, the president had not named a new nominee to fill O'Connor's impending vacancy.) Roberts, 50, is a *magna cum laude* graduate of Harvard Law School who clerked for then-Associate Justice Rehnquist early on in his career. Roberts has argued 39 cases before the Court, 25 of which he won. He is a conservative judge, and the subtext to much of the post-nomination analysis has been whether he would be likely to nudge the Court to the right if confirmed to the lifetime appointment.

In the 2004-2005 term, O'Connor provided the deciding vote in many of the 13 capital cases the Court decided, and her opinions have been described as a kind of "bridge" over the wide gulf between the Court's left and right factions in this area.[1] Looking at this and other battleground areas for the Rehnquist Court, legal analysts now find themselves asking, "What would Roberts have done?" That is, would a Justice Roberts have provided a more dependably conservative voice than Justice O'Connor did in her famed "swing vote" role last term?

Indeed, due in part to O'Connor's centrist influence, the 2004-2005 term had a markedly "moderate" hue in general, as the Court's conservative majority (Chief Justice Rehnquist and Justices O'Connor, Scalia, Kennedy, and Thomas) held together in only five of the 24 5-4 cases this term. In 19 of the 5-4 cases, one or more of the five conservatives broke ranks to vote with the more liberal justices. This represents a notable change from the previous two terms, when the five conservatives were united in nearly half of the 5-4 cases, and is also a departure from the levels of conservative unity observed in previous years of the Rehnquist Court.[2]

Outside the realm of capital punishment, where death-row defendants handed the states a string of defeats, prosecutors saw the Court overturn the criminal conviction of the accounting firm Arthur Andersen for shredding documents related to its work for Enron, but uphold the use of routine drug-dog sniffs at traffic stops in the face of Fourth Amendment challenges. In the civil arena, the Court rejected arguments

This 5-foot tall stone slab bearing the Ten Commandments stands near the Capitol in Austin, Texas, in this July 2002 file photo. On March 2, 2005, the Supreme Court heard arguments in a federal lawsuit seeking to remove this monument and one at a Kentucky courthouse on grounds that they violate constitutional separation of church and state. The Supreme Court allowed this monument to remain. (AP Photo/Harry Cabluck)

advanced by federalism proponents who favor limits on the authority of Congress to regulate local activities, in a case involving medical marijuana. It also refused to block a local government's eminent domain action against a small-home owner who had sought protection under the Takings Clause in the Fifth Amendment, which restricts the appropriation of private property for public use.

Religion

But perhaps no cases better exemplified the justices' cautious approach—and the importance of each vote on the closely divided Court—than the two Ten Commandment cases in which the justices seemingly split the difference between the pro- and anti-display sides. In one 5-4 ruling issued on June 27, the justices declared unconstitutional the Ten Commandments exhibits hanging on the walls at two Kentucky courthouses. In another opinion issued the same day, they allowed a large, 6-foot-high granite Ten Commandments monument to remain on exhibit at the Texas Capitol.

Voting to join Justice Souter's opinion striking down the Kentucky courthouse exhibits in *McCreary County v. ACLU of Kentucky,* No. 03-1693, were Justices Stevens, O'Connor, Ginsburg, and Breyer. Justice Breyer then switched teams to cast the tie-breaking fifth vote needed to make the four *McCreary* dissenters (Chief Justice Rehnquist and Justices Scalia, Kennedy, and Thomas) a majority who OK'd the Texas monument at issue in *Van Orden v. Perry,* No. 03-1500.

Justice Souter's opinion, striking down the Kentucky displays, acknowledged that, after Establishment Clause objections were raised in litigation, the counties had enlarged their Commandments' display to include other historical documents and symbols that played a role in the development of American law. He concluded, however, that the resulting displays still violated the First Amendment, which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…."

Applying the three-part "Lemon test," (whose name is derived from the 1971 *Lemon v. Rustzman* case) Souter determined that the displays failed the "secular legislative purpose" requirement for government actions facing challenges on the ground that they violated the Establishment Clause of the First Amendment that requires religious neutrality by the government.[3] In this case, he said, the counties' claim that the displays had a secular purpose "was an apparent sham":

> The touchstone for our analysis is the principle that the "First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion." … When the government acts with the ostensible and predominant purpose of advancing religion, it violates that central Establishment Clause value of official religious neutrality, there being no neutrality when the government's ostensible object is to take sides.[4]

In *Van Orden*, on the other hand, Chief Justice Rehnquist refused to apply the *Lemon* test, declaring it "not useful in dealing with the sort of passive monument that Texas has erected on its capitol grounds." Instead, he said, "the analysis should be driven by both the monument's nature and the Nation's history."

He described the Court's Establishment Clause jurisprudence as having two faces. One face, he said, acknowledges our nation's religious heritage and guards against evincing hostility toward religion. The other face demands a separation between church and state but does not forbid all displays that contain religious elements. Of course, the Ten Commandments are religious, he said:

> [T]hey were so viewed at their inception and so remain. The monument, therefore, has religious significance. According to Judeo-Christian belief, the Ten Command-

This display of the Ten Commandments, seen amid seven historic documents displayed alongside them in the Mercer County, Ky., courthouse Tuesday, Nov. 27, 2001, was the subject of a federal lawsuit. The American Civil Liberties Union of Kentucky filed federal lawsuits against four counties where the Ten Commandments were posted in their courthouses. The lawsuits sought court orders prohibiting the posting of religious documents in the public buildings. The Supreme Court declared this display unconstitutional. (AP Photo/*The Advocate-Messenger*, Clay Jackson)

ments were given to Moses by God on Mt. Sinai. But Moses was a lawgiver as well as a religious leader. And the Ten Commandments have an undeniable historical meaning. … Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause.[5]

Justice Breyer wrote separately to explain his vote. He emphasized that (unlike the Kentucky displays, which had only been on the courthouse walls for the past five years) the Texas monument had been in place and uncontroversial for 40 years. Moreover, the physical setting of the monument suggested "little or nothing of the sacred":

> The monument sits in a large park containing 17 monuments and 21 historical markers, all designed to illustrate the "ideals" of those who settled in Texas and of those who have lived there since that time. … The setting does not readily lend itself to meditation or any other religious activity. But it does provide a context of history and moral ideals. It (together with the display's inscription about its origin) communicates to visitors that the State sought to reflect moral principles, illustrating a relation between ethics and law that the State's citizens, historically speaking, have endorsed. That is to say, the context suggests that the State intended the display's moral message—an illustrative message reflecting the historical "ideals" of Texans—to predominate.[6]

Writing for the *New York Times*, Supreme Court reporter Linda Greenhouse noted the view shared by many commentators that "to the extent that the decisions provided guidelines for the further cases that are all but

Teaching Activity:

Separation of Church and State

Michelle Parrini

Break students into small groups. Assign the following five scenarios, based on actual U.S. Supreme Court cases, to each group; if possible, make sure that at least three groups will cover the same scenarios. Initially, do not let students know that the scenarios come from cases that have actually been heard by the Supreme Court.

1. Bible verses and the Lord's Prayer are read daily at the beginning of the school day in the public schools of a particular school district. The readings take place without accompaniment of comment by teachers or administrators. Students might be excused from the practice with a note from home. (*Abington School District v. Schempp*, 374 U.S. 203 [1963]).

2. A state legislature passes a statute requiring posting of a copy of the Ten Commandments on the wall of each public classroom in the state. The displays are paid for with private funds. (*Stone v. Graham*, 449 U.S. 39 [1980]).

3. Public middle and high schools in an unnamed state hold prayers at graduations. (*Lee v. Weisman*, 505 U.S. 577 [1992]).

4. The grounds of a state capitol has among its 21 historical markers and 17 monuments a 6-foot high monolith inscribed with the Ten Commandments presented by the Fraternal Order of Eagles more than 40 years ago (*Van Orden v. Perry,* Docket No. 03-1500 [2005]).

5. Two counties mounted large copies of the Ten Commandments in their courthouses. The exhibits were modified two times after they were initially mounted. In their final display, they are accompanied by "eight smaller, historical documents containing religious references as their sole common element," such as the passage in the Declaration of Independence that reads "endowed by their Creator." (*McCreary County v. ACLU*, Docket No. 03-1693 [2005]).

Provide students with a copy of the Establishment and Free Exercise Clauses of the Constitution. Give them some background about it and separation of church/state issues. (One good source is the Exploring Constitutional Law website, maintained by Professor Doug Linder at the University of Missouri-Kansas City Law School: www.law.umkc.edu/faculty/projects/ftrials/conlaw/home.html). Next, explain to students that over the years the courts have used different tests to determine whether the Constitution has been violated, and different justices have advocated the use of different tests, sometimes in their dissents. Ask each group to apply one of the following three "tests" to its scenarios to answer the question, "Does the scenario violate the Constitution?" Each group should be prepared to explain how the test applies or fails to apply to their scenarios and the strengths and weaknesses of each test. Have students appoint a recorder and reporter for their group. If possible, for the purpose of comparison later in the activity, make sure each of the three tests outlined below is applied to each of the five scenarios mentioned.

The Lemon Test

To be constitutional, you must find that the law or government action does not violate any of these principles. The law or government action involved

1. Must have a legitimately secular purpose.

certain to follow, it appeared to be that religious symbols that have been on display for many years, with little controversy, are likely to be upheld, while newer displays intended to advance a modern religious agenda will be met with suspicion and disfavor from the Court."[7]

Death

Thirteen of the 2004-2005 term's cert-granted cases involved capital punishment. *Roper v. Simmons,* barring juvenile executions under the Eighth Amendment, achieved instant landmark status by pressing a series of hot-button issues concerning "evolving standards of decency," the relevance of foreign law, and the circumstances in which lower courts can determine that Supreme Court precedent is obsolete and no longer binding. [8]

In other cases, like *Miller-El v. Dretke*, the Court found itself having to continue policing the state courts' implementation of the penalty.[9] During jury selection in Miller-El's capital trial, Texas law allowed the state 15 so-called "peremptory strikes" with which it could dismiss prospective jurors without stating a reason. Under Supreme Court precedent, however, once a defendant challenges the exercise of a peremptory strike on the ground that it is racially motivated, the state is obligated to put forth a race-neutral explanation for its decision to strike the juror. [10]

In Miller-El's case, 10 of the 11 qualified black potential panel members were peremptorily struck. "At least two of them were ostensibly acceptable to prosecutors seeking a death verdict, and [one] was ideal," Justice Souter wrote. "The prosecutors' chosen race-neutral reasons for the strikes do not hold up and are so far at odds with the evidence that pretext is the fair conclusion, indicating the very discrimination

2. Must not have the primary effect of advancing or inhibiting religion. (The government should be concerned only with secular matters. Religious matters should be a matter of individual choice.)
3. Cannot create "excessive government entanglement with religion." (People must be able to distinguish between the government and religion.) (*Lemon v. Kurtzman*, 403 U.S. 602 [1971])

The Coercion Test

To be constitutional, you must find that the law or government action does not violate these principles. The law or government action involved

1. Cannot provide direct aid to religion so as to effectively establish a state church.

2. Cannot coerce people to support or participate in religion against their will. (Justice Kennedy, dissenting, *County of Allegheny v. ACLU*, 492 U.S. 573 [1989])

The Endorsement Test

To be constitutional, you must find that the law or government action involved

1. Cannot create the impression to a reasonable person of effectively endorsing religion, for instance through "a message to non-adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." (Justice O'Connor, *Lynch v. Donnelly,* 465 U.S. 668 [1984])

In addition to giving students common general instructions, ask specific groups to be prepared to report how they defined these concepts:

- Lemon Test Groups: secular purpose, advancing and inhibiting religion, and excessive entanglement.
- Coercion Test Groups: direct aid, state church, and coercion.
- Endorsement Test Groups: reasonable person, and endorsement of religion.

As groups report their decisions, record them on the board, noting the "test" applied, definitions of key concepts, and decision in each case. Compare the decisions across tests and groups. Do any trends emerge? Discuss the strengths and weaknesses of each test.

Next, explain to students that these are actual scenarios from Supreme Court cases. Ask students in small groups to research the actual decisions—looking at the rulings, concurrences, and dissents. Which tests did the Court apply or fail to apply in the main opinion in each case? What were the arguments in concurrences? What arguments were applied by dissenters? What main concerns did the justices express in their opinions? Ask them to report their findings to the class.

Compare student decisions with the decisions of the Supreme Court. What do they surmise about the law in this area, based on their own decision-making process, and based on what they discovered about the Court's actual decisions? Which concerns raised by the justices in the five cases do they believe are most relevant today? Conclude by asking students to evaluate how well they believe the Establishment and Free Exercise Clauses have allowed us to maintain government neutrality, accommodation, and separation in church-state matters over time, giving their rationale.

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RESOURCES

The Supreme Court's Official Website

www.supremecourtus.gov

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OYEZ

www.oyez.org/oyez/frontpage

Provides audio recordings of all Supreme Court oral arguments going back to 1995.

SCOTUSblog

www.scotusblog.com/movabletype/

A constantly updated Supreme Court blog maintained by *Preview* contributor and Supreme Court litigator Tom Goldstein.

First Amendment Center

www.firstamendmentcenter.org

A forum for the study and exploration of free-expression issues, including freedom of speech, of the press and of religion, and the rights to assemble and to petition the government.

Death Penalty Information Center

www.deathpenaltyinfo.org

Comprehensive coverage of current and historical death penalty issues and litigation. *Note: this site has an anti-death penalty point of view.*

Compassion and Choices

www.compassionandchoices.org

This organization, a supporter of Oregon's legal assisted-dying law, has collected all the amicus briefs and court filings in the *Gonzales v. Oregon* case.

the explanations were meant to deny." The Court ruled 6-3 that the trial court's decision to accept the state's explanations for excluding the black potential jurors was unreasonable in light of the evidence, which included proof of widespread racial discrimination within the Dallas County prosecutor's office. Justice Thomas penned a dissent, which was joined by Chief Justice Rehnquist and Justice Scalia.

Two cases featuring the by-now familiar allegation that capital defendants received ineffective assistance of counsel were also decided this term: *Rompilla v. Beard,* 125 S.Ct. 2456 (2005), and *Florida v. Nixon,* 125 S.Ct. 551 (2004). In *Rompilla*, the Court ruled 5-4 that defense counsel provided ineffective assistance when they failed to look at a file they knew the prosecution planned to cull for aggravating evidence in support of the death penalty. Justice Souter (joined by Justices Stevens, O'Connor, Ginsburg, and Breyer) held that even when a capital defendant and his family members have suggested that no mitigating evidence is available, his lawyer is bound to make reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggravation at the trial's sentencing phase. In the Florida case, which was decided without the participation of an ill chief justice, eight justices agreed that given the defendant's constant resistance to answering the inquiries put to him by counsel and the court, his trial attorney was not additionally required to gain the defendant's express consent before conceding his guilt.

Federalism

Meanwhile, however, federalism proponents who support clear constitutional limits on Congress's authority to regulate local activities were disappointed by the Court's ruling in *Gonzales v. Raich*, No. 03–1454 (June 6, 2005). The majority (Justice Stevens, joined by Justices Kennedy, Souter, Ginsburg, and Breyer) declared that the federal government's authority to outlaw the cultivation and possession of marijuana trumped California's Compassionate Use Act of 1996, which legalized the possession of medical marijuana for seriously ill patients who use the locally grown drug on the advice of their physicians.[11]

The respondents in this case, Angel Raich and Diane Monson, are gravely ill. After prescribing a host of conventional medicines to treat their conditions and alleviate their suffering, their physicians concluded that marijuana was the only drug available that provides effective treatment. Indeed, the Court noted, "Raich's physician believes that forgoing cannabis treatments would certainly cause Raich excruciating pain and could very well prove fatal." [12]

Although recognizing that his ruling upholding the federal government's power to arrest and charge critically ill patients for the possession of even physician-prescribed marijuana would add to the suffering of these women and others in their position, Justice Stevens believed Court precedent left him no choice. He said the case was difficult because the respondents had "strong arguments" regarding their medical need for marijuana. But he said the question was not whether it is wise for the federal government to pursue its zero tolerance policy regarding marijuana. Rather, he said, the only question is whether Congress's power to regulate "interstate markets for medicinal substances encompasses the portions of those markets that are supplied with drugs produced and consumed locally." And he found that the answer to that question was yes: The federal Controlled Substances Act, he said, "is a valid exercise of federal power, even as applied to the troubling facts of this case."[13]

Justice O'Connor, the only member of the Court who has served as a state legislator, dissented. "One of federalism's chief virtues is that it promotes innovation by allowing for

the possibility that 'a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country,'" she said. This case, she wrote, "exemplifies" the role of states as laboratories as California came to its own conclusion about "whether marijuana should be available to relieve severe pain and suffering."[14]

Search and Seizure

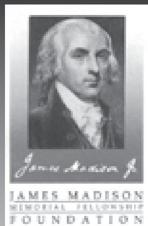
Speaking of marijuana, if you are pulled over for speeding, can an officer walk a drug-detection dog around your car just to see what happens? Frankly, yes. In *Illinois v. Caballes*, No. 03-923, the Court ruled 6-2 that the Fourth Amendment does not require "reasonable, articulable suspicion" (that is, a reasonable suspicion that the searching officer can describe in words) to justify using a drug-detection dog to sniff your vehicle.[15] According to Justice Stevens's majority opinion, "A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment."[16] Justice Souter and Justice Ginsburg were the only dissenters.

Property Rights

Conservatives expressed disappointment at the result in *Kelo v. City of New London,* No. 04-108 (June 23, 2005), a 5-4 case in which the Court held that the "public use" restriction in the Fifth Amendment's Takings Clause does not bar a city from using the power of eminent domain to acquire a homeowner's property and transferring it to a large private development corporation. The Takings Clause provides that "nor shall private property be taken for public use, without just compensation." The Court has previously stated that this clause is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." [17]

Justice Stevens concluded that because the government believes its plan for acquiring the private property that includes the petitioner's home will ultimately "provide appreciable benefits to the community, including ... new jobs and increased tax revenue," the plan serves a public purpose and satisfies the Fifth Amendment's "public use" requirement. [18]

Writing for four justices, however, Justice O'Connor dissented, determining that "[t]o reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings 'for public use' is to wash out any distinction between private and public use of property—and thereby effectively to delete the words 'for public use' from the Takings Clause of the Fifth Amendment." [19]



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White Collar Crime

Finally, we should note that in *Arthur Andersen v. United States*, No. 04-368 (May 31, 2005), the Court unanimously overturned the criminal conviction of accounting firm Arthur Andersen for shredding documents related to its work for Enron. The reason? The trial judge failed to tell the jury that the government had the burden of proving that Andersen knew its actions were illegal. Although Andersen had consistently argued that it had done nothing wrong when it simply instructed its employees to follow the firm's standard rules for disposing of unnecessary documents, it was convicted of "corruptly" persuading its employees to withhold documents from official proceedings. The guilty verdict effectively killed the firm, which once employed 28,000 people.

The 2005–2006 Term

Proving the adage that some things never change, four more capital cases have already found their way onto the Court's cert-granted list for the 2005–2006 term, which opened October 3. One of them asks the Court to clarify when the *habeas corpus* rules should bar a death row prisoner from presenting newly discovered DNA evidence that he claims proves he was wrongfully convicted. The case, *House v. Bell*, No. 04-8990, will be argued sometime after December.

And in another echo of the 2004-2005 term, the Court agreed to hear arguments on October 5 concerning the highly charged issue of physician-assisted suicide. The concerns in this case, *Gonzales v. Oregon*, No. 04-623, are familiar to the justices who debated *Gonzales v. Raich*, the medical marijuana case. The question this time was whether the attorney general can threaten Oregon doctors with revocation of their license to prescribe narcotic drugs if they comply with an Oregon state law that (in some circumstances) authorizes such prescriptions for the purpose of facilitating a terminally ill, mentally competent patient's suicide.[20]

No Supreme Court term would be complete without at least one intriguing search and seizure question. In 2005, the Court will follow its 2004 drug-dog case with at least two Fourth Amendment cases. *Georgia v. Randolph*, No. 04-1067 (to be argued November 8), asks whether one spouse may consent to a police search of the home when the other spouse refuses consent. And *Hudson v. Michigan*, No. 04-1360, to be argued sometime after November, asks the Court to revisit the "inevitable discovery" exception to the Fourth Amendment's exclusionary rule.

Of course, the Drug War will continue to bedevil the Court. In *Gonzales v. O Centro Espirita*, No. 04-1084, it is asked to decide whether the federal government violates the First Amendment when it criminalizes the importation of controlled substances for use in religious ceremonies that involve the ingestion of a dimethyltryptamine (DMT) based tea that is referred to by adherents as "hoasca." The case will be heard November 1.

And finally, abortion returns to the Court yet again. In *Ayotte v. Planned Parenthood*, No. 04-1144, the justices will be asked to decide the constitutionality of a New Hampshire law that requires parental notification before abortions can be performed on unemancipated minors.[21] The district court found the act unconstitutional due to the absence of an explicit exception to protect the health of the pregnant minor. Arguments are scheduled for November 30.

Notes

1. Kathy Swedlow, "Capital Punishment in the 2004 Term," *2004-2005 ABA S.Ct. Preview* 461 (2005).
2. Thomas C. Goldstein, Anisha Dasgupta, and Brian Fletcher, "End of Term Statistics and Analysis," *2004-2005 ABA S.Ct. Preview* 457 (Aug. 15, 2005).
3. Named after the three-part test announced in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the Lemon test requires the government to demonstrate that its actions do have a secular legislative purpose, and that they do not have the primary effect of advancing or inhibiting religion or creating excessive government entanglement with religion.
4. *McCreary County v. ACLU of Kentucky,* No. 03-1693, slip op. at 11 (opinion of Justice Souter).
5. *Van Orden v. Perry,* No. 03-1500, slip op. at 10 (opinion of Chief Justice Rehnquist).
6. *Van Orden v. Perry,* No. 03-1500, slip op. at 5 (Breyer, concurring in the judgment).
7. Linda Greenhouse, "Justices Allow a Commandments Display, Bar Others," *The New York Times* (June 28, 2005).
8. *Roper v. Simmons*, No. 03-633 (March 1, 2005). For an in-depth discussion of this case, see Charles F. Williams, "Update on Death Penalty for Juveniles: Supreme Court Decides *Roper v. Simmons*," *Social Education* 69, no.3 (2005): 123-125.
9. *Miller-El v. Dretke*, No. 03–9659 (June 13, 2005).
10. *Batson v. Kentucky*, 476 U. S. 79 (1986).
11. The act provides that, its purpose is "To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief." Cal. Health & Safety Code Ann. § 11362.5(b) (1) (West Supp. 2005.)
12. *Gonzales v. Raich*, No. 03–1454, slip op. at 3 (June 6, 2005) (Justice Stevens).
13. 21 U. S. C. § 801 et seq.; *Gonzales v. Raich*, No. 03–1454, slip op. at 6 (June 6, 2005) (Justice Stevens).
14. *Gonzales v. Raich*, No. 03–1454, slip op. at 1-2 (June 6, 2005) (Justice O'Connor, dissenting).
15. Chief Justice Rehnquist did not participate in the case.
16. *Illinois v. Caballes*, No. 03-923, slip op. at 5 (January 24, 2005) (opinion by Justice Stevens).
17. *Armstrong v. United States,* 364 U.S. 40, 49 (1960).
18. *Kelo v. City of New London,* No. 04-108, slip op. at 13 (June 23, 2005) (opinion by Justice Stevens).
19. *Kelo v. City of New London,* No. 04-108, slip op. at 1-2 (June 23, 2005) (Justice O'Connor, dissenting).
20. The Death With Dignity Act, Or. Rev. Stat. § 127.800 *et seq.*
21. The New Hampshire Parental Notification Prior to Abortion Act, N.H. Rev. Stat. Ann. § 132:24-28).

Charles F. Williams *is editor of the* Preview of U.S. Supreme Court Cases, *a publication of the American Bar Association's Division for Public Education in Chicago, Illinois.*

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