

# The Roberts Court

## *Evaluating the 2006 Term and Previewing the 2007 Term*

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## *Evaluating the 2006 Term and Previewing the 2007 Term*

### **I. Current Members of the Supreme Court of the United States**

#### **A. John G. Roberts, Jr., Chief Justice of the United States**

Joined the Court in 2005. Nominated by President George W. Bush. Previously served as a judge of the United States Court of Appeals for the District of Columbia Circuit.

#### **B. John Paul Stevens, Associate Justice**

Joined the Court in 1975. Nominated by President Gerald Ford. Previously served as a judge of the United States Court of Appeals for the Seventh Circuit.

#### **C. Antonin Scalia, Associate Justice**

Joined the Court in 1986. Nominated by President Ronald Reagan. Previously served as a judge of the United States Court of Appeals for the District of Columbia Circuit.

#### **D. Anthony M. Kennedy, Associate Justice**

Joined the Court in 1988. Nominated by President Ronald Reagan. Previously served as a judge of the United States Court of Appeals for the Ninth Circuit.

#### **E. David H. Souter, Associate Justice**

Joined the Court in 1990. Nominated by President George H.W. Bush. Previously served as a judge of the United States Court of Appeals for the First Circuit.

#### **F. Clarence Thomas, Associate Justice**

Joined the Court in 1991. Nominated by President George H.W. Bush. Previously served as a judge of the United States Court of Appeals for the District of Columbia Circuit.

#### **G. Ruth Bader Ginsburg, Associate Justice**

Joined the Court in 1993. Nominated by President William J. Clinton. Previously served as a judge of the United States Court of Appeals for the District of Columbia Circuit.

#### **H. Stephen G. Breyer, Associate Justice**

Joined the Court in 1994. Nominated by President William J. Clinton. Previously served as a judge of the United States Court of Appeals for the First Circuit.

#### **I. Samuel A. Alito, Jr., Associate Justice**

Joined the Court in 2006. Nominated by President George W. Bush. Previously served as a judge of the United States Court of Appeals for the Third Circuit.

## II. Selected Cases to Be Heard during the 2007-08 Term in the Supreme Court of the United States (as of July 31, 2007)

As of July 31, 2007, the Supreme Court of the United States had granted *certiorari* in 28 cases in which it had not yet heard oral argument, including the following cases.

### A. Arbitration

*Hall Street Associates, LLC v. Mattel, Inc.*, No. 06-989.

*Question presented:* Did the Ninth Circuit Court of Appeals err when it held, in conflict with several other federal courts of appeals, that the Federal Arbitration Act precludes federal courts from enforcing parties' clearly expressed agreement providing for more expansive judicial review of an arbitration award than the narrow standard of review provided for in the FAA?

### B. Employment Discrimination

*Federal Express Corp. v. Holowecki*, No. 06-1322.

*Question presented:* Did the Second Circuit Court of Appeals err in concluding, in conflict with several other circuits, that an "intake questionnaire" submitted to the Equal Employment Opportunity Commission may suffice for a charge of discrimination that must be submitted pursuant to the Age Discrimination in Employment Act, even if there is no evidence that the EEOC treated the form as a charge of discrimination, or that the employee submitting the questionnaire reasonably believed it constituted a charge?

### C. ERISA

*LaRue v. DeWolff, Boberg & Associates, Inc.*, No. 06-856.

*Questions presented:* (1) Does section 502(a)(2) of ERISA permit a participant in a plan under section 401(k) of the Internal Revenue Code to bring an action to recover losses attributable to his account in a "defined contribution plan" that were allegedly caused by fiduciary breach? (2) Does ERISA section 502(a)(3) permit the participant to bring an action for monetary "make-whole" relief to compensate for losses directly caused by fiduciary breach?

### D. Habeas Corpus

*Boumediene v. Bush*, No. 06-1195.

*Questions presented:* (1) Did the 2006 Military Commissions Act validly strip federal court jurisdiction over *habeas corpus* petitions filed by foreign citizens imprisoned indefinitely at the United States Naval Station at Guantanamo Bay? (2) Do petitioners' *habeas corpus* petitions, which establish that the United States government has imprisoned the petitioners for more than five years, demonstrate unlawful confinement requiring grant of *habeas* relief, or, at least, a hearing on the merits?

### E. Motor Carriers

*Rowe v. New Hampshire Motor Transport Association*, No. 06-457.

*Questions presented:* (1) Does the 1994 Federal Aviation Administration Authorization Act, 49 U.S.C. §§14501(c)(1) and 41713(b)(4)(A), preempt states from exercising their public health police powers to regulate carriers that deliver contraband such as tobacco and other dangerous substances to children? (2) Does the FAAAA preempt states from exercising their public health police powers to require shippers of contraband,

such as tobacco and other dangerous substances, to use carriers that provide age verification and signature service to ensure that such substances are not delivered to children?

## **F. Product Liability**

*Riegel v. Medtronic, Inc.*, No. 06-179.

*Question presented:* Does the express preemption provision of the Medical Device Amendments to the Food, Drug and Cosmetic Act, 21 U.S.C. §360k(a), preempt state-law claims seeking damages for injuries caused by medical devices that received premarket approval from the FDA?

## **G. Securities**

*Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, No. 06-43.

*Question presented:* Does *Central Bank NA v. First Interstate Bank NA*, 511 U.S. 164 (1994), foreclose claims for deceptive conduct under section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b), and Rule 10b-5(a) and (c), 17 C.F.R. §240.10b-5(a) and (c), against an entity that engaged in transactions with a publicly traded corporation with no legitimate business or economic purpose except to artificially inflate the public corporation's financial statements, but the entity that engaged in those sham transactions made no public statements concerning the transactions?

# **III. Selected Cases Decided by the Supreme Court of the United States during the 2006-07 Term**

## **A. Abortion**

### **1. *Gonzales v. Carhart*, 127 S. Ct. 1610 (2007).**

Author: Kennedy. Dissenting: Stevens, Souter, Ginsburg, and Breyer.

Upheld a 2003 federal statutory ban on an abortion procedure that Congress called "partial birth abortion" over objections that the ban was unconstitutional because it lacked an exception for when a physician decided that the method might be the best option for a woman's health.

## **B. Antitrust**

### **1. *Weyerhaeuser Co. v. Ross-Simmons Hardwood Co.*, 127 S. Ct. 1069 (2007).**

Author: Thomas. Dissenting: None.

The two-part test announced in the Supreme Court's decision in *Brooke Group, Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993), which governs claims based on alleged predatory selling, applies equally to claims based on alleged predatory buying.

## **C. Bankruptcy**

### **1. *Marrama v. Citizens Bank of Massachusetts*, 127 S. Ct. 1105 (2007).**

Author: Stevens. Dissenting: Alito, Roberts, Scalia, and Thomas.

A bankruptcy court may, in its discretion, deny a petitioner in bankruptcy the right to convert a Chapter 7 proceeding to a Chapter 13 proceeding when the court finds that the petitioner has acted in bad faith.

## **D. Civil Procedure**

### **1. *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007).**

Author: Souter. Dissenting: Stevens and Ginsburg.

A complaint alleging a violation of section 1 of the Sherman Act, 15 U.S.C. §1, must allege enough factual matter which, if taken as true, suggests that an agreement to conspire was made. An allegation of parallel conduct and a bare assertion of a conspiracy is not sufficient.

## **E. Commerce Clause**

### **1. *United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority*, 127 S. Ct. 1786 (2007).**

Author: Roberts. Dissenting: Alito, Stevens, and Kennedy.

A flow-control ordinance requiring delivery of all solid waste to a publicly owned local facility did not unlawfully burden interstate commerce in violation of the Commerce Clause.

## **F. Employment Discrimination**

### **1. *Ledbetter v. Goodyear Tire & Rubber Co.*, 127 S. Ct. 2162 (2007).**

Author: Alito. Dissenting: Stevens, Souter, Ginsburg, and Breyer.

Limited the time within which workers may sue for paycheck discrimination based on sex or race by holding that the 180-day statute of limitations under Title VII begins running from the initial discriminatory salary decision, and rejecting the argument that a challenge may be brought within 180 days from any paycheck that perpetuates the initial act of discrimination.

## **G. Environmental Law**

### **1. *Massachusetts v. Environmental Protection Agency*, 127 S. Ct. 1438 (2007).**

Author: Stevens. Dissenting: Roberts, Scalia, Thomas, and Alito.

The Environmental Protection Agency has authority to regulate carbon dioxide and other greenhouse gases emitted from new cars and trucks, and the EPA must give scientific grounds if it chooses to not regulate the emissions.

## **H. *Forum Non Conveniens***

### **1. *Sinochem International Co. v. Malaysia International Shipping Corp.*, 127 S. Ct. 1184 (2007).**

Author: Ginsburg. Dissenting: None.



A district court may dismiss an action based on *forum non conveniens* grounds without first determining whether it has subject-matter jurisdiction over the matters alleged or personal jurisdiction over the defendant.

## I. Free speech

### 1. *Davenport v. Washington Education Association*, 127 S. Ct. 2372 (2007).

Author: Scalia. Dissenting: None.

States may constitutionally prohibit public sector unions from spending fees collected from nonmembers for political purposes without affirmative consent to such use.

### 2. *Federal Election Commission v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007).

Author: Roberts. Dissenting: Stevens, Souter, Ginsburg, and Breyer.

Limited the scope of a section of the 2002 McCain-Feingold law that banned corporations and labor unions from paying for broadcast advertisements that mentioned a candidate for federal office before an election.

### 3. *Morse v. Frederick*, 127 S. Ct. 2618 (2007).

Author: Roberts. Dissenting: Stevens, Souter, Ginsburg, and Breyer.

In the “Bong Hits 4 Jesus” case, the Court held that a public school may discipline students for displaying signs or wearing clothing that bears messages that might conflict with the school’s antidrug policy, even if the banner or message does not cause a disruption among students.

### 4. *Tennessee Secondary School Athletic Association v. Brentwood Academy*, 127 S. Ct. 2489 (2007).

Author: Stevens. Dissenting: None.

A state athletic association can restrict member schools’ recruiting practices without violating coaches’ free speech rights.

## J. Patents

### 1. *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007).

Author: Kennedy. Dissenting: None.

A combination of prior patented designs is obvious when the resultant design and its benefits to the field are within the grasp of a “person having ordinary skill” in the art. The “teaching, suggestion, or motivation” test is not appropriate for determining whether a claimed invention is “obvious.”

## K. Punitive Damages

### 1. *Philip Morris v. Williams*, 127 S. Ct. 1057 (2007).

Author: Breyer. Dissenting: Stevens, Scalia, Thomas, and Ginsburg.

Reversed and remanded a \$79.5 million punitive damage award on the grounds that the trial court failed to properly instruct the jury concerning limits on the jury's ability to award punitive damages to punish the defendant for harm to people who are not parties to the lawsuit.

## **L. Removal to Federal Court**

### **1. *Watson v. Philip Morris Cos.*, 127 S. Ct. 2301 (2007).**

Author: Breyer. Dissenting: None.

A private actor that is sued for actions taken in connection with complying with a federal agency regulation is not a "person acting under a federal officer" for purposes of 28 U.S.C. §1442(a)(1), entitling the actor to remove to federal court a civil action brought in state court under state law.

## **M. Schools**

### **1. *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S. Ct. 2738 (2007).**

Author: Roberts. Dissenting: Stevens, Souter, Ginsburg, and Breyer.

Struck down programs in Louisville and Seattle that used students' race as a factor in school placement to ensure diversity throughout a district.

## **N. Standing**

### **1. *Hein v. Freedom from Religion Foundation, Inc.*, 127 S. Ct. 2553 (2007).**

Author: Alito. Dissenting: Stevens, Souter, Ginsburg, and Breyer.

Taxpayers lacked standing to challenge, as a violation of the Establishment Clause, various expenditures by the White House Office of Faith-Based Initiatives, which had been created by executive order and funded by general appropriations.

## **IV. Notes from the 2006-07 Term**

- Justice Kennedy was in the majority in each of the Court's 23 split decisions, including the Court's 22 decisions decided by a 5-4 split.
- Justice Kennedy was in the majority in 97 percent of the Court's decisions.
- Justices Roberts and Alito voted together in almost 88 percent of the Court's cases—the highest percentage for any pair of justices.
- Justices Stevens and Thomas voted together least often—31.8 percent.
- In argued cases, the Court reversed 52.6 percent, affirmed 25.6 percent, and vacated 15.4 percent.
- Almost 90 percent of the Court's cases originated from federal courts.
- The Court heard more cases originating from the Ninth Circuit Court of Appeals than any other source.
- Justices Scalia, Kennedy, Thomas, and Breyer each wrote the most majority opinions—eight. Justice Stevens wrote the most dissenting opinions—14.

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