

## Constitutional Cases Before SCOTUS – 2007-2008 Term

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### ***Washington State Grange v. Washington State Republican Party***

06-713 (consolidated)

#### **First Amendment – Associational Rights of Political Parties**

**Issue:** Whether Washington’s modified blanket primary scheme, which allows candidates to state a party “preference” on the ballot, violates the First Amendment associational rights of political parties.

**Lower Court Determination:** Yes, system invalidated (9th Cir.)

**Argued:** 10/01/07 -- [transcript](#)

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### ***New York Bd. of Election v. Lopez Torres***

06-766

#### **First Amendment – Right to Run for Office**

**Issue:** Whether New York’s system of choosing party nominees for judicial elections through conventions of delegates, rather than primaries, violates the First Amendment rights of candidates.

**Lower Court Determination:** Yes, injunction issued requiring a primary (2nd Cir.)

**Argued:** 10/03/07 -- [transcript](#)

**Decision:** [Reversed](#) on 01/16/08, 9-0 (Scalia, with concurrences)

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## ***Medellin v. Texas***

06-984

### **Presidential Powers – State Courts; Supremacy Clause – Status of ICJ Decisions**

**Issues:** (1) Whether the President of the United States, in trying to effect compliance with U.S. treaty obligations, can order a state court to comply with a decision of the International Court of Justice, and (2) whether, regardless of presidential attitude, a state court has a duty under the Supremacy Clause to obey an ICJ order interpreting U.S. treaty obligations

**Lower Court Determination:** No to each (Texas Court of Criminal Appeals)

**Argued:** 10/10/07 -- [transcript](#)

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## ***US v. Williams***

06-964

### **Freedom of Speech – Child Pornography**

**Issue:** Whether a provision of the federal PROTECT Act that bans the “pandering” of material that is falsely claimed or believed to be child pornography is constitutionally overbroad and therefore violates the First Amendment.

**Lower Court Determination:** Yes, pandering provision invalidated (11th Cir.)

**Argued:** 10/30/07 -- [transcript](#)

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***Danforth v. Minnesota***

06-8273

**Federalism – State Courts and Federal Law**

**Issue:** Whether state courts may grant broader retroactive effects to SCOTUS criminal procedure decisions than SCOTUS itself requires.

**Lower Court Determination:** [No](#) (Minnesota Supreme Court)

**Argued:** 10/31/2007 -- [transcript](#)

**Decision:** [Reversed and remanded](#) on 02/20/08, 7-2 (Stevens for the majority, Roberts, joined by Kennedy, dissenting)

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***Kentucky Department of Revenue v. Davis***

06-666

**Dormant Commerce Clause – Taxation of Government Bonds**

**Issue:** Whether a state may grant preferential tax treatment to holders of that state's bonds versus bonds issued by other states.

**Lower Court Determination:** No, favorable treatment invalidated (Kentucky intermediate app. court)

**Argued:** 11/05/2007 -- [transcript](#)

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## ***Snyder v. Louisiana***

06-10119

### **Equal Protection – Juror Selection**

**Issue:** Whether a prosecuting attorney who struck all the black prospective jurors in a case (and who made statements comparing the case to the O.J. Simpson case) violated the *Batson* rule against racial discrimination in juror selection.

**Lower Court Determination:** No (Louisiana Supreme Court)

**Argued:** 12/04/2007

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## ***Boumediene/Al- Odah v. Bush***

06-1195 (consolidated)

### **Habeas Corpus – Applicability Abroad**

**Issues:** (1) Whether detainees at Guantanamo could, in the absence of a specific bar, assert *habeas* rights to challenge their detentions in federal court, (2) if so, whether the provision of the 2006 Military Commissions Act that purports to strip those detainees of *habeas* rights is constitutional, and (3) if the detainees now have no *habeas* rights, whether they have other rights, from the Constitution or other sources of law, to challenge their detention beyond the restrictive Combatant Status Review Tribunals process now conducted by the military.

**Lower Court Determination:** Detainees have no *habeas* or other rights to challenge their detention beyond the CSRT process. (D.C. Circuit)

**Argued:** 12/05/2007 -- [transcript & audio](#)

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***Baze v. Rees***

07-5439

**Cruel and Unusual Punishment – Death Penalty**

**Issue:** Whether the now-standard three-drug lethal injection protocol inflicts pain severe and unnecessary enough to render use of the protocol cruel and unusual punishment.

**Lower Court Determination:** No (Kentucky Supreme Court)

**Argued:** 01/07/2008 – [transcript & audio](#)

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***Crawford v. Marion County Election Bd.***

07-21 (consolidated)

**Right to Vote -- Voter Requirements**

**Issue:** Whether Indiana's voter identification law, which requires voters to show a photo ID at the polls, unconstitutionally infringes on the right to vote.

**Lower Court Determination:** No (7th Cir.)

**Argued:** 01/09/2008 -- [transcript](#)

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***Virginia v. Moore***

06-1082

**Fourth Amendment – Exclusionary Rule**

**Issue:** Whether evidence gathered pursuant to an arrest that complies with the minimum requirements of the Fourth Amendment but violates broader state law protections must be excluded under the Fourth Amendment.

**Lower Court Determination:** Yes, evidence excluded (Virginia Supreme Court)

**Argued:** 01/14/08 -- [transcript](#)

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***Rothgery v. Gillespie County***

07-440

**Sixth Amendment – Right to Counsel**

**Issue:** Whether an initial hearing where an accused is informed of the charges against him but where no prosecutor is present constitutes the start of “adversary judicial proceedings,” entitling the accused to an appointment of counsel.

**Lower Court Decision:** No (5th Cir.)

**Argument:** Set for 03/17/08

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***D.C. v. Heller***

07-290

**Second Amendment**

**Issues:** (1) Whether the Second Amendment contains an individual right to possess firearms, and (2) whether the District of Columbia's blanket ban on possession of handguns violates that right.

**Lower Court Determination:** Yes, the Second Amendment contains an individual right to possess firearms free from unreasonable federal regulation, and D.C.'s handgun ban is not a reasonable regulation. (D.C. Cir.)

**Argument:** Set for 03/18/2008

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***U.S. v. Clintwood Elkhorn***

07-308

**Export Clause – Right to Recover Unconstitutionally Collected Duties**

**Issue:** Whether companies that have been subjected to duties imposed by the federal government in violation of the Export Clause can bring suit to recover under the clause itself.

**Lower Court Determination:** Yes (Fed. Cir.)

**Argument:** Set for 03/24/2008

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***Munaf v. Geren***

06-1666 (consolidated)

**Habeas Corpus – Applicability Abroad**

**Issue:** Whether U.S. citizens detained in Iraq by the U.S. military can have *habeas* petitions heard in domestic federal courts.

**Lower Court Determination:** Mixed; a petition from a detained U.S. citizen who had been charged by an Iraqi tribunal could not be heard, but a petition from a citizen who had not been charged by an Iraqi tribunal could go forward. (D.C. Cir.)

**Argument:** Set for 03/25/08

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***Indiana v. Edwards***

07-208

**Sixth Amendment – Right to Self-Representation**

**Issue:** Whether a criminal defendant found competent to stand trial but nevertheless demonstrating severe psychiatric problems has, under the Sixth Amendment, a right to represent himself.

**Lower Court Determination:** Yes (Indiana Supreme Court)

**Argument:** Set for 03/26/2008

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***Kennedy v. Louisiana***

07-343

**Cruel and Unusual Punishment – Death Penalty**

**Issue:** Whether imposing the death penalty for the rape of a child constitutes cruel and unusual punishment.

**Lower Court Decision:** No (Louisiana Supreme Court)

**Argument:** Set for 04/16/2008

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***Sprint v. APCC Servs.***

07-552

**Judicial Power – Standing**

**Issue:** Whether an assignment of a claim to a third party, for purposes of having the assignee collect on the claim on behalf of the assignor, gives the third party standing under Article III to sue on the claim in federal court.

**Lower Court Decision:** Yes (D.C. Cir.)

**Argument:** Set for 04/21/2008

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## ***Davis v. FEC***

07-320

### **First Amendment -- Campaign Finance Regulation**

**Issue:** Whether the “Millionaire’s Amendment” – which imposes heightened disclosure requirements on self-funded candidates for House and Senate and eases some finance restrictions on their opponents – contained in the Bipartisan Campaign Reform Act (ie. McCain-Feingold) violates the First Amendment.

**Lower Court Determination:** No (three-judge D.C. district court)

**Argument:** Set for 04/22/2008

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## ***Giles v. California***

07-6053

### **Sixth Amendment – Confrontation Clause**

**Issue:** Whether prosecutors seeking to admit statements from the victim of an alleged homicide under the “forfeiture” exception to *Crawford* confrontation requirements must prove that the defendant killed the victim for the purpose of preventing the deceased from testifying.

**Lower Court Decision:** No (California Supreme Court)

**Argument:** Set for 04/22/2008

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***Engquist v. Oregon Dept. of Agriculture***

07-474

**Equal Protection – Public Employers**

**Issue:** Whether “rational basis” scrutiny applies to individual employment decisions made by a state agency.

**Lower Court Decision:** No (9th Cir.)

**Argument:** Set for 04/21/08