Foreword

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FOREWORD

The following twenty Comments make up the first issue of the Boston College Law Review’s electronic supplement. These Comments, written by second-year students, comprise a survey of recent federal en banc decisions of note, and other significant cases. Each Comment is intended to present a clear overview of the decision, a discussion of the important issues, and a meaningful perspective on its consequences for litigants.

In United States v. Textron, the First Circuit handed the IRS a victory by subjecting companies’ tax accrual workpapers to discovery in tax litigation, creating potential concerns for companies in non-tax settings. In Fox Television Stations, Inc. v. FCC, the Second Circuit struck down the FCC’s latest attempt to regulate indecent speech, signaling a major win for broadcasters and putting one more crack in the Supreme Court’s Pacifica precedent. The Third Circuit, in the bankruptcy case of In re Grossman’s, Inc., overruled a 1984 precedent when it held that the tort claims of a person exposed to a Chapter Eleven debtor’s asbestos-containing products arose pre-petition, despite their post-petition manifestation. In North Carolina ex rel. Cooper v. Tennessee Valley Authority, the Fourth Circuit undercut the viability of public nuisance claims in environmental litigation, holding that the Clean Air Act preempts state nuisance claims and that the issuance of a permit makes those claims legally impossible.

The Fifth Circuit, in Castro v. United States, held that a government employee’s conduct could fall within the Federal Tort Claims Act’s discretionary function exception even if a constitutional violation may have occurred. Judge Richard Posner of the Seventh Circuit created a unique standard for applying the equal terms provision of the Religious Land Use and Institutionalized Persons Act in River of Life Kingdom Ministries v. Village of Hazel Crest. Also in the Seventh Circuit, the court in United States v. Skoien upheld a federal ban on the possession of firearms by domestic violence misdemeanants against a Second Amendment challenge.

Several important en banc decisions were recently decided by the Ninth Circuit. In Perdomo v. Holder, the court took a step forward in recognizing gender as a “particular social group” for the purposes of the federal asylum laws, making it easier for persecuted women to seek refuge in the United States. In Pinholster v. Ayers, the court held that a death row inmate had received ineffective assistance of counsel
at the sentencing phase because his lawyers failed to present a mitigation case. In *Dukes v. Wal-Mart*, the court approved the class certification of female Wal-Mart employees in a sex discrimination lawsuit, despite the company’s policy of leaving employment decisions to local branch managers. Chief Judge Alex Kozinski, in *Murdoch v. Castro*, wrote that under the Antiterrorism and Effective Death Penalty Act, state court decisions presumptively adjudicate federal claims on the merits even where no state court has even addressed a federal claim raised in the habeas petition. Finally, in *United States v. Nevils*, the court reaffirmed the high bar appellants must clear to make out a viable claim for insufficient evidence.

The survey examines three cases from the Eleventh Circuit. In *Dodge v. United States*, the court applied a non-categorical approach in deciding whether a defendant is required to register under the Sex Offender Registration and Notification Act, creating potential due process concerns down the road. The Eleventh Circuit also decided *United States v. Sneed*, holding that courts may not use police reports to determine if prior offenses occurred for the purposes of the Armed Career Criminal Act. And the same court held, in *Randall v. Scott*, that the First Amendment protects a right to political candidacy.

In *American Equity Investment Life Insurance Co. v. SEC*, the D.C. Circuit struck down an attempt by the SEC to bring fixed indexed annuities into its regulatory purview. In *Ariad Pharmaceuticals, Inc. v. Eli Lilly & Co.*, the Federal Circuit held that the first paragraph of 35 U.S.C. § 112 contains a written description requirement separate from the enablement requirement. And in Nebraska, a federal district court in *Planned Parenthood of the Heartland v. Heineman* struck down a state law requiring doctors to give abortion patients an impossibly long list of disclosures in order to obtain their informed consent.

Two state cases are discussed in this issue. In *Commonwealth v. Runyan*, the Supreme Judicial Court of Massachusetts upheld that state’s safe storage statute against a Second Amendment challenge. And in *Kaur v. New York State Development Corp.*, the New York Court of Appeals upheld the broad power of the state to condemn private property and transfer it for private use in the name of economic development.