

**U.S. SUPREME COURT DOCKET CHART
2017 TERM**

January 7 – January 13

Amicus cases = yellow highlight
Petitions scheduled for conference – green highlight

MOST RECENT PETITIONS FOR CERT. FILED

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE FILED	COMMENTS
<i>Meyer v. Shulkin</i> , 17-898, <i>unpublished</i> (2d Cir.)	Employment & Labor: Is a finding that an alleged discriminating official's lack of knowledge of prior protected EEO activity is dispositive to a Title VII retaliation claim, upon summary judgment, consistent with prior Court of Appeals precedent	12/19/17	
<i>Bustillo-Formoso v. Million Air San Juan Corp.</i> , 17-895, 691 Fed. Appx. 1 (1st Cir.)	Employment & Labor: (1) Did the First Circuit err in allowing the grounding, referral and termination of petitioner; (2) Do claims for general emotional damages constitute "direct" threats of "significant" harm; (3) Does the First Circuit's decision trump the objective inquiry standard followed by the other circuits when evaluating the "business necessity" prong of 42 U.S.C. §12112(d)(4)(A); (4) Does the opinion trump the exam limitations and burden of proof imposed by 42 U.S.C. §12112(d)(4)? (5) Ultimately, will employers of pilots be forced to ground a pilot who claims "garden-variety" emotional damages? (6) Will employees in similar sensitive positions, and their employers, be similarly affected	12/5/17	
<i>Fleck v. Wetch</i> , 17-886, 868 F.3d 652 (8th Cir.)	Legal System: (1) Does it violate the First Amendment for state law to presume that petitioner consents to subsidizing non-chargeable speech by the group he is compelled to fund (an "opt-out" rule), as opposed to an "opt-in" rule whereby petitioner must affirmatively consent to subsidizing such speech; (2) Should <i>Keller v. State Bar of Cal.</i> , 496 U.S. 1 (1990), and <i>Lathrop v. Donohue</i> , 367 U.S. 820 (1961), be overruled insofar as they permit the state to force petitioner to join a trade association he opposes as a condition of earning a living in his chosen profession	12/15/17	

DECISIONS

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	HOLDING	DATE OF OPINION

CASES DISMISSED

<i>CASE/DOCKET NO./LOWER COURT CITATION</i>	ISSUE	DATE	COMMENTS

ARGUED

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE GRANTED	DATE ARGUED

REVIEW GRANTED

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE GRANTED	DATE OF ORAL ARGUMENT
<i>Janus v. American Federation of State, County, and Municipal Employees Council 31</i> , 16-1466, 851 F.3d 746 (7th Cir.)	Employment & Labor: (1) Whether <i>Abood v. Detroit Board of Education</i> should be overruled and public-sector “agency shop” arrangements invalidated under the First Amendment; and (2) whether it violates the First Amendment to require that public employees affirmatively object to subsidizing nonchargeable speech by public-sector unions, rather than requiring that employees affirmatively consent to subsidizing such speech	9/28/17	2/26/17

REVIEW DENIED

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE DENIED	COMMENT
Edionwe v. Bailey , 17-693, 860 F.3d 287 (5th Cir.)	Employment & Labor: (1) Did the 2013 Texas legislation consolidating and/or abolishing University of Texas-Pan American and UT-Brownsville and hiring policy adopted by the UT System Board of Regents for tenured faculty members at UTPA create an expectancy of transition to and employment at UT-Rio Grande Valley of tenured professors at UTPA and UTB; (2) Did a faculty member's proposed amended complaint allege that he had a constitutionally protected property right to employment at UTRGV	1/8/18	
Raimondo v. Arias , 17-648, 60 F.3d 1185 (9th Cir.)	Employment & Labor: Can an individual who has no operational control over an employer (or the terms or conditions of its employees'; employment) be sued for retaliation under the Fair Labor Standards Act	1/8/18	
Campaign for S. Equality v. Bryant , 17-642, 860 F.3d 345 (5th Cir.)	Religion: Where Mississippi H.B. 1523 singles out three religious beliefs for promotion and protection under the law, and where petitioners represent and include individuals who do not adhere to these preferred beliefs, do petitioners have standing to challenge H.B. 1523 on grounds that it violates the establishment clause	1/8/18	
E.L. v. Voluntary Interdistrict Choice Corp. , 17-620, 864 F.3d 932 (8th Cir.)	Legal System: Is an injury-in-fact "fairly traceable" to the defendant when the defendant is the but-for cause of the injury or does the mere presence of other but-for causes serve as a constitutional bar to review by an Article III court	1/8/18	
Clemons v. Delta Airlines, Inc. , 17-597, 790 S.E.2d 814 (Ga. Ct. App.)	Employment & Labor: Does the Fifth Amendment's Due Process Clause require a pretermination hearing before firing an employee	1/8/18	
Window Rock Unified Sch. Dist. v. Reeves , 17-447, 861 F.3d 894 (9th Cir.)	Legal System: Does a tribal court have jurisdiction to adjudicate employment claims by Arizona school district employees against their Arizona school district employer that operates on the Navajo reservation pursuant to a state constitutional mandate to provide a general and uniform public education to all Arizona children	1/8/18	
DirectTV, LLC v. Hall , 16-1449, 846 F.3d 757 (4th Cir.)	Employment & Labor: Did the U.S. Court of Appeals for the Fourth Circuit misinterpret the Fair Labor Standards Act and its implementing regulation in holding—in conflict with eight other circuits—that a claim of vertical joint employment must be evaluated by focusing on whether the putative joint employers are "completely disassociated" from one another with respect to the putative employee	1/8/18	

PENDING PETITIONS FOR CERTORARI

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE FILED	ADDITIONAL INFORMATION
M.L. v. Smith , 17-852, 867 F.3d 487 (4th Cir.)	Special Education & Disabilities: Do public school systems have, under the Individuals with Disabilities Education Improvement Act, 20 U.S.C. §1400, a responsibility to consider a child's cultural and religious background as part of his or her unique, individualized circumstances when developing an individualized education program when, without consideration of such circumstances, the child will fail to make the academic and functional progress to which the child is entitled	12/8/17	Scheduled for Conference 1/12/18 <i>Legal Clips</i> summary of Fourth Circuit panel's opinion available at https://www.nsba.org/legalclips/2017/08/14/fourth-circuit-panel-rules-maryland-district-provided-disabled-student-fape
Lucas v. Office of Colo. Pub. Def. , 17-833, unpublished (10th Cir.)	Employment & Labor: (1) Did the U.S. Court of Appeals for the Tenth Circuit erroneously apply the McDonnell Douglas framework by placing the burden on plaintiff-employees to demonstrate "pretext" in order to survive a defense motion for judgment as a matter of law, in contravention to U.S. Supreme Court precedent; (2) Does placing the burden on defendant-employers to demonstrate the legal sufficiency of their proffered evidence to support the "legitimacy" of their articulated reasons for their challenged conduct effectively rebut the inference raised to survive a plaintiff's motions for judgment as a matter of law; (3) Does a discussion on <i>Reeves v. Sanderson Plumbing Prods.</i> , 530 U.S. 133 (2000) and <i>Desert Palace v. Costa</i> , 439 U.S. 90 (2003), including their respective impacts on the McDonnell Douglas analysis, and the relationships between the "mixed motive" manner of proof and "falsity of proffered reason" clarify and restore the intended use of the burden-shifting framework; (4) Does inflicting reputational harm to individuals implicate liberty interests triggering procedural due process guarantees under the "stigma plus" doctrine after <i>Paul v. Davis</i> , 424 U.S. 693 (1976) and <i>Siebert v. Gilley</i> , 500 U.S. 226 (1991)	11/1/17	
Wayne Cnty. Sch. Dist. v. Frierson , 17-827, 224 So.3d 539 (Miss.)	Legal System: Is a state statute, interpreted by the state's highest court as vesting in the state's tax administrative agency the arbitrary and unrestricted to determine how much, if any, monetary interest is owed to a taxpayer on a tax overpayment, unconstitutional because it is in violation of (i) the Takings Clause of the Fifth Amendment made applicable to the states by the Fourteenth Amendment, (ii) the Due Process Clause of the Fourteenth Amendment, and/or (iii) the Equal Protection Clause of the Fourteenth Amendment	11/15/17	
Lin v. Rohm and Haas Co. , 17-784, 685 Fed. Appx. 125 (3d Cir.)	Employment & Labor: (1) Should a party be estopped from defending or prevailing in a Title VII retaliation action on the basis of perjury or other fraudulent evidences, a standard enforced by the Fifth, Seventh, Eighth, Ninth and Tenth Circuits, but not enforced in the DC, First and Third Circuits; (2) The standard of but-for causation established by this court in <i>Univ. of Tex. Sw. Med. Ctr. v. Nassar</i> , 81 U.S.L.W. 4514, 2013 BL 167359 (U.S., June 24, 2013). permits an employer to escape from liability in a Title VII retaliation action if it advances a legitimate reason for its adverse actions against an employee. Should an employer who fails to advance any legitimate reason for any crucial adverse action be permitted to escape from liability by falsely denying that it took the adverse action	11/13/17	

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CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE FILED	ADDITIONAL INFORMATION
Martin v. Ak Steel Corp. , 17-774, unpublished (6th Cir.)	Employment & Labor: (1) Do the lower Courts time barred rulings negate Section 301 of the Labor Management Relations Act? (2) Did the lower Courts set a new and untenable high standard in regard to providing a breach of duty of fair representation? (3) Does a clause within the collective bargaining agreement amount to collusion?	11/15/17	
McAdory v. Vail Techs. , 17-767, unpublished (4th Cir.)	Employment & Labor: Should the Fourth Circuit's none-factor "hybrid" test for determining whether a person is jointly employed by simplified	11/20/17	Scheduled for Conference 1/12/18
Kirk v. Invesco, Ltd. , 17-762, unpublished (5th Cir.)	Employment & Labor: Can an employee meet the burden to produce sufficient evidence to show the amount and extent of work when the employer has failed to keep legally required records by testifying from personal knowledge as to the number of overtime hours he or she worked, or is the employee's testimony insufficient unless "substantiated by additional evidence"	11/15/17	Scheduled for Conference 1/12/18
Alston v. Pa. State Univ. , 17-713, 685 Fed. Appx. 158 (3d Cir.)	Special Education & Disabilities: Did a law school violate due process and federal discrimination laws by not giving a student financial aid to help take care of his elderly, disabled mother	7/12/17	Scheduled for Conference 1/12/18
Buxton v. Kurtinitis , 17-698, 862 F.3d 423 (4th Cir.)	Student Rights & Discipline: Did the Fourth Circuit err by holding that the free speech clause has no application to private speech expressed during the interview of an applicant seeking admission to a competitive academic program of a public college	11/6/27	Scheduled for Conference 1/12/18
March v. Mills , 17-689, 867 F.3d 46 (1st Cir.)	Legal System: Does a noise provision that restricts speech based on the purpose the speaker has in making the noise constitute a content-based restriction on speech under this Court's ruling in <i>Reed v. Town of Gilbert</i> , 83 U.S.L.W. 4444, 2015 BL 193925 (U.S. June 18, 2015)	11/6/17	
Phillips v. Auto Workers , 17-632, 854 F.3d 323 (6th Cir.)	Employment & Labor: (1) Must a plaintiff bringing a hostile-environment claim against her union prove that the union's harassment altered the terms and conditions of her employment; (2) Does Title VII's plain text require a plaintiff to overcome a "high bar" when attempting to prove discriminatory conduct under a hostile-environment theory	11/7/17	
Mount Lemmon Fire Dist. v. Guido , 17-587, 859 F.3d 1168 (9th Cir.)	Employment & Labor: Does the Age Discrimination in Employment Act's 20-employee minimum that applies to private employers also apply to political subdivisions of a state, as the Sixth, Seventh, Eighth, and Tenth circuits have held, or does it apply instead to all state political subdivisions of any size, as the ninth circuit held in this case	10/18/17	Scheduled for Conference 1/19/18
Rowan County v. Lund , 17-565, 863 F.3d 268 (4th Cir.)	Legal System: Does the legislative prayer delivered by legislators comport with <i>Town of Greece v. Galloway</i> , 82 U.S.L.W. 4334, 2014 BL 124245 (U.S. July 14, 2014), and <i>Marsh v. Chambers</i> , 463 U.S. 783 (1983), as the en banc U.S. Court of Appeals for the Sixth Circuit had held, or doesn't it, as the en banc U.S. Court of Appeals for the Fourth Circuit has held	10/12/17	
South Dakota v. Wayfair, Inc. , 17-494, 2017 BL 324005 (S.D.)	Finance: Should the U.S. Supreme Court abrogate the sales-tax-only, physical-presence requirement affirmed in <i>Quill Corp. v. North Dakota</i> , 504 U.S. 298 (1992)	10/2/17	Scheduled for Conference 1/12/18

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CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE FILED	ADDITIONAL INFORMATION
CONSOL Energy Inc. v. EEOC , 17-380, 860 F.3d 131 (4th Cir.)	Employment & Labor: (1) Does Title VII of the Civil Rights Act of 1964 permit a claim for constructive discharge when an employee quits before being disciplined and does not seek relief through the grievance and arbitration procedure in the collective bargaining agreement governing his employment? (2) Are retirement benefits received from an ERISA plan collateral source income that may not be set off against back and front pay under Title VII of the Civil Rights Act of 1964	9/11/17	
Benisek v. Lamone , 17-333, 2017 BL 297758 (D.Md.)	Legal System: (1) Did the majority err in holding that, to establish an actual concrete injury in a First Amendment retaliation challenge to a partisan gerrymander, a plaintiff must prove that the gerrymander has dictated and will continue to dictate the outcome of every election held in the district under the gerrymandered map; (2) Did the majority err in holding that the <i>Mt. Health</i> burden-shifting framework is inapplicable to First Amendment retaliation challenges to partisan gerrymanders; (3) Regardless of the applicable legal standards, did the majority err in holding that the present record does not permit a finding that the 2011 gerrymander was a but-for-cause of the Democratic victories in the district in 2012, 2014, or 2016	8/1/17	
Kenosha Unified Sch. Dist. No. 1 Bd. of Educ. v. Whitaker , 17-301, 858 F.3d 1034 (7th Cir.)	Equity & Discrimination: (1) Is a school policy requiring boys and girls to use separate bathroom facilities that correspond to their biological sex is sex stereotyping that constitutes discrimination "based on sex" in violation of Title IX; (2) Is a school policy requiring boys and girls to use separate bathroom facilities that correspond to their biological sex a sex-based classification triggering heightened scrutiny under an equal protection analysis	8/14/17	<i>Legal Clips</i> Summary of Seventh Circuit panel's opinion <i>available at</i> https://www.nsba.org/legalclips/2017/05/31/seventh-circuit-panel-upholds-district-courts-grant-preliminary-injunction
E.I. Du Pont de Nemours & Co. v. Smiley , 16-1189, 839 F.3d 325 (3d Cir.)	Employment & Labor: (1) Does the Fair Labor Standards Act prohibit an employer from using compensation paid to employees for non-compensable <i>bona fide</i> meal breaks that it included in their regular rate of pay as a credit against compensation owed for work time; (2) Is an agency's interpretation of a statute advanced for the first time in litigation entitled to <i>Skidmore v. Swift & Co.</i> , 323 U.S. 134 (1944) deference	3/30/17	
United Healthcare Servs. Inc. v. Riederer , 16-996, <i>unpublished</i> (7th Cir.)	Employment & Labor: Is an agreement that requires an employer and an employee to resolve employment-related disputes through individual arbitration, and waive class and collective proceedings, enforceable under the Federal Arbitration Act, notwithstanding the provisions of the National Labor Relations Act	2/13/17	
NLRB v. SF Markets LLC , 16-801, <i>unpublished</i> (5th Cir.)	Employment & Labor: Are arbitration agreements with individual employees that bar them from pursuing work-related claims on a collective or class basis in any forum prohibited as an unfair labor practice under 29 U.S.C. §158(a)(1), because they limit the employees' right under the National Labor Relations Act to engage in "concerted activities" in pursuit of their "mutual aid or protection," 29 U.S.C. §157, and are therefore unenforceable under the saving clause of the Federal Arbitration Act, 9 U.S.C. §2	12/22/16	

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NLRB v. PJ Cheese Inc. , 16-800, 2016 BL 225053 (5th Cir.)	Employment & Labor: Are arbitration agreements with individual employees that bar them from pursuing work-related claims on a collective or class basis in any forum prohibited as an unfair labor practice under 29 U.S.C. §158(a)(1), because they limit the employees' right under the National Labor Relations Act to engage in "concerted activities" in pursuit of their "mutual aid or protection," 29 U.S.C. §157, and are therefore unenforceable under the saving clause of the Federal Arbitration Act, 9 U.S.C. §2	12/22/16	
Sanders v. 24 Hour Fitness USA, Inc. , 16-701, 2016 BL 229211 (5th Cir.)	Employment & Labor: (1) Is a provision in an employment arbitration agreement that prohibits employees from seeking adjudication of any work-related claim on a class, collective, joint, or representative basis in any forum invalid and unenforceable under Sections 2 and 3 of the Norris-LaGuardia Act, 29 U.S.C. §§102, 103, and Sections 7 and 8(a)(1) of the National Labor Relations Act, 29 U.S.C. §§157, 158(a)(1), because it "interfere[s]" with the employees' statutory right "to engage in . . . concerted activities for the purpose of . . . mutual aid or protection"; (2) Is such a provision, if otherwise unlawful, rendered lawful by permitting employees a time-limited pre-dispute opportunity to opt-out of the default employment arbitration agreement	11/22/16	
NLRB v. 24 Hour Fitness USA, Inc. , 16-689, 2016 BL 229211 (5th Cir.)	Employment & Labor: Are arbitration agreements with individual employees that bar them from pursuing work-related claims on a collective or class basis in any forum prohibited as an unfair labor practice under 29 U.S.C. §158(a)(1), because they limit the employees' right under the National Labor Relations Act to engage in "concerted activities" in pursuit of their "mutual aid or protection," 29 U.S.C. §157, and are therefore unenforceable under the saving clause of the Federal Arbitration Act, 9 U.S.C. §2	11/23/16	
Patterson v. Raymours Furniture Co. , 16-388, 2016 BL 287695 (2d Cir.)	Employment & Labor: Is a provision in an employment arbitration agreement that prohibits employees from seeking adjudication of any work-related claim on a class, collective, joint or representative basis in any forum invalid and unenforceable under Sections 2 and 3 of the Norris-LaGuardia Act, 29 U.S.C. §§102, 103 and Sections 7 and 8(a)(1) of the National Labor Relations Act, 29 U.S.C. §§157, 158(a)(1), because it "interfere[s]" with the employees' statutory right "to engage in ... concerted activities for the purpose of ... mutual aid or protection"	9/22/16	
Wynn Las Vegas, LLC v. Cesarz , 16-163, 816 F.3d 1080 (9th Cir.)	Employment & Labor: (1) Does the Fair Labor Standards Act impose restrictions, enforceable in private suits, on tip-pooling arrangements by employers who don't seek to count tips toward their minimum wage obligations; (2) Did the U.S. Court of Appeals for the Ninth Circuit err in holding that a federal agency purporting to implement a statute may create entitlements and requirements that the statute doesn't, so long as the statute doesn't expressly prohibit the agency's regulation	8/1/16	