

**U.S. SUPREME COURT DOCKET CHART
2018 TERM
Nov. 11 – Nov. 17**

Amicus cases = yellow highlight

Petitions scheduled for conference – green highlight

MOST RECENT PETITIONS FOR CERT. FILED

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE(S)	DATE FILED	COMMENTS
James v. Montgomery Reg'l Airport Auth. , 18-537, 730 Fed. Appx. 772 (11th Cir.)	Employment & Labor: (1) Could a reasonable jury have found that a supervisor's retaliatory attitude toward petitioner for whistleblowing to a government representative was the proximate cause for his decision to terminate petitioner's employment? (2) Did the supervisor violate Fed. R. Civ. P. 11 & 37 by willfully and intentionally introducing substitute evidence into court records in place of the original evidence during discovery, with an adverse impact on petitioner's constitutional rights	8/22/18	
Travis v. Exel, Inc. , 18-533, 884 F.3d 1326 (11th Cir.)	Employment & Labor: Is the proper test for imputing a manager's discriminatory conduct the "higher management" standard advanced by the U.S. Court of Appeals for the Eleventh Circuit in <i>Dudley v. Wal-Mart Stores, Inc.</i> , 166 F.3d 1317 (11th Cir. 1999), or the "managerial capacity" standard advanced by this court in <i>Kolstad v. Am. Dental Ass'n</i> , 527 U.S. 526 (1999)	9/4/18	
Straub v. City of Spokane, Wash. , 18-527, 2018 BL 212563 (9th Cir.)	Employment & Labor: Must a government that intends to publish professionally crippling charges against its employee on the internet during the course of an at-will termination give that employee notice and an opportunity to respond before the publication as the constitutional process due	10/18/18	

DECISIONS

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	HOLDING	DATE OF OPINION
<p><i>Mount Lemmon Fire Dist. v. Guido</i>, 17-587, 859 F.3d 1168 (9th Cir.)</p>	<p>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</p>	<p>Unanimous, 8-0, Justice Kavanaugh took no part in the consideration or decision of the case, held: The definitional provision's two-sentence delineation, set out in §630(b), and the expression "also means" at the start of §630(b)'s second sentence, combine to establish separate categories: persons engaged in an industry affecting commerce with 20 or more employees; and States or political subdivisions with no attendant numerosity limitation.</p>	<p>11/6/18</p>

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>Maryland-Nat'l Capital Park & Planning Comm'n v. Am. Humanist Ass'n</i> , 18-18, 874 F.3d 195 (4th Cir.)	Religion: Does the establishment clause require the removal or destruction of a 93-year-old memorial to American servicemen who died in World War I <i>solely</i> because the memorial bears the shape of a cross	11/2/18	TBA Consolidated with 17-1717 for oral argument
<i>Am. Legion v. Am. Humanist Ass'n</i> , 17-1717, 874 F.3d 195 (4th Cir.)	Religion: 1) Is a 93-year-old memorial to the fallen of World War I unconstitutional merely because it is shaped like a cross? (2) Should the constitutionality of a passive display incorporating religious symbolism be assessed under the tests articulated in <i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971), <i>Van Orden v. Perry</i> , 545 U.S. 677 (2005), <i>Town of Greece v. Galloway</i> , 134 S. Ct. 1811 (2014), or some other test? (3) If the test from <i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971), applies, does the expenditure of funds for routine upkeep and maintenance of a cross-shaped war memorial, without more, amount to an excessive entanglement with religion in violation of the First Amendment	11/2/18	TBA Consolidated with 18-18 for oral argument

PENDING PETITIONS FOR CERTORARI

REVIEW DENIED

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE DENIED	COMMENT
<i>Kirby v. North Carolina</i> , 18-305, 727 Fed. Appx. 48 (4th Cir.)	Equity & Discrimination: (1) Should Title IX of the Education Amendments Act of 1972 and other civil rights/non-discrimination statutes be interpreted to encompass the full range of sex-based physical characteristics; (2) Should the Eleventh Amendment be overturned	11/13/18	

PENDING PETITIONS FOR CERTORARI

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE FILED	ADDITIONAL INFORMATION
Fort Bend Cty. v. Davis , 18-525, 893 F.3d 300 (5th Cir.)	Employment & Labor: Is the requirement of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq., that plaintiffs exhaust claims of employment discrimination with the EEOC before filing suit in federal court, a jurisdictional prerequisite to suit, as three circuits have held, or is it a waivable claim processing rule, as eight circuits have held	10/18/18	
Hatch v. Brennan , 18-416, 720 Fed. Appx. 868 (9th Cir.)	Employment & Labor: (1) On a motion for summary judgment, may the trial court disregard or ignore a party's sworn testimony concerning a material historical fact based upon contradictory inferences arising from unsworn evidence in the summary judgment record; (2) Under <i>U.S. Airways v. Barnett</i> , 535 U.S. 391 (2000), to show that a proposed accommodation is ordinarily unreasonable, does the employer bear the burden of proving the accommodation would violate the rules of a seniority system or is the employer's burden simply one of articulating a non-discriminatory reason	9/28/18	
The Presbyterian Church in Morristown v. Freedom From Religion Found. , 18-365, 181 A.3d 992 (N.J.)	Religion: Does the categorical exclusion of active houses of worship from a competitive government grant program advancing the secular interest of historic preservation violate the free exercise clause of the Constitution	9/18/18	
Morris Cty. Bd. of Chosen Freeholders v. Freedom From Religion Found. , 18-364, 181 A.3d 992 (N.J.)	Religion: Does the categorical exclusion of active houses of worship from a competitive government grant program advancing the secular interest of historic preservation violate the free exercise clause of the Constitution	8/13/18	
City of Pensacola v. Kondrat'yev , 18-351, 2018 BL 323452 (11th Cir.)	Religion: (1) Do plaintiffs have standing to sue under the establishment clause when their only alleged injury consists of the feelings of offense produced by observing a passive religious display; (2) Under <i>Town of Greece v. Galloway</i> must passive religious displays with a long historical pedigree be torn down because of claims that they have the purpose or effect of endorsing religion	9/17/18	
In-N-Out Burger, Inc. v. NLRB , 18-340, 894 F.3d 707 (5th Cir.)	Employment & Labor: (1) Did the respondent's order compelling speech of a private employer violate the First Amendment in light of this court's recent holdings in <i>Janus v. AFSCME</i> , 2018 BL 228001 (2018), and <i>Nat'l Inst. of Family Life Advocates v. Becerra</i> , 2018 BL 225930 (2018); (2) Did the respondent and the U.S. Court of Appeals for the Fifth Circuit err in their application of the respondent's special circumstances test in this case, in conflict with the respondent's own precedent and decisions of other circuits, and is the test so muddled and internally inconsistent as to be unenforceable	9/11/18	

PENDING PETITIONS FOR CERTORARI

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE FILED	ADDITIONAL INFORMATION
<i>Yovino v. Rizo</i> , 18-272, 887 F.3d 453 (9th Cir.)	Employment & Labor: (1) The Equal Pay Act permits employers to pay men and women different wages for the same work "where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex." 29 U.S.C. § 206(d)(1). Is prior salary a "factor other than sex"; (2) May deceased judges continue to participate in the determination of cases after their deaths	8/30/28	
<i>Sinegal v. Polk</i> , 18-122, 714 Fed. Appx. 457 (5th Cir.)	Employment & Labor: (1) Is candidacy for political office, standing alone, a protected right under the First Amendment; (2) Did the Fifth Circuit err in holding that the petitioner's supervisor was not entitled to qualified immunity when Fifth Circuit precedent did not clearly establish that candidacy alone was a protected First Amendment right until a year after Polk's termination	7/24/18	
<i>R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC</i> , 18-107, 884 F.3d 560 (6th Cir.)	Employment & Labor: (1) Did the word "sex" in Title VII's prohibition on discrimination "because of...sex," 42 U.S.C. §2000e-2(a)(1), mean "gender identity" and include "transgender status" when Congress enacted Title VII in 1964; (2) Does <i>Price Waterhouse v. Hopkins</i> , 490 U.S. 228 (1989), prohibit employers from applying sex-specific policies according to their employees' sex rather than their gender identity	7/30/18	Scheduled for Conference 11/30/18 <i>Legal Clips</i> summary of Sixth Circuit panel opinion available at https://www.nsba.org/legalclips/2018/03/29/sixth-circuit-rules-title-vii-prohibits-sex-discrimination-against-transgender
<i>Kennedy v. Bremerton Sch. Dist.</i> , 18-12, 869 F.3d 813 (9th Cir.)	Employment & Labor: Do public school teachers and coaches retain any First Amendment rights when at work and "in the presence of" students	6/25/18	<i>Legal Clips</i> summary of Ninth Circuit panel decision available at https://www.nsba.org/legalclips/2017/09/12/ninth-circuit-panel-rules-washington-state-district-did-not-retaliate-against

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CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE FILED	ADDITIONAL INFORMATION
<i>Altitude Express, Inc. v. Zarda</i> , 17-1623, 883 F.3d 100 (2d Cir.)	Employment & Labor: Does the prohibition in Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a)(1), against employment discrimination “because of...sex” encompass discrimination based on an individual's sexual orientation	5/29/18	
<i>Bostock v. Clayton County, Ga.</i> , 17-1618, 723 Fed.Appx. 964 (11th Cir.)	Employment & Labor: Does discrimination against an employee because of sexual orientation constitute prohibited employment discrimination “because of . . . sex” within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2	5/25/18	

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