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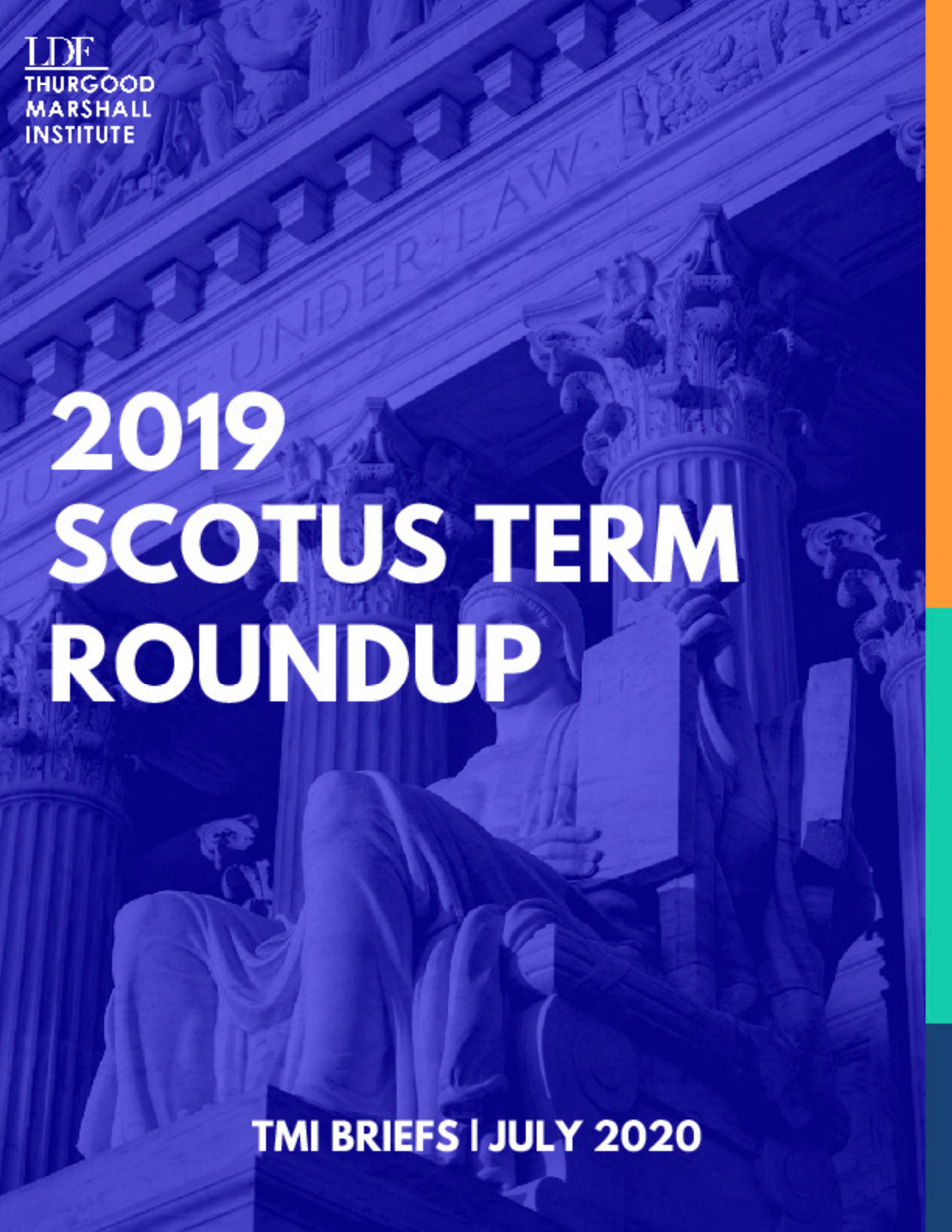
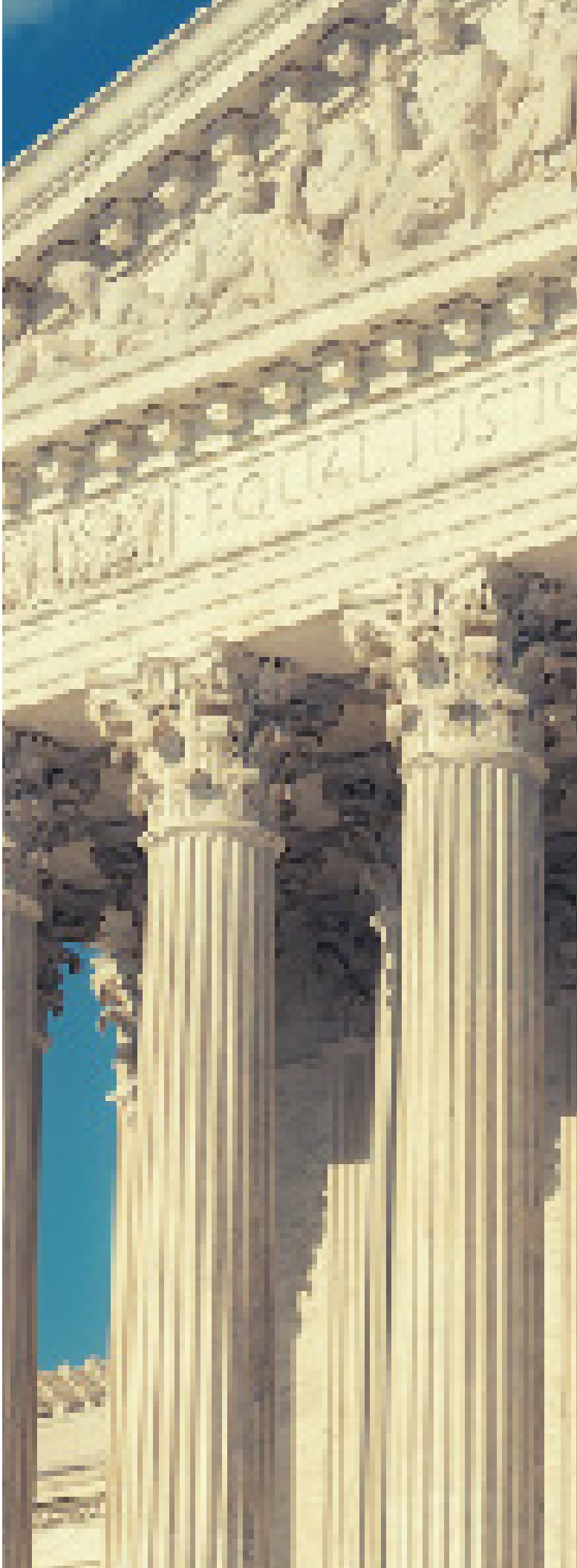


2019 SCOTUS TERM ROUNDUP

TMI BRIEFS | JULY 2020

CONTENTS



2019 SCOTUS TERM ROUNDUP

From its inception, the NAACP Legal Defense and Educational Fund, Inc. (LDF) has served on the front lines of civil rights litigation efforts, including many groundbreaking cases before the U.S. Supreme Court. Only the government has argued more civil rights cases before the Supreme Court. In its October 2019 Term, the Court agreed to hear 74 cases but postponed consideration in twelve cases to the October 2020 Term due to the COVID-19 pandemic. Of the cases it considered this term, LDF filed or joined an amicus brief in five that affect civil rights: *Bostock v. Clayton County, Georgia*; *Ramos v. Louisiana*; *Department of Homeland Security v. Regents of University of California*; *Comcast Corporation v. National Association of African-American Owned Media*; and *June Medical Services LLC v. Russo*. We highlight those cases here as well as two additional cases with civil rights implications: *Kansas v. Glover* and *Mathena v. Malvo*.

Our 2019 Term Roundup provides a snapshot of the issue in each case, the outcome, and its impact on our rights. Our hope is that this summary will be easy to digest (without too much legal jargon) and will underscore the importance of the U.S. Supreme Court (and other courts) to our lives and the future of our democracy. Special thanks to Arthur Lien for the use of his court renderings.

June Medical Services L.L.C. v. Russo – Reproductive Rights

For almost 50 years, the United States Supreme Court has recognized that the constitutional right to privacy encompasses a person's decision whether to terminate their pregnancy. Additionally, since the Supreme Court's ruling in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Court has held that any state law restricting abortions cannot pose an "undue burden," or a substantial obstacle, to abortion rights. The Court reiterated this holding in 2016, when it held in *Whole Woman's Health v. Hellerstedt* that a Texas law requiring doctors who perform abortions to have admitting privileges—that is, the authority to admit patients to a hospital if they need urgent care—within 30 miles of an abortion clinic was an unconstitutional burden on the right to an abortion.

In *June Medical Services LLC v. Russo*, the Supreme Court was asked to consider whether Louisiana's materially identical admitting privileges requirement was constitutional. LDF joined an amicus brief with 12 other civil rights organizations in support of June Medical Services. In their brief, LDF argued that Louisiana's admitting privileges law imposes an undue burden on all people, and especially on Black women, who, because of poverty and systemic economic oppression, face particularly high burdens in seeking abortion care. Louisiana's admitting privileges law would only exacerbate the economic barriers, and thus impede Black women's access to abortions.

In a 4-1-4 decision, the Supreme Court struck down Louisiana's admitting privileges requirement. Four justices held that the law posed an unconstitutional burden and a substantial obstacle to an abortion. In a separate opinion, Chief Justice Roberts held that Louisiana's law is unlawful under the Supreme Court's decision in *Whole Woman's Health*, which the Court was obligated to follow under principles of stare decisis, a legal doctrine that obligates courts to follow prior decisions.

This case is a victory for reproductive rights advocates and maintains abortion access for low-income families and people of color in Louisiana.

Dept. of Homeland Security v. Regents of Univ. of California; Trump v. NAACP; McAleenan v. Vidal – Deferred Action for Childhood Arrivals

In 2012, during the Obama Administration, the Department of Homeland Security (DHS) announced an immigration program known as Deferred Action for Childhood Arrivals (DACA). The program allows individuals who entered the United States as children to apply for a two-year forbearance from removal if they meet certain criteria and makes them eligible to receive certain social benefits, including Social Security and Medicaid. Since its implementation, more than 700,000 individuals have availed themselves of the program.

Credit: Arthur Lien

In 2017, the U.S. Attorney General advised DHS's Acting Secretary to rescind DACA based on his conclusion that the policy was unlawful. The Acting Secretary issued a memorandum terminating the program on that basis. DACA recipients and other affected individuals and entities challenged DHS's termination of the program.

They argued that the termination violated the Administrative Procedure Act (APA), which requires agencies to engage in reasoned decision making and directs that agency actions be set aside if they are "arbitrary" or "capricious" and violated the equal protection guarantee recognized under the Fifth Amendment's Due Process Clause.

In a separate opinion, Justice Sotomayor disagreed with the Court's dismissal of the equal protection claim because she concluded that "the complaints each set forth particularized facts"—including President Trump's derogatory statements regarding Latinx people, the impact of the DACA termination on Latinx communities, and DHS's alleged about-face in rescinding the policy—"that plausibly allege discriminatory animus."

LDF filed an amicus brief on the equal protection issue, submitting that the Fifth Amendment prohibits the federal government from basing policy judgments about whether to terminate the DACA program on racial discrimination.

LDF argued that the multi-factor framework outlined in *Arlington Heights v. Metropolitan Housing Development Corporation* applies to racial discrimination claims regarding changes to immigration programs. LDF's brief also reiterated why the *Arlington Heights* framework is important for identifying discrimination that may underly facially neutral laws—including in the immigration context.

In a 5-4 decision, the Court held that DHS's decision was subject to judicial review under the APA. Applying the APA, the Court found that the decision to terminate DACA was arbitrary and capricious in violation of the APA because DHS did not consider the protection from deportation that DACA conferred and the related reliance interests it engendered in DACA recipients.

Unfortunately, however, the Court rejected the equal protection claim and held that the plaintiffs failed to plausibly plead that DHS's decision to terminate DACA was motivated by racial animus. Relying on Arlington Heights, the Court concluded that several factors—including that (1) the termination decision disparately impacted Latinos from Mexico, who represent 78% of DACA recipients, (2) the history behind the termination, and (3) pre- and post- election statements by President Trump evincing racial animus—were not enough to raise a plausible inference that the termination was motivated by animus.

Bostock v. Clayton County, Georgia; Altitude Express Inc. v. Zarda; R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC -
Title VII – Employment Discrimination Against LGBTQ Individuals

Credit: Arthur Lien

During the peak of the Civil Rights Movement, Congress passed the 1964 Equal Employment Opportunities Act, later known as Title VII of the Civil Rights Act of 1964. Title VII, one of the foundational anti-discrimination statutes, outlaws employment discrimination by private and governmental employers. The statute explicitly prohibits employers from discriminating against workers based on race, color, religion, sex, or national origin. In these consolidated cases, the Court considered whether Title VII prohibits discrimination against gay and transgender individuals.

The employees in *Bostock v. Clayton County, Georgia*, and *Altitude Express, Inc. v. Zarda*, were both gay men who were fired after their employers found out they were gay. In *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC*, the employee was fired after she informed her employer of her lifelong struggle with gender identity and her decision to transition from male to female by first living and working as a woman before undergoing sex reassignment surgery. The employees in all three cases sued their employers, arguing that they were terminated because of their sex, sexual orientation, or sexual identify in violation of Title VII.

LDF joined 58 other civil rights organizations in an amicus brief on behalf of the employees. The brief highlighted Title VII's critical role in advancing civil rights and emphasized that LGBTQ workers of color face particularly high levels of discrimination and that it can be difficult to disentangle sexual orientation discrimination from race discrimination. Finally, the brief noted that excluding LGBTQ discrimination from Title VII protection would call into question settled law around other forms of discrimination long considered within Title VII's scope.

In a momentous 6-3 decision, the Supreme Court agreed with the employees and held that Title VII's text prohibits employment discrimination against LGBTQ persons. The Court emphasized that Title VII prohibits employment discrimination "because of [an] individual's race, color, religion, sex, or national origin." This prohibition on employment discrimination "because of . . . sex" necessarily encompasses employment discrimination against LGBTQ persons. The Court's application of Title VII to LGBTQ persons conclusively and definitively shields LGBTQ individuals from harassment and discrimination in the workplace. This clear reading and interpretation of Title VII will help root out and quell discrimination against all groups protected by Title VII.

Ramos v. Louisiana – Sixth Amendment Right to a Jury Trial

After the Civil War, Congress passed the Fourteenth Amendment and the Civil Rights Act of 1875 to protect the rights of newly freed African Americans. One of the most important rights protected by these provisions was the right to serve on a jury. In 1868, the year that the Fourteenth Amendment was ratified, the right to a jury trial was explicitly protected by state constitutions in 36 out of the 37 states. In 1898, however, Louisiana convened a constitutional convention and ratified a non-unanimous jury provision. There is overwhelming evidence that Louisiana's non-unanimous jury provision was enacted with discriminatory intent and was designed to facilitate the conviction of Black defendants over the dissent of Black jurors. Non-unanimous juries effectively allow the exclusion the Black jurors who sit on them, as their voices—which are much more likely to be dissenting than those of White jurors—are diluted on majority-White juries. In 2018, Louisiana voters approved a measure to remove the non-unanimous jury provision from the State's constitution. The constitutional amendment did not, however, provide retroactive relief for those convicted under the discriminatory non-unanimous jury system created by the state in 1898.

In 2016, Evangelisto Ramos was convicted of second-degree murder in Louisiana by ten members of a 12-person jury. Ramos was sentenced to life in prison without the possibility of parole. His sentence was upheld by a Louisiana appellate court, which rejected his argument that the Sixth Amendment to the U.S. Constitution requires a unanimous jury verdict. In affirming Mr. Ramos's conviction, the Louisiana appellate court relied on the U.S. Supreme Court's decision in *Apodaca v. Oregon*, in which the Supreme Court refused to incorporate the Sixth Amendment's unanimity requirement in claims against the states and held that non-unanimous state jury verdicts are constitutional.

LDF's amicus brief before the Supreme Court explained that the Sixth Amendment right to a unanimous jury verdict to convict an individual of a crime should apply to the states. The brief argued that (1) the history and purpose of the Fourteenth Amendment compel the incorporation of the Sixth Amendment right to a unanimous jury trial; (2) as reflected in the official record from Louisiana's Constitutional Convention in 1898, Louisiana's non-unanimous jury provision was designed to nullify Black jury service; and (3) the discriminatory design of Louisiana's non-unanimous jury provision persisted as intended by the drafters of the provision.

In a 6-3 decision, the Supreme Court held that Louisiana's law authorizing a criminal defendant's conviction without a unanimous jury verdict is unconstitutional under the Sixth Amendment, which is incorporated against the states through the Fourteenth Amendment. Now many defendants convicted under Louisiana's (and Oregon's) non-unanimous jury regime. The Court will consider whether its holding applies retroactively to cases that have exhausted their direct appeals in the October 2020 term.

Credit: Arthur Lien

Comcast Corp. v. National Association of African-American Owned Media – Right to Make Contracts Free from Racial Discrimination

Passed as part of the Civil Rights Act of 1866, 42 U.S.C. § 1981 broadly prohibits racial discrimination in economic transactions by mandating that "[a]ll persons . . . shall have the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens." The question before the Court in *Comcast Corporation v. National Association of African American-Owned Media* was whether a plaintiff bringing a claim under § 1981 "must first plead and then prove that its injury would not have occurred "but for" the defendant's unlawful conduct."

In this case, African American actor and entrepreneur Byron Allen repeatedly attempted to secure a contract for his company Entertainment Studios Networks, Inc. (ESN) with Comcast. Mr. Allen is the sole owner of ESN, which has seven individual lifestyle channels. The ESN channels are carried by many major distributors, including Verizon FIOS, AT&T U-verse, and DIRECTV. Beginning in 2008, ESN attempted repeatedly to secure a contract with Comcast, but Comcast consistently declined. Despite assuring ESN that its channels were "good enough" and on the "short list" for consideration, Comcast opted to carry more than 80 less popular, White-owned channels. One Comcast executive candidly told ESN why it refused to contract: "We're not trying to create any more Bob Johnsons," referring to the African American founder of Black Entertainment Television. ESN and the National Association of African American-Owned Media sued Comcast, alleging that its decision not to carry ESN's channels violates § 1981. The district court dismissed the case at the pleading stage, finding that Mr. Allen's allegations did not sufficiently exclude the possibility of an alternative explanation for Comcast's decision that would be justified based on legitimate business reasons.

LDF, along with ten other civil rights organizations, filed an amicus brief supporting ESN and the National Association of African American-Owned Media, maintaining that § 1981 does not require a plaintiff to prove "but-for" causation to bring a § 1981 claim. Alternatively, LDF's brief argued that issues of but-for causation can rarely be resolved based on the allegations in a plaintiff's complaint, thus counseling against dismissal at the early stages of the lawsuit. There can be multiple but-for causes of a defendant's conduct and deciding among potential but-for causes requires discovery and a trial.

The Court unanimously held, contrary to our argument, that a plaintiff must meet a "but-for causation" standard in § 1981 cases. In so doing, the Court created a standard that makes it difficult for plaintiffs to satisfy the pleading requirements for a race discrimination claim under § 1981. Theoretically, some defendants who are motivated by racial discrimination will nonetheless escape liability if the plaintiff cannot adequately plead, and then prove, that the defendants' discrimination caused them to take some action against plaintiffs. However, the Court left open an important question whether § 1981 prohibits discrimination in the process of forming a contract, as the plaintiffs argued, or is limited to situations where a defendant's discrimination impacts the outcome of the contractual process, as Comcast and the United States argued.

Kansas v. Glover –
Investigative Stop Under the Fourth Amendment

Under the Fourth Amendment to the U.S. Constitution, which prohibits "unreasonable searches and seizures," a police officer can initiate a brief investigative traffic stop (a seizure) when they have specific reasons to suspect a person of legal wrongdoing. This level of suspicion is known as "reasonable suspicion" and requires that all the facts and circumstances leading up to a stop justify the seizure.

In *Kansas v. Glover*, Charles Glover, was driving his pickup truck when a sheriff's deputy randomly ran the license plate and received a report indicating that Mr. Glover, the registered owner, had a revoked driver's license. The deputy assumed the registered owner was driving the truck and pulled the truck over. Mr. Glover sought to suppress any evidence from the stop, arguing that the officer lacked reasonable suspicion to stop him.

The Supreme Court held in an 8-1 opinion that the officer had reasonable suspicion to stop Mr. Glover because the officer knew, at the time, that a driver was operating a pickup truck, and the registered owner of the pickup truck had a revoked license. The Court's opinion allows police to stop a vehicle based on a registered owner's license status, and any such stop will likely be justified under the Fourth Amendment.

Mathena v. Malvo – Juvenile Life Without Parole Sentences Under the Eighth Amendment

In *Montgomery v. Louisiana*, the U.S. Supreme Court confirmed that: (1) imposing a life-without-parole sentence on a juvenile homicide offender pursuant to a mandatory penalty scheme violates the Eighth Amendment to the U.S. Constitution, as construed in *Miller v. Alabama*; and (2) sentencing judges also violate *Miller's* rule any time they impose a discretionary life-without-parole sentence on a juvenile homicide offender without first concluding that the offender is permanently incapable of reform.

Credit: Arthur Lien

In 2002, then-17-year-old Lee Boyd Malvo and John Allen Muhammad, also known as the "DC Snipers," engaged in a series of random sniper shootings that killed 12 people and injured six others in the Washington, D.C. metropolitan area. Mr. Malvo was sentenced to life without the possibility of parole pursuant to Virginia's "discretionary" sentencing scheme. Following the Supreme Court's decisions in *Miller* and *Montgomery*, he sought to have his sentences vacated. The district court vacated Mr. Malvo's sentences, finding that *Miller* applies to all situations in which juveniles receive a life-without-parole sentence, irrespective of whether the "penalty scheme is mandatory or discretionary." The Fourth Circuit Court of Appeals affirmed.

On February 24, 2020, Virginia passed a law making juvenile offenders eligible for parole after serving 20 years of their sentences, and on February 26, 2020, the Supreme Court dismissed the case from its merits docket, leaving the Fourth Circuit's decision in place. On March 9, 2020, the Court took up another case raising a similar question, J*ones v. Mississippi*, which it will consider during the October 2020 Term.