TMI BRIEFS OCTOBER 2020

2020 SCOTUS PREVIEW

LDF

THURGOOD MARSHALL INSTITUTE

TMI BRIEFS OCTOBER 2020

2020 SCOTUS PREVIEW

Table of Contents

LDF
THURGOOD MARSHALL INSTITUTE

SCOTUS 2020 Term Preview

From its inception, the NAACP Legal Defense and Educational Fund, Inc. ("LDF") has served on the front lines of civil rights litigation efforts. Only the government has litigated more civil rights cases before the U.S. Supreme Court. Our goal is to keep our supporters abreast of key developments in civil rights jurisprudence by providing substantive, concise overviews of the noteworthy cases before the Supreme Court. Of the many cases the Court will hear this term, we have highlighted five that present issues related to civil rights. These cases are *Torres v. Madrid; Jones v. Mississippi; Brownback v. King; Edwards v. Vannoy;* and *Brnovich v. Democratic National Committee*.

In each case snapshot, we provide the question presented, the background of the case, the key legal issues, the case's importance to civil rights, and a description of LDF's amicus brief, if applicable. We hope this summary will be easy to digest and will underscore the importance of the Supreme Court (and other courts) to our lives and the future of our democracy.

Torres v. Madrid

ARGUMENT DATE: OCTOBER 14, 2020

QUESTION PRESENTED: Whether an unsuccessful attempt to detain a suspect by use of physical force is a "seizure" within the meaning of the Fourth Amendment to the U.S. Constitution, or whether an officer must successfully physically detain a suspect to effect a "seizure."

BACKGROUND: Early in the morning on July 15, 2014, Roxanne Torres was sitting in the driver seat of her parked car when two state police officers—Officers Janice Madrid and Richard Williamson—approached her vehicle.[1] The officers wore dark clothing, and Ms. Torres did not recognize them as police officers.[2] The officers shouted commands at Ms. Torres, but Ms. Torres did not hear them. When the officers pulled their guns, Ms. Torres—believing the officers were carjackers—started driving forward.[3] As the car inched forward, the officers opened fire on Ms. Torres, trying to stop her from leaving.[4] The officers fired thirteen shots at Ms. Torres; two of the bullets entered her back, temporarily paralyzing her left arm.[5] Ms. Torres drove a short distance before losing control of her car and stopping.[6] She got out of her car and asked a bystander to call the police for help, but she did not receive a response from the officers.[7] Ms. Torres drove herself to a nearby hospital and sustained major injuries.[8] The following day, Ms. Torres was arrested at the hospital on charges related to the incident.[9]

Ms. Torres sued Officers Madrid and Williamson under 42 U.S.C. § 1983 (a federal civil rights statute that allows a plaintiff to sue for damages when a state official violates their constitutional rights), alleging the officers violated her Fourth Amendment right to be free from unreasonable seizures when they shot her twice in the back.[10] The officers sought to dismiss Ms. Torres's lawsuit, and the district court granted their request, holding that an excessive force claim requires an actual "seizure," but Ms. Torres was never seized because the officers never acquired physical control of her.[11] The U.S. Court of Appeals for the Tenth Circuit affirmed, holding that Ms. Torres was not seized under the Fourth Amendment because, "[d]espite being shot, Torres did not stop or otherwise submit to the officers' authority."[12]

KEY ISSUES: The Fourth Amendment protects individuals against unlawful seizure by law enforcement.[13] The Supreme Court has made clear that a "seizure" under the Fourth Amendment occurs when police either apply any amount of physical force to a person or take action that would make a reasonable person feel not free to leave an interaction.[14] Whether a person has been lawfully seized by law enforcement is the source of substantial litigation. Circuit courts are split on the issue: some courts, including the U.S. Courts of Appeal for the Eighth, Ninth, and Eleventh Circuits, have held that a person is seized within the meaning of the Fourth Amendment even when an officer's attempt to physically seize that person are unsuccessful. Other courts, including the U.S. Courts of Appeal for the Tenth and D.C. Circuits, have held the opposite: a person must be successfully apprehended to effect a physical seizure under the Fourth Amendment. The Supreme Court will resolve this circuit split.

IMPORTANCE AS A MATTER OF CIVIL RIGHTS: LDF filed an amicus brief in support of Ms. Torres and disagreeing with the Tenth Circuit's holding.[15] LDF urged that the Tenth Circuit's position would leave many innocent victims of police shootings without a legal remedy under § 1983. Such a holding would be particularly troubling for African-American communities, which have disproportionately been victims of police violence that often involve weapons and specifically firearms.

Jones v. Mississippi

ARGUMENT: NOVEMBER 3, 2020

QUESTION PRESENTED: Whether the Eighth Amendment requires a sentencing court to make an explicit finding that a juvenile offender—a person who is convicted of a crime before turning 18 years old—is "permanently incorrigible" before imposing a sentence of life without the possibility of parole.

BACKGROUND: In August 2004, when he was 15-years-old, Brett Jones stabbed his paternal grandfather to death during a fight about Brett's girlfriend.[16] Brett had moved in with his grandparents in Mississippi two months prior to escape from his mother's and stepfather's violent household in Florida.[17] Immediately after the incident, Brett and his girlfriend set out for the nearby Walmart where Brett's grandmother worked to tell her what happened.[18] Brett and his girlfriend were arrested on their way to the Walmart.[19]

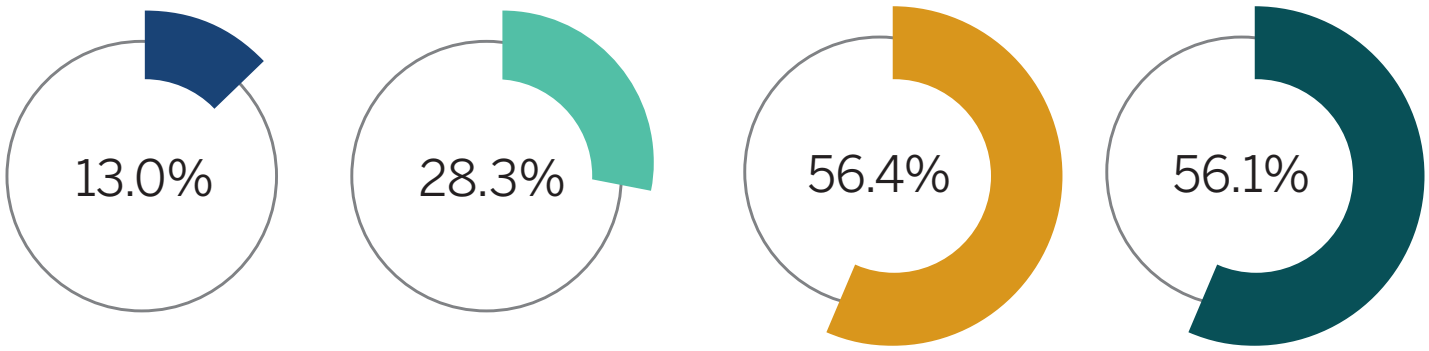
Brett was tried for murder and asserted a claim of self-defense. The jury rejected the self-defense claim, and he was convicted of murder.[20] The court sentenced Brett to spend the rest of his life in prison without the possibility of parole.[21] In 2013, following the Supreme Court's decision in *Miller v. Alabama*, in which the U.S. Supreme Court held that the imposition of a life-without-parole sentence for a juvenile offender violated the Eighth and Fourteenth Amendment's prohibition against cruel and unusual punishment, the Mississippi Supreme Court vacated Brett's sentence and remanded to the circuit court.[22] The Mississippi Supreme Court did not interpret Miller to restrict life without parole sentences only to permanently incorrigible juvenile offenders, but instead opined that a court can impose a life without parole sentence on a juvenile so long as the court considers youth-related factors when making its sentencing determination.[23] The Mississippi Supreme Court thus directed the circuit court to consider a set of "juvenile characteristics" but not to determine whether Brett was permanently incorrigible.[24]

After a hearing on the youth-related factors, the circuit court resentenced Brett to life without parole. The court did not find Brett permanently incorrigible, but instead considered both mitigating and aggravating circumstances surrounding the crime, focusing on the nature of Brett's crime, which the circuit court described a "particularly brutal."[25] Brett appealed his sentence, which was assigned to the Mississippi Court of Appeals. While the appeal was pending, the U.S. Supreme Court decided *Montgomery v. Louisiana*, which concluded that *Miller* applied retroactively and confirmed that *Miller* "barred life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility."[26] The court of appeals affirmed Brett's sentence, concluding that a sentencing judge is not required to make any specific finding of fact regarding the Miller factors. The Mississippi Supreme Court also denied Brett relief.

KEY ISSUES: In Montgomery, the Supreme Court confirmed that imposing life without parole on a juvenile homicide offender pursuant to a mandatory penalty scheme violates the Eighth Amendment as construed in *Miller*, and sentencing judges 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's crimes reflect "permanent incorrigibility," and not "the transient immaturity of youth."[27] Despite Montgomery's

holding, courts throughout the country continue to sentence youth offenders to life without the possibility of parole without making an adequate finding of permanent incorrigibility. In this case, the Supreme Court will determine whether courts are required to make a formal finding and, if so, what their obligation will be under Miller and Montgomery.

IMPORTANCE AS A MATTER OF CIVIL RIGHTS: LDF co-wrote an amicus brief in support of Brett Jones, urging the justices to recognize that a sentencing court must find that a juvenile offender is permanently incorrigible before sentencing that person to life in prison without the possibility of parole.[28] Poor Black children are most likely to feel the impact of juvenile life without parole practices. In its 2014 report on racial disparities in sentencing, the ACLU observed that "although Blacks constitute only about 13 percent of the U.S. population, as of 2009, Blacks constitute 28.3 percent of all lifers, 56.4 percent of those serving [life without parole], and 56.1 percent of those who received [life without parole] for offenses committed as juveniles."[29] LDF argued that requiring sentencing courts to make findings of permanent incorrigibility will help to avoid biased sentencing and reduce the risk that sentencing courts will continue to impose life without parole sentences on Black children who are capable of reform.[30]



Black population of the United States

Black percentage of all lifers

Black percentage of those serving who have been sentenced to life in prison without parole

Black percentage of those serving who have been sentenced to life in prison without parole for offenses committed as juveniles

LDF THURGOOD MARSHALL INSTITUTE

Brownback v. King

ARGUMENT: NOVEMBER 9, 2020

QUESTION PRESENTED: The law provides persons injured or otherwise wronged by the federal government with few avenues for legal redress in the courts. One of those is the Federal Tort Claims Act (FTCA),[31] which authorizes specific categories of claims against the United States for torts committed by federal employees while acting within the scope of their employment. Another is a Bivens claim, which comes from the Supreme Court case Bivens v. Six Unknown Named Agents,[32] in which the Court held that a person could sue a federal officer for damages stemming from specific constitutional violations. Both claims have limits, however. As relevant here, under the FTCA, if a claim is dismissed in favor of the United States, the claimant is barred from bringing another claim that involves the same subject matter and the same parties. This is known as the FTCA's judgment bar.

The question in this case is whether a district court's dismissal of tort claims against the United States for lack of subject-matter jurisdiction under the FTCA bars a claimant from asserting Bivens claims involving the same federal employees and arising from the same subject matter.

BACKGROUND: In July 2014, members of a joint federal-state police task force in Grand Rapids, Michigan, were searching for a person named Aaron Davison, who was the subject of an outstanding arrest warrant.[33] The officers had few descriptive details about Mr. Davison, though they knew that he visited a gas station in Grand Rapids between 2 p.m. and 4 p.m. almost every day.[34] The officers surveilled the gas station on July 14 around 2:30 p.m. and saw a man, James King, who fit the vague description in the arrest warrant walking near the gas station.[35] The officers, wearing plain clothes and without badges, approached Mr. King and asked him for his name.[36] Mr. King responded, and the officers asked him for identification, to which he replied he did not have any.[37] The officers removed Mr. King's wallet and pocketknife from his pocket.[38] Mr. King asked the officers—who had not identified themselves—whether they were mugging him, and then he attempted to run away.[39] One of the officers chased Mr. King, tackled him, and placed him in a chokehold, causing Mr. King to lose consciousness for several seconds.[40] At some point in the scuffle, the officers started punching Mr. King in the head and face, and ultimately subdued and arrested him.[41] Mr. King was jailed, charged with several felonies for his resistance, and was tried before a jury, which found Mr. King not guilty on all charges.[42]

Following his acquittal, Mr. King sued the United States for tort violations under the FTCA and sued the officers for violating his Fourth Amendment right to be free from unreasonable seizure. On the government's motion, the district court dismissed Mr. King's FTCA claim for lack of subject-matter jurisdiction and dismissed his constitutional claims as barred by qualified immunity. Mr. King appealed the district court's ruling on his constitutional claims but not his claims under the FTCA. On appeal, the government argued that because Mr. King did not appeal the tort claims against the United States, the lower court's dismissal of those claims became final and non-appealable and the FTCA's judgment bar precluded Mr. King from pursuing his constitutional claims on appeal. The Sixth Circuit Court of Appeals disagreed, holding that the FTCA did not bar Mr. King from maintaining his claims against the officers because the district court lacked subject-matter jurisdiction over Mr. King's FTCA claim. The Sixth Circuit also held that

Mr. King had alleged meritorious constitutional claims and the officers were not entitled to qualified immunity. The government appealed to the U.S. Supreme Court.

KEY ISSUES: Generally, private litigants cannot sue the United States for damages under the doctrine of sovereign immunity. The FTCA waives the United States' sovereign immunity for tort claims that meet the statute's terms.[43] The FTCA's remedy is generally "exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the [federal] employee whose act or omission gave rise to the claim."[44] The FTCA also imposes a judgment bar, which establishes that a plaintiff who "receives a judgment in an FTCA suit . . . generally cannot proceed with a suit against an individual employee based on the same underlying facts." The Supreme Court has previously held that the FTCA's judgment bar does not apply to FTCA claims that fall under the FTCA's "exceptions."[45] In this case, the Court will have the opportunity to decide whether the FTCA's judgment bar applies to cases dismissed for lack of subject-matter jurisdiction under other provisions of the statute.

IMPORTANCE AS A MATTER OF CIVIL RIGHTS: The proliferation of joint state-federal task forces means communities—and specifically Black communities—are policed by federal agents, many of whom perform their work without any accountability. One important tool for accountability is redress through the courts. But such redress is difficult to obtain, especially because of doctrines like qualified immunity, a court-made rule that shields officers accused of violence or misconduct from liability. An expansive reading of the FTCA's judgment bar would be another means of shielding the United States and its employees from liability for constitutional and tort violations without ever reaching the merits of the claims.

The question in this case is whether a district court's dismissal of tort claims against the United States for lack of subject-matter jurisdiction under the FTCA bars a claimant from asserting Bivens claims involving the same federal employees and arising from the same subject matter.

Edwards v. Vannoy

ARGUMENT: NOVEMBER 30, 2020

QUESTION PRESENTED: Whether the Supreme Court's decision in *Ramos v. Louisiana* applies retroactively to cases on federal collateral review.

BACKGROUND: This case arises from a series of crimes that occurred near Louisiana State University in May 2006.[46] Over the course of a week, two armed assailants committed two robberies and raped two women.[47] The Baton Rouge Police Department focused on Thedrick Edwards as a suspect, and two days after the second robbery, officers obtained and executed a warrant to search Mr. Edwards' home but did not find anything related to the crimes.[48] Mr. Edwards voluntarily surrendered to the officers and, after several interviews—including one during which Mr. Edwards alleged the officers used force—Mr. Edwards confessed.[49] Mr. Edwards was arrested and indicted on multiple counts, to which he pleaded not guilty.[50] During jury selection, the State used 10 of its 11 strikes to eliminate all but one Black person from the jury, leaving one Black juror to serve on the jury.[51] At the conclusion of trial, Mr. Edwards was convicted by non-unanimous juries; in each instance, the sole Black juror voted to acquit Mr. Edwards of the charges.[52]

At the time of his conviction, in 48 states and in federal court, a single juror's vote to acquit would have been enough to prevent a conviction. But in Louisiana, a finding of guilt by a mere ten jurors was all that was necessary to secure a conviction, and Mr. Edwards was sentenced to 30 years' imprisonment without parole for the robbery charges, and a life sentence without parole for the kidnapping and rape charges.[53] The Louisiana Court of Appeal and Louisiana Supreme Court affirmed Mr. Edwards' convictions, and a federal district and appellate court denied his requests for habeas relief.

While Mr. Edwards' case was pending in federal court, the Supreme Court decided Ramos, in which it held that the Sixth Amendment requires conviction by a unanimous jury, even in state court.

KEY ISSUES: In 2018, Louisianans voted to remove the non-unanimous jury provision from their state constitution.[54] The constitutional amendment did not, however, provide retroactive relief to those convicted under the non-unanimous jury system created in 1898. And the Court's rule in Ramos only applied to cases pending before a state or federal court at the time of the decision. This is because of the longstanding rule that cases announcing "new" rules only apply prospectively. Under the Supreme Court ruling in *Teague v. Lane*,[55] however, the Court ruled that "new" rules would have retroactive effect if they fell into one of two categories: "watershed" new procedural rules that implicate fundamental fairness and accuracy in criminal trials,[56] and "substantive" new rules that place persons beyond the State's power to punish.[57] The Supreme Court has not readily applied new procedural retroactively, and it indicated in Ramos that it is not inclined to do so for the new unanimity rule.

IMPORTANCE AS A MATTER OF CIVIL RIGHTS: LDF filed an amicus brief urging the Court to apply *Ramos* retroactively to cases pending on federal collateral review, emphasizing that Louisiana's non-unanimous jury rule's origins undermine the accuracy of convictions obtained under it.[58] In 1898, White Louisianans convened a constitutional convention and ratified a non-unanimous jury rule. There is overwhelming evidence that Louisiana's non-unanimous jury provision was enacted with discriminatory intent and was designed to facilitate White jurors being able to convict Black defendants over the muted dissent of Black jurors. Louisiana's non-unanimous jury provision functioned as intended, as Black jurors continually found themselves casting not guilty votes overridden by the supermajority vote of non-minority jurors.[59] Such convictions violate the constitution, and persons convicted under the discriminatory non-unanimous jury regime should have an opportunity to have their convictions unanimously decided.

LDF THURGOOD MARSHALL INSTITUTE

Brnovich v. Democratic National Committee

ARGUMENT DATE: TBD

QUESTIONS PRESENTED: The Fifteenth Amendment to the United States Constitution, one of the three constitutional amendments enacted during Reconstruction in the aftermath of the Civil War, established that the right to vote could not be denied or abridged on the basis of race. The amendment went largely ignored and was circumvented for nearly a century, as Southern states adopted an array of laws—including laws requiring people to demonstrate literacy, to prove their good character, or to pay poll taxes—with the purpose of disenfranchising racial minorities. To remedy this discrimination, Congress enacted the Voting Rights Act of 1965 (VRA), which provided a variety of means for the federal government and federal courts to ensure the right to vote is not denied or abridged on the basis of race. Section 2 of the VRA prohibits voting practices or procedures that result in a denial or abridgment of the right to vote based on race.

The questions presented are whether Arizona's out-of-precinct policy, which requires election officials to discard in their entirety ballots cast outside the voter's designated precinct, violates Section 2 and whether Arizona's ballot collection law, which criminalizes the collection and delivery of another person's ballot other than by certain persons (i.e, family and household members, caregivers, mail carriers and election officials), violates Section 2 or the Fifteenth Amendment.

BACKGROUND: Arizona law provides for voting either by mail or in person.[60] Voters who choose to vote in person are required, under a policy announced by the Arizona Secretary of State, to vote at a polling place in their own precinct in precinct-based counties. Voters who do not go to a polling place in their own precinct may cast a provisional ballot. After election day, election officials review the ballots and discard in their entirety those ballots that are cast by out-of-precinct voters. This is the case regardless as to whether the voter has voted for candidates for which she was eligible to vote, such as President, U.S. Senator, or state-wide office holders. The policy adversely impacts minority communities, who because of frequent changes of polling places, confusing placement of polling places, and high rates of residential mobility in minority neighborhoods cast out-of-precinct ballots at twice the rate of their White counterparts.[61]

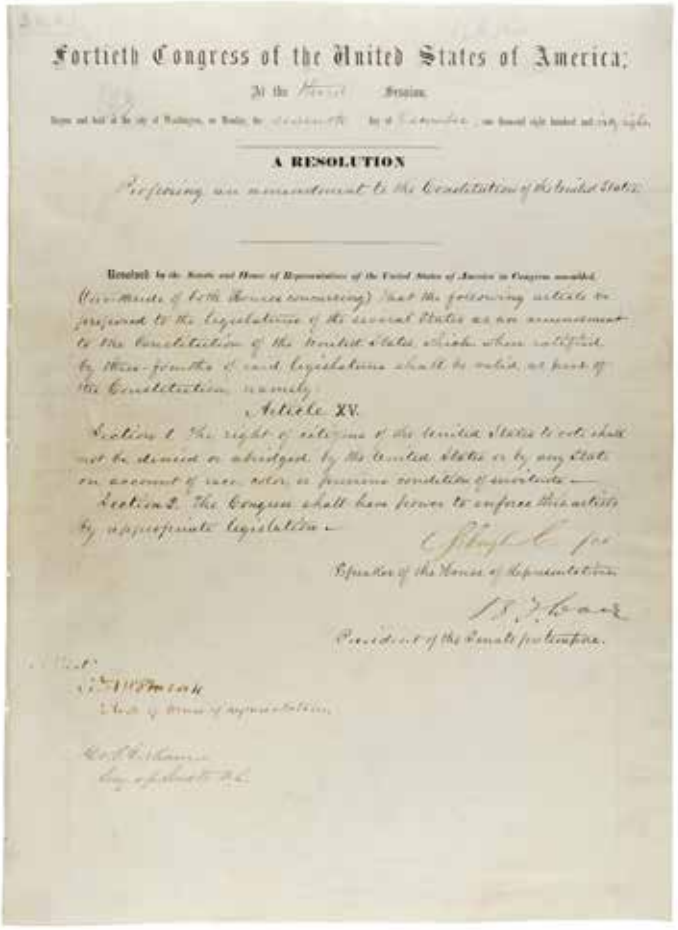
Arizona voters who choose to vote early by mail must generally return their own ballot. Arizona law criminalizes third-party ballot collection, unless the person collecting ballots is the voter's family member, household member, or caregiver.[62] Arizona justifies the statute as necessary to prevent absentee voter fraud and to maintain election integrity.[63]

In 2016, the Democratic National Committee and other plaintiffs sued Arizona's Secretary of State and Attorney General, challenging the State's out-of-precinct policy and ballot-collection statute as a violation of Section 2 of the VRA.[64] The plaintiffs also alleged that the ballot-collection statute was adopted with discriminatory intent and violates the Fifteenth Amendment. Following a ten-day bench trial, the district court found in favor of Arizona on all claims.[65] The DNC appealed to the United States Court of Appeals for the Ninth Circuit, and a divided three-judge panel affirmed the district courts holding.[66] The entire Ninth Circuit voted to rehear the case and reversed the district court's holding.[67] The Ninth Circuit found that the out-of-precinct policy disparately burdens American Indian, Latinx, and Black voters in violation of Section 2, and that the discriminatory burden is in part caused by or linked to social and historical conditions that produce inequality in

minority participation in the political process.[68] Second, the court found that the ballot-collection law disproportionately burdens minority voters, many of whom rely on third parties to collect and deliver their early ballots, that the disparate burden is caused by or linked to social and historical conditions that manifest in unequal opportunities to participate in the political process, and that the ballot-collection law was passed with racially discriminatory intent.[69] The Supreme Court agreed to review the case.

KEY ISSUES: States and localities throughout the county employ seemingly benign policies and laws—such as out-of-precinct policies and prohibitions against ballot collection—that disproportionately burden minority communities. The Supreme Court will determine whether Section 2 of the VRA and the Fifteenth Amendment prohibit these and similar policies.

IMPORTANCE AS A MATTER OF CIVIL RIGHTS: Beginning in 1965, the VRA made real the promise of nondiscrimination in voting. It did so primarily through two tools. Section 2 is one of them. The other is Section 5, which prohibits specific districts with a history of voter discrimination from enacting changes to their election laws and procedures without first obtaining authorization (commonly called the "preclearance provision"). In 2013, however, the Supreme Court immobilized Section 5 of the Voting Rights Act in Shelby County, Alabama v. Holder, where it held that the VRA's preclearance formula exceeds Congress's authority to enforce the Fourteenth and Fifteenth Amendments. The Court's Shelby County holding thus left Section 2 as the main mechanism for challenging discriminatory voting laws and policies.


Fortieth Congress of the United States of America;

A RESOLUTION

Proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both Houses concurring) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said Legislatures, shall be valid, as part of the Constitution, namely:

Article XV.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Speaker of the House of Representatives.

President of the Senate pro tempore.

(top) 15th Amendment to the U.S. Constitution: Voting Rights (1870)Passed by Congress February 26, 1869, and ratified February 3, 1870, the 15th amendment granted African American men the right to vote.

(bottom) President Lyndon B. Johnson celebrates with Martin Luther King, Jr., Ralph Abernathy, and Clarence Mitchell after signing the Voting Rights bill into law. *(Photo by © CORBIS/Corbis via Getty Images)*

Endnotes

1 Brief for Petitioner at 17, Torres v. Madrid, 140 S. Ct. 680 (Jan. 31, 2020) (No. 19-292) (No. 18-1259), 2020 WL 583727 at *4, https://www.supremecourt.gov/DocketPDF/19/19-292/130661/20200131165910890_200111a%20Merits%20Brief%20for%20e-filing.pdf.

2 *Id.* at 5.

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.* at 5–6.

7 *Id.* at 6.

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.* at 6–7.

12 *Id.* at 7.

13 U.S. Const. Amend. IV.

14 *See Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968) (explaining that the Fourth Amendment seizure occurs when an officer restrains the liberty of a citizen either by physical force or by show of authority); *see also California v. Hodari D.*, 499 U.S. 621 (1991); *United States v. Mendenhall*, 446 U.S. 544, 553–54 (1980).

15 Brief of Amicus Curiae NAACP Legal Defense and Educational Fund, Inc., in Support of Petitioner, *Torres v. Madrid*, 140 S. Ct. 680 (Feb. 7, 2020) (No. 19-292), 2020 WL 635277, https://www.supremecourt.gov/DocketPDF/19/19-292/132289/20200207110826521_19-292%20Amicus%20Brief%20of%20NAACP%20LDF.pdf.

16 Brief for Petitioner Brett Jones at 11, *Jones v. Mississippi*, 140 S. Ct. 1293 (June 5, 2020) (No. 18-1259), 2020 WL 3106513 at *3, https://www.supremecourt.gov/DocketPDF/18/18-1259/144986/20200605133639767_18-1259BriefForPetitioner.pdf.

17 *Id.*

18 *Id.* at *4.

19 *Id.*

20 *Id.*

21 *Id.*

22 *Id.*

23 *Id.* at *4–5.

24 *Id.* at *5.

25 *Id.* at *8.

26 *Id.* at *9.

27 *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016).

28 Brief of Amicus Curiae NAACP Legal Defense and Educational Fund, Inc., in Support of Petitioner, *Jones v. Mississippi*, 140 S. Ct. 1293 (June 12, 2020) (No. 18-1259), 2020 WL 3270460, https://www.supremecourt.gov/DocketPDF/18/18-1259/145477/20200612115310689_18-1259%20tsac%20JLC%20et%20al.pdf.

29 Hearing on Reports of Racism in the Justice System of the United States, 153rd Session of the Inter-American Commission on Human Rights (Oct. 27, 2014) (Written Submission of the American Civil Liberties Union on Racial Disparities in Sentencing at 2), https://www.aclu.org/sites/default/files/assets/141027_iachr_racial_disparities_aclu_submission_0.pdf.

30 Brief of LDF, *supra* note 28, 2020 WL 3270460 at *21–26.

31 28 U.S.C. ∬ 1346 et seq.

32 403 U.S. 388 (1971).

33 Brief for the Petitioners, *Brownback v. King* at 13, 140 S. Ct. 2563 (June 19, 2020) (No. 19-546), 2020 WL 3453084 at *5, https://www.supremecourt.gov/DocketPDF/19/19-546/145995/20200619172637885_19-546tsUnitedStates.pdf.

34 *Id.* at *5-6.

35 *Id.* at *6.

36 *Id.*

37 *Id.*

38 *Id.*

39 *Id.*

40 *Id.* at *7

41 *Id.*

42 *Id.*

43 *See* 28 U.S.C. ∬ 1346(b)(1).

44 28 U.S.C. ∬ 2679(b)(1).

45 *Simmons v. Himmelreich*, 136 S. Ct. 1843, 1847-48 (2016).

46 Brief of Petitioner Thedrick Edwards at 14, *Edwards v. Vannoy*, 140 S. Ct. 2737 (July 15, 2020) (No. 19-5807), 2020 WL 4455249 at *3, https://www.supremecourt.gov/DocketPDF/19/19-5807/147838/20200715145538368_Edwards%20-%20Brief%20for%20Petitioner%20FINAL.pdf.

47 *Id.*

48 *Id.* at *3–4.

49 *Id.* at *4.

50 *Id.*

51 *Id.* at *4–5.

52 *Id.* at *5.

53 *Id.* at *6.

54 German Lopez, Louisiana Votes to Eliminate Jim Crow Jury Law with Amendment 2, Vox (Nov. 6, 2018, 10:41 PM), https://www.vox.com/policy-and-politics/2018/11/6/18052540/election-results-louisiana-amendment-2-unanimousjim-crow-jury-law.

55 489 U.S. 288 (1989).

56 *Id.* at 311-13.

57 *Id.* at 311.

58 Brief of Amicus Curiae NAACP Legal Defense & Educational Fund, Inc., in Support of Petitioner Thedrick Edwards, *Edwards v. Vannoy*, 140 S. Ct. 2737 (July 22, 2020) (No. 19-5807), 2020 WL 4450434, https://www.supremecourt.gov/DocketPDF/19/19-5807/148395/20200722134242520_19%205807%20Amicus%20Brief%20of%20NAACP%20Legal%20Defense%20and%20Educational%20Fund%20Inc.pdf.

59 *See* Thomas Ward Frampton, *The Jim Crow Jury*, 71 Van. L. Rev. 1593, 1637 (2018).

60 Brief of Arizona Secretary of State Katie Hobbs at 3, *Brnovich v. Democratic National Committee*, 2020 WL 5847130 (July 1, 2020)(Nos. 19-1257, 19-1258), https://www.supremecourt.gov/DocketPDF/19/19-1257/146748/20200701144544718_19-1257%2019-1258%20BIO.pdf.

61 *Id.* at 8.

62 *Id.* at 11.

63 *Id.* at 12.

64 *See Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989, 998 (9th Cir. 2020) (en banc).

65 *Id.*

66 *Id.*

67 *Id.*

68 *Id.* at 1032.

69 *Id.* At 1037, 1042.

LDF

THURGOOD MARSHALL INSTITUTE

For more information about LDF or to make a tax deductible contribution to support LDF's work, please visit: naacpldf.org or call 212.965.2200.

TO OBTAIN A COPY OF THE REPORT, PLEASE CONTACT:

LDF Communications Department

TO DOWNLOAD A COPY, PLEASE VISIT:

tminstituteldf.org