HYDERALLY & ASSOCIATES P.C.

US Supreme Court
Year in Review 2009-2010
Labor & Employment Law Cases

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City of Ontario, California v. Quon, 130 S. Ct. 2619 (2010)

- Jeff Quon – Police Sergeant for OPD & member of SWAT team.
- SWAT team members issued pagers capable of sending & receiving text messages in 2001.
- OPD – written policy that gave City right to monitor all activity; users told to have no expectation of privacy or confidentiality.

- Each month, Quon exceeding allotted # of text messages under the plan.
- LT advised – overages subject to auditing, but as long as Quon reimbursed the City for overage charges, messages would not be audited.

- Quon reimbursed City each month.
- City requested transcripts of text messages to determine whether City needed to increase allotment under their usage plan.

- Vast majority of Quon's messages were personal, – Quon disciplined.

- Quon sues in Central District of California
  - Violation of 4th Amendment & Stored Communications Act
    - Summary Judgment:
      - Quon has a reasonable expectation of privacy in his text messages
      - Reasonableness of the search turned on City's intent
    - Jury finds:
      - The search was reasonable! No 4th Amendment violation!
      - City ordered the audit to determine the efficacy of the character limits

- Quon appeals to Ninth Circuit
  - 9th Cir. reverses in part
    - Agrees that Quon had a reasonable expectation of privacy
    - Disagrees that the search was reasonable in scope
    - Opines that less intrusive means of conducting such inquiry existed
      - Chief could have warned Quon each month that future messages could be audited
      - City could have asked Quon to redact the personal messages on the transcripts

- U.S. Supreme Court
  - Holding: *Unanimously* Reverses 9th Circuit
    - J. Kennedy writes for majority, joined by C.J. Roberts, Stevens, Thomas, Ginsburg, Breyer, Alito, & Sotomayor; & Scalia (in part)
  - Why?
    - Even if there was a reasonable expectation of privacy, ***the search was reasonable!!!!!***

- Supreme Court's Rationale
  - Court relies *O'Connor v. Ortega*, 480 U.S. 709 (1987)
    - *O'Connor* set forth several options for analyzing 4th Amendment claims against gov't employers
    - J. Kennedy uses *O'Connor* plurality's 2-step test:
      - 1. Consider the "operational realities of the workplace" to determine whether the 4th Amendment applies (meaning, whether the employee has a reasonable expectation of privacy)
      - 2. If so, determine whether the search was reasonable
    - J. Kennedy notes that in *O'Connor*, J. Scalia concurred, saying the 4th Am. always applies and that routine workplace investigations were *per se* reasonable

- Supreme Court's Rationale
  - Under either test in *O'Connor*, Quon loses
    - City's search was reasonable
      - Work-related purpose
        - Audit to determine whether Quon's allotment was enough, or whether the City needed a different plan
      - Not excessive in scope
        - Auditors redacted the content of the personal messages
        - Only sample of months was used, not all usage of the pager
        - City's communications policies were clearly applicable and clearly communicated – thus, even with an expectation of privacy, that expectation could be limited

- Implications of *Quon*
  - Court refuses to offer guidance on what the applicable analysis is in employee communications cases
    - *"Prudence counsels caution before the facts of the instant case are used to establish far-reaching premises that define the existence, and extent, of privacy expectations enjoyed by employees when using employer-provided communication devices."*
      - Why is the Supreme Court declining to offer guidance?
  - The decision is limited to:
    - The search was reasonable

- Implications of *Quon* – a few observations
  - Explicitly rejects 9th Circuits "least intrusive means" reasoning
  - Discusses factors for "reasonable expectation" analysis:
    - (1) whether communication policy was amended by supervisor's oral statements,
    - (2) whether independent grounds for intrusion (i.e., state open records laws, performance evals, litigation regarding police conduct) impact privacy expectations
  - Strong indication that 4th Am. "reasonable expectation" analysis is relevant in employment circumstances – even in the private sector

LEWIS V. CITY OF CHICAGO, 130 S. CT. 2191

- Arthur Lewis -representatives of class of 6,000 African-Americans who were unsuccessful applicants for entry-level Chicago firefighter jobs

- Written exam for candidates for the Chicago Fire Dep't in 1995
  - Score of 89 (of 100) or above = "well qualified"
  - Score of 65 – 88 = "qualified"
  - Score below 65 = rejected

- City conducted drawings to select candidates for the next phase of the application process
- Drawings limited to the “well qualified” candidates
  - Drawings were to occur until the pool was exhausted – ultimately over the course of 6 years, Then go to “qualified” pool.
- In 1997, “qualified” candidates filed EEOC charge alleging discrimination
- EEOC issued right to sue letters

- Class sued in Northern District of Illinois
  - Title VII violation: exam & application process had a disparate impact on African Americans
  - Summary judgment
    - Denied – failure to file EEOC charge within 300 days irrelevant because the City's "ongoing reliance" on the test results was a "continuing violation"
  - 8 Day bench trial:
    - Plaintiffs win!!
    - City's business-necessity defense rejected
    - City ordered to hire 132 class-members
    - Award of back pay

- City appeals to Seventh Circuit
  - 7th Cir. reverses
    - Suit untimely!
      - Earliest EEOC charge was filed beyond 300 days of the discriminatory act, which was sorting the scores into “well qualified” and “qualified”
      - Eventual hiring decisions were immaterial because they were the automatic consequence of the sorting, not “fresh act[s] of discrimination.”

- U.S. Supreme Court
  - Holding: *Unanimously* Reverses 7th Circuit
    - J. Scalia writes for the unanimous Court
  - Scalia re-frames the issue:
    - The real question is not whether the claims regarding the actual selection of candidates is *timely* – or, rather *when* the claims accrued
    - The real question is: ***Can the practice of picking only those who scored 89 or higher on a prior examination be the basis for a disparate-impact claim <u>at all</u>?***
- ***"We conclude that it can."***

- Supreme Court's Rationale
  - The *prima facie* disparate-impact claims requires the employee to show that the employer "*uses* a particular employment practice that causes a disparate impact" on one of the prohibited bases.
    - *See* 42 U.S.C. § 2000e(k)
  - J. Scalia sticks to the statutory text
    - No requirement to prove discr. Intent. Ee only has to show a "present violation w/I the limitations period."

- Implications of *Lewis*
  - The “use” of a discriminatory employment practice is actionable, and constitutes separate and independent grounds.
  - Each time a hiring decision is made on the basis of the discriminatory policy is a “use” that gives rise to a disparate-impact claim.
  - Ultimately, this makes disparate-impact claims easier to prove.

Broader Implications of *Lewis*

- Scalia – a conservative – reads the statute in favor of the employee – rejects the 7th Cir.'s narrow interpretation in favor of relatively liberal reading!!!!!!!!

- Scalia ends saying "it is not our task to assess the consequences of [the possible interpretations of the statute] and adopt the one that produces the least mischief." If the statutory text produces an "effect [that] was unintended, it is a problem for Congress, not one that the federal courts can fix."

- This signals that the Roberts Court is serious about employing a neutral, plain-meaning approach to statutory text.

Graham County Soil & Water Conservation District v. Wilson,

130 S. Ct. 1396

- Karen Wilson was an employee of the Graham County Soil & Water Conservation District
  - a special purpose gov't body who was delegated responsibility over USDA funded cleanup/repair efforts following flooding in North Carolina
- Wilson suspected fraud
- The County, State, & USDA investigated and published their findings of irregularities

- Wilson brings *qui tam* lawsuit in Western District of North Carolina
  - False Claims Act (FCA) violations
  - Trial court – claims barred: "public disclosure bar" of the FCA
    - FCA – 31 U.S.C. § 3730(e)(4)(a) – public disclosure bar
      - "No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, **in congressional, administrative, or Government Accounting Office [("GAO")] report, hearing, audit, or investigation**, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information."
    - Since the information relied upon was in the County & State reports, Wilson's *qui tam* FCA claims were deemed barred!!!

- Wilson appeals to Fourth Circuit

  - 4th Cir. reverses
    - Public disclosure bar does not apply – only applies to federal "administrative" reports, audits, and investigations
      - The statute says "congressional, administrative, or GAO reports . . ."
      - *Noscitur a sociis* – "it is known by its associates" – "a word may be known by the company it keeps"
      - "congressional" refers to federal; "GAO" refers to federal
      - So, "administrative" must refer to federal, too!

- U.S. Supreme Court
  - Grants cert to resolve circuit split
  - Holding: Reverses 4th Circuit
    - J. Stevens writes for majority, joined by C.J. Roberts, Kennedy, Thomas, Ginsburg, Alito, & Scalia (in part)
    - Dissenters: J. Sotomayor, joined by Breyer

- Supreme Court's Rationale
  - There's nothing inherently "federal" about the word "administrative"
    - Rejects *noscitur a sociis* argument and the "Third Circuit Sandwich Theory"
      - "hard to believe that the drafters of this provision intended the word 'administrative' to refer to both state and federal reports when it lies sandwiched between modifiers which are unquestionably federal in character"
    - The list of 3 words is too short & lacks "substantive connection" to demand that the Court "'rob' any one of them 'of its independent and ordinary significance'"

- Supreme Court's Rationale
  - Beyond just that clause, the broad purpose of the clause is to bar "parasitic" plaintiffs who would file *qui tam* lawsuits after learning facts from public disclosures.

- Implications of *Wilson*
  - Minimal impact on the law!
  - FCA was amended (before this case was decided, as noted by the majority) to read:
    - The **court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—**(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; (ii) **in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation**; or (iii) from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

STOLT-NIELSEN S.A. V. ANIMALFEEDS INTERNATIONAL CORP., 130 S. CT. 1396

- Stolt-Nielsen – group of shipping companies that serve a large share of the world market for parcel tankers-seagoing vessels with compartment that are separately chartered to customers wishing to ship liquids in small quantities

- AnimalFeeds – supplier of raw ingredients to animal-feed producers around the world

- AnimalFeeds ships pursuant to a standard contract.
  - Arbitration clause: Silent on the issue of class arbitration
- DOJ investigation uncovers that Stolt-Nielsen engaged in an illegal price-fixing conspiracy
- AnimalFeeds brings putative class action in Eastern District of Pa. asserting antitrust claims.
- Other charterers brings similar cases in other districts

- Judicial Panel on Multidistrict Litigation consolidates the cases in the District of Conn.

- The parties agree that the antitrust dispute is subject to arbitration; however, does the applicable arbitration clause permits the arbitration to proceed on behalf of or against a class"
  - Recall: the "applicable arbitration clause" was silent about classes

- Arbitral panel decides: Yes

- Stolt-Nielsen petitions Southern District of New York to vacate arbitrators' award
  - SDNY: vacated
    - Arbitrators' decision was made in "manifest disregard" of the law
      - Panel failed to conduct a choice of law analysis.
      - Panel should have performed choice of law analysis, and if they had done so they would have applied maritime law.
      - Under maritime law, contracts are interpreted in light of custom & usage.

- AnimalFeeds appeals to Second Circuit
  - 2d Cir. reverses SDNY
    - Petitioners had never cited any authority applying maritime rule of custom and usage against class arbitration
    - Likewise, not even New York law has a rule against class arbitration
    - So, the arbitrators' decision was not in manifest disregard for the law!

- U.S. Supreme Court
  - Holding: Reverses 2d Circuit
    - J. Alito writes for majority, joined by C.J. Roberts, Scalia, Kennedy, & Thomas.
    - Dissenters: J. Ginsburg, joined by Stevens & Breyer.
    - J. Sotomayor took no part.
  - No class arbitration unless the parties *agree to authorize* class arbitration
    - Silent arbitration clause = lack of agreement

- Supreme Court's Rationale
  - First, the S. Ct. finds the arbitral panel overstepped their authority
    - Strayed from the interpretation & application of the agreement and effectively dispensed their own brand of justice.
    - They based their decision on a public policy argument, like a court would.
    - They failed to identify & apply the law.

- Supreme Court's Rationale
  - Second, arbitration is rooted in contract - the parties *agree to authorize* arbitration of their disputes
    - A fundamental foundational principle of arbitration!
  - The differences between bilateral arbitrations and class arbitrations:
    - Resolve disputes between hundreds/thousands of parties
    - Rights of potentially absent parties are adjudicated
  - This is more than a simple procedural question
  - Parameters of arbitration are limited to the parties' express agreement – no more, no less

- J. Ginsburg dissents, joined by Stevens & Breyer
  - This issue not ripe for judicial review!!
    - Arbitral panel's decision was a preliminary ruling, similar to an order regarding class certification—What about the final decision rule?!?!
  - The parties agreed to arbitrate the issue of whether the silent arbitration clause permits class arbitration, so allowing Stolt-Nielsen to appeal basically allows them to repudiate their supplemental agreement!
    - Plus, how could they have exceeded their power if they were specifically chosen to consider that exact issue?

- Implications of *Stolt-Nielsen*
  - Class arbitrations of employment actions may be barred, unless specifically provided for
    - Employer friendly!
  - But, employer-drafted arbitration clauses are often purposely broad to capture "all disputes arising out of employment" – so what about class arbitration?
  - If state law provides default rule (i.e., barring class arbitration is unconscionable), the rule may override *Stolt-Nielsen*'s rule
  - A host of new questions!!

Rent-A-Center, West, Inc. v. Jackson, 130 S. Ct. 2772

- Jackson signed "Mutual Agreement to Arbitrate Claims" as a condition of employment by Rent-A-Center
  - "The Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to any claim that all or any part of this Agreement is void or voidable."

- Jackson brings § 1981 employment discrimination lawsuit in District of Nevada
  - RAC moves to stay/dismiss & compel arbitration
  - Jackson argues arbitration clause is unconscionable
  - District Court: grants D's motion to dismiss & compel arbitration
    - Finds agreement clear & unmistakable: arbitrator decides enforceability issues
    - Notes that the agreement to split arbitration fees was not unconscionable

- Jackson appeals to Ninth Circuit
  - 9th Cir. Reverses in part & affirms in part
    - Threshold question of unconscionability is for the court to decide
    - But, affirms that the fee-sharing provision is not unconscionable

- U.S. Supreme Court
  - Holding: Reverses 9th Circuit
    - J. Scalia writes for majority, joined by C.J. Roberts, Kennedy, Thomas, Alito.
    - Dissenters: J. Stevens, joined by Ginsburg, Breyer, & Sotomayor.
  - Strengthens the severability rule for arbitration clauses

- Supreme Court's Rationale
  - Fundamental principle: arbitration is a matter of contract
  - Parties can agree to arbitrate gateway questions of arbitrability
  - Two types of challenges:
    - The arbitration clause itself is invalid
    - The contract as a whole is invalid

- Supreme Court's Rationale
  - Courts can only decide questions of validity about the arbitration clause itself
    - If a court finds the arbitration clause invalid, it can decline to order compliance with the clause.
  - Since Jackson consistently argued that the entire agreement was unconscionable, the issue should have been resolved by an arbitrator.

- Implications of *Jackson*
  - Reduces employees' access to judicial review of disputes if there is an arbitration clause in place
    - Employer friendly—strengthens forced arbitration
  - New (heightened?) pleading requirement?
    - Must plead specific severed clauses are invalid to prevail, as opposed to challenging the arbitration agreement?
  - What about constitutional notions of litigants' access to courts?

Union Pacific Railroad Co. v. Brotherhood of Locomotive Engineers & Trainmen General Committee of Adjustment, Central Region, 130 S. Ct. 584

- Railway Labor Act (RLA) establishes specific process for "minor disputes"
  - First, the parties must exhaust the CBA grievance procedures, called "on-property proceedings"
  - If no resolution, parties must conference
  - If there is still no resolution, either party can refer the matter to the National Railroad Adjustment Board (NRAB)

- Union Pacific Railroad (the “Carrier”) charged 5 employees with disciplinary violations
- Union grieved each one – exhausted on-property proceedings
- Parties conferenced
- Union referred matter to NRAB
- Just before the hearing, one of the arbitrators (industry representative), on his own initiative, noted that the record before the NRAB did not contain evidence that the parties conferenced – even though there was no dispute that it had

- The Carrier embraced the objection
- NRAB adjourned so the Union could submit the missing evidence, which it did
- *One year later: NRAB dismisses the case for lack of jurisdiction because the prerequisite (conference) for jurisdiction was not met*
  - NRAB decides: the record was closed when referred to NRAB – subsequent submissions cannot be considered

- Union files petition for review by court in Northern District of Illinois
  - District Court affirms NRAB
  - Issue of missing evidence was jurisdictional, and jurisdictional issues can be raised at any time

- Union appeals to 7th Circuit
  - 7th Cir. reverses!
    - NRAB committed due process violation
      - The requirement to submit evidence of the conference was not found in any statute, regulation, or CBA – so NRAB's refusal to hear the case constitutes a denial of due process

- U.S. Supreme Court
  - Affirms 7th Cir.
    - J. Ginsburg writes for unanimous court

- Supreme Court's Rationale

- No need to find constitutional analysis because dispute resolved on statutory grounds

- Conference requirement is not "jurisdictional"
  - Required by RLA, but in "general duties" section of statute – not "establishment, powers, and duties" section found elsewhere
  - Conferencing is informal in process
  - Similar to filing a timely charge with the EEOC – also nonjurisdictional
- Common practice is not to deny jurisdiction, but to stay arbitration to allow the parties to confer

- Implications of *Union Railroad*
  - Court reminds agencies that they are limited to the powers conferred by Congress, as agencies are created by statute (meaning, Congress)
  - Court declines to add hurdles to bringing of claims
  - Court prioritizes access over procedural mistakes.

New Process Steel v. National Labor Relations Board, 130 S. Ct. 2635

- Taft-Hartley Act
  - NLRA § 3(b), 29 U.S.C. § 153(b)
    - Board consists of 5 Members
    - 3 Members required for quorum
    - Board can delegate its authority to groups of at least 3 members
- December 2007 – the Board has 4 members, and 2 of the Members' appointments set to expire, leaving only 2 Members.
- Congressional deadlock – end of G.W. Bush's term.

- The Board's solution:
  - December 20, 2007 – Board delegates all the Board's powers to Members Liebman, Schaumber, and Kirsanow, as a 3-member group
    - Effective December 28, 2007
- Board's official position: After departure of Members Kirsanow & Walsh, Members Liebman & Schaumber can continue as a 2-Member quorum wielding the full authority of the Board
- January 1, 2008 to March 27, 2010 (27 months): 2-Member board issues over 600 opinions
  - 3/27/10: Obama recess appoints Craig Becker & Mark Gaston Pearce

- New Process Steel – party in one of the 600 cases resolved by the 2-member Board
  - Board sustained 2 unfair labor practice complaints against New Process Steel

- New Process Steel appeals to Seventh Circuit
  - 7th Cir. affirms
  - Board's delegation of authority was legitimate

- Same day – D.C. Circuit decides same issue
  - But comes to opposite conclusion
    - *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (2009)

- U.S. Supreme Court
  - Grants cert to resolve circuit split
  - Holding: Reverses 7th Circuit
    - J. Stevens writes for majority, joined by C.J. Roberts, Scalia, Thomas, & Alito
    - Dissenters: J. Kennedy, joined by Ginsburg, Breyer, & Sotomayor

Supreme Court's Rationale

- NLRA § 3(b) is read to require that the delegee group must maintain 3 members in order for the delegation to remain valid
  - Reason 1: textual analysis
    - This reading gives effect to the language of all of the provisions of § 3(b)
    - Otherwise, the Board would be effectively able to delegate to a 2-member delegee group

- Supreme Court's Rationale

  - Reason 2: Congressional intent , or lack of
    - Had Congress intended to allow 2 members alone to act for the Board, it would have said so, and it did not do so here

  - Reason 3: Board's practice
    - Previously, when 1 of the 3 members was disqualified from a case, the 2 members could proceed.

- Board efficiency is not an excuse to read the language to allow something that Congress did not provide for .

- "If Congress wishes to allow the Board to decide cases with only two members, it can easily do so."

- Implications of *New Process Steel*
  - Minimal impact on labor law!
    - This is not likely an issue that will be presented very often
  - But, shows that the Roberts Court is committed to textual analysis
    - And if Congress doesn't like the Court's interpretation, let them fix it

- Since *New Process Steel*
  - All of the 600 or so cases decided by the 2-member board were reversed
  - The Board is allowing rehearings, although there is no deluge of Board
  - Many litigants are just settling instead of incurring additional expense and using more time
  - New members on the Board – the Board has authority once again.

Granite Rock Co. v. International Brotherhood of Teamsters, 130 S. Ct. 2847

- CBA between Union and employer Granite Rock expired in April 2004 and negotiations at impasse
- Union members strike, starting June 9.
- A new CBA was negotiated during the strike, agreement on July 2.
  - Contained a no-strike provision
- But, Union did not get a hold-harmless agreement or a back-to-work agreement to shield Union from liability for the strike.
- So, Union continues strike.

- Granite Rock sues in District of California
  - Sought injunction against ongoing strike & strike-related damages
    - Pursuant to LMRA § 301(a) – continued strike violates CBA's no strike provision
  - Court denies Granite Rock's motion based on lack of evidence that the new CBA was ratified
- Granite Rock obtains witnesses with knowledge of the ratification and moves for new trial on injunction and damages claims
- Jury decides CBA ratified on 7/2 (earlier), was breached, and awards damages

- 9th Cir. affirms in part, reverses in part
  - Affirms dismissal of tort claims
  - Reverses Court's determination that the date of the CBA's ratification was a matter for judicial resolution
    - This dispute was governed by CBA's arbitration provision

- U.S. Supreme Court
  - Holding: Reverses in part & Affirms in part 9th Circuit
    - J. Thomas writes for majority, joined by C.J. Roberts, Scalia, Kennedy, Ginsburg, & Breyer joined
    - J. Stevens & Sotomayor join Part III only
    - Concurring: J. Sotomayor, joined by Stevens
  - Trial court should have determined:
    - 1. When the CBA was formed
    - 2. Whether the arbitration clause covers the dispute at issue

- Supreme Court's Rationale
  - Courts are to determine issues of whether the parties intended to arbitrate a particular matter unless the parties "clearly and unmistakably provide otherwise"
  - This is because:
    - Fundamentally, arbitration is something that the parties must consent to
    - So, the only disputes that can be properly submitted to arbitration are the disputes that the parties agreed to arbitrate
    - The "policy favoring arbitration" cannot be used to force arbitration of issues that the parties did not consent to arbitrate

- Supreme Court's Rationale
  - Bonus! Another independent reason to reverse 9th Circuit
    - Even if arbitration clause was in place, *this* dispute is outside the language of *this* arbitration clause
      - Applies to disputes "arising under this agreement"
      - Questions regarding whether the CBA existed cannot be said to "arise under" the CBA
      - Plus, the CBA's remaining provisions detail labor disputes that are arbitrable, never mentioning disputes over fundamental contract formation issues

- Implications of *Granite Rock*
  - Pulls back on Court's "policy favoring arbitration"
  - Reiterates that arbitration is only available for disputes that the parties agree can be resolved in arbitration
    - The parties decide what is arbitrable .

Bonus Footage: *Next Term Preview!!*

- *NASA v. Nelson*, (argument October 5) (9th Cir.)
  - Scope of federal contract employee's constitutional right to privacy
- *Kasten v. Saint-Gobain*, (argument October 13) (7th Cir.)
  - Type of complaint (oral or written) required to trigger protection from retaliation for complaining of Fair Labor Standards Act violation
- *Staub v. Proctor Hospital*, (argument November 2) (7th Cir.)
  - Scope of employer's liability for the discriminatory acts of supervisors who do not themselves make employment decisions but do influence the employment decision-makers – known as the "Cat's Paw" theory

Bonus Footage: *Next Term Preview!!*

- *Amara v. CIGNA*, (argument November 30) (2d Cir.)
  - Can plaintiff in ERISA case prevail if instead of showing actual injury, they only show "likely harm"?
- *Thompson v. N. Am. Stainless*, (argm't December 7) (6th Cir.)
  - Does Title VII's anti-retaliation provision protect third party based solely on association with the employee – i.e., if employee complains and his co-worker/fiancée is fired, is that a Title VII violation?
- *Chamber of Commerce v. Whiting*, (argm't Dec. 8) (9th Cir.)
  - Legal Arizona Workers Act case – places federal preemption of state immigration laws at issue

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