

1-1-2017

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Recommended Citation

Chavez, Anthony (2017) "Scalia missed out: a review of the 2015–2016 Supreme Court session and its 4-4 decisions," *Veritas*: Vol. 3 : Iss. 1 , Article 7.

Available at: <http://lib.dr.iastate.edu/veritas/vol3/iss1/7>

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SCALIA MISSED OUT

A review of the
2015-2016 Supreme
Court session and its
4-4 Decisions

By Anthony Chavez



It's not unusual for there to be close decisions in the Supreme Court, but with a vacancy there are rising 4-4 decisions. In all these decisions they upheld a circuit court's ruling. Many of these cases, often politically charged, will likely make their way up to the Supreme Court again after the appointment of the ninth justice.

Some people say they voted in the 2016 election simply because of the importance of a Supreme Court appointment. It is likely that President Trump may actually have to appoint more than one justice, meaning that we're going to be seeing a strongly originalist court for the rest of our millennial lifetimes.

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Originalism means interpreting the Constitution as stable from the time it was written, and can only be changed by Article Five of the Constitution. There are three big docket items that ended in 4-4 decisions in the 2015-2016 session. Teacher's unions, religious

groups seeking exemption, and illegal immigrants are all under fire in the judicial edge of this new age in politics.

Friedrichs v. California The Teacher's Association questioned whether a public employee has to join a union. Unions and public employees are still a hot topic in Iowa, especially with the passing of the controversial collective bargaining legislation, that left bargaining rights for certain occupations, and striped the rights away for others. In a previous case, *Abood v. Detroit Education Association*, the Supreme Court decided that it wasn't against any employee's First Amendment rights to pay union fees. The union incurs costs in collective bargaining, improving contracting, and improving grievances for all employees, so all employees should pay their union dues. This case came back up because of another First Amendment violation, but directly targeted Union actions outside of employee care: political activism. Political engagement of unions was argued to violate the First Amendment since teachers are forced to fund it through forced dues.

Rob Bingham, a sophomore in political science at Iowa State, thought both sides had valid points. "There's the democrat in me that says they really shouldn't have to pay dues," he said, citing some of his time spent working

for the Democratic Party. He also thinks that unions play an important role in helping public employees. "They're there to help fight for you and help you get a voice at the table. It shouldn't be forced, but it should be requested [to pay dues]."

The justices decided 4-4 in a per curiam decision, upholding the decision of the Ninth Circuit to allow California to force teachers to pay union dues. Because it wasn't a normal Supreme Court decision, it didn't set precedent nationwide. In a per curiam, we don't know how each particular judge decided unless they wrote a dissenting decision. The teachers challenging the unions petitioned the court on April 8th last year, pleading for the case to be reheard upon confirmation of a new justice.

Zubik v. Burwell is about Affordable Care Act's birth control mandate. Zubik was a collection of seven cases against Burwell that were consolidated for the Supreme Court, ranging from churches, religious universities, and other nonprofit religious employers. The issue is whether the HHS Mandate would cause penalties to followers of the Religious Freedom Act (RFRA) of 1993 by making religious nonprofits violate their beliefs. The government hasn't proven that this is the most specific and effective way of implementing compelling interest. The

petitioners argued that having to put forward exemption documentation violates their religious freedom, making them sustain an “objectionable contractual relationship,” while the government argues that opting out denies a woman’s right to healthcare.

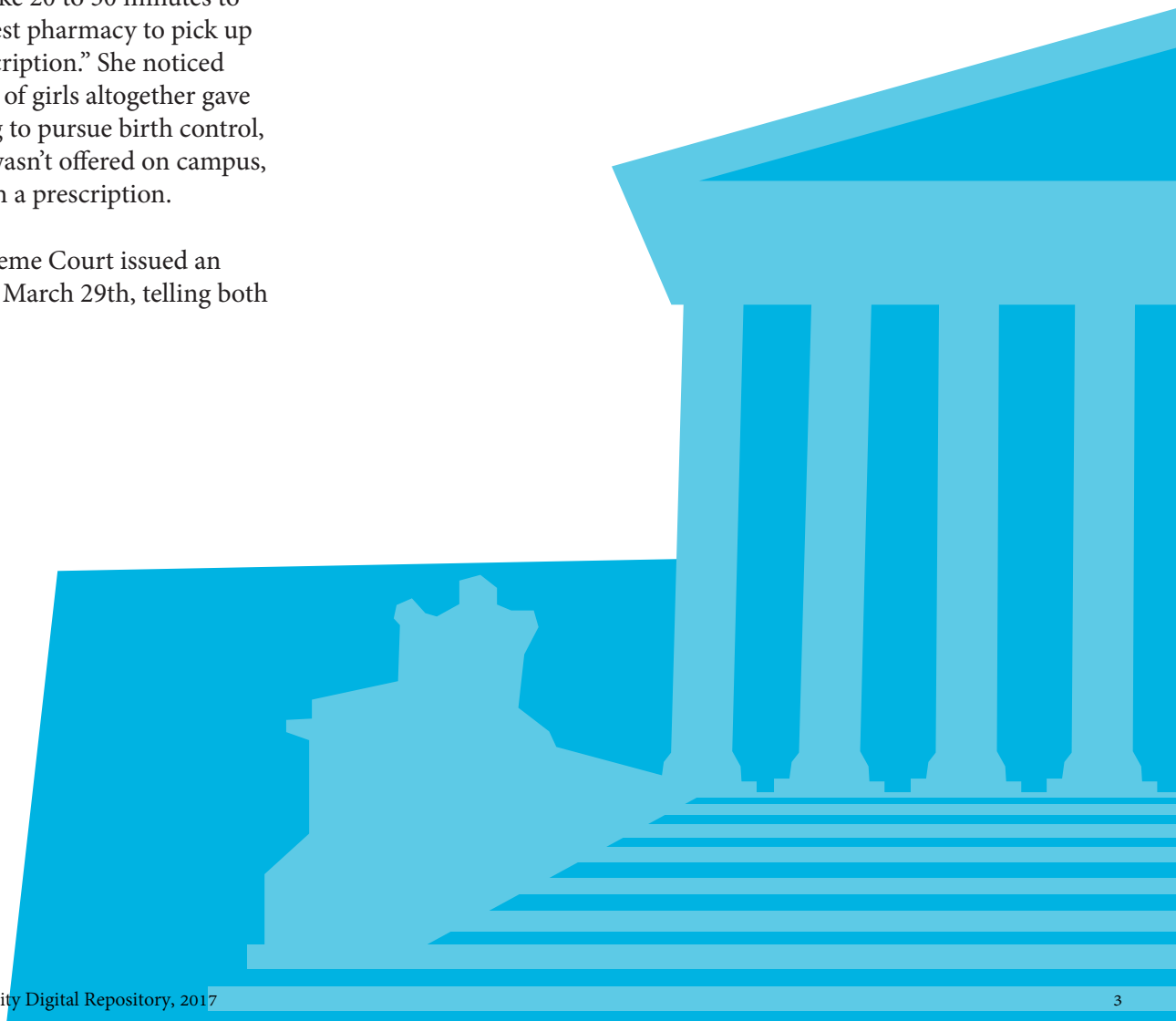
“They basically did nothing,” says Emily Lunzer, senior in mechanical engineering, who formerly attended Notre Dame University and saw firsthand how current policies affected students there. “Everyone lives on campus there,” she states. “My roommate had to bike 20 to 30 minutes to the nearest pharmacy to pick up her prescription.” She noticed that a lot of girls altogether gave up trying to pursue birth control, since it wasn’t offered on campus, even with a prescription.

The Supreme Court issued an order on March 29th, telling both

parties to discuss more options on how employees might find contraceptive relief without the religious organization’s involvement. On May 15th, the court issued a per curiam decision and remanded the case back to lower courts, pending for further consideration. The court decided a solution was possible to provide contraceptive care without religious employers providing and violating their rights. While the court refrained from commenting more on the case, it’s obvious that a similar case will come back up the chain

and present itself again, and the current decision failed to set precedent for the future.

United States v. Texas was because of President Obama’s immigration accountability executive actions. Among helping taxpaying illegal residents find ways to stay, it also increased border security and started deporting illegal immigrant felons. Although most of the work involved building on the Deferred Action for Childhood Arrivals (DACA) and constructing the Deferred Action for Parents



of U.S. Citizens and Lawful Permanent Residents (DAPA) program, Texas and 25 other states stopped this by challenging Obama's actions. As it made its way through the judicial system, the United States Court of Appeals for the Fifth Circuit decided that Obama could not proceed with his plans in a 2-1 decision.

The court looked for violations in the Administrated Procedures Act because the immigration programs were emplaced without public review and the take care

clause of the Constitution. While the Obama administration stated that this was unprecedented, Texas and the other 25 states argued the administration ignored Congress' powers.

Talking to local Iowan and Iowa State student John Kitten, junior in political science, brings a different perspective. "I think the main issues at hand is these cases aren't going to set the type of precedent Supreme Court cases need to set with a 4-4 bench." John Kitten has taken an interest in legal studies during his time

at Iowa State, and doesn't see DAPA's future with the Trump administration going very far. The most important thing to Kitten, is that the Senate Judiciary Committee "uphold their job and...pass a nominee with all due and deliberate speed."

The court once again submitted a 4-4 per curiam decision, and the Fifth Circuit's decision was upheld. In the full opinion, it stated, "The judgment is affirmed by an equally divided Court." While the original DACA policy from 2012 remains, it is very likely that another immigration policy will reach the Supreme Court, especially with President Trump's new immigration executive orders being challenged by a majority of state administrations.

While none of these cases set precedent, it is overwhelmingly clear that after the appointment of the ninth justice we will see them all again.

