

July 26, 2018

2017-2018 Supreme Court Review

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Agenda

- **Overview of Term**
- **Case Highlights**
- **Looking Ahead**

Overview of October Term 2017

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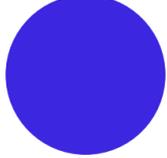
2017 Term

- **The Term ended with several high profile decisions**
- **Justice Gorsuch finished his first full year, and the Court felt the impact**
- **Justice Kennedy announced his retirement**
- **President Trump nominated Judge Kavanaugh**

Case Highlights

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L&E Cases

-  **CNH Industrial N.V. v. Reese**
-  **Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Commission**
-  **Digital Realty Trust, Inc. v. Somers**
-  **Encino Motorcars, LLC v. Navarro**
-  **Janus v. AFSCME Council 31**
-  **Epic Systems Corp. v. Lewis**
-  **Trump v. Hawaii**

***CNH Industrial N.V.
v.
Reese***

Facts:

- **CBA provided health care benefits under a group benefit plan**
- **When CBA expired by its terms in 2004, retirees and surviving spouses filed a lawsuit seeking declaration that benefits vested for life**

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**CNH Industrial N.V.
v.
Reese**

Question:

- **Should a court use inferences to determine whether a CBA is ambiguous?**

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Chief Justice Roberts announces opinions for absent justices. 1-22-18

***CNH Industrial N.V.
v.
Reese***

Decision:

- **Under Supreme Court precedent (*Tackett*), CBAs must be interpreted according to ordinary principles of contract law**

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Chief Justice Roberts announces opinions for absent justices. 1-22-18

Digital Realty Trust, Inc.
v.
Somers

Facts:

- **Paul Somers reported SEC violations to managers**
- **Somers was terminated and alleged whistleblower retaliation**
- **Digital Realty moved to dismiss, claiming Somers was not a whistleblower**

LIEAL
DIGITAL REALTY TRUST v. Somers

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Digital Realty Trust, Inc.
v.
Somers

Question:

- **Are employees who report SEC violations internally protected as whistleblowers?**



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Digital Realty Trust, Inc.
v.
Somers

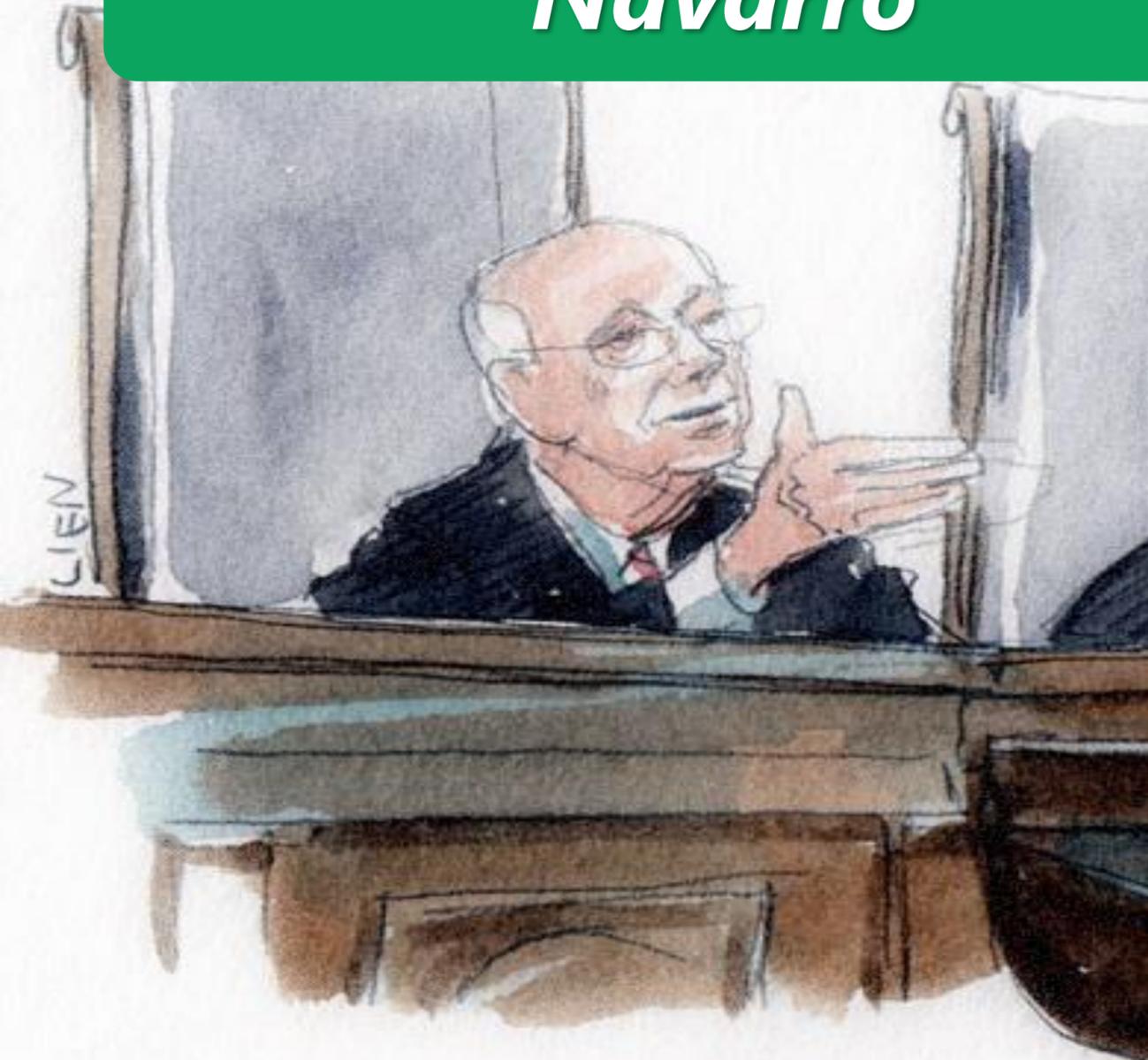
Decision:

- **To be a whistleblower, you have to report to the SEC**
- **Internal complaints do not provide employees protection**

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Encino Motorcars, LLC
v.
Navarro



James A. Feldman
ENCINO MOTORCARS V. NAVARRO

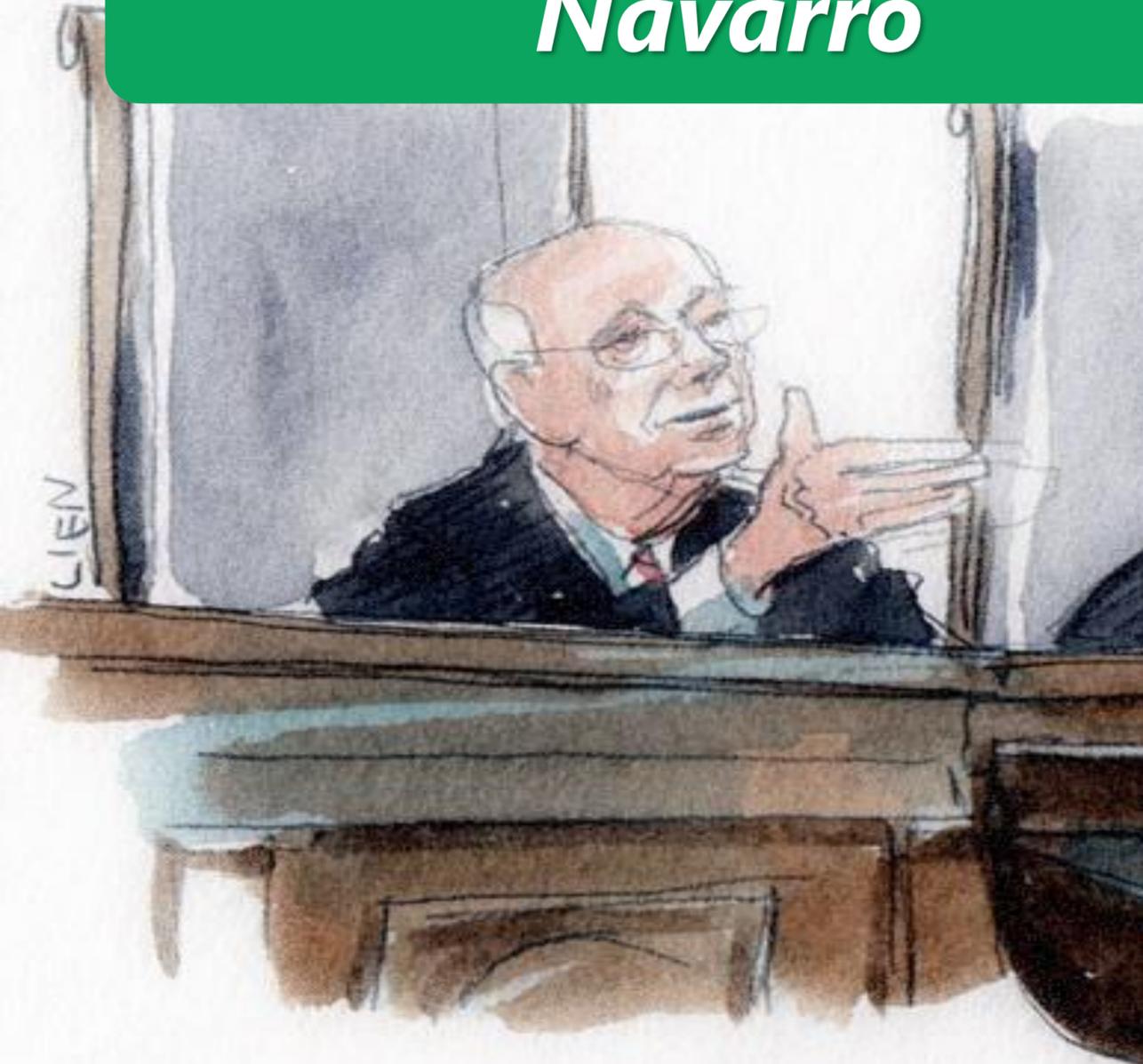
Facts:

- Service advisors at a California car dealership sued, claiming they were misclassified under the FLSA
- FLSA exempted from overtime salesmen, partsmen, or mechanics primarily engaged in selling or servicing automobiles

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***Encino Motorcars, LLC
v.
Navarro***



*James A. Feldman for respondents
ENCINO MOTORCARS V. NAVARRO 1-17-15*

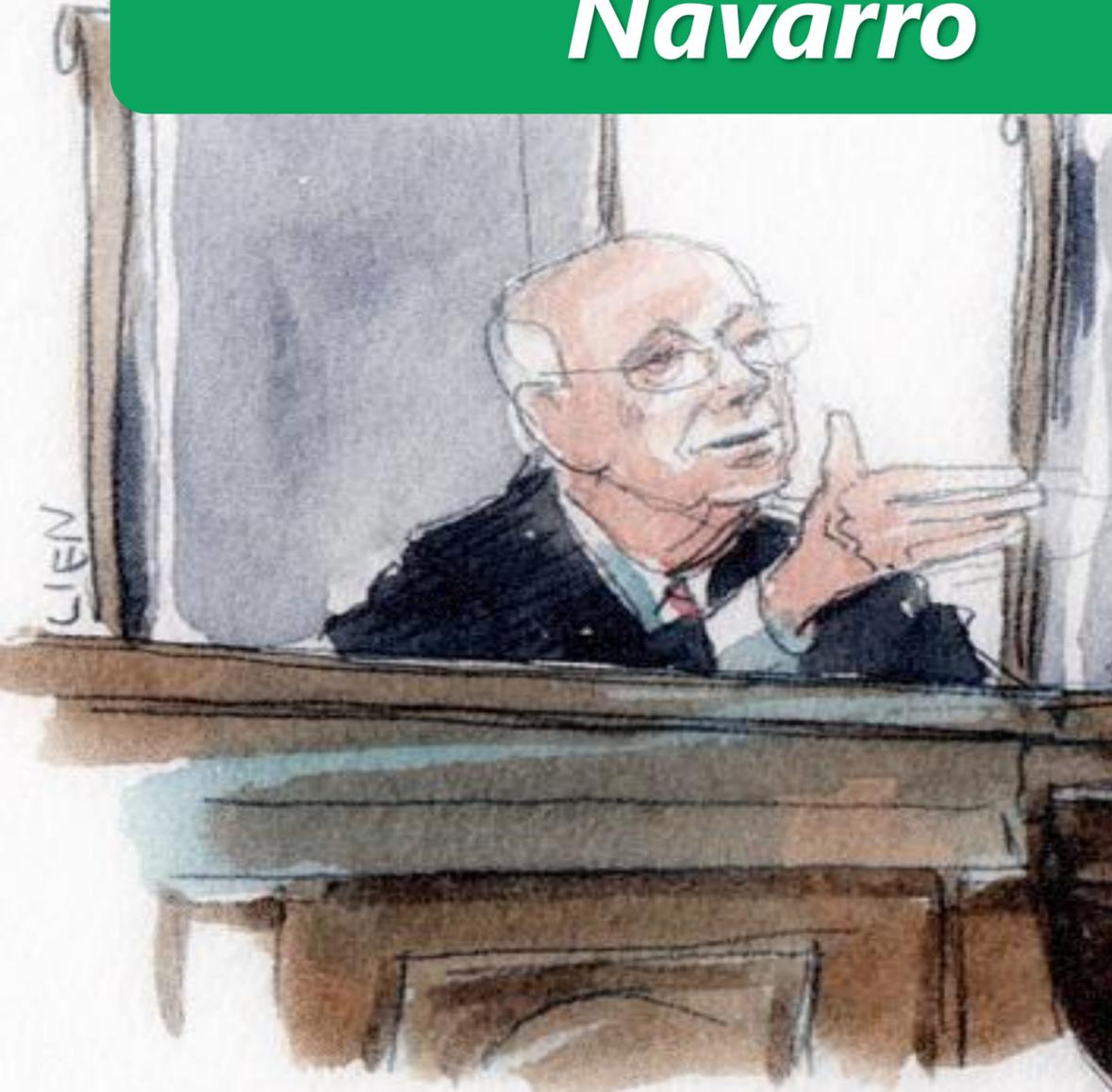
Question:

- **Are service advisors at car dealerships exempt from the Fair Labor Standards Act's overtime-pay requirements?**

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***Encino Motorcars, LLC
v.
Navarro***



*James A. Feldman for respondents
ENCINO MOTORCARS v. NAVARRO 1-17-15*

Decision:

- **Service Advisors were salesmen servicing automobiles**
- **The prior “narrow construction” doctrine for interpreting the FLSA should be replaced by “fair reading” doctrine**

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Encino Motorcars, LLC
v.
Navarro



*James A. Feldman for respondents
ENCINO MOTORCARS V. NAVARRO 1-17-15*

Dissent:

- **The dissent focused on the majority's divergence from past Supreme Court decisions**
- **Reiterated belief that narrow construction was proper, and required finding that service advisors were not exempted from overtime by the FLSA**

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Epic Systems Corp.

v.

Lewis

Facts:

- **Epic has employment agreement requiring individual arbitration**
- **Jacob Lewis, a former Epic employee, sued Epic under FLSA**
- **Epic moved to dismiss under arbitration agreement**

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Justice Sarsuch with

opinion in EPIC

5-21-18

Epic Systems Corp.
v.
Lewis

Question:

- **Do individual arbitration agreements violate the NLRA?**

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Justice Sarsuch with

opinion in EPIC

SYSTEMS v. LEWIS
5-21-18

Epic Systems Corp.
v.
Lewis

Decision:

- **Arbitration agreements should be upheld**
- **The NLRA does not prohibit enforcing individual arbitration agreements**

Justice Sarsuch with opinion in EPIC

Epic Systems Corp.
v.
Lewis

Dissent:

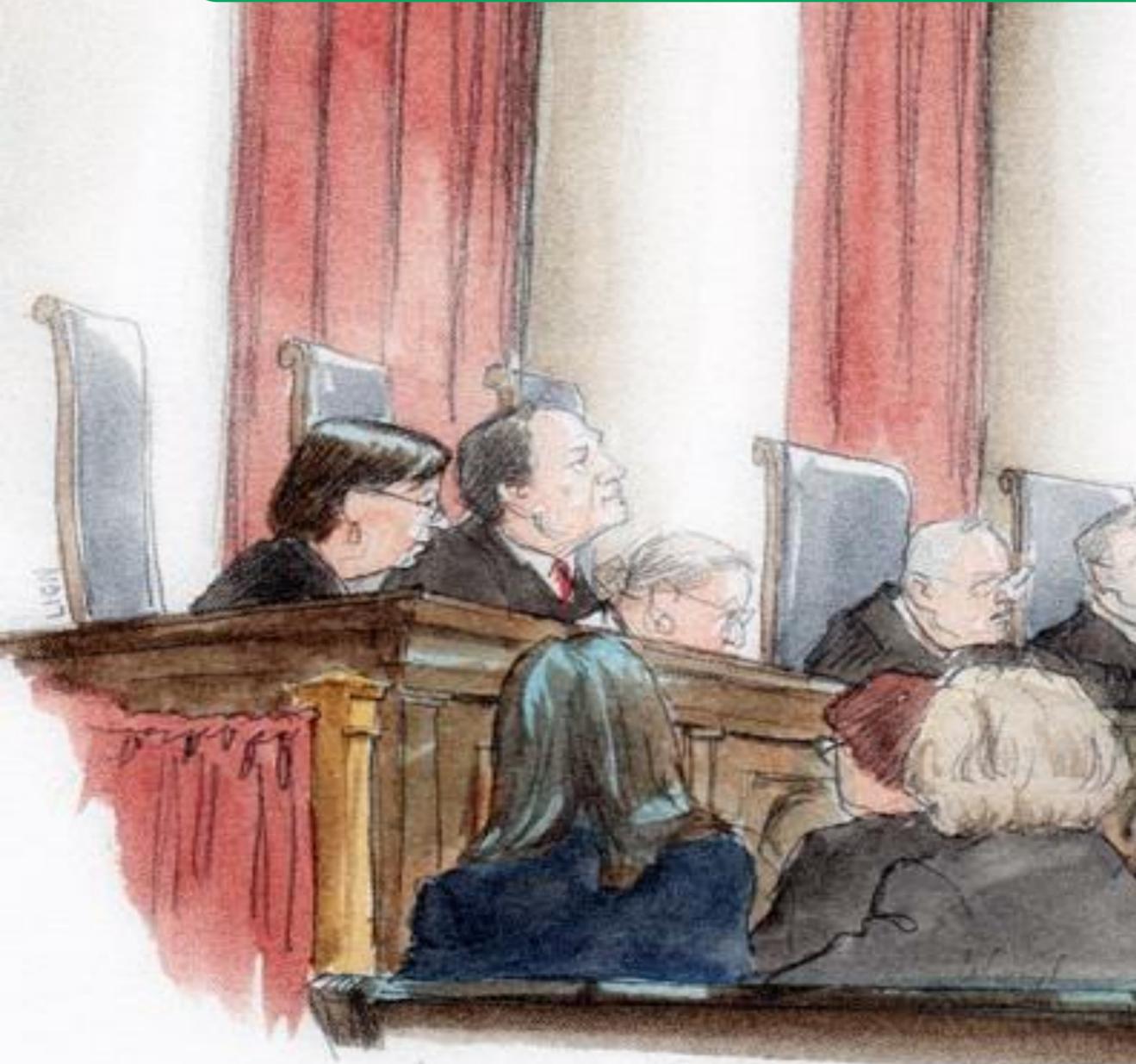
- **Justices Ginsburg, Breyer, Sotomayor, and Kagan**
- **Collective arbitration is collective action and protected by the NLRA**

Justice Sotomayor with opinion in EPIC

Janus
v.
AFSCME, Council 31

Question:

- **Janus addressed whether government employees who are represented by a union to which they do not belong can be required to pay a fee to cover the costs of collective bargaining, or so-called fair share fees.**

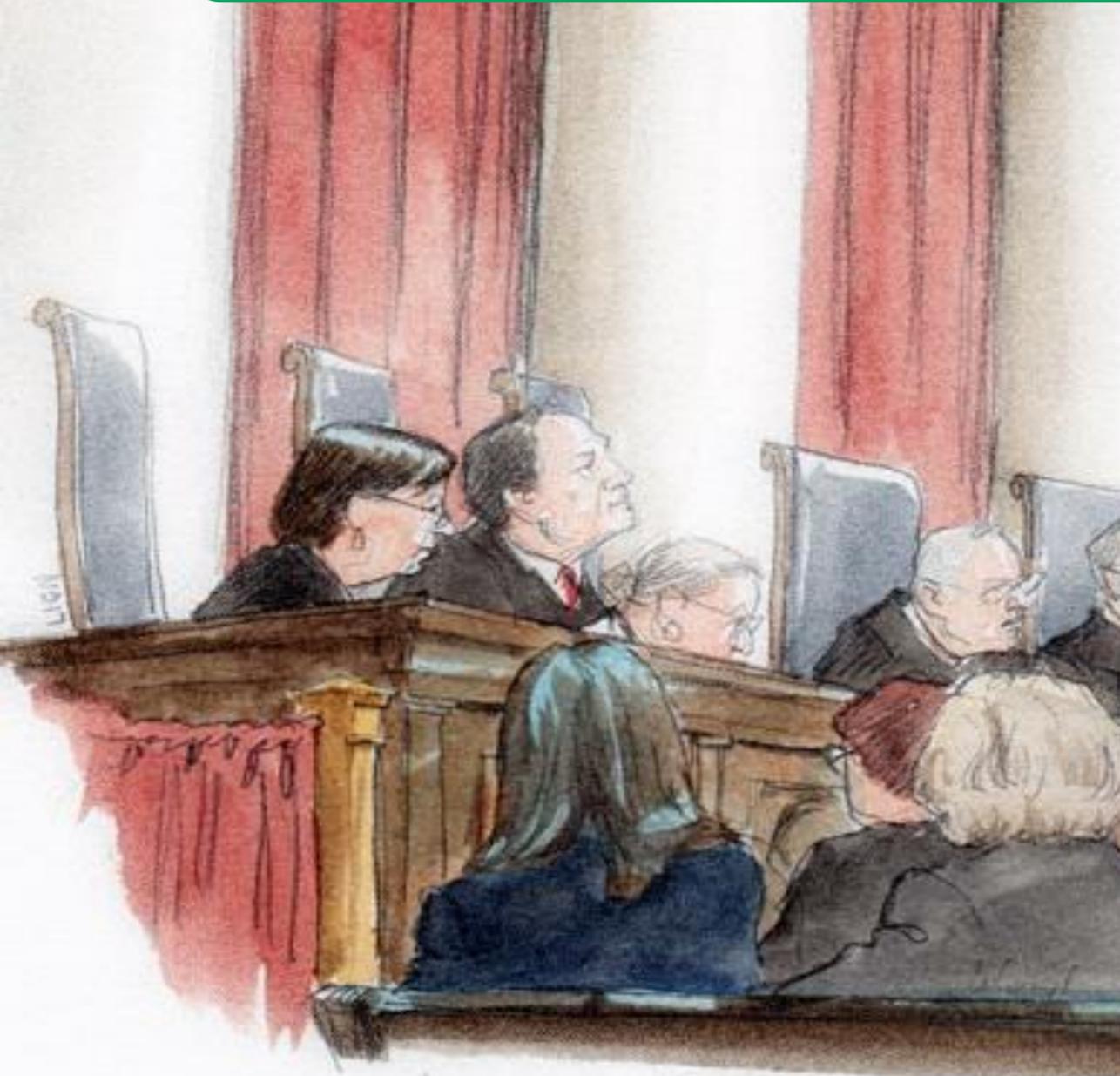


Janus v. AFSCME, William L. Messinger

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Janus
v.
AFSCME, Council 31



Janus v. AFSCME, William L. Messinger

Decision:

- **Writing for a divided court (5-4), Justice Alito stated that the public-sector unions' practice of exacting fair share fees from nonconsenting employees violated the First Amendment.**

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***Masterpiece Cakeshop, Ltd
v.
Colorado Civil Rights
Commission***

Facts:

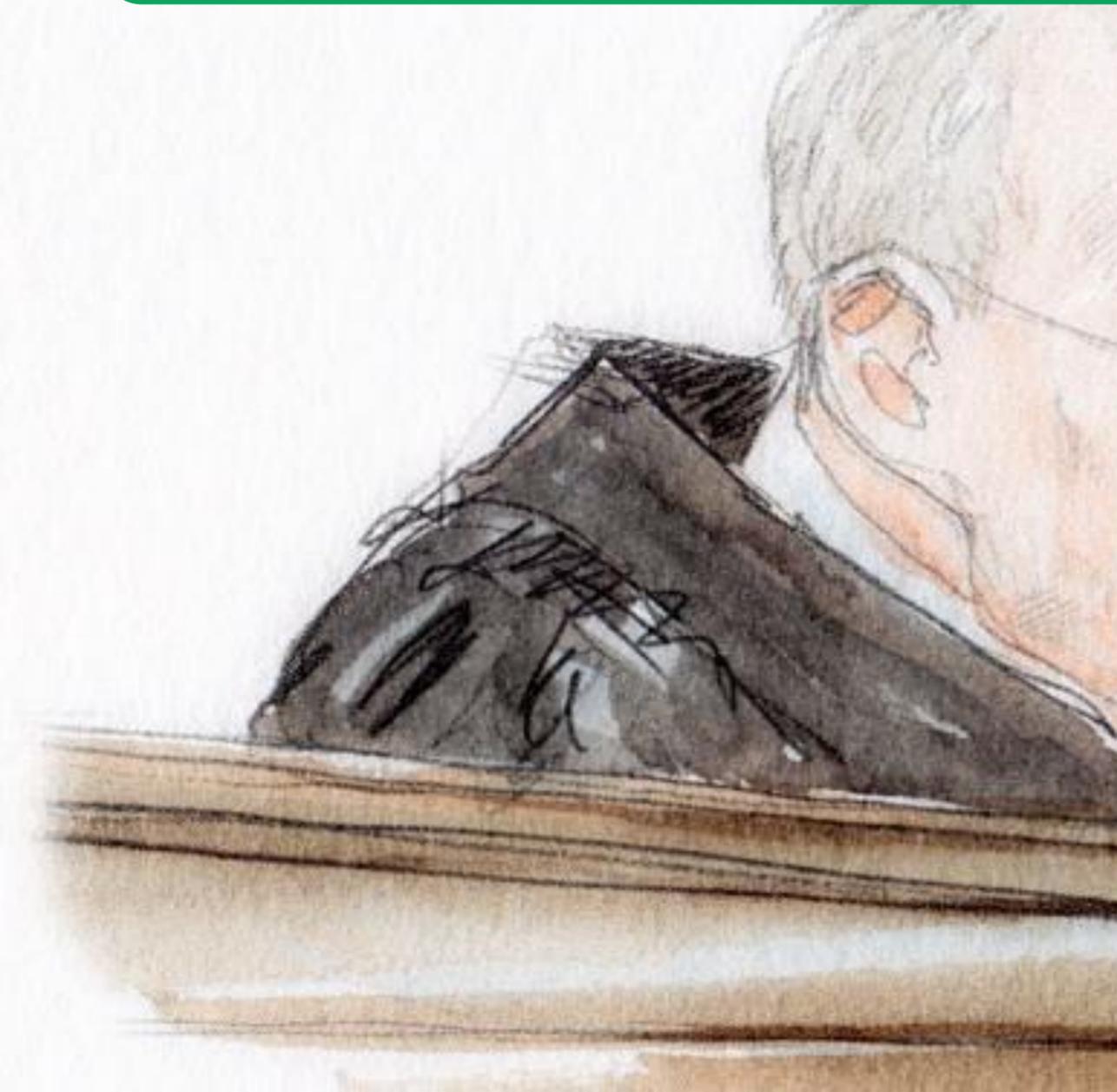
- **Charlie Craig and David Mullins ordered a wedding cake**
- **Baker refused on religious grounds**
- **Craig and Mullins filed discrimination charges with the Colorado Civil Rights Commission**
- **The Commission made several arguably anti-religious comments**



***Masterpiece Cakeshop, Ltd
v.
Colorado Civil Rights
Commission***

Question:

- **Does the Colorado public accommodations law require a baker to make a wedding cake if he claims it is a violation of his religious beliefs?**



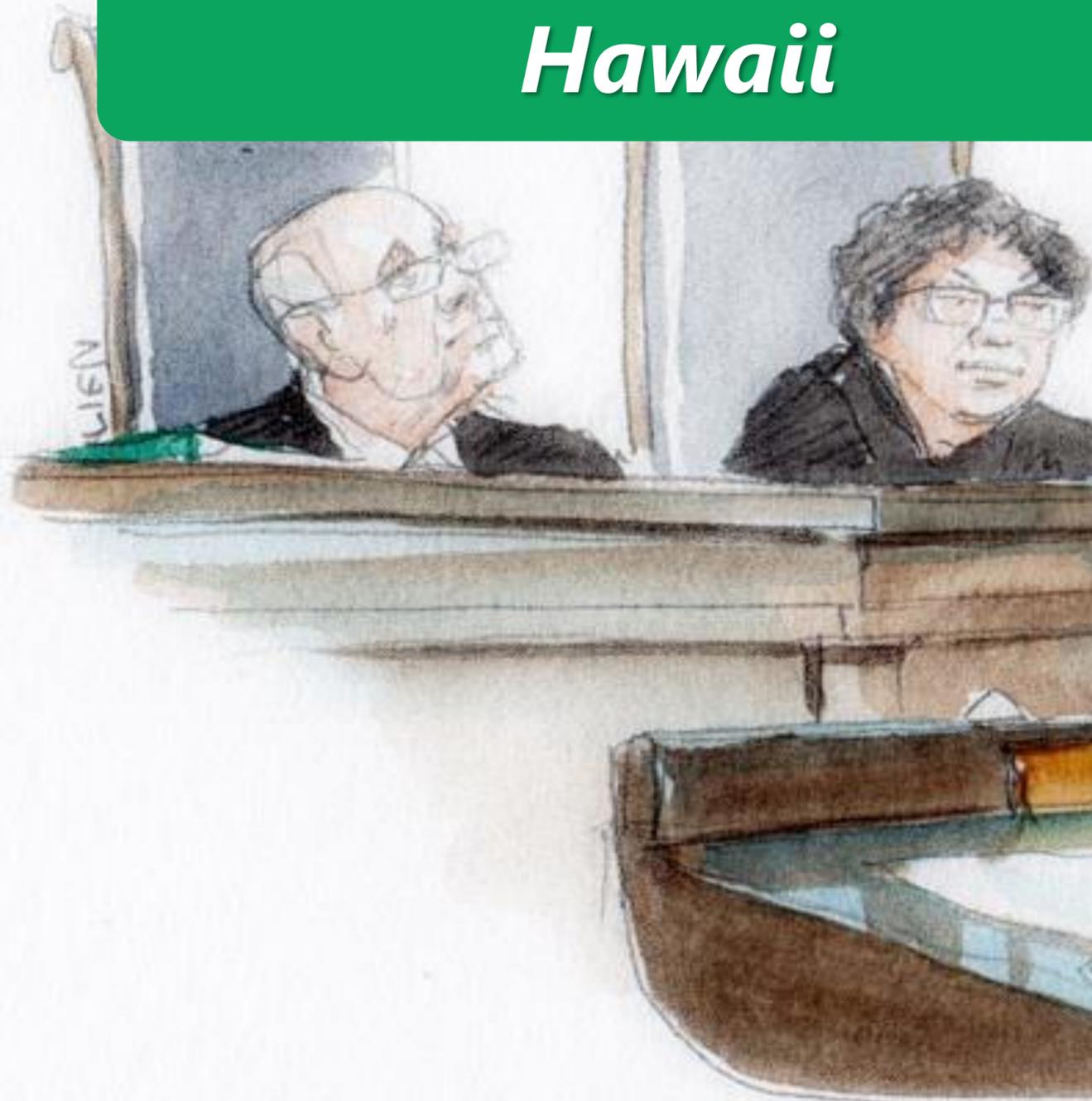
***Masterpiece Cakeshop, Ltd
v.
Colorado Civil Rights
Commission***



Decision:

- **The Civil Rights Commission's investigation was not fair and neutral**
- **The Baker was entitled to a new hearing**

***Trump
v.
Hawaii***



Solicitor General Noel Francisco

Facts:

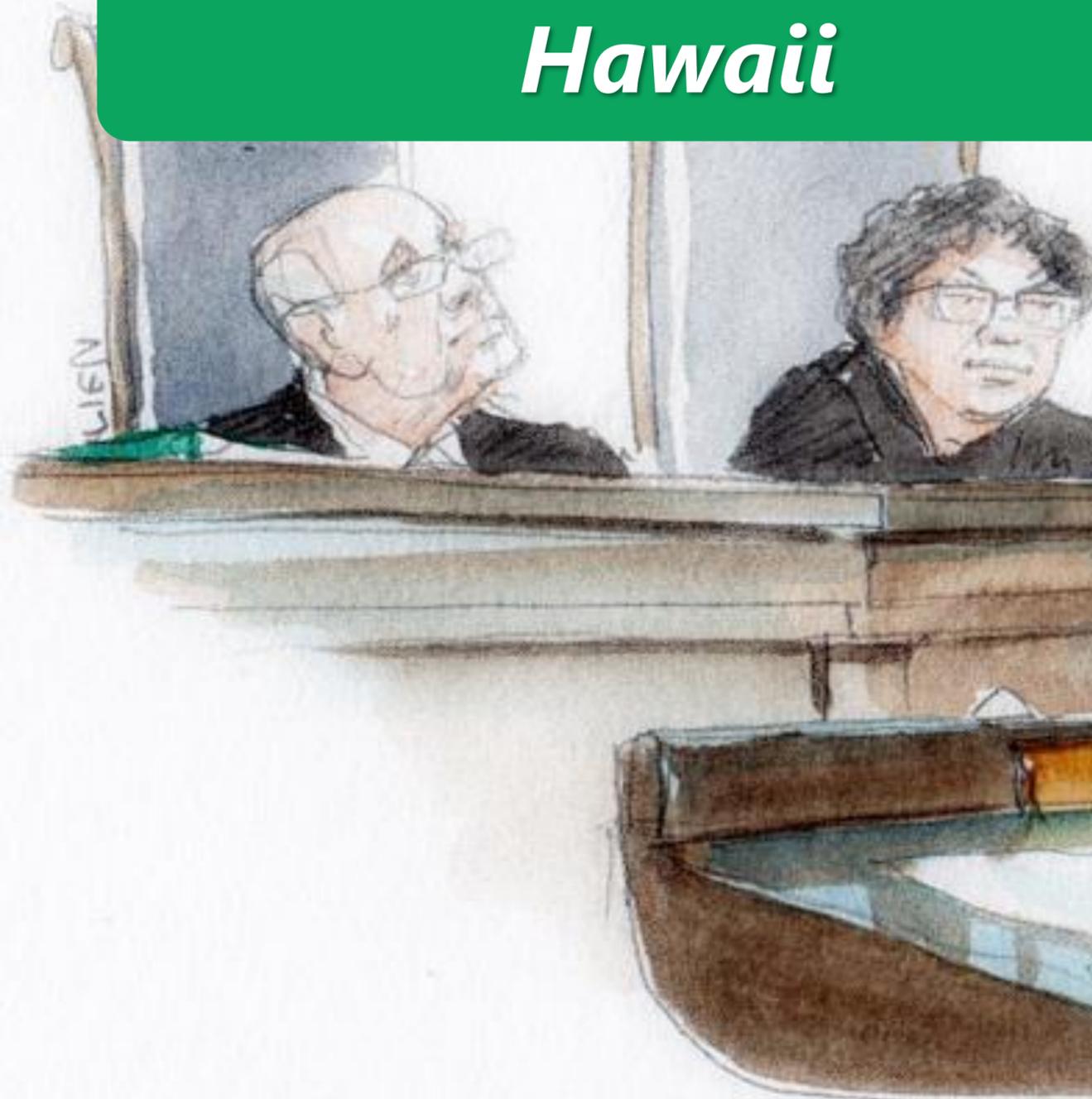
- **President entered three different executive orders**
- **Nationwide injunctions**

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San Francisco, TRUMP v. HAWAII 4-25-18

***Trump
v.
Hawaii***



Solicitor General Noel Francisco

Questions:

- **Do the Executive Orders violate the Immigration and Nationality Act (INA)**
- **Do the Executive Orders violate the Establishment Clause of the United States Constitution**

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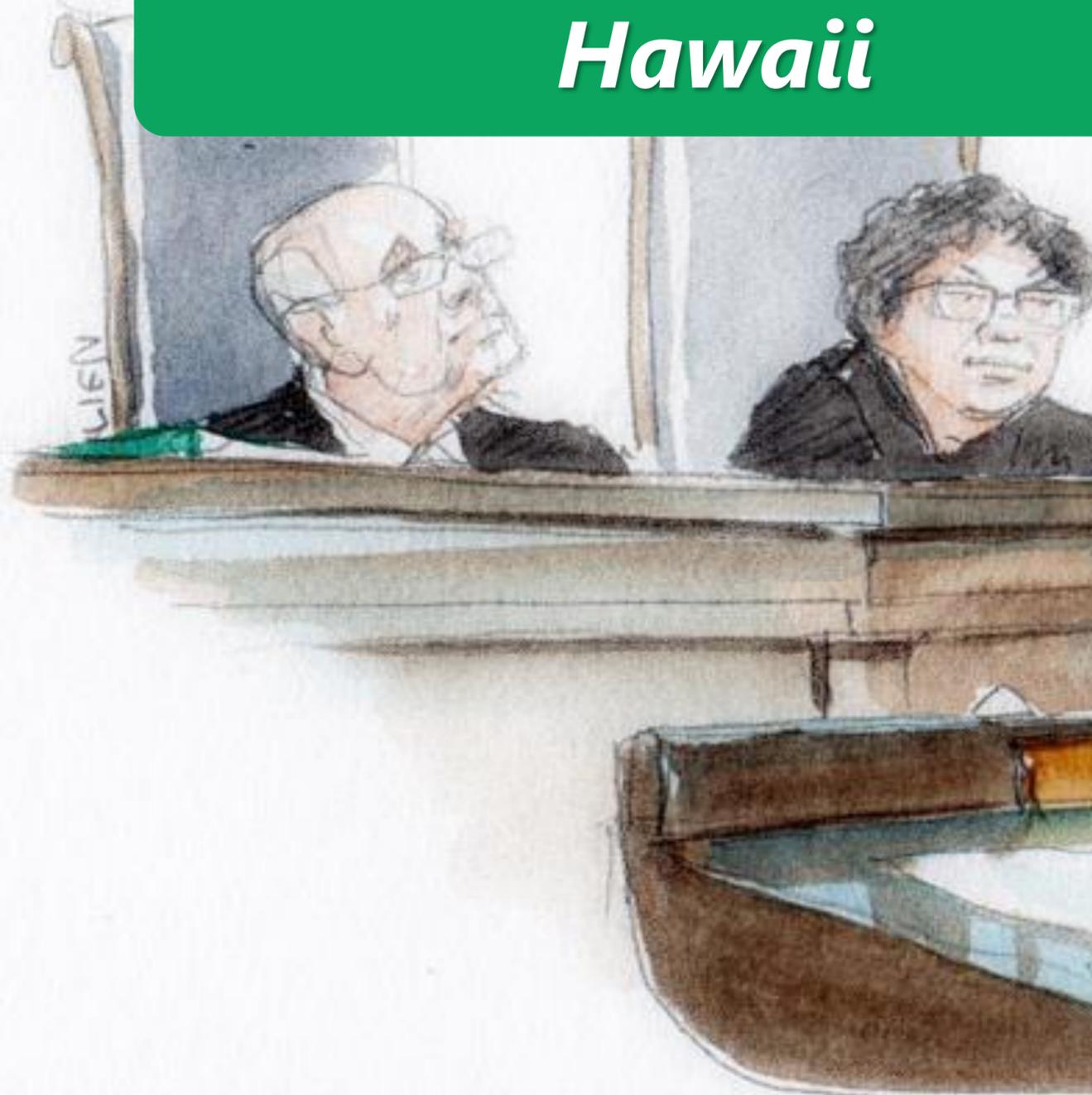
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San Francisco, Trump v. Hawaii 4-25-18

***Trump
v.
Hawaii***

Decision:

- **The orders do not violate the INA and the respondents did not demonstrate a likelihood of success on the merits of the Establishment Clause claim.**



Solicitor General Noel Francisco

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San Francisco, TRUMP v. HAWAII 4-25-18

Looking Ahead

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Upcoming L&E Cases

Mount Lemmon Fire Dist. v. Guido

Henry Schein, Inc. v. Archer and White Sales, Inc.

Lamps Plus, Inc. v. Varela

New Prime, Inc. v. Oliveira



**Mount Lemmon Fire Dist.
v.
Guido**

This case came to the Supreme Court from the Ninth Circuit, based on a suit filed by firemen in Mount Lemmon, AZ.

Question:

- **Does the 20-employee threshold for the ADEA to apply to private employers also apply to public employers?**

**Henry Schein, Inc.
v.
Archer and White
Sales, Inc.**

This case came to the Supreme Court from the Fifth Circuit, and is the first of three arbitration cases to highlight.

Question:

- **Does the FAA allow a court to decline to enforce an agreement delegating questions of arbitrability to an arbitrator, if the court concludes the claim of arbitrability is “wholly groundless”?**

**Lamps Plus, Inc.
v.
Varela**

Another arbitration case, this one from the Ninth Circuit.

Question:

- **Does the FAA foreclose a state-law interpretation of an arbitration agreement that would authorize class arbitration based solely on general language commonly used in arbitration agreements.**

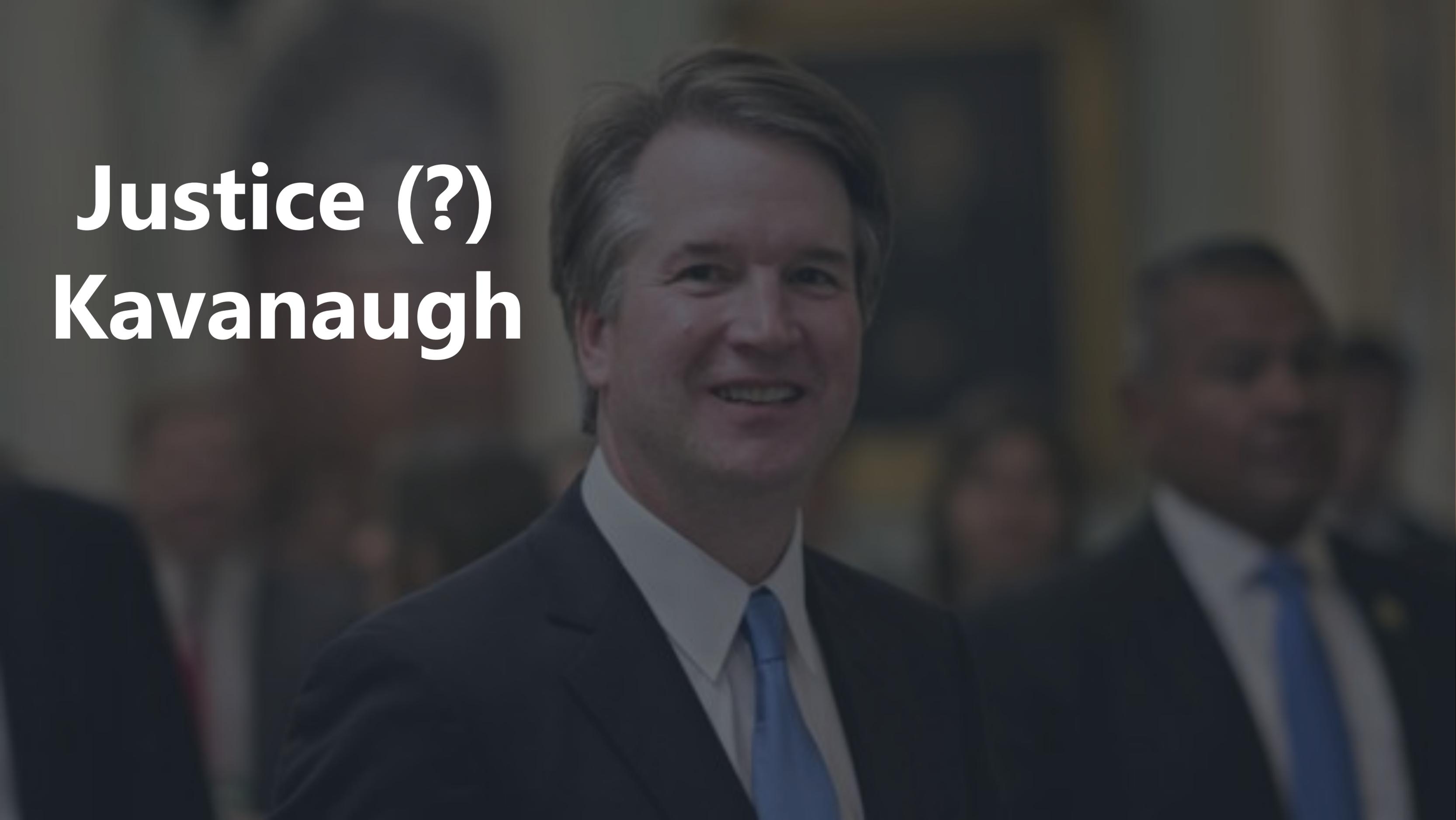
**New Prime, Inc.
v.
Oliveira**

The final arbitration case to highlight comes from the First Circuit, and raises two questions for the Court.

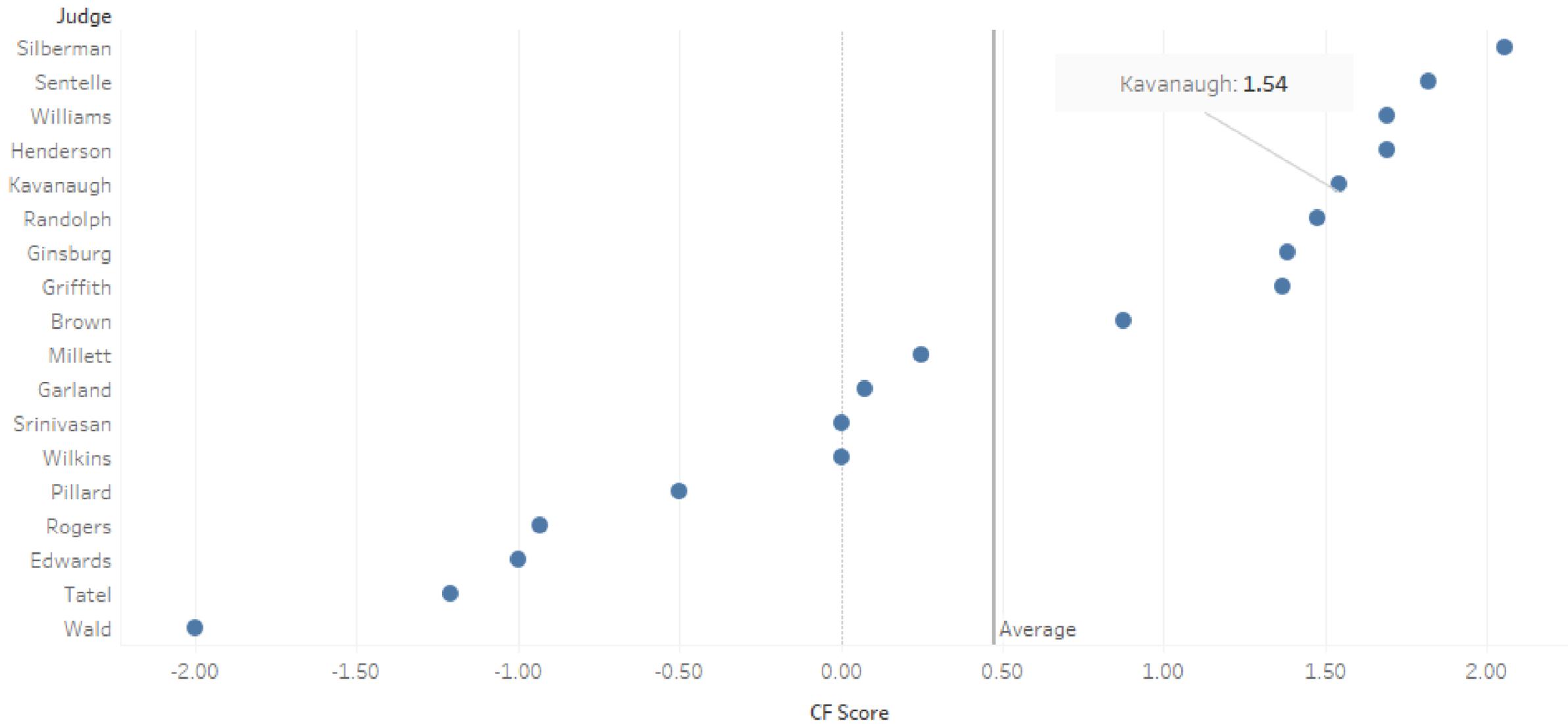
Question:

- **Does Section 1 of the FAA also apply to independent contractor relationships or just employees when it exempts “contracts of employment” in certain industries?**

Justice (?) Kavanaugh

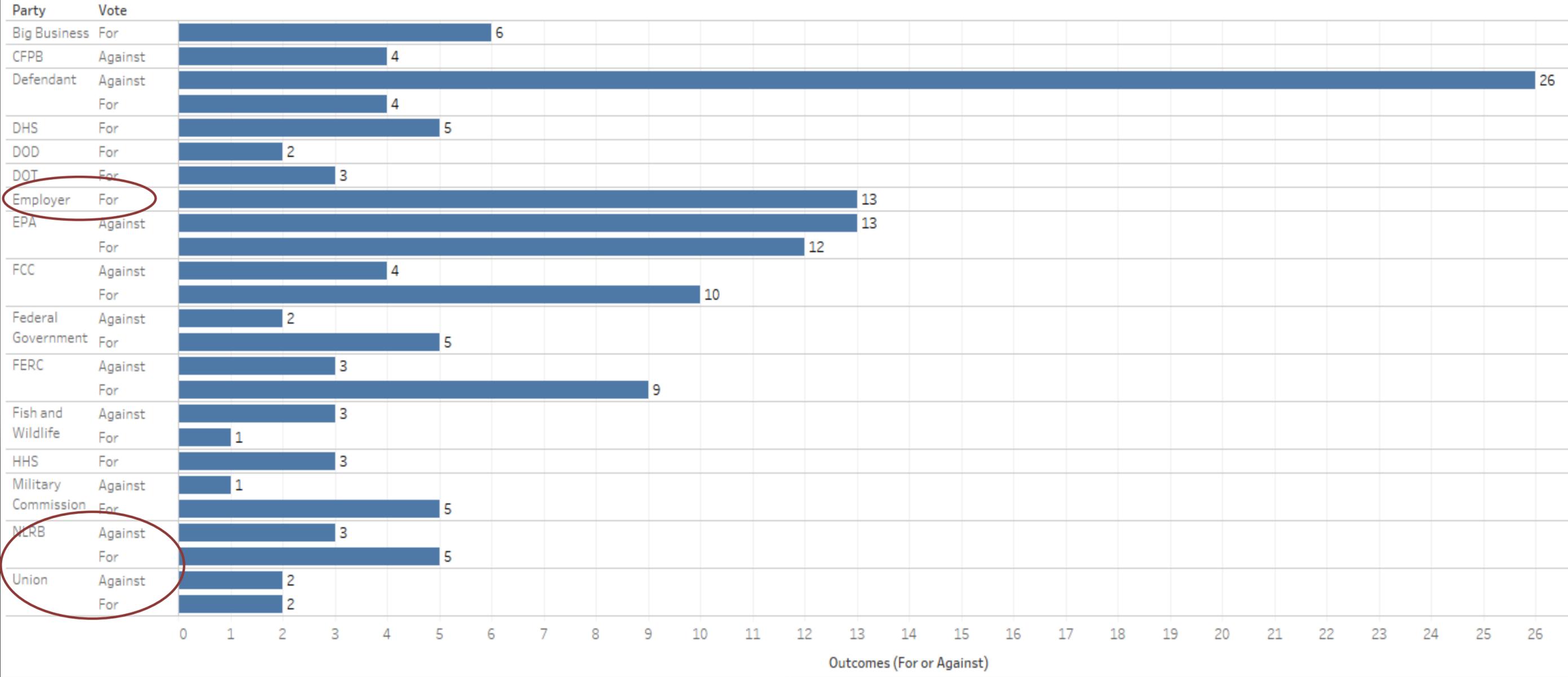


D.C. Circuit Judges' Preferences (Liberal - Conservative)



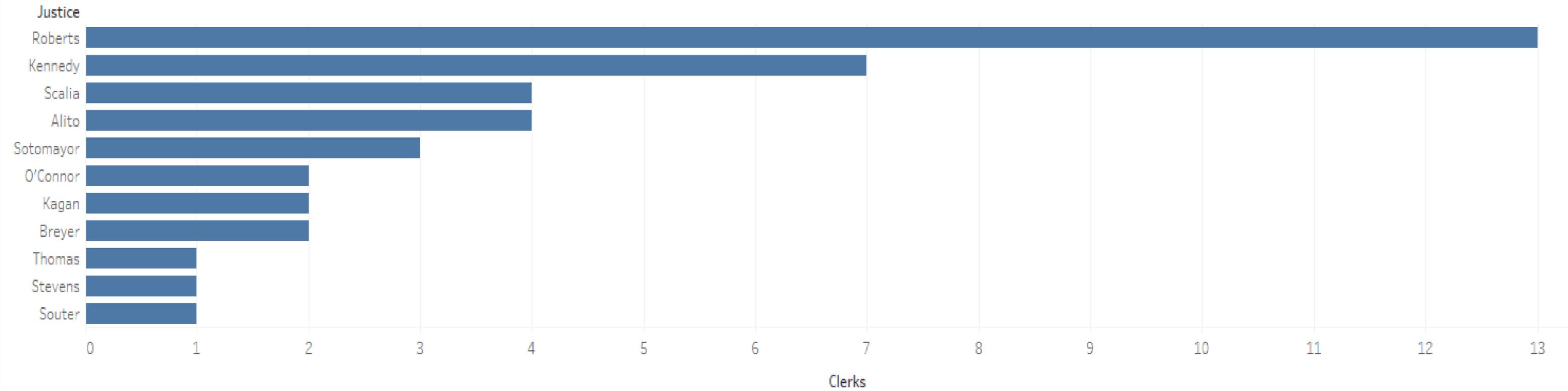
Source: EmpiricalSCOTUS.com

Opinion Side Based on Party

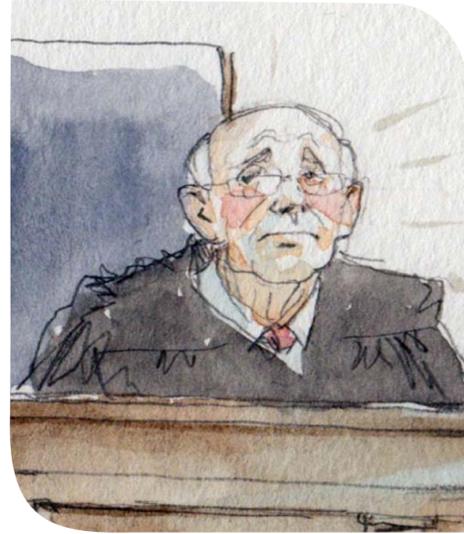


Source: EmpiricalSCOTUS.com

Kavanaugh's Clerks to SCOTUS



Source: EmpiricalSCOTUS.com



Conclusion



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