"Expressions Hair is a case that asks what the scope of the First Amendment is. It involves a New York law that says businesses cannot charge extra for paying with a credit card. They can offer a cash discount, but not a credit card surcharge. Expressions Hair argued that this is a First Amendment violation, because it affects how they can describe their prices. The interesting thing is that both the solicitor general and the Supreme Court agreed—because the law might affect speech, it implicated the ‘field of speech’ under the First Amendment.

"But plenty of other business and commerce regulations also implicate speech. Imposing liability for loose purses or cleaning fees for a particular purpose also affects what businesses can say about their products. Does that mean that the warranty implicates the First Amendment? The law has traditionally said no. This case distills the line between what is covered by the First Amendment and what is not.

—Leslie Kendall ’06

"The court heard it in its longstanding ‘as far as’ approach to questions of when regulation goes so far as to amount to a taking of property for which compensation is owed. While the court broke some new doctrinal ground by articulating a nonsensical multi-part test for determining the proper unit of property against which to assess the effect of the challenged government action, Justice Kennedy’s major opinion for five of the eight participating justices stressed that neither the ultimate question of whether property has been taken nor the narrow one of the proper ‘denominator’ presentation in Murr is reducible to straightforward analysis. Justice Gorsuch, who joined the court after the Memorial Day argument, did not participate. The question is really striking about the opinion is that the court did not give the extraordinary deference to Congress that it has usually applied to immigration and citizenship statutes. Instead, the opinion reads like the court’s other equal protection cases, applying intermediate scrutiny to strike down a gender-discriminatory statute."

—Maureen Brady

"Expressions Hair Design v. Schneiderman: The Limits of Free Speech"

"The Supreme Court’s 5-3 decision in Expressions Hair Design v. Schneiderman is relatively more recent. The decision struck down a New York law that prohibited a beauty parlor from offering customers discounted cash payments. The law was intended to discourage the use of credit cards, which often come with high fees for small transactions. The court ruled that the law violated the First Amendment because it could be interpreted as a content-based restriction on speech."

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