First Mondays
Overview

- OT 2017’s cases of particular interest to states
- The Court in flux
Gerrymandering cases (*Gill & Benisek*)

- Court punts on big constitutional question in both cases
- Justice Kagan’s pitch to Justice Kennedy
  - Did he never make up his mind?
- Are future challenges doomed?
Masterpiece Cakeshop

- Another punt
  - Narrow opinion focused on statements by Civil Rights Commissioner
- Court still has to answer bigger questions about clash between religious liberty and public accommodation laws
- Kagan/Gorsuch duel
Janus

- Union agency fees unconstitutional
  - *Abood* overruled
- The “weaponized” First Amendment?
- Questions about legislative responses and possible retroactive liability
Murphy v. NCAA

- PASPA barred states from “authoriz[ing]” sports gambling
- Struck down under “anti-commandeering” doctrine
  - Disagreement about “severability”
- Ball now in states’ hands
South Dakota v. Wayfair

- Old rule: physical presence needed to compel tax collection
- Physical presence rule overruled, 5-4
  - CJ Roberts: “third time’s a charm”?
- Any constitutional limits on more aggressive regimes?
The Court in Flux

- Justice Gorsuch’s first full Term
- Justice Kennedy’s retirement
- The Chief Justice as the new median justice?
- Judge Kavanaugh nomination
Questions?