

# These Two Decisions Highlight How Scalia's Absence Has Affected the Court

☒ As the U.S. Supreme Court enters the last month of its term, the impact of having only eight justices already is clear. Some of the most high-profile cases of the year are not being decided, or perhaps even worse, are being resolved on narrow grounds that create more confusion than clarity in the law, writes **Erwin Chemerinsky** in the *ABA Journal*.

Chemerinsky is Dean and Distinguished Professor of Law at the University of California, Irvine School of Law.

“A 4-4 tie, which affirms the lower court without opinion by an evenly divided high court, is not a problem when there is no split among the lower courts and there already is a clear prior decision on point. In fact, in a couple of cases, the justices divided 4-4 on whether to overrule a precedent,” writes Chemerinsky.

He discusses *Friedrichs v. California Teachers Association*, which raised the issue of whether to overrule *Abod v. Detroit Board of Education*, which held that non-union members of a public employees' union can be required to pay the share of the union dues that go to support the collective bargaining activities of the union. The article also considers *Franchise Tax Board of California v. Hyatt*, in which one of the questions presented was whether to overrule *Nevada v. Hall*, which held that a state may be sued in the courts of another state.

**Read the article.**

