



## JUSTICE BREYER: THE CARD

Questions have arisen about the significance of the details of our Justice Stephen G. Breyer *Supreme Court Sluggers* card. Here are answers to some of them.

Breyer is on the pitcher's mound at Fenway Park in Boston. His posture is inspired by a Babe Ruth trading card from Ruth's time with the Red Sox. The setting is the 1918 World Series. The scene is game four, in which Ruth is the winning pitcher and also drives in two of the three Red Sox runs. The action on the field behind him – with shortstop Everett Scott breaking toward second base and the baserunner, Charlie Pick of the Chicago Cubs, also running toward second – reveals that it is the top of the fifth inning, in which the second and third outs are about to result from a double play (pitcher to shortstop to first).

Then as now, the Green Monster (which occupies most of the left side of the background) featured big advertisements. On our version, the top of the wall features two ads. The first is for “Beef and Mushroom Marketing, Inc.” – a nod to an especially vivid First Amendment opinion by Breyer in

## Ex Ante

*United States v. United Foods, Inc.*,<sup>1</sup> and to a sequel, *Johanns v. Livestock Marketing Association*.<sup>2</sup> The second is for “Painless Parker, Dentist” – a nod to Breyer’s opinion in *California Dental Association v. Federal Trade Commission*.<sup>3</sup> Below those is a fragment of a third ad. If you could see the whole thing it would read “J. McMachinery & Friend, Ltd.” – a nod to two admirably forthright and characteristically practical jurisdictional opinions by Breyer in *J. McIntyre Machinery, Ltd. v. Nicastro*<sup>4</sup> and *Hertz Corp. v. Friend*.<sup>5</sup>

We could say more, and maybe we will someday, but for now we’ll just say “play baseball.”<sup>6</sup>

### WE’RE IN KANSAS EVERMORE

After the U.S. Supreme Court decided *South Dakota v. Wayfair*, we had to stop doing business with the good people of Kansas. We were sad about that. See *Wayfair and Farewell*, 23 Green Bag 2d 2 (2019).

But now we can joyfully report that while *Wayfair* has not changed, Kansas’s tax laws have changed in ways that make transacting with Kansas feasible again. See *An Act Concerning Taxation*, 2021 Kansas Laws Ch. 93 (S.B. 50). So, we send many thanks to the Senate and the House of Representatives of Kansas. And we will happily send *Green Bags* (and, when appropriate, other treasures) to subscribers in Kansas.



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<sup>1</sup> 533 U.S. 405, 419 (2001) (Breyer, J., dissenting).

<sup>2</sup> 544 U.S. 550, 569 (2005) (Breyer, J., concurring).

<sup>3</sup> 526 U.S. 756, 781, 785 (1999) (Breyer, J., concurring in part and dissenting in part).

<sup>4</sup> 564 U.S. 873, 887 (2011) (Breyer, J., concurring in the judgment).

<sup>5</sup> 559 U.S. 77 (2010).

<sup>6</sup> 536 U.S. 822, 841 (2002) (Breyer, J., concurring).