*Chapter 1*

**Law and Legal Reasoning**

***Sample Case***

812 F.3d 824, 44 Media L. Rep. 1097, 25 Fla. L. Weekly Fed. C 1905

812 F.3d 824

United States Court of Appeals,

Eleventh Circuit.

[**ROSA AND RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT**](http://www.westlaw.com/Search/Results.html?query=advanced%3a+OAID(5008527057)&saveJuris=False&contentType=BUSINESS-INVESTIGATOR&startIndex=1&contextData=(sc.Default)&categoryPageUrl=Home%2fCompanyInvestigator&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem)**, Plaintiff–Appellant,**

**v.**

**TARGET CORPORATION, Defendant–Appellee.**

No. 15–10880.

Jan. 4, 2016.

**Opinion**

[ROSENBAUM](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0387739101&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)), Circuit Judge:

It was December 1, 1955. Although more than a year had passed since the Supreme Court issued [*Brown v. Board of Education of Topeka,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1954121869&pubNum=0000708&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)), invalidating [*Plessy v. Ferguson,* 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1896180043&pubNum=0000708&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)), and its separate-but-equal doctrine, change was slow to arrive in Alabama.

**\*826** Rosa Parks had had enough. After a long day of work, she boarded the bus in downtown Montgomery and took a seat.[1](#co_footnote_B00112037922185_1) Once the bus filled up, some white men boarded and could find no seats. *Id.* at 83. So the bus driver demanded that Parks and some other African–Americans give their seats to the white men. *Id.*

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| [1](#co_footnoteReference_B00112037922185_ID0) | Interview by Sidney Rogers with Rosa Parks (Apr.1956), *in* DAYBREAK OF FREEDOM: THE MONTGOMERY BUS BOYCOTT 82 (Stewart Burns ed., 1997). |

Though the other passengers yielded, Parks refused. *Id.* In later years, she explained, “[W]hen that white driver stepped back toward us, when he waved his hand and ordered us up and out of our seats, I felt a determination to cover my body like a quilt on a winter night.” Donnie Williams & Wayne Greenhaw, THE THUNDER OF ANGELS: THE MONTGOMERY BUS BOYCOTT AND THE PEOPLE WHO BROKE THE BACK OF JIM CROW 48 (Chicago Rev. Press 2005). Upon seeing Parks continuing to sit, the bus driver persisted, asking Parks if she was going to stand. Juan Williams, EYES ON THE PRIZE: AMERICA’S CIVIL RIGHTS YEARS, 1954–1965 66 (Penguin Books 1987).

Parks said, “No, I’m not.” *Id.* And when the bus driver threatened to call the police, Parks calmly answered, “You may do that.” *Id.* The police arrived and arrested Parks for refusing to relinquish her bus seat to a white passenger in accordance with Montgomery city law. *Id.* at 87.

Parks’s courageous act inspired the Montgomery Bus Boycott and served as the impetus for the modern Civil Rights Movement, transforming the nation.[2](#co_footnote_B00222037922185_1) *Id.* In response to Parks’s arrest, for 381 days, 42,000 African–Americans boycotted Montgomery buses, until the United States Supreme Court held the Montgomery segregation law unconstitutional and ordered desegregation of the buses. Act of May 4, 1999, [Pub.L. No. 106–26](http://www.westlaw.com/Link/Document/FullText?findType=l&pubNum=1077005&cite=UUID(IBD664991B4-DB445E8FD7A-25950C21D2F)&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=SL&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)), § 1(4), (5), 113 Stat. 50, 50 (awarding Parks the Congressional gold medal).

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| [2](#co_footnoteReference_B00222037922185_ID0) | So significant to the Civil Rights Movement were Parks’s actions of December 1, 1955, that even the actual bus on which Parks made her famous stand, Bus No. 2875, has been preserved as a museum exhibit at the Henry Ford Museum. *See* Rosa Parks Bus, THE HENRY FORD MUSEUM http://www.thehenryford.org/exhibits/rosaparks/faq.asp (last visited Dec. 22, 2015). |

Parks’s refusal to cede ground in the face of continued injustice has made her among the most revered heroines of our national story; her role in American history cannot be over-emphasized. Indeed, the United States Congress has recognized Parks as the “first lady of civil rights” and the “mother of the freedom movement,” and it has credited Parks with “ignit[ing] the most significant social movement in the history of the United States.” *Id.* at § 1(2).

So it is not surprising that authors would write about Parks’s story and artists would celebrate it with their works. The commemoration and dissemination of Parks’s journey continues to entrench and embolden our pursuit of justice. And it is in the general public interest to relentlessly preserve, spotlight, and recount the story of Rosa Parks and the Civil Rights Movement—even when that interest allegedly conflicts with an individual right of publicity.

**I.**

The Rosa and Raymond Parks Institute for Self Development (the “Institute”) is a Michigan 501(c)(3) non-profit corporation[3](#co_footnote_B00332037922185_1) **\*827** that owns the name and likeness of the late Rosa Parks[4](#co_footnote_B00442037922185_1) pursuant to a right-of-publicity assignment. Target Corporation (“Target”), a national retail corporation headquartered in Minneapolis, Minnesota, operates more than 1,800 retail stores across the United States.

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| [3](#co_footnoteReference_B00332037922185_ID0) | A 501(c)(3) non-profit corporation refers to a corporation “organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purpose, or to foster national or international amateur sports competition.” [26 U.S.C. § 501(c)(3) (2014)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=26USCAS501&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RB&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_b1b5000051ac5). |

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| [4](#co_footnoteReference_B00442037922185_ID0) | Parks passed away in 2005. Debbi Wilgoren & Theola S. Labbe, *An Overflowing Tribute to an Icon,* WASHINGTON POST, Nov. 1, 2005, at 1, http://www.washingtonpost.com/wp-dyn/content/article/2005/10/31/AR2005103100370.html. Her public importance was as great then as at any prior time. Parks’s body lay in state in the Capitol Rotunda, and lines “snaked for blocks around the complex and across the Mall” for people to pay their final respects to Parks. *Id.* at 2. A public memorial service followed at the Metropolitan AME Church in Washington, D.C. *Id.* Among others, the United States Secretaries of Defense, Homeland Security, and Labor, as well as the Senate Majority and Minority Leaders, attended. *Id.* President George W. Bush ordered flags at federal buildings to be flown at half-staff on the day of Parks’s funeral. *Id.* at 1. |

Target offered seven books about Parks for retail: (1) *Rosa Parks: My Story,* by Rosa Parks and Jim Haskins[5](#co_footnote_B00552037922185_1); (2) *Who Was Rosa Parks?,* by Yona Zeldis McDonough; (3) *Rosa Parks: Childhood of Famous Americans,* by Kathleen Kudlinski; (4) *Rosa Parks,* by Eloise Greenfield; (5) *A Picture Book of Rosa Parks,* by David A. Adler[6](#co_footnote_B00662037922185_1); (6) *The Rebellious Life of Mrs. Rosa Parks,* by Jeanne Theoharis[7](#co_footnote_B00772037922185_1); and (7) *The Story of Rosa Parks,* by Patricia A. Pingry.[8](#co_footnote_B00882037922185_1) Target also sold the American television movie, *The Rosa Parks Story,*[9](#co_footnote_B00992037922185_1) and a collage-styled plaque that included, among other items, a picture of Parks, **\*828** alongside Dr. Martin Luther King, Jr.[10](#co_footnote_B010102037922185_1)

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| [5](#co_footnoteReference_B00552037922185_ID0) | This book, obviously, was an autobiography. |

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| [6](#co_footnoteReference_B00662037922185_ID0) | This book was a part of a series called “Picture Book Biographies.” *See* http://www.amazon.com/Picture–Book–ParksBiographies–Biography/dp/082341177X (last visited Dec. 22, 2015). |

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| [7](#co_footnoteReference_B00772037922185_ID0) | Melissa Harris–Perry, the host of MSNBC’s *Melissa Harris–Perry,* said that this book “will undoubtedly be hailed as one of the most important scholarly contributions to civil rights history ever written.... I can’t wait to assign this book in every class I teach.” Review by Melissa Harris–Perry, http://www.amazon.com/Rebellious–Life–Mrs–Rosa–Parks/dp/0807033324 (last visited Dec. 22, 2015). Henry Louis Gates Jr. agreed, “Theoharis brings all of her talents as a political scientist and historian of the civil rights movement to bear on this illuminating biography of the great Rosa Parks.” *Id.* |

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| [8](#co_footnoteReference_B00882037922185_ID0) | *Who Was Rosa Parks?, Rosa Parks: Childhood of Famous Americans, Rosa Parks,* and *The Story of Rosa Parks* were all books directed towards sparking the interests of children, as the primary audience, in Parks’s role in the modern Civil Rights Movement. *See* http://www.amazon.com/Rosa–Parks–Yona–Zeldis–McDonough/dp/0448454424 (last visited Dec. 22, 2015); http: //www.amazon.com/Rosa–Parks–Childhood–FamousAmericans/dp/0689839251 (last visited Dec. 22, 2015); http://www.amazon.com/Rosa–Parks–Trophy–Chapter–Book/dp/0064420256 (last visited Dec. 22, 2015); http://www.amazon.com/Story–Rosa–Parks–Patricia–Pingry/dp/0824966872 (last visited Dec. 22, 2015). |

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| [9](#co_footnoteReference_B00992037922185_ID0) | Angela Bassett played the title role. *See* http://www.imdb.com/title/tt0293562/ (last visited Dec. 22, 2015). Dexter Scott King, the son of Dr. Martin Luther King, Jr., produced the film and played the role of his father. *See id.; see also* http://kingencyclopedia.stanford.edu/encyclopedia/encyclopedia/enc\_king\_dexter\_scott\_1961/ (last visited Dec. 22, 2015). Dexter King was named after the Dexter Avenue Baptist Church, the church where Dr. King held his first pastorate. http://kingencyclopedia.stanford.edu/encyclopedia/encyclopedia/enc\_king\_dexter\_scott\_1961/; http://www.dexterkingmemorial.org/about/ (last visited Dec. 22, 2015). Dr. King was serving as the pastor of the Dexter Avenue Baptist Church when Parks refused to give up her seat on the bus. He was instrumental in the Montgomery Bus Boycott. http://www.thekingcenter.org/bus-boycott-sparks-movement (last visited Dec. 22, 2015). |

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| [10](#co_footnoteReference_B010102037922185_ID) | Below is a picture of the plaque in question:    [​](http://www.westlaw.com/Link/Document/Blob/Ia575f180b3b911e59905010000000000.png?originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentImage&contextData=(sc.UserEnteredCitation))  During oral argument, counsel for the Institute asserted that Target also sold another Parks plaque. The only other plaque referred to in the record was sold under the same merchandise identification label, “Created Equal,” but it did not depict Parks. Instead, it contained pictures of Dr. King and other images related to the Civil Rights Movement. The plaques were packaged and sold simultaneously. |

The plaque was emblazoned with the title, “Civil Rights.” Besides Parks’s photograph and a statement of the years that she lived, the plaque included the word, “CHANGE,” and it contained a photograph and diagram of the bus where Parks threw down the Civil Rights Movement gauntlet, as well as a picture of the Congressional Gold Medal that Parks was later awarded. Overlaid on the photograph of Parks and Dr. King was the statement, “People always say that I didn’t give up my seat because I was tired, but that isn’t true. I was not tired physically ... [.] I was not old ... [.] I was forty two. No, the only tired I was, was tired of giving in.”

Stephanie Workman Marrott, the professional artist who designed the plaque, explained that she created it to “tell[ ] a story about civil rights in America ... [to] describe important aspects of American history and convey a message about those events.” She added that her decision to “include[ ] the name and image of Rosa Parks, as well as an image of the Montgomery bus and the word ‘CHANGE,’ was in order to tell the story of Rosa Parks and the civil rights movement in a way that would convey an inspirational message about standing up for what you believe is right and what you believe in.”

Six of the books, the movie, and the plaque became available for sale on Target’s website or in some of its retail stores before November 2011. In 2013, the Theoharis book was added to Target’s online retail. There is no evidence in the record that any of the products say “Target” on them or are otherwise identifiably affiliated with Target in any way other than that Target offered them for sale.

**\*829** On November 6, 2013, the Institute filed the underlying complaint in the Middle District of Alabama. Invoking diversity jurisdiction, the Institute alleged claims for unjust enrichment, right of publicity, and misappropriation under Michigan common law for Target’s sales of all items using the name and likeness of Rosa Parks.

Generally, the Institute complained that, by selling the products identified above, Target had unfairly and “without [the Institute’s] prior knowledge, or consent, used [Parks’s] name, likeness, and image to sell products and did promote and sell products using [Parks’s] name, likeness, and image for [Target’s] own commercial advantage.” After Target sought summary judgment, the district court dismissed the complaint, and this appeal followed. We now affirm the district court’s dismissal of the Institute’s complaint.

**II.**

[**[1]**](#co_anchor_F12037922185_1) [**[2]**](#co_anchor_F22037922185_1) [**[3]**](#co_anchor_F32037922185_1) The “starting point ... in all cases in which subject-matter jurisdiction is premised on diversity of citizenship[ ] is [*Erie Railroad Co. v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1938121079&pubNum=0000708&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)).” [*Ellis v. Great Sw. Corp.,* 646 F.2d 1099, 1102–03 (5th Cir.1981)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1981121844&pubNum=0000350&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_350_1102&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_350_1102).[11](#co_footnote_B011112037922185_1) Because no federal common law exists, under *Erie,* a federal court sitting in diversity applies the substantive law of the state in which it sits except in cases governed by federal law or the United States Constitution. *Id.* Here, Alabama’s choice-of-law rules control and hold that the procedural law of the forum state is applied, while the law of the state in which the injury occurred governs the substantive rights of the case. [*Fitts v. Minn. Min. & Mfg. Co.,* 581 So.2d 819, 820 (Ala.1991)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1991109544&pubNum=0000735&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_735_820&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_735_820). Accordingly, in this case we apply the procedural rules of Alabama and the substantive law of Michigan.[12](#co_footnote_B012122037922185_1)

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| [11](#co_footnoteReference_B011112037922185_ID) | The decisions of the United States Court of Appeals for the Fifth Circuit prior to October 1, 1981, are binding as precedent in the Eleventh Circuit. [*Bonner v. City of Prichard, Ala.,* 661 F.2d 1206, 1207 (11th Cir.1981)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1981145934&pubNum=0000350&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_350_1207&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_350_1207) (en banc). |

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| [12](#co_footnoteReference_B012122037922185_ID) | It appears that Alabama’s statute of limitations would preclude a claim based on all but one of the books at issue. [Ala.Code § 6–2–38(*l* ) (1975)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS6-2-38&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)). Alabama typically considers statutes of limitations procedural, [*Randolph v. Tenn. Valley Auth.,* 792 F.Supp. 1221, 1222 (N.D.Ala.1992)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1992116074&pubNum=0000345&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_345_1222&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_345_1222), and generally applies what is known as the single-publication rule to tort claims. *See* [*Precision Gear Co. v. Cont’l Motors, Inc.,* 135 So.3d 953, 957 (Ala.2013)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2030975170&pubNum=0003926&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_3926_957&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_3926_957); [*Cofer v. Ensor,* 473 So.2d 984, 987 (Ala.1985)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985126190&pubNum=0000735&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_735_987&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_735_987). Although Alabama courts have not yet addressed whether they would apply the single-publication rule to common-law right-of-publicity claims, we are inclined to believe that they would. *See, e.g.,* [*Poff v. Hayes,* 763 So.2d 234, 242 (Ala.2000)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2000047630&pubNum=0000735&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_735_242&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_735_242). But because Michigan’s well-established qualified privilege for matters of public concern soundly resolves this case, we do not address this specific issue. |

[**[4]**](#co_anchor_F42037922185_1) In consulting Michigan’s laws, we first consider rulings of Michigan’s Supreme Court. *See* [*Bailey v. S. Pac. Transp. Co.,* 613 F.2d 1385, 1388 (5th Cir.)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980102256&pubNum=0000350&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_350_1388&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_350_1388), *cert. denied,* [449 U.S. 836, 101 S.Ct. 109, 66 L.Ed.2d 42 (1980)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980224177&pubNum=0000708&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)). Where the highest court in the state has rendered no decisions on point, however, we must follow the opinions of Michigan’s intermediate courts, unless we are “convinced that the highest court would decide otherwise.” *Id.* (citing [*Comm’r v. Bosch,* 387 U.S. 456, 465, 87 S.Ct. 1776, 18 L.Ed.2d 886 (1967)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1967129537&pubNum=0000708&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation))).

[**[5]**](#co_anchor_F52037922185_1) In Michigan, the common-law right of privacy protects against four types of invasions of privacy:

1. Intrusion upon the plaintiff’s seclusion or solitude, or into his private affairs.

**\*830** 2. Public disclosure of embarrassing private facts about the plaintiff.

3. Publicity which places the plaintiff in a false light in the public eye.

4. Appropriation for the defendant’s advantage, of the plaintiff’s name or likeness.

[*Tobin v. Mich. Civ. Serv. Comm’n,* 416 Mich. 661, 331 N.W.2d 184, 189 (1982)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983115481&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_189&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_189) (quoting [*Beaumont v. Brown,* 401 Mich. 80, 257 N.W.2d 522, 533 (1977)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1977131134&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_533&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_533), *overruled on other grounds by* [*Bradley v. Saranac Cmty. Sch. Bd. of Educ.,* 455 Mich. 285, 302, 565 N.W.2d 650, 658 (1997)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1997154455&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_658&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_658)). The last category of invasion of privacy—misappropriation of a person’s name or likeness—is commonly referred to as a violation of the “right of publicity.” [*Ruffin–Steinback v. dePasse,* 82 F.Supp.2d 723, 728–29 (E.D.Mich.2000) (applying Michigan law)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2000048871&pubNum=0004637&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_4637_728&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_4637_728), *aff’d,* [267 F.3d 457 (6th Cir.2001)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2001828883&pubNum=0000506&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)).

Michigan’s common-law right of publicity “is founded upon ‘the interest of the individual in the exclusive use of his own identity, in so far as it is represented by his name or likeness, and in so far as the use may be of benefit to him or to others.’ ” [*Battaglieri v. Mackinac Ctr. for Pub. Pol’y,* 261 Mich.App. 296, 680 N.W.2d 915, 919 (2004)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2004238666&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_919&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_919) (quoting RESTATEMENT SECOND OF TORTS, § 652C cmt. a (1977)). This particular privacy right guards against the appropriation of “the commercial value of a person’s identity by using without consent the person’s name, likeness, or other indicia of identity for the purpose of trade.” [RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 46 (1995)](http://www.westlaw.com/Link/Document/FullText?findType=Y&pubNum=0106587&cite=REST3DUNCOMs46&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=TS&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)).

[**[6]**](#co_anchor_F62037922185_1) Privacy rights, however, are not absolute. [*Earp v. City of Detroit,* 16 Mich.App. 271, 167 N.W.2d 841, 845 (1969)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1969124833&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_845&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_845). The Michigan Constitution guarantees that “[e]very person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.” [MICH. CONST. of 1963, art. I, § 5](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000643&cite=MICOART1S5&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)).[13](#co_footnote_B013132037922185_1) Premised on this state constitutional right, Michigan courts have long recognized that individual rights must yield to the qualified privilege to communicate on matters of public interest.[14](#co_footnote_B014142037922185_1) [*Lawrence v. Fox,* 357 Mich. 134, 97 N.W.2d 719, 721 (1959)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1959113728&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_721&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_721); [*Dienes v. Associated Newspapers, Inc.,* 137 Mich.App. 272, 358 N.W.2d 562, 565 (1984)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1984155027&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_565&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_565).

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| [13](#co_footnoteReference_B013132037922185_ID) | The protection derived from this provision of the Michigan Constitution provides the necessary shield for the works at issue and we need not address whether the First Amendment would also serve to protect the works. *See* [*United States v. Charles,* 722 F.3d 1319, 1332–35 (11th Cir.2013)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2031161886&pubNum=0000506&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_506_1332&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_506_1332) (Marcus, J., specially concurring) (relying on the “long-standing prudential policy ‘that we ought not to pass on questions of constitutionality ... unless such adjudication is unavoidable’ ”) (quoting [*Spector Motor Serv., Inc. v. McLaughlin,* 323 U.S. 101, 105, 65 S.Ct. 152, 154, 89 L.Ed. 101 (1944)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1944117110&pubNum=0000708&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_708_154&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_708_154)). We nonetheless recognize and appreciate the efforts of amici in briefing the First Amendment issues. |

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| [14](#co_footnoteReference_B014142037922185_ID) | In Michigan, matters concerning freedom of speech may be shielded by an absolute or a qualified privilege. [*Raymond v. Croll,* 233 Mich. 268, 206 N.W. 556, 557–58 (1925)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1926106442&pubNum=0000594&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_594_557&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_594_557). The absolute privilege is a narrow exception not applicable in the instant case, covering matters such as judicial proceedings, [*Sanders v. Leeson Air Conditioning Corp.,* 362 Mich. 692, 695, 108 N.W.2d 761, 762 (Mich.1961)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1961118127&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_762&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_762), proceedings of legislative bodies, and communications by military and naval officers. [*Froling v. Carpenter,* 203 Mich.App. 368, 371, 512 N.W.2d 6, 8 (Mich.Ct.App.1993)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994059033&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_8&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_8). |

[**[7]**](#co_anchor_F72037922185_1) [**[8]**](#co_anchor_F82037922185_1) The “qualified privilege to report on matters in the public interest is deeply rooted in Michigan jurisprudence,” [*Rouch v. Enquirer & News of Battle Creek,* 427 Mich. 157, 398 N.W.2d 245, 253 (1986)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1987005154&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_253&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_253), and, where the facts are undisputed, presents a question of law. [*Tumbarella v. Kroger* **\*831** *Co.,* 85 Mich.App. 482, 271 N.W.2d 284, 289 (1978)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1978128739&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_289&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_289). The privilege attaches to matters of general public interest, [*Peisner v. Detroit Free Press, Inc.,* 82 Mich.App. 153, 266 N.W.2d 693, 697 (1978)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1978127830&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_697&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_697), and “extends to all communications made bona fide upon any subject-matter” where the party communicating has an interest or a duty to a person having a corresponding interest or duty. [*Bacon v. Mich. Cent. R. Co.,* 66 Mich. 166, 33 N.W. 181, 183 (1887)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1887096796&pubNum=0000594&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_594_183&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_594_183). This defense also “embraces cases where the duty is not a legal one, but where it is of a moral or social character of imperfect obligation.” *Id.*[15](#co_footnote_B015152037922185_1)

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| [15](#co_footnoteReference_B015152037922185_ID) | Although most often used as a shield to liability in defamation and libel cases, Michigan’s absolute and qualified privileges have been applied to preclude liability for claims premised on other torts. *See, e.g.,* [*Meyer v. Hubbell,* 117 Mich.App. 699, 324 N.W.2d 139, 144 (1982)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1982141677&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_144&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_144) (applying absolute privilege to preclude claim of intentional infliction of emotional distress and tortious interference with economic relations); [*Bichler v. Union Bank & Trust Co. of Grand Rapids,* 745 F.2d 1006, 1011 (6th Cir.1984)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1984143360&pubNum=0000350&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_350_1011&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_350_1011) (en banc) (applying Michigan law and the qualified privilege to preclude right-of-privacy claim). The Restatement of the Law also recognizes that the same qualified privilege applicable to defamation and libel claims would apply with equal force to invasion-of-privacy claims. RESTATEMENT (SECOND) OFTORTS § 652G cmt. a (1977). (“Under any circumstances that would give rise to a conditional privilege for the publication of defamation there is likewise a conditional privilege for the invasion of privacy.”); [*Beaumont v. Brown,* 125 Mich.App. 464, 336 N.W.2d 26, 27 (1983)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983132213&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_27&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_27) (citing [RESTATEMENT (SECOND) OF TORTS § 652G](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=0290694573&pubNum=0101577&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=TS&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation))). |

The privilege afforded is not a constant but varies with the situation and the importance of the social issues at stake. [*Peisner,* 266 N.W.2d at 697](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1978127830&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_697&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_697). In cases concerning social issues, Michigan courts and courts applying Michigan law have found the qualified privilege to extend to issues concerning even general topics of public concern. *See, e.g.,* [*Gaynes v. Allen,* 128 Mich.App. 42, 339 N.W.2d 678, 681 (1983)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983148901&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_681&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_681) (public interest in matters of healthcare); [*Peisner,* 266 N.W.2d at 698](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1978127830&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_698&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_698) (public interest in the administration of justice); [*Weeren v. Evening News Ass’n,* 2 Mich.App. 74, 138 N.W.2d 526, 527 (1965)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1965119154&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_527&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_527) (public interest in the broadcast of an historical documentary), *rev’d on other grounds,* [379 Mich. 475, 152 N.W.2d 676 (1967)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1967122626&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)); [*Bichler,* 745 F.2d at 1011](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1984143360&pubNum=0000350&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_350_1011&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_350_1011) (public interest in the closing of the only dinner theater in Western Michigan); [*Schultz v. Newsweek, Inc.,* 481 F.Supp. 881, 884 (E.D.Mich.1979)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1979137841&pubNum=0000345&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_345_884&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_345_884) (public interest in liquor-license application as a matter of public function).

Of course, it is beyond dispute that Rosa Parks is a figure of great historical significance and the Civil Rights Movement a matter of legitimate and important public interest. And it is uncontested that five of the six books, including an autobiographical book co-authored by Parks herself, and the movie are all *bona fide* works of non-fiction discussing Parks and her role in the Civil Rights Movement. As for the sixth book, *Rosa Parks: Childhood of Famous Americans,* by Kathleen Kudlinski, it is a fictionalized biography meant to introduce children to the importance of Parks, so it, too, concerns a matter of public interest.

[**[9]**](#co_anchor_F92037922185_1) Similarly, the plaque depicts images and mentions dates and statements related to Parks and the Civil Rights Movement, in an effort to convey a message concerning Parks, her courage, and the results of her strength. Indeed, all of the works in question “communicate[ ] information, express[ ] opinion[s], recite[ ] grievances, [and] protest[ ] claimed abuses, ... on behalf of a movement whose existence and objectives” continue to be “of the highest public interest and concern.” **\*832** [*New York Times Co. v. Sullivan,* 376 U.S. 254, 266, 84 S.Ct. 710, 718, 11 L.Ed.2d 686 (1964)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124777&pubNum=0000708&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_708_718&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_708_718) (discussing the Civil Rights Movement).[16](#co_footnote_B016162037922185_1)

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| [16](#co_footnoteReference_B016162037922185_ID) | Michigan courts have been clear that “[t]he rights to free speech under the Michigan and federal constitutions are coterminous ... [and t]hus, federal authority construing the First Amendment may be used in construing the Michigan Constitution’s free speech guarantee.” [*Burns v. City of Detroit,* 253 Mich.App. 608, 660 N.W.2d 85, 93 (2002)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2002705820&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_93&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_93). |

Although the qualified privilege is not invincible, [*Lins v. Evening News Ass’n,* 129 Mich.App. 419, 342 N.W.2d 573, 581 (1983)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983156847&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_581&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_581), the Institute has not articulated any argument as to why Michigan’s qualified privilege for matters of public concern would not apply to these works, in light of the conspicuous historical importance of Rosa Parks. Nor can we conceive of any.

[**[10]**](#co_anchor_F102037922185_1) The use of Rosa Parks’s name and likeness in the books, movie, and plaque is necessary to chronicling and discussing the history of the Civil Rights Movement—matters quintessentially embraced and protected by Michigan’s qualified privilege. Indeed, it is difficult to conceive of a discussion of the Civil Rights Movement without reference to Parks and her role in it. And Michigan law does not make discussion of these topics of public concern contingent on paying a fee. As a result, all six books, the movie, and the plaque find protection in Michigan’s qualified privilege protecting matters of public interest.[17](#co_footnote_B017172037922185_1)

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| [17](#co_footnoteReference_B017172037922185_ID) | The district court held that the Institute’s claims of misappropriation and unjust enrichment were derivative of its right-of-publicity claim. The Institute’s misappropriation claim is the same as its claim based on the right of publicity and is thus duplicative. *See* [*Carson v. Here’s Johnny Portable Toilets, Inc.,* 698 F.2d 831, 834 (6th Cir.1983) (applying Michigan state law)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983105719&pubNum=0000350&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_350_834&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_350_834) (stating that misappropriation of likeness “has become known as ‘the right of publicity’ ”). Because we find that Target did not unlawfully use Parks’s name and likeness, any acquired benefit would not have been unjust, so the Institute’s common-law claim of unjust enrichment necessarily fails. [*Tkachik v. Mandeville,* 487 Mich. 38, 790 N.W.2d 260, 266 (2010)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2022626213&pubNum=0000595&originatingDoc=I3f6498d0b2da11e5b4bafa136b480ad2&refType=RP&fi=co_pp_sp_595_266&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_595_266). |

**III.**

In short, the district court did not err in dismissing the Institute’s complaint. The district court’s order is **AFFIRMED.**

**Supplemental Case Printout for: *Ethics Today***

135 S.Ct. 2401

Supreme Court of the United States

**Stephen KIMBLE et al., Petitioners**

**v.**

**MARVEL ENTERTAINMENT, LLC, successor to Marvel Enterprises, Inc.**

No. 13–720.

Argued March 31, 2015.

Decided June 22, 2015.

**Opinion**

Justice [KAGAN](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0301239401&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) delivered the opinion of the Court.

[**[1]**](#co_anchor_F12036504422_1) In [*Brulotte v. Thys Co.,* 379 U.S. 29, 85 S.Ct. 176, 13 L.Ed.2d 99 (1964)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124883&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)), this Court held that a patent holder cannot charge royalties for the use of his invention after its patent term has expired. The sole question presented here is whether we should overrule *Brulotte*. Adhering to principles of *stare decisis,* we decline to do so. Critics of the *Brulotte* rule must seek relief not from this Court but from Congress.

I

[**[2]**](#co_anchor_F22036504422_1) In 1990, petitioner Stephen Kimble obtained a patent on a toy that allows children (and young-at-heart adults) to role-play as “a spider person” by shooting webs—really, pressurized foam string—“from the palm of [the] hand.” [U.S. Patent No. 5,072,856](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1991329987&pubNum=0004074&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=PA&docFamilyGuid=Ib9d23830749511d79ccbd455e2fa80ef&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)), Abstract (filed May 25, **\*2406** 1990).[1](#co_footnote_B00212036504422_1) Respondent Marvel Entertainment, LLC (Marvel) makes and markets products featuring Spider–Man, among other comic-book characters. Seeking to sell or license his patent, Kimble met with the president of Marvel’s corporate predecessor to discuss his idea for web-slinging fun. Soon afterward, but without remunerating Kimble, that company began marketing the “Web Blaster”—a toy that, like Kimble’s patented invention, enables would-be action heroes to mimic Spider–Man through the use of a polyester glove and a canister of foam.

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| [1](#co_footnoteReference_B00212036504422_ID0) | Petitioner Robert Grabb later acquired an interest in the patent. For simplicity, we refer only to Kimble. |

Kimble sued Marvel in 1997 alleging, among other things, patent infringement. The parties ultimately settled that litigation. Their agreement provided that Marvel would purchase Kimble’s patent in exchange for a lump sum (of about a half-million dollars) and a 3% royalty on Marvel’s future sales of the Web Blaster and similar products. The parties set no end date for royalties, apparently contemplating that they would continue for as long as kids want to imitate Spider–Man (by doing whatever a spider can).

And then Marvel stumbled across *Brulotte,* the case at the heart of this dispute. In negotiating the settlement, neither side was aware of *Brulotte*. But Marvel must have been pleased to learn of it. *Brulotte* had read the patent laws to prevent a patentee from receiving royalties for sales made after his patent’s expiration. See [379 U.S., at 32, 85 S.Ct. 176](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124883&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). So the decision’s effect was to sunset the settlement’s royalty clause.[2](#co_footnote_B00322036504422_1) On making that discovery, Marvel sought a declaratory judgment in federal district court confirming that the company could cease paying royalties come 2010—the end of Kimble’s patent term. The court approved that relief, holding that *Brulotte* made “the royalty provision ... unenforceable after the expiration of the [Kimble patent.” 692 F.Supp.2d 1156, 1161 (D.Ariz.2010)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2021470193&pubNum=0004637&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_4637_1161&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_4637_1161). The Court of Appeals for the Ninth Circuit affirmed, though making clear that it was none too happy about doing so. “[T]he *Brulotte* rule,” the court complained, “is counterintuitive and its rationale is arguably unconvincing.” [727 F.3d 856, 857 (2013)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2030996656&pubNum=0000506&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_506_857&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_506_857)*.*

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| [2](#co_footnoteReference_B00322036504422_ID0) | In *Brulotte,* the patent holder retained ownership of the patent while licensing customers to use the patented article in exchange for royalty payments. See [379 U.S., at 29–30, 85 S.Ct. 176](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124883&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). By contrast, Kimble sold his whole patent to obtain royalties. But no one here disputes that *Brulotte* covers a transaction structured in that alternative way. |

We granted certiorari, [574 U.S. ––––, 135 S.Ct. 781, 190 L.Ed.2d 649 (2014)](http://www.westlaw.com/Link/Document/FullText?findType=Y&pubNum=0000708&cite=135SCT781&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)), to decide whether, as some courts and commentators have suggested, we should overrule *Brulotte*.[3](#co_footnote_B00432036504422_1) For reasons of *stare decisis,* we demur.

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| [3](#co_footnoteReference_B00432036504422_ID0) | See, *e.g.,* [*Scheiber v. Dolby Labs., Inc.,* 293 F.3d 1014, 1017–1018 (C.A.7 2002)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2002373591&pubNum=0000506&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_506_1017&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_506_1017) (Posner, J.) (*Brulotte* has been “severely, and as it seems to us, with all due respect, justly criticized.... However, we have no authority to overrule a Supreme Court decision no matter how dubious its reasoning strikes us, or even how out of touch with the Supreme Court’s current thinking the decision seems”); Ayres & Klemperer, [Limiting Patentees’ Market Power Without Reducing Innovation Incentives: The Perverse Benefits of Uncertainty and Non–Injunctive Remedies, 97 Mich. L.Rev. 985, 1027 (1999)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=0110726547&pubNum=0001192&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=LR&fi=co_pp_sp_1192_1027&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_1192_1027) (“Our analysis ... suggests that *Brulotte* should be overruled”). |

II

[**[3]**](#co_anchor_F32036504422_1) [**[4]**](#co_anchor_F42036504422_1) Patents endow their holders with certain superpowers, but only for a limited time. In crafting the patent laws, Congress struck a balance between fostering innovation and ensuring public access to **\*2407** discoveries. While a patent lasts, the patentee possesses exclusive rights to the patented article—rights he may sell or license for royalty payments if he so chooses. See [35 U.S.C. § 154(a)(1)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=35USCAS154&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RB&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_7b9b000044381). But a patent typically expires 20 years from the day the application for it was filed. See [§ 154(a)(2)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=35USCAS154&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RB&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_d86d0000be040). And when the patent expires, the patentee’s prerogatives expire too, and the right to make or use the article, free from all restriction, passes to the public. See [*Sears, Roebuck & Co. v. Stiffel Co.,* 376 U.S. 225, 230, 84 S.Ct. 784, 11 L.Ed.2d 661 (1964)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124786&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)).

This Court has carefully guarded that cut-off date, just as it has the patent laws’ subject-matter limits: In case after case, the Court has construed those laws to preclude measures that restrict free access to formerly patented, as well as unpatentable, inventions. In one line of cases, we have struck down state statutes with that consequence. See, *e.g.,* [*id.,* at 230–233, 84 S.Ct. 784](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124786&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)); [*Bonito Boats, Inc. v. Thunder Craft Boats, Inc.,* 489 U.S. 141, 152, 167–168, 109 S.Ct. 971, 103 L.Ed.2d 118 (1989)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1989026580&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)); [*Compco Corp. v. Day–Brite Lighting, Inc.,* 376 U.S. 234, 237–238, 84 S.Ct. 779, 11 L.Ed.2d 669 (1964)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124784&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). By virtue of federal law, we reasoned, “an article on which the patent has expired,” like an unpatentable article, “is in the public domain and may be made and sold by whoever chooses to do so.” [*Sears,* 376 U.S., at 231, 84 S.Ct. 784](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124786&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). In a related line of decisions, we have deemed unenforceable private contract provisions limiting free use of such inventions. In [*Scott Paper Co. v. Marcalus Mfg. Co.,* 326 U.S. 249, 66 S.Ct. 101, 90 L.Ed. 47 (1945)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1945116150&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)), for example, we determined that a manufacturer could not agree to refrain from challenging a patent’s validity. Allowing even a single company to restrict its use of an expired or invalid patent, we explained, “would deprive ... the consuming public of the advantage to be derived” from free exploitation of the discovery. [*Id.,* at 256, 66 S.Ct. 101](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1945116150&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). And to permit such a result, whether or not authorized “by express contract,” would impermissibly undermine the patent laws. [*Id.,* at 255–256, 66 S.Ct. 101](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1945116150&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)); see also, *e.g.,* [*Edward Katzinger Co. v. Chicago Metallic Mfg. Co.,* 329 U.S. 394, 400–401, 67 S.Ct. 416, 91 L.Ed. 374 (1947)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1947114969&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) (ruling that *Scott Paper* applies to licensees);[*Lear, Inc. v. Adkins,* 395 U.S. 653, 668–675, 89 S.Ct. 1902, 23 L.Ed.2d 610 (1969)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1969133016&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) (refusing to enforce a contract requiring a licensee to pay royalties while contesting a patent’s validity).

*Brulotte* was brewed in the same barrel. There, an inventor licensed his patented hop-picking machine to farmers in exchange for royalties from hop crops harvested both before and after his patents’ expiration dates. The Court (by an 8–1 vote) held the agreement unenforceable—“unlawful *per se* ”—to the extent it provided for the payment of royalties “accru[ing] after the last of the patents incorporated into the machines had expired.” [379 U.S., at 30, 32, 85 S.Ct. 176](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124883&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). To arrive at that conclusion, the Court began with the statutory provision setting the length of a patent term. See [*id.,* at 30, 85 S.Ct. 176](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124883&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) (quoting the then-current version of [§ 154](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=35USCAS154&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default))). Emphasizing that a patented invention “become[s] public property once [that term] expires,” the Court then quoted from *Scott Paper* : Any attempt to limit a licensee’s post-expiration use of the invention, “whatever the legal device employed, runs counter to the policy and purpose of the patent laws.” [379 U.S., at 31, 85 S.Ct. 176](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124883&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) (quoting [326 U.S., at 256](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1945116150&pubNum=0000780&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_780_256&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_780_256)). In the *Brulotte* Court’s view, contracts to pay royalties for such use continue “the patent monopoly beyond the [patent] period,” even though only as to the licensee affected. [379 U.S., at 33, 85 S.Ct. 176](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124883&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). And in so doing, those agreements conflict with patent law’s policy of establishing a **\*2408** “post-expiration ... public domain” in which every person can make free use of a formerly patented product. *Ibid.*

The *Brulotte* rule, like others making contract provisions unenforceable, prevents some parties from entering into deals they desire. As compared to lump-sum fees, royalty plans both draw out payments over time and tie those payments, in each month or year covered, to a product’s commercial success. And sometimes, for some parties, the longer the arrangement lasts, the better—not just up to but beyond a patent term’s end. A more extended payment period, coupled (as it presumably would be) with a lower rate, may bring the price the patent holder seeks within the range of a cash-strapped licensee. (Anyone who has bought a product on installment can relate.) See Brief for Memorial Sloan Kettering Cancer Center et al. as *Amici Curiae* 17. Or such an extended term may better allocate the risks and rewards associated with commercializing inventions—most notably, when years of development work stand between licensing a patent and bringing a product to market. See, *e.g.,* 3 R. Milgrim & E. Bensen, Milgrim on Licensing § 18.05, p. 18–9 (2013). As to either goal, *Brulotte* may pose an obstacle.

[**[5]**](#co_anchor_F52036504422_1) [**[6]**](#co_anchor_F62036504422_1) [**[7]**](#co_anchor_F72036504422_1) [**[8]**](#co_anchor_F82036504422_1) Yet parties can often find ways around *Brulotte,* enabling them to achieve those same ends. To start, *Brulotte* allows a licensee to defer payments for pre-expiration use of a patent into the post-expiration period; all the decision bars are royalties for using an invention after it has moved into the public domain. See [379 U.S., at 31, 85 S.Ct. 176](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124883&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)); [*Zenith Radio Corp. v. Hazeltine Research, Inc.,* 395 U.S. 100, 136, 89 S.Ct. 1562, 23 L.Ed.2d 129 (1969)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1969132989&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). A licensee could agree, for example, to pay the licensor a sum equal to 10% of sales during the 20–year patent term, but to amortize that amount over 40 years. That arrangement would at least bring down early outlays, even if it would not do everything the parties might want to allocate risk over a long timeframe. And parties have still more options when a licensing agreement covers either multiple patents or additional non-patent rights. Under *Brulotte,* royalties may run until the latest-running patent covered in the parties’ agreement expires. See [379 U.S., at 30, 85 S.Ct. 176](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124883&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). Too, post-expiration royalties are allowable so long as tied to a non-patent right—even when closely related to a patent. See, *e.g.,* 3 Milgrim on Licensing § 18.07, at 18–16 to 18–17. That means, for example, that a license involving both a patent and a trade secret can set a 5% royalty during the patent period (as compensation for the two combined) and a 4% royalty afterward (as payment for the trade secret alone). Finally and most broadly, *Brulotte* poses no bar to business arrangements other than royalties—all kinds of joint ventures, for example—that enable parties to share the risks and rewards of commercializing an invention.

[**[9]**](#co_anchor_F92036504422_1) Contending that such alternatives are not enough, Kimble asks us to abandon *Brulotte* in favor of “flexible, case-by-case analysis” of post-expiration royalty clauses “under the rule of reason.” Brief for Petitioners 45. Used in antitrust law, the rule of reason requires courts to evaluate a practice’s effect on competition by “taking into account a variety of factors, including specific information about the relevant business, its condition before and after the [practice] was imposed, and the [practice’s] history, nature, and effect.” [*State Oil Co. v. Khan,* 522 U.S. 3, 10, 118 S.Ct. 275, 139 L.Ed.2d 199 (1997)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1997219814&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). Of primary importance in this context, Kimble posits, is whether a patent holder has power in the relevant market and so might be able to curtail competition. See Brief for Petitioners **\*2409** 47–48; [*Illinois Tool Works Inc. v. Independent Ink, Inc.,* 547 U.S. 28, 44, 126 S.Ct. 1281, 164 L.Ed.2d 26 (2006)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2008558382&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) (“[A] patent does not necessarily confer market power”). Resolving that issue, Kimble notes, entails “a full-fledged economic inquiry into the definition of the market, barriers to entry, and the like.” Brief for Petitioners 48 (quoting 1 H. Hovenkamp, M. Janis, M. Lemley, & C. Leslie, IP and Antitrust § 3.2e, p. 3–12.1 (2d ed., Supp. 2014) (Hovenkamp)).

III

[**[10]**](#co_anchor_F102036504422_1) [**[11]**](#co_anchor_F112036504422_1) Overruling precedent is never a small matter. *Stare decisis*—in English, the idea that today’s Court should stand by yesterday’s decisions—is “a foundation stone of the rule of law.” [*Michigan v. Bay Mills Indian Community,* 572 U.S. ––––, ––––, 134 S.Ct. 2024, 2036, 188 L.Ed.2d 1071 (2014)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2033456179&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_708_2036&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_708_2036). Application of that doctrine, although “not an inexorable command,” is the “preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” [*Payne v. Tennessee,* 501 U.S. 808, 827–828, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1991116033&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). It also reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation.

[**[12]**](#co_anchor_F122036504422_1) [**[13]**](#co_anchor_F132036504422_1) [**[14]**](#co_anchor_F142036504422_1) Respecting *stare decisis* means sticking to some wrong decisions. The doctrine rests on the idea, as Justice Brandeis famously wrote, that it is usually “more important that the applicable rule of law be settled than that it be settled right.” [*Burnet v. Coronado Oil & Gas Co.,* 285 U.S. 393, 406, 52 S.Ct. 443, 76 L.Ed. 815 (1932)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1932123079&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) (dissenting opinion). Indeed, *stare decisis* has consequence only to the extent it sustains incorrect decisions; correct judgments have no need for that principle to prop them up. Accordingly, an argument that we got something wrong—even a good argument to that effect—cannot by itself justify scrapping settled precedent. Or otherwise said, it is not alone sufficient that we would decide a case differently now than we did then. To reverse course, we require as well what we have termed a “special justification”—over and above the belief “that the precedent was wrongly decided.” [*Halliburton Co. v. Erica P. John Fund, Inc.,* 573 U.S. ––––, ––––, 134 S.Ct. 2398, 2407, 189 L.Ed.2d 339 (2014)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2033642715&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_708_2407&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_708_2407).

[**[15]**](#co_anchor_F152036504422_1) [**[16]**](#co_anchor_F162036504422_1) [**[17]**](#co_anchor_F172036504422_1) What is more, *stare decisis* carries enhanced force when a decision, like *Brulotte,* interprets a statute. Then, unlike in a constitutional case, critics of our ruling can take their objections across the street, and Congress can correct any mistake it sees. See, *e.g.,* [*Patterson v. McLean Credit Union,* 491 U.S. 164, 172–173, 109 S.Ct. 2363, 105 L.Ed.2d 132 (1989)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1989089493&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). That is true, contrary to the dissent’s view, see *post,* at 2417 – 2418 (opinion of ALITO, J.), regardless whether our decision focused only on statutory text or also relied, as *Brulotte* did, on the policies and purposes animating the law. See, *e.g.,* [*Bilski v. Kappos,* 561 U.S. 593, 601–602, 130 S.Ct. 3218, 177 L.Ed.2d 792 (2010)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2022394590&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). Indeed, we apply statutory *stare decisis* even when a decision has announced a “judicially created doctrine” designed to implement a federal statute. [*Halliburton,* 573 U.S., at ––––, 134 S.Ct., at 2411](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2033642715&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_708_2411&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_708_2411). All our interpretive decisions, in whatever way reasoned, effectively become part of the statutory scheme, subject (just like the rest) to congressional change. Absent special justification, they are balls tossed into Congress’s court, for acceptance or not as that branch elects.

And Congress has spurned multiple opportunities to reverse *Brulotte*—openings as frequent and clear as this Court ever **\*2410** sees. *Brulotte* has governed licensing agreements for more than half a century. See [*Watson v. United States,* 552 U.S. 74, 82–83, 128 S.Ct. 579, 169 L.Ed.2d 472 (2007)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2014313734&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) (stating that “long congressional acquiescence,” there totaling just 14 years, “enhance[s] even the usual precedential force we accord to our interpretations of statutes” (internal quotation marks omitted)). During that time, Congress has repeatedly amended the patent laws, including the specific provision ([35 U.S.C. § 154](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=35USCAS154&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default))) on which *Brulotte* rested. See, *e.g.,* Uruguay Round Agreements Act, § 532(a), 108 Stat. 4983 (1994) (increasing the length of the patent term); Act of Nov. 19, 1988, § 201, 102 Stat. 4676 (limiting patent-misuse claims). *Brulotte* survived every such change. Indeed, Congress has rebuffed bills that would have replaced *Brulotte* ‘s *per se* rule with the same antitrust-style analysis Kimble now urges. See, *e.g.,* S. 1200, 100th Cong., 1st Sess., Tit. II (1987) (providing that no patent owner would be guilty of “illegal extension of the patent right by reason of his or her licensing practices ... unless such practices ... violate the antitrust laws”); S. 438, 100th Cong., 2d Sess., § 201(3) (1988) (same). Congress’s continual reworking of the patent laws—but never of the *Brulotte* rule—further supports leaving the decision in place.

[**[18]**](#co_anchor_F182036504422_1) Nor yet are we done, for the subject matter of *Brulotte* adds to the case for adhering to precedent. *Brulotte* lies at the intersection of two areas of law: property (patents) and contracts (licensing agreements). And we have often recognized that in just those contexts—“cases involving property and contract rights”—considerations favoring *stare decisis* are “at their acme.” *E.g.,* [*Payne,* 501 U.S., at 828, 111 S.Ct. 2597](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1991116033&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)); [*Khan,* 522 U.S., at 20, 118 S.Ct. 275](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1997219814&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). That is because parties are especially likely to rely on such precedents when ordering their affairs. To be sure, Marvel and Kimble disagree about whether *Brulotte* has actually generated reliance. Marvel says yes: Some parties, it claims, do not specify an end date for royalties in their licensing agreements, instead relying on *Brulotte* as a default rule. Brief for Respondent 32–33; see 1 D. Epstein, Eckstrom’s Licensing in Foreign and Domestic Operations § 3.13, p. 3–13, and n. 2 (2014) (noting that it is not “necessary to specify the term ... of the license” when a decision like *Brulotte* limits it “by law”). Overturning *Brulotte* would thus upset expectations, most so when long-dormant licenses for long-expired patents spring back to life. Not true, says Kimble: Unfair surprise is unlikely, because no “meaningful number of [such] license agreements ... actually exist.” Reply Brief 18. To be honest, we do not know (nor, we suspect, do Marvel and Kimble). But even uncertainty on this score cuts in Marvel’s direction. So long as we see a reasonable possibility that parties have structured their business transactions in light of *Brulotte,* we have one more reason to let it stand.

As against this superpowered form of *stare decisis,* we would need a superspecial justification to warrant reversing *Brulotte*. But the kinds of reasons we have most often held sufficient in the past do not help Kimble here. If anything, they reinforce our unwillingness to do what he asks.

First, *Brulotte* ‘s statutory and doctrinal underpinnings have not eroded over time. When we reverse our statutory interpretations, we most often point to subsequent legal developments—“either the growth of judicial doctrine or further action taken by Congress”—that have removed the basis for a decision. [*Patterson,* 491 U.S., at 173, 109 S.Ct. 2363](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1989089493&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) (calling this “the primary reason” for overruling statutory precedent). But the core feature of the patent laws on which *Brulotte* relied remains just the same: [Section 154](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=35USCAS154&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) now, as then, draws **\*2411** a sharp line cutting off patent rights after a set number of years. And this Court has continued to draw from that legislative choice a broad policy favoring unrestricted use of an invention after its patent’s expiration. See *supra,* at 2406 – 2407. *Scott Paper*—the decision on which *Brulotte* primarily relied—remains good law. So too do this Court’s other decisions refusing to enforce either state laws or private contracts constraining individuals’ free use of formerly patented (or unpatentable) discoveries. See *supra,* at 2406 – 2407. *Brulotte,* then, is not the kind of doctrinal dinosaur or legal last-man-standing for which we sometimes depart from *stare decisis*. Compare, *e.g.,* [*Alleyne v. United States,* 570 U.S. ––––, –––– – ––––, 133 S.Ct. 2151, 2164–2166, 186 L.Ed.2d 314 (2013)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2030794220&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_708_2164&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_708_2164) (SOTOMAYOR, J., concurring). To the contrary, the decision’s close relation to a whole web of precedents means that reversing it could threaten others. If *Brulotte* is outdated, then (for example) is *Scott Paper* too? We would prefer not to unsettle stable law.[4](#co_footnote_B00542036504422_1)

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| [4](#co_footnoteReference_B00542036504422_ID0) | The only legal erosion to which Kimble gestures is a change in the treatment of patent tying agreements—*i.e.,* contracts conditioning a licensee’s right to use a patent on the purchase of an unpatented product. See Brief for Petitioners 43. When *Brulotte* was decided, those agreements counted as *per se* antitrust violations and patent misuse; now, they are unlawful only if the patent holder wields power in the relevant market. See Act of Nov. 19, 1988, § 201, 102 Stat. 4676 (adding the market power requirement in the patent misuse context); [*Illinois Tool Works Inc. v. Independent Ink, Inc.,* 547 U.S. 28, 41–43, 126 S.Ct. 1281, 164 L.Ed.2d 26 (2006)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2008558382&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) (relying on that legislative change to overrule antitrust decisions about tying and to adopt the same standard). But it is far from clear that the old rule of tying was among *Brulotte* ‘s legal underpinnings. *Brulotte* briefly analogized post-expiration royalty agreements to tying arrangements, but only after relating the statutory and caselaw basis for its holding and “conclud[ing]” that post-patent royalties are “unlawful *per se*.” [379 U.S., at 32, 85 S.Ct. 176](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124883&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). And even if that analogy played some real role in *Brulotte,* the development of tying law would not undercut the decision—rather the opposite*.* Congress took the lead in changing the treatment of tying agreements and, in doing so, conspicuously left *Brulotte* in place. Indeed, Congress declined to enact bills that would have modified not only tying doctrine but also *Brulotte*. See *supra,* at 2410 (citing S. 1200, 100th Cong., 1st Sess. (1987), and S. 438, 100th Cong., 2d Sess. (1988)). That choice suggests congressional acquiescence in *Brulotte,* and so further supports adhering to *stare decisis*. |

And second, nothing about *Brulotte* has proved unworkable. See, *e.g.,* [*Patterson,* 491 U.S., at 173, 109 S.Ct. 2363](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1989089493&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) (identifying unworkability as another “traditional justification” for overruling precedent). The decision is simplicity itself to apply. A court need only ask whether a licensing agreement provides royalties for post-expiration use of a patent. If not, no problem; if so, no dice. *Brulotte* ‘s ease of use appears in still sharper relief when compared to Kimble’s proposed alternative. Recall that he wants courts to employ antitrust law’s rule of reason to identify and invalidate those post-expiration royalty clauses with anti-competitive consequences. See *supra,* at 2408 – 2409. But whatever its merits may be for deciding antitrust claims, that “elaborate inquiry” produces notoriously high litigation costs and unpredictable results. [*Arizona v. Maricopa County Medical Soc.,* 457 U.S. 332, 343, 102 S.Ct. 2466, 73 L.Ed.2d 48 (1982)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1982127302&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). For that reason, trading in *Brulotte* for the rule of reason would make the law less, not more, workable than it is now. Once again, then, the case for sticking with long-settled precedent grows stronger: Even the most usual reasons for abandoning *stare decisis* cut the other way here.

IV

Lacking recourse to those traditional justifications for overruling a prior decision, **\*2412** Kimble offers two different ones. He claims first that *Brulotte* rests on a mistaken view of the competitive effects of post-expiration royalties. He contends next that *Brulotte* suppresses technological innovation and so harms the nation’s economy. (The dissent offers versions of those same arguments. See *post,* at 2415 – 2417.) We consider the two claims in turn, but our answers to both are much the same: Kimble’s reasoning may give Congress cause to upset *Brulotte,* but does not warrant this Court’s doing so.

A

According to Kimble, we should overrule *Brulotte* because it hinged on an error about economics: It assumed that post-patent royalty “arrangements are invariably anticompetitive.” Brief for Petitioners 37. That is not true, Kimble notes; indeed, such agreements more often increase than inhibit competition, both before and after the patent expires. See *id.,* at 36–40. As noted earlier, a longer payment period will typically go hand-in-hand with a lower royalty rate. See *supra,* at 2407. During the patent term, those reduced rates may lead to lower consumer prices, making the patented technology more competitive with alternatives; too, the lesser rates may enable more companies to afford a license, fostering competition among the patent’s own users. See Brief for Petitioners 38. And after the patent’s expiration, Kimble continues, further benefits follow: Absent high barriers to entry (a material caveat, as even he would agree, see Tr. of Oral Arg. 12–13, 23), the licensee’s continuing obligation to pay royalties encourages new companies to begin making the product, figuring that they can quickly attract customers by undercutting the licensee on price. See Brief for Petitioners 38–39. In light of those realities, Kimble concludes, “the *Brulotte per se* rule makes little sense.” *Id.,* at 11.

We do not join issue with Kimble’s economics—only with what follows from it. A broad scholarly consensus supports Kimble’s view of the competitive effects of post-expiration royalties, and we see no error in that shared analysis. See *id.,* at 13–18 (citing numerous treatises and articles critiquing *Brulotte* ). Still, we must decide what that means for *Brulotte*. Kimble, of course, says it means the decision must go. Positing that *Brulotte* turned on the belief that post-expiration royalties are always anticompetitive, he invokes decisions in which this Court abandoned antitrust precedents premised on similarly shaky economic reasoning. See Brief for Petitioners 55–56 (citing, *e.g.,* [*Leegin Creative Leather Products, Inc. v. PSKS, Inc.,* 551 U.S. 877, 127 S.Ct. 2705, 168 L.Ed.2d 623 (2007)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012562227&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)); [*Illinois Tool Works,* 547 U.S. 28, 126 S.Ct. 1281, 164 L.Ed.2d 26](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2008558382&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default))). But to agree with Kimble’s conclusion, we must resolve two questions in his favor. First, even assuming Kimble accurately characterizes *Brulotte* ‘s basis, does the decision’s economic mistake suffice to overcome *stare decisis* ? Second and more fundamentally, was *Brulotte* actually founded, as Kimble contends, on an analysis of competitive effects?

[**[19]**](#co_anchor_F192036504422_1) If *Brulotte* were an antitrust rather than a patent case, we might answer both questions as Kimble would like. This Court has viewed *stare decisis* as having less-than-usual force in cases involving the Sherman Act. See, *e.g.,* [*Khan,* 522 U.S., at 20–21, 118 S.Ct. 275](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1997219814&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). Congress, we have explained, intended that law’s reference to “restraint of trade” to have “changing content,” and authorized courts to oversee the term’s “dynamic potential.” [*Business Electronics Corp. v. Sharp Electronics Corp.,* 485 U.S. 717, 731–732, 108 S.Ct. 1515, 99 L.Ed.2d 808 (1988)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1988056342&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). We have therefore felt relatively free to revise our **\*2413** legal analysis as economic understanding evolves and (just as Kimble notes) to reverse antitrust precedents that misperceived a practice’s competitive consequences. See [*Leegin,* 551 U.S., at 899–900, 127 S.Ct. 2705](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012562227&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). Moreover, because the question in those cases was whether the challenged activity restrained trade, the Court’s rulings necessarily turned on its understanding of economics. See [*Business Electronics Corp.,* 485 U.S., at 731, 108 S.Ct. 1515](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1988056342&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). Accordingly, to overturn the decisions in light of sounder economic reasoning was to take them “on [their] own terms.” [*Halliburton,* 573 U.S., at ––––, 134 S.Ct., at 2410](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2033642715&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_708_2410&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_708_2410).

[**[20]**](#co_anchor_F202036504422_1) [**[21]**](#co_anchor_F212036504422_1) But *Brulotte* is a patent rather than an antitrust case, and our answers to both questions instead go against Kimble. To begin, even assuming that *Brulotte* relied on an economic misjudgment, Congress is the right entity to fix it. By contrast with the Sherman Act, the patent laws do not turn over exceptional law-shaping authority to the courts. Accordingly, statutory *stare decisis*—in which this Court interprets and Congress decides whether to amend—retains its usual strong force. See [*supra,* at 2409](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2033642715&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_708_2409&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_708_2409). And as we have shown, that doctrine does not ordinarily bend to “wrong on the merits”-type arguments; it instead assumes Congress will correct whatever mistakes we commit. See [*supra,* at 2408 – 2409](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2033642715&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_708_2408&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_708_2408). Nor does Kimble offer any reason to think his own “the Court erred” claim is special. Indeed, he does not even point to anything that has changed since *Brulotte*—no new empirical studies or advances in economic theory. Compare, *e.g.,* [*Halliburton,* 573 U.S., at ––––, 134 S.Ct., at 2409–2411](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2033642715&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_708_2409&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_708_2409) (considering, though finding insufficient, recent economic research). On his argument, the *Brulotte* Court knew all it needed to know to determine that post-patent royalties are not usually anticompetitive; it just made the wrong call. See Brief for Petitioners 36–40. That claim, even if itself dead-right, fails to clear *stare decisis* ‘s high bar.

[**[22]**](#co_anchor_F222036504422_1) [**[23]**](#co_anchor_F232036504422_1) And in any event, *Brulotte* did not hinge on the mistake Kimble identifies. Although some of its language invoked economic concepts, see n. 4, *supra,* the Court did not rely on the notion that post-patent royalties harm competition. Nor is that surprising. The patent laws—unlike the Sherman Act—do not aim to maximize competition (to a large extent, the opposite). And the patent term—unlike the “restraint of trade” standard—provides an all-encompassing bright-line rule, rather than calling for practice-specific analysis. So in deciding whether post-expiration royalties comport with patent law, *Brulotte* did not undertake to assess that practice’s likely competitive effects. Instead, it applied a categorical principle that all patents, and all benefits from them, must end when their terms expire. See [*Brulotte,* 379 U.S., at 30–32, 85 S.Ct. 176](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124883&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)); [*supra,* at 2406 – 2408](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2033642715&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_708_2406&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_708_2406). Or more specifically put, the Court held, as it had in *Scott Paper,* that Congress had made a judgment: that the day after a patent lapses, the formerly protected invention must be available to all for free. And further: that post-expiration restraints on even a single licensee’s access to the invention clash with that principle. See [*Brulotte,* 379 U.S., at 31–32, 85 S.Ct. 176](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1964124883&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) (a licensee’s obligation to pay post-patent royalties conflicts with the “free market visualized for the post-expiration period” and so “runs counter to the policy and purpose of the patent laws” (quoting [*Scott Paper,* 326 U.S., at 256, 66 S.Ct. 101](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1945116150&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)))). That patent (not antitrust) policy gave rise to the Court’s conclusion that post-patent royalty contracts are unenforceable—utterly “regardless of a demonstrable effect on competition.” 1 Hovenkamp § 3.2d, at 3–10.

**\*2414** [**[24]**](#co_anchor_F242036504422_1) Kimble’s real complaint may go to the merits of such a patent policy—what he terms its “formalis[m],” its “rigid[ity]”, and its detachment from “economic reality.” Brief for Petitioners 27–28. But that is just a different version of the argument that *Brulotte* is wrong. And it is, if anything, a version less capable than the last of trumping statutory *stare decisis*. For the choice of what patent policy should be lies first and foremost with Congress. So if Kimble thinks patent law’s insistence on unrestricted access to formerly patented inventions leaves too little room for pro-competitive post-expiration royalties, then Congress, not this Court, is his proper audience.

B

Kimble also seeks support from the wellspring of all patent policy: the goal of promoting innovation. *Brulotte,* he contends, “discourages technological innovation and does significant damage to the American economy.” Brief for Petitioners 29. Recall that would-be licensors and licensees may benefit from post-patent royalty arrangements because they allow for a longer payment period and a more precise allocation of risk. See *supra,* at 2407. If the parties’ ideal licensing agreement is barred, Kimble reasons, they may reach no agreement at all. See Brief for Petitioners 32. And that possibility may discourage invention in the first instance. The bottom line, Kimble concludes, is that some “breakthrough technologies will never see the light of day.” *Id.,* at 33.

Maybe. Or, then again, maybe not. While we recognize that post-patent royalties are sometimes not anticompetitive, we just cannot say whether barring them imposes any meaningful drag on innovation. As we have explained, *Brulotte* leaves open various ways—involving both licensing and other business arrangements—to accomplish payment deferral and risk-spreading alike. See *supra,* at 2408. Those alternatives may not offer the parties the precise set of benefits and obligations they would prefer. But they might still suffice to bring patent holders and product developers together and ensure that inventions get to the public. Neither Kimble nor his *amici* have offered any empirical evidence connecting *Brulotte* to decreased innovation; they essentially ask us to take their word for the problem. And the United States, which acts as both a licensor and a licensee of patented inventions while also implementing patent policy, vigorously disputes that *Brulotte* has caused any “significant real-world economic harm.” Brief for United States as *Amicus Curiae* 30. Truth be told, if forced to decide that issue, we would not know where or how to start.

Which is one good reason why that is not our job. Claims that a statutory precedent has “serious and harmful consequences” for innovation are (to repeat this opinion’s refrain) “more appropriately addressed to Congress.” [*Halliburton,* 573 U.S., at ––––, 134 S.Ct., at 2413](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2033642715&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_708_2413&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_708_2413). That branch, far more than this one, has the capacity to assess Kimble’s charge that *Brulotte* suppresses technological progress. And if it concludes that *Brulotte* works such harm, Congress has the prerogative to determine the exact right response—choosing the policy fix, among many conceivable ones, that will optimally serve the public interest. As we have noted, Congress legislates actively with respect to patents, considering concerns of just the kind Kimble raises. See [*supra,* at 2410](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2033642715&pubNum=0000708&originatingDoc=Ib0bca52a18dd11e5b86bd602cb8781fa&refType=RP&fi=co_pp_sp_708_2410&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_708_2410). In adhering to our precedent as against such complaints, we promote the rule-of-law values to which courts must attend while leaving matters of public policy to Congress.

**\*2415** V

What we can decide, we can undecide. But *stare decisis* teaches that we should exercise that authority sparingly. Cf. S. Lee and S. Ditko, Amazing Fantasy No. 15: “Spider–Man,” p. 13 (1962) (“[I]n this world, with great power there must also come—great responsibility”). Finding many reasons for staying the *stare decisis* course and no “special justification” for departing from it, we decline Kimble’s invitation to overrule *Brulotte*.

For the reasons stated, the judgment of the Court of Appeals is affirmed.

*It is so ordered.*