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Appellate Practice

The Supreme Court's Term: Highlights of '22, Preview of '23

October 3, 2023

Steven J. Wells
Nick Bullard
Ian Blodger

Materials

PowerPoint Presentation...2
Supreme Court Review...22

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Supreme Court Review: Highlights of OT 2022, Preview of OT 2023

Steve Wells, Nick Bullard, and Ian Blodger

with assistance from Brock Huebner

October 3, 2023

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Today's program is 75 minutes.

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Happy October Term 2023!

"The Supreme Court shall hold at the seat of government a term of court commencing **on the first Monday in October** of each year and may hold such adjourned or special terms as may be necessary."

-28 U.S.C. § 2

OT 2022: Term in Review

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OT 2022: Statistics

Source: https://www.supremecourt.gov/about/justices.aspx

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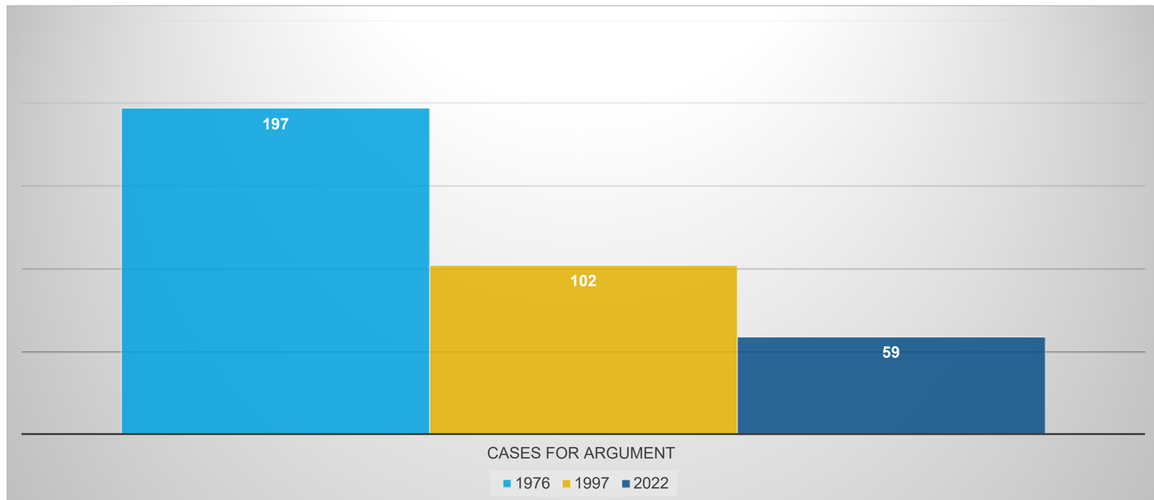
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Declining Workload
197
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CASES FOR ARGUMENT
1976
1997
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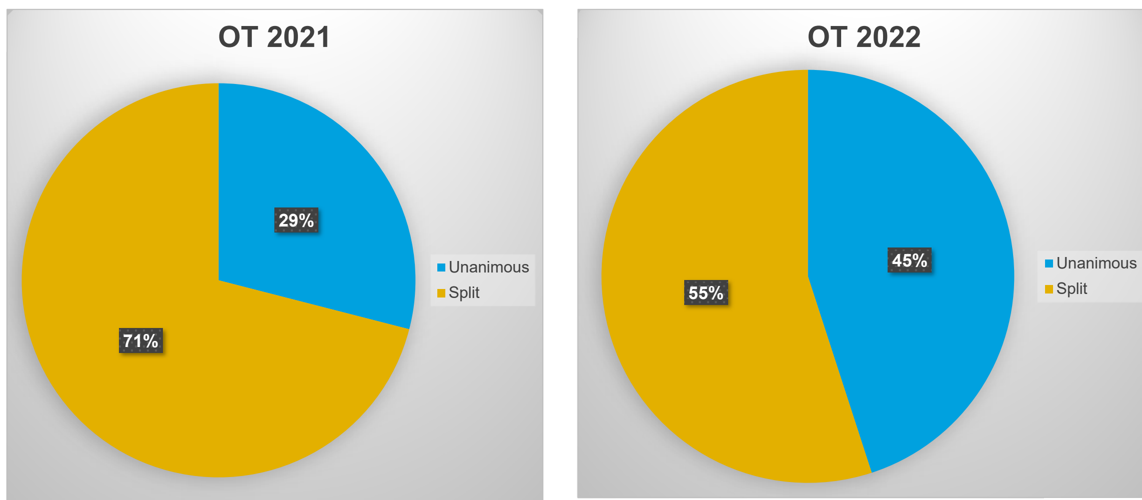
STATISTICS
2021 Term vs. 2022 Term
OT 2021
29%
71%
Unanimous
Split
OT 2022
45%
55%
Unanimous
Split
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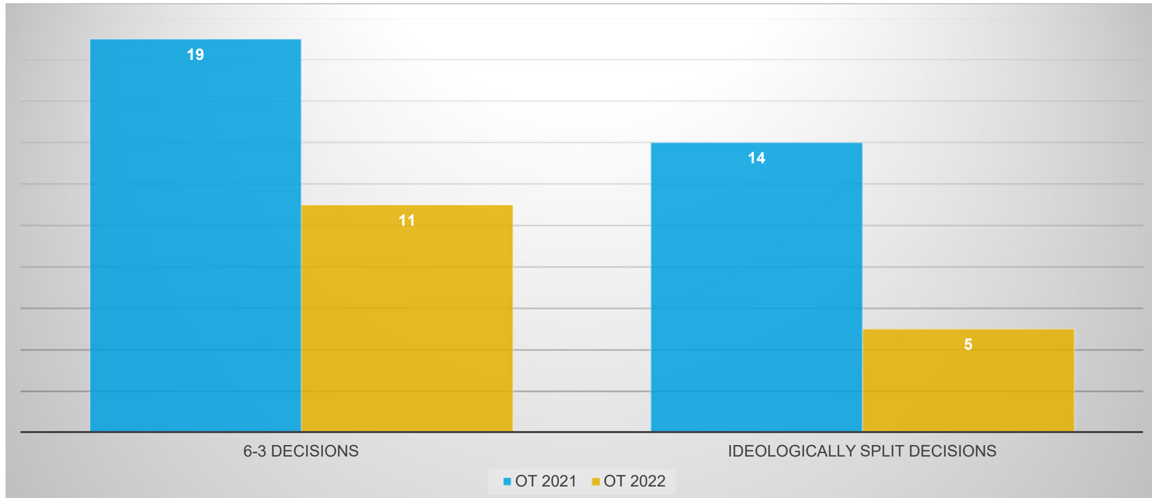
STATISTICS
2021 Term vs. 2022 Term



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SUPREME COURT UPDATE

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SUPERLATIVES
Spoke the Most at Argument

Source: https://www.supremecourt.gov/about/biographies.aspx

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SUPREME COURT UPDATE

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SUPERLATIVES

Most Likely to Agree

- **Justices Roberts/Kavanaugh: 95%**
- **Justices Sotomayor/Kagan: 95%**
- **Justices Jackson/Sotomayor: 95%**

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SUPERLATIVES

Most Unusual Coalitions

- ***Abitron Austria GmbH v. Hetronic International, Inc.***
  - Majority by Justices Alito, Thomas, Gorsuch, Kavanaugh, and Jackson
  - Concurrence by Justices Roberts, Sotomayor, Kagan, and Barrett
- ***Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith***
  - Dissent by Justices Roberts and Kagan
- ***Counterman v. Colorado***
  - Concurrence by Justices Sotomayor and Gorsuch

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SUPERLATIVES

Most Willing to Split from Fellow Democrat Appointees

Source: https://www.supremecourt.gov/about/biographies.aspx

SUPERLATIVES

Most Willing to Split from Fellow Democrat Appointees

- **Example: *Polselli v. Internal Revenue Service***
  - Concurs with Justice Gorsuch
- **Example: *National Pork Producers v. Ross***
  - Dissents with three Republican appointees
- **Example: *Pugin v. Garland***
  - Forms majority with five Republican appointees

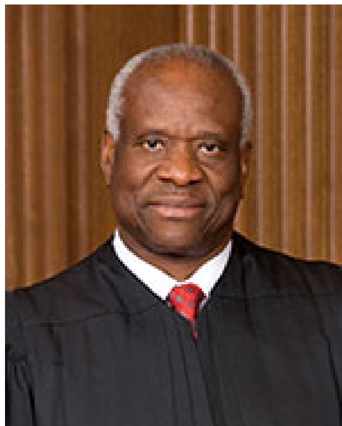
SUPERLATIVES

Most Often in the Majority

Source: https://www.supremecourt.gov/about/biographies.aspx

SUPERLATIVES

Most Dissents



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STATISTICS

Takeaways

- Continuing decline in volume of merits decisions
- Uptick in unanimity and ideological fracturing
- Justices Roberts and Kavanaugh remain the "swing" justices
- Clear conservative majority

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OT 2022: Merits Docket

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AFFIRMATIVE ACTION

Students for Fair Admission v. UNC/Harvard

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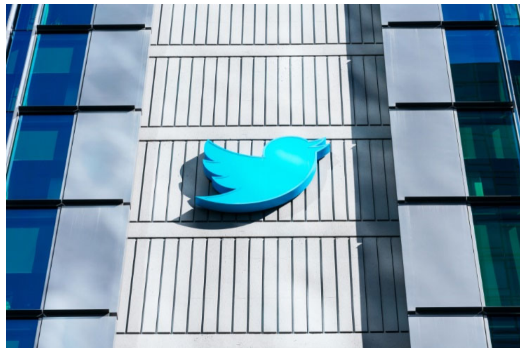
INTERNET LIABILITY

Twitter v. Taamneh & Gonzalez v. Google



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First Amendment

303 Creative LLC v. Elenis

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CLE Code
for
Attendees in States that Require a Code

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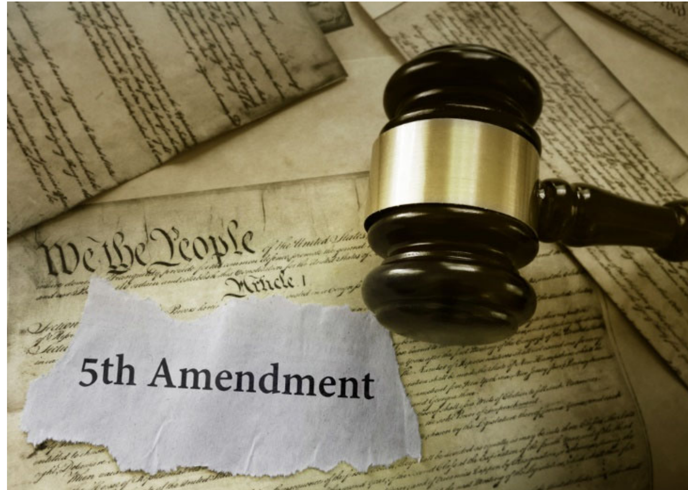
Fifth Amendment Takings Clause

Tyler v. Hennepin County



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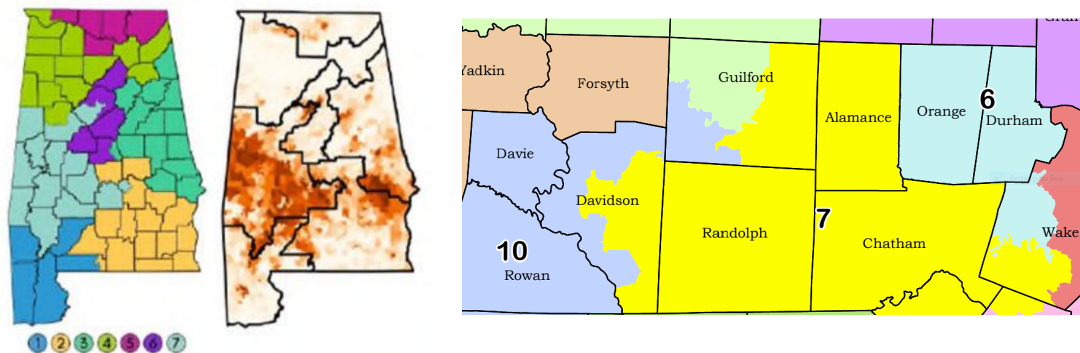
Gerrymandering Cases

Allen v. Milligan & Moore v. Harper

Figure 2: HB1 - The 2021 Enacted Map



SJA26 (darker shading in the map on the right reflects voting precincts with a higher BVAP share).

Image from North Carolina S.L. 2021-174, available at https://webservices.ncleg.gov/ViewBillDocument/2021/53440/0/SL%202021-174%20-%2011%20x%2017%20Map

Image from *Allen v. Milligan*, No. 21-1086, Br. for Appellees at 12, available at https://www.supremecourt.gov/DocketPDF/21/21-1086/229773/20220711132550198_2022.07.11%20Milligan%20Br.%20for%20Appellees_A.pdf

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Students Loan Forgiveness

Biden v. Nebraska & Dept. of Ed. v. Brown

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Dormant Commerce Clause

National Pork Producers Council v. Ross

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Clean Water Act
Sackett v. EPA

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Personal Jurisdiction
Mallory v. Norfolk Southern Railway Co

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TRADEMARK

Jack Daniel's Properties v. VIP Products

Images from *Jack Daniel's Properties, Inc. v. VIP Products LLC*, No. 22-148, Brief of Respondent at 5-6, available at https://www.supremecourt.gov/opinions/22pdf/22-148_3e04.pdf

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Andy Warhol Foundation v. Goldsmith

Figure 6. Warhol's orange silkscreen portrait of Prince superimposed on Goldsmith's portrait photograph.

Image from *Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith, et al.*, No. 21-869, Slip Op. at 9 (May 18, 2023), available at https://www.supremecourt.gov/opinions/22pdf/21-869_87ad.pdf

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The Shadow Docket

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OT 2023: Preview

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Cases to Watch

- ***Chevron* Deference:** *Loper Bright Enterprises v. Raimondo* [Arg. TBD]
- **CFPB Constitutionality:** *CFPB v. Cmty. Fin. Servs. Ass'n of Am.* [Arg. 10.3.23]
- **Non-Delegation:** *SEC v. Jarkesy* [Arg. TBD]
- **First Amendment**: *Moody v. NetChoice, LLC* and *NetChoice, LLC v. Paxton* [Arg. TBD]
- **2nd Amendment:** *U.S. v. Rahimi* [Arg. 11.7.23]
- **16th Amendment Tax Apportionment:** *Moore v. U.S.* [Arg. TBD]

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Cases to Watch

- **Abortion:** *Alliance for Hippocratic Medicine v FDA* [cert. pending]
- **14th Amendment Disqualification:** Various states, including Minnesota

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Steve Wells is a Partner in Dorsey's Commercial Litigation Group. For over thirty years, Steve has tried business cases and argued appeals in courtrooms across the nation. He works with clients to resolve disputes early by thoroughly investigating the facts and the law, identifying key issues, and collaborating closely with clients to understand their business goals. Steve understands that, often, winning at all costs is not winning at all. But when push comes to shove, Steve advocates persuasively for his clients from trial level courts to the highest court in the land – as his track record of trial and appellate wins reflects.

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Nick's practice focuses on three primary areas: (1) employee benefit and ERISA litigation, (2) healthcare-related litigation, and (3) appellate matters. Nick first developed a passion for appellate litigation when he clerked for Judge James B. Loken of the U.S. Court of the Appeals for the Eighth Circuit. Relying on that experience, Nick has helped with appeals to the U.S. Supreme Court, federal appellate courts, and state appellate courts.

Ian is an associate in Dorsey's Securities and Financial Services Litigation Group. Ian joined Dorsey following a clerkship with Minnesota Supreme Court Chief Justice Gildea. Ian helps clients to navigate complex financial disputes involving securities fraud, director and fiduciary liability, and commercial contract disputes. Ian has also devoted a portion of his practice to appellate work.

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A Dorsey U Presentation

October 3, 2023

Supreme Court Review: Highlights of 2022, Preview of 2023

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Decisions of October Term 2022[1]

I. ADMINISTRATIVE LAW

Axon Enterprise, Inc. v. FTC; SEC v. Cochran
Nos. 21-86, 21-1239 | 9-0 | Justice Kagan

These consolidated cases address the proper timing and venue for asserting constitutional challenges to agency proceedings. In both cases, the respondents sued in federal district court, seeking to enjoin agency proceedings against them on grounds that the ALJs' appointment was unconstitutional. In the Axon case, the Ninth Circuit held that the district court lacked jurisdiction to hear the suit because the challenge could be made only by a petition in the court of appeals after conclusion of the agency action. In the Cochran case, the Fifth Circuit reached the opposite conclusion. In a nearly unanimous decision authored by Justice Kagan, the Court held that the district courts have jurisdiction to hear the suits and to resolve the parties' constitutional challenges. The Court explained that the "ordinary statutory review scheme does not preclude a district court from entertaining these extraordinary claims." Justice Thomas filed a concurring opinion, and Justice Gorsuch filed an opinion concurring in the judgment

Biden v. Nebraska | No. 22-506 | 6-3 | Chief Justice Roberts
Department of Education v. Brown | No. 22-535 | 9-0 | Justice Alito

These cases addressed suits brought by borrowers and states challenging the legality of the federal student loan forgiveness plan. In response to the COVID-19 pandemic, the Secretary of Education announced a plan to discharge $10,000 or $20,000 in federal student loans for individuals with less than $125,000 in income (the "Plan"). The Plan was justified under the Higher Education Relief Opportunities for Students Act of 2003 ("HEROES Act"), which authorized the Secretary of Education "to waive or modify" applicable federal loan programs "as may be necessary to ensure" recipients are no worse off "financially in relation to that financial assistance" because of a national emergency. 20 U.S.C. §§ 1098bb(a)(1), (a)(2)(A), 1098ee(2)(C)-(D). Two borrowers who did not qualify for full forgiveness under the Plan (the "Borrower Plaintiffs") and six states (the "State Plaintiffs") filed lawsuits to prevent the Plan from taking effect, arguing the Plan was not authorized under the HEROES Act. After considering the State Plaintiffs' claims, the Eighth Circuit issued a nationwide preliminary injunction, blocking the implementation of the Plan. The Court held the Plan exceeded the scope of the HEROES Act, and prevented the Plan's implementation. Before reaching the merits of the lawsuits, the Court first evaluated whether the various entities had standing to challenge the legality of the Plan.

[1] These case summaries are adapted from Dorsey & Whitney's Supreme Court eUpdate, which is regularly-issued throughout the Supreme Court's term. If you would like to subscribe to receive this eUpdate by email, please sign up at https://www.dorsey.com/newsresources.

In ***Department of Education v. Brown***, the Court, in a 9-0 opinion authored by Justice Alito, held that the Borrower Plaintiffs lacked standing because they failed to show that their alleged injury–-not qualifying for the full $20,000 in loan forgiveness–-was traceable to the alleged procedural violations in the creation of the Plan.

In ***Biden v. Nebraska***, the Court, in a 6-3 decision authored by Chief Justice Roberts, held that at least one of the states, Missouri, had standing to challenge the Plan because its state-created loan servicing organization, MOHELA, would potentially lose fees if the Plan was implemented. Turning to the merits of the State Plaintiffs' claims, the Court held that the Plan exceeded the scope of the HEROES Act, concluding "that 'the basic and consequential tradeoffs' inherent in a mass debt cancellation program 'are ones that Congress would likely have intended for itself.'" Justice Barrett authored a concurring opinion. Justice Kagan (joined by Justices Sotomayor and Jackson) dissented, claiming the Court's majority opinion "exceeds its proper, limited role in our Nation's governance."

Sackett v. Environmental Protection Agency | No. 21-454 | 9-0 | Justice Alito

This case addressed the scope of the Clean Water Act ("CWA"), 33 U.S.C. § 1362(7). The Sacketts were blocked from building a home on their property after the EPA ruled that the land contained wetlands governed by the CWA. The EPA determined that the wetlands on the Sackett's property qualified as "waters of the United States" under the CWA because they were near a ditch that fed into a creek that fed into a navigable lake. The Ninth Circuit upheld the EPA's determination after concluding the Sackett's wetlands had an "ecologically significant nexus" to traditional navigable waters. The Court issued an opinion in which all Justices agreed in reversing the Ninth Circuit. Justice Alito (joined by Chief Justice Roberts and Justices Thomas, Gorsuch, and Barrett) authored the opinion of the Court and held that "waters" as defined by the CWA only applies to wetlands when they are adjacent to and "as a practical matter indistinguishable from" bodies of water that independently qualify as "waters of the United States." Justice Thomas (joined by Justice Gorsuch) filed a concurring opinion noting that other jurisdictional terms in the CWA—"navigable" and "of the United States"—could also limit the reach of the CWA. The other four justices concurred only in the judgment and filed two separate opinions authored by Justice Kagan and Justice Kavanaugh offering alternative tests based on the CWA's text.

II. BANKRUPTCY LAW

Bartenwerfer v. Buckley | No. 21-908 | 9-0 | Justice Barrett

This case analyzed the U.S. Bankruptcy Code's prohibition of the discharge of debts that were incurred through fraud. Kate Bartenwerfer and her husband, David, sold their home to Kieran Buckley. After Buckley discovered defects in the property that were not disclosed prior to the sale, he sued the Bartenwerfers and received a $200,000 judgment. The Bartenwerfers filed for Chapter 7 bankruptcy, but Buckley argued the $200,000 judgment was non-dischargeable as the product of fraud under 11 U.S.C. § 523(a)(2)(A). Kate argued that her husband was solely responsible for the fraud, and her lack of culpability should allow her to discharge her debt to Buckley. In a 9-0 decision authored by Justice Barrett, the Court held that debtors are precluded from discharging debts obtained through fraud regardless of their own culpability. In reaching this

conclusion, the Court relied on the text of § 523(a)(2)(A) and neighboring provisions, the legal context of common law fraud, and Congress's amendment to the relevant Bankruptcy Act section after the Court held the fraud of one partner can be imputed to other partners.

MOAC Mall Holdings LLC v. Transform Holdco LLC
No. 21-1270 | 9-0 | Justice Jackson

This case involved the interpretation of Bankruptcy Code § 363(m) and its intersection with an appellate court's jurisdiction. The question was whether § 363(m) limits an appellate court's jurisdiction over any bankruptcy sale order or order deemed "integral" to a sale order, such that it is not subject to waiver, and even when a remedy could be fashioned that does not affect the validity of the sale. In a 9-0 decision authored by Justice Jackson, the Court held that "§ 363(m) is not a jurisdictional provision" because Congress did not clearly state that the statute is.

III. CIVIL PROCEDURE

***Coinbase, Inc. v. Bielski* |** No. 22-105 | 5-4 | Justice Kavanaugh

This case addressed the procedures in a district court when a party files an interlocutory appeal under the Federal Arbitration Act ("FAA"). 9 U.S.C. § 16(a). Abraham Bielski sued Coinbase in a putative class action, alleging Coinbase failed to repay funds that were fraudulently taken from users' accounts. After the district court denied Coinbase's motion to compel arbitration under the terms of its user agreement, Coinbase asserted its right under the FAA to immediately appeal the denial to the Ninth Circuit. However, the district court and the Ninth Circuit both declined to stay the district court proceedings while the interlocutory appeal was pending. In a 5-4 decision authored by Justice Kavanaugh, the Court held that district courts' proceedings must be placed on hold during interlocutory appeals under the FAA. While the FAA itself is silent on the matter, the Court applied its *Griggs* precedent to conclude that a stay was required "[b]ecause the question on appeal is whether the case belongs in arbitration or instead in the district court," which means "the entire case is essentially 'involved in the appeal.'" Justice Jackson filed a dissenting opinion, joined by Justices Sotomayor and Kagan in full, and Justice Thomas in part.

Dupree v. Younger | No. 22-210 | 9-0 | Justice Barrett

This case addressed the issue of preserving legal issues for appeal. In this case, the district court rejected the defendant's summary judgment argument that the plaintiff failed to exhaust administrative remedies. At trial, the defendant did not present evidence relating to his exhaustion defense, the jury found against the defendant, and the defendant did not file a post-trial motion related to exhaustion. On appeal, the Fourth Circuit held that the defendant could not challenge the district court's exhaustion ruling because he did not renew the issue in a post-trial motion. In a 9-0 decision authored by Justice Barrett, the Court held "that a post-trial motion under Rule 50 is not required to preserve for appellate review a purely legal issue resolved at summary judgment." The Court remanded the case to the Fourth Circuit to "decide whether the issue [defendant] raised on appeal is purely legal."

Mallory v. Norfolk Southern R. Co. | No. 21-1168 | 5-4 | Justice Gorsuch

This case addressed whether companies consent to jurisdiction in states where they have registered to do business. In this case, a Virginia man filed a lawsuit in Pennsylvania state court against Norfolk Southern, a company incorporated in Virginia and headquartered there, alleging injuries sustained while working for Norfolk Southern in Ohio and Virginia. Norfolk Southern had registered to do business in Pennsylvania under a state law requiring out-of-state companies that register to do business in Pennsylvania to agree to appear in Pennsylvania courts on "any cause of action" against them. The Pennsylvania Supreme Court concluded that the registration law violates the Due Process Clause of the Fourteenth Amendment. In a fractured decision authored by Justice Gorsuch, the Court reversed. A majority of the Court agreed "that the state law and facts before us fall squarely within" the 1917 decision in *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U. S. 93 (1917) in which the Court held that laws like Pennsylvania's comport with the Due Process Clause. The majority cautioned that it "need not speculate whether any other statutory scheme and set of facts would suffice to establish consent to suit." Justice Jackson filed a concurring opinion, and Justice Alito filed an opinion concurring in part and concurring in the judgment. Justice Barrett (joined by Chief Justice Roberts and Justices Kagan and Kavanaugh) dissented, warning that the majority's decision allows states to "now manufacture 'consent' to personal jurisdiction" and "circumvent constitutional limits."

Wilkins v. United States | No. 21-1164 | 6-3 | Justice Sotomayor

This case considered the question of whether the 12-year statute of limitations in the Quiet Title Act is jurisdictional, and thus not subject to exceptions. Two Montana landowners grew dissatisfied with the U.S. Government's use of a road across their land, access to which was originally granted via a 1962 easement. In 2018, the landowners filed suit under the Quiet Title Act, a statute that allows challenges to the federal government's real property rights. Lower courts dismissed the suit under the Act's 12-year statute of limitations. In a 6-3 decision authored by Justice Sotomayor, the Court reversed the suit's dismissal and held that the Quiet Title Act's statute of limitations was not a jurisdictional barrier to suit, but was instead a "non-jurisdictional claims-processing rule," potentially subject to exceptions like waiver or estoppel. The Court analyzed the text of the Quiet Title Act and previous Court opinions interpreting the Act before concluding that Congress never provided the requisite clear statement of intent to overcome the presumption that statutes' time bars are non-jurisdictional. Justice Thomas filed a dissenting opinion joined by Chief Justice Roberts and Justice Alito.

IV. CRIMINAL LAW

A. CHARGING & STATUTORY INTERPRETATION

Bittner v. United States | No. 21-1195 | 5-4 | Justice Gorsuch

This case concerns the Bank Secrecy Act's requirement that certain individuals file an annual report about their foreign bank accounts on a form known as an "FBAR"— the Report of Foreign Bank and Financial Accounts. The Act imposes a maximum $10,000 penalty for nonwillful violations of the law. The Court answered the following question: if you fail to file a FBAR, is that a single $10,000 violation, or is there a separate $10,000 violation for each account not properly reported? In a 5-4 decision authored by Justice Gorsuch, the Court held that the Act "treats the failure to file a legally compliant report as one violation carrying a maximum penalty of $10,000, not a cascade of such penalties calculated on a per-account basis." Justice Barrett filed a dissent, joined by Justices Thomas, Sotomayor, and Kagan, contending that the "most natural reading of the [Act] establishes that each failure to report a qualifying foreign account constitutes a separate reporting violation."

Ciminelli v United States | No. 21-1170 | 9-0 | Justice Thomas

This public corruption case concerned a conviction based on a "right to control" theory of fraud. Louis Ciminelli was convicted of federal wire fraud based on his role in a scheme to rig the bidding process for projects funded from New York's "Buffalo Billion" investment initiative. Ciminelli's conviction was based on jury instructions premised on a "right to control" theory, whereby a defendant commits fraud by depriving a victim of the intangible property right to control the use of one's assets through withholding potentially valuable economic information. In a 9-0 opinion authored by Justice Thomas, the Court held that the "right to control" theory was invalid under the text and structure of federal fraud statutes and accordingly reversed Ciminelli's conviction. Justice Alito filed a concurring opinion.

Dubin v. United States | No 22-10 | 9-0 | Justice Sotomayor

This case involved the federal aggravated identity theft statute, which provides that during certain felonies, a person who "knowingly transfers, possesses, or uses without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years." 18 U.S.C. § 1028A(a)(1). In this case, the Government argued at trial that § 1028A(a)(1) was automatically satisfied because Dubin's fraudulent Medicaid billing included a patient's Medicaid reimbursement number—a "means of identification." The District Court allowed Dubin's conviction for aggravated identity theft to stand. The Fifth Circuit affirmed with a "sweeping reading" of the law that "as long as a billing or payment method employs another person's name or other identifying information, that is enough." In a 9-0 decision authored by Justice Sotomayor, the Court vacated and remanded. The Court held that "§1028A(a)(1) is violated when the defendant's misuse of another person's means of identification is at the crux of what makes the underlying offense criminal, rather than merely an ancillary feature of a billing method." Justice Gorsuch filed an opinion concurring in the judgment.

Percoco v. United States | No. 21-1158 | 9-0 | Justice Alito

This case arose from the conviction of former Governor Andrew Cuomo's campaign manager, Joseph Percoco, for honest-services fraud under federal law. After resigning from government service to run the Governor's reelection campaign, Percoco accepted $35,000 to help a developer navigate state bureaucracy. Percoco argued unsuccessfully that a private citizen cannot commit or conspire to commit honest-services wire fraud based on his own duty of honest services to the public. The Second Circuit affirmed the conviction. In an opinion authored by Justice Alito, the Court reversed, concluding that the jury had been improperly instructed on the proper test for determining whether a private person may be convicted of honest-services fraud. Justice Gorsuch (joined by Justice Thomas) filed a separate opinion concurring in the judgment, raising concerns about the vagueness of the honest-services fraud statute.

B. Criminal Procedure

Samia v. United States **|** No. 22-196 | 6-3 | Justice Thomas

This case addressed whether the Sixth Amendment's Confrontation Clause is violated when a non-testifying co-defendant's confession is admitted which implicates, but does not directly name, another defendant. Adam Samia and two other defendants were tried jointly for a variety of offenses related to the murder-for-hire of the decedent. A co-defendant confessed that Samia shot the decedent. A DEA agent testified during the trial to the content of that confession, but replaced Samia's name with neutral terms like "the other person." Samia was convicted on all counts. On appeal, Samia argued that admission of the non-testifying co-defendant's confession violated his Sixth Amendment Confrontation Clause rights because the jury could immediately infer that "the other person" was Samia. The Second Circuit held that the admission of the confession did not violate Samia's constitutional rights. In a 6-3 decision authored by Justice Thomas, the Court affirmed. The Court found that including this testimony with the limiting instruction that the "confession was admissible only as to [co-defendant] and should not be considered as to Samia," while also altering the testimony such that Samia was not directly named, was permitted. The Court reasoned that such practice has been permitted historically and is in accord with the understanding that jurors follow limiting instructions. Justice Kagan filed a dissent joined by Justice Sotomayor and Justice Jackson. Justice Jackson filed a separate dissent.

Smith v. United States | No. 21-1576 | 9-0 | Justice Alito

This case addressed the remedy available when a criminal defendant is tried and convicted in the wrong federal court district. Timothy Smith was indicted for theft of trade secrets in the Northern District of Florida. Prior to trial, Smith moved to dismiss the indictment, arguing that the Northern District of Florida was the wrong venue because it lacked a proper connection to the criminal offense. The district court denied the motion and a jury found Smith guilty. On appeal, the Eleventh Circuit vacated the conviction after determining the venue was improper, but held (contrary to Smith's wishes) that he may be re-tried for the same offense in a proper venue. In a unanimous decision authored by Justice Alito, the Court affirmed the Eleventh Circuit. After analyzing the text

and history of the Venue and Vicinage Clauses of the Constitution, the Court held that neither clause prohibits re-prosecution in the correct venue in front of a properly constituted jury. The Court similarly determined that the Double Jeopardy Clause did not prevent re-prosecution after violations of the Venue or Vicinage Clauses.

C. SENTENCING

Lora v. United States | No. 22-49 | 9-0 | Justice Jackson

This case addressed the extent of trial court judges' discretion in imposing consecutive or concurrent prison sentences under federal criminal sentencing laws. Typically, judges have discretion on whether multiple prison sentences can be served concurrently, but 18 U.S.C. § 924(c) creates an exception that mandates consecutive prison terms for offenses under that statute. In this case, the trial court judge sentenced an offender to consecutive sentences after determining that offenses under § 924(j) are also governed by the § 924(c) exception. In a 9-0 decision authored by Justice Jackson, the Court disagreed and vacated the consecutive sentences. The Court held that neither the text nor structure of the law incorporated § 924(c) into § 924(j), and accordingly federal trial courts retain discretion on whether to allow concurrent sentences under § 924(j).

D. *HABEAS* AND AEDPA

Cruz v. Arizona | 21-846 | 5-4 | Justice Sotomayor

In this complex capital punishment case, he petitioner, John Cruz, was sentenced to death after he was found guilty of murder by an Arizona jury. The Arizona courts rejected Cruz's arguments that under a 1994 Supreme Court decision, *Simmons v. South Carolina*, he should have been allowed to inform the jury that a life sentence would be without parole. But after the conviction became final, the Supreme Court decided *Lynch v. Arizona* in which it instructed Arizona courts to apply *Simmons*. Cruz then tried to re-raise the *Simmons* issue in a state post-conviction petition under an Arizona procedural rule, which permits a defendant to bring a successive petition in certain situations, but the Arizona courts denied relief. In a 5-4 decision authored by Justice Sotomayor, the Court vacated and remanded. The issue was whether the Arizona court's interpretation of the procedural rule was an "independent" and "adequate" state-law ground for refusing to recognize Cruz's federal right. The Court held it was not "adequate" because the Arizona court's judgment was a "novel and unforeseeable" procedural decision "lacking fair or substantial support in prior state law." Justice Barrett wrote a dissent, joined by Justices Thomas, Alito, and Gorsuch, explaining that "[c]ases of inadequacy are extremely rare, and this is not one."

Jones v. Hendrix | No. 21-857 | 6-3 | Justice Thomas

This case addressed whether a federal inmate, who previously collaterally attacked his sentence under 28 U.S.C. § 2255, but not on the grounds that the statute did not criminalize his activity, could apply for habeas relief after the Supreme Court invalidated the circuit precedent on which the inmate relied in previously refraining from challenging his conviction on those grounds. The federal inmate, Marcus Jones, was convicted of two counts of unlawful possession of a firearm by a felon, despite his contended belief

that his criminal record had been expunged. After losing an appeal on this conviction, Jones filed a federal habeas petition, which resulted in the vacatur of one of his concurrent sentences. Many years later, the Supreme Court held in *Rehaif v. United States* that the statute under which Jones was convicted required prosecutors to show that a defendant had knowledge of the status which disqualified him from possessing a firearm. After this holding, Jones filed a new federal habeas petition. This was dismissed by the Eastern District of Arkansas and the Eighth Circuit affirmed. In a 6-3 decision authored by Justice Thomas, the Court affirmed. The Court held that a federal prisoner cannot file a second or successive § 2255 motion based on a more favorable interpretation of statutory law adopted after his conviction. Rather, "newly discovered evidence" or "a new rule of constitutional law" is required. Justices Sotomayor and Kagan filed a joint dissent. Justice Jackson filed a separate dissent.

V. EDUCATION

Perez v. Sturgis Public Schools | No. 21-887 | 9-0 | Justice Gorsuch

This case considered whether a federal education law's administrative exhaustion requirements precluded a civil lawsuit under the Americans with Disabilities Act ("ADA"). Miguel Perez, a deaf student, claimed a Michigan public school district failed to provide him with qualified sign language interpreters and misrepresented his academic progress for years. When, months before his planned graduation, the school district revealed it would not award Perez a diploma, Perez and his family filed an administrative complaint under the Individuals with Disabilities Education Act ("IDEA"). That complaint settled and provided forward-looking relief to allow Perez to receive additional schooling. Perez then filed a civil lawsuit against the district under the ADA, seeking compensatory damages. The district court dismissed the suit, finding the ADA claim was barred by the IDEA's prohibition on other lawsuits "seeking relief that is also available under [the IDEA]." 20 U.S.C. § 1415(l). In a 9-0 decision authored by Justice Gorsuch, the Court held that the IDEA's administrative exhaustion requirement did not apply to this suit because the compensatory damages sought were not available remedies under the IDEA.

Students for Fair Admissions v. President and Fellows of Harvard
Students for Fair Admissions v. University of North Carolina
Nos. 20-1199, 21-707 | 6-3 | Chief Justice Roberts

These consolidated cases involved constitutional challenges to the admissions systems used by Harvard College and the University of North Carolina. The petitioners claimed those schools' "race-based admissions programs violated" both the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. After trial, the district courts found that Harvard's and UNC's admissions programs were lawful. In a 6-3 decision authored by Chief Justice Roberts, the Court reversed. The Court first rejected an argument that the petitioners lacked standing. Turning to the merits, the Court did not outright prohibit race-based admissions or overrule *Grutter v. Bollinger*, 539 U. S. 306 (2003), which permitted race-based admissions under certain circumstances. The Court, however, explained it would permit such admissions programs "only within the confines of narrow restrictions"—the "programs must comply with strict scrutiny, they may never use race as a stereotype or negative, and—at some

point—they must end." The Court concluded Harvard's and UNC's policies failed those criteria and therefore were invalid under the Equal Protection Clause. Justice Thomas filed a concurring opinion, arguing that race-based "policies fly in the face of our colorblind Constitution and our Nation's equality ideal" and "are plainly—and boldly—unconstitutional." Justices Gorsuch and Kavanaugh each filed a separate concurring opinion. Justices Sotomayor, Kagan, and Jackson filed two dissents, arguing "the Court cements a superficial rule of colorblindness as a constitutional principle in an endemically segregated society where race has always mattered and continues to matter" and "subverts the constitutional guarantee of equal protection by further entrenching racial inequality in education, the very foundation of our democratic government and pluralistic society."

VI. ELECTION LAW

Allen v. Milligan | No. 21-1086 | 5-4 | Chief Justice Roberts

This case addressed claims of malapportionment and racial gerrymandering under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. Since 1992, Alabama has had one district in which black voters formed a majority of the voting population. After the 2020 census, Alabama voters argued that an additional majority-minority district was required under Section 2. However, the Alabama legislature instituted congressional maps that retained a single majority-minority district. A panel of three district court judges granted a preliminary injunction blocking the redistricting plan, after concluding the challengers were likely to succeed on their Section 2 claim. Alabama appealed. In a previous order, the Supreme Court temporarily lifted this injunction and allowed the challenged map to be used during the appeal, including in the 2022 congressional elections. In a 5-4 decision authored by Chief Justice Roberts, the Court reinstituted the preliminary injunction and agreed that Alabama's map likely violated Section 2. The Court determined the lower court panel properly applied the governing *Thornburg v. Gingles*, 478 U.S. 30 (1986) test, which examines the size and compactness of a state's minority voting population, its political cohesiveness, and the history of racially polarized voting in the state. The Court clarified, however that neither Section 2 nor its previous holdings require or allow maps created to ensure proportional representation based on race. Justice Kavanaugh joined in the judgment and most of the Court's analysis, but filed a concurring opinion to further address arguments raised by Alabama. Justice Thomas (joined in full by Justice Gorsuch and in part by Justices Alito and Barrett) filed a dissenting opinion. Justice Alito (joined by Justice Gorsuch) filed an additional dissent.

Moore v. Harper | No. 21-1271 | 6-3 | Chief Justice Roberts

This case involved interpretation of the Elections Clause of the U.S. Constitution that requires "the Legislature" of each State to prescribe the rules governing federal elections—specifically, whether that clause vests state legislatures with authority to set rules governing federal elections free from restrictions imposed under state law. In this case, the North Carolina Supreme Court invalidated proposed maps drawn by the North Carolina General Assembly for federal elections in North Carolina, and adopted a congressional map of its own creation. The petitioners argued that state courts cannot review decisions made by state lawmakers when setting the rules for federal elections, because the Elections Clause gives that power solely to state legislatures. In a 6-3

decision authored by Chief Justice Roberts, the Court confirmed that it had jurisdiction over the case and then held that the "Elections Clause does not insulate state legislatures from the ordinary exercise of state judicial review." Justice Kavanaugh filed a concurring opinion. Justice Thomas filed a dissent (joined by Justice Gorsuch in full and Justice Alito in part).

VII. FALSE CLAIMS ACT

United States* ex rel. *Polansky v. Executive Health Resources, Inc.
No. 21-1052 | 8-1 | Justice Kagan

This case concerned the scope of the government's authority to dismiss a claim under the False Claims Act (FCA). The FCA allows private parties (known as relators) to sue on the government's behalf (known as *qui tam* actions) subject to various restrictions. In this case, a relator filed a *qui tam* action claiming Executive Health Resources helped hospitals overbill Medicare. The government declined to intervene, and the case proceeded for years. Eventually, the government filed a motion under 31 U.S.C. § 3730(c)(2)(A), which provides that "[t]he Government may dismiss the action notwithstanding the objections of the [relator]," so long as the relator received notice and an opportunity for a hearing. The district court granted the request and dismissed the case, and the Third Circuit affirmed. In a 8-1 decision authored by Justice Kagan, the Court held "that the Government may seek dismissal of an FCA action over a relator's objection so long as it intervened sometime in the litigation, whether at the outset or afterward" and also held "that in handling such a motion, district courts should apply the rule generally governing voluntary dismissal of suits: Federal Rule of Civil Procedure 41(a)." Justice Thomas filed a solo dissent, noting, among other things, "substantial arguments that the *qui tam* device is inconsistent with Article II and that private relators may not represent the interests of the United States in litigation." Justice Kavanaugh filed a very short concurrence (joined by Justice Barrett), joining the Court's opinion in full but noting agreement with Justice Thomas that there are "substantial arguments that the *qui tam* device is inconsistent with Article II."

United States* ex rel *Schutte v. SuperValu Inc. | No. 21-1326 | 9-0 | Justice Thomas

This case involved the interpretation of the scienter element of the False Claims Act ("FCA"), 31 U.S.C. § 3729, a federal law that imposes liability on anyone who "knowingly" submits a "false" claim to the government. Various petitioners sued retail pharmacies under the FCA, alleging the pharmacies defrauded Medicare and Medicaid, and violated the FCA, when they submitted prescription drug reimbursement claims at rates higher than the "usual and customary" charges allowed under law. The Seventh Circuit held that the pharmacies did not meet the FCA's "knowingly" element because the claims were consistent with an objectively reasonable interpretation of "usual and customary" charges, despite evidence that the pharmacies themselves thought their claims were inaccurate. In a 9-0 decision authored by Justice Thomas, the Court reversed and held that the FCA's text and common law origins imposes a three-part definition of "knowingly" that includes either actual knowledge, deliberate ignorance, or recklessness. Given the evidence that the pharmacies thought the claims were inaccurate when they were submitted, the pharmacies violated the FCA by "knowingly" submitting "false" claims.

VIII. FIRST AMENDMENT

303 Creative LLC v. Elenis | No. 21-476 | 6-3 | Justice Gorsuch

This case addressed a wedding website designer's claim that the Colorado Anti-Discrimination Act (CADA) violates the Free Speech Clause of the First Amendment by requiring her to create custom websites celebrating same-sex marriages. The designer, Lorie Smith, sought an injunction to prevent Colorado from forcing her to create websites celebrating marriages that defy her belief that marriage should be reserved to unions between one man and one woman. The district court denied the request for the injunction, and the Tenth Circuit affirmed. In a 6-3 decision authored by Justice Gorsuch, the Court reversed, concluding that Colorado violated the First Amendment by "seek[ing] to force an individual to speak in ways that align with its views but defy her conscience about a matter of major significance." The Court added that "no public accommodations law is immune from the demands of the Constitution." Justice Sotomayor (joined by Justices Kagan and Jackson) dissented, arguing that "the Court, for the first time in its history, grants a business open to the public a constitutional right to refuse to serve members of a protected class."

Counterman v. Colorado | No. 22-138 | 7-2 | Justice Kagan

This case addressed the limits of First Amendment speech protections in the context of "true threats" of violence. Billy Counterman sent hundreds of Facebook messages across multiple years to a local musician he had never met. The musician never responded and repeatedly blocked Counterman, but his continued messaging and suggestions of violence caused her fear and anxiety. After she contacted the authorities, Counterman was convicted under a Colorado law that criminalized repeated communications "that would cause a reasonable person to suffer serious emotional distress and does cause that person . . . to suffer serious emotional distress." Colo. Rev. Stat. § 18–3–602(1)(c). Counterman appealed, claiming that the First Amendment required that the prosecution prove both that the statements were objectively threatening and that he was subjectively aware of their threatening nature. In a 7-2 opinion authored by Justice Kagan, the Court held that "true threats" prosecutions need only prove that the defendant's objectively threatening statements demonstrated a reckless state of mind—a conscious disregard for a substantial and unjustifiable risk of harm. Because Counterman's conviction was based solely on proof of the objectively threatening nature of his messages, the Court returned the case to state court for potential re-trial under the recklessness standard. Justice Sotomayor (joined in part by Justice Gorsuch) filed a concurring opinion. Justices Thomas and Barrett each filed dissents.

IX. GOVERNMENT BENEFITS & TAXATION

Arellano v. McDonough | No. 21-432 | 9-0 | Justice Barrett

The case concerns the question of whether equitable tolling—allowing a court or agency to excuse a missed deadline in certain circumstances—is available to veterans applying for disability benefits under 38 U.S.C. § 5110(b)(1). This statute grants retroactive payment of disability benefits if a veteran applies for benefits within one year of discharge. Adolfo Arellano, a Navy veteran, suffered from post-traumatic stress disorder

and other mental health conditions as a result of his service. Mr. Arellano sought retroactive benefits dating to his 1981 honorable discharge. Although he first filed a claim for benefits in 2011, he argued the one-year filing deadline should be equitably tolled because the delay in filing was caused in part by his disability. In a 9-0 decision authored by Justice Barrett, the Court held that the one-year filing deadline in § 5110(b)(1) is not subject to equitable tolling. The Court reached this conclusion after interpreting broader statutory text and structure of § 5110, which demonstrated that Congress already considered equitable concerns and incorporated them into explicit exceptions set forth elsewhere in the law.

Polselli v. Internal Revenue Service | No. 21-1599 | 9-0 | Chief Justice Roberts

This case concerned the Internal Revenue Service's ("IRS") power to seek financial records from third-party record keepers, without notification to the delinquent taxpayer. In this case, the IRS entered assessments against Remo Polselli for more than $2 million in unpaid taxes and penalties, and then issued summonses to banks and law firms seeking financial records concerning Polselli, without notice to Polselli. Some of those third parties moved to quash the summonses, arguing notice to Polselli was required. The district court rejected that argument, as did the Sixth Circuit which concluded that the summonses fell within an exception to the general notice requirement. In an opinion authored by Chief Justice Roberts, the Court affirmed. The Court rejected the argument that the exception to the notice requirement applies only if the delinquent taxpayer has a legal interest in the accounts or records summoned by the IRS. Justice Jackson issued a concurring opinion (joined by Justice Gorsuch) to emphasize that notice is the default rule when the IRS seeks information from third-party record keepers.

X. IMMIGRATION LAW

Pugin v. Garland | No. 22-23 | 6-3 | Justice Kavanaugh

This case resolved a circuit split over which laws qualify as "aggravated felony" offenses "relating to obstruction of justice" that can justify a noncitizen's removal from the United States under 8 U.S.C. §§ 1101(a)(43)(S), 1227(a)(2)(A)(iii). The Ninth Circuit held that a state conviction could only qualify as an offense "relating to obstruction of justice" if there was an investigation or proceeding pending at the time of the offense. The Fourth Circuit reached the opposite conclusion. In a 6-3 decision authored by Justice Kavanaugh, the Court agreed with the Fourth Circuit. The Court relied on an "extensive body of authority—dictionaries, federal laws, state laws, and the Model Penal Code" along with "common sense" to conclude that "individuals can obstruct the process of justice even when an investigation or proceeding is not pending." Justice Jackson filed a separate concurrence and Justice Sotomayor dissented and was joined by Justices Gorsuch and Kagan.

Santos-Zacharia v. Garland | No. 21-1436 | 9-0 | Justice Jackson

This case analyzed the administrative exhaustion requirements before federal courts may review decisions from the Board of Immigration Appeals. In this case, a noncitizen in removal proceedings claimed the Board engaged in improper fact-finding. The Fifth

Circuit dismissed the case because the improper fact-finding argument was not first raised in a motion to reconsider before the Board. In a 9-0 decision authored by Justice Jackson, the Court held that the federal law at issue, 8 U.S.C. § 1252, did not contain a "jurisdictional" exhaustion requirement (i.e. one not subject to exception), and further held the law did not require petitioners to first seek reconsideration from the Board before seeking review in federal court. Justice Alito (joined by Justice Thomas) concurred in the judgment.

***United States v. Hansen* |** No. 22-179 | 7-2 | Justice Barrett

This case addressed whether a statute that forbids "encourag[ing] or induc[ing] an alien to come to, enter, or reside in the United States" is unconstitutionally overbroad. 8 U.S.C. § 1324(a)(1)(A)(IV). Helaman Hansen was charged and convicted under § 1324 for his role in a scheme to deceive hundreds of noncitizens by claiming he could secure them citizenship through "adult adoption." The Ninth Circuit overturned the conviction, agreeing with Hansen that the statute violated the First Amendment. In a 7-2 opinion authored by Justice Barrett, the Court overruled the Ninth Circuit and held that because § 1324 only forbids purposeful solicitation and facilitation of specific acts, the law is not unconstitutionally overbroad. The decision was based on the Court's interpretation of the "encourage or induce" language in the statute and its conclusion that Congress included these terms in a "specialized, criminal-law sense" which narrowly applies to the solicitation of unlawful acts. Justice Jackson filed a dissenting opinion joined by Justice Sotomayor.

United States v. Texas | No. 22-58 | 8-1 | Justice Kavanaugh

This case addressed the ability of states to sue the executive branch over its national immigration enforcement policy. In 2021, the Secretary of Homeland Security released guidelines that prioritized the arrest and deportation of noncitizens based on individuals' potential threats to border security and public safety (the "Guidelines"). Texas and Louisiana sued, arguing the Guidelines violated the Immigration and Nationality Act ("INA"). 8 U. S. C. §§ 1226(c) 1231(a)(2). To gain standing (the right to sue in federal court), the States claimed that they would incur additional costs through the executive branch's failure to comply with the INA. A district court agreed with the States on the merits and declared the Guidelines unlawful. The Fifth Circuit declined to set aside the district court's judgment. In an opinion authored by Justice Kavanaugh, the Court held that the States lacked standing to challenge the Guidelines and accordingly reversed the district court's judgment for lack of jurisdiction. Framing the dispute as "an extraordinarily unusual lawsuit," the Court held that the States lacked standing to ask "a federal court to order the Executive Branch to alter its arrest policies so as to make more arrests." Chief Justice Roberts and Justices Sotomayor, Kagan, and Jackson joined the Court's opinion in full. Justice Gorsuch (joined by Justices Thomas and Barrett) and Justice Barrett (joined by Justice Gorsuch) concurred in the judgment, but wrote separately to focus on the States' failure to demonstrate redressability, which requires that a favorable verdict remedy the harms alleged. Justice Alito dissented.

XI. Indian Law

Arizona v. Navajo Nation | No. 21-1484 | 5-4 | Justice Kavanaugh

This case considered the federal government's obligations related to the Navajo Tribe's access of the Colorado River's water supply. The 1868 treaty establishing the Navajo Reservation implicitly reserved the Tribe's right to use water from the Colorado River and other sources on the reservation. Facing ongoing water scarcity and competition from other states, the Tribe sued the federal government, asserting a breach-of-trust claim from the 1868 treaty and seeking to compel the federal government to take affirmative steps to ensure the Tribe maintained access to sufficient water supply. Several states intervened against the Tribe to assert their competing water rights. In a 5-4 decision authored by Justice Kavanaugh, the Court ruled against the Tribe and held that the 1868 treaty "contained no 'rights-creating or duty-imposing' language that imposed a duty on the United States to take affirmative steps to secure water for the Tribe." Justice Gorsuch dissented and was joined by Justices Sotomayor, Kagan, and Jackson.

Haaland v. Brackeen | No. 21-376 | 7-2 | Justice Barrett

This case addressed the constitutionality of the Indian Child Welfare Act (ICWA), which governs foster placement for Indian children and requires, among other things, that a state court place an Indian child with an Indian caretaker, if one is available. A birth mother, foster and adoptive parents, and the State of Texas challenged ICWA arguing that it exceeds federal authority, infringes state sovereignty, and discriminates on the basis of race. In a 7-2 decision authored by Justice Barrett, the Court "reject[ed] all of petitioners' challenges to the statute, some on the merits and others for lack of standing." Justice Gorsuch (joined by Justices Sotomayor and Jackson) and Justice Kavanaugh filed concurring opinions. Justices Thomas and Alito filed separate dissents. According to Justice Thomas in dissent, Congress in enacting ICWA "ignored the normal limits on the Federal Government's power and prescribed rules to regulate state child custody proceedings in one circumstance: when the child involved happens to be an Indian."

XII. Intellectual Property

Abitron Austria GmbH v. Hetronic International, Inc.
No. 21-1043 | 9-0 | Justice Alito

This case considered the application of the Lanham Act's trademark infringement provisions outside of the United States. Hetronic, a U.S. manufacturer, sued its former foreign distributors in U.S. district court under 15 U.S.C. §§ 1114(1)(a), 1125(a)(1), which prohibit the unauthorized use of trademarks in commerce. Abitron, a collection of six foreign parties, argued the Lanham Act did not apply against its alleged infringing uses outside of the U.S. The district court rejected this argument and awarded Hetronic damages and a permanent injunction against Abitron. In an opinion authored by Justice Alito, the Court reversed and applied the "presumption against extraterritoriality" to hold that the sections of the Lanham Act at issue apply "only to where the claimed infringing use in commerce is domestic." Justice Jackson filed a concurring opinion and Justice

Sotomayor (joined by Chief Justice Roberts and Justices Kagan and Barrett) authored an opinion concurring solely in the judgment.

Amgen Inc. v. Sanofi | No. 21-757 | 9-0 | Justice Gorsuch

This case addressed the Patent Act's "enablement" requirement—the provision that requires a patent applicant to describe the invention "in such full, clear, concise, and exact terms as to enable any person skilled in the art . . . to make and use the [invention]." 35 U.S.C. § 112(a). Amgen obtained patents covering antibodies engineered by scientists that help reduce levels of certain cholesterol. Amgen then sued Sanofi for infringement. In response, Sanofi argued the patents were invalid under the "enablement" requirement because the patents sought to claim for Amgen's exclusive use potentially millions more antibodies than the company had taught scientists to make. The district court and Federal Circuit sided with Sanofi. In a 9-0 decision authored by Justice Gorsuch, the Court held that the lower courts correctly determined that Amgen failed to satisfy the enablement requirement. The Court explained that a patent may call for "a reasonable amount of experimentation to make and use a patented invention," but "in allowing that much tolerance, courts cannot detract from the basic statutory requirement that a patent's specification describe the invention" so that a skilled person can make and use the invention.

Andy Warhol Foundation for the Visual Arts v. Goldsmith
No. 21-869 | 7-2 | Justice Sotomayor

This case concerned the scope of copyright law's fair use doctrine. In 1981, professional photographer Lynn Goldsmith was commissioned by Newsweek to photograph the musician, Prince. Goldsmith later granted Vanity Fair a license to use the image "one time" only as a "reference for an illustration." Vanity Fair hired Andy Warhol to create a purple silkscreen portrait based on Goldsmith's photo. Warhol also used the photo to create 15 other images with different background colors. Warhol's purple Prince image was published in a 1984 Vanity Fair issue, with Goldsmith credited and paid as the source photographer. After Prince died in 2016, Condé Nast, Vanity Fair's parent company paid the Andy Warhol Foundation for the Visual Arts, Inc. ("AWF") to license the orange version of Warhol's Prince image ("Orange Prince") and publish it on the cover of a magazine. Goldsmith claimed the AWF's licensing of Orange Prince infringed her copyright of the original photograph, while AWF maintained its use was protected under the fair use doctrine in federal copyright law, 17 U.S.C. § 107. After the district court sided with AWF, the Second Circuit reversed and held the four fair use factors in § 107 favored Goldsmith. In a 7-2 decision authored by Justice Sotomayor, the Court affirmed and held that AWF's licensing of Orange Prince was not fair use. The Court focused on the first fair use factor, "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes," and determined that the purpose of AWF's 2016 licensing of Orange Prince to Condé Nast was substantially the same as the original use of Goldsmith's 1981 magazine photograph. Justice Kagan (joined by Chief Justice Roberts) filed a dissent arguing the majority's analysis failed to properly consider the "transformative" nature of the Warhol's Orange Prince.

***Jack Daniel's Properties v. VIP Products* |** No. 21-148 | 9-0 | Justice Kagan

This case addressed the infringement analysis for federal trademark law. VIP Products manufactures dog toys, including a line of products that are intended to parody famous brands. At issue in this case was VIP's "Bad Spaniels" toy, which is shaped like a bottle of whiskey and spoofs Jack Daniel's words and graphics. Jack Daniel's sued for trademark infringement and dilution under the Lanham Act, 15 U.S.C. §§ 1114, 1125. The Ninth Circuit ruled in favor of VIP. In a 9-0 decision authored by Justice Kagan, the Court held that the Ninth Circuit applied an incorrect legal test in its infringement and dilution analyses. Unlike situations where trademarks are used to perform a separate artistic function, and may warrant greater First Amendment or fair use protections for alleged infringers, VIP used Jack Daniel's trademarks as a "source identifier." The Court remanded to the Ninth Circuit to re-evaluate whether VIP's use of Jack Daniel's trademarks is likely to cause consumer confusion. Justice Sotomayor (joined by Justice Alito) and Justice Gorsuch (joined by Justices Thomas and Barrett) each filed brief concurring opinions.

XIII. INTERNET & COMMUNICATIONS LAW

Twitter v. Taamneh | No. 21-1496 | 9-0 | Justice Thomas

This case considered the potential liability of social media companies under the Antiterrorism Act ("ATA"). After a 2017 ISIS attack in a Turkish nightclub killed 39 people, the families of one of the victims sued Facebook, Twitter, and Google (as the owner of YouTube) under the ATA. The victim's family alleged that the social media companies knowingly allowed, and profited from, ISIS and its supporters using the platforms and algorithms as recruiting, propaganda, and fundraising tools. Because ISIS is a designated Foreign Terrorist Organization, the family alleged the companies aided and abetted ISIS in violation of the ATA, 18 U.S.C. § 2333(d)(2). In a 9-0 decision authored by Justice Thomas, the Court dismissed the lawsuit and held the family failed to state a claim under the ATA. While undefined in the ATA itself, the Court held that aiding and abetting liability under the ATA requires "conscious, voluntary, and culpable participation in another's wrongdoing" and that the companies' actions fell short of the standard with respect to the nightclub attack. Justice Jackson filed brief a concurring opinion.

***Gonzalez v. Google* |** No. 21-1333 | 9-0 | Per Curiam

This case was related to *Twitter v. Taamneh* and addressed the extent of internet companies' protections under Section 230 of the Communications Decency Act ("Section 230"), 47 U.S.C. § 230(c)(1). Under Section 230, "No provider or user of an interactive computer service shall be treated as the publisher of or speaker of information provided by another information content provider." In an unsigned per curiam opinion, the Court did not decide the scope of Section 230. Instead, because the plaintiff's Section 230 claims relied on the same factual allegations that were dismissed in *Taamneh*, the Court remanded to the Ninth Circuit for reconsideration in light of *Taamneh.*

XIV. INTERSTATE DISPUTES

Delaware v. Pennsylvania | No. 22O145 | 9-0 | Justice Jackson

This case, decided under the Court's original jurisdiction, addressed the question of which state has the right to claim abandoned intangible property under the process of "escheatment." MoneyGram issued two financial products that operated similar to money orders, allowing funds to be transferred to a named payee. However, if the products are not presented for payment within a set time limit, they are deemed abandoned and can be reclaimed by a state government under escheatment. The MoneyGram products followed a common law rule which transmitted the abandoned proceeds back to MoneyGram's state of incorporation, Delaware. Multiple states sued to argue that the products at issue were governed by the federal Disposition of Abandoned Money Orders and Traveler's Checks Act ("FDA"), requiring the proceeds go to the state where the financial product was purchased. In a 9-0 decision authored by Justice Jackson, the Court held that the FDA rules applied because the financial products at issue were sufficiently similar to money orders given their similar function and operation. (Note: Justices Thomas, Alito, Gorsuch, and Barrett did not join one part of the opinion addressing legislative history.).

National Pork Producers Council v. Ross | No. 21-468 | 5-4 | Justice Gorsuch

This case involved a constitutional challenge to California's "animal cruelty law" known as Proposition 12 ("Prop 12"), which prohibits the sale of certain veal, pork, and egg products in California if the seller "knows or should know" that the product came from an animal confined—anywhere—"in a cruel manner." Out-of-state pork sellers challenged Prop 12, arguing it violates the U.S. Constitution's "dormant Commerce Clause." The district court dismissed the claims for failure to state a claim, and the Ninth Circuit affirmed. In a fractured decision authored by Justice Gorsuch, the Court affirmed. The Court held that Prop 12 does not violate the "antidiscrimination" principle of the dormant Commerce Clause and rejected the pork sellers' argument that Prop 12 improperly controls "extraterritorial commerce." The justices, however, filed four separate opinions addressing whether the pork producers had a stated a viable claim that Prop 12 has an excessive impact on interstate commerce (called a "*Pike* claim" from *Pike v. Bruce Church*, 397 U.S. 137 (1970)). A majority of the Court agreed that the *Pike* claim failed but for different reasons.

New York v. New Jersey | No. 22O156 | 9-0 | Justice Kavanaugh

This case was heard pursuant to the Court's original jurisdiction and addressed whether New York could prevent New Jersey from unilaterally withdrawing from the states' Waterfront Commission Compact. The Compact, created in 1953 by laws passed in both states and approved by Congress under Article I § 10 of the U.S. Constitution, granted the Waterfront Commission of New York Harbor broad powers to regulate and enforce laws for the Port of New York and New Jersey. After New Jersey passed a state law to withdraw from the Compact, New York sought relief from the Supreme Court. In a unanimous decision authored by Justice Kavanaugh, the Court sided with New Jersey and agreed the state could unilaterally exit the Compact notwithstanding New York's opposition. Because the Compact itself did not address withdrawal conditions, the Court

applied default contract law rules and state sovereignty principles to conclude that unilateral withdrawal was allowed under the Compact.

XV. LABOR & EMPLOYMENT LAW

Glacier Northwest, Inc. v. Int'l Brotherhood of Teamsters Local Union, No. 174
No. 21-1449 | 8-1 | Justice Barrett

This case involved the preemptive force of federal labor law—specifically, whether the National Labor Relations Act (NLRA) preempts a state tort claim against a union for intentionally destroying an employer's property in the course of a labor dispute. In this case, a concrete company, Glacier Northwest, claimed a union ordered truck drivers to intentionally destroy loads of Glacier's ready-mix concrete, and Glacier sued the union in state court asserting tort claims. The state courts dismissed the case, concluding the NLRA preempted the claims because they related to a labor dispute. In a decision authored by Justice Barrett, the Court reversed. The Court held that "[b]ecause the Union took affirmative steps to endanger Glacier's property rather than reasonable precautions to mitigate that risk, the NLRA does not arguably protect its conduct." Justice Alito (joined by Justices Thomas and Gorsuch) filed a separate opinion, concurring in the judgment only. Justice Jackson dissented

Groff v. DeJoy | No. 22-174 | 9-0 | Justice Alito

This case addressed employers' duties to provide religious accommodations under Title VII of the Civil Rights Act of 1964 ("Title VII"), which mandates that accommodations be provided unless they impose "undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j). Gerald Groff, an employee of the U.S. Postal Service ("USPS"), objected to a change in his employment duties that required him to assist with Sunday package delivery. Groff claimed this violated his Christian beliefs and sued USPS under Title VII for refusing to accommodate his Sunday Sabbath practice. The lower courts ruled for USPS under the Supreme Court's *TWA v. Hardison* test, which the Third Circuit interpreted to allow employers to decline accommodations that impose "more than a *de minimis* cost." 432 U.S. 63, 84 (1977). In a 9-0 decision authored by Justice Alito, the Court reversed the Third Circuit. The Court clarified that Title VII and *Hardison* require courts to engage in a "fact-specific inquiry" to consider whether "a burden is substantial in the overall context of an employer's business." The Court remanded the case for the lower court to reconsider the allegations under the proper context-specific analysis. Justice Sotomayor (joined by Justice Jackson) authored a concurring opinion

Helix Energy Solutions Group, Inc. v. Hewitt | No. 21-984 | 6-3 | Justice Kagan

This case addressed the regulations and rules governing when highly paid employees may qualify for overtime pay under the Fair Labor Standards Act (FLSA). Michael Hewitt worked for Helix on an offshore oil rig, routinely working more than 80 hours a week. Mr. Hewitt was paid on a daily-rate basis and earned more than $200,000 annually. Helix argued Mr. Hewitt was exempt from overtime pay as a "bona fide executive" under the Department of Labor's rules interpreting the FLSA. In a 6-3 decision authored by Justice Kagan, the Court held that Mr. Hewitt was not exempted from the FLSA's overtime pay

guarantee because he was not paid on a "salary basis." The Court concluded that the text and structure of 29 CFR §§ 541.602(a), 541.604(b) excluded daily-rate workers like Mr. Hewitt, regardless of his total annual earnings. Justice Gorsuch and Justice Kavanaugh each filed dissenting opinions.

Ohio Adjutant General's Department v. Federal Labor Relations Authority
No. 21-1454 | 7-2 | Justice Thomas

This case involved whether the Federal Labor Relations Authority ("FLRA") properly exercised jurisdiction over an unfair labor practices dispute between the Ohio National Guard ("Guard") and the American Federation of Government Employees, Local 3970, AFL–CIO ("Union"), which represents federal employees known as dual-status technicians who work in both civilian and military roles for the Guard. Under the Federal Service Labor-Management Relations Statute, the FLRA only has jurisdiction over labor organizations and federal "agencies." The Guard claimed it was not a federal "agency." The lower courts concluded there was jurisdiction. In a 7-2 decision authored by Justice Thomas, the Court held the FLRA has jurisdiction over the dispute because the Guard acts as a federal "agency" when they hire and supervise dual-status technicians serving in their civilian role. Justice Alito (joined by Justice Gorsuch) dissented.

XVI. RICO

Yegiazaryan v. Smagin | No. 22-381 | 6-3 | Justice Sotomayor

This case clarified the definition of a "domestic injury" for allegations arising from the Racketeer Influenced and Corrupt Organizations Act (RICO Act). In this case, Vitaly Smagin sued Ashot Yegiazaryan under the RICO Act, claiming Yegiazaryan had engaged in a pattern of wire fraud, witness tampering, and other racketeering acts to avoid paying a prior multimillion dollar arbitration award. The district court dismissed Smagin's suit for failure to plead a domestic injury. Smagin appealed and the Ninth Circuit overruled the district court's decision. In a 6-3 decision authored by Justice Sotomayor, the Court upheld the Ninth Circuit's decision and held that for purposes of the RICO Act, a plaintiff can allege a domestic injury "when the circumstances surrounding the injury indicate it arose in the United States." In reaching this decision, the Court determined that the domestic injury inquiry is a context specific test that relies heavily on the facts of each case. Therefore, when applying this test, lower courts should look "to the nature of the alleged injury, the racketeering activity that directly caused it, and the injurious aims and effects of that activity." Justice Alito dissented and was joined by Justices Thomas and Gorsuch.

XVII. SECTION 1983

Reed v. Goertz | No. 21-442 | 6-3 | Justice Kavanaugh

This case addressed the statute of limitations for prisoners challenging the constitutionality of state-provided DNA testing procedures. Rodney Reed was convicted and sentenced to death in Texas state court for a 1996 murder. In 2014, Reed sought DNA testing on certain evidence under Texas's post-conviction DNA testing law. The state trial court denied his motion for testing after concluding the evidence at issue was

not preserved through a proper chain of custody. The Texas Court of Criminal Appeals affirmed and subsequently denied a motion for rehearing. Reed later filed a 42 U.S.C. § 1983 suit in federal court claiming that the Texas law's chain of custody procedures violated his Constitutional procedural due process rights. This federal suit was dismissed for failure to comply with the two-year statute of limitations in § 1983, because the lower court held that the statute of limitations started to run when Reed's motion was originally denied by the state trial court. In a 6-3 decision authored by Justice Kavanaugh, the Court reversed the dismissal and held that the statute of limitations for a § 1983 claim against a state-provided litigation process begins when the state litigation ends, not upon the initial ruling by a state trial court. The Court reasoned that because Reed's due process claim challenged state procedures governing both trial and appellate court proceedings, Reed's claim was not a "complete and present cause of action" until the state appellate review process was concluded. Justice Thomas dissented, arguing that federal courts lack jurisdiction to review state court judgements. Justice Alito, joined by Justice Gorsuch, separately dissented on the merits of the Court's statute of limitations analysis

Health and Hospital Corporation of Marion County v. Talevski
No. 21-806 | 7-2 | Justice Jackson

This case concerned whether there is a private right of action to enforce the Federal Nursing Home Reform Act (FNHRA). In this case, Gorgi Talevski brought an action under 42 U.S.C. § 1983 against a county-owned nursing home, claiming the home's treatment of Talevski violated two sets of rights under FNHRA—the right to be free from unnecessary chemical restraints and rights to be discharged or transferred only when certain preconditions are met. The District Court dismissed the case, concluding no plaintiff can enforce FNHRA via § 1983. The Seventh Circuit reversed. In a 7-2 decision authored by Justice Jackson, the Court affirmed. The Court held "that the two FNHRA provisions at issue here do unambiguously create § 1983-enforceable rights. And we discern no incompatibility between private enforcement under § 1983 and the statutory scheme that Congress has devised for the protection of those rights." Justices Gorsuch and Barrett filed separate concurrences, and Justices Thomas and Alito filed separate dissents.

XVIII. SECURITIES LAW

***Slack Technologies v. Pirani* |** No. 22-200 | 9-0 | Justice Gorsuch

This case addressed the pleading requirements for lawsuits under Section 11 of the Securities Act of 1933. The 1933 Act requires companies to prepare a registration statement with detailed information about the company prior to offering shares to the public, and imposes strict liability on the issuing company if the registration statements contain material misstatements or omissions. In 2019, Slack filed the required registration statement and conducted a direct listing to sell shares on the New York Stock Exchange. An investor who purchased a subset of these shares later filed a class-action lawsuit alleging Slack's registration statements included material misrepresentations in violation the 1933 Act. Slack moved to dismiss, claiming the investor failed to allege that the purchased shares were directly traceable to the

allegedly misleading registration statement. The district court denied the motion to dismiss and the Ninth Circuit affirmed. In a 9-0 decision authored by Justice Gorsuch, the Court reversed the Ninth Circuit and held that Section 11 of the 1933 Act requires plaintiffs to plead (and ultimately prove) they purchased securities registered under a defective registration statement. The Court relied on the context and text elsewhere in the 1933 Act to interpret the "such security" language in Section 11 to include this pleading requirement.

XIX. SOVEREIGN IMMUNITY

***Financial Oversight and Management Board for Puerto Rico v. Centro de Periodismo Investigativo, Inc.* |** No. 22-96 | 8-1 | Justice Kagan

This case considered whether the federal law creating the Financial Oversight and Management Board for Puerto Rico ("Board") also abrogated the Board's sovereign immunity from federal lawsuits. After the Board failed to respond to various requests for information, a non-profit media organization sued the Board under a provision of the Puerto Rican Constitution provision guaranteeing a right of access to public records. Lower courts rejected the Board's attempt to claim sovereign to avoid the lawsuit. In an 8-1 decision authored by Justice Kagan, the Court held that the Board can claim sovereign immunity. The Court assumed without deciding that Puerto Rico was protected by sovereign immunity and concluded that the Board enjoyed the same protections as an entity of the Puerto Rican government because the federal law creating the Board did not include the clear language required to abrogate sovereign immunity. Justice Thomas filed a dissenting opinion.

Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin
No. 22-227 | 8-1 | Justice Jackson

This statutory interpretation and federal Indian law case addressed the extent of sovereign immunity for Native American tribes. A member of the Lac du Flambeau Band made a loan to respondent Brian Coughlin, who then filed for Chapter 13 bankruptcy. When the Band member continued to try to collect Coughlin's debt, Coughlin filed a motion in bankruptcy court to enforce the automatic stay against collection efforts by all creditors including the Band member. The Bankruptcy Court dismissed the suit on grounds of tribal sovereign immunity, but the First Circuit reversed, concluding that the Bankruptcy Code "unequivocally strips tribes of their immunity." In a decision authored by Justice Jackson, the Court affirmed and "conclude[d] that the Bankruptcy Code unequivocally abrogates the sovereign immunity of any and every government that possesses the power to assert such immunity," including "[f]ederally recognized tribes." Justice Thomas filed an opinion concurring in the judgment, and Justice Gorsuch filed a solo dissent

Turkiye Halk Bankasi A.S. v. United States | No. 21-1450 | 7-2 | Justice Kavanaugh

This case concerned the federal government's prosecution of a Turkish state-backed bank for allegedly helping Iran evade U.S. sanctions. The bank moved to dismiss the indictment arguing that, as an instrumentality of a foreign state, it was immune from criminal prosecution under the Foreign Sovereign Immunities Act of 1976 ("Act"). The

district court denied the motion, and the Second Circuit affirmed. In a 7-2 decision authored by Justice Kavanaugh, the Court held that the district court has jurisdiction over the criminal prosecution of the bank. Among other things, the Court held that the "Act does not provide foreign states and their instrumentalities with immunity from criminal proceedings." However, instead of affirming the Second Circuit, the Court remanded to allow the bank to pursue other immunity theories. Justice Gorsuch, joined by Justice Alito, filed an opinion concurring in part and dissenting in part.

XX. TAKINGS CLAUSE

Tyler v. Hennepin County | No. 22-166 | 9-0 | Chief Justice Roberts

This case involved the Fifth Amendment's "Takings Clause" in the context of seizing property to collect unpaid taxes. In this case, Hennepin County, Minnesota confiscated Geraldine Tyler's condo to satisfy her $15,000 property tax debt, sold the condo at auction for $40,000, and kept the $25,000 surplus. The district court dismissed Tyler's claim that the County violated the Takings Clause, and the Eighth Circuit affirmed. In a 9-0 decision authored by Chief Justice Roberts, the Court reversed and held that Tyler had stated a viable claim under the Takings Clause, relying on history, its precedents, and Minnesota law. The Court reasoned that the County "could not use the toehold of the tax debt to confiscate more property than was due," and by doing so, "it effected a classic taking in which the government directly appropriates private property for its own use." (quotation omitted). Justice Gorsuch filed a concurring opinion (joined by Justice Jackson) to address an issue the Court did not reach—whether Tyler also stated a claim that the County violated the Eighth Amendment's ban on excessive fines. The concurring justices explained that "even a cursory review" of the lower courts' Eighth Amendment analysis revealed "mistakes future lower courts should not be quick to emulate."

Preview of October Term 2023[2]

Acheson Hotels, LLC v. Laufer | No. 22-429

Issue: Whether a self-appointed Americans with Disabilities Act "tester" has Article III standing to challenge a place of public accommodation's failure to provide disability accessibility information on its website, even if she lacks any intention of visiting that place of public accommodation.

Alexander v. South Carolina State Conference of the NAACP | No. 22-807

Issues: (1) Whether the district court erred when it failed to apply the presumption of good faith and to holistically analyze South Carolina Congressional District 1 and the South Carolina General Assembly's intent; (2) whether the district court erred in failing to enforce the alternative-map requirement in this circumstantial case; (3) whether the district court erred when it failed to disentangle race from politics; (4) whether the district court erred in finding racial predominance when it never analyzed District 1's compliance with traditional districting principles; (5) whether the district court clearly erred in finding that the General Assembly used a racial target as a proxy for politics when the record showed only that the General Assembly was aware of race, that race and politics are highly correlated, and that the General Assembly drew districts based on election data; and (6) whether the district court erred in upholding the intentional-discrimination claim when it never even considered whether—let alone found that—District 1 has a discriminatory effect.

Bissonnette v. LePage Bakeries Park St., LLC | No. 23-51

Issue: Whether, to be exempt from the Federal Arbitration Act, a class of workers that is actively engaged in interstate transportation must also be employed by a company in the transportation industry.

Brown v. United States | No. 22-6389

Issue: Whether the "serious drug offense" definition in the Armed Career Criminal Act incorporates the federal drug schedules that were in effect at the time of the federal firearm offense or the federal drug schedules that were in effect at the time of the prior state drug offense.

Campos-Chaves v. Garland | No. 22-674

Issue: Whether the government provides notice "required under" and "in accordance with paragraph (1) or (2) of" 8 U.S.C. § 1229(a) when it serves an initial notice document that does not include the "time and place" of proceedings followed by an additional document containing that information, such that an immigration court must enter a removal order in absentia and deny a noncitizen's request to rescind that order.

[2] This list reflects all grants of certiorari through September 29, 2023.

Consumer Financial Protection Bureau v. Community Financial Services Association of America, Limited | No. 22-448

Issue: Whether the court of appeals erred in holding that the statute providing funding to the Consumer Financial Protection Bureau, 12 U.S.C. § 5497, violates the appropriations clause in Article I, Section 9 of the Constitution, and in vacating a regulation promulgated at a time when the Bureau was receiving such funding.

Corner Post v. Board of Governors of the Federal Reserve System | No. 22-1008

Issue: Whether a plaintiff's Administrative Procedure Act claim "first accrues" under 28 U.S.C. § 2401(a) when an agency issues a rule — regardless of whether that rule injures the plaintiff on that date — or when the rule first causes a plaintiff to "suffer[] legal wrong" or be "adversely affected or aggrieved."

Culley v. Marshall | No. 22-585

Issue: Whether district courts, in determining whether the due process clause requires a state or local government to provide a post-seizure probable-cause hearing prior to a statutory judicial-forfeiture proceeding and, if so, when such a hearing must take place, should apply the "speedy trial" test employed in *United States v. $8,850* and *Barker v. Wingo* or the three-part due process analysis set forth in *Mathews v. Eldridge*.

Dep't of Agriculture Rural Development Rural Housing Service v. Kirtz | No. 22-846

Issue: Whether the civil-liability provisions of the Fair Credit Reporting Act unequivocally and unambiguously waive the sovereign immunity of the United States.

Devillier v. Texas | No. 22-913

Issue: Whether a person whose property is taken without compensation may seek redress under the self-executing takings clause of the Fifth Amendment even if the legislature has not affirmatively provided them with a cause of action.

Federal Bureau of Investigation v. Fikre | No. 22-1178

Issue: Whether respondent's claims challenging his placement on the No Fly List are moot given that he was removed from the No Fly List in 2016 and the government provided a sworn declaration stating that he "will not be placed on the No Fly List in the future based on the currently available information."

Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC | No. 22-500

Issue: Whether, under federal admiralty law, a choice-of-law clause in a maritime contract can be rendered unenforceable if enforcement is contrary to the "strong public policy" of the state whose law is displaced.

Harrington v. Purdue Pharma L.P. | No. 23-124

Issue: Whether the Bankruptcy Code authorizes a court to approve, as part of a plan of reorganization under Chapter 11 of the Bankruptcy Code, a release that extinguishes claims held by nondebtors against nondebtor third parties, without the claimants' consent.

Lindke v. Freed | No. 22-611

Issue: Whether a public official's social media activity can constitute state action only if the official used the account to perform a governmental duty or under the authority of his or her office.

Loper Bright Enterprises v. Raimondo | No. 22-451

Issue: Whether the court should overrule *Chevron v. Natural Resources Defense Council*, or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency.

Macquarie Infrastructure Corp. v. Moab Partners, L.P. | No. 22-1165

Issue: Whether the U.S. Court of Appeals for the 2nd Circuit erred in holding that a failure to make a disclosure required under Item 303 of SEC Regulation S-K can support a private claim under Section 10(b) of the Securities Exchange Act of 1934, even in the absence of an otherwise misleading statement.

McElrath v. Georgia | No. 22-721

Issue: Whether the double jeopardy clause of the Fifth Amendment prohibits a second prosecution for a crime of which a defendant was previously acquitted.

McIntosh v. United States | No. 22-7386

Issue: Whether a district court may enter a criminal-forfeiture order outside the time limitations set forth in Federal Rule of Criminal Procedure 32.2.

Moody v. NetChoice, LLC | No. 22-277

Issues: (1) Whether the laws' content-moderation restrictions comply with the First Amendment; and (2) whether the laws' individualized-explanation requirements comply with the First Amendment.

Moore v. United States | No. 22-800

Issue: Whether the 16th Amendment authorizes Congress to tax unrealized sums without apportionment among the states.

Muldrow v. City of St. Louis, Missouri | No. 22-193

Issue: Whether Title VII of the Civil Rights Act of 1964 prohibits discrimination in transfer decisions absent a separate court determination that the transfer decision caused a significant disadvantage

Murray v. UBS Securities, LLC | No. 22-660

Issue: Whether, following the burden-shifting framework that governs cases under the Sarbanes-Oxley Act of 2002, a whistleblower must prove his employer acted with a "retaliatory intent" as part of his case in chief, or whether the lack of "retaliatory intent" is part of the affirmative defense on which the employer bears the burden of proof.

NetChoice, LLC v. Paxton | No. 22-555

Issues: Whether the First Amendment prohibits viewpoint-, content-, or speaker-based laws restricting select websites from engaging in editorial choices about whether, and how, to publish and disseminate speech — or otherwise burdening those editorial choices through onerous operational and disclosure requirements.

O'Connor-Ratcliff v. Garnier | No. 22-324

Issue: Whether a public official engages in state action subject to the First Amendment by blocking an individual from the official's personal social media account, when the official uses the account to feature their job and communicate about job-related matters with the public, but does not do so pursuant to any governmental authority or duty.

Office of the U.S. Trustee v. John Q. Hammons Fall 2006, LLC | No. 22-1238

Issue(s): Whether the appropriate remedy for the constitutional uniformity violation found by this court in *Siegel v. Fitzgerald* is to require the United States Trustee to grant retrospective refunds of the increased fees paid by debtors in U.S. Trustee districts during the period of disuniformity, or is instead either to deem sufficient the prospective remedy adopted by Congress or to require the collection of additional fees from a much smaller number of debtors in Bankruptcy Administrator districts.

Pulsifer v. United States | No. 22-340

Issue: Whether a defendant satisfies the criteria in 18 U.S.C. § 3553(f)(1) as amended by the First Step Act of 2018 in order to qualify for the federal drug-sentencing "safety valve" provision so long as he does not have (a) more than four criminal history points, (b) a three-point offense, and (c) a two-point offense, or whether the defendant satisfies the criteria so long as he does not have (a), (b), or (c).

Rudisill v. McDonough | No. 22-888

Issue: Whether a veteran who has served two separate and distinct periods of qualifying service under the Montgomery GI Bill and the Post-9/11 GI Bill is entitled to receive a total of 48 months of education benefits as between both programs, without first exhausting the Montgomery benefit in order to obtain the more generous Post-9/11 benefit.

Securities and Exchange Commission v. Jarkesy | No. 22-859

Issues: (1) Whether statutory provisions that empower the Securities and Exchange Commission to initiate and adjudicate administrative enforcement proceedings seeking civil penalties violate the Seventh Amendment; (2) whether statutory provisions that authorize the SEC to choose to enforce the securities laws through an agency adjudication instead of filing a district court action violate the nondelegation doctrine; and (3) whether Congress violated Article II by granting for-cause removal protection to administrative law judges in agencies whose heads enjoy for-cause removal protection.

Sheetz v. County of El Dorado, California | No. 22-1074

Issue: Whether a building-permit exaction is exempt from the unconstitutional-conditions doctrine as applied in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard, Oregon* simply because it is authorized by legislation

Smith v. Arizona | No. 22-899

Issue: Whether the confrontation clause of the Sixth Amendment permits the prosecution in a criminal trial to present testimony by a substitute expert conveying the testimonial statements of a nontestifying forensic analyst, on the grounds that (a) the testifying expert offers some independent opinion and the analyst's statements are offered not for their truth but to explain the expert's opinion, and (b) the defendant did not independently seek to subpoena the analyst.

United States v. Rahimi | No. 22-915
Issue: Whether 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to domestic-violence restraining orders, violates the Second Amendment on its face.

Vidal v. Elster | No. 22-704

Issue: Whether the refusal to register a trademark under 15 U.S.C. § 1052(c) violates the free speech clause of the First Amendment when the mark contains criticism of a government official or public figure.

Warner Chappell Music v. Nealy | No. 22-1078

Issue: Whether, under the discovery accrual rule applied by the circuit courts and the Copyright Act's statute of limitations for civil actions, 17 U.S.C. § 507(b), a copyright plaintiff can recover damages for acts that allegedly occurred more than three years before the filing of a lawsuit.

Wilkinson v. Garland | No. 22-666

Issue: Whether an agency determination that a given set of established facts does not rise to the statutory standard of "exceptional and extremely unusual hardship" is a mixed question of law and fact reviewable under 8 U.S.C. § 1252(a)(2)(D), or whether this determination is a discretionary judgment call unreviewable under Section 1252(a)(2)(B)(i).