

Supreme Court Review

District Court of the Virgin Islands  
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*October Term 2021*

I. Abortion

Dobbs v. Jackson Women’s Health Organization, 142 S.Ct. 2228 (2022). *Roe v. Wade* is overruled. Mississippi law prohibiting abortions after the fifteenth week of pregnancy is constitutional.

II. Administrative law

West Virginia v. Environmental Protection Agency, 142 S.Ct. 2587 (2022). Congress did not grant the Environmental Protection Agency in Section 111(d) of the Clean Air Act the authority to devise emissions caps based on the generation shifting approach the agency took in the Clean Power Plan.

III. Civil rights

Rivas-Villegas v. Cortesluna, 142 S.Ct. 4 (2021). Officer Rivas-Villegas is entitled to qualified immunity in this excessive force action brought under 42 U. S. C. §1983; the 9th Circuit’s holding that circuit precedent “put him on notice that his conduct constituted excessive force” is reversed.

City of Tahlequah, Oklahoma v. Bond, 142 S.Ct. 9 (2021). Officers Girdner and Vick are entitled to qualified immunity in this excessive force action brought under 42 U. S. C. §1983; the 10th Circuit’s contrary holding is not based on a single precedent finding a Fourth Amendment violation under similar circumstances.

Egbert v. Boule, 142 S.Ct. 1793 (2022). A cause of action does not exist under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* for First Amendment retaliation claims; A cause of action does not exist under *Bivens* for claims against federal officers engaged in immigration-related functions for allegedly violating a plaintiff’s Fourth Amendment rights.

Vega v. Tekoh, 142 S.Ct. 2095 (2022). A plaintiff may not state a claim for relief against a law enforcement officer under 42 U.S.C. § 1983 based simply on an officer’s failure to provide the warnings prescribed in *Miranda v. Arizona*.

#### IV. Criminal law -- Sixth Amendment

United States v. Tsarnaev, 142 S.Ct. 1024 (2022). District Court did not abuse its discretion by declining to include specific media-content question in juror questionnaire. A court of appeals cannot use its discretionary supervisory powers, if any, to supplant a district court's broad discretion to manage voir dire by prescribing specific lines of questioning. District Court did not abuse its discretion by excluding certain allegedly mitigating evidence at capital sentencing. Section of Federal Death Penalty Act that allowed exclusion of mitigating evidence if its probative value was outweighed by risk of unfair prejudice, confusing the issues, or misleading the jury did not violate Eighth Amendment.

Hemphill v. New York, 142 S.Ct. 681 (2022). The trial court's admission—over Hemphill's objection—of the plea allocution transcript of an unavailable witness violated Hemphill's Sixth Amendment right to confront the witnesses against him.

#### V. Religious freedom

Carson v. Makin, 142 S.Ct. 1987 (2022). A state violates the free exercise clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or "sectarian," instruction.

Kennedy v. Bremerton School Dist., 142 S.Ct. 2407 (2022). The free exercise and free speech clauses of the First Amendment protect an individual engaging in a personal religious observance from government reprisal; the Constitution neither mandates nor permits the government to suppress such religious expression.

#### VI. Second Amendment

New York Rifle and Piston Association v. Bruen, 142 S.Ct. 2111 (2022). New York law requiring showing of "cause" for a permit to have a concealed weapon in public violates the Second Amendment. "To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'"

### *October Term 2022*

#### I. Affirmative action

*Students for Fair Admissions v. University of North Carolina*, No. 21-707 (argued October 31, 2022). (1) Whether the Supreme Court should overrule *Grutter v. Bollinger* and hold that institutions of higher education cannot use race as a factor in admissions; and (2) whether a university can reject a race-neutral alternative because it would change the composition of the

student body, without proving that the alternative would cause a dramatic sacrifice in academic quality or the educational benefits of overall student-body diversity.

*Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, No. 20-1199 (argued October 31, 2022). (1) Whether the Supreme Court should overrule *Grutter v. Bollinger* and hold that institutions of higher education cannot use race as a factor in admissions; and (2) whether Harvard College is violating Title VI of the Civil Rights Act by penalizing Asian American applicants, engaging in racial balancing, overemphasizing race and rejecting workable race-neutral alternatives.

## II. Elections

*Merrill v. Milligan*, No. 21-1086 (argued October 4, 2022). Whether the state of Alabama’s 2021 redistricting plan for its seven seats in the United States House of Representatives violated Section 2 of the Voting Rights Act.

*Moore v. Harper*, No. 21-1271 (to be argued on December 7, 2022). Whether a state’s judicial branch may nullify the regulations governing the “Manner of holding Elections for Senators and Representatives ... prescribed ... by the Legislature thereof,” and replace them with regulations of the state courts’ own devising, based on vague state constitutional provisions purportedly vesting the state judiciary with power to prescribe whatever rules it deems appropriate to ensure a “fair” or “free” election.

## III. First Amendment – speech (and Section 230)

*303 Creative LLC v. Elenis*, No. 21-476 (to be argued December 5, 2022). Whether applying a public-accommodation law to compel an artist to speak or stay silent violates the free speech clause of the First Amendment.

*Gonzalez v. Google LLC*, No. 21-1333 (argument date not set). Whether Section 230(c)(1) of the Communications Decency Act immunizes interactive computer services when they make targeted recommendations of information provided by another information content provider, or only limits the liability of interactive computer services when they engage in traditional editorial functions (such as deciding whether to display or withdraw) with regard to such information.

## IV. Presidential/administrative power

*Biden v. Nebraska*, No. 22-506 (to be argued February 28, 2023). (1) Whether the respondents have Article III standing; and (2) whether the [student loan] plan exceeds the Secretary's statutory authority or is arbitrary and capricious.

*Arizona v. Mayorkas*, No. 22-592 (to be argued March 1, 2023). Whether the State applicants may intervene to challenge the District Court’s summary judgment order.