National Conference of State Legislatures

Supreme Court 2022-23 Review

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George W. Hicks, Jr.

Mallory v. Norfolk Southern

Issue	▪ Whether the Due Process Clause of the Fourteenth Amendment prohibits Pennsylvania from requiring out-of-state corporations to consent to personal jurisdiction as a condition of doing business within its borders.
Holding (Gorsuch)	▪ Requiring out-of-state corporations to consent to personal jurisdiction to do business in a state does not violate the Due Process Clause. Longstanding precedent—namely *Pennsylvania Fire*—already established that such a scheme is constitutional. Consistent with this regime, *International Shoe* merely provided an additional, non-consent-based way to obtain jurisdiction over out-of-state corporations. The traditional method of securing personal jurisdiction through consent thus remains constitutional. ▪ Notably, Justice Alito concurred only in the judgment for parts of the opinion. While agreeing that *Pennsylvania Fire* controlled the case, he suggested that this kind of consent-by-registration statute likely violates the dormant Commerce Clause.
Vote	▪ 5-4 (Barrett, Roberts, Kagan, and Kavanaugh dissenting)

Moore v. Harper

Issue	▪ Whether a state's judicial branch can nullify regulations governing elections prescribed by the state legislature and replace them with provisions devised by the state court.
Holding (Roberts)	▪ The Elections Clause does not insulate state legislatures' electoral prescriptions from review by state courts for compliance with state law. Instead, state legislatures' actions taken pursuant to the Election Clause remain subject to ordinary state law constraints. Although the Constitution vests state legislatures with the authority to make rules regarding federal elections, that authority is neither exclusive nor independent of judicial review.
Vote	▪ 6-3 (Thomas, Gorsuch, and Alito dissenting)

Allen v. Milligan

Issue	▪ Whether Alabama's 2022 congressional map violated the Voting Rights Act by intentionally discriminating on the basis of race when drawing district lines.
Holding (Roberts)	▪ Alabama's map violates the Voting Rights Act. Black voters could constitute a majority in a second reasonably configured district. Black voters are also politically cohesive, and the white majorities in the challenged districts vote cohesively enough to defeat black voters' preferred candidates. The totality of the circumstances indicate that elections in Alabama are racially polarized and the state shows a history of racial discrimination, including in election law. The Voting Rights Act prohibits only those laws with a discriminatory purpose, not laws with discriminatory effects. The Act requires, however, an equal opportunity to participate in the political process, and this is lacking when a state's map minimizes or cancels the weight of their votes.
Vote	▪ 5-4 (Thomas, Gorsuch, Barrett, and Alito dissenting)

303 Creative LLC v. Elenis

Issue	▪ Whether enforcement of the Colorado Anti-Discrimination Act (CADA) to require an objecting website designer to create websites for same-sex marriages would violate the Free Speech Clause of the First Amendment.
Holding (Gorsuch)	▪ Enforcing CADA against the website designer would violate the Constitution. Given the stipulated facts that the wedding websites would all be "original, customized" creations, the services in question would qualify as pure speech. Consequently, invoking CADA to compel the website designer to create websites for same-sex marriages against her conscience would run afoul of the First Amendment. While public accommodations laws can serve the compelling interests of eradicating discrimination and fostering dignity, the Supremacy Clause dictates that the Constitution must prevail against a conflicting state law.
Vote	▪ 6-3 (Sotomayor, Kagan, and Jackson dissenting that CADA regulates conduct, not speech, so any burden on expression is merely incidental to its regulation of commercial activity)

Haaland v. Brackeen

Issues	▪ (1) Whether the Indian Child Welfare Act's requirement that state courts place Indian children with Indian caretakers unconstitutionally discriminates on the basis of race. ▪ (2) Whether the Indian Child Welfare Act's placement preferences violate the Tenth Amendment and exceed Congress' power under Article I by commandeering state actors to implement a federal child placement program.
Holdings (Barrett)	▪ (1) Both the state and private party plaintiffs lack standing to challenge the Act's placement preferences for Indian parents, primarily because the Court cannot redress their injuries. ▪ (2) The Act does not exceed Article I's limits on congressional power, as Congress has "plenary and exclusive" power to legislate on matters involving Indian tribes. The states' traditional authority over family law and domestic relations does not preclude federal regulation in that area. Additionally, the Act's requirement that parties seeking an involuntary placement or termination of parental rights show "active efforts" to prevent family breakup does not violate the Tenth Amendment, as it applies evenly to both private and government parties.
Vote	▪ 7-2 (Alito and Thomas dissenting)

Sackett v. EPA

Issue	▪ Whether the EPA can regulate wetlands adjacent to a tributary that feeds into a non-navigable creek, which in turn, feeds into a traditionally navigable lake as "waters of the United States" under the Clean Water Act (CWA).
Holding (Alito)	▪ The EPA lacks jurisdiction over the wetlands in question. The CWA's use of "waters" in §1362(7) only covers relatively permanent bodies of water commonly described in ordinary parlance as "streams, oceans, rivers, and lakes" and adjacent wetlands with a continuous surface connection that makes them indistinguishable from those waters. A landowner cannot evade coverage by illegally constructing a barrier to disrupt the continuous surface connection between wetlands and a covered water.
Vote	▪ 9-0

National Pork Producers Council v. Ross

Issue	▪ Whether California's Proposition 12, which imposes animal-welfare standards for pork production, violates the dormant Commerce Clause due to its dramatic out-of-state economic effects on an integrated nationwide industry.
Holding (Gorsuch)	▪ Proposition 12 does not violate the dormant Commerce Clause. Only state laws that purposefully discriminate against out-of-state economic interests violate the dormant Commerce Clause. Even where state laws impose burdens on interstate commerce and out-of-state economic interests, they are permissible absent a purpose to intentionally discriminate against those outside the state. Absent an economically protectionist motive, states can freely pass laws that impose incidental costs on industries in other states. There is no cost-benefit analysis required to determine whether the in-state benefits of Proposition 12 outweighed the out-of-state costs to pork producers.
Vote	▪ 5-4 (Roberts, Alito, Kavanaugh, and Jackson dissenting)

Tyler v. Hennepin County

Issue	▪ Whether a county's retention of the surplus equity from a foreclosure sale above the tax debt owed violates the Takings Clause of the Fifth Amendment.
Holding (Roberts)	▪ Retaining surplus equity constitutes a taking under the Fifth Amendment. State law is not the only source of property rights under the Takings Clause, as states could otherwise disavow traditional property interests at will to take private assets for themselves. Instead, "traditional property law principles," historical practice, and Supreme Court precedent also affect the takings analysis. As evidenced by Magna Carta's enshrinement and early state adoption of the principle that the government cannot take more than a taxpayer owes, historical practice supports finding a takings violation. Precedent confirms that the government is not entitled to surplus equity.
Vote	▪ 9-0

Students for Fair Admissions, Inc. v. President and Fellows of Harvard College

Issue	▪ Whether the race-conscious college admissions protocols used by Harvard College and the University of North Carolina violate the Equal Protection Clause of the Fourteenth Amendment.
Holding (Roberts)	▪ The universities' affirmative action programs violate the Equal Protection Clause. The Equal Protection Clause applies equally to members of all races, forbidding all forms of racial discrimination. Any exceptions must survive strict scrutiny by advancing a compelling state interest and using narrowly tailored means to achieve it. The universities' stated goals, which included training future leaders and promoting a marketplace of ideas, were insufficiently specific for the purposes of strict scrutiny. Additionally, the colleges failed to articulate a connection between those interests and their use of race in admissions decisions. Finally, the affirmative action programs "unavoidably employ race in a negative manner," which is irreconcilable with the Equal Protection Clause.
Vote	▪ 6-3 (Jackson, Sotomayor, and Kagan dissenting that the majority's "colorblind" approach to the Equal Protection Clause undermines its purpose and fails to address historical racial inequality)

Biden v. Nebraska

Issues	▪ (1) Whether states have Article III standing to challenge the Secretary of Education's student loan cancellation plan. ▪ (2) If so, whether the Higher Education Relief Opportunities for Students Act (HEROES Act) grants the Secretary of Education the authority to cancel $430 billion in student loan debt.
Holdings (Roberts)	▪ (1) The Secretary's plan harms the Missouri Higher Education Loan Authority (MOHELA), a nonprofit government corporation that services student loans, because the proposed debt cancellation will cause MOHELA to lose $44 million annually in administrative fees. Since MOHELA furthers a public purpose and is governed by state officials, it is a "public instrumentality" of Missouri. The state therefore suffers an injury-in-fact due to the lost fees. ▪ (2) The HEROES Act's use of "waive or modify" only empowers the Secretary to make modest changes to existing programs; it does not permit him to rewrite the Education Act. This mass debt cancellation also implicates the major questions doctrine because the Secretary has never previously claimed such authority under the HEROES Act and the plan would have staggering economic and political impacts. Given that the Act contains no clear statement that Congress intended to allow cancellation of this magnitude, the Secretary cannot undertake this action.
Vote	▪ 6-3 (Kagan, Sotomayor, and Jackson dissenting that (1) MOHELA is legally and financially distinct from Missouri, and (2) the HEROES Act's text broadly empowers the Secretary to cancel loan debt)

Next Term – Cases of Note

- *Alexander v. South Carolina State Conference of the NAACP*
  - Whether South Carolina's congressional map violates the Equal Protection Clause because it used racial targets as a proxy for politics in creating new legislative districts.
- *Lindke v. Freed/O'Connor-Ratcliff v. Garnier*
  - 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.
- *Loper Bright Enterprises v. Raimondo*
  - Whether the Magnuson-Stevens Act implicitly grants the National Marine Fisheries Service power to require domestic vessels to pay the salaries of required federal observers, and
  - Whether the Court should overrule *Chevron* or clarify that statutory silence about powers expressly granted elsewhere in the statute is not an ambiguity requiring agency deference.
- *Moore v. United States*
  - Whether the Sixteenth Amendment authorizes Congress to tax unrealized sums without apportionment among the states.
- *United States v. Rahimi*
  - 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.