Fourteenth Annual
U.S. Supreme Court Review

2020-2021 Term

Kieran D. Maye, Jr.

Prepared for
William J. Holloway, Jr.
American Inn of Court
November 17, 2021

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OVERVIEW OF THE TERM

In the October 2020 term, the United States Supreme Court decided 55 cases with full signed opinions, two (2) *per curiam* opinions and eight (8) cases were summarily reversed. Vote tallies were as follows[1]:

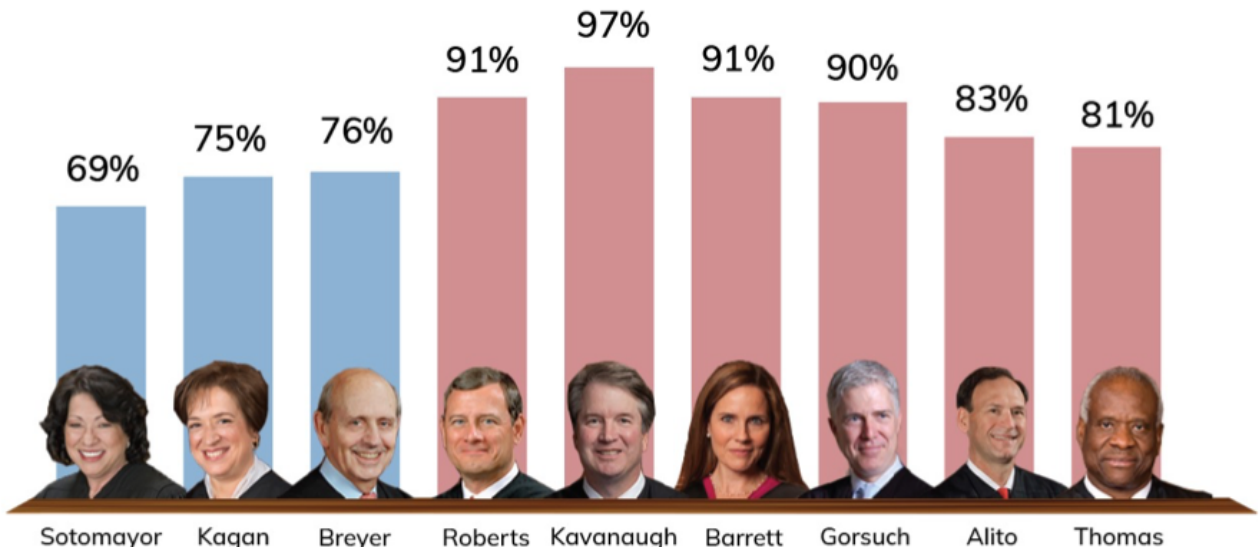
VOTE	Number of Cases	Percentage
9-0	26	38%
8-1	7	10%
7-2	4	5%
6-3	12	17%
5-4	6	8%

VOTING PATTERNS

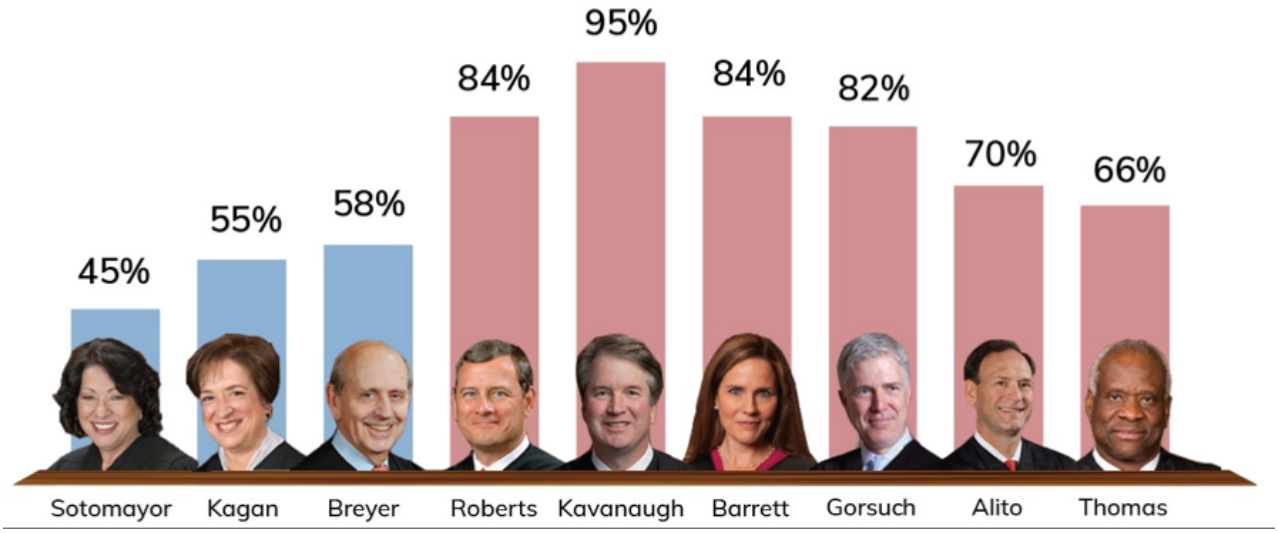
The following charts reflect the number of times the Justices voted in the majority. The first chart breaks down all the cases decided last term. The second chart breaks down only the opinions where the Court was divided. Again, this information was compiled by scotusblog.com.

[1] The data presented here is courtesy of Scotusblog.com. The full Oct. 2020 Term Stat Pack can be found here: https://www.scotusblog.com/wp-content/uploads/2021/07/Final-Stat-Pack-7.6.21.pdf

ALL CASES



DIVIDED CASES



CLOSELY DIVIDED CASES

5-4 cases	Issue									
PennEast	Eminent domain and gas pipeline construction	■		■	■	■			■	
Borden	Sentencing of "reckless" crimes and violent felonies	■	■	■				■		■
Minerva	Inventor challenging a patent after selling it	■	■	■	■	■				
Salinas	Statutory retirement benefits for railroad workers	■	■	■	■	■				
Arthrex	Appointment of administrative patent judges				■	■	■	■	■	
TransUnion	Class-action suits against corporations				■	■	■	■	■	
Diocese	COVID-19 restrictions on religion in New York					■	■	■	■	■
Tandon	COVID-19 restrictions on religion in California					■	■	■	■	■

Polarized cases	Issue									
Dunn	Post-conviction relief for death row inmate				■	■	■	■	■	■
Brnovich	Voting rights restrictions in Arizona				■	■	■	■	■	■
AFP Foundation	Donor disclosure rules for charities in California				■	■	■	■	■	■
Guzman Chavez	Bond hearings for noncitizens facing deportation				■	■	■	■	■	■
Jones	Sentencing juveniles to life without parole				■	■	■	■	■	■
Edwards	Retroactivity of state unanimous jury requirement				■	■	■	■	■	■
Trump	Challenge to exclusion of noncitizens from census				■	■	■	■	■	■
Shinn	Post-conviction relief for death row inmate				■	■	■	■	■	■
Cedar Point	Union access to workers on private farm property				■	■		■	■	■
Pereida	Mandatory deportation for minor crimes				■	■	(recused)	■	■	■

UNANIMITY

The uptick in unanimity we saw in the Oct 2016 term, is now firmly a thing of the past.

Scotusblog measures the degree of unanimity by using three measurements.

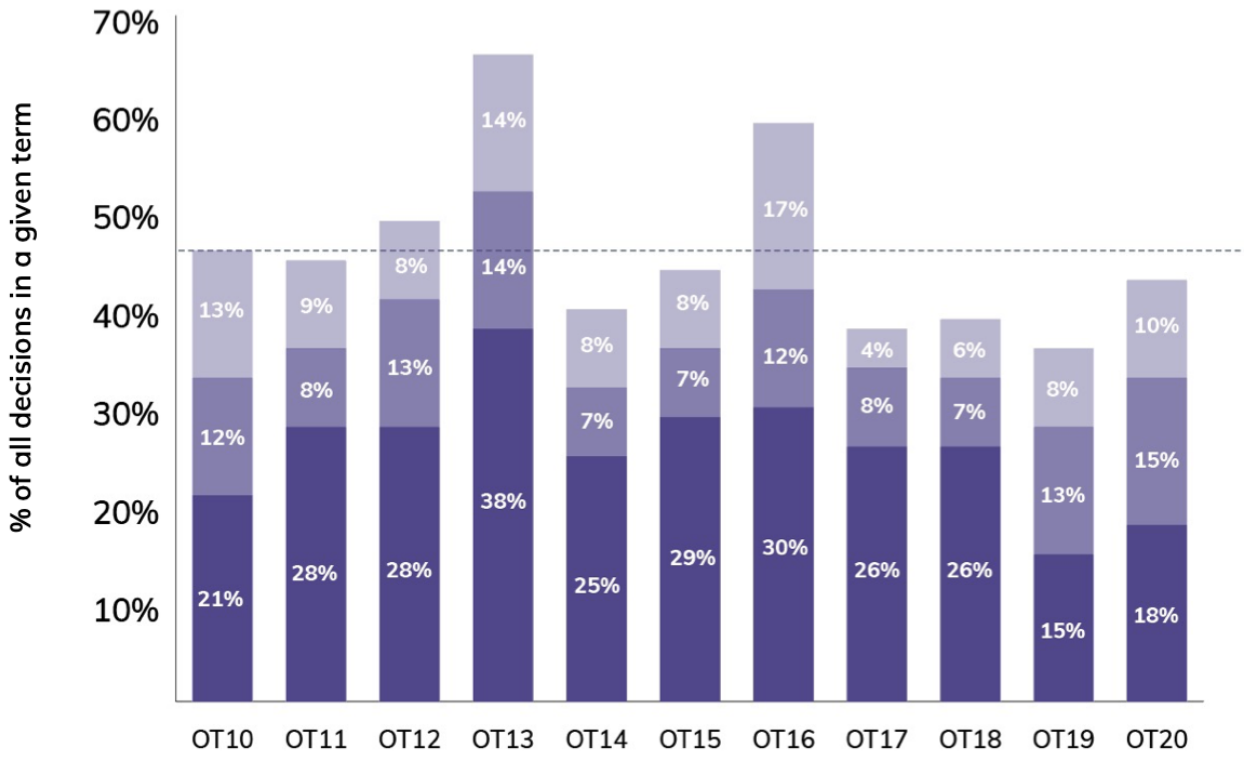
Measure #1: When all justices simply voted for the same judgment – i.e., whether to affirm or reverse the judgment below. This is the broadest measure of unanimity because it allows for justices to write separate opinions — and sometimes even conflicting ones — as long as each justice voted to affirm or reverse the decision below.

Measure #2: When all justices joined some part of the same majority opinion, but one or more justices (1) wrote separately to state an individual position or (2) did not join the majority opinion in full.

Measure #3: When all justices joined a single majority opinion in full, and without any justices writing separate concurring opinions. This is the narrowest measure of unanimity because it requires that the justices agree in full and without any written reservations or additions.

The analysis reflects the following:

UNANIMOUS CASES



CASE SUMMARIES[2]

CRIMINAL LAW AND PROCEDURE

JONES V. MISSISSIPPI

Facts of the case

When Brett Jones was fifteen years old, he stabbed his grandfather to death. He was convicted of murder, and the Circuit Court of Lee County, Mississippi, imposed a mandatory sentence of life imprisonment, and Mississippi law made him ineligible for parole. The appellate court affirmed his conviction and sentence. In a post-conviction relief proceeding, the Supreme Court of Mississippi ordered that Jones be resentenced after a hearing to determine whether he was entitled to parole eligibility. Subsequently, the U.S. Supreme Court decided Miller v. Alabama, 567 U.S. 460 (2012), and Montgomery v. Louisiana, 577 U.S. 190 (2016). In Miller, the Court held that mandatory life in prison without the possibility of parole sentences for juveniles violated the Eighth Amendment's prohibition on cruel and unusual punishments. And in Montgomery, it clarified that Miller barred life without the possibility of parole "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." The circuit court held the hearing weighing the factors laid out in Miller and determined Jones was not entitled to parole eligibility.

Question

Does the Eighth Amendment require a sentencing authority to find that a juvenile is permanently incorrigible before it may impose a sentence of life without the possibility of parole?

Conclusion

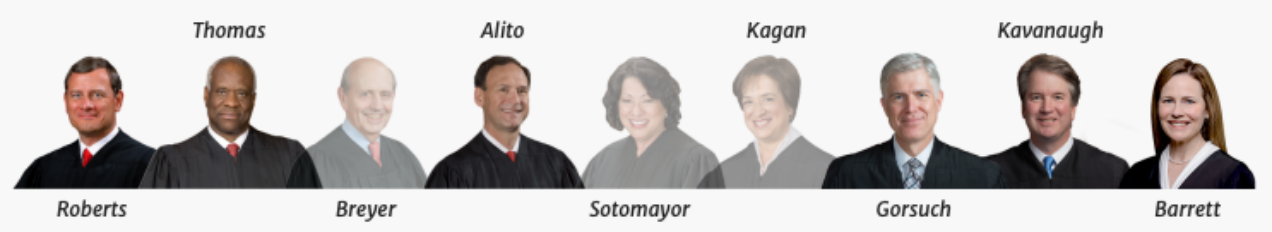
A sentencing authority need not find a juvenile is permanently incorrigible before imposing a sentence of life without the possibility of parole; a discretionary sentencing system is both constitutionally necessary and constitutionally sufficient to impose a sentence of life without parole on a defendant who committed a homicide when they were under 18. Justice Brett Kavanaugh authored the 6-3 majority opinion.

[2] The following cases are based largely on case summaries prepared by the Oyez Project, located at www.oyez.org, and are used and reproduced pursuant to the Creative Commons License granted for non-commercial uses.

In Miller v. Alabama, 567 U.S. 460 (2012), the Court held that "a sentencer [must] follow a certain process—considering an offender's youth and attendant characteristics—before imposing" a life-without-parole sentence." And in Montgomery v. Louisiana, 577 U.S. 190 (2016), the Court stated that "a finding of fact regarding a child's incorrigibility . . . is not required." Taken together, these two cases refute Jones's argument that a finding of permanent incorrigibility is constitutionally necessary to impose a sentence of life without parole. The Court noted that it expresses neither agreement nor disagreement with Jones's sentence, and its decision does not preclude states from imposing additional sentencing limits in cases involving a juvenile's commission of homicide.

Justice Clarence Thomas authored an opinion concurring in the judgment, arguing that the Court should have reached the same outcome by declaring that Montgomery was incorrectly decided.

Justice Sonia Sotomayor authored a dissenting opinion, in which Justices Stephen Breyer and Elena Kagan joined. Justice Sotomayor argued that the majority effectively circumvents stare decisis by reading Miller to require only "a discretionary sentencing procedure where youth is considered." Under Montgomery, sentencing discretion is necessary, but under Miller, it is not sufficient. Rather, a sentencer must actually make the judgment that the juvenile is one of those rare children for whom life without parole is a constitutionally permissible sentence.



TRIBAL POLICE AUTHORITY

U.S. V. COOLEY

Facts of the case

Joshua James Cooley was parked in his pickup truck on the side of a road within the Crow Reservation in Montana when Officer James Saylor of the Crow Tribe approached his truck in the early hours of the morning. During their exchange, the officer assumed, based on Cooley's appearance, that Cooley did not belong to a Native American tribe, but he did not ask Cooley or otherwise verify this conclusion. During their conversation, the officer grew suspicious that Cooley was engaged in unlawful activity and detained him to conduct a search of his truck, where

he found evidence of methamphetamine. Meanwhile, the officer called for assistance from county officers because Cooley "seemed to be non-Native."

Cooley was charged with weapons and drug offenses in violation of federal law. He moved to suppress the evidence on the grounds that Saylor was acting outside the scope of his jurisdiction as a Crow Tribe law enforcement officer when he seized Cooley, in violation of the Indian Civil Rights Act of 1968 ("ICRA"). The district court granted Cooley's motion, and the U.S. Court of Appeals for the Ninth Circuit affirmed, finding that Saylor, a tribal officer, lacked jurisdiction to detain Cooley, a non-Native person, without first making any attempt to determine whether he was Native.

Question
May a police officer for a Native American tribe detain and search a non-tribe member within a reservation on suspicion of violating a state or federal law?

Conclusion
A tribal police officer has the authority to detain temporarily and to search a non-tribe member traveling on a public right-of-way running through a reservation for potential violations of state or federal law. Justice Stephen Breyer authored the unanimous opinion of the Court.

Native American tribes are "distinct, independent political communities" exercising a "unique and limited" sovereign authority within the United States. Among the limitations is the general lack of inherent sovereign power to exercise criminal jurisdiction over non-tribal members. However, the Court recognized two exceptions to this rule in Montana v. United States, 450 U.S. 544 (1981). First, a tribe may regulate the activities of non-tribal members "who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." Second, a tribe may "exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." The authority at issue in this case aligns with the second exception "almost like a glove." None of the policing provisions Congress has enacted fit the circumstances of this case as well as the Court's understanding in Montana, and particularly the second exception. Rather, legislation and executive action appear to assume that tribes retain the detention authority presented in this case.

Justice Samuel Alito authored a concurring opinion noting that his agreement is limited to a narrow reading of the Court's holding.

Facts of the case
Edward Canaglia and his wife Kim got into a heated argument, during which Canaglia displayed a gun and told Kim something to the effect of "shoot me now." Fearing for her husband's state of mind, Kim decided to vacate the premises for the night. The next morning, she asked an officer from the Cranston Police Department to accompany her back to the house because she was worried that her husband might have committed suicide or otherwise harmed himself.

Kim and several police officers went to the house, and while the encounter was non-confrontational, the ranking officer on the scene determined that Canaglia was imminently dangerous to himself and others and asked him to go to the hospital for a psychiatric evaluation, which Canaglia agreed to. While Canaglia was at the hospital, the ranking officer (with telephone approval from a superior officer) seized two of Canaglia's guns, despite knowing that Canaglia did not consent to their seizure.

Caniglia was evaluated but not admitted as an inpatient. In October of 2015, after several unsuccessful attempts to retrieve his firearms from the police, Caniglia's attorney formally requested their return, and they were returned in December. Subsequently he filed a lawsuit under Section 1983 alleging the seizure of his firearms constituted a violation of his rights under the Second and Fourth Amendments. The district court granted summary judgment to the defendants, and Caniglia appealed. Although the U.S. Supreme Court has recognized "community caretaking" as an exception to the Fourth Amendment's warrant requirement in the context of a vehicle search, whether that concept applies in the context of a private home was a matter of first impression within the First Circuit. The appellate court held that the doctrine does apply in the context of a private home and affirmed the lower court's decision.

Question
Does the "community caretaking" exception to the Fourth Amendment's warrant requirement extend to the home?

Conclusion

The "community caretaking" exception to the Fourth Amendment's warrant requirement, described in Cady v. Dombrowski, 413 U.S. 433 (1973), does not extend to the home. Justice Clarence Thomas authored the unanimous opinion, holding that police officers' seizure of the petitioner's guns from his home violated his Fourth Amendment right against warrantless searches and seizures.

The lower court's conclusion that the "community caretaking" exception permitted the officers to seize the petitioner's guns relied on an extension of Cady, which held that a warrantless search of an impounded vehicle for an unsecured firearm did not violate the Fourth Amendment. The Court's jurisprudence makes clear that vehicle searches are different in kind from home searches, the latter of which are subject to the highest level of protection the Constitution affords. The Court

has repeatedly declined to expand the scope or number of exceptions to the warrant requirement to permit warrantless entry into the home, and it declined to do so here.

Chief Justice John Roberts authored a concurring opinion, which Justice Stephen Breyer joined, to clarify that the Court's decision does not disturb the Court's holding in Brigham City v. Stuart, 547 U.S. 398 (2006), that a peace officer does not need a warrant to enter a home in situations where there is a "need to assist persons who are seriously injured or threatened with such injury."

Justice Samuel Alito authored a concurring opinion to note that while he agrees with the Court's opinion, there are certain related questions the Court did not decide.

HOT PURSUIT
LANGE V. CALIFORNIA

Facts of the case

A California Highway Patrol officer observed a parked car "playing music very loudly," and then the driver, Arthur Gregory Lange, honked the horn four or five times despite there being no other vehicles nearby. Finding this behavior unusual, the officer began following Lange, intending to conduct a traffic stop. After following Lange for several blocks, the officer activated his overhead lights, and Lange "failed to yield." Lange turned into a driveway and drove into a garage. The officer followed and interrupted the closing garage door. When asked whether Lange had noticed the officer, Lange replied that he had not. Based on evidence obtained from this interaction, Lange was charged with two Vehicle Code misdemeanors and an infraction.

Lange moved to suppress the evidence obtained in the garage. At the suppression hearing, the prosecutor argued that Lange committed a misdemeanor when he failed to stop after the officer activated his overhead lights and that the officer had probable cause to arrest Lange for this misdemeanor offense. Based on this probable cause, the prosecutor argued that exigent circumstances justified the officer's warrantless entry into Lange's garage. Lange's attorney argued that a reasonable person in Lange's position would not have thought he was being detained when the officer activated his overhead lights, and the officer should not have entered Lange's garage without a warrant. The court denied Lange's motion to suppress, and the appellate division affirmed. Lange pled no contest and then appealed the denial of his suppression motion a second time. The appellate division affirmed Lange's judgment of conviction.

In the meantime, Lange filed a civil suit, asking the court to overturn the suspension of his license, and the civil court granted the petition after determining Lange's arrest was unlawful. The court reasoned that the “hot pursuit” doctrine did not justify the warrantless entry because when the officer entered Lange's garage, all the officers knew was that Lange had been playing his music too loudly and had honked his horn unnecessarily, which are infractions, not felonies.

Based on the inconsistent findings of the courts, Lange petitioned for transfer to the California Court of Appeals, which concluded that Lange's arrest was lawful and affirmed the judgment of conviction.

Question

Does the exigent circumstances exception to the Fourth Amendment’s warrant requirement apply when police are pursuing a suspect whom they believe committed a misdemeanor?

Conclusion

Pursuit of a fleeing misdemeanor suspect does not categorically qualify as an exigent circumstance justifying a warrantless entry into a home. Justice Elena Kagan authored the majority opinion of the Court.

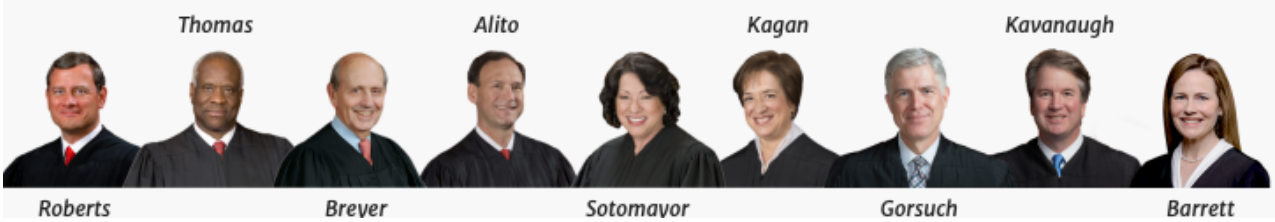
The Fourth Amendment ordinarily requires a police officer to obtain a warrant to enter a home, but under settled law, an officer may enter a home without a warrant under certain specific circumstances, including exigency. The Court has recognized exigent circumstances when an officer must act to prevent imminent injury, the destruction of evidence, or a felony suspect’s escape.

That a suspect is fleeing does not categorically create exigency. In United States v. Santana, 427 U.S. 38 (1976), the Court recognized that the “hot pursuit” of a felony suspect created exigency that justified warrantless entry into a home. However, that case did not address hot pursuit of misdemeanor suspects. Rather, the Court’s Fourth Amendment precedents support a case-by-case assessment of the exigencies arising from a particular suspect’s flight.

Justice Brett Kavanaugh authored a concurring opinion noting that the reasoning of the majority and that of Chief Justice John Roberts in his opinion concurring in the judgment are not so dissimilar as they might seem at first. Rather, cases involving fleeing misdemeanor suspects will almost always involve a recognized exigent circumstance such that warrantless entry into a home is justified.

Justice Clarence Thomas authored an opinion concurring in part and concurring in the judgment. Justice Thomas noted that the general case-by-case rule described by the majority is subject to historical, categorical exceptions. Joined by Justice Kavanaugh, Justice Thomas also noted that the federal exclusionary rule does not apply to evidence discovered in the course of pursuing a fleeing suspect.

Chief Justice Roberts authored an opinion concurring in the judgment, which Justice Samuel Alito joined. The Chief Justice argued that it is well established that the flight, not the underlying offense, justifies the "hot pursuit" exception.



CIVIL CASES

POLICE SHOOTINGS

TORRES V. MADRID

Facts of the case
In 2014, Roxanne Torres was involved in an incident with police officers in which she was operating a vehicle under the influence of methamphetamine and in the process of trying to get away, endangered the two officers pursuing her. In the process, one of the officers shot and injured her. Torres pleaded no contest to three crimes: (1) aggravated fleeing from a law enforcement officer, (2) assault on a police officer, and (3) unlawfully taking a motor vehicle.

In October 2016, she filed a civil-rights complaint in federal court against the two officers, alleging claims including excessive force and conspiracy to engage in excessive force. Construing Torres's complaint as asserting the excessive force claims under the Fourth Amendment, the court concluded that the officers were entitled to qualified immunity. In the court's view, the officers had not seized Torres at the time of the shooting, and without a seizure, there could be no Fourth Amendment violation. The U.S. Court of Appeals for the Tenth Circuit affirmed.

Question
Must physical force used to detain a suspect be successful to constitute a "seizure" under the Fourth Amendment?

Conclusion

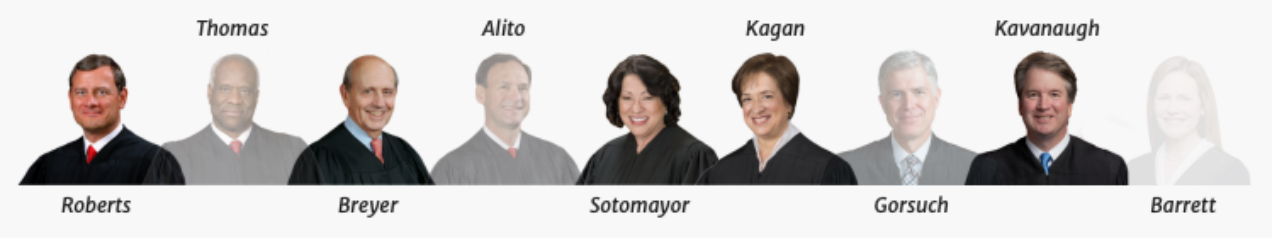
The application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person. Chief Justice John Roberts authored the majority opinion.

Under the Court's precedents, common law arrests are considered seizures under the Fourth Amendment, and the application of force to the body of a person with intent to restrain constitutes an arrest even if the arrestee escapes. The use of a device, here, a gun, to effect the arrest, makes

no difference in the outcome; it is still a seizure. There is no reason to draw an "artificial line" between grasping an arrestee with a hand and using some other means of applying physical force to effect an arrest. The key consideration is whether the conduct objectively manifests the intent to restrain; subjective perceptions are irrelevant. Additionally, the requirement of intent to restrain lasts only as long as the application of force. In this case, the officers' conduct clearly manifested intent to restrain Torres and was thus a seizure under the Fourth Amendment.

Justice Amy Coney Barrett took no part in the consideration or decision of the case.

Justice Neil Gorsuch authored a dissenting opinion, in which Justices Clarence Thomas and Samuel Alito joined, arguing that "neither the Constitution nor common sense" support the majority's definition of a seizure.



FREE SPEECH

MAHANOY AREA SCHOOL DISTRCT V. B.L.

Facts of the case

B.L., a student at Mahanoy Area High School (MAHS), tried out for and failed to make her high school's varsity cheerleading team, making instead only the junior varsity team. Over a weekend and away from school, she posted a picture of herself on Snapchat with the caption "Fuck school fuck softball fuck cheer fuck everything." The photo was visible to about 250 people, many of whom were MAHS students and some of whom were cheerleaders. Several students who saw the captioned photo approached the coach and expressed concern that the snap was inappropriate. The coaches decided B.L.'s snap violated team and school rules, which B.L. had acknowledged before joining the team, and she was suspended from the junior varsity team for a year.

B.L. sued the school under 42 U.S.C. § 1983 alleging (1) that her suspension from the team violated the First Amendment; (2) that the school and team rules were overbroad and viewpoint discriminatory; and (3) that those rules were unconstitutionally vague. The district court granted

summary judgment in B.L.'s favor, ruling that the school had violated her First Amendment rights. The U.S. Court of Appeals for the Third Circuit affirmed.

Question
Does the First Amendment prohibit public school officials from regulating off-campus student speech?

Conclusion

The First Amendment limits but does not entirely prohibit regulation of off-campus student speech by public school officials, and, in this case, the school district's decision to suspend B.L. from the cheerleading team for posting to social media vulgar language and gestures critical of the school violates the First Amendment. Justice Stephen Breyer authored the 8-1 majority opinion of the Court.

Although public schools may regulate student speech and conduct on campus, the Court's precedents make clear that students do not "shed their constitutional rights to freedom of speech or expression" when they enter campus. The Court has also recognized that schools may regulate student speech in three circumstances: (1) indecent, lewd, or vulgar speech on school grounds, (2) speech promoting illicit drug use during a class trip, and (3) speech that others may reasonably perceive as "bear[ing] the imprimatur of the school," such as that appearing in a school-sponsored newspaper. Moreover, in Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), the Court held that schools may also regulate speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others."

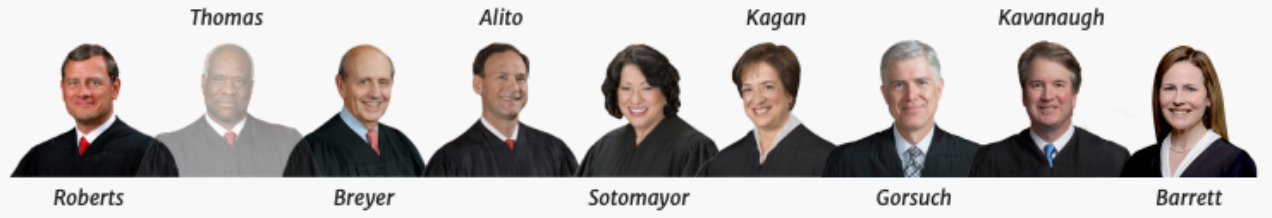
The school's interests in regulating these types of student speech do not disappear when the speaker is off campus. Three features of off-campus speech diminish the need for First Amendment leeway: (1) off-campus speech normally falls within the zone of parental responsibility, rather than school responsibility, (2) off-campus speech regulations coupled with on-campus speech regulations would mean a student cannot engage in the regulated type of speech at all, and (3) the school itself has an interest in protecting a student's unpopular off-campus expression because the free marketplace of ideas is a cornerstone of our representative democracy.

In this case, B.L. spoke in circumstances where her parents, not the school, had responsibility, and her speech did not cause "substantial disruption" or threaten harm to the rights of others. Thus, her off-campus speech was protected by the First Amendment, and the school's decision to suspend her violated her First Amendment rights.

Justice Samuel Alito authored a concurring opinion, joined by Justice Neil Gorsuch, explaining his understanding of the Court's decision. Justice Alito argued that a key takeaway of the Court's decision is that "the regulation of many types of off-premises student speech raises serious First Amendment concerns, and school officials should proceed cautiously before venturing into this territory."

Justice Clarence Thomas authored a dissenting opinion, arguing that schools have historically had the authority to regulate speech when it occurs off campus, so long as it has a proximate tendency

to harm the school, its faculty or students, or its programs. Justice Thomas viewed the facts of this case as falling squarely within that rule and thus would have held that the school could properly suspend B.L. for her speech.



UZUEGBUNAM V. PRECZEWSKI

Facts of the case
In July 2016, Chike Uzuegbunam, a student at Georgia Gwinnett College (GGC), began distributing religious literature in an outdoor plaza on GGC's campus. The campus police stopped him, however, citing GGC's "Freedom of Expression Policy," which stated that students were generally permitted to engage in expressive activities only in two designated speech zones, and only after reserving them.

Later, Uzuegbunam reserved one of the designated speech zones to speak to students about his religious beliefs, and campus police again stopped him. According to the police, he was exceeding the scope of his reservation by speaking in addition to handing out literature. After this incident, neither Uzuegbunam nor Joseph Bradford—another GGC student who wishes to speak publicly on campus about his religious beliefs—have attempted to speak publicly or distribute literature on campus.

Uzuegbunam and Bradford filed a lawsuit seeking a declaratory judgment that the school's policies, both facially and as-applied, violate their First and Fourteenth Amendment rights. They also sought nominal damages for the violation of these rights. GGC filed a motion to dismiss for failure to state a claim, and while that motion was pending, GGC revised its "Freedom of Expression Policy" to allow students to speak anywhere on campus without having to obtain a permit, except in limited circumstances. It also removed the portion of its student code of conduct that Uzuegbunam and Bradford had challenged. After making these changes, the school filed a motion to dismiss the case as moot.

The district court dismissed the case as moot, concluding that the claims for nominal damages could not save otherwise moot constitutional challenges. The U.S. Court of Appeals for the Eleventh Circuit affirmed.

Question
Can an award of nominal damages by itself redress a past injury, or does revision of the unconstitutional policy render moot the constitutional challenge?

Conclusion

A constitutional challenge to a school policy that seeks nominal damages is not rendered moot if the constitutional policy is revised during litigation because an award of nominal damages can redress the past injury. Justice Clarence Thomas authored the opinion for the 8-1 majority.

To satisfy the Article III standing, a plaintiff must establish that: (1) they suffered an injury in fact, (2) that the injury is fairly traceable to the challenged conduct, and (3) that the remedy sought from the Court would redress the injury. The parties did not dispute that Uzuegbunam had established the first two elements, leaving only the question whether the remedy he sought—nominal damages—can redress the constitutional violation that Uzuegbunam alleged occurred.

Common law demonstrates that while early English courts required a plaintiff to prove monetary damages, they later "reasoned that every legal injury necessarily causes damage," so courts award nominal damages even if there is no evidence of other damages. At the time of the Constitution's ratification, courts were already following the latter approach. Thus, an award of nominal damages does redress any legal injury.

Justice Brett Kavanaugh joined the majority in full but wrote separately to note his agreement with the Chief Justice and the U.S. Solicitor General that "a defendant should be able to accept the entry of a judgment for nominal damages against it and thereby end the litigation without a resolution of the merits."

Chief Justice John Roberts authored a dissenting opinion, in which he argued that the case is moot because the plaintiffs are no longer students, the challenged restrictions no longer exist, and the plaintiffs have not alleged actual damages. The Chief Justice noted that if nominal damages can preserve a live controversy to establish Article III standing, future plaintiffs have every incentive to "tack[] on a request for a dollar" to ensure that federal courts resolve their disputes.

Facts of the case
In 2012, the U.S. Supreme Court upheld the individual mandate of the Affordable Care Act (ACA) against a constitutional challenge by characterizing the penalty for not buying health insurance as a tax, which Congress has the power to impose. In 2017, the Republican-controlled Congress enacted an amendment to the ACA that set the penalty for not buying health insurance to zero, but it left the rest of the ACA in place. Texas and several other states and individuals filed a lawsuit in federal court challenging the individual mandate again, arguing that because the penalty was zero, it can no longer be characterized as a tax and is therefore unconstitutional. California and several other states joined the lawsuit to defend the individual mandate.

The federal district court held that the individual mandate is now unconstitutional and that as a result, the entire ACA is invalidated because the individual mandate cannot be "severed" from the rest of the Act. The U.S. Court of Appeals for the Fifth Circuit upheld the district court's conclusion but remanded the case for reconsideration of whether any part of the ACA survives in the absence of the individual mandate. The Supreme Court granted California's petition for review, as well as Texas's cross-petition for review.

Question
Do the plaintiffs in this case have standing to challenge the individual mandate of the Affordable Care Act (ACA), which now has a penalty of zero for not buying health insurance?

If the plaintiffs have standing, is the individual mandate unconstitutional?

If the individual mandate is unconstitutional, is it severable from the remainder of the ACA?

Conclusion

The plaintiffs lack standing to challenge the Affordable Care Act's minimum essential coverage provision. Justice Stephen Breyer authored the 7-2 majority opinion of the Court.

To have standing to bring a claim in federal court, a plaintiff must "allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." No plaintiff in this case has shown such an injury.

With respect to the individual plaintiffs, the Court found the injuries they alleged—past and future payments necessary to carry the minimum essential coverage that §5000A(a) requires—not "fairly traceable" to the allegedly unlawful conduct. There is no penalty for noncompliance, only the statute's unenforceable language, which alone is insufficient to establish standing.

With respect to the state plaintiffs, the Court found the injuries they alleged not traceable to the government's allegedly unlawful conduct. The state plaintiffs alleged direct and indirect injuries. The states alleged indirect injuries in the form of increased costs to run state-operated medical insurance programs, but they failed to show how an unenforceable mandate would cause state residents to enroll in valuable benefits programs that they would otherwise forgo. The states alleged direct injuries in the form of increased administrative and related expenses, but those

expenses are the result of other provisions of the Act, not §5000A(a) and are thus not fairly traceable to the conduct alleged.

Justice Clarence Thomas authored a concurring opinion, praising Justice Samuel Alito's dissent in this case (describing the "epic Affordable Care Act trilogy") but stopping short of agreeing with his opinion in its entirety because Justice Thomas agreed with the majority that the plaintiffs lack standing in this case.

Justice Samuel Alito authored a dissenting opinion, which Justice Neil Gorsuch joined, arguing that Texas and the other state plaintiffs have standing and that because the "tax" imposed by the individual mandate is now $0, the mandate cannot be sustained under the taxing power.

ANTTTRUST

NCAA V. ALSTON

Facts of the case
In NCAA v. Board of Regents of the University of Oklahoma, 468 U.S. 85 (1984), the Supreme Court struck down the NCAA's television plan as violating antitrust law, but in so doing it held that the rules regarding eligibility standards for college athletes are subject to a different and less stringent analysis than other types of antitrust cases. Because of this lower standard, the NCAA has long argued that antitrust law permits them to restrict athlete compensation to promote competitive equity and to distinguish college athletics from professional sports.

Several Division I football and basketball players filed a lawsuit against the NCAA, arguing that its restrictions on "non-cash education-related benefits," violated antitrust law under the Sherman Act. The district court found for the athletes, holding that the NCAA must allow for certain types of academic benefits, such as "computers, science equipment, musical instruments and other tangible items not included in the cost of attendance calculation but nonetheless related to the pursuit of academic studies." However, the district court held that the NCAA may still limit cash

or cash-equivalent awards for academic purposes. The U.S. Court of Appeals for the Ninth Circuit affirmed, recognizing the NCAA's interest in "preserving amateurism," but concluding nevertheless that its practices violated antitrust law.

Question
Does the National Collegiate Athletic Association (NCAA)'s prohibition on compensation for college athletes violate federal antitrust law?

Conclusion

The NCAA's rules restricting certain education-related benefits for student-athletes violate federal antitrust laws. Writing for a unanimous Court, Justice Neil Gorsuch upheld the trial court's ruling. The Court affirmed that the traditional "rule of reason" standard was appropriate in this case and rejected the NCAA's call for a more deferential standard. Because the student-athletes who brought the lawsuit did not appeal the Ninth Circuit's ruling upholding the NCAA's rules "untethered to education," the Court did not pass judgment on that aspect of the case.

In affirming the Ninth Circuit's ruling, the Court clarified that a prior statement made in the 1984 case NCAA v. Board of Regents of the University of Oklahoma noting that the NCAA's role in maintaining the "revered tradition of amateurism" was "entirely consistent with the goals of the Sherman Act" was not a shield against all challenges to compensation restrictions, as such rules were not even at issue in that case. Instead, there was nothing so unique about the NCAA or amateur sports to alter the traditional method of analysis applied to claims of antitrust violations.

In a concurring opinion, Justice Brett Kavanaugh noted that while other rules limiting student-athlete compensation unrelated to academics remain in place because they were not properly before the Court, this decision makes clear that the same traditional "rule of reason" analysis would apply. He concluded, "there are serious questions whether the NCAA's remaining compensation rules can pass muster under ordinary rule of reason scrutiny."

Facts of the case

In February 2011, Sergio Ramirez went with his wife and father-in-law to purchase a car. When the dealership ran a joint credit check on Ramirez and his wife, it discovered that Ramirez was on a list maintained by the Treasury Department's Office of Foreign Assets Control (OFAC), of people with whom U.S. companies cannot do business (i.e. "a terrorist list"). Ramirez and his wife still bought a car that day, but they purchased it in her name only. TransUnion, the company that had prepared the report, eventually removed the OFAC alert from any future credit reports that might be requested by or for Ramirez.

On behalf of himself and others similarly situated, Ramirez sued TransUnion in federal court, alleging that the company's actions violated the Fair Credit Reporting Act (FCRA). The district court certified a class of everyone who, during a six-month period, had received a letter from TransUnion stating that their name was a "potential match" for one on the OFAC list, although only a fraction of those class members had their credit reports sent to a third party.

The jury awarded each class member nearly $1,000 for violations of the FCRA and over $6,000 in punitive damages, for a total verdict of over $60 million. On appeal, the U.S. Court of Appeals for the Ninth Circuit upheld the statutory damages but reduced the punitive damages to approximately $32 million.

TransUnion asked the Supreme Court to resolve two questions, of which the Court agreed to decide only the first.

Question

Does either Article III of the Constitution or Federal Rule of Civil Procedure 23 permit a damages class action when the majority of the class did not suffer an injury comparable to that of the class representative?

Conclusion

Only a plaintiff concretely harmed by a defendant's violation of the Fair Credit Reporting Act has Article III standing to seek damages against that private defendant in federal court. Justice Brett Kavanaugh authored the 5-4 majority opinion.

To have Article III standing to sue in federal court, a plaintiff must show that he suffered concrete injury in fact, that the injury was fairly traceable to the defendant's conduct, and that the injury is likely to be redressed by a favorable ruling by the court. To show a concrete injury, a plaintiff must demonstrate that the asserted harm is similar to a harm traditionally recognized as providing a basis for a lawsuit in American courts—i.e., a close historical or common-law analogue for their asserted injury.

Of the 8,185 class members, TransUnion provided third parties with credit reports containing OFAC alerts for only 1,853 individuals; these individuals have standing. The remaining 6,332 class members stipulated that TransUnion did not provide their credit information to any potential

creditors during the designated class period and thus have failed to demonstrate concrete harm required for Article III standing. Mere risk of future harm is insufficient to establish standing.

Justice Clarence Thomas authored a dissenting opinion, joined by Justices Stephen Breyer, Sonia Sotomayor, and Elena Kagan. Justice Thomas argued that injury in law to a private right has historically been sufficient to establish "injury in fact" for standing purposes, and each class member in this case has demonstrated violation of their private rights.

Justice Kagan authored a dissenting opinion joined by Justices Breyer and Sotomayor arguing that Congress expressly allowed these plaintiffs to bring their claim of violation of the Fair Credit Reporting Act, yet the majority disallows them from doing so. Justice Kagan noted her slightly different understanding of the "concrete injury" requirement for Article III standing that Justice Thomas described in his dissent but suggested such a difference would not lead to a different outcome.

RELIGIOUS LIBERTY

FULTON V. PHILADELPHIA

Facts of the case
In March 2018, the City of Philadelphia barred Catholic Social Services (CSS) from placing children in foster homes because of its policy of not licensing same-sex couples to be foster parents. CSS sued the City of Philadelphia, asking the court to order the city to renew their contract. CSS argued that its right to free exercise of religion and free speech entitled it to reject qualified same-sex couples because they were same-sex couples, rather than for any reason related to their qualifications to care for children.

The district court denied CSS's motion for a preliminary injunction, and the Third Circuit affirmed, finding that the City's non-discrimination policy was a neutral, generally applicable law and that CSS had not demonstrated that the City targeted CSS for its religious beliefs or was motivated by ill will against its religion.

Question

1. To succeed on their free exercise claim, must plaintiffs prove that the government would allow the same conduct by someone who held different religious views, or only provide sufficient evidence that a law is not neutral and generally applicable?

2. Should the Court revisit its decision in Employment Division v. Smith?

3. Does the government violate the First Amendment by conditioning a religious agency's ability to participate in the foster care system on taking actions and making statements that directly contradict the agency's religious beliefs?

Conclusion

The refusal of Philadelphia to contract with CSS for the provision of foster care services unless CSS agrees to certify same-sex couples as foster parents violates the Free Exercise Clause of the First Amendment. Chief Justice John Roberts authored the majority opinion of the Court.

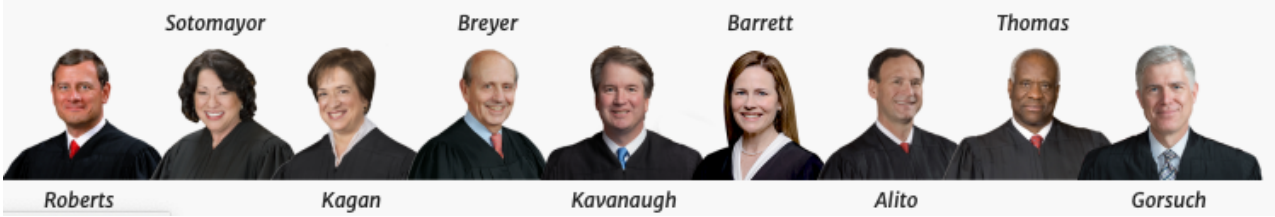
Philadelphia's actions burdened CSS's religious exercise by forcing it either to curtail its mission or to certify same-sex couples as foster parents, in violation of its stated religious beliefs. Although the Court held in Employment Division v. Smith that neutral, generally applicable laws may incidentally burden religion, the Philadelphia law was not neutral and generally applicable because it allowed for exceptions to the anti-discrimination requirement at the sole discretion of the Commissioner. Additionally, CSS's actions do not fall within public accommodations laws because certification as a foster parent is not "made available to the public" in the usual sense of the phrase. Thus, the non-discrimination requirement is subject to strict scrutiny, which requires that the government show the law is necessary to achieve a compelling government interest.

The Court pointed out that the question is not whether the City has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest in denying an exception to CSS. The Court concluded that it did not.

Justice Amy Coney Barrett wrote a separate concurring opinion in which Justice Brett Kavanaugh joined and in which Justice Stephen Breyer joined as to all but the first paragraph. Justice Barrett acknowledged strong arguments for overruling Smith but agreed with the majority that the facts of the case did not trigger Smith.

Justice Samuel Alito authored an opinion concurring in the judgment, in which Justices Clarence Thomas and Neil Gorsuch joined. Justice Alito would overrule Smith, replacing it with a rule that any law that burdens religious exercise must be subject to strict scrutiny.

Justice Gorsuch authored an opinion concurring in the judgment, in which Justices Thomas and Alito joined, criticizing the majority's circumvention of Smith.



VOTING RIGHTS
BRNOVICH V. D.N.C

Facts of the case
Arizona offers two methods of voting: (1) in-person voting at a precinct or vote center either on election day or during an early-vote period, or (2) "early voting" whereby the voter receives the ballot by mail and either mails back the voted ballot or delivers the ballot to a designated drop-off location.

Arizona law permits each county to choose a vote center or a precinct-based system for in-person voting. In counties using the vote-center system, registered voters may vote at any polling location in the county. In counties using the precinct-based system, registered voters may vote only at the designated polling place in their precinct. About 90% of Arizona's population lives in counties using the precinct-based system. If a voter arrives at a polling place and is not listed on the voter rolls for that precinct, the voter may cast a provisional ballot. After election day, election officials review all provisional ballots to determine the voter's identity and address. If officials determine the voter voted out of precinct (OOP), the county discards the ballot in its entirety, even if (as is the case in most instances), the OOP voter properly voted (i.e., was eligible to vote) in most of the races on the ballot. The Democratic National Committee challenged this OOP policy as violating Section 2 of the Voting Rights Act because it adversely and disparately affects Arizona's Native American, Hispanic, and African American citizens.

Arizona law has permitted early voting for over 25 years, allowing voters to request an early vote-by-mail ballot either on a per-election basis or on a permanent basis. Some counties permit voters to drop their early ballots in special drop boxes, but all counties permit the return of early ballots by mail, or in person at a polling place, vote center, or authorized election official's office. Many voters (particularly minorities) who vote early use third parties to collect and drop off voted ballots, which, until 2016, was permissible. Despite "no evidence of any fraud in the long history of third-party ballot collection in Arizona," Republican legislators in 2016 passed H.B. 2023, which criminalized the collection and delivery of another person's ballot. The DNC challenged H.B. 2023 as violating Section 2 of the Voting Rights Act and the Fifteenth Amendment because it was enacted with discriminatory intent.

After a ten-day bench trial, the district court found in favor of Arizona on all claims. The DNC appealed, and a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit affirmed. A majority of the full Ninth Circuit agreed to rehear the case en banc, and the court reversed, finding the district court "clearly erred."

Question
1. Does Arizona's out-of-precinct policy violate Section 2 of the Voting Rights Act?

2. Does Arizona's H.B. 2023 violate Section 2 of the Voting Rights Act or the Fifteenth Amendment?

Conclusion

Neither Arizona's out-of-precinct policy nor H.B. 2023 violates Section 2 of the Voting Rights Act (VRA), and H.B. 2023 was not enacted with a racially discriminatory purpose. Justice Samuel Alito wrote the 6-3 majority opinion of the Court.

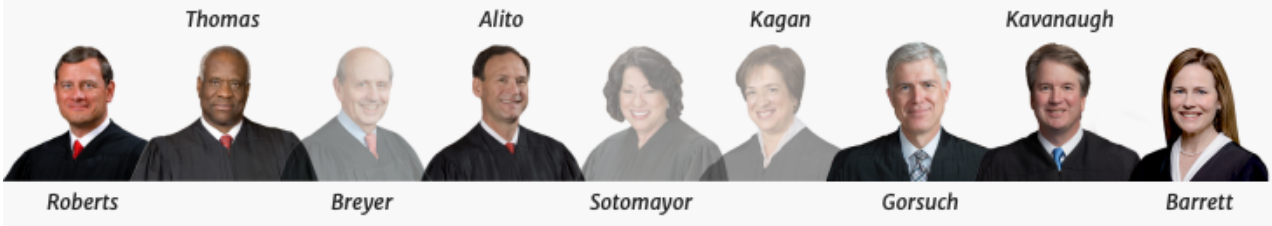
As a threshold matter, the petitioner, Arizona Attorney General Brnovich, has standing to appeal the decision below because he is an authorized representative of the state. Additionally, the Court declined to establish a test to govern all VRA § 2 challenges; its decision applies only to the facts of the cases below.

This is the first time the Court has considered how Section 2 of the VRA applies to time, place, or manner voting rules. The text of that provision prohibits a state from abridging the right to vote on account of race or color. Although the statute requires equal openness and equal opportunity to vote, they are not separate requirements; equal openness is the "core." This openness is assessed using the "totality of the circumstances."

Neither Arizona's out-of-precinct policy nor H.B. 2023, the ballot-collection law, violates Section 2 of the VRA. Neither imposes burdens on voters that exceed the "usual burdens of voting," and any racial disparity in burdens is "small in absolute terms." The state has legitimate and important interests in ensuring even distribution of voters among polling places and preserving the integrity of election procedures. Finally, the Court accepted the district court's finding that H.B. 2023 was not enacted with a discriminatory purpose.

Justice Neil Gorsuch concurred with the majority opinion in full but wrote a concurring opinion, which Justice Clarence Thomas joined, to note that the parties did not raise the question (and therefore the Court did not decide) whether the VRA provides an implied cause of action under Section 2.

Justice Elena Kagan wrote a dissenting opinion, joined by Justices Stephen Breyer and Sonia Sotomayor. Justice Kagan argued that the majority's decision narrowly reads the language of Section 2 of the VRA in a way that undermines its essential purpose to guarantee that members of every racial group have equal voting opportunities.



PROPERTY RIGHTS

CEDAR POINT NURSERY V. HASSID

Facts of the case

In 1975, California enacted the Agricultural Labor Relations Act (“ALRA”), which, among other things, created the Agricultural Labor Relations Board (“the Board”). Shortly after ALRA went into effect and established the Board, the Board promulgated a regulation allowing union organizers access to agricultural employees at employer worksites under specific circumstances.

Cedar Point Nursery, an Oregon corporation, operates a nursery in Dorris, California, that raises strawberry plants for producers. It employs approximately 100 full-time workers and more than 400 seasonal workers at that location. On October 29, 2015, organizers from the United Farm Workers union ("the UFW") entered the nursery, without providing prior written notice of intent to take access as required by the regulation. The UFW allegedly disrupted the workers, and some workers left their work stations to join the protest, while a majority of workers did not.

Sometime later, the UFW served Cedar Point with written notice of intent to take access. Cedar Point filed a charge against the UFW with the Board, alleging that the UFW had violated the access regulation by failing to provide the required written notice before taking access. The UFW likewise filed a countercharge, alleging that Cedar Point had committed an unfair labor practice.

Cedar Point then sued the Board in federal district court alleging that the access regulation, as applied to them, amounted to a taking without compensation, in violation of the Fifth Amendment, and an illegal seizure, in violation of the Fourth Amendment. The district court granted the Board’s motion to dismiss for failure to state a claim, and Cedar Point appealed. Reviewing the district court’s order granting the motion to dismiss de novo, the U.S. Court of Appeals for the Ninth Circuit concluded that the access regulation does not violate either provision, and it affirmed the lower court.

Question

Does the California regulation granting labor organizations a “right to take access” to an agricultural employer’s property to solicit support for unionization constitute a per se physical taking under the Fifth Amendment?

Conclusion

The California regulation granting labor organizations a "right to take access" to an agricultural employer's property to solicit support for unionization constitutes a per se physical taking. Chief Justice John Roberts authored the 6-3 majority opinion of the Court.

The Takings Clause of the Fifth Amendment of the U.S. Constitution, which applies to the states via the Fourteenth Amendment, prohibits the government from taking private property for public use "without just compensation." There are two types of takings: physical appropriations of land and imposition of regulations that restrict the landowner's ability to use the land. Physical takings must be compensated. Use restrictions are evaluated using a flexible test developed in Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978), which balances factors such as the "economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the government action."

In this case, the California regulation granting labor organizations a "right to take access" to an agricultural employer's property is a physical taking. The regulation does not restrict the growers' use of their own property, but instead appropriates the owners' right to exclude third parties from their land, "one of the most treasured rights" of property ownership. By granting access to third-party union organizers, even for a limited time, the regulation confers a right to physically invade the growers' property and thus constitutes a physical taking.

Justice Brett Kavanaugh authored a concurring opinion describing another way the Court could have arrived at the same conclusion, using a different precedent.

Justice Stephen Breyer authored a dissenting opinion, in which Justices Sonia Sotomayor and Elena Kagan joined. Justice Breyer argued that the regulation does not physically appropriate growers' property; rather, it temporarily regulates their right to exclude others and as such should be subject to the "flexible" Penn Central rule.

GUN CONTROL

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC. V. CORLETT

Facts of the case
The state of New York requires a person to show a special need for self-protection to receive an unrestricted license to carry a concealed firearm outside the home. Robert Nash and Brandon Koch challenged the law after New York rejected their concealed-carry applications based on failure to show "proper cause." A district court dismissed their claims, and the U.S. Court of Appeals for the Second Circuit affirmed.

Question
Does New York's law requiring that applicants for unrestricted concealed-carry licenses demonstrate a special need for self-defense violate the Second Amendment?

ABORTION

DOBBS V. JACKSON WOMEN'S HEALTH ASSOCIATION

Facts of the case
In 2018, Mississippi passed a law called the "Gestational Age Act," which prohibits all abortions, with few exceptions, after 15 weeks' gestational age. Jackson Women's Health Organization, the only licensed abortion facility in Mississippi, and one of its doctors filed a lawsuit in federal district court challenging the law and requesting an emergency temporary restraining order (TRO). After a hearing, the district court granted the TRO while the litigation proceeded to discovery. After discovery, the district court granted the clinic's motion for summary judgment and enjoined Mississippi from enforcing the law, finding that the state had not provided evidence that a fetus would be viable at 15 weeks, and Supreme Court precedent prohibits states from banning abortions prior to viability. The U.S. Court of Appeals for the Fifth Circuit affirmed.

Question
Is Mississippi's law banning nearly all abortions after 15 weeks' gestational age unconstitutional?

AFFIRMATIVE ACTION

STUDENTS FOR FAIR ADMISSION V. HARVARD

Cert Petition Pending

Facts of the case

Rejected Asian-American students who said Harvard was violating federal civil rights law in its admissions process brought suit against Harvard. Harvard said during a 2018 trial that it considered race as one of many factors, and not the determining one, which was allowed under previous Supreme Court rulings. Admissions officers testified that the college would be a much

different place if they did not take race into account. They said they had tried alternatives like increasing financial aid and outreach to Black and Latino students, and they did not work as well.

A federal judge, Allison D. Burroughs, found in Harvard's favor, and on Thursday the U.S. Court of Appeals for the First Circuit endorsed her ruling, stating in a 104-page decision that Harvard "has already reached, or at least very nearly reached, the maximum returns in increased socioeconomic and racial diversity that can reasonably be achieved through outreach and reducing the cost of a Harvard education."

The plaintiffs argued that Harvard systematically discriminated against Asian-American applicants by holding them to a higher standard than other groups. They contended that Harvard's admissions officers used racial stereotypes about studious, shy Asians against them. The case troubled Asian-Americans who had experienced prejudice, though many also said they supported affirmative action.

The First Circuit Court of Appeals ruled that Harvard's admissions process did not violate civil rights law.

Questions

(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.

ESTABLISHMENT CLAUSE

CARSON V. MAKON

Facts of the Case

The question comes to the court in a case from Maine, where over half of the school districts don't operate their own high schools and instead pay for students to attend public or private schools, both inside and outside the state. The tuition-assistance program only allows the funds to be used, however, only at "nonsectarian" schools. The challengers in the case are two sets of parents, David and Amy Carson and Troy and Angela Nelson, who want to use funds from the program to send their children to private Christian schools that the state has labeled "sectarian," so that the families do not qualify for funding.

The parents went to federal court, where they argued that their exclusion from the program violated their constitutional rights, including their rights to exercise their religion. The U.S. Court of Appeals for the 1st Circuit upheld the program, reasoning that the exclusion of religious schools

hinged on whether the money was used for religious instruction and to proselytize, rather than simply on whether the school was religious.

Question Presented

Whether a state violates the religion clauses or equal protection 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.

FREE SPEECH

CITY OF AUSTIN, TEXAS V. REAGAN NATIONAL ADVERTISING OF TEXAS

Facts of the case

Reagan National Advertising of Austin and Lamar Advantage Outdoor Company own and operate signs and billboards that display commercial and non-commercial messages. They filed applications with the City of Austin to digitize existing billboards, but the City denied the applications because its sign code does not allow the digitization of off-premises signs.

Reagan and Lamar sued, arguing that the code's distinction between on-premise signs and off-premise signs violates the First Amendment. The district court held that the sign code was content-neutral and thus that it need only satisfy intermediate scrutiny—it must further an important government interest through means that are substantially related to that interest. The court found the code satisfied this test and entered judgment for the City. The U.S. Court of Appeals for the Fifth Circuit reversed, finding the code's distinction is content-based, therefore subject to scrutiny, and that it cannot withstand strict scrutiny.

Question

Does the Austin city code's distinction between on-premise signs, which may be digitized, and off-premise signs, which may not, constitute facially unconstitutional content-based regulation?

HOUSTON COMMUNITY COLLEGE SYSTEM V. WILSON

Facts of the case

The Houston Community College (HCC) System operates community colleges throughout the greater Houston area. HCC is run by a Board of nine trustees, each of which is elected by the public to serve a six-year term without remuneration. David Wilson was elected to the Board as a trustee on November 5, 2013. Starting in 2017, Wilson criticized the other trustees, alleging that they had violated the Board's bylaws, and made various other criticisms of the Board. As a result, the Board censured Wilson and barred him from holding officer positions on the Board or from receiving travel reimbursements.

Wilson sued HCC, alleging that the censure violated his First Amendment right to free speech. The district court ruled against him, and the U.S. Court of Appeals for the Fifth Circuit reversed. In holding for Wilson, the Fifth Circuit concluded that the First Amendment precludes community college boards from censuring members for their speech.

Question

Does the First Amendment restrict the authority of an elected body to issue a censure resolution in response to a member's speech?

DEATH PENALTY

RAMIREZ V. COLLIER

Facts of the case

John Henry Ramirez was convicted and sentenced to death in 2008 for the 2004 killing of Pablo Castro in Nueces County, Texas. Ramirez sincerely believes that the presence of his pastor in the execution chamber, the pastor's laying on of hands on Ramirez as he dies, and the vocalization of prayers and scripture, will assist his passing from life to death and will guide his path to the afterlife. Texas denied permission for the pastor to do anything other than stand by in silence. Ramirez challenged the policy under the First Amendment's Free Exercise Clause and Religious Land Use and Institutionalized Persons Act (RLUIPA). On August 18, 2021, Ramirez filed a motion for a stay of execution in the district court. On September 2, 2021, the district court denied Ramirez's motion. On September 6, 2021, the Fifth Circuit affirmed.

Questions

(1) Whether, consistent with the free exercise clause and Religious Land Use and Institutionalized Persons Act, Texas' decision to allow Ramirez's pastor to enter the execution chamber, but forbidding the pastor from laying his hands on his parishioner as he dies, substantially burden the exercise of his religion, so as to require Texas to justify the deprivation as the least restrictive means of advancing a compelling governmental interest; and

(2) whether, considering the free exercise clause and RLUIPA, Texas' decision to allow Ramirez's pastor to enter the execution chamber, but forbidding the pastor from singing prayers, saying prayers or scripture, or whispering prayers or scripture, substantially burden the exercise of his religion, so as to require Texas to justify the deprivation as the least restrictive means of advancing a compelling governmental interest.

UNITED STATES V. TSARNAEV

Facts of the case

In 2013, Dzhokhar Tsarnaev and his brother detonated two homemade pressure cooker bombs near the finish line of the race, killing three and injuring hundreds. He was sentenced to death for his

role in the bombings, but the U.S. Court of Appeals for the First Circuit threw out his death sentences on the grounds that the district court should have asked potential jurors what media coverage they had seen about Tsarnaev's case, and the district court should not have excluded from the sentencing phase evidence that Tsarnaev's brother was involved in a separate triple murder.

Question

Did the U.S. Court of Appeals for the First Circuit err in vacating the death sentence for the district court's failure to ask prospective jurors for a specific accounting of the pretrial media coverage they had seen, heard, or read, and for its exclusion of evidence at the sentencing phase of trial that Tsarnaev's brother had been involved in different crimes two years before the bombing?