

San Luis Obispo Bar Association
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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. 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.

III. 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. Indian Child Welfare Act

Haaland v. Brackeen, No. 21-376 (to be argued on November 9, 2022). (1) Whether various provisions of the Indian Child Welfare Act of 1978 — namely, the minimum standards of Section 1912(a), (d), (e), and (f); the placement-preference provisions of Section 1915(a) and (b); and the recordkeeping provisions of Sections 1915(e) and 1951(a) — violate the anticommandeering doctrine of the 10th Amendment; (2) whether the individual plaintiffs have Article III standing to challenge ICWA’s placement preferences for “other Indian families” and for “Indian foster home[s]”; and (3) whether Section 1915(a)(3) and (b)(iii) are rationally related to legitimate governmental interests and therefore consistent with equal protection.