

Supreme Court Review

SLOCBA

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October Term 2022

I. Affirmative action

Students for Fair Admissions Inc. v. President & Fellows of Harvard College, 143 S.Ct. 2141 (2023). The admissions programs at Harvard College and the University of North Carolina violate Title VI of the 1964 Civil Rights Act and the equal protection clause of the 14th Amendment in using race as a factor in admissions decisions to benefit minorities and enhance diversity.

II. Elections

Allen v. Milligan, 143 S.Ct. 1487 (2023). 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, 143 S.Ct. 2065 (2023). The federal elections clause does not vest exclusive and independent authority in state legislatures to set the rules regarding federal elections and therefore did not bar the North Carolina Supreme Court from reviewing the North Carolina legislature's congressional districting plans for compliance with North Carolina law.

III. Executive power – and state challenges to it

Biden v. Nebraska, 143 S.Ct. 2355 (2023). The Secretary of Education does not have authority under the Higher Education Relief Opportunities for Students Act of 2003 to establish a student loan forgiveness program that will cancel roughly \$430 billion in debt principal and affect nearly all borrowers.

IV. First Amendment: speech

Counterman v. Colorado, 143 S.Ct. 2106 (2023). To establish that a statement is a “true threat” unprotected by the First Amendment, the state must prove that the defendant had some subjective understanding of the statements' threatening nature, based on a showing no more demanding than recklessness.

303 Creative LLC v. Elenis, 143 S.Ct. 2298 (2023). The First Amendment prohibits Colorado from forcing a website designer to create expressive designs speaking messages with which the designer disagrees.

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I. Administrative law

Securities and Exchange Commission v. Jarkesy, No. 22-859 (to be argued November 29, 2023). (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.

Loper Bright Enterprises v. Raimondo, No. 22-451 (argument date not set). 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.

Relentless v. Department of Commerce, No. 22-1219 (argument date not set). 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.

II. Second Amendment

U.S. v. Rahimi, No. 22-915 (to be argued November 7, 2023). 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.

III. Social media and the First Amendment

O'Connor-Ratcliff v. Garnier, No. 22-324 (argued October 31, 2023). 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.

Lindke v. Freed, No. 22-611 (argued October 31, 2023). 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.

Moody v. NetChoice, LLC, No. 22-277 (argument date not set). (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.

NetChoice, LLC v. Paxton, No. 22-555 (argument date not set). 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.

Murthy v. Missouri, No. 23-411 (argument date not set). (1) Whether respondents have Article III standing; (2) whether the government’s challenged conduct transformed private social media companies’ content-moderation decisions into state action and violated respondents’ First Amendment rights; and (3) whether the terms and breadth of the preliminary injunction are proper.

National Rifle Association of America v. Vullo, No. 22-842 (argument date not set).

Whether the First Amendment allows a government regulator to threaten regulated entities with adverse regulatory actions if they do business with a controversial speaker, as a consequence of (a) the government’s own hostility to the speaker’s viewpoint or (b) a perceived “general backlash” against the speaker’s advocacy.