Annual Supreme Court Term in Review

June 25, 2021

JENNER&BLOCK

Our Panel

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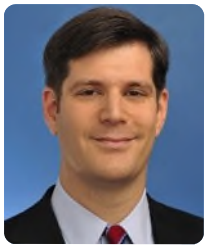

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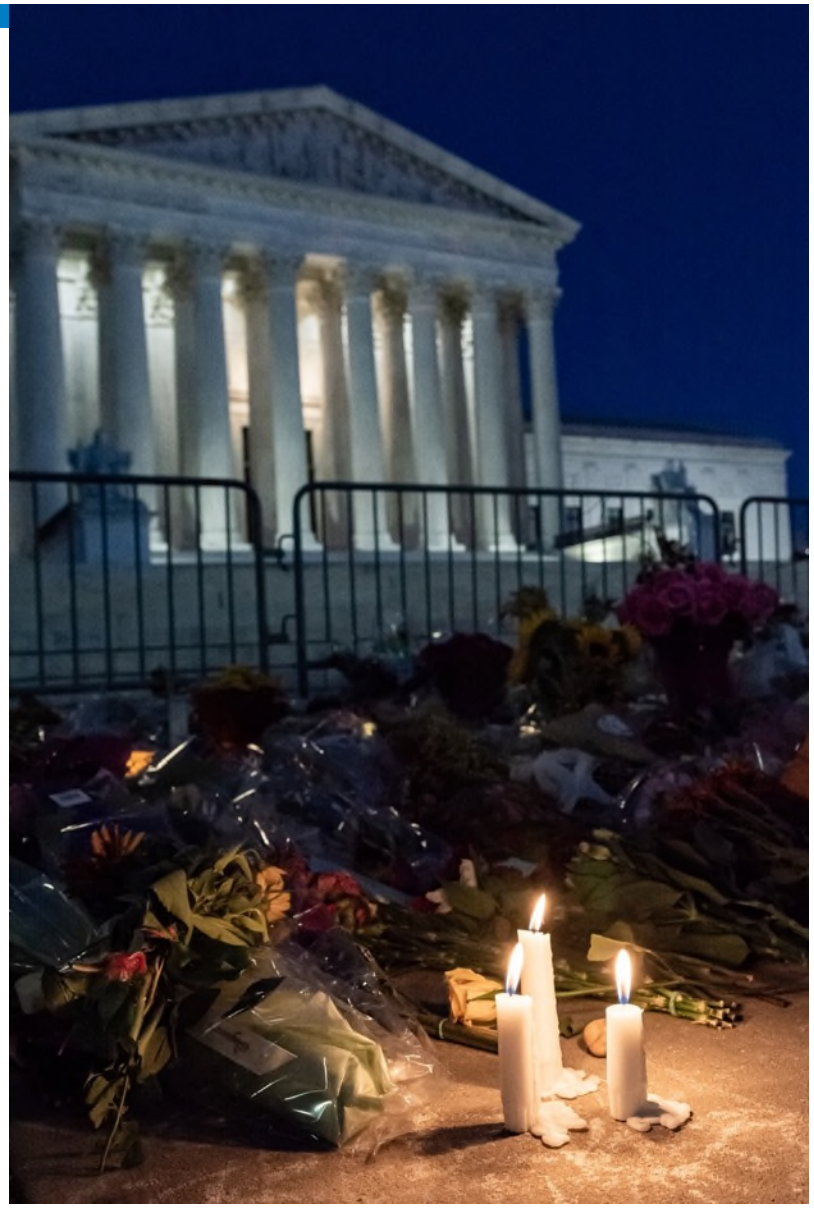
Our Appellate and Supreme Court Practice

- 21 oral arguments in the past six US Supreme Court Terms
- Argued two cases in the pandemic telephonically
- Routinely appear in federal and state appellate and trial courts and provide counseling on commercial and regulatory issues
- More than a dozen members of the firm have argued before the US Supreme Court

Appellate and Supreme Court

Changes at The Court

Justice Ginsburg's Legacy



Justice Ginsburg

- Legal community and the country saddened by Justice Ginsburg's death after a long battle with cancer

- "Ruth Ginsburg was one of the members of the Court who achieved greatness before she became a great justice. I loved her to pieces." – *Justice Souter*

Justice Ginsburg

- "Her 483 majority, concurring, and dissenting opinions will steer the court for decades. They are written with the unaffected grace of precision." – *Chief Justice Roberts*

- "She held to—indeed, exceeded—the highest standards of legal craft. Her work was as careful as it was creative, as disciplined as it was visionary." – *Justice Kagan*

Justice Barrett's First Term

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Justice Barrett – Background

- Highly qualified nominee
  - Clerked for Justice Scalia
  - 18 years as a professor at Notre Dame Law School
  - Appointed to the Seventh Circuit by President Trump in 2017
- Seventh Circuit Record
  - Conservative record
  - University sex discrimination
  - Dissents on gun rights and abortion issues

Justice Barrett – In her own words

- "I clerked for Justice Scalia more than 20 years ago, but the lessons I learned still resonate. His judicial philosophy is mine too: A judge must apply the law as written." – *Justice Barrett*

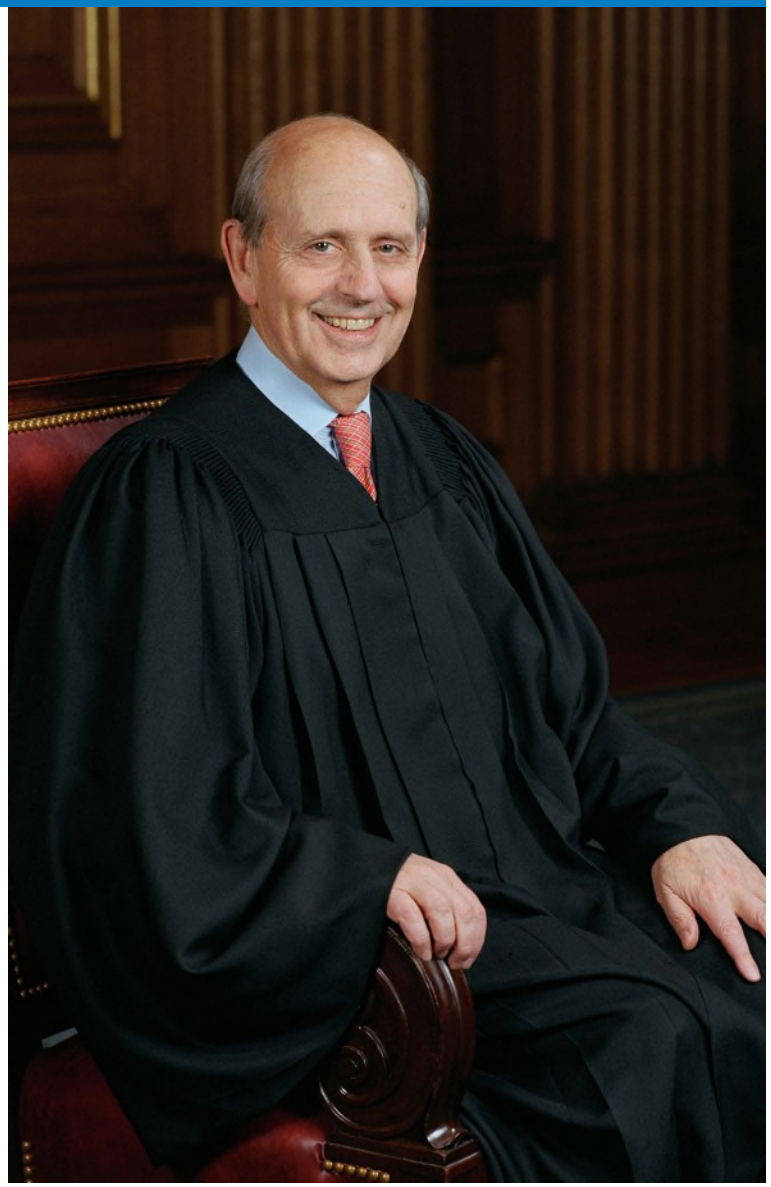
- Defends a "weak presumption" of stare decisis in constitutional cases, and argues it is "unrealistic" to expect adherence to a stronger presumption of stare decisis, "at least in those cases that strike at a justice's core positions"

Justice Barrett – Early returns

- Scalia Conservative or a Thomas Conservative?
  - “Faint-hearted originalist”
  - ”Weak” stare decisis
- Voting patterns
- Notable opinions

Justice Breyer

- Notable cases
- Impact of retirement
- Potential successors



Poll Question:

Should Justice Breyer retire?

– Yes
– No

Poll Question:

Will Justice Breyer retire?

– Yes
– No

Backdrop to the 2020-21 Term

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Court Reform – Polarization

- Confirmation votes have become increasingly partisan:
  - Justice Scalia: 98-0
  - Justice Kennedy: 97-0
  - Justice Souter: 90-9
  - Justice Thomas: 52-48
  - Justice Ginsburg: 96-3
  - Justice Breyer: 87-9
  - Chief Justice Roberts: 78-22
  - Justice Alito: 58-42
  - Justice Sotomayor: 68-31
  - Justice Kagan: 63-37
  - Justice Gorsuch: 54-45
  - Justice Kavanaugh: 50-48
  - Justice Barrett: 52-48

"My hope is that one fine day, Congress will return to the bipartisan spirit that prevailed for my nomination."

– Justice Ginsburg

Court Reform – Will the center hold?

"It's been extremely important for the Court that in the last 40 years, starting with Justice O'Connor and continuing with Justice Kennedy, there has been a person who found the center, where people couldn't predict in that sort of way. That's enabled the Court to look as though it was not owned by one side or another and so it was indeed impartial and neutral and fair. And it's not so clear that I think going forward that sort of middle position—it's not so clear whether we'll have it."

– Justice Kagan

"All of us need to realize how precious the Court's legitimacy is. It's an incredibly important thing for the Court to guard this reputation of being impartial."

– Justice Kagan

An Independent Supreme Court

- Biden Commission to Consider Court Reform
- Court Packing
- Term Limits
- Restrictions on Jurisdiction

Poll Question:

Should we change the Court?

– Yes, term limits
– Yes, add Justices
– Yes, both of the above
– No, keep the Court as it is

The Post-Kennedy Court

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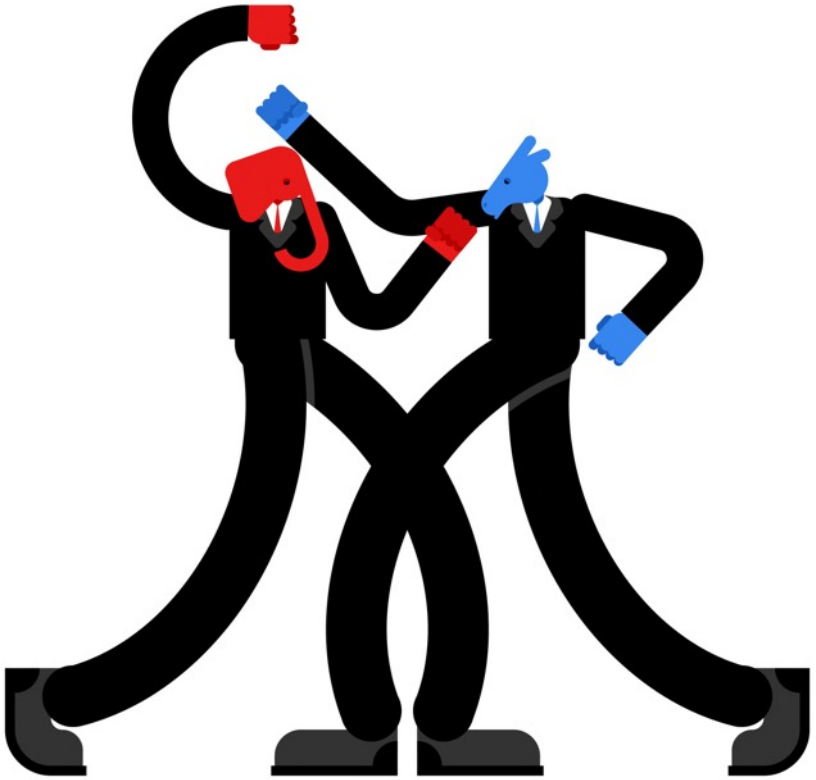
The Post-Kennedy Court – Year 1

- 21 5-4 decisions (30% of the docket)
- Only 7 were the “traditional” 5-4
- 10 involved the “more liberal bloc” plus one more conservative Justice
  - Justice Gorsuch – 4 cases
  - Chief Justice Roberts – 3 cases
  - Justices Thomas/Alito/Kavanaugh – 1 case each

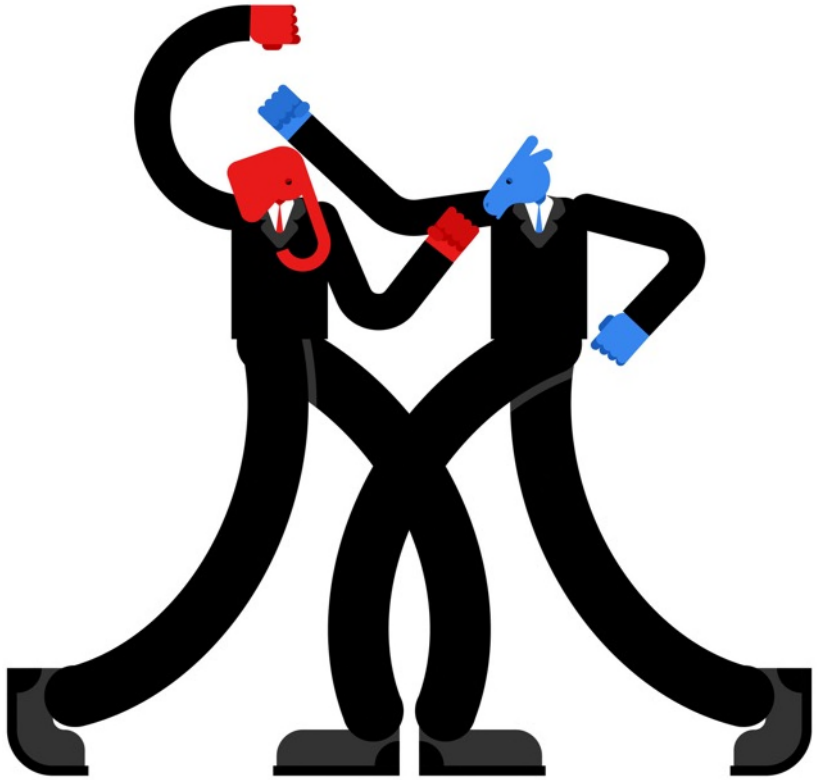
The Post-Kennedy Court – Year 1

- Major decisions
- “Liberal” wins
  - Census
  - Apple
  - Separation of Powers
  - Death Penalty
  - Ad Law
- “Conservative” wins
  - Takings
  - Gerrymandering
  - Arbitration
  - Death Penalty



The Post-Kennedy Court – Year 2: The "Roberts Court"

- "Liberal" wins
  - *Bostock*
  - *June Medical*
  - DACA
  - Trump Subpoena cases
  - *Seila Law*
- "Conservative" wins
  - *Seila Law*
  - *Espinoza*
  - *Hernandez*
  - Death Penalty
  - Contraceptive coverage
- The "Roberts Court"
  - Chief Justice in the majority in all but 2 cases



The 2020-21 Term

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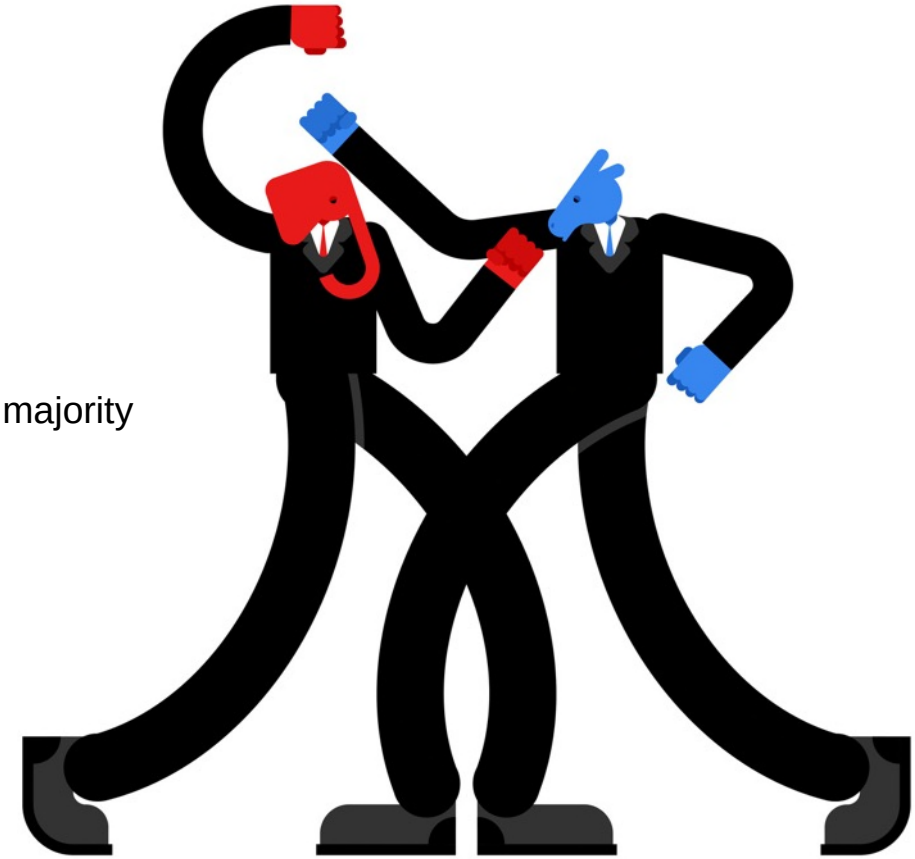
Poll Question:

In how many of the Court's merits decisions this Term did all of the Court's more conservative Justices vote against all three of the Court's more liberal Justices?

– Fewer than 5
– 5-10
– 10-15
– More than 15

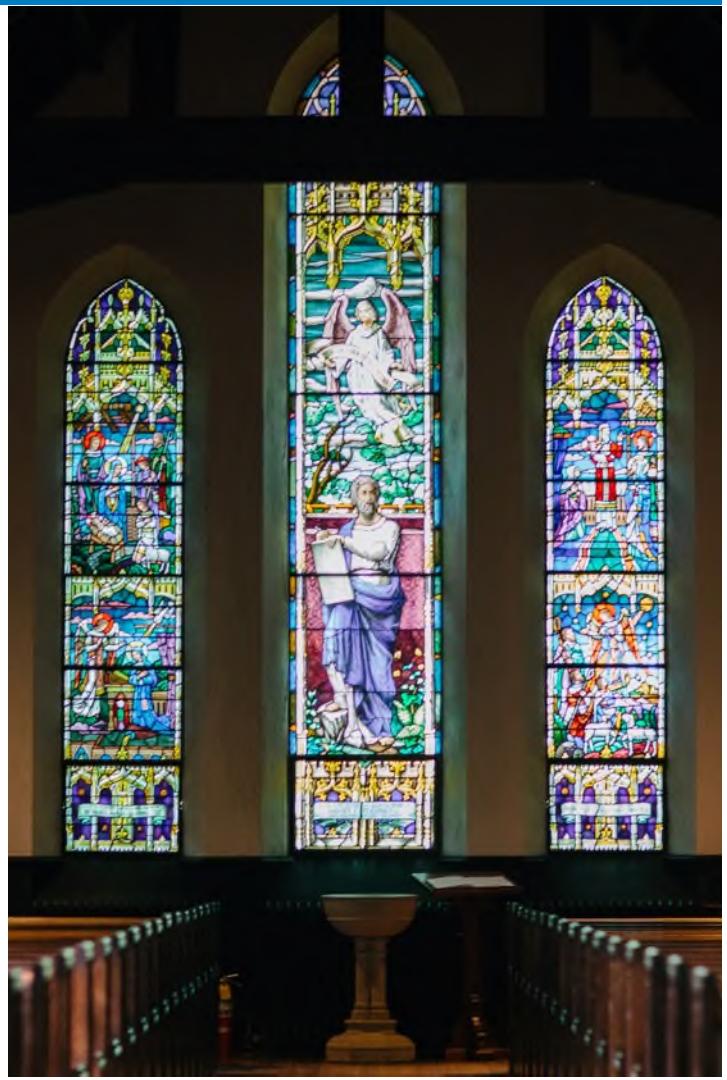
The Post-Kennedy Court – Year 3: Signs of change?

- "Conservative" wins
- "Liberal" wins
- The "Kavanaugh Court"?
  - Chief Justice in dissent
  - Justice Kavanaugh in the majority



A Revolution on Religion?

- Two basic tenets in the Court's First Amendment jurisprudence:
  - *Smith*: a neutral law of general applicability does not violate the First Amendment just because it has a disproportionate impact on a religious group
  - *Lukumi Babalu Aye*: If a law is not neutral and of general applicability it is subject to strict scrutiny and generally falls
  - These two decisions—since 1990—have maintained an uneasy balance and allowed governmental regulation in the face of a deeply religious, pluralist, and at the same time secular society



A Revolution on Religion?

- The pandemic has begun to show the extent to which *Smith* and its requirement of neutrality may no longer be enough
  - Prior to Justice Ginsburg's death, the Court faced a number of emergency applications challenging the application of state laws that limited the operations of houses of worship-including in the number of individuals that could congregate, the manner in which they could congregate, and the location. The Court upheld these restrictions 5-4
  - Since Justice Barrett joined the Court, there has been a dramatic shift. The Court, 5-4 or 6-3, has invalidated state mandates—not in merits cases following argument but in emergency applications resolved on the "shadow docket"

This Term: *Fulton v. City of Philadelphia*

- City of Philadelphia contracts with private agencies to recruit, screen and certify foster parents; as a condition for performing this public function, agencies must not categorically screen out same-sex couples
- Catholic Social Services ("CSS") argued that this policy violates their Free Exercise Clause rights because their religion prevents them from certifying same-sex couples
- City of Philadelphia's policy meant that CSS would have to certify same-sex couples to continue on as a foster care agency for the City
- In suit challenging this policy, Petitioners sought to overrule *Employment Division v. Smith*, under which States may apply neutral laws of general applicability that incidentally infringe on religious liberty

This Term: *Fulton v. City of Philadelphia*

- 9-0 decision issued last week, with the Chief Justice writing for the Court, in favor of the Petitioners
- Court held that the policy was subject to strict scrutiny, rather than the *Smith* standard, because it was not a rule of "general applicability": The policy allowed for discretionary exceptions to its application
  - "Rejection of Referral. Provider shall not reject a child or family including, but not limited to, . . . prospective foster or adoptive parents, for Services based upon . . . their . . . sexual orientation . . . ***unless an exception is granted by the Commissioner or the Commissioner's designee, in his/her sole discretion."***
- Court declined to reach question of whether *Smith* should be overruled
  - Concurrences filed by the more conservative Justices (including one partially joined by Justice Breyer) suggest that *Smith* could be revisited and overruled at a later date on different facts

The Court and the 2020 Election

- Pandemic-related changes to election procedures ordered in a number of States by executive branch officials and courts
- Changes to vote-by-mail deadlines; drive-through voting; witness signature requirements; "excuse-only" absentee voting
- Challenges make their way to the Court through emergency stay motions on the Court's "shadow docket"
- Stanford-MIT Healthy Elections Project counted 628 election law cases arising out of the COVID-19 pandemic

The Court and the 2020 Election

- Cases raise the proper role of legislative, executive, and judicial branches
- Challenges often rely on Elections and Electors Clauses
  - Article I, Section 4, Clause 1: The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State ***by the Legislature thereof…***
  - Article II, Section 1, Clause 2: Each State shall appoint, ***in such Manner as the Legislature thereof may direct***, a Number of Electors

The Court and the 2020 Election

- *Republican Party of Pennsylvania v. Boockvar*
  - Republican State Legislature pitted against Democratic Pennsylvania Supreme Court
  - Deadline for vote-by-mail ballots
  - Four Justices vote for a stay
  - Ultimately, Justices Thomas, Alito, Gorsuch dissent from denial of certiorari
  - Justice Thomas stokes fears of fraud in vote-by-mail ballots
  - Justices Alito and Gorsuch embrace independent state legislature theory
  - What happened to Justice Kavanaugh?

The Court and the 2020 Election

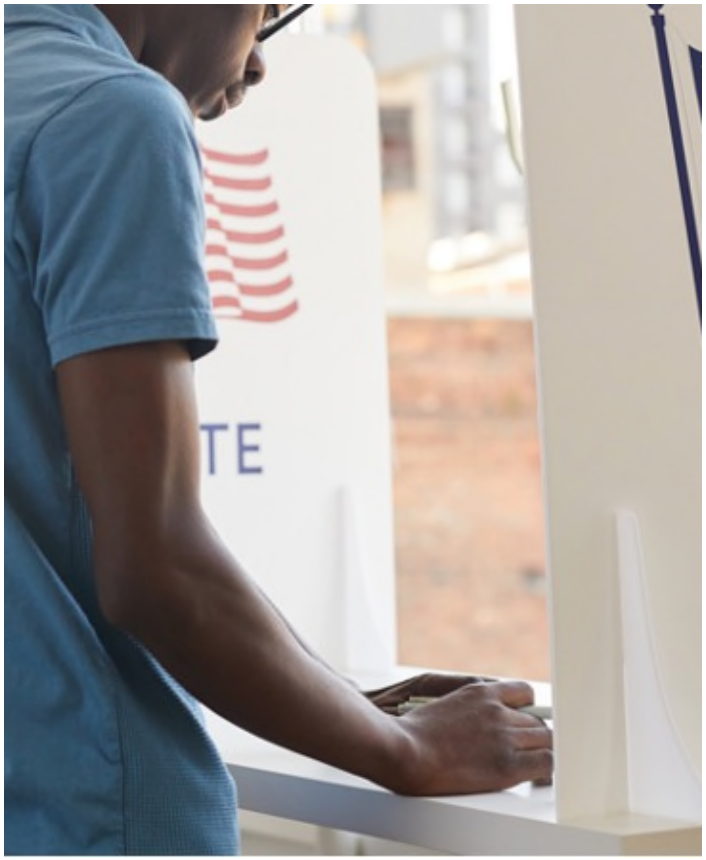
- The Court avoids another *Bush v. Gore*
- Lawsuits seeking to challenge the election results in Arizona, Georgia, Michigan, Nevada, Pennsylvania, Wisconsin, as well as directly in the Supreme Court, all failed
- General principles emerge:
  - Deference to state legislatures
  - Suspicion of “last-minute” changes
- Implications for upcoming voting rights cases
  - Redistricting
  - Restrictions on the right to vote

Brnovich v. Democratic National Committee

- How does Section 2 of the Voting Rights Act apply to claims that States have policies or procedures that disparately impact minority voters?
- Backdrop of the case is the Court's decision in 2013 rendering Section 5 of the Voting Rights Act no longer operable

Brnovich v. Democratic National Committee

- At issue in the case are two Arizona provisions
  - Out-of-precinct policy
  - Ballot collection law
- Real question in the case is the test that courts will apply to future cases
  - Laws currently being passed in a number of States that advocates claim will disparately impact minority voters



The Affordable Care Act Trilogy: *The Return of The ACA*

- *California v. Texas*
  - Litigants challenge constitutionality of mandate to purchase insurance after Congress sets penalty to $0
  - District court finds mandate unconstitutional – and concludes that the entire ACA must be invalidated as well
  - Fifth Circuit affirms but asks district court to explain its severability ruling better
- United States – A House Divided
  - Recurring motif – DOJ does not defend law; House supports
  - DOJ position on severability changes
    - Just the exchanges?
    - Or the entire ACA?
    - Red States only?
- Third Major Case On The Legality Of the ACA

The Affordable Care Act Trilogy: *The Return of The ACA*

- Court upholds the Act (again), by a 7-2 vote in an opinion by Justice Breyer
- Court decides the issue on standing grounds
  - Individual plaintiffs lack standing because the harm imposed by a $0 penalty is $0
  - States lack standing because they suffer no direct harm from the $0 penalty
  - Because no plaintiff has standing, Court does not need to consider constitutionality and severability issues
- The line-up
  - Justice Breyer's majority opinion joined by the Chief Justice, Justice Thomas, Justice Kavanaugh, and Justice Barrett, as well as Justice Sotomayor and Justice Kagan
  - Justice Thomas: "Although this Court has erred twice before in cases involving the Affordable Care Act, it does not err today"
  - Justices Alito and Gorsuch would have found standing, would have found the mandate unconstitutional, and would have invalidated much of the rest of the Act

NCAA v. Alston: Background

- Legal background
  - In 2014, student-athletes brought a class action, arguing that the NCAA and major conferences' rules on student compensation and eligibility violated federal antitrust law
  - In essence, the student-athletes argued that the NCAA was maintaining an illegal monopoly through which it prevented students from being paid fair market wages for their work
  - A California district court ruled that the NCAA could restrict compensation unrelated to education (e.g., salaries) but that it couldn't restrict education-related benefits (e.g., free laptops)
  - The Ninth Circuit affirmed

Poll Question:

Should student athletes be paid a salary?

– Yes
– No

NCAA v. Alston: Legal Analysis

- In a decision this week by Justice Gorsuch, the Court unanimously affirmed the Court of Appeal's decision
- Held that, notwithstanding some "stray comments" in prior opinions, the NCAA is not immune from antitrust laws, nor should it get deferential treatment under the law. Even if the NCAA is properly conceived as a joint venture, its dominance of the student sports market requires antitrust scrutiny
- Court applies the traditional Sherman Act "rule of reason" analysis and looks at 3 factors in doing so:
  - Whether the challenged restraint causes significant anticompetitive effects in the relevant market
  - Whether there are pro-competitive reasons for the restraints
  - Whether less restrictive alternatives could achieve the same pro-competitive results

NCAA v. Alston: Final Thoughts

- Decision marks a significant step towards athlete compensation
- Justice Gorsuch's historical opening makes clear that compensation for student athletes has been part of college sports as long as college sports has existed
- Many will think this does not go far enough and Justice Kavanaugh's concurring opinion discusses at length the inequities he sees created by the NCAA's rules regarding student athlete-compensation
- Court repeatedly notes that if the rules should be fundamentally changed Congress is best placed to do that, and there may well be legislative action in this area in the years to come

Knight First Amendment Institute v. Trump

- SDNY and Second Circuit hold that President Trump violated the First Amendment by blocking individuals from his @realDonaldTrump Twitter account after they criticized him; DOJ petitions for certiorari
- Supreme Court vacates the case as moot after President Biden is elected
- Justice Thomas writes a concurrence saying that the real "problem is private, concentrated control over online content and platforms available to the public" and the potential "solution may be found in doctrines that limit the right of a private company to exclude"
  - Common-carrier regulation
  - Public accommodation regulation
  - Pushing the law?

Poll Question:

Should tech platforms be able to block users from their platform?

–Yes
– No

Business Cases

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Google v. Oracle America

- Copyright case of the century
- Google designed Android; wanted app developers to use Java to write Android apps
- Google therefore copied Java's declaring code without a license
- Oracle sued Google for copyright infringement
- 7-2 decision: Google's copying was fair use
  - Copying for purposes of interoperability was transformative
  - Google copied for functional reasons, not to free-ride on Oracle's creativity
  - Commercial use of Android didn't prevent copying from being fair use

United States v. Arthrex, Inc.

- For the second time in three years, a patentee sought to topple Inter Partes Review
- Patentee argued that Inter Partes Review violated Appointments Clause because ALJs were Principal Officers, not Inferior Officers; hence, entire Inter Partes Review scheme should be struck down
- Supreme Court divided 4-1-4
  - Controlling opinion (Roberts, Alito, Kavanaugh, Barrett): ALJs are Principal Officers, but giving Director review authority cures the constitutional problem
  - Gorsuch: Strike down entire statute
  - Dissent (Thomas, Breyer, Sotomayor, Kagan): No constitutional problem with current scheme

Other Business Cases

FTC decision

Transunion

Cedar Point Nursery

Cargill v. Doe

A Look Ahead to the 2021-22 Term

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The Post-Kennedy Court – Year 4: The Blockbuster?

Abortion

Second Amendment

Affirmative Action

Roe and *Casey:* An Uneasy Status Quo

- Since *Roe v. Wade* (1973) was reaffirmed in *Planned Parenthood v. Casey* (1993), the basic framework of the constitutional protections for abortion have remained relatively stable

- Overall, States continue to have the ability place limits on access to abortions based on the viability of the fetus and the extent to which the challenged restriction places an "undue burden" on a woman's right to choose

- Last term in *June Medical Services*, Chief Justice Roberts voted to strike down a Louisiana law that would have required a doctor to have admitting privileges at a hospital within 30 miles of where the abortion was provided
  - *Stare decisis* – 2016 decision in *Whole Women's Health* striking down a virtually identical Texas law

Dobbs v. Jackson Women's Health Org.

- Passed in 2018, Mississippi's law bans abortions after 15 weeks. The statute includes only narrow exceptions for medical emergencies or "a severe fetal abnormality."
- The law was immediately challenged, and struck down, in the lower courts.
  - "The state chose to pass a law it knew was unconstitutional to endorse a decades-long campaign, fueled by national interest groups, to ask the Supreme Court to overturn *Roe v. Wade*."
  - "Time will tell. If overturning *Roe* is the state's desired result, the state will have to seek that relief from a higher court. For now, the United States Supreme Court has spoken."
- The Fifth Circuit affirmed.
- The Court repeatedly rescheduled and then relisted the case 12 times before granting certiorari. Argument will be scheduled for next Term.

Poll Question:

How many Justices will vote to overturn Roe v. Wade in this case?

– None
– Between 1-4
– A majority

New York State Rifle & Pistol Ass'n v. Corlett

- For years after *Heller* and *McDonald*, the Supreme Court consistently denied certiorari in Second Amendment cases—despite many opportunities
- Following Justice Barrett's confirmation, that trend changed
- The Court took the rare step of altering the question presented

New York State Rifle & Pistol Ass'n v. Corlett

QUESTION PRESENTED IN PETITION:

"Whether the Second Amendment allows the government to prohibit ordinary law-abiding citizens from carrying handguns outside the home for self-defense."

QUESTION AS STATED BY COURT:

"Whether the State's denial of petitioners' applications for concealed-carry licenses for self-defense violated the Second Amendment."

- Unclear why Court changed question
- Court preferred narrower ruling?
- Court did not want to opine on "open carry"?

New York State Rifle & Pistol Ass'n v. Corlett

- Five likely votes to interpret Second Amendment expansively
  - *New York State Rifle & Pistol Association v. New York*
    - Court was reviewing New York City law restricting transportation of guns
    - After the law was repealed, the Court held that the case was moot
    - Gorsuch, Alito, Thomas dissented; would have found that the case was not moot and that the Second Amendment was violated
    - Kavanaugh concurred on mootness, but agreed with dissent on the merits
  - *Kanter v. Barr* (7th Circuit): Barrett dissented, endorsing expansive view of Second Amendment

Affirmative Action and College Admissions

- In *Regents of University of California v. Bakke* (1978), a divided Court held that universities could consider race in admissions for the purpose of ”attain[ing] a diverse student body”

- Key principles
  - Strict scrutiny applies
  - Student body diversity is a compelling state interest
  - Program must be narrowly tailored
  - No quotas
  - Holistic consideration of applicant with race as a potential plus factor on par with other diverse characteristics, such as geographic and talent diversity

- Harvard’s program held up as an example of a valid approach; widely adopted by other schools

The Harvard Case and a Changing (Changed?) Court

- These principles were tested in a series of cases involving admissions at the University of Michigan and the University of Texas
- By a one-vote margin, the Court upheld the consideration of race
- The most recent case was a 4-3 decision written by Justice Kennedy over dissents by the Chief Justice, Justice Thomas, and Justice Alito
  - Justice Alito: “To this day, [the University of Texas] has not explained in anything other than the vaguest terms what it means by ‘critical mass’”

The Harvard Case and a Changing (Changed?) Court

- Case was brought by Students for Fair Admissions, contending that Harvard intentionally discriminated against Asian-American applicants in its admission process in favor of Black and Latino applicants
- After a bench trial with testimony from University officials and expert statistical analysis, trial court finds in favor of Harvard; First Circuit affirms
- SFFA petitions focusing almost entirely on asking the Court to overrule its precedents in this area:
  - "*Grutter* endorsed racial objectives that are amorphous and unmeasurable and thus incapable of narrow tailoring"
  - "*Grutter's* core holding—that universities can use race in admissions to pursue student-body diversity—is plainly wrong"
- Court calls for views of the Solicitor General
  - Biden DOJ unlikely to recommend a grant
  - Will likely present its views by Dec/Jan

Poll Question:

If cert is granted, how many Justices will vote to ban affirmative action entirely?

– None
– Between 1-4
– A majority

Questions & Answers

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Our Panel

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Mr. Gershengorn is chair of the firm's Appellate and Supreme Court Practice and is one of the Nation's premier Supreme Court and appellate advocates. He has argued 16 cases before the Supreme Court, including one of the telephonic arguments in May 2020. Before re-joining the firm in 2017, he served in the Office of the Solicitor General at the US Department of Justice, first as Principal Deputy Solicitor General and then as Acting Solicitor General of the United States, a position he held from June 2016 until the end of the Obama administration in January 2017. Mr. Gershengorn's practice focuses on advising clients on a range of complex litigation and strategy problems, with particular emphasis on commercial disputes and challenges involving government, regulatory, and other public policy issues.

Since returning to the firm in the Fall of 2017, Mr. Gershengorn has appeared regularly in the state and federal appellate courts, arguing on behalf of clients such as McKesson Corporation, FanDuel, the Recording Industry Association of America, FirstTrust Bank, General Dynamics, and Charter Communications.

Mr. Gershengorn currently co-teaches a course at Harvard Law School on The Roberts Court.

Jessica Ring Amunson

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Jessica Ring Amunson is co-chair of the firm's Appellate and Supreme Court Practice and chair of the firm's Election Law and Redistricting Practice. She has been recognized as a "Leading Lawyer" by *The Legal 500* and an "Appellate MVP" by *Law360*. An experienced litigator, Ms. Amunson has argued before the US Supreme Court and multiple federal and state courts of appeals and has authored hundreds of briefs. She has successfully represented clients in matters involving federal constitutional claims, statutory interpretation questions, administrative law issues, and large commercial disputes. Ms. Amunson also regularly counsels clients on appellate and Supreme Court strategy.

As chair of the firm's Election Law and Redistricting Practice, Ms. Amunson represents clients, including elected officials, in matters involving redistricting, voting rights, and campaign finance in the US Supreme Court, before the Federal Elections Commission, and in courts around the country. She has litigated election law and redistricting matters in a number of states, including litigation involving disputed elections. She regularly represents clients on the merits and as amici in direct appeals to the US Supreme Court in redistricting and voting rights cases. In March 2021, Ms. Amunson argued *Brnovich v. Democratic National Committee* in the US Supreme Court, which the *New York Times* called the Court's "most important voting rights case in almost a decade." Ms. Amunson has been repeatedly recognized for her extensive knowledge of election law and regularly speaks on panels regarding issues in redistricting and voting rights. She serves on the Advisory Committee to the Voting Rights Institute and is a member of the Litigation Strategy Council for the Campaign Legal Center.

Ishan K. Bhabha

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Ishan K. Bhabha is a partner in the litigation department, a member of the Appellate and Supreme Court Practice, and co-chair of the Education Practice. Since joining the firm in 2012, his practice has focused on complex issues of regulatory, constitutional, international, and commercial law.

Mr. Bhabha's practice has spanned a wide variety of substantive areas of law including energy, aviation and aerospace, education, media, communications, copyright, criminal, and banking. Mr. Bhabha has extensive experience in helping companies navigate complex regulatory structures, both through internal counseling and in representation before administrative agencies. He has tried cases both in federal court and arbitration and has represented clients in all stages of litigation from the filing of an initial complaint through the appeal of a verdict. In addition, Mr. Bhabha has significant experience in the United States Supreme Court including presenting oral argument on behalf of the petitioner in Biestek v. Berryhill and serving as merits and amicus counsel in multiple other cases.

Mr. Bhabha also has an active pro bono practice in both criminal and immigration law. He has presented oral argument on behalf of criminal defendants three times in the US Court of Appeals for the Seventh Circuit and once in both the US Court of Appeals for the District of Columbia Circuit and the District of Columbia Superior Court. He has also represented clients in immigration law matters in the US Courts of Appeals for the Second and Tenth Circuit, as well as in various district courts. Mr. Bhabha was recently interviewed by C-SPAN concerning the retirement of Justice Kennedy.

Matthew Hellman

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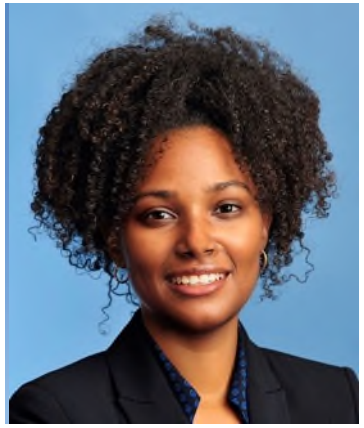
Matthew S. Hellman is co-chair of the firm's Appellate and Supreme Court Practice. He has been lead counsel in dozens of appellate matters and has presented arguments in the US Supreme Court and in federal and state appellate courts around the country. He has successfully defended on appeal more than $1 billion in commercial claims, and he has prevailed in the Supreme Court in important bankruptcy, copyright, First Amendment and administrative law cases. Clients such as Marriott, GE, Nomura and General Dynamics have sought his counsel on a wide variety of banking, hospitality, government contracts, copyright and business torts matters.

Mr. Hellman maintains a substantial pro bono practice, including matters with significant commercial implications, such as his win in the US Supreme Court in Law v. Siegel, which was called the most important bankruptcy case of that term. He has argued or supervised more than a dozen pro bono cases in the courts of appeals, including two capital cases. In 2007, Jenner & Block recognized Mr. Hellman with the Albert E. Jenner, Jr. Pro Bono Award, which annually recognizes lawyers in the firm with a strong commitment to pro bono or public service work.

In 2016, Mr. Hellman was named co-director of the Jenner & Block University of Chicago Law School Supreme Court and Appellate Clinic, a testament to his experience as well as his ability to teach the next generation of appellate advocates. He is also a member of the Edward Coke Appellate Inn of Court and on the Board of Directors of the Washington Lawyers' Committee for Civil Rights and Urban Affairs. He serves as co-chair of the DC Hiring and Hiring Executive Committees and is also a member of the Associate Development and Evaluation Committee and the Finance Committee.



Tassity Johnson

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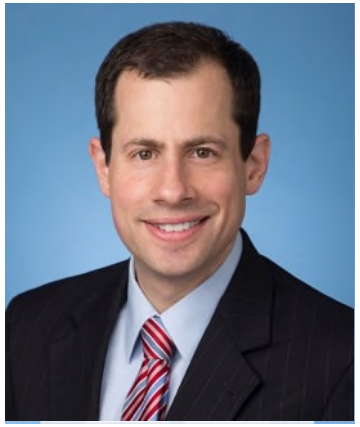
Tassity S. Johnson is a member of the Appellate and Supreme Court Practice Group and a partner in the firm's Litigation Department. Her practice focuses on appellate and trial litigation concerning constitutional, statutory, and regulatory matters.

Ms. Johnson has substantial experience in a number of areas and industries, including First Amendment rights, consumer law, voting rights, energy, environmental law, and commercial litigation. She represents clients in a variety of industries, including technology companies in matters involving First Amendment, antitrust, and consumer issues. She has litigated cases involving complex regulatory schemes, statutory interpretation, administrative law issues, and federal constitutional claims. Ms. Johnson has authored dispositive motions and appellate briefs; interviewed, deposed, and examined witnesses; and presented oral argument in federal and state court.

Ms. Johnson maintains an active public interest practice, representing clients in immigration, voting rights, and free speech matters at both the trial and appellate level. She defended a county supervisor of elections from an effort to purge voters under the National Voters Registration Act at the trial and appellate levels, and has been a core member of teams seeking to enforce and defend the Voter Rights Act, representing Arizona Secretary of State Katie Hobbs in Brnovich v. DNC before the Supreme Court, and Fair Fight in its challenge to Georgia's election administration system. Ms. Johnson also helped litigate a number of novel First Amendment public forum challenges to government official conduct on social media platforms, including Knight First Amendment Institute v. Trump.

Prior to joining the firm, Ms. Johnson was the Francis D. Murnaghan Appellate Advocacy Fellow at the Public Justice Center, where she successfully briefed and argued multiple appeals before the highest court of Maryland; a law clerk to the Honorable Martha C. Daughtrey of the United States Court of Appeals for the Sixth Circuit; and a law clerk to the Honorable Janet C. Hall, Chief Judge of the United States District Court for the District of Connecticut.



Adam G. Unikowsky

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Adam G. Unikowsky is a partner in the Litigation Department and a member of the Appellate and Supreme Court, Communications, and Technology Litigation Practices.. He also handles high-stakes appellate and district court litigation in numerous areas of law, including patent law, telecommunications law and securities law. In 2017, he was recognized as a Law360 “MVP of the Year.”

Mr. Unikowsky litigates cases in the US Supreme Court, appellate courts, trial courts, and administrative agencies. At the US Supreme Court, Mr. Unikowsky has won eight cases as lead counsel since 2016, while losing none. In six of those cases, Mr. Unikowsky represented the petitioner and filed a successful petition for certiorari. Mr. Unikowsky has been recognized by “Empirical SCOTUS” as the attorney in the United States with the highest statistical rate of success in Supreme Court merits cases; he has also separately been recognized by “Empirical SCOTUS” as the attorney in the United States with the highest statistical rate of success at obtaining grants of certiorari. In 2017, he argued three cases within a 28-day span, leading to unanimous victories in all three. Among those cases were Kokesh v. SEC, a case limiting the SEC’s power to obtain disgorgement, which led to Law360 recognizing him as a Securities Law “MVP of the Year.”

Thank You!

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