

# Annual Supreme Court Term in Review

June 29, 2022



JENNER & BLOCK

# Our Panel | Appellate and Supreme Court Practice



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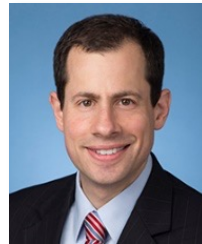
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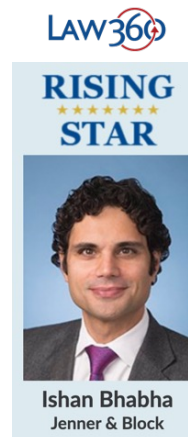
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# Our Appellate and Supreme Court Practice

- 23 oral arguments in the past seven US Supreme Court Terms
- Argued two cases this Term
- Routinely appear in federal and state appellate and trial courts and provide counseling on commercial and regulatory issues
- A dozen members of the firm have argued before the US Supreme Court



Appellate and Supreme Court



# ***Dobbs v. Jackson Women's Health Organization***

# 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 has remained relatively stable.
- Overall, states continue to have the ability to 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.
- Very recently 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 Organization*

- Mississippi law bars abortions after 15 weeks with limited exceptions.
- Five justices (Alito, Thomas, Gorsuch, Kavanaugh, and Barrett) uphold the law and overrule *Roe* and *Casey*.
- The Chief Justice would have upheld the law without overruling the earlier cases.
- Three Justices (Breyer, Sotomayor, and Kagan) jointly dissent.
- The result is that there is no longer a constitutional right to abortion— states are free to prohibit so long as they can articulate any reason for doing so.

# *Dobbs v. Jackson Women's Health Organization*

## Majority Opinion

- “We hold that *Roe* and *Casey* must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision.... It is time to heed the Constitution and return the issue of abortion to the people’s elected representatives.”
- “The inescapable conclusion is that a right to abortion is not deeply rooted in the Nation’s history and traditions.”
- “All in all, *Roe*’s reasoning was exceedingly weak.... *Casey* did not attempt to bolster *Roe*’s reasoning.”
- “A law regulating abortion, like other health and welfare laws, is entitled to a ‘strong presumption of validity.’”
- “Rights regarding contraception and same-sex relationships are inherently different from the right to abortion because the latter uniquely involves what *Roe* and *Casey* termed ‘potential life.’”

# *Dobbs v. Jackson Women's Health Organization*

## **The Chief's Concurrence**

- “I would take a more measured course.”
- “Our abortion precedents describe the right at issue as a woman’s right to choose to terminate her pregnancy. That right should therefore extend far enough to ensure a reasonable opportunity to choose.”
- “If it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more.”
- “The Court’s opinion is thoughtful and thorough, but those virtues cannot compensate for the fact that its dramatic and consequential ruling is unnecessary to decide the case before us.”



# *Dobbs v. Jackson Women's Health Organization*

## The Joint Dissent

- “*Roe* held, and *Casey* reaffirmed, that the Constitution safeguards a woman’s right to decide for herself whether to bear a child [and] that in the first stages of pregnancy, the government could not make that choice for women ... Today, the Court discards that balance.”
- “*Stare decisis* is ... a doctrine of judicial modesty and humility. Those qualities are not evident in today’s opinion.”
- “Power, not reason, is the new currency of this Court’s decision making.”
- “For millions of women, *Roe* and *Casey* have been critical in giving them control of their bodies and their lives. Closing our eyes to the suffering today’s decision will impose will not make that suffering disappear.”
- “*Roe* and *Casey* fit neatly into a long line of decisions protecting from government intrusion a wealth of private choices about family matters, child rearing, intimate relationships, and procreation.”

# *Dobbs v. Jackson Women's Health Organization*

## **What's Next for Abortion Rights**

- Trigger laws and zombie laws
- Private enforcement and SB 8
- Lots of legal questions about how far states can go
  - Right to travel
  - Dormant Commerce Clause
  - Aiding and abetting liability
  - Fetal personhood
  - Full Faith and Credit Clause

# *Dobbs v. Jackson Women's Health Organization*

## **Two Sides of the Majority and What Lies Ahead**

"Overruling *Roe* does *not* threaten or cast doubt on those [same-sex marriage and contraception] precedents."

– *Justice Kavanaugh*

"We should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*."

– *Justice Thomas*

- What's next?

# What will the Supreme Court overrule next?

- ***Griswold v. Connecticut / Eisenstadt v. Baird*** (invalidating anti-contraception laws)
  - *Dobbs*' logic would appear to require invalidating anti-contraception laws, too.
  - Not clear if states will seek to enact or enforce anti-contraception laws; it is possible that no case will arise.
- ***Lawrence v. Texas*** (invalidating Texas' criminal sodomy ban)
  - Justice Thomas dissented in *Lawrence*.
  - Seems unlikely states would take issue up to the Supreme Court, but not impossible.
- ***Obergefell v. Hodges / United States v. Windsor*** (constitutional right to same-sex marriage)
  - States and private parties likely to file petitions seeking to overrule these decisions.
  - Gorsuch dissent in *Pavan v. Smith* – may be prepared to narrow or overrule *Obergefell*.

# The Leak

# The Leak and the Court

To: The Chief Justice  
Justice Thomas  
Justice Breyer  
Justice Sotomayor  
Justice Kagan  
Justice Gorsuch  
Justice Kavanaugh  
Justice Barrett

From:

**Justice Alito**

Circulated: February 10, 2022 \_\_\_\_\_

Recirculated: \_\_\_\_\_

**1st Draft**

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

## SUPREME COURT OF THE UNITED STATES

No. 19–1392

THOMAS E. DOBBS, STATE HEALTH OFFICER OF  
THE MISSISSIPPI DEPARTMENT OF HEALTH,  
ET AL., PETITIONERS *v.* JACKSON WOMEN'S  
HEALTH ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[February \_\_, 2022]

JUSTICE ALITO delivered the opinion of the Court.

Abortion presents a profound moral issue on which Americans hold sharply conflicting views. Some believe fervently

# The Leak and the Court (cont.)

“To the extent this betrayal of the confidences of the Court was intended to undermine the integrity of our operations, it will not succeed. The work of the Court will not be affected in any way. ... This was a singular and egregious breach of that trust that is an affront to the Court and the community of public servants who work here.”

– ***Chief Justice Roberts (5/3/2022)***

“The Court right now, we had our conference this morning, we’re doing our work. We’re taking new cases, we’re headed toward the end of the term, which is also a frenetic time as we get our opinions out. So, that’s where we are.”

– ***Justice Alito (5/13/2022)***

“When you lose that trust, especially in the institution that I’m in, it changes the institution fundamentally. You begin to look over your shoulder. It’s ... kind of an infidelity, that you can explain it, but you can’t undo it.”

– ***Justice Thomas (5/14/2022)***

# The Court in the Political Spotlight





# The Court in the Political Spotlight

## Increased Security at the Court



## Protests Outside Justices' Homes



# The Court in the Political Spotlight

- 26-year-old man travels from California to Justice Kavanaugh's home with gun, ammunition, lock-pick, duct tape, etc. and is arrested and charged with attempted assassination.
- Congress passes and the President signs a bill providing round-the-clock protection to the families of the Justices.
- Legislation to protect the Court passed quickly, while other legislation has long languished, including bills to establish term limits, increase the number of Justices, and strengthen ethical requirements.

# Justice Breyer's Retirement

# Breyer Retires



# Breyer Retires

“His pragmatism, encyclopedic knowledge, and varied government experience have enriched the Court’s deliberations. And his fanciful hypotheticals during oral argument have befuddled counsel and colleagues alike.”

– *Chief Justice Roberts*

“Though Justice Breyer’s tenure on the Court draws to a close, our friendship and deep affection redoubles and endures.”

– *Justice Thomas*

**Justice Jackson**



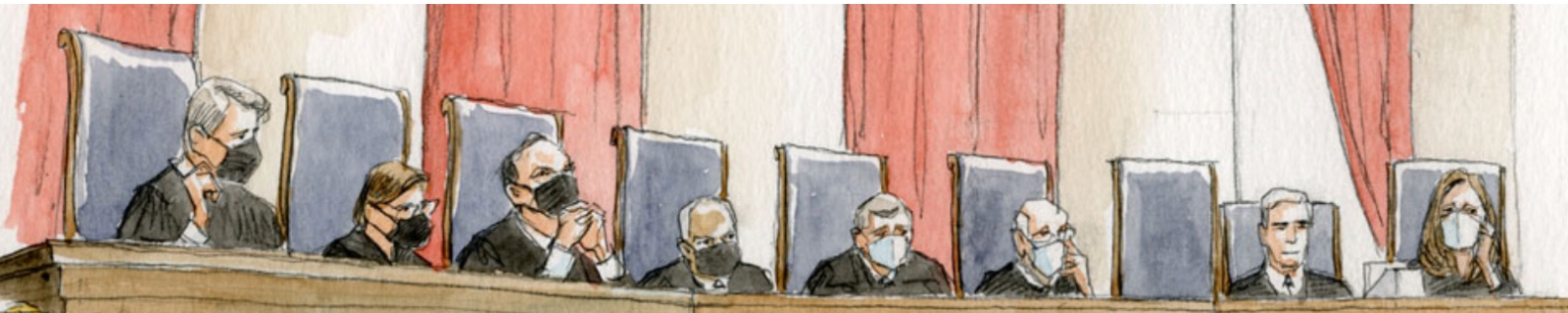
# Justice Jackson

- Background
  - Breyer clerk
  - Public defender
  - DDC, DC Circuit
- No surprises during confirmation hearing
  - Decides cases from a “position of neutrality,” and based on text and original intent of framers
  - Presumed liberal
- Historical appointment, contentious times

**COVID-19**



# Vaccines, Masks, and COVID-19 at the Court



# Arguing at the Court During Covid



Matthew S. Hellman for petitioner, NANCEV. WARD, 4-25-22

# Arguing at the Court During Covid

**ZACH SCHAUF**

**Attorney for  
Victor Manuel Castro-Huerta**



**STATES' PROSECUTION AUTHORITY ON TRIBAL LAND**

**SUPREME  
COURT**

**Oral Argument**  
**Oklahoma v. Castro-Huerta**

**C-SPAN2**

# Arguing at the Court During Covid

- From phones to an empty Courtroom
- Masks vs. no masks
- More orderly questioning
- Longer arguments
- No opinions and dissents from the Bench

# Civility at the Court

“According to Court sources, Sotomayor did not feel safe in close proximity to people who were unmasked. Chief Justice John Roberts, understanding that, in some form asked the other justices to mask up. They all did. Except Gorsuch, who, as it happens, sits next to Sotomayor on the bench. His continued refusal since then has also meant that Sotomayor has not attended the Justices' weekly conference in person, joining instead by telephone.”

– *Nina Totenberg, NPR (1/18/2022)*

“Reporting that Justice Sotomayor asked Justice Gorsuch to wear a mask surprised us. It is false. While we may sometimes disagree about the law, we are warm colleagues and friends.”

– *Joint Statement of Justices Sotomayor and Gorsuch (1/19/2022)*

“I did not request Justice Gorsuch or any other Justice to wear a mask on the bench.”

– *Statement of Chief Justice Roberts (1/19/2022)*

# Civility at the Court

“Many of you have seen the famous picture of Justice Scalia and Justice Ginsburg riding a top an elephant in India. It captured so much of Ruth. There she was doing something totally unexpected just as she had in law school, where she was not only one of the few women, but a new mother to boot. And in the photograph, she is riding with a dear friend, a friend with totally divergent views. There is no indication in the photo that either was poised to push the other off.”

– *Chief Justice Roberts (9/23/2020)*



## Civility at the Court

“None of us wanted for that to happen very often because it would look as though we were a riven institution and it would look as though we were incapable of getting our work done...So I think we all made a very serious effort to try to find common ground even where we thought we couldn't. It sort of forced us to keep talking to each other.”

Kagan said she hoped the justices learned from how they operated when they were part of an eight-member court. “That would help show others how to reduce divisions.”

– *Justice Kagan (9/8/2017)*



## Civility at the Court



Justice Thomas is “a man who cares deeply about the court as an institution, about the people who work there.”

He “has a different philosophy of life ... but I think we share a common understanding about people and kindness towards them. That's why I can be friends with him and still continue our daily battle over our difference of opinions in cases.”

**– Justice Sotomayor (6/16/2022)**



# Cases – The 2021-22 Term

# *New York State Rifle & Pistol Ass'n v. Bruen*

- The State of New York requires a license to “have and carry” a concealed “pistol or revolver” only if you can “demonstrate a special need for self-protection distinguishable from that of the general community.”
- The Court, in a 6-3 decision authored by Justice Thomas, held that New York’s requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense.
- The Court rejects the “two-step” inquiry developed by the courts of appeals following *Heller* and *McDonald*, that combined history with means-end scrutiny. The Court says it is just about text and history.

# *New York State Rifle & Pistol Ass'n v. Bruen*

- After extensive historical discussion, Justice Thomas reiterates that the right to bear arms is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.”
- Justice Alito concurs to attack the dissenters for describing multiple incidents of gun violence and referencing recent mass shootings. “[W]hile the dissent seemingly thinks that the ubiquity of guns and our country’s high level of gun violence provide reasons for sustaining the New York law, the dissent appears not to understand that it is these very facts that cause law-abiding citizens to feel the need to carry a gun for self-defense.”
- Justice Kavanaugh and the Chief Justice concur to point out that this does not mean the end of licensing requirements or potentially other regulation.

# *New York State Rifle & Pistol Ass'n v. Bruen*

- Justice Breyer, joined by Justices Sotomayor and Kagan, writes a lengthy dissent criticizing: (1) relying exclusively on history; (2) deciding the case without any record; (3) creating practical problems about which historical facts to analyze.
- Justice Breyer: “In my view, when courts interpret the Second Amendment, it is constitutionally proper, indeed often necessary, for them to consider the serious dangers and consequences of gun violence that lead States to regulate firearms.”
- Justice Breyer: “Justice Alito asks why I have begun my opinion by reviewing some of the dangers and challenges posed by gun violence and what relevance that has to today’s case. All of the above considerations illustrate that the question of firearm regulation presents a complex problem—one that should be solved by legislatures rather than courts.

# COVID-19 Vaccine at the Court

- The OSHA ETS and health worker mandates came to the Court in late December and on December 22 the Court ordered January 7 argument.
- By a 6-3 vote the Court held OSHA had exceeded the power granted it by Congress when it issued a nationwide vaccine or test mandate.
  - “Permitting OSHA to regulate the hazards of daily life — simply because most Americans have jobs and face those same risks while on the clock — would significantly expand OSHA’s regulatory authority without clear congressional authorization.”
  - Unusual joint dissent arguing that the decision “stymies the Federal Government’s ability to counter the unparalleled threat that COVID-19 poses to our nation’s workers.”
- By a 5-4 vote the Court held that HHS had the power to require health workers in facilities receiving federal funds to be vaccinated.
- District courts have stayed the contractor mandate and it is now pending before various courts of appeals.

# *West Virginia v. Environmental Protection Agency*

## **Substantive dispute**

- Does the Clean Air Act authorize the EPA to regulate CO2 emissions by prescribing measures that apply industrywide?
- Or is EPA limited to measures that can be implemented on the physical premises of a power plant – “inside the fenceline?”

## **Broader issue: The “major questions doctrine”**

- West Virginia SG: This authority “would be a new and transformative variety of agency power. That is a -- a major policy question. And so that is the sort of thing that courts are not willing to assume that Congress implicitly delegated those sort of questions.”
- Justice Kagan: “So my understanding is there's ambiguity in the statute. That's the first condition. The second is that the agency has stepped far outside of what we think of as its appropriate lane, you know, the FDA regulating tobacco, that sort of thing, just like something that's like, what, the FDA regulates tobacco? So that's the second. And the third is, even though it would -- it is conceivable on the face of the provision being most directly looked at, that it kind of wreaks havoc on a lot of other things in the statute.”

# Biden v. Texas – “Remain in Mexico”



- 2018: Trump Administration announces Migrant Protection Protocol (MPP), in which certain non-citizens who arrive via the Mexican border are returned to Mexico pending their immigration proceedings.
- 2020: Biden Administration terminates MPP.

## *Biden v. Texas* – “Remain in Mexico”

- Texas sues, claiming that Biden Administration is legally obligated to maintain MPP.
  - If this argument is correct, then the federal government would have been openly violating the law for 25 years with no one noticing.
- Fifth Circuit agrees with Texas. DOJ seeks expedited review.
- Many complex issues.
  - Interpretation of immigration statutes.
  - Administrative law – when can government change its mind?
  - Jurisdiction – supplemental briefing order.



# Kennedy v. Bremerton School District

- High school football coach fired after kneeling after games to pray
  - District concerned coach’s prayer would expose it to liability for appearing to endorse religion
- Establishment Clause and First Amendment violations
  - District disciplined coach only for prayer: Policy not “neutral” or “generally applicable” to religious and secular employee conduct
  - Prayers were coach’s personal, not professional, speech
  - District had no compelling interest: Concerns about liability not enough; concerns about coercive effect on students not enough
- Overrules *Lemon* test for Establishment Clause claims
  - Whether reasonable observer would believe government endorses religion no longer matters
  - “Historical practices and understandings” are what matter
- Majority vs Dissent: Differing views on the facts
  - Majority: Prayer was private and quiet, during brief lull in duties
  - Dissent: Coach led students in public prayer, invited others to join

# *Carson v. Makin*

- Majority: This is an anti-discrimination case
- “Unremarkable principles”
- “A State need not subsidize private education, but once a state decides to do so, it cannot disqualify some private schools solely because they are religious.”
- To do so “effectively penalizes the free exercise of religion”
- Establishment Clause is not problem:
  - Independent private choices
  - “A neutral benefit program in which public funds flow to religious organizations through the independent choices of private recipients does not offend the Establishment Clause.”

# Carson v. Makin

- Dissent: Majority all but ignores the Establishment Clause and undermines the play in the joints
- Point of the religion clauses
  - Avoid bitter conflicts that had plagued Europe resulting from union of church and state
  - Point was to ensure that “no religion be sponsored or favored, none commanded, and none inhibited”
  - Goal of “avoiding religious strife”
- States had “play in the joints” that allowed states to decide not to fund religious activity, if they wanted
- For the first time, “may” becomes “must” in the context of funding through private choices

# *Carson v. Makin*

- **Major doctrinal shift** – “What a difference 5 years makes”
  - “The Court continues to dismantle the separation between church and state that the Framers sought to build.”
- **Incremental but steady**
  - Trinity Lutheran
  - Espinoza
- **What comes next:** Must a “school district that pays for public schools . . . pay equivalent funds to parents who wish to send their children to religious schools?”

# Shadow Docket

# Shadow Docket

- Difference between merits cases and everything else
- George W. Bush and Obama administrations sought cert before judgment 4 times (although only in 2 distinct cases) and sought 8 stays
- Trump administration sought stays on 21 occasions, cert before judgment 9 times, and requested mandamus relief in 3 cases
- Critiques of the shadow docket
- Does it make a difference?



## Shadow Docket

“Today’s ruling illustrates just how far the Court’s ‘shadow-docket’ decisions may depart from the usual principles of appellate process. That ruling . . . is of great consequence. Yet the majority has acted without any guidance from the Court of Appeals—which is right now considering the same issues. It has reviewed only the most cursory party submissions, and then only hastily. And it barely bothers to explain its conclusion—that a challenge to an obviously unconstitutional abortion regulation backed by a wholly unprecedented enforcement scheme is unlikely to prevail. In all these ways, the majority’s decision is emblematic of too much of this Court’s shadow docket decision-making—which every day becomes more unreasoned, inconsistent, and impossible to defend.”

***– Justice Kagan (dissenting in *Whole Woman’s Health v. Jackson*, 11/1/2021)***

## Shadow Docket

“The catchy and sinister term ‘shadow docket’ has been used to portray the court as having been captured by a dangerous cabal that resorts to sneaky and improper methods to get its ways. . . . This portrayal feeds unprecedented efforts to intimidate the court and to damage it as an independent institution.”

– *Justice Alito (speech on 9/30/2021)*



# *NetChoice, LLC v. Paxton*

## Social media regulation on the shadow docket

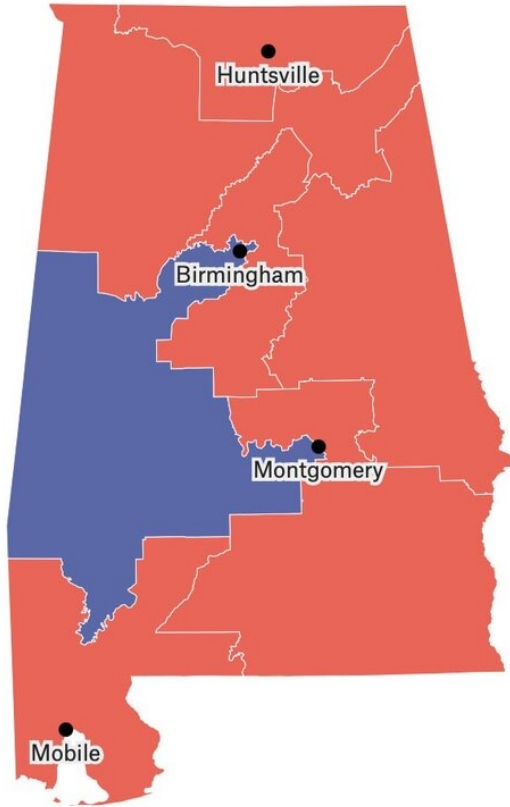


# *NetChoice, LLC v. Paxton*

## **Social media regulation on the shadow docket**

- Texas enacts law banning social media platforms from “censoring” users based on their “viewpoint.”
  - Governor Abbott: “It is now law that conservative viewpoints in Texas cannot be banned on social media.”
- Social media companies sue, claiming that the law burdens their own First Amendment rights.
- Supreme Court stays law by a 5-4 vote.
  - Alito, Gorsuch, Thomas are sympathetic to Texas’ position.
  - Kagan dissents for unexplained reasons.

# Merrill v. Milligan and the Shadow Docket



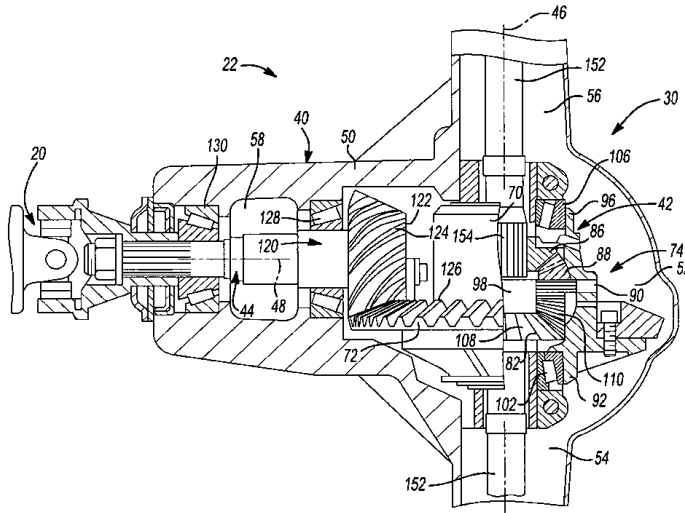
- Plaintiffs win a unanimous ruling from a three-judge federal that Alabama’s congressional redistricting plan violates the Voting Rights Act.
- Alabama seeks an emergency stay.
- In a 5-4 decision, the Court grants the stay.
- Justice Kavanaugh claims the Court is not making any new law and says Justice Kagan’s “catchy but worn-out rhetoric about the ‘shadow docket’” is “off target.”
- Chief Justice Roberts says he would not grant the stay, but would grant certiorari to clarify Voting Rights Act jurisprudence.
- Justice Kagan strongly criticizes the use of the shadow docket to make new law.

# Cases – Next Term

# American Axle – Can laws of nature be patented?

- Fiercest dispute in patent law: what can be patented?
  - **Software patents:** Can inventor obtain patent on a series of abstract software steps?
  - **Medical patents:** Can inventor obtain patent on diagnostic methods that depends on laws of nature?
- Supreme Court cases (*Bilski*, *Mayo*, *Alice*) resolve nothing
- Federal Circuit judges constantly at odds

# American Axle – Can laws of nature be patented?



**Fig-3**

- Invention: matching mass and stiffness of liner to vibration frequencies.
  - Hooke's law relates mass and stiffness to frequency.
  - Is this a patent on, or an application of, Hooke's law?
    - 6-6 vote in Federal Circuit

## *American Axle* – Can laws of nature be patented?

- Solicitor General recommends granting certiorari and holding that invention is patentable.
- Grant of certiorari is imminent.
- Court could apply Section 101 precedents, or could veer in new direction.

# *Affirmative Action and College Admissions*

- Case was brought by Students for Fair Admissions, contending that Harvard 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 for certiorari – seeks to overrule Grutter:
  - “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 grants review and pairs with a case upholding UNC admissions policies



# Haaland v. Brackeen

- Challenge to the 1978 Indian Child Welfare Act brought by Texas and individuals.
- Theories
  - Article I
  - Equal Protection
  - Anti-Commandeering
  - Nondelegation
- In a 325-page set of opinions, Fifth Circuit upholds many provisions, strikes down a few.
- All parties petition for cert.



## 303 *Creative v. Elenis*

- *Masterpiece Cakeshop* Part II
  - Another challenge to Colorado’s anti-discrimination in public accommodations law
- Petitioner wants to say that she won’t design wedding websites for same-sex marriages on her professional website
- Broad QP: “Whether applying a public-accommodation law to compel an artist to speak or stay silent violates the Free Speech Clause of the First Amendment.”
  - Will this open the door to discrimination in public accommodations, on First Amendment groups?

# Questions & Answers

# Our Panel



## Ian Heath Gershengorn

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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. In 2018, she was named an "Appellate MVP" by *Law360*, which recognizes the five attorneys in the country "who had extraordinary wins and contributed most to their practice area in the past year." 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. 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.



## Zachary C. Schauf

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Zachary C. Schauf is a litigator in the firm's Energy and Appellate and Supreme Court practices who helps clients resolve their most difficult legal problems, particularly in highly regulated industries and in complex commercial disputes. He has been the primary author of winning appellate briefs and critical motions in courts nationwide, from the United States Supreme Court and federal appellate courts, to state trial courts, to administrative agencies.

Mr. Schauf has particular experience in the energy sector, defending merger approvals, innovative clean energy programs, and infrastructure initiatives against constitutional challenges. Clients in other highly regulated industries also rely on Mr. Schauf's advocacy, including financial services, communications, hospitality, automotive, and Indian law.

Mr. Schauf maintains an active pro bono practice. He has helped a father obtain discretionary relief from removal to Haiti, secured the release from prison of a criminal defendant whose sentence was unlawful, and prevailed on behalf of a Wisconsin resident who was subject to a stop-and-frisk that violated the Fourth Amendment. In the Supreme Court, Mr. Schauf has represented Arizona's independent redistricting commission, a capital defendant challenging his death sentence, and individuals facing abusive government forfeitures, among others. In Mr. Schauf's amicus practice, he has advocated on behalf of the European Commission, immigrants seeking discretionary relief from removal, and children sentenced to life in prison.

Mr. Schauf received his JD, summa cum laude, from Harvard Law School, where he graduated first in his class and served as president of the Harvard Law Review.

Mr. Schauf clerked for Chief Judge Merrick B. Garland of the United States Court of Appeals for the DC Circuit and Justice Elena Kagan of the United States Supreme Court.



## 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. 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 frequently represents technology companies in matters involving First Amendment, antitrust, and consumer issues.

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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