

Supreme Court: *October Term 2022*

Federal Bar Association of San Diego
July 31, 2023

Erwin Chemerinsky
Dean and Jesse H. Choper Distinguished Professor of Law
University of California, Berkeley School of Law

I. Affirmative action

Students for Fair Admissions Inc. v. President & Fellows of Harvard College, 143 S.Ct. ____ (June 29, 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. Civil rights litigation

Groff v. DeJoy, 143 S.Ct. ____ (June 29, 2023). Title VII requires an employer that denies a religious accommodation to show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.

III. Criminal Law

Jones v. Hendrix, 143 S.Ct. ____ (June 22, 2023). The saving clause in 28 U.S.C. § 2255(e) does not allow a prisoner asserting an intervening change in the interpretation of a criminal statute to circumvent the Antiterrorism and Effective Death Penalty Act of 1996's restrictions on second or successive Section 2255 motions by filing a habeas petition under Section 2241.

Samia v. United States, 143 S.Ct. ____ (June 23, 2023). The admission of a nontestifying codefendant's confession did not violate the Sixth Amendment's confrontation clause where the confession as modified did not directly inculcate the defendant but used the descriptor "other person" and the jury was instructed to consider the confession only as to the codefendant.

IV. 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. ____ (June 27, 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.

V. Executive power – and state challenges to it

U.S. v. Texas, 143 S.Ct. ____ (June 23, 2023). Texas and Louisiana lack Article III standing to challenge immigration-enforcement guidelines promulgated by the Secretary of Homeland Security that prioritize the arrest and removal of certain noncitizens from the United States.

Biden v. Nebraska, 143 S.Ct. ____ (June 30, 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.

VI. First Amendment: speech

Counterman v. Colorado, 143 S.Ct. ____ (June 27, 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. ____ (June 30, 2023). The First Amendment prohibits Colorado from forcing a website designer to create expressive designs speaking messages with which the designer disagrees.

VII. Indian Child Welfare Act

Haaland v. Brackeen, 143 S.Ct. ____ (June 16, 2023). (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.

VIII. Personal jurisdiction

Mallory v. Norfolk Southern Railway Co., 143 S.Ct. ____ (June 27, 2023). Whether the due process clause of the 14th Amendment prohibits a state from requiring a corporation to consent to personal jurisdiction to do business in the state.