

U.S. Supreme Court Round-Up

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The Supreme Court Round-Up previews upcoming cases, summarizes opinions, and tracks the actions of the Office of the Solicitor General. Each entry contains a description of the case, as well as a substantive analysis of the Court's actions.

Cases Scheduled For Oral Argument

OCTOBER CALENDAR

1. ***Williams v. Washington*, No. 23-191 (Ala., 387 So. 3d 138; cert. granted Jan. 12, 2024; argument on Oct. 7, 2024).** The Question Presented is: Whether exhaustion of state administrative remedies is required to bring claims under 42 U.S.C. § 1983 in state court.
2. ***Royal Canin U.S.A., Inc. v. Wullschleger*, No. 23-677 (8th Cir., 75 F.4th 918; cert. granted Apr. 29, 2024; argument on Oct. 7, 2024).** The Questions Presented are: (1) Whether a post-removal amendment of a complaint can defeat federal question subject matter jurisdiction; and (2) Whether such a post-removal amendment of a complaint precludes a district court from exercising supplemental jurisdiction over the plaintiff's remaining state-law claims pursuant to 28 U.S.C. § 1367.
3. ***Garland v. VanDerStok*, No. 23-852 (5th Cir., 86 F.4th 179; cert. granted Apr. 22, 2024; argument on Oct. 8, 2024).** The Questions Presented are: (1) Whether "a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive," 27 C.F.R. § 478.11, is a "firearm" regulated by the Gun Control Act of 1968; and (2) Whether "a partially complete, disassembled, or nonfunctional frame or receiver" that is "designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver," *id.* § 478.12(c), is a "frame or receiver" regulated by the Act.

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4. **Lackey v. Stinnie, No. 23-621 (4th Cir., 77 F.4th 200; cert. granted Apr. 22, 2024; argument on Oct. 8, 2024).** The Questions Presented are: (1) Whether a party must obtain a ruling that conclusively decides the merits in its favor, as opposed to merely predicting a likelihood of later success, to prevail on the merits under 42 U.S.C. § 1988; and (2) Whether a party must obtain an enduring change in the parties' legal relationship from a judicial act, as opposed to a non-judicial event that moots the case, to prevail under § 1988.
5. **Glossip v. Oklahoma, No. 22-7466 (Okla. Crim. App., 529 P.3d 218; cert. granted Jan. 22, 2024; argument on Oct. 9, 2024).** The Questions Presented are: (1) Whether the State's suppression of the key prosecution witness's admission he was under the care of a psychiatrist and failure to correct that witness's false testimony about that care and related diagnosis violate due process; (2) Whether the entirety of the suppressed evidence must be considered when assessing the materiality of *Brady* and *Napue* claims; (3) Whether due process requires reversal, where a capital conviction is so infected with errors that the State no longer seeks to defend it; and (4) Whether the Oklahoma Court of Criminal Appeals' holding that the Oklahoma Post-Conviction Procedure Act precluded post-conviction relief is an adequate and independent state-law ground for the judgment.
6. **Medical Marijuana, Inc. v. Horn, No. 23-365 (2d Cir., 80 F.4th 130; cert. granted Apr. 29, 2024; argument on Oct. 15, 2024).** The Question Presented is: Whether economic harms resulting from personal injuries are injuries to "business or property by reason of" the defendant's acts for purposes of civil RICO.
7. **Bouarfa v. Mayorkas, No. 23-583 (11th Cir., 75 F.4th 1157; cert. granted Apr. 29, 2024; argument on Oct. 15, 2024).** The Question Presented is: Whether a visa petitioner may obtain judicial review when an approved petition is revoked on the basis of nondiscretionary criteria.
8. **Bufkin v. McDonough, No. 23-713 (Fed. Cir., 75 F.4th 1368; cert. granted Apr. 29, 2024; argument on Oct. 16, 2024).** The Question Presented is: Whether the Veterans Court must ensure that the benefit-of-the-doubt rule was properly applied during the claims process in order to satisfy 38 U.S.C. § 7261(b)(1), which directs the Veterans Court to "take due account" of the VA's application of that rule?
9. **San Francisco v. EPA, No. 23-753 (9th Cir., 75 F.4th 1074; cert. granted May 28, 2024; argument on Oct. 16, 2024).** The Question Presented is: Whether the Clean Water Act allows EPA (or an authorized state) to impose generic prohibitions in National Pollutant Discharge Elimination System permits that subject permit holders to enforcement for exceedances of water quality standards without identifying specific limits to which their discharges must conform.

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NOVEMBER CALENDAR

10. ***Wisconsin Bell, Inc. v. United States ex rel. Heath*, No. 23-1127 (7th Cir., 92 F.4th 654; cert. granted June 17, 2024; argument on Nov. 4, 2024).** The Question Presented is: Whether reimbursement requests submitted to the E-rate program established by the Federal Communications Commission to provide discounted telecommunications services to schools and libraries—but administered by a private, nonprofit corporation and funded entirely by contributions from private telecommunications carriers—are “claims” under the False Claims Act.
11. ***Advocate Christ Medical Center v. Becerra*, No. 23-715 (D.C. Cir., 80 F.4th 346; cert. granted June 10, 2024; argument on Nov. 5, 2024).** The Question Presented is: Whether the phrase “entitled . . . to benefits,” used twice in the same sentence of the Medicare Act, means the same thing for Medicare part A and SSI, such that it includes all who meet basic program eligibility criteria, whether or not benefits are actually received.
12. ***E.M.D. Sales, Inc. v. Carrera*, No. 23-217 (4th Cir., 75 F.4th 345; CVSG Dec. 11, 2023; summary reversal recommended May 7, 2024; cert. granted June 17, 2024; argument on Nov. 5, 2024).** The Question Presented is: Whether the burden of proof that employers must satisfy to demonstrate the applicability of an FLSA exemption is a mere preponderance of the evidence, as six circuits hold, or clear and convincing evidence, as the Fourth Circuit holds.
13. ***Facebook, Inc. v. Amalgamated Bank*, No. 23-980 (9th Cir., 87 F.4th 934; cert. granted June 10, 2024; argument on Nov. 6, 2024).** The Question Presented is: Whether risk disclosures are false or misleading when they do not disclose that a risk has materialized in the past, even if that past event presents no known risk of ongoing or future business harm.
14. ***Velazquez v. Garland*, No. 23-929 (10th Cir., 88 F.4th 1301; cert. granted July 2, 2024; argument on Nov. 12, 2024).** The Question Presented is: Whether, when a noncitizen’s voluntary-departure period ends on a weekend or public holiday, is a motion to reopen filed the next business day sufficient to avoid the penalties for failure to depart.
15. ***Delligatti v. United States*, No. 23-825 (2d Cir., 83 F.4th 113; cert. granted June 3, 2024; argument on Nov. 12, 2024).** The Question Presented is: Whether attempted murder in aid of racketeering, 18 U.S.C. § 1959(a)(5), a crime that requires proof of bodily injury or death, but can be committed by failing to take action, has as an element the use, attempted use, or threatened use of physical force.
16. ***NVIDIA Corp. v. E. Ohman J:or Fonder AB*, No. 23-970 (9th Cir., 81 F.4th 918; cert. granted June 17, 2024; argument on Nov. 13, 2024).** The Questions Presented are: (1) Whether plaintiffs seeking to allege scienter under the Private Securities Litigation Reform Act based on allegations about internal company documents must plead with particularity the contents of those documents; and (2) Whether plaintiffs can satisfy the Act’s falsity requirement by relying on an expert opinion to substitute for particularized allegations of fact.

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CASES AWAITING ARGUMENT DATE

17. ***Kousisis v. United States*, No. 23-909 (3d Cir., 82 F.4th 230; cert. granted June 17, 2024).** The Questions Presented are: (1) Whether deception to induce a commercial exchange can constitute mail or wire fraud, even if inflicting economic harm on the alleged victim was not the object of the scheme; (2) Whether a sovereign’s statutory, regulatory, or policy interest is a property interest when compliance is a material term of payment for goods or services; and (3) Whether all contract rights are “property.”
18. ***United States v. Skrmetti*, No. 23-477 (6th Cir., 83 F.4th 460; cert. granted June 24, 2024).** The Question Presented is: Whether Tennessee Senate Bill 1, which prohibits all medical treatments intended to allow “a minor to identify with, or live as, a purported identity inconsistent with the minor’s sex” or to treat “purported discomfort or distress from a discordance between the minor’s sex and asserted identity,” Tenn. Code Ann. § 68-33-103(a)(1), violates the Equal Protection Clause of the Fourteenth Amendment.
19. ***United States v. Miller*, No. 23-824 (10th Cir., 71 F.4th 1247; cert. granted June 24, 2024).** The Question Presented is: Whether a bankruptcy trustee may avoid a debtor’s tax payment to the United States under 11 U.S.C. § 544(b)(1)—which permits a trustee to avoid any pre-petition transfer of the debtor’s property that would be voidable “under applicable law” outside bankruptcy—when no actual creditor could have obtained relief under the applicable state fraudulent-transfer law outside of bankruptcy.
20. ***Feliciano v. Department of Transportation*, No. 23-861 (Fed. Cir., 2023 WL 3449138; cert. granted June 24, 2024).** The Question Presented is: Whether a federal civilian employee called or ordered to active duty under a provision of law during a national emergency is entitled to differential pay even if the duty is not directly connected to the national emergency.
21. ***Hungary v. Simon*, No. 23-867 (D.C. Cir., 77 F.4th 1077; cert. granted June 24, 2024).** The Questions Presented are: (1) Whether historical commingling of assets suffices to establish that proceeds of seized property have a commercial nexus with the United States under the expropriation exception to the Foreign Sovereign Immunities Act; (2) Whether a plaintiff must make out a valid claim that an exception to the Foreign Sovereign Immunities Act applies at the pleading stage, rather than merely raising a plausible inference; and (3) Whether a sovereign defendant bears the burden of producing evidence to affirmatively disprove that the proceeds of property taken in violation of international law have a commercial nexus with the United States under the expropriation exception to the Foreign Sovereign Immunities Act.
22. ***Dewberry Group, Inc. v. Dewberry Engineers Inc.*, No. 23-900 (4th Cir., 77 F.4th 265; cert. granted June 24, 2024).** The Question Presented is: Whether an award of the “defendant’s profits” under the Lanham Act, 15 U.S.C. § 1117(a), can include an order for the defendant to disgorge the distinct profits of legally separate non-party corporate affiliates.

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23. ***Seven County Infrastructure Coalition v. Eagle County*, No. 23-975 (D.C. Cir., 82 F.4th 1152; cert. granted June 24, 2024)**. The Question Presented is: Whether the National Environmental Policy Act requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority.
24. ***Stanley v. City of Sanford*, No. 23-997 (11th Cir., 83 F.4th 1333; cert. granted June 24, 2024)**. The Question Presented is: Whether, under the Americans with Disabilities Act, a former employee—who was qualified to perform her job and who earned post-employment benefits while employed—loses her right to sue over discrimination with respect to those benefits solely because she no longer holds her job.
25. ***Hewitt v. United States*, No. 23-1002 (5th Cir., 92 F.4th 304; cert. granted July 2, 2024), consolidated with *Duffey v. United States*, No. 23-1150 (5th Cir., 92 F.4th 304; cert. granted July 2, 2024)**. The Question Presented is: Whether the First Step Act’s sentencing reduction provisions apply to a defendant originally sentenced before the First Step Act’s enactment when that original sentence is judicially vacated and the defendant is resentenced to a new term of imprisonment after the First Step Act’s enactment.
26. ***FDA v. Wages and White Lion Investments, L.L.C.*, No. 23-1038 (5th Cir., 90 F.4th 357; cert. granted July 2, 2024)**. The Question Presented is: Whether the court of appeals erred in setting aside FDA’s denial of applications for authorization to market new e-cigarette products as arbitrary and capricious.
27. ***Free Speech Coalition, Inc. v. Paxton*, No. 23-1122 (5th Cir., 95 F.4th 263; cert. granted July 2, 2024)**. The Question Presented is: Whether the court of appeals erred as a matter of law in applying rational-basis review to a law burdening adults’ access to sexual materials, instead of strict scrutiny.
28. ***Waetzig v. Halliburton Energy Services, Inc.*, No. 23-971 (10th Cir., 82 F.4th 918; cert. granted Oct. 4, 2024)**. The Question Presented is: Whether a Rule 41 voluntary dismissal without prejudice is a “final judgment, order, or proceeding” under Rule 60(b).
29. ***Cunningham v. Cornell University*, No. 23-1007 (2d Cir., 86 F.4th 961; cert. granted Oct. 4, 2024)**. The Question Presented is: Whether a plaintiff can state an ERISA claim by alleging that a plan fiduciary engaged in a transaction constituting a furnishing of goods, services, or facilities between the plan and a party in interest, as proscribed by 29 U.S.C. § 1106(a)(1)(C), or whether a plaintiff must plead and prove additional elements and facts not contained in the provision’s text.
30. ***Ames v. Ohio Department of Youth Services*, No. 23-1039 (6th Cir., 87 F.4th 822; cert. granted Oct. 4, 2024)**. The Question Presented is: Whether, in addition to pleading the other elements of Title VII, a majority-group plaintiff must show “background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority.”

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31. ***Thompson v. United States*, No. 23-1095 (7th Cir., 89 F.4th 1010; cert. granted Oct. 4, 2024)**. The Question Presented is: Whether 18 U.S.C. § 1014, which prohibits making a “false statement” for the purpose of influencing certain financial institutions and federal agencies, also prohibits making a statement that is misleading but not false.
32. ***Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, No. 23-1141 (1st Cir., 91 F.4th 511; cert. granted Oct. 4, 2024)**. The Questions Presented are: (1) Whether the production and sale of firearms in the United States is the “proximate cause” of alleged injuries to the Mexican government stemming from violence committed by drug cartels in Mexico; and (2) Whether the production and sale of firearms in the United States amounts to “aiding and abetting” illegal firearms trafficking because firearms companies allegedly know that some of their products are unlawfully trafficked.
33. ***FDA v. R.J. Reynolds Vapor Co.*, No. 23-1187 (5th Cir., 2024 WL 1945307; cert. granted Oct. 4, 2024)**. The Question Presented is: Whether under the statute permitting review of the FDA’s denial of authorization for a new tobacco product, 21 U.S.C. § 3871(a)(1), a manufacturer may file a petition for review in a circuit (other than the D.C. Circuit) where it neither resides nor has its principal place of business, if the petition is joined by a seller of the manufacturer’s products that is located within that circuit.
34. ***CC/Devas (Mauritius) Limited v. Antrix Corp. Ltd.*, No. 23-1201 (9th Cir., 2023 WL 4884882; cert. granted Oct. 4, 2024), consolidated with *Devas Multimedia Private Limited v. Antrix Corp. Ltd.*, No. 24-17 (9th Cir., 2024 WL 1945307; cert. granted Oct. 4, 2024)**. The Question Presented is: Whether plaintiffs must prove minimum contacts before federal courts may assert personal jurisdiction over foreign states sued under the Foreign Sovereign Immunities Act.
35. ***McLaughlin Chiropractic Associates, Inc. v. McKesson Corporation*, No. 23-1226 (9th Cir., 2023 WL 7015279; cert. granted Oct. 4, 2024)**. The Question Presented is: Whether the Hobbs Act, 28 U.S.C. § 2342(1), requires a district court to accept the FCC’s legal interpretation of the Telephone Consumer Protection Act.
36. ***Barnes v. Felix*, No. 23-1239 (5th Cir., 91 F.4th 393; cert. granted Oct. 4, 2024)**. The Question Presented is: Whether courts should look only to “the moment of the threat” when evaluating an excessive force claim under the Fourth Amendment.
37. ***BLOM Bank SAL v. Honickman*, No. 23-1259 (2d Cir., 2024 WL 852265; cert. granted Oct. 4, 2024)**. The Question Presented is: Whether Rule 60(b)(6)’s stringent standard applies to a post-judgment request to vacate for the purpose of filing an amended complaint.

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38. ***Nuclear Regulatory Commission v. Texas*, No. 23-1300 (5th Cir., 78 F.4th 827; cert. granted Oct. 4, 2024), consolidated with *Interim Storage Partners, LLC v. Texas*, No. 23-1312 (5th Cir., 78 F.4th 827; cert. granted Oct. 4, 2024).** The Questions Presented are: (1) Whether the Hobbs Act, 28 U.S.C. § 2341 et seq., which authorizes a “party aggrieved” by an agency’s “final order” to petition for review in a court of appeals, 28 U.S.C. § 2344, allows nonparties to obtain review of claims asserting that an agency order exceeds the agency’s statutory authority; and (2) Whether the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq., and the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 et seq., permit the Nuclear Regulatory Commission to license private entities to temporarily store spent nuclear fuel away from the nuclear-reactor sites where the spent fuel was generated.
39. ***Perttu v. Richards*, No. 23-1324 (6th Cir., 96 F.4th 911; cert. granted Oct. 4, 2024).** The Question Presented is: Whether, under the Prison Litigation Reform Act, prisoners have a right to a jury trial concerning their exhaustion of administrative remedies when disputed facts regarding exhaustion are intertwined with the underlying merits of their claim.
40. ***Gutierrez v. Saenz*, No. 23-7809 (5th Cir., 93 F.4th 267; cert. granted Oct. 4, 2024).** The Question Presented is: Whether Article III standing requires a particularized determination that a specific state official will redress the plaintiff’s injury by following a favorable declaratory judgment.

Pending Petitions with Calls For The Views of The Solicitor General (“CVSG”)

1. ***Zilka v. City of Philadelphia*, No. 23-914 (Pa., 304 A.3d 1153; CVSG June 10, 2024).** The Question Presented is: Whether the Commerce Clause requires states to consider a taxpayer’s burden in light of the state tax scheme as a whole when crediting a taxpayer’s out-of-state tax liability as the West Virginia and Colorado Supreme Courts have held and this Court has suggested, or permits states to credit out-of-state state and local tax liabilities as discrete tax burdens, as the Pennsylvania Supreme Court held below.
2. ***Sunoco LP v. City and County of Honolulu*, No. 23-947 (Haw., 537 P.3d 1173; CVSG June 10, 2024), consolidated with *Shell PLC v. City and County of Honolulu*, No. 23-952 (Haw., 537 P.3d 1173; CVSG June 10, 2024).** The Question Presented is: Whether federal law precludes state-law claims seeking redress for injuries allegedly caused by the effects of interstate and international greenhouse-gas emissions on the global climate.

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3. ***Walen v. Bergum*, No. 23-969 (D.N.D., 700 F. Supp. 3d 759; CVSG June 10, 2024)**. The Questions Presented are: (1) Whether the district court erred by applying the incorrect legal standard when deciding that the legislature had good reasons and a strong basis to believe the subdistricts were required by the VRA; (2) Whether the district court erred by improperly weighing the evidence and granting inferences in favor of the moving party at summary judgment instead of setting the case for trial; and (3) Whether the district court erred when it found that the legislature’s attempted compliance with Section 2 of the VRA can justify racial sorting of voters into districts.
4. ***Alabama v. California*, No. 220158 (Original Jurisdiction; CVSG Oct. 7, 2024)**. The Question Presented is: Whether States may constitutionally seek to impose liability or obtain equitable relief premised on either emissions by or in nonconsenting States or the promotion, use, and/or sale of traditional energy products in or to nonconsenting States.
5. ***Landor v. Louisiana Department of Corrections & Public Safety*, No. 23-1197 (5th Cir., 82 F.4th 337; CVSG Oct. 7, 2024)**. The Question Presented is: Whether an individual may sue a government official in his individual capacity for damages for violations of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc et seq.
6. ***M & K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, No. 23-1209 (D.C. Cir., 92 F.4th 316; CVSG Oct. 7, 2024)**. The Question Presented is: Whether 29 U.S.C. § 1391’s instruction to compute liability for withdrawal from an underfunded multiemployer pension plan “as of the end of the plan year” requires the plan to base the computation on the actuarial assumptions to which its actuary subscribed at the end of the year, or allows the plan to use different actuarial assumptions that were adopted after the end of the year.
7. ***Mulready v. Pharmaceutical Care Management Association*, No. 23-1213 (10th Cir., 78 F.4th 1183; CVSG Oct. 7, 2024)**. The Questions Presented are: (1) Whether ERISA preempts state laws that regulate Pharmacy Benefit Managers by preventing them from cutting off rural patients’ access, steering patients to favored pharmacies, excluding pharmacies willing to accept their terms from preferred networks, and overriding State discipline of pharmacists; and (2) Whether Medicare Part D preempts state laws that limit the conditions Pharmacy benefit Managers may place on pharmacies’ participation in their preferred networks.

Supreme Court Statistics

Gibson Dunn has a longstanding, high-profile presence before the Supreme Court of the United States, appearing numerous times in the past decade in a variety of cases. Fifteen current Gibson Dunn lawyers have argued before the Supreme Court, and during the Court's nine most recent Terms, the firm has argued a total of 21 cases, including closely watched cases with far-reaching significance in the areas of intellectual property, securities, separation of powers, and federalism. Moreover, although the grant rate for petitions for certiorari is below 1%, Gibson Dunn's petitions have captured the Court's attention: Gibson Dunn has persuaded the Court to grant 40 petitions for certiorari since 2006.

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