

GIBSON DUNN

CA MCLE Blitz

January 7 – 9, 2025

Hosted by Gibson, Dunn & Crutcher



January 8, 2025

Supreme Court Roundup

Presenters:

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Overview of Topics Covered

01 October 2023 Term

02 October 2024 Term

03 Q&A

04 Attorney Profiles

October 2023 Term

October 2023 Term **Statistical Overview**

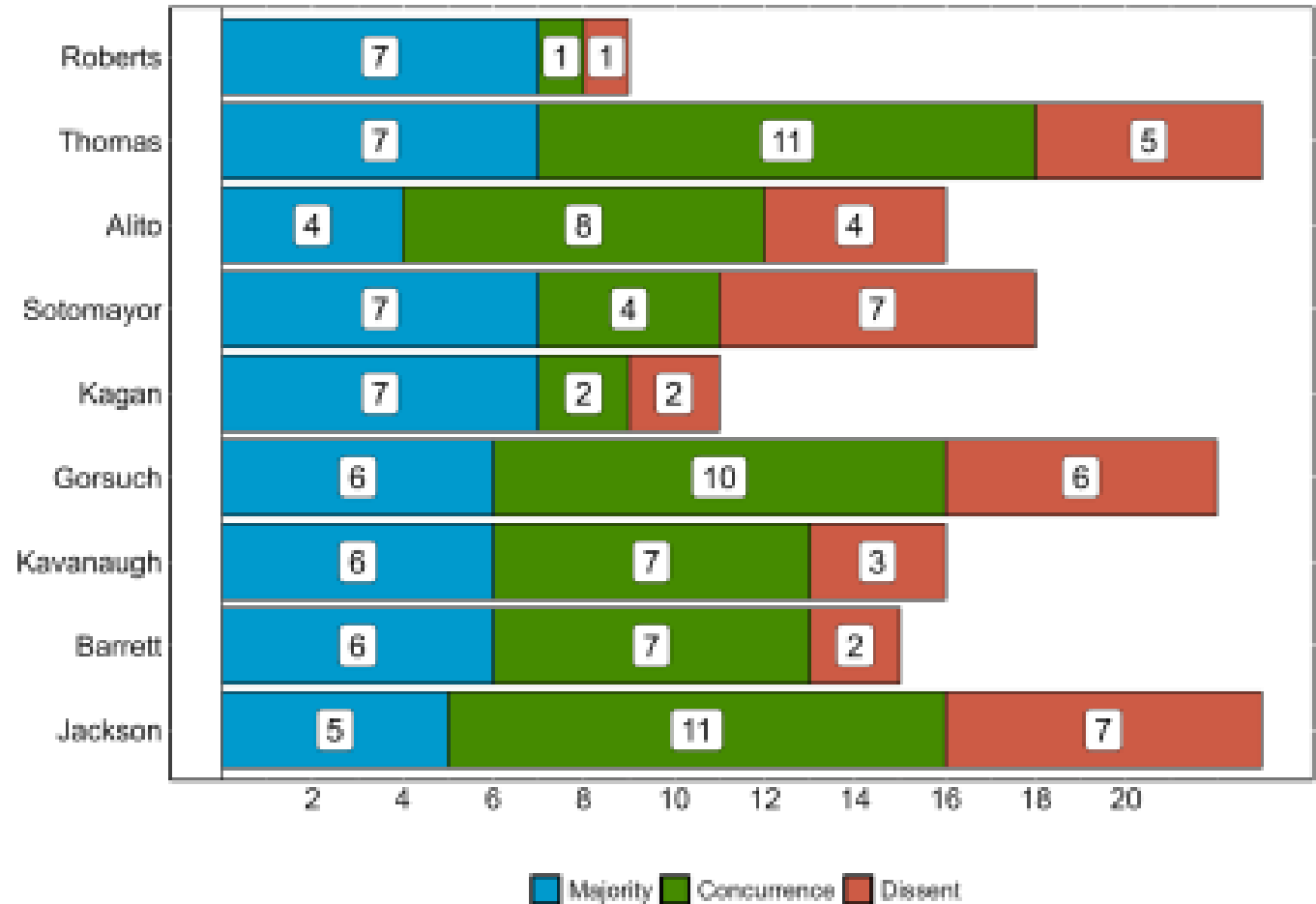
- **59 total decisions:**
 - 27 unanimous decisions
 - 22 6-3 decisions
 - Roughly 4100 cert. petitions
- **Most frequently in the majority:**
 - Chief Justice Roberts (96%), Justice Kavanaugh (95%), Justice Barrett (92%)
- **Least frequently in the majority:**
 - Justices Kagan, Sotomayor, and Jackson
 - Justices Kagan and Sotomayor tied at the bottom with 71%

October 2023 Term **Statistical Overview**

- This term saw more 6-3 decisions with blurred ideological coalitions.
- Of the 22 6-3 decisions released this term, only half (11) maintained the established conservative versus liberal split.
- Most authored majority decisions:
 - Chief Justice Roberts, Justice Thomas, Justice Sotomayor, Justice Kagan (7).

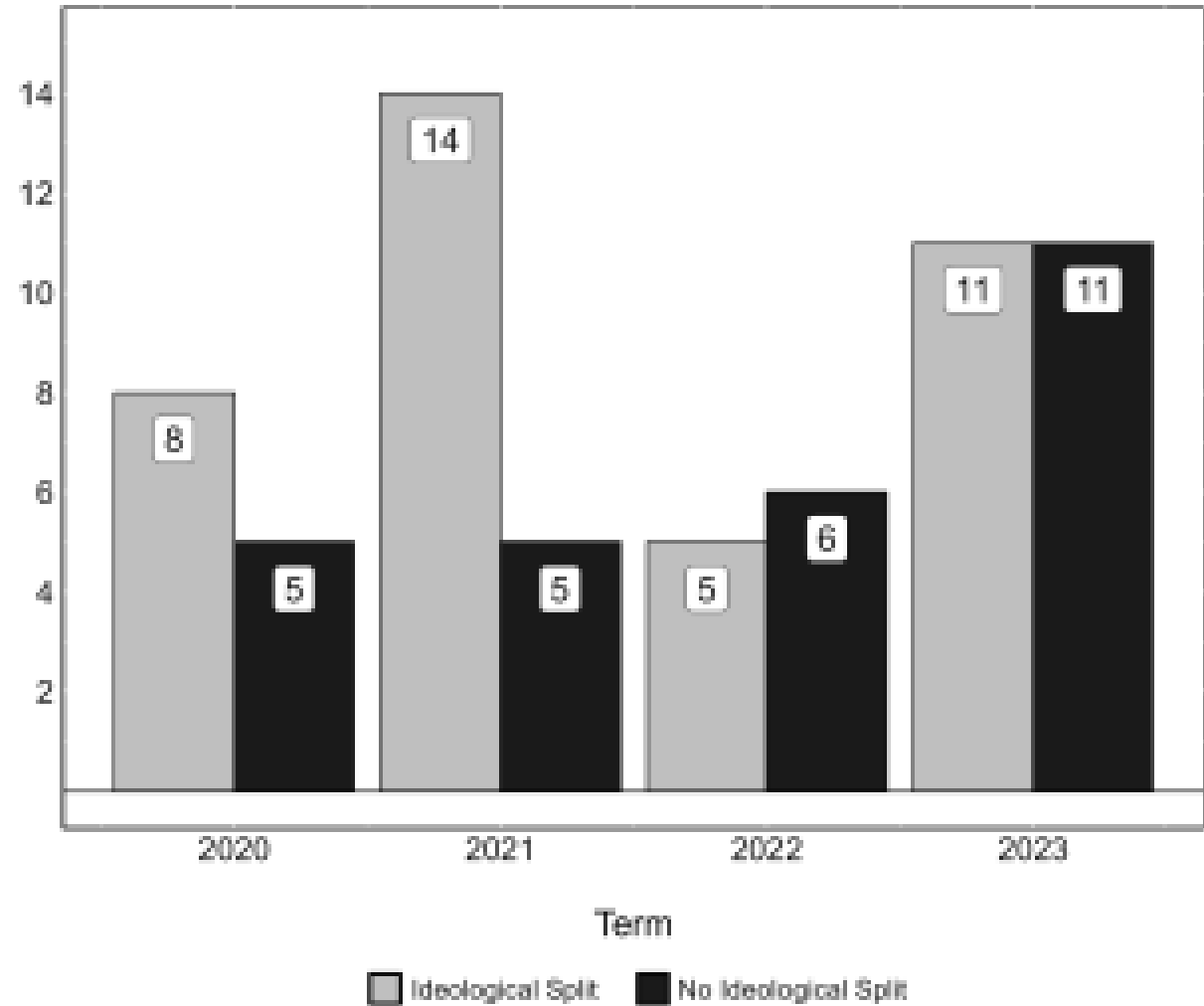
October 2023 Term **Statistical Overview**

Figure 19: Opinion Authorship by Justice (OT23)



















October 2023 Term **Statistical Overview**

Figure 18: Ideological Splits in (6-3) and (5-4) Cases (OT20-OT23)



October 2023 Term **Statistical Overview**

Table 29: Justice-Level Agreement (2023 Term)

								
	79.66							
	82.76	89.66						
	71.19	50.85	53.45					
	71.19	50.85	53.45	96.61				
	76.27	83.05	82.76	61.02	61.02			
	94.92	77.97	84.48	69.49	69.49	74.58		
	88.14	81.36	81.03	69.49	69.49	77.97	89.83	
	69.49	52.54	58.62	91.53	91.53	62.71	71.19	67.8

Note: Cell values represent percentage of cases where Justices coalesced similarly (Majority vs. Dissent) – Includes Per Curiam

October 2023

Term: Key Cases of Interest

Administrative Law

- *Loper Bright Enterprises v. Raimondo / Relentless, Inc. v. Dep't of Commerce*, June 28, 2024
- *SEC v. Jarkesy*, June 27, 2024

General Interest

- *National Rifle Association v. Vullo*, May 30, 2024
- *Trump v. United States*, July 1, 2024
- *City of Grants Pass v. Johnson*, June 28, 2024

IP/Media

- *Moody v. NetChoice, LLC and Paxton v. NetChoice*, July 1, 2024

Compliance

- *Murray v. UBS*, February 8, 2024

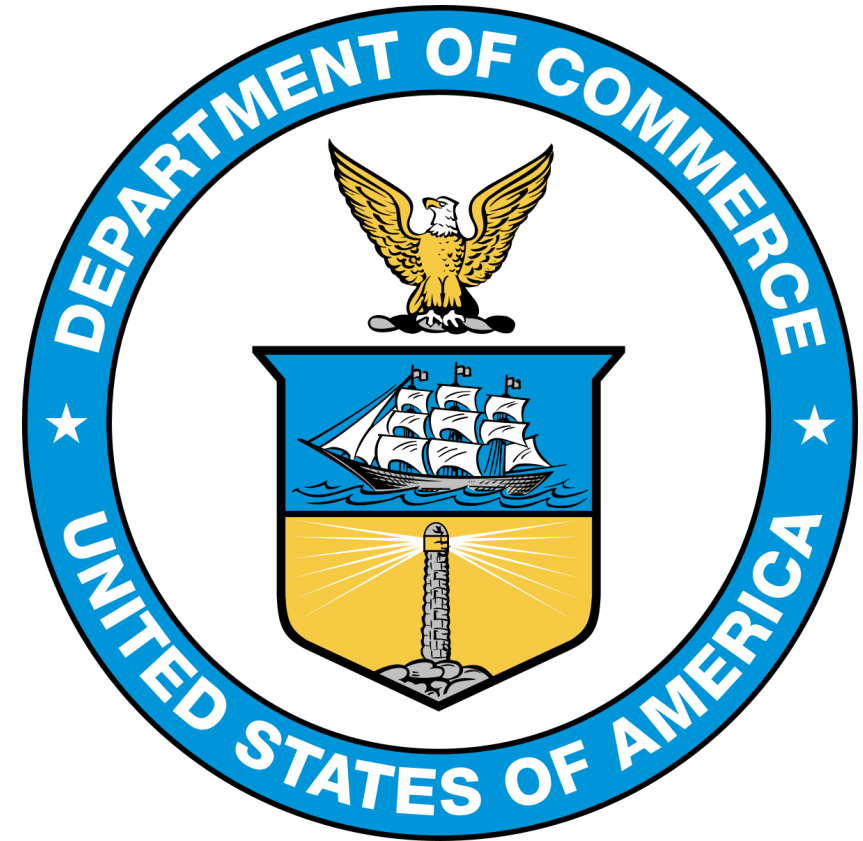
Loper Bright Enterprises v. Raimondo / Relentless, Inc. v. Dep't of Commerce

Holding:

The Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous; *Chevron* is overruled. (Roberts)

Concurrence: Thomas

Dissent: Kagan



SEC v. Jarkesy

Holding:

When the SEC seeks civil penalties against a defendant for securities fraud, the Seventh Amendment entitles the defendant to a jury trial. (Roberts)

Dissent: Sotomayor





NRATM

National Rifle Association v. Vullo

Holding:

The NRA plausibly alleged that respondent violated the First Amendment by coercing regulated entities to terminate their business relationships with the NRA in order to punish or suppress gun-promotion advocacy. (Sotomayor)

Concurrences: Gorsuch, Jackson

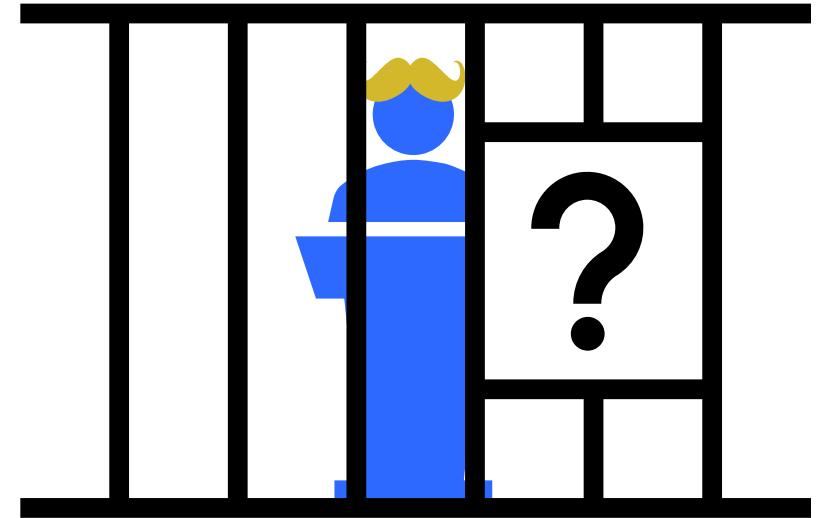
Trump v. United States

Holding:

Under the constitutional structure of separated powers, the nature of Presidential power entitles a former President to absolute immunity from criminal prosecution for actions within his conclusive and preclusive constitutional authority. And he is entitled to at least presumptive immunity from prosecution for all his official acts. There is no immunity for unofficial acts. (Roberts)

Concurrence: Thomas, Barrett

Dissent: Sotomayor, Jackson

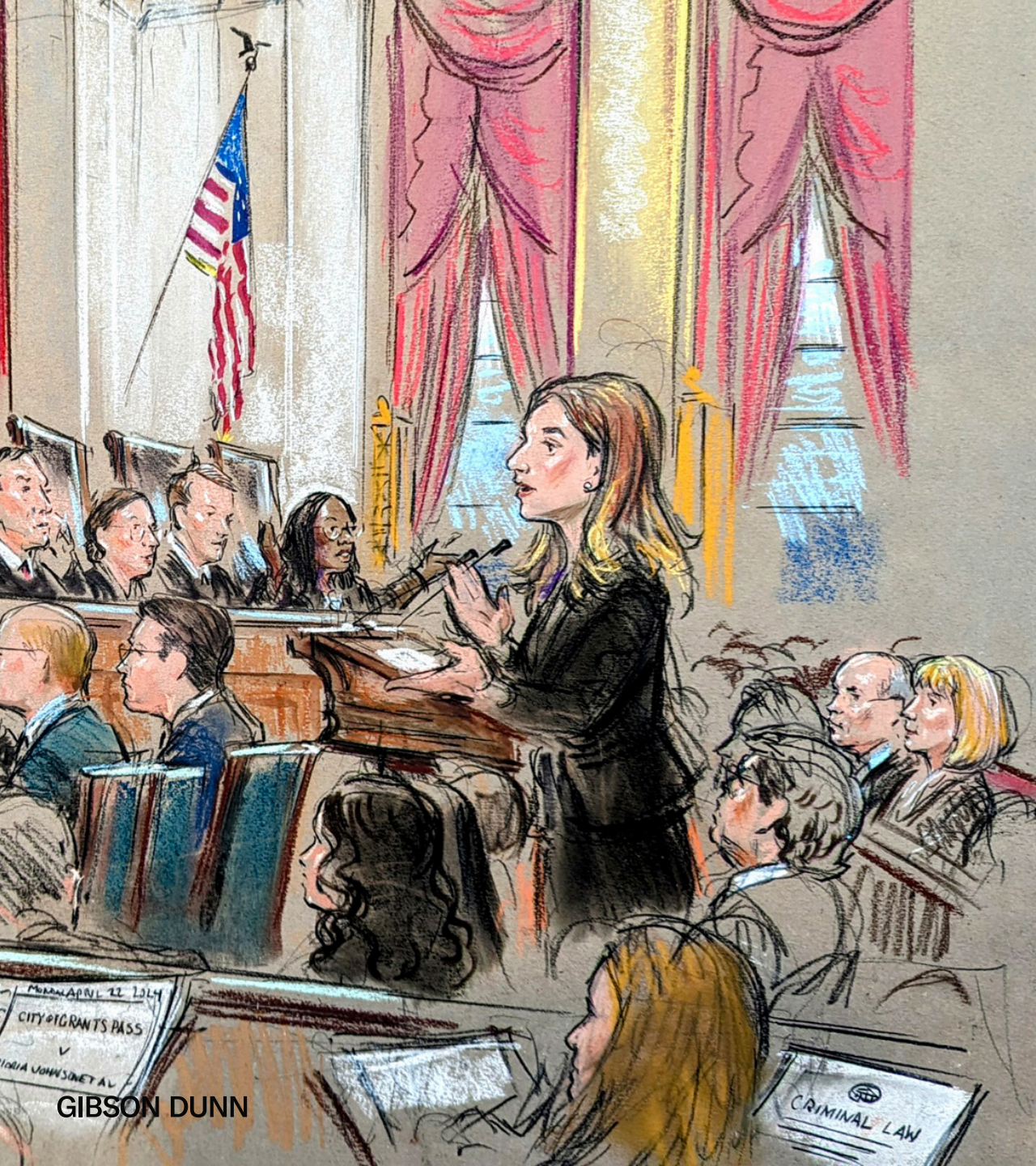


City of Grants Pass v. Johnson

Holding:

The enforcement of generally applicable laws regulating camping on public property does not constitute “cruel and unusual punishment” prohibited by the Eighth Amendment. (Gorsuch)

Dissent: Sotomayor



NetChoice



Moody v. NetChoice

Holding:

Neither the Eleventh Circuit nor the Fifth Circuit properly analyzed the facial First Amendment challenges to Florida and Texas laws regulating large internet platforms. That analysis should begin with an assessment of the state laws' scope, then decide which of the laws' applications violate the First Amendment, and measure them against the rest. (Kagan)

Concurrences: Barrett, Jackson, Thomas, Alito

Murray v. UBS

Holding:

A whistleblower seeking to invoke the protections of the Sarbanes-Oxley Act must prove that his protected activity was a contributing factor in the employer's unfavorable personnel action, but need not prove that his employer acted with "retaliatory intent." (Sotomayor)



October 2024 Term

October 2024

Term: Key Cases of Interest

Administrative Law

- *FCC v. Consumers' Research*

Procedure

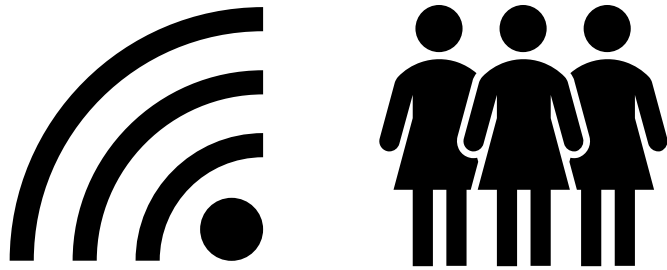
- *CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.*
- *Waetzig v. Halliburton Energy Servs., Inc.*

IP/Media

- *Free Speech Coalition, Inc. v. Paxton*
- *Dewberry Group, Inc. v. Dewberry Engineers Inc.*

Compliance

- *Kousisis v. United States*
- *Wisconsin Bell, Inc. v. United States ex rel. Heath*
- *Ames v. Ohio Dep't of Youth Services*



FCC v. Consumers’ Research

Issues:

1. Whether Congress violated the nondelegation doctrine by authorizing the Commission to determine, within the limits set forth in Section 254, the amount that providers must contribute to the Fund.
2. Whether the Commission violated the nondelegation doctrine by using the Administrator’s financial projections in computing universal service contribution rates.
3. Whether the combination of Congress’s conferral of authority on the Commission and the Commission’s delegation of administrative responsibilities to the Administrator violates the nondelegation doctrine.
4. Whether this case is moot in light of the challengers’ failure to seek preliminary relief before the Fifth Circuit.

CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.

Issue:

Whether plaintiffs must prove minimum contacts before federal courts may assert personal jurisdiction over foreign states sued under the Foreign Sovereign Immunities Act.



Waetzig v. Halliburton Energy Servs., Inc.

Issue:

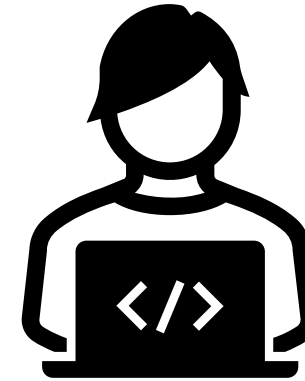
Whether a voluntary dismissal without prejudice under Federal Rule of Civil Procedure 41 is a “final judgment, order, or proceeding” under Federal Rule of Civil Procedure 60(b).



Free Speech Coalition v. Paxton

Issue:

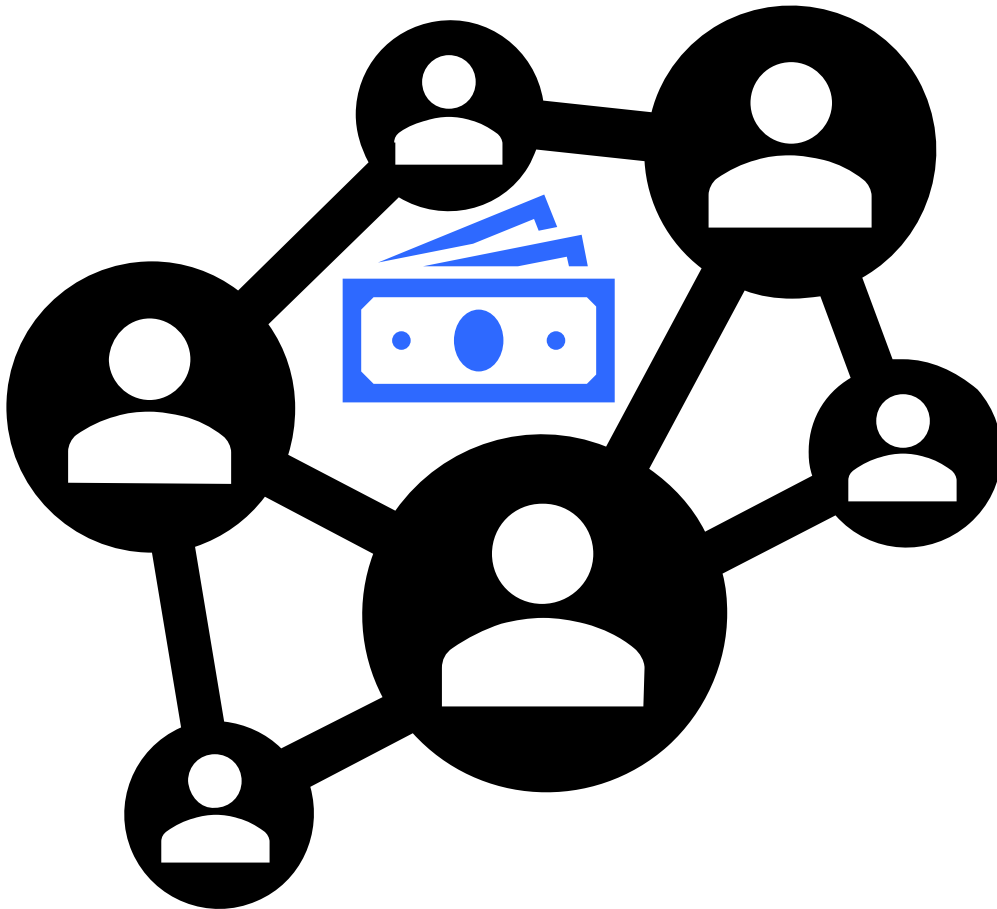
Whether the court of appeals erred as a matter of law in applying rational-basis review to a law burdening adults' access to sexual materials, instead of strict scrutiny.



Dewberry Group, Inc. v. Dewberry Engineers Inc.

Issue:

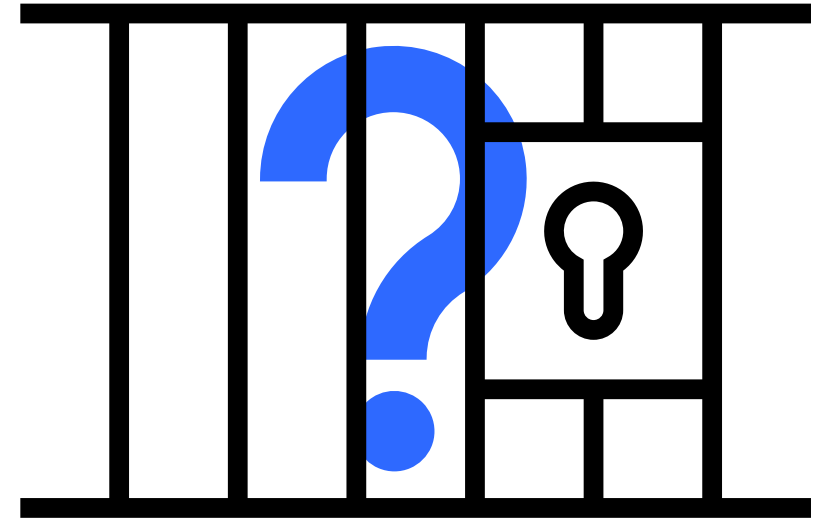
Whether an award of the “defendant’s profits” under the Lanham Act, 15 U.S.C. § 1117(a), can include an order for the defendant to disgorge the distinct profits of legally separate non-party corporate affiliates.



Kousisis v. United States

Issue:

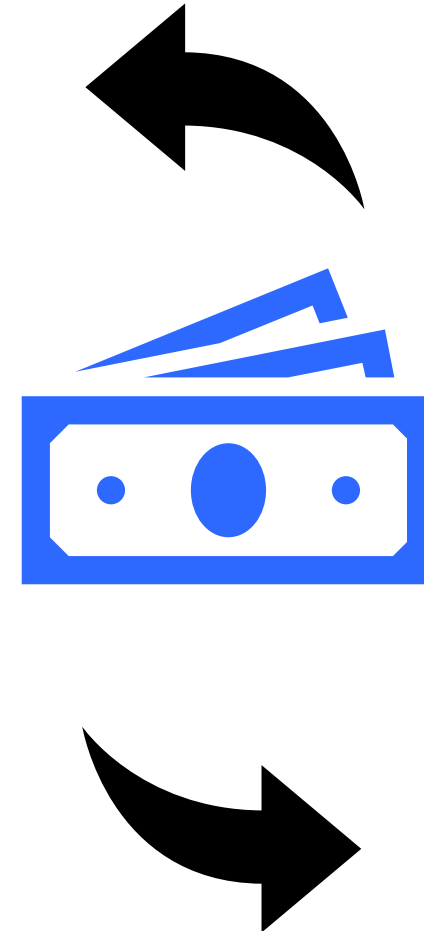
- 1) Whether deception to induce a commercial exchange can constitute mail or wire fraud, even if inflicting economic harm on the alleged victim was not the object of the scheme;
- 2) Whether a sovereign's statutory, regulatory, or policy interest is a property interest when compliance is a material term of payment for goods or services; and
- 3) Whether all contract rights are "property."



Wisconsin Bell, Inc. v. United States ex rel. Heath

Issue:

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.



TITLE

VII

Civil Rights Act

Ames v. Ohio Dep't of Youth Services

Issue:

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.”

October 2024 Term: Other High-Profile Cases

- ***Garland v. VanDerStok*** (argued October 8, 2024)
- ***United States v. Skrmetti*** (argued December 4, 2024)
- ***TikTok, Inc. v. Garland*** (argument January 10, 2025)
- ***Catholic Charities Bureau v. Wisconsin Labor & Industry Review Commissions*** (argument TBD)
- ***Shell PLC v. City & County of Honolulu*** (cert. pending)
- ***Peterson v. Doe*** (cert. pending)
- ***Hittle v. City of Stockton*** (cert. pending)

Q&A / Discussion

Attorney Profiles



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Samuel Eckman is a partner in the Los Angeles office of Gibson, Dunn & Crutcher. He is a member of the firm's Appellate and Constitutional Law and Class Actions practice groups.

Samuel has been recognized in *Best Lawyers: Ones to Watch® in America* for Appellate Practice (2022-2024), and by *Benchmark Litigation* as a “Future Star” (2025).

Before joining the firm, he served as a law clerk to the Honorable Antonin Scalia, Associate Justice of the U.S. Supreme Court, and the Honorable Alex Kozinski, then-Chief Judge of the U.S. Court of Appeals for the Ninth Circuit.

Samuel graduated with high honors from The University of Chicago Law School in 2013. While there, he served as editor-in-chief of *The University of Chicago Law Review*, and was selected as a Kirkland & Ellis Scholar and as a member of the Order of the Coif. He also was awarded a John M. Olin Student Fellowship in Law and Economics, and a Bradley Family Foundation Fellowship.

Samuel's full biography is available [here](#).

EDUCATION

University of Chicago
Juris Doctor

University of Pittsburgh
Bachelor of Arts

University of Pittsburgh
Bachelor of Science

CLERKSHIPS

U.S. Supreme Court, Hon. Antonin Scalia

U.S. Court of Appeals, 9th Circuit



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Jacob Spencer is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher. He practices in the firm's Appellate and Constitutional Law, Transnational Litigation, and Administrative Law and Regulatory Practice groups. His practice focuses on high-stakes litigation at every stage of the judicial system, from initial pleadings to the Supreme Court. Jacob has significant experience representing and advising clients in the technology, telecommunications, food and beverage, transportation, energy, and securities industries. Jacob was recognized as a "Future Star" by *Benchmark Litigation*, and as a "Rising Star" in Telecommunications by *Law360*.

Jacob clerked for U.S. Supreme Court Justice Clarence Thomas, Judge Diarmuid O'Scannlain of the U.S. Court of Appeals for the Ninth Circuit, and Judge Jerry E. Smith of the U.S. Court of Appeals for the Fifth Circuit.

Jacob received his law degree, *magna cum laude*, from Harvard Law School in 2012, where he was Deputy Editor-in-Chief of the *Harvard Journal of Law and Public Policy* from 2011-2012. He received his undergraduate degree in classics and religious studies, *magna cum laude*, from Washington & Lee University in 2006.

Jacob is admitted to practice law in the Commonwealth of Virginia and the District of Columbia.

Jacob's full biography is available [here](#).

EDUCATION

Harvard University
Juris Doctor

Washington & Lee University
Bachelor of Arts

CLERKSHIPS

U.S. Supreme Court, Hon. Clarence Thomas

U.S. Court of Appeals, 9th Circuit

U.S. Court of Appeals, 5th Circuit

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