

D. Brook Bartlett Lecture
United States District Court for the Western District of Missouri
June 24, 2022

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I. Abortion

Whole Women's Health v. Jackson, 142 S.Ct. 522 (2021). State officials may be sued for injunctive relief only if they play a role in enforcing or implementing the law.

Dobbs v. Jackson Women's Health Organization, No. 19-1392 (argued on December 1, 2021). Whether all pre-viability prohibitions on elective abortions are unconstitutional.

II. Criminal law

Hemphill v. New York, 142 S.Ct. 681 (2022). The trial court's admission—over Hemphill's objection—of the plea allocution transcript of an unavailable witness violated Hemphill's Sixth Amendment right to confront the witnesses against him.

United States v. Tsarnaev, 142 S.Ct. 1024 (2022). District Court did not abuse its discretion by declining to include specific media-content question in juror questionnaire. A court of appeals cannot use its discretionary supervisory powers, if any, to supplant a district court's broad discretion to manage voir dire by prescribing specific lines of questioning. District Court did not abuse its discretion by excluding certain allegedly mitigating evidence at capital sentencing. Section of Federal Death Penalty Act that allowed exclusion of mitigating evidence if its probative value was outweighed by risk of unfair prejudice, confusing the issues, or misleading the jury did not violate Eighth Amendment.

III. Civil rights

Rivas-Villegas v. Cortesluna, 142 S.Ct. 4 (2021). Officer Rivas-Villegas is entitled to qualified immunity in this excessive force action brought under 42 U. S. C. §1983; the 9th Circuit's holding that circuit precedent "put him on notice that his conduct constituted excessive force" is reversed.

City of Tahlequah, Oklahoma v. Bond, 142 S.Ct. 9 (2021). Officers Girdner and Vick are entitled to qualified immunity in this excessive force action brought under 42 U. S. C. §1983; the 10th Circuit's contrary holding is not based on a single precedent finding a Fourth Amendment violation under similar circumstances.

Thompson v. Clark, 142 S.Ct. 1332 (2022). To demonstrate the favorable termination of a criminal prosecution for purposes of a Fourth Amendment claim under § 1983 for malicious prosecution, a plaintiff need only show that his prosecution ended without a conviction, and is not required to demonstrate that the prosecution ended with some affirmative indication of his innocence, such as an acquittal or a dismissal accompanied by a statement from the judge that the evidence was insufficient

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Vega v. Tekoh, No. 21-499 (argued April 13, 2022). Whether a plaintiff may state a claim for relief against a law enforcement officer under 42 U.S.C. § 1983 based simply on an officer’s failure to provide the warnings prescribed in *Miranda v. Arizona*.

IV. First Amendment – freedom of speech

City of Austin, Texas v. Reagan National Advertising of Texas, Inc., 142 S.Ct. 1464 (2022). The Austin city code’s distinction between on-premise signs, which may be digitized, and off-premise signs, which may not, is not a facially unconstitutional content-based regulation under *Reed v. Town of Gilbert*.

Shurtleff v. Boston, 142 S.Ct. 1583 (2022). City violated the First Amendment in refusing to allow a flag from a private group after having allowed 284 other flags to be raised at City Hall.

V. First Amendment: Religion

Carson v. Makin, 142 S.Ct. ____ (June 21, 2022). A state violates the free exercise clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or “sectarian,” instruction.

Kennedy v. Bremerton School Dist., No. 21-418 (argued on April 25, 2022).

1) Whether a public-school employee who says a brief, quiet prayer by himself while at school and visible to students is engaged in government speech that lacks any First Amendment protection; and (2) whether, assuming that such religious expression is private and protected by the free speech and free exercise clauses, the establishment clause nevertheless compels public schools to prohibit it.

VI. Environmental protection

West Virginia v. Environmental Protection Agency, No. 20-1530 (argued on February 28, 2022). Whether, in 42 U.S.C. § 7411(d), an ancillary provision of the Clean Air Act, Congress constitutionally authorized the Environmental Protection Agency to issue significant rules — including those capable of reshaping the nation’s electricity grids and unilaterally decarbonizing virtually any sector of the economy — without any limits on what the agency can require so long as it considers cost, nonair impacts and energy requirements.

VII. Second Amendment

Rifle and Piston Association v. Bruen, No. 20-843 (argued on November 3, 2021). Whether the state of New York’s denial of petitioners’ applications for concealed-carry licenses for self-defense violated the Second Amendment.