

D. Brook Bartlett Lectures  
United States District Court for the Western District of Missouri  
June 30, 2023

Supreme Court: *October Term 2022*\*

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I. Affirmative action

*Students for Fair Admissions v. University of North Carolina*, No. 21-707 (argued October 31, 2022). (1) Whether the Supreme Court should overrule *Grutter v. Bollinger* and hold that institutions of higher education cannot use race as a factor in admissions; and (2) whether a university can reject a race-neutral alternative because it would change the composition of the student body, without proving that the alternative would cause a dramatic sacrifice in academic quality or the educational benefits of overall student-body diversity.

*Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, No. 20-1199 (argued October 31, 2022). (1) Whether the Supreme Court should overrule *Grutter v. Bollinger* and hold that institutions of higher education cannot use race as a factor in admissions; and (2) whether Harvard College is violating Title VI of the Civil Rights Act by penalizing Asian American applicants, engaging in racial balancing, overemphasizing race and rejecting workable race-neutral alternatives.

II. Civil rights litigation

*Groff v. DeJoy*, No. 22-174 (to be argued on April 18, 2023). (1) Whether the court should disapprove the more-than-de-minimis-cost test for refusing religious accommodations under Title VII of the Civil Rights Act of 1964 stated in *Trans World Airlines, Inc. v. Hardison*; and (2) whether an employer may demonstrate “undue hardship on the conduct of the employer’s business” under Title VII merely by showing that the requested accommodation burdens the employee’s coworkers rather than the business itself.

III. Dormant commerce clause

*National Pork Producers Council v. Ross*, 143 S.Ct. 1142 (May 11, 2023). California law requiring that pork products sold in the state come from pigs that were humanely treated did not violate the dormant commerce clause.

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#### IV. Elections

Merrill v. Milligan, 143 S.Ct. \_\_\_\_ (June 8, 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*, No. 22-506 (argued February 28, 2023). (1) Whether the respondents have Article III standing; and (2) whether the [student loan] plan exceeds the Secretary's statutory authority or is arbitrary and capricious.

*Department of Education v. Brown*, No. 22-535 (argued February 28, 2023). (1) Whether two student-loan borrowers have Article III standing to challenge the Department of Education's student-debt relief plan; and (2) whether the department's plan is statutorily authorized and was adopted in a procedurally proper manner.

#### 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*, No. 21-476 (argued December 5, 2022). Whether applying a public-accommodation law to compel an artist to speak or stay silent violates the free speech clause of the First Amendment.

#### 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.