Supreme Court for the States

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Big Picture Thoughts

Has the SCOTUS docket always been this dull?

Blockbusters v. big decisions v. harder to understand biggish decisions

Deep in the thick of a 6-3 conservative Court?

Trump and SCOTUS

The two that got away

Does the SCOTUS Docket Always have SO Many Dull Cases?!

Lackey v. Stinnie

- Holding: Plaintiffs who gained only preliminary injunctive relief before this action became moot do not qualify as "prevailing part[ies]" eligible for attorney's fees under 42 U.S.C. § 1988(b) because no court conclusively resolved their claims by granting enduring relief on the merits that altered the legal relationship between the parties

Velazquez v. Bondi

- Holding: Under 8 U.S.C. § 1229c(b)(2), a voluntary-departure deadline that falls on a weekend or legal holiday extends to the next business day

Waetzig v. Halliburton Energy Services

- Holding: A case voluntarily dismissed without prejudice under Federal Rule of Civil Procedure 41(a) counts as a "final proceeding" under Federal Rule of Civil Procedure 60(b)

Blockbusters v. Big Decisions v. Harder to Understand Biggish Decisions

Not really a “typical” term with 1-3 block buster decisions

More big, controversial decisions than usual

- Almost all of them involve the states

More “harder to understand” biggish decisions that usual

- Religion
- Environmental
- Not much free speech

6-3 Conservative Court

- Yes and no
- Yes when it matters
- Simple bell weather: last opinion day of the term (where many of the “big” cases come out) I think I only “processed” 6-3 decisions
- Note: statistical info from the next few slides comes from SCOTUSblog

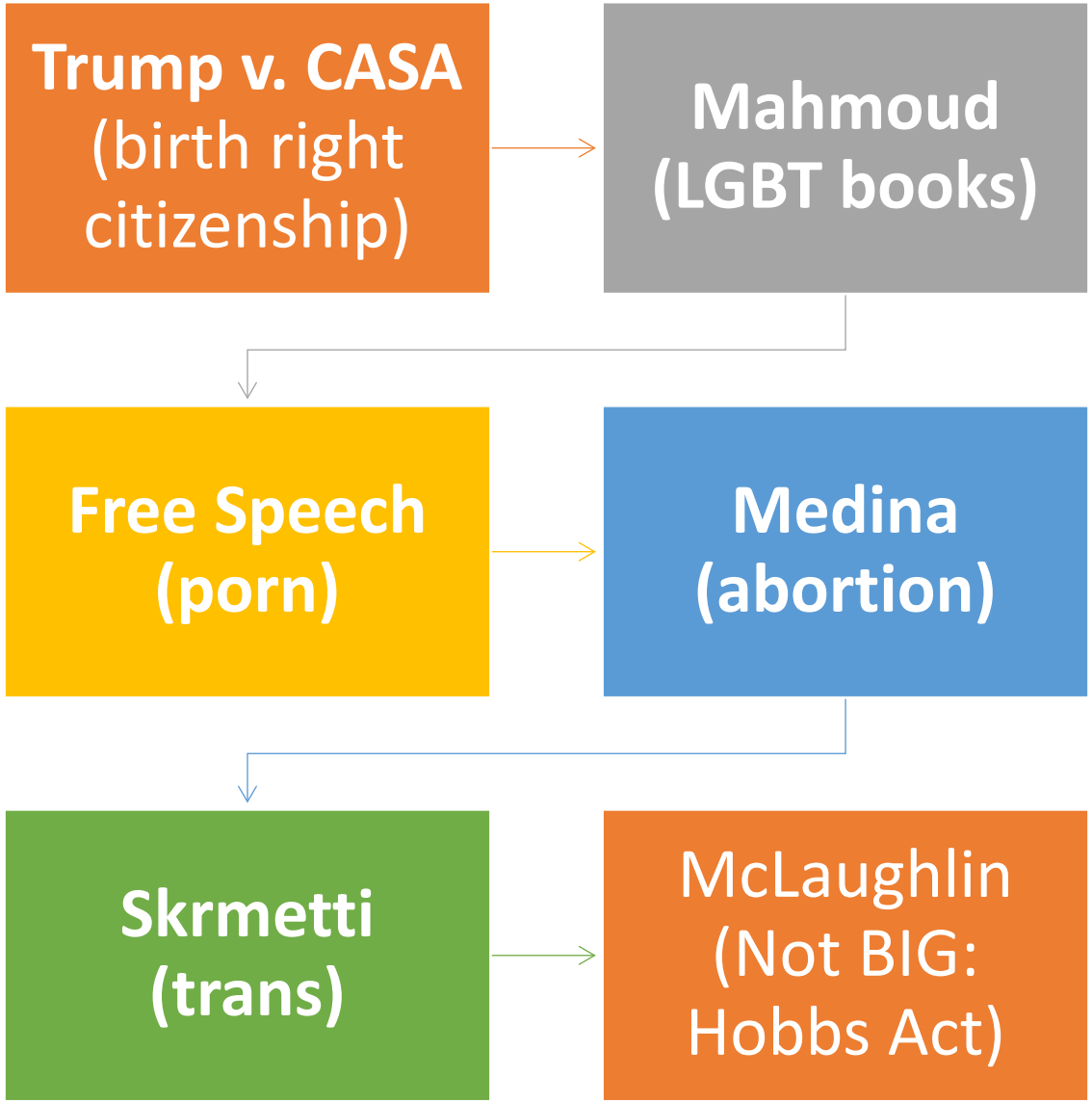
A Closer Look

Hard numbers don’t show a lot of 6-3 decisions

Ten decisions or 15% of decided cases were by 6-3 split votes

Three of those had Thomas, Alito, and Gorsuch dissenting

Most 6-3 **Conservative** Decision were BIG



But Overall, the Court Remains Less Divided than you Might Think

42% of cases were decided unanimously this term – compared to 44% in the previous term and 50% in the 2022-23 term

Chief Justice John Roberts was in the majority most frequently at 95% in all cases, 92% in non-unanimous cases, and 90% in closely divided cases, and he did not write a single separate opinion this term

Justice Kagan was in the majority 83% of the time in all cases this term – which was more common than Justices Thomas, Gorsuch, and Alito, who were each in the majority 78% of the time

SCOTUS and Trump: Examining the Emergency Docket

- How has Trump faired with SCOTUS?
  - We won't really know until SCOTUS hears cases merits cases with full briefing (but see *Trump v. CASA)*
  - This may take a few years
- We do have over 10 emergency docket rulings
  - Lower court has temporarily allowed (or prevented) a law from taking effect temporarily (while litigation over the law continues)
  - Party that loses before the lower court asks the Supreme Court to reverse the lower court ruling that did (or didn't) temporarily allow the law from taking effect (while litigation continues)

Important to Not Draw too Many Conclusions from the Emergency Docket

- The bar is HIGH for the Supreme Court to reverse the lower court
- Most cases on the emergency docket get little/no attention
- Mostly one Justice makes decisions on these cases
- Opinions are rarely issued
- But we have what we have, and we have emergency rulings

Wins for Trump—DOGE Wins

- ***McMahon v. New York***
  - Whether the Supreme Court should stay a district court order requiring the government to reinstate Department of Education employees fired as part of a reduction in force
- ***Social Security Administration v. American Federation of State, County, and Municipal Employees***
  - Whether the Supreme Court should stay the district court's injunction blocking Department of Government Efficiency team members and affiliates from accessing Social Security Administration record systems
- ***U.S. Doge Service v. Center for Responsibility and Ethics in Washington***
  - Whether the Supreme Court should stay the district court's orders permitting discovery of certain DOGE materials pursuant to FOIA
- ***Office of Personnel Management v. American Federation of Government Employees***
  - Whether the Supreme Court should stay the district court's injunction ordering six departments and agencies to immediately offer reinstatement to over 16,000 employees who were laid off

Trump Immigration Wins

- ***Department of Homeland Security v. D.V.D.***
  - Whether the Supreme Court should stay a district court order preventing DHS from removing non-citizens to a country not specifically identified in their removal order unless DHS assesses any potential claims such persons may have under the Convention Against Torture
- ***Noem v. National TPS Alliance***
  - Whether the Supreme Court should stay the district court's order barring the Secretary of Homeland Security from terminating a portion of the Temporary Protected Status designations for Venezuelan nationals
- ***Trump v. J.G.G.***
  - Whether the Supreme Court should vacate the district court's order blocking the Trump administration from summary removal under the Alien Enemies Act
- ***Noem v. Doe***
  - Whether the Supreme Court should stay the district court's order holding that the Secretary of Homeland Security lacked authority to revoke the categorical grant of parole to 532,000 non-citizens from Cuba, Haiti, Nicaragua, and Venezuela, without providing individualized, case-by-case consideration for each person

Trump Immigration Losses

- ***Noem v. Abrego Garcia***
  - Whether the Supreme Court should vacate U.S. District Judge Paula Xinis's order to return Kilmar Armando Abrego Garcia to the United States
- ***A.A.R.P. v. Trump***
  - Whether the Supreme Court should stay the removal of a proposed class of Venezuelan men in immigration custody and preserve the status quo for individuals challenging their removal under the Alien Enemies Act in the U.S. District Court for the Northern District of Texas

Trump Trans Win

- ***U.S. v. Shilling***
  - Whether the Supreme Court should stay the district court's injunction blocking the Department of Defense from enforcing its policy which generally disqualifies from military service individuals who have gender dysphoria or have undergone medical interventions for gender dysphoria

Overall Thoughts on the Emergency Docket

- Trump has won more than he has lost
- LOTS of dissents—mostly the liberals
- IMHO these decisions say more about lower court judges than SCOTUS (and their skepticism of Trump's agenda)
- Trump has been surprised and annoyed when even conservative lower court judges have temporarily halted his agenda

My Take On Lower Court Judges Isn't Groundbreaking

Many of the case don't involve issues of the most traditional conservative/liberal divide

On some level all the case involve executive power which isn't a traditional conservative/liberal divide

Not Covering GUN Cases

Bondi v. VanDerStok

- The Bureau of Alcohol, Tobacco, Firearms and Explosives's 2022 rule interpreting the Gun Control Act of 1968 to cover certain products that can readily be converted into an operational firearm or a functional frame or receiver is not facially inconsistent with the act

Smith & Wesson Brands v. Estados Unidos Mexicanos

- Because Mexico's complaint does not plausibly allege that the defendant gun manufacturers aided and abetted gun dealers' unlawful sales of firearms to Mexican traffickers, the Protection of Lawful Commerce in Arms Act bars the lawsuit

Not Covering Any of the Employment Cases

E.M.D. Sales v. Carrera: The preponderance-of-the-evidence standard applies when an employer seeks to demonstrate that an employee is exempt from the minimum-wage and overtime-pay provisions of the Fair Labor Standards Act

Stanley v. City of Sanford, Florida: To prevail under Title I of the Americans with Disabilities Act, a plaintiff must plead and prove that she held or desired a job, and could perform its essential functions with or without reasonable accommodation, at the time of an employer's alleged act of disability-based discrimination

Ames v. Ohio Department of Youth Services: The U.S. Court of Appeals for the 6th Circuit's "background circumstances" rule — which requires members of a majority group to satisfy a heightened evidentiary standard to prevail on a Title VII discrimination claim — cannot be squared with either the text of Title VII or the Supreme Court's precedents

Audience Question

People blew up my over which case?

Trump v. Casa

- Holding: universal injunction applicable to the implementation and enforcement of the Trump administration's Jan. 20 executive order ending birthright citizenship is too broad
- 6-3
- Opinion written by Justice Barrett

Birth Right Citizenship Executive Order

- Specifically, it sets forth the “policy of the United States” to no longer issue or accept documentation of citizenship in two scenarios: “(1) when [a] person’s mother was unlawfully present in the United States and the person’s father was not a United States citizen or lawful permanent resident at the time of said person’s birth, or (2) when [a] person’s mother’s presence in the United States was lawful but temporary, and the person’s father was not a United States citizen or lawful permanent resident at the time of said person’s birth”

Predictable Lawsuit

Individuals, organizations, and states filed suit, alleging that the Executive Order violates the Fourteenth Amendment's Citizenship Clause, §1, as well as §201 of the Nationality Act of 1940

In each case, the District Court concluded that the Executive Order is likely unlawful and entered a **universal preliminary injunction** barring various executive officials from applying the policy to **anyone in the country**

Traditionally, courts issued injunctions prohibiting executive officials from enforcing a challenged law or policy only against the plaintiffs in the lawsuit

Universal Injunction Stats are WOW

- By the end of the Biden administration, we had reached “a state major presidential act [was] immediately frozen by a federal district court.” The trend has continued: During the first 100 days of the second Trump administration, district courts issued approximately 25 universal injunctions. **As the number of universal injunctions has increased, so too has the importance of the issue.**

General Idea and Exceptions

- If I sued the federal government over the executive order (and I had standing) I could get injunction for myself (but no one else)
- Exceptions
  - Class action
    - EO should have gone into place in the 27 states where it wasn't challenged but a class action already been filed involving "new babies"
  - **States—SCOTUS doesn't decide**
    - As the States see it, their harms—financial injuries and the administrative burdens flowing from citizen-dependent benefits programs—cannot be remedied without a blanket ban on the enforcement of the Executive Order. Children often move across state lines or are born outside their parents' State of residence. Given the cross-border flow, the States say, a "patchwork injunction" would prove unworkable, because it would require them to track and verify the immigration status of the parents of every child, along with the birth State of every child for whom they provide certain federally funded benefits.
  - New agency rules—challenging a rule not an officer under the Judiciary Act

Courts Didn’t Issue Nationwide Injunctions in England

- A universal injunction can be justified only as an exercise of equitable authority, yet Congress has granted federal courts no such power
  - The Judiciary Act of 1789 endowed federal courts with jurisdiction over “all suits . . . in equity,” §11, 1 Stat. 78, and still today, this statute “is what authorizes the federal courts to issue equitable remedies”
  - We have held that the statutory grant encompasses only those sorts of equitable remedies “traditionally accorded by courts of equity” at our country’s inception
  - We must therefore ask whether universal injunctions are sufficiently “analogous” to the relief issued “‘by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act
  - The answer is no: Neither the universal injunction nor any analogous form of relief was available in the High Court of Chancery in England at the time of the founding. Equity offered a mechanism for the Crown “to secure justice where it would not be secured by the ordinary and existing processes of law”

Or at the Founding or even Recently

- Nor did founding-era courts of equity in the United States chart a different course
- In the ensuing decades, we consistently rebuffed requests for relief that extended beyond the parties
- **The bottom line? The universal injunction was conspicuously nonexistent for most of our Nation**

What about Policy?

They argue that a universal injunction is sometimes the **only practical way to quickly protect groups from unlawful government action**

Respondents also contend that universal injunctions are an appropriate remedy to **preserve equal treatment** among individuals when the Executive Branch adopts a facially unlawful policy

And they suggest that forcing plaintiffs to proceed on an individual basis can **result in confusion or piecemeal litigation that imposes unnecessary costs on courts and others**

Policy is Beside the Point!

- As with most disputed issues, there are arguments on both sides. But as with most questions of law, **the policy pros and cons are beside the point**. Under our well-established precedent, the equitable relief available in the federal courts is that "traditionally accorded by courts of equity" at the time of our founding. Nothing like a universal injunction was available at the founding, or for that matter, for more than a century thereafter. Thus, under the Judiciary Act, federal courts lack authority to issue them.

Justice Sotomayor Let's the Majority Have it!

- The Government does not ask for complete stays of the injunctions, [it only asks for a stay of the universal part] as it ordinarily does before this Court. Why? The answer is obvious: To get such relief, the Government would have to show that the Order is likely constitutional, an impossible task in light of the Constitution's text, history, this Court's precedents, federal law, and Executive Branch practice. So the Government instead tries its hand at a different game. It asks this Court to hold that, no matter how illegal a law or policy, courts can never simply tell the Executive to stop enforcing it against anyone. Instead, the Government says, it should be able to apply the Citizenship Order (whose legality it does not defend) to everyone except the plaintiffs who filed this lawsuit.

If I Had to Guess

- The number 1 seekers of universal injunctions
- I would guess
- States
- Who they help in any given case really depends the issue
- IHMO the significance of universal injunctions for average Americans who might not be personally affected by a lawsuit (but care about current events) is . . . they set a tone

I am Still Struggling to Wrap My Head Around this Decision

- I can’t remember a time before universal injunctions

Religion Cases

Mahmoud v. Taylor

- Second place for most media attention of merits decision
- Holding: parents challenging the school board's introduction of the "LGBTQ+-inclusive" storybooks, along with its decision to withhold opt outs, are entitled to a preliminary injunction
- 6-3
- Justice Alito wrote the opinion
- Whooping 135 pages

Facts

- Montgomery County, Maryland, has introduced a variety of “LGBTQ+- inclusive” storybooks into the elementary school curriculum. These books—and associated educational instructions provided to teachers—are designed to “disrupt” children’s thinking about sexuality and gender
- The Board has told parents that it will **not give them notice** when the books are going to be used and that their **children’s attendance during those periods is mandatory**
- At issue in this lawsuit are the five “LGBTQ+-inclusive” story books that are approved for students in Kindergarten through fifth grade—in other words, for children who are generally between 5 and 11 years old
- “Teachers cannot . . . elect not to use the LGBTQ-Inclusive Books at all”
- Books challenged on religious grounds

Why Did the Court Agree to Hear this Case at the Preliminary Injunction Stage?

- At this stage, the parents seek a preliminary injunction that would permit them to have their children excused from instruction related to the storybooks while this lawsuit proceeds. To obtain that form of preliminary relief, the parents must show that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction would be in the public interest

First Amendment Free Exercise of Religion Case

- Our Constitution proclaims that “Congress shall make no law . . . prohibiting the free exercise” of religion. Amdt. 1

It All Starts With *Yoder*

- A government burdens the religious exercise of parents when it requires them to submit their children to instruction that poses "a very real threat of undermining" the religious beliefs and practices that the parents wish to instill. *Wisconsin v. Yoder*, 406 U. S. 205, 218 (1972)
- It will depend on the specific religious beliefs and practices asserted, as well as the specific nature of the educational requirement or curricular feature at issue. Educational requirements targeted toward very young children, for example, may be analyzed differently from educational requirements for high school students. A court must also consider the specific context in which the instruction or materials at issue are presented. Are they presented in a neutral manner, or are they presented in a manner that is "hostile" to religious viewpoints and designed to impose upon students a "pressure to conform"?

These Books Burden Religion

Like many books targeted at young children, the books are unmistakably normative. They are clearly designed to present certain values and beliefs as things to be celebrated and certain contrary values and beliefs as things to be rejected

These books carry with them “a very real threat of undermining” the religious beliefs that the parents wish to instill in their children

That “objective danger” is only exacerbated by the fact that the books will be presented to young children by authority figures in elementary school classroom

The Rest of the Test

- The government is generally free to place incidental burdens on religious exercise so long as it does so pursuant to a neutral policy that is generally applicable
- Thus, in most circumstances, two questions remain after a burden on religious exercise is found
- First, a court must ask if the burdensome policy is **neutral and generally** applicable
  - When the burden imposed is of the same character as that imposed in *Yoder*, we need not ask whether the law at issue is neutral or generally applicable before proceeding to strict scrutiny
- Second, if the first question can be answered in the negative, a court will proceed to ask whether the policy can survive strict scrutiny
- Under that standard, the government must demonstrate that "its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest"

Applying Strict Scrutiny

- Court focused on opt-outs not being too much of a hassle
  - As we have noted, the board continues to permit opt outs in a variety of other circumstances, including for “noncurricular” activities and the “Family Life and Human Sexuality” unit of instruction, for which opt outs are required under Maryland law
  - Several States across the country permit broad opt outs from discrete aspects of the public school curriculum without widespread consequences. See, e.g., 22 Pa. Code §4.4(d)(3) (2025); Minn. Stat. §120B.20 (2024); Ariz. Rev. Stat. Ann. §§15–102(A)(4), (8)(c) (2024)
  - And prior to the introduction of the “LGBTQ+-inclusive” storybooks, the Board’s own “Guidelines for Respecting Religious Diversity” gave parents a broad right to have their children excused from specific aspects of the school curriculum

Justice Sotomayor in Dissent was More Restrained than I Expected

- Today's ruling ushers in that new reality. Casting aside longstanding precedent, the Court invents a constitutional right to avoid exposure to "subtle" themes "contrary to the religious principles" that parents wish to instill in their children. **Exposing students to the "message" that LGBTQ people exist, and that their loved ones may celebrate their marriages and life events, the majority says, is enough to trigger the most demanding form of judicial scrutiny.** That novel rule is squarely foreclosed by our precedent and offers no limiting principle. Given the great diversity of religious beliefs in this country, countless interactions that occur every day in public schools might expose children to messages that conflict with a parent's religious beliefs. If that is sufficient to trigger strict scrutiny, then little is not.

Observations

- Would the case have gone the other way if the books weren't so "normative"?
  - LQBTQIA+ exist and people celebrate their major life events versus you should accept LQBTQIA as "good" or "okay" or "normal"
- No matter how you feel about the school boards decision…it feels heavy-handed (no notice, no opt-outs)
  - We all know lots of people have religious objections to LQBTQIA+
  - Religion has been used to justify a lot of very bad ideas
- How may state law interact with the decision?
  - Might we see state legislation allowing/requiring opt-outs?

Oklahoma Statewide Charter School Board v. Drummond

- Potentially ground-breaking (earth shattering) religion case that fizzles out
- Questions presented
  - Whether the academic and pedagogical choices of a privately owned and run school constitute state action simply because it contracts with the state to offer a free educational option for interested students
  - Whether a state violates the Free Exercise Clause by excluding privately run religious schools from the state's charter school program solely because the schools are religious, or whether a state can justify such an exclusion by invoking anti-establishment interests that go further than the Establishment Clause requires

Oklahoma Statewide Charter School Board v. Drummond

Oklahoma Supreme Court ruled against allowing a government funded Catholic charter school

4-4; lower court opinion affirmed by an equally divided court

Justice Barrett didn’t participate

Facts

Oklahoma has a charter school law (and board)

Law requires charter schools to be non-sectarian in programs, admissions, and operations

The board approved a newly established Catholic virtual charter school

Its contract said it which was going to operate as a religious school (but it was affiliated with a nonpublic sectarian school)

State isn’t paying tuition, offering a voucher, giving a tax credit, etc.

It is approving a Catholic charter school just like it would approve a charter school run by me!

Bottom line: is this a distinction without a difference?

Oklahoma Law

- Oklahoma law is very against the government establishing religion
  - Oklahoma Constitution's Blaine amendment (super-Establishment Clause) prohibits this contract
    - No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.
  - Oklahoma Constitution's says schools must be "free from sectarian control"

Charter School Board Argument

- The Charter School Board and St. Isidore contend that the Oklahoma Constitution provision requiring that Oklahoma's system of public schools be free from sectarian control does not apply to St. Isidore because **St. Isidore is a private corporation and not a public school**. They further argue that despite its sectarian nature, the St. Isidore Contract does not violate the Oklahoma Constitution or the Act because St. Isidore is merely a **private actor contracting with the State to perform a substantial benefit for the State**.
- Oklahoma Supreme Court says St. Isadore's is the government

Doesn’t the Federal Free Exercise Clause Help St. Isadore’s?

What about *Carson v. Makin*, 596 U.S. 767 (2022) (Maine school districts that pay tuition for students to attend school outside the district must pay tuition at sectarian schools)

Oklahoma Supreme Court responds: St. Isadore’s is a government entity and state actor

Million Dollar Questions Remains

If states can offer vouchers, pay tuition, give tax credits to religious schools why can’t they just entirely fund them?

And believe you me it will come up again

Why did Justice Barrett recuse herself?

Catholic Charities Bureau v. Wisconsin Labor and Industry Commission

- What was the lower court thinking?
- Holding: The Wisconsin Supreme Court's decision denying Catholic Charities Bureau a tax exemption available to religious entities under Wisconsin law on the grounds that they were not "operated primarily for religious purposes" because they neither engaged in proselytization nor limited their charitable services to Catholics violated the First Amendment
- 9-0
- Opinion written by Justice Sotomayor

Facts

In WI nonprofit employers don't have to contribute to the unemployment system if they are "operated primarily for religious purposes" and controlled, supervised, or principally supported by a church or convention or association of churches

Federal government and 40 other states have a similar exemption

More Facts

- Catholic Charities Bureau, Inc., in the Diocese of Superior, Wisconsin "provid[es] services to the poor and disadvantaged" and seeks to "be an effective sign of the charity of Christ"
- Controlled by the Roman Catholic Diocese of Superior; bishop is the President
- Helps anyone, employs anyone regardless of religion
- Not allowed: "proselytization" which seeks to "influence" or "coerc[e]" others into accepting one's religious views
- Allowed: "evangelization" which involves "sharing one's faith"

Wisconsin Department of Workforce Development Denies Exemption

Acknowledges the Bureau is “supervised and controlled by the Roman Catholic Church”

But concludes it is not “operated primarily for religious purposes”

Wisconsin Supreme Court denied the Bureau an exemption because they do not “attempt to imbue program participants with the Catholic faith,” “supply any religious materials to program participants or employees,” or limit their charitable services to members of the Catholic Church

But that isn’t How Catholic Roll

Catholic teaching, petitioners say, forbids “‘misus[ing] works of charity for purposes of proselytism’”

It also requires provision of charitable services “without making distinctions ‘by race, sex, or religion’”

Strict Scrutiny Applies to Denominational Preferences

- The clearest command of the Establishment Clause" is that the government may not "officially prefe[r]" one religious denomination over another
- Must be a compelling governmental interest closely fitted to further that interest
- Wisconsin argued the that the law serves a compelling state interest in "ensuring unemployment coverage for its citizens"
  - **The Bureau operate its own unemployment compensation system for employees, which provides benefits largely "'equivalent'" to the state system**
- Wisconsin argued that that the Wisconsin Supreme Court's interpretation is narrowly tailored to avoid entangling the state with employment decisions touching on religious faith and doctrine
  - How?

A Few Observations

- Rare/impossible to get 9-0 opinion in a religion case
- SCOTUS rarely takes cases from state supreme courts
- When it does the law, the decision, or both are outliers
- Here the decision is an outlier
- **Wisconsin does not cite any decisions interpreting these federal or state laws to require proselytization or exclusively co-religionist service for charitable organizations to qualify for the exemption, as the Wisconsin Supreme Court did here**
- Wisconsin is very Catholic; so is the SCOTUS

Free Speech Case

- Staying with the First Amendment…for now
- Sort of strange we are only discussing one case

Free Speech Coalition v. Paxton

- IHMO majority applies the wrong legal test—full stop
- Holding: Texas law which requires commercial websites that publish sexually explicit content to verify the ages of their visitors triggers, and survives, review under intermediate scrutiny because it only incidentally burdens the protected speech of adults
- 6-3
- Opinion written by Justice Thomas

Verification is Rigorous

- To verify age, a covered entity must require visitors to “comply with a commercial age verification system” that uses “government-issued identification” or “a commercially reasonable method that relies on public or private transactional data.” The entity may perform verification itself or through a third-party service

This is at the Heart of this Case

Adults have a First Amendment right to view sexually explicit material

So it burdens their First Amendment right to have to verify their age

Is that burden constitutional?

First Amendment Obscenity Case

I thought Justice's Thomas's opinion was confusing

- States may prohibit speech that is obscene to the public at large
- States may prevent children from accessing speech that is obscene to children
- A State may not prohibit adults from accessing content that is obscene only to minors
- States may enact laws to prevent minors from accessing such content

I was relieved when it wasn't just me

- Justice Kagan also called it "confused" "at war with itself"

It All Comes Back to Levels of Scrutiny

Strict—law almost always gets struck down

Intermediate—50/50 change law gets struck down

Rationale-basis—law almost never gets struck down

Why Does the Court apply Intermediate Scrutiny?

Texas's law is an exercise of Texas's traditional power to prevent minors from accessing speech that is obscene from their perspective

To the extent that it burdens adults' rights to access such speech, it has "only an incidental effect on protected speech," making it subject to intermediate scrutiny

Applying Intermediate Scrutiny

A statute survives intermediate scrutiny if it "advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests"

Texas's law undoubtedly advances an important governmental interest

- Texas's interest in shielding children from sexual content is important, even "compelling"

Texas's law is also sufficiently tailored to Texas's interest

- States have commonly used age-verification requirements, in the case of in-person access to sexual materials, to reconcile their interest in protecting children with adults' right to avail themselves of such material

Dissent

- The dissenting Justices would apply strict to this law scrutiny
- IMHO the dissenters have the law correct: “we apply strict scrutiny to laws regulating protected speech based on its content”
- This law is clearly content based (verify age only applies to websites that contain sexually explicit materials)
- Would this law pass strict scrutiny? Justice Kagan says it might
- This question intrigues me:
  - But what if Texas could do better—what if Texas could achieve its interest without so interfering with adults’ constitutionally protected rights in viewing the speech Texas law covers?

This is a Very Common State Law

At least 21 other States have imposed materially similar age-verification requirements to access sexual material that is harmful to minors online

Bigger question: is the Court going to back off of strict scrutiny in other First Amendment speech cases?

For legal nerds: was *Reed* the high-water mark for applying strict scrutiny to context based speech?

Culture Wars Cases

Trans rights

Abortion

United States v. Skrmetti

- From purely the perspective of SCOTUS "interacting" with state law this case is fascinating
- Holding: Tennessee's **law** prohibiting certain medical treatments for transgender minors is not subject to heightened scrutiny under the equal protection clause of the 14th Amendment and satisfies rational basis review
- 6-3
- Written by Chief Justice Roberts (only 24 pages are his majority opinion)
- Entire opinion: 118 pages

Tennessee Law

- Prohibits a healthcare provider from "[s]urgically removing, modifying, altering, or entering into tissues, cavities, or organs of a human being," or "[p]rescribing, administering, or dispensing any puberty blocker or hormone," for the purpose of (1) "[e]nabling a minor to identify with, or live as, a purported identity in consistent with the minor's sex," or (2) "[t]reating purported discomfort or distress from a discordance between the minor's sex and asserted identity"
- Opinion focuses on puberty blockers and hormone therapy for standing reasons
- Interestingly: A healthcare provider may administer puberty blockers or hormones to treat a minor's congenital defect, precocious (or early) puberty, disease, or physical injury

This is a 14th Amendment Case

A State shall not “deny to any person within its jurisdiction the equal protection of the laws”

14th Amendment is…squishy and has three levels of scrutiny from at least a “legal perspective”

But what about a policy perspective?

Level of Scrutiny Decides this Case

- **Strict**. “Certain legislative classifications, however, prompt heightened review. For example, laws that classify on the basis of race, alienage, or national origin trigger strict scrutiny and will pass constitutional muster ‘only if they are suitably tailored to serve a compelling state interest.’” (State law will probably get struck down)
- **Intermediate**. Sex based classifications get intermediate scrutiny (50/50 state law gets struck down)
- **Rational basis**. Transgender gets rational basis (State law will almost for sure NOT get struck down)


Which Basis do you Think the Court Applied?

Not a Sex-Based Classification

- (Intermediate scrutiny applies to sex-based classifications)
- First, SB1 classifies on the basis of age
  - Healthcare providers may administer certain medical treatments to individuals ages 18 and older but not to minors.
- Second, SB1 classifies on the basis of medical use
  - Healthcare providers may ad minister puberty blockers or hormones to minors to treat certain conditions but not to treat gender dysphoria, gender identity disorder, or gender incongruence
- Classifications that turn on **age or medical use** are subject to only **rational basis review**

My First Thought: This Feels Very Literal to Me

- Dissenting Justice Sotomayor agrees
  - SB1 plainly classifies on the basis of sex
  - The statutes on its face talks about sex
    - “Recall that SB1 prohibits the prescription of hormone therapy and puberty blockers only if done to ‘enable a minor to identify with, or live as, a purported identity inconsistent with the **minor’s sex**’ or to alleviate ‘discomfort or distress from a discord ance between the minor’s sex and asserted identity.’ ”

My Second Thought: Trans Rights are Totally New

- Dissenting Justice Sotomayer agrees with me again!
- This Court has long recognized, however, that a more “searching” judicial review is warranted when the rights of “discrete and insular minorities” are at stake
- First trans case the court ever decided was in 2020 *Bostock v. Clayton County*

Applying Rationale Basis Review

- Tennessee determined that administering puberty blockers or hormones to a minor to treat gender dysphoria, gender identity disorder, or gender incongruence "can lead to the minor becoming **irreversibly sterile, having increased risk of disease and illness, or suffering from adverse and sometimes fatal psychological consequences**."
- It further found that it was "likely that not all harmful effects associated with these types of medical procedures when per formed on a minor are **yet fully known**, as many of these procedures, when performed on a minor for such purposes, are experimental in nature and not supported by high-quality, long-term medical studies."
- Tennessee deter mined that "minors **lack the maturity** to fully understand and appreciate the life-altering consequences of such procedures and that many individuals have expressed regret for medical procedures that were performed on or administered to them for such purposes when they were minors."
- At the same time, Tennessee noted evidence that discordance between sex and gender "can be resolved by **less invasive approaches** that are likely to result in better outcomes for the minor"

Interesting Observations about Rational Basis Review

- Court focuses on the Tennessee legislature's rationale (not on what social science studies say)
- Chief Justice Roberts opinion implies that he thought the strongest argument against Tennessee's laws is that Tennessee has failed to explain why it has banned access to puberty blockers and hormones "only where they would allow a transgender minor to 'identify' or 'live' in a way 'inconsistent' with their 'sex'"
    - To this he responds: It may be true, as the plaintiffs contend, that puberty blockers and hormones carry comparable risks for minors no matter the purposes for which they are administered. But it may also be true, as Tennessee determined, that those drugs carry greater risks when ad ministered to treat gender dysphoria, gender identity dis order, and gender incongruence.
- Chief Justice Robert doesn't really address the other side claims that the Tennessee's legislature's rationales are inaccurate/wrong:
    - Tennessee concluded that there is an ongoing debate among medical experts regarding the risks and benefits associated with administering puberty blockers and hormones to treat gender dysphoria, gender identity disorder, and gender incongruence. SB1's ban on such treatments responds directly to that uncertainty.

All States in the SLC Ban Some form of “Gender Affirming Care” Except…

Medina v. Planned Parenthood South Atlantic

- Biggish abortion case; legal issue is hard to understand
- Holding: Medicaid's **any-qualified-provider provision** does not clearly and unambiguously confer a private right upon a Medicaid beneficiary to choose a specific provider
- Bottom line: if a state doesn't want to use Planned Parenthood as a Medicaid provider there is no mechanism for someone to sue to get Planned Parenthood "back on this list"
- 6-3
- Opinion by Justice Gorsuch

Any Qualified Provider

For states to receive Medicaid dollars they must satisfy more than 80 separate conditions

Medicaid's any qualified-provider provision requires States to ensure that "any individual eligible for medical assistance . . . may obtain" it "from any [provider] qualified to perform the service . . . who undertakes to provide" it

Planned Parenthood offers "a wide range" of services to Medicaid and non-Medicaid patients including abortions

No More Planned Parenthood Participation in South Carolina

Citing a state law prohibiting the use of its own public funds for abortion, South Carolina announced in July 2018 that Planned Parenthood could no longer participate in the State's Medicaid program

Petitioner she has had especially positive experiences with Planned Parenthood and would like "to shift all [her] gynecological and reproductive health care there" but now she can't

Ms. Edwards and Planned Parenthood brought a putative class action "pursuant to 42 U. S. C. §1983 to vindicate rights secured by the federal Medicaid statutes"

Explaining Section 1983

- First enacted as part of the Civil Rights Act of 1871, §1983 allows private parties to sue state actors who violate their "rights" under "the Constitution and laws" of the United States
- But federal statutes do not confer "rights" enforceable under §1983 "as a matter of course"
- **So plaintiffs have to find "rights" in the statute itself to be able to use §1983 as a VEHICLE to sue**
- Historically, individuals brought §1983 suits to vindicate rights protected by the Constitution. But, in 1980, this Court recognized that §1983 also authorizes private parties to pursue violations of their federal statutory rights

Test to Determine if a Case May be Brought under Section 1983

- It is very rigorous
- To prove that a statute secures an enforceable **right, privilege, or immunity**, and **does not just provide a benefit or protect an interest**, a plaintiff must show that the law in question “clear[ly] and unambiguous[ly]” uses “rights creating terms”
- Right v. benefit

Quick Look at Statute SCOTUS Most Recently Found to Create Rights

Health and Hospital Corporation of Marion Cty. v. Talevski, 599 U. S. 166 addressed two provisions of the Federal Nursing Home Reform Act (FNHRA)

The first obliged nursing-home facilities to "protect and promote" residents' "**right** to be free from" unnecessary "physical or chemical restraints."

The second appeared in a subparagraph titled "[t]ransfer and discharge **rights**." And both provisions sat in a subsection called "[r]equirements relating to residents' **rights**."

And Then There is This

- To be sure, Congress could have taken a different approach when drafting [Medicaid.] In fact, FNHRA offers an example almost perfectly on point. One of its provisions gives nursing-home residents the right to choose their own attending physicians. Here is the provision in context:
- (c) Requirements relating to residents' **rights**
- (1) General **rights**
- (A) Specified **rights**
- A nursing facility must protect and promote the **rights** of each resident, including each of the following **rights**:
- (i) Free choice
- The **right** to choose a personal attending physician . . . .

And the Medicaid Statute says this

- Section 1396a(a)(23)(A) indicates that state Medicaid plans must "provide that . . . any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required . . . who undertakes to provide him such services
- Doubtless, this language speaks to what a State must do to participate in Medicaid, and a State that fails to fulfill its duty might lose federal funding. Doubtless, too, this provision seeks to benefit both providers and patients. But missing from §1396a(a)(23)(A) is anything like FNHRA's clear and unambiguous "rights-creating language"

Dissent

- Written by Justice Jackson
- Section 1983 is BOLD; stop trying to make it less so
  - The Civil Rights Act of 1871 was an exercise in grand ambition. It had to be. In the wake of the Civil War, the American South was consumed by a wave of terrorist violence designed to disenfranchise and intimidate the country's newly freed citizens and their allies
- Our inquiry is to look for "**rights creating language**" not the word **rights**
  - But focusing myopically on a given statute's resemblance to FNHRA does little to advance the goal of providing fair notice to federal grantees. That is because, as we have often recognized, Congress "need not use magic words in order to speak clearly." Henderson v. Shinseki, 562 U. S. 428, 436 (2011).

Tons of Rights Creating Language

- To start, the text of the provision is plainly “phrased in terms of the persons benefited”—namely, Medicaid recipients
- Congress also used rights-creating language in the heading of the provision when it enacted the original session law. The provision was entitled: **FREE CHOICE** BY INDIVIDUALS ELIGIBLE FOR MEDICAL ASSISTANCE
- And Congress reinforced its rights-creating intent by making the provision mandatory—it specifically inserted the word “**must**” into the statute—to make clear that the obligation imposed on the States was binding

My Thoughts

- Pro-state decision (but it is always weird to say well you don't really have to follow the law)
- Obvious implications: any state remove Planned Parenthood from their provider list
- Implications for any other Spending Clause case: Must Congress always use the precise words "rights" for it to be possible to bring a Section 1983?
  - Not sure the majority went that far

States Not Allowing Medicaid Recipients to Use Planned Parenthood

- Arkansas
- Missouri
- South Carolina
- Texas

Other Than Environmental Cases

Prison Litigation Reform Act case

ACA case

Perttu v. Richards

- Money case for states
- Not the easiest to understand
- Holding: Parties are entitled to a jury trial on the issue of exhaustion of remedies under the **Prison Litigation Reform Act** when that issue is intertwined with the merits of a claim that requires a jury trial under the Seventh Amendment
- Opinion written by Chief Justice Roberts
- 5-4; Justice Barrett filed a dissenting opinion, joined by Justices Thomas, Alito and Kavanaugh

Facts

- Inmate Kyle Richards (and others) alleges that Thomas Perttu, a prison employee, sexually harassed Richards and other inmates
- Richards wanted to sue Perttu
- To “reduce the quantity and improve the quality of prisoner suits” the Prison Litigation Reform Act of 1995 requires inmates to exhaust administrative remedies before filing a lawsuit in federal court
- Plain English: inmates must follow jail/prison complaint procedure before they can sue

Facts

- Richards claimed he tried to do this, but Perttu allegedly ripped up the plaintiffs' grievance forms, threw them away, and threatened to kill the plaintiffs if they filed more
- Richards also alleged they were being "wrongfully held in administrative segregation in retaliation for filing grievances" and that Perttu was retaliating against them in other ways, all in violation of their First Amendment rights

And Now it Gets Circular

Richards (inmate) sued Perttu (prison employee)

Perttu said you can't sue me you didn't exhaust your administrative remedies because you didn't file any grievance

Richards said you destroyed all my grievances so I can't prove that I filed them

A judge not a jury decided that Perttu didn't destroy Richards's grievances

Richards wanted a jury and not a judge to decide whether Perttu destroyed Richards's grievances

Richards (Inmate) Argument

The 7th Amendment to the US Constitution guarantees the right to a jury trial in federal civil cases

Dispute over exhaustion in this case is intertwined with a claim that falls squarely under the Seventh Amendment—his First Amendment retaliation claim for damages—and that factual questions related to that claim must be resolved by a jury

Court's Reasoning

- PLRA exhaustion (decided by a judge) is an affirmative defense subject to "the usual practice under the Federal Rules [of Civil Procedure]"
- The usual practice is that factual disputes regarding the merits of a legal claim go to the jury, even if that means a judge must let a jury decide questions he could ordinarily decide on his own
- PLRA supports this usual practice
  - That usual practice matters for interpreting the statute because "Congress is understood to legislate against a background of common-law adjudicatory principles . . . with an expectation that the principle[s] will apply except 'when a statutory purpose to the contrary is evident'"
  - No such contrary purpose is evident in the PLRA

Impact of Case

- 2018 about 12 civil right lawsuits per 1,000 inmates were filed under the PLRA Slamming the Courthouse Door: 25 years of evidence for repealing the Prison Litigation Reform Act | Prison Policy Initiative
- Couldn't find good data on how many are against states (versus the feds or local governments)
- How often does it come up that the exhaustion question and a legal issue are intertwined?
  - That decision conflicted with a contrary holding on the same question from the Seventh Circuit, see *Pavey v. Conley*, 544 F. 3d 739, 742 (2008)
- Are juries going to be more be more sympathetic to inmates?
  - Probably most of the time

Kennedy v. Braidwood Management, Inc.

- Litigation of the ACA will never end…or succeed it seems
- Holding: Members of the U.S. Preventive Services Task Force are inferior officers whose appointment by the Secretary of the Department of Health and Human Services is consistent with the appointments clause
- Bottom line: members of the U.S. Preventive Services Task Force have been properly appointed and can continue telling health insurance companies that must cover certain services at no cost
- 6-3 decision written by Justice Kavannagh
- Dissent: Thomas, Alito, Gorsuch

Facts

- Per the ACA the U.S. Preventive Services Task Force, an entity within the Department of Health and Human Services, may mandate that health insurers cover some of the recommended services at no cost to the insured
- Perhaps unsurprisingly, some insurance companies were not thrilled by some of these mandates
- They argued that this task force acted beyond its constitutional authority because it isn’t made up of “principal officers”

Legal Issue

- The Secretary of Health and Human Services appointed the 16 current members of the Task Force
- Principal officers must be appointed by the President “with the Advice and Consent of the Senate.” Art. II, §2, cl. 2
- Congress may “by Law vest” appointment of inferior officers “in the President alone, in the Courts of Law, or in the Heads of Departments.” Art. II, §2, cl. 2.
- In this case task force members weren’t appointed by the President with consent of the Senate (so they were treated as “inferior officers”)
- But are they actually inferior officers?

How do you Determine

A principal officer

Versus

An inferior officer

Who is the Boss?

- If your boss is the President you are a principal officer
- If your boss is someone else you are an inferior officer
- Justice Scalia, once explained: "**It is perfectly obvious**" that the language in Article II authorizing department heads to appoint inferior officers "was intended merely to make clear . . . that those officers appointed by the President with Senate approval could on their own appoint their subordinates, who would, of course, by chain of command still be under the direct control of the President"

Boss Here is the Secretary of HHS

We conclude that Task Force members are inferior officers because their work is "**directed and supervise**d" by the Secretary of HHS, a principal officer

The Secretary's ability to direct and supervise the Task Force derives from two main sources: the Secretary's authority to remove Task Force members at will; and the Secretary's **authority to review and block the Task Force's recommendations** before they can take effect

Dissent

- To promote democratic accountability, the Appointments Clause establishes a default rule that all Executive Branch officers must be appointed by the President with the Senate's approval
- Congress may depart from this default by authorizing a department head to appoint "inferior Officers"—**but only if it does so expressly**
- But, rather than accept that the default mode of appointment applies, the **Government invented a new theory on appeal, arguing that the combination of two ambiguously worded statutes enacted decades apart establishes that the Secretary of HHS can appoint the Task Force's members**

And What Exactly do these Statutes Say

- The Government derived this purported appointment authority from the combination of two statutes, enacted decades apart. First, §299b–4(a)(1) gave the **AHRQ Director the power to "convene" the Task Force**, which the Government read to include appointing its members
- Second, a statute called Reorganization Plan No. 3 of 1966, 80 Stat. 1610 (Reorganization Plan), **"transferred" to the Secretary "all functions" of all officers of the Public Health Service, including AHRQ**. In addition to claiming to appoint the members, the Secretary issued an order purporting to ratify all the recommendations that the Task Force had issued from 2010 to 2022, when its members had been unlawfully appointed by the AHRQ Director

My Thoughts

- On one hand, it can’t be that these task force members work directly for the President
- On the other hand, how can the HHS Secretary claim via some random, unclear statutes that he or she can appoint these task members?
- The ACA will never get struck down EVER!
- Are these categories that make sense? If so, what divides them?
- Roberts, Kavanaugh, and Barrett
- Thomas, Alito, and Gorsuch

Two Environmental Case: Neither are Easy!

San Francisco v. EPA

- Holding: The challenged end-result permitting provisions which make the permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants exceed the Environmental Protection Agency's authority under the **Clean Water Act**
- Opinion written by Justice Alito
- 5-4
- Line up is messy; 5 Justices agree with what I talk about

Background

Under the Clean Water Act, Environmental Protection Agency (EPA) **and authorized state agencies** may issue permits that impose requirements on entities that wish to discharge "pollutants"

Permits issued by these agencies include what the CWA calls "effluent limitations," that is, provisions that specify the quantities of enumerated pollutants that may be discharged (for example, you can only discharge water than has .000001 dog poop in it into the Pacifica Ocean)

(It is also common for permits to set out other steps that a discharger must take. These may include testing, record-keeping, and reporting requirements, as well as requirements obligating a permittee to follow specified practices designed to reduce pollution.)

California's *State Water Agency* Added Two New Requirement to SF's Permit

The first of these prohibits the facility from making any discharge that "contribute[s] to a violation of any applicable water quality standard" for receiving waters

The second provides that the City cannot perform any treatment or make any discharge that "create[s] pollution, contamination, or nuisance as defined by California Water Code

Justice Alito calls these "end-result" requirements because they make the permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants

Ends Results Not Okay

- Statute says permittees only have to achieve quality for what they discharge
- We begin with the text of §1311(b)(1)(C), which, as noted, requires a permit to contain, in addition to "effluent limitations," "any more stringent limitation" that is "necessary to meet" certain "water quality standards" that are imposed under state law "or any other federal law or regulation"; and "any more stringent limitation" that is "required to implement any applicable water quality standard established pursuant to this chapter." (Emphasis added.) **All the italicized terms in the preceding sentence suggest that the most natural reading of §1311(b)(1)(C) is that it authorizes the EPA to set rules that a permittee must follow in order to achieve a desired result, namely, a certain degree of water quality**.

Ends Results Not Okay

- Old law explicitly made discharger responsible for quality of body of water pollutants were discharged into
- Under the Government's reading, a permittee may be held liable if the quality of the water into which it discharges pollutants fails to meet water quality standards. Before 1972, the WPCA contained a provision that did exactly that in no uncertain terms. But when Congress overhauled the WPCA in 1972, it scrapped that provision and did not include in the new version of the Act anything remotely similar. **Under these circumstances, the absence of a comparable provision in the CWA is telling.**

State Impact of this Case

- States just like other entities apply for CWA permits
- Would only a CA State Agency add ends results requirements in a CWA permit applications?
  - My guess is no especially if they knew they could
- Would the federal government approve (or even add) an ends results requirements to CWA permit applications if it could?
  - It did in this case

NRC v. Texas

- Holding: Entities who were not parties to a Nuclear Regulatory Commission's licensing proceeding are not entitled to obtain judicial review of the commission's licensing decision under the **Hobbs Act**
- 6-3 decision
- Opinion written by Justice Kavanaugh
- Justice Gorsuch filed a dissenting opinion, joined by Justices Thomas and Alito

Did You Know?

Today, more than 50 nuclear power plants—along with coal, natural gas, and renewable energy sources—produce electricity for American homes and businesses

In all, nuclear power plants generate almost 20 percent of the electricity in America

You Probably Know

Most spent fuel is stored on site

Because some plants are shutting down or no longer operating, on-site storage is not a viable long-term solution

To address the storage problem, federal law has long designated the Yucca Mountain Nuclear Waste Repository in Nevada as the future permanent site for disposal of spent nuclear fuel

You Won’t Be Surprised to Leave

To fill the void, some private businesses have sought to build and operate facilities to store spent nuclear fuel “off site”—that is, off the site of a nuclear power plant

To do so, however, they need to obtain licenses from the Nuclear Regulatory Commission

Facts

NRC granted a renewable 40-year license to a private entity seeking to store spent nuclear fuel at an off-site facility in West Texas

Texas and a private West Texas business known as Fasken Land and Minerals objected to the project and sued

They argued that federal law does not authorize storage of spent nuclear fuel at private *off-site* facilities

Could Texas Sue Over this?

- No
- Under the Hobbs Act, only an "**aggrieved party**" may obtain judicial review of a Commission licensing decision
- To qualify as a party to a licensing proceeding, the Atomic Energy Act requires that one either be a **license applicant** or have **successfully intervened** in the licensing proceeding
- In this case, however, Texas and Fasken are not license applicants, and they did not successfully intervene in the licensing proceeding (though Fasken tried to intervene)

Why Does the Hobbs Act Apply?

- I am not sure but the answer might be in this paragraph:
  - The licensing proceeding culminates with a final order by the Commission that either grants or denies the license. The final orders of the Commission are subject to judicial review under the Administrative Orders Review Act of 1950, commonly known as the Hobbs Act. Ch. 1189, 64 Stat. 1129, as amended; see §2239(b). The Hobbs Act provides that any "party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order" in a court of appeals. 28 U. S. C. §2344 (emphasis added).

Texas and Fasken Argued

- Yes we weren't applicants and we didn't successfully intervene but…
- First, according to Texas and Fasken, they were parties because **both of them submitted comments** to the NRC. Fasken also separately argues that it was a party because it **sought to intervene** in the licensing proceeding, even though it did **not successfully intervene**
- Second, Fasken contends that the NRC **erroneously denied** Fasken's intervention petition
- Agreeing with the Fifth Circuit, they argue that the NRC acted **ultra vires** by issuing a license, so a court may invalidate the license even if no statutory avenue for judicial review like the Administrative Procedure Act or the Hobbs Act is available

Do Any of These Arguments Sound Persuasive to You?

Not to me either

Dissenting Justice Gorsuch Said Forget Party What about Aggrieved

- Yes, the respondents are the State of Texas and Fasken Land and Minerals, Ltd., a landowner with property near the proposed facility. And, yes, they are "aggrieved" by the NRC's decision. **Radioactive waste poses risks to the State, its citizens, its lands, air, and waters, and it poses dangers as well to a neighbor and its employees.** But, the Court insists, the agency never admitted Texas or Fasken as "parties" in a hearing it held before issuing ISP's license—and that's the rub. Maybe the agency's internal rules governing who can participate in its hearing are highly restrictive. Maybe those rules are themselves unlawful. But, the Court reasons, its hands are tied: The agency did not admit Texas or Fasken as parties in its hearing, and that is that.

Some Thoughts (Really Questions)

Would a different court have held that Texas or Fasken could have intervened?

Who, if anyone, that doesn't like the idea of private off-site storage can intervene?

When can I turn my daughter's bedrooms into off-site storage for spent nuclear fuel?

Thanks for Attending