

The Supreme Court - June 23, 2021

Today, the Supreme Court of the United States issued the following four decisions:

Collins v. Yellen, No. 19-422: The Housing and Economic Recovery Act of 2008 (“Recovery Act”), 12 U.S.C. §4501 et seq., was passed in response to concerns that Fannie Mae’s and Freddie Mac’s financial condition as a result of the 2008 housing crisis would threaten the national economy. One of the measures in the Recovery Act to address this concern was the creation of the Federal Housing Finance Agency (“FHFA”), an independent agency headed by a single Director removable by the President only for cause, that was charged with regulating Fannie Mae and Freddie Mac, and stepping in as the companies’ conservator or receiver if necessary. The FHFA did just that, placing Fannie Mae and Freddie Mac into conservatorship, and entering into agreements with the Department of Treasury. Fannie Mae and Freddie Mac shareholders brought suit in response to the third amendment to those agreements, raising a statutory claim that the FHFA’s agreement exceeded the FHFA’s authority as a conservator under the Recovery Act, as well as a constitutional claim that the FHFA’s structure with a single Director removable by the President only “for cause” violates separation of powers. The en banc Fifth Circuit reversed the District Court’s dismissal of the statutory claim and held that the FHFA’s structure violates separation of powers. The Fifth Circuit’s remedy was to sever the Director’s removal restriction, but not to vacate and set aside the third amendment. Today, the Court affirmed in part, reversed in part, vacated in part, and remanded. With respect to the statutory claim, the Court held that the claim was barred by the Recovery Act’s prohibition on courts taking “any action to restrain or affect the exercise of [the] powers or functions of the Agency as a conservator.” §4617(f). As for the constitutional claim, the Court held that the FHFA’s structure violates the separation of powers, and remanded for a determination of what remedy, if any, the shareholders are entitled to on that claim. Justice Alito issued the Court’s opinion, joined in full by Chief Justice Roberts, as well as Justices Thomas, Kavanaugh, and Barrett. Justice Gorsuch, Justice Thomas, and Justice Kagan all issued separate concurring opinions. Justice Sotomayor filed an opinion concurring in part and dissenting in part, joined by Justice Breyer.

Related Capabilities

- Securities & Financial Services Litigation & Enforcement
- Real Estate & Land Use
- Food, Beverage & Agribusiness
- Labor & Employment

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Cedar Point Nursery v. Hassid, No. 20-107: Two agricultural growers in California challenged a California regulation granting labor organizations a “right to take access” to an agricultural employer’s property in order to solicit support for unionization, and requiring that agricultural employers allow union organizers on their property for up to three hours per day, 120 days per year. The growers contended that the regulation created an easement without compensation and was thus an unconstitutional *per se* physical taking. The District Court disagreed, holding that there was no *per se* physical taking because the regulation did not allow public access to the grower’s property in a permanent and continuous manner. The Ninth Circuit affirmed. The Court today reversed, holding that whenever a regulation results in a physical appropriation of property, a *per se* taking has occurred, and under that standard, found that because the California regulation appropriates a right to invade the growers’ property, it constitutes a *per se* physical taking. Chief Justice Roberts issued the Court’s opinion, joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett. Justice Breyer dissented, in an opinion joined by Justice Sotomayor and Justice Kagan.

View the Court's [decision](#).

Mahanoy Area School Dist. v. B. L., No. 20-255: The respondent is a public high school student and member of the school’s cheerleader team who – outside of school hours and off-campus – used profanity and vulgar gestures on Snapchat criticizing the school and cheerleading team after she failed to make the varsity squad. The school suspended the student from the cheerleading team for a year, which the student challenged as violating the First Amendment. The Third Circuit agreed that the school’s punishment violated the First Amendment, based upon an off-campus/on-campus distinction derived from the Court’s decision in *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969). The Court today affirmed, holding that the school’s suspension violated the First Amendment, but relying upon different reasoning. The Court disagreed that the special characteristics that give schools additional license to regulate student speech always disappear when a school regulates speech that takes place off campus. Instead the Court identified three features of off-campus speech that will often distinguish schools’ efforts to regulate off-campus speech from on-campus speech: 1) a school, in relation to off-campus speech, will rarely stand in the place of students’ parents; 2) regulation of off-campus speech, when coupled with regulation of on-campus speech, could mean regulation of all student speech, 24 hours a day; and 3) public schools, as “nurseries of democracy,” have an interest in protecting a student’s unpopular expression, especially off campus. Justice Breyer issued the Court’s opinion, joined by all members of the Court except Justice Thomas, who dissented.

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Lange v. California, No. 20-18: When petitioner Arthur Lange drove past a California highway patrol officer listening to loud music with the windows down and repeatedly honking his horn, the officer tailed Lange and then turned on his overhead lights to pull Lange over. Lange, however, was only 100 feet from his home, and instead drove into

his driveway and entered his garage. The officer followed Lange into his garage, began questioning him, and after observing signs of intoxication, performed field sobriety and blood tests which led to a charge of misdemeanor driving under the influence and a noise infraction. The California Superior Court and California Court of Appeals both rejected Lange's motion to suppress all evidence obtained after the officer entered his garage, agreeing with the State that the pursuit of a suspected misdemeanant always qualifies as exigent circumstances authorizing a warrantless home entry. Today, the Court vacated and remanded, holding that the flight of a suspected misdemeanant does not categorically justify a warrantless entry into a home. Justice Kagan issued the Court's opinion, joined in full by Justices Breyer, Sotomayor, Gorsuch, Kavanaugh, and Barrett. Justice Thomas joined the Court's opinion in part and also issued a concurring opinion, joined in part by Justice Kavanaugh. Chief Justice Roberts issued an opinion concurring in the judgment, joined by Justice Alito.

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