

The Supreme Court - June 29, 2020

Today, the Supreme Court of the United States issued the following three opinions:

Seila Law LLC v. Consumer Financial Protection Bureau, No. 19-7: Congress established the Consumer Financial Protection Bureau (“CFPB”) in light of the 2008 financial crisis to be an independent regulatory agency. Unlike other independent administrative agencies, Congress designated that a single Director would lead the CFPB, and would be removable by the President only for inefficiency, neglect, or malfeasance. When petitioner Seila Law LLC was issued a civil investigative demand by the CFPB, Seila Law objected and refused to comply on the basis that the agency’s leadership by a single Director removable only for cause violated separation of powers. The District Court rejected that argument and ordered Seila Law to comply. The Ninth Circuit affirmed. Today, the Court vacated and remanded. Chief Justice Roberts, joined by Justices Thomas, Alito, Gorsuch, and Kavanaugh, found that the two exceptions to the President’s unrestricted removal power – whereby Congress could 1) create expert agencies led by a group of principal officers removable by the President only for good cause; or 2) provide tenure protections to inferior officers with narrowly defined duties – did not apply here, and should not be extended. Justice Thomas and Justice Gorsuch, however, did not join Chief Justice Robert’s conclusion that the Director’s removal protection is severable from the other statutory provisions bearing on the CFPB’s authority. Instead, the opinion by Justice Kagan, joined by Justices Ginsburg, Breyer, and Sotomayor, concurred in the judgment with respect to severability, but otherwise dissented.

The Court’s decision is available [here](#).

Agency for Int’l Development v. Alliance for Open Society, No. 19-177: In 2003 the Federal Government enacted the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act (“Leadership Act”), 22 U.S.C. §7601 *et seq.*, which allocated funds to American and foreign nongovernmental organizations that fight HIV/AIDS abroad. As part of the law, Congress included a condition whereby it would

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only fund organizations that have, or agree to have, a “policy explicitly opposing prostitution and sex trafficking.” §7631(f). American nongovernmental organizations that receive Leadership Act funds, but did not want to express their agreement with a commitment to eliminating prostitution, brought a First Amendment challenge to §7631(f)’s policy requirement. In a 2013 decision, the Court agreed that the policy requirement, as applied to American organizations, violated the First Amendment’s free speech clause. *Agency for Int’l Development v. Alliance for Open Society Int’l, Inc.*, 570 U.S. 205 (2013). Plaintiffs then brought this suit, invoking the same First Amendment principle against §7631(f)’s policy requirement as applied against their legally distinct foreign affiliates. The District Court and Second Circuit both found for the organizations. Today, the Court reversed, holding that as foreign organizations operating abroad, plaintiffs’ foreign affiliates possess no rights under the First Amendment, and thus applying §7631(f)’s policy requirement to the foreign affiliates is not unconstitutional. Justice Kavanaugh issued the Court’s opinion, joined by Chief Justice Roberts, and Justices Thomas, Alito, and Gorsuch. Justice Breyer filed a dissent, joined by Justices Ginsburg and Sotomayor. Justice Kagan did not participate.

The Court’s decision is available [here](#).

June Medical Services L. L. C. v. Russo, No. 18-1323: Four years ago in *Whole Woman’s Health v. Hellerstedt*, 579 U.S. ____ (2016), the Court struck down as unconstitutional a Texas abortion law that required abortion providers to hold active admitting privileges at a hospital within 30 miles of the place where they perform abortions. Louisiana, in turn, had enacted Act 620, which is nearly word-for-word identical to the Texas law. The District Court made a number of factual findings regarding the law and its effects that led it to conclude that the law imposes an undue burden and is unconstitutional. The Fifth Circuit reversed, agreeing as to the District Court’s interpretation of the legal standards that apply to abortion regulations, but finding the District Court’s factual findings were clearly erroneous. The Court today reversed. Justice Breyer, joined by Justices Ginsburg, Sotomayor, and Kagan, concluded that the record supported the District Court’s factual findings, which mirrored those made in *Whole Woman’s Health* in every relevant respect and required the same result. Chief Justice Roberts concurred in the judgment on the basis of *stare decisis* and the fact that the Louisiana law imposes a burden on access to abortion just as severe as that at issue in *Whole Woman’s Health*, a case in which he dissented. He observed that neither party asked the Court to reassess the constitutional validity of the governing standard from *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992). Justice Alito filed a dissent, joined in full by Justice Gorsuch, and joined in part by Justices Thomas and Kavanaugh, who also filed their own separate dissenting opinions.

The Court’s decision is available [here](#).