

The Supreme Court Update - June 14, 2024

by Ian Blodger, Jessica M. Leano, and Brock Huebner

On Thursday, June 13, the Supreme Court of the United States issued three decisions:

FDA v. Alliance for Hippocratic Medicine, No. 23-235: This case involves an attempt to rescind the Food and Drug Administration's ("FDA") past approval of, and subsequent regulation over, mifepristone as an abortion medication. After a temporary injunction issued by the district court was stayed by the Supreme Court, the Fifth Circuit Court of Appeals ruled that the plaintiffs—a collection of medical associations and individual doctors—had standing to challenge the FDA's past actions and determined that the plaintiffs were likely to succeed on the merits in challenging regulations governing prescriptions of mifepristone, but were unlikely to succeed in challenging the FDA's approvals of the drug. Today, in a 9-0 decision authored by Justice Kavanaugh, the Court did not reach the merits of the Fifth Circuit's decision and instead held that the plaintiffs failed to demonstrate Article III standing to pursue their lawsuit in federal court. Moral or ideological opposition is insufficient to demonstrate Article III's actual injury, causation, and redressability requirements, as "a plaintiff's desire to make a drug less available for others does not establish standing to sue." Here, the plaintiffs did not themselves prescribe or use mifepristone, and any theorized downstream conscience or economic injuries would not be caused by the FDA's actions at issue. Justice Thomas filed a concurrence related to organizations' attempts to maintain "associational standing" on behalf of members.

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

Vidal v. Elster, No. 22-704: This case addresses a First Amendment challenge to the Lanham Act's "Names Clause" which prohibits trademarks that "consist of or comprises a name . . . identifying a particular living individual except by his written consent." 15 U.S.C. § 1052(c). Here, the respondent, Steve Elster, sought to register the trademark, "Trump too small," but was denied by the U.S. Patent and Trademark Office because the proposed trademark referenced former President Trump's name without his consent. The

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Federal Circuit reversed, agreeing with Elster that the Names Clause violated his First Amendment right to free speech. In an opinion authored by Justice Thomas and joined in full by Justices Alito and Gorsuch and joined in part by Chief Justice Roberts and Justices Kavanaugh and Barrett, the Supreme Court reversed, holding that the Lanham Act's Names Clause does not violate the First Amendment because the Names Clause fits within the historical tradition of restricting the trademarking of names that has coexisted with the First Amendment. Justice Barrett wrote separately to express her position that a tradition of restricting the trademarking of names is insufficient by itself to resolve the constitutional question. Justice Sotomayor, joined by Justices Kagan and Jackson, concurred in the Court's judgment, but wrote separately to argue that the Court should have resolved the dispute by holding the Names Clause constitutes a "reasonable, viewpoint-neutral content regulation" as opposed to examining the history of the First Amendment.

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

Starbucks Corp. v. McKinney, No. 23-367: This case resolves a circuit split regarding the standard federal district courts should apply when evaluating the National Labor Relations Board's ("Board") requests for preliminary injunctions under Section 10(j) of the National Labor Relations Act to enjoin unfair employment practices. Starbucks employees invited a news crew to visit their store after hours to promote their unionizing efforts. Store management learned about the event and ultimately fired multiple employees involved for violating company policy. The union, coordinating with the employees, filed charges with the Board, alleging that Starbucks unlawfully interfered with the employees' right to unionize and discriminated against union supporters. The Board issued a complaint against Starbucks and filed a Section 10(j) petition seeking a preliminary injunction that would require Starbucks to reinstate the fired employees, among other relief. To assess whether the Board was entitled to a preliminary injunction, the district court applied the Sixth Circuit Court of Appeal's two-part test, which asks (1) whether there is reasonable cause to believe that unfair labor practices have occurred, and (2) whether injunctive relief is just and proper. The district court granted an injunction and the Sixth Circuit affirmed. Today, in an opinion authored by Justice Thomas and joined by seven other Justices, the Court vacated and remanded, rejecting the use of the Sixth Circuit's two-part test. Instead, the Court directed district courts to apply the traditional four-part test for preliminary injunctions from *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), which requires a plaintiff to make a clear showing that (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. The Court determined that Section 10(j) does not displace the traditional principles of equity encompassed in the Winter test. Justice Jackson concurred in part, concurred in the judgment, and dissented in part on grounds that the majority casts a district court's decision regarding a Section 10(j) request as one that invokes the full sweep of a court's traditional equitable discretion without regard for the Board's authority or the statutory scheme authorizing courts to issue such interim relief in the first place.

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

Today, the Supreme Court issued an additional three decisions:

Garland v. Cargill, No. 22-976: This case addresses whether a bump stock constitutes a machinegun under the National Firearms Act of 1934, which defines a “machinegun” to mean a firearm with the ability to “shoot, automatically more than one shot . . . by a single function of the trigger.” 26 U.S.C. § 5845(b). A bump stock is an accessory designed to help a shooter use a firearm’s recoil to rapidly manipulate the trigger, resulting in a faster firing rate. In 2018, following a mass shooting in Las Vegas where the shooter used a bump stock, the Bureau of Alcohol, Tobacco, and Firearms and Explosives (“ATF”) issued a final Rule interpreting bump stocks to constitute “machineguns” under § 5845(b). Michael Cargill surrendered two bump stocks to the ATF under protest, and initiated a claim under the Administrative Procedure Act arguing that the ATF lacked statutory authority to promulgate the final Rule because bump stocks are not “machinegun[s]” as defined in § 5845(b). The district court entered judgment for the ATF. The Fifth Circuit Court of Appeals initially affirmed, but later reversed after rehearing en banc. Today, in a 6-3 decision authored by Justice Thomas, the Supreme Court held that the ATF exceeded its statutory authority by issuing a Rule that classifies a bump stock as a “machinegun” under § 5845(b). The Court reasoned that firearms equipped with a bump stock do not fire more than one shot “by a single function of the trigger” and even if they did, they would not do so “automatically.” Justice Sotomayor dissented, joined by Justices Kagan and Jackson, arguing that a bump-stock-equipped semiautomatic rifle is a machinegun because with a single pull of the trigger, a shooter can fire continuous shots without any additional human input beyond forward pressure.

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

United States Trustee v. John Q. Hammons Fall 2006, LLC, No. 22-1238: This case defines the consequences of the Court’s ruling in *Siegel v. Fitzgerald*, 596 U. S. 464 (2022), that a law, which allowed debtors in bankruptcy proceedings in two states to pay lower administrative fees than debtors in other states, violated the uniformity requirement in the Bankruptcy Clause of the U.S. Constitution. *Siegel* did not define what the appropriate remedy should be for the debtors in other states that paid higher fees. In this case, the Tenth Circuit Court of Appeals ordered that debtors be given a refund of past fees to the extent the fees exceeded those paid in other states. Today, in a 6-3 decision authored by Justice Jackson, the Court reversed and held that the appropriate remedy is only parity in fees going forward, not refunds for past fees already paid. Justice Gorsuch filed a dissenting opinion joined by Justices Thomas and Barrett.

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

Campos-Chaves v. Garland, No. 22-674: This immigration law case concerns the due process and notice requirements for removal hearings against non-citizens. 8 U.S.C. §

1229(a)(1), (2) requires “written notice” prior to initiating removal proceedings, and sets forth various information that must be included with the initial notice to appear (“NTA”) and any subsequent notices of the change in place or time of proceedings. If a non-citizen fails to attend a removal hearing after receiving written notice, they may be “ordered removed in absentia.” In these consolidated cases, non-citizens attempted to rescind absentia removal orders by claiming the written notices received were deficient because the initial NTAs did not include the time and place of proceedings—instead such information was provided in subsequent notices. Today, in a 5-4 decision authored by Justice Alito, the Court rejected the attempt to rescind the removal orders after interpreting the text of the relevant Immigration Code sections and determining that each non-citizen received proper notice prior to their removal hearing. Justice Jackson dissented, and was joined by Justices Sotomayor, Kagan, and Gorsuch.

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