

The Supreme Court Update - June 27, 2023

by Brock Huebner

Today, the Supreme Court of the United States issued three decisions:

Mallory v. Norfolk Southern R. Co., No. 21-1168: This case addressed whether companies consent to jurisdiction in states where they have registered to do business. In this case, a Virginia man filed a lawsuit in Pennsylvania state court against Norfolk Southern, a company incorporated in Virginia and headquartered there, alleging injuries sustained while working for Norfolk Southern in Ohio and Virginia. Norfolk Southern had registered to do business in Pennsylvania under a state law requiring out-of-state companies that register to do business in Pennsylvania to agree to appear in Pennsylvania courts on “any cause of action” against them. The Pennsylvania Supreme Court concluded that the registration law violates the Due Process Clause of the Fourteenth Amendment. Today, in a fractured decision authored by Justice Gorsuch, the Court reversed. A majority of the Court agreed “that the state law and facts before us fall squarely within” the 1917 decision in *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U. S. 93 (1917) in which the Court held that laws like Pennsylvania’s comport with the Due Process Clause. The majority cautioned that it “need not speculate whether any other statutory scheme and set of facts would suffice to establish consent to suit.” Justice Jackson filed a concurring opinion, and Justice Alito filed an opinion concurring in part and concurring in the judgment. Justice Barrett (joined by Chief Justice Roberts and Justices Kagan and Kavanaugh) dissented, warning that the majority’s decision allows states to “now manufacture ‘consent’ to personal jurisdiction” and “circumvent constitutional limits.”

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

Counterman v. Colorado, No. 22-138: This case addressed the limits of First Amendment speech protections in the context of “true threats” of violence. Billy Counterman sent hundreds of Facebook messages across multiple years to a local musician he had never met. The musician never responded and repeatedly blocked

Related People

- Brock Huebner

Related Capabilities

- Appellate

Counterman, but his continued messaging and suggestions of violence caused her fear and anxiety. After she contacted the authorities, Counterman was convicted under a Colorado law that criminalized repeated communications “that would cause a reasonable person to suffer serious emotional distress and does cause that person . . . to suffer serious emotional distress.” Colo. Rev. Stat. § 18–3–602(1)(c). Counterman appealed, claiming that the First Amendment required that the prosecution prove both that the statements were objectively threatening and that he was subjectively aware of their threatening nature. Today, in a 7-2 opinion authored by Justice Kagan, the Court held that “true threats” prosecutions need only prove that the defendant’s objectively threatening statements demonstrated a reckless state of mind—a conscious disregard for a substantial and unjustifiable risk of harm. Because Counterman’s conviction was based solely on proof of the objectively threatening nature of his messages, the Court returned the case to state court for potential re-trial under the recklessness standard. Justice Sotomayor (joined in part by Justice Gorsuch) filed a concurring opinion. Justices Thomas and Barrett each filed dissents.

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

Moore v. Harper, No. 21-1271: This case involved interpretation of the Elections Clause of the U.S. Constitution that requires “the Legislature” of each State to prescribe the rules governing federal elections—specifically, whether that clause vests state legislatures with authority to set rules governing federal elections free from restrictions imposed under state law. In this case, the North Carolina Supreme Court invalidated proposed maps drawn by the North Carolina General Assembly for federal elections in North Carolina, and adopted a congressional map of its own creation. The petitioners argued that state courts cannot review decisions made by state lawmakers when setting the rules for federal elections, because the Elections Clause gives that power solely to state legislatures. Today, in a 6-3 decision authored by Chief Justice Roberts, the Court confirmed that it had jurisdiction over the case and then held that the “Elections Clause does not insulate state legislatures from the ordinary exercise of state judicial review.” Justice Kavanaugh filed a concurring opinion. Justice Thomas filed a dissent (joined by Justice Gorsuch in full and Justice Alito in part).

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