

The Supreme Court Update - June 29, 2023

by Brock Huebner

The Supreme Court of the United States issued four decisions today:

Students for Fair Admissions v. President and Fellows of Harvard; Students for Fair Admissions v. University of North Carolina, Nos. 20-1199, 21-707: These consolidated cases involved constitutional challenges to the admissions systems used by Harvard College and the University of North Carolina. The petitioners claimed those schools' "race-based admissions programs violated" both the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. After trial, the district courts found that Harvard's and UNC's admissions programs were lawful. Today, in a 6-3 decision authored by Chief Justice Roberts, the Court reversed. The Court first rejected an argument that the petitioners lacked standing. Turning to the merits, the Court did not outright prohibit race-based admissions or overrule *Grutter v. Bollinger*, 539 U. S. 306 (2003), which permitted race-based admissions under certain circumstances. The Court, however, explained it would permit such admissions programs "only within the confines of narrow restrictions"—the "programs must comply with strict scrutiny, they may never use race as a stereotype or negative, and—at some point—they must end." The Court concluded Harvard's and UNC's policies failed those criteria and therefore were invalid under the Equal Protection Clause. Justice Thomas filed a concurring opinion, arguing that race-based "policies fly in the face of our colorblind Constitution and our Nation's equality ideal" and "are plainly—and boldly—unconstitutional." Justices Gorsuch and Kavanaugh each filed a separate concurring opinion. Justices Sotomayor, Kagan, and Jackson filed two dissents, arguing "the Court cements a superficial rule of colorblindness as a constitutional principle in an endemically segregated society where race has always mattered and continues to matter" and "subverts the constitutional guarantee of equal protection by further entrenching racial inequality in education, the very foundation of our democratic government and pluralistic society."

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Groff v. DeJoy, No. 22-174: This case addressed employers' duties to provide religious

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accommodations under Title VII of the Civil Rights Act of 1964 (“Title VII”), which mandates that accommodations be provided unless they impose “undue hardship on the conduct of the employer’s business.” 42 U.S.C. § 2000e(j). Gerald Groff, an employee of the U.S. Postal Service (“USPS”), objected to a change in his employment duties that required him to assist with Sunday package delivery. Groff claimed this violated his Christian beliefs and sued USPS under Title VII for refusing to accommodate his Sunday Sabbath practice. The lower courts ruled for USPS under the Supreme Court’s *TWA v. Hardison* test, which the Third Circuit interpreted to allow employers to decline accommodations that impose “more than a *de minimis* cost.” 432 U.S. 63, 84 (1977). Today, in a 9-0 decision authored by Justice Alito, the Court reversed the Third Circuit. The Court clarified that Title VII and *Hardison* require courts to engage in a “fact-specific inquiry” to consider whether “a burden is substantial in the overall context of an employer’s business.” The Court remanded the case for the lower court to reconsider the allegations under the proper context-specific analysis. Justice Sotomayor (joined by Justice Jackson) authored a concurring opinion.

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Abitron Austria GmbH v. Hetronic International, Inc., No. 21-1043: This case considered the application of the Lanham Act’s trademark infringement provisions outside of the United States. Hetronic, a U.S. manufacturer, sued its former foreign distributors in U.S. district court under 15 U.S.C. §§ 1114(1)(a), 1125(a)(1), which prohibit the unauthorized use of trademarks in commerce. Abitron, a collection of six foreign parties, argued the Lanham Act did not apply against its alleged infringing uses outside of the U.S. The district court rejected this argument and awarded Hetronic damages and a permanent injunction against Abitron. Today, in an opinion authored by Justice Alito, the Court reversed and applied the “presumption against extraterritoriality” to hold that the sections of the Lanham Act at issue apply “only to where the claimed infringing use in commerce is domestic.” Justice Jackson filed a concurring opinion and Justice Sotomayor (joined by Chief Justice Roberts and Justices Kagan and Barrett) authored an opinion concurring solely in the judgment.

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