

The Supreme Court Update - June 30, 2023

by Brock Huebner

Today, in the last day of the 2022-2023 term, the Supreme Court of the United States issued three decisions:

Department of Education v. Brown, No. 22-535; **Biden v. Nebraska**, No. 22-506:

These cases addressed suits brought by borrowers and states challenging the legality of the federal student loan forgiveness plan. In response to the COVID-19 pandemic, the Secretary of Education announced a plan to discharge \$10,000 or \$20,000 in federal student loans for individuals with less than \$125,000 in income (the “lan”). The Plan was justified under the Higher Education Relief Opportunities for Students Act of 2003 (“HEROES Act”), which authorized the Secretary of Education “to waive or modify” applicable to federal loan programs “as may be necessary to ensure” recipients are no worse off “financially in relation to that financial assistance” because of a national emergency. 20 U.S.C. §§ 1098bb(a)(1), (a)(2)(A), 1098ee(2)(C)-(D). Two borrowers who did not qualify for full forgiveness under the Plan (the “Borrower Plaintiffs”) and six states (the “State Plaintiffs”) filed lawsuits to prevent the Plan from taking effect, arguing the Plan was not authorized under the HEROES Act. After considering the State Plaintiffs’ claims, the Eighth Circuit issued a nationwide preliminary injunction, blocking the implementation of the Plan. Today, the Court held the Plan exceeded the scope of the HEROES Act, and prevented the Plan’s implementation. Before reaching the merits of the lawsuits, the Court first evaluated whether the various entities had standing to challenge the legality of the Plan. In **Brown**, the Court, in a 9-0 opinion authored by Justice Alito, held that the Borrower Plaintiffs lacked standing because they failed to show that their alleged injury—not qualifying for the full \$20,000 in loan forgiveness—was traceable to the alleged procedural violations in the creation of the Plan. In **Biden v. Nebraska**, the Court, in a 6-3 decision authored by Chief Justice Roberts, held that at least one of the states, Missouri, had standing to challenge the Plan because its state-created loan servicing organization, MOHELA, would potentially lose fees if the Plan was implemented. Turning to the merits of the State Plaintiffs’ claims, the Court held that the Plan exceeded the scope of the HEROES Act, concluding “that ‘the basic and consequential tradeoffs’ inherent in a mass debt cancellation program ‘are ones that

Related People

- Brock Huebner

Related Capabilities

- Appellate

Congress would likely have intended for itself.” Justice Barrett authored a concurring opinion. Justice Kagan (joined by Justices Sotomayor and Jackson) dissented, claiming the Court’s majority opinion “exceeds its proper, limited role in our Nation’s governance.”

View the Court’s [Department of Education v. Brown](#) decision.

View the Court’s [Biden v. Nebraska](#) decision.

303 Creative LLC v. Elenis, No. 21-476: This case addressed a wedding website designer’s claim that the Colorado Anti-Discrimination Act (CADA) violates the Free Speech Clause of the First Amendment by requiring her to create custom websites celebrating same-sex marriages. The designer, Ms. Lorie Smith, sought an injunction to prevent Colorado from forcing her to create websites celebrating marriages that defy her belief that marriage should be reserved to unions between one man and one woman. The district court denied the request for the injunction, and the Tenth Circuit affirmed. Today, in a 6-3 decision authored by Justice Gorsuch, the Court reversed, concluding that Colorado violated the First Amendment by “seek[ing] to force an individual to speak in ways that align with its views but defy her conscience about a matter of major significance.” The Court added that “no public accommodations law is immune from the demands of the Constitution.” Justice Sotomayor (joined by Justices Kagan and Jackson) dissented, arguing that “the Court, for the first time in its history, grants a business open to the public a constitutional right to refuse to serve members of a protected class.”

View the Court’s [decision](#).

The Supreme Court also granted certiorari in seven cases:

SEC v. Jarkesy, No. 22-859: This case involves a constitutional challenge to the Securities and Exchange Commission. The questions presented are: (1) Whether statutory provisions that empower the Securities and Exchange Commission to initiate and adjudicate administrative enforcement proceedings seeking civil penalties violate the Seventh Amendment; (2) whether statutory provisions that authorize the SEC to choose to enforce the securities laws through an agency adjudication instead of filing a district court action violate the non-delegation doctrine; and (3) whether Congress violated Article II by granting for-cause removal protection to administrative law judges in agencies whose heads enjoy for-cause removal protection.

United States v. Rahimi, No. 22-915: This case concerns a Second Amendment challenge to a federal law prohibiting certain individuals from possessing firearms. The question presented is: Whether 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to domestic violence restraining orders, violates the Second Amendment on its face.

Muldrow v. City of St. Louis, Missouri, No. 22-193: This civil rights and employment law case addresses the scope of Title VII protections against an employer’s alleged discriminatory conduct. The question presented is: Whether Title VII of the Civil Rights

Act of 1964 prohibits discrimination as to all “terms, conditions, or privileges of employment,” or whether its reach is limited to discriminatory employer conduct that courts determine causes materially significant disadvantages for employees.

Wilkinson v. Garland, No. 22-666: This immigration law case concerns the scope of judicial review when non-citizens challenge a deportation order. The question presented is: Whether an agency determination that a given set of established facts does not rise to the statutory standard of “exceptional and extremely unusual hardship” is a mixed question of law and fact reviewable under 8 U.S.C. § 1252(a)(2)(D), or whether this determination is a discretionary judgment call unreviewable under Section 1252(a)(2)(B) (i).

Campos-Chaves v. Garland; Garland v. Singh, Nos. 22-674, 22-884: These consolidated immigration law cases address the statutory notice requirements that must be provided to non-citizens prior to an order of removal in absentia for failure to attend removal proceedings. The question presented is: Whether the government provides notice “required under” and “in accordance with paragraph (1) or (2) of” 8 U.S.C. § 1229(a) when it serves an initial notice document that does not include the “time and place” of proceedings followed by an additional document containing that information, such that an immigration court must enter a removal order in absentia and deny a noncitizen’s request to rescind that order.

McElrath v. Georgia, No. 22-721: This criminal procedure case concerns the scope of the U.S. Constitution’s double jeopardy clause. In this case, a jury convicted a defendant on one criminal charge and acquitted him on another charge arising from the same facts. The state supreme court vacated both verdicts and allowed retrial on both charges. The question presented is: Whether the double jeopardy clause of the Fifth Amendment prohibits a second prosecution for a crime of which a defendant was previously acquitted.