

The Supreme Court Update - September 29, 2023

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

Today, the Supreme Court of the United States granted certiorari in 12 cases:

Moody v. NetChoice, LLC, No. 22-277: This case involves a First Amendment challenge to a Florida statute that restricts certain social media companies from removing content based on the user's viewpoint. The questions presented are: (1) Whether the First Amendment prohibits a State from requiring that social-media companies host third-party communications, and from regulating the time, place, and manner in which they do so, and (2) whether the First Amendment prohibits a State from requiring social-media companies to notify and provide an explanation to their users when they censor the user's speech.

NetChoice, LLC v. Paxton, No. 22-555: Similar to the *Moody* case, this case involves a First Amendment challenge to a Texas statute that restricts certain social media companies from removing content based on the user's viewpoint. The questions presented are: (1) Whether the laws' content-moderation restrictions comply with the First Amendment, and (2) whether the laws' individualized-explanation requirements comply with the First Amendment.

Warner Chappell Music, Inc. v. Nealy, No. 22-1078: This case involves the scope of damages available in a copyright suit. The question presented is: Whether, under the discovery accrual rule applied by the circuit courts and the Copyright Act's statute of limitations for civil actions, 17 U.S.C. § 507(b), a copyright plaintiff can recover damages for acts that allegedly occurred more than three years before the filing of a lawsuit.

Bissonnette v. LePage Bakeries Park St., LLC, No. 23-51: This arbitration case concerns the scope of the Federal Arbitration Act's exemption for workers engaged in foreign or interstate commerce. The question presented is: Whether, to be exempt from the Federal Arbitration Act, a class of workers that is actively engaged in interstate

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transportation must also be employed by a company in the transportation industry.

Macquarie Infrastructure Corp. v. Moab Partners, L.P., No. 22-1165: This securities case addresses the intersection between Section 10(b) of the Securities Exchange Act of 1934, which prohibits a party from making false or misleading statements in connection with the purchase or sale of a security, and Item 303 of SEC Regulation S-K. Item 303 requires companies to disclose known trends or uncertainties that are likely to have a material impact on their financial position. The question presented is: Whether a failure to make a disclosure required under Item 303 can support a private claim under Section 10(b), even in the absence of an otherwise-misleading statement.

Devillier v. Texas, No. 22-913: This case concerns the Fifth Amendment's Takings Clause. The question presented is: Whether a person whose property is taken without compensation may seek redress under the self-executing Takings Clause even if the legislature has not affirmatively provided them with a cause of action.

Sheetz v. County of El Dorado, No. 22-1074: This case involves the “unconstitutional conditions doctrine,” articulated in *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 837 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994), which holds that the government may not condition approval of a land-use permit on the owner’s dedication of property (e.g., money) to public projects, unless the government can prove an “essential nexus” and “rough proportionality” exists between the owner’s project and the property demanded by the government. The question presented is: Whether a permit exaction is exempt from the unconstitutional conditions doctrine as applied in *Nollan* and *Dolan* simply because it is authorized by legislation.

Office of the United States Trustee v. John Q. Hammons Fall 2006, LLC, No. 22-1238: This case considers the remedy for violations of the Constitution’s requirement that bankruptcy laws be uniform nationwide. The question presented is: Whether the appropriate remedy for the constitutional uniformity violation found by this court in *Siegel v. Fitzgerald*, 142 S. Ct. 1770 (2022), is to require the United States Trustee to grant retrospective refunds of the increased fees paid by debtors in U.S. Trustee districts during the period of disuniformity, or is instead either to deem sufficient the prospective remedy adopted by Congress or to require the collection of additional fees from a much smaller number of debtors in Bankruptcy Administrator districts.

Corner Post, Inc. v. Bd. of Governors FRS, No. 22-1008: This case addresses when a claim accrues under the Administrative Procedure Act (“APA”). The question presented is: Does a plaintiff’s APA claim first accrue when an agency issues a rule—regardless of whether that rule injures the plaintiff on that date—or when the rule first causes a plaintiff to suffer legal wrong or be adversely affected or aggrieved.

FBI v. Fikre, No. 22-1178: This case concerns the ability to continue a lawsuit after the defendant voluntarily ceases the allegedly harmful conduct. The question presented is: Whether respondent’s claims challenging his placement on the No Fly List are moot given that he was removed from the No Fly List in 2016 and the government provided a sworn declaration stating that he “will not be placed on the No Fly List in the future based

on the currently available information.”

Smith v. Arizona, No. 22-899: This criminal case involves application of the Sixth Amendment’s Confrontation Clause to certain expert testimony.

The question presented is: Whether the Confrontation Clause of the Sixth Amendment permits the prosecution in a criminal trial to present testimony by a substitute expert conveying the testimonial statements of a nontestifying forensic analyst, on the grounds that (a) the testifying expert offers some independent opinion and the analyst’s statements are offered not for their truth but to explain the expert’s opinion, and (b) the defendant did not independently seek to subpoena the analyst.

McIntosh v. United States, No. 22-7386: This criminal procedure case addresses a circuit court split about whether a final criminal forfeiture order is valid if the government previously failed to comply with procedural rules and time limits governing criminal forfeiture. The question presented is: Whether a district court may enter a criminal forfeiture order outside the time limitations set forth in Rule 32.2 of the Federal Rules of Criminal Procedure.