

Supreme Court Review: October Term 2021

San Diego Federal Bar Association  
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I. Abortion

Dobbs v. Jackson Women’s Health Organization, 142 S.Ct. \_\_\_\_ (June 24, 2022). *Roe v. Wade* is overruled. Mississippi law prohibiting abortions after the fifteenth week of pregnancy is constitutional.

II. Civil rights

Rivas-Villegas v. Cortesluna, 142 S.Ct. 4 (2021). Officer Rivas-Villegas is entitled to qualified immunity in this excessive force action brought under 42 U. S. C. §1983; the 9th Circuit’s holding that circuit precedent “put him on notice that his conduct constituted excessive force” is reversed.

City of Tahlequah, Oklahoma v. Bond, 142 S.Ct. 9 (2021). Officers Girdner and Vick are entitled to qualified immunity in this excessive force action brought under 42 U. S. C. §1983; the 10th Circuit’s contrary holding is not based on a single precedent finding a Fourth Amendment violation under similar circumstances.

Egbert v. Boule, 142 S.Ct. 1793 (2022). A cause of action does not exist under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* for First Amendment retaliation claims; A cause of action does not exist under *Bivens* for claims against federal officers engaged in immigration-related functions for allegedly violating a plaintiff’s Fourth Amendment rights.

Vega v. Tekoh, 142 S.Ct. \_\_\_\_\_. A plaintiff may not state a claim for relief against a law enforcement officer under 42 U.S.C. § 1983 based simply on an officer’s failure to provide the warnings prescribed in *Miranda v. Arizona*.

III. Criminal law

A. Sixth Amendment

Hemphill v. New York, 142 S.Ct. 681 (2022). The trial court’s admission—over Hemphill’s objection—of the plea allocution transcript of an unavailable witness violated Hemphill’s Sixth Amendment right to confront the witnesses against him.

United States v. Tsarnaev, 142 S.Ct. 1024 (2022). District Court did not abuse its discretion by declining to include specific media-content question in juror questionnaire. A court of appeals cannot use its discretionary supervisory powers, if any, to supplant a district court's broad discretion to manage voir dire by prescribing specific lines of questioning. District Court did not abuse its discretion by excluding certain allegedly mitigating evidence at capital sentencing. Section of Federal Death Penalty Act that allowed exclusion of mitigating evidence if its probative value was outweighed by risk of unfair prejudice, confusing the issues, or misleading the jury did not violate Eighth Amendment.

#### B. Habeas corpus

Brown v. Davenport, 142 S.Ct. 1510 (2022). When a state court has ruled on the merits of a state prisoner's claim, a federal court cannot grant habeas relief without applying both the test the Supreme Court outlined in *Brecht v. Abrahamson* and the one Congress prescribed in the Antiterrorism and Effective Death Penalty Act of 1996; the U.S. Court of Appeals for the 6th Circuit erred in granting habeas relief to Ervine Davenport based solely on its assessment that he could satisfy the *Brecht* standard.

#### IV. Federal jurisdiction

Whole Women's Health v. Jackson, 142 S.Ct. 522 (2021). State officials may be sued for injunctive relief only if they play a role in enforcing or implementing the law.

#### V. Environmental protection

West Virginia v. Environmental Protection Agency, 142 S.Ct. \_\_\_\_ (June 30, 2022). Congress did not grant the Environmental Protection Agency in Section 111(d) of the Clean Air Act the authority to devise emissions caps based on the generation shifting approach the agency took in the Clean Power Plan.

#### VI. First Amendment – freedom of speech

City of Austin, Texas v. Reagan National Advertising of Texas, Inc., 142 S.Ct. 1464 (2022). The Austin city code's distinction between on-premise signs, which may be digitized, and off-premise signs, which may not, is not a facially unconstitutional content-based regulation under *Reed v. Town of Gilbert*.

Shurtleff v. Boston, 142 S.Ct. 1583 (2022). City violated the First Amendment in refusing to allow a flag from a private group after having allowed 284 other flags to be raised at City Hall.

#### VII. First Amendment: Religion

Carson v. Makin, 142 S.Ct. \_\_\_\_ (June 21, 2022). A state violates the free exercise clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or "sectarian," instruction.

Kennedy v. Bremerton School Dist., 142 S.Ct. \_\_\_\_ (June 27, 2022). The free exercise and free speech clauses of the First Amendment protect an individual engaging in a personal religious observance from government reprisal; the Constitution neither mandates nor permits the government to suppress such religious expression.

#### VIII. Second Amendment

Rifle and Piston Association v. Bruen, (June 23, 2022). New York law requiring showing of “cause” for a permit to have a concealed weapon in public violates the Second Amendment. “To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’”