

**Council of Chief Judges of the State Courts of Appeal**  
Supreme Court Review

Boston, Massachusetts  
October 29, 2021

Erwin Chemerinsky and Ken Starr

*October Term 2020*

**I. Affordable Care Act.**

California v. Texas, 141 S.Ct. 2104 (2021). Plaintiffs lack standing to challenge the constitutionality of the Patient Protection and Affordable Care Act.

**II. Civil rights litigation**

Taylor v. Riojas, 141 S.Ct. 52 (2020). Because any reasonable correctional officer should have realized that Trent Taylor's conditions of confinement offended the Eighth Amendment, the U.S. Court of Appeals for the 5th Circuit erred in granting the officers qualified immunity.

**III. Criminal law and procedure**

**A. Fourth Amendment**

Torres v. Madrid, 141 S.Ct. 989 (2021). The application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued.

Caniglia v. Strom, 141 S.Ct. 1596 (2021). The "community caretaking" exception to the Fourth Amendment's warrant requirement did not extend to permit search of the home.

Lange v. California, 141 S.Ct. 2011 (2020). Under the Fourth Amendment, pursuit of a fleeing misdemeanor suspect does not always or categorically qualify as an exigent circumstance justifying a warrantless entry into a home.

**B. Eighth Amendment**

Jones v. Mississippi, 141 S.Ct. 1307 (2021). The Eighth Amendment does not require a finding that a juvenile is permanently incorrigible before imposing a sentence of life without parole.

### C. Habeas corpus

Edwards v. Vannoy, 141 S.Ct. 1547 (2021). The unanimous jury verdict requirement of Ramos v. Louisiana (2020) does not apply retroactively. There is no exception to retroactivity for watershed rules of criminal procedure.

### D. Federal criminal law

Van Buren v. United States, 141 S.Ct. 1648 (2021). An individual “exceeds authorized access” under the Computer Fraud and Abuse Act of 1986, 18 U.S.C. § 1030(a)(2), when he accesses a computer with authorization but then obtains information located in particular areas of the computer — such as files, folders or databases — that are off-limits to him.

## IV. Federal court jurisdiction

TransUnion, LLC v. Ramirez, 141 S.Ct. 2190 (2021). Only a plaintiff concretely harmed by a defendant’s violation of the Fair Credit Reporting Act has Article III standing to seek damages against that private defendant in federal court.

## V. First Amendment

### A. Free exercise of religion

Roman Catholic Diocese of Brooklyn v. Cuomo, 141 S.Ct. 63 (2020). Granting preliminary injunction to stop enforcement of orders restricting size of attendance for religious worship.

Tandon v. Newsom, 141 S.Ct. 1294 (2021). Prohibition on gatherings of more than three households in homes is unconstitutional as applied to worship services.

Fulton v. City of Philadelphia, 141 S.Ct. 1868 (2021). Philadelphia’s refusal to contract with Catholic Social Services for the provision of foster care services unless CSS agrees to certify same-sex couples as foster parents violates the free exercise clause of the First Amendment.

### B. Freedom of speech

Mahaney Area School Dist. v. B.L., 141 S.Ct. 2038 (2021). The school district’s decision to suspend student Brandi Levy from the cheerleading team for posting to social media (outside of school hours and away from the school’s campus) vulgar language and gestures critical of the school violates the First Amendment.

Americans for Prosperity Foundation v. Bonta, 141 S.Ct. 2373 (2021). California’s requirement is facially requirement that non-profits disclose their donors by providing the state with forms completed for the federal government is invalid because it burdens

donors' First Amendment rights and is not narrowly tailored to an important government interest.

## **VI. Intellectual property**

Google v. Oracle, 141 S.Ct. 1183 (2021). Google's limited copying of the Java SE Application Programming Interface allowed programmers to put their accrued talents to work in a transformative program and constituted a fair use of that material under copyright law.

## **VII. Personal jurisdiction**

Ford Motor Company v. Montana Eighth Judicial District, 141 S.Ct. 1017 (2021). The connection between plaintiffs' product-liability claims arising from car accidents occurring in each plaintiff's state of residence and Ford's activities in those states is sufficient to support specific jurisdiction in the respective state courts, even though the automobiles involved in the accidents were manufactured and sold elsewhere.

## **VIII. Takings Clause**

Cedar Point Nursery v. Hassid, 141 S.Ct. 2063 (2021). A California regulation granting labor organizations a "right to take access" to an agricultural employer's property to solicit support for unionization constitutes a per se physical taking.

## **IX. Voting rights**

Brnovich v. Democratic National Committee, 141 S.Ct. 2321 (2021). Arizona's laws requiring voting within a person's precinct and preventing "ballot harvesting" do not violate Section 2 of the Voting Rights Act, and the prohibition of ballot harvesting was not motivated by a discriminatory purpose.

# *October Term 2021*

## **I. Abortion**

*Dobbs v. Jackson Women's Health Organization*, No. 19-1392 (to be argued on December 1, 2021). Whether all pre-viability prohibitions on elective abortions are unconstitutional.

## **II. Civil rights**

*Thompson v. Clark*, No. 20-1659 (to be argued on October 12, 2021). Whether the rule that a plaintiff must await favorable termination before bringing a Section 1983 action alleging unreasonable seizure pursuant to legal process requires the plaintiff to show that the criminal proceeding against him has "formally ended in a manner not inconsistent with his innocence," as the U.S. Court of Appeals for the 11th Circuit decided in *Laskar*

*v. Hurd*, or that the proceeding “ended in a manner that affirmatively indicates his innocence,” as the U.S. Court of Appeals for the 2nd Circuit decided in *Lanning v. City of Glens Falls*.

### **III. Criminal law**

*United States v. Tsarnaev*, No. 20-443 (to be argued on October 13, 2021). (1) Whether the U.S. Court of Appeals for the 1st Circuit erred in concluding that Dzhokhar Tsarnaev’s capital sentences must be vacated on the ground that the district court, during its 21-day voir dire, did not ask each prospective juror for a specific accounting of the pretrial media coverage that he or she had read, heard or seen about Tsarnaev’s case; and (2) whether the district court committed reversible error at the penalty phase of Tsarnaev’s trial by excluding evidence that Tsarnaev’s older brother was allegedly involved in different crimes two years before the offenses for which Tsarnaev was convicted.

### **IV. First Amendment – free exercise of religion**

*Carson v. Makin*, No. 20-1088 (to be argued on December 8, 2021). Whether a state violates the religion clauses or equal protection 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.

### **V. First Amendment – freedom of speech**

*Houston Community College System v. Wilson*, No. 20-804 (to be argued on November 2, 2021). Whether the First Amendment restricts the authority of an elected body to issue a censure resolution in response to a member’s speech.

*City of Austin, Texas v. Reagan National Advertising of Texas, Inc.*, No. 20-1029 (to be argued on November 10, 2021). Whether the Austin city code’s distinction between on-premise signs, which may be digitized, and off-premise signs, which may not, is a facially unconstitutional content-based regulation under *Reed v. Town of Gilbert*.

### **VI. Second Amendment**

*New York Rifle and Piston Association v. Bruen*, No. 20-843 (to be argued November 3, 2021). Whether the state of New York’s denial of petitioners’ applications for concealed-carry licenses for self-defense violated the Second Amendment.

### **VII. State secrets doctrine**

*U.S. v. Zubaydah*, No. 20-827 (to be argued October 6, 2021). Whether the U.S. Court of Appeals for the 9th Circuit erred when it rejected the United States’ assertion of the state-secrets privilege based on the court’s own assessment of potential harms to the

national security, and required discovery to proceed further under 28 U.S.C. 1782(a) against former Central Intelligence Agency contractors on matters concerning alleged clandestine CIA activities.

*Federal Bureau of Investigation v. Fazaga*, No. 20-828 (to be argued November 8, 2021). Whether Section 1806(f) of the Foreign Intelligence Surveillance Act of 1978 displaces the state-secrets privilege and authorizes a district court to resolve, in camera and ex parte, the merits of a lawsuit challenging the lawfulness of government surveillance by considering the privileged evidence.