U.S. Supreme Court Review: Key Themes and Decisions of 2022-23 Term and Preview of 2023-24 Term

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U.S. District Court for the District of Puerto Rico Continuing Legal Education Program: 2.5 Instruction Hours

I. Prominent Themes of 2022-23 Term

- C.J. Roberts reasserts control over decision-making, authoring 4 of the Term's 5 major opinions
- The conservative majority continues to flex its muscle on politically-charged issues like affirmative action, religion v. same-sex rights, and administrative agency action
- But, led by Roberts and Kavanaugh, the Court formed a more moderate coalition on voting rights
- Roberts not so much in control on Court ethical controversies. Will the justices be pressured into agreeing to an enforceable code of ethics in light of troubling revelations?
- Investigation into leaked draft of *Dobbs* opinion stalls
- Justice Ketanji Jackson quickly finds her voice in her inaugural term; Justice Kagan continues her metamorphosis into a liberal version of the late Justice Scalia with her witty and acerbic dissents—causing C.J. Roberts to cry "foul!"

II. Major Civil Rights Rulings

STUDENTS FOR FAIR ADMISSIONS (SFFA) v. HARVARD COLLEGE; SFFA v. UNIV. OF NORTH CAROLINA (14th Amend Equal Protection-Affirmative Action) (opinion by Roberts)

Key facts: An organization representing Asian applicants denied admission to Harvard, and Asian and White applicants denied admission to the U. of N. Carolina, sued those institutions for race discrimination (as a private college accepting public funds Harvard is bound by the same Equal Protection non-discrimination standards as public universities). In the Harvard case, the plaintiffs essentially claimed that Harvard had an admissions program that 1) illegally engaged in racial balancing of the students the college admitted to the detriment of Asian American candidates with higher test scores and other admission criteria, and 2) intentionally discriminated against such candidates by giving them lower personal assessment scores than similar applicants. In the UNC case, both Asian American and White applicants claimed that the school's admission policy illegally favored non-Asian minority applicants at the expense of Asian American and White applicants that possessed higher admission criteria.

Questions presented: 1) Should the Court overrule *Grutter v. Bollinger* (2003), permitting the consideration of race as a factor in higher education admissions? 2) If *Grutter* is not overruled, did the lower courts erroneously apply strict scrutiny to conclude that the desired level of student body diversity could not have been achieved with race-neutral applicant assessment criteria?

Held: The Harvard and UNC admission programs fail to satisfy strict scrutiny, and thus violate the Equal Protection Clause. The benefits that purportedly flow from a racially diverse student body—training future leaders, acquiring new knowledge based on diverse outlooks, promoting a robust marketplace of ideas, and preparing engaged and productive citizens—are too amorphous and difficult to measure to qualify as compelling interests. Moreover, the programs are not narrowly tailored to achieve such interests. The categories used to identify various races are overbroad, arbitrary or underinclusive. Additionally, the programs improperly rely on racial stereotypes, negatively discriminate against Asian and White American applicants, and lack meaningful end points. However, nothing prohibits universities from considering an applicant's discussion of how race affected the applicant's life, so long as that discussion is concretely tied to a quality of character or unique ability that the particular applicant can contribute to the university.

Lead dissent (Sotomayor, Kagan, Jackson): 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. It subverts the constitutional guarantee of equal protection by further entrenching racial inequality in education, the very foundation of our democratic government and pluralistic society. Simultaneously with the passage of the Equal Protection Clause, Congress enacted a number of race-conscious laws to fulfill the Clause's promise of equality, leaving no doubt that it permits consideration of race to achieve its goal. Moreover, the majority effectively overrules *Grutter* when nothing has changed to warrant a departure from stare decisis.

303 CREATIVE v. ELENIS (1st Amend Freedom of Speech) (opinion by Gorsuch)

Key facts: A website designer in Colorado desired to expand her services to include designing websites for weddings, but did not want to include same-sex weddings due to her Christian belief that God's will is that marriage is between a man and woman. Fearing prosecution under the Colorado Anti-Discrimination Act (CADA), the plaintiff brought a pre-enforcement challenge to CADA claiming that penalizing her for refusing to assist in facilitating and celebrating same-sex weddings would violate her free speech and free exercise rights under the First Amendment.

Question presented: Would the application of the CADA to the plaintiff violate her free speech rights, essentially compelling her to express a message celebrating same-sex marriage that she disagrees with? (Interestingly, SCOTUS only agreed to take up the plaintiff's free speech challenge and not her free exercise claim.)

Held: The application of CADA to the plaintiff would violate her free speech rights. Here, the parties stipulated that the plaintiff's websites will express and communicate ideas—namely, those that celebrate and promote same-sex wedding. They also stipulated that the websites would express the plaintiff's message celebrating and promoting same-sex marriage along with that of the customers. Particularly in light of these stipulations, applying CADA to the plaintiff would compel her to express a message she disagrees with in violation of this Court's precedents.

Dissent (Sotomayor, Kagan, Jackson): Today 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. The law in question targets conduct, not speech, for regulation, and the act of discrimination has never constituted protected expression under the First Amendment. Our Constitution contains no right to refuse service to a disfavored group. Since CADA merely places an incidental burden on speech, it is subject to a lower standard of scrutiny and is constitutional.

MOORE v. HARPER (Art. I, Sec. 4 Elections Clause) (opinion by Roberts)

Key facts: Following the 2020 census, the N. Carolina Assembly, controlled by the G.O.P., redrew its congressional voting districts to accord with the one-person-one-vote principle established by the U.S. Supreme Court as a matter of Equal Protection rights. Plaintiff N. Carolina League of Conservation Voters and others challenged the new districts in state court as an unconstitutional partisan gerrymander that was likely to give the G.O.P. a disproportionate number of seats in the U.S. House of Representatives. The state supreme court agreed, ruling that the new districts violated certain provisions of the N. Carolina Constitution, including the right to free elections. The court then ordered that the 2022 elections be held under redrawn districts.

Question presented: When a state court reviews congressional voting districts created by a state legislature for compliance with state law, and replaces or alters them as a remedy for a violation, do such actions violate the Elections Clause of the U.S. Constitution which provides that "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof…."

Held: The Elections Clause does not vest exclusive and independent authority in state legislatures to set the rules regarding federal elections. A state legislature may not create congressional districts independently of requirements imposed by the state constitution with respect to the enactment of laws. Hence, state courts may exercise judicial review over such issues. However, federal courts remain available to ensure that state courts do not transgress the ordinary bounds of judicial review such that they interpret state law to arrogate to themselves the power vested in state legislatures to regulate federal elections.

Dissent (Thomas, Gorsuch, and Alito as to mootness only): The majority stretches to decide this case. It was moot and should have been dismissed since a state court granted the plaintiffs all the relief they were seeking. But as to the merits, in prescribing the times, places, and manner of congressional elections, the state legislature performs a federal function derived from the U.S. Constitution, which thus transcends any limitations sought to be imposed by the people of a State via other state law.

ALLEN v. MILLIGAN (Voting Rights Act) (opinion by Roberts)

Key facts: After the 2020 census, the Alabama Legislature redrew its 7 congressional voting districts to contain one Black majority district. A three-judge U.S. District Court panel ruled that, given the population demographics of the State, the Legislature's failure to create two Black majority districts diluted Black votes in violation of Section 2 of the Voting Rights Act (VRA).

The District Court then ordered the Legislature to draw new districts that complied with the VRA. In a 5-4 order, the U.S. Supreme Court stayed the District Court's decision and granted certiorari—reinstating the original map for the 2022 elections.

Question presented: Did the original map violate Section 2 of the VRA by diluting Black voting power, and what is the standard for assessing such claims?

Held: The District Court properly found that the Legislature's original map likely violated Sec. 2 of the VRA, warranting injunctive relief against its continued use. Congress determined that a disproportionate effect on the voting strength of minority voters can violate Sec. 2 so long as such a finding does not amount to a proportionality standard. We incorporated that standard into our Sec. 2 precedent, and the District Court faithfully applied it in this case. We reject Alabama's argument that race-neutral criteria must be applied under Sec. 2.

Lead dissent (Thomas, Alito, Gorsuch, Barrett): The District Court found that Alabama's congressional districting map dilutes black residents' votes because, while it is possible to draw two majority-black districts, Alabama's map only has one. But the critical question in all vote-dilution cases is what is the relevant dilution benchmark. The text of §2 and the logic of vote-dilution claims require a meaningfully race-neutral benchmark, and no race-neutral benchmark can justify the District Court's finding of vote dilution in these cases. The only benchmark that can justify it is the non-neutral benchmark of proportional allocation of political power based on race.

III. Major Constitutional Structure Rulings (Separation of Powers)

BIDEN v. NEBRASKA; U.S. DEPT. OF EDUCATION v. BROWN (Separation of Powers; Agency Rulemaking) (opinion by Roberts)

Key facts: The Higher Education Relief Opportunities Act of 2003 (the "HEROES Act") was designed to help ensure that certain student loan borrowers were not made worse off by a national emergency in terms of being able to repay their student loans. It contains a provision permitting the Secretary of Education to "waive or modify" any statutory or regulatory provisions applicable to financial assistance programs to achieve such objectives. Relying on this provision, the Biden Administration implemented a $400 billion student loan forgiveness program related to the COVID-19 pandemic, which was declared a national emergency by the Trump Administration. Under the program, defined classes of eligible individuals were entitled to have up to $20,000 of their student loans forgiven. Six states, and two individual borrowers who did not qualify for forgiveness under the program, sued to enjoin its implementation in two separate actions that were consolidated for appeal.

Questions presented: 1) Do any of the states or individual borrowers possess Article III standing to maintain their actions; and 2) does the loan forgiveness program exceed the Secretary's statutory authority, or was it adopted in a procedurally improper manner.

Held: 1) Missouri has standing since a public corporation it created and controls in connection with the student loan market would lose fees from loan forgiveness; and 2) either applying ordinary statutory interpretation principles, or the major questions doctrine, the adoption of such

a large forgiveness program cannot reasonably be understood to constitute a waiver or modification of a relevant statutory or regulatory provision. Such a program effectively constitutes a revision of the statute.

Dissent (Kagan, Sotomayor, Jackson): Re standing, the court violates Article III by deciding this case at all, and illegitimately acts as a policymaker. The Missouri public corporation is legally and financially independent of the State, and could have brought suit itself but did not. On the merits, the statute provides the administration with broad authority to give emergency relief to student-loan borrowers, including by altering usual discharge rules. The majority only reaches the result it does by changing the ordinary rules of statutory interpretation to counter substantial regulatory measures it dislikes.

FINANCIAL OVERSIGHT AND MANAGEMENT BD. FOR P. R. v. CENTRO DE PERIODISMO INVESTIGATIVO, INC. (Sovereign Immunity) (opinion by Kagan)

Key facts: Congress created the Financial Oversight and Management Board for Puerto Rico (the Board) to oversee Puerto Rico's finances. Respondent media organization (CPI) sued the Board in the U.S. District Court for Puerto Rico to obtain certain records after its requests for them went unfulfilled.

Question presented: Did the statute creating the Board waive any sovereign immunity from suit in federal court that it enjoys?

Held: Assuming without deciding that Puerto Rico enjoys immunity from suit in federal court, and that the Board partakes in that immunity, nothing in the governing statute makes the clear statement of Congress' intent to abrogate the Board's sovereign immunity that our precedents require to effect that result. Hence, the Board enjoys immunity from being sued in federal court without its consent.

Dissent (Thomas): CPI properly raised the issue below of whether Puerto Rico, and hence the Board, enjoys sovereign immunity from suit in federal court. Hence, the Court should address this antecedent question rather than just assume such immunity exists and decide that the law does not abrogate it. And the Board has not carried its burden of demonstrating that such immunity exists.

IV. Key Criminal Justice Rulings

COUNTERMAN v. COLORADO (1st Amend Free Speech—True Threat) (opinion by Kagan)

Key facts: Over a two-year period, Counterman, a Colorado man on probation for a federal offense, sent ominous Facebook messages to a popular local musician (Coles Whalen). The messages included statements to the effect that Whalen should die, and ones describing events implying Counterman had been covertly following Whalen while she was out in public. Counterman was convicted in state court of stalking by repeatedly engaging in communications in a manner that would cause, and did cause, serious emotional distress to the recipient. He received a sentence of four and one-half years in prison.

Question presented: Did Counterman's communications amount to true threats that fell outside of free speech protection? Did the government have to prove he subjectively intended to make a true threat, or was proof of the recipient's reasonable understanding of the communications as such sufficient?

Held: The government must prove in true-threats cases that the defendant had some subjective understanding of his statements' threatening nature, but the First Amendment requires no more demanding a showing than recklessness—that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence. Having no subjective mens rea requirement, or a lesser one such as negligence, would risk chilling too much protected speech. Conversely, having a stricter requirement such as actual knowledge would accord insufficient weight to the public interest in protecting the recipients of such communications from emotional distress and related harms.

Lead dissent (Barrett, Thomas): True threats do not enjoy First Amendment protection, and nearly every other category of unprotected speech may be restricted using an objective standard. The nature of a true threat points to an objective test for determining the scope of First Amendment protection: Neither its social value nor its potential for injury depends on the speaker's subjective intent.

U.S. v. HANSEN (1st Amend Free Speech—Overbreadth) (opinion by Barrett)

Key facts: Hansen operated an organization that promised to get undocumented immigrants U.S. citizenship as part of an "adult adoption" ruse in exchange for payments they would make to him. In addition to being convicted for violating federal wire and mail fraud laws, Hansen was convicted of violating a federal statute that makes it illegal to encourage or induce unlawful immigration. (He received an enhanced sentence for the latter conviction because he had done it for private financial gain.) Hansen challenged the latter statute on free speech grounds, arguing the law was unconstitutionally overbroad.

Question presented: Is a law that punishes a person for encouraging or inducing unlawful immigration overbroad in violation of the First Amendment? In other words, even if the law could constitutionally be applied to Hansen's fraudulent activities, is the law unconstitutional because it could punish a substantial amount of protected speech relative to its legitimate applications?

Held: The federal statute is not overbroad. Before evaluating overbreadth, the statute must first be interpreted. Here, Congress used "encourage" and "induce" in the statute as terms of art referring to criminal solicitation and facilitation (thus capturing only a narrow band of speech). As such, the law reaches no further than the purposeful solicitation and facilitation of specific acts known to violate federal law. So understood, the statute does not prohibit a substantial amount of protected speech relative to its plainly legitimate sweep.

Dissent (Jackson, Sotomayor): The majority departs from ordinary principles of statutory interpretation to reach its result. It rewrites the provision's text to include elements that Congress once adopted but later removed as part of its incremental expansion of this particular criminal

law over the last century. It is neither our job nor our prerogative to retrofit federal statutes in a manner patently inconsistent with Congress's choices.

SAMIA v. U.S. (6th Amend Confrontation Clause) (opinion by Thomas)

Key facts: Samia and a codefendant were prosecuted in the U.S. in connection with being hired to murder a real estate agent in the Philippines. In a joint trial for the killing, the codefendant declined to testify. The government introduced the codefendant's confession against him at trial, redacting references to Samia firing the murder weapon and otherwise being at the murder scene. The redactions consisted of substituting any explicit reference to Samia with generic references to "the other person" the codefendant was with. Following his conviction, Samia claimed a Confrontation Clause violation on the grounds that other evidence introduced at trial, and the context of the confession, made it clear to the jury that "the other person" the codefendant's confession mentioned referred to him.

Question presented: Whether admitting at a joint trial a non-testifying codefendant's redacted out-of-court confession that impliedly inculpates a defendant based on the surrounding context, with the jury receiving a limiting instruction to only consider the confession as to the codefendant's guilt, violates the defendant's rights under the Confrontation Clause.

Held: The Confrontation Clause was not violated by the admission of a non-testifying codefendant's confession that did not directly inculpate the defendant and was subject to a proper limiting instruction. Longstanding practice and our precedents allow a nontestifying codefendant's confession to be admitted in a joint trial so long as the confession does not directly implicate the defendant and the jury is properly instructed not to consider it against the nonconfessing defendant. This historical evidentiary practice is in accord with the law's broader assumption that jurors can be relied upon to follow the trial judge's instructions.

Lead dissent (Kagan, Sotomayor, Jackson): The majority undermines our precedent that holds the government may not introduce a nontestifying codefendant's confession that would inculpate the defendant to a reasonable juror regardless of the presence of a limiting instruction. Its attempts to distinguish that precedent in this case are unpersuasive. The majority simply disagrees with our precedent and seeks to evade and weaken it.

SMITH v. U.S. (Art. III Venue Clause; 6th Amend Vicinage Clause; 5th Amend Double Jeopardy Clause) (opinion by Alito)

Key facts: Smith, a resident of Mobile, Alabama, was a software engineer and avid angler who obtained the coordinates of artificial fishing reefs in the Gulf of Mexico by improperly accessing a website owned by StrikeLines, a business in Pensacola, Florida, that sold those coordinates. Smith was prosecuted in the Northern District of Florida in connection with his actions, and, among other offenses, was convicted of federal trade secret theft. Before trial, Smith had moved to dismiss the trade secret indictment for lack of venue, citing the Constitution's Venue Clause, Art. III, §2, cl. 3, and the 6th Amend. Vicinage Clause. On appeal, the Eleventh Circuit held that venue on the trade secret charge in the Northern District of Florida was improper since the key elements of the offense did not occur there, but it disagreed with Smith that this error barred

reprosecution. It concluded that the remedy for improper venue is vacatur of the conviction, not acquittal or dismissal with prejudice, and that the Double Jeopardy Clause was not implicated by a retrial in a proper venue.

Question presented: Does the Constitution permit the retrial of a defendant following a trial in an improper venue and before a jury drawn from the wrong district?

Held: Yes. It has long been the general rule that when a defendant obtains a reversal of a prior, unsatisfied conviction, he may be retried in the normal course of events. The text, history and precedent surrounding the Venue and Vicinage Clauses do not support creating an exception to this retrial rule for violations of those clauses. Moreover, the Double Jeopardy Clause is not implicated by a retrial in a proper venue. A judicial decision on venue is fundamentally different from a jury's general verdict of acquittal. The Eleventh Circuit's decision that venue was improper did not adjudicate Smith's culpability.

PERCOCO v. U.S. (Due Process Vagueness—Wire Fraud) (Opinion by Alito)

Key facts: Percoco, a long-time aide of Governor Cuomo, left government employment for a period of several months in order to work on the Governor's reelection campaign. During that time, Percoco intervened on behalf of a paying client to help the client obtain the contract it desired with a state agency. Among other things, Percoco was charged and convicted of honest services wire fraud in connection with his intervention.

Question presented: Can a *private* citizen with influence over government decision-making be convicted for wire fraud on the theory that he or she deprived the public of its "intangible right of honest services" as per the statute?

Held: It depends. Yes, if the private person is acting in an agency capacity on behalf of the government. But seeking to hold a private person guilty on a theory that he was able to dominate and control government decision-making is unduly vague and violates due process because it does not give ordinary people sufficient notice of what is prohibited and permits arbitrary and discriminatory enforcement.

Concurrence-in-judgment (Gorsuch/Thomas): The honest services fraud statute should be held unconstitutionally vague on its face and sent back to Congress for further definition. As it stands, the majority is improperly leaving it to citizens, the courts, and prosecutors to guess at when a private person can be found guilty of having committed such fraud.

CIMINELLI v. U.S. (Wire Fraud) (opinion by Thomas)

Key facts: Ciminelli owed a company that had obtained lucrative Buffalo real estate development contracts funded by the State of New York through a scheme whereby Ciminelli, a lobbyist, and a board member for the state development agent rigged the bidding process to ensure that Ciminelli's company would be awarded the contracts. The defendants were convicted under a federal statute that criminalizes the use of interstate wires to commit fraud for the purpose of obtaining money or property. The defendants had been convicted under a right-to-control theory under which the government can establish wire fraud by showing that the

defendant schemed to deprive a victim of potentially valuable economic information necessary to make discretionary economic decisions with their assets.

Question presented: Whether the right-to-control theory of wire fraud is a valid basis for liability under the pertinent wire fraud provision.

Held: "Money or property" in the pertinent wire fraud provision solely encompasses traditional property interests, and thus exclude a right-to-control theory because it does not qualify as such.

TWITTER, INC. v. TAAMNEH (Aiding or abetting liability) (opinion by Thomas)

Key facts: Plaintiffs were family members of a U.S. national allegedly killed by a terrorist attack committed by an adherent of ISIS in Istanbul, Turkey. Plaintiffs sued Twitter, Facebook and Google under a federal law permitting a civil cause of action for damages against the terrorist, as well as any person who aided and abetted the terrorist by providing substantial assistance to him. Plaintiff's theory was that the social media defendants aided and abetted the Istanbul attack because they knew ISIS was using their platforms to recruit terrorists and raise money for such acts, but did nothing about it.

Question presented: Did the plaintiffs sufficiently allege that the social media defendants had aided and abetted the terrorist act in question under the statute?

Held: No. The rules for aiding and abetting in criminal and tort law are roughly similar, and refer to a conscious, voluntary, and culpable participation in another's wrongdoing. Hence, the key question here is whether the social media defendants gave such knowing and substantial assistance to ISIS that they culpably participated in the Istanbul attack. Plaintiffs allege only that defendants supplied generally available virtual platforms that ISIS made use of, and that defendants failed to stop ISIS despite knowing it was using those platforms. Given the lack of nexus between that assistance and the Istanbul attack, the lack of any defendant intending to assist ISIS, and the lack of any sort of affirmative and culpable misconduct that would aid ISIS, plaintiffs' claims fall far short of plausibly alleging that defendants aided and abetted that attack.

V. Cases of Note to be Decided in Current (2023-24) Term

Theme Note for the Current Term: Shaping up to be huge Term for cases regarding free speech on Internet social media platforms.

LINDKE v. FREED; O'CONNOR-RATCLIFF v. GARNIER (1st Amend Free Speech—State Action)

Key facts: These are two separate cases from the 6th and 9th Circuits involving local public officials who maintained social media accounts, and who blocked individuals from accessing their accounts after they posted comments critical of their official performance. The blocked individuals sued, alleging that the officials' conduct violated their First Amendment rights to criticize government conduct.

Question presented: Under what circumstances does a social media account maintained by a public official constitute state action such that the official's actions on it are subject to First Amendment constraints?

MOODY v. NETCHOICE; NETCHOICE v. PAXTON (1st Amend Free Speech)

Key facts: These are two separate cases from the 5th and 11th Circuits involving legislation adopted by Texas and Florida, respectively, that essentially prohibits large social media platforms like Facebook, X and YouTube from discriminating against user content on the basis of the information or views being expressed. It also requires those platforms to provide individualized explanations to users where they remove or alter their posts. The 11th Circuit held that the Florida legislation likely *did* violate the free speech rights of the platforms to moderate and curate content consist with their user policies. The 5th Circuit held that the Texas legislation likely *did not* violate the free speech rights of those platforms.

Questions presented: Do the laws' content-moderation restrictions and individualized-explanation requirements violate the free speech rights of the platforms?

MURHTY v. MISSOURI (1st Amend Free Speech)

Key facts: The States of Missouri and Louisiana, and three doctors, a healthcare activist, and a news website that allegedly had posts removed or downgraded by social media platforms, including Facebook and X, sued the Biden administration and other federal government officials claiming those officials coerced the platforms into taking such actions. Hence, the plaintiffs claim, the federal officials indirectly violated their free speech rights.

Question presented: Did the government's challenged conduct transform private social media companies' content-moderation decisions into state action and violate the plaintiffs' free speech rights?

U.S. v. RAHIMI (2nd Amend Gun Rights)

Key facts: After Rahimi committed acts of violence against his girlfriend, fired a gun at a witness to the violence, and later threatened to shoot his girlfriend if she told anyone about the assault, she received a protective order against him. Among other things, the order barred Rahimi from approaching the girlfriend or her family, suspended Rahimi's gun license, and prohibited him from possessing a firearm—all for a period of two years. After Rahimi defied the order by attempting to visit the girlfriend, and after multiple incidents where he was involved in gun violence, he was indicted for violating a federal law that prohibits individuals subject to certain domestic violence protective orders from possessing a firearm in or affecting commerce. Rahimi plead guilty to the indictment, and received a 73-month prison sentence. On appeal, the 5th Circuit held that the law violated the 2nd Amendment on its face pursuant to the Court's 2022 decision in *NYSR&PA v. Bruen*, because there were not sufficient historical analogues to the challenged federal law to be found in American history.

Question presented: Does the federal law barring persons subject to domestic violence protective orders from possessing a gun, violate the 2nd Amendment?

McELRATH v. GEORGIA (5th Amend Double Jeopardy Clause)

Key facts: McElrath was prosecuted for stabbing his mother to death. The jury found him guilty but mentally ill as to felony murder, but not guilty by reason of insanity as to malice murder. On appeal, the Supreme Court of Georgia held that it was not legally possible for McElrath to simultaneously be both sane (guilty but mentally ill) and insane (not guilty by reason of insanity) during the single episode of stabbing his mother. Thus, it determined that the purported verdicts were repugnant and a nullity, and should not have been accepted by the trial court. Accordingly, it vacated both verdicts and remanded the case for a new trial. The court also held that McElrath's retrial did not violate the Double Jeopardy Clause as to his purported malice murder "acquittal." It reasoned that since the verdicts were repugnant, both were rendered valueless and failed to result in an event that terminated McElrath's initial jeopardy.

Question presented: Would McElrath's retrial on the malice murder count for which the jury found him not guilty by reason of insanity violate the Double Jeopardy Clause?

DIAZ v. U.S. (Fed. Rules of Evidence—Drug Trafficking)

Key facts: Diaz was convicted and sentenced to 7 years in prison for importing methamphetamine into the U.S. One of her defenses was that she was an unwitting drug mule, and that she had no knowledge she was transporting meth in the vehicle that she drove from Mexico into the U.S. An expert witness testified at trial that it was very rare for drug couriers to be used to move a high quantity of drugs without knowledge about the cargo they are carrying due to the risk of delivery failures.

Question presented: Federal Rule of Evidence 704(b) provides: "In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone." The question is: In a prosecution for drug trafficking—where an element of the offense is that the defendant knew she was carrying illegal drugs—does Rule 704(b) permit a governmental expert witness to testify that most couriers know they are carrying drugs and that drug-trafficking organizations do not entrust large quantities of drugs to unknowing transporters?

COMMUNITY FINANCIAL SRVCS ASSN OF AMERICA v. CONSUMER FINANCIAL PROTECTION BUREAU (Appropriations Clause)

Key facts: As a result of the 2008 global financial crisis, Congress created the Consumer Financial Protection Bureau (CFPB) as an independent regulatory agency housed within the Federal Reserve System. The CFPB was created to consolidate the federal government's administration and enforcement of consumer protection regulations. Congress directed that funding for the agency would be provided by the Federal Reserve via assessments made on banks that fund the operations of the Federal Reserve itself. Organizations representing payday lenders and other credit businesses challenged the legality of a series of regulations promulgated by the CFPB to curb abusive payday lending practices. Among other claims, the plaintiffs argued that the funding mechanism Congress created for the CFPB violated the Appropriations

Clause of the U.S. Constitution, which provides that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."

Questions presented: Does the funding mechanism Congress established for the CFPB violate the Appropriations Clause and warrant setting aside payday lending regulations adopted as the result of that funding scheme?

LOPER BRIGHT ENTERPRISES v. RAIMONDO (Agency Authority—*Chevron* Deference)

Key facts: In implementing a federal law that establishes industry-funded monitoring programs in New England fishery management plans, the National Marine Fisheries Service promulgated a rule that requires industry to fund at-sea monitoring programs. Plaintiffs, a group of commercial herring fishing companies, contend that the statute does not specify that industry may be required to bear such costs and that the process by which the Service adopted the industry-funding rule was improper.

Questions presented: Whether the court should overrule *Chevron v. Natural Resources Defense Council*, or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency.