Cases To Be Addressed At March 8, 2023 ABTL CLE Program

**Affirmative Action**

***Students for Fair Admissions v. Harvard*** 20-1199

***Students for Fair Admissions v. University of North Carolina*** 21-707

Students for Fair Admissions (SFFA) sued Harvard and the University of North Carolina (UNC) over their admissions policies, alleging that they violate the Fourteenth Amendment and/or Title VI of the Civil Rights Act of 1964 by using race as a factor. Both universities admit they use race as one of many factors in considering student applications but argue that their processes adhere to the requirements of Supreme Court precedents such as *Grutter v. Bollinger*, which upheld the narrowly tailored use of race in admissions to further a compelling interest in the educational benefits that flow from a diverse student body.  Both district courts ruled that the Universities’ admissions policies survived strict scrutiny and were consistent with *Grutter v. Bollinger*. In the Harvard case, SFFA appealed, and the U.S. Court of Appeals for the First Circuit affirmed. In the UNC case, SFFA appealed, and the Fourth Circuit agreed to hold the case in abeyance after the U.S. Supreme Court granted review. **Questions**: May institutions of higher education use race as a factor in admissions? If so, do Harvard’s and UNC’s policies comply with the Constitution and/or Title VI?

**Speech**

***303 Creative v. Elenis*,** 21-476

Lorie Smith, owner of a graphic design firm, seeks to expand her business to include wedding websites, but opposes same-sex marriage on religious grounds. She wants to state on her website that she will not design websites for same-sex weddings. The Colorado Anti-Discrimination Act (“CADA”) prohibits businesses open to the public from discriminating on the basis of certain characteristics, including sexual orientation. Even before Colorado sought to enforce the law against her, Smith sued, alleging various constitutional violations. Smith lost in the district court and the Tenth Circuit. The Supreme Court granted cert only on the speech, not religion, aspect of her First Amendment claim. **Question**: Does application of CADA to compel an artist to speak or stay silent violate the Free Speech Clause?

**Religion**

***Groff v. DeJoy***, 22-174

Gerald Groff, a Christian and U.S. Postal Service employee, refused to work on Sundays. USPS offered to find employees to swap shifts with him, but sometimes no co-worker would swap, and Groff did not work. USPS fired him. Groff sued USPS under Title VII of the Civil Rights Act of 1964, claiming USPS failed to reasonably accommodate his religion. The district court concluded the requested accommodation would impose an undue hardship on USPS and granted summary judgment. The Third Circuit affirmed. **Question:** Is inconvenience to coworkers an “undue burden” under Title VII sufficient to excuse an employer from providing an employment accommodation for religion?

**Commerce Clause**

***National Pork Producers Council v. Ross,***  21-468

In 2018, California voters passed Proposition 12, which amends the Health and Safety Code to prohibit the sale of pork from hogs confined in a manner inconsistent with certain standards. Pork industry participants challenged the law, arguing that Proposition 12 places an undue burden on interstate commerce and causes an impermissible “extraterritorial effect” under the dormant Commerce Clause because it effectively forces hog farmers across the country to comply with California law yet mostly affects transactions in other states, because most pork is consumed outside of California. The district court dismissed the complaint for failure to state a claim, and the Ninth Circuit affirmed, finding the complaint did not plausibly plead that Proposition 12 violates the dormant Commerce Clause under either theory. ***Question:*** Does the California law violate the Constitution’s Commerce Clause?

**Elections and Voting**

***Moore v. Harper*,** 21-1271

After the 2020 Census, North Carolina gained an additional seat in the U.S. House of Representatives and the state thus required redistricting. The Republican-majority state legislature passed a map challenged as a partisan gerrymander. The North Carolina Supreme Court struck down the map for violating the state constitution’s “free elections clause” and other provisions. After rejecting a second map proposed by the legislature, the court ordered a special master to create a map for the 2022 congressional elections. Legislators sought U.S. Supreme Court review based on an argument that the Elections Clause gives state legislatures, not courts, the authority to regulate federal elections—the Independent State Legislature theory. **Question**: Does the state legislative body, independent of state courts or other laws, have sole authority to regulate federal elections?  **Note**: On February 3, 2023, the NC Supreme Court granted rehearing and on March 2, the Supremes issued an order requiring supplemental briefing on whether it still has jurisdiction.

***See also Merrill v. Milligan***, 21-1086 (three-judge district court granted injunction under Section 2 of the Voting Rights Act as to Alabama’s 2021 redistricting map for diluting Black votes; Supreme Court stayed the injunction pending a merits review).

**Executive Authority**

***Biden v. Nebraska,*** 22-506

The Biden administration announced its intent to forgive, via executive action, $10,000 in student loans for borrowers with annual incomes of less than $125,000. Nebraska and other states challenged the program, arguing that it violated the separation of powers and the Administrative Procedure Act. The district court dismissed the challenge, finding that the states lacked standing to sue. The Eighth Circuit enjoined the forgiveness program pending appeal.   **Questions:** 1. Do the states have standing to challenge the student-debt relief program? 2. Does the student-debt relief action, grounded in the Higher Education Relief Opportunities for Students (HEROES) Act of 2003, exceed the executive authority of the U.S. Secretary of Education or violate the Administrative Procedure Act?

**Technology platforms and terrorism**

***Gonzalez v. Google***, No. 21-1333

[Nohemi Gonzalez](https://www.nytimes.com/2015/11/20/world/europe/paris-terror-attacks-nohemi-gonzalez-cal-state-long-beach.html), a 23-year-old college student, was killed in a Paris restaurant during terrorist attacks in November 2015. Gonzalez’s father filed an action against Google, Twitter, and Facebook, claiming, among other things, that Google aided and abetted international terrorism because Google uses computer algorithms that suggest content to users based on their viewing history, thus assisting ISIS in spreading its message. The district court granted Google’s motion to dismiss based on Section 230 of the Communications Decency Act, which protects online platforms that moderate content from being held legally responsible for content posted by users. The Ninth Circuit affirmed.  **Question:** Does Section 230(c)(1) immunize interactive computer services when they make targeted recommendations of information provided by a third-party content provider?

***See also Twitter v. Taamneh*,** 21-1496  (companion case that will decide whether Twitter along with Facebook and Google can be held liable, regardless of Section 230, for aiding and abetting a January 2017 ISIS attack at the Reina nightclub in Istanbul under Section 2333 of the Anti-Terrorism Act, as amended by the Justice Against Sponsors of Terrorism Act, based on ISIS’s use of the companies’ platforms; the Ninth Circuit reversed dismissal).