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Tort Trial & Insurance Practice Law Journal
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RECENT DEVELOPMENTS IN APPELLATE ADVOCACY

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This article is a survey of recent United States Supreme Court cases that may be of interest to trial and appellate litigators. The following United States Supreme Court cases were decided during the October Term 2024 and involve the areas of constitutional law, discrimination, employment law, civil RICO law, administrative law, and opinions regarding procedural rules and jurisdictional issues.

I. CONSTITUTIONAL LAW

During the 2024–2025 term, the Supreme Court issued a decision upholding Tennessee's ban on gender-affirming care for minors against an Equal Protection Clause challenge. The Court also upheld a Texas law that required age verification for access to sexually explicit websites and a federal law that was poised to ban the TikTok app. Both cases presented questions of the scope of protected speech under the First Amendment, and both cases left significant questions for future determination. In a First Amendment religion case, the Court applied the principle of denominational neutrality to a religious-charities exception to a state unemployment-compensation tax. Defining the outer boundaries of that broad principle, though, will surely require more Supreme Court decisions.

A. United States v. Skrmetti *imposes rational-basis review for law on gender-affirming medical procedures under the Equal Protection Clause of the Fourteenth Amendment.*

In *United States v. Skrmetti*,[1] Chief Justice Roberts, writing for a 6–3 majority, addressed whether Tennessee Code Annotated § 68–33–101 *et seq.* (SB1), which restricted certain medical procedures for transgender minors, violates the Equal Protection Clause of the Fourteenth Amendment.

Three transgender minors, their parents, and a physician challenged SB1 under the Equal Protection Clause and moved for a preliminary injunction to prevent the law from going into effect.[2] In partially granting the plaintiffs' preliminary injunction, the district court explained that transgender individuals constituted a quasi-suspect class, that SB1 discriminated on the basis of sex and transgender status, and that SB1 was unlikely to survive intermediate scrutiny.[3] The Sixth Circuit reversed, concluding heightened scrutiny did not apply and that SB1 satisfied rational-basis review.[4] The Supreme Court affirmed.

1. United States v. Skrmetti, 605 U.S. 495 (2025).
2. *Id.* at 507.
3. *Id.* at 508.
4. *Id.* at 508–09.

In determining which level of review was warranted, the majority determined that SB1 classifies on the basis of age and medical use—both of which are subject only to rational-basis review.[5] The Court rejected plaintiffs' argument for heightened scrutiny, explaining that it "has never suggested that mere reference to sex is sufficient to trigger heightened scrutiny."[6] Because, for example, SB1 would allow a boy to take puberty blockers to treat precocious puberty but would prohibit a boy (whose biological gender was female) from taking those same drugs to treat gender dysmorphia, the application of the prohibition does not turn on sex.[7] The Court also rejected the plaintiffs' arguments that SB1 was meant to force minors to conform to sex-based expectations and that the state's statutory findings themselves showed sex-based stereotyping.[8] The majority also sidestepped the argument, raised by the plaintiffs, as to whether transgender individuals are a quasi-suspect class, because, it determined, the law did not classify on the basis of transgender status.[9] The Court ultimately determined that SB1 survived rational-basis review because Tennessee had plausible reasons for the statute's enactment.[10]

Skrmetti is a fractured opinion, with many of the Justices writing separately. Justice Thomas wrote a concurrence in full; Justice Barrett wrote a concurring opinion expressing why she believed transgender status does not constitute a suspect class; and Justice Alito wrote concurring in part and concurring in the judgment, disagreeing with the majority that SB1 does not classify on the basis of transgender status, but ultimately concluding that such a classification does not trigger heightened scrutiny.[11] Justice Sotomayor wrote a lengthy dissent, with which Justice Jackson joined, and Justice Kagan joined in all but one part, stating that the Tennessee law expressly classifies on the basis of gender (because "sex determines access to the covered medication") and transgender status, both of which demand intermediate scrutiny, and that the majority opinion took pains to contort the plain meaning of SB1 and to avoid the application of *Bostock v. Clayton County*, 590 U.S. 644 (2020)—a Title VII case where the Court "already decided . . . that discrimination based on incongruence between sex and gender identity was itself discrimination."[12]

Skrmetti is helpful to government lawyers who wish to draw a distinction between Title VII when defending a statute on Equal Protection grounds.

5. *Id.* at 511.
6. *Id.* at 512.
7. *Id.* at 513–14.
8. *Id.* at 516–17.
9. *Id.* at 517.
10. *Id.* at 522–23.
11. *Id.* at 526–78.
12. *Id.* at 578–607.

To the extent other states follow Tennessee's lead in enacting similar statutes, the decision will make challenging such statutes under rational-basis review very difficult. However, because *Skrmetti*'s majority left for another day the question of whether a classification based on transgender status warrants heightened scrutiny, challengers to such laws may be able to argue for intermediate scrutiny on that basis.

B. Free Speech Coalition[13] *and* TikTok[14]*: What is protected speech in one context may not be protected in another.*

Texas enacted a statute that "requires certain commercial websites that publish sexually explicit content to verify the ages of their visitors."[15] The Supreme Court granted certiorari in *Free Speech Coalition* to determine whether the statute placed burdens on free speech that would render the statute unconstitutional.[16]

Congress passed the Protecting Americans from Foreign Adversary Controlled Applications Act, which prohibited domestic companies from "provid[ing] services to distribute, maintain, or update the social media platform TikTok, unless U. S. operation of the platform is severed from Chinese control."[17] The Supreme Court granted review to consider whether the Act, as applied, violates the free-speech protections of the First Amendment.[18]

Both decisions turned on nuances in defining protected speech. The results may encourage legislative efforts to indirectly regulate otherwise-protected speech by focusing on unprotected elements of the speech or on the digital platform used to communicate the speech.

1. The Court underscored the importance of distinguishing content-based and content-neutral laws.

In both *Free Speech Coalition* and *TikTok*, the Court's analysis began with a distinction "between two types of restrictions on protected speech: content-based laws and content-neutral laws."[19] Content-based laws "target speech based on its communicative content" and are subject to strict-scrutiny review.[20] "That standard requires that a law be the least restrictive means of achieving a compelling state interest."[21]

13. Free Speech Coalition Inc. v. Paxton, 606 U.S. 461 (2025).
14. TikTok Inc. v. Garland, 604 U.S. 56 (2025).
15. *Free Speech Coalition*, 606 U.S. at 466.
16. *Id.*
17. *TikTok*, 604 U.S. at 62.
18. *Id.*
19. *Free Speech Coalition*, 606 U.S. at 471; *see also TikTok*, 604 U.S. at 70–71.
20. *Free Speech Coalition*, 606 U.S. at 471; *see also TikTok*, 604 U.S. at 70.
21. *Free Speech Coalition*, 606 U.S. at 471 (quotation omitted); *see also TikTok*, 604 U.S. at 70.

Content-neutral laws are subject to intermediate-scrutiny review.[22] That standard requires that a law "advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests."[23]

Unprotected speech, however, is subject only to rational-basis review.[24] "Under that standard, a law will be upheld if there is any reasonably conceivable state of facts that could provide a rational basis for its enactment."[25] Unprotected speech may include obscenity, defamation, fraud, incitement, and speech integral to criminal conduct.[26] As discussed below, the Texas age-verification law and the federal TikTok law were each subject to—and satisfied—the intermediate-scrutiny standard.

2. At least in the sexual-content context, a state may regulate speech that is protected as to adults but not minors.

The *Miller* test determines whether "speech is obscene to the public at large—and thus proscribable."[27] Under that three-part test, speech is obscene if (1) "the average person, applying contemporary community standards[,] would find that the work, taken as a whole, appeals to the prurient interest"; (2) "the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law"; and (3) "the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."[28]

"When regulating minors' access to sexual content," however, the test focuses on "that which is obscene from a child's perspective."[29] Thus, "speech that is obscene to minors is unprotected" though the same speech may not be obscene as to adults.[30] The unprotected speech effectively becomes "a nonspeech element" for purposes of the First Amendment.[31]

Although a state's regulation of unprotected speech is usually subject to rational-basis review, the Court held that the rational-basis standard "fails to account for the incidental burden that age verification necessarily has on an adult's First Amendment right to access speech that is obscene only to minors."[32] "Rational basis is the appropriate standard for laws that do not

22. *Free Speech Coalition*, 606 U.S. at 471; *see also TikTok*, 604 U.S. at 70.
23. *Free Speech Coalition*, 606 U.S. at 471 (quoting Turner Broadcasting System Inc. v. FCC, 520 U.S. 180, 189 (1997)); *see also TikTok*, 604 U.S. at 70.
24. *Free Speech Coalition*, 606 U.S. at 471.
25. *Id.* at 471–72.
26. *Id.* at 471.
27. *Id.* at 472 (quoting Miller v. California, 413 U.S. 15, 24 (1973).
28. *Id.* (quoting *Miller*, 413 U.S. at 24.
29. *Id.* at 474.
30. *Id.* at 492.
31. *Id.* (quotation omitted).
32. *Id.* at 495.

implicate fundamental constitutional rights at all."[33] Intermediate scrutiny was appropriate to balance the state's interest in protecting minors against adults' right of access to the content.[34] Moreover, intermediate scrutiny is appropriate to ensure that "legislatures do not use ostensibly legitimate purposes to disguise efforts to suppress fundamental rights."[35]

The Court found the intermediate-scrutiny standard satisfied. The standard requires "an important governmental interest," and "Texas's interest in shielding children from sexual content" met that requirement.[36] The age-verification requirement was "sufficiently tailored to Texas's interest" because "the government's interest 'would be achieved less effectively absent the regulation' and the regulation 'does not burden substantially more speech than is necessary to further that interest.'"[37] The Court considered age verification a "modest burden" on "access to the content"—especially in light of a history of age verification for in-person access to sexual content.[38]

A three-justice dissent would have applied strict scrutiny to the Texas statute. Justice Kagan, joined by Justices Sotomayor and Jackson, observed that "Texas's law defines speech by content and tells people entitled to view that speech that they must incur a cost to do so."[39] They concluded that the statute was a "quintessential content-based law" that "demands strict scrutiny."[40] Thus, they asserted, the Court should have focused on whether Texas "can achieve its goal as to minors while interfering less with the speech choices of adults."[41] While the state could show "that the commonly proposed alternatives . . . such as content filtering technology" are inadequate, the Court's application of intermediate scrutiny did not require answering that question.[42]

3. We may have to distinguish the regulation of platforms for speech from the regulation of speech itself.

Undoubtedly, TikTok is a platform for speech. For example, at least forty-nine members of Congress used TikTok to promote themselves and their messages, even though twenty-three of that group voted to ban the

33. *Id.* (quotation omitted).
34. *Id.*
35. *Id.* at 495.
36. *Id.* at 496.
37. *Id.* (quoting *TikTok*, 604 U.S. at 70).
38. *Id.* at 496.
39. *Id.* at 502 (Kagan, J., dissenting).
40. *Id.* at 502, 504 (Kagan, J., dissenting).
41. *Id.* at 502 (Kagan, J., dissenting).
42. *Id.* at 509–10 (Kagan, J. dissenting).

platform if it remained under Chinese control.[43] Despite this statistic, the Court concluded, "It is not clear that the [Protecting Americans from Foreign Adversary Controlled Applications] Act itself directly regulates protected expressive activity, or conduct with an expressive component."[44] The Act did not regulate content creators, and it directly regulated the platform's China-based owners "only through the divestiture requirement."[45] The Court chose to "assume without deciding that the challenged provisions . . . are subject to First Amendment scrutiny."[46] Justices Sotomayor and Gorsuch wrote concurrences on this issue, with Sotomayor finding "no doubt" that First Amendment scrutiny applies, and Gorsuch "harbor[ing] serious reservations" whether the law is content-neutral.[47] The Court concluded that the challenged provisions were "facially content neutral" because, instead of targeting speech based on its content, function, or purpose, the Act "impose[d] TikTok-specific prohibitions due to a foreign adversary's control over the platform."[48]

Targeting the platform, the Court noted, did not "trigger strict scrutiny" because the "differential treatment" was justified by a "special characteristic" of the "speaker being regulated" and not content of the speech.[49] The Act's provisions were based on "a content-neutral data collection interest" of preventing the Chinese government from using its control over Chinese corporations to collect Americans' personal data.[50] The Court concluded that "[n]o more than intermediate scrutiny is in order" and that the Act satisfied that standard.[51] "The challenged provisions further an important Government interest unrelated to the suppression of free expression," with that interest being the prevention of a foreign adversary's collection of domestic users' data.[52] And those provisions "do not burden substantially more speech than necessary to further that interest" by imposing a conditional ban "until a qualified divestiture severs China's control."[53]

This application of the intermediate-scrutiny standard was quite deferential to congressional discretion. Although the challengers proposed

43. Kat Tenbarge, *They Supported a Tiktok Ban, but Still Used the App to Win Their Elections*, NBC News (Nov. 29, 2024), https://www.nbcnews.com/tech/social-media/tiktok-ban-trump-video-account-donald-election-rcna168693.
44. *TikTok*, 604 U.S. at 68.
45. *Id.*
46. *Id.* at 69.
47. *Id.* at 80 (Sotomayor, J., concurring); *id.* at 82 (Gorsuch, J., concurring).
48. *Id.* at 71.
49. *Id.* at 72–73.
50. *Id.* at 73 (quotation omitted).
51. *Id.* at 73–74.
52. *Id.*
53. *Id.* at 73–74, 77.

alternatives (including disclosure requirements and data-sharing restrictions), the Court said that the proposals "ignore the latitude we afford the Government to design regulatory solutions to address content-neutral interests."[54] All intermediate scrutiny requires is a "policy [that] is grounded on reasonable factual findings supported by evidence that is substantial for a legislative determination."[55] The Court found that test satisfied.

4. It remains unclear how much these decisions will affect the regulation of speech and platforms for speech.

The Court's blessing of any legislative restriction affecting speech can have a threefold effect. First, some jurisdictions may adopt the same restriction. Second, some jurisdictions may impose similar restrictions in analogous contexts. And third, some jurisdictions may impose broader restrictions than those already known to meet constitutional muster.

With the age-verification law in *Free Speech Coalition* surviving Supreme Court review, one might ask whether age-verification requirements could be imposed for other types of speech that are often seen as damaging to minors. For example, could states impose age-verification requirements to view violent programming—perhaps even extending such requirements to graphic content in news programs and documentaries? Could states extend such requirements where the question of harm to minors is viewed through a political lens, with legislatures adopting a view of harm that contradicts the views of most mental-health experts? Will the Court extend or rein in its deference to legislative judgments in such cases?

The Court's approval of the TikTok ban could put other foreign-owned platforms at risk. While Congress enacted the TikTok ban, could the President cite national-security powers to ban other foreign-owned platforms? Could the government deem certain domestically owned platforms to operate in a criminal or seditious manner—and thus justify banning those platforms too? And will the Court be as deferential to another branch's judgment in such cases?

The Court issued its *TikTok* opinion on January 17, 2025, which was two days before the challenged law would take effect. If the Court had issued that opinion at the end of the term instead, would the result have remained unanimous? Or would five months of increased assertion of executive power have resulted in dissent? Beyond the specific circumstances of those cases, the lasting effects of *Free Speech Coalition* and *TikTok* are far from clear. Litigation of those effects is almost certain.

54. *Id.* at 77 (quotation omitted).
55. *Id.* at 78 (quoting Turner Broad. Sys., Inc. v. FCC, 520 U.S. 180, 224 (1997)).

C. Catholic Charities[56]: *Unanimous agreement about denominational neutrality—at least in this case.*

Wisconsin's unemployment-compensation laws contain an exemption for nonprofit organizations "operated, supervised, controlled, or principally supported by a church or convention or association of churches" if they are "operated primarily for religious purposes."[57] The Wisconsin Supreme Court concluded that Catholic Charities Bureau Inc., along with four entities that it operates, did not qualify for the exemption.[58] That court held that the Catholic Charities entities did not meet the "operated primarily for religious purposes" requirement because they neither exclusively served Catholics nor engaged in proselytization.[59]

As interpreted by the Wisconsin Supreme Court, some church-affiliated charities would qualify for the exemption, while others would not.[60] The Catholic Charities entities urged that Catholic teaching forbids using works of charity to proselytize and requires providing charitable service without race, sex, or religious distinctions.[61] Amici curiae reported that Judaism, Islam, Sikhism, and Hinduism have similar rules, while some Protestant denominations have contrary rules.[62]

The Court applied the "principle of denominational neutrality" under which laws that establish denominational preferences are subject to strict scrutiny.[63] The Court concluded that Wisconsin's law, as interpreted by that state's supreme court, violated the principle.[64] The law applied differential treatment "based on theological practices" by conditioning the objection on the "inherently religious choices" of "whether to proselytize or serve only co-religionists."[65] The unemployment-tax exemption was, therefore, not "available on an equal basis to all denominations."[66]

The Wisconsin law did not survive strict scrutiny. One fatal problem was that the state did not "explain how the theological lines drawn by [the statute] are narrowly tailored to advance [the] asserted interest" of ensuring unemployment coverage for all workers.[67] But another fatal problem was

56. Catholic Charities Bureau Inc. v. Wis. Labor & Indus. Rev. Comm'n, 605 U.S. 238 (2025).
57. Wis. Stat. §108.02(15)(h)(2).
58. *Catholic Charities*, 605 U.S. at 241.
59. *Id.*
60. *Id.* at 249–50.
61. *Id.* at 249.
62. *Id.* at 250.
63. *Id.* at 247–48.
64. *Id.* at 249–50.
65. *Id.* at 250.
66. *Id.* at 251 (quotation omitted).
67. *Id.* at 252.

the under inclusiveness of the distinctions.[68] The Wisconsin statute provided forty exemptions, including one that covers "religious entities that provide charitable services in a similar manner . . . but are exempt because the work is done directly by the church itself or its ministers, rather than by a separate nonprofit organization controlled by the church."[69] Thus, if the Catholic diocese had directly performed the same services in the same manner, no unemployment tax would be due.

The statute was fatally overinclusive too, as the state's desire to "avoid opining on employee compliance with religious teachings" could have been satisfied with "an exemption limited to employees who are in fact tasked with inculcating religious doctrine."[70] Instead, the exemption at issue "functions at an organizational level, covering both the janitor and the priest in equal measure."[71]

The Supreme Court's unanimous decision shows strong support for the principle of denominational neutrality in the abstract and in the specific context of the law at issue in *Catholic Charities*. Denominational neutrality is a broad concept, however, that touches every governmental interaction with a religious organization. Perhaps because the *Catholic Charities* opinion was unanimous, the Court did not discuss the boundaries of the doctrine's reach or opposing concepts that could limit the doctrine. We are certain to see discussion of those boundaries and opposing concepts in future Supreme Court cases.

II. DISCRIMINATION LAW

The Supreme Court issued several opinions addressing federal discrimination statutes that clarify who may bring claims and what standards govern liability under the Americans with Disabilities Act (ADA), the Rehabilitation Act, and Title VII of the Civil Rights Act of 1964.

A. Stanley v. City of Sanford, Florida *resolves a circuit split over ADA Title I claims.*

In *Stanley v. City of Sanford, Florida*, the Supreme Court granted certiorari to resolve a circuit split over whether Title I of the ADA applies to claims of disability discrimination brought by retirees who neither hold nor seek employment at the time of the alleged discriminatory act.[72] The Court held that, to prevail under Title I, a plaintiff must plead and prove that she held

68. *Id.* at 253.
69. *Id.* at 253–54.
70. *Id.* at 254.
71. *Id.*
72. Stanley v. City of Sanford, Florida, 606 U.S. 46, 51 (2025).

or desired a job and could perform its essential functions, with or without reasonable accommodation, at the time of the employer's alleged act of disability-based discrimination.[73] Applying that rule, the Court affirmed the Eleventh Circuit's decision and concluded that Title I does not protect retirees who do not hold or seek employment when the alleged discrimination occurs.[74]

The plaintiff, a former firefighter, alleged that the city discriminated against her by providing reduced post-retirement health-insurance benefits to employees who retired due to disability as compared to those who retired after completing twenty-five years of service.[75] In 2003, the City amended its policy to provide health insurance until age 65 only to retirees with at least twenty-five years of service; employees who retired earlier due to disability received only twenty-four months of coverage.[76] The plaintiff alleged that she developed an unspecified disability sometime after 2003 and that, in 2018, her disability forced her to retire with fewer than twenty-five years of service.[77]

The Court emphasized that the ADA's protections extend only to individuals who are able to perform the essential functions of a job that they hold or seek at the time of the alleged discrimination; they do not extend to retirees who neither hold nor desire employment.[78] Focusing on the statute's use of present-tense verbs—protecting individuals who "hold[] or desire[]" a job and "can perform" its essential functions—the Court declined to extend Title I's protections to individuals outside an existing or prospective employment relationship.[79] The Court further noted concerns, echoed by at least one circuit court, that judicially extending Title I to retirees could produce unintended consequences, such as encouraging employers to reduce retirement benefits, and that other statutory schemes may be better suited to address discrimination in post-employment benefits.[80]

For appellate practitioners, *Stanley* is also notable for Justice Thomas's concurrence, joined by Justice Barrett, addressing certiorari practice. The concurrence criticized petitioners who urge the Court to grant review by portraying a case as a "clean vehicle" to resolve an important and recurring question, only to introduce "an entirely new question at the merits stage."[81]

73. *Id.* at 65.
74. *Id.* at 50–51.
75. *Id.* at 49–50.
76. *Id.*
77. *Id.* at 50.
78. *Id.* at 51–52.
79. *Id.* at 52–53.
80. *Id.* at 58–59.
81. *Id.* at 69–71.

The concurrence serves as a pointed reminder that effective Supreme Court advocacy requires alignment between the questions presented and the arguments advanced on the merits.

B. A.J.T. v. Osseo Area Schools, Independent School District No. 279 *clarifies standard of review for education-related claims.*

In *A.J.T. v. Osseo Area Schools*, Chief Justice Roberts delivered the unanimous opinion of the Court, holding that schoolchildren asserting education-related disability discrimination claims under Title II of the ADA or Section 504 of the Rehabilitation Act are not required to make a heightened showing of "bad faith or gross misjudgment."[82] Instead, such claims are governed by the same standards that apply in other disability-discrimination contexts.[83] The Court vacated the judgment of the U.S. Court of Appeals for the Eighth Circuit and remanded for further proceedings.[84]

The case arose from a school district's refusal to provide evening instruction to a student whose severe epilepsy prevented her from attending school during morning hours.[85] Although the student prevailed on her claim under the Individuals with Disabilities Education Act, the lower courts rejected her ADA and Rehabilitation Act claims based on Eighth Circuit precedent requiring a heightened showing of bad faith or gross misjudgment by school officials.[86]

The Court rejected that heightened evidentiary burden, finding no textual support in either the ADA or Section 504 for treating education-related disability claims differently from other forms of disability discrimination.[87] In doing so, the Court agreed with the Eighth Circuit panel's own observation that its circuit's approach imposed "a high bar for claims based on educational services" while requiring far less in other disability-discrimination contexts, including no showing of intent for failure-to-accommodate claims and only deliberate indifference for damages.[88] The Court further endorsed the panel's conclusion that this disparity resulted from judicially imposed requirements untethered to statutory text—underscoring that the case is a lesson in why courts do not add provisions to federal statutes.[89] For appellate practitioners, the decision clarifies the evidentiary standards governing education-based disability claims and underscores the Court's continued insistence on fidelity to statutory text.

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82. A.J.T. v. Osseo Area Schs., 605 U.S. 335, 336–37 (2025).
83. *Id.* at 336.
84. *Id.* at 351.
85. *Id.* at 340–41.
86. *Id.* at 341–42.
87. *Id.* at 345.
88. *Id.* at 343.
89. *Id.*

C. Ames v. Ohio Department of Youth Services *levels the playing field for Title VII claimants*

In *Ames v. Ohio Department of Youth Services*, Justice Jackson delivered the unanimous opinion of the Court, holding that the U.S. Court of Appeals for the Sixth Circuit's "background circumstances" rule—which required members of a majority group to satisfy a heightened evidentiary burden to establish a prima facie case under Title VII—cannot be squared with the statute's text or the Court's precedents.[90] The Court vacated the judgment below and remanded for application of the proper standard.[91]

The plaintiff, a heterosexual female employee of the Ohio Department of Youth Services, alleged that she was denied a promotion and later demoted because of her sexual orientation.[92] Applying Sixth Circuit precedent, the lower courts required her, as a member of a majority group, to produce evidence that her employer was unusually inclined to discriminate against the majority.[93] The Supreme Court rejected that approach, emphasizing that Title VII prohibits discrimination against "any individual" because of protected characteristics, without distinguishing between majority- and minority-group plaintiffs.[94]

The Court held that the Sixth Circuit's rule improperly imposed a uniform, heightened evidentiary requirement on all majority-group plaintiffs and explained that this approach departs from both Title VII's text and the Court's precedents.[95] The Court further reiterated that its decisions caution against rigid or mechanized applications of the prima facie burden under *McDonnell Douglas*, which instead requires a flexible, context-dependent inquiry.[96]

Justice Thomas, joined by Justice Gorsuch, filed a concurring opinion criticizing reliance on atextual judicial frameworks and urging a more textually grounded approach to Title VII claims.[97] For appellate practitioners, *Ames* clarifies that Title VII's disparate-treatment framework applies uniformly, regardless of a plaintiff's majority or minority status, and reinforces the Court's refusal to endorse judicially created evidentiary hurdles lacking textual support.

90. Ames v. Ohio Dep't of Youth Servs., 605 U.S. 303, 305–06 (2025).
91. *Id.* at 313.
92. *Id.* at 306.
93. *Id.* at 306–07.
94. *Id.* at 309.
95. *Id.* at 310–11.
96. *Id.* at 311 (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)).
97. *Id.* at 313.

III. EMPLOYMENT LAW

There was at least one case related to employment law from the October 2024 term that may be relevant to civil and appellate practitioners.

A. E.M.D. Sales, Inc. v. Carrera*'s clarification of the standard of proof for FLSA exemptions.*

In *E.M.D. Sales, Inc. v. Carrera*,[98] the Supreme Court addressed a narrow but consequential procedural question under the Fair Labor Standards Act of 1938 (FLSA)[99]: what evidentiary standard governs when an employer seeks to prove that an employee falls within a statutory exemption from minimum-wage and overtime protections?[100] Resolving a circuit split, the Court unanimously held that the preponderance-of-the-evidence standard applies, rejecting the Fourth Circuit's idiosyncratic requirement that employers prove exemptions by clear and convincing evidence.[101]

The FLSA establishes baseline protections for covered employees, including a federal minimum wage and overtime compensation for work exceeding more than forty hours per week.[102] The Act also carves out a number of exemptions from these protections, among them an exemption for employees working "in the capacity of outside salesman."[103] Employers bear the burden of proving that an exemption applies, but the statute is silent as to the standard of proof required to meet that burden.[104]

E.M.D. Sales, Inc. distributes international food products and employs sales representatives who manage inventory and take orders at grocery stores that stock E.M.D. products.[105] Several sales representatives sued E.M.D., alleging that it violated the FLSA by failing to pay them overtime wages.[106] E.M.D. did not dispute that the employees worked more than forty hours per week without overtime pay.[107] Instead, it argued they fell within the outside-salesman exemption.[108]

After a bench trial, the district court ruled in favor of the employees, concluding that E.M.D. failed to establish the exemption by clear and convincing evidence.[109] The Fourth Circuit affirmed, relying on long-standing

98. E.M.D. Sales, Inc. v. Carrera, 604 U.S. 45 (2025).
99. 29 U.S.C. §§ 201–219.
100. *E.M.D. Sales*, 604 U.S. at 47.
101. *Id.* at 49, 52.
102. 29 U.S.C. §§ 206(a)(1), 207(a)(1).
103. 29 U.S.C. § 213(a)(1). *See also generally id.* §§ 213(a)–(b).
104. *E.M.D. Sales*, 604 U.S. at 48, 52.
105. *Id.* at 48.
106. *Id.*
107. *Id.*
108. *Id.*
109. *Id.*

circuit precedent that conflicted with decisions from other circuits applying the preponderance-of-the-evidence standard.[110]

The Supreme Court granted certiorari to resolve the conflict, then reversed.[111] Writing for a unanimous Court, Justice Kavanaugh concluded that the default civil standard of preponderance of the evidence governs exemption determinations under the FLSA.[112] The Court explained that preponderance of the evidence has historically been the default standard in civil cases.[113] The Court has deviated from that default in three main circumstances: (1) when a statute establishes a heightened standard of proof; (2) when the case implicates constitutional rights that require a heightened standard; and (3) when the government tries to engage in "unusual coercive action," such as taking away a person's citizenship.[114] None of those circumstances, the Court reasoned, applies to wage-and-hour disputes under the FLSA.[115] The Court found the FLSA's silence on the standard of proof to be particularly significant.[116] It emphasized that such statutory silence "is generally inconsistent with the view that Congress intended to require a special, heightened standard of proof."[117]

E.M.D. Sales signals the Supreme Court's reluctance to impose heightened evidentiary standards absent clear legislative or constitutional direction. As a practical matter, the ruling eliminates a significant hurdle for employers attempting to prove FLSA exemptions in the Fourth Circuit. The decision restores nationwide uniformity and ensures that exemption disputes are resolved under the same evidentiary standard regardless of forum.

IV. CIVIL RICO

At least one case from the October 2024 term pertains to civil causes of action under the Racketeer Influenced and Corrupt Organizations Act (RICO)[118] that may be relevant to civil and appellate practitioners.

110. *Id.* at 49.
111. *Id.* at 49, 54.
112. *Id.* at 52.
113. *Id.* at 50.
114. *Id.* at 50–51 (internal quotation marks and citation omitted).
115. *Id.* at 52.
116. *Id.*
117. *Id.*
118. 18 U.S.C. §§ 1961–1968.

A. Medical Marijuana, Inc. v. Horn *and the end of the antecedent personal injury bar in civil RICO*

In *Medical Marijuana, Inc. v. Horn*,[119] the Supreme Court resolved a longstanding circuit split concerning the scope of civil remedies available under RICO. RICO creates a cause of action for "[a]ny person injured in his business or property by reason of a [RICO] violation."[120] The Court held that civil RICO does not categorically bar recovery for business or property losses merely because those losses derive from a personal injury.[121] Rejecting the so-called "antecedent personal injury bar," the Court clarified that § 1964(c) limits the type of harm recoverable, not the causal pathway by which that harm occurs.[122]

Douglas Horn was a commercial truck driver who suffered from chronic pain.[123] Seeking a non-psychoactive alternative to conventional pain treatment, Horn purchased "Dixie X," a tincture infused with cannabidiol that Medical Marijuana, Inc. marketed as free from tetrahydrocannabinol (THC) and therefore legal to consume.[124] Several weeks later, Horn tested positive for THC during a random drug screening.[125] After Horn refused to participate in a substance-abuse program, he was terminated.[126] Subsequent third-party testing confirmed that Dixie X contained THC.[127]

Horn sued Medical Marijuana asserting civil RICO, among other claims.[128] He alleged that Medical Marijuana engaged in a fraudulent marketing scheme constituting a pattern of racketeering activity that directly caused his loss of employment, which he contended was an injury to his business or property within the meaning of § 1964(c).[129] The district court granted summary judgment to Medical Marijuana on Horn's RICO claim after concluding that his lost employment "flow[ed] from" a personal injury—namely, the ingestion of the THC contained in Dixie X.[130] The court reasoned that § 1964(c)'s extension of a cause of action to those injured in their "business or property" implicitly bars recovery not only for personal injuries, but also for economic losses derived from such injuries.[131]

119. Medical Marijuana, Inc. v. Horn, 604 U.S. 593 (2025).
120. 18 U.S.C. § 1964(c).
121. *Med. Marijuana*, 604 U.S. at 596.
122. *Id.* at 600–01.
123. *Id.* at 597.
124. *Id.*
125. *Id.*
126. *Id.* at 597–98.
127. *Id.* at 598.
128. *Id.*
129. *Id.* at 598, 600.
130. *Id.* at 598.
131. *Id.*

The Second Circuit reversed, holding that § 1964(c) does not impose an antecedent personal injury bar.[132] In doing so, the court aligned itself with the Ninth Circuit and against other circuits that had adopted the opposite rule.[133]

The Supreme Court granted certiorari to resolve the circuit split.[134] In an opinion by Justice Barrett, a divided Court affirmed the Second Circuit and held that a plaintiff may seek civil RICO damages for business or property loss regardless of whether the loss resulted from a personal injury.[135]

Relying on dictionary definitions, the Court explained that "injure" means to "harm" or "damage."[136] Accordingly, a plaintiff is "injured in his business or property" whenever that business or property has been harmed or damaged, without regard to whether the harm traces back to a personal injury.[137] Although § 1964(c) implicitly excludes recovery for personal injuries themselves, that exclusion "operates with respect to the *kinds* of harm for which the plaintiff can recover, not the *cause* of the harm for which he seeks relief."[138] To illustrate the distinction, the Court offered the example of a gas-station owner beaten in a robbery who cannot recover for physical pain and suffering but may recover for lost business profits if the injuries force him to shut down operations.[139]

Addressing concerns that its holding would nullify RICO's "business or property" limitation, the Court emphasized several independent constraints on civil RICO claims. First, § 1964(c)'s "by reason of" language requires a direct relationship between the racketeering conduct and the asserted injury.[140] Foreseeability alone is insufficient, and multistep causal chains remain vulnerable to dismissal.[141] Second, plaintiffs must still plead and prove a pattern of racketeering activity, requiring at least two related predicate crimes.[142] Third, not every economic loss may qualify as an injury to "business" or "property," depending on how lower courts ultimately define those terms.[143]

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132. *Id.* at 598–99.
133. *Id.* at 599–600.
134. *Id.* at 600.
135. *Id.* at 596.
136. *Id.* at 600–01 (citing American Heritage Dictionary 676 (1969); Webster's Third New International Dictionary 1164 (1971); Ballentine's Law Dictionary 626 (3d ed. 1969)).
137. *Id.* at 601.
138. *Id.*
139. *Id.* at 594.
140. *Id.* at 612.
141. *Id.* at 612–13.
142. *Id.* at 613.
143. *Id.*

For plaintiffs, *Medical Marijuana* eliminates a powerful threshold defense and opens the door to civil RICO claims, particularly in cases involving consumer products where economic losses follow physical injuries. But the decision simultaneously heightens the importance of pleading direct causation. For defendants, the antecedent personal injury bar is foreclosed. The litigation battlefield shifts instead to remoteness, intervening actors, and the meaning of "business" and "property." Early dispositive motions remain potent tools.

V. ADMINISTRATIVE LAW

The Supreme Court issued a few significant opinions involving administrative law of import to practitioners. Following the Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), overruling the *Chevron* deference standard, the Court continues to refine the relationship between the courts and agencies.

A. Williams v. Reed *crafts a solution for a Catch-22 faced by some Section 1983 plaintiffs.*

In *Williams v. Reed*, Justice Kavanaugh delivered the 5–4 majority opinion, holding that where a state's administrative-exhaustion requirement effectively immunizes state officials from claims under 42 U.S.C. § 1983 challenging delays in the administrative process, state courts may not deny those claims on failure-to-exhaust grounds.[144]

The petitioners were claimants seeking unemployment benefits in Alabama.[145] Under Alabama law, before a claimant can challenge an adverse decision in state court, he or she must complete a strict administrative review process as set forth by statute.[146] After their claims languished in the administrative review process for a lengthy time, the claimants in *Williams* petitioned under Section 1983 for a court order directing the state department to promptly address their benefits claims.[147] The claimants lost in Alabama state court and before the Alabama Supreme Court due to their failure to exhaust administrative remedies.[148]

But the Supreme Court reversed, recognizing that the state's delay in adjudicating these claims placed the plaintiffs in a Catch-22 where they had neither received a benefits decision nor could move forward with challenging that decision or even asking for relief from the delay.[149] The

144. Williams v. Reed, 604 U.S. 168, 174 (2025).
145. *Id.* at 172.
146. *Id.* at 171–72.
147. *Id.* at 173.
148. *Id.*
149. *Id.* at 170

Court cited a long history of cases holding that state laws that immunize government conduct that is otherwise subject to suit under § 1983 is preempted, even where the civil-rights litigation takes place in state court.[150] The Alabama exhaustion requirement at issue, the Court determined, operates in exactly the same manner—by immunizing state officials from claims of unnecessary delay, and so is preempted.[151] The majority stressed the "unusual circumstances" of this case and noted that the holding would apply only to "this narrow category of § 1983 claims about delays in the administrative process."[152]

Justice Thomas wrote a dissent, which was joined in part by Justices Alito, Gorsuch, and Barrett, which would have affirmed the dismissal of these claims because states have broad discretion to regulate state-court jurisdiction over federal causes of action, and Alabama's exhaustion requirement does not run afoul of any limitations on that discretion.[153]

Civil-rights practitioners in state court should understand that the *Williams* decision applies, by its terms, only to a narrow subset of Section 1983 cases focused on challenges to administrative delay that effectively block relief. But *Williams* also telegraphs, in a more general sense, the Court's willingness to view cases from a pragmatic point of view, rather than sticking to textualist approaches.

B. Bourfa v. Mayarkas *clarifies the parameters of executive agency discretion.*

In *Bourfa v. Mayarkas*,[154] the Court granted certiorari to resolve a circuit split over whether a district court has jurisdiction to review the revocation of a previously approved visa approval by the Secretary of Homeland Security. In a unanimous decision authored by Justice Jackson, the Court found that revocation of an approved visa petition under 8 U.S.C. § 1155 by the Secretary of Homeland Security qualified as a decision in the Secretary's discretion.[155] Thus, the decision fell within the purview of 8 U.S.C. § 1252(a)(2)(B)(ii), a jurisdiction-stripping provision that barred judicial review of the sham-marriage determination. The Court noted that the statutory language provides the Secretary with a broad grant of discretion. Under long-standing precedent, the use of the word "may" connotes discretion.[156] Further, Congress had in no way prescribed how the Secretary may exercise that discretion. The *Bourfa* decision thus highlights

150. *Id.* at 174–75.
151. *Id.* at 175–76.
152. *Id.* at 174.
153. *Id.* at 182–80.
154. Bourfa v. Mayarkas, 604 U.S. 6 (2024).
155. *Id.* at 6.
156. *Id.* at 13.

that where Congress has explicitly granted discretion by specific statutory language, a court cannot interfere with this authority.

C. McLaughlin Chiropractic Associates v. McKesson Corp.*: District courts not bound by FCC's interpretation of the Telephone Consumer Protection Act.*

In McLaughlin Chiropractic Assocs. v. McKesson Corp.,[157] the Supreme Court answered the question whether district courts were bound by the Federal Communications Commission interpretation of the Telephone Consumer Protection Act. Justice Kavanaugh authored the 6–3 decision of the Court, which answered the question, "No," with Justice Kagan dissenting, joined by Justice Sotomayer and Justice Jackson.

Petitioner, supported by the United States as *amicus curiae*, argued that the Hobbs Act's provision for pre-enforcement review in the courts of appeals bar district courts in enforcement proceedings from disagreeing with an agency's interpretation of a statute. [158]

In finding district courts were not bound by the FCC's interpretation, the majority found that nothing in the Hobbs Act prevented a district court from independently determining whether the FCC's legal interpretation of a statute was correct. The Court compared the statutory language of the Clean Water Act, CERCLA, and the Clean Air Act to demonstrate that Congress can choose to expressly preclude judicial review in enforcement proceedings.[159]

The vigorous dissent, using a plutonium example, claimed the majority's decision validates a party's decision not to challenge an agency's decision pre-enforcement but rather to seek to invalidate the decision years later in an enforcement proceeding. Besides attacking the practical implications of the decision, the dissent also argued that it was plainly wrong as a matter of ordinary statutory interpretation.[160] The impact on defendants following *McLaughlin* is that they can now directly challenge the FCC's pronouncements and claim the FCC's legal interpretations of a statute are wrong. This decision will no doubt significantly impact how these cases are pursued and litigated.

VI. JURISDICTIONAL ISSUES

The Court issued at least three decisions this Term impacting questions of federal jurisdiction and the power of the courts, including tackling some long-simmering questions.

157. McLaughlin Chiropractic Assocs. v. McKesson Corp., 606 U.S. 146 (2025).
158. *Id.* at 152.
159. *Id.* at 154.
160. *Id.* at 169–70.

A. Fuld v. Palestine Liberation Organization*: "Minimum Contacts" test for personal jurisdiction is not applicable to Fifth Amendment Due Process Clause.*

In *Fuld v. Palestine Liberation Organization*,[161] the Supreme Court addressed whether the Fifth Amendment's Due Process Clause imposes the same "minimum contacts" requirement for a federal court's exercise of personal jurisdiction that the Fourteenth Amendment imposes on state courts.[162] The issue was presented by lawsuits brought under the Antiterrorism Act (ATA) by American citizens injured in terror attacks in Israel and the West Bank who sued the Palestine Liberation Organization (PLO) and the Palestinian Authority (PA).[163]

The statutory basis for jurisdiction was provided by the Promoting Security and Justice for Victims of Terrorism Act of 2019 (PSJVTA), which specifically addressed the PLO and PA and deemed them to have consented to personal jurisdiction in ATA cases if they made payments to imprisoned terrorists or their families or conducted certain activities on U.S. soil.[164] The Second Circuit held that the PSJVTA violated the Fifth Amendment's Due Process Clause, applying the same "minimum contacts" standard applicable under the Fourteenth Amendment.[165]

Chief Justice Roberts, writing for a seven-justice majority, reversed.[166] The Court declined to import the Fourteenth Amendment's minimum contacts framework into the Fifth Amendment. Although the Amendments use similar language, the Fourteenth Amendment was developed in the context of state-sovereignty and federalism concerns—considerations that do not apply to the federal government and its broader sovereign authority.[167] "Because the State and Federal Governments occupy categorically different sovereign spheres," the Court explained, "we decline to import the Fourteenth Amendment minimum contacts standard into the Fifth Amendment."[168]

The Court held that the PSJVTA's jurisdictional provisions satisfy whatever constraints exist under the Fifth Amendment's Due Process Clause but did not articulate the Clause's outer limits.[169] It was sufficient that the PSJVTA was narrow, targeting only two specific foreign entities with longstanding, complex relationships with the United States, reasonably tied jurisdiction to conduct closely related to the United States (specifically,

161. Fuld v. Palestine Liberation Org., 606 U.S. 1 (2025).
162. *Id.* at 5, 11.
163. *Id.* at 5, 9.
164. *Id.* at 6–7, 8–9.
165. *Id.* at 10, 17.
166. *Id.* at 25. Justice Thomas wrote an opinion concurring in the judgment that Justice Gorsuch joined in part.
167. *Id.* at 14–15.
168. *Id.* at 16.
169. *Id.* at 18–19.

payments incentivizing terrorism against U.S. citizens and activities on U.S. soil) and implicated sensitive foreign-policy concerns as to which the political branches are entitled to deference.[170] Even assuming a reasonable inquiry applied, the Court held that the federal government's compelling interest in providing a forum for American victims of terrorism, combined with the PLA's and PA's sophisticated international operations and decades-long presence in the United States satisfied it.[171]

Because federal courts generally follow state law to determine the extent of their personal jurisdiction, *Fuld*'s impact will be limited to a narrow subset of cases, "such as those in which personal jurisdiction is—as in the PSJVTA—'authorized by a federal statute.'"[172] That said, with a clearer understanding of its power to confer jurisdiction without constraints tied to Fourteenth Amendment jurisprudence, Congress may exercise its power to authorize personal jurisdiction by federal statute more freely in future legislation.

B. Royal Canin U.S.A., Inc. v. Wullschleger*: Complaints amended to include only state law claims must be remanded.*

In *Royal Canin U.S.A., Inc. v. Wullschleger*,[173] the Supreme Court unanimously resolved a circuit split regarding the effect of post-removal amendments to a pleading on federal subject-matter jurisdiction.[174] The case arose from a consumer class action alleging deceptive marketing practices related to prescription dog food. The plaintiff originally filed in state court, asserting both federal and state-law claims.[175] The defendant removed to federal court based on the federal claims but, after removal, the plaintiff amended her complaint to delete all references to federal law and moved for remand.[176]

Justice Kagan, writing for the unanimous Court, held that, when a plaintiff amends the complaint after removal to delete all federal-law claims, the federal court loses supplemental jurisdiction over the remaining state-law claims, and the case must be remanded to state court.[177] The decision abrogates contrary holdings from the First, Third, Fourth, Sixth, and Eleventh Circuits, which had held that jurisdiction is determined by examining the complaint as it existed at the time of removal.[178]

170. *Id.* at 21–22.
171. *Id.* at 24–25.
172. *Id.* at 11 (quoting Fed. R. Civ. P. 4(k)(1)(C)).
173. Royal Canin U.S.A., Inc. v. Wullschleger, 604 U.S. 22 (2025).
174. *Id.* at 29–30.
175. *Id.* at 28.
176. *Id.* at 28–29.
177. *Id.* at 43–44.
178. *Id.* at 30 & n.3.

The Court grounded its analysis in the text of 28 U.S.C. § 1367, the statute that confers supplemental jurisdiction, and the principle articulated in *Rockwell International Corp. v United States* that, "when a plaintiff files a complaint in federal court and then voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction."[179] The Court explained that § 1367(a) confers supplemental jurisdiction over state-law claims only when they are "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy."[180] Once the federal claims are eliminated, however, the state-law claims have no claims within the federal court's original jurisdiction to which they can relate, and they become "supplemental to nothing."[181]

The Court emphasized that this rule aligns with Congress's general approach to amendments and jurisdiction: an amendment can "wipe the jurisdictional slate clean, giving rise to a new analysis with a different conclusion."[182] The same principle operates in removed and original cases alike—the plaintiff is "the master of the complaint" and controls much about the suit, including whether to establish a basis for federal jurisdiction.[183] This principle also ensures "that the case, as it will actually be litigated, merits a federal forum."[184]

Inasmuch as the Court's holding in *Royal Canin* brings uniformity by siding with the Eighth Circuit against every other circuit to have decided the issue, it represents a significant change to a defendant's removal prospects of achieving a federal forum in most jurisdictions. It is therefore expected to have an immediate and widespread impact. Importantly, however, the rule that a plaintiff cannot, in either original or removed case, oust a federal court of jurisdiction through an amendment reducing the alleged amount in controversy remains undisturbed.[185] The Court reasoned that this rule "more concerns a fact on the ground" than the plaintiff's prerogative to select the claims and parties.[186]

C. Trump v. CASA, Inc. *and the curbing of district courts' universal injunction authority.*

In *Trump v. CASA, Inc.*,[187] the Supreme Court addressed a long-simmering dispute over whether federal courts' equitable powers are broad enough to allow so-called "universal injunctions"—that is, injunctions that bar

179. *Id.* at 32 (quoting Rockwell Int'l Corp. v. United States, 549 U.S. 457, 473–74 (2007)).
180. *Id.* at 31 (quoting 28 U.S.C. § 1367(a)).
181. *Id.* at 34.
182. *Id.*
183. *Id.* at 35 (quoting Caterpillar Inc. v. Williams, 482 U.S. 386, 398–99 (1987)).
184. *Id.* at 39.
185. *Id.* at 38 n.8.
186. *Id.*
187. Trump v. CASA, Inc., 606 U.S. 831 (2025).

enforcement of a government policy against *anyone*, not just the parties to the lawsuit.[188] The case arose from challenges to Executive Order No. 14160, which purported to restrict birthright citizenship for certain children born in the United States.[189] Three district court entered preliminary injunctions prohibiting enforcement of the order against anyone, and their respective circuit courts denied the government's request to stay the orders.[190] The government then filed three nearly identical applications to partially stay the injunctions by limiting them to the parties in each lawsuit.[191] Justice Barrett, writing for the Court, held that universal injunctions likely exceed the authority that Congress granted to federal courts in the Judiciary Act of 1789 (the "Act").[192]

Under the Court's decision in *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, the statutory grant encompassed only those equitable remedies "traditionally accorded by courts of equity" at the founding.[193] Because the Court could find no founding-era analog for universal injunctions, the Act did not authorize them.[194] The Court rejected the contention that universal injunctions are analogous to decrees obtained on a "bill of peace"—a historic form of group litigation.[195] While bills of peace allowed courts to adjudicate the rights of dispersed groups, they involved small cohesive groups and, unlike universal injunctions, their outcomes bound all members of the group at issue, not only the parties.[196] The true modern descendant of the bill of peace, the Court explained, is the class action, governed by Rule 23, not the universal injunction.[197]

The Court likewise rejected the contention that universal injunctions are justified by the principle that equity allows courts to provide "complete relief."[198] But "complete relief," the Court explained, "is not synonymous

188. *Id.* at 837 & n.1. As a preliminary matter, the court explained that the injunctions at issue are better referred to as *universal* injunctions rather than *nationwide* injunctions, explaining that "[e]ven a traditional, parties-only inunction can apply beyond the jurisdiction of the issuing court." *Id.* at 837 n.1. The issue with the injunction in *CASA* was "not so much *where* it applie[d], but *whom* in protect[ed]." *Id.*

189. *Id.* at 838–39.

190. *Id.* at 839.

191. *Id.* Importantly, the applications for stays did not raise, and, thus, the Court did not consider whether the executive order violated applicable law. *Id.* The only issue was the permissible remedy for a presumed violation.

192. *Id.* at 847.

193. *Id.* at 841–42.

194. *Id.* at 847 ("Neither the universal injunction nor a sufficiently comparable predecessor was available from a court of equity at the time of our country's inception.").

195. *Id.*

196. *Id.* at 848. Universal injunctions, by contrast, bar enforcement of a government policy against any person, whether or not a party to the lawsuit when granted, but, when denied, do not bar others from pursuing the same remedy.

197. *Id.* at 849.

198. *Id.* at 850–51.

with 'universal relief.'"[199] Rather, it allows courts to "administer complete relief *between the parties*."[200] For individual and associational plaintiffs, an injunction prohibiting enforcement against their children, for example, would provide complete relief, but extending the injunction universally would not make *their* relief "any more complete."[201]

The Court left open whether universal injunctions might be justified as necessary for "complete relief" to state plaintiffs, whose harms from administering citizen-dependent benefit programs might well require broader protection due to the cross-border movement of children.[202] That question was remanded for consideration by lower courts in the first instance.[203] The applications for stay were granted only to the extent that the injunctions exceeded what was necessary to provide complete relief to each plaintiff with standing.

VII. PROCEDURE

In October Term 2024, the Supreme Court issued at least three decisions involving the rules of procedure that may be of interest to trial and appellate litigators.

A. Waetzig v. Halliburton Energy Services*: Voluntary dismissal under Rule 41(a) is final for purposes of Rule 60.*

In *Waetzig v. Halliburton Energy Services*, a unanimous Supreme Court held that a plaintiff's voluntary dismissal under Federal Rule of Civil Procedure 41(a) qualifies as a "final judgment, order, or proceeding," such that the plaintiff can subsequently obtain relief from the dismissal pursuant to Federal Rule of Civil Procedure 60(b).[204]

In *Waetzig*, the plaintiff filed a wrongful-termination action against his former employer.[205] The employer asserted that the plaintiff was required to arbitrate his claim.[206] The plaintiff submitted his claim to arbitration and

199. *Id.* at 851.
200. *Id.*
201. *Id.* at 853. By contrast, complete relief for a plaintiff asserting a nuisance claim against a neighbor for "blasting loud music at all hours of the night" would necessarily mean stopping the loud music for all neighbors, but this is permissible because there would be no way to remedy the harm to the plaintiff without incidentally benefitting other. *Id.* at 851–52. Even then, only the plaintiff would have the power to enforce the injunction against the defendant; other neighbors who would stand to incidentally benefit from the plaintiff's injunction would have to file their own lawsuits and obtain their own injunctions if the judgment-holding plaintiff declined to enforce hers. *Id.*
202. *Id.* at 853–54.
203. *Id.* at 854.
204. Waetzig v. Halliburton Energy Services, 604 U.S. 305, 307 (2025).
205. *Id.*
206. *Id.*

voluntarily dismissed his federal case, without prejudice, pursuant to Rule 41(a)(1)(A)(i).[207] Following an arbitration hearing, the arbitrator issued an award granting summary judgment for the employer.[208] According to the plaintiff, however, the arbitrator failed to follow various procedural rules required by the parties' arbitration agreement.[209] The plaintiff then made a "procedurally creative . . . gambit," seeking relief in the district court by moving to reopen his previously dismissed case pursuant to Rule 60(b).[210] The district court granted the motion, reopened the case, and then issued a separate order granting the plaintiff's request to vacate the arbitration award.[211] On appeal, the Tenth Circuit reversed, finding that the plaintiff's voluntary dismissal was not a "final judgment, order, or proceeding" that could be challenged and reopened under Rule 60(b).[212] The Supreme Court granted certiorari and held to the contrary.[213]

The Supreme Court explained that "a Rule 41(a) voluntary dismissal without prejudice qualifies as a 'final . . . proceeding' under Rule 60(b)."[214] First, a voluntary dismissal is "final," as it terminates the action itself.[215] Second, a voluntary dismissal counts as a "proceeding," as the term "proceeding" encompasses all steps taken in the action, including a voluntary dismissal without prejudice.[216] And third, Rule 60(b)'s predecessor rule, California Code of Civil Procedure section 473, was historically interpreted to apply to voluntary dismissals.[217] Accordingly, the Court held, "[w]hen the requirements of Rule 60(b) are satisfied, a district court may relieve a party from such a dismissal and reopen the case."[218]

Civil practitioners should be aware, after *Waetzig*, that litigants can potentially seek relief under Rule 60(b) even after voluntarily dismissing pursuant to 41(a), as long as Rule 60(b)'s requirements are otherwise met.

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207. *Id.* Under Rule 41(a)(1)(A)(i), a plaintiff may dismiss its case "without a court order" by serving "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i).

208. *Waetzig*, 604 U.S. at 308.

209. *Id.*

210. *Id.* Rule 60(b) permits a court, "[o]n motion and just terms . . . [to] relieve a party . . . from a final judgment, order, or proceeding," on any of six enumerated bases, including "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b).

211. *Waetzig*, 604 U.S. at 309.

212. *Id.* at 309–10.

213. *Id.* at 307, 310.

214. *Id.* at 311–12.

215. *Id.* at 312.

216. *Id.* at 315–16.

217. *Id.* at 318–19.

218. *Id.* at 319.

B. BLOM Bank SAL v. Honickman *and the showing necessary to reopen a case under Rule 60(b)(6).*

In *BLOM Bank SAL v. Honickman*, the Court held that when a party seeks to reopen a case pursuant to Rule 60(b)(6) for purposes of filing an amended complaint, the party must first establish "extraordinary circumstances" justifying relief before it can avail itself of Rule 15(a)'s more liberal repleading standard.[219] In *Honickman*, the plaintiffs filed an action against the defendant bank under the Justice Against Sponsors of Terrorism Act (JASTA), 18 U.S.C. § 2333(d), alleging that the defendant aided and abetted Hamas's commission of terrorist attacks.[220] The defendant sought dismissal, arguing that the facts alleged in the plaintiffs' complaint were insufficient to state an aiding-and-abetting claim under JASTA.[221] The plaintiffs stood on their allegations and indicated that they would not seek leave to amend if the district court dismissed their complaint.[222] The district court subsequently dismissed the complaint with prejudice, finding that that plaintiffs had not plausibly alleged the "general awareness" element necessary to plead JASTA aiding-and-abetting liability.[223] On appeal, the Second Circuit held that the district court erred by applying an unduly high foreseeability requirement, but the appellate court nonetheless affirmed, finding that the plaintiffs still failed to state a claim under the less exacting standard.[224] The plaintiffs then moved under Rule 60(b)(6) to vacate the final judgment so that they could file an amended complaint.[225] They contended that the Second Circuit's clarification of the aiding-and-abetting standard constituted "extraordinary circumstances" sufficient to justify relief under Rule 60(b)(6).[226] The district court denied their motion, finding that a mere change in decisional law does not constitute an "extraordinary circumstance."[227] The Second Circuit reversed, finding that the district court should have used a hybrid standard to "consider Rule 60(b) finality and Rule 15(a) liberality in tandem."[228] The Second Circuit held that the district court incorrectly treated plaintiffs' motion to vacate and amend "as calling for two distinct analyses, requiring Plaintiffs to successfully navigate Rule 60(b)'s finality gauntlet before they

219. BLOM Bank SAL v. Honickman, 605 U.S. 204, 206 (2025).
220. *Id.* at 206–07.
221. *Id.* at 207.
222. *Id.*
223. *Id.*
224. *Id.* at 208.
225. *Id.* at 208–09. Rule 60(b)(6) allows a court to vacate a judgment for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6).
226. *Honickman*, 605 U.S. at 209.
227. *Id.*
228. *Id.* at 210. Rule 15(a) governs amendment of pleadings and states in part, "The court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2).

could invoke Rule 15(a)'s liberal repleading policy."[229] The Supreme Court granted certiorari and held to the contrary.[230]

The Supreme Court explained that "[r]elief under Rule 60(b)(6) requires extraordinary circumstances. That standard does not become less demanding when a Rule 60(b)(6) movant also hopes to amend his complaint."[231] "[S]atisfaction of Rule 60(b)(6) necessarily precedes any application of Rule 15(a)."[232] Accordingly, the district court was right to evaluate the plaintiffs' motion under only Rule 60(b)'s standard.[233] To be sure, where a party seeks vacatur to amend its pleadings, a district court is free to cite Rule 15 and acknowledge amendment-related considerations, such as whether a movant has had the opportunity to amend, and the amendment standard that the party will eventually have to meet if the Rule 60(b) motion is granted.[234] But the district court cannot "dilute Rule 60(b)(6)'s stringent standard by 'balanc[ing]' it with 'Rule 15(a)'s liberal pleading principles.'"[235] Under this ruling, movants seeking to use Rule 60(b)(6) to amend pleadings—or really, for any purpose—must establish "extraordinary circumstances" justifying relief before any other standards are applied.

C. Parrish v. United States *and belated notices of appeal under 28 U.S.C. § 2107(c)*

In *Parrish v. United States*, the Court held that when a party receives a judgment late and seeks to reopen the case and file a belated appeal pursuant to 28 U.S.C. § 2107(c), a notice of appeal filed after the original deadline—but before the case is reopened—"relates forward" to the date reopening is granted, making a second notice of appeal unnecessary.[236]

In *Parrish*, the plaintiff inmate filed a federal action against the government, seeking damages for time placed in segregated confinement.[237] The district court dismissed the case, finding the plaintiff's claims untimely or unexhausted.[238] The day after the judgment was entered, the plaintiff was released from federal custody and transferred to a state penitentiary.[239] The district court's order arrived at the federal prison two weeks later, when plaintiff was no longer there.[240] The plaintiff ultimately received the order

229. *Honickman*, 605 U.S. at 210.
230. *Id.* at 206, 210.
231. *Id.* at 210.
232. *Id.* at 213.
233. *Id.* at 214.
234. *Id.*
235. *Id.*
236. Parrish v. United States, 605 U.S. 376, 379 (2025).
237. *Id.*
238. *Id.* at 379–80.
239. *Id.* at 380.
240. *Id.*

of dismissal three months after the district court issued it.[241] The plaintiff promptly sent a letter to the court, indicating that he was filing a notice of appeal.[242] The Fourth Circuit construed the letter as a motion to reopen the time to file an appeal under 28 U.S.C. § 2107(c).[243] On remand, the district court granted reopening for fourteen days.[244] The plaintiff did not file a second notice of appeal.[245] The Fourth Circuit subsequently held that it lacked jurisdiction to hear the plaintiff's case.[246] The Fourth Circuit reasoned that the plaintiff's first notice of appeal was untimely with respect to the original appeal period, and he failed to file a second notice of appeal within the reopened period.[247] The Supreme Court granted certiorari to resolve a circuit split on whether a litigant who files a notice of appeal after the ordinary appeal period expires must file a second notice after the appeal period is reopened.[248]

The Court held that when a district court grants reopening to a litigant who has already filed a notice making the intent to appeal clear, no second notice of appeal is required.[249] Instead, the original notice "relates forward" to the date reopening is granted.[250] Section 2107(c) indicates that a reopened appeal period does not begin until "the date of entry of the order reopening the time for appeal," and that it runs "for a period of 14 days."[251] A notice filed after that fourteen-day period is late.[252] A notice filed before reopening is granted, however, is merely early.[253] The statute says nothing about whether such prematurity carries jurisdictional consequences.[254] Under common-law adjudicatory principles, an adequate but premature notice of appeal "relates forward to the entry of the document that renders an appeal possible."[255] Here, the plaintiff's filing otherwise provided ample

241. *Id.*
242. *Id.*
243. *Id.* The statute provides that if district court finds "(1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and (2) that no party would be prejudiced," the district court "may, upon motion filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal." 28 U.S.C. § 2107(c).
244. *Parrish*, 605 U.S. at 380.
245. *Id.*
246. *Id.* at 380–81.
247. *Id.* at 381.
248. *Id.*
249. *Id.* at 391.
250. *Id.*
251. *Id.* at 382.
252. *Id.*
253. *Id.*
254. *Id.* at 383.
255. *Id.* (quoting 16A C. Wright, A. Miller, E. Cooper & C. Struve, Federal Practice and Procedure § 3950.5 (5th ed. 2019)).

notice to all involved.[256] Accordingly, his notice related forward to the date of the district court's reopening order.[257]

Appellate practitioners should be aware that when a litigant seeks to reopen a case under 28 U.S.C. § 2107(c), a notice of appeal filed after the original appeal deadline but before reopening "relates forward" to the date of reopening, and the litigant need not file a second notice of appeal.

256. *Id.* at 386.
257. *Id.*