UNC SCHOOL OF GOVERNMENT

UNITED STATES SUPREME COURT: Review and Preview

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November 13, 2024

1

ROADMAP

I.	Federal Employment Discrimination Law	(Joyce)
II.	The Double Jeopardy Clause	(Hyde)
III.	Redistricting	(Joyce)
IV.	The Counsel Clause	(Hyde)
V.	The Presidency	(Joyce)
VI.	The Confrontation Clause	(Hyde)

2

FEDERAL EMPLOYMENT DISCRIMINATION LAW

UNITED STATES SUPREME COURT: REVIEW AND PREVIEW

3

Four Terms Ago

BOSTOCK v. CLAYTON COUNTY, GEORGIA, 140 S.CT. 1731 (2020)

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4

"discriminate . . . because of such individual's . . . sex

"Those who adopted the Civil Rights Act might not have anticipated their work would lead to this particular result. Likely, they weren't thinking about many of the Act's consequences that have become apparent over the years, including its prohibition against discrimination on the basis of motherhood or its ban on the sexual harassment of male employees. But the limits of the drafters' imagination supply no reason to ignore the law's demands. When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit.."

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5

Two Terms Ago

GROFF v. DEJOY 143 S.CT. 2279 (2023)

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6

"discriminate . . . because of such individual's . . . religion

"unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."

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7

The Necessary Accommodation

Old: "To require TWA to bear more than a de minimis cost in order to give Hardison Saturdays off is an undue hardship."

New: "'undue hardship' is shown when a burden is substantial in the overall context of an employer's business."

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8

This Past Term

MULDROW v. CITY OF ST. LOUIS, MISSOURI
144 S.CT. 967 (2024)

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9

The Necessary Harm

Old: "The courts below rejected the claim on the ground that the transfer did not cause Muldrow 'significant' employment disadvantage. Other courts have used similar standards in addressing Title VII suits."

New: "Today, we disapprove that approach. Although an employee must show some harm from a forced transfer to prevail in a Title VII suit, she need not show that the injury satisfies a significance test. Title VII's test nowhere establishes that high bar."

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10

This Next Term

STANLEY v. CITY OF SANFORD, FLORIDA
83 F.4th 1333 (11th Cir. 2023)
Cert. granted
144 S.Ct. 2680 (2024)

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11

The Timing of the Harm

Old: "Because plaintiff [] is suing over termination of retirement benefits when she neither held nor desired to hold an employment position with her former employer [cited precedent] bars her claim."

New: ?

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12

THE DOUBLE JEOPARDY CLAUSE

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13

THE DOUBLE JEOPARDY CLAUSE

THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

- … nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.

  U.S. Const. Amend. V.
- The Fifth Amendment's double jeopardy clause was made applicable to the states in 1969.
- The United States Supreme Court summarized general principles of double jeopardy in *United States v. DiFrancesco* (1980).

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14

ACQUITTAL BARS RETRIAL

THE RIGHT TO A FINAL DECISION

- The Double Jeopardy Clause accords absolute finality to an acquittal and bars retrial for the same offense.
- Acquittal means any ruling that the prosecution's proof is insufficient to establish criminal liability.
- The jury holds an unreviewable power to return a verdict of not guilty, even for impermissible reasons.

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15

McELRATH v. GEORGIA (2024)

THE PROBLEM OF INCONSISTENT VERDICTS

- Jury found the defendant not guilty by reason of insanity on malice-murder charge but guilty on felony-murder charge.
- Georgia Supreme Court found the verdicts were repugnant, and it vacated both malice-murder and felony-murder verdicts.
- US Supreme Court held that the verdict of not guilty by reason of insanity was an acquittal that barred retrial *on that charge*.

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16

REDISTRICTING

UNITED STATES SUPREME COURT: REVIEW AND PREVIEW

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17

Several Terms Ago

RUCHO v. COMMON CAUSE
588 U.S. 684 (2019)

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18

Political Gerrymandering

"The districting plans at issue here are highly partisan, by any measure. The question is whether the courts below appropriately exercised judicial power when they found them unconstitutional as well."

"Excessive partisanship in districting leads to results that reasonably seem unjust. But the fact that such gerrymandering is 'incompatible with democratic principles' *Arizona State Legislature*, 576 U.S., at ——, 135 S.Ct., at 2586, does not mean that the solution lies with the federal judiciary. We conclude that partisan gerrymandering claims present political questions beyond the reach of the federal courts."

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19

This Past Term

ALEXANDER v. SOUTH CAROLINA CONFERENCE OF THE NAACP 144 S.Ct. 1221 (2024)

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20

Political/Racial Gerrymandering

"Redistricting constitutes a traditional domain of state legislative authority."

"[F]ederal courts must 'exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race.'"

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21

Political/Racial Gerrymandering

"We have noted that a State's partisan-gerrymandering defense therefore raises 'special challenges' for plaintiffs."

"To prevail, a plaintiff must 'disentangle race from politics' by proving 'that the former *drove* a district's lines'. That means, among other things, ruling out the competing explanation that political considerations dominated the legislature's redistricting efforts. If either politics or race could explain a district's contours, the plaintiff has not cleared its bar."

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THE COUNSEL CLAUSE

UNITED STATES SUPREME COURT: REVIEW AND PREVIEW

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23

THE COUNSEL CLAUSE

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION

- In all criminal prosecutions, the accused shall enjoy the right … to have the Assistance of Counsel for his defense.

  U.S. Const. Amend. VI.

- First major discussion of the constitutional right to counsel appeared in *Powell v. Alabama* (1932).

- The Sixth Amendment's counsel clause was made applicable to the states in 1963.

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24

STRICKLAND v. WASHINGTON (1984)

THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

- At capital sentencing, counsel chose not to present mitigating evidence of the defendant's character and emotional state.
- The benchmark for ineffectiveness is whether counsel's conduct undermined the proper functioning of the adversarial process.
- To establish ineffective assistance, a defendant must show:
  (1) that counsel's performance was deficient, and
  (2) that the deficient performance prejudiced the defense.

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25

THORNELL v. JONES (2024)

THE PROBLEM OF INADEQUATE INVESTIGATION

- In federal habeas proceeding, the capital defendant argued that counsel should have retained an independent neuropsychologist.
- To show prejudice from counsel's failure to present mitigating evidence, the defendant must show a reasonable probability that the additional evidence would have avoided a death sentence.
- This analysis requires an evaluation of the strength of all the evidence and a comparison of aggravating and mitigating factors.

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26

THE PRESIDENCY

UNITED STATES SUPREME COURT: REVIEW AND PREVIEW

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27

This Past Term

TRUMP v. ANDERSON
144 S.Ct. 662 (2023)

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28

The 14th Amendment

"No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability."

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29

The Scope of the State's Power

"In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder. Among those retained powers is the power of a State to 'order the processes of its own governance.' In particular, the States enjoy sovereign 'power to prescribe the qualifications of their own officers' and 'the manner of their election free from external interference, except so far as plainly provided by the Constitution of the United States.' Although the Fourteenth Amendment restricts state power, nothing in it plainly withdraws from the States this traditional authority. And after ratification of the Fourteenth Amendment, States used this authority to disqualify state officers in accordance with state statutes."

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30

The Scope of the State's Power

"Such power over governance, however, does not extend to *federal* officeholders and candidates. Because federal officers owe their existence and functions to the united voice of the whole, not of a portion, of the people, powers over their election and qualifications must be specifically delegated to, rather than reserved by, the States."

"This case raises the question whether the States, in addition to Congress, may also enforce Section 3. We conclude that States may disqualify persons holding or attempting to hold *state* office. But States have no power under the Constitution to enforce Section 3 with respect to federal offices, especially the Presidency."

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31

This Past Term

TRUMP v. UNITED STATES
603 U.S. 593 (2024)

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32

"Without Undue Caution"

"This case is the first criminal prosecution in our Nation's history of a former President for actions taken during his Presidency. We are called upon to consider whether and under what circumstances such a prosecution may proceed."

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33

"Without Undue Caution"

"Congress cannot act on, and courts cannot examine, the President's actions on subjects within his 'conclusive and preclusive' constitutional authority. It follows that an Act of Congress—either a specific one targeted at the President or a generally applicable one—may not criminalize the President's actions within his exclusive constitutional power. Neither may the courts adjudicate a criminal prosecution that examines such Presidential actions. We thus conclude that the President is absolutely immune from criminal prosecution for conduct within his exclusive sphere of constitutional authority."

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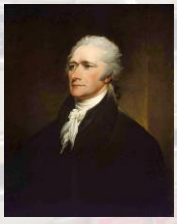
34

"Without Undue Caution"



"A President inclined to take one course of action based on the public interest may instead opt for another, apprehensive that criminal penalties may befall him upon his departure from office. And if a former President's official acts are routinely subjected to scrutiny in criminal prosecutions, 'the independence of the Executive Branch' may be significantly undermined. The Framers' design of the Presidency did not envision such counterproductive burdens on the 'vigor[ ]' and 'energy' of the Executive. The Federalist No. 70, at 471–472."

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35

"Without Undue Caution"

"[W]e conclude that the separation of powers principles explicated in our precedent necessitate at least a *presumptive* immunity from criminal prosecution for a President's acts within the outer perimeter of his official responsibility. Such an immunity is required to safeguard the independence and effective functioning of the Executive Branch, and to enable the President to carry out his constitutional duties without undue caution."

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36

THE CONFRONTATION CLAUSE

UNITED STATES SUPREME COURT: REVIEW AND PREVIEW

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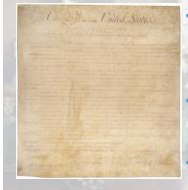
37

THE CONFRONTATION CLAUSE

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION



- In all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him.

  U.S. Const. Amend. VI.
- The Sixth Amendment's confrontation clause was made applicable to the states in 1965.
- The Supreme Court offered the first comprehensive approach to the issue of hearsay and confrontation in *Ohio v. Roberts* (1980).

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38

CRAWFORD v. WASHINGTON (2004)

THE RIGHT TO CONFRONT ONE'S ACCUSERS

- Trial court admitted the defendant's wife's statement to police, though he had no opportunity for cross-examination.
- The principal evil at which the confrontation clause was directed was the civil-law mode of procedure.
- Clause precludes admission of testimonial statements of a witness who did not appear at trial, absent a showing of unavailability and a prior opportunity for cross-examination.

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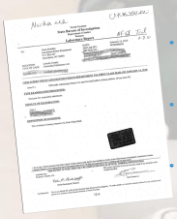
39

SMITH v. ARIZONA (2024)

THE PROBLEM OF SUBSTITUTE ANALYSTS



- The trial court admitted the testimony of an expert who relied, in forming his opinion, upon the report of the certifying analyst.
- Confrontation clause does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.
- Held: if expert conveys an out-of-court statement in support of his opinion, and the statement supports the opinion only if true, then the statement has been offered for the truth of the matter asserted.

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40

BRADY ISSUES

UNITED STATES SUPREME COURT: REVIEW AND PREVIEW

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41

GLOSSIP v. OKLAHOMA, Docket No. 22-7466

UNITED STATES SUPREME COURT PREVIEW

- The suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or punishment. *Brady v. Maryland* (1963).
- Richard Glossip was sentenced to death based on the testimony of Justin Sneed. Glossip now contends prosecutors suppressed evidence that Sneed was under the care of a psychiatrist.
- US Supreme Court heard oral argument on Oct. 9, 2024.

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42

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43