

**KEKER**  
**VAN NEST**  
**& PETERS**

# Oyez, Oyez, Oyez: A Look at High-Profile Cases in the Current SCOTUS Term

---

January 25, 2023

# Presenters



**Anjali Srinivasan**  
asrinivasan@keker.com



**Connie Sung**  
csung@keker.com



**Julia Greenberg**  
jgreenberg@keker.com

# Overview of this SCOTUS Term (OT 2022)

## Court composition

- 6 Justices nominated by Republican presidents, 3 Justices nominated by Democratic presidents
- 4 Justices appointed within past 5 years

## Oral arguments

- 39 cases argued to date
- 7 more cases set through March 1



# Issues Before the Court this Term

## Affirmative Action

- *Students for Fair Admissions* cases

## Anti-Discrimination

- *303 Creative v. Elenis*

## Elections

- *Moore v. Harper*
- *Merrill v. Milligan*

## Internet Platform Liability

- *Gonzalez v. Google*
- *Twitter v. Taamneh*

## Copyright & Fair Use

- *Warhol Foundation v. Goldsmith*

## Public Benefits

- *HHC v. Talevski*

# Students for Fair Admissions v. Harvard/Univ. of North Carolina



**Background:** Two separate cases questioning the consideration of race in college admissions: Harvard (Title VI of 1964 Civil Rights Act); University of North Carolina (14<sup>th</sup> Amendment, Equal Protection)

**Issue Presented:** Does race-conscious admissions violate the Fourteenth Amendment (University of North Carolina) or Title VI (Harvard)?

**History:** *Bakke* (1978); *Grutter/Gratz* (2003); *Fisher I* (2013) and *Fisher II* (2016)

**Implications:**

- End of affirmative action programs
- Ripple effects throughout institutions across society

# 303 Creative LLC v. Elenis



**Background:** Lorie Smith is a web-designer who runs 303 Creative. She wants to get into the design of wedding websites but does not want to create wedding websites for same-sex couples. She also wants to post a notice on her website explaining this stance. She worries that either action could violate Colorado's Anti-Discrimination Act.

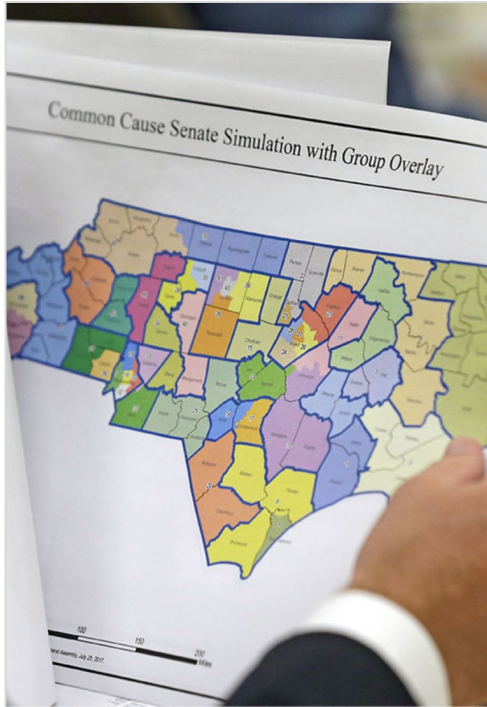
**Issue Presented:** Does Colorado's Anti-Discrimination Act compel speech or compel silence in violation of the First Amendment?

**History:** *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (2018)

**Implications:**

- Legalization of private discrimination under the guise of "Free Speech"
- Could be the end of meaningful anti-discrimination laws

# Moore v. Harper



**Background:** North Carolina's Supreme Court struck down a new congressional map drawn by the state legislature as violative of the state's constitution requiring "fair and free" elections.

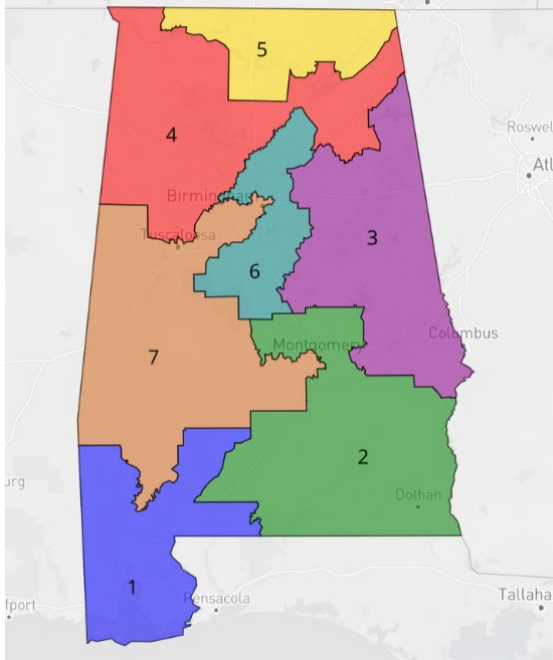
**Issue Presented:** Did the state court overstep its authority under the U.S. Constitution's Elections Clause, which provides that the time, place, and manner of congressional elections "shall be prescribed in each State by the Legislature thereof"?

## Implications:

- An expansive "Independent State Legislature Theory" would foreclose state judicial (and other state executive/administrative) review of state election laws.
- Federal courts would be regularly required to wade into political conflicts between state branches of government and interpret state constitutions.



# Merrill v. Milligan



**Background:** A federal three-judge panel ruled that Alabama's redistricting map for U.S. House seats likely violated the Voting Rights Act (VRA) by compacting Black voters into one majority-Black district. Alabama said it drew its map using a race-neutral districting algorithm.

**Issue Presented:** Did Alabama's redistricting plan violate Section 2 of the VRA?

**History:** *Thornburg v. Gingles* (1986)

**Implications:**

- Existing precedent would be upended if the Court were to introduce an intent requirement into the Section 2 test.
- This case comes after two consequential Supreme Court VRA rulings in the last decade, *Shelby County* and *Brnovich*, both of which limited the statute's applicability.



# Gonzalez v. Google



**Background:** After his daughter was killed in the 2015 ISIS attack in Paris, Reynaldo Gonzalez sued Google under the Anti-Terrorism Act, claiming that Google aided and abetted ISIS recruitment by recommending videos to certain YouTube users.

**Issue Presented:** Does CDA Section 230's immunity for intermediaries who host third-party content include immunity for targeted recommendations?

## Implications:

- This is the first Supreme Court case to consider the scope of Section 230.
- It could impact how social media platforms moderate and curate the billions of pieces of content shared online.
- It may also change how online creators, new and emerging companies, and users—likely all of us—experience the Internet.

# Twitter v. Taamneh



**Background:** Relatives of Nawras Alassaf, a victim of the 2017 ISIS attack at a Turkish nightclub, filed suit against Twitter (and others), alleging liability for aiding and abetting the attack.

**Issues Presented:** (1) Does an internet platform “knowingly” provide substantial assistance under the Anti-Terrorism Act merely because it allegedly could have taken more “aggressive” action to prevent use of its service? (2) If its service was not used as relates to a specific “act of international terrorism,” can it still be liable?

**Implications:**

- A ruling in favor of Taamneh may lead to platforms removing constitutionally protected speech for fear of liability.
- It also might burden both established and emerging companies with additional obligations to monitor content.

# Andy Warhol Foundation for the Visual Arts v. Goldsmith



2016 *Vanity Fair* Cover



1981 Goldsmith Photo

**Background:** In 1981, *Newsweek* hired photographer Lynn Goldsmith to photograph Prince (right). *Vanity Fair* later commissioned Andy Warhol to create an image for the magazine based on Goldsmith's photo. Warhol also created 15 other works in a "Prince Series." After Prince's death in 2016, *Vanity Fair* published a piece from the series (left) without compensating Goldsmith.

**Issue Presented:** Under the fair use doctrine, is a work "transformative" when it conveys a different meaning or message from its source material?

## Implications:

- A ruling in favor of Goldsmith could chill free expression and creativity for artists of all kinds.
- A ruling in favor of the Warhol Foundation might harm artists too, say, by permitting adaptations without requiring licenses for the original works.

# Health & Hospital Corporation of Marion County, Indiana v. Talevski



**Background:** Gorgi Talevski’s family sued his nursing home after he was drugged and mistreated in violation of federal requirements for nursing homes that receive federal funding.

**Issues Presented:** (1) Can statutes enacted under Congress’s Spending Clause authority give rise to private suits? (2) If so, can a nursing home resident sue a state facility under Section 1983 for violating federal law?

**Implications:**

- A change in the longstanding doctrine allowing such suits would harm the beneficiaries of many federal programs.
- Many federal benefits programs, like Medicaid and SNAP, have been enacted by Congress under the assumption that violations of beneficiaries’ rights would be enforceable under Section 1983.

**KEKER**  

---

**VAN NEST**  

---

**& PETERS**

**Thank you!**

---