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2023 Supreme Court Preview Notebook

The Institute of Bill of Rights Law

The Institute of Bill of Rights Law was established at William & Mary in 1982 to support research and education on the Constitution and the Bill of Rights. One of the principal missions of the Institute is to facilitate interaction between the professions of law and journalism. Through a discussion of key cases on the Supreme Court's docket at the start of each term, the annual Supreme Court Preview provides in-depth education for journalists on the underlying issues to enhance press coverage of the decisions.

ALLISON ORR LARSEN

Alfred Wilson & Mary I.W. Lee Professor of Law

Director, The Institute of Bill of Rights Law

NEAL DEVINS

Sandra Day O'Connor Professor of Law

STUDENT EDITORS

Aimee Wiencek

Delia Gammon

The Panelists

Easha Anand- Stanford Law School
Easha Anand is an assistant professor of law at Stanford Law School and co-director of the Stanford Supreme Court Litigation Clinic. A former Supreme Court and court of appeals clerk, Easha joins Stanford from the MacArthur Justice Center, where she served as Supreme Court & Appellate Counsel and litigated police excessive force, prison conditions, habeas, and other criminal defense and civil rights cases around the country. Easha is a graduate of the University of California, Berkeley, School of Law and clerked for Justice Sonia Sotomayor on the United States Supreme Court and for Judge Paul J. Watford on the Ninth Circuit Court of Appeals.

Robert Barnes- The Washington Post
Robert Barnes has spent most of his career at *The Washington Post*, as a reporter and editor. He joined the paper to cover politics in 1987, and has covered campaigns at the presidential, congressional and gubernatorial level. He served in various editing positions, including metropolitan editor, deputy national editor in charge of domestic issues and the Supreme Court, and national political editor.

He returned to reporting to cover the Supreme Court in November 2006, and has done so since then, with a brief break to cover the conclusion of the 2008 presidential campaign. A native Floridian, he gave up law school plans for a life in newspapers after taking a journalism class at the University of Florida.

Stephanos Bibas- U.S. Court of Appeals, Third Circuit
Stephanos Bibas is a judge on the U.S. Court of Appeals for the Third Circuit. Judge Bibas was previously a professor of law and criminology at the University of Pennsylvania Law School. As director of the Penn Law Supreme Court Clinic, he argued six cases before the Supreme Court of the United States and filed briefs in dozens of others. He graduated summa cum laude and Phi Beta Kappa from Columbia University in 1989 with a B.A. in political theory and from Oxford University in 1991 with a B.A. in jurisprudence. He then earned his J.D. from Yale Law School in 1994.

After graduating from Yale Law, Judge Bibas clerked for Judge Patrick Higginbotham of the U.S. Court of Appeals for the Fifth Circuit and Justice Anthony Kennedy on the Supreme Court and was a litigation associate at Covington & Burling LLP in Washington, D.C. Thereafter, Judge Bibas served as an Assistant U.S. Attorney in the Southern District of New York, where he successfully prosecuted the world's leading expert in Tiffany stained glass for hiring a grave robber to steal priceless Tiffany windows from cemeteries. Before his tenure at Penn Law, Judge Bibas taught at the University of Chicago Law School and the University of Iowa College of Law and was a research fellow at Yale Law School. He has published two books and more than sixty scholarly articles.

Joan Biskupic- CNN
Joan Biskupic, CNN's Senior Supreme Court analyst, has covered the Supreme Court for more than twenty-five years and has written several books on the judiciary. She is the author of the recently published *Nine Black Robes: Inside the Supreme Court's Drive to the Right and its Historic Consequences*. She is also the author of a biography of Chief Justice John Roberts (*The Chief*, 2019) and earlier books on Sandra Day O'Connor, Antonin Scalia and Sonia Sotomayor. Biskupic previously was an editor-in-charge for Legal Affairs at *Reuters* and the Supreme Court correspondent for *The Washington Post* and for *USA Today.* She was a finalist for the Pulitzer Prize in explanatory journalism in 2015. A native of Chicago, she holds a law degree from Georgetown University.

Jess Bravin- The Wall Street Journal
Jess Bravin covers the U.S. Supreme Court for *The Wall Street Journal*, following earlier postings as United Nations correspondent and editor of the WSJ/California weekly. His books include *The Terror Courts*, an account of military trials at Guantanamo Bay, and *Squeaky: The Life and Times of Lynette Alice Fromme*, along with contributions to *Violence in America: An Encyclopedia*, *Crimes of War 2.0*, and *A Concise Introduction to Logic* (2nd ed.). Mr. Bravin is a regent emeritus of the University of California, delivered the John Field Simms Sr. Memorial Lecture in Law at the University of New Mexico School of Law, and has taught at the University of California Washington Center. He served on the city Police Review Commission in Berkeley, Calif., the UC Berkeley Police Review Board, and the Takoma Park, Md., Ethics Commission. Mr. Bravin is a graduate of Harvard College and the UC Berkeley School of Law.

Beth Brinkmann- Center for Reproductive Rights
Beth Brinkmann is Senior Litigation Director, U.S. Program at the Center for Reproductive Rights. The Center is a global legal advocacy organization dedicated to advancing reproductive rights.

Before joining the Center, Beth was a partner in the DC office of a national law firm where she served as co-chair of the Appellate & Supreme Court Litigation practice. She joined the firm after serving as Deputy Assistant Attorney General in the U.S. Department of Justice, Civil Division,

where she oversaw the Division's nationwide appellate litigation.

Beth has practiced for more than two decades before the Supreme Court of the United States, where she has argued 26 cases, including as Assistant to the Solicitor General and in private practice. She also has argued in federal and state appellate courts across the country. Previously, Ms. Brinkmann served as Assistant Federal Public Defender, representing indigent criminal defendants, including approximately a dozen felony jury trials. Following law school, she served as a law clerk to Hon. Phyllis A. Kravitch, U.S. Court of Appeals for the Eleventh Circuit, and to Hon. Harry A. Blackmun, Supreme Court of the United States. Ms. Brinkmann graduated from the University of California, Berkeley, A.B., and received her J.D. from Yale Law School.

Aaron-Andrew Bruhl- William & Mary Law School

Professor Bruhl teaches and writes on statutory interpretation, federal courts, and the legislative process. His scholarly publications have appeared in many of the nation's leading law journals and have been cited by state and federal courts, including the United States Supreme Court. He was elected to the American Law Institute in 2014. He has offered expert commentary for television, radio, magazines, and national wire services.

Professor Bruhl received his J.D. degree from Yale Law School. While at Yale, he served as Book Reviews Editor for the *Yale Law Journal* and also worked on the *Yale Law & Policy Review* and the *Yale Journal of Law & the Humanities*. Professor Bruhl holds a master's degree in political theory from the University of Cambridge.

After law school, Professor Bruhl clerked for Chief Judge Carolyn Dineen King on the United States Court of Appeals for the Fifth Circuit. He then worked as a litigation associate in the Washington DC office of Jenner & Block LLP. His work focused on federal appellate litigation and included cases involving election law, the First Amendment, federal Indian law, and copyright infringement over online peer-to-peer file-sharing services. He is admitted to practice law in the District of Columbia and New York.

Before joining the William & Mary faculty in 2015, Professor Bruhl taught at the University of Houston Law Center and served as a visiting professor at the University of Texas School of Law. He was a recipient of the Plumeri Award for Faculty Excellence in 2017 and was honored by the graduating class of 2020 with the Walter L. Williams Jr. Teaching Award. He is one of the most highly cited scholars in the field of legislation and statutory interpretation.

Erwin Chemerinsky- UC Berkeley School of Law

Erwin Chemerinsky became the 13th Dean of Berkeley Law on July 1, 2017, when he joined the faculty as the Jesse H. Choper Distinguished Professor of Law.

Prior to assuming this position, from 2008-2017, he was the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at University of California, Irvine School of Law. Before that he was the Alston and Bird Professor of Law and Political Science at Duke University from 2004-2008, and from 1983-2004 was a professor at the University of Southern California Law School, including as the Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science. From 1980-1983, he was an assistant professor at DePaul College of Law.

He is the author of sixteen books, including leading casebooks and treatises about constitutional law, criminal procedure, and federal jurisdiction. His most recent books are *Worse than Nothing: The Dangerous Fallacy of Originalism* (2022) and *Presumed Guilty: How the Supreme Court Empowered the Police and Subverted Civil Rights* (2021).

He also is the author of more than 200 law review articles. He is a contributing writer for the Opinion section of the *Los Angeles Times*, and writes regular columns for the *Sacramento Bee, the ABA Journal and the Daily Journal*, and frequent op-eds in newspapers across the country. He frequently argues appellate cases, including in the United States Supreme Court.

In 2016, he was named a fellow of the American Academy of Arts and Sciences. In 2017, National Jurist magazine again named Dean Chemerinsky as the most influential person in legal education in the United States. In 2022, he is the President of the Association of American Law Schools.

Paul Clement- Clement & Murphy

Paul served as the 43rd Solicitor General of the United States from June 2005 until June 2008. Before his confirmation as Solicitor General, he served as Acting Solicitor General for nearly a year and as Principal Deputy Solicitor General for over three years.

Paul has argued over 100 cases before the United States Supreme Court, including *McConnell v. FEC, Tennessee v. Lane, United States v. Booker, MGM v. Grokster, Hobby Lobby v. Burwell, Epic Systems Corp. v. Lewis, Rucho v. Common Cause, Facebook v. Duguid, and TransUnion v. Ramirez*. Paul has argued more Supreme Court cases since 2000 than any lawyer in or out of government. He has also argued many important cases in the lower courts, including *Walker v. Cheney, United States v. Moussaoui and NFL v. Brady*.

Paul's practice focuses on appellate matters, constitutional litigation and strategic counseling. He represents a broad array of clients in the Supreme Court and in federal and state appellate courts. Last year, for example, he successfully argued Supreme Court cases involving significant issues of energy regulation, statutory interpretation, state sovereign immunity and Article III standing, and successfully argued a trademark appeal in the Fourth Circuit, and a constitutional appeal before the en banc Eleventh Circuit.

Paul focuses on high-stakes appeals. In recent years, he successfully defended a $1.2 billion jury verdict for clients in a Tenth Circuit case, while securing the reversal of an over $2 billion jury verdict for another client in the Seventh Circuit and the approval of a nearly $1 billion dollar class action settlement in the Third Circuit. He has initiated major administrative law challenges and constitutional litigation against the federal government, such as the successful challenge to the HHS drug-pricing rule and threatened challenges that led to the withdrawal of the Treasury Department's proposed cryptocurrency regulations. He also counsels clients on a variety of strategic legal questions, whether arising from pending legislation, government inquiries or ongoing litigation.

Paul has undertaken substantial pro bono engagements in the Supreme Court, such as twice successfully representing the defendant in *Bond v. United States* and successfully representing the Omaha Tribe in *Nebraska v. Parker*, the guardian ad litem in *Adoptive Couple v. Baby Girl*, the defendant in *Sekhar v. United States*, a high school football coach in *Kennedy v. Bremerton*, and the Little Sisters of the Poor. Paul's pro bono representation also precipitated the federal government's confession of error in *United States v. Rojas*.

Following law school, Paul clerked for Judge Laurence H. Silberman of the U.S. Court of Appeals for the D.C. Circuit and for Associate Justice Antonin Scalia of the U.S. Supreme Court. After his clerkships, he went on to serve as Chief Counsel of the U.S. Senate Subcommittee on the Constitution, Federalism and Property Rights.

Paul is a Distinguished Lecturer in Law at the Georgetown University Law Center, where he has taught in various capacities since 1998. He also serves as a Senior Fellow of the Law Center's Supreme Court Institute. He is the Justice Joseph Story Distinguished Practitioner in Residence at the Gray Center at Scalia Law School.

Katherine Crocker- William & Mary Law School

Professor Crocker joined the William & Mary Law School faculty in 2019. She will become an Affiliate of the Stanford Constitutional Law Center at Stanford Law School in Fall 2023, and she was a Campbell Fellow at the Hoover Institution at Stanford University in January 2023.

Professor Crocker's scholarship concentrates on federal courts, civil-rights litigation, structural constitutional law, and state and local-government law. She has published scholarship in the *Duke Law Journal, the Florida Law Review, the Georgia Law Review, the Michigan Law Review, the Notre Dame Law Review*, and *the Virginia Law Review*. Her work has been cited in an opinion from the Supreme Court of the United States dissenting from the denial of certiorari and in majority opinions from other courts.

At William & Mary, Professor Crocker teaches Federal Courts, State and Local Government Law, Civil Procedure, and Property, and at Duke Law School, she co-taught a course on judicial decisionmaking. Before coming to William & Mary, Professor Crocker was an Olin-Smith Fellow and Postdoctoral Associate at Duke. She also practiced law at McGuireWoods LLP in Richmond, Virginia, where she focused on appellate litigation and dispositive motions. She clerked for Justice Antonin Scalia of the Supreme Court of the United States and for Judge J. Harvie Wilkinson III of the U.S. Court of Appeals for the Fourth Circuit.

Professor Crocker received her law degree from the University of Virginia, where she graduated first in her class and served as an Articles Development Editor of the Virginia Law Review. She earned her undergraduate degree cum laude from Harvard University.

Professor Crocker is a member of the Virginia State Bar and the Virginia Bar Association. She is also a member of the John Marshall Inn of Court and a recipient of the Temple Bar Scholarship from the American Inns of Court Foundation.

Neal Devins- William & Mary Law School

Neal Devins is the Sandra Day O'Connor Professor of Law and Professor of Government at the College of William and Mary. He is the author of several books and more than 100 articles and book chapters on courts, constitutional law, and law & politics. His books include *The Company They Keep* (Oxford 2019) (with Larry Baum), *The Democratic Constitution* (Oxford 2d ed. 2015) (with Louis Fisher), *Political Dynamics of Constitutional Law* (West 6th ed. 2019) (with Louis Fisher), and *Shaping Constitutional Values: The Supreme Court, Elected Government, and the Abortion Dispute* (Johns Hopkins University Press 1996).

His articles have appeared in *The Yale Law Journal, The Stanford Law Review, The Columbia Law Review, The Michigan Law Review, The California Law Review, The Virginia Law Review, The University of Pennsylvania Law Review, The University of Chicago Law Review, The New York University Law Review*, and several other journals and magazines. Professor Devins is also the author of op-eds appearing in *The Wall Street Journal, The New York Times, The Washington Post, The Los Angeles Times, Slate*, and several other newspapers. He has testified before House and Senate committees on budget reform and the separation of powers. Professor Devins is a graduate of Georgetown University (A.B. 1978) and Vanderbilt Law School (J.D. 1982).

Jonathan Ellis- McGuireWoods

As co-chair of the Appeals and Issues Team, Jonathan helps clients design winning legal strategies in appeals and high-stakes litigation. Jonathan has argued nine cases before the U.S. Supreme Court and filed more than 150 briefs at the merits and certiorari stages before the Court. He has handled appeals and dispositive motions in other federal courts and state courts across the country. He has significant experience nationally in assisting clients in formulating appellate strategy, both in pending appeals and at the trial court level before judgment. And he has challenged and defended federal agency actions at every level of the federal judiciary.

Before joining McGuireWoods, Jonathan served in the Office of the Solicitor General in the U.S. Department of Justice. As an Assistant to the Solicitor General, Jonathan represented the federal government before the Supreme Court and helped oversee the government's appellate litigation in lower courts throughout the country. He briefed and argued cases involving patent and copyright law, constitutional law, administrative law, ERISA, international arbitration, securities regulation, and other areas of federal law.

Jonathan graduated first in his class from the University of Pennsylvania Law School and has served as a lecturer at the school. After graduation, Jonathan served as a law clerk to John G. Roberts, Jr., Chief Justice of the United States, and to Judge A. Raymond Randolph of the U.S. Court of Appeals for the D.C. Circuit. He also previously served as a Bristow Fellow in the Office of the Solicitor General. He holds a bachelor's degree in computer science from North Carolina State University

Rebecca Green- William & Mary Law School

Rebecca Green is an Associate Professor of Law at William & Mary Law School where she teaches courses in Election Law, Redistricting & GIS, Privacy Law, and Alternative Dispute Resolution.

Professor Green co-directs the Election Law Program, a joint project of the Law School and the National Center for State Courts that provides resources for judges on election law topics. In 2013, Professor Green co-founded Revive My Vote to assist Virginians with prior felony convictions regain the right to vote. In 2018, Professor Green joined the National Task Force on Election Crises, a cross-partisan group convened to prevent and mitigate a range of election crises. In 2020, Green helped students co-found the Alliance of Students at the Polls (ASAP), a group mobilizing a national network of law students to work towards greater participation in and public confidence in U.S. election administration.

Professor Green's research interests focus on the intersection of privacy law and elections, most recently in scholarship on Election Observation, Election Surveillance, and Redistricting Transparency.

Professor Green earned her B.A. in Political Science from Connecticut College, an MA in Chinese Legal History from Harvard University, and is a cum laude graduate of Harvard Law School.

The class of 2016 selected Professor Green to receive the Walter Williams Jr. Memorial Teaching Award awarded annually to one professor by the graduating class. Since January 2021, Professor Green has served as one of three University Ombuds at the College of William & Mary assisting faculty and staff with workplace conflict resolution.

Sarah Harris- Williams & Connolly

Sarah Harris represents clients in high-stakes appeals in the U.S. Supreme Court and federal and state appellate courts across the country. In the last three terms, she has argued five cases before the U.S. Supreme Court and obtained one summary reversal. Sarah has presented many arguments in federal courts of appeals and state appellate courts. Her cases have run the gamut of substantive areas, including constitutional law—especially First Amendment and separation-of-powers issues—as well as administrative law, arbitration, class actions, antitrust, False Claims Act litigation, commercial litigation, and federal civil procedure.

Sarah is widely recognized for her appellate advocacy. Chambers USA has recognized her nationally as a leading lawyer in Appellate Law, and reported that clients describe her as "a superb advocate at the Supreme Court," "very collegial and collaborative," and "prevails in her arguments." The Legal 500 reported that Sarah "is brilliant, incisive and collegial." Law360 ranked her as one of five 2021 "MVPs" in Appellate Law. She has been named to Bloomberg Law's 40 Under 40 list of top lawyers nationwide and to Benchmark Litigation's "40 & Under Hot List," as well as an appellate "Rising Star" by The National Law Journal and Law360, a "Next Generation Partner" by The Legal 500, among Lawdragon's "500 Leading Lawyers," and as one of Bloomberg Law's "Five Fresh Faces to Know in Appellate."

Sarah clerked for Justice Clarence Thomas on the Supreme Court of the United States, Judge Laurence Silberman on the United States Court of Appeals for the D.C. Circuit, and Judge Sandra Lynch on the United States Court of Appeals for the First Circuit. Before joining Williams & Connolly, she served as a Deputy Assistant Attorney General in the Department of Justice's Office of Legal Counsel.

Sarah received her undergraduate degree *summa cum laude* from Princeton University, and her J.D. *magna cum laude* from Harvard Law School. She also holds a Ph.D. and M. Phil. from the University of Cambridge.

Toby Heytens- U.S. Court of Appeals, Fourth Circuit

Toby Heytens is a judge of the U.S. Court of Appeals for the Fourth Circuit, appointed in 2021 by President Biden. Originally from Superior, Wisconsin, and a first-generation lawyer, Judge Heytens attended Macalester College in St. Paul, Minnesota, and the University of Virginia School of Law.

Judge Heytens began his career as a law clerk to Chief Judge Edward Becker of the U.S. Court of Appeals for the Third Circuit and Justice Ruth Bader Ginsburg of the U.S. Supreme Court. He next spent several years working in Washington, DC, first in private practice and then at the Department of Justice's Office of the Solicitor General. From 2010 until 2018, Judge Heytens was a law professor at the University of Virginia, where he taught civil procedure, civil rights litigation, and the Supreme Court Litigation Clinic and helped coach UVA's three-time national champion trial advocacy team. From 2018 until 2021, Judge Heytens served as Solicitor General of Virginia, where he argued three times before the U.S. Supreme Court and served as lead counsel successfully defending the governor's decision to remove the Robert E. Lee monument from Richmond's Monument Avenue.

Margaret Hu- William & Mary Law School

Professor Margaret Hu is a Professor of Law. She is a Research Affiliate with the Institute for Computational and Data Sciences at Penn State University. Her research interests include the intersection of immigration policy, national security, cybersurveillance, and civil rights. She has published several works on dataveillance and cybersurveillance, including, *Biometric ID Cybersurveillance; Big Data Blacklisting; Taxonomy of the Snowden Disclosures; Biometric Cyberintelligence and the Posse Comitatus Act; and Algorithmic Jim Crow*. She is currently a member of the Advisory Board of the Future of Privacy Forum, a non-profit think tank in Washington, D.C., that promotes responsible data privacy policies. Previously, she served as special policy counsel in the Office of Special Counsel for Immigration-Related Discrimination in the Civil Rights Division, U.S. Department of Justice. Hu holds a B.A. from the University of Kansas and a J.D. from Duke Law School. She clerked for Judge Rosemary Barkett on U.S. Court of Appeals for the Eleventh Circuit, and subsequently joined the U.S. Department of Justice through the Attorney General's Honors Program.

Michelle Kallen- Jenner & Block

Michelle Kallen, the former Solicitor General of Virginia, helps clients navigate complex matters before federal and state appellate courts. Leading companies in the aerospace and defense, hospitality, technology, and transportation industries benefit from her extensive government experience, unique insight into multistate and constitutional litigation matters, and award-winning appellate work.

Michelle regularly files briefs and litigates matters in the US Supreme Court, the Supreme Court of Virginia, the United States Court of Appeals for the Fourth Circuit, the Eastern District of Virginia, and other state and federal courts. She achieved notable wins in these venues during her tenure in the Office of the Attorney General of Virginia, including defending the Commonwealth against challenges to its COVID-19 response. Michelle also served as lead counsel in the Commonwealth's election matters and in litigation to certify and publish the Equal Rights Amendment to the US Constitution.

Michelle's past public service includes serving as Special Litigation Counsel in the US House of Representatives, representing the Select Committee to Investigate the January 6th Attack on the United States Capitol in litigation. She successfully defended the Committee against attempts to block subpoenas for phone records and an effort to compel testimony from 16 lawmakers and congressional staffers.

Clients benefit from Michelle's deep understanding of regulatory proceedings, knowledge of the inner workings of government and administrative agencies, and experience both defending and challenging regulatory actions. She uses this skillset to assist clients in strategically navigating litigation crises and controversial challenges at the intersection of law, law enforcement, and government regulation.

Michelle speaks regularly on a wide variety of topics including constitutional law, state and federal regulations, appellate cases, crypto currency, and equal rights. She maintains an active pro bono practice and is committed to serving her community. Michelle serves as a mentor for The Appellate Project and has litigated pro bono cases on behalf of the Center for Reproductive Rights. She is also a founding member of the Ad Idem Corporate Counsel Network, the Washington Area Women Trial Attorneys, and the Women Lawyers on Guard.

Allison Orr Larsen- William & Mary Law School

Allison Orr Larsen is the Alfred Wilson & Mary I.W. Lee Professor of Law at William & Mary where she also directs the Institute for the Bill of Rights Law. Professor Larsen teaches courses in constitutional law, administrative law, and statutory interpretation. Since joining the William & Mary law faculty in 2010, Larsen has received many awards honoring her teaching and scholarship including: the university's Alumni Fellowship Award, the Walter L. Williams Jr. Memorial Teaching Award, the 1L Professor of the Year Award, two university-wide Plumeri Awards, the inaugural McGlothlin Teaching Award and the state-wide Outstanding Faculty Award in the "Rising Star" category (the latter is Virginia's highest faculty honor, awarded by the State Council of Higher Education for Virginia).

Professor Larsen is a scholar of constitutional law and legal institutions, with a focus on how information dynamics affect both. Her work on fact-finding at the Supreme Court has been featured multiple times in *the New York Times, the Washington Post*, and *the Wall Street Journal*, and was also the subject of her testimony before the Senate Judiciary Committee in April 2021. Larsen has published in the nation's top law reviews, and

her work has been cited by four different U.S. Courts of Appeals. She appeared with Stephen Colbert as a guest on The Colbert Report (Comedy Central) to discuss her scholarship on Supreme Court amicus briefs, a subject on which she also testified before the Presidential Commission on Supreme Court Reform.

Professor Larsen received her B.A. from William & Mary in 1999 and her law degree in 2004 from the University of Virginia where she graduated first in her class. After law school, Professor Larsen clerked for Judge J. Harvie Wilkinson on the U.S. Court of Appeals for the Fourth Circuit and for Justice David Souter on the U.S. Supreme Court. Prior to joining the William & Mary faculty, Professor Larsen was an associate in the appellate practice group at O'Melveny and Myers in Washington DC.

Professor Larsen spent the fall of 2016 as a visiting scholar at Oxford University, and the fall of 2018 as the Daniel P.S. Paul Visiting Professor of Constitutional Law at Harvard Law School.

Adam Liptak- The New York Times

Adam Liptak covers the Supreme Court for *The New York Times*. A graduate of Yale College and Yale Law School, he practiced law for 14 years before joining The Times's news staff in 2002. In 2007, he began writing "Sidebar," a column on legal affairs. In 2008, he became the paper's Supreme Court correspondent.

Liptak was a finalist for the Pulitzer Prize in explanatory reporting in 2009. He is a member of the American Academy of Arts and Sciences. He has taught courses on the Supreme Court and the First Amendment at the University of Chicago Law School, New York University School of Law, and Yale Law School.

Aileen McGrath- Akin Gump Strauss Hauer & Feld

Aileen McGrath is a highly accomplished California litigator in the Supreme Court and appellate practice who has handled high-profile cases at all levels, with a particular focus on matters in the U.S. Court of Appeals for the 9th Circuit and California appellate courts. Aileen has argued multiple appeals in the 9th Circuit and California Courts of Appeal, and has also argued dozens of dispositive motions in California federal and state trial courts.

Aileen has particular experience and expertise in constitutional and civil rights issues, consumer protection cases, class actions, labor and employment matters, state and local government litigation, and state and federal administrative proceedings. In addition to her appellate work, Aileen frequently works with clients at the trial court level. She is known as a creative problem-solver and high-level strategist, and often works with trial teams to solve complicated legal problems or to draft and argue high-profile motions.

Prior to joining Akin Gump, Aileen served as co-chief of appellate litigation in the San Francisco City Attorney's Office. She began her tenure at the San Francisco City Attorney's Office in 2012 as Deputy City Attorney on the Complex and Affirmative Litigation team. During her time at the City Attorney's Office, she served as lead counsel for San Francisco in a variety of matters at both the trial and appellate level, in state and federal courts, including the U.S. Supreme Court.

Earlier in her career, Aileen served as a law clerk to Justice Stephen Breyer of the U.S. Supreme Court and Judge Michael Boudin of the U.S. Court Appeals for the 1st Circuit. She also worked as a chambers attorney on the California Supreme Court for Justice Mariano-Florentino Cuéllar.

Aileen received her J.D., magna cum laude, from Harvard Law School, where she was awarded the Sears Prize, given to the top two students in a class, and was president of the Harvard Law Review. She received her B.A., magna cum laude, from Columbia University.

Erin Murphy- Clement & Murphy

Erin Murphy is widely recognized as one of the nation's leading Supreme Court and appellate advocates. She has argued dozens of cases in appellate and trial courts throughout the country, including the Supreme Court and nearly all of the federal courts of appeals. Erin is one of only seven women in the top two bands of Chambers & Partners rankings for Appellate Law–Nationwide, and the National Law Journal has named her one of the nation's "Outstanding Women Lawyers." Erin has litigated appeals involving myriad provisions of the Constitution, including several cases involving the Constitution's structural protections of liberty. She has litigated a wide range of statutory issues as well, including cases involving the Affordable Care Act, the Bankruptcy Code, the False Claims Act, the Federal Arbitration Act, the Federal Power Act, the Natural Gas Act, the National Labor Relations Act, and more. The National Law Journal named Erin a "Litigation Trailblazer" for her work representing institutional clients, which includes successfully arguing before the Supreme Court on behalf of the U.S. House of Representatives and the Wisconsin State Legislature. Erin also has an active pro bono practice, through which she has successfully represented many religious organizations and adherents, criminal defendants, asylum applicants, adoptive parents, and more.

Erin is an adjunct professor at her alma mater the Georgetown University Law Center, a member and former officer of the Edward Coke Appellate Inn of Court, and a frequent speaker on topics relating to the Supreme Court and appellate advocacy. In her spare time, Erin serves on the boards of directors of Street Law and the Mother of Light Center.

Melissa Murray- NYU School of Law

Murray is a graduate of the University of Virginia, where she was a Jefferson Scholar and an Echols Scholar, and Yale Law School, where she was notes development editor of the Yale Law Journal. While in law school, she earned special recognition as an NAACP-LDF/Shearman & Sterling Scholar and was a semifinalist of Morris Tyler Moot Court.

Following law school, Murray clerked for Sonia Sotomayor, then of the US Court of Appeals for the Second Circuit, and Stefan Underhill of the US District Court for the District of Connecticut. Murray is a member of the New York bar.

Murray teaches constitutional law, family law, criminal law, and reproductive rights and justice, among other courses. Murray's research focuses on the legal regulation of sex and sexuality and encompasses such topics as marriage and its alternatives, the marriage equality debate, the legal recognition of caregiving, and reproductive rights and justice. Her publications have appeared (or are forthcoming) in the *California Law Review, Columbia Law Review, Harvard Law Review, Michigan Law Review, Pennsylvania Law Review, Virginia Law Review,* and *Yale Law Journal*, among others. She is an author of *Cases on Reproductive Rights and Justice*, the first casebook to cover the field of reproductive rights and justice. She has translated her scholarly writing for more popular audiences by publishing in the *New York Times, Newsweek, the San Francisco Chronicle, Vanity Fair*, and *the Huffington Post*, and has offered commentary for numerous media outlets, including NPR, MSNBC, and PBS.

In 2013, Murray's article, "What's So New About the New Illegitimacy?," was awarded the Dukeminier Awards' Michael Cunningham Prize as one of the best sexual orientation and gender identity law review articles of 2012. Her article, "Marriage as Punishment," won the Association of American Law Schools' 2010-2011 Scholarly Papers Competition for faculty members with fewer than five years of law teaching. "Marriage as Punishment" was also selected by the Association of American Law Schools' Section on Women in Legal Education as a winner of the 2010-2011 New Voices in Gender Studies scholarly paper competition. In 2010, Murray was awarded the Association of American Law School's Derrick A. Bell Award, which is given to a junior faculty member who has made an extraordinary contribution to legal education, the legal system, or social justice. In 2011, Murray was elected to the membership of the American Law Institute.

Prior to joining the NYU faculty, Murray was on the faculty of the University of California, Berkeley, School of Law, where she was the recipient of the Rutter Award for Teaching Distinction. From March 2016 to June 2017, she served as interim dean of the Berkeley Law.

Andrew Pincus- Mayer Brown

Andrew Pincus focuses his appellate practice on briefing and arguing cases in the Supreme Court of the United States and in federal and state appellate courts; developing legal strategy for trial courts; and presenting policy and legal arguments to Congress, state legislatures, and regulatory agencies.

Andy has argued 30 cases in the Supreme Court. Law360 ranked Andy's victory in *AT&T Mobility v. Concepcion*, 131 S. Ct. 1740 (2011), as the most important Supreme Court class action decision of the last 15 years. Andy is a 2022 BTI Client Service All-Star, with clients saying that he is "a brilliant, master strategist and a great litigator." Legal 500 (2022) places Andy in its Hall of Fame, which "highlights individuals who have received constant praise by their clients for continued excellence." Benchmark Litigation (2022) names Andy as a National Litigation Star.

Chief Justice John G. Roberts, Jr. appointed Andy to a three-year term as one of four practitioner members of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States , effective October 1, 2022. The Committee drafts and recommends to the Judicial Conference new rules of practice, procedure, and evidence governing appellate, bankruptcy, civil, and criminal cases in the federal courts.

Chambers USA ranks Andy in Band 1 for nationwide appellate lawyers, reporting (2021) that he is "'an amazing advocate with full command of the courtroom and panels, but at the same time he is approachable and easy to work with.' 'He is one of the smartest people I have ever met. From a client perspective you get 100% of him.'" It also states (2022) that Andy is "'[a]n excellent advocate who is particularly good at pulling together coalitions and entire appellate presentations before the Court. He's not just thinking about the principal brief, but also the overall presentation and making it well rounded.' 'He's very focused on his client's objectives and very thoughtful about how to pursue litigation in a way that's consistent with them.'"

A former Assistant to the Solicitor General in the United States Department of Justice (1984-1988), Andy co-founded and serves as co-director of the Yale Law School's Supreme Court Advocacy Clinic (2006-present), which provides pro bono representation in 10-15 Supreme Court cases each year. Andy's Supreme Court oral arguments are available here. A selection of his more than 250 appellate briefs is available here.

Andy is "'one of the finest appellate partners in the United States'" and "'a master of oral argument, a superb strategist and a super writer'" (Chambers USA 2019); a "'leading light of the appellate Bar, making frequent appearances in high-stakes and high-profile Supreme Court arguments'" and "'without a doubt one of the most stellar advocates in the country—at the Supreme Court, in the lower courts, in the non-court advocacy space and in counseling behind closed doors'" (Chambers USA 2017).

In 2022, Andy was named to Washingtonian's "Lawyer Lifetime Achievement" list , placing him in an "elite group" of the "best of the best"

individuals who have been named to Washingtonian's list of "Top Lawyers" in the Washington DC area at least 10 times within the past 15 years. Andy was also recognized as a 2019 and 2016 "Appellate MVP" by Law360; and profiled in 2015 as a Litigation Trailblazer by The National Law Journal. Andy's appellate experience has also won him recognition in The Best Lawyers in America (2006-2022).

Andy's practice also includes detailed written and oral advocacy before Congress, other legislative bodies, and regulatory agencies regarding a variety of policy and legal issues. He frequently testifies before Congress on a variety of subjects, including patent reform, the Consumer Financial Protection Bureau, reform of the federal litigation system, and the Supreme Court's decisions in cases involving business law issues. Andy successfully represented clients in connection with passage of the Private Securities Litigation Reform Act.

Reporters often turn to Andy for commentary on Supreme Court cases. He also frequently speaks and writes on legal issues for academic, professional, and general audiences.

While serving as General Counsel of the United States Department of Commerce (1997-2000), Andy had principal responsibility for the Digital Millennium Copyright Act and the Electronic Signatures in Global and National Commerce Act. He also participated in formulation of policy concerning intellectual property protection, privacy, domain name management, taxation of electronic commerce, export controls, international trade, and consumer protection.

Before rejoining Mayer Brown, Andy served as General Counsel of Andersen Worldwide S.C. Following law school graduation, Andy was Law Clerk to the Honorable Harold H. Greene, United States District Court for the District of Columbia (1981-1982), after which he practiced with another major law firm in Washington.

Andy is a contributor to Class Defense, the firm's blog on key issues affecting class action law and policy.

Robin Rosenbaum- U.S. Court of Appeals, Eleventh Circuit

Robin S. Rosenbaum was appointed as a United States Circuit Judge for the United States Court of Appeals for the Eleventh Circuit on June 3, 2014.

Prior to becoming a United States circuit judge, Judge Rosenbaum served as a United States district judge and a federal magistrate judge in the Southern District of Florida. Before joining the bench, Judge Rosenbaum served as the Chief of Economic Crimes at the Broward County office of the United States Attorney's Office for the Southern District of Florida. She has also served as a law clerk to the Honorable Stanley Marcus, United States Circuit Court Judge for the Eleventh Circuit Court of Appeals. In addition, Judge Rosenbaum worked in private practice for Holland & Knight LLP and served as staff counsel to Independent Counsel Daniel S. Pearson in the investigation of former United States Secretary of Commerce Ronald Brown. Judge Rosenbaum began her legal career in the United States Attorney General's Honors Program, where she served as a trial attorney in the Federal Programs Branch of the Civil Division of the United States Department of Justice.

Judge Rosenbaum earned her undergraduate degree at Cornell University and her law degree at the University of Miami

Bertrall Ross- University of Virginia School of Law

Bertrall Ross joined the law faculty in 2021. He teaches and writes in the areas of constitutional law, constitutional theory, election law, administrative law and statutory interpretation.

Ross' research is driven by a concern about democratic responsiveness and accountability, as well as the inclusion of marginalized communities in administrative and political processes. His past scholarship has been published in several books and journals, including the *Columbia Law Review, New York University Law Review* and the *University of Chicago Law Review*. Two of his articles were selected by the Yale/Harvard/Stanford Junior Faculty Forum.

Prior to joining the Virginia faculty, Ross taught at the University of California, Berkeley School of Law, where he received the Rutter Award for Teaching Excellence. He has also been awarded the Berlin Prize from the American Academy in Berlin, the Princeton University Law and Public Affairs Fellowship, the Columbia Law School Kellis Parker Academic Fellowship and the Marshall Scholarship. Ross is currently serving on the Administrative Conference of the United States and the Presidential Commission on the Supreme Court.

Ross earned his undergraduate degree in international affairs and history from the University of Colorado, Boulder; his graduate degrees from the London School of Economics and Princeton University's School of Public and International Affairs; and his law degree from Yale Law School. After law school, he clerked for Judge Dorothy Nelson of the U.S. Court of Appeals for the Ninth Circuit and Judge Myron Thompson of the U.S. District Court for the Middle District of Alabama.

David Savage- Los Angeles Times

David G. Savage has covered the Supreme Court and legal issues for the *Los Angeles Times* in the Washington bureau since 1986. He has covered the Senate confirmation hearings for all of the current justices. In addition to writing about the court's work, he has written on the legal battles that have raged in Washington. He joined The Times in 1981 and was an education writer on the Metro staff for five years. He has degrees from the University of North Carolina at Chapel Hill and Northwestern University.

Pratik Shah- Akin Gump Strauss Hauer & Feld

Pratik Shah briefs and argues cases in federal and state appellate courts across the country, including the U.S. Supreme Court. Pratik also provides strategic advice to clients at all stages of constitutional, regulatory and other complex litigation.

Under Pratik's leadership, Akin has been a mainstay on the National Law Journal's Appellate Hot List, named one of the top three appellate practices in the 2017 Best of Corporate Counsel rankings, and recognized as Law360's 2019 Practice Group of the Year.

Before joining the firm, Pratik served for more than five years as an Assistant to the Solicitor General at the DOJ. He received a number of awards for his advocacy before the Supreme Court during that time, including the Attorney General's Distinguished Service Award for his role as lead drafter of the successful challenge to the Defense of Marriage Act in United States v. Windsor.

Prior to his work at the DOJ, Pratik worked in the appellate practice of another international law firm, taught constitutional law, and clerked for Justice Stephen G. Breyer on the U.S. Supreme Court and Judge William A. Fletcher on the U.S. Court of Appeals for the 9th Circuit.

Kannon Shanmugam- Paul, Weiss, Rifkind, Wharton & Garrison

Chair of the Supreme Court and Appellate Litigation Practice and managing partner of the Washington office, Kannon Shanmugam is widely recognized as one of the nation's top appellate lawyers. Kannon has argued 36 cases before the Supreme Court, including 28 cases in private practice. He has also argued over 100 appeals in courts across the country, including arguments in all thirteen federal courts of appeals and in numerous state courts.

One study found that, over a five-year period, Kannon had the highest rate of successful petitions for review of any Supreme Court practitioner. He was lead counsel in the successful constitutional challenge to the structure of the Consumer Financial Protection Bureau, described by the *Wall Street Journal* as the "constitutional case of the year."

This year alone, he successfully overturned the certification of a $13 billion securities class action arising out of the 2008 financial crisis (*ATRS* v. *Goldman Sachs*); he successfully defended the settlement of what is believed to be the largest private antitrust settlement in history (*Fikes Wholesale* v. *HSBC Bank USA*); and he successfully overturned a $570 million damages award in a high-profile trade-secrets case (*Syntel* v. *TriZetto*).

Prior to private practice, Kannon served as an Assistant to the Solicitor General at the U.S. Department of Justice. He also served as a law clerk to Supreme Court Justice Antonin Scalia and to Judge J. Michael Luttig of the U.S. Court of Appeals for the Fourth Circuit.

Paul Smith- Campaign Legal Center

Paul has four decades of experience litigating a wide range of cases. He has argued before the U.S. Supreme Court 21 times and secured numerous victories, including in the important cases advancing civil liberties and civil rights, *Lawrence v. Texas*, the landmark gay rights case, and *Brown v. Entertainment Merchants Ass'n*, which established First Amendment rights of those who produce and sell video games.

In addition, Paul has argued several voting rights cases at the Supreme Court, including *Vieth v. Jubelirer* and *Gill v. Whitford,* involving partisan gerrymandering, *LULAC v. Perry*, involving the legality of Texas's mid-decade redrawing of congressional districts and *Crawford v. Marion County Election Board*, involving the constitutionality of a voter identification law. He served as counsel for amici in several key campaign finance merits cases including *McCutcheon v. FEC* (on behalf of Democratic House members), *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett* (on behalf of the Committee for Economic Development) and *Citizens United v. FEC* (on behalf of the Committee for Economic Development). Paul previously served as a partner in the law firm of Jenner & Block, where he was chair of the firm's Appellate and Supreme Court Practice and co-chair of the firm's Election Law and Redistricting Practice.

Paul is a graduate of Yale Law School (J.D.), where he was Editor-in-Chief of the Yale Law Journal, and Amherst College (B.A.). He now serves Amherst as a member of its Board of Trustees. After law school, Paul clerked for Judge James Oakes on the Second Circuit and U.S. Supreme Court Justice Lewis F. Powell Jr. He is admitted to practice law in DC, New York, Maryland, and all the federal circuits. Paul joined CLC in January 2017.

Martina Stewart- Bloomberg

Martina Stewart is a team lead for Legal Intelligence at Bloomberg Law. She oversees a general assignment team focused on daily litigation coverage whose responsibilities include covering the impact of Supreme Court cases in the lower courts and covering possible Supreme Court cases as they rise through the courts. Journalism is a second career for Stewart. She graduated from Yale in 1994 and from Harvard Law School in 1997. Stewart practiced law for nearly a decade before returning to school and getting a master's degree in journalism from Columbia in 2007. As a young lawyer, she clerked on the federal district court in the Central District of California and for the Honorable Judith W. Rogers of the D.C. Circuit during the 2000-2001 term of the court. Before Bloomberg Law, she worked in USA TODAY's Washington, D.C. bureau where she was the Supreme Court editor for 3 and a half years from fall 2019-spring 2023. Before moving fully into legal coverage, national politics had been her journalistic focus. She also previously worked at NPR, the Washington Post, and began her career in journalism in the political unit at CNN in 2007.

David Stras- U.S. Court of Appeals, Eighth Circuit

David Stras became a judge on the United States Court of Appeals for the Eighth Circuit on January 31, 2018. Before serving on the Eighth Circuit, Judge Stras was an Associate Justice of the Minnesota Supreme Court, a position he occupied from July 1, 2010 until his appointment to the Eighth Circuit.

Prior to becoming a judge, Stras was a member of the faculty of the University of Minnesota Law School from 2004 through 2010. He taught and wrote in the areas of federal courts and jurisdiction, constitutional law, criminal law, and law and politics.

Following law school, Stras clerked for The Honorable Melvin Brunetti of the United States Court of Appeals for the Ninth Circuit and then for The Honorable J. Michael Luttig of the United States Court of Appeals for the Fourth Circuit.

From 2001 to 2002, he practiced white-collar criminal and appellate litigation with the Washington, D.C., office of Sidley Austin Brown & Wood. Following his year in practice, he clerked for The Honorable Clarence Thomas of the Supreme Court of the United States.

Meaghan VerGow- O'Melveny & Myers

Meaghan VerGow is a highly regarded litigator who assists clients with complex commercial litigation and class actions at the trial and appellate levels. She also counsels clients on legal, policy, and regulatory matters. In recommending Meaghan, Chambers USA reports that clients consider her "impressive" and "very smart and strategic," with a knack for thinking through "the best arguments."

A member of the firm's Financial Services and Appellate practices, Meaghan has briefed and argued cases in federal and state trial and appellate courts across the US, and has obtained multiple unanimous Supreme Court victories. Meaghan's strategic insights have supported a long record of judgments in her client's favor.

Meaghan's areas of focus include ERISA, health care, administrative law, insurance law, federal jurisdiction and preemption, constitutional law, and securities law. Meaghan also maintains an active First Amendment practice.

2023-2024 Granted Cases

Consumer Financial Protection Bureau v. Community Financial Services Association of America, Limited **(No. 22-448)**

Issue(s): Whether the court of appeals erred in holding that the statute providing funding to the Consumer Financial Protection Bureau, 12 U.S.C. § 5497, violates the appropriations clause in Article I, Section 9 of the Constitution, and in vacating a regulation promulgated at a time when the Bureau was receiving such funding.

- Overview of Consumer Financial Protection Bureau v. Community Financial Services Association of America, Limited – SCTOUSblog

- Consumer Financial Protection Bureau's fate is again in the hands of the Supreme Court – Joan Biskupic, CNN

- CFPB Funding System Gets High Court Review at Biden's Behest – Greg Stohr, Bloomberg

- Supreme Court to Take Up Case on Fate of Consumer Watchdog – Adam Liptak, The New York Times

Pulsifer v. U.S. **(No. 22-340)**

Issue(s): Whether a defendant satisfies the criteria in 18 U.S.C. § 3553(f)(1) as amended by the First Step Act of 2018 in order to qualify for the federal drug-sentencing "safety valve" provision so long as he does not have (a) more than four criminal history points, (b) a three-point offense, and (c) a two-point offense, or whether the defendant satisfies the criteria so long as he does not have (a), (b), or (c).

- Overview of Pulsifer v. U.S. – SCOTUSblog

- US Supreme Court to hear cases on criminal sentencing and appropriations – Marissa Zupancic, Jurist

Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC **(No. 22-500)**

Issue(s): Whether, under federal admiralty law, a choice-of-law clause in a maritime contract can be rendered unenforceable if enforcement is contrary to the "strong public policy" of the state whose law is displaced.

- Overview of Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC – SCOTUSblog

- U.S. Supreme Court to Decide Whether State's Public Policy Interest Could Sink Insurance Policy's Choice-of-Law Provision – David Klein, William Miller, JDSupra

- Off to Sea the Wizard: High Court Takes On Marine Insurance Dispute – James E. Mercante, The New York Law Journal

Acheson Hotels, LLC v. Laufer (No. 22-429)

Issue(s): Whether a self-appointed Americans with Disabilities Act "tester" has Article III standing to challenge a place of public accommodation's failure to provide disability accessibility information on its website, even if she lacks any intention of visiting that place of public accommodation.

- Overview of Acheson Hotels, LLC v. Laufer – SCOTUSblog

- Supreme Court to Hear Dispute Between Maine Hotel and Disability Activist – Adam Liptak, The New York Times

- U.S. Supreme Court Grants Cert in ADA "Tester" Case – The National Law Review

Culley v. Marshall (No. 22-585)

Issue(s): Whether district courts, in determining whether the due process clause requires a state or local government to provide a post-seizure probable-cause hearing prior to a statutory judicial-forfeiture proceeding and, if so, when such a hearing must take place, should apply the "speedy trial" test employed in United States v. $8,850 and Barker v. Wingo or the three-part due process analysis set forth in Mathews v. Eldridge.

- Overview of Culley v. Marshall – SCOTUSblog

- Car Seizures Are New Test for Justices on Property Rights – Lydia Wheeler, Bloomberg

- Supreme Court Will Consider Need for Speed in Civil Forfeiture Challenges – Steve Lash, National Law Journal

- Justices To Hear Whether Post-Seizure Hearings Are Required – Marco Poggio, Law360

O'Connor-Ratcliff v. Garnier (No. 22-324)

Issue(s): Whether a public official engages in state action subject to the First Amendment by blocking an individual from the official's personal social-media account, when the official uses the account to feature their job and communicate about job-related matters with the public, but does not do so pursuant to any

governmental authority or duty.

- Overview of O'Connor-Ratcliff v. Garnier – SCOTUSblog

- Can officials block critics on Twitter? Supreme Court weighs if that violates First Amendment. – John Fritze, USA Today

- Supreme Court to Decide Whether Officials Can Block Critics on Social Media – Adam Liptak, The New York Times

- Supreme Court will decide when public officials can block people from personal social media accounts – Debra Cassens Weiss, ABA Journal

- The Supreme Court's next target: social media – Clay Calvert (Opinion Contributor), The Hill

- Facebook, Twitter Curbs by Government Get Supreme Court Review – Kimberly Strawbridge Robinson, Bloomberg

Lindke v. Freed (No. 22-611)

Issue(s): Whether a public official's social media activity can constitute state action only if the official used the account to perform a governmental duty or under the authority of his or her office.

- Overview of Lindke v. Freed – SCOTUSblog

- Can officials block critics on Twitter? Supreme Court weighs if that violates First Amendment. – John Fritze, USA Today

- Supreme Court will decide when public officials can block people from personal social media accounts – Debra Cassens Weiss, ABA Journal

- The Supreme Court's next target: social media – Clay Calvert (Opinion Contributor), The Hill

- Facebook, Twitter Curbs by Government Get Supreme Court Review – Kimberly Strawbridge Robinson, Bloomberg

Murray v. UBS Securities, LLC (No. 22-660)

Issue(s): Whether, following the burden-shifting framework that governs cases under the Sarbanes-Oxley Act of 2002, a whistleblower must prove his employer acted with a "retaliatory intent" as part of his case in chief, or whether the lack of "retaliatory intent" is part of the affirmative defense on which the employer bears the

burden of proof.

- [Overview of Murray v. UBS Securities, LLC](#) – SCOTUSblog

- [UBS Whistleblower's Retaliation Case Taken Up by Supreme Court](#) – Khorri Atkinson, Bloomberg

- [High Court Whistleblower Case Is Bigger Than Wall Street](#) – Jessica Corso, Law360

Loper Bright Enterprises v. Raimondo (No. 22-451)

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

- [Overview of Loper Bright Enterprises v. Raimondo](#) – SCOTUSblog

- [Supreme Court to hear major case on limiting the power of federal government, a long-term goal of legal conservatives](#) – Ariane de Vogue, Devan Cole, and Joan Biskupic, CNN

- [Supreme Court to Reconsider Precedent Giving Federal Agencies Benefit of Doubt](#) – Jess Bravin, Wall Street Journal

- [Supreme Court's Chevron Review Caps Years-Long Conservative Push](#) – Emily Birnbaum, Jennifer A. Blouhy, and Greg Stohr, Bloomberg

- [US Supreme Court to Consider Curbing Authority of Federal Regulatory Agencies](#) – Greg Stohr, Bloomberg

- [A Welcome Supreme Court Review of Chevron Deference](#) – The Wall Street Journal

- [A new Supreme Court case seeks to make the nine justices even more powerful](#) – Ian Millhiser, Vox

Brown v. U.S. (No. 22-6389)

Issue(s): Whether the "serious drug offense" definition in the Armed Career Criminal Act incorporates the federal drug schedules that were in effect at the time of the federal firearm offense or the federal drug schedules that were in effect at the time of the prior state drug offense.

- [Overview of Brown v. U.S.](#) – SCOTUSblog

- [Justices To Hear Cases On Gun Sentencing For Repeat Felons](#) – Marco Poggio, Law360

- [Supreme Court to Consider Sentencing in Light of New Drug Laws](#) – Kimberly Strawbridge Robinson, Bloomberg

Alexander v. South Carolina State Conference of the NAACP (No. 22-807)

Issue(s): (1) Whether the district court erred when it failed to apply the presumption of good faith and to holistically analyze South Carolina Congressional District 1 and the South Carolina General Assembly's intent; (2) whether the district court erred in failing to enforce the alternative-map requirement in this circumstantial case; (3) whether the district court erred when it failed to disentangle race from politics; (4) whether the district court erred in finding racial predominance when it never analyzed District 1's compliance with traditional districting principles; (5) whether the district court clearly erred in finding that the General Assembly used a racial target as a proxy for politics when the record showed only that the General Assembly was aware of race, that race and politics are highly correlated, and that the General Assembly drew districts based on election data; and (6) whether the district court erred in upholding the intentional-discrimination claim when it never even considered whether—let alone found that—District 1 has a discriminatory effect.

- [Overview of Alexander v. South Carolina State Conference of the NAACP](#) – SCOTUSblog
- [U.S. Supreme Court Will Hear Appeal in South Carolina Redistricting Case That Held State Gerrymandered Black Voters](#) – ACLU Press Release
- [Supreme Court to Consider South Carolina Voting Map Ruled a Racial Gerrymander](#) – Adam Liptak, The New York Times
- [US Supreme Court Will Hear South Carolina GOP Appeal on Voting Map](#) – Greg Stohr, Bloomberg
- [Supreme Court to weigh South Carolina plan that 'exiled' Black voters](#) – Robert Barnes, The Washington Post
- [A new Supreme Court case threatens to make gerrymandering even worse](#) – Ian Millhiser, Vox

Vidal v. Elster (No. 22-704)

Issue(s): Whether the refusal to register a trademark under 15 U.S.C. § 1052(c) violates the free speech clause of the First Amendment when the mark contains criticism of a government official or public figure.

- [Overview of Vidal v. Elster](#) – SCOTUSblog
- [Supreme Court will hear attempt to trademark 'Trump Too Small'](#) – Robert Barnes, The Washington Post

- ['Trump Too Small' Trademark Fight Gets US Supreme Court Review](#) – Greg Stohr, Bloomberg

- [Supreme Court agrees to hear dispute over effort to trademark "Trump Too Small"](#) – Melissa Quinn, CBS News

- [SCOTUS will consider First Amendment right to trademark 'Trump too small' without Trump's consent](#) – Debra Cassens Weiss, ABA Journal

Department of Agriculture Rural Development Rural Housing Service v. Kirtz **(No. 22-846)**

Issue(s): Whether the civil-liability provisions of the Fair Credit Reporting Act unequivocally and unambiguously waive the sovereign immunity of the United States.

- [Overview of Department of Agriculture Rural Development Rural Housing Service v. Kirtz](#) – SCOTUSblog

- [Supreme Court to Decide if US Can Be Sued as Creditor](#), Kimberly Strawbridge Robinson, Bloomberg Law

- [US Supreme Court agrees to hear case concerning federal government's sovereign immunity](#), Lauren Ban, Jurist

- [US Supreme Court to hear government appeal in credit report dispute](#), John Kruzel, Reuters

Rudisill v. McDonough **(No. 22-888)**

Issue(s): Whether a veteran who has served two separate and distinct periods of qualifying service under the Montgomery GI Bill and the Post-9/11 GI Bill is entitled to receive a total of 48 months of education benefits as between both programs, without first exhausting the Montgomery benefit in order to obtain the more generous Post-9/11 benefit.

- [Overview of Rudisill v. McDonough](#) – SCOTUSblog

- [Important Policy Implications of Rudisill v. McDonough](#) – Timothy L. McHugh, Abbey M. Thornhill, and David J. DePippo, Dominion Energy Services Inc.

- [Supreme Court Accepts GI Bill Case That Could Affect 1.7 Million Veterans](#) – Patricia Kime, Military.com

- [Post 9/11 Veterans' Educational Benefits Get High Court Look](#) – Kimberly Strawbridge Robinson, Bloomberg Law

- [Troutman Pepper and Dominion Energy Pro Bono Team Turn to Nation's Highest Court as Fight Continues for Full Educational Benefits for Military Veterans](#)

Moore v. U.S. (No. 22-800)

Issue(s): Whether the 16th Amendment authorizes Congress to tax unrealized sums without apportionment among the states.

- [Overview of Moore v. U.S.](#) – SCOTUSblog

- [Is a U.S. Wealth Tax Constitutional?](#) – Wall Street Journal

- [A Wealth-Tax Watershed for the Supreme Court](#) – Wall Street Journal

- [A constitutional overreach with dire consequences for philanthropy](#) – Jack Salmon, The Hill

- [Supreme Court Will Hear Case Targeting Tax On Unrealized Gains](#) – Forbes

- [The Ninth Circuit Upholds a Wealth Tax](#) – Christopher Cox and Hank Adler, The Wall Street Journal

- [Supreme Court to Consider Scope of Congress's Taxing Power under the 16th Amendment](#) – Jonathan H. Adler, Reason

Campos-Chaves v. Garland (No. 22-674)

Issue(s): Whether the government provides notice "required under" and "in accordance with paragraph (1) or (2) of" 8 U.S.C. § 1229(a) when it serves an initial notice document that does not include the "time and place" of proceedings followed by an additional document containing that information, such that an immigration court must enter a removal order in absentia and deny a noncitizen's request to rescind that order.

- [Overview of Campos-Chaves v. Garland](#) – SCOTUSblog

- [Immigration Court Notice Requirements to Get Supreme Court Look](#) – John Wooley, Bloomberg

- [Justices To Weigh Immigration Hardship, Removal Notices](#) – Britain Eakin, Law360

McElrath v. Georgia **(No. 22-721)**

Issue(s): Whether the double jeopardy clause of the Fifth Amendment prohibits a second prosecution for a crime of which a defendant was previously acquitted.

- Overview of McElrath v. Georgia – SCOTUSblog

- Justices Take Up Double Jeopardy Challenge on Acquitted Conduct – Kimberly Strawbridge Robinson, Bloomberg

- Justices To Weigh Double Jeopardy In 'Repugnant' Verdicts – Ivan Moreno, Law360

- State Supreme Court says man convicted twice in mother's death can't argue double jeopardy – Gabriella Nunez, 11Alive

Securities and Exchange Commission v. Jarkesy **(No. 22-859)**

Issue(s): (1) Whether statutory provisions that empower the Securities and Exchange Commission to initiate and adjudicate administrative enforcement proceedings seeking civil penalties violate the Seventh Amendment; (2) whether statutory provisions that authorize the SEC to choose to enforce the securities laws through an agency adjudication instead of filing a district court action violate the nondelegation doctrine; and (3) whether Congress violated Article II by granting for-cause removal protection to administrative law judges in agencies whose heads enjoy for-cause removal protection.

- Overview of Securities and Exchange Commission v. Jarkesy – SCOTUSblog

- Another federal agency challenges adverse ruling by 5th Circuit, Kalvis Golde, SCOTUSblog

- Justices Likely To Hear Case That 'Cast Cloud' On SEC Courts, Jessica Corso, Law 360

- SEC's Use of In-House Judges Will Get US Supreme Court Review – Greg Stohr, Bloomberg

- SEC asks SCOTUS to review Fifth Circuit decision with implications for CFPB's use of administrative law judges – Michael Gordon & Alan S. Kaplinsky, Consumer Finance Monitor

- Supreme Court will decide whether SEC enforcement actions violate right to jury trial – Debra Cassens Weiss, ABA Journal

U.S. v. Rahimi **(No. 22-915)**

Issue(s): Whether 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to domestic-violence restraining orders, violates the Second Amendment on its face.

- Overview of U.S. v. Rahimi – SCOTUSblog

- Do People Subject to Domestic Abuse Orders Have the Right to Be Armed? – Adam Liptak, The New York Times

- Supreme Court to Hear Major Guns Case Involving Domestic Violence – Adam Liptak and Glenn Thrush , The New York Times

- The Supreme Court will decide if abusive spouses have a right to own guns – Ian Millhiser, Vox

- Gun Ban in Domestic-Violence Cases Draws Supreme Court Review – Greg Stohr, Bloomberg

- Supreme Court Will Consider Right Of Domestic Abusers to Own Firearms – Jack McCordick, Vanity Fair

Muldrow v. City of St. Louis, Missouri (No. 22-193)

Issue(s): Whether Title VII of the Civil Rights Act of 1964 prohibits discrimination in transfer decisions absent a separate court determination that the transfer decision caused a signification disadvantage.

- Overview of Muldrow v. City of St. Louis, Missouri – SCOTUSblog

- US Supreme Court to consider whether employees can sue for bias-motivated workplace transfers – Rebekah Yeager-Malkin, Jurist

- Court agrees to hear Title VII employer discrimination case – Amy Howe, SCOTUSblog

- Justices To Mull If Lateral Job Transfers Can Violate Title VII – Vin Gurrieri, Law360

- US Supreme Court to Weigh In on Employees' Rights to Sue for Bias-Driven Workplace Transfers – Rachel E, JDJournal

Wilkinson v. Garland (No. 22-666)

Issue(s): Whether an agency determination that a given set of established facts does not rise to the statutory standard of "exceptional and extremely unusual hardship" is a mixed question of law and fact reviewable under 8 U.S.C. § 1252(a)(2)(D), or whether this determination is a discretionary judgment call unreviewable under Section 1252(a)(2)(B)(i).

- Overview of Wilkinson v. Garland – SCOTUSblog

- [Justices asked to weigh in again on "mixed" questions in immigration appeals](#) – Kalvis Golde, SCTOUSblog
- [Deportation Hardship Waiver Case Gets Supreme Court Review](#) – Emily Garcia, Bloomberg

Schedule of Events

All sessions will be held in Room 119 with overflow in Room 120 unless otherwise specified. Except for the greenroom and Docket Deep Dives all panels will be recorded / live-streamed on zoom.

Friday, October 6

2:30 PM -3:30 PM: Greenroom with Students

Brief Description: Available panelists will meet with registered W&M students to talk about their lives in the law and to give advice they wish they had been given when in law school.

4:00 PM: Welcome (Alli Larsen and Dean A. Benjamin Spencer)

4:05 PM - 5:30 PM: Moot Court- United States v. Rahimi*

Advocates: Jonathan Ellis and Michelle Kallen

Justices: Joan Biskupic (Chief), Judge Toby Heytens, Judge Robin Rosenbaum, Judge Stephanos Bibas, Judge David Stras, Katherine Mims Crocker, Pratik Shah, Meaghan VerGow, Jess Bravin

Brief Description: The question presented is whether the government may constitutionally forbid people subject to domestic violence orders from having guns. Zackey Rahimi was under a restraining order after assaulting his girlfriend in 2019; a year later, police found guns in his home while executing a warrant for a shooting. Rahimi was convicted of violating a federal law which prohibits possession of a firearm by anyone who is the subject of a domestic violence restraining order. The Fifth Circuit reversed his conviction, concluding that Rahimi still retained his right to bear arms under the Second Amendment because the government could not show that the ban was consistent with the country's historical tradition of regulating firearms.

5:30 PM – 6:30 PM: "Heartfelt disagreement or disparagement?": Is there discord at the Court or worries about its public image? And will any of that matter at the end of the day?

Moderator: Adam Liptak

Panelists: Melissa Murray, Beth Brinkmann, Kannon Shanmugam, Erin Murphy

Brief Description: On the last day of the last term, the Chief Justice wrote, "we do not mistake this plainly heartfelt disagreement for disparagement. It is important that the public not be misled either. Any such misperception would be harmful to this institution and our country." Is this all talk or do the relationship dynamics among the Justices make a difference in the decisions the Court makes? Similarly, do recent ethics controversies and public criticism matter in terms of how the Court decides cases? The panel will discuss whether and how recent criticisms of the Court might manifest in the Court's actions this term.

* The moot court and the Friday evening panel will both be held in the McGlothlin courtroom. All panelists are welcome to sit in the courtroom. Paid registrants may sit in the courtroom on a first come, first serve basis. All students, without a special invitation, should be seated in the classroom.

Saturday, October 7

9:00 AM – 10:00 AM: A Term of Significant Administrative Law Challenges

Moderator: Aaron Bruhl

Panelists: Paul Clement, Aileen McGrath, Bertrall Ross, Meaghan VerGow

 Brief Description: Although the battle lines have been drawn for years, 2023-24 may be the apex of challenges to the administrative state at the Court. On the docket are cases asking the Justices to overturn Chevron deference, to limit the power of administrative law judges at the SEC, and to invalidate the CFPB, among others possible claims. This panel will discuss the specific pending cases and speculate which of the proposed changes the Court will adopt.

10:00 AM – 11:00 AM: Recurring procedural problems: what is the future and what are the stakes of standing for state plaintiffs, the shadow docket, and nationwide injunctions?

Moderator: Adam Liptak

Panelists: Paul Clement, Beth Brinkmann, Andrew Pincus, David Savage

Brief Description: It seems every year there are two procedural issues that require the Court to engage in refereeing policy disputes between the states and the federal government regardless of which party controls the White House: state standing doctrine and universal relief (nationwide injunctions). On top of that, many of

these disputes (student loans, immigration) reach the Court first on the Court's shadow docket. This panel will address where the law stands now on these recurring procedural issues and whether the Court is likely to make a change.

Break

11:15 AM – 12:15 PM: Collegiality on the Bench: what specifically does it mean to be a collegial judge and why is it important / fragile?

Moderator: Neal Devins

Panelists: Judge Stephanos Bibas, Judge Toby Heytens, Judge Robin Rosenbaum, Judge David Stras

Brief Description: A panel of distinguished federal appellate judges will take us behind the scenes to address the importance, fragility, and stakes of civil discourse among members of the judiciary.

12:15 PM – 1:00 PM: Lunch Break

1:00PM – 2:00 PM: Docket Deep Dives (3 choices in 3 different rooms)

- Election Law (Room 119)
    - *Moderator*: Joan Biskupic
    - *Panelists*: Bertrall Ross, Paul Smith, Erin Murphy, Rebecca Green
- Business Law & Employment Law (Room 133)
    - *Moderator*: Robert Barnes
    - *Panelists*: Pratik Shah, Andrew Pincus, Kannon Shanmugam, Aileen McGrath
- Criminal Law & Immigration Law (Room 124)
    - *Moderator*: Martina Stewart
    - *Panelists*: Erwin Chemerinsky, Easha Anand, David Savage

2:00 PM -3:00 PM: Online speech and the First Amendment

Moderator: Jess Bravin

Panelists: Paul Smith, Sarah Harris, Erwin Chemerinsky, Margaret Hu

Brief Description: Should the balance behind the First Amendment's commitment to free speech change as technology changes? This panel will address several versions of that question likely to reach the Court this term all relating to online speech, including a case presenting the foundational question of whether public official activity on social media constitutes state action subject to constitutional scrutiny and another challenging new Florida and Texas laws regulating social media platforms.

Break

3:15 PM – 4:15 PM: Civil Rights Cases

Moderator: Martina Stewart

Panelists: Robert Barnes, Easha Anand, Sarah Harris, Michaele Turnage Young

Brief Description: Civil forfeiture and Due Process, "Trump too small" T shirts, Second Amendment challenges, and a possible grant in the Oklahoma religious charter school case will make for an active civil rights docket this term. This panel will address those specific cases and more, including which follow-up cases after Bruen and Dobbs are most likely to reach the Court's docket.

4:15 PM CONCLUDE

2023 Supreme Court Preview Moot Court

U.S. v. Rahimi (No. 22-915)

Issue: Whether 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to domestic-violence restraining orders, violates the Second Amendment on its face.

Lower Court Opinion
U.S. v. Rahimi (United States Court of Appeals for the Fifth Circuit)

Party Briefs
Petition for Writ of Certiorari by the United States

Brief of Respondent Zackey Rahimi in Opposition

Reply of Petitioner United States

Brief of Petitioner United States

Supplemental Materials
Overview of U.S. v. Rahimi – SCOTUSblog
Do People Subject to Domestic Abuse Orders Have the Right to Be Armed? – Adam Liptak, The New York Times
Supreme Court to Hear Major Guns Case Involving Domestic Violence – Adam Liptak and Glenn Thrush, The New York Times
The Supreme Court will decide if abusive spouses have a right to own guns – Ian Millhiser, Vox
Gun Ban in Domestic-Violence Cases Draws Supreme Court Review – Greg Stohr, Bloomberg
Supreme Court Will Consider Right Of Domestic Abusers to Own Firearms – Jack McCordick, Vanity Fair

"Heartfelt Disagreement or Disparagement?": Is there Discord at the Court or Worries about its Public Image? And Will Any of that Matter at the End of the Day?

Description

On the last day of the Term the Chief Justice wrote "we do not mistake this plainly heartfelt disagreement for disparagement. It is important that the public not be misled either. Any such misperception would be harmful to this institution and our country." Is this all talk or do the relationship dynamics / reaction to public perception make a difference in the decisions the Court makes? The panel will discuss recent hits to the Court's public image and whether it matters, specifically addressing what we learned last year with respect to when this Court will embrace incrementalism and when it will make big changes.

Resources

Along with Conservative Triumph, Signs of New Caution at Supreme Court- Adam Liptak, New York Times

The Supreme Court Justices Do Not Seem to be Getting Along- Steven Mazie, The Atlantic

A Term of Significant Administrative Law Challenges

Description

Although the battle lines have been drawn for years, 2023-24 may be the apex of challenges to the administrative state at the Court. On the docket are cases asking the Justices to overturn Chevron deference, to limit the power of administrative law judges at the SEC, and to invalidate the CFPB, among others possible claims. It seems likely the Court is poised to significantly change administrative law. This panel will discuss the specific pending cases and speculate which of the proposed changes the Court will adopt.

Resources

Supreme Court will Consider Major Case on Power of Federal Regulatory Agencies, Amy Howe, SCOTUSblog

SEC's Use of In-House Judges will get US Supreme Court Review, Greg Stohr, Bloomberg

Court will Review Constitutionality of Consumer-Watchdog Agency's Funding, Amy Howe, SCOTUSblog

Recurring Procedural Problems: What is the Future and what are the Stakes of Standing for State Plaintiffs and Nationwide Injunctions?

Description

It seems every year there are two procedural issues that require the Court repeatedly to engage in refereeing policy disputes between the states and the federal government, regardless of which party controls the White House. State standing doctrine and universal relief (nationwide injunctions) essentially force the first case up to the Supreme Court. This panel will address where the law stands now on these two procedural issues and whether the Court is happy with the current state of affairs or likely to make a change.

Collegiality on the Bench: What Specifically does it mean to be a Collegial Judge and Why is it Important / Fragile?

Description

A panel of distinguished federal appellate judges will take us behind the scenes to address the importance, fragility, and stakes of civil discourse in the judiciary

Docket Deep Dives

Description

Three concurrent panels that allow participants to tailor their experience to their particular interests. The panels this year will be Election Law, Business & Employment Law, and Criminal Law & Immigration Law.

Resources

Election Law:

- Supreme Court to Consider South Carolina Voting Map Ruled a Racial Gerrymander – Adam Liptak, The New York Times

- US Supreme Court Will Hear South Carolina GOP Appeal on Voting Map – Greg Stohr, Bloomberg

- Supreme Court to weigh South Carolina plan that 'exiled' Black voters – Robert Barnes, The Washington Post

- A new Supreme Court case threatens to make gerrymandering even worse – Ian Millhiser, Vox

Business Law / Employment Law:

- Supreme Court to Hear Dispute Between Maine Hotel and Disability Activist – Adam Liptak, The New York Times

- Supreme Court to Take Up Case on Fate of Consumer Watchdog – Adam Liptak, The New York Times

- US Supreme Court Halts Purdue's $6 Billion Opioid Pact, Will Hear Appeal – Greg Stohr, Bloomberg

- US Supreme Court to consider whether employees can sue for bias-motivated workplace transfers – Rebekah Yeager-Malkin, Jurist

- [UBS Whistleblower's Retaliation Case Taken Up by Supreme Court](#) – Khorri Atkinson, Bloomberg
- [SEC's Use of In-House Judges Will Get US Supreme Court Review](#) – Greg Stohr, Bloomberg

Criminal Law & Immigration Law:

- [US Supreme Court to hear cases on criminal sentencing and appropriations](#) – Marissa Zupancic, Jurist
- [Justices To Hear Cases On Gun Sentencing For Repeat Felons](#) – Marco Poggio, Law360
- [Justices Take Up Double Jeopardy Challenge on Acquitted Conduct](#) – Kimberly Strawbridge Robinson, Bloomberg

- [Immigration Court Notice Requirements to Get Supreme Court Look](#) – John Wooley, Bloomberg
- [Deportation Hardship Waiver Case Gets Supreme Court Review](#) – Emily Garcia, Bloomberg

Free Speech and Social Media

Description

Should the balance behind the First Amendment's commitment to free speech change as technology changes? This panel will address several versions of that question pending before the Court including a case that presents the foundational question of whether public official activity on social media constitutes state action subject to constitutional scrutiny.

Resources

Supreme Court to Decide Whether Officials Can Block Critics on Social Media, Adam Liptak, The New York Times

Supreme Court Will Decide When Public Officials Can Block People from Personal Social Media Accounts, Debra Cassens Weiss, ABAJournal

U.S. Supreme Court to Decide if Public Officials can Block Critics on Social Media, John Kruzel, Reuters

Civil Rights Cases

Description

Civil forfeiture and the Due Process Clause, "Trump too small" T shirts and the First Amendment, and a possible grant in the Oklahoma religious charter school case will make for an active civil rights docket this Term. This panel will address those specific cases and more, including which follow-up cases after Bruen and Dobbs are likely to reach the Court's docket first.

Resources

Supreme Court will Hear Attempt to Trademark "Trump Too Small," Robert Barnes, The Washington Post

Car Seizures are New Test for Justices on Property Rights, Lydia Wheeler, Bloomberg