The Supreme Court of the United States (SCOTUS)

***

Week 2

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Fall 2024

2nd AMENDMENT - GUN CONTROL

United States v. Rahimi

(Opinion Issued June 21, 2024)

RELEVANCE:

- **Reined in *Bruen*** (June, 2022) which vastly expanded gun rights, clarifying a strict test for the constitutionality of federal restrictions to rights to possess firearms.
- One of the cases the **Court felt it had to take** – appeal came from the Biden Administration and clear turmoil in lower courts since ***Bruen***.
- A **nearly unanimous decision (8:1),** yet with **7 opinions** issued, revealing ideological divisions beyond liberal/conservative.

2nd AMENDMENT:

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

United States v. Rahimi (cont.)

TIMELINE:

- **2019** – Zackey Rahimi of Arlington, TX, was found **guilty of domestic assault** against his girlfriend and a **restraining order** was issued against him, **barring him from possessing a gun**. He was warned that **violation** of the order **would be a federal felony**.
- **2020-21** – Rahimi was again arrested for a series of violent incidents. Police searched his home and **found a rifle and a pistol**, leading to **his federal indictment**.
- **~2021** – Rahimi **challenged the federal statute as a violation of the 2nd Amendment.** When the District court denied the challenge, Rahimi **pleaded guilty** and was sentenced to 6+ years in prison plus 3 years of supervised release. However, he **reserved his right to challenge.**

United States v. Rahimi (cont.)

- **~2021** – 5th Circuit upheld the conviction, citing *District of Columbia v.* ***Heller*** (2008), which **affirmed the right of *"law-abiding, responsible citizens"* to possess a handgun in the home for self-defense, while casting no doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.**
- **2022** – **In the meantime,** SCOTUS ruled 6:3 (Breyer, Sotomayor & Kagen dissented) in *NY State Rifle v.* ***Bruen***, in which Thomas's opinion:
  - Affirmed *Heller* **but adding** ***"…the government must … justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation."***
- **2022/23 – Citing *Bruen*, the 5th Circuit reversed itself**, finding the statute unconstitutional because the **government hadn't shown any analogous historical tradition. Biden administration appealed.**

United States v. Rahimi (cont.)

QUESTION: Does the federal statute prohibiting the possession of firearms by persons subject to domestic-violence restraining orders **violate the Second Amendment?**

RAHIMI'S ARGUMENTS:

- The 2nd Amendment's plain **text protects the right of *"the people,"*** not some subset such as "*law-abiding, responsible citizens.*"
- Congress is addressing a general **societal problem that the framing generation addressed through different means**, such as divorce and criminal sanctions other than disarming the abuser.
- The government has **failed to identify any historical analogue** to the statute, as required by *Bruen*.

United States v. Rahimi (cont.)

GOVERNMENT'S ARGUMENT:

- The line between protecting society generally and protecting identified individuals is a **false dichotomy**.
- **Crimes against individuals destroy the peace of the community**, and **armed domestic abusers** not only pose a threat to their partners, but also **endanger society generally**.

8:1 MAJORITY OPINION (by Roberts) REVERSED 5th CIRCUIT DECISION:

- The court's 2nd Amendment cases "were **not meant to suggest a law trapped in amber."** Instead, courts considering the constitutionality of restrictions on gun rights **must determine "whether the new law is 'relevantly similar' to laws that our tradition is understood to permit**, applying faithfully the balance struck by the founding generation to modern circumstances."

United States v. Rahimi (cont.)

8:1 MAJORITY OPINION (cont.):

- Citing cases from U.S. and English history **in true originalist legal approach**, he argued that this ban – like the other laws – was **intended to reduce "demonstrated threats of physical violence,"** and it only applies after a court has concluded that the individual "represents a credible threat."
- When an individual has been found by a court to pose a credible threat to the physical safety of another, **that individual may be temporarily disarmed** consistent with the Second Amendment.

DISSENT (By Thomas, author of *Bruen*):

- The **early laws** to which the majority points to support its holding, Thomas contended, are in reality **too different from the ban here to serve as a historical analogue.**

https://www.scotusblog.com/2024/06/supreme-court-upholds-bar-on-guns-with-domestic-violence-restraining-orders

United States v. Rahimi (cont.)

MAJORITY CONCURRENCES:

- **Gorsuch**, on the other hand, **appeared to agree with Thomas** in taking a narrower view of what qualifies as a historical "analogue" for purposes of the *Bruen* test. But the **early English and U.S. laws on which the majority relied were precisely the kind of historical analogue** that the federal government needed to provide.
- **Sotomayor, joined by Kagan**, who both dissented in *Bruen*, again voiced her belief that ***"Bruen was wrongly decided."***
- **Jackson echoed Sotomayor's disdain for *Bruen***, noting that she too **would have joined the dissent** if she had been on the court when the case was decided. She posited that the majority's effort to clarify the *Bruen* test "*is a* ***tacit admission that lower courts are struggling"*** **to apply that [*Bruen*] test**. "*In my view,*" she wrote, ***"the blame may lie with us, not with them."***

United States v. Rahimi (cont.)

MAJORITY CONCURRENCES (cont.):

- **Barrett also pushed back against *Bruen* & originalism,** which assumes that "***founding-era legislatures maximally exercised their power to regulate, thereby adopting a 'use it or lose it'*** *view of legislative authority.*"
- I would describe **Kavanaugh**'s concurrence as a **dissertation in defense of originalism** -- constitutional interpretation properly taking account of text, pre-ratification and post-ratification history, and precedent. **Michael Dorf of Oyez dismissed it** as "*a little law review article* ***defending originalism against straw man arguments***" and "*a* ***self-indulgent exercise,*** *the point of which appears to be to get himself quoted in books and articles about constitutional interpretation.*" https://www.dorfonlaw.org/2024/06/justice-kavanaughs-concurrence-in.html

Where Does the Public Stand?

In a SCOTUS Poll:

- **74 %** think barring domestic abusers from possessing firearms **does not violate** their Second Amendment Rights.
- **27%** think it **violates** their rights.

Administrative Authority of ATF

Garland v. Cargill

(Opinion Issued June 14, 2024)

QUESTION: Is a semi-automatic weapon equipped with a bump stock a "machine gun?"

TIMELINE:

- The National Firearms Act of 1934 defines a "machinegun" as "*any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading,* ***by a single function of the trigger***."
- For over a decade, ATF maintained that bump-stocked weapons were NOT machine guns, but reversed itself under public pressure in 2018 after a shooter in Las Vegas with a bump stock killed 60 and injured >500. **The ATF made ownership of a bump stock illegal.**
- Cargill turned in 2 bump stocks, but filed suit against the ATF. The District Court upheld the ATF ruling, but the 5th Circuit reversed, so the **Biden administration requested SCOTUS review**.

Garland v. Cargill (cont.)

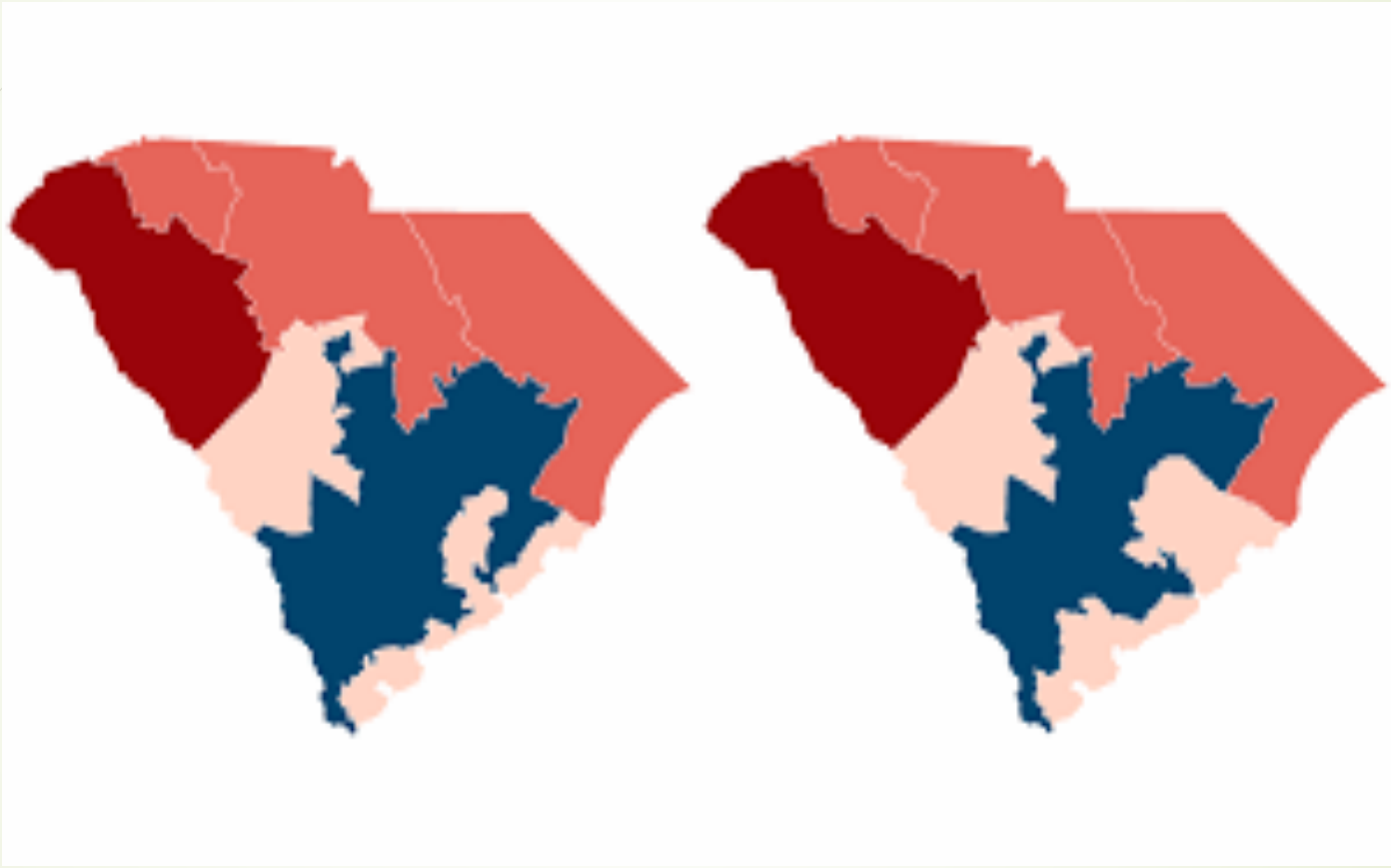
6:3 MAJORITY OPINION (by Thomas) AFFIRMED 5th CIRCUIT:

- In a technical, textualist opinion, Thomas opined that bump-stocked rifles **do not fire more than one shot *"by a single function of the trigger."*** The bump stock "*merely reduces the amount of time that elapses between separate 'functions' of the trigger" by allowing the trigger to be quickly pressed again.*"
- In a concurring majority opinion, Alito acknowledged that "*the* ***Congress*** *that enacted*" the machinegun ban "***would not have seen any material difference*** *between a machinegun and a semi-automatic rifle equipped with a bump stock.*" However, he stressed, ***"the statutory text is clear, and we must follow it."*** **The solution is for Congress to amend the statute**.
- Sotomayor (joined by Kagan and Jackson) dissented. "*By casting aside the statute's ordinary meaning…****the majority eviscerates Congress's regulation of machineguns."***

https://www.scotusblog.com/2024/06/supreme-court-strikes-down-bump-stock-ban/

Alexander v. SC State Conference of the NAACP: Racial v. Political Gerrymandering

- Before the 2020 Census, South Carolina's 1st Congressional District was a swing district, won by Democrat Joe Cunningham in 2018 and Republican Nancy Mace in 2020, both by small margins.
- After the Census, the Legislature enacted a new map changing the partisan and racial makeup of the 1st District. It split Charleston County in two, putting the cities of Charleston and North Charleston into the Democratic heavy 6th Congressional district and thus moving Black Democratic voters into the District.
- The rest of Charleston county was redistricted by leaving White Democratic voters in the 1st District, making it more Republican. In 2022 Mace won reelection by almost 14 percentage points. Multiple plaintiffs, including the SC NAACP, sued stating that the congressional map was an unconstitutional racial gerrymander, in violation of the **Equal Protection Clause of the Fourteenth Amendment as well as the Fifteenth Amendment**.
- In response to the lawsuit, the defendants asserted that the move to exclude black voters from the 1st District and leave white voters in the district was done as a **partisan** gerrymander, as opposed to a **racial gerrymander**.



Alexander v. SC State Conference of the NAACP: Racial v. political gerrymandering

- The **6:3 opinion** for the majority was authored by **Alito**, the basic point being that the evidence of record supports that the gerrymandering was *politically* based, i.e. **trying to pack democrats into the democratic district and increase the number of republicans in the swing district.**
- While gerrymandering based on race is unconstitutional and/or a violation of the voting rights act, **gerrymandering for partisan political reasons is not**:
  - *"[A] party challenging a map's constitutionality must disentangle race and politics to show that race was the legislature's 'predominant' motivating factor. Miller v. Johnson."*
  - *"[T]he Court starts with a presumption that the legislature acted in good faith."*

Alexander v. SC State Conference of the NAACP: Racial v. Political Gerrymandering

- **Alito's** opinion included discussions of the evidence that the District Court relied upon, including:
  - An increase in District 1 Republican vote by 1.36%
  - An increase in the black voting age population by 0.16%
  - Critiques of the experts cited by the plaintiffs
  - The failure to include alternative redistricting maps
- Ultimately then, **Alito's conclusion is that the evidence fails to show that the legislature's predominant motivating factor was race and not partisan politics.**
- It's not clear to me **why this case was brought on Constitutional grounds** and not through the process of the Voting Rights Act.

Alexander v. SC State Conference of the NAACP: Racial v. political gerrymandering

- This was a 6-3 decision along partisan lines. **Kagan** wrote the dissent, saying:
  - *"It is to respect the plausible — no, the more than plausible — findings of the district court that **the state engaged in race-based districting**. And to tell the state that it must redraw this time without targeting African-American citizens."*
- **Ian Millhiser**, a legal journalist for Vox, stated that a ruling for the defendants makes gerrymandering worse and makes it ***"virtually impossible to challenge racial gerrymanders."***

Presidential Immunity

Trump v. United States

(Opinion Issued July 1, 2024)

QUESTION: Does a former president enjoy presidential immunity from criminal prosecution for conduct alleged to involve official acts during his tenure in office, and if so, to what extent?

TIMELINE:

- **August, 2023 – Federal charges** were brought in four counts against Trump for **conspiring to overturn the results of the 2020 election**.
  1. **Pressuring the Acting Attorney General to convince some states to replace their legitimate electors** with Trump's fraudulent slates of electors.
  2. **Pressuring the Vice President not to certify the election** by rejecting the states' electoral votes or sending them back to state legislatures.

Trump v. United States (cont.)

TIMELINE (cont.):

3. **Attempting to convince some state officials** that election fraud had tainted the popular vote count in their states, and thus **electoral votes for Trump's opponent needed to be changed** for electoral votes for Trump.
4. **Tweeting his 89 million followers to gather** in Washington D.C. on January 6, **asserting to those gathered that several states wanted to re-certify their electoral slates** and the Vice President had the power to do so, and **directing the crowd to go to the Capital** to pressure the Vice President not to certify the election.

- **February, 2024** – When the D.C. Circuit upheld the District Court's denial of Trump's claim of presidential immunity, **Trump appealed to the Supreme Court**.

Trump v. United States (cont.)

6:3 MAJORITY OPINION (by Roberts, joined in full by Thomas, Alito, Gorsuch, and Kavanaugh, joined in part by Barrett):

- *"Under our constitutional structure of separated powers, the nature of Presidential power entitles a former President to* ***absolute immunity from criminal prosecution for actions within his conclusive and preclusive constitutional authority.*** *And he is entitled to at least* ***presumptive immunity from prosecution for all his official acts****. There is* ***no immunity for unofficial acts.****"*
- The opinion sought to **balance the need to free the president to make decisions without a *"pall of potential prosecution"* with a compelling *"public interest in fair and effective law enforcement."***

Trump v. United States (cont.)

- How that related to the **four counts**, the Court ruled:
  1. **The President has exclusive authority over the Justice Department**, therefore he is ***"absolutely immune from prosecution for the alleged conduct with Justice Department Officials."***
  2. **Discussions with the Vice President are official conduct and thus "presumptively immune."** However, the VP's role as president of the Senate is not an executive branch role, so **the Court remanded to the District Court to assess "*whether a prosecution…would pose any dangers of intrusion on the authority and functions of the Executive Branch.*"**
  3. **Determining whether soliciting state officials** to change electoral votes **is official or unofficial conduct requires "a fact-specific analysis**," thus again the Court **remanded to the District Court**.

Trump v. United States (cont.)

4. **Most of a President's public communications** are likely…within the outer perimeter of his official responsibilities. There may, however, be **contexts in which the President speaks in an unofficial capacity** – perhaps **as a candidate** for office **or party leader**…The Court therefore **remands to the District** to determine whether this alleged conduct is official or unofficial."

- Interestingly, the opinion went on to add, ***"Presidents cannot be indicted based on conduct for which they are immune…****Testimony or private records of the President or his advisers probing such conduct* ***may not be admitted as evidence at trial."***

Trump v. United States (cont.)

CONCURRING OPINIONS:

- **Thomas** wrote a concurring opinion further **questioning the constitutionality of Jack Smith's appointment** as a special counsel.
- **Barrett** concurred, in part, but dissented on two points:
  - She strongly challenged the prohibition against the use of evidence from official acts. ***"The Constitution does not require blinding juries to the circumstances surrounding conduct for which Presidents can be held liable."***
  - She further offered an **alternative process** to granting immunity - **first determining if the relevant statute applies** to the President's conduct, **and then evaluating whether prosecuting** the President under that statute **would unconstitutionally intrude on executive power.**

Trump v. United States (cont.)

DISSENTING OPINIONS:

- **Sotomayor (joined by Kagan & Jackson) strongly dissented.**
  - *"Today's decision to grant former Presidents criminal immunity **reshapes the institution of the Presidency**. It makes a mockery of the principle…that no man is above the law."*
  - *"Under the majority's rule, **a President's use of any official power for any purpose, even the most corrupt, is immune from prosecution.** That is just as bad as it sounds, and it is baseless."*
  - *Eschewing the traditional "respectfully," Sotomayor ended by saying, **"With fear for our democracy, I dissent."***
- **Jackson** added a separate dissent, arguing that the ruling ***"has unilaterally altered the balance of power"*** between the three branches.

Where Does the Public Stand?

In a SCOTUS Poll:

- **74 %** think former presidents **are not immune** from criminal prosecutions for actions they took while president.
- **27%** think former presidents **are immune.**

Trump v. Anderson

(Opinion Issued March 4, 2024)

QUESTION: Does Section 3 of the 14th Amendment **disqualify Donald Trump from holding the office of President** of the United States **and thus from appearing on Colorado's 2024 presidential primary ballot**?

14th AMENDMENT, SECTION 3:

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

Trump v. Anderson (cont.)

TIMELINE:

- **November 2023** – The CO **District Court** found that Trump engaged in insurrection as those terms are used in Sec. 3 but that **Sec. 3 does not apply to the President**, as it is not an "office…under the United States." Thus, the court **denied the petition** to keep Trump off the primary ballot.
- **December 2023** – The CO Supreme Court affirmed the finding of insurrection but **reversed the lower court's finding that the president is not an officer of the United States**.
- **January 2024** – SCOTUS granted review
- **February 2024** – Oral arguments
- **March 2024** – SCOTUS **unanimously ruled for Trump**

Trump v. Anderson (cont.)

UNSIGNED UNANIMOUS OPINION:

- *"…**responsibility for enforcing Section 3** against federal officeholders and candidates **rests with Congress and not the States**. The judgment of the Colorado Supreme Court therefore cannot stand."*
- The opinion further stated that **Section 5 of the 14th Amendment gives Congress the power to determine to whom the provision applies and authorizes it to pass "appropriate legislation"** to enforce the 14th Amendment.
- **Allowing states to enforce Section 3** for federal candidates could **create a *"patchwork"*** that could "dramatically change the behavior of voters, parties, and States across the country…"***Nothing in the Constitution requires that we endure such chaos.***"

Trump v. Anderson (cont.)

PARTIAL CONCURRENCES:

- **Kagan, Sotomayor, & Jackson** agreed with the ruling but criticized the opinion for going too far:
  - **Quoting Roberts** in Dobbs, they noted: "*If it is not necessary to decide more to dispose of a case, then* ***it is necessary not to decide more.***"
  - "*Today, the majority goes beyond the necessities of this case* ***to limit how Section 3 can bar an oathbreaking insurrectionist from becoming President****… we protest the majority's effort to* ***use this case to define the limits of federal enforcement*** *of that provision. Because we would decide only the issue before us, we concur only in the judgment.*"

Trump v. Anderson (cont.)

PARTIAL CONCURRENCES (cont.):

- **Barrett agreed** with the liberal critique that the court had gone too far, **but she scolded the liberals for their tone**:
  - The court's holding that states cannot enforce Section 3 against presidential candidates was "*sufficient to resolve this case.*" **The court should not have weighed in on *"the complicated question whether federal legislation is the exclusive vehicle*** *through which Section 3 can be enforced.*"
  - However, "*…this is* ***not the time to amplify disagreement with stridency****. The Court has settled a politically charged issue in the volatile season of a Presidential election. Particularly in this circumstance, writings on the* ***Court should turn the national temperature down, not up.*"**

https://www.scotusblog.com/2024/03/supreme-court-rules-states-cannot-remove-trump-from-ballot-for-insurrection/

Trump v. Anderson (cont.)

COURT WATCHER'S COMMENTARY:

- **Vikram Amar (Oyez Court Review) questions how one squares the Court's "uniformity" argument with the Electoral College.** Moreover, the Court:

  *"wants to prevent just a few states from deciding the election **when it is already what happens.** For example, Ralph Nader was on the ballot in some states and basically decided the 2000 election."*

Where Does the Public Stand?

In a SCOTUS Poll:

- **53 %** think Trump **is eligible** to run in 2024.
- **27%** think Trump **is not eligible.**

Taking on the Administrative State – Agency Funding

Consumer Financial Protection Bureau (CFPB) v. Community Financial Services Association of America, Limited (CFSA)

- The basic issue here is whether 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.
- Congress created the CFPB in the wake of the 2008 financial crisis, giving it the power to enforce a range of federal consumer finance laws. To help ensure the agency's independence from political control, **the CFPB receives its funding from the Federal Reserve, which is in turn funded through the fees that it charges for the services that it provides.**
- As you can see, that does not prevent attempts to defund or outright kill the agency.
- This case comes to the Supreme Court after the **5th Circuit** held that the CFPB's funding mechanism is unconstitutional.

Taking on the Administrative State

CFPB v. CSFA

12 USC s. 5497:

(a)Transfer of funds from Board Of Governors

(1)In general

Each year (or quarter of such year), beginning on the designated transfer date, and each quarter thereafter, the Board of Governors ***shall transfer to the Bureau*** *from the combined earnings of the Federal Reserve System,* ***the amount determined by the Director to be reasonably necessary to carry out the authorities of the Bureau under Federal consumer financial law****, taking into account such other sums made available to the Bureau from the preceding year (or quarter of such year).*

(2)Funding cap

(A)In general

Notwithstanding paragraph (1), … the amount that shall be transferred to the Bureau in each fiscal year ***shall not exceed a fixed percentage*** *of the total operating expenses of the Federal Reserve System … equal to—(i)10 percent of such expenses in fiscal year 2011; (ii)11 percent of such expenses in fiscal year 2012; an (iii)****12 percent of such expenses in fiscal year 2013, and in each year thereafter.***

Taking on the Administrative State

CFPB v. CSFA

- **Article I of the US Constitution, appropriations clause:**

  Section 9, Clause 7:

  No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Taking on the Administrative State

CFPB v. CSFA

- So what is CFSA's argument here:
  - While the appropriations clause requires congress to set the amount of funding, the statute allows the CFPB to *self-determine* the amount of funding it needs each year only subject to an 'illusory' cap.
  - Congress gave up its appropriations power without any *temporal* limit, which changes the baseline amount under which the President must negotiate with Congress for appropriations.
  - The funding is available to carry out any part of CFPB's authority, which includes core executive functions like rulemaking etc.
  - This combination of features is unique and **has no historical counterpart.**

Taking on the Administrative State

CFPB v. CSFA

- **The Administration's Response:**
  - The appropriations clause does not have a *dollar amount* requirement. And even if there were, the cap would meet that requirement.
  - The appropriations clause also does not restrict Congress' authority to choose the duration of appropriations (in this case, in effect until it changes the law).
  - The appropriations clause does not draw any distinctions between agencies exercising core executive powers and those that do not.
  - This combination of features is in fact similar to the Federal Reserve Board, the Office of the Comptroller of the Currency, and the FDIC.

Taking on the Administrative State

CFPB v. CSFA

- **7:2 Opinion by Thomas** (with **Kagan** & **Jackson** concurrence), and **Alito** and **Gorsuch** dissent.
- **Thomas** finds that the appropriation mechanism satisfies the appropriations clause of the Constitution:
  - The CFPB funding mechanism is required to satisfy the App. Clause
  - Thomas looks at both American and British history to determine the constitution means by appropriation: "a legislative means of authorizing expenditures from public funds for designated purposes." An **identified source** of the money and a **purpose** for the money are **all that is required** for a valid appropriation, he concludes.
  - Historically, appropriation mechanisms have been quite flexible, and the current scheme 'fits comfortably within the historical appropriations practice.'

Taking on the Administrative State

CFPB v. CSFA

- **Thomas** addressed **CFSA**'s arguments:
  - The agency does not decide the amount of its annual funding to draw from the Fed. Reserve system; appropriations of 'sums not exceeding' were common historically and this is not a violation by allowing the CFPB to decide its funding **'up to a cap.'**
  - While there is no time limit in the law that would require Congress to periodically revisit the funding of the CFPB, indefinite funding is historically supported by e.g. the Customs Service and the Post Office funding mechanisms; and while the Constitution explicitly limits **army** appropriations to two years, there is no such limit in place for other purposes.
- **Alito's** dissent quibbled with the lack of time limitation, and with the lack of dollar amount cap.

Taking on the Administrative State

Securities and Exchange Commission v. Jarkesy

Agency Power: Does administrative SEC enforcement require a jury trial?

- The SEC act authorizes the SEC to adjudicate claims of securities fraud and impose *civil* penalties for violations. Is this a violation of a person's 7th Amendment right to a jury trial?

  *'In Suits **at common law**, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.'*

- The **5th Circuit (!!)** said that the ***public rights doctrine***, covering matters between the federal government and persons subject to its authority, which otherwise authorizes the SEC adjudication, is not applicable: SEC actions resemble common law actions for fraud, and jury trials would not dismantle the statutory scheme.
- Commentators' prediction from last year: **a majority in favor of the SEC**.

Taking on the Administrative State

Securities and Exchange Commission v. Jarkesy

- The SEC was created to enforce three statutes enacted after the Wall Street crash of 1929. It can bring **enforcement actions in two ways:**
  - File suit in Federal District Court
  - Adjudicate the matter itself, at the SEC (Administrative Law Judges, (ALJs))
- In-house adjudication is by the ALJs, there is **no jury**.
- While originally the SEC could only seek civil penalties (monetary fines) in federal court, the **Dodd-Frank Act authorized such penalties for in-house adjudication.**
- ***Jarkesy*** was fined $300,000 for violating anti-fraud provisions of the federal securities laws in an in-house proceeding
- The **5th Circuit vacates the SEC order**, finding that *Jarkesy* is entitled to a jury trial under the 7th amendment, and the SEC appeals.

Taking on the Administrative State

Securities and Exchange Commission v. Jarkesy

- **Roberts** wrote the majority opinion in a partisan 6-3 split

  Roberts goes through a historical discussion of why we have the 7th amendment and its importance, emphasizing that in "suits at common law … the right of trial by jury shall be preserved."

  - This right embraces all suits that are not of equity or admiralty jurisdiction, but 'legal in nature.'
  - To determine if its legal in nature, look at whether the cause of action and the remedy resemble those at common law
  - Here the SEC seeks a civil penalty, monetary relief, designed to punish rather than 'restore the status quo.'
  - There is a close relationship between securities fraud and common law fraud.

Taking on the Administrative State
Securities and Exchange Commission v. Jarkesy

- **Roberts** thus concludes that a jury trial is required unless a 'public rights' exception applies:
  - Such matters historically could have been decided exclusively by the executive and/or legislative branches (examples: revenue collection; customs law; immigration law; relations with native tribes; etc.)
  - Roberts goes through a lengthy discussion about why this exception does not apply here.

Taking on the Administrative State
Securities and Exchange Commission v. Jarkesy

- **Sotomayor** wrote the dissent:
  - Her main argument seemed to be the public rights doctrine, arguing that when Congress creates a public right enforced by the federal government, it can "assign the matter for decision to an agency without a jury, consistent with the Seventh Amendment."
  - Roberts' response says that Congress cannot "conjure away the Seventh Amendment by mandating that traditional legal claims be … taken to an administrative tribunal."
  - The key here, I think, is that the claim at issue, securities fraud, is so similar to common law fraud.

Taking on the Administrative State

Securities and Exchange Commission v. Jarkesy

- **Impact:**
  - Legal experts believe *Jarkesy* is the first case that has held an administrative enforcement action brought to its ALJ must be tried by a jury.
  - Since *Jarkesy*, **at least three lawsuits have been filed** claiming that the Dept. of Labor's administrative **proceedings for enforcing anti-discrimination** requirements for federal contractors are **unconstitutional.**

Preview of Cases for Week 3

- **TAKING ON THE ADMINISTRATIVE STATE:**
  - *Securities & Exchange Commission v. Jarkesy*
  - *Loper Bright Enterprises v. Raimondo & Relentless v. Department of Commerce*
- **FIRST AMENDMENT CHALLENGE:** *National Rifle Association of America v. Vullo*
- **RESTRICTIONS ON THE HOMELESS:** *City of Grants Pass v. Johnson*
- **JANUARY 6 OBSTRUCTION CHARGES:** *Fischer v. United States*
- **EMERGENCY ABORTION CARE:** *Moyle v. United States*
- **OPIOID SETTLEMENT:** *Harrington v. Purdue Pharma*

Hope to see you next week!