2024 Supreme Court Review

AUGUST 28, 2024

Dean Falavolito – Partner

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Dean Falavolito is a seasoned litigation attorney with almost two decades of representing businesses and individuals in a wide variety of litigation and corporate matters.

Dean focuses his practice on representing businesses and nonprofit organizations in matters relating to employment law, professional liability, general liability and construction litigation. Dean often defends claims that involve Employment Practices Liability Insurance ("EPLI"), Director and Officers Insurance ("D&O"), and Architects and Engineer Insurance ("AE") claims for a variety of carriers. Dean also counsels multiple business on their day-to-day legal affairs, including advising on human resources, reviewing contracts, and assisting in all areas of operations.

Dean has represented employers in a wide range of employment matters. He represents management in collective bargaining negotiations, union organization issues and National Labor Relations Board proceedings. He also counsels clients on employment policies designed to minimize exposure to litigation. Dean also represents corporations and their owners in professional liability and commercial litigation matters, including claims regarding shareholder agreements, sales agreements, and various contractual disputes. Dean, also has years of direct experience in the construction industry, serving as General Counsel for a large general contractor.

Dean regularly appears in federal and state courts throughout Pennsylvania, West Virginia and Ohio, including first chairing multiple jury trial to verdict. Dean has also argued before all of Pennsylvania's Appellate courts, the National Labor Relations Board, and the Third Circuit Court of Appeals.

In addition to his litigation experience, Dean also counsels his clients on a wide variety of day-to-day legal matters.

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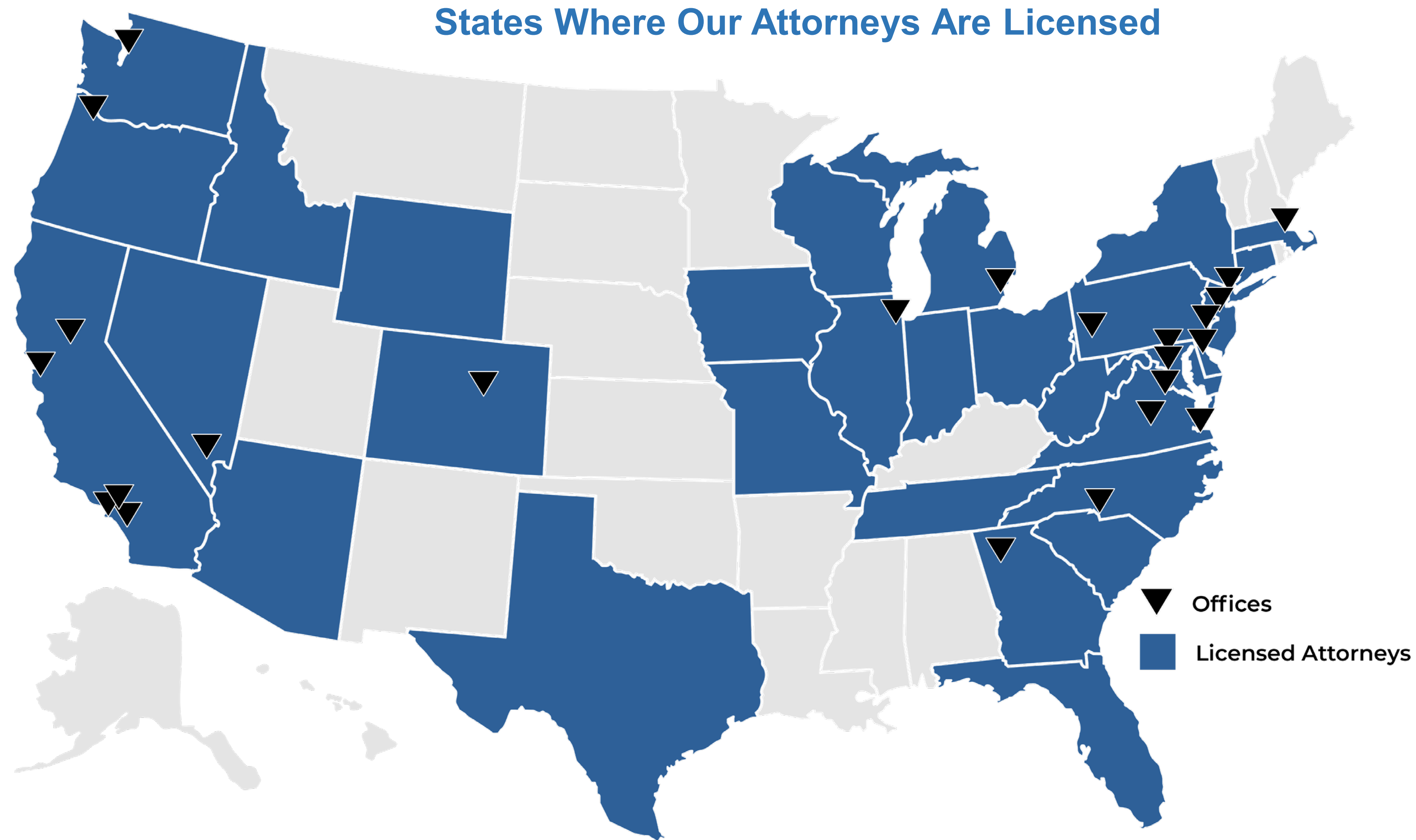
O'M

OUR REACH

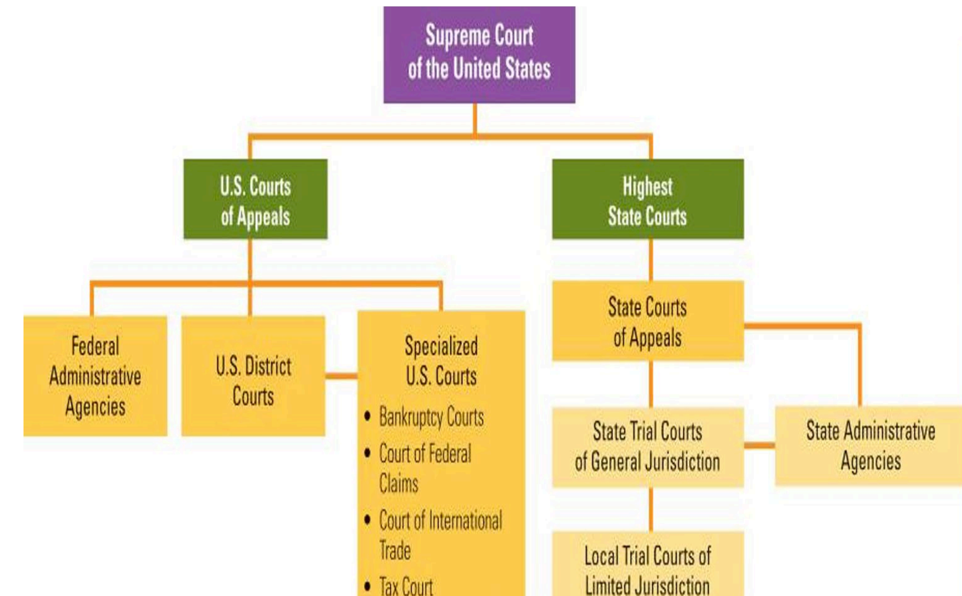


Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Central Theme for the First Five Cases

"The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

- U.S. Const. Art III, Sec. 1



Central Theme for the First Five Cases

In many of these cases, particularly with regard to administrative law, there is an emphasis on the fact that it is courts, and not administrative agencies, which must decide.

O'M

Trump v. United States, 29-939

- Decided July 1, 2024
- 6-3 Decision in favor of Trump
- Majority Opinion by Chief Justice Roberts

Trump v. United States, 29-939

- In Aug. 2023, former president Donald Trump was indicted on four counts of conspiracy and obstruction related to the Jan. 6, 2021, Capitol attack.

- Trump moved to dismiss, claiming that the alleged conduct fell within his "official duties" and that he was, therefore, "immune" from prosecution.
  - "ma[king] public statements,"
  - "communicat[ing] with … Justice Department officials,"
  - "communicat[ing] with state officials,"
  - "communcat[ing] with the Vice President … and … Members of Congress," and
  - "authoriz[ing] or direct[ing] others…"

- Can a former President by prosecuted for "official acts" done as President?

Trump v. United States, 29-939

- Presidents, including former presidents, have absolute immunity from criminal prosecution for actions within exclusive constitutional authority, such as pardoning offenses or removing officers.

- They have presumptive immunity from prosecution for “official acts.”
  - **Nixon v. Fitzgerald** (1982) – President has absolute civil immunity from liability for official acts.

- They have no immunity for “unofficial acts.”
  - **Clinton v. Jones** (1997) – President does not have civil immunity for unofficial acts.

Trump v. United States, 29-939

- The decision did not discuss whether President Trump's actions were "official" or "unofficial."
- Rejects President Trump's argument that former presidents can only be prosecuted after impeachment and conviction by Congress.
- Rejects government's argument that presidents enjoy no immunity from criminal prosecution whatsoever.
- It is up to the **courts** to decide, on a case-by-case basis, whether the actions of the President are official or unofficial.

Muldrow v. City of St. Louis, Missouri, 22-193

- Decided on Apr. 17, 2024
- 9-0 decision
- Opinion by Justice Kagan

Muldrow v. City of St. Louis, Missouri, 22-193

- Sergeant Jatonya Clayborn **Muldrow** is employed by the **St. Louis Police Department** for the Intelligence Division.

- She was a plainclothes officer from 2008 through 2017, investigating public corruption and human trafficking cases, oversaw the Gang Unit, and served as head of the Gun Crimes Unit.

- She was sometimes deputized by the FBI.

- New division commander, Captain Michael Deeba, wanted to replace **Muldrow** with, allegedly, a male police office. She was reassigned to a uniformed job in the Department's Fifth District. Her rank and pay remained the same, but her responsibilities, perks, and schedule did not.

- **Muldrow** brought a Title VII suit to challenge the transfer as sex discrimination.

Muldrow v. City of St. Louis, Missouri, 22-193

- **Muldrow** argued that the transfer was less prestigious and more administrative. Fewer opportunities for important investigations and networking opportunities. Also lost her weekday work schedule and take-home car.
- District court dismissed case as **Muldrow** was unable to show a “materially significant disadvantage.” Eight Circuit affirmed. She could not show an “adverse employment action” and could not establish a prima facie case for sex discrimination under Title VII. There was also no “materially adverse action” as required for a prima facie Title VII retaliation claim.
- As long as the transfer left the employee worse off in some way with respect to employment terms or conditions and was made because of a protected characteristic like sex or race, it violates Title VII.

Muldrow v. City of St. Louis, Missouri, 22-193

- Unanimous Supreme Court determined that an employee challenging a job transfer under Title VII must show some harm with respect to an identifiable term or condition of employment, but it does not need to be "significant."
- No basis for a heightened "significant harm" standard.
- Justice Alito concurrence – criticized majority for not clarifying the degree of harm required. There is "little if any substantive difference between the terminology the Court approves and the terminology it doesn't like."
- Justice Kavanaugh concurrence – disagrees with the requirement of "some harm." hypothetical provided by Justice Kavanaugh: even if the employee is transferred to another city on the basis of a protected category, this should violate Title VII, even if the quantifiable harm is infinitesimal.

O'M

Loper Bright Enterprises v. Raimondo, 22-451

- Decided Jun 28, 2024
- 6-2 Decision in favor of Loper Bright
- Majority Opinion by Chief Justice Roberts

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Loper Bright Enterprises v. Raimondo, 22-451

- Two consolidated cases: ***Loper Bright Enterprises v. Raimondo*** and ***Relentless, Inc. v Department of Commerce.***
  - Unfortunately for everyone, L comes before R, so the case will forever be known as "Loper Bright" and not "Relentless."

- **Magnuson-Stevens Fishery Conservation** and **Management Act** authorizes local councils to set standards for coastal fishing. To ensure standards, vessels may be required to carry an "observer."

- Who funds the observers?

- The act identifies three groups, but the **National Marine Fisheries Service** adopt a rule that adds Atlantic herring fishermen themselves as a group who must fund the observers.

- Can the NMFS add a fourth category? **Loper Bright** and other companies challenges the rule.

- Lower courts upheld NMFS's interpretation under the **Chevron** doctrine.

Loper Bright Enterprises v. Raimondo, 22-451

- In 1984, the Supreme Court decided ***Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc***., establishing a two-step test in analyzing a federal agency's interpretation of a congressional statute.

STEP 1

- Step 1: Is the language of the statute clear? If yes, that's the end of it. If the language is silent or ambiguous, then move on to step 2.

STEP 2

- Step 2: Is the agency's interpretation based on a "permissible construction of the statute?" If yes, then the court will defer to the agency's interpretation.

Loper Bright Enterprises v. Raimondo, 22-451

- This deference model has been of some controversy, particularly among critics who are concerned about the "administrative state."

- Would it encourage Congress to pass intentionally ambiguous statutes?

- Would it lead to a dereliction of judicial duty by deferring to an interpretation of the agency?

- Does it empower the executive branch to not only enforce, but legislate and adjudicate its own interpretation of the law?

Loper Bright Enterprises v. Raimondo, 22-451

- Supreme Court overrules **Chevron**, stating it is incompatible with the Administrative Procedure Act.
- Courts will no longer defer to agency interpretation and must conduct its own analysis.
- Concerns with this decision:
  - Deemphasizing the role of “experts” hired by agencies
  - Empowering courts to adjudicate matters on policy they may not have technical expertise in
  - Cases will not be quickly thrown out, leading to more protracted litigation.

Loper Bright Enterprises v. Raimondo, 22-451

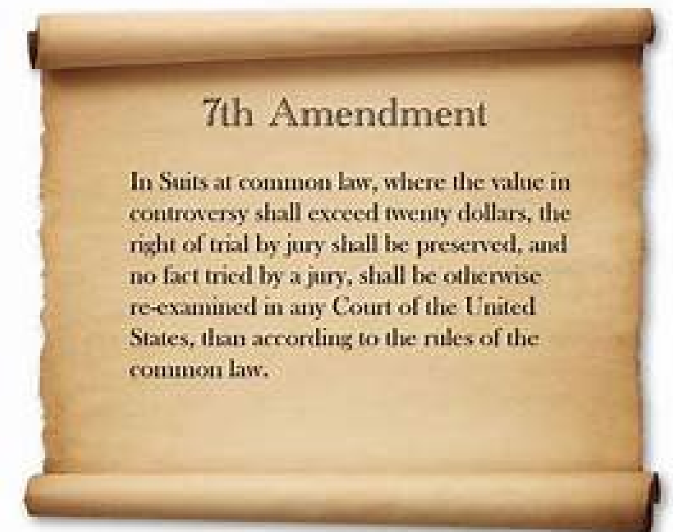
- **Courts** will decide and they will no longer simply defer to agency interpretation.
- There is more opportunity to challenge agency rules and courts will not simply defer to agency interpretation.
- The fact that Chevron is relatively old and current practice administrative and legal practice relies on it is not good enough reason to leave it in place.
- The current Supreme Court is open to overturning longstanding precedent.

Securities and Exchange Commission
v.
Jarkesy, 22-859

- Decided on June 27, 2024
- 6-3 Decision in favor of Jarkesy
- Majority Opinion by Chief Justice Roberts

Securities and Exchange Commission v. Jarkesy, 22-859

- In 2013, the Securities and Exchange Commission (SEC) sought civil penalties against George Jarkesy.
- SEC chose to adjudicate the matter before an SEC administrative law judge rather than federal court.
- Jarkesy argued that this violated his 7th Amendment right to a jury trial.



Securities and Exchange Commission v. Jarkesy, 22-859

- Yes, it violated the 7th Amendment.
  - **Jarkesy** is entitled to a jury trial and should have been taken to federal court for civil penalties.

- There is a "public rights exception" which permits Congress to assign matters of public rights to an agency without a jury consistent with the 7th Amendment.

- But Congress may not remove matters concerning private rights away from Article III courts.

- Public rights have typically related to relations with Indian tribes, administration of public lands, and granting public benefits such as veterans' payments, pensions, and patent rights.

- None of this deals with punishment or deterrence of individuals from violating federal laws.

Securities and Exchange Commission v. Jarkesy, 22-859

- Consistent with the theme, the **federal courts** are empowered to hear these types of cases.

- If an agency seeks civil penalties from an individual, it must sue the individual in federal court.

- Concerns:
  - Given litigation is costly, will agencies now forego pursuing civil penalties against certain individuals?

Coinbase, Inc. v. Suski, 23-3

- Decided on May 24, 2024
- 9-0 Decision in favor of Suski
- Opinion by Justice Jackson

Coinbase v. Suski, 23-3

- **Coinbase, Inc**. is a cryptocurrency exchange platform. When opening an account on **Coinbase,** an individual must agree to an arbitration provision with a delegation clause, permitting an arbitrator to decide all contract disputes.

- Coinbase ran a sweepstakes for a chance to win a cryptocurrency called "Dogecoin."

- When entering the sweepstakes, entrants were required to agree to a forum selection clause, indicating all claims would be litigated in California courts.

Coinbase v. Suski, 23-3

- Respondents filed a class action lawsuit in federal court in Northern California, alleging that **Coinbase**'s sweepstakes violated <u>California's False Advertising Law</u>, among other statutes.

- **Coinbase** moved to compel arbitration per the first agreement that all class members agreed to when opening their Coinbase accounts, arguing that an arbitrator should decide whether the claims were arbitrable.

- Who decides whether the claims of the class are arbitrable?

Coinbase v. Suski, 23-3

- A court must decide. The question of which contract controls is a question for the courts, not an arbitrator.
- On theme, the **courts** are empowered to decide the question of whether the claims are arbitrable in this narrow circumstance (given that there were two conflicting contracts).

O'M

Starbucks Corporation
v.
McKinney, 23-367

- Decided on June 13, 2024
- 9-1 Decision (Jackson concurred in part and dissented in part) in favor of Starbucks
- Majority Opinion by Justice Thomas

Starbucks Corporation v. McKinney, 23-367

- In 2022, a supervisor at a Memphis Starbucks initiated union-organizing efforts.
- On January 18, 2022, the Memphis store was later closed by management.
- On February 8, 2022, seven employees, including key organizing committee members, were fired, leading to reduced union support.
- In June 2022, the Memphis store voted to join the union.
- Union filed charges for unfair labor practices and the National Labor Relations Board filed an injunction, demanding that fired employees be reinstated.
- But what test must the court use to evaluate injunction requests under Section 10(j) of the National Labor Relations Act?

Starbucks Corporation v. McKinney, 23-367

- NLRB argues that it must satisfy a two-factor test, in which NLRB bears the burden of showing

  (1) there is reasonable cause to believe that unfair labor practices have occurred" and
  (2) whether injunctive relief is "just and proper."

- Supreme Court disagrees. The NLRB must instead satisfy the standard four-part test:

  (1) likelihood of success on the merits,

  (2) irreparable harm,

  (3) balance of the equities, and

  (4) public interest.

- Takeaways: The NLRB must satisfy the traditional four-part test in order to succeed on an injunction in court.

Corner Post, Inc.
v.
Board of Governors of the Federal Reserve System, 22-1008

- Decided July 1, 2024
- 6-3 Decision for Corner Post
- Majority opinion by Justice Barrett

Corner Post, Inc. v. Board of Governors of the Federal Reserve System, 22-1008

- When you use your debit card as payment at a merchant's establishment, the merchant must pay an interchange fee to the payment network.
- The Durbin Amendment to Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requires the Federal Reserve Board to set standards assessing the reasonability and proportionality of interchange transaction fees.
- In 2011, Federal Reserve Board established Regulation II regulating this fee.
- Trade associations and retailers sued the board, arguing that Regulation II violates the underlying statute.
- The challenges lost in the D.C. Circuit in 2014.

Corner Post, Inc. v. Board of Governors of the Federal Reserve System, 22-1008

- **Corner Post** is a North Dakota-based truck stop and convenience store that was incorporated in 2017 and opened in 2018.

- In 2021, it filed a separate suit challenging the Regulation under the Administrative Procedure Act.

- However, Section 2401(a) of the APA sets a six-year statute of limitations on suits.

- "The default statute of limitations for suits against the United States requires 'the complaint [to be] filed within six years after the right of action accrues." 28 U.S.C. Sec. 2401(a).

- When does the right of action "accrue"?

Corner Post, Inc. v. Board of Governors of the Federal Reserve System, 22-1008

- The Supreme Court decided that the right of action does not accrue until the plaintiff is actually injured by the final agency decision. Thus, **Corner Post**'s lawsuit could proceed.

- Takeaway:
  - Challenge of a regulation occurs after the party is actually injured by the regulation.

Harrington v. Purdue Pharma L.P., 23-124

- Decided on June 27, 2024
- 5-4 Decision in favor of Harrington
- Majority opinion by Justice Gorsuch

Harrington v. Purdue Pharma, 23-124

- **Purdue Pharma** was owned and controlled by the Sackler family.
- **Purdue Pharma** makes OxyContin, a prescription narcotic.
- OxyContin was originally marketed as non-addictive.
- This is not the case.
- Around 2007, expecting suits against **Purdue Pharma**, the Sacklers began “milking” **Purdue Pharma**, distributing to themselves as much as 70% of Purdue’s annual revenue.
- In 2019, **Purdue Pharma** declared Chapter 11 bankruptcy.

Harrington v. Purdue Pharma, 23-124

- **Purdue Pharma** has claims against the Sacklers.
- Per a potential settlement, the Sacklers agreed to return billions of dollars to **Purdue Pharma** on the condition that all claims that could be made against **Purdue Pharma** and the Sacklers personally be enjoined as to the Sacklers'.
- The settlement was included in a potential plan.
- Fewer than 20% of the creditors voted on the plan, but nearly all of those who did vote voted to approve the plan.
- The U.S. Trustee, several creditors, and governmental entities objected.
- Bankruptcy court confirmed the plan. On appeal to the district court, the plan was rejected.
- While on appeal, the Sacklers agreed to contribute more money per the settlement and the governmental entities withdrew their objections.

Harrington v. Purdue Pharma, 23-124

- U.S. Trustee did not recall the objection.
- Second Circuit reversed district court and confirmed the plan.
- U.S. Trustee filed certiorari which was accepted.
- May a bankruptcy court extend the benefits of a Chapter 11 discharge, usually reserved for debtors, to include nondebtors?

Harrington v. Purdue Pharma, 23-124

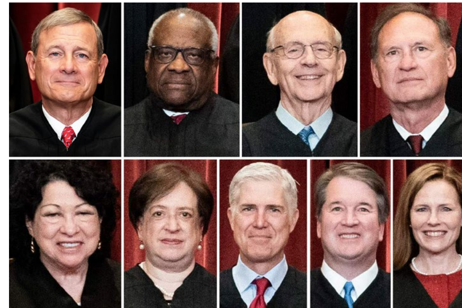
- **No**. The Bankruptcy Code does not give courts the authority to extinguish non-debtor claims against other non-debtors without the consent of the claimants.

- What the Court did not decide:
  - Whether consensual third-party releases may be included in a Chapter 11 plan
  - What qualifies as "consensual"
  - Whether different rules apply when a plan provides for full satisfaction of claims against the 3rd-party non-debtor
  - Whether plans containing now unlawful releases are subject to modification.

Harrington v. Purdue Pharma, 23-124

- Takeaways:
  - Consent of potential claimants now needed to dismiss claims against non-debtors in a Chapter 11 plan.

- Why did the Justices decide the way they did?
  - **Majority**: Justices **Gorsuch**, **Thomas**, **Alito**, **Barrett**, and **Jackson**
    - Majority believes that these claims cannot be dismissed without consent. Opens up the Sacklers to potential liability. Prioritizes the potential liability of the Sacklers.
  - **Dissent**: Justices **Kavanaugh**, **Sotomayor**, **Kagan**, and Chief Justice **Roberts**
    - Dissent believes that refusing to confirm the plan will actually result in less recovery by opioid victims. Prioritizes the actual recovery of the victims.



O'M

Murray v. UBS Securities, LLC, 22-660

- Decided on February 8, 2024
- 9-0 Decision in favor of Murray
- Majority Opinion by Justice Sotomayor

Murray v. UBS Securities, LLC, 22-660

- **Murray** is a whistleblower, claiming that his superiors pressured him into skewing his reports to the SEC.
- He reported this to his direct supervisor, who appeared to sympathize, but suggested that skew the reports.
- Privately, the direct supervisor recommended Murray's termination and Murray was fired in 2012.

Murray v. UBS Securities, LLC, 22-660

- **Murray** invokes Section 1514A of the Sarbanes Oxley Act, which prohibits publicly-traded companies from taking adverse employment action against employees who "provide information, cause information to be provided or otherwise assist in an investigation" or "file, cause to be filed, testify, participate in, or otherwise assist in a proceeding" regarding any conduct which an employee "reasonably believes" constitutes a violation of any SEC rule or regulation as well as sections 1341, 1343, 1344, and 1348 of Title 18 of the U.S. Code."

- Employers may not "discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in terms and condition of employment" because of whistleblowing activities.

Murray v. UBS Securities, LLC, 22-660

- Is **Murray** required to show "retaliatory intent" on the part of **UBS** in his invocation of Section 1514A?
- **Second Circuit** said **yes**, creating a split with the **Fifth** and **Ninth Circuits** which said **no**.
- **Answer**: **No**, Murray does not need to show "retaliatory intent," only that his protected activity was a "contributing factor" in the termination of his employment.

Truck Insurance Exchange v. Kaiser Gypsum Company, Inc., 22-1079

- Decided on June 6, 2024
- 8-0 Decision in favor of Truck Insurance Exchange
- Opinion by Justice Sotomayor

Truck Insurance Exchange v. Kaiser Gypsum, 22-1079

- **Truck Insurance Exchange** ("Truck") is the primary insurer of companies, including **Kaiser Gypsum**, that manufacture and sold products with asbestos.
- **Kaiser Gypsum** and Hanson Permanente Cement, Inc. filed Chapter 11 bankruptcy.
- Companies that face asbestos claims often file bankruptcy, establishing a trust for asbestos claims.
- **Truck** is obligated to pay up to $500,000 per asbestos claim.
- **Truck** wants to object to the bankruptcy reorganization plan because it lacked disclosure requirements that Truck thought would save it from paying millions of dollars for fraudulent claims.

Truck Insurance Exchange v. Kaiser Gypsum, 22-1079

- Is an insurer with financial responsibility for a bankruptcy claim a "party in interest" under Chapter 11 of the Bankruptcy Code and can they object to the plan of reorganization?
- Yes. An insurer with financial responsibility for a bankruptcy claim is a "party in interest."
- The lower court decided that Truck was not a party in interest because the plan 'did not increase **Truck**'s prepetition obligations or impair **Truck**'s pre-petition policy rights" per the insurance neutrality doctrine.
- However, the plain meaning of a party in interest is "entities that are potentially concerned with or affected by a proceeding."

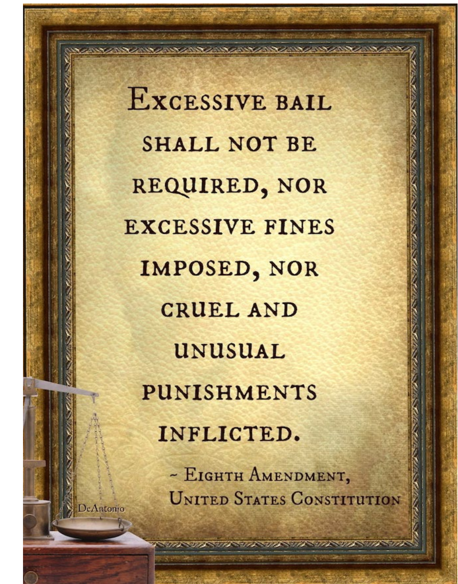
O'M

City of Grants Pass v. Johnson, 23-175

- Decided June 28, 2024
- 6-3 Decision in favor of City of Grants Pass
- Majority opinion by Justice Gorsuch

City of Grants Pass v. Johnson, 23-175

- **Grants Pass**, Oregon has a population of about 38,000 with 50-600 persons unhoused.
- The number of homeless exceeds the number of shelter beds, so some are forced to sleep outside.
- However, the **Grants Pass** municipal code has laws against camping.
- In 2019, the Ninth Circuit decided in ***Martin v. City of Boise*** that Boise, Idaho's criminal penalties for sitting, sleeping, or lying outside is a violation of the 8th Amendment right against cruel and unusual punishment when applied to a homeless person when a shelter is not available.



City of Grants Pass v. Johnson, 23-175

- **Grants Pass** provides for civil penalties, but left unpaid, could mature to criminal penalties.
- Does a municipality's anti-camping ordinance violate the 8th Amendment right against cruel and unusual punishment?
- **No**. The ordinance does not violate the 8th Amendment.
- Cruel and unusual punishment is historically applied to punishments that follow criminal convictions, not on what behaviors a government may criminalize.
- But, in ***Robinson v. California*** (1962), the Supreme Court struck down a law which made it a criminal offence to be addicted to drugs. Is the **Grants Pass** ordinance criminalizing a status?
- **No**, an ordinance against public camping is distinguishable from a law against addiction. While a law cannot criminalize an involuntary status, it can criminalize actions that result from that status.
- For example, in ***Powell v. Texas*** (1968), the Supreme Court upheld a law against public drunkenness.