

American Constitution Society  
Nashville Chapter

Supreme Court Review

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I. Abortion

*Whole Women's Health v. Jackson*, No. 21-463 (argued on November 1, 2021). Whether a state can insulate from federal-court review a law that prohibits the exercise of a constitutional right by delegating to the general public the authority to enforce that prohibition through civil actions.

*United States v. Texas*, No. 21-588 (argued on November 1, 2021). Whether the United States may bring suit in federal court and obtain injunctive or declaratory relief against the state, state court judges, state court clerks, other state officials, or all private parties to prohibit Texas Senate Bill 8 from being enforced.

*Dobbs v. Jackson Women's Health Organization*, No. 19-1392 (argued on December 1, 2021). Whether all pre-viability prohibitions on elective abortions are unconstitutional.

II. Civil rights

*Thompson v. Clark*, No. 20-1659 (argued on October 12, 2021). Whether the rule that a plaintiff must await favorable termination before bringing a Section 1983 action alleging unreasonable seizure pursuant to legal process requires the plaintiff to show that the criminal proceeding against him has “formally ended in a manner not inconsistent with his innocence,” as the U.S. Court of Appeals for the 11th Circuit decided in *Laskar v. Hurd*, or that the proceeding “ended in a manner that affirmatively indicates his innocence,” as the U.S. Court of Appeals for the 2nd Circuit decided in *Lanning v. City of Glens Falls*.

*Rivas-Villegas v. Cortesluna*, 142 S.Ct. \_\_\_\_ (October 18, 2021).

Officer Rivas-Villegas is entitled to qualified immunity in this excessive force action brought under 42 U. S. C. §1983; the 9th Circuit's holding that circuit precedent “put him on notice that his conduct constituted excessive force” is reversed.

*City of Tahlequah, Oklahoma v. Bond*, 142 S.Ct. \_\_\_\_ (October 18, 2021)

Officers Girdner and Vick are entitled to qualified immunity in this excessive force action brought under 42 U. S. C. §1983; the 10th Circuit’s contrary holding is not based on a single precedent finding a Fourth Amendment violation under similar circumstances.

### III. Criminal law

*United States v. Tsarnaev*, No. 20-443 (argued on October 13, 2021). (1) Whether the U.S. Court of Appeals for the 1st Circuit erred in concluding that Dzhokhar Tsarnaev’s capital sentences must be vacated on the ground that the district court, during its 21-day voir dire, did not ask each prospective juror for a specific accounting of the pretrial media coverage that he or she had read, heard or seen about Tsarnaev’s case; and (2) whether the district court committed reversible error at the penalty phase of Tsarnaev’s trial by excluding evidence that Tsarnaev’s older brother was allegedly involved in different crimes two years before the offenses for which Tsarnaev was convicted.

### IV. First Amendment – freedom of speech

*Houston Community College System v. Wilson*, No. 20-804 (argued on November 2, 2021). Whether the First Amendment restricts the authority of an elected body to issue a censure resolution in response to a member’s speech.

*City of Austin, Texas v. Reagan National Advertising of Texas, Inc.*, No. 20-1029 (argued on November 10, 2021). Whether the Austin city code’s distinction between on-premise signs, which may be digitized, and off-premise signs, which may not, is a facially unconstitutional content-based regulation under *Reed v. Town of Gilbert*.

*Shurtleff v. Boston*, No. 20-1800. (to be argued January 18, 2022). (1) Whether the U.S. Court of Appeals for the 1st Circuit’s failure to apply the Supreme Court’s forum doctrine to the First Amendment challenge of a private religious organization that was denied access to briefly display its flag on a city flagpole, pursuant to a city policy expressly designating the flagpole a public forum open to all applicants, with hundreds of approvals and no denials, conflicts with the Supreme Court’s precedents holding that speech restrictions based on religious viewpoint or content violate the First Amendment or are otherwise subject to strict scrutiny and that the establishment clause is not a defense to censorship of private speech in a public forum open to all comers; (2) whether the 1st Circuit’s classifying as government speech the brief display of a private religious organization’s flag on a city flagpole, pursuant to a city policy expressly designating the flagpole a public forum open to all applicants, with hundreds of approvals and no denials, unconstitutionally expands the government speech doctrine.

### V. Religion

*Carson v. Makin*, No. 20-1088 (to be argued on December 8, 2021). Whether a state violates the religion clauses or equal protection clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or “sectarian,” instruction.

*Ramirez v. Collier*, No. 21-5592 (argued on November 9, 2021). (1) Whether, consistent with the free exercise clause and Religious Land Use and Institutionalized Persons Act, Texas' decision to allow Ramirez's pastor to enter the execution chamber, but forbidding the pastor from laying his hands on his parishioner as he dies, substantially burden the exercise of his religion, so as to require Texas to justify the deprivation as the least restrictive means of advancing a compelling governmental interest; and (2) whether, considering the free exercise clause and RLUIPA, Texas' decision to allow Ramirez's pastor to enter the execution chamber, but forbidding the pastor from singing prayers, saying prayers or scripture, or whispering prayers or scripture, substantially burden the exercise of his religion, so as to require Texas to justify the deprivation as the least restrictive means of advancing a compelling governmental interest.

## VI. Second Amendment

*New York Rifle and Piston Association v. Bruen*, No. 20-843 (argued on November 3, 2021). Whether the state of New York's denial of petitioners' applications for concealed-carry licenses for self-defense violated the Second Amendment.