A View From Washington:  
Commentary and Recap of the U.S. Supreme Court 2020 Term and the Administration’s Independent Contractor Initiatives

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**Agenda**

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Part 1

The 2020-2021 Supreme Court
The 2020-2021 Court

Composition of the Court
• One New Justice -- Justice Coney Barrett

Continued Impact of COVID-19
• Arguments have taken place by telephone since May 2020.
• Justices now ask questions in order of seniority.
Statistics for October Term 2020

Frequency in the Majority

SCOTUS Advocates

Merits Cases By Vote Split

67 Cases Decided
EEO

Forbes v. SeaWorld (20-7153)
- Challenge to per curium order issued by the 4th Circuit in 2020 that affirmed a trial court’s dismissal of petitioner’s 2019 harassment and bias suit.

Isabel Del Pino Allen, Petitioner v. Board of Trustees of Miami Dade College (20-7116)
- Petition by formerly tenured professor who claimed she had been fired as punishment for telling two publications that a fellow professor had submitted plagiarized material.

Melvin v. Federal Express Corp (20-1107)
- Challenge to 2020 decision in 11th Circuit refusing to reopen petitioner’s ADEA suit.

- Challenge to split 6th Circuit decision to remand a wage suit by former Michigan cosmetology school students so that a district court could use a different test to determine whether the students were employees and owed pay for janitorial work.

O’Reilly Auto Enterprises LLC v. Bell (20-1224)
- Challenge to 1st Circuit ruling that gave an ex-store manager with Tourette’s syndrome reprieve of his ADA suit.

NLRB

Badkin v. Lockheed (20-7104)
- Challenge to ruling that petitioner’s firing by Lockheed Martin did not violate a collective bargaining agreement between his company and his union.

International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 229 v. NLRB (20-1111)
- Petition by Ironworkers local asserting that a federal labor law provision barring protesting unions from inviting neutral workers to join the picket line violates the First Amendment.

Jade Thompson v. Marietta Education Association et al. (20-1019)
- Challenge to an Ohio law that allows elected unions to act as the exclusive bargaining representative of public employees in workplaces they represent, leaving in place a 6th Circuit ruling against a high school teacher.
Notable Cases
 Denied Cert

FMLA
*Randy T. Thomas v. Steve Stanson* (20-7595)
- Petition by pro-se litigant who claimed that he had been fired from his job at the Petersburg Utility Lines Water Department in Virginia while he was on FMLA medical leave.

FLSA
*Just Energy Marketing Corp et al. v. Davina Hurt et al.* (20-1093)
- Challenge to 6th Circuit ruling that FLSA’s overtime exemption for outside sellers covers a class of employees selling products door to door.

LGBTQ Rights
*Gloucester County School Board v. Grimm* (20-1163)
- Petition to review a 4th Circuit decision in favor of a transgender man’s suit challenging his Virginia high school’s bathroom access policy.

Former Presidents
*Texas et al. v. Cook County, Illinois et al.* (20A150)
- Petition to revive Trump-era public charge rule.

*Protect our Parks Inc. et al v. City of Chicago et al.* (20-1259)
- Petition to revive lawsuit challenging the City of Chicago’s approval for former President Obama’s planned $500M presidential center in a public park.
Part 2

The 2020-2021 Term’s Employment-Related Cases: Holdings, Analysis & Significance
Employee Benefits Cases
A. Rutledge v. Pharmaceutical Care Management Association
B. California v. Texas

Immigration Case
C. Sanchez v. Mayorkas

Employee Rights Cases
D. Henry Schein, Inc. v. Archer and White Sales, Inc.
E. Van Buren v. United States
F. Nestlé USA, Inc. v. Doe
G. National Collegiate Athletic Association v. Alston
H. Cedar Point Nursery v. Hassid
I. TransUnion LLC v. Ramirez

First Amendment Cases
I. Fulton v. City of Philadelphia
J. Mahanoy Area School District v. B.L.
**Rutledge v. Pharmaceutical Care Management Association**

**Docket Number:** 18-540

**Citation:** *Rutledge v. Pharmaceutical Care*, 141 S.Ct. 474

**Argument:** October 6, 2020

**Opinion:** December 10, 2020

**Vote:** 8-0

**Holding:** Arkansas’ Act 900 is not preempted by the Employee Retirement Income Security Act of 1974.

**Judgment:** Reversed and remanded, 8-0, in an opinion by Justice Sotomayor on December 10, 2020. Justice Thomas filed a concurring opinion. Justice Barrett took no part in the consideration or decision of this case.

**Practical Impact:** The ruling overturns a 2018 decision by the 8th Circuit, which had held that ERISA preempted Arkansas’ Act 900, a law passed in 2015 that forbade PBMs (pharmacy benefit managers) from reimbursing pharmacies for drugs at rates below the drugs’ acquisition costs. The ruling clears the way for other states to regulate PBMs.


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**California v. Texas**

**Docket Number:** 19-840

**Citation:** *California v. Texas*, 141 S.Ct. 2104

**Argument:** November 10, 2020

**Opinion:** June 17, 2021

**Vote:** 7-2

**Holding:** Plaintiffs lack standing to challenge the Patient Protection and Affordable Care Act’s minimum essential coverage provision.

**Judgment:** Reversed and remanded, 7-2, in an opinion by Justice Breyer on June 17, 2021. Justice Thomas filed a concurring opinion. Justice Alito filed a dissenting opinion, in which Justice Gorsuch joined.

**Practical Impact:** Employers should note that the Affordable Care Act will remain in full effect and remain focused on compliance and reporting requirements.

**Source:** [https://www.scotusblog.com/case-files/cases/california-v-texas/](https://www.scotusblog.com/case-files/cases/california-v-texas/)
Sanchez v. Mayorkas

**Docket Number:** 20-315

**Citation:** *Sanchez v. Mayorkas*, 141 S.Ct. 1809

**Argument:** April 18, 2021

**Opinion:** June 7, 2021

**Vote:** 9-0

**Holding:** An individual who entered the United States unlawfully is not eligible to become a lawful permanent resident under 8 U.S.C. § 1255 even if the United States has granted the individual temporary protected status.

**Judgment:** Affirmed, 9-0, in an opinion by Justice Kagan on June 7, 2021.

**Practical Impact:** The decision affects many TPS (temporary protected status) holders as well as businesses seeking to sponsor employment-based green cards for certain workers.

**Source:** https://www.scotusblog.com/case-files/cases/sanchez-v-mayorkas/
**Docket Number:** 19-963

**Citation:** *Henry Schein v. Archer*, 141 S.Ct. 656 (Mem)

**Argument:** December 8, 2020

**Opinion:** January 25, 2021

**Holding:** Certiorari dismissed as improvidently granted.

**Judgment:** Dismissed in a per curiam opinion on January 25, 2021.

**Practical Impact:** The dismissal leaves in place the decision of the 5th Circuit that a federal district court, rather than an arbitrator, should decide whether the dispute with Henry Schein is subject to arbitration.

Van Buren v. United States

Docket Number: 19-783
Citation: Van Buren v. United States, 141 S.Ct. 1648
Argument: November 30, 2020
Opinion: June 3, 2021
Vote: 6-3

Holding: An individual “exceeds authorized access” under the Computer Fraud and Abuse Act of 1986, 18 U.S.C. § 1030(a)(2), when he accesses a computer with authorization but then obtains information located in particular areas of the computer — such as files, folders or databases — that are off-limits to him, but CFAA is not violated merely because someone has improper motives for obtaining information that the person is authorized to access.


Practical Impact: The reach of the CFAA has been curtailed. The decision will make it more challenging for businesses to cite the CFAA in lawsuits where insiders are accused of misusing computer networks to view trade secrets, but CFAA claims may still be possible to bring in cases where employees are accused of stealing company files after termination.

Source: https://www.scotusblog.com/case-files/cases/van-buren-v-united-states/
Holding: To plead facts sufficient to support a domestic application of the Alien Tort Statute, 28 U.S.C. § 1350, plaintiffs must allege more domestic conduct than general corporate activity.

Judgment: Reversed and remanded, 8-1, in an opinion by Justice Thomas on June 17, 2021. Justice Thomas announced the judgment of the court and delivered the opinion of the court with respect to Parts I and II, in which Chief Justice Roberts and Justices Breyer, Sotomayor, Kagan, Gorsuch, Kavanaugh and Barrett joined, and an opinion with respect to Part III, in which Justices Gorsuch and Kavanaugh joined. Justice Gorsuch filed a concurring opinion, in which Justice Alito joined as to Part I, and in which Justice Kavanaugh joined as to Part II. Justice Sotomayor filed an opinion concurring in part and concurring in the judgment, in which Justices Breyer and Kagan joined. Justice Alito filed a dissenting opinion.

Practical Impact: The decision leaves open the question of whether US corporations can be liable under the ATS. With the potential for liability open and legislative tides moving beyond disclosure and towards mandatory due diligence, the impetus for businesses, whether subject to a current law or not, to understand and manage the modern slavery and child labor risks in their supply chains continues to increase.

Source: https://www.scotusblog.com/case-files/cases/nestle-usa-inc-v-john-doe-i/
Docket Number: 20-512

Citation: National Collegiate Athletic Association v. Alston, 141 S.Ct. 2141

Argument: March 31, 2021

Opinion: June 21, 2021

Vote: 9-0

Holding: The district court’s injunction pertaining to certain NCAA rules limiting the education-related benefits that schools may make available to student-athletes is consistent with established antitrust principles.


Practical Impact: The decision allows for schools to provide educational benefits to student athletes that were previously barred or limited by the NCAA, including reimbursements for computers and musical instruments, free tutoring, internship stipends, and cash academic achievement awards.

**Cedar Point Nursery v. Hassid**

**Docket Number:** 20-107

**Citation:** *Cedar Point v. Hassid*, 141 S.Ct. 2063

**Argument:** March 22, 2021

**Opinion:** June 23, 2021

**Vote:** 6-3

**Holding:** A California regulation granting labor organizations a “right to take access” to an agricultural employer’s property to solicit support for unionization constitutes a per se physical taking.


**Practical Impact:** The decision nullifies the California rule giving union organizers access to farm laborers at work, but will have a limited effect, if any, on labor rights under federal law.

**Source:** https://www.scotusblog.com/case-files/cases/cedar-point-nursery-v-hassid/
**TransUnion LLC v. Ramirez**

**Docket Number:** 20-297

**Citation:** *TransUnion v. Ramirez*, 141 S.Ct. 2190

**Argument:** March 30, 2021

**Opinion:** June 25, 2021

**Vote:** 5-4

**Holding:** Only a plaintiff concretely harmed by a defendant’s violation of the Fair Credit Reporting Act has Article III standing to seek damages against that private defendant in federal court.


**Practical Impact:** While the decision is helpful to employers in that it restricts “no-harm” class actions in federal court, the practical impact may be an increase in similar claims filed in state courts with less demanding standing requirements.

**Source:** [https://www.scotusblog.com/case-files/cases/transunion-llc-v-ramirez/](https://www.scotusblog.com/case-files/cases/transunion-llc-v-ramirez/)
Fulton v. City of Philadelphia

Docket Number: 19-123

Citation: Fulton v. Philadelphia, 141 S.Ct. 1868

Argument: November 4, 2020

Opinion: June 17, 2021

Vote: 9-0

Holding: Philadelphia's refusal to contract with Catholic Social Services for the provision of foster care services unless CSS agrees to certify same-sex couples as foster parents violates the free exercise clause of the First Amendment.

Judgment: Reversed and remanded, 9-0, in an opinion by Chief Justice Roberts on June 17, 2021. Chief Justice Roberts delivered the opinion of the court, in which Justices Breyer, Sotomayor, Kagan, Kavanaugh and Barrett joined. Justice Barrett filed a concurring opinion, in which Justice Kavanaugh joined, and in which Justice Breyer joined as to all but the first paragraph. Justice Alito filed an opinion concurring in the judgment, in which Justices Thomas and Gorsuch joined. Justice Gorsuch filed an opinion concurring in the judgment, in which Justices Thomas and Alito joined.

Practical Impact: Businesses may find it more difficult to recruit, retain, and assign employees to areas where the only government contractor in town refused to serve them and create an unworkable array of religious exemptions to nondiscrimination laws, making commercial transactions difficult to navigate.

Source: https://www.scotusblog.com/case-files/cases/fulton-v-city-of-philadelphia-pennsylvania/
Docket Number: 20-255

Citation: Mahanoy v. B.L., 141 S.Ct. 2038

Argument: April 28, 2021

Opinion: June 23, 2021

Vote: 8-1

Holding: The school district’s decision to suspend student Brandi Levy from the cheerleading team for posting to social media (outside of school hours and away from the school’s campus) vulgar language and gestures critical of the school violates the First Amendment.


Practical Impact: Public schools should be cautious in their regulation of student speech and delineate between on-campus and off-campus speech. Public schools may need to review and revise existing policies and procedures regarding student speech.

Source: https://www.scotusblog.com/case-files/cases/mahanoy-area-school-district-v-b-l/
Part 3

Looking Ahead…Cert Granted for 2021-2022 Term
Babcock v. Saul, No. 20-480
• Issue: Whether a civil service pension received for federal civilian employment as a “military technician (dual status)” is “a payment based wholly on service as a member of a uniformed service” for the purposes of the Social Security Act’s windfall elimination provision.

Badgerow v. Walters, No. 20-1143
• Issue: Whether federal courts have subject-matter jurisdiction to confirm or vacate an arbitration award under Sections 9 and 10 of the Federal Arbitration Act when the only basis for jurisdiction is that the underlying dispute involved a federal question.

Cameron v. EMW Women’s Surgical Center, P.S.C., No. 20-601
• Issue: Whether a state attorney general vested with the power to defend state law should be permitted to intervene after a federal court of appeals invalidates a state statute when no other state actor will defend the law.

Hughes v. Northwestern University, No. 19-1401
• Issue: Whether allegations that a defined-contribution retirement plan paid or charged its participants fees that substantially exceeded fees for alternative available investment products or services are sufficient to state a claim against plan fiduciaries for breach of the duty of prudence under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1104(a)(1)(B).

Patel v. Garland, No. 20-979
• Issue: Whether 8 U.S.C. 1252(a)(2)(B)(i) precludes judicial review of non-discretionary determinations underlying the determination of the Board of Immigration Appeals that petitioner is inadmissible to the United States for permanent residence and therefore ineligible for adjustment of status under 8 U.S.C. 1255(i).

U.S. v. Vaello-Madero, No. 20-303
• Issue: Whether Congress violated the equal-protection component of the due process clause of the Fifth Amendment by establishing Supplemental Security Income — a program that provides benefits to needy aged, blind and disabled individuals — in the 50 states and the District of Columbia, and in the Northern Mariana Islands pursuant to a negotiated covenant, but not extending it to Puerto Rico.
Part 4

Current Administration’s Independent Contractor Initiatives
Legislative Updates

- PRO Act
- Unemployment Insurance Modernization Act (UIMA)
- California ABC Test under Labor Code and Industry Exemptions
• FLSA – DOL IC Rule Withdrawal
• What’s next? The Economic Realities Test Revisited
• 213(d) and its Impact
Closing Thoughts