

Constitution Day release of new Cato Supreme Court Review

Looking Back, Looking Forward at the Supreme Court

On September 17—Constitution Day—Cato released its 19th annual *Cato Supreme Court Review*, the first such journal to be released after the end of each term for the Court. With contributions from scholars across the field, the *Review* is the only comprehensive look at the Court’s cases that addresses the decisions from a classically liberal, Madisonian perspective grounded in limited government principles.

As always, the release of this year’s volume was accompanied by Cato’s Constitution Day symposium, held virtually this year because of the COVID-19 pandemic. The symposium included the Annual B. Kenneth Simon Lecture delivered by Judge Don Willett of the U.S. Court of Appeals for the Fifth Circuit. (See “Civic Illiteracy and the Rule of Law,” page 9.)

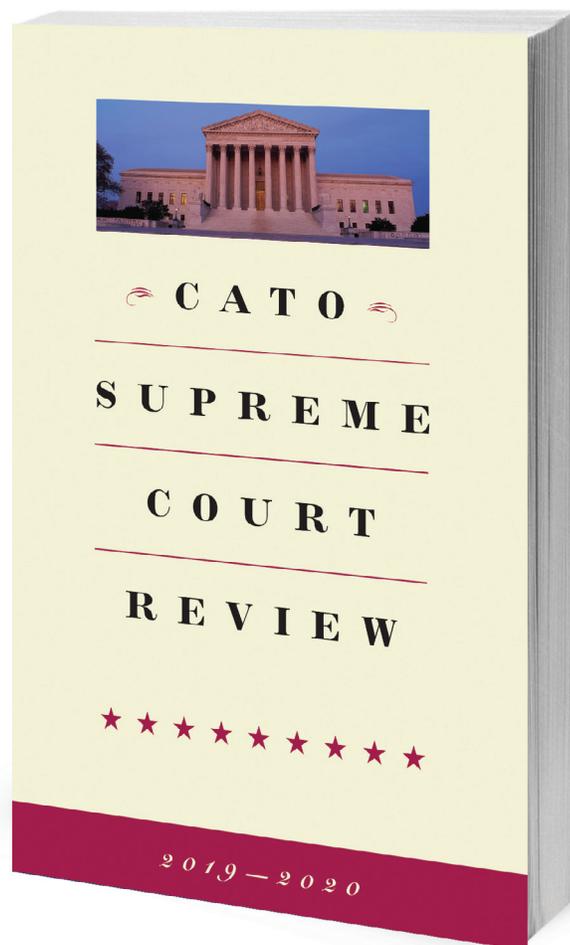
The Supreme Court has also had to adapt to the pandemic, cancelling oral arguments in March and April while conducting an unusual series of hearings in May using teleconferences. That didn’t stop the Court from making several important rulings, whose consequences and merits are addressed in the *Review* under editor in chief Trevor Burrus, a research fellow at Cato’s Robert A. Levy Center for Constitutional Studies.

One case that attracted particular attention was *Chiafalo v. Washington*, along with its companion case, *Colorado Dept. of State v. Baca*. Keith E. Whittington analyzes the ruling in “The Vexing Problem of Faithless Electors,” explaining how the Court resolved the thorny textual problem of state laws binding members of the Electoral College to vote for their party’s candidates. In 2016, several states sought to enforce these laws for the first time in response to a movement of so-called Hamilton Electors seeking to block the election of Donald Trump. The Court ul-

timately ruled unanimously, though with some justices offering different rationales, that state laws binding electors are constitutionally valid.

School choice and the First Amendment were also on the docket, with a crucial victory for liberty in *Espinoza v. Montana Dept. of Revenue*. Clint Bolick, cofounder of the Institute for Justice and now a justice on the Arizona Supreme Court, writes about the case in “The Dimming of Blaine’s Legacy.” The Blaine in question is U.S. Senator James G. Blaine (1830–1893). Blaine was a strident opponent of immigration and Catholicism in particular, and he led an effort to adopt a constitutional amendment barring state funding for “sectarian” schools, a thinly veiled attack on the system of parochial schools operated by the Catholic Church.

Blaine’s efforts to amend the federal Constitution were unsuccessful, but several similar “baby Blaine” amendments were adopted as part of state constitutions, where they have recently been invoked against programs that allow parents to direct funding to the school of their choosing. The unambiguous origin in anti-Catholic bigotry led to a 5-4 ruling striking down the Blaine amendments as violations of the First Amendment. Bolick traces the long history of cases that led the Court to strike down these provisions, explaining that “*Espinoza*, in a very important sense, is the culmination of a long journey meant to make America safe for school choice.”



As always with the *Cato Supreme Court Review*, in addition to analyzing the cases just decided, contributors look ahead to the upcoming 2020–2021 term, which began on the first Monday in October. Anastasia Boden, senior attorney at the Pacific Legal Foundation, takes on that topic in “Looking Ahead: Déjà Vu at the Supreme Court.”

Pending cases include another challenge to the Affordable Care Act, *California v. Texas*, which stems from a lawsuit filed by several Republican-governed states, and *Fulton v. City of Philadelphia*, in which Philadelphia excluded religious agencies from the city’s foster care system because of their refusal to place children with same-sex couples. ■