

Introduction

*Laura Bondank-Harmon**

This is the 25th volume of the *Cato Supreme Court Review*, the nation's first in-depth assessment of the most recent Supreme Court Term, plus a preview of the Term ahead. This is also my first year as managing editor of the *Review*. It is an honor to take on a larger role in the publication of such an important piece of legal scholarship, and I want to thank our editor-in-chief, Tommy Berry, for both his guidance and for the opportunity to take on this responsibility.

While the personnel behind the *Review* may change, its core purpose and unique speed remain the same. We release the *Review* every year at our annual Constitution Day symposium, less than three months after the previous Term ends and two weeks before the next Term begins. It would be almost impossible to publish a journal any faster, and credit for that goes first and foremost to our authors, who year after year meet our unreasonable but necessary demands and deadlines.

The *Review* isn't your typical law review or scholarly journal. We want you to read this volume even if you're not a lawyer. We ask our authors to skip the Latin, cut the page-long footnotes, and leave the jargon behind. We don't want to publish articles on narrow topics that only interest academics. Instead, we publish digestible articles in plain English that help Americans understand the decisions of their highest Court and why they matter.

And as we explain each year, we freely confess our biases. We start from first principles: We have a federal government of limited powers, those powers are divided among the several branches, and individuals have rights that act as shields against those powers. We take seriously those liberty-protective parts of the Constitution that have too often been neglected, including the affirmation of unenumerated

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rights in the Ninth Amendment and the reservation of legislative power to only the *legislature* (not the President) in Article I.

We also reject the tired dichotomy of judicial “restraint” versus “activism” that dominates so much commentary on the Court. We urge judges to engage with and follow the law, which includes—most importantly—the Constitution. It’s the judiciary’s duty to strike down a bad statute or regulation when it violates the law, rather than defer to the elected branches as a matter of course. But following the law doesn’t always mean chasing good outcomes. A ruling can produce bad policy without being wrong as a matter of law. Indeed, a legal methodology that never produces a result its adherents dislike isn’t much of a methodology at all.

And there is one more core value of the *Review*: We aren’t trying to create an echo chamber. We recognize that many cases are hard and that people of good faith can disagree on both outcomes and reasoning. We don’t want our authors to simply repeat the “Cato position.” Rather, we ask them to write what they actually think. Sometimes two authors who share the same judicial philosophy land in different places on the same issue—and we consider that a feature, not a bug.

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Turning to this year’s *Review*, we begin as always with last year’s B. Kenneth Simon Lecture delivered by Stephen Richer. Richer’s topic is courage—the kind it takes for officials, lawyers, and institutions to choose the law over “compliance, appeasement, or surrender.” Richer draws on his own experiences as a former elected recorder of Maricopa County, Arizona, where he certified the state’s 2020 election results despite threats from his own party. Richer argues for staying true to constitutional principles rather than indulging “the political fascination of the day” and suggests that those brave enough to stand up for the rule of law deserve more than a shrug dismissing their conduct as “the bare minimum.”

Next, Chris Kieser writes on *Louisiana v. Callais*. In that case, the Court rejected Louisiana’s claim that Section 2 of the Voting Rights Act (VRA) required it to draw a second majority-Black district, and instead struck down the congressional map as an unconstitutional gerrymander. Kieser disagrees with critics who claim this decision

“guts” the VRA, contending instead that it restores the Act’s original focus on individual rights by refocusing “the Act on equality of opportunity rather than equality of outcome.”

Oliver Dunford and Charles Brandt write on *Trump v. Slaughter*, in which the Court struck down the statutory limits on the President’s power to remove FTC Commissioners, overruling *Humphrey’s Executor* in the process. They agree with the majority that only the presidential removal power can “hold Washington’s vast bureaucracy to account,” but they fault the Court for its “overly formalist” reasoning, which ignores that agencies like the FTC also exercise legislative and judicial power. The result, they warn, may hand “one man” the power “to make the law, enforce the law, and adjudicate deprivations under the law.”

Will Creeley writes on *Chiles v. Salazar*, in which the Court ruled 8-1 that Colorado’s ban on “conversion therapy” counseling violated a licensed counselor’s First Amendment rights. Although this case was widely covered as a culture-war victory for religious conservatives, Creeley argues that it is better understood as a win for viewpoint-neutral speech protections, one that will benefit litigants across the political spectrum. He argues that this decision “should be welcomed by First Amendment litigants of all political commitments (or none at all)” because it sharpened the line between speech and conduct in professional settings and reinforced the basic proposition that “speech is speech.”

Next, John Wrench writes on *Chatrue v. United States*. In that case, the Court held that police conducted a Fourth Amendment “search” by obtaining a suspect’s Google Location History via a geofence warrant. Wrench explains how this case resolved several questions left open about the Fourth Amendment’s reach in the age of technology. He explains why this decision is more than just a “modest and incremental expansion” of *Carpenter v. United States* and contends that *Chatrue* is “the clearest expression to date” of a distinctly Roberts-Court methodology for the Fourth Amendment.

Jonathan Wroblewski and Lucian Dervan cover *Hunter v. United States*, in which the Court held that an appeal waiver is unenforceable if it would result in a “miscarriage of justice.” They explain that the agreement among the *Hunter* majority “was more apparent than real”: While eight Justices agreed that a miscarriage-of-justice exception exists, they did not say where that bar lies. Wroblewski

and Dervan argue that the U.S. Sentencing Commission should use its empirical expertise to assist courts in defining which sentencing errors clear that bar.

Dru Stevenson writes on *United States v. Hemani*. There, a unanimous Court held that prosecuting a habitual marijuana user for firearm possession violated the Second Amendment. Although the Court framed its decision as grounded in historical tradition, Stevenson argues it functioned more to replace “Congress’s policy judgment on disarming marijuana users” with the Court’s own. He contends that the opinion is drawn so narrowly that it offers little guidance to lower courts or law enforcement going forward, and he warns that it creates broader complications for how the background-check and regulatory systems around gun purchases will operate.

Robert Chang and Susan McMahon cover *Trump v. Barbara*, where the Court rejected an effort to strip birthright citizenship from children born to parents who are undocumented or only temporarily in the country. Although media coverage treated the ruling as a decisive win for birthright citizenship, Chang and McMahon explain that the constitutional holding rested on “only the slimmest of majorities.” Drawing on the history of quickly reversed Supreme Court precedents, they argue that the accompanying dissents leave real openings for opponents of birthright citizenship to try again, and they caution defenders not to mistake this decision for lasting security.

Joshua Claybourn and Michael McConnell write on *Learning Resources, Inc. v. Trump*, in which the Court held that the International Emergency Economic Powers Act (IEEPA) does not authorize the President to impose tariffs. Claybourn and McConnell argue that the decision correctly restores the constitutional distinction between the taxing power reserved to Congress and the executive’s narrower regulatory authority—a line they say the Trump administration had effectively erased. They frame the ruling as a return to over two centuries of practice in which Presidents sought Congress’s explicit authorization for tariffs rather than deriving it from a statute never meant to grant such power.

Finally, Darpana Sheth authors our annual “Looking Ahead” article. Sheth identifies several major cases to watch next Term, on topics ranging from federal habeas relief and prisoner remedies, to the Second Amendment, immigration, and religious liberty.

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The *Review* is a labor of love and wouldn't be possible without help from many other people. Most important, of course, are the authors, without whose work there would be no *Review*. Our authors this year turned in excellent, polished work under real time pressure and for that I sincerely thank them all. Thanks also to my Cato colleagues Clark Neily, Matthew Cavedon, Walter Olson, Molly Nixon, Dan Greenberg, and Mike Fox, who helped with editing and picked up extra work at Cato while Tommy and I were buried in the *Review*. Legal associates Samuel Rutzick, Kimberly Coleman, Harrison Prestwich, Garrett Flynn, and Samara Hasan handled the difficult and vital work of cite-checking and proofreading. Research associates Arpit Rao and Mira Harris, and legal intern Miles Clutter rounded out the team with their essential help. And special thanks to the *Review's* editor-in-chief, Tommy Berry, for giving me the opportunity to take on the role of managing editor and for his unwavering commitment to this publication. Tommy's dedication is what keeps the *Review* going year after year and his efforts are reflected in its continuing quality. This year's edition wouldn't exist without him.

We hope you enjoy this 25th volume of the *Cato Supreme Court Review*.