

The Court Crier

2026 Recap Issue

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A Note from *The Court Crier* Team:

Thank you for reading this issue of *The Court Crier*. *The Court Crier* covers appellate cases from state and federal courts that we select for their legislative and general legal relevance. The cases we write about touch on topics of constitutionality, statutory interpretation, sovereign immunity, and separation of powers, as well as other topics of general legal interest. Each entry provides a summary of the case, with a specific focus on the relevant analysis, discussion, and ruling, and an explanation of the legislative relevance of such case. Each case's full court opinion is linked in the title of each entry, and category tags for each case are included for reference.

We hope you enjoy reading this issue and find it informative.

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Court of Appeals of Virginia

Fleming v. Commonwealth of Virginia

Issued: June 10, 2025
By: Taylor Mey

In this case, the Court of Appeals of Virginia looked at (i) whether the crime of possessing a machine gun for an offensive or aggressive purpose in violation of § 18.2-290 of the Code of Virginia, which is part of the Virginia Machine Gun Act (the Act), violates the Second Amendment to the Constitution of the United States; (ii) whether such statute is void for vagueness; and (iii) whether such statute contains unconstitutional burden-shifting presumptions.

The appellant, Rasheed Daniel Fleming, carried a Glock 22 handgun with an extended magazine in a grocery bag into a convenience store. Upon inspection, police realized the handgun was equipped with a "switch" that allows a semi-automatic firearm to operate as a fully automatic weapon, and Department of Forensic Science testing found the handgun was operable and did fire in full-automatic mode. Mr. Fleming was charged with unlawfully possessing a machine gun for an offensive or aggressive purpose in violation of § 18.2-290, and prior to trial he moved to dismiss the indictment based on the argument that the statute was unconstitutional both facially and as applied under the Second and Fourteenth Amendments to the Constitution of the United States and Supreme Court of the United States precedent *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). He also argued that the statute is void for vagueness and the presumptions contained in the statute unconstitutionally shift the burden of proof to the defendant.[1] The trial court denied the motions to dismiss and Mr. Fleming appealed.

Second Amendment Analysis

In analyzing whether § 18.2-291 of the Code of Virginia, which defines what constitutes an offensive or aggressive purpose, violates the Second Amendment, the Court walks through Second Amendment precedent, including *United States v. Miller*, 307 U.S. 174 (1939), *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *Bruen*, highlighting that each of them include language reiterating that Second Amendment rights do not necessarily extend to all weapons. As the Court concluded in *Heller*, "the Second Amendment does *not* protect those weapons *not* typically possessed by law-abiding citizens for lawful purposes." *Heller*, 554 U.S. at 625. The Court states that in *Bruen* the prior approach to analyzing Second Amendment challenges in *Heller* was rejected by the United States Supreme Court, which instead held:

> [W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude

[1] Mr. Fleming also argued that § 18.2-291 contains no *mens rea* requirement and constituted a strict liability offense. The Court found he effectively waived this argument, so it is not addressed in this summary.

that the individual's conduct falls outside the Second Amendment's "unqualified command." *Id.* at 17 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)).

The Court says, "[i]n applying that test, courts must generally ask whether the defendants 'are part of 'the people' whom the Second Amendment protects,' the weapon is 'in common use today' for lawful purposes, and the Second Amendment 'protects' the 'proposed course of conduct.'" Page 8 of the opinion (quoting *Bruen*, 597 U.S. at 31–32 (quoting *Heller*, 445 U.S. at 580, 627); *Ginevan*, 83 Va. App. at 9). The Court also emphasized that *Bruen* stated that the Second Amendment does not extend to "any weapon whatsoever in any manner whatsoever and for whatever purpose" and that the historical tradition prohibited "the carrying of 'dangerous and unusual weapons.'" *Id.* at 21 (quoting *Heller*, 554 U.S. at 626–27). Based on such precedent, the Court held that machine guns are dangerous and unusual weapons and are not protected under the Second Amendment, and accordingly, the circuit court did not err by denying the motion to dismiss the indictment on the grounds that § 18.2-290 violated Mr. Fleming's Second Amendment rights.

Void for Vagueness Analysis

Mr. Fleming argued that the Act is unconstitutionally vague. The "void for vagueness" doctrine is rooted in the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution and essentially declares a law invalid if it is too unclear or fails to provide sufficient notice of what conduct is prohibited. The Court highlights that the vagueness doctrine "recognizes that legislatures encounter 'practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited.'" *Santillo v. Commonwealth*, 30 Va. App. 470, 483 (1999) (quoting *Colten v. Kentucky*, 407 U.S. 104, 110 (1972)).

The Act challenged by Mr. Fleming is made up of several sections, including a definitions section (see § 18.2-288 of the Code of Virginia), sections prohibiting the use of a machine gun for a crime of violence or for an aggressive purpose (see §§ 18.2-289 and 18.2-290), and a section laying out what constitutes an aggressive purpose (see § 18.2-291). Mr. Fleming's argument that the Act is vague is based on the fact that a citizen would have to consult multiple, distinct statutes to determine what conduct is proscribed and that additional statutes would have to be cross-referenced "to educate oneself on what an aggressive purpose is." The Court ultimately finds that Mr. Fleming failed to argue that the Act is impermissibly vague as applied to him and that he had plain and unequivocal notice that his conduct violated § 18.2-290 and therefore could not successfully challenge the statute as unconstitutionally vague.

Presumptions Analysis

Mr. Fleming argued that § 18.2-291 unconstitutionally shifts the burden of proof to the defendant. The Due Process Clause requires the prosecution to prove every element of a crime beyond a reasonable doubt. However, this "does not prohibit the use of a permissive inference as a procedural device that shifts to a defendant the burden of producing some evidence contesting a fact that may otherwise be inferred, provided that the prosecution retains the ultimate burden of proof beyond a reasonable doubt." *Yap v. Commonwealth*, 49 Va. App. 622, 631 (2007). The Court reviewed the two-fold test used to analyze statutes containing presumptions, which involves

determining (i) whether "there is a natural and rational evidentiary connection between the fact proved and the ultimate fact presumed" and (ii) "whether the presumption is rebuttable." *Crenshaw v. Commonwealth*, 219 Va. 38, 42 (1978). If an evidentiary connection does exist and the presumption is rebuttable, then the statute will be upheld. The Court determined that § 18.2-291 does not include a conclusive or mandatory presumption and instead provides merely a "rule of evidence," noting that it also does not cut off any defense and does not impose an obstacle to a factual dispute on whether possession or use of the machine gun was actually offensive or aggressive. Moreover, the Court found there was a rational connection between the proved and presumed facts in § 18.2-291 because machine guns have been generally recognized as weapons most often used by persons engaged in unlawful activities. Accordingly, the Court held that the rebuttable presumption in § 18.2-291 did not unconstitutionally burden Mr. Fleming's due process rights.

Legislative relevance: A good reference for an application of *Bruen* to a firearm statute.

Category tags: Constitutional Rights, Second Amendment, Due Process Clause, Void for Vagueness, Rebuttable Presumptions, Firearms, Criminal, Machine Guns

Blake Darvin Hughes, a/k/a Blake Darin Hughes v. Commonwealth of Virginia

Issued: May 12, 2026
By: Troy Hatcher

Blake Darvin Hughes operated a gold minivan and initiated red and blue lights behind another vehicle as both vehicles left a parking lot. The other vehicle pulled over; Mr. Hughes got out in plain clothes, laughing and apologizing, and gave the driver of the other vehicle a quick hug. Security cameras and a coworker of the driver caught the entire interaction and the police were contacted. The police went to Mr. Hughes's home, where he gave consent for the police to seize the lights and initially told them he never left his car during the incident. Mr. Hughes was charged with and convicted of abduction, impersonation of a police officer, and assault and battery.

Pursuant to § 18.2-174 of the Code of Virginia, "[a]ny person who falsely assumes or exercises the functions, powers, duties, and privileges incident to the office of sheriff, police officer, marshal, or other peace officer . . . , or who falsely assumes or pretends to be any such officer, is guilty of a Class 1 misdemeanor." The Court determined that the term "privileges" captures "purported official actions" and thus requires a showing that the defendant exercised such action or privilege. Further, the Court determined "incident" to mean arising as a consequence of attaining the status of law-enforcement officer and not from another source. *See* Pages 9–10 of the opinion. The Court held that Mr. Hughes violated the privileges clause of § 18.2-174 by activating the lights on his gold minivan, noting that § 46.2-1022 of the Code of Virginia only allows such lights on vehicles operated by "law enforcement," the Department of Corrections, and the Virginia National Guard "in state active duty to perform particular law-enforcement functions." Additionally, § 46.2-1020 of the Code of Virginia prohibits any motor vehicle equipped with any lighting device other than lights required or permitted by law from being operated on any highway.

As for Mr. Hughes's intent, there is either general or specific intent to commit a crime; specific intent must be explicitly found in the statute, but if no specific intent is required, a general criminal

intent is still required. *Johnson v. Commonwealth*, 37 Va. App. 634, 640 (2002); *see Rompalo v. Commonwealth*, 72 Va. App. 147, 158 (2020). However, no Virginia appellate court has addressed whether § 18.2-174 requires the Commonwealth to prove that a defendant had "the specific intent to deceive another into believing he is a law enforcement officer." *Morgan*, 73 Va. App. at 526. The Court did not address this issue because it found that the evidence was sufficient to show Mr. Hughes had both general and specific intent.

The Court also upheld the abduction charge, finding that Mr. Hughes intended to stop the driver by turning the lights on and therefore deprive the driver of her personal liberty through the inference that an officer regularly compels members of the public to restrict their movement. The Court upheld the assault and battery charge, finding that Mr. Hughes committed a rude touching by hugging the driver and that "submission to an act through fear is not consent." Page 19 of the opinion.

Legislative relevance: Great analysis of using dictionary definitions and secondary sources to define undefined terms in a statute.

Category tags: Statutory Interpretation, Judicial Review, Canons of Construction, Criminal

Coresite, LLC, et al. v. County of Fairfax, Virginia

Issued: June 16, 2026
By: Stephen Kindermann

The Court of Appeals of Virginia reviewed whether Fairfax County could require a data center company, CoreSite, LLC, to supply the names of customers using equipment in CoreSite's data centers. Although the Code of Virginia and the customer agreements authorized some information to be lawfully obtained by the County from CoreSite, the County failed to adhere to specific, procedural taxpayer identification requirements set out in Code.

CoreSite owns and operates data centers in Reston where roughly 300 customers access servers and cloud storage. CoreSite also leases space in its data centers for some customers to store and use their own equipment subject to customer agreements with CoreSite. Those agreements include a confidentiality clause that authorizes CoreSite to provide information required by government entities and in compliance with court orders. The County sought information on tenants using personal property at CoreSite's data centers beginning in late 2021 for tax investigation purposes. This led to an exchange of letters in which the County requested information and CoreSite refused to provide it given a disagreement over the law. Eventually, the County summoned CoreSite to provide relevant tenant records under § 58.1-3110 of the Code of Virginia[2] to which CoreSite again refused for various reasons. CoreSite then filed a petition for declaratory judgment and to quash the aforementioned summons. The circuit court ruled in favor of the County generally and CoreSite appealed to the Court of Appeals of Virginia.

[2] Section 58.1-3110 of the Code of Virginia authorizes a commissioner to "summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions touching the tax liability of any and all specifically identified taxpayers and to produce documents relating to such tax liability, either or both" as long as the summons is "for the purpose of assessing all taxes assessable by his office."

First, the Court held that the County's general authority to investigate for tax purposes is sufficiently broad to allow officials to seek information necessary to determine whether certain equipment property in data centers is taxable. The Court reviewed the mandate on local commissioners of revenue for information gathering in § 58.1-3109(6)[3] contrasted against the permissive summons authority for specifically identified taxpayers in § 58.1-3110. The Court also found persuasive two advisory opinions from the Attorney General, in 2003 and 2016 respectively, that interpreted the scope of a local taxing authority's investigative powers broadly under the statutes and noted legislative acquiescence by inaction in the time since the two opinions were penned. The Court thus found that the County is not prohibited from investigating entities with an unknown tax status for purposes of determining ownership of taxable personal property. Limiting the County in assessing such taxes to only those customers known to be taxpayers would undercut and undermine the ability of any jurisdiction to complete a full tax assessment of all personal property therein.

The Court then agreed with CoreSite's position that the County's summons made pursuant to § 58.1-3110 failed to "specifically identify" taxpayers as required by the statute. The Court acknowledged that the term is ambiguous because it is not defined in the Code and can be understood in more than one way.[4] The surplusage canon of statutory construction states that courts will "ordinarily resist a construction of a statute that would render part of a statute superfluous."[5] In this case, the Court found that the surplusage canon dictates that the General Assembly intended a narrower construction than that adopted by the circuit court because § 58.1-3110 requires that the County specifically identify taxpayers, rather than simply identify them. So while the County did have broad investigatory powers under § 58.1-3109(6), that broad investigatory power does not extend to § 58.1-3110. The Court held that the County failed to "specifically identify taxpayers" in this instance, but left unanswered whether § 58.1-3110 *always* requires a summons to name taxpayers or whether a sufficiently precise description that uniquely identifies the taxpayers would suffice for statutory compliance.

Finally, the Court found that the confidentiality provision in the customer agreements with CoreSite did not prohibit CoreSite from releasing customer information without a court order. While the contract did bind CoreSite to agree to keep contract terms, including customer names, confidential, the very provision contained a relevant carve out for information as required by any

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[3] Section 58.1-3109(6) of the Code of Virginia mandates that commissioners of revenue "[r]equire taxpayers or their agents or any person, firm or officer of a company or corporation to furnish information relating to tangible or intangible personal property, income or license taxes of any and all taxpayers; and require such persons to furnish access to books of account or other papers and records for the purpose of verifying the tax returns of such taxpayers and procuring the information necessary to make a complete assessment of any taxpayer's tangible and intangible personal property, and license taxes for the current tax year and the three preceding tax years."

[4] The Court noted three possible definitions for "specifically identified": (i) using precision and exactness but not necessarily naming an entity or thing, (ii) naming an entity or thing, or (iii) using enough specificity to comply with the summons but leaving the possible requirement of naming of an entity or thing undefined.

[5] *Loch Levan Land Ltd. P'ship v. Bd. of Supervisors*, 297 Va. 674, 685 (2019) (quoting *Davis v. MKR Dev., LLC*, 295 Va. 488, 494 (2018)). Virginia courts "must assume that in enacting legislation, 'the [General Assembly] did not intend to do a vain and useless thing.'" *Va. Elec. & Power Co. v. State Corp. Comm'n*, 300 Va. 153, 164 (2021) (alteration in original) (quoting *Williams v. Commonwealth*, 190 Va. 280, 293 (1949)).

governmental entity. Under the plain language of the exception, CoreSite is not barred from providing information under the customer agreement's contractual terms.[6]

The Court affirmed the circuit court's judgment that § 58.1-3109 authorizes broad investigative authority into CoreSite's customers because it requires that the County make a "complete assessment" of personal property. However, the Court also vacated the circuit court's order enforcing the summons against CoreSite because the County failed to specifically identify taxpayers as required by § 58.1-3110, though no contractual provisions bar CoreSite from disclosing customer information to the County upon a proper request.

Legislative relevance: Statutory interpretation of local taxation statutes and privacy concerns in the context of data centers and data center tenants.

Category tags: Statutory Interpretation, Taxation, Confidentiality

Refund Recov. Spec., LLC v. City of Norfolk, Va.

Issued: June 16, 2026
By: Orion Fiscella Semmes

The Court of Appeals of Virginia decided a procedural portion of a case involving distribution of funds following a foreclosure sale. The main issue at hand was whether the plaintiff had a valid constitutional claim. The claim alleges that § 58.1-3967 of the Code of Virginia, which dictates that unclaimed funds from a foreclosure sale must escheat to the city, is an unconstitutional takings as applied here. On appeal in the present opinion, however, are questions of whether (i) a denial of motion for entry of default judgment in favor of the plaintiff was proper, (ii) a dismissal of the plaintiff's petition on the record was proper, and (iii) sanctions were proper as applied to the plaintiff's counsel.

The property was appraised at more than $330,000. After the homeowner died, nobody paid taxes for the property and the unpaid taxes totaled $6,984.15. The property was auctioned at a price of $220,000. Citibank held a lien on the property of $200,000. The city took the tax amount from the proceeds along with $18,510.21 in fees, which totaled $25,494.36. The remaining $169,332.14 should have gone to Citibank, the primary lienholder, to satisfy their lien in accordance with Virginia law. Citibank never claimed its share of the proceeds. Section 58.1-3967 dictates that a sum that stays uncollected after two years should go to the locality in which the property is located, in this case Norfolk, rather than to the property owner or any tertiary lienholder. The decedent's heirs (the plaintiff) challenged the application of this law as a takings, claiming that, instead, they should receive the funds.

The Court examined the plaintiff's claim and indicated that *McKeithen v. City of Richmond* established a favorable precedent for a constitutional claim that § 58.1-3967 as applied would amount to a takings. *McKeithen v. City of Richmond*, 302 Va. 422 (2023). In *McKeithen*, the

[6] The Court did note that, "Because the confidentiality provision allows CoreSite to comply with governmental requests there is no need to discuss CoreSite's arguments over whether a summons is "the law" or whether § 58.1-3 of the Code of Virginia is an adequate safeguard for protecting confidentiality." Page 20 of the opinion.

Supreme Court of Virginia held the law to be unconstitutional when the primary lienholder is unascertained and the secondary lienholder has a valid claim. *Id.* at 442. In this case, the primary lienholder is ascertained, although unresponsive. Instead of a secondary lienholder, it is the property owner's heirs who exercise a valid claim. The Court suggested that the law would also be unconstitutional as applied in this situation, but ruled the issue a task for the circuit court to examine further. Page 11 of the opinion. The unresolved procedural issues prevented the appellate court from applying any further constitutional analysis at this time.

The Court resolved each procedural issue. The Court held that the circuit court did not err in denying motion for entry of judgment by default. The plaintiff filed a motion for default judgment against Citibank because Citibank failed to respond to the plaintiff's petition. However, because Citibank was never served with a summons or complaint, service was inadequate and default judgment inappropriate. However, the circuit court did err in dismissing the plaintiff's petition on the record. The circuit court summarily dismissed the plaintiff's petition based solely on the operation of § 58.1-3967. The circuit court failed to consider whether Citibank's lien was still chargeable against the property. The circuit court also failed to consider whether the application of § 58.1-3967 was unconstitutional. For those reasons, the Court directed the circuit court to apply a factual inquiry and to analyze it along the *McKeithen* precedent. Finally, the issue of sanctions was determined to be unripe.

Legislative relevance: Although the decision only resolves procedural issues with the case at hand, it highlights an unconstitutional application of Virginia law, where certain applications of § 58.1-3967 have been identified by the courts as effectuating a takings by allowing the city to leapfrog other parties with valid claims to the property.

Category tags: Constitutionality, Statutory Interpretation, Summary Dismissal, Foreclosure Sale

Supreme Court of Virginia

Scott v. McDougle

Issued: May 8, 2026
By: Stephen Kindermann

In a case of first impression that ended in a split decision, the Supreme Court of Virginia overturned the decision of the Court of Appeals of Virginia by invalidating an amendment to the Constitution of Virginia that would have allowed the General Assembly to approve a new congressional map ahead of congressional midterm elections in November. The Court held that the amendment's passage within the electoral cycle failed to adhere to legislative procedural requirements for Constitutional amendments.

The Court's analysis began by examining the intentionally deliberate nature of constitutional amendments under Article XII, Section 1 of the Constitution of Virginia. That section requires the General Assembly to vote in favor of a proposed constitutional amendment twice, in two separate legislative sessions with an intervening election of the House of Delegates. Those distinct votes by the General Assembly offer the voters two opportunities to consider and respond to a proposed amendment: (i) during the intervening election period between the two legislative sessions, the voters may elect a new House of Delegates that supports or opposes the proposed amendment and (ii) if the newly elected General Assembly votes in favor of the proposal, voters also get a direct

opportunity to vote on the proposed amendment at the ballot box. However, the Court noted that "the efficacy of the second popular vote depends in part upon the reliability of the first." Page 11 of the opinion

The "reliability" in question centered upon the timeline of the passage of the constitutional amendment and the electoral cycle:

- September 19, 2025: Early voting in the general election for the House of Delegates begins;
- October 31, 2025: General Assembly votes for the first time to propose the constitutional amendment to the electorate (in Special Session);
- November 4, 2025: Voting in the general election for the House of Delegates ends.
- February 2026: 2026 General Assembly enacts and publishes a new Congressional map contingent upon approval by a majority of voters at the constitutional referendum;
- March 6, 2026: First day of early voting on the proposed constitutional amendment;
- April 21, 2026: Voting ends with a majority of voters approving the constitutional amendment and new maps.

The Court highlighted that the first vote to propose the constitutional amendment to the electorate on October 31 came after over 1.3 million votes, roughly 40 percent of the final total vote, had been cast in the general election.

The Commonwealth argued that the usage of "general election" in Article XII, Section 1 refers to the final day of the election (Election Day, November 4, 2026). Therefore, because Election Day was four days after the October 31 General Assembly vote to propose the constitutional amendment to voters, the requisite intervening election for constitutional purposes was the election between the 2024 Special Session (which included the first legislative vote for the constitutional amendment on October 31) and the later 2026 Regular Session (which included the second legislative vote).

The Court found no precedent for utilizing anything close to a four-day period for purposes of satisfying the requisite intervening "period during which Virginia voters could find out what the proposed amendment actually said, whether their preferred candidate supported or opposed it, and whether they wanted to use their vote to express a view on the subject." Page 13 of the opinion.

The Court then distinguished a "general election" in Article XII, Section 1, which means the cumulative actions of voters casting votes and election officials receiving those votes, from the "shall be elected" phrase in Article IV, Section 3, which means the singular day, Election Day, at the conclusion of which all votes cast legally are tallied to declare the ultimate winner. The difference is treated as a material variation in meaning that the Court resolves (i) by reference to the definition of "election" historically including the act of casting votes and (ii) by the contextual purpose of Article XII, Section 1, which gives Virginia voters an opportunity to choose legislators who will support or defeat the proposed amendment. The Court held that "general election" in Article XII, Section 1 describes the combined actions of voters casting ballots and officers of election receiving those votes and closing the polls on the last day of the election. The Constitution thus requires an intervening "general election" after the first legislative vote in favor of a proposed

amendment and prior to the second legislative vote before the General Assembly has the constitutional authority to submit the proposal to the voters.

The Court disregarded arguments that resorted to statutory definitions given their expressly self-limiting nature and stated inapplicability when "context requires a different meaning" that could not supersede "the literal text, drafting history, historical context, and unambiguous purpose of a constitutional provision." Page 24 of the opinion. Article II, Section 4 even states that its authorization to the General Assembly does not contemplate statutory provisions that regulate elections in a manner inconsistent with the Constitution's provisions.

Ultimately, the Court concluded with its primary point that "precluding 1.3 million early voters in the 2025 general election from having a say in an ongoing debate over a proposed constitutional amendment would require a truly illiberal construction of Virginia law." Page 25 of the opinion. The passage of the proposed amendment violated the intervening election requirement of the Constitution and invalidated the subsequent referendum vote, leaving Virginia's congressional maps as issued in 2021 for the upcoming 2026 elections.

Dissent

The dissenting justices took issue with the majority's interpretations beyond the express recognition of the General Assembly's power to determine the time and manner of conducting elections in Article II, Section 4, which it exercised by amending the Code of Virginia. The General Assembly specifically defines a "general election" in § 24.2-101 of the Code of Virginia in a way that establishes an intent of the General Assembly to exercise its Constitutional authority by limiting general elections to a single day. The General Assembly chooses words carefully and could have clarified an alternative intent by defining the term to indicate that an election started at some earlier point in time rather than occurring solely on the Tuesday after the first Monday in November. The General Assembly did not define a general election as an election ending on a specific day, but rather explicitly defined a general election as an election held on a specific day. The dissenting justices also noted that definition's change in the context of early 1970's debates on amendments to the Virginia Constitution.

See also: ***Scott v. McDougle, Denied by SCOTUS, May 15, 2026***

Legislative relevance: Discusses legislative requirements and the procedure for approval of constitutional amendments.

Category tags: Statutory Interpretation, Virginia Constitution, Redistricting, Constitutional Amendment, Congressional Maps

City of Hopewell v. Shree Arihant Motel, Inc.

Issued: July 16, 2026
By: Stephen Kindermann

The Supreme Court of Virginia reversed a City of Hopewell Circuit Court decision where the City was denied a sovereign immunity defense against tort claims and declaratory relief requests by the owner of a vacant shopping center that the City burned after deeming it blighted.

Shree Arihant Motel, Inc. (SAM) owns property in Hopewell that contained Colonial Corner shopping center, which became vacant following two unsuccessful redevelopment efforts in 2008 and 2014. The property deteriorated. After being deemed blighted by the City and a series of communications and public meetings regarding safety and health concerns at the property,[7] a February 12, 2021, letter advised SAM of a planned burn of Colonial Corner on or after February 26, 2021. Local fire departments proceeded with the Colonial Corner burn on such date and debris removal was arranged for thereafter with other companies.

In early 2024, SAM filed a civil complaint in the Hopewell Circuit Court with claims against the City and debris removal contractors for (i) common law and statutory torts,[8] (ii) a constitutional takings claim,[9] and (iii) a declaratory judgment regarding SAM's liabilities for certain costs and penalties. The City claimed sovereign immunity from the tort claims by arguing that it was engaged in a governmental function when it conducted the shopping center burn. The Circuit Court denied the City's plea in bar because it could not determine whether the City's actions were within its governmental function, followed by an interlocutory appeal by the City to the Court.

The Court began its analysis by distinguishing cities, whose entitlement to sovereign immunity depends on the function being exercised when liability arises, from counties, who share fully in the Commonwealth's immunity from torts. Cities are only protected by sovereign immunity from claims arising from the performance of discretionary governmental functions,[10] but non-discretionary, proprietary[11] functions are afforded no such protection.

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[7] In February of 2019, a Hopewell official informed SAM that the property was blighted and was endangering public health, safety, and welfare, and that SAM could submit a written abatement plan within 30 days to address the blighted state of the property. SAM did not submit such a plan. In June of 2019, a Hopewell official informed SAM of a City staff recommendation to demolish Colonial Corner. During a City Council meeting in July, a SAM representative claimed that he was negotiating with prospective tenants, and ultimately was directed to board up the property and collaborate with the City on a plan before its August 2019 meeting. A proposal to conduct a controlled burn of Colonial Corner was offered after the meeting and SAM's representative asked for cost estimates as he considered the proposal. At the August 2019 meeting, the City Council voted to proceed with the planned demolition of Colonial Corner; however, a clerk erroneously recorded an additional, affirmative vote to burn the shopping center. No ordinance addressing Colonial Corner was ever adopted. Trespassing concerns at the property began in May 2020. The City ordered SAM to construct a fence around the shopping center and SAM did so at its own expense. The City Council discussed the controlled burn of the shopping center again in January, but at the time noted it did not present an emergency. Weeks later, an official informed the Council that squatters and trespassers were still accessing the property, including children, resulting in unsafe conditions necessitating more immediate demolition.

[8] These claims included intentional trespass, statutory business conspiracy (pursuant to §§ 18.2-499 and 18.2-500 of the Code of Virginia), tortious interference with a business expectancy, and waste (pursuant to §§ 8.01-178.1 and 8.01-178.2 of the Code of Virginia).

[9] Article I, Section 11 of the Constitution of Virginia.

[10] "A function is governmental if it entails the exercise of an entity's political, discretionary, or legislative authority." *City of Chesapeake v. Cunningham*, 268 Va. 624, 634 (2004). "Governmental functions are powers and duties performed exclusively for the public welfare." *Id.* at 633. A governmental function is "directly tied to the health, safety, and welfare of [a municipality's] citizens." *Niese*, 264 Va. at 239 (quoting *Edwards v. City of Portsmouth*, 237 Va. 167, 171 (1989)).

[11] "If [a] function is a ministerial act and involves no discretion, it is proprietary." *Cunningham*, 268 Va. at 634. "Proprietary functions are performed primarily for the benefit of the municipality." *Id.* Sovereign immunity does not apply to claims arising from these functions, "even though 'the general public may derive a common benefit' from their performance." *Massenburg*, 298 Va. at 218.

The City's failure to comply with the statutory and municipal provisions concerning spot blight abatement,[12] did not affect sovereign immunity claims that are only "contingent upon the nature of the actions underlying the claims at issue." Page 8 of the opinion. Even when a municipality exercises its discretionary authority in a negligent or improper manner, so long as it is in the performance of a governmental function, it is generally entitled to sovereign immunity. In this case, the Court found that the City was, at least partially, engaged in a governmental function when it burned Colonial Center because the record and exhibits demonstrated that the City was attempting to abate blight when it demolished the property.[13] Blight abatement is a pure governmental function in the exercise of discretionary municipal authority to promote the health, safety, and welfare of citizens therein. So by demolishing this shopping center it deemed a public safety threat, the City engaged in a governmental function that triggered sovereign immunity protections. Potential secondary economic development motives from the City were deemed irrelevant to the case at hand.

The Court held that the City of Hopewell Circuit Court erred in denying the City's plea in bar and should have afforded the City sovereign immunity against SAM's common law tort, statutory tort, and most of the declaratory relief requests. The case was remanded for the circuit court to address the remaining takings and third-party claims in the civil suit.

Legislative relevance: Distinguishes sovereign immunity protections afforded to the Commonwealth and counties from the narrower protection afforded to municipalities.

Category tags: Civil, Scope of Sovereign Immunity

Antle v. Commonwealth

Issued: June 4, 2026
By: Anissa Cottrell

Beginning in 2015, Tiger King star Bhagavan "Doc" Antle purchased lion cubs from a zoo owner in Winchester. In 2016, the U.S. Fish and Wildlife Services placed lions on the list of endangered and threatened species. *See* 50 C.F.R. § 17.11. The Code of Virginia provides that the "taking, transportation, possession, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568." *See* Va. Code Ann. § 29.1-564. Despite the statutory prohibition, Mr. Antle proceeded to purchase five more lions in 2018 and 2019.

Mr. Antle was prosecuted for purchasing and conspiring to purchase protected lion cubs. He argued that because § 29.1-564 of the Code of Virginia omits the term "purchase," purchasing

[12] The City Council was required to adopt a specific ordinance declaring Colonial Corner to be a blighted property, but never did so. See subsections C and D of § 36-49.1:1 of the Code of Virginia; Hopewell City Code § 19-135. The City Council also never formally voted to demolish Colonial Corner; it simply voted to move forward with planning the controlled burn, but its clerk erroneously recorded that the City Council had voted to burn the shopping center.
[13] The City expressly noted that the property was "blighted," "dilapidated," "unsafe," and "a danger to the public" at various points and in various communications.

endangered or threatened wildlife is not a prohibited act. The Commonwealth countered that § 29.1-564 must be read alongside the associated penalty statute, § 29.1-567, which provides: "the sale, offering for sale, *purchasing or offering to purchase* within the Commonwealth of any fish or wildlife appearing on a list of threatened or endangered species as prohibited by § 29.1-564 shall be punishable as provided in § 29.1-553." (emphasis added). The Commonwealth argued this inclusion in the penalty statute implies that § 29.1-564 also prohibits purchasing such species.

Mr. Antle received a conviction for the purchase of the lions and for conspiracy to purchase the lions in the trial court. The Court of Appeals affirmed the lower court's judgment as to the conspiracy but reversed the trial court's judgment on the purchasing of the lions, siding with Mr. Antle's initial argument that the act of purchasing is not within the expressed list of prohibited activities and that the Commonwealth cannot rely on a penal statute to impute meaning given that the statute did not prohibit anything. Both parties appealed to the Supreme Court of Virginia.

The Supreme Court of Virginia agreed with Mr. Antle, holding that the statutes do not prohibit purchasing or offering to purchase protected wildlife. The Court noted that its "primary objective is to ascertain and give effect to legislative intent, expressed by the language used in the statute." *See City of Hamilton v. Williamson*, 302 Va. 325, 333 (2023). The Court emphasized that § 29.1-564 expressly lists specific prohibited acts, and the omission of "purchase" signifies that the legislature did not intend to capture that activity. Comparing this to other sections within Title 29.1 where "purchase" is explicitly included, the Court concluded it must give effect to the General Assembly's purposeful omission.

Furthermore, the Court rejected the Commonwealth's reliance on § 29.1-567, stating that courts "must not add to the words of the statute, nor ignore its actual words" when construing penal statutes. *See Robinson v. Commonwealth*, 274 Va. 45, 51 (2007).

Therefore, because the statute did not include the word "purchase" within the list of prohibited activities in § 29.1-564, the Court reversed Mr. Antle's convictions for purchasing the lion cubs.

Legislative relevance: This statutory interpretation case highlights a loophole in Virginia's endangered species statutes. It remains unclear whether the legislature intentionally omitted "purchase" or relied on "possession" to capture the transaction when title transfers. This case also serves as a good reminder of the judicial deference that courts provide in statutory interpretation cases.

Category tags: Statutory Interpretation, Wildlife and Fish Laws, Endangered or Threatened Species, Tiger King

FEDERAL COURTS

Fourth Circuit

Whateley v. Lackey

Issued: July 31, 2026
By: Nikhil Edward

The Fourth Circuit Court of Appeals took up the question of whether character combinations on vanity license plates are private speech for purposes of the First Amendment.

In this case, following the procedure that the Department of Motor Vehicles (DMV) provides for personalized license plates (vanity plates), Mr. Whateley applied for and was issued a vanity plate with the characters "FTP&ATF" (i.e. "Fuck the Police & Alcohol, Tobacco, and Firearms"). After a year, DMV recalled the vanity plate after receiving a complaint, explaining it violated DMV's guidelines as the plate's "message could reasonably be viewed as profane, obscene, or vulgar and as condoning or encouraging violence . . . " Page 6 of the opinion. After DMV's appeals process, Mr. Whateley sued the DMV Commissioner in his official capacity in federal district court. The District Court granted a motion to dismiss for failure to state a claim, finding that an application of *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015) pointed to government speech. The Court reviewed such dismissal.

The central question of the case is whether the characters on the vanity plate constitute government speech, the analysis for which, based on a line of precedents, turns on whether the government is speaking for itself, which may include the use of third parties to speak. However, the Court did caution that third-party analysis is different because of potential misuse and encroachment on private First Amendment speech. *See* page 8–9 of the opinion. The Court started its analysis with context from the most analogous case, *Walker*, involving a specialty plate design for the Sons of Confederate Veterans in Texas that was rejected, in which the Supreme Court of the United States ruled that such specialty license plates were government speech and that Texas could decide their content. The Court did make clear that *Walker* did not touch on vanity plates, and that since that case, courts have been divided on the issue of whether vanity plates are private speech, though a majority of those have found that they are private speech. *See* page 10 of the opinion.

The Court ruled that the character combinations of vanity plates are private speech subject to protections of the First Amendment. One threshold question is, as the Court put it, "[w]hat, exactly, is the speech at issue here?" Page 11 of the opinion. The commissioner argued that the license plate should be taken as a whole as the speech, and because the speech includes the whole plate, not just the characters, it should be considered government speech. The Court disagreed and focused on the character combinations themselves, citing various possible messages on and around license plates that can be distinguishable from the generic message that the state registered the vehicle. *See* page 2 of the opinion. The Court also used other cases to distinguish functional messages from other messages and identify the "'channel of communication' sought by the speaker." Page 13 of the opinion (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc*., 473 U.S. 788, 801 (1985)).

The Court then delved into analysis of whether the identified speech is government or private speech. The analysis began with the three factors from *Walker* for determining whether speech is private or government speech:

> "The first factor, recall, asks about the 'history of the expression at issue' and whether 'governments have long used [it] to speak to the public.' *Shurtleff*, 596 U.S. at 252; *Walker*, 576 U.S. at 209 (cleaned up). The second factor assesses 'the public's likely perception as to who (the government or a private person) is speaking.' *Shurtleff*, 596 U.S. at 252; see Walker, 576 U.S. at 210. And the third examines 'the extent to which the government has actively shaped or controlled the

expression' in question. *Shurtleff*, 596 U.S. at 252; *see Walker*, 576 U.S. at 210." Page 15 of the opinion.

For the first factor, the Court found that state governments have not traditionally used character combinations on vanity plates to convey their own message and that characters and numbers can be distinguished from other design elements that do convey a government message. The Court found, in the context of Virginia's history of license plates, that the characters put in the space for vehicle registration numbers have not had an intrinsic meaning and that the only expressive messages in that space have been by individual drivers "who have swapped out those random characters for expressive messages conveyed by way of personalized character combinations." Page 18 of the opinion.

For the second factor, the Court distinguished some of the conclusions *Walker* made. First, the relevant history points to private speech and the fact that Virginians are more likely to see a vanity plate as the driver's speech because the only messages made up by characters on the area of the license plate for the registration number are those by drivers. Second, the Court distinguished the 350 special license plates in Texas at issue in *Walker* versus the 930,000 vanity plates in Virginia. The volume difference in the perception of messages and their relation, or lack thereof, to a government message is important; the Court also analogizes the volume issue with the circumstances of the trademarks in *Matal v. Tam*. *See* page 20 of the opinion. Third, the Court found that, in contrast to the specialty plates in *Walker* for which privately submitted designs were approved by the Texas DMV for individuals to then select, in this case, vanity plates are personalized and must be unique to one driver, further pointing to the characters on vanity plates being perceived by the public as private speech by the driver, not the government. The Court further did not accept the commissioner's counterargument that the public would see this speech as government speech because license plates are government property,[14] because " . . . private speech happens all the time on government property." Page 21 of the opinion. The Court also did not accept the commissioner's argument against reliance on common-sense insight of the public's perception based on *Walker*, in part due to later analysis found in *Matal*, finding that the public is likely to think that the speech is "private speech *permitted* by the government, not . . . the government's own speech." Page 23 of the opinion.

For the third factor, the Court found that Virginia does not sufficiently control the messages on vanity plates. While the Commissioner argued that DMV guidelines prohibiting "character combinations that might reasonably be seen as (broadly speaking) profane, obscene, vulgar, or sexually explicit; or encouraging or condoning violence; or describing illegal activities or substances" were sufficient control, the Court disagreed, having cited earlier precedents that described how some control or approval " . . . by itself, cannot transform private speech into government speech, or distinguish the two." Page 24 of the opinion (*Citing Shurtleff v. City of Boston*, 596 U.S. 243, 252 (2022); *see Ogilvie*, 2020 WL 10963944, at *4). The Court distinguished this case from *Walker*, with a much more intensive consideration of designs for approval that were then made available to the public on the Texas DMV's website, as that case was closer to other government speech cases. The Court further compared final approval authority by Virginia's DMV, and how it can deny approval for messages it deems to be vulgar or offensive, to

[14] Citing § 46.2-713 of the Code of Virginia.

the case of *Matal* and its trademark context, in which the Supreme Court distinguished state control from what had happened in *Walker* and found that there was not enough to favor trademarks as government speech. *See* page 26 of the opinion. The Court agreed with that approach on final approval, finding that "Virginia does not actively shape or control" vanity plate messages within the framework of *Walker* and *Matal* and therefore the third factor also points to private speech. *See* page 27 of the opinion.

Because of these factors and this analysis, the Court ruled that the vanity plate character combinations on Virginia license plates are private speech, subject to First Amendment protections. The Court, however did not delve into how those protections apply, instead leaving the public forum doctrine analysis to the lower court, instructing that it will turn on the nature of the forum provided for private speech and the reason for the recall of Mr. Whateley's license plate. The Court accordingly vacated the district court's order dismissing the challenge for the recall and remanded the case to the district court.

A *petition for writ of certiorari* was filed with the United States Supreme Court on October 29, 2026, to appeal this case. The name of that case will be *Jack v. Whateley*, reflecting the current DMV Commissioner.

Legislative relevance: This case offers an example of the analysis for the determining private versus government speech, specifically in the context of character combinations on Virginia's vanity license plates. It is further relevant for directly concerning the Virginia DMV's system and process for vanity plates. The case also fills in some gaps not covered by *Walker* for First Amendment analysis regarding license plates, interestingly using *Matal* as an analogous case for much of its analysis. While the specific public forum analysis will still need to be decided by the district court on remand, the case decides the important question of private versus government speech in this context. It also offers broader examples and analyses of the extent of government control over private speech and whether certain private speech can constitute a government message for a First Amendment analysis.

Category tags: Constitutionality, First Amendment, Free Speech, Vanity License Plates

Supreme Court of the United States

Hunter v. United States

Issued: June 18, 2026
By: Troy Hatcher

Justice Elena Kagan wrote the opinion for the Supreme Court of the United States, holding that an agreement not to appeal a sentence is unenforceable when it would result in a miscarriage of justice—meaning, when it would leave in place the kind of egregious error that would bring the judicial system into disrepute. Justice Neil Gorsuch wrote a concurring opinion, joined by Justices Sonia Sotomayor and Ketanji Brown Jackson. Justice Brett Kavanaugh wrote a concurring opinion, joined by Justices Samuel Alito and Amy Coney Barrett. Justice Barrett wrote a concurring opinion. Justice Clarence Thomas wrote a dissenting opinion.

Under a plea agreement, Munson Hunter III agreed to plead guilty to one count of aiding and abetting wire fraud, and in exchange, the government dismissed nine other charges and agreed to refrain from prosecuting him in the future for the conduct they described. Mr. Hunter was aware that his sentence had not been determined by the District Court and that the government was making no representations for what that sentence might be; he retained his right to raise a claim of ineffective assistance of counsel. The District Court accepted the plea agreement and subsequently sentenced him to a period of active incarceration, probation, and certain terms, including a requirement that he had to take all mental health medications prescribed by his physician. The District Court also stated that Mr. Hunter had the right to appeal. Because of the mandatory-medication requirement, Mr. Hunter did appeal, and the government moved to enforce the plea agreement that waived his appeals. Mr. Hunter contended that an appeal waiver is unenforceable when the disputed aspect of the sentence violates a fundamental constitutional right. The Fifth Circuit denied the appeal on the grounds that the District Court's misstatement at sentencing did not impact the validity of the appeal waiver and that such a waiver controls even if the District Court imposed an unconstitutional sentence. The Fifth Circuit's precedent "general rule" that appeal waivers are enforceable has only two exceptions: when the waiver itself was "tainted by ineffective assistance of counsel" and when the challenged sentence "exceed[ed] the statutory maximum."

Because of a circuit split on how to enforce such appeal waivers as applied to sentencing, the Court granted the application for certiorari and adopted the "miscarriage of justice" approach, and then remanded the case to the Fifth Circuit to consider whether, under this standard, Mr. Hunter's appeal should still be dismissed.

Justice Gorsuch's concurrence was scathing regarding the right of plea agreements with appeal waivers and the decline of jury trials. He also noted the overwhelming power the prosecution has over a defendant (e.g. dismissing charges). However, he questioned whether a waiver could be "knowing and voluntary" if the defendant is unaware of what sentence may be imposed. He also noted other constitutional rights that may eventually be forbidden pursuant to a plea agreement (e.g. right to worship freely, freedom of speech). Most interestingly, he noted the bill that Governor Abigail Spanberger vetoed that would have prohibited Fourth Amendment waivers in plea agreements, with certain exception.

Legislative relevance: Discussion on the validity of plea agreements and appeal waivers (especially given that these matters have come up in recent years in the General Assembly).

Category tags: Constitutionality, Criminal, Plea Agreements

Chatrie v. United States

Issued: June 29, 2026
By: Nikhil Edward

The Supreme Court of the United States took up the issues of whether the use of a geofence warrant constituted a Fourth Amendment search and whether such search violated the Fourth Amendment, though the Court did not answer the latter issue and remanded it to the Fourth Circuit.

The underlying case arose from a bank robbery in Midlothian, Virginia, the investigation of which involved the execution of a geofence warrant, a multistep warrant that used Location History data collected by Google to identify potential suspects in a case. The District Court ruled that the good-faith exception to the exclusionary rule applied, despite violating the Fourth Amendment, a decision that the Fourth Circuit affirmed by finding that there was no search.

The Court's analysis hinges on the precedent of *Carpenter v. United States*, and its analysis of the purpose of the Fourth Amendment "to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." Page 11 of the opinion, citing *Carpenter v. United States*, 585 U. S. 296, 303 (2018) (quoting *Camara v. Municipal Court of City and County of San Francisco*, 387 U. S. 523, 528 (1967)). The Court further emphasized, as a result of "guideposts" from precedents, the importance of an expectation of privacy in a Fourth Amendment analysis, especially when applying existing principles to novel technology. See page 12 of the opinion. The Court's analysis compared the Google Location History in this case and the cell-site location information (CSLI) in *Carpenter*, for which the Court found there to be a reasonable expectation of privacy, and found it comparable and even more "fine-tuned" than CSLI. *See* page 16 of the opinion. The analysis also delved into the details of the data collected in Location History and how it can "serve as a personal journal of a user's movements, which that user consults (and even can edit) for his own purposes." Page 18 of the opinion. The Court did not accept the government's argument that the short duration of data being investigated would make it not constitute a Fourth Amendment search, because it can still "reveal private matters" and because the duration of the time accessed has not affected the Court's understanding of Fourth Amendment protections. *See* pages 18–20 of the opinion. The Court also refused to apply third-party doctrine, which involves a third party providing information to police that it was authorized to obtain,[15] as *Carpenter* did not apply such doctrine to CSLI, finding that "no good reason exists to reach a different result for Location History." Page 24 of the opinion. The Court also delved into the minutia of how users opt into such services and the pervasiveness of the use, also rejecting the Government's argument for an app-by-app and feature-by-feature method for Fourth Amendment protections, particularly questioning such a method's workability. For these reasons, the Court ruled that this was a search under the Fourth Amendment.

The Court did not address the question of whether the search was reasonable. That question of reasonableness and questions of its application to each step in the multi-step warrant are left to the Fourth Circuit to answer. Among the factors important to those inquiries are the role of the magistrate, determining probable cause, and the level of discretion left to police in the search. *See* pages 29–32 of the opinion.

Justice Ketanji Brown Jackson explained in her concurrence the reasons she believed the search violated the Fourth Amendment, going a step further than the majority opinion. Justice Neil Gorsuch's concurrence reached the same conclusion as the majority, though by reasoning that the data at issue would qualify as personal property, and that based on that analysis, it follows that the

[15] In this case, the third-party doctrine argument asserts that the user waived the expectation of privacy because he authorized Google to collect, retain, and use the location data. *See* page 24 of the opinion.

event at hand was a search.[16] *See* page 5 of Justice Gorsuch's concurrence. Justice Samuel Alito's dissent first questions the majority's issuance of an "advisory" opinion, followed by an argument against the original granting of certiorari, and then argues that there was neither a search nor an unreasonable search. *See* pages 4–5, 8 of Justice Alito's dissent.

Legislative relevance: The Supreme Court of the United States ruled that geofence warrants, at least the ones in this case that were used in Virginia, are a Fourth Amendment search. While the constitutionality of the geofence warrant in this case, and any further concrete analysis of whether geofence warrants in general are constitutional in light of Fourth Amendment requirements, were left to be determined by the Fourth Circuit, this case more broadly provides insight into the process of applying constitutional analyses to novel technologies. The larger context of geofence warrants, including the extent of such analysis applying to the use of automatic license plate readers, has been relevant in past years and is still being established in cases like these.

Category tags: Constitutionality, Fourth Amendment Search, Technology, Geofence Warrants

Blanche v. Lau

Issued: June 23, 2026
By: Katlin Cooper

The Supreme Court of the United States granted certiorari to resolve a split among the circuits regarding the procedure for reentry into the country by a lawful permanent resident (LPR) who is suspected of committing a crime involving moral turpitude. The Court considered two questions: (i) will an LPR be deemed an applicant seeking admission if the individual has committed a crime of moral turpitude but has not yet been convicted and (ii) if yes, is there a certain evidentiary standard that must be met before an LPR can be designated as seeking admission?

This case concerns Muk Choi Lau, a Chinese citizen with United States LPR status. In 2012, Mr. Lau was charged by New Jersey with trademark counterfeiting. After a brief trip to China and on reentry into the United States, upon seeing Mr. Lau's pending criminal charge, a border officer deemed Mr. Lau as not already admitted to the United States. As a result, Mr. Lau was placed on parole until he pleaded guilty to his trademark counterfeiting charge, at which point the government initiated removal proceedings.

At issue in this case is § 1101(13)(C)(v) of the Immigration and Nationality Act (INA). This subsection states that, "An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien . . . has committed an offense identified in Section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under Section 1182(h) or 1229b(a) of this title . . . " Section 1182(a)(2) of the INA stipulates that "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential

[16] Justice Gorsuch in his concurrence also cites Virginia's computer crimes act, specifically § 18.2-152.2, as describing computer data as being a form of property. Page 5 of the opinion (citing § 18.2-152.2 of the Code of Virginia).

elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible."

During the removal proceedings, the government asserted that Mr. Lau was an applicant for admission who was inadmissible for having been convicted of a crime involving moral turpitude. *See* § 1101(13)(C)(v) of the INA. Mr. Lau sought to terminate the proceedings, arguing that he should have not needed to seek admission on reentering the country as an LPR who had not yet been proven to have engaged in a crime involving moral turpitude.

The Second Circuit agreed that Mr. Lau should not have been treated as seeking admission upon reentry. The circuit court held that an LPR may be regarded as seeking admission after committing a crime involving moral turpitude even if the LPR has yet to be convicted, but that the government must provide clear and convincing evidence at the border that the LPR has committed the crime. Without such evidence, border officers must regard LPRs as already admitted, therefore precluding removal on inadmissibility grounds.

However, the Court[17] reversed that decision, holding that the government could retroactively apply Mr. Lau's admission of guilt to the point of reentry. The Court refused to read "commit" in § 1101(13)(C)(v) and "convict" in § 1182(a)(2) of the INA as indicative of needing a conviction at the time of reentry. Because § 1101(13)(C)(v) references § 1182(a)(2) but never uses the word "conviction," the Court interpreted this to mean that a conviction is not needed to deem an LPR an applicant for admission.

The Court also ruled that nothing in the INA imposes a clear and convincing evidentiary burden on the government to prove that an alien is an applicant for admission. The INA imposes a burden on an applicant for admission to prove that he is admissible and it imposes the burden on an alien seeking to prove that he was previously admitted. *See* §§ 1229a(c)(2)(A) and 1229a(c)(2)(B) of the INA. The Second Circuit derived the evidentiary requirement from the Board of Immigration Appeals' precedent. However, the Board of Immigration Appeals only applies this evidentiary burden to the government at the time of the removal hearing and not at the border. See *Matter of Valenzuela-Felix*, 26 I. & N. Dec. 53, 57, 64 (BIA 2012).

Lastly, the Court refrained from determining whether Lau's conviction for trademark counterfeiting amounts to a crime involving moral turpitude and remanded this question to the Second Circuit for consideration.

The dissent[18] disagreed with the majority's statutory interpretation of the INA, stressing the importance of § 1101(13)(C), which states that, unlike other noncitizens, an LPR "shall not be regarded as seeking an admission into the United States" unless one of the exceptions applies. Page 3 of the dissent. Additionally, the dissent raised concerns that the majority's holding evidences a breakdown in the criminal justice system and the belief that one is innocent until proven guilty.[19]

Legislative relevance: Interprets "commit," in § 1101(13)(C)(v) of the INA, to not require conviction when deeming an LPR as an applicant for admission at the point of reentry. Also

[17] Majority: Chief Justice Roberts; Justices Thomas, Coney Barrett, Kavanaugh, Gorsuch, and Alito.
[18] Dissent: Justices Jackson, Sotomayor, and Kagan.
[19] To support this position, the dissent cites *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953), which stated that "LPRs are extended the same constitutional protections of due process we accord citizens."

indicates that immigration attorneys can encourage individuals with LPR status to not travel abroad, but that if LPR's have committed a crime of moral turpitude, they are at risk for being deemed at the border, upon reentry, as seeking admission.

Category tags: Statutory Interpretation, Immigration, Criminal, Immigration and Nationality Act, Evidentiary Burden

Monsanto Co. v. Durnell

Issued: June 25, 2026
By: Anissa Cottrell

In a 7–2 decision, the Supreme Court of the United States held that the uniformity clause of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) preempts state failure-to-warn claims imposing requirements "in addition to or different from" federal standards. FIFRA authorizes the Environmental Protection Agency (the EPA) to mandate pesticide labeling, packaging, registration, and usage standards.

In 2019, John Durnell filed a failure-to-warn lawsuit in Missouri, arguing that Roundup manufacturer Monsanto failed to include a cancer warning on the product label. Mr. Durnell claimed this omission caused him to develop non-Hodgkin's lymphoma after repeated use of the product. Conversely, Monsanto argued that FIFRA expressly preempted Mr. Durnell's tort claim because the statute "prohibits States from imposing labeling requirements that are 'in addition to or different from' those imposed under FIFRA." Page 8 of the opinion; *see also* Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136v(b) (2018). Monsanto noted that the EPA had approved the Roundup label without a cancer warning; therefore, it argued that FIFRA obligated the company to use that approved label unless the EPA required a subsequent modification.

The lower court rejected Monsanto's argument and ruled in favor of Durnell, reasoning that the tort claims were "fully consistent with" FIFRA's prohibition against misbranded pesticides, as both require adequate warnings regarding potential product dangers. *See Monsanto*, 609 U.S. at 8. Resolving a split among federal and state courts, including the Fourth Circuit, the Supreme Court agreed with Monsanto and overruled the lower court's decision.

The Court detailed the process for pesticide registration under FIFRA, noting that approval requires a product not be "misbranded". Page 3 of the opinion; *see also* 7 U.S.C. § 136j(a)(1)(E). The Court further explains that "[a] pesticide is misbranded if its label contains 'any statement' that is 'false or misleading'" or "does not contain a 'warning or caution statement which may be necessary and . . . adequate to protect health and the environment.'" Page 3 of the opinion; *see* 7 U.S.C. §§ 136(q)(1)(A), (G). Once approved, manufacturers are required to adhere to EPA-mandated labels to avoid civil or criminal penalties. *See* 7 U. S. C. §§ 136l, 136j(a)(1)(E). Additional labeling requirements may be required if after the initial registration, the EPA determines that a modified label is necessary. While Roundup's active ingredient was linked as a possible carcinogenic in 2017 and 2019, the EPA maintained that no label modification was necessary, as the agency had not reached the same conclusion. Because the EPA found no evidence requiring a cancer warning, the Court concluded that Missouri's failure-to-warn claim imposed requirements "in addition to or different from" those under FIFRA. *See* 7 U.S.C. § 136v(b). Consequently, the Court resolved the circuit split, holding that FIFRA preempts state-law labeling

requirements differing from federal standards, and reversed and remanded the lower court's decision.

In this case, there was one concurrence by Justice Clarence Thomas and a dissenting opinion by Justice Ketanji Brown Jackson joined by Justice Neil Gorsuch.

Justice Thomas concurred with the majority's outcome but expressed significant constitutional reservations about FIFRA. He questioned whether Congress has the authority to regulate pesticides under the Commerce Clause, argued that FIFRA's labeling requirements represent an unconstitutional delegation of core legislative power to the EPA, and challenged whether executive agency regulations fall within the scope of the Supremacy Clause.

In her dissent, Justice Jackson argued that the Court should have followed jurisdictions that rejected Monsanto's preemption claims, contending that FIFRA does not grant the EPA exclusive authority over cancer warnings. She asserted that states retain the power to mandate labeling equivalent to federal standards, noting that Mr. Durnell's claim and FIFRA's misbranding ban share the same goal of ensuring adequate hazard warnings. Justice Jackson further argued that agency approval of a label is not definitive proof of proper branding, concluding that the majority's decision improperly ignored FIFRA's statutory prohibition on misbranded pesticides.

Legislative relevance: Several Fourth Circuit cases debated whether states could require glyphosate-based herbicides like Roundup to include cancer warnings despite federal standards. This decision resolves the Fourth Circuit cases and the circuit court split, establishing FIFRA as a federal ceiling on state pesticide labeling requirements. A key point is that FIFRA now expressly preempts state failure-to-warn claims mandating modifications to EPA-approved labels where the agency has affirmatively evaluated the risk. However, this case does not foreclose all state law claims. Claims not predicated on labeling—such as design or manufacturing defects, advertising claims, and those involving risks not considered by the EPA—remain viable.

Category tags: Statutory Interpretation, Supremacy Clause, Express Preemption, Federal Insecticide, Fungicide, and Rodenticide Act, Restricted Pesticide Regulations

Trump v. Slaughter

Issued: June 29, 2026
By: Keelin Cronin

In a 6–3 decision, the Supreme Court of the United States overturned the lower court's decision that declared the removal of a sitting Federal Trade Commission (FTC) Commissioner by President Trump unlawful.

Rebecca Slaughter served as an FTC Commissioner. The FTC is governed by the Federal Trade Commission Act, which provides that a president may only remove a commissioner for "inefficiency, neglect of duty, or malfeasance in office." 15 U.S.C.S. § 41. President Trump fired Slaughter from her position as commissioner because her performance was "inconsistent with the Administration's priorities . . . " *Trump v. Slaughter*, 146 S. Ct. 2283 (2026). Ms. Slaughter sued, arguing that the President's stated reason for her firing did not align with the permitted reasons for

removal under the Federal Trade Commission Act. The district court ruled in favor of Ms. Slaughter, and the government appealed, requesting a stay. The Court of Appeals denied the government's motion, at which point the government appealed to the Supreme Court. The Supreme Court granted the stay and granted cert.

In its decision, the Supreme Court held that the statutory removal protections for FTC Commissioners violates constitutional separation of powers. The explanation provided by the Court states that because the Constitution vests the executive power in the president and instructs that he take care that the laws are faithfully executed, the persons whom he employs are not his equals and remain "subject to this superintendence." The Federalist No. 47, at 303 (J. Madison). To remain ultimately accountable, these persons must be removable by the president. The Court then turns to a discussion of historical precedent to support this claim, primarily by relying on *Myers v. United States*, 272 U. S. 52, in which the Supreme Court upheld the ability of then-President Wilson to fire the postmaster of Portland, Oregon, without consulting the Senate, despite the existence of a statute requiring the president to receive the advice and consent of the Senate to both appoint *and* remove such persons. The Court then overruled more recent precedent found in *Humphrey's Executor v. United States*, when then-President Roosevelt fired a Commissioner of the FTC without specifying any cause for his removal. 295 U.S. 602, (1935). As we know, the statute only permits removal for "inefficiency, neglect of duty, or malfeasance in office." In *Humphrey's Executor*, the Court ruled against Roosevelt by distinguishing the FTC as a quasi-judicial and quasi-legislative entity, rather than political or executive. As a result, the Commissioner only needed to answer to Congress and the courts. The Court in this case holds that in the intervening years, *Humphrey's Executor* has been steadily chipped away by later precedent and that all that is left of the case at this time is an observation that an agency that "exercises no part of the executive power" need not fall within the rule of presidential removal.

With this background, the Court states that the FTC enforces and administers around 80 statutes nationwide and, as a result, is very much executing the law. Consequently, its Commissioners are removable at-will.

Legislative relevance: Discussion of constitutional separation of powers and the ability of the President to remove subordinates at-will.

Category tags: Separation of Powers, Federal Trade Commission, Executive Power, Removal Power of the President

Wolford et al. v. Lopez, Attorney General of Hawaii

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By: Keelin Cronin

In this case, the Supreme Court of the United States, by a vote of 6–3, reversed the judgment of the Ninth Circuit, striking down a Hawaii law that makes it a crime for gun owners to bring their guns onto private property that is open to the public unless they have the property owner's specific consent. In writing this opinion, Justice Samuel Alito stated that the Hawaiian law departed "sharply" from the current default common law rule that anyone has an implied license

to enter property held open to the public unless the property owner withdraws consent. *Wolford v. Lopez*, No. 24-1046, 2026 LX 331359 (June 25, 2026).

The Court began its analysis with an overview of current Second Amendment jurisprudence. First, in *District of Columbia v. Heller*, 554 U. S. 570, which held (i) "the Second Amendment, like other provisions of the Bill of Rights, protects an individual right enjoyed by 'the people'"; (ii) the phrase to "keep and bear Arms" means to "have" and "carry Arms"; and (iii) "Arms" refers to implements used for offense or defense, further adding that handguns, which are "overwhelmingly chosen by American society" for self-defense, fall squarely into this category. Further, *Heller* stated that the central concern of the Second Amendment is securing the fundamental right of self-defense. Next came *McDonald v. Chicago*, 561 U. S. 742, which established that the Second Amendment applied equally to the federal government and the states. Finally, the Court reviewed its decision from *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U. S. 1, which established the two-step framework for analyzing the constitutionality of a law regulating firearms. The first step asks whether the restriction imposed on firearms by the challenged law falls within the plain text of the Second Amendment. If it does, then the law is presumptively unconstitutional, which means that it *may* violate the right codified by that amendment. The relevant government body, however, may show that its challenged law did not infringe the historical understanding of the codified right. *Wolford* at 7. The Court expressed in *Bruen* that the best evidence in this inquiry is likely historical legal analogues of similar laws or regulations. In evaluating such analogues, the Court should examine (a) the number of jurisdictions in which the analogue was adopted, (b) the extent to which the analogues were accepted, and (c) whether any analogue or collection of analogues is "relevantly similar" to the modern law. *Wolford* at 8.

In applying *Bruen* to the Hawaiian law, Justice Alito states that there is no dispute that the petitioners are among "the people" protected by the Second Amendment, or that they seek to bear arms, satisfying the first step. Addressing the second step of *Bruen*, Hawaii begins by pointing to its particular laws and customs. The Court finds this argument similar to that made in *McDonald*, where the Court held that the Second Amendment applies equally across the federal government and the states. It cannot give way to "the spirit of Aloha" in Hawaii, *State v. Wilson*, 154 Haw. 8, 27, 543 P. 3d 440, 459 (2024), any more than it can yield to the spirit of the Big Apple (*Bruen*) or the Windy City (*McDonald*). Hawaii then presents a series of historical analogues, consisting primarily of laws prohibiting unauthorized hunting of deer or small game on someone else's private property. These had little if any impact on the Second Amendment's central objective: protecting the fundamental right to self-defense. *Wolford* at 21. Further, their "obvious aim," according to the Court, was to prevent the harms and risks associated with unauthorized hunting. That conduct often entailed the theft of private property, by way of poaching, as well as the possibility of inflicting serious injury, and at the very least threatens the tranquility of the property owners. *Wolford* at 22. The Court summed up its analysis of the second *Bruen* step by asking: "Because it was accepted that prohibiting unauthorized hunting on private land was consistent with the Second Amendment right, can we infer that it is also consistent with that right to ban a person who is lawfully carrying a concealed handgun for self-defense from entering a gas station, coffee shop, grocery store, or other private property open to the public without express and unambiguous consent?" *Wolford* at 22. The answer for the Court is no.

The Court also makes quick work of Hawaii's other two historical analogues. The first is an 1893 Oregon law that prohibited anyone other than an officer on lawful business from being armed

or trespassing upon any enclosed premises without the consent of the owner. The Court does not believe that the phrase "enclosed premises" necessarily means an establishment that is open to the public, and there is no such indication from any other Oregon authority. Lastly, Hawaii cites to an 1865 Louisiana statute that made it unlawful "for any person or persons to carry fire-arms on the premises or plantations of any citizen, without the consent of the owner or proprietor, other than in lawful discharge of a civil or military order." 1865 La. Acts No. 10, § 1, p. 14. The Court stated that "[b]ecause this statute was neither widespread nor widely accepted, it carries no weight." As a result, the law fails both steps of the *Bruen* test and is unconstitutional. *Wolford* at 23.

Legislative relevance: Includes a thorough discussion and application of current Second Amendment SCOTUS case law.

Category tags: Constitutionality, Second Amendment, Bruen Test