

# KENTUCKY LAW UPDATE



# 2024

ADVANCING THE PROFESSION THROUGH EDUCATION

## Federal Court Update

1 CLE Credit

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2024 Kentucky Law Update**

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## I. FEDERAL RULES AMENDMENTS

Amendments to the following rules were adopted by the U.S. Supreme Court and transmitted to Congress on April 2, 2024. The amendments are set to go into effect on December 1, 2024. The full Congressional Rules Package is available for download at [https://www.uscourts.gov/sites/default/files/congressional\\_package\\_final\\_for\\_website.pdf](https://www.uscourts.gov/sites/default/files/congressional_package_final_for_website.pdf).

- A. [Appellate Rules 32, 35, 40](#), and [Appendix on Length Limits](#)
- B. Bankruptcy Restyled Rules Parts I through IX, [Rules 1007, 4004, 5009, 7001, 9006](#), and proposed new Rule 8023.1
- C. [Civil Rule 12](#)
- D. [Evidence Rules 613, 801, 804, 1006](#), and new Rule 107

## II. SIXTH CIRCUIT COURT OF APPEALS

- A. Abortion

*Ohio v. Becerra*, 87 F.4th 759 (6th Cir. 2023)

The Department of Health and Human Services (HHS) issued a final rule interpreting, in part, §1008 of Title X, which bars funds appropriated under the Title X grant program from being used in programs where abortion is considered a family planning method. A group of states filed suit to block two provisions of the 2021 rule. The first eliminated a prior HHS rule that required grantees to maintain strict physical and financial separation between their Title X programs and any abortion-related services they provide. The second is the requirement that Title X projects provide referrals for abortion services when requested by a patient. In [Rust v. Sullivan](#),<sup>1</sup> the Supreme Court held §1008 is ambiguous as to program integrity and abortion referrals and [Chevron](#)<sup>2</sup> deference applies. The Sixth Circuit held [Rust](#) and its application of [Chevron](#) remain binding. Applying [Rust](#), it held the rule's referral requirement is not an impermissible agency interpretation of §1008. The rule's program integrity requirements are not a permissible interpretation of §1008. The Court found only the state of Ohio made the requisite showing of irreparable harm to support a preliminary injunction. Holding the preliminary injunction factors weigh in favor of granting relief on the challenge to the rule's program integrity requirements, the Court found Ohio is entitled to a preliminary

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<sup>1</sup> 500 U.S. 173, 184 (1991).

<sup>2</sup> [Chevron U.S.A., Inc. v. NRDC](#), 467 U.S. 837 (1984), *overruled by Loper Bright Enterprises v. Raimondo*, 2024 WL 3208360 (2024).

injunction enjoining the federal government from enforcing those requirements in Ohio in a manner that would affect allocation of funding in that state.

B. Administrative Law

1. *Allstates Refractory Contractors, LLC v. Su*, 79 F.4th 755 (6th Cir. 2023).

The Sixth Circuit affirmed the district court's holding that Congress's delegation to the Occupational Safety and Health Administration (OSHA) to set workplace safety standards is constitutional. Allstates argued that because the only textual constraint on setting workplace safety standards is that they be "reasonably necessary or appropriate,"<sup>3</sup> OSHA does not have constitutional authority to set those standards under [§655\(b\)](#) and employers do not have a duty to comply with them under [§654\(a\)](#). The district court held the "reasonably necessary or appropriate" standard provided an "intelligible principle" to satisfy the nondelegation doctrine because the Supreme Court has repeatedly upheld similar delegations.

2. *Electric Power Supply Association v. Federal Energy Regulatory Commission*, 89 F.4th 546 (6th Cir. 2023).

The Sixth Circuit held the chairman of the Federal Energy Regulatory Commission exceeded his authority in moving for a remand of a ratemaking challenge without the support of any other members of the Commission. The Court remanded the matter to the agency to determine in the first instance what, if anything, can or should be done about his *ultra vires* action. Once the agency resolves that issue, any interested party may renew the petition for review of whether the Commission's underlying ratemaking decisions are arbitrary and capricious agency action.

C. Americans with Disabilities Act

1. *Bennett v. Hurley Medical Center*, 86 F.4th 314 (6th Cir. 2023).

Bennett appealed the district court's grant of summary judgment to Hurley Medical Center on her claim it violated her rights under Title II of the Americans with Disabilities Act, §504 of the Rehabilitation Act, and state disabilities law when it stopped allowing her service dog to accompany her during her work as a student nurse. Bennett's service dog assists with her panic disorder by recognizing the signs of a panic attack so that Bennett may take medication before the attack begins. Hurley initially let Bennett bring the dog with her on rotations, but patients and staff complained of experiencing allergic reactions. The company offered to allow the dog if he wore a body suit designed to minimize the spread of allergens, but one was not available to fit his breed. Hurley then revoked consent to allow the dog to accompany Bennett throughout the facility but offered to crate him in a specific area and allow Bennett to take breaks to visit him as necessary. The district court found for Hurley on summary judgment, holding no

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<sup>3</sup> [29 U.S.C. §652\(8\)](#).

reasonable juror could find the hospital failed to provide Bennett with a reasonable accommodation because the dog constituted a direct threat to the health and safety of patients and staff. It also found Hurley did not disrupt the interactive process required by Title II because staff's emails with Bennett showed it remained open to continued conversation regarding Bennett's accommodation. It granted summary judgment to Hurley on the Rehabilitation Act and state law claims, agreeing with the parties' conclusion that those claims should be resolved consistently with the ADA claims. The Sixth Circuit affirmed. While the district court erred in holding Bennett abandoned her intentional discrimination claim, it did not err in ultimately granting summary judgment to Hurley. Bennett failed to show Hurley prevented the dog from accompanying her on rounds because of her disability. The Court noted that no circuit court has considered how a healthcare provider should reasonably accommodate a service animal under Title II of the ADA. The district court properly concluded Hurley reasonably decided the dog posed a direct threat to patient health and safety, and the accommodations proposed to mitigate the risks were not reasonable.

2. *Cooper v. Dolgencorp, LLC*, 93 F.4th 360 (6th Cir. 2024).

Cooper has Tourette's syndrome which causes him to involuntarily utter racist and profane words. Coca-Cola Consolidated, Inc. hired him to deliver its products to customers. Following customer complaints, Coca-Cola provided Cooper with various accommodations for his disability. Its last accommodation required him to transfer to a position with no customer contact. Cooper filed suit under the ADA for disability discrimination and constructive discharge. The district court granted summary judgment to Coca-Cola, and the Sixth Circuit affirmed. The Court found excellent customer service was an essential function of Cooper's position. The district court did not err in finding Cooper could not provide excellent customer service without an accommodation. Cooper failed to create a triable issue of fact regarding whether the delivery route he proposed was not customer-facing and constituted a reasonable accommodation. In addition, because there was no bulk delivery position available at the time in question, it was not a reasonable accommodation as a matter of law. Coca-Cola's accommodation of transferring Cooper to a warehouse position was reasonable. Cooper's constructive discharge claim also failed because he could not show Coca-Cola deliberately created intolerable working conditions with the intent of forcing him to quit.

D. Arbitration

1. *Bazemore v. Papa John's U.S.A., Inc.*, 74 F.4th 795 (6th Cir. 2023).

Bazemore, a delivery driver, filed suit against Papa John's under the Fair Labor Standards Act, claiming the company under-reimbursed his vehicle expenses reducing his pay below the federal and state minimum wage. Papa John's moved to compel arbitration and dismiss the complaint, providing proof it requires all new employees to sign an arbitration agreement as condition of employment along with records showing

Bazemore signed the agreement in October 2019. Bazemore swore under penalty of perjury he had not seen the agreement, had no knowledge of it, and that his manager had logged in for him and other drivers in order to complete their training materials. He requested discovery as to whether he actually signed the agreement. The district court denied the request, granted Papa John's motion to compel arbitration and dismissed the complaint. Bazemore appealed, and the Sixth Circuit reversed. Under Kentucky law, a contract exists only when the parties assent to it by way of "an intentional manifestation" of that assent.<sup>4</sup> An electronic signature is only legally valid when it is made by the person whose signature it purports to represent.<sup>5</sup> The parties presented conflicting evidence on that point, creating a genuine issue of material fact. The Court reversed the district court's judgment and remanded for proceedings consistent with its opinion.

2. *Tillman Transportation, LLC v. MI Business Incorporated*, 95 F.4th 1057 (6th Cir. 2024).

At issue in this case was the Federal Arbitration Act's exemption clause, §1, which states the FAA does not "apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."<sup>6</sup> *New Prime Inc. v. Oliviera*<sup>7</sup> held that before proceeding under the FAA, courts "must first know whether the contract itself falls within or beyond the boundaries of §§1 and 2." Whether corporate entities such as limited liability companies are covered under §1's exemption was an issue of first impression in the Sixth Circuit. It held the district court correctly held the §1 exemption does not apply to limited liability companies like Tillman Transportation. "[A] business entity is not a transportation worker, and... a commercial contract between two business entities is not a contract of employment."<sup>8</sup>

3. *Schwebke v. United Wholesale Mortgage LLC*, 96 F.4th 971 (6th Cir. 2024).

Schwebke filed suit against United Wholesale Mortgage (UWM), alleging disability discrimination under federal and state law. After participating in extensive discovery over seven months, UWM moved to compel arbitration based on its employment agreement containing an arbitration clause requiring the parties to submit covered claims to binding arbitration. The district court denied the motion, holding UWM implicitly waived its arbitration right because its conduct was inconsistent with reliance on its right to arbitration. The Sixth Circuit affirmed.

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<sup>4</sup> *Furtula v. University of Kentucky*, 438 S.W.3d 303, 308 (Ky. 2014).

<sup>5</sup> *Friedmann v. Jefferson County Board of Education*, 647 S.W.3d 181, 189-90 (Ky. 2022); [KRS 369.109\(1\)](#).

<sup>6</sup> [9 U.S.C. §1](#) (emphasis added).

<sup>7</sup> 586 U.S. 105 (2019).

<sup>8</sup> *Tillman Transportation, LLC v. MI Business Incorporated*, 2023 WL 4875872 (E.D. Mich 2023) at \*4.

E. Bankruptcy

1. *In re Juntoff*, 76 F.4th 480 (6th Cir. 2023).

From 2014-2018, the Affordable Care Act's individual mandate required most Americans to buy health insurance. Those who did not were forced to pay a "shared responsibility payment" as a penalty equal to 2.5 percent of the taxpayer's income, subject to a floor (\$695) and a ceiling (the nationwide average premium for certain health insurance plans). Congress eliminated the mandate in 2017 and relieved any responsibility under it for tax years 2019 and after. In 2018, Juntoff did not buy insurance and did not make his shared responsibility payment. After he declared bankruptcy, the IRS attempted to collect payment from him and filed a proof of claim in bankruptcy court. It asked for priority above other debtors under [11 U.S.C. §507\(a\)\(8\)\(A\)](#), which covers bankruptcy claims by government units for any "tax on or measured by income." The bankruptcy court denied this request, finding the shared responsibility payment was not a tax on or measured by income. The Bankruptcy Appellate Panel reversed, and Juntoff appealed to the Sixth Circuit. The Court affirmed, joining the Third and Fourth Circuits in finding the shared responsibility payment amounts to a tax measured by income under [§507\(a\)\(8\)\(A\)](#).

2. *In re Teter*, 90 F.4th 493 (6th Cir. 2024).

Teter filed Chapter 7 bankruptcy with almost \$100,000 in debt, consisting mainly of unpaid student loans. Bankruptcy law restricts an individual's ability to discharge consumer debt if the debtor's income exceeds certain thresholds.<sup>9</sup> The Trustee characterized Teter's loans as consumer debt, and after evaluating her income, held she was abusing the system and filed a motion to dismiss the bankruptcy petition. Teter filed a motion for summary judgment, and the Trustee thereafter withdrew the motion, citing awareness of facts and circumstances rendering the motion unwarranted. Teter thereafter sought attorneys' fees from the Trustee under the Equal Access to Justice Act.<sup>10</sup> The bankruptcy court declined to award the fees, and Teter appealed to the district court, which affirmed. Teter filed an appeal with the Sixth Circuit, which also affirmed. As a threshold to recovering fees under the EAJA, Teter had to demonstrate the Trustee's motion to dismiss in bankruptcy court unambiguously constituted a "civil action" under the Act. Both the bankruptcy court and district court held it did not. The Sixth Circuit stated, "we agree with the bankruptcy court that the EAJA could be read to exclude §707(b) motions to dismiss, leaving fees unavailable to a party like Teter."<sup>11</sup>

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<sup>9</sup> See [11 U.S.C. §707](#); *Schultz v. U.S.*, 529 F.3d 343, 346-47 (6th Cir. 2008).

<sup>10</sup> [28 U.S.C. §2412](#).

<sup>11</sup> *Id.* at 498-99.

F. Black Lung Benefits

*Wilgar Land Co. v. Director, Office of Workers' Compensation Programs, U.S. Department of Labor*, 85 F.4th 828 (6th Cir. 2023)

Along with the regulation defining “pneumoconiosis,” the Department of Labor also drafted a preamble to accompany the final regulation, which became effective in 2001. Claimant filed a second application for black lung benefits in 2008. He passed away while his claim was pending, and his widow took over his benefits claim and filed a separate claim for survivor’s benefits. Following a hearing, the ALJ awarded her benefits, finding Claimant had “legal pneumoconiosis” within the meaning of [20 C.F.R. §718.201\(a\)\(2\)](#). The experts had debated whether his obstructive impairment derived exclusively from his smoking habit or at least partly from exposure to dust during his coal mine work. The ALJ discredited Wilgar’s experts’ statements based on the belief they conflicted with the discussion in the preamble to the 2001 regulation. The Benefits Review Board affirmed the award of benefits, holding the ALJ properly looked to the preamble to discredit Wilgar’s experts. Wilgar sought review in the Sixth Circuit, arguing the ALJ erred under the Administrative Procedure Act by treating the preamble as binding. The Court denied the petition for review, stating the ALJ’s opinion showed the judge did not treat the preamble as binding.

G. Civil Procedure

1. *Johnson v. Griffin*, 85 F.4th 429 (6th Cir. 2023).

Kathy Griffin published a series of tweets to her Twitter followers alleging that Johnson, CEO of a Tennessee company, had engaged in homophobic behavior. She tagged his company and asked it to remove him from the board of directors. Within a day, the company terminated Johnson and removed him from the board. Johnson filed suit in federal court in Tennessee, claiming Griffin tortiously interfered with his employment. Griffin argued her tweets did not subject her to personal jurisdiction in Tennessee, and the district court dismissed the case. Johnson appealed, and the Sixth Circuit reversed and remanded. “To possess specific jurisdiction over an out-of-state defendant, the defendant’s ‘suit-related conduct’ must show a ‘substantial connection with the forum State.’”<sup>12</sup> The Court noted Griffin’s tweets were drawn from Tennessee sources, impugned the professionalism of an executive whose career was based in Tennessee, and in them she urged her followers to pressure Johnson’s company, a Tennessee-based business, to fire him and remove him from the Board. It also noted her initial tweet tagged the company directly. “These intentional threats to VisuWell’s Tennessee-based business plainly affected Tennessee.”<sup>13</sup> “Targeting Johnson and VisuWell in Tennessee,

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<sup>12</sup> *Id.* at 432, citing [Walden v. Fiore](#), 571 U.S. 277, 284 (2014).

<sup>13</sup> *Id.* at 433.

based exclusively on conduct in Tennessee, and urging action in response in Tennessee, ‘tether[ed] those effects to the forum.’”<sup>14</sup>

2. *In re Onglyza (Saxagliptin) and Kombiglyze (Saxagliptin and Metformin) Products Liability Litigation – MDL 2809*, 93 F.4th 339 (6th Cir. 2024).

Plaintiffs claimed saxagliptin, a diabetes medication, caused their heart failure. They presented a single expert to support their claim. After a *Daubert* hearing, the district court excluded the expert, holding methodological flaws made this testimony unreliable under [Federal Rule of Evidence 702](#). It granted summary judgment for defendants. Plaintiffs appealed, challenged the exclusion of their expert, the grant of summary judgment, and denial of their request for more time to find another expert. The Sixth Circuit affirmed. “Dr. Goyal’s failure ‘to adequately account for contrary evidence is not reliable or scientifically sound.’”<sup>15</sup> “By ignoring all other human studies, besides SAVOR, without an adequate explanation, Dr. Goyal failed to base his opinion on ‘sufficient facts or data.’”<sup>16</sup> The district court did not abuse its discretion in excluding his testimony. It also did not err in finding all jurisdictions require expert testimony to show general causation in complex medical cases. Its exclusion of the expert’s testimony warranted its grant of summary judgment to defendants.

#### H. Constitutional Law

1. *L.W. by and through Williams v. Skrmetti*, 73 F.4th 408 (6th Cir. 2023).

In March 2023, Tennessee enacted a law banning certain treatments for minors with gender dysphoria. It also allows state regulatory authorities to impose professional discipline on healthcare providers who violate the law. Plaintiffs, who are transgender minors, their parents, and a doctor, filed suit against state officials claiming the law violates federal due process and equal protection. They specifically challenged the law’s prohibitions on hormone therapy and surgery, but not its private right of action. They sought a preliminary injunction to prevent those portions of the law from going into effect on July 1, 2023. The district court granted the motion in part, finding plaintiffs lacked standing to challenge the surgery ban but could challenge the ban on hormone therapy. It held the law violates due process by infringing on the parents’ fundamental right to direct their children’s medical care. It held the law also violates equal protection, finding it improperly discriminates on the basis of sex, that transgender persons are a quasi-suspect class, and Tennessee could not satisfy the necessary justifications based on that designation. The district court held

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<sup>14</sup> *Id.* at 435, citing *Blessing v. Chandrasekhar*, 988 F.3d 889, 906 (6th Cir. 2021); see *Tamburo v. Dworkin*, 601 F.3d 693, 707 (7th Cir. 2010).

<sup>15</sup> *Id.* at 345, quoting *In re Lipitor (Atorvastatin Calcium) Marketing, Sales Practices and Products Liability Litigation*, 174 F.Supp.3d 911, 932 (D.S.C. 2016).

<sup>16</sup> *Id.* at 346, quoting [Rule 702\(b\)](#).

the law is facially unconstitutional (excepting the surgery ban and private enforcement provisions) and issued a statewide injunction prohibiting its enforcement. Tennessee appealed, and the district court denied the state's motion for a stay. The Sixth Circuit stayed enforcement of the district court's preliminary injunction. It found the district court likely abused its discretion by enjoining enforcement of the law statewide, rather than just against plaintiffs in the instant action. The Court also found plaintiffs are unlikely to prevail on their due process and equal protection claims. In regard to the due process claim, the Court noted no Supreme Court opinions extend a parent's right to make decisions concerning the care, custody, and control of their children to a general right to receive "new medical or experimental drug treatments."<sup>17</sup> It is within the state's police power to ban off-label uses of certain drugs. Addressing the equal protection claim, the Court stated it is skeptical that heightened scrutiny applies in this case, and it is highly unlikely plaintiffs can show the law lacks a rational basis. It noted that neither the Supreme Court nor the Sixth Circuit have recognized transgender status as a quasi-suspect class. In addition, if the injunction remains in place, the state will suffer irreparable harm from its inability to enforce the legislature's will, further the public health considerations underlying the law, and avoid irreversible health risks to its children.

2. *Norris v. Stanley*, 73 F.4th 431 (6th Cir. 2023).

Michigan State University employees filed suit, arguing MSU's requirement that its employees receive the COVID-19 vaccine violated their constitutional rights. They also argued the vaccine mandate was preempted by federal law regulating distribution and use of pharmaceuticals. The district court granted MSU's motion to dismiss, and the Sixth Circuit affirmed. It held plaintiffs' substantive due process claim failed because MSU's vaccine policy satisfied rational basis scrutiny. Public health and safety are legitimate state interests, and "MSU could rationally believe that requiring the vaccine for naturally immune individuals would further combat COVID-19 on its campus."<sup>18</sup> As no employee's rights were violated, the vaccine policy is not an unconstitutional condition on plaintiffs' employment. In addition, MSU's policy is not preempted due to conflict with the federal statute regarding emergency use authorizations for pharmaceuticals that have not received final FDA approval.<sup>19</sup> The statute addresses interactions between medical providers and the person receiving the vaccine, not interactions between an employer and employees receiving it.

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<sup>17</sup> *Id.* at 417.

<sup>18</sup> *Id.* at 436.

<sup>19</sup> [21 U.S.C. §360bbb-3](#).

3. *Doe v. Thornbury*, 75 F.4th 655 (6th Cir. 2023).

The district court preliminarily enjoined Kentucky’s ban on sex-transition care for minors but stayed the injunction based on the Sixth Circuit’s decision in *L.W. by and through Williams v. Skrmetti*.<sup>20</sup> The Sixth Circuit declined to lift the district court’s stay, finding plaintiffs’ requested stay presents the same issues decided in *Skrmetti*.

4. *Pleasant View Baptist Church v. Beshear*, 78 F.4th 286 (6th Cir. 2023).

A group of churches, private religious schools, affiliated pastors, and parents of students filed suit against Governor Beshear in his individual capacity alleging he violated their rights to free exercise of religion, to private school education, and to assemble peacefully and associate freely when he issued an executive order in 2020 barring in-person learning at all private and public elementary and secondary schools in Kentucky due to COVID-19. The executive order expired on January 4, 2021. After litigating plaintiffs’ request for a preliminary injunction, the Governor moved to dismiss the case on the basis qualified immunity shielded him from liability. The district court granted the motion, and the Sixth Circuit affirmed. It held the district court did not err when it dismissed plaintiffs’ claims for monetary damages against the Governor on the basis of qualified immunity. Neither the Sixth Circuit nor the U.S. Supreme Court’s precedent clearly established that temporarily closing in-person learning at all elementary and secondary schools would violate the Free Exercise Clause when the Governor signed the executive order. The executive order did not implicate plaintiffs’ rights to private education, and even if plaintiffs could establish a constitutional violation, they did not demonstrate that right was clearly established. The Court held plaintiffs forfeited their claim regarding their rights to assemble peacefully and associate freely because of their “failure to develop any actual arguments on these points...”<sup>21</sup> It also noted those claims also fail on the merits.

5. *Fischer v. Thomas*, 78 F.4th 864 (6th Cir. 2023).

Plaintiffs, who were candidates for judicial office, filed suit against the Kentucky Judicial Conduct Commission after finding out the Commission planned to investigate their campaign speech. The district court denied a preliminary injunction, and plaintiffs appealed. The Sixth Circuit enjoined the Commission from initiating an investigation during the campaign.<sup>22</sup> Plaintiffs thereafter lost their elections. Because Plaintiffs no longer face a threat of irreparable harm, the Sixth Circuit affirmed the district court’s denial of a preliminary injunction and dissolved the injunction pending appeal.

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<sup>20</sup> 73 F.4th 408 (6th Cir. 2023).

<sup>21</sup> *Id.* at 301.

<sup>22</sup> See *Fischer v. Thomas*, 52 F.4th 303 (6th Cir. 2022) (*per curiam*).

6. *McElhaney v. Williams*, 81 F.4th 550 (6th Cir. 2023).

When his daughter's high school softball coach benched her, Plaintiff sent text messages to her coach criticizing the decision. The school thereafter banned him from attending games for the next week. Plaintiff filed suit alleging school officials impermissibly retaliated against him for exercising his [First Amendment](#) rights. The district court granted defendants' motion for summary judgment on qualified immunity grounds, finding Plaintiff was not denied a clearly established constitutional right. The Sixth Circuit reversed. It held that any reasonable officer would have understood that Plaintiff's speech was protected. Plaintiff satisfied the clearly established prong of the qualified immunity inquiry. On remand, the district court must determine whether a constitutional violation in fact occurred. It affirmed the dismissal of Plaintiff's due process claim, finding the issue of whether Plaintiff was deprived of his contractual right to sit in his reserved game seats without sufficient process is a state contract law question.

7. *Pedreira v. Sunrise Children's Services, Inc.*, 79 F.4th 741 (6th Cir. 2023).

Plaintiffs, who are Kentucky taxpayers, filed suit against state government and Sunrise Children's Services alleging the state violated the Establishment Clause by paying Sunrise for religious services plaintiffs allege Sunrise imposes on children in state custody.<sup>23</sup> Plaintiffs and the state, without Sunrise, entered into a settlement agreement in which plaintiffs agreed to dismiss the suit in exchange for the state's agreement to make changes to its foster care system and jointly moved to dismiss the case with prejudice. The motion emphasized that pursuant to *Smoot v. Fox*,<sup>24</sup> plaintiffs could not be forced to litigate claims they wished to voluntarily dismiss with prejudice. The district court granted the motion, dismissed the case, and refused to review the settlement agreement. It noted the motion was filed by the parties to the sole remaining claim – plaintiffs' Establishment Clause claim against Kentucky – and held *Smoot* controlled, and it had no discretion to deny the motion. Sunrise appealed, and the Sixth Circuit affirmed. It also affirmed the district court's holding it lacked jurisdiction to review the 2021 settlement agreement. The district court did not enter the agreement, incorporate it into its judgment, or retain jurisdiction to enforce it.

8. *Truesdell v. Friedlander*, 80 F.4th 762 (6th Cir. 2023).

Legacy Medical Transport, an Ohio small business, sought to provide nonemergency ambulance services in Kentucky, which required it to show a "need" for the services and apply for a "certificate of need" with the Cabinet for Health and Family Services. Existing providers in the area objected to the request. The Cabinet denied Legacy's application partly on the ground that existing providers offered an adequate supply. Legacy filed

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<sup>23</sup> *Pedreira v. Sunrise Children's Services, Inc.*, 826 Fed. App'x 480 (6th Cir. 2020).

<sup>24</sup> 340 F.2d 301, 302-03 (6th Cir. 1964) (*per curiam*).

suit against Cabinet officials, arguing Kentucky's certificate of need law violated the dormant Commerce Clause. The district court granted summary judgment in the Cabinet's favor. The Sixth Circuit affirmed in part and reversed in part. It affirmed with respect to Legacy's request to offer intrastate ambulance services, noting Kentucky's law treats in-state and out-of-state providers the same. It reversed as to Legacy's request to provide interstate transportation between Kentucky and Ohio. The U.S. Supreme Court held in [Buck v. Kuykendall](#)<sup>25</sup> that states may not deny a common carrier a license to provide interstate transportation on the ground the interstate market has an adequate supply.

9. *Changizi v. Department of Health and Human Services*, 82 F.4th 492 (6th Cir. 2023).

Plaintiffs are Twitter users who were temporarily or permanently banned from the platform for posting alleged misinformation regarding COVID-19. They filed suit against the U.S. Department of Health and Human Services, its secretary, and the U.S. Surgeon General alleging claims under the [First](#) and [Fourth Amendments](#) and the Administrative Procedure Act. The district court dismissed the complaint for lack of jurisdiction and failure to state a claim. The Sixth Circuit affirmed, holding Twitter's actions are not traceable to the federal government. "Because Plaintiffs have not adequately pleaded that HHS compelled Twitter's chosen course of conduct, we are left with a 'highly attenuated chain of possibilities' that is too speculative to establish a traceable harm."<sup>26</sup>

10. *L.W. v. Skrmetti*, 83 F.4th 460 (6th Cir. 2023).

The Court held the U.S. Constitution does not prohibit Kentucky and Tennessee from limiting certain sex-transition treatments for minors experiencing gender dysphoria. The Tennessee plaintiffs challenged the state's ban on puberty blockers, hormone therapy, and sex-transition surgery for children. The district court held the law was facially unconstitutional (excepting the surgery and private enforcement provisions) and issued a statewide injunction against its enforcement. The Sixth Circuit stayed the injunction pending appeal. The Kentucky plaintiffs challenged the state's ban on puberty blockers and hormone therapy but did not challenge its provisions regarding surgical procedures. The district court granted a preliminary injunction but granted Kentucky's motion for stay of the injunction, which the Sixth Circuit declined to lift. The Court thereafter consolidated the appeals and expedited them. It held plaintiffs are not likely to establish a due process violation because parents do not have a constitutional right to obtain reasonably banned treatments for their children. The laws do not violate equal protection because they treat similarly situated individuals evenhandedly. The Court declined to recognize transgender individuals as a suspect class, holding rational basis

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<sup>25</sup> 267 U.S. 307 (1925).

<sup>26</sup> *Id.* at 498.

review applies. It also noted the preliminary injunctions are based on a facial invalidation of each law rather than an as-applied judgment, and each applies to every individual in each state. It found that if the injunction remains in place, the states will suffer harm from their inability to enforce the will of their legislatures, further public health considerations, and avoid risks to their children. The Sixth Circuit lifted the preliminary injunctions issued in these cases and remanded for further proceedings consistent with its decision.

11. *Lichtenstein v. Hargett*, 83 F.4th 575 (6th Cir. 2023).

In Tennessee, it is illegal for anyone other than election officials to distribute the state's application to vote absentee. However, the form is available online. Plaintiffs would like to hand out the application at their voting drives. They filed suit alleging the First Amendment provides them the right to do so. The Sixth Circuit affirmed the district court's dismissal of Plaintiffs' complaint. The Court found the law bans conduct, not speech. Even if the ban did prohibit speech, strict scrutiny does not apply because the ban applies neutrally no matter what message the person wishing to hand out the form is trying to convey. It burdens nobody's ability to engage in actual speech. The Court declined to apply the *Anderson-Burdick* balancing test to this pure speech claim. It held that even if Plaintiffs' conduct qualifies as inherently expressive, the ban survives the expressive-conduct test.

12. *Inner City Contracting LLC v. Charter Township of Northville, Michigan*, 87 F.4th 743 (6th Cir. 2023)

Inner City Contracting LLC, a minority-owned business, filed suit against a township and consulting company, claiming racial discrimination after the consultants allegedly made false and inaccurate statements about it, leading the township to award a government contract to a different white-owned company. The district court dismissed on the basis Inner City failed to state a claim under either [42 U.S.C. §1981](#) or [§1983](#) by failing to allege the racial composition of its ownership. It also held Inner City lacked standing to bring its constitutional claims, and the consulting company was not a state actor for the purposes of [§1983](#). The Sixth Circuit reversed in part, affirmed in part, and remanded for further proceedings. It found neither *Club Italia*<sup>27</sup> nor *Lukens*<sup>28</sup> "bars all disappointed bidders from bringing their cases in federal court – just those who do not allege an injury specific to them, arising from law created for their protection, and apart from the generic injury of losing a contract award."<sup>29</sup> The Court held Inner City has Article III standing to bring its claims against defendants. It suffered a cognizable injury when it lost the contract and profits as a result of alleged

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<sup>27</sup> *Club Italia Soccer & Sports Org., Inc. v. Charter Township of Shelby, Michigan*, 470 F.3d 286 (6th Cir. 2006), overruled on other grounds by [Engquist v. Oregon Dept. of Agr.](#), 553 U.S. 591 (2008).

<sup>28</sup> [Perkins v. Lukens Steel Co.](#), 310 U.S. 113 (1940).

<sup>29</sup> *Id.* at 751.

racial discrimination, and the alleged injury was traceable to defendants' conduct. It also held a corporation can satisfy statutory standing under [§1981](#). The Court clarified the plaintiff's burden when pleading a [§1981](#) claim, and found Inner City met its preliminary burden. The facts, when construed in Inner City's favor, plausibly alleged it was denied the right to contract while the other company was not due to inaccurate statements allegedly made on the basis of race. The Court affirmed the district court's dismissal of Inner City's [§1983](#) claims based on the lack of a cognizable due process claim, lack of a meritorious equal protection claim, and due to Inner City's failure to sufficiently plead either *Monell* liability or that the consulting company was a state actor.

13. *Peterson v. Johnson*, 87 F.4th 833 (6th Cir. 2023).

Peterson filed suit against Johnson and McPherson under [42 U.S.C. §1983](#), alleging he had a property interest in his status as an emeritus professor at Ohio State University, and OSU deprived him of that status without adequate process. The district court dismissed the complaint under [Rule 12\(b\)\(6\)](#), holding his emeritus status was not a constitutionally protected property interest. The Sixth Circuit affirmed. The Court found Peterson's claim amounted to claiming a property interest in his professional reputation, which is indistinguishable from a liberty interest claim based on alleged injuries to a plaintiff's reputation. Before asserting a liberty interest in reputation or good name, a plaintiff must show he or she requested a name-clearing hearing and was denied that hearing.<sup>30</sup> Peterson conceded he did not request such a hearing, and therefore that benefit cannot form the basis of his procedural due process claim.

14. *Kareem v. Cuyahoga County Board of Education*, 95 F.4th 1019 (6th Cir. 2024).

Kareem filed suit alleging Ohio state election laws violated her First Amendment right to free speech by prohibiting her from displaying her marked ballot to others. The district court granted summary judgment to defendants, finding Kareem did not have Article III standing. The Sixth Circuit reversed and remanded for further proceedings. It held Kareem sufficiently alleged an injury in fact at the summary judgment stage. In addition, she established causation because the alleged violation of her constitutional rights is "fairly traceable" to each of the defendants, who all play a role in enforcing the ballot display prohibitions. Kareem also established redressability since the relief she requested is substantially likely to remedy her alleged injury.

15. *Richards v. Perttu*, 96 F.4th 911(6th Cir. 2024).

Richards appealed the dismissal of his [42 U.S.C. §1983](#) claim, which the district court dismissed due to his failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA). On appeal, he

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<sup>30</sup> *Quinn v. Shirey*, 293 F.3d 315, 319, 322 (6th Cir. 2002).

argued that under the [Seventh Amendment](#), a jury must resolve disputed facts of exhaustion that are intertwined with his substantive claim. The Sixth Circuit found Richards made out a *prima facie* case of [First Amendment](#) retaliation because Perttu allegedly destroyed his grievances in response to Richards' attempt to file them. It held the factual disputes concerning exhaustion in this case are intertwined with the merits of Richards' retaliation claim. The Court further held "the [Seventh Amendment](#) requires a jury trial when the resolution of the exhaustion issue under the PLRA would resolve a genuine issue of material fact regarding the merits of the plaintiff's substantive case."<sup>31</sup> As such, the district court erred in ordering an evidentiary hearing to settle the disputed facts in question. This was an issue of first impression in the Sixth Circuit.

16. *Oakland Tactical Supply, LLC v. Howell Township, Michigan*, 103 F.4th 1186 (6th Cir. 2024).

Oakland Tactical Supply leased land from a Michigan township to construct and operate a commercial shooting range with long-distance target shooting. However, the township's zoning restrictions limited the land to agricultural and residential uses. Oakland and five residents who wish to train at the proposed range filed suit arguing the township's zoning restrictions violate the [Second Amendment](#). The district court granted the township's motion for judgment on the pleadings, and plaintiffs appealed. The Sixth Circuit remanded for reconsideration in light of [New York State Rifle & Pistol Association, Inc. v. Bruen](#),<sup>32</sup> and the district court again granted judgment for the township. The Sixth Circuit affirmed the district court's dismissal of plaintiffs' facial challenge to the ordinance at issue, noting the amendments to the ordinance removed any ambiguity as to the definition of shooting ranges and where they are allowed within the township. The Court also rejected plaintiffs' as-applied challenge. "As carefully detailed in [Heller](#),<sup>33</sup> the right covered by the [Second Amendment](#)'s plain text is the right to possess and carry arms in case of confrontation."<sup>34</sup> "[W]hen applying [Bruen](#) we must ask not simply whether the regulation affects firearms in some way, but whether the regulation infringes the right to own and bear arms in case of confrontation."<sup>35</sup> The Court found plaintiffs' wish to engage in conduct more specific than "firearms training," and the zoning ordinance did not infringe their right to possess and carry firearms in case of confrontation. Plaintiffs' right to firearms training does not extend to training in a particular location or at the long distances proposed by Oakland Tactical. In addition, the zoning ordinance does not interfere with

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<sup>31</sup> *Id.* at 923.

<sup>32</sup> 597 U.S. 1 (2022).

<sup>33</sup> [District of Columbia v. Heller](#), 554 U.S. 570 (2008).

<sup>34</sup> *Id.* at 1195.

<sup>35</sup> *Id.* at 1196.

their [Second Amendment](#) right to keep and bear arms in case of confrontation.

I. Criminal Law

1. *U.S. v. Lewis*, 81 F.4th 640 (6th Cir. 2023).

Homeland Security received a tip in 2019 that a computer at Lewis’s IP address was being used to view child sexual exploitation online. Following an investigation, KSP and Homeland Security officers traveled to Lewis’s home to speak with him regarding a federal complaint of alleged internet crime. Lewis consented to a search of the premises, his property and vehicle, including a laptop and his smartphone. A forensic examiner generated a preview of the laptop, which revealed file names associated with child pornography. He also found thumbnail pictures of video on Lewis’s cellphone of his minor family members bathing naked. Lewis invoked his rights when officers led him outside and read him his *Miranda* rights but did not state he was revoking consent to the search of his devices or home. A detective prepared a proposed search warrant for the home and devices, which a state judge signed. Following his indictment, Lewis filed a motion to suppress, arguing the warrant authorizing the search was not supported by probable cause and that the affidavit the officer submitted in support of the warrant was a bare-bones affidavit. A magistrate judge recommended denying the motion, finding Lewis knowingly and voluntarily consented to the search, the consent authorized not only the initial preview of his devices but also the subsequent search and seizure, and that Lewis had not withdrawn his consent at any time. The district court denied the motion on other grounds, finding the search warrant was not based on probable cause but suppression was not warranted because the officers relied on the search warrant in good faith. Lewis pleaded guilty to one count of producing child pornography, but retained his right to appeal the suppression order and to withdraw his plea if he prevailed on appeal. On appeal, the government did not dispute the affidavit failed to establish probable cause, noting it contained no description of the evidence found. The Sixth Circuit held the officers did not reasonably rely on the affidavit because it was a bare-bones affidavit. “Considering the complete lack of factual information included in [the] affidavit, we hold that no reasonable officer would rely on the affidavit to establish probable cause to believe that Lewis’s electronic devices would contain evidence of a child sexual-exploitation offense or any other crime.”<sup>36</sup> “By omitting the essential facts of his investigation and communicating only his bottom-line conclusion, [the detective] asked the magistrate to find probable cause based solely on his say-so.”<sup>37</sup> Application of the good-faith exception under these facts was inappropriate. The Court agreed with the district court’s finding that Lewis had only consented to an initial search of his devices and the officers exceeded the scope of that consent when they seized the devices and

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<sup>36</sup> *Id.* at 648.

<sup>37</sup> *Id.* at 648.

examined them forensically. The Court reversed the district court's order denying the motion to suppress, vacated the conviction, and remanded for further proceedings.

2. *U.S. v. Bauer*, 82 F.4th 522 (6th Cir. 2023).

Following a DEA investigation, Bauer was indicted for unauthorized distribution of controlled substances to 14 of his neurology patients. A jury convicted him on all counts. While his appeal was pending, the U.S. Supreme Court decided *Ruan v. U.S.*,<sup>38</sup> which held the crime of unauthorized distribution includes as an element that defendant subjectively knew the distribution was unauthorized. It is not sufficient that the distribution was objectively unauthorized. Bauer argued that, under *Ruan*, there was insufficient evidence for the government to meet its burden regarding the appropriate *mens rea*, and the district court improperly instructed the jury. The Sixth Circuit affirmed. Viewed in the light most favorable to the government, the Court found there was extensive evidence that Bauer did not examine patients adequately, establish diagnoses, consider red flags, or attempt more conservative treatment, violating the standard of care put forward by the government's expert. "A jury could credit this evidence and find that Bauer *knew* his prescriptions were without authorization, satisfying *Ruan's mens rea* requirement."<sup>39</sup> Reviewing the jury instructions for plain error, the Court held they were adequate in light of its decision in *U.S. v. Anderson*.<sup>40</sup>

3. *U.S. v. Zakhari*, 85 F.4th 367 (6th Cir. 2023).

Zakhari was convicted of attempting to persuade a minor to engage in illegal sexual activity in violation of [18 U.S.C. §2422\(b\)](#), attempting to transmit an obscene image to a minor in violation of [18 U.S.C. §1470](#), and attempting to produce child pornography in violation of [18 U.S.C. §2251\(a\)-\(e\)](#). The district court denied his pretrial motion to suppress his statements, stating he had not made a clear and unambiguous invocation of his right to counsel when he stated his sister is an attorney and he wanted to call her. The Sixth Circuit reversed. "As made plain in *Abela*,<sup>41</sup> an invocation is sufficient despite a verbal hedge when other elements of the situation establish that the defendant sought to invoke his rights."<sup>42</sup> The Court held Zakhari adequately invoked his [Fifth Amendment](#) right to counsel, and the district court should have granted his motion to suppress the entirety of his interrogation. It also rejected the government's claim that the error was harmless in light of other evidence in the record. On remand, the district

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<sup>38</sup> 597 U.S.450 (2022).

<sup>39</sup> *Id.* at 529.

<sup>40</sup> 67 F.4th 755, 764-66 (6th Cir. 2023) (*per curiam*).

<sup>41</sup> *Abela v. Martin*, 380 F.3d 915 (6th Cir. 2004).

<sup>42</sup> *Id.* at 377.

court must reconsider Zakhari's motion to dismiss the third count against him due to prosecutorial vindictiveness.

4. *U.S. v. Zheng*, 87 F.4th 336 (6th Cir. 2023).

A jury convicted Zheng and a co-defendant on four counts of harboring illegal noncitizens for commercial gain in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(iii\) and \(a\)\(1\)\(A\)\(v\)\(II\)](#). The Sixth Circuit affirmed on appeal. It rejected defendants' argument the district court erred by refusing to instruct the jury that the government must prove they intentionally harbored or concealed noncitizens from law enforcement. The Court joined the Third, Fifth, and Eighth Circuits in upholding "the district court's instruction that 'harboring' encompasses conduct that tends to substantially facilitate noncitizens remaining in the country illegally and prevent authorities from detecting the noncitizens' presence."<sup>43</sup> It declined to join the Second, Seventh, and Ninth Circuits, which hold "harboring" requires a defendant to act intentionally or purposefully, or the Eleventh Circuit, which requires a knowing *mens rea*. The Court also found any error in the district court's instructions was harmless because a reasonable jury would have found defendants guilty even under their proposed instruction. It also rejected defendants' argument the district court deprived the jury of its opportunity to apply law to the facts of the case by providing examples of conduct prominent in this case in its jury instructions. "[T]he district court did not unequivocally state that [defendants] substantially facilitated the noncitizens remaining in the United States by providing housing and employment."<sup>44</sup>

5. *U.S. v. O'Lear*, 90 F.4th 519 (6th Cir. 2024).

O'Lear was convicted of healthcare fraud, making a false statement in connection with healthcare services, and aggravated identity theft and sentenced to 180 months in prison. The Sixth Circuit affirmed. It held the district court did not violate Lear's [Sixth Amendment](#) right to an impartial jury by excluding individuals who had not been vaccinated against COVID-19 from the potential jury pool. The unvaccinated do not qualify as a "distinctive group" that can trigger [Sixth Amendment](#) concerns with excluding a fair cross section of the community from the jury pool. It also held the nursing home residents were victims of Lear's fraud under the "vulnerable victims" sentencing enhancement even though Medicare and Medicaid suffered the monetary losses. Because Lear used the residents' medical records and identities without their permission, he took advantage of them in a way that made them "victims" under the ordinary understanding of that term.

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<sup>43</sup> *Id.* at 343.

<sup>44</sup> *Id.* at 347.

6. *U.S. v. Johnson*, 95 F.4th 404 (6th Cir. 2024).

The Sixth Circuit affirmed Johnson’s convictions and sentence for firearms and drug trafficking offenses. The Court rejected his claim the jury pool was not drawn from a fair cross section of the community in violation of the [Sixth Amendment](#) and the Jury Selection and Services Act.<sup>45</sup> To establish a *prima facie* case for a fair cross section claim under [Duren v. Missouri](#),<sup>46</sup> a defendant must show 1) the group alleged to be excluded is distinctive in the community; 2) representation of the group in venires from which the jury is selected is not fair and reasonable in relation to the number of such persons in the community; and 3) the underrepresentation is due to systemic exclusion of the group during jury selection. The focus in this case was on the third prong. The Court held “Johnson has not identified a procedural or operation flaw in the [Eastern District of Kentucky] Jury Selection Plan that could satisfy the third [Duren](#) prong.”<sup>47</sup> It found “[c]omparative disparity cannot, by itself, establish the third [Duren](#) prong when the size of the distinctive group [in this case, African Americans] when the size of the distinctive group comprises on 1.16% of the jury-eligible population.” The Court also noted the jury consultant calculated the standard deviation for comparison between the eligible percentage of African Americans in the Eastern District of Kentucky and the percentage of African Americans in the London Division Qualified Jury Wheel. While the comparison ranged from four to six standard deviations below the expected value, the Court stated “[the data] do not show a systematic underrepresentation in the London Division’s jury-selection process.”<sup>48</sup> “The relevant community is the division, and not the district.”<sup>49</sup> It rejected Johnson’s argument that removal of unresponsive jurors from the qualified jury wheel is an act of systematic exclusion, stating he produced no evidence to show potential African American jurors face unique obstacles preventing them from receiving or returning jury questionnaires. The Court also rejected Johnson’s claim the felon-in-possession statute, [18 U.S.C. §922\(g\)\(1\)](#), is unconstitutional as applied to him. “Without precedent explicitly holding that [§922\(g\)\(1\)](#) is unconstitutional and because it is unclear that [Bruen](#)<sup>50</sup> dictates such a result, we find Johnson has not satisfied plain-error review.”<sup>51</sup>

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<sup>45</sup> [28 U.S.C. §1867 et seq.](#)

<sup>46</sup> 439 U.S. 357, 364 (1979).

<sup>47</sup> *Id.* at 413.

<sup>48</sup> *Id.* at 414.

<sup>49</sup> *Id.*

<sup>50</sup> [New York State Rifle & Pistol Association, Inc. v. Bruen](#), 597 U.S. 1 (2022).

<sup>51</sup> *Id.* at 417.

7. *U.S. v. Alvarado*, 95 F.4th 1047 (6th Cir. 2024).

Alvarado was convicted of being a felon in possession of a firearm in violation of [18 U.S.C. §922\(g\)\(1\)](#) and sentenced to 104 months in prison after the court applied a four-level sentencing enhancement for reckless endangerment. He argued for the first time on appeal that his conviction violates the [Second Amendment](#) under [New York State Rifle & Pistol Ass’n. v. Bruen](#).<sup>52</sup> He also argued the evidence did not support the reckless endangerment sentencing enhancement. The Sixth Circuit stated “[w]e agree that the constitutionality of [§922\(g\)\(1\)](#) under [Bruen](#) is subject to reasonable dispute and will not disturb Alvarado’s conviction on plain error review.”<sup>53</sup> It held the district court erred in applying a sentencing enhancement for reckless behavior under Tennessee law because there was no evidence in the record of anyone being within Alvarado’s line of fire or otherwise facing an imminent risk of harm.

## J. Education

1. *S.C. v. Metro Government of Nashville*, 86 F.4th 707 (6th Cir. 2023).

S.C., a high school student, filed suit against Metro Nashville Public Schools (MNPS) under Title IX and [42 U.S.C. §1983](#) alleging it was deliberately indifferent to student-on-student harassment she suffered related to a sexual assault and later participation in a sexual misconduct investigation. She raised three claims: 1) a Title IX “before” claim alleging deliberate indifference by MNPS before she was assaulted; 2) a Title IX “after” claim alleging deliberate indifference by MNPS during its investigation into her harassment; and 3) a Fourteenth Amendment equal protections claim under [§1983](#). The district court dismissed the “before” claim at summary judgment. The remaining claims proceeded to a bench trial. The district court found MNPS liable for emotional distress and other damages under the “after” claim but not liable under [§1983](#). On appeal, the Sixth Circuit vacated and remanded the district court’s grant of summary judgment on the Title IX “before” claim and the [§1983](#) “before” claim in light of its ruling in *Doe v. Metro Government of Nashville & Davidson County*.<sup>54</sup> The Court affirmed the district court’s judgment that MNPS is liable on S.C.’s Title IX “after” claim and the damages award.

2. *Bradley v. Jefferson County Public Schools*, 88 F.4th 1190 (6th Cir. 2023).

A high school student and his parents filed suit, arguing the guarantees under the Individuals with Disabilities Education Act (IDEA) extend to students enrolled full time at Kentucky’s Craft Academy for Excellence in

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<sup>52</sup> 597 U.S. 1 (2022).

<sup>53</sup> *Id.* at 1053.

<sup>54</sup> 35 F.4th 459 (6th Cir. 2022), *cert. denied sub. nom. Metro Government of Nashville & Davidson County v. Doe*, 143 S.Ct. 574 (2023).

Science and Mathematics. The Academy is located on campus at Morehead State University and provides education in a residential environment with undergraduates and classes eligible for high school and college credit. The district court held the Act does not apply to the Academy because the dual-credit classes amounted to postsecondary rather than secondary school education. The Sixth Circuit affirmed.

3. *Holland v. Kenton County Public Schools*, 88 F.4th 1183 (6th Cir. 2023).

Kenton County developed an individualized education plan (IEP) for high school student Holland. For his senior year, his parents enrolled him as a full-time student in the local community college and claimed the IDEA required the school district to provide the same support and special education services there. The district court granted summary judgment to the school system, holding it was not obligated to provide Holland with services at the community college because the IDEA does not apply to postsecondary education. The Sixth Circuit affirmed. “Kentucky law provides that a high school student who enrolls in ‘a college-level course of study’ on a college campus and simultaneously earns high school and college credit receives ‘postsecondary’ education, one ineligible for automatic coverage under the Act.”<sup>55</sup> Plaintiffs also failed to show the school district violated the terms of Holland’s existing plan.

4. *State of Tennessee v. Department of Education*, 2024 WL 2984295 (6th Cir. June 14, 2024).

The Department of Education issued three documents following the U.S. Supreme Court decision [Bostock v. Clayton County, Georgia](#)<sup>56</sup> stating it will now enforce Title IX to prohibit sexual orientation and gender identity discrimination in education programs and activities receiving federal financial assistance. Twenty states filed suit to bring a pre-enforcement challenge. The district court granted the states a preliminary injunction preventing enforcement of the challenged documents until the case is resolved on the merits. The district court held the states have standing, the documents are reviewable, and the states’ claim the documents had to go through notice and comment rulemaking is likely to succeed on the merits. The Sixth Circuit affirmed.

#### K. ERISA

- Patterson v. United Healthcare Ins. Co.*, 76 F.4th 487 (6th Cir. 2023)

United paid Patterson’s medical expenses following a car accident. He also recovered for his injuries from the other driver. United claimed his plan required him to pay those monies to it as reimbursement. Patterson and United settled, with Patterson paying United \$25,000. He later discovered his plan document

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<sup>55</sup> *Id.* at 1187, citing *Bradley* above.

<sup>56</sup> 590 U.S. 644 (2020).

contained no provision for reimbursement rights. He filed suit against United under ERISA. The district court dismissed the action, finding Patterson only had standing to sue for the \$25,000 not for injuries inflicted upon other insureds or for other forms of relief. As to the money, it held he did not state a viable claim under any of ERISA's causes of action. On appeal, the Sixth Circuit affirmed the holding Patterson had standing to sue for return of his money but failed to allege any plausible future injury entitling him to prospective injunctive relief. The Court declined to apply the *Rooker-Feldman* doctrine to bar Patterson's suit. It found he was not attacking the state court settlement but rather alleged United breached its ERISA duties to him in the underlying litigation, claims which could not have been pursued in state court. The Court held Patterson asserted a viable claim against United and Optum, its subsidiary, under ERISA's equitable cause of action<sup>57</sup> for breach of fiduciary duty and engagement in prohibited transactions. The district court must determine in the first instance whether Optum was acting as a fiduciary at the relevant time. The Court affirmed the district court's holding that Patterson's claim under [§1132\(a\)\(2\)](#) fails. Individual injury is not cognizable under that provision unless it also constitutes harm to the plan itself, and Patterson made no plausible allegations of plan harm. It also affirmed the district court's denial of Patterson's request for leave to amend the complaint on behalf of a putative class.

L. Federal Employers' Liability Act

*Mattingly v. R.J. Corman Railroad Group, LLC*, 90 F.4th 487 (6th Cir. 2024)

Mattingly filed suit to recover damages under the Federal Employers' Liability Act (FELA)<sup>58</sup> after he was injured while working to repair a bridge owned and operated by a common carrier, Memphis Railroad Line. Mattingly argued that under the "unitary theory" Corman Group operated its subsidiaries, including his employer Corman Services, as an organized, unitary railroad system, rendering it and all of its subsidiaries common carriers for FELA purposes. The district court held Mattingly's unitary theory for recovery was not supported by law, and he failed to present sufficient evidence from which a rational juror could find Memphis Line controlled or had the right to control Corman Services or Mattingly's daily work at the time of his injury. The Sixth Circuit affirmed the district court's grant of summary judgment to R.J. Corman, holding Mattingly was not employed by a common carrier which is a prerequisite to trigger FELA liability. It held Mattingly did not present a genuine dispute of material fact as to whether Corman Services may be considered a common carrier based on its relationship with Corman Group under FELA. In addition, Memphis Line did not control nor have the right to control Corman Services' daily operations such as to establish a master-servant relationship.

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<sup>57</sup> [29 U.S.C. §1132\(a\)\(3\)](#).

<sup>58</sup> [45 U.S.C. §51](#).

M. Habeas Corpus

1. *Fields v. Jordan*, 86 F.4th 218 (6th Cir. 2023).

A jury convicted Fields of murder and first-degree burglary. The Kentucky Supreme Court affirmed the conviction and the trial court's subsequent denial of postconviction relief. Fields thereafter filed a habeas petition in federal court under [28 U.S.C. §2254](#). The district court denied relief, and the Sixth Circuit granted him a certificate of appealability on five claims. His primary argument alleged the jury violated the Constitution when it conducted an "experiment" with a knife alleged to have been used during the crime during deliberations. Two jurors attempted to use the knife to unscrew screws in a wall cabinet in the jury room to see if it could be used in the way alleged by the prosecution. The Sixth Circuit denied habeas relief on this ground, holding Fields failed to identify any "clearly established" Supreme Court precedent regarding jury experiments that would permit relief under AEDPA.<sup>59</sup> "Fields cites not a single Supreme Court case that has ever 'addressed' the propriety of jurors experimenting with evidence during deliberations – let alone one that has found these experiments unconstitutional."<sup>60</sup> The Court also rejected his claims regarding ineffective assistance of counsel, holding Fields failed to show the state court engaged in any unreasonable application of the Supreme Court's test for evaluating defense counsel's performance or made an unreasonable determination of the facts about their conduct. Finally, the Court rejected Fields's argument the trial court violated his constitutional rights when it prohibited him from introducing statistics that showed the low likelihood he would ever get paroled if sentenced to life in prison during the penalty phase. The Court affirmed the district court's holding denying Fields habeas relief.

2. *Witham v. U.S.*, 97 F.4th 1027 (6th Cir. 2024).

Individuals in federal custody may not obtain [28 U.S.C. §2255](#) relief with respect to procedurally defaulted claims. [Section 2255](#) petitioners who contest their sentence on appeal but did not challenge the validity of their plea procedurally default those claims. Those petitioners are bound by that procedural default unless they can demonstrate actual innocence of the crime. Petitioners in this case defaulted on their claims by failing to raise them on direct appeal but they are actually innocent of their charges of conviction under [U.S. v. Davis](#).<sup>61</sup> Petitioners and the government all agreed that using a firearm during attempted bank extortion and using a firearm during attempted robbery of federal property no longer qualify as violations under [18 U.S.C. §924\(c\)](#). [Bousley v. U.S.](#)<sup>62</sup> held that when the government

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<sup>59</sup> Antiterrorism and Effective Death Penalty Act, [28 U.S.C. §2254\(d\)\(1\)](#).

<sup>60</sup> *Id.* at 232.

<sup>61</sup> 588 U.S. 445 (2019).

<sup>62</sup> 523 U.S. 614 (1998).

dismisses more serious charges through a plea bargain, “petitioner’s showing of actual innocence must also extend to those charges.”<sup>63</sup> In this case, petitioners’ dismissed charges were equally serious to the offense of conviction. The Court joined the Seventh Circuit and held the *Bousley* rule “does not require that the charge that was dropped or forgone in the plea negotiations be more serious than the charge to which the petitioner pleaded guilty. It is enough that it is as serious.”<sup>64</sup> “If petitioner has accepted a plea bargain, he may not collaterally attack his conviction unless he can show that he is actually innocent of equally or more serious charges dismissed as part of the bargain.”<sup>65</sup> The Sixth Circuit did not excuse petitioners’ procedural defaults in this case because both their plea agreements involved the dismissal of equally serious [§924\(c\)](#) charges, and neither showed actual innocence of those dismissed charges.

3. *Kitchen v. Whitmer*, 2024 WL 3218983 (6th Cir. June 28, 2024).

Seventeen-year-old Kitchen was convicted of armed robbery, possession of a firearm during a felony, first-degree criminal sexual conduct, and other offenses and sentenced to an indeterminate sentence of 42-60 years in prison. Under Michigan law, he will not be eligible for parole until he is almost 60 years old. He filed a *pro se* [§1983](#) suit challenging the Michigan sentencing statute alleging it violates his [Eighth Amendment](#) rights because it effectively keeps him in prison for life without parole. Defendants filed a pre-answer motion to dismiss for lack of subject matter jurisdiction and for summary judgment on the basis Kitchen’s [§1983](#) claim is barred by *Heck v. Humphrey*.<sup>66</sup> *Heck* held [§1983](#) claims are not cognizable if they challenge the fact or duration of confinement or seek immediate or speedier release. Those claims must be made via petition for a writ of habeas corpus. The district court held Kitchen is not required to bring his federal constitutional claims via a petition for a writ of habeas corpus and could proceed under [§1983](#). On appeal, the Sixth Circuit held Kitchen has Article III standing, and the *Rooker-Feldman* doctrine does not bar his claim. The Court reversed the district court and held Kitchen must bring his claim in habeas, not as an action under [§1983](#). The district court erred in only considering whether quicker release will result if Kitchen’s challenge succeeds. “In sum, the court cannot grant Kitchen the relief he seeks without undercutting his sentence. His sentence put him in prison for forty-two years without parole. To order the Parole Board to consider him now rewrites that sentence. This sort of adjustment lies in the province of habeas, not [§1983](#).”<sup>67</sup> The Court reversed and remanded to the district court for dismissal of Kitchen’s claim.

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<sup>63</sup> *Bousley* at 624.

<sup>64</sup> *Id.* at 1034, quoting *Lewis v. Peterson*, 329 F.3d 934, 937 (7th Cir. 2003).

<sup>65</sup> *Id.* at 1034.

<sup>66</sup> 512 U.S. 477 (1994).

<sup>67</sup> *Id.* at \*13.

N. Horse Racing

*Mattera v. Baffert*, 100 F.4th 734 (6th Cir. 2024)

Medina Spirit was disqualified due to a failed post-race drug test after winning the 2021 Kentucky Derby. Mattera and 18 other bettors who would have won their bets based on the new order of finish sued Churchill Downs and the horse's trainers. The district court granted defendants' motions to dismiss, and the Sixth Circuit affirmed. Under Kentucky law governing pari-mutuel wagering, the first official order of finish is final, and the complaint failed to state a claim upon which relief can be granted.

O. Immigration Law

1. *Sebastian-Sebastian v. Garland*, 87 F.4th 838 (6th Cir. 2023).

Petitioner petitioned for review of the Board of Immigration Appeals' denial of her application for asylum and withholding of removal under the Immigration and Nationality Act and protection under the Convention Against Torture. She also challenged the Board's decision regarding her due process claim. In denying her asylum and withholding of removal claims, the Board held Petitioner failed to demonstrate a nexus between her particular social groups and the harm she faced. In denying CAT protection, the Board found she failed to demonstrate she is more likely than not to be tortured if removed to Guatemala. The Sixth Circuit granted her petition for review in part, denied in part, vacated the Board's denial of her application for asylum and withholding of removal, and remanded for reconsideration consistent with its opinion. The Court found Petitioner provided evidence for the Board to conclude her mother-in-law harmed her, at least in part, because she could not leave her, "a characteristic that is a core aspect of two of her proposed social groups – Guatemalan Chuj women in domestic relationships who are unable to leave and who are viewed as property by virtue of their relationship."<sup>68</sup> The Board erred in failing to examine whether her mother-in-law had a personal motivation and a particular-social-group-related motivation that were "inextricably intertwined." The Court remanded to the Board to consider whether Petitioner was persecuted based on her membership in her first two proposed social groups and the remaining asylum considerations. On remand, the Board should reconsider Petitioner's withholding of removal claim and humanitarian asylum claim. The Court held there was substantial evidence to support the Board's ruling on Petitioner's CAT claim, and the Board and immigration judge did not violate her right to due process.

2. *Patel v. Jaddou*, 92 F.4th 639 (6th Cir. 2024).

The Patels filed applications for U visas. After waiting 14 months to receive the visas, they filed suit against Jaddou, the director of U.S. Citizenship and Immigration Services. The agency thereafter granted visas to the Patels,

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<sup>68</sup> *Id.* at 849.

and Jaddou filed a motion to dismiss the lawsuit as moot. The motion included an exhibit verifying the agency had granted the Patels' applications that included their personal identifying information. [8 U.S.C. §1367\(a\)\(2\)](#) prohibits the disclosure of information relating to noncitizen U visa applicants and recipients. Jaddou requested the district court to seal the exhibit the next day. The Patels sought \$20,000 in penalties for Jaddou's failure to initially seal the exhibit. The district court granted Jaddou's motions to dismiss for mootness and to file the motion under seal and denied the Patels' motion for civil penalties on the ground that the disclosure was not willful. The Sixth Circuit affirmed.

P. Immunity from Suit

1. *New Albany Main Street Properties v. Watco Companies, LLC*, 74 F.4th 615 (6th Cir. 2023).

New Albany Main Street Properties filed suit against Watco Companies and Maria Bouvette, executive director for the Louisville and Jefferson County Riverport Authority, alleging state claims of tortious interference with contractual and business relationships, civil conspiracy, and defamation. Bouvette moved to dismiss the complaint, arguing she was immune from suit under sovereign immunity, governmental immunity, and immunity under Kentucky's Claims Against Local Governments Act. The district court held she & the Authority could not invoke state sovereign immunity because of the Authority's status as a corporation rather than a government. It also held they could not seek governmental immunity because the Authority performed a proprietary, rather than a governmental, function. Bouvette appealed immediately to the Sixth Circuit. The Court found it had appellate jurisdiction over the state law immunity issue under the collateral-order doctrine. It held Bouvette, in her capacity as the Authority's executive director, is entitled to state governmental immunity.

2. *Reed v. Campbell County, Kentucky*, 80 F.4th 734 (6th Cir. 2023).

Police officers knocked on Reed's door in response to a 911 call reporting a domestic dispute. There were no signs of any altercation at the time. After speaking with the officers briefly, Reed refused to engage further because they did not have a warrant. The officers then broke down his front door, pointed a gun at his head, and removed him from the home. He filed suit against them in their official and individual capacities under [42 U.S.C. §1983](#). On motion for summary judgment, the district court denied the officers qualified immunity for Reed's [Fourth Amendment](#) claims of unlawful entry, false arrest, and excessive force. The Sixth Circuit affirmed. In light of the lack of evidence to corroborate the 911 report, a jury could conclude the officers did not have a reasonable basis for believing there was someone in Reed's home who needed immediate aid. The officers violated his constitutional rights by entering his home without a warrant. It is clearly established that warrantless entry into a home without an exception to the warrant requirement violates clearly established law. A reasonable jury could also conclude there was no objectively reasonable basis for believing the officers' warrantless entry was justified by exigent circumstances, and

the officers' detention of Reed was a constitutional violation. It is clearly established that warrantless arrests of a misdemeanor suspect inside the home are impermissible, and without exigent circumstances, the arrest was presumptively unreasonable. A reasonable jury could also conclude the officers used excessive force against Reed. It is clearly established law that officers cannot use gratuitous violence against individuals who are not actively resisting.

3. *Jones v. Bottom*, 85 F.4th 805 (6th Cir. 2023).

Jones was convicted of bank robbery in Kentucky. He negotiated a plea deal with prosecutors that fixed the commencement date for accrual of time-served credits. However, the sentencing court failed to adopt the plea agreement when entering the judgment of conviction. Instead, the court directed the Kentucky Department of Corrections Division of Probate and Parole to calculate credit for time served in accordance with "this judgment" and "the law." The court also failed to give Jones an opportunity to withdraw his plea. Jones did not seek to appeal or correct his sentence. After the court took notice of the plea agreement and instructed Jones to be given credit in accordance with it, he filed suit alleging the Kentucky prison administrators and the warden violated his [Eighth](#) and [Fourteenth Amendment](#) rights through their alleged deliberate indifference to the prospect of incarcerating him beyond the length of his sentence. He also alleged false imprisonment in violation of state law. The district court denied Defendants' motion for summary judgment on qualified immunity grounds. Defendants appealed to the Sixth Circuit. It dismissed the false imprisonment claim for lack of appellate jurisdiction. It held the state administrators are entitled to qualified immunity and did not act with deliberate indifference by complying with their state law duties and adhering to the sentencing court's judgment.

4. *Laible v. Lanter*, 91 F.4th 438 (6th Cir. 2024).

The federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and the Cincinnati Police Department (CPD) participated in a joint task force to arrest Mason Meyer. Meyer lost control of his vehicle while fleeing from the officers, striking a restaurant and killing Gayle and Raymond Laible and injuring Steven and Maribeth Klein. The Laible estate and the Kleins filed suit alleging three CPD officers were negligent in executing the high-speed chase. The CPD officers alleged they were federal employees immune from common law tort actions due to their participation on the federal task force. The district court denied their motion for immunity under the Westfall Act.<sup>69</sup> On appeal, the Sixth Circuit reversed the denial of immunity for Officer Scalf because he was a federal employee acting within the scope of his employment during the chase. An individual detailed to a federal agency is considered a federal employee under the Federal Tort Claims Act (FTCA), and Scalf was deputized to the ATF at the time of the chase. It affirmed the district court's denial of immunity for Officers Lanter

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<sup>69</sup> [28 U.S.C. §2679\(b\)\(1\), \(d\)\(1\), \(d\)\(3\)](#).

and Thomas because they were not federal employees at the time of the chase. Both were employed by CPD and do not meet the definition of federal employee under the federal employee clause. In addition, they were never under direct ATF supervision, and were not acting on the ATF's behalf.

Q. Labor & Employment Law

1. *McKinney for and on behalf of National Labor Relations Board v. Starbucks Corporation*, 77 F.4th 391 (6th Cir. 2023).<sup>70</sup>

Following news coverage of unionization efforts at a Memphis store, Starbucks fired seven employees who worked there. Workers United filed an action with the National Labor Relations Board charging Starbucks violated §8 of the National Labor Relations Act. McKinney, a regional Board member, petitioned the district court for temporary injunctive relief pending completion of the Board's proceedings. The district court found reasonable cause to believe Starbucks violated the Act. It also held that, because of the chilling impact of the terminations on union support, interim relief including temporary reinstatement of the terminated employees, was just and proper. Starbucks appealed to the Sixth Circuit, which affirmed.

2. *Baltrusaitis v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America*, 86 F.4th 1168 (6th Cir. 2023).

Plaintiffs are former automotive engineers who filed several grievances with UAW after their company, FCA US LLC, transferred their work previously performed at the company's headquarters to a new location. The UAW declined to pursue the first two grievances. Plaintiffs thereafter learned of a bribery scheme involving FCA and the UAW, which they believed affected their earlier job location process and the union's treatment of their grievances. They filed the same grievance a third time, and UAW found the grievance meritorious nearly two years later. Plaintiffs thereafter filed suit against FCA, UAW, and various individual defendants, alleging claims under the Labor Management Relations Act (LMRA) and the Racketeer Influenced and Corrupt Organizations Act (RICO). The district court granted defendants' motion to dismiss under [Rule 12\(b\)\(6\)](#) for failure to state a claim, holding the statute of limitations barred both claims. Plaintiffs appealed, and the Sixth Circuit affirmed. Plaintiffs' hybrid LMRA claims are subject to a six-month statute of limitations. LMRA claims accrue when the employee knew or should have known of the acts constituting either the employer's alleged violation or the union's alleged breach. "Plaintiffs pursuing a hybrid claim must sue once they 'reasonably should know that the union has abandoned' their claim."<sup>71</sup> The district court did not err in holding plaintiffs' LMRA claims are barred by the six-month statute of limitations. RICO claims are subject to a four-year statute of limitations.

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<sup>70</sup> Vacated and remanded by [Starbucks Corporation v. McKinney](#), 144 S.Ct. 1570 (2024).

<sup>71</sup> *Id.* at 1175, quoting *Saunders v. Ford Motor Company*, 879 F.3d 742, 751 (6th Cir. 2018).

Plaintiffs knew of their injuries stemming from the alleged pattern of racketeering sometime in 2011 or 2012 when they learned of the transfer and that FCA and the UAW were not complying with the CBA transfer protocols. The statute of limitations began to run at that time. The district court did not err in holding plaintiffs' RICO claims are barred by the statute of limitations.

3. *Littler v. Ohio Association of Public School Employees*, 88 F.4th 1176 (6th Cir. 2023).

Littler, a bus driver, joined a public sector union representing Ohio public school employees. Following the U.S. Supreme Court's decision in [Janus v. American Federation of State, County, & Municipal Employees, Council 31](#),<sup>72</sup> Littler emailed the union membership director and the school district's treasurer and CFO stating she was withdrawing her union membership and prior dues-deduction authorization. Littler's email did not contain an original signature, and the union deemed it ineffective. It thereafter retroactively applied a new policy honoring any withdrawals from union members seeking to withdraw without original signatures. The union notified Littler it was honoring her withdrawal and mailed her a check refunding dues deducted since August 2018 with interest. Littler filed suit in district court under [§1983](#) and state law, alleging the union illegally deducted dues from her paycheck in violation of [Janus](#) and the [First Amendment](#), and that she never freely provided consent to the union to deduct dues. Following a remand from the Sixth Circuit reversing a grant of summary judgment,<sup>73</sup> the district court held Littler failed to show the union was a state actor and granted summary judgment on the [§1983](#) claim. It declined to exercise supplemental jurisdiction over her remaining state law claims. The Sixth Circuit affirmed. "[T]he challenged conduct is [the union]'s failure to process Littler's withdrawal pursuant to a membership application and remove her name from the deduction list. That failure is not governed by a state-imposed rule of conduct but rather by a private individual or organization's policy."<sup>74</sup>

4. *Jones v. Producers Service Corporation*, 95 F.4th 445 (6th Cir. 2024).

The issue in this case was one of first impression in the Sixth Circuit: when, under [§207\(f\)](#) of the Fair Labor Standards Act (FLSA) do an employee's job duties "necessitate" irregular hours? The FLSA requires employers to pay employees one and one-half times their regular rate of pay for each hour worked in excess of 40 hours per week.<sup>75</sup> The Act allows employers to implement an alternative compensation arrangement called a *Be/lo* plan

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<sup>72</sup> 585 U.S. 878 (2018), which held imposition of mandatory fair-share union fees on non-union members by public-sector unions is unconstitutional.

<sup>73</sup> *Littler v. Ohio Association of Public School Employees*, 2022 WL 898767.

<sup>74</sup> *Id.* at 1182.

<sup>75</sup> [29 U.S.C. §207\(a\)\(1\)](#).

in which the employer sets a guaranteed weekly wage for all hours worked in a week up to 60.<sup>76</sup> The Act outlines four prerequisites that must be satisfied for its plan to qualify as a *Bebo* plan. In this case, the district court granted summary judgment to plaintiffs, holding their employer, PSC, could not convince a reasonable jury its oilfield technicians' job duties necessitated irregular hours. On appeal, the Sixth Circuit held that for the purposes of [§207\(f\)](#), "an employee's job duties 'necessitate' irregular hours when the inherent nature of the employee's work – *i.e.*, the inalienable qualities of his industry, profession, or specific position – place the employee's hours beyond either his or his employer's power to control or predict."<sup>77</sup> It held PSC presented evidence to create a genuine issue of fact as to the reason behind plaintiffs' irregular schedules. The Court reversed the district court's grant of summary judgment to plaintiffs as to liability, affirmed the court's denial of summary judgment to PSC, vacated its consent judgment, and remanded for further proceedings.

5. *Savel v. MetroHealth System*, 96 F.4th 932 (6th Cir. 2024).

MetroHealth System initially denied all employee requests for religious exemptions from its COVID-19 vaccine mandate. A month later, it changed course and granted all religious exemption requests. Savel and other current and former employees filed suit for religious discrimination alleging the hospital's actions violated Title VII<sup>78</sup> and state law. The district court dismissed the suit for lack of subject matter jurisdiction and failure to state a claim. It held the plaintiffs still employed by the hospital at the time of filing had no standing to sue, and in the alternative, they failed to state claims under Title VII and state law. It found those who had resigned before filing had standing to sue, but also failed to state claims upon which relief can be granted. The Sixth Circuit affirmed the district court's dismissal of claims by plaintiffs who are still employed by MetroHealth, holding they have not suffered an injury sufficient to establish standing. It held the plaintiffs who resigned after submitting exemption requests but before those requests were denied or who never submitted a request also do not have standing as they cannot offer facts sufficient to plausibly allege constructive discharge. It held the two plaintiffs who resigned after the hospital denied their requests alleged sufficient facts to support a theory of forced resignation sufficient to establish standing. They also pleaded facts sufficient to state a violation under Title VII and Ohio state law for the hospital's failure to make reasonable accommodations for their religious practices and its disparate treatment of them based on their religion. The Court remanded those claims to the district court for further proceedings.

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<sup>76</sup> [§207\(f\)](#).

<sup>77</sup> *Id.* at 452.

<sup>78</sup> [42 U.S.C. §2000e-2000e-17](#).

R. Property Law

*Norfolk Southern Railroad Co. v. Dille Rd. Recycling, LLC*, 94 F.4th 517 (6th Cir. 2024)

Dille Road Recycling (DDR) occupied and used a parcel of land owned by Norfolk Southern Railroad Co. located adjacent to Norfolk's active rail line for 20 years. When the parties disputed ownership of the land, Dille sought adverse possession of the parcel, or alternatively a prescriptive easement. Norfolk sought a declaration that Dille's claim was preempted by the Interstate Commerce Commission Termination Act (ICCTA). The district court held Dille's claim is not preempted by the ICCTA and granted the easement. On appeal, the Sixth Circuit reversed, holding federal law preempts Dille's state-law prescriptive-easement claim. The Court held the proper evaluation of ICCTA preemption for prescriptive easements is the as-applied framework. The focus of this analysis is whether the state law at issue imposes an unreasonable burden upon railroading. "The [Surface Transportation Board] has defined this standard as whether the particular state action has the effect of preventing or unreasonably interfering with rail transportation."<sup>79</sup> The Court found that Dille's prescriptive easement "would be so exclusive and conflicting that it would be essentially adverse possession by another name."<sup>80</sup>

S. Sentencing

1. *U.S. v. Rogers*, 84 F.4th 259 (6th Cir. 2023).

Rogers was found in a motel room with methamphetamine. Following his indictment for that offense, officers found methamphetamine in his car during a traffic stop. He was convicted of violating state drug trafficking laws, receiving separate, concurrent sentences for each offense. A year later following his release from custody, he pleaded guilty to possessing methamphetamine with the intent to distribute under federal law. Based on his two prior offenses, the district court classified him as a career offender, raising his sentencing range and ultimate sentence. Rogers objected to the enhancement, arguing the two previous drug offenses did not count as distinct prior felony convictions because they were not separated by an intervening arrest. Rogers appealed to the Sixth Circuit, which affirmed. The Court found that for the purposes of the Sentencing Guidelines, an intervening arrest is a custodial arrest that occurs at some point before commission of the second offense. Police caught Rogers at the motel with methamphetamine in 2017, placed him in police custody, and held him for an indefinite period of time. That arrest occurred before the March 2018 traffic stop. The sentences Rogers received for each offense count separately under the Guidelines, despite the fact they were issued on the same day.

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<sup>79</sup> *Id.* at 526-27.

<sup>80</sup> *Id.* at 528.

2. *U.S. v. Hayden*, 102 F.4th 368 (6th Cir. 2024).

The issue in this case concerned which of the supervised release conditions must district courts orally pronounce at sentencing. The Court held “defendants’ due process rights are satisfied when the sentencing court incorporates the standard conditions by reference to language contained in a publicly available districtwide order, an individual defendant’s presentence investigation report, or other document provided to the defendant before sentencing.... for special discretionary conditions not previously made available to a defendant, a district court must always orally pronounce them and explain its basis for imposing them, provided that its reasoning is not readily apparent from the record.”<sup>81</sup>

T. Student Loans

*Mackinac Center for Public Policy v. Cardona*, 102 F.4th 343 (6th Cir. 2024)

Mackinac Center for Public Policy and the Cato Institute filed suit to stop the Department of Education’s one-time student loan account adjustments in 2022 and 2023. Plaintiffs are nonprofit, tax-exempt organizations that are qualified public service employers under the Public Service Loan Forgiveness (PSLF) program. The district court dismissed the action for lack of subject matter jurisdiction, and the Sixth Circuit affirmed. The Court held plaintiffs’ complaint failed to sufficiently allege they suffered an injury in fact resulting from the adjustment based on competitor standing and deprivation of a procedural right.

U. Social Security

*Hamilton v. Commissioner of Social Security*, 98 F.4th 800 (6th Cir. 2024)

An ALJ denied Hamilton’s applications for disability insurance benefits and supplemental security income, finding she could still work in two occupations despite her physical impairments. On appeal, Hamilton argued the Sixth Circuit should adopt the Ninth Circuit’s categorical rule that would treat her as disabled unless she could work in at least three occupations. The Sixth Circuit affirmed the district court’s decision upholding the Social Security Administration’s denial of benefits to Hamilton. The ALJ did not err by ruling Hamilton was not disabled under the regulations because she had skills that transferred to a significant range of work.

V. Torts

1. *Sandmann v. New York Times Co.*, 78 F.4th 319 (6th Cir. 2023).

Sandmann and his classmates were recorded interacting with a Native American man in Washington, D.C. in 2019. Appellees, who are national news organizations, published stories about the event and public reaction to it. Sandmann filed suit, alleging Appellees’ reporting was defamatory.

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<sup>81</sup> *Id.* at 372.

The district court granted Appellees' joint motion for summary judgment, finding the challenged statements were opinion, not fact, and therefore nonactionable. Sandmann appealed, and the Sixth Circuit affirmed.

2. *Abbott v. U.S.*, 78 F.4th 887 (6th Cir. 2023).

Plaintiffs appealed the dismissal of their claims under the Federal Torts Claims Act (FTCA) for damages caused by the National Park Service's failure to warn them of an uncontrolled wildfire that escaped from Great Smoky Mountains National Park. They also appealed the denial of their motion to alter or amend the judgment under [Rule 50](#). The district court held plaintiffs' SF-95 forms filed with the National Park Service contained no information regarding a failure to warn or facts related to the failure to warn claims. Rather, they were concerned with the Park Service's failure to extinguish the fire. The Sixth Circuit vacated the dismissal and remanded for further proceedings. The district court erred in finding the SF-95 forms did not satisfy the FTCA's presentment requirement. All that is required is written notice of a claim sufficient to enable the agency to investigate it and placement of a value or sum certain on the claim. Administrative claims do not need to articulate a precise cause of action in order to satisfy the presentment requirement. The Court held plaintiffs' forms sufficiently enabled the Department of the Interior to investigate their claims of injuries suffered as a result of the failure to warn.

3. *L.C. v. U.S.*, 83 F.4th 534 (6th Cir. 2023).

L.C. was repeatedly sexually assaulted by a Bureau of Prisons (BOP) employee. She filed suit against the U.S. under the FTCA. She argued the BOP knew or should have known about the assaults and failed to enforce its zero-tolerance policy for sexual assault in its facilities because BOP officials failed to timely report and investigate the assaults. The district court granted the government's motion to dismiss. It dismissed L.C.'s assault and battery claim, holding the FTCA's exception to sovereign immunity does not apply to torts committed by federal employees acting beyond the scope of their employment. It dismissed her negligence claim under the discretionary-function exception to the FTCA. In the alternative, it held dismissal under [Rule 12\(b\)\(6\)](#) was appropriate because L.C.'s complaint failed to sufficiently allege the BOP knew or should have known about the assaults. L.C. appealed only the dismissal of her negligence claim to the Sixth Circuit, which affirmed. It held that because BOP policy requires staff to timely report and investigation any sexual assault or harassment by a BOP official and the decision to report and investigate is not susceptible to policy analysis, a properly alleged claim that the BOP acted negligently by failing to timely report and investigate falls outside of the discretionary-function exception. However, L.C.'s claim fails under [Rule 12\(b\)\(6\)](#) because she failed to sufficiently allege that a BOP official had any information about her assailant's conduct and failed to act on it before November 22, 2019. Because her complaint failed to state a claim upon which relief may be granted, the district court properly dismissed her negligence claim.

4. *American Reliable Insurance Company v. U.S.*, 2024 WL 3218853 (6th Cir. June 28, 2024).

American and other insurance companies paid claims to policy holders following the 2016 wildfire in Gatlinburg, Tennessee. It then filed claims under the Federal Tort Claims Act (FTCA) against the National Park Service, alleging negligence for failure to follow mandatory fire management protocols and for failure to issue mandatory warnings to the public. The government filed a [Rule 12\(b\)](#) motion to dismiss for lack of subject matter jurisdiction on grounds it was immune from suit under the discretionary function exception to the FTCA. The district court granted the motion as to the fire management protocols but denied the motion on the claims regarding the duty to warn. The insurance companies appealed to the Sixth Circuit. The Court reversed the district court's order granting the government's motion to dismiss plaintiffs' incident-command claim. "Salansky's failure to use the required incident-command structure is not the type of decision or conduct protected by the discretionary-function exception."<sup>82</sup> The Court affirmed the district court's dismissal of plaintiffs' fire monitoring and wildland fire decision support system claims as part of the discretionary fire-suppression decision-making process. The Court also affirmed the district court's denial of the government's facial challenge to plaintiffs' duty to warn claims. "[S]ince Plaintiff-Appellants' failure-to-warn claims survive the government's facial challenge, we remand for the same analysis as set forth in *Abbott*<sup>83</sup> for identical failure-to-warn claims."<sup>84</sup>

#### W. USERRA

*Ward v. Shelby County, Tennessee*, 98 F.4th 688 (6th Cir. 2024)

Ward is an Army reservist who worked at the Shelby County Jail in Memphis. When he was terminated, he entered into a settlement agreement with the county wherein he released any and all claims whatsoever. He later brought suit against the county under the Uniformed Services Employment and Reemployment Rights Act.<sup>85</sup> The district court granted summary judgment to Ward, holding the scope of the release did not reach his USERRA claim. It then entered a judgment against the county to pay Ward over \$1.5 million. The county appealed, and the Sixth Circuit vacated the district court's judgment and remanded for further proceedings. The Court held the district court erred in finding the release did not apply to Ward's USERRA claim. USERRA contains a second requirement for release of a claim. The agreement must establish rights that are more beneficial for the servicemember than the ones he gives up.<sup>86</sup> The district court held this

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<sup>82</sup> *Id.* at \*9.

<sup>83</sup> *Abbott v. U.S.*, 78 F.4th 887 (6th Cir. 2023).

<sup>84</sup> *Id.* at \*13.

<sup>85</sup> [38 U.S.C. §4301 et seq.](#)

<sup>86</sup> [§4302.](#)

requirement was not met because three weeks of back pay and a reinstatement with probation was objectively less beneficial to Ward than his rights under USERRA. However, servicemembers may waive their USERRA rights without court interference if they believe the consideration they will receive is more beneficial than pursuing their rights.<sup>87</sup> On remand, a jury must determine whether Ward believed the benefits from the settlement agreement outweighed his USERRA claim.

### III. U.S. SUPREME COURT

#### A. Administrative Law

1. [\*Loper Bright Enterprises v. Raimondo\*](#), 2024 WL 3208360 (June 28, 2024).

The Court overruled [\*Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.\*](#)<sup>88</sup> It held the Administrative Procedure Act requires courts to exercise their independent judgment to decide whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous. The Court noted its decision does not call into question prior cases that relied on [\*Chevron\*](#). Those holdings stating specific agency actions are lawful are still subject to statutory *stare decisis* despite the Court's change in interpretive methodology.

2. [\*Corner Post, Inc. v. Board of Governors of the Federal Reserve System\*](#), 2024 WL 3237691 (July 1, 2024).

The Court held claims under the Administrative Procedure Act do not accrue for purposes of the six-year statute of limitations in [28 U.S.C. §2401](#) until the plaintiff is injured by final agency action.

3. [\*Garland v. Cargill\*](#), 602 U.S. 406 (2024).

The Court held the Bureau of Alcohol, Tobacco, Firearms and Explosives exceeded its statutory authority by issuing a rule classifying a bump stock as a “machinegun” under [26 U.S.C. §5845\(b\)](#).

#### B. Arbitration

1. [\*Bissonnette v. LePage Bakeries Park St., LLC\*](#), 601 U.S. 246 (2024).

The Court held a transportation worker need not work in the transportation industry to be exempt from coverage under [§1](#) of the Federal Arbitration Act.

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<sup>87</sup> *Wysocki v. International Business Machine Corp.*, 607 F.3d 1102, 1108 (6th Cir. 2010).

<sup>88</sup> 467 U.S. 837 (1984).

2. [Coinbase, Inc. v. Suski](#), 144 S.Ct. 1186 (2024).

The Court held when parties have agreed to two contracts – one which sends arbitrability disputes to arbitration and the other which explicitly or implicitly sends those disputes to court – a court must decide which contract controls.

3. [Smith v. Spizzirri](#), 601 U.S. 472 (2024).

The Court held when a district court finds a lawsuit involves an arbitrable dispute and a party requests a stay of the court proceeding pending arbitration, §3 of the Federal Arbitration Act compels the court to issue a stay, and the court lacks discretion to dismiss the suit.

#### C. Banking

- [Cantero v. Bank of America](#), 144 S.Ct. 1290 (2024)

Escrow accounts operated by national banks in connection with home mortgage loans are regulated by the Real Estate Settlement Procedures Act of 1974 (RESPA). RESPA does not mandate national banks to pay interest to borrowers on the balance of their escrow accounts. New York law states banks shall pay borrowers interest on their escrow balances maintained in connection with a mortgage on certain real estate. The district court held nothing in the National Bank Act or other federal law preempted the New York law. The Second Circuit reversed, holding the state law was preempted. The Supreme Court granted certiorari, vacated the judgment, and remanded back to the Second Circuit. It held the Second Circuit failed to analyze whether New York's law is preempted as applied to national banks in a manner consistent with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and [Barnett Bank of Marion County, N.A. v. Nelson](#).<sup>89</sup>

#### D. Bankruptcy Law

1. [Harrington v. Purdue Pharma L.P.](#), 2024 WL 3187799 (June 27, 2024).

Purdue Pharma, owned and controlled by the Sackler family, began marketing OxyContin in the mid-1990s. Between 1999 and 2019, approximately 247,000 people in the U.S. overdosed on prescription opioids. Lawsuits were filed against the company after an affiliate pleaded guilty to misbranding OxyContin as a less addictive and abusable alternative to other pain medicine. The Sacklers then began withdrawing approximately \$11 billion from the company over the next 10 years. Purdue Pharma filed for bankruptcy in 2019. The Sacklers proposed returning \$4.3 billion to the bankruptcy estate in exchange for a judicial order releasing them from all opioid claims and an injunction preventing victims from bringing future claims against them. The bankruptcy court approved the proposed plan, but the district court vacated the decision. It held the law

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<sup>89</sup> 517 U.S. 25 (1996).

does not authorize bankruptcy courts to extinguish claims against third parties without the claimants' consent. The Second Circuit reversed and revived the bankruptcy court's order approving a modified reorganization plan. The Supreme Court granted certiorari and reversed. The Court held the bankruptcy code does not authorize a release and injunction that, as part of a Chapter 11 reorganization plan, seeks to discharge claims against a nondebtor without the consent of the affected claimants. It noted this holding is narrow and should not be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorganization plan.

2. [\*Office of the United States Trustee v. John Q. Hammons Fall 2006, LLC\*](#), 144 S.Ct. 1588 (2024).

The Court held that prospective parity – requiring equal fees for otherwise identical Chapter 11 debtors moving forward – is the appropriate way to remedy the disparity created when the Court held the fee statute unconstitutional in [\*Siegel v. Fitzgerald\*](#).<sup>90</sup>

3. [\*Truck Insurance Exchange v. Kaiser Gypsum Company, Inc.\*](#), 144 S.Ct. 1414 (2024).

The Court held an insurer with financial responsibility for bankruptcy claims is a “party in interest” under [11 U.S.C. §1109\(b\)](#) that may raise and may appear and be heard on any issue in a Chapter 11 case.

#### E. Civil Procedure

1. [\*Federal Bureau of Investigation v. Fikre\*](#), 601 U.S. 234 (2024).

After flying to Sudan in 2009, Fikre was placed on the No Fly List and prevented from returning to the U.S. In 2015, he filed suit arguing the government violated his rights to procedural due process by failing to provide notice of his addition to the list or any appropriate way to obtain redress. In 2016, the government notified him he had been removed from the list and sought dismissal of the suit in district court. The district court held the case was moot, but the Ninth Circuit reversed, holding a party seeking to moot a case based on its own voluntary cessation of challenged conduct must show the conduct cannot be reasonably expected to reoccur.<sup>91</sup> On remand, the government submitted a declaration that Fikre would not be placed back on the list, and the district court again dismissed the action as moot. The Ninth Circuit again reversed, holding the government failed to meet its burden by failing to disclose the conduct that placed Fikre on the list initially and ensuring he would not be placed back on the list for engaging in the same or similar conduct in the future. The

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<sup>90</sup> 596 U.S. 464 (2022).

<sup>91</sup> See [\*Friends of the Earth, Inc. v. Laidlaw Environmental Services \(TOC\), Inc.\*](#), 528 U.S. 167, 189 (2000).

Supreme Court affirmed, holding the government failed to show the case is moot.

2. [\*Murthy v. Missouri\*](#), 2024 WL 3165801 (June 26, 2024).

In 2020, certain social media platforms stated they would enforce their content moderation policies against users posting false or misleading information about the COVID-19 pandemic and the upcoming elections. Two states and five individual social media users filed suit against federal executive branch officials and agencies alleging the government pressured social media platforms to censor their speech in violation of the [First Amendment](#). The district court issued a preliminary injunction, but the Fifth Circuit affirmed in part and reversed in part. It held both sets of plaintiffs had Article III standing to seek injunctive relief because government officials transformed the platforms' moderation decisions into state action by coercing or significantly encouraging those decisions. It modified the injunction to state defendants shall not coerce or significantly encourage social media companies to suppress protected speech on their platforms. The Supreme Court granted certiorari and reversed, holding neither set of plaintiffs established Article III standing to seek an injunction against any defendant in this case.

3. [\*Food and Drug Administration v. Alliance for Hippocratic Medicine\*](#), 144 S.Ct. 1540 (2024).

In 2016 and 2021, the FDA relaxed its rules regarding distribution of mifepristone tablets, which are used to terminate pregnancies up to seven weeks. A group of pro-life medical associations and individual doctors moved for a preliminary injunction requiring the FDA to either rescind approval of mifepristone or its 2016 and 2021 regulatory actions. The district court enjoined the FDA's approval of the drug and ordered mifepristone to be taken off the market. The Supreme Court stayed the order pending dissolution of appellate proceedings. The Fifth Circuit held plaintiffs have standing and concluded while they were unlikely to succeed on their challenge to the FDA's drug approvals, they were likely to succeed in showing the regulatory actions were unlawful. The Supreme Court granted certiorari, reversed and remanded. The Court held plaintiffs do not have Article III standing to challenge the FDA's actions regarding regulation of mifepristone.

#### F. Civil Rights

- [\*Lindke v. Freed\*](#), 601 U.S. 187 (2024)

The Court held a public official who prevents someone from commenting on their social media pages engages in state action for the purpose of [42 U.S.C. §1983](#) only if the official possessed actual authority to speak on the state's behalf on a particular matter and purported to exercise that authority when speaking in the relevant social media posts.

G. Constitutional Law

1. [Consumer Financial Protection Bureau v. Community Financial Services Association of America, Ltd.](#), 601 U.S. 416 (2024).

The Court held the statutory authorization given by Congress allowing the Consumer Financial Protection Bureau to draw money from earnings of the Federal Reserve System as “reasonably necessary to carry out” its duties satisfies the Appropriations Clause.<sup>92</sup>

2. [Culley v. Marshall](#), 601 U.S. 377 (2024).

The Court affirmed the Eleventh Circuit, holding that in civil forfeiture cases involving personal property, the Due Process Clause requires a timely forfeiture hearing but does not require a separate preliminary hearing to determine whether the seized personal property may be retained pending the ultimate forfeiture hearing.

3. [Vidal v. Elster](#), 602 U.S. 286 (2024).

Respondent sought to register the trademark “Trump too small” for use on shirts and hats. The Patent and Trademark Office refused registration based on the Lanham Act’s “names clause” which prohibits registration of a mark consisting of or comprising a name identifying a particular living person except with that person’s written consent.<sup>93</sup> The Supreme Court affirmed the Trademark Trial and Appeal Board’s decision and reversed the Federal Circuit, holding the names clause does not violate the [First Amendment](#).

4. [U.S. v. Rahimi](#), 2024 WL 3074728 (June 21, 2024).

The Court held when a person has been found by a court to pose a credible threat to the physical safety of another, that person may be temporarily disarmed without violating the [Second Amendment](#). At issue in this case was [18 U.S.C. §922\(g\)\(8\)](#), which prohibits individuals subject to a domestic violence restraining order from possessing firearms.

5. [Sheetz v. County of El Dorado, California](#), 601 U.S. 267 (2024).

The Court held the Takings Clause does not distinguish between legislative and administrative land-use permit conditions. It remanded to state court to determine in the first instance whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition targeting a particular development, along with whether the parties’ arguments are preserved and how they bear on plaintiff’s legal challenge.

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<sup>92</sup> [U.S. Constitution, Art. I, §9, cl. 7.](#)

<sup>93</sup> See [15 U.S.C. §1052\(c\)](#).

6. [Moody v. NetChoice, LLC](#), 2024 WL 3237685 (July 1, 2024).

In 2021, Florida and Texas enacted statutes regulating social media companies and other internet platforms. Trade associations filed facial [First Amendment](#) challenges against the two statutes. Courts in each state issued preliminary injunctions. The Eleventh Circuit upheld the injunction of Florida's law, holding the restrictions on content moderation trigger [First Amendment](#) scrutiny under precedent protecting editorial discretion. It held the content moderation provisions and individualized explanation requirements are unlikely to survive heightened scrutiny. The Fifth Circuit reversed the preliminary injunction of the Texas law, holding the platforms' content moderation activities are not "speech" and do not implicate the [First Amendment](#). Even if the activities were speech, Texas could regulate them to advance its interest in protecting diversity of ideas. The Supreme Court vacated both judgments and remanded because neither circuit conducted a proper analysis of the facial [First Amendment](#) challenges. It noted the proper analysis begins with assessing the state laws' scope, following by deciding which of the laws' applications violate the [First Amendment](#) and measuring them against the rest. It also noted the interest on which Texas relies cannot sustain its law, as that interest relates to the suppression of free expression, and it is neither valid nor substantial.

7. [National Rifle Association of America v. Vullo](#), 602 U.S. 175 (2024).

The NRA filed suit against the former superintendent of New York's Department of Financial Services alleging she violated the [First Amendment](#) by coercing agency-regulated entities to punish or suppress the NRA's gun-promotion advocacy. The Second Circuit held Vullo's actions constituted permissible government speech and legitimate law enforcement. The Supreme Court granted certiorari, vacated and remanded. It held the NRA plausibly alleged Vullo violated the [First Amendment](#) by coercing regulated entities to terminate their business relationships with the NRA in order to punish or suppress its gun-promotion advocacy.

8. [City of Grants Pass, Oregon v. Johnson](#), 2024 WL 3208072 (June 28, 2024).

Plaintiffs filed a putative class action on behalf of homeless individuals living in Grants Pass, Oregon, claiming the city's ordinance against public camping violated the [Eighth Amendment](#). The district court certified the class and entered a *Martin*<sup>94</sup> injunction prohibiting the city from enforcing the ordinance against its homeless population. It held those without shelter in the city were involuntarily homeless because the city's homeless population outnumbered its available shelter beds. The Ninth Circuit affirmed. The Supreme Court granted certiorari, reversed and remanded. It held enforcement of generally applicable laws regulating camping on

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<sup>94</sup> *Martin v. City of Boise*, 920 F.3d 584, 617 (9th 2019).

public property does not constitute cruel and unusual punishment prohibited by the [Eighth Amendment](#).

H. Copyright Law

[Warner Chappell Music, Inc. v. Nealy](#), 144 S.Ct. 1135 (2024)

The Court held the Copyright Act entitles a copyright owner to obtain monetary relief for any timely infringement claim, no matter when the infringement occurred. The Act's three-year statute of limitations for filing suit begins to run when a claim accrues. That provision establishes no separate three-year limit on recovering damages.

I. Criminal Law

1. [Smith v. Arizona](#), 2024 WL 3074423 (June 21, 2024).

The Court held when a substitute expert conveys an absent lab analyst's statements in support of the expert's opinion, and the statements provide that support only if true, the statements come into evidence for their truth, implicating the [Sixth Amendment](#) Confrontation Clause. It remanded to state court to determine whether the out of court statements conveyed by the substitute expert were testimonial and if the government forfeited its argument that they were not in the first instance.

2. [McIntosh v. U.S.](#), 601 U.S. 330 (2024).

The Court held a district court's failure to comply with [Federal Rule of Criminal Procedure 32.2\(b\)\(2\)\(B\)](#)'s requirement to enter a preliminary order of forfeiture before sentencing does not bar a judge from ordering forfeiture at sentencing subject to harmless error principles on appellate review.

3. [Snyder v. U.S.](#), 2024 WL 3165518 (June 26, 2024).

Snyder was convicted of accepting an illegal gratuity in violation of [18 U.S.C. §666\(a\)\(1\)\(B\)](#) and sentenced to one year and nine months in prison. On appeal, he argued the statute only criminalizes bribes, not gratuities. The Seventh Circuit affirmed his conviction. The Supreme Court reversed and remanded, holding [§666](#) proscribes bribes to state and local officials but does not make it a crime for those officials to accept gratuities for their past acts.

4. [Chiaverini v. City of Napoleon, Ohio](#), 144 S.Ct. 1745 (2024).

The Court held the presence of probable cause for one charge in a criminal proceeding does not categorically defeat a [Fourth Amendment](#) malicious-prosecution claim related to another baseless charge.

J. Elections

[\*Trump v. Anderson\*](#), 144 S.Ct. 662 (2024)

The Court held the Colorado Supreme Court erred in ordering Donald Trump excluded from the 2024 presidential primary ballot based on §3 of the [Fourteenth Amendment](#). The Constitution makes Congress, rather than the states, responsible for enforcing §3 against federal officeholders and candidates.

K. Environmental Law

[\*Ohio v. Environmental Protection Agency\*](#), 2024 WL 3187768 (June 27, 2024)

In 2015, the EPA revised its air-quality standards for ozone, requiring states to submit new state implementation plans (SIPs). It thereafter announced it would disapprove 20 of the SIPs because the states failed to adequately address obligations under the Good Neighbor Provision.<sup>95</sup> During the public comment period for the proposed disapprovals, EPA issued a single proposed Federal Implementation Plan (FIP) binding all the states. Following litigation, courts stayed 12 of the SIP disapprovals. Some of the remaining states and industry groups challenged the FIP in the D.C. Circuit, arguing the EPA's decision to apply the FIP after so many other states dropped out was arbitrary and capricious. They asked the court to stay efforts to enforce the FIP while their appeals were pending. The D.C. Circuit denied relief, and the parties renewed their request in the Supreme Court. The Supreme Court granted the applications for a stay, halting enforcement of the FIP against those states pending disposition of their petition for review in the D.C. Circuit and any petition for writ of certiorari timely sought.

L. Evidence

[\*Diaz v. U.S.\*](#), 144 S.Ct. 1727 (2024)

The Court held that evidence that “most people” in a group have a particular mental state is not an opinion about “the defendant” and does not violate [Federal Rule of Evidence 704\(b\)](#). In this case, a Homeland Security Investigations agent testified most drug couriers know they are transporting drugs. The Court affirmed the Ninth Circuit, which held the agent's testimony did not violate [Rule 704\(b\)](#) because he did not explicitly opine that Diaz knowingly transported methamphetamine.

M. Fair Credit Reporting Act

[\*Department of Agriculture Rural Development Rural Housing Service v. Kirtz\*](#), 601 U.S. 42 (2024)

The Court held consumers may file suit against a federal agency for defying the terms of the Fair Credit Reporting Act.

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<sup>95</sup> [42 U.S.C. §7410\(a\)\(2\)\(D\)\(i\)\(I\)](#).

N. GI Bill

[\*Rudisill v. McDonough\*](#), 601 U.S. 294 (2024)

GI bills typically provide 36 months of educational benefits each up to a cap of 48 months in cases where servicemembers are eligible for benefits under more than one GI bill.<sup>96</sup> At issue in this case were two separate GI bills with overlapping service dates – the Montgomery GI Bill Act of 1984 covering service between 1985 and 2030 and the Post-9/11 Veterans Educational Assistance Act of 2008 covering service on or after September 11, 2001. The Court held that servicemembers who, through separate periods of service, are eligible for educational benefits under both the Montgomery and Post-9/11 GI bills may use either one, in any order, up to the statutory 48-month aggregate benefits cap.

O. Gerrymandering

[\*Alexander v. South Carolina State Conference of the NAACP\*](#), 144 S.Ct. 1221 (2024)

The NAACP filed suit challenging South Carolina’s redrawn congressional maps after the 2020 Census, alleging they resulted in racial gerrymandering in certain districts and dilution of the electoral power of the state’s black voters. The Court held the district court’s finding that race predominated in the design of district 1 in the enacted plan was clearly erroneous. Because the same findings of fact and reasoning applied to the district court’s analysis of the independent vote-dilution claim, it also failed. The Court reversed in part and remanded to the district court.

P. Immigration

1. [\*Wilkinson v. Garland\*](#), 601 U.S. 209 (2024).

Wilkinson was arrested and detained for remaining in the U.S. past expiration of his tourist visa. He applied for cancellation of removal based in part on the hardship to his minor son, who suffers from a serious medical condition and relies on his father for financial and emotional support. The immigration judge held the child’s situation did not meet the statutory standard for “exceptional and extremely unusual”<sup>97</sup> hardship and denied Wilkinson’s application. The Board of Immigration Appeals affirmed, and the Third Circuit held it lacked jurisdiction to review the immigration judge’s discretionary hardship determination. The Supreme Court granted certiorari and held the Third Circuit erred in holding it lacked jurisdiction under [§1252\(a\)\(2\)\(B\)\(i\)](#) to review the immigration judge’s decision in this case. Application of the statutory “exceptional and extremely unusual” hardship standard to a set of given facts is a mixed question of law and

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<sup>96</sup> See [36 U.S.C. §3695\(a\)](#).

<sup>97</sup> [8 U.S.C. §1229b\(b\)\(1\)\(D\)](#).

fact. [Section 1252\(a\)\(2\)\(D\)](#) allows jurisdiction to review “questions of law,” which include mixed questions of law and fact.<sup>98</sup>

2. [Campos-Chaves v. Garland](#), 144 S.Ct. 1637 (2024).

In these consolidated cases, each alien moved to rescind an *in absentia* order of removal because they did not receive prior notice of the removal hearing. In each case, the government provided an initial notice to appear that did not specify the place and time of the removal hearing. It thereafter provided each with a notice of hearing under [8 U.S.C. §1229\(a\)\(2\)](#) setting out the specific time and place of the hearing. The Court held each of the aliens received proper notice of the hearings they missed at which they were ordered removed, and none may seek rescission of their *in absentia* removal orders based on deficient notice under [§1229a\(b\)\(5\)\(C\)\(ii\)](#).

3. [Department of State v. Muñoz](#), 2024 WL 3074425 (June 21, 2024).

The Court held a U.S. citizen does not have a fundamental liberty interest in their noncitizen spouse being admitted to the country.

Q. Labor & Employment Law

1. [Muldrow v. City of St. Louis, Missouri](#), 144 S.Ct. 967 (2024).

The Court held an employee challenging a job transfer under Title VII must show the transfer brought about some harm with respect to an identifiable term or condition of employment, but the harm does not have to be significant.

2. [Harrow v. Department of Defense](#), 601 U.S. 480 (2024).

The Court held [5 U.S.C. §7703\(b\)\(1\)](#)'s 60-day deadline for a federal employee to petition the Federal Circuit to review a final decision of the Merit Systems Protection Board is not jurisdictional.

3. [Starbucks Corp. v. McKinney](#), 144 S.Ct. 1570 (2024).

The Court held that when considering the National Labor Relations Board's request for a preliminary injunction under §10(j) of the National Labor Relations Act, district courts must apply the traditional four factors stated in [Winter v. Natural Resources Defense Council, Inc.](#)<sup>99</sup>

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<sup>98</sup> See [Guerrero-Lasprilla v. Barr](#), 589 U.S. 221, 225 (2020).

<sup>99</sup> 555 U.S. 7, 4-11 (2008).

R. Presidential Immunity

[Trump v. U.S.](#), 2024 WL 3237603 (July 1, 2024)

The Court held the nature of presidential power entitles a former president to absolute immunity from criminal prosecution for actions within his or her conclusive and preclusive constitutional authority and at least presumptive immunity from prosecution for all official acts. There is no immunity for unofficial acts.

S. Sarbanes-Oxley Act

1. [Murray v. UBS Securities, LLC](#), 601 U.S. 23 (2024).

The Sarbanes-Oxley Act of 2002 prohibits publicly traded companies from retaliating against employees who report what they reasonably believe to be criminal fraud or securities law violations. [18 U.S.C. §1514A\(a\)](#) states employers may not “discharge, demote, suspend, threaten, harass, or ... discriminate against an employee in the terms and conditions of employment because of” protected whistleblower activity. The Court reversed the Second Circuit, holding whistleblowers who invoke [§1514A\(a\)](#) must prove their protected activity was a contributing factor in the employee’s unfavorable personnel action, but they do not have to prove the employer acted with “retaliatory intent.”

2. [Fischer v. U.S.](#), 2024 WL 3208034 (June 28, 2024).

Fischer participated in breaching the Capitol on January 6, 2021. He was charged with various crimes, including obstructing an official proceeding in violation of [18 U.S.C. §1512\(c\)\(2\)](#). He moved to dismiss the charge, alleging it only criminalizes attempts to impair the availability or integrity of evidence. The district court granted his motion, but the D.C. Circuit reversed and remanded for further proceedings. The Supreme Court vacated and remanded, holding that to prove a violation of [§1512\(c\)\(2\)](#), the government must establish the defendant impaired the availability or integrity for use in an official proceeding of records, documents, objects, or other things used in an official proceeding or attempted to do so.

T. Securities

1. [Securities and Exchange Commission v. Jarkesy](#), 2024 WL 3187811 (Jun 27, 2024).

The Court held when the Securities and Exchange Commission seeks civil penalties against a defendant for securities fraud, the [Seventh Amendment](#) entitles the defendant to a jury trial.

2. [Macquarie Infrastructure Corporation v. Moab Partners, L.P.](#), 601 U.S. 257 (2024).

The Court held pure omissions are not actionable under [Rule 10b-5\(b\)](#), which makes it unlawful to omit material facts in connection with buying or

selling securities when the omission renders the statements made misleading. A pure omission occurs when the speaker says nothing in circumstances that do not give any special significance to that silence.

## U. Sentencing

1. [Pulsifer v. U.S.](#), 601 U.S. 124 (2024).

The Court held defendants facing a mandatory minimum sentence are eligible for “safety-valve” relief under [18 U.S.C. §3553\(f\)\(1\)](#) only if they satisfy all three of the provision’s conditions – no more than four criminal history points, no prior three point offense, and no prior two-point violent offense.

2. [Brown v. U.S.](#), 144 S.Ct. 1195 (2024).

At issue in this case was whether a state drug offense constitutes a “serious drug offense”<sup>100</sup> if it involved a drug that was on the federal schedules when the defendant possessed or trafficked in it but was later removed. The Court affirmed defendants’ enhanced sentences, holding a state drug conviction counts as a predicate offense under the Armed Career Criminal Act if it involved a drug on the federal schedules at the time of conviction.

3. [Erlinger v. U.S.](#), 2024 WL 3074427 (June 21, 2024).

The Court held the [Fifth](#) and [Sixth Amendments](#) require a unanimous jury to decide beyond a reasonable doubt that a defendant’s past offenses were committed on separate occasions for purposes of the Armed Career Criminal Act.

## V. Taxes

1. [Moore v. U.S.](#), 144 S.Ct. 1680 (2024).

The Court held the Mandatory Repatriation Tax,<sup>101</sup> which attributes the realized and undistributed income of an American-controlled foreign corporation to the entity’s American shareholders and then taxes them on their portions of that income, does not exceed Congress’s constitutional authority.

2. [Connelly v. U.S.](#), 144 S.Ct. 1406 (2024).

Connelly and his brother were sole shareholders in a small corporation. They had an agreement stating the surviving brother would have the option to purchase the deceased brother’s shares. If he declined, the company would be required to redeem the shares. When his brother died, Connelly

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<sup>100</sup> See [18 U.S.C. §924\(e\)\(1\)](#).

<sup>101</sup> [26 U.S.C. §§965\(a\)\(1\), \(c\), \(d\)](#).

opted not to purchase his shares. The company paid \$3 million to the estate. Connelly, as executor of his brother's estate, then filed a federal tax return for the estate reporting the value of his brother's shares as \$3 million. During an audit of the return, an analyst determined the company's fair market value at the brother's time of death was \$3.86 million, which excluded the \$3 million in life insurance proceeds used to redeem the deceased's share on the basis their value was offset by the redemption obligation. The IRS found the redemption obligation did not offset the life insurance proceeds and assessed the company's total value at \$6.86 million. It calculated the value of the deceased's shares as \$5.3 million and determined the estate owed an additional \$889,914 in taxes. The estate paid the deficiency, and Connelly sued the federal government for a refund. The district court granted summary judgment to the government, holding the \$3 million in life insurance proceeds must be counted in the company's valuation. The Eighth Circuit affirmed. The Supreme Court granted certiorari and held a corporation's contractual obligation to redeem shares is not necessarily a liability that reduces the company's value for purposes of the federal estate tax. At the time of the brother's death, the company was worth \$6.86 million – \$3 million in life insurance proceeds earmarked for the redemption and \$3.86 million in other assets and income-generating potential. The company's promise to redeem the deceased's shares at fair market value did not reduce the value of those shares.

## FOR YOUR INFORMATION ...

### The Kentucky Law Update: Continuing Legal Education for All Kentucky Lawyers

The Supreme Court of Kentucky established the Kentucky Law Update Program as an element of the minimum continuing legal education system adopted by Kentucky attorneys in 1984. The KLU program is now offered in a hybrid format. The 2024 Kentucky Law Update is offered as a one-day, in-person program at nine different locations across the state. The 2024 On-Demand Kentucky Law Update is offered virtually on the Kentucky Bar Association website from September 1st until December 31st. These two programs offer every Kentucky attorney the opportunity to meet the 12 credit CLE requirement, including the 2 ethics credit requirement, **close to home and at no cost!** Judges can also earn continuing judicial education credits at the Kentucky Law Update.

This program was designed as a service to all Kentucky attorneys regardless of level of experience. This service is supported by membership dues and is, therefore, each member's program. The program is a survey of current issues, court decisions, ethical opinions, legislative and rule changes, and other legal topics of general interest that are faced by the Kentucky practitioner on a daily basis. As such, the program serves both the general practitioner and the practitioner who limits his or her practice to a particular field of the law. The Kentucky Law Update program is not intended, nor designed, to be an in-depth analysis of a particular topic. It is designed to alert the lawyers of Kentucky to changes in the law and rules of practice that impact the daily practice of law.

### About the Handbooks and Presentations

Handbook materials are the result of the combined efforts of numerous dedicated professionals from around Kentucky and elsewhere. The KBA gratefully acknowledges the following individuals who graciously contributed to this publication:

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KBA AI Task Force	KBA Office of Bar Counsel
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KBA Criminal Law Section	Kentucky Court of Appeals
KBA Elder Law Section	Kentucky Lawyer Assistance Program
KBA Ethics Committee	Lawyers Mutual of Kentucky
KBA Family Law Section	Legislative Research Commission
KBA Law Practice Committee	NAELA – Kentucky Chapter
KBA Military Law Committee	Supreme Court of Kentucky

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A special thank you to all of the organizations, authors, presenters, moderators, and other 2024 Kentucky Law Update program volunteers will appear in the January 2025 issue of the *Bench & Bar*.

### **CLE and Ethics Credit**

The one-day, in-person 2024 Kentucky Law Update Program is accredited for 7 CLE credits, including 2 ethics credits. The 2024 On-Demand Kentucky Law Update is accredited for 7.75 CLE credits, including 3 ethics credits. One credit is awarded for each 60 minutes of actual instruction as noted on the agendas provided on the KBA website.

The Kentucky Bar Association 2024 Kentucky Law Update programs are accredited CLE activities in numerous other jurisdictions. Credit categories and credit calculations vary from state-to-state. CLE reporting information for other states will be provided at the registration desk at the in-person programs. The out of state information for the on-demand sessions will be available on the program website.

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