

Supreme Court Review for the States

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This term Supreme Court decided six—arguably seven—“big” cases. All of them but one impacted the states. In some of these cases being down a Justice made all the difference—in a few cases it made no difference at all. Below is a summary of the big six cases for states.

In [Reynold v. Sims](#) (1964), the Supreme Court established the principle of “one-person, one-vote” requiring state legislative districts to be apportioned equally.

The question in [Evenwel v. Abbott](#) was what population is relevant—total population or voter-eligible population.

The maximum total-population deviation between Texas Senate districts was about 8 percent; the maximum voter-eligible population deviation between districts exceeded 40 percent.

The Court’s unanimous opinion concluded Texas may redistrict using total population “based on constitutional history, this Court’s decisions, and longstanding practice.”

Over the last 25 years the Supreme Court refused to decide this issue at least three times.

In [Whole Women’s Health v. Hellerstedt](#), the Court held 5-3 that Texas’s admitting privileges and ambulatory surgical center requirements (ASC) create an unconstitutional undue burden on women seeking abortions.

Texas argued these two requirements would “protect the health of women who experience complications from abortions.”

According to the Court, nothing in the record indicated that the admitting privileges requirement advanced women’s health, because very few women who receive abortions need to be hospitalized. The admitting privileges requirement placed a “substantial burden” on a woman’s ability to get an abortion because about half of Texas’s clinics closed as a result.

Regarding the ASC requirement, the Court concluded that it does not benefit patients. For those who have abortions via medication, complications almost always arise only after the patient has left the facility. Also, Texas does not require that much riskier procedures like child birth and colonoscopies be performed in an ASC.

The Court concluded the ASC requirement places a substantial obstacle in the path of women seeking an abortion because it will further reduce the number of abortion clinics (initially about 40) to seven or eight.

In [Fisher v. University of Texas at Austin](#), the Court ruled 4-3 that the University of Texas at Austin’s race-conscious admissions program is constitutional.

Per Texas’s Top Ten Percent Plan, the top ten percent of Texas high school graduates are automatically admitted to UT Austin, filling up to 75 percent of the class. Other students are admitted based on a combination of their grades, test scores, and “personal achievement index.” Race is considered as one factor in one of the two components of an applicant’s “personal achievement index.”

The Court rejected Abigail Fisher's argument that the university's use of race is unnecessary. This is the first time an education institution has won an affirmative action case since [Grutter v. Bollinger](#) (2003).

In [McDonnell v. United States](#), the Court unanimously reversed former Virginia Governor Robert McDonnell's federal bribery conviction.

While in office McDonnell accepted more than \$175,000 in loans, gifts, and other benefits from Jonnie Williams. Williams wanted a Virginia state university to test a dietary supplement, Anatabloc, his company had developed.

The federal government claimed McDonnell committed at least five "official acts" of bribery, including arranging for Williams to meet with Virginia government officials and hosting and attending events at the Governor's mansion designed to encourage Virginia university researchers to study Anatabloc.

The Court held that setting up meetings, calling other public officials, and hosting events do not alone qualify as "official acts."

The lower court will decide whether charges against McDonnell should be dismissed based on its new definition of "official acts" or whether McDonnell should receive a new trial.

The Supreme Court split 4-4 in [United States v. Texas](#) on whether the President's deferred action immigration program violates federal law.

As a result, the Fifth Circuit's nationwide temporary stay of the program remains in effect.

The Deferred Action for Parents of Americans (DAPA) program allows certain undocumented immigrants who have lived in the United States for five years, and either came here as children or already have children who are U.S. citizens or permanent residents, to lawfully stay and work temporarily in the United States.

At least four Justices apparently agreed that Texas had "standing" to challenge DAPA, presumably based on Texas's argument that the cost of issuing drivers licenses to DAPA participants is a particular harm states face.

In [Friedrichs v. California Teachers Association](#), the Supreme Court issued a 4-4 opinion affirming the lower court's decision to not overrule [Abood v. Detroit Board of Education](#) (1977).

In *Abood*, the Supreme Court held that the First Amendment does not prevent "agency shop" arrangements--where public employees who do not join the union are still required to pay their "fair share" of union dues for collective-bargaining, contract administration, and grievance-adjustment.

In two recent cases in 5-4 opinions written by Justice Alito and joined by the other conservative Justices (including Justice Scalia and Justice Kennedy), the Court was very critical of *Abood*. The Court heard oral argument in *Friedrichs* in January before Justice Scalia died, and the five more conservative Justices seemed poised to overrule *Abood*.

Justice Scalia, who ultimately didn't participate in this case, likely would have voted to overrule *Abood*.

What else?

Beyond the blockbusters, over half of the Supreme Court's docket affects the states in some way. Because there were so many big cases last term few of the less significant cases stand out.

Last term the Court decided an unusually high number of redistricting cases and cases involving the death penalty. None of these cases significantly changed existing law.

Also, for the first time in many terms the Supreme Court decided a number of preemption cases. All involved technical topics ranging from energy to health care claims data collection.

The Court also decided a number of cases involving "bread and butter" issues for states including qualified immunity, public employment, and the Fourth Amendment. All of these cases raised narrow issues.