



## RUTGERS SPAA RESEARCH BRIEF

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# A Transformative Era: The Roberts Court, Constitutional Interpretation, and Public Administration

The Constitutional School of American Public Administration dictates that the rule of law serves as the intellectual and practical foundation of the field. One way to support the Constitutional School is to examine how the United States Supreme Court works to shape the administrative state in its own image. This article examines how the Court under Chief Justice John Roberts constitutionally protected laws affecting gay marriage, affirmative action, abortion rights, gun ownership, and healthcare while it simultaneously narrowed constitutional protections concerning voting rights, campaign finance laws, and employer mandated contraceptive coverage.

## Expanding Constitutional Law

### *The Equal Protection Clause and Gay Marriage*

In the 2012 term, the Supreme Court addressed a seminal civil rights question for 21st century constitutional law: Does the Constitution afford gays and lesbians the right to marry? Congress answered this question definitively in 1996 when it passed the Defense of Marriage Act (DOMA). Section 3 of DOMA defined marriage as a “legal union between one man and one woman as husband and wife, and the word spouse refers only to a person of the opposite sex who is a husband or a wife” (DOMA 1 U.S.C. § 7).

Justice Kennedy, writing for the majority in a 5-4 decision, held that DOMA’s definition of marriage was unconstitutional for three important reasons. First, Congress’s decision to recognize marriage as a legal union between one man and one woman denies all same-sex couples who want to marry their partner equal protection under the law. Second, by the time this case reached the nation’s highest Court, New York and 29 other states had legally recognized and accepted same-sex marriage, directly challenging federal law. Finally, the Court argued that DOMA served no legitimate legal purpose, and by not serving a legitimate purpose it undermined the “personhood and dignity” of same-sex couples.

### *Applying Affirmative Action in University Admissions*

Affirmative action is one of the most divisive issues in contemporary American politics. It constitutes a redistributive effort to make opportunities available

to individuals and groups who have been historically or traditionally discriminated against on the basis of race and ethnicity.

In *Fisher v. University of Texas* (579 U.S. \_\_\_\_\_, 2016), the Court reexamined how the University of Texas relied upon an undergraduate applicant's race in the admissions process. Justice Kennedy, writing for the majority, held that the University's race-conscious admissions program was not a violation of the Fourteenth Amendment's Equal Protection Clause and supported its reliance on race as one factor among many for achieving a diverse, representative undergraduate student body. Most importantly, this decision constitutionally legitimated a specific form of affirmative action in public sector decision-making.

### ***Limiting States' Rights to Regulate Abortion***

Like affirmative action, abortion is an extremely contentious policy in American politics today. In *Whole Woman's Health et al. v. Hellerstedt* (579 U.S. \_\_\_\_\_, 2016), the Court's majority held that a newly adopted Texas state law, H.B. 2, which required all abortion clinics to meet the same safety and staffing standards of a hospital operating room while also necessitating that every physician who performed abortions have admitting privileges at a hospital no more than 30 miles from the clinic where they perform abortions, was unconstitutional. Justice Breyer, writing for the majority, argued that such stipulations placed an undue burden, embedded with substantial obstacles, for women seeking an abortion, directly undermining the Court's previous decisions on constitutional matters concerning abortion.

### ***Expanding Second Amendment Rights***

In *District of Columbia v. Heller* (554 U.S. 570, 2008), the Court examined the constitutionality of a D.C. law that (1) banned handgun possession and ownership throughout the District, (2) prohibited the registration of handguns, and (3) required residents who owned other types of firearms to register those arms with the District and to keep them unloaded and disassembled or bound by a trigger lock at all times. If individuals violated any part of this law, they were subject to a fine and up to a year in prison for the first offence and up to five years in prison for the second.

Justice Scalia, writing for the majority, was deeply troubled by this law. In addition to declaring D.C.'s ban on handguns unconstitutional, the Court held that the District's policy of requiring residents to keep all firearms in their homes inoperable violated the Second Amendment. The decision, however, placed no restrictions on policies keeping firearms out of schools or government buildings. And, it did not restrict rules for conditions and qualifications for the commercial sale of arms. Those prohibitions remained constitutional.

In *McDonald v. Chicago* (554 U.S. 570, 2010), the Court expanded the *Heller* decision to apply Second Amendment protections to states and localities who were attempting to restrict gun ownership in an effort to curb gun violence in their jurisdictions. The Court, in both cases, ruled that denying individuals access to handguns violates the Constitution.

### ***Upholding the Affordable Care Act***

History will likely regard Chief Justice John Roberts' majority opinion in *National Federation of Independent Business v. Sebelius* (567 U.S. \_\_\_\_\_, 2012) as one of the most defining cases of his tenure on the Court.

The individual mandate portion of the Affordable Care Act (ACA) was the most controversial requirement associated the ACA. It required individuals to have at least minimal health care coverage by 2014. The mandate further stipulated that if individuals chose not to purchase health insurance, the government would subject them to a financial penalty on their taxes. Chief Justice Roberts held that the individual mandate is constitutional because of Congress' power to lay and collect taxes, thereby, constitutionally legitimating the signature domestic policy achievement of the Obama administration.

## **Narrowing Constitutional Law**

### ***Limiting the Application of the Voting Rights Act of 1965***

In *Shelby County, Alabama v. Holder* (567 U.S. \_\_\_\_\_, 2012), the Court's majority overturned Sections 4 and 5 of the Voting Rights Act (VRA). Section 4 distinguished among certain states and jurisdictions with a history of civil rights and voting

rights violations. Later, Congress expanded covered jurisdictions to include non-English speaking citizens. Section 5 required that when any state or jurisdiction covered by Section 4 wanted to make changes to voter laws, voter registration, or voting policy, they first had to receive preclearance from the Attorney General of the United States or from a three judge panel from the U.S. District Court system.

Chief Justice Roberts held that the formula Congress used to determine which states had to comply with Sections 4 and 5 was based on data that was almost half a century old and, therefore, unconstitutional. The Court also held that these Sections infringed upon the rights of states to make their own laws and determine their own policies concerning voting rights.

### ***Deregulating Campaign Finance Laws***

In perhaps the most unexpected case of the Roberts Court so far was *Citizens United v. Federal Elections Commission* (558 U.S. 310, 2010). Here, the Court overturned the Bipartisan Campaign Reform Act of 2002, commonly known as the McCain-Feingold law, prohibiting corporations and unions from using general treasury funds to contribute to candidates directly or from using independent expenditures to advocate for the election or defeat of any candidate running for public office.

Justice Kennedy held that while the government can still regulate corporate political speech through disclaimer and disclosure requirements, it cannot regulate corporate political speech through the regulatory process. The decision determined that a corporation's political speech is constitutionally protected under the First Amendment. The majority based this assessment on the belief that political speech is essential for democracy, and the First Amendment does not support the suppression of any form of political speech by media corporations or other associations of people. Civic discourse must be left to the people to decide, not the government.

### ***Constitutional Boundaries for Contraceptive Coverage***

In *Burwell v. Hobby Lobby* (573 U.S. \_\_\_\_\_), the Court reviewed a contraceptive mandate regulation adopted by the U.S. Department of Health and Human Services under the ACA's statutory authority. This rule required employers to cover certain contraceptives for their female employees. The owners of three companies – Hobby Lobby, Conestoga Wood Specialties Store, and Mardel – brought suit against the federal government for requiring them to provide contraceptive coverage as part of their insurance plan for their female employees. They based this claim on provisions of the Religious Freedom Restoration Act (RFRA) of 1993. This law prohibits the government from substantially burdening a person's exercise of religion even if the burden results from a rule of general applicability. The owners of these businesses are devout Christians who oppose abortion. They believe life begins at conception and do not support any medical decision that infringes on the process of conception. Since the ACA's contraceptive mandate could cover prescriptions like the morning after pill and intrauterine devices, they argued this provision placed a substantial burden on their free exercise of religion.

Justice Alito held that the ACA's implementation of this policy undermined the religious freedom of the parties in question. The Court further maintained that the option of requiring these companies to pay \$475 million in fines and penalties for violating this federal regulation or to subject themselves to fund religiously objectionable contraception was a direct violation of the RFRA.

## **Conclusion**

Evaluating the Roberts Court in this capacity affords us an opportunity to underscore the power of the Supreme Court to fashion the administrative state in a manner that upholds democratic-constitutional values in some cases and weakens them in others.

In the current political and social climates that engulf American politics, it is imperative that public administration theorists and practitioners rely on constitutional discourse as a seminal component in the decision-making of civil servants and administrative agencies.

Grounding administrative decisions in democratic-constitutional norms and values and Supreme Court precedent provides a

safe haven against the proverbial attacks on governmental bureaucracy. As the Court continues to be reshaped by the appointment of new justices, we in public administration must continue to follow its decisions and their effects on our field ever so carefully.

By doing so, we can make a more concerted effort to participate in judicial processes concerning public sector decision-making and work towards advancing democratic-constitutional norms and values more effectively and responsively.

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