




The Supreme Court, October Term 2025 — A (p)review of leading cases

MAMA/GLS 2026 Summer Education Conference


James Ming Chen, Michigan State University



An overview of the presentation

- ▶ Birthright citizenship
 - ▶ Additional cases on immigration and asylum
- ▶ The tariff decisions (including a look at the major questions doctrine)
- ▶ Unitary Trumpism: The fate of independent regulatory commissions
- ▶ Voting rights and election law
- ▶ Sexual orientation and identity
- ▶ Guns and the second amendment

- ▶ Many cases have not yet been decided, but we'll muddle through



Trump v. Barbara, No. 25-365 (argued April 1, 2026)

- ▶ In a striking departure from previous law, Executive Order No. 14-160 conditions citizenship upon the legal status of a child's parents
 - ▶ No birthright citizenship for the children of anyone short of permanent resident
 - ▶ The the Trump administration has sought denaturalization at an extreme pace
- ▶ “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” 14th amendment, § 1
- ▶ *Wong Kim Ark* (1898) — Three traditional exceptions
 - ▶ American Indians (this is the formal legal term). *Elk v. Wilkins* (1884)
 - ▶ Ambassadors and their families
 - ▶ “Invading armies” — Describing migrants as “invaders” is circus clown/“UFC” law



Additional cases on immigration and asylum

- ▶ Backdrop: The Trump administration more comprehensive hostility toward immigration, especially by nonwhites
 - ▶ J.D. Vance, patriarch of a mixed-race family, favors *Blut und Boden* over the conventional civic religion of America as a creedal nation
- ▶ *Noem v. Al Otro Lado*, No. 25-5 (argued March 24, 2026)
 - ▶ “Metering policy” turns migrants back before they can seek asylum upon “arriv[ing] in the United States”
 - ▶ There’s no “physical presence” in the U.S. if border agents block entry
- ▶ *Mullin v. Doe*, No. 25-1083 (argued April 29, 2026)
 - ▶ Termination of Temporary Protected Status for Syrians and Haitians



The tariff decisions: Undoing (if not refunding) "Liberation Day"

- ▶ *Learning Resources v. Trump*, No. 24-1287, and *Trump v. V.O.S. Selections*, No. 25-250, both decided on Feb. 20, 2026
- ▶ The International Emergency Economic Powers Act (IEEPA) of 1977 does not authorize the wide swath of tariffs upon dozens of trading partners
- ▶ The major questions doctrine (MQD). <https://ssrn.com/abstract=4392722>
 - ▶ "Congress does not hide elephants in mousetraps": Any major policy question must be clearly stated in the text of a statute, which is an *anti-textualist* principle
 - ▶ Until the "Liberation Day" cases, MQD had never struck down Republican policy
 - ▶ Kagan's concurrence: MQD adds nothing to a straightforward statutory case
 - ▶ Gorsuch, over Barrett's demurral, sees MQD as prophylaxis for nondelegation
 - ▶ It's fair to describe the MQD as part of Gorsuch's (successful) jihad on *Chevron*
 - ▶ Thomas, Alito, and Kavanaugh would have deferred to Trump's executive judgment



The unitary (Trumpian) executive

- ▶ *Trump v. Slaughter*, No. 25-332 (argued Dec. 8, 2025); see also Lisa Cook
- ▶ Article II of the Constitution (§ 2, clause 2) says a lot about the power to appoint officers, but nothing about their removal
- ▶ The President “shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law, but the Congress may by law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments”
- ▶ *Humphrey’s Executor* (1935) upheld the power to limit the removal of a Federal Trade Commissioner for “inefficiency, neglect of duty, or malfeasance in office.” *Slaughter* explicitly invites its overruling.



Voting rights and election law

- ▶ This Term's biggest voting rights case, and probably the most significant case of its kind in decades, is *Louisiana v. Callais*, No. 24-109 (April 29, 2026)
- ▶ Backdrop: The Voting Rights Act Amendments of 1982 overturned the "intent" standard of *Mobile v. Bolden* (1980)
- ▶ But *Callais* found that the VRA as amended did not compel the creation of an additional majority-minority district. As such, the consideration of race rendered Louisiana's map unconstitutional.
- ▶ Southern states have reacted with a rush to redraw districts in favor of white Republican voters
- ▶ *Cf. Rucho v. Common Cause* (2019): Partisan gerrymandering is not only nonjusticiable, but an embedded, affirmative virtue of American politics



Further thoughts on *Callais* and election law in today's Supreme Court

- ▶ The Supreme Court has reversed the frustration that a young John Roberts faced when he failed to block the adoption of the 1982 amendments
 - ▶ *Holder v. Hall* (1994): Changing the size of a governing body is not vote dilution under § 2 of the VRA
 - ▶ *Shelby County v. Holder* (2023) invalidated the coverage formula that had been used to determine preclearance under § 5
- ▶ Race is baked into partisan preferences and voting patterns in the South
 - ▶ Combining *Callais* with *Rucho* does declare open season on safe black seats
- ▶ *Watson v. RNC*, No. 24-1260 (argued 3/24), challenges rules allowing mail-in ballots to be counted if postmarked but not received by election day
- ▶ *NRSCC v. FEC*, No. 24-621 (argued 12/9/25): “Party coordinated communications” and political party expenditures (J.D. Vance campaign)



Sexual orientation and identity

- ▶ *Backdrop*: The “5G agenda” of God, guns, gynecology, gay people, and now gerrymandering remains potent, even amid more aggressive attacks on conventional views of constitutional law
- ▶ First amendment claims to speech and religious freedom prevail over legislation banning “conversion therapy”
 - ▶ *Chiles v. Salazar*, No. 24-539 (March 31, 2026)
- ▶ Two pending cases appear likely to uphold prohibitions on the participation of male-to-female transgender athletes in girls’ sports
 - ▶ *West Virginia v. B.P.J.*, No. 24-43, and *Little v. Hecox*, No. 24-38, both argued Jan. 31, 2026



Guns and the second amendment



- ▶ Lower courts have struggled to find a consistent way to apply *New York State Rifle and Pistol Association v. Bruen* (2022), which protects the personal right to bear arms as recognized in *District of Columbia v. Heller* (2008) by requiring historical evidence supporting specific gun restrictions
- ▶ *United States v. Hemani*, No. 24-1234 (decided June 18, 2026), invalidated restrictions on gun possession based on prior convictions for recreational marijuana use
 - ▶ Marijuana remains a federally controlled substance, but is widely deregulated at the state level
- ▶ *Wolford v. Lopez*, No. 24-1046 (argued Jan. 20, 2026), poses a much more direct challenge to *Bruen*, since laws requiring the landowner's permission to carry a gun onto the premises have dated from the founding



Thank you

- ▶ James Ming Chen
 - ▶ chenjame@law.msu.edu
- 