
The United States Supreme Court OT 2023

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Overview of the Supreme Court Term:

Administrative Law

Corner Post, Inc. v. Board of Governors of the Federal Reserve System—Corner Post, a convenience store, and retail groups challenged the Board of the Federal Reserve System’s Regulation II, which caps the fees banks can charge for each debit transaction. Petitioners argued that the regulation is arbitrary and capricious in violation of the Administrative Procedure Act (APA), but the district court dismissed the case based on the statute of limitations. The question presented to the Supreme Court is whether, under the APA’s “first accrue”



rule in 28 U.S.C. § 2401(a), Corner Post’s limitations period began in 2011, when the regulation was first promulgated, even though Corner Post had not yet entered the industry, or when the regulation first harmed it. *Decision pending.*



Department of Agriculture Rural Development Rural Housing Services v. Kirtz—Justice Gorsuch delivered the opinion for a unanimous Court. The Court held that the civil liability provisions of the Fair Credit Reporting Act (FCRA) waive the sovereign immunity of the United States. In the Court’s view, FCRA Sections 1681n and 1681o use “any person” (who furnished information to consumer reporting agencies)

to refer back to Section 1681a's definition of "person," which explicitly included government agencies. In other words, the FCRA provides that a government agency is also subject to a consumer suit for misreporting information to credit reporting agencies.



Food and Drug Administration v. Alliance for Hippocratic Medicine—(Consolidated with *Danco Laboratories, LLC v. Alliance for Hippocratic Medicine*.) In 2016, the Food and Drug Administration (FDA) expanded medical practitioners' access to mifepristone, a drug used in over half of all U.S. abortions. In 2021, because of COVID-19, the FDA permitted pharmacies to distribute the drug through certified mail. After *Dobbs v. Jackson Women's Health Organization* allowed States to prohibit most abortions, the Alliance for Hippocratic

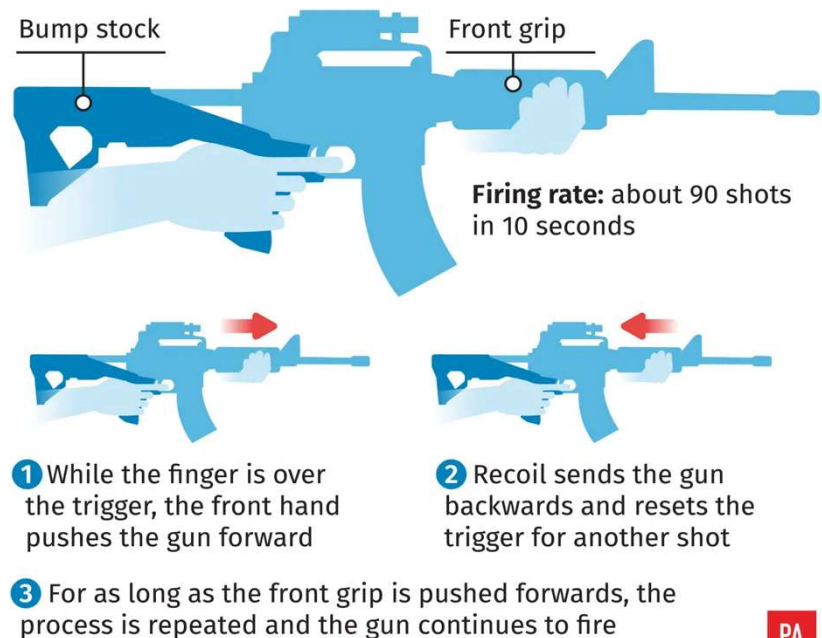
Medicine and other anti-abortion groups challenged the FDA's expansion of access to the drug in 2016. The Court is asked to decide whether Respondents have Article III standing to challenge the 2016 and 2021 approvals; whether those approvals were arbitrary and capricious; and whether the district court properly granted respondents' request for an injunction. *Decision pending.*

Garland v. Cargill—After the 2017 Las Vegas nightclub shooting, the Bureau of Alcohol, Tobacco,

Firearms and Explosives (ATF) changed its prior position and classified bump-stock guns as machineguns, ownership or use of which could lead to criminal liability. Cargill surrendered his bump stock but challenged ATF's regulations as exceeding its statutory authority. The Court is asked to decide whether, pursuant to the statute permitting ATF to regulate dangerous weapons such as machineguns, 26 U.S.C. § 5845(b), a bump stock device qualifies as a machinegun. *Decision pending.*

How a bump stock works

A bump stock allows a semi-automatic rifle to be fired continuously like an automatic weapon





Loper Bright Enterprises v. Raimondo—*See Relentless. Decision pending.*

Ohio v. Environmental Protection Agency—Unlike the broader challenges to the existence of agencies, this case is a more typical challenge to federal-agency rulemaking. The Environmental Protection Agency (EPA) required States to submit plans on how they would mitigate emissions that would affect “downwind” States to conform to the Clean Air Act’s “good neighbor” provision. 21 States proposed no action, and 2 failed to submit plans. The EPA

nevertheless promulgated a Rule mandating that States use existing tools more efficiently and adopt commonly used tools by 2026, among other things. 3 States and several companies and interested parties challenged the rule on the merits, and 12 States

challenged the EPA’s rejection of their emission plans. The Court is asked to decide whether the EPA’s Rule should be stayed and whether the emission controls established by the Rule are reasonable. *Decision pending.*



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