

SCOTUS

OCTOBER 2023

TERM IN REVIEW

AMICUS ON THE MERITS:
4 Wins, 3 Losses

AMICUS ON CERT:
5 Denied, 2 Pending



Americans for Prosperity Foundation engages in cases before the Supreme Court with one unifying theme: liberty. This year the victories were significant.

- We stood against the State of New York for unconstitutionally coercing companies to stop doing business with organizations based on their speech.
- We stood with online platforms opposing state laws that would compel them to host speech they otherwise would not.
- We stood with a small business fighting for the right to seek relief from overreaching regulations.
- And we stood up for people's Seventh Amendment right to a jury trial when government agencies seek civil penalties.

These are just a few examples of our broad engagement. The consistent theme in every case, regardless of the plaintiff or the legal issue, is asking the Court to apply the text of the law and Constitution and, as a result, promote liberty. **On balance, this year, liberty won.**

AMICUS BRIEFS ON THE MERITS

FREE EXPRESSION

NRA v. Vullo

WIN – In a win for the First Amendment, the Supreme Court unanimously decided that government officials cannot pressure or otherwise coerce organizations to terminate certain business relationships when doing so infringes the First Amendment rights of the third party. In this case, the Superintendent of New York's Department of Financial Services used her official position to pressure New York insurance companies to stop doing business with the NRA.

DECISION

BRIEF

BLOG

Court's vote: 9-0

Murthy v. Missouri

LOSS – The Supreme Court held the plaintiffs did not have Article III standing to challenge whether the federal government unduly pressured private social media companies' content-moderation decisions and thus violated plaintiffs' First Amendment rights.

DECISION

BRIEF

Court's vote: 6-3

NetChoice v. Moody/NetChoice v. Paxton

WIN – The Supreme Court held that the circuit courts erred in failing to perform the requisite First Amendment analysis of facial challenges to the Florida and Texas laws compelling social media platforms to host speech they otherwise would not. The Supreme Court sent both cases back down to perform the First Amendment analysis.

DECISION

BRIEF

Court's vote: 9-0

REGULATORY REFORM

Corner Post, Inc. v. Board of Governors of the Federal Reserve System

WIN – Americans harmed by old regulations can now seek relief in court. The Supreme Court ruled the Administrative Procedure Act's statute of limitations begins to run when a party is first harmed by an agency regulation, not when the agency first issues the regulation.

DECISION

BRIEF

BLOG

Court's vote: 6-3

SEC v. Jarkesy

WIN – The Security and Exchange Commission can no longer act as judge, jury, and executioner in cases with civil penalties. The Supreme Court held that when the SEC seeks civil penalties against a defendant, the Seventh Amendment entitles the defendant to a jury trial.

DECISION

BRIEF

Court's vote: 6-3

CFPB v. Community Financial Services Association of America

LOSS – The Supreme Court held that Congress's statutory authorization allowing the Consumer Financial Protection Bureau to draw money from the earnings of the Federal Reserve System to carry out the CFPB's duties satisfies the Constitution's Appropriations Clause.

DECISION

BRIEF

Court's vote: 7-2

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AMICUS BRIEFS ON THE MERITS (cont'd)

CRIMINAL JUSTICE

Pulsifer v. United States

LOSS – Interpreting changes the First Step Act made to federal sentencing law, the Supreme Court held that defendants convicted of certain drug offenses are eligible to be sentenced as individuals, instead of receiving otherwise applicable mandatory minimum prison terms, only if they meet all three criminal history criteria in the statute, instead of only one, in addition to satisfying all other requirements for safety-valve relief.

DECISION

BRIEF

Court's vote: 6-3

AMICUS BRIEFS SUPPORTING PETITIONS FOR CERT

Felkner v. Rhode Island College | **DENIED**

Newell-Davis v. Phillips | **DENIED**

Speech First v. Sands | **DENIED**

Allstates Refractory Contractors LLC v. Su | **DENIED**

Consumers' Research v. FCC | **DENIED**

No on E v. Chiu | **PENDING**

Villarreal v. City of Laredo | **PENDING**

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