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First Monday: Cardozo Professors Preview the Supreme Court Term at the Floersheimer Center's Annual Event



Professors Deborah Pearlstein, Michael Pollack, Kate Shaw, and Saurabh Vishnubhakat at the SCOTUS Term Preview on Sept. 19.

The Floersheimer Center held its annual Supreme Court Term Preview on Monday, where Cardozo professors discussed what they believe will be the "blockbuster" cases the Supreme Court will be adjudicating when the new term starts on Oct. 3, also known as "First Monday."

This year's lineup, which was fully in-person for the first time since 2020, included Professors Kate Shaw, Saurabh Vishnubhakat, Deborah Pearlstein and Michael Pollack, who looked at the topics of gerrymandering, copyright infringement, discrimination on the basis of race and LGBTQ+ issues. They broke down the facts of the cases for students in attendance and talked about ways they think the Court may respond to these issues. Afterwards, they answered questions from students in attendance.

"[Last term] was the first full term with a very conservative six justice supermajority in place," Shaw said. "This newly constituted court has moved very swiftly and changed the law in a number of areas, and I think we'll see whether that trend continues in this upcoming term."

Shaw spoke about two upcoming cases, both about the issue of gerrymandering, *Merrill v. Milligan* and *Moore v. Harper*. *Merrill v. Milligan* looks at whether the 2021 Alabama redistricting plan violates the Voting Rights Act, while *Moore v. Harper* is about whether the North Carolina Supreme Court has the power to strike down the state's illegally gerrymandered congressional map for violating the North Carolina Constitution.

Vishnubhakat also spoke about two cases, one of which involves the work of artist Andy Warhol and whether it violates copyright law. The case, *Andy Warhol Foundation for the Visual Arts Inc v. Goldsmith*, examines whether a photograph that Lynn Goldsmith took of Prince, was “transformed” enough by Warhol to avoid copyright infringement. However, one of the things that makes this case unusual, according to Vishnubhakat, is that the Andy Warhol Foundation is suing Goldsmith “preemptively,” instead of Goldsmith suing the Foundation.

Both Pearlstein and Pollack discussed cases related to equal treatment under the law and how they think this Court will view them and rule.

“I want to speak to what I think are going to be 'blockbuster statements' from the Supreme Court on what the 14th Amendment means when it says that no State shall deprive any citizen equal protection of the laws,” Pearlstein said.

She also spoke about the different interpretations of the 14th Amendment, and the different interpretations that different members of the Court have today, with the liberal minority believing that race can sometimes be used in legal decision making if it is not used for the purpose of subordinating a minority race..

“There has long been, since the 14th Amendment was enacted, this giant conceptual legal debate in what the ‘equality’ protection of the 14th Amendment means,” Pearlstein said. “On one side, [some] believe that you cannot use race in any way as part of a legal classification. You can't distinguish among people on the basis of race no matter what the reason.” If the Court applies this understanding of the 14th Amendment to the affirmative action cases it will be looking at this fall, it could radically change the legal landscape for diversity programs in higher education.”

Pollack also used his time to speak on cases of discrimination, except he focused on questions of LGBTQ+ discrimination the Court will be examining.

Pollack also talked about *303 Creative v. Elenis*, a case where a web designer is challenging Colorado law by arguing that she should not have to create wedding websites for gay couples. This case is a “cousin” case of *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, in which a cake store owner claimed that creating a cake for a same-sex marriage would violate his religious freedom. The Court ruled in favor of *Masterpiece Cakeshop* in 2018. However, this case is

slightly different, since the web designer, Lorie Smith, is not responding to a specific request, but acting preemptively.

While speaking about the upcoming cases on LGBTQ+ issues the Court will be deciding, he also discussed *Yeshiva University v. Y.U. Pride Alliance*, in which Cardozo's parent university asked the Court for relief from a New York State Court injunction requiring the university to recognize an LGBTQ club while the case is being appealed in lower courts. Pollack examined the legal question of whether equal treatment means endorsement and explored the strategies of both sides. Pollack laid out Yeshiva's legal arguments, which are based on religious liberty, and he discussed the Pride Alliance's position and its focus on the place of antidiscrimination law. He also discussed the potential doctrinal consequences for other areas of antidiscrimination law if the Court were ultimately to rule in Yeshiva's favor.