

(ORDER LIST: 589 U.S.)

MONDAY, OCTOBER 21, 2019

APPEAL -- SUMMARY DISPOSITION

19-220 CHATFIELD, LEE, ET AL. V. LEAGUE OF WOMEN VOTERS, ET AL.

The judgment is vacated, and the case is remanded to the United States District Court for the Eastern District of Michigan for further consideration in light of *Rucho v. Common Cause*, 588 U.S. \_\_\_\_ (2019).

CERTIORARI -- SUMMARY DISPOSITIONS

19-5181 JOHNSON, LAMAR V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of *Rehaif v. United States*, 588 U. S. \_\_\_\_ (2019).

19-5217 WATKINS, LAVARES D. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Rehaif v. United States*, 588 U. S. \_\_\_\_ (2019).

19-5623 LEGRIER, DESHAWN V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted.

The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Second Circuit for further consideration in light of *Rehaif v. United States*, 588 U. S. \_\_\_\_ (2019).

**ORDERS IN PENDING CASES**

19M56 VELASQUEZ PEREZ, MARILIS Y. V. PALENCIA, JOSE C.

19M57 DOE, JANE V. DARDANELLE SCHOOL DISTRICT

The motions for leave to file petitions for writs of certiorari with the supplemental appendices under seal are granted.

19M58 BITON, CRYSTAL V. BARR, ATT'Y GEN., ET AL.

19M59 BITON, CRYSTAL, ET AL. V. VERRILLI, DONALD B., ET AL.

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

65, ORIG. TEXAS V. NEW MEXICO

The conditional motion of Texas for review of the Special Master's 2019 final determination is granted.

18-938 RITZEN GROUP, INC. V. JACKSON MASONRY, LLC

The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

18-7739 HOLGUIN-HERNANDEZ, GONZALO V. UNITED STATES

The motion of the Solicitor General for divided argument is granted, and the time is divided as follows: 15 minutes for petitioner, 15 minutes for the Solicitor General in support of vacatur, and 30 minutes for Court-appointed *amicus curiae* in support of the judgment below.

19-5632 T. A., ET AL. V. LEFF, HOWARD B., ET AL.

The motion of petitioners for leave to proceed *in forma pauperis* is denied. Petitioners are allowed until November 12, 2019, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

**CERTIORARI DENIED**

18-1446 SEXTON, LETTIE V. KENTUCKY, ET AL.

18-1506 MARTIN, JULIAN V. UNITED STATES

18-1515 ELI LILLY AND CO. V. ERFINDERGEMEINSCHAFT UROPEP GbR

18-1543 KATZ, MICHAEL A. V. CELLCO PARTNERSHIP

18-1554 BLESSINGER, LAWRENCE W. V. UNITED STATES

19-73 GAHAGAN, MICHAEL W. V. CITIZENSHIP & IMMIGRATION

19-75 GARNER, JAMES J. V. COLORADO

19-76 MARQUARDT, DEPUTY SHERIFF V. FLETCHER, WILLIAM

19-170 E CO., ET AL. V. TRUSTEES OF SUBURBAN TEAMSTERS

19-201 HANSON, ROGER S. V. ALLERT, JENNIFER

19-204 CARRICK, PAUL M. V. RICE, TAMYRA A., ET AL.

19-207 GROBER, DAVID, ET AL. V. MAKO PRODUCTS, INC.

19-210 OLAECHEA, LIZETTE V. OLAECHEA, GRACE

19-215 NEVELS, DARREL C. V. PIGGLY WIGGLY CORP., ET AL.

19-217 DaVINCI AIRCRAFT, INC. V. UNITED STATES, ET AL.

19-218 SUN, XIU J. V. JING, WU H., ET AL.

19-226 SMITH, NOEL L. V. CARUSOS, DIANE S.

19-231 PERKINS, WES V. DAVIS, DIR., TX DCJ

19-236 AMMIYHUWD, ACHASHVEROSH A. V. POMPEO, SEC. OF STATE, ET AL.

19-246 JALLALI, MASSOOD V. FLORIDA

19-258 KATZIN, RICHARD L., ET AL. V. UNITED STATES

19-262 YU, XIAO-YING V. NEALL, ROBERT R., ET AL.  
19-270 RODRIGUEZ, PATRICIA V. LPP MORTGAGE LTD., LP  
19-316 HANSEN, LARRY D. V. SALT LAKE CITY CORP.  
19-334 DIAMOND, NORMAN D. V. UNITED STATES, ET AL.  
19-344 HUANG, QIHUI V. PAI, CHAIRMAN, FCC, ET AL.  
19-349 SWISHER INT'L, INC. V. TRENDSETTAH USA, INC., ET AL.  
19-364 WILLIAMS, DWAYNE L. V. VIRGINIA  
19-366 LANGE, WALTER C. V. CIR  
19-372 JENKINS, WILLIAM D., ET UX. V. CHANCE, COREY, ET AL.  
19-374 BRYNS, FLOYD H. V. MARYLAND  
19-419 SAULSBERRY, ANTONIO L. V. LEE, WARDEN  
19-5246 ROSADO, JASON V. UNITED STATES  
19-5592 SPAULDING, DAWUD V. OHIO  
19-5615 REMENAR, MARC V. REMENAR, JAMIE  
19-5628 ROCHESTER, CHARLES V. NY DIV. OF HUMAN RIGHTS, ET AL.  
19-5637 WILSON, KAREN S. V. MARION POLICE DEPARTMENT, ET AL.  
19-5639 CRAWFORD, KIRBY D. V. GEORGIA  
19-5644 CUMBEE, KEITH S. V. DAVIS, DIR., TX DCJ  
19-5649 O'BRIEN, TERRY L. V. HACKER-AGNEW, WARDEN, ET AL.  
19-5650 WILLIAMS, JAMES M. V. PARAMO, WARDEN, ET AL.  
19-5660 SANCHEZ, ALFONSO V. PENNSYLVANIA  
19-5664 SHEPPARD, CURTIS L. V. TEXAS  
19-5674 TEAGUE, ED V. REGENT FINANCIAL GROUP, ET AL.  
19-5680 CURRY, KENNETH T. V. VANCOUVER HOUSING AUTH., ET AL.  
19-5692 COCHRUN, LARRY D. V. DOOLEY, WARDEN  
19-5694 FARLEY, CRAIG V. DIAZ, SEC., CA DOC  
19-5696 WILLIAMS, ADRIAN F. V. INCH, SEC., FL DOC, ET AL.  
19-5703 MASSEY, ERIC V. VANNOY, WARDEN

19-5709 NEWMAN, SAM V. LOUISIANA  
19-5768 VILLALONA, STEVEN V. FLORIDA  
19-5802 MATTHEWS, TRAVIS W. V. PENNSYLVANIA  
19-5840 STUCKEY, ANDRE K. V. CALIFORNIA  
19-5879 JOE, TIMOTHY L. V. INCH, SEC., FL DOC, ET AL.  
19-5912 LEON, JESUS O. V. RYAN, DIR., AZ DOC, ET AL.  
19-5913 SMITH, SAMMIE L. V. FLORIDA  
19-5917 CASTRO, MATTHEW A. V. INCH, SEC., FL DOC, ET AL.  
19-5919 CARTER, MARLON R. V. LOUISIANA  
19-5932 MYERS, CHAVEZ V. UNITED STATES  
19-5951 HARRIS, JEFFREY L. V. SMITH, WARDEN  
19-5955 HEILMAN, DENNIS R. V. BLADES, WARDEN, ET AL.  
19-5956 APODACA, ADRIAN V. UNITED STATES  
19-5959 FERGERSON, LORETTA V. UNITED STATES  
19-5962 TJADER, DAVID V. UNITED STATES  
19-5963 YUGOPICIO-ROJAS, JESUS V. UNITED STATES  
19-5969 BANKS, TAWOINE A. V. UNITED STATES  
19-5970 RAZZAQ, MURAD V. KANSAS  
19-5974 O'MALLEY, DUANE L. V. UNITED STATES  
19-5976 DEDMON, MARQUISE T. V. UNITED STATES  
19-5982 DE LA TORRE, ALCADIO C. V. UNITED STATES  
19-5996 POTTER, MICHAEL J. V. UNITED STATES  
19-6018 LITTLE, JOEY V. UNITED STATES  
19-6019 MURILLO, MARCO A. V. UNITED STATES  
19-6020 ROMEU, JOSE V. UNITED STATES  
19-6021 DE LA ROSA, RICARDO V. V. UNITED STATES  
19-6027 COMBS, JORDAN V. UNITED STATES  
19-6030 ELIAS, CRAIG V. CAPOZZA, SUPT., FAYETTE, ET AL.

19-6035 ESPINAL-RIVERA, LUIS R. V. UNITED STATES

19-6052 LEE, RAFIE A. V. FLORIDA, ET AL.

19-6064 COLE, TOMMY V. RACKLEY, WARDEN

The petitions for writs of certiorari are denied.

19-6 NEW YORK V. JONES, JAHMARLEY

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

19-232 NEW MIGHTY U.S. TRUST, ET AL. V. ROBERT SHI, ET AL.

The motion of Professor George A. Bermann for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied. Justice Kavanaugh took no part in the consideration or decision of this motion and this petition.

19-274 BUCHANAN, TERESA V. ALEXANDER, F. K., ET AL.

The motion of National Coalition Against Censorship, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

19-5971 SCHMIDT, DARLENE V. HERBERT, GOV. OF UT

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8.

#### **HABEAS CORPUS DENIED**

19-421 IN RE WILLIAM H. HAMMAN

19-6066 IN RE JEFFREY S. COLLIER

19-6093 IN RE BARBARA STONE, ET AL.

19-6134 IN RE RECARDO WIMBUSH, ET UX.

The petitions for writs of habeas corpus are denied.

**MANDAMUS DENIED**

19-338 IN RE PETER APPEL, ET AL.

The petition for a writ of mandamus is denied.

**ATTORNEY DISCIPLINE**

D-3044 IN THE MATTER OF DISBARMENT OF ARTHUR JAY SMITH

Arthur Jay Smith, of Pittsburgh, Pennsylvania, having been suspended from the practice of law in this Court by order of August 5, 2019; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and a response having been filed;

It is ordered that Arthur Jay Smith is disbarred from the practice of law in this Court.

THOMAS, J., concurring

**SUPREME COURT OF THE UNITED STATES**

DAN M. LIPSCHULTZ, IN HIS OFFICIAL CAPACITY AS  
COMMISSIONER OF THE MINNESOTA PUBLIC  
UTILITIES COMMISSION, ET AL. *v.* CHARTER  
ADVANCED SERVICES (MN), LLC, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 18–1386. Decided October 21, 2019

The petition for a writ of certiorari is denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, concurring in the denial of certiorari.

Charter Advanced Services provides Voice over Internet Protocol services, which allow users to place voice calls over an Internet connection. After the Minnesota Public Utilities Commission attempted to regulate Charter’s provision of these services, Charter brought suit in federal court, arguing that the state regulation was pre-empted. The District Court granted summary judgment to Charter. The Eighth Circuit affirmed, reasoning that the Federal Communications Commission’s “policy of nonregulation” of these services pre-empted state law. *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F. 3d 715, 718 (2018) (internal quotation marks omitted).

I agree with the Court’s determination that this case does not satisfy our criteria for certiorari. I write to explain why, in an appropriate case, we should consider whether a federal agency’s policy can pre-empt state law.

The Supremacy Clause of the Constitution provides:

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all



THOMAS, J., concurring

Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” Art. VI, cl. 2.

The Clause contains a *non obstante* provision, a common device used by 18th-century legislatures to signal the implied repeal of conflicting statutes. See *PLIVA, Inc. v. Mensing*, 564 U. S. 604, 621 (2011); see also Nelson, Preemption, 86 Va. L. Rev. 225, 237–242, 245–246 (2000). At the time of the founding, this Clause would have been understood to pre-empt state law only if the law logically contradicted the “Constitution,” the “Laws of the United States,” or “Treaties.” See *id.*, at 260.

It is doubtful whether a federal policy—let alone a policy of nonregulation—is “Law” for purposes of the Supremacy Clause. Under our precedent, such a policy likely is not final agency action because it does not mark “the consummation of the agency’s decisionmaking process” or determine Charter’s “rights or obligations.” *Bennett v. Spear*, 520 U. S. 154, 177–178 (1997) (internal quotation marks omitted); see also *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U. S. \_\_\_\_, \_\_\_\_ (2019) (THOMAS, J., concurring). Even if it were final agency action, the Supremacy Clause “requires that pre-emptive effect be given only to those federal standards and policies that are set forth in, or necessarily follow from, the statutory text that was produced through the constitutionally required bicameral and presentment procedures.” *Wyeth v. Levine*, 555 U. S. 555, 586 (2009) (THOMAS, J., concurring in judgment); see also *Department of Transportation v. Association of American Railroads*, 575 U. S. 43, 86 (2015) (THOMAS, J., concurring in judgment) (“The Government may create generally applicable rules of private conduct only through the proper exercise of legislative

THOMAS, J., concurring

power”).

Giving pre-emptive effect to a federal agency policy of nonregulation thus expands the power of both the Executive and the Judiciary. It authorizes the Executive to make “Law” by declining to act, and it authorizes the courts to conduct “a freewheeling judicial inquiry” into the facts of federal nonregulation, rather than the constitutionally proper “inquiry into whether the ordinary meanings of state and federal law conflict,” *Wyeth, supra*, at 588 (THOMAS, J., concurring in judgment) (alteration and internal quotation marks omitted). Because this petition does not clearly challenge the underlying basis of the pre-emption theory, however, I concur in the denial of certiorari.