

5 Supreme Court Cases To Watch This Fall

By **Katie Buehler**

Law360 (October 2, 2026, 12:26 PM EDT) -- The U.S. Supreme Court will convene Monday to begin its 2026 October Term, which includes several cases that could determine the future of climate change tort litigation, expand religious freedoms and parental rights, and grant states authority to require proof of citizenship when individuals register for presidential elections using state forms.

The justices have assembled a relatively light caseload so far, attorneys told Law360. They've granted review in only 26 cases, and many of them deal with detail-oriented disputes related to employee retirement plans, veterans benefits legislation, private condemnations under the Natural Gas Act and excessive fines.

Here, Law360 looks at five of the most important cases scheduled for argument this fall.

Climate Torts

The Supreme Court will kick off its new term with a case that could change the course of litigation seeking billions of dollars in damages across the country and determine the future of climate change tort disputes, as well as other mass tort litigation that relies on similar theories of liability.

Suncor Energy Inc. and Exxon Mobil Corp. have asked the justices to overturn the Colorado Supreme Court's finding that federal law doesn't preempt the city and county of Boulder's pursuit of a state court lawsuit seeking to hold the oil companies liable for city- and county-specific injuries allegedly caused by greenhouse gas emissions. Boulder contends the companies violated state public and private nuisance, unjust enrichment and civil conspiracy laws by downplaying how the production and use of fossil fuels would impact the environment.

A divided Colorado Supreme Court ruled in May 2025 that Boulder's claims for billions of dollars in damages and costs related to natural disaster response and mitigation services could move forward, rejecting Suncor and Exxon's arguments that the state court lawsuit was preempted by the Clean Air Act, or CAA, and federal common law. The state high court also found the claims don't intrude or conflict with the federal government's authority to control the nation's foreign policy agenda.

This case presents the justices with a prime opportunity to lay down some guidelines and curb rising efforts by states and individual plaintiffs to essentially legislate through litigation, Shook Hardy & Bacon LLP managing partner Phil Goldberg said. A ruling in favor of Suncor and Exxon could have monumental impacts on other product liability cases involving opioids, electronic vapes and other products that are

at the center of social debates, he said.

But the high court might also sidestep the question altogether, as possibly indicated by its decision to ask the parties to discuss whether it has jurisdiction to hear this dispute.

Suncor and Exxon argue the Supreme Court has jurisdiction to hear this case because the state high court's ruling was the result of a petition for an order to show cause, which is categorized as an original proceeding under Colorado's appellate rules. Although the decision was handed down during the case's motion-to-dismiss stage, the oil companies claim the petition initiated a separate case that is final for purposes of Supreme Court review. The companies add that the Colorado Supreme Court's ruling foreclosed their use of a federal defense at trial — a result that provides a distinct basis for the justices to examine the case.

But the city and county of Boulder counter that the justices lack jurisdiction to hear this case because no final judgment has been rendered by the trial court. The oil companies remain able to use their preemption arguments at trial and to seek appellate review after a final judgment, so there is no need for resolution by the Supreme Court at this early stage, they say.

While some attorneys see the jurisdictional question as a potential off-ramp if the court winds up sharply divided over the merits question, many believe the court took this case in order to declare that state courts can't oversee climate tort suits.

"It's easy to see where the court may want to go directionally, but very difficult to figure out how the court will decide this case," Gupta Wessler LLP name partner Deepak Gupta said.

The oil companies contend federal law precludes state law claims seeking relief for local effects of interstate and international greenhouse gas emissions. The Supreme Court has long held that federal law governs disputes over the regulation of interstate air and water conditions, and that states voluntarily surrendered their right to resolve such conflicts under their own laws when they agreed to join the Union, Suncor and Exxon said. The CAA solidified the federal government's control over interstate environmental conditions by giving the U.S. Environmental Protection Agency primary authority to regulate interstate emissions and pollution disputes, they argue.

The federal government, which will argue in favor of the oil companies, adds that while each state has the authority to regulate within its own borders, multiple judicial doctrines prohibit the type of extraterritorial authority Boulder seeks to assert in its lawsuit. The structure of the U.S. Constitution, for example, bars Colorado courts from imposing its laws on other states or the federal government. If the Supreme Court allows Boulder's suit to move forward, it will undermine the federal government's authority to regulate emissions nationwide and interfere with its ability to conduct international negotiations related to climate change policy, the federal government says.

Meanwhile, Boulder claims no federal law preempts its lawsuit because it's aimed at curbing deceptive marketing and sales practices, not the emission of greenhouse gases. Even if Suncor and Exxon are found liable in this case, Boulder argues, they can continue to produce and sell as much fossil fuel as they desire; they just can't continue to mislead the public about the effect fossil fuel use has on the environment. And the Constitution's due process clause allows states to apply their own laws when tortious conduct injures one of their citizens within their borders, as the oil companies have allegedly done in this case, Boulder said. It adds that any incidental effects the lawsuit has on the federal government's foreign relations are insufficient to preempt it.

The case is Suncor Energy (U.S.A.) Inc. et al. v. County Commissioners of Boulder County et al., case number 25-170. Oral arguments are scheduled for Monday.

Religious Exercise

A case involving a challenge to Colorado's universal preschool program will allow the high court's majority to continue its efforts to expand religious freedom.

The Archdiocese of Denver and two of its parishes have petitioned the Supreme Court to reverse a Tenth Circuit decision that ruled Colorado's universal preschool program can require Catholic Church-run schools to accept students from LGBTQ+ families as a condition of receiving state funding. St. Mary Catholic Parish in Littleton, Colorado, and St. Bernadette Catholic Parish in Lakewood, Colorado, claim the program violates the First Amendment's free exercise clause by denying their schools religious exemptions to its equal opportunity mandate while allowing secular schools to give preferential treatment to students based on other protected class statuses.

A unanimous Tenth Circuit panel found in September 2025 that the program's equal opportunity mandate is constitutional under the Supreme Court's 1990 decision in *Employment Division v. Smith*, which held that facially neutral and generally applicable laws don't violate the free exercise clause.

The mandate prohibits participating schools from denying preschool services based on a student's race, ethnicity, religious affiliation, sexual orientation, gender identity, lack of housing, income level or disability. But Colorado has created exceptions in its student-to-school matching software to allow Head Start programs and certain other preschools to express preferences for low-income students and students with disabilities.

Latham & Watkins LLP partner Roman Martinez said this case has potential to be a blockbuster free exercise ruling depending on how broadly the justices want to write their decision. Although it refused to take up the archdiocese's direct attempt to overturn *Smith*, the high court could effectively achieve that result if it rules that a state policy is unconstitutional if its effect is to keep religious groups out of a government-funded program, Martinez said.

But even a narrower ruling would be a big win for religious freedom, he said.

"The tea leaves are pretty good for the challengers generally," Martinez said. "Colorado, on the other hand, doesn't have a great track record in these kinds of cases."

The archdiocese and its parishes argue the Tenth Circuit applied the wrong Supreme Court precedent in this case, claiming it instead should have analyzed the universal preschool program's mandate under the 2022 *Carson v. Makin* decision, which struck down a Maine tuition assistance program that only provided state funds to students who attended nonsectarian schools. The ruling established that states violate the free exercise clause when they deny benefits based on a recipient's religious exercise, which Colorado is allegedly doing in this case by refusing to allow the Catholic preschools to give preference to families that agree with the church's teachings on gender identity and sexual orientation. In order to participate in Colorado's program, the parishes claim their schools are forced to abandon their religious practices and beliefs to receive government benefits. Colorado cannot establish a compelling reason for that requirement, they argued, and even if it could, its grant of exceptions for other schools would undermine it.

Lisa Roy, the executive director of the Colorado Department of Early Childhood, counters that nothing in the universal preschool program's equal opportunity mandate requires faith-based preschools to abandon their practices and beliefs. The archdiocese and its parishes are free to provide faith-based schooling as long as they don't discriminate against students based on their or their families' gender identity or sexual orientation, she said. The department allows certain schools to set preferences for low-income students and students with disabilities because those preferences don't deny enrollment opportunities to other students based on a protected class status, and they provide specialized services to historically disadvantaged classes, Roy argued.

The case is *St. Mary Catholic Parish et al. v. Roy et al.*, case number 25-581. Arguments are scheduled for Nov. 3.

AR-15 Bans

This Supreme Court's sole Second Amendment case granted so far this term could be its most important ruling on the topic since the justices fundamentally changed the modern understanding of an individual's right to bear arms in 2008.

Illinois and Connecticut residents have asked the justices in a pair of consolidated cases to overturn two decisions from the Second and Seventh circuits upholding semiautomatic rifle laws that prohibit individuals from owning AR-15s and similar guns. The residents claim the bans, which are also called "assault weapon" bans, violate the Second Amendment right to bear arms by banning one of the most popular firearms in the country.

In June 2025, a unanimous Seventh Circuit panel found a ban by Cook County, Illinois, constitutional after a group of residents, led by Cutberto Viramontes, failed to show AR-15-style firearms fall within the Second Amendment's definition of "arms." That August, a unanimous Second Circuit panel held that Connecticut could prohibit the possession of AR-15-style weapons because they involved dramatic technological changes from the "arms" that were available when the Second Amendment was written, and because the ban addresses the relatively new societal concern of mass shootings.

Attorneys say the question to watch in this case isn't whether AR-15s are "arms" under the Second Amendment, but whether they are unusual and dangerous ones that fall outside the amendment's protection.

"The critical question is, unusually dangerous as compared to what?" Clement & Murphy PLLC name partner Erin Murphy said. "If an arm is in common use, it's essentially going to not be unusually dangerous."

Robert Cottrol, a George Washington University Law School professor, said he's interested in watching how the justices will harmonize their ruling in this case with their 2008 decision in *District of Columbia v. Heller*, in which Cottrol said Justice Antonin Scalia took "strenuous efforts" to distinguish pistols from military weapons. The court's history-and-tradition test established in *New York State Rifle & Pistol Association Inc. v. Bruen* in 2022 will require the justices to consider that the same framers who wrote the Second Amendment also wrote the first national firearms act in 1792, which required every white man to own a rifle and bayonet, he said.

"That raises the question of how far *Bruen* can be carried," Cottrol said. "Does the court have to go back

to some type of balancing test?"

Viramontes and the Connecticut residents, who are led by Eddie Grant Jr., argue both laws are unconstitutional. The original meaning of "arms" in the Second Amendment covers all weapons, including AR-15-style guns, used in offense or self-defense, they said, a definition the Supreme Court recently affirmed in its ruling earlier this year that invalidated Hawaii's so-called vampire rule for guns on private property open to the public.

From there, a court must defer its analysis to the American people, Viramontes and Grant argue. A firearm is in "common use" for the purposes of the Second Amendment if a large number of Americans currently allow its possession for lawful use, they said. In this case, millions of citizens possess and use AR-15-style weapons for various reasons, and courts don't have the authority to second-guess the public's determination of their usefulness.

Furthermore, a firearm that's in common use cannot be deemed "unusually dangerous," Viramontes and Grant add. Courts must trust the people's judgment regarding what sorts of firearms are appropriate.

Cook County and Connecticut's joint response brief isn't due until Oct. 21, but both argued at the petition for certiorari stage that just because a firearm happens to be in common use today doesn't mean it is protected under the Second Amendment. The "common use" analysis requires more than a survey of how many Americans own a certain type of gun, Ronnell Higgins, commissioner of Connecticut's Department of Emergency Services and Public Protection, argued for the state. Courts must instead consider a weapon's actual use and functionality, he said.

The Supreme Court explained in its Heller decision that the Second Amendment's reference to "arms" encompassed weapons designed for self-defense, not military use, Cook County added. Since the AR-15 is a modified version of the military's M-16 automatic rifle, it isn't entitled to the same protections that pistols or other guns commonly used for self-defense are, the county said.

The consolidated cases are Viramontes et al. v. Cook County, Illinois, et al., case number 25-238, and Grant et al. v. Higgins et al., case number 25-566. Arguments are scheduled for Dec. 2.

Transgender Youth

A parental rights challenge to a Washington state transgender youth policy will likely have big implications for case law on the two hot-button topics of parental rights and transgender rights, as well as the more meat-and-potatoes topic of standing.

Two nonprofits opposed to "gender ideology" and five sets of parents have petitioned the Supreme Court to reverse the Ninth Circuit's dismissal of their lawsuit challenging a Washington state law that changed the process by which certain parents are notified if their runaway child checks into a homeless shelter and requests gender-affirming care. The law transfers the notification responsibility from the individual shelters to the Washington Department of Children, Youth and Families, in violation, the groups and parents contend, of the rights of nonapproving parents of transgender minors or children experiencing gender dysphoria by treating them similarly to allegedly abusive and neglectful parents.

The law added children seeking gender-affirming care to an exception to Washington's requirement that homeless shelters notify parents within 24 to 72 hours of their child checking into a licensed facility.

Prior to 2023, the only exception to the law was for children who shelter staff believed would face abuse or neglect if their parents were notified. Now, the state's child welfare agency is responsible for notifying those children's parents and the parents of children seeking gender-affirming care, and is required to offer them family reconciliation services within three days of the child's arrival at a shelter.

A unanimous Ninth Circuit panel in July 2025 affirmed a Washington federal judge's dismissal of the lawsuit, finding the parents' asserted First Amendment injuries of chilled parenting techniques and speech about gender identity were self-inflicted. Washington's law directly regulates homeless shelters, not parents, the panel said, and none of the parents proved they faced an immediate harm of their children running away and seeking gender-affirming care from a shelter.

Hogan Lovells Cadwalader partner Sean Marotta said he's interested to see the breakdown of the court's decision in this case, given the varying alliances that have emerged in both parental rights and transgender rights cases. For example, the justices split 6-3 along ideological lines in their 2025 decision in *Mahmoud v. Taylor*, which held a Maryland school district had likely burdened parents' religious rights when it declined to provide opt-outs from a policy that introduced LGBTQ+-themed storybooks into its K-12 English curriculum. But in June, while the justices disagreed 6-3 on the final outcome of the case, they unanimously held in *West Virginia v. B.P.J.* that schools are allowed under Title IX to prohibit transgender females from joining women's and girls' sports.

Crowell & Moring LLP partner Emily Kuwahara said the court's standing decision could have widespread effects for her appellate practice.

"Underlying the hot-button nature of the topic, there is a more foundational question being answered," she said. "These are the cases that we will be using to argue who is injured, and when do you have the right to sue."

The Washington law's challengers, led by Chicago-based International Partners for Ethical Care Inc., claim they have standing to sue under the Supreme Court's March emergency docket ruling in *Mirabelli v. Bonta* and its June 2025 merits decision in *Diamond Alternative Energy LLC v. Environmental Protection Agency*. Both rulings established that a party can be the object of a law without being directly regulated by it and that being a law's object creates standing to sue.

The five sets of parents in this case have sufficiently proved standing by either alleging their children have gender dysphoria or have run away before and will likely be incentivized by Washington's new law to seek gender-affirming care from the state despite their parents' disapproval and beliefs. The fear that their children will run away to seek such care degrades parents' legal authority to decide how to raise their children and harms the parent-child relationship, the challengers said.

Washington Gov. Bob Ferguson, whose response brief is due Oct. 21, argued against the Supreme Court reviewing this case because the challengers' asserted injuries are based on a string of hypotheticals he argues aren't likely to occur. The Ninth Circuit's ruling was a straightforward application of settled law, he said, and the challengers' reliance on the high court's *Diamond* decision, which found fuel industry groups could challenge the Biden-era EPA's decision to allow California to set its own greenhouse gas emission standards for vehicles, is misplaced. Unlike in that case, the challengers of Washington's law cannot demonstrate a clear and predictable link between the actions of the regulated shelters and the parents' alleged injuries, Ferguson argued. He added that the new law also doesn't impose new burdens on parents; it simply changes how they're notified if their child checks into a homeless shelter.

The case is International Partners for Ethical Care Inc. et al. v. Ferguson et al., case number 25-840. Arguments are set for Dec. 7.

Election Law

A dispute over Arizona's voter ID law could decide whether states have the authority to request proof of citizenship when individuals seek to register to vote in federal elections via a state application.

The Republican National Committee has asked the justices to overturn a Ninth Circuit decision invalidating provisions of Arizona law that require proof of citizenship to register to vote in presidential elections when using the state's application form and allow election officials to remove noncitizens from the state's voter roll within 90 days of a federal election. Neither federal law nor a 2018 consent decree prohibits the state from implementing those election rules, the RNC claims.

A divided Ninth Circuit panel ruled in February 2025 that Arizona's laws were preempted by the National Voter Registration Act, or NVRA, which doesn't require federal voters to provide proof of citizenship when registering, and institutes a 90-day moratorium on programs that systematically cull ineligible voters from state voter rolls. The panel's majority also held that a 2018 consent decree the state entered into to resolve a prior challenge to its proof of citizenship requirement prohibits Arizona from implementing a new version of its voter ID law.

While this case won't affect this year's midterm elections, Cooley LLP partner Ephraim McDowell said it will have huge implications for voter registration in future election cycles.

"I think the implications would be pretty significant if these laws were upheld," he said. "Because of how burdensome it is to present documentary evidence of citizenship, a ruling in the state's favor could lead to eligible voters having their registrations canceled."

The RNC argues that the Supreme Court already approved Arizona's proof of citizenship requirement when it ruled in 2013 in *Arizona v. Inter Tribal Council of Arizona* that the NVRA doesn't bar states from requiring additional documentation on their state voter registration forms, compared to the federal form. The proof is "necessary" information that the federal law says state election officials can request to assess voter qualifications, the committee said. The RNC adds that while the NVRA instructs states to create forms "equivalent" to the federal one, it doesn't require them to be carbon copies.

The NVRA's 90-day moratorium also doesn't apply to noncitizens because they were never eligible to vote, the committee said. The only way noncitizens could appear on voter rolls is through a mistake or fraud, and the RNC said removing them is allowed at any time.

Meanwhile, the 2018 consent decree has no authority over this case, the committee said. The agreement expired in December 2020 and cannot apply to new laws enacted by the Arizona Legislature in 2022, it argues.

The Democratic National Committee, the League of United Latin American Citizens and several other voter rights groups who challenged Arizona's laws have not yet filed their response briefs, which are due Oct. 13. But they defended the Ninth Circuit's decision in a series of filings opposing certiorari.

The NVRA's provision allowing states to request additional "necessary" information for voter registration only permits states to ask for documentation that is "essential" to the registration process, voting rights

group Mi Familia Vota argued. As long as the applicant attests that they are a citizen, which they must do on the federal form, they don't have to provide any further information to states, it said. The U.S. Election Assistance Commission has repeatedly concluded that an attestation is enough to establish citizenship, the group said, and states lack authority to ask for more.

The DNC added that the plain meaning of the NVRA's 90-day moratorium on voter roll purges applies to all people registered to vote, regardless of their citizenship status. The committee said the act lists four exemptions to the moratorium that allow states to remove voters within the 90-day period in response to a voter's request, a criminal conviction or mental incapacity, death or a change of residence. The fact that Congress expressly created exemptions for those four situations and not for a lack of citizenship, as well as the NVRA's lack of distinction between citizen and noncitizen registered voters, proves lawmakers didn't envision a carve-out similar to the one Arizona law and the RNC promote, the DNC said.

As for the consent decree, Mi Familia Vota argued it is equivalent to a final judgment that doesn't expire. Arizona was required to move to modify or vacate the decree before enacting a change in its laws that contradict it, the organization said. Otherwise, the state's legal obligation not to require proof of citizenship to register to vote in presidential elections when using the state's application form remains in place, it argued.

The case is Republican National Committee v. Mi Familia Vota et al., case number 25-1017. Arguments are scheduled for Dec. 8.

--Editing by Robert Rudinger.