FIRST AMENDMENT — FEDERAL ANTI-RIOT ACT — FOURTH CIRCUIT FINDS THE ANTI-RIOT ACT PARTIALLY UNCONSTITUTIONAL. — *United States v. Miselis*, 972 F.3d 518 (4th Cir. 2020).

After lying nearly dormant for decades, the Federal Anti-Riot Act of 1968[1] reemerged into the spotlight over the past few years as prosecutors invoked the law against white supremacists, demonstrators advocating for racial justice, and insurrectionists at the U.S. Capitol.[2] Recently, in *United States v. Miselis*,[3] however, the Fourth Circuit became the first federal appellate court to hold that parts of the Anti-Riot Act unconstitutionally infringed on protected advocacy under the First Amendment.[4] With more courts poised to adjudicate prosecutions under the Anti-Riot Act and assess its constitutionality, the import of this decision has grown. Overall, the Fourth Circuit reached a reasonable, pragmatic outcome supported by current doctrine. Nevertheless, the court missed an opportunity to strengthen the public legitimacy of its decision by acknowledging the Act's racialized history, distancing the Act's current uses from its origins, and expressing a broader judicial commitment to grappling with complicated questions regarding race.

Defendants Benjamin Daley and Michael Miselis were members of the Rise Above Movement, a white supremacist, militant organization that encourages members to attend political demonstrations to engage in violence against counterprotestors.[5] In 2017, the defendants traveled to various political rallies, including the infamous "Unite the Right" rally in Charlottesville, where they participated in violent clashes with counterprotestors.[6] In 2018, they were charged with traveling in interstate commerce with the intent to riot in violation of the Anti-Riot Act.[7]

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[1] 18 U.S.C. §§ 2101–2102.

[2] *See* Josh Gerstein, *Feds Get First Indictments in Cases Related to Capitol Riot*, POLITICO (Jan. 12, 2021, 6:45 PM), https://www.politico.com/news/2021/01/12/feds-capitol-riot-first-indictments-458233 [https://perma.cc/2RC5-X8T8]; Ryan J. Reilly, *How Segregationists Rushed Through the 1968 Rioting Laws DOJ Is Using in 2020*, HUFFPOST (Sept. 24, 2020, 2:39 PM), https://www.huffpost.com/entry/anti-rioting-act-civil-disorder-law-doj-barr-trump-consitutional_n_5f6a012cc5b655acbc701ca2 [https://perma.cc/D6GT-HP2V].

[3] 972 F.3d 518 (4th Cir. 2020).

[4] *See id.* at 526.

[5] *Id.*; United States v. Daley, 378 F. Supp. 3d 539, 545 (W.D. Va. 2019).

[6] *Miselis*, 972 F.3d at 526; *Daley*, 378 F. Supp. 3d at 546.

[7] *Daley*, 378 F. Supp. 3d at 545. The Anti-Riot Act criminalizes:

> (a) Whoever travels in interstate or foreign commerce or uses any facility of interstate or foreign commerce . . . with intent —
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> (1) to incite a riot; or
>
> (2) to organize, promote, encourage, participate in, or carry on a riot; or
>
> (3) to commit any act of violence in furtherance of a riot; or
>
> (4) to aid or abet any person in inciting or participating in or carrying on a riot or committing any act of violence in furtherance of a riot;

The United States District Court for the Western District of Virginia denied the defendants' motion to dismiss the indictment, rejecting their arguments that the Act was facially invalid because it was unconstitutionally vague, overbroad, and criminalized more than unprotected incitement.[8] In regard to the overbreadth challenge, the court ruled that the Act "does not criminalize peaceful protest or lawful assembly but rather targets 'public disturbance[s] involving' violence or the threat of such violence undergirded by the 'ability of immediate execution.'"[9] Next, the court held that the terms in § 2101 (for example, "incite" and "promote") satisfied the *Brandenburg v. Ohio*[10] incitement test because they criminalized only speech that bore the "required relation to action" under *Brandenburg*.[11] Subsequently, Daley and Miselis entered conditional guilty pleas on condition of appellate review of the Act.[12]

The Fourth Circuit affirmed the convictions.[13] Writing for a unanimous panel, Judge Diaz[14] held the Anti-Riot Act was not unconstitutionally vague, but did "sweep[] up a substantial amount of [protected] speech," violating the First Amendment.[15] However, the court determined that the Act need be only partially invalidated because the "discrete instances of overbreadth" were severable.[16] In its assessment of whether the Act was facially overbroad, the court announced an analytical framework that "reflect[s] the notion 'that the overbreadth doctrine is strong medicine'"[17]: the court must (1) construe the statute and introduce limiting constructions where feasible; (2) examine whether the stat-

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> and who either during the course of any such travel or use or thereafter performs or attempts to perform any other overt act for any purpose specified in subparagraph (A), (B), (C), or (D) . . . .

18 U.S.C. § 2101(a).

Section 2102(b) defines some of the statute's relevant terms:

> (b) [T]he term "to incite a riot", or "to organize, promote, encourage, participate in, or carry on a riot", includes, but is not limited to, urging or instigating other persons to riot, but shall not be deemed to mean the mere oral or written (1) advocacy of ideas or (2) expression of belief, not involving advocacy of any act or acts of violence or assertion of the rightness of, or the right to commit, any such act or acts.

18 U.S.C. § 2102(b).

[8] *Daley*, 378 F. Supp. 3d at 547, 558. The court also rejected the defendants' claim that the Act was facially invalid because it was not within the purview of Congress's Commerce Clause powers, *id.*, and rejected the defendants' as-applied challenge, *id.* at 558–59.

[9] *Id.* at 554–55 (quoting 18 U.S.C. § 2102(a)).

[10] 395 U.S. 444 (1969) (per curiam).

[11] *Daley*, 378 F. Supp. 3d at 556. Under *Brandenburg,* speech has to be "directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action." *Brandenburg*, 395 U.S. at 444.

[12] *Miselis,* 972 F.3d at 525.

[13] *Id.* at 525–26, 548.

[14] Judge Diaz was joined by Judges King and Rushing.

[15] *Miselis,* 972 F.3d at 525.

[16] *Id.* at 526.

[17] *Id.* at 531.

ute "criminalizes a substantial amount" of speech related to its "plainly legitimate sweep;" and, if so, (3) conduct a severability analysis.[18]

The court began its overbreadth analysis by examining the Act's specific intent elements. It first assessed the plain meaning of the speech-related verbs in § 2101(a)(1)–(2) (for example, "incite" and "organize") and their narrowing context provided in § 2102(b).[19] After determining that the plain meaning of "incite" had the requisite relationship between speech and lawlessness,[20] the court analyzed dictionary meanings to find that "promote," "encourage," and "urge" were overbroad because these terms swept up too much conduct unlikely to result in an imminent riot.[21] The court then concluded that "organize" was not overbroad because it encompassed "concrete aid" to rioting.[22] Proceeding to § 2102(b)(2),[23] the court deemed the provision overbroad because its double negative language meant the provision criminalized mere advocacy of violence.[24]

In the second step of its overbreadth analysis, the court contended that the statute's overbreadth was substantial in relation to its "plainly legitimate sweep."[25] Comparatively, the amount of proscribed protected speech "dwarf[ed]" the proscribed unprotected speech because it "cover[ed] the . . . realm of advocacy that *Brandenburg* protects."[26]

Ultimately, the court held that the overbroad provisions of the Act were severable from the constitutionally valid provisions.[27] It proceeded by first establishing the framework for its severability analysis: a statute is severable if (1) there are constitutionally valid provisions; (2) those

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[18] *See id.* (quoting United States v. Williams, 553 U.S. 285, 292 (2007)).

[19] *Id.* at 535.

[20] *See id.* at 536. Using *Brandenburg* for its definition of incitement, the court determined "incite" "refers to speech that is directed and likely to produce imminent lawlessness." *Id.* The court also said that "instigate" was not overbroad because it is synonymous with "incite." *Id.* at 538.

[21] *Id.* at 536, 538. While the Supreme Court construed "promote" narrowly in a separate overbreadth challenge, the *Miselis* court declined to do so here. *Id.* at 536–37. In *United States v. Williams*, 553 U.S. 285, the Supreme Court limited "promote" to the transactional meaning of recommending child pornography, in light of the statutory language's "transactional connotation." *See Williams*, 553 U.S. at 294. The Fourth Circuit also refused to limit "promote" and "encourage" to *Brandenburg*'s definition of incitement, as this restraint would be superfluous. *See Miselis*, 972 F.3d at 537.

[22] *Miselis*, 972 F.3d at 537.

[23] This provision provides that the specific intent elements "shall not be deemed to mean the mere oral or written advocacy of ideas or expression of belief, not involving advocacy of any act or acts of violence." 18 U.S.C. § 2102(b) (internal numbering omitted).

[24] *Miselis*, 972 F.3d at 538–39.

[25] *Id.* at 541.

[26] *Id.*

[27] *Id.* The court decided to sever the terms "encourage," "promote," and "urging" in § 2101(a)(2) and § 2102(b), and the phrase "not involving advocacy of any act or acts of violence" in § 2102(b)(2). *See id.* at 542.

provisions can function independently; and (3) the remainder of the statute is consistent with Congress's original purposes in enacting it.[28] The court argued that the valid provisions could function independently considering that the "'offending' language" comprised only a small subset of the Act's specific intent elements, and the court could "cleanly excise[]" them.[29] Because Congress aimed to "proscribe, to the maximum permissible extent, unprotected speech and conduct" relating to riots and interstate commerce, the court concluded that if Congress could have foreseen the *Brandenburg* ruling, it would have enacted the revised version of the statute instead of forgoing a statute altogether.[30] Finally, the court affirmed the defendants' convictions because their conduct still fell within the purview of the statute's remaining provisions.[31]

The Fourth Circuit reached a logical, pragmatic outcome in its overbreadth and severability analyses that was consistent with current First Amendment and severability doctrine. However, the opinion's compromise approach missed an opportunity to acknowledge the Anti-Riot Act's racialized legislative history, distance the Act's current uses from its origins, and exhibit the court's commitment to addressing complicated questions regarding race. The Act's origins, which were raised in the appellants' brief, suggest a congressional focus on establishing a federal mechanism to target the speech and conduct of so-called "outside agitators," specifically, Black political leaders and Communists, who were supposedly able to evade existing state anti-riot statutes.[32] In avoiding the Act's legislative history, the court did not consider the importance of judicial rhetoric and its discussions of racial context in legitimating certain narratives and outcomes. Although this discussion of the Act's racialized history would not have helped the court's doctrinal analysis, addressing the Act's racial context still would have strengthened the legitimacy of the court's decision.

The *Miselis* court's compromise approach of selectively introducing limiting constructions to the Anti-Riot Act pragmatically preserved key provisions of the statute, while also severing the most threatening. Its method offers a logical middle ground between those decisions that have upheld the entire Act[33] and those that have opted to strike it down completely.[34] The court correctly recognized that overbreadth is strong medicine and that courts should seek limiting constructions where feasible

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[28] *Id.* at 542.

[29] *Id.* at 543 (quoting Seila Law LLC v. CFPB, 140 S. Ct. 2183, 2209 (2020)).

[30] *Id.*

[31] *Id.* at 547.

[32] *See* Reply Brief of the Appellants at 26–30, *Miselis*, 972 F.3d 518 (No. 19-4550).

[33] *See* United States v. Dellinger, 472 F.2d 340, 355 (7th Cir. 1972).

[34] *See* United States v. Rundo, No. 18-cr-00759, 2019 U.S. Dist. LEXIS 233081, at *17 (C.D. Cal. June 3, 2019), *rev'd*, 2021 U.S. App. LEXIS 6304 (9th Cir. Mar. 4, 2021) (per curiam).

to avoid constitutional issues.[35] In doing so, it maintained the Act as a "critical federal tool," which, the government argued, enables prosecution of individuals who use facilities of interstate commerce to organize and incite "violent cross-jurisdictional conduct" that states are unwilling or unable to prohibit.[36] But the court also correctly refused to introduce limiting constructions to the provisions of the statute with the most attenuated relationship between speech and imminent lawlessness.[37] This refusal was a wise decision considering the statute's infrequent use by federal prosecutors[38] and tenuous precedent.[39]

The court's omission of the Act's legislative history and potential purpose is supported by current doctrine. First, the Supreme Court has held that it will not invalidate an otherwise constitutional statute solely on the basis of an allegedly impermissible legislative motive in First Amendment cases.[40] Second, although severability analysis has traditionally looked at legislative history as part of its counterfactual legislative intent prong,[41] recent case law has moved away from considering legislative history and toward a strong presumption of severability.[42]

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[35] *Miselis*, 972 F.3d at 531 (citing New York v. Ferber, 458 U.S. 747, 769 n.24 (1982)). Because the Act was promulgated prior to *Brandenburg*, the Fourth Circuit inferred an imminence requirement from the Act's "instigating" and "inciting" language. *Id.* at 532, 536, 538.

[36] *See* Response Brief of Appellee at 15, *Miselis*, 972 F.3d 518 (No. 19-4550).

[37] *See Miselis*, 972 F.3d at 536–39.

[38] There have been only a "handful" of prosecutions under the Anti-Riot Act, with most occurring in the 1970s. Susan R. Klein, *Movements in the Discretionary Authority of Federal District Court Judges over the Last 50 Years*, 50 LOY. U. CHI. L.J. 933, 942 (2019); *see id.* at 943 (arguing that the statute's rare use indicates that it was "purely political or symbolic" or unconstitutional); *see also* Reply Brief of Amicus Curiae the Free Expression Foundation, Inc., in Support of Defendants/Appellants at 1, *Miselis*, 972 F.3d 518 (No. 19-4550) (noting that the government has employed the Act only thirteen times in the past fifty years).

[39] Of the few cases addressing the Act's constitutionality, many either occurred before *Brandenburg* or did not extensively analyze its provisions. *See* Marvin Zalman, *The Federal Anti-Riot Act and Political Crime: The Need for Criminal Law Theory*, 20 VILL. L. REV. 897, 921–23 (1975).

[40] *See* United States v. O'Brien, 391 U.S. 367, 383 (1968). *But see* Elena Kagan, *Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine*, 63 U. CHI. L. REV. 413, 414–15 (1996) (arguing that in spite of *O'Brien*, the Court's First Amendment jurisprudence has sought to uncover and invalidate statutes with impermissible governmental motives).

[41] Scholars have framed the question of whether the legislature would have preferred what is left of the statute to no statute at all as one of counterfactual legislative intent. *See, e.g.*, Kevin C. Walsh, *Partial Unconstitutionality*, 85 N.Y.U. L. REV. 738, 740 (2010).

[42] *Compare* Alaska Airlines, Inc. v. Brock, 480 U.S. 678, 685 (1987) ("The more relevant inquiry in evaluating severability is whether the statute will function in a manner consistent with the intent of Congress." (emphasis omitted)), *and* Ayotte v. Planned Parenthood of N. New Eng., 546 U.S. 320, 330 (2006) (noting the importance of legislative intent in the Court's severability analysis), *with* Barr v. Am. Ass'n of Pol. Consultants, 140 S. Ct. 2335, 2350 (2020) (plurality opinion) (arguing that searching for legislative intent "often leads to an analytical dead end," which is why the Court has adopted a "strong presumption of severability"). However, some Fourth Circuit decisions have examined legislative history when determining severability. *See* Ameur v. Gates, 759 F.3d 317, 331 (4th Cir. 2014); Pittston Co. v. United States, 368 F.3d 385, 400 (4th Cir. 2004).

Therefore, the court followed the predominant approach when, instead of grappling with the Act's historic focus on criminalizing the conduct of Black and Communist leaders, it merely concluded that "minimal severance" was consistent with Congress's overall purpose: "[T]o proscribe, to the maximum permissible extent, unprotected speech and conduct that both relates to a riot and involves the use of interstate commerce."[43]

Nonetheless, in trying to adopt a compromise approach and portray the Anti-Riot Act in a favorable light, the court's rigid focus on doctrine ignored the Act's racialized history, which had been raised in the appellants' brief[44] and a journal article the opinion cited.[45] Congress passed the Act in the aftermath of several summers of riots occurring across American cities related to racial justice and anti-war movements.[46] The legislative history indicates that Communists and Black political leaders, not white supremacists, were the Act's primary targets because they were seen as the culprits of these urban riots. In the floor debate and committee reports in the Senate and House, these individuals were characterized as "outside agitators" traveling across the country to foment unrest.[47] For example, notorious segregationist Senator Strom Thurmond, one of the cosponsors of the Anti-Riot Act, named well-known Black activists, such as Stokely Carmichael and H. Rap Brown, as encouraging and inciting riots when he introduced the amendment — arguing that it was necessary to "protect society from the extremist element which advocates the destruction of our nation."[48] Representative William Cramer echoed similar sentiments in his statement: "[This leg-

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[43] *Miselis*, 972 F.3d at 543.

[44] Reply Brief of the Appellants, *supra* note 32, at 2, 5–8, 26–28.

[45] The *Miselis* court references Professor Marvin Zalman's article, *see* Zalman, *supra* note 39, when describing the assassination of Dr. Martin Luther King, Jr., and the resulting civil unrest, as the catalyst for the Anti-Riot Act. *Miselis*, 972 F.3d at 527. Zalman, however, also notes that the Act's legislative history reveals that it was designed to stamp out "legitimate political dissent," Zalman, *supra* note 39, at 910, and destroy particular groups of "outside agitators," *id.* at 916.

[46] *See* Zalman, *supra* note 39, at 911; *Miselis*, 972 F.3d at 527–28.

[47] Bruce D'Arcus, *Protest, Scale, and Publicity: The FBI and the H Rap Brown Act*, 35 ANTIPODE 718, 727–28 (2003). The following discussion of legislative history references statements from House members made during the debate over the House's 1967 anti-riot bill. The anti-riot provisions of the Civil Rights Act of 1968 were "essentially similar" in language to the House's 1967 anti-riot bill. *See Recent Anti-Riot Moves in the Congress*, 47 CONG. DIG. 104, 105 (1968).

[48] Reilly, *supra* note 2 (quoting Sen. Thurmond). Other legislators also mentioned Carmichael, Brown, and Dr. Martin Luther King, Jr., as the outside agitators and Black power advocates responsible for the riots. *See, e.g.*, 114 CONG. REC. 9535 (1968) (statement of Rep. Tuck) (describing King as sowing discord and violence wherever he traveled); *id.* at 9573 (statement of Rep. Steiger) (characterizing Brown and Carmichael as making "inflammatory statements"); *id.* at 329 (statement of Sen. Long) (arguing for a bill that would stop Brown and Carmichael and "their ilk"); H. Comm. on the Judiciary, Majority Rep., *Should the Cramer Anti-Riot Bill Be Enacted into Law? PRO*, 47 CONG. DIG. 106, 118 (1968) [hereinafter *Pro Anti-Riot Bill*] (statement of Rep. Watson) (characterizing Black power advocates as creating anarchy); *id.* at 114 (statement of Rep. Cramer) (attributing Black riots to Communist agitators).

islation] is aimed at those professional agitators . . . who either operate from States outside the jurisdiction of local law enforcement officials or who come into a jurisdiction, inflame the people therein to violence, and then leave . . . ."[49]

Moreover, the importance of judicial opinions is not limited to their outcomes and doctrinal soundness; the rhetoric of an opinion is also important for its long-term effects on social outcomes, the concerns it legitimates,[50] and the commitments it expresses, especially in regard to issues of race.[51] Specifically, judicial rhetoric helps shape public debate and political consciousness.[52] As recently exemplified by the Supreme Court in *Ramos v. Louisiana*,[53] the racial context of laws can also be grappled with and acknowledged by courts, even when it is not doctrinally necessary, to signal a concern with racial issues and broader inequities.[54] In addition, judicial rhetoric has tangible effects. Even when a judicial holding might be favorable to racial minorities, omissions and obfuscations of important racial context reinforce majoritarian narratives and thus help maintain the status quo in the long run.[55] A consideration of racial context thus represents an attempt to focus on law's "previously neglected features"[56] and the views of the less powerful.

Addressing the racial context of the Act, as raised by the defendants, would have also enhanced the public legitimacy of the court's decision. As Judge Wald notes, the explanations in judicial opinions are one

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[49] *Pro Anti-Riot Bill*, *supra* note 48, at 112 (statement of Rep. Cramer). Representative Cramer's statements explicitly linked the professional agitators to Black leaders, contending that they "work[] up [their] audience to a fever pitch" by telling the "downtrodden" that "'black power' is their salvation, . . . that they must 'kill Whitey,' and that they must 'burn, baby, burn.'" *Id.* at 114.

[50] *See* James Boyd White, *What's an Opinion For?*, 62 U. CHI. L. REV. 1363, 1366–68 (1995) (positing that a court opinion validates a certain way of viewing the world and "shapes the way we think and argue," *id.* at 1368).

[51] *See* Thomas Ross, *The Rhetorical Tapestry of Race: White Innocence and Black Abstraction*, 32 WM. & MARY L. REV. 1, 3 (1990) ("The greatest challenge for the judge as rhetorician is to make coherent the choices that might divide us as a community. The greatest of those kinds of challenges throughout our legal history have been those triggered by race.").

[52] *Cf.* Ann E. Freedman, *Sex Equality, Sex Differences, and the Supreme Court*, 92 YALE L.J. 913, 968 (1983) (arguing that judges can influence public opinion on sex equality through constitutional adjudication).

[53] 140 S. Ct. 1390 (2020).

[54] *Cf.* Melissa Murray, *The Supreme Court, 2019 Term — Comment: The Symbiosis of Abortion and Precedent*, 134 HARV. L. REV. 308, 332 (2020) (noting that the *Ramos* Court discussed the failure of an earlier case to consider the "racist origins" of the state jury rule at issue (quoting *Ramos*, 140 S. Ct. at 1405)); Melissa Murray, *Race-ing* Roe*: Reproductive Justice, Racial Justice, and the Battle for* Roe v. Wade, 134 HARV. L. REV. 2025, 2080–83 (2021) [hereinafter Murray, *Race-ing* Roe] (arguing that the Court will look to racial context in special circumstances to rationalize a departure from stare decisis).

[55] *See* Brad Desnoyer & Anne Alexander, *Race, Rhetoric, and Judicial Opinions: Missouri as a Case Study*, 76 MD. L. REV. 696, 700–01, 725 (2017).

[56] *See* Martha Minow & Elizabeth V. Spelman, *In Context*, 63 S. CAL. L. REV. 1597, 1629 (1990).

means by which a court justifies its power to make important decisions affecting the lives of ordinary citizens.[57] Constitutional law in particular depends on a significant degree of popular acceptance for its legitimacy.[58] Professor Jamal Greene posits that legitimacy at the appellate level can be established by courts "[c]ommunicating [social] awareness," which aids the "democratic responsiveness and the administrability of constitutional rules."[59] In light of societal concerns about the Anti-Riot Act's legislative and enforcement history, including the potential shift between targeting white supremacists to people of color engaged in demonstrations for racial justice,[60] a case dealing with white supremacists engaged in violence was the perfect opportunity for the court to acknowledge these racialized origins while also pivoting to how the Act is now being used.

Despite the court reaching a reasonable and doctrinally sound outcome in its overbreadth and severability analyses, it still missed an opportunity to acknowledge and reconcile the Anti-Riot Act's controversial origins and legislative history, which revealed a congressional focus on the speech and conduct of Black political leaders and suspected Communists. This approach would have strengthened the public legitimacy of the opinion and demonstrated the court's commitment to grappling with complicated questions regarding race. As more courts are poised to examine the Act's constitutionality with the recent spate of federal indictments under the Act, its racialized origins will likely continue to be invoked and even co-opted by white supremacists as an argument to invalidate it.[61] This co-optation further demonstrates the importance and increasing publicity of the racialized history of the Act,[62] and the need for courts to incorporate the history as part of their analysis to uphold or invalidate the Act.

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[57] Patricia M. Wald, *The Rhetoric of Results and the Results of Rhetoric: Judicial Writings*, 62 U. CHI. L. REV. 1371, 1372 (1995).

[58] Jamal Greene, *Pathetic Argument in Constitutional Law*, 113 COLUM. L. REV. 1389, 1395 (2013).

[59] *Id.*

[60] *See, e.g.*, Garrett Epps, *Tell Me It's Not About Race*, THE ATLANTIC (June 22, 2019), https://www.theatlantic.com/ideas/archive/2019/06/doe-v-mckesson-and-ram-cases-show-courts-hypocrisy/592327 [https://perma.cc/JZL8-W4S3]; Gerstein, *supra* note 2; Reilly, *supra* note 2.

[61] *See, e.g.*, Appellees' Joint Answering Brief at 43–44, United States v. Rundo, 2021 U.S. App. LEXIS 6304 (9th Cir. Mar. 4, 2021) (No. 19-50189) (arguing that the Anti-Riot Act is a "content-based, viewpoint-discriminatory restriction," *id.* at 43, designed to "stifle internal political dissent" and target Black civil rights leaders, *id.* at 44 (quoting Zalman, *supra* note 39, at 900)).

[62] *Cf.* Murray, *Race-ing* Roe, *supra* note 54, at 2058–59 (contending that the antiabortion community's co-optation of racialized rhetoric from traditional abortion rights groups signals the success of the reproductive justice movement).