The View From Washington: The National School Law Landscape

2019 South Carolina School Boards Association School Law Conference

August 24, 2019

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Here's the Trailer

- The Supreme Court's – 2018 Term
  - The 2020 Census
  - Deference to Federal Agencies
  - The First Amendment – Free Speech and the Religion Clauses
- The Supreme Court's 2019 Term
  - DACA
  - State Tax Credit Scholarship Programs
- Federal Agencies and Public Schools
  - Charter School Organizations
  - Tax Credits
  - Public Charge
  - Title IX
- Federal Activity on School Safety
- The Latest Guide From NSBA

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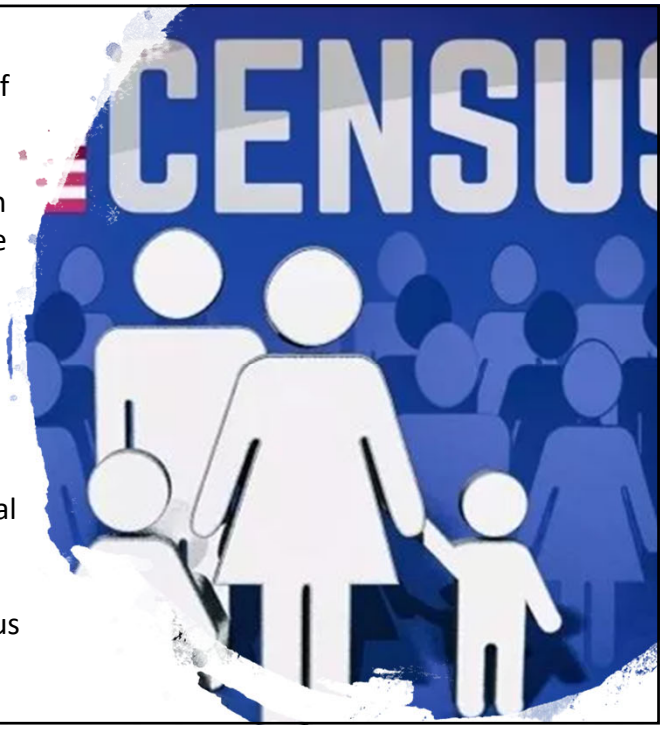
The Supreme Court's 2018 Term – The 2020 Census

4

U.S. Constitution:
In order to apportion Members of the House of Representatives among the States, the Constitution requires an "Enumeration" of the population every 10 years, to be made "in such Manner" as Congress "shall by Law direct." The federal government must count "the whole number of persons in each state" every ten years.

Census Act:
Congress delegated to the Secretary of Commerce the task of conducting the decennial census "in such form and content as he may determine."
The Secretary is aided in that task by the Census Bureau, a statistical agency housed within the Department of Commerce.



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Citizenship Question Planned for 2020

- In March 2018, Secretary of Commerce Wilbur Ross announced in a memo that he had decided to reinstate a question about citizenship on the 2020 census questionnaire.
- Secretary Ross asserted that he was adding the question in response to the Department of Justice, which sought improved data about citizen voting-age population for purposes of enforcing the Voting Rights Act.

6

Litigation ensued – and was heard by the Supreme Court Twice!
Federal complaints were filed by multiple plaintiffs in California, New York, and Maryland.

First, Justice Ginsburg had to decide whether the New York trial court had properly ordered discovery outside of the administrative record – including the testimony of Ross himself. She decided that expanded discovery was allowable, but put off the testimony of Ross.

7

The Supreme Court Agreed To Decide:
.. whether the Department of Commerce's decision to add a citizenship question to the 2020 Census questionnaire violated federal statutes or constitutional principles.

- May the Secretary decide to include the question?
- If so, was the Secretary's decision supported by the evidence?
- Did the Secretary follow the law?
- Are federal courts even allowed to review the Secretary's decision?

8

NSBA filed an amicus brief on behalf of Educational Organizations

I. Courts can review the Secretary's decision. This Court has long subjected to judicial review agency actions, like the one here, where a constitutional or statutory provision imposes a mandatory duty on an agency.

II. Congress has further limited the Secretary's discretion by setting restrictions on the Secretary's ability to seek information other than a population count.

III. The wide-ranging consequences of an inaccurate census count, including on education funding and programs for children, demonstrate the importance of judicial review to ensure that the Secretary is faithfully following the constitutional and statutory limitations embodied in the grant of authority to him.

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NSBA Amicus Brief -- Policy Points

- Agencies are presumed not to have unfettered authority, as they are instruments of the elected branches.
- When agency action amounts to a large shift from prior actions they must follow formal procedure or be able to state a valid reason.
- This is important to school districts, which are highly regulated and make policy decisions based on agency actions.

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NSBA Amicus Brief -- Policy Points, cont'd

- Because of the census's historic role as the principal source of accurate population data, myriad institutions have come to rely on the census in their allocation of vitally important public goods. The importance of an accurate census count thus extends far beyond the electoral process.
- Because decennial census population counts are so vital to adequate funding for schools and education policy, census undercounts pose a grave risk to our education system.

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NSBA Amicus Brief -- Policy Points, cont'd

- Public schools have a constitutional duty to educate all students regardless of citizenship status, Given the financial impact on public schools the addition of a citizenship question and resulting inaccurate count will cause, especially on those public schools in states with high populations of immigrant populations, communities in the most need of federal assistance for education will receive less.

12

The Supreme Court Decided (June 27, 2019):

- The Constitution permits Congress, and by extension the Secretary, to inquire about citizenship on the census.
- The Secretary did not violate the Census Act's "statistics" and "report" requirements.
- Federal courts are allowed to review the Secretary's decision?
- The Secretary's decision was reasonable BUT could not be adequately explained in terms of DOJ's request for improved citizenship data to better enforce VRA.

"We cannot ignore the disconnect between the decision made and the explanation given."

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What's Next for the Census?

Ensuring an accurate count!

"An accurate census count is critical to the myriad of federal programs that fund essential state and local education programs,. …. an undercount means less or no federal resources for schools and for students and families who need them most."

Tom Gentzel,

NSBA Executive Director

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The Supreme Court's 2018 Term – Deference To Federal Agencies

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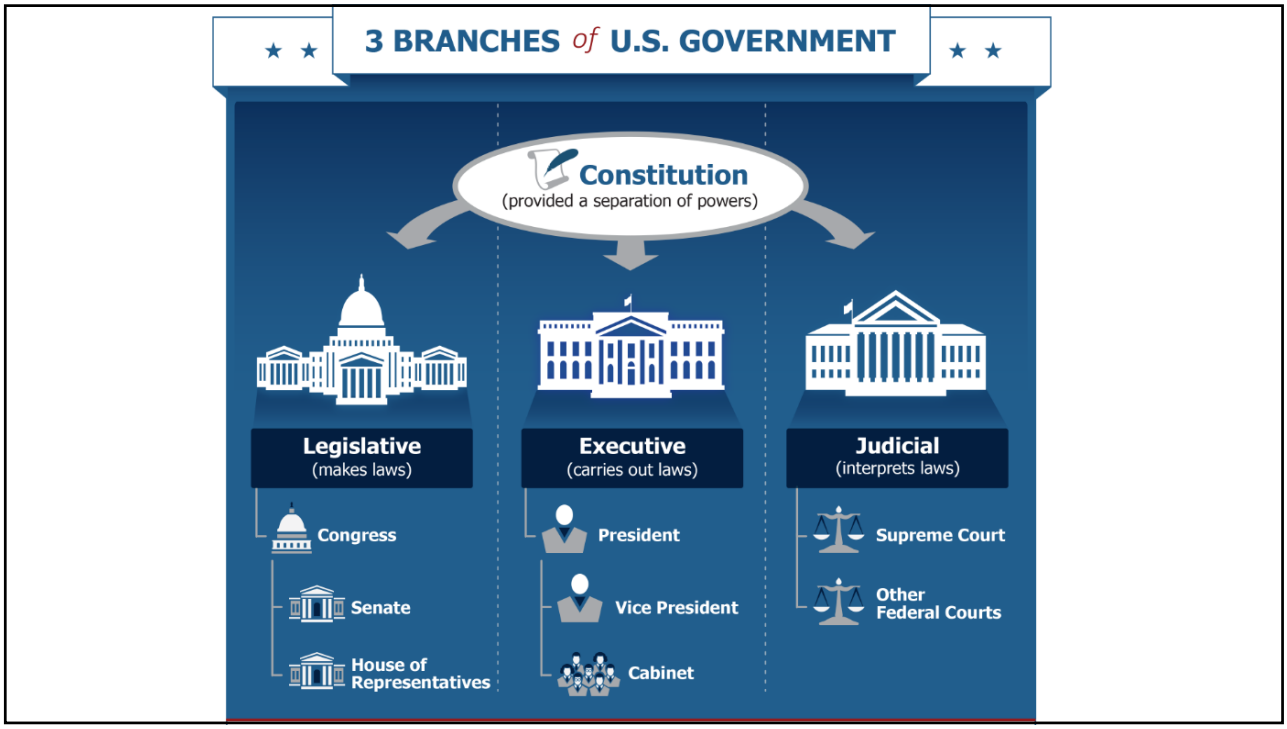

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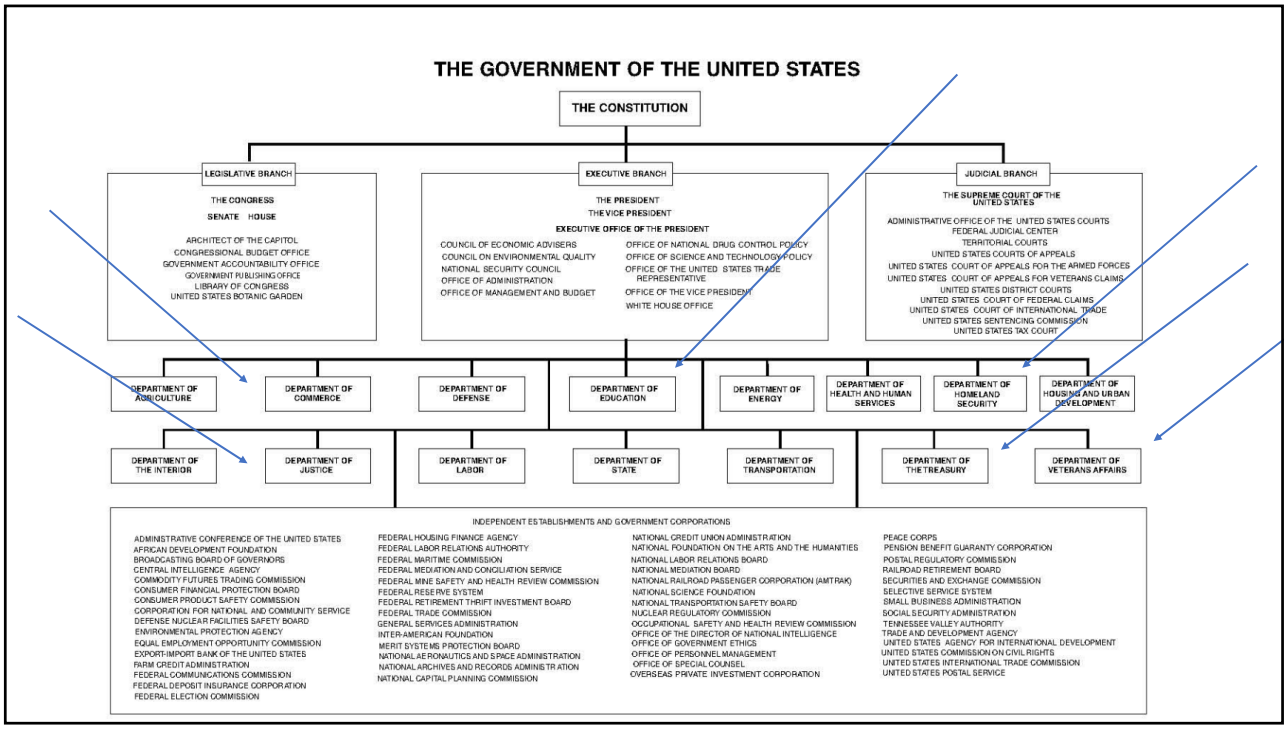
THE GOVERNMENT OF THE UNITED STATES
THE CONSTITUTION
LEGISLATIVE BRANCH
THE CONGRESS
SENATE HOUSE
ARCHITECT OF THE CAPITOL
CONGRESSIONAL BUDGET OFFICE
GOVERNMENT ACCOUNTABILITY OFFICE
GOVERNMENT PUBLISHING OFFICE
LIBRARY OF CONGRESS
UNITED STATES BOTANIC GARDEN
EXECUTIVE BRANCH
THE PRESIDENT
THE VICE PRESIDENT
EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
COUNCIL ON ENVIRONMENTAL QUALITY
NATIONAL SECURITY COUNCIL
OFFICE OF ADMINISTRATION
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WHITE HOUSE OFFICE
JUDICIAL BRANCH
THE SUPREME COURT OF THE UNITED STATES
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
FEDERAL JUDICIAL CENTER
TERRITORIAL COURTS
UNITED STATES COURTS OF APPEALS
UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES
UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
UNITED STATES DISTRICT COURTS
UNITED STATES COURT OF FEDERAL CLAIMS
UNITED STATES COURT OF INTERNATIONAL TRADE
UNITED STATES SENTENCING COMMISSION
UNITED STATES TAX COURT
DEPARTMENT OF AGRICULTURE
DEPARTMENT OF COMMERCE
DEPARTMENT OF DEFENSE
DEPARTMENT OF EDUCATION
DEPARTMENT OF ENERGY
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF HOMELAND SECURITY
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
DEPARTMENT OF THE INTERIOR
DEPARTMENT OF JUSTICE
DEPARTMENT OF LABOR
DEPARTMENT OF STATE
DEPARTMENT OF TRANSPORTATION
DEPARTMENT OF THE TREASURY
DEPARTMENT OF VETERANS AFFAIRS
INDEPENDENT ESTABLISHMENTS AND GOVERNMENT CORPORATIONS
ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
AFRICAN DEVELOPMENT FOUNDATION
BROADCASTING BOARD OF GOVERNORS
CENTRAL INTELLIGENCE AGENCY
COMMODITY FUTURES TRADING COMMISSION
CONSUMER FINANCIAL PROTECTION BOARD
CONSUMER PRODUCT SAFETY COMMISSION
CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
DEFENSE NUCLEAR FACILITIES SAFETY BOARD
ENVIRONMENTAL PROTECTION AGENCY
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
EXPORT-IMPORT BANK OF THE UNITED STATES
FARM CREDIT ADMINISTRATION
FEDERAL COMMUNICATIONS COMMISSION
FEDERAL DEPOSIT INSURANCE CORPORATION
FEDERAL ELECTION COMMISSION
FEDERAL HOUSING FINANCE AGENCY
FEDERAL LABOR RELATIONS AUTHORITY
FEDERAL MARITIME COMMISSION
FEDERAL MEDIATION AND CONCILIATION SERVICE
FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
FEDERAL RESERVE SYSTEM
FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
FEDERAL TRADE COMMISSION
GENERAL SERVICES ADMINISTRATION
INTER-AMERICAN FOUNDATION
MERIT SYSTEMS PROTECTION BOARD
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
NATIONAL CAPITAL PLANNING COMMISSION
NATIONAL CREDIT UNION ADMINISTRATION
NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES
NATIONAL LABOR RELATIONS BOARD
NATIONAL MEDIATION BOARD
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
NATIONAL SCIENCE FOUNDATION
NATIONAL TRANSPORTATION SAFETY BOARD
NUCLEAR REGULATORY COMMISSION
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
OFFICE OF GOVERNMENT ETHICS
OFFICE OF PERSONNEL MANAGEMENT
OFFICE OF SPECIAL COUNSEL
OVERSEAS PRIVATE INVESTMENT CORPORATION
PEACE CORPS
PENSION BENEFIT GUARANTY CORPORATION
POSTAL REGULATORY COMMISSION
RAILROAD RETIREMENT BOARD
SECURITIES AND EXCHANGE COMMISSION
SELECTIVE SERVICE SYSTEM
SMALL BUSINESS ADMINISTRATION
SOCIAL SECURITY ADMINISTRATION
TENNESSEE VALLEY AUTHORITY
TRADE AND DEVELOPMENT AGENCY
UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT
UNITED STATES COMMISSION ON CIVIL RIGHTS
UNITED STATES INTERNATIONAL TRADE COMMISSION
UNITED STATES POSTAL SERVICE

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USA
NSF
PEACE CORPS

18

In ***Kisor v. Wilkie***, a veteran appealed the decision of the Department of Veterans Affairs' Regional Office to the Veterans Court, then to the U.S. Court of Appeals for the Federal Circuit, and finally to the Supreme Court.

The decisions of each tribunal largely depended on the meaning of "relevant" in a VA regulation. Under Auer, if the meaning is ambiguous, the agency's interpretation of its meaning is entitled to deference.

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The Supreme Court Agreed To Decide:

.. whether the Court should overrule *Auer v. Robbins* (1997), *and Bowles v. Seminole Rock* (1945), which direct courts to defer to an agency's reasonable interpretation of its own ambiguous regulation.

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NSBA filed an amicus brief with other public entities saying it's time for ***Auer t***o be overruled. The brief argued:

I. Cooperative Federalism Depends on Mutual Participation by Federal, State, and Local Governments

A. Federal Law Informs State Laws and Imposes Affirmative Obligations on State and Local Governments.

B. State and Local Governments' Participation in Agency Rulemaking Improves the Quality and Efficacy of Federal Law

II. The Auer Regime Deprives Local Governments of the Opportunity to Participate in Federal Policy-Making

III. Auer Should Be Overruled

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The Supreme Court Decided (June 26, 2019):

Auer *a*nd ***Seminole Rock*** are not overruled.

But, ***Auer*** is "cabined" by several factors.

When the reasons for agency's interpretation do not hold up, and

When there are countervailing reasons.

Auer deference should not be afforded unless using "traditional tools" of construction, regulation is genuinely ambiguous.

If rule remains genuinely ambiguous after this analysis, agency interpretation must still be reasonable determined by looking at the character & context of its interpretation.

22

The Supreme Court Decided (June 26, 2019):

"When it applies, *Auer* deference gives an agency significant leeway to say what its own rules mean. In so doing, the doctrine enables the agency to fill out the regulatory scheme Congress has placed under its supervision. But that phrase 'when it applies' is important—because it often doesn't. As described above, this Court has cabined *Auer*'s scope in varied and critical ways—and in exactly that measure, has maintained a strong judicial role in interpreting rules. What emerges is a deference doctrine not quite so tame as some might hope, but not nearly so menacing as they might fear."

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VA | U.S. Department of Veterans Affairs

What does the *Kisor v. Wilkie* decision mean for future challenges to agencies' interpretations of their own rules?

- For now, agency still get large balance of power in making interpretations of their own rules due primarily to their expertise.
- But, agencies are on notice that their interpretation cannot be ad hoc or pretextual, and must be based reasonableness, expertise and context.

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The Supreme Court's 2018 Term – the First Amendment

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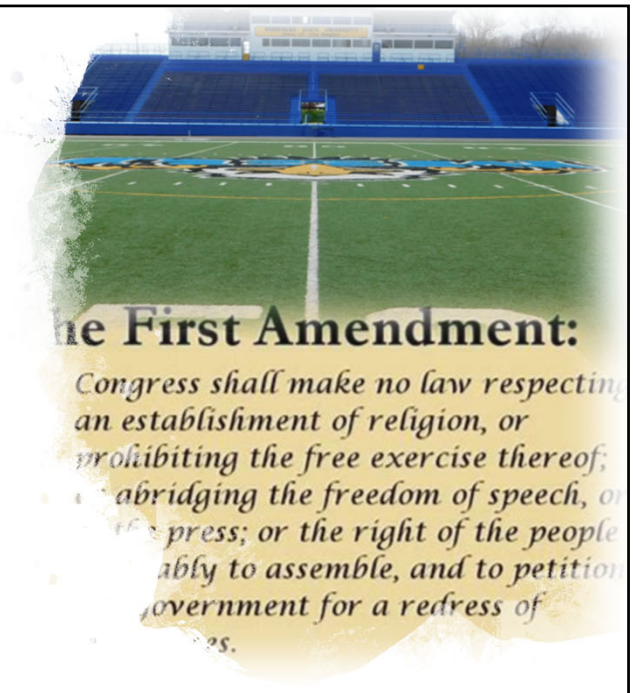
In ***Kennedy v. Bremerton School District***, a high school football coach sued his employer after he was disciplined for conducting prayers on the 50-yard-line with players and students after games.

The federal district court found in favor of the school district, as did the U.S. Court of Appeals for the 9th Circuit. The 9th Circuit determined that the coach did not have a First Amendment retaliation claim because his speech was pursuant to his official duties as a coach, so it wasn't protected speech under Garcetti v. Ceballos (2006).



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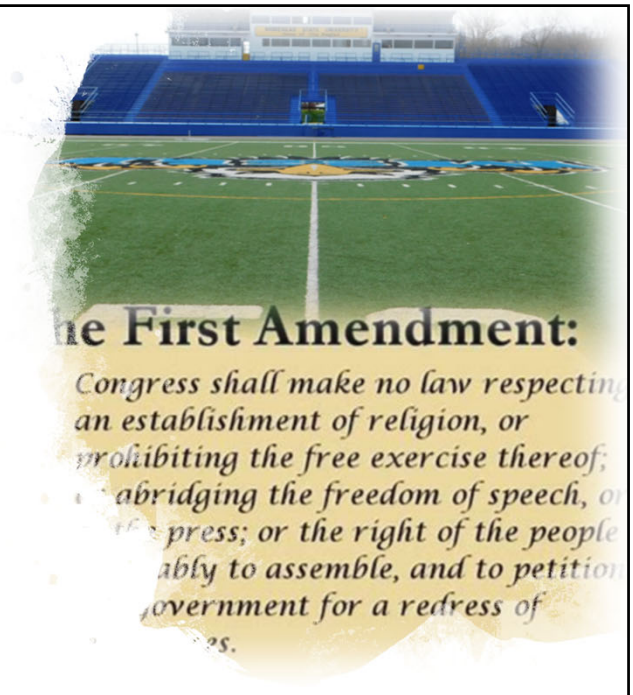
Alito +Thomas, Gorsuch, and Kavanaugh, issued a statement concurring:

- Denial doesn't mean we agree with the 9th Circuit's decision or opinion.
- Important factual questions are unresolved – the likely reason for the school district's conduct – so it is difficult-to-impossible to decide the free speech question.
- The coach's free speech claim may ultimately implicate important constitutional issues.
- 9th Circuit interpreted *Garcetti* to allow employers to fire employees "if they engage in any expression that the school does not like while they are on duty."
- 9th Circuit's opinion could "be understood to mean that a coach's duty to serve as a good role model requires the coach to refrain from any manifestation of religious faith—even when the coach is plainly not on duty."



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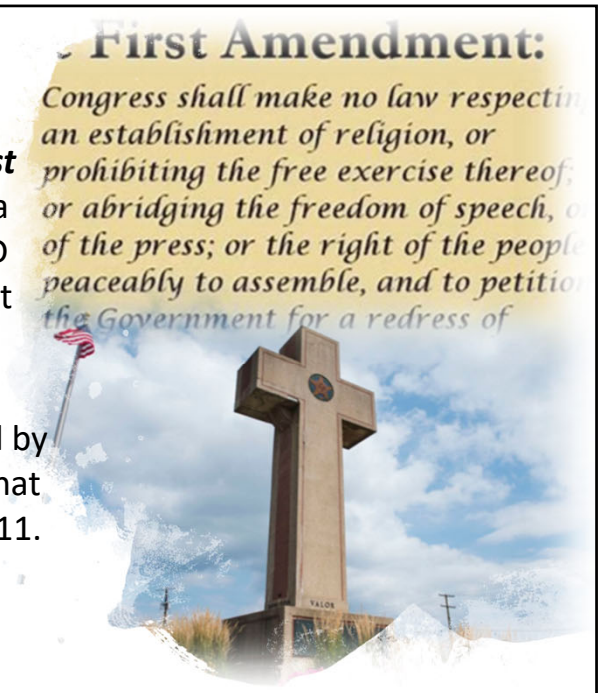
In ***Maryland-National Capital Park and Planning Commission v. American Humanist Association***, several groups challenged the a large cross that sits on public land in the MD suburbs of DC, saying the public entities that maintain it are violating the Establishment Clause.

It was dedicated in 1925 after being erected by American Legion and is part of larger park that honors veterans from many wars and Sept. 11.



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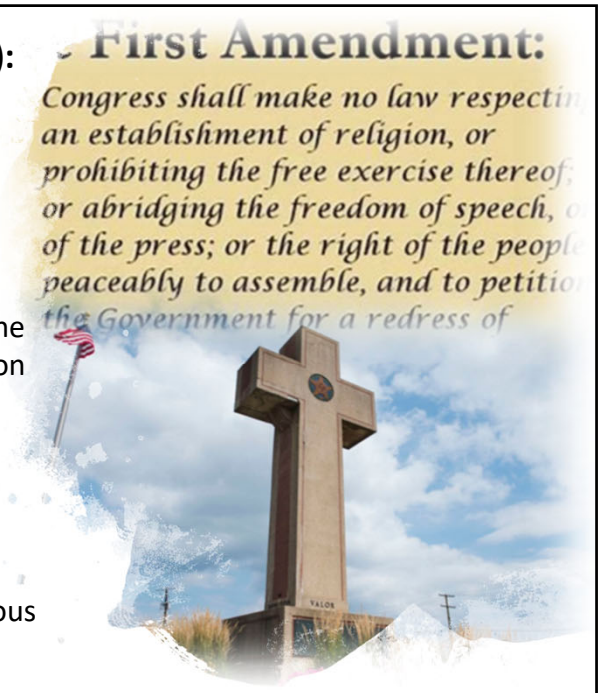
The Supreme Court Decided (June 26, 2019):

that the cross does not violate the Establishment Clause. (7-2)

Majority:

- "Retaining established, religiously expressive monuments, symbols, and practices is quite different from erecting or adopting new ones. The passage of time gives rise to a strong presumption of constitutionality."
- "Destroying or defacing … would not be neutral and would not further the ideals of respect and tolerance embodied in the First Amendment."
- *Lemon* is no longer applied in cases involving government use of words or symbols with religious associations.



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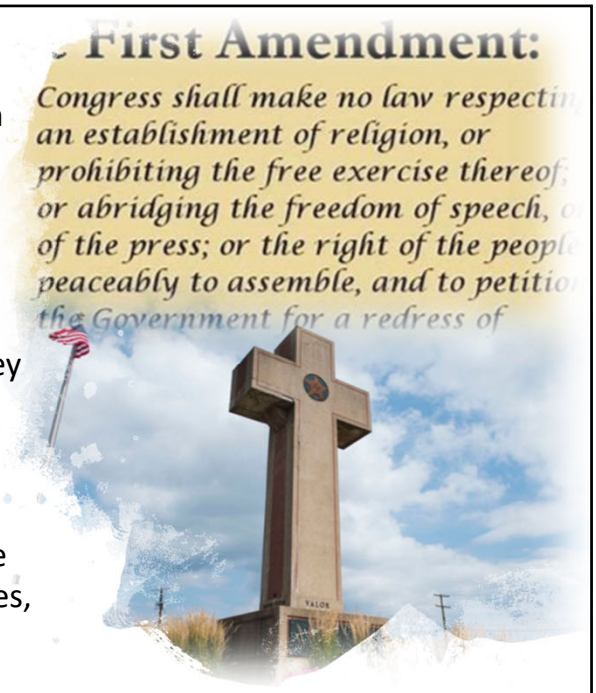
" … respect and tolerance for differing views, an honest endeavor to achieve inclusivity and nondiscrimination, and a recognition of the important role that religion plays in the lives of many Americans. Where categories of monuments, symbols, and practices with a longstanding history follow in that tradition, they are likewise constitutional."

Dissent (Ginsburg and Sotomayor):

"The principal symbol of Christianity around the world should not loom over public thoroughfares, suggesting official recognition of that religion's paramountcy."



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The Supreme Court's 2019 Term – Deferred Action for Childhood Arrivals (DACA)

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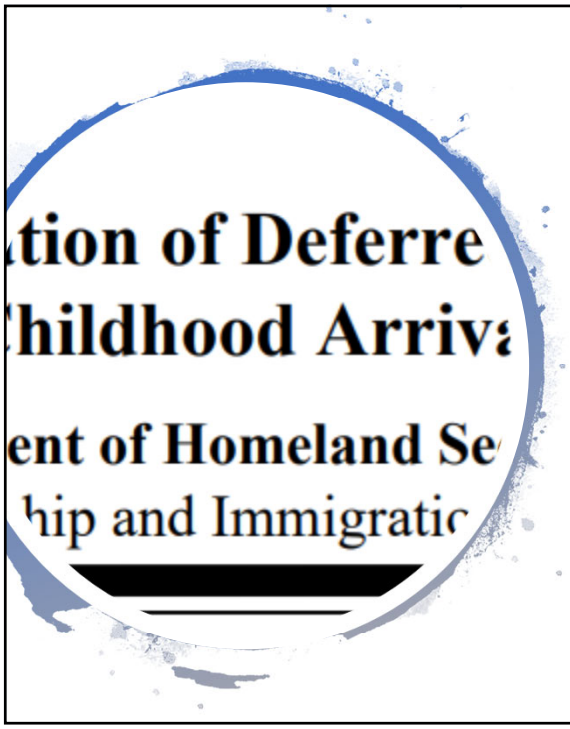

DACA (Department of Homeland Security began in 2012)

- Allowed certain young people who arrived with undocumented parents to apply for protected status: government would forbear removal action vs. undocumented individual for a designated period.
- Involved extensive application process & background check.
- Authorized hundreds of thousands of young people for deferral of removal proceedings and work authorization.
- Rescinded DACA on September 5, 2017 by DHS. After the expiration of grantees' current terms, grantees will immediately face loss of employment, loss of certain benefits, and be subject to deportation.

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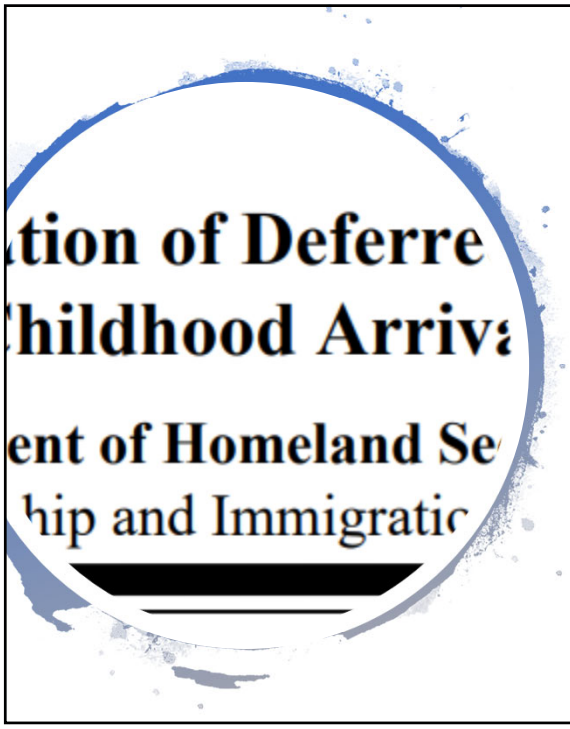

Litigation ensued

Cases challenging the *rescission* of DACA were filed in New York, California, DC, and Maryland.

- Injunctions halting the *rescission* were issued in NY and CA.
- One appellate court (9th Circuit in California) upheld one of those injunctions.

A case challenging DACA was filed in Texas.

- The appellate court (5th Circuit in New Orleans) held certain immigration enforcement policies, including an expansion of DACA, were likely unlawful and should be enjoined.
- The Supreme Court upheld that decision in 2016

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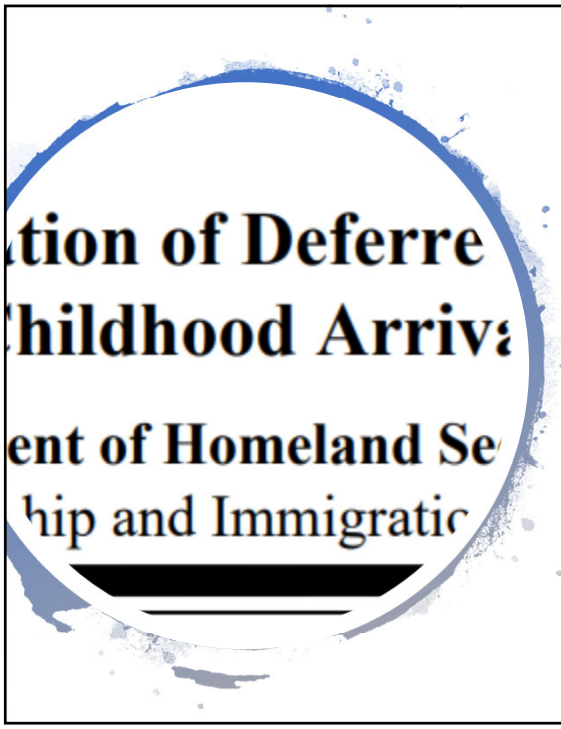

NSBA joined with several state associations and national education groups in amicus briefs led by the NEA.

New York and California Cases

The briefs focus on ways DACA program motivated young people to stay in school, further their education and choose productive careers, including in public schools.

Unique feature of the briefs -- the testimony of students, teachers, administrators and school board members about their experiences concerning the educational benefits of DACA, and how they will be detrimentally affected by this abrupt change in policy.

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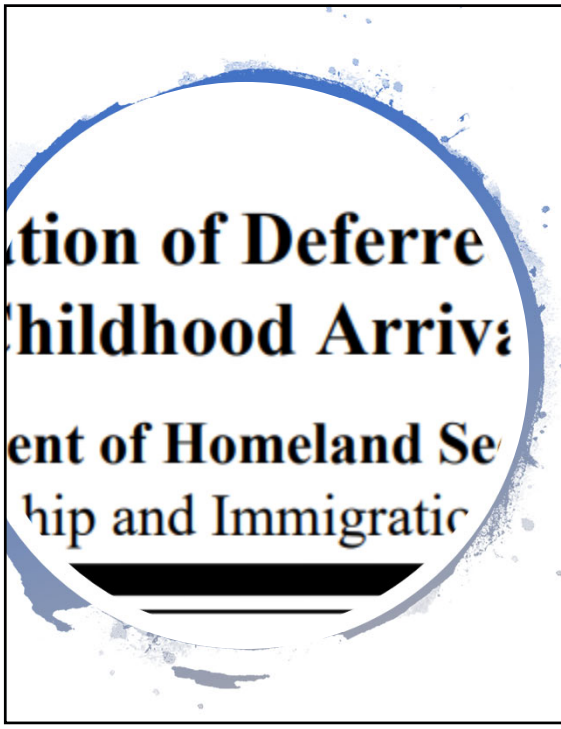

The Supreme Court Agreed to Decide:

- Was DHS's decision to wind down the DACA policy lawful?
- Can federal courts review DHS's decision to wind down the DACA policy?

Oral Argument is set for November 12, 2019.

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The Supreme Court's 2019 Term – State Tax Credit Scholarship Programs

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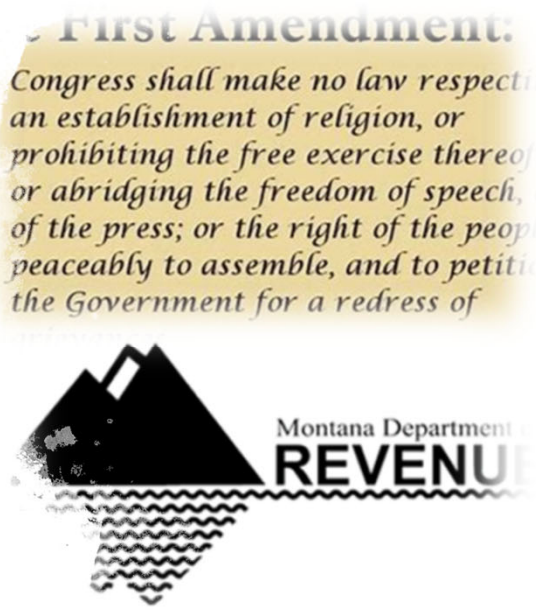
With apologies to the Bard,

A rose *(or a tax credit, or an education savings account, or a private school scholarship program)* by any other name is still a voucher…

38

In ***Espinoza v. Montana Dept. of Revenue***, the Montana Supreme Court ruled that the state's tax credit scholarship program was invalid because, as written, it would allow state funds to go to religious institutions in violation of the state constitution.

Parents of students in private parochial schools who cannot use the program petitioned the Supreme Court to hear the case. They are represented by the Institute for Justice.



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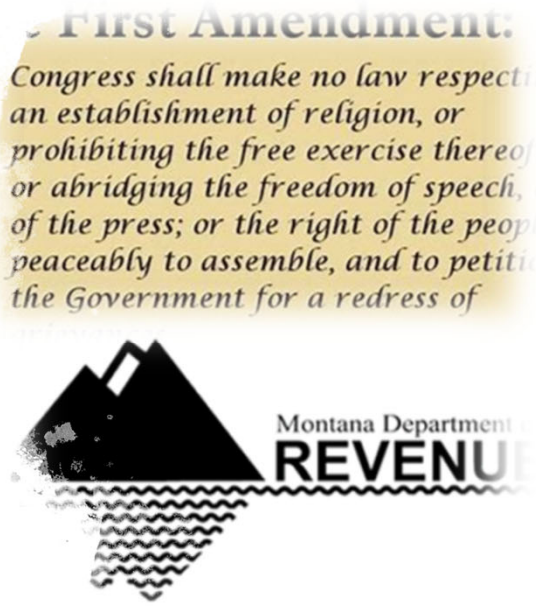
The Supreme Court agreed to decide:

…whether it violates the Religion Clauses or Equal Protection Clause of the United States Constitution to invalidate a generally available and religiously neutral student-aid program simply because the program affords students the choice of attending religious schools.



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Remember *Trinity Lutheran Church of Columbia v. Comer* (2017):

The Supreme Court held that to deny a religious institution a public safety benefit (a grant for playground resurfacing) based only on its religious character violates the Free Exercise Clause. In this case, at least, fear of an Establishment Clause violation was not enough to justify the restriction on religious freedom.

Missouri's decision to restrict the funds in this way was based on its state constitution, which prohibits public money from going "directly or indirectly, in aid of any church, sect or denomination of religion…."

41

Remember *Locke v. Davey* (2004):

The Supreme Court held that if a state provides college scholarships for secular instruction, the First Amendment's free exercise clause does not require the state to fund religious instruction.

Washington state's decision to restrict the funds in this way was based on its state constitution, which explicitly prohibits state money from going to religious instruction.

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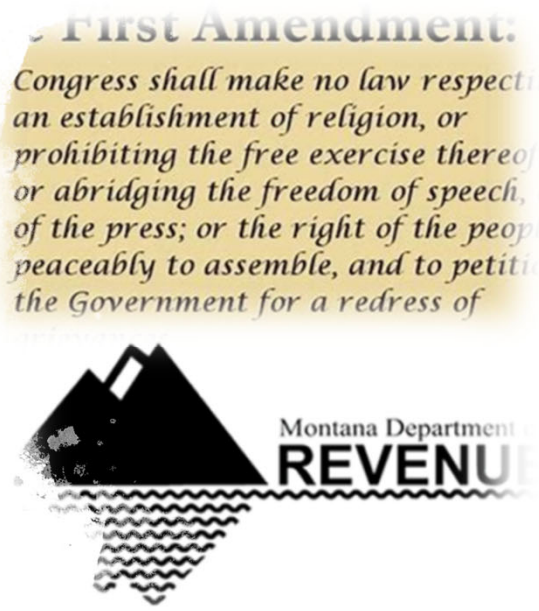
Montana's state constitution prohibits public entities including school district from making "any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination."



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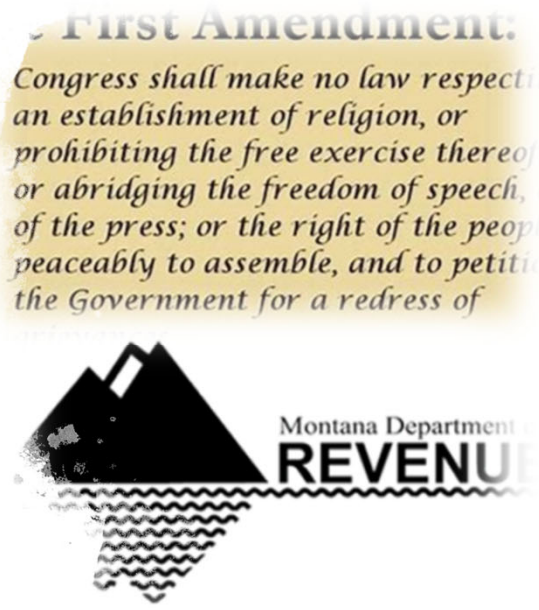
In **Espinoza v. Montana Dept. of Revenue**, the Supreme Court will be applying ***Trinity Lutheran***, for the first time in a "school choice" context.

Is the Montana tax credit scholarship program in ***Espinoza*** like the playground resurfacing program in ***Trinity Lutheran***?

Or, is it like religious instruction in ***Locke v. Davey***?



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NSBA Amicus Briefs 2019

U.S. Supreme Court

- *Kisor v. Wilkie*
- *Town of Millburn v. Palardy*
- *Fort Bend County, Texas v. Davis* (Merits, Filed March 4, 2019)
- *Department of Commerce v. New York*
- *Bostock v. Clayton County, Georgia; Altitude Express v. Zarda*

U.S. Circuit Courts of Appeals

- *C.D. v. Natick Pub. Sch. Dist*. (1st Cir.)
- *B.L. v. Mahanoy Area School District* (3rd Cir.)
- *M.S. and S.S. v. Hillsborough Twp. Public School District* (3rd Cir.)
- *N. M. v. Harrison School District* (10th Cir.)
- *B.L. v. Mahanoy Area School District* (3rd Cir.)

https://www.nsba.org/Advocacy/Legal-Advocacy/Legal-Briefs-and-Guides

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Federal Agencies and Public Schools

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NSBA Comments to Proposed Rulemaking

- August 27, 2018 – Proposed Rule -- Grants to Charter Management Organizations – U.S. Dept. of Education
- October 11, 2018 – Proposed Rule -- Contributions in Exchange for State or Local Tax Credits – Internal Revenue Service
- December 10, 2018 -- Proposed Rule -- Inadmissibility on Public Charge Grounds – Department of Homeland Security
- January 30, 2019 – Proposed Rule – Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance [Title IX Sexual Harassment]
- Testimony and statements before the Federal Commission on School Safety

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Proposed Rule -- Inadmissibility on Public Charge Grounds

- Proposed rule would expand the definition of "public charge" as used in the Immigration and Nationality Act, 8 U.S.C. 1182(a)(4)(A).
  "Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible."
- "Public charge" would now include beneficiaries of most Medicaid-covered care, prescription medicines for the elderly under Medicare, the Supplemental Nutrition Assistance Program (also called SNAP or food stamps), and housing assistance.

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NSBA Comments on Public Charge Proposed Rule – Dec. 10, 2018

- In identifying the number of low-income students for purposes of Title I, most public schools rely on approval for free or reduced-price meals as the primary indicator of low family income
- Many immigrant families—including those who have children who were born in the United States—will forgo enrolling for needed public benefits out of fear of losing the eligibility to adjust their immigration status.
- Will lead to increased hunger and homelessness in families schools serve, and undercounts of low-income students for purposes of federal funding.

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FINAL Rule -- Inadmissibility on Public Charge Grounds – Aug. 14, 2019

The final rule changes the definitions for public charge and public benefits, and changes the standard that DHS uses when determining whether an alien is likely to become a "public charge" at any time in the future and is therefore inadmissible and ineligible for admission or adjustment of status.

The rule also makes nonimmigrants who have received, since obtaining the nonimmigrant status they are seeking to extend or from which they are seeking to change, designated public benefits for more than 12 months in the aggregate within any 36-month period generally ineligible for change of status and extension of stay.

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Proposed Rule -- Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

The Department of Education issued extensive proposed regulations on sexual harassment, laying out definitions and procedures for the first time.

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Proposed Rule -- Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, cont'd

- Safe harbor from finding of deliberate indifference if higher ed institution offers supportive measures when no formal complaint filed; no safe harbor for K-12
- Extensive procedural requirements regarding the "complainant" and "respondent"

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NSBA Comments on Title IX Proposed Rule – January 30, 2019

- Extensive procedural requirements are a poor fit for, and will significantly burden, K-12 schools. "Complainant" and "respondent" are not terms K-12 educators use.
- Although the proposed rule declares, "Imputation of knowledge based solely on respondeat superior or constructive notice is insufficient to constitute actual knowledge," the provision allowing actual knowledge to be assumed with "teacher" knowledge at the K-12 level seems to do exactly that. The provision is at odds with the standard for award of money damages laid out by the Supreme Court in *Davis v. Monroe County Bd. of Educ*. (1999).

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NSBA Comments on Title IX Proposed Rule – January 30, 2019, cont'd

- Inappropriate teacher-student relationships are not covered if no "unwelcome."
- Safe harbor for supportive measures offered in absence of formal complaint not available to K-12.
- Appears to require disclosure of the complainant's identity if a formal complaint is filed.
- Right to inspect and review records and disclosure of final decision/sanctions overlap and expand rights under FERPA.

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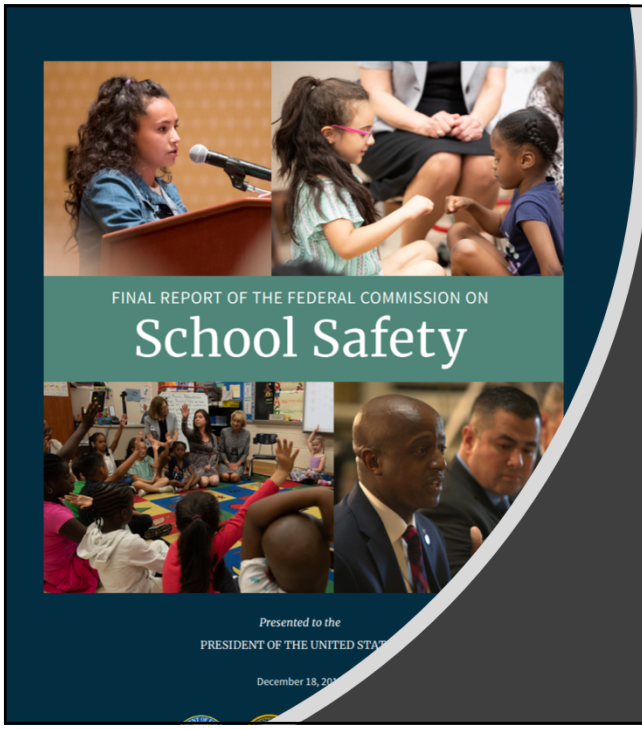

Federal Activity on School Safety

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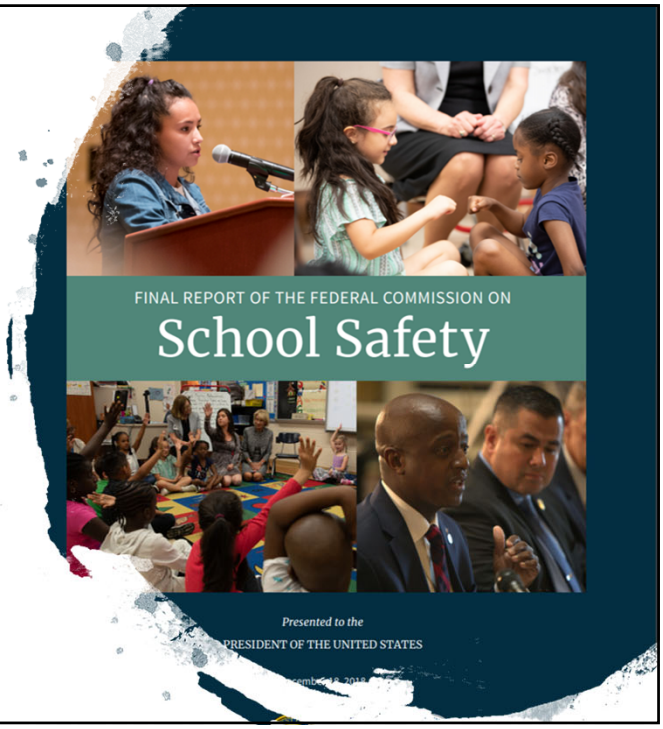
Federal Commission on School Safety

- Established March 2018 by President in wake of Parkland tragedy.
- Charge: to quickly provide meaningful and actionable recommendations to keep students safe at school. These recommendations will include a range of issues:
- social emotional support;
- recommendation on effective school safety infrastructure;
- discussion on minimum age for firearms purchases;
- impact that videogames and the media have on violence; among others.



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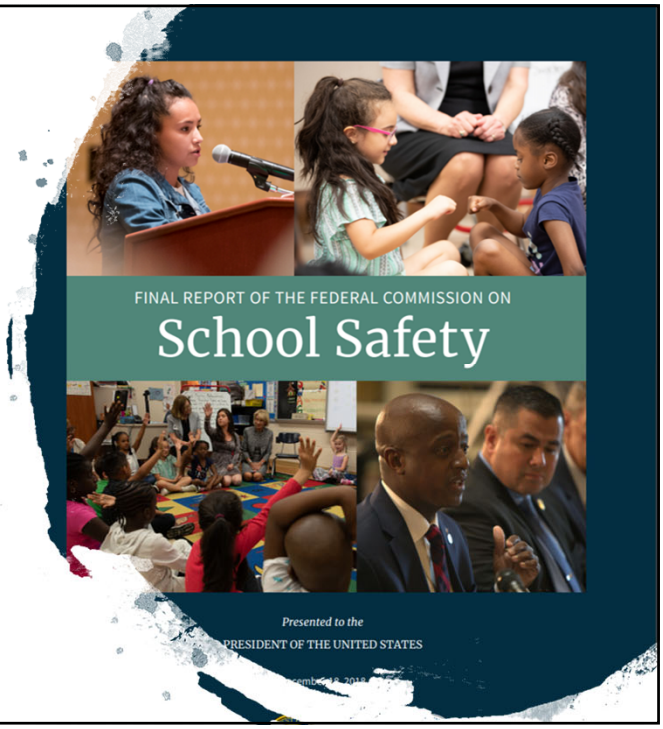
NSBA Testimony to the Federal Commission on School Safety

- June 6, 2018 (Federal Role)
- July 11, 2018 (FERPA)
- July 28, 2018 (Discipline)



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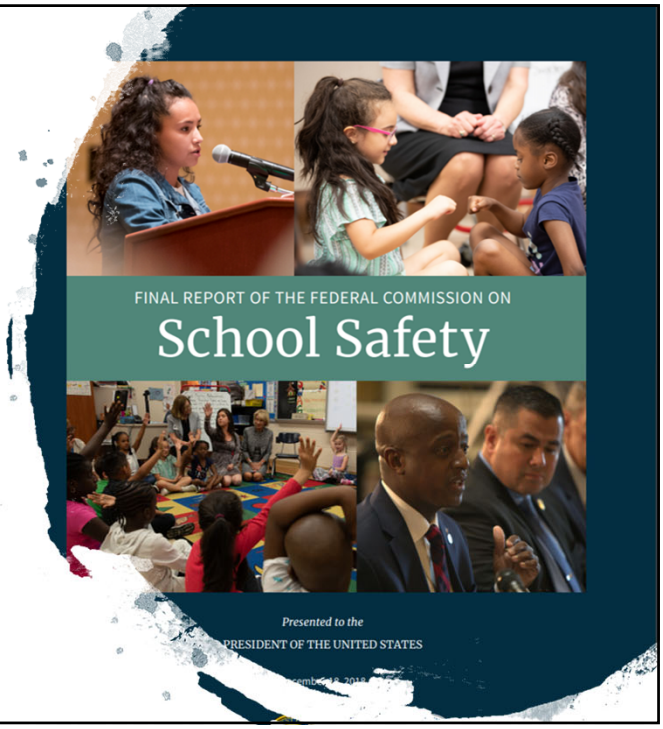
FCSS FINAL REPORT
December 2018

"There can be no 'one-size-fits-all' approach for an issue this complex."



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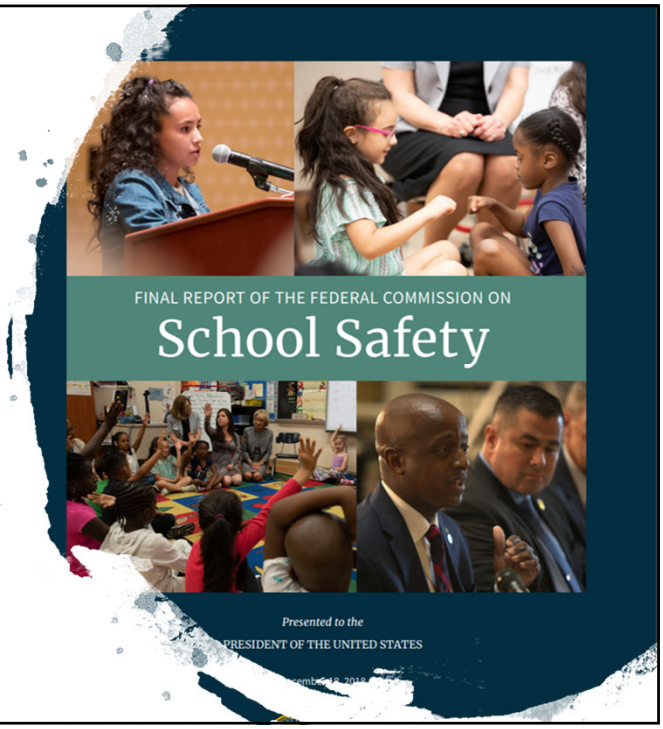
https://www.ed.gov/school-safety



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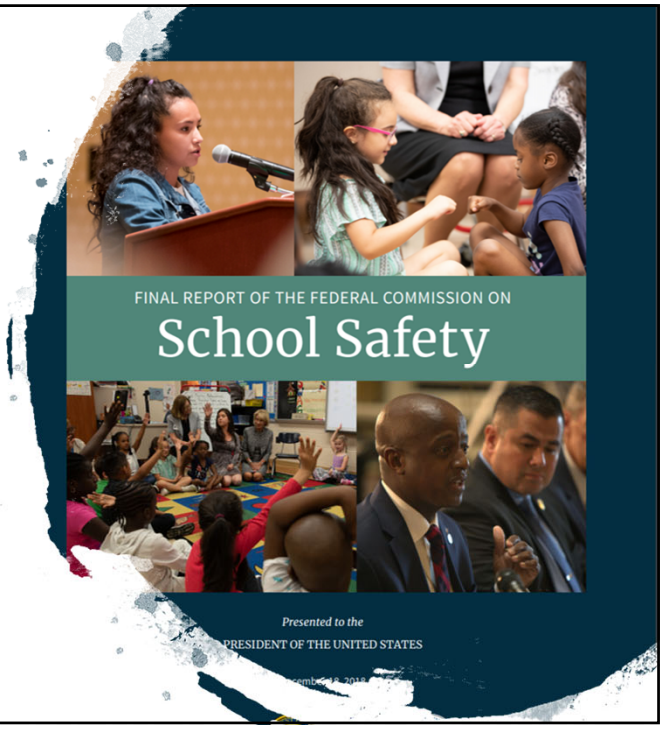
FCSS FINAL REPORT–
FERPA and Privacy

- *"…FERPA retains a pre-Internet approach to data that is out of touch with today's modern and digitally connected classroom."*
- Confusion about what FERPA allows creates barriers to information sharing and collaboration, thus hampering the ability to prevent potential acts of violence.
- Selected Recommendations:
  - ED should clarify that the "school official" exception may permit disclosures of disciplinary information to appropriate teachers and staff within the schools
  - ED should work with Congress to modernize FERPA.
  - Districts and schools should raise awareness of existing FERPA flexibilities.



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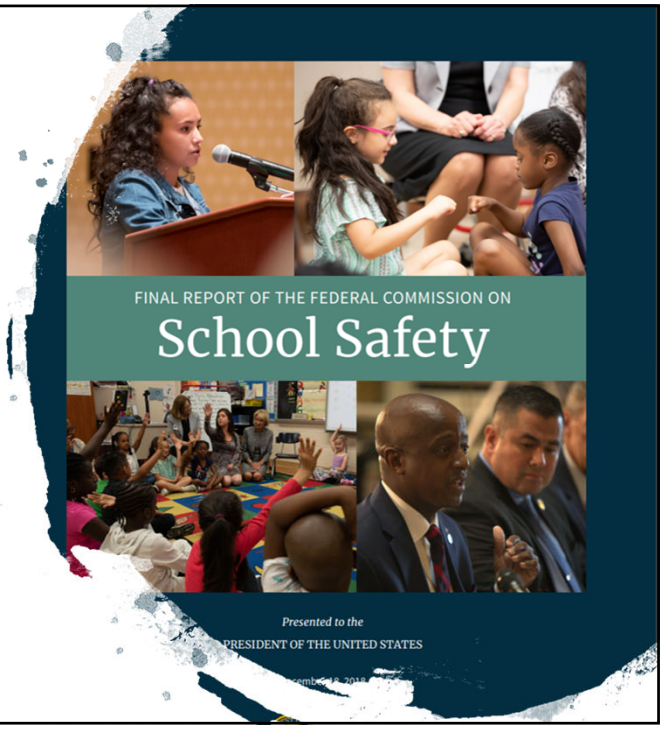
FCSS FINAL REPORT–
School Discipline Guidance

- *"Surveys of teachers confirm that the [2014 ED-DOJ Discipline] Guidance's chilling effect on school discipline …has forced teachers to reduce discipline to non-exclusionary methods, even where such methods, … with significant consequences for student and teacher safety."*
- Selected Recommendations:
  - DOJ and ED should rescind the Guidance and its associated sub-regulatory guidance documents.
  - ED should develop information for schools to identify resources and best practices to improve school climate and learning outcomes, and protect the rights of students with disabilities
  - DOJ and ED should continue to vigorously enforce Title VI of the Civil Rights Act.



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Congressional action in the works?

- Hearings on school safety and student records.
- After recent shootings, call for action from Senate HELP committee re: schools from Senate Leadership

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NSBA Center for Safe Schools

https://www.nsba4safeschools.org/home

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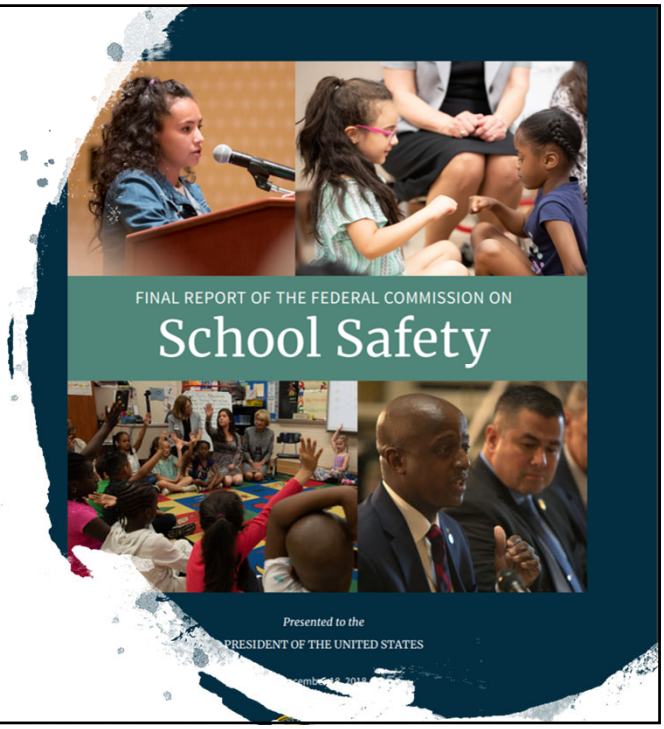
ool-safety/school-safety-report.pdf

THE FINAL REPORT AND FINDINGS OF THE SAFE SCHOOL INITIATIVE: IMPLICATIONS FOR THE PREVENTION OF SCHOOL ATTACKS IN THE UNITED STATES (USSS, ED) (2004) https://www2.ed.gov/admins/lead/safety/preventingattacksreport.pdf

THREAT ASSESSMENT IN SCHOOLS (USSS, ED) (2004) https://www2.ed.gov/admins/lead/safety/threatassessmentguide.pdf

Enhancing School Safety Using a Threat Assessment Model: An Operational Guide for Preventing Targeted School Violence (DHS, USSS, National Threat Assessment Center)



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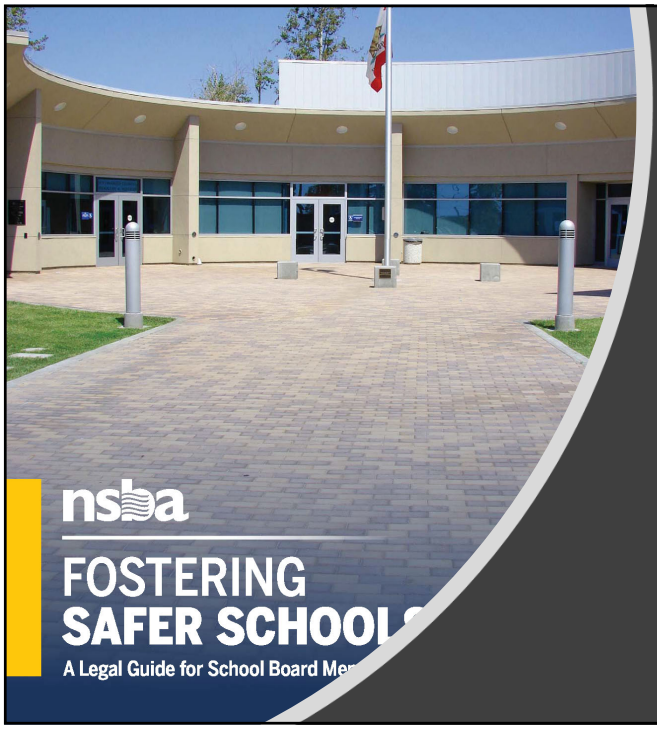

NSBA School Safety guide

https://www.nsba.org/Advocacy/Legal-Advocacy/Legal-Briefs-and-Guides

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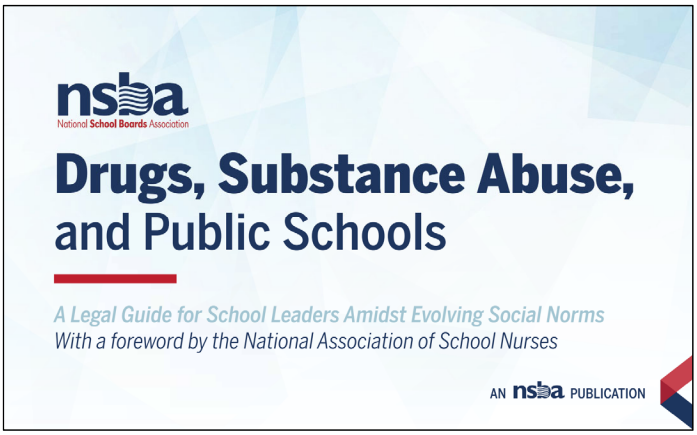
The Latest Legal Guide From NSBA



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Thank you!

Sonja Trainor
Managing Director, Legal Advocacy
National School Boards Association

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