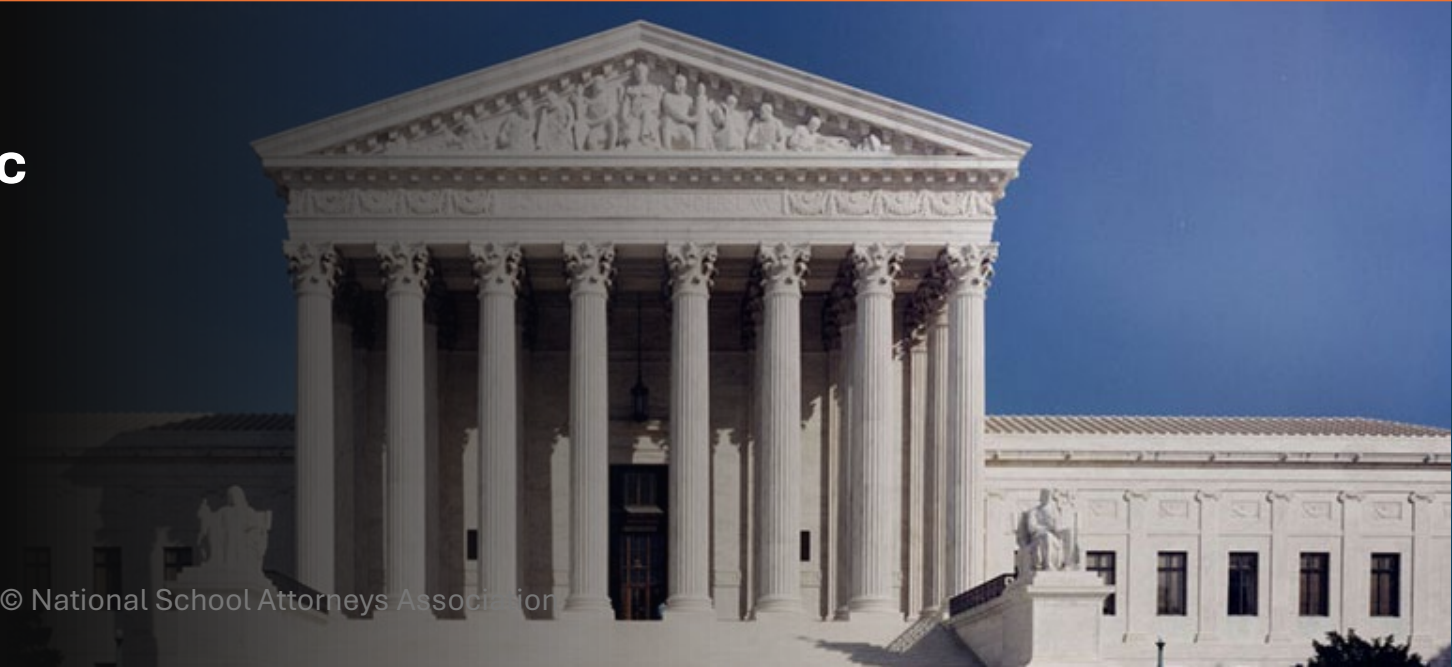
Supreme Decisions

What This Term Means for Public Education

August 23, 2025

SCSBA School Law Conference



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https://www.nationalschoolattorneysassociation.org/

NSAA
NATIONAL SCHOOL ATTORNEYS ASSOCIATION

Roadmap

- Intro – Separation of Powers
- Parent Rights
- School Choice
- Disability Discrimination Liability Standard
- E-Rate Funding
- Sex-based Policies
- Separation of Powers – Checks and Balances?
- SCOTUS Says No

U.S. Const. Article I, Section 1

All legislative Powers herein granted shall be vested in a **Congress** of the United States, which shall consist of a Senate and House of Representatives.

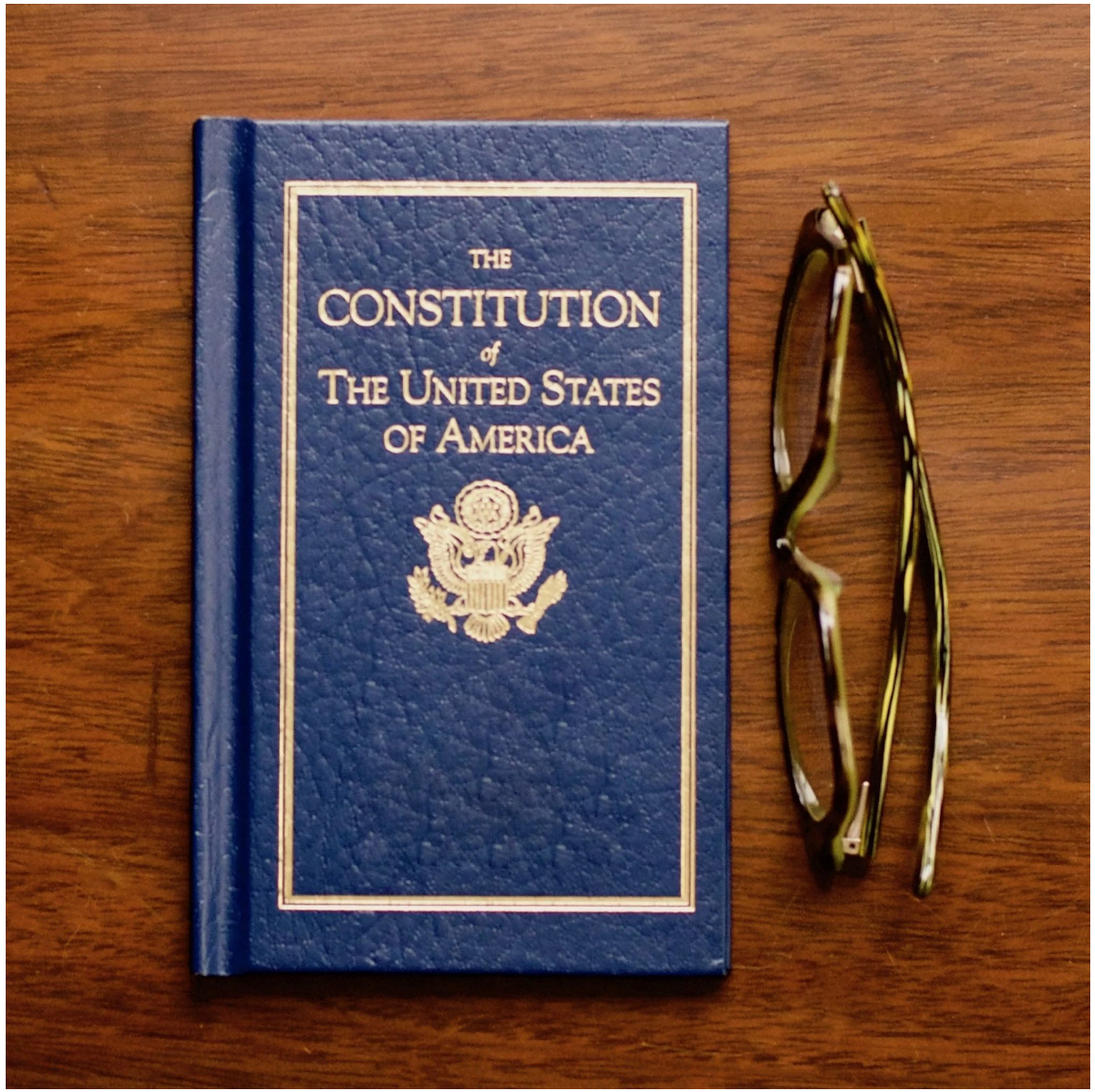
U.S. Const. Article II, Section 1

The executive Power shall be vested in a **President** of the United States of America….

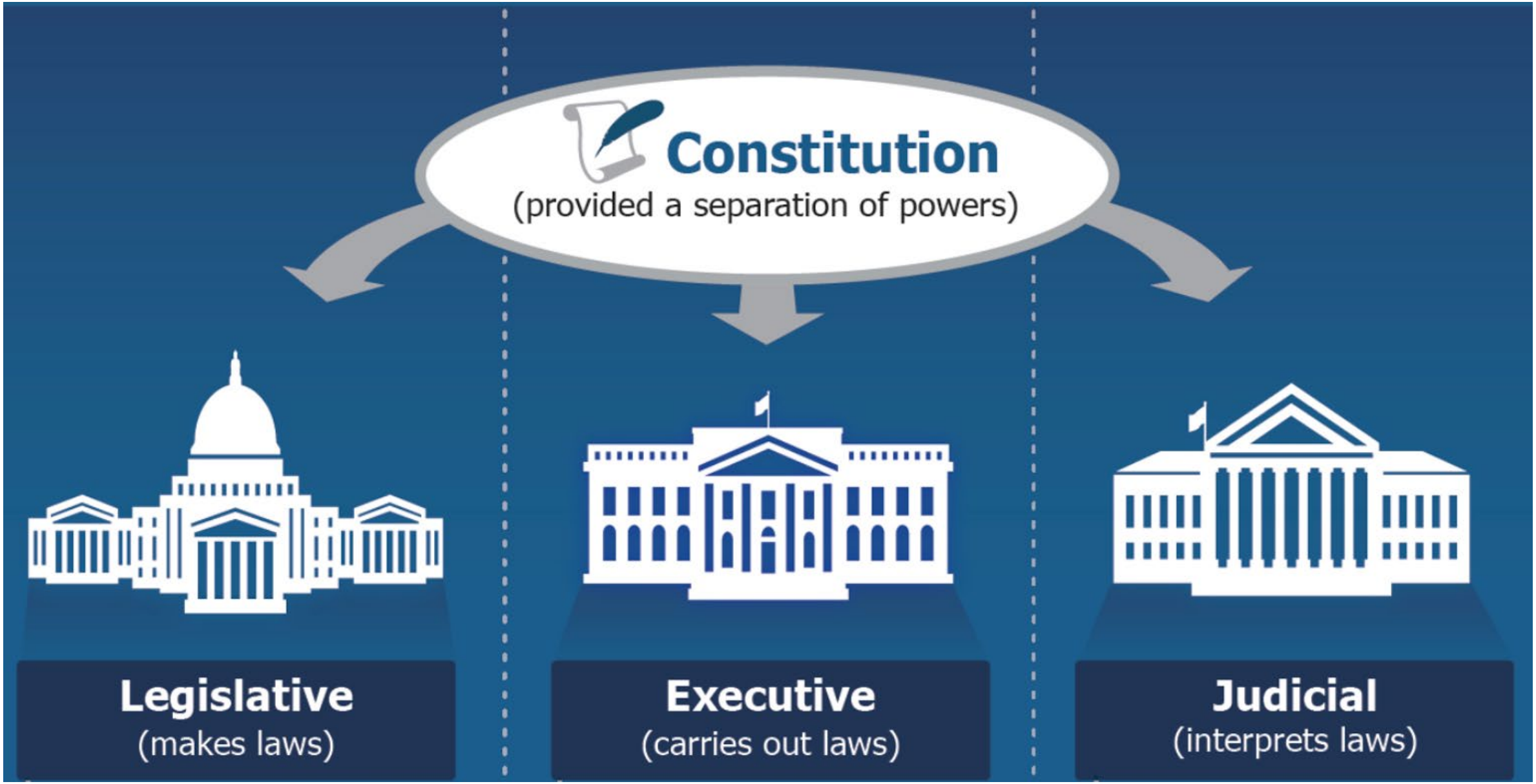
U.S. Const. Article III, Section 1

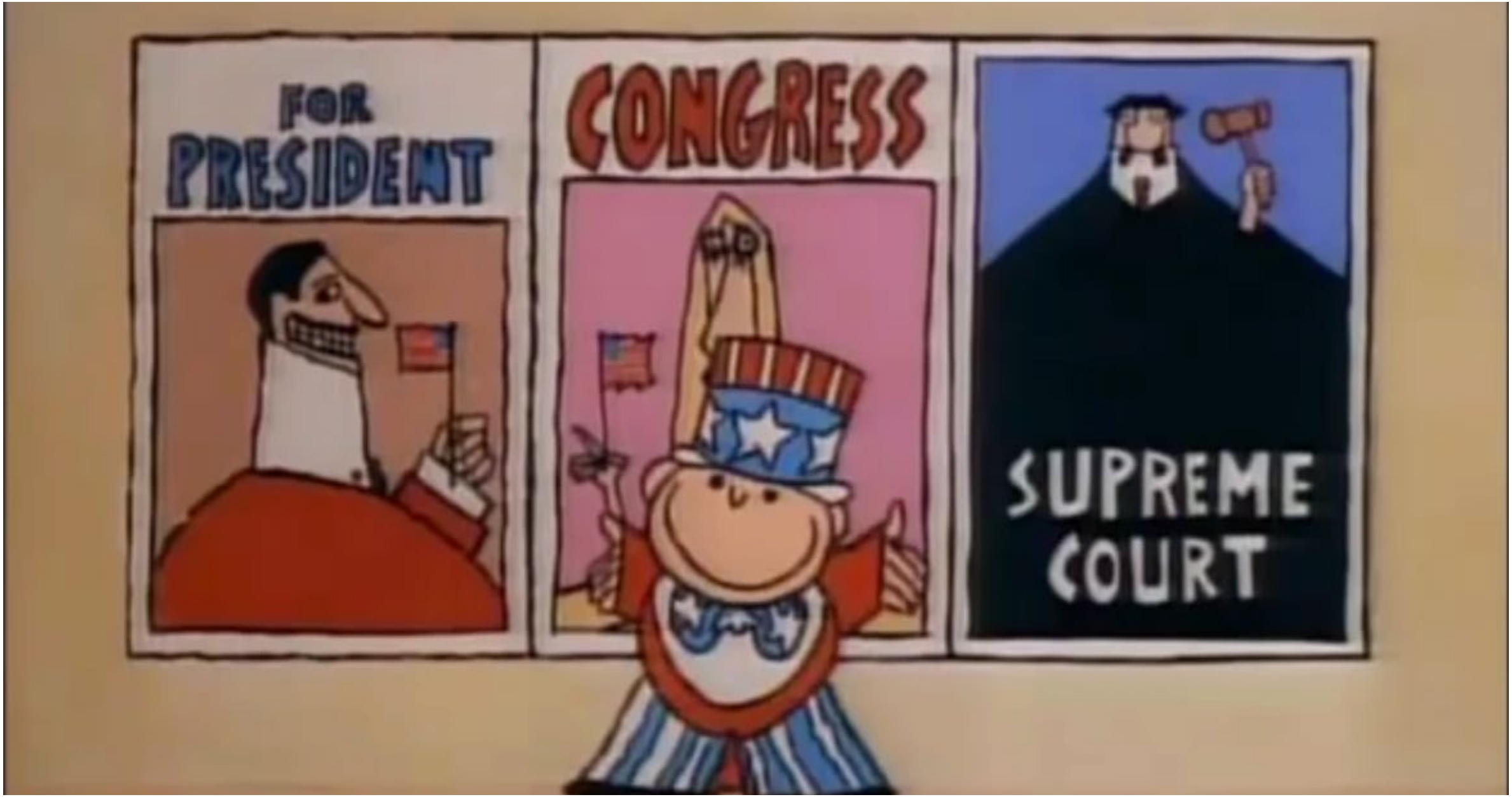
The judicial Power of the United States, shall be vested in **one supreme Court**, and in such inferior Courts as the Congress may from time to time ordain and establish….

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties….

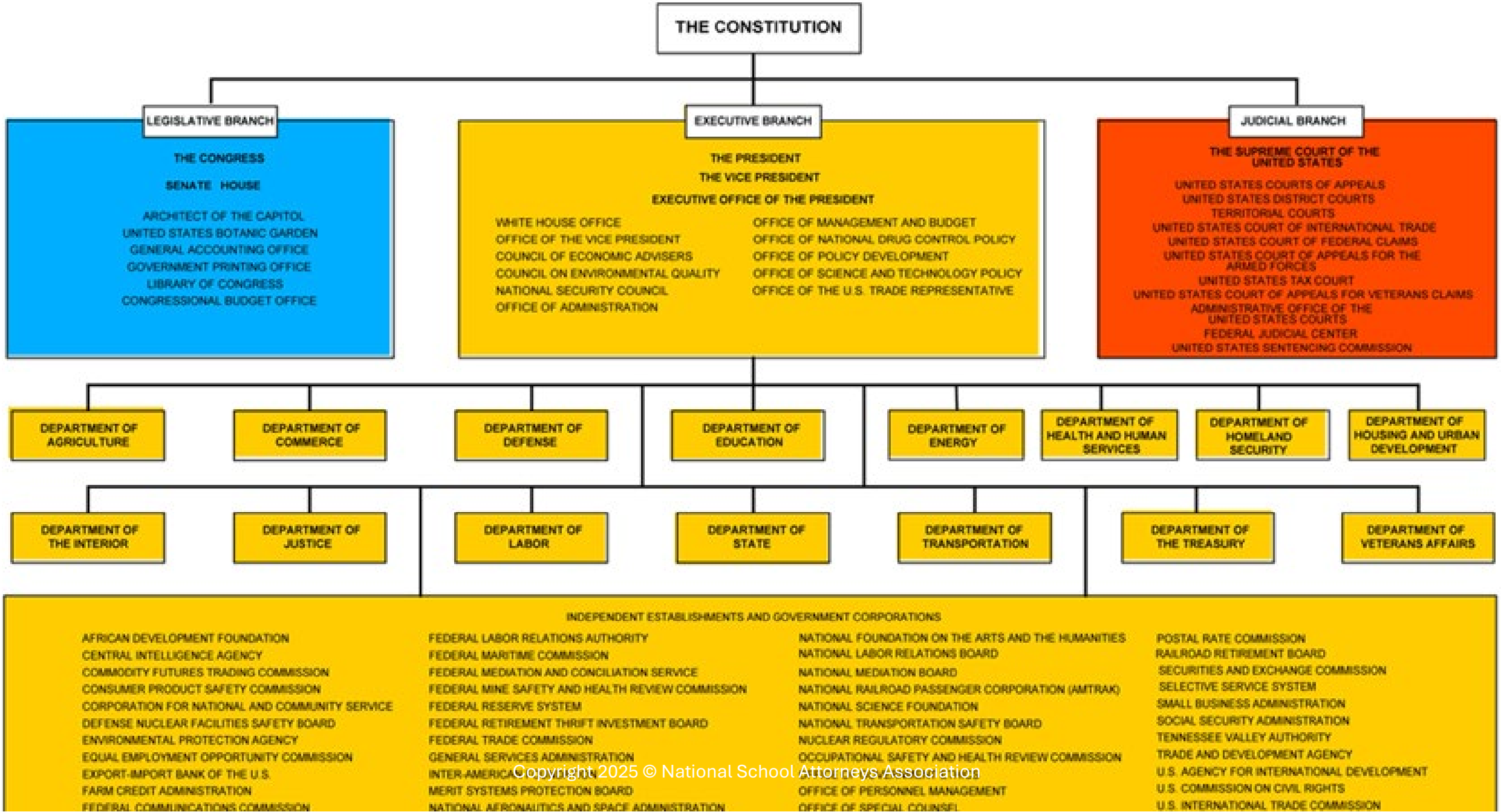


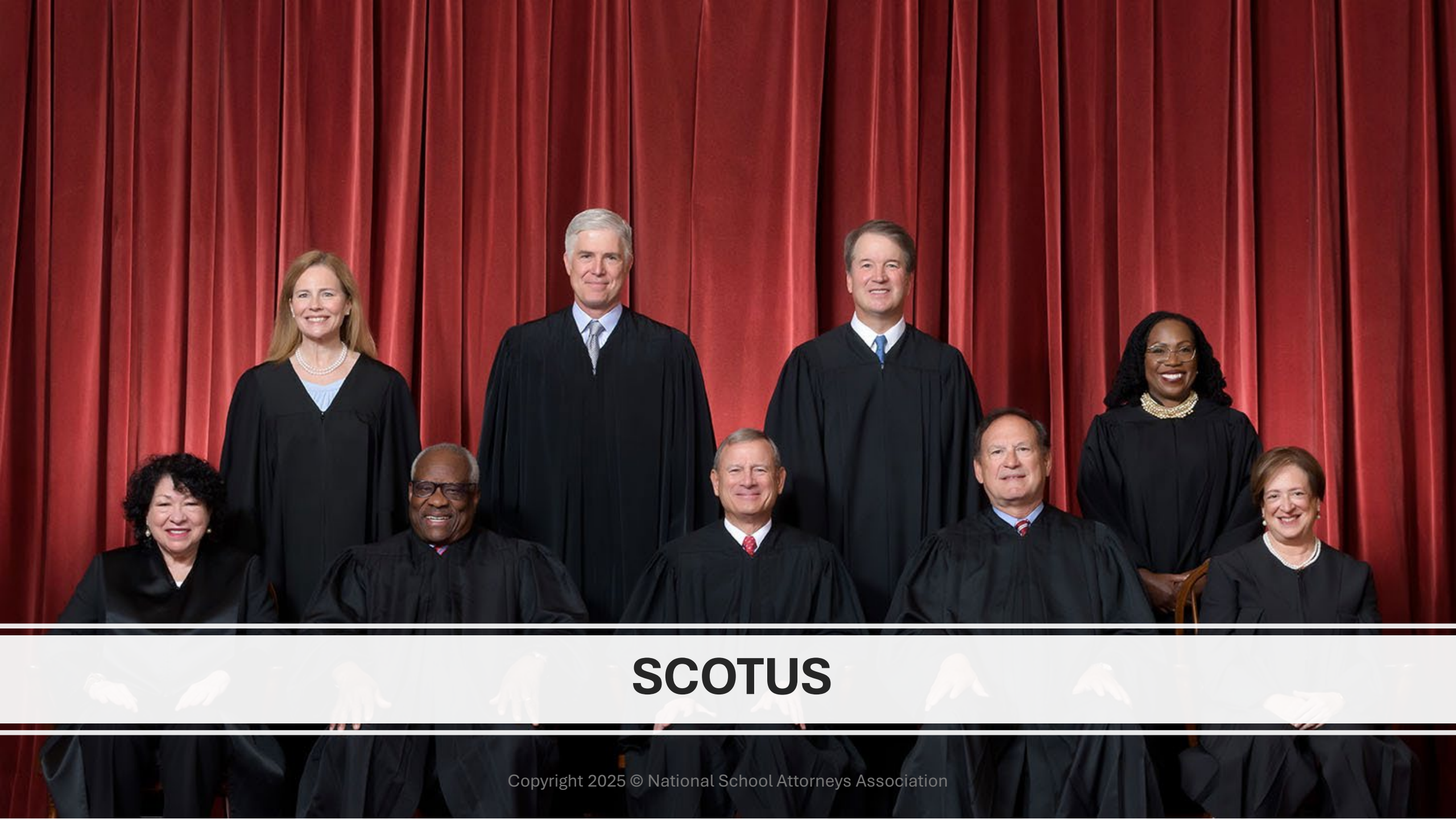

Nutrition Facts
Calories 90 30
POP QUIZ
Signature SELECT
QUALITY GUARANTEED
BLUE • WHITE • RED
POP QUIZ
CHERRY, LIME & BLUE RASPBERRY
ARTIFICIALLY FLAVORED
12
ICE POPS
FROZEN CONFECTION
90





THE GOVERNMENT OF THE UNITED STATES





SCOTUS

Supreme Court case

Lower court decision (usually Court of Appeals)

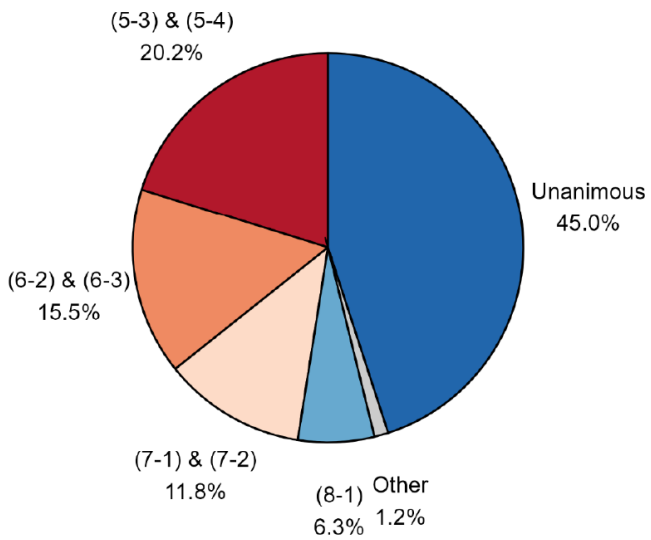
- Losing party has 90 days to file **petition for a writ of certiorari,** a.k.a., "**cert. petition**") -- a brief asking the Supreme Court to hear the case.
  - **7,000 to 8,000 cert. petitions** filed each Term
- Parties file briefs. Non-parties may file "*amicus curiae*" (friend of the court) briefs in support of/opposed the Court granting cert.
- Court grants or denies cert. in about **80** cases. Grant requires votes of four justices.
- Parties file briefs. Non-parties may file "*amicus curiae*" briefs supporting Petitioner, Respondent, neither.
- Oral argument
- Decision

Stat Pack -- www.scotusblog.com

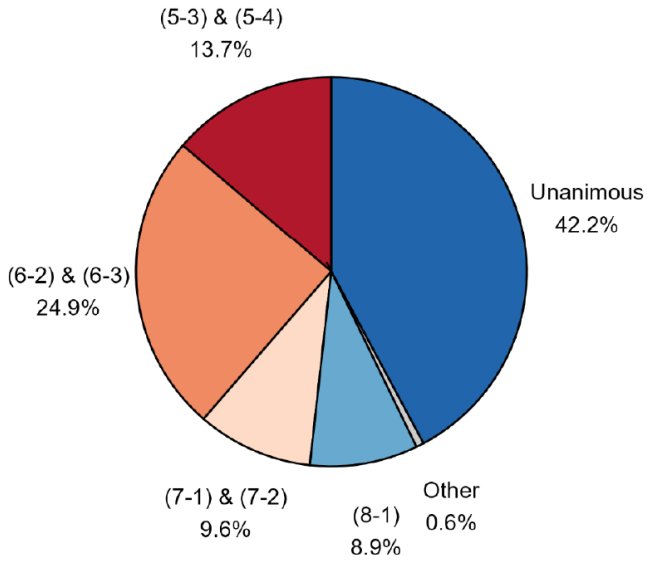
Totals		
Opinions of the Court – Signed	56	
Opinions of the Court – Per Curiam	10	
	66	**Total opinions released**
Cases Granted for Argument	62	
Cases Decided Without Argument	5	
Cases Postponed Before Argument	0	
Cases Dismissed After Argument	4	
	67	**Total opinions expected**

DECISIONS BY VOTE SPLIT – All Cases

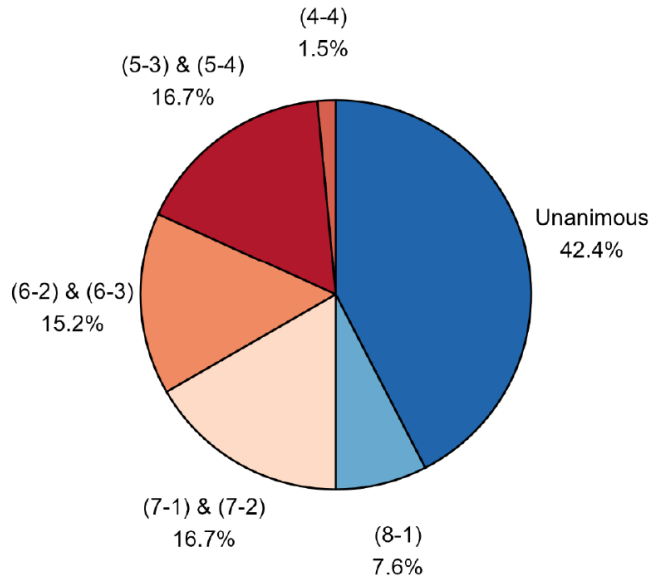
2005-2024 Terms



2020-2024 Terms



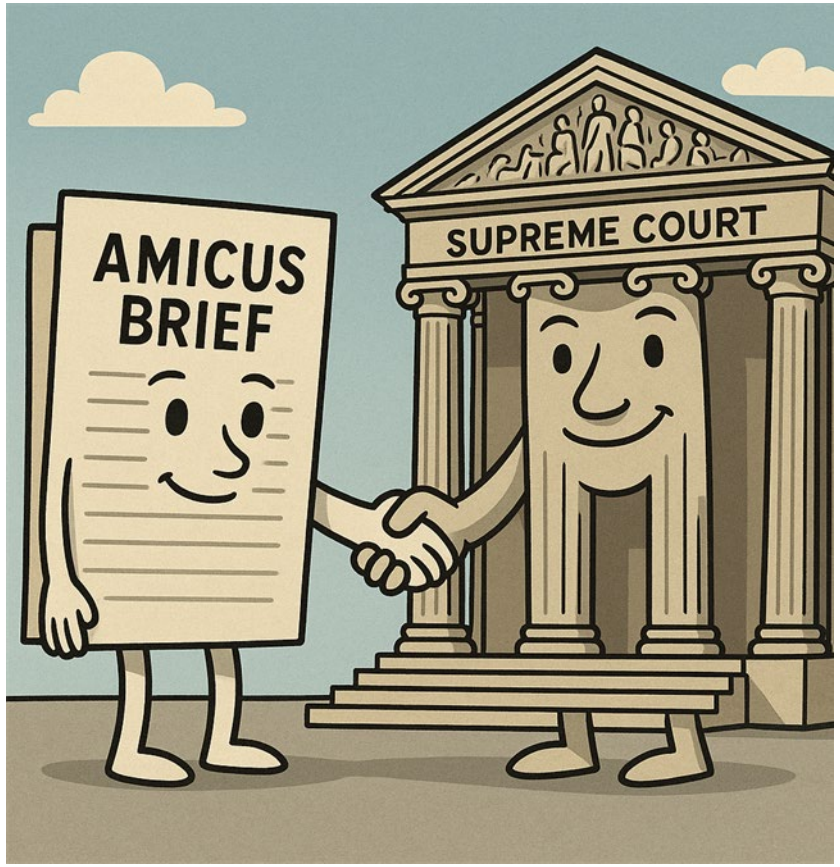
2024 Term



Figures show the percent of cases decided by different coalition sizes between the 2005 and 2024 terms. For instances where justices were recused or did not participate in an otherwise unanimous decision, we coded these as *unanimous* (e.g., 8-0 decisions were included in calculating 9-0 coalitions).

Amicus Briefs

- An *amicus curiae*, or “friend of the court” brief brings to the attention of the Court relevant matter not already brought to its attention by the parties.
- Supreme Court rules: say amicus briefs “may be of considerable help to the Court.”



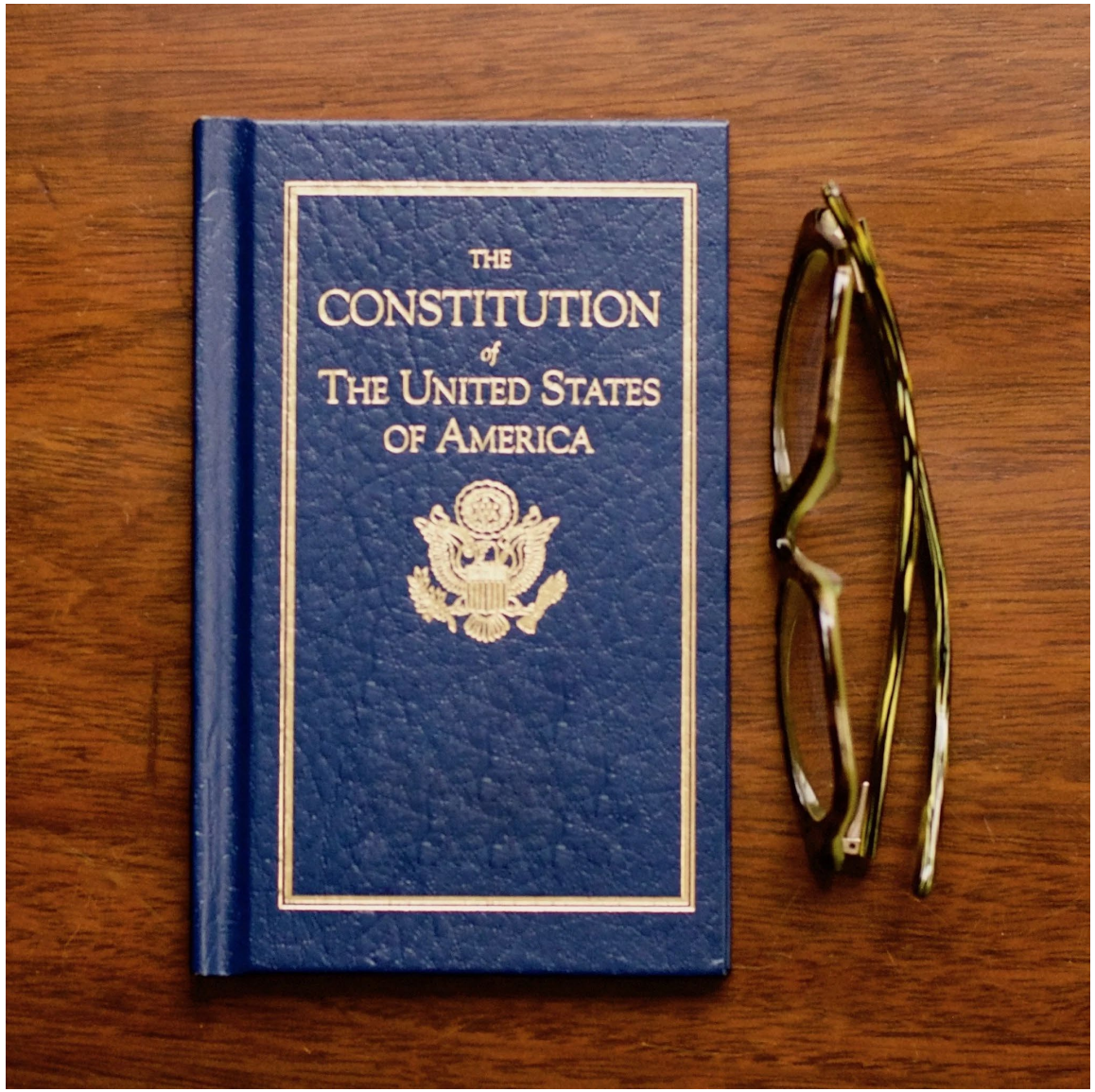
SCOTUS and public education – parent rights

U.S. Const. Amendment I

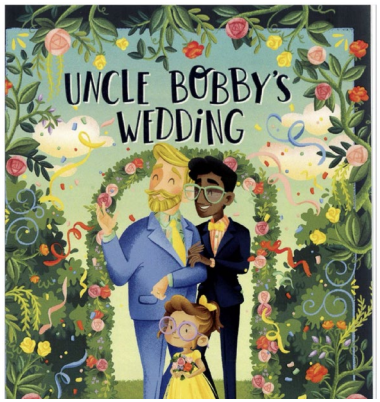
Congress shall make no law respecting an establishment of religion, **or prohibiting the free exercise thereof**; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

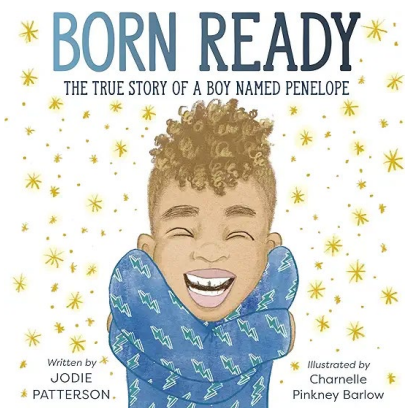
U.S. Const. Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. **No state shall** make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State **deprive any person of life, liberty, or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.



Mahmoud v. Taylor, 606 U.S. __ (June 27, 2025)





At the center: parents' religious objections to readings from "LBGTQ+-inclusive" storybooks to their elementary school-age children. The district originally allowed opt-out but quickly changed its policy.

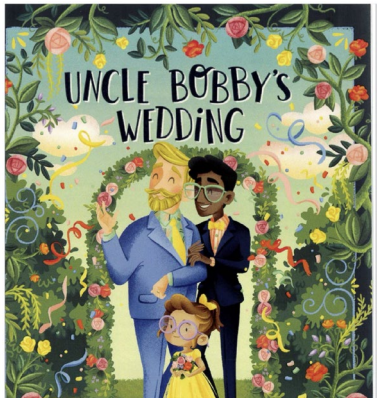
Parents from diverse religious backgrounds sued the Montgomery County, Maryland Public Schools over the school district's refusal to allow opt-outs from lessons where these stories were presented.

They asserted a Free Exercise, Free Speech (1A) and Due Process (14A) right to notice and the opportunity to opt out "of classroom instruction on such sensitive religious and ideological issues."

Parents asked a federal court to issue an injunction to require the district to provide such notice and an opt-out option. The district court denied their motion and the parents filed an interlocutory appeal. The Court of Appeals for the 4th Circuit affirmed.

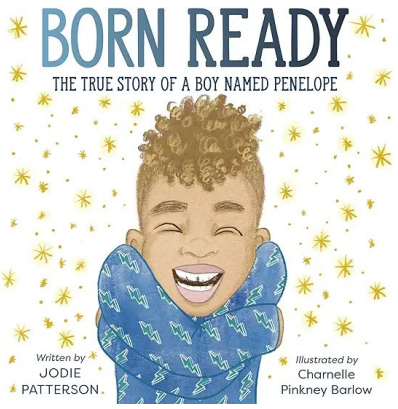
Mahmoud v. Taylor, 606 U.S. __ (June 27, 2025)

The parents maintained that the district's inclusion of the books was **designed to promote and instill certain beliefs, not merely to expose** students to LGBTQ+ people to encourage tolerance and respect, but to promote a certain mindset contrary to their religion-based teachings at home.



District classroom guide

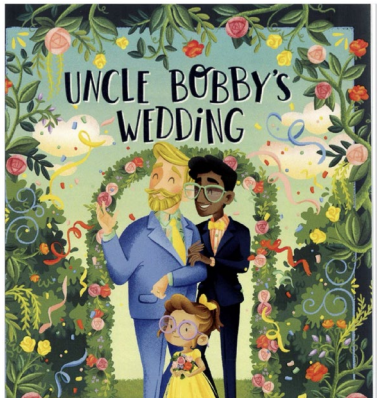
- If a student says two men cannot get married, suggested response: "When people are adults they can get married. Two men who love each other can decide they want to get married."
- If a student says a character "can't be a boy if he was born a girl," suggested response: "That comment is hurtful."
- If a student asks "[w]hat's transgender?", suggested response: "When we're born, people make a guess about our gender and label us 'boy' or 'girl' based on our body parts. Sometimes they're right and sometimes they're wrong."
- "Disrupt the either/or thinking."

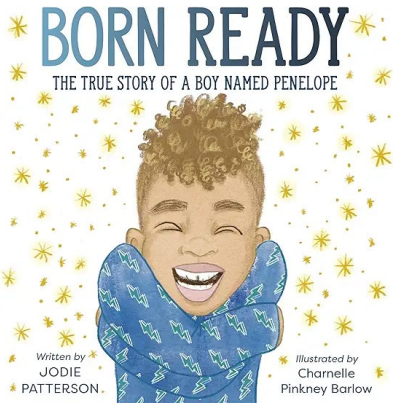


Mahmoud v. Taylor, 606 U.S. __ (June 27, 2025)

Parents petitioned the Supreme Court to answer:

Do public schools **burden parents' religious exercise** when they compel elementary school children to participate in instruction on gender and sexuality against their parents' religious convictions and without notice or opportunity to opt out?



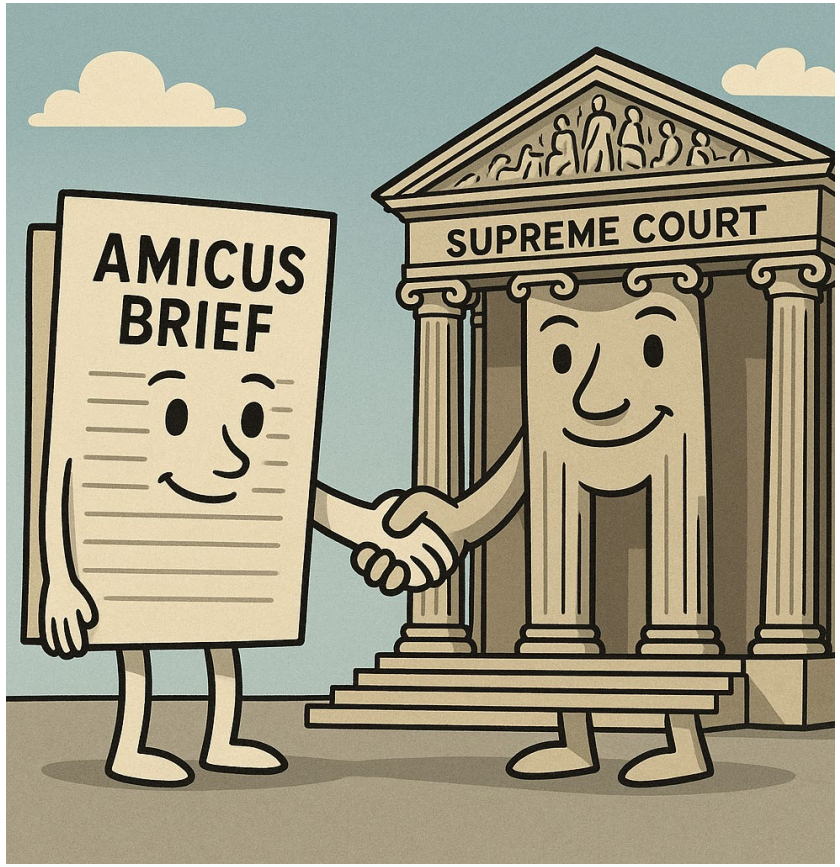


AASA-NSAA Amicus Brief

Courts have consistently and properly recognized that States have broad discretion to control conduct and curriculum in their public schools.

- States that have provided notice and opt out rights for parents typically balance honoring parents' opt out rights and allowing teachers, schools, and school boards to use their professional judgment for student instruction.
- Mandating notice and opt out rights without demonstrating coercive effect risks drastically increasing burden on schools.

Lowering the standard for parents to establish a Free Exercise claim could have widespread and undesirable consequences for schools.



***Mahmoud v. Taylor*, 606 U.S. __ (June 27, 2025)**

6-3 opinion on behalf of the six-member conservative majority authored by Justice Samuel Alito:

“A government burdens the religious exercise of parents when it requires them to submit their children to instruction that poses ‘a very real threat of undermining’ the religious beliefs and practices that the parents wish to instill.”

When a district’s curricular choices substantially interfere with parents’ religious upbringing of their children, the district owes parents a duty of reasonable accommodation – an opt-out, in this case -- which cannot be denied absent a compelling justification that wasn’t shown here.

The school district in this case must notify the parents in advance whenever one of the books or any similar book was going to be used.

Mahmoud v. Taylor, 606 U.S. __(June 27, 2025)

Justice Sonia Sotomayor, joined by Justices Kagan and Jackson, filed a vigorous dissenting opinion citing the NSAA-AASA brief.

"As one group of ***amici*** representing over 10,000 school district leaders and advocates …attests, however, '**it would be an extreme and overly broad burden to force all school districts in the country' to provide the extensive notification regime that the majority's test would require. ….** Such a regime, amici warn, would force school administrators and teachers 'to divert their already limited resources and time to ensure full compliance' with these new 'parental notification rights.'"

"Managing opt outs will impose even greater administrative burdens. At present, the vast majority of States that allow parents to opt students out of instruction limit that right to a specific course or single curricular unit, rather than permitting opt outs for certain themes or particular materials. …. That approach ensures that opt outs can be 'administered centrally' in a way that 'reduce[s] the burden on teachers and principals' and 'minimizes interruption o[f] classroom instruction for other students.'" ….

What you should know:

- The Court did not limit what curricular materials a school district can choose to include, what messages it chooses to convey, or what events it chooses to have.

AND

- State law still dictates when notice/opt-outs are required from curricular materials in many situations.

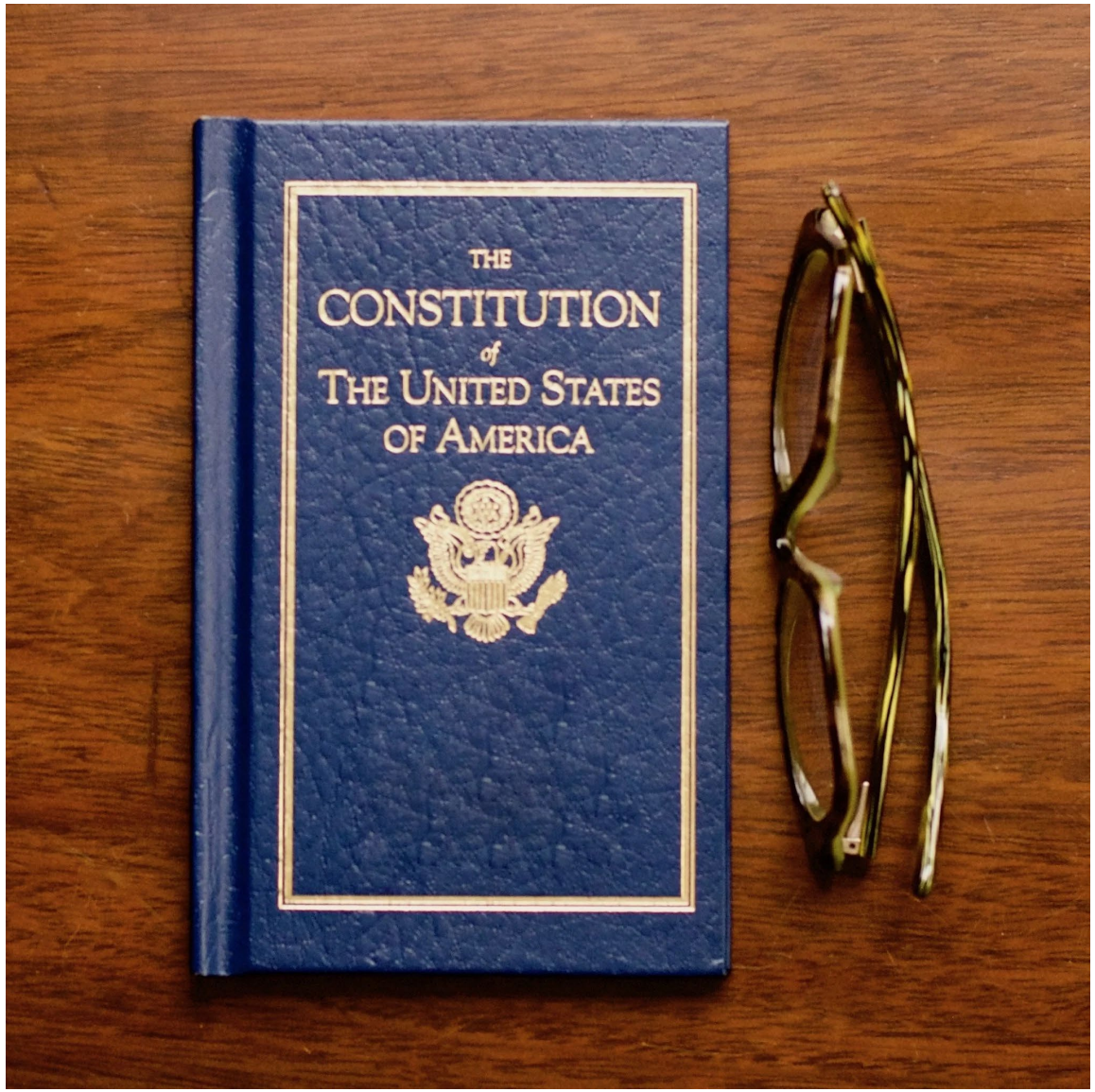
BUT

- *Mahmoud v. Taylor* broadened the circumstances under which parents will be able to show a burden on religious beliefs under the Constitution.
- Schools are likely to face more requests for notice and/or opt-out of curricular materials based on religion.
- Schools should consult their attorneys about reviewing/developing policies and protocols on:
  - parents claiming a religious burden
  - interactive process to determine reasonable solution
  - how the school will notify parents and arrange for other lessons

Religious charter schools

U.S. Const. Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



Oklahoma Statewide Virtual Charter School Board v. Drummond; St. Isidore of Seville Catholic Virtual School v. Drummond, 605 U.S. 165, (May 22, 2025)

Two OK Catholic dioceses formed a private organization to form a virtual Catholic charter school. The Oklahoma Charter School Board granted the charter and agreed to contract with the organization. The Oklahoma AG challenged that decision, saying it amounted to government establishment of religion in violation of the First Amendment.

OK Supreme Court decided:

- school was governmental entity and state actor;
- contract violated Establishment Clause;
- Free Exercise Clause did not preclude Oklahoma from denying charter-school contract due to school's religion

At the Supreme Court:

St. Isadore's (aided by the SG) argued:

- It is not a state actor, and the school would not be "government-run."
- It simply contracts with the state to offer a free educational option for interested students.
- A state violates the Free Exercise Clause by excluding privately run religious schools from the state's charter school program solely because the schools are religious.

Drummond (supported by public school groups' amicus) argued:

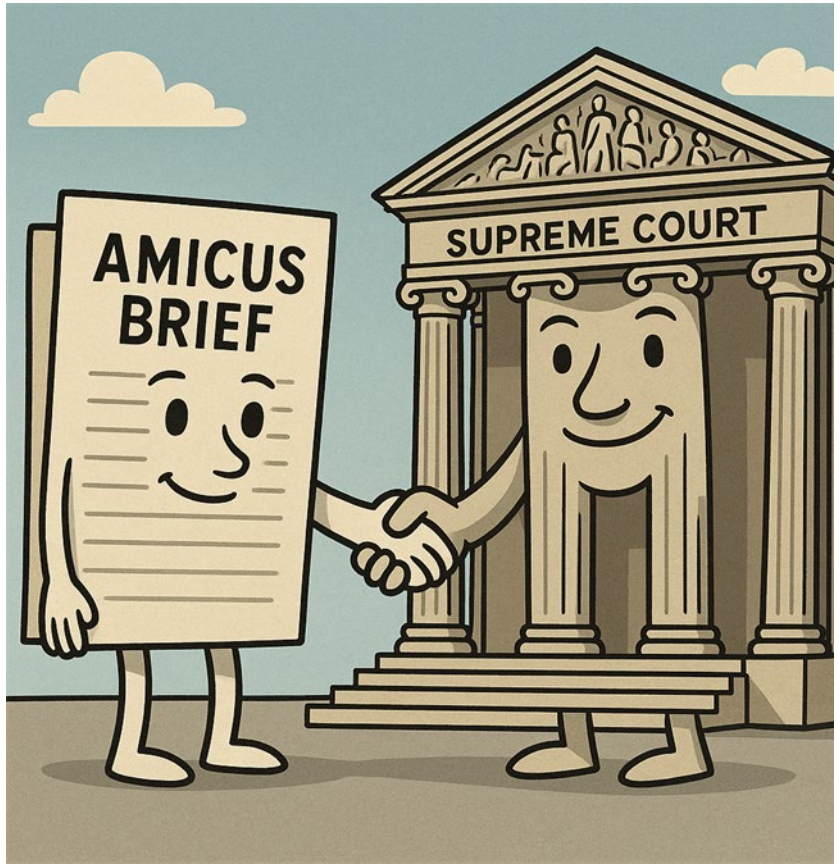
- A charter school is a public school, operated by the state, not a mere contractor.
- Public education may be secular, free from religious instruction, as the Supreme Court said in *Carson*.
- To hold otherwise would be an astounding reversal of the Supreme Court's prior rulings saying a public school may not use its own voice to proselytize students, and public money may not support that effort.

AASA-NSAA Amicus Brief

Public Education Is A Bedrock Of American Democracy And Charter Schools Are Part Of The Public Education System.

Requiring States To Authorize Religious Charter Schools Would Undermine State Public Education And Harm Traditional Public Schools.

- Religious charter schools would draw funds away from traditional public schools, which would harm students with disabilities in particular.
- Religious charter schools would present extraordinary operational challenges for public school administrators.
- Religious charter schools could become the only neighborhood schools in some communities, leaving students without an accessible nonsectarian option.



Oral argument – *Drummond v. OK State Charter School Board*

Conservative Justices Kavanaugh, Gorsuch, Alito, Thomas made clear they viewed this case as a state program excluding religious entities. Kavanaugh: it's "rank discrimination."

Chief Justice Roberts expressed concern about the "state action" issue. He asked about the extent of state oversight in running charter schools.

Liberal Justices Sotomayor, Kagan, and Jackson raised alarm bells about how religious schools can be public schools and still operate consistent with their religious beliefs. Won't all ask for exceptions for curriculum, staff choices, student admissions?

Justice Barrett did not participate.

Per Curiam

SUPREME COURT OF THE UNITED STATES

Nos. 24–394 and 24–396

OKLAHOMA STATEWIDE CHARTER SCHOOL BOARD, ET AL., PETITIONERS
24–394 *v.*
GENTNER DRUMMOND, ATTORNEY GENERAL OF OKLAHOMA, EX REL. OKLAHOMA

ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL, PETITIONER
24–396 *v.*
GENTNER DRUMMOND, ATTORNEY GENERAL OF OKLAHOMA, EX REL. OKLAHOMA

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

[May 22, 2025]

PER CURIAM.

The judgment is affirmed by an equally divided Court.

JUSTICE BARRETT took no part in the consideration or decision of these cases.

What you should know:

- The Supreme Court's "tie" decision affirms the Oklahoma Supreme Court's ruling that St. Isidore's contract with the state's charter board is not permitted under the Establishment Clause.
- **The Chief Justice's interest in the involvement of the state may lead to states adjusting their charter school programs.**
- The current administration favors school choice, and argued at SCOTUS in favor of the religious charter school.
  - Jan. 29 Executive Order directs agencies to make more funds available for school choice.
  - BBB establishes new tax credit for contributions to state-approved not-for-profits that award scholarships for private schools.
- **Another challenge is likely.**

Disability Discrimination -- Liability Standard

Image: Thompson & Horton

Section 504 of the Rehabilitation Act, Americans with Disabilities Act

"No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .

29 U.S.C. § 794

"…[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

42 U.S.C. § 12132

A.J.T. v. Osseo Area Schools, Independent School District No. 279, 605 U.S. 335 (June 12, 2025)

- A.J.T., a teenager, has a severe form of epilepsy, causing seizures continually throughout the day and intellectual capacity of an 18-month-old child. She has been served under the IDEA throughout her years of schooling.

- Seizures are so severe early in the day that she is unable to attend school in the morning.

- A.J.T.'s previous school district in KY provided evening instruction. Osseo agreed to provide instruction starting at noon but not into the evening.

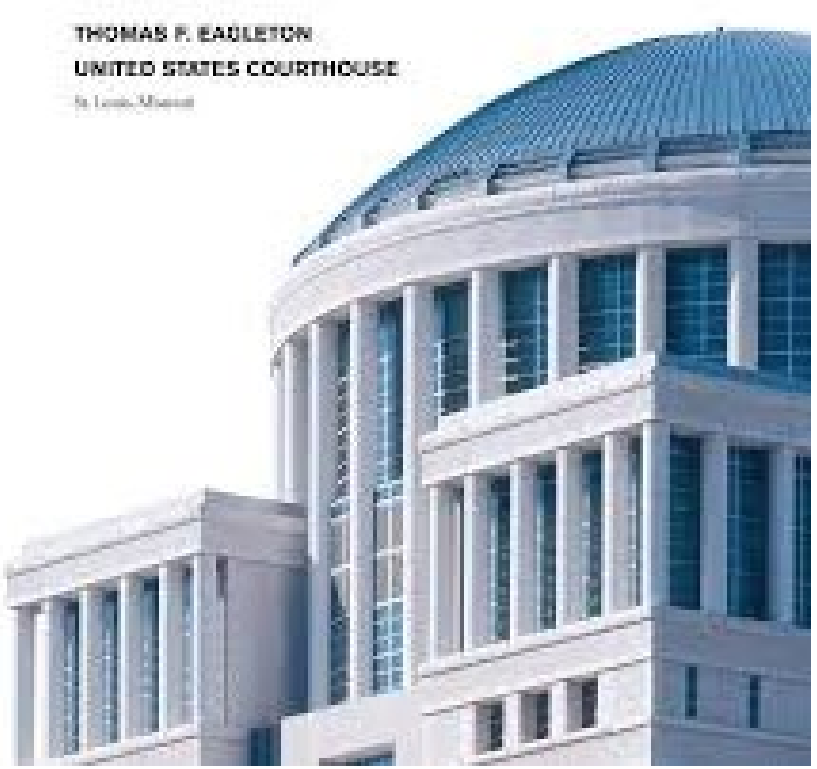
- A.J.T. pursued an IDEA due process claim and prevailed at the ALJ, trial court, and court of appeals, all of which found Osseo had not provided FAPE.

A.J.T. v. Osseo Area Schools, Independent School District No. 279, 605 U.S. 335 (June 12, 2025)

A.J.T. filed a discrimination claim under Section 504 and the ADA for money damages, claiming the school district discriminated against A.J.T. by not providing evening instruction, as she was not provided a day close in length to that of her peers.

Trial court: school district could not be held liable because it did not act with "bad faith or gross misjudgment."

Court of appeals: reluctantly affirmed, finding it was bound by its own precedent, but that the standard was not tied to the statutory text.



At the Supreme Court:

A.J.T. argued that children with disabilities seeking relief for education-related discrimination should not have to satisfy a more stringent legal test than all other plaintiffs suing under ADA and Section 504.

Osseo SD argued that the Court should not disturb more than forty years of precedent from U.S. courts of appeals considering this unique subset of ADA and Rehabilitation Act claims:

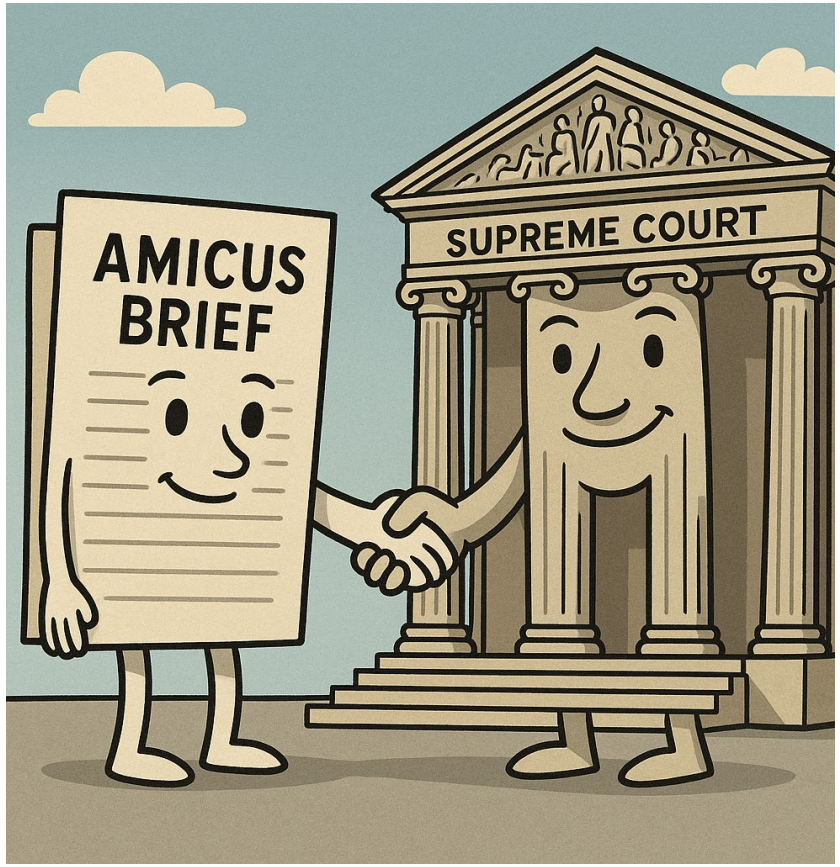
“When a plaintiff directly challenges educational services provided through the IDEA, she must establish more than a bare violation of the IDEA. The plaintiff must show that educators acted with discriminatory intent by demonstrating that their decisions were premised on “bad faith or gross misjudgment.”

AASA-NSAA-CASE Amicus Brief

Urged the court to uphold the “bad faith or gross misjudgment” for FAPE-related claims under Section 504 and the ADA.

Explained that the bad faith/gross misjudgment standard brings FAPE-related discrimination claims within the text and structure of these statutes because it reflects the discretionary decision-making educators are legally required to undergo.

Encouraged the Court to consider this case carefully due to its importance for schools. If the Court imposes a standard that does not recognize the expertise and discretion of school personnel, schools will face potential liability unforeseen by Congress.



A.J.T. v. Osseo Area Schools, 605 U.S. 335(June 12, 2025)

Unanimous, by Chief Justice Roberts:

- Students with disabilities **do not have to satisfy a more stringent standard of proof** than other plaintiffs to establish discrimination under Title II of the ADA and Section 504 of the Rehabilitation Act in a case where the child is served under IDEA.
- ADA and Rehabilitation Act claims based on educational services should be subject to the same standards that apply in other disability discrimination contexts.
- The court 8th Circuit's "bad faith or gross misjudgment" standard placed a condition on relief that Congress did not intend when it revised Section 1415 of IDEA to "make[] clear that nothing in the IDEA ‘restrict[s] or limit[s] the rights [or]remedies’ that other federal laws, including antidiscrimination statutes, confer on children with disabilities."

A.J.T. v. Osseo Area Schools, 605 U.S. 335(June 12, 2025)

The Court did not provide a standard for determining what constitutes discrimination under 504-ADA in this specific context - where a child's education program developed under the IDEA is challenged.

Generally, appellate courts say:

- To establish a statutory violation and obtain injunctive relief under the ADA and Rehabilitation Act – no requirement that the plaintiff show intent to discriminate.
- To obtain compensatory damages, the plaintiff must show intentional discrimination through proof that the defendant acted with "**deliberate indifference**."
  - Plaintiff does not have to show personal ill will or animosity toward the disabled person.
  - Plaintiff must simply prove the defendant disregarded a strong likelihood that the challenged action would result in a violation of federally protected rights.

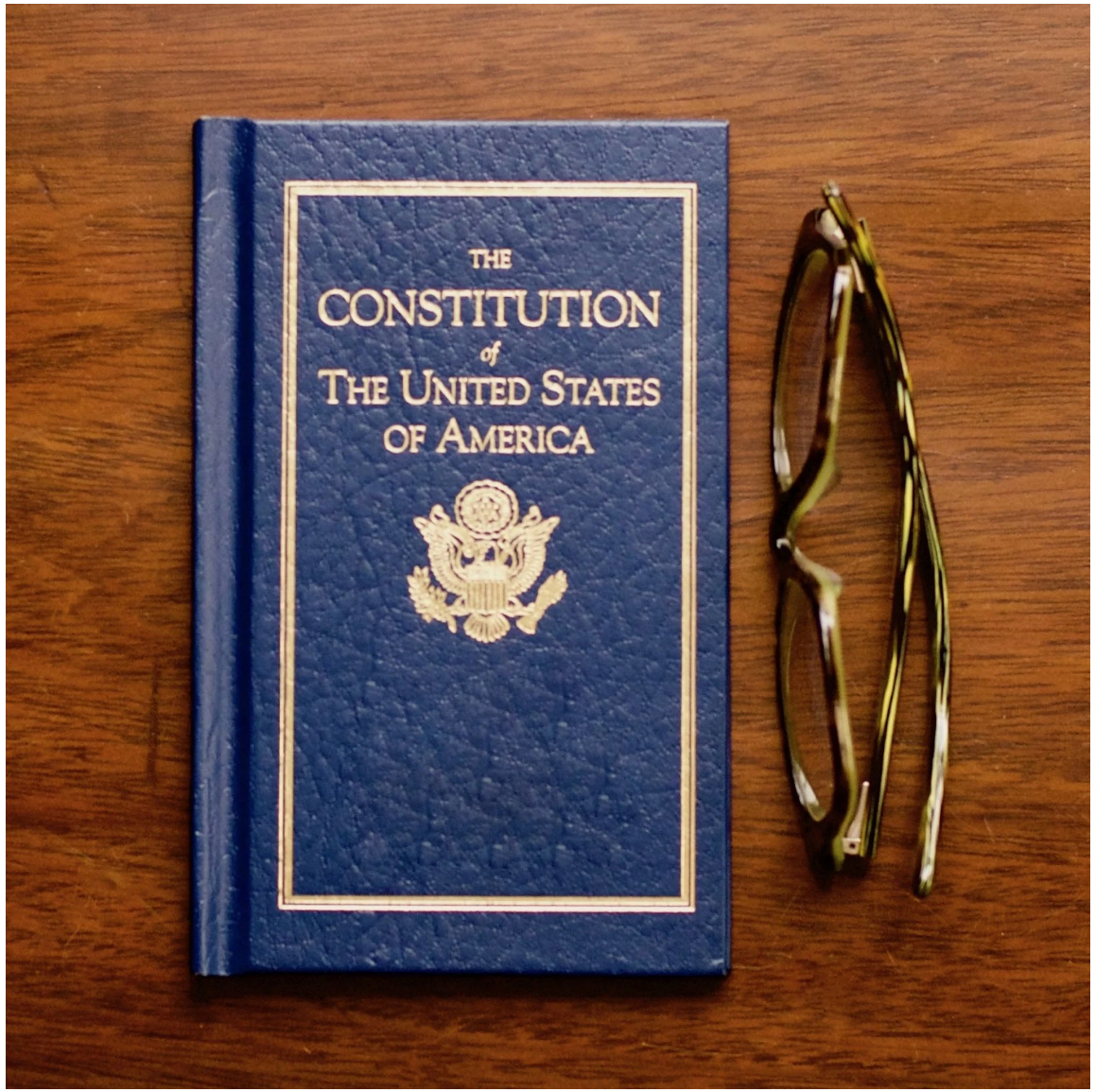
What you should know:

- After *Fry* and *Perez*, parties seeking to sue school districts based on alleged violations of disability discrimination laws (504 and ADA) have an easier path *to the courthouse*.
- Now that the Court has abandoned the "bad faith or gross misjudgment" standard, it will be easier for families **in some circuits** to *prove* a case challenging an education program.
- Families are regularly filing Section 504/ADA suits at same time as IDEA complaint.
- In some federal circuits, the law did not change.

E-Rate Funding

U.S. Const. Article I, Section 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.



Federal Communications Commission v. Consumers' Research; Schools, Health & Libraries Broadband Coalition v. Consumers' Research, 606 U.S. __, Nos. 24-354 and 24-422 (June 27, 2025)

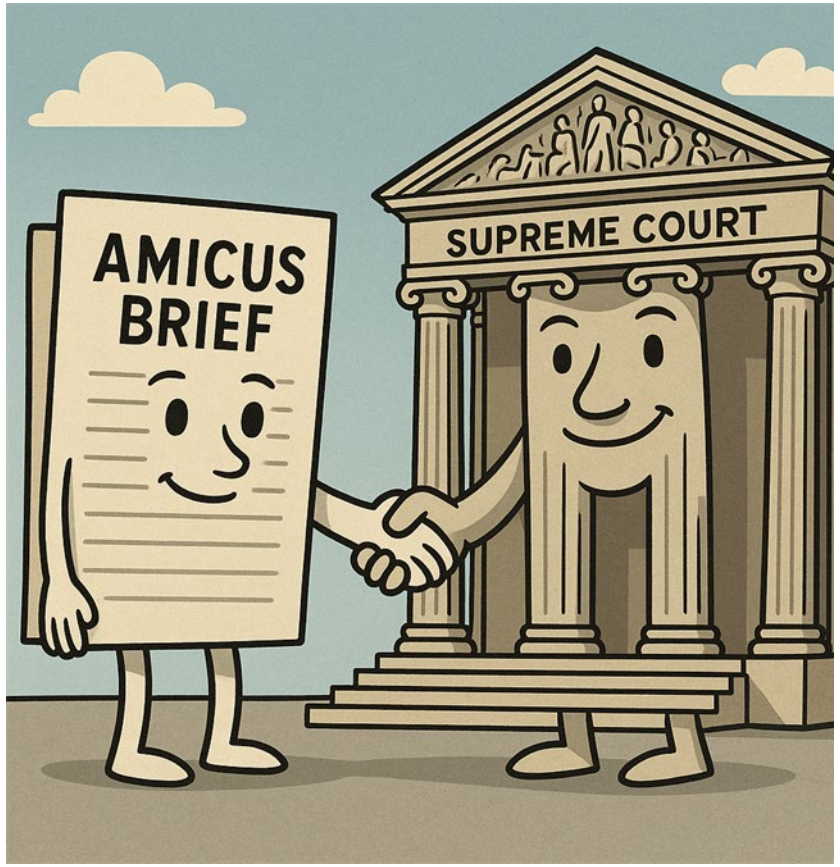
- The Telecommunications Act of 1996 requires telecom companies to contribute to the Universal Service Fund, administered by the FCC through the Universal Service Administrative Co.
- USAC oversees collection of the contributions and disbursement of USF money through four USF programs including E-Rate
- E-Rate provides $3.26 billion each year in discounts to schools and libraries to support broadband and Wi-Fi connectivity.

Federal Communications Commission v. Consumers' Research; Schools, Health & Libraries Broadband Coalition v. Consumers' Research, 606 U.S. __, Nos. 24-354 and 24-422 (June 27, 2025)

- Consumers' Research claimed that Congress impermissibly allowed the FCC too much latitude in establishing the universal service fund (USF) and its funding mechanism and that the FCC, in turn, had ceded too much authority to USF's administrator.
- The full U.S. Court of Appeals for the Fifth Circuit struck down the USF funding mechanism as a "misbegotten" and unconstitutional tax on consumers.
- SCOTUS was asked to revive the "nondelegation doctrine": the principle that Congress cannot delegate its lawmaking powers to other institutions.

AASA-led Amicus Brief joined by 21 educational, library, municipal organizations

- The Fifth Circuit's unprecedented decision invalidating the universal service fee jeopardizes **Congress's longstanding mission** to provide telecommunications services to all Americans.
- Rural, poor, and underserved communities across the United States have depended for decades on programs funded by the universal service fee for access to affordable, reliable telecommunication services, including high-speed internet services.
- Congress may authorize executive agencies to exercise substantial "**discretion**" in implementing and enforcing the laws that Congress enacts. In carrying out those laws, agencies may also rely on assistance from private actors, so long as the actors remain subordinate to and under the agencies' authority and supervision.
- The universal service fee mechanism follows these principles because Congress established multiple "**intelligible principles**" guiding the FCC in assessing the fee and administering the USF…



Federal Communications Commission v. Consumers' Research; Schools, Health & Libraries Broadband Coalition v. Consumers' Research, 606 U.S. ___, Nos. 24-354 and 24-422 (June 27, 2025)

6-3 opinion written by Justice Kagan:

"[N]o impermissible transfer of authority has occurred" under the Constitution.

- Congress sufficiently guided and constrained the discretion it gave the FCC to implement the universal-service contribution scheme.
- The FCC has retained all decision-making authority within that discretion sphere, relying on the Administrative Company only for non-binding advice.

"For nearly three decades, the work of Congress and the Commission in establishing universal-service programs has led to a more fully connected country. And it has done so while leaving fully intact the separation of powers integral to our Constitution."

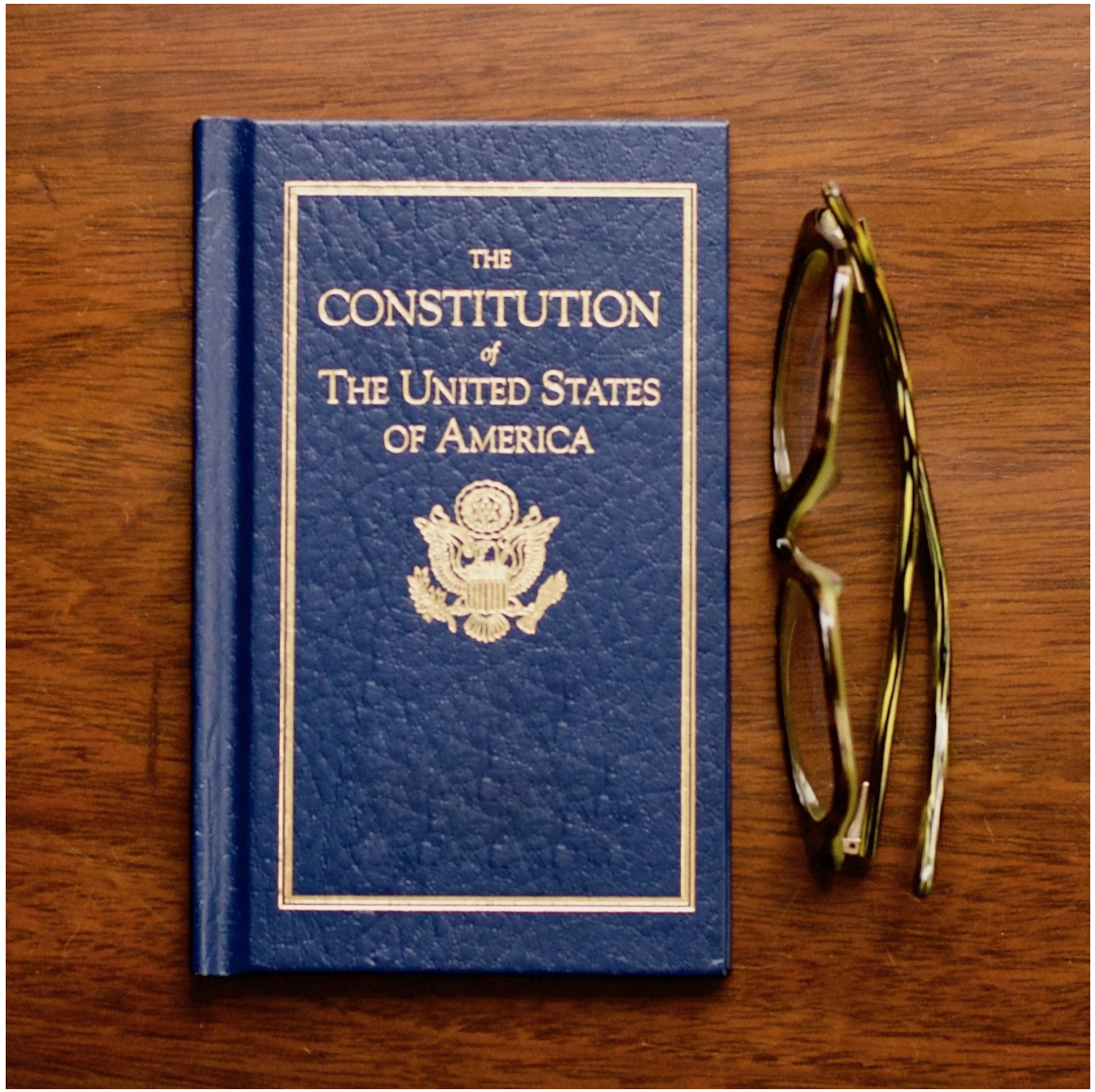
What you should know:

- The E-Rate funding mechanism is safe for now.
- This is great news for schools and libraries in rural areas.
- “Nondelegation” doctrine may arise in another context at another time. At least 4 justices are open to reviving the doctrine.
- This decision is part of a series in which the Court has grappled with whether federal agencies have too much power. Expect more.

“Sex”-based policies

U.S. Const. Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. **No state shall** make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor **deny to any person within its jurisdiction the equal protection of the laws.**



Title IX of the Education Amendments of 1972

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that …."

20 U.S.C. §1681(a)

But what does “sex” mean?

Trump Executive Order Jan. 20, 2025:

“It is the policy of the United States to recognize **two sexes, male and female.** These sexes are not changeable and are grounded in fundamental and incontrovertible reality. Under my direction, the Executive Branch will enforce all sex-protective laws to promote this reality, and the following definitions shall govern all Executive interpretation of and application of Federal law and administration policy:

(a) “Sex” shall refer to an individual’s immutable biological classification as either male or female. “**Sex” is not a synonym for and does not include the concept of “gender identity.”**

Rescinded 5 **Biden** Executive Orders, including Jan. 20, 2021 order saying:

“[L]aws that prohibit sex discrimination—including **Title IX …, prohibit discrimination on the basis of gender identity or sexual orientation**, so long as the laws do not contain sufficient indications to the contrary.”… It is the policy of my Administration to prevent and combat discrimination on the basis of gender identity or sexual orientation….”

Athletic Participation - Executive Order: *Keeping Men Out of Women's Sports* – Feb. 5)

- Directs Secretary of Education and Attorney General, to

(i) continue to comply with the vacatur of the 2024 Title IX rule;

(ii) **take action to "protect all-female athletic opportunities and all-female locker rooms** and thereby provide the equal opportunity guaranteed by Title IX" and "bring regulations and policy guidance into line with the Congress' existing demand for 'equal athletic opportunity for members of both sexes' by clearly specifying and clarifying that women's sports are reserved for women; and the resolution of pending litigation consistent with this policy;" and

(iii) "**prioritize Title IX enforcement actions against educational institutions (including athletic associations composed of or governed by such institutions) that deny female students an equal opportunity to participate in sports and athletic events by requiring them, in the women's category, to compete with or against or to appear unclothed before males."**

- Directs all executive departments and agencies to "**review grants** to educational programs and, where appropriate, **rescind funding** to programs that fail to comply with the policy established in this order."

U.S. v. Skrmetti, 605 U.S. __(June 18, 2025)

The Supreme Court upheld Tennessee's ban on puberty blockers and hormone therapy for transgender minors.

6-3 opinion written by Chief Justice Roberts:

- The Tennessee law incorporates two classifications: age and medical use, not sex. "This Court has never suggested that mere reference to sex is sufficient to trigger heightened scrutiny."
- The law is subject to **rational basis review**: the law does not violate equal protection if there are "plausible reasons" for the government's policy.

  "Tennessee concluded that there is an ongoing debate among medical experts regarding the risks and benefits associated with administering puberty blockers and hormones to treat gender dysphoria, gender identity disorder, and gender incongruence." The Tennessee law's "ban on such treatments responds directly to that uncertainty."
- **The law does not violate Petitioners' (three transgender teens, their parents and a doctor) constitutional right to equal protection.**

SCOTUS WILL DECIDE NEXT TERM: Whether state laws banning biological male participation on female sports teams violate Equal Protection or Title IX

***Little v. Hecox*, 104 F.4th 1061 (9th Cir. 2024), petition filed July 11, *cert. granted* July 3, 2025, SCOTUS No. 24-38**

- Does the ID state law that "seeks to protect women's and girls' sports by limiting participation to women and girls based on sex" violate the Equal Protection Clause?

***West Virginia v. B.P.J.*, 98 F.4th 542 (4th Cir. 2024), *cert. granted* July 3, 2025, SCOTUS No. 24-43**

- May a state designate girls' and boys' sports teams based on biological sex determined at birth under Title IX? Equal Protection?

***Petersen v. Doe*, 115 F.4th 1083 (9th Cir. 2024), *petition filed* October 22, SCOTUS No. 24-449**

- Does Arizona's Save Women's Sports Act, which excludes biological males from girls' and women's sports teams and competitions, violate the Equal Protection Clause?

Pending Cases – Athletics Participation

Tirrell v. Edelblut (D N.H. filed 8/16/24)

Transgender athletes in New Hampshire challenge the state's transgender sports ban. After the EOs, they added claims against the Department of Education and the Administration, asserting constitutional violations and other claims.

U.S.A. v. Maine Department of Education (D. Me. filed 4/16/25)

The U.S. DOJ sues the Maine Dept. of Education alleging open and defiant violation of Title IX and Title IX contractual assurances, and seeks declaratory, injunctive, and damages relief to prevent Maine from defying their orders regarding transgender athletes.

California v. U.S. Dept. of Justice (N.D. Cal. filed 6/10/2025)

CA alleges that the DOJ demand for every school district in CA to certify its noncompliance with the gender-identity athletics participation rule, which is consistent with state law, violates the Spending Clause, is ultra vires, and exceeds the Government's authority.

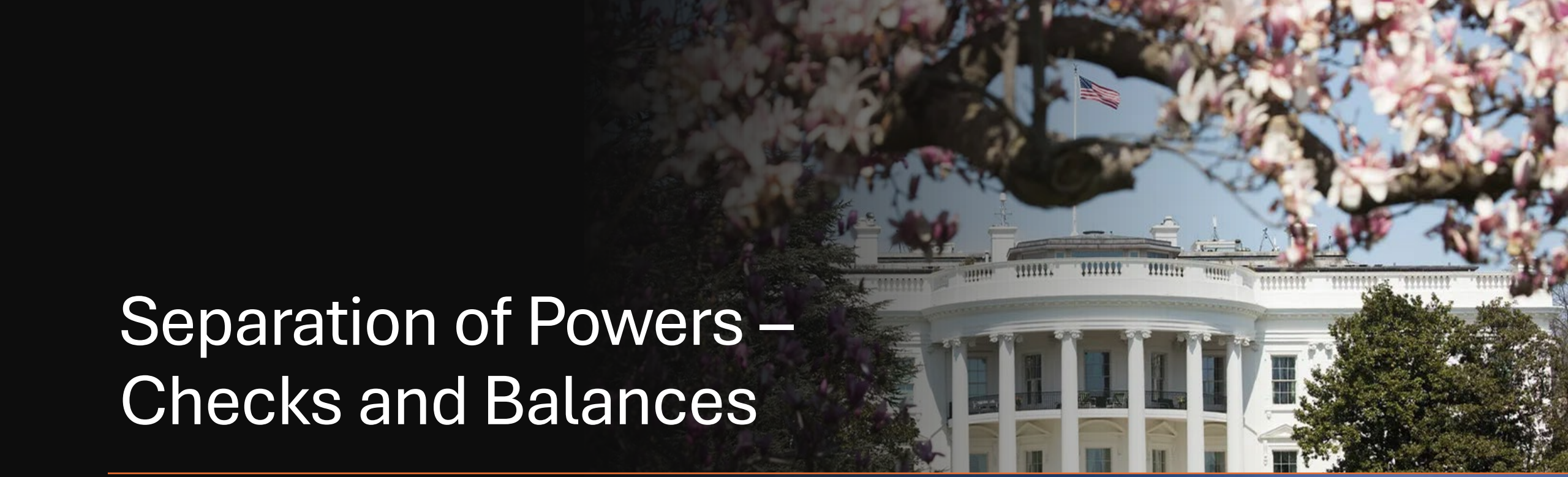
State of Minnesota v. Trump (D. Minn. filed 4/22/25)

State of Minnesota AG preemptively challenges anticipated enforcement by the Trump administration against Minnesota based on its enforcement activity against Maine.

What you should know:

- Until the Supreme Court rules NEXT TERM on how the Equal Protection Clause and/or Title IX applies to gender identity, federal law is unsettled on this issue.
- The 2020 Title IX Regulations are considered effective. They do not mandate athletic participation/intimate spaces use according to GI, but many state laws address this.
- Consult with your attorney about legal standards in your federal circuit. Federal appellate courts have ruled differently on TIX and E.P. with regard to “sex”-based discrimination in different contexts.
- *Skrmetti* did not address gender identity in the school context.
- The issue is a priority for the administration.

Separation of Powers – Checks and Balances



Recent Executive Actions Challenged in Federal Courts

- Executive Orders Affecting K-12 Education
  - Ending and fighting DEI programs
  - Recognizing sex based only on biology
  - Ending and fighting biological male participation in female sports and spaces
  - Ending birthright citizenship for children of undocumented or temporarily-present mother and non-citizen/permanent resident father
- Mass Reductions-in-Force in Agencies
- **Funding Reductions, Withdrawals, Reviews and Terminations**
- Agency Rulemaking and Guidance
  - HHS -- Interpreting Head Start as a “federal public benefit” inaccessible to undocumented immigrants under the PRWORA

SCOTUS stayed injunctions issued by lower courts

April 4 –5-4 ruling allowed the Administration to terminate immediately more than 100 TQP and SEED grants totaling $65 million while the litigation challenging that termination continues in the D. Mass. court.

April 8 – 7-2 ruling allowed mass layoffs of 16,000 federal employees to go forward while the N.S. Cal. court's injunction is appealed.

July 8 – 8-1 ruling allowed layoffs in 19 agencies to go forward while the Executive Order and OMB/OPM memos were challenged in lower courts.

July 14 – 6-3 ruling allowed ED RIFs and EO dismantling the Department to go forward while litigation challenging those actions continues.

McMahon v. New York, 606 U.S. __ (July 14, 2025)

A judge in the District Court of Massachusetts issued injunctions in two cases invalidating and stopping Reductions in Force at the Department of Education and the Executive Order calling for the Department's dismantling.

The First Circuit denied a motions for stay pending appeal.

On June 6, the Trump Administration filed an emergency application with the Supreme Court asking it to stay the injunction in this case, brought initially by the state of New York and other states.

The Court's July 14 ruling grants the application for stay, meaning the injunction is stayed while the litigation challenging the administration's actions continues.

McMahon v. New York, 606 U.S. __ (July 14, 2025)

Justice Sotomayor wrote a vigorous dissent joined by Justices Kagan and Jackson denouncing the Court's decision: "The President thus lacks unilateral authority to close a Cabinet-level agency. Congress created the Department, and only Congress can abolish it. The President, too, may not refuse to carry out statutorily mandated functions assigned to the Department, for he must "take Care that the Laws be faithfully executed." Art. II, §3. …

"When the Executive publicly announces its intent to break the law, and then executes on that promise, it is the Judiciary's duty to check that lawlessness, not expedite it." Justice Sotomayor wrote. "[The] decision is indefensible. It hands the Executive the power to repeal statutes by firing all those necessary to carry them out. The majority is either willfully blind to the implications of its ruling or naive, but either way the threat to our Constitution's separation of powers is grave."

Trump v. CASA, Inc., 606 U.S. __ (June 27, 2025)

6-3 opinion authored by Justice Barrett

- Traditionally, courts issued injunctions prohibiting executive officials from enforcing a challenged law or policy only against the plaintiffs in the lawsuit. “The injunctions before us today reflect a more recent development: district courts asserting the power to prohibit enforcement of a law or policy against *anyone*.”
- These **“universal injunctions”—likely exceed the equitable authority Congress has granted to federal courts.**
- "[F]ederal courts do not exercise general oversight of the Executive Branch; they resolve cases and controversies consistent with the authority Congress has given them. When a court concludes that the Executive Branch has acted unlawfully, the answer is not for the court to exceed its power, too."

New York v. U.S. Dept. of Justice, No. 1:25CV00345 (D. R.I. filed July 21, 2025)

20 states (AZ, CA, CO, CT, HI, IL, ME, MA, MS, MI, MN, NV, NJ, NM, NY, OR, RI, VT, WA, WI) and DC sue the U.S. Dept. of Justice and the AG, plus the U.S. Dept.s of HHS, Ed., and Labor and their Secretaries.

They allege that the administration's interpretation of the Personal Responsibility and Work Opportunity Reconciliation Act to reclassify federally funded services as "federal public benefits" inaccessible to undocumented immigrants violates the APA and the Spending Clause.

The government defendants agreed to hold off enforcing the policy in the Plaintiff states at least until September 10, 2025, and not to apply the policy retroactively in those states

What you should know:

- Executive actions are being challenged in courts, and courts are wrestling with complex legal arguments about the limits of Executive power.
- After *Trump v. CASA*, District Court judges will have to limit preliminary injunctions to be "no broader than necessary to provide complete relief to each plaintiff with standing to sue." But there are other routes litigants are using.
  - Administrative Procedure Act
  - Class Actions
- **SCOTUS' ruling in *McMahon v. New York* allows the Trump Administration to continue with the RIFs and reassigning portions of the Department's statutory obligations to other departments while the litigation challenging those actions proceeds.**

SCOTUS Says No

Petition Denied: Student 1A Free Speech – Dress Code

***L.M. v. Town of Middleborough, Mass.*, 103 F.4th 854 (1st Cir. 2024), petition denied May 28, 2024**

Student sent home for wearing “There are Only Two Genders” and “There are Only [Censored] Genders” shirts in his middle school. He challenged the discipline based on First Amendment free speech rights. The student argued that the shirt was meant to be a statement of belief, which was contrary to the pervading orthodoxy promoted by the school to support all students’ gender identity preferences.

The district court upheld the discipline under Tinker’s “rights of others” prong. The First Circuit affirmed, but on slightly different grounds.

Petition Denied: Student 1A Free Speech – Dress Code

First Circuit decision (ME, MA, NH, PR, RI) in favor of the school district stands:

Tinker permits school officials to regulate passive and silently expressed messages by students at school that target no specific student if:

1) **the expression is reasonably interpreted to demean one of those characteristics of personal identity**, given the common understanding that such characteristics are "unalterable or otherwise deeply rooted" and that demeaning them "strike[s] a person at the core of his being,"; **and**

2) **the demeaning message is reasonably forecasted to "poison the educational atmosphere"** due to its serious negative psychological impact on students with the demeaned characteristic and thereby lead to "symptoms of a sick school -- symptoms therefore of substantial disruption

Petition Denied: Teacher 1A Free Speech – Social Media

***MacRae v. Matos*, 106 F.4th 122 (1st Cir. 2024), *cert. denied* June 30, 2025**

- School district terminated teacher based on six allegedly controversial memes posted to her personal TikTok account before she was hired.
- MacRae sued the school district based on alleged violation of her First Amendment Free Speech rights. The district court granted summary judgment to the district.
- First Circuit decision (ME, MA, NH, PR, RI) stands: The *Garcetti* test applies. MacRae spoke as a citizen on a matter of public concern and the memes were a substantial and motivating factor behind the termination decision. BUT, when the court balanced MacRae's First Amendment interest and the district's interest in preventing disruption, the latter was more weighty. "[T]here is ample evidence to conclude that Defendants were reasonably concerned disruption would erupt," as it had in a neighboring town.

Petition Denied: Student Harassment based on race? Or political views?

***B.W. v. Austin Independent School District*, 121 F.4th 1066 (5th Cir. 2024), cert. denied June 30, 2025**

Student who supports Trump and wore MAGA hat on school trip alleged TVI violations. The district court dismissed the complaint, and a Fifth Circuit panel affirmed. The en banc Fifth Circuit vacated the panel's decision, then split evenly, so the district court's decision stands.

Concurring judges explained: The student's allegations were conclusory as to how AISD had notice of harassment or discrimination *based on race*, though AISD certainly was apprised that B.W. was harassed due to his conservative political views. B.W. did not allege harassment based on race that was "so severe, pervasive, and objectively offensive that it can be said to deprive him of access to the educational opportunities or benefits provided by the school."

Resources

- NSAA Tracking Chart: Challenges to Executive Actions related to K-12 public education and law firms (NSAA members)
- Holland and Knight: Trump's Executive Orders: Updates and Summaries
- EdWeek: OCR investigations; Litigation Challenging Education-Related Actions by Trump Administration
- Chalk and Gavel podcast, https://www.chalkandgavel.com/

Thank you!

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This presentation is intended to provide the best information available at the time. Many of the issues discussed are evolving quickly, with court rulings and/or executive actions occurring nearly every day. It is not intended to be an evergreen representation of the law beyond the presentation date.

This presentation addresses federal legal issues affecting public education. Much of the legal authority affecting public schools arises at the state level, and local policy differs dramatically from district to district. The presentation is NOT INTENDED TO ADDRESS STATE OR LOCAL LAW, REGULATIONS, OR POLICY.

The presentation, including any statement, summary, quotation, or image are informational and NOT INTENDED AS LEGAL ADVICE.

Please seek legal advice from your school attorney.