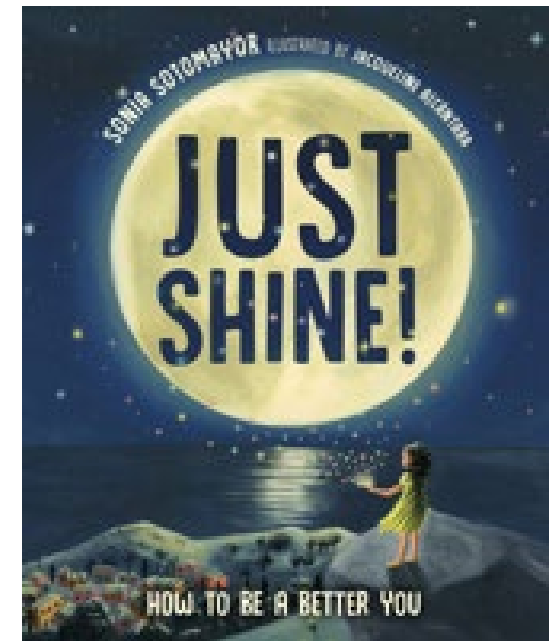
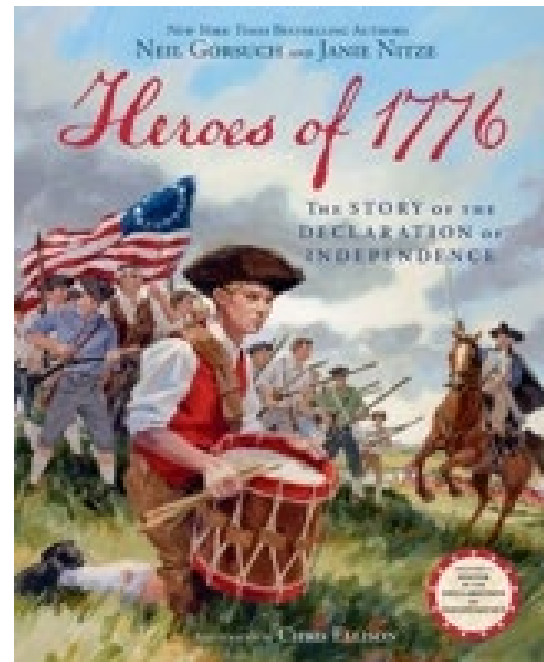
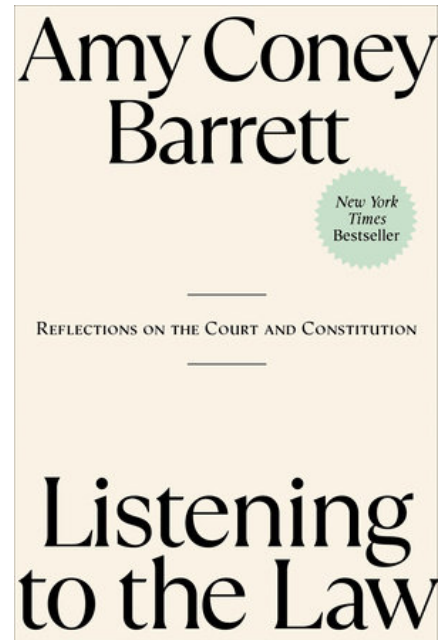
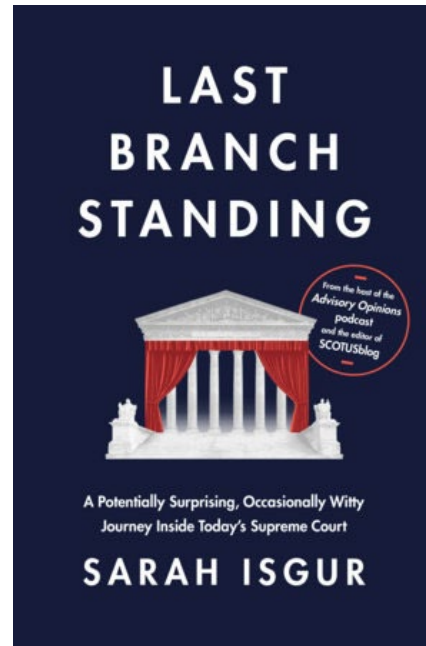


Federal Rights, State Responsibility, Local Decision-Making

SCSBA SCHOOL LAW CONFERENCE

AUGUST 29, 2026

SONJA TRAINOR, EXECUTIVE DIRECTOR, NATIONAL SCHOOL ATTORNEYS ASSOCIATION



Recently released

Who gets to decide?



I. School Scenarios



II. Branch Balance: Judicial Power



III. SCOTUS October 2025 Term



IV. Looking ahead to OT2026



School Scenarios

Summer Reading List

Arranged by Guided Reading Level

These books are available at many public libraries as well as in bookstores. Reading over the summer can help your child maintain or improve his or her reading ability.

READ



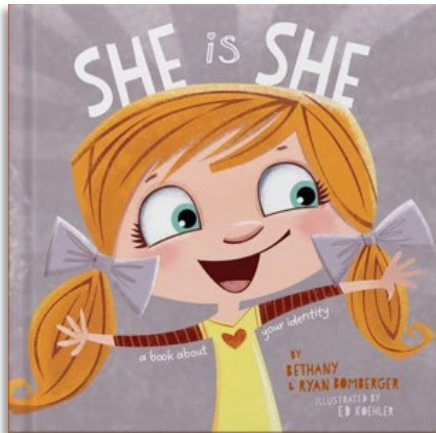
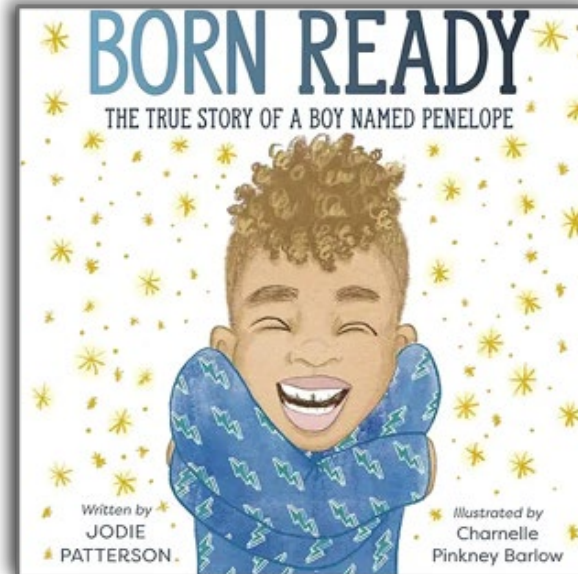
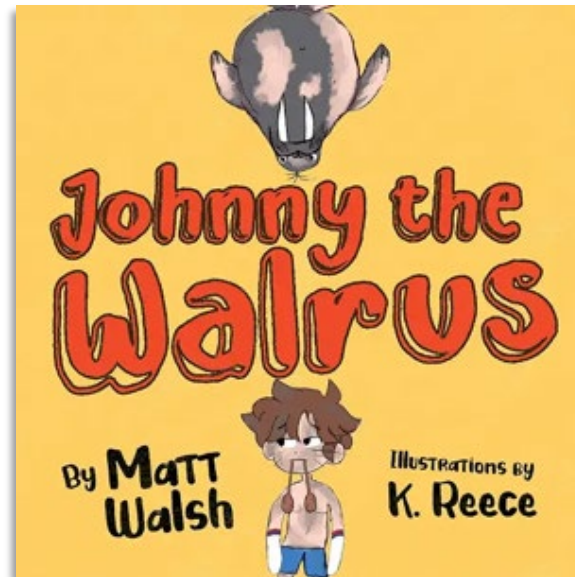
MCPS Reading Targets Text Level Chart: K-5

Grade Level	End of First Quarter	End of Second Quarter	End of Third Quarter	End of Fourth Quarter
Kindergarten	(Not Applicable)	Level 1 (A)	Level 2-3 (B-C)	Level 4 (C)
First Grade	Level 5-7 (D-E)	Level 8-11 (E-G)	Level 12-15 (H-I)	Level 16-17 (I)
Second Grade	Level J (17)	Level K (18)	Level L (19)	Level M (20)
Third Grade	Level M	Level N	Level O	Level P
Fourth Grade	Level Q-R		Level S-T	
Fifth Grade	Level T-U		Level V-W	

Reading curriculum

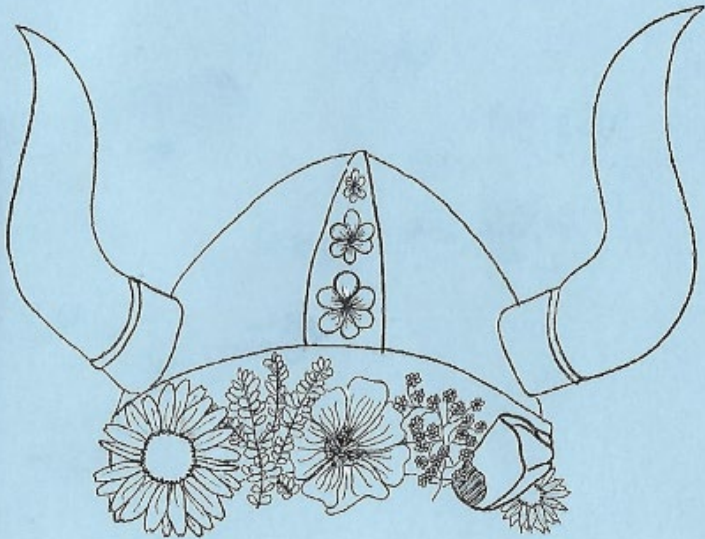
Reading curriculum with LGBTQ+ favorable/unfavorable themes?

Employee displays? Parent opt-out?



Walt Whitman High School Clubs Night

2019-2020



High School student clubs

High school student-run club rule: no political/religious messaging?

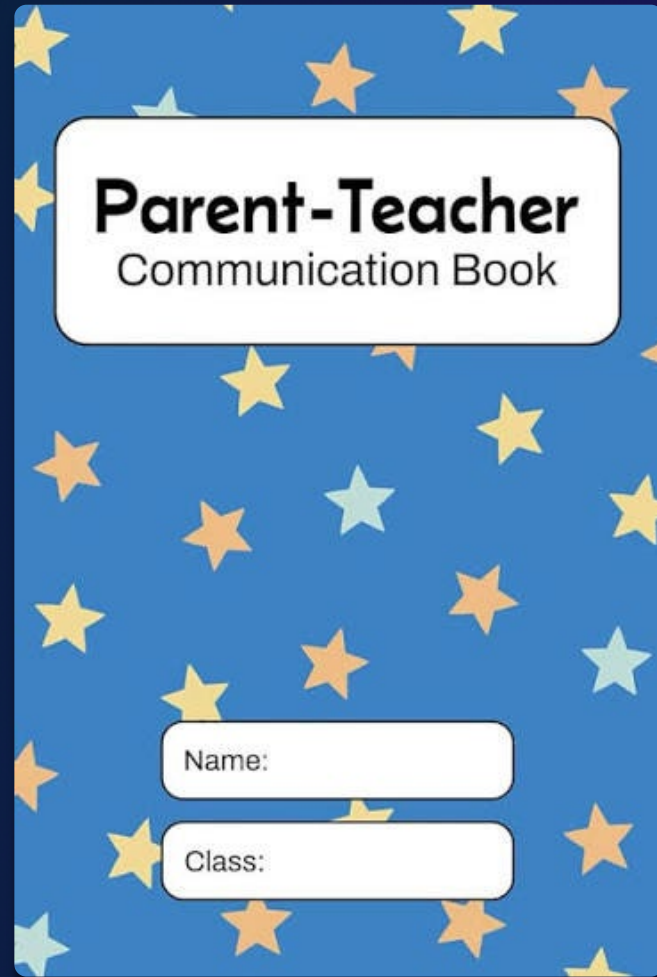


STUDENTS FOR LIFE
OF AMERICA



GSA
NETWORK





District-Parent Communications

Whether schools *must* disclose a student's gender identity at school to the student's parent?





Organizing athletic teams

Whether a state may require eligibility for girls' sports teams base on biological sex?





Branch Balance: The Power of the Judiciary

Who was supposed to decide what?



ARTICLE I

Elected



ARTICLE II

Elected



ARTICLE III

Life tenure

The Founders' vision – limited powers



ARTICLE I

Section 1: Congress

*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.*

The Founders' vision – limited powers



ARTICLE II

Section 1

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

The Founders' vision – limited powers

Section 1



ARTICLE III

*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. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.*

The Founders' vision – limited powers



ARTICLE VI

*This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the **supreme Law of the Land**; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*

The Senators and Representatives . . . , **and the Members of the several State Legislatures, and all executive and judicial Officers,** both of the United States and **of the several States**, shall be bound by Oath or Affirmation, to support this Constitution;

▶ “It’s my job to call balls and strikes, and not to pitch or bat.”





What about public education?

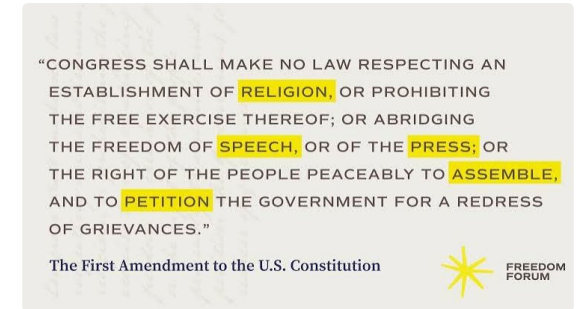
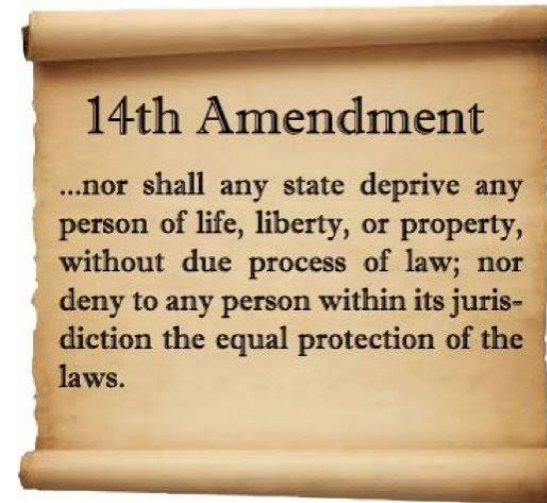
- ▶ Constitution is mute.
- ▶ Founders assumed that educating citizens would be a core responsibility of state governments.
- ▶ Congress reinforced that expectation in the Northwest Ordinance. States entering/reentering the Union were required to encourage “schools and the means of education.”
- ▶ Local school district make nearly all day-to-day decisions.

“THE GENERAL ASSEMBLY SHALL PROVIDE FOR THE MAINTENANCE AND SUPPORT OF A SYSTEM OF FREE PUBLIC SCHOOLS OPEN TO ALL CHILDREN IN THE STATE AND SHALL ESTABLISH, ORGANIZE AND SUPPORT SUCH OTHER PUBLIC INSTITUTIONS OF LEARNING, AS MAY BE DESIRABLE.”

SC CONST. ART. XI, § 3



Federal Law and Public Education



Federal Law and Public Education



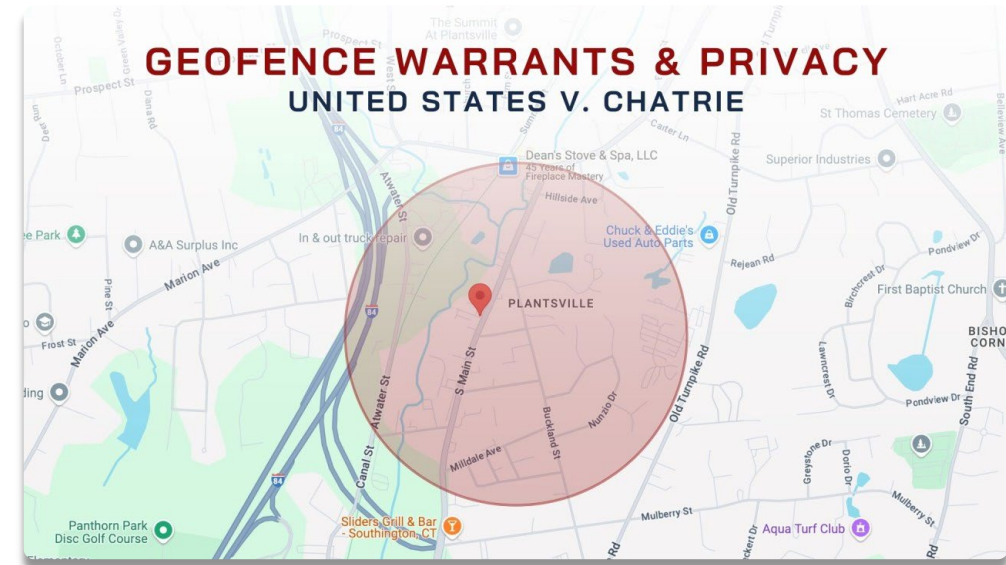
October
Term 2025

Police Acquiring Location Data

***Chatrie v. United States*, 609 U.S. ____ (June 29, 2026)(6-3, Gorsuch concurring)**

Justice Kagan wrote for the Court, joined by CJ, Sotomayor, Kavanaugh and Jackson

- ▶ When law enforcement officials used a “geofence warrant” – a warrant that instructing Google to provide location data for cellphone users who were near a particular place during a specific time period – to obtain evidence used to convict a Virginia man of a 2019 bank robbery, they conducted a “search” for purposes of the Fourth Amendment.
- ▶ Remanded back to the lower court for it to consider whether, as the Fourth Amendment requires, the search was “reasonable.”





Federal Right

- ▶ 4 Am. - The Constitution protects some/all data about a person's location. **Police** intrude on that constitutionally protected interest when they demand the information—even though for only a limited time, and from a third-party tech company.

State Responsibility

- ▶ State may have stronger privacy protections, but may not have weaker.

Local Decision-making

- ▶ School districts can decide whether to address tracking functionality in policies/contracts:
 - ▶ Tech tools to monitor student social media, email, and schoolwork on school-owned devices
 - ▶ Student discipline investigations
 - ▶ Residency investigations



LAW & COURTS

Supreme Court's gender identity ruling leaves schools seeking clarity



School Cases

Mirabelli v. Bonta, 607 U.S. 492 (March 2, 2026) (6-3)

- ▶ California State Department of Education issued guidance to school districts requiring policies that prohibited school staff from revealing information about a child's gender identity at school to the parents without the child's consent – at any age. Many school districts adopted policies consistent with that position.
- ▶ Teachers and parents filed class actions suits against state officials challenging this policy.
 - ▶ Teachers claimed violation of Free Speech and Free Exercise rights
 - ▶ Parents claimed violation of Free Exercise and Parent Right to make decisions about their children's education, medical care and religious training



Remember *Mahmoud v. Taylor* (2025)?

“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.

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.



Mirabelli v. Bonta

California district court:

The school district's policy requiring staff to NOT inform parents of a child's gender expression at school substantially interferes with two rights of parents:

The First Amendment Free Exercise right to direct the religious upbringing of their children' under the *Mahmoud* decision (2025); and

The Fourteenth Amendment parental right to be informed about the gender identity expressed within the schoolhouse gate of one's child.

*"California's education policymakers may be experts on primary and secondary education but they would not receive top grades as students of Constitutional Law. They misapprehend the **supremacy of federal constitutional rights.**"*



Mirabelli v. Bonta

Mirabelli v. Bonta, 607 U.S. 492 (March 2, 2026)(6-3)

- ▶ The U.S. Court of Appeals for the Ninth Circuit reversed and halted the district court's injunction after finding that the district court certified the class improperly and read *Mahmoud* too broadly.
- ▶ The parents and teachers filed an emergency petition to hear the case.



Mirabelli v. Bonta

Parents challenging California's nondisclosure, or "parental exclusion" rule were likely to succeed on their 1st Am. Free Exercise and 14th Am. parent rights claims.

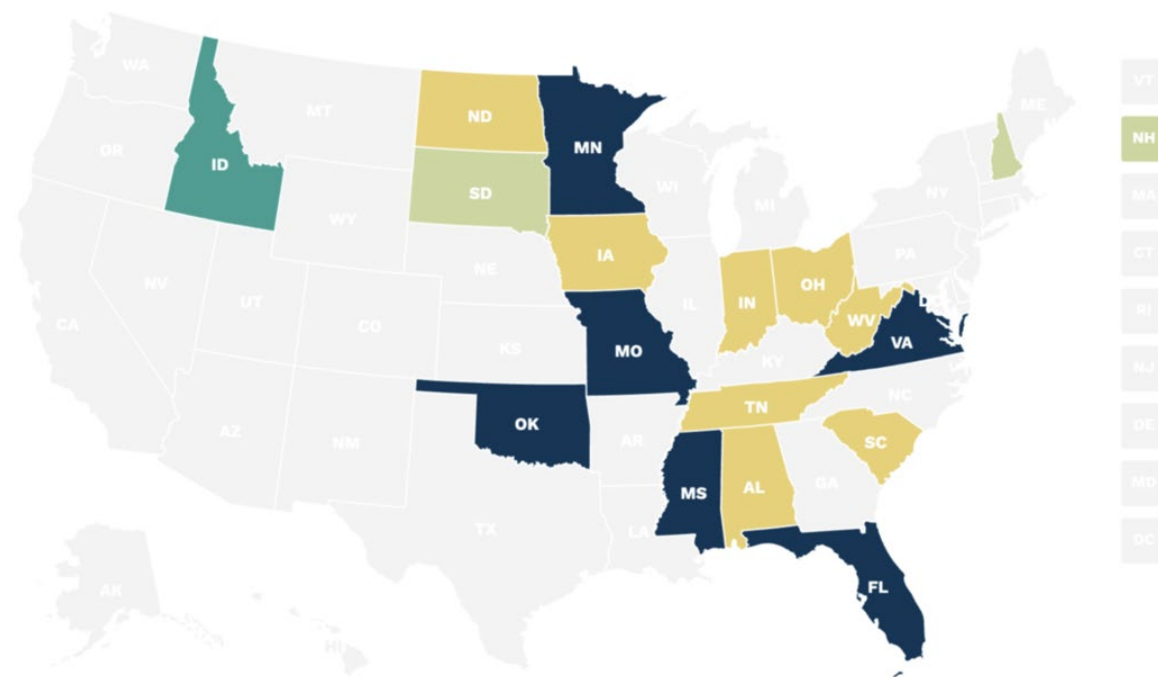
Neither states nor schools may restrict those rights absent a compelling/important interest that was not present in this case.

The Supreme Court reinstated the injunction issued by the district court in favor of the parents, but declined to reinstate the injunction in favor of the objecting teachers.



Which states had bills addressing parental notification requirements for student gender identity in 2026?

■ Introduced ■ Passed one or both chambers ■ Enacted ■ State already had this law



Source: MultiState. Data as of April 28, 2026. South Carolina's House passed legislation in 2026 reinforcing prior disclosure requirements.



Federal Right

- ▶ 1A – The Constitution protects the parental right to raise children consistent with **sincerely held religious beliefs**, and the state interest in protecting student privacy, without more facts showing potential harm, is not sufficiently compelling to overcome that right.
- ▶ 14A – The Constitution protects parents' primary authority over children's **upbringing and education**, and parents' right not to be shut out of participation in decisions regarding their children's mental health.

State Responsibility

- ▶ State law that require disclosure to parents in similar situations are likely safe from challenge.
- ▶ State laws that forbid disclosure to parents in similar situations are subject to challenge.
- ▶ State laws on student mental health records – next?

Local Decision-making

- ▶ School districts should review parent communication policies, but still have much discretion in how/when staff communicates with parents.

*West Virginia v. B.P.J.; Little v. Hecox, 609 U.S. ____
(June 30, 2026) (9-0;6-3)*

Justice Kavanaugh wrote for the Court:

“Over the past several years, some biological males who identify as female have sought to play various women’s and girls’ sports . . .”



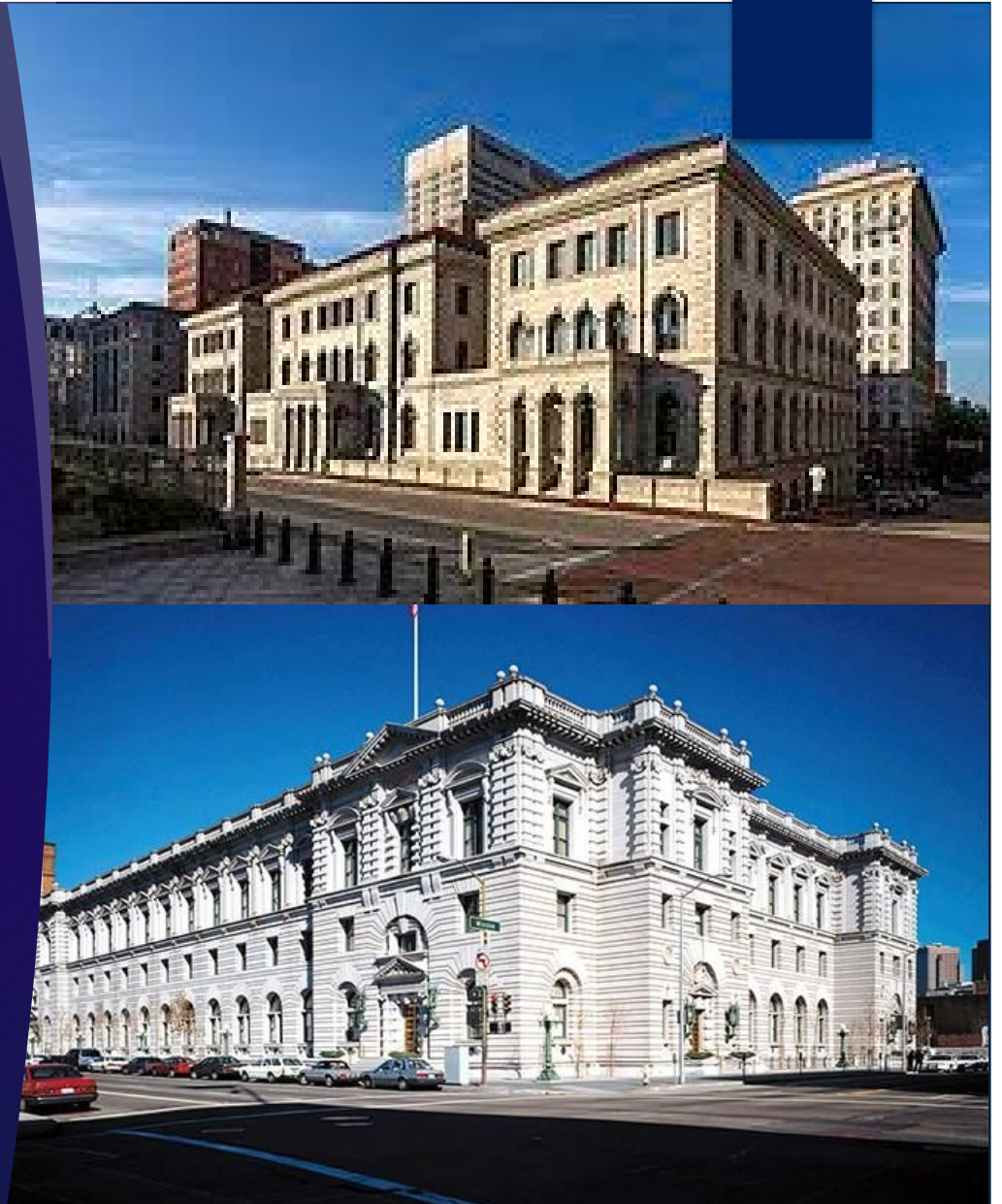
West Virginia v. B.P.J.; Little v. Hecox, 609 U.S. ____ (June 30, 2026) (9-0;6-3)

- ▶ Hecox and B.P.J., born male who have transitioned to female, sought to play sports on female track/cross country teams.
 - ▶ Hecox – higher ed
 - ▶ B.P.J. – K-12
- ▶ Idaho and West Virginia each had a law prohibiting those who are biologically male from participating on girls'/women's teams.
- ▶ B.P.J. transitioned socially in third grade, took puberty blockers shortly thereafter, and never went through male puberty.



West Virginia v. B.P.J.; Little v. Hecox, 609 U.S. ____ (June 30, 2026) (9-0;6-3)

- ▶ B.P.J. challenged the West Virginia law under Title IX and the Equal Protection Clause of the 14th Amendment. The U. S. District Court for the Southern District of West Virginia granted summary judgment for the State on both claims.
- ▶ On appeal, the U. S. Court of Appeals for the Fourth Circuit reversed on the Title IX issue and remanded for further fact-finding on the Equal Protection Clause claim.
- ▶ Hecox challenged the Idaho law under Equal Protection. The district court granted a preliminary injunction barring enforcement of the ID law, and the U. S. Court of Appeals for the Ninth Circuit affirmed.



West Virginia v. B.P.J.; Little v. Hecox

(1) Title IX permits West Virginia to limit women's and girls' sports teams to biological females;

(2) The Equal Protection Clause of the Fourteenth Amendment allows both WV and ID to do the same.

WV and ID may maintain women's and girls' sports for biological females. They may determine eligibility for women's and girls' sports based on biological sex. The Constitution and Title IX do not require an overhaul of women's and girls' sports throughout America.



West Virginia v. B.P.J.; Little v. Hecox

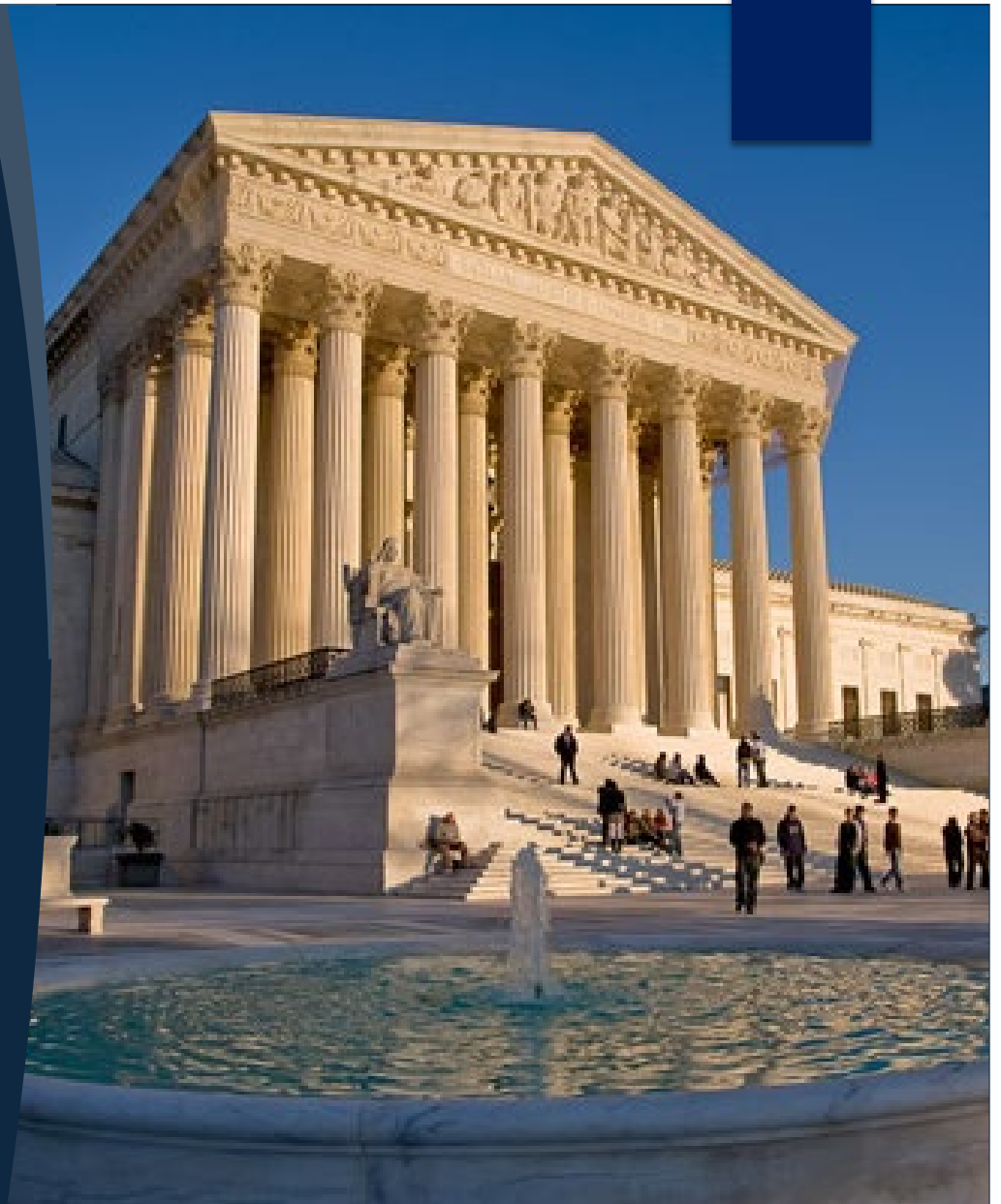
SCOTUS did NOT decide :

- ▶ **Whether, under Title IX and the Equal Protection Clause, schools may allow** biological males who identify as female to participate on girls' and women's sports teams.
- ▶ Participation by biological females on male or co-ed sports teams.
- ▶ Whether a law's transgender or gender-identity should be analyzed using "heightened scrutiny," as the Court uses for sex-based classifications.



West Virginia v. B.P.J.; Little v. Hecox

- ▶ In so ruling, we emphasize one last point. Most of the biological female and transgender student-athletes who are involved in transgender sports disputes around the country are teenagers or in their early twenties. Those student-athletes want to play sports. Their desire to warrants respect. No student-athlete on either side of the issue, whether a biological female or transgender, deserves to be ostracized or vilified.



Federal Right

- ▶ Title IX allows states to designate participation in female sports teams by biological sex.
- ▶ 14A Equal Protection – The Constitution allows a state to designate participation in female sports teams by biological sex because the restriction is substantially related to the important state interests of preserving safety and fair competition.

State Responsibility

- ▶ State laws that restrict participation on girls' /women's sports teams to by biological sex may continue to do so.
- ▶ WE DON'T KNOW from SCOTUS whether state laws that allow or require participation on girls' /women's teams based on gender identity may do so. Some lower courts have ruled.

Local Decision-making

- ▶ Consider: State law, Federal funding exposure under Title IX, Local nondiscrimination requirements, Student privacy obligations – FERPA

West Virginia v. B.P.J. left for another day....

Bathrooms

Grimm v. Gloucester County School Board, 972 F.3d 586 (4th Cir. 2020) cert denied June 28, 2021 – ON SHAKY GROUND?

- ▶ Holding a school board's policy restricting restroom use by biological sex constituted sex-based discrimination as to Grimm and was subject to intermediate scrutiny.
- ▶ Appeals court:
 - ▶ Decided that Grimm was subjected to sex discrimination because he was viewed as failing to conform to the sex stereotypes.
 - ▶ Rejected the Board's arguments that Grimm was treated similarly to others.
 - ▶ Determined that Grimm was **similarly situated to other boys**, but was excluded from using the boys restroom facilities based on his sex-assigned-at-birth. Adopting the Board's framing of Grimm's equal protection claim here would only vindicate the Board's own misconceptions, which themselves reflect "stereotypic notions."

West Virginia v. B.P.J. left for another day . . .

Bathrooms

Whitaker v. Kenosha Unified Sch. Dist. No. 1 Board of Education, 858 F.3d 1034 (7th Cir. 2017) – ON SHAKY GROUND?

- ▶ Holding that a student was likely to succeed on Title IX and EP claims that school board's policy restricting restroom use by sex marker on birth certificate failed intermediate scrutiny.
- ▶ Appeals court:
 - ▶ Decided that *A policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX.*
 - ▶ Decided that the school board had not proved a convincing "important interest" that would satisfy intermediate scrutiny. It's privacy argument was *based upon sheer conjecture and abstraction*, and it is unclear that the sex marker on a birth certificate can even be used as a true proxy for an individual's biological sex.

West Virginia v. B.P.J. left for another day . . .

Locker Rooms

Pronouns

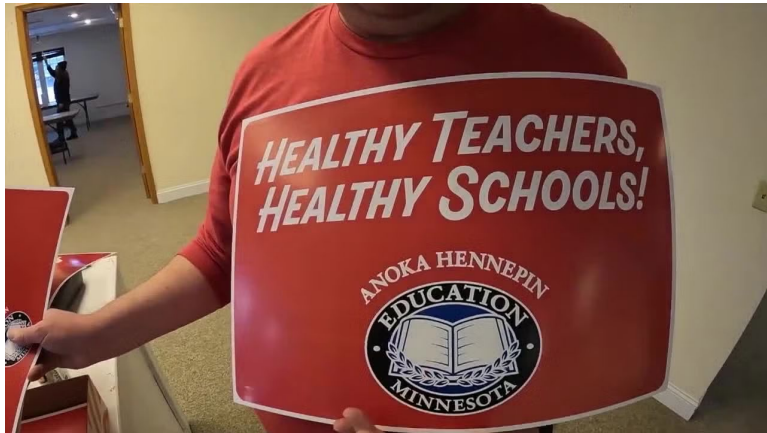
Parent Notification

Staff rights



Certiorari
denied

SCOTUS will not decide . . .

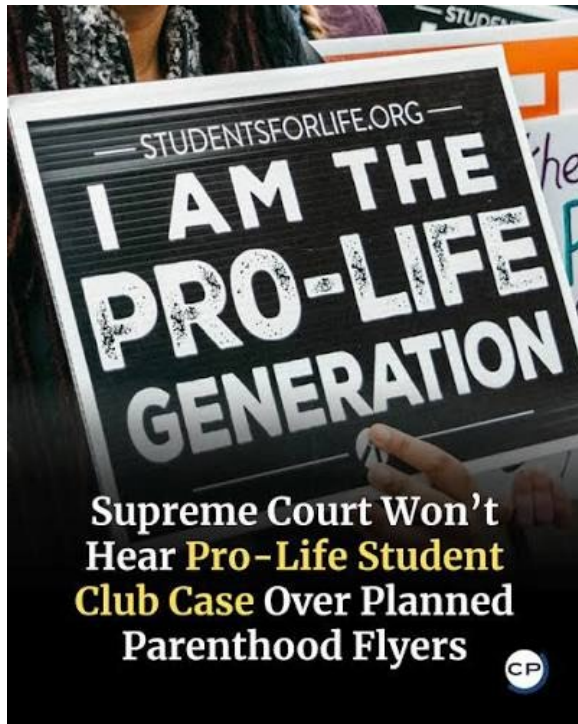


. . . **whether school district taxpayers** may sue a school district and teachers union to challenge a union leave arrangement because they don't want the school district to subsidize union speech.

The Eighth Circuit Court of Appeals said YES, even though there was no net expenditure by the district, nor were the taxpayer's dollars traceable to the payments for substitutes. NSAA filed an amicus brief urging the Supreme Court to accept the case.

***Anoka Hennepin Education Minnesota v. Huizenga*, 149 F.4th 990 (8th Cir. 2025), cert. denied (U.S. June 22, 2026).**

SCOTUS will not decide . . .



. . . . whether a school's decision to temporarily suspend a club based on rule violations re: political flyers and parent involvement should be considered a school-sponsored speech scenario or a student-speech scenario.

The Seventh Circuit Court of Appeals said this was school-sponsored speech, so the school could suspend the Club without implicating the student's First Amendment free speech rights.

E.D. by Duell v. Noblesville Sch. Dist., 151 F.4th 907 (7th Cir. 2025), cert. denied (U.S. June 23, 2026).

SCOTUS will not decide . . .

. . . . whether parents could bring a lawsuit to challenge a school's policy or practice of speaking about/encouraging a student to express a different gender identity at school, without the parents' knowledge or involvement.

The First Circuit Court of Appeals ruled that the "parents cannot invoke the Constitution's Due Process Clause to 'create a preferred educational experience for their child in public school.'"

***Foote v. Ludlow School Committee*, 128 F.4th 336 (1st Cir. 2025), cert. denied (U.S. April 20, 2026)**

The Eleventh Circuit Court of Appeals ruled that the school may have infringed upon the parents' fundamental rights, the parents failed to state a claim that could be litigated because the infringement did not "shock the conscience."

***Littlejohn v. School Board Leon County, Florida*, 132 F.4th 1232 (11th Cir. 2025), cert. denied (U.S. April 27, 2026)**



SCOTUS will not decide . . .



. . . . whether a school district violated a high school teacher's First Amendment free speech rights by firing her after she shared incendiary posts about protests following George Floyd's death that the district determined to be "disrespectful, demeaning of other viewpoints and racist."

The Seventh Circuit Court of Appeals said NO VIOLATION. The school's interest in avoiding disruption outweighed the teacher's right to free speech.

***Hedgepeth v. Britton*, 152 F.4th 789 (7th Cir. 2026), cert. denied, 2026 WL 1377052, U.S., May 18, 2026.**

SCOTUS will not decide . . .

. . . whether ABA therapy for autism is an educational service subject to the IDEA process, or an accommodation over which parents may sue a school district without first going through the IDEA administrative process.



The First Circuit Court of Appeals held that ABA therapy in this case is an educational service. The parents must exhaust administrative remedies through the IDEA due process procedure before filing suit.

Derek S. v. Ballston Spa Central School District, 2025 WL 3552714 (2nd Cir., Dec. 11, 2025), cert. denied, (U.S., May 18, 2026)



Looking
Ahead:
October
Term 2026

SCOTUS *will* decide . . .

. . . whether employees can sue their school employer for sex-based employment discrimination.

Eleventh Circuit Court of Appeals said NO. SCOTUS asked the SG to weigh in, SG said the Eleventh Circuit got it right, but SCOTUS should take the case to resolve the Circuit split.

Crowther v. Bd. Of Regents, Univ. System of Ga., 121 F.4th 855 (11th Cir. 2024), rehearing en banc denied, 133 F.4th 1284 (11th Cir. 2025), cert. granted, 2026 WL 1377024, U.S., May 18, 2026.



SCOTUS *will* decide . .

. . . whether Colorado may exclude a Catholic preschool from a state funding program because of its faith-based admissions policy disallowing LGBTQ+ families.

Tenth Circuit Court of Appeals said YES. The state's conditions were neutral and generally applied to every preschool, regardless of religion. State argues that religious schools are welcome to participate but are required to follow nondiscrimination laws.

***St. Mary Catholic Parish v. Roy*, 154 F.4th 752 (10th Cir. 2025), cert. granted (U.S. April 20, 2026).**

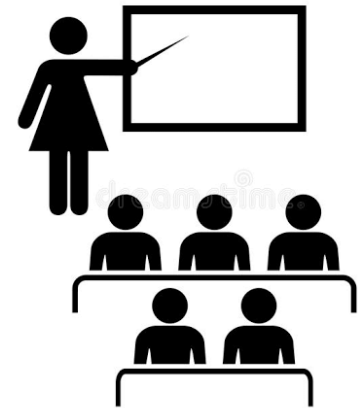


SCOTUS *has been asked* to decide . . .

. . . whether a school district policy requiring teachers to use a student's preferred pronouns and prohibiting teachers from discussing student gender identity with parents violates a teacher's Free Exercise or Free Speech rights.

The Fourth Circuit said NO. The court ruled that the policy:
(1) was neutral and generally applicable, and rationally related to the district's goals of providing a safe/nurturing environment for students so it didn't violate the teacher's Free Exercise rights; and

(2) could direct how teachers referred to students and information they shared with parents because that isn't speech as a private citizen on a matter of public concern, so it didn't violate the teacher's Free Speech rights.



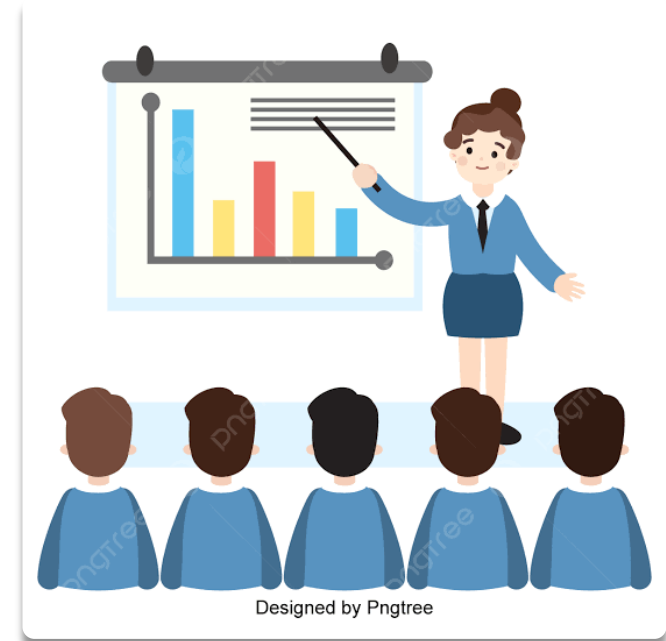
- ***Polk v. Montgomery County Public Schools***, 166 F.4th 400 (4th Cir. 2026), petition filed June 26, 2026

SCOTUS *has been asked* to decide . . .

. . . whether school staff may sue their employer school district claiming First Amendment free speech violations for requiring attendance, participation, and affirmation of understanding of, equity training.

The en banc Eighth Circuit said YES. School staff had standing to bring a 1st Am compelled speech claim against a school district resulting from (since-abandoned) DEI training.

- ***Henderson v. Springfield R-12 School District***, 163 F.4th 478 (8th Cir. 2025)

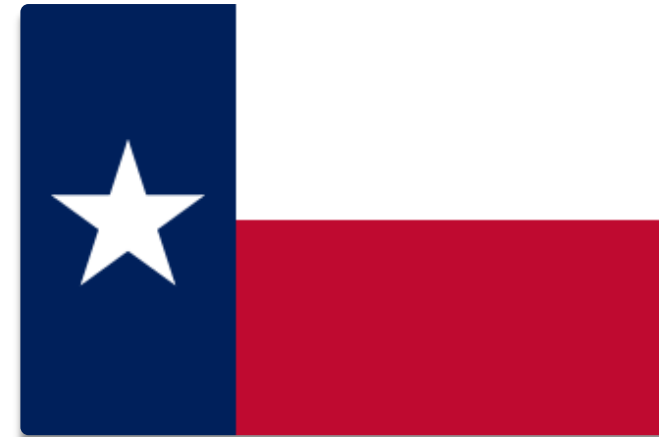


SCOTUS *has been asked* to decide . . .

. . . whether a state may require schools to display a specific version of the Ten Commandments in all classrooms without violating the First Amendment's prohibition against government establishment of religion.

The en banc Fifth Circuit said YES.

- ▶ parents challenging Texas state statute requiring posting of specific version of the Ten Commandments in public school classroom had plausibly alleged standing;
- ▶ the facial challenge was ripe;
- ▶ the statute did not bear hallmarks of founding-era establishment of religion, and thus did not facially violate Establishment Clause; and
- ▶ statute did not impose substantial burden on students', or their parents', rights to freely exercise religion.



Nathan v. Alamo Heights Independent School District, 173 F.4th 576 (5th Cir. 2026).

SCOTUS *has been asked* to decide . . .

Qualified Immunity

. . . whether a plaintiff may bring a claim in federal court claiming interference with her right to make and enforce contracts (Section 1981) based on race against a defendant(s) who is not a party to the contract; and
. . . whether a public official has to show that *liability for the alleged conduct* was not clearly established to have qualified immunity.

The Eleventh Circuit panel said YES and NO.

- ▶ Former teacher claimed years of race-based discrimination in employment, including transfer and termination, and brought multiple claims and suits.
- ▶ In this suit, she asserts that the district failed to abide by a settlement agreement in which it agreed to seek out more black teaching candidates, which was unlawful interference with her ability to contract.
- ▶ Eleventh Circuit panel said she could sue third parties who weren't part of the contract, and the officials who were sued could not claim qualified immunity because reasonable officials should have know that the alleged **conduct** was unlawful.

- ▶ ***Foster v. Echols County School District***, 169 F.4th 1291 (11th Cir. 2026)

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