Supreme Court Review
October Term 2024-25

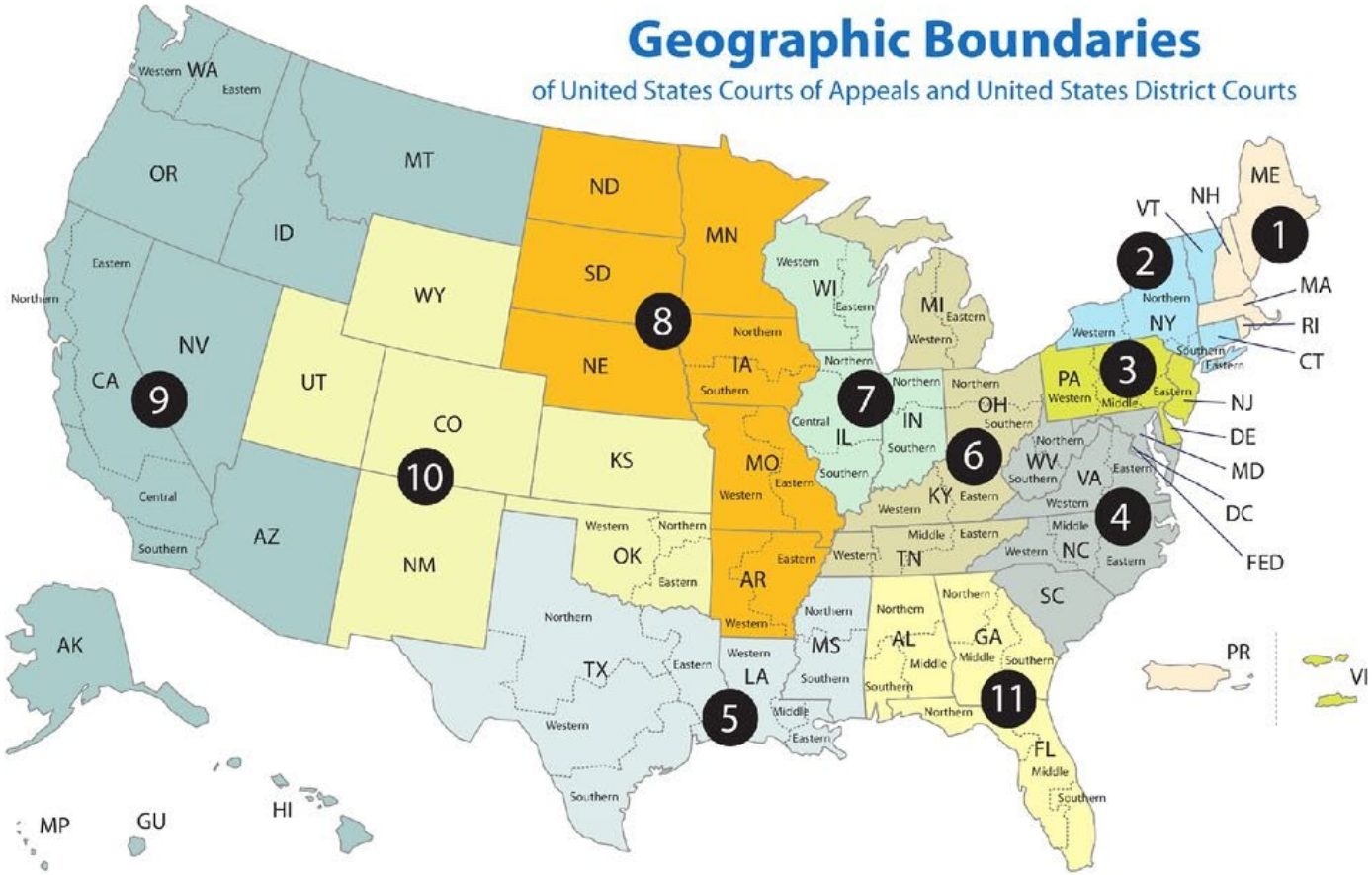
Minnesota Attorney General

September 10, 2025

Cases

- The Supreme Court issued 65 opinions this past term.
- The Court also decides cases on its so-called “shadow docket,” where emergency applications for relief are filed with the Court.
  - In those cases, the Court has to make a quick decision without full oral arguments or briefing.
  - *Noem v. Abrego Garcia* (2025) was one of those cases.
  - So was *Trump v. Casa, Inc.* (2025) (birthright citizenship).

Most of the Court's Cases Come from the United States Courts of Appeals

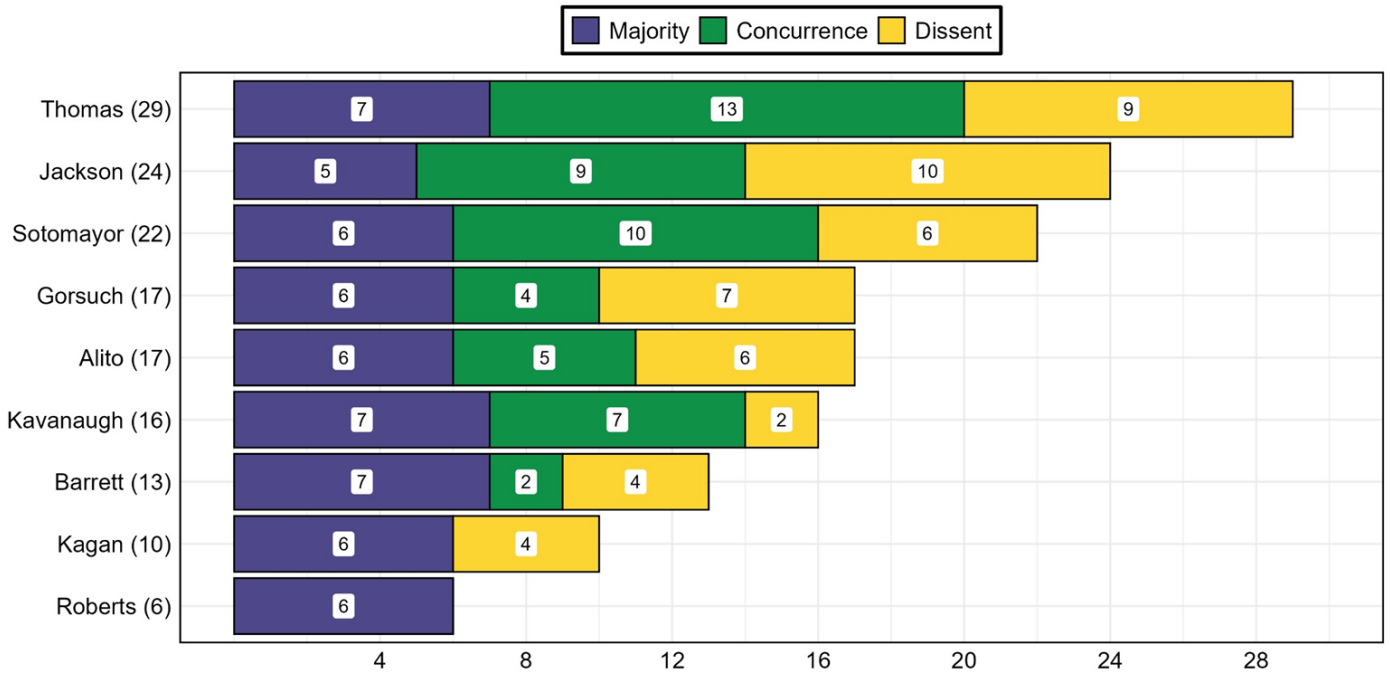


*From SCOTUSblog Stat Pack

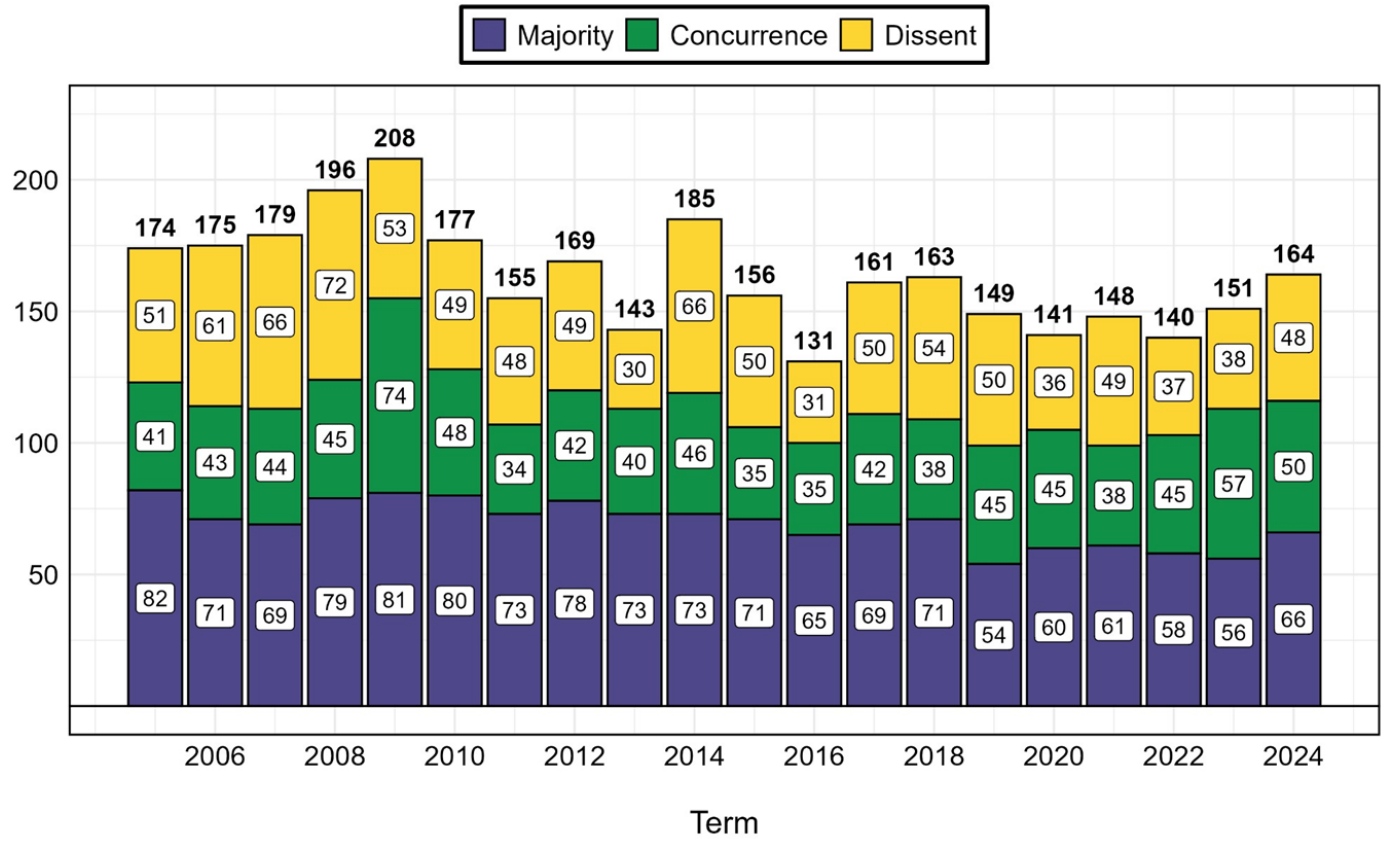
CIRCUIT SCORECARD

Court below	# of Cases	# Decided	# Affirmed	# Reversed	% Affirmed	% Reversed
1st Circuit	2	2	0	2	0%	100%
2nd Circuit	5	5	2	3	40%	60%
3rd Circuit	2	2	1	1	50%	50%
4th Circuit	8	8	0	8	0%	100%
5th Circuit	13	13	3	10	23.1%	76.9%
6th Circuit	4	4	2	2	50%	50%
7th Circuit	2	2	1	1	50%	50%
8th Circuit	2	2	1	1	50%	50%
9th Circuit	7*	4	0	4	0%	100%
10th Circuit	5	5	0	5	0%	100%
11th Circuit	4	4	2	2	50%	50%
D.C. Circuit	5	5	2	3	40%	60%
Fed. Circuit	3	3	1	2	33.3%	66.7%
Total	**62**	**59**	**15**	**44**		

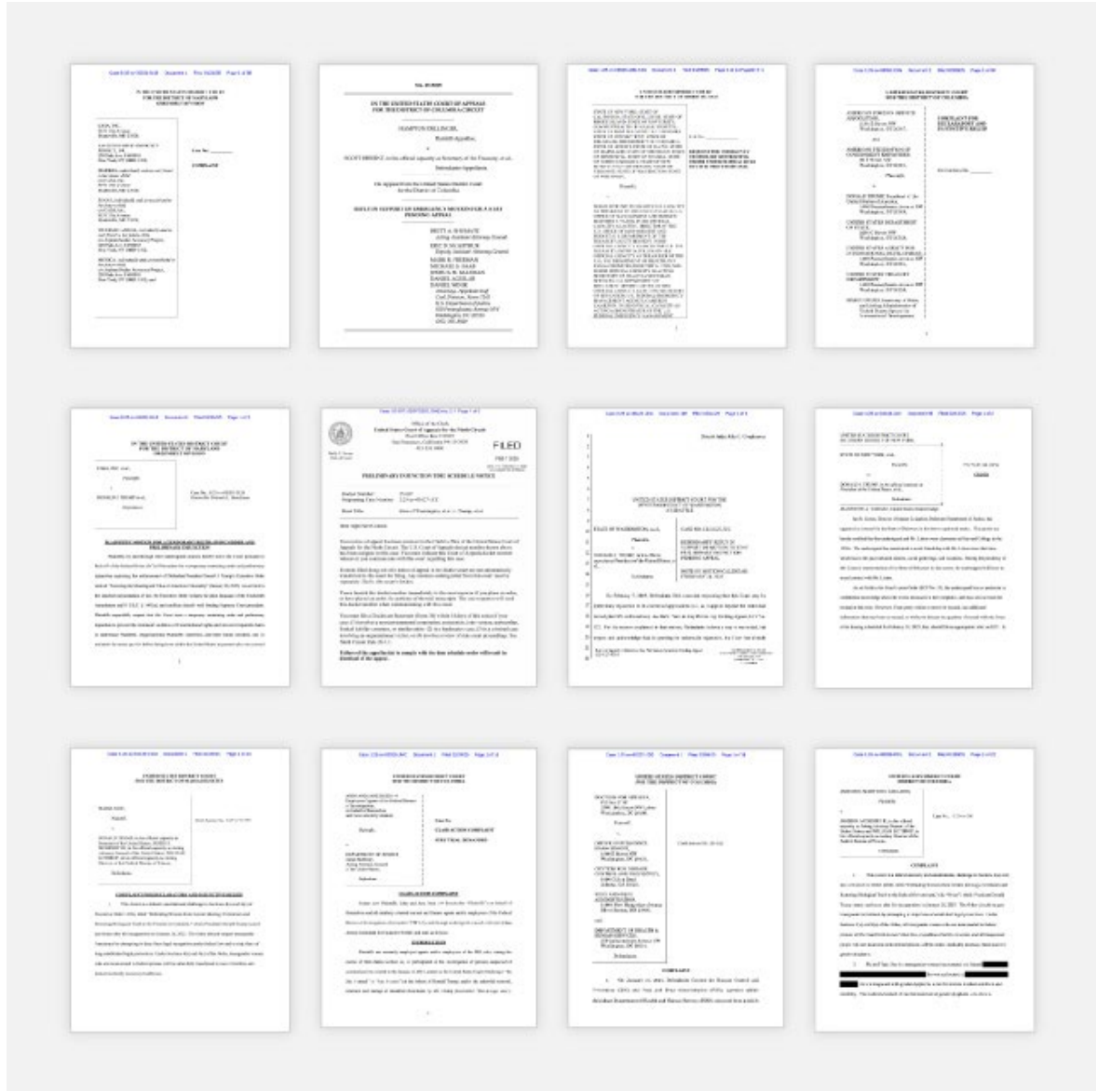
Opinions Authored By the Justices



Total Number of Opinions (not cases) By Year



The Administration's Agenda Has Prompted Numerous Lawsuits



The (Emergency) (Shadow) (Interim) Docket

October 7, 2025 – Aug. 9, 2025

- 119 emergency applications
  - Death penalty cases (47)
  - Refiled emergency applications (29) (never granted)
  - Applications involving core work
    - Judicial power cases
    - Administrative state disputes
    - First Amendment conflicts
    - Federalism questions
- The requests?
  - Typically (3/4ths of the cases), the request is to stay a lower court order.
- Success?
  - The Court granted 44% of the emergency applications.

*Taraleigh Davis, *What emergency docket actually looks like*, SCOTUS FOCUS, https://www.scotusblog.com/2025/08/what-the-supreme-court-emergency-docket-actually-looks-like/

Cases to Review

Trump v. Casa, Inc.

Tiktok, Inc. v. Garland

Free Speech Coalition v. Paxton

Mahmoud v. Taylor

Oklahoma Statewide Charter School Board v. Drummond

Ames v. Ohio Department of Youth Services

United States v. Skrmetti

Barnes v. Felix

Goldey v. Fields

Birthright Citizenship and National (Universal) Injunctions

What is Birthright Citizenship?

- The Fourteenth Amendment:
  - 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. . . .

- 8 U.S. Code § 1401: The following shall be nationals and citizens of the United States at birth:
  - (a)a person born in the United States, and subject to the jurisdiction thereof . . . .

Wong Kim Ark

which property rights have been interfered with without the owner's assent. In such cases damages for the interruption of the owner's business are allowed. Allison v. Chandler, 11 Mich. 540." In City of Detroit v. Brennan, 93 Mich. 338, 53 N. W. 525, the court reaffirmed the doctrine of the former cases, that the full measure of compensation and the injury done to the business should be allowed, and said: "The law considers the rights of the property and business carried on by the respondent as of equal consideration, and entitled to as much protection, as the right of the city to take the property and interfere with the business, and will not permit the property to be taken, and the business to be interfered with, unless an actual public necessity exists for the making of the improvement. * * * The elements of damages are: (1) The value of the property taken for the opening of the street; the injury to the works and property not taken, and left in the parcel of land from which the property is taken; (2) the injury to the business of the owner; (3) compensation for all prospective loss or injury resulting from the opening of the street, and the taking of the property for that purpose."

See, also, Railroad Co. v. Chesebro, 74 Mich. 466, 42 N. W. 69, where the court said: "An owner has a right to be indemnified for anything that he may have lost. The farming test, which is the one petitioner sought to apply, would be of no particular use in a great many cases of suburban lands. * * * The mere taking of four acres for a right of way could not be regarded, in any sensible point of view, as compensated by one-tenth of the value of the forty acres, taking acre for acre. *The damages in such a case must be such as to fully make good all that results, directly or indirectly, to the injury of the owners in the whole premises and interests affected, and not merely the strip taken." Further: "The jury here, as in all cases where no certain measure exists, must trust somewhat to their own judgment. That is one of the purposes for which juries of inquest are provided. They are expected to view the premises and use their own senses. * * * But the purpose throughout is to give all the damages which they reasonably discover, past or present, and to result, but no more. No one can read this record without seeing that the jury did not deal fully with the case. It is manifest that they gave no damages beyond what they assumed to be the price of four acres by the acre. * * * It cannot be said there is any real conflict as to the damages arising from the cutting off one part from the other of the forty acres, and this was left out altogether, unless they regarded the proofs of value wantonly, which we cannot believe." See, also, Pearsall v. Supervisors, 74 Mich. 561, 42 N. W. 77; Barnes v. Railway Co., 65 Mich. 251, 32 N. W. 426; Grand Rapids v. Grand Rapids & I. R. Co., 58 Mich. 641, 648, 26 N. W. 159; Toledo, A. A. & N. M. Ry. Co. v. Detroit, L. & N. R. Co., 62 Mich. 564, 29 N. W. 500; Commissioners of Parks & Boulevards of City of Detroit v. Chicago, D. & C. G. T. J. R. Co., 91 Mich. 291, 51 N. W. 934; Commissioners of Parks & Boulevards of City of Detroit v. Michigan Cent. R. Co., 90 Mich. 385, 51 N. W. 447; City of Grand Rapids v. Bennett, 106 Mich. 529, 64 N. W. 585.

Without referring to other matters discussed at the bar and in the elaborate brief of counsel, I place my dissent from the opinion and judgment of the court upon the ground that the trial court committed error in its charge to the jury as to the principles which should guide them in determining the just compensation to which the plaintiffs in error were entitled. The rules laid down by the supreme court of Michigan as to what was just compensation were, I think, in accord with the principles that obtain in the courts of the Union when determining the just compensation to be made for private property taken for public use.

(169 U. S. 649)

UNITED STATES v. WONG KIM ARK.

(March 28, 1898.)

No. 132.

CITIZENSHIP — CONSTRUCTION OF CONSTITUTION — COMMON LAW — FOURTEENTH AMENDMENT — INTERNATIONAL LAW — NATURALIZATION — CIVIL RIGHTS — CHILD OF CHINESE PARENTS.

1. In construing any act of legislation, whether a statute or a constitution, regard is to be had, not only to all parts of the act itself, and of any former act of the same lawmaking power of which the act is an amendment, but also to the condition and the history of the law as previously existing, and in the light of which the new act must be read and interpreted.

2. As the constitution nowhere defines the meaning of the words "citizen of the United States," except by the declaration in the fourteenth amendment that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States," resort must be had to the common law, the principles of which were familiar to the framers of the constitution.

3. Under the common law, every child born in England of alien parents, except the child of an ambassador or diplomatic agent or of an alien enemy in hostile occupation of the place where the child was born, was a natural-born subject.

4. The fourteenth amendment to the constitution, which declares that "all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the states wherein they reside," is affirmative and declaratory, intended to allay doubts and settle controversies, and is not intended to impose any new restrictions upon citizenship.

5. It affirms the ancient rule of citizenship by birth within the territory in the allegiance and under the protection of the country, including all children here born of resident aliens, except the children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies during a hostile occupation, and children of Indian tribes owing direct tribal allegiance. It includes the children of all other persons, of whatever race or color, domiciled within the United States.

6. The fourteenth amendment to the consti-

The Issue in *Wong Kim Ark*

- “[W]hether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the emperor of China, becomes at the time of his birth a citizen of the United States.”

The Holding

- Wong Kim Ark was born in the United States.
- His parents were not “employed in any diplomatic or official capacity under the Emperor of China.”
- He is automatically a citizen under the Fourteenth Amendment’s Citizenship Clause.

A Counterargument?

- Children born to persons who are not lawfully in the United States are simply not covered.

Trump v. CASA, Inc.

145 S. Ct. 2540 (2025)

EXECUTIVE ORDER: PROTECTING THE MEANING AND VALUE OF AMERICAN CITIZENSHIP (January 20, 2025)

- It is the policy of the United States that no department or agency of the United States government shall issue documents recognizing United States citizenship, or accept documents issued by State, local, or other governments or authorities purporting to recognize United States citizenship, to persons: *(1) when that person's mother was unlawfully present in the United States and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth, or (2) when that person's mother's presence in the United States was lawful but temporary, and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth*. (Emphasis added).

The Lawsuit

- The plaintiffs in the case argued that the Executive Order violated the Fourteenth Amendment and the Nationality Act.
- In three cases, federal district courts issued universal preliminary injunctions that barred various federal executive officials from applying the law to anyone in the country.
- In each case, the courts of appeals refused to stay the injunctions pending appeal.

The Key Issue is the Validity of the Universal Injunction

- When a court issues an injunction against governmental action, it will prohibit government from enforcing a law against the person seeking the injunction.
- “A universal injunction prohibits the Government from enforcing the law against *anyone*, anywhere.”

- The Court held in a 6-3 opinion (Barrett, J., writing for the Court) that the courts exceeded their authority in granting the universal injunctions.
- Justice Sotomayor (Kagan and Jackson, JJ.) dissented.
- Jackson, J., dissented separately.

The Judiciary Act of 1789

- The Court's decision rested on its interpretation of the Judiciary Act of 1789.
  - The Court did not decide whether Article III (the judicial power) of the Constitution precludes universal relief.
- The Judiciary Act of 1789 is the statute that authorizes federal courts to grant equitable relief.
- History and tradition do not support the grant of universal injunctions.
- The Court's practice has to consistently deny requests for relief extending beyond the parties to the case.
- Universal injunctions did not appear in federal court litigation until sometime in the 20th century.

The Court’s Conclusion

- “The upshot: As with most disputed issues, there are arguments on both sides. But as with most questions of law, the policy pros and cons are beside the point. Under our well-established precedent, the equitable relief available in the federal courts is that ‘traditionally accorded by courts of equity” at the time of our founding.’ “
- That authority limits relief to the parties to the litigation but does not extend to universal injunctions.

Sotomayor, J. (Kagan and Jackson, JJs) Dissenting

- “Children born in the United States and subject to its laws are United States citizens. That has been the legal rule since the founding, and it was the English rule well before then. This Court once attempted to repudiate it, holding in *Dred Scott v. Sandford*, 19 How. 393 (1857), that the children of enslaved black Americans were not citizens. To remedy that grievous error, the States passed in 1866 and Congress ratified in 1868 the Fourteenth Amendment's Citizenship Clause, which enshrined birthright citizenship in the Constitution. There it has remained, accepted and respected by Congress, by the Executive, and by this Court. Until today.”

- The injunctions in these cases were necessary to provide complete relief to the respondents.
- In equity, as the majority recognizes, “the broader and deeper the remedy the plaintiff wants, the stronger the plaintiff’s story needs to be.”
- “Here, respondents paired their respective requests for complete relief with the strongest story possible: Without such relief, an executive order that violates the Constitution, federal law, Supreme Court precedent, history, and over a century of Executive Branch practice would infringe upon their constitutional rights or cause them to incur significant financial and administrative costs.”

Jackson, J., dissenting

- “I agree with every word of Justice Sotomayor's dissent. I write separately to emphasize a key conceptual point: The Court's decision to permit the Executive to violate the Constitution with respect to anyone who has not yet sued is an existential threat to the rule of law.” (Highlight added).

First Amendment

Freedom of Speech

Tiktok Inc. v. Garland

604 U.S. 56 (2025) (per curiam)

The Facts

- TikTok Inc., an American corporation, operates TikTok, a social media platform, in the U.S.
- It has over 170 million users in the U.S. (over a billion worldwide).
- Users of the platform can “create, publish, view, share, and interact with short videos overlaid with audio and text.”
- The feed a user gets when opening a “For You” page is tailored to the user’s interests by the use of a proprietary algorithm and content and filtering decisions by TikTok.
- ByteDance Ltd., is a privately owned company that has operations in China.
- ByteDance owns TikTok’s proprietary algorithm. It is developed and maintained in China.
- Chinese law requires it to aid in intelligence work in China and ensure that the government there has the power to access and control the company’s private data.

- An August 2020 executive order found that “the spread in the United States of mobile applications developed and owned by companies in [China] continues to threaten the national security, foreign policy, and economy of the United States.”
- Subsequent orders and litigation ensured.
- Congress enacted the Protecting Americans from Foreign Adversary Controlled Applications Act, making it “unlawful for any entity to provide certain services to ‘distribute, maintain, or update’ a ‘foreign adversary controlled application’ in the United States.”

- “The Act permits the President to grant a one-time extension of no more than 90 days with respect to the prohibitions’ 270-day effective date if the President makes certain certifications to Congress regarding progress toward a qualified divestiture. § 2(a)(3).”

The Lawsuit

- ByteDance Ltd. and TikTok Inc., along with certain TikTok users and creators, sued in the D.C. Circuit, arguing that the Act is unconstitutional in violation of the First Amendment.
- The D.C. Circuit assumed without deciding that strict scrutiny applied and concluded that the law is constitutional because of compelling national security concerns.

The Supreme Court

- Does the First Amendment apply to the case?
  - The First Amendment can but does not necessarily apply if the law directly regulates expression.
  - It also may apply if a statute that is directed at an activity that does not have an expressive component imposes a disproportionate burden on persons or entities who are engaged in expressive activities.
  - There are no cases where the Supreme Court has considered "a regulation of corporate control as a *direct* regulation of expressive activity or semi-expressive conduct."
  - The Court was disinclined "to break that new ground in this unique case."
  - The Court treated it as a disproportionate impact case.

- “This Court has not articulated a clear framework for determining whether a regulation of non-expressive activity that disproportionately burdens those engaged in expressive activity triggers heightened review. We need not do so here. We assume without deciding that the challenged provisions fall within this category and are subject to First Amendment scrutiny.”

The Standard of Review

- Given that the regulation is not content-based because of its focus on data collection issues in the unusual circumstances of this particular case, the Court rejected TikTok's argument that strict scrutiny applies, concluding that "[n]o more than intermediate scrutiny" applies.
- The standard
  - Substantial government interest
  - That would be achieved less effectively without the regulation
  - And doesn't burden substantially more speech than necessary to further that interest.

The Standard is Satisfied

- The governmental interest is sufficiently important (preventing China, a designated foreign adversary, from using its control over ByteDance to capture U.S. TikTok users' personal data).
- The Court accorded "substantial deference to the predictive judgments of Congress" in this setting.

Extensions

- The deadline for divestiture of TikTok’s U.S. assets was initially extended, as provided by the statute. It was extended again in June for another 90 days.
- Is it legal?

Free Speech Coalition, Inc. v. Paxton

145 S. Ct. 2291 (2025)

Some Background

- In *Miller v. California*, 413 U.S. 15, 24 (1973) the Supreme Court established a three-prong obscenity test (work appeals to the prurient interest, depicts certain sexual conduct in a patently offensive way, and doesn't have any serious literary, artistic, political, or scientific value).
- Problems arise, however, if government attempts to restrict access to material that is not obscene as to adults but may be obscene as to minors under a minor-specific obscenity standard.
- Adults have a right to access that content but limiting a minor's access may also limit an adult's access.
- Regulation of the content of speech and expression creates First Amendment issues and triggers strict scrutiny.

The Facts

- Texas enacted a statute requiring pornographic websites to verify that users of those websites are adults (so do 21 other states).
- Why the restrictions?
  - The legislature was concerned about the sexual violence and assault, physical aggression, on the websites, the addictive nature of that pornography, and its impact on child development.
- The statute applies to commercial entities that “knowingly and intentionally” publish or distribute material on an Internet website, . . . more than one-third of which is sexual material harmful to minors.”

Age Verification

- These cites have to use reasonable age-verification methods to verify that persons accessing the sites are 18 or older.
- Verification has to be through a commercial system using a government-issued ID or other “commercially reasonable method that relies on public or private transactional data,” or through “digital identification (Texas doesn’t yet have such a system for the latter).
- The penalty for violation is $10,000 for each day of noncompliance and an additional penalty of up to $250,000 if any minors access the covered sexual material.

- The statute was challenged facially on First Amendment grounds by Free Speech Coalition, a trade association for the pornography industry.
- The federal district court applied strict scrutiny because the statute regulated the content of the material available to minors.
  - That court held that there were less restrictive alternatives (e.g., encouraging parents to install filtering content).
- The Fifth Circuit reversed, applying a rational basis review standard.

The Supreme Court

- The Court reversed in a 6-3 opinion (Thomas, J.).
- “States have a specific interest in protecting children from sexually explicit speech.” *See Ginsberg v. New York*, 390 U.S. 629 (1968) (upholding New York’s criminal obscenity statute).
- “To be more precise, a State may prevent minors from accessing works that (a) taken as a whole, and under contemporary community standards, appeal to the prurient interest *of minors*; (b) depict or describe specifically defined sexual conduct in a way that is patently offensive *for minors*; and (c) taken as a whole, lack serious literary, artistic, political, or scientific value *for minors*.” (Emphasis the Court’s).

History and Tradition

- "History, tradition, and precedent recognize that States have two distinct powers to address obscenity: They may proscribe outright speech that is obscene to the public at large, and they may prevent children from accessing speech that is obscene to children."
- "States have a specific interest in protecting *children* from sexually explicit speech." (Emphasis the Court's).
- "Consistent with this history, our precedents recognize that States can impose greater limits on children's access to sexually explicit speech than they can on adults' access."

The Standard of Review – Intermediate Scrutiny

- The statute does not directly regulate the protected speech of adults.
  - It does not regulate either the content of protected speech or in the statutory justification.
- Adults have a right to access that speech, however, but that burden is only incidental.
  - Intermediate scrutiny applies.
    - *See United States v. O'Brien* (1968).

The Standard Applied

- There must be an important governmental interest.
  - The interest in protecting children from sexual content is important and, the Court says, even compelling.
- The means must be sufficiently tailored to the State's interest.
  - There is adequate tailoring if "the government's interest 'would be achieved less effectively absent the regulation' and the regulation 'does not burden substantially more speech than is necessary to further that interest.' " (Quoting *TikTok Inc. v. Garland*).
    - As applied, the age verification requirement "is plainly a legitimate legislative choice."

Justice Kagan (Justices Sotomayor and Jackson) dissenting

- The Texas statute covers a substantial amount of speech protected by the First Amendment.
- The statute regulates protected speech based on its communicative content.
- That requires the application of strict scrutiny.
- Application of strict scrutiny in this context “need not be a death sentence,” however.
- The State should have to show that other alternatives would not be as effective.



Freedom of Religion

The First Amendment

- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

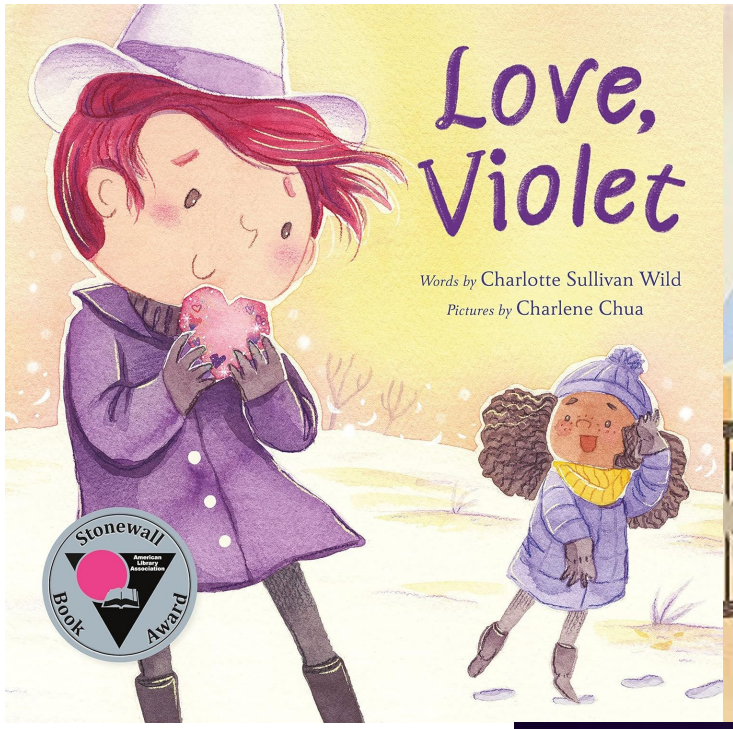
Free Exercise of Religion

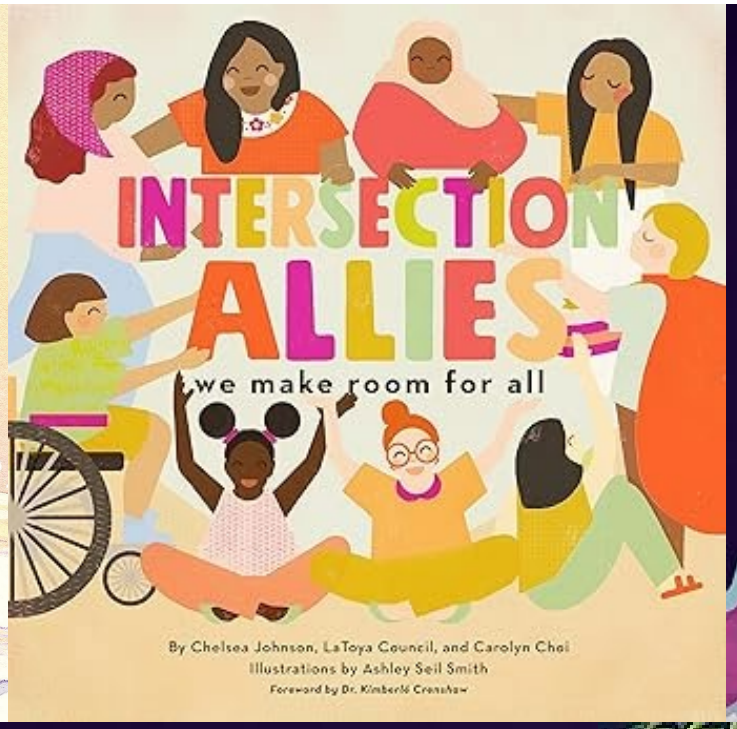
Mahmoud v. Taylor

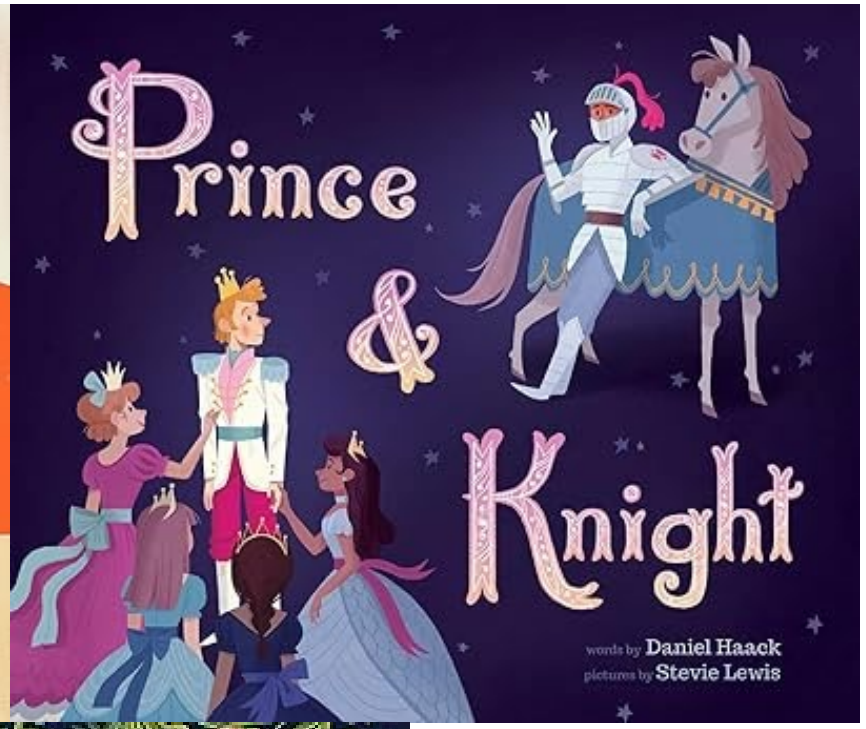
145 S. Ct. 2332 (2025)

The (Very Basic) Facts

- The Montgomery County Board of Education introduced “LGBTQ+-inclusive” storybooks into the curriculum for elementary school students.
- The case turned on these books:


Love, Violet
Words by Charlotte Sullivan Wild
Pictures by Charlene Chua
Stonewall Book Award
American Library Association


INTERSECTION ALLIES
we make room for all
By Chelsea Johnson, LaToya Council, and Carolyn Choi
Illustrations by Ashley Seil Smith
Foreword by Dr. Kimberlé Crenshaw


Prince & Knight
words by Daniel Haack
pictures by Stevie Lewis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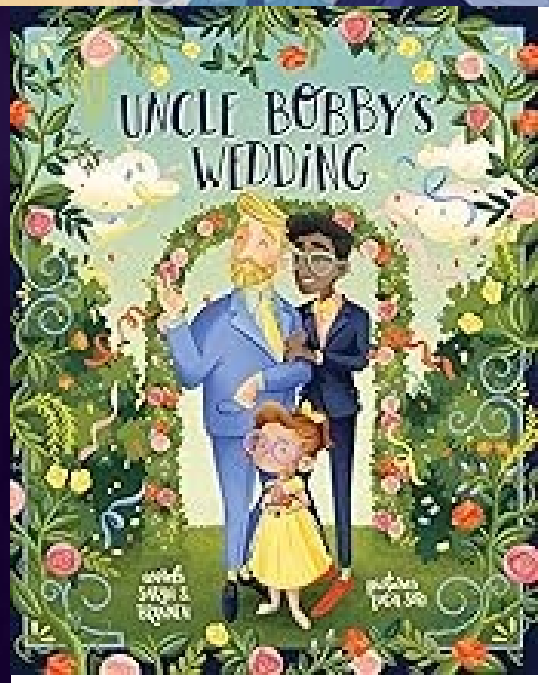
pictures by Stevie Lewis


UNCLE BOBBY'S WEDDING

- These books, along with instructions that are provided for teachers, are “designed to ‘disrupt’ children’s thinking about sexuality and gender.”
- The Board informed parents that they would not be provided with notice about when the books would be used.
- Student attendance at the sessions will be mandatory.

The Claim

- A group of parents from diverse religious backgrounds sought to enjoin the board's policies, arguing that the board's new curriculum, combined with a denial of opt outs, impermissibly burdened their free exercise of religion.

Riding *Yoder*

- In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), members of the Old Order Amish religion and the Conservative Mennonite Church challenged Wisconsin's compulsory education law (requiring attendance until the age of 16).
- They declined to send their children to school after the eighth grade, instead providing informal vocational education that would prepare them for life in the Amish community.
- They argued that the statute violated their right to free exercise of religion.

Yoder and Strict Scrutiny

- The Court required a showing of a compelling government interest to justify the infringement of the sincerely held religious beliefs of the Amish.
- The Court in *Mahmoud* emphasizes that *Yoder* is an important precedent, one not easily dismissed as just one special exception granted to one religious minority.
- “It . . . embodies a principle of general applicability,” a principle that provides robust protection for religious liberty.
- *Yoder*, combined with *Barnette*, “embody a view of religious liberty, one that comports with the fundamental values of the American people.”

Substantial Interference?

- The inquiry is fact-intensive, turning on
  - The specific religious beliefs and practices involved
  - The specific nature of the curricular features and educational requirements involved
  - The age of the children involved
  - The method of presentation (neutral or hostile to conflicting viewpoints)

Burden on Religion

- The Court concluded that based on the record, the introduction by the Board "of the "LGBTQ+-inclusive" storybooks—combined with its decision to withhold notice to parents and to forbid opt outs—substantially interferes with the religious development of their children and imposes the kind of burden on religious exercise that Yoder found unacceptable."
  - The books are unmistakably normative.
  - The messages are contrary to the religious beliefs of many Americans and the books encourage the acceptance of a contrary view.
  - There is a very real threat that the books will undermine the parents' religious beliefs.

But What About *Employment Division v. Smith*?

- Even if there is a burden, *Smith* held that if the burdensome policy is neutral and generally applicable.
  - If so, rational basis review applies.
  - If not, strict scrutiny applies.
- The Court says that this case is different, however, because if a *Yoder*-like burden exists, it is irrelevant whether the policy is neutral and generally applicable.

Strict Scrutiny - Applied

- The Court conceded that schools have a compelling interest in conducting uninterrupted school sessions that are conducive to learning.
- Refusing to permit opt-outs isn’t necessary (it’s allowed in other cases, e.g. sex education).
- Allowing opt-outs is obviously feasible.
- There may be a large number of opt-outs, as has occurred in the past, but it is self-inflicted by the Board in constructing a curriculum that would be antithetical to many in the county’s substantial religious communities.

The Conclusion

- The Court held that in light of the strong showing made by the parents in this case, and the lack of a compelling interest supporting the Board's policies, the preliminary injunction should be granted.
- The case was remanded for further proceedings.

Justice Sotomayor (Justices Kagan and Jackson) dissenting

- Public schools “offer to children of all faiths and backgrounds an education and an opportunity to practice living in our multicultural society. That experience is critical to our Nation's civic vitality. Yet it will become a mere memory if children must be insulated from exposure to ideas and concepts that may conflict with their parents’ religious beliefs.”
- The dissent predicts chaos for the public schools.

Minn. Stat. § 120B.20
PARENTAL CURRICULUM REVIEW

- Each school district shall have a procedure for a parent, guardian, or an adult student, 18 years of age or older, to review the content of the instructional materials to be provided to a minor child or to an adult student and, if the parent, guardian, or adult student objects to the content, to make reasonable arrangements with school personnel for alternative instruction. Alternative instruction may be provided by the parent, guardian, or adult student if the alternative instruction, if any, offered by the school board does not meet the concerns of the parent, guardian, or adult student. The school board is not required to pay for the costs of alternative instruction provided by a parent, guardian, or adult student. School personnel may not impose an academic or other penalty upon a student merely for arranging alternative instruction under this section. School personnel may evaluate and assess the quality of the student's work.

Oklahoma Statewide Charter School Board v. Drummond

—

558 P.3d 1 (Okla. 2024), *judgment aff'd by equally divided Court*,145 S. Ct. 1381 (2025)

The Facts

- Oklahoma has a Charter Schools Act intended to assist the State in carrying out its constitutional duty to establish a system of free public schools.
  - A charter school is a public school, according to Oklahoma law.
- The Archdiocese of Oklahoma City and the Diocese of Tulsa applied to the Charter School Board to establish St. Isodore, a religious virtual charter school.
  - The “purpose of the school is to ‘create establish and operate’ the school as a Catholic school.”

Drummond v. Oklahoma Statewide Virtual Charter School Board, 558 P.3d 1 (Okla. 2024)

The Oklahoma Supreme Court held that

- St. Isidore of Seville Catholic Virtual School's contract with the Oklahoma Statewide Virtual Charter School Boards violated the Establishment Clause of the United States Constitution.
- The Free Exercise Clause did not bar Oklahoma from denying the contract because of the school's religion.

The Issues in the Petition for Certiorari

- 1. Whether the academic and pedagogical choices of a privately owned and run school constitute state action simply because it contracts with the state to offer a free educational option for interested students.
- 2. Whether 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, or whether a state can justify such an exclusion by invoking anti-establishment interests that go further than the Establishment Clause requires.

The Holding

- “The judgment is affirmed by an equally divided Court.”
- Justice Barrett recused herself.

But What If?

- The overarching issue is separation of church and state.
- The Supreme Court has often invoked Thomas Jefferson’s statement that the Establishment Clause of the Constitution was intended to erect a wall of separation between church and state.
  - How high should the wall be?
  - How wide?

A Wall of Separation?

Some Background - The Supreme Court's Expansion of Religious Freedom

- In a series of cases beginning in 2017, the Supreme Court has applied an anti-discrimination principle in cases involving state attempts to limit state aid to religion.
- For example, in a 2017 case, the Court held that the Missouri DNR could not refuse to provide rubber pellets to a church for playground surfacing at a religiously based school operating under the auspices of the church, when it provided that benefit to other private schools, because doing so would violate Missouri's constitutional provision prohibiting state aid to religion.
  - *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017).
- In 2022, the Court held that if Maine provided tuition coverage for students who attended private schools, it could not refuse to provide that coverage if schools were religiously based private schools.
  - *Carson v. Makin*, 596 U.S. 767 (2022).

- *Drummond* involved the issue of whether the State of Oklahoma could charter a religiously based school.
- The Oklahoma Supreme Court held that it could not because it would violate the First Amendment.
- The Supreme Court's 4 – 4 decision counted as an affirmance of that decision.

And What About?

- In a Courthouse?
  - Is *McCreary County v. ACLU*, 545 U.S. 844 (2005) still good law?
- In a School?
  - *Roake v. Brumley*, 141 F.3d 614 (5th Cir. 2025) (holding Louisiana statute unconstitutional)
  - *Nathan v. Alamo Heights Indep. Sch. Dist.*, No. SA-25cv-00756, 2025 WL 2417589 (W.D. Tex. Aug. 20, 2025) (holding Texas statute unconstitutional((“For those who disagree with the Court’s decision and who would do so with threats, vulgarities and violence, Grace and Peace unto you. May humankind of all faiths, beliefs and non-beliefs be reconciled one to another. Amen.”

Or?

Prayer in a public school?

Attorney General Paxton's press release, September 2, 2025

Attorney General Ken Paxton Encourages Texas Schools to Begin Legal Process of Putting Prayer Back in the Classroom and Recommends the Lord's Prayer for Students

President Trump previewed new rules protecting Americans' right to pray in public schools: "I am pleased to announce this morning that the Department of Education will soon issue new guidance protecting the right to prayer in our public schools." (September 8, 2025 Address at the Museum of the Bible)

Employment Discrimination

Ames v. Ohio Department of Youth Services

605 U.S. 603 (2025)

Title VII of the Civil Rights Act of 1964

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's *race, color, religion, sex, or national origin*; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Facts

- The Ohio Department of Youth Services hired Marlean Ames in 2004 to work as an executive secretary.
- Ames alleged that she suffered two adverse employment decisions based on her sexual orientation as a heterosexual person.
- She sued the Department, alleging a violation of Title VII.
- The District Court held that she could not show that the employer acted with a discriminatory motive because, as required by Circuit precedent, she could not prove “background circumstances” establishing that the defendant was the rare employer who discriminated against members of a majority group.
- The Sixth Circuit affirmed.

The Issue

- Whether a plaintiff in a Title VII case has to meet a different standard (background circumstances) if a member of a majority group.

The Supreme Court

- The Court reversed in a unanimous decision (Jackson, J., writing for the Court).

Holding

- The Court held that the “background circumstances” requirement is inconsistent with the text of Title VII and the cases that have construed it.

The Explanation

- The standard for determining whether there is disparate treatment under Title VII does not turn on whether the plaintiff belongs to a majority group.
- The “background circumstances” rule disregards this admonition by uniformly subjecting all majority-group plaintiffs to the same, highly specific evidentiary standard in *every* case. As the Sixth Circuit observed, the rule effectively requires majority-group plaintiffs (and only majority-group plaintiffs) to produce certain types of evidence—such as statistical proof or information about the relevant decisionmaker's protected traits—that would not otherwise be required to make out a prima facie case.

Equal Protection

The Fourteenth Amendment

- 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*.

United States v. Skrmetti

145 S. Ct. 1816 (2025)

Facts

- Tennessee enacted a statute barring certain treatments of transgender minors, including surgery and the use of puberty blockers and hormones.
- Three transgender minors, their parents, and a physician brought suit, arguing that the statute was unconstitutional in violation of the equal protection clause of the Fourteenth Amendment.
- The United States intervened in the suit.
- A federal district court in the Middle District of Tennessee partially enjoined the enforcement of the statute.
- The Sixth Circuit reversed.
- The Supreme Court granted certiorari and affirmed in a 6 – 3 opinion (Roberts, C.J., writing for the Court).

Deference?

- Chief Justice Roberts lays the foundation early in the opinion for deference to the legislative findings –
  - Sex transition treatments are increasingly being performed on and administered to minors.
  - That, notwithstanding that the full range of the harmful effects is not yet known.
  - Guidelines for treatment have changed significantly recently.
  - Gender dysphoria may be resolved by less drastic means that are likely to result in better outcomes.

The Issue and the Holdings

- The issue was whether the statute violated the equal protection clause of the Fourteenth Amendment because of its discrimination against transgender minors.
- The plaintiffs argued that there was discrimination based on
  - Sex
  - Transgender status
- The Court rejected both claims.
  - The statute did not classify based on sex.
  - Transgender is not a suspect classification.

The Statutory Classifications?

- The Court saw two classifications on the face of SB1
  - Age (healthcare providers are permitted to administer certain medications to persons 18 and older but not to minors.
  - Medical use (healthcare providers may administer puberty blockers or hormones to treat certain conditions, but not gender dysphoria, etc.).
- Rational basis review applies.
- But what about the use of sex-based language in the statute?
  - "In the *medical context*, the mere use of sex-based language does not sweep a statute within the reach of heightened scrutiny." (Emphasis added).

Sex Stereotyping?

- Does SB1 enforce a government preference for people to conform to expectations about their sex?
  - The Court rejects the dissent's position on the issue.
  - Sex discrimination may trigger heightened scrutiny if based on impermissible stereotypes.
    - That is not the case with SB1.

Transgender Discrimination?

- Do transgender individuals constitute a quasi-suspect class?
- The Court rejected the argument.
- "A State does not trigger heightened constitutional scrutiny by regulating a medical procedure that only one sex can undergo unless the regulation is a mere pretext for invidious sex discrimination."
- This is similar, the Court says, to *Geduldig v. Aiello* (1974) (Cal. insurance plan excluding certain pregnancy-related disabilities from coverage did not discriminate on the basis of sex).
    - Two groups, pregnant women and nonpregnant persons. No discrimination because women fell into both groups.
- Here, no one is excluded from treatment based on transgender status. SB1 simply removes one set of diagnoses (gender dysphoria, etc.) from the range of conditions that can be treated.
    - The Court declined to find that SB1 excluded any person on the basis of transgender status.

42 U.S.C. § 1983
Bivens

—

Barnes v. Felix

145 S. Ct. 1353 (2025)

Facts

- The suit was a § 1983 excessive force action arising out of the death of Barnes in a traffic stop that ended when Felix, a law enforcement officer, shot Barnes, who started to drive away after being ordered out of the vehicle.

Excessive Force Claims

- The use of deadly force by a police officer violates the Fourth Amendment if it is not “objectively reasonable.”
- That determination must be based on the “totality of the circumstances.”

The Issue

- The lower federal courts applied a “moment-of-threat” rule in making the excessive force determination.
- In deadly force cases, the Fifth Circuit’s approach focuses on “the situation existing ‘*at the moment of the threat*’ that sparked the fatal shooting.” (emphasis the court’s).
- As applied by the District Court, that meant focusing on the two seconds before the police officer fired the first shot at Barnes.

The Holding

- In a unanimous opinion (Kagan, J.) the Court rejected the moment-of-threat approach because it narrowed the “totality of the circumstances” standard for resolving excessive force cases.

Kavanaugh, J. (Thomas, Alito, and Barrett, JJ.) concurring

- Justice Kavanaugh agreed that the totality of the circumstances test is the appropriate test for excessive force cases.
- Focusing on the nature of the stop (driver attempting to flee after a stop), he notes that the circumstances have to include not only the severity of the crime but also the attempt to evade the officer.
- His point is all of the decisions an officer makes in these circumstances require life-or-death decisions that have to be made in a few seconds.

- There also must be a “careful balancing of ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.”
- “In analyzing the reasonableness of an officer’s conduct at a traffic stop, particularly traffic stops where the driver suddenly pulls away, courts must appreciate the extraordinary dangers and risks facing police officers and the community at large.”

Goldey v. Fields

606 U.S. 942 (2025)

Facts

- Goldey, a federal inmate, made an excessive force claim under the Eighth Amendment against prison officials.

The Holding

- The Supreme Court rejected the claim in a brief per curiam opinion.
- The Court noted that recognizing causes of action under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971) is a disfavored judicial activity.
- The Court noted that for the past forty-five years it has consistently refused to extend *Bivens* and declined to do so in this case.

Constitutional Structure and Administrative Law

Cases

Procedural Due Process, Foreign Affairs

- *Noem v. Abrego Garcia*

Non-delegation Doctrine

- *FCC v. Consumers' Research*

Appointment and Removal

- *Kennedy v. Braidwood Management*
- *Trump v. Wilcox*
- *Trump v. Boyle*

National Environmental Policy Act

- *Seven County Infrastructure Coalition v. Eagle County*

Procedural Due Process, Foreign Affairs

Noem v. Abrego Garcia (Emergency Docket)

145 S. Ct. 1017 (2025)

Facts

- Kilmar Armando Abrego Garcia, 29, citizen of El Salvador
- Undocumented immigrant living in Maryland with wife and three children (all U.S. citizens)
- 2019: Immigration judge finds Abrego Garcia is MS-13 gang member, based mostly on informant; granted “withholding of deportation” because of dangers faced if returned to El Salvador
- March 2025: Detained by ICE, removed to El Salvador’s CECOT (“terrorism confinement center”)

Facts

- April 4, 2025: United States District Court Judge Paula Xinis ordered Government to “facilitate and effectuate the return of [Abrego Garcia] to the United States by no later than 11:59 PM on Monday, April 7.”
- April 7, 2025: Government asks Judge Xinis and Fourth Circuit to stay or vacate the judge’s order; both decline
- Simultaneous filing with Supreme Court; stay granted
- April 10, 2025: Unanimous Supreme Court order

Order

- “The United States acknowledges that Abrego Garcia was subject to a withholding order forbidding his removal to El Salvador, and that the removal to El Salvador was therefore illegal.”
- “The [district court] order properly requires the Government to ‘facilitate’ Abrego Garcia's release from custody in El Salvador and to ensure that his case is handled as it would have been had he not been improperly sent to El Salvador.”

Order

- “The intended scope of the term ‘effectuate’ in the District Court's order is, however, unclear, and may exceed the District Court's authority. The District Court should clarify its directive, with due regard for the deference owed to the Executive Branch in the conduct of foreign affairs.”

“Statement Respecting Disposition of the Application”

Sotomayor, J., with Kagan, J., and Jackson, J.

- “[T]he Government must comply with its obligation to provide Abrego Garcia with ‘due process of law,’ including notice and an opportunity to be heard, in any future proceedings.”
- Must also comply with Convention Against Torture
- “In the proceedings on remand, the District Court should continue to ensure that the Government lives up to its obligations to follow the law.”

Aftermath

- April 2025: Attorney General Bondi argues return of Abrego Garcia is up to El Salvador, not U.S.
- April 2025: Visit by U.S. Senator Van Hollen results in transfer to lower-security facility
- May 2025: Indicted by grand jury in Tennessee for human trafficking
- June 2025: Returned to U.S., immediately detained in Tennessee to face trafficking charges

Aftermath

- August 2025: Magistrate orders released from custody in Tennessee; detained by ICE three days later at immigration check-in appointment
- September 2025: “[W]e hereby notify you that your new country of removal is Eswatini, Africa.”

Aftermath

- Government also original withholding order will be nullified if immigration case is reopened to seek asylum
- Current Status: Judge Xinis has prohibited removal of Abrego Garcia from United States pending resolution of immigration issues

Non-delegation Doctrine

Background

The Non-delegation Doctrine:

- Article I vests "all" legislative power in Congress.
- Therefore, Congress may not delegate legislative power wholesale to president, agencies, corporations, etc.
- "[W]hen Congress confers decisionmaking authority upon agencies Congress must 'lay down by legislative act an **intelligible principle** to which the person or body authorized to [act] is directed to conform.'" *Whitman v. American Trucking Ass'n* (2001), Scalia, J.

Background

Statutory "Intelligible Principle" Examples:

- "in the public interest"
- "not unduly or unnecessarily complicated"
- "generally fair and equitable and will effectuate the purposes of [the] Act"

Whitman, Scalia, J., for the majority

Background

Trend in Administrative Law Cases:

- *Seila Law v. CFPB (2020)* (invalidating CFPB structure and narrowing removal protections)
- *West Virginia v. EPA (2022)* (invalidating EPA rule under “major questions doctrine”)
- *Loper Bright (2024)* (overruling *Chevron*, kind of)
- *Corner Post (2024)* (permitting new corporation to appeal regulation years after expiration of appeals period)

- **The next shoe: a non-delegation standard with real teeth?**

Federal Communications Commission v. Consumers' Research

145 S. Ct. 2482 (2025)

Facts

- Congress establishes Universal Service Fund to subsidize phone and internet in underserved rural areas
- Funded by charge on telecoms, passed on to telecom customers
- Congress creates private nonprofit corporation, Universal Service Administrative Company, to administer funds
- Fifth Circuit invalidates on two non-delegation grounds:
  - Congress provided no “intelligible principle” regarding fee amount
  - Congress improperly “delegated” to private non-profit corporation

Pew/iStock

Holdings

Kagan, J., for the majority:

- “Intelligible Principle” is still the standard
- Applied here:
  - Statute identifies communities to be served, prioritizes education, public safety, and public health services
  - Statute directs FCC to collect fee in an amount ‘sufficient’ to support” these functions
  - Satisfies “intelligible principle” requirement

Holdings

Kagan, J., for the majority:

Private “Delegation” Issue:

- Rejects factual premise of the argument
- “In every way that matters to the constitutional inquiry,” the FCC “is in control.”

Dissent

Gorsuch, J.:

- “Congress may not transfer to another branch powers which are strictly and exclusively legislative.”
- FCC forcing telecoms to contribute to universal service fund is tantamount to taxation, an exclusively legislative power
- “…historical practice and our cases suggest other guides, beyond the intelligible principle test, for assessing when Congress has impermissibly ceded legislative power.”

Appointments and Removal

Background

Appointments: Article II, section 2

[The President]…shall nominate, and by and with the Advice and Consent of the Senate, shall appoint…**Officers of the United States**, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such **inferior Officers**, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

- Principal Officers: president nominates, Senate confirms; answerable to the president
- Inferior Officers: Congress may vest appointment in President alone, in federal courts, or heads of federal departments; directed by and supervised by principal officers

Kennedy v. Braidwood Management

145 S. Ct. 2427 (2025)

Facts

Affordable Care Act Fight, Round 8

- ACA requires insurers to cover certain preventative care without cost to patients
- Statute requires Secretary of Health and Human Services (HHS) to “convene” a Preventive Services Task Force to identify covered preventative care
- Task Force operates as an agency within Department of Health and Human Services (HHS)

Facts

- Task Force finds “PrEP” HIV prophylaxis to be covered preventative care
- Braidwood Management objects on religious grounds
- Main argument: Religion Clause, loses below

Facts

- Secondary argument: Appointments Clause, prevails below:
  - Statute (as amended) says HHS secretary "shall convene" a task force
  - Statute simply says "convene"; silent about who "appoints" task force members
  - Because Congress has not "vested" the appointment power in the head of the department by law, the only valid appointment option would be president + Senate
  - District Court agrees, invalidates *all* Affordable Care Act preventative care requirements going back to 2011
  - Fifth Circuit upholds, modifies relief to be less sweeping

Holding

Kavanaugh, J.,: “convene” is good enough to appoint

- “To be sure, the statute does not use the term ‘appoint.’ But Congress need not use magic words to confer appointment authority….”
- Canvases other statutory uses of “convene” to appoint: military commissions, Coast Guard Reserve Policy Board, Department of Commerce personnel board
- “[W]here…there is no separate statutory provision specifying who is to appoint the individuals to be called together or assembled, the obvious conclusion is that the person with the power to convene is also the person with the power to appoint.”

Holding

Kavanaugh, J., for the majority:

Other reasons supporting valid appointment as “inferior officers”:

- “Congress has routinely tied inferior-officer status to at-will removability by Heads of Departments”; here, Task Force members have no express job security, presumably removable at-will by HSS secretary
- HSS Secretary charged with supervising Task Force, coupled with power to remove, means Secretary has significant power over Task Force work, reinforcing inferior status

Holding

On Agency Deference:
[For the past] 26 years, the relevant government actors have always read the authorization to "convene" the Task Force to include the power to appoint the Task Force members. That considered and consistent Executive Branch practice—which began contemporaneously with enactment of the statute codifying the Task Force in 1999—buttresses the ordinary meaning and natural interpretation of the term "convene" in the statute. See *Loper Bright Enterprises v. Raimondo*, 603 U. S. 369, 394 (2024)[.]

Dissent

Thomas, J., dissenting (with Alito, J., and Gorsuch, J.):

- “Principal Officer” is the constitutional default
- “Inferior Officer” is the constitutional exception
- Courts should presume the default and require Congress to be clear when it prefers the “exception”
- Statute here insufficiently clear about intent that Task Force members be appointable as inferior officers

Trump v. Wilcox (Emergency Docket)

145 S. Ct. 1415 (2025)

Background

Removal: Article II, section 4

"The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

Case Law Gloss

"All offices the tenure of which is not fixed by the Constitution or limited by law must be held either during good behavior…or must be held at the will and discretion of some department of the government, and subject to removal at pleasure.... [T]he power of removal [is] incident to the power of appointment in the absence of all constitutional or legislative provision on the subject." *Ex parte Hennen*, 13 Pet. 230, 233 (1839).

Background

Independent Agencies and Removal

- *Humphrey's Executor* (1935): Congress may insulate members of independent agencies (*e.g.* FTC) from at-will presidential removal
- *Seila Law* (2020): Narrows the circumstances in which Congress may insulate agency officials from at-will removal:
  - Multimember, bipartisan commissions lacking executive powers
  - Inferior officers with limited powers, supervised by officials answerable to the president

Independent Agencies and Trump Executive Order, Feb. 18, 2025

"...previous administrations have allowed so-called "independent regulatory agencies" to operate with minimal Presidential supervision. These regulatory agencies currently exercise substantial executive authority without sufficient accountability to the President, and through him, to the American people....For the Federal Government to be truly accountable to the American people, officials who wield vast executive power must be supervised and controlled by the people's elected President."

Facts

- Federal statutes protect National Labor Relations Board (NLRB) and Merit Systems Protection Board (MSPB) members from removal for except for cause
- Wilcox (NLRB) and Harris (MSPB) are fired by President Trump; “no qualifying cause was given” according to the Court
- Harris argues that MSPB in particular does not wield substantial executive power; mostly adjudicatory
- Harris further argues that if statute protecting MSPB members from at-will removal is not valid, then no such statutes are—including those protecting Federal Reserve Board members

Majority

Unsigned opinion staying lower court orders:

- "Because the Constitution vests the executive power in the President, see Art. II, §1, cl. 1, he may remove without cause executive officers who exercise that power on his behalf, subject to narrow exceptions recognized by our precedents, see *Seila Law*…."
- "The stay reflects our judgment that the Government is likely to show that both the NLRB and MSPB exercise considerable executive power."
- "[T]he Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty."

Majority

Curiosities in the unsigned opinion:

"A stay is appropriate to avoid the disruptive effect of the repeated removal and reinstatement of officers during the pendency of this litigation."

- Hired by President Biden
- Fired by President Trump
- Re-hired by District Court
- Re-fired again by three-judge appellate panel
- Re-re-hired by *en banc* appellate panel
- **Re-re-fired by the Supreme Court temporarily, pending possible final determination on the merits (or not)**

Majority

Curiosities in the unsigned opinion:

"Finally, respondents Gwynne Wilcox and Cathy Harris contend that arguments in this case necessarily implicate the constitutionality of for-cause removal protections for members of the Federal Reserve's Board of Governors or other members of the Federal Open Market Committee....We disagree."

Majority

Wilcox **Majority:**
"The Federal Reserve is a uniquely structured, quasi-private entity that follows in the distinct historical tradition of the First and Second Banks of the United States. See *Seila Law*, 591 U. S., at 222, n. 8."

[That's all, folks.]

Seila Law**, n. 8**
"But even assuming financial institutions like the Second Bank and the Federal Reserve can claim a special historical status, the CFPB is in an entirely different league…."

Dissent

Kagan, J.

- Majority here “favors the President over our precedent”
- *Humphrey’s Executor* is still good law and controls
- Majority’s order is “unrestrained by the rules of briefing and argument—and the passage of time—needed to discipline our decision-making.”
- “The impatience to get on with things—to now hand the President the most unitary, meaning also the most subservient, administration since Herbert Hoover (and maybe ever)—must reveal how that eventual decision will go.”

Dissent

Kagan, J.

- "Except apparently for the Federal Reserve. The majority closes today's order by stating, out of the blue, that it has no bearing on "the constitutionality of for-cause removal protections" for members of the Federal Reserve Board or Open Market Committee."
- "If the idea is to reassure the markets, a simpler—and more judicial—approach would have been to deny the President's application for a stay on the continued authority of *Humphrey's [Executor]*."

Doubling Down on *Wilcox*

Trump v. Boyle**, 145 S. Ct. 2653 (2025)**

- President Trump dismisses members of Consumer Product Safety Commission (another independent agency)
- Majority: "The application is squarely controlled by *Trump v. Wilcox* [because] the Consumer Product Safety Commission exercises executive power in a similar manner as the National Labor Relations Board, and the case does not otherwise differ from *Wilcox* in any pertinent respect."

Doubling Down on *Wilcox*

Trump v. Boyle**, 145 S. Ct. 2653 (2025)**

- Kavanaugh, J., concurring: “[T]he downsides of delay in definitively resolving the status of the precedent sometimes tend to outweigh the benefits of further lower-court consideration. So it is here. Therefore, I not only would have granted a stay but also would have granted certiorari before judgment.”
- Kagan, J., dissenting: “Once again, this Court uses its emergency docket to destroy the independence of an independent agency, as established by Congress….By means of such actions, this Court may facilitate the permanent transfer of authority, piece by piece by piece, from one branch of Government to another. Respectfully, I dissent.”

Environmental Law: National Environmental Policy Act

Seven Country Infrastructure Coalition v. Eagle County

145 S. Ct. 1497 (2025)

Background

National Environmental Policy Act (NEPA)

- 1970 procedural statute creating the environmental impact statement (EIS) requirement for major federal actions
- EIS required to address “the significant environmental effects of a proposed project and identify feasible alternatives that could mitigate those effects.”
- NEPA does not mandate specific environmental outcomes; just information gathering and assessment of alternatives
- It is up to the agency to weigh the “environmental consequences as it sees fit under its governing statute and any relevant substantive environmental laws.”
- The D.C. Court of Appeals often reviews petitions involving federal projects.

Facts

- Consortium of seven Utah counties proposes new 88-mile railroad line to transport oil from the region to refineries in other states
- U.S. Surface Transportation Board responsible for approving new railroads
- Board generated a 3,600 page EIS, then approved proposed new railroad
- Opponents argued EIS failed to evaluate “upstream” impacts of oil extraction and “downstream” impacts of oil refining
- D.C. Circuit agreed, found EIS inadequate, vacated Board’s approval

Holding

Kavanaugh, J., for a unanimous Court

- Reversed and remanded.
- “Simply stated, NEPA is a procedural cross-check, not a substantive roadblock. The goal of the law is to inform agency decisionmaking, not to paralyze it.”
- “So long as the EIS addresses environmental effects from the project at issue, courts should defer to agencies’ decisions about where to draw the line—including (i) how far to go in considering indirect environmental effects from the project at hand and (ii) whether to analyze environmental effects from other projects separate in time or place from the project at hand.”

Concurrence

Sotomayor, J., concurring (with Kagan, J., and Jackson, J.):

- Majority opinion relies on unnecessarily broad reasoning; could have decided under prior caselaw:
- "An agency is not responsible for environmental impacts it could not lawfully have acted to avoid, either through mitigation or by disapproving the federal action. See *Department of Transportation v. Public Citizen*, 541 U. S. 752, 770 (2004)."
- Statute here contains presumption in favor of approval of new railroads serving common carrier purposes; contains no authority to Board to regulate oil extraction or oil refining
- Therefore, under the rule of *Public Citizen*, the Board could not have been made responsible for evaluating upstream/downstream impacts.

Constitutional Structure and Administrative Law

Non-delegation Doctrine

- *FCC v. Consumers' Research*

Appointment and Removal

- *Kennedy v. Braidwood Management*
- *Trump v. Wilcox*
- *Trump v. Boyle*

National Environmental Policy Act

- *Seven County Infrastructure Coalition v. Eagle County*