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Court Report

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U.S. Supreme Court Enters Emergency Order Partially Reinstating Block on California Policy Requiring Student Consent for Parent Notification of Gender Transitions

In a challenge to a California policy prohibiting teachers from disclosing a student's gender identity to parents without the student's consent, a California federal district court had certified a class action with subclasses of objecting parents and teachers, and entered a permanent injunction in their favor, preventing schools from "misleading" parents about their children's gender presentation at school. The State of California appealed to the U.S. Court of Appeals for the Ninth Circuit (AK, CA, HI, ID, MT, NV, OR, WA), which stayed the district court's injunction for the appeal, expressing procedural concerns about the class certification, the breadth of the injunction, and expressing skepticism about the merits of the ruling. The plaintiffs filed an emergency application with the U.S. Supreme Court to vacate the Ninth Circuit's stay, which would in effect reinstate the injunction.

In a per curiam opinion (i.e., not attributed to particular authoring justice), the Supreme Court granted the application and vacated the Ninth Circuit's stay with respect to parents, but left the stay in place as to the teachers. The Court found that the subset of parents who sought religious exemptions was likely to succeed on their First Amendment Free Exercise claim, relying heavily on its recent decision in *Mahmoud v. Taylor* (2025), which held that exposure to LGBTQ-inclusive curriculum without opt-out rights burdened parents' religious exercise. The Court found California's policies unlikely to survive strict scrutiny, reasoning that the State's interest in student safety could be served by a narrower policy that allows religious exemptions while still protecting children from genuinely abusive parents. The Court also found that all objecting parents (including those without religious objections) were likely to succeed on their Fourth Amendment substantive due process claim, reasoning that the fundamental right in the upbringing and education of one's children includes "the right not to be shut out of participation in decisions regarding their children's mental health."

Justice Barrett, joined by Chief Justice Roberts and Justice Kavanaugh, authored a concurring opinion underscoring the substantive due process issue and justifying the length of the Court's per curiam opinion issued on an emergency basis.

Justice Kagan, joined by Justice Jackson, dissented sharply, objecting to the use of the Court's emergency docket to resolve novel and consequential constitutional questions without the benefit of full briefing, oral argument or other deliberative processes that ordinarily accompany major decisions.

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Justice Kagan also pointed out that the Court has other vehicles to address the issues through its normal procedures, including the pending petition in *Foote v. Ludlow School Committee* (see below), raising substantially identical issues.

Fifth Circuit (LA, MS, TX) Vacates Injunction Blocking Louisiana Law Requiring Ten Commandments Displays in Classrooms

A group of parents challenged a Louisiana law requiring every public-school classroom to display the Ten Commandments, arguing the law violated the First Amendment's Establishment and Free Exercise Clauses. The federal district court issued a preliminary injunction blocking enforcement of the law, concluding the parents were likely to succeed on the merits of their constitutional claims. Sitting en banc, a per curiam majority of the U.S. Court of Appeals for the Fifth Circuit vacated that injunction and held that the challenge was not ripe for judicial review. The court explained that since the law leaves discretion to local school boards regarding how the displays will appear (subject to certain minimums), it could not evaluate the constitutionality of the law without knowing how schools will actually implement it, but future as-applied challenges could proceed after schools actually implement the displays.

One judge concurred in the judgment but would have resolved the case on different grounds by rejecting the claim on the merits. In his view, the Supreme Court's precedent striking down classroom Ten Commandments displays does not apply, as it relied on an Establishment Clause analysis (the Lemon Test) that the Court recently expressly abandoned in Kennedy v. Bremerton School District (2022) (post-game prayer case). The concurring judge contended that the new Establishment Clause test focusing on historical tradition does not prevent "passive religious displays."

Several judges dissented, arguing that the case was ripe and that the injunction should have been affirmed, emphasizing that the law's core requirements were already fixed and that additional factual development was not needed to resolve the question. Dissenting judges also relied heavily on Stone v. Graham (1980), which invalidated a similar Kentucky law requiring Ten Commandments postings in public school classrooms.

U.S. Supreme Court: State-Created Corporations Cannot Automatically Claim Sovereign Immunity

The U.S. Supreme Court unanimously held that New Jersey Transit Corporation is not an "arm of the state" and therefore cannot claim New Jersey's sovereign immunity to shield itself from lawsuits in other states' courts. The cases arose when two individuals injured in separate bus accidents (one in New York City and one in Philadelphia) sued New Jersey Transit for negligence in their home state courts. New Jersey Transit moved to dismiss both suits, arguing that as a state instrumentality, it shared in New Jersey's sovereign immunity. The Supreme Court disagreed, holding that the key inquiry is not whether an entity performs public functions or receives state funding, but whether the state structured it as a legally separate entity responsible for its own judgments. Because New Jersey created NJ Transit as a corporation with traditional corporate powers (e.g., the ability to sue and be sued, enter into contracts, and hold property) and because New Jersey law expressly provides that the state bears no liability for NJ Transit's debts, the Court found NJ Transit stands on its own. The Court cautioned that state control alone carries little weight in this analysis, since the state ultimately controls all entities it creates. While this case involves a transit authority, the Court's reasoning would extend to school districts, charter school authorizers, and other public entities created by states as legally separate corporations — clarifying that such entities generally cannot invoke state sovereign immunity to deflect negligence suits brought against them in other jurisdictions.

Ninth Circuit (AK, CA, HI, ID, MT, NV, OR, WA) Blocks Department of Education's Cancellation of School Mental Health Funds

The Ninth Circuit rejected an emergency stay of a district court order preventing the U.S. Department of Education from canceling nearly $1 billion in school mental health grants. The court found that the Department failed to provide grant recipients with adequately reasoned, individualized explanations for the cancellations, as required under the Administrative Procedure Act. While the injunction does not compel the department to release funds, it requires the agency to make new, legally compliant continuation determinations for each grant.

Fourth Circuit (MD, NC, SC, VA, WV) Revives School Shooting Lawsuit Against Gun Manufacturers

The U.S. Court of Appeals for the Fourth Circuit reversed the dismissal of a case brought by two survivors of a school shooting in Washington, D.C. against assault rifle manufacturers alleging negligence and violations of Virginia consumer protection laws. The Fourth Circuit held that the plaintiffs' allegations were sufficient to show that the manufacturers' marketing had a "predictable effect" on the shooter's conduct, satisfying the "traceability" requirement of Article III standing.

U.S. Supreme Court Petitions to Watch:

- *Adams v. Sacramento County* – Whether public employee speech, made as a private citizen and about a controversial subject, loses all First Amendment protection unless the speech is intended "to ignite the public interest." ***Petition denied.***
- *Mirabelli v. Bonta* (emergency application for stay of Ninth Circuit's order vacating a preliminary injunction) – Whether public school teachers have a First Amendment right to refuse to comply with district policy requiring them to use students' preferred names and pronouns and refrain from disclosing gender identity information to parents.
- *Anoka Hennepin Education Minnesota (AFT Local 7007) v. Huizenga* – Whether local taxpayers have standing to sue a teachers' union over a collective bargaining provision with no net effect on school district funds.
- *Lavigne v. Great Salt Bay Community School Board* – Whether a parent's fundamental constitutional rights include the right to be notified when public schools affirmatively recognize and facilitate a child's gender-transition.
- *Petersen v. Doe* – Whether Arizona's Save Women's Sports Act, which excludes biological males from girls' and women's sports teams, violates the Equal Protection Clause.
- *Foote v. Ludlow School Committee* – Whether a public school violates parents' constitutional rights when, without parental knowledge or consent, the school encourages a student to transition to a new "gender" or participates in that process.
- *Littlejohn v. School Board of Leon County* – Whether a court may dismiss a parental-rights substantive due process claim challenging a public school's handling of a student's gender identity on the ground that the alleged conduct did not "shock the conscience," even where the claim alleges infringement of a fundamental right.
- *Crowther v. Board of Regents of the University System of Georgia* – Whether Title IX provides employees of federally funded educational institutions a private right of action to sue for sex discrimination in employment.
- *Hedgepeth v. Britton* – Whether and in what circumstances public employers may discipline employees based on their expression of controversial views while off the job.

U.S. Supreme Court Cases to Watch:

- *Chiles v. Salazar* – Whether Colorado's law prohibiting certain conversations between licensed counselors and minors regarding changes to a minor's sexual orientation or gender identity (i.e., "conversion therapy") violates the Free Speech Clause. ***(Argued Oct. 7, 2025).***
- *West Virginia v. B.P.J, by next friend and mother, Heather Jackson* – Whether Title IX or the Equal Protection Clause prevents a state from designating school sports teams based on biological sex determined at birth. ***(Argued Jan. 13, 2026).***
- *Little v. Hecox* – Whether laws that seek to protect women's and girls' sports by limiting participation based on sex violate the Equal Protection Clause. ***(Argued Jan. 13, 2026).***