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Court Report

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Fifth Circuit (LA, MS, TX) Upholds Texas Law Requiring Ten Commandments Displays in Classrooms

Parents of public-school students from diverse religious backgrounds challenged a Texas statute requiring public schools to display the Ten Commandments in every classroom, arguing the law violated the Establishment Clause and burdened their children's religious exercise. The law mandated a uniform, prominently displayed poster of the Ten Commandments but did not require instruction, recitation or enforcement tied to the text. A federal district court granted a preliminary injunction, finding the law unconstitutional under prior precedent, but the U.S. Court of Appeals for the Fifth Circuit reversed. (Note that as reported just a few weeks ago, the Fifth Circuit vacated an injunction blocking Louisiana's Ten Commandments classroom display law.) The Fifth Circuit held that Texas' statute does not facially violate the Establishment Clause because it lacks the defining features of a historical "establishment of religion." Rejecting earlier precedent that relied on the now-abandoned *Lemon* test, the court applied a history-focused analysis derived from recent Supreme Court decisions. Under that framework, the court reasoned that the Texas law does not resemble founding-era establishments, which typically involved coercive religious practices such as mandatory worship, government control of doctrine, financial support for clergy or punishment of dissenters. By contrast, the statute merely requires passive display of religious text and imposes no penalties, compulsion or doctrinal control.

The court also rejected the parents' Free Exercise claim, concluding that exposure to the Ten Commandments does not constitute a substantial burden on religious exercise. Unlike cases involving compelled participation in religious activities or instruction designed to undermine students' beliefs, the law does not require students to affirm, study or engage with the text. The court emphasized that passive exposure to religious content, without more, does not amount to coercion under the First Amendment.

Seventh Circuit (IL, IN, WI) Rejects First Amendment Challenge to Indiana's Ban on "Human Sexuality" Instruction in Early Grades

A prospective Indiana elementary school teacher challenged a 2023 state law prohibiting instruction on "human sexuality" for students in pre-kindergarten through third grade, arguing the law was overly broad and unconstitutionally vague. The teacher pointed to anticipated classroom practices (e.g., such as selecting certain books, responding to student language and displaying pro-LGBTQ messages) as speech she feared could trigger discipline or loss of licensure. The district court denied her request for a preliminary injunction, and the U.S. Court of Appeals for the Seventh Circuit affirmed, finding she was unlikely to succeed on the merits.

The Seventh Circuit concluded that the statute likely does not regulate a substantial amount of protected speech because most of the conduct it covers (i.e., classroom instruction and related student interactions) falls within a teacher's official duties and therefore lacks First Amendment protection. The

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court emphasized that even spontaneous or informal interactions with students on school grounds can qualify as instructional activity tied to a teacher's role and thus remain subject to curricular control. While acknowledging that some marginal applications (such as personal expression through stickers) could implicate protected speech, the court found those instances too limited to render the law facially overbroad. The court also rejected the vagueness challenge, holding that the terms "instruction" and "human sexuality" have a sufficiently clear core meaning — namely, the pedagogical delivery of content related to sexual topics such as reproduction, anatomy, and sexual conduct. The presence of borderline or ambiguous scenarios did not invalidate the statute, as courts typically resolve so-called "edge cases" through future interpretation or as-applied challenges.

Iowa Supreme Court Upholds Closed-Door School Board Discussions of Superintendent's Alleged "Quid Pro Quo" Conduct

An Iowa school superintendent challenged two closed school board sessions after members discussed allegations that he had engaged in a late-night, alcohol-involved conversation with board members suggesting support for leadership positions in exchange for alignment on district priorities. The superintendent characterized the exchange as harmless, while board members described it as a potential "quid pro quo" or even "bribery" concern that raised questions about his ethics. During a closed performance evaluation session requested by the superintendent himself, the board first discussed these concerns privately and later consulted legal counsel about whether to pursue an ethics complaint. After the superintendent left the district, the board held a second closed session to discuss and ultimately approve filing a complaint with the state licensing authority. The Iowa Supreme Court held that neither closed session violated the state's Open Meetings Act, reversing a lower court's finding that the first session was improper. The court reasoned that discussing specific allegations of unethical conduct fell squarely within the board's authority to evaluate the superintendent's professional competency, even if the discussion also touched on potential investigation or discipline. It rejected the argument that evaluation must be narrowly confined to pre-listed criteria or that boards must separate "evaluation" from "investigation," emphasizing that performance reviews often involve both. The court also found that the superintendent had no statutory right to advance notice of specific topics or an opportunity to respond during the closed session, explaining that open meetings law governs public access, not internal personnel procedures.

Texas Federal Court Upholds Firearm Ban at School Sporting Events

A group of firearm owners and an advocacy organization challenged Texas laws prohibiting firearms at locations including interscholastic events, bars, racetracks and sporting events, arguing the restrictions violated the Second Amendment. The federal district court rejected the challenge and granted summary judgment for the state.

The court held that although carrying firearms in public generally falls within the Second Amendment, the restrictions are consistent with the nation's historical tradition of regulating firearms in "sensitive places." It emphasized that schools (and by extension interscholastic events) have long been treated as protected environments due to the presence of students and the need for orderly educational settings. The court also pointed to historical analogues supporting firearm restrictions in locations involving alcohol, large gatherings and public entertainment.

DOJ Launches Investigations into 36 Illinois School Districts

The U.S. Department of Justice's Civil Rights Division announced it launched investigations into 36 Illinois public school districts to determine whether they have included sexual orientation and gender ideology (SOGI) content in classes. The investigation will also assess whether the schools limit access to single-sex bathrooms and locker rooms and girls' sports teams based on biological sex.

OCR Launches Investigation into NYC Schools for Alleged Antisemitism

The U.S. Department of Education's Office of Civil Rights opened an investigation into the New York City Department of Education (NYCDOE) to determine whether NYCDOE violated Title VI of the Civil Rights Act of 1964 (Title VI) by discriminating against Jewish students.

U.S. Supreme Court Petitions to Watch:

- *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. ***Petition granted.***
- *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. ***Petition denied.***
- *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. ***Petition denied.***
- *Hedgepeth v. Britton* – Whether and in what circumstances public employers may discipline employees based on their expression of controversial views while off the job. ***Petition denied.***
- *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.
- *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.
- *C.S., by Her Next Friend Stroub v. McCrumb* **(the "Come and Take It" Hat case)** – Whether, under Tinker, school officials may rely on later-developed concerns about potential disruption (e.g., anticipated emotional harm to students) to defend a decision to restrict student expression, even when those concerns were not articulated at the time of the discipline.
- *Smith v. Kind* – Whether, when a government official acts in an obviously unconstitutional manner, that is sufficient for the violation to be clearly established, or it is a violation clearly established only if there is binding precedent in a factually indistinguishable case.
- *E.D. ex rel. Duell v. Noblesville School District* **(pro-life student club)** – Whether Hazelwood v. Kuhlmeier (which holds that schools can control school-sponsored student expression) applies (1) whenever student speech might be erroneously attributed to the school; (2) when student speech occurs in the context of an "organized and structured educational activity"; or (3) only when student speech is part of the "curriculum."
- *D.A. ex rel. B.A. v. Tri County Area Schools* **("Let's Go Brandon" sweatshirts)** – Whether *Bethel School District v. Fraser* (which allowed a school to discipline a student for a school assembly speech filled with sexual innuendo) permits schools to censor nondisruptive political speech that is not plainly profane or lewd.

U.S. Supreme Court Cases to Watch:

- *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).***
- *St. Mary Catholic Parish v. Roy* – Whether a state can attach nondiscrimination requirements (here, requiring Catholic preschools to comply with LGBTQ-inclusive enrollment) as a condition to receiving public funding when those conditions conflict with religious doctrine.