Syracuse University
College of Law

# US SUPREME COURT: 2025-2026 PREVIEW

# PROGRAM MATERIALS

## Friday, Oct. 17, 2025 | 1:15 to 4:00 p.m.

In Person at Syracuse University College of Law, Dineen Hall,
and Live-Streamed. **Free and open to the public.**

NORTHERN DISTRICT OF NEW YORK · NDNY-FCBA · FEDERAL COURT BAR ASSOCIATION

Syracuse University
Newhouse School of
Public Communications
Tully Center for Free Speech

Syracuse University
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Institute for the Study of the
Judiciary, Politics & the Media

**Syracuse Civics Initiative**

"US Supreme Court: The 2025–2026 Term" provides 3 hours of CLE credit for Professional Practice in New York State. The College of Law and NDNY-FCBA have been certified by the NYS CLE Board New York State Continuing Legal Education Board as Accredited Providers of continuing legal education in the State of New York. This is a single program; no partial credit will be awarded. There is no charge for this program.

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*Special thanks to Bess Murad L'26 for compiling and editing these materials.

E. Roy Gutterman L'00



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# United States Supreme Court: The 2025–2026 Term

## Friday, October 17, 2025

Melanie Gray Ceremonial Courtroom, Dineen Hall
Syracuse University College of Law, 950 Irving Avenue
Syracuse, NY 13244

### Agenda

| | |
|---|---|
| 12:00–1:00 p.m. | Lunch with the Judiciary |
| 1:00–1:15 p.m. | CLE Registration |
| 1:15–1:20 p.m. | Welcome and Introduction: **Lauryn P. Gouldin**, Associate Dean for Faculty Affairs and Crandall Melvin Professor of Law |
| 1:20–2:20 p.m. | Keynote Lecture: **"The Supreme Court Clerkship: Evolution of an Institution,"** **David B. Lat**, Author of Original Jurisdiction; Founder of Above the Law |
| 2:20–2:30 p.m. | Break |
| 2:30–4:00 p.m. | Panel Discussion: "Supreme Court Preview: The 2025-2026 Term"<br>Moderator: **Terence Lau L'98,** Dean and Professor of Law<br>Panel participants (in speaking order):<br>**Terence Lau L'98,** Dean and Professor of Law<br>**Rakesh K. Anand,** Professor of Law<br>**Jenny S. Breen,** Associate Professor of Law<br>**Roy Gutterman '93, L'00,** Professor, Newhouse School of Communications; Director, Tully Center for Free Speech<br>**Lisa Peebles L'92,** Federal Public Defender, Northern District of New York |

**Zoom Link:** https://syracuseuniversity.zoom.us/j/93764675436

## PROGRAM PARTICIPANTS

### KEYNOTE SPEAKER

### David B. Lat, Author of Original Jurisdiction; Founder of Above the Law

David Lat is a lawyer turned writer. He publishes Original Jurisdiction, a newsletter on Substack about law and legal affairs, and he writes a column for Bloomberg Law. His work has also appeared in The New York Times, The Washington Post, and the Wall Street Journal, among other publications. Prior to launching Original Jurisdiction, David founded Above the Law, one of the nation's most widely read legal news websites, and Underneath Their Robes, a popular blog about federal judges that he wrote under a pseudonym. He is also the author of a novel set in the world of the federal courts, Supreme Ambitions. Before entering the media world, David worked as a federal prosecutor in Newark, New Jersey; a litigation associate at Wachtell, Lipton, Rosen & Katz, in New York; and a law clerk to Judge Diarmuid F. O'Scannlain of the U.S. Court of Appeals for the Ninth Circuit. David graduated from Harvard College and Yale Law School, where he served as an editor of the Yale Law Journal.

### PANELISTS

### Professor Rakesh K. Anand, Professor of Law

Professor Anand graduated from Stanford University in 1989 with a bachelor's degree in political science with honors and distinction and from Yale Law School in 1994 with a Juris Doctor. After graduating from law school, he clerked for Justice Aharon Barak of the Supreme Court of Israel and subsequently worked from 1995-2001 as a civil litigator with Heller Ehrman White & McAuliffe in San Francisco.

His research focuses on legal theory, constitutional law, professional responsibility, and the law of the European Union. His most recent publications are A Professionally Responsible Supreme Court?, 74 Case W. Rsrv. L. Rev. 903 (2024) and Reasoning About Faith: On the Religious Lawyer, 16 FIU. L. Rev. 259 (2022). In 2022, he received the Syracuse University College of Law Student Bar Association Faculty of the Year Award.

## Professor Jenny S. Breen, Associate Professor of Law

Professor Jenny Breen researches and writes on democracy with particular attention to democratic erosion and the United States Supreme Court. Prior to arriving at the College of Law, Professor Breen practiced immigration law and then worked as a judicial law clerk to the Hon. Rosemary S. Pooler on the United States Court of Appeals for the Second Circuit.

Professor Breen received her J.D. from Cornell Law School, her Ph.D. in Political Science from the University of Pennsylvania, and her B.A. in Political Science from the University of North Carolina at Chapel Hill.

## Lisa Peebles L '92, New York Federal Public Defender

Lisa Peebles joined the Northern District of New York Federal Public Defender's Office in August 1999. She was appointed First Assistant Public Defender in 2005 and Interim Federal Public Defender in November 2010. She was officially appointed as the Federal Public Defender for the Northern District of New York in 2013. She is a native of Cleveland, Ohio, and has practiced law in the Syracuse area for the past 31 years. She received her undergraduate degree from Akron University (Summa Cum Laude) and her law degree from Syracuse University (Cum Laude).

Lisa worked as a clerk in the United States Attorney's Office in Syracuse while attending law school. Upon being admitted to the Bar, she worked as an assistant public defender from 1993-1994 in the Jefferson County Public Defender's Office. Thereafter, she operated a private practice with emphasis on criminal defense matters. She has tried more than 50 cases to verdict, including both civil and criminal. She has handled numerous appeals in the Second Circuit Court of Appeals. Lisa has dedicated her career to indigent defense work and in 2014 she was awarded the Thurgood Marshall Award for outstanding criminal practitioner by the NYSACDL. In 2021, she co-authored a true-crime book, Scrapped: Justice and a Teen Informant.

## Roy Gutterman ’93, L’00 Professor, Newhouse School of Communications; Director, Tully Center for Free Speech

An expert on communications law and the First Amendment, Roy Gutterman is director of the Newhouse School’s Tully Center for Free Speech. He is a graduate of the Newhouse School and the Syracuse University College of Law.

At Newhouse, Gutterman was the 2009-10 director of the Carnegie Legal Reporting Program. He also works with the Society of Professional Journalists student chapter and serves on academic integrity committees.

After graduating from Newhouse, Gutterman worked as a reporter for the Cleveland Plain Dealer, covering local and state government, crime, legal issues and general news. He later clerked for a New Jersey Superior Court judge and practiced business and general litigation.

Gutterman writes and speaks on media law, free speech, the intersection between courts and journalists and legal education issues. He has delivered lectures at the Communication University of China in Beijing, Fudan University in Shanghai and National Chengchi University in Taipei.

Gutterman is a program director for the Burton Foundation for Legal Achievement; on the faculty committee for the Government Accountability Project in Washington, D.C., and on the honorary dinner committee for FIRE, the Foundation for Individual Rights in Education. As an undergraduate, he worked at The Boston Globe; The Courier-News in Bridgewater, N.J.; The Post-Standard in Syracuse; and The Daily Orange. While in law school, he served as editor-in-chief of the law review. His book, “L.Rev: the Law Review Experience in American Legal Education” (Academica Press 2002), is in law school libraries around the world.

MODERATOR

## Terence Lau L'98 Dean and Professor of Law

Terence J. Lau was appointed the 13th Dean of the Syracuse University College of Law in 2024. He leads the College, which offers one of the nation's first ABA-accredited hybrid online J.D. programs through JDinteractive and serves as a Professor of Law.

Lau graduated from Syracuse Law in 1998 and began practicing in Detroit, Michigan, in the Office of the General Counsel at Ford Motor Company in the International Trade and Transactions practice group. His practice focused on three primary areas: distribution, mergers & acquisitions, and compliance with U.S. law for foreign affiliates and subsidiaries. After three years in this role, he was transferred to Bangkok, Thailand, where he served as Ford's Director for the Association of Southeast Asian Nations Government Affairs, responsible for all government affairs matters in the 10-country group of Southeast Asian nations.

In 2002, he started his academic career at the School of Business Administration at the University of Dayton in Ohio. He was tenured as a business law Associate Professor in 2006 and then took a year's leave to serve as a Supreme Court Fellow at the Supreme Court of the United States in the Office of the Chief Justice. After serving as Professor and Associate Dean, he was then appointed Director of Faculty Affairs and Corporate Engagement at the University of Dayton China Institute in Suzhou, China, in 2016. In 2018, Lau was appointed Dean of the College of Business at California State University, Chico (CSU Chico), where he helped launch the College's first fully online MBA program. In 2023, interim Dean of the College of Engineering, Computer Science, and Construction Management. In July 2023, he served as Interim Provost and Vice President of Academic Affairs at CSU Chico before making the move back to Syracuse in 2024.

Lau has taught a variety of undergraduate, MBA, and J.D.-level courses in his career including new venture creation and entrepreneurship. He is the author of The Legal and Ethical Environment of Business, now in its Fifth Edition and has been adopted by over 200 universities and colleges. His research focuses on corporate governance, corporate social responsibility, and automotive distribution, and has appeared in Nevada Law Journal, DePaul Law Review, American Business Law Journal, University of Dayton Law Review, and William and Mary Journal of Women & The Law. He is the former Editor-in-Chief of The American Business Law Journal.

Lau is a former member of the Syracuse University College of Law Board of Advisors, a former Board of Directors member of Mikesells in Dayton, Ohio, and a former Board of Directors member of Capital Public Radio in Sacramento, California. He is admitted to practice in Michigan and the Supreme Court of the United States.

PROGRAM ORGANIZER

Lauryn, Gouldin, Associate Dean for Faculty Affairs; Crandall Melvin Professor of Law; Director, Syracuse Civics Initiative

Crandall Melvin Professor Lauryn Gouldin teaches constitutional criminal procedure, evidence, constitutional law, privacy law, criminal law, and criminal justice reform. Her scholarship focuses on the Fourth Amendment, pretrial detention and bail reform, and judicial decision-making. Her articles have appeared or are forthcoming in the University of Chicago Law Review, Emory Law Journal, Wake Forest Law Review, BYU Law Review, and the American Criminal Law Review, among others. Syracuse University named her a Laura J. and L. Douglas Meredith Professor of Teaching Excellence in 2022.

Professor Gouldin earned her B.A. from Princeton and her J.D., magna cum laude, from NYU School of Law. She clerked for Judge Leonard B. Sand (S.D.N.Y.) and Judge Chester J. Straub (2d Cir.) before practicing at Wachtell, Lipton, Rosen & Katz in white-collar defense and securities litigation. She later served as Assistant Director of the Center for Research in Crime and Justice at NYU before joining the Syracuse faculty.

## PROGRAM PARTICIPANTS AND CASES DISCUSSED

**Moderator: Terence Lau L'98**
*Dean and Professor of Law*

| PANELIST | TOPICS/CASES |
|---|---|
| **Terence Lau L'98**<br>Dean; Professor of Law | Learning Resources v. Trump |
| **Rakesh K. Anand**<br>Professor of Law | Little v. Hecox<br>Chiles v. Salazar |
| **Jennifer Breen**<br>Associate Professor of Law | Trump v. Slaughter<br>Trump v. Cook<br>The Court's Shadow Docket |
| **Lisa Peebles L'92**<br>New York Federal Public Defender; Adjunct Professor of Law | Case v. Montana<br>Villareal v. Texas<br>Hamm v. Smith |
| **Roy Gutterman L'00**<br>Professor, Newhouse School of Communications; Director, Tully Center for Free Speech | First Choice Women's Resource Centers v. Platkin<br>Landor v. Louisiana Department of Corrections and Public Safety<br>Cox Communications v. Sony Music Entm't |

| SCOTUS CASE<br>*listed in same order as above* | CASE DESCRIPTION |
|---|---|
| **Learning Resources v. Trump, No. 24-1287**<br>[Arg: 11.05.2025 ] | **Issue:** Whether the International Emergency Economic Powers Act authorizes the president to impose tariffs. |
| **Little v. Hecox, No. 24-38**<br>**[Arg: TBD]**<br>Lower Court Decision | **Issue:** Whether laws that seek to protect women's and girls' sports by limiting participation to women and girls based on sex violate the equal protection clause of the 14th Amendment. |
| **Chiles v. Salazar, No. 24-539**<br>**[Arg: 10.07.2025 ]**<br>Lower Court Decision | **Issue(s):** Whether a law that censors certain conversations between counselors and their clients based on the viewpoints expressed regulates conduct or violates the free speech clause of the First Amendment |
| **Trump v. Slaughter, No. 25-332**<br>**[Arg: TBD]**<br>Lower Court Decision | **Issue(s):** (1) Whether the statutory removal protections for members of the Federal Trade Commission violate the separation of powers and, if so, whether *Humphrey's Executor v. United States* should be overruled. (2) Whether a federal court may prevent a person's removal from public office, either through relief at equity or at law. |
| **Trump v. Cook, No. 25-A312.**<br>**[Arg: TBD]**<br>Lower Court Decision | **Issue:** Whether the Supreme Court should stay a district court ruling preventing the president from firing a member of the Federal Reserve Board of Governors. |
| **Case v. Montana, No. 24-624**<br>**[Arg: 10.15.2025]**<br>Lower Court Decision | **Issue**: Whether law enforcement may enter a home without a search warrant based on less than probable cause that an emergency is occurring, or whether the emergency-aid exception requires probable cause. |
| **Villarreal v. Texas, No. 24-557**<br>**[Arg: 10.06.2025]**<br>Lower Court Decision | **Issue**: Whether a trial court abridges a defendant's Sixth Amendment right to counsel by prohibiting the defendant and his counsel from discussing the defendant's testimony during an overnight recess |
| **Hamm v. Smith, No. 24-872**<br>**[Arg: 11.04.2025]**<br>Lower Court Decision | **Issues**: Whether and how courts may consider the cumulative effect of multiple IQ scores in assessing an Atkins claim. |
| **Cox Communications v. Sony Music Entm't, No. 24-171**<br>**[Arg: TBD]**<br>Lower Court Decision | **Issue(s):** (1) Whether the U.S. Court of Appeals for the 4th Circuit erred in holding that a service provider can be held liable for "materially contributing" to copyright infringement merely because it knew that people were using certain accounts to infringe and did not terminate access, without proof that the service provider affirmatively fostered infringement or otherwise intended |

| SCOTUS CASE<br>*listed in same order as above* | CASE DESCRIPTION |
|---|---|
| | to promote it; and (2) whether the 4th Circuit erred in holding that mere knowledge of another's direct infringement suffices to find willfulness under 17 U.S.C. § 504(c). |
| **First Choice Women's Resource Centers v. Platkin, No. 24-781**<br>**[Arg: TBD]**<br>Lower Court Decision | **Issue(s):** Whether, when the subject of a state investigatory demand has established a reasonably objective chill of its First Amendment rights, a federal court in a first-filed action is deprived of jurisdiction because those rights must be adjudicated in state court. |
| **Landor v. Louisiana Department of Corrections and Public Safety, No. 23-1197**<br>**[Arg: 11.10.2025]**<br>Lower Court Decision | **Issue(s):** Whether an individual may sue a government official in his individual capacity for damages for violations of the Religious Land Use and Institutionalized Persons Act of 2000. |

The Full October term can be found here, courtesy of SCOTUSblog.

## Supreme Court Docket - October & November 2025

**Villarreal v. Texas, No. 24-557 [Arg: 10.6.2025]**

- **Issue**: Whether a trial court abridges a defendant's Sixth Amendment right to counsel by prohibiting the defendant and his counsel from discussing the defendant's testimony during an overnight recess.

**Berk v. Choy, No. 24-440 [Arg: 10.6.2025]**

- **Issue**: Whether a state law providing that a complaint must be dismissed unless it is accompanied by an expert affidavit may be applied in federal court.

**Barrett v. U.S., No. 24-5774 [Arg: 10.7.2025]**

- **Issue**: Whether the double jeopardy clause of the Fifth Amendment permits two sentences for an act that violates 18 U.S.C. § 924(c) and (j).

**Chiles v. Salazar, No. 24-539: [Arg: 10.7.2025]**

- **Issue**: Whether a law that censors certain conversations between counselors and their clients based on the viewpoints expressed regulates conduct or violates the free speech clause of the First Amendment.

**Bost v. Illinois State Board of Elections, No. 24-568 [Arg: 10.8.2025]**

- **Issue**: Whether petitioners, as federal candidates, have pleaded sufficient factual allegations to show Article III standing to challenge state time, place, and manner regulations concerning their federal elections.

**U.S. Postal Service v. Konan, No. 24-351 [Arg: 10.8.2025]**

- **Issue**: Whether a plaintiff's claim that she and her tenants did not receive mail because U.S. Postal Service employees intentionally did not deliver it to a designated address arises out of "the loss" or "miscarriage" of letters or postal matter under the Federal Tort Claims Act.

**Bowe v. U.S., No. 24-5438 [Arg: 10.14.2025]**

- **Issues**:
    1. Whether 28 U.S.C. § 2244(b)(1) applies to a claim presented in a second or successive motion to vacate under 28 U.S.C. § 2255
    2. Whether Subsection 2244(b)(3)(E) deprives this court of certiorari jurisdiction over the grant or denial of an authorization by a court of appeals to file a second or successive motion to vacate under Section 2255

**Ellingburg v. U.S., No. 24-482 [Arg: 10.14.2025]**

- **Issue**: Whether criminal restitution under the Mandatory Victim Restitution Act is penal for purposes of the Constitution's ex post facto clause.

**Case v. Montana, No. 24-624 [Arg: 10.15.2025]**

- **Issue**: Whether law enforcement may enter a home without a search warrant based on less than probable cause that an emergency is occurring, or whether the emergency-aid exception requires probable cause.

**Louisiana v. Callais, No. 24-109 [Arg: 10.15.2025]**

- **Issues**:
    1. Whether the majority of the three-judge district court in this case erred in finding that race predominated in the Louisiana legislature's enactment of S.B. 8
    2. Whether the majority erred in finding that S.B. 8 fails strict scrutiny
    3. Whether the majority erred in subjecting S.B. 8 to the preconditions specified in Thornburg v. Gingles
    4. Whether this action is non-justiciable

**Rico v. U.S., No. 24-1056 [11.3.2025]**

- **Issue**: Whether the fugitive-tolling doctrine applies in the context of supervised release.

**Hencely v. Fluor Corporation, No. 24-924 [11.3.2025]**

- **Issue**: Whether Boyle v. United Technologies Corp. should be extended to allow federal interests emanating from the Federal Tort Claims Act's combatant-activities exception to preempt state tort claims against a government contractor for conduct that breached its contract and violated military orders.

**Coney Island Auto Parts Unlimited v. Burton, No. 24-808 [11.4.2025]**

- **Issue**: Whether Federal Rule of Civil Procedure 60(c)(1) imposes any time limit to set aside a void default judgment for lack of personal jurisdiction.

**The Hain Celestial Group v. Palmquist, No. 24-724 [11.4.2025]**

- **Issue**: Whether a district court's final judgment as to completely diverse parties must be vacated when an appellate court later determines that it erred by dismissing a non-diverse party at the time of removal.

**Learning Resources v. Trump, No. 24-1287 [Arg: 11.05.2025 ]**

- **Issue**: Whether the International Emergency Economic Powers Act authorizes the president to impose tariffs.

**The GEO Group v. Menocal, No. 24-758 [11.10.2025]**

- **Issue**: Whether an order denying a government contractor's claim of derivative sovereign immunity is immediately appealable under the collateral-order doctrine.

**Landor v. Louisiana Department of Corrections and Public Safety, No. 23-1197 [11.10.2025]**

- **Issue**: Whether an individual may sue a government official in his individual capacity for damages for violations of the Religious Land Use and Institutionalized Persons Act of 2000.

**Rutherford v. U.S., No. 24-820 [11.12.2025]**

- **Issue**: Whether a district court may consider disparities created by the First Step Act's prospective changes in sentencing law when deciding if "extraordinary and compelling reasons" warrant a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i).

**Fernandez v. U.S., No. 24-556 [11.12.2025]**

- **Issue**: Whether a combination of "extraordinary and compelling reasons" that may warrant a discretionary sentence reduction under 18 U.S.C. § 3582(c)(1)(A) can include reasons that may also be alleged as grounds for vacatur of a sentence under 28 U.S.C. § 2255.

**Cases Not (Yet) Set for Argument**

**Chevron USA Inc. v. Plaquemines Parish, Louisiana, No. 24-813**

- **Issues**:
    1. Whether a causal-nexus or contractual-direction test survives the 2011 amendment to the federal-officer removal statute, which provides federal jurisdiction over civil actions against "any person acting under [an] officer" of the United States "for or relating to any act under color of such office"
    2. Whether a federal contractor can remove to federal court when sued for oil-production activities undertaken to fulfill a federal oil-refinement contract

**Cox Communications v. Sony Music Entm't, No. 24-171**

- **Issues**:
    1. Whether the U.S. Court of Appeals for the 4th Circuit erred in holding that a service provider can be held liable for "materially contributing" to copyright infringement merely because it knew that people were using certain accounts to infringe and did not terminate access, without proof that the service provider affirmatively fostered infringement or otherwise intended to promote it
    2. Whether the 4th Circuit erred in holding that mere knowledge of another's direct infringement suffices to find willfulness under 17 U.S.C. § 504(c)

**Enbridge Energy, LP v. Nessel, No. 24-783**

- **Issue**: Whether district courts have the authority to excuse the 30-day procedural time limit for removal in 28 U.S.C. § 1446(b)(1).

**First Choice Women's Resource Centers v. Platkin, No. 24-781**

- **Issue**: Whether, when the subject of a state investigatory demand has established a reasonably objective chill of its First Amendment rights, a federal court in a first-filed action is deprived of jurisdiction because those rights must be adjudicated in state court.

**FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd., No. 24-345**

- **Issue**: Whether Section 47(b) of the Investment Company Act creates an implied private right of action.
- **Note**: CVSG: 5/22/2025

**Galette v. New Jersey Transit Corporation, No. 24-1021**

- **Issue**: Whether the New Jersey Transit Corporation is an arm of the State of New Jersey for interstate sovereign immunity purposes.

**Hamm v. Smith, No. 24-872**

**Issue**: Whether and how courts may consider the cumulative effect of multiple IQ scores in assessing an Atkins claim.

**Little v. Hecox, No. 24-38:**

- **Issue**: Whether laws that seek to protect women's and girls' sports by limiting participation to women and girls based on sex violate the equal protection clause of the 14th Amendment.

**M & K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund, No. 23-1209**

- **Issue**: Whether 29 U.S.C. § 1391's instruction to compute withdrawal liability "as of the end of the plan year" requires the plan to base the computation on the actuarial assumptions most recently adopted before the end of the year, or allows the plan to use different actuarial assumptions that were adopted after, but based on information available as of, the end of the year.

**National Republican Senatorial Committee v. Federal Election Commission, No. 24-621**

- **Issue**: Whether the limits on coordinated party expenditures in 52 U.S.C. § 30116 violate the First Amendment, either on their face or as applied to party spending in connection with "party coordinated communications" as defined in 11 C.F.R. § 109.37.

**Olivier v. City of Brandon, Mississippi, No. 24-993**

- **Issues**:
    1. Whether this court's decision in Heck v. Humphrey bars claims under 42 U.S.C. § 1983 seeking purely prospective relief where the plaintiff has been punished before under the law challenged as unconstitutional
    2. Whether Heck v. Humphrey bars Section 1983 claims by plaintiffs even where they never had access to federal habeas relief

**Trump v. Slaughter, No. 25-332**

- **Issues**:
    1. Whether the statutory removal protections for members of the Federal Trade Commission violate the separation of powers and, if so, whether Humphrey's Executor v. United States should be overruled.
    2. Whether a federal court may prevent a person's removal from public office, either through relief at equity or at law.

**Urias-Orellana v. Bondi, No. 24-777**

- **Issue**: Whether a federal court of appeals must defer to the Board of Immigration Appeals' judgment that a given set of undisputed facts does not demonstrate mistreatment severe enough to constitute "persecution" under 8 U.S.C. § 1101(a)(42).

**West Virginia v. B.P.J., No. 24-43:**

- **Issues**:
    1. Whether Title IX of the Education Amendments of 1972 prevents a state from consistently designating girls' and boys' sports teams based on biological sex determined at birth
    2. Whether the equal protection clause of the 14th Amendment prevents a state from offering separate boys' and girls' sports teams based on biological sex determined at birth

**Cases Dismissed from Merits Docket**

**Department of Education v. Career Colleges and Schools of Texas, No. 24-413**

- **Issue**: Whether the U.S. Court of Appeals for the 5th Circuit erred in holding that the Higher Education Act of 1965 does not permit the assessment of borrower defenses to repayment before default, in administrative proceedings, or on a group basis.

# New SCOTUS Clerk Class Has More Women, Experience Than in 2000

July 30, 2025, 4:30 AM EDT

*David Lat*

**David Lat**
Bloomberg Law

The US Supreme Court currently stands in recess, but that doesn't mean nothing's happening at One First Street. Although the justices generally aren't in the building, as they typically travel or teach over the summer, July is an important month for the justices' law clerks: Outgoing clerks depart after training their successors, and the incoming clerks settle into their new jobs.

I've been reporting on Supreme Court clerk hiring for years, and each year, after the court's Public Information Office confirms the accuracy of my list of clerks, I conduct a demographic analysis of the new class of clerks. I recently published my analysis of the latest crop of clerks for October Term 2025.

The year 2025 is a nice, round number, and it got me thinking: Wouldn't it be interesting to compare the clerks for October Term 2025 (OT 2025) with their counterparts from a quarter century ago, the clerks for October Term 2000 (OT 2000)?

The two cohorts differ in a number of important respects—and the differences are revealing.

## Gender

The OT 2000 clerk class wasn't very balanced in terms of gender. Of the 35 clerks, 25 were men and 10 were women, making for a 71% to 29% split.

By contrast, the OT 2025 class of 38 clerks consists of 20 men and 18 women. At a 53% to 47% split, that's fairly close to even representation.

Over the past 25 years, the representation of women in the legal profession has increased dramatically—and it's reflected in the ranks of Supreme Court clerks. Women aren't just entering the legal profession; they're making progress in its highest echelons.

Men are still overrepresented in the ranks of SCOTUS clerks, since they represented only 42% of incoming law students last year but constitute 53% of clerks. But that's not an overwhelming majority—and it's a far cry from the 71% of a generation ago.

## Age

Of the 35 clerks in OT 2000, three graduated from law school in 1997, 14 graduated in 1998, and 18 graduated in 1999. So no clerk was more than three years out of law school by the time they arrived at the court, the median clerk was one year out of law school, and the average time out of law school was a little over one and a half years. I'm guessing that all or almost all of the OT 2000 clerks were in their 20s when they clerked at the court.

The 38 clerks in OT 2025 are a significantly older crew, at least based on when they graduated from law school. Only two graduated in 2024, 10 graduated in 2023, another 10 graduated in 2022—and the remaining 16 graduated four or more years ago. Three graduated in 2019, placing them six years out of law school—and one graduated in 2011, some 14 years earlier. The median clerk in OT 2025 is three years out of law school, and the average time out of law school for the group is 3.6 years.

This shift to more mature clerks has pluses and minuses, but on the whole, I think it's a positive development. If it's true that with age comes wisdom, older clerks might have somewhat better judgment than ones fresh out of law school—and might be able to offer their justices sounder advice.

# Clerkship Experience

How did these OT 2025 clerks spend their additional time out of law school? Some worked as lawyers in private practice or government, but most spent the time clerking for lower court judges.

Out of the 38 clerks for OT 2025, 33—or 87% of the group—completed more than one prior clerkship. The most common path, taken by 23 clerks or 61% of the class, was to clerk for a district court judge in addition to the traditional circuit-court judge.

Compare this with OT 2000. Out of the 35 clerks, only two did more than one clerkship, and only one of the two had clerked on a district court. Put another way, 94% of the OT 2000 clerks had completed only one clerkship by the time they arrived at the Supreme Court.

Is this a good thing? I think so—and I'm guessing the justices do as well, given their revealed preference for hiring such experienced clerks.

A district-court clerkship typically provides a clerk with more practical, nuts-and-bolts knowledge about the litigation process than a circuit-court clerkship. This insight can help clerks provide better counsel to their justices—and I'm guessing that the two justices who once served as district court judges, Justices Sonia Sotomayor and Ketanji Brown Jackson, especially appreciate it.

And as one district-court "feeder judge"—that is, a judge who sends an unusually high number of their clerks into Supreme Court clerkships—suggested to me, experience

clerking on a district court might be particularly valuable today.

“The Justices’ recent interest in hiring clerks with district court experience makes sense given the rise of the emergency docket,” this judge told me. “That docket—with its fast pace, fact-intensive work, and equitable balancing—is much more akin to the work of district courts than typical appellate fare.”

# Law Schools

Which law schools sent the highest number of their graduates into Supreme Court clerkships? In OT 2000, the top schools were Harvard (with 11 clerks), Yale (6), Chicago (4), Columbia (3), and NYU (3). In OT 2025, the top schools were Harvard (7), Yale (7), Chicago (7), Stanford (5), Michigan (2), Notre Dame (2), Penn (2), and Virginia (2).

So the top three stayed the same, but after that, there were some notable shifts. Harvard, once dominant, now shares top honors with Yale and Chicago. Columbia and NYU lost ground, going from sending three clerks in OT 2000 to only one clerk apiece in OT 2025.

Meanwhile, Stanford shot up, from one clerk in OT 2000 to five in OT 2025. Notre Dame and Penn also fared well, going from zero clerks in OT 2000 to two each in OT 2025. The remaining two schools basically stayed the same: UVA sent two clerks to the court in OT 2000 and OT 2025, while Michigan dropped from two in OT 2000 to one in OT 2025.

Compared with the other factors discussed above, law schools changed the least between OT 2000 and OT 2025. Then and now, if you aspire to clerk for the Supreme Court, you’ll maximize your chances by attending an elite law school (and, of course, doing exceedingly well there).

So if you aspire to clerk for the high court, focus on prestige when picking a law school, and stack up those lower court clerkships. And don’t be afraid to apply again if you don’t succeed the first time.

As reflected in the graduation years of the OT 2025 clerks, there’s no longer a sense that your ship has sailed if you’re more than two to three years out of law school. Maybe I should throw in an application. Is any justice looking for a 50-year-old law clerk?

*David Lat, a lawyer turned writer, publishes Original Jurisdiction. He founded Above the Law and Underneath Their Robes, and is author of the novel “Supreme Ambitions.”*

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July 30, 2025, 4:30 AM EDT

David Lat
Bloomberg Law

# Great Law Clerks Are Like General Counsel, Not Junior Associates

Aug. 27, 2025, 4:30 AM EDT

*David Lat*

David Lat
Bloomberg Law

Fall is a time of beginnings. It brings a new school year, a new season for television and theater, and—in the federal judicial world—a new class of law clerks. (Clerks traditionally transition in the late summer or early fall—except for Supreme Court clerks, who change over in July.)

I'm frequently asked for career advice, by everyone from college students contemplating law school to partners thinking about lateral moves. In light of the time of year, I thought I'd tackle this question: What counsel would I give to clerks?

Here are some tips. They're based not just on my own knowledge of the clerkship world, including my (admittedly dated) experience clerking for the Ninth Circuit, but on recent conversations I had with federal judges whom I consulted for advice.

**1. Be proactive, not passive**

Law clerks are sometimes described as extensions of their judges. And it's true that during their clerkships, clerks don't have independent professional identities—their efforts get turned into work product that goes out in the names of their judges.

You might think, then, that clerks should await instruction from their judges before doing anything—just as an arm doesn't move unless the brain tells it to move. But multiple judges told me they don't want passivity in their clerks.

Instead, the judges I interviewed said they want clerks to think independently and offer their honest assessments of the facts and the law, as opposed to being yes-men or yes-women who simply say what they think their judges want to hear. These judges want clerks who can "see around corners" and bring both problems and opportunities to their judges' attention—for example, a troubling decision that the judge might want to have reheard en banc, or a way in which the judge can clarify existing doctrine or even move the law forward.

As one judge put it to me, the judge-clerk relationship is more like the relationship between a CEO and a general counsel, as opposed to the relationship between a partner and an associate. The best clerks serve as trusted advisers to their judges, taking the initiative and exercising independent judgment—not as mere worker bees, simply waiting to execute on orders.

Okay, perhaps that's uncharitable to Big Law associates. Maybe a nicer way to put it is that clerks should act like seasoned senior associates, confident enough to think and speak freely, as opposed to fearful junior associates, not speaking unless they're spoken to.

At the same time, because a judicial chambers is staffed more leanly than a Big Law firm, clerks also need to assume the duties of junior associates and paralegals—which include making sure that everything is correct, down to the tiniest detail. Where can that particular fact be found in the record? Does that case actually stand for that precise proposition? As a clerk, it's your job to find

these things out—and to get them right.

### 2. Work closely—and become friends—with your co-clerks

Discussions of clerking inevitably focus on the judge-clerk relationship—which is entirely understandable, given how judges often become mentors to their clerks. But clerk-clerk relationships shouldn't be overlooked; in fact, they're also an essential part of the clerkship experience.

Some judges require their clerks to work together—for example, by editing or cite-checking each other's work. But even if your judge doesn't mandate it, you should collaborate with your co-clerks, bounce ideas off of each other, and try to improve each other's work.

A clerkship is, compared with many other legal workplaces, largely free of internal competition and backstabbing. Take advantage of this collaborative environment while you have it. In fact, one judge told me that he requires his clerks to come into chambers at least four times a week precisely because being in each other's company makes for better work product.

And you should enjoy spending time with your co-clerks as well. My three co-clerks are some of the most fun (and funniest) people I know, and hanging out with them—not just at work but outside of it, whether attending the Pendleton Round-Up, hiking in the Columbia River Gorge, or touring Oregon wineries—was a highlight of my clerkship year.

I learned a tremendous amount during my year clerking for the Ninth Circuit. But in terms of the most important things I gained from my clerkship, I'd cite my relationships with Judge Diarmuid O'Scannlain, who has been a lifelong mentor to me, and with my co-clerks, who are three of my best friends a quarter century later.

### 3. Before your clerkship starts, try to get in some R&R: rest and … reading

A clerkship can be an intense and demanding job. So it made sense when one judge told me that clerks should try to get some rest before the start of the clerkship—especially if they're coming from stressful, time-consuming jobs in Big Law. If you can, try to take some time off after your last job (or the bar exam) and before your clerkship.

Before arriving in chambers, read your judge's most notable recent opinions. This will give you a sense of both the legal issues your judge is facing these days and your judge's writing style, which will be useful to you in drafting opinions. Pay especially close attention to dissents and concurrences, which provide even greater insight into your judge's analytical approach and writerly voice. In these separate opinions, which don't require buy-in from any of their colleagues, judges enjoy more freedom to think and write as they please.

Judges also provided me with book recommendations for clerks. One suggested "Reading Law," by the late Justice Antonin Scalia and the legal-writing expert Bryan Garner, to understand statutory and constitutional interpretation. Another recommended "Point Taken: How to Write Like the World's Best Judges" by Ross Guberman, another writing guru, to help clerks draft opinions well.

And if you'll allow me a shameless plug, check out my own "Supreme Ambitions." It's a novel with a Ninth Circuit clerk as the protagonist, and it's a fun beach read for these final days of summer.

### 4. Get to know your judge—and govern yourself accordingly

One of the best pieces of advice I ever received, from then-dean Risa Goluboff of the University of Virginia School of Law, could be described as "meta-advice." Whenever you receive a tip or pointer, ask yourself: Does this apply to me and my circumstances? Counsel that might be wise for one person, in one particular situation, might be misguided for someone not similarly situated.

This applies to everything written in this column. Because they are individual human beings, judges are more varied than pretty much any other employer (including law firms). So clerks need to know their judges well, including their preferences and pet peeves, and adjust accordingly.

Most judges I know want clerks who take the initiative, as discussed above. But if your judge expects clerks to be glorified cite-checkers, then that is what you should be. (And maybe you should think about clerking again, for a judge who values independent thinking in their clerks; it makes for a much better clerkship experience.)

If you're an incoming clerk, congratulations on your clerkship. It's one of the best jobs the legal profession has to offer. And good luck in the year ahead.

*David Lat, a lawyer turned writer, publishes Original Jurisdiction. He founded Above the Law and Underneath Their Robes, and is author of the novel "Supreme Ambitions."*

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**David Lat**
Bloomberg Law

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SCOTUS NEWS

# Supreme Court announces it will hear challenges to Trump's tariffs on Nov. 5

By **Amy Howe**
on Sep 18, 2025


(Katie Barlow)

The Supreme Court will hear arguments on Nov. 5 in **the pair of challenges** to President Donald Trump's authority to impose tariffs under the International Emergency Economic Powers Act. The court on Thursday morning released an **updated calendar** for its November argument session that reflects the addition of the tariffs dispute, which the justices **added** to their docket for the 2025-26 term on Sept. 9.

The dispute over Trump's tariffs is operating on a highly expedited schedule. The government will file its opening brief on Friday, just 10 days after the court announced that it had granted review; the challengers' briefs will follow just over one month after that. Both sides had urged the court to act quickly. The Trump administration has

**argued** that the ruling by a federal appeals court that the tariffs are unlawful "has disrupted highly impactful, sensitive, ongoing diplomatic trade negotiations," while the challengers have **pointed** to the "severe economic hardships" caused by the tariffs.

To accommodate the addition of the tariffs dispute to the November argument calendar, **the case that had initially been scheduled for Nov. 5** was moved to Nov. 4, and ***Hamm v. Smith***, a death-penalty case that had originally been scheduled for Nov. 4, was taken off the November calendar. It presumably will be rescheduled at a later date.

Posted in **Court News**, **Merits Cases**
Cases: **Learning Resources, Inc. v. Trump**, **Coney Island Auto Parts Unlimited, Inc. v. Burton**, **Hamm v. Smith**, **Trump v. V.O.S. Selections**

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SCOTUS NEWS

# Trump administration urges Supreme Court to uphold tariffs

By **Amy Howe**
on Sep 19, 2025


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(Win McNamee/Getty Images)

*Updated on Sept. 20 at 9:31 a.m.*

The Trump administration on Friday **urged the Supreme Court** to uphold President Donald Trump's power to impose sweeping tariffs on virtually all goods imported into the United States. U.S. Solicitor General D. John Sauer, the government's top lawyer before the court, told the justices that "the President and his Cabinet officials have determined that the tariffs are promoting peace and unprecedented economic prosperity, and that the denial of tariff authority would expose our nation to trade retaliation without effective defenses and thrust America back to the brink of economic catastrophe."

The 49-page filing came just 10 days after the justices **agreed to take up** and fast-track the challenges to the tariffs, which Trump imposed in a series of executive orders beginning in February. The court will hear oral arguments on Nov. 5; both sides have asked the justices to rule on the challenges soon after that.

Trump's executive orders relied on the **International Emergency Economic Powers Act**, a 1977 law that authorizes the president to take action to "deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States" if he declares a national emergency "with respect to such threat." In particular, IEEPA gives the president the power, when there is a national emergency, to "regulate … importation" of "property in which any foreign country or a national thereof has any interest."

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The tariffs fall into two buckets. The first, known as the "trafficking" tariffs, apply to goods from Canada, China, and Mexico – countries that, in Trump's view, have not taken sufficient measures to stop the flow of fentanyl into the United States. The second, known as the "reciprocal" tariffs, impose tariffs ranging from 10% to 50% on products from almost all nations.

Three separate challenges followed their imposition. The first, filed in a federal court in Washington, D.C., came from two small, family-owned businesses, Learning Resources and hand2mind, that make educational toys and products. They say that the tariffs will cost them $100 million in 2025 – almost 45 times as much as they paid in tariffs the previous year.

Two other challenges to the tariffs were filed in the Court of International Trade, which is in New York. A separate group of five small businesses brought one suit. One of the plaintiffs, Terry Cycling, which makes women's cycling apparel, says that the tariffs could cost the company as much as $1.2 million in 2026 – "an amount," it contends, "that is simply not survivable for a business of its size."

The second suit, brought by a group of 12 states, led by Oregon, contends that the tariffs have increased the costs that the states must pay to buy "equipment, supplies and parts, many of which are imported from other countries" – for example, specialized research equipment for their public universities.

Both U.S. District Judge Rudolph Contreras and the Court of International Trade agreed with the challengers that the tariffs exceeded Trump's power under IEEPA.

Learning Resources and hand2mind then **came to the Supreme Court** in June, asking the justices to take up the case without waiting for the U.S. Court of Appeals for the District of Columbia Circuit to rule on the government's appeal.

On Aug. 29, the U.S. Court of Appeals for the Federal Circuit, which hears appeals from the Court of International Trade, **ruled** that Trump did not have the power to impose the tariffs. By a vote of 7-4, it said that imposing "tariffs of unlimited duration on imports of nearly all goods from nearly every country with which the United States conducts trade" is "both 'unheralded' and 'transformative.'" Reasoning that "[t]he Executive's use of tariffs qualifies as a decision of vast economic and political significance," the majority explained that the government was therefore required to "'point to clear congressional authorization'" for its actions – which, the majority concluded, it could not do.

The Trump administration **came to the Supreme Court** on Sept. 3, asking the justices to take up the case. Both the **small businesses** and the **states** maintained that the lower courts' rulings were correct, but they agreed that the court should grant review – which it did on Sept. 9. The court fast-tracked the case, as well as the case brought by Learning Resources and hand2mind, which it had also granted, and scheduled oral arguments for Nov. 5.

In its brief on the merits, the Trump administration on Friday argued that IEEPA's grant of power to the president to "'regulate importation'" "plainly authorizes the President to impose tariffs" because tariffs "are a traditional and commonplace way to regulate imports." It does not matter, Sauer insisted, that IEEPA does not specifically refer to tariffs,

particularly when the Supreme Court "has repeatedly rejected such magic-words requirements."

The Trump administration next pushed back against the challengers' contention (also advanced by the majority in the Federal Circuit) that "even if IEEPA authorizes tariffs, it does not authorize 'unlimited' tariffs." Such an argument, Sauer wrote, "attacks a strawman" because IEEPA and a related law, the National Emergencies Act, impose their own limits on tariffs, such as a one-year limit on emergencies and "a slew of procedural and reporting requirements that allow Congress to oversee and override the President's determinations."

And to the extent that the Federal Circuit relied on the "major questions" doctrine – the idea that if Congress wants to give a federal agency the authority to make decisions with "vast economic and political significance," it must clearly say so – to reach its conclusion, Sauer wrote, that reliance was misplaced. First, Sauer noted, that doctrine only comes into play when a law is not clear. But IEEPA's grant of authority to the president to "regulate importation," Sauer said, "unambiguously includes tariffs." Second, Sauer continued, the Supreme Court has "never applied the doctrine in the foreign-affairs context, where Congress presumptively does grant the President broad powers to supplement his" authority under the Constitution. To the contrary, Sauer wrote, the major questions doctrine was intended to deal with "the 'particular and recurring problem' of '*agencies* asserting highly consequential power beyond what Congress could reasonably be understood to have granted.'" Such "concerns dissipate where, as here, Congress delegates authority directly to the President," Sauer concluded.

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Sauer also urged the court to uphold the president's determination that trade deficits and drug trafficking constitute national emergencies for purposes of invoking IEEPA. Courts, he contended, should not have the power to review such determinations, because "[j]udges lack the institutional competence to determine when foreign affairs pose an unusual and extraordinary threat that requires an emergency response; that is a task" for Congress and the president.

Finally, Sauer asked the court to hold that Contreras did not have the power to rule on the claims brought by Learning Resources and hand2mind. The case should have instead been brought in the Court of International Trade, he argued, because the two companies' claims arise out of laws involving tariffs – which fall within the exclusive purview of that court.

The challengers will file their briefs on or before Oct. 20.

Posted in **Featured**, **Merits Cases**
Cases: **Learning Resources, Inc. v. Trump**, **Trump v. V.O.S. Selections**

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SCOTUS NEWS

# Supreme Court agrees to decide the fate of Trump's tariffs

By **Amy Howe**
on Sep 9, 2025

(Win McNamee/Getty Images)

Setting the stage for a major ruling on presidential power, the Supreme Court on Tuesday agreed to decide whether a 1977 federal law giving the president certain emergency powers allowed President Donald Trump to levy tariffs on **nearly all goods** imported into the United States through a series of executive orders.

In a brief order issued by the court's Public Information Office on Tuesday afternoon, the court announced that it had granted review in two cases: ***Learning Resources v. Trump***, in which two small businesses had asked the justices to weigh in on Trump's power to impose the tariffs without waiting for a federal appeals court to rule on the Trump administration's appeal; and ***Trump v. V.O.S. Selections***, in which the Trump administration had asked the court to review a ruling by a different federal appeals court striking down the tariffs. The court will fast-track the two cases, which will be argued together, and hold oral arguments in early November.

In a series of executive orders, Trump imposed tariffs that fall into two categories, which collectively cover a wide range of products from U.S. trading partners. The first category, known as the "trafficking tariffs," apply to goods from Canada, China, and Mexico, which in Trump's view have not done enough to halt the flow of fentanyl into the United States. The second category, known as the "reciprocal tariffs," impose a minimum tariff of 10% (which can escalate up to 50%) on products from virtually all countries.

The law at the center of the case is the **International Emergency Economic Powers Act**, a 1977 law that allows the president to take action to "deal with any unusual and extraordinary threat, which has its

source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States" if he declares a national emergency "with respect to such threat." When he imposed the tariffs, Trump relied on IEEPA, and in particular on a provision of the law that authorizes the president, in times of national emergencies, to "regulate . . . importation" of "property in which any foreign country or a national thereof has any interest."

Two small family-owned businesses, Learning Resources and hand2mind, challenged the tariffs in federal court in Washington, D.C. They contend that paying the tariffs in 2025 will cost them $100 million – nearly 45 times as much as they paid in 2024.

In a decision on May 29, U.S. District Judge Rudolph Contreras ruled that the IEEPA tariffs were illegal and barred the Trump administration from enforcing the tariffs against the two businesses.

In an unusual move, the challengers **came to the Supreme Court** in June, asking the justices to take up the case without waiting for the U.S. Court of Appeals for the District of Columbia Circuit to decide the Trump administration's appeal. They urged the justices to act quickly, telling them that "paralyzing uncertainty" is created when tariffs are "added and subtracted at will."

The Trump administration urged the court to stay out of the dispute. It countered that the Learning Resources case did "not warrant the extraordinary step of granting" review before the D.C. Circuit had weighed in on the government's appeal, particularly when the D.C. Circuit had "expedited its consideration of the appeal." Moreover, it added, the justices did not have the power to take up the challengers' case.

The justices denied the request by Learning Resources and hand2mind to fast-track the consideration of their petition for review.

Meanwhile, in a pair of separate challenges to the tariffs, filed by another group of small businesses and a group of states, led by Oregon, the Court of International Trade on May 28 ruled that both categories of tariffs – the trafficking tariffs and the reciprocal tariffs – exceeded Trump's power under IEEPA.

By a vote of 7-4, the U.S. Court of Appeals for the Federal Circuit, which hears appeals from the Court of International Trade, upheld that ruling in a lengthy opinion on Aug. 29. It explained that, among other things, when "Congress intends to delegate to the President the authority to impose tariffs, it does so explicitly, either by using unequivocal terms like tariff and duty, or via an overall structure which makes clear that Congress is referring to tariffs."

In a **petition for review** filed on Sept. 3, U.S. Solicitor General D. John Sauer – the Trump administration's top lawyer before the Supreme Court – told the justices that the "tariffs and the ensuing trade negotiations with all our major trading partners are pulling America back from the precipice of disaster, restoring its respect and standing in the world, eliminating decades of unfair and asymmetric trade policies that have gutted our manufacturing capacity and military readiness, and inducing our trade partners to invest trillions of dollars in the American economy."

The small businesses **agreed** that the Supreme Court should review the Federal Circuit's ruling, but they continued to insist that "the tariffs are unlawful for multiple reasons, the government's arguments to the contrary are flawed, and invalidating these tariffs will not deprive the

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President of the ability to impose other tariffs and negotiate lawful trade agreements under the numerous statutes that Congress has enacted for that purpose."

Oregon and the other states echoed that sentiment in **their brief**, telling the justices that "although the Federal Circuit got it right—and although the petition is littered with inaccuracies, hyperbole, and citations to material outside the summary judgment record—the state respondents agree that this Court should grant expedited review."

On Tuesday afternoon, the Supreme Court did just that. It instructed the Trump administration to file its opening brief on Sept. 19, with the challengers' briefs to follow on Oct. 20. "The cases will be set for argument in the first week of the November 2025 argument session," which begins on Nov. 3.

Posted in **Court News**, **Merits Cases**
Cases: **Learning Resources, Inc. v. Trump**, **Trump v. V.O.S. Selections**

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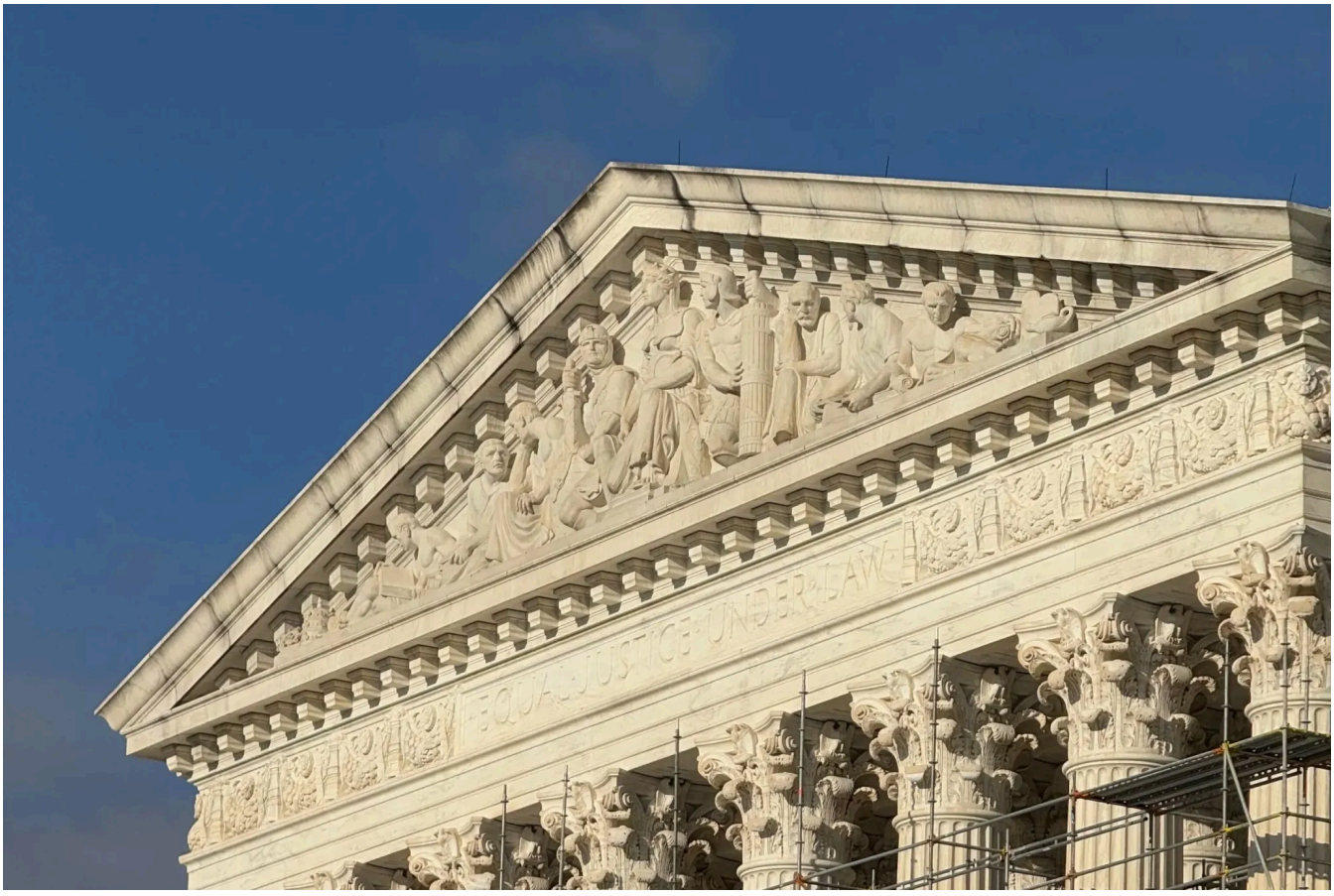
SCOTUS NEWS

# Transgender woman urges Supreme Court to drop sports case

By **Amy Howe**
on Sep 5, 2025




(Katie Barlow)

Lawyers for a 24-year-old transgender woman **urged the Supreme Court on Tuesday** to dismiss a challenge to an Idaho law that bans transgender women and girls from participating on girls' and women's sports teams. Lindsay Hecox, who originally filed the case because Hecox wanted to try

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out for the women's track and cross-country teams at Boise State University, will no longer play women's sports in Idaho, Hecox's lawyers said. And as a result, Hecox's legal team argued, the case is moot – that is, no longer a live controversy.

Alan Hurst, the solicitor general of Idaho, **told the justices** that the state intended to oppose Hecox's request.

In a six-page filing, Hecox's lawyers explained that Hecox had been dealing with illness, "her father's passing," and "negative public scrutiny from certain quarters because of this litigation." As a result, they said, Hecox has decided not to play women's sports in Idaho, and "dismissed with prejudice her claims against petitioners in the district court" – that is, so that they cannot be refiled. As a result, the lawyers concluded, "there is no possibility that the controversy might reemerge."

Hecox's lawyers asked the justices to throw out the ruling by the U.S. Court of Appeals for the 9th Circuit – which upheld a preliminary ruling allowing Hecox to participate on women's sports teams while the litigation continued – and send the case back to the lower court with instructions to dismiss it.

In a brief letter to the court, Hurst asked for an extension of time to respond to Hecox's "suggestion" – the technical term for Hecox's filing – that the case is now moot. He explained that the state's response to the filing would normally be due on the same day as its opening brief on the merits, and he asked for a 10-day extension, giving the state a new deadline of Sept. 26.

The Supreme Court has not yet scheduled Hecox's case for oral argument. In **Hecox's case**, the 9th Circuit's affirmance of the district court's preliminary ruling rested on its conclusion that the Idaho law likely violates the Constitution's guarantee of equal protection – that is, the idea that the government must generally treat everyone fairly. On the same day that the court granted Idaho's petition for review of the 9th Circuit's ruling in Hecox's case, it also agreed in ***West Virginia v. B.P.J.*** to hear West Virginia's petition for review of a decision by the U.S. Court of Appeals for the 4th Circuit in favor of a transgender teen who wants to compete on girls' sports teams. In that case, the court of appeals ruled that a Virginia law barring the teen from doing so violates Title IX, a federal civil rights law which prohibits gender discrimination in educational programs and activities that receive federal funding.

Posted in **Featured**, **Merits Cases**
Cases: **Little v. Hecox**, **West Virginia v. B.P.J.**

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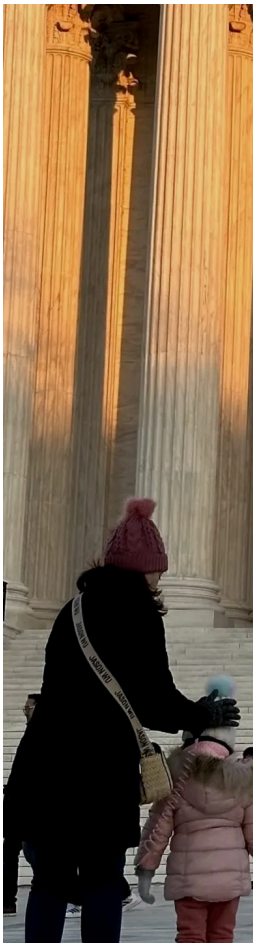
SCOTUS NEWS

# Supreme Court takes up challenge to Colorado ban on "conversion therapy"

By **Amy Howe**
on Mar 10, 2025



The court took up two cases in a regularly scheduled list of orders on Monday. (Katie Barlow)

The Supreme Court on Monday agreed to weigh in on the constitutionality of Colorado's ban on "conversion therapy" – that is, the effort to "convert" someone's sexual orientation or gender identity. That announcement came as part of **a list of orders** released on Monday morning from the justices' private conference last week.

Less than a year and a half ago, the Supreme Court declined to hear a challenge to a Washington state law that prohibits licensed therapists from practicing conversion therapy on children. Justices Clarence Thomas, Samuel Alito, and Brett Kavanaugh dissented from the decision not to weigh in then, indicating that they would have granted review. On Monday, the justices agreed to take up a challenge to a similar ban, this time from Colorado.

The case was filed **by Kaley Chiles**, a licensed counselor and a practicing Christian. She sometimes works with clients who want to discuss issues such that, she says, "implicate Christian values about human sexuality and the treatment of their own body." And

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although Chiles "never promises that she can solve" issues relating to gender identity, gender roles, and sexual attraction, "she believes clients can accept the bodies that God has given them and find peace." She contends that the law violates her First Amendment rights to free speech and to freely exercise her religion.

The U.S. Court of Appeals for the 10th Circuit rebuffed Chiles's challenge. It reasoned that Colorado enacted the law, based on evidence of the harms of conversion therapy, as part of its effort to regulate the health care profession and that the law primarily regulates therapists' conduct, rather than their speech.

Chiles came to the Supreme Court in November, asking the justices to hear her case. She contended that governments like Colorado "do not have a freer hand to regulate speech simply because the speaker is 'licensed' or giving 'specialized advice.'" And she warned that the 10th Circuit's rule "has devastating real-world consequences. In jurisdictions with counseling restrictions," she wrote, "many young people cannot receive the care they seek — and critically need."

The state countered that the ban on conversion therapy was based on "overwhelming evidence that efforts to change a child's sexual orientation or gender identity are unsafe and ineffective." And it distinguished Chiles's counseling of her patients from "a chat with one's college roommate," emphasizing that the two scenarios receive different protections under the First Amendment. "Unlike laypersons," it told the justices, "those who choose to practice as health professionals are required, among various other responsibilities, to provide treatment to their patients consistent with their field's standard of care."

In a brief order on Monday, the justices granted Chiles's petition for review. The case will likely be argued sometime in the fall, with a decision to follow by summer 2026.

In a second case granted on Monday, the justices agreed to decide whether state procedural rules apply to lawsuits filed in federal court.

The **question comes to the court** in a medical-malpractice lawsuit filed in federal court in Delaware. The court dismissed Harold Berk's case, citing his failure to comply with a state law that requires plaintiffs in medical-malpractice cases to include an "affidavit of merit" — certification from an expert witness attesting that the plaintiff's medical malpractice claims are plausible – in their filings.

A federal appeals court upheld the dismissal, explaining that the state law does not conflict with the rules governing procedures in federal court.

Berk came to the Supreme Court in October, asking the justices to weigh in. Other federal courts of appeals would allow his lawsuit to move forward without the affidavit of merit, he contended, on the theory that the state requirement is inconsistent with the federal rules that outline what plaintiffs must provide when bringing a lawsuit – and do not impose such an additional obligation.

One purpose of those federal rules, Berks stressed, is to "bring about uniformity in the federal courts by getting away from local rules." "That purpose," he told the justices, "is undermined when federal courts allow a patchwork of state procedural rules to govern, creating a chaotic landscape where litigants face dramatically different procedural standards based solely on where they file."

The Supreme Court on Monday turned down a bid by 19 Republican-led states to file a case directly in the Supreme Court to block lawsuits brought by five other states against oil and gas companies, alleging that the companies knew that their products contributed to climate change but instead misled the public about the cause of climate change and the risks of fossil fuels.

Thomas dissented from the decision not to allow the case to move forward in the Supreme Court, in a three-page opinion joined by Alito.

The Republican-led states came to the Supreme Court last spring, seeking permission to file their lawsuit in the Supreme Court. The states sought to rely on the court's original jurisdiction – that is, its limited power under the Constitution to hear a dispute for the first time, rather than as an appeal from state or lower federal courts.

In October, the justices asked the federal government for its views on whether the dispute should move forward in the Supreme Court. In a brief filed in December, Elizabeth Prelogar – the U.S. solicitor general during the Biden administration – urged the court to turn down the Republican-led states' bid and allow the disputes to play out in the state courts instead.

Prelogar contended (among other things) that the states did not have a legal right to sue, known as standing, to bring their case. Noting that the state-court lawsuits that the Republican-led states seek to halt "are still in their early stages," she argued that any connection between the state-court suits and an injury to the Republican-led states or their citizens is too speculative to support a lawsuit. "The most that can be said," she reasoned, "is that a state court 'might' find the private companies liable" in state court. "But even then," she wrote, "those directly affected would be the private companies, not the" Republican-led states or their citizens.

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Thomas reiterated his skepticism that the Supreme Court can decline to take up lawsuits pitting states against each other. "This discretionary approach," he wrote, "is a modern invention that the Court has never persuasively justified." And the approach is particularly "troubling," he continued, because it "leaves the 19 plaintiff States without any legal means of vindicating their claims against the 5 defendant States."

The Supreme Court also turned down an invitation to overrule the half-century-old framework, first outlined in *McDonnell Douglas Corp. v. Green*, used when plaintiffs do not have direct evidence to show that they were the victims of employment discrimination.

Thomas once again dissented from the decision not to intervene, this time in a nine-page opinion joined by Justice Neil Gorsuch.

The question comes to the court **in the case of a California fire chief** who claims he was fired because of his religion – specifically, for attending a Christian leadership event. The city counters that he was let go after "years" of "mismanagement, misconduct, and refusals to follow" orders given by city managers.

The U.S. Court of Appeals for the 9th Circuit agreed with a federal trial court that Ronald Hittle had not presented enough evidence to support his religious discrimination claim. The city, it concluded, had legitimate and nondiscriminatory reasons for firing Hittle. Over a dissent by four judges, the full court of appeals declined to rehear the case.

Hittle came to the Supreme Court in October, asking the justices to take up his case. He called the *McDonnell Douglas* test "unworkable and egregiously wrong," arguing that it is inconsistent with the test of federal employment discrimination laws and the federal rules governing civil lawsuits. At the very least, he contended, the court should clarify what a plaintiff needs to show at the third step of the *McDonnell Douglas* framework to demonstrate that the nondiscriminatory reason that an employer offers to justify its actions is actually just an excuse.

Arguing that the Supreme Court "appears to have" created the *McDonnell Douglas* test "out of whole cloth," Thomas (joined by Gorsuch) would have granted Hittle's petition for review and used his case as an "opportunity to revisit McDonnell Douglas and decide" whether the test "remains a workable and useful evidentiary tool." Hittle's case would have been an appropriate one in which to consider that question, Thomas explained, because Hittle had "presented 'ample' evidence of discriminatory intent on the part of those who decided to terminate him." Therefore, Thomas concluded, the lower courts should not have ruled for the city.

The justices once again did not act on several other high-profile petitions for review that they considered last week, including a pair of cases contesting **Maryland's ban on assault-style weapons** and **Rhode Island's bar on large-capacity magazines**, as well as **the case of a Massachusetts middle schooler** who was barred from wearing a t-shirt to school reading "There Are Only Two Genders."

The justices will meet again on Friday, March 21, to consider new petitions for review. Orders from that conference are expected on Monday, March 24.

*This article was originally published at Howe on the Court.*

*Correction (March 12 at 2:11 p.m.): An earlier version of this article incorrectly omitted Justices Brett Kavanaugh from the justices dissenting in the court's decision not to hear the challenge to Washington's conversion therapy ban.*

Posted in **Corrections**, **Merits Cases**
Cases: **Alabama v. California**, **Hittle v. City of Stockton, California**, **Berk v. Choy**, **Chiles v. Salazar**

**Recommended Citation:** Amy Howe, *Supreme Court takes up challenge to Colorado ban on "conversion therapy"*, SCOTUSblog (Mar. 10, 2025, 12:00 AM), https://www.scotusblog.com/2025/03/supreme-court-takes-up-challenge-to-colorado-ban-on-conversion-therapy/

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# Supreme Court takes up cases on transgender athletes

*Kelsey Dallas*

The Supreme Court on Thursday added two cases on transgender athletes to its docket for the 2025-26 term. In *Little v. Hecox* and *West Virginia v. B.P.J.*, the justices will consider whether state laws restricting participation in girls' and women's sports to athletes who were born female violate the equal protection clause of the 14th Amendment or, in the West Virginia case, Title IX.

The cases will likely be among the most closely watched of the upcoming term, and they come on the heels of the Supreme Court's 6-3 decision upholding Tennessee's ban on certain medical treatments for transgender minors in *United States v. Skrmetti,* which was released on June 18. In that case, the court's six Republican-appointed justices said the ban did not need to satisfy heightened scrutiny and did not violate the equal protection clause because it classifies patients based on age and medical diagnosis, not on sex.

In the two cases granted Thursday, the justices will again consider when laws regarding transgender rights must satisfy heightened scrutiny under the Constitution's equal protection clause. The states involved – Idaho in *Little v. Hecox* and West Virginia in *West Virginia v. B.P.J.* – claim that courts should assess their transgender sports policies using a less stringent legal standard and that the equal protection clause has long been held to allow sex-separated sports teams.

The Idaho case centers on the state's Fairness in Women's Sports Act, which draws "an across-the-board distinction based on sex," preventing transgender athletes from competing in girls' and women's sports leagues, as the state's petition for a writ of certiorari explained. The act was challenged by a transgender college student, who secured an injunction from the district court, which was upheld by the U.S. Court of Appeals for the 9th Circuit. The 9th Circuit applied heightened scrutiny and concluded that the act likely violates the equal protection clause.

In the West Virginia case, a transgender teen challenged the state's Save Women's Sports Act, which bars athletes who were born male from participating on girls' sports teams in competitive and/or contact sports. The U.S. Court of Appeals for the 4th Circuit ruled in the teen's favor, deciding that the act violates Title IX.

The cases granted on Thursday will likely be argued this fall. The court's decision isn't expected to come before 2026.

Cases: Little v. Hecox, West Virginia v. B.P.J.

**Recommended Citation:** Kelsey Dallas, *Supreme Court takes up cases on transgender athletes*, SCOTUSblog (Jul. 3, 2025, 11:08 AM), https://www.scotusblog.com/2025/07/supreme-court-takes-up-cases-on-transgender-athletes/

# SUPREME COURT OF THE UNITED STATES

No. 25A264 (25-332)

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* REBECCA KELLY SLAUGHTER, ET AL.

ON APPLICATION FOR STAY

[September 22, 2025]

The application for stay presented to THE CHIEF JUSTICE and by him referred to the Court is granted. The July 17, 2025 order of the United States District Court for the District of Columbia, No. 25–cv–909, ECF Doc. 52, is stayed. The application is also treated as a petition for a writ of certiorari before judgment, and the petition is granted. The parties are directed to brief and argue the following questions: (1) Whether the statutory removal protections for members of the Federal Trade Commission violate the separation of powers and, if so, whether *Humphrey's Executor* v. *United States*, 295 U. S. 602 (1935), should be overruled. (2) Whether a federal court may prevent a person's removal from public office, either through relief at equity or at law. The Clerk is directed to establish a briefing schedule that will allow the case to be argued in the December 2025 argument session. The stay shall terminate upon the sending down of the judgment of this Court.

JUSTICE KAGAN, with whom JUSTICE SOTOMAYOR and JUSTICE JACKSON join, dissenting from the grant of the application for stay.

On top of granting certiorari before judgment in this case, the Court today issues a stay enabling the President to immediately discharge, without any cause, a member of the Federal Trade Commission (FTC). That stay, granted on

our emergency docket, is just the latest in a series. Earlier this year, the same majority, by the same mechanism, permitted the President to fire without cause members of the National Labor Relations Board, the Merits Systems Protection Board, and the Consumer Product Safety Commission. See *Trump* v. *Wilcox*, 605 U. S. ___ (2025); *Trump* v. *Boyle*, 606 U. S. ___ (2025). Congress, as everyone agrees, prohibited each of those presidential removals. See, *e.g.*, 15 U. S. C. § 41 (barring the President from discharging FTC Commissioners except for "inefficiency, neglect of duty, or malfeasance in office"). Under the relevant statutes, the entities just listed are "classic independent agenc[ies]"—"'multi-member, bipartisan commission[s]' whose members serve staggered terms and cannot be removed except for good reason." *Boyle*, 606 U. S., at ___ (KAGAN, J., dissenting from grant of application for stay) (slip op., at 1). Yet the majority, stay order by stay order, has handed full control of all those agencies to the President. He may now remove—so says the majority, though Congress said differently—any member he wishes, for any reason or no reason at all. And he may thereby extinguish the agencies' bipartisanship and independence.

I dissented from the majority's prior stay orders, and today do so again. Under existing law, what Congress said goes—as this Court unanimously decided nearly a century ago. In *Humphrey's Executor* v. *United States*, 295 U. S. 602 (1935), we rejected a claim of presidential prerogative identical to the one made in this case. (Indeed, the suit emerged from a discharge at the very same agency.) Congress, we held, may restrict the President's power to remove members of the FTC, as well as other agencies performing "quasi-legislative or quasi-judicial" functions, without violating the Constitution. *Id.*, at 629. So the President cannot, as he concededly did here, fire an FTC Commissioner without any reason. To reach a different result requires reversing the rule stated in *Humphrey's*: It entails overriding

rather than accepting Congress's judgment about agency design. The majority may be raring to take that action, as its grant of certiorari before judgment suggests. But until the deed is done, *Humphrey's* controls, and prevents the majority from giving the President the unlimited removal power Congress denied him. Because the majority's stay does just that, I respectfully dissent. Our emergency docket should never be used, as it has been this year, to permit what our own precedent bars. Still more, it should not be used, as it also has been, to transfer government authority from Congress to the President, and thus to reshape the Nation's separation of powers.

SCOTUSCRIM

# The Supreme Court's upcoming criminal cases

By **Rory Little**
on Sep 5, 2025

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(Katie Barlow)

*ScotusCrim is a recurring series by Rory Little focusing on intersections between the Supreme Court and criminal law.*

*Please note that the views of outside contributors do not reflect the official opinions of SCOTUSblog or its staff.*

The Framers of our Constitution were, of course, all criminals. This is not often said, but it deserves frank recognition. The revolutionary founders were committing violent, treasonous acts against their government, the British monarchy. Announcing independence in 1776, the Framers declared that they had suffered a "long train of abuses" at the hands of the British criminal justice system. Thus much of **the Bill of Rights** provided for rights and guarantees for people subjected to criminal investigation or prosecution. The Fourth, Fifth, Sixth, and Eighth Amendments address criminal law directly, and the First, Second, and even the Third address criminal law issues by implication. As **Professor David A. Strauss noted** long ago, "protections for criminal defendants are arguably the dominant feature of the Bill of Rights."

**Criminal cases in the 2025-26 term**

With this in mind, it is perhaps unsurprising that the Supreme Court's next term, which begins on Oct. 6, has so many criminal cases. (Here is the court's **calendar** for the term.) By my count, 15 of the 31 cases for which the court has already granted review are criminal law and related. (A full list appears at the end of this post – last month **I explained** what I count as criminal cases.)

Indeed, of the **10 cases set for oral argument** in the first two weeks (referred to as "the October sitting"), five – half the docket – are criminal cases. (Some court followers may not know that the court generally holds oral arguments only two weeks a month, in only the first seven months of the term. They usually hear arguments in only two cases per day, and on only three days a week. **My previous column** explained why some might say that "the justices have the easiest job in the judiciary.")

Of the 15 criminal law cases granted review so far (with more to come after the court's **"long conference"** on Sept. 29), six are what might be called "pure" criminal law (as described below). Five of the cases directly present constitutional law questions. Another two address criminal sentencing, two more address habeas corpus issues, and two others raise immigration matters. A final three cases are what I call "related to" criminal law, meaning that their criminal law connections might not seem immediately obvious, but those who practice or administer criminal law might still want to know about them.

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The full list is at the end; I first offer some introductory thoughts, and then a brief discussion of three cases that stand out in particular.

**Five early-term cases involve pure criminal constitutional issues**.

The court's oral argument **calendar for October** shows that fully 50% of the ten cases to be argued will present what I call "pure" issues of constitutional criminal law: the Fourth Amendment's protection from unreasonable searches (*Case v. Montana*, Oct. 15); the Fifth Amendment's double jeopardy prohibition (*Barrett v. United States*, Oct. 7); the Sixth Amendment right to counsel (*Villarreal v. Texas*, Oct. 6); and protections found in Article I of the Constitution for the "Privilege of the Writ of Habeas Corpus" (*Bowe v. United States*, Oct. 14) and against ex post facto punishments (*Ellingburg v. United States*, Oct. 14). That's a pretty packed schedule for **those who want to listen** to criminal law arguments (there is still no video, despite **its use in other courts**). The October sitting will provide a mouth-watering constitutional smorgasbord for Supreme Court epicures.

Although SCOTUS nerds like me find something interesting in almost every case, detailing 15 cases would be too much for one post. Here's a closer look at three particularly interesting ones.

**The term opens by focusing on the Sixth Amendment's right to "Assistance of Counsel."**

The very **first oral argument of the term** should feature some fun hypotheticals, and prove to be extremely important for the conduct of criminal trials. *Villarreal v. Texas* presents an exercise in constitutional line-drawing between two Sixth Amendment precedents. When a trial court recesses for the day while a criminal defendant is testifying, may a trial court bar defense counsel and their client from discussing the defendant's testimony overnight? One might think that the "assistance of counsel" would be particularly important at such a stage. However, two precedents, decided by two very different alignments of justices 12 years apart, point in opposite directions.

Fifty years ago, an 8-0 court ruled in the 1976 case of *Geders v. United States* that an overnight no-discussion order between the defendant's direct and cross-examination unconstitutionally interfered with the defendant's Sixth Amendment right to counsel. But 13 years (and three new Reagan-appointed justices) later, the court ruled (in *Perry v. Leeke*, 1989, 6-3) that a no-discussion order during a 15-minute trial break in the defendant's testimony did not. *Perry*'s conclusion appeared to be limited to a recess for "a good reason ... of a few minutes." But it also suggested that *Geders* might protect

attorney-client discussions only of "matters that go beyond the content of the defendant's own testimony."

In *Villarreal*, set as the first case to be argued on October 6, the Texas Court of Criminal Appeals upheld a trial judge's (somewhat muddled) order that appeared to permit overnight discussion of "everything *except* [Villarreal's] ongoing testimony" (my emphasis added). Undoubtedly Justice Thurgood Marshall, who joined the *Geders* majority and noted at **the *Perry* argument** that he had "tried a few cases," would object to such a limit on attorney-client conversation. But Marshall was a dissenter in *Perry*, and the court in 2025 is – spoiler alert – an entirely different one than in 1976. *Villarreal v. Texas* will provide a fiery term-opening oral argument full of creative "what if" questions from the justices, and starkly different Sixth Amendment visions.

**A Fourth Amendment case: what level of suspicion of an "emergency" must law enforcement have to enter a house without a warrant?**

When William Trevor Case's ex-girlfriend told the police that Case was threatening suicide, the police knew Case well and that he had tried to stimulate "suicide by cop" before. After waiting and debating for some 40 minutes outside Case's house, officers entered, without attempting to get a warrant. The entry is what is at issue in this case; with many post-entry facts in play, Case was later convicted of assault of an officer after a motion to suppress evidence – found after the warrantless entry of his house – was denied. The Montana Supreme Court affirmed, 4-3.

The Supreme Court has stated, as in the 2006 case of *Brigham City v. Stuart*, that an "objectively reasonable basis" is required for warrantless "emergency aid" home entries. But does an "objectively reasonable basis" mean the same level of suspicion as "probable cause" that is required to get a search warrant? Or does some lesser degree of belief, say "reasonable suspicion" (akin to the standard required for a traffic stop), allow entry? Here is one way to conceive of the difference, although we will hear how the parties describe it at oral argument: Case's claim appears to be that when they decided to enter his home, the officers were not firmly convinced that Case was going to kill himself (thus lacking probable cause), but they still suspected that he might (constituting reasonable suspicion).

The difference between "probable cause" and "reasonable suspicion" often seems vague and indeterminate, yet important criminal cases often turn on how judges later evaluate the distinction. In the 2021 case of *Caniglia v. Strom*, concurrences by Justices Samuel Alito and Brett Kavanaugh identified potential suicide and other "real world" situations as requiring further analysis. At argument on October 14 (and later), *Case* will

require all members of the court to try to explain, more precisely if possible, what the Fourth Amendment requires in non-criminal home-entry situations.

**November: A death penalty case asks who is intellectually disabled.**

*Hamm v. Smith*, **set for argument on Nov. 4**, asks the court to specify more clearly how lower courts should analyze whether a capital defendant is so intellectually disabled that they may not be executed. Like all death penalty cases, *Hamm* involves an extensive factual and judicial record, as well as a thicket of complicated state statutes and lower court interpretations seeking to apply the deceptively simple rule established in the 2002 case of *Atkins v. Virginia*. The court wrote its own question presented when it granted review: "Whether and how courts may consider the cumulative effect of multiple IQ scores in assessing an *Atkins* claim."

In *Atkins*, a 6-3 majority ruled that the **Eighth Amendment**'s prohibition of "cruel and unusual punishments" forbids the execution of a capital defendant who is intellectually disabled. The court noted in a footnote that mental retardation (the term used at the time) was "typically" applied to persons with an IQ of "approximately 70" or lower.

After multiple up-and-down state court proceedings, the Alabama Court of Criminal Appeals **affirmed, long ago**, that Smith was not intellectually disabled. However, in 2023, the U.S. Court of Appeals for the 11th Circuit affirmed a district court's habeas judgment that the execution of Joseph Clifton Smith would violate *Atkins*. (Smith's conviction and sentence for a brutal 1997 murder is not at issue in this term's argument.) Smith's five IQ tests, scored between 72 and 78, put an IQ of 69 within the standard range of error of the lowest score (meaning that his IQ could be as low as 69).

After a **record number of re-listings** over ten months, in November 2024, the Supreme Court **sent** the case back to the 11th Circuit for clarification of whether it had employed a single "standard error" rule (based solely on Smith's lowest IQ score) or a "holistic approach that considers the relevant evidence, including as appropriate any relevant expert testimony." **The 11th Circuit** quickly **endorsed** the latter, saying "the district court did not clearly err in its factual findings that Smith suffered from significantly subaverage intellectual function, that he had significant and substantial deficits in adaptive behavior, and that he manifested those qualities before he turned 18." The 11th Circuit explained that this multi-factor analysis was consistent with the 2014 Supreme Court decision in *Hall v. Florida*, in which the a 5-4 majority said that "[i]ntellectual disability is a condition, not a number," and that "[i]t is not sound to view a single factor as dispositive."

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However, three of the dissenters in *Hall* were Chief Justice John Roberts and Justices Clarence Thomas and Samuel Alito. (Thomas was also a dissenter in *Atkins*.) And the record number of **re-listings** of the *Hamm* case for discussion among the justices over ten months last year suggests deep disagreements about this entire area of death penalty law, not just multiple IQ tests. In the Supreme Court, 14 **state attorneys general have argued** that the 11th Circuit's decision undermines "States' sovereignty over criminal law." The **state has also asked** the court to overrule *Hall*. The oral argument on Nov. 4 may reveal how deeply the disagreements go, and suggest how much of existing precedent the current court is open to re-examining.

**OK, here's the list: 15 "criminal law and related" cases (so far) for the 2025-26 term**

The case list below is divided topically. Each case name is hyperlinked to its **SCOTUSblog** page, followed by its scheduled oral argument date (if available) and a brief description of the issue presented. The descriptions are my own, and I am well aware that Supreme Court cases are often more nuanced or complex than brief soundbite descriptions can adequately capture.

**Pure criminal law:**

*Villarreal v. Texas* (Oct. 6): Sixth Amendment right to assistance of counsel; order barring attorney-client discussion of defendant's testimony during overnight recess.

*Barrett v. United States* (Oct. 7): Does the Fifth Amendment's double jeopardy clause permit two (consecutive) sentences for the same federal robbery act that violates two criminal provisions?

*Ellingburg v. United States* (Oct. 14): Whether restitution ordered in a criminal case under the Mandatory Victim Restitution Act is "punishment" subject to the ex post facto clause.

*Case v. Montana* (Oct. 15): Fourth Amendment; does a warrantless entry into a home upon report of a possible suicide (the "emergency aid exception") require probable cause or some lesser degree of suspicion?

*Rico v. United States* (Nov. 3): Whether the "fugitive tolling" doctrine allows revocation of a term of supervised release that expired while the defendant was absconded.

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*Hamm v. Smith* (Nov. 4): Eighth Amendment; whether and how courts may consider multiple IQ tests to apply the *Atkins* prohibition on execution of the intellectually

disabled.

**Sentencing cases:**

*Fernandez v. United States* (Nov. 12): May "extraordinary and compelling reasons" to justify reduction of a federal criminal sentence include reasons that could be alleged for a separate habeas corpus attack on the sentence (such as actual innocence)?

*Rutherford v. United States* (consolidated with *Carter v. United States*) (also Nov. 12): May "extraordinary and compelling reasons" to justify reduction of a federal criminal sentence include disparities created by the First Step Act's prospective ambit?

**Habeas corpus cases** (in addition to *Fernandez*, above).

*Bowe v. United States* (Oct. 14): How do federal "successive application" statutory provisions apply to motions to vacate filed under 28 U.S.C. § 2255, possibly barring Supreme Court review?

*Olivier v. City of Brandon, Mississippi* (not yet scheduled): Does *Heck v. Humphrey* bar a § 1983 challenge seeking prospective relief against an allegedly unconstitutional (on religious freedom grounds) criminal statute, when the challenger has already been convicted but no habeas relief was available?

**Immigration cases:**

*The GEO Group v. Menocal* (Nov.10): Whether a private immigration detention facility, under contract with the federal government, that is denied a sovereign immunity defense may appeal immediately under the collateral order doctrine.

*Urias-Orellana v. Bondi* (not yet scheduled): Whether and how a federal court should defer to findings by the Bureau of Immigration Appeals findings against (or for?) a "persecution" claim.

**Otherwise related to criminal law:**

*Landor v. Louisiana Dept. of Corrections and Public Safety* (Nov. 10): Are money damages available against individual government officials, under the Religious Land Use and Institutionalized Persons Act? The case was brought by a Rastafarian inmate whose head was forcibly shaved.

*FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.* (not yet scheduled): Is there a private right of action under the Investment Company Act [somewhat akin to

a financial fraud case]?

*First Choice Women's Resource Centers, Inc. v. Platkin* (not yet scheduled): May a state attorney general's investigatory subpoena be challenged directly in federal court when it raises a First Amendment religious freedom issue?

Posted in **Featured**, **Recurring Columns**, **ScotusCrim**
Cases: **Landor v. Louisiana Department of Corrections and Public Safety**, **Rico v. United States**, **FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.**, **Ellingburg v. United States**, **Bowe v. United States**, **Fernandez v. United States**, **Villarreal v. Texas**, **Barrett v. United States**, **Case v. Montana**, **The GEO Group, Inc. v. Menocal**, **Urias-Orellana v. Bondi**, **First Choice Women's Resource Centers, Inc. v. Platkin**, **Rutherford v. United States**, **Hamm v. Smith**, **Olivier v. City of Brandon, Mississippi**

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This is the first week of the Supreme Court's 2025-26 term. You can

SCOTUS NEWS

# Court takes up potentially important case on campaign-finance regulations

By **Amy Howe**
on Jun 30, 2025


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(Anthony Quintano via Flickr)

Creating the prospect of a major case on campaign-finance regulations, the Supreme Court on Monday agreed to revisit its 2001 ruling in *Federal Election Commission v. Colorado Republican Federal Campaign Committee*, in which the justices upheld federal limits on coordinated campaign expenditures, which restrict political parties from spending money on campaign advertising with input from political candidates.

The announcement came on a list of orders released from the justices' private conference on Thursday, June 26. The case, *National Republican Senatorial Committee v. Federal Election Commission*, will likely be argued in the fall, with a decision to follow in 2026.

The dispute now before the court was filed by the NRSC, the National Republican Congressional Committee, then-Sen. J.D. Vance, and former Rep. Steve Chabot, who represented Ohio in the House of Representatives for more than two decades. The challengers contended that the law violates the First Amendment, and they argued that the Colorado decision should no longer apply because the Supreme Court's later cases have "tightened the free-speech restrictions on campaign-finance regulations," while political fundraising and spending have also changed.

In a decision by Chief Judge Jeffrey Sutton, the full U.S. Court of Appeals for the 6th Circuit acknowledged that the challengers had identified "several ways in which tension has emerged between" the Supreme Court's reasoning in the 2001 Colorado case and its later campaign-finance decisions. But, the court of appeals said, the Supreme Court has not overruled its 2001 decision, and the Circuit lacks the power to do so.

The challengers **came to the Supreme Court** in December, asking the justices to weigh in. Represented by former U.S. Solicitor General Noel Francisco, they urged the justices to grant review and "vindicate the fundamental principle that the government cannot abridge 'the political speech a political party shares with its members'—'speech which is 'at the core of our electoral process and of the First Amendment freedoms.'"

The Trump administration agreed with the challengers that the restrictions violate the First Amendment and that the court should grant review.

In a brief unsigned order on Monday, the justices agreed to take up the case. They also granted a motion from the Democratic National Committee for permission to join the case.

The DNC, in its motion, promised to "provide a vigorous and informed defense of the coordinated expenditure limits now under attack."

Posted in **Merits Cases**

Cases: **National Republican Senatorial Committee v. Federal Election Commission (Campaign Finance)**

**Recommended Citation:** Amy Howe, *Court takes up potentially important case on campaign-finance regulations*, SCOTUSblog (Jun. 30, 2025, 12:17 PM), https://www.scotusblog.com/2025/06/court-takes-up-potentially-important-case-on-campaign-finance-regulations/

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SCOTUS NEWS

# Court to decide whether government officials can be held personally liable for violating inmate's religious liberty

By **Amy Howe**
on Jun 23, 2025

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(Mark Fischer via Flickr)

The Supreme Court on Monday agreed to decide whether an inmate can sue a government official in his individual capacity – that is, seeking to hold an official personally liable, rather than the government entity itself – for violations of the Religious Land Use and Institutionalized Persons Act, a law enacted by Congress in 2000 partly to strengthen the religious liberty rights of prisoners. In **a list of orders** from the justices' private conference last week, the court also declined to take up the case of a Vietnam veteran whose execution is scheduled for Wednesday in Mississippi.

The Supreme Court will hear argument in the fall in **the case of Damon Landor**, who is a devout Rastafarian. For almost 20 years, Landor adhered to a promise that he made – known as the Nazarite Vow – to grow his hair without cutting it. But in 2020, just three weeks before he finished serving a five-month sentence in the Louisiana prison system, prison officials shaved his head. Landor had attempted to explain his religious beliefs and provided a prison guard with a copy of a ruling by the U.S. Court of Appeals for the 5th Circuit striking down the state's policy prohibiting dreadlocks, but the guard threw the opinion in the trash.

Landor filed a lawsuit under RLUIPA in federal court against the state and against the prison officials in both their individual and official capacities. The district court dismissed the claims against the prison officials in their individual capacities, holding that RLUIPA does not allow private individuals to bring such claims seeking money damages.

After the 5th Circuit upheld that ruling, Landor came to the Supreme Court, asking the justices to weigh in. In **a brief** filed in May, the federal government agreed that the justices should take up Landor's case, telling them that the 5th Circuit's decision conflicted with two Supreme Court decisions: *Sossamon v. Texas*, holding that money damages are not "appropriate relief" in lawsuits against states; and *Tanzin v. Tanvir*, holding that "appropriate relief" under the Religious Freedom Restoration Act can include money damages in lawsuits brought against government officials in their individual capacities. Those two cases, U.S. Solicitor General D. John Sauer wrote, "together are thus best understood to hold that money damages do not constitute 'appropriate relief' in suits against sovereigns, but may constitute appropriate relief in suits against individual government officials—under RFRA and RLUIPA alike."

The justices considered Landor's case at two consecutive conferences before granting his petition for review.

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Also on Monday, the Supreme Court declined to review **the case of Richard Jordan**, who was sentenced to death for the 1976 kidnapping and murder of Edwina Marter. Jordan, a Vietnam veteran who was honorably discharged and suffers from post-traumatic stress disorder, is scheduled to be executed on Wednesday.

Jordan contended that when he was resentenced in 1998, he should have had an independent mental health expert assisting with his defense. Instead, he said, he was evaluated by a psychiatrist employed by the state, whose report was also given to the state – and which prosecutors used against him at sentencing.

The Mississippi Supreme Court's denial of his request for post-conviction relief, Jordan argued, conflicts with the Supreme Court's 1985 decision in *Ake v. Oklahoma*, holding that when a defendant's mental health will be an issue in his trial, the state must give him access to a competent psychiatrist to assist him with his defense, and *McWilliams v. Dunn*, the court's 2017 decision clarifying that due process requires the mental health expert to be an independent one.

The court granted a request to resume briefing in *Department of Education v. Career Colleges and Schools of Texas*. In January, the justices agreed in that case to review a ruling by the 5th Circuit that suspended the implementation of a Biden administration-era rule intended to streamline the process for reviewing requests for student loan forgiveness from borrowers whose schools defrauded them or were shut down. In early February, the challenger in the case, a group of for-profit colleges, agreed to pause the briefing schedule to give the Trump administration time to take another look at the regulations.

In May, Sauer notified the court that the Department of Education would continue to defend the rule and wanted to resume briefing. In a brief order on Monday, the justices granted that request. The case now will likely be argued in the fall.

The court also asked the federal government for its views in a patent dispute between two drug companies over generic-drug labeling. There is no deadline for the government to file its brief in *Hikma Pharmaceuticals v. Amarin Pharma*.

[Disclosure: I was among the counsel in the Supreme Court to Harvey Sossamon.]

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Cases: **Landor v. Louisiana Department of Corrections and Public Safety**, **Department of Education v. Career Colleges and Schools of Texas**, **Jordan v. Mississippi**