

SUPREME COURT WRAP UP

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Topics

1. *AJT v. Osseo*
 2. *FCC v. Consumers' Research*
 3. *Oklahoma Statewide Charter Board v. Drummond*
 4. *Mahmoud v. Taylor*
- Bonus:** *United States v. Skrmetti; Little, Gov. of ID, et al. v. Hecox, Lindsey, et al.; and West Virginia, et al. v. B.P.J.*

AJT v. Osseo

- AJT received a combination of in-school and evening at-home instruction due to a disability through Kentucky school district
- In 2015, as she was entering the fourth grade, AJT moved to Minneapolis area.
- As part of her Individualized Education Program (IEP), school agreed AJT could begin school at noon but refused to extend instruction into afterschool hours, despite repeated parental requests and medical input confirming AJT's alertness window.
- Specifically, the district offered 4.25 hours per day of intensive 1:1 instruction, a shorter period than the 6.5-hour instructional day offered to her nondisabled peers.
- The district contend the truncated scheduled was sufficient based on staffing logistics, precedent-setting concerns, and other administrative constraints.

AJT v. Osseo

- AJT brought claims under Section 504, Title II of the ADA, and IDEA
- U.S. Supreme Court decided a very narrow issue—whether the same standard under the ADA and Section 504 should apply both inside and outside of the education context.
- ADA claims could be brought in non-education context like state and municipal programs.
- The parties agreed on this point—that the same standard, whatever it may be, should apply in education and non-education contexts alike.
- But the school district then tried to argue that the Court should also decide that the heightened standard—intent—applies across the board without preserving the issue in prior filings.
- The Court denied that opportunity, reserving the issue for another day.

AJT v. Osseo

- Concurring opinion (Thomas, J. & Kavanaugh, J.) highlights more inconsistency in the analysis.
- To establish a violation or obtain injunctive relief, the plaintiff need not prove intentional discrimination.
- But to obtain compensatory damages, deliberate indifference—a lesser standard—is required.
- The concurrence seemed to believe that intent is required.
- The lower courts use one standard for injunctive relief and a different standard for damages (similar to the two-context standard).
- Importantly, it was not clear to the concurring justices if statutory language even supports injunctive relief.

***AJT v. Osseo* - Impact**

- The Court seems receptive to arguments that an “intent” standard is required for both compensatory damages and injunctive relief, and some relief may not even be available.
- Litigation of these cases should preserve and press these issues.
- COSSBA should look for cases to support certiorari review to clarify this area of law.

FCC v. Consumers' Research

- The Federal Communications Commission is permitted by Congress to raise money in taxes for a program designed to benefit the United States more broadly.
- But then the FCC delegates its authority to USAC, a private entity that increases the rates used to generate the taxes for the program
- This comprises the E-Rate program that benefits many public schools and libraries, particularly in rural settings.
- Organizations challenge this taxing scheme as violating nondelegation restrictions on congressional power

FCC v. Consumers' Research

- U.S. Supreme Court upheld the legality of the Universal Service Fund, including the E-rate program, which subsidizes internet and communications services for schools, libraries, rural areas, and other underserved populations.
- In a 6-3 decision authored by Justice Kagan, the Court rejected claims that the program violated the nondelegation doctrine, affirming that Congress provided adequate direction to the FCC in managing the program and collection contributions from telecommunications providers.

FCC v. Consumers' Research - Impact

- E-Rate program is not unconstitutional.
- Continued funding for information technology and other important services should continue uninterrupted.

Oklahoma Statewide Charter Board v. Drummond

- Oklahoma's charter school board approved an application by the archdiocese of Oklahoma City and the diocese of Tulsa to establish St. Isidore of Seville, a virtual Catholic charter school.
- Although the state law governing charter schools requires them to be non-religious "in their programs, admissions policies, and other operations," the board's contract with St. Isidore provided that the school could freely exercise its religious beliefs.
- Gentner Drummond, the state's Republican attorney general, went to the Oklahoma Supreme Court, asking it to invalidate the board's contract with St. Isidore.
- The state supreme court agreed to do so. St. Isidore, the state court ruled, is a public school and therefore required under state law to be non-religious.

Oklahoma Statewide Charter Board v. Drummond

- The state supreme court agreed to do so. St. Isidore, the state court ruled, is a public school and therefore required under state law to be non-religious.
- Also, state supreme court found that since charter schools are public schools, they cannot be sectarian under the First Amendment's Establishment Clause and U.S. Supreme Court precedent.

Oklahoma Statewide Charter Board v. Drummond

- Charter school argued that U.S. Supreme Court precedent allow funds that are available to the public cannot exclude religious groups, but justices pushed back noting discrete state involvement.
- Also, the justices struggled with whether charter schools were private actors that have a right under the constitution or a governmental entity with limited to no right. The oral argument centered on state creation and control of the charter schools.
- Boiled down, it seems like this case turns on whether charter schools are considered public schools (and therefore state actors that cannot be religious), or if the charter schools are not public schools but private schools receiving state funds (and thus can be religious).

Oklahoma Statewide Charter Board v. Drummond

- Arizona, California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Washington, and the District of Columbia supported the Oklahoma Attorney General as they (like Indiana) have charter school statutes that prohibit sectarian charter schools and create, regulate and close charter schools similarly.
- But just saying in the statute that charter schools cannot be religious is not enough—the U.S. Supreme Court looks at the facts and what control or involvement the state has of the charter schools.
- Since Justice Barret recused herself, the Court deadlocked 4-4, and so the Oklahoma Supreme Court was affirmed.

Oklahoma Statewide Charter Board v. Drummond - Impact

- Be on the lookout for more litigation.
- Each state could be treated differently based on the statutory scheme.
- Charter schools and states with charter schools were not entirely aligned in this litigation.
- Consider how religious charter schools (as opposed to vouchers) would impact your state's educational ecosystem.

Mahmoud v. Taylor

- School district implement new equity and inclusion plan to integrate LGBTQ+ materials into elementary school
- Initially, the district planned to provide notice of these materials and activities and a process by which parents could opt-out, but then both the notice and opt-out process were removed

Mahmoud v. Taylor

- While the school district asserted that the use of inclusive storybooks was mere exposure to diverse viewpoints and therefore did not infringe on any religious rights, the Court found that the books went beyond exposure and, in any event, that exposure “is not the touchstone for determining whether the line is crossed.”

Mahmoud v. Taylor

- Instead, the question to ask is “whether the educational requirement or curriculum at issue would substantially interfere with the religious development of the child or pose a very real threat of undermining the religious beliefs and practices the parent wishes to instill in the child.”

Mahmoud v. Taylor

- The Court also brushed aside concerns regarding how administration of the opt-out process would create a substantial burden for schools. The Court pointed to other opt-outs in other contexts in Maryland and around the country (e.g., sex education) and faulted the school district for failing to show why opt-outs in this case could not be structured similarly.

Mahmoud v. Taylor

- Whether a school district's actions substantially interfere with the religious development of a child "will always be fact-sensitive."
- Parents need not wait for a burden or harm to occur before enforcing rights
- Activities or curriculum that substantially interfere with the religious development of a student or pose a very real threat of undermining the religious beliefs and practices the parent wishes to instill in the student burden religious rights of parents

Mahmoud v. Taylor

- Educational requirements targeted towards very young children may be analyzed differently from requirements for high school students
- Courts will look to whether the instruction or materials are presented neutrally or in a manner creating pressure to conform

Mahmoud v. Taylor

- Oral argument exchanges teased out other hypotheticals with Trump administration counsel.
- Is it a burden on a parent's religious beliefs if a student is required to use the chosen pronoun of another student even though there's a religious objection to doing so?
- Is it a burden on a parent's religion to have their child (Student A) in a classroom with a transgender-identifying student (Student B) and the teacher is referring to Student B by the preferred pronouns which Student A's parent believes conflicts with their religious views?

Mahmoud v. Taylor - Impact

- Train administrators to know about this fluid right and how to quickly respond.
- Monitor litigation closely.

United States v. Skrametti

- First U.S. Supreme Court case to address rights of individuals identifying as transgender under the Constitution.
- *Skrametti* involved statute that allow puberty blockers and similar treatment for certain conditions but not to treat gender dysphoria, gender identity disorder, or gender incongruence.

United States v. Skrametti

- Court found that the regulation was not a sex-based classification.
- Why is this important for schools? It sheds light on how the Court views Equal Protection claims from transgender identifying individuals.
- Court did not address Title IX.
- *Bostock* still controls **employment** decisions by schools.

Little, Gov. of ID, et al. v. Hecox, Lindsey, et al.; and West Virginia, et al. v. B.P.J.

- Court accept review of two cases out of Idaho and West Virginia.
- These cases address claims by transgender identifying students under Title IX and Equal Protection Clause in sports.
- These cases will substantially impact other similar claims (restrooms, locker rooms, etc.).

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