NAME OF EVENT: ACS Chicago: 2025 Supreme Court Term in Review

DATE | TIME | LOCATION: July 31, 2025| 12:00 PM - 1:30 PM CDT | Mayer Brown, Chicago, IL

BRIEF DESCRIPTION:

We will review the U.S. Supreme Court Term and several cases, including on gender affirming care, free speech and religious liberty, immigrants' rights, disability rights, and more. The program will also include a discussion of trends in the Supreme Court and panelists will answer audience questions.

SPEAKERS' NAMES AND BIOS:

- **Kevin Fee**, Legal Director, ACLU of Illinois
- **Aziz Z. Huq**, Frank and Bernice J. Greenberg Professor of Law, University of Chicago Law School; Member, ACS Board of Academic Advisors
- **Steve Sanders** (***Moderator***), Professor of Law and Associate Dean for Academic Affairs, Indiana University Maurer School of Law
- **Steven D. Schwinn**, Professor of Law and Associate Dean for Research and Faculty Development, University of Illinois Chicago Law School; Member, ACS Chicago Lawyer Chapter Board of Advisors
- **Michael A. Scodro**, Partner, Mayer Brown; Member, ACS Chicago Lawyer Chapter Board of Advisors
- **Carolyn Shapiro**, Professor of Law and Co-Director of the Institute on the Supreme Court of the United States, Chicago-Kent College of Law; Member, ACS State AG Council of Advisors; Member, ACS Chicago Lawyer Chapter Board of Advisors

AGENDA OF PROGRAM (1.25 hours of CLE):

- 11:30 a.m. Doors Open. Boxed lunches available for pick-up.
- 12:00 p.m. Opening Remarks (5 min)
- 12:05 p.m. Panel Discussion (70 min)
- 1:15 p.m. Q&A (15 minutes)
- 1:30 p.m. Program Ends

READING MATERIALS:

- *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. ___ (2025)
- *Catholic Charities Bureau, Inc. v. Wisconsin Labor and Industry Review Commission*, 605 U.S._ (2025)
- *Trump v. CASA*, 606 U. S. ____ (2025)
- *Trump v. JGG*, 604 U. S. ____ (2025)
- *U.S. v. Skrmetti*, 605 U. S. ____ (2025)

- *Mahmoud v. Taylor*, 606 U.S. ___ (2025)
- *Ames v. Ohio Dept. of Youth Services*, 605 U. S. ___ (2025)
- *A.J.T. v. Osseo Area Schools*, 605 U.S. ___ (2025)
- *FCC v. Consumers' Research*, 606 U.S. ___ (2025)
- *OPM v. AFGE*
    - Jimmy Balser, *OPM v. AFGE and Related Litigation: Supreme Court Stays Order Reinstating Federal Probationary Employees*, Congressional Research Service (May 7, 2025).
    - OPM v. AFGE Order in Pending Case
- *Department of Education v. California*, 604 U. S. ____ (2025)
- Bridgette Adu-Wadier, From Planned Parenthood to Birthright Citizenship, What to Know About Recent Supreme Court Decisions, WTTW (July 1, 2025)
- Carolyn Shapiro, Whose irreparable harm?, SCOTUSBLOG (July 10, 2025).
- Aziz Huq, The Court's Liberals Are Trying to Tell Americans Something, THE ATLANTIC, (July 17, 2025)
- Aziz Huq, The Court's Liberals Are Trying to Tell Americans SomethingA Look at Trump's Escalating Instability, JD Vance's Intellectual Cover for Racist Policy, the Erosion of , THE ATLANTIC, (July 17, 2025)Constitutional Remedies, and the GOP's War on the Free Press — With Guests Katherine Stewart, Aziz Huq, and Peter Loge, Background Briefing (July 28, 2025).

Case Breakdowns:

Free Speech Coalition v. Paxton, Decided 06.27.2025

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., ALITO, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. KAGAN, J., filed a dissenting opinion, in which SOTOMAYOR and JACKSON, JJ., joined.

Holding: A Texas law requiring certain commercial websites publishing sexually explicit content that is obscene to minors to verify that visitors are 18 or older only incidentally burdens the protected speech of adults and survives intermediate scrutiny under the First Amendment's Free Speech Clause.

Impact: The Court ruled that "no person—adult or child—has a First Amendment right to access speech that is obscene to minors without first submitting proof of age." This ruling allows states to enact age-verification rules that could, whether intentionally or incidentally, block adults from accessing lawful speech, curtail their ability to be anonymous, and jeopardize their data security and privacy. The Court's reasoning applies only to age-verification rules for certain sexual material, and not to age limits in general. In 1997, the Supreme Court applied strict scrutiny to strike down a federal online age-verification law in *Reno v. American Civil Liberties Union*. In that case the Court ruled that many elements of the Communications Decency Act violated the First

Amendment, including part of the law making it a crime for anyone to engage in online speech that is "indecent" or "patently offensive" if the speech could be viewed by a minor. The Court's ruling in the current case holds that laws burdening an adult's access to sexual materials that are obscene to minors are subject to intermediate scrutiny. Critics are concerned that this decision will empower states to enact laws that will deter queer folks and others from accessing lawful speech and finding community online by requiring them to identify themselves.

Dissent: In her dissent, Justice Kagan asserted that the Texas law should have been review under strict scrutiny, as precedent would require, "because [the Texas law] covers speech constitutionally protected for adults; impedes adults' ability to view that speech; and imposes that burden based on the speech's content. Case closed."

Catholic Charities Bureau, Inc. v. Wisconsin Labor and Industry Review Commission,
Decided 07.07.2025

SOTOMAYOR, J., delivered the opinion for a unanimous Court. THOMAS, J., and JACKSON, J., filed concurring opinions.

Holding: The Wisconsin Supreme Court's decision denying Catholic Charities Bureau a tax exemption available to religious entities under Wisconsin law on the grounds that they were not "operated primarily for religious purposes" because they neither engaged in proselytization nor limited their charitable services to Catholics violated the First Amendment.

Impact: A state law that exempts nonprofit organizations from unemployment taxes for being "operated primarily for religious purposes" may not condition that exemption on particular theological practices such as proselytizing or serving only fellow believers.

The First Amendment prohibits government favoritism or discrimination between religions, particularly when based on theological differences. Wisconsin's interpretation of the exemption statute at issue favored religious groups that proselytize or limit services to members of their own faith and penalized groups that do not adopt these religious practices. This amounted to an unconstitutional denominational preference because it relied on inherently religious criteria. The Court rejected the State's argument that the exemption could be conditioned on religious motivation or on activities that "express and inculcate" doctrine, emphasizing that all such standards require impermissible theological line-drawing and thus fail strict scrutiny.

The exemption in Wisconsin law as enforced against Catholic Charities Bureau and its affiliates cannot survive strict scrutiny; it was not narrowly tailored to serve a compelling government interest. The State's stated goals—ensuring unemployment coverage and avoiding religious entanglement—could not justify its selective exemption based on religious practice. For example, petitioners already offered equivalent unemployment benefits through their own system, and Wisconsin's regime was both underinclusive and overinclusive: it exempted some similarly

situated religious providers while denying the exemption to petitioners. The law thus failed to achieve its aims without intruding on religious neutrality.

Justice Clarence Thomas's concurring opinion emphasized that the organizational structure of Catholic Charities should be viewed as integrated with the Diocese for First Amendment purposes, not as separate legal corporations.

Justice Ketanji Brown Jackson's concurring opinion focused on how the statute should be interpreted as a matter of textual and legislative meaning, arguing that "religious purposes" refers to the religious function an organization performs, not to its motivations or doctrinal methods.

Trump v. CASA, Decided 6.27.2025

BARRETT, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, GORSUCH, and KAVANAUGH, JJ., joined. THOMAS, J., filed a concurring opinion, in which GORSUCH, J., joined. ALITO, J., filed a concurring opinion, in which THOMAS, J., joined. KAVANAUGH, J., filed a concurring opinion. SOTOMAYOR, J., filed a dissenting opinion, in which KAGAN and JACKSON, JJ., joined. JACKSON, J., filed a dissenting opinion.
Holding: Universal injunctions likely exceed the equitable authority that Congress has given to federal courts. The Court grants the Government's applications for a partial stay of the injunctions entered below, but only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue.

Impact: By ending universal injunctions, the Court will create the need for other litigation strategies that can result in broad relief, like class-action lawsuits. For example, within hours of the Supreme Court's decision the organizational plaintiffs in the Maryland case that was before the justices filed an amended complaint seeking class certification on behalf of a class of "all children who have been born or will be born in the United States on or after February 19, 2025, who are designated by Executive Order 14,160 to be ineligible for birthright citizenship, and their parents."

The case did not address the underlying legal issues regarding President Donald Trump's executive order purporting to end birthright citizenship for people born in the U.S. whose father is not a U.S. citizen or lawful resident and whose 1) mother was unlawfully present in the United States or (2) mother's presence in the United States at the time of said person's birth was lawful but temporary.

Dissent: In her dissent, Justice Jackson asserted that, "The Court's decision to permit the Executive to violate the Constitution with respect to anyone who has not yet sued is an existential threat to the rule of law." She continued that, "what it means to have a system of government that is bounded by law is that everyone is constrained by the law, no exceptions. And for that to actually happen, courts must have the power to order everyone (including the Executive) to follow the law—full stop."

Trump v. JGG

Emergency application to vacate orders of the United States District Court for the District of Columbia presented to The Chief Justice and by him referred to the Court is granted April 7, 2025. The March 15, 2025 minute orders granting a temporary restraining order and March 28, 2025 extension of the United States District Court for the District of Columbia, case No. 1:25-cv-766, are vacated.

KAVANAUGH, J., concurring. SOTOMAYOR, J., filed a dissenting opinion, in which KAGAN and JACKSON, JJ., joined. JACKSON, J., filed a dissenting opinion.

Holding: Detainees subject to removal orders under the Alien Enemies Act are entitled to notice and an opportunity to challenge their removal, but venue lies in the district of confinement.

Impact: The court emphasized that the plaintiffs, as well as others who may be detained or removed under the Alien Enemies Act, are entitled to be notified "that they are subject to removal under the Act."

The court added that the government must provide that notice "within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs."

Justice Sonia Sotomayor penned a 17-page dissent joined in full by Justices Elena Kagan and Ketanji Brown Jackson and in part by Justice Amy Coney Barrett. She contended that her colleagues' "decision to intervene in this litigation is as inexplicable as it is dangerous."

U.S. v. Skrmetti, Decided 06.18.2025

ROBERTS, C. J., delivered the opinion of the Court, in which THOMAS, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined, and in which ALITO, J., joined as to Parts I and II–B. THOMAS, J., filed a concurring opinion. BARRETT, J., filed a concurring opinion, in which THOMAS, J., joined. ALITO, J., filed an opinion concurring in part and concurring in the judgment. SOTOMAYOR, J., filed a dissenting opinion, in which JACKSON, J., joined in full, and in which KAGAN, J., joined as to Parts I–IV. KAGAN, J., filed a dissenting opinion.

Holding: Tennessee's law prohibiting certain medical treatments for transgender minors is not subject to heightened scrutiny under the equal protection clause of the 14th Amendment and satisfies rational basis review.

Impact: The Court rejected the plaintiff's contention that that Tennessee's ban classifies either on the basis of sex or on the basis of transgender status. It held that the Tennessee law makes only two classifications: age (minor v. adult) and medical use (gender affirming care v. all other uses) and that neither of those classifications triggers the need for heightened scrutiny. The Court concluded

that the sex classification explicitly included in the law is a "mere reference," that is not sufficient to trigger heightened scrutiny. As a result, the court did not rule on whether heightened scrutiny applies to classifications based on transgender status and allowed for claims that animus motivated any challenged policy or law. Additionally, the Court notes that the Tennessee ban does not restrict the administration of puberty blockers or hormones to individuals 18 and over" — leaving open the possibility that the court could view restrictions on adult care differently. In response to the decision, in orders released on June 30, the Court directed lower courts to revisit rulings blocking state policies excluding coverage for gender affirming care in state-sponsored health insurance plans in WV and NC, and Oklahoma's ban on changing gender on birth certificates, saying these rulings should be reviewed in light of *Skrmetti*.

Dissent: In her dissent, Justice Sotomayor asserts that there is a clear the incongruity in the majority's opinion, observing that under SB 1, "Male (but not female) adolescents can receive medicines that help them look like boys, and female (but not male) adolescents can receive medicines that help them look like girls," making it a clear sex classification based on sex. She continues, "The majority contorts logic and precedent to say otherwise, inexplicably declaring it must uphold Tennessee's categorical ban on lifesaving medical treatment so long as "'any reasonably conceivable state of facts'" might justify it." She concludes that the Court's decision to obfuscate the obvious sex classification inherent in SB 1 "does irrevocable damage to the Equal Protection Clause and invites legislatures to engage in discrimination by hiding blatant sex classifications in plain sight. It also authorizes, without second thought, untold harm to transgender children and the parents and families who love them."

Mahmoud v. Taylor, Decided 06.27.2025

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. THOMAS, J., filed a concurring opinion. SOTOMAYOR, J., filed a dissenting opinion, in which KAGAN and JACKSON, JJ., joined.

Holding: Parents challenging the Montgomery County Board of Education's introduction of certain "LGBTQ+-inclusive" storybooks, along with the board's decision to withhold parental opt outs from that instruction, are entitled to a preliminary injunction.

Impact: While not directly resolving the underlying issue in the case, the Court granted a temporary injunction against the Montgomery County Board of Education, noting that "The parents are likely to succeed on their claim that the Board's policies unconstitutionally burden their religious exercise. The Court has 'long recognized the rights of parents to direct 'the religious upbringing' of their children.' Espinoza v. Montana Dept. of Revenue, 591 U. S. 464, 486 (quoting Yoder, 406 U. S., at 213–214). Those rights are violated by government policies that "substantially interfer[e] with the religious development" of children Yoder, 406 U. S., at 218." The Court noted that questions of "substantial interference" are always fact intensive. The Court concludes that in this case substantial interference exists because the books at issue are "unmistakably normative,"

designed to present "certain values and beliefs as things to be celebrated and certain contrary values and beliefs as things to be rejected." The Court concluded that applying strict scrutiny

objecting parents "substantial interference exists unless parents have the chance to opt their children out of any instruction related to the challenged instruction.

Ames v. Ohio Department of Youth Services, Decided 06.05.2025

JACKSON, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion, in which GORSUCH, J., joined.

Holding: Holding: The U.S. Court of Appeals for the 6th Circuit's "background circumstances" rule — which requires members of a majority group to satisfy a heightened evidentiary standard to prevail on a Title VII discrimination claim — cannot be squared with either the text of Title VII or the Supreme Court's precedents.

Impact: The Court's ruling largely restates settled, and generally uncontroversial legal principles. It brings the handful of circuits who applied the background circumstances rule in line with the rest of the nation. Nevertheless, the timing of the ruling and concurrences from Justices Thomas's may lend momentum to the anti-DEI legal movement, which has attempted to conflate support for diversity, equity and inclusion with "reverse discrimination." Observers should remember that most widely accepted DEI practices do not involve race or gender.

A.J.T. v. Osseo Area Schools, Decided 06.15.2025

ROBERTS, C. J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion, in which KAVANAUGH, J., joined. SOTOMAYOR, J., filed a concurring opinion, in which JACKSON, J., joined.

Holding: Schoolchildren bringing claims related to their education under either Title II of the Americans with Disabilities Act or Section 504 of the Rehabilitation Act are not required to make a heightened showing of "bad faith or gross misjudgment" but instead are subject to the same standards that apply in other disability discrimination contexts.

Impact: Schoolchildren bringing claims related to their education under either Title II of the Americans with Disabilities Act or Section 504 of the Rehabilitation Act are not required to make a heightened showing of "bad faith or gross misjudgment" but instead are subject to the same standards that apply in other disability discrimination contexts.

When the Individuals with Disabilities Education Act (IDEA) was amended in 1986, Congress explicitly declared that nothing in the IDEA "shall be construed to restrict or limit the rights,

procedures, and remedies available under" the Americans with Disabilities Act (ADA), the Rehabilitation Act, or other federal laws protecting disabled children's rights. This provision directly repudiates judicial attempts to create special barriers for educational discrimination claims. The Eighth Circuit's rule requiring schoolchildren to prove "bad faith or gross misjudgment"—rather than the standard deliberate indifference required in other disability contexts—artificially limits disabled students' ability to vindicate their rights under the ADA and Rehabilitation Act. Neither statute's text suggests that educational services claims deserve different treatment than other disability discrimination claims. Both laws use expansive language applying protections to "any person" alleging discrimination, without distinction based on the type of claim.

The heightened standard originated in 1982 when the Eighth Circuit attempted to "harmonize" the IDEA with the Rehabilitation Act, reasoning that courts should defer to educators unless they departed grossly from professional standards. This Court made a similar harmonization attempt in 1984, holding the IDEA was the exclusive remedy for educational claims, but Congress swiftly overturned that decision. The Eighth Circuit's continued application of its heightened standard conflicts with Congress's clear directive that the IDEA does not limit other federal antidiscrimination laws. By imposing a higher burden of proof for educational claims compared to other disability discrimination contexts, courts effectively read the IDEA as restricting the independent rights and remedies that Title II and Section 504 provide to disabled children.

Justice Clarence Thomas's concurring opinion, joined by Justice Brett Kavanaugh, suggested that the Court should consider in a future case whether intent to discriminate must be proven for all ADA and Rehabilitation Act claims, not just educational ones.

Justice Sonia Sotomayor's concurring opinion, joined by Justice Ketanji Brown Jackson, emphasized that the ADA and Rehabilitation Act require no showing of improper purpose or animus because discrimination against people with disabilities often results from thoughtlessness rather than malice.

FCC v. Consumers' Research, Decided 06.27.2025

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SOTOMAYOR, KAVANAUGH, BARRETT, and JACKSON, JJ., joined. KAVANAUGH, J., and JACKSON, J., filed concurring opinions. GORSUCH, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined.

Holding: The universal-service contribution scheme does not violate the Constitution's nondelegation doctrine; Congress sufficiently guided and constrained the discretion that it lodged with the Federal Communications Commission to implement that scheme, and the FCC has retained all decision-making authority within that sphere, relying on the Universal Service Administrative Company only for non-binding advice.

Impact: The statutory scheme that allows the FCC to collect "sufficient" contributions to fund universal-service programs does not violate the nondelegation doctrine. The Communications Act directs the FCC to collect contributions that are "sufficient" to support universal-service programs, which sets both a floor and a ceiling on the agency's authority. The FCC cannot raise less than what is adequate to finance the programs but also cannot raise more than that amount. Congress provided adequate guidance by specifying whom the programs must serve (rural and high-cost areas, low-income consumers, schools, and libraries) and defining which services qualify for subsidies. To receive funding, services must be subscribed to by a substantial majority of residential customers, be available at affordable rates, and be essential to education, public health, or safety. These conditions create determinate standards that meaningfully constrain the FCC's discretion.

The FCC's use of the Universal Service Administrative Company to help calculate contribution amounts also passes constitutional muster. The Administrator operates subordinately to the Commission, which appoints its Board of Directors, approves its budget, and retains final decision-making authority. While the Administrator produces initial projections of carrier revenues and Fund expenses, the Commission reviews, revises if needed, and approves these figures before setting the contribution factor. The arrangement mirrors the permissible structure approved in Sunshine Anthracite Coal Co. v. Adkins, where private parties could make recommendations to a government agency that retained ultimate authority.

Justice Brett Kavanaugh's concurring opinion agreed with the outcome but emphasizing concerns about delegations to independent agencies.

Justice Ketanji Brown Jackson's concurring opinion, expressed skepticism about the viability of the private nondelegation doctrine as an independent constitutional principle.

Dissent: Justice Neil Gorsuch's dissenting opinion, joined by Justices Clarence Thomas and Samuel Alito, argued that Section 254 impermissibly delegates Congress's taxing power by failing to set a tax rate or meaningful cap on collections.

OPM v. AFGE

Emergency application for stay is granted on April 8, 2025. JACKSON, J., and SOTOMAYOR, J., would deny the application.

Impact: In OPM v. AFGE, nonprofit organizations and labor union plaintiffs representing terminated probationary employees at the Departments of Veterans Affairs, Agriculture, Defense, Energy, Interior, and Treasury challenged the removals in the U.S. District Court for the Northern District of California. With respect to only the nine nonprofit plaintiffs, the district court found

jurisdiction and granted a temporary restraining order, and on March 13 issued a preliminary injunction from the bench ordering the reinstatement of probationary employees at the six federal agencies. In granting the preliminary injunction, the court held that the nonprofit plaintiffs showed irreparable harm resulting from the immediate impairment of public services, and reasoned that plaintiffs were likely to succeed on the merits based on its finding that OPM's directive to agencies to terminate probationary employees constituted an ultra vires act that "violated its and all impacted agencies' statutory authority."
The U.S. Court of Appeals for the Ninth Circuit denied an emergency motion to stay the district court order, and the government appealed to the Supreme Court. In its appeal, the government argued, among other things, that the plaintiff nonprofit organizations lacked standing, or a legal right to challenge the removals of the probationary employees. In general, for a party to establish standing, it must allege that it has or will suffer (1) a concrete and particularized injury (2) that is fairly traceable to the allegedly unlawful actions of the opposing party and (3) that is redressable by a judicial decision. The government claimed that the district court improperly relied on speculative injuries: disruptions of government services caused by mass firings. The nonprofit organizations responded that the alleged harms were not speculative, stating, for example, that the removal of employees from the Department of Veterans Affairs "has already had and will imminently continue to have serious negative consequences for members [plaintiff veterans organizations], including delays in receiving prosthetic limbs, mental health counseling, and other vital services"; and that the removals at the Forest Service (Department of Agriculture) and Bureau of Land Management (Department of the Interior) "have already harmed and will continue to harm the ability of [plaintiff] environmental and outdoor organizations to enjoy and protect a wide range of federal lands and resources," among other disruptions to government services.

On April 8, the Supreme Court granted the government's application to stay the preliminary injunction. The Court stated in an unsigned order that the lower court's injunction "was based solely on the allegations of the nine non-profit-organization plaintiffs in this case. But under established law, those allegations are presently insufficient to support the organizations' standing." The Court cited to Clapper v. Amnesty Int'l USA, a 2013 decision where the Court addressed how likely the threat of future harm to the plaintiff must be in order for that harm to qualify as an imminent injury. The Court also clarified that it was not ruling on whether the other plaintiffs would have standing, nor was the Court ruling on the legality of the probationary employee removals. Justices Sotomayor and Jackson dissented—with Justice Jackson writing that the Court should have declined to reach the standing question since the government had not demonstrated irreparable harm necessitating emergency relief in its application to stay.

- Jimmy Balser, *OPM v. AFGE and Related Litigation: Supreme Court Stays Order Reinstating Federal Probationary Employees*, Congressional Research Service (May 7, 2025).

- OPM v. AFGE Order in Pending Case

Department of Education v. California

Emergency application to vacate order is granted on April 4, 2025. The Chief Justice would deny the application. KAGAN, J., dissenting. JACKSON, J., with whom SOTOMAYOR, J., joins, dissenting.

Holding: The court halted an order by a federal judge in Massachusetts that would have required the Department of Education to reinstate more than $65 million in grants that it terminated in February because they funded programs that included diversity, equity, and inclusion initiatives.

Dissent: The vote was 5-4, with Chief Justice John Roberts indicated that he would have denied the government's request. Justice Elena Kagan dissented, calling the court's ruling a "mistake." Justice Ketanji Brown Jackson, in an opinion joined by Justice Sonia Sotomayor, also dissented, writing that it was "beyond puzzling that a majority of the Justices conceive of the Government's application as an emergency."